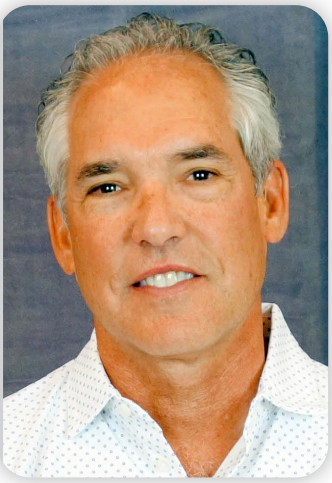
PRESIDENT'S MESSAGE



Rising from the Pandemic, Let's Strive to be Productive, Safe, and Equitable as We Re-Assemble Our Economy

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As we continue to move out of the COVID-19 pandemic and restart the economy to return to a normal life, I realized how blessed we are to be in this country, and the steps we have taken from its formation until now, in the area of employment rights.

As many of us know, the U.S. started as a master-servant economy. As we developed into a capitalist society and rewarded entrepreneurship, artisans began hiring laborers to manufacture goods. This trend led to employer-employee relations that needed to be dealt with in courts. By the 1800s, unions began to form to enact codes that governed wages, working conditions, and employment relations. In the beginning, employees who tried to organize unions were found guilty of committing conspiracy to raise wages and were fined. After the Civil War and the 13th Amendment was enacted to abolish slavery, work began to shift from farming to manufacturing. The 14th Amendment gave rights to all persons naturalized in the U.S., which led to the spread of labor rights. To counter this development, courts were permitted to enact labor injunctions to prohibit unlawful activity such as boycotts and strikes. In *re Debs*, 158 U.S. 564 (1895), the president of the American Railway Union was involved in the Pullman strike and challenged the federal injunction ordering strikers back to work. When Debs refused to end the strike and was held in contempt, the court, in a unanimous decision, held that the U.S. government had the right to regulate interstate commerce and ensure the operations of the postal service and the general welfare of the public.

In *Lochner v. New York*, 198 U.S. 45 (1905), the Supreme Court held that limits to working time violated the 14th Amendment. In New York, there was a state law that limited bakery employees from working more than 10 hours a day or 60 hours per week. The 5-4 decision held the law violated the due process clause as an unreasonable arbitrary interference with the right to contract.

Here's an interesting labor connection for those of us who have travelled through our state and passed through the town of Goldfield. By 1908, the town was Nevada's largest city with more than 25,000 residents. The miners went on strike in 1907 concerning a pay cut. As a result of concerns for the mine owners, Governor John Sparks asked President Theodore Roosevelt to send federal troops to protect the mines. The president sent 300 troops, who remained in Goldfield until Nevada formed a state police force on March 7, 1908, and the federal troops withdrew.

In 1915, the court allowed "yellow-dog contracts," which are agreements between an employer and an employee in which the employee agrees to not join a union as a condition of employment. *Coppage v. Kansas*, 236 U.S. 1 (1915) saw the majority of the court hold that the Kansas law forbidding such contracts violated Coppage's due-process rights, as the government did not have a responsibility to prevent an inequality in bargaining power. This type of decision continued in *Adkins v. Children's Hospital*, 261 U.S. 525 (1923), when the court ruled that the federal minimum wage for women was an unconstitutional infringement of liberty of contract. It was not until 1934 that the Supreme Court finally decided in *Nebbia v. New York*, 291 U.S. 502 (1934) that New York state could regulate the price of milk for dairy farmers, dealers, and retailers, thus determining there is no constitutional fundamental right to freedom of contract.

In 1931, the Davis-Bacon Act was established to require the paying of local prevailing wages on federally funded public works. In 1932, Congress passed the Norris-La Guardia Act that barred the

federal courts from issuing injunctions against nonviolent labor disputes. In 1935, the National Labor Relations Board was established to encourage the practice and procedure of collective bargaining. Then followed the Fair Labor Standards Act of 1938 that created the right to a minimum wage and overtime pay for more than 40 hours of labor in a week. After a wave of strikes between 1945 and 1946, Congress passed the Taft-Hartley Act in 1947 over President Harry Truman's veto. The act prohibited unfair labor acts such as wildcat strikes and secondary boycotts, and it allowed states to pass right-to-work laws banning union shops.

In 1963, Congress passed the Equal Pay Act aimed at abolishing wage disparity based on sex. The Civil Rights Act of 1964 followed, outlawing discrimination based on race, and other factors, in addition to sex. Then in 1967, the Age Discrimination in Employment Act was created to forbid employment discrimination against anyone 40 years of age or older. In 1970, the Occupational Safety and Health Act was enacted to assure safe and healthy working conditions.

In *Phillips v. Martin Marietta Corp.*, 400 U.S. 541 (1971), Ida Phillips applied for a job at the Martin Marietta Corp., a missile plant in Orlando, Florida. She had seven children, and the business had a hiring policy excluding mothers with pre-school children, believing them to be unreliable. Phillips alleged she had been denied employment because of her sex. The issue for the court was whether this outcome was discrimination under Title VII of the Civil Rights Act of 1964. The Supreme Court unanimously held that it was discriminatory, since it was based on the sex of the applicant, even if the policy focused on motherhood. Thereafter, employers were prohibited from sex discrimination based on the basis of pregnancy by the Pregnancy Discrimination Act of 1978. Later in that same year, Congress passed the Civil Service Reform Act that established collective bargaining rights for most employees of the federal government.

In the 1990s, the Americans with Disabilities Act of 1990 prohibited discrimination based upon disability. The areas of discrimination protection were further expanded recently in *Bostock v. Clayton County*, 590 U.S. ____ (2020), where the court issued a landmark decision, holding that Title VII prohibits discrimination against employees based upon sexual orientation and transgender status.

I'm sure many of us are familiar with the Family and Medical Leave Act of 1993 (FMLA) that was enacted to require employers to provide employees with job-protected and unpaid leave for qualified medical and family reasons. During the pandemic, Congress passed and the president signed into law the Families First Coronavirus Response Act (FFCRA). This act required that certain employers provide paid sick leave or expand family and medical leave. After the pandemic, the FMLA and FFCRA will probably be the most relied-on laws to provide guidance on how we should all try to be fair with one another as we strive to be productive, safe, and equitable as we work to put our economy back together.

Thanks to Frank Morton, Esq. for being a great labor law mentor.