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Three Questions Employers Should Be Aware Of

Q. While there are many labor and employment topics Oklahoma employers should consider as we begin the new year, there are three that stand out. First, how have reasonable accommodation issues under the Americans with Disabilities Act evolved and what is an important focal point for employers in 2019?

Reports of disabilities in the workplace have increased and will continue to rise. Often times, the employer's and the employee's expectations differ on what is considered to be a reasonable accommodation. Examples of reasonable accommodations include modified schedules and equipment, leaves of absence, job coaches and telecommuting. It is important that the employer tailor each accommodation request to the specific employee and that the employer does not jump to conclusions. Some disabilities may not be obvious, such as mental health impairments. Some conditions have varying severity levels, resulting in different limitations for different employees. It is now more common to receive a request for a service dog as an accommodation. Such requests may be for an employee with a physical limitation (guide for the blind) or a mental health impairment (PTSD). Employers now more than ever should think outside of the box when considering requests for reasonable accommodations.

Q. Medical marijuana is a big topic with the recent passage of the Oklahoma Medical Marijuana Act (OMMA). What aspects of the new law should employers be aware of moving forward?

Employers may soon see challenges to terminations from former employees who are medical marijuana license holders. The OMMA allows employers to take action against an employee/license holder if the employee uses or possesses marijuana at work or during work hours. This provision seems fairly clear, if for example, an employee is caught red-handed. Things get murky when employers take action based on their belief that the employee is under the influence. The OMMA prohibits an employer from taking action against employees solely because they have a license or have tested positive for marijuana.

Management should be trained on how to identify impairment (e.g., dilated pupils, delayed reaction, nervousness, paranoia, impaired coordination) and how to prepare proper documentation, which will reflect that the termination was based upon factors other than license holder status

and/or a positive test. Taking these steps will provide an employer with a stronger defense to a claim of discrimination.

Q. How will the #MeToo movement continue to impact employers?

#MeToo is still moving and shows no signs of slowing down. Public awareness grows as media attention to celebrities and other prominent figures continues to be highlighted in the news.

Equal Employment Opportunity Commission (EEOC) charges and lawsuits have increased. In fact, the EEOC's harassment task force has refocused its efforts to combat sexual harassment by reconvening to hear from experts on "Transforming #MeToo into Harassment-Free Workplace." Legal scholars and employment attorneys discussed issues such as non-disclosure and arbitration agreements, training mandates and proposals for legal reform.

Employers should review and revise their policies annually and ensure each employee understands the policy. It is particularly important that the employer make several avenues available for employees to report complaints. The employer should also make clear to the employees that they will not suffer retaliation. A prompt response to a complaint, a fair and thorough investigation, and an unbiased factual conclusion will reflect the organizational leadership's culture of commitment of enforcing its anti-harassment policies.

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The foregoing should not be understood as, or considered a substitute for, legal advice. For specific inquiries, please contact Bryant, or another licensed attorney.