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If you have any questions regarding the matters discussed in this memorandum, please contact the attorneys listed on the last page or call your regular Skadden contact.

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NLRB Spotlight

The National Labor Relations Board (NLRB) recently issued a series of decisions, several of which are summarized below. We also discuss various other U.S. federal and state labor and employment-related developments.

NLRB Adopts 'Contract Coverage' Standard for Evaluating Unilateral Employer Changes

On September 10, 2019, in *M.V. Transportation, Inc.*, 28-CA-173726; 368 NLRB No. 66, the NLRB adopted the "contract coverage" standard for determining whether unionized employers violate federal labor law by unilaterally changing the terms and conditions of workers' employment. Under the "contract coverage" standard, the NLRB examines the plain language in a collective bargaining agreement to determine whether the action taken by the employer was within the scope of contractual language granting the employer the right to act unilaterally. If the employer acted outside its authority in the contract to act unilaterally, the employer will have committed an unfair labor practice, unless the employer can show that the union waived its right to bargain over the change or that the employer had the legal authority to act unilaterally on some other basis. The NLRB stated that the U.S. Court of Appeals for the District of Columbia Circuit has applied the "contract coverage" standard for more than 25 years and, agreeing with the D.C. Circuit, rejected the former "clear and unmistakable waiver" standard, according to which an employer's unilateral change violates the National Labor Relations Act (NLRA) unless a collective bargaining agreement unequivocally refers to the type of

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employer action at issue. Furthermore, the NLRB noted that the “contract coverage” standard is more consistent with the purposes of the NLRA because that standard encourages parties to anticipate labor management issues through comprehensive collective bargaining.

NLRB Rules That Worker Misclassification Does Not Violate NLRA

On August 29, 2019, the NLRB ruled that misclassifying employees as independent contractors does not violate the NLRA, because such misclassification does not interfere with worker organizing rights. The NLRB affirmed, in part, an administrative law judge’s decision in *Velox Express Inc. and Jeannie Edge*, 15-CA-184006; 368 NLRB No. 61. It affirmed that the drivers should be classified as employees under the NLRA, thus providing jurisdiction for the NLRB to opine on the issues before it, but it held that such misclassification of workers did not violate Section 8(a)(1) of the NLRA. In the matter before the NLRB, a former employee alleged that the company violated Section 8(a)(1) of the NLRA because “an employer’s misclassification of employees as independent contractors inherently coerces employees in the exercise of their Section 7 rights,” which provides employees the right to organize. The NLRB majority held that an employer’s misclassification of workers did not violate the NLRA because such misclassification does not prohibit workers from organizing. The NLRB stated that workers may still “disagree with their employer and take the position that they are employees, and engage in union and other protected concerted activities.” The majority further stated that an employer’s classification of workers as independent contractors is a legal opinion, and the communication of that opinion to its workers is privileged by Section 8(c) of the NLRA. The NLRB ultimately reversed, in part, the administrative law judge’s decision by holding that an employer’s misclassification of its employees, standing alone, did not violate the NLRA. However, the NLRB affirmed that the company violated Section 8(a)(1) of the NLRA by discharging the former employee for raising complaints about misclassification.

NLRB Rules Employers May Modify Mandatory Arbitration Agreements After Class Action Lawsuits Are Initiated

On August 14, 2019, the NLRB ruled in *Cordia Restaurants, Inc.*, 16-CA-160901, 16-CA-161380, 16-CA-170940, 16-CA-173451; 368 NLRB 43, that a restaurant operator did not violate the NLRA when it fired its workers for opting into a class action lawsuit alleging violations of federal and state wage-and-hour laws. Prior to the initiation of the class action lawsuit, the employer had its employees sign a form arbitration agreement that waived employees’ rights to “file, participate or proceed”

in a class action lawsuit against their employer. Nine months after the wage-and-hour class action lawsuit had been filed, the employer updated its mandatory arbitration agreement to also prohibit its employees from opting into class or collective action lawsuits unless the employer expressly gave them written permission to do so. Employees were not unionized but argued that the employer’s actions prohibited them from engaging in protected concerted activity under the NLRA. In a 4-1 decision, the NLRB panel cited the U.S. Supreme Court’s decision in *Epic Systems Corp. v. Lewis*, 584 U.S. ____ (2018), which held that the NLRA permitted employers to use mandatory arbitration agreements with class action waivers as legal justification for the employers to update their agreements, require their employees to sign them and inform employees that failure to sign them would result in termination of their employment. In short, the NLRB held that requiring employees to waive the right to join in a class or collective action lawsuit does not violate the employees’ Section 7 rights to engage in concerted action.

NLRB Issues Advice That Could Impact Social Media Policies

One of the NLRB’s recently published advice memoranda, *Colorado Professional Security Services, 27-CA-203915 et al.*, addresses social media and an employee’s right to engage in concerted activities for the purpose of mutual aid and protection pursuant to Section 7 of the NLRA. As discussed in the memorandum, the security company had an employee policy prohibiting employees from “publicly criticizing the Company, its management or its employees.” Additionally, the company included confidentiality language in its disciplinary notices to employees that prohibited employees from discussing discipline with co-workers and clients. In 2016, a then-current employee joined a lawsuit alleging wage-and-hour violations by the company. Thereafter, in 2017, the employee received a number of disciplinary notices for failing to have on proper footwear. The notices included the confidentiality language noted above. Additionally, the employee was disciplined with a reduction in hours for discussing the wage-and-hour lawsuit and providing his personal contact information to clients. Following these disciplinary measures, the employee posted a live video on Facebook while on the job and wearing his company uniform. In the post, the employee made a number of crude, critical remarks about the company and his supervisor. The employee also discussed, among other topics, the disciplinary notices related to improper footwear, the overbroad confidentiality provision in the notices and unfair treatment. The employee’s employment was terminated as a result of the Facebook video and the employee’s violation of the policy prohibiting public criticism.

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The NLRB's Division of Advice found that the company's policy and confidentiality language in the disciplinary notices were unlawfully overbroad. The division nonetheless found that the employee's discharge was not unlawful because the Facebook post did not constitute protected concerted activity. Specifically, the topics discussed in the video that could relate to Section 7 subjects, including the reference to the lawsuit and the overbroad confidentiality provision, were individual complaints, and the employee gave no indication that he was speaking for, or seeking to act in concert with, others. Additionally, although the employee's employment was terminated in part due to his violation of the unlawfully overbroad policies, the division concluded that the termination was not unlawful because the video was "so egregious" that other employees would not connect the termination of employment to the unlawful policies.

NLRB Narrows Nonemployee Union Access to Employer Property

In a September 6, 2019, decision, the NLRB ruled that employers may ban nonemployee access to employer property for union organizational activities if the employer also bans comparable organizational activities by groups other than unions. In *Kroger Limited Partnership I Mid-Atlantic*, 05-CA-155160; 368 NLRB 64, the employer asked the police to remove a union agent who had entered a parking lot adjacent to the employer's store and began soliciting the employer's customers to sign petitions protesting the forthcoming transfer of union employees to other stores. The union filed an unfair labor practice charge, arguing that the employer's removal of the union agent and prohibition of nonemployee union solicitation violated Section 8(a)(1) of the NLRA. The union also argued that the employer engaged in unlawful discrimination in violation of NLRB and U.S. Supreme Court precedent by permitting a variety of other nonemployee solicitation on its property. The NLRB overruled prior precedent and adopted a new approach for analyzing discrimination in these situations, focusing on whether the permitted and prohibited nonemployee activities are similar in nature. Accordingly, the NLRB ruled that the employer did not violate the NLRA by prohibiting nonemployee union solicitation on its property while allowing various charitable and civic entities to access its property to engage in solicitation of donations — the activities were not similar in nature, and there was no evidence the employer permitted other nonemployees to engage in protest or boycott activities on its property.

The *Kroger* decision follows two other recent NLRB decisions bolstering employer rights to restrict nonemployee union access to employer property. In June 2019, the NLRB held that an

employer does not have a duty to allow the use of its facilities, such as a publicly available cafeteria, by nonemployees for promotional or organizational activity. *UPMC*, 368 NLRB 2. In August 2019, the NLRB held that property owners do not need to grant access to off-duty employees of an on-site contractor to engage in protected concerted activity. *Bexar County Performing Arts Center Foundation*, 368 NLRB 26.

Additional Developments

DOL Issues Final Rule Increasing Annual Earnings Threshold for FLSA 'White Collar' and Highly Compensated Employee Exemptions

On September 24, 2019, the Department of Labor (DOL) announced its final rule (Final Rule) that raises the annual earnings threshold from \$23,660 to \$35,568 for the executive, administrative and professional "white collar" exemptions under the Fair Labor Standards Act (FLSA). The Final Rule includes a special salary rate for employees in the five major U.S. territories of Puerto Rico, the U.S. Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands and American Samoa, as well as an updated weekly base rate for the motion picture producing industry. In addition, the Final Rule raises the annual earnings threshold from \$100,000 to \$107,432 for highly compensated employees under the FLSA. The Final Rule allows for nondiscretionary bonus and incentive payments (including commissions) paid on an annual or more frequent basis to be used to satisfy up to 10 percent of the standard annual earnings threshold for the three white-collar exemptions (or the special salary levels applicable to the U.S. territories). No changes were made to the duties tests or to other FLSA exemptions (*e.g.*, the outside sales exemption). The Final Rule will become effective on January 1, 2020.

DOJ Holds Public Workshop on Competition in Labor Markets

Since issuing guidance in 2016, the Department of Justice (DOJ) has made it a priority to curb the use of "no-poach" and "non-solicit" agreements between companies by educating employers about the application of antitrust laws and by filing statements of interest in federal court actions brought by private plaintiffs challenging no-poach provisions in franchise agreements. Although recent enforcement actions have focused on franchise agreements, the DOJ's October 2016 guidance, titled "Antitrust Guidance for Human Resource Professionals," provides broader insight into the DOJ's perspective on nonsolicitation agreements and the sharing of employee wage data during a merger or acquisition. Specifically, the guidance recognizes that some no-poach

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or nonsolicit provisions between companies may be permissible if they are part of and “reasonably necessary to a larger legitimate collaboration between employers.” Further, the guidance acknowledges that some sensitive information about terms and conditions of employment may need to be shared between competitors in connection with a proposed merger or acquisition. The DOJ advises companies in these circumstances to consider providing the information in a way that protects the identity of the underlying source or having a neutral third party, or “clean team,” manage the exchange.

State attorneys general have also increased enforcement actions of no-poach and nonsolicit agreements, with a focus on the use of such provisions in franchise agreements, but have also focused their advocacy efforts on federal regulators. Recently, 18 state attorneys general, including the attorneys general for California and New York, jointly filed public comments with the Federal Trade Commission (FTC) in response to the FTC’s recent public hearings on a topic it called “Competition and Consumer Protection in the 21st Century.” The comment focuses on four major antitrust issues in the labor market: (1) horizontal agreements between employers not to hire employees; (2) vertical no-poach agreements (*e.g.*, between franchisors and franchisees); (3) noncompete agreements between employers and employees; and (4) mergers of employers.

On September 23, 2019, the DOJ held the first public workshop, in a two-part series, to discuss “the role of antitrust enforcement in labor markets and promoting robust competition for the American worker.” The public workshop addressed, among other topics, the economics and definition of labor markets; college athletes as a distinct group of laborers; agreements affecting worker mobility, with an emphasis on laborers in the “gig” economy; and nonstatutory antitrust exemptions for collective bargaining. The FTC will host the second day of the public workshop and focus on issues associated with the use of noncompetition clauses in employment agreements. The date and agenda for the second day of the workshop have not yet been announced.

DOL Opinion Letter Expands FMLA Coverage to Certain School Meetings

On August 8, 2019, the Wage and Hour Division of the DOL issued an opinion that a parent’s need to attend individualized education program (IEP) meetings for her two children was a qualifying reason for taking intermittent leave pursuant to the Family and Medical Leave Act (FMLA). To reach this conclusion, the DOL first established that the children had serious health conditions, as defined under the FMLA regulations and certified by a health care provider. Second, the DOL cited FMLA

regulations to establish that caring for a family member with a serious health condition includes not only the provision of physical and psychological care but also making arrangements for changes in that care. The DOL explained that at IEP meetings, participants make medical decisions concerning the children’s medically prescribed speech, physical and occupational therapy; discuss the children’s well-being and progress with providers of such services; and ensure that the children’s school environment is suitable to their medical, social and academic needs. The DOL clarified that making arrangements for care is not limited to finding a facility that provides medical treatment and explained that the parent’s attendance at IEP meetings qualified for intermittent leave, regardless of whether the child’s doctor was present.

DOL Opinion Letter Clarifies Nondiscretionary Bonus’ Impact on Overtime

On July 1, 2019, the DOL issued an opinion letter clarifying the types of nondiscretionary bonuses that require an employer to recalculate a nonexempt employee’s regular rate of pay to determine overtime compensation. Under the FLSA, an employee’s regular rate of pay includes “all remuneration for employment paid to, or on behalf of, the employee,” and nondiscretionary bonuses count as “remuneration.” As an employee’s overtime rate of pay is calculated based on an employee’s regular rate of pay, certain nondiscretionary bonus plans may require an employer to recalculate the regular rate of pay, thus increasing an employee’s overtime wages in the bonus period. The DOL clarified that a nondiscretionary annual bonus plan that pays an employee a fixed percentage based only on the employee’s regular-time rate for hours worked during the bonus period requires an employer to “recalculate the regular rate for each workweek in the bonus period and pay the overtime compensation due on the annual bonus.” The DOL reached this conclusion, in part, because this type of plan structure “is not tied to straight-time or overtime hours actually worked,” and the employer was able to “readily ascertain the proportionate amount of the annual bonus” earned in each workweek. Conversely, a nondiscretionary quarterly bonus plan that pays an employee a fixed percentage on both regular-time and overtime wages “does not require recalculation of the regular rate because the bonus includes the overtime compensation due on the bonus as an arithmetic fact, fully satisfying the FLSA’s overtime requirements.” Although the bonus plans at issue in this case were annual and quarterly, the length of the bonus plan was not a driving factor in the DOL’s conclusion. Rather, the DOL focused on whether a bonus was paid as a “percent of total compensation — including hourly wages, overtime, bonuses, commissions, etc.” The DOL concluded that bonus plans that pay a percentage of the total compensation do not require calculation.

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EEOC Not Renewing Request To Continue Collecting Component 2 Pay Data

On September 12, 2019, the Equal Employment Opportunity Commission (EEOC) published a Notice of Information Collection stating that it is not renewing its request to continue collecting Component 2 pay data from EEO-1 filers for years after 2018 because the “unproven utility of the data” in Component 2 is outweighed by the burden imposed on employers that must comply with the reporting obligation. Private employers with at least 100 employees and federal contractors with at least 50 employees are required to annually file information with the EEOC related to employee pay data on the basis of job category, race, ethnicity and sex. Since 2016, the EEOC has required such employers to complete both Component 1 (containing 140 data fields) and Component 2 (containing 3,360 fields) when submitting annual reports. If approved by the Office of Management and Budget, the EEOC will provide employers with more detailed instructions on filing future reports. This notice will not affect employers’ current obligations to report Component 2 pay data for years 2017 and 2018 by September 30, 2019.

EEOC Issues Guidance on Reporting Nonbinary Gender Employees in EEO-1 Reports

The EEOC issued guidance to employers in filling out their EEO-1 reports with respect to employees who identify as nonbinary, or outside of the male and female binary. The EEOC advised that employers may “report employee counts and labor hours for non-binary gender employees by job category and pay band and racial group in the comment box on the Certification Page” and that employers should preface this data with the phrase “Additional Employee Data.” Employers are permitted but not required to include this additional information on the EEO-1 Component 2 report, to explain if any workers identify as nonbinary.

New York Expands Workplace Protections for Victims of Domestic Violence

On August 20, 2019, Gov. Andrew M. Cuomo signed a new bill into law that will entitle victims of domestic violence to expanded workplace protections under the New York State Human Rights Law (NYSHRL). The new law will go into effect on November 18, 2019, and expands existing protections by expressly adding victims of domestic violence as a protected class and prohibiting employers from taking any of the following discriminatory acts against such individuals: refusing to hire or discharging an individual based on his or her status as a victim of domestic violence; discriminating against such individuals in compensation or privileges of employment; and using job applications or job postings that either express a limitation against

individuals’ status as victims of domestic violence or inquire about individuals’ status as victims of domestic violence (unless the employer is inquiring for the purpose of providing assistance or reasonable accommodation). Under the new law, employers are also required, absent undue hardship, to provide reasonable accommodations to employees who are victims of domestic violence, including by allowing them to take a reasonable amount of time off to seek medical treatment, obtain psychological counseling, participate in safety planning or obtain legal services. Employers may charge any time off to an employee’s accrued vacation or personal leave, and employees are required to provide their employer with reasonable advance notice of any absence, if feasible.

New York State’s Expanded Workplace Anti-Discrimination Protections To Take Effect; New York City Expands Scope of Human Rights Law

Various measures under NYSHRL’s expansion of discrimination and harassment protections are set to go into effect in the upcoming months.

- Effective immediately, employers must provide employees (at the time of hire and annually) with a notice containing the employer’s sexual harassment prevention policy and the information presented at the employer’s annual harassment prevention training.
- By October 9, 2019, every employer in New York state must have provided employees with sexual harassment prevention training, which must then recur on an annual basis. As noted in the [January 2019](#) issue of *Employment Flash*, this training must, among other things, include interactive components and information concerning employees’ rights of redress and available forums for adjudicating claims.
- Effective October 11, 2019, (1) a complainant will no longer need to show that alleged harassment is “severe or pervasive” but rather just that they were subjected to inferior terms, conditions or privileges of employment on the basis of a protected characteristic; (2) employers will be unable to use the *Faragher-Ellerth* affirmative defense (that an employee failed to use the employer’s internal complaint processes to raise his or her claim) for claims under the NYSHRL; (3) NYSHRL protections against discrimination will extend to any protected category, rather than just sexual harassment, and will apply to contractors, subcontractors, vendors, consultants and other service providers rather than just employees; (4) the prohibition on mandatory arbitration of sexual harassment claims will extend to all types of unlawful discrimination; (5) employers will be generally prohibited from including nondisclosure

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provisions in settlement agreements covering discrimination claims; and (6) the NYSHRL will allow for punitive damages and attorneys' fees.

- Effective January 1, 2020, any provision in an agreement that prevents the disclosure of information related to future discrimination claims on the basis of a protected characteristic will be unenforceable, except where the agreement informs the individual that he or she is not prohibited from contacting the EEOC, New York State Division of Human Rights (NYSDHR), a local human rights commission, an attorney or law enforcement.
- Effective February 8, 2020, the NYSHRL's prohibitions against discrimination and harassment will apply to all employers, regardless of their size.
- Effective August 12, 2020, individuals will have three years, instead of one, to report claims of sexual harassment to the NYSDHR.

In addition, on September 12, 2019, the New York City Council passed a law that would expand the scope of the New York City Human Rights Law. The amendment covers freelancers and independent contractors, who will now be able to file complaints with the New York City Commission on Human Rights if they are harassed or discriminated against based on a protected category. The new law further expands coverage from employers who employ four or more employees to businesses that employ or engage at least three employees or independent contractors combined. New York City Mayor Bill de Blasio is expected to sign the bill into law.

California Passes Landmark Bill Restricting Classification of Contract Workers

On September 18, 2019, California Gov. Gavin Newsom signed into law an employment bill (AB5) that codifies the recent extension of employment protections to workers previously classified as independent contractors. AB5 codifies the recent California Supreme Court decision in *Dynamex v. Super. Ct. of Los Angeles*, 4 Cal. 5th 903 (2018): It adds Section 2750.3 to the California Labor Code and tracks the *Dynamex* three-part "ABC" test, stating that "a person providing labor or services for remuneration shall be considered an employee rather than an independent contractor unless the hiring entity demonstrates that all of the following conditions are satisfied:

- A. The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.

- B. The person performs work that is outside the usual course of the hiring entity's business.
- C. The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed."

AB5 expands the reach of the *Dynamex* "ABC" test by applying it for purposes of the provisions of the Labor Code, as well as California's Unemployment Insurance Code and the wage orders of California's Industrial Welfare Commission. AB5 explicitly exempts various occupations, industries and contracting relationships from application of the *Dynamex* three-part test and instead requires application of other tests to determine employment status of such relationships.

AB5 provides that the addition of the *Dynamex* three-part test to the Labor Code "does not constitute a change in, but is declaratory of, existing law with regard to wage orders of California's Industrial Welfare Commission and violations of the Labor Code relating to wage orders," and that to the extent that *Dynamex* exemptions in the bill would relieve an employer from liability, those provisions of the bill apply retroactively to existing claims and actions to the maximum extent permitted by law, while other provisions apply to work performed on or after January 1, 2020. AB5 does not permit an employer to reclassify an individual who was an employee on January 1, 2019, to an independent contractor due to the bill's enactment.

Please refer to our September 16, 2019, client alert "[California Passes Landmark Bill Restricting Classification of Contract Workers](#)" for further information about this development.

California Supreme Court Rules That Workers Cannot Use PAGA To Recover Unpaid Wages

On September 12, 2019, the California Supreme Court held that employees may not use the state's Private Attorneys General Act of 2004 (PAGA) as a vehicle to collect unpaid wages. *ZB, N.A. v. Super. Ct.*, No. S246711. PAGA permits aggrieved employees to file suit on behalf of themselves and other aggrieved employees, and collect civil penalties for certain state Labor Code violations. For each alleged Labor Code violation, PAGA civil penalties generally range from \$50 to \$100 for each aggrieved employee per pay period for an initial violation and \$100 to \$250 for each aggrieved employee per pay period for each subsequent violation.

In *ZB, N.A.*, the plaintiff-employee filed a PAGA-only action seeking civil penalties, as well as unpaid and premium wages, on behalf of herself and other aggrieved employees. The plaintiff-employee alleged that her employer failed to

provide her and other aggrieved employees with overtime and minimum wages, meal and rest breaks, timely wage payments, complete and accurate payroll records, and reimbursement for business expenses. The employer argued that a mandatory arbitration agreement barred the plaintiff-employee from seeking unpaid wages and, as such, moved to compel arbitration of the unpaid wages claim (and sought to stay the PAGA action for civil penalties). The court resolved a threshold matter in holding that an employee may not seek unpaid wages in a PAGA action at all but denied the employer's motion to compel arbitration. Importantly, though the court's ruling eliminates PAGA actions as a vehicle for California employees to recover unpaid wages, California employees can recover unpaid wages through a non-PAGA civil action or by filing a wage complaint with the state Labor Commissioner's Office as well as through PAGA civil penalties in connection with alleged Labor Code violations for unpaid wages.

Deadline for California Sexual Harassment and Abusive Conduct Training Extended to 2021

In the [January 2019](#) edition of *Employment Flash*, we described the sexual harassment and abusive conduct training required under California law to be provided to employees by January 1, 2020, and every two years thereafter. In response to resistance from the business community, on August 30, 2019, Gov. Newsom signed into effect a law extending the training deadline to January 1, 2021.

Delaware Vice Chancellor Declines To Enforce Noncompete Claims Despite Delaware Choice-of-Law Provision

On August 26, 2019, the Delaware Court of Chancery ruled that post-termination noncompetition and nonsolicitation covenants in an employment contract with a former executive were unenforceable because the covenants violated well-founded California law principles prohibiting noncompetition provisions, even though the employment contract contained a Delaware choice-of-law provision. The court stated that California's interest in overseeing California-based employment relationships

manifestly outweighed Delaware's general interest in freedom of contract. As such, the court declined to enforce the employment contract's Delaware choice-of-law provision. In the court's earlier *NuVasive* decision, dated September 28, 2018, and discussed in the [January 2019](#) issue of *Employment Flash*, the Court relied on Section 925(e) of the California Labor Code to enforce the noncompetition covenant. Under Section 925(e) of the Labor Code, non-California choice-of-law and forum provisions are enforceable if an employee is individually represented by legal counsel in negotiating such provisions. However, the court explained in this August 26, 2019, decision that the former executive presented persuasive evidence that he did not, in fact, have counsel negotiate the employment agreement, and for that reason, the statutory exception in Section 925(e) of the Labor Code did not apply.

Chicago Enacts Predictive Scheduling Requirements With Fair Workweek Ordinance

The Chicago City Council approved the Chicago Fair Workweek Ordinance (FWO), which will require certain Chicago employers to provide covered employees with advance notice of their schedule and compensate them for schedule changes, and will entitle employees to certain other rights with respect to work schedules. The FWO will go into effect on July 1, 2020, and will apply to businesses that globally employ more than 100 employees, or nonprofits that globally employ 250 or more employees, including, in each case, at least 50 covered employees. Employees will be covered by the FWO if they work primarily in the city of Chicago, perform the majority of their work in a covered industry (including building services, health care, hotel, manufacturing, retail, certain restaurants and warehouse services) and earn less than \$50,000 annually (or \$26 per hour). The FWO may be expressly waived in collective bargaining agreements.

Employers in violation of the FWO will be subject to fines of up to \$500 for each offense, for each affected employee and for each day the violation occurs. An employer will be subject to a \$1,000 fine for discriminating or retaliating against any covered employee for exercising any rights under the FWO.

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