

Managing the Increasingly Complex Patchwork of State and Local Regulation of Employment

Presented by:

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Why Care?

- Many of you have operations outside Wisconsin and are subject to these laws
- Often state laws are a sign of what is to come
- Plaintiffs may look to these laws as the “best practice”

State and Local Developments

- Growing trends in state and local employment laws
- Overview:
 - Ban the Box Laws
 - Pay Equity and Salary History Bans
 - Paid Sick Leave Laws
 - Wage and Hour Issues
 - Miscellaneous Others
- And of course, COVID

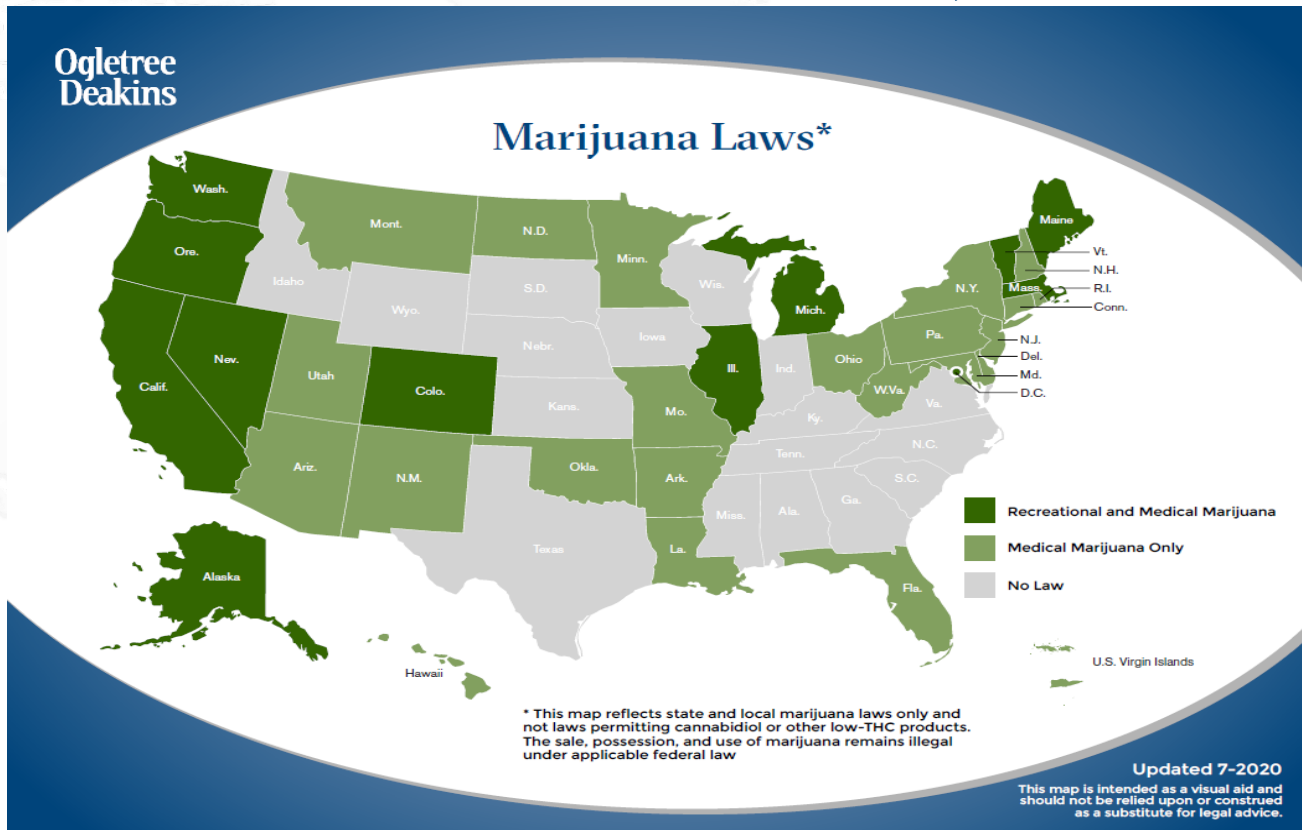
Paid Sick Leave



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Medical and Recreational Marijuana Laws

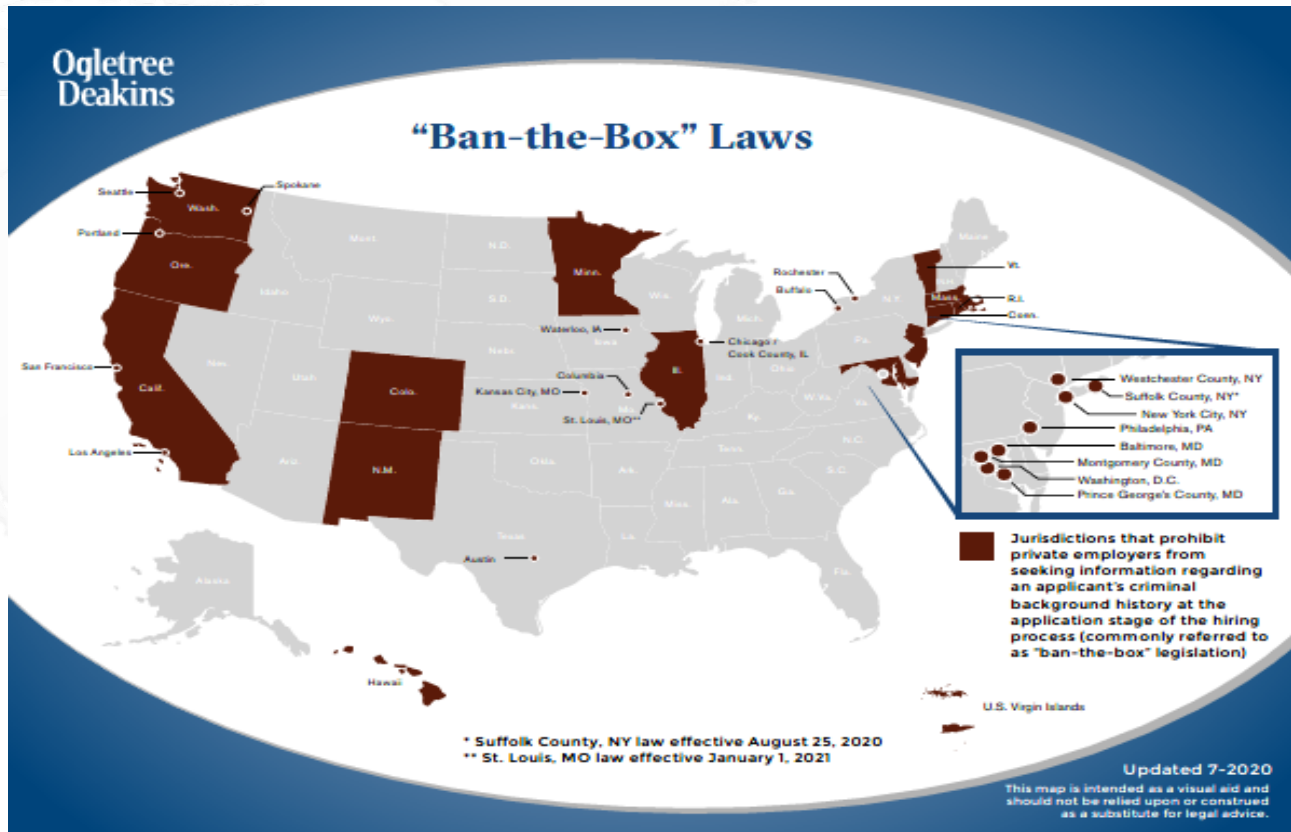


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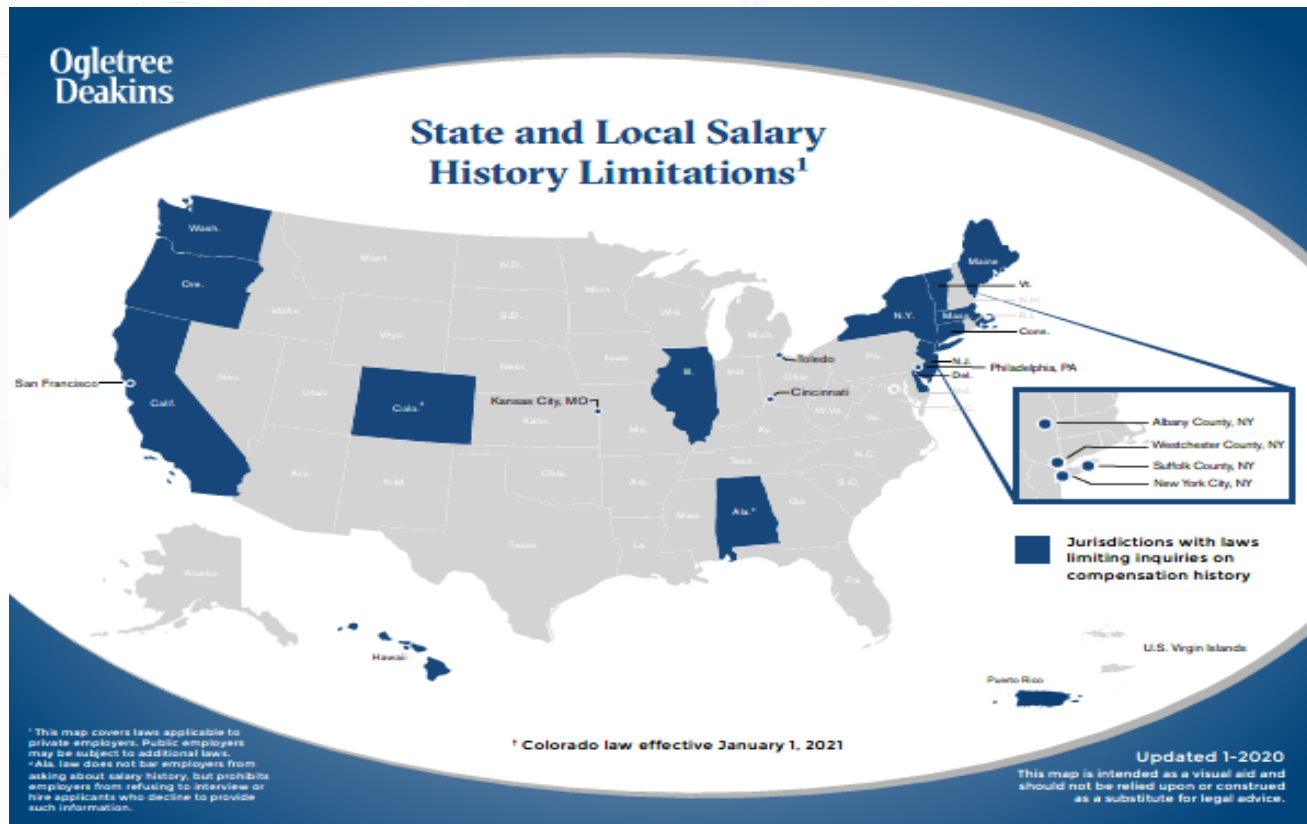
“Ban the Box”



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Salary History Inquiry Bans



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Sexual Harassment Training



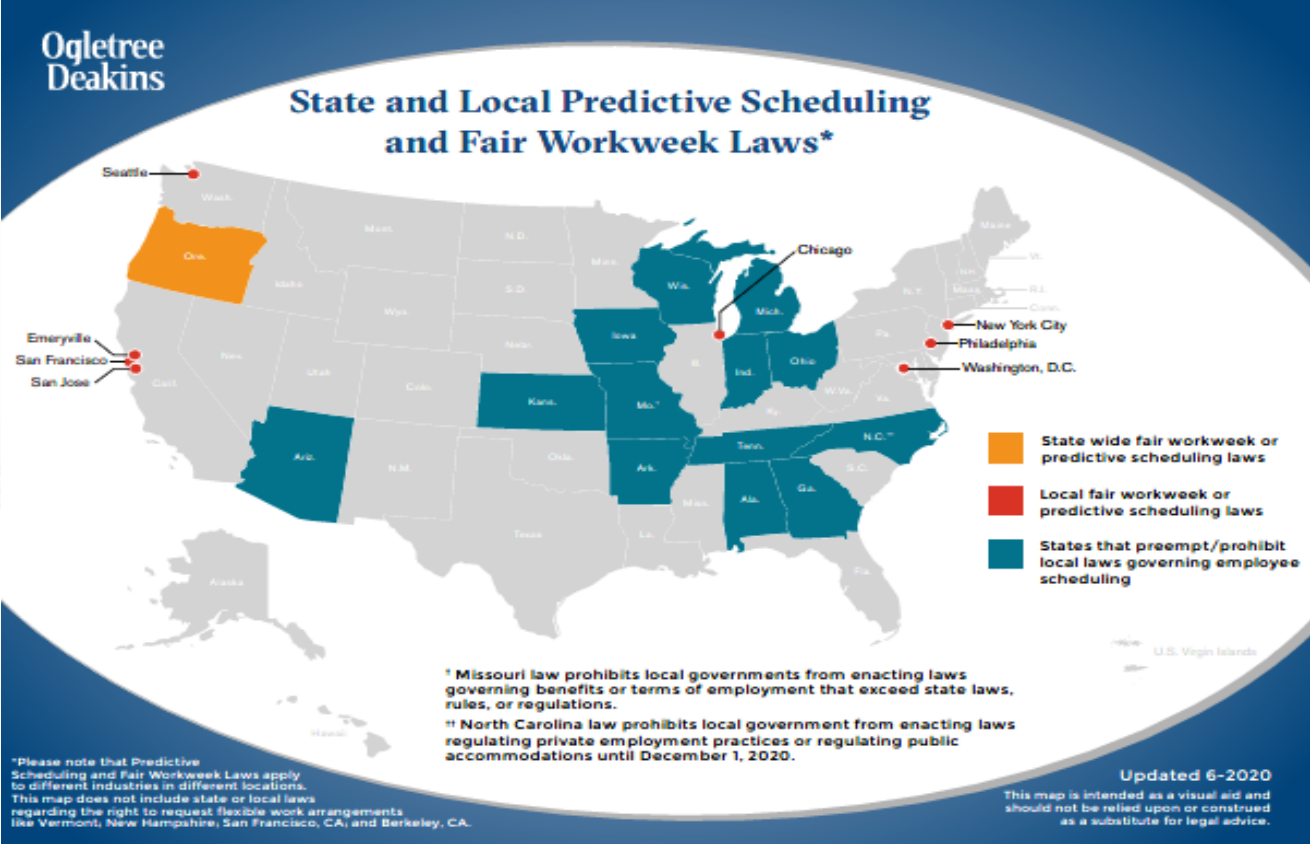
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Predictive Scheduling



Other Potential Issues

- State FMLA laws
- E-Signatures
- Biometrics
- Drug testing laws
- Right to Work
- Varied protected categories
 - Protection from discrimination based on sexual orientation or gender identity
 - Arrest/conviction records

COVID: State and Local Screening and Masks



Note: The COVID-19 (Coronavirus) situation is developing very rapidly. Employers should continue to monitor the [U.S. Centers for Disease Control and Prevention COVID-19 website](#), the [World Health Organization COVID-19 website](#), and Ogletree's [Coronavirus \(COVID-19\) Resource Center](#) for the latest developments. This document reflects all known information as of 5:30 p.m. CST on July 31, 2020. Regional, country-specific, and local laws may vary, and government agencies may issue further orders and guidance that should be considered. Employers should carefully review and discuss these materials with their Ogletree counsel to tailor the materials and guidance to their particular situation.

Orders and Guidance to Screen Employees for COVID-19 and to Provide Protective Measures

Last Updated: July 31, 2020. Content updated on/after July 27, 2020 noted with: ****updated****

Table of Contents																	
AL	AK	AZ	AR	CA	CO	CT	DE	DC	FL	GA	HI	ID	IL	IN	IA	KS	KY
LA	ME	MD	MA	MI	MN	MS	MO	MT	NE	NV	NH	NJ	NM	NY	NC	ND	OH
OK	OR	PA	PR	RI	SC	SD	TN	TX	UT	VT	VI	VA	WA	WV	WI	WY	

Please note:

- The information contained herein includes summaries and excerpts provided for convenience. Documents referenced herein contain additional requirements that may not be summarized in this chart. Many orders and recommendations address employee access to hand sanitizing/washing facilities, enhanced workplace sanitation, workplace social distancing, and the business's ability to refuse admission or service to individuals who do not comply with public face covering requirements (if any), as well as steps to take if employee screening results cause concern and when employees may return to work after illness, suspected illness, or exposure to illness. Refer to source documents via hyperlinked text for complete information.
- Information herein applies to general employment settings. This chart does not attempt to identify face covering orders that apply to individuals outside of the employment setting (i.e., individuals who are shopping or commuting to work or shop). This chart does not attempt to identify information specific to healthcare settings (i.e., the chart is not intended to provide information that has been specifically issued for hospitals, clinics, doctor's offices, dialysis clinics, dentists, nursing homes, long-term care facilities, or other similar facilities—please refer to CDC, state, and local guidance for those types of facilities). Similarly, this chart does not attempt to identify information specific to education or daycare settings, government facilities, detention facilities, halfway houses, or congregate facilities.
- References to occupational safety and health requirements (i.e., OSHA or OSHA-approved state plans) that may be made in this chart are not comprehensive. This chart does not attempt to identify or resolve conflicts with or enhancements to federal, state, or local occupational safety and health requirements.
- This chart does not provide medical guidance for diagnosing illness.

Overview of Federal Agency Guidance on Employee Face Coverings and Employee Temperature / Symptom Screenings	
Face Coverings	Employee Screening
<p>The Occupational Safety and Health Administration (OSHA) issued a 27-page guidance document for businesses re-opening their doors and returning employees to the workplace. While the guidance expressly does not create any new legal requirements, it is a helpful compilation of recommended actions employers should take, and includes information related to face coverings.</p> <p>The U.S. Centers for Disease Control and Prevention (CDC) issued guidance for wearing and making cloth face coverings (CFCs), which are not surgical masks or N95 respirators. The CDC has prepared a document to explain the difference between surgical masks and N95 respirators.</p>	<p>OSHA issued a 27-page guidance document for businesses re-opening their doors and returning employees to the workplace. While the guidance expressly does not create any new legal requirements, it is a helpful compilation of recommended actions employers should take, and includes information related to employee screenings.</p> <p>The CDC issued Interim Guidance for Implementing Safety Practices for Critical Infrastructure Workers Who May Have Had Exposure to a Person with Suspected or Confirmed COVID-19 to screen critical infrastructure employees following potential exposure to COVID-19. The guidance permits allowing such workers who are asymptomatic after a potential exposure to continue to work provided, among other things, the following practices are followed each work shift: (1) measure</p>

COVID: Local Leave Laws

Table: Paid Sick Leave Laws—Reasons for Use Potentially Relevant to COVID-19

Federal / State	Jurisdiction	REASONS FOR LEAVE UNDER PAID SICK LEAVE LAWS			
		Employee's own illness/health condition	Family member's illness/health condition	Closure of workplace or child's school/place of care by order of public official due to public health emergency	Other reason (relevant to COVID-19)
FEDERAL	Nationwide			✓ Federal Emergency Paid Sick Leave Act (COVID-19-specific)¹	✓ Federal Emergency Paid Sick Leave Act (COVID-19-specific)²
Arizona³	Statewide	✓	✓	✓	Care for an employee or family member if public health authority determines that the employee's or family member's presence in the community may jeopardize the health of others because of exposure to a communicable disease. May include an asymptomatic employee who has had close contact with a COVID-19-positive individual, and is excluded from the workplace for a 14-day quarantine period (based on CDC guidance).
California	Statewide	✓	✓		✓ Executive Order N-51-20: Supplemental Paid Sick Leave for Food Sector Workers (COVID-19-specific)⁴
	Berkeley, CA	✓	✓		

Other COVID Issues

- Closure/Re-Opening Orders (some of which make public health recommendations mandatory)
 - This can implement FFCRA eligibility
- State FMLA Laws
- State “Mini-WARN” laws
- Termination Pay Requirements and other laws impacting furloughs

Compliance Strategies

- Stay up to date
 - Google alerts for states in which you operate
 - Subscription updates for key topics (paid sick leave, ban the box, etc.)
 - Streamline legal updates so you can actually read them
- Decide how to comply
 - Lowest (highest?) common denominator approach
 - Separate compliance for each law

Questions?



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Thank you!

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