



What Do I Do Now?

ENOCH
TARVER



DOES THE LAW APPLY TO YOU?

Title	Min. # of Employees to Apply
Title VII	15
ADA	15
COBRA	20
ADEA	20
FMLA	50
PPACA (Obamacare)	50
FLSA	Assume it applies unless advised by professional
NLRA	Everyone, with very limited exceptions





CORONAVIRUS

- Temperature checks are probably out of bounds unless CDC declares a pandemic
- Guidance issued by EEOC during H1N1 outbreak. Implicates the ADA as a “medical test.”
- No court interpretation of this guidance
- Use common sense, send sick people home.



OVERTIME RULES

- **Salary Basis Test: \$35,568 per year (\$684 per week)**
- **Up from \$23,660 (\$455)**
- **Nondiscretionary bonuses and incentives (including commissions) can be used to satisfy up to 10% (paid at least annually)**
- **Highly compensated employees = \$107,432**
- **Effective January 1, 2020**



OVERTIME RULES

- **Executive**—manage at least 2 employees
- **Administrative**—exercise of independent judgment on matters of significance
- **Professional**—prolonged course of specialized intellectual instruction
- **Computer**—not the kid who hooks up your computer
- **Outside Sales**—away from your business



New I-9 Form

- **Dated 10/21/2019**
- **Can use old form until May 1, 2020**
- **No difference in the printed form except date in the bottom left corner**



Marijuana Testing

- 33 states have legalized marijuana for medical use and 11 states plus the District of Columbia have legalized recreational use



Marijuana Testing

- Most commonly used Schedule 1 drug in US
- None of the tests—urine, saliva or hair—show impairment, just establish use
- Research hampered by Schedule 1 classification
- National Safety Council (NSC) continues to hold no amount of use is safe for safety sensitive positions.

Marijuana Testing

- **Some states that have legalized are also protecting employees who use**
 - **NJ—medical marijuana**
 - **Nevada—cannot deny employment for positive test as of Jan 1**
 - **NYC— same effective May 20**



Marijuana Testing

- Employees terminated for testing positive, even in legalized states, generally still do not have protection
- No ADA protection



Marijuana Testing

- **Per NSC good policy includes:**
 - Proper management training to make managers more likely to enforce the policy
 - Access to support for employees with drug problems, which can range from a formal assistance program to a referral to local resources



Marijuana Testing

- Per NSC good policy includes:
 - Clearly defined use and possession parameters for employees
 - Established rules for post-accident testing
 - Rules on how you will handle an employee's conviction or arrest



Marijuana Testing

- Some jobs require testing per federal law
- Focus on impairment at work
- Coordinate with WC carrier



TRENDS

- **Ban the Box**—35 states, 150 cities and counties have adopted, federal government
- **Salary History Ban**—17 states, 20 localities
- **Paid Leave Initiatives**—federal government, 8 states and DC
- **Appearance Discrimination**
- **NLRB**—employer friendly decisions on handbooks



EEOC

- Retaliation: 39,110 (53.8 percent of all charges filed)
- Disability: 24,238 (33.4 percent)
- Race: 23,976 (33.0 percent)
- Sex: 23,532 (32.4 percent)
- Age: 15,573 (21.4 percent)
- National Origin: 7,009 (9.6 percent)
- Color: 3,415 (4.7 percent)
- Religion: 2,725 (3.7 percent)
- Equal Pay Act: 1,117 (1.5 percent)
- Genetic Information: 209 (0.3 percent)



Questions?

PowerPoint can be downloaded at
www.enochtarver.com

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