

THREE THINGS TO DO: END-OF-THE-YEAR LABOR AND EMPLOYMENT CHECKLIST FOR 2015

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What better way to prepare for the new year than to review the biggest developments in the world of labor and employment law that took place over the past 12 months? Presenting Fisher Phillips' annual end-of-the-year review, complete with a handy checklist to make sure you don't miss out on any important steps you need to take before 2016 rolls around.

No matter your particular field, focus, or position, here are three things you need to do. Note: each item contains a link to our firm website for a detailed discussion of the particular topic, or you can visit fisherphillips.com/KnowledgeCenter.

DO YOU PLAY A ROLE IN HIRING?

- If your company's application still includes a question asking about criminal history, make sure you don't operate in a state that has implemented a "ban the box" law prohibiting that practice. New York, Ohio, Oregon, Virginia, and Vermont are among states that passed such legislation in 2015; 19 states and over 100 cities and counties now have some form of the law. (Read [more](#))
- In the wake of June's Supreme Court *Abercrombie & Fitch* decision, review your interviewing and hiring protocols to make sure you don't violate new religious accommodation obligations. No longer will you be able to stick your head in the sand and claim you didn't know that the applicant needed an accommodation; the burden is now yours. (Read [more](#) and [more](#))

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Service Focus

Counseling and Advice

- Assess your starting (and incumbent) salaries to make sure you don't open yourself up to equal pay act claims. A number of states strengthened equal pay laws in 2015, including California and New York, and a number of others ratcheted up protections against gender pay discrimination (including Connecticut, Oregon and Delaware). (Read [more](#))

DO YOU MAINTAIN THE COMPANY HANDBOOK?

- The new year might be the perfect time to review your handbook top-to-bottom to make sure your policies don't run afoul of the many rules the NLRB has put into effect of late. Even if you are not unionized, be aware of the standards that you must follow to avoid government scrutiny. (Read [more](#))
- Do your policies prohibit discrimination and harassment because of LGBTQ status? If not, be aware that 2015 saw the EEOC begin to enforce Title VII to include sexual orientation, even if your state law does not. The courts will no doubt address this issue in 2016. (Read [more](#))
- Nothing's a more appropriate sign of the times than realizing that your handbook should address whether your employees can have visible tattoos in the workplace. If you haven't updated your dress and appearance policies to reflect the modern state of affairs, you might want to consider it for 2016. (Read [more](#))

DO YOU MANAGE YOUR COMPANY'S LABOR RELATIONS?

- 2015 was not a good year for employers on the labor relations front. The low point might have been the August *BFI* decision that created a broad new standard for determining when two companies are considered "joint employers" for collective bargaining purposes. This decision is expected to have even more negative consequences in the new year. (Read [more](#))
- August also saw the NLRB issue a controversial decision reversing 35+ years of precedent, holding that witness statements obtained by employers during pre-arbitration investigations must be provided to the union before the hearing. As a result, you should adjust your practices accordingly. (Read [more](#))

- We'd been expecting it for quite some time, but April 2015 finally saw the implementation of the "quickie election" rules for union organizing votes. If there's a silver lining, recent data appears to show that union success rates have not increased greatly with the change, rising by only 1.6% since April. (Read [more](#))

ARE YOU GENERAL COUNSEL?

- If you are in charge of big-picture compliance efforts for your business, be aware that the EEOC focused much of its 2015 efforts and resources on "systemic" claims of discrimination. Think globally to steer your company away from the EEOC's spotlight in 2016. (Read [more](#))
- If your company does any business in Europe, be aware that the last few months saw the dismantling of the EU-US data transfer arrangement known as "Safe Harbor." You will need to review your company's business practices immediately to ensure compliance. (Read [more](#) and [more](#))
- Finally, if your company's business involves the global supply chain, be aware that there was a renewed effort in 2015 to ensure that anti-trafficking rules are enforced. You should address this issue before enforcement efforts expand in 2016. (Read [more](#))

DO YOU ADMINISTER BENEFITS?

- The SCOTUS *Obergefell v. Hodges* decision from June requires all states to recognize same-sex marriage; you'll want to review your entire array of benefits to ensure you are in compliance with the associated obligations brought about by this change. (Read [more](#))
- An increasing number of states, counties, and cities are mandating some form of paid sick leave. At least five jurisdictions joined these ranks in 2015, and many more are expected in 2016. Make sure your benefits administrators are aware of your local obligations (Read [more](#) and [more](#) and [more](#) and [more](#))
- Businesses see a great advantage to instituting wellness programs for their workforce, but the EEOC has decided that some employers were going too far. In April, the agency published proposed rules governing the programs,

with which you will want to familiarize yourself before the new year. (Read [more](#))

ARE YOU IN CHARGE OF WAGE AND HOUR COMPLIANCE?

- If your business requires employees to pass through a security screening at the end of their shifts, 2015 was a pretty good year for you. The Supreme Court unanimously ruled that employers do not have to pay workers for security-check wait time, and a California federal court just expanded on that decision. Make sure to read through the summaries of these cases to make sure your company follows the standards. (Read [more](#) and [more](#))
- Meanwhile, if your business retains independent contractors, 2015 was not necessarily a good year for you. Government agencies and courts continued their full-scale assault on alleged misclassification arrangements, costing business by the millions. You'll want to once again revisit your relationships to ensure compliance. (Read [more](#))
- A few years ago, "BYOD" (Bring Your Own Device) policies were all the rage, as both employers and workers saw the benefit of allowing employee-owned electronic devices to be put to use for work-related reasons. But the past year has seen an onslaught of wage and hour lawsuits stemming from these arrangements. Proceed with caution. (Read [more](#))

DO YOU OVERSEE SAFETY?

- The biggest shocker of Fall 2015 was the November Surprise, when the federal budget deal revealed that OSHA now has the power to increase penalties by up to 82%. We'll have final figures in 2016, but take the time now to beef up your compliance efforts to avoid this new stinger. (Read [more](#))
- On the same day in June when Caitlyn Jenner made her appearance on a Vanity Fair cover, OSHA released guidance for employers on transgender employee bathroom usage. If you haven't yet done so, read up now so you know how to handle any situations that arise in 2016. (Read [more](#))

- A million drones are expected to be sold this coming holiday season, which means that the chances a drone will enter your workplace in 2016 are pretty high. Consider implementing a policy now to address the safety aspects of this 21st-century phenomenon. (Read [more](#))

ARE YOU IN CHARGE OF IMMIGRATION ISSUES?

- If so, you're probably aware that Immigrations and Customs Enforcement (ICE) audits and immigration worksite compliance sanctions are at an all-time high, while employers in all sectors struggle to find talent. This potentially combustible combination led to many headaches in 2015; you'll want to tighten the reins to avoid being in the government crosshairs in 2016. (Read [more](#))
- Meanwhile, U.S. employers are scrambling to keep up with the global competition for technology in STEM fields. But 77% of all H-1B petitions filed for FY 2015 were denied due to the antiquated quota-based immigration system, and the denial rate is expected to rise even higher for FY 2016. (Read [more](#))
- There are an estimated 12 million undocumented workers in the country, and 2015 brought no real solutions to the growing problem. A significant part of our workforce and economy is in limbo, and the lack of guidance for employers that are trying to do the right thing for both their domestic and foreign employee base has created anxiety. There may not be any noteworthy developments until after the 2016 presidential elections. (Read [more](#))

ARE YOU A FEDERAL CONTRACTOR?

- Although signed into law back in 2014, the federal contractor minimum wage increases took effect this past year. By January 2, 2016, the minimum rate will rise again, from \$10.10 per hour to \$10.15, so adjust your labor budgets (and pay practices) accordingly. (Read [more](#))
- Labor Day 2015 will be remembered as the day the President signed an Executive Order which will require all contractors to provide paid sick leave for their workforces. The intended implementation date is January 1, 2017, so use the new year to get ready. (Read [more](#))

- New rules going into effect in early January 2016 will require covered contractors to include certain information on pay stubs and prohibit discrimination against employees sharing wage information in the name of pay transparency. If you aren't familiar with these new rules, you have only a few weeks to get up to speed. (Read [more](#))

DO YOU WANT A SNEAK PEEK AT 2016?

- Employers have been on pins and needles for much of 2015 waiting for the U.S. Department of Labor's new regulations on overtime pay. Unfortunately, you'll have to wait a bit longer. It now looks like we'll get final publication in July 2016, but the agency is unpredictable and this schedule could be adjusted once again. (Read [more](#) and [more](#))
- A SCOTUS case, expected to be decided by June 2016, could be a crucial stepping stone for those who want to further reduce the impact of unions on the American workplace. The *Friedrichs* case could eliminate "agency shop" fees that public unions take from non-members, and the hope is that a favorable decision will reduce union resources and political clout. (Read [more](#))
- Worker advocates will have a rallying cry in 2016 – they will "Fight for 15" in an effort to see minimum wage increased to \$15 per hour. Expect to see much movement at the local level, and increased activism by low-wage workers seeking greater pay. (Read [more](#))

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