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LEGISLATION AND AGENCIES

Primary and secondary legislation
What are the main statutes and regulations relating to employment?

In the United States, the employment relationship is governed by federal and state laws and, sometimes, by the laws of local governments within states (eg, counties, boroughs, cities and towns).

The primary federal laws that regulate various aspects of employment include:

- the National Labor Relations Act, establishing the right of employees to form, join and assist labour unions, and the right to bargain collectively with the employer;
- the Fair Labor Standards Act (FLSA), establishing minimum wages and the right to a premium wage rate for time worked over 40 hours in a working week, as well as exemptions from such wage-rate obligations;
- the Occupational Safety and Health Act, establishing minimum standards for safety and health in the work environment generally and for specific industries;
- the Employee Retirement Income Security Act, regulating the field of employee benefits, such as pension and welfare plans;
- the Family and Medical Leave Act (FMLA), establishing the right of eligible employees to take time off from work:
    - owing to medical disability;
    - to bond with a newborn, or a child who is either adopted or placed through foster care; or
    - to care for a family member who has a serious health condition, or who is an ill or injured serviceperson;
- the Immigration Reform and Control Act, regulating immigration into the United States and providing that employers may only employ individuals who can establish their identity and lawful right to work in the United States; and
- the Sarbanes-Oxley Act and the Dodd-Frank Act, establishing whistle-blowing protection for employees of publicly held companies (and any subsidiaries or affiliates the financial information of which is included in consolidated financial statements) who make complaints or assist in investigations regarding shareholder fraud, accounting, internal accounting controls or auditing matters.

Law stated - 25 February 2024

Protected employee categories
Is there any law prohibiting discrimination or harassment in employment? If so, what categories are regulated under the law?

Federal, state and local laws prohibit discrimination or harassment in employment as a result of certain characteristics of the applicant or employee. The main federal laws are as follows:

- Title VII of the Civil Rights Act (Title VII) prohibits discrimination against and harassment of an individual based on race, skin colour, sex (including sexual orientation, gender identity and pregnancy), national origin or religion.
- The Age Discrimination in Employment Act (ADEA) prohibits discrimination against and harassment of individuals who are 40 years of age or older.
- The Americans with Disabilities Act (ADA) prohibits discrimination against qualified individuals with a physical or mental disability, those with a history or record of a disability and persons associated with individuals who have a disability. The ADA also requires employers to provide reasonable accommodation to an individual with a disability that would enable him or her to apply for a position or perform the essential functions of a position, if such accommodation does not result in undue hardship to the employer's operations.
- The Genetic Information Nondiscrimination Act prohibits employers from using genetic information for decisions on hiring, firing, promotions or job assignments, and prohibits group health plans and health insurers from basing eligibility or premium determinations on genetic information.
- The Equal Pay Act prohibits sex discrimination in pay.

Other federal statutes prohibit discrimination based on citizenship and veteran status.

The Americans with Disabilities Act Amendments Act of 2008 came into effect on 1 January 2009. The amendments contained therein make important changes to the definition of the term 'disability' under the ADA, which broadens coverage for individuals who seek to establish that they have disabilities within the meaning of the ADA.

On 29 January 2009, the Lilly Ledbetter Fair Pay Act of 2009 (FPA) was signed into law, eliminating many statute of limitations defences for pay discrimination claims under federal employment laws such as Title VII, the ADEA and the ADA. The FPA amends Title VII by providing that an unlawful employment practice occurs each time an employer issues a pay cheque that has been affected by a prior discriminatory pay decision, regardless of when that initial alleged discriminatory pay decision was made. The FPA applies retroactively to all claims pending on or after 28 May 2007.

Also, virtually all 50 states have their own anti-discrimination and anti-harassment laws. Some state and local laws prohibit discrimination or harassment on the same basis covered by federal laws. Others prohibit discrimination or harassment on additional bases such as marital status, domestic or civil union partner status, family status and appearance. All anti-discrimination and anti-harassment laws – federal, state and local – prohibit retaliation against employees for exercising their rights under such statutes by opposing or making complaints of discrimination or harassment, or participating in legal proceedings regarding discrimination or harassment.

Law stated - 25 February 2024

Enforcement agencies

What are the primary government agencies or other entities responsible for the enforcement of employment statutes and regulations?

Federal government agencies enforce federal employment laws. State government agencies enforce state employment laws. Most employment-related laws allow individuals to bring lawsuits in federal or state courts to enforce the law at issue or to recover monetary damages for violation of that law. Some federal and state laws require individuals to pursue and exhaust their remedies with the specified government agency before filing lawsuits in a federal or state court.

The following federal government agencies enforce the corresponding federal employment laws:

- the Department of Labor, through its various divisions, enforces the FLSA, the FMLA, the Occupational Safety and Health Act and the Employee Retirement Income Security Act;
- the Equal Employment Opportunity Commission enforces Title VII, the ADEA, the ADA, the Genetic Information Nondiscrimination Act and the Equal Pay Act;
- the National Labor Relations Board administers the National Labor Relations Act; and
- the Department of Justice enforces the non-discrimination requirements of the Immigration Reform and Control Act.

Law stated - 25 February 2024

WORKER REPRESENTATION

Legal basis
Is there any legislation mandating or allowing the establishment of employees' representatives in the workplace?

The National Labor Relations Act protects the right of private-sector employees to organise into trade unions, engage in collective bargaining and take collective action such as strikes.

Law stated - 25 February 2024

Powers of representatives
What are their powers?

Among other powers, a union selected by employees as a bargaining representative has the right to meet with the employer at reasonable times to bargain in good faith about wages, hours, vacation time, insurance, safety practices and other mandatory subjects. The union also may collect dues from union members pursuant to federal and state law. Depending on state law, the union may also enter into a security agreement with the employer, which requires all employees in a bargaining unit to become union members and begin paying union dues and fees within 30 days of being hired.

Law stated - 25 February 2024

BACKGROUND INFORMATION ON APPLICANTS

Background checks
Are there any restrictions or prohibitions against background checks on applicants? Does it make a difference if an employer conducts its own checks or hires a third party?

Federal law does not generally restrict background checks of applicants and employees provided that the employer conducts the check directly rather than through a third party. When an employer uses a third-party vendor to conduct the background check, however, the process is governed by the Fair Credit Reporting Act (FCRA). The FCRA does not prohibit an employer from hiring a vendor to conduct background checks or from taking employment action based upon the results of such investigations, but it does require the employer to first provide notice and obtain permission from the applicant or employee. The FCRA also requires that notice be provided to applicants and employees before any adverse employment action can be taken based upon background check information, and it requires that applicants or employees be allowed to correct or explain any negative information. The FCRA further requires employers to maintain the confidentiality of background check information and places some limits on how this information can be used. It is also important to note that several states, including California and New York, have their own laws governing the use of background checks and impose additional requirements and restrictions on an employer's ability to obtain and use this information.

As of 20 December 2021, the federal Fair Chance Act generally prohibits federal contractors from asking applicants for work in connection with federal contracts about their criminal histories until after the contractor extends a conditional job offer. The Fair Chance Act also prohibits employers from seeking an applicant's criminal history from other sources and provides exceptions for criminal background checks that are otherwise required by law or for other specific job positions.

In April 2012, the Equal Employment Opportunity Commission issued guidance regarding when it is appropriate for an employer to use background check information relating to an applicant's criminal history. This guidance states that employers should exercise caution before excluding individuals from employment based on criminal history, and asks employers to avoid blanket exclusions unless there is a close link between the requirements of the job and the type of crime committed. Similarly, certain states and municipalities across the country have enacted legislation limiting the ability to inquire as to a criminal record and the use of this information during the application process or in other employment decisions.

Law stated - 25 February 2024

Medical examinations
Are there any restrictions or prohibitions against requiring a medical examination as a condition of employment?

The Americans with Disabilities Act (ADA) prohibits employers from conducting medical examinations or making pre-employment inquiries to determine whether an applicant has a disability, or the nature or severity of an applicant's disability. Under the ADA, however, employers may require applicants to submit to post-offer medical examinations, which may be administered after the applicant has received a conditional offer of employment but before the applicant has commenced employment. Moreover, employers may condition offers of employment on the results of the post-offer medical examination if the following conditions are met:

- all entering employees in the same position are subjected to such examinations whether or not they have a disability;
- information obtained regarding an employee's medical condition or history is collected and maintained on separate forms and in separate medical files that are treated as confidential medical records; and
- the results of the examinations are used only under the provisions of the ADA and, if people with disabilities are excluded from the position based on the examination, the examination must be job-related and consistent with business necessity.

Employers must ensure that medical examinations do not result in a violation of the Genetic Information Nondiscrimination Act, which prohibits employers from using genetic information for decisions on hiring, firing, promotions or job assignments.

State laws may also provide restrictions on pre-employment medical and physical examinations of applicants.

Law stated - 25 February 2024

Drug and alcohol testing
Are there any restrictions or prohibitions against drug and alcohol testing of applicants?

Generally, pre-employment drug and alcohol testing is lawful under federal and state law where:

- the testing is required by law (eg, Department of Transportation drug and alcohol testing requirements) or is part of a lawful pre-employment medical examination required of every applicant for the same position;
- an applicant has notice of and consents to the testing requirement;
- the testing is conducted under conditions designed to minimise the intrusiveness of the procedure (eg, an applicant is not observed while furnishing the sample); and
- no specific medical information is reported to the employer; rather, the employer is only informed of a pass or no-pass result.

Drug and alcohol testing of applicants and employees is predominantly a subject of state law, which can vary widely from state to state. Some states, such as California, have recently passed laws that generally prohibit employers from discriminating against applicants and employees for lawful off-duty cannabis use.

Law stated - 25 February 2024

HIRING OF EMPLOYEES

Preference and discrimination

Are there any legal requirements to give preference in hiring to, or not to discriminate against, particular people or groups of people?

There is no legal requirement to give preference in hiring particular people or groups of people. Various anti-discrimination laws prohibit discrimination against applicants who are members of protected groups.

Law stated - 25 February 2024

Written contracts

Must there be a written employment contract? If yes, what essential terms are required to be evidenced in writing?

No.

Law stated - 25 February 2024

Fixed-term contracts

To what extent are fixed-term employment contracts permissible?

State, not federal, law would govern the maximum duration of any fixed-term employment contract. Although generally there is no limitation on the duration of fixed-term employment contracts, such contracts are typically for a term of one to three years in the United States.

Law stated - 25 February 2024

Probationary period

What is the maximum probationary period permitted by law?

There is no federal law that requires any probationary period at the beginning of the employment relationship. Unless the employer agrees to a probationary period – with an individual employee or with a representative of employees, such as a union – it would be the employer's choice whether to establish a probationary period and, if so, whether such a probationary period would be extended in the employer's discretion or only under certain circumstances. US states and territories, except Montana and Puerto Rico, do not require a probationary period.

Law stated - 25 February 2024

Classification as contractor or employee

What are the primary factors that distinguish an independent contractor from an employee?

Control, dependence and risk of loss are among the primary factors used to distinguish between an independent contractor and an employee.

An employee is generally an individual whose time, place and manner of providing services or results are controlled by, or subject to the control of, the employer. Generally, the employer provides the employee with the tools and means necessary for the work to be performed, the employee is economically dependent upon the employer, and the employer bears the risk of loss if the work performed or results achieved by the employee are not satisfactory to the employer (eg, the employer must still pay the employee and can only discipline or terminate the employee if the work or result is not satisfactory).

By contrast, an independent contractor is an individual or business entity that is generally retained to deliver a specific result and, except for deadline and security of intellectual property reasons, has the right to control the time, place and manner of performing the work necessary to produce the agreed-upon result. Independent contractors often market their services to more than one entity, provide the tools and other means necessary to produce the result, and bear some risk of loss in the event that they fail to deliver the result promptly or deliver results that are unsatisfactory in quality or quantity to the contracting business (eg, the contractor will not be paid).

This area of US law has undergone substantial change and continues to evolve very quickly on both the federal and state level in the current regulatory and enforcement environment. Several states have adopted the onerous ABC Test, which significantly limits contractor classification.

Under the ABC Test, a worker is considered an employee and not an independent contractor unless the hiring entity satisfies all three of the following conditions:

- the worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact;
- the worker performs work that is outside the usual course of the hiring entity's business; and
- the worker is customarily engaged in an independently established trade, occupation or business of the same nature as that involved in the work performed.

Exposure resulting from contractor misclassification can be significant, including exposure based on tax liabilities; failure to provide benefits; failure to reimburse for expenses; wage and hour claims; and associated penalties and derivative claims.

Several states and municipalities, such as Illinois, Washington and New York, have passed laws requiring that hiring entities comply with specific requirements when engaging an independent contractor, including paying independent contractors a set minimum amount or providing paid sick leave.

Law stated - 25 February 2024

Temporary agency staffing

Is there any legislation governing temporary staffing through recruitment agencies?

No.

Law stated - 25 February 2024

FOREIGN WORKERS

Visas
Are there any numerical limitations on short-term visas? Are visas available for employees transferring from one corporate entity in one jurisdiction to a related entity in another jurisdiction?

There are numerical limitations on two significant temporary visa categories: H-1B and H-2B. H-1B visas are for professional employees coming into the United States to work temporarily for a US employer in a specialty occupation. A specialty occupation is one requiring, at a minimum, a baccalaureate degree in a specific academic discipline (or equivalent in work experience), and the foreign national must have the requisite educational background or equivalent in work experience. Under current law, the H-1B visa has an annual numerical cap of 65,000 visas each fiscal year. The first 20,000 petitions filed on behalf of beneficiaries with a US master's degree or higher are exempt from the cap, so effectively there are 85,000 slots annually. An annual lottery is held in March and, for those selected, employers may file an H-1B petition after 1 April each year, six months before the start of the fiscal year in which the H-1B visa will become active. The Immigration and Nationality Act sets forth visa caps.

US institutions of higher education and affiliated not-for-profit organisations, not-for-profit research organisations, and US government research institutions are not subject to the H-1B cap, so they may apply for H-1B visas for professional employees at any time. Also, H-1B employees extending their stay or transferring from one cap-subject employer to another are not subject to numerical limitations.

H-1B visas are valid for a maximum period of six years. Extensions past the six-year maximum are possible when the H-1B employee is at a certain stage in the process of obtaining lawful permanent residence.

H-2B visas are for temporary employees who will work for US employers on temporary projects with a finite end, for seasonal employees and for employees who will fill a peak-load need. For example, many hospitality companies use the H-2B category to bring seasonal resort employees and ski instructors to the United States. There is a numerical limitation of 66,000 H-2B visas available each fiscal year. Half of the allotment is made available for the first half of the fiscal year and the second half is opened up in the second half of the fiscal year.

There are also work visas based on special legislation or trade treaties. The E-3 is a work visa available to nationals of Australia, and the H-1B1 is available to nationals of Chile and Singapore. These visas have requirements that are very similar to the H-1B visa in terms of the type of occupation and educational background required. Admission on an E-3 visa is typically granted for two years and is indefinitely extendable in two-year increments, provided that the E-3 visa holder can demonstrate an intent to live in the United States temporarily. H-1B1 visas are issued for 18 months and admission is typically granted for one year at a time. H-1B1 visas are also indefinitely renewable if temporary intent can be demonstrated. Based on provisions in the United States–Mexico–Canada Agreement (formerly known as the North American Free Trade Agreement), TN status is available to certain Mexican and Canadian professionals who will enter the United States to engage in pre-arranged professional work in one of the approved professional job classifications listed in the Agreement. Canadian nationals may apply for admission under TN status at a US–Canada port of entry and Mexican nationals must apply for TN visa issuance at a US consular post in Mexico.

The L visa is available for employees transferring from a corporate entity abroad to a US parent, subsidiary, affiliate or branch of the foreign employer. To qualify for the L visa, the foreign national must have worked for the related entity abroad for one of the prior three years in a managerial, executive or specialised knowledge capacity. The foreign national must be offered a position in the related US entity in a similar capacity. The L-1A visa, for managers and executives, is valid for a total of seven years. The L-1B visa, for individuals with specialised company knowledge, is valid for a total of five years.

Sometimes, a company may transfer an employee to the United States on an E visa. E visas are available to nationals of countries with which the United States has certain trade, investment, navigation, friendship or commerce treaties. The company that will employ foreign nationals in the United States must be majority-owned or controlled by nationals of the treaty country. The employing company must represent a substantial investment in the United States or must conduct trade, at least 50 per cent of which must be between the United States and the treaty country. The foreign national must be a citizen of the same treaty country and must be entering the United States to assume a managerial, executive or essential function. There is no requirement for the E visa applicant to work with a related entity abroad for a period of time before applying for the visa. E visas are typically granted for five years at a time and are renewable in most circumstances.

There are no numerical limitations on the number of L or E visas that may be issued each year.

Law stated - 25 February 2024

Spouses
Are spouses of authorised workers entitled to work?

Spouses of L and E visa holders are authorised to work incident to their E-1S, E-2S, E-3S or L-2S status and are not required to obtain a work authorisation card (an employment authorisation document). Work authorisation is unrestricted as to employers, and extends for as long as the principal visa holder and spouse remain in L or E status. Certain H-4 dependent spouses of H-1B employees are also eligible for work authorisation and may apply for an employment authorisation document. Work authorisation is unrestricted as to employers but is time-limited based on the validity period of the employment authorisation document. The couple must be legally married. Work authorisation is not available to non-spouse partners.

Law stated - 25 February 2024

General rules

What are the rules for employing foreign workers and what are the sanctions for employing a foreign worker who does not have a right to work in the jurisdiction?

Every US employer must verify the identity and work eligibility of every employee hired to perform services in the United States since 6 November 1986. The verification must be completed on Form I-9 within three business days of hire and maintained during the employment of the employee and for a period of time after separation or termination. Employers who fail to undertake verification of employees' identity and work authorisation may face serious civil fines and, increasingly, criminal penalties. The Immigration and Customs Enforcement agency of the Department of Homeland Security may conduct audits and raids of employers to determine whether verification is taking place.

Foreign nationals who work without appropriate authorisation in the United States may face difficulty receiving future immigration benefits such as permanent residence or, in egregious cases, may be removed from the United States and barred from returning for a certain period. Also, the US government offers employers the use of the E-Verify electronic verification database. Use of E-Verify is currently optional for most US employers, except for certain federal government contractors and companies doing business in certain states.

Law stated - 25 February 2024

Resident labour market test

Is a labour market test required as a precursor to a short or long-term visa?

A labour market test is required as a precursor for two temporary visas. It is required for the H-2B visa for seasonal or peak-load employees and for the H-2A visa for seasonal agricultural employees.

Also, a labour market test is required as the first step for most employment-sponsored permanent residence applications. The process involves a highly structured recruitment campaign that complies with Department of Labor rules and an online attestation of recruitment activities. Employers are required to cover all fees and costs for such labour market tests under Title 20 of the Code of Federal Regulations.

Law stated - 25 February 2024

TERMS OF EMPLOYMENT

Working hours

Are there any restrictions or limitations on working hours and may an employee opt out of such restrictions or limitations?

Generally, the Fair Labor Standards Act (FLSA) does not limit or restrict the number of hours that adult employees may work in a single working day or working week if the employees agree to work those hours. However, depending upon an employee's job classification, if the employee works in excess of a certain number of hours per working day or per working week, the employer may be required to pay the employee at premium wage rates for the excess hours under either the FLSA or applicable state laws. Also, some state laws prohibit employers from requiring employees to work more than a certain number of hours per working day or per working week and protect employees against retaliation by employers if the employees refuse to work in excess of such hours. Further, some states require employers to provide their employees with meal breaks and rest breaks after working a certain number of hours in a day or during certain times of the day. There may be other regulatory limitations on working hours for minors or adults in certain specific industries or positions (eg, commercial truck drivers and airline pilots).

Local laws have begun requiring employers to offer predictable or flexible work schedules to employees on an increasingly more common basis. Many of these laws require employers to provide employees with advance notice of work schedules and limit an employer's ability to require employees to work certain shifts.

Law stated - 25 February 2024

Overtime pay – entitlement and calculation
What categories of workers are entitled to overtime pay and how is it calculated?

All employment positions are presumed to be subject to the minimum and overtime wage requirements of the federal and state wage and hour laws unless the employer can prove that the employee's compensation, job duties and responsibilities qualify the employee for one of the exemptions under the FLSA or applicable state wage and hour laws. If the employee is not exempt, such an employee is eligible for premium pay for overtime worked.

Under the FLSA, non-exempt employees are entitled to one-and-a-half times their regular rate of pay for all time worked in excess of 40 hours in one working week (defined as a recurring period of seven 24-hour periods). The regular rate of pay is calculated by taking into account the employee's hourly rate as well as any additional cash compensation entitlements, such as sales commissions, performance bonuses and certain other forms of compensation, including meals and housing, provided by the employer.

Under some states' wage and hour laws, such as Californian law, a non-exempt employee's entitlement to overtime compensation is greater than that provided by the FLSA. For instance, while the FLSA requires that overtime compensation be paid at one-and-a-half times the employee's regular rate of pay for all time worked in excess of 40 hours in one working week, Californian law requires that overtime compensation be paid at one-and-a-half times the employee's regular rate of pay for all time worked in excess of eight hours, up to and including 12 hours, in one working day (defined as a recurring 24-hour period) or for all time worked in excess of 40 hours in one working week, and for the first eight hours worked on the seventh day that the employee works in a working week. Californian law also provides for an overtime compensation rate equal to two times the employee's regular rate of pay for time worked in excess of 12 hours in one working day and for time worked in excess of eight hours on the seventh day that the employee works in a working week.

Law stated - 25 February 2024

Overtime pay – contractual waiver
Can employees contractually waive the right to overtime pay?

Employees cannot waive their right to receive overtime payments and generally cannot agree to settle claims arising from an employer's failure to provide such payments, absent approval by a court or the United States Department of Labor (see ***Boaz v FedEx Customer Information Servs, Inc***, 725 F3d 603, 606 (Sixth Circuit 2013) recognising that 'employees may not, either prospectively or retrospectively, waive their FLSA rights to minimum wages, overtime, or liquidated damages'; and ***Lynn's Food Stores, Inc v United States***, 679 F2d 1350, 1352-53 (Eleventh Circuit 1982) establishing the long-recognised exception for settlement agreements approved by a court or the Department of Labor). However, one federal circuit court of appeals has held that a union-negotiated settlement agreement may be enforceable without court or Department of Labor approval where the agreement resolves 'claims predicated on a bona fide dispute about time worked and not as a compromise of guaranteed FLSA substantive rights themselves' (***Martin v Spring Break '83 Prods, LLC***, 688 F3d 247, 255 (Fifth Circuit 2012)).

Law stated - 25 February 2024

Vacation and holidays
Is there any legislation establishing the right to annual vacation and holidays?

Certain states and local jurisdictions – such as Illinois, Maine, Nevada, and West Hollywood, California – have passed laws requiring paid time off. Certain businesses in Massachusetts must also permit employees to choose not to work on Sundays and some legal holidays. Even if paid vacation or paid holidays are not required by applicable law, if an employer elects to provide its employees with such paid time off benefits, some states' laws regulate how an employer administers such benefits.

Law stated - 25 February 2024

Sick leave and sick pay
Is there any legislation establishing the right to sick leave or sick pay?

Medical leave

Federal law and some states' laws provide certain employees with unpaid medical leave. In particular, the federal Family and Medical Leave Act (FMLA) provides that eligible employees may take leave for up to 12 weeks during a 12-month period if the employee:

- works for an employer that has at least 50 employees in the United States;
- works at a location where the employer employs at least 50 employees within a 75-mile radius;
- has been employed by the employer for at least 12 months;

- has provided at least 1,250 hours of service to the employer during the past 12 months;
- has not already used all of his or her 12 weeks of FMLA leave during the relevant 12-month period; and
- is medically certified by a healthcare provider as having a serious health condition as defined by the FMLA.

Several states and localities have their own laws that parallel the FMLA. Some states have laws that provide greater rights to medical leave than those provided by the FMLA.

Paid sick leave

Although there is no federal statute establishing the right of any employee to paid medical leave, in September 2015, President Barack Obama issued an executive order requiring federal contractors to provide employees working on government contracts with seven days or more of paid sick leave per year.

In recent years, there has been an explosion of paid sick leave laws enacted by states and municipalities. For example, in January 2012, Connecticut became the first state to require employers with 50 or more employees to provide up to five days of paid sick leave to their 'service worker' employees. Other states have since followed suit, passing laws that require employers to provide paid sick leave. These states include Arizona, California, Colorado, Connecticut, Maine, Maryland, Massachusetts, Michigan, Nevada, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, Virginia and Washington. This trend has grown among municipalities as well, including Chicago, Illinois; the District of Columbia; Jersey City and Trenton, New Jersey; New York City, New York; Philadelphia, Pennsylvania; Portland, Oregon; San Francisco, California; and Seattle, Washington. For example, under the New York City Earned Sick Time Act, which took effect on 1 April 2014, employers with employees 'within the City of New York' are required to provide their employees with paid sick leave. Covered employees must accrue at least one hour of sick leave for every 30 hours worked and are entitled to up to 40 or 56 hours (depending on the employer's size) of sick leave per calendar year. Although the Act states that accrued but unused sick leave shall carry over from year to year, employers may limit employee usage to a maximum of 40 or 56 hours per year, depending on the employer's size. The Act provides that paid sick leave may be used for absences owing to:

- an employee's own medical care or the care of a family member in connection with a physical or mental illness, injury or health condition;
- closures of an employee's place of business or an employee's child's school or childcare provider owing to a public health emergency; and
- for certain reasons related to domestic violence, family offences, sexual offences, stalking or human trafficking.

Similarly, the District of Columbia requires employers to provide paid sick leave. Under the Accrued Sick and Safe Leave Act, the amount of leave that employers are obliged to provide varies from three to seven days per calendar year, depending on the size of the company. Unused leave carries over annually, but an employer is never obliged to provide more leave than the required statutory maximum. Employees may use paid leave for absences resulting from:

- their own medical care and the care of a family member in connection with a physical or mental illness, injury or mental condition; and
- the need to obtain social, legal or medical services for themselves or family members who were victims of stalking, domestic violence or sexual abuse.

These permissible uses are commonly found in paid sick leave ordinances and laws enacted by other jurisdictions nationwide.

Independent contractors

Certain states and municipalities require that companies provide paid sick leave to independent contractors. For example, Washington State requires that rideshare drivers receive paid sick leave. As another example, Seattle, Washington, requires that 'network companies' provide paid sick leave to non-employee app-based workers.

Law stated - 25 February 2024

Leave of absence

In what circumstances may an employee take a leave of absence? What is the maximum duration of such leave and does an employee receive pay during the leave?

Various federal and state laws establish the right of employees to take a leave of absence in certain circumstances.

The FMLA establishes a right for an eligible employee to take medical leave for up to 12 weeks during a 12-month period if the employee cannot work owing to a serious health condition, including a temporary disability caused by pregnancy, childbirth or a related condition. Other qualifying reasons for leave under the FMLA are:

- child-bonding leave, for the employee to bond with a child under the age of 18 within one year of the child’s birth, adoption or foster care placement with the employee;
- family care leave, for the employee to care for a parent, spouse or child who has a serious health condition and who needs or could benefit from the employee’s care;
- exigency leave, for the employee to tend to any qualifying exigency arising from a family member’s (eg, a spouse, child or parent) active-duty military service or call to active duty; and
- military caregiver leave of up to 26 weeks in a single 12-month period, for the employee to care for a family member (eg, spouse, child, parent or next of kin) who is an injured serviceperson.

The employer is not required to pay employees during FMLA leave, although employees generally can use their accrued paid time off benefits (voluntarily provided by the employer) to continue pay during such leave and, in some cases, employers can require employees to use their accrued paid time off benefits during FMLA leave.

Various states have leave laws that either parallel the FMLA or provide for greater leave protections. For example, the California Family Rights Act provides for leave that largely parallels the FMLA, but provides for additional leave rights, including family care leave for an employee's sibling, grandparent, adult child and grandchild, and the child of an employee's domestic partner.

The federal Uniformed Services Employment and Reemployment Rights Act (USERRA) establishes the right of employees to leaves of absence owing to military service. USERRA also establishes re-employment and other benefits protections for employees returning from cumulative periods of military leave of five years or less. USERRA does not require employers to provide employees with pay during military leave but does require that employees on military leave be permitted to use their paid time off benefits (voluntarily provided by the employer) and to continue participating in certain employer's benefit plans during military leave.

Several states have enacted family military leave laws. For example, California requires employers with 25 or more employees to provide up to 10 days of unpaid leave to eligible employees who are spouses of deployed military servicepeople, to be taken when the military spouse is on leave from deployment during a time of military conflict.

Further, under the Americans with Disabilities Act and its state or local equivalents, or both, a leave of absence may be considered a reasonable accommodation for covered qualified employees with disabilities. The reasonableness of such an accommodation, including the duration of such leave, is determined on a case-by-case basis.

Also, some states have laws that establish the right of employees to take unpaid time off from work for certain reasons, such as to vote, serve on a jury, grieve the loss of a family member, recover from a reproductive-related loss, appear as witnesses in legal proceedings, perform services as volunteer firefighter emergency responders, participate in school or day-care activities, or seek medical services and legal recourse as victims of domestic abuse or violent crime.

Law stated - 25 February 2024

Mandatory employee benefits

What employee benefits are prescribed by law?

Employers are mandated by law to provide workers' compensation insurance to their employees, except in Texas. Generally, workers' compensation insurance provides partial wage replacement payments and, if needed, medical services and treatment as well as vocational rehabilitation services to an employee who sustains a work-related illness or injury.

Workers' compensation insurance is a subject of state, not federal, law. Most states also require employers to contribute to state-administered unemployment and disability insurance funds from which employees may be eligible for benefits upon termination of employment or becoming disabled.

The federal Affordable Care Act also requires certain large employers to either offer minimum essential healthcare coverage to their full-time employees and the employees' dependants or potentially make a payment to the Internal Revenue Service.

Law stated - 25 February 2024

Part-time and fixed-term employees

Are there any special rules relating to part-time or fixed-term employees?

No.

Law stated - 25 February 2024

Public disclosures

Must employers publish information on pay or other details about employees or the general workforce?

Employers that meet certain criteria must file Form EEO-1 annually with the EEO-1 Joint Reporting Committee of the Equal Employment Opportunity Commission. Form EEO-1 requires employers to submit employment data categorised by race or ethnicity, gender and job category. Employers meeting the following criteria must file Form EEO-1:

- All private employers that are subject to Title VII of the Civil Rights Act (Title VII) with 100 or more employees (excluding state and local governments, primary and secondary school systems, institutions of higher education, Native American tribes and tax-exempt private membership clubs other than labour organisations) or employers that are subject to Title VII that have fewer than 100 employees if the employers are owned by or affiliated with another employer, or there is centralised ownership, control or management so that the group legally constitutes a single enterprise and the entire enterprise employs a total of 100 or more employees.
- All federal contractors (private employers) that:
    - are not exempt (as provided for by 41 Code of Federal Regulations section 60-1.5); have 50 or more employees; are prime contractors or first-tier subcontractors; and have a contract, subcontract or purchase order amounting to US$50,000 or more; or
    - serve as a depository of government funds in any amount or are financial institutions that are issuing and paying agents for US savings bonds and notes.

Only establishments located in the District of Columbia and the 50 states are required to submit Form EEO-1. Both the Equal Employment Opportunity Commission and the Office of Federal Contract Compliance Programs use Form EEO-1 to collect data from private employers and government contractors on the gender and race composition of their workforce. The two agencies also use the data from Form EEO-1 to support civil rights enforcement and to analyse employment patterns, such as the representation of women and people of colour within companies, industries or regions.

Californian employers with 100 or more employees, or labour contractor employees, must report pay data by job category, sex, race and ethnicity to the California Civil Rights Department by 10 May 2023 and annually thereafter.

Certain states and municipalities require employers to disclose the salary range in any job posting. For example, as of 1 November 2022, New York City employers must include the minimum and maximum salary for a job position in any advertisement for a job, promotion or transfer opportunity. On 1 January 2023, California and Washington instituted similar requirements, and Colorado has had a job posting pay range requirement since 1 January 2021.

Law stated - 25 February 2024

POST-EMPLOYMENT RESTRICTIVE COVENANTS

Validity and enforceability
To what extent are post-termination covenants not to compete, solicit or deal valid and enforceable?

The validity and enforceability of employee covenants not to compete, solicit or deal are a matter of state, not federal, law. Under some states' laws, such as Californian law, covenants not to compete, solicit customers or deal are void as being against public policy and are unlawful except in very limited circumstances, such as when executed in connection with the sale of a business entity, or the sale of all or substantially all of the assets of a business entity.

However, most of the 50 states recognise as valid and will enforce a covenant not to compete, solicit or deal if the covenant is:

- supported by adequate consideration;
- necessary to protect a legitimate business interest of the employer; and
- reasonable in time, subject matter and geographical reach consistent with the employer's legitimate business interest.

Some states, such as New York, consider whether the former employee's services are unique or extraordinary. In many states, covenants not to solicit employees are valid and enforceable if they are not deemed an unreasonable restraint on competition. Certain states have passed laws limiting non-compete covenants to certain types of employees, such as those who earn salaries above a minimum threshold.

Law stated - 25 February 2024

Post-employment payments
Must an employer continue to pay the former employee while they are subject to post-employment restrictive covenants?

Washington requires continued base pay during the duration of a non-competition provision if the employee was terminated as part of a lay-off. Otherwise, generally, there is no requirement for an employer to continue to pay a former employee while he or she is subject to post-employment restrictive covenants in the absence of a contractual agreement between the employer and employee to do so. In some states, however, payment during the restricted period will increase the likelihood that a court will find such a covenant reasonable and enforceable.

Law stated - 25 February 2024

LIABILITY FOR ACTS OF EMPLOYEES

Extent of liability
In which circumstances may an employer be held liable for the acts or conduct of its employees?

Generally, employees are agents of the employer and act on behalf, and for the benefit, of the employer when performing their jobs. Accordingly, employers can be held liable for the harm resulting from acts and omissions of their employees occurring in the scope and course of the employees' employment.

However, the Supreme Court decision ***Vance v Ball State University***, 570 US 421 (2013) limited the scope of employees who are considered 'supervisors' such that employers can be held liable for their conduct. In this case, the Supreme Court ruled that an employee is only a supervisor for purposes of imposing liability on an employer if the supervisor has the power to take 'tangible employment actions against the victim', which include such actions as hiring, firing, failing to promote, reassignment with significantly different responsibilities or making a decision causing a significant change in benefits. If a supervisor does not meet these standards, the employer cannot be held vicariously liable for the supervisor's actions.

Law stated - 25 February 2024

TAXATION OF EMPLOYEES

Applicable taxes
What employment-related taxes are prescribed by law?

Employers are required by federal, state and local tax laws to withhold federal Social Security, Medicare and income tax, and (if applicable) state and local income tax from employee wages. Also, some states require employers to withhold additional taxes from employee wages to fund certain government-sponsored and government-administered unemployment programmes, such as a state disability insurance benefits programme.

Law stated - 25 February 2024

EMPLOYEE-CREATED IP AND CONFIDENTIAL BUSINESS INFORMATION

Ownership rights

Is there any legislation addressing the parties' rights with respect to employee inventions?

Most states have laws allowing an employer to require its employees, as a condition of employment, to assign all inventions to the employer except if an invention is not developed by:

- an employee using any of the employee's working time for the employer; and
- use of any employer equipment, supplies, facilities or trade secret information.

However, even if these two requirements are met, the employer can still require the employee to assign an invention to the employer if the invention:

- at the time of conception or reduction to practice by the employee, relates to the employer's business or the employer's actual anticipated research or development; or
- results from any work performed by the employee for the employer.

Law stated - 25 February 2024

Trade secrets and confidential information

Is there any legislation protecting trade secrets and other confidential business information?

Various federal and state laws protect trade secrets and confidential business information. Under federal law, the Computer Fraud and Abuse Act prohibits accessing a protected computer without authorisation or exceeding authorisation to obtain information, causing damages or perpetrating fraud. The Computer Fraud and Abuse Act is primarily a criminal statute, but it also provides for civil liability and has been used by employers against former employees who unlawfully accessed computer systems. Many states also have legislation to protect trade secrets and confidential business information, such as the New Jersey Computer Related Offenses Act and the Massachusetts Taking of Trade Secrets Law. Many states also have common law causes of action that can be used by employers when employees or former employees misappropriate confidential and proprietary business information.

The federal Defend Trade Secrets Act (DTSA) was enacted in 2016. The DTSA allows employers to bring suit in federal court to pursue trade secret disputes with current and former employees. Before the implementation of the DTSA, such claims were only cognisable in federal court if diversity jurisdiction existed. The DTSA does not pre-empt existing remedies under state law. Notably, the DTSA contains several specific procedural mechanisms and disclosure requirements not commonly found at common law that may affect how employers seek to enforce trade secret claims as well as their available remedies.

Law stated - 25 February 2024

DATA PROTECTION

Rules and employer obligations
Is there any legislation protecting employee privacy or personnel data? If so, what are an employer's obligations under the legislation?

There is no federal legislation that protects employee privacy or personal data per se. Privacy protection is primarily a function of state law; however, certain provisions of some federal laws aim to protect employee privacy and personal data. The Americans with Disabilities Act requires employers to maintain the confidentiality of information and records on an employee's health and medical condition. The Fair Credit Reporting Act (FCRA) permits an employer to obtain background information on an applicant or employee through a third party only if the applicant or employee authorises the background investigation and delivery of results to the employer. The FCRA also limits employers' use of background check information, requires employers to maintain the confidentiality of background check information and requires the destruction of records containing such information by means that prevent its reconstruction.

Many of the 50 states have either a state constitutional provision or statutes that protect the privacy of certain information, including medical, personal, financial and background check information. To the extent that an employer collects and maintains records of such information on applicants and employees, the employer also must comply with applicable laws. Biometric privacy has developed into a new area of legislative focus, with state laws currently in Illinois, Texas and Washington that require written notice to and written consent from an individual before collection of any biometric information .

Law stated - 25 February 2024

Privacy notices
Do employers need to provide privacy notices or similar information notices to employees and candidates?

No federal law requires privacy notices to employees and candidates; however, some states have enacted laws requiring such notices. For example, the California Consumer Privacy Act (CCPA) requires employers to provide notices describing the categories of personal information to be collected and the purposes for which the categories of personal information shall be used, which may include Social Security numbers, employment history, financial information, medical information and emergency contacts. The CCPA also requires that the privacy notice include details on how employees who are California residents can exercise their privacy rights. Similar privacy notices are also required for job applicants and contractors who are California residents.

Law stated - 25 February 2024

Employee data privacy rights
What data privacy rights can employees exercise against employers?

In some US jurisdictions, employees can file individual or class action lawsuits against their employers after a data breach, including common law claims for negligence or breach of contract. In California, employees, job applicants and contractors also have the same privacy rights as traditional 'consumers' in the state (right to access, correct and delete personal information), subject to some limitations. Additionally, state and local jurisdictions have increased their regulation of employee privacy concerning biometric privacy. As employers increasingly rely on fingerprints, handprints, retinal scans and other forms of biometrics for security, timekeeping and employee tracking purposes, courts are seeing an increase in biometric privacy litigation.

Law stated - 25 February 2024

BUSINESS TRANSFERS

Employee protections
Is there any legislation to protect employees in the event of a business transfer?

There is no federal, state or local law that protects employees in the event of a business transfer. However, if an employer must dismiss employees in connection with a business transfer and the dismissal is covered by the Worker Adjustment and Retraining Notification Act or a state equivalent, the affected employees are entitled to receive 60 days' or more advance notice of termination.

Law stated - 25 February 2024

TERMINATION OF EMPLOYMENT

Grounds for termination
May an employer dismiss an employee for any reason or must there be 'cause'? How is cause defined under the applicable statute or regulation?

Unless the employer contractually agrees otherwise (either in an individual employment agreement or a collectively bargained agreement), most employment in the United States is at will, meaning that it is not for any specific period, and the employer and employee each have the legal right to terminate the employment relationship at any time, with or without advance notice or procedures and with or without any particular cause or reason. However, employers cannot terminate at-will employees for a reason that is unlawful under federal, state or local law.

Montana does not recognise at-will employment after a 12-month, or otherwise agreed, probationary period. In that state, after the probationary period has elapsed, an employer may only terminate an employee for good cause, which is defined as 'reasonable job-related grounds for dismissal based on a failure to satisfactorily perform job duties, disruption of operations, material or repeated violation of a written employer policy, or other legitimate business reason determined by employer'. Puerto Rico also does not recognise at-will employment.

Law stated - 25 February 2024

Notice requirements
Must notice of termination be given prior to dismissal? May an employer provide pay in lieu of notice?

Advance notice of dismissal or pay in lieu of such notice is not required by any federal, state or local law unless the termination of employment is owed to a mass termination or plant closure, as such terms are specifically defined under the Worker Adjustment and Retraining Notification Act (the WARN Act) or any counterpart state law applicable to the employer. However, an employer may contractually agree to provide employees with advance notice of dismissal or pay in lieu of such notice.

Law stated - 25 February 2024

Dismissal without notice
In which circumstances may an employer dismiss an employee without notice or payment in lieu of notice?

Unless the employer has contractually agreed to provide its employees with advance notice of dismissal or pay in lieu of such notice (either in an individual employment agreement or a collectively bargained agreement), or the termination of employment is owed to a mass termination or a plant closure under the WARN Act or any applicable counterpart state law, advance notice or pay in lieu of such notice is not required.

Law stated - 25 February 2024

Severance pay
Is there any legislation establishing the right to severance pay upon termination of employment? How is severance pay calculated?

Except for in Puerto Rico, no federal, state or local law establishes a right to severance pay upon termination of employment. Whether to provide severance pay and, if so, in what form or amount are determinations made by the employer, or these may be required in individual employment or collectively bargained agreements.

In Puerto Rico, all employees who were hired without fixed terms and terminated without just cause who completed their probationary periods are entitled to a certain amount of severance pay based on their length of service.

Law stated - 25 February 2024

Procedure
Are there any procedural requirements for dismissing an employee?

There are no procedural requirements for dismissing an employee unless the employer has contractually agreed to such procedures in individual employment or collectively bargained agreements. Many states require, however, that terminated employees be provided information relating to their medical insurance benefits and eligibility for unemployment compensation insurance benefits.

Law stated - 25 February 2024

Employee protections

In what circumstances are employees protected from dismissal?

An employee may be protected from dismissal if the employer has entered into an individual employment agreement or a collectively bargained agreement requiring that certain reasons exist or certain procedures be followed, including due process procedures, before terminating the employment relationship. Even if an employee is employed at will and typically is not protected from dismissal, various federal and state laws provide the employee with the right to file a claim for damages with a government agency or a federal or state court if the reason for the dismissal is unlawful. When such a claim is filed, the employee typically sues the former employer for the economic damages resulting from the unlawful termination (typically, past and future earnings, and value of lost benefits). Depending on the type of claim, a former employee may also sue the former employer for additional monetary damages:

- to compensate the former employee for emotional pain and suffering caused by the unlawful termination;
- to recover the attorneys' fees and costs of suit the employee incurred in prosecuting his or her claim;
- to punish the employer for its conduct; or
- to recover penalties that may be authorised by a specific statute under which a claim is brought.

Under certain claims, the former employee may request reinstatement of employment and implementation of remedial measures.

Law stated - 25 February 2024

Mass terminations and collective dismissals

Are there special rules for mass terminations or collective dismissals?

The WARN Act generally requires an employer with 100 or more employees in the United States to provide its employees and others with 60 days' advance notice if the employer will conduct a mass termination or a plant closure, as such terms are specifically defined in the WARN Act. In addition to employees, others who are entitled to such advance notice are the employees' union, the state government and certain local government officials. If the employer fails to provide the required notice, employees may file a lawsuit against the employer for the pay and value of certain benefits governed by the Employee Retirement Income Security Act that the employees would have received during a period of up to 60 days for the number of days that advance notice should have been given. Also, the local government may recover a penalty of US$500 per day for up to 60 days for the number of days that advance notice should have been, but was not, given to the local government official.

Some states, such as California, Illinois and New York, also have their own laws that impose similar advance notice requirements as well as other requirements on employers in connection with mass terminations and closures affecting a certain number of employees. These state laws typically cover smaller dismissals and closures than the WARN Act and may require longer notice periods.

Law stated - 25 February 2024

Class and collective actions
Are class or collective actions allowed or may employees only assert labour and employment claims on an individual basis?

Individual employees may assert claims on behalf of other individuals through class or collective actions, and such claims have become extremely prevalent in the past decade. In a class action, all individuals who fall within the class definition will be deemed to be part of the class unless they affirmatively opt out of the class. In a collective action, on the other hand, only those individuals who affirmatively opt in will be deemed to be part of the class. In class or collective actions, employers may be required to disclose to opposing counsel the names and addresses of all employees, current and former, who may be part of the class so that opposing counsel may contact them.

Law stated - 25 February 2024

Mandatory retirement age
Does the law in your jurisdiction allow employers to impose a mandatory retirement age? If so, at what age and under what limitations?

Generally, the imposition of a mandatory retirement age is not allowed, although there may be exceptions in certain specific industries.

Law stated - 25 February 2024

DISPUTE RESOLUTION

Arbitration
May the parties agree to private arbitration of employment disputes?

Generally, yes. However, whether a court will enforce an employment arbitration agreement when the dispute to be arbitrated arises under a federal statute, a state statute or state common law is an issue that continues to be extensively litigated. Moreover, litigation is often initiated over the circumstances of entering into the arbitration agreement and its terms.

Also, because arbitration agreements constitute a waiver of the right to a jury trial, arbitration agreements are subject to state contract law as well as state statutory law. Some states, such as California, have developed specific standards that must be met if an employment arbitration agreement is to be enforced. Because state laws can differ in these respects, agreements to arbitrate employment disputes must be carefully drafted.

On 3 March 2022, Congress enacted the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act, which permits the person alleging conduct constituting sexual harassment or assault, or the representative of a class or collective action alleging such conduct, to invalidate a pre-dispute arbitration agreement or joint action waiver with respect to the sexual harassment or assault dispute.

Law stated - 25 February 2024

Employee waiver of rights

May an employee agree to waive statutory and contractual rights to potential employment claims?

Generally, yes. However, an employee cannot prospectively waive claims based on acts or omissions that have not yet occurred. Moreover, a waiver of minimum wage, overtime and certain other wage claims generally requires court or Department of Labor approval to be enforceable. Some states' laws prohibit waivers of workers' compensation insurance benefits and waivers of unemployment insurance benefits. Rights under certain federal laws, such as the National Labor Relations Act, also cannot be waived.

Under contract law of most states, a waiver is valid and enforceable if it is given knowingly and voluntarily, and in exchange for something of value to which the individual giving the waiver is not already entitled. Some statutes establish additional substantive and procedural requirements for a valid waiver of claims. For example, the Age Discrimination in Employment Act requires that a waiver of age claims under it meet certain requirements based on the context in which the waiver is being given, including but not limited to a minimum period for the individual to consider and sign the waiver, and a seven-day period after signing within which to revoke the waiver. Under Californian law, a waiver of unknown claims arising from past acts or omissions is not valid unless the waiver also includes an express waiver of rights under section 1542 of the California Civil Code.

On 15 July 2009, the Equal Employment Opportunity Commission issued guidance on discrimination waivers and releases contained in employee severance agreements. This guidance addresses all types of discrimination waiver and release requirements, and contains specific examples and numerous questions and answers that should be taken into account by employers when dealing with waiver and release issues in severance agreements.

Similarly, on 1 April 2015 and 16 August 2016, the Securities and Exchange Commission issued press releases reflecting its position that confidentiality agreements or provisions that could potentially lessen an employee's willingness to cooperate with a government agency or make whistle-blowing reports violate securities laws.

In response to the #MeToo movement, the federal government and some states have enacted laws that prohibit employers from requiring employees to waive certain rights, prohibiting waivers such as mandatory pre-dispute arbitration agreements, class action waivers and jury trial waivers. In November 2022, Congress passed the Speak Out Act, which makes pre-dispute non-disclosure or non-disparagement agreements unenforceable with respect to sexual harassment or assault disputes.

On 21 February 2023, the National Labor Relations Board issued a decision holding that employers may not offer non-supervisor employees agreements containing confidentiality or non-disparagement provisions, unless:

- the confidentiality provision is narrowly tailored to restrict the dissemination of proprietary or trade secret information; and
- the non-disparagement provision is narrowly tailored to restrict employee statements that are 'maliciously untrue, [such that] they are made with knowledge of their falsity or with reckless disregard for their truth or falsity'.

Law stated - 25 February 2024

Limitation period
What are the limitation periods for bringing employment claims?

The limitation periods vary based on the statutory or common law basis for employment-related claims. Generally, however, the limitation periods for most employment-related claims range from one to three years. Claims under some state laws can typically be brought as late as four to five years and, under other states' laws, as late as 10 years in limited circumstances after the alleged wrongful act, omission or resulting harm.

Law stated - 25 February 2024

UPDATE AND TRENDS

Key developments and emerging trends
Are there any emerging trends or hot topics in labour and employment regulation in your jurisdiction? Are there current proposals to change the legislation?

Consumer Privacy Acts

Influenced by California's Consumer Privacy Act and the Europe Union's General Data Protection Regulation, a wave of new data privacy legislation has been introduced across the United States, including updates in California. Many of these laws apply to the treatment of employee information.

Diversity, equity and inclusion

Since the US Supreme Court issued its 2023 decision that race-conscious university admissions policies violate the Equal Protection Clause, there has been a rise in private lawsuits against employers with diversity, equity and inclusion programmes.

Non-competition agreements

Federal, state and local governments and agencies have increased focus on limiting the viability of non-competition agreements. Certain jurisdictions have created private rights of action to hold employers liable for maintaining unlawful non-competes.

Law stated - 25 February 2024