

HR Insights

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5 Employment Policies to Review in 2024

Employee handbooks are important tools for establishing employee expectations, addressing workplace issues and defending against potential lawsuits. Failing to update the employment policies in these handbooks regularly can make employers vulnerable to legal risks and liabilities, resulting in costly fines, penalties and attorneys' fees. Employment laws are often complicated, and employers must be aware of new regulatory developments that may impact their organizations and workforce. The start of the year provides employers with an excellent opportunity to review and update their policies.

To assist with this effort, this article explores five employment policies employers should consider reviewing in 2024.

1. CROWN Act

In 2023, many states and localities enacted laws prohibiting discrimination based on an individual's hair texture and style associated with a protected class, such as race. As of September 2023, 23 states had passed the Creating a Respectful and Open World for Natural Hair (CROWN) Act. Additionally, the U.S. Virgin Islands and more than 40 localities have passed CROWN laws. Many states that have not passed a CROWN Act have filed or pre-filed similar legislation. CROWN laws generally forbid discrimination based on hair textures or protective hairstyles commonly associated with a protected characteristic, such as race, national origin and ethnicity. Looking ahead, the U.S. Equal Employment Opportunity Commission (EEOC) has signaled that it will pursue discrimination claims related to hair texture and style.

As many states and localities adopt hair discrimination laws, employers must ensure their workplace dress code policies are current and comply with state and local laws. It is critical to review existing policies to ensure they accommodate different hairstyles by not banning or restricting certain hair textures and styles that are associated with race, national origin and ethnicity.

2. Pregnant Workers Fairness Act

The Pregnant Workers Fairness Act (PWFA), signed into law on Dec. 29, 2022, became effective on June 27, 2023. Under this law, employers with at least 15 employees must provide reasonable accommodations to workers with known limitations related to pregnancy, childbirth or related medical conditions unless the accommodation will cause the employer an "undue hardship." The EEOC has started accepting charges under the PWFA for situations occurring on June 27, 2023, or later.

The number of lawsuits claiming employers failed to accommodate pregnant workers will likely increase in 2024. As such, employers should review and familiarize themselves with this law. Savvy employers will look at the EEOC's final PWFA regulations and consider including a policy in their 2024 employee handbook that explicitly addresses PWFA accommodations. Moreover, forward-thinking employers will increasingly engage in the interactive process with covered employees and applicants who require accommodations under PWFA.



3. Noncompete Agreements

In January 2023, the Federal Trade Commission (FTC) proposed a rule banning most noncompete agreements. The FTC is expected to vote on this rule in April 2024. Additionally, about six months after the FTC announced its proposed rule, the National Labor Relations Board stated that most noncompete and nonsolicitation agreements violate the National Labor Relations Act. Many states have also passed noncompete bans or taken action to ensure noncompetes are unenforceable.

Due to the shifting legislation surrounding these policies, employers need to ensure their noncompete agreements are tailored to the state and locality where their employees work. Moreover, employers can consider limiting or eliminating noncompete agreements and policies to avoid potential litigation and unnecessary enforcement hurdles.

4. Form I-9

In 2023, the U.S. Department of Homeland Security's (DHS) Citizenship and Immigration Services published an updated Employment Eligibility Verification form (Form I-9) and instructions. The DHS also issued a final rule that will amend agency regulations to allow for the authorization of alternative document examination procedures, such as remote documentation verification and examination. Employers had to start using the new form as of Nov. 1, 2023, to avoid penalties.

Complying with Form I-9 requirements is often challenging and places a significant administrative burden on employers. Failing to complete and retain Forms I-9 for all employees can be extremely costly. Form I-9 violations often can lead to additional fines and penalties from other government agencies. While the required timelines for completing Forms I-9 for employees haven't changed, the updated form will likely force employers to make some changes to their Form I-9 operations and processes. Therefore, employers should familiarize themselves with the updated form and establish a plan for implementing the required changes. Savvy employers will also train employer representatives and communicate with employees about plan updates. Due to the complexities of complying with Form I-9 requirements, employers are

encouraged to seek legal counsel to discuss specific issues and concerns.

5. FLSA Overtime and Minimum Wage Exemptions

On Aug. 30, 2023, the U.S. Department of Labor (DOL) announced a proposed rule to amend current requirements that executive, administrative and professional employees must satisfy to be exempt from the Fair Labor Standards Act's (FLSA) minimum wage and overtime requirements. With this rule, the DOL proposes increasing the minimum salary level from \$684 to \$1,059 per week (from \$35,568 to \$55,068 per year) and from \$107,432 to \$143,988 per year for highly compensated employees. The rule would also enable the DOL to update salary levels automatically every three years without relying on the rulemaking process. The final overtime rule is expected to be released in April 2024.

While the proposal doesn't impose any new requirements on employers until the rule is published, proactive employers will review the FLSA's proposed rule and evaluate the changes needed to remain compliant with the new law. This may include reviewing employee compensation, auditing exempt employees' job duties and revising workplace policies to ensure compliance.

Summary

Outdated policies can often expose organizations to unnecessary legal risks. Regularly reviewing and updating employment policies is an effective and cost-effective way for employers to protect themselves. By understanding the most important rules and regulations to study in 2024, employers can take steps to ensure their employment policies are current and reflect the most recent regulatory developments.

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