

DEEP DIVE

7 compliance issues every HR leader should know

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From recruiting to retirement, HR leaders handle a variety of compliance issues related to employees. With the start of the new year, now is the perfect time to do a high-level review of some need-to-know topics.

Whether you're new to HR or an experienced professional, it's important to stay abreast of action at the federal level. Keep in mind, however, that these federal laws set the floor beneath which you cannot go, says David Miller, attorney at Bryant Miller Olive. State and local governments have been very active in recent months, and employers also need to know about any requirements that go above and beyond federal law.

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David Miller

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Anti-discrimination laws

Federal anti-discrimination laws prohibit employment discrimination based on race, color, sex, ethnic origin, disability or age, as well as because of genetic information or veteran status. In general, these laws prohibit employers from taking adverse employment actions based on these factors.

Title VII of the Civil Rights Act of 1964 (Title VII) outlaws discrimination based on race, color, sex or ethnic origin and applies to organizations with 15 or more employees. Sexual harassment, so prevalent in the news, is prohibited by Title VII because it is a form of sex discrimination.

The Americans with Disabilities Act (ADA) prohibits discrimination against individuals with disabilities and limits the questions employers can ask workers. It also protects those who have a record of a disability, are regarded as having a disability or are associated with an individual with a disability. The ADA, which applies to employers with 15 or more employees, also requires companies to provide covered individuals with reasonable accommodations.

The Age Discrimination in Employment Act (ADEA) protects workers who are 40 years or older from discrimination based on age. It's one of the most overlooked areas in discrimination, says Cathy Ventrell-Monsees, senior advisor at the U.S. Equal Employment Opportunity Commission (EEOC), the agency that enforces these laws. "Age stereotyping is so common," she says,

noting that people sometimes seem to find it more acceptable than other forms of discrimination. To guard against this type of discrimination, employers should avoid making assumptions about what an employee can or can't do, based on age, Ventrell-Monsees says.

Title II of the Genetic Information Nondiscrimination Act (GINA) guards against employment discrimination based on genetic information. GINA restricts employers from asking, requiring or using genetic information to make employment decisions.

The Uniformed Services Employment and Reemployment Rights Act (USERRA), which is enforced by the U.S. Department of Labor (DOL), prohibits discrimination based on military service and also provides job protection while individuals are serving, under certain circumstances.

What changes should HR leaders anticipate in the area of anti-discrimination? Miller says it's clear that the trend is to broaden the basis of prohibited discrimination, especially for gender identification and sexual orientation.

Wage and hour laws

Wage and hour laws include requirements for minimum wage, overtime, hours worked, child labor, and meal and break time.

The Fair Labor Standards Act (FLSA) is a federal law that establishes minimum wage and overtime requirements, but many states have adopted stringent requirements, says Jeffrey W.

Brecher, head of the wage and hour practice group at Jackson Lewis.

The federal minimum wage is \$7.25 per hour, and is not likely to increase anytime soon, Brecher says. However, most states have their own minimum wage, and increases to those rates can take place throughout the year, he noted. “Make sure you are paying the correct rate for each of the states in which you operate,” Brecher said, adding that some states may have different rates within the state, based on city, county or even employer size.

Brecher also recommended that employers note any other applicable rates, such as tip credit maximums for the hospitality industry. “You’ve got to make sure you get your rates right because if you don’t, it could be a significant liability going forward,” he said.

HR leaders also should note related state and local wage and hour laws; individual jurisdictions are increasingly adopting salary history bans, predictable scheduling laws and more.

Family and medical leave

The Family and Medical Leave Act (FMLA) is a federal law that allows workers who have met certain requirements take 12 weeks of unpaid leave each year without losing their jobs. This leave is granted for the birth and care of an employee’s newborn, bonding time with an adoptive child or with a child from foster care, to provide care of an immediate family member or for the employee's

own serious health condition.

While few federal changes are anticipated, the trend in employment is to expand the amount of time allowed for leave, and making the leave paid instead of unpaid, says Miller.

“New York sets the bar for the most robust program to date,” according to Michael Grant, executive managing director of employee benefits services of Crystal & Company, which provides brokerage and benefits consulting services. Although New York is only one of several states currently offering paid leave, it will eventually require some income replacement for all 12 weeks covered by the FMLA (phased in over four years) and will pay for a greater percentage of the employee’s salary in comparison to the other states’ plans, Grant says.

Immigration laws

Immigration laws, including the Immigration and Nationality Act (INA), the Immigration Reform and Control Act of 1986 (IRCA), the Immigration Act of 1990 and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), serve, among other things, to ensure that employers only hire candidates who are eligible to work in the U.S.

Eligible candidates include citizens, noncitizen nationals, lawful permanent residents and aliens authorized to work. Employers must verify candidate eligibility through documentation while also ensuring they don't run afoul of anti-discrimination laws.

Immigration was a hot-button issue in 2017, and that trend appears likely to continue in 2018. The Trump administration has promised increased workplace visits, and is beginning to make good on that promise. Deeper vetting of visa applications, along with an increased focus on hiring U.S. workers and an expectation that the government will review visa programs are all signs that immigration policies will continue to fluctuate in the future. HR leaders will need to make sure their I-9 process is up to par and watch for changes to immigration requirements.

Benefits

Benefits laws will not see major changes in 2018, says Steve Wojcik, vice president of public policy for the National Business Group on Health, a nonprofit organization that represents large employers' perspectives on national health policy issues.

Although the Affordable Care Act (ACA, also known as “Obamacare”) no longer includes an individual mandate, the majority of the plan is still in effect. Experts caution that employers should be remember that reporting deadlines are also still in place and should not be ignored or overlooked.

Other major employee benefits law, including the Employment Retirement Income Security Act of 1974 (ERISA), the Health Insurance Portability and Accountability Act (HIPAA) and the Consolidated Omnibus Budget Reconciliation Act (COBRA) are not expected to change in 2018, Wojcik says.

Safety laws

The Occupational Health and Safety Act (OSH Act) was created to ensure employees had safe working conditions and is administered by the Occupational Health and Safety Administration (OSHA). While several OSHA initiatives remain in limbo in light of the administration change, HR may want keep a careful eye on new recordkeeping and reporting requirements.

Union laws

It may be tempting to ignore the National Labor Relations Act (NLRA) if your workplace isn't unionized, but that would be a mistake. Several employers have faced claims alleging that they interfered with workers' rights to work together to improve their working conditions. Of particular note are claims involving workers taking to social media to air grievances and employer trainings and policies that, for example, prohibit negativity at work.

The National Labor Relations Board, which is made up of members appointed by the president, decides labor cases, and because of that, decisions can shift politically, according to Miller. “Over the last eight years, we’ve seen dramatic expansion for protections of employees, empowerment of unions,” Miller said. But in the last year, with the majority of members appointed by President Donald Trump, that has shifted, he said. Signs of that include a number of late December decisions that favor employers. HR leaders would do well to stay tuned as the landscape continues to shift.

HR leaders may not be expected to be experts in every area of compliance, but their role in recognizing issues is critical, Miller said; “HR professionals are the absolute front line of defense for a company to make sure it treats people fairly, legally and keeps the business out of danger.”