

Ancel Glink Labor and Employment Attorneys Present at Heartland Community College - Normal

**Ancel
Glink**

DIAMOND BUSH
DiCIANNI
& KRAFTHEFER

*Your Local Government
Attorneys*

MAIN OFFICE:
140 S. DEARBORN STREET, 6TH FL.
CHICAGO, ILLINOIS 60603

PHONE: 312-782-7606
FAX: 312-782-0943
WWW.ANCELGLINK.COM

OTHER OFFICE LOCATIONS:
175 E. HAWTHORN PARKWAY,
VERNON HILLS, ILLINOIS 60061
(847) 247-7400

101 N. MAIN STREET, SUITE 2
CRYSTAL LAKE, ILLINOIS 60014
(815) 477-8980

1979 MILL STREET, SUITE 207
NAPERVILLE, ILLINOIS 60563
(630) 596-4610

202 N. PROSPECT ROAD, SUITE 203
BLOOMINGTON, ILLINOIS 61704
(309) 828-1990

THURSDAY, FEBRUARY 16, 2017

8:30 A.M. – 11:15 A.M.

New Employment Law Changes

PRESENTERS:

MARGARET KOSTOPULOS

ROBERT T. McCABE

JEFFREY M. BROWN

New Employment
Legislation

By: Margaret Kostopulos
Robert T. McCabe
Kathleen O'Grady

Ance! Glink BUSINESS BOOKS, EBOOKS & CRAFT PROJECTS

© 2017 Ance! Glink All Rights Reserved

I. Leave In Many of Its Glorious Forms
One of THE Overall Hottest Topics




"We're a small company, so sick leave means if you get sick you leave."

Ance! Glink BUSINESS BOOKS, EBOOKS & CRAFT PROJECTS

© 2017 Ance! Glink All Rights Reserved

1. Mandated Paid Sick Leave

- A. Growing trend towards requiring employers to give **minimum paid sick leave** benefits.
- B. Cook County, City of Chicago, Seattle, State of New York and others states and municipalities have passed ordinances **ensuring sick leave for all employees** in the locality.
- C. The **problem** is that this generosity is not always well received.



Ance! Glink BUSINESS BOOKS, EBOOKS & CRAFT PROJECTS

© 2017 Ance! Glink All Rights Reserved

1. Mandated Paid Sick Leave

- D. How can a municipality **counter** this?
- Some **home rule** communities have adopted ordinances **invalidating** county ordinances.
 - Otherwise, be aware and ensure your policies **conform**.
- E. How can entities **other than home rule** municipalities counter this?
- We haven't figured that out yet, but we're working on it!

Ancel
Glink

Business Rules
EXPLANATIONS
& CRAFTING

© 2017 Ancel Glink All Rights Reserved

2. Employee Sick Leave Act

You have to wonder about legislation that is amended within the first 14 days of enactment.



Ancel
Glink

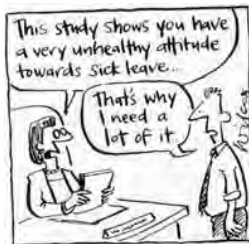
Business Rules
EXPLANATIONS
& CRAFTING

© 2017 Ancel Glink All Rights Reserved

2. Employee Sick Leave Act

A. Who Gets It?

- All employees who receive any amount of sick leave benefit
- This includes paid or unpaid time off
- This **does not include FMLA**, long or short term disability whether paid for by the employer or in the form of insurance



Ancel
Glink

Business Rules
EXPLANATIONS
& CRAFTING

© 2017 Ancel Glink All Rights Reserved

2. Employee Sick Leave Act

B. How does the Act expand employee rights?

- Ensures the rights of employees to use sick leave for certain family members
- Does not ensure the right to receive sick leave



Ancel Glink

Business Risk
Insurance
& Financial

© 2017 Ancel Glink All Rights Reserved

2. Employee Sick Leave Act

C. What family members are covered?

The Employee's:

- Child
- Stepchild
- Spouse
- Sibling
- Parent
- Mother-in-law
- Father-in-law
- Grandchild
- Grandparent
- Stepparent
- Domestic partner



Ancel Glink

Business Risk
Insurance
& Financial

© 2017 Ancel Glink All Rights Reserved

2. Employee Sick Leave Act

D. When can an employee use sick leave for these family membe

For any covered family member's:

- Injury
- Illness
- Medical appointment



"Reflexes seem normal. You kept him waiting over two hours."

Ancel Glink

Business Risk
Insurance
& Financial

© 2017 Ancel Glink All Rights Reserved

2. Employee Sick Leave Act

E. Is there a limit on the amount of sick leave that can be used for covered family members?

Yes

The Act provides that an employee can use the sick leave that he or she would accrue in six months of employment for covered family members.

Ance! Glink

Business Rules
Explained
& Crafted

© 2017 Ance! Glink All Rights Reserved

2. Employee Sick Leave Act

F. What the heck does that mean?

- That means that if your employees accrue sick leave incrementally, it is the amount that they would accrue in 6 months
- If your employees accrue sick leave annually, then they are entitled to use half of it for covered family members

Ance! Glink

Business Rules
Explained
& Crafted

© 2017 Ance! Glink All Rights Reserved

2. Employee Sick Leave Act

G. What if you have a sick leave bank for employees?

- The law remains unclear on that. A close examination of the policy or contract provision is required.
- Can be restricted or differentiated from sick leave by definition – such as short or long term disability leave.



Ance! Glink

Business Rules
Explained
& Crafted

© 2017 Ance! Glink All Rights Reserved

2. Employee Sick Leave Act

H. Can the use of sick leave for family members be restricted in any other ways?

- The use of sick leave for family members must be consistent with employee use restrictions for themselves



"You'd better have a good excuse for missing work yesterday, Feldt... oh, never mind."

Ancel Glink
BUSINESS RISK
DISCLOSURE
& CRAFTSMEN

© 2017 Ancel Glink All Rights Reserved

2. Employee Sick Leave Act

- For example, if employees can use $\frac{1}{2}$ day increments for themselves, then they can use $\frac{1}{2}$ day sick leave for family members.
- Or, if an employee has to bring a doctor's note after three days of absence due to illness, then the same rule applies if the employee is out for family illness.

Ancel Glink
BUSINESS RISK
DISCLOSURE
& CRAFTSMEN

© 2017 Ancel Glink All Rights Reserved

2. Employee Sick Leave Act

I. Does the Act automatically change the terms of our existing union contracts?

No

Employers can rely on the terms of current contracts and bargain for terms inconsistent with the Act in the future.

Ancel Glink
BUSINESS RISK
DISCLOSURE
& CRAFTSMEN

© 2017 Ancel Glink All Rights Reserved

2. Employee Sick Leave Act

J. Does the Employee Sick Leave Act apply to public employers?

Yes

Ancel Glink
DISCIPLINARY
& CRAFTSMAN

© 2017 Ancel Glink All Rights Reserved

3. Vacation Policies

In August of 2014, the Illinois DOL added the following amendment to the Illinois Wage Payment and Collection Act: An employer **cannot effectuate a forfeiture of earned vacation** by a written employment policy or practice of the employer.



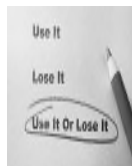
Ancel Glink
DISCIPLINARY
& CRAFTSMAN

© 2017 Ancel Glink All Rights Reserved

“Use It Or Lose It” Vacation Policies are Still Okay

An employer may utilize a “use it or lose it” vacation policy as long as

- it is in accordance with 56 Ill. Adm. Code 300.520(f)
- the employer gives the employee a **reasonable opportunity to take the vacation**
- the employer can demonstrate that the **employee had notice of the “use it or lose it”** nature of the policy (300.520 (e)).



Ancel Glink
DISCIPLINARY
& CRAFTSMAN

© 2017 Ancel Glink All Rights Reserved

“Use It Or Lose It” Vacation Policies are Still Okay

- However, an employer cannot change a vacation policy in which vacation time already earned is forfeited by an employee because 56 Ill. Adm. Code 300.520 (h) provides “An employer cannot effectuate a forfeiture of earned vacation by a written employment policy or practice of the employer.”

Ance! Glink
BUSINESS RISK
DISCLOSURE
& CRAFT PROJECTS

© 2017 Ance! Glink All Rights Reserved

If an employer has a calendar year “use it or lose” it accrued vacation policy and an employee fails to take all earned vacation by the end of the calendar year, is that time forfeited?

Ance! Glink
BUSINESS RISK
DISCLOSURE
& CRAFT PROJECTS

© 2017 Ance! Glink All Rights Reserved

- Yes, the DOL says if a policy gives the employee a reasonable opportunity to take the vacation and the employer can demonstrate that the employee had notice of the “use it or lose it” nature of the policy, there is no violation of Section 300.520 (f) and (h) and vacation days not taken by the end of the calendar year are lost.

Ance! Glink
BUSINESS RISK
DISCLOSURE
& CRAFT PROJECTS

© 2017 Ance! Glink All Rights Reserved

4. Child Bereavement Leave Act

A. Who gets it?

- Employees who are otherwise qualified but have not exhausted FMLA leave.

B. What employers are covered?

- Only employees who are covered by FMLA

C. How many of you think that all public employers are covered by FMLA?

D. How much time may an employee take off for the death of a child?

- Up to 10 days for the death of a child or up to 6 weeks for the death of a second child.

Ance! Glink
BUSINESS RISK
DISCLOSURE
& CRAFT PROJECTS

© 2017 Ance! Glink All Rights Reserved

E. Are there any other restrictions?

- The leave must be completed within 60 days of the date of death of the child;
- The employer is entitled to 48 hours notice of the leave unless that it not practicable;
- An employer may ask for verification of the child's death or the relationship of the individual to the employee.

Ance! Glink
BUSINESS RISK
DISCLOSURE
& CRAFT PROJECTS

© 2017 Ance! Glink All Rights Reserved

F. What does this Act not cover?

- It seems to restrict the use to actual biological parent/child relationships.
- It contains no age restrictions;
- It does not mention coordination with other bereavement leave. We see it as an extension of, not an addition to, other bereavement leave.

Ance! Glink
BUSINESS RISK
DISCLOSURE
& CRAFT PROJECTS

© 2017 Ance! Glink All Rights Reserved

G. Employees may use unpaid bereavement leave:

1. to attend the funeral, or an alternative to a funeral, of a child;
2. to make arrangements necessitated by the death of the child; or
3. to grieve the death of the child.

Ancel
Glink

Business Risk
Insurance
& Estate Planning

© 2017 Ancel Glink All Rights Reserved

5. Victims Economic Safety and Security Act (VESSA)

Up until January 1, 2017, VESSA only applied to employers with 15 or more employees. VESSA now provides benefits to all employers, regardless of the size of the workplace.



Ancel
Glink

Business Risk
Insurance
& Estate Planning

© 2017 Ancel Glink All Rights Reserved

A. What Does VESSA Do?

It provides unpaid leave, similar in nature to FMLA, to employees who are victims of domestic or sexual violence or whose family members or household members are victims of domestic or sexual violence.

Ancel
Glink

Business Risk
Insurance
& Estate Planning

© 2017 Ancel Glink All Rights Reserved

B. How Much Time Can an Employee Take Off Work?

Employees who work for an employer with no more than 14 employees will be entitled to 4 workweeks of unpaid leave in any 12-month period to address issues related to domestic or sexual violence.



Ancel
Glink

Business Law
DISCUSSION
& CRAFT PROJECT

© 2017 Ancel Glink All Rights Reserved

6. FMLA Leave To Care For Autistic Child

Employers are required, under FMLA, to grant intermittent leave in order to care for children with a serious health condition.



Ancel
Glink

Business Law
DISCUSSION
& CRAFT PROJECT

© 2017 Ancel Glink All Rights Reserved

II. Privacy in the Workplace



Ancel
Glink

Business Law
DISCUSSION
& CRAFT PROJECT

© 2017 Ancel Glink All Rights Reserved

Employers Have a Legitimate Interest in Monitoring

- Investigation and prevention of workplace harassment or workplace violence.
- Is an employee participating in illegal activities (gambling, pirating)?



Ance! Glink
BUSINESS BRIEF
DISCUSSION
& CRAFT PROJECT

© 2017 Ance! Glink All Rights Reserved

Employers Have a Legitimate Interest in Monitoring

- Is confidential information being disclosed?
- Are employees being productive?
- Are employees acting in accordance with established policies?

Ance! Glink
BUSINESS BRIEF
DISCUSSION
& CRAFT PROJECT

© 2017 Ance! Glink All Rights Reserved

1. Privacy Under the Fourth Amendment



Governmental employees may have an expectation of privacy under the Fourth Amendment, while private sector employees cannot typically evoke Fourth Amendment protections (although there could be other bases for privacy claims)

Ance! Glink
BUSINESS BRIEF
DISCUSSION
& CRAFT PROJECT

© 2017 Ance! Glink All Rights Reserved

A. O'Connor v. Ortega

1. To assert protection under the Fourth Amendment, employee must prove "that he personally had an expectation of privacy in the place searched, and that his expectation was reasonable"
2. Based upon a government employer's "special needs," it may conduct workplace searches so long as they are reasonable

Ance! Glink
BUSINESS BRIEF
DISCUSS
& CRAFT QUESTIONS

© 2017 Ance! Glink All Rights Reserved

B. What Are Special Needs?

The purpose of a search is legitimate at its inception and the scope is reasonably related to the employer's objectives. Simply put, employers searches must be reasonable under the circumstances.



Ance! Glink
BUSINESS BRIEF
DISCUSS
& CRAFT QUESTIONS

© 2017 Ance! Glink All Rights Reserved

C. City of Ontario v. Quon

- (1) a review of two months of text messages was a reasonable time frame
- (2) the exclusion of text messages sent outside work hours demonstrated that the City of Ontario was trying not to intrude on Quon's personal privacy
- (3) Quon had been informed of the City of Ontario's policy on acceptable use
- (4) as a SWAT team member, Quon should have known that his actions were likely to come under scrutiny
- (5) a reasonable employee should have expected a periodic audit of the pager text messages.


Ance! Glink
BUSINESS BRIEF
DISCUSS
& CRAFT QUESTIONS

© 2017 Ance! Glink All Rights Reserved

D. Privacy Claims

Factors to Consider

- Exclusive use of technology (computer, smart phone, tablet)
- Personal information stored with employer's knowledge
- Policies
- Policy reminders and enforcement
- Employee conduct



Ancel Glink | Business Risk
Insurance & Craft Services

© 2017 Ancel Glink All Rights Reserved

2. The Right to Privacy in the Workplace Act

Amendments to the Right to Privacy in the Workplace Act will make it illegal for an employer or prospective employer to:

- ask or require an employee or job candidate to **access a personal online account** in the presence of the employer;

Ancel Glink | Business Risk
Insurance & Craft Services

© 2017 Ancel Glink All Rights Reserved

2. The Right to Privacy in the Workplace Act

- require an employee or job candidate to **invite the employer to join a group affiliated with a personal account** of the employee or candidate;
- require an employee or job candidate to **join an online account** established by the employer,
- discharge, discipline, discriminate against, retaliate against, or otherwise penalize an employee, or refuse to hire a job candidate, who refuses or declines to provide the employer with the prohibited information or access.

Ancel Glink | Business Risk
Insurance & Craft Services

© 2017 Ancel Glink All Rights Reserved


Workplace Cameras

Employers are free to utilize surveillance cameras in areas where employees have no reasonable expectation of privacy

Can an employee be disciplined as a result of these workplace cameras?

Union Employee

Non-Union Employee



Ancel Glink | BUSINESS RISK
DISCIPLINE
& CRAFT PROJECTS

© 2017 Ancel Glink All Rights Reserved

Questions Employers Should Be Asking

- What do your policies say about privacy in the workplace?
- Are workplace policies enforced?
- Do employees have their own password protections on workplace technology?
- Do employees act as if they have an expectation of privacy?
- What kind of workplace technology is being used?

Ancel Glink | BUSINESS RISK
DISCIPLINE
& CRAFT PROJECTS

© 2017 Ancel Glink All Rights Reserved

Most Important Things to Keep in Mind

- Establish a policy and act in accordance with that policy
- Have a legitimate purpose for monitoring
- Be reasonable

Ancel Glink | BUSINESS RISK
DISCIPLINE
& CRAFT PROJECTS

© 2017 Ancel Glink All Rights Reserved

III. Travel Reimbursement Policies



Ance! Glink
BUSINESS RULES
DECISIONS
& CRAFT PROJECTS

© 2017 Ance! Glink All Rights Reserved

1. Who Needs One?

- Units of Local Government other than a Home Rule Unit including School Districts and Community Colleges

Ance! Glink
BUSINESS RULES
DECISIONS
& CRAFT PROJECTS

© 2017 Ance! Glink All Rights Reserved

2. Adoption of Local Expense Reimbursement Policy

That policy must include, at a minimum, the following:

- The **types** of official business for which travel, meal, and lodging expenses are allowed.
- The **maximum allowable reimbursement** for travel, meal, and lodging expenses.

Ance! Glink
BUSINESS RULES
DECISIONS
& CRAFT PROJECTS

© 2017 Ance! Glink All Rights Reserved

2. Adoption of Local Expense Reimbursement Policy

- A **standardized form** for submission of travel, meal and lodging expenses that includes spaces for the following information:
 - an estimate of the cost of travel, meals or lodging if the expense has not yet been incurred or receipts for those expenses if they have already been incurred;
 - the name and job title or position of the individual requesting reimbursement;
 - the dates and nature of the official business in which the expenses were or will be expended.

Ance! Glink | BUSINESS RISK
DISCLOSURE
& CRAFT PROJECTS

© 2017 Ance! Glink All Rights Reserved

3. Approval of Expenses

In addition to adopting a formal policy, section 15 of the new law requires covered units of local government to **formally approve any expense that exceeds the maximum allowed under the local policy**. That approval must be by the corporate authorities and by roll call vote at an open meeting.

Ance! Glink | BUSINESS RISK
DISCLOSURE
& CRAFT PROJECTS

© 2017 Ance! Glink All Rights Reserved

4. Prohibition on Entertainment Expenses

Section 25 of the new law prohibits a covered unit of local government from reimbursing any government official or employee for "any entertainment expense."

Ance! Glink | BUSINESS RISK
DISCLOSURE
& CRAFT PROJECTS

© 2017 Ance! Glink All Rights Reserved

4. Prohibition on Entertainment Expenses

These are defined to include the following:

- shows
- amusements
- theaters
- circuses
- sporting events
- any other place of public or private entertainment or amusement unless ancillary to the purpose of the program or event

Ancel
Glink

Business Rules
Explanations
& Drafting Tools

© 2017 Ancel Glink All Rights Reserved

We are happy to help you draft
or revise your policies to
comply with these new laws.

Ancel
Glink

Business Rules
Explanations
& Drafting Tools

© 2017 Ancel Glink All Rights Reserved

Labor And Employment Issues To Watch In 2017

2016	2017
<ul style="list-style-type: none"> • 2016 and the Obama Administration proved to be invigorating for labor and employment 	<ul style="list-style-type: none"> • Likely to be more contentious and not simply because of the transition to the Trump administration.

Ancel Glink
DANIELA ROSE
DANIELA ROSE
& ASSOCIATES

Overview

Key Players In the Trump Administration

DOL Overtime Rule

Future of Agency Guidance

Future of Obama Executive Orders

ACA

Minimum Wage Increases

Unsettled state of affairs with AFSCME

Right To Work

Shift In Organized Labor Strategy

Union Avoidance

Ancel Glink
DANIELA ROSE
DANIELA ROSE
& ASSOCIATES

Key Players In The Trump Administration

Attorney
General
Jeff
Sessions

Secretary
of DOL
?????

EEOC Chair
Victoria
Lipnic

NLRB Chair
Philip A.
Miscimarra

Ancel Glink
DANIELA ROSE
DANIELA ROSE
& ASSOCIATES

Jeff Sessions Attorney General

Served as a senator from Alabama for two decades

Opposed nearly every immigration bill that has come before the Senate the past two decades

Former prosecutor as someone deeply versed in criminal law who will advocate on behalf of police.

Deep support from the law enforcement community

Taken an aggressive stance toward terrorism that has often put him at odds with the Obama administration and even some Republicans

Ance! Glink | DEBORAH ROSE
DECAVANT
& KRAFTHEIMER

Nominee for Secretary of Labor ????

Ance! Glink | DEBORAH ROSE
DECAVANT
& KRAFTHEIMER

Victoria Lipnic Acting Chair of the EEOC

Former Assistant Secretary of Labor

Initially appointed to the EEOC in March 2010 by President Barack Obama

Voted against the EEOC's July 2015 decision that said sexual orientation discrimination is gender discrimination prohibited by Title VII.

Voted against the pregnancy discrimination guidance

Oversaw the creation and implementation of revised regulations on overtime and the Family and Medical Leave Act.

Ance! Glink | DEBORAH ROSE
DECAVANT
& KRAFTHEIMER

NLRB Chair Philip A. Miscimarra

- Despite being a Republican nominated by Barack Obama
- Trump's first move toward shaping his NLRB
- Miscimarra has routinely clashed with the board's Democratic members
- Opposed the NLRB's 2011 Specialty Healthcare decision
- Opposed the NLRB Browning-Ferris ruling

Ance! Glink | SHARON ROSE, ESQ. | 202.692.1100

Keys To Change

Rapid pace of change in first three weeks

Key will be how much more and how fast

All depends on speed of executive orders, issuance of agency orders, and pace of litigation

Ance! Glink | SHARON ROSE, ESQ. | 202.692.1100

The DOL Final Overtime Rule *State of Nevada et. al. v. U.S. Department of Labor*

- Nationwide injunction against the new DOL overtime regulation
- Employers had been moving quickly to prepare for implementation
- Rule effectively revised FLSA overtime exemption for "white collar"
- The DOL's final overtime rule was challenged when 21 states filed a motion for preliminary injunction to prevent implementation.
- The future of DOL final overtime rule is certainly in doubt
- Mindful of the forthcoming changes, on December 1, 2016, President Obama appealed the decision

Ance! Glink | SHARON ROSE, ESQ. | 202.692.1100

Overtime Rule Revisited

- FLSA generally requires employers pay employees the federal minimum wage (currently \$7.25 per hour) and overtime compensation for all hours worked over 40 in a workweek.
- Some employees are exempt from the FLSA's minimum wage and overtime requirements.
- New Salary Level Test increased the salary threshold to \$913 per week (\$47,476 annually).
- The anticipated upshot of the change was that many more workers would be entitled to overtime under the FLSA.
- The DOL's new rule also increased the minimum salary employees must receive to qualify for the highly compensated employee exemption from \$100,000 per year to \$134,004 per year.

Ance! Glink | DISCUSSING RISK
MANAGEMENT
& COMPLIANCE

U.S. Appeal Of Nationwide Injunction

- Early in the appeal, the government convinced the Fifth Circuit to address the appeal on an expedited basis. Under that schedule, briefing would have ended
- The new administration filed an unopposed motion to extend the same briefing schedule that it previously sought to expedite so that it could reconsider the positions it has taken thus far.
- Late last week, the Fifth Circuit granted the motion, extending the briefing schedule to March 2, 2017.

Ance! Glink | DISCUSSING RISK
MANAGEMENT
& COMPLIANCE

What Does Uncertainty Mean For Employers

Employers are still stuck with status quo

The rules are on life support

Changes likely

Ance! Glink | DISCUSSING RISK
MANAGEMENT
& COMPLIANCE

The Future of Non-Binding Agency Orders

- In *Texas et. al. v. United States*, eleven States, joined by officials and school districts from another two States, brought suit to challenge six non-binding guidance documents issued by the Department of Education, Department of Justice ("DOJ"), Occupational Safety and Health Administration ("OSHA"), and Equal Employment Opportunity Commission ("EEOC") since 2010.
- At issue are agency interpretations regarding prohibitions against discrimination "on the basis of sex" or "because of ... sex" in Title IX and Title VII encompass discrimination because an individual's gender identity is different than his or her birth-assigned sex (i.e., because the person is transgender).

Ancestral
Glink

The Future of Non-Binding Agency Orders

- The district court issued a "nationwide" preliminary injunction
- The United States appealed the injunction and a decision is likely this summer
- This case also represents the highest-profile case the Obama Administration has advanced involving transgender rights.

Ancestral
Glink

Obama Executive Orders

- The President-elect has revealed plans to repeal President Barack Obama's executive actions on his first day in office.
- Parts of ACA could be repealed using Executive Order
- Project Labor Agreements ("PLA") could be repealed.
- Overtime rules and other DOL regulations

Ancestral
Glink

The Future of the ACA

Repeal Efforts

Employer Compliance Issues

- Good Faith
- Transitional Relief
- Reporting Requirements
- Nondiscrimination
- Wellness
- Summary of Benefits and Coverage

Ance
Glink

SHARON ROSE
OF COUNSEL
ATTORNEY AT LAW

Minimum Wage Increases

- Local minimum wage laws have significantly increased in recent years.
- Beginning in 2017, both the City of Chicago and Cook County enacted ordinances to gradually increase the minimum wage to \$13 per hour by July of 2020.
- Legal challenges to minimum wage ordinances in other jurisdictions
 - Seattle: last spring, the U.S. Supreme Court declined to hear a lawsuit against a law Monday that will gradually raise the Seattle minimum wage to \$15 an hour.
 - Maricopa County: Judge refused to halt Arizona's new minimum wage increase that went into effect on January 1, 2017.
 - Birmingham: pending
 - St. Louis: pending
- Cook County State's Attorney's Office legal opinion – no home-rule authority to enact such an ordinance.

Ance
Glink

SHARON ROSE
OF COUNSEL
ATTORNEY AT LAW

Right To Work

- Right-to-Work proponents were dealt a setback when the U.S. Supreme Court virtually punted in its 4-4 order in *Friedrichs v. California Teachers Association*
- Efforts to pass Right-to-Work legislation are far from dead
- *Janus v. AFSCME*.
- *Lincolnshire v. Local 150*
- Right to Work Legislation in Michigan, Wisconsin, Kentucky, Indiana, Iowa and Missouri

Ance
Glink

SHARON ROSE
OF COUNSEL
ATTORNEY AT LAW

Key Players In Right To Work

- President Trump: indicated preference for Right-to-Work laws.
- Vice President Pence: passed Right-to-Work legislation while governor of Indiana
- Governor Rauner: advocate of Right to Work, particularly local legislation
- Governor's Staff: worked for former Indiana Governor Mitch Daniels

Ance
Glink

Sharon Rose
DeCavert
& KRAFTHEIM

Supreme Court Review of Right To Work

- Possible "Circuit Split" makes Supreme Court Review Likely in 2018 When Conservative Majority
- Nominee Gorsuch: If confirmed, the Supreme Court have a conservative majority.
- That spells big trouble for public-sector labor unions and plaintiffs attorneys

Ance
Glink

Sharon Rose
DeCavert
& KRAFTHEIM

Gorsuch Employment Cases

Decisions favorable to employer:

- Hwang v. Kansas State Univ., 753 F.3d 1159 (10th Cir. 2014)
- Myers v. Knight Protective Serv., Inc., 774 F.3d 1246 (10th Cir. 2014)
- Roberts v. Int'l Bus. Machines Corp., 733 F.3d 1306 (10th Cir. 2013)
- Elwell v. Oklahoma ex rel. Bd. of Regents of Univ. of Oklahoma, 693 F.3d 1303 (10th Cir. 2012)
- Almond v. Unified Sch. Dist. No. 501, 665 F.3d 1174 (10th Cir. 2011)
- Johnson v. Weld Cty., Colo., 594 F.3d 1202 (10th Cir. 2010)
- Hinds v. Sprint/United Mgmt. Co., 523 F.3d 1187 (10th Cir. 2008)
- Montes v. Vail Clinic, Inc., 497 F.3d 1160 (10th Cir. 2007)
- Young v. Dillon Companies, Inc., 468 F.3d 1243 (10th Cir. 2006)

Decision partially favorable to employer and partially favorable to employee:

- Barrett v. Salt Lake Cty., 754 F.3d 864 (10th Cir. 2014)
- Williams v. W.D. Sports, N.M., Inc., 497 F.3d 1079 (10th Cir. 2007)

Decision favorable to employee:

- Walton v. Powell, 821 F.3d 1204 (10th Cir. 2016)
- Energy W. Mining Co. v. Oliver, 555 F.3d 1211 (10th Cir. 2009) - Orr v. City of Albuquerque, 531 F.3d 1210 (10th Cir. 2008)

Ance
Glink

Sharon Rose
DeCavert
& KRAFTHEIM

Unsettled AFSCME Contract

- Almost two years ago in early 2015, the State and AFSCME began negotiating for a successor CBA
- On November 15, 2016, the ILRB orally declared there was an impasse in the collective bargaining negotiations.
- State Implementation of its Last, Best, and Final Offer:
 - \$1,000 merit pay
 - overtime after 40 hours;
 - bereavement leave; the use of volunteers;
 - the beginning of a merit raise system;
 - drug testing of employees suspected of working impaired
- AFSCME Put Full Court Press On The ILRB Decision

Ance! Glink | THOMAS R. RYAN
OF COUNSEL
ATTORNEYS AT LAW

Unions Are Concerned

Right-to-Work legislation alive and kicking

SEIU cuts its budget 30%

Other unions are following suit

Unions likely to seek revenue by targeting unrepresented employees

Ance! Glink | THOMAS R. RYAN
OF COUNSEL
ATTORNEYS AT LAW

Union Avoidance

We anticipate unions will ramp up organizing efforts

An employer can set forth facts to employees about unions.

Interested in minimizing unionization? Consider Ance! Glink's next seminar on union avoidance this Spring

Ance! Glink | THOMAS R. RYAN
OF COUNSEL
ATTORNEYS AT LAW

Shift In Policy On Transgender Rights

- The Trump Administration withdrew its objections to the nationwide injunction that blocked guidance requiring that transgender students be allowed to use restrooms that match their gender identity
- The DOL recently removed its guidance on transgender rights from its website.

Ance! Glink | TRANSGENDER RIGHTS
RESEARCH & ANALYSIS

What To Expect From Congress

- Unanimity from Republican senators and 8 Democratic senators to change LGBT laws
- Hate Crimes Prevention Act unlikely to be repealed because of prior Republican support
- Expansion of Anti-discrimination law unlikely

Ance! Glink | TRANSGENDER RIGHTS
RESEARCH & ANALYSIS

What To Expect From Executive Orders

- The President has not yet tweeted about LGBTQ Executive Orders issued by Obama.
- While Agency regulations have already changed, hard to predict what the President will do.
- Cabinet members opposed to expansion of rights.

Ance! Glink | TRANSGENDER RIGHTS
RESEARCH & ANALYSIS

Anti-LGBTQ Laws Face Scrutiny

- NFL has threatened to exclude Texas from consideration for future Super Bowl
- NCAA has already pulled out of North Carolina
- NCAA considering pulling out of Texas for events
- Some states ban doing business with North Carolina

Ancestral
Glink

RESEARCH
DESIGN
& ANALYSIS

Illinois Impact

- Any federal rollback of LGBTQ rights will have little to no impact
- Illinois employers should continue to follow the Illinois Human Rights Act
- The question is only how many different laws will protect LGBTQ rights.

Ancestral
Glink

RESEARCH
DESIGN
& ANALYSIS

Pending Litigation – Title VII

Hively vs. Ivy Tech Community College

- The Seventh Circuit is currently reconsidering whether LGBTQ rights are protected under Title VII of the Civil Rights Act which bars discrimination in employment based on sexual orientation.
- Should the Seventh Circuit find in favor of Hively, it will be the first federal appeals court to extend Title VII workplace protections to sexual orientation claims.

Ancestral
Glink

RESEARCH
DESIGN
& ANALYSIS

Pending Litigation – Title XI

Gloucester County School Board v. G.G.

- Although not a labor and employment case, the ultimate outcome of *Gloucester County School Board v. G.G.* will be far-reaching and could have an impact on deference given to federal agency orders, including the U.S. Equal Opportunity Commission and the U.S. Department of Labor.

Ance! Glink | DEBORAH BROWN
DEANNE
& KATHY THAYER

Questions

Please contact us with any questions

Margaret Kostopulos	(312) 604-9106 mkostopulos@ancelglink.com
Robert McCabe	(847) 856-5436 rmccabe@ancelglink.com
Jeff Brown	(312) 604-9187 jbrown@ancelglink.com
Katie O'Grady	(312) 604-9168 kogrady@ancelglink.com

Ance! Glink | DEBORAH BROWN
DEANNE
& KATHY THAYER
