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Eye on Washington
State and Local Update

Timely, topical insights on a variety of payroll and reporting issues.

Topics covered in this issue:

Covid-19

State of Washington Again Extends Proclamation Protecting High-Risk Employees During COVID-19

We previously reported that on June 9, 2020, Washington State Governor Jay Inslee had issued a Proclamation that extended the job protections in place for "high-risk" Washington employees until 11:59 p.m. on August 1, 2020.

The Proclamation was amended to stipulate that it will remain in effect through the duration of the state of emergency, or until otherwise rescinded or amended.

Background

High-risk employees are (1) any individual 65 years or older, (2) anyone living in a nursing home or long-term care facility, and (3) people with certain chronic underlying health conditions, such as the following:

- Chronic lung disease or moderate to severe asthma
- Serious heart conditions
- Immunocompromised
    - Many conditions can cause a person to be immunocompromised. These include cancer treatment, smoking, bone marrow or organ transplantation, immune deficiencies, poorly controlled HIV or AIDS, and prolonged use of corticosteroids and other immune-weakening medications
- Severe obesity (body mass index [BMI] of 40 or higher)
- Diabetes
- Chronic kidney disease undergoing dialysis
- Liver disease

The Proclamation provides the following protections for high-risk employees:

- When employees request alternative work assignments to protect themselves from the risk of exposure to COVID-19 on the job, employers must utilize all available options, including telework, alternative or remote work locations, reassignment and social distancing measures. If alternative work arrangements are not feasible, the employer must allow the employee to use all of the employee's employer-granted accrued leave options. It is the employee's decision to use accrued leave or unemployment insurance in any sequence.

- If the employee's paid time off is exhausted during the period of leave, the employer must fully maintain all employer-related health insurance benefits until the employee is deemed eligible to return to work. The Proclamation does not indicate how exactly the employee would be "deemed" eligible to return to work. It also does not explain what it means to "fully maintain" insurance.
- Employers may not retaliate against or take adverse employment action in a way that would result in the permanent replacement of employees who exercise their rights under the Proclamation.
- Employers and unions cannot enforce any provisions in an employment contract that contradict or interfere with the Proclamation.
- The Proclamation should be generally construed to protect employees from loss of their positions, employment benefits and retaliation for decisions related to the Proclamation.
- The Proclamation does not prohibit hiring a temporary employee, as long as this does not negatively affect the "permanent" employee's right to return to their existing position without any negative ramifications.
- Employers may require employees who do not report to work in reliance of the Proclamation to give the employer up to five days' notice of the employee's intention to report or return to work.
- Employers may take employment action when "no work reasonably exists," such as a reduction in force. However, where no work exists, employers may not take action that may adversely affect an employee's eligibility for unemployment benefits.

Any violations of the Proclamation are subject to criminal penalties.

For a copy of the updated Proclamation, click on the link provided below:

https://www.governor.wa.gov/sites/default/files/proclamations/proc_20-46.2.pdf?utm_medium=email&utm_source=govdelivery

Leave

Virginia Mandates Time-Off Requirements for Election Day Service

Virginia House Bill 196, effective July 1, 2020, prohibits an employer from taking adverse personnel action or requiring an employee to use sick leave or vacation time as a result of his or her service at a polling place on election day or at a meeting of the electoral board following the election to ascertain the results of an election, provided reasonable notice is provided.

Election day service may be in the capacity as an electoral board member or assistant general registrars for election day service. Employers may not require an employee who provides four or more hours, including travel time, to start any work shift that begins on or after 5:00 p.m. on the day of his or her election day service or begins before 3:00 a.m. on the day following the day of his service. Any employer violating the legislation is guilty of a Class 3 misdemeanor (subject to a fine of no more than $500).

For a copy of Virginia House Bill 196, click on the link provided below.

https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP0838

Payroll

California Supreme Court Rules Airline Employees Whose Base of Work is in California Must Receive Legally Compliant Wage Statements

In *Ward v. United Airlines*, the California Supreme Court was asked by the Ninth Circuit Court to answer the question of whether certain airline employees must be provided with California-compliant wage statements pursuant to Cal. Lab. Code § 226(a). In this case, the airline employees were pilots and flight attendants for United Airlines, which is based outside California. Although they reside in California, they perform most of their work in airspace outside of California's jurisdiction. The employees are not paid according to California wage law, but pursuant to the terms of a collective bargaining agreement entered into under federal labor law.

The California Supreme Court answered the Ninth Circuit's questions as follows:

(1) The Railway Labor Act exemption in Wage Order No. 9 does not bar a wage statement claim brought under Section 226 by an employee who is covered by a collective bargaining agreement; and

(2) Section 226 applies to wage statements provided by an employer if the employee's principal place of work is in California.

This test is satisfied if the employee works a majority of the time in California or, for interstate transportation workers whose work is not primarily performed in any single state, if the worker has his or her base of work operations in California.

Colorado Enacts Revised Garnishment Rules Due To COVID-19

Colorado Governor Jared Polis has signed into law Senate Bill 211 (SB 211), which mandates that new writs of garnishment, from June 29, 2020 through November 1, 2020, must have a notice that the employee/debtor can request the temporary suspension of the garnishment if the employee is facing financial hardship due to the coronavirus (COVID-19) health emergency.

SB 211 requires that the employee being garnished must notify the creditor or the creditor's attorney of the hardship. However, the employee is not required to provide documentation of the hardship to qualify for the temporary suspension of the garnishment.

It is important to note that employers should not suspend withholding under a writ of garnishment until a temporary suspension notice or release is received from the creditor or its attorney.

SB 211 also stipulates that the temporary suspension period may be extended to February 1, 2021, if deemed necessary.

For a copy of SB 211, click on the link provided below.

https://leg.colorado.gov/sites/default/files/2020a_211_signed.pdf

Connecticut Increases Minimum Wage

The Connecticut minimum wage rate will increase from $11.00 per hour to $12.00 per hour effective September 1, 2020. The increase is part of a scheduled increase to $15.00 per hour by 2023 as shown on the chart below.

Effective Date	Minimum Wage Per Hour
October 1, 2019	$11.00
September 1, 2020	$12.00
August 1, 2021	$13.00
July 1, 2022	$14.00
June 1, 2023	$15.00

The cash minimum wage for tipped employees remains frozen at $6.38 per hour for hotel and restaurant staff and is frozen at $8.23 per hour for bartenders. .

Wage Garnishment Rules Revised in Georgia

The state of Georgia has enacted legislation (Senate Bill 443) relating to garnishment proceedings. Specifically, the bill does the following:

- Revises procedures for garnishment proceedings
- Provides for uniform procedures for garnishment actions
- Limits the maximum part of disposable earnings subject to garnishment in relation to certain educational or student loans
- Provides a fixed time for continuous garnishments
- Provides for voluntary reductions of payments
- Provides for litigation procedures for parties to garnishment actions

Importantly, Senate Bill 443 provides for the following withholding exemption limits:

The lesser of:

- 25% (15% for private student loans) of weekly disposable earnings or,
- The weekly disposable earnings in excess of $217.50

Note: A "private student loan" is defined as an educational/student loan used for postsecondary educational expenses and not guaranteed by the federal government.

The legislation also provides that a continuing garnishment shall include the next 1,095 rather than the current 179 days.

These changes go into effect on January 1, 2021.

For a copy of Senate Bill 443, click on the link provide below.

http://www.legis.ga.gov/legislation/en-US/Display/20192020/SB/443

Kentucky Releases Guidance on Tax Issues for Employees Telecommuting Due To COVID-19

The Kentucky Department of Revenue (DOR) has issued a set of Frequently Asked Questions (FAQs) regarding tax issues related to employees who are telecommuting due to COVID-19. The FAQs are as follows:

Can a business continue to withhold income tax in the state and local jurisdiction where the employer is located?

The Kentucky DOR does not administer license, occupational, or other excise taxes imposed by cities, counties, and other local jurisdictions in this state. For Kentucky state income tax purposes, employers employing Kentucky residents, and/or nonresidents who reside in states with which Kentucky has a reciprocal agreement, will not need to change their current withholding practices during the period when these employees are working from home. Requirements for withholding of tax in either case remain unchanged by restrictions related to the COVID-19 public health emergency.

Can an employee who is temporarily telecommuting continue to pay taxes to the state and local jurisdiction where the employer is located?

The Kentucky DOR does not administer license, occupational, or other excise taxes imposed by cities, counties, and other local jurisdictions in this state. For Kentucky state income tax purposes, employers employing Kentucky residents and/or nonresidents who reside in states with which Kentucky has a reciprocal agreement will not need to change their current withholding practices during the period when these employees are working from home. These employees' Kentucky state income tax obligations remain unchanged by restrictions related to the COVID-19 public health emergency

Does the presence of an employee working in Kentucky or any local jurisdiction due to restrictions related to the COVID-19 public health emergency create a nexus for tax purposes in Kentucky or any local jurisdiction?

The Kentucky DOR does not administer license, occupational, or other excise taxes imposed by cities, counties, and other local jurisdictions in this state. DOR will continue reviewing Kentucky state income tax nexus determinations on a case-by-case basis

For more information, access the link to the FAQs found below:

https://revenue.ky.gov/Individual/Pages/COVID-19-Tax-Relief-Frequently-Asked-Questions.aspx

Massachusetts Releases Withholding Guidance for Telecommuters

On July 21, 2020, the Massachusetts Department of Revenue (DOR) released via Technical Release No. 20-10 (TR 20-10) the rules that apply to income earned by a nonresident employee who telecommutes on behalf of an in-state business from a location outside the state due to the COVID-19 state of emergency in Massachusetts.

In summary, if a business is located within Massachusetts, a nonresident who telecommutes will continue to have his or her wages considered to be Massachusetts-sourced wages for the purpose of income tax withholding. TR 20-10 is effective through the earlier of December 31, 2020 or 90 days after the Massachusetts COVID-19 state of emergency is lifted.

TR 20-10 stated in part:

> The Department of Revenue (the "Department") has promulgated emergency regulation 830 CMR 62.5A.3: Massachusetts Source Income of Nonresidents Telecommuting due to the COVID-19 Pandemic, to explain the sourcing and withholding rules applicable to employees who are telecommuting due to the COVID-19 pandemic. Pursuant to the regulation, until the earlier of December 31, 2020, or 90 days after the state of emergency in Massachusetts is lifted, all compensation received for services performed by a nonresident who, immediately prior to the Massachusetts COVID-19 state of emergency was an employee engaged in performing such services in Massachusetts, and who began performing services from a location outside Massachusetts due to a Pandemic-Related Circumstance, will continue to be treated as Massachusetts sourced income subject to personal income tax under M.G.L. c. 62 and personal income tax withholding.

For a copy of TR 20-10, click on the link provided below.

https://www.mass.gov/technical-information-release/tir-20-10-revised-guidance-on-the-massachusetts-tax-implications-of

New Hampshire Minimum Wage Bill Vetoed

On July 24, 2020, New Hampshire Governor Chris Sununu vetoed a bill that would have raised New Hampshire's minimum wage to $10 an hour next year, and $12 an hour in 2023. Consequently, the minimum wage in the state remains at $7.25 per hour.

Sununu had previously vetoed a bill in August of 2019, that would have raised the New Hampshire minimum hourly rate in stages to $12 per hour by 2022.

Oregon Provides Guidance Regarding Employees Temporarily Telecommuting

On July 28, 2020, Oregon provided guidance in regard to Oregon income tax that nexus would not be considered created by employees temporarily telecommuting within Oregon due to COVID-19.

The Oregon Department of Revenue (DOR) / COVID-19 tax relief options webpage states as follows:

> For purposes of Oregon corporate excise/income tax, the presence of teleworking employees of the corporation in Oregon between March 8, 2020 and November 1, 2020 won't be treated by the department (DOR) as a relevant factor when making a nexus determination if the employee(s) in question are regularly based outside Oregon.

Click on the link provided below for access to the webpage.

https://www.oregon.gov/dor/Pages/COVID19.aspx

Time & Labor

Enforcement of Philadelphia, Pennsylvania, Predictability Pay Ordinance Delayed Until Further Notice

We previously reported that the Philadelphia Office of Benefits and Wage Compliance (OBWC) had announced that the city of Philadelphia will begin enforcing its predictability pay ordinance on September 1, 2020. The city paused the enforcement of predictability as of April 1, 2020 due to the coronavirus (COVID-19) public health emergency. Beginning September 1, 2020, predictability pay will be required for any employer-initiated changes to the 10-day advanced notice of work schedule.

The OBWC website now states as follows that enforcement will be postponed until further notice.

> **In response to the COVID-19 health emergency, the Office of Benefits and Wage Compliance paused the enforcement of predictability pay as of the April 1, 2020 effective date of the Fair Workweek law until further notice. However, employers are still expected to comply with other portions of the law.**

Background:

On December 8, 2018, the City Council of Philadelphia passed a "Fair Workweek" bill, which was signed into law on December 20 by Philadelphia Mayor Jim Kenney. The law applies to employers in the retail, fast-food and hotel industries with more than 30 locations and 250 employees. It will require covered employers to:

- Provide employees with a written, good faith estimate of the employee's schedule when hired
- Engage in an interactive process regarding the employee's availability
- Give employees two weeks' advance notice of their schedules
- Provide "predictability pay" if schedules change within ten days of the schedule being delivered (and increasing to 14 days beginning January 1, 2021) unless an employee consents to the change
  - If hours are added to an employee's schedule, or the schedule is changed with no loss in hours to the employee, the employer must pay one hour of predictability pay
  - If hours are reduced, the employer must pay predictability pay at a rate of time and a half for all hours not worked as a result of the change
  - Some exceptions for extenuating circumstances, such as natural disasters, apply
- Offer available shifts to existing employees before hiring new ones
- Provide employees with at least a nine-hour break between shifts
- Maintain records of their compliance with the law
- Moreover, any part of the ordinance may be waived in a bona fide collective bargaining agreement

For a copy of the announcement regarding the pending enforcement date of the Philadelphia ordinance, click on the link provided below.

https://www.phila.gov/2020-03-19-understanding-predictability-pay-under-fair-workweek/

ADP Compliance Resources

ADP maintains a staff of dedicated professionals who carefully monitor federal and state legislative and regulatory measures affecting employment-related human resource, payroll, tax and benefits administration, and help ensure that ADP systems are updated as relevant laws evolve. For the latest on how federal and state tax law changes may impact your business, visit the ADP *Eye on Washington* Web page located at **www.adp.com/regulatorynews**.

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ADP, LLC.
One ADP Boulevard, Roseland, NJ 07068
adp.com

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