

# A Look Ahead: 5 Employment Law Trends to Watch in 2019

---

January 2019



Jaime Lizotte,  
HR Solutions Manager



Shanna Wall,  
Compliance Attorney

# Today's Agenda

- New requirements for conducting anti-harassment training and how to address this issue with employees
- State marijuana laws, plus tips for creating an employee policy and establishing drug testing guidelines
- The recent surge in mandatory employee notifications
- The proliferation of state and local paid sick leave laws and other trending leave regulations
- The latest Affordable Care Act developments

# **Trend #1: Anti-Harassment Training Laws**

# State Harassment Laws

- California requires businesses with 5 or more employees to provide sexual harassment training to all employees
- Connecticut requires businesses with 50 or more employees to provide sexual harassment training to supervisors
- Delaware requires businesses with 50 or more to provide sexual harassment training to all employees
- Maine employers with 15 or more employees must provide training to all workers at the start of employment
- New York requires all employers to provide sexual harassment prevention training to all employees
- Several other states strongly *encourage* employers to provide training

# Harassment Policy

The first step to preventing harassment is to have a formal policy prohibiting it. Your policy should:

- Include a clear explanation of harassment and specific types of prohibited conduct
- Encourage employees to report harassment immediately
- Explain the internal complaint procedure
- Designate at least two contacts within your company who can receive harassment complaints

# Harassment Policy

Your policy should also:

- Indicate that complaints will be treated confidentially to the extent possible under the circumstances
- Prohibit retaliation for reporting harassment or participating in any subsequent investigation
- Inform that complaints will be taken seriously and investigated promptly, thoroughly and impartially
- Confirm that appropriate corrective action will be taken if warranted

# Anti-Harassment Training

Training should address all types of harassment (race, religion, age, etc.). In addition, it should:

- Reinforce that harassment will not be tolerated
- Highlight specific examples of unacceptable behavior
- Explain that it is the employee's responsibility to avoid questionable behavior and to report any incidents

# Anti-Harassment Training

- Formal training of workers can go a long way in preventing harassment
- Training should cover all types of harassment – not just sexual
- All employees should be trained in general prevention, including that harassment will not be tolerated
- Include real-life scenarios in training sessions so workers understand what behaviors are unacceptable
- Managers should have additional training so they understand their responsibilities



# ComplyRight Harassment Prevention Power Training™ for Employees

- Comprehensive training program that covers all forms of harassment in the workplace, as well as special concerns regarding sexual harassment
- Uses realistic examples of verbal, physical and visual harassment
- Illustrates what action an employee should take when confronted with any type of prohibited conduct
- Ready-to-go presentation is perfect for a presenter-led setting or as a self-directed training program

# ComplyRight Harassment Prevention Power Training™ for Managers

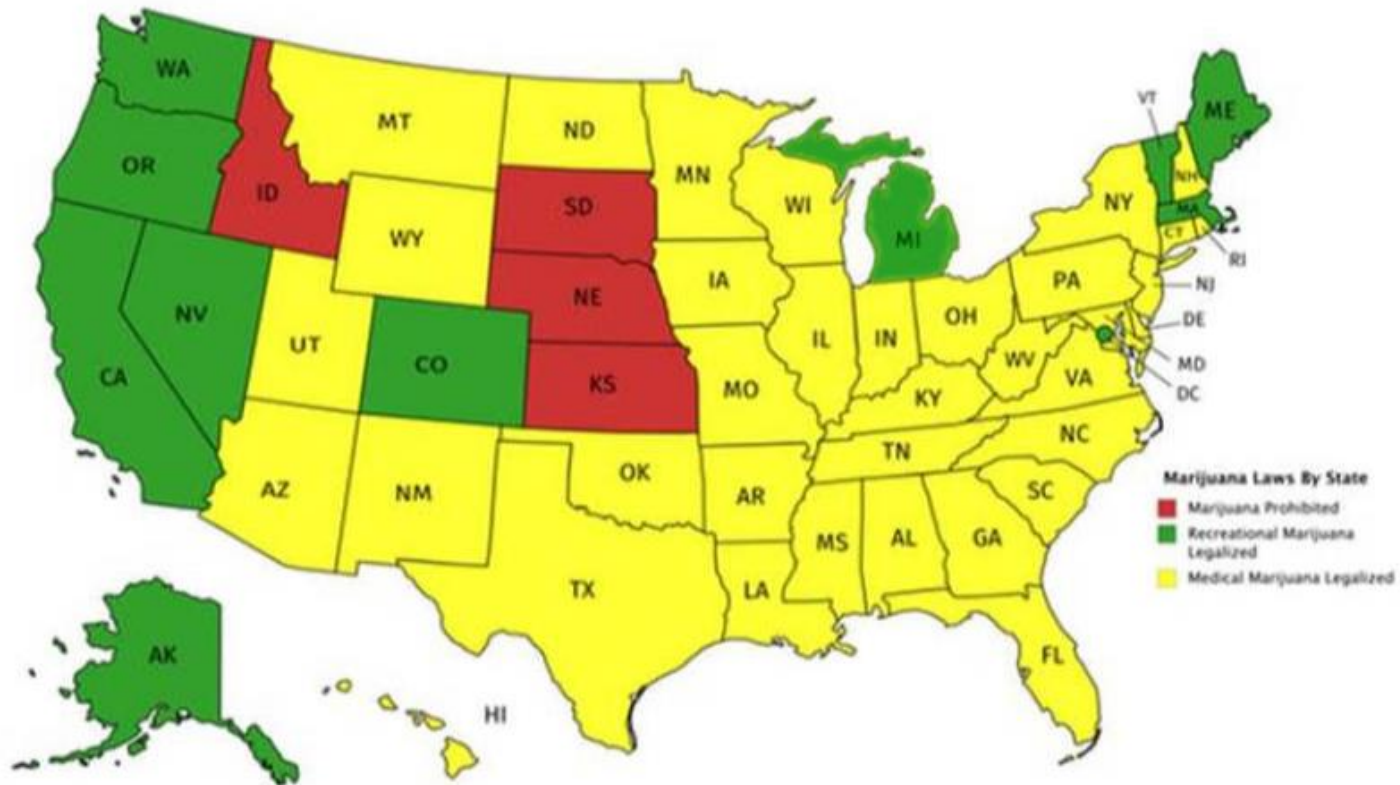
- Specific harassment-prevention training program for managers and supervisors
- Essential information all managers need to know to help prevent lawsuits
- Illustrates what action a manager should take when confronted with any type of prohibited conduct
- Provides guidelines on how managers should respond to complaints – and proper reporting procedures

# **Trend #2: State Legalization of Marijuana**

# Testing for Marijuana

- No matter your state law, you can still administer the drug policy of your choice – including marijuana testing – and fire employees who fail
- Under federal law, marijuana is still an illegal drug
- Legalization does not require you to permit or accommodate marijuana in the workplace
- You can still discipline employees who violate your workplace drug policy

# Marijuana Legalization by State



Source: inverse.com

# States Allowing Recreational Use

- Alaska
- California
- Colorado
- Maine
- Massachusetts
- Michigan
- Nevada
- Oregon
- Vermont
- Washington
- Washington D.C.

# Tips to Deal with Marijuana Use

- Model your company's marijuana policy after the existing policies on alcohol use
- Prohibit coming to work under the influence
- Spell out the consequences of using marijuana during working hours
- Be upfront with applicants on your pre-employment testing guidelines
- Consider altering drug screening guidelines to exclude cannabis during routine drug tests

# Conducting Drug Screenings

Drug testing laws vary from state to state, but these tips can help you stay in compliance:

- Conduct the pre-employment screening only after a job offer is made
- Specify in your offer letter that employment is conditioned upon on passing a drug test
- Use a state-certified laboratory
- Put your policies in writing and obtain written consent before testing



# Conducting Drug Screenings

Along with your offer letter, include a written notice and consent form that details:

- The testing procedures
- What you're testing for
- What happens if applicant refuses to take the test (e.g., will the job offer be rescinded?)
- What happens if the results come back positive (e.g., can the candidate take the test again?)

# Company Policies Smart App

- Inexpensive, electronic solution to create, manage and share attorney-approved policies in minutes
- Includes mandatory and recommended federal and state policies, including drug-free workplace
- Use it to create a few policies or an entire handbook
- Employees can view the policies online or you can print them out to distribute
- Gives you the ability to verify when employees view your policies online

# **Trend #3: Mandatory Employee Notifications**

# Employee Notifications

- Employers are required by law to personally distribute various notices to employees
- These notices cover specific topics and are triggered by employee-related events
- Like labor law posters, these vary from state to state — and change frequently due to new or updated laws

# Employee Notifications

The topics addressed in employee handouts can include:

- Medical leave
- Workers' compensation
- Sexual harassment in the workplace
- Pregnancy accommodations
- Health benefits

# Employee Notifications

Reasons for providing these handouts vary. Depending on the law, these handouts may be required for all new employees or in certain situations. Event-based incidents requiring notifications can include:

- Enrollment in employee benefits
- Request for medical leave
- Notice of injury
- Pregnancy
- Termination

# Employee Handout Service

- Includes mandatory federal and state-specific employee handouts for your business
- Also includes local city/county handouts
- Notifications are developed by in-house legal team to ensure compliance
- Download and print the handouts online

# **Trend #4: State and Local Leave Laws**



# Paid Sick Leave

- Many states, cities and counties have paid sick leave laws – and more will be introduced in 2019
- States that have paid sick leave laws in place include Arizona, California, Connecticut, Maryland, Massachusetts, New Jersey, Oregon, Rhode Island, Vermont, Washington and the District of Columbia
- Some cities and counties (e.g., New York City, Minneapolis, Chicago, Philadelphia) have also issued paid sick leave laws
- State and local laws vary greatly

# Other Local Leave Laws

- Other types of leave, such as jury duty leave and voting leave, are legally guaranteed by a large number of states
- In some states the employer must pay employee for time taken off for jury duty or voting
- A small number of states have laws requiring employers to provide parental leave, allowing employees to attend to the needs of children (e.g., doctors appointments, school functions)

# Handling Protected Leave

- Know your state and local laws
- Managers are responsible for recognizing when an employee's absence is covered by law
- A formal time-off request system can help you determine employee reasons for needing days off
- By requiring employees to submit a general reason time off, you can be alerted when a protected leave situation might be occurring

# Time Off Request Smart App

- Many businesses lack a formal or reliable method for managing time-off requests
- The Time Off Request Smart App allows employees to easily request and track their time off online
- A step-by-step workflow allows employees to make requests directly within the app, followed by managers approving or denying the requests
- Reduces compliance complexities related to granting employee time off

# **Trend #5: ACA Reporting Requirements**

# ACA Reporting Requirements

- Under the ACA, the IRS requires information reporting for certain employers
- Requirements are mandated by two sections of the Internal Revenue Code
- They ensure that employers report health insurance coverage information to the IRS and furnish statements to employees annually
- The information summarizes who was offered coverage and whether the insurance meets all ACA specifications

# ACA Employer Penalties

- The IRS began issuing penalties in late 2017 to businesses that didn't file in 2015
- More than \$4 billion in penalties have already been issued
- The IRS is now issuing penalty assessments for 2016
- With billions of dollars at stake, the IRS will continue enforcement as long as possible

# efile4Biz.com

- Filing your ACA forms online is the fastest, easiest way to meet reporting requirements
- efile4Biz is an IRS authorized e-filer
- Complete your forms directly and securely on the website
- efile4Biz prints and mails the forms to your employees and electronically files directly with the IRS