

# IS THIS YEAR OVER YET?.... LOOKING AHEAD TO EMPLOYMENT LAW CHANGES IN 2021

DECEMBER 9, 2020

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# TODAYS AGENDA

- Preparing for Another COVID Wave
- Potential Action From the Lame Duck Congress
- Anticipated Changes Under the Biden Administration
- Potential State Law Developments

# PREPARING FOR A COVID-19 WINTER

- Create or review your telework policy
- Update and review leave policies for 2021
- Create or review employee travel and event policies
- Monitor WARN Act requirements

# KEY QUESTIONS WHEN LOOKING AT YOUR TELEWORK POLICY

- Does our policy address telework job expectations?
- Are work hours or overtime restrictions made clear?
- Do we have a system for addressing IT issues and remote access protocols?
- Have we addressed potential workers compensation issues?
- Have we made it clear that telework is not a substitute for childcare?

# KEY ISSUES TO LOOK AT WHEN ADDRESSING LEAVE POLICIES

- Accrual rates
- Year-to-year rollover issues
- Payout/forfeiture at termination
- Compliance with local and states leave laws

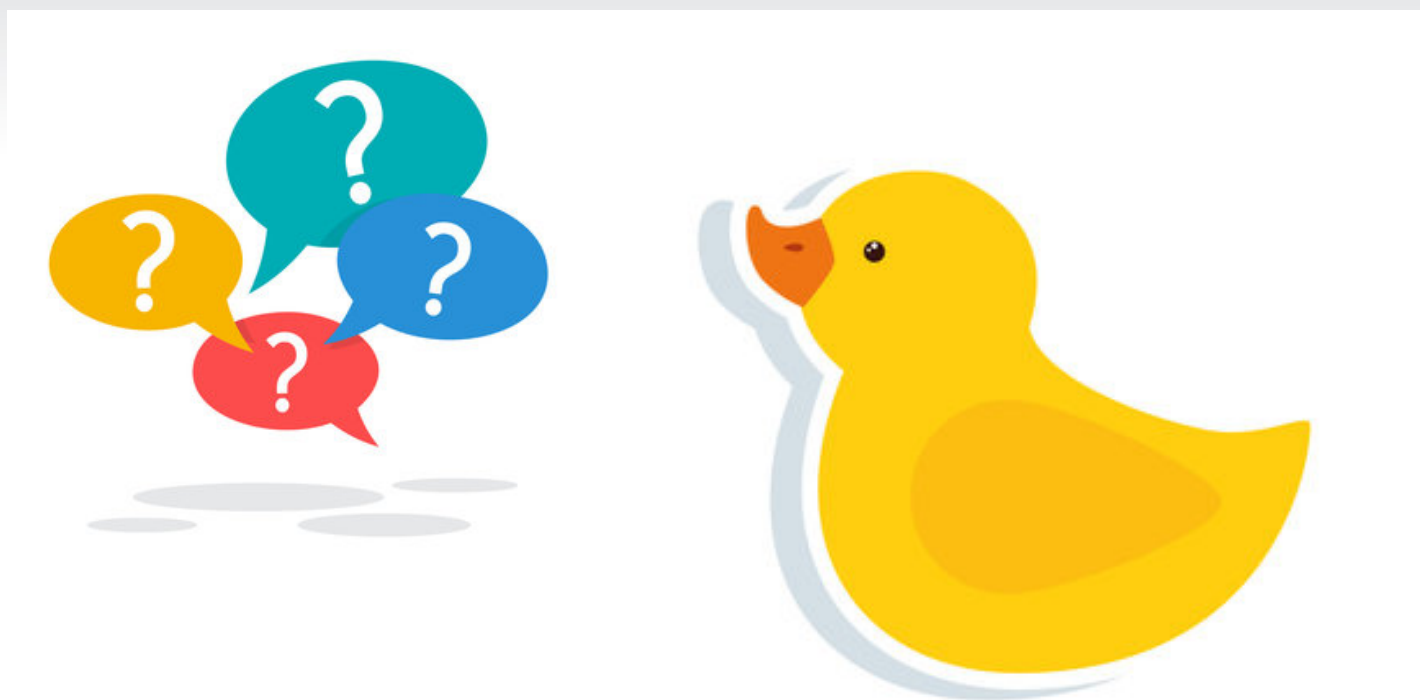
# EMPLOYEE TRAVEL AND EVENTS POLICIES

- Restrictions on business-related travel
- Restrictions on personal travel
  - What are the parameters?
  - What is the policy on quarantining upon return?
  - What is the policy on testing on return?
- Restrictions on personal attendance at large gatherings
  - What are the parameters?
  - What is the policy on employee's disclosing attendance?
  - What is the policy on returning to the workplace?

# MIND YOUR WARN ACT REQUIREMENTS

- Federal WARN Act applies to businesses with 100 or more employees in the event of –
  - A permanent shutdown of a worksite causing 50 or more employees to lose their jobs in any 30 day period OR
  - A mass layoff in which at least 50 employees and at least 33% of the workforce at a single site is laid off within a 30 day period
- Furloughs longer than 6 months are counted as a layoff
- Maryland mini- WARN Act

# WHAT TO EXPECT FROM THE LAME-DUCK CONGRESS





# WHAT TO EXPECT UNDER THE NEW BIDEN ADMINISTRATION

- COVID as #1 priority
- Swift action from OSHA
- An ambitious agenda on labor and employment that will likely divide along the lines of what items require legislative action and what can be accomplished through the regulatory process

# THE BIG OPEN QUESTIONS

- Which party will control the Senate?
- What will the Supreme Court do with the Affordable Care Act (ACA)?

# NEW BOSS NEW RULES

- A new Administration has a few tools at its disposal to undo the administrative actions of the prior administration
  - Congressional Review Act
  - Stop work order/ withdrawal of proposed rules
  - Changing stance on defending challenged rules
  - New rulemaking
  - Executive Orders

# BIDEN'S INCOMING PRIORITIES

- Increasing the minimum wage
- Paid family leave
- Pay equity
- Independent contractor classification rules
- Joint employer rules
- Overtime rules
- Non-compete and no-poaching agreements
- Mandatory arbitration clauses and class action waivers

# MINIMUM WAGE

- President-Elect Biden has proposed increasing the minimum wage to \$15
- Requires Congressional act
- 2021 - State and Local Minimum Wage Increases
  - Maryland (January 1)
    - 15 or more employees = \$11.76 per hour
    - Less than 15 employees = \$11.60 per hour
  - Montgomery County (July 1)
    - \$15 (over 50 ees) / \$14(11-50 ees) / \$13.50 (10 or less ees)

# PAID FAMILY LEAVE

- Bi-partisan support in Congress
- Families First Coronavirus Response Act (FFCRA) recent example
- States and localities – like Maryland and Montgomery County – have been acting because Congress has not

# PAY EQUITY

- Paycheck Fairness Act and similar proposals
  - Look a lot like Maryland Equal Pay for Equal Work Act
- Restoring EEO pay data reporting requirements

# INDEPENDENT CONTRACTOR RULES

- Big area for potentially significant nationwide change
- The Biden Administration could dramatically change the landscape without Congressional action
- ABC Test?



# NON-COMPETITION AND NO-POACHING AGREEMENTS

- Limiting the use of non-competes is typically a partisan issue
- There is somewhat more bi-partisan support for prohibiting no-poaching agreements
- Issue can be addressed through legislative or regulatory action

\* Don't forget the Maryland Non-Compete and Conflicts of Interests Law effective October 1, 2019

# MANDATORY ARBITRATION CLAUSES AND CLASS ACTION WAIVERS

- Requires Congressional action
- Subject to significant partisan divide

# POTENTIAL STATE AND LOCAL ACTIONS

- Maryland General Assembly will convene January 13, 2021
- Potential extension of COVID-19 Public Health Emergency Protection Act of 2020

# THANK YOU!

## Q+A

If you have any questions, please don't hesitate to contact me.

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