2017 Compliance Requirements in Depth
Session Agenda

In this session, we will review several topics:

• **Washington Update**
  – Regulatory Reform
  – ACA
  – FLSA

• **Pay Equity**
  – EEO-1
  – State and Global Pay Equity Laws

• **More Hot Topics**
  – Paid Sick Leave
  – Pay Statement Compliance

• **2017 Federal and State Watch List**
Disclaimer

This presentation is not:

- Legal Advice
- A Political Opinion

ADP DOES NOT PRACTICE LAW OR GIVE LEGAL ADVICE

ADP STRONGLY RECOMMENDS THAT CLIENTS OBTAIN QUALIFIED LEGAL COUNSEL PRIOR TO MAKING ANY DECISIONS
The New Washington D.C.
Executive Orders Focusing on Regulatory Reform

• 01.20.2017 Regulatory Freeze
• 01.20.2017 ACA Repeal and Replace
• 01.30.2017 One-in Two-Out
• 02.24.2017 Task Forces in Each Agency
• *Coming Soon* – Agency Restructuring
ACA Executive Order

- Republicans said they will need to take several steps to fully repeal and replace the ACA (“three buckets”)

- Step 1 – **Repeal Obamacare** through budget reconciliation process

- Step 2 – **Regulatory Action** to attempt to stabilize the insurance markets following repeal

- Step 3 – **American Health Care Act was in Congress and pulled from consideration on March 24, 2017**
  - Employer and individual mandate penalties would be repealed
  - ACA subsidies to be replaced with refundable tax credits beginning in 2020
  - Health savings accounts (HSAs) would be expanded beginning in 2018
  - Most of ACA’s taxes and fees would be repealed beginning in 2018
  - 40 percent “Cadillac” tax on high-cost plans delayed until 2025, from 2020
  - Potential Impacts for Employers
So, What’s Next?

- ACA remains the law for the foreseeable future
- Legislative efforts to repeal and replace the ACA are over... for now
- Continued ACA regulatory action is likely
- Employer Shared Responsibility mandate and related employer reporting requirements remain in effect
- Be on the lookout for marketplace and penalty notices
ACA Outlook

**ACA remains and** employers should comply with existing law
*Stay focused on meeting key compliance milestones*

**New rules**, through regulation, could emerge to determine employer responsibilities, penalties, and the value of all health benefits

**New systems** to report the value of health benefits for each employee
*Continue to closely monitor regulatory developments*
FLSA White Collar Exemptions - Update

• **Federal Regulations will probably never become effective**
  – Blocked by federal court in November 2016
  – Trump administration will probably not pursue case

• **ADP Workforce Now FLSA Dashboard**
  – Still a useful tool – State Wage & Hour laws still require compliance
  – Legislation pending in many states.
  – If federal overtime regulations are not amended, many states are likely to close the gap.

• **OT Navigator Tool for Comprehensive Services Clients**
  – Exemption Analysis Tool
  – Are your employees properly classified?
Pay Equity is Not a New Concept

Laws Prohibiting pay discrimination based on gender and ethnicity/race.

- The Equal Pay Act - 1963
- Title VII of the Civil Rights Act - 1964
- Lilly Ledbetter – 2009

The EEOC and the OFCCP enforce these laws.

For 50 years, the EEOC and OFCCP have used the EEO-1 report to collect workforce data about the number of employees by job category, sex, and ethnicity or race.
Equal Pay Protected Since 1963

1963 - The Equal Pay Act requires that men and women in the same workplace be given equal pay for equal work.
- The jobs need not be identical, but they must be substantially equal.
- Job content (not job titles) determines whether jobs are substantially equal.

1964 - Title VII prohibits employment discrimination based on:
- race,
- color,
- religion,
- sex;
- and national origin.

It also makes it unlawful to engage in employment practices that discriminate ... with respect to ... compensation, terms, conditions, or privileges of employment

2009 - Lilly Ledbetter Fair Pay Act
Each paycheck is a separate violation regardless of when the discrimination began
Pay Transparency and the New EEO-1
Tools for Closing the Pay Gap
**The Pay Transparency Trend - 2016**

**Federal Contractors:** Prohibited from discriminating against employees or applicants because they have inquired about, discussed, or disclosed their own pay or the pay of another employee or applicant. **Exception** [Eff. Jan. 11, 2016]

**Oregon:** Prohibits employers from discriminating against an employee who inquires about, discusses or discloses his/her wages or the wages of another employee. **Exception** [Eff. Jan. 11, 2016]

**New York:** Prohibits employers from discriminating against an employee who inquires about, discusses or discloses his/her wages or the wages of another employee. **No Exception** [Eff. Jan. 21, 2016]

**Delaware:** Prohibits employers from discriminating against an employee who inquires about, discusses or discloses his/her wages or the wages of another employee. **No Exception** [Eff. June 30, 2016]
Revised Annual EEO-1

Applies to all employers (including Federal Contractors) with 100 or more employees

» Federal contractors with 50 to 99 employees must still file but must not report compensation data

Employers required to track pay and hours-worked data for all full-time, part-time, and variable hour employees throughout the calendar year.

» Pay is determined by Box 1 W-2 wages

Employers take a “snap shot” pay period from any single pay period between October 1 – December 31

New report will be electronically filed in March 2018 for the 2017 reporting year

EEO-1 report revised to include wages and hours worked in addition to gender, race/ethnicity and job category
Two standard reports are available:

- **EEO-1 Employee Detail Report** provides individual demographic data for all employees
  - Clients may use this to verify the accuracy of their data
- **EEO-1 Worksheet** provides summary data needed for reporting
  - Enhancements expected Fall 2017
EEO-1 Outlook

Acting EEOC Chair Lipnic indicated that the costs of the changes may outweigh the benefits. Full Contingent in July 2017.

Changes to the EEO-1 form could proceed, be delayed, revised, or be entirely withdrawn.

Regardless, States are expected to continue pay equity efforts.
The State and Global Pay Equity Trend
State Pay Equity Laws

Common Elements:

✓ **Prohibit pay disparity** based on gender or sex

✓ **Pay equality goes beyond** base compensation and includes bonus, commissions, etc.

✓ **Pay Transparency**

✓ **No Retaliation**

✓ **Ban on Salary History Inquiries**

✓ **Safe Harbor (Defense)**
States That Mandate More than Just Transparency

**California:** Enacted 2015; Amended 2016 Equal pay for “substantially similar” work

**Legitimate Differentiators:**
- Seniority
- Merit
- A system that measures production
- A “bona fide factor other than sex”

**No Defense Available**

**Maryland:** Revised effective October 2016; Posting Requirement

**Legitimate Differentiators:**
- Seniority
- Merit increases
- Jobs that require different abilities or skills
- Different duties or services
- Different shifts or times of day
- Performance measures based on a quality or quantity of production;
- Education, training, or experience
States That Mandate More than Just Transparency

**Massachusetts:** Effective 2018; Equal pay for “comparable” work; Ban on Salary History Inquiries

**Legitimate Differentiators:**

- Seniority (family/medical leave must not reduce seniority)
- A merit system
- A system that measures quantity or quality of production or sales
- Geographic location
- Education, training, or experience
- Travel, if a necessary condition

**Yes! Affirmative Defense**

**New York:** Effective January 2016

**Legitimate Differentiators:**

- A “bona fide factor other than sex such as education, training or experience”
- is not based on or derived from a sex-based differential in compensation
- is job-related with respect to the position in question; and
- is consistent with a business necessity (defined as “a factor that bears a manifest relationship to the employment in question”).
Global Equal Pay Laws

United Kingdom:

Equal treatment in the terms and conditions if:

- Work is broadly similar
- Equivalent under a job evaluation study
- Equal value in terms of effort, skill or decision making
- Any differences must be due to genuine factors other than gender

Employees may discuss pay and ask for pay difference information

Must Post Pay Gaps on Webpage
How Can Employers Protect Themselves?

**Evaluate and Document**
- Evaluate and document bona fide factors to justify differences
  - Skill
  - Effort
  - Responsibility

**Examine**
- Examine compensation policies and documents
  - Review employment applications and job descriptions
  - Train HR managers
  - Document differences in pay

**Develop**
- Develop policy for setting starting salary (pay grades, mid points)
  - Update policies
    - Handbook: remove prohibitions against disclosure
    - Retaliation statement
  - Review Pay Practices

**Best Practice:**
Perform Analysis Under Attorney Review
Your Tools - Pay Equity Explorer

- Improve ability to help attract and retain talent
- Gain insight into potential inequitable pay practices across your organization
- Differentiate your brand through your visible commitment to pay equity

Helps answer questions such as:

“Where are my biggest potential pay gaps and on which group of employees do I need to focus?”
Hot Topics
Paid Sick Leave
Paid Leave Benefits are Growing

- **New paid leave laws** being introduced
- **More large companies** extending paid leave policies
- **Maternity/Paternity**
- **Adoption**
- **Fertility treatments**
- **More paid leave** will attract the “sandwich generations” and dual income families

**Facebook:**
- Up to 20 days bereavement immediate family, 10 days extended family
- 3 paid family sick days for short term illness such as child with flu
- Up to 6 weeks paid family sick days to care for family member per year
Paid Sick Leave – Federal, States and Local

- San Francisco, California (eff. 02/2007, amended eff. 01/2017)
- Seattle, Washington (eff. 09/2012, amended eff. 01/2016)
- Long Beach, California hotel workers, hotels with 100 or more rooms (eff. 11/2012)
- Portland, Oregon (eff. 01/2014)
- New York City (eff. 04/2014)
- Newark, New Jersey (eff. 05/2014)
- District of Columbia (11/2008, Amended 10/2014)
- Connecticut (amended eff. 01/2015)
- Irvington, New Jersey (eff. 01/2015)
- Passaic, New Jersey (eff. 01/2015)
- East Orange, New Jersey (eff. 01/2015)
- Paterson, New Jersey (eff. 01/2015)
- Trenton, New Jersey (eff. 03/2015)
- Montclair, New Jersey (eff. 03/2015)
- Oakland, California (eff. 03/2015)
- Philadelphia Pennsylvania (eff. 05/2015)
- Bloomfield, New Jersey (eff. 06/2015)
- California (eff. 01/2015)
- Massachusetts (eff. 07/2015)
- Emeryville, California (eff. 07/2015)
- Jersey City, New Jersey (eff. 1/2014, Amended 10/2015)
- Eugene, Oregon (eff. 07/2015 – preempted by state law 01/2016)
- Puerto Rico (eff. 12/2015)
- Oregon (eff. 01/2016)
- New Brunswick, New Jersey (eff. 1/2016)
- City of New Orleans city contractors and grant recipients (eff. 01/2016)
- Tacoma, Washington (eff. 2/2016)
- Santa Monica, California (02/25/2016)
- Elizabeth, New Jersey (eff. 03/2016)
- Pittsburgh, Pennsylvania (eff. 03/2016; on hold pending legal appeal)
- Los Angeles, California (eff. 07/01/2016)
- San Diego, California (eff. 07/11/2016, amended eff. 09/2016)
- Plainfield, New Jersey (eff. 09/2016)
- Montgomery County, Maryland (eff. 10/2016)
- Federal Contractors (eff. 01/2017)
- Spokane, Washington (eff. 01/2017)
- Morristown, New Jersey (eff. 01/2017)
- Vermont (eff. 01/2017)
- Arizona (eff. 07/2017)
- Minneapolis, Minnesota (eff. 7/1/2017)
- St. Paul, Minnesota (eff. 07/2017)
- Chicago, Illinois (eff. 07/2017)
- Cook County, Illinois (eff. 07/2017)
- Berkeley, California (eff. 10/2017)
- Washington (eff. 01/2018)
Best Practices

Paid Sick Leave Outlook/Best Practices

Monitor the status of **paid family leave** legislation in **New York**

Create written policies addressing leave entitlements and the interplay with related laws

Monitor President Trump’s proposal that guarantees six weeks of paid maternity leave by amending unemployment insurance (UI) laws
Pay Statement Compliance - Requirements

• **FLSA** does not require a pay statement
• **Nearly all states** have enacted laws requiring certain information be provided to employees on a wage statement
• In the last two to three years, wage statements have become an increased risk item for employers, particularly in states like **California and New York** due to:
  ▪ Increased enforcement, particularly through employee lawsuits
  ▪ Changes in state laws to add new requirements and/or to enable increased enforcement
States Requiring Wage Statements

There are many:

- Alaska
- Arizona
- California
- Colorado
- Connecticut
- Delaware
- District of Columbia (D.C.)
- Hawaii
- Idaho
- Illinois
- Indiana
- Iowa
- Kansas
- Kentucky
- Maine
- Maryland
- Massachusetts
- Michigan
- Minnesota
- Missouri
- Montana
- Nebraska
- Nevada
- New Hampshire
- New Jersey
- New Mexico
- New York
- North Carolina
- North Dakota
- Oklahoma
- Oregon
- Pennsylvania
- Rhode Island
- South Carolina
- Texas
- Utah
- Vermont
- Virginia
- Washington
- West Virginia
- Wisconsin
- Wyoming
Wage Statement Requirements Vary by State

**Simple**

Indiana

Itemized deductions.

**Simple**

Missouri

Total deductions.

**Complex**

New York

Dates of work covered by the statement, name of employee, name of employer, address and phone number of employer, rate of pay and basis for rate (hourly shift, weekly, salary, piece, commission, or other), gross wages, deductions, overtime rate of pay if applicable, number of regular and overtime hours worked, piece rate and number of pieces completed if applicable, and upon request of the employee, written explanation of computation.

Commissioned salespeople: earnings paid, or due and unpaid, if requested.

Railroads: accrued total earnings and taxes to date, and separate listing of daily wages and how computed.
California Cure Provision

Important Facts about the California Assembly Bill (AB 1506)

• Applies only to two types of pay statement errors –
  ▪ (1) failure to list correct beginning and ending dates of the pay period; and
  ▪ (2) failure to list correct employer name and address

• Before an employee can file a lawsuit, the employee must provide written notice to the employer using certified mail

• The employer has 33 calendar days from the postmark date to “cure” the violation
California Cure Provision (continued)

• To cure the violation, the employer must provide a “fully compliant, itemized wage statement to each aggrieved employee for each pay period for the three-year period prior to the date of the written notice” from the employee
  ▪ An “aggrieved employee” is any employee who did not receive a compliant wage statement – not limited to the employee bringing the claim

• The employer can cure a violation only once in any 12-month period
Compliance Areas to Monitor
What to Watch Out For…

**FEDERAL**

- Immigration Reform
- Federal Contractor Blacklisting Rollback – March 27, 2017
- OSHA Enforcement Rollback

**STATE**

- Minimum wage and Overtime
- Background checks and Marijuana Use
- Worker Classification
ADP Pro
Client Conference
Thank you!