



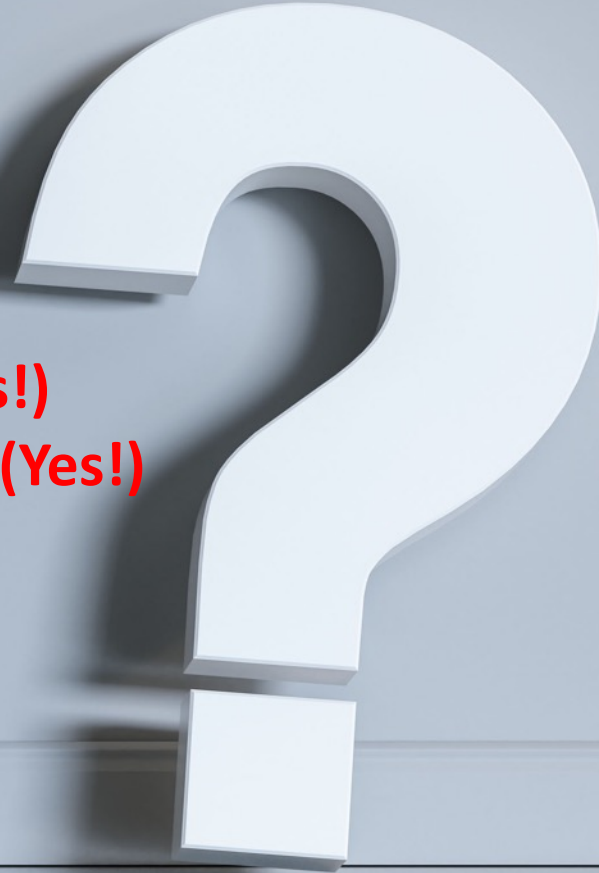
2020 Vision on Compliance

Employment Law 2019 Review and 2020 Preview

December 11, 2019

Webinar FAQs

- Can I get SHRM and HRCI credit? **(Yes!)**
- Will I receive a recording? **(Yes!)**
- Are the slides available to download and print? **(Yes!)**
- Will you answer my questions during the webinar? **(Yes!)**



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Senior Legal
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Today's Speakers

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John Dickinson,
JD

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Constangy,
Brooks, Smith and
Prophete, LLP

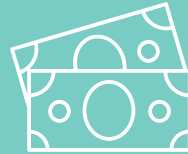
Today's Topics



Harassment



Marijuana



Wage and Hour



Discrimination



Paid Leave

Harassment

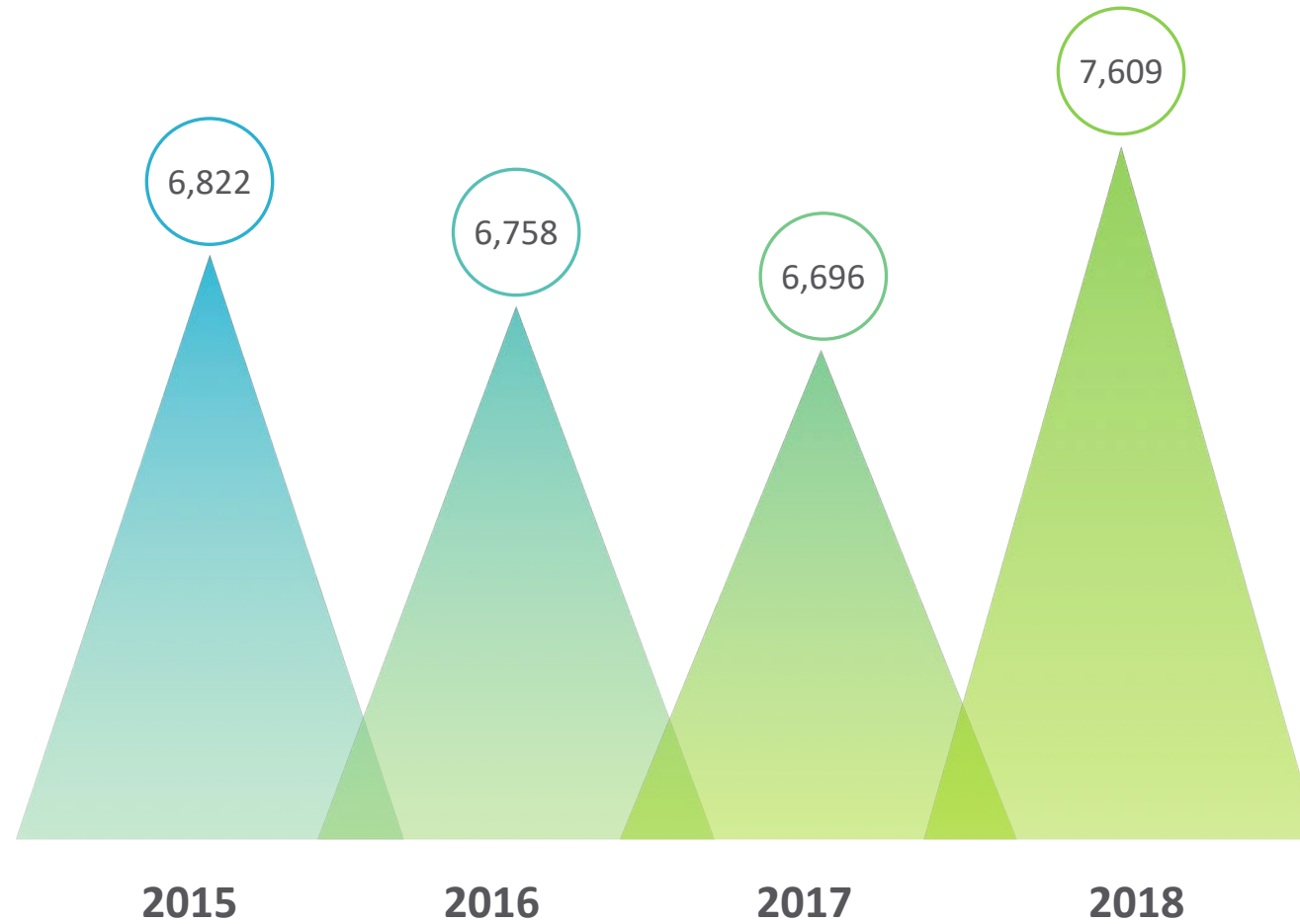
Harassment and #MeToo

- EEOC had a 13.6 percent increase in charges alleging sexual harassment during FY 2018, according to unofficial statistics issued in late 2018*
- State FEP agencies have reported even more dramatic increases

* EEOC has yet to publish 2019 charge statistics

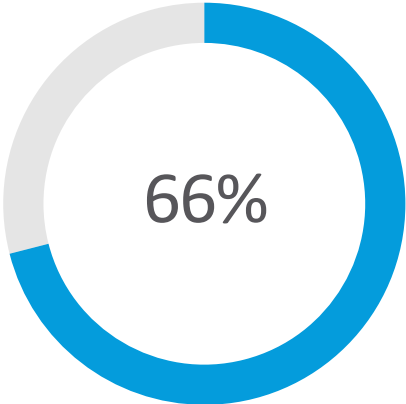
Sex Harassment Charges

FY 2015–2018

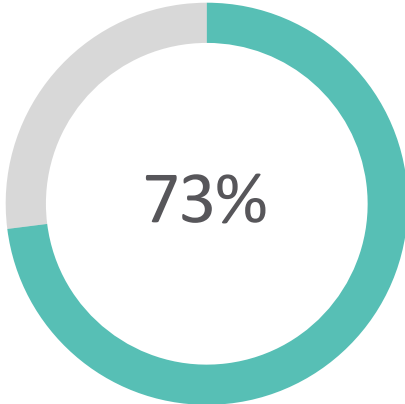


“Sexual Harassment in the Workplace is a Major Problem”

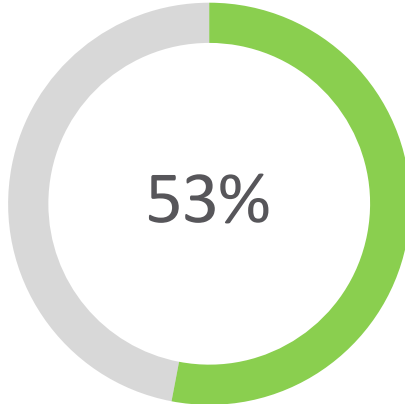
Men vs. Women



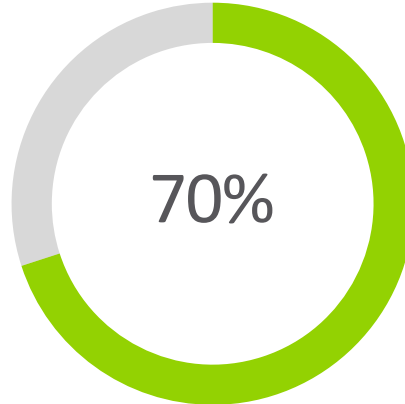
2017
Men



2017
Women



2019
Men

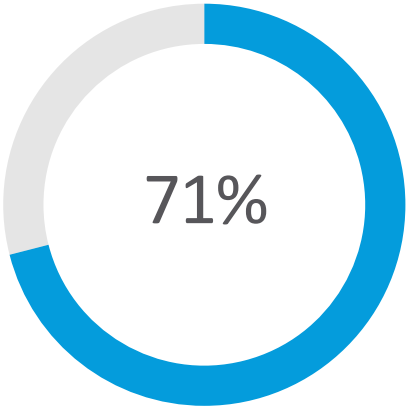


2019
Women

SOURCE: Gallup, Inc., released March 18, 2019

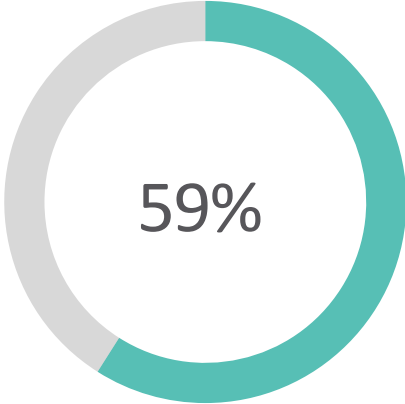
“Sexual Harassment in the Workplace is a Major Problem”

Generation Gap Among Men



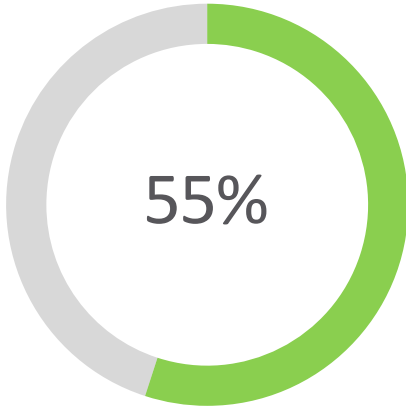
2017

Men Ages 18-49



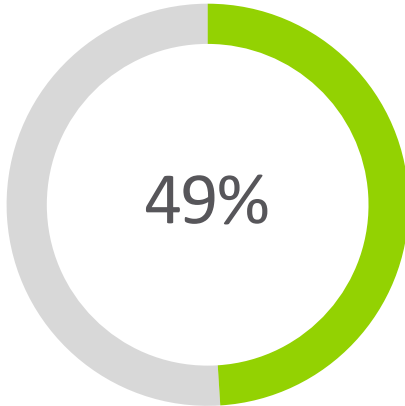
2017

Men Ages 50+



2019

Men Ages 18-49



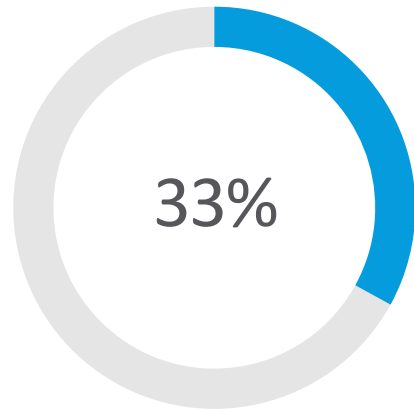
2019

Men Ages 50+

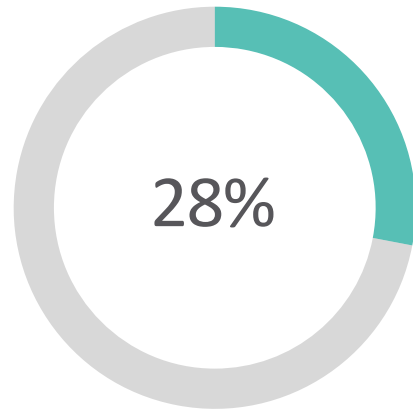
SOURCE: Gallup, Inc., released March 18, 2019

“People Are Too Sensitive About Sexual Harassment at Work”

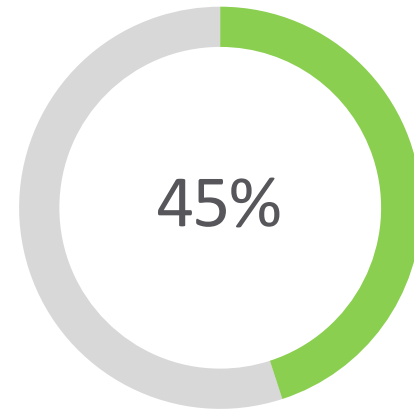
Men vs. Women



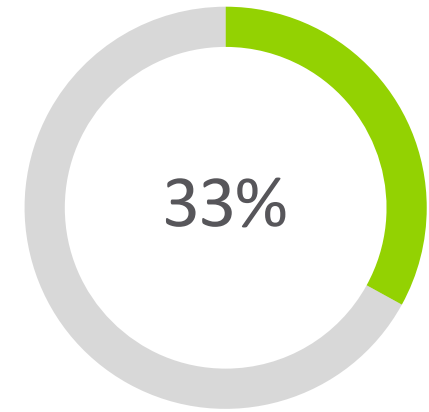
2017
Men



2017
Women



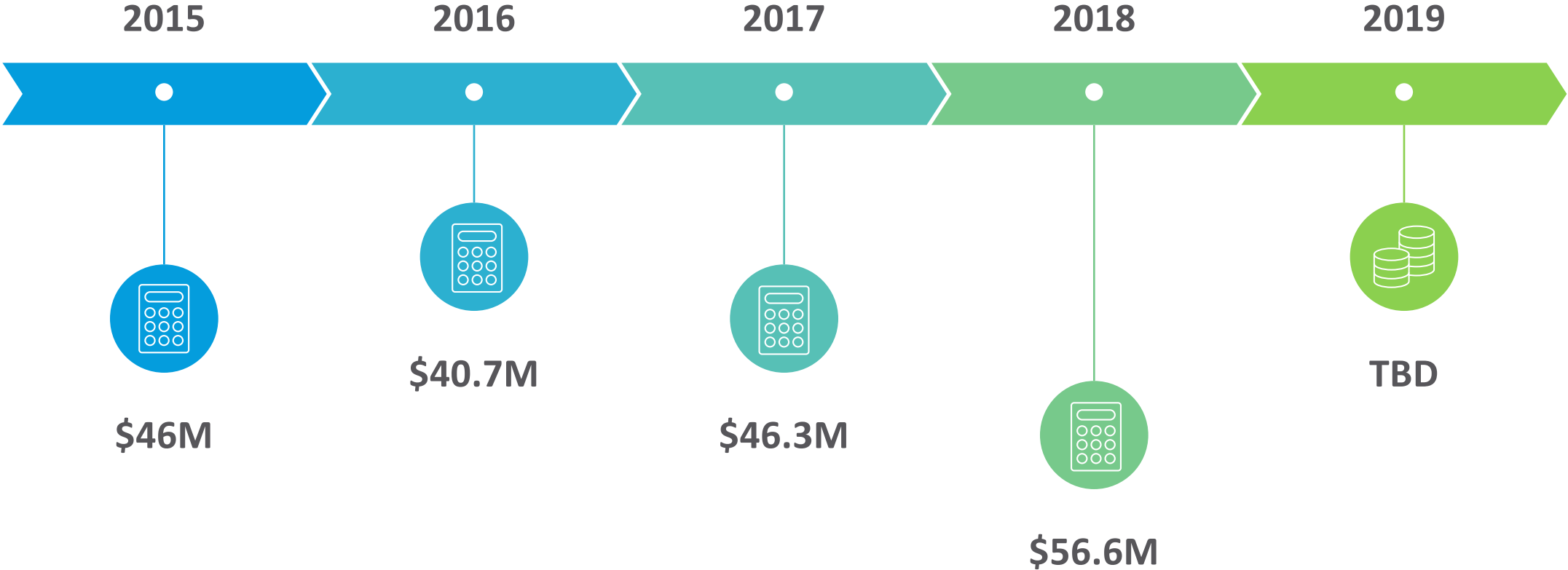
2019
Men



2019
Women

SOURCE: Gallup, Inc., released March 18, 2019

Monetary Relief

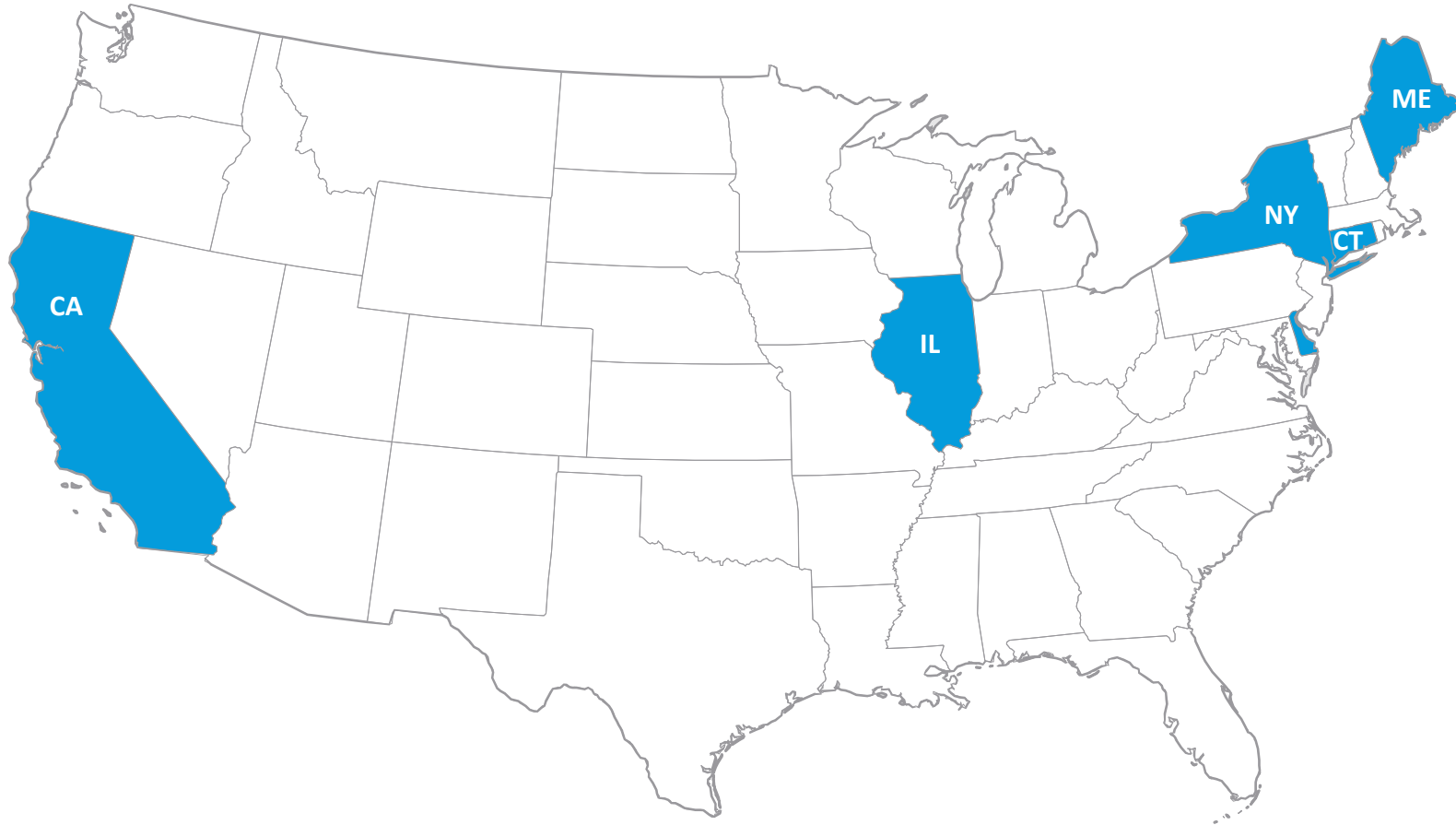




2019 Saw More Training Mandates

- No federal law requires sexual harassment training
- Case law references duty to train
 - *Parker vs. Reema Consulting Services*
- During 2019, over 29 states introduced legislation related to sexual harassment or mandating sexual harassment training
- State and local legislation obligating sexual harassment training continued during 2019:
 - Illinois – annual training
 - New York – annual training
 - Connecticut – within 6 months
- Laws vary on timing, amount, format (interactive, face-to-face, online video, etc.)

State Laws Requiring Sexual Harassment Prevention Training



Harassment Training Laws

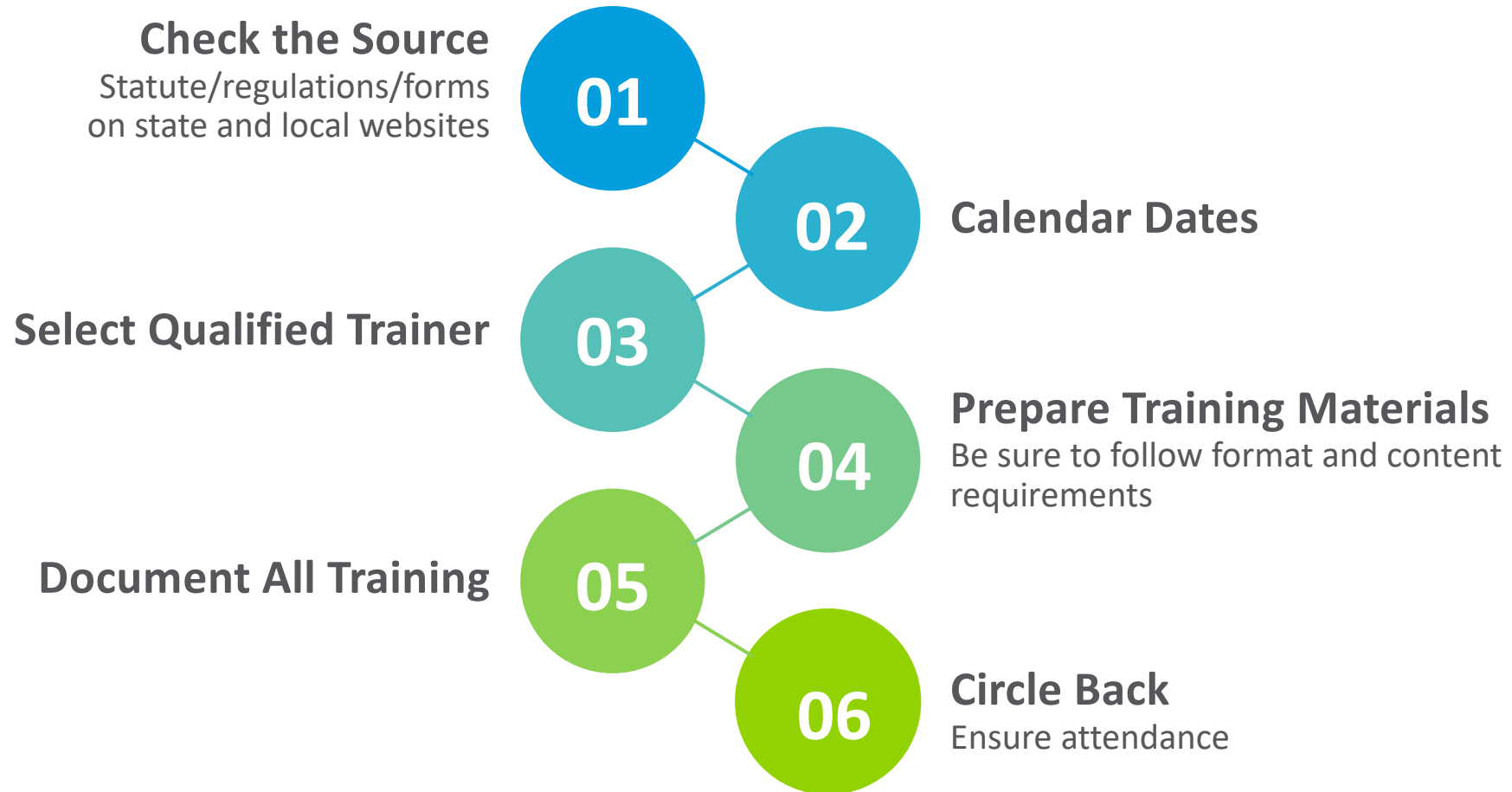
- California: 1/1/21
- Connecticut: 10/1/20, or 6 months of hire
- District of Columbia (not shown): Pending
- Delaware: 1/1/20
- Illinois: 1/1/20
- Maine: 10/91
- New York State: 10/9/19
- New York City: 12/31/19

Workplace Transparency Legislation

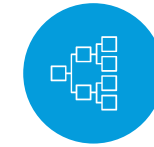


Sexual Harassment

How to Stay Compliant



Workplace Harassment Prevention



State-Specific



Compliant



Documentation



Interactive

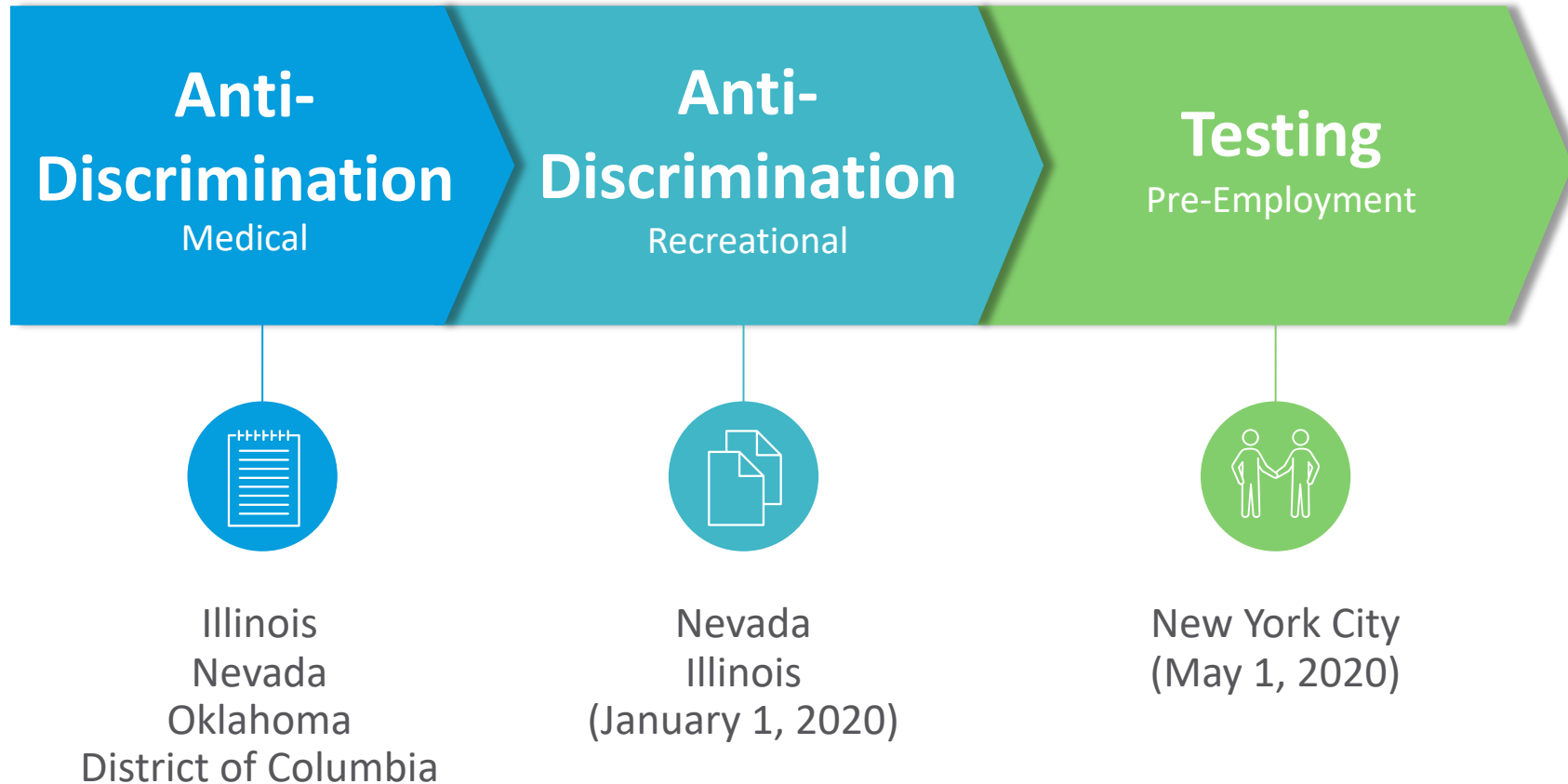
Marijuana

Federal Regulation

- Federal law holds marijuana is illegal
- Current “illegal” drug users are therefore not covered by the ADA (a federal law)
- ADA may cover the underlying disability, but not the marijuana use
- State law may create additional requirements for accommodation
- Department of Transportation (DOT) regulations also may apply



Latest Marijuana Laws



How State Marijuana Laws Affect Workplaces

- State laws continue to rapidly evolve
- Does your state's law:
 - Permit medicinal or recreational marijuana use?
 - Prohibit pre-employment drug testing for marijuana?
 - Prohibit employer discrimination against registered medicinal marijuana users on their qualified patient status alone?
 - Prohibit adverse action on the basis of a positive drug test alone?
 - Require employers to explore reasonable accommodation for legal medical marijuana users to treat disabilities?
 - Define and include exceptions to “safety sensitive” positions?

Get ahead of the trend: Consider a flexible approach to marijuana for non-safety sensitive roles

Marijuana

How to Stay Compliant



Wage and Hour

The Issues

- White collar exemptions
- Pay equity





White Collar Exemptions

The Basics

- Rescinds 2016 proposed rule
 - Current \$455/week (since 2004) too low
 - 2016 proposed \$913/week too high
 - 2019 final \$684/week or \$35,568/year
- Up to 10% can be regularly paid non-discretionary bonus, commission, or incentive pay
- Effective January 1, 2020
- Maintains duties tests
- No automatic increases

White Collar Exemptions

How to Be Compliant

- Make sure your exempt employees are making \$684 per week, every week
- Know what deductions you can and cannot take
 - Even though these rules are ancient, many employers still seem to be unaware that they cannot (for instance) reduce salary for partial day absences
- Look at the duties test associated with exemptions.



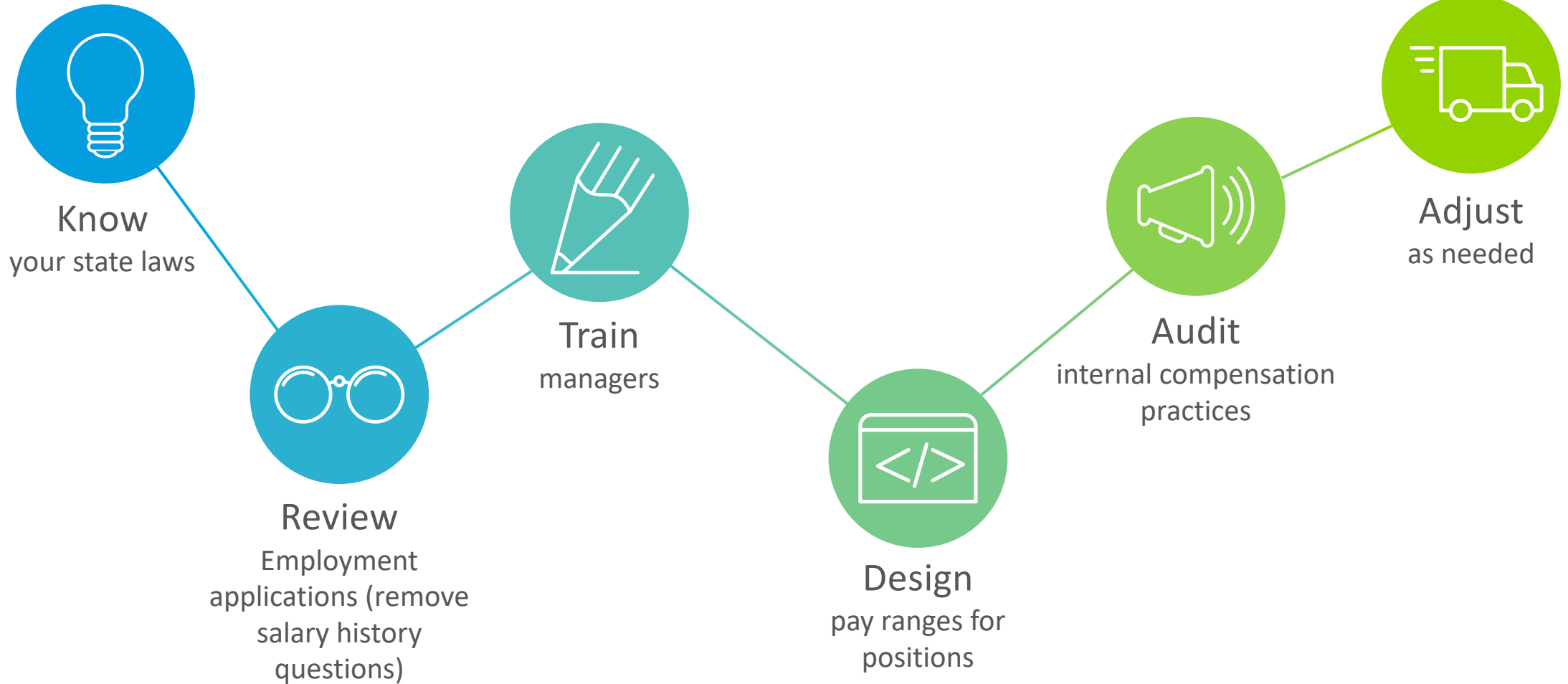
Pay Equity

- New York, Illinois, Washington, Maine, and Alabama created or expanded laws in 2019
- More salary history bans passed



Pay Equity Initiatives

How to Be Compliant



Discrimination

The Issues

- LGBTQI+ cases before SCOTUS
- Expansion of protected classes



Title VII

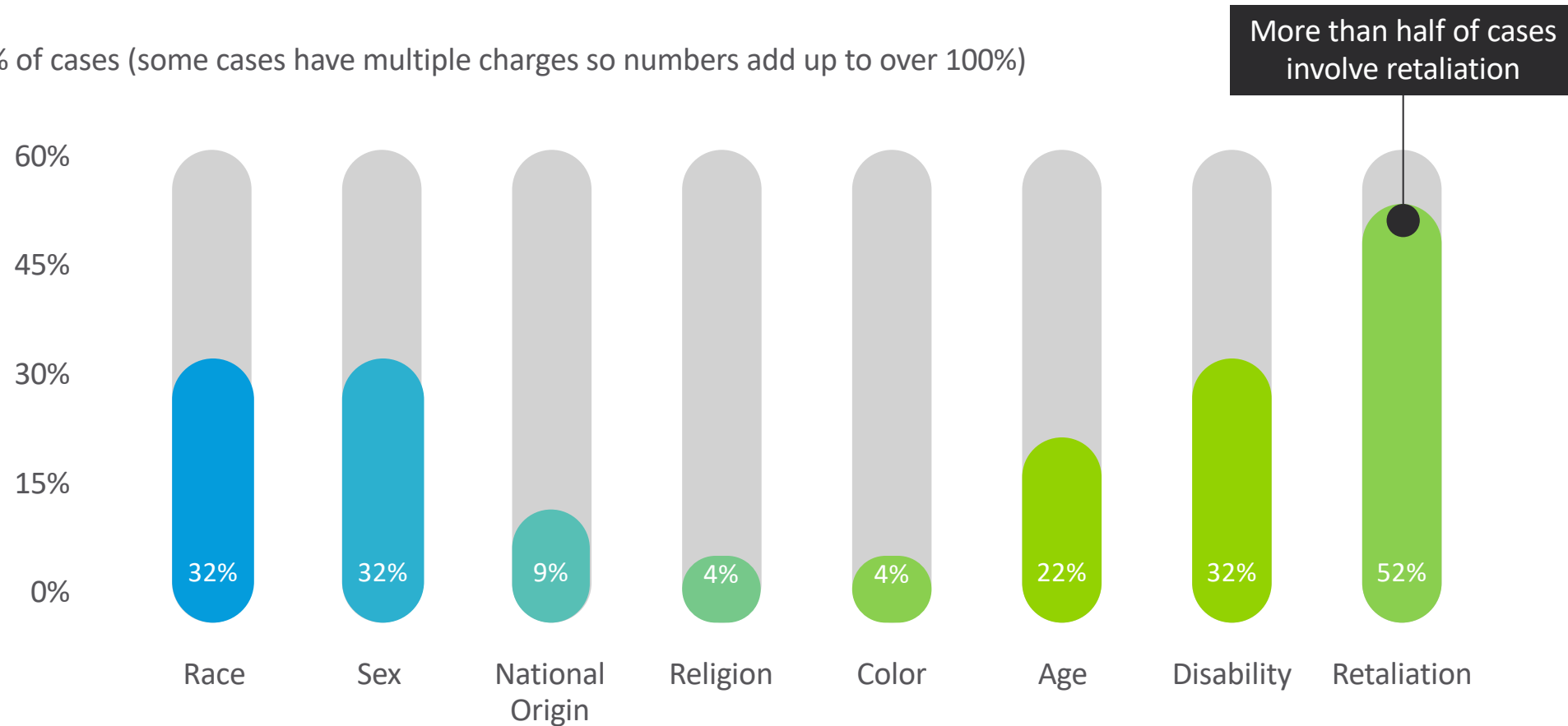
- Prohibits employers from discriminating against an individual on the basis of race, color, sex (including pregnancy), national origin (also of forebearers), or religion
- Affects hiring, discharge, compensation, promotion, classification, training, apprenticeship, referral for employment, or other terms, conditions, and privileges of employment
- Applicable to 15+ employee employers

No explicit ban on sexual orientation or gender identity discrimination, but cases went before SCOTUS October 2019

EEOC Enforcement Is Up

76,418 cases were filed in FY 2018

% of cases (some cases have multiple charges so numbers add up to over 100%)



New Protections

Enacted by States and Cities

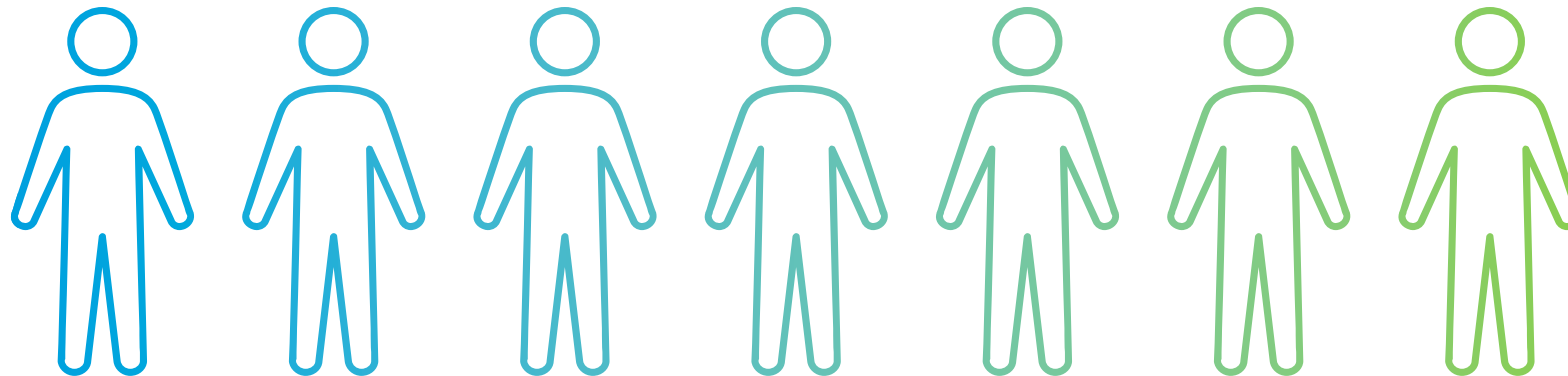
Marital
Status

Credit
History

Racial Traits
(e.g. natural or braided
hairstyles)

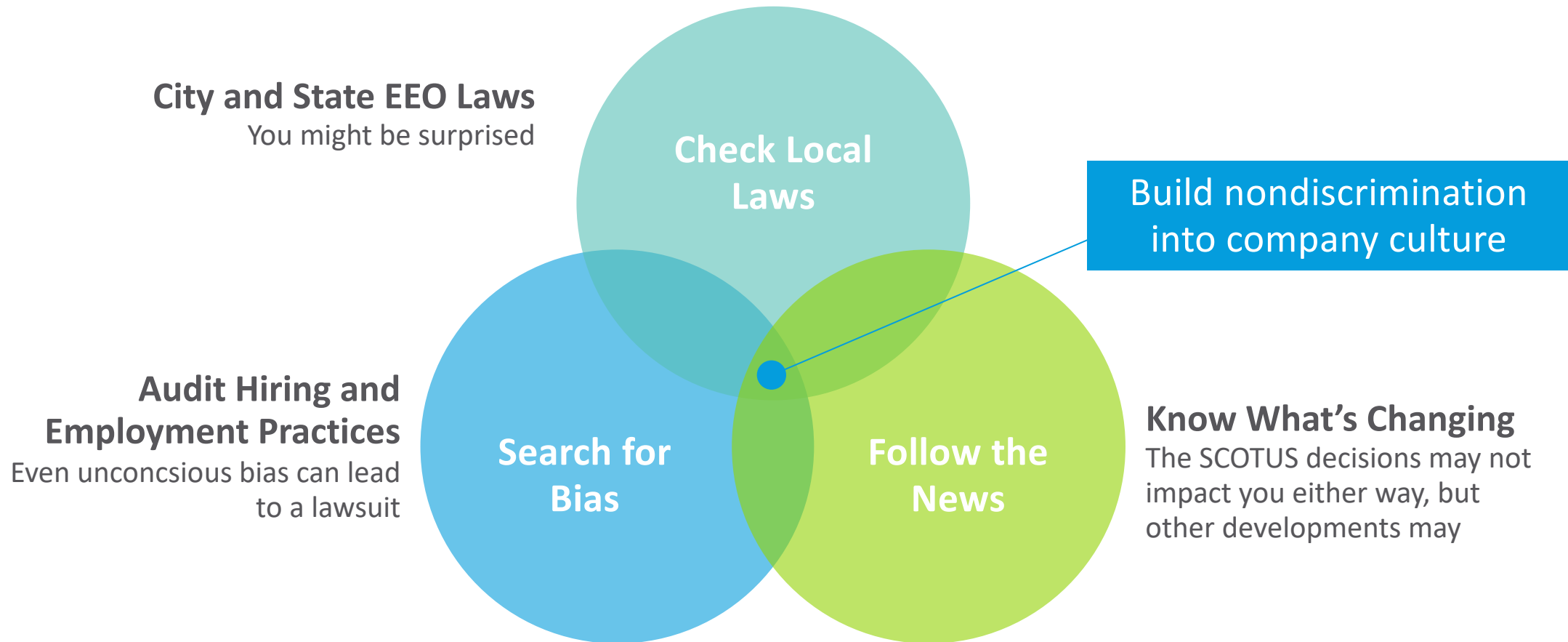
Off Duty
Lawful
Activities

Arrest
Record



Discrimination

How to Be Compliant



A man in a white shirt and tie is surfing on a red and white surfboard amidst a chaotic sea of papers. The papers are flying around him, creating a sense of motion and overwhelming information. The background is a bright blue sky.

Living Handbook

- Automatic updates to keep up with the wave of state and federal legislation
- Multi-state, Spanish, and e-signature options with Living Handbook Plus

Paid Leave

Background

- Since 1993 FMLA has required unpaid leave for eligible employees of covered employers for qualifying reasons
- #MeToo has accelerated legislation on state and local levels to augment paid leave benefits for pregnancy, lactation, family, sickness, etc.
- Various names for legislation
 - Family Rights Act
 - Family Care Act
 - Family Leave Law
 - Parenting Leave Act
 - Parental and Family Medical Leave Act
- Qualifications, reasons for leave, amounts of leave, interplay with FMLA make compliance complicated



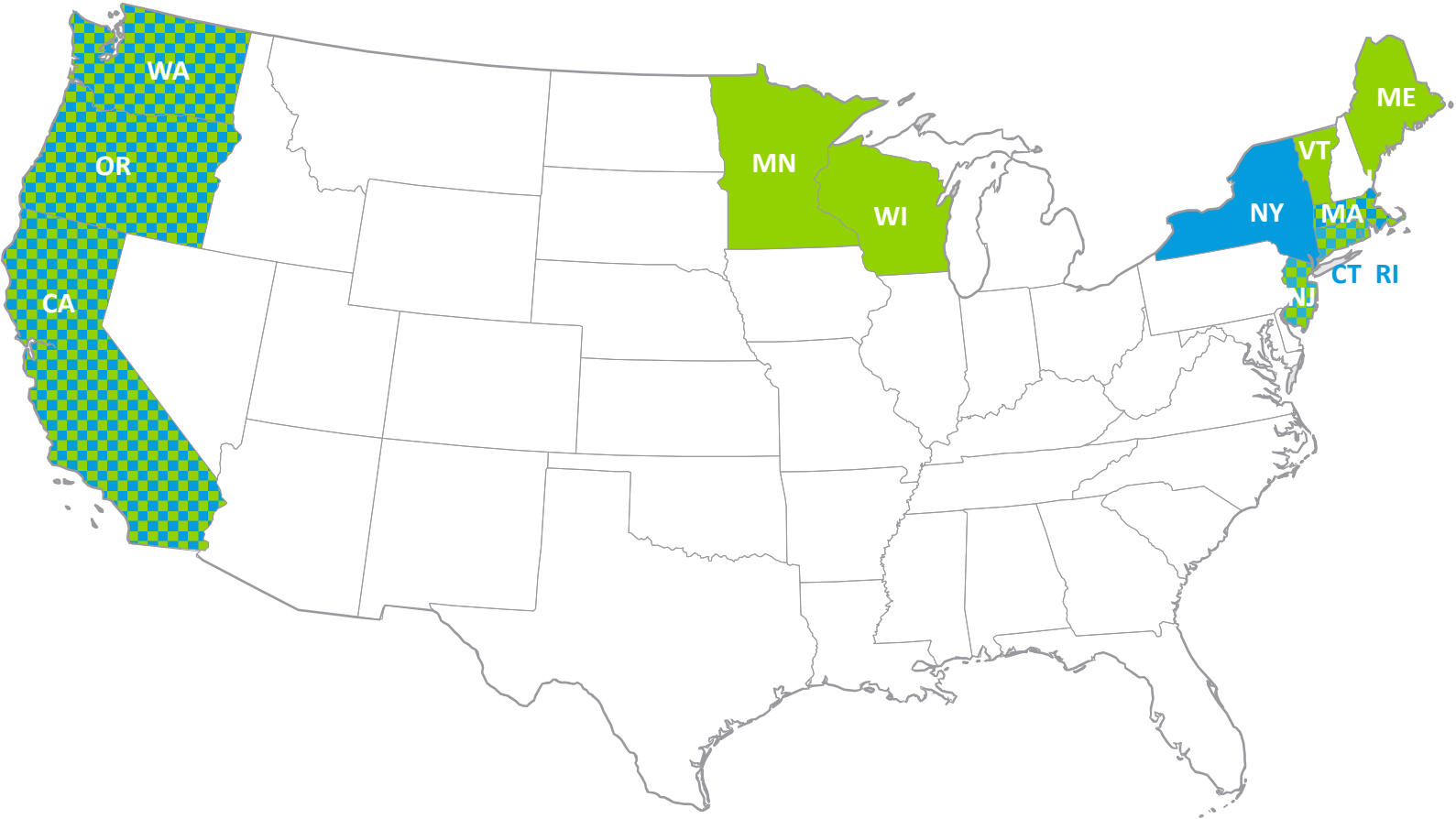


2019 Saw Growth in Paid Leave Enactments

- Composition of American workforce and family is changing – single motherhood and dual-earner households are trending upward
- United States is only industrialized country without a national paid leave mandate
- New Jersey Family Leave Act – expanded law to broaden coverage and qualifying reasons for leave
- Massachusetts Paid Family and Medical Leave Act – new regulations relating to employer contributions for paid leave benefits
- Nevada Paid Leave Law – use for any reason

Family and Medical Leave Laws

As of November 1, 2019



Paid State Leave

Paid AND Unpaid Leave

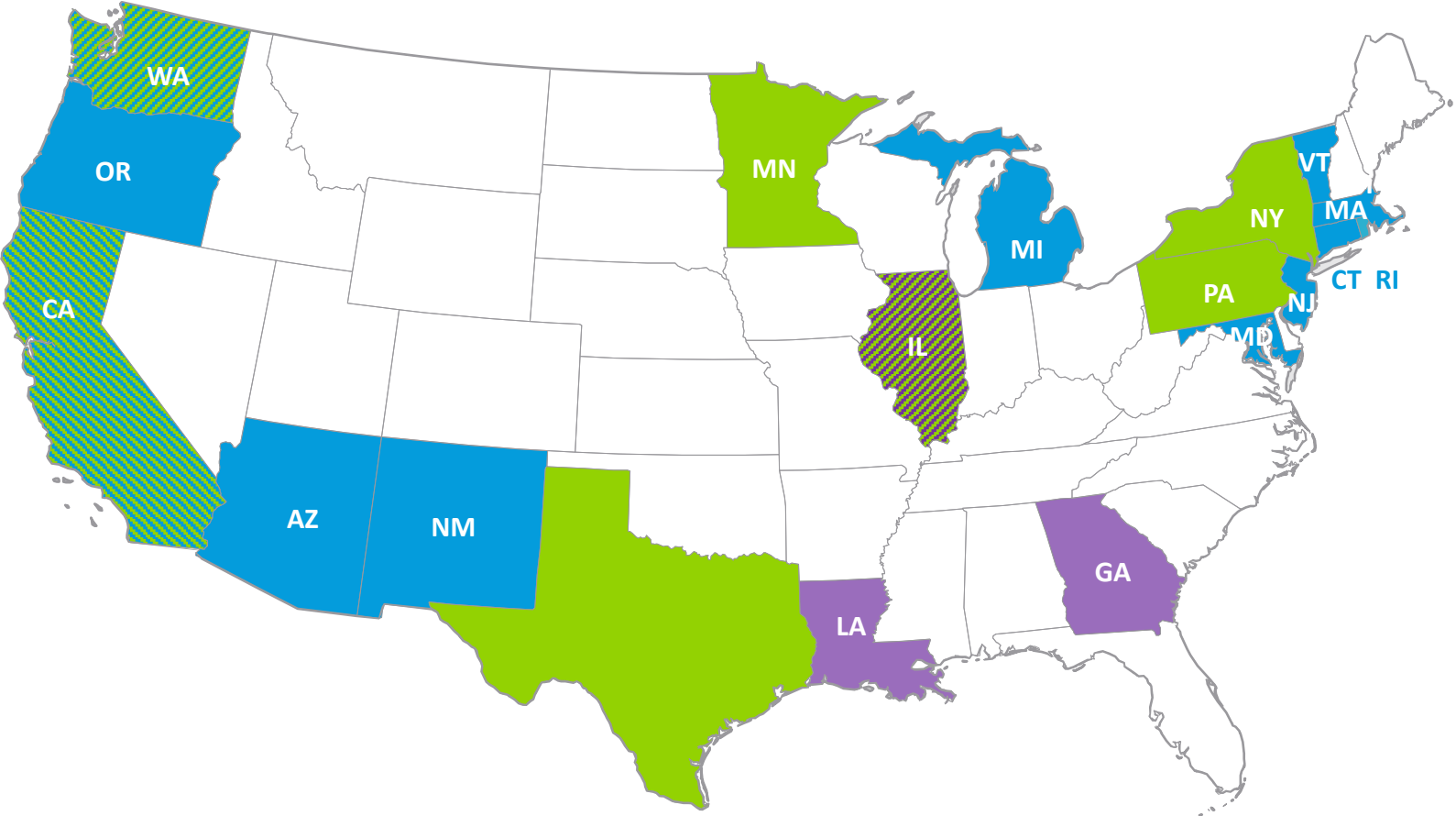
District of Columbia (not shown)

Unpaid State Leave

Hawaii (not shown)

Paid Sick Leave Laws

As of November 1, 2019



Paid Sick Leave Statewide

District of Columbia (not shown)

Paid Sick Leave Statewide Plus Local Laws

Paid Sick Leave Locally

Limited Paid Sick Leave

Paid Sick Leave Locally Plus Limited Statewide

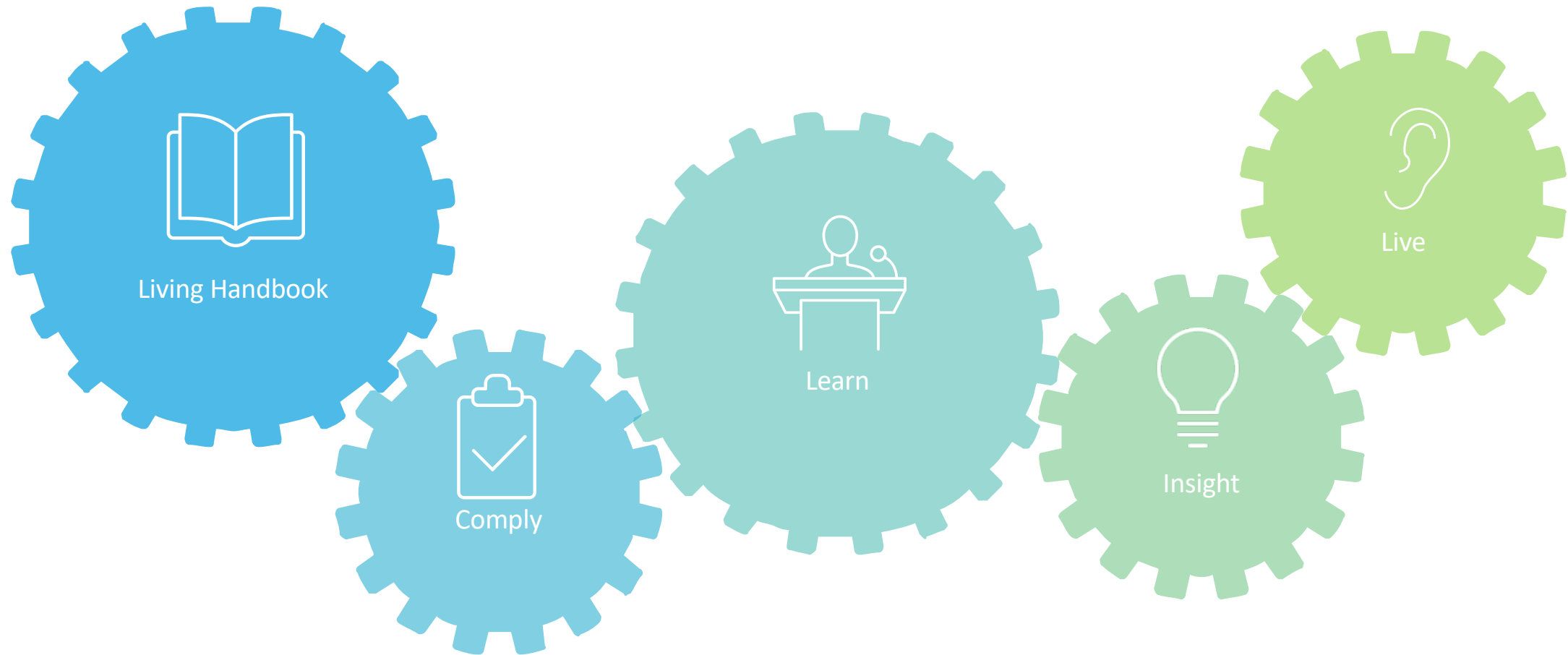
Municipal Paid Sick Leave Laws

CALIFORNIA	ILLINOIS	MARYLAND	MINNESOTA
<ul style="list-style-type: none"> Berkeley 	<ul style="list-style-type: none"> Cook County 	<ul style="list-style-type: none"> Montgomery County 	<ul style="list-style-type: none"> Duluth
<ul style="list-style-type: none"> Los Angeles 			<ul style="list-style-type: none"> Minneapolis
<ul style="list-style-type: none"> Oakland 			<ul style="list-style-type: none"> St. Paul
<ul style="list-style-type: none"> San Diego 			
<ul style="list-style-type: none"> San Francisco 			
<ul style="list-style-type: none"> Santa Monica 			
NEW YORK	PENNSYLVANIA	TEXAS	WASHINGTON STATE
<ul style="list-style-type: none"> New York City 	<ul style="list-style-type: none"> Philadelphia 	<ul style="list-style-type: none"> Austin 	<ul style="list-style-type: none"> Seattle
<ul style="list-style-type: none"> Westchester County 	<ul style="list-style-type: none"> Pittsburgh 	<ul style="list-style-type: none"> Dallas 	<ul style="list-style-type: none"> Tacoma
		<ul style="list-style-type: none"> San Antonio* 	

Bonus!

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