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Illinois Employer Update: Learning from 2024 and Planning for 2025

North Shore Labor Counsel | January 8, 2025



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Agenda

01 Global Immigration and Mobility

02 Global Compensation

03 Labor and Employment

- A. Trump 2.0: What to expect
 - B. Illinois Legislative “Quick Hits”
 - C. Trade Secret Protection
 - D. Other Concerns Keeping Employers Up at Night
 - E. Tips to Meet the Challenges Ahead
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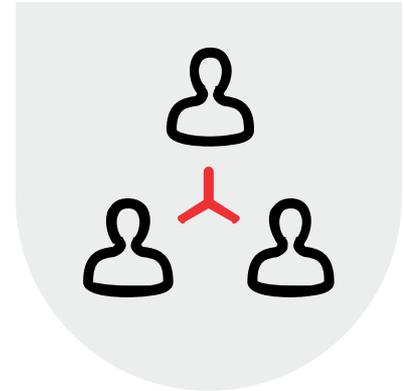
01 Global Immigration and Mobility

Trump's second term & workplace immigration

What to expect

Expected changes

- Increased worksite enforcement
- Restrictions on visas and permanent residence for certain countries
- Attempts to eliminate STEM OPT program
- Attempts to increase prevailing wage rates for H-1B and permanent residence processes, aiming to price employers out
- Increased denials across the board with USCIS and DOS (e.g., 21-24% H-1B denial rate)
- Increased corporate investigations in relation to protection of US workers (e.g., investigation of PERM practices, hiring practices, and alleged preferential treatment of foreign workers)



Trump's second term & workplace immigration

What to expect



Takeaways

- Communicate with visa-holder employees via e-mail or town-hall style meetings
- Review I-9 and E-Verify compliance / protocols and conduct internal audits (especially if no audit in the past 3 years)
- Review internal procedures / protocols to ensure equal treatment of US workers as compared to foreign workers
- Consider filing extensions (and upgrading to premium processing for pending petitions) as early as possible before the administration change
- Consider alternative paths for long-term immigration solutions

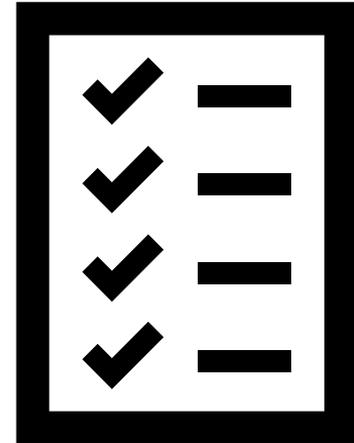


02 Global Compensation

Key trends and considerations for 2025

Global compensation

- Renewed focus on risk mitigation strategies for employment-related claims related to equity compensation awards (e.g., acquired rights, termination indemnities)
- Reevaluation of the continued use of restrictive covenants (e.g., non-competes, non-solicitation) as part of stock-based awards
- Increased prevalence of broad-based global employee stock purchase plans
- Expansion of clawback policies that seek recovery of equity compensation awarded to senior executives beyond the minimum Dodd-Frank requirements (i.e., incentive-based awards based on a financial reporting metric) to cover all time-vesting equity awards and seek recovery of compensation in circumstances involving misconduct
- Greater interest in establishing equity compensation reimbursement agreements with non-U.S. subsidiaries



03 Labor and Employment



A. Trump 2.0: What to expect

Likely impact on federal employment regs / legislation



Expected shifts in enforcement activity

Department of Government Efficiency
cuts likely to mean decreased enforcement activity



Equal Employment Opportunity Commission
possible enforcement actions against employers that promote "quotas" or discuss "critical race theory;" unlikely to aggressively enforce new protections for covered employees under the Pregnant Workers' Fairness Act



National Labor Relations Board
Abruzzo likely out with pro-employer General Counsel in and enforcement expected to wane; series of Biden-era labor-friendly decisions may be reversed

Takeaways

- Stay tuned for further developments as Trump takes office
- Work with counsel to de-risk workplace ID&E programs
- Monitor for potential uptick in state and local legislative activity particularly with respect to:
 - Minimum wage hikes
 - Wage / salary disclosure laws
 - Expansion of paid leave laws
 - New AI laws regulating the use of AI tools in HR (e.g. Illinois and Colorado)
 - Post-termination noncompetes

Ask your Baker McKenzie attorney for a copy of our ID&E Health Check Due Diligence Step List



Baker McKenzie.

Confidential / Attorney client privileged / Attorney work product
November 2024

ID&E Health Check | Step List & Due Diligence Priorities (US)

#	Item / Request	Status / Response	Priority of Review
Step 1: Confirm Health Check approach, protocol and process			
1.1	Determine extent to which the ID&E program review will be privileged and directed by internal / outside counsel; create a protocol for the review to help ensure it remains privileged.		N/A but we recommend a privileged review
1.2	Identify all relevant stakeholders, and determine levels of support / resourcing for assessing ID&E programming and initiatives throughout the organization.		N/A
1.3	Review corporate org chart to confirm which U.S. entities with employees ("Company") should be included in the scope. Consider privilege issues if different legal entities are involved.		N/A
Step 2: Review and collect external statements regarding Company ID&E			
2.1	Collect all external, public-facing statements and agreements regarding Company ID&E commitments, aspirations, goals and/or targets. This includes: <ul style="list-style-type: none"> • promotional materials • Company website • public filings, such as 10-K submissions • public statements made by senior leaders • recruiting materials • company statements regarding ESG goals or commitments • third party contracts that impose ID&E obligations (e.g. vendor agreements) 		High
Step 3: Review and collect information regarding Company ID&E recruiting, hiring, representation or promotion goals and practices			
3.1	If the Company has ID&E hiring, retention, representation or promotion quotas, targets, goals, or aspirations, then gather all communications, program information and methodology for determination. This includes: <ul style="list-style-type: none"> • all data collection and analyses • reporting (internal and external) • presentations (internal and external) 		High

B. Illinois Legislative “Quick Hits”

Illinois legislative quick hits

Illinois now requires pay scales in job postings

Effective **January 1, 2025** Illinois employers with 15 or more employees must include the "pay scale and benefits" in any job posting

- Applies to positions in Illinois or reporting to Illinois
- "Pay scale and benefits" broadly defined (IDOL intends to provide examples / guidance on "benefits" in the coming months)
- Job postings **not** required—but if a public or internal job posting has not been made available to an applicant, the employer must disclose the pay scale and benefits to the applicant prior to any offer or discussion of compensation, and also if the applicant requests the information
- Promotion opportunities must be announced within 14 days of external posting
- Employers must maintain pay scale and benefits records and the job posting for at least 5 years

Takeaways:

- FAQs and required poster available on IDOL website; review the FAQs, and consult with counsel regarding implementation plan
- Determine best practices for choosing pay ranges for posting
- Consider a pay equity audit to determine disparities and possible remedial measures



Illinois legislative quick hits

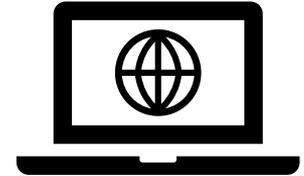
Use of AI that has discriminatory effect on employees prohibited

Under HB 3773, effective **January 1, 2026** it is a violation of IHRA for employers to:

- Use AI in activities such as recruitment, hiring, and promotion or with respect to the terms, privileges or conditions of employment that has the effect of subjecting employees to discrimination on the basis of protected classes under the IHRA—or to use zip codes as a proxy for protected classes
- Fail to provide notice to an employee that the employer is using AI for these purposes

Takeaways:

- Inventory and review AI tools used in employment activities / decision-making for discriminatory effect, and consult counsel with questions
- If AI is used, be certain employees are provided with notice that AI is being used and the purposes it is used for



Illinois legislative quick hits

Illinois Worker Freedom of Speech Act bans captive audience meetings



SB 3649 prohibits adverse employment actions against employees who decline to attend employer-sponsored meetings or listen to communications about the employer's opinions on religious or political matters, including unionization. The change took effect **January 1, 2025**

Takeaways:

- Make sure meetings on religious or political matters are voluntary. Clearly inform employees they can opt out without repercussions. Train HR, managers, and supervisors not to make these meetings mandatory
- Keep watch of this trend. In November, the NLRB banned captive audience meetings, and this year, several other states have passed laws banning captive audience meetings, including California, Hawaii, Vermont and Washington

Illinois legislative quick hits

BIPA per scan damages no more

SB 2979 amends BIPA to limit damages to one violation per individual, rather than each instance their biometric information is captured, collected, disclosed, redisclosed, or otherwise disseminated. The amendment took effect **August 2, 2024**

Takeaways:

- Despite the elimination of per-scan damages, employers using biometric data must still be diligent. Be certain to have updated BIPA policies in place, including a clear written policy, notifying employees and consumers before collection, obtaining written consent, and making a retention schedule publicly available
- Keep watch. There is currently a split between Illinois federal judges on whether the amendment applies prospectively or retroactively from the August 2, 2024 effective date

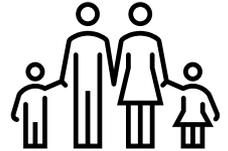


Illinois legislative quick hits

Family responsibilities and reproductive health decisions new protected classes under the IHRA

Effective **January 1, 2025**, employers are prohibited from discriminating against employees on the basis of “family responsibilities” (HB 2161) and “reproductive health decisions” (HB 4867)

- **“Family responsibilities”** means an employee’s actual or perceived provision of personal care to a family member. “Personal care” and “family member” both have the meaning given to the terms under the Employee Sick Leave Act
- **“Reproductive health decisions”** means a person’s decisions regarding the person’s use of contraception; fertility or sterilization care; assisted reproductive technologies; miscarriage management care; healthcare related to the continuation or termination of pregnancy; or prenatal, intranatal, or postnatal care



Takeaways:

- The amendments do not explicitly impose any new leave or accommodation requirements on Illinois employers, but the FMLA and Illinois, Cook County and Chicago paid leave laws may provide job-protected leave for individuals under the new protected classes
- Update anti-discrimination and anti-harassment policies (including in handbooks) to include new protected classes. Train HR, managers/supervisors, and employees on the new protected classes, including for purposes of accommodation and leave requests

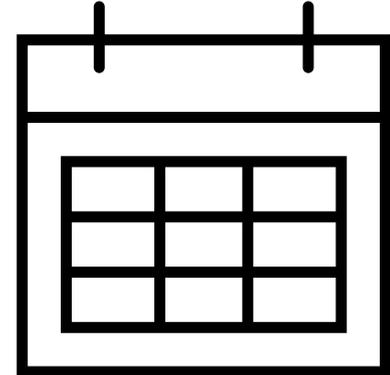
Illinois legislative quick hits

Statute of limitations for filing a discrimination complaint with IDHR now two years

Under SB 3310, the statute of limitations under the IHRA for filing a discrimination complaint with Illinois Department of Human Rights (IDHR) has been extended from 300 days to two years. The change took effect **January 1, 2025**

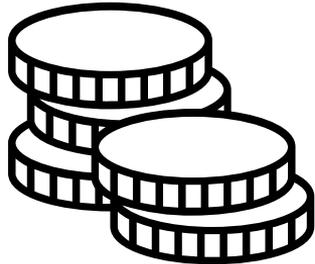
Takeaways:

- Train employees on the company's anti-discrimination and anti-harassment policies regularly to reduce the likelihood of discrimination claims
- Consult with counsel when facing employee discrimination claims



Illinois legislative quick hits

Employers beware: “pattern and practice” cases have increased penalties



Under HB 5371 (effective **August 29, 2024**) each separate instance in which the IHRA is violated in a pattern and practice can constitute a separate violation, each of which can carry a \$50,000 civil penalty (up from \$25,000)

- Employers found to have violated “any” provision of the IHRA in the last five years will face a \$75,000 penalty per violation
- Employers that have committed two or more such violations in the last five years will face a \$100,000 penalty per violation
- The amendment also calls for the creation of hotlines for confidential reporting of discrimination, harassment, and bias incidents

Takeaways:

- Train employees on the company’s anti-discrimination and anti-harassment policies regularly to reduce the likelihood of discrimination claims
- Consult with counsel when facing employee discrimination claims

Illinois legislative quick hits

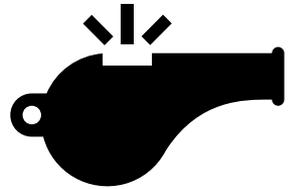
Whistleblower Act amendments expand employee protections

HB 5561 amends the Whistleblower Act effective **January 1, 2025**. Employees who report violations of the law or threats to public health and safety directly to their employer are now protected. Highlights include:

- Clarification that an “employee” does not include independent contractors
- A “good faith” requirement for reporting unlawful activities and expanded protections for whistleblowers
- “Adverse action” now includes any action that could dissuade a reasonable worker from disclosing protected information
- The Illinois AG's office has statutory authority to file suit against employers who retaliate or threaten to retaliate. Workers can now be awarded interest on back pay of 9% for each year up to 90 calendar days from the date a complaint is filed, along with liquidated damages and a civil penalty up to \$10,000 each

Takeaways:

- Update whistleblower policies to include the changes in the law, and train HR and management on the changes
- Ensure clear, accessible channels for reporting



Illinois legislative quick hits

Personnel Record Review Act amendment expands employee rights

Effective **January 1, 2025**, amendments to the Personnel Record Review Act (PRRA) (HB 3763) expand employees' right to inspect and copy employment records

- Employers must provide copies of contracts, employee handbooks, and written policies and procedures employees were subject to (in addition to the personnel records employers were required to provide previously)
- A “written request” for records now specifically includes any electronic communications, including emails or text messages
- The law also limits the fee that an employer can charge for employees' records to the actual cost of duplicating the information

Takeaways:

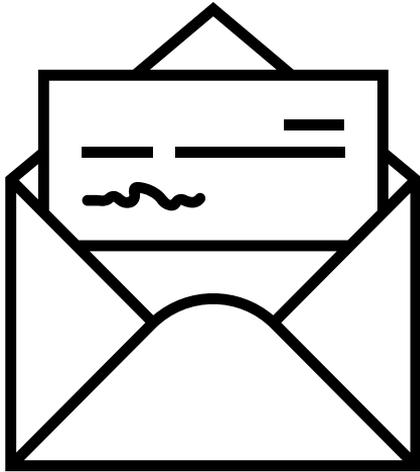
- Update policies and train HR to provide contracts, employee handbooks, and written policies and procedures upon request in compliance with the law
- Ensure that any written request for records, including emails or text messages, is honored
- Limit any fees charged for providing records to the actual cost of duplicating the information



Illinois legislative quick hits

IWPCA amendment increases employers' recordkeeping obligations

Effective **January 1, 2025**, amendments to the Illinois Wage Payment and Collection Act (IWPCA) (SB 3208) increase employer recordkeeping obligations



- Employers must maintain copies of employee pay stubs for not less than three years after the date of payment, and provide copies of pay stubs within 21 days upon employee request
- Employers who furnish electronic pay stubs in a manner that the former employee cannot access after separation must, upon separation from employment, offer to provide the outgoing employee with a record of all the pay stubs from the year prior to the separation

Takeaways:

- Update recordkeeping policies and practices to maintain and provide copies of pay stubs in compliance with the law

Illinois legislative quick hits

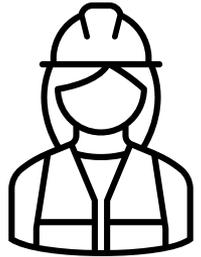
Noncompete and nonsolicitation agreements with construction workers prohibited

Effective **January 1, 2025**, SB 2770 amends the Illinois Freedom to Work Act (IWFA)

- Illinois employers are restricted from entering into noncompete or nonsolicitation agreements with construction workers, regardless of whether they are covered by a collective bargaining agreement

Takeaways:

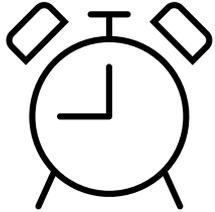
- Construction industry employers who have existing noncompetes with construction workers should work with counsel to determine how to proceed
- Two proposals to amend the IFWA to broadly restrict or altogether ban restrictive covenants failed, but keep watch—we expect increased state restrictions on noncomeptes given that the FTC’s final rule on noncompetes was enjoined



Illinois legislative quick hits

New rules for employing minors under the age of 16

SB 3646 created the Child Labor Law of 2024 (effective **January 1, 2025**), covering minors under the age of 16. Under the law, employers must:



- Obtain an employment certificate from a school issuing officer authorizing the minor to work for the employer
- Limit the minor's work hours as specified (including no more than 18 hours during a week when school is in session, and no more than 40 hours during a week when school is not in session), and ensure that all minors are supervised at all times by an adult 21 years or older
- Provide 30-minute meal breaks to minors working more than five hours continuously
- Post a notice summarizing the requirements of the Child Labor Law of 2024

Takeaways:

- Employers who employ minors under the age of 16 should review the law and IDOL's FAQs on the law, and make any necessary changes to comply
- Note that under the law, minors are prohibited from working in certain locations and industries, including factories and cannabis shops

Illinois legislative quick hits

E-Verify not required; new procedures if discrepancies arise in verification information



Under SB 0508 (effective **January 1, 2025**), Illinois clarifies employers are not required to use E-Verify or any other electronic employment verification system to determine work authorization status unless required by federal law

- Employers cannot impose work verification or re-verification requirements greater than those required by federal law
- If employers choose to use a verification system, they must comply with new procedures if they either find a discrepancy in an employee's employment verification information (including by providing information on how to correct the deficiency and that they can have a representative present during related meetings), or if they receive notification from the Social Security Administration or IRS of a discrepancy (including that the employer cannot take any adverse action, must provide the employee with notice of the time they have to challenge, and that they can have a representative present during related meetings)

Takeaways:

- Employers should consult with counsel regarding to discuss the best method for determining work authorization status given the new law and required procedures if discrepancies arise

Illinois legislative quick hits

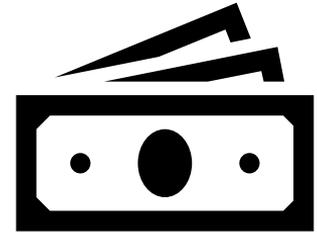
Illinois minimum wage increased to \$15

The Illinois minimum wage increased to \$15 per hour on **January 1, 2025**

- The minimum wage for tipped workers is \$9 per hour
- The minimum wage for workers under age 18 is \$13 per hour
- This move marks the final hike in the state's minimum wage as part of Governor Pritzker's 2019 legislation scheduling minimum wage increases from \$9.25 per hour in 2020 to \$15 per hour in 2025

Takeaways:

- Check with payroll providers to ensure appropriate changes have been made to the hourly pay of any minimum wage employees
- Going forward, monitor for possible legislation to increase the minimum wage



C. Trade Secret Protection

Trade secrets

A few considerations



75% of employees admit to stealing from their employers at least once



70% of employees secretly use public AI tools without telling their employers



Increasing restrictions on noncompetes and increasing success for employers in trade secret litigation is shifting the focus to trade secrets

Focus on: Trade secret protection



Protecting trade secrets

- Unlike noncompete agreements, trade secrets have significant legal protection, including the Defend Trade Secrets Act and the Uniform Trade Secrets Act (adopted by several states—including Illinois, with some modifications, as the Illinois Trade Secrets Act)
 - Seventh Circuit ruled in July 2024 that the DTSA provides for extraterritorial damages
- Even most jurisdictions that do not allow noncompetes have carve outs allowing employers to protect trade secrets
- Trade secret protections typically last in perpetuity (or at least for many years), and are not limited in geographical scope
- Though most trade secret cases result in settlement, from 2019 to 2023 the trade secrets cases that went to trial in federal court resulted in an 86% win rate for plaintiffs (compared to a 57% win rate for plaintiffs for other types of cases during that period)

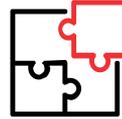
Steps for employers

Protecting trade secrets



Inventory the company's trade secrets and other confidential information

- Determine what your trade secrets are, and who has access to them
- Be precise in distinguishing trade secret ownership between affiliated entities



Have documents / processes in place to protect trade secret information

- Limit access to only those who need access to do their work
- Review and bolster confidentiality agreements with employees and NDAs with vendors
- Regularly train employees on trade secret obligations
- Conduct exit interviews to remind employees of their obligation not to disclose trade secrets



Be diligent in taking measures to protect trade secrets

- In many states and under the Defend Trade Secrets Act, establishing you have reasonable measures in place to protect trade secrets is required to pursue a trade secret misappropriation claim

D. Other Concerns Keeping Employers Up at Night

Pay equity / transparency enforcement

Enforcement activity expands

- Pay discrepancies are more visible with wage transparency laws, exposing employers to liability
- Recent uptick in the enforcement of salary disclosure requirements; employers hit with fines and citations
- Several class actions in **Washington state**, seeking damages for all job applicants alleging (i) job postings did not include the required wage or salary range, and (ii) plaintiffs / class members lost valuable time applying for jobs with the defendants for which the wage scale or salary range was not disclosed
- Other enforcement efforts, including in **Colorado** (violations including failing to include a wage range) and **New York City** (violations including posting salary bands so wide they did not qualify as “good faith” estimates)
- **Takeaways:**
 - Understand the details and obligations of the pay transparency laws in the jurisdictions where you recruit and have headcount
 - Stay ahead of any concerns about unexplained pay disparities with **regular pay equity audits** conducted under legal privilege to the fullest extent possible



Noncompetes

FTC rule halted, but increasing restrictions elsewhere

The FTC's rule on noncompetes halted in August; FTC appealed, but Trump Administration unlikely to continue with appeals

NLRB GC issued October memo stating intent to prosecute employers who require certain noncompetes and "stay or pay" provisions, and to use monetary remedies

States continue to restrict noncompetes. In 2024, CA and WA tightened already-restrictive limitations. IL banned noncompetes and nonsolicits with construction workers

Courts reviewing how noncompetes are applied: 1st Circuit found CA's public policy banning noncompetes does not supersede MA's public policy permitting them; DE Supreme Court determined scope and breadth of forfeiture for competition provisions under DE law in favor of employer on certified question from 7th Circuit

Takeaways:

- Prioritize key employees; focus on high value assets like **trade secret protection** and PIIAs
- Monitor regulation at the state level and court decisions determining the application of noncompetes
- Keep watch of the Trump Administration's treatment of the FTC noncompete rule and other noncompete developments

Use of AI in employment

AI issues for employers increase as laws proliferate

How AI is used



Use of AI tools specifically by HR in recruiting, hiring, and promotion



Internal use of AI tools by workers in furtherance of their job duties



Diligence and reps regarding use of AI tools in major business change (IPO, transactions)



Associated Risk

Discrimination claims and failure to provide notice / obtain consent. Violations and penalties associated with laws like the **NYC**, **Colorado**, and **Illinois AI laws**

IP ownership; divulging of trade secrets; loss of confidential nature of company information; risk of impact of inaccuracy in work product

Exposure and liability

Takeaways:

- Establish processes for detecting and mitigating algorithmic bias arising from use of AI systems
- Train HR and management on how to properly use AI in hiring or other employment-related decisions, including providing notice and obtaining consent if required; always keep a human in the loop
- Vet AI vendors carefully. Work with counsel on third-party vendor risk management, including careful consideration of AI-specific risks to address in your vendor contracts

SCOTUS cases shifting the landscape



Too early to see the full effect

- ***Muldrow v. City of St. Louis*** (April 2024)—An employee needs only show “**some harm**” from a change in the terms and conditions of employment, rather than a “significant” employment disadvantage, to assert a claim for discrimination under Title VII (though plaintiffs still must show some discriminatory intent)
 - **Takeaways:** Be prepared to investigate all employee claims of discrimination, even if not tied to tangible employment disadvantages, but to discomfort or loss in status
 - Keep watch of cases pending on (i) whether Title VII’s revised “adverse action” standard under *Muldrow* should also apply to ADA claims under Title I; (ii) whether *Muldrow* should apply to lower the evidentiary bar for reverse discrimination plaintiffs
- ***Loper Bright Enterprises v. Raimondo*** (June 2024)—The US Supreme Court overturned the so-called “**Chevron doctrine.**” Post-*Loper Bright*, courts are no longer required to defer to a federal agency’s reasonable interpretation of ambiguous statutes
 - **Takeaway:** Monitor legal challenges to federal employment agency actions, including recent regulations, as compliance obligations may shift



E. Wrap Up and Tips to Meet the Challenges Ahead

Tips to meet the challenges ahead



Some of our popular tools include

- ❑ Watch for **state-level developments** impacting minimum wage increases, pay transparency laws, paid leave entitlements, noncompete restrictions and laws regulating the use of AI in HR
- ❑ Work with counsel to ensure your trade secrets are protected
- ❑ Ask your Baker McKenzie attorney for a complimentary copy of our **ID&E Health Check Due Diligence Step List**
- ❑ Use the **Legislative Quick Hits** section to prioritize changes to your Employee Handbook (and to train HR personnel on the same)
- ❑ Subscribe to **The Employer Report** blog for the latest updates on the biggest employment developments

Horizon scanning updates



Voluntary self-ID diversity data risk matrices

Global Pay Transparency and Disclosure Compendium

Employment Law Overview Matrices

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