

2020 Employment Law Update

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HR4VR

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What We're Going to Cover

Ten changes
to law affecting employers

Practical tips
on how to handle the changes



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Salary History Bans

Purpose to not perpetuate wage gaps

No questions about what a person is currently making or has made in the past

Alternative: Salary expectation questions can be asked during the interview process

★ State-wide Bans

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★ Local Bans

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Pay Equity

Continues to be an issue

Estimates to reach equity in 2059

Legislation

Designed to allow employees to talk about their pay

Often with significant penalties for noncompliance

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Pay Equity *Tips*

Be willingly to do something about it

Consider a third-party evaluation

Strategic advantage for sharing the results

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Ban the Box

★ State-wide Bans

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★ Cities

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Purpose to not **discriminate** against people who have a criminal history

Job Postings: Remove language saying applicants **must** have clean record

Remove box on employment application asking about prior convictions

Disclosure in applications: Some positions require background check

Alternative: Consider what types of criminal histories are acceptable for your business and which positions

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Pre-Employment Testing for **Weed**

Nevada & New York City prohibit marijuana testing prior to employment

Spread to other parts of the country?

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Weed in the Workplace

Medicinal Use:

Possibility to reasonably accommodate the use

11 States have a no discrimination provision

No accommodation for being high at work

Testing can't tell if someone is high right this second

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Marijuana *Tips*

If testing, test only the positions that are safety sensitive

If employee tests positive, ask the person:

- Medicinal use
- Used in a lawful state

Train managers to recognize signs of use

Consider accommodations for medicinal users

- Use it after work or on weekends
- Talk with managers

ADA – Americans with Disabilities Act

A physical or mental impairment that substantially limits or interrupts one or more major life activities

A record of an impairment

Being regarded as having an impairment

Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

Hidden Disabilities

**Nearly 1/3 of
Americans have a
disability**

* 2014 Census.gov published study

**Includes
neurological,
psychiatric &
learning
disorders**

**Are not easy
to identify by
employers**

**Misperceptions
abound
because they
are not obvious**

**Supreme Court
narrowed
accommodation
protections for
hidden disabilities**

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LGBTQ+ Issues

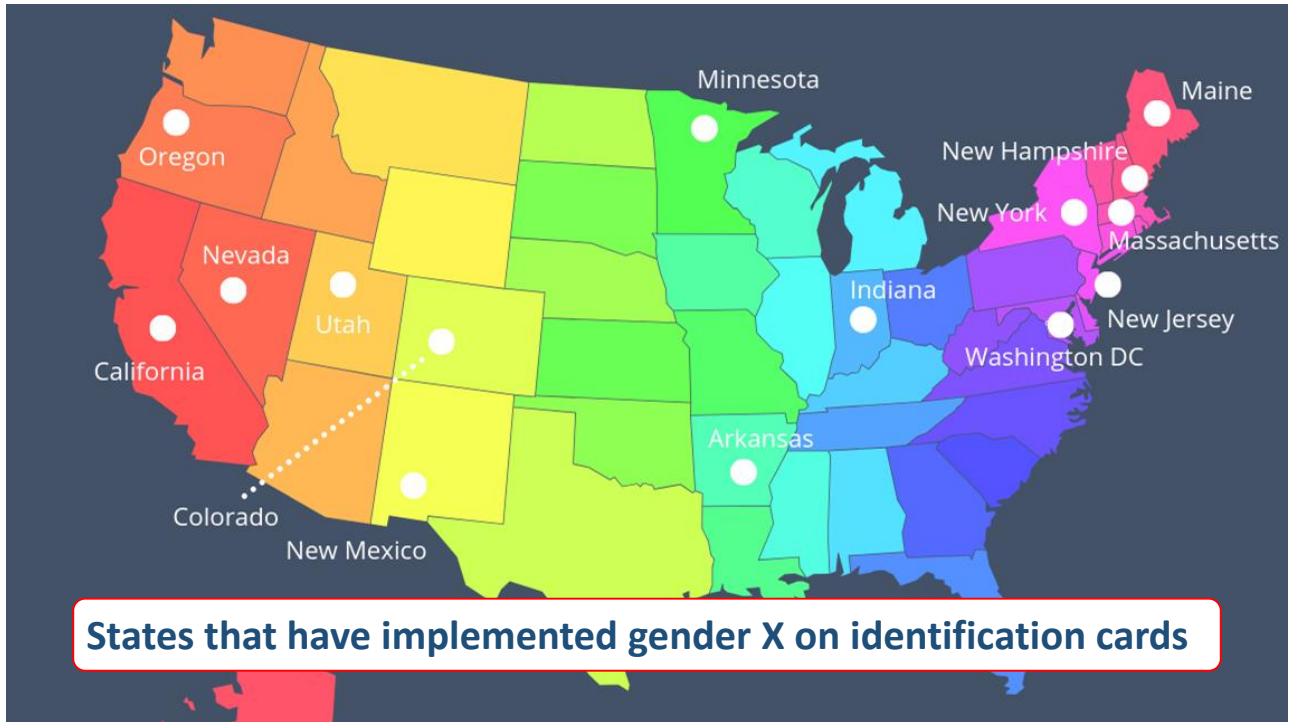
**Supreme Court heard arguments on whether
Title VII's definition of "sex" includes
protections for the LGBTQ+ community**

Decision likely in late June

**Practice not discriminating on
this now**

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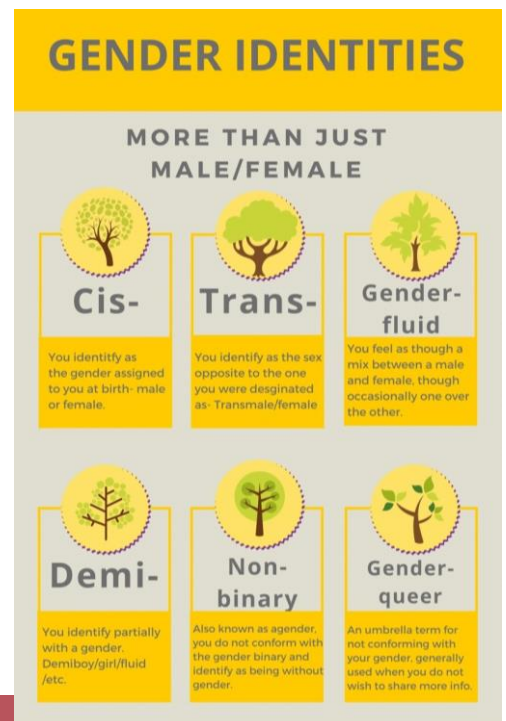


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Pronouns

- Employee may want to be referred to as **he, she, they or zhe**—a gender-neutral pronoun that is pronounced "**zay**."
- May prefer the title **Mx. instead of Mr. or Ms.**
- Email signatures identify pronouns:
 - he, him, his*
 - she, her, hers*
 - they, them, theirs*
- "They-Them, She-Her, or He-Him" (or whatever other pronouns you use) can now be added **after your last name on LinkedIn and other social sites.**

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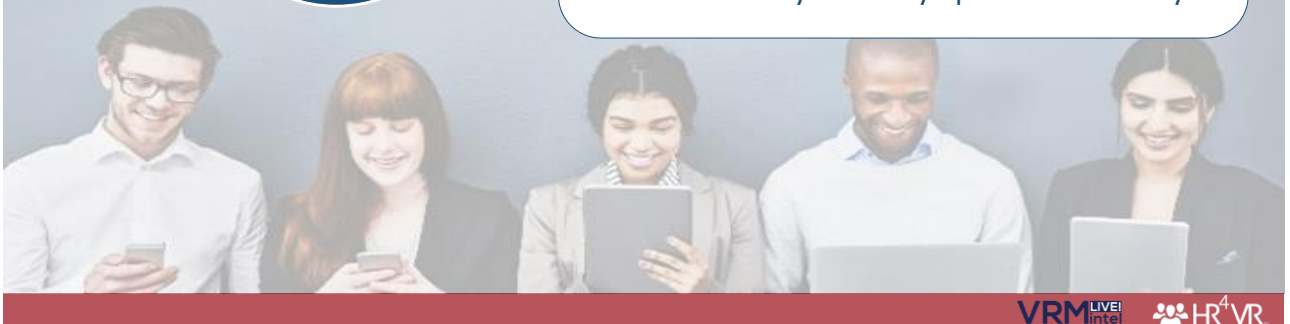


Overtime

Remember
3 Basis

Salary threshold increase to **\$684** per week
(**\$35,568** annually) to be exempt from overtime

1. Paid on a salary basis – not hourly
2. Meets the duties test of each exemption
3. Nondiscretionary bonuses and incentive payments (including commissions) paid at least annually to satisfy up to 10% of salary



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Overtime *Tips*

Update job descriptions

Conduct FLSA Audit - Use the law as an opportunity to revisit duties test

Communication is key



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On Call Pay *Tips*

Unpaid – Waiting to Engage – required nearby

Paid – Engaged to Wait – on premise

Employees **waiting to engage** are **not compensated** for their time

- Provide a stipend or additional PTO for on call time
- Include all hours worked on call in OT calculations

Employees **engaged to wait** on premises are working while on-call and **must be paid** for their time.

Paid Sick Leave

11 states & DC have paid sick leave laws

Many localities

Typically, 1 hour for every 30 hours worked

Shift in how we count time off

Purposes – sick & safe

Caps & rollovers are key & different

Paid Sick Leave *Tips*

Know headcount

**Consider
frontloading time**

**Track the time
accrued & used**

**Sick leave interacts
with other protected
leaves**

Combine PTO & Sick Time Policies

- First 40 hours satisfy sick leave time
- Cannot discipline for attendance issues in first 40 hours

24 states require the payout of PTO upon employment termination:

- Separate PTO & Sick Leave Policies

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Harassment

**In responses to
#MeToo**

**Changes to the
standard**

**Changes to
agreements**

**Training
requirements**

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Legal Standard

Courts created severe & pervasive standards

Incredibly high standard

Intentional legislative action to reduce this standard

- Treated “less well”
- Inferior to others

Elimination of Faragher-Elzerth defense

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Effects on Agreements

No arbitration

No nondisclosure provisions

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Training Changes

Mandatory training

Two-hour training for managers & one-hour for employees

Must discuss topics:

- What is harassment
- Policy & resources
- Case law & legal standard
- Obligations of supervisors
- What to do
- Confidentiality
- Remedies

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Takeaways

Employment law changes fast

Sign up for newsletters & webinars:

- HR4VR
- DOL & State Resources

Consider changes to your policies & procedures before the laws come to your neighborhood

Good relationship with an HR Consultant

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Questions? Contact us!



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