

2016

SAME-SEX MARRIAGE

In June of 2015, the U.S. Supreme Court issued a landmark ruling legalizing same-sex marriage in the groundbreaking Obergefell v. Hodges case. The ruling mandates that employers re-evaluate and revise health insurance plans and other benefits to include provisions for same-sex spouses.

Should benefits be extended to unmarried same-sex couples in domestic partnerships? Is retroactive benefit coverage for the period prior to Obergefell v. Hodges necessary? Will there be protections afforded by state and local laws or employer-adopted policies that prohibit discrimination based on marital status?



MEDICAL MARIJUANA

Twenty-three states plus the District of Columbia (DC) have legalized medical marijuana. Four of those states plus DC have legalized the recreational use of marijuana. At the federal level, marijuana remains illegal and classified as a Schedule 1 Controlled Substance under the Controlled Substances Act of 1970.

Should an employee who has failed a drug test be terminated even if (s)he has a legal prescription under the state laws? Can an employer make accommodations for a worker using medical marijuana? To keep workers safe under OSHA guidelines, should people found to be under the influence of medical marijuana be excluded from certain tasks, or from the workplace altogether?



EMPLOYEE USE OF SOCIAL MEDIA

Employers are starting to actively monitor their employees' social media content under the auspices of protecting the company brand. Employees have cried foul citing privacy issues and protected concerted activity. Some employers are also requesting access to employee social media usernames and passwords. In 2015, twenty-three states introduced or considered legislation and 9 states enacted formal legislation to protect workers from having to grant account access to their social media.¹

What right does a company have to legally monitor their employees' social media accounts, both on and off duty hours? Are there circumstances such as a workplace investigation when an employer needs access to a worker's social media username, password or admin privileges? Can employees be terminated for content found on their personal social media accounts?



"BAN THE BOX"

"Ban the Box," or fair chance hiring reform, went federal in 2015 when President Obama asked the Office of Personnel Management to enact new rules mandating removal of the job application tick box for an individual's conviction history. The guidelines also require that hiring managers postpone asking about a candidate's criminal history until after an interview has been conducted or a provisional job offer extended. Thirteen states and the District of Columbia (DC) have already passed similar legislation, and other states are expected to follow suit.²

Does an applicant's criminal background really have an impact on his/her employability? Can "ban the box" be implemented while still protecting public safety and security? Should adherence to "ban the box" vary according to job category?



EMPLOYEE TATTOOS

Starbucks, Walmart, Abercrombie & Fitch and PetSmart recently reconfigured their dress code policies and relaxed employee tattoo guidelines. It's no surprise. Over 40% of people in a 2014 NBC News/Wall Street Journal poll³ said someone in their household had a tattoo. That's double the 1999 percentage.

Can a company's dress code policy on tattoos differ according to individual job functions? Should employers offer accommodation to workers who have tattoos with religious meaning? Will "tatcalling" emerge as a form of employee misconduct?



REVERSE MENTORING

For over a decade, reverse mentoring has been gaining momentum as a way to bring older, more experienced executives up to speed with evolving technology. It allows employers to tap into existing company resources – a younger, more tech savvy generation. With the millennial population entering the workforce in droves, projected to account for nearly 50% of the global workforce by 2020⁴, this mentoring tactic is a powerful tool that has the added benefit of narrowing the generation gap.

To what extent do programs like reverse mentoring impact overall employee engagement? How should companies handle executives resistant to the idea of reverse mentoring? Can reverse mentoring go beyond technology?



TRANSGENDER EMPLOYEES

As companies continue to grapple with low levels of employee engagement, diversity and inclusion are emerging as key differentiators for success. A recent Forbes study⁵ confirms that an inclusive, diverse workplace culture drives ideation and innovation, and this type of data-driven insight has prompted organizations to tackle employee relations policies for transgender employees.

How should companies handle restroom policies and dress codes for transgender employees? Can an employer remain sensitive to a transgender worker's needs without bringing unwanted attention to him/her? What do companies need to do to make sure that colleagues of transgender employees are sensitized to the needs of a transgender coworker?



AFFORDABLE CARE ACT EMPLOYER MANDATE

The Affordable Care Act Employer Mandate had a phased rollout through 2015, and in 2016, the last leg will require small businesses with 50 to 99 full-time equivalent (FTE) employees to provide affordable health insurance of "minimum value." Failure to comply results in financial penalties, or Employer Shared Responsibility Payments.⁶

Will companies adjust employee hours to keep the number of FTE employees low? Will small businesses choose to keep FTE employee headcounts below 50 to exempt them from the Mandate? Will the financial burden of healthcare associated with an aging workforce discourage companies from retaining older workers?



ANNUAL PERFORMANCE REVIEWS

Performance reviews can be traced back to the 1950s Performance Rating Act⁷, legislation that mandated the annual review of federal employees. Companies are changing to offer more frequent feedback by managers rather than an annual performance review. Major companies like Accenture, Adobe, Microsoft and Expedia have nixed annual performance reviews while other prominent firms like KPMG and Deloitte are eliminating stack rankings.

How can companies accurately distinguish high performers if ranking systems are eliminated? Will managers follow through with frequent, less formal feedback? How will human resource departments justify layoffs, terminations or promotions without documented annual performance reviews?



CONFIDENTIALITY OF WORKPLACE INVESTIGATIONS

In 2015, the National Labor Relations Board (NLRB) overruled its long-standing holding that employers may withhold witness statements from requesting unions. The NLRB further held that general policies requiring employee confidentiality in all company investigations are unlawful.⁸

How can employers ensure the integrity of investigations if they cannot ask employees to maintain confidentiality? Without mandatory confidentiality, is there an increasing risk of retaliation or harassment of witnesses, victims, and employees involved in a workplace investigation? Without confidentiality policies, how can an employer deter employees from spreading unsubstantiated rumors about an on-going workplace investigation?



¹ NLRB.gov "The NLRB and Social Media."
² "States Ban the Box: Removing Barriers to Work for People with Criminal Records." CSG Justice Center.
³ "Infographic: America's Love for Tattoos Grows." NBC News.
⁴ "Reverse Mentoring: How Millennials Are Becoming the New Mentors." Microsoft News Centre Europe.
⁵ "Global Diversity and Inclusion: Fostering Innovation through a Diverse Workforce." Forbes | Insights.
⁶ "ObamaCare Employer Mandate." Obamacare Facts.
⁷ "The Annual Performance Review: Worthless Corporate Ritual." Bloomberg.com.
⁸ "LawFlash: NLRB Limits Confidentiality in Workplace Investigations."