

6 HR compliance challenges to track in 2018

Stay ahead of the game and avoid potential penalties

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Table of Contents

INTRODUCTION

BAN THE BOX

SALARY HISTORY BANS

PREDICTIVE SCHEDULING

IMMIGRATION LAWS AND HIRING

EMPLOYER CREDIT FOR PAID FAMILY AND MEDICAL LEAVE

LEGALIZATION OF MARIJUANA AND DRUG TESTING

CONCLUSION

INTRODUCTION

Compliance. It's not sexy. It's not a hot topic or the latest buzzword. And it's definitely not simple. But it is an extremely important responsibility for HR and Finance professionals, particularly in a constantly changing and increasingly complex regulatory environment.

So, we thought we'd take a break from talking about employee engagement, the employee experience and data analytics and give some attention to the ever-present HR challenge of compliance.

There are many developments to long-held regulations and laws that organizations must be aware of to avoid penalties and continue hiring top talent. This eBook covers six potential or existing changes that may present compliance challenges to businesses in 2018. Being aware of them now – and following future developments – can help you prepare strategies to ensure your company is in compliance.



BAN THE BOX

As of February 2018, **30 states and more than 150 cities and counties across the U.S. have “banned the box”** in their hiring policies, according to the National Employment Law Project.¹

Employers in these areas cannot include questions about a person's criminal history in their job application materials. Instead, employers are legally bound to wait and ask questions related to a person's criminal background until later in the hiring process. In many states, this means after a job offer is made.

It is likely that more states will adopt ban the box policies this year. Employers should be aware of where their state or city stands.

Even if it is not yet implemented in your area, you should examine how you will need to update your current hiring processes should similar legislation come to town.

1. <http://www.nelp.org/content/uploads/Ban-the-Box-Fair-Chance-State-and-Local-Guide.pdf>



SALARY HISTORY BANS

Asking a job applicant for salary history has been a standard operating procedure for many companies, but this is changing.

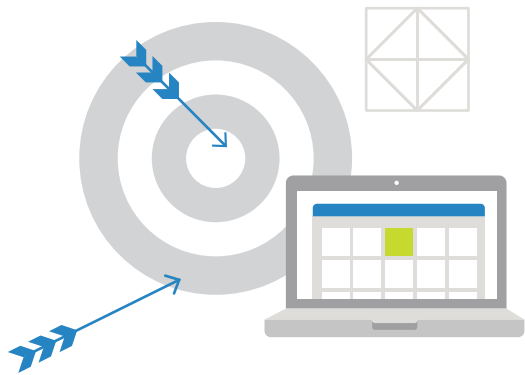
As of February 2018, Oregon, California, Delaware, Massachusetts, New York, New Jersey and Puerto Rico had banned employers from asking job applicants about their past salaries. Some individual cities and territories also have banned the question, including Pittsburgh and New Orleans.²

The ban is intended to decrease discrimination and promote fair pay for female and minority job applicants. Regardless of where your company is located, you might find eliminating salary history makes sense as did Amazon and Bank of America.³

Periodically reviewing your current hiring processes to ensure they are compliant and supportive of applicants of all backgrounds is a good practice.

2. <https://www.hrdive.com/news/salary-history-ban-states-list/516662/>

3. <https://www.bna.com/amazon-bofa-join-n73014474798/>



PREDICTIVE SCHEDULING

Several cities including San Francisco, Seattle and New York City have passed predictive scheduling laws that prohibit companies from calling employees into work with little notice.

Initially designed to protect employees in food service and retail from unpredictable schedules that don't allow individuals to effectively plan and budget, predictive scheduling is expected to be adopted in other industries.

San Francisco was first to implement predictive scheduling regulations, requiring employers to schedule workers at least two weeks in advance. In New York City, schedules must be posted at least 72 hours in advance. If companies do not comply with these laws, they must give employees additional pay.⁴

The movement to adopt predictive scheduling laws in other cities is gaining momentum, and there is talk of state legislation.

4. <https://www.hrdive.com/news/predictive-scheduling-laws-coming-soon-to-a-jurisdiction-near-you/448483/>



IMMIGRATION LAWS AND HIRING

In the first 100 days after President Donald J. Trump signed Executive Orders (EOs) on immigration enforcement priorities in January 2017, U.S. Immigration and Customs Enforcement (ICE) **arrested more than 41,000 individuals on civil immigration charges**. This was a **37 percent increase** over the same period in 2016.⁵

As further evidence of increasing federal scrutiny on the citizenship of workers under the Trump administration, ICE raided nearly 100 7-Eleven convenience stores in January 2018.⁶ Following the raids, Thomas Homan, ICE deputy director, made the following statement:

“Today’s actions send a strong message to U.S. businesses that hire and employ an illegal workforce: ICE will enforce the law, and if you are found to be breaking the law, you will be held accountable.”⁷

Employers must **review their hiring and background screening practices** to ensure compliance with all state and federal immigration and work authorization laws.

5. <https://www.ice.gov/features/100-days>

6. <https://www.hrdive.com/news/ice-targets-7-eleven-stores-nationwide-in-largest-single-company-raid-under/514581/>

7. <https://www.ice.gov/news/releases/statement-ice-deputy-director-thomas-d-homan-7-eleven-operation>



EMPLOYER CREDIT FOR PAID FAMILY AND MEDICAL LEAVE

The Family and Medical Leave Act of 1993 currently mandates that companies with more than 50 employees allow each worker to receive up to 12 weeks of unpaid leave each year. But **there is a push for employers to expand maternity and paternity leave** and make this type of leave paid.

The current law that provides a tax credit for employers who provide paid family and medical leave expires at the end of 2019.⁸

In response to the paid leave movement, certain cities have expanded related policies. Beginning January 2018, companies based in New York City are required to offer paid family leave to employees for a variety of circumstances.⁹

Companies will want to watch what happens between now and 2019 and may want to consider adopting their own paid leave maternity/paternity policies as a way to attract and retain top talent.

8. <https://www.shrm.org/resourcesandtools/hr-topics/benefits/pages/taking-advantage-of-paid-leave-tax-credit.aspx>

9. <https://www.ny.gov/programs/new-york-state-paid-family-leave>



LEGALIZATION OF MARIJUANA AND DRUG TESTING

As of January 2018, nine states had legalized the recreational use and sale of marijuana. Twenty-nine states had legalized medical use of the drug. **Changing laws and attitudes around marijuana and other cannabis-related products can present challenges for employers** and their traditional drug-screening protocols for both job applicants and current employees.

As a result, some companies have ceased including marijuana testing in their pre-employment drug screenings. In Colorado, where recreational marijuana use is legalized, the number of businesses performing marijuana testing has declined by 7 percent in the past two years.¹⁰ But companies in states where recreational and medical use have been legalized can still fire employees for drug use because marijuana is illegal under federal law.

While this issue continues to develop, take time to evaluate your current drug screening practices, review applicable state and federal laws and determine if your procedures are still effective and in compliance.

¹⁰ <svg id="Layer_1" data-name="Layer 1" xmlns="http://www.w3.org/2000/svg" viewBox="0 0 196.35 164.54"><defs><style>

CONCLUSION

Ban the box, salary history bans, predictive scheduling, immigration laws, paid leave and drug testing are six areas you need to be aware of now – and keep track of moving forward – to ensure your company provides the protections your employees have the right to while also avoiding significant penalties for non-compliance.

Although you may currently be compliant, it's important to regularly review existing policies and procedures for hiring and human capital management, and explore alternatives, so you can seamlessly pivot your practices should what is legal today become illegal tomorrow.

A comprehensive HCM solution like PeopleStrategy eHCM can help employers more effectively manage – and remain compliant with – local, state and federal regulations. **Learn more today at peoplestrategy.com.**



PeopleStrategy® provides a single source for today's employers to build an effective and competitive human capital management program through a strategic combination of technology, employee benefits and managed services.



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