Oh, the Times They Are a Changin':

Critical Employment Law Issues in 2019

Overtime pay.
Marijuana use.
Paid leave.
Sexual harassment.

Employment law is changing at both the federal and state level, and millions of businesses are feeling the effects.

Here are some of the top employment law changes for 2019 and where to turn for help.

Overtime Pay

The U.S. Department of Labor has proposed a change to the overtime rules, raising the salary threshold for white-collar exemptions to $35,308.

The increase would raise the threshold from its current position at $23,660, but it would maintain it at a lower level than that proposed by the Obama administration DOL, which considered placing the threshold at $47,476.

Why Employers Shouldn't Wait on Overtime Pay

Although the Department of Labor has not yet issued a final rule, employers can take steps now to examine their employee rosters and determine which workers might need to be reclassified under the new rule.

In fact, addressing overtime reclassification proactively might be a good idea, since the Department of Labor may move quickly to implement the new rule once it's passed. Employers can give themselves more time to comply by thinking ahead about what the rule's changes could mean – even if they don't make actual changes until the final rule becomes public.

Marijuana Use

Several states have taken steps to legalize the use of marijuana for medical purposes, recreational purposes, or both.

As a result, many employers wonder what the new rules mean for their own policymaking. For example, can employers prohibit marijuana use or intoxication during work hours? What should an updated drug policy contain – and what should it avoid?

Considerations for Marijuana Policy at Work

Employers are frequently allowed to enact drug policies for the workplace, even when substances like alcohol and marijuana are legal for consumption. Nevertheless, it is worthwhile to review your drug policies to ensure that they:

- **define use and possession parameters** in a way employees can clearly understand and follow;
- **establish rules for drug testing,** if needed, including testing after an accident;
- **explain how the employer will handle** an employee's conviction or arrest for drug possession or use;
- **provide resources for employees** who are struggling with drug use; and
- **include proper training for managers** on the boundaries and enforcement of the policy.

Paid Leave

Paid leave for illness, family care and similar tasks has become a hot topic. Over 40 state and local jurisdictions currently have paid leave laws.

While the U.S. still has no federally mandated leave requirements, many states are instituting new rules on paid leave. Businesses that operate within these states must ensure that their leave policies comply with the new or amended laws.

State Changes on Paid Leave

2019 ushered in several changes in paid leave requirements in various states and localities, including:

Massachusetts:
The Massachusetts Paid Family and Medical Leave Program starts July 1, 2019. It provides eligible employees with up to 20 weeks per year paid leave for their own medical needs and 12 weeks for family care, at 80 percent of their average weekly wage up to a designated cap.

New York:
New York's Westchester County enacted its own sick leave lead, requiring most employers to provide all employees with accrued sick leave, based on the number of hours worked.

Michigan:
The Paid Medical Leave Act requires certain employers to provide paid medical leave, based on an accrual schedule. It takes effect March 29, 2019.

Washington:
Washington State's Paid Family and Medical Leave Law provides 12 weeks of paid leave per year to employees with serious illnesses. Employee benefits begin January 1, 2020, but employers must begin deducting and remitting premiums on January 1, 2019. Employers also have to meet reporting requirements beginning in April 2019.

Sexual Harassment Prevention

States and cities alike have renewed their focus on preventing sexual harassment in the workplace. Here, training of staff members and new notice and reporting requirements are intended to ensure that staff understand what behaviors are not acceptable and know how to speak up if they are targeted.

State Changes on Sexual Harassment

Several cities and states have changed their laws on workplace sexual harassment.

They include:

New York City:
The Stop Sexual Harassment Act takes effect April 1, 2019, requiring certain employers to conduct annual training to combat sexual harassment.

Delaware:
Delaware's HB 360, effective January 1, 2019, specifically prohibits sexual harassment in the workplace and creates new notice and training requirements.

California:
Employers with more than five employees must provide certain minimum amounts of training, every other year – and the first session must take place before 2020 begins.

Illinois:
The Illinois legislature amended the Illinois Human Rights Act to explicitly include the right to be free from sexual harassment.

Salary History

Does your employment application still ask for salary history? This once-popular application question has come under fire in recent years, and legislatures are taking action.

It may be time to review your company's applications for salary history questions. Several cities and states now have laws prohibiting employers from asking about an applicant's previous pay.

Recent Changes on Salary History Laws

Both states and localities are taking aim at the salary history question, seeking to eliminate it from job applications. **Some notable changes include:**

Connecticut:
Beginning January 1, 2019, Connecticut employers may not ask about an applicant's salary history, unless the applicant volunteers the information first.

New York:
New York's Suffolk County passed the Restricting Information on Salaries and Earnings (RISE) Act, which prohibits employers from asking about wage or salary histories. The law takes effect June 30, 2019.

Where to Turn for Help

Your staffing partner can help you:

- **increase compliance** and stay aware of key legal issues;
- **ensure legal hiring practices** by offering guidance and support; and
- **minimize employment risks** through improved screening.

Disclaimer: The information provided here is intended to offer a general overview of employment law issues. It is not legal advice. For help with issues specific to your business, speak to an attorney who is licensed to practice in your jurisdiction.