HR COMPLIANCE TRENDS FOR 2019

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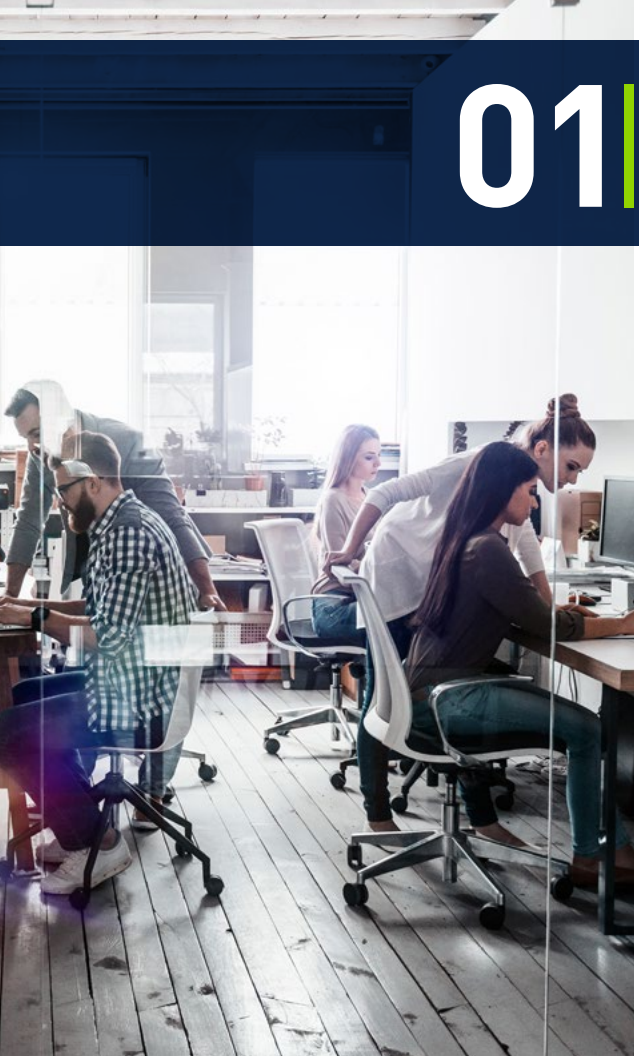
The compliance landscape is complicated. It's a patchwork of laws that vary by state, county and even city, and it's always changing. Local governments pass new laws, and courts constantly weigh in with different interpretations of those laws.

At the same time, remaining compliant is important for every employer. Even one compliance issue can cost thousands or even millions of dollars. It's crucial to track every compliance development and to work with a talent partner who stays up to date on the legal landscape.

We're always watching for compliance developments, and every year there are a few new trends. In this ebook, we'll walk you through the biggest compliance trends for 2019 and what they mean for you. This ebook primarily covers compliance issues in the United States and North America.

01 EQUAL PAY & SALARY HISTORY BANS



WHAT IT IS

Salary history laws are intended as a way to promote pay equity by imposing limitations on how employers can use a worker's previous salary as a benchmark to set compensation. While the Equal Pay Act of 1963 guarantees equal pay for equal work, pay discrepancies still exist. Salary history bans are usually part of a broader pay equity movement being legislated throughout the country. In 2018, multiple courts weighed in on pay equity laws, but the legislation may end up in the Supreme Court.

IN ACTION

Salary history bans are increasing in popularity across the U.S. At the start of 2019, 11 states and commonwealths and 11 local governments enacted salary history bans, though one is currently on hold. The legislation typically prevents employers from asking about salary history and if a candidate volunteers that information, employers cannot use it to set that person's salary.

STATES AND COMMONWEALTHS WITH SALARY HISTORY BANS:

CALIFORNIA
- Impacts all employers
- Took effect in 2018

CONNECTICUT
- Impacts any individual, corporation, limited liability company, firm, partnership, voluntary association, joint stock association, the state and any political subdivision thereof and any public corporation within the state
- Took effect in 2019

DELAWARE
- Impacts all employers or employers' agents
- Took effect in 2017

HAWAII
- Impacts all employers, employment agencies and employees or agents thereof
- Took effect in 2019

MASSACHUSETTS
- Impacts all employers, including state and municipal employers
- Took effect in 2018

NEW JERSEY
- Impacts state entities
- Took effect in 2018

NEW YORK
- Impacts all agencies and departments over which the governor has executive authority, and all public benefit corporations, public authorities, boards and commissions for which the governor appoints the chair, the chief executive or the majority of board members, except for the Port Authority of New York and New Jersey
- Took effect in 2017

OREGON
- Impacts any person employing one or more employees, including the state or any political subdivision thereof or any county, city, district, authority, public corporation or entity and any of their instrumentalities organized and existing under law or charter
- Took effect in 2017

PENNSYLVANIA
- Impacts state agencies
- Took effect in 2018

PUERTO RICO
- Impacts all employers
- Took effect in 2017

VERMONT
- Impacts all employers
- Took effect in 2018

LOCAL GOVERNMENTS WITH SALARY HISTORY BANS:

SAN FRANSISCO, CALIFORNIA
- Impacts all employers
- Took effect in 2018

CHICAGO, ILLINOIS
- Impacts all employers
- Took effect in 2018

LOUISVILLE, KENTUCKY
- Impacts the Louisville/Jefferson County Metro Government or any department, agency or office thereof unless specifically excluded in the law
- Took effect in 2018

NEW ORLEANS, LOUISIANA
- Impacts all employers
- Took effect in 2017

KANSAS CITY, MISSOURI
- Impacts the city
- Took effect in 2018

NEW YORK CITY, NEW YORK
- Impacts all employers, employment agencies or employees or agents thereof in the city
- Took effect in 2017

ALBANY COUNTY, NEW YORK
- Impacts all employers and employment agencies
- Took effect in 2017

SUFFOLK COUNTY, NEW YORK
- Impacts all employers and employment agencies
- Takes effect June 30, 2019

WESTCHESTER COUNTY, NEW YORK
- Impacts employers, labor organizations, employment agencies or licensing agencies, or an employee or agent thereof
- Took effect in 2018

PHILADELPHIA, PENNSYLVANIA
- Impacts any person who does business in the city through employees or who employs one or more employees exclusive of parents, spouse or children, including any public agency or authority; any agency, authority or instrumentality of the state; and the city, its department, boards and commissions
- On hold as legal challenges are considered by the courts

PITTSBURGH, PENNSYLVANIA
- Impacts the city or any division, department, agency or office thereof, unless specifically excluded in the law
- Took effect in 2017

Additionally, multiple courts have weighed in on equal pay legislation and salary history bans. In April, a federal appeals court ruled that salary history cannot be used to justify paying a woman less than a man for doing similar work under the Federal Pay Equity Act. The ruling in *Rizo v. Fresno County Office of Education* covers California, Oregon, Washington, Nevada, Arizona, Alaska, Hawaii, Idaho and Montana.

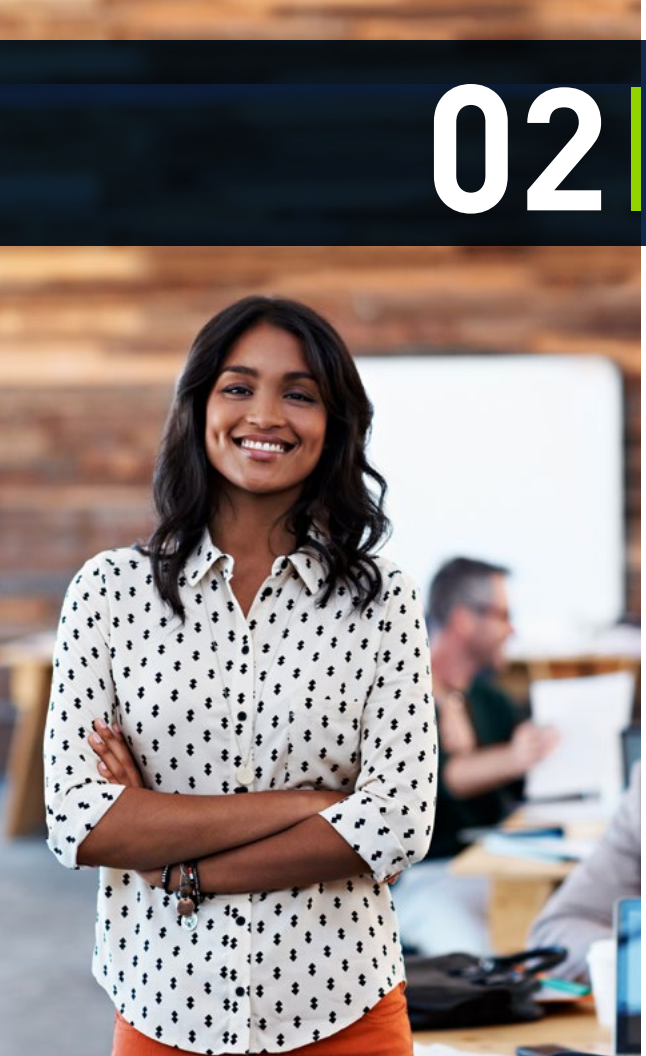
However, a federal district court judge halted part of Philadelphia's salary history ban, ruling that banning employers from inquiring about salary history violates the First Amendment's free speech clause. At the same time, the judge ruled that the portion of the law that prevents employers from using salary history to determine an employee's wage does not have constitutional concerns. Under this, employers can ask for a candidate's salary history, but they cannot rely on that information.

Two states, Michigan and Wisconsin, have banned local governments from enacting salary history bans.

LOOKING AHEAD

With the accelerating popularity of this legislation, employers should watch closely for any new salary history laws passed by state and local governments. Additionally, employers, especially those operating in multiple states and localities, should adjust their policies to remain compliant.

02 SEXUAL HARASSMENT POLICIES & TRAINING



WHAT IT IS

In the wake of the #MeToo movement and several high-profile cases of workplace harassment, some state and local governments are passing laws to strengthen workplace sexual harassment policies and increase the amount of training required. The U.S. Equal Employment Opportunity Commission (EEOC) also increased its focus in this area.

IN ACTION

In 2018, New York State signed the 2019 State Budget which updated the state's sexual harassment laws.

- The legislation lays out several new requirements all employers must meet in their sexual harassment policies.
- The policies must prohibit sexual harassment consistent with guidance issued by the Department of Labor in consultation with the Division of Human Rights;
- Provide examples of prohibited conduct that would constitute unlawful sexual harassment;

- Include information concerning the federal and state statutory provisions concerning sexual harassment, remedies available to victims of sexual harassment, and a statement that there may be applicable local laws;
- Include a complaint form;
- Include a procedure for the timely and confidential investigation of complaints that ensures due process for all parties;
- Inform employees of their rights of redress and all available forums for adjudicating sexual harassment complaints administratively and judicially;
- Clearly state that sexual harassment is considered a form of employee misconduct and that sanctions will be enforced against individuals engaging in sexual harassment and against supervisory and managerial personnel who knowingly allow such behavior to continue; and
- Clearly state that retaliation against individuals who complain of sexual harassment or who testify or assist in any investigation or proceeding involving sexual harassment is unlawful.

As a part of the law, every employer in the state must provide sexual harassment prevention training that includes the following minimum requirements:

- The training must be interactive;
- Include an explanation of sexual harassment consistent with guidance issued by the New York Department of Labor in consultation with the Division of Human Rights;
- Include examples that would constitute unlawful sexual harassment;
- Include information concerning the federal and state statutory provision concerning sexual harassment and remedies available to victims of sexual harassment;
- Include information about employees' rights of redress and all available forums for adjudicating complaints; and
- Include information addressing conduct by supervisors and any additional responsibilities for supervisors.

Employees need to complete this training annually, and it must be provided in the language spoken by employees.

Employers have until October 9, 2019 to comply with the training requirements. The policy requirements became effective on October 9, 2018. Employers can learn more about this on the State's website. The website includes a model sexual harassment prevention policy, sexual harassment training script, sexual harassment complaint form, additional explanations of employers' legal obligations, and FAQs about the new requirements.

A new California law regarding harassment training took effect in 2018. This legislation requires businesses that employ 50 or more workers to train their supervisory employees on anti-harassment policies designed to protect employee gender identity, gender expression and sexual orientation. This bill is unique in that it expands training to prevent harassment due to gender identity or gender expression, and that it sets specific standards for the training, including that the training be two hours in length, include specific examples of harassment in the aforementioned areas, and must be presented every two years by trainers with knowledge and expertise in these areas.

California also requires workplaces to display a standard transgender rights poster in the workplace. Additionally, by January 1, 2020, California employers with at least five or more employees must provide one hour of sexual harassment prevention training and education to non-supervisory employees as well.

The EEOC filed 66 harassment lawsuits in fiscal year 2018, including 41 that alleged sexual harassment. That's a more than 50 percent increase in suits challenging sexual harassment over fiscal year 2017. The EEOC also significantly increased the amount of money recovered for victims of sexual harassment over fiscal year 2017 – from $47.5 million to nearly $70 million.

LOOKING AHEAD

Employers should evaluate and adapt their sexual harassment policies and training to meet all legal requirements in the areas where they operate. Employers should also expect continued focus on sexual harassment from the EEOC. Additionally, employers should expect legislation which invalidates separation or non-disclosure/non-disparagement agreements that prohibit a party from disclosing factual information related to claims of sexual harassment or discrimination, including retaliation for reporting the harassment.

03 MARIJUANA IN THE WORKPLACE

WHAT IT IS

At the start of 2019, ten states and Washington, D.C. had legalized recreational marijuana and 33 had legalized medical marijuana. Experts expect as many as nine states to legalize or expand the availability of recreational marijuana in 2019, though it remains illegal at the federal level. Additionally, Canada recently legalized the drug for recreational use, and the Mexican Supreme Court also ruled the recreational marijuana ban in that country unconstitutional. However, there is no legal consensus about what actions employers should take if a candidate or an employee uses marijuana for medical purposes.

IN ACTION

The landscape of marijuana laws is complicated. While states like Oregon and Colorado allow the use of marijuana for recreational purposes, others like Iowa and Texas restrict even its medical use, limiting the types of conditions eligible for treatment and the level of THC, the psychoactive component of marijuana that the drug can contain when used for medicinal purposes. Many states do not provide protections for people who use medical marijuana. However, some, like Connecticut, do offer protections to employees.

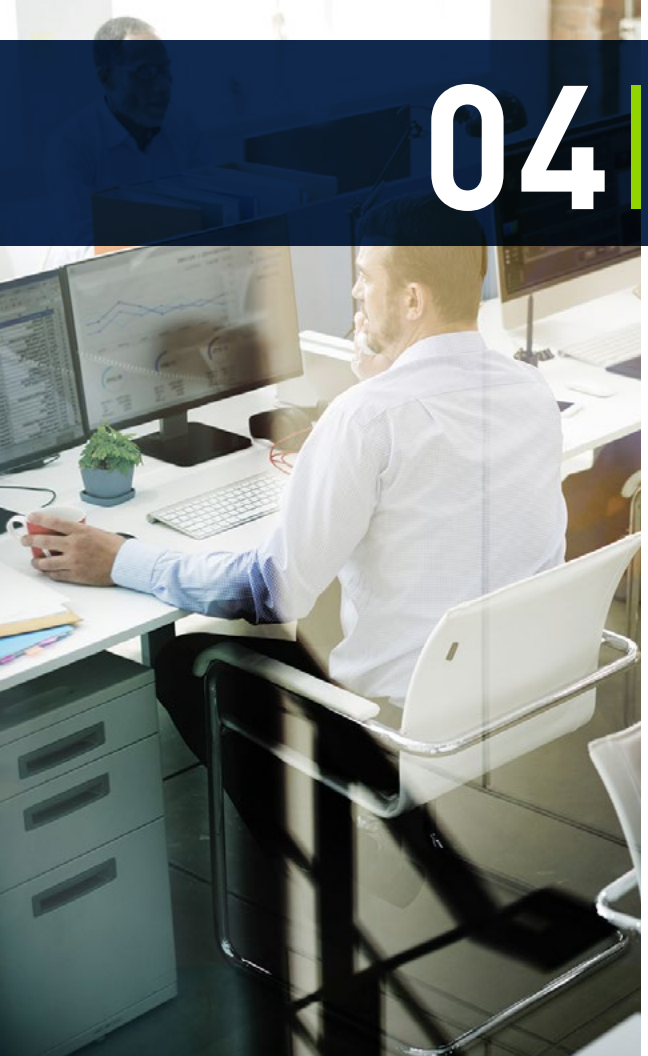
Additionally, all marijuana is illegal under federal law. While the Justice Department has indicated plans to crack down on the industry, there has not been a widespread federal crackdown in legalized states.

In 2017, State courts in Massachusetts and Connecticut ruled in favor of users of medical marijuana in cases that found that off-duty medical marijuana use is a "reasonable accommodation" under the Massachusetts' disability law. The federal law that makes it a crime to use marijuana does not make it illegal to employ a person who uses medical marijuana, so it does not pre-empt Connecticut's State law. Importantly, these decisions do not permit an employee to be under the influence during the workday.

In 2018, several cases made the issue more complicated for employers. A judge in Maine recently ruled that employers are not required to reimburse for medical marijuana treatment. However, in New York, the New York Workers Compensation Board held that it has the authority to require insurers to reimburse for marijuana as a worker's compensation treatment when marijuana is prescribed by a certified medical provider.

LOOKING AHEAD

Considering the wide variety of state laws and recent court cases, employers should evaluate their own policies regarding the use of medical marijuana outside of the workplace as well as any state laws that may apply. There is currently no broad legal consensus regarding the issue; employers should watch for any court decisions that can provide clarity.



04 DATA PRIVACY

WHAT IT IS

Data privacy laws are designed to regulate how organizations collect personal data, what those organizations can do with that data and what rights consumers have with regard to their personal data. They are growing in popularity as high-profile data breaches continue to make the news.

IN ACTION

Commonly known as the GDPR, the EU General Data Protection Regulation took effect last year and requires businesses to protect the personal data and privacy of EU citizens for transactions that occur within EU member states.

The GDPR applies to all organizations that collect the data of people who live in the EU, regardless of the organization's physical location.

That means the GDPR impacts organizations across the globe, and the penalties can reach up to 4 percent of the global revenue of the parent company or 20 million euros, whichever is higher. Enforcement began on May 25, 2018.

The regulation requires privacy by design, which means that a data system needs to include data protection from the start, rather than as an addition. Organizations must only hold and process the data that is absolutely necessary, and limit access to that data to those who need to process it.
Similar to GDPR, last year, the governor of California signed into law the California Consumer Privacy Act of 2018, one of the toughest data privacy laws in the U.S. It takes effect in 2020.

The California law applies to most companies that collect the data of Californians, and it expands the definition of what is considered personal information, including behavioral and profiling data and professional and personal background data.

Under the new law, consumers in California are guaranteed the following rights:

- "To know what personal information is being collected about them"
- "To know whether their personal information is sold or disclosed and to whom"
- "To say no to the sale of personal information"
- "To access their personal information"
- "To equal service and price, even if they exercise their privacy rights"

The law requires any business that collects a California consumer's personal information to disclose the categories and specific pieces of personal information that have been collected and the purposes for which the information will be used if the person requests.

LOOKING AHEAD

Organizations that are not yet in compliance with California's law should work to update their policies in 2019. In addition, because of the growing popularity of this type of legislation, employers should watch for similar bills in regions that impact their business.

05 BAN THE BOX

WHAT IT IS

"Ban the box" refers to the box on applications requiring applicants to disclose if they have a prior criminal conviction. The law prohibits employers from requesting or considering a candidate's conviction history until a conditional offer has been made. Ban the box is intended to push a background check later into the hiring process so that employers consider an applicant's qualifications before their criminal history.

IN ACTION

Ban the box laws have been popular for several years, so now 11 states, more than 30 cities and counties and Washington, D.C. have some form of ban the box legislation. However, there is no federal law on the issue, so employers are left navigating the patchwork of varying requirements. Depending on the location, the law may apply to all employers, employers with 15 or more employees, any employer doing business with the city, county or state, or another variation.

The laws also vary on when employers can perform criminal background checks. For example, in California, the background check can only happen after a conditional offer is made. However, in Illinois, employers can perform a criminal background check after an interview.

States with ban the box laws:

- California
- Connecticut
- Hawaii
- Illinois
- Massachusetts
- Minnesota
- New Jersey
- Oregon
- Rhode Island
- Vermont
- Washington State
- Washington, D.C.

Localities with ban the box laws:

- Compton, California
- Los Angles, California
- Richmond, California
- San Francisco, California
- Hartford, Connecticut
- New Haven, Connecticut
- Chicago, Illinois
- Cook County, Illinois
- Indianapolis, Indiana
- Louisville, Kentucky
- New Orleans, Louisiana
- Baltimore, Maryland
- Montgomery County, Maryland
- Prince George's County, Maryland
- Boston, Massachusetts
- Cambridge, Massachusetts
- Worchester, Massachusetts
- Detroit, Michigan
- Kalamazoo, Michigan
- Columbia, Missouri
- Kansas City, Missouri
- Buffalo, New York
- New York City, New York
- Rochester, New York
- Syracuse, New York
- Portland, Oregon
- Philadelphia, Pennsylvania
- Pittsburgh, Pennsylvania
- Austin, Texas
- Seattle, Washington
- Spokane, Washington
- Madison, Wisconsin

LOOKING AHEAD

Any employers who hire in the above jurisdictions should review their current practices with an attorney. With the growing popularity of “ban the box” laws and the variance between jurisdictions, employers should closely watch any developments and adjust their policies accordingly.

06 PAID SICK LEAVE

WHAT IT IS

States, counties and cities across the United States are implementing paid sick leave laws, designed to ensure that employees have the ability to take sick days without losing pay and without any adverse action taken against them.

These laws impact employers with full-time or part-time employees.

IN ACTION

Eleven states and Washington, D.C. and at least 26 local jurisdictions have passed paid sick leave laws. The most recent, in Michigan, takes effect in April 2019.

States with paid sick leave laws:

- Washington, D.C.
- Connecticut
- California
- Massachusetts
- Oregon
- Vermont
- Arizona
- Washington
- Rhode Island
- Maryland
- New Jersey
- Michigan

Cities and counties with paid sick leave laws:

- Emeryville, California
- Oakland, California
- San Diego, California
- San Francisco, California
- Santa Monica, California
- Portland, Oregon
- Bloomfield, New Jersey
- East Orange, New Jersey
- Irvington, New Jersey
- Montclair, New Jersey
- Newark, New Jersey
- Passaic, New Jersey
- Patterson, New Jersey
- Trenton, New Jersey
- Jersey City, New Jersey
- New Brunswick, New Jersey
- Seattle, Washington
- Tacoma, Washington
- New York City, New York
- Westchester County, New York
- Montgomery County Maryland
- Philadelphia, Pennsylvania
- Pittsburgh, Pennsylvania
- Minneapolis, Minnesota
- Duluth, Minnesota
- Austin, Texas

While the paid sick leave legislation across all these locations are similar, they are not identical. Thus, it has become increasingly difficult for an employer to have a one-size-fits-all policy. For example, some laws require one hour of paid sick leave for every 30 hours worked while others accrue for every 40 hours worked. Further complicating the issue, the requirement for rollover hours also varies, and each law has different requirements for rehires. There is no federal standard for paid sick leave.

LOOKING AHEAD

Employers should review their sick leave policies and have plans in place to implement new policies to ensure compliance. Employers should also have procedures to ensure that employees are not subject to any adverse employment action for taking these sick days. Organizations with a contingent workforce should also reach out to their staffing vendors or MSP providers to inquire if they are following the appropriate regulations.

07 | ACCOMMODATIONS FOR PREGNANT & NURSING EMPLOYEES

WHAT IT IS

There's been a lot of conversation in recent years about family leave, but equally important is the discussion about the accommodations that pregnant and nursing workers can receive while they're in the workplace. Local legislatures have been busy working to provide new protections for women who fall into this category.

IN ACTION

In 2018, South Carolina passed the South Carolina Pregnancy Accommodations Act as an amendment to the South Carolina Human Affairs Law.

The law provides examples of reasonable accommodations an employer may be required to provide an employee, including:

- Making existing facilities used by employees readily accessible to and usable by individuals with disabilities and medical needs arising from pregnancy, childbirth or related medical conditions.
- Providing more frequent bathroom breaks.
- Providing a private place, other than a bathroom stall, for the purpose of expressing milk, although, employers are not required to construct a permanent, dedicated space for expressing milk.
- Modifying food or drink policy.
- Providing seating or allowing the employee to sit more frequently if the job requires the employee to stand.
- Providing assistance with manual labor and limits on lifting.
- Temporarily transferring the employee to a less strenuous or hazardous vacant position, if qualified.
- Providing job restructuring or light duty, if available.
- Acquiring or modifying equipment or devices necessary for performing essential job functions.
- Modifying work schedules.

Additionally, in 2017, Washington passed the Healthy Starts Act, which requires covered employers to provide certain accommodations to pregnant employees without a showing of pregnancy-related disability and regardless of whether such accommodations would cause an undue hardship to the employer. Washington employers are also prohibited from engaging in certain acts related to pregnant employees, including:

- Failing or refusing to make reasonable accommodation for an employee for pregnancy, absent an undue hardship;
- Taking adverse action against an employee who requests, declines, or uses an accommodation;
- Denying employment opportunities to an otherwise qualified employee because of the qualified individual's need for reasonable accommodation required by the Healthy Starts Act; or
- Requiring an employee to take leave if another reasonable accommodation can be provided for the employee's pregnancy.

On a federal level, the Pregnancy Discrimination Act forbids discrimination based on pregnancy when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, such as leave and health insurance, and any other term or condition of employment.

LOOKING AHEAD

Be on the lookout for new legislation related to accommodations for pregnant and nursing workers. In particular, take note of how you and the employee will come to terms on accommodations, and know if there are any accommodations for which you cannot claim undue hardship.

08 GIG ECONOMY

WHAT IT IS

Contingent workers are a growing part of the workforce. A recent survey by the Freelancers Union shows as many as 56.7 million Americans did freelance work in 2018. Because of this growth, courts are evaluating the laws that regulate the gig economy.

IN ACTION

Moving into 2019, there is still some confusion over the National Labor Relations Board joint employer standard.

In September 2018, the National Labor Relations Board announced it was undertaking the formal rule-making process to create a new Board rule defining the joint employer standard. This standard states entities must "possess and actually exercise substantial direct and immediate control over the essential terms and conditions of employment in a manner that is not limited and routine."

This is a departure from the Browning-Ferris ruling which defined the joint employer standards as applying to those entities that possess only indirect control over terms and conditions of employment, and those

that reserve the right to control the terms and conditions of the subject employees' employment (even if not actually exercised).

Complicating things further, the D.C. Circuit Court issued a ruling at the end of 2018 finding that the Board had failed to confine its consideration of indirect control to the "essential terms and conditions of employment" and cast doubt on the proposed rule that would require substantial direct control.

Because of this ruling and the current rule-making process, the current joint employer standard is not clear.

In early 2019, the NLRB vacated a 5-year-old test to determine whether a worker is an employee or an independent contractor and returned to the earlier "common-law agency test." This test considers how much control the employer exercises over the worker, whether the worker's services fall outside the employer's core competencies, whether the employer provides the tools, equipment and place of work, how long the worker has served the employer, how the worker is paid and whether the worker has the opportunity to generate profits or recognize loses.

At the state level in 2018, a California court ruling established a three-part test that provides the criteria an organization must meet for a person to be considered an independent contractor and not an employee. The 7-0 ruling by the California Supreme Court in Dynamex Operations West, Inc. v. Superior Court of Los Angeles laid out the following criteria:

(A) "that the worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of such work and in fact;
(B) that the worker performs work that is outside the usual course of the hiring entity's business; and
(C) that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity."

In the ruling, if the worker does not meet all three criteria of the ABC test, then that worker is presumed to be an employee.

Previously, courts had relied on the decision in S.G. Borello & Sons, Inc. v. Department of Industrial Relations which adopted the "control-of-work" test that asks "whether the person to whom service is rendered has the right to control the manner and means of accomplishing the result desired."

However, the court decided that the Borello test "makes it difficult for both hiring businesses and workers to determine in advance how a particular category of workers will be classified, frequently leaving the ultimate employee or independent contractor determination to a subsequent and often considerably delayed judicial decision." The result of such circumstances "often leaves both businesses and workers in the dark with respect to basic questions relating to wages and working conditions that arise regularly, on a day-to-day basis."

LOOKING AHEAD

With the growth of the gig economy, this ruling has significant implications for organizations in California that use independent contractors to provide a core product or service. Evaluating whether any independent contractors need to be reclassified as employees should be done early in the year.

09 PAID FAMILY LEAVE

WHAT IT IS

Paid family leave programs are growing in popularity across the U.S. to provide workers with paid time off in cases of a serious illness, an ill family member or to welcome a new child.

IN ACTION

In 2017, Washington State passed legislation establishing a Paid Family and Medical Leave insurance program. Parts of that law take effect in 2019, and employers in Washington need to prepare.

The program will allow workers to take up to 12 weeks of paid time off to welcome a new child to their families, deal with a serious illness or take care of an ill or ailing family member. In some circumstances, workers may be able to take up to 18 weeks of paid time off. The program will be administered by the Employment Security Department (ESD) and is funded by premiums paid by employees and employers. Under the program, employees can receive up to 90 percent of their weekly wage, with a minimum of $100 each week and a maximum of $1,000 each week.

Beginning January 1, 2019, employers must remit premiums and submit quarterly reports for the Paid Family and Medical Leave program, with the first quarterly premium remittance and reports due by April 30, 2019. Employees can begin taking benefits on January 1, 2020.

The plan requires employers to report employee wages, hours worked and additional information quarterly. For 2019, the total premiums will be 0.4 percent of gross wages paid, subject to a cap that will be adjusted annually. Generally, the worker will be responsible for 63 percent of the total premiums due and the employer will be responsible for 37 percent of the premiums due. Small employers with fewer than 50 employees do not have to pay the employer portion of the premium, but they are required to collect and report the employee portion and comply with reporting requirements.

To qualify for leave, an employee must have worked for 820 hours in the qualifying period. These hours can be earned at more than one employer. By reporting hours to the ESD, employers ensure an accurate record of hours worked by each employee. The qualifying period is the first four of the last five completed calendar quarters starting from the day the employee intends to take leave.

The application process for employees is being created in 2019. However, employees must inform their employer if they intend to take leave. If the event is foreseeable, the employee must notify their employer 30 days in advance. If the event is unforeseeable, the employee is required to give as much notice as possible. In some cases, like a traumatic auto accident, for example, employees should give notice as soon as they are able.

Six other states and Washington, D.C. have paid family leave laws including:

- California
- New Jersey
- Rhode Island
- New York
- Washington
- Massachusetts

LOOKING AHEAD

As the application process for employees is finalized in 2019, employers should build out internal policies that meet state requirements. Employers will be required to post a notice developed by the ESD about this law in their workplace as well. Employers can learn more and obtain resources from the ESD here.

Employers should also watch for other jurisdictions that may pass paid family leave legislation.

10 | ARBITRATION AGREEMENTS & CLASS ACTION WAIVERS

WHAT IT IS

As a condition of employment, some employers require new hires to sign arbitration agreements that include class action waivers. In the event that an employee believes they have a lawsuit against the employer, this agreement provides that the dispute will be resolved through individual arbitration and never as a collective or class action.

IN ACTION

In 2018, the U.S. Supreme Court ruled in favor of employers that use arbitration agreements that include class action waivers.

The court ruled 5-4 in Epic Systems Corp. v. Lewis that if workers were allowed to band together to press their claims, "the virtues Congress originally saw in arbitration, its speed and simplicity and inexpensiveness, would be shorn away and arbitration would wind up looking like the litigation it was meant to displace."

For employers, arbitration is beneficial because it is less expensive and quicker. It is also private and confidential as well as more absolute since there are fewer avenues to appeal a ruling.

However, the court did explicitly state that legislators could change the status quo, with Justice Neil Gorsuch writing, "The respective merits of class actions and private arbitration as means of enforcing the law are questions constitutionally entrusted not to the courts to decide but to the policymakers in the political branches where those questions remain hotly contested."

LOOKING AHEAD

Due to this ruling, employers should consult with an attorney and consider adding an arbitration agreement in the onboarding process. However, employers should keep in mind that at some point, the practice could change due to legislation. Given the recent movement in the law, employers should also consider having their arbitration provision reviewed by an attorney, if it has not been reviewed within the past year or so.

Justice Ruth Bader Ginsberg in her dissent called for the U.S. Congress to act, writing, "The inevitable result of today's decision will be the underenforcement of federal and state statutes designed to advance the well-being of vulnerable workers."

Before the ruling, the Ending Force Arbitration of Sexual Harassment Act of 2017 was introduced to the Senate; however, at this point, Congress did not take action.

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We constantly see major new developments when it comes to employer compliance. The landscape is constantly shifting, and regulations vary from one location to the next. From the momentum of the campaign to ban the box to the patchwork of marijuana laws, a lot of changes are taking place in worksites across the country.

To help make sure you're in the clear, an RPO, MSP and Total Workforce Solutions partner can enable you to find the best talent while staying compliant. Partner with an organization that knows the field and that's ready to pivot to meet any new regulations. Your talent acquisition partner should be committed to making sure that you and your workforce are always covered.

Have questions? Get in touch.
Email **marketing@peoplescout.com** to learn more.

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