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# Employment Law Trends for 2012



Over the past 12 months, we sent dozens of Compliance Updates covering changes in federal and state employment laws. Among these, certain trends were apparent, particularly around paid sick leave, E-Verify, credit checks, gender identity discrimination, and wage payment protections.

The following is an overview of these five trends:

## **Trend: Paid Sick Leave Requirements**

A few jurisdictions have started requiring employers to provide paid sick leave to employees. In general, these laws allow paid time off when an employee or his or her family member becomes ill. Some of these laws also permit employees to take paid sick leave following domestic violence or sexual assault.

In 2011, the following jurisdictions approved paid sick leave laws:

- Connecticut
- Seattle
- Philadelphia

Connecticut's law, the first of its kind at the state level, applies to employers with 50 or more employees and requires them to provide paid sick leave to hourly service employees. The law is effective January 1, 2012.

**Federal Considerations:** In the U.S. Congress, legislation has been proposed (known as the Healthy Families Act) that would require employers with 15 or more employees to provide paid sick leave to employees. This legislation remains in the preliminary stages of the legislative process and is not likely to gain enough traction to become law in the near future.

## **Trend: E-Verify**

Operated by the Department of Homeland Security in partnership with the Social Security Administration, **E-Verify** is an Internet-based system that allows an employer to determine a new hire's eligibility to work in the United States.

The list of states that require the use of E-Verify continues to grow. In 2011, the following states passed legislation requiring private employers to use E-Verify :

- Alabama
- Georgia (employers with more than 10 employees)
- North Carolina (employers with 25 or more employees)
- South Carolina

In 2011, Tennessee also passed a law that requires employers in the state to either:

- Use E-Verify to confirm that newly hired employees are eligible to work in the United States;
- Request a copy of certain documents from the employee or independent contractor to confirm work eligibility.

Other states have enacted legislation that provides incentives for employers to use E-Verify. In Indiana and Louisiana, for example, there is no requirement for private employers to use E-Verify, but for employers that do, there is an exemption from certain penalties associated with hiring unauthorized workers.

**Federal Considerations:** In the U.S. Congress, legislation has been proposed that would require employers across the country to use E-Verify, but there has been little action on the legislation since it was introduced.

### **Trend: Credit Check Restrictions**

A growing number of states are placing restrictions on the use of credit checks for employment purposes. In 2011, the following states approved such laws:

- California
- Connecticut
- Maryland

In general, these laws prohibit the use of credit checks for employment purposes except in very limited circumstances. Financial institutions are generally exempt as are certain positions with fiduciary or management responsibilities.

**Federal Considerations:** In the U.S. Congress, legislation has been proposed that would amend federal law to prohibit the use of consumer credit checks for the purposes of making adverse employment decisions. This legislation remains in the preliminary stages of the legislative process.

### **Trend: Prohibiting Gender Identity Discrimination**

More jurisdictions are prohibiting employers from discriminating against individuals on the basis of their gender identity. In 2011, the following states enacted such laws:

- Connecticut
- Hawaii
- Nevada
- Massachusetts

Sixteen states and the District of Columbia now prohibit such discrimination. While each law has slight variations on the definition of “gender identity,” generally it refers to: a person’s gender-related identity, appearance, or behavior, regardless of whether it is different from that traditionally associated with the person’s assigned sex at birth. Gender identity laws generally protect individuals from discrimination in all aspects of employment, including dress codes.

**Federal Considerations:** A similar law has been introduced in the U.S. Congress, but it remains in the preliminary stages of the legislative process.

## **Trend: Wage Theft Prevention**

A couple of states have enacted laws to increase penalties for employers that violate state pay requirements and require certain pay information be provided to employees upon hire.

### **California:**

Effective January 1, 2012, California employers must provide each non-exempt employee with a written notice at the time of hire that includes certain pay-related information.

### **New York:**

On April 9, 2011, New York employers were required to start providing employees with a notice about their pay. The pay notice must be provided at the time of hire, yearly between January 1 and February 1, and when there are any changes to the information provided (i.e., a change in pay rate, allowances claimed, or payday). The law also requires employers to provide a wage statement each payroll period outlining the employee's rate of pay as well as other wage-related information.

**Federal Considerations:** The federal Department of Labor has announced that it intends to propose rules that would require greater disclosure to employees about their employment status (i.e., exempt vs. non-exempt) and how their pay is calculated. In addition, an employer that classifies any of its workers as independent contractors would be required to perform a classification analysis, disclose that analysis to the worker, and retain that analysis to give to the Department's enforcement personnel in the event of an investigation. Watch for potential developments in this area in 2012.

### **Conclusion:**

Employment laws are constantly changing. Before the start of 2012, review and assess the changes that occurred in 2011, ensure compliance with the laws that apply to your organization, and watch for new developments in 2012.

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