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2024 REPORT

The Current State of North America Workforce Compliance

New Employee Protections in 2023—and What Will Follow in 2024

In 2023, United States and Canadian employers were confronted with new employee protections, including new leave laws and other safeguards. These measures also covered protections related to preserving the health of employees and their family members, regulations for childbirth and pregnancy-related issues, and pay disclosure laws intended to reduce salary inequities and increase the trust between workers and their employers. These new legal protections were enacted across both countries.

To begin, here are examples of laws that passed or took effect in the United States in 2023:

- **California Reproductive Loss Leave:**

  On Oct. 11, 2023, California enacted a law requiring employers with five or more employees to grant five days of unpaid time off for reproductive loss events to workers who have been employed for at least 30 days starting Jan. 1, 2024. A reproductive loss event includes a failed adoption, failed surrogacy, miscarriage, stillbirth, or unsuccessful assisted reproduction. But if an employee experiences multiple reproductive loss events within 12 months, an employer is not obligated to provide more than 20 days of leave within the 12-month period.

- **California Paid Sick Leave Expanded:**

  Beginning Jan. 1, 2024, California employers must provide eligible employees with up to five days or 40 hours of paid sick leave per year (whichever is greater). The previous annual leave requirement was three days or 24 hours. Any local laws less generous than the expanded state paid sick leave requirement are specifically preempted.

- **Illinois Paid Leave for All Workers Act:**

  Starting Jan. 1, 2024, Illinois employers are required to provide covered employees with up to 40 hours of paid leave per year to be used for any reason. Employees will accrue one hour of paid leave for every 40 hours worked and can accrue up to 40 hours in a 12-month period.

- **Paid Leave Oregon:**

  Covered employees in Oregon became eligible for 12 weeks of paid leave in a 52-week period under Oregon's paid family and medical leave program, effective Sept. 3, 2023. The program provides leave to address an employee's own serious health condition, to care for a loved one with a serious health condition, to bond with a new child, and for certain needs when the employee or their child experiences sexual assault, domestic violence, harassment, or stalking. Employees may be able to take two additional weeks of leave (up to 14 total weeks) if they are pregnant, have given birth, or have health needs relating to childbirth.

- **Illinois Child Extended Bereavement Leave Act:**

  Beginning Jan. 1, 2024, the new Illinois Child Extended Bereavement Leave Act requires employers with 50 or more full-time employees to provide unpaid leave to workers experiencing the loss of their child by suicide or homicide. Employees of employers with 250 or more full-time employees are entitled to 12 weeks of leave, while employees of employers with 50 to 249 full-time employees must receive six weeks of leave.

- **Pregnant Workers Fairness Act ("PWFA"):**

  The federal PWFA took effect on June 27, 2023. It requires public and private employers with at least 15 employees to provide reasonable accommodations to a worker's known limitations relating to pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer undue hardship. The PWFA does not supersede state or local laws more generous to workers affected by pregnancy, childbirth, or related medical conditions.

- **New Hampshire Workplace Accommodations for Nursing Mothers:**

  On Aug. 4, 2023, New Hampshire enacted legislation guaranteeing the right of nursing mothers to unpaid breaks of at least 30 minutes to express breast milk for every three hours worked for one year after their child's birth. The only exception to the break requirement is if it would cause the employer undue hardship. Nursing employees must also be provided with a private space to express milk within a reasonable walk of their worksite. The law covers employers with at least six employees and is effective July 1, 2025.

- **Illinois Pay Transparency:**

  Illinois enacted a law on Aug. 11, 2023, amending the Illinois Equal Pay Act to require pay transparency in job postings for most Illinois employers. Beginning Jan. 1, 2025, it will be unlawful for an employer with at least 15 employees to fail to provide the pay scale and benefits for a specific job posting in Illinois. "Pay scale and benefits" is defined as the "wage or salary, or the wage or salary range, and a general description of the benefits and other compensation, including, but not limited to, bonuses, stock options, or other incentives the employer reasonably expects in good faith to offer for the position."

- **Hawaii Pay Transparency:**

  Starting Jan. 1, 2024, Hawaii employers with at least 50 employees are required to disclose an hourly rate or salary range in job postings that reasonably reflects the expected compensation of the posted position. The disclosure requirements do not apply to public positions where salary, benefits, and other compensation are determined by a collective bargaining agreement or to internal promotions or transfers within the current employer. The new law also prohibits employers from paying any employee in a protected category less for substantially similar work.

Similar new legal protections passed or commencing in 2023 have also affected Canadian employers and will continue to require careful diligence to maintain proper compliance. These include:

- **Manitoba Bereavement Leave for Loss of Pregnancy:**

  On May 30, 2023, an amendment to Manitoba Bereavement Leave took effect. The amendment expanded former bereavement leave upon the death of a covered family member by creating a new bereavement leave for the loss of a pregnancy. An employee may now take up to five days of unpaid leave if they or their spouse or common-law partner experiences the loss of a pregnancy. The five-day unpaid leave entitlement also applies to an employee, their spouse, or common-law partner who had undertaken to be the guardian of the child born as a result of the pregnancy.

- **Nova Scotia Leave for End of Pregnancy:**

  Nova Scotia Leave for End of Pregnancy is an unpaid leave of up to 16 weeks for employees experiencing an end of a pregnancy. End of pregnancy means a pregnancy that does not end in a live birth. The reason the pregnancy ended does not affect an employee's eligibility for leave, and employers are not entitled to know why a pregnancy ended. This new leave came into effect on Jan. 1, 2023.

- **Ontario Reservist Leave Expanded:**

  Starting Oct. 26, 2023, employee eligibility for Ontario Reservist Leave was expanded to provide Reservist Leave to employees to recover from a physical or mental health illness, injury, or medical emergency resulting from participation in a military operation or training. The new law also reduced the eligibility period for Reservist Leave from three months to two months of consecutive employment.

- **British Columbia Pay Transparency:**

  Beginning Nov. 1, 2023, all employers in British Columbia covered by the Employment Standards Act must include the expected pay or the expected pay range for a specific publicly posted job opportunity. Also, British Columbia employers can no longer ask applicants about the salary or wages earned with other employers.

New and amended employment laws protecting workers in a myriad of ways will continue in 2024 and perhaps accelerate, including pay transparency laws. Additionally, there will likely be heightened scrutiny by government agencies and plaintiffs' attorneys on proper employee classifications as exempt or nonexempt. Employers must ensure workers are appropriately classified and that proper documentation is in place supporting the classification, or extensive liability may follow.

Read this report that includes my monthly updates and commentary to better understand 2023's biggest compliance challenges for North American employers, and gain insights to plan your 2024 workplace strategy.

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Supporting Mental Health in the Workplace

January 20, 2023

Mental illnesses and disabilities are quite common, though they are not always obvious. The Centers for Disease Control and Prevention have reported that more than 50% of Americans will be diagnosed with a mental illness or disorder during their lifetimes, and one in five will experience a mental illness each year. Given anxiety stemming from ongoing global health concerns and economic uncertainties in the United States (and worldwide), employee mental health issues will remain a concern for employers in 2023.

There are numerous workplace laws and rules employers should know about that grant rights to employees with mental health conditions. Here are a few of the most notable requirements:

1 | Americans with Disabilities Act ("ADA")

Under the federal ADA, employees are protected against disability discrimination and harassment in the workplace. Employees with disabilities are also entitled to workplace accommodation that will help them perform their jobs, unless providing such would cause the employer undue hardship. Examples of potential reasonable accommodations for employees with mental disabilities include a leave of absence, permission to work remotely, flexible scheduling, a quiet office space, a shift change, or approval to bring a pet to work.

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

The federal FMLA provides up to 12 weeks per year of job-protected leave to address serious health conditions. Eligible employees may take FMLA leave for their own serious health condition or to care for a spouse, child, or parent with a serious health condition. A serious health condition can include mental illnesses, disorders, and disabilities.

3 | State laws

Many states have enacted medical leave and disability legislation that protects employees with mental health conditions. These state laws often function similarly to the FMLA and ADA, including the requirement to provide reasonable accommodations, but may also provide greater protections than their federal law counterparts (e.g., additional leave time).

4 | Predictive scheduling laws

Predictive scheduling laws require employers to give employees sufficient notice of their work schedules so they can plan around their working hours. This type of legislation greatly benefits employees with mental health conditions, who may need to schedule and attend recurring doctor appointments.

5 | Company policies and agreements

Due to COVID-19, many employers in 2021 and 2022 began offering mental health days and other benefits to employees to help with anxiety and other mental health conditions exacerbated by the pandemic. Such policies are a good way to promote the importance of mental health awareness in the workplace while assisting employees in creating a better work/life balance. additional time off.

In addition to complying with workplace laws that protect and assist employees, employers should take additional steps to support employees' mental health in any way that will fit within their business plan. By creating a work environment supportive of mental health, employers can boost employee morale and overall health, which is essential to any successful organization.
Addressing mental health in the workplace is no longer just a nice thing to do but a necessity for businesses to remain compliant and prosper.

Final Thoughts

Mental health concerns effect over half of American workers. Employers must ensure that they are compliant with laws like the ADA and FLMA to both safeguard their employees and ensure fair treatment and accommodation. Workforce management capabilities like predictive scheduling help employees manage commitments, while company policies offering mental health days promote balance. Supporting mental health isn't just beneficial—it's crucial for business continuity. Multi-state employers should seek legal counsel if they have any compliance-related concerns.

New Federal Employment Protections for Pregnant and Nursing Employees

February 2, 2023

In late December 2022, the U.S. Congress passed and President Biden signed an omnibus government funding bill addressing multiple national concerns. Within this complicated bill are two acts affecting work-related rights for pregnant and breastfeeding employees: the Pregnant Workers Fairness Act (PWFA) and the Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP). The PWFA and PUMP expand and clarify the rights of pregnant and nursing workers in the workplace.

1 | The PWFA

The PWFA takes effect June 27, 2023, and applies to employers with 15 or more employees, with limited exceptions. It requires covered employers to provide reasonable accommodations to applicants and employees experiencing temporary limitations due to pregnancy, childbirth, or related medical conditions unless the accommodation would impose an undue hardship on the employer. Presently, federal law only obligates accommodations for pregnant workers if employers also give them to workers with injuries or medical conditions with similar limitations.

A reasonable accommodation is any change to the application process, job, or work environment that allows a qualified pregnant employee to perform the essential functions of a position and enjoy equal employment opportunities. Upon receiving an accommodation request from a pregnant worker, the PWFA requires employers to engage in an interactive process to determine what reasonable accommodations may be needed and whether the accommodation would cause undue hardship. The PWFA bars employers from requiring qualified pregnant employees to take leave (paid or unpaid) as an accommodation if another reasonable accommodation can be provided. Moreover, employees are not required to accept an accommodation not arrived at through the interactive process.

The PWFA also contains antidiscrimination and antiretaliation provisions, protecting employees and applicants from discrimination, retaliation, coercion, intimidation, threats, or interference with their rights under the PWFA. The new law also prohibits discrimination and retaliation against individuals who aid or encourage other workers in exercising their PWFA rights.

Remedies for noncompliance with the PWFA include back pay, front pay, compensatory damages, punitive damages, reinstatement, and recovery of attorneys' fees and costs.

2 | The PUMP Act

In 2010, Congress amended the Fair Labor Standards Act (FLSA) to require employers to provide "non-exempt" employees with time and a private space (other than a bathroom) to express breast milk each time they need to express milk for one year after their child is born. Employees exempt from overtime were not covered by this amendment. Effective December 29, 2022, however, the PUMP Act further expanded the FLSA by requiring employers to also provide exempt employees—such as nurses and teachers—with reasonable break time and a private location to pump breast milk.

Employers are not required to pay employees who take this break time to express milk unless otherwise required by federal, state, or municipal law. Nevertheless, this break time is considered hours worked if the employee is not entirely relieved from their duties during the totality of the break.

The PUMP Act exempts employees of employers with fewer than 50 employees if the small employer can show the Act's requirements would impose an undue hardship on their business (i.e., a significant difficulty or expense). Additional exemptions from PUMP include air carrier crew members and rail carrier crew members and motorcoach service operators under certain conditions outlined in the Act.

Before proceeding with legal action for a violation of the PUMP Act, employees must provide an employer with notice of a failure to comply with the requirement to provide a private location to express breast milk and give the employer 10 days to remedy the failure. This notice period is waived, however, if the employee was terminated allegedly in retaliation for requesting their rights under the PUMP Act or for otherwise opposing an employer's refusal to provide a private space. Noncompliance remedies include back pay, front pay, liquidated damages, employment, reinstatement, promotion, and attorney's fees to be paid by the defendant employer.

3 | What Does This Mean for Employers?

Although many employers already have policies in place regarding pregnant and nursing workers, employers should take the time to review and update their policies and practices to ensure compliance with these new laws.

Also, since some states, counties, and cities have their own laws granting workplace protections to nursing and pregnant workers, employers may wish to consult legal counsel if they have questions regarding the entirety of their legal obligations to pregnant and nursing workers based on where they are located.

Final Thoughts

The recent omnibus government funding bill signed in 2022 introduces two pivotal acts, the PWFA and PUMP. Effective June 2023, the PWFA demands reasonable accommodations for pregnancy-related conditions, guarding against discrimination and retaliation. The PUMP Act extends FLSA coverage to exempt employees, ensuring break time and private spaces for expressing breast milk. Employers need to adapt policies for compliance and consider local laws concerning pregnant and nursing workers.

Los Angeles Continues National Trend with New Fair Workweek Ordinance

March 7, 2023

Effective April 1, 2023, Los Angeles will begin enforcing a new "fair workweek" law, following the lead of other city jurisdictions across the United States, including Berkeley, California; Chicago; Euless, Texas; New York; San Francisco; and Seattle.

Fair workweek laws are regulations that make employee scheduling more transparent and are aimed at discouraging abusive and erratic scheduling practices. To prepare for the Los Angeles Fair Work Week Ordinance (LAFWW), there are key points you should know:

1 | Covered Employers/Employees

The employers covered by the ordinance are retail businesses under the North American Industry Classification System that employ at least 300 persons globally. Workers employed through staffing agencies and employees of certain subsidiaries and franchises count toward the 300-employee total. Employees must perform at least two hours of work per week within the geographic boundaries of Los Angeles to be covered by the ordinance.

2 | Good Faith Estimate of Work Schedules

Before hiring an employee, a covered employer must provide a written good faith estimate of the employee's work schedule and a notice of rights under the ordinance. If the actual work hours substantially differ from the good faith estimate, the ordinance is violated unless the employer can document a legitimate business reason for the deviation unknown at the time the estimate was given to the employee. Employers must also provide a written good faith estimate to current employees within 10 days of the employee's request.

3 | Advance Notice of Work Schedules

Employers must provide work schedules to employees at least 14 calendar days before the first day of the schedule and give the employee written notice of any changes made to the schedule after the advance notice period. This notice may be provided in person, electronically, or by posting the schedule in a conspicuous and accessible location in the workplace. If an employee voluntarily consents to a schedule change made fewer than 14 days before the work period, the consent must be in writing. The employee, however, has a right to decline any schedule deviations in hours, shifts, or work location.

4 | Right to Request Certain Work Schedules

Employees have the right to request certain work hours, times, and work locations. If the employer denies the request, they must do so in writing and state the reason for the denial.

5 | Right to Rest

Employers must give at least 10 hours of rest between shifts unless the employee consents in writing to a shorter period. An employer must pay an employee a time and a half premium for each shift not separated by 10 hours.

6 | Predictability Pay for Work Schedule Changes

"Predictability pay" must be paid to employees when they agree to a change in their schedule. Employees are entitled to one hour of additional pay at their regular rate for each change to their schedule that does not result in a loss of time to the employee or does not result in additional work time exceeding 15 minutes. Workers are entitled to one-half of their regular rate for the time they do not work if the employer reduces their work time by at least 15 minutes. Predictability pay, however, is not mandated under certain circumstances, such as when the employee initiates the schedule change, when the employee voluntarily accepts schedule changes due to another employee's absence, or when extra hours worked require overtime payment.

7 | Offering Work to Current Employees

Employers must offer additional available work to current employees at least 72 hours before hiring a new worker, contractor, or temporary employee. Employers need only offer these additional hours to employees qualified to perform the available work.

8 | Coverage for an Absence

Employers are prohibited from requiring an employee to find coverage for shifts or partial shifts the employee cannot work for reasons protected by law. It is the employer's responsibility to find coverage.

9 | Posting Notice

Employers must post a notice informing employees of their rights under the ordinance. Electronic posting is sufficient.

10 | Record Retention

Employers must retain Fair Work Week Ordinance records for current and former employees for at least three years.

Retail businesses with employees in Los Angeles should closely review their scheduling policies and practices to ensure they comply with this new law and ensure their payroll departments understand the potential need to provide predictability pay. Additionally, all employers should be on the lookout for new fair workweek laws to be enacted in other parts of the country, as this trend is expected to continue.

Final Thoughts

Los Angeles launched its "fair workweek" law on April 1, 2023, joining cities like New York and San Francisco. This law demands fairer employee scheduling, impacting larger retail businesses. It mandates a written schedule estimate, 14-day advance notice, and employees' rights to request specific schedules. Rest between shifts, predictability pay for schedule changes, and fair work offers to existing employees are also key provisions. Compliance with this law is crucial for affected businesses in Los Angeles and potentially other cities should the legislation expand further.

Department of Labor Issues New FMLA and FLSA Guidance

April 4, 2023

The United States Department of Labor (DOL) recently published new guidance on the Family and Medical Leave Act (FMLA) and the Fair Labor Standards Act (FLSA). To avoid compliance issues, employers should carefully review this guidance, which is summarized below.

1 | Indefinite FMLA Leave

In opinion letter FMLA 2023-1-A, the Wage and Hour Division of the DOL states that an employee may continue to use FMLA leave indefinitely as long as they continue to be eligible and have a qualifying leave reason. Therefore, according to the DOL, an employee who never exhausts their FMLA leave may work a reduced schedule indefinitely.

2 | Amount of FMLA Leave

Opinion Letter FMLA2023-1-A also reminds employers that eligible employees are entitled to 12 workweeks of FMLA leave per 12-month period, not 480 hours (12 weeks x 40 hours). Therefore, if an employer limits its employees to only 480 hours of FMLA leave per year, they may be violating the FMLA because some employees may work more than 40 hours per week. For instance, an employee working 48 hours per week would be entitled to 576 hours of FMLA leave in a year (12 weeks x 48 hours).

3 | Break Time

Field Assistance Bulletin (FAB) No. 2023-1 underscores that work breaks of 20 minutes or less are compensable under the FLSA whether the employee works remotely (e.g., from home) or at the employer's facility. The DOL explains that short breaks, whether at home or at a company worksite, primarily benefit the employer by reducing employee fatigue and improving productivity and thus should be paid. Off-duty breaks longer than 20 minutes may be excluded from hours worked if the employee is relieved from all duties and can effectively use the time for their own purposes.

4 | Hours Worked

FAB No. 2023-1 emphasizes that employers must pay teleworkers for all hours worked, including non-scheduled time, if the employer knows or has reason to believe that work is being performed. Employers also must exercise reasonable diligence to determine whether teleworkers are working unscheduled hours by providing a reasonable procedure for reporting nonscheduled work time.

5 | Nursing Employees

FAB No. 2023-1 also reminds employers of their obligation under the FLSA to provide a private space and reasonable break time to remote employees for expressing breast milk. Employers must ensure a teleworking employee has privacy from an employer-provided computer camera, security camera, or web conferencing platform when expressing breast milk. Break time for nursing employees can be unpaid as long as the employee is relieved of all duties during the break.

6 | Worksite when Teleworking:

FAB No. 2023-1 discusses the meaning of "worksite" for FMLA eligibility reasons when employees telework from home. One eligibility criterion to qualify for FMLA leave is that an employee work at a location where the employer has at least 50 employees within 75 miles of that location. When an employee works from home, their worksite for FMLA eligibility purposes is not their residence but, rather, the office to which they report or from where they receive assignments. This means as long as 50 employees are employed within 75 miles of the office to which the remote employee reports or from where they receive assignments, the employee meets the 50 employees within 75 miles requirement for FMLA eligibility.

Employers should remember that state and local wage and hour laws, leave laws, and lactation break laws may provide different legal obligations for employers than do the federal FMLA and FLSA. Companies in multiple jurisdictions should therefore review state and local laws where they have employees and discuss any inconsistencies between the various applicable laws with legal counsel.

Final Thoughts

The Department of Labor released new guidance on FMLA and FLSA, outlining key points for employers to ensure compliance. Employees can use FMLA leave indefinitely for qualifying reasons, and they're entitled to 12 workweeks per 12-month period, not limited to 480 hours. Breaks under 20 minutes must be paid, even for remote work. Employers must pay for all hours worked by teleworkers, provide nursing employees with break time, and determine worksites for FMLA eligibility. Understanding these nuances is critical, and organizations must have a plan to maintain compliance on a national level.

Seven Steps for Ensuring Employer Compliance

May 11, 2023

Don't think your company is alone in struggling to meet a seemingly endless array of legal obligations to your workers, such as those governing leave entitlements, wage standards, break time, and scheduling requirements. Legal compliance remains a challenge for all employers.

Still, you are correct to be concerned about how compliance issues may affect your organization. Not only does legal compliance protect you from lawsuits and other penalties, but it keeps your employees happy and productive, resulting in increased productivity and an improved reputation for your company. Here are a few important steps employers should follow to ensure their obligations toward their employees are being met:

1 | Determine Which Laws Apply to Your Workers

Not every employment law applies to every employer. Certain laws apply to larger employers but not to smaller ones. Other laws only apply to employees who have worked for an organization for a certain amount of time. To promote compliance, you should research and understand which laws you need to abide by at the federal, state, and local levels.

2 | Workplace Posters

Some laws require employers to conspicuously post workplace posters at their worksite summarizing the law for employees. Compliance with posting obligations should be taken seriously. Failing to properly display workplace posters can lead to costly penalties. Additionally, these posters are a valuable source of information in better understanding the law for both employers and employees.

3 | Stay Current with Employment Law Changes

Simply learning about the employment laws that apply to your organization is not enough. To ensure full compliance, every business, large or small, must do their best to stay on top of changes in federal, state, and local law. This is not an easy task since new and amended employment laws are constantly being passed, so make efforts to stay up to date.

4 | Train Your Team

You should make sure that all members of your relevant management team are knowledgeable about the employment laws and policies applicable to your employees. Ongoing training and clearly written employment policies and procedures and procedures are key to safeguarding compliance.

5 | Use Technology to Your Advantage

One way to better ensure compliance is through cloud technology. With so many employment laws to contend with and so many regulatory changes to track, manual workforce administration is time consuming and error prone. Reduce the strain of seeking legal compliance using manual processes by investing in an HR software solution. It will eliminate compliance concerns, reduce errors, save you time and money, and provide a great return on your investment.

6 | Recordkeeping

Federal, state, and local laws may contain a provision requiring relevant records to be maintained for a certain amount of time. The federal Family and Medical Leave Act (FMLA), for example, requires covered employers to keep certain FMLA-related leave records for no less than three years. Proper recordkeeping not only improves the efficiency of your business but protects your company and its employees if a lawsuit or agency charge arises.

7 | Perform Internal Compliance Audits

Every year or two, employers should conduct a compliance audit to determine if they are conforming to federal, state, and local employment laws. Compliance audits are important because they help employers know if they need to strengthen their compliance activities in a particular area, such as internal policies or external regulations. Compliance audits also create a detailed, documented paper trail that will help establish compliance if you are ever involved in an agency investigation or lawsuit.

Meeting compliance standards can prove to be a challenging task for organizations. Nevertheless, if you have the right processes in place, treat your workers fairly, and follow the above steps, you can avoid the costly compliance problems affecting many employers. Do your best to become or remain legally compliant, and it will make your employees better and reflect positively on your organization.

Final Thoughts

Legal obligations for employers encompass diverse areas like leave entitlements, wage standards, and scheduling. Staying compliant is crucial to shield against penalties, fosters employee satisfaction, and boosts productivity. Key steps include: 1) understanding applicable laws, 2) posting required workplace notices, 3) staying updated on law changes, 4) providing effective staff training, 5) leveraging cloud technology, 6) maintaining accurate records, 7) and conducting internal compliance audits. Prioritizing compliance not only benefits the workforce but also enhances an organization's brand reputation and success.

Must Employees Always Be Reinstated When They Return from FMLA Leave?

June 5, 2023

Most discussions about the federal Family and Medical Leave Act ("FMLA") examine issues relating to granting or denying FMLA leave. These issues commonly include the reasons FMLA leave may be taken, employee eligibility requirements, employee and employer notice obligations, medical certifications, and the interaction of FMLA leave with other forms of time off. This article, however, focuses on the end of FMLA leave—particularly, the circumstances when employees may be denied reinstatement.

The FMLA generally requires employees returning from leave to be placed in the position they held when their leave began or to an equivalent position with equivalent pay, benefits, and other terms and conditions of employment. Nevertheless, there are circumstances when employees do not have to be reinstated by their employer when their FMLA leave ends. For example, reinstatement may be denied in the following situations:

1 | Failing to Provide a Fitness-for-Duty Certification

When an employee's own serious health condition is the reason for continuous FMLA leave the employer may require the employee to provide a fitness-for-duty certification from a health care provider as a condition of allowing the employee to return to work. If not provided, job restoration may be denied. This policy of requiring a fitness-for-duty certification must be uniformly applied to all similarly situated employees to be valid. Additionally, the FMLA Designation Notice must advise the employee if the employer requires a fitness-for-duty certification to return to work.

2 | Employee Unequivocally Announces an Intent Not to Return to Work

If an employee on FMLA leave unequivocally advises their employer they will not be returning to work, the employer's obligations to maintain health benefits (subject to COBRA) and to reinstate the employee immediately cease.

3 | Termination of Employment

An employee on FMLA leave has no greater right to reinstatement than if the employee had not taken leave. Therefore, if an employer can show that the employee on FMLA leave would have been laid off or otherwise terminated even if they had not taken leave, the employee does not have to be restored to employment.

4 | Moonlighting

When an employee on FMLA leave violates an employer's uniformly applied policy prohibiting outside or supplemental employment while on leave, the employer may deny reinstatement to the employee.

5 | Fraudulent Leave

An employee who fraudulently obtains FMLA leave need not be reinstated, and their leave ends at the time the employer discovers the employee's fraud.

6 | Key Employees

The FMLA has an exception to reinstatement for an organization's salaried workers who are the highest paid 10% of all employees employed by the employer within 75 miles of the employee's worksite. These key employees need not be restored to employment following FMLA leave if the employer can show their reinstatement would cause substantial and grievous economic injury to the employer.

7 | Employee Unable to Perform the Job

If an employee is physically or mentally unable to perform an essential function of their position when their FMLA leave ends, the employee has no right to restoration to another position. The employer's reinstatement obligations, however, may be affected by the reasonable accommodation requirement under the Americans with Disabilities Act.

Employees must generally be restored to the same or to an equivalent position upon returning from FMLA leave, so employers should think twice before deciding not to reinstate an employee when their FMLA leave ends

Nevertheless, if an employee falls within one of the exceptions to reinstatement, restoration to employment need not occur.

If you are unsure an employee falls within one of these exceptions, you should consult legal counsel—the necessity of reinstatement from FMLA leave may vary depending on the employee'sparticular circumstances.

Final Thoughts

Discussions about FMLA often focus on granting leave, but employers must also have a clear understanding of when employees might be denied reinstatement after FMLA leave. While the law mandates reinstatement in most cases, certain situations permit denial, like failing to provide a fitness-for-duty certification, employee declarations of non-return, terminations unrelated to leave, moonlighting, fraudulent leave, key employee status, or inability to perform essential job functions. Employers must navigate these exceptions carefully and consult legal counsel when uncertain.

New Minnesota Laws Impose Far-Reaching Changes on Employers

July 6, 2023

When considering states with the most legislative activity affecting employers, Minnesota usually is not the first state that comes to mind. That is changing, however, as Minnesota recently enacted numerous new legal obligations for employers with employees in the state. Here are some of the key changes:

1 | Earned Sick and Safe Time Leave (Effective January 1, 2024)

Earned Sick and Safe Time (ESST) is paid leave employers will have to provide to eligible employees in Minnesota to be used when the employee is sick; to care for a sick family member; to seek assistance if an employee or their family member experiences domestic violence; when school, work, and care facility closures occur due to weather or public emergencies; and when the employee or family member is at risk of affecting others with a communicable disease. Employers must provide at least one hour of ESST for every 30 hours worked, up to 48 hours per year, and employees may carry over the leave to the next year which may be capped at 80 hours. Alternatively, employers may frontload 80-hours of ESST at the beginning of the year.

2 | Nursing and Lactating Employee Breaks (Effective July 1, 2023)

Minnesota law previously limited employee breaks for expressing breast milk to the first 12 months after the birth of an employee's child. This 12-month limitation was removed so the employer's obligation to provide these breaks no longer ends after a year. The new legislation also removed the provision allowing employers to deny lactation breaks if they would unduly disrupt operations. Finally, the space employers must provide to employees to express breast milk should be a clean, private, and secure room with access to an electrical outlet.

3 | Pregnant Employee Accommodations (Effective July 1, 2023)

Employers with one or more employees must provide reasonable accommodations to employees with health conditions related to pregnancy and childbirth, unless the employer can show the accommodation would impose undue hardship on their operations. Pregnancy accommodations were expanded to include more frequent or longer breaks, temporary leaves of absence, modified work schedules or job assignments, and limits to heavy lifting. The employee and employer must engage in an interactive process to determine the reasonableness of an accommodation request and whether it causes undue hardship.

4 | Paid Family and Medical Leave (Effective January 1, 2026)

Covered employees will be granted up to 12 weeks of paid family leave and 12 weeks of paid medical leave, subject to a 20-week combined limit of medical and family leave in a claim year. Qualifying reasons for leave include: (1) addressing an employee's own serious health condition; (2) caring for a covered family member with a serious health condition; (3) bonding with a new child within 12 months of birth, adoption, or foster care placement; (4) addressing needs relating to the domestic abuse, sexual assault, or stalking of the employee or a family member; and (5) addressing certain needs arising from a family member's military deployment. Paid Family and Medical Leave will apply to all private businesses in Minnesota, as well as state and local government employers and charter schools.

5 | Amendments to Pregnancy and Parental Leave Act (Effective July 1, 2023)

The Minnesota Pregnancy and Parental Leave Act previously applied to employers with at least 21 employees but was amended to cover employers with one or more employees. Another amendment entitles employees to leave from the start of their employment rather than requiring them to work for a specified amount of time before becoming eligible.

6 | Prohibition of Non-Compete Agreements (Effective July 1, 2023)

Minnesota law now includes an almost complete prohibition of non-compete clauses in employment agreements. The new law applies to employees and independent contractors, regardless of their income. Two exceptions when non-compete provisions may be enforceable is when they are entered into during the sale of a business or in anticipation of dissolving a business.

These changes to Minnesota law require employers to review and revise their leave policies, ensure a system is in place to track ESST accrual and use, amend employment agreements with non-compete clauses, and safeguard the accommodation rights of nursing and pregnant employees.

Remember, employers should consult an attorney or other professional if needed because penalties for non-compliance with these new laws can be substantial.

Final Thoughts

Minnesota has recently implemented significant legal changes affecting employers. These include Earned Sick and Safe Time Leave (ESST) starting January 2024, extended breaks for nursing employees, expanded pregnancy accommodations, and a forthcoming Paid Family and Medical Leave in 2026. Amendments also cover parental leave eligibility, barring non-compete agreements in most cases. Employers must update policies, track ESST, amend agreements, and ensure compliance. Employers should seek legal advice if needed to avoid potential penalties for non-compliance.

Guidelines for an Effective and Compliant ADA Interactive Process

August 2, 2023

The Americans with Disabilities Act (ADA) requires employers with 15 or more employees, and state and local governments, to provide effective, reasonable accommodations to qualified employees with disabilities, unless doing so would cause undue hardship. To arrive at an effective accommodation, employers should enter into a back-and-forth dialogue with the employee to determine if they need an accommodation to perform their essential job functions and, if so, what accommodation is needed. This is known as the "interactive process."

Participating in the interactive process is crucial to complying with the reasonable accommodation requirement under the ADA when an accommodation is not obvious. Here are guidelines employers should follow to ensure they engage in a good faith, flexible, and compliant interactive process:

1 | Recognize Accommodation Requests

The interactive process begins when an employee with a disability requests an accommodation. There are no magic words employees must use when making such a request. The request need not be in writing, articulate a specific accommodation, or use terms such as "reasonable accommodation" or "disability." Any time employees indicate they are having difficulty in their job due to a health condition, the employer must consider whether they are asking for an accommodation. In other words, employers must proactively recognize when an employee with a disability may need an accommodation.

2 | Do Not Delay

Employers must not delay engaging in the interactive process. If an employer's delay in beginning the process is unreasonable, the delay may be used as evidence of disability discrimination.

3 | Acquire Information

After an accommodation request, employers should acquire information necessary to process the request, including documentation of a disability and the need for an accommodation. Also, employers should determine with the employee if the accommodation is for a limited period or if it is permanent. Since this part of the interactive process involves collecting confidential medical information, it should be handled by a human resource professional and not by the employee's supervisor.

4 | Determine if the Employee has a Disability

Under the ADA, a person with a disability is someone who has a physical or mental impairment substantially limiting one or more major life activities, has a history or record of a physical or mental impairment, or is perceived by others as having such an impairment. If an employee (or applicant) falls in any of these categories, the ADA protects them, and they may be entitled to an accommodation.

5 | Search for an Accommodation

Once the employee's disability is identified, the employer must search for and suggest accommodations that will effectively assist the employee in doing their job. The employer should also ask the employee to suggest reasonable accommodations. Additionally, the employee's medical provider may be a valuable source of accommodation options.

6 | Select the Accommodation

After reasonable accommodation possibilities have been identified, the employer must select the accommodation to use. If more than one effective accommodation is available, the employer should consider the employee's preference. Nevertheless, employers are not bound by the employee's preference. The employer may choose between accommodations and may select the least expensive one, as long as it is effective.

7 | Leave as a Reasonable Accommodation

A reasonable accommodation is any change to the job or to the work environment that helps the employee with a disability perform their job's essential functions without imposing undue hardship on their employer. Allowing the use of paid leave and unpaid leave can be a reasonable accommodation if it is necessitated by the employee's disability.

8 | Employer Follow-Up

After implementing an accommodation, employers should contact the employee to ensure the accommodation was provided as discussed, and that it is enabling the employee to perform their job. Additionally, regular follow-up communication with the employee will help bring any accommodation problems to the forefront sooner and will prevent new issues from arising.

9 | Keep Information Confidential

Any information received from or on behalf of an employee regarding their disabilities and accommodation needs must be kept confidential. Further, medical documents regarding an employee's disability and accommodation should be maintained in a private, standalone file.

10 | Document the Entire Interactive Process

Employers should document the entire interactive process. This documentation can be used to show the employer engaged in a good faith interactive process if a lawsuit or administrative charge is filed.

Employers are obligated under the ADA and state disability laws to accommodate employees and applicants with a disability. Participating in the interactive process is vital to complying with these disability laws and is an obligation employers should not take lightly. Remember, the cost of providing an accommodation is usually not that high, but failing to provide needed accommodation can be expensive for an organization if a disability discrimination lawsuit or charge is filed against them.

Final Thoughts

The ADA mandates employers to accommodate qualified employees with disabilities through an interactive process. This dialogue involves recognizing requests, avoiding delays, acquiring information, confirming disability status, seeking accommodations, selecting effective solutions, and maintaining confidentiality. Employers must engage in good faith, document the process, and follow up to ensure effectiveness. Failure to accommodate can lead to costly legal issues. Prioritizing the interactive process not only complies with the law but also fosters an inclusive workplace.

The Surge of Pay Transparency Laws and Evolving Compliance Landscape

September 5, 2023

In an era marked by increasing calls for fairness and equality in the workplace, pay transparency has emerged as a critical tool for combating wage discrimination and building trust between employers and employees. The practice involves disclosing information about compensation to both applicants and current staff, and its benefits extend far beyond mere numbers on a paycheck. Pay transparency not only helps bridge the gender and racial pay gaps but also fosters a sense of clarity and integrity that enhances employee loyalty, as well as organizational well-being.

As the movement gains momentum, pay transparency laws are becoming more prevalent across the United States, reshaping the dynamics of work and compensation. Here, we'll offer a picture of where in the U.S. pay transparency is going into effect and share insights into what these new legislations require and how they will affect organizations at large.

1 | What is Pay Transparency?

Pay transparency represents a significant shift in how companies handle compensation information. By opening discussions about wages and benefits, organizations equip individuals to make informed decisions about their careers and negotiate fair compensation packages. Pay transparency occurs when employers disclose information about wages and other compensation to applicants and employees.

Moreover, it serves as a check against systemic discrimination. According to experts, pay transparency reduces pay inequities, which commonly prevent wage discrimination by race, color, gender, age, national origin, religion, and other protected status. It is also thought that pay transparency increases the trust workers have in their employers. For these reasons, pay transparency laws are rapidly rising.

Pay transparency laws in the United States commonly take three approaches and their terms and applicability vary by jurisdiction. These approaches include:

- Laws requiring employers to **disclose prospective compensation or compensation range when advertising for a job opening.** This helps candidates to gauge whether the position aligns with their expectations and allows for more informed job searches.
- Laws requiring employers to **provide pay rates to applicants or employees upon request**. This prevents information asymmetry during negotiations and equips individuals with the knowledge needed to advocate for equitable compensation.
- Laws obligating **employers to file yearly compensation disclosures**. This approach encourages organizational introspection and accountability, fostering a culture of fairness and openness.

Penalties for violating these laws depend on the state or local law that applies, but generally may include large monetary fines and other relief.

2 | Where are Pay Transparency Laws Going into Effect?

As of September 2023, several states and cities have embraced pay transparency laws, each taking a unique approach to ensure fair compensation practices. A partial list of states and cities with some form of pay transparency law include:

- California
- Cincinnati
- Colorado
- Connecticut
- Ithaca (New York)
- Jersey City
- Maryland
- Nevada
- New York City
- New York State
- Rhode Island
- Toledo (Ohio)
- Washington
- Westchester County (New York)

Additionally, Hawaii and Illinois recently enacted pay transparency laws that take effect in 2024 and 2025, respectively.

3 | How to Prepare for Pay Transparency Laws

Although pay transparency laws are not yet required in the great majority of states, cities, and counties in the United States, it is clearly a growing trend with many new laws likely to take effect in the next few years. To be ready for this surge in pay transparency laws, employers should:

- Evaluate the laws in any jurisdiction they have workers to determine if some form of pay transparency is needed;
- Conduct a privileged pay audit with legal counsel to ensure compliance with applicable pay transparency laws; and
- Train relevant human resource professionals and management staff in the intricacies of the pay transparency laws affecting their company.

If you are unsure if a pay transparency law applies to your organization, or if you don't understand any part of a pay transparency law applicable to your company, contact legal counsel or other qualified professional for clarification. Failing to do so may lead to costly legal fines for noncompliance.

Looking toward the future, the trajectory of pay transparency is clear. This is not just a passing trend, but rather represents a movement that is redefining the employment landscape. By embracing this evolution and taking proactive steps, organizations can foster an environment of fairness, trust, and equal opportunity for all.

Final Thoughts

In the modern workplace climate of fairness and equality, pay transparency is a powerful tool that bridges wage gaps, builds trust, and enhances loyalty. This movement is shaping U.S. laws with an emphasis on disclosing compensation information to applicants and employees. It curbs discrimination, encourages fair negotiations, and drives organizational integrity. As part of this trend, Emergent laws require salary disclosures in job ads, on request, or annually. States like California, New York, and Colorado lead this shift, urging employers to prepare and ensure compliance.

New Proposed DOL Rule 2023: How It Increases Overtime Pay Eligibility for Millions of Employees

October 3, 2023

On August 30, 2023, a crucial proposed rule was released by the United States Department of Labor (DOL), aiming to substantially increase the minimum salary levels for employees, making them eligible for overtime pay exemptions under the Fair Labor Standards Act (FLSA). If this proposed rule comes into effect, an estimated 3.6 million additional workers in the United States will be granted overtime protection, greatly affecting the "white collar" and highly compensated sectors. Gain a comprehensive understanding of how the DOL's proposed rule will potentially transform overtime pay eligibility and affect millions of U.S. employees.

1 | White-Collar Exemption

Bona fide administrative, executive, and professional salary-based workers are exempt from "white collar" employees under the FLSA. This exemption means the FLSA's overtime pay requirements do not cover them if they earn a certain minimum salary and perform particular job duties (i.e., the duties test). A white-collar employee who makes $35,568 a year, or $684 a week, is exempt from overtime. Under the proposed rule, the salary level to meet this exemption would increase to $55,068 yearly, or $1,059 a week. The DOL has indicated, however, that it will use the most recent earnings data available when it issues the final rule, which likely will result in an even higher salary threshold for exemption.

2 | Highly Compensated Exemption

To qualify for the FLSA's highly compensated overtime exemption, employees performing office or non-manual work must, among other things, be paid a minimum annual compensation of at least $107,432, which must include at least $684 a week paid in salary or on a fee basis. The DOL's proposed rule would raise the total annual compensation requirement for this exemption to $143,988, requiring a weekly payment of $1,059 or more on a salary or fee basis.

3 | Triennial Adjustments

The proposed rule provides automatic adjustments to the exemption salary thresholds every three years after the rule's effective date to reflect new earnings data. Nevertheless, if economic conditions or other unforeseen circumstances warrant, authorities could temporarily delay automatic increases.

4 | United States Territories

The new salary levels under the proposed rule also would apply to employees in the United States territories of Guam, Puerto Rico, the Commonwealth of Northern Mariana Islands, and the U.S. Virgin Islands.

Publication of the proposed rule in the Federal Register on September 8 started a 60-day public comment period for employers and other stakeholders on the rule. After the comment period ends, the DOL will analyze and consider the submitted comments before publishing a final rule updating the earning thresholds. When the final rule will be published is unknown, but it will likely occur in early 2024.

So, what is next? Employers should consistently monitor the developments of this proposed rule and initiate the identification of exempt salaried employees earning below the expected new minimum salary levels.

As the final rule unfolds, necessary adjustments will have to be made. Employers will need to either increase the salaries to the updated thresholds to maintain exempt status or shift them to non-exempt status, ensuring overtime pay compliance. Exploring alternative overtime exemptions without a minimum salary requisite is also a possible route. Given the potential legal complications and the risk of significant liability from incorrect employee classification concerning the Fair Labor Standards Act (FLSA) and overtime protections, seeking expert legal advice is strongly recommended for accurate and compliant classification determinations.

Final Thoughts

The proposed rule by the Department of Labor suggests a substantial hike in salary thresholds for overtime exemptions under the Fair Labor Standards Act, potentially impacting millions of U.S. workers. It aims to raise the minimum salaries for both white-collar and highly compensated employees, along with triennial adjustments. The rule's release has initiated a 60-day public comment period, urging employers to prepare for potential shifts in employee classifications and seek legal counsel for compliant adjustments.

California Enacts Significant New Leave Entitlements for Employees

November 7, 2023

California is well renowned as an employee-friendly state thanks to its extensive employee-friendly labor laws. For decades the state trend has been to increase the power of workers in relation to their employers through generous leave laws, generous wage and hour rules, strict meal and rest break requirements, numerous fair scheduling ordinances, and other pro-employee regulations.

Well, California is at it again with the recent passage of two statewide employee leave entitlements covered employers must comply with beginning in 2024. These include Reproductive Loss Leave and Extended Paid Sick Leave. Employers with employees in California should be aware of these two new laws to ensure continued compliance and to avoid liability.

We'll examine what this legislation means for employees and discuss strategies to help employers ensure they can fully comply with these new standards.

1 | Reproductive Loss Leave

Senate Bill 848, effective January 1, 2024, requires employers with five or more employees to grant workers who have been employed at least 30 days, with five days of leave, for a reproductive loss event. A reproductive loss event includes a failed adoption, failed surrogacy, miscarriage, stillbirth, or an unsuccessful assisted reproduction (e.g., artificial insemination and embryo transfer). The new law also states that if an employee experiences multiple reproductive loss events within 12 months, the employer is not obligated to provide more than 20 days of leave within the 12-month period.

Eligible employees must generally complete reproductive loss leave within three months of the loss event. However, if an employee takes any other leave under state or federal law prior to or immediately after the reproductive loss event, the reproductive loss leave must be completed within 3 months of the other leave ending.

Reproductive loss leave does not have to be used in a single block of time and can be unpaid unless the employer has a policy stating differently. Additionally, employees may choose to substitute any accrued and available sick leave, or other paid time off, for reproductive loss leave.

2 | Paid Sick Leave Expanded

Senate Bill 616 increases the amount of Paid Sick Leave (PSL) all employers, regardless of size, must grant to California employees under the Healthy Workplaces, Healthy Families Act.

Presently, qualified employees must be provided with at least three days or 24 hours of PSL per year (whichever is greater).

Effective January 1, 2024, however, that amount increases to at least five days or 40 hours of leave in a year. Senate Bill 616 specifically preempts any local laws less generous than the newly expanded state paid sick leave requirement.

Standard accrual of PSL remains 1 hour for every 30 hours worked but the yearly cap on accruing PSL increases from six days (or 48 hours) to 10 days (or 80 hours). Alternative accrual methods are valid under the new law as long as the employee accrues no fewer than 24 hours or three days of PSL by their 120th day of employment, and 40 hours or five days by their 200th day of work.

Finally, under Senate Bill 616, employers using paid time off policies to satisfy their PSL obligation must ensure employees receive five days or 40 hours of paid leave within six months of employment (up from the present three days or 24 hours within nine months).

3 | New Compliance Measures for California Employers

What should California employers do to navigate these evolving employee leave entitlements? Here are several key steps that can help ensure compliance with these emerging standards:

- **Update Employee Handbooks**
  Employers should promptly revise their employee handbooks to incorporate the provisions of these new leave entitlements. Providing clear direct language that communicates how and when employees can exercise these new leave standards, as well as how company policies interact with these compliance standards, will help reduce confusion.
- **Training**

  Management personnel, Human Resource (HR) professionals, and other relevant staff should receive comprehensive training to ensure a clear understanding of these new laws.
- **Communicate with Legal Counsel**

  Employers should seek assistance from legal counsel if they have any uncertainties about the application or implications of these leave entitlements.

California's unwavering dedication to enhancing worker protections and rights is evident through the introduction of these new employee leave entitlements. As these new legislations are set to go into effect at the start of the new year, there is a relatively short window for California Employers to make these changes. However, noncompliance can result in significant costs and is detrimental to both employers and employees.

Employers in the state must remain vigilant in adapting their policies and practices to align with these evolving regulations. On the positive side, meeting these new legal obligations can continue to foster a fair and supportive work environment. Embracing these changes not only ensures compliance but also reflects a commitment to the well-being and rights of the California workforce, ultimately benefiting both employees and employers alike. to substitute any accrued and available sick leave, or other paid time off, for reproductive loss leave.

Final Thoughts

California's employee-friendly landscape continues to evolve with two new leave entitlements: Reproductive Loss Leave and Extended Paid Sick Leave, effective January 1, 2024. Senate Bill 848 mandates up to five days of leave for reproductive loss events for eligible employees, while Senate Bill 616 expands paid sick leave to a minimum of five days or 40 hours annually. Employers must swiftly update policies, train staff, and seek legal guidance to ensure compliance with these changing regulations, reflecting California's persistent commitment to worker rights and fostering a fair workplace.

FMLA Mistakes You May Not Know About

Dec 4, 2023

The federal Family and Medical Leave Act of 1993 (FMLA) provides eligible employees of covered employers with job-protected, unpaid leave for specified family, medical, and military-related reasons. It is a complicated law with over 70 detailed implementing regulations and differing interpretations from courts.

Although the FMLA has been law for 30 years, many human resource (HR) professionals and managers still struggle with FMLA compliance exposing their company to risks of violations and costly lawsuits. This article focuses on lesser-known mistakes employers make when navigating the FMLA that may catch them by surprise.

1 | Not Having a Written FMLA Policy

The FMLA permits employers some leeway in deciding certain terms and conditions of FMLA leave. Still, it is important for employers to have a written FMLA policy to clearly explain these terms and conditions to their workers. Under current regulations, an employer who has any FMLA eligible employees must provide notice to employees of their FMLA rights in an employee handbook or other written guidance materials (if these materials exist). If an employer does not have an employee handbook or other guidance, the FMLA information must be given to workers in writing upon hire.

2 | Not Using the Best FMLA Leave Year for Your Company

Employers must generally provide up to 12 weeks of FMLA leave in a 12-month period and may select one of four methods to establish their FMLA leave year:

- The calendar year.
- Any fixed 12-month period (such as the fiscal year).
- A 12-month period measured forward from the date an employee's FMLA leave begins.
- A rolling period measured backwards from the date an employee uses any FMLA leave

Many employers instinctively choose the calendar year or fixed 12-month period methods due to ease of administration. But these FMLA leave years allow employees to lawfully stack 24 consecutive weeks of leave over two leave years, such as the final 12 weeks of one calendar year and the first 12 weeks of the next calendar year. Employers should consult an HR professional to determine the best FMLA leave year for their business.

3 | Failing to Use Model FMLA Forms

When administering FMLA leave, employers should use the model FMLA forms issued by the United States Department of Labor instead of creating their own forms. This helps ensure employers are properly following FMLA regulations.

4 | Providing FMLA Leave for Non-Covered Reasons

Some states have family and medical leave laws which differ from the FMLA. For instance, state laws may grant employees leave to care for grandparents and siblings with a serious health condition, which are not covered FMLA leave reasons. If employers in these states count leave taken for these relationships under both the state leave law and the FMLA, they will be tracking FMLA leave incorrectly.

Counting non-covered leave reasons as FMLA leave can lead to the perilous situation where an employer wrongfully denies a valid FMLA leave request because they mistakenly believe the employee has exhausted their FMLA entitlement.

5 | Failing to Follow FMLA Recordkeeping Rules

FMLA regulations mandate that employers must maintain FMLA records according to the recordkeeping requirements of the Fair Labor Standards Act. A specific list of the types of documents and information that must be preserved is identified in the regulations. Failing to properly retain these records can lead to FMLA violations and substantial liability for employers.

6 | Failing to Understand the Relationship Between the FMLA and the Americans with Disabilities Act (ADA)

The FMLA requires employers to provide job-protected leave to employees for personal medical reasons that may also qualify as a disability under the ADA, for which leave may be necessary as a reasonable accommodation. Consequently, even if an employee has exhausted their FMLA leave, they are not precluded from further time off under the ADA as an accommodation. Before terminating an employee whose medical condition prevents a return to work after their FMLA leave expires, employers should consider whether the employee is owed additional leave as an ADA accommodation.

7 | Forgetting About State Law

The FMLA does not supersede state laws covering the same leave reasons. Thus, if an employer has employees in a state with its own family and medical leave law that is more protective of workers than the FMLA, the employer must abide by the more generous provisions of the state law.

Employers should be vigilant about complying with the FMLA, including the Act's lesser-known rules. Reduce noncompliance risks by working with your employment counsel if you are unsure about the FMLA's many regulations or switch to a cloud-based modern workforce management solution, like the WorkForce Suite, to remove the difficulties associated with compliance. Whichever way you choose, always remember to treat employees fairly and it will lead to a more productive workforce.

Final Thoughts

30 years after it first took effect, the intricacies of the Family and Medical Leave Act can still present challenges for employers, exposing them to compliance failures and legal liability. From paperwork pitfalls to confusing overlap with other laws like the American with Disabilities Act, companies can easily trip up on FMLA's finer points. New workforce management tools promise less hassle tracking leave, giving employers clarity and employees their entitled time off.

Navigate the Shifting Landscape of Labor Laws, Emergent Trends, and Evolving Demands.

Each year brings a new series of employee demands and legislative changes. Employers across the nation should remain cognizant that employee rights are progressing swiftly, necessitating organizational agility to support a new reality. 2024 already promises a wave of new leave entitlements, representing a larger trend toward an employee-centric legal culture that enhances worker protections. While looking ahead to changes on the horizon, it remains vital that employers take careful steps to ensure compliance with established legislations, such as FMLA and ADA rules.

The insights from this report are designed to help organizations minimize noncompliance risks, penalties, and lawsuits, but there is even more value to be gained. Though compliance may evolve swiftly, embracing support for employees continues to be instrumental for both employee retention and company reputation. Ultimately, accurate compliance fosters positive, productive environments that benefit the organization and its workforce. Staying vigilant on changes to employment laws, seeking expert legal advice for uncertainties, and proactively aligning policies demonstrates an organization's commitment to both workforce and business success.

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