HR Brief

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DID YOU KNOW?

Many employers hire additional workers during the holidays. The same screening laws and EEOC guidelines that apply to regular applicants also apply to seasonal or temporary workers. Background checks for temporary workers must be just as thorough as those given to permanent workers, as employers may open themselves up to legal issues if temporary workers are only vetted through an Internet search.

However background checks for seasonal employees cannot be stricter, nor can their results be applied differently. Applicants for short-term work must be allowed to dispute findings of background checks and cannot be asked about irrelevant criminal history in "ban the box" states.

Federal Appeals Court Upholds Same-sex Marriage Bans

On Nov. 6, 2014, the U.S. Court of Appeals for the 6th Circuit upheld bans on same-sex marriage in Kentucky, Michigan, Ohio and Tennessee, determining that the issue should be decided by the regular political process in each state.

The immediate effect of the ruling allows those four states to keep laws in place that ban same-sex marriage within their borders and do not recognize same-sex marriages performed in other states.

The 6th Circuit is the first federal appeals court to uphold state bans on same-sex marriage since the U.S. Supreme Court struck down part of the federal Defense of Marriage Act (DOMA) in 2013. This decision directly conflicts with same-sex marriage decisions from the 4th, 7th, 9th and 10th Circuits, where the federal appeals courts struck down state bans on same-sex marriage.

Most observers view this conflict in appellate court rulings as the catalyst that will cause the Supreme Court to take up the issue.

Before the 6th Circuit's decision was issued, the Supreme Court announced that it would not hear appeals in other same-sex marriage cases, at least until the fall of 2015. That decision allowed rulings by three federal appeals courts to take effect that overturned same-sex marriage bans in five states. A fourth federal appeals court issued a similar ruling days after the Supreme Court's announcement.

However, with the 6th Circuit's decision, it is now possible that a Supreme Court decision on same-sex marriage could be issued as early as next summer, which may resolve the constitutional issue surrounding same-sex marriage once and for all.

One factor accelerating the process, according to SCOTUSblog, is that lawyers representing the challengers in all six of the cases affected by the 6th Circuit Court's decision have agreed that they will go directly to the Supreme Court, bypassing review requests from lower courts.

Same-sex marriage is currently permitted in 33 states and the District of Columbia.

NLRB Allows Employers to Require Social Media Disclaimers

The National Labor Relations Board (NLRB) has ruled that employers may require workers to post a disclaimer on their social media accounts stating that their views are separate from those of their employer.

In an advice memorandum, the NLRB found that, "requiring employees, when they identify themselves as the Employer's employees on various social media, to state that the views expressed are their own is lawful, because the Employer has a legitimate interest in protecting itself against unauthorized postings purportedly on its behalf."

The NLRB further found that employees, who have the right to discuss working conditions on social media, would not be unduly burdened by having to post a disclaimer.

The same memorandum ruled that employers could not ban workers from posting what they deem as confidential or sensitive information, nor could employers restrict workers from posting "embarrassing" material.

For help adopting an employee policy that requires workers to add a disclaimer when commenting about their workplace on social media, please contact Brown & Brown Benefit Advisors.

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