

# Littler Lightbulb: Shining a Light on Key Issues as we Leap into 2020



By: *Dan Thieme*

The start of a new year always brings a fresh batch of employment concerns. While some workplace issues are evergreen, 2020 will present some unique challenges for employers. This Littler Lightbulb highlights some significant issues employers should keep in mind for the coming year.

- **Minimum Wage Increases.** While Congress remains deadlocked on increasing the federal minimum wage, dozens of [states and localities across the country](#) will implement new minimum wages in 2020, not all of which will take effect on January 1. These increases vary not only by location, but also by employer size and industry.<sup>1</sup>
- **Minimum Exempt Salary Increases** The DOL's new "white collar" [overtime exemption rule](#), with an increased minimum salary level of \$684 per week, takes effect on January 1. In addition, some states have minimum exempt salary levels that will continue to exceed the federal minimum, and those rates will rise on January 1 in Alaska, California, Colorado, Maine, and New York.
- **Patchwork of State and Local Employment Laws.** Over [100 new employment laws and regulations](#) will take effect in various states and major cities this year. These laws cover a range of topics, including salary history inquiries, hairstyle discrimination, paid leave, worker misclassification, and the use of artificial intelligence in hiring. Employers operating in multiple jurisdictions will need to take particular notice of these changes.
- **New Federal Rules.** Despite the dearth of legislative action at the federal level, federal agencies continued to issue final rules, some of which will become operative in 2020. On January 15, the DOL's [new rule](#) clarifying which employment perks must be factored into the regular rate of compensation for overtime purposes will take effect. In April, the National Labor Relations Board (NLRB)'s [revised representation elections rule](#) will come into force. In the fall regulatory agenda, the DOL's [Wage and Hour Division](#) and [Occupational Safety and Health Administration](#), and the [Equal Employment Opportunity Commission](#), also outlined a host of other rulemaking initiatives they intend to roll out in 2020
- **It's a 27 Payday Year (For Some).** If your organization pays biweekly on Fridays, and has a payday on January 3, 2020, you will have 27 paydays in 2020 instead of the usual 26. This scenario occurs every 11 or 12 years for all biweekly payrolls, and happens because 26 biweekly payroll periods pays for 364 days of employment, whereas a calendar year includes 365 days—or, in a leap year like 2020, 366 days. This one-day or two-day shortage each year catches up every 11 or 12 years, causing a 27th payday to fall within a single calendar year. Employers facing this issue need to consider how the extra payday will impact payroll deductions for health benefits, flexible spending accounts, and other employee benefit contributions, as well as the cash flow and financial statement impacts of this "bunching" of an extra payday into 2020. Some employers may also wish to consider "dividing by 27," which produces a cut in pay rates of 3.7%. If that possibility is on the table, be sure to consider all issues that are implicated by a pay rate cut, including advance notice requirements under state law, wage theft notice obligations, contractual guarantees in employment contracts or offer letters, and minimum biweekly salary rates required to maintain exempt status.
- **And an Election Year!** In our current climate, political tensions will invariably seep into the workplace. Employers may be forced to address arguments among employees with different political opinions, conflicts with clients or vendors, or perhaps an increase in complaints of discrimination or harassment. The stakes are high for employers this year as they seek to proactively address and defuse these charged situations. To this end, employers can consider implementing policies to

<sup>1</sup> For more information on how to keep track of minimum wage and other employment law changes, see [Littler Edge](#).



promote workplace civility. In 2017, the NLRB [approved](#) as lawful the maintenance of workplace rules promoting “harmonious interactions and relationships,” and requiring civility in the workplace. Note, however, that the National Labor Relations Act generally protects political discussion in the workplace that relates to labor or working conditions, and some states grant employees a level of protection to engage in political expression at work (subject to reasonable time, place and manner regulations). In addition, activities taking place outside of work time are governed by different rules and standards. State laws in several jurisdictions, for example, prohibit employers from taking adverse action against employees for lawful, off-the-clock political activities.

These are just a handful of employment considerations that will affect the workplace in 2020. Employers should [stay tuned](#) throughout the year for additional labor and employment developments, at all levels of government. Happy New Year!