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#METOO ON THE MOVE: NEW SEXUAL HARASSMENT LEGISLATION MAY IMPACT EMPLOYERS

In the year or so since the #MeToo and #TimesUp movements shined a national media spotlight on sexual harassment in the workplace, the issue has reached several courts and state legislatures as well. As a result, employers may now be required to take additional action in developing policies and procedures to address sexual harassment, training employees to raise and respond to issues in the workplace and promoting safe work environments.

In the past 30 months, elected officials in a number of states passed over 260 laws directly addressing topics supported by the anti-sexual harassment initiatives. Most of the proposals related to the actions of legislators and government employees, but some were directed towards all employers or private sector employers specifically. In summary:

- 12 states (Arizona, California, Delaware, Illinois, Louisiana, Maryland, Nebraska, New York, Oregon, Tennessee, Vermont and Washington) made new laws that affect both private and public employers.
- 8 states (California, Delaware, Florida, Louisiana, Maine, Maryland, New York and Oregon) passed legislation that requires regular sexual harassment training for employees at various levels.
- 7 states (Arizona, California, Maryland, New York, Tennessee, Vermont and Washington) limited or restricted the use of nondisclosure agreements in cases involving sexual harassment claims.
- 4 states (Maryland, New York, Vermont and Washington) limited employers' ability to enforce mandatory arbitration for workplace sexual harassment claims in employee contracts. The impact of these legislative moves may be blunted by the Supreme Court of the U.S.'s decision in *Epic Systems Corporation v. Lewis*, discussed in more depth below.

Some case law developments will also influence how employers choose to handle sexual harassment claims. For instance, in *Minarsky v. Susquehanna County*, the Third Circuit Court of Appeals decided on July 3, 2018 that Sheri Minarsky's four-year delay in notifying her employer, Susquehanna County, of sexual advances made by her supervisor was not unreasonable. The Court agreed with Minarsky and acknowledged her fear of job loss due to financial need in light of her daughter's cancer treatments for not reporting her supervisor's behavior earlier. The Supreme Court of the U.S. heard *Epic Systems Corporation v. Lewis* and questioned whether employment contracts requiring individualized arbitration for resolving disputes are enforceable if they are intended to prevent multiple employees from suing an employer jointly. The Supreme Court held that arbitration agreements providing for one-on-one or individualized proceedings must be enforced, and neither the Federal Arbitration Act's saving clause nor the National Labor Relations Act suggests otherwise.

Hall Render has discussed sexual harassment policies and related employment issues in prior posts on November 30, 2017; January 12, 2018; June 29, 2018; and July 24, 2018, and we will continue monitoring these developments and their impacts on your organizations going forward.

If you have any questions or would like additional information about this topic, please contact:

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