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The Law at Work: Key developments in 2020

By Dan Eaton
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Executive action dominated legal response to pandemic

The governor and other state and local executive officials, especially public health officers, generally set the rules that governed workplaces suddenly upended by the coronavirus. Executive officials may issue, modify, and rescind orders faster than legislators may enact, amend, and repeal laws.

A look at 2020(Ingram Publishing / Getty Images/Ingram Publishing)

Officials used their emergency powers to issue sweeping edicts on what, where, when, and how work could be performed. Most recently, Cal-OSHA issued detailed emergency rules mandating employer action to prevent and contain the spread of COVID-19 and mandating what, when, and to whom employers must report when COVID-19 nonetheless invades the workplace.

The state legislature and U.S. Congress also acted. Congress enacted paid leave laws which, among other things, addressed the singularly disruptive impact of pandemic-related school closures. Congress also authorized supplemental unemployment compensation benefits and made more workers eligible for those benefits.

Existing laws obligating employers to accommodate disabilities and religious beliefs and to provide healthful workplaces were applied in novel ways as the pandemic intensified. Employers will review those same laws, guided by ethical principles, in deciding whether to mandate vaccination in their workplaces as the pandemic subsides.

Legislative actions and judicial rulings have a durability time-limited emergency actions of executive officials necessarily do not. While fully a third of my 27 columns this year focused on COVID-19-related legal developments, here are a couple of other developments covered in this space whose impact will extend beyond the pandemic.

Changes to independent contractor law

The California legislature enacted AB 2257, which repealed and replaced the AB 5 independent contractor law. The core of the former law remained: hiring entities generally must pass a strict ABC test to classify a worker as an independent contractor instead of an employee. Under that test, a worker is presumed to be an employee unless the hiring entity can show the worker: (A) works relatively free of the hiring entity's control; (B) performs work beyond the "usual course of the hiring entity's business"; and (C) is engaged in an independent trade, occupation, or business similar to the work performed.

But AB 2257 made significant changes to the exceptions to the ABC test. For example, the new law expanded the 12-part business-to-business exception to service providers: (1) whose employees solely provide services to the customers of the contracting entity under the name of the service provider; and (2) that regularly contract with other businesses.

Separately, in passing Proposition 22, California voters created a new kind of independent contractor limited to app-based drivers. The law makes those drivers independent contractors with limited employee-like rights, such as the right to a minimum hourly wage for hours worked.

Application of California wage laws to non-Californians

In two rulings earlier this year, the California Supreme Court held that California wage rules apply to non-resident workers who perform most of their work in this state or are based here. The cases concerned flight attendants.

Those rulings caused the California Court of Appeal earlier this month to revisit its February ruling applying Louisiana wage rules to claims by crewmen who resided out-of-state who worked for a Louisiana-based company on a vessel docked at a California port that sailed through California waters and who provided maintenance services to offshore oil platforms. The ruling focused on the residence of the employees and the location of their employer.

In its latest ruling, the appellate court said it had been "mistaken." The Supreme Court's recent flight attendant decisions "establish that California's wage and hour laws apply to workers who perform all or most of their work in California. For workers who perform work in multiple jurisdictions, this test is satisfied if the worker performs some work in California and is based here, meaning that California serves as the physical location where the worker presented himself or herself to begin work. Neither the residence of the worker nor the location of the employer is relevant to this analysis."

The pandemic has shown many jobs may be performed, virtually, anywhere. Further rulings may determine how the principles in these rulings apply to the outsourced workforce.

Fittingly, for all its calamities the year 2020 brought a clarity of vision: to how we see ourselves, our work, the law.
Next year will be better.

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