

## TRENDS AND INNOVATION

# Buckle Up for 2021: 4 Compliance Trends to Watch



by Paul McCormack

*Businesses must understand the compliance trends with the potential to shape 2021.*

In a matter of months, COVID-19 upended the business world and forced organizations to make seismic shifts in their daily operations. While most executives hope the next year will bring better fortune, businesses can't lose sight of emerging compliance trends with the potential to shift the operating environment in 2021.

How will the legal and compliance landscape evolve, and what can businesses do to anticipate those changes? Two legal experts at ADP — Stacy Williams, Senior Counsel, Global Compliance and Ellen Feeney, Vice President, Counsel — identified four trends to watch in 2021.

## 1. Change in the workplace accelerates

"COVID accelerated some of the changes we were starting to see pre-COVID, including working from home and the growth and evolution of the gig economy," says Williams. She points to the

passing of California's Proposition 22, which created a hybrid worker status between employee and independent contractor, as an example of how the landscape changed in 2020.

While Williams acknowledges that there is promising news regarding a vaccine for COVID-19, she predicts that it might take up to six months for it to become widely available. Even then, employers will face some challenging questions.

"Employers are going to have to grapple with employees who balk at getting the vaccine. Can an employer require it?" asks Williams. She notes that employers will also need to accommodate religious beliefs and health conditions that may affect employees' ability to get the vaccine.

With respect to working from home, Feeney recommends that employers pay close attention to the guidance from [local, state and federal officials](#). "Look to that guidance to figure out the appropriate return-to-office strategy and how to keep employees safe and productive," she says.

## 2. Employee leave programs may accelerate

While making it safe for employees to enter the workplace is an important goal for many employers, providing employees with time off to recover from such a trying year is also an important consideration. Also, as COVID-19 lingers, some employees will continue to need to take time off to take care of themselves and their family members.

*"Being proactive in this environment means being nimble and recognizing you're dealing with a very fluid situation. Business leaders have to recognize that good compliance is good for business. You're not just trying to check the box."*

- Ellen Feeney, Vice President, Counsel, ADP

While the [Families First Coronavirus Response Act \(FFCRA\)](#) provides some employees in the private sector with the ability to take paid leave for certain reasons tied to COVID-19, the act sunsets on December 31, 2020, barring an extension. Before the pandemic and throughout its duration, some local and state governments have established paid leave provisions, and if the FFCRA expires, we will likely see even more paid leave programs that allow employees to step

away from their work commitments. In response to COVID-19, some jurisdictions have enacted entirely new paid sick leave laws, some existing laws have been amended, and there also has been some general guidance issued regarding how existing paid sick leave law applies in light of COVID-19.

### 3. US legal and compliance shifts

With the change of presidential administration beginning in 2021, employers should expect some very [substantial policy changes](#). The next administration will be very active, and employers will see a shift in some of the policies championed by the outgoing administration. Every change in administration generally brings policy changes and different areas of focus. One of the main areas of focus for the Biden administration is COVID-19 and economic recovery so expect new stimulus measures and new CDC and OSHA guidance concerning workplace safety.

As a specific example, the proposed DOL test for determining who is an independent contractor and who is an employee under the FLSA may be modified or abandoned.

There will be more regulatory activity related to the workplace, such as increased efforts to improve pay equity. The changes to the [EEO-1](#) report to include pay data for the 2017 and 2018 reporting years are expected to be revisited and possibly reinstated by the Biden administration.

"We expect to see a pivot to be more in line with Obama administration priorities and policies but not necessarily a replica of the Obama era," says Feeney. She notes that the extent of the changes under the new administration and what is possible legislatively depends on the Georgia Senate run-off race, as control of the Senate has enormous implications for the legal and compliance environment businesses will face. However, businesses cannot overlook changes in the compliance and legal landscape from beyond Washington.

"Even if we continue to see legislative gridlock on the federal level, state and local governments will continue to be active. We would definitely expect to see that continue or even accelerate," says Feeney.

### 4. Work from home complicates compliance overseas

With millions of employees working from home, [achieving compliance](#) with laws and regulations overseas — particularly those that limit working hours — will require careful consideration.

For example, in France and Spain, there is the "right of disconnection," which enables employees to disconnect from their employers' technology after normal work hours. With employees working from home, adhering to this policy requires walking a fine line between achieving compliance and not alienating employees for leaving the virtual office when they deem appropriate.

"Since employees are working remotely, they may move their physical location, and that may create problems related to taxes and compliance with local laws," says Williams. To that end, employers might want to create policies requiring employees to receive permission before they relocate across borders, or at least notify their employer of their intent to do so.

Compliance will always matter

While much remains unknown about the 2021 operating environment, businesses cannot wait for a clearer picture of compliance demands to present itself. Instead, they must continue to evolve their policies and [give their employees](#) as much advance notice as possible about changes that could affect how and where they work.

Compliance starts at the local level and requires subject matter experts with [knowledge of the compliance landscape](#) and how it might evolve.

"Being proactive in this environment means being nimble, and recognizing you're dealing with a very fluid situation," says Feeney. "Business leaders have to recognize that good compliance is good for business. You're not just trying to check the box."

While it's difficult to predict the future, organizations that account for current and emerging compliance trends can better position themselves to meet tomorrow's challenges head on.

*Learn more*

Compliance Buyer's Guide - [Download this guidebook](#) to learn about strategic compliance solutions across the employee lifecycle.

Beyond the Curve: Guide to Getting Back to Work - [This guidebook](#) includes information about compliance challenges and others as your organization adjusts to the new world of work in light of COVID-19.

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