



THE LITTLER® ANNUAL EMPLOYER SURVEY
MAY 2018

Little
Employment & Labor Law Solutions Worldwide®

This report summarizes and analyzes the results of Littler's seventh annual survey of the legal, technological and social issues having the greatest impact on the workplace. It is based on survey responses from 1,111 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

2017 began with employers eagerly expecting the new, business-friendly presidential administration to pare back workplace regulations instituted during the Obama years. While some of this change came slower than businesses may have hoped, many of the eventual policy changes lived up to their billing, representing a 180-degree reversal of prior rules and initiatives. But while employers received some of the relief they were seeking, the dramatic swings in regulation also left them to redesign policies and strategies that had only recently been updated, while simultaneously navigating a growing patchwork of employment laws as states and localities worked to fill perceived policy vacuums at the federal level.

Meanwhile, the fundamental cultural shift sparked by the #MeToo movement has focused more attention on workplace behavior and gender parity, a conversation that can be expected to continue to stretch into the broader realm of fairness in pay and equal opportunities for employees of various backgrounds.

Those are among the key findings of The Littler® Annual Employer Survey 2018, summarized below with the full charts following on pages 4-25.

WORKPLACE REGULATION

Employers have justifiably felt buffeted by abrupt and sweeping regulatory changes as policies are built and, often while workplaces are still adapting to them, dismantled.

A broad swath of mandates from the previous presidential administration – including those related to healthcare law, overtime pay, union participation and pay data collection – have been rescinded or placed on hold, while regulation and enforcement of both legal and illegal immigration have tightened. This turnabout has compelled companies of all sizes and industries to focus significant time, money and resources on writing and rewriting internal policies, training and retraining employees, and formulating and reformulating strategies. Meanwhile, the new administration's more business-friendly approach to workplace regulation has further drawn state and local governments into the fray, resulting in an increasingly fragmented, and sometimes contradictory, array of employment laws.

Specifically:

- The majority of respondents (**64 percent**) said that the frequent and dramatic reversal of workplace policies and regulations with changes in political power has created a burden for their businesses. At the same time, **75 percent** said that the patchwork of state and local labor and employment requirements has led to compliance challenges.
- A little over a year into the new administration, employers are cautiously anticipating less of an impact from key regulatory issues on their workplaces over the next 12 months. The percentage of respondents expecting a significant impact from the Affordable Care Act (ACA) dropped from **33 percent** in the 2017 survey to **15 percent** in 2018, while decreases were also seen in those expressing significant concern about enforcement by the U.S. Department of Labor (DOL) – **25 percent to 16 percent** – and the National Labor Relations Board (NLRB) – **13 percent to 8 percent**.
- The survey showed virtually no change in the impact employers anticipate from enforcement by the Equal Employment Opportunity Commission (EEOC) over the next year, given slow-moving confirmations to key positions and the Commission's active enforcement in 2017. Over the next year, respondents expect the EEOC's top three enforcement priorities to be harassment claims, hiring practices and retaliation against employees who file discrimination or harassment claims.
- Following a period of active immigration policy changes, respondents identified tighter restrictions on visa adjudications (**48 percent**) and increased workplace immigration enforcement (**36 percent**) as the areas where they expected to see the most significant impact on their workplaces in the near-term.

WORKFORCE MANAGEMENT

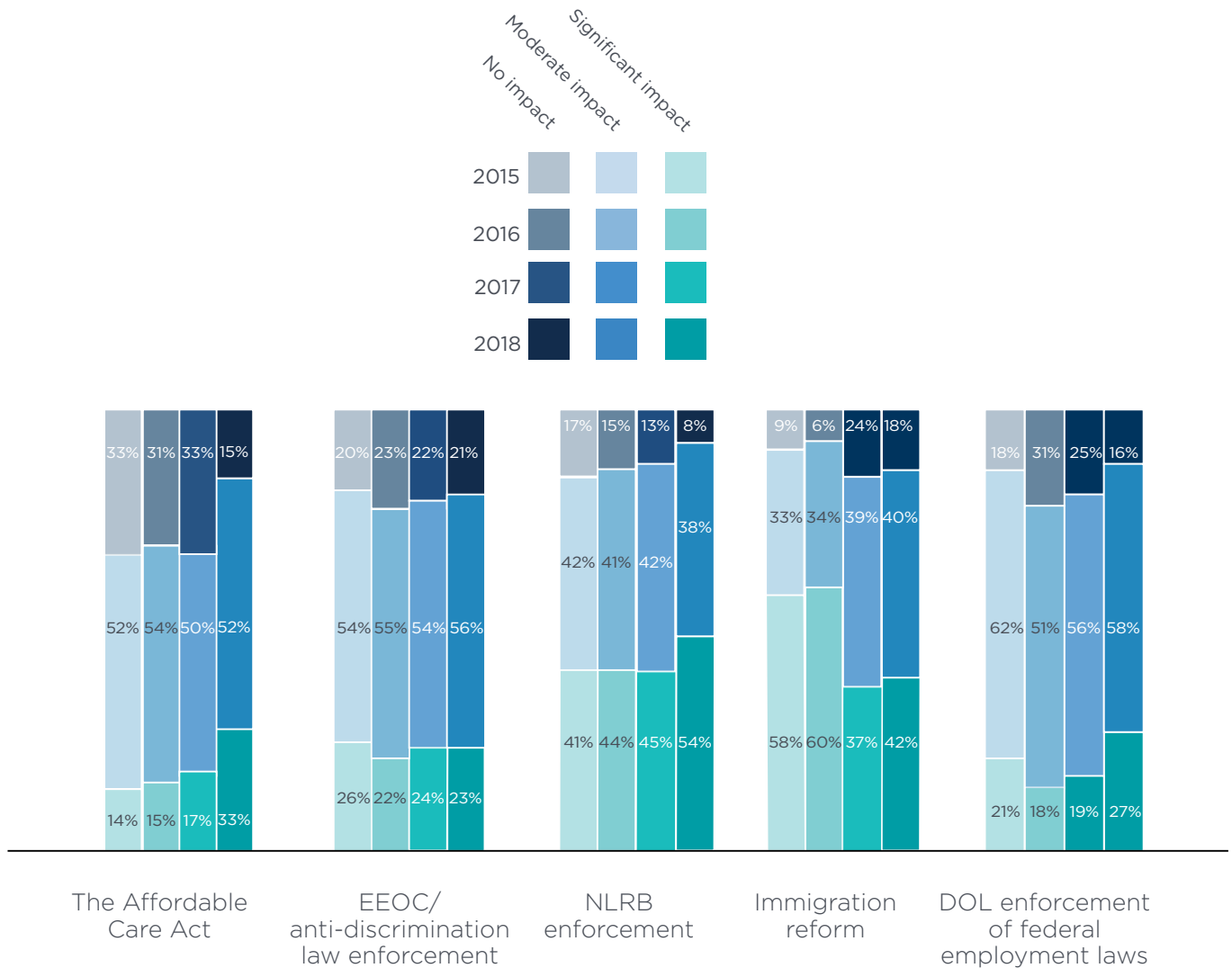
Responses on topics as varied as sexual harassment, whistleblowing and data protection demonstrated the importance of cultivating a strong company culture. The regular drumbeat of high-profile sexual harassment allegations and the subsequent firings, resignations and apologies of powerful men made a profound mark on employers' priorities for the coming year. In addition, expanded federal protections for whistleblowers have incentivized employers to cultivate confidentiality cultures, and roughly half of respondents recognized the importance of cross-border and interdepartmental collaboration in complying with international privacy laws. Meanwhile, big data and advanced analytics are proving valuable in helping employers understand how employees work and build more vibrant company cultures.

Specifically:

- About two-thirds of survey participants (**66 percent**) identified sexual harassment as the past year's most or second-most concerning issue impacting the workplace, followed closely by the related issue of gender pay equity (**41 percent**). Similarly, a substantial portion of respondents expect the EEOC to focus its enforcement efforts over the next year on harassment claims (**64 percent**) and equal pay (**47 percent**). Employers are taking a range of actions in response to these developments, including providing additional sexual harassment training for supervisors and employees (**55 percent**) and auditing pay practices and salary data (**61 percent**).
- To protect themselves against employees obtaining and using confidential business information in whistleblower actions, survey respondents indicated a focus on emphasizing a "confidentiality culture" (**37 percent**) and creating a culture of trust with employees (**32 percent**). While the focus on company culture is encouraging, **25 percent** of respondents said they had no employee theft protections in place and only **24 percent** said they were monitoring their systems for unauthorized information removal.
- Employers also appear to be mindful of both the opportunities and risks of using artificial intelligence and data analytics to guide workforce management decisions. Recruiting and hiring ranked as the most common way respondents were using big data in the workplace, with **49 percent** using some kind of advanced data techniques to add to their workforces. Respondents also indicated using AI and data analytics to guide HR strategy and employee management decisions (**31 percent**), analyze workplace policies (**24 percent**) and automate tasks previously performed by humans (**22 percent**).
- Among respondents from companies with international operations, roughly half are collaborating in some manner in preparation for the European Union's General Data Protection Regulation (GDPR). A slight majority (**51 percent**) reported that their human resources, legal and information technology departments were working more collaboratively, and only slightly fewer (**47 percent**) indicated closer collaboration with European operations to achieve compliance. However, given the cross-functional teams needed to effectively comply with the GDPR's requirements, it is surprising that the degree of collaboration reported was not higher.

WORKPLACE REGULATION

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



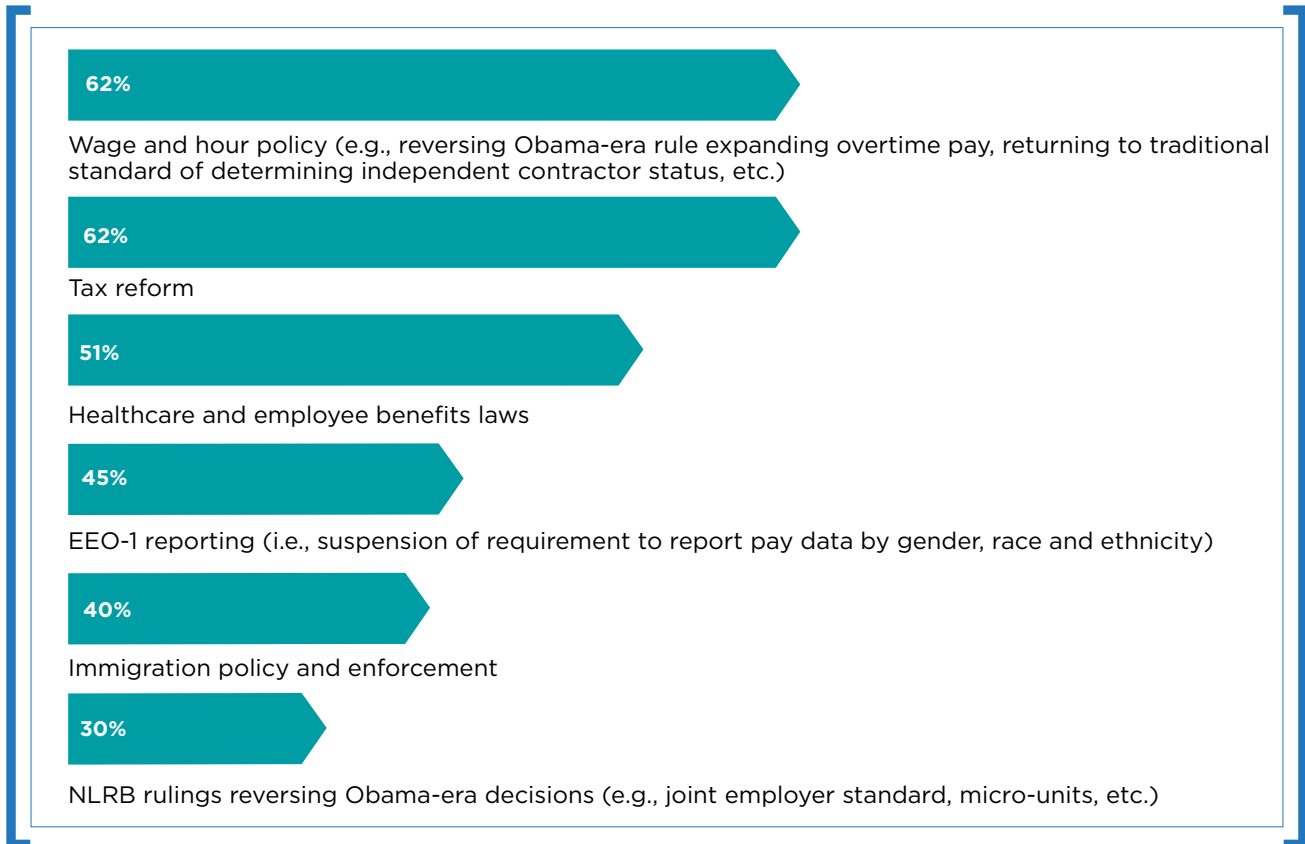
Employers are starting to feel the impact of regulatory shifts from the new presidential administration and are cautiously anticipating less of an impact from key regulatory issues over the next 12 months. Specifically, those anticipating a significant impact from the ACA dropped from 33 percent in the 2017 survey to 15 percent in 2018, while those expressing significant concern about enforcement by the DOL and the NLRB dropped 9 and 5 percentage points, respectively. This represents a shift from the 2017 survey when the perceived impact of various regulatory issues was relatively unchanged from 2016, suggesting that employers had yet to see an impact on their individual workplaces.

There was virtually no change in the anticipated impact of enforcement from the EEOC over the next year, which is not surprising given that the Commission still did not have a Republican majority when employers responded to the survey. Littler's latest [Annual Report](#) on EEOC developments shows that 2017 was an active year, with the Commission filing more lawsuits in fiscal year 2017 than it has since 2011. Employers remain uncertain with regard to whether this trend will reverse and send EEOC enforcement on a different path in the second year of the Trump administration.

The fact that the 2018 survey did not show a substantial change in the anticipated impact from enforcement of labor and employment laws suggests that changes to Obama-era policies have been slower to materialize than employers may have hoped. The impacts of policy shifts will likely continue to be felt throughout 2018 as slow-moving nominations and confirmations to key agency positions shape their implementation. Without major changes to the leadership of government agencies, there tend not to be many alterations in how the agency officials who enforce federal law operate, and they may still be enforcing rules prioritized during the prior administration. In addition, the upcoming midterm congressional elections and the possibility for further political upheaval make it even more difficult to predict what form regulation will take in the near-term.

Despite the Trump administration's focus on immigration issues, the survey showed a drop in the anticipated impact of immigration reform on the workplace over the next year from the 2017 survey (63 percent predicted a moderate or significant impact) to the 2018 survey (58 percent indicated the same). This result is not surprising given that much of the focus around immigration reform has been on illegal immigration, and many employers responding to the survey may be operating in industries where undocumented workers are not a significant part of their labor pools. Those employers anticipating more of an impact from current reform efforts are likely in industries where undocumented immigration is top of mind, such as hospitality and agriculture.

In which of the following areas have changes during the first year of the Trump administration either significantly impacted, or are likely to significantly impact, your business? (check all that apply)

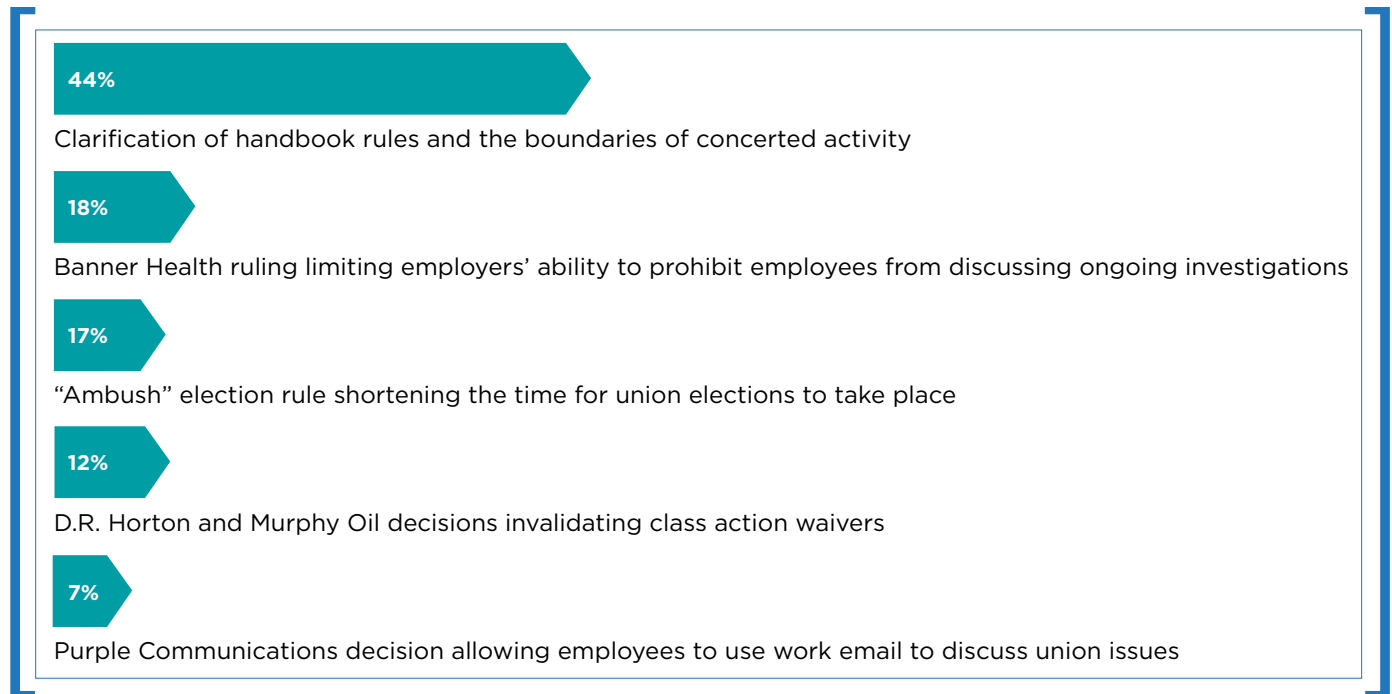


Employers have seen broad impacts as mandates from the previous presidential administration – including those pertaining to healthcare law, overtime pay, union participation and pay data collection – have been rescinded or placed on hold, while regulation and enforcement of both legal and illegal immigration have tightened. Although new federal regulations and laws more favorable to employers have not materialized at the rate businesses may have hoped, they have clearly felt the effects of the rollback of Obama-era rules.

The clearest impact pertained to the highly visible halting of wage-and-hour policies and the new tax bill, which cut corporate taxes meaningfully enough to spur a wave of announced bonuses, capital projects and share buybacks among U.S. companies.

Employers saw substantial victories on wage-and-hour matters in 2017, including the rollback of the Obama administration’s overtime rule. But it was a Pyrrhic victory for businesses that had already gone through the complicated and time-intensive process of implementing the new rules. In addition, many states have moved to fill a perceived void created by more business-friendly wage-and-hour rules at the federal level. For instance, in 2017 more than 40 jurisdictions in the U.S. considered a total of over 100 bills aimed at closing the gender pay gap.

Which of the following rules or cases would you most like to see the NLRB address in the coming months?

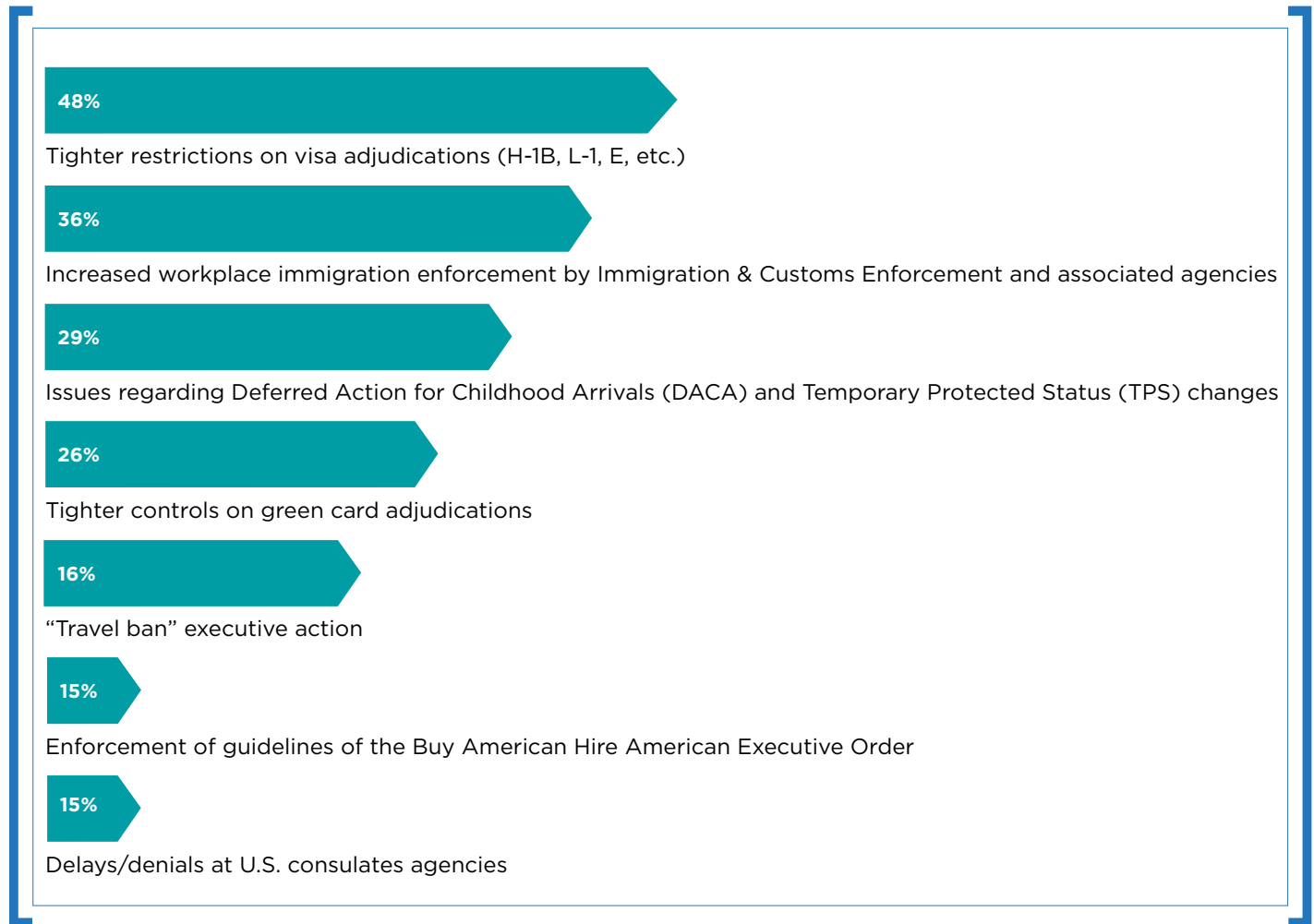


While union membership has declined to 10.7 percent of the workforce from 20.1 percent in 1983, according to the DOL's Bureau of Labor Statistics, the NLRB's increased focus on non-union workplaces has kept the agency's activities at the forefront with employers.

This trend is evident in the fact that employee handbook rules emerged as the top area that employers would like the NLRB to address in the coming months. Handbook rules and the boundaries of concerted activity are issues that affect all employers, regardless of whether their workplaces are unionized. The standard for evaluating the validity of employer rules, policies and handbook provisions under the National Labor Relations Act has [swung widely](#) in recent years, which explains why employers are eager for clarification.

The second-most concerning issue for respondents was the 2017 ruling in *Banner Health System v. NLRB*, which restricted employers' ability to prohibit employees from discussing ongoing workplace investigations – another issue that impacts union-free workplaces.

What immigration policy changes do you anticipate will have a significant impact on your workplace over the next year? (check all that apply)



Changes affecting the visa process and immigration enforcement emerged as respondents' top concerns in the immigration arena. About half (48 percent) selected tighter restrictions on visa adjudications, such as those for employees with specialized skills, intracompany transfers and temporary workers, as the issue that would have the most significant impact on their workplaces over the next year.

This year, the volume of petitioners for H-1B visas available to foreign nationals working in specialty occupations once again vastly outnumbered the visas available. In 2017, the U.S. Citizenship and Immigration Services received 199,000 petitions for 85,000 visas. While the cap on the number of visas is the same this year, the number of petitioners is expected to rise as the government applies more scrutiny to new visa applications, exacerbating the shortfall for employers. Beyond H-1B visas, employers are generally struggling to manage their workforces due to the lack of clarity in this area and unpredictable rule changes.

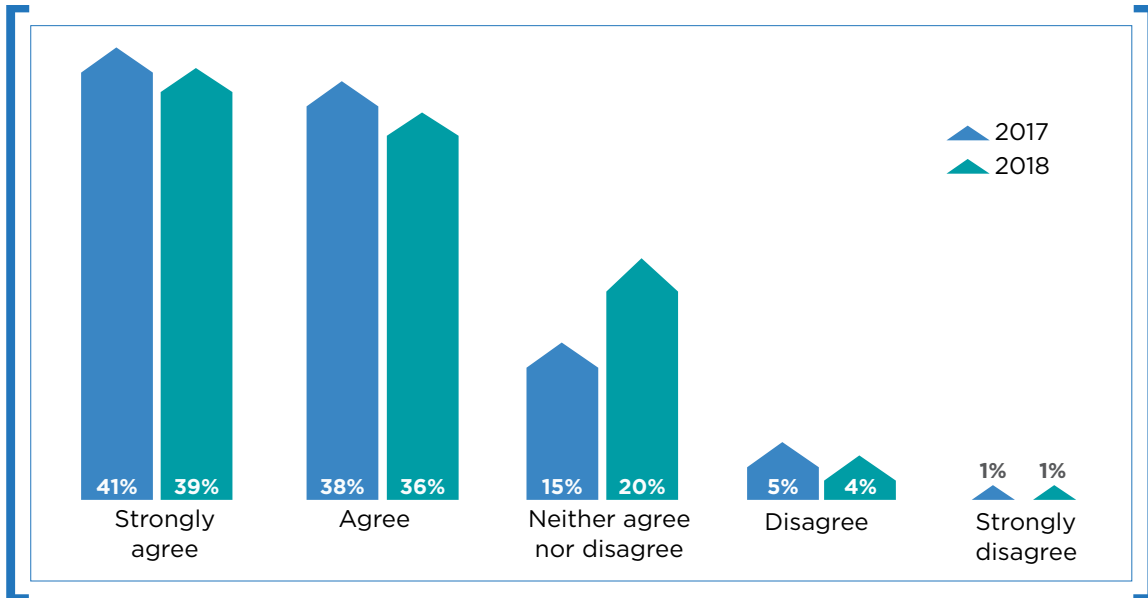
Thirty-six percent of respondents said increased immigration enforcement would be an impactful policy change. The U.S. Immigration and Customs Enforcement's investigative arm began 2018 by increasing worksite enforcement actions with both paperwork audits and arrests – as of March 30, close to 1,900 enforcement actions have occurred. Worksite raids can create a multitude of challenges for employers, from workforce shortages and lost productivity to impaired morale, reputation damage and liability concerns.



Jorge Lopez
*Chair of Littler's
Global Mobility
and Immigration
Practice Group*

“It’s not surprising that the visa process and immigration enforcement emerged as employers’ top concerns. The increased scrutiny being applied to employment visas and rule changes impacting visa programs, which often come mid-stream and without prior warning, make it difficult for employers to plan ahead and manage their workforces. In addition, the increase in worksite enforcement and raids have naturally heightened employers’ focus on worksite compliance issues and properly addressing those concerns.”

To what extent do you agree with this statement: The host of new or amended labor and employment requirements at the state and local levels has created challenges for our organization in complying with a patchwork of rules and regulations.

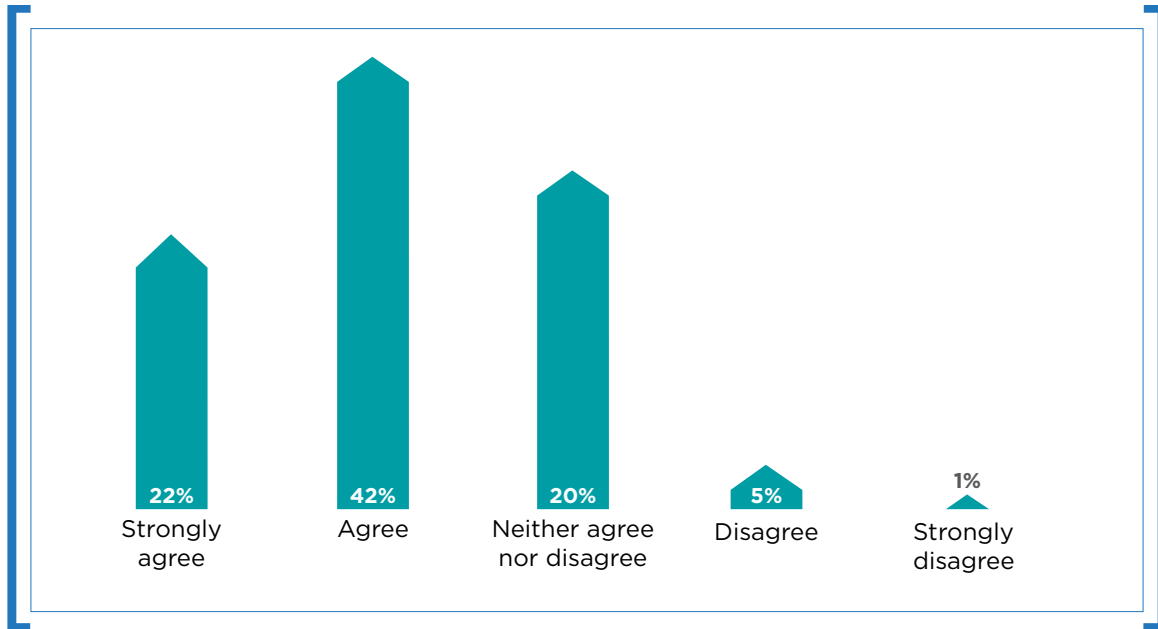


We continue to see a near consensus among employers that a patchwork of state and local rules and regulations creates compliance challenges. Three-quarters of respondents agree or strongly agree with this statement.

State and local governments maintain a furious pace in enacting new workplace regulations, leaving employers to grapple with an increasingly fragmented – and often contradictory – array of employment laws. [Dozens of new state laws](#) were implemented in 2018, pertaining to everything from equal pay and the treatment of pregnant workers to mobile phone use while driving and the protection of Facebook passwords.

In the face of these difficulties, some companies have chosen to universally apply the laws of the strictest jurisdiction where they operate as a preferable option to tracking, complying, training and updating procedures to keep pace with a dizzying collection of moving targets. This approach could explain the small, 5 percentage-point bump in the number of respondents who said they are neutral about the challenges these changes present.

To what extent do you agree with this statement: The frequent and dramatic reversal of workplace policies and regulations with each change in political administration or shift of power in Congress has created a burden for my business.



Very few respondents have been spared the whipsaw effect of rapid, dramatic changes in workplace regulations between presidential administrations. Businesses are clearly reeling from the 180-degree reversal of many rules, initiatives and policies of the previous administration, even as the new administration has been slow to appoint top agency officials and develop new policy positions.

A strong majority of respondents (64 percent) agree or strongly agree that the shifting sands of workplace policies and regulations strain their businesses. Many individual survey respondents flagged the uncertainty this creates for their businesses and the resulting difficulty in making fundamental decisions. “It is difficult to set long-standing, well-thought-out policies when the rules change quickly,” said one respondent.

Several specifically noted the money and resources they devoted to complying with the ACA and new overtime rules, only to have those regulations reversed months later. “We’re spending time and money to comply, then having to spend time and money to reverse it all,” a participant said.

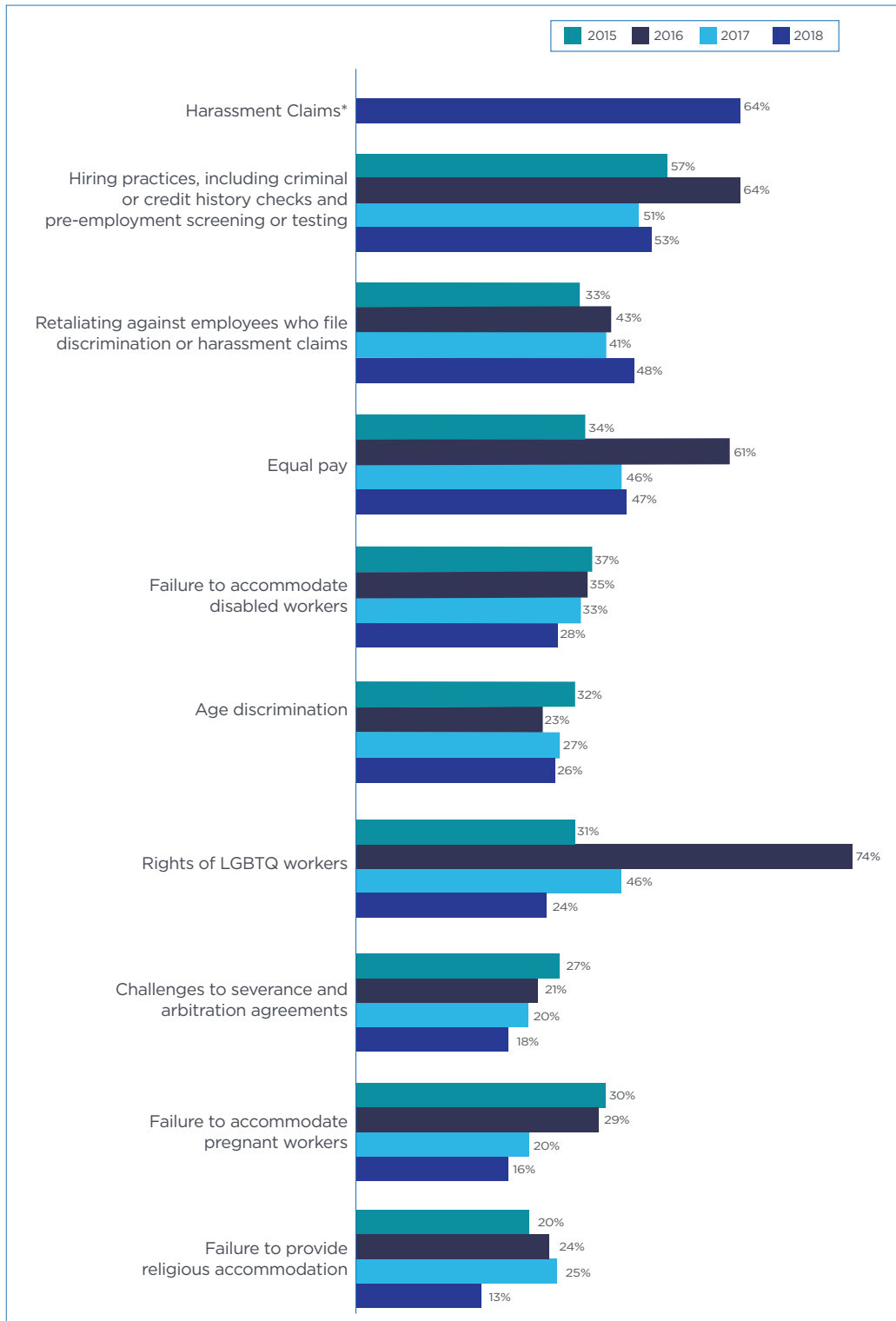
While smaller businesses are burdened by the volume of changes – “Learning and administering changes is difficult with limited resources for a small company,” according to one participant – larger organizations cited struggles with rules that vary among the jurisdictions where they operate: “As a multistate employer, it’s difficult to ensure compliance with all of the state and local laws,” said another. “It inhibits long-range planning, budgeting and related factors.”



Michael Lotito
*Co-Chair
of Littler's
Workplace
Policy Institute*

“Companies want certainty more than anything. The vast majority of employers want to comply with the law and the continuous reversals of federal workplace policy, as well as the increasingly fragmented and sometimes contradictory rules at the state and local level, is an enormous distraction for them. Uncertainty means inability to plan, budget and anticipate, and it requires constantly retraining employees and reformulating employment policies.”

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 before the 2018 survey.

Harassment claims emerged as the area where employers most expect the EEOC to focus its enforcement efforts over the next year. The results echo concerns, expressed elsewhere in this survey, that sexual harassment and the #MeToo movement will continue to impact the workplace. They also align with Littler's 2017 [Annual Report](#) on EEOC developments, which identified attacking harassment in the workplace as a key priority of the Commission. Another key consideration is the impact of the EEOC's emphasis on this issue – as well as the broader cultural shift it has created – on the plaintiffs' bar, which typically follows the lead of the EEOC and can be expected to become more aggressive in pursuing harassment cases. In a related point, roughly half of respondents (48 percent) expect more EEOC action focused on retaliation against employees who file discrimination or harassment claims.

Over the past four surveys, respondents have held steady in flagging hiring practices as an area where they anticipate an increase in EEOC enforcement activity. While the EEOC has settled some of its larger failure-to-hire cases recently, the Commission can still be expected to bring cases involving the consideration of criminal or credit history in the hiring process and pre-employment testing or screening practices.

Nearly half of survey respondents (47 percent) expect an increase in equal-pay claims over the next year. With more pay equity laws going into effect across the U.S., we can expect to see more lawsuits filed under state law. Moreover, pay equity and the ongoing public discussion around sexual harassment share a common thread – the treatment of women in the workplace – making equal pay a natural additional area of focus for discrimination claims.

The percentage of respondents who expect an increase in discrimination claims related to the rights of LGBTQ workers dropped significantly, from 74 percent in the 2016 survey to 46 percent in 2017 to 24 percent this year. This finding is likely less a reflection of the priority employers are placing on the treatment of LGBTQ workers and more of the fact that we now have more clarity in the law. While there may have previously been some ambiguity around whether Title VII of the Civil Rights Act covers discrimination based on sexual orientation, there have since been two significant federal appeals court rulings banning discrimination of LGBTQ employees, and companies are recognizing the importance of implementing best practices regarding this group's rights. With these changes implemented, employers may be less worried about facing lawsuits in this area.

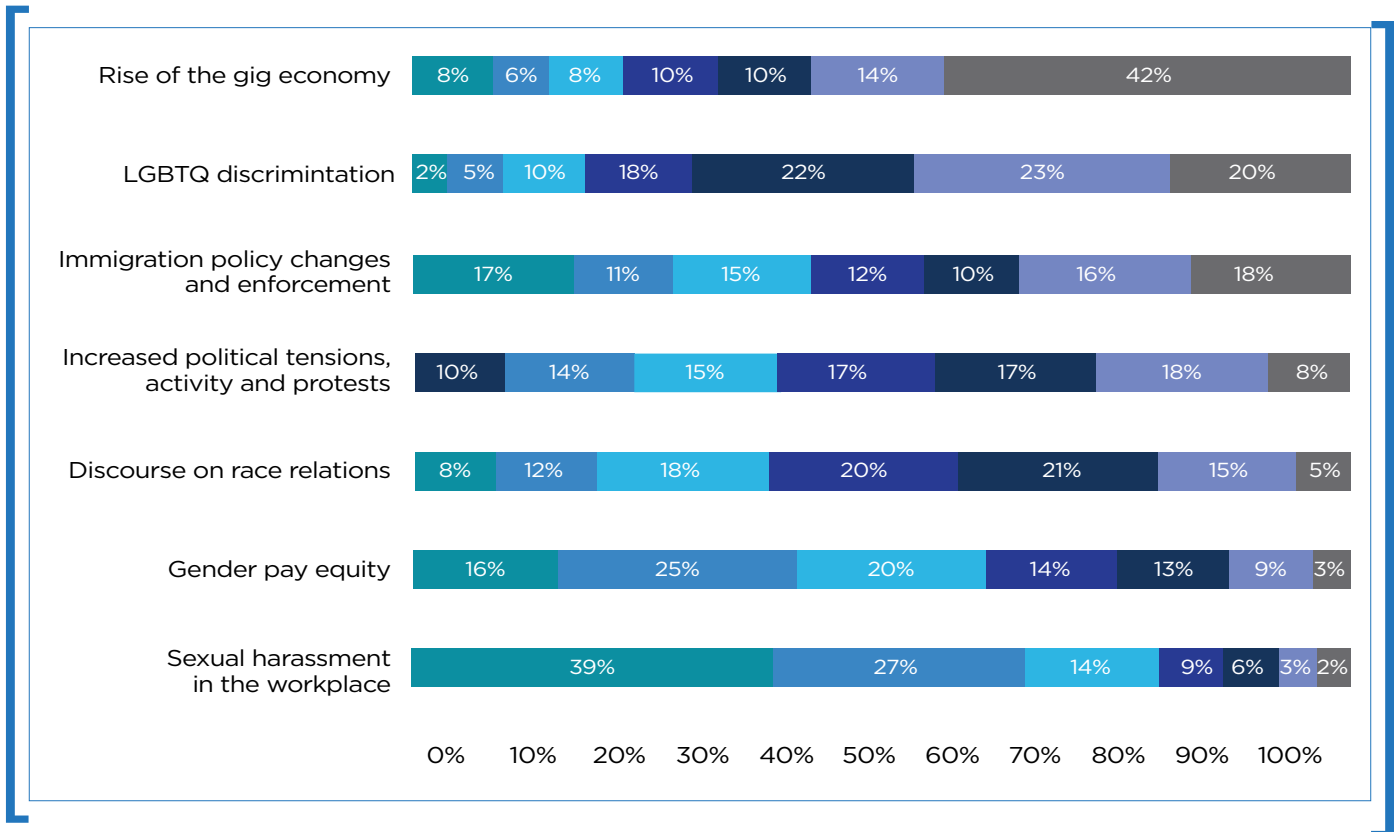


Barry Hartstein
*Co-Chair of
Littler's EEO
& Diversity
Practice Group*

“Employers are right to expect the EEOC to continue to vigorously investigate workplace discrimination claims, particularly harassment claims and other EEOC priorities, regardless of upcoming changes at the Commission with an expected new chair, commissioner and general counsel. With the #MeToo movement and the EEOC's focus on stemming the tide of harassment in the workplace, taking steps to minimize the risk of harassment claims should be a top priority for employers. We also should expect an active plaintiffs' bar threatening and initiating private lawsuits during the coming year based on these developments.”

WORKFORCE MANAGEMENT

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



Among the many headline-grabbing issues swirling through the workplace, sexual harassment emerged, unsurprisingly, as respondents’ principal preoccupation. About two-thirds ranked sexual harassment as the most or second-most concerning workplace issue of the past year, amid a steady cadence of high-profile accusations of misconduct that have left few industries unscathed.

The related issue of gender pay equity was the second-most concerning issue for respondents, with 41 percent placing it among their top two concerns. States and cities across the U.S. are increasingly adopting laws intended to equalize pay between men and women, broadening existing laws and prohibiting employers from asking about salary history, among other transparency measures. The issue also continues to be high on the public’s radar as the gender pay gap persists. According to a U.S. Census Bureau report released in September 2017, women earn 80 cents for every dollar paid to men, and gap is even larger for ethnic and other historically marginalized groups.

Respondents also expressed a great deal of concern about immigration policy changes and enforcement. As immigration rules have tightened under the new presidential administration and it has become increasingly difficult for employers to secure visas for skilled foreign workers, there is a great deal of anxiety around this issue for American businesses.

In response to the increase in sexual harassment accusations and the #MeToo movement, which of the following actions has your company taken over the past year? (check all that apply)



More than half of respondents (55 percent) said they have added training for supervisors and employees in the wake of the #MeToo movement. This very important and basic step helps employers prevent harassment from occurring and ensure that employees understand the company's procedures for reporting complaints.

While 38 percent of respondents have updated human resource policies or handbooks, only 13 percent said they have implemented new tools or investigation procedures to manage employee complaints. These two tactics work best together, so it is surprising to see such a broad differential between them. To truly change the culture and influence employee behavior, it is crucial that companies take the next step of ensuring that employees know what the policies are and that they are encouraged to make complaints about potential misconduct they have experienced or witnessed.

While 24 percent of respondents indicated that they did not make any changes over the past year, that data point may be slightly misleading. There are plenty of organizations that have long been doing this the right way, that have training and updated policies in place and that effectively handle employee concerns. While every company needs to regularly evaluate its guidelines and procedures to keep them timely and relevant, many of the respondents in this category may have done so and determined that no changes were needed.

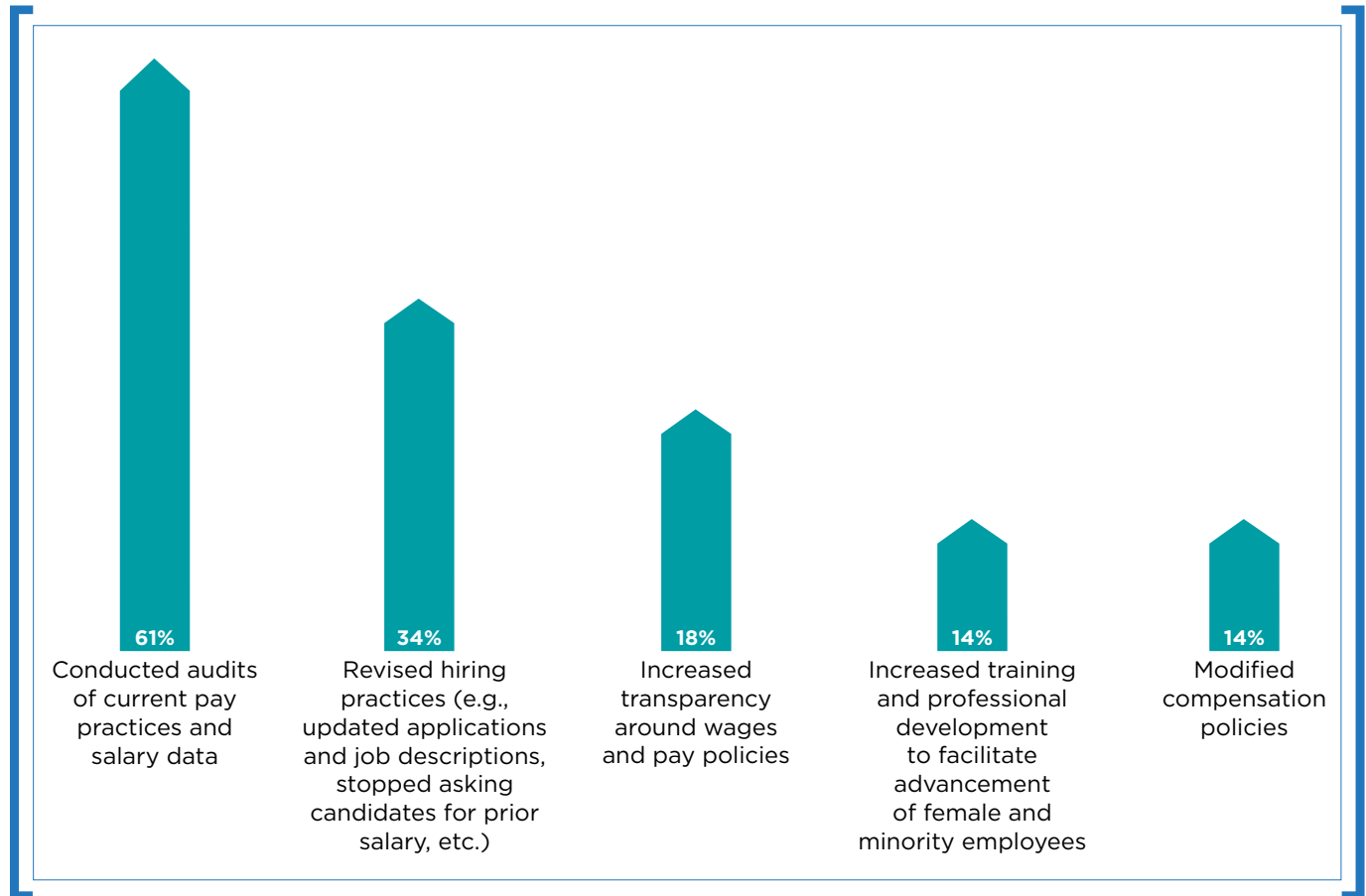
The critical point for all employers to keep in mind is that even though the law hasn't changed precipitously over the past several months, the audience receiving these policies has. In the new #MeToo era, there is great value in communicating to employees that the company takes this issue very seriously and in continuously reinforcing the policies that are in place to provide a harassment-free workplace.



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

“No company can afford to ignore this issue, and while many already have a good foundation, the past several months have shown the importance of reevaluating and reinforcing policies and procedures. While the law governing harassment in the workplace hasn't changed much, employee expectations have. In addition to providing training and updating policies, it's critical that companies have effective complaint procedures in place and that employees feel confident that reports of potential misconduct will be taken seriously and acted upon.”

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)



Clearly, employers are paying attention to gender pay equity as the issue remains top of mind for policymakers, the news media and the public. As concerns about pay inequality continue to intensify, so have the legal and reputational risks for employers.

The majority of survey respondents (61 percent) reported conducting audits of current pay practices and salary data, which is an important starting point to address pay equity in the workplace. The next step is to analyze the results and identify causes and possible solutions to any issues that are uncovered. [The Littler Pay Equity Assessment™](#) uses advanced data analytics to conduct pay equity audits and deliver actionable results that help employers understand the source of any disparities and whether they reflect legitimate business considerations. By conducting audits in a privileged context, the tool also addresses another critical issue for employers: Performing audits internally or through non-legal vendors can open companies up to significant risk by creating information that may later be discoverable in litigation.

Roughly one-third of respondents (34 percent) said they have revised hiring practices, such as updating applications and job descriptions, or ceased asking candidates about prior salaries. Adjusting hiring practices is important in correcting pay imbalances because differences in starting pay are difficult to reconcile later in an individual's employment.

Only 14 percent of respondents said they were modifying compensation policies or taking steps to facilitate advancement of female and minority employees. These data points suggest that many companies may be performing audits but not following through on the findings by adjusting pay practices or ensuring all employees have opportunities for advancement.

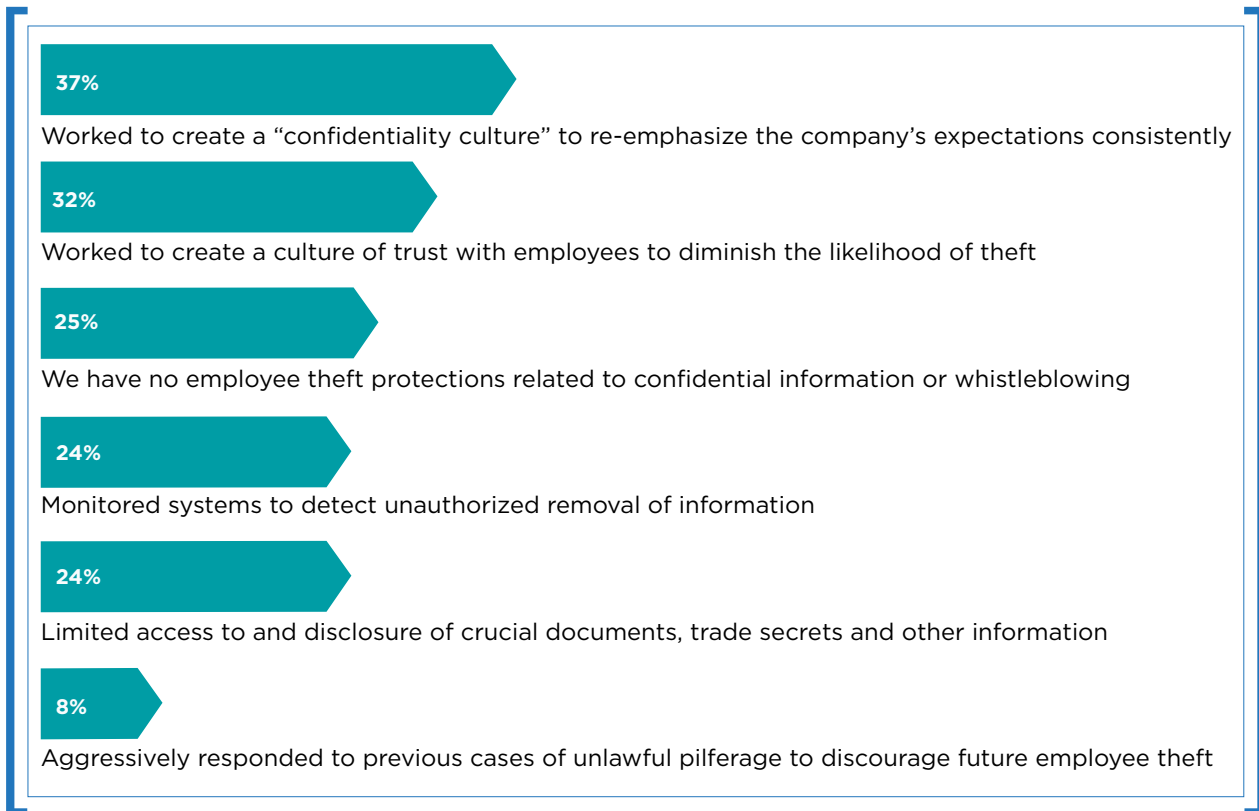
As a final point, proactive employers should be looking beyond gender and examining pay equality for other protected groups. Title VII, the California Fair Pay Act and the laws of other states also address race- and ethnicity-based disparities in pay, and statistics show that pay imbalances are even more pronounced for these groups.



Denise Visconti
*a shareholder
heading the
Littler Pay Equity
Assessment*

“Conducting audits is a critical first step to identifying pay disparities among employees, but with continued attention to this issue and an evolving legal landscape, an audit is just the beginning of addressing pay equity in the workplace. As time goes on, pay disparities only become more intractable, so proactively addressing this issue helps companies mitigate risk and reinforce their commitments to treating employees equally and fairly.”

What steps has your organization taken to respond to an employee taking confidential business information to provide to a governmental agency or for use in a whistleblower action? (check all that apply)



Even as federal protections for whistleblowers have expanded, employers can still take strategic action to protect themselves from employee theft of confidential and proprietary business information.

A substantial portion of survey participants said company culture was a powerful tool in diminishing the likelihood of employees stealing company information for use in whistleblower actions. The top two options selected – consistently emphasizing a “confidentiality culture” (37 percent) and creating a culture of trust with employees (32 percent) – both indicate that an encouraging number of employers understand the importance of creating a culture of confidentiality and trust, along with policies and contracts. Many companies now understand that just rolling out non-disclosure agreements (NDAs) and policies is not enough protection. Rather, it is important to regularly emphasize these policies and NDAs, as well as other information security measures, to ensure employees understand why they are in place.

A quarter of respondents said they had no employee theft protections in place. Others may only have weak or incomplete protections. This result is troublesome because the 2016 Defend Trade Secrets Act (DTSA) now provides civil and criminal immunity to employees who misappropriate trade secret information and provide it to government agencies or to lawyers for the purposes of reporting a suspected violation of law or supporting whistleblower retaliation claims. But, the DTSA's immunity rights are fairly narrow. Thus, to better protect themselves, companies can write NDAs to specifically identify the DTSA's protections, while at the same time protect the company's ability to recover attorney's fees and exemplary damages in a trade secret misappropriation action if the employee has misappropriated trade secret information beyond the DTSA's immunity protections.

Only 24 percent of respondents said they were monitoring their systems for unauthorized information removal. While cloud storage, email and USB drives have made accessing and moving company information almost effortless for employees, these same technological advances have created simple and ubiquitous tools that all employers should be using to monitor and restrict employee access to, and the ability to transfer, confidential business information.

In which of the following areas is your organization using artificial intelligence or data analytics to improve workforce management decisions? (check all that apply)



Recruiting and hiring is the most common way survey respondents are using big data in the workplace. Nearly half of respondents are using some kind of advanced data techniques to add to their workforces. AI and data analytics offer powerful benefits in recruiting and hiring, but employers also have to be wary of potential pitfalls, including ensuring that algorithms used to make employment decisions do not adversely impact a protected group or otherwise give rise to discrimination claims. While employers continue to operate in a legal framework that has not kept pace with technological advancements, new data-rich tools and methods have become part of the daily landscape of human resources. Few guideposts translate seamlessly between the two worlds.

A considerable portion of employers are also using AI and data analytics to guide HR strategy and employee management decisions (31 percent) and to analyze workplace policies (24 percent). By shedding light on how employees work and how they are impacted by the organization's policies or practices, big data can play a useful role in helping employers build a vibrant company culture and more effectively manage their workforces.

The smallest group of participants (5 percent) are using advanced analytics to guide litigation strategy. This response is surprising as there is a great deal of opportunity for companies and their legal counsel to use big data to achieve a sophisticated understanding of a case and build a solid strategy at the onset, while also providing factual context for claims, communications and important actions or events.

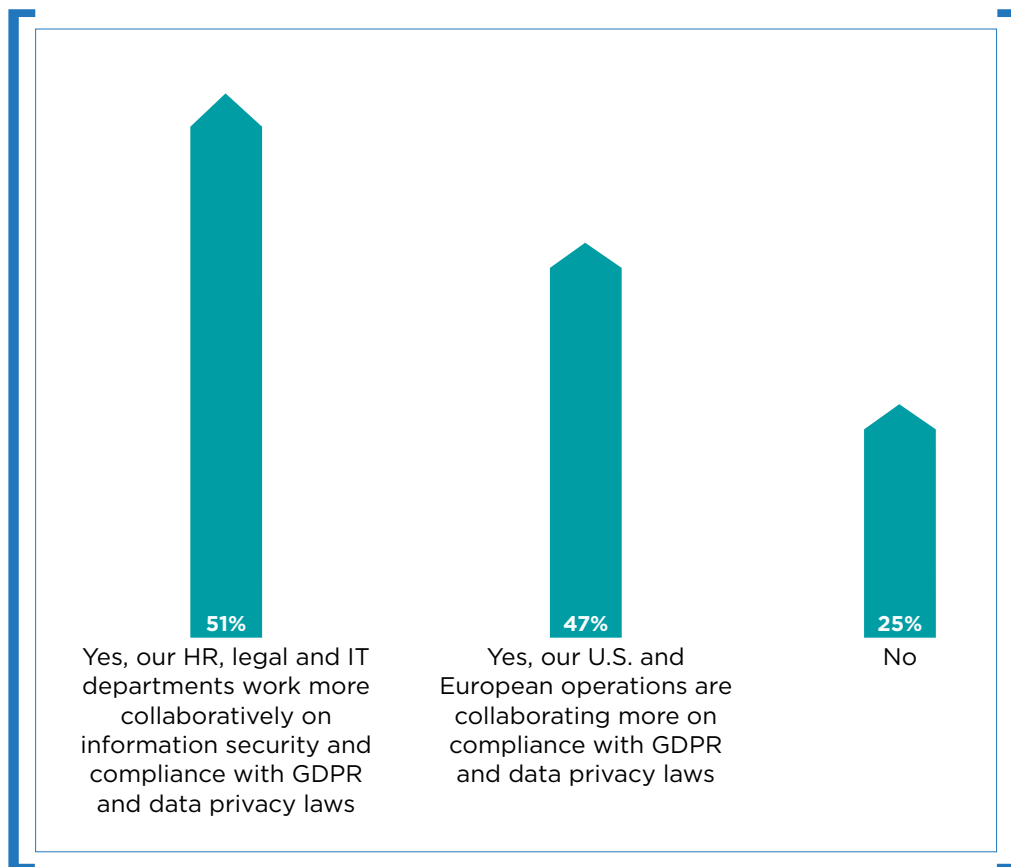


Aaron Crews
*Littler's Chief
Data Analytics
Officer*

“It is encouraging to see employers starting to embrace the many benefits provided by big data in helping manage their most important asset, their people. However, it appears that many employers are not aware of the significant potential to use advanced data techniques to guide litigation strategy. The ability to leverage data early in a case, to tease out insights before you ever take a deposition or begin evaluating the credibility of witnesses, is revolutionary.”

Have international privacy laws, such as the soon-to-be-implemented General Data Protection Regulation (GDPR), impacted the way stakeholders and departments within your organization operate? (check all that apply)

This question was only answered by respondents whose companies have an international presence.



Among respondents whose companies have an international presence, roughly half are collaborating in some manner in preparation for the [GDPR](#), which becomes enforceable on May 25, 2018. However, given the cross-functional teams needed to effectively comply with the GDPR's requirements, it is surprising that the degree of collaboration among this cohort is not higher.

The largest portion of employers (51 percent) reported that their human resources, legal and information technology departments are working more collaboratively. GDPR is a comprehensive regulation that addresses a combination of legal, operational and information security requirements. In order for any U.S. multinational company to fully address compliance, it will need the support of the key departments responsible for handling EU personal data, including HR, legal and IT, as well as any leaders of business units responsible for collecting consumer data.

Nearly half of respondents (47 percent) reported closer collaboration with European operations to achieve compliance. Collaboration with EU leadership is critical for U.S. multinationals as it's more likely to result in policies and procedures that truly reflect the operational reality in Europe and meet the concerns of both EU managers and line employees. When the U.S. operations lead the compliance effort without involving their European counterparts, it can lead to mistrust from EU leadership based on the fear that they will be exposed to penalties if the organization is not in compliance. And that fear is understandable when the steep penalties are considered: up to 4 percent of a corporate group's worldwide gross annual revenue for most violations.

METHODOLOGY AND DEMOGRAPHICS

In February and March of 2018, 1,111 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 (58 percent)
- In-house attorneys/corporate counsel (34 percent)
- C-suite executives or other professionals (8 percent)

Companies represented were of a variety of sizes:

- More than 1,000 employees (49 percent)
- 500 to 1,000 employees (11 percent)
- 100 to 500 employees (29 percent)
- 25 to 100 employees (11 percent)

Respondents identified the size of their legal departments as:

- 1 to 5 in-house attorneys (65 percent)
- 5 to 10 in-house attorneys (15 percent)
- More than 10 in-house attorneys (20 percent)

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

- 1 attorney (58 percent)
- 2 to 5 attorneys (36 percent)
- 5 to 10 attorneys (4 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)
- \$100,000 to \$500,000 (29 percent)
- \$500,000 to \$1,000,000 (11 percent)
- \$1,000,000 to \$5,000,000 (10 percent)
- More than \$5,000,000 (4 percent)

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