SMITH ANDERSON
expectexcellence®

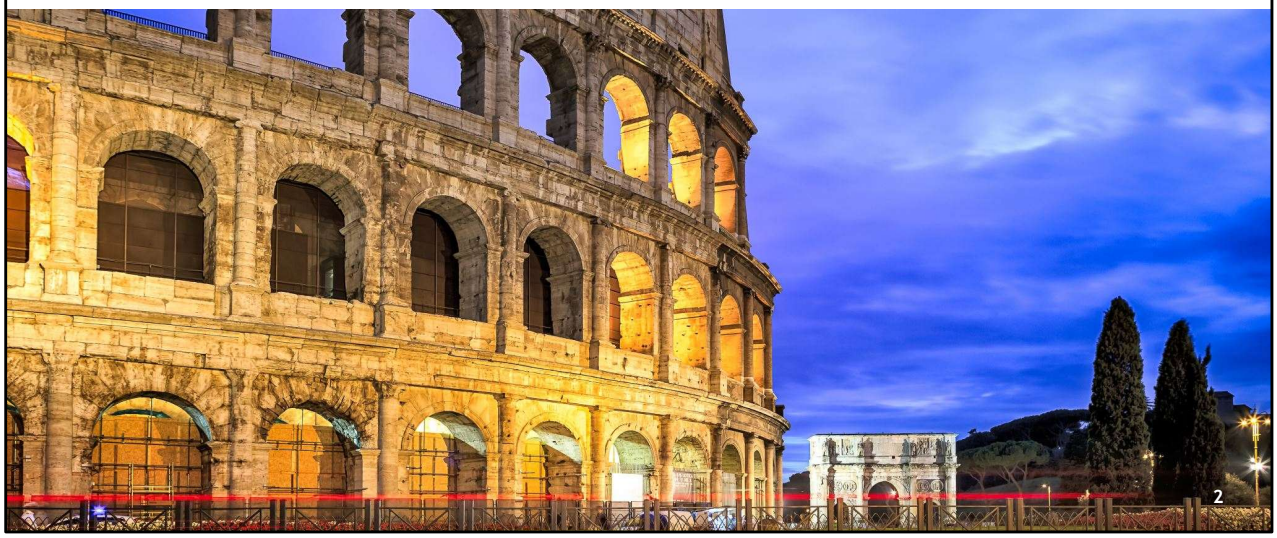
Fifty Shades of a Compliance Plan:

When Employees are Here, There, and Everywhere

Kimberly J. Korando
Bella Thoren

October 28, 2026

When in Rome…



Today

Why Multi-State Compliance Matters
The Checklist Framework
High-Priority Topics
Compliance Strategy Approaches
Takeaways and Action Items

Why Multi-State Compliance Matters

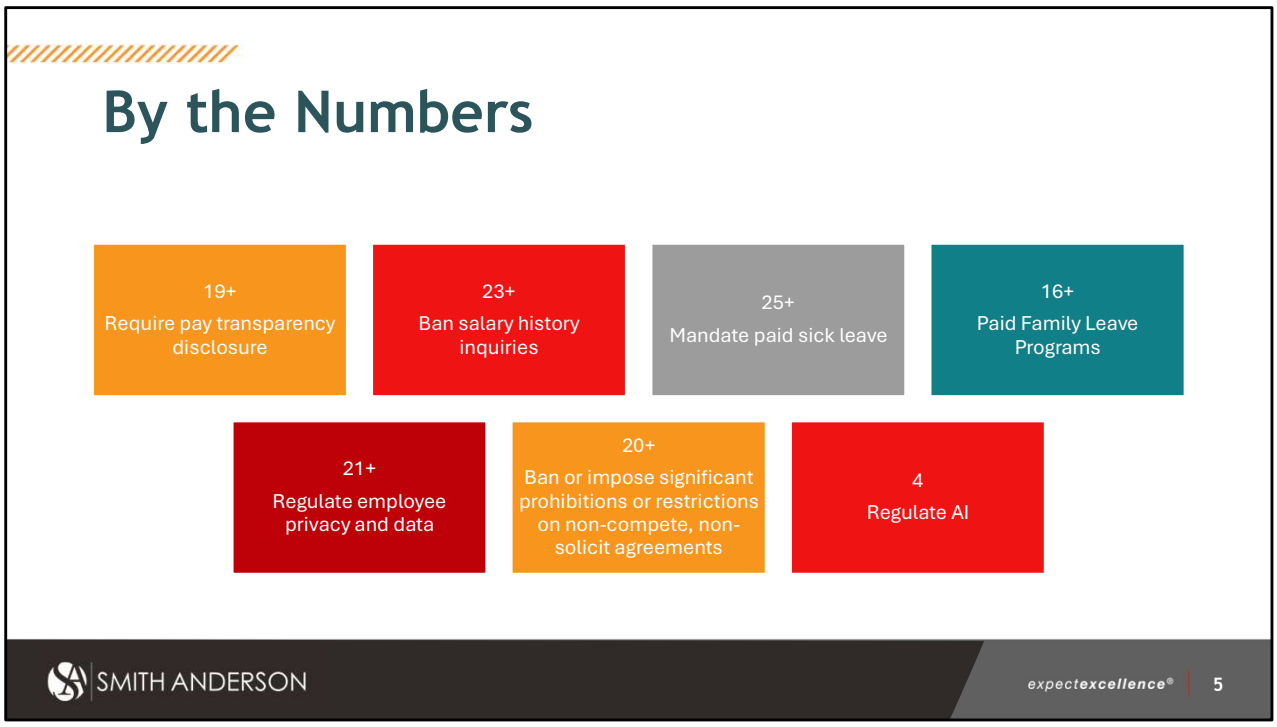
States have emerged as the primary drivers of employment law reform

Many state laws cover topics not address in federal law

Many state laws exceed federal standards

Multi-state employers face differing requirements varying by jurisdiction, headcount, industry and municipality

Non-compliance consequences are significant and growing—enforcement actions (civil and criminal), private lawsuits, class actions, reputational risk



These are the fastest growing areas of state employment law.



A Multi-State Employer Checklist is attached as an Appendix to these materials.

CHECKLIST PRACTICAL GUIDANCE

Use the Checklist

- When employing workers in a new state
- Policy development and revision
- Annual compliance reviews
- M&A due diligence

Best Practices

- Complete the checklist for each jurisdiction in which you employ workers
- Prioritize categories based on where workers located and how many
- Update the checklist annually

CHECKLIST CATEGORIES

Tax, Benefits Mandates, Business Nexus	Hiring and Onboarding	Technology and AI in Employment	Worker Classification and Joint Liability	Wage and Hour
Time-Off Law	Discrimination, Harassment, Whistleblowing, Protected Activities	Employee Privacy and Data	Restrictive Covenants	Drug Testing and Substance Abuse
	Workplace Safety and Health	Labor Relations	Termination and Separation	

TAX AND BUSINESS NEXUS CHECKLIST

GENERAL RULE

Law of the state in which the individual works, including remotely, governs

- State payroll registration requirements
- State/local tax withholdings (income, unemployment, state benefit contributions such as disability and family leave)
- MUST CONSIDER
  Is business nexus created by employing remote workers in another state?

Notes

State disability insurance programs (including CA, HI, NJ, NY, RI, and PR)

STATE BENEFIT MANDATES CHECKLIST

- State disability insurance programs
- State-mandated family leave contribution programs
- State health insurance requirements and supplements
- State-mandated retirement savings programs
- Workers' compensation coverage requirements, reporting, return to work

HIRING AND ONBOARDING CHECKLIST

- Job posting pay/benefits transparency requirements; ghost job restrictions
- Salary history inquiry bans
- E-Verify requirements (varying by state and employer size or industry)
- New hire reporting requirements
- New hire disclosure requirements (wage rate, pay schedule, benefits, and written notices)
- Background check requirements and restrictions (timing/scope of inquiries; adverse action procedures)
- Criminal history restrictions / ban-the-box / fair chance hiring laws (timing/scope of inquiries; expungement protections; adverse action procedures)
- State poster and notice requirements
- Employee v. independent-contractor tests

TECHNOLOGY AND AI IN EMPLOYMENT CHECKLIST



USE OF ARTIFICIAL INTELLIGENCE IN HIRING AND EMPLOYMENT DECISIONS



AUTOMATED DECISION-MAKING DISCLOSURE REQUIREMENTS, BIAS AUDITS



ELECTRONIC MONITORING NOTICE REQUIREMENTS

WAGE AND HOUR CHECKLIST

Issue	Key Compliance Topics
Exempt Employees	Higher minimum salary thresholds Higher duties requirements
Non-Exempt Employees	Higher state/and local rates above federal $7.25; annual adjustments Overtime requirements and exemptions Prevailing wage requirements for public works Tip credit and tip pooling rules
Scheduling	Meal break and rest break requirements (timing, duration, waiver, penalties) Fair Workweek/Predictive Scheduling restrictions (including reporting-time, scheduling, advance schedule notice, and related premium-pay rules)
Payment Requirements	Frequency Deduction/forfeiture/garnishment rules Pay statement disclosures Business expense reimbursement Commuter benefits requirements PTO mandatory annual carry-over/payout; mandatory payout at termination Final pay

TIME-OFF/LEAVE CHECKLIST

Leave	Key Compliance Issues
Sick Leave	Paid v. Unpaid; State Funding Program; Covered Absences; Amount of Leave; Eligibility; Notice (Employer/Employee) Requirements
Family and Medical Leave	Paid v. Unpaid; State Funding Program; Covered Absences; Amount of Leave; Eligibility; Notice (Employer/Employee) Requirements
Paid Time Off Mandate	Amount of PTO; Eligibility; Notice (Employer/Employee) Requirements; Carry-over; Forfeiture; Payout Requirements
Other Mandatory Time-Off/Leave (bereavement, jury duty, crime victim, domestic violence, witness, court attendance, voting, school activity, military/CAP/emergency responder, organ/bone marrow donor, small necessities)	Paid v. Unpaid; Covered Absences; Amount of Leave; Eligibility; Notice (Employer/Employee) Requirements

DISCRIMINATION AND HARASSMENT CHECKLIST

Topic	Key Compliance Areas
Protected Characteristics/Activities	Beyond federal (e.g. sexual orientation, gender identity, CROWN Act / hairstyle protections, reproductive health decisions, credit history, familial status, veteran status, immigration status, weight/height, off-duty lawful conduct, political activity, union activity, whistleblower protections)
State harassment training and policy	Content, frequency, audience, instructor
Pay equity and equal pay requirements	State equal pay act requirements beyond the federal Equal Pay Act
Pregnancy and lactation accommodation requirements	State requirements exceeding federal law
Disability coverage and accommodation	Requirements beyond federal law
Age discrimination	State coverage for persons younger than 40 and other variations from federal law

Mandatory training (content, frequency, audience): CA, CT, DE, IL, ME, NY

EMPLOYEE PRIVACY AND DATA CHECKLIST



Surveillance and monitoring restrictions and notice requirements; video, audio, GPS



Social media privacy protections (including restrictions on requesting employee passwords; account access)



Employee data privacy laws (state consumer privacy laws with employee-data provisions)



Biometric data collection restrictions



NIL consent / name, image, likeness considerations



Personnel file access rights (inspect, copy, or rebut)

RESTRICTIVE COVENANTS CHECKLIST

Non-compete agreement bans and restrictions:

Scope, salary thresholds, notice requirements, garden-leave obligations

Non-solicitation agreement bans and restrictions:

Scope, salary thresholds, notice

Trade secret and confidential information protections:

Requirements for coverage, required carve-outs

NDA restrictions on employment and separation agreements and policies:

Prohibitions, required carve-outs

DRUG TESTING AND SUBSTANCE ABUSE CHECKLIST

Medical and recreational marijuana/cannabis employment protections	Drug testing requirements and restrictions	Alcohol testing restrictions
• Off-duty use • Positive-test protections	• Types • Notice requirements • Testing protocols	• Testing methods • Timing • Employer obligations

WORKPLACE SAFETY AND HEALTH CHECKLIST

- State OSHA plans and reporting requirements
- Workplace violence prevention programs
- Heat illness prevention standards
- Indoor air quality and smoking/vaping restrictions



LABOR RELATIONS CHECKLIST

State labor relations laws beyond the NLRA

Right-to-work, union security provisions

Captive audience meeting bans (states prohibiting mandatory employer meetings on union or political topics)

Public sector collective bargaining

TERMINATION AND SEPARATION CHECKLIST

- Exceptions to at-will employment (implied contract, oral contract, handbook liability, public policy, and reasonable-notice requirements)
- Termination notice and reporting requirements
- Final pay timing requirements (same day, next business day, or next regular payday)
- Mini-WARN / state plant-closing notification requirements (thresholds or longer notice periods than the federal WARN Act)
- Separation agreement requirements and limitations
- Unemployment insurance obligations

High Risk Compliance Topics

PAY TRANSPARENCY

19+ STATES REQUIRE SALARY RANGE IN JOB POSTINGS, BEFORE DISCUSSING PAY OR ON REQUEST

Selected State Highlights

CA

- On request: provide applicant pay scale for posted position and employee pay scale for their position
- 15+ employees (at least 1 in CA): Job posting must include pay scale for a position that may ever be filled in California, either in-person or remotely (provided in a separate link or QR code does not comply)

CO

- 1+ employees in CO: Job posting for work in CO or remote work performable anywhere must include the hourly/salary compensation or range, benefits and other compensation, date application window expected to close, how to apply

MA

- 25+ employees (primary work location in MA): Job posting for positions performed in MA or can be performed remotely in MA must list pay range; on existing employee request, disclose pay range of their position

WA

- Employers with 15 or more employees (at least 1 in WA): Job posting including for remote work that could be performed by a WA-based employee must include salary range and general description of other compensation and benefits

Other States

CT, DE (9/1/27), DC, HI, IL, ME, MD, MN, NJ, NY (+ multiple locals), OH (Cincinnati, Cleveland, Columbus, Toledo), RI, VT, VA

ACTION: If your job postings reach these states or you have employees in these states, confirm all pay transparency requirements

Important Notice: The states listed on this slide are examples only. Other states may have similar or different requirements. States regularly pass new laws and change or repeal existing ones, including the prohibitions, restrictions, and requirements described here. Before use, check that every legal requirement is current and accurate for each state involved, and consult counsel as needed.

SALARY HISTORY BAN

23+ STATES BAN INQUIRIES INTO PAST PAY HISTORY

Select State Highlights

CA, CO

- Cannot inquire about applicant's salary history or rely on salary history as "a factor" in hiring or salary decisions or use prior salary to justify disparity in compensation

DE

- Cannot screen applicants based on their compensation histories or seek an applicant's compensation history from the applicant or their current or former employer
- Can (i) discuss and negotiate compensation expectations with an applicant, if done without requesting or requiring compensation history and (ii) seek compensation history solely to confirm that information after an employment offer that includes compensation is negotiated, made, and accepted

IL

- Cannot screen applicants by requiring salary history meet minimum or maximum criteria, request salary history, seek salary history information from a current or former employer
- Cannot use a voluntary disclosure when deciding whether to make an offer, making an offer of compensation, or determining future wages, salary, benefits, or other compensation

Other States

CT, DC, HI, ME, MD, MA, MN, MO (local only-Kansas City), NV, NJ (has exceptions for some voluntary disclosures), NY (+Albany County, NYC, Suffolk County, Westchester County), Ohio (Cincinnati, Cleveland, Columbus, Toledo), OR, PA (local only-Lehigh County, Philadelphia), RI, VA, VT

ACTION: Remove salary history inquiries from all application and other materials

Important Notice: The states listed on this slide are examples only. Other states may have similar or different requirements. States regularly pass new laws and change or repeal existing ones, including the prohibitions, restrictions, and requirements described here. Before use, check that every legal requirement is current and accurate for each state involved, and consult counsel as needed.

PAID SICK LEAVE LAWS

25+ STATES HAVE PAID SICK LEAVE LAWS

Term	Variations Across Jurisdictions
Covered Employer	Some apply to all employers; some mandate leave only for employers of certain size
Covered Employees	Some require employee to work a certain number of hours, or exempt certain categories (e.g. temporary, seasonal, certain occupations)
Leave Accrual and Usage	Accrual typically is 1 hour per # of hours worked (varies 30 to 87 hours worked) up to accrual cap (varies 24 to 192/year); some provide additional supplemental hours (up to 80) for public health emergencies and/or additional 20 hours for prenatal. Some jurisdictions accrue additional unpaid leave up to 80 hours. Some allow frontloading of leave. Some allow use as soon as accrued; others have new hire waiting period ranging from 60 days to 6 months
Carryover	Most carryover unused to next year subject to accrual cap; no carryover for frontloaded hours. Some condition no carryover for frontloaded hours on payout at year-end
Covered Family Members	Most cover employee, employee's family member (spouse, domestic partner, foster child, legal ward, or loco parentis; foster parent, adoptive parent, legal guardian, or loco parentis when the employee was a minor child). Some include other individual related by blood or whose close association is the equivalent of a family relationship; grandparents, grandchild; niece, nephew, aunt, uncle; 1 other designated person
Qualifying Uses	Most cover diagnosis, care, or treatment of mental or physical illness, injury, or health condition, or preventive medical care. Many cover specific activities related to domestic violence, sexual assault, or stalking; business closures ordered by government for health-related reasons; certain court appearances; reproductive loss; bereavement; aid/care of service animal; vacation; person necessity; home evacuation; parental leave; any purpose (IL, ME)

States: AK, AZ, CA (+ numerous local laws), CO, CT, DC, IL (+ Chicago, Cook County), LA (NOLA only), ME, MD (+ Montgomery County), MA, MI, MN (+ Minneapolis, St. Paul), NE, NV, NJ, NM (+ Bernalillo County), NY (+ NYC, Westchester County), OR, PA (local only Allegheny County, Philadelphia, Pittsburgh), RI, VT, VA (home health; others eff. 7/1/27), WA (+ multiple locals)

Important Notice: The states listed on this slide are examples only. Other states may have similar or different requirements. States regularly pass new laws and change or repeal existing ones, including the prohibitions, restrictions, and requirements described here. Before use, check that every legal requirement is current and accurate for each state involved, and consult counsel as needed.

Note

While Georgia does not have a paid sick leave law, it does have a law requiring that if the employer provides sick leave, up to 5 days of sick leave can be used for family care).

PAID FAMILY AND MEDICAL LEAVE LAWS

16+ STATES HAVE MANDATORY PAID FAMILY LEAVE

Term	Variation Across Jurisdictions
Covered Employers, Employees	Most cover all non-government employers. Employees generally must earn a certain minimum compensation or work a minimum number of hours to qualify for PFL.
Funding Source	Most are funded entirely by employee wage deductions; some require employer contribution or full employer funding.
Benefit Amount	Each state has different contribution levels, benefit levels (based on state minimum wage or average weekly wage rates or % employee salary), # weeks covered (6 – 26), eligibility rules (generally based on minimum pay or work hours), claims processes
Permitted Reasons	All cover birth or care for serious ill family member. Some states also cover leave related to prenatal care, domestic or sexual violence, organ or bone marrow donation,
Covered Family Members	Most cover employee's spouse, sibling, child, grandparent, grandchild and parent. Some also cover domestic partner, in-laws, other relatives, or others with a relationship equivalent to relative.
Notice and Posting	Most require certain notices and postings of employee rights.

States: CA, CO, CT, DE, DC, MA, ME, MN, NJ, NY, OR, RI, VA (eff. 12/1/2028), WA

ACTION: Determine whether contributions are made in the states where employees live/work, and payroll vendor is properly configured.

Important Notice: The states listed on this slide are examples only. Other states may have similar or different requirements. States regularly pass new laws and change or repeal existing ones, including the prohibitions, restrictions, and requirements described here. Before use, check that every legal requirement is current and accurate for each state involved, and consult counsel as needed.

Notes

MD (eff. 1/1/2027 contributions begin; 1/1/2028 leave benefits begin)

New Hampshire has a voluntary program

INDEPENDENT CONTRACTOR v. EMPLOYEE

8+ STATES HAVE MORE STRINGENT REQUIREMENTS FOR INDEPENDENT CONTRACTOR STATUS

Test	Requirements	States
ABC	IC must satisfy all 3 requirements: (A) free from control, (B) services outside the usual course of client business, and (C) services are customarily an independent trade	CA, MA, NJ
Hybrid	Right to Control: Client does not have control over how work is performed + Relative Nature of Work: Services outside the usual course of client business	CO, HI, IL, MT, NY
Common Law	Right to Control and multi-factor economic realities test	Most other states

Misclassification consequences include back pay, tax liability, benefits obligations, statutory penalties Class and collective action exposure and, in California, potential PAGA actions.

Important Notice: The states listed on this slide are examples only. Other states may have similar or different requirements. States regularly pass new laws and change or repeal existing ones, including the prohibitions, restrictions, and requirements described here. Before use, check that every legal requirement is current and accurate for each state involved, and consult counsel as needed.

The rules: There is no 1 rule that governs IC classification. Different federal and state laws have different rules. person can qualify as independent contractor under some laws, but not others.

Examples
Qualifies under federal tax law, but not under federal FLSA nor under CA state law
Qualifies under NC state law, but not under CA state law
Qualifies under NJ discrimination law, but not under NJ wage payment law

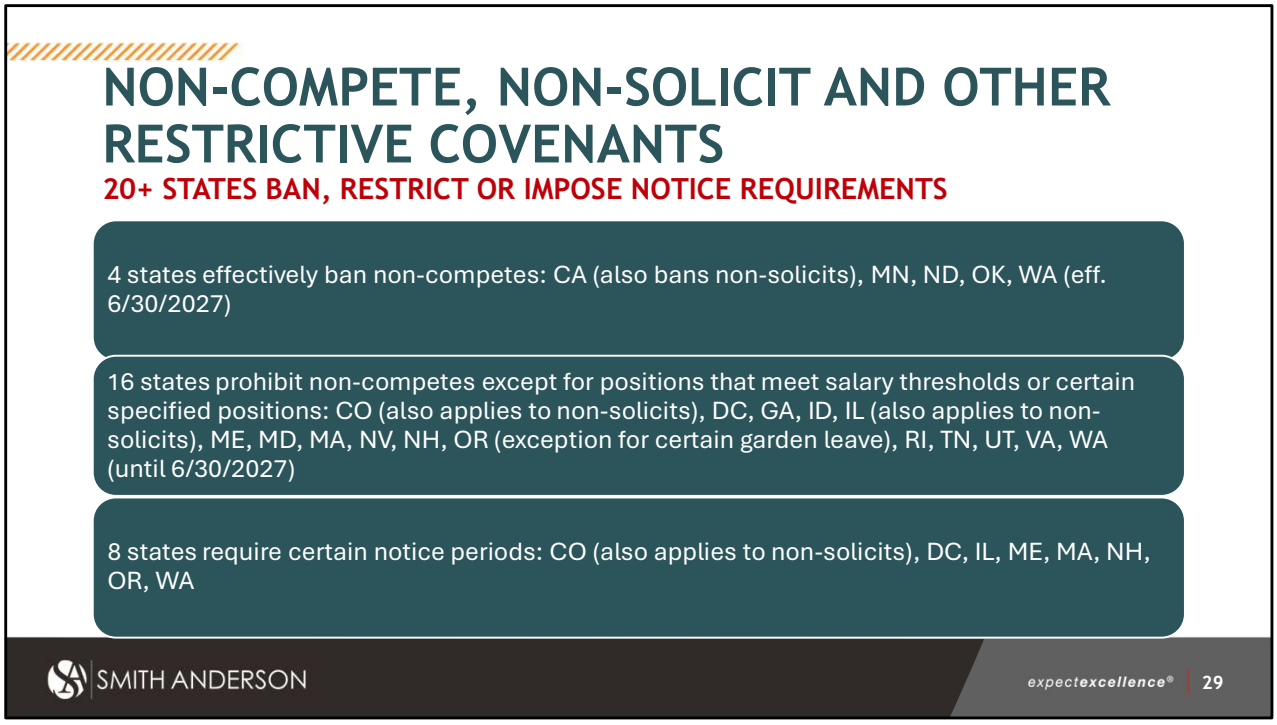
EMPLOYEE PRIVACY AND DATA

20+ STATES HAVE LAWS REGULATING THESE AREAS

- 20 states have laws governing access to personnel records. Some give rights to copy and rebut the records. Some extend these rights to former employees. Some impose time deadlines for employer production of the records. AK, CA, CO, CT, DE, HI, IL, IA, KS, ME, MA, MN, NJ, OR, PA, RI, TN, TX, VA, WA, WI
- 12+ states have laws prohibiting or restricting, and/or requiring notice and/or consent for, various monitoring/surveillance, including location tracking, electronic monitoring of online activity or use of biometric data: CA, CO, CT, DE, HI,IL, KS, ME, NJ, OR, TN, TX
- 21 states have consumer data privacy laws: CA (no exemption for employee data), CO (applies only to employee biometric identifiers). Most states exempt employee data.



Important Notice: The states listed on this slide are examples only. Other states may have similar or different requirements. States regularly pass new laws and change or repeal existing ones, including the prohibitions, restrictions, and requirements described here. Before use, check that every legal requirement is current and accurate for each state involved, and consult counsel as needed.



Important Notice: The states listed on this slide are examples only. Other states may have similar or different requirements. States regularly pass new laws and change or repeal existing ones, including the prohibitions, restrictions, and requirements described here. Before use, check that every legal requirement is current and accurate for each state involved, and consult counsel as needed.

AI IN EMPLOYMENT DECISIONS

Selected Laws

NYC: Local Law 144 requires annual bias audits for automated employment decision tools, publication of audit results, candidate notice and opt-out rights

IL: Illinois Artificial Intelligence Video Interview Act requires among other things notice, an explanation of how the AI works and what characteristics it evaluates, and consent before an AI-analyzed video interview

MD: Labor and Employment Section 3-717 requires a signed consent waiver before an employer may use facial recognition technology to create a facial template during an interview

California Automated Decision Systems in the Workplace (eff. July 1, 2027): Regulates ADS "any computational process derived from machine learning, statistical modeling, data analytics, or artificial intelligence that issues simplified output, including a score, classification, or recommendation, that is used to assist or replace human discretionary decision-making and materially impacts natural persons." Prohibits relying solely on ADA for disciplinary or terminations. If ADS is primarily relied on, requires human corroboration using data collected or used to produce the output or other relevant corroborating information. Requires notice to employee of use of the ADS in the decision and description of data used by ADS.

Colorado AI Act (eff. Aug. 1, 2027): Imposes duties on deployers of high-risk AI used in employment and other consequential decisions), including reasonable care to avoid algorithmic discrimination, impact assessments, and consumer notice

Important Notice: The states listed on this slide are examples only. Other states may have similar or different requirements. States regularly pass new laws and change or repeal existing ones, including the prohibitions, restrictions, and requirements described here. Before use, check that every legal requirement is current and accurate for each state involved, and consult counsel as needed.

TERMINATION

FINAL PAY/NOTICES

- When does state require final pay (salary, bonus, commission, other) to be made? Some require delivery to an involuntarily terminated employee on the day of termination or sooner than the next regular payday. Ex. AK, AZ, AR (commissions), CA, CO, CT, DC, HI, ID, MA, TX
- Does state require payout of accrued unused PTO? Ex. (requirements vary) CA, CO, IL, KS, LA, ME, MA, MT, NE, ND, RI
- Does the state require unemployment benefits notices/information be delivered to separated employees? 20+ states
- Does the state require employers to provide employees written reasons for separation upon their request? 7+ states

MINI-WARN

- For separations of more than 1 or position elimination, does the state have lower thresholds or longer notice periods than the federal WARN Act or other notice requirements: Ex. CA, DE, GA, HI, IL, IA, ME, MD, MA, NE, NH, NJ, NY, ND, TN, VT, WA, WI, WY

SEVERANCE AGREEMENTS

- Does the state have specific review, revocation or confidentiality/non-disclosure requirements? Ex. AL, AZ, CA, CO, HI, IL, LA, ME, MN, NY, OR, VT, VA, WA, WV

Important Notice: The states listed on this slide are examples only. Other states may have similar or different requirements. States regularly pass new laws and change or repeal existing ones, including the prohibitions, restrictions, and requirements described here. Before use, check that every legal requirement is current and accurate for each state involved, and consult counsel as needed.

ALL THINGS CONSIDERED-Regulatory Tiers

The Most Regulated States:

- California
- Colorado
- Illinois
- Maine
- Massachusetts
- Minnesota
- New Jersey
- New York
- Oregon
- Rhode Island
- Washington

Followed by:

- Connecticut
- Delaware
- District of Columbia
- Hawaii
- Maryland
- Virginia

Beware the rest….*they have a few peculiarities that are gotchas*

Compliance Strategy Approaches

Most uniform to most customized

OVERALL APPROACHES

Approach	Best Fit	Pros/Cons
State-by-State (each state has its own handbook/policies/agreements)	< 5 states	Most precise; highest administrative burden
Baseline Plus (main handbook/policies + state supplement for regulated deviations)	Works good for all	Scalable; administrative burden grows with geographic footprint
Tiered by Level of Regulation (Most, Next, Rest)	Multiple states in Most, Next and Rest	Can ease administrative burden; can't standardize some inherently state specific standards*
Highest Standard	Large 50-state employers/large "Most regulated" headcount	Simplest administrative burden; highest cost/may create contractual obligations in some states/loss of competitive flexibility/can't standardize some inherently state specific standards*

**Tax, payroll registration, PFML/state disability program contribution, workers comp, new hire reporting/disclosures, termination notices, state OSHA*

TOPICS SUITABLE FOR HIGHEST STANDARD IN STATE-BY-STATE OR BASELINE PLUS APPROACHES

- Pay transparency disclosures
- Pay history bans
- AI use in employment decisions
- Paid sick leave amounts
- Disability, pregnancy, lactation accommodation
- Surveillance, monitoring
- Social media privacy
- Biometric data collection

DECISIONS, TAKE-AWAYS, MOVING FORWARD

DECIDING ON APPROACH

- Assess geographic footprint
- Number of personnel in the state
- Assess level of regulation in footprint (Most, Next, Rest)
- Assess compliance resources

TAKE-AWAYS

- No one right approach—depends on footprint, census and level of regulation in the footprint
- Every approach requires monitoring for developments, especially in fast developing areas
- Treat the checklist as a living document with annual review

PRACTICAL NEXT STEPS

- Use the checklist to audit your policies, procedures and forms; identify gaps; prioritize remediation
- Select your approach
- Put together a monitoring plan and resources
- Remediate and roll-out

SMITH ANDERSON
expectexcellence®

Fifty Shades of a Compliance Plan:

When Employees are Here, There, and Everywhere

Kimberly J. Korando
Bella Thoren

October 28, 2026