

RECENT CHANGES TO FEDERAL EMPLOYMENT LAWS

Enacting federal employment law is a lot like cooking. What looks good on paper doesn't necessarily translate into the desired finished product. Federal employment law is an ever-evolving field. Laws are written to have general applicability reflecting changes in Congress, the White House, and case law around the country. And, much like recipes, laws need to be tinkered with from time to time to get them just right.

Following is a summary of some recent changes to federal employment laws and practices.

Family and Medical Leave Act

Federal law requires all municipalities that employ more than 50 employees within a 75-mile radius to post notifications of employees' rights and responsibilities under the Family and Medical Leave Act (FMLA) at a prominent location at all work sites. Municipalities must do more than simply post this notice. They must also actually comply with all that tiny text that resides within its four corners. A lot of those words changed recently, the result of rule changes ("Final Rule") adopted by the Department of Labor (DOL) in response to the passage of the National Defense Authorization Act (NDAA), federal court cases, 15 years of administering the FMLA, and extensive public comment. Highlights of the Final Rule, which took effect on November 17, 2008, include: codifying the NDAA increase of the standard 12-week FMLA leave to 26 weeks for family members caring for a "covered service member"; defining "any qualifying exigency" arising under the NDAA from one's spouse, child, or parent being on active duty or called to active duty status; new DOL certification forms for military family leave; removing categorical penalties for failure to properly designate FMLA leave; clarifying that "light duty" does not count against an employee's 12 weeks of FMLA leave; permitting employers to require "fitness-for-duty" certifications to ascertain an employee's ability to address reasonable job safety concerns and ensure employees can perform the essential functions of their job; and changing employer and employee notice requirements.

For more information regarding the Department of Labor's Final Rule on Family and Medical Leave please visit: <http://www.dol.gov/esa/whd/fmla/finalrule/factsheet.pdf>.

Lilly Ledbetter Fair Pay Act of 2009

The passage of this Act has been somewhat misconstrued by the general public. Both federal law (Equal Pay Act) and Vermont law (Vermont Fair Employment Practices Act) already prohibit wage based sex discrimination. Employees must be paid equally for the same or similar work, regardless of their sex, with exceptions for disparate pay based on such factors as seniority, quantity or quality of work, or some other factor besides sex. The Ledbetter Act, which went into effect on January 29, 2009, is actually a number of amendments to preexisting federal laws, including Title VII of the Civil Rights Act of 1964, Age Discrimination in Employment Act of 1967, Americans with Disabilities Act of 1990, and the Rehabilitation Act of 1973. Highlights of this Act include:

- an extension of the time in which employees can file discrimination charges;
- an allowance for employees to seek back pay for a period of two years predating the filing of such charges; and

- clarification that unlawful conduct occurs when a discriminatory compensation decision is adopted, or when an employee is affected by a discriminatory compensation decision or practice, including each time compensation is paid.

For more information regarding the Lilly Ledbetter Fair Pact Act of 2009 please visit <http://thomas.loc.gov/cgi-bin/bdquery/z?d111:SN00181:@@D&summ2=m&>

I-9 Employment Eligibility Verification

All employers must complete and retain I-9 Employment Eligibility Verification forms for the purpose of establishing that employees, whether citizens or not, are authorized to work in the United States. Beginning April 3, 2009, the U.S. Citizenship and Immigration Service will require use of a new I-9 Form. Both the new and current I-9 forms are available at www.uscis.gov/portal/site/uscis. (Click on Form I-9 in the left-hand column.)

Garrett Baxter, Staff Attorney, VLCT Municipal Assistance Center

VLCT News, March 2009