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Employment Law Bulletin

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The Effective Supervisor®

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New EEOC Chair, New EEOC Direction?

It took only 23 months, but on May 8, 2019, the United States Senate approved President Trump's nomination of Janet Dhillon to become Chair of the Equal Employment Opportunity Commission. Dhillon was confirmed by a 50 – 43 vote. Dhillon was nominated in June 2017.

Prior to her nomination, Dhillon was a management-side employment lawyer for a large corporate firm from 1991 through 2004. Subsequently, she worked as General Counsel for a national airline and for several national retailers. She also was a founder of the Retail Litigation Center, which is an advocacy group advancing the interest of retailers through initiating judicial action.

With Dhillon's confirmation, the Commission now has a quorum to transact businesses. Out of the five Commissioner positions, two are still vacant. The question, then, is what impact will Dhillon's appointment have on the agency? First up is for the agency to evaluate the pay data component of the EEO-1 report, which is due on September 30, 2019 (for 2017 and 2018 pay data). Will the EEOC under Dhillon's leadership revoke those requirements going forward? Based upon her record in private practice and corporate life and her publicly expressed skepticism about the value of the Component 2 data, we believe that it is likely that she will seek to revoke that requirement. It is expensive for the EEOC to enforce and manage that requirement and the information request is contrary to Dhillon's stated objective, which is to reduce the amount of EEOC-initiated litigation. Dhillon prefers the EEOC litigate less and enhance its efforts to mediate and resolve employment claims. Though we would love to be wrong, we do not think the EEOC can move through the rulemaking process to kill the pending required Component 2 data report due in September.

Dhillon's term expires on July 1, 2022. Commissioner Charlotte Burrows' term expires on July 1, 2019, which can be extended until September 1 if a new Commissioner is not confirmed by then. Thus, for the EEOC to revoke the pay data component of the EEO-1 report, it must act while it has a quorum – between now and September 1, 2019.

U.S. House Passes LGBTQ Non-Discrimination Bill

On May 16, by a vote of 236 – 173, the House passed The Equality Act. Eight Republicans voted for the bill. Those who opposed the bill did so for a variety of reasons, including the belief that it would jeopardize an employer's religious freedom by accepting certain ideologies about sexual identity. (The bill would amend the Civil Rights Act of 1964 to explicitly state that the Religious Freedom Restoration Act of 1993 "shall nor provide a claim concerning, or a defense to a claim under" the law. The bill does not however seek to undo the ecclesiastical exemption for religious employers).

The Equality Act would ban discrimination in employment, housing, public accommodations, and programs receiving federal financial assistance. Related to employment, it would amend Title VII by modifying the protected status of "sex" to be "sex (including sexual orientation and gender identity)." It would insert a definitions section for the Civil Rights Act as a whole defining sex to include sex stereotypes; pregnancy, childbirth, or a related medical condition; sexual orientation or gender identity; and sex characteristics, including intersex traits. Gender identity is defined in the bill as "the gender-related identity, appearance, mannerisms, or other gender-related characteristics of an individual, regardless of the individual's designated sex at birth." Sexual orientation is defined in the bill as "homosexuality, heterosexuality, or bisexuality."

President Trump opposed the bill, stating that the bill in its current form is filled with poison pills that "threaten to undermine parental and conscience rights." Note that at least 20 states and several cities and municipalities have enacted legislation and ordinances to prevent LGBTQ discrimination. Further, many if not most employers as a "best practice" include sexual orientation, gender identity and gender expression as protected classes within their organization's no harassment, discrimination or harassment policies. Wise move, as most of these claims generally rely on evidence of sex-stereotyping, and sex-stereotyping has long been recognized as unlawful sex discrimination.

UAW Driving to Unionize VW Plant

During the past four years, the United Auto Workers has tried different methods to unionize the workforce at the Volkswagen plant in Chattanooga, Tennessee. They narrowly lost a "wall to wall" election, but approximately 18 months ago successfully organized about 200 maintenance employees at that plant. The company refused to bargain with the UAW, claiming that the maintenance employees were not an appropriate bargaining unit. The company asserted that the appropriate bargaining unit should be the same unit that less than two years earlier rejected the UAW. The Union two weeks ago dropped its Unfair Labor Practice Charges against VW over the issue of the maintenance unit and "disavowed recognition" of the maintenance employees. The disavowed recognition means that the UAW voluntarily took the position that it was not the bargaining representative of the maintenance employees.

The strategy behind the UAW's decision is without pending litigation over the maintenance employee unit, the UAW is free to seek an election with a "wall to wall" unit of 1,700 employees. The UAW has for years sought a key victory in its efforts to organize Southern auto and other manufacturers. Apparently, the UAW believes that it now has the opportunity to do so at VW in Chattanooga. According to Chattanooga Local 42 UAW President Steve Cochran, organizing "is about respect and consistency. That's the two big things we want. It's not about money. It's not about greed."

Costly COBRA Calculation

In the recent case of *Morehouse v. Steak-N-Shake, Inc.,* the district court for the Southern District of Ohio concluded that the company failed to comply with the notice requirements under COBRA and owed the employee the cost of the employee's medical expenses and a $50 per day fine for each day of non-compliance from 45 days after the qualifying event to the date on which the plaintiff in that case obtained other medical insurance. Furthermore, Steak-N-Shake was ordered to pay the plaintiff's attorney fees.

Employers can easily overlook basic COBRA requirements, which end up potentially costing employers a fair amount of money. COBRA applies to those employers with 20 or more full time employees. Employers are required to offer for a limited amount of time to employees and their dependents continuation coverage with the employer's medical plan if there is a qualifying event.

Once a qualifying event occurs, the Election Notice is required to be sent to the employee and any qualifying dependent or beneficiary. The notice explains to the recipient the right for them to obtain continuation coverage and how to do so. Many employers outsource the notice provision of COBRA to a third party, such as a plan administrator. Note that ultimately, it is the employer's responsibility to ensure that the notices are mailed in a timely manner.

The employer does not have to prove that the notice was received, but only that it was mailed. Regular U.S. mail is appropriate. We suggest that the employer maintain a log that shows the date, address and to whom the COBRA notice was mailed. We suggest not to use certified mail, because an individual may not be physically capable of going to the post office to pick the letter up, which is required in some regions. Where you have contracted with a vendor to provide the COBRA notice, be sure to (1) confirm how the vendor will prove that notice was sent and (2) provide that the vendor assumes the liability risk in the event the notice is not sent in a timely manner.

Recent NLRB News 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.

Protect Immigrant Employees, Say Labor Unions

More than 30 unions and liberal think tanks asked the U.S. Congress to take legislative action to protect Dreamers and other non-citizens who stand to lose their temporary protected status under DACA, arguing that the uncertainty created by the Trump Administration impacts both "valued workers" and all U.S. employees.

In letters addressed to both the House and Senate, the unions urge the members of Congress to protect all migrant workers:

> The AFL-CIO urges you to oppose the Tribal Labor Sovereignty Act, which would deny protection under the National Labor Relations Act to a large number of workers employed by tribal-owned enterprises located on Indian land.

The letter went on to say:

> The House bill . . . would overturn a decision by the National Labor Relations Board in San *Manuel Indian Bingo and Casino,* 341 NLRB No. 138 (2004), which applied the NLRA to a tribal casino enterprise. [The majority of casino employees are non-Native Americans]. [Casino employees] therefore have no voice in setting tribal policy and no recourse to tribal governments for the protection of [employee] rights. [W]here the business employs primarily non-Native, American employees and caters to primarily non-Native American customers, there is no basis for depriving employees of their rights under the NLRA.

In short, the unions like the balancing test articulated by the Board in its 2004 decision. In a separate problem, on April 29, 2019, an employer asked the U.S. Supreme Court to grant *certiorari* in a case involving a tribal casino on whether the NLRB properly asserted jurisdiction in a case where the NLRB prohibited employees from distributing literature on Casino property. Certiorari, on May 20, 2019, was denied by the Supreme Court. Therefore, the NLRB's petition for enforcement in the lower court was granted and the casino's petition was denied.

NLRB Tightens *Weingarten* Rights

Union representatives can be silenced during an investigatory interview, the NLRB ruled in *PAE Applied*

Technologies LLC and Security Police Association of Nevada v. NLRB (Mar. 2019). A government security contractor's investigator did not violate the NLRA when the employer representative silenced a union president's representative for part of the investigation to assess whether the president should be dismissed for a heated conversation he had with an air force officer. The case, decided by a three-person panel along party lines, implicates *Weingarten* rights under the NLRA.

Under the *Weingarten* case, a U.S. Supreme Court decision issued in 1975, a unionized employee, in the present case, the local president, has the right to request that a union representative be present during any investigatory interview where the employee reasonably believes that the interview can lead to disciplinary action by the employer.

The old law said that you could not silence *Weingarten* representatives during an investigatory interview. The company investigator told the union representatives to "be quiet" during the interview to determine if the union president should be disciplined as a result of alleged improper conduct. The NLRB said that even though the Supreme Court allows representatives to be present in the room during an investigatory interview to clarify certain facts, employers retain the right to ask that only the employee gives his or her version of the incident that triggered the interview. The Board stated that:

> The [employer saying] to all those in attendance at the meeting to "stop talking", and its limitation of when they could speak, were consistent with [Supreme Court] principles. In [the company investigator's opinion], he had no choice but to order both parties there – management and union officials alike - that they could not speak unless he called on them.

The Board seemed to take great stock in the fact that both management and union representatives were silenced at the meeting. Lauren McFerran, the only Democrat on the panel, wrote a dissent in which she said the NLRB majority was wrong to find that the local president's *Weingarten* rights were not violated, and therefore that the discipline issued to the local president was illegal. McFerran said:

> In fact, the record evidence here clearly demonstrates that [the individual who was the object of the investigation] representatives were hampered during the interview and that [the local president] was unlawfully disciplined for conduct that was inextricably intertwined with statutorily protected conduct, while the [object of the investigation] engaged in no sanctionable misconduct himself.

D.C. Circuit Approves NLRB Professor Status Test

On March 12, 2019, the D.C. Circuit Court of Appeals affirmed the Board's decision in *Pacific Lutheran University,* saying the case does not interfere with the Supreme Court decision in *Yeshiva University*. In *Yeshiva,* the high court said that college professors are employees and can organize as long as the professors "lack effective control" of school policy.

The Board in *Pacific Lutheran* divides the school decision-making into 5 buckets and directs the Board to analyze professors "actual control or effective recommendation" to school administrators. If faculty professors exercise their control through a committee, then the professors are not managers or supervisors unless they make up a majority on the committee. The Court, in defending its decision, stated that:

> The standard is demanding, but it comports with *Yeshiva, and* [the court] agrees with the Board that setting a high bar for effective control is necessary to avoid interpreting the managerial exception so broadly that it chips away at the NLRA's protections [to organize].

The NLRA gives employees the right to organize but does not give managers and supervisors the right to form a union. Drawing a line between employee and manager in academia can be tricky, where many schools give professors input into shaping the curriculum, allocating funds, and setting administrative criteria for promotion

Panicked over EEO-1 Rulings?

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.

I hope that everyone who is required to file an EEO-1 report has filed Component 1 (the original demographic data you have filed for years) by now. Although the government shutdown pushed back the dates for submitting the information this year, everyone knew it would have to be done. The EEOC announced in February that Component 1 reports would be accepted through May 31 of this year. What we did not know until this month was that EEOC would call for Component 2 (pay and hours worked data) for both 2017 and 2018 by September 30.

Not expecting these developments? Not prepared to report this information so soon? You are not alone. EEOC was not expecting or prepared to receive this information either. The agency had to hire a contractor to collect Component 2 data for them and has now appealed the court order requiring them to collect this data. However, filing an appeal does not automatically stay the lower court's ruling. While we expect that the EEOC will file a motion requesting a stay until the appeal is resolved, it has not yet done so. In the meantime, most employers with more than 100 employees are scrambling to gather two years of wage information.

What happens if a stay is not granted and you simply cannot compile the required data for submission by September 30? EEOC will usually grant short extensions for information it requests. In this case, there will have to be a fixed date for extensions because the electronic portal for accepting EEO-1 reports closes on a fixed date.

In the event that either component of the EEO-1 is not filed as required, the EEOC can seek a court order compelling completion of the report. While there are no provisions for penalties (monetary or otherwise), litigation of any kind can be quite expensive. If such an order is granted and an employer still does not comply, it could be held in contempt, which does carry penalties. I cannot say EEOC would do this now with respect to Component 2 data since it seems to no longer want the pay data it originally requested permission to collect. However, the change in administration and government priorities is what precipitated this lawsuit over Component 2 and the next election could provide more changes.

The EEO-1 report requires certification of accuracy and truthfulness. The law does provide for monetary penalties and possible imprisonment for "the making of willfully false statements on Report EEO-1." Punishable false statements are not limited to the actual numbers in the body of the report. They also include those first page questions, such as total number of employees and establishments, common ownership with another employer, and government contractor status.

Under any administration, the most likely consequences of failing to file an EEO-1 report come when being investigated by the EEOC or audited by the OFCCP. If either finds that an employer has failed to comply with the law or falsified their report, the employer loses credibility. That negative impression can impact the entire process with either agency. Developing a reputation for hiding or falsifying information also can influence or even prompt future investigations and audits. It is especially important for government contractors to realize that failure to comply with legal obligations can result in suspension or debarment.

School is Out—Summer Interns and Child Labor

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.

Each year as we approach the end of another school year, I try to remind employers of the potential pitfalls that can occur when employing persons under the age of 18.

While summer employment can be very beneficial to both the minor and the employer, one must make sure that the minor's employment is permitted under both the state and federal child labor laws. According to some information I found on the Wage Hour website, they are not spending nearly as much of their resources, as their emphasis is currently on traditional low-wage industries in conducting directed child labor investigations as they have previously. However, they still conducted 695 child labor investigations and found almost 2,300 minors employed contrary to the child labor requirements of the Fair Labor Standards Act last year. Consequently, employers still need to be very aware of those requirements before hiring a person under the age of 18.

In 2016, Congress amended the child labor penalty provisions of the Fair Labor Standards Act, increasing the maximum penalties and implementing an annual escalator provision. Effective January 2019, any violation that leads to **serious injury or death** may result in a penalty of up to $58,383, while the penalty for other prohibited employment of minors may be as great at $12,845. Additionally, the amount can be doubled for violations found to have been repeated or willful.

The Act defines "serious injury" as any of the following:

1. Permanent loss or substantial impairment of one of the senses (sight, hearing, taste, smell, tactile sensation);

2. Permanent loss or substantial impairment of the function of a bodily member, organ or mental faculty; including the loss of all or part of an arm, leg, foot, hand or other body part; or

3. Permanent paralysis or substantial impairment causing loss of movement or mobility of an arm, leg, foot, hand or other body part.

For example, employers are also required to have a record of the date of birth of any employee under the age of 19 on file and if you have not maintained such a record there is a penalty of $398 per investigation. Further, if a minor that is employed contrary to the regulations and is killed or seriously injured, the maximum penalty is more than $58,000.

Prohibited jobs

There are seventeen non-farm occupations determined by the Secretary of Labor to be hazardous that are out of bounds for teens below the age of 18. Those that are most likely to be a factor are:

- Driving a motor vehicle or being an outside helper on a motor vehicle.

- Operating power-driven wood-working machines.

- Operating meat packing or meat processing machines (includes power-driven meat slicing machines).

- Operating power-driven paper-products machines (includes trash compactors and paper bailers).

- Engaging in roofing operations.

- Engaging in excavation operations.

In recent years, Congress has amended the FLSA to allow minors to perform certain duties that they previously could not do. However, due to the strict limitations that are imposed in these changes and the expensive consequences of failing to comply with the rules, employers should obtain and review a copy of the regulations related to these items before allowing an employee under 18 to perform these duties. Below are some of the more recent changes.

1. The prohibition related to the operation of motor vehicles has been relaxed to allow 17-year-olds to operate a vehicle on public roads in very limited circumstances. However, the limitations are so strict that I do not recommend you allow anyone under 18 to operate a motor vehicle **(including the minor's personal vehicle)** for business related purposes.

2. The regulations related to the loading of scrap paper bailers and paper box compactors have been relaxed to allow 16 & 17-year-olds to load (**but not operate or unload)** these machines.

3. Employees aged 14 and 15 may not operate power lawn mowers, weed eaters or edgers.

4. 15-year-olds may work as lifeguards at swimming pools and water parks, but they may not work at lakes, rivers or ocean beaches.

Hours limitations

There are no limitations on the work hours, under federal law, for youths 16 and 17 years old. However, the state of Alabama prohibits minors under 18 from working past 10:00 p.m. on a night before a school day. Youths 14 and 15 years old may work outside school hours in various non-manufacturing, non-mining, and non-hazardous jobs (basically limited to retail establishments and office work) up to;

- 3 hours on a school day
- 18 hours in a school week
- 8 hours on a non-school day
- 40 hours on a non-school week
- Work must only be performed between the hours of 7 a.m. and 7 p.m., except from June 1 through Labor Day, when the minor may work until 9 p.m.

To make it easier on employers, several years ago the Alabama Legislature amended the state law to conform very closely to the federal statute. Further, the state of Alabama statute requires the employer to have a work permit on file for each employee under the age of 18. Although the federal law does not require a work permit, it does require the employer to have proof of the date of birth of all employees under the age of 19. A state issued work permit will meet the requirements of the federal law. Currently, work permits are issued by the Alabama Department of Labor. Instructions regarding how to obtain an Alabama work permit are available on the Alabama Department of Labor website.

If you operate in states other than Alabama, I recommend that you check with those states in order to determine their requirements. Typically, that information is available on the website of the Department of Labor of each state.

The Wage Hour Division of the U. S. Department of Labor administers the federal child labor laws while the Alabama Department of Labor administers the state statute. Employers should be aware that all reports of injury to minors, filed under Workers Compensation laws, are forwarded to both agencies. Consequently, if you have a minor who suffers an on the job injury, you will most likely be contacted by either one or both agencies. If Wage Hour finds the minor to have been employed contrary to the child labor law, they will assess a substantial penalty in virtually all cases. Thus, it is very important that the employer make sure that any minor employed is working in compliance with the child labor laws.

Interns

Another issue that many employers face during the summer is the use of Interns. In 2018, Wage Hour issued some revised guidelines setting forth their position as to whether the Interns are employees or do not have to be compensated for the time they spend at the firm. Below is some information from a fact sheet that is found on the Wage Hour website.

The FLSA requires "for-profit" employers to pay employees for their work. Interns and students, however, may not be "employees" under the FLSA—in which case the FLSA does not require compensation for their work.

The test for unpaid interns and students:

Courts have used the "primary beneficiary test" to determine whether an intern or student is, in fact, an employee under the FLSA. In short, this test allows courts to examine the "economic reality" of the intern-employer relationship to determine which party is the "primary beneficiary" of the relationship. Courts have identified the following seven factors as part of the test:

1. The extent to which the intern and the employer clearly understand that there is no expectation of compensation. Any promise of compensation, express or implied, suggests that the intern is an employee—and vice versa.

2. The extent to which the internship provides training that would be similar to that which would be given in an educational environment, including the clinical and other hands-on training provided by educational institutions.

3. The extent to which the internship is tied to the intern's formal education program by integrated coursework or the receipt of academic credit.

4. The extent to which the internship accommodates the intern's academic commitments by corresponding to the academic calendar.

5. The extent to which the internship's duration is limited to the period in which the internship provides the intern with beneficial learning.

6. The extent to which the intern's work complements, rather than displaces, the work of paid employees while providing significant educational benefits to the intern.

7. The extent to which the intern and the employer understand that the internship is conducted without entitlement to a paid job at the conclusion of the internship.

Courts have described the "primary beneficiary test" as a flexible test, and no single factor is determinative. Accordingly, whether an intern or student is an employee under the FLSA necessarily depends on the unique circumstances of each case.

I suggest that an employer who is planning to not pay his interns at least the minimum wage and overtime after 40 hours in a workweek seek guidance from counsel to ensure that the intern is not in fact an employee. Unless the intern is participating in an educational program at an institution of higher education, I find that it is very difficult to convince Wage Hour that the intern is not an employee. If I can be of assistance, do not hesitate to give me a call.

EFFECTIVE SUPERVISOR®

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

Auburn, AL – October 29, 2019
8:30am - 4:00pm Central
Auburn Center for Developing Industries
1500 Pumphrey Avenue, Suite D
Auburn, AL 36832

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For more information about Lehr Middlebrooks Vreeland & Thompson, P.C. upcoming events, please visit our website at www.lehrmiddlebrooks.com or contact Jennifer Hix at 205.323.9270 or jhix@lehrmiddlebrooks.com.

In the News

Reasonable Accommodation Required for Pregnant and Lactating Employees

Kentucky Governor Bevin (R) signed into law the Kentucky Pregnant Workers Act. This law requires "reasonable accommodation" for pregnant employees

and prohibits discrimination based upon pregnancy and pregnancy-related conditions. Examples of reasonable accommodation include the number and duration of breaks, time off of work, modification of equipment, modification of seating, temporary transfer, light duty, modified work schedule and a private, secure location to express milk. In essence, Kentucky has made pregnancy accommodation the same type of analysis that occurs under the Americans with Disabilities Act.

Fat Shaming - Cause of Action

It is merely a coincidence that this article about "fat shaming" follows the article about pregnancy. Morbid obesity is considered a disability under the Americans with Disabilities Act, but generally being overweight is not. However, "fat shaming" can create a separate cause of action, such as intentional infliction of emotional distress and invasion of privacy. Recently, a Las Vegas casino was ordered to pay $500,000 to a server who was "fat shamed." The server was referred to by other employees as "Fat Andy." Additionally, a sign that said "Fat Andy" was posted at his station and, even though he objected to it, it was not removed until shortly before he brought this lawsuit. The casino's gamble to leave the sign up certainly did not pay off. Note that employer policies that prohibit harassment should be worded in such a manner as to include offensive, degrading or belittling behavior, even if not based upon a protected class. Weight is not a protected class but "fat shaming" or similar behavior based upon someone's weight creates a potential workplace harassment issue which may be actionable under state law.

Hairstyle Discrimination

Two years ago, we defended (successfully, of course) a case in which the EEOC sued our client for our client's alleged "no dreadlocks" grooming policy. Our client had other reasonable and traditional grooming rules, including prohibiting long hair on men. The EEOC argued that the prohibition of dreadlocks was race discrimination; while we argued and the Court agreed that dreadlocks was a hairstyle and not an immutable characteristic, such as race. The Wall Street Journal called the EEOC's action "dreadful." On May 14, the CROWN Act was passed by the California Senate by a vote of 37 – 0. CROWN is an acronym for Create A Respectful and Open Workplace for Natural Hair. The law defines "race or ethnicity" to include "traits historically associated with race, including, but not limited to, hair texture and protected hairstyles." The proposed law defines protected hairstyles as "braids, locks, and twists." Note, however, that the bill does not prohibit "discrimination" based upon hair color. Even in California, an employee who appears at work with hair color that looks like a parrot will not be protected.

Employer Liability for On-Boarding and Training Time

In the case of *Cormier et al. v. Western Express, Inc.*, the company agreed to a Fair Labor Standards Act settlement of $8.3 million for not paying employees during on-boarding and training time. There were 4,000 employees who joined in this collective action against Western Express. Each employee will receive approximately $450. The 4,000 claimed that they were not paid at least the minimum wage for time during the on-boarding and company training programs before they officially assumed their job duties. A reminder to employers: the general principle is that when an employee is required to be somewhere at a fixed time or to do something of benefit for the employer, it is considered compensable. Thus, training time, orientation and on-boarding time – that is all compensable. If an employee is required to have a particular certification or license in order to become hired, that generally is not compensable. That is viewed as a license or training to prepare an employee for a type of work, not for something that is unique to that employer.

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