

THE NATIONAL LAW REVIEW

The Bubbler - Employment Law Compliance February 2019

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January ushered in many new developments across many employment law compliance categories. We hope the summary below will help you keep track of the changes most relevant for you:

- **Parental Leave** - The Equal Employment Opportunity Commission (EEOC) has been paying increased attention to whether companies are implementing parental leave policies unequally based upon gender, which can provide grounds for gender discrimination lawsuits. Examples of potentially unlawful policies include providing less paid time off to male or non-birth parent employees for the purpose of bonding with a child or denying male or non-birth parent employees benefits such as flexible “back to work” schedules available to female employees. Our blog discusses [recent enforcement actions](#) and key federal and state statutes and common law principles to consider when implementing parental leave policies.
- **New York Paid Family Leave** - New York Paid Family Leave (NYPFL), effective January 1, 2018, is a comprehensive paid family leave program for all employees working in New York. It was designed to be fully phased in over four years. The first of the changes [began on January 1, 2019](#) - resulting in increased allotments for leave periods, benefit levels, and other components such as the employee contribution rate.
- **FLSA Considerations** - [New case law clarified](#) the Fair Labor Standards Act’s (the “FLSA”) fee-shifting provision and the measurement of minimum wage violations. [One federal court judge](#) clarified that the “prevailing party” for the purposes of the FLSA fee-shifting provision does not include a situation where an employee was paid allowed wages shortly after filing a lawsuit. [Another federal decision](#) confirmed that FLSA minimum wage violations are measured based on the workweek.
- **The ACA’s Contraceptive Mandate** - The Affordable Care Act (the “ACA”) requires most health plans to provide coverage for Federal Drug Administration approved contraception methods. This contraception mandate remains one of the most embattled ACA provisions. Our blog post discusses [recent rulemaking](#) and the challenges from various federal court districts that impact exemptions and accommodations under this mandate.
- **Employment Compliance for Start-Ups 101** - Tune in to Mintz’s podcast to hear **Jennifer Rubin**, a Member in the Employment, Labor & Benefits Practice, and **Sebastian Lucier**, a Member in the Venture Capital & Emerging Companies Practice, identify [key employment law compliance points](#) (particularly for California) to help companies establish best practices and avoid common pitfalls. The discussion covers issues that are particularly relevant for start-ups and emerging companies.



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- **Illinois' Biometric Information Privacy Act Update** - Illinois employers should be familiar with the state's unique Biometric Information Privacy Act ("BIPA") which requires companies that capture individuals' biometric information, including fingerprints, retina scans, or voice samples to obtain written consent and disclose how they use, store, and destroy that data. Notably, it is the nation's only biometric privacy law with a private right of action. [A recent court ruling](#) increases exposure and risk for companies collecting biometric data for commercial and employment purposes, and companies may consider strengthening their disclosures or scaling back their offerings to try to avoid statutory penalties of over \$1,000 for each negligent violation and \$5,000 per intentional or reckless violation.

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