

The background of the slide features a close-up, artistic shot of a glass being filled with a vibrant orange liquid. The glass is partially filled, and the liquid is captured in motion, creating a sense of dynamic energy. The lighting is soft and focused on the glass, highlighting its curved surface and the rich color of the liquid. The overall aesthetic is clean and professional, suitable for a seminar or presentation.

Hot Button Topics in Employment Law

GFOA Winter 2018 Seminar

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Federal Update

- *Janus v. American Federation of State, County, and Municipal Employees (AFSCME)*
 - United States Supreme Court Oral Argument – 2/26/2018
 - At issue in the case are the laws in 22 states which allow public unions to require that public employees who are not union members to pay so-called “agency” or “fair share” fees.
 - While the fate of Senate Bill 19 (“Right-to-work” legislation) is being decided, Missouri allows unions with exclusive representative status to force non-members to pay agency fees.
 - Whether it is constitutional for public sector unions to require all employees to pay union fees regardless of their membership under the First Amendment.
 - The ruling in *Janus* will also clarify whether the Court’s decision in *Abood v. Detroit Board of Education* to uphold these requirements will remain good law.

Hot Button Topic: Right-to-Work Law

- On February 6, 2017, Gov. Greitens signed SB 19, Missouri's Right-to-Work bill, into law.
 - Under this Act, employers are barred from requiring employees to become, remain, or refrain from becoming a member of a labor organization or pay dues or other charges required of labor organization members as a condition of employment.
 - As enough signatures were collected to put SB 19 on the ballot as a veto referendum, the law did not go into effect.
 - A lawsuit to block the union effort by pro right-to-work interests was rejected in court.
 - November 6, 2018, is date for referendum vote, with a "No" vote overturning the legislation, unless an earlier date is set by the legislature.

Federal Update

- *Fair Labor Standards Act Overtime Exemptions*

- May 18, 2016 DOL Rules set forth a new salary threshold for exempt employees, increasing it from \$23,660/annually to \$47,476/annually.
- Set to take effect December 1, 2016.
- In late November 2016, Judge Mazzant for Eastern District of Texas federal court issued a temporary injunction.
- In July 2017, DOL announced request for information which initiated a new rule-making process for salary level test.
- August 31, 2017, Judge Mazzant struck down the rule in its entirety.

Hot Button Topic: FLSA Overtime

- Generally, FLSA requires that employers pay employees overtime pay for hours worked in excess of 40 hours in a 7-day period.
- § 207(k) applies special rule to police officers and firefighters, setting overtime on “work period” basis.
- Unlike private employers, public employers may grant comp time in lieu of overtime pay.
- Exempt employees MAY be due overtime pay in certain situations.
- On-call time may be compensable as hours worked.
- Travel time during work hours is generally compensable time.

Federal Update

- *Hively v. Ivy Tech Community College of Indiana*, 853 F.3d 339 (7th Cir. 2017).
 - First time a federal appeals court ruled that Title VII prohibits employers from discriminating on the basis of sexual orientation.
 - Court, acknowledging that Supreme Court had never addressed sexual orientation discrimination, relied on *Price Waterhouse* and *Oncale* decisions.
 - Just one month before *Hively*, 11th Circuit held that there was no protection under Title VII for sexual orientation.
 - And on Monday, 2nd Circuit ruled in *Zarda* that Title VII bars employers from discriminating against their workers based on sexual orientation.

Hot Button Topic: Gender Discrimination

- *Lampley and Frost v. MCHR*, Case No. WD 80288 (Mo. App. W.D. 2017).
 - Lampley alleged employer discriminated against him because his behavior and appearance contradicted stereotypes of maleness held by employer and managers.
 - Frost claimed her close relationship with Lampley resulted in her suffering associational discrimination.
 - MCHR dismissed charge of discrimination on the ground that MHRA did not extend protection based on sexual stereotype.
 - Western District reversed, holding that sexual stereotyping can support an inference that discrimination on the basis of gender occurred in the workplace.
 - Case transferred to the Missouri Supreme Court – 1/23/2018

Missouri Update

- Municipal Minimum Wage Law
 - In 2015, St. Louis passed a local ordinance establishing a city minimum wage higher than the State's minimum wage.
 - In February 2017, Missouri Supreme Court upheld challenge to St. Louis minimum wage law, finding that 2015 legislation was not effective to preempt ordinance passed by St. Louis before law took effect.
 - HB 1194 passed in May 2017 which prohibited Missouri municipalities from adopting a higher minimum wage than the State's (\$7.85/hour) by preempting that area of law. §§ 288.062, 290.528.
 - Municipal minimum wage ordinances are now preempted by State law.

Hot Button Topic: Wage and Hour

- Employers must pay for all hours worked—even if the work was not authorized or requested.
- Deductions from paychecks must not take the hourly employee below minimum wage for the workweek.
- Improper deductions from paychecks of exempt employees may remove their exempt status.
- Calculate overtime pay on employee's "regular rate of pay."
- Maintain accurate time records to defend challenges to wage claims.

Missouri Update

- *Hoffmeier v. Civil Service Commission of the St. Louis MSD*, ED 105455 (Mo. App. E.D. 2017).
 - Senior construction inspector was driving MSD truck when he rear-ended two other vehicles, sending one driver to the hospital by ambulance. Hoffmeier was cited for following too closely.
 - Hoffmeier submitted to drug test at MSD's request and tested positive for marijuana. Hoffmeier was terminated following confirmation results.
 - Hoffmeier challenged termination on ground that accident didn't invoke MSD's policy on drug testing.
 - No evidence that anyone in accident suffered bodily injury and received medical treatment away from the scene of the accident; as a result, circuit court's judgment in favor of MSD reversed.

Hot Button Topic: Drug Policies

- Can conduct pre-employment screenings if some safety or security concern is present in the position.
- U.S. Supreme Court has held, however, that governments can only perform “suspicionless drug testing” of employees when the positions are known as “safety sensitive.”
- Drug/alcohol testing of employees involved in accidents permissible when:
 - employee operating drives commercial vehicles covered by the U.S. D.O.T. regulations;
 - Where there is a “reasonable possibility” that drugs/alcohol may have contributed to cause accident.
 - Missouri SB 66 provides rebuttable presumption of causation as to employee injury under work comp laws.

General Update

- *Severson v. Heartland Woodcraft, Inc.* (7th Cir. Sept. 20, 2017)
 - Raised the issue of whether extended leave (after FMLA leave had expired) was a reasonable accommodation under the ADA.
 - Court analyzed ADA and concluded that it “is an antidiscrimination statute, not a medical-leave entitlement”; held that “a long-term leave of absence cannot be a reasonable accommodation” under the ADA.
 - In so doing, the Court explicitly rejected EEOC’s argument that a long-term medical leave of absence should qualify as a reasonable accommodation when the leave is of a definite, time-limited duration, requested in advance, and likely to enable to perform the essential functions of his job when he returns.

Hot Button Topic: ADA Extended Leave

- Situation arises where employee either has used all FMLA leave or is not eligible for FMLA.
- EEOC asserts and 8th Circuit has suggested that extended leave can be a reasonable accommodation under the ADA.
- Issue: When is granting an extended leave a reasonable accommodation under ADA?
- Answer is fact-intensive to determine whether extended leave is reasonable accommodation or poses undue hardship.
- Considerations include whether leave is open-ended, the burden on the employer during extended leave, and history of accommodation.

Thank you for the invitation.

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