

FP'S TOP 10 WORKPLACE LAW PREDICTIONS FOR 2024

Insights
Dec 28, 2023

It's never easy to make accurate predictions about what we'll see in the workplace in the coming year, especially given the recent volatility we've experienced and expect for the foreseeable future. Despite the ever-present uncertainty, we asked our firm's thought leaders to develop their best predictions to help you plan for 2024. [You can read our entire FP Workplace Law 2024 Forecast here](#), or you can dive into this Insight for the top 10 predictions we pulled from our report.

1. AI Regulation Will Arrive

Federal agencies will start issuing AI-targeted guidance as required by [President Biden's sweeping executive order](#) – but you shouldn't expect to see anything from Congress in 2024 that would move the needle. Instead, we'll see state legislatures step into the fray and start regulating artificial intelligence in the coming months.

2. SCOTUS Will Take a Hatchet to Federal Agencies' Regulatory Power

The Supreme Court will overturn a longstanding rule known as "*Chevron* deference" that gives federal agencies broad power to administer and enforce laws passed by Congress. This will have profound implications for administrative agencies such as the DOL, NLRB, and OSHA – expect the ripple effects to carry on through 2024 and beyond.

3. Labor Board Will Expand Remedies

We predict the NLRB will unshackle the constraints that had prohibited it from issuing any additional remedies besides

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“make-whole relief” for unfair labor practices concerning failure to bargain. That means you can expect to soon see the Board issue rulings awarding compensatory damages to unions and union members. You can also expect the Board to uphold the General Counsel’s recent memo restricting mandatory captive audience meetings.

4. Expect to See More Consumer Privacy Laws – But Not From the Feds

To date, 13 states have passed consumer privacy laws, and more will follow suit in 2024. We expect that additional states will follow the post-CCPA trend of excluding employment-related data from protection under these new laws, unlike California – where such data is subject to the CCPA/CPRA requirements. But despite bipartisan efforts in recent years to pass a federal consumer privacy law, the prospects are dim for passage of any law from Congress in 2024.

5. Lower Wage Earners Will Receive Greater Non-Compete Protections

As the [proposed federal ban on non-competes](#) remains in [administrative limbo through the first half of 2024 or so](#), we’ll see more states impose minimum-income requirements for employees who can be required to sign restrictive covenants. We may even see the FTC follow that path when it comes to finalizing its non-compete rule.

6. Expect EEO-1 Reporting Changes

Annual EEO-1 reporting is required for nearly all employers with 100 or more employees and for many federal contractors or subcontractors with at least 50 employees. In 2024, we’ll see the EEOC revise the gender reporting categories to give employees an opportunity to voluntarily self-identify as non-binary or a similar category other than male or female. We may even see the agency revise race/ethnicity reporting to include a category specifically for employees with origins in Middle Eastern countries who have historically been reported as “White.”

7. Safety Officials Will Make Criminal Referrals

OSHA will be aggressive in referring workplace safety matters to the federal Department of Justice or local state criminal prosecutors in 2024. This will most often arise when

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a supervisor provides damning testimony about workplace safety concerns to OSHA and the agency provides a copy of the statement or recording of the interview to a prosecutor. Knowing how to defend against such prosecutions will be a crucial skill for employers in the new year.

8. Wage and Hour Regulators Will Focus on Child Labor Laws

Federal and state enforcement of child labor laws will be a main focus of federal officials in 2024. The USDOL recently reported a 70% increase in the number of children illegally employed by companies in recent years. Businesses that relied on minors in response to worker shortages that were unaware of or failed to adhere to the strict restrictions on child labor will continue to face hefty penalties.

9. E-Verify NextGen Will Streamline the I-9 Process

USCIS will release a new product, E-Verify NextGen, which will modernize the I-9 and employment verification process for employers and employees alike in 2024. Among other features, employees will be able to enter their own information through a portal – with the goal of reducing data entry errors – and notifications will be streamlined.

10. Federal Contractors Will See New Race/Ethnicity Categories

The contractor community has long raised concerns on the limits and nature of the race and ethnicity categories currently used for EEO-1 filings and Affirmative Action Plan (AAP) documents. Both the EEOC and OFCCP have indicated they are currently reviewing the issue, and we expect to soon see new categories or new clarifications in current categories.

Conclusion

If you want more predictions, [you can read our entire FP Workplace Law 2024 Forecast here](#). We will continue to keep tabs on workplace law developments throughout the new year, so make sure that you are subscribed to [Fisher Phillips' Insights](#) to get the most up-to-date information direct to your inbox. If you have further questions, contact your Fisher Phillips attorney.