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Expert Analysis - Series

Employer's Agenda: Allied Universal Counsel Talks Synergy

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In this [Expert Analysis series](#), in-house employment attorneys discuss the most important issues companies and counsel should plan for amid the current business landscape, and offer practical advice for how to address the year's unique challenges.



Deborah Pecci

Bob Dylan had it right when he wrote, "The Times They Are A-Changin'." What Dylan said of the world in 1964 can be equally said of the role of today's in-house counsel.



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When I first began my in-house journey more than 20 years ago, my days were dominated by litigation and related forms of risk management. While these challenges remain today, statutory and regulatory compliance related to all aspects of the business have taken center stage.

As in-house employment counsel for a global provider of security and facility services, tracking and complying with statutes and regulations at the local, state and federal levels demands continual review and analysis.

Equally important, our legal team must communicate internally with numerous departments, including human resources, finance, IT and field operations, to ensure that each group is aware of compliance obligations.

Partnering With HR and Other Departments

In-house legal teams must work hand in hand with HR on many subjects across the employment spectrum including:

- Recruiting initiatives — e.g., requirements that pay rate be included in job postings;
- Background checks and employee onboarding — e.g., laws that ban inquiries about a job applicant's criminal history and drug testing requirements;
- Leave issues — e.g., family and medical leave laws;
- Equal pay laws; and



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- Fair employment practices generally.

This is important because the HR team, unlike the legal department, interfaces directly with employees. We must equip HR with the information and tools necessary to ensure all employment-related actions are permissible and compliant. Accurate and just treatment of employees by HR is critical to our business objectives.

Our integration with HR takes on many forms.

For example, our legal team spends the first Wednesday of every month on a compliance call with our HR team where we present a 5- to 10-page report that highlights local, state and federal regulatory developments from that month.

Of late, COVID-19 issues have been the focal point.[1] Laws regulating vaccines, masking requirements and COVID-19 leave issues are constantly evolving and vary throughout the country.[2] Employers in California, for example, must pay for COVID-19 testing for workers who were exposed in the workplace while most states do not impose such a requirement.

We often include other departments, such as safety and procurement, on our compliance updates. For example, the purchasing group may need information about which COVID-19 tests they can utilize, while the safety and field operations teams may need guidance relative to in-person workplace protocols.

Employee privacy issues have also been a hot topic. Laws in this arena vary significantly by jurisdiction.



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Beginning in May, for example, New York employers must provide employees with prior notice if they wish to monitor their telephone, email or internet usage.[3] Similarly, Illinois has specific legislation in place to protect employees' biometric data. Employer violations can result in class actions and monetary damages, which can be quite costly.

In-house employment teams can work with HR and other departments to address privacy laws by assisting with employee communications and policies. These types of notifications serve to accurately inform employees of their privacy rights and notify them of any limitations on privacy expectations.

Background Checks, Drug Tests and Onboarding

In-house legal teams must also ensure that background checks and employee onboarding are conducted in a legally compliant manner. The requirements for background checks and onboarding can differ depending on an employee's place of employment and the type of work they will perform.

In-house counsel must guide HR on compliance with a myriad of federal, state and local laws concerning background checks. We must work with HR to determine:

- The classes of jobs that should be the subject of a particular background check;
- The type of background check that is relevant and necessary to the job;



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- The point in time the background check should occur; and
- If the state or locality where the employee will be working places any legal limitations on the type of background check that can be conducted.

For example, New York state and New York City each have laws that regulate the timing of criminal background checks and require employers to issue detailed pre- and post-adverse action notices before refusing to hire an applicant based on the contents of a background check. Likewise, San Francisco and other jurisdictions limit the types of criminal history that an employer can consider.

Similarly, an employer's ability to conduct preemployment drug testing is increasingly regulated by state and local law, particularly when it comes to marijuana use. The in-house legal department must learn about these laws and notify the purchasing group of any changes to the types of tests they should buy — e.g., no 10-panel drug tests in jurisdictions that prohibit preemployment marijuana testing.

The legal department must also ensure the recruiting team changes their procedures as needed, and should work with the contracting department to modify existing client contracts to the extent that they require drug tests that are no longer legally permissible.

Coordinating with HR to ensure compliance is important because where an individual is disqualified for employment based on the result of a background check or drug test, failing to follow the law can result in significant legal issues.



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Minimum Wage and Paid Leave

Minimum wage and paid leave requirements change frequently. A number of jurisdictions raise their minimum wage annually and these increases require lead time to ensure that payroll programming is in order.

Similarly, many states and local jurisdictions are passing laws that require employers to give employees paid leave for a multitude of reasons.

Some states and cities have paid sick leave requirements, while other states like Maine, Nevada and, beginning in July, New Mexico require employers to give paid time off irrespective of whether an employee is sick. Other states have laws that give employees paid family and medical leave under which the state administers the leave.

Legal must partner with HR as well as the benefits, payroll and IT teams in developing policies and administration protocols.

For example, HR may need to modify the company's attendance policies to avoid conflicting with the requirements of these laws. IT may need to be involved to program systems that automate compliance to ensure employees are paid within certain statutory time frames. Legal must also partner with the payroll and benefits groups to achieve full compliance.

Equal Pay

More states are passing equal pay laws and changing the standards by which such claims are analyzed. No longer must employees point to individuals performing the same work for purposes of comparison in making a claim. Instead, employees can now simply identify co-workers that perform similar



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work — a far easier standard to meet.

Laws that prohibit employers from asking about an applicant's salary history also continue to be enacted. The logic behind these laws is that paying an employee based on their salary history allows unlawful pay disparities to continue throughout someone's career.

State and local jurisdictions are also passing laws that require increased transparency concerning the pay offered for a position. For example, in Colorado job postings must include the salary that the employer expects to offer for a position. Beginning in May a similar law will become effective in New York City.

In addition to working with HR on equal pay initiatives, the in-house legal team must educate hiring managers and others who are involved in the job posting process but might not be as familiar with the legal standards.

This is important because managers are on the front lines of the company's compliance obligations. Without a basic knowledge of the company's legal obligations relating to compensation, the company is running the risk of noncompliance despite the legal team's efforts. In short, regular training is critical.

Conclusion

Staying up to date on city, state and national compliance regulations takes a village, which includes the advice of external legal counsel, as well as daily review of newsletters and legal updates, and participation in industry associations.



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In the sector I serve, the National Association of Security Companies is very helpful in keeping its members updated on regulatory changes. NASCO's objective is to highlight industry concerns and situations directly applicable to security companies.

While in-house counsel can find information about compliance topics from a wide variety of sources, the fact that NASCO's information is all germane to our industry allows me to focus on compliance developments that directly implicate our day-to-day operations. I strongly encourage other in-house counsel to find industry groups that provide similar tools.

Dylan said times were changing, and he was right. But in that song he also wrote, "you better start swimmin' or you'll sink like a stone." He was right yet again; start swimming.

Keep up to date on statutory and regulatory requirements, communicate that essential information throughout your organization, and then periodically check with your internal clients to ensure their continued adherence.

Deborah Pecci is executive vice president, and global employment and litigation counsel at Allied Universal.

Disclosure: Allied Universal is a dues-paying member of NASCO, and the company has a representative on NASCO's board of directors. Pecci volunteers to chair the organization's legal forum section.

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[1] U.S. Equal Opportunity Commission - [What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws.](#)

[2] [Centers for Disease Control and Prevention](#) - CDC – [COVID-19 Guidelines for Business Owners & Community Leaders.](#)

[3] New York State [Senate Bill S2628.](#)

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