



2019 Compliance Update

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2019 Legal and Compliance Updates



Agenda

- California ban on salary history inquiries
- California harassment prevention training
- Delaware sexual harassment prevention
- Massachusetts paid family and medical leave
- Michigan paid sick leave
- New York anti-harassment training
- New York lactation room policy
- Suffolk County, NY ban on salary history inquiries
- Westchester County, NY paid sick leave

- Oregon equal pay protection
- Oregon registration for payroll deduction IRA program
- Washington, DC sexual harassment prevention
- Washington State paid family and medical leave

Salary History Inquiry Ban Clarification

Effective Date: January 1, 2019.

Employers Impacted: all employers with employees in California.

Clarifies three ambiguous terms

1. “applicant” is an individual who seeks employment with the employer, not a current employee.
2. “pay scale” is defined as a salary or hourly wage range and does not include bonuses or equity ranges.
3. “reasonable request” is a request made after the applicant has completed the initial interview.

Clarifies that employers may ask about an applicant’s salary expectations.

Employers can make a compensation decision based on the employee's current salary, as long as any resulting wage differential is justified by one or more bona fide factors.

Action Items:

- Review and revise policies and procedures related to screening of applicants or employees.
- Provide training to staff, who are involved in the hiring process, to ensure awareness and compliance with these requirements.

California Expands Harassment Prevention Training Requirements

Effective Date: By January 1, 2020, employers with five or more employees are required to provide sexual harassment prevention training as follows and then once every two years thereafter:

- 1 hour of training for existing non-supervisory employees.
- 2 hours of training for existing supervisory employees.
- For supervisory employees hired after January 1, 2020, 2 hours of training must be provided within the first 6 months of hire date.
- 1 hour of training for temporary employees within 30 days after the hire date or within 100 hours worked if the employee will work for less than six months.
- DFEH will develop online training courses for supervisory and non-supervisory employees.
- Trainings will be available on the DFEH website at no cost to the employer.
- There are no changes to the content training requirements.

Action Items

California employers should review their training process and onboarding process to ensure they meet the requirements for current employees and new hire.

Delaware Updates

Sexual Harassment Law

- **Effective Date:** January 1, 2019.
- **Employers Impacted:** Employers with 4 or more employees are required to provide an information sheet provided by the state to all current and new employees.
- Employers with 50 or more employees are required to provide all employees with sexual harassment prevention training.
 - Supervisors must also receive employee training as well as training on the responsibilities of a supervisor to prevent and correct sexual harassment as well as the legal prohibition against retaliation.

Action Items:

- Review and revise policies and procedures related to sexual harassment and training.
- Provide the [information sheet](#) to all employees.
- Update new hire process to ensure the information sheet is provided.
- Review current training requirements and ensure compliance.

Massachusetts Updates

Paid Family Leave Law

Effective Date: January 1, 2021

Who is eligible to take Paid Family and Medical Leave?

This new leave law covers nearly all private sector employees

While the Massachusetts Department of Family and Medical Leave is not required to publish its proposed regulations relating to the Massachusetts Paid Family and Medical Leave Law until March 31, 2019, it has published FAQs for both employers and employees relating to the new program.

Massachusetts Updates

Paid Family Leave Law

What leave benefits are available?

Under this new leave law, starting January 1, 2021, eligible employees can take the following leave in a benefit year:

Up to 20 weeks of job-protected paid medical leave to care for their own serious health condition;

Up to 12 weeks of job-protected paid family leave

- o to care for a family member with a serious health condition,
- o to bond with the employee's child during the first 12 months after the child's birth or the first 12 months after the placement of the child for adoption or foster care with the employee, or
- o because of any qualifying exigency arising out of an employee's family member being active duty or notification of an impending call or order to be in the Armed Forces; and

Up to 26 weeks of job-protected paid family leave to care for a covered servicemember.

This leave entitlement is subject to a combined maximum of twenty-six weeks of total leave in a year, which means that employees cannot take more than 26 weeks of paid family and medical leave in one benefit year.

Michigan Paid Medical Leave Act

Expected effective date: March 29, 2019.

Employers impacted: Applies to all employers with 50 or more employees in Michigan.

Eligible employees may use accrued sick time when:

- Employee or covered family member's illness or injury requires medical diagnosis, care or treatment or for preventative medical care;
- Employee or covered family member is a victim of domestic or sexual abuse;
- Meeting as a child's school or place of care related to child's health or disability, or effects of domestic violence or sexual assault on the child;
- Closure of employee's place of business or child's school due to public health emergency; or
- Employee's or family member's presence in community causes a health risk to others due to a communicable disease.

Michigan Paid Medical Leave Act (cont.)

Employees accrue 1 hour of sick leave for every 35 hours worked with a maximum of one hour per calendar week and 40 hours in a benefit year.

All employees may be required to wait 90 days after commencing employment before using accrued medical leave.

Paid leave must be used in one-hour increments, unless the employer has a different increment policy in writing.

Action Items:

- Review and revise paid sick leave policies to ensure compliance.
- Train all HR and supervisory staff on the new paid sick leave requirements.

New York State Sexual Harassment Prevention Policy and Training

Effective Date: October 9, 2018.

Employers Impacted: Requires all covered employers with employees in New York State to implement a written policy preventing sexual harassment.

Employers may implement the model policy created by the State, or create their own policy following the State's guidelines.

New York State Sexual Harassment Prevention Policy and Training

Action Items:

All covered employers with employees in New York State must provide interactive sexual harassment prevention training on an annual basis.

New York Anti-Harassment (cont.)

New York State Sexual Harassment Prevention Policy and Training (cont.)

Arbitration and Confidential Settlement Agreements:

- Prohibits employers from entering into settlement agreements preventing employees from underlying facts and circumstances of claims involving sexual harassment unless the employee requests such a provision.
- Prohibits employers from including contractual provisions mandating arbitration for claims or allegations of sexual harassment, except when inconsistent with federal Law.

Extension of Sexual Harassment Protection: Employers are now liable for sexual harassment of contractors, vendors, consultants or any other person providing services in the workplace.

Action Items:

- Ensure implementation of State policies, or review to ensure company created policies meet the requirements.
- Review and revise all employment agreements and settlement agreements to ensure compliance.

NYC Sexual Harassment Prevention

- All employers with 15 or more employees working in New York City must:
- Post a notice, in form of a city provided poster, in a workplace common area in both English and Spanish.
- Provide all new hires a factsheet that discusses anti-sexual harassment rights and responsibilities on or before **September 6, 2018**.
- Implement an **anti-sexual harassment training program for all employees by April 2020**.
- Both New York State and New York City have model trainings and policies available to employers.
- TriNet provides compliant harassment prevention training as part of your service fee that meets all current state and local requirements. Please contact your TriNet representative for further details.

NYC Sexual Harassment Prevention (cont.)

Action Items:

- Ensure notice is publicly displayed in the workplace.
- Ensure all new hires are provided with factsheet.
- Prepare for training requirement.

Lactation Room Requirement

Effective Date: March 18, 2019

- Amendment to the New York City Human Rights Law.
- All NYC employers with 4 or more employees must provide a lactation room to accommodate employees needing to express breast milk and a refrigerator for storing milk.
- Lactation room requirements are:
 - a sanitary place, other than a restroom.
 - shielded from view and free from intrusion and that includes at minimum an electrical outlet, a chair, a surface on which to place a breast pump and other personal items, and nearby access to running water.

Lactation Room Policy Requirement

Effective Date: March 18, 2019

- Employers must implement and distribute a written policy regarding the provision of a lactation room.
- Policy must:
 - State employees' right to request a lactation room.
 - Specify how employees make this request.
 - Require employer to respond to request within 5 business days.
 - Provide a procedure to follow when multiple employees need to use the lactation room at the same time.
 - State that employer will provide reasonable break time for employee to express breast milk.
 - State that if the request creates an undue hardship, employer will engage in cooperative dialogue.

Lactation Room Policy Requirement (cont.)

Action Items:

- Create a policy or ensure existing policy complies with the law.
- Train managers and appropriate personnel on implementing the policy.

Ban on Inquiring into Job Applicant's Salary History

Effective Date: June 30, 2019

- Applies to all employers in Suffolk County with 4 or more employees.
- Prohibits employers from inquiring about or relying on job applicant's prior salary history at any time during the interview process.
- Includes prohibition on searching public records for salary information.
- Except when required by law or subject to collective bargaining agreement.

Action Items:

- Review and revise policies and procedures related to screening and interviewing applicants.
- Train their managers and hiring personnel on these changes.

Ban the Box Law

Effective Date: March 4, 2019

- Applies to all employers in Westchester County with 4 or more employees.
- Prohibits inquiring about arrests or convictions on job applications; and discriminating against job applicants based on arrest or conviction history.
- Prohibits inquiring about or making statements about arrest or conviction history except when required by law during the application process.

Action Items:

- Review and revise policies and procedures related to screening of applicants and employees.
- Train their managers and hiring personnel on these changes.

Earned Sick Leave

Effective Date: April 10, 2019

- All employers with 5 or more employees must provide paid sick leave.
- All employers with less than 5 employees must provide unpaid sick leave.
- Earned sick leave may be used for:
 - Employee's or family members treatment or care for illness, disability or health condition
 - Employee or family member's presence in the community creates health risk due to exposure to communicable disease; or
 - Employee's workplace or child's school or daycare is closed due to public health risk.
- Employees accrue 1 hour of sick time for every 30 hours worked
- Employers can cap accrual and use of sick time at 40 hours.

Earned Sick Leave (cont.)

Action Items:

- Review and revise paid sick leave policies to ensure compliance.
- Train all HR and supervisory staff on the new paid sick leave requirements.

OregonSaves Enrollment

Effective Date: December 15, 2018.

Employers Impacted: Employers with 20 or more covered employees.

Oregon employers with 20 or more covered employees must enroll in the OregonSaves payroll deduction IRA program.

A wider roll out will include more employers based on a set schedule.

Action Items:

- Register with OregonSaves.

Equal Pay Protections expansion

Effective Date: January 1, 2019.

An employer is prohibited from –

- Engaging in wage discrimination based on race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability, and age for work of a comparable character.
- Screening applicants based on current and past compensation or seeking an applicant's salary history, either from the applicant or from his or her current or former employer; and
- Determining compensation based on the current or past compensation of a prospective employee.
- Provides employers a safe harbor if they conduct a pay equity analysis to identify and eliminate discriminatory pay practices. However, unlike Massachusetts, this safe harbor is not a complete defense to a violation.

Notice Requirement: Employers are required to post notice of the law's requirements.

Action Items:

- Post the notice in every location where employees work.
- Review and revise policies and procedures.
- Provide training to staff, who are involved in the hiring process, to ensure awareness and compliance with these requirements.

Washington, D.C., Updates

Mandatory Sexual Harassment Training For Tipped Employees

Effective Date: July 1, 2019.

Employers will be required to provide sexual harassment training to their tipped employees and managers. This training must be either through a course developed by the Office of Human Rights (OHR) or from an OHR-certified provider.

This training must be provided to all tipped employees as follows:

- **New employees – Must receive sexual harassment training within 90 days after hire, unless they have received such training within the past two years .**
 - The training may be in person or online training.
- **Current employees – Must receive sexual harassment training within two years.**
 - The training may be in person or online training.
- **Owners and operators – Must receive sexual harassment training every two years.**
 - The training may be in person or online training.
- **Managers – Must receive in person sexual harassment training every two years.**
 - NOTE: Online training of managers is not permitted.

Washington Updates

Paid Family Medical Leave

Effective Date: January 1, 2019.

Beginning January 1, 2019, employers may **collect employee** contributions to fund paid family and medical leave benefits.

Beginning January 1, 2020, employees may **access paid** family and medical leave benefits.

Employees may take paid family and medical leave for the following qualifying reasons:

- Medical leave, for the employee's own serious health condition; and/or
- Family leave, for: A family member's serious health condition; Bonding with a newborn or newly placed child; or A qualifying exigency related to a family member being on active military duty.
- The maximum duration of leave an employee may take during a 52-consecutive-calendar-week period ranges from 12 to 18 weeks, depending on the reason(s) for taking leave.

Action Items:

- Review and revise policy to ensure compliance.
- Train HR and supervisory staff on the new requirements.

Thank you!