

Speaker 1 ([00:00](#)):

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Kelly Bunting ([00:21](#)):

Welcome to Asked and Answered GT's Labor and Employment podcast. I'm your host Kelly Bunting, and I'm a shareholder in GT's Labor and Employment practice. I'm here with Malcolm Ingram, an associate in Greenberg Traurig's Philadelphia office. We'll be discussing some new employment laws of note and what else to expect that may be happening in 2022. Malcolm, what are some of the new employment laws that employers should be made aware of that could be coming up?

Malcolm Ingram ([00:50](#)):

Thank you, Kelly. I think we'll continue to see New Jersey continue to crack down on the misclassification of employees. New Jersey AB5892 provides that misclassifying employees to evade the payment of insurance premiums as a violation of the New Jersey Insurance Fraud Prevention Act and provides for civil penalties of up to \$5,000 for the first violation and discretionary criminal action through the Attorney General's office.

Malcolm Ingram ([01:13](#)):

Executive order 14042, which was issued by President Biden provided that federal contractors with more than 100 employees or all employers with more than 100 employees require their employees to be fully vaccinated against the COVID-19 virus or submit to weekly COVID-19 testing. This executive order was actually preliminary and joined by a Georgia Federal District Judge. This judge's order was actually appealed to the 11th circuit who also affirmed this ruling. Around the same time, we saw the Office of Management and Budget issue guidance that it would no longer take action to enforce executive order 14042.

Malcolm Ingram ([01:48](#)):

Here in Philadelphia, Philadelphia bill number 200625 was enacted which prohibits employers from requiring prospective employees to undergo testing for the presence of marijuana as a condition of employment. This amendment does not apply to public safety, federal contractors positions that require commercial driver's licenses and formal caregiver positions. Kelly, what are you seeing?

Kelly Bunting ([02:10](#)):

Well, I'm really seeing a lot of paid leave laws being passed. These family and medical leave laws, Malcolm, we're seeing more and more states are following California's lead here. Delaware is probably the most recent to enact family and medical leave. That was just signed into law in May. It's called the Healthy Delaware Families Act, and it creates a statewide family and medical leave insurance program that will let employees access up to 12 weeks of paid parental or care giving leave per year. It's similar to New Jersey's Paid Family and Medical Leave Law, that follows actually on the heels of Maryland.

Kelly Bunting ([02:58](#)):

Maryland just recently enacted a paid family medical leave law as well, and actually follows in the footsteps of both California and New Jersey in crafting its program. Now, Delaware's paid leave does not

go into effect until January 2025, and then workers can start accessing those benefits in 2026. Maryland goes into effect next year and workers can start accessing the benefits after that. But really when you think about it, we've got Oregon, Colorado, California, Washington, Maryland, Delaware, DC. These are all jurisdictions in which there are either paid family and medical leave acts in place now, or they've been introduced and have a high likelihood of passing. So I really see that as being a strong trend in 2022, 2023 and beyond.

Malcolm Ingram (04:01):

Kelly, what do you think employers can expect to see in 2022 to finish the year off?

Kelly Bunting (04:06):

Well, see this follows right on what we were just talking about. Definitely, we're going to see more of the state family and medical leave laws, at least proposed. They may not be passed, but it's a very popular thing right now in state legislatures. So we're definitely going to see more of those.

Kelly Bunting (04:25):

I'm seeing more new state data privacy laws, and we've already got Colorado just enacted one, Nevada, Virginia. The newest one of course is Connecticut. That just happened in May of this year, enacting what they call an act concerning personal data, privacy, and online monitoring. Now, what's important for employers to note about each of the state's laws that I just referenced is none of those state's laws actually cover employers yet. We can see what happened in California. California passed the data privacy law. It did not initially apply to employers and then they come along and they amend the law to specifically apply to the sorts of personal data and information collected by employers about their employees and that new amendment to the law just went into effect this year.

Kelly Bunting (05:22):

So I do see that's going to be a trend as well, that some of these data privacy laws, which have been so popular are going to be amended to start applying to the kinds of information that employers collect. I also definitely see more non-compete laws, or I guess I should say restrictions on non-compete laws. You've got a bunch of states now, Colorado, Washington, again, following California's lead in either banning non-compete outright like Washington DC's law, which still isn't in effect. It was supposed to go into effect last year and the businesses came out saying, "Look, it's really going to be an issue. Can you please delay it?" It was delayed until March. It's now been delayed until October 1st of this year.

Kelly Bunting (06:14):

We'll see if it actually goes into effect, but the other states have already passed their non-compete laws, whether as I said, it's banning it outright or severely restricting non-competes to only apply to very high wage earners as much as \$250,000 and above a year. Those are going to be the only employees, true executives that these laws will apply to in certain jurisdictions like Illinois and like Washington. So I definitely see more of those laws coming out as well. What about you, Malcolm? What do you see as far as the new laws in 2022 and beyond, or at least what's being considered by these various state legislatures?

Malcolm Ingram (07:02):

I think we're going to see a lot of employers consider unlimited vacation or creative vacation packages for their employees as they continue to navigate the great resignation. Because of the pandemic,

employees and employers have had to find ways to become creative to keep employees engaged, to bring them back into the office. I have seen some larger companies set forth unlimited vacation packages as a way to keep their employees happy, boost morale, keep employees engaged. I think we'll continue to see that throughout the new year and into 2023.

Kelly Bunting ([07:30](#)):

And it's all to counter the great resignation, right? I know that's one of your favorite topics to discuss, but are you seeing any other benefits that employers are offering that are a little unusual in addition to the unlimited vacation, which I know a couple of tech companies have offered, some big Wall Street companies are offering that. I've seen pet insurance, that's become like really hot, right? That not everybody has children, but most people do have a dog or a cat and it's a nice benefit to offer your employees. Have you seen anything else that's maybe a little unusual as a way for employers to try to keep their employees engaged or to try to attract new employees?

Malcolm Ingram ([08:14](#)):

Sure. I have seen employers actually pay for parking as a way to get employees to come back into the office.

Kelly Bunting ([08:19](#)):

That's important. That's important in big cities, for sure.

Malcolm Ingram ([08:22](#)):

That's right, or pay for their trans passers, their trail passes, make it easier for the employee to come into the office. There's no financial barrier prohibiting employees. I've also seen employers have breakfast once a week, lunch once a week as a way to kind of get employees to look forward to coming in and not have to worry about paying for breakfast or lunch, as well as happy hours at the office, just to bring people back in to celebrate coming together after a long two and a half years.

Kelly Bunting ([08:47](#)):

I mean, who knew that work could actually be fun. Thank you so much for joining me on Asked and Answered, GT's Labor and Employment podcast. It was a really a pleasure to talk to you and hopefully you'll come back and talk to us again.

Malcolm Ingram ([09:03](#)):

Thank you, Kelly.