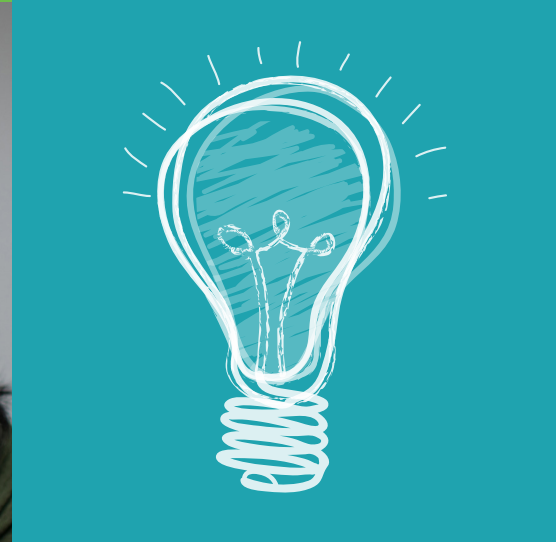
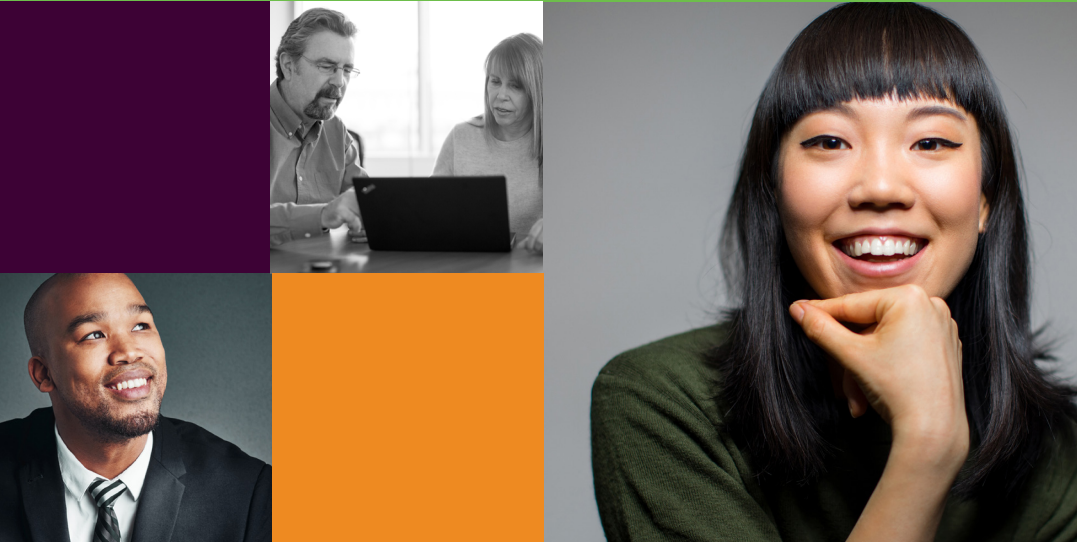


The Littler[®] Annual Employer Survey

May 2019



Littler[®]

Fueled by ingenuity.
Inspired by you.

This report summarizes and analyzes the results of Littler’s eighth annual survey of the legal, technological and social issues having the greatest impact on the workplace. It is based on survey responses from 1,331 in-house counsel, human resources professionals and C-suite executives.

Disclaimer: Survey questions and resulting findings do not represent any specific political affiliation or preferences of Littler, nor do they constitute any legal, economic or political advice.

Executive Summary

With changes to federal regulation and enforcement under the Trump administration proving slow to materialize and the web of state and local employment laws growing increasingly complex, employers’ compliance concerns swelled on multiple fronts over the past year. Compounding the challenge of navigating a complicated legal landscape, employers are more preoccupied than ever with preventing harassment and pay inequality in the second year of the #MeToo movement. Meanwhile, companies are starting to use robotics, artificial intelligence (AI) and analytics to boost efficiency and improve performance, but few are seizing on the full range of opportunities presented by these emerging technologies, nor are they sufficiently preparing for the impact on the workforce.

These are among the key findings of The Littler® Annual Employer Survey 2019, summarized below with the full charts following on pages 4-26.

Workplace Regulation

Employers report feeling very little relief from federal regulation and enforcement as President Trump’s regulatory agenda has been stalled by unfilled positions across government agencies and gridlock on Capitol Hill. However, in the lead-up to the 2020 election season, the U.S. Department of Labor (DOL) in particular is racing to implement regulatory changes that will likely have a significant impact on employers in the years ahead. In the meantime, state and local lawmakers continue to aggressively enact legislation to address public concern over myriad issues impacting the workplace, including sexual harassment, gender pay equity and paid sick leave.

Specifically:

- Employers continue to anticipate a substantial impact on their workplaces from a range of regulatory issues in the year ahead. DOL enforcement of federal employment laws topped the list, with **78 percent** of respondents anticipating a moderate or significant impact, followed by enforcement by the Equal Employment Opportunity Commission (EEOC) (**77 percent**) and developments concerning the Affordable Care Act (ACA) (**57 percent**). The perceived impact of various regulatory issues at the federal level remained relatively unchanged from last year’s survey, with one exception: The number of respondents anticipating a moderate or significant impact from the ACA declined by 10 percentage points from the 2018 survey.

- Respondents pointed to numerous employment laws at the state and local levels creating compliance challenges for their organizations, mainly in the areas of paid sick leave (**69 percent**), legalization of marijuana (**54 percent**) and background checks (**52 percent**). Given the patchwork and conflicting nature of these laws, companies have found it difficult to keep up with the dizzying pace of change and to develop policies that apply across jurisdictions.
- The majority of employers had already taken steps to prepare to comply with the DOL's new proposed rule to revise the "white collar" overtime exemption regulations, even prior to the release of the proposal. In addition to the **42 percent** that instituted changes prior to the injunction of the 2016 rule, **40 percent** are reviewing job descriptions to verify the classification of current employees, and **36 percent** are auditing compensation to identify those employees likely to be impacted.
- Employers expect the EEOC to continue to be aggressive in its enforcement efforts. The top three areas where respondents expect an increase in workplace discrimination claims over the next year include harassment claims (**61 percent**), retaliation against employees who file discrimination or harassment claims (**49 percent**) and equal pay (**47 percent**).

Workforce Management

This year's survey shows an even greater number of companies focusing energy on workplace behavior and gender pay equity, driven by both public expectations and heightened regulatory action. Employers are also navigating several new opportunities and challenges that come with managing a workforce today, including deploying emerging technologies while preparing for their impact on the workforce, updating policies in response to the proliferation of new marijuana-related laws and addressing unconscious bias in the workplace.

Specifically:

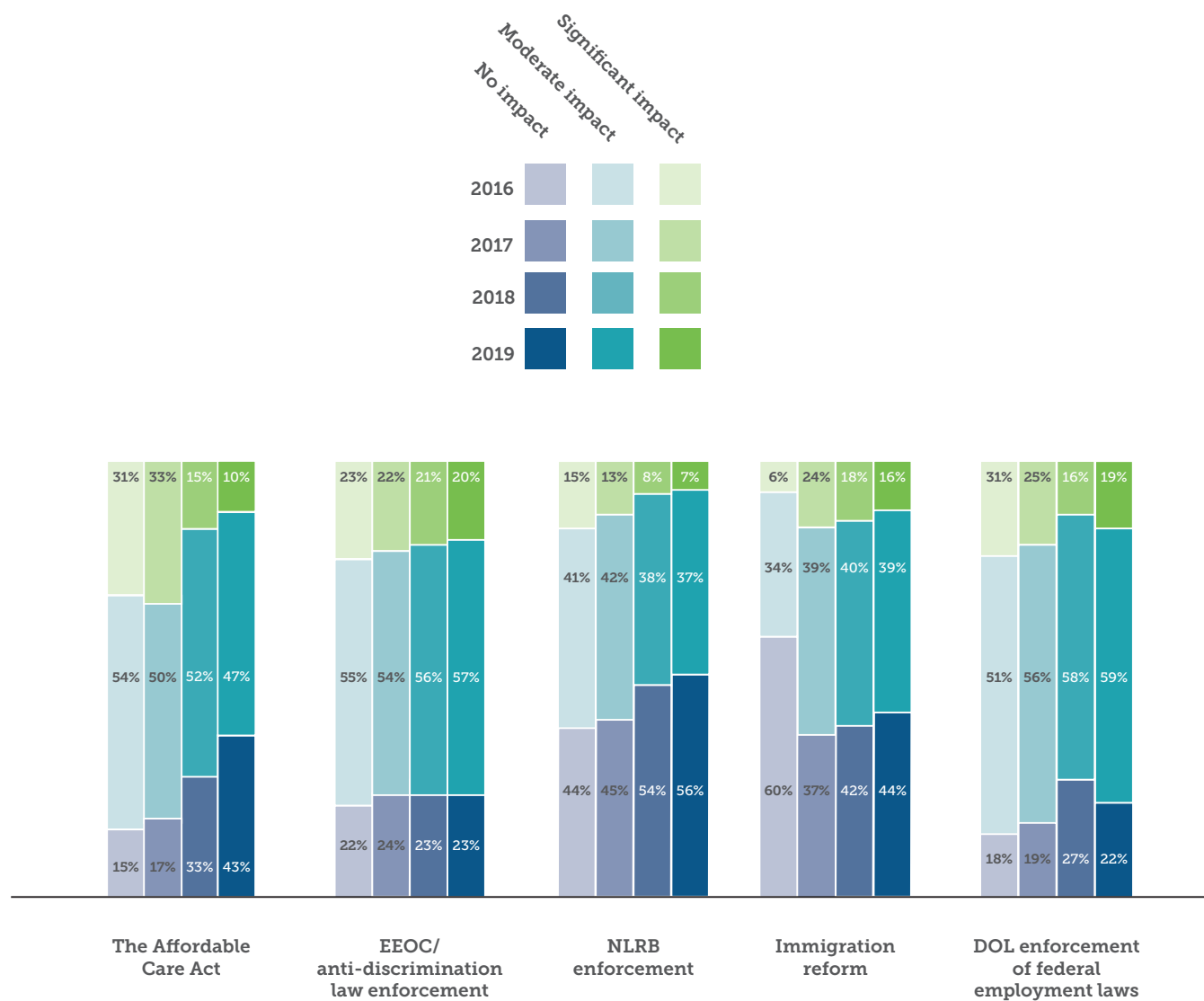
- Employers are taking greater action across the board to curb sexual harassment in their workplaces compared to last year's survey, including providing additional training to supervisors or employees (**63 percent** in the 2019 survey, up from **55 percent** in 2018), updating HR policies or handbooks (**51 percent** in 2019, up from **38 percent** in 2018) and more proactively addressing complaints and potential misconduct (**37 percent** in 2019, up from **29 percent** in 2018). In addition, most employers are taking action to address gender pay equity, with **48 percent** auditing salary data and pay practices and **24 percent** revising hiring practices.
- Respondents are starting to use AI or analytical tools in recruiting and hiring, with screening resumes or applications the most commonly cited method by **25 percent** of respondents. However, the **63 percent** who are not currently using AI-based tools suggests that there is far more potential for employers to leverage AI to support workforce management decisions. Similarly, most employers are taking some steps to prepare for the impact of robotics, AI and automation on the workplace – including identifying tasks that can be automated (**37 percent**) and hiring talent skilled in emerging technologies (**22 percent**) – but there is work to be done, as **46 percent** have not taken any action in this area.

- Many employers are struggling with the challenges posed by the proliferation of new marijuana-related laws across the U.S. and in Canada. Despite the need to adapt, about half of employers (**49 percent**) did not take action in the past year to manage safety and employment-law risk in this area. Among those respondents who have taken proactive steps, the most common has been updating employee handbooks, policies and related documents (**30 percent**).
- Most respondents (**63 percent**) say their companies are taking steps to address unconscious bias, the “mental shortcuts” that influence decision making in hiring, promotions and other areas. More than one-third (**38 percent**) have conducted training, and **26 percent** have developed plans to improve diversity and inclusion.
- With rising efficiency demands and growing resource constraints, employers increasingly expect their legal service providers to use their scale to develop and provide technology-driven tools and platforms. Among respondents who serve as general counsel or in-house attorneys, **64 percent** say they have this expectation.

The sentiments shared by survey respondents, the majority of whom are based in the U.S., align with the key legal and HR issues that emerged from [Littler’s first annual European survey](#). Released in November 2018, the survey found that sexual harassment, gender pay equity and AI and data analytics were also top of mind for the over 800 European employers that completed the survey.

Workplace Regulation

How much impact do you expect the following regulatory issues to have on your workplace over the next 12 months?



The 2018 survey found employers starting to feel the effects of the Trump administration's regulatory agenda and, in comparison to 2017 survey data, anticipating slightly less impact from key regulatory issues over the next 12 months.

But this year's survey shows very little change from 2018 data as employers continue to anticipate a substantial impact on their workplaces over the next year from a range of regulatory issues. DOL enforcement of federal employment laws was the leading concern, with 78 percent of respondents anticipating a moderate or significant impact, followed closely by EEOC enforcement (77 percent). The one exception was the continued decline with regard to the ACA, as 57 percent foresee a moderate or significant impact in the 2019 survey compared to 67 percent last year. This result suggests that the anticipated shift away from Obama administration labor- and employment-law enforcement and policies has been slow to materialize.

The stasis can largely be attributed to bureaucratic gridlock and perpetual delays in confirmations to agency positions. More than two years into the Trump administration, hundreds of government positions remain unfilled. Three of five commissioners' seats at the EEOC remain vacant, as does the general counsel's. Lacking a quorum, Acting Chair Victoria A. Lipnic's ability to address certain controversial Obama-era EEOC policies has been limited.

Similarly, employers have not felt much change in enforcement by the DOL, as enforcement across the Department's regional offices remains extraordinarily robust. However, the DOL is in the midst of an intense year of rulemaking that will likely have an impact in 2020 and beyond. For instance, in the span of a few weeks starting in late March 2019, the DOL published three long-awaited proposed rules to revise the "white collar" overtime exemption regulations, clarify the "regular rate" requirements for calculating overtime and narrow the definition of joint employment. There could also be significant rulemaking activity at the National Labor Relations Board (NLRB), which to date has been slow to issue decisions that would address the significant changes to workplace law issued during the Obama administration.

Even when the executive branch has proposed regulatory shifts, they have often foundered. The administration's efforts to change regulations have frequently been challenged under the Administrative Procedure Act (APA), a late-1940s law that seeks to thwart arbitrary rulemaking. While administrations average a roughly 70 percent APA win rate, the Trump administration's rate is about 6 percent.

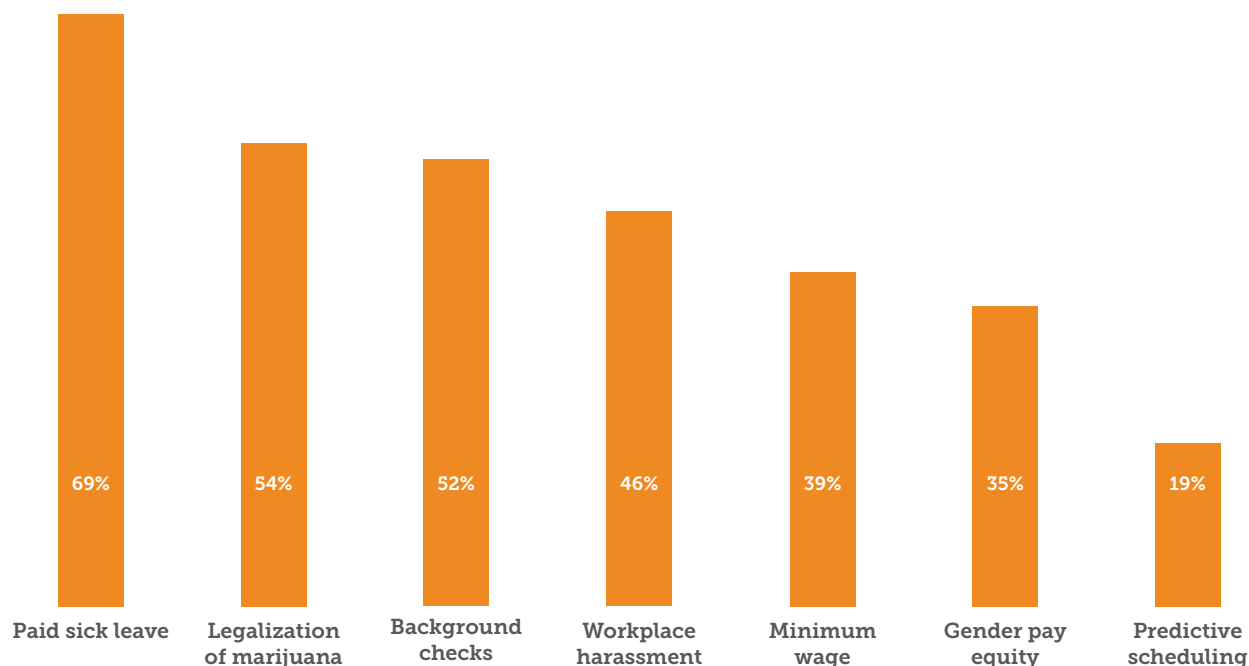


Despite the lack of activity on regulatory matters over the past two years, agencies are moving quickly to complete their regulatory agendas before the 2020 election season. 2019 is a year of preparation as the race is on to finalize rules that could have an enormous impact for employers in the coming years.

Michael Lotito, Co-Chair of Littler's [Workplace Policy Institute](#)



In which of the following areas have laws enacted at the state or local levels created compliance challenges for your organization? (check all that apply)



A complex web of employment laws at the state and local levels creates persistent compliance challenges for companies across a range of areas. More than two-thirds of employers (69 percent) say abiding by paid sick leave requirements is a challenge, followed by legalization of marijuana (54 percent) and background check stipulations (52 percent). Respondents from companies with more than 1,000 employees express heightened concerns across the board, most likely because of their broader geographic footprint. In particular, they expressed greater concern with complying with laws related to paid sick leave (79 percent) and legalization of marijuana (64 percent).

Paid sick leave tops the list of employer concerns for good reason. A [white paper](#) released by Littler and the Human Resources Professionals Association (HRPA) in April 2019 examined the proliferation of paid sick leave laws across the U.S., the impact on employers of all sizes and potential solutions to the challenges created by incongruous laws. Because of the patchwork and conflicting nature of these laws, companies find it very difficult, if not impossible, to develop policies that comply universally, or even in just two jurisdictions. Moreover, the definition of sick leave has expanded. Some jurisdictions, such as Washington, D.C. and San Francisco, have added “safe leave,” permitting absences when employees or family members experience a sexual offense or domestic abuse. In Seattle, bereavement, inclement weather, attending a school meeting and caring for a service dog are now among the justifications for employee absences.

Responding to the implications of marijuana legalization efforts on workplace policies has become increasingly challenging given that most states now permit the use of marijuana or marijuana products for medical reasons to some extent, and 10 states and Washington, D.C., have adopted rules permitting adult recreational marijuana use. Companies navigating intersecting laws in this area must consider a host of issues, including how to update drug policies to address marijuana possession and use, whether and how to accommodate employees who use marijuana for medical purposes, and how to approach testing applicants and employees.

As the year goes on, the challenge of complying with state and local laws is poised to get even more complex. State legislatures [introduced](#) over 1,000 employment-related bills in the first month of 2019, covering a wide range of issues from arbitration agreements to workplace bullying. In the early weeks of the year, as new lawmakers took their seats around the country, several dozen bills began moving. Among other goals, these aim to restrict salary and criminal history inquiries, establish a system of paid family and medical leave insurance, and void agreements that conceal the details of sexual harassment or assault claims.

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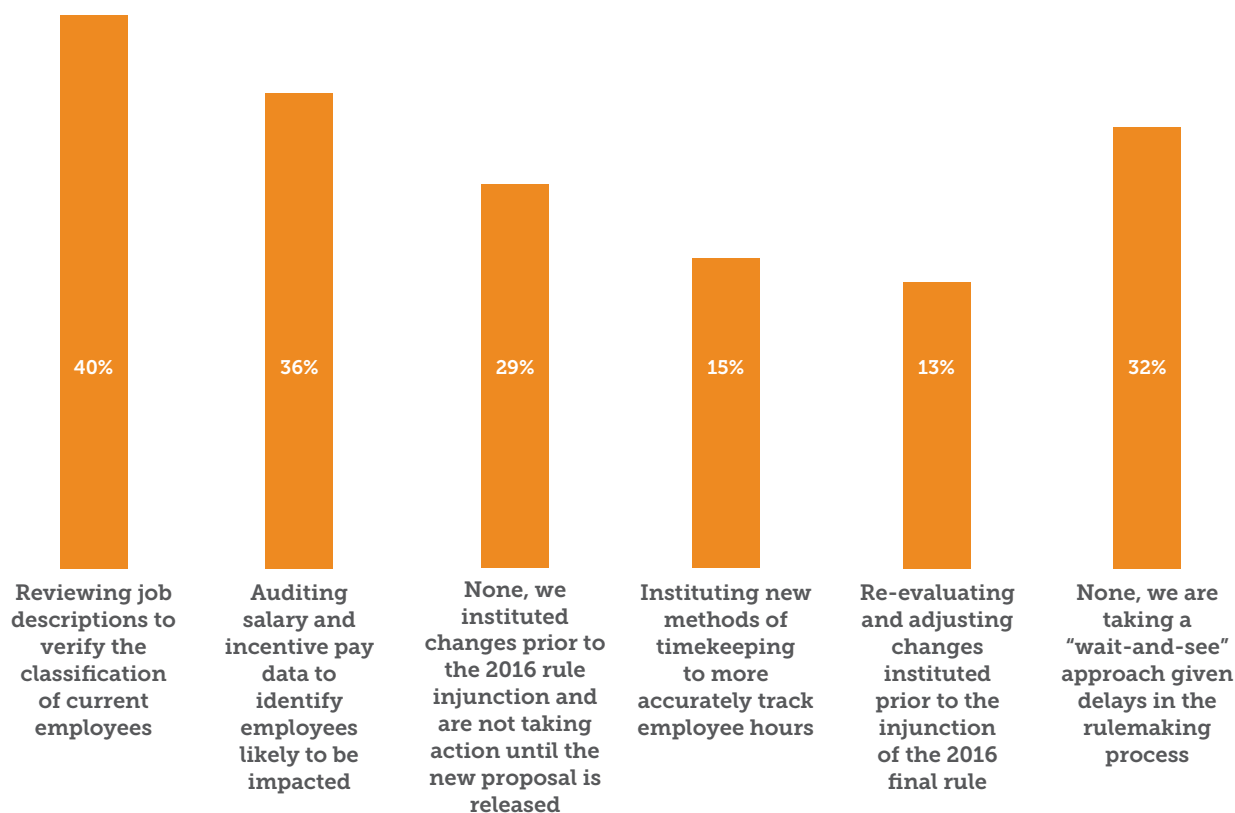
As public acceptance of marijuana use leads to expanded protections for marijuana users across the U.S., employers face ongoing challenges in managing the behavior of employees who may feel emboldened to bring marijuana into the workplace or to work while arguably impaired. Companies that seek a compliance solution that can be applied across their operations are stymied by the need to tailor policies and practices to the varied statutes and legal rulings in each jurisdiction.

[Nancy Delogu](#), Shareholder in Littler’s Washington, D.C., office



Which of the following actions is your organization currently taking, or planning to take, in anticipation of the Department of Labor’s new proposed rule on “white collar” overtime exemptions? (check all that apply)

The below chart reflects feedback received before the DOL published its Notice of Proposed Rulemaking to revise the “white collar” overtime exemption regulations on March 7, 2019.



Even prior to the release of the DOL’s new proposed rule to revise the “white collar” overtime exemption regulations, the majority of employers had already taken important actions to prepare to comply. Forty percent are reviewing job descriptions to verify the classification of current employees, while 36 percent are auditing pay data to identify employees likely to be impacted. A further 42 percent instituted changes prior to the 2016 rule injunction, and 13 percent of those employers are re-evaluating and adjusting those changes.

The [proposed rule](#) would replace the final rule issued by the DOL on May 19, 2016, but enjoined just weeks before its December 1, 2016 effective date. It would increase the minimum salary for exemption from \$455 to \$679 per week and raise the exemption ceiling for highly compensated employees from \$100,000 to \$147,414.

Employers that proactively address this issue will be ahead of the curve in complying with the new rule once finalized, whereas the 32 percent that are taking a “wait-and-see” approach may find themselves with little opportunity to make changes that can be time-intensive to implement. For instance, determining which employees to reclassify and implementing that reclassification can take up to six months. Taking time to review job descriptions is also an essential step to properly documenting job duties and to creating an evidentiary record in the event of future misclassification litigation.

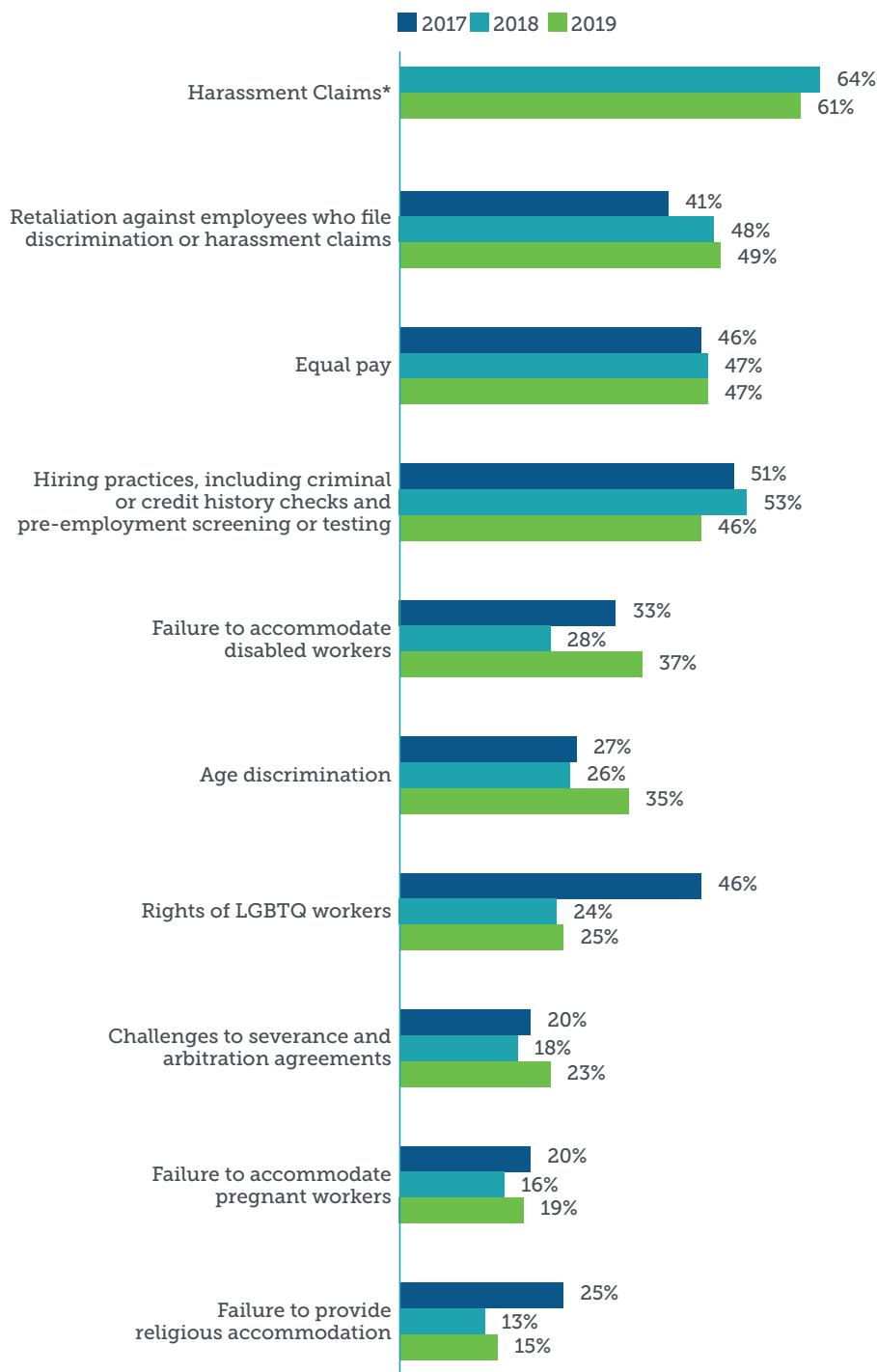
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It is encouraging that such a large percentage of employers are taking steps to prepare for the rule changes before they are finalized. With the DOL targeting an effective date in the first quarter of 2020, companies may not have much time to come into compliance if the rule is not finalized until fall of 2019. Those that wait for the final rule to make decisions on classification and salary levels may be too late to comply by the effective date.

Tammy McCutchen, Littler Principal and former administrator of the DOL’s Wage and Hour Division



Of the following areas where the Equal Employment Opportunity Commission is focusing its enforcement efforts, which do you feel are likely to see an increase in workplace discrimination claims over the next year? (check all that apply)



* Harassment claims was not provided as an answer choice in the 2017 survey

With the continued momentum of the #MeToo movement and the EEOC's ongoing focus on combatting workplace harassment, it's no surprise that respondents once again chose harassment claims as the area where they most expect increased EEOC enforcement in the coming year. As reported in Littler's FY 2018 [Annual Report](#) on EEOC developments, one-third of all lawsuits filed by the agency in Fiscal Year 2018 contained allegations of harassment (66 out of 199), and roughly two-thirds of those involved sexual harassment (41 of 66). The EEOC has made a coordinated effort to address harassment in the workplace, including filing groups of harassment lawsuits around the country on the same day, and has devoted significant resources to shining additional light on the issue. In addition to EEOC enforcement, the number of harassment lawsuits filed by the plaintiffs' bar – which is responsible for most EEO litigation – will likely continue to increase. Settlement demands are also likely to escalate as companies fear having their brands stigmatized by these lawsuits.

Similarly, the survey shows a steady rise in respondents' concerns about EEOC action focused on retaliation against employees who file discrimination or harassment claims, with an 8 percentage point increase over the past three surveys. Preventing retaliation against workers who bring lawsuits is a major area of concern for employers. Providing training to ensure all managers and HR representatives understand what constitutes retaliation and how to treat these employees is critical to mitigating this risk.

Nearly half of respondents (47 percent) continue to expect heightened enforcement related to equal pay. While a great deal of equal pay enforcement has taken place at the state level, employers should anticipate that the EEOC may expand individual charges into systemic investigations. The agency also has the right to conduct "directed investigations" under the Equal Pay Act, in which it can initiate an investigation in the absence of a discrimination charge. Furthermore, the EEOC has taken the view that pay equity extends beyond gender to include race and other protected groups.

With regard to hiring practices – which 46 percent of respondents believe will be an area of increased enforcement – the EEOC has continued to take the lead in filing failure-to-hire lawsuits given the private bar's reluctance to take on these often difficult-to-litigate cases. Employers are rightfully concerned about EEOC enforcement in this area, where settlements have been some of the richest of any handled by the commission.

The 2019 survey also shows a spike in employer concern over EEOC enforcement in three areas: age discrimination, accommodation of disabled workers and severance and arbitration agreements.

In conjunction with the 50th anniversary of the Age Discrimination in Employment Act, the EEOC [reiterated](#) that law's importance in protecting the aging workforce. As more baby boomers remain in the workforce, either because they don't want or can't afford to retire, employers must carefully manage this ongoing issue to avoid litigation.

Disability discrimination represented the highest number of cases filed by the EEOC in Fiscal Year 2018 (84 of 199). With the agency continuing to bring a high volume of lawsuits under the Americans with Disabilities Act, it's important that employers remain diligent in managing accommodation requests and that they document efforts to make reasonable accommodations in case that documentation is needed to defend against future claims.

Finally, severance and arbitration agreements have received greater attention as the #MeToo movement increases calls for transparency in how companies resolve sexual harassment claims. This trend aligns with the finding on page 14 that 15 percent of respondents are re-examining severance and/or settlement agreements involving harassment claims in the wake of #MeToo.



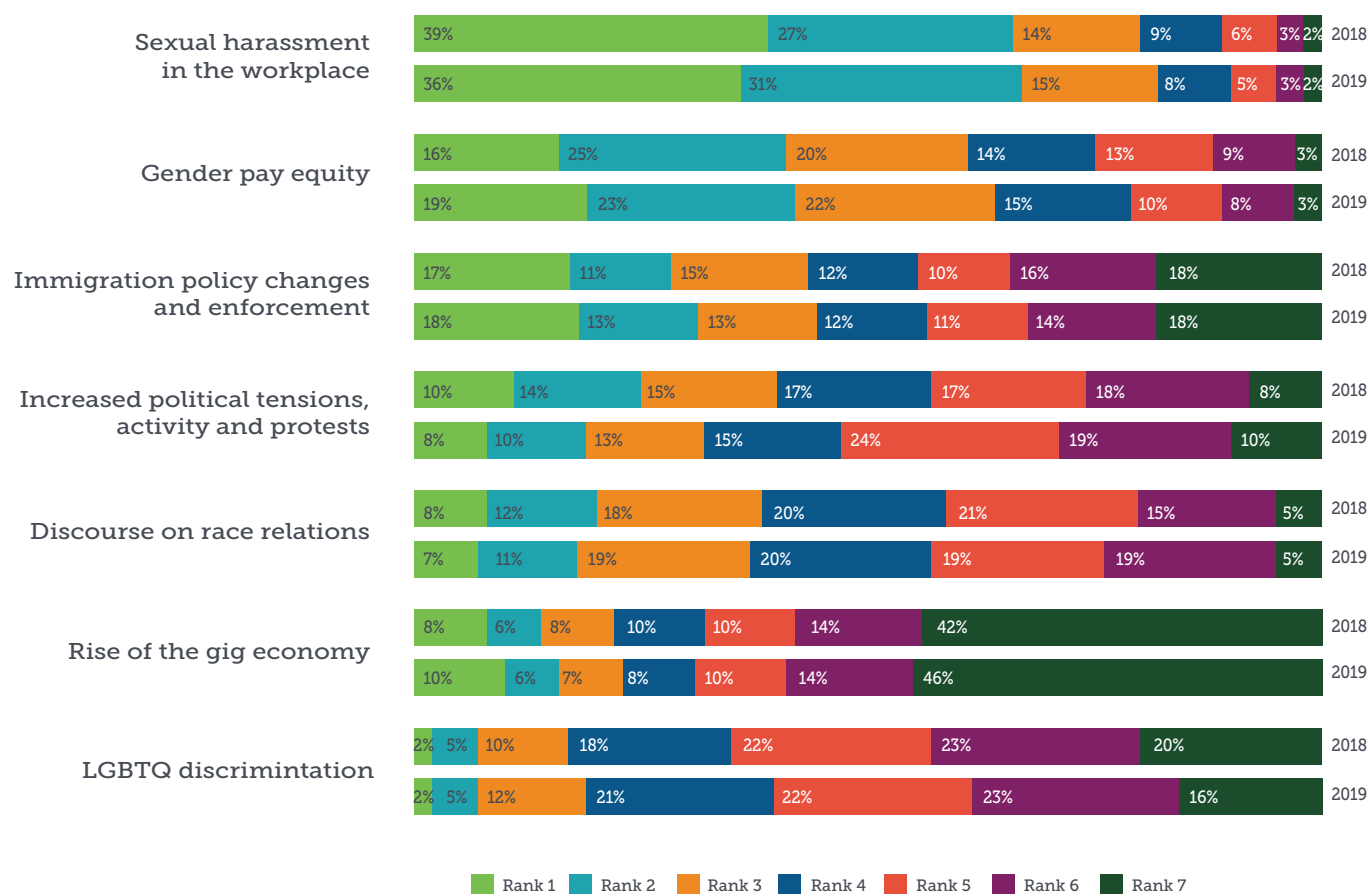
Employers are understandably concerned about workplace discrimination claims in a wide range of areas. The EEOC has been ahead of the curve in addressing workplace harassment, which – alongside the culture shift created by the #MeToo movement and a plaintiffs’ bar that views the Commission as a litmus test – has led to an increase in sexual harassment lawsuits. At the same time, employers must pay close attention to compliance and proper management of employee requests and complaints related to disability accommodations, age discrimination, pay equity and fair hiring practices, among many other issues.

Barry Hartstein, Co-Chair of Littler’s EEO & Diversity Practice Group



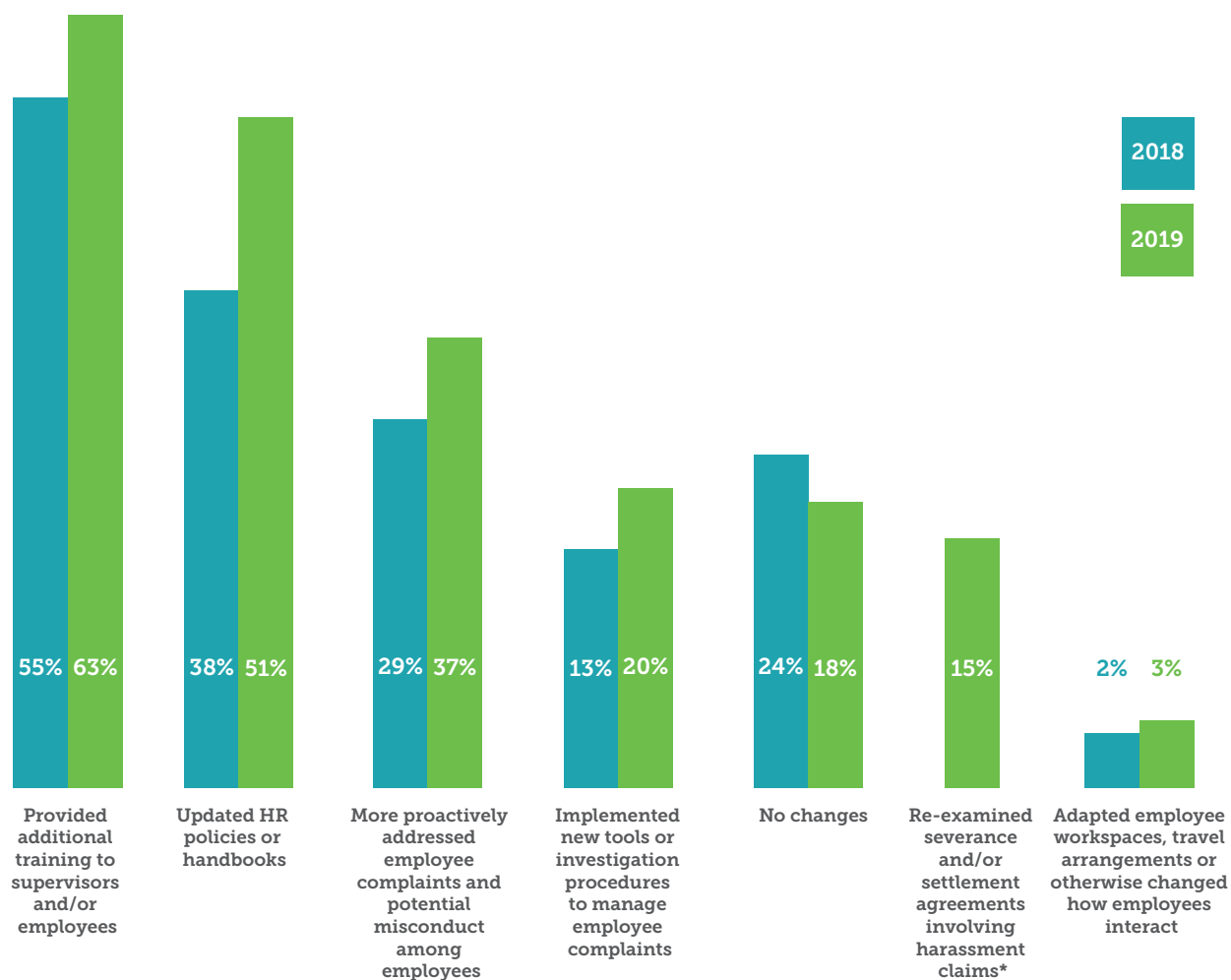
Workforce Management

Please rank the following issues in the headlines by the level of concern created in your workplace over the past year (1 being the highest and 7 being the least).



Sexual harassment and gender pay equity continue to top the list of issues in the headlines that are creating concerns for employers. More than three-quarters of respondents (82 percent) ranked sexual harassment among their top three concerns, and 64 percent did the same with gender pay equity. In the second year of the #MeToo movement amid continued high-profile misconduct allegations, calls for workplace equality have extended to other areas including equal pay.

Which of the following actions has your company taken over the past year in the wake of the #MeToo movement? (check all that apply)



* Not provided as an answer choice in the 2018 survey

As the #MeToo movement rolls on, employers are taking greater action across the board to curb sexual harassment in their workplaces. Most respondents say their companies are providing additional training (63 percent) and updating policies (51 percent), and more than a third (37 percent) are taking complaints more seriously.

The portion of companies implementing new tools or investigative procedures to manage complaints jumped from 13 percent in 2018 to 20 percent in 2019. In addition to providing training for managers and employees, it is imperative that companies provide additional training to HR departments and investigators on how to handle employee complaints. Companies are also increasingly exploring new tools that provide employees with additional means of reporting concerns, as well as re-evaluating investigation procedures and using independent investigators who can examine claims in a way that is less likely to be construed as biased.

Beyond the proactive measures that companies are taking to address harassment, they are also increasingly responding to enhanced state regulations. California, for instance, now requires training for every employee in companies with at least five employees. The regulatory burden is poised to rise, as states and the federal government consider a wide range of bills addressing training, retaliation and arbitration agreements, among other matters.

The portion of companies that report making no changes over the past year dropped from 24 percent in 2018 to 18 percent this year. Still, considering that workplace harassment remains top of mind in the public consciousness and lawsuits alleging sexual harassment have dramatically risen, it is surprising that any employers are choosing not to address this issue.

A smaller portion of respondents (15 percent) have re-examined their severance or settlement agreements involving harassment claims. This percentage could have been expected to be higher given the public attention to this issue and regulatory changes, including a provision in the federal Tax Cuts and Jobs Act of 2017 that prohibits deduction of sexual harassment or abuse settlements that include a confidentiality clause. However, these developments are relatively new, and employers may be planning to review their agreements more closely in the coming year.

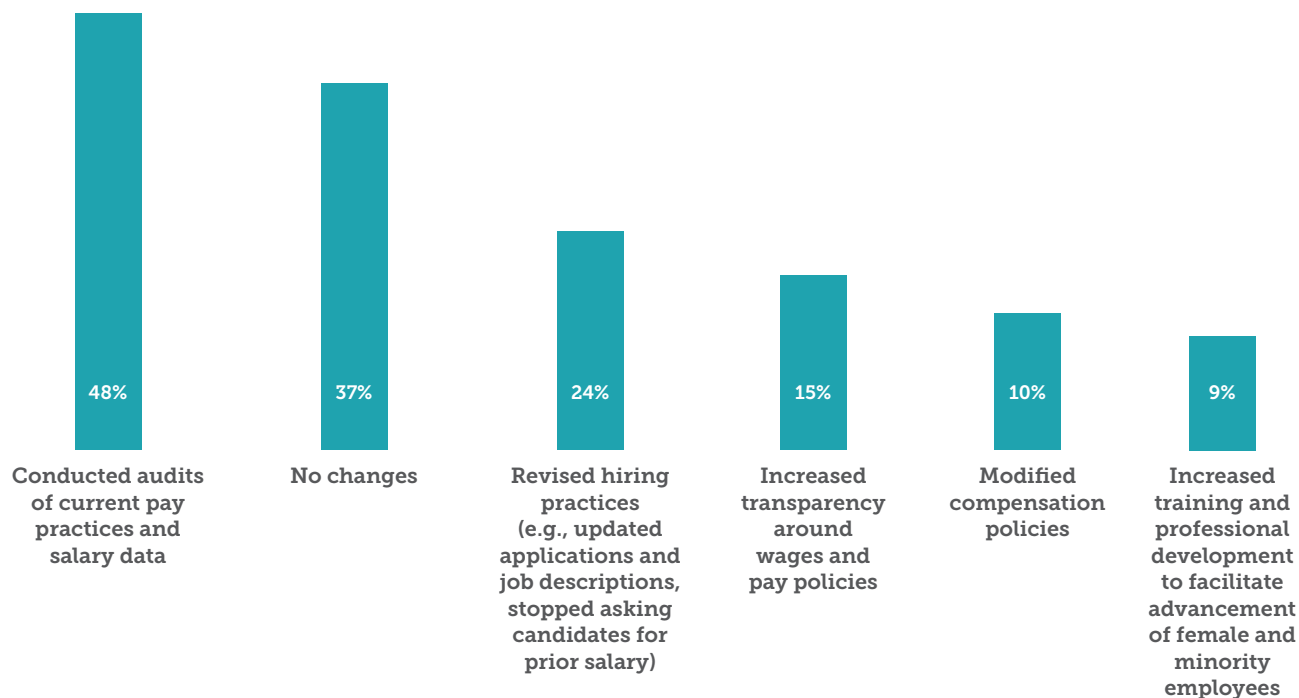


#MeToo has touched every industry imaginable; it impacts all types of companies, large or small, high profile or even no profile. The survey data shows that most companies are taking this issue seriously and are focused on providing training and updating policies and procedures to ensure employees are treated fairly and feel safe in the workplace.

Helene Wasserman, Co-Chair of Littler's Litigation and Trials Practice Group



Which of the following actions has your company taken as concerns about the gender pay gaps in the workplace continue to intensify? (check all that apply)



Most employers are taking action to address gender pay equity, an issue that continues to receive significant attention from the public, media and lawmakers. Nearly half of respondents (48 percent) have audited salary data and pay practices, and 24 percent have revised hiring practices – for example, updating applications and job descriptions or ceasing to ask candidates for prior salaries. The more than a third (37 percent) that report having made no changes may be leaving themselves vulnerable to legal and reputational risks as concerns about pay inequality continue to intensify.

An increasing number of state legislatures are debating pay equity statutes, including restrictions related to candidates' salary history and prohibiting employers from preventing salary discussions among coworkers. Already, pay equity laws enacted over the past few years have shifted the burden to employers to disprove that a pay gap is due to employees' protected characteristics and limited the defenses available against a claim of unequal pay.

One of the best ways for employers to determine whether a pay gap exists – and whether legitimate factors explain that gap or if it is the result of gender or other protected characteristics – is to proactively conduct an audit. While not all pay gaps are unlawful, the factors contributing to pay gaps – such as career breaks or occupational differences – can be highly complex. Conducting an audit is an important first step, but employers should also analyze the results and determine whether any disparities uncovered are permissible or in need of attention.

Employers should also consider conducting audits in a privileged context. While the data may not be protected, the analysis and advice on the results could be turned over as evidence in the future if not done at the direction of counsel. To that end, Littler offers a [tool](#) that uses advanced data analytics to examine compensation data and deliver actionable results that help employers understand the source of any disparities and whether action is needed.

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Proactively addressing pay equity is not just important from a legal liability standpoint. It is also vital to maintaining workplace morale and to employee retention and recruitment. While legislatures across the nation continue to strengthen pay equity laws, many in the C-suite already understand that demonstrating a commitment to paying employees fairly is in their best interest and gives them a competitive advantage.

Denise Visconti, a shareholder heading the [Littler Pay Equity Assessment™](#)



In which of the following ways is your organization using artificial intelligence (AI) or analytical tools in recruiting and hiring? (check all that apply)

25%

Screen resumes or applications

11%

Identify candidate pools that may be hard to reach (e.g., diverse candidates, military veterans)

9%

Analyze top performers to detect traits to seek in candidates

8%

Conduct social media reviews of candidates

8%

Analyze applicants' responses during interviews (e.g., body language, tone, facial expressions)

7%

Reduce bias and facilitate more objective hiring decisions

3%

Use chatbots to gather basic candidate information

41%

None, we are not currently using these tools, nor do we plan to do so

22%

None, but we are planning to implement these tools in the future

Respondents report using AI or analytical tools for a range of recruiting and hiring applications, mainly screening applicants (25 percent) and unlocking difficult-to-reach candidate pools (11 percent). As companies continue to ask HR departments to do more with less, the potential for AI to help deliver on this mandate – particularly in the time-consuming areas of recruiting and hiring – grows more enticing. The advent of more powerful analytic tools and data visualization software, along with a greater understanding of their many benefits, has led progressive companies to take the initial steps toward using AI for workforce management decisions.

Still, employers appear to be exercising caution and watching this space develop, as evidenced by the roughly two-thirds of respondents who are not currently using AI-based tools. While these tools can offer revolutionary insights and efficiencies to help HR professionals do their jobs better, there are also compliance risks that must be carefully managed, including ensuring that algorithms do not adversely impact a protected group. In addition, these tools are only as good as the data used to train and feed them. As such, companies should ensure the integrity of their data before embarking on an HR-related analytics project.



HR is ripe for the implementation of AI-based tools, given that companies have troves of existing data surrounding job postings, applications, promotions and other decisions to train algorithms. While the use of AI in recruiting and hiring is in its early stages, more and more companies are realizing the significant benefits technology brings to augment HR departments and support more informed decision making.

Aaron Crews, Littler’s Chief Data Analytics Officer



What steps is your organization taking to prepare for the impact of robotics, AI and other automation technologies on the workplace and workforce? (check all that apply)



More than half of survey respondents report taking steps to prepare for the impact of robotics, AI and automation on their workplaces. The most common actions are identifying tasks that could be automated and hiring employees skilled in emerging technologies. Respondents from companies with more than 1,000 employees are more active in this area, with a focus on identifying current and future tasks that could be automated (46 percent for large companies vs. 37 percent overall), hiring employees with skill sets in emerging technologies (28 percent vs. 22 percent) and working with industry groups, associations or other institutions (23 percent vs. 18 percent). About one-third of respondents from large companies say they are taking no action, compared to 46 percent of all respondents.

The rise of AI and robotics will dramatically boost productivity and create unprecedented opportunities for companies that embrace these technologies and proactively prepare their workforces for technology-induced changes. Determining which tasks are prime for automation and hiring technology-savvy employees are good first steps, but truly preparing for the sweeping changes ahead will require a deeper evolution in the way companies approach talent planning and job training. While technology may improve worker satisfaction by freeing employees to pursue more high-value tasks, it will also result in widespread job disruption and displacement. Only 13 percent of respondents say they are implementing training programs to prepare their workforces.

Recognizing that the [technology-induced displacement of employees](#) (TIDE) will be the paramount challenge of our time for employers and the workforce, Littler has been actively working with business leaders and government officials to prepare for the opportunities and challenges created by TIDE. These efforts include work through the [Emma Coalition](#), a nonprofit, nonpartisan organization established by Littler, the National Restaurant Association and Prime Policy Group to prepare American businesses for TIDE through education, training and engagement with policymakers. In addition, Littler recently hosted its third [Future Workforce Roundtable](#) with distinguished leaders from government, industry and academia to discuss the impact of automation technologies on the workforce.

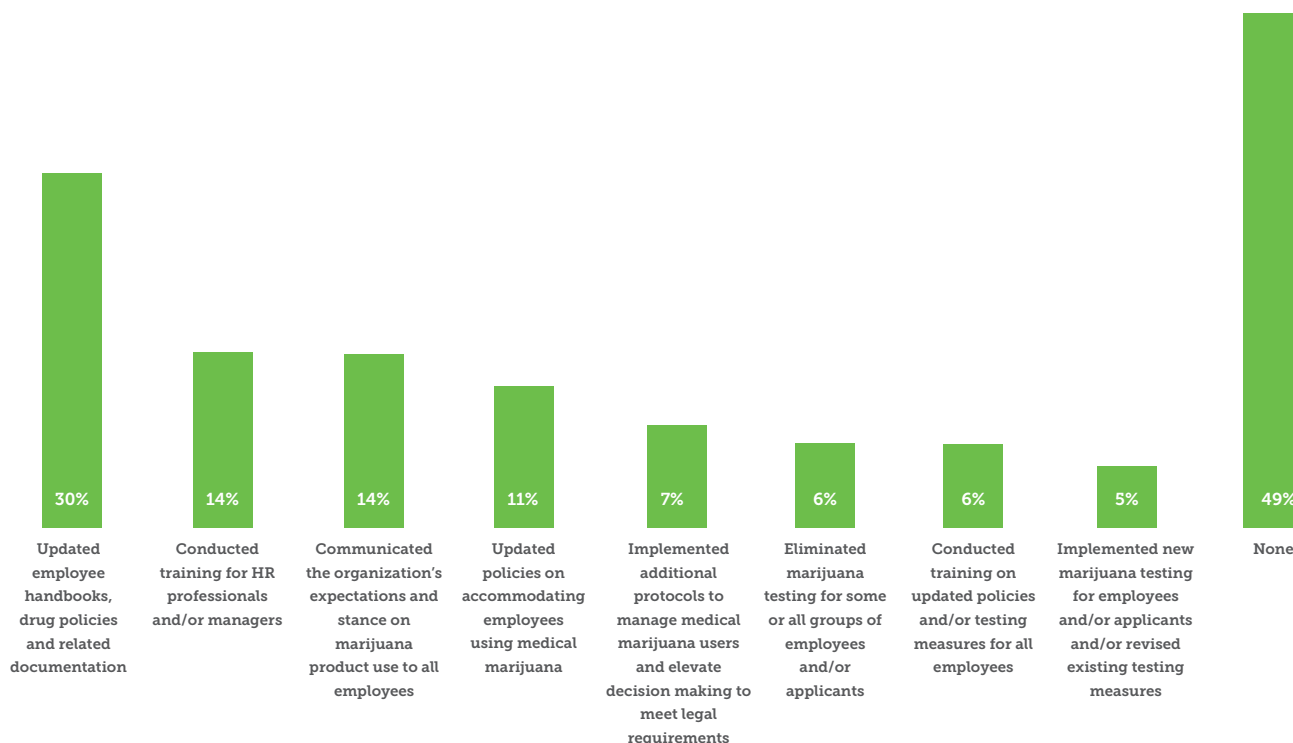


Robotics and AI are redefining the 21st-century workplace, workforce and work itself. While companies face unique challenges in preparing for these changes and operating in a regulatory landscape that has not kept pace with technological advancements, it is critical that they take steps to address the disruptive effect of these innovations on the future workforce and ensure their workers have the skills and training to adapt.

[Garry Mathiason](#), Co-Chair of Littler's Robotics, AI and Automation Practice Group



What steps, if any, has your organization taken over the past year to manage safety and employment law risk amid measures to legalize the recreational and medical use of marijuana at the state/local level in the U.S. and/or in Canada? (check all that apply)



Despite the proliferation of marijuana-related laws across the U.S. and in Canada, nearly half of respondents (49 percent) did not take any steps over the past year to manage safety and employment law risk. Among those that have, the most common actions were to update employee handbooks, drug policies and related documentation (30 percent), conduct training for HR or management (14 percent) and communicate expectations on marijuana use to employees (14 percent).

In the U.S., the relatively low level of activity likely stems at least in part from confusion surrounding employer obligations, given the widely varying marijuana laws at the state level and the fact that marijuana remains illegal at the federal level. Further complicating matters, while courts have previously held that employers are not required to accommodate employee use of medical marijuana in states where it is legal, more recent decisions have reached the opposite conclusion based on state disability-accommodation laws. Only 11 percent of survey respondents have updated policies on accommodating employees using medical marijuana.

In Canada, the federal Cannabis Act, which went into effect in October 2018, created a legal framework for the recreational use of marijuana. Each province of Canada has also implemented its own rules surrounding the sale of marijuana and may further restrict the federal law. While the law did not change the fact that employees do not have a right to use marijuana in the workplace, respondents with operations in Canada would have been expected to at least take such basic actions as updating drug policies and communicating expectations to employees.

With regard to testing, 6 percent of respondents have eliminated marijuana testing in some form and 5 percent have added new testing. This dynamic will be interesting to watch as employers respond to issues specific to their industries. For instance, industries such as hospitality or retail that are more sensitive to the tight labor market and the difficulty of finding applicants who can pass drug tests are more likely to stop testing applicants. Whereas industries with greater safety concerns or that are required to conduct testing by the Department of Transportation or another agency may be more inclined to add testing measures.

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It is important that companies stay abreast of legislative changes and court decisions related to marijuana in the workplace. Despite the complexity of navigating the current legal landscape, doing nothing exposes employers to considerable risks, whereas taking such actions as updating policies, conducting training and evaluating testing measures helps them keep their workplaces safe and compliant.

Dale Deitchler, Shareholder in Littler’s Minneapolis office



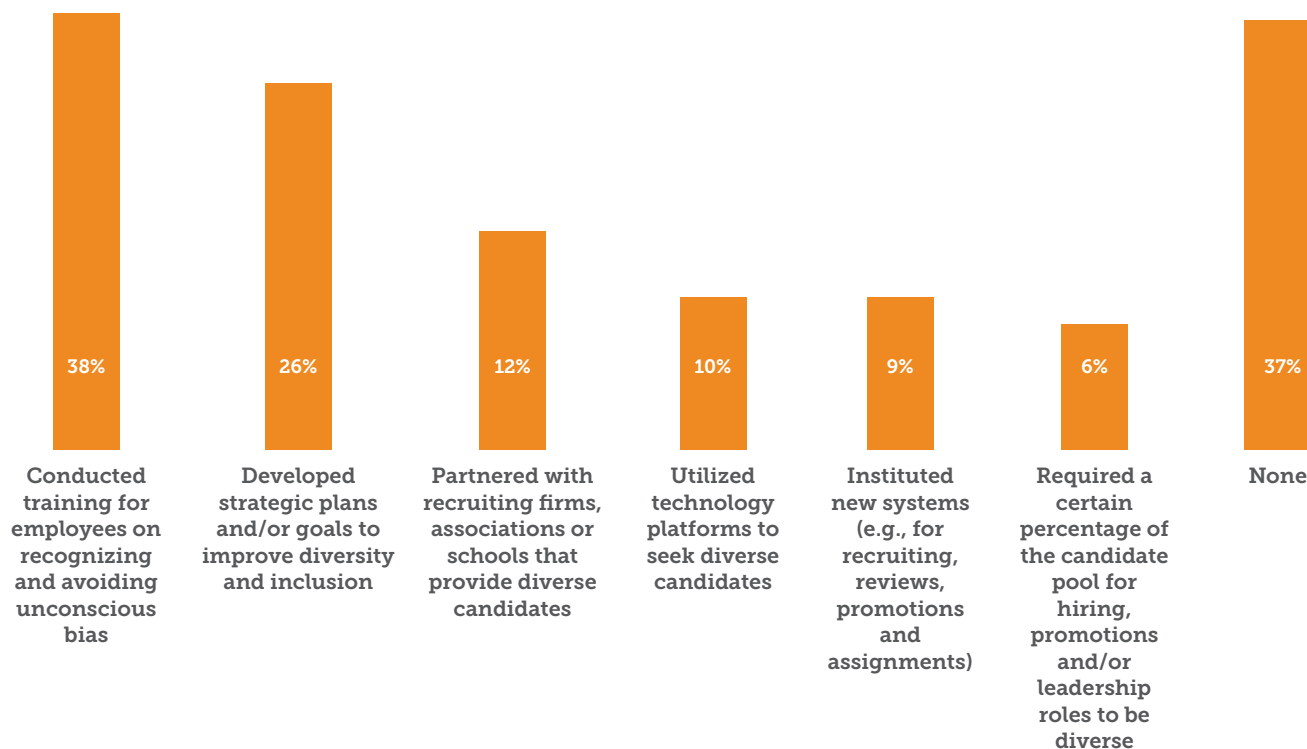
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While some feared the legalization of recreational marijuana in Canada would create a free-for-all, the Cannabis Act does not provide employees with a right to use marijuana in the workplace or come to work impaired. As new legal developments continue to emanate from various levels of government, the courts and administrative tribunals, employers with operations in Canada should continue to evaluate their policies and testing methods in accordance with the laws in this area.

Monty Verlint, Partner in Littler’s Toronto office



Which of the following actions, if any, has your organization taken to mitigate unconscious or implicit bias in the workplace? (check all that apply)



Unconscious bias, also referred to as implicit bias, affects how employees manage, mentor and interact, and can hamper efforts to improve diversity and inclusion in the workplace. These subconscious attitudes, or “mental shortcuts,” influence decision making in such areas as hiring, promotions, the assignment of work and who is chosen for projects or initiatives.

Recognizing the importance of addressing this issue, more than one-third of survey respondents report that their organizations are taking steps to bring awareness to and manage these biases. The largest percentage (38 percent) have conducted unconscious bias training, and 26 percent have taken the additional step of developing strategies to help promote a more diverse and inclusive workplace.

Although a healthy cohort of respondents are taking initial steps to mitigate unconscious bias in the workplace, 37 percent still say that their organizations are not doing so – despite plentiful evidence showing they should be. Numerous studies have shown that unconscious bias leads to a range of detrimental effects for businesses and that diverse teams are more effective and drive better business results. As awareness of this issue continues to grow, there is likely to be a continued uptick in the number of companies taking a proactive approach to addressing unconscious bias.

Notably, respondents from companies with more than 1,000 employees are taking greater action in this area across the board; a higher percentage say they are conducting training (45 percent) and developing strategic plans (36 percent) in particular. In addition, a smaller percentage (26 percent) are not taking any action.



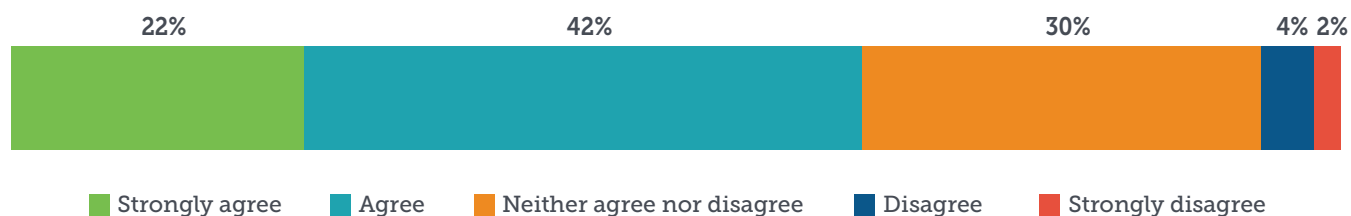
Conducting training is an important first step to create awareness of how unconscious biases manifest themselves and to minimize associated behaviors. However, effectively addressing this challenge means also committing to structural changes, such as implementing new recruiting systems and reexamining reward systems. While the survey data suggests that companies are in the early stages, it is encouraging that they are taking proactive steps. We will only see more of this as business leaders experience the positive effects of mitigating unconscious bias.

Cindy-Ann Thomas, Co-Chair of Littler's EEO & Diversity Practice Group



To what extent do you agree with this statement: **With increased pressure to operate our legal department more efficiently and limited internal resources to invest in new solutions, we increasingly expect our legal service providers to provide technology-driven tools and platforms.**

This question was only answered by respondents who serve as general counsel or in-house attorneys



Over the past decade, corporate law departments have faced increased pressure to improve operational efficiency, manage costs and provide metrics that show the value they are creating for their organizations. While law departments are investing in technology to address these market shifts, many do not have the resources needed to realize the tools' full potential, and others may find it difficult to justify the expenditures. Against this backdrop, the majority of general counsel and in-house attorneys responding to the survey (64 percent) expect their legal service providers to offer technology-driven tools and platforms. Only 6 percent do not have that expectation.



Law firms have a unique opportunity to leverage their scale to develop technology that can be deployed across multiple clients. This means collaborating with legal departments to create solutions that address their pain points and that analyze data derived from their legal matters – along with publicly available and industry-wide data – to identify trends, manage risk and guide decision making.

Scott Forman, Shareholder and Founder of **Littler CaseSmart®** and **Littler onDemand**



Methodology and Demographics

In February and March of 2019, 1,331 professionals primarily based throughout the U.S. and from a wide variety of industries completed The Littler® Annual Employer Survey via an online survey tool.

Respondents included:

- Human resources professionals (50 percent)
- General counsel/in-house attorneys (40 percent)
- C-suite executives or other professionals (10 percent)

Companies represented were of a variety of sizes:

- More than 1,000 employees (49 percent)
- 501 to 1,000 employees (12 percent)
- 101 to 500 employees (25 percent)
- 1 to 100 employees (13 percent)

Respondents identified the size of their legal departments as:

- 1 to 5 in-house attorneys (63 percent)
- 6 to 10 in-house attorneys (13 percent)
- More than 10 in-house attorneys (25 percent)

The number of attorneys responsible for labor and employment issues broke down as:

- 1 attorney (60 percent)
- 2 to 5 attorneys (33 percent)
- 6 to 10 attorneys (5 percent)
- More than 10 attorneys (2 percent)

Respondents' estimated global spend with outside legal counsel on labor and employment annually included:

- \$25,000 to \$100,000 (45 percent)
- \$100,001 to \$500,000 (29 percent)
- \$500,001 to \$1,000,000 (10 percent)
- \$1,000,001 to \$5,000,000 (12 percent)
- More than \$5,000,000 (5 percent)

At Littler, we understand that workplace issues can't wait. With access to more than 1,500 employment attorneys in over 80 offices around the world, our clients don't have to. We aim to go beyond best practices, creating solutions that help clients navigate a complex business world. What's distinct about our approach? With deep experience and resources that are local, everywhere, we are fully focused on your business. With a diverse team of the brightest minds, we foster a culture that celebrates original thinking. And with powerful proprietary technology, we disrupt the status quo—delivering groundbreaking innovation that prepares employers not just for what's happening today, but for what's likely to happen tomorrow. For over 75 years, our firm has harnessed these strengths to offer fresh perspectives on each matter we advise, litigate, mediate, and negotiate. Because at Littler, we're fueled by ingenuity and inspired by you.

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