

The Long Arm of the Law: How Changes in Employment Law Will Affect Your Business

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How do you ask questions?

Type your question into the
"Questions" panel

A screenshot of the GoToWebinar Control Panel interface. The window title is "GoToWebinar Control Panel". The interface is divided into several sections: "Screen Sharing", "Dashboard", "Attendees: 1 out of 1001", and "Audio". The "Audio" section is expanded, showing "Use:" with radio buttons for "Telephone" (selected) and "Mic & Speakers". Below this, it displays "Dial: +1 (415) 655-0059", "Access Code: 732-878-437", and "Audio PIN: 77". A note says "If you're already on the call, press #77# now." with a link "Problem dialing in?". The "Talking:" section is also visible. The "Questions" panel is expanded, showing a checkbox for "Show Answered Questions" and a table with columns "Question" and "Asker". Below the table is a text input field with the placeholder "Type answer here" and two buttons: "Send Privately" and "Send To All". At the bottom, there are sections for "Polls" and "Chat", and a footer with "Test - Witnessing History" and "Webinar ID# 154-586-243". The GoToWebinar logo is at the very bottom.

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About Kate

- Management-side Employment Attorney & HR Consultant
- Human Resources Officer for the U.S. Department of State in Jerusalem & Zambia
- Got the fancy letters
- Started tHRive Law & Consulting
- Adjunct Professor of HR Compliance at Mitchell Hamline
- Compliance doesn't always mean no



What We're Going to Cover...

- Fair Labor Standards Act
 - Overtime threshold
 - Regular rate
- #MeToo implications
- #TimesUp implications
- Leave issues
 - Paid leave
 - FMLA DOL Opinion Letter
- Marijuana



FLSA Salary Threshold

- "White Collar" exemptions
 - Administrative
 - Executive
 - Professional
 - Computer-related professional
- DOL announced intention to raise the salary threshold to \$679 per week (\$35,308 annually)
- No changes to the duties tests
- If accepted, likely to go into effect in early 2020



What Should You Be Doing?

- If you didn't re-evaluate in 2016, now is a good time
- Don't look just at salary threshold, but duties too
- Blame the DOL & the pesky lawyers if changes
- Remember, we're not valuing employees less, we're changing how we pay them
- Often, this results in increased pay





FLSA Regular Rate

- DOL proposed creating new [regulations](#) to better define what the “regular rate” is
- Regular rate is the “time” in the “time and a half”
- Not included:
 - Wellness
 - Discretionary bonuses
 - Payments for unused paid leave
 - Reimbursements

What Should You Be Doing?

- Nothing right now
- Welcome clarity to how we make this calculation
- Remember, states will still be different



#MeToo Implications

- Significant [increase](#) in charges filed with the EEOC
- No changes federally
- State action
 - Required training
 - Limitations on separation & settlement agreements



What Should You Be Doing?

- Update policies
- Update training
 - Base in respect
 - Define harassment
 - Bystander
 - Deal with the fear
- Train managers on how to connect with employees
- Welcome concerns





#TimesUp Implications

- Salary history questions banned
- EEOC required to collect pay data per Obama Administration rule
 - [DC Circuit](#) Court of Appeals reinstated the previous form that includes pay data across the job classifications
- UK pay reporting is now in effect
- Legislator focus on eliminating the pay gap

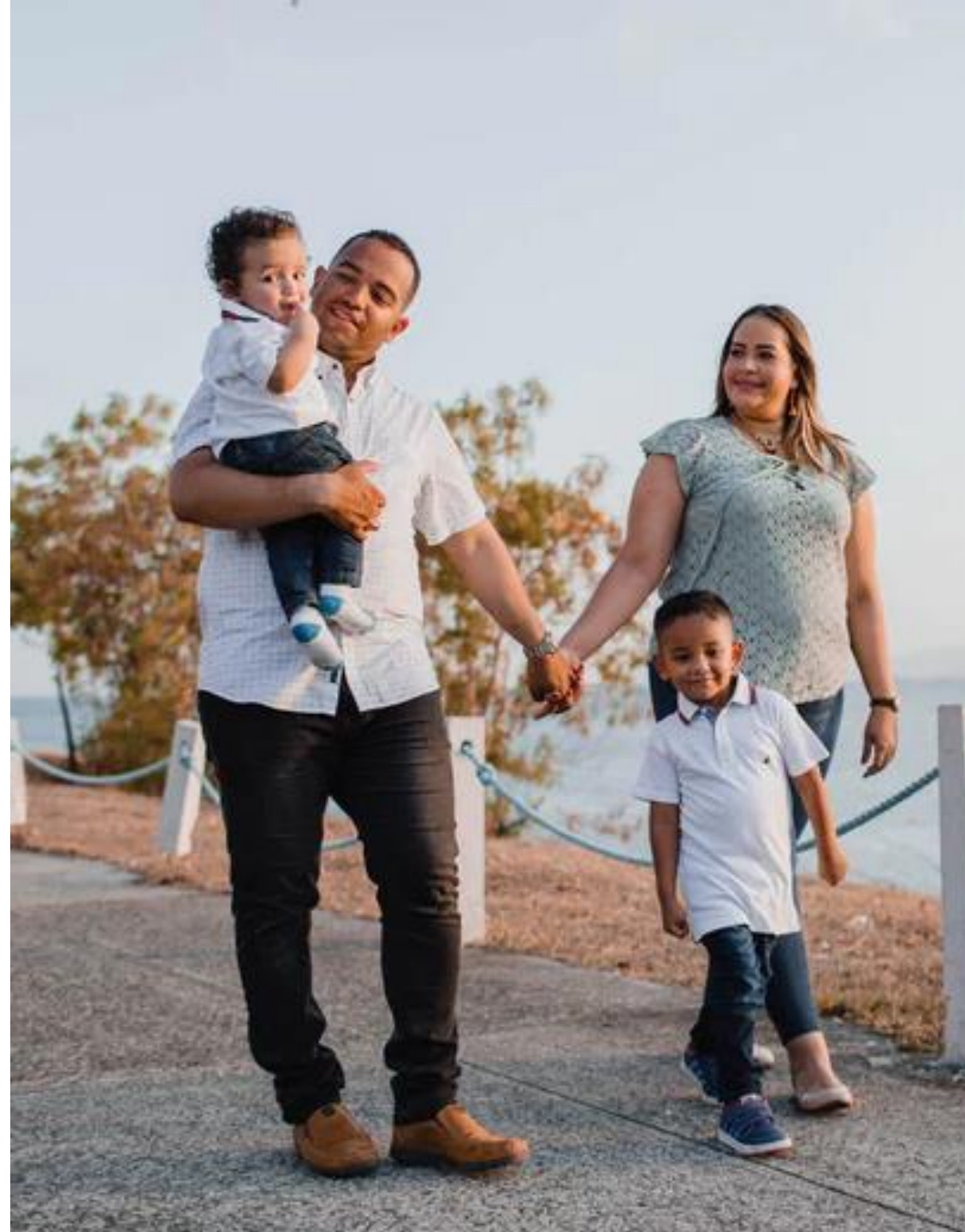


What Should You Be Doing?

- Stop asking about salary history
- Prepare to file pay data
- Review pay data
- Look for discrepancies

Leave

- Paid family leave
 - California, New Jersey, Rhode Island, New York, Washington state & Washington, D.C.
 - Initiatives have been making progress in other legislatures
- Paid [sick & safe time](#) leave
 - Many states & even more localities



What Should You Be Doing?

- Stay up on what's happening in your state, city & county
- Doublecheck your market comparisons
- Be mindful of counting leave



DOL Opinion Letter

- Question of whether an employee can [decline FMLA](#)
- “An employer is prohibited from delaying the designation of FMLA-qualifying leave as FMLA leave. Once an eligible employee communicates the need to take leave for an FMLA-qualifying reason, neither the employee nor the employer may decline FMLA protection for that leave.”

Designation Notice (Family and Medical Leave Act)

U.S. Department of Labor
Wage and Hour Division



U.S. Wage and Hour Division

OMB Control Number: 1235-0003

Expires: 8/31/2021

Leave covered under the Family and Medical Leave Act (FMLA) must be designated as FMLA-protected and the employer must inform the employee of the amount of leave that will be counted against the employee's FMLA leave entitlement. In order to determine whether leave is covered under the FMLA, the employer may request that the leave be supported by a certification. If the certification is incomplete or insufficient, the employer must state in writing what additional information is necessary to make the certification complete and sufficient. While use of this form by employers is optional, a fully completed Form WH-382 provides an easy method of providing employees with the written information required by 29 C.F.R. §§ 825.300(c), 825.301, and 825.305(c).

To: _____

Date: _____

We have reviewed your request for leave under the FMLA and any supporting documentation that you have provided. We received your most recent information on _____ and decided:

Your FMLA leave request is approved. All leave taken for this reason will be designated as FMLA leave.

The FMLA requires that you notify us as soon as practicable if dates of scheduled leave change or are extended, or were initially unknown. Based on the information you have provided to date, we are providing the following information about the amount of time that will be counted against your leave entitlement:

Provided there is no deviation from your anticipated leave schedule, the following number of hours, days, or weeks will be counted against your leave entitlement: _____

Because the leave you will need will be unscheduled, it is not possible to provide the hours, days, or weeks that will be counted against your FMLA entitlement at this time. You have the right to request this information once in a 30-day period (if leave was taken in the 30-day period).



Marijuana

- Possibly coming to a state near you
- Three recent cases where employee had a prescription but either didn't get the job or was terminated
 - [Michigan](#) – employers can discriminate
 - [Connecticut](#) – employers can't discriminate
 - [Arizona](#) – employers can't discriminate



What Should You Be Doing?

- Carefully consider whether to test
- Safety sensitive only?
- Understand the limitations on testing

Takeaways

- Laws change fast – especially at the state & local level
- Two things to focus on
 - Pay
 - Culture
- Love your managers



TAKEAWAYS



Questions?

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