

Coast-to-Coast Compliance for Multi-State Employers

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Today's Topics

- Overview:
 1. What is multi-state employer compliance?
 2. Why does it matter?
- Tackling Multi-State Employer Issues Through YOUR Questions
- Compliance Resources

What Is Multi-State Compliance and Why Does it Matter?

Laboratories...of DEMOCRACY!

“It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”

-Supreme Court Justice Louis Brandeis
New State Ice Co v. Liebmann (1932) (dissenting)



Here's The Problem

Federalism: 1787



States and Territories of the United States of America
March 4 1789 to August 7 1789



Here's The Problem (Cont.)

Federalism: 2024



The Romantic View of State Autonomy

- **Different strokes.** What might be right for you, might not be right for some
- **Experimentation.** If it works, spread the word. If it fails, the damage is limited



The Single, Courageous State:



The Headache for Today's Multi-State Employers

■ Intake

- Each state has its own laws. The multi-state employer must know:
 - Whether there is a state/local law
 - Whether the law applies under the circumstances
 - When the law changes
 - The above for every topic, or risk penalties for noncompliance

■ Output

- An employer with all of this information must decide:
 - To prioritize either administrative convenience or the bottom line
 - Whether to use resources to comply with all laws or risk penalties
 - What to do if a law changes

Two Primary Questions

- How does the employer collect information about applicable laws?
- Does the employer choose to create multiple policies for employees in multiple states, or let the tail wag the dog?

The Tail



Your Questions, Our Answers

Category 1: Do I Have To Think About This? (Yes, Probably)

Is this seminar for companies that hire employees who live in other states, or employers who conduct business in other states?

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Does The Election Impact This Issue?

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**What if my only contact with a State is
one remote employee?**



**Category 2:
Job Posting, Hiring, and
Start of Employment**

Should I Request Felony Conviction Information On An Application?

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So the FCC FTC won't let me be

Should We Stop Using Non-Competes In All States?

What Is Best Practice For Labor Posters When Employees Are Remote Only?



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What States Require E-Verify and Do Those Requirements Apply to Temp Agencies/PEOs?

(The reason we do
background checks)



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Does Miller Johnson Have A List Of States That It Recommends Employers Avoid?

Yes.

But, if we told you, we'd have to bill you.



Just kidding:

- District of Columbia
- Illinois (especially Chicago)
- New York
- Oregon
- Washington

Additional employee-friendly states:

- Colorado
- Connecticut
- New Jersey
- Massachusetts
- Minnesota

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Oh yeah, this one too...



Category 3: Day-to-Day Employee Issues

**Should We Have Separate
Handbooks For Each State In
Which We Have Employees?**



Just say yes

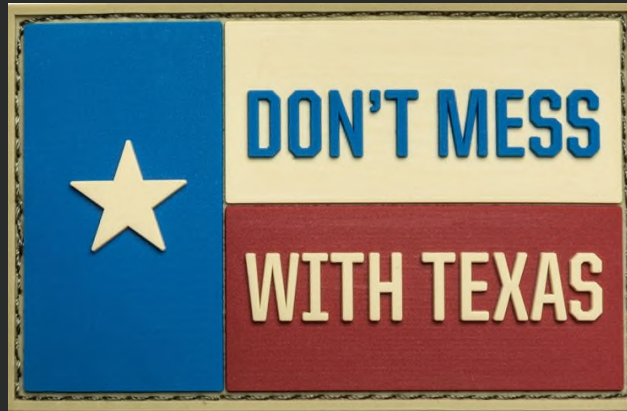
**Should We Create Multiple Leave Policies For
Each Specific State, Or Try To Create A Single
Policy That Covers All States?**

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**Category 4:
Other Issues**

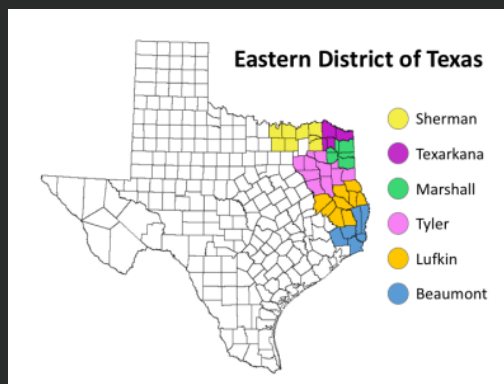
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We have one employee living in Texas, what should I be concerned about?



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But seriously, why are legal challenges always brought in Texas?



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Short List: What Matt and Adam See

Pre-Employment

- Drug Testing Laws
 - Oklahoma, California
- Wage History / Transparency
 - Maryland, California

Separation / Post-Employment

- Accrued, Unused PTO
 - Many, California
- Separation Agreements
 - Minnesota, California

Pay/Leave Policies

- Restrictive Covenants
 - Colorado, Illinois, California
- Leave Laws
 - Chicago, California
- Harassment Training
 - Chicago, California
- Meal / Rest Breaks
 - Washington, California
- Pay Dates, Pay Methods, Deductions, Stub Information

Spotting the Issues

- You should always pause and consider whether there is a state-specific issue for:
 - Criminal history checks
 - All contracts
 - Employment agreements (esp. benefits, arbitration clauses)
 - Separation agreements (esp. releases of claims, arbitration clauses)
 - State-specific policies that must be included in handbooks (e.g., pregnancy non-discrimination, reimbursement policy)
 - Meal/rest breaks
 - Wage deductions
 - Accrual/use of leave, and payout of unused leave

Resources

National Employment Law Compliance (NELC)

- Compliance Bulletin
- Checklists
- Policies

Other Resources

- SHRM and other HR-based services
- Benefits providers for certain topics (STD, WC, etc.)
- Government newsletters (EEOC, DOL)
- Other law firm newsletters
- Other vendor newsletters
- Industry websites/blogs

Final Notes

What's the Best Approach to Compliance?

- Two extremes:
 - Invest significant resources to comply with every possible applicable law
 - Hard to implement, hard to maintain
 - Resources are fallible and can miss developments
 - Those trained to know laws can leave employment; more resources to train someone else
 - Ignore laws in states where you do not employ many employees, and roll the dice
 - No explanation needed

What's the Best Approach to Compliance?

- Balanced option for those without endless resources or endless risk tolerance:
 - Outsource to obtain a baseline for a state (when hiring the first employee in that state)
 - Subscribe to / follow services that provide updates for relevant states
 - Train employee(s) (employer size-dependent) to monitor updates and understand when higher-risk subject is present
 - (If applicable) Create system for employees to funnel those issue to trained point person
 - Contact legal / other advisor(s)



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