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STAYING CURRENT

New state, federal laws mean businesses must keep up


Eric Magnelli, an associate at Brach Eichler, says manufacturers must be vigilant about keeping abreast of regulatory developments. - BRACH EICHLER LLC

BY MARTIN DAKS

President Trump's trade war and the reality of higher tariffs may be grabbing headlines, but manufacturers in New Jersey have a host of other issues to contend with, according to industry insiders. From high taxes to ripples from the #MeToo movement, they must keep on their toes.

New Jersey manufacturers need to pay close attention to local and national developments, according to Eric Magnelli, an associate at the law firm Brach Eichler LLC. For example, there's the Diane B. Allen Equal Pay Act, which was signed into law by Gov. Phil Murphy in April. It basically prohibits pay disparities among employees that do "substantially similar work."

"Review your operations and consider whether responsibilities, qualifications and other issues justify pay differential," said Magnelli. "Consider intangibles too, like how much of an effect their skills have on outcomes."

Two people working in management may have similar experience and job titles, but pay differentials might be justified if one of them has far better analytical or other skills. On the other hand, it might be harder to justify a significant differential for two employees with similar seniority who work jobs on an assembly line.

Another law, focusing on paid sick leave, will be effective in October. It will affect almost all large and small businesses and among other mandates will require employers to accrue earned sick leave based on the amount of hours worked, subject to certain limits. In most cases, employers will generally also have to carry forward employees' unused sick leave into the next year.

"Businesses should review their sick leave policies to ensure they're complying with the new law," advised Magnelli.

While they're at it, employers may want to update their employee handbooks. "Make sure you have a handbook and if necessary, update it annually," he suggested. "I used to advise clients to update their handbook every two years, but with all the changes it's better to stay current by reviewing it every year and updating as needed."

Even simple tasks like disciplining or firing an employee are getting more complicated, according to Magnelli. "New Jersey is generally an employee-friendly state, so even simple activities often have to be reviewed by an attorney, making it more costly to do business here."

Watch the workplace

Something as simple as promoting a happy workplace may lead to ominous consequences, Magnelli said. "Know the culture of your workplace," he counseled. "Manufacturing shops often are hard-working places where many employees have been around for a long time and know each other pretty well. This can occasionally lead to things like physical horseplay and off-color jokes."

They may have innocent intentions, but if even one person is uncomfortable with that off-color joke or mild physical contact, you could have a lawsuit on your hands. "Know what kinds of calendars or posters are on the workplace walls, what's posted in people's lockers [and visible to others]," he said. "Train employees in acceptable behavior and what may constitute harassment. Be aware if jokes and behavior may be going too far, and address it early on. Unfortunately there may be a thin line under the law between a happy workplace that is also harassment free."

Separately, Gov. Murphy is focusing on wage-hour misclassification, noted Magnelli. "Earlier this year he signed an executive order establishing a Task Force on Employee Misclassification." It will examine issues like improperly classifying employees as independent contractors — and not withholding or remitting applicable income and payroll taxes — and also figures to look at whether employees are inappropriately being classed as "exempt" and not getting overtime pay.

"It's a good idea to proactively engage in your own honest self-audit and take corrective action if needed," he cautioned. "Remember, if it's close or a tie, in the state — and increasingly in others too — the employee will usually win."

On the federal level, manufacturers will be impacted by at least some of the Trump administration's Tax Cuts and Jobs Act of 2017.

Federal changes

One of the most significant is the drop in the corporate rate from 35 percent to 21 percent, noted Douglas Finkle, tax director at accounting, tax and advisory firm CohnReznick LLP. "Separately, manufacturers organized as a pass-through business — like subchapter S Corporations, limited liability firms, partnerships and sole proprietorships — may be able to exclude up to 20 percent of their taxable income, subject to certain limitations. Most service providers are excluded from this deduction, but manufacturers are generally included by default since they are not service providers."

The new tax laws also let manufacturers and many other companies depreciate their assets more rapidly, which can reduce taxable income, according to Al Traverso, a partner at the accounting, tax and advisory firm Sax LLP. "It enhances and expands Section 179 expensing, allowing an immediate write-off of up to $1 million, subject to certain limitations. Additionally, for assets that don't qualify under 179, like most real estate, manufacturers and other businesses may qualify for 'bonus depreciation,' which may also allow an immediate first-year deduction on the purchase of eligible business property."

The new, more-generous bonus depreciation rules carry another benefit that manufacturers will appreciate, according to Jim Hannan, practice leader for manufacturing, distribution and logistics services and partner at the accounting, advisory, tax and audit firm WithumSmith+Brown PC.

"Under the new rules, used equipment may also qualify," he said. "This can be a big benefit to manufacturers since they can upgrade and refurbish their equipment and get a 100 percent write-off, subject to certain limitations. Previously, only new equipment purchases generally qualified."

There's some good news at the state level too, since New Jersey previously required most companies to file separate returns for their affiliated businesses — like a parent company and its subsidiaries — even if one or more had a profit and others posted a loss. "New Jersey now has mandatory combined reporting, so you may be able to offset any profits and losses of affiliated businesses," according to CohnReznick's Finkle.

These experts and others caution that manufacturers shouldn't let tax considerations be the sole driver of their business decisions. But at a time when some new wage-hour and other laws can make it tougher for manufacturers to compete, some positive developments are also easing the burden.