Littler Survey Reveals Employers Caught in a Tangled Web of Federal, State and Local Laws

The **Littler** law firm has released the results of its sixth annual survey, completed by 1,229 in-house counsel, human resources professionals and C-suite executives. **The Littler Annual Employer Survey, 2017** reveals that the change occurring in Washington, D.C., and in local governments – combined with technological advances and shifts in how work is performed – is creating an unprecedented level of uncertainty in the workplace.

A release from the firm continues:

A Complex Patchwork of State and Local Laws, Deep Uncertainty at Federal Level

The vast majority of employers expect the Trump administration to prioritize reforming healthcare and employee benefits law (89 percent) and immigration policies (85 percent) in 2017. However, for most regulatory issues, the percentage of respondents who anticipate an impact on their workplace over the next year remains relatively unchanged from last year's survey. That includes the Affordable Care Act (85 percent in 2016 to 83 percent in 2017) and enforcement by the Equal Employment Opportunity Commission (78 percent to 76 percent), National Labor Relations Board (56 percent to 55 percent) and Department of Labor (82 percent to 81 percent). Immigration reform was the exception as 63 percent said they expect an impact in 2017, up from 40 percent in 2016.

"With the profound changes in Washington, D.C., it may be initially surprising that respondents do not anticipate more

of a near-term impact on their businesses," said Michael Lotito, co-chair of Littler's Workplace Policy Institute. "However, given the general climate of uncertainty and delays in appointments to government agencies, employers likely expect it to take time before they start to see how the president's agenda is carried out and personally feel an impact in their workplaces."

The host of new or amended labor and employment requirements at the state and local levels is creating compliance challenges for the majority of respondents (79 percent). In an effort to keep up, employers are updating their policies, handbooks and HR procedures (85 percent); providing additional employee training (54 percent); and conducting internal audits (50 percent).

"As states and municipalities continue to propose and enact a dizzying array of rules and regulations, it is no wonder employers are struggling with the increasingly fragmented landscape," said Lotito. "With the Trump administration working to reduce federal regulations, employers can expect a growing patchwork of employment regulations as states and municipalities look to fill a perceived void at the federal level."

Of the array of changes at the state and local levels, respondents have been most impacted by paid leave mandates (59 percent), background check restrictions (48 percent) and minimum wage increases (47 percent).

Uncertainty Surrounding Healthcare Reform

Even though survey responses were collected before Republicans withdrew the American Health Care Act in late March, more than a quarter (27 percent) were already uncertain about the impact of repealing the ACA's employer mandate. And another 28 percent said they did not anticipate an impact at all.

"Employers face even more questions about the future of the

ACA, as well as the extent to which the administrative process can and will be used to change aspects of the law, than when they responded to our survey," said Ilyse Schuman, co-chair of Littler's Workplace Policy Institute. "In this environment, employers can continue to expect a certain level of uncertainty surrounding employer-sponsored health coverage in the months ahead."

Only 4 percent of respondents anticipate dropping coverage for some full-time employees if they are relieved of the ACA's employer mandate, but 18 percent said they would allow more employees to work more than 30 hours a week.

"The responses indicate that employers are committed to providing health insurance for their full-time employees," said Steven Friedman, co-chair of Littler's Employee Benefits Practice. "However, they also suggest that a repeal of the mandate would give employers more flexibility to set work schedules based on the needs of their businesses, without fear of triggering a requirement to provide health insurance."

EEOC Expected to Prioritize Hiring Practices, LGBTQ Rights and Pay Equity

Hiring practices – including the consideration of criminal or credit histories in the hiring process and pre-employment testing or screening practices – was the area where most respondents (51 percent) expected an increase in EEOC workplace discrimination claims over the next year, closely followed by LGBTQ rights (46 percent) and equal pay (46 percent).

"The transitions in Washington, D.C., appear to have curtailed employers' expectations for EEOC enforcement activity around LGBTQ rights and equal pay, which rose sharply in the 2016 survey, when 74 percent and 61 percent of respondents, respectively, expected increased enforcement around those issues," said Barry Hartstein, co-chair of Littler's EEO &

Diversity Practice. “Nonetheless employers continue to expect substantial enforcement over the next year as pay equity and discrimination based on sexual orientation remain priorities not only for the EEOC, but for the courts, state and local governments, the plaintiffs’ bar and the general public.”

FMLA Leave Presents Headaches

Among the employee requests that are most difficult to accommodate, leaves of absences under the Family and Medical Leave Act emerged as the presenting the greatest challenges. The majority of respondents indicated difficulty with managing intermittent FMLA leave (65 percent) and leaves that extend beyond FMLA requirements (55 percent), followed by remote or work-from-home arrangements (37 percent) and modified or reduced schedules (36 percent).

“Nothing is more disruptive to the operation of a business than unpredictability. When employees are repeatedly and unexpectedly off work, employers have to scramble to cover their responsibilities and manage potential resentment from employees who are inevitably asked to do more,” said Hartstein. “The increasingly common practice of requesting flexible work arrangements is also creating a whole new layer of legal and practical challenges for employers.”

Data Privacy and Breach Prevention Top of Mind

As the volume of data breaches originating with employees continues to grow, 63 percent of respondents said their HR and IT departments are collaborating on information security policies. Just over half (51 percent) said they were providing additional training to employees, and a smaller percentage said they were utilizing cyber-incident response plans (29 percent) and updating employee contracts to cover confidentiality obligations (23 percent).

“It is encouraging to see HR collaborating with IT to reduce the risk of data breaches that originate with employees.

Information security policies prepared only by IT often focus on technical safeguards, whereas involving HR in the process helps to address the human elements of information security," said Philip Gordon, co-chair of Littler's Privacy and Background Checks Practice. "However, our results suggest that employers can take additional steps to guard against and prepare for employee-initiated data breaches, including ensuring all employees are trained on policies and know how to recognize and then report a security incident."

Among respondents from large-cap organizations, the majority (56 percent) said global data privacy was a key area of concern in doing business outside of the U.S. "This concern likely stems from the significant restrictions on sharing personal data of employees in Europe and in the many countries that impose stricter rules than the U.S.," noted Philip Berkowitz, U.S. co-chair of Littler's International Employment Law Practice.

The survey results were released at Littler's 34th annual Executive Employer Conference held May 10-12, 2017, in Phoenix, Arizona, and attended by many of the employers who completed the survey.

Click here for The Littler® Annual Employer Survey 2017 Report

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