

2023 Employment & Executive Compensation Compliance Checklist

Each year, LP's Employment & Executive Compensation 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 2023 Employment & Executive Compensation Checklist to be a helpful guide to best practices for the year ahead.

- ❑ **Schedule Anti-Harassment Training!** Anti-harassment training is always a good idea, but recent changes to the law make it mandatory in many jurisdictions. In Chicago, employers now need to conduct THREE hours of training in every July 1 to June 30 each year (two for rank-and-file employees and a third for managers). Elsewhere in Illinois, in California, and in some other jurisdictions, employers are required to conduct anti-harassment training annually or bi-annually. Get anti-harassment training on the calendar early to maximize attendance and make sure that leadership emphasizes the importance of trainings, attends and actively participates. If you are interested, we invite you talk to us about the [trainings we offer](#).
- ❑ **Ensure Job Postings Comply with New Pay Disclosure Requirements.** California, New York City, and Washington State have joined Colorado in requiring some or all employers to disclose wage ranges in job postings. Notably, these requirements include jobs that may be performed remotely in these states. Additionally, Rhode Island joins a growing list of states that require disclosure of the salary range for a position upon request. It's critical that employers understand what information needs to be included in job postings to avoid inadvertently violating these laws. Employers that don't currently practice pay transparency should also think about how they might implement such an approach to get in front of requirements as pay disclosure laws continue to spread.
- ❑ **Update Bereavement Leave Policies in Illinois.** Beginning January 1, 2023, any Illinois employer covered by the FMLA must provide employees up to 10 days of unpaid leave in the event of a death of a close family member, or up to six weeks in the event of the death of two close family members in a year. **Bereavement leave** must also be made available for employees with fertility-related issues such as a miscarriage, an unsuccessful round of assisted reproduction, failed adoption or surrogacy, or stillbirth.
- ❑ **Make Sure Restrictive Covenants Comply With Strict New Standards and Consider Alternatives to Protect Legitimate Business Interests.** Employers in Washington D.C. and Colorado need to be aware of strict new restrictions on the use of non-competes and non-solicits that limit not only who can be required to sign these types of covenants but how broad they can be – and impose penalties for overbreadth. In addition, while the FTC's rule is far from final, employers nationwide need to be aware of efforts by the Federal Trade Commission to abolish employment non-competes all together. It is critical that employers review and consider their standard restrictive covenants to find the right balance between enforceability and deterrence. In addition, in this atmosphere of uncertainty around the future of non-competes, employers should consider long-term incentive plans and other tools to incentivize employees to stay and also protect the company without relying on restrictive covenants.
- ❑ **Be Ready to Apply for Illinois' Equal Pay Registration Certificate.** Employers with more than 100 employees in Illinois must apply for the Certificate between March 24, 2022 and March 23, 2024, and recertify every two years thereafter. Companies will be notified by the Department of Labor when it is time for them to register and will be given at least 120 days' notice of their individual deadline. If you have not received notice yet, get started now by considering how you will answer the questions in the compliance statement and report the data.
- ❑ **Make Sure You're Complying With the Amended Illinois One Day Rest in Seven Act.** Under a new amendment, covered Illinois employees must be given 24 hours off in every consecutive 7-day period (replacing the previous requirement of once per calendar week). Excluded from this requirement are security guards and employees who are exempt under the FLSA and supervisors under the National Labor Relations Act. Covered employees must also be given an additional 20-minute meal period for every additional 4 ½ continuous hours worked (over their original 7 ½ hours).

- ❑ **Be Aware of Minimum Wage and Minimum Salary Increases.** 2023 brings minimum wage increases in many states and localities, as well as increases to the minimum salary that employees must receive in order to be eligible to be exempt from overtime requirements (remember that salary isn't enough – they also need to satisfy a job duties test!). Make sure that you are aware of – and complying with – the minimum wage and minimum salary requirements in the jurisdictions where your employees perform work, including the requirements in the locations where you have any remote employees.
- ❑ **Re-consider Classification of Independent Contractors & Don't be Tempted to 1099.** The standards around who can properly be considered an independent contractor continue to evolve to make it more difficult to establish independent contractor status. Take a close look at the individuals your company treats as independent contractors to determine if they are properly classified as independent contractors. If you decide to keep them classified as such, make sure that both your agreement and reality support that classification. Also, don't be tempted to try to hedge against potential downturns by engaging workers as independent contractors instead of as employees. The fact that a worker may be engaged on a short term or "trial" basis isn't sufficient grounds for them to be classified as an independent contractor, and misclassifying them as such exposes the company to significant liability. When in doubt, engage the worker as a temporary employee.
- ❑ **Update Sick and Family Leave Policies.** The list of states and municipalities requiring some type of paid sick or family leave continues to grow. Notably, Illinois has recently approved a new law providing employees with 40 hours of paid leave for any reason, which is set to take effect on January 1, 2024. With this and other ever-expanding requirements, employers must decide whether to have one all-inclusive policy for all U.S. employees or location-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 you, and confirm all policies are up to date.
- ❑ **Give Your Retirement Plans Some TLC.** Many corporate officers and board members are fiduciaries to the company's retirement plan and must act with prudence in that role. Part of prudence requires fiduciaries to consider the retirement plan's vendors, fees, services every three to five years. If not done so recently, consider taking the retirement plan through the request for proposal process to determine if the retirement plan is receiving appropriate services for a reasonable fee.

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