

Strategic commentary

The complexities of US Labor Law – an evolving landscape

Thought leaders share their views on the HR profession and its direction for the future

Ashley Kaplan

The labor law posting requirements provide one of the more “visible” indicators of the USA Labor Law regulatory landscape, and recent changes indicate a significant shift in which governmental bodies are exercising their authority.

Historically, most regulation has been from the federal level, but recently, cities and states are increasingly enacting their own minimum wages and sick leave laws. Further, a jurisdictional battle has begun to brew as cities override federal and state minimum wages, while some states simultaneously preempt cities from enacting their own labor law ordinances.

From 2013 through the midpoint of 2017, there have been 376 employment law changes that prompted edits or new additions to the labor law posters that US businesses are mandated to display; 120 of those came in 2016 alone, and only 3 were at the federal level.

In an early 2017 survey of 230 businesses, ComplyRight asked if managing labor law posting compliance had increased in complexity over the past few years – 90 per cent said yes. As the US

Federal Administration pushes to ease business regulations under President Donald J. Trump, city and state governments will likely continue to take regulatory issues into their own hands, further complicating the business environment as employers juggle with multiple conflicting authorities (Table I).

USA Labor Law posting compliance today

- Up to 21 postings are required for federal/state compliance.
- Up to 9 additional postings are required by city/county laws.
- Additional postings are required for government contractors and certain industries.
- 170 plus postings are required by different federal/state agencies
- In total, 22,000 local US jurisdictions have regulatory authority.
- The Federal Government posting fines were recently increased to \$33,000+ per location; non-compliance can also increase liability in civil lawsuits.

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A changing landscape: a closer look

From 2015 to 2016, the number of state- and local-level employment law poster changes jumped from 79 to 117; 59 more came in the first half of 2017.

The most common labor law posting changes each year related to wages, with over 50 in 2016 and another 43 going into effect in the first half of 2017. Also on the rise were changes related to paid sick leave, which saw 12 changes across the country in 2016 compared to 3 in 2015. Eleven changes related to sick leave went into effect in the first two quarters of 2017.

Several other trends appeared in the state and local regulations enacted in the past year

- **Criminal history:** To date, 29 states and over 150 localities have passed legislation to prohibit employers from asking if applicants have been convicted of a crime.
- **Salary history:** Four states and several localities have restricted employers from asking job applicants about their salary histories.
- **Paid leave:** There is no national requirement that private businesses offer paid sick time; 29 cities and 2 counties have laws granting workers paid days off because of illness. Seven states and D.C. also have paid sick leave requirements.
- **Equal pay:** To address the

gender pay gap and ensure pay equity in the workplace, numerous states have passed laws that seek to eliminate pay differentials on the basis of sex. Gender-based equal pay bills have been introduced in over 15 states.

- **Weapons at work:** Many states have enacted their own laws prohibiting employers from banning lawfully owned weapons from the periphery of a workplace, such as in cars in company parking lots.

The changing dynamics of minimum wage legislation

The most recent federal minimum wage increase took effect in 2009, bringing the minimum hourly wage for most non-exempt workers to \$7.25. Localities are lately taking up the issue. At the end of 2015, there were 15 local-level minimum wage laws on the books. Halfway through 2017, there are 70.

Some of these laws more than double the federal wage. And many more are gradual increases over time, meaning employers with multiple locations will be dealing with dynamic laws through the year 2020 or 2022, in many cases.

The definitions of “large” and “small” businesses, as they apply to minimum wage, also differ by jurisdiction, which can affect the rate at which employers are expected to increase their minimum wages in localities where higher rates are being phased in over time.

Implications for US businesses

The oversight and multi-jurisdiction challenges of the current labor law environment will hit small businesses especially hard, as they often lack the personnel to track and act on multiple jurisdictions' regulations. Businesses that conduct an internal audit of current employment requirements can better understand how each location is complying. This can be particularly tricky if a business has several locations. Turnover of managerial positions can also be a key risk for businesses that rely on location-level resources to ensure compliance.

Looking forward: labor law influencers to watch

This shift in the exercise of regulatory authority from federal to state and local is further complicated by battles over the shift itself. In 2016, at least 36 states introduced laws preempting city regulatory actions, according to *The Atlantic's* March 2017 report noting research by Grassroots Change[1]. Twenty-seven states have passed such laws as of midway through 2017[2]. Also to watch in 2017-2018, new Supreme Court Justice Neil Gorsuch and new Secretary of Labor Alex Acosta will add their own yet unknown influences to the complex power dynamic.

Tips for US businesses to navigate in this climate of change

- Conduct an internal audit of all employment practices to ensure compliance with federal, state and local regulations.
- Follow the provisions of each applicable law that are most generous to the employee.
- Address any areas that require policy adjustments.

Table 1

Labor law posting changes or additions

	As of June 30, 2017	2016	2015	2014	2013
State	25	64	69	66	47
City/county	34	53	10	3	Not tracked
Federal	1	3			1

- Consider uniform practices across locations (consistency vs cost).
- Display local postings in addition to mandatory federal and state postings, even if the information conflicts.
- Assign internal resources or use an outsourced partner for posting compliance to stay abreast of changing federal, state and local laws.

About ComplyRight

ComplyRight has provided human resources insight and compliance solutions to small business, enterprises and the accountants and attorneys who served them for 30 years. Our mission is to free employers from the burden of

tracking and complying with the complex Web of federal, state and local employment laws, so they can stay focused on managing and growing their businesses. We speak daily with employers, and our team of labor law attorneys monitors around 23,000 state, federal and local entities for labor law changes. We apply these insights to create practical, affordable human resources, labor law and employer tax filing solutions that streamline essential tasks while staying “within the lines” of those complex laws.

We complement these solutions with educational content and actionable guidance to help employers act in their own best interest while still doing right by employees. From hiring and training, to time tracking

and recordkeeping, to labor law posting and tax information reporting, our innovative products and services address the real-world challenges employers face every day.

Visit www.complyright.com for more on our family of brands.

Notes

1. www.theatlantic.com/magazine/archive/2017/03/red-state-blue-city/513857/
2. www.npr.org/2017/07/18/537901833/as-cities-raise-minimum-wages-many-states-are-rolling-them-back

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