K&L GATES

United States Employer Guide

2024

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INTRODUCTION

As the world reopened more fully following the global COVID-19 pandemic, employers continued to address pandemic-era employment law issues, including remote and hybrid work, mental health in the workplace, workplace safety, recruitment, and retention of talent, as well as reductions of the workforce. In addition to post-pandemic issues, employers were faced with increased workplace regulations at the federal, state, and local level.

The US Congress passed a law extending reasonable accommodations to pregnant workers, and various federal administrative agencies issued guidance related to restrictive covenant agreements, extreme heat-related workplace safety, anti-harassment protections for employees, severance agreements, and workplace conduct rules. States and municipalities continued to move forward with substantial legislative and regulatory agendas, addressing expanded paid medical and family leave entitlements for employees, a broader scope of anti-discrimination and anti-harassment laws, limitations on the use of restrictive covenant agreements, predictive scheduling and fair workweek regulations, and implementation of pay transparency practices.

As employers look ahead to 2024, they should anticipate a continued increase in workplace regulations, instability in the labor market, and tension surrounding flexibility in the workplace.

EMPLOYMENT RELATIONSHIP

I. PRE-EMPLOYMENT

Immigration/Visa Requirements

Employers must ensure that their employees are lawfully authorized to work in the United States.

Employers must have employees complete a Form I-9 to verify employment eligibility and collect evidence of eligibility to work in the United States. Employees typically must complete their Form I-9 on or before the first day of work, and the employer must complete verification within three days of their date of hire.

Foreign workers are eligible to live and work in the United States with the proper work permits/visas.

Reference/Background Checks

An employer may contact an applicant's previous employers and personal references before extending an offer of employment. Some states provide protections to employers against defamation lawsuits stemming from information provided in response to such inquiries, but many do not.

An employer may run background and credit checks if it complies with the Fair Credit Reporting Act (FCRA). The requirements include, but are not limited to, seeking written permission from the applicant/employee and taking steps to notify the applicant/employee of the results prior to taking adverse action. Some state laws and local ordinances heighten the requirements of the FCRA.

The Equal Employment Opportunity Commission (EEOC) requires that employers make decisions based on background checks in a manner that does not discriminate against applicants and employees because of any trait protected by Title VII of the Civil Rights Act (Title VII), the Age Discrimination in Employment Act, the Americans with Disabilities Act (ADA), the Genetic Information Nondiscrimination Act, or other categories protected by law. The EEOC warns that, in certain circumstances, background check policies (such as those containing guidelines for what crimes will automatically cause denial of employment) can have a disparate impact on protected individuals, and, if that is true, such policies must be consistent with business necessity. Some state laws and local ordinances prohibit or limit employers from asking certain questions regarding an applicant's criminal background or require employers to follow certain procedures when an applicant discloses criminal background information.

Some state and local laws limit an employer's ability to inquire about a candidate or employee's wage or salary history during the recruitment and hiring process. Other state and local wage transparency laws require certain employers to disclose compensation information in job postings or during the recruitment process.

Medical Examinations

Under the ADA, an employer may not require any medical examination or make any disability-related inquiries prior to making an offer of employment.

After an offer is extended, but prior to employment beginning, an employer may require medical examinations and make disability-related inquiries so long as it does so for every applicant for such job category.

After employment begins, an employer may not require medical examinations or make disability-related inquiries unless they are job-related and consistent with business necessity.

Drug and Alcohol-Free Workplace Policies

With certain exceptions, employers may implement policies and programs intended to take action against drug and alcohol use in the workplace, including, but not limited to, preemployment and during-employment drug testing. Applicable law will require some types of private employers, including, but not limited to, federal contractors, to impose such programs. All employers should ensure their drug- and alcohol-free programs, including their testing policies, comply with applicable state law requirements, including, but not limited to, regulations addressing the medicinal and recreational use of marijuana. Employers should also ensure that their hiring, firing, and promotion policies do not discriminate against individuals with histories of substance abuse or individuals enrolled in rehabilitation programs. Employers should also refrain from asking employees about their legal prescription drug use during the prehiring or pre-promotion drug testing process.

Minimum Qualifications

An employer may set minimum qualifications for a position and ascertain an applicant's qualifications through pre-offer questioning and requests for proof that the applicant has obtained such qualifications.

II. TYPES OF RELATIONSHIPS

Employee

Generally, employers engage employees on an "at-will" basis, meaning that both the employer and the employee may end the employment relationship at any time, for any legal reason, with or without notice, and the employer may change the terms and conditions of the employee's employment. Montana, however, only recognizes the concept of at-will employment during an initial probationary period.

Employers and employees may enter contracts setting terms and conditions of employment or otherwise alter the at-will nature of employment, i.e., setting a term for the length of employment, restricting the reasons for which an employee may be terminated, or setting certain terms and conditions of employment.

The COVID-19 global crisis and subsequent economic instability resulted in the furlough of many workers. A furlough is a temporary unpaid leave of absence. In general, an employer has discretion to furlough its employees who are employed on an at-will basis (meaning that both the employee and employer have reserved the right to terminate the employment relationship at any time and for any legal reason). If an employee has an individual contract of employment or is covered by a collective bargaining agreement, the terms of the contract will govern whether a furlough is permitted.

Independent Contractor

An individual who is classified as an independent contractor is generally afforded fewer rights than one who is classified as an employee. Workers may be engaged as independent contractors, as opposed to employees, if the relationship meets certain legal requirements. This relationship is usually documented in a written agreement, although the labels used by the parties themselves do not control the issue. Government agencies and courts increasingly disfavor the independent contractor relationship and impose strict standards, analyzing the overall job duties of the individual and the relationship between the individual and the employer to determine the proper category. Each state varies in its common law and legislative standards for classifying an independent contractor, with states like California being particularly strict. Misclassification of an employee as an independent contractor can create significant liability for the employer.

Labor Hire

Employers may hire employees as seasonal or temporary workers. Employers may also work with an employee leasing company, which temporarily assigns the leasing company's employees to the employer. The relationship between employers and employee leasing companies is sometimes regulated by state laws and must meet certain legal requirements. These arrangements create the risk that the leasing company and hiring company may be found to be joint employers.

III. INSTRUMENTS OF EMPLOYMENT

Contracts

Employment contracts can be oral or in writing.

Most employers rely on the at-will nature of employment and do not enter into employment contracts with employees (although they frequently provide offer letters to employees confirming the terms of their employment, such as their position, supervisor, pay rate, and benefits).

However, employers will often enter into contracts with employees designed to protect their confidential, trade secret, and proprietary information. Such contracts may contain non-disclosure, non-compete, non-solicit, and anti-raiding provisions—the validity, strength, and terms of which depend on state law. These contracts often expressly preserve the at-will nature of the employment relationship though.

Registered Agreements

The National Labor Relations Act (NLRA) provides employees with the ability to engage in collective activity and form labor unions. Employees that choose to do so and can meet certain requirements can request that the National Labor Relations Board (NLRB) conduct an election to determine whether the employer must set the terms and conditions of employment through negotiating with the employees' chosen union.

The Labor Management Relations Act requires that an employer must abide by any terms and conditions agreed to with the employees' chosen labor union.

Policies

Employers typically provide employees with a handbook or policies that discuss the terms and conditions of employment and rules governing workplace conduct. Such handbooks or policies are not required (although the lack of such policies—for instance, in the case of a sexual harassment policy—may expose the employer to increased liability), although some state and local laws require employers to maintain sexual harassment policies and conduct training. Some states also require employers that decide to create employee handbooks to include certain policies within those handbooks. Handbooks typically provide that they are not contractually binding and do not alter the at-will nature of employment.

Various federal and state laws require employers to post certain notices in breakrooms or other employee-accessible areas that inform employees of their rights under such laws. Such notices generally are required to be disseminated to employees who work remotely via electronic means.

Some state laws require that employers provide notice to employees as to certain aspects of the employment relationship, which include, but are not limited to, the rate of pay, hours of work, and timing of payment.

IV. ENTITLEMENTS

Minimum Employment Rights

The Fair Labor Standards Act (FLSA) requires that employers pay employees a specified minimum wage rate and provide overtime premium payments on all hours worked beyond 40 hours in a workweek. State and local law may increase (but not decrease) the minimum wage and may provide for additional overtime premiums (for instance, for work over eight hours in one day, work over 12 hours in one day, or after a certain number of days are worked in a week). In certain circumstances, an employee's "rate" may need to factor in commissions, incentives, and bonuses. The FLSA also describes which employees are "exempt" from overtime using a test that combines a minimum compensation level and a duties test.

Federal law prohibits discrimination against employees on the basis of certain characteristics, such as sex (which includes gender identity and sexual orientation), pregnancy, religion, color, race, national origin, veteran status, age, disability, genetic information, etc. State and local law may provide for other protected traits. Many states and municipalities have adopted a form of the Creating a Respectful and Open World for Natural Hair Act, which prohibits racial discrimination on the basis of an individual's hair texture and is protective of hair styles such as braids, locs, twists, and knots.

Employers must provide reasonable accommodations to qualified individuals with disabilities under the ADA so that they may perform the essential functions of their positions, unless doing so would cause the employer undue hardship. Further, employers must accommodate an individual's sincerely held religious beliefs, observances, or practices under Title VII, unless doing so would cause the employer undue hardship. Many state and local laws require employers to provide reasonable accommodation for individuals who are pregnant, and recently, the US Congress passed the Pregnant Workers Fairness Act (PWFA), which requires covered employers to provide reasonable accommodations to a worker's known limitations related to pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an undue hardship.

Employers that meet minimum size requirements must provide 12–26 weeks of leave under the Family and Medical Leave Act (FMLA) to employees in certain circumstances, including to care for their own serious medical condition or the serious medical condition of a family member, to bond with a natural born or adopted child, and, in certain circumstances, to care for or be with military personnel. FMLA leave is unpaid. Employers may not discriminate against or terminate employees for exercising their FMLA rights. Some state laws provide leave in addition to that which is available under the FMLA and may require payment during certain leaves. Those state laws often have minimum size requirements different from what exists for FMLA leave. In some instances, even if an employee is not eligible for FMLA leave at all or if the employee has already exhausted FMLA leave, the employer is still required to engage in an interactive process with the employee to determine the feasibility of providing leave as a reasonable accommodation under the ADA.

The Occupational Safety and Health Administration regulates workplace health and safety for covered employers by setting certain minimum standards, which can vary by industry, and requiring adequate training, notice, and recordkeeping requirements. States may have their own approved state workplace health and safety plan that may set additional workplace safety regulations. State law may require employers to maintain or offer some benefits to employees who sustain workplace injuries.

State law typically provides some level of unemployment insurance benefits for employees that are terminated for certain reasons, including through layoff or no fault of the employee.

State law also typically provides for temporary disability benefits.

State law may require employers to maintain worker's compensation insurance for employees, which is a form of insurance providing wage replacement and medical benefits to employees injured in the course of employment.

State law may provide for additional minimum employment rights.

Discretionary Benefits

Most terms and conditions of employment are provided to employees at the employer's discretion. Below are a few examples of discretionary benefits that may be provided by employers.

Paid Vacation

Employers may provide paid vacation benefits to their employees. Such benefits allow the employee to be absent from work for personal reasons without losing pay. If an employer chooses to provide vacation pay, it must comply with the applicable state's laws. For example, some state laws require that employers pay employees for all accrued, but unused, vacation upon termination; other states do not. Some states allow employers to maintain "use it or lose it" policies, which require that employees use the vacation benefits within a certain time frame or forfeit the same, while other states do not. Other states allow employers to place a ceiling on how much vacation an employee may accrue but may require that ceiling be set at a certain level. A few states have adopted mandatory paid time off for employees that may be used for any purpose.

Sick Leave

Employers may also provide paid sick leave to their employees. Such benefits are typically available when the employee must be absent from work due to a medical condition. If an employer chooses to provide paid sick leave, it must comply with the applicable state laws. Some states and local municipalities require minimum amounts of paid sick leave. Some states allow for employers to provide "paid time off" policies that cover both paid vacation and paid sick leave amounts so long as they comply with state law requirements.

Holidays

Employers may provide paid or unpaid holiday benefits to employees. Employers commonly use federal holidays, or some subset thereof, as the basis for such benefits.

Bonuses

Employers may provide bonuses to employees separate from their typical wage payments. Such bonuses are typically earned based on personal or company performance milestones or provided at certain times of the year, e.g., Christmas.

Paid Medical/Parental Leave

Some employers voluntarily provide for income replacement during FMLA or other medical or personal leaves. Some states provide insurance benefits to employees who are on certain types of leave.

Other Leave

Employers may voluntarily provide for other paid or unpaid leave. Some states require that leave be given for reasons that include, but are not limited to, civil air patrol or firefighter duty, being a victim of crime or domestic violence, volunteering, jury duty, children's school activities, voting, organ donation, bereavement, and being a witness in a legal proceeding.

Retirement Benefits

Employers may provide for pensions (less common now as compared to previous years) or 401(k) plans (more common). These benefits assist employees in retirement planning. Some employers that maintain 401(k) plans “match” part or all of the employee’s contribution.

Insurance

Employers that meet certain minimum size requirements must offer health insurance to employees or pay penalties. Employers typically provide insurance for employees, including health, dental, vision, life, and disability. Often, employers offering such insurance benefits will pay all or a portion of the premiums.

COVID-19 and Similar Emergency Conditions

In response to the COVID-19 global health crisis, many state and local laws were enacted to address the effect pandemic conditions may have on the workplace. There are a myriad of state and local laws applicable to pandemic and other emergency situations. Legal guidance and advice is strongly recommended, as the individual circumstances of the situation and venue must be taken into account.

Many states and local governments have more comprehensive paid sick leave laws that are applicable to a broader range of employers for a longer length of time in pandemic or emergency situations.

Under federal law, private employers may maintain a policy requiring all employees to be vaccinated against COVID-19, subject to the reasonable accommodation and anti-discrimination provisions of Title VII and the ADA. Some state laws limit the ability of private employers to impose mandatory vaccination policies, inquire about an employee’s vaccination status, or discriminate against employees on the basis of their vaccination status. Employers who maintain such a requirement must maintain vaccination information in a confidential manner under the ADA and state law.

TERMINATION OF EMPLOYMENT

I. GROUNDS

In the typical at-will employment situation, an employee may be terminated for any reason, with or without notice, although employers may not terminate employees for any illegal reason. Statutes typically govern what constitutes an "illegal" reason. For example, Title VII prohibits employers from terminating employees on the basis of their race and gender (among other things). State public policies and common law often create other exceptions. For example, employees typically cannot be terminated for failing to perform an illegal act.

Employment contracts may limit the grounds for termination and require that a certain amount of notice be provided.

II. MINIMUM ENTITLEMENTS

Payments/Notice

Employers typically are not required by law to provide payments to terminated employees. However, some employers voluntarily provide severance benefits to departing employees in certain situations, such as reductions in force or in exchange for a release of potential claims the employee may have against the employer. Federal (such as the Age Discrimination in Employment Act (ADEA)) and state laws may impose specific requirements related to timing, notice, and revocation periods on employers entering into release agreements with employees.

Statutory Entitlements

Employers must pay all owed compensation to a terminated employee. State laws typically require that it be paid within a certain number of days from the date of termination. Some state laws require that certain vested or accrued benefits (such as vacation pay) are part of owed compensation and must be paid on or after termination.

Federal law requires employers meeting certain minimum size requirements to provide information to employees about how to temporarily continue their insurance benefits following employment (at the employee's cost but under the employer's plan). Certain states have similar laws (typically lowering the minimum size threshold).

III. REDUNDANCY

Layoff/Downsizing Notices

An employer may eliminate/consolidate positions and engage in reductions in workforce at its discretion.

The Worker Adjustment and Retraining Notification Act (WARN Act) requires covered employers to provide 60 days' advance notice of a mass layoff or a plant closing (as those terms are defined by the WARN Act), as well as for certain layoffs. State laws may expand the notice requirements in other situations.

Payment

Employers typically are not required by law to make payments to employees selected for a reduction in workforce or a layoff, although state and local law may require remuneration under certain conditions. However, some employers voluntarily provide a severance package to laid-off employees, usually in exchange for a release of potential claims the employee may have against the employer.

Federal (such as the ADEA) and state laws may impose specific requirements related to timing, notice, and revocation periods on employers entering into release agreements with employees.

IV. REMEDIES

Dismissal Action

Since employment is generally "at will" in the absence of an employment contract, a claim for wrongful termination typically must be based on an argument that the employment contract was breached or that the employer terminated the employee due to a protected trait (such as gender, pregnancy, religion, color, race, national origin, veteran status, age, disability, or genetic information). State and federal claims also include actions based on a retaliation theory, i.e., the employer retaliated against the employee for opposing discrimination or harassment in the workplace, complaining about the employer's failure to pay minimum wage or overtime, or stating that the employer failed exercise FMLA rights or an NLRA right to participate in a protected concerted activity.

State laws often prohibit retaliation against employees who apply for benefits related to a workplace injury or who are forced to take leave because of a workplace injury.

State laws may provide for claims in circumstances where the employer terminated the employee for refusing to commit a criminal act or where the employer has breached the covenant of good faith and fair dealing. Further, many states have "lawful activities statutes" whereby an employer may not terminate an employee for engaging in lawful off-duty conduct.

Both federal and state laws also provide protections to certain categories of whistleblowers, including those who report financial misconduct of a company or its employees.

For many unlawful termination claims, there is a federal, state, or local agency dedicated to investigating and resolving such claims. Plaintiffs are also typically able to bring their claims in court (sometimes provided they have exhausted their remedies at an agency level first).

Successful plaintiffs in such actions can be awarded a variety of damages, including back pay, front pay, compensatory damages, punitive/exemplary damages, liquidated damages, attorneys' fees, court costs, and interest.

BUSINESS TRANSFER AND RESTRUCTURING

I. LEGAL REQUIREMENTS

Transfer of Business

Employers are allowed to transfer, sell, or restructure businesses at their discretion. Typically, the contract regarding the transfer, sale, or restructuring addresses the impact of the transaction on the employees.

While an employer is free to sell its business or go out of business altogether, other decisions (including by a purchaser of the business) may be penalized under the NLRA if unlawfully intended to rid the business of the obligation to negotiate with the employees' chosen union. Furthermore, such business decisions may also implicate the enforceability of non-competition agreements in some states.

II. RESTRUCTURING

Notification

As stated above, the WARN Act may require that a covered employer provide 60 days' advance notice if the transaction results in a plant closing or mass layoff. State and local laws may impose differing requirements.

PROTECTION OF ASSETS

I. CONFIDENTIAL INFORMATION

Employers typically maintain a confidentiality policy that defines what confidential information is and prohibits employees from using or disclosing it, except for the employer's business purposes. Employers should be careful to ensure that the policy does not infringe on employees' rights under federal, state, or local law to share information about the terms and conditions of their employment, make protected disclosures to government agencies, or discuss information relating to unlawful employment practices.

Often, employers will require that employees sign confidentiality agreements, which are more detailed than the basic policies.

Many states provide employers with the right to sue employees and former employees who misappropriate confidential, proprietary, and trade secret information, even in the absence of a confidentiality agreement. The Defend Trade Secrets Act of 2016 provides a federal civil court remedy for acts of trade-secret misappropriation, which includes uniform definitions for "trade secrets" and "misappropriation," as well as a uniform set of procedural and evidentiary rules to be used in federal courts in such cases.

II. CONTRACTUAL RESTRAINTS AND NON-COMPETES

Employers can typically require employees to sign non-competition provisions (restricting the employee's ability to work for a competitor post-employment), non-solicitation provisions (restricting the employee's ability to solicit customers post-employment), and anti-raid provisions (restricting the employee's ability to hire employees or contractors post-employment). State law governs such provisions and often requires reasonable restrictions on the temporal length, geographic scope, and subject matter. The laws regarding such provisions vary from state to state, and some states do not permit such restrictions at all except in narrow circumstances.

III. PRIVACY OBLIGATIONS

Federal law requires employers to keep employee medical information in a separate file that can be accessed only by those with the need to do so.

Some state laws provide employees with privacy protections with respect to their employment information and personal data, including biometric data.

Some state laws require that employees and former employees be allowed access to their personnel files upon request.

IV. WORKPLACE SURVEILLANCE

Employers generally are allowed to monitor the workplace as well as electronic networks (i.e., email) for security purposes (although they should provide notice of such intent to eliminate any expectation of privacy).

The NLRA prohibits employers from implementing workplace surveillance in a manner that restricts employee participation in protected concerted activity (e.g., collective bargaining or unionization). For example, an employer may not begin surveillance in response to a union organizing campaign.

V. WORKPLACE INVESTIGATIONS

Employers can generally investigate misconduct in the workplace and manage, discipline, and terminate an employee's employment based on the same.

Employee complaints about violations of law (sexual harassment, discrimination, retaliation, etc.) should be investigated promptly and corrective action taken where appropriate. In many cases, such investigations can serve as a defense to later claims.

WORKPLACE BEHAVIOR

I. MANAGING PERFORMANCE AND CONDUCT

Employers may set workplace conduct rules and production standards at their discretion so long as workplace rules do not infringe on an employee's rights to engage in protected concerted activity under the NLRA.

Employers may manage, discipline, and terminate an employee based on an employee's failure to comply with workplace conduct rules or production standards.

II. DISCRIMINATION

Employers may not make employment decisions based on membership in a protected group. Federally protected groups include, but are not limited to, sex, pregnancy, religion, color, race, national origin, veteran status, age (40 or older), disability, sexual orientation, gender identity, and genetic information. States and municipalities will sometimes also protect other traits.

Employers may not maintain facially neutral employment policies that tend to have a disparate impact on (i.e., disproportionately affect) employees in a certain protected class.

The ADA, as well as many state laws, requires employers to reasonably accommodate qualified employees with disabilities so that they may perform the essential functions of their positions. Reasonable accommodation of religious practices is also required. The PWFA, along with state and local laws, requires covered employers to provide reasonable accommodations to a worker's known limitations related to pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an undue hardship.

III. HARASSMENT

Federal law also prohibits harassment of employees based on protected traits.

Employers should provide training to employees on and maintain policies prohibiting harassment and discrimination to decrease the risk of such claims or provide affirmative defenses to them. Employee complaints about violations of law (sexual harassment, discrimination, retaliation, etc.) should be investigated promptly and corrective action taken where appropriate. In many cases, such investigations can serve as a defense to later claims.

State laws often mirror or increase protections for employees against harassment.

Some states and municipalities require maintenance of anti-harassment policies and provision of anti-harassment and related training.

IV. RETALIATION

Federal law prohibits retaliating against employees who:

- Make complaints regarding discrimination or harassment.
- Make complaints regarding payment of minimum wage and overtime.
- Exercise their rights under the FMLA.
- Exercise their rights under the NLRA.
- Exercise their rights under Occupational Safety and Health Act.

State laws may provide for similar or greater protections.

State laws often prohibit retaliation against employees who are forced to take leave for a workplace injury.

The federal Dodd-Frank Wall Street Reform and Consumer Protection Act, the Sarbanes-Oxley Act, and various state laws also protect "whistleblowers" in certain situations (particularly with regard to financial misconduct by a company or its employees and the reporting of such). Some state laws also prohibit retaliation against employees for reporting other violations of law or public policy.

V. BULLYING

Some states have enacted workplace bullying laws that prohibit abusive conduct of employees in workplaces even if the conduct is not based on the employee's protected traits and, thus, is not otherwise prohibited by discrimination and harassment laws.

VI. UNIONS

Representation

Under the NLRA, employees have the right to select a union to negotiate the terms and conditions of their employment. Employees may exercise this right by filing a petition for election with the NLRB. If the employees vote to have a union represent them during the election process, the employer is then obligated to negotiate with the union before making any changes (even favorable changes) to the employees' terms and conditions of employment. Unions are not as common as they used to be. Union activity tends to be concentrated in the manufacturing, government, teaching, health care, mining, and transportation industries, though the hospitality industry is experiencing increased union activity.

The Railway Labor Act governs the railway and airline industries but similarly allows for employees to use unions to negotiate collectively.

Right of Entry

An employer can restrict a union's right of access to the employer's property but only if it does so consistently with how it restricts third parties. In other words, the employer may not restrict only a union's access to the facility while allowing access to other third parties.

Industrial Disputes

Generally, employers may use lockouts and employees may use strikes as economic weapons during the bargaining process. Typically, once a contract is entered into, the contract will prohibit use of such means during the term of the contract.

The Railway Labor Act restricts use of such economic weapons for the railway and airline industries.

VII. REMOTE/HYBRID WORK

Many employers are permitting employees to work remotely on a full-time or part-time basis, resulting in various hybrid work situations. Some employers are also allowing employees to work remotely from a location that differs from the employer's physical worksite. As state and local laws vary greatly with regard to minimum entitlements, required policies, enforceability of restrictive covenants, and workplace regulations, employers should evaluate current policies for compliance with state and local laws, review employment requirements for new jurisdictions, and train managers and human resources personnel on location-specific requirements. Employers may consider implementing a remote work policy and entering into agreements with employees who will be working on a remote or hybrid basis. It is strongly recommended that employers seek legal guidance and advice on these matters.

VIII. PAY TRANSPARENCY AND EQUITY

The federal Equal Pay Act prohibits employers from paying men and women differently for the same work, with limited exceptions. State and local laws may prohibit employers from inquiring about an individual's salary or wage history during the hiring process and employment relationship. Other state and local laws require employers to include information about the rate of pay in job postings and to disseminate pay range information to current employees. A handful of state laws require employers to submit reports to the state on pay equity across certain protected characteristics. As state and local laws related to pay equity and transparency vary greatly, it is strongly recommended that employers seek legal guidance and advice on these matters.

AUTHORS AND CONTRIBUTORS

Erinn Rigney

Partner
Chicago
+1.312.807.4407
erinn.rigney@klgates.com