

Important Labor & Employment Law Developments: October 2016

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An McV Labor & Employment Law Alert

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- ***Employers must be aware of their employees' rights as voters and as electoral officers.***

With the upcoming general elections in Puerto Rico, to be held on Tuesday, November 8, 2016, employers must be aware of their employees' rights as voters and as electoral officers.

The Puerto Rico Election Code ("Election Code") states that the day of the election will be a legal holiday in Puerto Rico. Therefore, retail establishments covered by the Closing Act of 1989, should remain closed for the public. However, employers whose business operations remain active on election day must establish working shifts that allow employees to go to their corresponding polling place during the hours in which it is open for voting (between 8:00 am and 3:00 pm), and must grant employees the time that is reasonably necessary to exercise their right to vote, considering, among other factors, the distance between their workplace and the polling center. Employers cannot interfere with the right of employees to exercise their right to vote without impediment. The Election Code states that employers who interfere with an employee's right to vote, commit a misdemeanor, and if found guilty, will be subject to imprisonment for a term not to exceed six (6) months or a fine that will not exceed five hundred dollars (\$500), or both sanctions, at the discretion of the Court.

Moreover, impeding or attempting to impede an election official from performing his or her duties under the Election Code the day of the election, is also a misdemeanor.

In addition, it is illegal for an employer to authorize or dismiss an employee or official, or to threaten to dismiss or dismiss, suspend, decrease salary, demote, or impose or try to impose onerous working conditions on an employee or official because said employee or official has been summoned to attend and attends, as a regular local or alternate commissioner, a meeting duly called by the local commission if the affected local commissioner has sent a copy of the summons to his/her employer or supervisor before the meeting is held. Violations to this provision are also a misdemeanor.

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It is also illegal, and classified as a misdemeanor, for an employer to seek by coercion, intimidation or threats, to dismiss, or to refuse to employ, or to reduce the wages of any employee, for the purpose of inducing him to vote at any legal election according to the will of the employer or of any of his agents, and to in any manner demand of the employee that he exhibit the ballot marked by him for examination by the employer or any other person representing the latter. Violations to this provision are subject to imprisonment of up to one year or fines of up to \$5,000.00.

Employers need to be aware that Puerto Rico Act 100 of June 30, 1959 prohibits discrimination in employment for an employee's political beliefs. It is important to stay alert to any adverse actions taken against an employee, comments, or changes in working conditions due to an employee's political beliefs.

- ***New I-9 is expected to be published by the USCIS on or before November 22, 2016.***

The USCIS will publish the new Form I-9 on or before November 22, 2016. The revised Form I-9 is expected to contain “drop-down” lists, immediate error alerts, and instructions accessible from each field to help employers fill out the Form I-9 and avoid mistakes. However, employers may continue using the current version of the Form I-9, with revision date of March 8, 2013 until January 21, 2017. After January 21, 2017, employers must use the new Form I-9. Please be aware that sanctions for failing to adequately complete and maintain Forms I-9 and/or for knowingly employing unauthorized aliens recently increased. Therefore, employers are encouraged to conduct internal audits to identify and correct mistakes in Forms I-9.

- ***Additional requirements for certain employers in the United States and the District of Columbia who are currently required to file EEO-1 report***

On September 29, 2016 the U.S. Equal Employment Opportunity Commission (“EEOC”) announced that starting on March 2018, private employers in the United States and the District of Columbia, including federal contractors and subcontractors with 100 or more employees, will be required to provide a summary of employee pay data in the EEO-1 report they file annually. The first deadline for the new 2017 EEO-1 report will be March 31, 2018. Puerto Rico employers with 100 or more employees, however, are excluded from this requirement.

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- ***October is National Domestic Violence Awareness Month***

October is National Domestic Violence Awareness Month. Make sure your Company has the appropriate Domestic Violence Policies and Protocols in place and up to date, to avoid potential fines and to ensure the safety of your employees.

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