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Trending Employment Law Issues for 2023

Presented to ACC Baltimore

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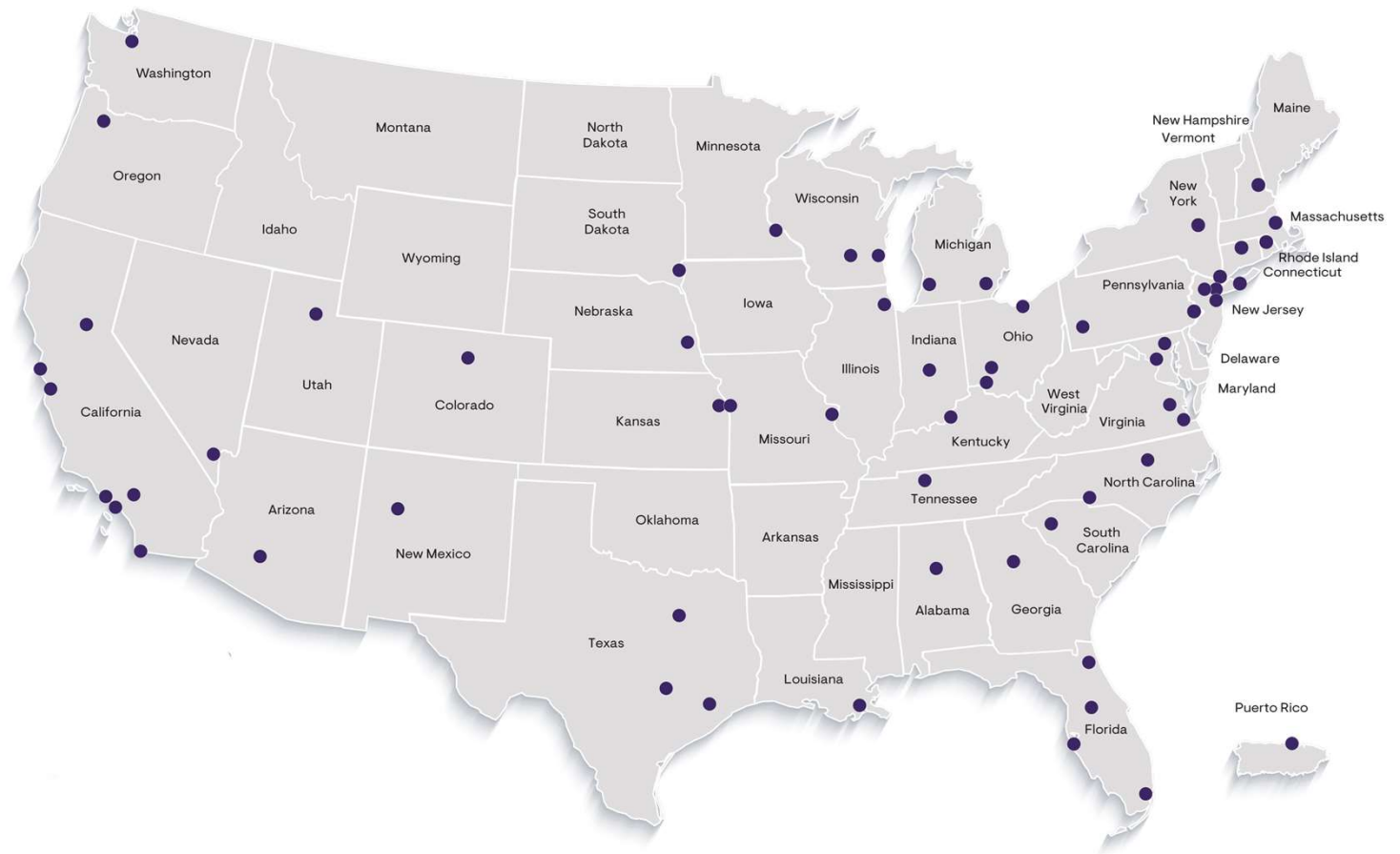
Strategically located to serve employers' needs

61

Locations Nationwide

950+

Attorneys



Practice & Industry Groups

Advice and Counsel

Affirmative Action, OFCCP and
Government Compliance

California Advice and Counsel

Class Actions and Complex
Litigation

Construction

Corporate Diversity Counseling

Corporate Governance and Internal
Investigations

Disability, Leave and Health
Management

Employee Benefits

Environmental, Social and
Governance

ERISA Complex Litigation

Financial Services

Healthcare

Higher Education

Hospitality

Immigration

International Employment

Labor Relations

Life Sciences

Litigation

Manufacturing

Pay Equity

Privacy, Data and Cybersecurity

Real Estate

Restrictive Covenants, Trade
Secrets and Unfair Competition

Retail

Sports

Technology

Transactional Services

Trials and Appeals

Wage and Hour

Workplace Safety

Workplace Training

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Coming Soon in 2023!
Employment Law Update

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Maryland's Time to Care Act

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12.12.2022

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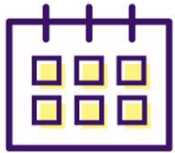
What Rights Will Employees Have

- Partially Paid and Job Protected Leave
 - To care for a child during the first year after the child's birth or after the placement of the child through foster care, kinship care, or adoption;
 - To care for a family member with a serious health condition;
 - Because the covered individual has a serious health condition that results in the covered individual being unable to perform the functions of the covered individual's position;
 - To care for a service member who is the covered individual's next of kin; or
 - Because the covered individual has a qualifying exigency arising out of the deployment of a service member who is a family member of the covered individual.



Who is Eligible & Covered?

- **Employees:**
 - Anyone who worked 680 hours in the prior 12 months (anywhere)
 - Experiencing a qualifying reason
- **Employer:**
 - All must provide leave
 - Only those with 15 employees must contribute



How Much Leave?

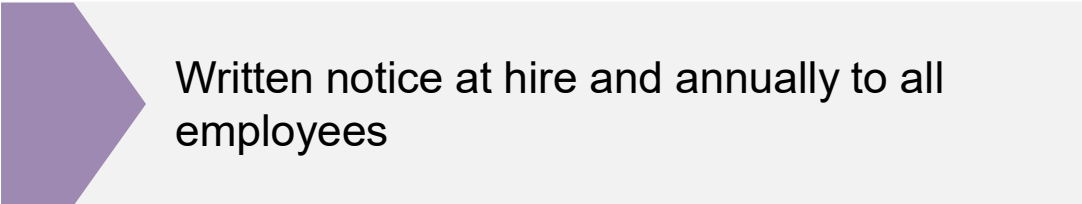
- Up to 12 weeks/year
 - Rolling basis measured from the day the employee files an application for benefits.
- Additional 12 weeks possible if experiencing leave for a serious health condition AND leave for placement of a child or birth.

Important Dates

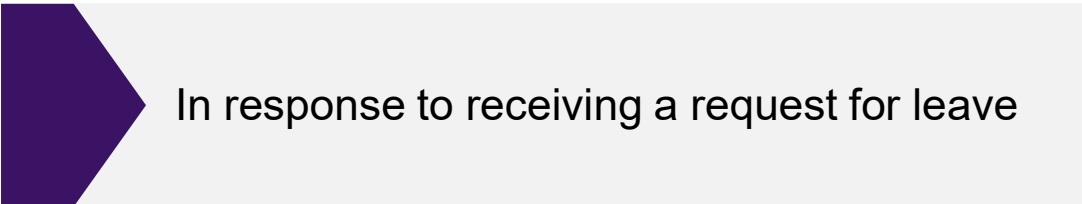
- Notice: January 1, 2023
- Regulations: January 1, 2023
- Contributions: October 1, 2023
- Leave: January 1, 2025



Employer Notice



Written notice at hire and annually to all employees



In response to receiving a request for leave



Handbook?

Contributions: Who?



Details of Leave



Job Protection



Overlap with Other Benefits



Notice



Continued health benefits

Many Open Questions

Maryland's Mini-WARN

Is it in effect?

Update on the Economic Stabilization Act:

The Economic Stabilization Act was enacted under Article II, § 17(c) of the Maryland Constitution on May 30, 2021 and the Department of Labor is actively working to develop regulations that facilitate implementation. Should you have an interest in this topic, we encourage you to check the [Maryland Register Online](#) or contact our Department's Dislocation Services Unit at sheila.bouloubassis@maryland.gov.

<https://www.dllr.state.md.us/employment/warn.shtml>



Comparison to WARN

- Lower coverage threshold
- Lower threshold triggering event
- Notice
 - Government officials
 - Employees
- Limited Exceptions
- Offer to transfer



Should Employers Comply?

- Penalties
 - No private cause of action
- Regulations
 - Comment period

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The Latest Updates on the NLRB and Union Organizing

Chelsea Hartnett

12.12.2022

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“State of The Unions”

- Unions are in decline
 - Bureau of Labor Statistics reports union membership in 2022 was 6.1% of the private sector workforce (10.3% in total – including public sector employees)*
 - Compare to 1955 at 36% and to 1983 at 20.1% union membership
- Unions are motivated to recover lost ground.

*Source: U.S. Bureau Labor Statistics, *Union Members* - 2021

Support for Unions: Highest in Years*

Survey: 71% of Americans approve of labor unions

- Highest since mid-1960s

Survey: 42% of non-managerial, non-union respondents would vote for a union

- Significantly higher than responses in previous years
- 1977 (33%); 1995 (32%)

Sources: Gallup “U.S. Approval of Labor Unions at Highest Point Since 1965” August 30, 2022, available at https://news.gallup.com/poll/398303/approval-labor-unions-highest-point-1965.aspx?utm_source=alert&utm_medium=email&utm_content=morelink&utm_campaign=syndication; MITWorker Voice Study, Harvard Kennedy School of Government and MIT Sloan School of Management (January 2018, Jeremy Avins, Megan Larcom, Jenny Weissbourd)

Organizing is Up



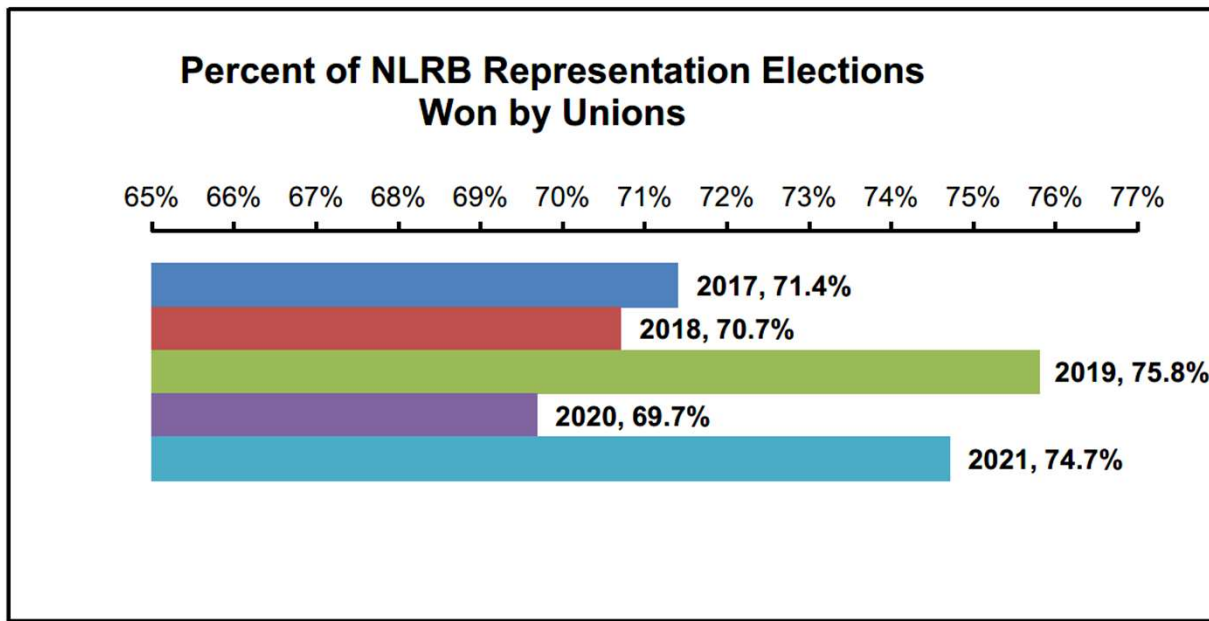
- 2,510 petitions filed in FY 2022.
- Compared to last year during the same period, there were only 1,638 petitions filed.
- Public activism all time high
- Wake of COVID organizing high



Source: NLRB Press Release dated October 6, 2022

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Unions are Winning



- Unions prevailed in **74.7%** of representation elections in 2021.
- The win rate rose above **70%** for the fourth time in the last five years.
- Unions have won more than **60%** of all representation elections in each of the past 17 years.

Reawakening of Employee / Public Activism

Media pressure on companies to demonstrate social responsibility.

Public demand on employers to provide workplace protections and benefits.

Increased support for protests and demonstrations for COVID-19 worker issues, Black Lives Matter, “Me too” movement and other causes.

Employee walkouts, work stoppages, and demonstrations.

Change.org, Coworker.org, and other petitions.

Increased awareness and engagement in protected, concerted activities.

Caffeinated Organizing

- New corporate campaign tactic
- Small stores nationally with coordinated union organizing
- Decentralized management
- Generational management closer to employees than corporate
- Driven by employees, not the union
- Social media campaigns
- Issues appeal to Gen Z and Millennials
 - Social justice, Pay Equity and DEI
 - Voice in the workplace
 - COVID and safety issues
 - Remote work opportunity



Expansion into Certain Industries

- Fast casual food, coffee shops, retail
- Tech
- Media
- Cannabis
- Higher Education – graduate students
- Healthcare – medical residents, fellows, interns



What Do Employees Want?

- Work with purpose and meaning / connection to the mission
- Trust in leadership
- Opportunity to use talents and strengths
- Communication / a voice at work
- Fair and consistent treatment
- Recognition and appreciation
- Respectful workplace / sense of community at work
- Demonstrated commitment to DEI
- Safe, healthy work environment
- Wages and benefits that support the person / family (Ex: a Living Wage)
- Opportunities for growth
- Flexibility / balance / job fits life
- Job security

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Changing Benefits: What's an Employer to Do?

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12.12.2022

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New Benefit Trends: Welfare and Fringe

- Employers are looking for new options to incentivize/retain
 - Family Building Benefits
 - Adoption/surrogacy/fertility (versus infertility)
 - Adoption/surrogacy can be offered to all - aligns with DEIB initiatives
 - Possible to self-administer
 - Can come with tax benefits (qualified adoption; Section 213(d) medical expenses
 - Caution: tax favored benefits come with compliance considerations, including non-discrimination and plan document requirements
 - Be careful of Section 409A!
 - Avoid the accidental group health plan
 - Tuition/Student Loan Benefits
 - Many of the same considerations as qualified adoption assistance, including tax benefits and non-discrimination requirements



New Benefit Trends: Welfare and Fringe

- Medical Travel Benefits in a Post-*Dobbs* World
 - May be targeted or broad based
 - Broad based may avoid the EEOC actions in the news
 - Another example of the accidental group health plan
 - COBRA, HIPAA, ERISA will apply
 - Must be either paid through the group health plan (easier to do with self-insured) or utilize another compliant vehicle
 - HRA (generally must be integrated due to the ACA's market reforms)
 - “Lifestyle” account
 - Who will administer?
 - Subject to Code limits (\$50/night per person; \$.22/mile) for deductible medical travel expenses
 - State law considerations – ERISA preemption is an open question

Retirement Plan Changes

- SECURE Act 2.0?
 - Increase the age again for RMDs
 - Up to age 75 (from 72) over a period of years
 - Also reduces the excise tax (50% to 25%) for missed RMDs
 - Change in the long-term part time employee rule from 3 years to 2 years
 - Higher catch-up limits for 62–64-year-olds
 - Codify student loan payment/matching contribution design choice
 - Allows small incentives (gift cards) to encourage plan participation
 - 401(k) plans can include emergency savings accounts
- Some of the above are in the House version, and some in the Senate committee versions – we don't yet know what the final will be.





Retirement Plan Changes

- ESG Retirement Plan Investments
 - Final rule from the Biden Administration allows ESG factors to be considered
 - Broadens the prior “tie-breaker” test
 - Clarifies there is no mandate to consider ESG
 - Generally fiduciary considerations will still apply – investments must be prudent; in the best interest of plan participants
 - Participant input can be considered

Questions?

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Thank you.