**Utah employers should take note of this year’s newly enacted laws**

Another session of the Utah Legislature is in the books, and lawmakers have enacted several new laws of which employers should be aware. Most of the new laws went into effect May 8, 2018. In last month’s issue of Utah Employment Law Letter, we reported on the passage of an amendment to the Post-Employment Restrictions Act (i.e., Utah’s law governing non-compete agreements) that affects broadcasters (see “Broadcast the news: no non-competes for TV and radio talent in Utah” on pg. 1). Below is a summary of some of the other new laws with which you should familiarize yourself.

Amendment to UAA

One of the major pieces of employment legislation enacted during the 2018 session of the Utah Legislature was an amendment to the Utah Antidiscrimination Act (UAA). The amendment made a few significant changes to the authority of the Utah Antidiscrimination and Labor Division (UALD) and how a charge of discrimination is investigated. Many of the changes were aimed at granting the UALD the authority to quickly resolve and better investigate charges of discrimination.

Under the new law, before the UALD launches an investigation into a charge of discrimination, it must as-sign a mediator to attempt to resolve the charge. Under the old law, mediation was required only before a hearing was held as part of the adjudicative proceeding. The change means that mediation must take place much earlier in the administrative process. In many respects, that was already occurring as a matter of practice, but now the UALD is required to offer mediation before an investigation. Notably, the UAA was also changed to re-move a rule that prohibited the agency from attempting to settle a charge if it was clear that there had been no discriminatory or prohibited employment practice.

Even under the new law, whether parties opt to participate in mediation or settle during mediation is entirely voluntary. If mediation is refused or no settlement is reached, then an investigator will be assigned. At that point, the investigator must undertake a prompt, impartial investigation into the allegations of discrimination or retaliation. The new law removed a provision that provided for the UALD to hold a hearing upon the filing of a charge of discrimination.

The amendment also grants the UALD the power to issue subpoenas during an investigation. The subpoenas can require a person to cooperate and participate in an interview or produce for examination any book, paper, or other information related to the matters raised in the charge of discrimination. The UALD is authorized to have the subpoena enforced by a state district court.

Further, any determination and order issued by the UALD after an investigation must include a notice advising the parties of their right to request an evidentiary hearing and stating that the failure to request an evidentiary hearing will result in a determination and order becoming final. The amendment makes clear that a determination and order is an action that is not subject to the Utah Administrative Procedures Act. Finally, the new law requires the UALD to investigate an allegedly discriminatory practice involving an officer or employee of state government when the Career Service Review Office requests such an inquiry.

Commissions at termination

Utah law requires an employer to pay all unpaid wages owed to an employee within 24 hours of the employee’s involuntary separation from payroll (in other words, when the employer fires the employee). However, the law did not apply to commissioned sales agents who had custody of an employer’s accounts, money, or goods if the net amount owed to the sales agent is determined only after an audit or verification of sales, accounts, funds, or stocks.

The Utah Legislature amended the Separation from Payroll Act to clarify that only commission-based wages owed to a sales agent are exempt from the law’s cover-age. Any other wages the sales agent is owed at termination are due within 24 hours of his separation.

UPPEA amendments

The legislature also updated the Utah Protection of Public Employees Act (UPPEA), Utah’s whistleblower statute protecting public employees who make a good-faith report of certain actions by public officials or employees. The first change exempts UPPEA actions from certain requirements of Utah’s Governmental Immunity Act.

Further, institutions of higher learning must establish an independent personnel board to hear and take action on any complaint alleging an employee has been subjected to an adverse employment action for engaging in certain whistleblowing activities. The independent board must be composed of members who are not in the same department as the complaining employee, do not supervise the complaining employee, and do not have a conflict of interest related to the complaining employee or her allegations.

The board must hear the complaint within 30 days after the complaint is filed. An additional 30 days may be granted if the independent personnel board and the employee agree that more time is needed. The board is permitted to either order or recommend to a final decision maker the actions that should be undertaken to rectify any adverse employment action that violates the UPPEA. If a recommendation is made, the final decision maker has seven days from the recommendation in which to render a final decision.

The amendment also provides an exception to the normal 180-day statute of limitations in which a com-plaint must be filed. The time limit for filing a complaint can be extended if the complaining employee originally brought the action within the 180-day limitations period but the matter failed or was dismissed for a reason other than the merits and the employee brings a new complaint within 180 days after the day on which the original complaint was filed. However, a second bite at the apple is permitted only once.

Independent contractors and service marketplace platforms

A variety of electronic and Internet-based programs and applications that direct customers to businesses have been developed in our tech-savvy world. Unsurprisingly, there are platforms that direct potential customers to construction and service businesses. Specifically, cleaning and janitorial, landscaping, home repair, furniture delivery or assembly, and moving companies (i.e., building service contractors) have started to use Internet-connected software platforms and mobile apps to connect with customers seeking building services. Those software platforms and mobile apps are referred to as “service marketplace platforms.”

Under such arrangements, the building service con-tractor agrees to pay a fee to the service marketplace platform for directing potential customers to him. The Utah Legislature has enacted legislation governing the relationship between a building service contractor and a service marketplace platform. Lawmakers recognized that building service contractors may be employees or in-dependent contractors of service marketplace platforms. The new law creates a presumption that a building service contractor who affiliates with a service marketplace platform is an independent contractor. The statute pro-vides that only by “clear and convincing evidence” can the presumption be rebutted and the building service contractor deemed an employee.

Going forward

The laws covered in this article all took effect on May 8, 2018. Utah employers should be complying with the new laws or evaluating the impact they will have on their workplace. Although some of the changes are procedural or may not affect you unless you are confronted with a charge of discrimination or some other legal action, it’s wise to be aware of any changes that may affect you in the future.

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