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Back to Basics: The 2025 Employment Law Playbook

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The employment law landscape has seen widespread changes on the federal and state levels in recent years. In light of what is poised to be years of even more changes, now is an opportune time to re-examine the basics of a compliant workplace. This post will keep companies ready for whatever comes next by providing employers around the country with a general breakdown of key considerations and best practices for all main phases of employment, from hiring to termination.

Hiring

When it comes to hiring, the first thing employers must keep in mind is compliance with applicable local and state laws concerning pay transparency when posting openings. A hot button issue for state lawmakers in recent years, many jurisdictions have enacted laws requiring employers to disclose estimated salary ranges for advertised roles. Some of those laws also require the disclosure of benefits, commissions, and/or bonuses, and some even apply to internal candidates. For example, Nevada's and Washington's laws require that internal job or promotion candidates also be provided salary information at the candidate's request. Employers need to stay on top of state and local pay transparency laws, which continue to be enacted across the country.

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Next, if your company uses artificial intelligence in the hiring process, it is crucial to ensure adherence to your jurisdiction's law regulating the use of AI in the hiring process. For example, in New York City, employers must disclose to candidates and employees seeking promotion the use of AI in the hiring or job evaluation process and the job qualifications and characteristics being analyzed by the AI. Additionally, NYC employers must conduct regular bias audits to prevent those tools from discriminating, conspicuously publish a summary of the results of those audits, and notify candidates of the data source and type collected (and the employer's data retention policy) and their right to select a different, non-AI selection process. Right now, only New York City, Illinois, and Maryland have these kinds of laws in place, and Colorado's AI law is set to take effect February 1, 2026. New York State and New Jersey's AI in hiring bills were introduced in 2023 and await approval and enactment. In the meantime, New Jersey's Division on Civil Rights just recently published guidance putting employers on notice that they are liable for AI-driven employment discrimination in the hiring process under the state's current Law Against Discrimination.

Employers should also be careful when considering a candidate's criminal history in the hiring process. In some states, "Fair Chance" and "Ban the Box" laws prevent employers from rejecting a candidate solely because of a criminal record; instead, these laws typically require employers to consider certain factors when deciding whether and when to deny an application based on criminal history and limit employers to relying only on convictions directly relating to the job. Some of these laws (for example, in Connecticut and Illinois) also require that employers provide a written explanation to the applicant whenever a conviction is used as the basis for rejecting an applicant. Other laws, such as California's, go even further and allow applicants a chance to respond to a notice of disqualification from employment, challenge the accuracy of the conviction history report used to disqualify them

from employment, and present any evidence of their rehabilitation or other circumstances that are important for the employer to consider. Nuances abound, so reach out to your Akerman attorneys for guidance on your jurisdiction's specific law (if any) on this topic.

Finally, it is always a good idea to maintain and publicize clearly-defined job requirements and essential functions for a given role during the hiring process and beyond. By being as clear as possible about the essential functions from the start, employers can mitigate the chance of later disputes that may arise surrounding a candidate or employee's requests for an accommodation on the basis of a disability or religious belief.

Big picture, employers should take steps to make sure that hiring decisions are not made based on a candidate/applicant's protected status. Keep in mind, too, that protected classes also include temporary disabilities and pregnancy.

Onboarding

Now that the candidate has been chosen and an offer has been extended, employers should pay close attention to their onboarding practices. First and foremost, it may make sense to consider the use of arbitration agreements. While not every potential claim will lawfully be subject to arbitration down the line (namely, claims involving sexual harassment or assault), it is always a good proactive tool to help give employers more options- and limit an employee's options- in the event that a dispute arises. Employers may also be able to limit their legal exposure with class action waivers requiring only individual arbitration or litigation.

Another key to onboarding and beyond is adherence to applicable laws requiring certain trainings. For example, jurisdictions like New York State, New York City, and Chicago require annual harassment trainings, and New York allows those trainings to be

done in-person or online. Other states such as California and Delaware require trainings every two years and within a certain time period after starting a supervisory or nonsupervisory position. To that end, it is always a good idea to implement practices that help employees access and complete those trainings. For example, conducting in-person, company-wide harassment trainings led by employment counsel or a human resources professional will typically satisfy most jurisdictions' requirements, and will also provide more chances for employees to ask questions and interact with (and in turn, absorb) the material. Employers may also find that interactive sessions help foster a safer environment where employees feel more comfortable speaking up later, and contribute to increased productivity and morale. Regardless of how these trainings are done, employers should keep a record of each employee who completes the training and their date of completion, on an ongoing basis, and maintain those records as long as practicable (but at least as long as the applicable law requires).

Employers should also be sure to provide any pamphlets or fact sheets required under the applicable law at the time of onboarding, such as information on discrimination/harassment, unemployment benefits, paid family leave, and disability insurance/leave. If in a state like California or New York, which require employers to provide wage notices to employees, employers should also keep record of those signed wage notices, in addition to signed acknowledgements of company policies (including an acknowledgement of their receipt of an employee handbook).

Performance

The employee has been successfully onboarded and is performing their job, so now it's smooth sailing, right? Hopefully, but because we don't have crystal balls, contemporaneously documenting performance problems is extremely important in protecting your company from a legal dispute down

the line. Employers must make their expectations clear, and should keep written records whenever employees fall short of those expectations.

Additionally, employers should ensure that employees know who they can turn to for any complaints. For example, an employee handbook should clearly identify the person or group to whom employees can issue complaints (typically, their manager or HR) and the existence of any hotline that can be used for complaints. While one designated individual or group may suffice for complaint reporting, employers should consider implementing such a hotline for complaints to help employees feel safe from retaliation and free of any bias. The handbook or applicable policies should be placed in a readily accessible location, such as posted in the physical workplace or available via intranet or shared cloud (but again, check with your Akerman attorney about your jurisdiction's law on accessibility of employee handbooks to make sure you follow the requirements). Employers should also have certain people designated to conduct investigations into any workplace discrimination/harassment complaints, and those investigations should also be well-documented. It may be a good idea to enlist the help of outside counsel to conduct investigations or to assist from the sidelines while an investigation is happening.

In addition to avenues for complaints, employers should also have policies in place for employees to request reasonable accommodation based on a religious belief, disability or pregnancy. Once an employer becomes aware of an employee's need or limitation, they should be sure to participate in an interactive process with the employee to determine if a reasonable accommodation can be made, or if an accommodation would cause undue hardship on the business operations. With pregnancy specifically, employers should heed caution when conducting that analysis and err on the side of granting the reasonable accommodation, since the Pregnant Workers Fairness Act makes many smaller

accommodations *per se* reasonable and — unlike other disabilities — pregnant individuals are still considered "qualified" to perform a role even if unable to perform an essential function of that role for up to 40 weeks (and potentially longer).

Terminations

There may come a time when the employee is not working out for any given reason and an employer concludes that it is time to part ways. This is another stage when it may make sense to enlist the help of in-house or outside counsel, particularly where a wrongful termination, retaliation, or discrimination claim may be imminent or where the employee is on leave or receiving reasonable accommodations prior to or during their termination. Nonetheless, it is always advisable to contemporaneously document the termination meeting and have a witness present to avoid a later he-said/she-said about what occurred or was communicated.

Employers should consider using severance agreements as a means to both financially soften the blow of termination to an employee and also mitigate the chance of litigation by obtaining a release of claims from the employee in exchange for compensation. Signed severance agreements become an important tool in protecting the company from potential claims, but remember: providing an employee with post-termination compensation unaccompanied by their contractual promise not to sue is nothing more than a gift, and will not help with any later claims.

Conclusion

There is a lot to keep in mind in the dynamic field of employment law, and proactive compliance can go a long way in reducing the chances of and developing strong defenses for litigation. By following this guide and staying up to date on the laws that apply to your business and employees, your company will develop its first line of defense for any asserted claim or litigation. The attorneys in Akerman's Labor and

Employment Group are available to assist with any preventative endeavors such as understanding and applying these laws, conducting trainings, and drafting handbooks, as well as defending your company should the need arise.
