Checklist of Hot Employment Topics for 2024

- [ ] If you have 100 or more employees, did you file your EEO-1 report by June 4? In an unprecedented move, the EEOC recently filed federal lawsuits against 15 employers in 10 states, alleging that they failed to file their mandatory EEO-1 reports and asking the court to order them to do so without delay. Note that you must consider if you own, are owned by, and/or are affiliated or associated with another employer (for example, if there is interrelation between operations) – or whether there is centralized or common ownership, control, or management so that the group of employers constitutes a single enterprise and/or integrated enterprise – to determine whether you have 100 or more employees.

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  Stay tuned to see if the EEOC begins collecting pay data again...

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- [ ] Speaking of the EEOC, have you refreshed your policies and trainings now that there is new guidance on harassment?

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- [ ] Are you up to date on the new federal overtime rule? Starting July 1, the DOL's salary threshold for the so-called "white-collar" exemptions from federal OT requirements increased to $43,888 (and will jump to nearly $59k at the start of 2025). Now is the time to determine if this change makes any of your salaried workers now eligible for overtime pay because they are no longer exempt. You should also keep up with lawsuits seeking to block the rule.

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  Speaking of July 1, are you up to speed on other changes that took effect this summer?

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  The first court to pause the new overtime rule limited its decision to government employees of the State of Texas.

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- [ ] Did you revisit your pregnancy accommodation compliance efforts? The EEOC's new rule took effect on June 18 and requires employers to accommodate applicants and workers who need time off or other modifications for an abortion procedure or recovery, or other pregnancy or childbirth related reasons for accommodations or leaves of absence. While at least 19 states are asking courts to block the rule, you should plan to comply unless a court decides to halt it.

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☐ Have you revisited workplace safety requirements? OSHA's new "walkaround rule," effective May 31, permits third parties – including union representatives – to accompany inspectors during facility walkarounds, raising many questions and concerns for employers from both a safety and a labor perspective.

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OSHA also proposed a new nationwide heat safety rule.

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☐ Are you maximizing how AI is used in the workplace? Studies are finding that some workers are using AI at work and doing so in secret. With new guidance from federal leaders and proposals this summer relating to AI in the workplace, now is the time to revisit AI in your workplace and enforce best practices.

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☐ If you use AI hiring tools, it is time to stay alert for legal changes. On May 30, the ACLU asked the FTC to investigate a personality assessment test, a video interview tool, and a cognitive ability assessment screening device – all powered by artificial intelligence – because of alleged discrimination.

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☐ Review workplace arbitration agreements. If your business is sued and the claims are subject to arbitration, you might hope for a court to dismiss the lawsuit. But a May 16 SCOTUS decision held that judges must pause court proceedings at a party's request while the arbitration plays out.

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☐ Stay on top of the FTC's ban on noncompetes. Set to take effect September 4, unless blocked by a Court, this could impact your hiring philosophy and how you protect any trade secrets or other valuable information for your operations.

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For an update on the court challenge process to date

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☐ Don't lose sight of joint employment risks. The Courts may have struck down the NLRA's proposed joint employer rule, but there remains risk in this area.

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☐ New HIPAA requirements related to ALL reproductive healthcare may require updates to your Notice of Privacy Practices and you should train your workforce on the new rule.

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☐ Managing employees, Social Media, and the workplace is getting more complex by the year. Revisit your policies related to LinkedIn and other platforms.

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☐ Carefully consider employee transfers. The Supreme Court ruled in April that an employer's decision to transfer an employee to a lateral job – with no change in pay or benefits – may violate federal civil rights laws in some situations if it's based on discriminatory reasons.

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☐ Consider the uptick in labor union organizing activity. It's never too early to revisit your legal obligations related to employees and collective bargaining, especially given so many changes in recent years in terms of NLRB enforcement.

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Also stay tuned for more challenges to the NLRB and other agencies' rule-making authority following the Supreme Court's ruling this summer.

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☐ Dust off and reevaluate some of your more long term policies to see if it is time for some changes. For example, your dress code and similar policies on appearance.

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