



employment law trends outlook

Today's federal, state and local employment regulations are increasingly more complex and liability-prone. Having knowledgeable veteran attorneys on your side can change all of that. Let's look at the trends that will hit employers the hardest in 2020 and see if your company's compliance is up to par.

The impact of the #MeToo movement holds strong. Did you know more than 7,500 sexual harassment claims were filed with the U.S. Equal Employment Opportunity Commission (EEOC) in 2018? That's a 14 percent increase from the prior year. Workplace sexual harassment is now at the forefront of the conversation about workplace issues, but employers shouldn't forget that harassment based on any protected class is illegal. At this point, employers who can't prove that they have a robust anti-harassment policy and good complaint and investigation procedures in place are at a real risk. New York State Law even requires that employers with one or more employees must conduct annual sexual harassment prevention training for all employees. Are you compliant?

Family leave policies are evolving. With more local jurisdictions taking up the crusade for mandated paid sick leave across the country, employers should consider taking the time to review their current policies. The introduction of paid family leave in New York has been a big change for employers, especially small businesses. Employers need to understand the calculations and other mechanisms of the law and how new requirements compare to current employer offerings.

Retaliation claims are still on the rise. The number of retaliation claims has nearly tripled since 1997, and retaliation is the most frequently filed charge with the Equal Employment Opportunity Commission (EEOC). Even if a discrimination or harassment claim fails, a retaliation claim may prevail. Do you have an anti-retaliation plan in place for any recent complaint your entity has investigated?

Employee compensation is being challenged. The reality is that a lot of off-the-clock work happens that managers or leadership team members are not aware of, which leads to issues of timecard adjustments, pre- and post-shift activities, and auto-deductions for meal and break periods. Work performed by hourly employees at home or while traveling will continue to be popular sources of litigation. The U.S. Department of Labor also recently instituted a final overtime rule that's picking up steam. Many states and cities, including New York, have banned salary history questions during the interview process to combat wage disparities.

Union involvement is still prevalent. Nearly 24 percent of workers in New York were members of unions in 2016, the highest rate of any state and more than double the national figure! Section 7 of the National Labor Relations Act (NLRA) gives all employees the right to collectively engage in efforts to improve their working conditions. In the past decade (and largely as a result of social media), Section 7 of the NLRA has been used to protect employees' right to complain about their bosses, how they were paid, company policies, etc. The National Labor Relations Board's treatment of issues under Section 7 continues to evolve, and in turn to shape how employers deal with issues of insubordination and termination, as well as confidentiality issues around internal investigations. Do your policies violate the NLRA?

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Immigration. With so much national focus on immigration compliance and the massive federal raids on workplaces, along with increased USDOL and NYSDOL inspections and audits, it is critical that employers audit their own I-9 forms and other hiring and payroll practices. Self-assessment of I-9 forms and hiring practices is a beneficial way to avoid costly compliance errors.

Employee benefits. With ever-increasing health insurance costs, it is more important now to understand the employee benefit needs of your employees, and to have a keen sense of the cost of the benefits in order to properly manage benefit cost growth. Are you partnering with all the right entities to offer employee benefits that meet the needs of your employees and remain affordable and sustainable for the company?

Marijuana. Marijuana has been causing issues for HR professionals ever since states started legalizing the drug for medicinal and recreational use. These issues will continue to expand in 2020 and beyond. Inconsistencies in federal, state and local laws raise concerns within hiring processes, attendance policies and drug testing policies. Knowing what to do about legal prescriptions for marijuana is essential to avoid discrimination in hiring or unlawful terminations. Have you considered a comprehensive review of your drug testing policies, job descriptions and hiring practices?

Transformative tech in the workplace. Have you reviewed your operations and policies for the impact of tech on your business? In 2020, social media will continue to explode. What does this mean for talent acquisition and job seeking? Is your recruitment up to date? Artificial intelligence is expected to grow by 10x in 2020; AI is learning to mine every tweet, post, reply and like. Facebook Messenger now has more than 11,000 "chatbots," where an algorithm communicates with end users over Messenger as if it were a person. Voice interfaces like Siri, Cortana, Google and Alexa are getting closer to carrying out in-depth conversations. What information is your company targeting, and are you attracting and engaging candidates who are sophisticated in these areas? Screening candidates, scheduling meetings and other routine office tasks will soon be conducted by a next-generation AI assistant. Digital Avatars are becoming photorealistic and will soon be used for interviewing. All of these tech advances will likely disrupt the protections and limitations of current employment laws and privacy laws.

Sources:
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