Littler Survey: Economic Volatility, AI Adoption and Heightened Regulatory Activity Pose New Challenges for Employers

New research by Littler, the world's largest employment and labor law practice representing management, shows U.S. employers facing fresh hurdles in 2023, from shifting working models and stepped-up regulatory enforcement to accelerating adoption of artificial intelligence (AI) technology.

The Littler® Annual Employer Survey, 2023 reveals how organizations are mitigating risks, seizing new opportunities and laying the foundation for the future workplace as they navigate headwinds including economic uncertainty and a growing patchwork of local, state and federal laws.

Now in its 11th year, Littler's survey draws on insights from 515 in-house lawyers, C-suite executives and human resources professionals based across the U.S.

Hybrid Work, Disability Accommodations Are Here to Stay

The hybrid work model appears to have staying power in the U.S. More than 70% of the employers surveyed have workforces operating on a hybrid work schedule, and, despite economic uncertainty and layoffs at major companies, just 20% of respondents believe that the easing of the tight labor market is helping their organizations push for more in-person work. Only 16% say their organizations require fully in-person work — a figure that is roughly half the 30% of respondents who said the same in Littler's 2022 European Employer Survey Report.

"In an environment where some hybrid work is likely to remain the norm, employers need to pivot away from crisis management and toward intentional remote work structures that can be broadly applied and consistently enforced," said Littler shareholder Devjani Mishra. "Given the current spotlight on equity, transparency and employee well-being, company leaders need to develop and communicate their remote work policies clearly and consistently to promote employee engagement and satisfaction."

The pandemic also spurred a rise in employee requests for disability accommodations and leaves of absence: 65% of respondents, for instance, report receiving an increase in requests related to mental health conditions. Nearly a quarter (22%) have seen increased requests related to long COVID or other post-COVID conditions. In addition, 50% of employers surveyed have expanded their policies for disability accommodations and/or leaves of absence since the start of the pandemic.

Employers Are Bracing for Heightened Regulatory Enforcement, Increasingly Active State Legislatures
Paid sick and family leave requirements topped a list of employment law changes that employers expect to impact their businesses in the year ahead (selected by 71% of respondents), as the patchwork of state and local requirements in this area continues to grow. Other employment law changes that are top-of-mind with respondents include pay equity, overtime pay and other income equality-related measures (67%); data privacy regulations (54%); and inclusion, equity and diversity (IE&D) considerations (53%).

"Given the era of divided government, many of the most significant changes impacting employers this year continue to come at the state and local levels," said Michael Lotito, co-chair of Littler's Workplace Policy Institute (WPI). "In the absence of comprehensive federal legislation governing such areas as paid leave, data privacy and minimum wage, state

lawmakers are frequently taking the lead."

Despite the scale of legislative changes, employers have done considerable work to prepare for new laws coming into force. The vast majority of respondents (91%), for example, feel prepared to comply to some extent with pay transparency laws requiring the disclosure of salary ranges, as well as with the California Privacy Rights Act, which applies comprehensive data protection to HR data.

WPI Executive Director Shannon Meade notes that in response to this proliferation of state and local workplace laws, "employers are increasingly looking for state-by-state analyses to understand the various laws and obligations before making critical operational decisions, such as where to expand their businesses."

On the federal level, employers are also anticipating a substantial impact on their workplaces stemming from enforcement by various regulatory agencies. This year's survey saw a particular rise in the expectations regarding enforcement by the National Labor Relations Board and compliance with its requirements, with 61% expecting a moderate or significant impact, up from 43% in the 2022 survey. Respondents also expect a moderate or significant impact from rulemaking and enforcement by other key federal agencies, including the Department of Labor's Wage and Hour Division (68%) and the Equal Employment Opportunity Commission (65%).

AI and Other New Technologies Pose Opportunities, Challenges

An increasingly remote and decentralized workforce has drawn greater attention to software that can track and monitor the activity of white-collar workers. However, the survey data finds employers split on the use of employee-monitoring technology, with 45% already using it and 41% not using or considering such applications. Employers identified a range of

concerns in using such technology, including the impact on employee morale and privacy law compliance, which were both cited by 65% of respondents.

"When considering the implementation of employee-monitoring tools, it's important for employers to carefully weigh the risk factors against the technology's benefits," Britney Torres and Mickey Chichester, Littler shareholders and members of the firm's Global Workplace Transformation Initiative, said in a joint statement. "While some companies may see a significant productivity improvement, simply collecting data does not necessarily result in actionable insights and could unnecessarily increase the likelihood of compliance issues."

AI tools are also increasingly being used by employers for a variety of essential HR functions. At a time when HR departments are increasingly stretched thin, respondents identified the greatest advantages of such tools as speeding up processes (63%) and reducing workloads and providing cost-efficiencies (59%). At the same time, respondents expressed concerns about the potential for systemic biases (59%) and employment-related discrimination (52%).

"AI tools will be an integral component of the future workplace, and organizations that do not take advantage of the benefits of these tools risk losing a competitive edge," said Littler shareholder Niloy Ray, who helps lead the firm's efforts to counsel on AI in Human Resource Decisions. "However, the lack of regulatory certainty and the potential risks make it critical for employers to adopt these tools with purpose and compliance top-of-mind."

Despite that, half of respondents say their organizations are taking a wait-and-see approach when it comes to developing policies on the use of generative AI technology — and a surprising number, 40%, say their organizations have no policies in place and do not intend to implement any.