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2023 Employment Law Update

So far this year, there have been significant developments on the labor and employment front. Below is a brief summary of three important employment law updates that employers should know about in 2023.

Pregnant Workers Fairness Act (PWFA) requires employers to reasonably accommodate known worker issues arising from pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an undue hardship. The law became effective June 27, 2023, and the EEOC began accepting charges that same date. The EEOC posted proposed regulations today.

Accommodation of Religious Beliefs: On June 29, 2023, in *Groff v. DeJoy*, the Supreme Court overruled prior precedent and held that showing "more than a de minimis cost," as that phrase is used in common parlance, does not suffice to establish "undue hardship" in accommodating a request for accommodation of a religious practice under Title VII of the Civil Rights Act of 1964. Rather, an employer that denies a religious accommodation must show that the burden of granting an accommodation would result in "substantial increased costs in relation to the conduct of its particular business." Courts must apply the test in a manner that takes into account all relevant factors in the case at hand, including the particular accommodations at issue and their practical impact in light of the nature, size and operating cost of an employer.

Confidentiality and Non-Disparagement clauses in severance agreements: On March 22, 2023, the National Labor Relations Board issued guidance on its position that certain confidentiality and non-disparagement clauses in employee severance agreements violate section 7 of the National Labor Relations Act and result in an unfair labor practice if they could be construed to prevent "concerted activity" by employees such as discussion of terms and conditions of employment. The ruling applies to all employers, not just those with unions or union campaigns.

However, confidentiality agreements may still be lawful so long as they are "narrowly-tailored to restrict dissemination of proprietary or trade secret information for a period of time based on legitimate business justification[.]"

Non-disparagement agreements may still be lawful so long as they are narrowly-tailored and "limited to employee statements about the employer that meet the definition of defamation as being maliciously untrue, such that they are made with knowledge of their falsity or with reckless disregard for their truth or falsity[.]"

If you have any questions about these topics or other employment law matters, please feel free to contact **Ken Keller**, **Robert Young**, **Trisha Barfield**, **Rachel Decker** or another member of Carruthers & Roth's **Employment Compliance and Litigation** team.

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