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E-UPDATE

September 29, 2023

RECENT DEVELOPMENTS

More Cooperation Among Federal Agencies – Which Means More Liability for Employers

In the past, the various federal workplace agencies – the Equal Employment Opportunity Commission, the National Labor Relations Board, and the Department of Labor (and its various divisions, including the Occupational Safety and Health Administration, the Wage-Hour Division, and the Office of Federal Contract Compliance Programs) – did not communicate. Thus, an investigation by one agency was limited to determining whether the employer violated laws enforced by only that agency, regardless of whether there were also possible violations of laws enforced by other agencies. But that is no longer the case, as several recent developments show.

For example, as noted in the EEOC's recently-released Strategic Enforcement Plan for FY 2024-2028, as discussed elsewhere in this E-Update, it intends to take an "integrated approach [that] acknowledges that protecting workplace civil rights is a shared responsibility that extends beyond the EEOC." In particular, the EEOC then names the DOL and Fair Employment Practices Agencies.

And to that specific point, the EEOC and the DOL's Wage-Hour Division just signed a Memorandum of Understanding on September 13, 2023, that increases coordination between the two agencies through information sharing and joint investigations, among other things. In particular, issues of equal pay and lactation breaks invoke laws that are enforced by both agencies (the Equal Pay Act, Title VII's equal pay requirements, and the Pregnant Workers Fairness Act for the EEOC, and the Fair Labor Standards Act and the PUMP for Nursing Mothers Act for the WHD).

The DOL also signed a MOU on August 30, 2023 with the Federal Trade Commission "to protect workers from anticompetitive, unfair, and deceptive practices." Among the issues the FTC has recently targeted are non-compete agreements and "gig worker" misclassification issues. We can expect the DOL to cooperate with the FTC on these concerns.

Moreover, as we discussed in the August 2023 E-Update, the NLRB and DOL had signed a similar MOU in January 2022, and have put it into effect, with a recent case in which a worker's complaint to the WHD about unpaid wages for himself and his co-workers was shared with the NLRB, which also found violations of the National Labor Relations Act in the employer's termination of the complaining employee. The NLRB found that the worker's complaint was protected under the NLRA since he was engaged in activity for the workers' mutual aid and protection.

As a result, employers can expect to face enforcement activity from multiple agencies, with the NLRB in particular taking an expansive view of what is protected concerted activity and asserting jurisdiction over matters that employers previously thought to be individual concerns.

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Denial of Religious Accommodation Requires Proof of "Substantial" Burden

Following the Supreme Court's recent overhaul of the undue hardship standard for religious accommodations requests under Title VII, which we discussed in our June 29, 2023 E-Lert, the U.S. Court of Appeals for the Fifth Circuit recently found that an employer failed to meet the heightened standard and, in so doing, provided some guidance to employers on how to apply the standard.

Background of the Case. In *Hebrew v. Texas Dept. of Criminal Justice*, the employer terminated a correctional officer for refusing to cut his hair and beard in violation of his religious vow. Although it provided beard exemptions from its grooming code for medical reasons, it stated that the employee's beard prevented him from properly wearing a gas mask on the occasions when chemical agents were being utilized on the unit, and that his long hair could be used by an offender to overpower him, while also preventing the easy detection of contraband that could be hidden in his hair.

The New Undue Hardship Standard. Under Title VII, an employer must provide reasonable accommodations for an employee's religious needs, absent an undue hardship. Prior to the Supreme Court's recent ruling in *Groff v. DeJoy*, this had been interpreted to mean any burden that was more than *de minimis,* or minimal. However, the Supreme Court "clarified" that "'undue' means that the requisite burden, privation, or adversity must rise to an 'excessive' or 'unjustifiable' level." Consequently, according to the Supreme Court, "an employer must show that the burden of granting an accommodation would result in substantial increased costs in relation to the conduct of its particular business."

The Fifth Circuit's Ruling. The Fifth Circuit found that the employer was unable to meet this "clarified" undue hardship standard. In particular, the Fifth Circuit noted that the employer failed to identify "any actual costs it will face – much less 'substantial increased costs' affecting its entire business – if it grants this one accommodation." Further, the employer's reference to possible additional work for the employee's co-workers was insufficient, especially since the Supreme Court asserted that impacts on co-workers are only relevant if they place "a substantial strain on the employer's business." And finally, the employer failed to show that it conducted "a thorough examination of 'any and all' alternatives."

The Fifth Circuit also rejected the employer's argument that the employee's long hair was an undue hardship because contraband could be hidden, and if all officers had long hair, it would change how the employer searched its officers. The Fifth Circuit noted that this was a hypothetical policy, and not specific to the single accommodation request at hand. Moreover, a search of the employee here might take a few extra minutes – which is not a substantial or undue hardship. Similarly, it rejected the argument that there was a safety risk in wearing a gas mask with a beard, noting that exceptions were permitted for medical reasons and the employer subsequently changed its policy to permit all male officers to have quarter-inch beards. And lastly, it rejected the argument that inmates could grab his long hair to incapacitate him, since the employer permitted female officers to have long hair for any reason.

Lessons for Employers. This case offers a number of lessons for employers wishing to claim undue hardship for a religious accommodation request, including the following:

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- Employers must provide evidence of concrete and specific costs, which must be substantial, that impact their business.
- The impact on co-workers is no longer enough to establish undue hardship, unless there is a "substantial" strain on the business. Certainly, co-worker resentment or religious animosity will never be enough to meet the standard.
- After denying a request, employers must then consider other alternatives, beyond what was requested by the employee.
- Employers must also rely on factual evidence of hardship, and not hypothetical harm.
- Employers should not make arguments that are obviously contrary to what they are doing or permitting elsewhere (such as the quarter-inch beards for all male officers, and long hair for female officers).

Can Maryland Employers Test and Discipline for Recreational Marijuana Use?

As most Maryland employers know, recreational marijuana was legalized as of July 1, 2023. The law does not contain any workplace provisions, and employers (and employees!) wondered what their rights were with regard to testing and disciplining employees for marijuana use. Well, according to recently-released guidance from the newly-created Maryland Cannabis Commission, employers have retained those rights.

What the Maryland Cannabis Commission Says. On its website, the Commission has Adult-Use Cannabis FAQs that include the following question and answer:

> **Can I use cannabis at work?**
>
> The Cannabis Reform Act does not address cannabis use or impairment in the workplace. Individuals remain subject to any existing laws and workplace policies on substance or cannabis use (e.g., federal laws prohibiting the operation of commercial transport vehicles while impaired, or workplace policies prohibiting cannabis use specifically and/or impairment generally). The legislation does not address the use of employer drug screening of employees or prospective employees. Your employer or prospective employer can provide more specific information about its policies regarding substance use in the workplace.

Accordingly, for the time being, it appears that employers may continue to prohibit marijuana use by employees – not only in the workplace, but off-duty as well. However, we anticipate that there will be attempts to pass legislation that provides workplace protections for recreational users in the coming Maryland General Assembly sessions, so employers should stay tuned for developments in this area.

But Testing Is Not the Only Option. Employers should be aware of issues with testing for marijuana use, however. The traditional drug tests only establish whether someone has used marijuana within the past several weeks or even months. There are some newer tests able to identify recent use, meaning within the past 4-8 hours or so – although such use could still occur prior to an employee reporting to work. Unlike alcohol testing, however, these drug tests do not measure current intoxication. Thus, even if an employer had a policy that permitted off-duty use but

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prohibited on-duty use, it would not be possible to establish through testing whether the employee was currently high on marijuana in violation of such a policy. As a result, employers may wish to include provisions in their drug testing policies that specifically state that they may take action based on observed symptoms of marijuana intoxication, in addition to or in lieu of positive drug test results.

TAKE NOTE

The DOL is Serious About PUMP Act Rights for Breastfeeding Mothers. As we most recently discussed in our May 2023 E-Update, the DOL has issued guidance for employers, employees and its own staff on the Providing Urgent Maternal Protections for Nursing Mothers Act ("PUMP" Act), which requires employers to provide nursing mothers with a reasonable amount of break time and private space to express milk for up to one year after the child's birth. And the DOL is now taking steps to enforce those requirements, as evidenced by its September 18, 2023 news release.

Apparently, it took a spa almost 4 months to respond to an employee's request for a private place to pump breast milk. The spa finally provided a manager's office, but there was no privacy as other employees could enter the room. In addition, the employee was written up for leaving work even though she informed her employer that she needed to leave to express breast milk. The DOL assessed $6,810 in civil penalties for this, and several other labor violations.

This matter serves as a reminder to employers that they need to respond promptly to employee requests under the PUMP Act, and must provide a truly private and functional location (that is not a bathroom) and adequate break time to express breast milk. Remember that the timing, length and frequency of breaks will depend on the individual needs of the employee, and may change over time – but that any break time in excess of normal employee breaks may be unpaid. Smaller employers with fewer than 50 employees may be able to assert a hardship exemption, but the DOL warns that the bar to meet the exemption will most certainly be high. And finally, employers should be aware that local or state lactation accommodations laws may impose additional requirements and offer more protections to breastfeeding employees.

A New Disability Resource for Federal Contractors from the EEOC and U.S. DOL. The Equal Employment Opportunity Commission has partnered with the Department of Labor's Office of Federal Contract Compliance Programs and Office of Disability Enforcement Policy to release a resource guide about recruitment, hiring, and employment of individuals with disabilities, "Employment Protections Under the Rehabilitation Act of 1973: 50 Years of Protecting Americans with Disabilities in the Workplace."

The Rehabilitation Act prohibits discrimination on the basis of disability not only by the federal government (Section 501, enforced by the EEOC) but also federal contractors and subcontractors (Section 503, enforced by the OFCCP). Notably, the standards for determining employment discrimination are the same under both Section 503 of the Rehab Act and the Americans with Disabilities Act (which applies to all private employers with 15 or more employees).

According to the EEOC's September 26, 2023 press release, the new resource pulls together information about the Rehab Act (including contractor obligations to develop an affirmative action

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program for individuals with disabilities), contact information for assistance, and links to agency publications, among other things.

More specifically, the resource includes suggestions for best practices. As to recruitment and hiring, the resource suggests the following:

- Contractors should regularly review their outreach and hiring practices to learn whether certain groups are being excluded, not just from being hired, but from even entering the applicant pool.

- Contractors should consider whether practices such as word-of-mouth recruiting, hiring only previous workers when new positions or opportunities for work arise, or picking up day laborers in particular locations are having an adverse impact on hiring.

As to retention and advancement, the resource suggests:

- Contractors should regularly review data related to applicants and hires to assess whether any particular group of applicants is being disproportionately screened out at a certain stage of the process.

- Contractors should also ensure that employees responsible for making hiring, assignment, or promotion decisions are applying the criteria equally to all applicants or candidates.

- Contractors should review their compensation policies to make sure employees are not subject to wage discrimination.

Employers – Beware of the EEOC's Targeted Priorities. The Equal Employment Opportunity Commission has released its final Strategic Enforcement Plan for FY 2024-2028, listing the priority issues that it intends to target over the next five years. This is different than the Strategic Plan that the EEOC released earlier this year (and discussed in our August 2023 E-Update), which sets forth the framework that the EEOC will use to pursue its priorities under the Strategic Enforcement Plan.

The EEOC has identified six subject matter priorities for enforcement:

- Eliminating barriers in recruitment and hiring. This includes the use of recruiting and screening technology with a discriminatory impact, channeling or steering individuals into certain jobs, and limiting access to training or advancement opportunities.

- Protecting vulnerable workers from underserved communities from discrimination. These specifically include immigrant and migrant workers, those with mental health or intellectual disabilities, LGBTQI+ individuals, and those with a criminal history, among others.

- Addressing selected emerging and developing issues. This includes enforcement of the new Pregnant Workers Fairness Act, Long COVID issues, and "backlash" against recent events – which we interpret to mean the Supreme Court's recent affirmative action decision (which we discussed here).

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- Advancing equal pay for all workers. This is a long-standing area of focus for the EEOC, but it takes on additional weight given the recently-announced partnership with the U.S. Department of Labor (which is the agency enforcing the Fair Labor Standards Act), as we discuss elsewhere in this E-Update.

- Preserving access to the legal system. The EEOC intends to focus on overly broad waivers, releases, non-disclosure agreements and non-disparagement agreements, as well as retaliatory practices that could dissuade employees from exercising their rights under employment discrimination laws.

- Preventing and remedying systemic harassment. This is another longstanding priority, with the EEOC warning that claims by an individual or a small group could trigger their interest if related to a widespread pattern or practice of harassment.

Employers should be aware that the EEOC will aggressively pursue claims that fall into these categories, and may even search out such claims by encouraging employees to file charges of discrimination that raise these issues.

Separation Agreements Should Not Prohibit Whistleblowing Activity or Recovery. In many cases, employers enter into separation agreements with employees to bring full closure to the relationship and cut off any further issues. However, a recent Securities and Exchange Commission Order highlights the fact that employees should not be required to waive certain rights in such agreements – including the right to engage in certain whistleblowing activity.

In the underlying matter, a company's standard separation agreement provided that, while employees retained the right to participate in a governmental investigation, they waived the right to receive any money damages or legal or equitable relief awarded by the investigating agency. The SEC found that this provision illegally impeded participation in the SEC's whistleblowing program by removing financial incentives intended to encourage the reporting of possible securities laws violations.

Although many employers are not subject to the jurisdiction of the SEC, all employers are subject to the Occupational Safety and Health Administration's Whistleblower Protection Program. This program enforces the anti-retaliation provisions of more than 20 federal laws, many of which may apply to private employers. Beyond the Occupational Safety and Health Act, these include the Sarbanes-Oxley Act, the Affordable Care Act, and the Consumer Financial Protection Act. And in its Whistleblower Investigations Manual, OSHA specifically asserts that employees cannot be required to waive their rights to participate in – and benefit from – whistleblowing activity. Thus, employers should ensure that their standard separation agreements do not include such language.

An Aggressive Offense Is Not Always the Best Defense. That was the lesson for a meteorologist who argued that his termination for engaging in sexual harassment was actually race discrimination. The U.S. Court of Appeals for the Eleventh Circuit rejected his argument, finding that "no reasonable jury" could conclude that he was fired because of his race.

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In *Ossmann v. Meredith Corporation*, female employees made multiple complaints over a period of years that the meteorologist had engaged in sexually harassing conduct, much of which he admitted, which finally led to the decision to terminate him. The HR director completed a termination request form, called an "EEO Analysis," for approval by the corporate office. In addition to a detailed description of the misconduct at issue, this form required information about the wrongdoer's race, sex and age, asked about discipline for other similar situations, and included a table for "Comparables" (i.e. other employees in similar positions) that also required their race, sex and age, among other things. There was also a statistical analysis of how the meteorologist's termination would affect the demographics of the weather team and the news station generally. The meteorologist claimed that this form was evidence that he was terminated because of his (white) race.

The Eleventh Circuit disagreed. It found that the form was not direct evidence of discrimination, as it did not establish that his race was treated as a negative factor. Rather, it was simply a neutral factor that did not require racial balancing. Moreover, there was ample, undisputed evidence of his harassing conduct and, further, there was no evidence that employees of other races were treated more favorably for engaging in similar conduct. Consequently, the employee failed to show that he was terminated because of his race.

We note, however, that there was a dissent by one of the judges on the 11th Circuit panel. This judge focused on the request for race information and the statistical study, finding that it was "reasonable and logical to infer that changing the race of the meteorologist would affect [the termination] decision." Whether or not this is, in fact, a logical and reasonable inference, we note that the use of race at all on the termination request form obviously created issues in a situation that would otherwise have been quite straightforward – termination for continuing and admitted sexual harassment. Employers should keep in mind that disciplinary decisions should be consistent, regardless of race or any other protected characteristic.

Requiring an Employee to Pay for a Leadership Program May Be Discrimination. Following its recent decision that an "adverse employment action" under Title VII need not be an "ultimate employment action" (as discussed in our August 2023 E-Update), the U.S. Court of Appeals for the Fifth Circuit has now provided a further example of what kind of employment action is sufficient to support a discrimination claim.

In *Harrison v. Brookhaven School District*, the school district typically paid the fees for a leadership training program for prospective school superintendents. A black educator and school administrator was accepted into the program, but the school superintendent reneged on his promise to pay her fees and offered to pay for her to attend in two years. However, because she had been accepted for the coming year, she paid the fees herself. She sued, arguing that the school district had engaged in discrimination because it refused to pay her fees while paying for white males to attend. The federal district court dismissed her claim on the basis that failing to pay for a leadership program was not an "ultimate employment action."

The Fifth Circuit, however, referenced its recent decision that rejected the "ultimate employment decision" standard. Consequently, it found that the refusal to pay for the program could be

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discrimination in the "terms, conditions, or privileges" of the administrator's employment. In addition, the Fifth Circuit quoted the Supreme Court that, "A benefit that is part and parcel of the employment relationship may not be doled out in a discriminatory fashion, even if the employer would be free under the employment contract simply not to provide the benefit at all." And keeping in mind that Title VII is not a "general civility code," the Fifth Circuit reiterated that *de minimis* (or minimal) injuries do not rise to the level of a Title VII violation – however, in this case, the employee was required to pay approximately $2000 out of her own pocket, which the Fifth Circuit found to be more than a *de minimis* injury.

This case reinforces the need for employers to be thoughtful and consistent – not only with what were formerly known as "ultimate employment actions" like hiring, promotions, pay increases, and terminations – but also with less significant, but still impactful, benefits and actions.

NEWS AND EVENTS

Victory. Lindsey A. White and Veronica Yu Welsh won summary judgment in a case where the employee of a contractor attempted to sue a large corporation on the grounds that it was substantially the same entity as his actual employer, or alternatively that it was his joint employer with the contractor. However, he failed to file a charge of discrimination with the Equal Employment Opportunity Commission that named the corporation, as is required before bringing a lawsuit, and the federal court found the corporation was not substantially identical to his employer, nor was it a joint employer.

Webinar. J. Michael McGuire and Chad M. Horton presented a webinar, "NLRB Update 2023: Landscape-Altering Changes to Employee Handbook Standards, Paths to Unionization, and the Protected Concerted Activity Doctrine," on September 21, 2023. You may view the recording of the webinar here.

Presentation. J. Michael McGuire and Fiona W. Ong presented an update on NLRB developments and an overview of federal, D.C. and Maryland leave laws for the Associated Builders and Contractors of Greater Baltimore on September 19, 2023.

Publication. Chambers' 2023 Regional Employment Practice Guide, for which Shawe Rosenthal authored the Maryland Chapter, has been released. Our chapter provides a comprehensive overview of labor and employment law in the state. Chambers & Partners is a prominent London-based research and publishing organization that ranks law firms and lawyers based upon their reputation among peers and clients. It also publishes global practice guides providing clients with expert legal commentary on the main practice areas in key jurisdictions around the world.

Publication. On behalf of Lexology (a global resource of legal updates, analysis and insights), our firm authored the Maryland chapter of the "Employment: North America" Guide (Courtesy access provided to paid subscription). This chapter provides a detailed overview of labor and employment law in Maryland. A pdf of the chapter is available here.

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TOP TIP: What to Expect from Maryland's Paid Family and Medical Leave Program – The Sequel

In last month's Top Tip, we discussed two regulatory outlines (Equivalent Private Insurance Plans and Contributions) and a discussion document (Claims) that had thus far been issued by the Maryland Department of Labor's FAMLI Division as part of its process to develop regulations for the forthcoming paid family and medical leave program. The FAMLI Division has now released its regulatory outline for Claims, which provides employers with a clearer indication than the discussion document of what to expect when the actual regulations are finally released for comment sometime in the coming months.

As we previously noted, Maryland has enacted a paid family and medical leave insurance (FAMLI) program that, starting in 2026, will provide most Maryland employees with 12 weeks of paid family and medical leave, with the possibility of an additional 12 weeks of paid parental leave. The MDOL was directed to issue regulations to interpret and implement the Act by January 1, 2024. The MDOL's FAMLI Division has begun the regulatory process by holding a series of public sessions on specific topics. They released a discussion document prior to each, and are following up with regulatory outlines on the topic that provide some indication of what might be included in the regulations. The FAMLI Division will then issue a full set of proposed regulations later this fall for public comment, before final regulations are released.

Last month, we highlighted some of the more significant topic areas identified in the Claims discussion document. Now, the FAMLI Division's regulatory outline for Claims provides more insight as to how they likely intend to implement the law, as follows:

- With regard to the reasons for which FAMLI leave may be taken, the document adopts essentially the same definitions as under the federal Family and Medical Leave Act. That is helpful for employers who are subject to FMLA (those with 50+ employees).

- The definition of "serious health condition" is more expansive, however, than under the FMLA, including conditions that pose an imminent danger of death and organ donations.

- "Covered employee" is defined to include previous employees who met the 680 hours worked requirement in Maryland.

- As to "domestic partners," the definition proposed is less stringent than that already contained in the Maryland Code, and, unlike that existing law, it does not require proof of the attested statements.

- If the employee can show "good cause," applications may be approved for those beyond the normal 60-day application period. The proposed definition of "good cause" includes some degree of incapacitation, natural disaster, power outage, or prolonged departmental system outage, but (this is new) also a claimant's lack of knowledge about their right to FAMLI benefits.

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- “Kinship care” includes both formal and informal arrangements, which are already defined in other parts of the Maryland Code.

- The information required to be provided in support of an application for benefits is largely similar to that required under the FMLA, including documentation from a health care provider where appropriate.

- There is a very vague statement that requires claimants to make attestations to “knowledge of certain information that will impact their applications.” While the FAMLI Division states that a list of attestations will be provided on its website, there is no indication at all of what this will encompass.

- Like the FMLA, FAMLI leave for adoption may be taken prior to placement for things like court appearances, legal appointments, and travel, among other things.

- As to intermittent leave, claimants will be required to submit requests every two weeks. It must be taken in increments of no less than 4 hours, unless the employee’s scheduled shift is fewer than 4 hours. Claimants will not receive benefits for leave that exceeds the expected duration and frequency set forth in the medical certification, unless they submit an updated certification.

- Employers must provide notice of FAMLI rights upon hire, annually, and whenever it knows that a leave request might be eligible for FAMLI. But like FMLA, the employee need not specifically refer to FAMLI; it is up to the employer to ask for more information in order to determine if FAMLI applies.

- The employer’s notice to the employees must contain an extensive list of information (the Division will create templates that employers may use):
  - An explanation of FAMLI, including who is covered, qualifying circumstances, where to apply, job protection and anti-retaliation language, and the availability of intermittent leave.
  - The employee’s responsibility to provide 30 days’ notice, where applicable (but see below).
  - Coordination of benefits, if the employer offers alternative FAMLI purpose leave, such as paid parental leave or short term disability leave (but not statutory sick leave, vacation or PTO).
  - Anything else the Division might require.

- Employee are required to provide 30 days’ notice to the employer for foreseeable leave. However, of serious concern, the outline contains no notice requirement for unforeseeable leave (unlike FMLA, which at least requires as much notice as practicable).

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- If an employee requires intermittent leave, they are supposed to make a reasonable effort to schedule such leave to not unduly disrupt business operations. They should also provide reasonable and practicable prior notice of the reason for the intermittent leave, although apparently not as to the leave itself, which is not helpful for employers.

- If the employee fails to provide such notice of intermittent leave, the employer may discipline the employee, but must notify the Division of the failure to provide notice. But since the notice provision only applies to the overall need for intermittent leave, and not each incident of leave, it is unclear how this would apply.

- In addition, if the employee's use of intermittent leave is inconsistent with the approved leave, the employer may request additional information related to the use of FAMLI leave. But there is no provision that allows employers to request additional information with regard to the use of FAMLI leave in a block.

- Employers will be notified by the FAMLI Division of claim details "subject to confidentiality restrictions" electronically within 5 days of a completed application. Employers will then have only 3 business days to report fraud before a determination of benefits is made. This is not much time and, moreover, if the "confidentiality restrictions" result in minimal information, it may not be possible for the employer to determine if there is fraud. Another concern is that there is no other provision that allows employers to report fraud outside of this extremely limited time period.

- Although FAMLI and FMLA will run concurrently, any FMLA leave taken before January 1, 2026 will not count towards available FAMLI leave.

- Employers may require employees to use alternative FAMLI purpose leave (AFPL) in coordination with FAMLI. AFPL must be specifically for a FAMLI-covered reason, paid, not accrued, not subject to repayment if the employee separates from employment, not available for general purposes and not subject to exhaustion of another type of paid leave first.
  - If employees take AFPL instead of FAMLI leave, their FAMLI entitlement will be reduced accordingly. If they take FAMLI, the AFPL may be used as a supplement to bridge the gap between FAMLI benefits and full pay – and the AFPL will be reduced by the full FAMLI time taken, even if used only for partial wage replacement.

- Neither employers nor employees can require the substitution of general purpose leave (vacation or PTO) for FAMLI. They may agree – in writing – to have such vacation or PTO supplement FAMLI benefits, but the general purpose leave is reduced only by the actual amount of the supplemental benefit. Employees may choose to use sick leave prior to receiving FAMLI benefits, however. Of concern, this can extend the time out by another full week (beyond the 12/24 weeks of FAMLI), since Maryland requires employers to provide up to 40 hours a year of sick leave.

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- Employees receiving unemployment benefits or workers' compensation wage replacement benefits are not eligible for FAMLI.

As should be clear from this summary, there are a number of problematic provisions suggested in the draft regulatory outline. Employers should feel free to express their concerns to the FAMLI Division at this time, but also when the Division releases the full proposed regulations.

RECENT BLOG POSTS

Please take a moment to enjoy our recent blog posts at laboremploymentreport.com:

- EEOC, NLRB and DOL Shutdown Contingency Plans – The 2023 Edition by Fiona W. Ong, September 27, 2023

- Wait – College Football Players Really Are Suing for Pay? by Fiona W. Ong, September 22, 2023

- It's Football (Unionizing) Season… by Fiona W. Ong, September 15, 2023

- What to Expect from Maryland's Paid Family and Medical Leave Program by Fiona W. Ong, Mark J. Swerdlin, and Donald Waldron, September 7, 2023

- The NLRB Vastly Expands the Parameters of Protected Concerted Activity by Evan Conder and Fiona W. Ong, September 15, 2023

- DOL Proposes New Overtime Rule To Increase the Required Salary Level for Exempt Employees by Fiona W. Ong, August 30, 2023

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