

This is your new

Employment Law Yearbook 2014

**by Orrick, Herrington & Sutcliffe LLP
Global Employment Law and
Litigation Practice Group**

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Employment Law Yearbook 2014 provides a review of developments in employment law from the past year, including case decisions, legislative changes, government agency actions, and other events of interest to employers, and offers practical steps employers can take to minimize their risk and to comply with the law.

Chapter 1	Wage-and-Hour Issues
Chapter 2	OFCCP Developments
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Chapter 14	Arbitration

A **Table of Cases** and **Index** are also included to assist in your research.

Throughout 2013, employers witnessed significant changes affecting the workplace and employees, including:

- Tremendous changes for the **Office of Federal Contract Compliance Programs**—revised regulations regarding veterans and individuals with disabilities; an increased focus on tackling **equal pay**; new directives on

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- compensation, **criminal background check policies**, and **backpay remedies**; and a new *Federal Contractor Compliance Manual*. See chapter 2.
- An increase in the number of states legalizing **same-sex marriages** and recognizing same-sex marriages for federal employees. As a result, employers have begun to grapple with the consequences on **spousal benefits for employees**. See chapter 3.
 - Continued grappling with the articulated “but for” standard required for proving **disparate-treatment cases under the Age Discrimination in Employment Act**. Although many predicted the demise of age discrimination claims after the Supreme Court’s 2009 decision in *Gross v. FBL Financial Services*, EEOC charge statistics for 2013 suggest that such predictions were unfounded. See chapter 5.
 - Reinvigorated enforcement priority by the Equal Employment Opportunity Commission for **investigating and litigating systematic discrimination lawsuits**, defined as “pattern or practice, policy, or class cases where the alleged discrimination has a broad impact on an industry, occupation, business, or geographic area.” The EEOC’s aggressive focus is a reminder to employers to review their ADA-related policies and consider whether they are overly restrictive. See chapter 7.
 - The first lawsuits by the EEOC against employers under the **Genetic Information Nondiscrimination Act**. As a result, employers should be ever vigilant to guard against asking job applicants for information on their family medical history, including requiring applicants to submit to physical exams that include routine medical questionnaires that inquire about family medical history. See chapter 8.
 - Intense scrutiny by the National Labor Relations Board and its Office of General Counsel of employers’ **blogging, social media, and communications policies**. While employers may have an incentive to limit employee usage of social media where it relates to their employment, they should be careful to craft policies in a way that avoids unlawfully suppressing protected activity and inadvertently causing the employer to contravene section 7 of the NLRA. See chapter 12.
 - Changes to the Department of Labor’s **FMLA regulations** (effective March 8, 2013) necessitated by the National Defense Authorization Act of 2010 and the Airline Flight Crew Technical Corrections Act; revisions to DOL Fact Sheet “Qualifying Reasons for Leave under the Family and Medical Leave Act,” redefining “spouse” as “a husband or wife as defined or recognized under state law for purposes of marriage in the state where the employee resides, including ‘common law’ and **same-sex marriage**.” See chapter 13.
 - The U.S. Supreme Court’s decision in *American Express Co. v. Italian Colors Restaurant*, holding that the Federal Arbitration Act does not permit courts to invalidate a **contractual waiver of class arbitration** on the grounds that the plaintiff’s costs of individually arbitrating a federal statutory claim exceed the potential recovery. The eighth pro-arbitration Supreme Court decision since 2008, *Italian Colors* reinforces the **supremacy of the FAA over any state laws** seeking to single out arbitration clauses and void their operation. See chapter 14.

Practising Law Institute is proud to publish *Employment Law Yearbook 2014*. If you have any comments or questions, please contact us (see **QUESTIONS ABOUT THIS BOOK?** on the page following the title page).