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It is great day to be a California employer!

Before you scroll down further what do Chipotle and Seasons 52 have in common? Give up?

They have both just settled and are paying millions in lawsuits across the nation, because they didn't train their managers.

Seasons 52 settled on charges of age discrimination, because their managers made statements like "*Seasons 52 girls are younger and fresh"; "We are not looking for old, white guys"; "Most of the workers are younger"; "Seasons 52 hires young people"; and "We are looking for someone with less experience."* The lack of training on interview questions you can and cannot ask cost the company 2.85 million. Read about the other consequences here.

Chipotle settled a wrongful termination lawsuit for $8 million. Read more here

Can you really not afford to train your managers?

Enough of that, on to the real purpose of this informational newsletter. If you think January 1 of every year is a difficult time to implement new laws, I regret to inform you that new laws take effect throughout the year. July 1 is a big date for many changes.

This semiannual update is for all employers not just California. If you are not a California employer you can jump down to all the state updates, and the OSHA reporting requirement.

I know this is long, please review the subject lines below and click on any links that may interest or affect your individual business. Please note this is not an exhaustive list but merely highlights some of the more exciting changes (evil HR laugh inserted here)

New Menu Labels Required

Restaurant chains with 20 or more locations were required effective May 8, 2018. to implement menu labeling requirements. Covered establishments must disclose the number of calories contained in standard items on menus and menu boards. Businesses also must provide upon request total calories, total fat, saturated fat, trans fat, cholesterol, sodium, total carbohydrates, sugars, fiber and protein. They must display two statements, one indicating that this written information is available upon request and another indicating that 2,000 calories a day is used for general nutrition advice, albeit calorie needs vary.

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San Francisco Paid Sick Leave Ordinance (PLSO) and other fun sick leave laws

Effective June 7, 2018 the San Francisco Office of Labor Standards Enforcement (OLSE) published new rules interpreting the PSLO, which is the granddaddy of municipal paid sick leave (PSL) mandates.

The new rules state that if an employee is jointly employed, and at least one employer is covered by the PSLO, *each employer* must comply with the PSLO. The rules follow California law to determine if an employee is jointly employed. The OLSE notes, by way of example, that joint employment can occur when an employer uses a temporary staffing agency, leasing agency, or professional employer organization. The new rules further state that a "controlled group of corporations" (as defined by the IRS Code), is considered to be a single employer under the PSLO. Employees of unincorporated businesses also are counted as working for one employer if the business satisfies the IRS's "controlled group of corporations" definition.

To learn more about the clarifications and changes for the PLSO click here

Just to keep it fun, numerous cities and counties give paid sick leave in excess of the state 24 hour annual minimum requirement. Fox Rothchild LLC has released a 12 page update on all the changes. If you have employees in Berkley, Emeryville, LA, Oakland, San Diego, San Francisco, or Santa Monica and want to pull your hair out contact your GCG Advisor for your copy.

Fair Employment Housing Expands National Origin Protection

Effective July 1, 2018 the following defines and expands what constitutes national origin discrimination:

Language restriction policies, including English-only policies, unless the restriction can be justified by business necessity and is narrowly tailored to further that business interest;

Discrimination based on an applicant's or employee's accent, unless the employer can show the accent materially interferes with the applicant's or employee's ability to perform the job;

Discrimination based on English proficiency, unless the employer can show that the proficiency requirement is justified by business necessity;

Height and weight requirements (as such may have a disparate impact on the basis of national origin), unless the requirement can be justified by business necessity and the purpose of the requirement cannot be met by less discriminatory means;

Recruitment, or assignment of positions/facilities/geographical area, based on national origin; and

Inquiring into an applicant's or employee's immigration status, or discriminating against an applicant or employee based on immigration status, unless required to do so under federal immigration law.

Dynamex and Independent Contractors ABC test

While many employers are keeping their fingers crossed that this decision will go away, I am sorry to tell you it will not. Considering two thirds of the states currently use this standard, there really is no hope for reversal.

Littler Mendelson a well renowned employment law firm released a very comprehensive analysis of the new test and its implications. Contact your GCG advisor for the full report. You may want to pack a lunch, to read it, it is pretty through.

Private Attorneys General Act (PAGA) or Just do it right or Be afraid be very afraid

California courts continue to expand the scope of representative actions brought under Private Attorneys General Act (PAGA). On May 23, 2018, the California Court of Appeal held that an employee bringing an action under PAGA against his or her employer may seek penalties for *every* Labor Code violation committed by that employer – including those that did not apply to the employee personally – as long as the employee was affected by at least one Labor Code violation.

Under the PAGA, an aggrieved employee has the authority to bring a representative lawsuit against a current or former employer to recover civil penalties based on violations of the California Labor Code. The employee may bring the lawsuit on behalf of themselves, as well as other aggrieved employees and the State of California, without the need to satisfy the class certification requirements. Notably, the California Supreme Court has held that class action waivers in employment arbitration agreements do not apply to PAGA actions.

All of you know how much I despise the alphabet agencies (FEHA, DLSE, EEOC etc.) and the unrealistic expectations at times that they place on employers. PAGA is your worst nightmare, to understand why read more here

Best advice, follow the laws, the devil is in the details, review your pay practices and conduct internal audits on your HR practices to ensure you are following all of the complex California employment laws. If you are not sure ask your GCG HR Advisor, or your employment attorney.

Minimum Wage Increases

On July 1, Santa Monica minimum wage goes up to $13.25. The $13.25 rate also applies to Los Angeles as of July 1st for employers with 25 or more employees; those with under 25 employees must pay $12.00.

In addition, certain hotel workers in Santa Monica and Los Angeles get increased to $16.10 per hour.

OSHA New Reporting Requirements

Effective July 1, 2018 **certain** employers are required to file their OHSA 300A electronically.

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Covered establishments with 250 or more employees (in all industries) are required to provide their 2017 Form 300A summary data. ***OSHA is not accepting Form 300 and 301 information at this time***. OSHA announced that it will issue a notice of proposed rulemaking (NPRM) to reconsider, revise, or remove provisions of the "Improve Tracking of Workplace Injuries and Illnesses" final rule, including the collection of the Forms 300/301 data. The Agency is currently drafting that NPRM and will seek comment on those provisions.

Establishments with 20-249 employees in certain high-risk industries must submit information from their 2017 Form 300A by July 1, 2018. Beginning in 2019 and every year thereafter, the information must be submitted by March 2.

Read more here

All States Update

Through out the country new laws take effect July 1. Read some state wide updates here if you have employees working in these states please ask your GCG HR Advisor or Employment attorney for more information.

Numerous decision have also come down from the courts that affect employers across the nation. For a synopsis of the top 15 decisions read more here.