2020 Vision: What to Prepare for in Employment Law in the Coming Year

As 2020 approaches, employers are likely well prepared for the increased white collar exempt status threshold. As of January 1, 2020, the salary basis test will increase from $23,600 to $35,568 annually. The job duties portion of the respective tests remains the same. And for the highly compensated exemption, annual compensation must increase from $100,000 to $107,432 per year.

2020 will continue the increased focus on harassment, in light of the #metoo movement. An effective anti-harassment policy continues to be the cornerstone of the prevention and elimination of workplace harassment. Many employers have not regularly updated the examples included within their harassment policies. The examples should provide understanding and education to employees regarding prohibited conduct. The EEOC recommends that examples should be “easy-to-understand.” [https://www.eeoc.gov/eeoc/task_force/harassment/checklist2.cfm](https://www.eeoc.gov/eeoc/task_force/harassment/checklist2.cfm). Examples are most useful when they are relevant to the specific workplace and relatable for employees. Refreshing the examples in your policy can be instructive for employees and help to prevent liability.

The EEOC also recommends that employers eliminate “zero tolerance” language from harassment policies. Id. at Part Three (B). This is not to suggest that employers should tolerate harassment in the workplace. But the desire to prevent and eliminate workplace harassment should be carefully expressed. If a policy suggests that anyone engaging in perceived harassment will be terminated, this could actually have a chilling effect on victims, potential reporters and witnesses. Research indicates that the least likely response of a victim of harassment is to report the harassment. Id. at Executive Summary. A frequent concern of victims and observers is that a report will lead to disruption in the workplace. If they fear that termination of the offender is the only possible outcome, rather than proportionate consequences, they will be less likely to report. Review the language in your policy to ensure that while harassment is clearly prohibited, the language won’t have a chilling effect on potential reporters.

Also consider whether your policy prohibits, or should be revised to prohibit, relationships between supervisors and subordinates. 2019 saw McDonald’s former CEO removed from his position following a consensual relationship with a subordinate. Company policy prohibited dating or sexual relationships for employees with direct and even indirect reporting relationships. A human resources executive who was aware of the relationship, but didn’t address it, was also reportedly let go.

The risks of such relationships are many. Legally, a break-up can lead to claims of harassment and retaliation, and co-workers may have legitimate claims of favoritism and inequities based on the relationship. From a morale standpoint, other employees may be uncomfortable, less productive, and may treat the subordinate differently, sometimes even seeking a conduit to the supervisor. The safest course is to prohibit supervisor/subordinate relationships, and require reporting of such relationships so that management can take appropriate actions. While relationships will certainly occur in the workplace, supervisors and managers must be held to higher standards.
Policies should also make clear that harassment is prohibited on the basis of every federally protected characteristic. In 2020, the Supreme Court of the United States will likely decide whether sexual orientation and gender identity are protected characteristics under Title VII. But local jurisdictions and certain states have included protection for these and additional characteristics such as height, weight, and most recently, hair and hairstyle. Employers should make sure that their harassment policies and equal employment policies include all protected characteristics for their specific locations.

Another change is the increasing number of states legalizing the use of marijuana. Currently, more than 30 states and the District of Columbia have legalized marijuana for medical use, and ten of those and the District include legalization for recreational use. New York City is the first municipality to prohibit pre-employment testing for marijuana or THC. The trend seems to be toward legalization, and depending on the state of an employer’s operations, employers may want to revise current policies for pre-employment testing and accommodation requests, especially for non-safety-sensitive jobs. It is important to note however, that the ADA does not require accommodation for marijuana use, nor does it prohibit discrimination against legal marijuana users. Marijuana is still an illegal drug under federal law.

And finally, a continuing issue in 2020 and beyond is the proper completion and retention of I-9 forms. The possible penalties for non-compliance can include fines for technical violations, substantive violations and illegal hiring or continued employment. In addition to potentially significant fines and penalties, state and federal agencies may refer violators to other administrative agencies for wage and hour audits and other investigations. A good resource to assist with compliance is the U.S. Citizenship and Immigration Services Handbook for Employers. [https://www.uscis.gov/i-9-central/handbook-employers-m-274](https://www.uscis.gov/i-9-central/handbook-employers-m-274).

These are just some of the issues facing employers as we look toward 2020. Here’s hoping that your new year is liability free!