

Article – Federal and State-Based Changes from 2018 and Coming in 2019

In 2018, the federal government had fewer than average laws passed that impact labor and employment law. This was due to focus on other areas as well as political gridlock. There were a few changes that employers should be aware of:

New FLSA rules for handling tips: The Consolidated Appropriations Act restricts an employer from keeping tips received by its employees for any reason, including allowing managers or supervisors to keep a portion of those tips. This act also repealed a previous ban on “tip pooling,” requiring tipped employees to share tips with non-tipped employees, as long as the employer does not take a “tip credit.”

Changes to tax credits: Under the Tax Cuts and Jobs Act of December 2017, certain exclusions for business-related deductions were eliminated, including for employer-paid relocation, transportation, and entertainment expenses. This act also eliminated the allowance to deduct certain expenses related to payments made as part of non-disclosure agreements for sexual harassment settlements.

Looking ahead to 2019, here are some trends or topics about which employers should be aware:

Immigration: There were no laws related to immigration enacted in 2018 and few anticipate there being any enacted for the next year or two. For now, most immigration initiatives such as DACA protections remain in place. However, employers can expect increased ICE activity and USCIS initiatives to enforce the administration’s focus on immigration. Workplace raids by ICE increased dramatically over the past year. In 2018, ICE conducted 6,000 workplace audits, up from just 1,300 in the prior year – an increase of more than 360%. And the number of workplace arrests, mostly of undocumented workers, increased nearly 700% over the same period, from 300 arrests in 2017 to 2,300 arrests in 2018. Employers can expect this dramatic increase in immigration control activity at the federal level to continue in 2019.

NLRB: With Republicans gaining control of the National Labor Relations Board, the Board is likely to continue their more employer-friendly decisions in 2019, such as reversing the previous Board’s decision regarding joint employment standards and restricting the rights of unions, union representatives, and employees. The NLRB also recently announced they are working to facilitate quicker settlements and resolutions by expanding the Alternative Dispute Resolution (ADR) program.

Department of Labor: The Wage-and-Hour division has been working on revamping the white-collar overtime rules, which are expected to be released in 2019; they are also expected to clarify regular rate of pay calculations for overtime. The DOL is expected to release its own guidance on joint employment in the upcoming year.

LGBTQ protections: Despite indications otherwise, the US Supreme Court will not take up cases challenging LGBTQ discrimination decisions. This leaves legal interpretations for federal workplace protections for LGBTQ employees in limbo for now so employees may need to defer to state and local laws.

While the federal government had most of their labor and employment bills stall in Congress, the states were busy passing and enacting laws impacting wage rate, sexual harassment prevention, sick time, and many other areas. Some of the changes that will be in effect as of January 1, 2019 include:

Minimum wage increases: While the federal minimum wage has remained \$7.25/hour since 2009, 29 states have or will have minimum wage rates higher than that. Twenty states (Alaska, Arizona, Arkansas, California, Colorado, Delaware, Florida, Maine, Maryland, Massachusetts, Minnesota, Missouri, Montana, New Jersey, New York, Ohio, Rhode Island, South Dakota, Vermont, and Washington) and the District of Columbia will have increasing minimum wage rates effective in 2019. Note: Many cities and counties have also implemented higher minimum wage rates so the highest rate would apply.

Predictive scheduling: Laws focused on employers in retail, food service, and hospitality industries have recently gone into effect in Oregon and several cities and are in the legislative forecast in at least 12 other states. These predictive scheduling laws require advanced notice when posting a schedule (ranging from 48 hours to 2 weeks depending on state law) and restrict or ban employers from scheduling on-call shifts and adding pay incentives for these shifts.

Salary history: In the effort to create more gender equality for wages, three states (California, Connecticut, and Hawaii) are joining 6 other states in enacting laws preventing employers from asking about an applicant's previous compensation history. Addressing some forms of compensation such as benefits and bonuses, as well as how to handle if an applicant offers the information varies based on specific state law.

Sexual harassment prevention training: Several states have recently passed laws creating or revising the requirements for sexual harassment prevention training to be conducted regularly, usually annually. Among states that recently enacted new or changed requirements are California, Delaware, and New York.

Earned sick time: Recent laws in Michigan, Minnesota, New Jersey and Texas implemented or expanded the requirement for providing sick time to employees but vary as to whether the mandated sick leave is paid or unpaid. Other states (Arizona, California, Connecticut, Massachusetts, Maryland, Oregon, and Vermont) as well as some cities and counties already have a mandatory sick time law with differences as to how much time and the allowable reasons for taking the time.

Legalized marijuana: While some states (Michigan, Montana, and Utah) passed laws legalizing medicinal and/or recreational use, these impacts expand into the workplace as it may change how employees react to a positive employment drug test. None of these laws change employers' ability to prohibit employees from being under the influence at work as with alcohol or other prescribed drugs.

If you are unsure what applies to your company given the new federal landscape and variations in laws from state-to-state and city-to-city, contact Affinity HR Group to help keep you informed and compliant!

Affinity HR Group wishes you a happy holiday season and a great 2019!

By Paige McAllister, SPHR, HR Compliance – Affinity HR Group, Inc.

Paige McAllister is a contributor for Affinity HR Group, Inc., WA's affiliated human resources partner. Affinity HR Group specializes in providing human resources assistance to associations such as WA and their member companies. To learn more, visit www.affinityHRgroup.com.