

Megan M. Biro: [00:00](#) On today's episode of WorkTrends, we're talking about the dangerous gaps that could put your business at risk.

Megan M. Biro: [00:08](#) Today's episode is sponsored by PosterGuard.

Megan M. Biro: [00:20](#) Welcome to the WorkTrends podcast from Talent Culture. I'm your host, Megan M. Biro. Every week we interview interesting people who are re-imagining work and join us on Twitter every Wednesday, 1:30 PM Eastern using the hashtag WorkTrends.

Megan M. Biro: [00:37](#) Guess what, everyone? Today we're talking about labor law, the important regulations that HR leaders need to know.

Megan M. Biro: [00:44](#) Before I dive in with today's guest, let's take a deeper dive at a series of laws regarding a topic I'm always kind of checking out: equal pay. [inaudible 00:00:55] Federal Bills that are literally stuck in the Senate, including the Paycheck Fairness Act. But, the good news is we are seeing forward progress on pay equality. 11 states have a pay equality law going into effect this year, so that's cool, right?

Megan M. Biro: [01:13](#) Bloomberg law has a great map that shows you where these laws are rolling out. The states impacted are all across the country from Hawaii to Alabama, so that's pretty cool. Let's dig deeper on the labor laws you need to know with today's guest.

Megan M. Biro: [01:34](#) Shanna Wall is a compliance attorney, kind of fancy, huh? at PosterGuard.

Megan M. Biro: [01:40](#) Welcome to WorkTrends, Shana.

Shanna Wall: [01:42](#) Thank you, Megan. Thanks for having me today.

Megan M. Biro: [01:44](#) You got it. Where are you calling in from?

Shanna Wall: [01:46](#) I am in near Fort Lauderdale, Florida.

Megan M. Biro: [01:49](#) Oh, sweet.

Shanna Wall: [01:51](#) Yes.

Megan M. Biro: [01:51](#) Rumor has it you didn't get much sleep last night, is that right?

Shanna Wall: [01:55](#) Oh, I haven't been getting sleep for about five and a half months now. I've got a newborn at home, so ...

Megan M. Biro: [02:00](#) Nice!

Shanna Wall: [02:02](#) Thank you.

Megan M. Biro: [02:03](#) Is it worth it?

Shanna Wall: [02:04](#) Absolutely, every sleepless minute.

Megan M. Biro: [02:06](#) Nice. Well we're excited you're here. I'd love to hear a little bit about your background first. How did you get interested in employment law?

Shanna Wall: [02:14](#) Oh, wow. Okay. Well, I guess it really kind of started with my first legal job as a law clerk. My first firm that I worked for, we handled some FLSA claims and I did a lot of the legal research on the topic. As a clerk that's kind of what you do, a lot of research.

Shanna Wall: [02:32](#) Then I'd say my interest kind of expanded when I became a small business owner. I had my own firm so I really had to pay attention and understand employment and labor law issues from the FLSA side but also even down to the minute details that you would find in handbooks, for example.

Megan M. Biro: [02:47](#) Mm-hmm (affirmative).

Shanna Wall: [02:48](#) Yeah, even though our law firm focused on contracts and property damage issues, actually running the business and handling those employment issues was really my favorite part of being a small business owner.

Megan M. Biro: [02:58](#) Really?

Shanna Wall: [02:59](#) Yeah.

Megan M. Biro: [03:00](#) Are you being serious with us, because I'm-

Shanna Wall: [03:01](#) I am.

Megan M. Biro: [03:02](#) ... like there's so many other things.

Shanna Wall: [03:04](#) Yeah, I know. I like the administrative side of it. I know.

Megan M. Biro: [03:08](#) Well listen, PosterGuard recently put out a list of 10 dangerous gaps that could put your business at risk. What are some of

those gaps that are top of mind for you? I know you've got a whole bunch of things there.

Shanna Wall: [03:20](#) Oh, yeah. That list of 10 is really good. But I think three really come to my mind.

Shanna Wall: [03:26](#) First and foremost I would say focusing only on those Federal and State level postings, and the reason why this one's top of mind for me is because we are seeing more and more city and county level posting requirements. So mandatory postings at the city level include topics like your minimum wage, anti-discrimination, sexual harassment, fair chance, there's a bunch, living wage and sick and leave law, for example. And employers have to post the city and county level posters along with any of their mandatory Federal and State level as well.

Shanna Wall: [04:00](#) This is true even if you would think that the posters conflict with each other. For example, like with the minimum wage posters, chances are if you're in an area that has three different minimum wage posters, your Federal and then your State and then your local, that they're all going to be three different numbers, but you have to post all three even though the highest number is the one that's actually going to be applicable to that employer.

Megan M. Biro: [04:20](#) Okay. You just said two words that are standing out to me: fair and chance. What is this? Talk to our audience about it.

Shanna Wall: [04:29](#) Fair chance, you know, there's different types of fair chance, but a lot of laws now are these ban the box laws that we're seeing. A lot of those are called the Fair Chance Laws as well. But those mostly have to do with job applications, for example, that employers can't ask about criminal history until a point in the application process.

Shanna Wall: [04:45](#) For example, you can't ask it on a job application. You can't ask it in a job interview until you actually make a conditional offer. So those are a lot of the fair chance ones. But there's different versions of it, but that's kind of the gist of it.

Megan M. Biro: [04:58](#) And does that matter state by state, or is this US? Or talk to us about how where you live affects some of this stuff.

Shanna Wall: [05:07](#) Well where you live is going to affect all these laws, really. Federal is just kind of your baseline laws, but then State and local levels really get down to the nitty-gritty and they actually

expand in areas where your Federal laws aren't really covering right now, especially, I'm sure we'll get into it later, like paid sick leave laws, things like that.

Megan M. Biro: [05:24](#) Well let's talk a little bit about remote work because we're all moving in that direction rapidly. What do HR leaders need to know about being in compliance when their workers aren't in the office?

Shanna Wall: [05:36](#) Remote work, obviously that's a very popular trend and we're seeing many factors actually contributing to this trend such as your changing workforce and the use of technology, for example.

Shanna Wall: [05:47](#) But the posting requirements are actually remaining the same. The laws here are going to require that you notify all employees of their rights, and that includes employees who work remotely. So all employees have to have access to mandatory notices and postings, and I'm not just talking posters, but there's also mandatory notifications that you have to provide in written form to your employees as well.

Shanna Wall: [06:08](#) And it gets confusing for employers on actually how to provide these notices to your remote workers. So the DOL, the Department of Labor, has recently clarified that the electronic postings are compliant solutions for remote workers if they have computer access. And they even further clarify that employees who come into the office less frequently, say three or four times a month or less, should have those posters provided to them in an alternate format such as the electronic posters.

Shanna Wall: [06:37](#) So the bottom takeaway here, I would say if you do have remote workers that don't come into your office or barely come into your office, you need to make those notices available via email or internet in some kind of electronic format that can be accessed by your employees if they had that computer.

Shanna Wall: [06:53](#) So as a best practice I would also track their acknowledgements that they have received those notices so you have proof that the employees were actually provided access to those postings.

Megan M. Biro: [07:03](#) I'm not hearing mobile phones in this equation. Talk to us about mobile and how it plays into some of those.

Shanna Wall: [07:09](#) If you send your postings via email then obviously you can open those through your phone as well. But it's basically just electronic formats.

Megan M. Biro: [07:17](#) Okay. So that includes what? How are you defining electronic?

Shanna Wall: [07:21](#) Well it's just going to be like you would send it through a PDF or something. You could even have it, like if they have access to an intranet, a company site, things like that.

Megan M. Biro: [07:30](#) And it doesn't matter what size organization you are for some of these laws around remote work?

Shanna Wall: [07:35](#) Right. If the employees are required to get the notice, they have to get the notice and that's not going to depend on the size of the employer.

Megan M. Biro: [07:42](#) Cool. And I've got a couple of people asking me, they're whispering in my ear PosterGuard, why the name? How does this relate to your business?

Shanna Wall: [07:50](#) What we try to do is protect the employer and keep them in compliance. That's our number one goal. And so we're guarding you in compliance and obviously the bulk of our business is providing these posters. And again, like I said, also we're adding those mandatory handouts. We have services for those as well.

Shanna Wall: [08:09](#) But basically our goal is to keep all employers in compliance and keep up-to-date with the latest requirements that they may have, whether that's federal, whether that's state or city and local.

Megan M. Biro: [08:18](#) So you're pretty busy, huh?

Shanna Wall: [08:20](#) Oh, I'm swamped. Very, very busy.

Megan M. Biro: [08:25](#) And do you just work in the US or globally?

Shanna Wall: [08:27](#) Oh, we handle the US territories and we also do a little bit of postings for Canada as well.

Megan M. Biro: [08:34](#) So you know what's coming next. If you're out there in the audience and you're on Twitter or Instagram or wherever you're tuning in to being social these days, we know there's been a lot of conversation lately about social media at work, how much

employers can control or monitor what you're saying on social media.

Megan M. Biro: [08:54](#) So what do we need to know about social media and the law right now, like as of today, because I know things are continuing to evolve.

Shanna Wall: [09:02](#) Yeah. Well, what I would say is employers really need to get to know the NLRB's position on this. That's the National Labor Relation Board, because they're really the ones that are guiding the social media policies right now.

Shanna Wall: [09:17](#) So what employers might see as a common sense social media policy that where they're trying to protect their company's reputation and confidential information can actually violate an employee's Section 7 rights, and NLRB has ruled against several employers' social media policies for actually being too broad and chilling the employees' legally protected speech. The board has held the position that a social media policy is unlawful if it can reasonably be construed to interfere with rights under the NLRA.

Shanna Wall: [09:50](#) But recently, like you said, we've got to keep apprised of this because it seems that the NLRB is actually softening their position a little bit, as they are with some of their other rules as well, but now they're looking to make it a little bit more employer friendly by weighing the legitimate employers' justifications for the reason for those policies against any potential restrictions on the employees' NLRA rights.

Shanna Wall: [10:14](#) So what I would say for employers that are wanting to install some of these policies, really give as much detail and context and examples of whatever communications that you're prohibiting, because you want to show that your scope is limited and not too over broad.

Shanna Wall: [10:29](#) And some employers might think just putting a simple disclaimer at the end of their policy that it's not intended to prohibit communications that might be protected. Just be aware that that might not be enough to actually save an unlawful policy. So you want to be specific and clear in your clause as well.

Megan M. Biro: [10:46](#) Okay. So I think the audience probably right now wants to hear some case studies from you. Can you give us some real life examples? You certainly don't have to name names if you're not

comfortable. Why are they starting to soften on this a little bit, in your opinion?

Shanna Wall: [10:59](#) Honestly, I don't really have any case studies other than the NLRB releases some general counsel memos and they actually tell you what company's policy says and why they deemed it unlawful. So without actually having those in front of me, I don't have them off the top of my head.

Shanna Wall: [11:18](#) But I think that we're seeing them soften because with the change of administration then obviously you're getting the change of the political party into the NLRB as well and I think that's where you're seeing some of the shifts are becoming more pro-employer across the board here, whether that's the Department of Labor or the NLRB. So I think that's where we're seeing the softening come from.

Megan M. Biro: [11:39](#) And you're saying this has really happened since Trump has been in office?

Shanna Wall: [11:42](#) Yeah, I would say it's definitely an administrative, a shift in priorities.

Megan M. Biro: [11:46](#) Is there a social media platform that you think is particularly, I don't know the right word, dangerous for employers?

Shanna Wall: [11:55](#) I think any of them could be, but obviously Twitter, because with those, you know, the short number of characters that could get people in trouble, you hit Send without thinking, so those are things you have to be on the lookout for, yeah, for sure.

Megan M. Biro: [12:07](#) Do you use social media yourself?

Shanna Wall: [12:09](#) Very, very little.

Megan M. Biro: [12:10](#) Aha! Why am I not surprised by that answer?

Shanna Wall: [12:16](#) Yeah, I keep it strictly to mostly friends and family that want to see pictures of my children.

Megan M. Biro: [12:21](#) Got it. Okay. And do you consider ... I had this conversation with somebody else earlier this week. I am wondering, LinkedIn. Do you see that from your POV? Number one, are you using it?

Number two, some people consider LinkedIn to be social media. Do you?

Shanna Wall: [12:39](#) I would say LinkedIn is definitely social media. You're connecting with other people in an environment, but obviously it's more business-oriented. But its stuff, I'd definitely consider that social media, yes.

Megan M. Biro: [12:51](#) Yeah, because there's still people saying kind of stupid silly stuff there, huh?

Shanna Wall: [12:58](#) I don't see it too often because I think most people try to keep it pretty professional on there.

Megan M. Biro: [13:02](#) Uh-huh (affirmative). You're not on my LinkedIn then, because it's the Wild West. I'm like, "Wow, you said that!"

Shanna Wall: [13:09](#) Yeah, I know. A lot of mine are business owners that I'm connected with, so yeah.

Megan M. Biro: [13:14](#) So we want to hear about brand new regulations. What's poppin? What are some changes that employers might not realize right now?

Shanna Wall: [13:23](#) I would start with discrimination and harassment laws. We're seeing a lot more regulations based on having to train your employees. So we're seeing states like California and Connecticut, they've already had some training requirements, but what we're seeing for them is they're actually reducing the number of employees, like the threshold, so it covers more employers and more employees.

Shanna Wall: [13:44](#) For example, the current law in California is employers with 50 or more have to train supervisors. Well, now they've changed the law to going forward they're going to have to, employers with five or more employees instead of 50 or more actually are going to have to train all of their employees not just their supervisors.

Shanna Wall: [14:02](#) So that's some trends that we're seeing, and they have to give written policies in some places, and we're even seeing that down at the city level, like New York city, for example, that they have their own discrimination and harassment requirements for training and policies and thing likes that.



Shanna Wall: [14:18](#) Actually, New York and California, two big states, of course, are actually leading the way on a new trend that I see maybe taking off, and that's prohibiting discrimination based on hairstyles.

Megan M. Biro: [14:29](#) Really!

Shanna Wall: [14:29](#) Yeah, so what they're doing is basically redefining their protected class of race to include traits historically associated with race such as hair texture and protective hairstyles.

Shanna Wall: [14:42](#) We're also seeing that in New York as well with religion. Now you cannot discriminate based on religious attire and facial hair, if you have the facial hair for religious reasons, things like that.

Shanna Wall: [14:52](#) Those laws are brand new. I don't know that they're fully implemented yet, but they're definitely really close to being effective on that.

Shanna Wall: [15:02](#) We're also seeing paid time off. I'm sure a lot of people have heard, you know, I have paid sick days, or my state's got paid family and medical leave. But now we're actually seeing a couple of states take off with paid time off for any reason.

Megan M. Biro: [15:13](#) Meaning, what?

Shanna Wall: [15:16](#) Meaning, "Hey, it's a sunny day, I want to go to the beach. I've got so many days of paid time off I'm going to take one." And those two states are Nevada and Maine, actually.

Megan M. Biro: [15:25](#) Really.

Shanna Wall: [15:25](#) Yeah. Those laws are going to go into effect in 2020 and 2021 respectively. So that might be something we see take off as well.

Shanna Wall: [15:34](#) Oh, and then of course smoking. Making the national headlines right now are all these vaping deaths. I think last count we're up to like six, maybe.

Megan M. Biro: [15:42](#) And growing.

Shanna Wall: [15:43](#) Yeah, and so some states, and even before these made national headlines we were seeing a lot of smoking laws starting to include vaping and the use of e-cigarettes inside the workplace. They're banning those inside the workplace.

Megan M. Biro: [15:57](#) Already. So they're getting ahead of it.

Shanna Wall: [15:59](#) Yeah. They started that before this actually started making national news, but I think now we're going to see even more and more states take over on that.

Shanna Wall: [16:07](#) And then of course the medical marijuana, too. They're starting to incorporate that into their no smoking laws as well.

Megan M. Biro: [16:13](#) Shanna, what states are leading the way around vaping?

Shanna Wall: [16:18](#) Oh, a lot of states actually, like I said, have already started including it. I know recently even Oklahoma included. I think they changed some of their laws there, and then Florida has added e-cigarettes as well.

Shanna Wall: [16:29](#) I don't know the other ones off the top of my head. There's so many laws it's hard to keep track of which states have which.

Megan M. Biro: [16:34](#) There you go. You're busy.

Shanna Wall: [16:36](#) Yeah, but I know I just updated Oklahoma. Oklahoma might actually have been one on the medical marijuana one. I'd have to double-check on that as well.

Megan M. Biro: [16:44](#) What is it stating around medical marijuana specifically?

Shanna Wall: [16:48](#) They're basically just saying that you can't smoke it in the workplace, is the gist of it. [crosstalk 00:16:54].

Megan M. Biro: [16:54](#) Can you eat it? Can we do edibles?

Shanna Wall: [16:57](#) In states that actually have medical or recreational legalization of it, it would probably be up to the employer to make their policies what they want to do, unless there's some other kind of ban that they might be applicable, such as if it's a security position of some sort, things like that that require an absolute no drug policy.

Shanna Wall: [17:16](#) And even in the States, some employers still have a total drug-free workplace just because of workers comp laws and things like that, if they want to get workers comp discounts and things that might actually be required as well.

- Megan M. Biro: [17:27](#) So, Shanna, as we look ahead into 2020, what are your predictions about how the law around employment will change?
- Shanna Wall: [17:34](#) I don't know so much is change, but like continue, for example. I really think we're going to continue to see more state and local laws being passed, especially when the federal laws are remaining unchanged for the most part, and that's with your minimum wage, your paid time off, things like that.
- Shanna Wall: [17:51](#) I think that's really going to cause nightmare for these larger employers that especially have employees in different locations, whether it's different states or even different cities because, for example, take Texas. They have three cities that passed some paid sick leave. I know some of them are actually being held off right now because they're being fought in the courts, but that potentially they could have three different cities.
- Shanna Wall: [18:13](#) So if your employer has employees in those three different cities, you're going to have to know all three of those laws and that is going to be the same across the board like if you're talking minimum wage, all those kinds of things. So it really causes a nightmare for employers to stay up-to-date on all of those requirements.
- Megan M. Biro: [18:28](#) And let me just ask you this, and it doesn't matter if you're remote or not in that instance?
- Shanna Wall: [18:34](#) It's going to depend on how the actual law is written, because some laws are going to say employees in this state or ...
- Shanna Wall: [18:41](#) For example, if you're have a company that's out on the East Coast, your headquarters are in the East Coast but you have a remote worker in California, most of California laws are probably going to apply to that remote worker in California. It's going to be very specific to how the law's actually written, so you're going to have to pay attention to that.
- Shanna Wall: [18:56](#) So it's kind of hard for me to say across the board. Absolutely it's going to apply, but you really have to pay attention to actually how the laws are written on those.
- Megan M. Biro: [19:03](#) Shanna Wall, thanks for stopping by today. This has been super informative.
- Shanna Wall: [19:08](#) No problem. Thanks for having me. I really had a good time.

This transcript was exported on Sep 19, 2019 - view latest version [here](#).

- Megan M. Biro: [19:17](#) Let's keep this conversation moving. Join us for our WorkTrends Twitter chat. We'll be on the Twitters with Shanna Wall and PosterGuard on Wednesday, September 25th at 1:30 PM Eastern, 10:30 AM Pacific. Join us to talk about some of the thorniest compliance issues in the workplace. You're not going to want to miss this one.
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