

Article – What to Watch For in 2022: Regulatory / Compliance

Trends and legislative agendas indicate that employers will face some new challenges in 2022 while battling old ones. When possible, it is critical that businesses prepare for these changes in advance of implementation. Below are some major regulatory and compliance trends we are watching as well as some actions we recommend taking throughout the year.

Minimum Wage Increases: Twenty-five states and Washington DC will increase their minimum wage in 2022, with 21 of them taking effect by January 1. Three states will also see corresponding increases to the exempt salary thresholds.

Action: Review wages paid to all employees ensuring they meet minimum wage standards and possibly adjusting others who are close to minimum wage to prevent wage compression.

National Labor Relations Act Initiatives: The pro-labor majority of the National Labor Relations Board (NLRB) are reviewing several workplace rules to give employees more protections. Some initiatives include defending protected, concerted activity, including using company networks and systems, redefining independent contractors, prohibiting and penalizing wage theft, and enforcing compliant handbook and policy language. Additionally, the Department of Labor and NLRB signed an agreement to share information, training, and enforcement more freely thereby increasing the possibility of cross-agency investigations and added penalties.

Action: Stay up to date with rulings and changes that will impact all workplaces. Review your policies, procedures, and actions to ensure all employees can exercise their rights. Ensure compliance with wage payment practices and employee / independent contractor classifications.

Discrimination Protections: State, county, and city governments will continue to pass laws expanding protections for certain characteristics such as pregnancy and childbirth, natural hair and protective hair styles, sexual orientation, gender identity, gender expression, COVID vaccination status, homelessness, or immigration status. Laws are also being strengthened to prohibit retaliation against any employee who makes a valid discrimination or harassment claim, files a discrimination or harassment complaint with a federal or state agency, or participates in any related investigation whether internal or by legal authorities.

Action: Know all the federal, state, and local laws which apply to your workplace and employees. Ensure there is no adverse employment action taken based on protected characteristics. Investigate any complaints. Draft and enforce policies prohibiting discrimination, harassment, sexual harassment, and retaliation.

Marijuana Legalization: Thirty-seven states and Washington DC have legalized marijuana in some form while 9 others have decriminalized it or legalized CBD oil. Initiatives to expand the legalization of medical and recreational marijuana use are expected. The federal government is also looking into options to legalize marijuana in some form.

Action: Understand the marijuana laws in your state and how they impact your policies and procedures, especially for drug testing and disciplinary action.

Restrictive Covenants: Federal and state governments are reviewing legislative options to limit non-disclosure, confidentiality, non-compete, and non-solicitation agreements so employees have more latitude and protections, especially if little consideration is given.

Action: Have any restrictive covenants regularly reviewed by legal counsel familiar with local employment law.

Independent Contractors: In addition to the NLRB reviewing independent contractor definitions, the DOL will join some states in refining the tests and criteria for independent contractors to ensure workers are properly classified.

Action: Review all current independent contractor relationships and ensure they meet the test under state law as well as DOL and IRS regulations.

Paid Leave: President Biden and Congress will continue to push for paid family leave and paid sick time on a federal level. In the meantime, several states have passed new paid or unpaid sick or leave laws while others are expanding leave laws currently in place. Some local governments are also passing sick leave laws which apply to their city or county.

Action: Understand what sick and/or leave laws apply to your employees based on where they work. Draft procedures so all requests are handled consistently.

COVID-19-related Regulations and Mandates:

OSHA Vaccine / Testing Mandate: The US Supreme Court recently heard arguments on OSHA's Emergency Temporary Standard. While no decision is expected for some time, indications are that it will be overturned in part or in whole. Some options may be ruling it a state issue allowing each state to implement their own standard, limiting the scope to certain types of businesses based on factors such as in-person work and employee density, or pushing it back to Congress to pass a mandate.

Action: Keep an eye out for this decision but realize there may be variations even if overturned.

Quarantining: The CDC has changed their guidance for those who are exposed to or who are asymptomatic or have recovered from mild symptoms after contracting COVID-19. However, some states have yet to update their guidance so there may be conflicting requirements.

Action: Check both CDC and state health department requirements on quarantining when dealing with employees who are exposed or test positive.

Privacy and Data Security: The protection of consumer and employee information will remain a priority for several states. We have already seen many states pass strict laws regarding how businesses and employers gather and protect information as well as actions that need to be taken if there is a breach threatening the security of that information.

Action: Consult data security experts to ensure all the sensitive and confidential information you gather on customers and employees is protected. Take required actions if there is a breach.

Other regulatory changes: In addition to all of the above, we expect federal, state, and local government to build on recent legislative changes including pay equity, mandatory benefits, wage theft, ban-the-box, safety, and use of artificial intelligence.

Affinity HR Group looks forward to supporting you in 2022, no matter your HR challenge. Connect with us at 877-660-6400 or contact@AffinityHRGroup.com.

By Paige McAllister, SPHR, SHRM-SCP, Vice President for Compliance – Affinity HR Group, Inc.

Paige McAllister is a contributor for Affinity HR Group, Inc., IIAV's affiliated human resources partner. Affinity HR Group specializes in providing human resources assistance to associations such as IIAV and their member companies. To learn more, visit www.affinityHRgroup.com.