2019 Labor and Employment Law Checklist

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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 2019 Labor and Employment Law Checklist to be a helpful guide to best practices for the year ahead.

Download a fillable PDF here. Print it out for yearlong reference, or get started right away and enjoy the satisfaction of checking some very important items off your list.

- **Keep Ahead of Harassment & Discrimination Claims.** The #MeToo and #TIMESUP headlines did not slow down in 2018, and preliminary data released by the EEOC showed more than a 50% increase in EEOC charges claiming sexual harassment. In addition, Illinois and New York implemented new requirements relating to harassment policies and training, with Illinois requiring policies for employers that do business with the state or claim EDGE tax credits, and New York implementing strict requirements that

apply to all companies with New York employees. The EEOC also issued "Promising Practices for Preventing Harassment" to provide strategies to employers to reduce workplace harassment. Committed and engaged leadership, strong and comprehensive harassment policies, and regular, interactive training tailored to the audience and the organization are the new standard. If you have not conducted training and updated your harassment, discrimination and retaliation policies to meet these standards, put it on the agenda for early 2019.

- **Update Policies to Reflect New Reimbursement Requirements.** Under a new law targeting employers who require employees to use their personal cell phones for business purposes, Illinois now requires employers to reimburse employees for expenses they incur that are "directly related" to the services they are providing their employer. However, employers can set requirements around how and when requests for reimbursement must be made. It is critical that employers confirm that expense reimbursement policies provide the framework for requesting reimbursement, and that policy manuals are clear that

employees are eligible for reimbursement for these expenses, at least to the extent they exceed what the employee would have spent for personal reasons.

- **Review Compensation Policies.** The gender pay gap continues to draw the attention of lawmakers. For example, California, Connecticut, Delaware, Hawaii, New York, New Jersey, Maryland, Massachusetts, Oregon, Puerto Rico, Vermont and a number of municipalities have adopted laws making it easier to prove discrimination and/or limiting the compensation information that can be requested from applicants. And with the change in leadership in Springfield, Illinois might just follow suit in 2019. Consider reviewing compensation policies to put the emphasis on the value of the work being performed, rather than on what the applicant was paid in his or her last position.

- **Confirm Parental Leave Policies Don't Discriminate.** Being more generous with paid leave to new mothers than new fathers can create significant liability if the difference is based on gender and not on the physical act of giving birth or the employee's designation as a primary care giver. In February 2018, Estee Lauder

paid $1 million to more than 200 male workers to settle a charge claiming that the company's parental leave policy discriminated against male employees. Employers should revisit maternity and parental leave policies to make sure that any difference between the leave being provided to male and female employees is based on a permissible reason.

- **Comply with New Military Leave Protections.** A new Illinois Law - ISERRA- provides some additional protections beyond those of the Federal USERRA. ISERRA applies to all Illinois employers, regardless of size and requires that a specific notice of rights be posted. Make sure that your team is aware of these new requirements and that the notice is posted in your workplace. Also, if you have a military leave policy, confirm that it reflects ISERRA.

- **Are Arbitration Agreements Right for You?** After years of uncertainty, the Supreme Court determined that employers can legally require employees to arbitrate any disputes individually. But are these types of agreements right for your company? There are pros and cons of arbitration, so talk with your legal advisors to determine whether the

agreements that require individual arbitration make sense for your organization.

- **Revisit Workplace Rules Following NLRB Shift.** The NLRB, now controlled by Republicans, is undoing many of the standards put in place by the prior NLRB. Many, but not all, of these rules are considered pro-employer, including a more practical approach to determining when handbook policies regarding confidentiality interfere with employees' right to engage in concerted activity. This means that some of the disclaimers and limitations in employee handbooks that were put into place in response to the "old" NLRB's standards are no longer necessary. Consider revisiting employee handbooks to clarify policies to be consistent with the current rules.

- **Consider Unpaid Intern Standard Changes.** For years we have counseled clients not to use unpaid interns or risk a variety of employment claims. However, changes to legal standards from both the courts and the Department of Labor have provided a more practical approach and raises the possibility of treating interns as unpaid. At the heart of the analysis is whether the internship is more for the

intern's benefit or the company's, and whether the internship is an extension of their education. If you have an internship program that works with students, or are considering one, talk to your legal counsel about whether the internships can be unpaid.

- **Update Restrictive Covenants.** There has been lots of conversation regarding restrictive covenants. In fact, states are increasingly passing laws related to non-competes. Most recently, Massachusetts passed the most sweeping legislation we have seen in several years, limiting when and how employers can prohibit competition and even requiring additional consideration during the time period in which the employee cannot compete. If your restrictive covenants are more than a few years old, or if they are not specifically crafted to meet the legitimate business needs of the company, it is important to revisit and update them to maximize enforceability.

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