

*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 2021 Labor and Employment Law Checklist to be a helpful guide to best practices for the year ahead.*

Reassess your COVID plan. In 2020, employers had to adapt and re-adapt while managing through the COVID-19 pandemic, and 2021 will continue to present new challenges in this area, including navigating employee requirements related to the COVID vaccine. COVID plans should not be static documents, but rather, they should be revised to incorporate new developments (such as vaccine availability), the latest guidance from the CDC, and any requirements from state and local agencies. If you need help on where to start, check out our [webinar from November 2020 on practical tips for COVID-related workplace issues](#).

Consider whether to require COVID-19 vaccination. The EEOC has made clear that employers may require that employees be vaccinated against COVID-19 when the vaccine becomes available, provided that requests for an exception from that requirement due to their personal health condition or religion are considered under a reasonable accommodation analysis. Requiring vaccinations isn't for all employers, and there are likely to be local considerations as well, but it is important to determine your company's plan and, if you decide to require vaccinations, develop a short policy document. You can find more information about mandating vaccines [here](#).

Make sure anti-harassment training is on your calendar! Illinois employers (and those in a few other states) must conduct anti-harassment training each calendar year and employers elsewhere should consider anti-harassment training to keep ahead of potential claims. It is important to determine the training that will work best for your business and a plan for how you will keep the training fresh. Get anti-harassment training on the calendar early to maximize attendance. If you are interested, we invite you talk to us about the [training we offer](#).

Evaluate D&I initiatives and update EEO Policies. If your company developed new diversity and inclusion initiatives in 2020, now is a great time to evaluate and make new goals for the year ahead. Publicly traded companies in California should also be aware of new requirements about diversity on their Board of Directors. Separately, employers who have not previously included sexual orientation and gender identity in their EEO and anti-harassment policies should revise to add these protected characteristics in light of the [Supreme Court's decision in Bostock v. Clayton County, Georgia last summer](#).

Be aware of minimum wage and minimum salary increases. 2021 brings minimum wage increases in more than 20 states and multiple municipalities, including New York City and Chicago. It also brings increases in minimum salary requirements for exempt employees in New York and California. Make sure that you are aware of – and complying with – the minimum wage and minimum salary requirements in the jurisdictions where you operate.

Re-consider classification of independent contractors. The standards around who can properly be considered an independent contractor continue to evolve. This year, Virginia, Minneapolis, Louisiana and Iowa all updated independent contractor standards for various industries or agencies, and California continues to make it virtually impossible to treat an individual performing work that is part of the company's business offerings as an independent contractor. Take a close look at the individuals who your company treats as independent contractors to determine if they are properly classified as such, and if you decide to keep them so-classified, make sure that both your agreement and reality support that classification.

Monitor use of biometrics. Class action litigation under Illinois' Biometric Information Privacy Act has not slowed down. In 2020, ADP and Facebook each entered into multi-million dollar settlements to resolve claims that they violated the Act. If your company utilizes, or previously utilized, face, hand, finger or retina scan timeclocks, be sure to confirm compliance with the Act and evaluate how to reduce any potential liability. Other states and localities have also grappled with regulating biometrics, including a new Portland law banning the use of facial recognition technology by public-facing businesses.

Update sick and family leave policies. The list of states and municipalities requiring some type of paid sick or family leave continues to grow, with New York, Maine, and Colorado adding new paid leave requirements, and Connecticut and Massachusetts implementing new paid family leave programs. Locations such as Chicago and California have also made changes to their paid leave requirements. With ever-expanding requirements, employers have to decide whether to have one all-inclusive policy for all U.S. employees, or locally-specific policies. There are pros and cons to each approach, so talk with your legal advisors and leave administrators to determine which path is best for your company, and confirm all policies are up to date.

Determine if the fluctuating workweek method is right for your workplace. If you have non-exempt employees whose hours change week to week, new FLSA regulations now make it easier to pay them a weekly salary under the [fluctuating workweek method](#). These changes allow employers to pay bonuses or other incentive-based pay above and beyond workers' fixed salaries when using the fluctuating workweek method, as long as those payments are included in the calculation of the regular rate. Consult with legal counsel to see if the fluctuating workweek method is right for your employees and an option in the states where you operate.

Update processes to comply with Colorado law on salary history and job postings. Employers with even one employee in Colorado must comply with its new Equal Pay for Equal Work Act. In addition to prohibiting employers from requesting salary history information from job applicants, what is particularly noteworthy are the law's onerous job posting and promotion notification requirements. Employers must notify Colorado employees of all opportunities for promotion anywhere in the company, even if the employee is not qualified. Additionally, all job postings for positions in Colorado, including those that can be performed remotely in Colorado, must include compensation and benefits information for the position. Companies with Colorado employees need to consider how they will ensure compliance – either on a Colorado-only or company-wide basis.

Prepare for changes in employment laws. While we cannot predict what actions the new Biden administration will prioritize, it is anticipated that there will be a push to increase the minimum wage to \$15 per hour and pass new anti-discrimination laws. It also appears likely that the Department of Labor will (once again) change its position on issues such as the independent contractor and joint employer analyses and revisit exempt status requirements. We will continue to monitor and provide updates on as the new administration gets under way.

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