

# 2023 Legal Year In Review

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## Agenda

- Maine Legislative Update
- Case Law Update
- DOL Updates/Administrative Action
- What is on the Horizon for 2024?

## Maine Newly Enacted Laws

### Expansion of Maine Severance Pay Law (L.D. 12)

- Approved by the Governor on May 8, 2023
- Effective 8/31/2023 (estimated), 91<sup>st</sup> day after session adjourns
- Expanded to cover more employers and workers by removing “industrial or commercial” language before “facility as it relates to definitions of “covered establishment,” “closing,” and “relocation”

### Revision of “Sexual Orientation” under MHRA (L.D. 707)

- Approved by the Governor on April 24, 2023
- Effective 6/29/2023
- Deletes “gender identity or expression” from definition of sexual orientation as such classifications are independently protected

## Maine Newly Enacted Laws

### Employee Free Speech Protections (L.D. 1756)

- Approved by the Governor on July 11, 2023
- Effective 10/25/2023
- Prohibits adverse action against an employee who “declines to attend or participate in an employer-sponsored meeting or declines to receive or listen to a communication from the employer . . . if the meeting or communication is to communicate the opinion of the employer about religious matters or political matters”

## Maine Newly Enacted Laws

### Increase on Damages Limits under the MHRA (L.D. 1423)

- Approved by the Governor on June 22, 2023
- Effective September 19, 2023
- Increases the amount of compensatory and punitive damages available in claims brought pursuant to MHRA

Employer Size	Prior Cap	New Cap
15-100 employees	\$50,000	\$100,000
101-200 employees	\$100,000	\$300,000
201-500 employees	\$300,000	\$500,000
501+ employees	\$500,000	\$1,000,000

## Maine Newly Enacted Laws

### Addition of Race to Maine Equal Pay Law (L.D. 1703)

- Approved by the Governor on June 22, 2023; effective October 25, 2023
- Adds protections to Maine's Equal Pay Law related to race

“An employer may not discriminate between employees in the same establishment on the basis of race by paying wages to any employee in any occupation in this State at a rate less than the rate at which the employer pays any employee of another race for comparable work on jobs that have comparable requirements relating to skill, effort and responsibility.”

### Right-to-Sue Letter Updates (L.D. 1001)

- Approved by the Governor on April 24, 2023; effective October 25, 2023
- MHRC may issue right to sue letters after 180 days upon complainant's request, or earlier for good cause; issuance ends investigation
- Plaintiff cannot recover fees/damages unless they received right-to-sue letter before filing the civil action

# Maine Newly Enacted Laws

## Individual Liability for Sexual Harassment/Assault (Workers' Compensation) (L.D. 53)

- Approved by the Governor on May 8, 2023
- Effective October 25, 2023
- Amendment to Workers' Compensation Act providing that “[a]n employee, supervisor, officer or director of an employer is liable for sexual harassment, sexual assault or an intentional tort related to sexual harassment or sexual assault”

## Maine Newly Enacted Laws

### **Timely Payment for Salaried Employees (L.D. 1278)**

- Approved by the Governor on June 1, 2023
- Effective October 25, 2023
- Clarifies wage payment law coverage for salaried employees

### **Expansion of Permissible Tip Pools (L.D. 903)**

- Approved by the Governor on June 15, 2023
- Effective October 25, 2023
- Permits tip pool sharing arrangements with back of house employees to align with federal law



## Maine Newly Enacted Laws

### State Enforcement Action for Retaliation (L.D. 767)

- Approved by the Governor on June 23, 2023
- Effective October 25
- Employers that retaliate against an individual exercising employment rights penalties and a cause of action for the DOL or AG

### Updates to Workers' Compensation Act (L.D. 1803 / L.D. 1372)

- Approved by the Governor on June 16, 2023 / enacted July 6, 2023, without signature
- Effective October 25
- Various amendments to Workers' Compensation Act related to independent contractor determinations, insurer reimbursement, establishment of fronting companies

## Supreme Court Case Law

### ***Groff v. DeJoy, Postmaster General, 600 U.S. \_\_\_ (2023)***

- Employers must show “substantial” increased costs to deny a religious accommodation

### ***303 Creative LLC v. Elenis, 600 U.S. \_\_\_ (2023)***

- State cannot compel business owner to convey messages contrary to beliefs, pursuant to First Amendment protections

# Supreme Court Case Law

## ***Students for Fair Admissions, Inc. v. President and Fellows of Harvard College, 600 U.S. \_\_\_ (2023)***

- Higher-ed institutions with admissions programs that take race into account violate the Equal Protection Clause of the Constitution
- Not an employment case – but has implications for DEI programs

## Local Case Law

- ***Bocko v. University of Maine System*** (Me. Jan. 25, 2024) – Analysis of fee basis exemption standard
- ***Montoya v. CRST Expedited, Inc.*** (1<sup>st</sup> Cir. Dec. 12, 2023) – Employees’ time spent in the sleeper berth that exceeds eight hours per day is compensable work under the FLSA
- ***Marcus v. American Contract Bridge League*** (1<sup>st</sup> Cir. Aug. 14, 2023) – Analysis of Administrative Exemption under the FLSA
- ***Walsh v. Until Serv. Corp.*** (1<sup>st</sup> Cir. Mar. 22, 2023) – Analysis of Administrative Exemption under the FLSA
- ***Johnson v. Whole Foods*** (D. Me. Feb. 23, 2023) – ADA disability when doctor indicates that condition “shouldn’t impact job performance as long as accommodations are made for absences” and availability of punitive damages

## Paid Family Medical Leave

**Discuss in detail later today**

- NH Paid FML
- Massachusetts Amendments to Paid FML
- Discussions in Washington

## DOL Update

### **New Independent Contractor Rule (Federal)**

- Opportunity for profit or loss depending on managerial skill;
- Investments by the worker and the potential employer;
- Degree of permanence of the work relationship;
- Nature and degree of control;
- Extent to which the work performed is an integral part of the potential employer's business; and
- Skill and initiative.

### **Change in Fine Rules (State)**

## EEOC & MHRC Updates

### EEOC Updated Workplace Harassment Guidance

### MHRC 2023 Guidance Update

- Inclusion of Familial Status discrimination
- Included Harassment definition
- Amendment to “Gender identity” and “Sexual orientation” definitions
- Clarification of “reasonable accommodation”
- Amendment to restrictions on pre-employment inquiries

## Maine Legislative Initiatives To Keep At Top Of Mind

- **324** – An Act to Prevent the Wrongful Firing of Maine Workers
- **513** – An Act Regarding Overtime Protections for Certain Maine Workers
- **741** – An Act to Prohibit Certain Training Repayment Agreements by Employers
- **827** – An Act to Allow Employees to Request Flexible Work Schedules
- **936** – An Act to Require Employers to Disclose Pay Ranges and Maintain Records of Employees' Pay History
- **949** – An Act to Protect Workers from Employer Surveillance
- **999** – An Act to Support Family Caregivers by Expanding Family Medical Leave
- **1190** – An Act to Require Minimum Pay for Reporting to Work
- **1496** – An Act to Prohibit Noncompete Clauses



# QUESTIONS?