

PUBLICATION

Technology, Guns and the NLRB – Get Ready for 2016

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January 13, 2016

Happy New Year! To help ring in the New Year and pin down last-minute New Year's resolutions, let's look at six topics impacting the workplace in 2016.

1. The NLRB

The National Labor Relations Board has continued its push into non-union workplaces, a trend we expect to continue in 2016. Employers have reluctantly adapted to the Board's positions on employee handbooks and social media, but the Board's most recent target is mandatory arbitration policies and class-action waivers. It claims such policies and waivers violate the National Labor Relations Act because they (i) bar or restrict an employee's right to file unfair labor practices, and/or they (ii) prevent employees from acting in concert, for example by proceeding as a class. The Board's arguments have been rejected by several appellate courts, but by all accounts, the Board is looking for a fight with the Supreme Court. The Supreme Court has repeatedly made clear that it strongly favors arbitration, doing so again in late December. Until the Supreme Court and the NLRB settle this issue, be sure to periodically review your arbitration policies.

2. Supreme Court – Class Actions

Pending before the Supreme Court are three separate class action appeals. Taken together, the class-action landscape could be markedly different by the end of 2016. For employers, this relates mostly to wage-and-hour class actions. Currently, such class actions, often filed under the Fair Labor Standards Act, are very costly to defend. The cases before the Supreme Court could make it harder for courts to certify a class. While employers may defend more individual claims as a result, they may be less likely to encounter a bet-the-company class action.

3. State Laws on Guns

The Obama Administration has pushed hard in recent weeks for executive measures on gun control. These measures, however, are unlikely to immediately impact the workplace. Rather, it will be state law that creates the most hurdles for employers in 2016. This year, gun laws have already grown broader in Texas, while narrowing in California. Multi-state employers need to stay vigilant, as these laws typically address if and when firearms are allowed on the premises or in parking lots.

4. The Department of Labor

In 2015, the DOL went public with its overhaul of the white-collar exemption, the rule that currently makes exempt from overtime almost all low- and mid-level managers/supervisors across countless industries. We initially believed the DOL would move forward with the proposed changes in early 2016, but the Solicitor of Labor, who heads the DOL, has indicated the DOL will not move forward until late 2016. This gives employers plenty of time to review currently exempt positions for compliance, especially those making less than \$50,400 annually.

5. The EEOC – Muslim or Middle Eastern Employees

At the end of 2015, the EEOC, "in the wake of tragic events at home and abroad," cautioned employers to be "particularly mindful of instances of harassment, intimidation or discrimination in the workplace against vulnerable communities." The EEOC published two resource documents on employment discrimination against individuals who are, or are perceived to be, Muslim or Middle Eastern. You can find the documents [here](#). These documents are helpful in addressing issues of discrimination, especially on the basis of religion, race or national origin.

6. Technology

Technology's hold on the workplace will only grow stronger in 2016. From social media to the "Internet of Things," from cybersecurity to cyberbullying, from email curfews to e-commuting, technology is constantly changing the workplace. One of the easiest ways to make sure technology does not overtake your workplace is to update written policies. Employers need to ensure their policies cover such things as social media, email and internet usage. Employers also need to make sure traditional policies apply equally to online activities; for example, that discrimination and harassment are not tolerated anywhere, including online, or that employees should not allow third parties to access computer systems (just like they should not allow third parties access to the workplace). Strong written policies not only protect employers, but they help employers use technology to their advantage.

Contact the author of this article or your regular Baker Donelson attorney for more information on how to ready the workplace and your workforce for 2016. Have a great year!