

# Employment law update

How recent changes in state and federal employment laws will impact your company **Interviewed by Sue Ostrowski**

**A** number of significant changes in employment law have already occurred under the Obama administration. Despite the difficulty, employers need to keep up on the changes and the rights they give employees, because failing to do so could result in a lawsuit, according to John Susany, chair of the litigation and employment group at Stark & Knoll Co., L.P.A.

“Once a lawsuit is filed by an employee, other people at your company can see themselves in the same shoes and start to think, ‘Maybe I should bring a claim, too,’” says Susany.

*Smart Business* spoke with Susany about the new state and federal laws, and what you can do stay out of trouble.

## What changes in employment law do employers need to be aware of?

This June, the administrator of the Department of Labor issued an interpretation of the Family Medical Leave Act that allows employees who are in same-sex relationships to take time off to care for their partner’s child.

Under the FMLA, people who work for a company with 50 or more employees are entitled to 12 weeks of unpaid leave to care for a child — natural or adopted — or to care for a spouse or a child with serious health conditions. The new ruling says that an employee in a same-sex relationship can qualify for that same kind of leave to care for the child of a partner, even if there is no biological relationship between the employee and the partner’s child.

## What else is new in federal employment law?

A new amendment to the Fair Labor Standards Act requires employers to offer ‘reasonable breaks’ for nursing mothers. An employer has to provide a private place that is shielded from view and free from intrusion. The law specifically excludes bathrooms as an appropriate place.

The law does not define what is ‘reasonable,’ but the employer cannot be the one scheduling break time. It’s the nursing mom who decides when she needs to take those breaks, which are permitted for up to one year after the birth of the child.

This applies to everyone, and if a company has a new mother, it has to react quickly. That means two things. You need



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to update your employment policies and you need to identify where you can create a private place.

However, the Fair Labor Standards Act allows employers who have fewer than 50 employees to not comply if doing so will present an ‘undue hardship’ on the company in relation to ‘size, financial resources, and the nature or structure of the business.’ Should an employee sue, there would be a very specific factual inquiry on what you did and what you could have done under the circumstances.

But one thing is clear — you can’t put your head in the sand. You have to take affirmative action.

## What changes have there been to Ohio law?

Effective July 2, Ohio employers with 50 employees or more are required to give two weeks of unpaid leave once each calendar year for the spouse, parent or custodian of a member of the armed services if that member is injured or going to be deployed.

Under the Ohio Military Family Leave Act, the member of the military has to have been called up for active duty longer than 30 days or injured while serving on active duty, and the employee has to give 14 days notice of a deployment.

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## How has the Equal Employment Opportunity Commission (EEOC) changed under the Obama administration?

It has more money, and that means more resources to pursue claims. It has hired additional staff, additional investigators and attorneys, and it’s the job of those people to investigate, and if necessary, to prosecute claims against employers. That is resulting in increased scrutiny by the EEOC of companies.

Most investigations tend to arise from a complaint by an individual, but that individual complaint could be expanded to a class of people similarly situated or adversely affected by a company policy.

## What steps can an employer take to protect itself from lawsuits?

An employer needs to have policies in place that are reviewed annually by your employment attorney. Go over the policies, talk about changes in the law — and not just the laws as they are written but about how they are implemented and applied.

It’s not enough just to have good policies; one of the most damning things that can happen in employment litigation is if a jury hears that the company didn’t follow its own policies.

Beyond having a handbook, your people have to work to know it, understand it and implement all its policies uniformly. And to do that, you need training. You need to practice and reaffirm what those policies are, and you need to understand them in the context of a changing workplace.

You really need to cultivate a partnership with external experts, such as employment lawyers, for policy reviews and management training seminars. And that is especially true right now. With the downturn in the economy, a lot of employers have neglected updating their policies and training, and that is dangerous.

Each person you lay off or fire or demote is a potential plaintiff. And if you haven’t been vigilant in your policies, in your training, or in educating your managers, each one of those people may have reason to sue you. A lawsuit may be based on a technicality, but it’s enough to get you into court and cause you to spend tens of thousands of dollars defending a claim that you shouldn’t have to defend. <<

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