

# Arbitration



## Arbitration—Takeaways

- State prohibitions—will continue to be introduced, but likely will be struck down
- One size likely will not fit all—**review and comply with different states' (everchanging) requirements**
- Arbitration agreements and class action waivers—**pros**
  - **Greatly** limit exposure
  - No publicity
  - No runaway juries
- Arbitration agreements and class action waivers—**cons**
  - Often not appealable
  - May not be cheaper in terms of administrative costs; attorney fees, may not be speedier



# Paid Leave



## Paid Leave—Takeaways

- **13 states** and **28 localities** have employer-provided paid time off mandates
- **Changing Dynamic:** Nevada (**effective Jan. 1, 2020**) and Maine (**effective Jan. 1, 2021**) have enacted **paid time off mandates**.
- Paid Parental Leave: Starting 10/1/20, any **federal** worker who has held their job for at least a year will be guaranteed 12 weeks of **paid parental leave**.
- Texas Supreme Court likely to hear a challenge to the Austin PSL temporary injunction. Dallas and San Antonio mandates would be affected by decision as well.
- **2020 Elections: What They Could Mean for Paid Leave Legislation**
  - **If Democrats control Congress and White House, a federal paid sick leave bill will likely be one of the first bills they consider.**
  - **With President Trump in office, very good chance he would sign bill into law.**



# Privacy



## Privacy—Takeaways

- Provide employees with **notice of collection**
- Obtain **written consent**
- Distribute **written policy** explaining
  - What is collected
  - Purpose of collection and use of information
  - Retention, storage, and destruction of information
- Check your **insurance coverage**
- Address obligations in **client and vendor contracts**



## Privacy—Takeaways

- Rep. Lofgren-Eschoo bill: Contains a robust private right of action. **NO federal pre-emption**. Attempts to carve out employment-related data but does not go far enough. **Some parts of bill modeled after GDPR**.
- Sen. Wicker bill: Broader definition of employment-related data, needs to be expanded. **Includes federal pre-emption**. Does not include private right of action.
- Sen. Caldwell bill: Confusing carve-out for employment-related data. No federal preemption. Contains a private right of action.
- **2020 Elections: What They Could Mean for Paid Leave Legislation**
  - **If Democrats control Congress and White House, the Lofgren-Eschoo bill will most likely be the model privacy bill.**
  - **With President Trump in office, something closer to the Senate bill would be needed.**



## Immigration Enforcement



## Form I-9—Takeaways

- Most common staffing firm error—**not reviewing original documents**
  - Copies not allowed
  - Skype not allowed
  - Video chat not allowed
- Electronic I-9s—Emerging Area
  - Section 1 prepopulation—risky proposition
  - **Audit trail—for each completed field**
  - Attestation—must be same as printed form
- **Do internal audit NOW, before ICE comes knocking**



## Immigration Enforcement—Takeaways

- Several states (i.e., CA, OR, WA, MA, NY) are actively fighting the administration's hard line immigration stance.
- Congress will continue to work around the edges. **Very little consensus, even within the respective parties.**
- Immigration policy one of the major tent poles of the administration's re-election campaign. **Will continue to play to the base with tough policies.**
- **2020 Elections: What They Could Mean for Federal Immigration Policy**
  - **If Democrats control Congress and White House, a complete overhaul of immigration policies is likely (i.e., Dreamers, visa caps, wall construction)**
  - **With President Trump in office, more standoff and more regulatory actions**



# Marijuana



## Marijuana—Takeaways

- 33 states, DC, and Puerto Rico allow for medical marijuana; 11 states and DC legalized recreational marijuana
- Some laws contain explicit **antidiscrimination or reasonable accommodation provisions**
- Some laws **prohibit pre-employment testing for non safety-sensitive jobs**
- **Consider your testing policies in light of state legalization trends**
- **Consider positive results on a case-by-case basis; use reasonable accommodation analysis with interactive process**



## Marijuana—Takeaways

- More states continue to consider some form of legalized marijuana
- States that have legalized looking to address concerns **raised by employers**.
- **H.R. 1595 The Secure and Fair Enforcement (SAFE) Act**: Would permit banks to work with legal cannabis business. **Overwhelmingly** passed House. Could move in Senate if administration signals its support.
- **2020 Elections: What They Could Mean for Federal Marijuana Policy**
  - **If Democrats control Congress and White House, intense push to decriminalize marijuana.**
  - **With President Trump in office, Dem Congress would at last pass SAFE Act and force President to act.**

