

Pressure, Pain & Politics:
What Keeps #HRPros Up at Night
 (and what you can do about it!)

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Top 10 Trends

1. Fair/Predictive Scheduling
2. Harassment / Bullying
3. Wage Issues – Minimum, Secrecy, Transparency
4. Reasonable Accommodation
5. Employment Agreements (N/C, NDA, N/S)
6. *Employee* Misclassification: OT/EAP/White Collar Rule
7. DOL's Regular Rate of Pay
8. *Worker* Misclassification: IC v. EE
9. Paid Sick Leave
10. On The Horizon

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#1 Fair/Predictive Scheduling


- 1 state for private sector
- At least six (6) locales
- Notice in advance
- Notice of change
- Compensation for certain changes

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Maryland's Proposal

- Notice of schedule at hire
- Notice of schedule for first 21 days b/4 1st day
- Notify EE of schedule change within 24 hours
- Post schedule 21 days in advance
- Cannot require EE to work additional hours
- Pay one hour for each shift changed with less than 21 days' notice
- Pay four hours' pay with less than 24 hours' notice



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#2 Harassment/Bullying

- How many states?
- At least 30 states and two locales related legislation



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Maryland's Proposal

- Abusive Conduct
- Employer *and employee* liability
- Emotional distress damages up to \$7,500



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#3: Wage Issues

- Minimum Wage
 - At least 29 states plus some US provinces
- Pay Secrecy
 - Asking about salary history in an interview: 17 states; 19 locales
 - MD Legislation in 2019
- Pay Equity
 - Watch the definition of “equal work”
 - MD – Location = in the same county
- Pay Transparency
 - NLRA
 - MD proposal: to publish pay rate in job ad



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#4: Reasonable Accommodation

1. ADA – 15 or more employees
2. State Laws –
 - A. Disability-related pregnancy – MD
 - A. Mandatory Poster & policy
 - B. Pregnancy
 - C. Advocacy Opp! 2.B. = Sex discrimination



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#5: Employment Agreements

- Non-Compete
 - Watch state laws!
 - The Power of Why?
- Non-Disclosure (NDA)
 - Trade secrets, proprietary information
 - *Not* wages
 - *Maybe Not* harassment, discrimination, etc.
- No Solicitation
 - Clients or employees
 - Use caution if applying to IC’s



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5: Employment Agreements

- Maryland Arbitration Agreements
 - Cannot enforce arbitration agreement that includes sexual harassment complaints, unless the agreement complies with the provisions of the FAA.



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#6: Employee Misclassification (FLSA)

- DOL's New Overtime Rule
- Where is it?!
- Acting Secretary Pizella
- What's faster than fast?
- Year end? Politics at play here.
- Anticipate change to Minimum salary test only
- \$23,660 to \$35,308 (better than \$47,476)
- 49%+ increase as compare to 100%+



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#6: Employee Misclassification (FLSA)

- **An Advocacy Success Story!!!**
- Maryland's OT/EAP rule
- 2004 -2005



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#7: DOL's Regular Rate of Pay

The screenshot shows the U.S. Department of Labor Wage and Hour Division website. The main heading is "Notice of Proposed Rulemaking: Regular Rate". The text explains that on March 26, 2019, the DOL announced a proposed rule to amend 29 CFR part 778 to clarify and update regular rate requirements under section 7(c) of the Fair Labor Standards Act (FLSA). It notes that the FLSA generally requires overtime pay of at least one and one-half times the regular rate of pay for hours worked in excess of 40 hours per workweek. An image of a desk with a calculator and a coffee cup is also visible.

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#8: Worker Misclassification – IC v. EE

- Implications
 - OSHA/State
 - Unemployment Insurance
 - Workers' Comp
 - Federal/state taxes
 - Back pay/benefits



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Maryland

- MD DOL applies ABC test
- Workplace Fraud Act
 - Presumption of employment relationship in construction & landscaping industries

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#9 Paid Sick Leave

- Federal proposals
 - Employer funded options
 - Employee funded options
 - SSI advance option

www.shrm.org

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#9: Paid Sick Leave

- Covered employer
- Covered employees
- Date accrual begins
- Date leave can be used
- Rollover
- Medical certification
- Job protection
- Recordkeeping

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#9: Paid Sick Leave

- MD HWFA
- MD DOL regulations?!
 - Policy *and* poster
- FAQ's - <https://www.dlir.state.md.us/paidleave/paidleavefaqs.shtml>
- Montgomery County SSL


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On The Horizon

- DOL's
 - Joint Employer Rule (NLRB too!)
 - RFP FMLA Forms
- Protecting Older Workers Against Discrimination Act – HB 1230 / S 485
- Employment at-will under attack?

Politics
Bernie Sanders Unveils Sweeping Labor Plan With Sectorwide Bargaining
By Jack Halpern
 August 21, 2018, 9:55 AM EDT | Updated on August 21, 2018, 10:55 PM EDT




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On The Horizon

- H.R. 5 – Equality Act
 - Would amend Title VII to include sexual orientation and gender identity
 - 240 Co-Sponsors (not quite bi-partisan)
- SCOTUS to rule whether Title VII prohibits discrimination based on sexual orientation (2) and/or gender identity (1)
- EEO-1 Reports
- MD's Workplace Violence Prevention



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Questions?



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