

THE NATIONAL LAW REVIEW

One Size Fits All? The Case for Unified Employment Policies for Multi-State Employers

Wednesday, September 2, 2015

One of the questions clients frequently pose to me is how to make employment policies uniform across the different states where their employees work. Now it seems to me that this is a most appropriate question in this day and age: as our economy grows increasingly national (and international) through technological advances, a mobile workforce and the “gig” economy, the days of a single brick and mortar headquarters-employing-all are growing few and far between. Adding to this mix is the very necessary and good business practice of publishing, applying and administering consistent employment policies in a very-heavily regulated employment world (you know who you are California employers). So what is a multi-state employer to do?

Most Favored Nation Most Favored Employment Status?

In international diplomacy, “most favored nation” status means best-in-class trading status countries grant to each other. In the legal realm, this notion is sometimes referred to as “in pari passu” or “on equal footing.” Whatever the label, the notion is the same – once a benefit standard is level set, that standard becomes the floor below which no one may fall. This concept has relevance in the employment context.

Say, for instance, that California requires all employers to provide employees working in California for at least 30 days in a year with no less than 3 fully paid sick days (in fact, this is the case). Connecticut also requires employers to provide paid sick leave, but its law only applies to employers who have 50 or more employees. Mississippi, on the other hand, has no paid sick leave law. I don’t mean to pick on Mississippi – in fact as of right now (excluding Oregon’s upcoming entry into the paid sick leave market), only 3 states nationwide have [paid sick leave laws](#). So what policy should employers who have employees in California, Connecticut and Mississippi adopt? What is the floor?

Check Your Most Favored Locality

Before sitting down to draft a policy for your California, Connecticut and Mississippi employees, you also need to know the cities or localities where your employees are working. Yes, a growing trend is for cities and localities actively to legislate in the employment arena. And that doesn’t just include the usual suspects like New York City or San Francisco. Municipalities in New Jersey, Oregon and yes, California, are active in this area. Employers with a workforce in any of the activist municipalities need to be aware of (and comply with) all applicable local laws.

Fire Up Your Cost-Benefit Analysis

So now you (think) you have your arms around the minimal legal requirements applicable to each of the jurisdictions (and localities) where you have employees. You might have a chart or spreadsheet or non-linear regression analysis that economically analyzes the cost of applying each of these relevant state and local laws



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to your workforce. But then you realize you need to capture other variables. Let's stay with sick leave for a moment. How do you know any single employee will even need to take a paid sick day? And why is that even relevant if you have a paid time off policy that exempts the application of the local sick leave law (or does it?). Frankly, it is difficult, if not impossible to fully analyze the costs of these laws because the human factor varies so widely.

So What is a Reasonable Employer to Do?

There is an appeal to employing a uniform "most favored nation" approach to wage and hour and other employment laws because it is administratively streamlined, and the chance for a mistake, even an innocent one, is lessened if all personnel are fully trained and familiar with the applicable policies. A high bar also positively impacts morale. While geographic location discrimination is not yet a protected employment category, having more favorable employment policies for one local office which do not benefit other company offices may present poor optics. But then again, given the [gross disparity in things like the minimum wage](#), at some point economics should dictate who gets what and why. But for some laws - such as the various forms of paid and unpaid leave and protected categories of discrimination - a unified policy is easier to administer than a 50-policy patchwork.

I hate to end on a negative note but I have to acknowledge what keeps my multi-jurisdictional clients up at night: the rapidity of legal change due to judicial patina or federal, state or local legislative activism makes it a daunting task to keep up with the minimum legal requirements. So find yourself a good blog like this one to keep up with those changes. And it never hurts to call your lawyer when Mr. Google fails to deliver a thoughtful, common sense and humanistic approach based on years of practice and experience.

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