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Sometimes You Need a Checklist

Last week, I presented an employment law update at my firm's annual Health Law Institute. While the presentation was aimed at employers in the health care industry, it also involved a review of recent state and federal law developments that affect all employers. I knew the audience would be looking for practical take-aways, so I put together a checklist of employer to-do items in light of the recent developments. I thought the readers of this blog might appreciate a list too. So here are some important employment law compliance to-do items:

1. Post the new FMLA poster, update your FMLA policy, and start using the new FMLA model forms. The Department of Labor issued new [regulations](#), a new [poster](#), and new [model forms](#) in March of 2013. [Employers that are subject to the FMLA](#) need to post the new poster, start using the new forms, and make revisions to their FMLA policies to reflect the changes.

2. Update your investigation forms and processes. As my colleague Megan Anderson [wrote last year](#), the NLRB and EEOC have taken issue with confidentiality requirements issued in connection with investigations into workplace issues. The NLRB has held that, under Section 7 of the National Labor Relations Act, a non-management employee has the right to talk with coworkers about workplace concerns and this right is not outweighed by the employer's generalized concerns about the integrity of an investigation. In addition, the Equal Employment Opportunity Commission (EEOC) has taken the position that overbroad confidentiality requirements violate federal anti-discrimination laws. The NLRB and EEOC have indicated, however, that an employer may request confidentiality based on an individualized assessment that reveals case-specific risks that present a legitimate and substantial business justification for a confidentiality instruction.

Many employers have forms or written policies they use when conducting internal investigations and I would bet that most of those forms include an instruction to tell witnesses to keep the investigation confidential. Those forms should be revised and replaced with instructions and guidance on how to decide whether confidentiality is needed in a particular investigation.

3. Take the time provided by the recent delay of the employer mandate in the Affordable Care Act to make sure that your organization is ready for health care reform. Gray Plant Mootys benefits attorneys, Kathi Wright and Monica Kelley, have provided some [great tips](#) for employers.

4. Review employee benefit and insurance plans and work with benefits counsel to determine what changes may need to be made to employee benefits in light of Minnesota's new same-sex marriage law and the U.S. Supreme Court decision holding that the Defense of Marriage Act is unconstitutional. Benefits attorneys Kathi Wright and Monica Kelly have also published helpful [e-Benefits Alerts](#) on these [issues](#).

5. Review the attendance, leave and return to work policies that your organization has in place to ensure that they allow for reasonable accommodations and an interactive process with disabled employees. As I've [written before](#) on this



blog, inflexible leave policies continue to be a significant focus of EEOC enforcement efforts.

6. Employers in Minnesota need to remove criminal history questions from their employment applications. Minnesota recently passed ban the box legislation that requires private employers to wait until a job applicant has been selected for an interview, or a conditional offer of employment has been extended, before asking a job applicant about criminal records or conducting a criminal background check. The law goes into effect on January 1, 2014. The Minnesota Department of Human Rights has information for employers [on its website](#), including frequently asked questions. In addition, all employers need to carefully review their practices and procedures for reviewing background check results to comply with the [EEOCs 2012 guidance](#). As my colleague Casey Nolan [recently wrote](#), this is an area of EEOC enforcement focus and the EEOC recently filed two lawsuits.

7. Minnesota employers should carefully review their sick leave and parenting leave policies and make appropriate updates in light of the new Minnesota law that requires employers that offer paid sick leave benefits to allow the use of those benefits for absences related to illness or injury of an adult child, spouse, sibling, parent, grandparent, or stepparent. My colleague Mark Mathison [wrote about this change last week](#). The law goes into effect on August 1, 2013.