



VIEWPOINT: EMPLOYMENT LAW RUN AMOK

BY JACK GARSON

November 2015 – As seen in the Washington Business Journal.

Everybody in a position of power, from the president on down to local governments, is creating new obligations for employers.

If you haven't heard, employment law has gone crazy.

Employers are being bombarded with new requirements, costs, and liability. Everybody in a position of power, from the president on down to local governments, is creating new obligations for employers.

The D.C. Council is set to consider a massively burdensome new law that provides four months of paid leave for each employee. The Universal Paid Leave Act of 2015, if enacted, requires businesses to provide each employee with paid leave for 16 weeks. Employees will qualify if they are ill, bonding with a newborn or adopted child, taking care of an ill family member, or unable to work for other reasons.

These are all understandable reasons to be absent from work.

But 16 weeks of paid leave is an unprecedented benefit in the U.S. and incredibly expensive. Of course, D.C. did come up with a novel way to pay for all of this: a new tax. Every business with an office in D.C. pays.

Big picture: D.C. adds a tax and excuses key employees for extended time periods. Good luck making that work. Seriously, think about the company of 10 employees that has two or three people out for a third of the year. I wouldn't want to be one of the lucky employees left behind.

D.C.'s proposed leave law quickly overshadowed nearby Montgomery County's new sick leave requirement. In June, the Montgomery County Council passed a law requiring all local businesses — big or small — to provide paid sick leave for all employees starting in October 2016.

D.C. and Maryland aren't alone, even if they lead the pack. Courts, elected officials, and legislatures around the country have been pounding businesses with major new requirements:

- Throughout 2015, courts have ruled that FedEx and Uber should be treating drivers as employees, not independent contractors. When these drivers are considered employees, they are entitled to all of the benefits of employment status, such as minimum wages, overtime pay, insurance and other benefits.

- In July 2015, the Department of Labor announced that employers are wrongly classifying employees as independent contractors and that the DOL would aggressively pursue these companies.
- On Labor Day, President Obama issued an executive order requiring federal contractors and their subcontractors to provide paid sick leave starting in 2017.

For years now, an employer's obligations have been significant, but not out of control.

In the new reality, another law is thrown on the pile every week.

You do the math: More laws times more employees equals more violations and more costs. If you're in business, you're probably — right at this very moment — breaking some employment law. Seriously. You have exposure.

Employment law is like the tax code. It gets longer and more complicated every year. And in the end, some of these employment laws hurt the very people they were intended to benefit.

Jack Garson is the founder of the law firm of Garson Law LLC in Bethesda, Maryland.

Jack Garson
Garson Law LLC
(301) 280-2700
jgarson@garsonlaw.com