

What to Expect in 2024: A Highlight Reel

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Littler[®]

Compliance **HR**

Today's Webinar Host:

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Who We Are



- Technology Platform
- Infrastructure enterprise

- Subject matter expertise
- Knowledge management team
- Case databases

What we do:
Deliver expert guidance in a fraction of time and cost vs traditional methods

Simplify the complexity of employment law



PolicySmart™

Create and maintain an up-to-date and legally compliant employee handbook



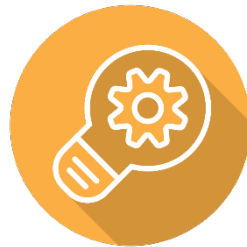
Navigator Independent Contractor

Remove risk in determining Independent Contractor status



Navigator Overtime

Determine if an employee is exempt or non-exempt



The Reference Center

A Comprehensive Solution for Employment Law and Common HR Compliance Questions



The Document Center

Efficiently generate state and federal compliant documents throughout the employee lifecycle

Sign Up for a Demo

Three ways to sign up for a demo:

1. Reply “Yes” to the on-screen poll
2. Click the link at the top of your screen
3. Visit the link in the Resources panel

Benefits of a custom demonstration:

- Discuss your organization’s requirements/challenges
- Review Navigator Suite Solutions
- Share compliance methodologies

ComplianceHR Demo & Free Trial:

<https://compliancehr.com/webinar-demo/>

Resources

[Compliance HR - Demo & Free Trial](#)

[State-by-State CLE Guide](#)

[BeaconLive - How to Access Certificates](#)

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Today's Format

- Rapid fire approach
- Highlight reel of important legal updates and what to watch for in 2024
- Not going deep into any particular topic, cover broad swath
- Place questions in the chat

Agenda

- **Maureen Lavery:** New legislation and anticipated legal trends
- **Hannah Stilley:** Reproductive rights laws after *Dobbs*
- **Michelle Devlin:** NLRB decisions and precedents impacting union and non-union workforces
- **Michelle Devlin:** the changing landscape of “Me Too” confidentiality provisions
- **Amy Mendenhall:** Handbook updates



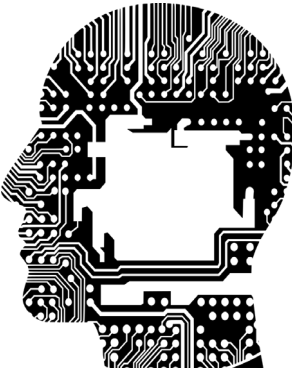
Before We Get Started...

- DOL's proposed update to overtime regulations: Not be covered
- Basics:
 - Increase current salary level to 35th percentile in lowest census region: by the time the rule is finalized (anticipated in first quarter of 2024) could be as high as \$1,158 per week (\$60,209 annualized)
 - HCE exemption: increase current level to 85th percentile of nationwide average
 - Automatic increases at same levels (35th percentile and 85th percentile) every 3 years
 - No duties test changes
- Employers should start preparing for that increase

Highlight Reel #1:

New Legislation and Anticipated Legal Trends for 2024





New Legislation and Trends: AI

- Only a small number of US jurisdictions has passed laws regulating the use of AI in employment decision-making: Illinois, Maryland, and New York City
- In October 2023, President Biden issued the “Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence”
- In September 2023, Governor Newsom had issued a similar executive order for the purpose of deploying GenAI ethically and responsibly throughout state government, protect and prepare for potential harms, and maintain the state’s position as the world’s AI leader
- In 2024, states may be more inclined to follow the federal government, California, and other states that have developed working groups to explore issues around GenAI and predictive AI and develop frameworks for future legislation, though some states have bills still pending that more closely regulate an employer’s use of AI tools

New Legislation and Trends: Pay Transparency

- In 2023, nearly a quarter of US states introduced legislation that would require employers to disclose the rate of pay or a range of pay rates in any job posting or advertisement for a position
- States that enacted pay transparency laws in 2023: Hawaii and Illinois
- States that amended existing pay transparency laws in 2023: Colorado and New York
- The Massachusetts legislature and the District of Columbia City Council have largely finalized pay transparency bills
- In 2024, look for jurisdictions whose 2023 bills did not pass to reintroduce their legislation

New Legislation and Trends: Non-Competes

- Federal action: in January 2023, the Federal Trade Commission proposed new regulations that, if adopted, will ban all noncompete agreements with limited exceptions. In June 2023, the general counsel of the National Labor Relations Board issued a memorandum urging the NLRB to make new law prohibiting the implementation and enforcement of employee noncompete agreements under the National Labor Relations Act.
- On the state side, California has famously restricted the use of post-employment noncompetition agreements for many years, and in 2023, the state amended its noncompetition statute to impose further restrictions.
- Maryland and Minnesota also enacted laws related to noncompete agreements in 2023, and the New York State legislature has passed a bill that is waiting for the governor's review.
- For the coming year, expect to see more states introduce legislation that significantly limits an employer's ability to enter into noncompete agreements with employees, particularly employees who are not considered highly compensated employees.

New Legislation and Trends: Captive Audience

- “Captive audience” laws regulate how employers may lawfully convey messages to employees about religious and political matters as well as issues related to unionization
- Maine and New York enacted captive audience bills during 2023
- California, New Mexico, New York, Rhode Island, Vermont, and Washington have similar bills pending
- Related issue: workplace freedom of speech. Montana enacted a law that prohibits an employer from discriminating or retaliating against an employee due to the employee’s political affiliation or expression of political views, including legal expressions of free speech in personal social media posts.
- Mandatory employer-sponsored meetings and workplace freedom of speech will continue to be a hot-button legislative issue in 2024, particularly because it is an election year

Highlight Reel #2:

After Dobbs: How Updates To Reproductive Rights Laws Will Continue To Impact Employers In 2024



After Dobbs: The Basics

- Dobbs v. Jackson Women's Health

Organization: The constitution of the United States does not confer a right to abortion.

- Initial concerns

- Abortion laws quickly changed
- Prohibitions on employer financial assistance

- More than just abortion

- Reproductive health services
- Gender-affirming care



After *Dobbs*: Legislation Tracking

- Parameters:
 - Gestational age and post-viability bans
 - Laws that would affect employers (discrimination, liability, health insurance coverage, etc.)
 - Does not include TRAP laws, specific medication bans, or abortions for minors, etc.

Year Range	Bills Introduced	Enacted
Jan. 2022 – Dec. 2022	72	21
Jan. 2023 – Dec. 2023	348	48

After *Dobbs*: Emerging Legislation

- Abortion restrictions
- Reproductive health protections
- SHIELD laws
- Mandatory health insurance coverage
- Discrimination protections

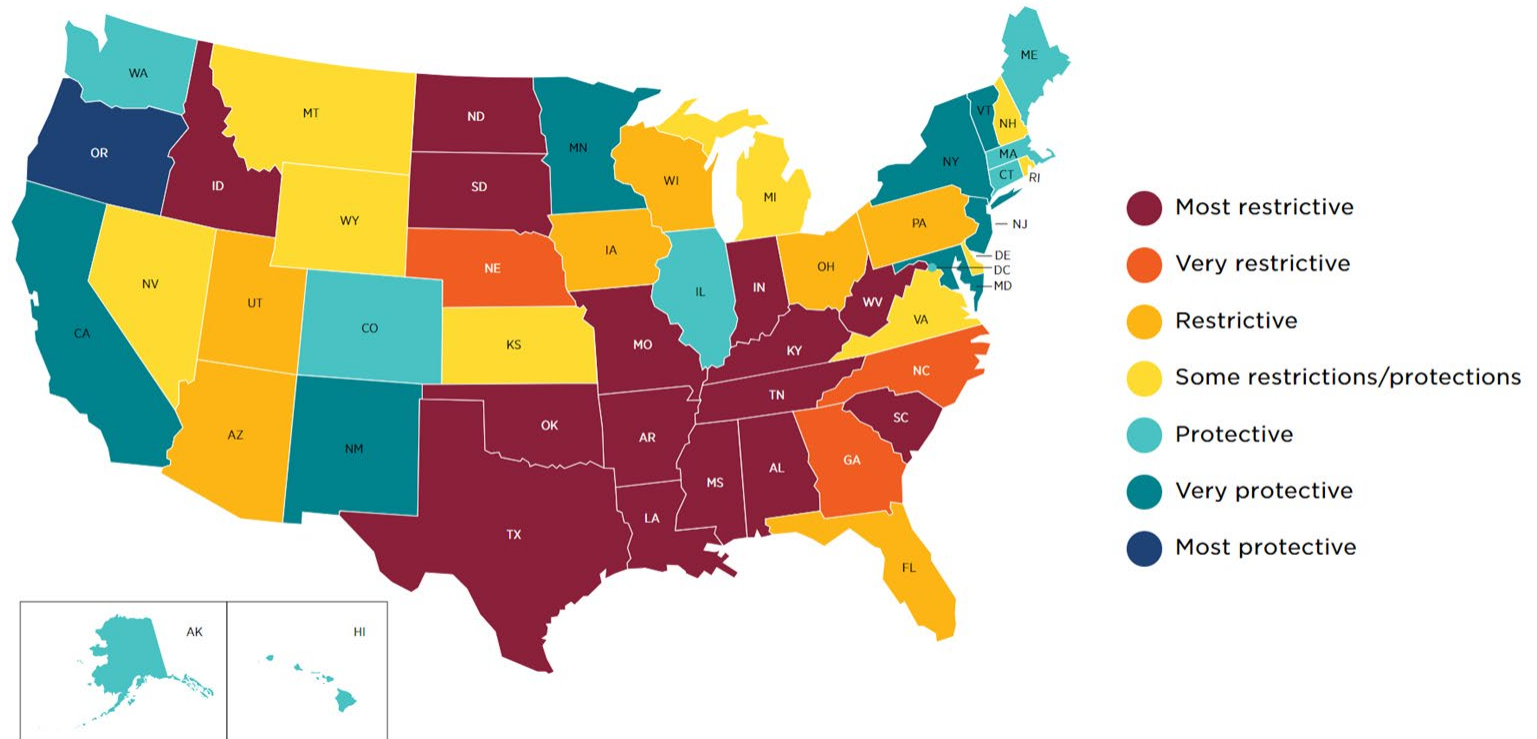


Image from the Guttmacher Institute: <http://www.states.guttmacher.com>

After Dobbs: Other Considerations

- Ballot measure initiatives
 - Recent example: Ohio
 - Upcoming in 2024:
 - Maryland
 - New York
- Judicial actions
 - Continual challenges to new laws and ballot measures



Highlight Reels #3 & #4:

NLRB Decisions And Precedents Impacting Union And Non-union Workforces

&

The Changing Landscape Of “Me Too” Confidentiality Provisions



Highlight Reel #3:

Major NLRB Decisions & Precedents



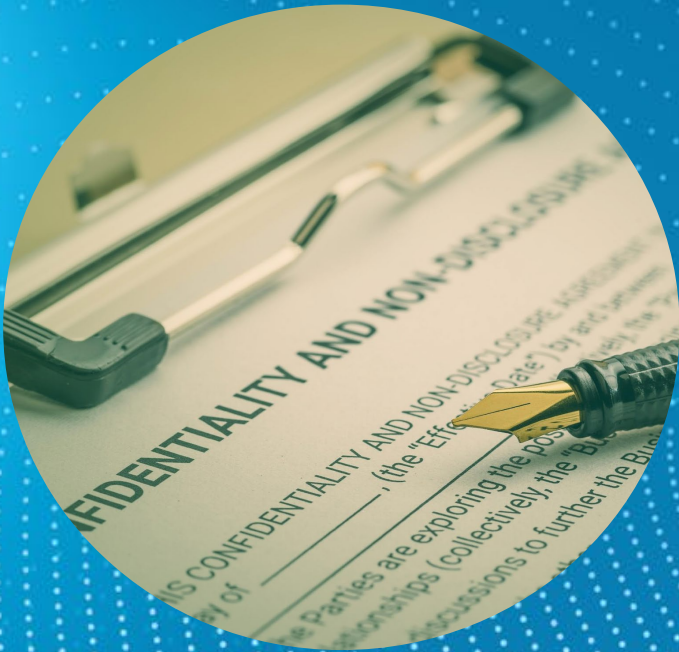
Change at the NLRB

- New legal rules make for easier organizing
 - Return to “Quickie” Election Rules
 - Union organizing by card check/bargaining orders
 - Return to “micro-units”
 - Joint employer rulemaking
 - Independent contractor status
- Expansion of PCA
- Restrictions on Separation Agreements
- Higher stakes for employers who commit ULPs
- Return to War on Handbooks



Highlight Reel #4:

The Changing Landscape of “MeToo” Confidentiality Provisions



“Me Too”

- Trend toward unrestricted right to disclose sexual harassment and other discriminatory conduct
- Speak Out Act – renders unenforceable non-disclosure and non-disparagement clauses related to allegations of sexual assault/harassment entered into “before the dispute arises”
- Colorado POWR Act – Expands Workplace Harassment Laws, Limits Nondisclosure Provisions, and more
- NY S4516 – Greater Restrictions on Release Agreements Involving Claims of Discrimination, Harassment, or Retaliation
- NLRB’s *McLaren* decision may conflict with some state laws

Colorado Passes Protecting Opportunities and Workers' Rights Act--Includes Updated Policy and New Policy
Colorado Legal Development (Effective 08/07/2023)

Requires Policy Changes

Effective August 31, 2023, Colorado has amended its employment practices law to include marital status as a protected classification, redefine the standards for harassment claims, and clarify nondiscriminatory employment practices related to employees with disabilities. In addition, the amendments outline the necessary requirements for an enforceable nondisclosure agreement relating to discriminatory or unfair employment practices and add certain recordkeeping requirements for employers.

Marital Status as a Protected Classification

Colorado law prohibits discrimination on the basis of a person's race, color, creed, religion, disability, sex, sexual orientation, gender identity, gender expression, age, national origin, ancestry, and pregnancy. This amendment adds marital status to the classifications protected by law and clarifies that it is an unfair and discriminatory practice to discharge an employee or to refuse to hire or promote a person solely on the basis that the person is married to or plans to marry another employee. The amendment does not, however, change Colorado law with respect to decisions to discharge an employee or refuse to hire a person where the spouse would have certain authority over the other spouse, such as supervisory, auditing, or dismissal authority, or if one spouse has access to the employer's confidential information.

Nondiscriminatory Practices Relating to Disability

This amendment makes a slight change to the standard for determining whether an employer's decision to discharge, demote, or refuse to hire or promote a person with a disability is a discriminatory practice, rather than considering whether the disability would have a significant impact on the job, the amendment specifies that discharge, demotion, or refusal to hire or promote a person with a disability will not be an unfair or discriminatory employment practice if there is no reasonable accommodation that can be made that would allow the individual to satisfy the essential functions of the job. In addition, the disability must actually disqualify the individual from the job.

Standards for Harassment Claims

This amendment expands the definition of "harass" or "harassment" to mean engaging in any unwelcome physical or verbal conduct or any written, pictorial, or visual communication directed at an individual or group because of actual or perceived membership in a protected class. The conduct or communication must be subjectively offensive to the individual and objectively offensive to a reasonable individual who is a member of the same protected class.

Repealing the judicial standard requiring that the conduct be severe or pervasive, conduct will constitute harassment in violation of the new law if:

- Submission to the conduct is explicitly or implicitly made a term or condition of the individual's employment;
- Submission to, objection to, or rejection of the conduct is used as a basis for employment decisions affecting the individual; or
- The conduct has the purpose or effect of unreasonably interfering with the individual's work performance or creating an intimidating, hostile, or offensive working environment.

The new law requires consideration of the totality of the current circumstances surrounding the conduct, including:

- Frequency of the conduct (a single incident may rise to the level of harassment);

Highlight Reel #5:

**Handbook Updates to
Get You Ready for 2024**



Updating Your Handbook: What's in a Year?

- Since January 1, 2023, we have updated or created more than 45 policy statements to keep state supplement handbook templates up-to-date
- Removed four policies that have sunsetted or will sunset at the end of 2023:
 - Utah Military Leave
 - Nevada Vaccine Leave
 - New York Vaccine Leave
 - Philadelphia COVID Leave
- More than 40 changes in handbook-related laws take effect on January 1, 2024

New and Revised State and Local Policies in 2023	
Alabama	1
Arkansas	1
California	5
Colorado	4
Connecticut	1
Florida	1
Georgia	2
Illinois	9
Louisiana	1
Massachusetts	1
Michigan	3
Minnesota	8
New Jersey	1
New York	4
North Carolina	1
North Dakota	1
Ohio	1
Oregon	4
Pennsylvania	1
Rhode Island	1
Virginia	1

Handbook Updates—Changes in the Paid Leave Landscape

- New Colorado FAMLI leave
- New Illinois paid leave
- New Chicago paid leave and paid sick leave
- New Minnesota paid sick and safe leave
- Recent changes to Massachusetts paid family and medical leave
- Recent changes to Connecticut paid sick and safe leave
- Changes in California paid sick and safe leave

The screenshot displays the PolicySmart website interface. The main content area is titled "Recent Policy News" and lists four news items:

- Illinois** (Posted December 1, 2023): [Illinois Passes New Law Requiring Paid Leave--Now Includes Sample Policy](#). Illinois has enacted the Paid Leave For All Workers Act ("the Act"). The Act requires nearly all covered Illinois employers to provide its covered employees with up to 40 hours of paid leave per year to be used for any purpose. ...
- Illinois** (Posted December 1, 2023): [Chicago Enacts New Paid Leave and Paid Sick Leave Ordinance for 2024--Includes New and Updated Policies](#). The Chicago City Council passed the new Chicago Paid Leave and Paid Sick and Safe Leave Ordinance. ...
- Minnesota** (Posted December 1, 2023): [Minnesota Passes Statewide Sick and Safe Leave Law--Now Includes Sample Policy](#). Minnesota has enacted a statewide Earned Sick and Safe Leave law (ESSL). The ESSL provisions, effective January 1, 2024, do not preempt other local paid sick and safe time laws. ...
- Colorado** (Posted November 16, 2023): [Colorado Passes Paid Leave Law by Ballot Initiative--Now Includes Sample Policy](#). Leave becomes available under Colorado's Paid Family and Medical Leave Insurance law on January 1, 2024. This post includes a sample policy. ...

On the right side, there is a "Filter Timeline" section with two circular gauges: "Effective Within" with "One Month" at 43 and "Six Months" at 54. Below it is a "Filter News" section with a "Select Jurisdiction" dropdown (set to "- Select All -"), a "Requires Policy Update" dropdown (set to "Yes"), and a "Clear All Filters" button.

New Notice Requirements

- New York notice regarding ban on certain employer-sponsored meetings
- Maine notice of employee rights to not attend certain employer-sponsored meetings
- New York City requiring distribution of materials on Temporary Schedule Changes Act (effective 3/1/2024)



Handbook Updates—New Kids on the Block

- Expansion of bereavement leave in Illinois and California
- New California workplace violence prevention requirements
- Paid organ donor leave in Illinois
- Leave for victims of bias crimes in Oregon
- New York City discrimination protections on the basis of height and weight



Federal Trends to Keep in Mind

- The NLRB's new *Stericycle* standard for employer policies
- Proposed regulations under the Pregnant Workers Fairness Act
- New religious accommodation standard after *Groff v. DeJoy*
 - A new and much higher standard in religious accommodation claims
 - “substantial increased costs in relation to the conduct of [an employer’s] particular business”
 - May result in increase in religious accommodation requests
 - A good time to re-evaluate policies and procedures used when assessing accommodation requests

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[State-by-State CLE Guide](#)

[BeaconLive - How to Access Certificates](#)

Questions?

Please add any additional questions to the Q&A box

Thank you!

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