




Trending Topics in Employment Law

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Top Legal Issues

- Immigration
- Marijuana laws
- Harassment training
- Paid sick leave laws
- Fair Credit Reporting Act
- Affordable Care Act

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Top Legal Issues

- Immigration
 - Increase in enforcement
 - Electronic Form I-9 Issues
 - Remote Form I-9 Issues
 - Update Form I-9 policy



Top Legal Issues

- Marijuana laws
 - 31 states; Washington, DC; and Puerto Rico allow for medical marijuana
 - Nine states Washington, DC have legalized recreational marijuana
 - Federal pre-emption of state laws? Not so fast...
 - Some state statutes legalizing medical marijuana contain an explicit antidiscrimination or reasonable accommodation provisions; others do not



Top Legal Issues

- Marijuana laws
 - Notwithstanding some state medical marijuana laws, employers are not required to tolerate marijuana use or impairment at work or while working
 - Many employers will continue to reject medical marijuana use in reliance on federal illegality, particularly federal contractors and those with safety-sensitive positions
 - Case-by-case, reasonable accommodation analysis with interactive process
 - Perhaps cease testing for marijuana entirely—**discuss with your workers' compensation and insurance providers first**



Top Legal Issues

- Harassment training
 - California and New York (and New York city) require sexual harassment training
 - Divide training between non-supervisors and supervisors
 - Divide training between internal and temporary employees
 - Temporary employees
 - Make sure employee knows who to report the problem to at the client site
 - Make the training interactive
 - Number of harassment complaints filed with the EEOC has quadrupled in the past two years



Top Legal Issues

- Paid Sick Leave laws
 - Still being introduced; city and county level as well
 - Tracking and compliance issues
 - Client issues
 - Federal approach coming anytime soon?
 - Growing trend on state level: paid family and medical leave



Top Legal Issues

- Fair Credit Reporting Act
 - Make sure forms are up to date (implemented by U.S. Federal Trade Commission)
 - Many offices allow temporary employees to start an assignment before background check results are in, based on the client's request—then, if results do not meet either the staffing firm or client criteria, the candidate will be pulled immediately and company will begin the adverse action process as required by the FCRA



Top Legal Issues

- Outside counsel recommendation:
 - Let the employee continue working after sending the pre-adverse action letter, for the duration of the five-day waiting period they have to “contest” the background check results (to avoid FCRA liability), *then* end the assignment—taking “adverse action” after the five-day waiting period
 - Send the pre-adverse action letter but end the assignment, yet continue to pay the employee for the five-day waiting period (to reduce FCRA liability)...although this may be problematic still, since ending the assignment is still an “adverse action”
 - Best and safest course of action—eliminate the use of contingent starts altogether, which will probably upset clients who want to have employees start *immediately* vs. waiting on background check results



Top Legal Issues

- Affordable Care Act
 - Reporting requirements
 - Individual mandate: repealed
 - Employer mandate: still in effect
 - 226-J letters: what are they and what to do if you get one





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