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The Law@Work

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Immigration

How All Employers – Even Those Who Do Not Sponsor Employees – Are Being Impacted by the Trump Administration's Changes in Policy

By Staci M. Jenkins

As we are now more than nine months into President Trump's time in office, employers are starting to feel the impact of multiple immigration-related changes that have been put into place by his administration. While some of the changes impact only those who sponsor foreign nationals for work authorization, many of the changes may be felt by all employers. Among them:

DACA Rescission

One of the most publicized changes the Trump administration has made is rescinding the Deferred Action on Childhood Arrivals (DACA) program. President Obama established DACA in 2012 to allow certain undocumented individuals who were brought to the United States as children to apply for deferred deportation and work authorization. Individuals who qualified and applied for work authorization were granted two-year "work permits," i.e., employment authorization document (EAD) cards. Approximately 800,000 individuals had applied for this benefit. President Trump announced the rescission in early September, but indicated that full implementation of the rescission would be delayed for six months to allow for Congress to take action on immigration reform. However, as of September 5th, no new initial DACA applications were accepted. Furthermore, those who were eligible to file for extensions must have filed them with U.S. Citizenship and Immigration Services (USCIS) on or before October 5th. Employers will need to be prepared to lose DACA employees as their work authorizations expire unless Congress takes action.

H-1B Scrutiny

In the first week of April, nearly 200,000 H-1B applications were filed by

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U.S. employers on behalf of foreign nationals offered professional positions in the United States. The Buy American and Hire American Executive Order (EO 13788) was signed on April 18 by President Trump. In the months following, USCIS has changed its past practice in adjudicating H-1B petitions, challenging H-1B eligibility when an entry-level wage is offered. USCIS is suggesting that entry-level positions, by definition, are not specialized enough to qualify for H-1B visas. The regulations, however, tie H-1B eligibility to the requirements for entry into the profession rather than the offered wage, and require a showing that at least a bachelor's degree is required for entry into the occupation. Many H-1B-eligible occupations require more than a bachelor's degree (e.g., lawyers and doctors). USCIS's change in practice will make it much more difficult for companies to secure H-1B approvals for recent graduates.

In addition, on October 23, USCIS issued updated policy guidance that it will now apply the same level of scrutiny to extension petitions that it does to initial petitions. Historically, USCIS would give deference to the findings of previously approved petitions as long as key elements were unchanged and there was no evidence of material error or fraud. Now, officers have been advised that this deference should not be given. Given the increased scrutiny for initial petitions, employers should anticipate heightened difficulty in receiving extension approvals as well.

Increased Processing Times of Individual Employment Authorization Applications

Even employers who do not sponsor individuals for work authorization likely have foreign nationals working pursuant to EAD cards. For example, individuals who have pending family-based permanent residency applications could have EAD cards. Similarly, spouses of foreign nationals working in the United States in certain nonimmigrant categories (e.g., L-1, E-3, etc.) also may qualify for EAD cards. While EAD card applications were historically processed in under 90 days, the government has recently been taking significantly longer to process these applications. Part of this is due to regulation changes that were implemented during President Obama's administration. While the regulations provided a benefit allowing continued work authorization for those with certain pending EAD card extension applications, it removed the 90-day requirement for government processing, which has unfortunately resulted in the government taking in excess of 90 days to process many of these EAD card applications. While this is not a serious concern for individuals whose category of EAD card qualifies them for work while the application is pending, not all individuals fall into this classification. If this automatic coverage does not apply, the individual will have to stop working upon the card's expiration until a new EAD card is issued. While this seems of greatest concern to the individual with the EAD card, employers are responsible for tracking these expirations for I-9 purposes and requiring new documentation of work authorization in order to continue employing the individual. Thus, employers will now face another complexity in completion of the I-9 as they have to determine if presenting a receipt for an EAD card extension qualifies the individual to continue working. For some individuals it will, while for others it will not. We recommend that employers maintain a "tickler" system to notify them of the upcoming expirations of all work authorizations, even those that are not employer sponsored. By reminding employees of the upcoming expirations six to seven months in advance, employers can limit the potential disruption to their workforce.

Increased Screening, Delays for Visa Applicants

In March, President Trump issued a memorandum to the secretary of state, attorney general and secretary of homeland security calling for additional vetting of visa applicants and limiting the number of daily visa interviews to allow time for the increased vetting. These measures have exacerbated wait times for visa interviews at consulates and extended the time required for consulates to return passports containing visas. Temporary work visa applicants now wait three months or longer for an appointment at some U.S. consulates in Canada, for example, and more visa applicants are being selected for administrative processing (an additional background check), which can add up to 12 weeks or more to the visa process.

Employers should be aware of these delays because they can extend the lead time needed to get new foreign national workers to the United States, delay business travel abroad because a visa needed to return cannot be secured before the trip, and result in employees being stranded abroad without a passport while they await the consulate's processing of the visa application. In addition, even employers who have not directly sponsored individuals for work authorization may be impacted as employees' spouses with work authorization could also face visa delays when traveling for renewals.

Travel Ban

On September 24, President Trump issued a third version of a travel ban. It responds to some of the directives provided by the U.S. Supreme Court's June decision that narrowed the scope of lower courts' injunctions on the second iteration of the travel ban. The June decision held that the travel ban cannot be enforced against "foreign nationals who have a credible claim of a bona fide relationship with a person or entity in the United States." This exemption includes a

foreign national worker with an offer of employment with a U.S. company so long as the employment is formal, documented and formed in the ordinary course and not for purposes of evading the travel ban.

The third version of the travel ban is for an indefinite period of time and applies to a new group of countries with Chad, North Korea and Venezuela added and Sudan removed. The restrictions are tailored. For example, the ban for Venezuela impacts only certain government officials and their immediate family members. The new ban immediately impacts nationals of Iran, Libya, Somalia, Syria and Yemen with no bona fide relationship to a U.S. person or entity. The travel ban was supposed to take effect for all other impacted nationals of those countries, as well as nationals of Chad, North Korea and Venezuela, on October 18. On October 17, two different federal judges in U.S. District Court ordered that the government should not enforce or implement the vast majority of the travel ban – those portions impacting nationals of Chad, Iran, Libya, Syria, Yemen and Somalia. The Department of State has confirmed that it will not enforce restrictions set forth in the presidential proclamation for these nationals. However, the portions of the proclamation applicable to certain nationals of North Korea and Venezuela are in place.

Inability to Travel if Advanced Parole Is Pending

Many global employers have relied upon their employees' ability to travel while Advanced Parole documents are pending (if they have another form of authorization permitting travel). Employers and employees alike many times preferred for an individual to travel on Advanced Parole once they were eligible instead of having to obtain a visa abroad. Their reasoning is that visa applications can sometimes face unforeseen delays, resulting in individuals having to remain outside of the United States for an uncertain duration of time.

However, the Trump administration has recently started to deny Advanced Parole applications when an individual travels while the application is pending. For global employers, this has a significant impact on their ability to do business. For example, if the employee applies for an extension of his/her Advanced Parole well in advance of its current expiration, but needs to travel during the several months it takes to obtain approval, that individual's future travel ability will likely be stymied by a denied extension. This will result in employers having to stop employees from traveling for several months at a time to obtain approval on the future travel authorization. Given this dilemma, employers are encouraged to look for other methods for employees to retain travel authorization, such as continuing to maintain nonimmigrant status and traveling pursuant to a nonimmigrant visa.

Work Visa Verifications

On April 3, USCIS announced plans to increase unannounced site visits to verify information in work-sponsored visa applications. USCIS stated that it would prioritize employers whose information cannot easily be verified, those who place workers at client sites and those who are "dependent" on an H-1B workforce (highly skilled professionals in specialty fields), with IT consulting firms being a prime example. Site visits include businesses where the H-1B worker is employed, even if that entity is not the direct employer of the H-1B worker. For instance, a company using IT contractors with H-1B visas should be prepared for a site visit. In this case, the host company should work closely with its IT consulting firm to ensure it has the appropriate information to respond to a site visit or documentation request.

Site visits also apply to the L-1 visa program used by global organizations to transfer managers, executives and specialized knowledge employees to the United States. While historically these site visits were focused on smaller multinational entities, more recently it appears that the USCIS is also conducting visits at larger global entities, even those who have utilized the blanket approval process which allows for more efficient and expedited processing. Similarly, these site visits are not being restricted to individuals who are newly in L-1 roles. Site visits have even been conducted following extensions and even as late in the process as when an individual has already been approved in the first phase of the green card process.

H-1B and L-1 employers should prepare for site visits by reviewing employees' petitions to ensure they are accurate and filing amendments where necessary, and by designating who is responsible for interacting with USCIS officers. Managers and staff should be informed about the examination process, and H-1B and L-1 workers and their supervisors should review petitions and prepare for the types of questions they will be asked.

Conclusion

In this constantly evolving political environment, the implications of immigration policy changes require heightened awareness of all employers, even those who do not sponsor employees for work authorization. With any questions, please do not hesitate to reach out to your immigration team at Thompson Hine by contacting Staci Jenkins or Sarah Flannery.

Employment Law

An Overview of the New York Paid Family Leave Law

By Jason Carruthers

The New York Paid Family Leave Law (PFLL) has been described as "the nation's strongest and most comprehensive Paid Family Leave policy." When fully implemented, it will provide eligible employees with up to 12 weeks of paid leave for a qualifying event. Although the PFLL does not take effect until January 1, 2018 and will not be fully implemented until 2021, many employers are already taking steps to prepare.

What Is the PFLL?

Under the PFLL, employers are required to maintain family leave insurance funded by employee payroll deductions. At or around the time of a qualifying event, eligible employees submit claims to their covered employer's family leave insurance carrier for payment.

What Is a Qualifying Event?

Generally, eligible employees may use Paid Family Leave for three reasons, or qualifying events:

- To bond with a newborn, foster or adopted child. However, eligible employees must take Paid Family Leave within 12 months of the child's birth or placement.
- To provide care for a spouse, domestic partner, child, parent, parent-in-law, grandparent or grandchild with a serious health condition.
- To assist loved ones with a qualifying military exigency, such as the active-duty deployment of a spouse, domestic partner, child or parent.

Who Is a Covered Employer, Eligible Employee or Covered Family Member?

Employers and human resources professionals will undoubtedly notice that New York's PFLL applies in many of the same circumstances covered by the federal Family and Medical Leave Act (FMLA). The FMLA requires covered employers to provide eligible employees with 12 weeks of unpaid leave in a 12-month period for the birth or placement of a child; to care for a spouse, child or parent with a serious health condition; or to care for the employee's own serious health condition. The FMLA also requires employers to provide eligible employees with 26 weeks of unpaid leave for a qualifying military exigency.

Although there are similarities, coverage under the PFLL is not coextensive with coverage under the FMLA. Generally, the FMLA only applies to individuals or entities who employ at least 50 employees. With few exceptions, the PFLL applies to individuals or entities who employ at least one employee.

Typically, only an employee who has worked for a covered employer at a qualifying worksite for at least one year, and who worked at least 1,250 hours in the 12 months preceding leave, is eligible to take FMLA leave. An employee may gain eligibility for Paid Family Leave after working for a covered employer for less than six months, regardless of how many hours he or she worked during that time. More specifically, under the PFLL individuals who regularly work more than 20 hours per week gain eligibility to take Paid Family Leave after 26 weeks of employment with a covered employer, and those who regularly work less than 20 hours per week become eligible after 175 working days of employment with a covered employer.

Further, the reasons an employee may take leave under the FMLA are slightly different than the qualifying events under the PFLL. Notably, under the PFLL an employee generally may not take Paid Family Leave to care for his or her own serious health condition or for the birth of his or her own child. The PFLL also employs a broader definition of family member than the FMLA. Under the PFLL an eligible employee may take Paid Family Leave to care for a grandparent, parent-in-law or domestic partner in addition to those individuals covered by the FMLA.

What Are Employers' Obligations?

Although family leave insurance is paid for by employee payroll deductions and employees are responsible for submitting claims, employers still need to prepare. The PFLL requires covered employers to provide employees with notice of their rights under the law. As such, employers are required to update their handbooks and post an appropriate notice of employee rights in a conspicuous place. The PFLL requires employers without written handbooks to provide employees with written notice of their rights.

Covered employers are required to maintain Paid Family Leave insurance funded by employee payroll deductions. An employer should work with its disability insurance carrier to ensure that it has appropriate coverage. In addition, as of July 1, 2017, employers are permitted to take appropriate payroll deductions to fund family leave insurance premiums, and they should work with their payroll processors to ensure that they are prepared to make and track appropriate deductions. Improper deductions include those that exceed the maximum amount allowed by law or that exceed the amount required to fund family leave insurance. An employer also is required to furnish premiums to the family leave insurance carrier. Employers may be liable under the PFLL for failure to maintain appropriate insurance or for making improper deductions.

Employers should ensure their administrators and human resources professionals are familiar with the PFLL. While an employee is required to provide his or her employer with sufficient notice of a qualifying event, at least initially, he or she is not required to expressly invoke the PFLL. In light of this, human resources personnel must be able to identify situations that qualify for leave, charge that leave to the applicable leave entitlement(s) and provide the employee with appropriate notice. Employers are also required to complete certain paperwork when they receive requests for leave under the PFLL and should develop systems to track leave that account for the various reasons why employees may use leave under state and federal law.

To ensure compliance with the PFLL's mandates, employers operating in New York should carefully review their policies, contact their insurance carriers, work with their payroll administrators and train their personnel to implement appropriate procedures and systems.

Please contact Jason Carruthers with any questions.

Annual Labor & Employment Seminar

Cleveland

Wednesday, November 8
8 a.m. to 4 p.m.

Thompson Hine's Labor & Employment group invites you to attend a complimentary all-day seminar designed to provide the latest legal updates to in-house counsel and human resources professionals in the area of labor and employment law. A wide variety of topics will be covered, including:

- Employment Law: Year in Review
- Understanding the Changes to Immigration Policies and Rules Under the Trump Administration and How They Are Impacting Businesses
- Best Practices for Addressing Weapons, Violence and Bullying in the Workplace
- A Fair Labor Standards Act Update and A Reminder About Compliance
- Keynote: *The Opiate Epidemic*, Dr. Doug Smith, Chief Clinical Officer, Summit County ADM Board
- The NLRA in the Non-Union Workplace
- Intertwining Leave Laws: The FMLA, ADA and State Sick Leave
- The Trump Impact on Employee Benefits

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Employee Benefits

Open Enrollment Checklist

By Kim Wilcoxon and Laura A. Ryan

It is benefits open enrollment season for many employers, which means that employers will soon be providing employees with a number of notices relating to their benefit plans. The following is a checklist of the notices that are generally required to be provided at this time of year.

☐ **Open Enrollment Summary**

What is it? A communication that explains what benefit plan options are available for the upcoming year, how those options differ from the benefits provided during the current year and how the various options and costs compare to one another.

What should an employer consider when preparing it? Though not a legally required notice, this summary could serve as an amendment to the employer's health plan or a summary of material modification to the plan's summary plan description. The employer should review its plan documents and fiduciary delegations to determine whether this communication would serve as an amendment and/or summary of material modification and, if so, what approval process would need to be followed. If this communication will not serve as a plan amendment and/or summary of material modification, the employer will need to be sure to amend its plan before the end of the year and timely provide a summary of material modification. In any event, an employer should very carefully ensure that this communication accurately reflects the benefits that the employer intends to offer for the upcoming year.

☐ **Summary of Benefits and Coverage (SBC)**

What is it? This document provides basic information about a medical plan option's coverage of certain services.

What should an employer consider when preparing it? Employers are required to provide an SBC for each available medical plan option to all participants and eligible employees on or before the date that enrollment materials are provided. The SBC must be prepared using the Department of Labor's template and instructions, which have been updated for this year's open enrollment period. When an employer offers a fully insured health plan, the insurance company is required to prepare the SBC. When an employer offers a self-funded health plan, the employer likely will receive a draft SBC from its third party administrator. These employers should carefully review the SBC to ensure that it accurately reflects the plan's benefits and that it was prepared using the updated template and related instructions.

☐ **CHIP Notice**

What is it? This notice provides information about where employees can learn about certain premium assistance programs, such as those available through the Children's Health Insurance Program (CHIP) or Medicaid, that can help an employee pay for health coverage offered by his employer.

What should an employer consider when preparing it? Employers are required to send this notice each year to any employees (even those who are ineligible for the employer's benefit plan) who live in a state that provides a premium assistance subsidy. The Department of Labor provides a model notice, which is generally updated semi-annually. An employer should be sure that it is using the most recently updated model, which is available on the Department of Labor's website. Additionally, employers who provide required notices electronically should carefully consider whether to provide this notice in hard copy. The Department of Labor has indicated that the CHIP notice can be provided electronically only to those employees who satisfy the Department of Labor's safe harbor for electronic distribution.

☐ **Women's Health and Cancer Rights Act of 1998 (WHCRA) Notice**

What is it? This notice informs medical plan participants about the plan's coverage of services relating to mastectomies, such as breast reconstruction and treatment of complications from the mastectomy.

What should an employer consider when preparing it? Employers are required to send this notice each year to all health plan participants. The Department of Labor has provided a model notice and has not updated the model in years, so employers can use last year's notice again this year.

☐ **Medicare Part D Notice**

What is it? This notice informs persons who are eligible for an employer's prescription drug plan about whether the plan's coverage is considered "creditable" under Medicare Part D (Medicare's prescription drug program). The notice explains the consequences of failing to enroll in Medicare Part D based on the creditable coverage status of the plan as well as the consequences of choosing to enroll in Medicare Part D while the individual is eligible for the employer's plan.

What should an employer consider when preparing it? Employers are required to send this notice each year, before the beginning of the Medicare open enrollment period, to all prescription drug plan participants and eligible employees who are also Medicare-eligible. The Department of Health and Human Services (HHS) has provided a model notice and has not updated the model in years, so employers generally can use last year's notice again this year if the plan's creditable coverage status has not changed.

☐ **Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Notice**

What is it? This notice describes how medical information obtained by the group health plan may be used and disclosed and how participants can obtain access to their medical information.

What should an employer consider when preparing it? Employers are required to send this notice, or a reminder about the availability of the notice, at least every three years, to all plan participants. Employers likely updated their privacy notices in 2013 to reflect changes required by the Health Information Technology for Economic and Clinical Health (HITECH) Act, but there have been no legally required changes or changes to the HHS model since that time. Employers should review their privacy notice to confirm that it still accurately reflects the privacy policy and procedures of the employer's health plan. Additionally, employers who provide required notices electronically should carefully consider whether to provide this notice in hard copy. The HIPAA privacy notice and the reminder about the availability of the notice can be provided electronically only to those employees who have provided consent to receive HIPAA notices electronically. To save on copying and mailing costs, employers might consider satisfying their every-three-years notice requirement by providing only a short reminder about the availability of the notice.

☐ **Equal Employment Opportunity Commission (EEOC) Wellness Program Notice**

What is it? For any wellness program that includes a health risk assessment (HRA), biometric screening, or other medical examination or disability-related inquiry (whether or not there is an incentive involved), this notice describes the type of medical information that will be obtained, the purpose for which it will be used, restrictions on disclosure of the information, employees and/or parties with whom the information will be shared, and measures taken to ensure the information is not improperly disclosed.

What should an employer consider when preparing it? The notice must be provided to individuals who are eligible for the wellness program, and must be provided sufficiently in advance of their participation in the program to enable them to make an informed decision about whether to participate. The EEOC has published a model notice on its website but the model notice will require modification to reflect the details specific to the employer's HRA and wellness program and information disclosure and use policies and practices. In addition, if the wellness program will involve collection of a spouse's medical information, the employer must obtain an informed authorization from the employee and/or spouse before the spouse's medical information is provided. The wellness program notice can be modified to serve as the authorization form.

Please contact Kim Wilcoxon, Laura Ryan or any member of our Employee Benefits & Executive Compensation group with questions about the benefit plan notices that must be provided or about the content, recipients and/or manner of distributing those notices.

Discrimination

Parental Leave Policy Perils

By Deborah S. Brenneman

More and more private employers are expanding their parental benefits policies as one tool in their strategy of attracting the best job candidates and of increasing employee retention, morale and productivity. These policies can close the gap in job-protected leave for employees ineligible for leave under the Family and Medical Leave Act (FMLA), or increase paid and unpaid benefits regardless of FMLA eligibility. In fact, 2017 has seen a boom in the addition of such benefits by some of the nation's largest employers, including Netflix and Facebook; Mark Zuckerberg famously took two months off when his daughter was born. But despite what may be the best of intentions, if employers don't develop and implement these policies in the proper way, they may face legal consequences.

Case in point: recent litigation launched by the Equal Employment Opportunity Commission (EEOC) against one of the country's largest cosmetics companies, Estée Lauder. The lawsuit alleges that the company violated federal law when it implemented and administered a paid parental leave program that automatically provides lesser parental leave benefits to male employees who are new fathers than to female employees who are new mothers. Estée Lauder has not yet responded to the litigation, which seeks injunctive relief, back pay, liquidated damages and compensatory and punitive damages.

According to the lawsuit, Estée Lauder adopted a new parental leave program to provide employees with paid leave for purposes of bonding with a new child. This "bonding" leave is provided in addition to the paid leave already provided to new mothers to recover from childbirth. The policy provides new mothers who have given birth with an additional six weeks of paid leave for bonding purposes, while it offers new fathers whose partners have given birth only two weeks of paid leave for child bonding, designating that as "secondary caregiver" leave. New fathers are only eligible for the six-week primary caregiver leave in surrogacy situations. Further, the suit alleges that new mothers are provided with flexible return-to-work benefits upon the expiration of child-bonding leave that are not provided to new fathers.

The EEOC's litigation stance is in keeping with its prior Enforcement Guidance on Pregnancy Discrimination and Related Issues, which states that "parental leave must be provided to similarly situated men and women on the same terms." The guidance further states that if an employer provides leave to new mothers to bond with and/or care for the child beyond the recuperation period for childbirth, it must provide an equivalent amount of leave to new fathers so that they too can bond with and/or care for the child. There may be more similar suits to come. Enforcement of equal pay laws, including targeting compensation systems and practices that discriminate based on gender, is one of six national priorities identified by the EEOC's Strategic Enforcement Plan.

The lawsuit also comes at the same time that more and more state and local governments are mandating paid and/or unpaid parental leave benefits. California, New Jersey, Rhode Island and San Francisco already have legislation on the books. Other jurisdictions, including New York, Washington and Washington, D.C., have enacted paid parental leave laws that will go into effect in the coming years. There are ongoing efforts to do the same at the federal level and in at least 15 other states.

The bottom line is that employers must craft policies carefully to ensure that good intentions don't lead to unintended consequences. Parental leave benefits given to mothers that are not related to pregnancy, childbirth or related medical conditions must be offered to fathers as well. Otherwise, the failure to provide equal benefits may violate Title VII, the Equal Pay Act and/or state or local employment laws.

Employers who provide different tiers of parental benefits must also be careful in how they define eligibility for the tiers. For example, some policies use the terms "primary

caregivers" and "secondary caregivers" as a way of distinguishing between the types of benefits that are provided. These designations appear gender-neutral on their face; however, they must also be applied without regard to gender stereotypes. Fathers may be the primary caregivers, for instance. Moreover, employers must be prepared to address how such designations apply if both parents claim to be co-primary caregivers, equally sharing in the responsibilities of providing care for the child, and how such designations apply in the context of same-sex parents.

As employers decide whether to (or become required to) provide enhanced parental leave benefits, it is essential that they craft their policies with care and consult counsel as needed. Employers must make sure that their policies and policy updates comply with all applicable federal, state and local requirements. If employers choose to be more generous than the law requires, they must still draft policies that are gender-neutral, paying attention to conscious and unconscious bias. Finally, they must train managers to consistently administer and apply these policies in a proper manner, to avoid unlawfully discriminating against employees on the basis of gender.

With any questions, please contact Debbie Brenneman.

2017 Labor & Employment and Professional Conduct Seminar
Cincinnati

Wednesday, December 6
8:25 a.m. to 4:45 p.m.

Please join Thompson Hine's Labor & Employment group for a complimentary all-day seminar that will provide in-house counsel and human resources professionals with the latest labor and employment law updates. Following the L&E portion, we will present a segment on professional conduct. Topics will include:

- **Labor & Employment Year in Review** – notable Supreme Court decisions; trends to expect in 2018; immigration update
- **FLSA Update** – repeal of Obama DOL rules; new Trump rules; significant developments
- **Noncompete Agreement Developments** – legislative initiatives to limit noncompete agreements; court trends regarding sufficient consideration; strategies for maximizing enforcement
- **Health & Welfare Update** – health care reform; disability claims regulations; wellness programs; mental health parity compliance; non-participating provider litigation
- **Crisis Management Strategies for Attorneys & Their Companies** – traditional media vs. new media; the difference between legal challenges and reputational challenges; what to consider when responding to a crisis; how to avoid making common mistakes with reporters
- **Agreements to Arbitrate and Class Action Waivers** –Murphy Oil case (NLRB argues class waivers in employee arbitration clauses violate the NLRA); CFPB promulgates ban on class waivers in consumer contracts; class and litigation waivers in Equifax's response to massive hack; the pros and cons of arbitration agreements
- **Professional Conduct** – Too Much of a Good Thing: The Professional Limits of Entrepreneurialism; Ethics Considerations in Government Contracting; Ethics & Professionalism in Elections, Politics & Government

Please visit ThompsonHine.com/events for more information or to register.

Workers' Compensation

Ohio BWC Refunds Premiums and Rewards Safety Innovation

By Philip B. Cochran

Last spring, the administrator of the Ohio Bureau of Workers' Compensation (BWC), Sarah Morrison, announced a $1 billion rebate for both public and private employers who participate in the State Insurance Fund (State Fund Employers). The bureau announced that the rebate was made possible as a result of better than expected investment returns for the bureau over the past few years. The bureau further attributed the rebate and its strong insurance fund to workplace safety programs and excellent care for injured workers. In the spring of 2017, the net value of the State Insurance Fund was $9.6 billion.

At its April 2017 meeting, the BWC's board of directors approved the workers' compensation premium rebate in the estimated amount of $967 million. Eligibility requirements for the rebate included the duration of the risk (the length of time the employer has had workers' compensation coverage through the State Insurance Fund) and whether the risk was in good standing with the BWC, i.e., whether the employer had paid all past workers' compensation premiums. The premium rebates apply to private State Fund Employers for policy years ending June 30, 2016 and for public State Fund Employers for calendar year 2015.

Payment of the rebates to qualified employers commenced in July 2017. The bureau projected that it would take approximately two months (through mid-September 2017) to pay all of the premium rebates. If your company qualifies for a State Insurance Fund premium rebate and you have not received one to date, you should call the bureau's risk department at 1-800-644-6292.

Additionally, the bureau is preparing to present its Safety Innovation Awards for the second year. These awards are designed to reward employers who innovate solutions that help reduce the risk of workplace injuries and occupational

diseases. The bureau believes that rewarding safety innovations creates an atmosphere in which employers take note of the safety innovations created by other organizations and utilize them in their own companies' safety efforts.

In the 2017 competition, the bureau awarded first place to a company that created a pneumatic clamping mechanism that eliminates repetitive manual squeezing and releasing of clamps while an employee is in the process of filling cylinders with a product. In all, the bureau presented first-, second- and third-place awards along with two honorable mentions and a People's Choice award, with prizes ranging from $1,000 to $6,000 each.

The BWC accepted applications for the 2018 Safety Innovation Awards through September 30. After two rounds of judging, the finalists will be announced on January 8, 2018, and the winners will be announced at the Ohio Safety Congress & Expo at the Greater Columbus Convention Center on March 8, 2018.

Please contact Phil Cochran with any questions.