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The Current State of North America Workforce Compliance

The Compliance Deluge of 2021—and What It Means for 2022

Contrary to U.S. and Canadian employers' hopes, 2021 proved in the end to be as volatile a year as the one before. Marked by waves of new employment laws—particularly ones aimed at protecting the health and safety of workers and their families—employers often had to scramble to keep pace with the additional administrative burdens and substantial legal risks the new laws and regulations imposed.

In the U.S., most new legislation affecting employers in 2021 occurred at state and local levels. Here is a sampling:

- Various cities/states – Mandated COVID-19 vaccination and testing for certain workers and employee time off to get this done (or help family members do so). Court challenges to mandates further increased uncertainty for employers.
- California – Unpaid leave to care for seriously ill relatives under the California Family Rights Act (CFRA) expanded to include caring for parents-in-law. Previously, leave was limited to caring for parents, children, grandparents, grandchildren, siblings, and a spouse/registered domestic partner.
- Pennsylvania – Mandated leave to FMLA-eligible employees for organ and tissue donation surgery for themselves or a spouse, child, or parent. Leave includes necessary preparation and recovery time.
- Maine – Leave to care for seriously ill relatives under its Family Medical Leave Act expanded to include caring for a grandchild or a domestic partner's grandchild. Previously, leave was limited to caring for a seriously ill child, domestic partner's child, parent, spouse, domestic partner, or sibling.
- Virginia – Expanded its Human Rights Act to mandate reasonable accommodation for known physical and mental impairments of an otherwise qualified employee with a disability unless accommodation would cause employer undue hardship.
- Washington, D.C. – Amended existing law to mandate additional paid medical leave and a new category of paid prenatal leave for employees. Also expanded the group of employees eligible for D.C. Family and Medical Leave.

Not to be outdone, many Canadian jurisdictions also passed laws protecting the health and safety of workers and their families, including:

- British Columbia – New law provided employees with three days' paid COVID-19-related sick leave for events such as being diagnosed with COVID-19, waiting for test results, or being quarantined or isolated. Beginning in 2022, the legislation also granted permanent paid sick leave to ill or injured employees.
- Prince Edward Island – Bereavement leave expanded to cover prenatal pregnancy loss or stillbirth. Also now entitled to bereavement leave in such cases: an employee who is (or whose spouse/partner is) an intended parent of a child born under a surrogacy agreement.
- Yukon – Amended Yukon Employment Standards Act to mandate combination of paid and unpaid leave if the employee, the employee's child, or a person to whom the employee provides care or support experiences domestic or sexual violence.
- Canada – At federal level, mandated COVID-19 vaccination for all employees of the Core Public Administration, including the Canadian Mounted Police, and for contracted personnel requiring access to federal government worksites to perform work. Canada also announced in December 2021 that it will propose regulations mandating vaccination for employees in federally regulated workplaces.

This is only an excerpt of the many new employment laws that took effect in the U.S. and Canada in 2021, and more can be expected in 2022. Change is the only constant employers will see in 2022, and nearly all will face uncertainty brought about by vaccination/testing mandates, new or expanded leave entitlements, increases in wages (including minimum wage increases), scheduling safeguards for workers, and employee protection against workplace retaliation. The twin necessities of meeting compliance obligations and maintaining an engaged workforce mean that employers must focus more than ever on their employees' physical—and mental—well-being.

Paul Kramer

Director of Compliance, WorkForce Software

Paul Kramer, JD, is an experienced employment law attorney and has been the Director of Compliance at WorkForce Software for more than 10 years. As Director of Compliance, he researches and stays abreast of employment laws in the United States, Canada, and elsewhere in the world. Before joining WorkForce Software, Paul was in private practice specializing in representing employers in employment law issues for almost two decades and represented companies of all sizes in many industries.

Navigating New Employer Compliance Requirements in 2021 and Beyond

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New and amended employment laws seem to be constantly on the rise in the United States and Canada, and 2021 will be no different. Employers must stay current with these new regulations or possibly face substantial liability through employee lawsuits and agency charges. Here are brief descriptions of several new laws in the United States and Canada that recently took effect or will soon be in force:

1 | California Family Rights Act (CFRA) Expansion

Effective January 1, 2021, California employers with as few as five employees (formerly 50 or more employees) are required to provide CFRA leave to eligible employees to care for additional family members with a serious health condition (i.e. grandparents, grandchildren and siblings); to care for a child with a serious health condition regardless of the child's age (before the amendment the child had to be under 18 or an adult-dependent child); 12 weeks of baby-bonding leave for both parents, even if the parents work for the same employer; and leave for certain qualifying exigencies related to the active military duty of an employee's spouse, domestic partner, child, or parent.

2 | California Crime Victim Leave Expansion

California expanded job protections for employees missing work for reasons related to their status as crime and abuse victims. The legislation (AB 2992), which took effect January 1, 2021, revised two sections of the California Labor Code (230 and 230.1) that formerly granted leave to employees who were victims of domestic violence, sexual assault, and stalking. Now, employers are prohibited from discharging, discriminating, or retaliating against employees who are victims of any public offense constituting a misdemeanor or felony causing physical injury or mental injury and a threat of physical injury, or whose immediate family member dies as a direct result of a crime. The legislation, among other things, also loosened the kinds of certification employers may require to verify a victim's need for scheduled leave, including a statement signed by the employee or an individual acting on the employee's behalf, certifying that the absence is for a valid reason.

3 | California Paid Family Leave

California expanded its Paid Family Leave program to include time off for employees to attend to a "qualifying exigency" related to an individual's spouse, registered domestic partner, parent, or child who is an active duty member of the United States Armed Forces. The expansion was effective January 1, 2021.

4 | Massachusetts Paid Family and Medical Leave (PFML)

This new state-offered benefit for Massachusetts workers can, under certain circumstances, provide up to 26 weeks of paid leave for various medical or family reasons. PFML is funded through a Massachusetts tax, and most benefits are available beginning January 1, 2021. Employees may take leave to bond with a newborn, newly adopted child, or new foster child during the first 12 months after birth or placement; to care for a family member in the Armed Forces, National Guard or Reserves who developed or aggravated a serious health condition in the line of duty on active duty while deployed to a foreign country; to manage family affairs when a family member is on or has been called to active duty in a foreign county while in the Armed Forces, including the National Guard or Reserves; and to manage their own serious illness or injury. Finally, beginning July 1, 2021, PFML benefits will become available to care for a covered family member with a serious health condition.

5 | New York State Paid (and Unpaid) Sick Leave

On September 30, 2020 (or on the employee's hire date if hired after September 30), covered employees in New York State began accruing sick leave at a rate of one hour for every 30 hours worked. Employees can start using this accrued leave on January 1, 2021. The total amount of leave that can be accrued by employees, and whether it must be paid, varies by employer size (e.g. employers with fewer than five employees and a net income of less than one million in the previous tax year need only grant 40 hours of unpaid sick leave). Employees may use accrued leave for "sick" and "safe" reasons affecting themselves or a family member for whom they are giving care. As an alternative to employees accruing one hour for every 30 hours worked, employers may provide the full sick leave entitlement at the start of each calendar year.

6 | Connecticut Paid Family and Medical Leave (PFML)

In 2019 the State of Connecticut enacted a PFML law creating a paid family and medical leave insurance program in Connecticut. Although benefits do not start under the law until 2022, in January 2021 employers must begin deductions from the pay of Connecticut employees to fund the program. When benefits begin, the leave may be used for events such as the employee's or a family member's serious health condition; to care for a child after birth, adoption, or foster care placement; to address qualifying military exigencies; to serve as an organ or bone marrow donor; and to attend to certain matters pertaining to family violence.

7 | COVID-19

The pandemic will continue to complicate matters for employers as new and amended leave rights are created and U.S. and Canadian jurisdictions permanently or temporarily change current laws to cover public health emergencies.

8 | Chicago Fair Workweek Ordinance

Employees covered by the Chicago Fair Workweek Ordinance will have a private right of action against employers for violating the ordinance starting January 1, 2021. Though the ordinance took effect July 1, 2020, including fines payable to the City of Chicago, the right to a private action under the ordinance was deferred until January 1. Before filing suit, however, employees must first exhaust their administrative remedies with the Chicago Department of Business Affairs and Consumer Protection. The ordinance, among other obligations, requires covered employers to furnish new hires with a good faith estimate of days and hours of work; to give notice of the work schedule to covered employees at least 10 days before the day the schedule begins (increasing to 14 days on July 1, 2022); to compensate employees for schedule changes made after the date the schedule must be posted, known as predictability pay; and to provide premium pay if the employee works with fewer than 10 hours between shifts.

9 | Employee Rest Periods in Alberta, Canada

Previously, employers in Alberta were required to furnish employees with 30 minutes of rest within, or immediately after, every block of five consecutive hours of work. New legal amendments that took effect in late 2020, however, have changed the rest period requirement in Alberta as follows: (1) employees are not entitled to a break if their shift is five hours or less; (2) employees are entitled to one 30-minute paid or unpaid break after the first five hours of work for shifts between five and 10 hours; (3) for shifts 10 hours or longer, an employee is entitled to two 30-minute breaks; and (4) if an employer and an employee agree,

10 | Manitoba Unpaid Leave for Reservists

The Employment Standards Code in Manitoba permits military Reserve members to take unpaid leave from their employment for active duty and training. A recent amendment to the law, effective December 3, 2020, clarified when leave can be taken and reduced the minimum consecutive employment period required for leave from seven months to three months.

11 | Canada Labour Code New Penalty System

Effective January 1, 2021, Bill C-44 subjects federally regulated employers to administrative penalties up to $250,000 for contravening certain provisions of Part II (Occupational Health and Safety) and Part III (Standard Hours, Wages, Vacations, and Holidays) of the Canada Labour Code. When a corporation violates a provision, liability for the penalty applies to those directing, authorizing, assenting to, acquiescing in, or participating in the violation.

12 | Quebec Act Respecting Labour Standards

The Quebec National Assembly recently enacted "an Act mainly to improve the flexibility of the parental insurance plan in order to promote family-work balance" which makes changes to parental leave, paternity leave, maternity leave, and special maternity leave. The amendments took effect January 1, 2021.

Stay Up to Date with Changing Requirements

These are just a sampling of new laws in the United States and Canada. What these and other new regulations mean for employers is that they must now contend with additional complex and expensive compliance obligations. As the North American landscape continues to veer toward more employee protections, the spread of employee-friendly legislation will only accelerate, both in 2021 and beyond. Employers must be mindful to keep pace with these changes or risk liability and should consult legal counsel if additional information is needed about new or amended laws.

8 Compliance Tips for Employers Using Medical Certifications Under the FMLA

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The federal Family and Medical Leave Act (FMLA) allows employers to require employee submission of a medical certification to support the worker's need for leave either for their own serious health condition or to care for a covered family member with a serious health condition. An important objective of the certification is for employers to obtain necessary information regarding the anticipated duration of the employee's leave.

To help you navigate the FMLA medical certification process, here are eight important compliance tips that employers should keep in mind:

1 | Utilize U.S. Department of Labor (DOL) Forms

Although no particular certification form is required, the DOL provides optional forms that employers and workers can use. A link to the medical certification forms for the employee's own serious health condition or to care for a covered family with a serious health condition, as well as other DOL documents, can be found here:

https://www.dol.gov/agencies/whd/fmla/forms

2 | Ensure Sufficient Content of Medical Certification

The certification should include information such as:

- Appropriate medical facts sufficient to support the need for leave
- When the serious health condition began
- The probable duration of the serious health condition
- How long the employee is likely to be unable to work
- Whether the medical necessity for leave is continuous or intermittent
- Contact information for the healthcare provider and the type of medical practice/specialization

3 | Be Conscious of Timing

In most cases, employers should request the medical certification at the time the employee gives notice of the need for leave or within five business days thereafter or, in the case of unforeseeable leave, within five business days after the leave begins. Employees must provide the certification to their employer within 15 calendar days after the request, unless it is impracticable to do so despite the employee's good faith and diligent effort. Employers may always provide workers with more than 15 days to submit the requested certification.

4 | Request Further Information for Insufficient Certification

Upon receiving the medical certification, employers may identify, in writing, any deficiencies in the certification and ask the employee to correct the information within seven calendar days (unless impracticable under the circumstances despite the employee's diligent and good faith efforts). If the deficiencies are not cured in the resubmitted certification, FMLA leave may be denied.

5 | Clarify and Authenticate

If an employee submits a sufficiently completed medical certification signed by a healthcare provider, employers cannot request additional information from the provider. Nevertheless, employers may use a healthcare provider, a human resource professional, a leave administrator, or a management official to contact the employee's health care provider for purposes of clarifying and authenticating the certification (whether an initial certification or recertification) after the employee has been given a chance to cure any deficiencies. Under no circumstances, however, may the employee's direct supervisor contact the employee's healthcare provider.

6 | Request Recertification

Employers may generally request recertification no more often than every 30 days and only in connection with an employee's absence. If the medical certification indicates that the minimum duration of the serious health condition exceeds 30 days, employers must wait until after the minimum period expires before requesting recertification.

In all cases, however, employers can request a recertification of a medical condition every six months in connection with an absence. Finally, employers may request recertification in fewer than 30 days if:

- The employee requests an extension of leave
- The circumstances of the previous certification change, or
- The employer receives information casting doubt on the employee's stated reason for leave or the validity of the certification

7 | Obtain Second and Third Opinions if Necessary

Employers may require a second medical opinion (at their expense) regarding the certification if there are concerns about the certification's validity. A third opinion may be obtained if the first two opinions differ.

8 | Health Insurance Portability and Accountability Act (HIPAA)

FMLA medical certifications are considered employment records, not healthcare records, and thus are not protected by HIPAA.

Final Thoughts: Knowledge Is Power

Although employers are not required to use medical certifications under the FMLA, it is the best tool they have to combat leave abuse. When medical certifications and recertifications are properly used, the leave creates less workplace disruption, leading to improved productivity. If employers require a medical certification as a condition to granting FMLA leave, employees must be informed in the written FMLA rights and responsibilities notice. Employers should remember that individual states, such as California, can have their own rules regarding the contents of medical certifications for use in conjunction with their jurisdiction's family and medical leave law.

6 Reasons Why Workplace Compliance is the First Step in Motivating Employees

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Workplace compliance is the very foundation for any successful workplace experience. While your organization should always continue to measure and refine its employee engagement initiatives, prioritizing compliance should be the very first step in motivating your people. This will create the strongest possible foundation for your HR department to use as a steppingstone for additional strategies and programs aimed at enhancing the employee experience even further. Without the vital foundation of proper workplace compliance, your employees will feel unhappy and disengaged from the get-go, and any further employee motivation initiatives will prove baseless and disjointed.

An unhappy and unmotivated workforce leads to high employee turnover, increased absenteeism, diminished productivity, a less energetic organization, and lower profits. In contrast, an efficient HR department that is laser-focused on compliance provides valuable structure to your organization, encourages a culture of engagement and innovation, and allows your business to flourish.

Here are 6 areas in which workplace compliance acts as the cornerstone of a positive employee experience:

1 | General Employment and Labor Law Compliance

HR personnel must be knowledgeable about federal and state leave laws, wage and hour laws, scheduling requirements, nondiscrimination laws, and collective bargaining rights as well as regulations, contracts, and company policies. Workplace noncompliance commonly results in employee complaints and lawsuits based on unfair or unlawful practices, an unsafe work environment, or general discontent. Your employees should rest assured that the very basics of their employment are covered.

2 | Diversity and Inclusion

A great deal of research shows that diversity in the workplace leads to expanded creativity, increased productivity, better problem solving, and, most of all, a professional experience founded on both equality and inclusion. Under federal law, your employees have legal rights even before they join your team. During the hiring process, recruitment teams cannot discriminate based on an applicant's race, color, national origin, religion, sex (including pregnancy and sexual orientation), disability, or age.

Recruiting and retaining a diverse workforce allows employees from different walks of life to collaborate, share experiences, and offer various global perspectives to achieve common business goals. Employers should put internal policies in place to ensure that all employees are treated fairly and feel safe and welcomed. Accordingly, HR departments must create conduct codes, moderate workplace behavior and dialogue, establish

3 | Compensation and Benefits

In addition to prohibiting discrimination in any term or condition of employment—such as hiring, firing, pay, benefits, promotions, layoffs, or job assignments—Title VII, the ADEA, and the ADA prohibit compensation discrimination on the basis of race, color, national origin, religion, sex (including pregnancy and sexual orientation), disability, or age. In any case of unequal pay among employees, there must be a legitimate, non-discriminatory reason for the pay difference.

HR departments should regularly evaluate competitive pay practices and establishing a fair compensation structure for workers. A salary figure isn't the only motivator for your workforce, but most often it is an employee's primary reason for employment in the first place. Employees who are compensated fairly are far more likely to feel happier in their roles, which in turn is reflected in their job performance.

4 | Mandatory Training

In some cases, companies may be legally required to provide mandatory safety training depending on the task the workers perform, the specific hazard they may encounter on the job, and the specific regulations those tasks and hazards fall under based on the job and the industry. For example, OSHA has a number of concrete training standards that are enforceable by law.

Internally, organizations must make sure that employees receive the training they need to excel. This may include orientation training for the general workforce, leadership training for supervisors and managers, or professional development opportunities for workers interested in advancement. Proper training is a key first step in creating a culture of innovation. Instilling confidence in your employees optimizes productivity and encourages them to bring new, creative ideas to the table.

5 | Workplace Safety

Comprehensive job training should be coupled with internal policies to prevent employee illnesses, injuries, and fatalities. An unsafe or unsanitary workplace is not an environment in which your employees are motivated to perform at their best. In response to the COVID-19 pandemic, HR departments should acquire up-to-date information about local COVID-19 safety practices in all locations where employees work. These practices may include:

- Providing sanitation materials to workers and visitors
- Routinely cleaning and disinfecting all high-touch areas
- Conducting daily health checks
- Excluding sick employees from the workplace and following applicable leave laws
- Promptly notifying workers of any worksite exposure to COVID-19

6 | Protection of Whistleblowers

Work-related fraud and misconduct commonly go unreported because many employees worry about retaliation if they complain. HR departments must uphold a policy of confidentiality and dependency so that employees can confidently disclose their workplace concerns without fear of losing their jobs or facing discipline. Effectively protecting whistleblowers requires leadership commitment, a "speak up" organizational culture, and a prevention-oriented system.

Final Thoughts

Workplace compliance certainly isn't the only initiative that your organization should utilize to motivate your employees, but it should be a mandatory first step. Without it, all other organizational initiatives will struggle to find two legs to stand on. HR departments have a tremendous opportunity to create a positive and productive work environment by balancing the needs of the employer and the employees. It all starts with workplace compliance and equipping staff with the tools they need to succeed.

What Employers Need to Know About New Expanded FFCRA Leave

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Shortly after the COVID-19 pandemic began, the Families First Coronavirus Response Act (FFCRA) was enacted, which mandated two new paid leaves for private employers with fewer than 500 employees and certain public employers:

- A two-week emergency paid sick leave (EPSL) for employees unable to work or telework because of six COVID-19 associated reasons
- Expanded FMLA Leave (EFML) to allow covered employees to take their 12 weeks of FMLA leave for school and day care closings linked to COVID-19, including 10 weeks of paid leave

These new paid leaves, for which companies could be reimbursed through a tax credit, expired on December 31, 2020. Nevertheless, the Consolidated Appropriations Act, 2021 (CAA) passed in late December and extended the tax credits available to employers choosing to provide EPSL and EFML through March 31, 2021.

On March 11, 2021, the American Rescue Plan Act of 2021 (Rescue Plan) was signed into law. The Rescue Plan expands and extends the refundable tax credits that covered employers may receive under the FFCRA for voluntarily providing paid COVID-19 related leave through September 30, 2021. Covered employers include those with fewer than 500 employees and certain federal, state, and local government employers.

The Rescue Plan also modified the FFCRA leave in the following ways, all of which took effect April 1, 2021:

1 | New Bank of EPSL

The Rescue Plan provides that each employee's two-week bank of EPSL (up to 80 hours) be reset on April 1, 2021 so that employers may continue to voluntarily provide EPSL and receive the tax credit.

2 | Nondiscrimination Rule

A nondiscrimination rule was added, establishing that employers cannot claim the tax credit if paid leave provided to employees discriminates in favor of highly compensated employees, full-time employees, or employees with longer tenure. Employers cannot provide differing EPSL or EFML benefits to employees for these reasons.

3 | New Qualifying Reasons for EPSL

Originally, under the FFCRA employees could take EPSL when they were:

- Subject to a quarantine or isolation order
- Advised to self-quarantine by a healthcare provider due to COVID-19
- Experiencing symptoms of COVID-19 and seeking a medical diagnosis
- Caring for an individual subject due to a quarantine or isolation order or who had been advised to self-quarantine
- When their child's school or place of care closed due to COVID-19
- Under the Rescue Plan, employers now also receive tax credits for granting EPSL to employees who are:
- Obtaining a COVID-19 immunization
- Recovering from any injury, disability, illness, or condition related to the immunization
- Seeking or awaiting diagnostic test results for, or a medical diagnosis of, COVID-19 when the employee has been exposed to COVID-19
  or the employer requests the test or diagnosis
- Again, employers are not required to grant paid leave for these new reasons, but a refundable tax credit is available if they do.

4 | EFML Expansion

EFML and the associated tax credit were initially available only if employees were unable to work or telework to care for their child due to the unavailability of a child's school or daycare caused by the pandemic. Under the Rescue Plan, employers may now claim the tax credit for EFML for all of the reasons for which an employee can take EPSL, including the two new reasons. In other words, the reasons for EPSL and EFML are now the same.

Further, the FFCRA originally provided that the first two weeks of EFML were unpaid, with the remaining 10 potential weeks of leave paid at 2/3 the employee's regular rate, up to $200 per day and a maximum of $10,000. The Rescue Plan also removed the unpaid two-week provision and raised the aggregate maximum pay from $10,000 to $12,000; thus, up to 12 weeks of EFML is now paid.

Revise Policies to Remain Compliant

Employers providing EPSL and EFML should know about these changes and revise their policies accordingly. Moreover, many states and local jurisdictions have passed their own COVID-19 leaves that remain applicable. Covered employers must therefore comply not only with the FFCRA,
but with state and local leave laws as well.

No End in Sight for New COVID-19 Leaves: How to Stay Compliant

Published May 3, 2021

With the COVID-19 pandemic well into its second year, many fatigued employers in the United States and Canada are hoping for an end, or at least a slow-down, to the ever-increasing legal obligations owed to employees due to the pandemic. But no such luck for employers, at least when it comes to emergency leave laws. COVID-19 has temporarily—but significantly—expanded leave entitlements for workers, and there appears to be no end in sight to this expansion.

Here is a partial list of recently enacted or modified state, local, and provincial COVID-19 leave laws that employers in the United States and Canada should know about to remain compliant:

1 | State of California

California Senate Bill 95, signed by Governor Newsom on March 19, 2021, resurrected the statewide COVID-19 Supplemental Paid Sick Leave (SPSL) that expired on December 31, 2020. The new SPSL covers employers in California with more than 25 employees, applies retroactively to January 1, 2021, and remains in effect until September 30, 2021 (unless extended again). All employees unable to work or telework due to any of seven COVID-19 qualifying reasons—including time off to obtain a vaccination—are eligible for the leave. Full-time employees are entitled to 80 hours of SPSL, and part-time employees are entitled to a pro-rata amount of leave based on their schedule and length of employment.

2 | Philadelphia

On March 29, 2021, Philadelphia amended and expanded its Public Health Emergency Leave requiring employers with 50 or more employees to grant up to 80 hours of paid leave to employees for reasons related to COVID-19. The ordinance applies to full-time and part-time employees who have worked for their employer for at least 90 days, but does not cover temporary, seasonal, federal, or state workers. To be eligible for the leave, employees must also work in Philadelphia, be teleworking but normally work in Philadelphia, or work for an employer in multiple locations with over 51% of work time in the city. The leave requirements will remain in effect until the expiration of the statewide public health emergency declaration related to the COVID-19 pandemic.

3 | State of New York

Effective March 12, 2021 through December 31, 2022 employers in New York state must grant all public and private employees with up to four hours of paid leave for each instance they receive a COVID-19 vaccine. The leave, however, cannot be used to attend a family member's injection. Employees subject to a collective bargaining agreement (CBA) may receive more leave time as the CBA allows, or the paid vaccine leave may be waived entirely if the CBA explicitly provides for a waiver. The new law does not prohibit employers from requiring notice before leave is taken or proof of vaccination when the employee returns.

4 | Los Angeles County

The Los Angeles County Board of Supervisors extended and expanded the Los Angeles County COVID-19 Supplemental Paid Sick Leave Ordinance retroactive to January 1, 2021. The new ordinance applies to all private employers within the unincorporated areas of Los Angeles County, as opposed to the original ordinance which applied only to employers with 500 or more employees nationally. Under the new ordinance, employers must grant up to 80 hours of supplemental paid sick leave for several reasons related to COVID-19, provided the employee did not previously exhaust available leave under the federal Families First Coronavirus Response Act or the original Los Angeles County Supplemental Paid Sick Leave Ordinance. The new law will remain in effect until two calendar weeks after the expiration of the COVID-19 local emergency.

5 | Saskatchewan

On March 18, 2021, Saskatchewan became the first Canadian jurisdiction to implement a paid leave allowing employees to take time off to be vaccinated for COVID-19. Employees are entitled to three consecutive hours of leave during work hours to receive a vaccination and may take more than three consecutive hours of leave if the employer determines the circumstances warrant it.

6 | British Columbia

On April 1, 2021 the British Columbia government announced changes to the COVID-19 leave provisions in its Employment Standards Act to enable full-time and part-time employees to take unpaid leave to receive COVID-19 vaccinations or to accompany dependent family members to vaccinations. A new bill that received Royal Assent on April 27, however, expanded the British Columbia Employment Standards Act to provide workers with up to three hours of paid leave to obtain each dose of the COVID-19 vaccine. The effective date of the new paid vaccine leave is retroactive to April 19, 2021.

7 | Chicago

On April 21, 2021, the Chicago City Council passed an ordinance prohibiting employers from terminating, disciplining, or taking any adverse action against a worker (including independent contractors) for taking time off to receive the COVID-19 vaccine. Additionally, employers cannot require workers to get the vaccine outside of work hours. Employers requiring workers to receive the COVID-19 vaccine must provide up to four hours of leave per dose at their regular rate of pay. If an employer does not require workers to get vaccinated, they must allow those with accrued paid sick leave to use that leave to receive the vaccine.

8 | Alberta

Effective April 21, 2021, the Alberta Employment Standards Code was amended to provide employees with up to three hours of paid leave for each dose of the COVID-19 vaccine. The leave applies to full-time and part-time employees no matter how long they have been employed.

9 | Ontario

On April 29, 2021, the Ontario Employment Standards Act was amended to require employers to grant employees up to three days of paid leave for reasons related to COVID-19. Employers must pay employees up to $200 a day and the three days of leave do not have to be consecutive. Paid leave is available for reasons such as attending a COVID-19 test; staying home awaiting the results of a COVID-19 test; being sick with COVID-19; getting a COVID-19 vaccination or experiencing vaccination side effects; being advised to self-isolate due to COVID-19 by an employer, medical practitioner, or other authority; or caring for a dependent who is sick, symptomatic, or self-isolating with COVID-19. The leave is in effect from April 19, 2021 through September 25, 2021, unless extended. *Update as of January 2022: The leave has been extended and is now in effect through July 31, 2022.*

Employers Should Be on the Lookout

These are only some of the new COVID-19 leave laws recently passed in the United States and Canada with more likely to follow as COVID-19 cases continue to spike in certain places. In early April 2021 the total number of COVID-19-related lawsuits filed in U.S. courts soared passed 2,000, proving that employee entitlements due to the pandemic are easily mishandled without thoughtful consideration. Employers should be on a daily lookout for new or amended COVID-19 legal obligations as their financial well-being, and employee safety, may depend on it.

Compliance Guidance: Reasonable Accommodation and Undue Hardship Under the ADA

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The Americans with Disabilities Act requires employers with 15 or more employees, and state and local governments, to provide reasonable accommodation to qualified employees (and applicants) with disabilities unless doing so would cause undue hardship to the employer.

An accommodation is any change to the work environment or to the way things are normally done that enables a person with a disability to enjoy equal employment opportunities. The reasonable accommodation process is a valuable tool that helps countless hard-working employees with disabilities succeed in their jobs.

Although employers need not provide an accommodation that will cause them undue hardship, what constitutes an undue hardship? Undue hardship is defined as any action requiring significant difficulty or expense for a particular employer. Generalized conclusions will not support a claim of undue hardship. Rather, a determination of undue hardship must be based on an individualized assessment of an organization's circumstances that considers several factors, including:

1 | The Nature and Cost of the Accommodation

Employers should evaluate the type of accommodation needed and the actual cost of providing it. For example, if an employee with a disability requests a leave of absence as an accommodation the employer will likely incur actual costs in covering the time off with another worker. Consequently, the longer a disabled employee is on leave the more likely the accommodation will be an undue hardship because the replacement costs will be greater.

2 | The Facility's Overall Financial Resources

This factor looks at a facility's ability to absorb the cost of an accommodation. When the facility making the accommodation is part of a larger organization, the overall resources of the larger entity should be considered in determining undue hardship. Generally, larger employers with greater resources are expected to provide accommodations requiring greater effort or expense than are smaller employers with fewer resources.

3 | The Type of Operation of the Employer

This factor focuses on the compatibility of an accommodation with an employer's operations. For instance, if an employee in the construction industry requests wheelchair accessibility at a work site that is constantly changing, this may be an unreasonable accommodation to provide. The employer, however, must still consider alternative reasonable accommodations that will assist the employee with a disability in performing their job.

4 | The Effect of the Accommodation on the Facility's Operation

In determining undue hardship, employers should analyze how the accommodation will affect the job performance of other employees as well as the overall functioning of the business. And it is not undue hardship merely because other workers complain that the employee requesting the accommodation is receiving preferential treatment. The accommodation must be unduly disruptive to coworkers or to the business's operations for an undue hardship to exist.

Examine the Facts of Each Case

Because many factors come into play when determining if an accommodation would cause undue hardship, what constitutes an undue hardship for one employer may not be a hardship for another employer. Organizations must evaluate every situation on a case-by-case basis.

Evaluating whether a requested accommodation would inflict undue hardship on an employer is a complicated task requiring careful consideration. And remember, undue hardship is a difficult threshold to meet. Organizations considering denying an accommodation on hardship grounds should consult legal counsel or an in-house expert because failing to provide a reasonable accommodation is discrimination that can lead to costly lawsuits and damages.

2021 Mid-Year Workplace Compliance Check for Employers

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There never seems to be a shortage of new employment laws for employers to contend with in the United States and Canada—and 2021 is no different. Although companies often watch for newly passed employment laws in January when many take effect, employers must be on guard for new regulations year-round since legislation can be enacted at any time.

Here is a 2021 mid-year look at recently passed employment laws in Canada and the United States that organizations should know about to stay compliant:

1 | Massachusetts COVID-19 Emergency Paid Sick Leave (EPSL)

Massachusetts employees are entitled to up to 40 hours of EPSL for several COVID-19-related reasons from May 28 until September 30, 2021 or until the exhaustion of EPSL program funds (whichever comes first). Employees may use EPSL intermittently and cannot be forced by their employers to take other available paid leaves before using EPSL.

2 | British Columbia Paid Sick Leavet

Effective May 20, 2021 through December 31, 2021, the British Columbia government amended the Employment Standards Act to provide employees with three days of paid sick leave if they are unable to work for reasons related to COVID-19. The reasons for leave include being diagnosed with COVID-19, being in quarantine or isolation as required by law, and/or being directed to stay home by their employer due to exposure related risks. The amendment also grants permanent paid sick leave to ill or injured workers starting January 1, 2022. Additional details regarding permanent paid sick leave, including the amount of leave available, will be forthcoming from the British Columbia government over the next few months.

3 | The Virginia Overtime Wage Act (VOWA)

Starting July 1, 2021, Virginia employers are subject to new state overtime pay obligations. As with the federal Fair Labor Standards Act (FLSA), VOWA requires employers to pay one and one half times an employee's regular rate of pay for work hours exceeding 40 in a workweek. VOWA departs from the FLSA, however, on how the regular rate is calculated depending on whether employees are paid hourly or by salary. For hourly employees, the regular rate of pay is the hourly rate plus any other non-overtime wages paid or allocated for the workweek—minus FLSA exclusion—divided by the number of hours worked in the workweek. For salaried employees or employees paid regularly in some other way, the regular rate under VOWA is one-fortieth (0.025) of all wages paid for the workweek. VOWA's other departures from the FLSA include a longer statute of limitations to file claims and the damages recoverable.

4 | Virginia Disability Discrimination Protections

Effective July 1, 2021, Virginia expanded its Human Rights Act to prohibit disability discrimination. With this expansion, employers must make reasonable accommodation to the known physical and mental impairments of an otherwise qualified person with a disability, including providing leave to employees, unless the accommodation would impose undue hardship on the employer. The law also prohibits employers from requiring workers to take leave if another reasonable accommodation is available.

5 | New Mexico Paid Sick Leave (PSL)

Private employers in New Mexico will soon be required to provide PSL. Beginning July 1, 2022, employers must permit employees to accrue one hour of PSL for every 30 hours worked or grant 64 hours of PSL to workers on January 1 of each year (or a prorated amount for employees hired after January 1). Employees may use up to 64 hours of PSL per 12-month period for their own health condition, to care for a family member's health condition, meetings at their child's school or place of care related to the child's health or disability, and for reasons related to domestic abuse, sexual assault, and stalking. PSL must be paid at the employee's regular hourly rate.

6 | Nova Scotia COVID-19 Paid Sick Leave Program

Nova Scotia implemented a COVID-19 paid sick leave program that began May 26, 2021 and ends July 31, 2021 (unless extended). Eligible employees may qualify for up to four paid sick days if they need time off because they are waiting to receive a COVID-19 lab test, getting a COVID-19 lab test, self-isolating while awaiting test results, or being vaccinated. Under the program, employers pay employees for the work time they miss and then apply for reimbursement. The payment amount is calculated based on the employee's rate of pay up to a maximum of $20 per hour or $160 a day (the maximum payment per employee is $640).

7 | Oklahoma Uniformed Services Employment and Reemployment Rights Act

On April 21, 2021, the Oklahoma Uniformed Services Employment and Reemployment Rights Act ("Act") was enacted. The Act prohibits employers from discriminating against employees or prospective employees based on their membership or service in state military forces. The Act also provides that employees whose absence from work is necessitated by state military service are entitled to reemployment when their service ends if they gave notice of their intent to return to work, were not cumulatively absent for more than 5 years, and submitted a reemployment application to their employer.

8 | Pennsylvania Living Donor Protection Act Leave

Starting June 26, 2021, Pennsylvania employers were mandated to grant time off to employees for organ and tissue donation surgery, including necessary preparation and recovery. Employees are eligible for leave if they meet the following federal Family and Medical Leave Act (FMLA) eligibility criteria: (1) work for an employer covered by the FMLA, (2) work 1,250 hours during the 12 months before the start of leave, (3) work at a location where 50 or more employees are employed within 75 miles of the site, and (4) have worked for the employer for 12 months. The leave also applies to eligible employees who need time off to care for a spouse, child, or parent making or receiving an organ or tissue donation.

9 | Maine Family Medical Leave

On June 14, 2021, Maine amended its Family Medical Leave Act to permit covered employees to take leave to care for a grandchild or a domestic partner's grandchild with a serious health condition. Formerly, the law only allowed workers to take leave to care for a seriously ill child, domestic partner's child, parent, spouse, domestic partner, or sibling. The amendment takes effect 90 days after the end of Maine's present legislative session.

10 | Canadian Vaccine Leaves

Several provinces including Alberta, British Columbia, Manitoba, and Saskatchewan have enacted temporary paid leaves for employees to receive a COVID-19 vaccine. Generally, these leaves are for three hours per vaccination or request.

11 | Bereavement Leave Under the Canada Labour Code

The Canada Labour Code (Code) defines the rights and responsibilities of workers and employers in federally regulated workplaces in Canada. Examples of federally regulated workplaces include air transportation, banks, certain railways and shipping, radio/television broadcasting, Crown Corporations, grain elevators, telecommunications, and other industries. On June 29, 2021 an amendment to Code, Bill C-220, received Royal Assent. Bill C-220 will extend by five unpaid days the period of bereavement leave to which an employee is entitled. The Bill also expands eligibility for bereavement leave to employees who, at the time the family member dies, are on compassionate care leave or leave related to critical illness regarding the deceased person.

This is only a partial list of new employment laws in the United States and Canada. Employers must constantly be on alert for new legislation affecting their employees because failing to do so risks substantial liability. And remember, staying compliant with ever-changing federal, state, and provincial employment regulations is not easy. If you are unsure if a new law applies to your organization or if there is something about it you do not understand, please consult legal counsel.

How Employers Can Prepare for Recurring Employment Law Issues

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Many human resources professionals will tell you, and correctly so, that one of the most difficult challenges employers face is keeping pace with the constant changes taking place in different areas of employment law. These changes include new and amended laws, confusing court decisions, and complicated government agency opinions. More than ever, employers are consulting with their pricey attorneys trying to figure out the quickly evolving regulatory landscape before them.

Despite the difficulties caused by legal changes, it's important for employers to stay focused and to understand that there are certain basic employment law issues they will run into just about every year—like leaves of absence, wage and hour requirements, discrimination (including harassment), and employee scheduling.

But by having a deep understanding of a few established employment laws, employers can build a solid foundation that will ready them for upcoming changes.

Below is a list of longstanding laws with which employers should have a strong working knowledge if they want to cultivate an atmosphere of workplace compliance regarding the aforementioned issues:

1 | Family and Medical Leave Act of 1993 (FMLA)

The FMLA requires private employers with 50 or more employees (and local, state, and federal employers) to provide eligible employees with up to 12 workweeks of unpaid, job-protected leave per year for specified family and medical reasons, and up to 26 workweeks of unpaid leave during a single 12-month period to care for a covered military veteran with a serious injury or illness. Employers who violate the FMLA are subject to damages including back pay, front pay, and liquidated damages. A court may also order an employer to reinstate an employee who was wrongfully terminated in violation of the FMLA. And to complicate matters more, national employers must also comply with many state family and medical leave laws that are similar to yet different from the FMLA.

2 | Fair Labor Standards Act (FLSA)

The FLSA is a federal law establishing minimum wage, overtime pay, child labor, and recordkeeping requirements in the private and public sectors. Under the FLSA, for example, nonexempt employees are entitled to overtime pay at not less than one and one-half times their regular rate of pay for work hours exceeding 40 in a workweek. An employee's regular rate of pay includes all remuneration for employment except for several payments specifically excluded by the Act. Hours worked usually include all the time an employee is required to be on duty, on the employer's premises, or at a prescribed workplace. Scary news for employers: the U.S. Department of Labor estimates that as many as 70 percent of employers violate the FLSA, exposing them to potentially costly litigation and damages.

3 | The Americans with Disabilities Act (ADA)

The ADA covers employers with 15 or more employees as well as state and local governments. It prohibits disability discrimination in the workplace to guarantee that applicants and employees with disabilities have the same job opportunities as everyone else. A key aspect of the ADA is that covered employers must provide reasonable accommodations to workers with disabilities unless it causes the employer undue hardship (such as significant difficulty or expense). Examples of reasonable accommodations may include job restructuring, accessible and assistive technologies, policy modifications, adjusting work schedules, and permitting the use of accrued paid or unpaid leave.

4 | Age Discrimination in Employment Act (ADEA)

The ADEA applies to private employers with 20 or more employees, the federal government, state and local governments, employment agencies, and labor organizations. Among other things, the ADEA prohibits age discrimination against employees and applicants age 40 or older. And some states have enacted laws protecting workers under age 40 from age discrimination. Age discrimination is prohibited in pre-employment inquiries, hiring, firing, job assignment, compensation (including benefits), training, promotions, layoffs, and other terms and conditions of employment.

5 | Title VII of the Civil Rights Act of 1964 (Title VII)

Title VII prohibits employers with 15 or more employees from discriminating against applicants and employees in any term or condition of employment based on race, color, religion, sex (including pregnancy and sexual orientation), and national origin. Areas often giving rise to Title VII discrimination claims include employee recruiting, hiring, firing, layoffs, compensation (including benefits), discipline, harassment, transfers, promotions, training, job assignments, and performance reviews.

6 | Predictive Scheduling Laws

Predictive scheduling laws protect workers by requiring employers to follow certain practices to avoid unpredictable work schedules that can deprive employees of a proper work-life balance. For example, predictive scheduling laws usually require employers to provide adequate notice to employees of when they will work so they can plan for and around their shifts. If these mandated scheduling practices are violated, stiff penalties can be imposed. Current predictive scheduling laws often cover food service, retail, and hospitality industry employers where "just-in-time" and "on-call" scheduling have historically complicated employees' lives.

Underestimating the importance of complying with employment laws is one of the biggest miscalculations employers can make. Although proper workplace compliance can be time-consuming and daunting, it is far less time-consuming and daunting than defending your noncompliant workplace actions in a court of law or agency proceeding. What compliance really boils to is understanding the law, following the law, and treating your employees fairly. And staying compliant with these recurring employment law issues is a great step in that direction.

Compliance During and After a Pandemic

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The COVID-19 pandemic has left employers vulnerable to many new employment law problems. Numerous organizations have already faced internal complaints and lawsuits regarding their response to this seemingly never-ending crisis.

Here are five areas employers should focus on to avoid pandemic-related workplace liabilities:

1 | Leave Laws

Federal, state, and provincial governments across the United States and Canada have been passing laws that provide time off to workers affected by COVID-19. Reasons for leave under these laws may include taking time off to care for themselves, to get a vaccination, being subject to quarantine or isolation orders, caring for family members with COVID-19 or who react negatively to a vaccination, and caring for a child or family member whose school or place of care closes due to the coronavirus. To minimize legal liability, employers must determine their obligations under these laws and provide time off to workers as warranted.

2 | Wage and Hour Requirements

The switch to remote work during the pandemic has made it more difficult for organizations to comply with the myriad federal, state, and local employment laws affecting employees. Many companies have had to deviate from conventional time systems used to track work hours, calculate overtime, and ensure that timely meal and rest breaks are provided where required (e.g., California). Therefore, more than ever, employers should emphasize and regularly communicate to their non-exempt workers that all work time must be recorded. This will help ensure that employees are properly paid and that allegations of employer wage theft are avoided.

3 | Scheduling

With the continued spread of COVID-19, personal and family responsibilities have become a greater burden on non-remote workers and a major factor in unplanned employee absences. Unplanned absenteeism can negatively affect productivity, damage employee morale, and ultimately harm the company's bottom line. It may also subject organizations to liability under the various predictive scheduling laws popping up around the United States which require certain employers to give employees sufficient advance notice of their work hours or face stiff penalties. It is imperative for today's pandemic-weary employers to have a robust absence-management system in place to battle these scheduling-related headaches.

4 | Workplace Safety

Throughout the COVID-19 pandemic (and even afterwards), employers should acquire up-to-date information about local safety practices and laws in all jurisdictions where they have employees. The Centers for Disease Control and the Occupational Safety and Health Administration continuously issue revised safety guidance and recommendations for certain industries, while many state and local jurisdictions have passed laws and released orders concerning worker safety measures including laws allowing or prohibiting employers from requiring employees to receive a COVID-19 vaccine. Employers must stay current with these edicts or possibly face substantial workplace liability.

5 | Disability Accommodation

Reasonable accommodations include workplace adjustments or modifications provided by employers to enable applicants and employees with disabilities to enjoy equal employment opportunities. Under the Americans with Disabilities Act, and comparable state laws, if an accommodation is requested and needed by an individual with a disability, the employer must provide it unless it would create undue hardship for the employer. There may also be reasonable accommodations that can protect workers whose disabilities put them at greater risk from COVID-19 and who request an accommodation to avoid exposure. To reduce potential liability in this area, employers should be open-minded and flexible in determining what accommodations are feasible under the circumstances.

New legislation, novel regulations, changing agency guidance, and public health precautions regarding COVID-19 (and other employee health issues) will be affecting and shaping American and Canadian employers' actions for years to come. It has already become the new normal. Employers must remain dedicated to compliance to protect their workers and to stay out of legal trouble. It may even be necessary to revise company policies and practices to remain compliant, and to consult with legal counsel as employer obligations continue to evolve and grow.

Complying with Crime Victim Leave Laws: What You Need to Know

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Many states and Canadian jurisdictions have passed laws granting employees leave from work when they or a covered family member are a victim of domestic violence, sexual assault, gender violence, stalking, or other crime of violence. Although the details of these laws differ from place to place, they commonly provide time off to attend legal proceedings, to seek medical treatment or counseling, to obtain services from a victims' rights organization, to participate in safety planning, or to temporarily or permanently relocate or take other action to increase safety.

Additionally, crime victim leave laws often protect employees from retaliation for requesting time off and may require employers to provide reasonable workplace accommodations to further safeguard workers who are victims.

Here are a few newer or recently amended crime victim leave laws you should know about in order to remain compliant.

1 | Missouri Leave for Domestic or Sexual Violence

On August 28, 2021, employers with at least 20 Missouri employees became legally mandated to provide unpaid leave to employees who are victims of domestic violence or sexual violence or whose family or household member is a victim. Employers with 20 to 49 Missouri employees must provide at least one week of leave per year and employers with 50 or more employees must grant two weeks of leave. Reasons for this leave include seeking medical attention and counseling; recovering from physical or psychological injuries; obtaining services from a victim services organization; participating in safety planning; relocating or taking other action to increase the safety of the employee (or family or household member); and pursuing legal remedies to ensure the health and safety of the employee (or family or household member), including preparing for civil and criminal actions resulting from the violence. Covered employers must notify current employees of their leave rights by October 27 or upon commencing employment for future employees.

2 | Missouri Reasonable Safety Accommodations

Missouri employers with at least 20 employees are now required to provide reasonable safety accommodations to employees who experience domestic or sexual violence, unless the accommodation would cause the employer undue hardship. Reasonable accommodations may include leave from work, a modified work schedule, a transfer or reassignment, adjusting a work requirement or job structure, and other actions responding to actual or threatened domestic or sexual violence. This new accommodation requirement took effect August 28, 2021.

3 | Illinois Victims' Economic Security and Safety Act (VESSA) Amendments

Under VESSA, employees who are victims of domestic violence, sexual violence, or gender violence, or who have a family or household member who is a victim, may take up to 12 work weeks of leave during any 12-month period to address the violence. The amount of leave available to employees decreases for employers with fewer than 50 workers. Beginning January 1, 2022, amendments to VESSA will also allow employees to take time off if they or a family or household member are a victim of any "crime of violence," including homicide, sex offenses, assault, offenses involving bodily harm, harassment, armed violence, obscene communications, terrorism, and similar criminal actions. Additionally, the VESSA amendments expand the "family or household members" for whom leave may be taken to include civil union partners, grandparents and grandchildren, siblings, any person related to the employee by blood or by present or prior marriage or civil union, individuals sharing a relationship with the employee through a child, and any other closely associated person the employee considers to be like a family member.

4 | Amendment to British Columbia Leave Respecting Domestic or Sexual Violence

As of August 14, 2020, the British Columbia Employment Standards Act was amended to allow employees to take up to 5 days of paid leave and 5 days of unpaid leave per calendar year if they are affected by domestic violence or sexual violence. An additional 15 weeks of unpaid leave is also available if needed. Before the amendment employees were limited to 10 days of unpaid leave per year to address the violence in addition to 15 weeks of unpaid leave if necessary.

5 | Yukon Leave Respecting Domestic or Sexual Violence

Effective July 8, 2021, the Yukon Employment Standards Act was amended to provide a combination of paid and unpaid leave to employees if the employee, a child of the employee, or a person to whom the employee provides care or support experiences domestic or sexual violence. Reasons for the leave include seeking medical attention for physical or psychological injuries or disabilities; obtaining services from a victim services organization; obtaining psychological or other professional counseling; relocating for safety reasons; or seeking legal or law enforcement assistance, including preparing for or participating in civil or criminal proceedings relating to the violence.

In addition to time off under crime victim leave laws, employees who are crime victims may also be eligible for leave under family and medical leave laws, sick/injury leave laws, or company policies and contracts. Each of these entitlements differ as to the duration of the leave, the reasons for leave, whether the time off runs concurrently with other leave entitlements, and whether the leave is paid or unpaid. If an employee requests time off for crime-related reasons and you are unsure if a leave law or rule applies to their request, consult legal counsel immediately.

Simplifying FMLA Leave Compliance

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Although federal FMLA (Family and Medical Leave Act) leave can be difficult to understand with all of its rules and regulations, there are ways employers can improve their FMLA administration, guard against leave abuse, and ensure covered employees can take advantage of leave if necessary.

Here are several practices employers should follow to make their FMLA leave administration more efficient and protect against violations and lawsuits.

1 | Mandate Written Leave Requests for All Absences

Employers may require employees to comply with the employer's usual and customary leave policies when requesting FMLA leave, including requiring a written leave request, unless unusual circumstances prevent such compliance. Although employers cannot deny an oral FMLA request when the employee articulates unusual circumstances for not applying for leave in writing, having a policy requiring employees to request FMLA leave in writing will likely cause them to think twice about committing leave abuse.

2 | Closely Monitor Leave

Employers should diligently track their employees' use of FMLA leave. When employees know their FMLA leave is closely monitored, they will be less inclined to use the leave inappropriately.

3 | Use Medical Certifications Properly

When employees request FMLA leave for their own serious health condition or to care for a family member with a serious health condition, specify that the employee must provide a complete and sufficient medical certification. Employers may use certification forms made available by the U.S. Department of Labor (DOL) or create their own forms, though many HR professionals choose to rely on the DOL forms. Also, to keep employees honest regarding their leave use, seek recertification as soon as the law allows.

4 | Require Second and Third Opinions, When Necessary

Employers often have reasons to question the validity of an employee's medical certification. If so, you should request a second medical opinion at your expense. A third opinion at the employer's expense may also be requested if the opinions of the employee's and the employer's designated health care providers differ.

5 | Keep Detailed Records of FMLA Leave

FMLA regulations require employers to keep certain records or face penalties for noncompliance. It is also important to keep detailed records to justify or support any action an employer takes regarding an employee's FMLA leave. In the end, proper documentation is indispensable to consistent decision making and helps employers avoid liability for discriminatory treatment.

6 | Require Non-Disruptive Medical Treatment and Temporary Transfers

Require employees to reasonably try to schedule medical treatment around the company's operations and consider temporarily transferring employees to an equivalent position when intermittent and reduced schedule leave is sought. Employers should take advantage of both these options

7 | Investigate Possible Abuse

Employers may receive information suggesting that an employee is using FMLA leave for activities inconsistent with their leave request. In this case employers should not hesitate to investigate the suspected abuse. Although the fraudulent use of FMLA leave can lead to employee discipline, employers should carefully consider the strength of their evidence before imposing discipline to prevent FMLA interference or retaliation claims.

8 | Substitute Paid Leave for Unpaid FMLA Leave

FMLA regulations allow employers to require employees to substitute accrued paid leave for unpaid FMLA leave. "Substitute" means paid leave provided by the employer runs concurrently with unpaid FMLA leave. Employees may be more likely to use FMLA leave wisely and not take unnecessary time off if they must burn through accrued paid leave to take the time off.

Properly managing FMLA leave is a significant challenge. The practices noted above will help employers administer FMLA leaves more efficiently and possibly discourage workers from abusing leave. Remember, however, that eligible employees are entitled to take the time off provided by the FMLA without employer interference. Employers should, therefore, work with their employment counsel to ensure they are using the best and most efficient FMLA leave practices for their organization.

New Year Resolutions for Employer Success and Compliance in 2022

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As 2021 comes to an end and 2022 quickly approaches, the time for employers to evaluate and implement strategies to bring newfound (or continued) success and compliance to their organizations is now. Here is my list of top resolutions employers should follow to ensure a promising and rewarding new year:

1 | Review the Prior Year

2021 was a rollercoaster year full of changes for employers, many of which were related to the pandemic. Resolve to review how you handled these changes and determine what you did right and what you did wrong. As conditions continue to change, don't forget the many valuable lessons your organization learned while navigating the pandemic.

2 | Make Sure to Properly Classify Your Employees as Nonexempt or Exempt

Employers should diligently track their employees' use of FMLA leave. When employees know their FMLA leave is closely monitored, they will be less inclined to use the leave inappropriately.

3 | Train Relevant Personnel

Training is essential to organizational success. If your company's family and medical leave, discrimination, workplace safety, security awareness, and other training are up to date, you are in the minority. Resolve to implement improved employee training processes to have the most efficient, liability-free, and profitable organization.

4 | Review and Update Your Employee Handbook

Updating employee handbooks and policies should be on every employer's yearly resolution list. Laws constantly change. Suppose your employee handbook is outdated or not easily understood. In that case, it will almost certainly lead to compliance issues and liability for your company. Commit to review, modify, clarify, and improve your handbook policies as needed.

5 | Accommodate Pregnancy-Related Restrictions

Most employers know their requirements to reasonably accommodate employees experiencing workplace difficulties due to physical or mental disabilities. Still, fewer know that they must accommodate pregnant workers with similar inabilities to work. Resolve to accommodate employees who are temporarily unable to perform their jobs due to pregnancy-related conditions, including childbirth, in the same manner you accommodate employees with disabilities.

6 | Get Employee Feedback

Collecting employee feedback is an excellent way to discover current and potential problems before they become lawsuits. Employee feedback is also valuable in adapting and instituting processes that make your company more efficient. Resolve to improve communication with your workers, and good things will happen. Remember, nobody knows your business better than your rank-and-file personnel.

7 | Invest in Employee Development

Focusing on employee development shows you care about their success, leading to a more satisfied and productive workforce. And since workers are a company's biggest asset, continuing to develop employee skills will increase the value of your business. Investing in employee development is one resolution you should not ignore.

8 | Monitor Your Company for Equitable Treatment of Employees

Treating your workers fairly and equitably will not only improve their morale and productivity, but it is the right thing to do. Therefore, resolve to monitor your company to ensure fair treatment of all employees, and positive results will follow.

Appreciate Your Current Employees Too

Resolve not to favor new hires over your current workers. In today's growing labor shortage, some employers' anxiety to find new workers leads to undervaluing the staff they have, causing existing employees to leave. Sweet talking and enticing new workers to join your company, possibly with higher compensation, does not serve your company if it causes experienced and knowledgeable personnel to feel overlooked and leave.

Whether employers follow these new year resolutions or create their own, there are always ways to improve your business and make it more compliant. The key is to act now. Do not procrastinate. Favorable results will ensue if you resolve to treat your employees well and upgrade your work environment. Let's make 2022 a great year!

Stay Up to Date with Everchanging Labor Laws, Emerging Issues, and New Guidance

When it comes to workforce management, an organization's compliance concerns extend beyond regulatory compliance to include union and collective bargaining agreements; industry standards; corporate policies; health and safety rules; and security concerns. With each new layer, requirements become that much more particular to a given organization.

Ensuring your organization is conversant with ever-changing labor laws, emerging issues, and new guidance does more than protect from the risk of costly litigation. A successful compliance check is vital in building a strong company culture and positive employee experiences.

WorkForce Software's Compliance Navigator offers the insight and resources your organization needs to stay up to date and prepared for what's ahead.

Ready to Learn More?

About WorkForce Software

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workforcesoftware.com | info@workforcesoftware.com | 877-4-WFORCE