The Times, They Are A-Changing…Flexible Work Required?

Labor & Employment Law Update

By Julie Proscia on March 20, 2014

Flexible work weeks have traditionally been viewed as a perk that large employers were able to give their employees because of their size and depth. This was a privilege that was generally earned on a case by case basis after an examination of the position and the employee. This is not necessarily the case anymore in San Francisco.

The San Francisco Board of Supervisors amended its city's Family Friendly Workplace Ordinance (FFWO) on January 7, 2014 to clarify that the ordinance applies to all employers with at least 20 employees, regardless of the employees' location. The amendment became effective on February 14, 2014. This means that if you have 15 employees in San Diego, 4 employees in San Jose and only 1 employee in San Francisco, the lone San Francisco employee is covered by the ordinance.

The FFWO requires that employers with 20 or more employees allow employees who are employed in San Francisco and who have been employed for six or more months (by their current employer) and work at least eight hours per week on a regular basis to request a flexible or predictable working arrangement to assist with caregiving responsibilities. Employees may request this change twice per every 12 month period. The employee may request the flexible or predictable working arrangement to assist with care for:

1. A child or children under the age of eighteen;
2. A person or persons with a serious health condition in a family relationship with the employee; or
3. A parent (age 65 or older) of the employee.

Employers have several obligations under the new law. First, employers are required to post a notice informing employees of their rights under the law. The notice must be posted in English and any language spoken by at least 5% of the employees in that workplace. A link to the notice follows: http://sfgsa.org/modules/showdocument.aspx?documentid=11256

Second, businesses must implement request forms and within 21 days of an employee's request for a flexible or predictable working arrangement, an employer must meet with the employee regarding the request. Just because you meet with the employee within 21 days does not mean that the request can automatically be denied. Rather, an employer who denies a request must explain the denial in a written response that sets out a *bona fide* business reason for the denial and provides the employee with notice of the right to request reconsideration.

This law and the request and response process are akin to the interactive process required by the ADA and should be viewed similarly. When employers are determining whether or not a request should be granted, they should evaluate if the request would pose an undue burden and the impact on hiring and retraining another individual. Moreover, documentation pertaining to the request is required to be kept for a period of three years from the date of the request. One thing that we can say about the state of California, green does not mean reduced recordkeeping.

The Times, They Are A-Changing…- Flexible Work Required?