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Employee Benefit Plan Review

The Importance of Understanding State and Local Employment Laws Requirements: A Patchwork Quilt Made of Patchwork Quilts

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Employers operating in multiple jurisdictions are increasingly subject to varying employment law requirements depending on the state and sometimes the city in which they operate. As a result, employers must be mindful of the often changing and varying requirements in those jurisdictions. A one-size-fits-all approach can create risk for multi-jurisdictional employers.

What Types of State and Local Employment Requirements Should Employers Look Out For?

It is impossible to identify all the state and local requirements affecting employment. That said, state and local governments are increasingly enacting laws relating to paid family leave, pay transparency and the use of artificial intelligence in employment. These are in addition to the already common varying requirements related to minimum wage, meal and rest breaks, overtime, paid sick leave and ban-the-box restrictions. To be sure, these are not the only requirements that may vary by location, but they are some of the more common issues facing multi-jurisdictional employers.

How Much Variation Is There Really Among These Requirements? Can Employers Just Pick One And Apply It To All Jurisdictions?

Unfortunately, that really depends on the type of process at issue. But the answer is often no. As an increasing number of jurisdictions enact their own employment-related regulations, the nuances among the various laws also increase. Failing to understand and implement jurisdiction-specific requirements can create risk for employers. The following are just a few examples of the increasing variation among state and local law. A review of these examples shows how difficult it would be to implement one process to comply with all the requirements.

Paid Family Leave

Whether and what paid family leave is available to employees varies by jurisdiction. Most employers are familiar with the Family and Medical Leave Act of 1993 (FMLA),[1] which provides eligible employees with protected unpaid leave; however, an increasing number of states are providing employees with paid leave. There are currently 14 states that

provide employees with some form of paid family leave, as well as the District of Columbia and several cities. The particulars of those programs vary considerably with respect to who is covered, how much leave is available, the rate of pay, the source of the pay and the covered reason for the leave, among other things.

By way of example, California provides up to eight weeks of paid family leave "to care for a seriously ill child, spouse, parent, grandparent, grandchild, sibling, or domestic partner, to bond with a minor child within one year of the birth or placement of the child in connection with foster care or adoption, or to participate in a qualifying exigency related to the covered active duty or call to covered active duty of the individual's spouse, domestic partner, child, or parent in the Armed Forces of the United States."[2] This leave is paid by the California Employment Development Department (EDD) and funded through employee wage deductions.[3] Benefits are approximately 60-70% of an employee's weekly salary, up to a max of $1,620 per week.[4] This statute does not provide job protection during the period of paid leave. However, depending on the reason for the leave, an employee may be entitled to job protection by FMLA, California's Family Rights Act and/or California's Pregnancy Disability Act.

Additionally, San Francisco has its own parental leave for bonding with a new child that provides for the difference in the employee's state Paid Family Leave and 100% of the employee's regular wages (up to a weekly cap of $2,700 in 2024) funded by the employer.[5]

Colorado provides up to 12 weeks of paid family leave with job protection, and the benefit amount is determined by a formula based on the state's average weekly wage.[6] The benefits are funded by employer contributions, although employers can deduct up to 50% of the premiums from employees' wages.[7]

Washington, D.C., provides up to 12 weeks of paid leave for parental leave, family leave, medical leave and pre-natal leave.[8] The benefits are determined by a formula based on the district's minimum wage and are employer-funded.[9] This leave is not job-protected.

New Hampshire has a state employee-paid family leave program that private employers can opt in to, which provides up to six weeks of paid family leave.[10] Benefits may be funded through employee wage deductions.[11] Depending on the size of the employer, the leave may include job protection.

New Jersey provides up to 12 weeks of paid family leave, and benefits are 85% of the employee's average weekly wages up to a maximum of $1,055 per week (increasing to $1,081 per week in 2025).[12] Family leave is funded through employee wage deductions.[13] This program provides pay during leave but not job protection.

New York also provides up to 12 weeks of paid family leave, and benefits are 87% of an employee's average weekly wage up to a maximum of $1,177.32 per week in 2025.[14] Family leave is funded through employee wage deductions.[15] The law provides for reinstatement following family leave.[16]

Connecticut, Delaware, Maine, Maryland, Massachusetts, Minnesota, Oregon, Rhode Island and Washington also have paid family leave statutes. Vermont has a paid family leave program for state employees in which private employers can participate voluntarily.

Pay Transparency

The Equal Pay Act of 1963[17] has been in place for decades, yet pay disparities persist. One way state and local governments are attempting to address such pay disparities is through pay transparency laws that require employers to post or disclose salary ranges and may limit what employers can ask applicants about their own salary history. The concepts among these laws are generally the same, but the implementation can vary considerably, especially with respect to the timing of disclosure and whether the information needs to be provided to applicants or employees without a request being made by such individuals.

California's Equal Pay Act[18] includes several provisions regarding pay transparency. Upon request, employers must provide pay scale information to applicants or employees for current positions. Employers with 15 or more employees must include pay scale information in job postings. Additionally, employers may not ask about the applicant's salary history or rely on salary history as a factor in hiring or determining salary (unless such information was disclosed by the applicant voluntarily and without prompting).

Washington, D.C., requires the minimum and maximum projected salary or hourly pay to be provided in all job listings and position descriptions advertised.[19] It also prohibits screening of applicants based on wage history.[20]

Illinois' Equal Pay Act of 2003 was amended effective January 1, 2025, to include pay transparency provisions. Employers with 15 or more employees must include pay scale and benefits (or link to the same) in job postings.[21] If a job posting is not made, employers must disclose the pay scale and benefits to the applicant before the offer and upon request.[22] Employers must also make opportunities for promotion known to all employees 14 days after making an external job posting for the position.[23]

Minnesota requires employers to include starting salary range and benefits, including health and retirement, in job postings.[24]

Employers in New York must disclose the compensation or range of compensation or the fact that compensation is based solely on commissions, and the job description if one exists for any advertised job, promotion or transfer opportunity if such job will be performed in New York or will report to supervisor or office in New York.[25]

Washington requires employers with 15 or more employees and at least one employee in Washington to disclose the wage scale or salary range and a description of the benefits in any job posting.[26] The wage scale or salary range must also be provided to an employee offered an internal transfer to a new position or promotion.[27]

Other jurisdictions with pay transparency laws include Colorado, Connecticut, Hawaii, Maryland, Massachusetts, Nevada, Rhode Island and Vermont, as well as Jersey City, New Jersey; New York City, Ithaca, Albany County and Westchester County, New York; and Cincinnati and Toledo, Ohio. It is likely additional state and local governments will follow suit.

Use of Artificial Intelligence

The use of artificial intelligence has been at the forefront of recent news cycles. The White House published its Blueprint for an AI Bill of Rights in October 2022, and in 2023, it issued an Executive Order on the Safe, Secure and Trustworthy Development of Use of AI. While the Equal Employment Opportunity Commission (EEOC) and the Department of Labor (DOL) have issued guidance related to the use of artificial intelligence in employment and the potential for disparate impact and other harmful consequences, the federal anti-discrimination laws have not been amended.

State and local governments are beginning to enact their own legislation aimed at artificial intelligence and the risk of resulting algorithmic discrimination.

Illinois' Artificial Intelligence Interview Act places requirements on employers utilizing video interviews to notify applicants of the fact that artificial intelligence is being used, how it is used, and obtain applicants' consent for its use, among other things.[28] Demographic data must be collected and reported to the Department of Commerce and Economic Opportunity for analysis.[29]

More recently, Illinois amended the Illinois Human Rights Act to require, beginning January 1, 2026, notice to employees that artificial intelligence is being used and to prohibit specifically the use of artificial intelligence that discriminates against individuals based on any protected classes or uses zip codes as a proxy for protected classes in various aspects of employment.[30]

New York City enacted a law in 2021 regarding automated employment decision tools, which was at the forefront of this type of legislation. It requires automated employment decision tools to be independently audited for bias and the results of the audit to be posted on the employer's website before use.[31] Employees and applicants residing in New York City must be notified before the automated decision tool is used to evaluate them.[32]

Beginning February 1, 2026, Colorado requires developers and deployers of "high-risk artificial intelligence systems" to use reasonable care to avoid algorithmic discrimination.[33] "High-risk artificial intelligence system" is defined as "any artificial intelligence system that, when deployed, makes, or is a substantial factor in making a consequential decision."[34]

Deployers of artificial intelligence are required to conduct regular impact assessments, provide prior notice to the affected individual that artificial intelligence is being used to make or be a substantial factor in making a consequential decision and implement a reasonable risk management policy and program that takes into account several enumerated factors.[35] An impact assessment must include:

(1) A statement disclosing the purpose, intended use, deployment context and benefits of the artificial intelligence system;
(2) An analysis of whether the system poses any known or reasonably foreseeable risks of algorithmic discrimination (and if so, the nature of such discrimination and the steps taken to mitigate it);
(3) A description of the data processed by the artificial intelligence system;
(4) If the system is customized, the data used to do so;
(5) Any metrics sued to evaluate the performance and known limitations of the system;
(6) A description of any transparency measures concerning the system; and
(7) A description of post-deployment monitoring and safeguards provided.[36]

It is generally anticipated that this trend in state and local AI regulation will continue. As a result, all employers using artificial intelligence for employment purposes should keep an eye on this very rapidly evolving area. This includes those employers who rely on third-party resources to filter resumes and applications that might be using artificial intelligence to do so. It is important for employers to understand what forms of artificial intelligence are being used in connection with employment, how that AI is being used, and whether the AI is impacting particular groups – either favorably or unfavorably. Employers cannot blindly rely on the use of AI, assuming it to be neutral or objective because it is computer-generated. Periodic audits will help ensure that any group or groups are not being disparately impacted.

What Does all This Mean For Employers?

It is important for all departments dealing with employment requirements to stay apprised of changing requirements. It is not enough for human resources alone to do the heavy lifting.

For example, communication with payroll departments – and even outsourced payroll providers – to ensure that state and local requirements related to paid family leave, paid sick leave, minimum wage, overtime,

meal and rest breaks, among others, are appropriately factored into the payroll processes.

Similarly, individuals with responsibility for recruiting and hiring must be aware of any requirements or restrictions related to the use of artificial intelligence in recruiting and hiring, pay transparency requirements and any added restrictions (beyond the Fair Credit Reporting Act) related to the inquiry into and use of criminal and credit information included in background checks. A misstep in these processes could create legal risk.

What Should Employers Do?

Certainly, staying current with state and local updates is important. That alone is no small task, given the multitude of potential regulating bodies and the varying legislative sessions. Employers should develop a system for monitoring changes in state and local employment laws in the jurisdiction in which they operate and educating the relevant departments as requirements evolve. Employers should also provide those departments with access to the relevant resources as they implement new processes. This includes updating internal policies and procedures to reflect jurisdiction-specific requirements in a timely manner. Maintaining a library of such policies and procedures, as well as user-friendly resources, that are easily accessible to the relevant departments can aid in implementation and continuity in the event of personnel turnover.

Employee handbooks should also be regularly updated to reflect jurisdiction-specific information so that employees have easy access to the applicable policies.

Importantly, employers should also periodically audit their employment processes to ensure compliance with this variable legal landscape.

Multi-jurisdictional employers may be tempted to develop policies that synthesize the various state and city legal requirements to create uniformity across jurisdictions. However, such an approach would be challenging and perhaps even unworkable since the laws in each jurisdiction tend to be very granular and constantly evolving.

While all of this may sound like a heavy lift, developing a system to stay apprised of changing state and local requirements, timely updating relevant policies and procedures and reviewing processes to ensure they are compliant will reduce risk to the organization and stress on implementing departments, and likely even increase employee confidence and morale.

Notes

1. 29 U.S.C. § 2601, et seq.
2. Cal. Unemp. Ins. Code § 3301.
3. Cal. Unemp. Ins. Code § 3300.
4. Cal. Unemp. Ins. Code § 3301.
5. S.F. Lab. & Empl. Code §§ 14.1 to 14.15.
6. Colo. Rev. Stat. Ann. § 8-13.3-504-506, 509.
7. Colo. Rev. Stat. Ann. § 8-13.3-507.
8. D.C. Code Ann. § 32-541.01, 04.
9. D.C. Code Ann. § 32-541.03, 04.
10. N.H. Rev. Stat. Ann. § 21-I:102, 104.
11. N.H. Rev. Stat. Ann. § 21-I:104.
12. N.J. Stat. Ann. § 43:21-40.
13. See https://www.nj.gov/labor/myleavebenefits/worker/tdi/index.shtml.
14. N.Y. Workers' comp. Law § 204.
15. N.Y. Workers' comp. Law § 209.
16. N.Y. Workers' comp. Law § 203-b.
17. 29 U.S.C.A. § 206.
18. Cal. Labor Code §432.3.
19. D.C. Code Ann. § 32-1453.01.
20. D.C. Code Ann. § 32-1452.
21. 820 Ill. Comp. Stat. Ann. 112/10.
22. Id.
23. Id.
24. Minn. Stat. Ann. § 181.173.
25. N.Y. Lab. Law § 194-b.
26. Wash. Rev. Code Ann. § 49.58.110.
27. Id.
28. 820 Ill. Comp. Stat. Ann. 42/5.
29. 820 Ill. Comp. Stat. Ann. 42/20.
30. 775 Ill. Comp. Stat. Ann. 5/2-101 and 102.
31. NYC Admin Code §§ 20-870-871.
32. NYC Admin Code §§ 20-871.
33. Colo. Rev. Stat. §§ 6-1-1702-1703.
34. Colo. Rev. Stat. Ann. § 6-1-1701(9).
35. Colo. Rev. Stat. § 6-1-1703.
36. Id.

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