

June 30, 2015 www.mcvpr.com

LABOR & EMPLOYMENT LAW ALERT

Recent Legislation Affecting the Labor & Employment Law Area

OSHA issues Guide to Restroom Access for Transgender Workers

On June 1, 2015, the U.S. Department of Labor (“DOL”) Occupational Safety and Health Administration (“OSHA”) issued a publication titled “Best Practices: A Guide to Restroom Access for Transgender Workers.” OSHA’s Sanitation standard (1910.141) requires all employers under OSHA’s jurisdiction to provide employees with toilet facilities. This standard prevents employees from suffering adverse health effects which may result if toilets are not available when employees need them. In many workplaces, separate restrooms are provided for men and women. However, in some cases questions may arise regarding which restrooms certain employees should use. This may be the case for transgender employees or employees that may be transitioning from one gender to the other. Restroom restriction may result in an employee avoiding using restrooms while at work, potentially leading to serious physical injury or illness.

In light of the above, OSHA issued guidance with model practices for restroom access for transgender employees. The core belief underlying policies for restroom access is that all employees should be permitted to use the facilities that correspond with their gender identity. Each employee should determine the most appropriate option for him or her. Employers may provide other options, which employees may choose, but are not required to use, including: (1) single-occupancy gender-neutral (unisex) facilities; and (2) use of multiple-occupant, gender-neutral restroom facilities with lockable single occupant stalls.

Under OSHA’s Best Practices guide, employees cannot be asked to provide medical or legal documentation in order to have access to gender-appropriate facilities. Also, employers may not require employees to use segregated restroom facilities because of their transgender status. In general, under OSHA standards, employees may not be limited to the use of facilities that are an unreasonable distance or travel time from his or her worksite.

While the OSHA publication serves as a guidance to best practices, employers should be aware of specific laws, rules or regulations regarding restroom access and gender identity. This includes, for example, the recent amendment to Executive Order 11246 applicable to federal contractors to include sexual orientation and gender identity in its prohibition of discrimination, as well as Puerto Rico Act 22 of 2013 and its corresponding protocol which bar discrimination on account of sexual orientation or gender identity in the workplace, and also provides for access to restroom facilities that correspond to the employee’s gender identity.

Local Minimum Wage Law Amended to Allow Payroll Deductions for Donations to Certain Institutions of Higher Education

On June 8, 2015, Governor Alejandro García Padilla signed Senate Bill 1276 into law, creating Act Number 81 of 2015 (Act 81-2015). Act 81-2015 allows voluntary payroll deductions for donations to private and public colleges and universities organized as nonprofit institutions in Puerto Rico. In order to make such donations, the employee must authorize his or her employer, in writing, to make the payroll deduction in the specified amount. The employer is then responsible for sending the donation to the specified institution.

Act 81-2015 also redefines the term “Charitable Institutions” in accordance with the Puerto Rico Internal Revenue Code of 2011 to include duly accredited nonprofit institutions of higher education.

Act 81-2015 is effective immediately.

If you have any questions or comments, or wish additional information regarding the above matters, please contact any of the following attorneys:

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