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# ARIZONA

## EMPLOYMENT LAW LETTER

Part of your Arizona Employment Law Service

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### New Year's resolutions every employer should make

Newsletter *New Year's resolutions every employer should make* has been updated.

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**From:** [Arizona Employment Law Letter](#) | 01/01/2023

**by** [Juliet Burgess, The Burgess Law Group](#)

[Americans with Disabilities Act \(ADA\)](#) [Discrimination](#) [Fair Labor Standards Act \(FLSA\)](#) [Family and Medical Leave Act \(FMLA\)](#) [Occupational Safety and Health Administration \(OSHA\)](#) [Retaliation](#) [Title VII of the Civil Rights Act of 1964 \(Title VII\)](#) [Workplace Culture](#)

by Juliet Burgess, The Burgess Law Group

*As the new calendar year begins, many organizations are wisely asking, "What can we do to protect our business assets from an employment law perspective?" This is a great question, and the beginning of the year is the perfect time to take stock of existing policies and their effectiveness, review recent changes to applicable laws, and press the reset button by revising and rolling out updated workplace policies and legal documents, if needed. Although every business is unique, here are five issues every employer should think about as we head into the New Year.*

#### **Make sure you're compliant with applicable laws**

Organizations are often surprised to learn that even though they operate a privately-owned business with a moderate number of employees or contractors, they're still bound by state and federal labor and employment laws. For example, federal laws relating to minimum wage and overtime under the Fair Labor Standards Act (FLSA) or workplace safety laws under the Occupational Safety & Health Act (OSHA).

In addition, many states also have specific laws and regulations relating to issues such as paid time off, sexual harassment, final paychecks, unemployment, and medicinal marijuana, among others. For example, in Arizona, employers are required to give all employees (even part-time and temporary employees) paid sick time.

Moreover, throughout 2022, at least 17 states passed laws regarding relevant workplace issues such as background checks, weapons in the workplace, wage theft, hairstyle discrimination, disability insurance, drug testing, and protected time off.

The best place to start in making a compliance audit for your company is to determine where your employees are geographically located and whether your organization needs to update any relevant workplace policies and procedures.

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## ***Size matters***

In addition to location, size matters too! In many instances, the number of workers an organization employs determines whether a particular employment law applies. For example, the Family and Medical Leave Act (FMLA) generally applies to private employers with 50 or more employees, while the Americans with Disabilities Act (ADA) applies to employers with more than 15 employees.

Oftentimes, state requirements deviate depending on the number of employees the company has as well. For example, in Arizona the amount of paid sick time an employer is required to provide depends on whether it has more or less than 15 employees.

## ***Treat similarly situated employees the same way***

Federal employment laws, such as Title VII of the Civil Rights Act of 1964, prohibit employment discrimination based on race, color, religion, sex, national origin, or any other protected category.

The most common way employers get into difficult situations here is by failing to treat similarly situated employees the same way. Therefore, the best way to avoid any type of discrimination and/or retaliation claim is to create uniform policies and procedures (typically in an employee handbook) for commonly occurring issues (such as progressive discipline, performance evaluations, telecommuting, PTO, timekeeping, dress code, etc.) and apply them in an even-handed manner.

Heading into 2023, employers should pay special attention to any new company policies regarding telecommuting and hybrid work environments to ensure they're fair and nondiscriminatory.

## ***Know your limits with noncompetes***

Use the New Year as an opportunity to review and evaluate the enforceability of post-employment restrictions such as noncompete or non-solicitation agreements.

Generally, restrictive covenants are unfavorable under the law, but courts will typically enforce them if they're reasonable in duration, geographic scope, and narrowly tailored to protect business interests. The specific requirements in terms of enforceability are governed by state law. For example, courts in some states will enforce noncompetes that are as long as 5 years, while other states will only enforce noncompetes that are 1 year or less.

The first step here is to look at the "choice of law" provision in relevant legal documents to see which state law applies. Notably, this state is sometimes different from the state where the organization is operating or where employees are located.

## ***Document everything***

The best protection an employer can have is a paper trail showing their good-faith efforts and compliance with the law.

For example, if you met with an employee regarding a performance issue, granted someone permission to work remotely during a discrete period, or made a reasonable accommodation to allow a disabled employee to perform an essential function of their position, make sure that you documented the conversation with an email.

## ***Bottom line***

The New Year is the perfect time to take inventory of your company's policies and to make any changes if necessary. Employers who initiate making changes proactively and in a uniform fashion are more likely to improve workplace culture and morale, minimize legal exposure, and address potential compliance issues before problems arise.

If you have any questions about complying with employment laws, you should contact a qualified attorney to help.

EEOC's new enforcement priorities show need for employer self-audits

Updated: 1/12/2023

Time for employers to plan for proposed rule banning noncompetes

Updated: 1/9/2023

NLRB extends joint employment comment period rule to December 7

Updated: 10/14/2022

DOL's proposed rule aims to tighten independent contractor definition

Updated: 10/13/2022

NLRB's joint employment plan seen having 'profound impact' on employers

Updated: 9/7/2022

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