

# THE NATIONAL LAW REVIEW

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## The 2014 Forecast For Employers

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Thursday, January 16, 2014

The year 2013 was anything but boring for labor and employment lawyers: delay of the Affordable Care Act employer mandate, changes to the National Labor Relations Board and questions about the validity of hundreds of past decisions made by it, and, oh, the federal government shutdown. What does 2014 hold? More of the same -- changes that are revolutionizing the workplace. If you are an employer, the following issues should garner your attention in the year ahead:

### 1. Continued implementation and compliance with health care reform.

The Affordable Care Act is nothing new - employers should already be familiar with the regulations regarding "[play or pay](#)" and know whether they are subject to them. Although the mandate was postponed in June 2012 until 2015, there is still much to be done. If you are a small employer, explore your options for offering health insurance - doing so may qualify you for a tax refund. Also, watch for the [U.S. Supreme Court's decision](#), expected sometime this summer, regarding the ACA's requirement that companies provide certain reproductive health services free to employees.

### 2. Compliance with the *Windsor* decision and subsequent agency rulings.

Section 3 of the Defense of Marriage Act, defining marriage as only between man and woman and limiting "spouse" to an individual of the opposite sex, was declared unconstitutional in the Supreme Court case [United States v. Windsor](#). Following the landmark decision, agencies have scrambled to update their policies and provide guidance in conformity with the ruling. The IRS and DOL have both adopted a "place of celebration" rule, meaning that a valid same-sex marriage from another state will be recognized for federal tax purposes in *all* states. Thus, even in employers in non-recognizing states must be compliant with federal agency regulations regarding employee benefit, health, and retirement plans. Employers should review employee handbooks and make any necessary changes about how same-sex spouses will be addressed.

### 3. Adoption of a wellness program.

The Affordable Care Act increased financial incentives for [employer-based wellness programs](#). Previously, the maximum financial incentive plans could offer for participation in health-contingent wellness programs could not exceed 20% of the health plan's premiums. Now, the maximum reward is 30% of the premium and up to 50% of the premium for programs designed to prevent or reduce tobacco use. There are a variety of programs to consider and employers must be cognizant of HIPAA, the Americans with Disabilities Act, and the Genetic Information Nondiscrimination Act, among other laws, if the choice is made to adopt a program.

### 4. Social networking, media and device policies.

If you do not already have a [social networking and media policy](#) in place, what are you waiting for? A good policy addresses acceptable online behavior, when and when it cannot be used (i.e., in the hiring process, for internal investigations, during work hours, etc.), and how it relates to other existing policies such as non-compete



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agreements or data breaches. Consider the [National Labor Relations Board 2012](#) advice memorandum and subsequent decisions when constructing your policy so that it does not violate the National Labor Relations Act. While you are at it, address employee BYOD (bring your own device) issues. BYOD policies will continue to dominate workplace discussions - the pros, cons, and risks associated with allowing employees to use their own devices must be weighed.

## **5. Immigration reform.**

In 2013, the Senate approved a bipartisan comprehensive immigration reform plan. It fell short of the finish line, but an overhaul is possible in 2014. Even if Congress fails to act, there could be state and federal agency changes that affect employers' workforce. Expect more use of [E-Verify](#) and the possible creation of new visa categories.

## **6. Increased enforcement from OSHA and the EEOC.**

In 2013, the EEOC took in a record \$372.1 million in fines from their enforcement actions. OSHA is vying to make [injury and illness reports public online](#) and reduce permissible exposure levels for some hazardous materials. No doubt these agencies will continue to subject employers of every size to investigations, reporting, and legal challenges.

## **7. Increased emphasis on worker classifications.**

The Department of Labor and IRS have increasingly focused on the [classification of employees and independent contractors](#) in recent years. Employers need to ensure workers are properly classified and that the proper paperwork is in place. Federal contractors/subcontractors must prepare for the new Office of Federal Contract Compliance Programs regulations that will take effect in March 2014 that call for hiring goals of 7% for disabled workers and 8% for veterans.

Not only must employers stay abreast of news and laws regarding the above, the new year should prompt a real assessment of the workplace overall. Take a minute to step back and examine, from a more personal perspective, how your business is operating on a daily basis. For example, is the face of your workforce changing? In 2014, more and more baby boomers will retire and be replaced by millennials. How will you, as an employer, handle this transition? Is the new generation prepared to fill the shoes of your more experienced employees? How will this shifting demographic affect business standards? As any successful employer will tell you, the devil is in the details and no detail is too small to leave unexamined.

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