



MP INSIDER: **Implementing HR Updates for 2020 and a COVID Workforce**

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What You Need to Know Now

Normally, right around July and August is a great time to pause and check out the latest legal HR updates. July 1 is a common time for wage increases and new laws to take effect. Many states pass new laws around this time, too. But this year in particular, late July is an imperative time to take stock of HR law updates.

State and federal government have been busy taking action to protect individuals and employers in the midst of COVID. This roundup of the latest HR updates will be divided into **COVID-oriented**, **non-COVID items**, and a list of **best practices** moving forward.

Read on for changes at the federal and state levels.

COVID Oriented HR Updates

On a state level, there has been a trend of many state laws written around sick leave, family leave, and leave for COVID-19 reasons. You'll want to check in with your HR services to ensure you're in compliance with any new legislation in your state.

On a federal level, there have been some indirect changes. Firstly, the work visa program has been frozen. This has and will continue to have a huge impact on businesses that hire H1B workers. Secondly, as a relief from the challenges of COVID, if you have over 100 employees, you won't need to do the EEO-1 filing this year. Lastly, OSHA has released guidance that if your employees are working remotely, there are no special home office requirements and there will be no inspections. You will, however, need to continue diligent record-keeping if an employee has an accident while working remotely.

There have been several COVID-19 updates coming down from the federal level that we

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have split into three categories: **Safety & Risk**, **Hiring**, and **Unknown Factors**.

Safety & Risk

The EEOC has created a temporary Direct Threat Standard. If employers feel that their workers are doing things that create a threat, like not wearing a mask, employers will have more leeway to discipline. They also have more leeway to do things like require temperatures to be taken and ask about potential COVID symptoms.

The DOL issued guidance on July 20th that exempt employees who are doing non-exempt duties during the pandemic can still be classified as exempt.

The EEOC has given guidance not to assume people are more or less at risk of COVID and make decisions based on that. For instance, if your employees are pregnant or older, do not immediately make or offer accommodations for them or keep them from coming to your workplace. This is discriminatory. Instead, let the employee request the accommodation, furlough, remote work, etc.

Legislators are contemplating how to provide liability protections for companies when it comes to COVID-related lawsuits. Companies are vulnerable now to complaints and litigation from employees and customers who may argue that they've been exposed to the virus at the business.

If your nonexempt employees are doing extra hours remotely, they must be paid time and a half whenever they exceed 40 hours in a workweek. Because schedules are especially erratic right now, the interpretation of the Continuous Workday regulation can be interpreted more flexibly. A workday no longer needs to begin with the first task and end with the last. There can be large chunks of time in between.

The IRS has released notice 2020-32, which says that if you benefit from something on your PPP loan you can't also deduct it on your taxes.

The CARES Act allows employers to defer their Social Security tax for the remainder of 2020.

Hiring

I-9 requirements have also seen changes. You can now do a remote inspection of section 2 documents when completing form I-9. This only applies to companies that are working remotely. Once you resume in-office operations, you'll have 3 days to complete inspection of physical copies, and you'll add the date of inspection to the additional info field.

Additionally, list B documents that expired after March 1st will be accepted, though this varies a bit state by state. Note that you should make sure you complete in-person inspection of documents before you do something where you will need the documentation, like firing somebody.

Unknown Factors

There's no agreement yet on unemployment, but there are 3 potential plans on the table. There's generally a tension between parties about two topics: a push for 200 extra dollars instead of the 600, as well as potential added stipulations for this money.

On August 8th, an executive order was proposed to allow an employee earning less than \$100,000 a year or \$4,000 bi-weekly to defer their social security tax payments starting from September 1st, 2020 to December 31st, 2020. This order is likely to be challenged and is not finalized.



While the COVID vaccine is months away, be ready for guidance from the EEOC on whether employers can require it for workers.

There may be stimulus packages for businesses on the way, but there's no final decision on this yet. As for individual stimulus payments for Americans, this is also still on the table. Again, there are no decisions yet.

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Non-COVID Oriented HR Updates

Even though the most pressing need has been the pandemic, the government has still been able to make some changes that are not related. Many were in the pipeline long before 2020 and address social issues and changes in America that have been brewing for a while.

There are five main sections to cover: **Misclassification of workers, LGBTQ rights, Religious Factors, State Trends, and Federal Trends.**

Misclassification of Workers

Misclassification of workers has been an important topic lately. Many states are making changes to their independent contractor test. They want workers to be classified as employees

more frequently. The government is focused especially on various driving roles right now, especially trucking and gig work/ride share roles.

There have been a lot of claims and settlements surrounding exempt employee misclassification lately as well, most notably with TJX, Taco Bell, and Burlington (formerly Burlington Coat Factory). These have often involved assistant manager roles being paid a salary when their job duties are more hourly in nature.

LGBTQ+ Rights

The Supreme Court has ruled that sexual orientation and gender identification are now protected classes under Title VII of the Civil Rights Act.

Virginia has passed new protections for LGBTQ+ employees. They've also passed more protections for pregnant employees, hair styles (this is an ethnic and diversity issue) and more protections for whistleblowers.



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Religious Factors

The Supreme Court ruled that religious schools can make restrictive decisions on employee policies with more leeway than other employers. Teachers at religious schools have less employment protections.

A Supreme Court ruling allows employers who have a religious or moral reason to object to birth control can opt out of providing for it in their benefits.

State Trends

Chicago employers must now schedule employees at least 10 days out.

Many states are trying to create limitations on non-compete agreements that protect workers.

Many states are passing laws to protect employee rights when it comes to cannabis testing.

The minimum wage has increased in many states and cities. Check for your location, but these include Illinois, Nevada, Chicago, San Francisco, Los Angeles, Minneapolis, Saint Paul, MN, Oregon, and others.

Many states are passing laws around pay equity, as well as restricting an employer's ability to ask about salary history.

Federal Trends

The National Labor Relations Board has been participating making more rules that have been very employer friendly. For instance, there was recently a law passed that makes it easier for employers to discipline or fire employees for profane, abusive, offensive language or hate speech. (We do suggest that you consider making policies that explicitly focus on this topic. Otherwise it will be harder to benefit from this law.)

A law restricting employees from linking personal blogs to company sites has been passed.

Another ruling says employee vehicles and personal property can be inspected by an employer if on the company premises.

Federal hiring guidelines have also been changed. An executive order now eliminates

minimum education requirements for government jobs unless truly necessary. Descriptions must now focus on skills or experience.

New FMLA forms have been released. The new FMLA request forms are now fillable PDFs and are reworded so they're easier for anyone to understand. Legally, you can use whatever version you'd like to. However, our HR consulting team at MP recommends that you use these. There are some FAQs clarifying the FMLA further for you.

New rules have been released for retirement plans and fiduciary responsibilities. Speak to your retirement plan provider to see if you're in compliance or need to make changes.

Tips & Best Practices Moving Forward

Beyond these specific HR updates for 2020, MP also offers you these 4 tips:

Handbook Review

With new changes occurring in many different areas, it's smart to review your handbook and employment policies. Keep a careful eye to look for areas that might relate to COVID-19, such as leave and telecommuting policies. Write policies for remote work if you don't already have them.

State Travel Regulations

Keep an eye on COVID state travel orders. For example, Massachusetts' new travel policy took effect on August 1st. Travelers coming into Massachusetts must:

Complete the [Massachusetts Travel Form](#) prior to arrival, unless you are visiting from a lower-risk state designated by the Department of Public Health.

Quarantine for 14 days or produce a negative COVID-19 test result that has been administered up to 72-hours prior to your arrival in Massachusetts.

Take note that changes can happen quickly. As

of August 7th, Rhode Island will no longer be a Lower Risk State and exempt from these rules for travelers coming to Massachusetts. Always check the latest information from your state government before an employee travels.

Remember that you may need to pay leave if somebody must quarantine. You may want to hold off on unnecessary corporate travel and approving vacation requests. You can also revisit vacation requests that you have already approved if employees will need to quarantine after their vacations.

Exempt or Non-Exempt

Review your job descriptions and worker classifications to see if employees are exempt or non-exempt, especially when workers are working remotely.

Sexual Harassment Training

Don't forget sexual harassment training, especially in New York, Illinois, or California, where there are new training mandates. MP's HR team can offer training sessions on these for you.

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The information presented here is an adaptation of MP's Semiannual Legislative Update July 2020 webinar, presented by Paul Carelis, VP of HR & Client Services. [Click here to watch the full webinar.](#)

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