

by **Stephanie Ramsey**



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**ICCFA Magazine  
author spotlight**

► Ramsey is the HR specialist for The Foresight Companies LLC. She has a unique perspective on the challenges funeral and cemetery business owners and managers

face when dealing with employee issues.

► Ramsey has managed both small staffs and ones with more than 200 employees and more than 25 supervisors directly reporting to her. She also has run an 800-call regional combination business. She has written many employee handbooks and other job-specific documents for clients nationwide.

**More from this author**

► Ramsey writes a quarterly blog on HR matters that can be viewed at [www.f4sight.com](http://www.f4sight.com)

**MANAGEMENT: HR ISSUES**

If your job includes hiring or managing employees, you have to keep track of the ever-changing federal, state and municipal laws covering HR practices. Do you know what 'ban the box' refers to? Do you know what constitutes discrimination against a pregnant employee? Are you on top of efforts to make sick leave a mandatory benefit?

## Employment legislation you need to keep an eye on

While employees are among an organization's most valuable assets, they are also the most challenging asset to manage. Adding to the complexity of dealing with employees are the rapidly changing employment laws at local, state and federal levels.

It is difficult for the owner or manager of a funeral home, cemetery or crematory to keep up on all of the proposed and new legislation at these various levels. Let's discuss some with these laws that are quietly beginning to make an impact on employers.

### Ban the what?

Have you heard of the grassroots movement asking employers to choose employees for their businesses based only on specific skills and qualifications for the individual position being filled, without regard to criminal record? No? You aren't alone.

Try entering the term "Ban the Box" or "All of Us or None," a civil rights organization leading the charge on promoting this concept, into a search engine. You'll learn that the slogan "Ban the Box" comes from the small box frequently found on job

applications asking if the applicant has ever been arrested or convicted of a crime.

The general position taken by All of Us or None is that questions regarding an applicant's arrest and conviction record lead to hiring discrimination, as individuals of color are disproportionately arrested, convicted and incarcerated. In fact, there is a perception that applicants who check this box are never even considered for interviews, regardless of their skills, experience and qualifications.

If you do not have an application form that you ask prospective employees to fill out, or you want to make sure the form you are using is suitable, feel free to contact me.

Statistics in support of this claim are difficult to locate and correlate. However, All of Us or None gained ground on this issue when, in April 2012, the U.S. Equal Employment Opportunity Commission clarified and affirmed its "Enforcement Guidance on Consideration of Arrest or Conviction Records in Employment Decisions."

Through this document, the EEOC has established guidelines on how employers should view criminal convictions in terms of considering an individual applicant for a position. These guidelines direct employers to follow two key directives:

1. Consider only those convictions related to specific job responsibilities of the position in question.
2. Make individual assessments of the circumstances surrounding a conviction and whether an applicant is likely to commit the same crime again.

From the EEOC perspective, it is a violation of Title VII (1964 Civil Rights

**End Discrimination at Your Workplace**

**Take the Fair Chance Pledge!**

Support the Ban the Box campaign to give people with past convictions a fair chance

Become an ally in the struggle to win back our civil rights

Have you ever been convicted?

From [bantheboxcampaign.org](http://bantheboxcampaign.org), promoting the elimination on job application forms of the question about whether the applicant has ever been convicted of a crime.

### What does the Supreme Court's recent ruling mean for managers in the funeral-cemetery business? They should review their policies to ascertain if any of them accommodate non-pregnant employees but not pregnant employees with similar accommodation requests.

Act) to discriminate against an applicant based on stereotyping by race or ethnicity in relation to criminal activity.

What does this mean for you as an owner or manager? Employers may want to review their hiring policies to make sure they are not rejecting qualified applicants without evaluating whether or not a conviction is relevant to the position being filled.

Accurate job descriptions become a valuable tool when making this type of hiring decision. There are many positions in a funeral home, cemetery or crematory business that may preclude an individual with a felony conviction from being a suitable candidate.

Positions such as funeral director, embalmer, office manager, preneed sales counselor and bookkeeper are just a few examples. These positions may require either licensing or bonding, which can be denied based on a felony conviction.

#### **Pregnancy discrimination act**

Most employers are aware of the Civil Rights Act of 1964 and are also conscious of the Pregnancy Discrimination Act (PDA) of 1978. The PDA is actually an amendment to the Civil Rights Act and essentially makes it unlawful to discriminate against someone who is pregnant.

On the surface, it seems that employers know they should treat a pregnant individual just as they would someone who is not pregnant in evaluating a person's qualifications for a position. However, there are additional issues they should be aware of as they relate to this area.

For example, let's say you have a pregnant employee who provides you with a doctor's note indicating that she has lifting restrictions. At a funeral home, this could impact an individual's ability to assist with the moving of a body, casket or other equipment necessary to handle the funeral arrangements and burial. Should you accommodate her? Are you required to do so?

According to a recent ruling by the U. S. Supreme Court, employers should not treat pregnant employees differently from other individuals who request similar accommodations. If you fail to do so, you can be sued for pregnancy discrimination.

The Supreme Court actually created a test to identify which pregnancy discrimination lawsuits should go to trial. Basically, a pregnant employee only needs to show the following:

1. She was pregnant.
2. She requested an accommodation and was denied.
3. The requested accommodation was granted to non-pregnant employees with similar abilities/inabilities to work. (Someone with an injured back or heart condition, for example.)

What does the Supreme Court's recent ruling mean for managers in the funeral-cemetery business? They should review their policies to ascertain if any of them accommodate non-pregnant employees but not pregnant employees with similar accommodation requests.

It also would be wise to train management staff on these issues so that a potential problem doesn't develop from a lack of knowledge and understanding.

Consider the example regarding a lifting restriction. If the position requires lifting, it should be identified in the job description regardless of gender.

Then, if an employee in that position develops a lifting restriction, the decision the manager must make is whether an accommodation can or should be made, based on the job description and the organization's policies regarding accommodations.

#### **Mandatory paid sick leave**

From the state of California to the city of Philadelphia, Pennsylvania, mandatory paid sick leave laws are popping up throughout the United States. In fact, mandatory paid sick leave has been the law in some of these states/cities for many years.

At this time, there are three states and 18 different cities with mandatory paid sick leave laws (a link to a current list can be found at [www.f4sight.com](http://www.f4sight.com) under our Human Resource tab), and many more are considering similar legislation.

In January, President Obama called on Congress to require companies to provide workers up to seven paid sick leave days a year. So far, Congress has put this proposal on the back burner as it deals with more

immediate issues such as the federal budget.

The lack of action in Congress on this issue has not prevented the idea from gaining popularity among the millions of American workers who do not have paid sick leave benefits. This has left state and city officials to consider implementing policies themselves.

While each state or city has its own perspective on what exactly a mandatory paid sick leave policy should offer, it has become clear that there are some consistencies. For example, most mandatory sick leave policies are based on the number of days or hours worked by an employee, regardless of full-time or part-time, exempt or non-exempt status.

Consider a part-time funeral director who does removals after regular business hours. The time spent handling these removals would be used as part of the calculation of how much mandatory paid sick leave that person may be eligible to receive, even if you simply pay the individual a flat rate for handling a removal.

Also, it appears that most of these policies allow sick leave to be used for the care of a loved one (a vague term that could be limited to only a spouse/child or to all immediate family members), and the definition of a child includes not only biological or adopted children but also foster children and children for whom the person serves as guardian.

Despite some similarities in existing and proposed sick leave laws, the complexity of this issue can be seen in the multiplicity of differences. Some states and cities have mandatory paid sick leave laws that apply to all businesses, regardless of the number of employees. Others only require businesses with more than a certain number of employees to comply. There are even policies that provide exemptions for certain types of business.

Of course, it is not unusual for employers to offer paid sick leave to employees as part of the benefits package. However, many employers provide these benefits only to full-time employees.

The financial impact of mandatory paid sick leave can be extremely variable, as some laws allow up to a maximum of three

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days of sick leave, while others allow up to nine days per year.

With this sick leave time being made available to new employees as early as 90 days after hire, employers need to calculate the potential effect of these laws on their budgets.

While the current number of states and cities mandating sick leave is fairly limited, if the momentum surrounding this movement continues, we may see many more states and cities enact a mandatory paid sick leave policy.

Employers who don't already offer paid sick leave should determine if it is a benefit they can provide. If so, they should make sure there is a clearly written policy available for employees to review.

### Staying in the loop

Funeral home, cemetery and crematory owners are busy dealing with daily operational issues and meeting the needs of the community they serve. This leaves little time to keep current with the ever-changing employment law environment.

While some funeral home businesses have dedicated HR staff to help them deal with these issues, many do not have this resource to keep them "in the know."

How can the managers of a small organization keep themselves informed? There are many different options:

**1. Take advantage of the Internet**, a powerful tool employers can use to help fill this void. Join email newsletters that talk about HR issues or visit HR-focused websites that post timely reports on employee law. Sign up for email blasts sent by HR websites that will bring critical employment trends to your attention.

**2. Subscribe to industry publications** that highlight articles about employee issues.

**3. Follow the news.** When an employment topic is discussed on a news report, record it or bookmark it if possible and then do some research on the issue or reach out to a qualified individual to help you understand the potential impact to your business.

**4. Have a relationship with an HR advisor** (such as myself) who will keep you informed.

While this may at first appear to be an overwhelming challenge, just making a conscious decision to be aware of employment issues will put you on the right path. 