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Unions' Share of U.S. Workforce Shrank in 2018

According to a poll released by the Bureau of Labor Statistics (BLS), the percentage of U.S. workers over the age of 16 who are union members dipped from 10.7% to 10.5% in 2018. The actual number of union members decreased from 14,817,000 to 14,744,000, even while the workforce grew by about 2.2 million jobs overall. There are many interesting aspects to and surprises within the BLS's report and other studies on unionization.

The drop in union membership is a bit of a surprise, as labor grew its membership rolls in the previous year by the biggest jump in more than a decade, including notable growth among employees ages 16-34. (See the November 2018 ELB for more about how and why labor felt it ended 2018 on an optimistic note). Public opinion was broadly favorable to unions, according to an August 2018 Gallup poll. Democrats, who tend to be supported by labor, were more successful, on a national level, than Republicans in November 2018. Yet, unions weren't able to convert this momentum into membership gains in 2018.

Demographically, labor's biggest loss came among men ages 45-54 years old. Union membership declined by over 100,000 among this group, from 2 million to 1.9 million, translating to a decline in union membership rate from 13.9% to 13.3%. In 2008, 17.4% (2.6 million) of male workers ages 45-54 years old were union members.

Interestingly, unions largely retained or grew their membership ranks among women. From 2017 to 2018, the number of women who were members of unions grew from 6,651,000 to 6,662,000, which, with the growth of the workforce, translated to only a 0.1% decline in membership rates for women overall. Unions also grew their ranks of African American women: from 1,109,000 (11.7%) to 1,147,000 (11.9%). This is especially remarkable when you consider that every other race/sex demographic group experienced reductions in or, at best, broke even on their year-over-year membership rates.

Unions also found some fertile soil for growth in the Deep South. In Alabama, union membership leapt from 138,000 (7.4% of workers) to 180,000 (9.2% of workers). In Georgia, union membership grew from 173,000 (4.0% of workers) to 201,000 (4.5% of workers). In Louisiana, union membership climbed from 78,000 (4.4%) to 89,000 (5.5%). Florida, Mississippi, South Carolina, and Tennessee generally held steady in their membership numbers. North Carolina reduced its proportion of unionized workers back down to among the very lowest in the nation, from 3.4% in 2017 to 2.7% in 2018 (tied with South Carolina). Other states where workforce union membership grew by more than one percent were Arizona (from 4.0% to 5.3%), Colorado (from 9.6% to 11.0%), Hawaii (from 21.3% to 23.1%), Maine (11.4% to 12.9%), Massachusetts (from 12.4% to 13.7%), Nevada (12.7% to 13.9%), Rhode Island (16.1% to 17.4%), and Washington state (18.8% to 19.8%). Workforce union membership shrank by more than one percent in Illinois (15.0% to 13.8%), Michigan (15.6% to 14.5%), Nebraska (8.2% to 6.6%), New Hampshire (11.3% to 10.2%), New Jersey (16.2% to 14.9%), New York (23.8% to 22.8%), Oregon (14.9% to 13.9%), and West Virginia (11.0% to 10.0%).

Union membership rates among public sector employees did not drop off precipitously in the immediate wake of the *Janus* decision. (See the June 2018 ELB). Union membership among public employees did decline, from 7,216,000 (34.4%) to 7,167,000 (33.9%). In the past ten years, public sector union membership rates have declined by an equal or greater percentage five times. It will be interesting to see if public sector union membership numbers decline (and by how much) in 2019 after *Janus* has been the law of the land for over a full year.

FCRA Litigation Increases

Although employment litigation overall has declined, largely due to low unemployment, litigation regarding the Fair Credit Reporting Act increased by 4% in 2018 compared to 2017. The FCRA is a "gotcha" statute, where technical noncompliance can result in class action litigation and expensive resolutions. For example, Uber paid $7.5 million (ok, that's chump change for them) in 2018 when they conducted background checks without proper authorization, and Amazon paid $5 million because its authorization was not on a required stand-alone form. In several sectors, failure to conduct a background check may be considered negligence by the employer if an incident occurs. For example, employer accountability to conduct a background check is higher for employees in healthcare, employees who enter private property in order to perform their job duties, employees who work with hazardous materials, and employees who drive vehicles in the performance of their job responsibilities. Background checks may also be required by some government contracts or to obtain licensures (ex: a daycare facility). Remember the following steps to assure compliance with the FCRA:

1. Create a stand-alone form for the applicant or employee to sign, where the form discloses that the employer will require a background report for employment purposes. A stand-alone form means that other terms and conditions may not be a part of this. For example, the form may not include a general release of liability, it may not include a "termination at will" statement, and it may not include a statement that an incomplete application or falsification of information will result in either termination of employment or no employment. Even if your authorization form is created by your vendor, you should ensure it complies. Many mid-sized vendors have been using non-compliant forms in the recent past.

2. If the report the employer receives contains information, which contributes in any way towards the employer taking an adverse action, such as termination or not hiring the applicant, the employer is required to give the applicant or employee a pre-adverse action notice containing a copy of the report and a summary of the employee's rights under the FCRA.

3. The employer must wait for what's considered a reasonable amount of time before taking the adverse action. If adverse action is taken, the employer must notify the employee and provide the name of the reporting agency that provided

the information which was the basis for the adverse action.

More employers are conducting background checks without using a third-party agency. In that situation, the FCRA does not apply. For example, if an employer calls former employers and educational institutions or searches the court system in the county where the employer is located, that is not considered a third-party report that becomes a basis for the required disclosures. However, especially if an employer is using a hybrid approach (for instance, if the employer conducts its own reference checks but uses a third party for criminal background research) we still recommend that an employer treat those inquiries as if they were covered under the FCRA, especially with respect to obtaining an authorization.

Marijuana: Dangerous Behaviors?

According to a recent article by Alex Berenson in *The New York Times*:

> The number of Americans who use cannabis heavily is soaring. In 2006, about 3 million Americans reported using the drug at least 300 times a year, the standard for daily use. By 2017, that number had increased to 8 million – approaching the 12 million Americans who drink every day. Put another way, only 1 in 15 drinkers consumed alcohol daily; about 1 in 5 marijuana users use cannabis that often.

Berenson adds that the cannabis individuals are consuming is highly potent, as measured by the amount of THC, which is a drug responsible for psychedelic effects. Berenson's research indicated that in the 1970's, marijuana's THC-potency was about 2%. "Today, marijuana routinely contains 20-25% THC, thanks to sophisticated farming and cloning techniques and the demand of users to get a stronger high more quickly."

So what do these statistics mean for employers? According to Berenson, excessive marijuana use creates a greater risk of psychosis, which then creates a higher risk of violent behavior. What's more, says Berenson, "much of that violence occurs when psychotic people are using drugs." 7.5% of young adults meet the definition of having a serious mental illness, more than double what it was in 2008. Berenson also stated that "the link between marijuana and violence doesn't appear limited to people with preexisting psychosis. Researchers have studied alcohol and violence for generations, proving that alcohol is a risk factor for domestic abuse, assault and even murder." Berenson cites a number of studies which show a higher correlation of violent behavior among non-psychotic individuals who are heavy marijuana users. For example, among the first states that legalized marijuana in 2013 and 2014 – Colorado, Washington, Alaska and Oregon -- they had a combined 450 murders and 30,300 aggravated assaults in 2013. As of 2017, they had 620 murders and 38,000 aggravated assaults, which Berenson said is more than the national average.

Testing for marijuana has yet to be perfected from the perspective of determining the degree to which an individual is "high" or "impaired" based upon marijuana use. As states continue to decriminalize the use of marijuana, employers still retain their rights to act based upon violence, threats, workplace attitude, attendance, performance, or other detrimental behavior, including and especially active impairment. Employers generally retain the ability to drug test, but some states have curtailed employers' abilities to dismiss employees solely because of a positive test.

NLRB Topics

This article was prepared by Frank F. Rox, Jr., NLRB Consultant for the law firm of Lehr Middlebrooks Vreeland & Thompson, P.C. Prior to working with the firm, Mr. Rox served as a Senior Trial Attorney for the National Labor Relations Board for more than 30 years. Mr. Rox can be reached at 404.312.4755.

D.C. Circuit Court Remands *Browning-Ferris* Case Back to NLRB

On December 28, 2018, the D.C. Circuit Court of Appeals said that the new joint employer rules were not well explained by the Board and remanded the case to the Board for a better explanation. In other words, the D.C.

Circuit has, in essence, upheld the Board's joint employer standard articulated by the NLRB in its 2015 *Browning-Ferris* decision (we covered that decision when it came out in our [August 2015 ELB]).

The panel said the NLRB acted within bounds in ruling that "direct control" was required by the NLRA, which "has deep roots in the common law." However, the Court also held that the Board properly considered an employer's (who is a joint employer) reserved right to control AND its actual indirect control over the employees' essential terms and conditions of employment as factors for determining whether businesses should be considered joint employers. Thus, the partial remand:

> The problem with the board's decision in not its recognition that indirect control (and certainly control exercised through an intermediary) can be a relevant consideration in the joint-employer analysis. [But] it is the board's failure when applying that [standard] to this case [that is the problem].

The Circuit Court went on to state that:

> The Board's conclusion that it need not avert its eyes from the indicia of indirect control - including control filtered through the intermediary- is consonant with common law [principals]. And that is the only question before this court.

In other words, the NLRB failed to articulate what it considers "indirect control" so that meaningful bargaining takes place. As a result, the panel remanded the case to the Board so it can better describe its indirect control standard and properly apply that standard to *Browning-Ferris* to determine if the company is in fact a joint employer with Leadpoint.

Given the NLRB's efforts to create new, more employer-friendly, rules, the D.C. Circuit's ruling may mean little in the joint employer arena. However, the Court's lecture to the Board that its rulemaking must fit the judicial roadmap for the agency factors under the common law for analyzing the "indirect" standard is cause for concern. Expect the NLRB to pay lip service to the indirect standard, and explain the "indirect" standard, but ultimately return to "direct control" benchmark. If passed through, I really do not see a path for review by the D.C. Circuit Court. The General Counsel will simply refuse to issue complaints against employers who only exhibit "indirect" control of workers' essential terms and conditions of employment.

This was a highly nuanced decision by the D.C. Circuit, consisting of approximately eighty pages, including a lengthy dissent of twenty–nine pages. The dissent lamented the fact that the Court issued a decision on the merits of the case while the Board is engaged in active rulemaking in this area. The dissent also said that the two-judge majority misconstrued the common law standards of control (agency rules under the common law) governing the joint employer issue.

The confusion regarding the decision is evident. One need only look on the internet at what the pundits say for their conflicting takes on the circuit court decision. One pundit believes the decision affirms the underlying *Browning-Ferris* decision, while another pundit believes that the decision invalidates the *Browning-Ferris* decision. Even the NLRB itself is confused as to the meaning of the decision, as it believes that the indirect control test articulated by the Obama Administration was invalidated. (This, I do not believe. While technically reversed by the court, the case was simply remanded for a better explanation and an application of the indirect standard to *Browning-Ferris*). Finally, the Court stated:

> In sum, we uphold as fully consistent with the common law the Board's determination that both reserved authority to control and indirect control can be relevant factors in the joint employer analysis. We reverse, however, the Board's articulation and application of the indirect - control element in this case to the extent that it failed to distinguish between indirect control that the common law of agency considers intrinsic to ordinary third-party contracting relationships, and indirect control over the essential terms and conditions of employment we accordingly grant [BFI's] petition, deny the Board's cross –

> application [for enforcement], dismiss without prejudice the Board's application for enforcement as to Leadpoint, and remand for further proceedings consistent with this opinion.

The best bet for final resolution is the NLRB rulemaking process. (Discussed in the November 2018 ELB). As the dissent in the *Browning-Ferris* stated, "Our court should not be attempting to preempt the [NLRB's] forthcoming judgement in the rulemaking [process]." One thing is clear, this decision hardly puts the issue to rest – stay tuned for further developments in the joint employer maelstrom.

The Legislative Agenda

The Democrats gaining control of the House of Representatives has changed the political atmosphere. The Democrats will try and slow down the regulatory push happening through rulemaking. Look for the House to try and frustrate the Republican agenda, such as the joint employer proposals. Look for the House to pass pro-labor legislation and a new minimum wage bill. No House initiatives are expected to make it out of the Senate.

In separate news, expect the NLRB to expand the use of rulemaking beyond the joint employer proposals, including rulemaking employed in recusals and property access rights. The Board's Chairman, John Ring, stated that the NLRB "is structured to decide cases and 'will continue to do so' . . . [but the NLRB must] develop a capacity and a structure for rulemaking." Ring stated in the interview that the Board intended to expand rulemaking under the Trump administration and whether a company is a joint employer of another company's employees is one of the most important issues facing the labor bar. Control of the House by the Democrats also empowers the House to call for hearings and start the investigative process.

EEOC in 2019

This article was prepared by JW Furman, EEO Consultant Investigator, Mediator and Arbitrator for the law firm of Lehr Middlebrooks Vreeland & Thompson, P.C. Prior to working with the firm, Ms. Furman was a Mediator and Investigator for 17 years with the Birmingham District Office of the U.S. Equal Employment Opportunity Commission (EEOC). Ms. Furman has also served as an Arbitrator and Hearing Officer in labor and employment matters. Ms. Furman can be reached at 205.323.9275.

What changes can we expect to see from the EEOC in 2019? Hopefully, some of the changes that were anticipated for 2018 will occur in 2019. This agency unfortunately is caught up in a logjam that is much larger than itself.

The Senate again failed to take action on the nominations of Daniel Gade and Janet Dhillon, leaving two seats on the Commission vacant. Gade withdrew his nomination late in 2018 and the President has not yet named another candidate. Chai Feldblum, who served two terms on the Commission (with Senate approval), was re-nominated in December 2017 for a third term by President Trump, but the Senate never advanced that to a vote. Her term expired and she left earlier this month; no nominee has been proposed for her seat. With only two of the five Commission seats filled, EEOC cannot make policy decisions, approve large contracts, or file amicus briefs. Acting Chair Victoria Lipnic can approve guidance on the application of existing laws and policies, but cannot reinterpret those laws and policies or issue new policies without a quorum. I have seen one report that these powers were delegated before Commissioner Feldblum left but have not been able to confirm it. However, since the Commission did not issue policies on EEO-1 reporting or employee wellness programs when they had two vacancies, I do not expect much policymaking with the current three vacancies.

There are two other key positions that will affect EEOC's direction for the future. President Trump's nominee for General Counsel, Sharon Fast Gustafson, has not received a vote by the Senate. While the General Counsel does not vote with the Commission, s/he does provide significant advice and direction. And the term of Commissioner Charlotte Burrows will expire July 1, 2019. There has been no announcement regarding her possible re-nomination. However, like Feldblum, a Senate vote is required before the end of her term in order for her to remain seated.

Sexual harassment is still in the forefront of the news. As predicted last year, the numbers of EEOC charges and lawsuits filed increased. The agency reported that more than 7,600 sexual harassment charges were filed during fiscal year 2018 (October 2017 – September 2018) and it filed 41 lawsuits alleging sexual harassment. A partnership with the Department of Justice was signed in December, which is expected to allow for faster action on harassment charges against state and local government employers. It is also anticipated that the DOJ will be much more involved in obtaining injunctive relief or temporary restraining orders during EEOC investigations, enabling more aggressive investigations.

While many within EEOC still anticipate that EEO-1 reporting will eventually include some pay data, it has not happened yet. The information required to be submitted still remains the same as that prior to the 2017 proposed changes. But the submission date change remains in effect. As begun in 2018, employers with 100 or more employees and federal contractors with 50 or more employees are required to file EEO-1 reports by March 31. Data for this year's report can be extracted from any pay period from October through December 2018.

The questions of whether Title VII sex discrimination protections apply to sexual orientation or transgender status likewise have not changed since last year. The Circuit Courts are still split and the Supreme Court has not decided these issues. EEOC's policies regarding its processing of these charges will not change unless or until the Supreme Court rules or new Commission members are confirmed who decide they should change.

EEOC is mostly closed during the partial government shutdown. It is taking charges and receiving mail but investigations and mediations are frozen. Stakeholders are unable to access its electronic portal to send or receive information or updates. With new charges coming in but none being closed, there obviously will be a huge backlog this year. In order to move this backlog, I am sure that EEOC will be open to settlement proposals on most charges as soon as they reopen.

Uniforms Under the Fair Labor Standards Act

This article was prepared by Lyndel L. Erwin, Wage and Hour Consultant for the law firm of Lehr Middlebrooks Vreeland & Thompson, P.C. Prior to working with the firm, Mr. Erwin was the Area Director for Alabama and Mississippi for the U. S. Department of Labor, Wage and Hour Division, and worked for 36 years with the Wage and Hour Division on enforcement issues concerning the Fair Labor Standards Act, Service Contract Act, Davis Bacon Act, Family and Medical Leave Act and Walsh-Healey Act. Mr. Erwin can be reached at 205.323.9272.

Many employers are not aware of potential liabilities that are involved when employees are <u>required</u> to wear uniforms at work. With respect to uniforms there are two specific issues that employers must consider. First, even though the FLSA does not require employees to wear uniforms, it does not allow uniforms, or other items which are considered to be primarily for the benefit or convenience of the employer, to be included as wages. **Therefore, if the wearing of a uniform is required by some other law, the nature of a business, or by an employer, the cost and maintenance of the uniform is considered to be a business expense of the employer**. If the employer requires the employee to bear the cost, that cost may not reduce the employee's wage below the minimum wage or cut into overtime compensation required by the Act.

Definition of "uniforms": Although there are no hard-and-fast rules in determining whether certain types of dresses are considered uniforms for purposes of section 3(m), the following principles are applicable:

a. If an employer merely prescribes a general type of ordinary basic street clothing to be worn while working and permits variations in details of dress, the garments chosen by the employees would not be considered to be uniforms.

b. On the other hand, where the employer does prescribe a specific type and style of clothing to be worn at work (*e.g.*, where a restaurant or hotel requires a tuxedo or a skirt and blouse or jacket of a specific or distinctive style, color, or quality), such clothing would be considered uniforms.

c. Other examples would include uniforms required to be worn by guards, cleaning and culinary personnel, and hospital and nursing home personnel.

If an employee is paid an hourly wage of $7.25, the employer may not make any deduction from the employee's wages for the cost of the uniform, nor may the employer require the employee to purchase the uniform on his/her own. However, if the employee were paid $7.50 an hour and worked 20 hours in the workweek, the maximum amount the employer could legally deduct from the employee's wages would be $5.00 ($.25 X 20 hours). The employer may prorate deductions for the cost of the uniform over a period of paydays provided the prorated deductions do not reduce the employee's wages below the required minimum wage or overtime compensation in any workweek. Additionally, employers may <u>not</u> avoid FLSA minimum wage and overtime requirements by having the employee reimburse the employer in cash for the cost of such items in lieu of deducting the cost from the employee's wages.

With respect to maintenance and cleaning of uniforms, Wage Hour has established an enforcement policy regarding “wash-n-wear” uniforms that the employee may launder with his/her other clothes. They will accept the payment of $3.35 per week ($.67 per day) as an adequate reimbursement to the employee. If the employee is required to have his uniform dry cleaned, these costs cannot reduce the employee below the minimum wage. Of course, many employers choose to clean and maintain the uniforms and thereby ensuring that they are complying with the FLSA. As with the cost of uniforms, employees receiving an amount sufficient above the minimum wage to cover the maintenance costs are not required to receive any additional payments.

Often employers renting the required uniforms with a commercial laundry service and the rental contract states that the uniforms must be returned when the employee terminates his employment. If the employee, upon termination, fails to return his/her uniforms (causing the employer to pay for the uniforms), the employer is still required to pay the employee at least the minimum wage for his final hours worked.

The second issue involves the time an employee spends in changing into and out of his uniform. In most situations, employees are allowed to wear their uniforms home. In those instances, the time an employee spends in changing at home would not be work time as this time is specifically described in the “Portal to Portal” Act as “preliminary or postliminary” activities that are not compensable. When employers require the changing of clothes on the premises, Wage Hour contends that these activities are no longer “preliminary or postliminary” activities but are an integral part of the employee’s job and must be paid. This position was upheld by the U. S. Supreme Court in 2005. The Court stated that the donning (putting on the protective items) begins the employee’s workday and time spent walking from the change house to the employee’s workstation is also compensable. They also took the same position regarding time the employee spends walking back from his workstation to the change house and time the employee spends in doffing (removing the protective items).

There is one circumstance where the changing of clothes on the premises of the employer is not considered as work time. That is the situation where there is a collective bargaining agreement in effect at the pant that addresses the issue. Section 3(o) of the FLSA states that “...there shall be excluded any time spent in changing clothes or washing at the beginning or end of each workday which was excluded from the measured working time ... by the “**expressed terms of or by custom or practice under a bona fide collective bargaining agreement applicable to the particular employee.”** Thus, if a CBA states that the clothes changing time is not compensable, the employer does not need to pay for this time.

A situation where I see that employers have the greatest potential liability is where there is no CBA in effect and the employees are required to change clothes on the premises. There are certain circumstances where employers believe for cleanliness, safety, or other reasons, that the employee must change clothes on the premises. However, in doing so, employers may be obligating themselves to compensate the employee for this time. Employers that require employees to change into uniforms on the premises should review their pay policies related to the time spent in changing clothes to ensure they are properly compensating their employees under the FLSA.

If I can be of assistance, do not hesitate to call me.

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Decatur, AL – May 14, 2019

8:30am - 4:00pm Central

City of Decatur Fire and Police Training Center

4119A Old Highway 31, Decatur, AL 35603

Birmingham, AL – October 3, 2019

8:30am - 4:00pm Central

Vulcan Park and Museum

1701 Valley View Drive, Birmingham, AL 35209

Huntsville, AL – October 17, 2019

8:30am - 4:00pm Central

Redstone Federal Credit Union

220 Wynn Drive, Huntsville, AL 35893

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In the News

EEOC Nominee Withdraws from Consideration

During July 2017, President Trump nominated Janet Dhillon to chair the EEOC and Dr. Daniel Gade, a disabled veteran, to an EEOC Commissioner's position. Neither has been brought to the Senate floor for a vote. Dr. Gade was tired of the "waiting game" for the Senate to act, and he withdrew his name from consideration, stating that the Senate should "get nominees approved and serving so that the agency can continue this critical work." Apparently, the delay in bringing Dr. Gade and Ms. Dhillon to the floor for a vote is connected to some who oppose the reappointment of Commissioner Chai Feldblum for a third term. Ms. Feldblum was appointed by President Obama. With some senators opposing her re-nomination and refusing to bring that vote to the floor, the "turn around is fair play" game apparently applies to the nominations of Dr. Gade and Ms. Dhillon.

$1.75 Million for Inappropriate Leave Policies

On December 6, the EEOC entered into a consent agreement with Family Healthcare Network for $1.75 million based on the Network's application of its leave policies. In essence, if an employee needed leave beyond the time provided by the policy, the employee was terminated. When those terminated employees applied to return to work, they were not considered. This raised issues under the Americans with Disabilities Act and the Pregnancy Discrimination Act. Remember that even if a leave policy is generous, a fixed termination date as a matter of policy may violate the ADA and PDA. Whether leave may be extended should be evaluated on an individualized, case-by-case basis, considering the individual's job duties, and whether the extension of the leave is for a fixed date for the individual to return. Generally, an employer is not required to accommodate an indefinite medical leave of absence.

Proposed Wage Hour Exemption Rule Moving Forward

The United States Department of Labor will move forward with the rulemaking process to propose a change to the white-collar exemption salary levels. The process involves DOL sending a Notice of Proposed Rulemaking to the White House Office of Management and Budget to review before publishing the proposed rule for comment in the Federal Register. The rule would replace the prior rule issued in 2016 and enjoined by a United States federal district court judge in Texas, where the annual salary level for exemptions would rise to nearly $48,000. The case where the injunction was issued is on appeal to the U.S. Court of Appeals for the Fifth Circuit, which has stayed the proceedings so that the Department of Labor may move forward with a revised rule. The rule that is enjoined not only raised the salary level to nearly $48,000, but also had a built-in escalator for further increases in the salary based upon cost of living statistics in four regions of the country. We anticipate DOL to propose an increase to the exemption level (for the first time since 2004) to the $32,000 range and to refrain from "automatic" future increases connected to the cost of living. Rather, we expect any future increases will occur as the proposed one, which is through the rule-making process.

Mandatory Vacation on the Way?

Several states and cities have passed mandatory leave statutes which extend rights to individuals who are not covered under the Family Medical Leave Act. A certain number of those statutes require paid leave. Mayor Bill de Blasio of New York has taken this one step further. He proposed on January 9, 2019, to require mandatory vacation time for those individuals who work in the city of New York. The proposed law would apply to any employer with five or more employees and it would give an employee a minimum of ten days of paid time off annually, to be used for any variety of purposes. This law would have carry-over provisions in addition to a minimum advance notice to the employer when an employee desires to use the paid personal day. This PTO bill would be an addition to the five paid sick days employers are required to provide in the state of New York.

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