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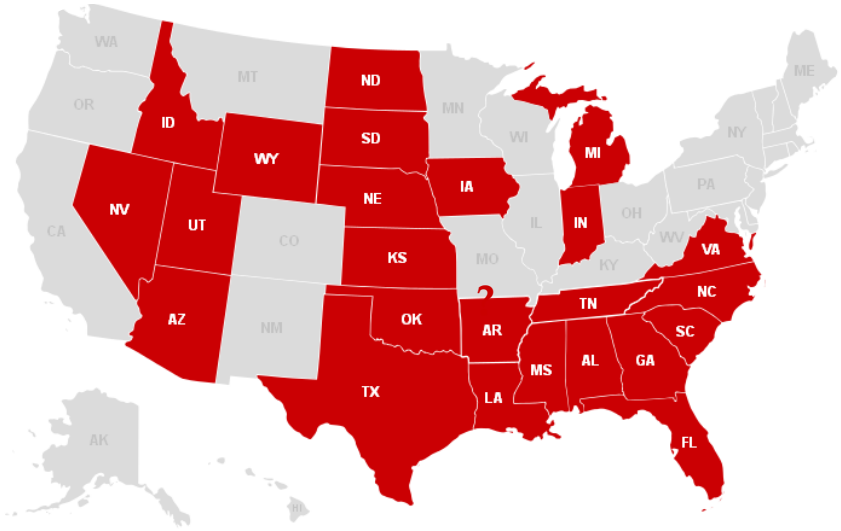
THE JOB DESCRIPTION



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In This Issue:

Missouri House Speaker to Push for "Right to Work" Law

Missouri House Speaker Tim Jones is attempting to rally voters to make Missouri the 25th "right to work" state. He has said worker freedom laws are a top priority for the Republican majority this year. Missouri Governor Jay Nixon is an ally of unions, and he will undoubtedly oppose these efforts.

"Right to work" laws prohibit agreements between unions and employers requiring employees to join the union and pay union dues. All of Missouri's bordering states except Illinois and Kentucky are "right to work" states. Republicans and employer groups fear losing a competitive economic edge with those neighboring states if Missouri fails to adopt a "right to work" law. A "right to work" law would make Missouri more attractive for investors and businesses, said Jones. Recognizing that Governor Nixon is strongly pro-union, Jones is pushing for a ballot initiative, which would not require the governor's approval.

The Cavanaugh Law Firm, LLC is committed to your company's success. We are available to provide you knowledgeable advice on the full range of labor and employment law issues and to defend your company and its managers in lawsuits and agency proceedings. If you have any questions about the contents of this newsletter or about any issue affecting your company, please contact us.

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Medical Marijuana Legalized in Illinois

On January 1, 2014, Illinois became the 20th state in the nation to legalize marijuana for medicinal purposes. Illinois' governor signed the legislation, the Compassionate Use of Medical Cannabis Pilot Program Act ("Cannabis Act"), to create the four-year pilot program. The program allows patients diagnosed with one of 42 specific, debilitating medical conditions to use medicinal marijuana. Qualifying individuals will be issued a Registry Identification Card by the Department of Public Health. Illinois has removed state-level criminal penalties from the medical use and cultivation of cannabis. The purpose of the Act is to protect patients with certain debilitating medical conditions, as well as their physicians and providers, from arrest and prosecution, criminal and other penalties, and property forfeiture if the patients engage in the medical use of cannabis.

Illinois law does not permit the use of marijuana in any place of employment. In addition, nothing in the Cannabis Act prohibits an employer from enforcing a policy concerning drug-testing, zero tolerance or a drug-free workplace, and employers may discipline employees for violating a workplace drug

policy. The Cannabis Act does not permit any person to engage in any task under the influence of cannabis, when doing so would constitute negligence, professional malpractice, or professional misconduct. A qualifying patient is not permitted to be impaired at work, and an employer who has a good faith belief that a qualifying patient is impaired while working, or has used or possessed cannabis at work, may take disciplinary action.

The Cannabis Act prohibits employers from penalizing an employee solely for his or her status as a registered, qualifying patient (or caregiver), unless failing to do so would put the employer in violation of federal law. Under Illinois law, an employer may have to consider accommodating an employee whose medical condition has led to a recommendation of medical marijuana use. Since medical marijuana remains an illegal drug under federal law, its use is not protected under the Americans with Disabilities Act ("ADA"). The three departments responsible for enforcing the provisions of the Act (the Departments of Health, Agriculture, and Financial and Professional Regulation) have until April 30, 2014, to develop and publish rules in accordance with their respective responsibilities. Illinois employers should consider updating their employee handbooks, and substance abuse testing policies, to include an explicit statement of their policy on medical marijuana and how they should handle this new law in light of drug-testing and Illinois disability accommodation issues.

Bill Would Prohibit Discrimination Against Unemployed Applicants

The proposed Fair Employment Opportunity Act of 2014 (H.R. 3972, S. 1972) would prevent employers and employment agencies from refusing to consider or offer a job to an unemployed individual; prohibit publishing any job advertisement that includes language indicating the unemployed need not apply; and entitle those discriminated against to sue the employer or employment agency for damages. Although this measure is not likely to advance this term, several states have recently introduced similar legislation.

EEOC Reports: Employers Paid a Record $372 Million in Settlements in FY2013

The Equal Employment Opportunity Commission ("EEOC") reported that its administrative division raked in a record $372.1 million in voluntary payments from private sector employers in fiscal year 2013. This figure, the highest in the EEOC's history, surpassed FY2012 by nearly $7 million and comes despite sequestration, which forced budget cuts, a hiring freeze, and mandatory furloughs on the EEOC. The EEOC reported resolving nearly 14,000 fewer charges in FY2013 (97,252) than it did in FY2012, indicating an increase in the average amount employers agreed to pay per charge. The $372.1 million represents sums paid through reported settlements, EEOC sponsored mediation, and conciliation efforts to some 70,522 individual private sector employees. It does not include amounts paid after a lawsuit was filed, whether through settlement or verdict.

The EEOC followed through on its stated goal of beefing up its systemic enforcement program during 2013. Of the settlements reported in FY2013, 63 involved allegations of systemic discrimination and accounted for approximately $40 million in payments. Nearly a quarter of the EEOC's pending lawsuits allege systemic discrimination — the largest percentage ever reported. "Systemic" cases allege broad-based discrimination and often accuse an employer of having a pattern and practice of discrimination.

The EEOC's legal enforcement division resolved 209 lawsuits during FY2013, bringing in another $39 million. Amounts paid to resolve lawsuits filed by private individuals (as opposed to actions filed by the EEOC itself) are not included in these figures. EEOC litigators filed 131 lawsuits in FY2013. Of those 131 lawsuits, 21 alleged systemic discrimination, 21 were non-systemic class based suits, and 89 alleged individual discrimination.

The number of private sector charges filed in FY2013 was down slightly from recent years, at 93,727. While these figures are certainly daunting, they are small compared to amounts paid to resolve private lawsuits. Federal courts throughout the country receive roughly 17,000 lawsuits alleging employment discrimination, and another 18,000 labor-based lawsuits every year. The best defense is to avoid EEOC involvement in the first place. Employers can lower this risk by implementing and consistently enforcing sound employment policies.

Congress Unlikely to Pass Bill Banning Discrimination Based on Sexual Orientation

The Employment Non-Discrimination Act ("ENDA") is legislation proposed in Congress that would prohibit employment discrimination on the basis of sexual orientation or gender identity by employers with at least 15 employees.

This bill passed the Senate in November 2013, but it faces tough odds in the House of Representatives. Speaker of the House John Boehner has said there is no need for the legislation and has promised not to give it a vote in the House. It is therefore likely not to pass this year. The White House has indicated that President Obama is considering issuing an executive order to expand the prohibitions against employment discrimination on the basis of sexual orientation. No federal law bans workplace discrimination on the basis of sexual orientation. Missouri state law also permits discrimination on the basis of sexual orientation, but Illinois law prohibits it.

The EEOC's Focus on Religious Accommodation

Religious accommodation claims are on the EEOC's radar screen. This means that offering religious accommodations to employees and applicants must be on your radar screen as well.

Most companies know that they cannot discriminate against employees and applicants based on their religion. But employers are also required to provide a reasonable accommodation to an employee's or applicant's "sincerely held" religious beliefs, unless doing so would cause more than a minimal burden on the operations of your business. Common religious accommodations that employers should consider include flexible scheduling, voluntary shift substitutions or swaps, job reassignments, and modifications to workplace policies or practices.

The number of religious discrimination lawsuits filed by the EEOC is on the rise. Common disputes arise in dress code policies and time off for religious observation or services on Saturday or Sunday. A "one size fits all" policy may be problematic when it conflicts with your employees' different religious beliefs. Although you generally have the right to enforce policies and procedures relating to an employee's uniform and appearance while at work and scheduling of employees' shifts and work days, you may have to provide exceptions when employees' religious beliefs or religious practices conflict with those policies or procedures.

New Workplace Laws in Missouri and Illinois

Missouri:

- Starting on January 1, 2014, the minimum hourly wage rose to $7.50 for non-tipped employees, and $3.75 for tipped employees.

Illinois:

- Employers now have the ability to seek orders of protection against employees who create or threaten workplace violence.
- The Illinois Right to Privacy in the Workplace Act was modified to restrict an employer's access to passwords of an "account, service or profile on a social networking website that is used by a current or prospective employee exclusively for personal communications unrelated to any business purpose of the employer."
- The Illinois Employee Classification Act, which deals with employee v. independent contractor classifications, adds a personal liability clause for knowingly violating the Act. In addition, any companies who employ independent contractors to perform construction services must report the names and address of those independent contractors and the amounts they each received to the Department of Labor on or before January 31 following the taxable year in which the payment was made. Failure to report can result in civil penalties.

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