



9 EMPLOYMENT LAW ISSUES YOU NEED TO WATCH

Year after year, companies struggle to keep up with the latest employer regulations and trending workplace issues. So far, 2017 is no different. Local, state and federal laws are changing frequently, and technology and social issues are constantly evolving and impacting today's workforce.

Here are nine employment law issues to watch:

1. Wage and hour law: New FLSA guidance

The Trump administration is not defending the previous' administration's rule, which would have raised the salary thresholds for certain exempt employees to \$913 a week. The Department of Labor has announced that it will seek input from the public before it issues a revised proposed overtime rule, which also would include new salary thresholds for exemptions.

2. Health care law — the ACA

Changes to current health care laws remain top-of-mind for individuals and employers. As of this writing, the Affordable Care Act (the ACA) is still the law. Unless and until a repeal, redrafting or replacement of the ACA is passed by Congress and fully enacted, businesses should maintain the status quo.

Employers should continue to ensure they remain compliant with all aspects of the ACA, including tax provisions and requirements for providing health care coverage to employees.

3. Employee use of social media

Companies are increasingly concerned about how employees use social media, both in the office and outside of the workplace. It's important to educate employees and establish clear and consistent standards and practices for interacting on social media. At the same time, employers must be careful not to infringe upon employee rights to discuss topics such as working conditions or wages. This activity is often protected, so companies should proceed cautiously before drafting or enforcing social media policies.

4. Independent contractors

The misclassification of employees as independent contractors or freelancers is a hot topic and an area of enforcement to watch closely. Some municipalities are providing additional protections for freelancers, such as the New York City Freelance Isn't Free Act, which establishes and enhances protections for freelance workers, specifically as to contracts, terms of payment and protection from retaliation.

5. Marijuana in the workplace

As more states legalize marijuana use for medical or recreational purposes, employers continue to struggle with how to address the issue in the workplace. A clear and consistent policy is vital because requirements vary by state. Statutes in Arizona, Connecticut, Delaware, Illinois, Maine, Minnesota, Nevada, New York and Rhode Island provide employee protections from discrimination primarily on the basis of being a medical marijuana cardholder, or for testing positive for marijuana during a drug test. The Massachusetts Supreme Court also recently ruled that employers may need to accommodate off-duty medical marijuana use in certain situations.



6. Paid leave and parental leave law

While we wait to see what the current administration's plans for paid parental leave will look like, states are busy passing their own laws. New York recently joined New Jersey, Rhode Island, California, Massachusetts and several other states providing some form of family leave. Multistate employers in particular should know that the Family Medical Leave Act (FMLA) is no longer the only law to follow when an individual is planning to give birth, adopt or foster a child, or to care for a family member. Also, many state laws are more inclusive of the family members covered under the FMLA.

7. Equal pay legislation and enforcement

The Equal Pay Act applies to all employers regardless of how many workers they employ. The law does not require an intent to discriminate, so whether an employer realized its actions were discriminatory is irrelevant. An individual who successfully sues under the federal law can recover back pay and penalties. The act is also not gender specific. Many states also have similar protections for employees and, in some cases, are more restrictive than the federal law in terms of the defenses that an employer can submit.

8. Discrimination, harassment and retaliation

With a steady increase in the number of claims filed against employers and changing guidance at the federal level, it's more important than ever for companies to consult with human resources and legal experts about whether some actions may be considered discrimination, harassment or retaliation. Knowledge of current case law is important in today's fluid environment. This is especially true in retaliation claims, which account for almost half of all EEOC claims. For example, a court can dismiss an underlying claim of discrimination or harassment but allow a retaliation claim to continue if the employee can prove that the company retaliated against them for exercising their rights and filing the complaint.

9. Business immigration and visa holders in the workplace

Immigration reform policies continue to evolve, and changes to business immigration laws remain in flux. Businesses should keep an eye on the latest policy proposals and actual legislation passed. For now, one specific change related to business immigration to be aware of is the updated Form I-9 used for identify verification and employment authorization. All employers must begin to use the new I-9 (with a revision date of July 17, 2017) by Sept. 18 of this year. The changes to the form are not substantial, but do include a new addition to the list of documents that may be used for verifications.

However challenging, businesses must closely monitor the legislative environment and stay informed on the topics that are driving significant changes in the law and best practices in human resources management. The best bet for employers is to partner with an HR consultant or employment law adviser to stay ahead of the curve.