

## **CLASS ACTION AVOIDANCE DURING AND AFTER COVID-19 BEST PRACTICES COMPLIANCE CHECKLIST**

Our Corporate Compliance and Litigation Teams stay ahead of the curve by carefully evaluating trends and insights to help our clients reduce risk. **We've recently honed in on four particularly notable class action trends garnering significant attention, and created a Compliance Checklist to help you mitigate the risk of lawsuits stemming from each of them.** These trends affect organizations of all shapes and sizes, geographic markets and industry sectors. And we're seeing a significant upswing in class action claims that are tactical, vetted and targeted to these four areas. So it's more important than ever to take proactive measures to implement compliance strategies, policies and training designed to minimize risk and, ideally, avoid suit.

**Buchanan's Best Practices Compliance Checklist for Class Action Avoidance can help get you started on the right path:**

### ☐ **Website Accessibility**

- Be aware that Web Content Accessibility Guidelines (WCAG) 2.0 are the leading standards for website functionality and access and consider integration of these
- Take advantage of the fact that most operating systems today include built-in screen readers that employers can use to test their websites for appropriate functionality
- Ensure that persons with disabilities have the capability to use your website and fill in forms without a mouse
- Avoid use of animations, slideshows, or videos with excessive blinking (which can induce seizures); and include a stop/pause button for users with visual-processing or cognitive disabilities
- Explicitly label form fields to tell users that they have encountered a field, explain what type of field it is, and provide additional information cues
- Do not omit certain groups in drop-down menus (e.g., drop-down menu only goes up to a certain age) when using third-party platforms like Facebook and LinkedIn

## **□ Wage and Hour**

- Conduct regular self-audits (with assistance of outside legal counsel, as necessary)
- Examine employee classifications based on job descriptions and review for exempt and non-exempt classifications
- Regularly assess work done by independent contractors for appropriate classification
- Analyze primary duties of current employees on a regular basis to determine if reclassification is appropriate
- Communicate with counsel about legal implications and potential liability before implementing classification changes to a single employee, or to an entire class of employees
- Maintain accurate and up-to-date systems to track hours worked and overtime
- Avoid suggesting that employees should perform work-related tasks while off the clock or on break, or ignoring employees who engage in such activity
- Properly document hours worked, rate of pay, pay periods, overtime hours, and overtime rates on all pay stubs

## **□ ERISA Plan Fees & Expenses**

- Evaluate the use of dollar-per-dollar matching of more than 3% of pay
- Consider using automatic enrollment to boost employees' retirement savings
- Take action to shrink wait times with respect to eligibility and vesting
- Provide a suggested savings rate for participants (more than 40% of organizations suggest a rate of 10% or more)
- Integrate mobile technology to provide plan services to participants
- Consider binding arbitration agreements (where permitted) to resolve disputes with plan participants
- Provide multiple investment options to plan participants with a reasonable mix and range of investments
- Use multifunctional third-party plan administrators and monitor performance (i.e., attend to duty of prudence)

## **COVID-19-Related Concerns:**

### **☐ Notice, Detail, and Other Preventive Considerations**

- For layoffs and furloughs, provide as much notice as possible (in writing)
- Notice of less than 60 days before the layoff / plant closure should be explained in meticulous detail within the notice
- Consider issuing a Worker Adjustment and Retraining Notification (WARN) notice even for temporary layoffs, since the future effects of COVID-19 on the employment relationship remain uncertain
- Learn state-specific requirements in places where employees are located, as they may have lower thresholds for “employment loss,” mandate longer notice periods, and require additional information in the notice
- Given the current lack of precedent, plan accordingly for uncertainty around how WARN Act affirmative defenses (e.g., unforeseeable business circumstances, natural disasters, and faltering companies) may apply in these suits
- Continually monitor federal, state, and local health and safety laws and guidelines for new requirements, and adjust and train your employees as guidance develops.

### **☐ Following Health Safety Guidelines From Federal, State, and Local Public Health Authorities**

- Demarcate flooring in six-feet (or larger) zones (social distancing)
- Post directional signs in hallways and corridors to appropriately restrict movement
- Limit the number of people permitted in elevators and other confined spaces
- Require masks in public and/or highly-trafficked workplace locations
- Prohibit congregation of employees in lunch rooms, conference rooms, etc.
- Install physical barriers such as clear plastic sneeze guards (if feasible)
- Limit customer and public access to the workplace (and utilize health-based admission forms premised on CDC and NIH guidance)
- Document limits on non-essential business travel for employees
- Provide soap, water, hand sanitizer, and paper towels throughout the workplace
- Ask employees to self-monitor for COVID-19 symptoms (and promptly self-report to trained and designated organization personnel)
- Carefully adhere to CDC guidance for ending self-isolation for employees who may be eligible to return to work after positive testing

## **We're Ready and Equipped to Help NOW**

This Checklist is a useful starting point for integrating appropriate class action compliance enhancements to your current program. If you have questions about the list, how to apply it or would like to have a more customized discussion around your particular needs and concerns, please contact us.

## **We're here to help**

In addition to compliance program updates, teaming with trusted legal counsel with relevant class action compliance and litigation expertise to assist with internal investigations of misconduct or noncompliance concerns can help prevent lawsuits. And if the prospect of litigation arises, having a law firm partner experienced with these issues can provide reassurance and help save time and money.

At Buchanan, our coordinated team of veteran compliance program specialists, seasoned commercial and class action litigators, former federal investigators and prosecutors, criminal defense attorneys, and widely respected government relations professionals can assist companies with the full gambit of class action compliance and litigation concerns. We are fully committed to helping clients create and maintain robust class action compliance measures to mitigate the risk of lawsuits as a means to facilitating continued business success.

**[Learn more about our Corporate Compliance Services.](#)**



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