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FLORIDA
EMPLOYMENT LAW LETTER

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PREGNANCY ACCOMMODATIONS

Police department was required to accommodate breastfeeding officer

The Pregnancy Discrimination Act (PDA) presents several thorny compliance issues for employers because it prohibits not just discrimination based on pregnancy itself but also discrimination based on related medical conditions that are necessarily unique to women. At the same time, the PDA doesn't require any special accommodations for pregnancy and its related medical conditions. So, where's the line between accommodation and nondiscrimination? A case out of Alabama turned on that very question, and the employer fell on the wrong side of the line. The case was reviewed by the federal appeals court with jurisdiction over Florida, so the ruling applies to Florida employers.

Balancing work and family

Stephanie Hicks worked for the Tuscaloosa (Alabama) Police Department (TPD), first as a patrol officer and then as an investigator on the narcotics task force. She was working on the narcotics task force when she became pregnant in January 2012. Her captain at the time, Jeff Snyder, allowed her to work on pharmaceutical fraud cases so she could avoid working nights and weekends.

Lieutenant Teena Richardson, Hicks' supervisor, admitted that it bothered her that Snyder allowed Hicks to avoid "on call" duty. Moreover, despite Richardson telling her more than once that she should take only six weeks of protected leave under the Family and Medical Leave Act (FMLA), Hicks took 12 weeks of FMLA leave from August 2012 to November 2012. Meanwhile, Snyder was caught embezzling and was replaced by Captain Wayne Robertson.

Before her FMLA leave, Hicks received a performance review from Richardson that said she "exceeded expectations." But on her first day back from leave, she was written up. She was also told that she should start working with five to seven confidential informants.

Hicks overheard Richardson calling her "that b____" in a conversation with Robertson and claiming that she would find a way to write Hicks up and get her out of there. And another officer overheard Richardson saying loudly, "That stupid c___ thinks she gets 12 weeks. I know for a fact she only gets six."

The city claimed that Hicks met with only one informant and never even spoke to the others. The city also claimed that she didn't want to work nights, declined to meet with an informant after hours because she had to pick up her child from day care, and chose not to attend a drug bust on a Saturday. Robertson said he met with her to determine why she wasn't working with the informants and helped her get started by arranging a ride-along with another agent and his informant. When Hicks didn't follow up after the ride-along, Robertson asked Chief Steve Anderson to reassign her to the patrol division.

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WORKPLACE TRENDS

Survey finds pay more important than health benefits for most workers. A survey by the American Payroll Association shows that 63% of employees in the United States say that receiving higher wages is more important to them than having better health benefits. "A wage increase is easy for workers to understand," Mike Trabold, director of compliance risk for Paychex, said of the findings. "The value is clear and immediately apparent. In 2017, considering today's unpredictable regulatory environment, the same can't be said for better benefits." More than 34,000 employees responded to the 2017 "Getting Paid In America" survey.

U.S. job tenure down slightly. New research shows that the typical American worker stayed at a job just over five years last year, down slightly from the record high since 1983 set in 2014. Research from the Employee Benefit Research Institute found that the median tenure (midpoint, half above, and half below) for all wage and salary workers ages 25 or older with their current employers was 5.1 years in 2016, compared with the high since 1983 of 5.5 years in 2014 and the low of 4.7 years in 1998-2002.

Report finds employer-provided benefit costs vary sharply by industry. The cost of employer-provided healthcare and retirement benefits, measured as a percentage of pay, varies greatly by industry, with retirement benefit costs experiencing the greatest variation, according to research by Willis Towers Watson. The analysis shows that healthcare costs are substantial across all sectors, ranging from 10.4% of pay in the retail sector to 12.7% of pay in the oil, gas, and electric (OG&E) sector. The disparities among industries are more pronounced for retirement benefits, which include defined benefit, defined contribution, and postretirement medical programs. Total retirement benefits averaged 12% of pay in the OG&E sector compared with roughly 5.5% of pay in the healthcare, high-tech, general services, and retail industries.

Glassdoor names 25 top cities for jobs. Jobs site Glassdoor has announced a new report identifying what it calls the 25 best cities for jobs in 2017. The 25 cities are Pittsburgh, Pennsylvania; Indianapolis, Indiana; Kansas City, Missouri; Raleigh-Durham, North Carolina; St. Louis, Missouri; Memphis, Tennessee; Columbus, Ohio; Cincinnati, Ohio; Cleveland, Ohio; Louisville, Kentucky; Birmingham, Alabama; Detroit, Michigan; Minneapolis-St. Paul, Minnesota; Hartford, Connecticut; Oklahoma City, Oklahoma; Washington, D.C.; Seattle, Washington; Atlanta, Georgia; Baltimore, Maryland; Nashville, Tennessee; Milwaukee, Wisconsin; San Jose, California; Chicago, Illinois; Charlotte, North Carolina; and Dallas-Fort Worth, Texas. ✤

Hicks countered that she worked several of the informants, and she wasn't introduced to the rest of them by their current agent. She was also warned by another agent that Richardson had it out for her.

Demotion upon return from FMLA leave

After Robertson recommended the reassignment, Anderson met with Hicks in December, only eight days after she returned from FMLA leave. The police chief claimed that Hicks preferred Snyder (her old captain) and wasn't willing to comply with orders from her new boss, Robertson. Anderson reassigned Hicks to the patrol division, claiming he transferred her solely based on Robertson's recommendation. He maintained that he always followed Robertson's recommendations.

According to Robertson, when he made his recommendation to Anderson, he didn't want it to look like Hicks was transferred because of her pregnancy, given that she had been back at work for only eight days. As a result of the reassignment, Hicks lost her vehicle and weekends off, and she was slated to receive a pay cut and different job duties. Additionally, officers in the narcotics task force aren't required to wear ballistic vests all day, while patrol officers are.

After the reassignment, Richardson wrote a letter outlining the reasons for the demotion. The letter criticized Hicks because when officers went to her home to pick up her vehicle, she didn't come to the door. Yet the letter also acknowledged that Hicks' husband came to the door and said she was breastfeeding.

Medical conditions related to pregnancy

Before she started back in the patrol division, Hicks took time off when a physician diagnosed her with postpartum depression. Richardson admitted that she asked Hicks if she was suffering from postpartum depression because "something was different about [her]. . . . [She] was a new mom and . . . new moms go through depressed states."

During her leave for postpartum depression, Hicks' doctor wrote a letter to Anderson recommending that she be considered for alternative duties because the ballistic vest she was required to wear on patrol duty was restrictive and could cause breast infections that might lead to an inability to breastfeed. But Anderson didn't believe that Hicks had any limitations because other breastfeeding officers had worn ballistic vests without any problems.

When Hicks returned from leave, Anderson met with her again. In accordance with her doctor's suggestion, Hicks requested a desk job that wouldn't require her to wear a vest along with assurances that she would be allowed to take breaks to breastfeed. But because Anderson didn't consider breastfeeding a condition that warranted alternative duty, he replied that her only options for accommodations were (1) not wearing a vest or (2) wearing a vest that could be "specially fitted" for her. He also told her that she would be assigned to a beat that allowed her access to lactation rooms and that she could get priority to take two breastfeeding breaks per shift.

To Hicks, not wearing a vest was no accommodation at all because it would be dangerous. Furthermore, the larger or "specially fitted" vests were ineffective because they left gaping, dangerous holes. Hicks resigned that day.

Lawsuit results in verdict for employee

Hicks sued the city of Tuscaloosa for pregnancy discrimination and FMLA violations. A jury found that the reassignment was discriminatory in violation of the PDA and retaliatory in violation of the FMLA. The jury also found that the city's failure to accommodate her breastfeeding requests constituted discriminatory constructive discharge in violation of the PDA. The jury awarded her $374,000 in damages. The city appealed.

Hicks had claimed that her reassignment from the narcotics task force to the patrol division was both a discriminatory violation of the PDA and retaliation in violation of the FMLA. On appeal, the city argued that she didn't prove that each of its reasons for her reassignment were false and discriminatory. The U.S. 11th Circuit Court of Appeals (whose rulings apply to all Florida employers) disagreed, noting that multiple overheard conversations in which Hicks' supervisor made defamatory comments about her and a period of only eight days between her return from leave and her reassignment supported the inference that there was intentional discrimination.

To support her constructive discharge claim, Hicks claimed that Anderson's proffered accommodations—patrolling without a vest or patrolling with an ineffective larger vest—made her work conditions so intolerable that any reasonable person would have been compelled to resign. The city argued that she failed to show Anderson harbored any discriminatory animus toward her or deliberately made her working conditions intolerable. The city pointed to the fact that the police chief offered to accommodate her by assigning her to a safe beat with access to lactation rooms, priority in receiving breaks, and a tailored vest.

So where's the line?

The PDA prohibits discrimination "on the basis of pregnancy, childbirth, or related medical conditions." The issue here was whether breastfeeding is a "related medical condition." The court of appeals concluded that it is.

Importantly, the court of appeals noted that "the line between discrimination and accommodation is a fine one." Taking adverse actions based on a female employee's breastfeeding is prohibited by the PDA, but employers are not required to provide special accommodations for breastfeeding mothers. According to the court, "Hicks's case presents a scenario that appears to straddle that line."

While the city may not have been required to provide Hicks special accommodations for breastfeeding, the jury found that its action in refusing an accommodation it afforded to other employees compelled her to resign. She had showed that other employees with temporary injuries were given "alternative duty," and she merely asked to be granted the same alternative duty. The court therefore upheld the jury's verdict on her constructive discharge claim.

The fine bottom line

As the court acknowledged, the line between accommodation (not required by the PDA) and nondiscrimination (required) is a fine one. The balance in this case may have been tipped by the unflattering comments about Hicks' pregnancy and the unfortunate timing of her demotion. While the PDA requires no special accommodations, bear in mind that the comparison isn't limited to pregnancy, but depends on how others with medical limitations have been treated (including light duty for employees on workers' compensation). Also remember that the Americans with Disabilities Act (ADA)—which does require accommodations—may be implicated if the pregnancy gives rise to severe medical limitations. ✤

WAGE AND HOUR LAW

Signed time cards: the difference between 'thrill of victory' and 'agony of defeat'

by Tom Harper
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Florida courts continue to hear many cases in which employees are seeking unpaid wages and overtime based on violations of the Fair Labor Standards Act (FLSA). Wage and hour cases often include claims for attorneys' fees under both the FLSA and the Florida unpaid wages law, Florida Statutes, Section 448.08. And if the employee can show that the employer's violation was "willful," she will ask for a back pay award worth three years of wages under the FLSA and five years of wages under the state's minimum wage law. What's worse, such claims carry personal liability for owners and managers (that may mean you). A recent decision from the federal court in Miami provides excellent guidance on how to defeat wage and hour claims.

Disassembling worker's FLSA case

Pedro Alexis Castaneda Pino worked as a pallet disassembler at Universal Used Pallets, Inc., in South Florida for more than 10 years. He stopped working for Universal in November 2016, the same month he sued the company and its owner, Jose Lesteiro, for unpaid minimum wages and overtime under the FLSA. Universal asked the U.S. District Court for the Southern District of Florida to dismiss the case without a trial.

The court's local rules set forth the procedure that parties must follow when filing motions to have cases dismissed. Under the rules, Universal had to set out in writing each undisputed fact that its motion to dismiss was based on. Pino then had an opportunity to respond and point out which facts were in dispute. A dismissal is

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ASK ANDY

Best practices for separation agreements

by Andy Rodman
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Q *I find myself in the unfortunate position of having to draft separation agreements several times each year. What are your "best practices" for drafting a separation agreement that contains a general release of claims?*

A First of all, there's no one-size-fits-all separation agreement. A separation agreement must be tailored for the facts at hand, so don't simply recycle your template by changing the severance amount and the employee's name throughout the document. Second, a separation agreement is an enforceable contract, so think twice about drafting the document on your own, without the assistance of employment counsel. That said, here are a few pointers to keep in mind.

What to consider when drafting separation agreements

Plain English. Make sure the separation agreement is written in plain English and is easily understood. If you know the employee doesn't read or speak English well, consider having it translated for him.

Definition of the employing entity. In a separation agreement, the departing employee typically releases the employer from any legal claims she may have, so it's very important that the agreement reflect the correct name of the employing entity (which may not be as straightforward as it sounds). It's also a good idea to expand the scope of the release to include the employing entity's parents, predecessors, successors, subsidiaries, affiliates, divisions, assigns, and all of its (and their) owners, officers, directors, members, employees, agents, insurers, attorneys, and assigns. The broader, the better.

Mutual release. If a release is "mutual," then not only is the employee releasing the employer from any claims, but the employer is also releasing the employee from claims. Most employers draft one-way release provisions (in which the employee releases the employer) unless an employee negotiates for a mutual two-way release.

Scope of release. In a perfect world, a release of claims truly would protect an employer from *all* claims filed by an employee. In the real world, however, certain claims can't be released as a matter of law. According to the Equal Employment Opportunity Commission (EEOC), an employee can't waive the right to file a charge of discrimination with the EEOC. So you should "carve out" from the scope of the release the employee's right to file a charge with, communicate with, and participate in an investigation pending before the EEOC.

No waiver of future rights. A release can only operate retroactively, not prospectively. For example, if you say something negative (and false) about the employee two weeks after he signs the separation agreement, he may sue you for defamation. The separation agreement should state that the employee isn't waiving claims that arise after the date he signs the agreement.

Amount of time to consider and sign the agreement. If your company is covered by the Age Discrimination in Employment Act (ADEA)—i.e., you have 20 or more employees during 20 or more weeks in the current or preceding calendar year—and if the departing employee is 40 or older, she must be informed that she has at least 21 days to consider whether to sign an agreement that contains a release of claims. And she must be informed that she has an additional seven days after signing the release to change her mind and revoke her execution of the agreement.

In the case of a group termination (which can include as few as two employees), an employee who is 40 or older must be informed that she has at least 45 days (instead of 21) to consider whether to sign the agreement and an additional seven days to revoke her execution of the agreement. There are several other disclosures that must be made to older employees who are part of a group termination—too many to discuss here, so consult with your employment attorney.

If the departing employee is younger than 40, you must allow her only a reasonable period of time to consider and sign the agreement. I like to give employees at least 15 days. Employees under 40 do not have revocation rights.

Payment terms. Make sure you state in the separation agreement whether the severance payment will be subject to taxes and withholdings, how it will be reported (e.g., on a W-2), and when it will be paid. If the employee is 40 or older, the payment shouldn't be made until the ADEA seven-day revocation period expires.

Advice to consult with an attorney. If the employee is 40 or older, the ADEA requires you to advise him to

consult with an attorney before signing the separation agreement.

Reference the ADEA. If the employee is 40 or older, the release provision of the agreement must expressly reference the "Age Discrimination in Employment Act" as a law under which claims are being released.

Confidentiality—mutual or one-way. Most employers draft confidentiality provisions one-way so that only the employee is bound by confidentiality. A mutual confidentiality provision can prove problematic unless you draft it very carefully because (1) you can't really control what *all* your employees may say and (2) there may be circumstances in which you must disclose the terms of a separation agreement (e.g., for auditing and financial reporting purposes).

Confidentiality—exceptions. You should carve out from the scope of a confidentiality provision the circumstances under which the employee may disclose the terms of the agreement. Circumstances in which confidentiality may be waived typically include:

(1) When the validity of the agreement is challenged;

(2) When a charge or investigation is pending before the EEOC or any other federal, state, or local agency;

(3) When communicating with the IRS or any other taxing authority;

(4) When consulting with attorneys or other advisers;

(5) When communicating with immediate family members; and

(6) In response to a subpoena, a court order, or an administrative order.

Neutral reference. Most employees want their employer to include a neutral reference provision in the separation agreement. If you do include a neutral reference provision, make sure it's consistent with your actual policy and practice. For most employers, that means disclosing the former employee's job title, dates of employment, and possibly compensation in response to a job reference inquiry.

Bottom line

Drafting separation agreements truly can be a trap for the unwary, particularly if you're dealing with an employee who's older than 40, and even more so if you're laying off a group of employees. Separation agreements are important documents, so you should never hesitate to consult with your employment attorney when you're drafting one.

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Your identity will not be disclosed in any response. This column isn't intended to provide legal advice. Answers to personnel-related inquiries are highly fact-dependent and often vary state by state, so you should consult with employment law counsel before making personnel decisions. ✤

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appropriate only when the undisputed facts show that there was no violation of law.

The FLSA requires that employees be paid minimum wage as well as time-and-a-half premium pay when they work more than 40 hours in a seven-day period. To establish his FLSA claims, Pino had to show that he performed work for which he wasn't properly compensated under the law. At the same time, Universal had a duty to keep accurate records of all the hours he worked and records of wages it paid him.

When Universal filed its motion to dismiss the case, it included copies of its weekly time records, which Pino had reviewed and signed each week. Once Universal provided its time records, Pino had to produce evidence that cast doubt on the completeness or accuracy of those records. In a way, time cards create a presumption of hours worked that must be rebutted by the employee if he disputes them. If there's some evidence that the time cards are inaccurate, incomplete, or altered, the employee must show that he performed work for which he wasn't paid. According to the court, an employee must produce "sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference."

Pino argued that there was a genuine dispute over the accuracy and completeness of Universal's time cards. However, the court pointed out that Universal had produced a complete set of time cards for the dates in question, and each time card had been signed by Pino. What's more, Universal claimed that Pino had the opportunity

to review his time cards each week and he signed them without ever disputing their accuracy.

Pino didn't deny that he had reviewed and signed each time card. Moreover, he didn't dispute that he never challenged the accuracy of his time cards during his employment. The court found that he hadn't presented enough evidence to establish that the time cards weren't accurate. According to the court, balanced against a full set of time cards, his "self-serving testimony . . . now that the [time cards] are inaccurate is not enough to create a genuine issue of material fact." The court granted Universal's motion and dismissed Pino's case. *Pedro Alexis Castaneda Pino v. Universal Used Pallets, Inc., Quality Pallets, Inc., and Jose R. Lesteiro,* Case No. 16-24747-CIV-GAYLES (S.D. Fla., October 23, 2017).

Takeaway

Although modern fingerprint devices and electronic timekeepers are nice, the FLSA, which was passed in 1938, doesn't require a time card machine or any other complicated apparatus, just clear documentation of when nonexempt employees start and stop work each day. But it's insufficient for time records to show only that employees performed eight hours of work each day. Instead, you should record the actual time they started work, the time they quit for lunch, when they went back to work after lunch, and when they finished for the day. You can use something as simple as a paper form to document their working time.

Moreover, make sure you have employees certify that the hours on their time records are accurate. You can preprint a statement on the form (or have a stamp made) that says something to the effect of "I certify that the hours on this time record are accurate and represent the actual hours that I have worked. I have performed no other work at home or off the clock." As the *Pino* case clearly illustrates, having each of your nonexempt employees review and sign weekly time sheets can help you avoid problems under the FLSA.

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DUE PROCESS

Gay man's conviction reversed because prospective jurors not asked about potential bias

by Tom Harper
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The 11th Circuit recently reversed the criminal conviction of a gay man involved in an altercation with a former partner because potential jurors weren't questioned before trial to determine if they had any bias against members of the LGBT community. Although the case didn't involve employment claims, Florida employers should be aware that former and current employees who make employment claims involving their sexual orientation will now ask that potential jurors be screened for LGBT bias.

'Spat' between former partners leads to arrest

On the evening of October 26, 2013, Raymond Berthiaume attended the Fantasy Fest parade in Key West with his then partner and now husband, Jhon Villa; his friend Corey Smith; and his former partner Nelson Jimenez. After the parade and some partying, Berthiaume, Villa, and Smith were ready to go home and went to the car. Jimenez didn't return to the car with them.

After the three men waited for Jimenez by the car for some time, Berthiaume went to one of the gay bars and found him. As Berthiaume was leading him by the arm out of the bar, Jimenez grabbed the car keys and ran outside and down a nearby alley. Berthiaume, who was wearing only boxer shorts (or a loin cloth) and flip-flops, pursued him.

Berthiaume was frustrated and banged on a street sign as he ran into the alley, attracting the attention of two police officers. The police observed Jimenez and Berthiaume pushing and shoving each other over the keys and believed they were witnessing a fight between the two men. The police officers broke up the altercation. Jimenez told the officers that he didn't want to press charges and that Berthiaume was his former partner and they were trying to get back together. At trial, one of the police officers testified that "in domestic situations" such as this one, "there is preferred arrest by the State of Florida" to ensure that the aggressor and the victim are separated and have time to cool off after the incident. That was the officer's explanation for arresting Berthiaume at the scene.

Questions would've revealed latent prejudice

When Berthiaume's criminal charge was tried, the judge refused to allow the parties to ask prospective jurors detailed questions about their potential bias toward LGBT persons. Several gay men testified as witnesses at the trial. After Berthiaume was convicted, he appealed first to the trial judge and then to the 11th Circuit, arguing that the lower court's failure to question potential jurors about any LGBT bias was an abuse of discretion because of the high likelihood of prejudice he was likely to face in a trial where his homosexuality was closely connected to the facts of the case.

Berthiaume argued that in a case involving both gay individuals and gay witnesses, it's necessary for courts to inquire into prospective jurors' potential biases against homosexuals to ensure a fair trial. The 11th Circuit agreed and ruled that the judge's refusal to permit any inquiry into whether potential jurors harbored any biases or prejudices against homosexuals was an abuse of discretion. The appeals court ordered a new trial for Berthiaume.

In reaching its decision, the appeals court noted that the U.S. Supreme Court has held that under "special circumstances," the U.S. Constitution may require district courts to ask jurors questions about any race bias they harbor—specifically, when racial issues are "inextricably bound up with the conduct of the trial" and there are substantial indications that racial prejudice would likely affect the jurors. The appeals court reasoned that sexual orientation should receive the same consideration.

Reviewing the transcript from the trial, the appeals court noted that the court "did not ask any questions specific enough to determine whether any of the jurors might harbor prejudices against [Berthiaume] based on his sexual relationships." Although courts ask prospective jurors general questions about whether they can be "impartial," not allowing specific questions about jurors' views on homosexuality prevented any "latent prejudice" from being revealed. *Raymond Berthiaume v. David Smith and the City of Key West,* Case No. 16-16345 (11th Cir., October 5, 2017).

Takeaway

Sexual orientation is now a protected class in Florida. Employers that go to trial in employment cases can no longer assume that jurors' prejudices against the LGBT community will help them. Lawyers representing employees will plant the seed early and screen out any jurors who admit to such prejudices.

You may contact the author at tom@employmentlawflorida.com. ✤

PAID LEAVE

As paid leave laws become more common, challenges increase

Much has been made in recent years about the fact that leave laws in the United States suffer dramatically in comparison to every other industrialized nation. Many companies, large and small, have responded by adopting paid leave policies on their own. But beyond that, there is an increasing effort at the state and even city and county levels to require employers doing business within their borders to offer varying types of paid leave to their employees.

While most of the laws that have taken effect so far are in solidly "blue" states, employers all over the country need to be paying attention if they fall into any of the following categories:

- *They have employees in any of the cities, counties, or states that have enacted a paid leave requirement;*
- *They are federal contractors (which are subject to their own paid leave requirements under an Obama-era Executive Order); or*
- *Their competitors offer paid family and medical leave policies that could make it harder for them to recruit and retain top talent.*

State and local laws

State, county, and city laws and ordinances that require employers to provide paid leave run the gamut from relatively simplistic (Arizona requires employers to provide a minimal amount of sick leave for the employee's own illness) to very robust (Washington guarantees employees up to 90 percent of their wage or salary, with a maximum weekly benefit of $1,000).

Currently, Arizona, California, Connecticut, New Jersey, New York, Rhode Island, Washington, and the District of Columbia have enacted paid parental and/or sick/medical leave laws. Some of the cities and counties with their own requirements include Tacoma, San Francisco, and Montgomery County, Maryland.

While there is a wide variance in what the different laws require, most of them apply to employers that have employees within the state's, city's, or county's borders. So, for example, a company in Kansas with employees in San Francisco would have to satisfy its paid leave requirements for those employees. Some of the laws provide an outright exception or lessen the requirements for very small employers.

Prospects for federal paid leave

While legislation hasn't yet been proposed to implement paid leave at a federal level, the Trump campaign and administration have expressed the desire to do so.

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In addition, the nonpartisan *Kaiser Health News* recently published an article titled "Paid Parental Leave May Be the Idea that Transcends Politics," pointing out that both Democrats and Republicans in Congress have previously proposed legislation that would have created or encouraged paid leave.

While it remains to be seen whether any issue can really "transcend politics," we agree with the position reported in the article that paid leave is "a win-win for businesses and workers, and the economy as well" because of its positive effect on worker retention and loyalty.

Clearly, it's too soon to know where all this will go, but the winds of change seem to be blowing in favor of paid leave laws, at least for the near future.

How are you supposed to keep up?

Too few employers manage their legally mandated leave requirements proactively, at least until after they get into trouble with the U.S. Department of Labor (DOL) or are hit with a lawsuit. Needless to say, that isn't the best approach.

For small companies with a presence in only a few states, a few changes to your leave policies and procedures will likely suffice. For larger companies, especially those with employees in multiple states, the patchwork of varying leave laws that could apply to you (plus the federal paid leave law if that ever happens) are only going to become more difficult to manage. An increasing number of leave management companies now offer outsourced management of every type of mandated leave imaginable. Some even offer a buy-up option of handling the Americans with Disabilities Act (ADA) accommodation process for you.

If you're looking for an external leave management solution, you may want to explore the options offered by your disability insurer first. This is often a good place to start because the carrier is already managing your employees' short-term disability claims, and it's a natural fit for them to handle Family and Medical Leave Act (FMLA) and various types of paid leave as well.

Some of the downsides include that many disability carriers offer leave management only to employers with a minimum number of employees, and others have systems that are too rigid to accommodate and administer your specific leave policies. The companies that offer leave administration independently of a carrier are typically willing to work with smaller employers and can offer more flexibility.

The long and short of it is that there is no one-size-fits-all solution. It will take some time and energy to find the right one for you. ✤

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