



What's New in Employment Law?

Presented by

Kennebec Valley HR Association

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Our Agenda

- Important New Cases
- Liability Risks During the Pandemic
- Back to School and Work
- COVID-19 Vaccinations
- Working Remotely
- Politics at Work
- Update on recreational marijuana



Important New Cases: LGBTQ+ Protections

Bostock v. Clayton County, Ga., U.S. Supreme Court 2020

- Gerald Bostock claimed he was fired after joining a gay recreational softball league

Altitude Express, Inc. v. Zarda

- Skydiving instructor alleged fired after he told a female customer he was “100 percent gay” during a tandem dive

R.G. & G.R. Harris Funeral Homes

- Employee Aimee Stephens came out as transgender, stating she intended to live as a woman and would report to work in appropriate business attire
- Employer terminated her, arguing Stephens violated its rule that men wear suits to work

Important New Cases: LGBTQ+ Protections

Takeaways

- Supreme Court held employees cannot be fired “simply for being homosexual or transgender.”
- Maine Human Rights Act has prohibited employment discrimination on the basis of sexual orientation, gender expression, and gender identity since 2005
- LGBTQ+ workers in Maine are now protected by state *and* federal anti-discrimination laws
- Outside of Maine, employees in 28 states may no longer be terminated because they identify as LGBTQ+
- Consider revising EEO statement and workplace dress codes

Workplace Dress Codes



The new look.

Shirts

- Rock your polo as you usually would.
- Tucked or untucked? You choose! Black belts should be worn when shirts are tucked.

Bottoms

- Throw on your favorite black or blue jeans.
- Jeans should be in good shape.
- Or, if you prefer, you can continue wearing black pants or skirts.

Shoes

- Pick your favorite kicks – any color, any kind!
- Shoes must be neat and clean, closed toe, flat and comfy.

Agents, we're not cramping your style.

The traditional Geek Squad Agent uniform is not going anywhere! Continue to wear the uniform as-is or, if you want to wear jeans, you'll need a black Geek Squad polo to go with them. The Agent uniform shirt and tie should not be worn with jeans.

What not to wear.

- Jeans with rips, tears or distressing
- Anything too loose or too tight
- Athletic wear or leggings
- Shorts or capris
- Sandals, flip-flops or mules
- Hats or head coverings (other than those related to your religious beliefs)



For complete details by role, go to MY HR (hr.bestbuy.com) and search #insidetheclub

Important New Cases: Disability Accommodations

Bell v. O'Reilly Auto Parts, 1st Circuit 2020

- Overworked and stressed out manager needed set schedule
- O'Reilly denied the request as unreasonable for a store manager

Ruling

- O'Reilly denied Bell reasonable accommodation
- If an employee struggles but is successful at getting the job done, he may still require reasonable accommodation

Maine Earned Paid Leave Act

- Effective January 1, 2021
- Requires one hour of paid leave for every 40 hours of work, total of 40 hours per year
 - Leave can be used for any reason
- Applies to employers with 10+ employees for more than 120 days per year



Maine Earned Paid Leave Act

- Rules are still in draft
- Key takeaways from proposed rules:
 - Act applies to full-time, part-time, and per diem employees
 - Employee begins accruing time the first day they perform work for the employer
 - Employer may have written policy requiring up to four weeks' notice of intent to use earned leave, absent an emergency, illness, or other sudden necessity
 - Employer cannot require employee to use earned paid leave when the employee is unable to perform their job (i.e., business is closed, shift is cancelled)

Liability Risks During the Pandemic

1. Public nuisance and negligence lawsuits
2. WARN Act layoffs
3. FFCRA leave claims
4. Right to remote work/ ADA claims

Reducing the Risks of Liability

1. Follow state and federal requirements for safety
2. Clearly communicate expectations and enforce them
3. Document your plans, policies, and actions
4. Err on the side of caution
5. Don't get complacent



Liability Risks During the Pandemic

LOCAL & STATE >

Posted August 25 | Updated August 26

INCREASE FONT SIZE **A⁺**

Big Moose Inn guest says he was never called after wedding outbreak

A New Hampshire man who stayed at the Millinocket inn on Aug. 6-7 said the owners 'played fast and loose with a lot of people's safety.'

Sanford school run by church with coronavirus outbreak will open next week



by **Patty Wight, Maine Public**

September 4, 2020

FFCRA Refresher

- FFCRA childcare related leaves:
 - Up to 80 hours of emergency paid sick leave to care for child whose school or place of care has been closed, or whose child care provider is unavailable, due to COVID-19
 - Up to twelve weeks of paid FMLA leave to care for child whose school or place of care has been closed, or whose child care provider is unavailable, due to COVID-19



FFCRA and Back to School Issues

- Intermittent leave for childcare:
 - Teleworking and unable to work normal schedule of hours
 - Must care for child whose school or place of care is closed, or whose child care provider is unavailable, due to COVID-19
 - Must care for an individual subject to quarantine or isolation order, or advised by a health care provider to self-quarantine due to COVID-19
 - Working at usual worksite
 - Must care for child whose school or place of care is closed, or whose child care provider is unavailable, due to COVID-19
- Federal rules require consent for intermittent leave, but NY case says consent is not required

FFCRA and Back to School Issues

- Employers may request the following documentation:
 - Child's name
 - Dates of leave requested
 - Qualifying reason for leave
 - Name of child's school or child care provider that is closed or unavailable due to COVID-19
 - Representation that no other suitable person is available to care for the child during the period of requested leave
 - For tax credit purposes: employees caring for children aged 14 years or older must document the "special circumstances" justifying need for care during daylight hours

Other COVID-19 Issues and Resources

- MHRC Q&A (Alert, August 19, 2020)
 - Face coverings and accommodations
- Governor Mills' Executive Orders (Alerts, July 9 and June 12, 2020)
 - Executive Order #2
 - Executive Order #57
- COVID Testing, Quarantine, and Return to Work (Alert, July 31, 2020)



COVID-19 vaccinations

	Mandatory Flu Vaccine for Employees?	Exemptions
OSHA	Ok, so long as employees are properly informed of benefits	<ul style="list-style-type: none">• Medical
EEOC	Ok, subject to exemptions <ul style="list-style-type: none">• Suggests employers “encourage” vaccinations	<ul style="list-style-type: none">• Medical/Disability• Religious
Maine	Mandatory in designated healthcare facilities	<ul style="list-style-type: none">• Medical• Religious• Philosophical

Remote Work Issues

1. Reasonable accommodations for disabled employees
2. Remote work expenses and FLSA



Remote Work Issues

3. Tracking time for FLSA purposes

4. Workers Compensation for injuries at home

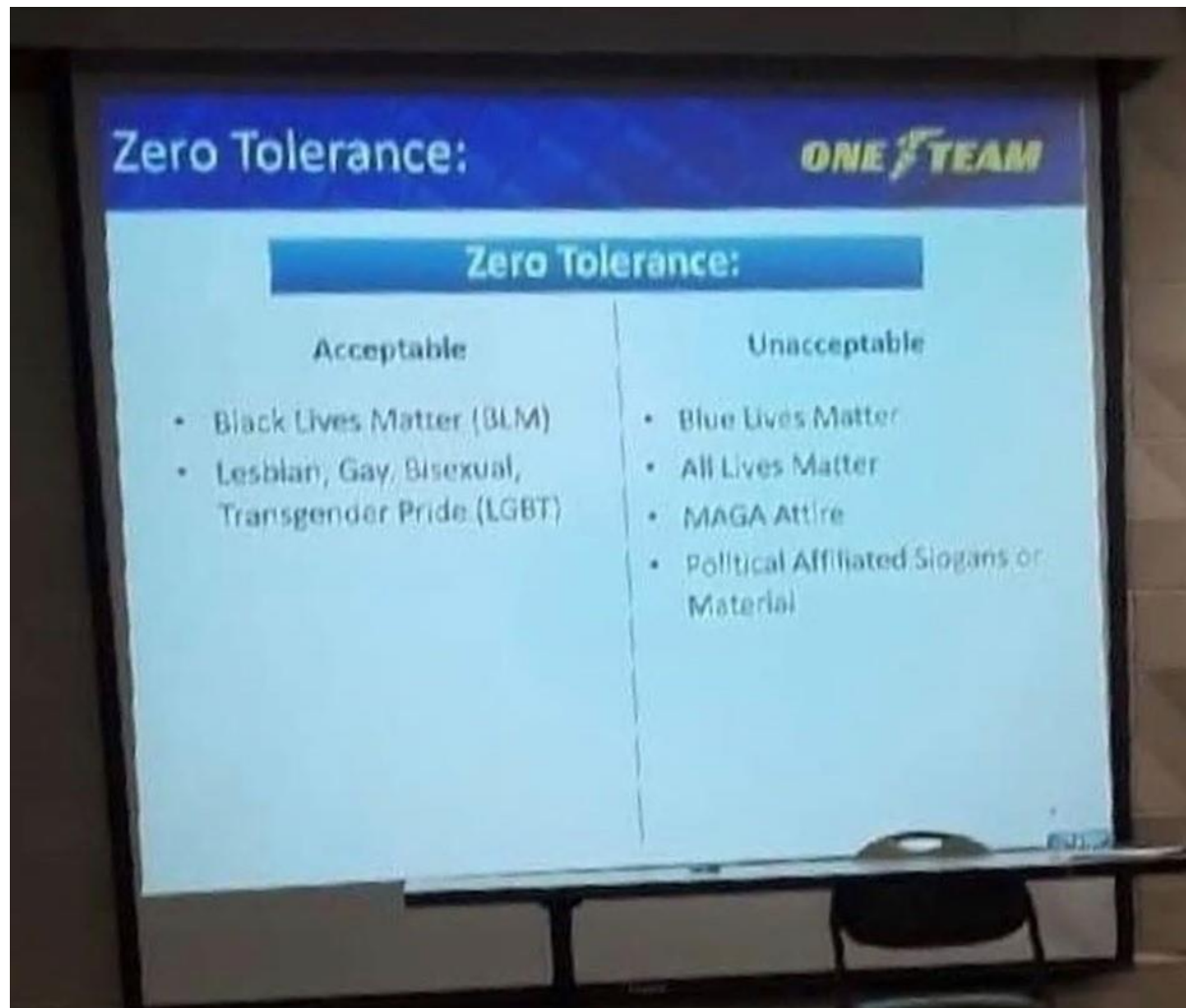
5. Remote work policy



Politics in the Workplace: Whole Foods



Politics in the Workplace: Goodyear



Politics in the Workplace: Goodyear



A Message from Goodyear to Our Customers, Partners and Associates:

Yesterday, Goodyear became the focus of a conversation that created some misconceptions about our policies and our company. For those not aware, a widely circulated image sparked a strong reaction, and we wanted to take the opportunity to provide some important context to the visual and our policies.

First, the visual in question was not created or distributed by Goodyear corporate, nor was it part of a diversity training class. To be clear on our longstanding corporate policy, Goodyear has zero tolerance for any forms of harassment or discrimination. To enable a work environment free of those, we ask that associates refrain from workplace expressions in support of political campaigning for any candidate or political party, as well as similar forms of advocacy that fall outside the scope of racial justice and equity issues.

Second, we appreciate the diverse viewpoints of all of our more than 60,000 associates, which are at the heart of many of the policies we establish. Fostering an inclusive, respectful workplace is important to establish teamwork and build culture, which is another reason we ask associates not to engage in political campaigning of any kind in the workplace – for any candidate, party or political organization.

Third and finally, Goodyear has always wholeheartedly supported both equality and law enforcement and will continue to do so. These are not mutually exclusive. We have heard from some of you that believe Goodyear is anti-police after reacting to the visual. Nothing could be further from the truth, and we have the upmost appreciation for the vital work police do on behalf of our shared communities. This can't be said strongly enough.

Marijuana in Maine



- Medical marijuana legalized in 1999
- In 2016, Marijuana legalized for recreational use in Maine
 - Recreational sales to begin in October
- Law allows adults to possess up to 2.5 ounces of marijuana and grow up to 6 plants

Recreational Marijuana in the Workplace

All you need to know:

- Recreational and medical marijuana are legal in Maine – however an employer may still limit the use and possession of marijuana at work
- No use of marijuana (recreational and medical) at work by employees.
- No possession of marijuana (recreational and medical) at work by employees.
- No employee may work while impaired by marijuana (recreational and medical), drugs, or alcohol.
- Do not refuse to hire an applicant solely because they are a marijuana user. Consult with HR.



Questions?

