# New Year, New Policy Updates 2024

## Description

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Have you updated your policies for 2024 yet? If not, chances are you are violating the law. Here are some recent changes all employers should consider:

- **NLRA DISCLAIMERS.** The National Labor Relations Board (NLRB) was busy this year issuing new requirements for handbook policies, confidentiality agreements and severance agreements. Coupled with these decisions, the NLRB also adopted a new (unfavorable) standard for determining when an employer's policies that govern employee conduct violate Section 7 of the National Labor Relations Act (NLRA) in Stericycle, Inc. & Teamsters Loc. 628, 372 NLRB No. 113 (Aug. 2, 2023) decision. Essentially, the new standard creates a rebuttable presumption that an employer's policies violate the NLRA if an employee could reasonably interpret the employer's policy to be coercive with the intent to chill employees from exercising their NLRA rights. The employer may rebut that presumption by proving that said policy advances a legitimate and substantial business interest of the employer and that the employer cannot advance that interest with a more narrowly tailored rule. Considering this new standard and other decisions, employers should insert additional NLRA disclaimers into many forms of employment agreements and policies, including those addressing conflicts of interest policies, confidentiality, restrictive covenants, non-disparagement and handbooks.
- **401(k) COVERAGE.** Pursuant to the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE ACT), beginning in 2024, part time employees must be allowed to participate in the employer's 401(k) plan if they have worked 500 hours or more in the past three consecutive years. In 2025, employees working at least two years with over 500 hours will be eligible to participate. While participating is mandatory, employers are not required to treat part-time employees equally in terms of contribution matching. Employers need to amend handbook provisions to the contrary and decide if they will match contributions for these part-time employees.
- **NEW OSHA RULE.** Under the Occupational Safety and Health Administration (OSHA), establishments with 100 or more employees in certain designated industries (appendix B to subpart E) will now be required to electronically submit information from their OSHA Forms 300 and 301 to OSHA once a year. The designated industries can be found at https://www.federalregister.gov/documents/2023/07/21/2023-15091/improve-tracking-of-workplace-injuries-and-illnesses. Employers with over 250 employees in industries that are required to routinely keep injury and illness records electronically must continue to submit them yearly from Form 300A, as do employers with 20-249 employees in designated industries (listed in https://www.osha.gov/recordkeeping/naics-codes-electronic-submission). The size threshold is based on one physical work location, not the overall size of the company, and employers may use the ITA tool to determine coverage: https://www.osha.gov/itareportapp. The submissions are due on March 2, 2024 through https://www.osha.gov/injuryreporting.

The new laws at the local level require changes to policies as well. In Rhode Island, R.I. Gen. Laws § 28-5-7(1)(vi) prohibits employers from requiring employees to sign any agreement with confidentiality obligations that cover information concerning unlawful conduct or "civil rights violations". While employers are still wise to require all employees to sign some form of confidentiality agreement, this means that those confidentiality agreements, along with any confidentiality policies, need to specifically carve out unlawful conduct and civil rights obligations, along with NRLA carve outs. Additionally, the Rhode Island Department of Health has updated the mandatory "no smoking" posting requirement to specifically include e-cigarettes. The new poster can be found at: https://health.ri.gov/publications/posters/ItIsIllegalToSmokeInThisEstablishment.pdf. In Massachusetts, employees must be given the new PFMLA notices reflecting both the PFMLA contribution change and a notice regarding the fact that employees are permitted to "top off" their PFML benefit by using

accrued PTO to make up the difference between the PFML benefit and their regular wages. As a reminder, employers cannot force employees to use PTO during an PFML absence. The notices are available at: https://www.mass.gov/info-details/pfml-workplace-poster-notices-and-rate-sheets-for-massachusetts-employers. Even larger changes occurred in states across the nation, with states like California turning their attention to reproductive rights (requiring five days for reproductive losses), New York passing a law that will, amongst other things, make routine union avoidance trainings illegal and Colorado requiring employers to provide information to employees about positions they would be elevated into (amongst countless other changes).

Employers who have not refreshed their compliance recently are well advised to reach out to their legal counsel now to discuss what changes need to be made.

Alicia J. Samolis, Sean M. Fontes, Michael A. Gamboli, and the Employment & Labor Group at Partridge Snow & Hahn are ready to assist businesses with these issues.

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