



Workplace Law Update: 10 Essential Items on Your September To-Do List

Insights

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It's hard to keep up with all the recent changes to labor and employment law, especially since the law always seems to evolve at a rapid pace. In order to ensure you stay on top of the latest changes and have an action plan for compliance, here is a quick review of the latest developments we tracked in August and a checklist of the essential items you should consider addressing in September and beyond.

Review your pay practices to prepare for a potentially significant bump in the salary threshold for exempt employees under the Fair Labor Standards Act's (FLSA's) white-collar exemptions. The Labor Department announced on August 30 that it intends to significantly raise the exempt salary threshold from \$684 per week to \$1,059, meaning employees would need to earn \$55,068 or more per year to be exempt from OT pay – a change the agency says would impact 3.6 million workers. [Read our comprehensive guide here.](#)

Determine whether your employee handbook's workplace conduct policies need to be modified in light of the National Labor Relations Board's August 2 ruling in *Stericycle, Inc.* That decision changed the legal standards that for the past six years have provided a commonsense solution for evaluating workplace misconduct rules. Employers must now show such rules are narrowly tailored to special circumstances justifying any infringement on employee rights. [Click here to learn more about how your policies may need to be updated.](#)

Make sure your anti-bias policies and practices are up to date and effectively administered. The full 5th Circuit Court of Appeals – which oversees cases arising out of Texas, Louisiana, and Mississippi – expanded the scope of the Title VII claims and opened the door for plaintiffs to file more discrimination charges and lawsuits. [Click here for your 10 biggest takeaways from the August 18 *Hamilton v. Dallas County* decision.](#)

Also ensure your business doesn't run afoul of anti-bias laws when using artificial intelligence for employment-related reasons. The Equal Employment Opportunity Commission (EEOC) recorded its first-ever settlement on August 9 in a case involving AI

discrimination in the workplace. [Click here for 10 steps you can take to ensure your organization doesn't befall the same fate as you adopt new AI technologies.](#)

Revisit your procedures for when the Occupational Safety and Health Administration (OSHA) shows up to conduct an inspection. A proposed rule OSHA announced on August 29 would give a designated union representative the right to accompany an OSHA inspector during a facility walkaround — *regardless of whether the representative is your employee or the facility is a union shop*. [Click here for more on the seven key steps you can take to prepare.](#)

Discuss the potential impact of recent NLRB decisions with your labor counsel. The Board kept its foot on the gas in August, issuing decision after decision – each further weighing the scales in labor's favor – leading up to the expiration of Democratic Board member Gwynne Wilcox's term. Decisions include the return of [quickie union elections](#), an [overhaul of the representation process](#) to boost union organizing, and [limits on employer actions](#) during first contract negotiations and after a contract expires. [Click here to review our Labor Relations Insights.](#)

Consider submitting a comment on the EEOC's proposed regulations for the Pregnant Workers Fairness Act (PWFA), a new law that requires employers to broadly consider pregnancy-related accommodation requests from job applicants and employees. The proposed rule – which was published in the Federal Register on August 11 – provides more detail about how the EEOC will interpret and enforce the new law. But you still have time to provide meaningful feedback about how it may impact your workplace. [Click here for the seven key takeaways you need to know about the proposal.](#)

Prepare for California's minimum wage to increase again in January 2024. The Director of California's Department of Finance recently published a letter stating that the minimum wage needed to rise by 3.5% to account for an inflation adjustment effective the beginning of next year. [Click here for the five things employers need to know about this impending change – and what you can expect in the coming months.](#)

Develop a plan to comply with mandatory Roth catch-up contributions under the SECURE Act 2.0. Employees who are at least 50 years old are currently able to make [pre-tax](#) "catch-up contributions" to their employer-sponsored retirement plans, including 401(k) plans – but certain higher earners will soon be required to make such contributions to an [after-tax](#) Roth account. This provision takes effect on January 1, 2024, but the IRS announced in August that there will be a two-year transition period, giving employers a pass until the beginning of 2026. [Click here to review the four steps should you consider taking now.](#)

Prepare for changes to the way the Office of Federal Contract Compliance Programs (OFCCP) audits federal contractors and conciliates disputes over alleged discriminatory practices. The OFCCP released a final rule on August 4 removing much of the clarity and transparency that contractors have enjoyed the past several years when it comes to pre-enforcement notices and conciliation procedures, generally making things more complicated for the employer community. The rule becomes effective on September 5 – meaning now is the time for federal contractors to understand what is changing and what it means for them. [Click here to learn more.](#)

We will continue to monitor developments related to all aspects of workplace law. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information. If you have questions, contact your Fisher Phillips attorney.

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