

The New HR Rules: Employment law updates for 2020

A new year means new HR rules. A comprehensive legal and HR compliance update is absolutely essential for keeping up with ever-changing laws and regulations. Start 2020 confident you can field questions from supervisors, employees, and corporate leadership. Here's what you need to know about employment law changes to stay ahead of the curve.

Family policies

The push for so-called work-life balance isn't going away. The economy continues to grow and the labor market remains tight. Having family-friendly policies can help let an employer stand out as a desirable place to work. Meanwhile, new laws and novel interpretations of old ones require constant handbook and policy updates. Many employers are struggling to comply with multiple, sometimes inconsistent, rules. Here's what you should review to make sure you're compliant:

- **Mother's rooms:** The Fair Labor Standards Act (FLSA) provides unlimited breaks to express milk during the first year of an infant's life. Hourly employees are entitled to as many unpaid breaks as are necessary. The break room must be private and *cannot* be a bathroom. The rule applies to all employers with 50 or more workers. It also covers employers with at least one employee unless the employer can show complying means undue hardship.
- **Paid leave:** More states and cities have added paid leave laws. These may cover sick, family or other time off. Eleven states and the District of Columbia mandate it, along with 30 cities and counties in states that don't. Check the rules in every location where you employ workers, including those who telecommute.
- **Pregnancy and childbirth leave:** Childbirth, or maternity and paternity leave, is distinct from paid leave, but can also overlap. For example, the FMLA provides up to 12 weeks of unpaid childbirth and bonding leave. Paid leave laws cover childbirth recovery, but not necessarily bonding time. Check the latest laws on childbirth leave, too. Currently, only the District of Columbia and California, New Jersey, Rhode Island, New York, and Washington – have paid childbirth leave laws. Your new HR rules should coordinate unpaid FMLA, paid leave and childbirth leave into one comprehensive policy. Finally, make sure your childbirth and bonding leave doesn't leave the father out. More men are suing for equal rights and winning.

Pay equity

Perhaps the biggest HR compliance development in 2019 was the push for so-called pay equity. Several states have passed new HR Rules that prohibit employers from asking about current or past salary when hiring. The idea is to force employers to make salary offers based on experience, education, and talent.

If HR doesn't know what salary a candidate currently receives, the offer has to be based on merit. The applicant

won't get an offer that's less than her credentials suggest just because her old employer discriminated. You can find an interactive [map here](#).

Here's a selection of state or city laws either in effect or that will soon go into effect:

- **California:** Prohibits asking salary history questions.
- **Colorado:** Effective in 2021, employers can't ask salary history or use it to set salaries.
- **New York:** The state banned using salary history as a factor in making an offer or setting salary. It bars employers from asking the applicant for their salary history or getting that information from other sources.

Predictive scheduling laws

Another legal update to add to your list involves schedules. Workers – especially in low-wage positions – have complained that their employers make last-minute schedule changes or cancel shifts without notice. States and cities have passed new HR rules regulating when schedules must be posted and what changes employers can make. Because it's first-line managers and supervisors who typically create and manage hourly employee schedules, make sure they're appropriately trained. Here are some examples of predicting scheduling laws:

- **New York City:** Schedules must be posted no less than 72 hours in advance. Once posted, employers can't make changes.
- **San Francisco:** Post schedules at least two weeks in advance. Changes result in extra pay for affected workers, based on when the employer makes the changes.
- **Washington, DC:** Post schedules 21 days in advance.

Supreme Court rulings impacting employment law

The U.S. Supreme Court will soon decide four major employment law cases. Two will answer the question of whether Title VII, the primary federal law governing employment discrimination, prohibits sexual orientation discrimination. One will test whether workers transitioning from one sex to another have protection from workplace discrimination. The fourth case will determine if 700,000 individuals brought to the U.S. as children illegally can stay and work. Currently protected under an Obama era executive order, Deferred Action on Childhood Arrivals (DACA) provides these individuals with work permits.

To assure HR compliance with these coming decisions, stay alert to the decision announcements. All four cases have already been through oral arguments. The current Supreme Court term will end in late June 2020. However, opinions may come earlier, perhaps as soon as January or February. Meanwhile, review your current anti-discrimination policies and handbook. If you already prohibit discrimination on the basis of sexual orientation or gender identity, you need do nothing. If you don't, now is a good time to decide whether to expand the policy.

If you employ one of the 700,000 individuals who may lose work permits, be prepared. You may have to discharge DACA permit holders, though there may be a phase-in period.

Overtime changes

As of January 1, 2020, new federal overtime rules go into effect. Employers will have to raise exempt salaries or convert workers to hourly and pay overtime. Here are the major changes:

- The final regulations raise exempt salary levels for most exempt positions from the current \$455 per week (\$23,660 per year) to \$684 per week (\$35,568 per year). Pay those workers less than the standard salary level, and you will have to pay time-and-a-half in overtime if they work more than 40 hours in a workweek.
- The new rules raise the "highly compensated employee" threshold – from \$100,000 to \$ 107,432.

- No change to the duties test.
- Employers can apply bonuses and incentive payments for up to 10 percent of the salary threshold for a credit of up to \$3557 per year. Example: nondiscretionary incentive bonuses tied to productivity and profitability.

Sexual harassment prevention

Sexual harassment continues to be a hot button issue. In response to the #MeToo social media movement, employers have no choice but to amp up training and prevention programs. Plus, the EEOC is on a litigation blitz. Sexual harassment is one of the agency's enforcement priorities and the cases filed reflect that. It's been known to file multiple sexual harassment lawsuits on the same day, across the country.

The EEOC and the court of social media expect employers to:

- Have a clear and concise sexual harassment policy that defines harassment;
- Train every employee from the mailroom clerk to the CEO on harassment prevention;
- Tell workers how and where to complain, with ways to bypass the chain of command;
- Tell supervisors passing on harassment complaints is mandatory;
- Investigate every complaint quickly and fairly to stop ongoing harassment;
- Punish perpetrators and prevent retaliation against the victim;
- Require bystander reporting whether the affected employee requests it or not; and
- Have a contingency plan for action when the alleged perpetrator is a board member, owner or corporate officer.

Disability policies

If you haven't already, make sure this is the year you update your leave policies. Disabled workers are entitled to time off as a reasonable accommodation whether they have earned leave available or not. This is another frequently cited basis for EEOC ADA lawsuits this past year.

If your policy is to discipline or terminate employees with no leave available, you need to rethink that approach. Your leave policy must invite disabled employees to request additional leave as a reasonable accommodation. Then consider the request on an individualized basis. For example, a new disabled hire with no FMLA, sick or vacation leave available may need time off for counseling. Turning the request down or counting the missed work against an attendance plan may spur a failure to accommodate suit. A disabled worker who has used up his FMLA entitlement and can't yet return should be considered for additional unpaid leave.

NLRB

The National Labor Relations Board (NLRB) announced a new test for balancing employee rights to complain against management rights. Rules banning disclosing pay or benefits are prohibited, while rules banning violence, threats and language creating a hostile environment are allowed. The NLRB also addressed social media usage. Employers can't require employees to use their real names while criticizing their employers. Employers can require a general disclaimer when targeting their employer by name that their views are their own. For more on what your social media policy can and cannot require, [click here](#).

Immigration

Both the Department of Homeland Security (DHS) and the Department of Labor (DOL) are strictly enforcing workplace immigration laws. Employers should review their I-9 files for completeness in case of audit or even a raid. It's also a good idea to conduct a hiring audit if you are in a high-risk industry. These include restaurant and foodservice, poultry and other food processing, construction and assembly work and agriculture. One hiring

manager willing to look the other way can spell big trouble. Several recent large-scale immigration raids were reportedly triggered by an insider whistleblower.