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EMPLOYMENT LAW UPDATE

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Workplace Violence Prevention Plan – July 1, 2024 Deadline

As a reminder, July 1, 2024 is the deadline for California employers to create, implement, and train their employees on their Workplace Violence Prevention Plan in accordance with California Labor Code section 6401.9, unless the employer is specifically exempted. An employer's Workplace Violence Prevention Plan is site-specific and must:

- Designate persons responsible for the plan;
- Include procedures for the employer to accept and respond to reports of workplace violence, and to prohibit retaliation against an employee who makes such a report;
- Include procedures to identify and evaluate workplace violence hazards and to correct any identified hazards;
- Include procedures for post-incident response and investigation; and
- Include emergency response protocols.

Cal/OSHA and the California Department of Industrial Relations published a model Workplace Violence Prevention Plan for general industry employers and other resources. These resources can be found on the California Department of Industrial Relations' website and include:

- Fact Sheet for Employers
- Fact Sheet for Employees
- Fact Sheet for Employers in Agricultural Operations
- Fact Sheet for Employees in Agricultural Operations
- Model Workplace Violence Prevention Plan

California employers who must maintain a Workplace Violence Prevention Plan will need to conduct annual training on the plan. If a new workplace violence hazard is discovered or changes are made to the plan, employers must provide additional training on the specific hazard or plan modifications.

California employers should be proactive and regularly evaluate their Workplace Violence Prevention Plan to assess whether modifications are required. The

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failure to comply with the Workplace Violence Prevention Plan requirements may result in penalties of up to $25,000 for serious violations, and up to $158,727 for "willful" violations.

JUDICIAL UPDATE

Federal

California

U.S Supreme Court Resolves Circuit Split on Standard for Granting Preliminary Injunctions in Labor Disputes

In *Starbucks Corp. v. McKinney*, the Supreme Court of the United States held that district courts must apply the traditional four factors articulated in *Winter v. Natural Resources Defense Council, Inc.* when considering the National Labor Relations Board's ("Board") request for a preliminary injunction under §10(j) of the National Labor Relations Act. (2008) 555 U.S. 7.) Section 10(j) authorizes a federal district court to grant temporary relief during the Board's administrative proceedings as it deems "just and proper." (29 USCS § 160(j). The Supreme Court found that this authorization is underpinned by the presumption that courts will exercise this power in line with traditional equity principles, including the four criteria identified in *Winter* for preliminary injunctions.

After several Starbucks employees announced plans to unionize and invited a news crew from a local television station to promote their unionizing effort, Starbucks fired multiple employees involved with the media event for violating company policy. The Board filed an administrative complaint against Starbucks alleging that it had engaged in unfair labor practices. The Board's Regional Director filed a §10(j) petition for a preliminary injunction during the administrative proceedings to reinstate the fired Starbucks employees. The District Court, applying a two-part test that asked whether "there is reasonable cause to believe that unfair labor practices have occurred," and whether injunctive relief is "just and proper." (*McKinney v. Ozburn-Hessey Logistics, LLC* (2017) 875 F. 3d 333, 339). Applying that test, the District Court granted injunctive relief. (*Id.*). This analysis is compared to the traditional four-part test that some courts use to evaluate petitions for §10(j) injunctions. Under this test, a plaintiff seeking a preliminary injunction must clearly demonstrate that "he is likely to succeed on the merits, he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." (*Winter*, 555 U. S., at 20, 22).

The District Court granted the injunction under the two-part analysis, and the Sixth Circuit affirmed. The Supreme Court granted certiorari to resolve the circuit split and to answer the question of what standard governs the Board's request for preliminary injunctions under §10(j). The Supreme Court ultimately vacated the Court of Appeals judgment and remanded the case, holding that district courts must apply the traditional four factors articulated in *Winter* when considering the Board's requests for preliminary injunction under §10(j).

The Supreme Court's decision in *Starbucks Corp. v. McKinney* represents a significant development for all U.S. employers. The ruling mandates that instead of using the relaxed two-factor test, district courts apply the traditional four factors articulated in *Winter* when considering the Board's request for a preliminary injunction under §10(j). This means that employers facing a §10(j) petition must be prepared to address these four factors in their defense. The Board argued that its adjudicatory authority could be compromised if district courts independently assessed the merits and equitable factors. However, the Supreme Court reasoned that the Board retains its autonomy to formulate its own legal conclusions and build its administrative proceedings record, regardless of the district court's investigation or review of evidence related to a §10(j) petition. Although the Board advocated for a deferential approach by district courts, the Supreme Court determined that the preliminary perspectives offered in a §10(j) petition do not represent the Board's official position, making deference inappropriate.

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This is Pettit Kohn Ingrassia Lutz & Dolin PC's employment update publication. If you would like more information regarding our firm, please contact Tom Ingrassia, Jennifer Lutz, Ryan Nell, Shannon Finley, Christine Clark, Jessica O'Malley, Nicole Allen, Haley Murphy, John Solis, Gabriella Kelly, Nia Perkins, Pouch Liang, Ethan Anderson, Amer Azizi or Michelle Perez-Yanez at (858) 755-8500; or Brett Greenberg, Greg Feldman, Lisa Mallinson, Alysha Zapata, Arsalan AlNasir, Andres Uriarte, or Kimberly Horne at (310) 649-5772.