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ICCFA Magazine spotlight

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

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More from this author

► Ramsey writes a quarterly blog on HR matters that can be viewed at www.theforesightcompanies.com

HR LEGISLATION

Employment laws are always changing, and can vary from state to state and even from one locality to another. There are a number of “hot topics” the people who run funeral homes, cemeteries and crematories need to be aware of.

Trending employment law

In the United States, employment laws seem to change as frequently as most people change their socks. This is because laws and regulations that relate to employees are enacted not only at the federal level but also at the state, county and city levels.

News reports about proposed or implemented employment laws can help funeral home, cemetery and crematory owners and managers anticipate the impact their businesses may face, but such news tends to focus on major changes such as increases in the minimum wage or very controversial laws. But many employment laws don't make the headlines and are only found through diligent research. Those can catch many funeral business owners and managers off guard.

Let us take a look at some of the trending employment laws that may have slipped under the radar for many of us in the funeral and cemetery industry.

Salary histories

One of the newest laws that seems to be gaining some ground is one which bans employers from asking job candidates about their previous salary history. The perception appears to be that such questions can potentially lead to job applicants being lowballed in terms of compensation rather than paid fairly for their skills, experience and education.

Additionally, there is some debate as to whether asking for salary histories promotes the large compensation disparity between men and women in the same positions. This is a sensitive issue which draws negative attention to employers and impacts employee morale and retention.

Given the increasing number of women entering the funeral industry, this is an important issue to consider. Proponents of such laws say they will encourage employers to make job offers that are

truly based on a candidate's skills and experience. The states and cities and one territory that currently have banned or will soon ban salary history inquiries during the interview process are: California, Massachusetts, Delaware, Oregon, New York City, Philadelphia, New Orleans, Pittsburgh and Puerto Rico.

LBGTQ non-discrimination laws

Title VII of the Civil Rights Act of 1964 prohibits many forms of discrimination, including on the basis of sex. Over the years there have been various rulings by the Federal Equal Employment Opportunity Commission (EEOC), which oversees the enforcement of Title VII, extending the prohibition on sex discrimination to include sexual orientation and gender identity.

It must be noted, though, that EEOC rulings are not binding on private employers and various federal courts have ruled inconsistently on cases specifically involving sexual orientation and gender identity. This has been an issue over which the LBGTQ community and their many supporters have been crying foul for many years.

The funeral industry recently saw The U.S. Court of Appeals for the Sixth Circuit rule in favor of a terminated employee stating that the funeral home owner had unlawfully discriminated against the employee. In this specific case, the court's ruling appears to affirm that transgender individuals are protected by federal sex discrimination laws. Another court may not see the case in the same exact way.

Regardless, funeral business owners and managers should be aware that many states have now passed laws that make it clear that their state sex discrimination laws do include protection for sexual orientation and gender identity situations. Currently the following states, in addition

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to Puerto Rico, Guam and the District of Columbia, have such laws:

California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oregon, Rhode Island, Utah, Vermont and Washington.

While this topic is still controversial, it behooves funeral home and cemetery owners and managers to know where their states stand on these issues to avoid a very messy and public lawsuit that could damage their community relations. Lack of knowledge and understanding can be very costly in this situation.

Accommodating pregnant and nursing employees

In 1978, the Pregnancy Discrimination Act amended Title VII of the Civil Rights Act of 1964 to specifically prohibit discrimination of women (whether an employee or an applicant) for pregnancy, childbirth or pregnancy-related health issues.

Discrimination is prohibited for any aspect of employment, including hiring, firing, compensation, job assignment, promotion, layoff, training, fringe benefits (such as leave and health insurance) and any other term or condition of employment.

This law and its ramifications for funeral owners is fairly well known. Recently, 22 states, the District of Columbia as well as various municipalities have passed laws granting pregnant employees the right to have reasonable accommodations at work.

Not surprisingly, the specifics of these laws vary state by state, but they do have a commonality. They all focus on the concept that a pregnant worker with a medical need for accommodation should not be forced to leave work when she can be reasonably accommodated without imposing an undue hardship on the employer. The laws tend to confirm that no employee should be forced to choose between the health of her pregnancy and her paycheck.

Some states apply the laws to all

employers, while others apply the laws to employers with a designated number of employees. In addition, some laws only focus on accommodations for pregnant employees and others include nursing mothers. It is important for business owners and managers to know what the requirements are in their state to make sure they don't run afoul of the law.

These are the states with current pregnancy and nursing mother accommodation laws: Alaska, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Louisiana, Maryland, Massachusetts, Minnesota, Nebraska, Nevada, New Jersey, New York, North Dakota, Rhode Island, Texas, Utah and Vermont.

Ban the Box

What started as a small, grass-roots movement in 2004 to overcome employment discrimination against formerly incarcerated people, Ban the Box (also known as Fair Chance Laws) is one of the strongest trending employment laws in the United States.

Initially the focus of the campaign was on government agencies and public hiring practices. The intent was to make sure the job applications they used did not ask questions about criminal convictions.

Supporters of this endeavor believed removing these types of questions would give formerly incarcerated individuals a better chance of obtaining an interview based on their skills and experience rather than being excluded from consideration because of a conviction for a crime which may have no relevancy to the position for which they are applying.

Over time, this movement has grown to include private employers, as well. While it may have started slowly, as of 2017, the District of Columbia, 31 states and more than 150 cities and counties have enacted legislation which mandates employers not inquire about the conviction history of applicants and also delay background checks until later in the hiring process. The movement is expected to continue to expand across the United States.

These laws vary from state to state, so business owners and managers must carefully review the laws in their state. Some of these laws have incorporated language requiring employers to consider, when making hiring decisions, how a conviction might be related to the job being filled, how much time has passed since the conviction and special circumstances or rehabilitation the applicant has undergone.

States that currently *do not* have any Ban the Box laws: Alabama, Alaska, Arkansas, Florida, Idaho, Iowa, Kansas, Maine, Michigan, Mississippi, Montana, New Hampshire, North Carolina, North Dakota, South Carolina, South Dakota, Texas, West Virginia and Wyoming.

In conclusion

Staying well-informed about existing and potential laws and regulations can be challenging. Funeral and cemetery business owners and managers are focused on serving their communities and families—as they should be. Researching what potential employment laws soon may be impacting their businesses may not appear to be a valuable use of their time. However, failure to comply with some of these laws can be costly not only in terms of dollars but also in public relations.

Ignorance is not an accepted defense once the Department of Labor or EEOC determines you have violated the law. Do what you can to protect yourself.

One way is to read industry publications or subscribe to a human resource-related website that send emails to update subscribers.

Or, perhaps a trusted employee who is responsible for addressing employee issues within the firm can be sent to various HR seminars.

Lastly, you can seek a professional consultant to help you identify your compliance with federal, state and local laws.

This is certainly a case of “what you don't know you don't know may harm you.”