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WOMEN IN SILICON VALLEY: CORPORATE AMERICA'S GENDER PARADOX

What Françoise Brougher's U.S. $22.5 million gender discrimination settlement from Pinterest tells HR

- **Deepa Damodaran,** Manager and Editor, Excellence ePublications, HR.com

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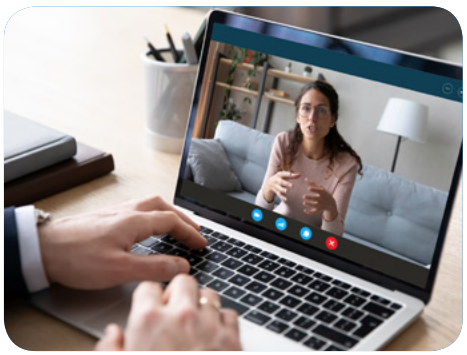

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EDITOR'S NOTE

Sexism and inequality go back a long way in Silicon Valley. The sad truth is, the industry still favors men, whereas, its women deal with inequality, on several fronts, even after three decades.

Gender discrimination is the big, dirty elephant in the room. According to recent studies, boardrooms, C-suits, and STEM jobs are still dominated by men and this scenario may not change anytime soon.

As the year 2020 drew a close, in December, we saw how Pinterest and Google came under the scanner for their sexist approach toward female employees. While the former spent U.S. $22.5 million to settle the case, the latter's issue is still under debate.

This month's cover article ***Women In Silicon Valley: Corporate America's Gender Paradox*** by Deepa Damodaran takes a deeper look into the Pinterest case. It talks about where companies fall short in building a diverse, equal and inclusive culture, and what should HR do to foster such culture at the workplace. A few eminent HR and labor experts share their views on the subject.

On a similar note, JPMorgan Chase recently signed a conciliation agreement with the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) agreeing to settle a long-running pay equity lawsuit alleging that it underpaid some of its female employees. Read Margaret Scheele's article, ***How To Address Pay Disparity Among Women And Minorities In The Workplace,*** to know more about the pay equity practices.

In May of 2019, Colorado Governor Jared Polis signed the Equal Pay for Equal Work Act into law, effective since January 1, 2021. The Act was enacted to address pay disparities affecting women and minorities, and includes several provisions aimed at preventing wage discrimination. Kevin Cloutier and Elizabeth Rowe, in their article, ***Colorado's New Equal Pay Act: What Employers Need To Know,*** will help us understand more about the law.

2021 seems like the end of a dark tunnel as the Covid-19 vaccine is finally out. However, this landmark development raises important questions – can employers require their employees to get the vaccine as a term and condition of continued employment when it becomes available to them? And if an employer implements such a mandate, would it be lawful? Catch up with Katherine Davis' article, ***What To Consider Before Implementing A Mandatory Vaccine Policy,*** to know the answer to the questions.

This is not all. This month's issue of ***HR Legal & Compliance Excellence*** brings to you the latest developments in the HR Legal and Compliance arena to keep yourself protected and compliant.

Stay safe! And, don't forget to send us your feedback.

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Women In Silicon Valley: Corporate America's Gender Paradox

What Françoise Brougher's U.S. $22.5 million gender discrimination settlement from Pinterest tells HR

By Deepa Damodaran

On December 14, 2020, Pinterest, an image sharing and social media platform, coughed up a whopping US $22.5 million to settle a gender discrimination lawsuit.

This settlement, touted to be the largest publicized settlement for a gender discrimination case, ever, was brought by Françoise Brougher, the company's former chief operating officer.

The Pinterest vs. Françoise Brougher suit is notable on several fronts - the size and public nature of the settlement, the fact that there aren't many C-level female executives who went against NDA to go on record about gender and pay discrimination at workplace, and that Pinterest did not fight back the allegations (although it did not admit to any liability either), unlike what happened in the Kleiner Perkins Caufield & Byers case in 2012. Will this be a turning point in addressing gender disparity in the tech industry?

Gender Discrimination: A Corporate America Paradox

Gender discrimination is not new to Silicon Valley. The industry has been called sexist since the early days on.

Time and again, and irrespective of whether you are a startup or a tech giant, we have come across cases of rampant discrimination and bias against women, including senior-level executives, in the industry. Companies such as Google, Tesla, Facebook, Uber, UploadVR, Apple, etc. have all come under the radar on account of gender discrimination.

Helen McFarland, Seyfarth Shaw

"Unfortunately, gender discrimination lawsuits in Silicon Valley and in the high tech industry are common and have been increasing since the 2012 Pao v. Kleiner Perkins lawsuit," says Helen McFarland, Labour and Employment Attorney, Seattle, Seyfarth Shaw.

The American tech industry is still a 'boys only' club, predominantly led by male executives. The number of women running Fortune 500 companies hit a record high of 37 in 2020, according to Fortune 500 list. However, even with 37 female CEOs, women make up just 7.4% of the leaders on the list!

Vikram Shroff,
Nishith Desai Associates

"Tech industry remains male-dominated. As more gender discrimination lawsuits come up, it does give a sense that the issue may be more widespread than what we originally perceived," notes Vikram Shroff, Head, HR Laws (Employment & Labor) at Nishith Desai Associates.

Françoise, in her blog post titled The Pinterest Paradox: Cupcakes and Toxicity, wrote extensively about "the rampant discrimination, hostile work environment, and misogyny that permeates Pinterest."

Françoise notes that although 70% of Pinterest's users are women, "the company is steered by men with little input from female executives. Pinterest's female executives, even at the highest levels, are marginalized, excluded, and silenced. I know because until my firing in April, I was Pinterest's chief operating officer."

Tech Was Not Always a Man's World

Throughout the 19th and most of 20th; through World War II and up to the 1980s, the computer industry was a woman's world. Programming was then predominantly done by women.

Women in Computing

- Ada Lovelace developed the first algorithm intended to be executed by a computer.
- Grace Hopper was the first to design a compiler for a programming language.
- Ida Rhodes was a pioneer in the analysis of systems of programming, designed (with Betty Holberton) the C-10 programming language in the early 1950s for the UNIVAC I. Ida also designed the original computer used for the Social Security Administration.
- Sophie Mary Wilson helped design the BBC Micro and ARM architecture.
- Adele Goldberg participated in developing the programming language Smalltalk-80 and various concepts related to object-oriented programming.
- Mary Lou Jepsen is technical executive and inventor in the fields of display, imaging, and computer hardware.

(Source: Wikipedia)

However, by early 1990, the scenario changed.

"The laws surrounding gender discrimination and harassment continue to evolve and grow worldwide. But it is not enough - there also needs to be more active recognition of the issues and buy-in from the management. Companies need to have a zero-tolerance mindset on such issues, irrespective of whether it involves a junior-level employee or the CEO / founder. Having the right culture, policies, training and messaging can help go a long way in being able to stop gender discrimination at workplace and hopefully nip it in the bud," adds Vikram.

Françoise, 55, helmed 1000 employees at Pinterest. She worked in the company from March 2018 until April 2020, when she was fired by Pinterest's CEO Ben Silbermann, over a '10-minute video call'. She accused Ben Silbermann of having an "in group," and added that men were invited to "meeting after the meeting," and held all the power and influence.

Jessica Westerman, Katz, Marshall & Banks

"Companies should ensure that business decisions are made with the full input of their executive teams rather than a small cadre of an executive leader's close (frequently male) confidants, as was the case at Pinterest. This will ensure that female executives' voices are heard, which will go a long way toward retaining women at the executive level," notes Jessica Westerman, Attorney, Katz, Marshall & Banks.

Gender Discrimination: The Stakes Are High. Now, Becoming Higher

In June, this year, Pinterest's two other staff members, Ifeoma Ozoma and Aerica Shimizu Banks, resigned alleging racism and discriminatory treatment. Following the allegations, over 200 Pinterest staff organized a 'virtual walkout' extending support to their female counterparts and in protest of the company's policies.

"While the discrimination laws have been in place since the early 1960s, social movements such as #metoo have encouraged women to be more vocal about unfair treatment and state legislatures have been modifying existing employment laws to offer additional protection to employees regarding unfair pay and discrimination. Companies should recognize that there is widespread community support for diversity, inclusion and equity (DI&E) initiatives and that there are serious consequences (both financial and reputational) for failing to include women and people of color," adds Seyfarth Shaw's Helen.

The Pinterest settlement is also notable for the provision requiring $2.5 million 'to be used towards advancing women and under-represented communities in the tech industry'.

"Employers are closely tracking these international developments. As the stakes get larger, there will continue to be a more active effort towards redefining and hopefully strengthening an organization's culture and policies," adds Vikram.

Helen Holden, Spencer Fane

"The size and very public nature of the settlement is likely to make businesses pay attention to the seriousness of claims for discrimination and retaliation, and the need for ongoing training efforts. We have seen steady increases in the number of retaliation complaints over the past few years, and that does not look like it is abating any time soon," says Helen Holden, HR Advisor, Employer Lawyer and Litigator at Spencer Fane.

Françoise notes in her blog post that in April 2019, when Pinterest held its initial stock offering, she 'felt something changed'. She was no more invited to board meetings and no one told her why.

"The record-breaking amount of the settlement communicates the seriousness of subtler forms of gender discrimination, such as pay discrimination, no matter how high up the corporate ladder. Hopefully, this development will persuade employers to take pay discrimination claims more seriously," notes Jessica.

Françoise says that with S1 filing, she found that she 'was the only executive on the leadership team given this backloaded deal.' "In my first year, I vested 37 percent of what my closest peer, Chief Financial Officer Todd Morgenfeld, vested in his first year. I would catch up to him eventually, but only if I was not fired first," Françoise adds.

"On the gender discrimination front, companies should audit their existing payrolls and identify instances of pay discrimination across their organizations, then take steps to remedy them. They should also practice pay transparency to promote equal pay for equal work from day one. On the retaliation front, they should implement protections for employees who raise concerns about discrimination in the workplace so that employees are not afraid to speak out about discriminatory treatment," adds Jessica.

Pinterest: Cultural Changes on Cards

Ever since Françoise's lawsuit against the company in August 2020, a number of Pinterest employees have come forward, complaining about the company's culture.

Law firm WilmerHale, which conducted a five-month investigation into Pinterest's company culture, came up with a set of recommendations to change how the firm handles workplace conflicts, including harassment and retaliation.

It specifically recommended the creation of an internal ombudsman's office that can field employee complaints. Pinterest has committed to adopting the recommendations.

A DI&E Culture Should Begin from Top

There has been a lot of discussion around diversity, inclusion and equity. The foremost question asked every time is who drives an inclusive culture?

Josh Bersin, The Josh Bersin Academy

"An inclusive culture begins with the CEO of the company. The most successful inclusive companies are driven by CEOs. If you look at the highest performing companies in the industry they are all very diverse. I worked at IBM in the 1980s. It is a very inclusive company. It's a hard company to work in and they have got their issues, but they have been around a long time. There aren't many tech companies that have lasted as long as IBM," says Josh Bersin, Co-Founder and Dean, The Josh Bersin Academy.

Even after five years since the Silicon Valley tech giants Apple, Facebook, Google, and Microsoft first released their diversity reports, they have only made little progress. While the search engine giant has only 33% female workforce, the social media giant's technical workforce consists of only 23% female in 2020.

Ray Narine, Consumer Reports

Ray Narine, Head of Talent Development, Deputy Chief Diversity Officer, at Consumer Reports, says that there is no second thought on senior leadership's responsibility and accountability when it comes to DE&I's success.

"It definitely starts with the senior leadership and the CEO. When Marta L. Tellado, President and CEO of Consumer Reports, started in 2014, the company's board of directors was more homogenous. Marta, who comes from a Latina origin, could successfully diversify the board. So, the culture needs to trickle down from the top and spread throughout the organization. Leadership needs to show how important it is to the company," Ray adds.

Diversity, inclusion and equity initiatives are slowly but surely becoming a core and integral part of several leading organizations. It is common to see these topics right up on the agenda of the management. In fact, there has also been a trend for the board members to actively push the agenda among the stakeholders.

Mark Arell, Herc Rentals

Mark Arell, Vice President, Talent and Organizational Development, Herc Rentals too notes that there is no substitute for the CEOs commitment to driving performance and an inclusive culture.

"The culture of the company is important to drive performance. Diversity and inclusion are not separate topics for us. It is part of our business strategy. It is a part of who we are and what we are striving for. And it's all focused on driving performance and making us a better place to work." notes Mark.

DE&I: Google Isn't Getting it Right, Yet

On December 2, 2020, Timnit Gebru, Google's former ethical AI team co-lead, took to Twitter announcing that the company forced her out. Timnit accused Google of suppressing her research after she criticized the company's diversity efforts.

Before joining Google, Gebru, Co-Founder of Black in AI affinity group, had co-authored a paper that showed facial recognition could lead to end up discimination as it is less accurate at identifying women and people of color.

More than 1,200 Google employees and more than 1,500 academic researchers voiced their protest against Google.

On December 21, 2020, April Christina Curley, a former Black diversity recruiter, called out on Google for firing her. April detailed, on Twitter, a history of being passed over for promotions and advancement despite possessing a good track record of accomplishments and strong metics.

HR's Role in Building an Inclusive Culture at Workplace

What is it like to be a woman in Silicon Valley? It used to be 'Exhilarating and brutally sexist' during the initial days. 'The bias in the tech industry is not malicious, but it is insidious," says a Silicon Valley insider-turned author, who writes under the pen name Jenna MacSwain. Seems like it has not changed much 30 years down the line.

"Some employers have made great strides in developing diversity, equity and inclusion initiatives focused on training and fostering inclusion among employees. However, others need to understand the value of a diverse workforce, and implement and promote policies to effectively discourage and prevent discrimination," notes Seyfarth Shaw's Helen.

> **HR should be both responsive and proactive. When complaints arise, HR should work with legal teams to ensure that they are thoroughly investigated. HR also should follow up with anyone who makes a complaint, and work to monitor the ongoing environment to ensure that there is no retaliation for those who report instances of potential discrimination or participate in investigations.**

HR is at the front line and has a greater role to play in identifying and mitigating such instances.

"As HR professionals communicate directly with employees, they are responsible for listening to what is happening on the ground. HR professionals should develop strong policies to encourage DE&I, train all of the company's employees on these policies, and promptly and adequately respond to complaints when violations occur," notes Seyfarth Shaw's Helen.

"HR should be both responsive and proactive. When complaints arise, HR should work with legal teams to ensure that they are thoroughly investigated. HR also should follow up with anyone who makes a complaint, and work to monitor the ongoing environment to ensure that there is no retaliation for those who report instances of potential discrimination or participate in investigations. HR can also spearhead training efforts to ensure that all levels of the organization understand the business case for diversity, equity and inclusion," notes Spenser Fane's Helen.

Conclusion

Although the number of women taking Science, Technology, Engineering and Mathematics (STEM) subjects has increased globally, we still have a long way to go when it comes to gender parity in the workplace. There is a lot to be done on the hiring and retention front too. Women still account for only 12% of professionals in cloud computing, 15% in engineering, and 26% in data and AI.

How can HR help in building an inclusive culture and prevent discrimination and retaliation.

"HR has the most crucial role in preventing discrimination as it is in the right position to understand these issues and adopt progressive policies and initiatives, in order to help change the culture. As the bridge between the management and the employees, HR can help communicate the right message across the organization. It can also ensure that necessary formal and informal reporting channels and redressal mechanisms are in place thereby promoting and encouraging employees to use the internal measures," notes Nishith Desai's Vikram.

Despite conversations about gender diversity and inclusivity in tech on national and international levels, the disparity still exists. 'Women are still underpaid, underrepresented and often discriminated'. The industry is yet to achieve gender balance even after 25 years.

- Half of startups have no women on their leadership teams
- There are only 24% women in senior leadership positions (IDC)
- In computing fields, women earn only 87 percent of what men earn. The numbers are even worse for black women (Pew Research Center)

"HR should preach and practice non-retaliation, including by protecting employees who speak out about discriminatory treatment. This will encourage other employees to voice their own concerns about discrimination and facilitate improvements in the workplace," notes Jessica.

It has been 100 years since the 19th Amendment – Women's Right To Vote. We still have a long way to go to achieve equal rights in the workplace.

Pinterest's case is a wake-up call for companies to take a deeper look at their diversity, inclusion and equity front. However, to understand to what extent will it change the gender equity landscape for females in Silicon Valley, we will have to wait more for that to unfold. The choices we make today will have a greater impact on how the future will turn out to be.

Will 2021 be any different?

• • •

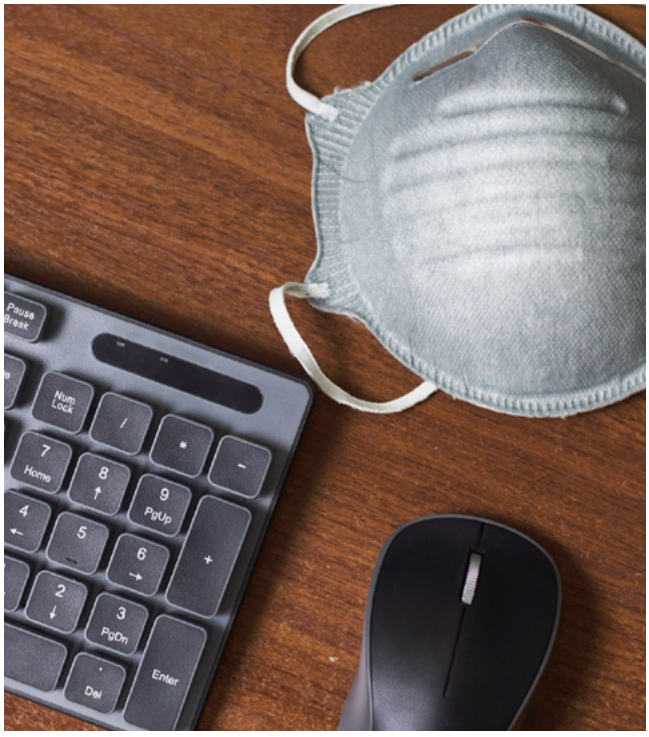
Deepa Damodaran is the Manager and Editor of Excellence ePublications at HR.com.

Would you like to comment?

Covid Quarantine Requirements: Key Updates California Employers Should Know

CDC cuts Covid-19 quarantine time for exposure to others

By Robin E. Largent



To make things endlessly confusing and hard for California employers to keep up with, Governor Newsom issued an Executive Order (EO) changing the quarantine requirements of the Cal/OSHA emergency regulations that just took effect November 30. The EO is effective immediately. Thus, employers who just scrambled to implement policies, practices, and training to comply with the strict Cal/OSHA requirements will now need to quickly modify those policies and practices to comply with the EO.

Here's what employers need to know:

The EO was issued to reflect a change in the California Department of Public Health's (CDPH) guidance regarding the recommended length of quarantine for individuals exposed to Covid-19. The revised CDPH guidance is inconsistent with the requirements of the recently adopted Cal/OSHA regulations (which included a bright-line 14-day quarantine [and exclusion from the workplace] requirement for employees exposed to Covid-19).

The new CDPH guidance appears to mirror recent changes to federal CDC quarantine guidance, and provides as follows:

- All asymptomatic close contacts (within 6 feet of an infected person for a cumulative total of 15 minutes or more over a 24-hour period) may discontinue quarantine after Day 10 from the date of last exposure with or **without** testing.
- During critical staffing shortages when there are not enough staff to provide safe patient care, essential critical infrastructure workers in the following categories are not prohibited from returning after **Day 7** from the date of last exposure if they have received a negative PCR test result from a specimen collected after Day 5:
    - Exposed asymptomatic health care workers; and
    - Exposed asymptomatic emergency response and social service workers who work face to face with clients in the child welfare system or in assisted living facilities.
- All exposed asymptomatic contacts permitted to reduce the quarantine period to less than 14 days must:
    - Adhere strictly to all recommended non-pharmaceutical interventions, including wearing face coverings at all times, maintaining a distance of at least 6 feet from others and the interventions required below, through Day 14.
    - Use surgical face masks at all times during work for those returning after Day 7 and continue to use face coverings when outside the home through Day 14 after last exposure.
    - Self-monitor for Covid-19 symptoms through Day 14 and if symptoms occur, immediately self-isolate and contact their local public health department or healthcare provider and seek testing.
- Context and Considerations
    - Local health jurisdictions may be more restrictive than the above guidance.
    - Health care employers with critical staffing shortages and lacking the staff to provide safe patient care may use Contingency Capacity Strategies as described by CDC where asymptomatic healthcare personnel (including in skilled nursing facilities during an outbreak when all staff are considered potentially exposed) are allowed to work with a surgical mask or respirator, but still report temperature and absence of symptoms each day until 14 days after exposure.
    - Persons who reside or work in a high-risk congregate living setting (e.g. skilled nursing facilities, prisons, jails, shelters) or persons residing or working with severely immunosuppressed persons (eg. Bone marrow or solid organ transplants, chemotherapy) should still quarantine for 14 days in the absence of staffing shortages.

The EO adopts the revised CDPH quarantine guidance and suspends the Cal/OSHA quarantine regulations to the extent they require GREATER quarantine periods/exclusion from the workplace than that mandated by the CDPH guidelines and/or local health department guidance.

In other words, the quarantine period for asymptomatic employees may be reduced to 10 days (and 7 days for a narrow category of specified critical infrastructure workers) and they may not be excluded from the workplace for a longer period than this under the EO, unless an applicable local health department order requires a greater period of quarantine/exclusion.

The EO's change to the Cal/OSHA regulations requires employers to immediately review their newly adopted Covid Prevention Plan and related practices to ensure that they are in compliance with the new EO (and local health department quarantine requirements). Employers may wish to revise the quarantine/exclusion provisions to simply state that "employees with Covid-19 exposure will be excluded from the workplace and required to quarantine the period of time (generally 10-14 days) required under applicable CDPH and local health department requirements."

Employers will need to review local health department quarantine requirements to determine the quarantine length for employees in those jurisdictions. For example, LA County's health department guidance still requires 14-day quarantine. It seems likely that local health departments will revise their guidance to comport with the revised CDPH quarantine guidance, but this will need to be monitored. Sufficed to say, it is virtually impossible for employers to stay on top of, and immediately comply with, all of this ever-changing guidance. Employers should simply do their best to try in good faith to do so.

This article originally appeared here.

Robin E. Largent is the Partner Sacramento Office of Carothers DiSante & Freudenberger LLP.

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Colorado's New Equal Pay Act: What Employers Need To Know

Key questions answered

By Kevin Cloutier and Elizabeth Rowe

Employers operating, even on a limited basis, in Colorado should be aware of Colorado's recent wage disparity and discrimination bill, which takes effect in 2021 and imposes widespread requirements related to record-keeping, disclosure, and transparency.

In May of 2019, Colorado Governor Jared Polis signed the Equal Pay for Equal Work Act into law. The Act will go into effect on January 1, 2021. The Act was enacted to address pay disparities affecting women and minorities, and includes several provisions aimed at preventing wage discrimination, such as:

- Prohibiting employers from seeking prospective employees' wage rate histories;
- Allowing employees subject to wage discrimination to file a civil action; and
- Providing for economic damages in the event of a violation, including liquidated damages.

The Act also contains several broader obligations and prohibitions intended to increase pay transparency, including:

- Requiring employers to announce opportunities for promotion or advancement;

- Requiring employers to disclose hourly or salary compensation and benefits for each posting or job opening; and
- Requiring employers to keep records of job descriptions and wage rate history for its employees.

The Act has the potential to impact employers nationwide, as its provisions cover all employers with at least one Colorado employee, and certain disclosures are required whether the relevant position is based in Colorado or another location. Not surprisingly, the Act has led to a number of questions for employers. Here are some commonly asked questions by our clients:

Frequently Asked Questions

Q. Do the compensation and benefits disclosure requirements apply to all positions, or just those based in Colorado?

A. These requirements apply to Colorado-based and remote-based job postings, with a limited exception. The Colorado Department of Labor and Employment (CDLE) has issued final rules interpreting the Act, which provide that the compensation disclosures do not apply to jobs performed entirely outside Colorado or to postings entirely outside Colorado. As such, disclosure is not required where a job is performed in-person, in a geographic area outside of Colorado. Because a remote-based position could be performed within Colorado, disclosures are still required. However, even for remote-based or Colorado-based positions, where the job posting itself is entirely outside Colorado (e.g., a paper posting not available via the internet), the requirements do not apply.

Q. How specific must employers be in disclosing the compensation for a job posting or opening?

A. The Act requires employers to include the hourly rate or salary compensation (or a range thereof) the employer is offering for the position. This compensation range may extend from the lowest to the highest pay the employer, in good faith, believes it may pay for the particular job.

Q. How specific must employers be in disclosing the benefits for a job posting or opening?

A. The CDLE final rules require employers to provide a "general description" of any bonuses, commissions, or other forms of compensation offered for the job. The rules do not elaborate on what a "general description" entails. However, the legislative history provides some guidance in this respect, as it appears that the Public Comment criticized the non-final version of these rules, noting the specific value of incentive compensation like commissions and bonuses are often unknown when a position is posted. The "general description" language was intended to clarify that a specific range or monetary value of bonus compensation and other benefits were not required.

Q. Do employers have to announce promotional opportunities to all employees, or just to employees based in Colorado?

A. The promotion announcement requirements do not apply to employees *entirely* outside Colorado. Employers need only announce promotion opportunities to employees who perform any amount of work while physically present in Colorado.

Q. Do employers have to announce promotional opportunities in all states, or just opportunities based in Colorado?

A. The Act and the CDLE final rules do not provide any geographic limitation on promotional opportunities that must be announced; employers should announce promotional opportunities in all states to Colorado-based employees.

Q. Does a promotional opportunity have to include a pay raise, or does an increase in responsibilities suffice?

A. A promotional opportunity includes any promotion in compensation, benefits, status, duties, or access to further advancement.

Q. Do all promotion opportunities have to be announced, or just those that would constitute a promotion for the Colorado-based employees?

A. According to the CDLE final rules, a promotional opportunity exists when the employer has or anticipates a vacancy in an existing or new position that could be considered a promotion *for one or more employee(s)*. An "employee" includes any person employed by an employer covered by the Act. Therefore, if any vacancy arises that could be considered a promotion for any person employed by the employer, the employer must make reasonable efforts to announce it to all Colorado-based employees.

This article originally appeared here.

• • •

Kevin Cloutier is a Partner in the Labor and Employment and Business Trials Practice Groups and Leader of the Sheppard, Mullin, Richter & Hampton LLP's Non-Compete and Trade Secrets Team. He acts as the hiring partner for the firm's Chicago office and is a member of the Diversity and Inclusion and Compensation Committees.

Elizabeth M. Rowe is an Associate in the Labor and Employment Practice Group at of the Sheppard, Mullin, Richter & Hampton LLP.

Would you like to comment?

"Ban the Box" Law: Can Employers Consider Reviewing A Job Applicant's Criminal Conviction History?

New amendments aim to further reduce employment barriers for ex-offenders

By Lisa Burden

The Aloha state has tightened the "Ban the Box" law — reducing the number of years employers can go back in considering criminal convictions.

Planning to open an office in Hawaii? Here is some small business news that may be useful. Hawaii legislators have tweaked their "Ban the Box" law, reducing the number of years that employers can consider when reviewing a job applicant's criminal conviction history.

Previously, public and private employers could go back 10 years in considering a job applicant's criminal record. The new law distinguishes between felonies and misdemeanors, limiting employers to consideration of felony convictions only as far back as 7 years and as far back as 5 years for misdemeanor convictions, excluding periods of incarceration.

Hawaii governor David Ige signed the new requirement into law on September 15, 2020. The amendments took effect immediately upon the democratic governor's signature.

Hawaii was one of the first states to create a "ban the box" law, putting its version of the law into place in 1998.

Getting Rid of the Checkbox

The term "Ban the Box" refers to the box on job applications that jobseekers have to check if they have a criminal record. An estimated 70 million people, or nearly 1 in 3 U.S. adults have criminal records, according to 2018 statistics available from the National Conference of State Legislatures. "Ban the box" laws make it easier for ex-offenders to obtain jobs.

As of September 2020, 36 states and more than 150 cities and counties have adopted "ban the box" laws to reduce employment barriers for ex-offenders, according to Employment Screening Resources — a Novato, CA.-based company that performs employee background checks.

Aloha State Narrows Consideration of Criminal Records

The purpose of the changes is to place further limitations on the convictions that can be used in employment decisions, the state legislators noted in the bill.

"Unfortunately, Hawaii's current "ban the box" law, specifically its ten-year conviction record "lookback" exception, may continue to facilitate employment discrimination against individuals who have a criminal history, but who have long since paid their debt to society and pose little to no risk to an employer or the public," the state legislators noted in the bill.

"The legislature finds that the ten-year "lookback" period for conviction records should be shortened to reduce unnecessary employment discrimination against individuals with old and relatively minor conviction records, in furtherance of economic self-sufficiency, and to reduce crime and recidivism rates," they noted.

The problem of old convictions in hiring is made worse, the state legislators said, by background checks that might be inaccurate or show expunged records.

Rational Relationship Test Still Applies

Apart from the limitation based on time in considering criminal convictions, Hawaii employers also have to comply with a job suitability requirement for looking into an applicant's criminal record — the "rational relationship test."

An employer may inquire about and consider conviction records if those records have a "rational relationship" to the duties and responsibilities of the position in question. However, that suitability determination can only occur after the applicant has received a conditional job offer.

Exceptions Not Affected

There were no changes to exceptions to inquiries into criminal records that already exist in Hawaii's "ban the box" law and those exceptions still apply.

Employers can still inquire into an individuals' criminal history for employment purposes for several specific reasons such as:

- A job with the Department of Education
- The judiciary
- Armed security services
- Private schools
- Financial institutions insured by a federal agency
- Insurance companies
- Public library system or the Department of Health

"Ban the Box" Laws for All States

Hawaii isn't the only jurisdiction to consider a "ban the box" law. Even in the midst of the pandemic, several other cities and states have amended, approved, or enacted such a law.

California's "Fair Chance Act" went into effect in January 2018, making it illegal for employers in California with 5 or more employees to ask about an applicant's criminal record before making a job offer. Under new regulations promulgated by the California Fair Employment and Housing Council that went into effect on October 1, 2020, the definition of an "applicant" was expanded to include individuals who begin work upon receiving a conditional offer of employment but before the employer has conducted or completed a criminal background check.

The change was "ostensibly prompted by the delay some employers are encountering in obtaining relevant criminal history information due to the Covid-19 pandemic, the new rule ensures that individuals working pursuant to a conditional job offer still enjoy the protections afforded by the CFCA to applicants," according to Amanda M. Gomez, an attorney with Esptein, Becker & Green.

Other States Considering a Ban the Box Law

Maryland's "ban the box" law went into effect on February 29, 2020 after lawmakers overrode a governor veto. It forbids all employers with 15 or more full-time employees from asking job applicants to disclose criminal records or criminal accusations before the first in-person interview.

In Virginia, a new law that decriminalizes simple possession of marijuana also contains a "ban the box" provision prohibiting employers from requiring job applicants to disclose information concerning criminal charges, arrests, or convictions for simple possession of marijuana went into effect on July 1, 2020, Epstein, Becker & Green attorney Amanda Gomez has noted.

In St. Louis, Missouri, beginning January 1, 2021, employers in St. Louis with 10 or more employees cannot base a hiring or promotion decision on an applicant's criminal history. They can only do so if they can show that the decision is based on all relevant information reasonably available to it and that the decision regarding the applicant's criminal history is reasonably related to the duties and responsibilities of the position, according to Jason P. Brown and Robert T. Quackenboss, attorneys at Hunton Andrews Kurth LLP. The law was unanimously passed by the City of St. Louis Board of Alderman in January 2020.

In Suffolk County, New York, employers with 15 or more employees cannot inquire about a job applicant's criminal convictions during the application process or before a first interview as of August 25, 2020.

In Waterloo, Iowa, a city ordinance that prohibits employers with 15 or more employees within the City of Waterloo from, among other acts, requiring applicants to disclose arrests, convictions, or pending criminal charges during the application process, including, but not limited to, any interview became effective July 1, 2020.

Lisa Burden is a Freelance Writer. She specializes in writing about legal and business topics.

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What Does The EEOC's Guidance On Covid-19 Vaccination Say?

Key takeaways

By Amy L. Angel and Natalie M. Pattison

The Equal Employment Opportunity Commission (EEOC), as anticipated, is permitting mandatory Covid-19 vaccinations, with some exceptions.

The EEOC released guidance answering important questions on how Covid-19 vaccinations interact with the legal requirements of the Americans with Disabilities Act (ADA), Title VII of the Civil Rights Act of 1964, and the Genetic Information Nondiscrimination Act (GINA).

Here are the main takeaways:

Medical Examinations & Disability-Related Inquiries

The Covid-19 vaccine is not a medical examination. Neither is asking an employee for proof of vaccination. This means employers are free to require and administer the vaccine without having to meet ADA standards for medical examinations.

However, pre-screening vaccination questions may be subject to the ADA restrictions for disability-related inquires. The EEOC emphasized the distinction between situations where an employer-required vaccine is administered by the employer (or a third party with whom the employer contracts to administer a vaccine), and situations where an employee voluntarily receives the vaccine or receives an employer-mandated vaccine from an unrelated

third party, such as a pharmacy or other health care provider.

If an employer requires *and* administers a Covid-19 vaccine, any pre-screening vaccination questions likely to elicit information about a disability must comply with the ADA requirement that such questions be job-related and consistent with business necessity. To satisfy this requirement, an employer needs to have "a reasonable belief, based on objective evidence, that an employee who does not answer the questions and, therefore, does not receive a vaccination, will pose a direct threat to the health or safety of her or himself or others." In contrast, this requirement does not apply to disability-related screening questions that are asked by either (1) an employer who offers the vaccine on a voluntary basis, or (2) by a third party (that does not have a contract with the employer), such as a pharmacy or other health care provider.

Employers that do not administer the vaccine are allowed to ask employees for proof of vaccination—it is not a medical examination or disability-related inquiry under the ADA. However, if the manner in which an employer requests proof may elicit information about a disability, it will be subject to the ADA standard for disability-related inquiries. The EEOC encouraged employers to expressly warn employees not to provide any medical information with proof of receipt of a Covid-19 vaccination. To avoid implicating the ADA, employers should essentially ask for a "yes" or "no" with respect to proof of vaccination and not why an employee has not received the vaccine to avoid gathering any medical-related information.

ADA & Title VII Accommodations

The EEOC affirmed that employers must provide reasonable accommodations for employees with an ADA-covered disability or sincerely held religious belief that prevents them from receiving a vaccine. However, employers are not required to provide a disability accommodation that would pose a direct threat to the health or safety of other employees. If an employee's ADA-covered disability prevents them from receiving a vaccine, the employer must show that an unvaccinated employee would pose a direct threat to other workers and the threat cannot be eliminated or reduced by reasonable accommodation. Even if an accommodation cannot eliminate or reduce an unvaccinated employee from presenting a direct threat to the workplace, the employee may be entitled to other reasonable accommodations such as remote work.

Likewise, employers do not have to provide a religious accommodation if it would pose an "undue hardship," which is defined under Title VII as having more than *de minimis* cost or burden on the employer. (Note that the standard for "undue hardship" is different for religious accommodations than for disability accommodations.) The EEOC encouraged employers to assume that an employee's request for religious accommodation is based on a sincerely held religious belief. But, employers are justified in requesting additional information if the employer has an objective basis for questioning either the religious nature or the sincerity of a particular belief, practice, or observance.

The EEOC also noted that administering a Covid-19 vaccine does not violate Title II of the Genetic Information Nondiscrimination Act (GINA), but pre-screening questions that ask about genetic information may violate GINA.

This article originally appeared here.

Amy Angel is a Partner at Barran Liebman LLP, representing public and private employers in all stages of employment litigation, including advice and compliance, administrative complaints, and trial as well as appeal. Amy works with employers of all sizes, from small local companies to national companies with operations in Oregon and in a wide-variety of industries, including construction, retail, manufacturing, agriculture, law, and health care, just to name a few.

Natalie M. Pattison is an Attorney Barran Liebman LLP. She is a member of the firm's employment, labor relations, and benefits practices, where she specializes in drafting memoranda, conducting legal research, and developing policy procedures, trainings, and handbooks.

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Return To Work: How Good Leaders Can Facilitate A Safe Reopening

Important competencies that help employees feel safe and heard

By Aggie Alvarez

Team leaders are preparing to bring their teams back into the office, and their primary concern is to lead their employees through this crisis with safety and composure at the forefront. During this time, there are a number of variables at play that can have a major impact on individuals from work-place-to-workplace. This means that, right now, leaders are the key resources employees are looking toward to help them return cautiously and effectively, maintain their personal safety, and look out for their best interests and health moving forward. It's a large task for leaders, but using the crisis and recovery leadership competency model, it's one that is possible and manageable.

Facilitating the Return to the Workplace

More so than normal, leaders must be present, communicative, and strong in order to facilitate employees returning to the office. There may be an excess of caution, some nervousness, and some uncertainty as to how things will have changed in the wake of the pandemic.

Before managers can effectively lead their teams, they need to take a moment to understand what's ahead of them and the best way to address it. The Selection Report for the Crisis and Recovery Leadership job model details how an individual aligns with the core competencies required to successfully lead, while maintaining morale and productivity, especially when there are many lingering questions. The ability to anticipate and prepare for what's in store will help leaders be more effective in a smooth transition back into the workplace. Important competencies that help employees feel safe and heard include:

- Active Listening
- Decisiveness
- Communication
- Planning
- Priority Setting
- Adaptability
- Composure

Recovering from Crisis

Good crisis leaders use empathy, active listening, and communication to identify the best ways to help employees feel comfortable, safe, and heard upon their return. When leaders build strong, trusting relationships with their employees throughout the crisis, their team is more likely to help them iron things out and build new processes as things return to normal.

Recovery requires leaders to see what was working before that needs to remain, what no longer works and needs to be replaced, and what organically occurred that can help them in the future. It requires perceptiveness, problem solving, and action in order to make it happen. They need to be agile, perceptive, organized, and remain composed as things may not always go according to plan. The ability to be adaptive without hesitating to make key decisions makes for confident leadership that employees can turn to for guidance and support during stressful and ever-changing situations.

What If They Don't Want to Return?

Understandably, there will be some employees who are uncomfortable with returning to the office. Perhaps they have small children and no child care has opened yet. Perhaps they are the sole caregiver to an elderly family member. Perhaps they themselves are high risk. Perhaps they simply do not feel safe returning to the workplace. There are valid reasons why people would want to opt-out of returning from work-from-home, and those employees should be heard.

Examine the policies your company has put in place for returning to the workplace. Is there an opt-out option available to employees? Are there alternate accommodations that can be made for those under extenuating circumstances? Right now, listening to the concerns of employees is of the utmost importance. Be sure that every individual feels heard, understood, and that an agreement can be reached that is acceptable and beneficial to everyone involved. Leaders may be the go-between in this case, where they act as advocates for employees, which means communication and negotiation skills are critical at this time.

What If Another Shutdown Happens?

One of the largest challenges of this moment is that things can change quickly, and with little warning. As some states begin to reopen, others are halting their reopening efforts, and some may be shutting down once again. The only certainty is that there is nothing to be certain about. Plans put in place today may no longer be the plan that works tomorrow. Be sure leaders understand every contingency plan, every alternate accommodation possible, and which scenarios lead to which response plans.

Communication will once again be a critical need as situations change and the rules and policies fluctuate to ensure the health and safety of employees. Be sure to inform employees every step of the way, let them know what to expect given each contingency and every level of warning should case grow in their region.

Do they know what happens if there's a spike in cases or an outbreak in their region? Do they know what happens if the state reinstates a shutdown? Do they know what happens if things continue to improve? Open communication, answering questions, and keeping employees informed and in the loop will be the top priority during the next few months as things are in flux.

Knowing which competencies to lean on in an unpredictable and unprecedented crisis can be a considerable challenge, but by better understanding your leaders and their behavioral strengths can help your organization better facilitate and manage the transition bringing employees from the work-from-home back into the workplace.

This article originally appeared here.

Aggie Alvarez is Marketing Communications Manager at Caliper.

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Top Pick

How To Address Pay Disparity Among Women And Minorities In The Workplace

Key practices to ensure pay equity

By Margaret Scheele

JPMorgan Chase recently signed a conciliation agreement with the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) agreeing to settle a long-running pay equity lawsuit alleging that it underpaid some of its female employees. Key provisions of the November 2 agreement require JPMorgan to pay $800,00 in back pay and interest to affected female employees, to conduct an annual pay equity analysis of its U.S. employees for the next five years, and to allocate $9,000,000 during the five-year period for pay adjustments for women and minorities to address pay equity.

The Lawsuit

The OFCCP, which enforces anti-discrimination and affirmative action obligations under Executive Order 11246 for companies that contract with the federal government, sued JPMorgan in 2017. The agency claimed that the company discriminated against a group of at least 93 female employees by compensating them significantly less than their male counterparts.

As a federal government contractor, JPMorgan must comply with affirmative action obligations, including ensuring that it does not discriminate against its employees on the basis of sex in its compensation practices. According to the Administrative Complaint filed by the OFCCP, the alleged pay disparities dated back to 2012. In addition to pay disparities, the OFCCP claimed that JPMorgan "failed to evaluate compensation systems applicable to individuals employed in the [impacted group] to determine whether there were gender-based disparities."

Key Settlement Terms

As noted above, JPMorgan will pay approximately $9.8 million dollars to resolve the lawsuit. The conciliation agreement not only addresses the alleged pay disparities impacting class members, which was narrowed to 67 from the original 93, but implements an annual pay equity analysis system in effect for the next five years aimed at ensuring that women and minorities are also being compensated equitably.

Using the analyses, JPMorgan has agreed to allocate $1.8 million per year for the five-year period and to make annual pay adjustments for women and minorities to address pay equity. If the pay adjustments required in a given year total less than $1.8 million, JPMorgan will use the differential to fund inclusion and diversity efforts and programs.

The company is also required to provide annual progress reports of its compliance with the annual analysis requirements of the agreement. Those reports will be confidential and privileged.

The agreement also contains favorable terms for JPMorgan. The OFCCP will close "all pending, scheduled or in-person compliance evaluations" of JPMorgan. Further, assuming JPMorgan complies with the terms of the agreement, it will be exempt from OFCCP audits for at least seven years. Of course, JPMorgan must continue to comply with its affirmative action obligations under Executive Order 11246.

Takeaways

Although the Labor Department has had some recent setbacks in pay bias litigation (most notably losing a huge case filed against Oracle in California alleging discrimination against women and minorities in pay practices), it continues to enforce its anti-discrimination mandates and it obtained a fairly sweeping settlement against JPMorgan. Companies should remain vigilant and audit their pay practices to ensure pay equity.

While JPMorgan had certain legal obligations to ensure pay equity as a federal contractor, pay equity requirements are not limited to large federal contractors. There are a myriad of other federal, state, and local laws that create obligations for employers to ensure that women (and other employees) are not underpaid.

This article originally appeared here.

Margaret J. Scheele is a Partner at Fisher Phillips LLP. As a former in-house attorney, Margaret understands that her clients deal with real business challenges, not just abstract legal issues. She works for a range of clients in a variety of industries, including aviation, food service, telecommunications, health care, and government contracting.

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Medical Interpreters Deemed Employees, Not Independent Contractors

The detrimental effect of non-compete agreements

By Mark Tabakman

If recent history teaches anything, it is that no industry is immune from attacks on employers who allegedly misclassify workers as independent contractors. In an offbeat case, this has occurred to a company that utilized medical interpreters. The case is entitled *In Re: Ingrid L. Vega, d/b/a Professional Interpreters of Erie v. Commonwealth of Pennsylvania, Department of Labor and Industry, Office of Unemployment Compensation Tax Services*, and was filed in the Commonwealth Court of Pennsylvania.

The three-judge panel affirmed an administrative finding by the Department of Labor and Industry that these Interpreters were misclassified. The Court stated that "the department issued an extensive set of findings of fact that highlight the many policies, procedures, and agreements petitioner utilized in its relationships with the interpreters, which demonstrate that petitioner retained control over the interpreters." The Company did not put forth sufficient evidence to alter the conclusion reached below.

The Court focused on the control element and found that the Company exercised sufficient control to label the people as "employees." The Company set the pay rates of the people, provided name badges

and gave the workers training. The Company also controlled their work assignments and, significantly, compelled them to sign non-compete agreements. The Company also evaluated and monitored the work performance of the workers. The Court succinctly noted that "overall, based upon the supported findings of the department, petitioner maintained significant control over the interpreters, and petitioner did not provide sufficient evidence to rebut the presumption of employment regarding control or direction in the interpreters' performances."

The Company argued that the people were independent contractors because they had the right to work for other agencies, allegedly did not receive training and used their own supplies and equipment. The Pennsylvania DOL, however, found that training was provided and looked at the non-competes as a strong factor in favor of employee status.

The Takeaway

This case is offbeat because usually the putative employer's defense fails because it cannot show the independent contractor is in their own "independent business." Usually, the employer is able to show a lack of control. Here, that was different—giving training, name badges, setting pay rates, evaluating performance, are all clear indicia of control. The existence of the non-compete agreements, however, was the death knell to the employer's defense.

Forget the non-compete…

This article originally appeared here.

Mark Tabakman is a Partner at Fox Rothschild LLP. He is a Labor and Employment Lawyer who handles both union and non-union matters for employers. He counsels Human Resource Professionals and in-house counsel in complying with the myriad federal/state employment laws to provide creative, practical, and cost-effective solutions to employment issues and problems. Mark concentrates in wage-hour law. He has deep experience in construction wage-hour law, where he represents construction contractors and sub-contractors in federal Department of Labor Davis-Bacon cases and audits, Service Contract Act cases and audits, state Department of Labor prevailing wage inspections, audits and debarment proceedings.

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What To Consider Before Implementing A Mandatory Vaccine Policy

Are mandatory vaccine policies lawful?

By Katherine Davis

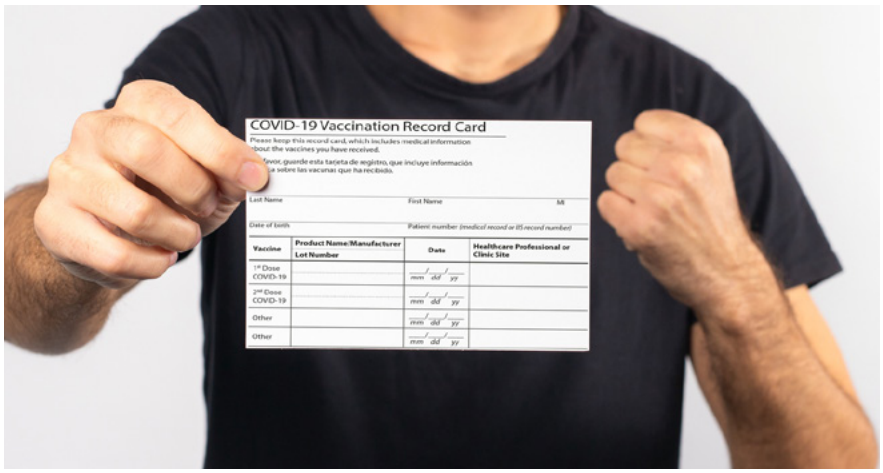
The first Covid-19 vaccines have been released, with more to come in the near future. This landmark development raises important questions – can employers require their employees to get the Covid-19 vaccine as a term and condition of continued employment when it becomes available to them? And if an employer implements such a mandate, would it be lawful?

Are Mandatory Vaccine Policies Lawful?

The Equal Employment Opportunity Commission ("EEOC") spoke on December 16, 2020 on the Covid-19 vaccine. Section K of the Guidance was newly added on December 16, and specifically discusses vaccine-related issues. The Guidance addressed concerns around vaccines related to several federal employment laws that the EEOC is tasked with enforcing, including the Americans with Disabilities Act ("ADA"), Title VII of the Civil Rights Act of 1964 ("Title VII"), and the Genetic Information Nondiscrimination Act ("GINA").

This Guidance discusses the potential legal issues that are likely to develop, but does not offer an opinion as to the ultimate legality of a mandatory vaccine policy. Such a policy is likely lawful, so long as an employer provides reasonable accommodations to those who need them for health or religious reasons and does not collect any health or genetic information in administering the vaccine.

But it is important to note that the EEOC is only responsible for enforcing a small subset of laws that are applicable to employees and that mandatory Covid-19 vaccination policies could be subject to other types of legal challenges. Employers should carefully monitor this issue.



What Should Employers Take Into Consideration When Deciding Whether to Implement a Mandatory Vaccine Policy?

When deciding whether to implement a mandatory vaccination policy, employers should carefully consider the consequences, including whether requiring the vaccine is necessary for the normal functioning of the workplace. For example, a health care provider that treats Covid-19 patients might feel it necessary to implement a mandatory vaccine policy, whereas an office that has been working remotely and can continue to do so may not need such a policy.

If an employer feels the workplace necessitates a mandatory vaccine policy, there are further questions to ask. Who will be required to get the vaccine? What will the procedure be for administering the vaccine? Will the employer pay for the vaccine? What will the consequences be for employees who refuse to be vaccinated (without a legitimate reason)? When will the policy go into effect? Employers will need to carefully consider these issues before implementing the policy.

The Guidance provides some suggestions as to overall legal risk for employers who would like their employees to be vaccinated. It is much less risky for employers to encourage their employees to get the vaccine, rather than mandate it. If a vaccine mandate is necessary for the work environment, it is also less risky to require employees to produce proof that they have been vaccinated for Covid-19, rather than to provide the vaccinations themselves.

Most importantly, it would be prudent for an employer to consult with a competent labor and employment attorney that will help them think through all of the issues raised above and advise it on the best way to implement such a policy for its particular workforce.

Key Takeaways

1. The EEOC has issued new guidance on the Covid-19 vaccine and potential legal implications under the employment laws it enforces. While it does not offer a final opinion, it does suggest that a mandatory vaccine policy is likely lawful so long as the employer provides reasonable accommodations for health and religious reasons and does not collect health or genetic information.
2. Employers should carefully analyze whether it makes sense for them to implement a mandatory Covid-19 vaccination policy. Depending on the work environment, it may not make sense to implement one.
3. Employers who wish to implement a mandatory Covid-19 vaccination policy should seek the advice of a competent labor and employment attorney before attempting to implement it.

This article originally appeared here.

Katherine Davis is an Associate in the Spencer Fane LLP.

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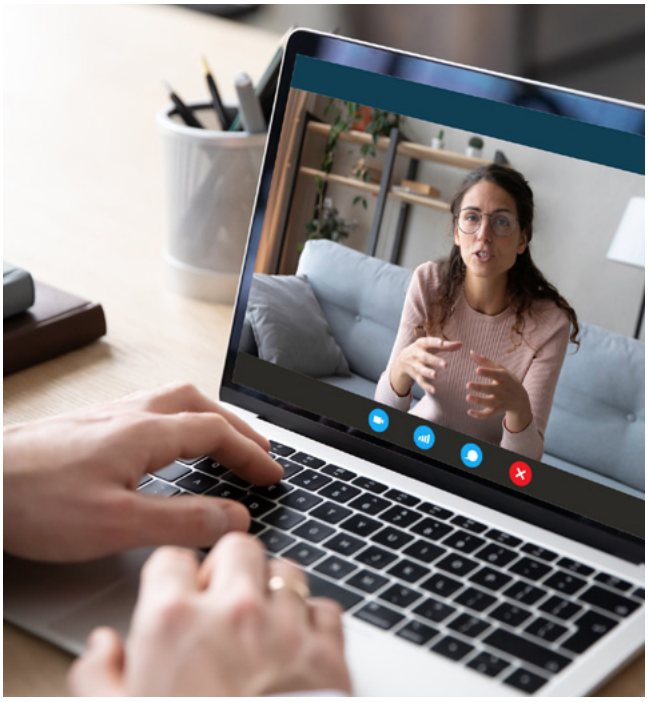
What You Need To Do When An Employee Seeks Time-Off To Deal With Covid-Related Issues?

Key insights

By Janette Levey Frisch

The Families First Coronavirus Response Act (FFCRA) will expire in a few days. Can Congress extend the FFCRA? Sure. There's no sign that it will do so at the moment, though. Could Congress resurrect the FFCRA once we have a new Administration in Washington? Sure, but in all likelihood that will still leave a gap.

So, if the FFCRA expires and there's no extension, does that mean that employees do not have job-protection or paid leave if they are impacted by the Covid pandemic? Does that mean that you, as an employer, are now off the hook, and don't have to allow your employees to take time off, or hold their jobs open if they are affected by the pandemic? Not necessarily. A patchwork of other laws may impact your company, and may still require you to provide time off, and job-protection to your employees.



Let's explore a bit, shall we? The Covid-19 pandemic has been with us now for close to a year. That means that state and local governments have had time to respond. Many of them have done so by passing emergency Covid-19 legislation, and some of that legislation gives employees the right to take time off if they or a loved one is impacted by the current crisis. Some states have amended existing laws to address the situation. Some have actually passed new, separate laws. In addition, the FMLA and the ADA may impose obligations in this context.

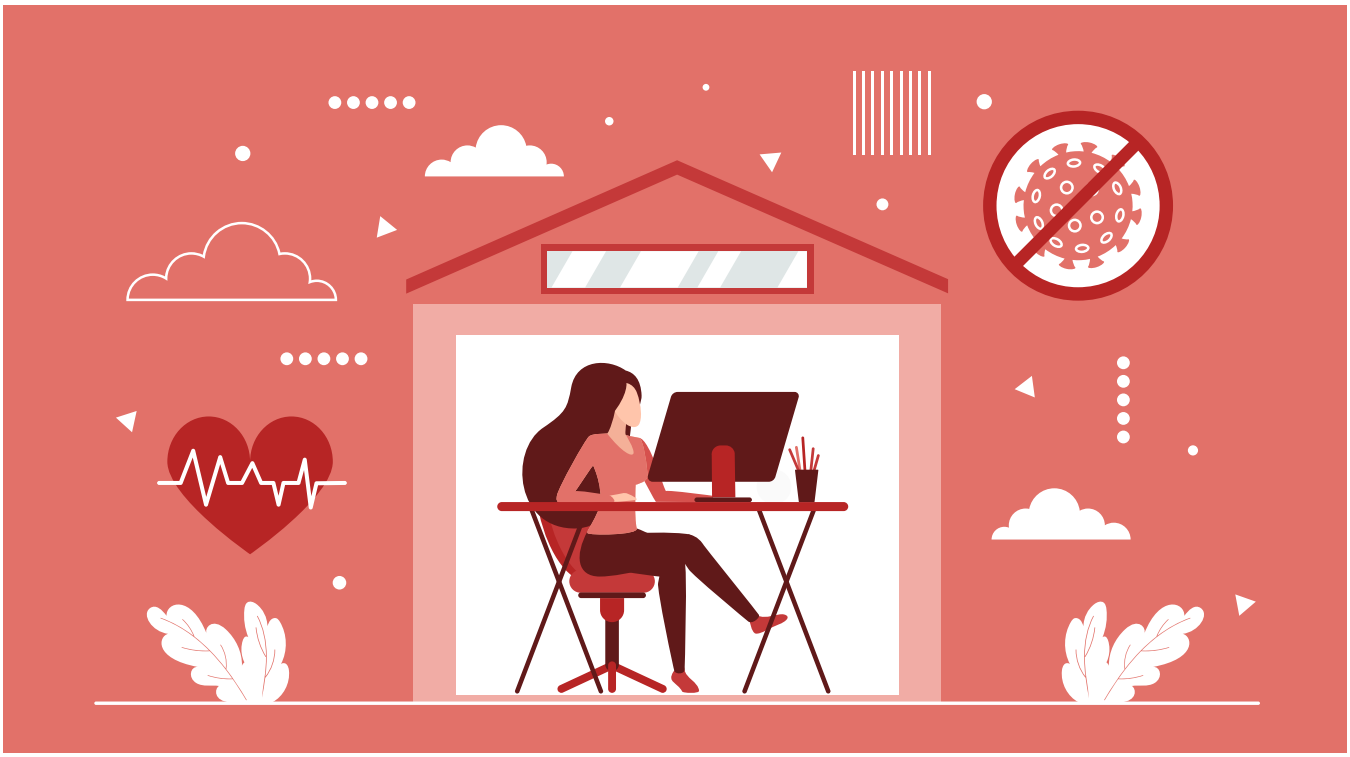
Starting with FMLA: An employee who has Covid or whose parent, child, or spouse has Covid will qualify for up to 12 weeks' job-protected leave and continuation of health benefits. In such a situation you will have to comply with all existing, applicable regulations. If you try to stop the employee from going out on leave, or you take adverse employment action against such an employee, or you fail to restore him/her to the same or an equivalent position, you risk being liable for FMLA violations. One thing you will not have to do for an employee on FMLA leave (assuming no other laws apply to them) is pay them, as FMLA leave is unpaid.

An employee with an underlying condition may be entitled to job-protected leave as a reasonable accommodation of a disability under the ADA. Here too, the leave is unpaid. Note that ADA-related leave is generally for an employee's own condition. Things can get a bit tricky here, though. Your employee might tell you s/he's afraid to come to work. On the one hand, then "I'm afraid", without more, generally will not be a basis for employee leave.

On the other hand though, if the employee has an underlying medical condition that makes them more vulnerable to Covid–and to complications from Covid–you may have to treat that statement as a reasonable accommodation request. Similarly, if your employee has an anxiety disorder, the pandemic may serve as a catalyst for exacerbating the anxiety–and again, the employee's statement, "I'm afraid", might be one you have to treat as a reasonable accommodation request.

As of now, nine (9) States (CA, RI, NJ, NY, CT, WA, CT, OR, CO) have passed some version of Paid Family Leave. Five of those nine State laws could provide employees paid leave now. Some of those laws only provide paid leave to care for a family member with a serious health condition. Most of those laws define "family member" more broadly than the federal FMLA. Some of the more recently-passed laws will allow employees paid leave for their own medical issues. Many other states have passed Family Leave laws providing unpaid leave. These laws tend to be similar to the federal FMLA, with more generous leave time and, in some cases, broader definitions as to who is a "family member".

Whether the leave is paid or not, employees entitled to leave under such laws will generally be entitled to job-protection and will be protected from retaliation. Taking adverse action against an employee seeking leave under these laws, or otherwise attempting to exercise their rights could open you up to significant liability.



Employees working in States or localities that have Paid Sick Leave laws will also get some paid leave, albeit for a shorter time than what's available under paid family leave laws. Some States have modified existing Paid Sick Leave laws to allow for Covid-related leave. Some have actually passed new emergency Covid-19 legislation, granting specific Covid leave. A number of states and localities are now specifically allowing employees to take time off to care for children whose school or childcare is closed due to the Covid pandemic.

CA, NJ, NY, DC, AZ, MI, OR, RI, VT, WA are among the States that either provide Paid Sick Leave (and paid leave for Covid reasons) or otherwise have laws dealing with school closings and related issues that may allow leave time, paid or unpaid. Philadelphia now allows the use of accrued PTO for Covid reasons. Pittsburgh apparently is poised to provide employees with up to 14 days' leave for Covid issues. Many counties and municipalities also have Covid-related leave laws as well.

The above is NOT by any means intended to be an exhaustive list of states or localities providing Covid-related leave. It is merely intended to make you aware that, just as Covid itself will not be expiring after December 31 (that would be awesome if it did though, right?) your obligations to provide Covid-related leave to your employees are probably not going to disappear either — at least not entirely.

You know what you gotta do then, right? You guessed it — speak with your friendly local employment counsel to determine what you need to do when presented with an employee seeking time off to deal with Covid-related issues.

This article originally appeared here.

Janette Levey Frisch is an Employment/HR Attorney and the Founder of The EmpLAWyerologist Firm.

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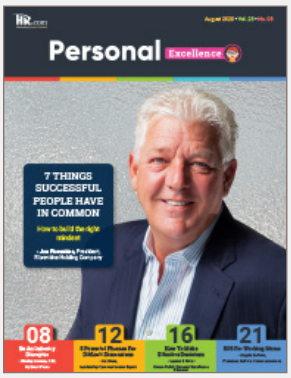

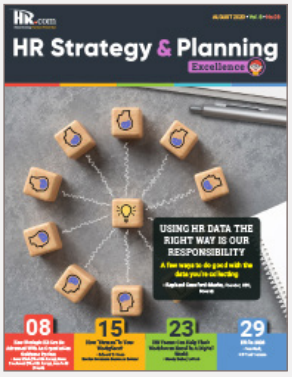

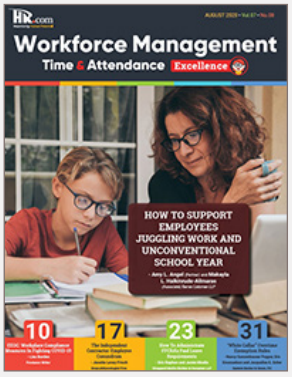

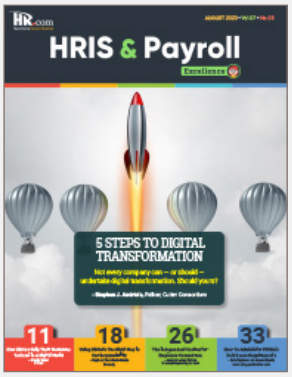

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