Next Up: Employment Law Revue Two-O-Two-One

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Legal Trends We Will Cover

• Disability and Race Discrimination Cases
• COVID Vaccine Mandates in Case Law
• First Amendment
• Pay Equity in Higher Education
• Sexual Orientation and Gender Identity Discrimination
• Sexual Harassment/Title IX & Title VII
• Age Discrimination
• OSHA and Labor Law
• Q & A
Disability Discrimination

- Lee v. Univ. of Pennsylvania School of Dental Medicine
- Stratton v. Jackson State
- Weiss v. Pa. Hosp. of Univ of Pa
- Hudnell v. Thomas Jefferson Univ
- Steckloff v. Wayne State Univ

Race Discrimination

- Champion v. Texas Southern University
COVID

Where we are on mandating vaccines?

- Bridges v. Houston Methodist
- Kiel

First Amendment

- Meriwether v. Shawnee State Univ
- Klein v. Arizona State Univ
Pay Equity/Federal Law

- Pending Legislation to Amend the EPA
- The Paycheck Fairness Act is currently before Congress
- Proposed changes:
  - Significantly narrows the “factor other than sex” defense
  - Requires employers to demonstrate that the wage differential is a matter of business necessity

Pay Equity/State Laws

- Many jurisdictions have their own equal pay protections stronger than federal law and providing greater damages.
- E.g., New Jersey and New York: treble damages if willful violation
- Generally, state and local laws are (a) expanding comparators; (b) limiting defenses; (c) increasing remedies and penalties; and (d) expanding opportunities for class and collective action litigation
Pay Equity/H.E. Contested Issues

• Battle of the Statistical Experts
• Who is the Appropriate Comparator?
• Justification for Removing Outliers
  • Retention Raises
  • Administrative Appointments
  • High Student Evaluations
  • Allegations of Bias in All of the Above

Pay Equity/The Future?

Freyd v. Univ. of Oregon

• About Plaintiff Jennifer Joy Freyd
• Ruling by Ninth Circuit
  • Whether Positions are Comparable is Question of Fact for Jury
  • Retention Raises—Title VII Disparate Impact
  • Statistical Expert Analysis—Question of Fact for Jury
• Impact on colleges/universities in 9th Circuit
**Sexual Orientation & Gender Identity Discrimination**

- Bostock v. Clayton County
- Banford v. Bd. Of Regents of Univ. of Minn
- Philpott v. State University of New York (pre-Bostock)

**A Brief Word on Religious/Ministerial Exemption**

- Our Lady of Guadalupe v. Morrissey-Berru
- Koenke v. Saint Joseph's University
- DeWeese-Boyd v. Gordon College
Wage and Hour

Federal Minimum Wage $7.25 (has not been changed since 2009)
  • Raise the Wage Act of 2021
Joint Employer Status Under the FLSA
Independent Contractor Rules
Exempt “White Collar” Salary Minimums

Sexual Harassment/Title IX & VII

• The first year under the TIX regulations – we’re still here…
• Courts still looking carefully at the kind of conduct being alleged
• Circuit split – TIX or TVII or both?
• Following policies still paramount – including adhering to requirements of CBAs; equitable application
• Retaliation claims management still an important area of focus
Age Discrimination

• Federal case law continues to follow Gross – “but for” causation required

• EEOC focus on age cases - systemic litigation; supportive of more expansive causation standard

• State and Federal legislative activity in support of older workers

OSHA

• New Administration – New Focus
  • “Ensuring the health and safety of workers is a national priority and a moral imperative.”
  • Avoiding retaliation claims is key
Labor

• Again…New Administration – New Focus
• Ongoing issues
  • Whiplash?
  • Graduate Student Organizing
  • Adjunct Organizing

QUESTIONS???????
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