

# New Administration, New Posting Requirements? A Closer Look at the Changing Compliance Climate for Employers

Presented by



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# About Ashley Kaplan, Esq.



- Senior Employment Law Attorney for ComplyRight, Inc.
- Also the Director of Legal Content, overseeing a team of attorneys and human resource professionals responsible for researching, developing and maintaining HR compliance solutions for ComplyRight and Poster Guard Compliance Protection
- More than 20 years' experience representing employers of all sizes in all areas of labor and employment law, including claims relating to civil rights, family leave issues, wage and hour matters, OSHA and immigration



# Learning Objectives

- How deregulation on the federal level is triggering state and local legislative activity
- Key employment law trends (state and local) expected to continue under the new administration
- How new state and local legislation is impacting posting requirements
- Tips on how to manage your business in this climate of change



# Labor Law Posting Compliance Today: The Basics

- Up to 21 postings required for federal/state compliance (6 federal, up to 15 per state)
- Up to 9 additional postings required by city/county laws
- Additional postings required for government contractors and certain industries
- No “one-stop shop” for free government posters
  - 170+ different federal/state agencies (up to 9 different agencies per state)
  - 22,000 local jurisdictions have authority to issue their own postings
- Posting changes are on the rise; 2017 is already a record year with 63 mandatory changes in 1<sup>st</sup> quarter
- Federal government posting fines were recently increased to \$33,000+ per location; non-compliance can also increase liability in civil lawsuits



# Federal Deregulation May Add Complexity

- Even repealed laws can mean updates to policies, postings, training, etc.
- Increased state and local legislative activity
- Managing business locations in multiple jurisdictions with different laws
- More complexity in determining which laws apply to your business when federal/state/local laws conflict
- Jurisdiction issues between state and local laws (preemption)
- Elevated risk of noncompliance



# State and Local Trends to Watch

- Minimum Wage
- Ban-the-Box
- Equal Pay, Wage Transparency & Salary History
- Paid Sick Time
- Predictable Scheduling & Opportunity to Work
- Anti-Discrimination (LGBT)
- Weapons in the Workplace
- Preemption Laws

# Minimum Wage

- Federal minimum wage \$7.25/hour since July 2009
- Certain federal contractors must pay \$10.20/hour effective 1/1/17 (*mandatory poster update*)
- 29 states have higher minimum wage rates than federal law
- More than half the states and hundreds of cities have at least one bill pending that will impact minimum wage rates in 2017 and beyond
- Most states and cities/counties with minimum wage laws have additional posting requirements
- As an employer, you must pay the highest rate that applies, but display all required postings (even if the posters seem to conflict)



# Minimum Wage (State Laws)

State	New Minimum Wage	Effective Date	
Alaska	\$9.80	January 1, 2017	Mandatory Poster Update
Arizona	\$10.00	January 1, 2017	Mandatory Poster Update
Arkansas	\$8.50	January 1, 2017	
California	\$10.50 (for employers with 26+ employees)	January 1, 2017	Mandatory Poster Update
Colorado	\$9.30	January 1, 2017	Mandatory Poster Update
Connecticut	\$10.10	January 1, 2017	
District of Columbia	\$12.50	July 1, 2017	Mandatory Poster Update
Florida	\$8.10	January 1, 2017	Mandatory Poster Update
Hawaii	\$9.25	January 1, 2017	
Maine	\$9.00	January 7, 2017	Mandatory Poster Update
Maryland	\$9.25	July 1, 2017	
Massachusetts	\$11.00	January 1, 2017	
Michigan	\$8.90	January 1, 2017	Mandatory Poster Update
Missouri	\$7.70	January 1, 2017	Mandatory Poster Update
Montana	\$8.15	January 1, 2017	Mandatory Poster Update
New Jersey	\$8.44	January 1, 2017	Mandatory Poster Update
New York	Variable rates based on location	December 31, 2016	Mandatory Poster Update
Ohio	\$8.15	January 1, 2017	Mandatory Poster Update
Oregon	Variable rates based on location	July 1, 2017	
South Dakota	\$8.65	January 1, 2017	
Vermont	\$10.00	January 1, 2017	
Washington	\$11.00	January 1, 2017	



# Minimum Wage (Local Laws)

City	New Minimum Wage	Effective Date	
California			
Cupertino	\$12.00	January 1, 2017	Mandatory Poster Update
El Cerrito	\$12.25	January 1, 2017	Mandatory Poster Update
Los Altos	\$12.00	January 1, 2017	Mandatory Poster Update
Mountain View	\$13.00	January 1, 2017	Mandatory Poster Update
Oakland	\$12.86	January 1, 2017	Mandatory Poster Update
Palo Alto	\$12.00	January 1, 2017	Mandatory Poster Update
Richmond	\$12.30	January 1, 2017	Mandatory Poster Update
San Diego	\$11.50	January 1, 2017	Mandatory Poster Update
San Jose	\$10.50	January 1, 2017	Mandatory Poster Update
San Mateo	\$12.00 (for profit employers)	January 1, 2017	Mandatory Poster Update
Santa Clara	\$11.10	January 1, 2017	Mandatory Poster Update
Sunnyvale	\$13.00	January 1, 2017	Mandatory Poster Update
Maine			
Portland	\$10.68	January 1, 2017	Mandatory Poster Update
New Mexico			
Albuquerque	\$8.80	January 1, 2017	Mandatory Poster Update
Las Cruces	\$9.20	January 1, 2017	Mandatory Poster Update
Washington			
Tacoma	\$11.15	January 1, 2017	Mandatory Poster Update

# Minimum Wage (2018 Local Increases)

The following have announced minimum wage increases for 2018, but posters have not yet been released:

- Cupertino, CA
- El Cerrito, CA
- Los Altos, CA
- Mountain View, CA
- Oakland, CA
- Palo Alto, CA
- Richmond, CA
- San Jose, CA
- San Mateo, CA
- Sunnyvale, CA
- Portland, ME
- Albuquerque, NM
- Bernalillo County, NM
- Las Cruces, NM
- Seattle, WA
- Tacoma, WA

# Ban-the-Box

- Ban-the-box refers to the question commonly included in job applications: *“Have you ever been convicted of a crime?”*
- Ban-the-box laws seek to protect individuals from being excluded from employment and other opportunities based on their criminal record
- Currently 25 states and more than 150 cities/counties have ban-the-box laws in place restricting pre-employment inquiries about criminal history
- Some laws restrict criminal background questions until after an interview; some require waiting until a conditional job offer is made

# Ban-the-Box (State Laws)

- There are currently 25 states that have ban-the box laws in place:
  - California
  - Colorado
  - Connecticut \*
  - Delaware
  - Georgia
  - Hawaii \*^
  - Illinois \*
  - Kentucky
  - Louisiana
  - Maryland
  - Massachusetts \*^
  - Minnesota \*
  - Missouri
  - Nebraska
  - New Jersey \*
  - New Mexico
  - New York
  - Ohio
  - Oklahoma
  - Oregon \*
  - Rhode Island \*
  - Tennessee
  - Vermont \*
  - Virginia
  - Wisconsin

\* Law extends to private employers

^ Mandatory posting requirement



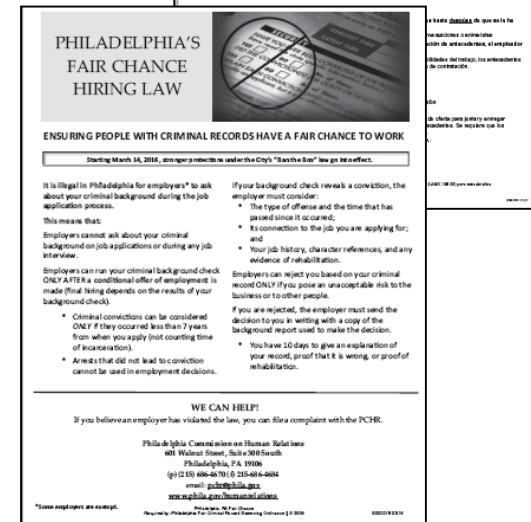
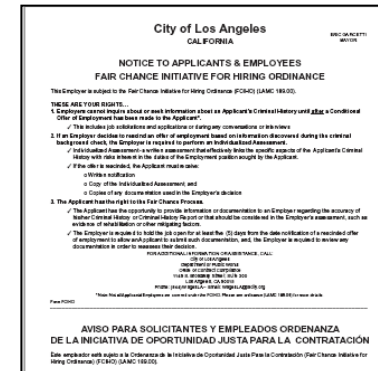
# Ban-the-Box (Local Laws)

- More than 150 cities/counties have ban-the-box laws in place:

- CA: Los Angeles<sup>\*^</sup>, San Francisco<sup>\*^</sup>
- CO: Denver
- FL: Miami-Dade County, Broward County
- GA: Atlanta
- MD: Baltimore\*, Montgomery County\*, Prince George's County\*
- MO: Columbia\*
- NY: Buffalo\*, New York City\*, Rochester\*
- OR: Portland\*
- PA: Philadelphia<sup>\*^</sup>
- TX: Austin\*
- WA: Seattle<sup>\*^</sup>

\* Law extends to private employers

^ Mandatory posting requirement



# Equal Pay, Wage Transparency & Salary History

- States and cities are expanding Equal Pay protections already afforded by federal law
  - Equal Pay Act (1963), Title VII of the Civil Rights Act (1964), Pay Secrecy for Federal Contractors (2016)
- “Wage Transparency” laws prohibit employers from discriminating or retaliating against employees for discussing their wages with coworkers
  - Pending legislation in Florida, Hawaii, Montana, Washington and many cities/counties
- “Salary History” laws restrict employers from asking job applicants about salary history
  - Massachusetts, Puerto Rico, Philadelphia and NYC have laws in place for private employers
  - Pending legislation in California, Connecticut, Texas and many cities/counties
- Equal Pay mandatory postings in Georgia, Maryland, New Hampshire, Pennsylvania



# Paid Sick Time


- Currently, there are limited federal requirements for sick leave
  - Family and Medical Leave Act (1993) provides unpaid leave for up to 12 weeks for “serious health condition”
  - Exec Order 13706 (2017) provides up to 7 days per year of paid sick leave for certain employees of federal contractors (*new mandatory posting effective 1/1/17*)
- States and cities are passing their own laws requiring private employers to offer paid sick leave
  - Seven states and Washington D.C. currently have paid sick leave laws
  - More than 25 cities and counties have paid sick leave laws
  - Several states and cities have pending legislation

## Paid Sick Time (State Laws)


- Seven states and Washington D.C. currently have paid sick leave laws:

- Arizona \*
- California \*
- Connecticut \*
- District of Columbia \*
- Massachusetts \*
- Oregon \*
- Vermont \*
- Washington

\* Mandatory posting requirements



**Bureau of Labor and Industries**

  
Official Seal of the State of Oregon  
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## REQUIREMENTS OF OREGON'S SICK TIME LAW

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**Effective January 1, 2016,** employers that employ employees in the state of Oregon are required to provide sick leave pay to their employees. Employees are discouraged from providing services without sick time as it can put them at risk of losing their job or being disciplined. This rule is intended to ensure that the employer provides the law, but does not limit the employee's ability to work without sick time as long as they are paid for the time worked.

**How much sick time does the law require?** Employees beginning accrual sick time on the first day of employment must accrue 1 hour of sick time every month. Employees who have been employed by the same employer for less than one year will accrue sick time based on the number of months they have been employed. Employees may use accrued sick time on the 90<sup>th</sup> calendar day of employment and may use sick time as it accrues.

**Employees can choose to simply give employees 1 hour per 40 hours of work at the beginning of the year.** Employees may choose to simply give employees 1 hour per 40 hours of work at the beginning of the year. However, if an employer chooses to do this, it must also provide for the following:

- Employees may carry over up to 40 hours of unused sick time into the next year.
- Employers may designate "year," i.e., calendar year, fiscal year, employee anniversary date, etc.
- Employees must track and report sick time usage.
- Employers must keep records of sick time usage for each employee for at least 5 years.

**Paid time off (PTO) policies that include time off for other purposes comply with the sick time law as long as the policy is substantially equivalent to the sick time law.**

**Employers must use accrued sick time in hourly increments unless otherwise specified in the employer's policy.** Employees may request sick time in 1-hour increments unless the employer has a policy that allows for larger increments.

**When must sick time be paid?** Employees with 30 or more consecutive days of absence in a period (including the state-mandated 15-day waiting period) must be paid sick time for the employee's regular rate of pay. All other employees must be paid sick time in 1-hour increments.

**The number of all employees employed by the employer in Oregon must be counted – including full-time, part-time, and temporary employees.**

**National and Verification:** In addition to providing a notice to employees of the requirements of the law, employers are required to provide quarterly verification notices to employees of the amounts of accrued and available sick time.

**Employers may require employees to provide written verification and certification for using sick time under certain circumstances.** For example, if the use of sick time is foreseeable, employers may require employees to provide a written statement of the need to use sick time. Such statements must be kept confidential.

**Discrimination/Retaliation Prohibited:** It is unlawful for an employer to discriminate against an employee or fail to pay for sick time to which an employee is entitled, or retaliate or in any way discriminate against an employee because the employee has requested sick time or taken sick time. Complaints may be filed with the Bureau of Labor and Industries.

**Collective Bargaining Agreements (CBAs):** The sick time law does not preempt CBAs. If a CBA contains provisions that conflict with the sick time law, the CBA provisions are collected by a collective bargaining agreement. Employers may wish to consult with their legal counsel and/or labor union representative to determine if a CBA provision complies with the sick time law.

Provision of the law on employee compliance with the requirement to use sick time for the purpose of the law is not applicable to the requirements of the law.

For more information, visit our website at [www.boli.state.or.us](http://www.boli.state.or.us), or call 1-800-333-3333.

**Division of Labor Standards Enforcement**

**THIS POSTER MUST BE DISPLAYED WHERE EMPLOYEES CAN EASILY READ IT**  
*(Poster may be printed on 8 1/2" x 11" letter size paper)*

**HEALTHY WORKPLACES/HEALTHY FAMILIES ACT OF 2014**

**PAID SICK LEAVE**

**Entitlement:**

- An employee who, on or after July 1, 2015, works in California for 30 or more days within a year from the beginning of employment is entitled to paid sick leave.
- Paid sick leave accrues at the rate of one hour per every 30 hours worked, paid at the employee's regular wage rate. Accrual shall begin on the first day of employment or July 1, 2015, whichever is later.
- Accrued paid sick leave shall carry over to the following year of employment and may be capped at 48 hours or 6 days. However, subject to specified conditions, if an employer has a paid sick leave, holiday or paid time off (PTO) that provides no less than 24 hours or three days of paid leave or paid time off, no accrual or carry over is required if the full amount of leave is received at the beginning of each year in accordance with the policy.

**Usage:**

- An employee may use accrued paid sick days beginning on the 90<sup>th</sup> day of employment.
- An employer shall provide paid sick days upon the oral or written request of an employee for themselves or a family member for the diagnosis, care or treatment of an existing health condition or preventive care, or specified purposes for an employee who is a victim of domestic violence, sexual assault, or stalking.
- An employer may limit the use of paid sick days to 24 hours or three days in each year of employment.

**Retaliation or discrimination against an employee who requests paid sick days or uses paid sick days or both is prohibited.** An employee who files a complaint with the Labor Commissioner against an employer who retaliates or discriminates against the employee.

For additional information you may contact your employer or the local office of the Labor Commissioner. Locate the office by looking at the list of offices on our website <http://www.boli.state.or.us/pdfs/ContactOffices.pdf> using the alphabetical listing of cities, locations, and counties. Staff is available in person and by telephone.

**DLSL Paid Sick Leave Posting**

Others Post Laws  
Revised By DLSL Dept

EOAS 10-14



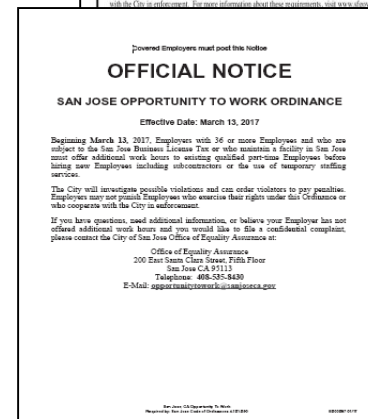
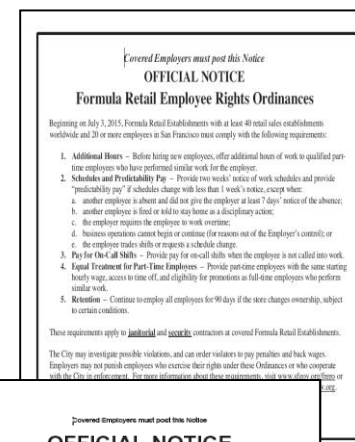
# Paid Sick Time (Local Laws)

- More than 25 cities and counties have paid sick leave requirements:
  - CA: Berkeley, Emeryville, Los Angeles, Oakland, San Diego, San Francisco, Santa Monica
  - IL: Chicago
  - MD: Montgomery County
  - MN: Minneapolis, St. Paul
  - NJ: Bloomfield, East Orange, Elizabeth, Irvington, Jersey City, Montclair, Morristown, Newark, New Brunswick, Passaic, Paterson, Trenton
  - PA: Philadelphia
  - WA: Seattle, Spokane, Tacoma
- All of the above have mandatory posting requirements



# Predictable Scheduling & Opportunity to Work

- Predictable Scheduling Laws - require employers to provide employees with advance notice of their schedule and, in some instances, compensate employees for last-minute changes
  - Laws passed in San Francisco, Emeryville, Seattle
  - Pending legislation in California, Minnesota, and NYC
  - Expected to include posting requirements
- Opportunity to Work Laws - require employers to offer additional work hours to existing part-time employees before hiring new employees
  - Laws passed in San Jose (all industries) and San Francisco (industry-specific)
  - Both require mandatory postings



# Anti-Discrimination

- Federal law (Title VII of the Civil Rights Act of 1964) doesn't specifically prohibit discrimination on the basis of sexual orientation or gender identity
  - Executive Order 11246, as amended, now includes these protections but only for federal contractors (effective April 2015)
  - 7<sup>th</sup> Circuit recognized sexual orientation discrimination under federal law in landmark case on April 4, 2017
- About 20 states and more than 200 cities/counties have LGBT anti-discrimination laws in place; many more state and local laws pending
- Mandatory posting requirements in: California, Colorado, Connecticut, District of Columbia, Delaware, Hawaii, Massachusetts, Maryland, New Hampshire, New Jersey, New Mexico, Nevada, New York, Rhode Island, Wisconsin

# Weapons in the Workplace

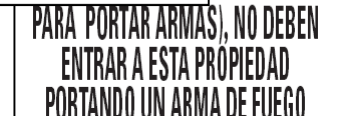
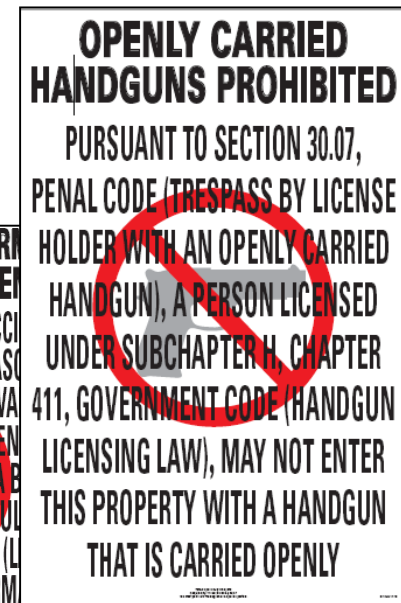
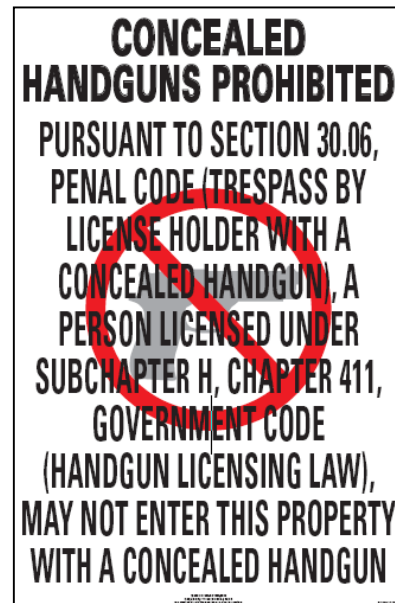
- Federal law generally does not regulate firearms at work
- More than 15 states have “parking lot” laws including: Arizona, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maine, Minnesota, Mississippi, North Carolina, Ohio, Tennessee, Texas, Utah, Wisconsin
- Several states require employers to post notices to prohibit guns at work:
  - Arkansas
  - District of Columbia
  - Illinois
  - Kansas
  - Minnesota
  - Mississippi
  - Missouri
  - Nebraska
  - North Carolina
  - South Carolina
  - Tennessee
  - Texas

# Weapons in the Workplace (continued)

Tennessee No-Weapons Poster:



Texas No-Weapons Posters:



# Preemption Laws

- “Preemption laws” are state laws that prohibit cities from imposing requirements on employers that are more restrictive than under existing federal and state law
  - 27 states preempt local minimum wage ordinances
  - 19 states preempt local paid leave ordinances
  - 3 states preempt local anti-discrimination ordinances
- Preemption bills now pending in Florida, Indiana, Iowa, Kansas, Minnesota, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas
- Local ordinances also may be preempted through court decisions
- Adds to the complexity of compliance and creates confusion; many local laws have been repealed after the employer has implemented them



# Tips to Manage Your Business

Here are some tips to help you navigate in this climate of change:

1. Conduct an internal audit of all employment practices to ensure compliance with federal, state and local regulations
2. Follow the provisions of each applicable law that are most generous to the employee
3. Address any areas that require policy adjustments
4. Consider uniform practices across locations (consistency vs. cost)
5. Display local postings in addition to mandatory federal and state postings, even if the information conflicts
6. Assign internal resources or use an outsourced partner for posting compliance to stay abreast of changing federal, state and local laws



# Poster Guard Compliance Protection Federal/State/Local Service

- To start, each of your locations will receive a complete federal, state and local poster set (coverage for every city and county in the U.S.)
- Our in-house Legal Team then continually monitors all federal, state and local legislation and regulatory activity
- Automatic poster replacements are sent immediately whenever there's a mandatory change
- 100% compliance guarantee against government posting fines
- Additional solutions available for remote/off-site workers, federal contractors, applicants, Canada, industry variations and more

