

2018 Labor and Employment Law Checklist

Each year, LP's Labor & Employment Practice Group is pleased to provide a short checklist of steps that all companies should consider taking to measure their readiness for the coming year. We hope that you find our 2018 Labor and Employment Law Checklist to be a helpful guide to best practices for the year ahead.

- Deal with the Elephant in the Room and Conduct Harassment Training for Your Workforce.** With the headlines around harassment and abuse allegations and the #MeToo and #TIMESUP movements, there is no hotter topic in employment law right now than workplace harassment. Appropriate training ensures both that your employees know how to stop harassment when they experience it and that your company can take advantage of certain defenses to claims that may come up in the future. If your company has not conducted training in the last two years, put it on the agenda for 2018.
- Decide on Your Investigation Procedures Now.** When serious allegations of harassment and discrimination arise, they need to be investigated by experienced legal and HR professionals in order to get to the bottom of what really happened. Well run investigations also form another foundation in a company's legal defense. Because speed counts when employees raise issues, determine now which outside investigators are on your short list and how you will approach such investigations.
- Determine Whether to Ask About Applicant Pay History.** In an effort to eliminate gender discrimination in compensation, many state and local governments have taken steps to ban employers from asking applicants about their pay in prior jobs. For example, California's law took effect January 1, 2018 and Massachusetts' law takes effect on July 1, 2018. Making things more complicated it that it's not entirely clear which state's law applies when the recruiting process crosses state lines. Employers need to determine if the jurisdictions where they operate have laws of this kind and immediately take steps to change hiring procedures to account for them.
- Monitor the Changes at the NLRB.** The National Labor Relations Board is now fully controlled by its Republican members, and rulings are already starting to change the landscape for employers. For instance, recent decisions by the NLRB have relaxed the standard applicable to policies in employee handbooks. Consider re-reviewing employee handbooks to take advantage of this change and be aware of how other changes at the NLRB impact your business.
- Review Changing Leave Laws.** One area where employee rights have continued to expand is in the area of leave laws. For instance, New York has a new law on paid family leave that took effect on January 1, 2018, and California has a law that took effect on that date expanding parental leave rights. Many states and municipalities also have passed new paid sick leave laws. It is important for employers to ensure that their HR teams understand these new laws and that their leave policies encompass the broader rights being given to employees.
- Don't Let Employees Engage in Distracted Driving.** When employees drive as part of their job, employers can be held liable for accidents that result from distracted driving. Laws around distracted driving are getting tougher. For instance, Rhode Island recently passed a law banning all mobile phone use by drivers, with limited exceptions for hands-free devices. In Washington, a new law went into effect on January 23rd that prohibits drivers from even holding gadgets at a stop sign or red light. Be sure your policies make clear that safety comes first, appropriately address employee responsibilities while driving and give employees the right to defer calls until they are off the road.
- Is It Time to Reconsider Using Arbitration Agreements?** Some employers have been reluctant to use arbitration agreements with their employees because of uncertainty about the enforceability of these agreements, particularly in situations involving class actions. Last fall, the Supreme Court heard oral argument in a case that is expected to clarify the law in this area. If this ruling ends up being favorable for employers, it may be time to reconsider whether arbitration is a better forum for resolving employee disputes.
- Be Careful Gathering Genetic Information.** Employers must be careful in how they gather and use genetic information concerning employees and applicants. Congress passed the Genetic Information Nondiscrimination Act in 2008 and approximately 37 states have laws on this topic. As of January 1, 2018, changes to the Illinois Genetic Information Privacy Act prohibit employers from penalizing employees who refuse to provide genetic information. This law was intended to head off efforts to require employees to provide genetic information in wellness programs.

- If Using Biometric Data, Make Sure You Know Legal Requirements.** In 2017 we saw a large number of class actions filed under the Illinois Biometric Information Privacy Act (IBIPA) against employers whose employees clock in and out using their fingerprint or a hand scan. These cases, which allege that the employers failed to meet the very specific requirements set out in IBIPA, are still in their early stages, but employers who use fingerprints or other biometric information for time tracking, security access, or other purposes should make sure that they understand and are complying with IBIPA's requirements.
- Review how Marijuana is Treated Under Drug Policies.** Recreational marijuana is now legal in seven states, including California, and nineteen states have laws permitting the use of marijuana for medical purposes. In view of the spread of laws permitting marijuana use, many employers have re-examined their drug policies and decided to treat marijuana differently from other illegal drugs. There are pros and cons to these changes and the right move depends to some extent on where an employer has operations, but 2018 may be the time to assess whether you are taking the right approach.
- Are You Ready for a Data Breach?** In 2017, nine states enacted new or amended security breach laws. Last year, updates to Illinois' Personal Information Protection Act went into effect expanding the definition of protected information and increasing the notice obligations for breaches. All employers should review the security safeguards being used to protect such information and also plan now for the steps that need to be taken in the event of a data breach.
- Understand Pregnancy Accommodation Obligations.** Under the Americans with Disabilities Act, employers have an obligation to accommodate pregnancy-related conditions. Now, however, many states are also passing specific laws requiring employers to accommodate employees who are pregnant or breastfeeding. Illinois amended its own Human Rights Act in 2015 to protect pregnant employees, and other states have been catching up. For instance, Vermont and Massachusetts have new laws going into effect in 2018. Employers should be sure that as issues arise, they understand and comply with both their federal and state pregnancy accommodation obligations.

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