

EMPLOYMENT LAW

AUTHORITY Your Resource for Today's Hot Topics in Labor & Employment Law

Ogletree Deakins

APRIL SHOWERS MAY BRING MORE THAN FLOWERS: EMPLOYMENT ISSUES DURING NATURAL DISASTERS

by Hal A. Shillingstad (Minneapolis)

2017 brought an unnerving array of natural disasters, from hurricanes and floods to earthquakes and wildfires. Employers and their employees are often greatly affected by these events, given that they can shut down operations, cause injuries or illness, and impact employees' ability to report to work. With the start of this year's hurricane season just a few months away, below is a checklist of key employment law issues that may arise not only during the immediate aftermath of a disaster, but also in the days, weeks, and months that follow.

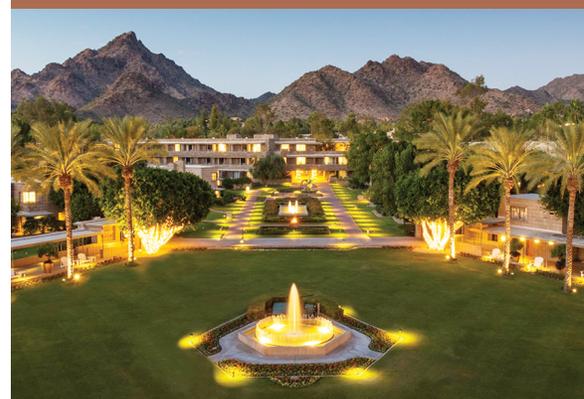
- Nonexempt Employees.** Nonexempt employees are paid for work performed. Nonexempt employees will likely earn overtime compensation as increased demands are placed on them to cover for other employees. If employees work from home or do other work away from the business premises, they must be compensated. If an employee cannot make it to work due to disaster-related transportation issues, that may be considered an absence for personal reasons under the Fair Labor Standards Act (FLSA) (so long as the employee does not work from home).
- Exempt Employees.** Exempt employees must still be paid for an entire week if they work any portion of a workweek and even if the location is closed for part of the week because of a natural disaster. If the facility is closed for one week or more, the employer has no obligation to pay exempt employees if they do not perform any work.
- Recordkeeping.** The FLSA does not provide relief from its recordkeeping requirements because of weather-related emergencies. Employers must still maintain time records, and should instruct employees who routinely track time electronically to manually record the time they have worked.
- WARN.** The Worker Adjustment and Retraining Notification (WARN) Act includes an exception for natural disasters when a plant location closes due to a natural disaster. Nevertheless, if possible, an employer will want to follow the law's notification requirements.
- FMLA.** Employers may need to grant qualifying employees leave under the Family and Medical Leave Act (FMLA) if they have developed a serious health condition as the result of a natural disaster. Employees may qualify for leave if they need to care for a spouse, parent, or child suffering from a serious health condition caused by the disaster.
- Benefits and Continuing Coverage.** Employers continuing coverage for their employees should contact their benefits vendors to determine how and to what extent coverage is to be maintained. These vendors often have specific hotlines during a disaster since life, health, and disability coverages will be impacted.
- Workplace Safety.** Employers must protect their employees from unreasonable dangers. During natural disasters, employers should ensure the safety of their employees who are working in and around the workplace. In particular, employers should protect employees from unreasonable exposure to hazards that may be present as a result of a natural disaster, such as slip and fall hazards, electrical exposures, and even exhaustion from working extended shifts.
- Emergency Responders.** Some employees may be members of the National Guard or volunteer responders that may be called up for duty by the state governor or president of the United States. Job protections are in place for these employees and some state laws may be implicated to address unique situations.

IN THIS ISSUE

- P2 D.C. DOWNLOAD**
Key Issues From Capitol Hill
- P3 ROUNDUP**
State & International Hot Topics
- P4 Q&A**
Are You Ready for the GDPR?
- P5 SPECIAL FEATURE**
The EEOC's New Strategic Plan
- P6 TOP 10**
Tips for Employee Benefit Plans
- P7 SPOTLIGHT ON**
Our Phoenix Office

JOIN US IN PHOENIX FOR WORKPLACE STRATEGIES

There is still time to register for our upcoming Workplace Strategies seminar, which will be held May 9-12 at the Arizona Biltmore in Phoenix, Arizona. This year's program features several outstanding keynote speakers, over 70 topics, and more than 175 speakers. We hope you can join us in Phoenix!



D.C. DOWNLOAD

AN INSIDE LOOK AT KEY ISSUES FROM CAPITOL HILL

by James J. Plunkett (Washington, D.C.) and Harold P. Coxson (Washington, D.C.)

Jim Plunkett and Hal Coxson are Co-Chairs of Ogletree Deakins' Governmental Affairs Practice Group and Principals in Ogletree Governmental Affairs, Inc. (OGA), a subsidiary of Ogletree Deakins that assists clients in addressing regulatory and legislative changes emanating from Washington, D.C.



NLRB Election Proposal Extended

Public comments in response to the National Labor Relations Board's (NLRB) request for information regarding its 2014 changes to its union election rules were originally due in February. However, the NLRB has since extended the filing deadline twice: first to March 19, and most recently to April 18, 2018. Regardless, the Board will unlikely be able to meaningfully act on comments until its current 2-2 deadlock is broken.

NLRB Returns to "Indirect" Joint-Employer Standard

In late February, in a stunning development, the NLRB [vacated its December 2017 decision](#) in *Hy-Brand Industrial Contractors, Ltd.*, following a determination from the Board's ethics official that Member William Emanuel should not have participated in the case because his previous law firm represented a party in another case (*Browning-Ferris Industries*) that dealt with the same issue. This means that the amorphous joint-employer standard set forth in *Browning-Ferris* is once again the law.

USCIS Announces Increased H-1B Scrutiny

According to a U.S. Citizenship and Immigration Services (USCIS) memorandum that became effective on February 22, 2018, employers of H-1B workers will be required to disclose even more information to the federal government. More specifically, pursuant to the [announced policy change](#), employers will be required to provide additional documentation in situations where H-1B employees are working at third-party worksites.

H-4 Spouse Proposal Delayed

According to the most recent regulatory agenda, USCIS was scheduled to issue a proposal by February of this year that would eliminate work authorization eligibility for certain H-4 spouses of H-1B nonimmigrants. However, the [Department of Homeland Security announced](#) that it needed a few more weeks to complete the economic analysis and now expects to send a proposal to the Office of Management and Budget in June. This means an actual notice of proposed rulemaking on this matter might not be issued until the fall of this year.

Federal Contractor Update

It's scheduling letter season for the Office of Federal Contract Compliance Programs (OFCCP)! On February 1, 2018, [OFCCP mailed 1,000 corporate scheduling announcement letters](#) to contractor establishments and announced that the actual scheduling letters started being sent on March 19, 2018.

SCOTUS Hears Union Fees Argument

On February 26, 2018, the Supreme Court of the United States (SCOTUS) heard oral argument in *Janus v. American Federation of State, County, and Municipal Employees, Council 31*, regarding the constitutionality of public sector agency fee arrangements. Justice Neil Gorsuch, thought to hold the deciding vote on the matter, was reportedly silent throughout the argument. Though the case concerns public sector employees, it could have an enormous impact on labor union coffers. Look for a decision toward the end of the Court's term, likely in June.

"Right to Cure" Bill Passes House

On February 15, 2018, the House of Representatives passed the [ADA Education and Reform Act of 2017](#). The bill seeks to curb purported "drive by" lawsuits filed under Title III of the Americans with Disabilities Act (ADA) by providing businesses with an opportunity to remove barriers to access before being sued. While there is no companion bill currently in the Senate, passage of the bill in the House indicates that policymakers are paying attention to this issue.

AHP Comment Period Closes

March 6 marked the close of the public comment period for the Department of Labor's (DOL) proposed rule related to association health plans (AHPs). In January, the DOL's Employee Benefits Security Administration published a proposed rule intended to increase the availability of AHPs by expanding the definition of "employer" to make it easier for smaller employers to band together to sponsor health insurance plans for their employees. Currently, there is no indication when a final rule may be issued.

STATE AND INTERNATIONAL ROUNDUP

California



The California Labor Commissioner's Office has released a template notice form to help employers comply with the posting requirements under California Labor Code section 90.2(a)(1), also known as the Immigrant Worker Protection Act or AB 450. The Act requires employers in California to notify their workforces within 72 hours of any immigration law compliance inspection or audit initiated by federal agencies.

Canada



The province of Alberta, Canada, enacted significant revisions to its Employment Standards Code effective January 1, 2018, overhauling its foundational employment laws for the first time in almost 30 years. Alberta has long been considered among the most employer-friendly provinces in Canada, in part because it lacked certain statutory leaves and other employee entitlements. The new law brings Alberta in line with the rest of Canada's common law provinces.

Colorado



On March 5, 2018, the Colorado Supreme Court addressed a longstanding question regarding the statute of limitations applicable to claims brought under the Colorado Wage Claim Act (CWCA) by holding the Act's statute of limitations reaches back only as far as three years preceding an employee's termination of employment. The case made its way to the supreme court when a federal district court judge asked the state's highest court to clarify two potentially conflicting sections in the CWCA: one establishing a statute of limitations for unpaid wage claims and another declaring all unpaid wages are due upon termination. *Hernandez v. Ray Domenico Farms*, No. 17SA77 (March 5, 2018).

Georgia



The Eleventh Circuit Court of Appeals has reinstated the Equal Pay Act and Title VII sex discrimination claims of a former manager of a car auction facility in Georgia who alleged that she had been paid less than the male manager whom she replaced. The Eleventh Circuit concluded that the manager had identified sufficient evidence to warrant a trial on her Equal Pay Act claim by demonstrating that her employer kept her salary at the bottom of its compensation range long after she had been promoted. *Bowen v. Manheim Remarketing, Inc.*, No. 16-17237 (February 21, 2018).

Louisiana



The Fifth Circuit Court of Appeals recently affirmed the U.S. District Court for the Western District of Louisiana's grant of summary judgment under the Louisiana whistleblower law, in favor of an employer that transferred an employee to a less desirable location after she expressed concerns about her employer's handling of a diabetic student. According to the court, the employee did not have a claim for retaliation because neither her transfer nor her reprimand caused her to lose any pay, benefits, or responsibilities. *Rayborn v. Bossier Parish School Board*, No. 16-30903 (February 2, 2018).

Massachusetts



On March 1, 2018, the Massachusetts Attorney General issued detailed guidance on the amendments to the Massachusetts Equal Pay Act (MEPA), which are set to go into effect on July 1, 2018. The amendments, which were enacted in 2016, will overhaul MEPA, a law that has been in effect for over 70 years, and make it one of the strictest pay equity laws in the nation.

Missouri



On February 1, 2018, the City Council of Kansas City, Missouri, enacted a ban-the-box ordinance that limits an employer's use of an individual's criminal history in making hiring or promotional decisions. The ordinance's employment-related provisions (1) implement a timing restriction on inquiries into an individual's criminal record and (2) mandate a job-relatedness test before using such information in an employment-related decision. The ordinance will go into effect on June 9, 2018.

New York



The Second Circuit Court of Appeals (which has jurisdiction in New York) recently rendered an *en banc* decision in *Zarda v. Altitude Express* that significantly expands employees' rights under Title VII of the Civil Rights Act. Ten judges joined at least in part in the majority decision and held that sex discrimination under Title VII encompasses discrimination based on sexual orientation. Three judges dissented and would not have extended Title VII protection to sexual orientation. *Zarda v. Altitude Express*, No. 15-3775 (February 26, 2018).

Texas



On February 16, 2018, the Austin City Council passed a new ordinance on earned sick time that affects employers in Austin, Texas. The ordinance takes effect on October 1, 2018, for all employers with six or more employees. For employers who have had five or fewer employees in the preceding 12 months, the ordinance is not effective until October 1, 2020. Although the ordinance will likely be challenged in court, employers should be aware of the basic requirements of the law so that they can prepare for the possibility of enforcement this fall.

Vermont



Beginning in the summer of 2018, Vermont residents will be able to legally possess and use recreational marijuana, under a new law passed in January. Vermont is the ninth state (in addition to Washington, D.C.) to legalize the recreational use of marijuana, but became the first state to legalize it through the legislative process, rather than a voter-approved ballot referendum. Vermont's new recreational marijuana law will have implications for companies with employees in the state.

Wisconsin



The Wisconsin Labor and Industry Review Commission recently decided that employers cannot rely on expunged convictions when arguing that an individual's conviction record is substantially related to a job. The commission concluded that permitting the employer to do so would conflict with the purpose of the statute permitting expungement, which is to permit certain offenders to "wipe the slate clean of their offenses and to present themselves to the world—including future employers—unmarked by past wrongdoing."

MAY DAY! ARE YOU READY FOR THE GDPR?

A Q&A WITH GRANT PETERSEN (THE SECOND IN A TWO-PART SERIES)

by Lisa E. Kaplan (Atlanta)

The European Union (EU) General Data Protection Regulation (GDPR), which takes effect on May 25, 2018, imposes strict and broad requirements for processing HR data, and creates new rights for data subjects, including applicants, current employees, and departing employees. In this interview, [Grant Petersen](#), a shareholder in Ogletree Deakins' Tampa office and co-founder of the firm's Data Privacy Practice Group, addressed what may constitute a legal basis for data collection and offered key takeaways for employers that will be subject to the GDPR.

Lisa Kaplan: The GDPR imposes strict limits on employers regarding the collection, processing, and retention of employee personal information. What role, if any, does employee consent play?

Grant Petersen: The Article 29 Working Party, which is comprised of all of the data protection authorities (DPA) in the EU, has stated that employers cannot rely on an employee's consent to collect, process, or retain personal information because the unequal bargaining power between employers and employees prevents employees from providing voluntary consent. Therefore, employers must use and document another legal basis for collecting, processing, and retaining employee personal information. This might include demonstrating that the personal information is necessary to perform the employment contract, comply with obligations under EU law, or advance a legitimate interest of the employer that outweighs the privacy rights of the employees.

LK: What is the biggest unknown about the GDPR and its impact?

GP: The biggest unknown is the degree to which the DPAs in each EU country will aggressively enforce the GDPR. The GDPR permits DPAs to assess fines of up to 20 million euro or 4 percent of a company's worldwide revenue (whichever is greater) for serious violations of the GDPR. The UK DPA has announced that it will take a practical approach to enforcing the GDPR and will proactively assist companies in their compliance efforts. On the other hand, Germany, which has multiple DPAs, is gearing up to aggressively enforce the GDPR. It is widely expected that the German DPAs intend to make examples out of violators shortly after the May 25 effective date.

LK: With less than two months until the GDPR takes effect, what key takeaways do you have for employers with regard to HR data?

GP: Based on the difficulty of achieving full compliance, the probability of complaints being filed, and the potential monetary exposure for noncompliance, processing HR data arguably is the highest risk area for GDPR compliance for most companies. Below I have outlined a number of key steps that employers may want to take now.

First, employers should consider immediately conducting a GDPR readiness assessment to determine whether their current HR data policies and procedures comply with the GDPR requirements and, if they do not, determine the areas of greatest risk. Additionally, because each EU country is permitted to implement stricter or additional requirements for HR data, employers may want to determine whether their current policies and procedures comply with these country-specific requirements.

Second, employers should consider creating a data map to determine the types of HR data collected and processed, the types and geographic locations of the databases or systems in which such data is processed and stored, and the identity and geographic location of individuals and entities that have access to the data. This data map is essential to comply with the GDPR requirement that employers document their data processing activities.

Third, employers may want to determine and document the purposes and legal bases for collecting, processing, and retaining HR data. They should also consider conducting data privacy impact assessments to justify the processing of high risk data such as handling special categories of data, monitoring employee location and use of technology, and cross-border transfers of HR data.

Fourth, employers should consider revising and updating all of their policies and procedures for handling HR data to comply with the GDPR requirements.

Finally, employers should consider conducting role-based training for all employees who will be handling EU personal information.



KEY TAKEAWAYS FOR EMPLOYERS FROM THE EEOC'S NEW STRATEGIC PLAN

by Simone R. D. Francis (St. Thomas)



On February 12, 2018, the U.S. Equal Employment Opportunity Commission (EEOC) issued its [*Strategic Plan for Fiscal Years 2018-2022*](#), in accordance with the congressional mandate requiring all executive departments, independent agencies, and government corporations to issue a strategic plan every four years. Together with the

EEOC's [*Strategic Enforcement Plan for Fiscal Years 2017-2021*](#), the Strategic Plan provides insight into the agency's intended focus and objectives for the next four years. Additionally, it offers a road map that can be utilized by HR professionals and in-house legal departments to chart a course for their organizations.

The Strategic Plan identifies the EEOC's two primary objectives. First, it underscores the EEOC's intention to focus resources on the priorities identified in the *Strategic Enforcement Plan* in an effort to ensure that the agency's activities have a significant impact on the development of the law and on legal compliance across industries or large business entities. Second, the Strategic Plan outlines the communication and outreach strategies that the EEOC intends to utilize to disseminate information targeted to increasing the public's understanding of the law and encouraging compliance with the law.

Continued Attention to Systemic and Significant Claims

In [*A Review of the Systemic Program of the U.S. Equal Employment Opportunity Commission*](#) released on July 7, 2016, the EEOC outlined its successes in addressing systemic discrimination, including by waging challenges to attendance policies that violated the Americans with Disabilities Act and focusing on employers' use of background checks, testing policies, and other practices that disproportionately impacted access to employment opportunities for women and minorities. The Strategic Plan confirms that the EEOC will continue to focus on cases raising systemic and other significant issues.

Multi-state and other large employers and large staffing companies should expect continued scrutiny of recruitment and hiring practices that may disparately impact members of racial or ethnic minority groups, older workers, and persons with disabilities. Such entities should consider adopting and maintaining processes to proactively assess whether workplace complaints signal entity-wide practices or challenges that necessitate modification of existing policies or warrant additional outreach to educate managers, supervisors, or other sectors of the workforce about compliance with applicable federal and state laws.

Targeted Equitable Relief

The Strategic Plan also underscores the EEOC's commitment to securing equitable relief in cases resolved by the agency. According to data published by the EEOC, the percentage of resolutions that include an equitable relief component has increased from 64 percent in FY 2013 to 81.2 percent in FY 2015. Accordingly, employers should continue to expect the EEOC to require the implementation of customized, interactive training, the adoption and communication of policies to deter future violations, and procedures for monitoring compliance and outcomes in conciliations, settlements, and consent decrees entered to resolve claims initiated by the EEOC. As appropriate, employers may consider implementing measures to assess the effectiveness of their educational and training programs to ensure that they incorporate current best practices and are appropriately tailored to reflect changes in organizational operations, workforce composition, and application and interpretation of federal and comparable state laws.

Continued Education and Outreach

A second prong of the EEOC's Strategic Plan identifies the agency's continued focus on education and outreach initiatives. For example, the Strategic Plan notes that the EEOC began to offer training on Leading for Respect (for supervisors) and Respect in the Workplace (for all employees) in FY 2018. The EEOC also has announced its intention to focus on digital technology and to enhance the agency's use of social media to reach audiences. As the EEOC continues to focus on maximizing the impact and effectiveness of its communications, employers should likewise consider assessing their use of internal and external communication channels to ensure that policies and programs that impact employees and applicants are disseminated in a clear and timely manner. Employers may need to evaluate whether information about rights and responsibilities, and responses to informal or formal complaints, are communicated in a sufficiently usable and timely manner to ensure that it reaches appropriate audiences. Employers also should consider periodically assessing whether and how to monitor and utilize new communication platforms.

Conclusion

Recent developments, including the public and media attention on the "#MeToo" movement, have resulted in heightened external scrutiny of workplace culture and relationships. Although these events have prompted many employers to reevaluate training and other priorities for 2018, the EEOC's Strategic Plan, together with other, recent EEOC publications outlining the agency's priorities and accomplishments, provides another resource for employers to consider when analyzing existing policies and performance measures and formulating budgets and strategies for coming years.

TOP

10

TOP 10 SPRING CLEANING TIPS FOR EMPLOYEE BENEFIT PLANS

by Kevin L. Burch (Indianapolis) and Catherine R. Reese (Indianapolis)

With laws and regulations governing employee benefit plans ever changing, those responsible for employee benefit plans should constantly check the tidiness of their procedures to ensure compliance. Below are 10 helpful tips to scrub your employee benefit plans this spring.

1 Rethink/Understand Compensation

Whether an item of compensation is included, and for what purpose, under a plan should be carefully considered. Contributions and benefits can be easily miscalculated otherwise. Common compensation errors involve the treatment of bonuses, overtime, nonqualified deferred compensation, or stock options. Align your practice with the plan's terms and ensure payroll codes are properly designated.

2 Watch for Delinquent Contributions

Employee 401(k) deferrals must be contributed to the 401(k) trust as soon as they can be reasonably segregated from the employer's general assets each payday. If you have a welfare trust, amounts withheld from paychecks for welfare benefits also must be contributed to that trust as soon as reasonably segregated. Automate your deferral contribution process to the greatest extent possible, but understand no process can be completely automated. Assign responsibility for manual aspects of the deferral contribution process to a suitable person (e.g., benefit specialist, controller, etc.), with a secondary person assigned to cover work absences.

3 Document Your Cafeteria Plans

A cafeteria plan enables participants to pay premiums, and possibly contribute to medical reimbursement, health savings, or dependent care accounts, on a pre-tax basis. One important, and sometimes overlooked, requirement for a cafeteria plan is the requirement of a written plan document. Without a written document, there is no cafeteria plan and additional income and employment taxes apply. Likewise, penalties for failing to properly report and withhold such taxes apply. Confirm that you have a written document that accurately reflects the pre-tax premium and contribution options offered to your employees.

4 Process 401(k) Hardship Distributions Properly

Hardship distributions are popular 401(k) plan design features (often too popular), which can create costly compliance problems if not properly administered. IRS guidance allows participants to self-certify that a hardship event occurred if the employer receives adequate information from the participant. Review the list of IRS requirements for self-certification and remind participants that they must be able to produce documentation about the hardship event if requested by the IRS.

5 Protect Plan Data From Cybersecurity Risks

Data breaches are commonplace occurrences, even for employee benefit plans. Plans and plan service providers can hold identifying employment, financial, and health information, and a plan fiduciary has the responsibility to safeguard plan data. Plan cybersecurity policies and procedures should be vetted and certified by cybersecurity experts. Define security obligations in writing with your service providers, including security measures, rules for sharing threat information, automatic breach notifications, and mitigation protocols if a data breach occurs.

6 Analyze Your Severance Arrangements for ERISA and Section 409A Risks

Legal requirements for severance arrangements vary depending on the nature, scope, and structure of the benefits provided. Severance arrangements requiring ongoing administration or sufficient employer discretion are subject to ERISA's requirements for a written plan document, participant disclosures, annual governmental filings, claims procedures, and fiduciary duties. Severance arrangements also may be subject to Section 409A of the Internal Revenue Code. When Section 409A applies, payments must be fixed and generally may not be accelerated or delayed without triggering significant penalties. Understand which requirements apply to your existing severance arrangements and consider the ERISA and Section 409A requirements when you implement a new severance agreement.

7 Review Eligibility Conditions

Plan eligibility errors include both failing to enroll employees who are eligible and allowing ineligible employees to participate. Maladministration can be costly. To avoid eligibility errors, know the eligibility requirements specified in your plan documents and carefully monitor each employee's employment status, age, and service.

8 Create a Prudent Process for Selecting Investments

Plan fiduciaries must make prudent investment decisions for plan assets, continuously monitor plan investments, and make adjustments when appropriate. Establish a prudent process for monitoring investments, hire experts as needed, follow that process in all circumstances, and carefully document investment decisions.

9 Assess Employment Taxes for Nonqualified Deferred Compensation Properly

A special timing rule provides that nonqualified deferred compensation is subject to employment tax upon vesting, regardless of when payment occurs. An employer's failure to apply the special timing rule properly can unnecessarily increase employment tax liability for both the employee and the employer. Review any deferred compensation arrangements and make certain employment taxes are applied when benefits vest.

10 Watch for Employer Shared Responsibility Payment (ESRP) Notices

The IRS is now sending proposed excise tax notices for the failure to offer affordable minimum essential health coverage to a sufficient number of full-time employees in 2015. These ESRP notices include a summary of the information used to calculate the proposed excise tax. If you receive an ESRP notice, verify the accuracy of the information included in the notice. If the proposed assessment is based on incorrect information, correcting the information may result in lowering, or even eliminating, the excise tax owed.

SPOTLIGHT ON OGLETREE DEAKINS' PHOENIX OFFICE



Downtown Phoenix, Arizona

This year, Ogletree Deakins is taking its annual labor and employment law seminar, Workplace Strategies, to Phoenix, Arizona from May 9-12, 2018. Ogletree Deakins has two offices in Arizona (Phoenix and Tucson), and the firm is excited to be back in the “Valley of the Sun” for its signature event. Phoenix may be well-known for cacti and a hot desert climate, but the city has a lot more to offer. Below we offer some interesting facts about the city and highlight unique labor and employment issues in Arizona.

- Arizona takes its cacti seriously. Cutting down the saguaro cactus without a permit is actually a crime, and could even result in prison time.
- Arizona’s new paid sick leave law went into effect on July 1, 2017. Virtually every private employer with employees in Arizona, as well as all municipalities and school districts, are covered by the law. Whereas so-called “small businesses” are exempt from coverage under the Arizona minimum wage law, even small businesses are covered by the new paid sick leave law.
- Phoenix is known for its unique architecture. Renowned architect Frank Lloyd Wright moved to Phoenix in 1937, and many other notable architects have called Phoenix home. Workplace Strategies will be held at the Arizona Biltmore, an iconic hotel known throughout the world as the “Jewel of the Desert.” Wright served as a consultant to the hotel’s principal architect, Albert Chase McArthur.
- In Arizona, medical marijuana is legal. An employer cannot discriminate against an employee or applicant based upon the person’s status as a registered medical marijuana patient/cardholder, or the registered cardholder’s positive drug test for marijuana (unless the person used, possessed, or was impaired by marijuana on the premises of the place of employment or during the hours of employment), although some safety-sensitive positions may be excepted.
- Even an employer-friendly state compared to its neighbor to the west, Arizona recently provided a statutory method for Arizona employers to confirm an independent contractor relationship via a declaration that creates a rebuttable presumption that the worker is an independent contractor, and not an employee. Like every little cactus needle, the little things matter!

52 OFFICES OF OGLETREE DEAKINS

Atlanta | Austin | Berlin | Birmingham | Boston | Charleston | Charlotte | Chicago | Cleveland | Columbia | Dallas | Denver | Detroit (Metro) | Greenville | Houston | Indianapolis
Jackson | Kansas City | Las Vegas | London | Los Angeles | Memphis | Mexico City | Miami | Milwaukee | Minneapolis | Morristown | Nashville | New Orleans | New York City
Oklahoma City | Orange County | Paris | Philadelphia | Phoenix | Pittsburgh | Portland | Raleigh | Richmond | Sacramento | San Antonio | San Diego | San Francisco
Seattle | St. Louis | St. Thomas | Stamford | Tampa | Toronto | Torrance | Tucson | Washington, D.C.

www.ogletree.com

MEET THE AUTHORS



Kevin L. Burch
Of Counsel
Indianapolis



Harold P. Coxson
Shareholder
Washington, D.C.



Simone R. D. Francis
Shareholder
St. Thomas



Grant D. Petersen
Shareholder
Tampa



James J. Plunkett
Senior Government
Relations Counsel
Washington, D.C.



Catherine R. Reese
Shareholder
Indianapolis



Hal A. Shillingstad
Shareholder
Minneapolis

Ogletree Deakins

© 2018

Editor in Chief
Jansen A. Ellis

Managing Editor
Stephanie A. Henry

Articles Editor
Hera S. Arsen

Reproduction

This is a copyright publication. No part of this publication may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopy, recording, or any information storage and retrieval system, without written permission.

Disclaimer

The articles contained in this publication have been abridged from laws, court decisions, and administrative rulings and should not be construed or relied upon as legal advice. If you have questions concerning particular situations and specific legal issues, please contact your Ogletree Deakins attorney. This publication may be considered advertising under applicable laws.

Additional Information

To request further information or to comment on an article, please contact Stephanie Henry at (310) 217-0130. For additional copies or address changes, contact Marilu Oliver at (404) 870-1755.

April 2018

Apr 3	Webinar	We're #1! Retaliation Claims Top the List Again
Apr 3	Appleton, WI	Employment Law Briefing
Apr 4	McAllen, TX	Employment Law Briefing
Apr 5	Laredo, TX	Employment Law Briefing
Apr 5	Madison, WI	Employment Law Briefing
Apr 10	Minneapolis	The Nontraditional Workplace —Navigating Flexible Work Arrangements in Compliance with the FLSA, ADA, and Other Requirements
Apr 10	Racine, WI	Employment Law Briefing
Apr 10	Philadelphia	Employment Law Briefing
Apr 10	Englewood, CO	Employment Law Briefing
Apr 11	Fort Collins, CO	Employment Law Briefing
Apr 11	Brookfield, WI	Employment Law Briefing
Apr 11	Franklin, TN	Employment Law Briefing
Apr 11	San Diego	Employment Law Briefing
Apr 12	Los Angeles	Employment Law Briefing
Apr 12	Orange County	Employment Law Briefing
Apr 12	Sacramento	Employment Law Briefing
Apr 13	Boulder	Employment Law Briefing
Apr 13	San Francisco	Employment Law Briefing
Apr 13	San Antonio	Advanced Leave of Absence Workshop
Apr 19	Webcast	It's All About Respect - California Harassment-Prevention Training for Supervisors
Apr 20	Memphis	Employment Law Briefing
Apr 25	Richmond	Employment Law Briefing
Apr 26	Webinar	One Toke Over the Line? What California Employers Need to Know About Marijuana and the Workplace

May 2018

May 2	Philadelphia	The Philadelphia Derby
May 8-9	Phoenix	Employee Benefits and Executive Compensation Symposium
May 9-12	Phoenix	2018 National Workplace Strategies Seminar
May 22	Oak Brook, IL	Employment Law Briefing
May 23	Chicago	Employment Law Briefing

June 2018

June 8	St. Louis	Professional Responsibility in Employment Litigation: Best Practices and Worst Mistakes
June 21	Las Vegas	Stay Connected: The New Nevada—Operating Under Recent Wage and Hour Court Decisions

July 2018

July 19	Sioux Falls, SD	Remedying Your Employee Handbook
---------	-----------------	--