# EYE ON WASHINGTON

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

# Detailed Look at State, Local and Federal Updates

## Topics covered in this issue:



## State/Territory/District

### Reminder: California Modifies Garnishment Maximum Withholding Amount

California has enacted Senate Bill 1477, which modifies the maximum amount of an individual's disposable earnings subject to levy when required to enforce a money judgment.

**The Details:**

**Effective September 1, 2023**, the maximum amount of disposable earnings of a judgment debtor for any workweek that is subject to levy must not exceed the lesser of 20 percent of the individual's disposable earnings for that week or 40 percent of the amount by which the individual's disposable earnings for that week exceed 48 times the state minimum hourly wage.

Current law provides that the maximum amount of a judgment debtor's disposable earnings for any workweek that is subject to levy shall not exceed 50 percent of the amount by which the disposable earnings for the week exceed 40 times the state minimum hourly wage.

**Next Steps:**

As of September 1, 2023, California employers when required to enforce a money judgment on an employee must not withhold in excess of the lesser of 20 percent of the individual's disposable earnings for that week or 40 percent of the amount by which the individual's disposable earnings for that week exceed 48 times the state minimum hourly wage.

### California: Delayed CCPA Regulations: Slight Reprieve But Time is Ticking

Read the article here.

### Maine to Establish Paid Family and Medical Leave Program

Maine has enacted legislation that will create a paid family and medical leave program in the state. Contributions to the program will begin January 1, 2025, and employees will be entitled to begin using the job-protected leave on May 1, 2026.

Employers can opt to have a private plan to meet the requirements, provided the plan is approved by the state. An employer with an approved private plan is not required to remit premiums.

**The Details:**

*Coverage:*

The program covers all individuals employed in the state and all employers that employ individuals at a location in the state. Employees must meet certain wage-base requirements to be eligible for the paid leave. Self-employed individuals will have the option of voluntarily participating in the program. See the **text of the law** for details.

*Reasons for Leave:*

Under the program, employees will be entitled to use up to 12 weeks of leave in a benefit year for the following absences:

- To bond with their child during the first 12 months after the child's birth or the first 12 months after the placement of the child for adoption or foster care;
- To care for a family member with a serious health condition;
- For the employee's own serious health condition;
- To attend to a qualifying exigency that arises when a family member is on covered active duty in the Armed Forces, or has been notified of an impending call or order to covered active duty;
- To care for a family member who is a covered military service member or veteran injured while in the line of duty;
- Because the employee or their family member is a victim of violence, assault, sexual assault, stalking, or similar act to:
  - Seek an order for protection;
  - Obtain medical care or mental health counseling to address physical or psychological injuries;
  - Make their home secure from the perpetrator or seek new housing to escape the perpetrator;
  - Seek legal assistance or attend and prepare for court-related proceedings; or
- Any other reason covered by the **Maine Family and Medical Leave Requirements**, including:
  - The donation of an organ of that employee for a human organ transplant; or
  - The death or serious health conditions of a family member in the military who died or incurred a serious health condition while on active duty.

The leave may be taken by an employee intermittently in increments of at least eight hours or on a reduced leave schedule otherwise agreed to by the employee and the employer.

**Note:** For the employee's own serious health condition, benefits aren't payable during the first seven calendar days of the leave. However, an employee may use accrued sick or vacation pay or other paid leave provided under a collective bargaining agreement or employer policy during the first seven calendar days of the leave.

*Contributions:*

The program will be funded by a payroll tax/premium that will be paid by employees and employers with 15 or more employees. From 2025 through 2027, the tax/premium is set at one percent of the employee's taxable wages. It may be adjusted in subsequent years.

Employers with 15 or more employees must contribute at least 50 percent of the tax/premium, with employees paying the portion that remains. Smaller employers aren't required to contribute to the program, but must still deduct and remit employee contributions (50 percent of the tax/premium).

Beginning January 1, 2025, for each employee, employers must remit employer contribution reports and taxes/premiums in the form and manner determined by the state agency that will administer the program. Employer contribution reports and premiums must be remitted quarterly.

*Job Protection:*

Except for an employee who has been employed for less than 120 days, an employee who exercises the right to leave under the law is entitled, upon return from that leave, to be restored to the position held by the employee when the leave commenced or to be restored to an equivalent position with equivalent employment benefits, pay and other terms and conditions of employment.

*Interaction with Federal FMLA:*

Leave taken under this law runs concurrently with leave taken under the federal Family and Medical Leave Act (FMLA). Employees may take leave under this law while ineligible for leave under the federal Family and Medical Leave Act in the same benefit year.

*Retaliation Prohibited:*

Employers are prohibited from taking adverse action against individuals for exercising their rights under the law.

*Employee Notice:*

Absent extenuating circumstances, an employee must give reasonable notice to their supervisor of their intent to use leave under the program. Use of such leave must be scheduled to prevent undue hardship on the employer, as reasonably determined by the employer.

*Employer Notice:*

Employers must post in a conspicuous place on each of their premises a workplace notice provided or approved by the Maine Department of Labor (MDOL) to notify employees of their rights under the paid family and medical leave program.

The MDOL will create the workplace notice in English, Spanish, French, Somali and Portuguese and any other language that is the primary language of at least 2,000 residents of the state. The employer must post the workplace notice in English and each language other than English that is the primary language of three or more employees of that workplace, if such notice is available from the MDOL.

An employer must also furnish a written notice, provided or approved by the MDOL, to each employee no more than 30 days from their date of hire. The notice must be in the employee's primary language.

**Next Steps:**

- Review leave policies and update them if necessary.
- Watch for the sample poster and notice that must be provided to employees.
- Once published, display the poster in the workplace and provide the sample notice to new hires.
- Prepare to begin making contributions on January 1, 2025.
- Train supervisors on how to handle leave requests.
- Begin providing leave for the covered reasons on May 1, 2026.

## Minnesota Bars Mandatory Employer Meetings on Religious or Political Matters

Minnesota has enacted legislation (Senate File 3035) that prohibits employers from taking adverse action against employees because they refuse to attend an employer-sponsored meeting, if the purpose of the meeting is to communicate the opinion of the employer about religious or political matters. Senate File 3035 takes effect **August 1, 2023**.

**The Details:**

The protection from adverse action also applies to employees who refuse to receive/listen to communications from the employer if the purpose of the communication is to convey the opinion of the employer about religious or political matters.

The law defines "political matters" as those relating to elections for political office, political parties, proposals to change legislation, regulations, or public policy, and the decision to join or support any political party or political, civic, community, fraternal or labor organization.

The law defines "religious matters" as those relating to religious belief, affiliation and practice, and the decision to join or support any religious organization or association.

*Poster Required:*

Within 30 days of August 1, 2023, an employer must post a notice of employee rights under the law. The notice must be posted where employee notices are customarily placed. The text of the law doesn't indicate whether the state will develop a sample notice.

**Next Steps:**

- Review policies and practices to ensure compliance with the changes.
- Train supervisors on the new law.
- Post the required notice within 30 days of August 1, 2023.

## Montana Establishes 30-Day Threshold for Income Tax Withholding for Nonresidents

Effective for tax years starting on or after January 1, 2024, employers are not required to withhold Montana state income tax from nonresident employee wages earned for work within the state until an employee spends more than 30 days performing work for the employer in Montana.

**The Details:**

Currently, all compensation paid to nonresident employees regardless of days worked in Montana is subject to income tax withholding.

Under the revised law, the number of days a nonresident employee is considered present in Montana includes all days the nonresident employee is present and performing employment duties on behalf of the employer.

**Exceptions:** The 30-day nonresident employee withholding threshold does not apply to wages received by professional athletes, professional entertainers, or people "of prominence" who perform services for pay on a per-event basis. In addition, construction workers who perform services to improve real property on construction sites, production employees and "key employees" are also excluded from the 30-day threshold.

"Key employee" means an individual who, for the year immediately preceding the current tax year, had annual compensation from the employer of greater than $500,000.

**Next Steps:**

Montana employers who have nonresident employees (other than those noted in the "exceptions" above) working in Montana are not required to withhold state income tax until the nonresident employee has worked for the employer in Montana for 30 or more days.

For additional information, see H.B. 447.

## Nevada Creates State-Run Retirement Plan

Nevada has enacted legislation (Senate Bill 305), which will require covered employers to enroll eligible employees in a retirement program that may include the Nevada Employee Savings Trust (NEST). Employee contributions would begin by **July 1, 2025**.

**The Details:**

The State of Nevada will establish a state-run retirement program, NEST, and employee contributions to their Individual Retirement Accounts (IRAs) are expected to begin by July 1, 2025.

*Covered Employee and Employer:*

**Covered Employee:** Is employed by a covered employer for at least 120 days, whose wages or other compensation is allocable to Nevada; and is at least 18 years of age. See the **text of the law** for exceptions.

**Covered Employer:** Has more than five workers, has been in business for at least 36 months; and has not maintained a tax-favored retirement plan for its employees (or has not done so in an effective form and operation at any time within the current calendar year or three immediately preceding calendar years).

*Employer Responsibilities, Protections and Requirements:*

Under Senate Bill 305, a covered employer must not be deemed to be a fiduciary of NEST and is required to do the following in relation to NEST:

- Automatically enroll a covered employee in NEST (or a similar program offered by a trade association or chamber of commerce);
- Withhold and contribute funds from a covered employee's compensation to an IRA at a contribution rate set by the Nevada Employee Savings Trust Board of Trustees (the Board).
- Deposit a covered employee's withheld contributions under NEST in a manner determined by the Board in no later than ten business days after the date such amounts otherwise would have been paid to the covered employee;
- Allow covered employees to:
  - Opt out of NEST;
  - Change their contribution rate; and
  - Make withdrawals (as allowed under federal law) to meet a financial or other emergency. **Note:** See the **text of the law** for beneficiary provisions; and
- Protect and keep confidential personally identifiable information (PII), such as the person's name, physical and email address, telephone number and other PII and information relating to individual accounts, unless the person who provides the information or is the subject of the information expressly agrees in writing to the disclosure of the information.

See the **text of the law** for further details on PII protections under the law.

*Employer Protections:*

The law protects a covered employer (or other employer) from:

- An employee's decision to participate in or opt out of NEST;
- A participant's or the Board's investment decisions;
- The design of NEST or the benefits paid to participants; and
- The financial performance of NEST, provided the covered employer or other employer played no role.

See the **text of the law** for further details on an employer's tax and financial protections under the law.

*Employer Requirements:*

Once prepared by the Board, covered employers may be required to deliver, distribute or facilitate the delivery of the following (and any other information to covered employees) in a time and manner set by the Board:

- Instructions on obtaining additional information about NEST;
- A description of the:
  - Benefits and risks associated with making contributions through NEST;
  - Federal and state income tax consequences of an IRA. This may consist of or include the disclosure statement required to be distributed by the Trustee by the Internal Revenue Code (IRC) and Treasury Regulations;
- The following statements:
  - Covered employees should contact their own financial advisers for financial advice;
  - NEST is not an employer-sponsored retirement plan;

- Covered employers are not in a position to provide financial advice and are not liable for decisions covered employees make concerning NEST;
- Nevada does not guarantee NEST or the covered employee's IRA that is established or maintained through NEST;
- Neither a covered employer nor the state will:
  - Monitor or have an obligation to monitor the covered employee's eligibility under the IRC to make contributions to an IRA or to monitor whether the covered employee's contributions to the IRA established or maintained for the covered employee through NEST exceed the maximum IRA contribution. It is the covered employee's responsibility to monitor such matters; and
  - Have liability with respect to the failure of a covered employee to be eligible to make IRA contributions or for making any contribution in excess of the maximum IRA contribution.

**Next Steps:**

Covered employers should be on the lookout for information from the Board to help ensure compliance with Nevada's state-run retirement program requirements under Senate Bill 305 by **July 1, 2025**.

## Update: New Jersey Strengthens Unemployment Laws

This communication has been updated as follows:

**Update August 2023:** The New Jersey Department of Labor (NJDOL) has **instructed** employers to create an **Employer Access account** as soon as possible to provide an email address for electronic correspondence with the NJDOL Divisions of Employer Accounts and Unemployment Insurance (under the law, all correspondence must be done electronically). NJDOL will use the email provided to send further updates to employers.

New Jersey has enacted several laws that impact unemployment processes by adding employer requirements and employee protections during labor disputes.

**The Details:**

New Jersey Governor Phil Murphy signed into law:

- **Amendments** that add employer reporting requirements and amend certain deadlines in the benefits determination process. These changes took effect on July 1, 2023.
- **Assembly Bill 4772**, which expedites unemployment payments during certain labor disputes. The law took effect immediately and is retroactive to unemployment claims filed on or after January 1, 2022.

**Amendments:**

*Reporting Requirements:*

As background, employers must provide **Form BC-10** immediately to employees upon their separation from employment. Under the amendments, employers must also, upon the separation of a New Jersey employee, simultaneously and electronically send to the New Jersey Department of Labor (NJDOL):

- A copy of Form BC-10; and
- A new form (to be published by the NJDOL with submission instructions) with specific information to enable the NJDOL to make a benefit determination, regardless of whether the separating employee files a claim. Employers must also provide this new form to separated employees.

*Initial Benefits Determination Deadlines:*

Under the amendments, the following initial benefits determination deadlines took effect beginning on July 31, 2023:

| Deadline | Current Law | Law Effective July 31, 2023 |
|---|---|---|
| DOL Notification to Employer Notification | N/A | Within seven days of the first occurrence of:<br>• The filing of a claim; or<br>• The employer providing benefit determination information |
| Employer Response to DOL Request for Information | 10 days | Seven days |
| Initial Benefits Determination | Two weeks | Three weeks |
| Employer Initial Benefit Determination Appeal | Seven days after delivery. | Seven days after confirmed receipt, including by electronic means. |
| Appeals of Subsequent Benefits Determination (if benefits were terminated or reduced) | N/A | Claimant has seven days following notification of written explanation. |

*Penalties:*

An employer that willfully fails or refuses to provide the required information (including the required separation information) would be required to pay a $500 fine or 25 percent of the amount "fraudulently withheld," whichever is greater. Each day the failure or refusal occurs is treated as a separate offense.

**Assembly Bill 4772:**

Assembly Bill 4772 applies to unemployment benefit claims filed on or after January 1, 2022. The amended law now allows unemployment insurance benefits to be paid to employees:

- During an employer lockout, even if a strike did not immediately precede the lockout.
- In 14 days (previously 30 days) following a strike.
- Immediately regardless of the timeframe, if replacement workers are hired on either a permanent or temporary basis.

Finally, the amended law makes clear that employees may still receive benefits if an issue in the labor dispute is:

- A failure or refusal of the employer to comply with an agreement or contract between the employer and the claimant, including a collective bargaining agreement with a union representing the claimant; or
- An employer's failure or refusal to comply with a state or federal law pertaining to hours, wages or other conditions of work.

**Next Steps:**

New Jersey employers should review the new requirements and train HR personnel and supervisors on their obligations under the law.

## New Jersey Retroactively Adopts "Convenience of the Employer" Rule for Withholding

Read the article here.

## Reminder: Upcoming New York Salary Transparency Requirements

All New York State salary transparency requirements and amendments are set to take effect on **September 17, 2023**. To prepare for the upcoming requirements and help ensure compliance with Senate Bill 9427A and Assembly Bill 999, covered employers should:

- Review:
  - o Hiring policies and procedures;
  - o Advertisements for jobs, promotions or transfer opportunities.
- Post salary ranges and other requirements on internal and external job postings.

- Consider retaining records of compensation and job descriptions as a best practice.
- Train managers and personnel involved in the recruitment process on the changes under Assembly Bill 999.
- Be on the lookout for updated rules and regulations from the state, which will be made available on the **state website**.

**Note:** New York City employers should coordinate compliance with the city's pay transparency law.

## State of New York Releases Updated WARN Act Regulations

The New York State Department of Labor (NYDOL) has updated regulations that clarify definitions and add employer requirements to the New York State Worker Adjustment and Retraining Notification (NY WARN) Act ("the Act"). The updated regulations are effective immediately.

**The Details:**

As background, the Act covers a business with 50 or more full-time employees or 50 or more employees (including part-time employees) that work at least 2,000 hours per week in the aggregate.

Covered employers must provide employees, union representatives, the New York Commissioner of Labor ("Commissioner") and the local Workforce Investment Board 90 days' advance notice for plant closings, mass layoffs, relocations or reductions in work hours. See the **NYDOL website** for further details.

**The Regulations:**

The updated **regulations** clarify and add employer requirements under the Act.

*Definitions:*

The regulations clarify the following definitions for layoffs:

- **Temporary Layoffs:** Do not trigger employer notice obligations and are a mass layoff with a duration of less than a six-month consecutive period with a planned return of employees after the layoff period ends.
- **Permanent Layoffs:** Trigger employer notice requirements and are a mass layoff that extends beyond a six-month consecutive period.

*Employee Thresholds:*

Under the regulations, employers must include full-time employees that work remotely, but are based at the employment site toward the 50-employee threshold.

**Notice Updates:**

*Additional Required Notice Recipients:*

The regulations expand the list of recipients that must receive an employer's notice of a layoff to include the following that are located in proximity of where the employment site is located:

- The chief elected official of the unit(s) of local government;
- The school district(s);
- A locality that provides police, firefighting, emergency medical or ambulance services or other emergency services. In the event two or more localities provide the above services, employers must notify each locality that provides such services; and
- Other individuals or entities identified in the Act.

*Employer Notice to the Commissioner:*

The regulations also require covered employers to provide notice to the Commissioner electronically (formerly, mailing or faxing was permitted). The Commissioner will provide further information, and the updated method will be posted on the NYDOL's website or another commissioner-approved method.

**Note:** Employers are strongly encouraged to submit their notices on the NYDOL's online WARN **portal**.

Employers must include the following **additional information** when providing notice to the Commissioner:

- The business addresses and email addresses for the employer's and employees' agents;
- For each affected employee:
  - The personal telephone numbers and email addresses (if known),
  - Work locations;
  - Working status (part-time or full-time);
  - The method of payment (hourly, salary or by commission); and
  - Their union affiliation.
- The total number of full-time and part-time employees in New York State and at each affected site, and the number of affected employees at each affected site.

*Notice to Affected Employees:*

An employer's notice to affected employees must also contain relevant information known at the time of the notice, including:

- Information on severance packages or financial incentives (if the employee works until the effective date of the layoff);
- Dislocated worker assistance that is available; and
- The estimated duration of the planned action (if it is expected to be temporary).

*Notice Exceptions:*

The regulations also provide the following changes to existing NY WARN exceptions, which in certain situations, allow an employer to give less than the full 90-days' notice to affected employees:

- The unforeseeable business circumstances exception includes public health emergencies (such as a pandemic) that result in a sudden and unexpected closure and a terrorist attack that directly impacts operations; and
- The faltering company exception only applies to plant closings (like the federal WARN Act).

*New Notice Exemption Process:*

Under the regulations' new process to claim eligibility for a NY WARN exception, an employer must:

- Submit a request to the Commissioner *within 10 business days of the required WARN notice being provided to the Commissioner* (unless an extension is granted); and
- Provide documentation to demonstrate the applicability of the exception, which includes:
  - A statement that explains the reasons for the layoff, closure or hours reduction;
  - A description stating why a shorter notice period is required; and
  - An affidavit that an employer signs under the penalty of perjury that confirms the documents are true and correct.

**Note:** Other documentation may be required.

After the Commissioner conducts an investigation:

- They will determine whether the employer qualifies for the exception or request an investigative conference with the employer and the employer's attorney if additional information is needed; and
- If it is determined that the employer failed to meet the exception criteria, the Commissioner will determine the employer's liability, if the employer is found to have violated the NY WARN Act.

*Employees Transferred Due to a Sale of Business:*

The regulations also clarify a NY WARN sale of business provision. Sellers are not required to give WARN notice if the transfer of employees in the sale is a good-faith condition of the purchase agreement and the purchasing employer does not uphold that condition. Under these circumstances, the purchasing employer is obligated to provide notice and the selling employer is relieved of the notice obligation.

**Next Steps:**

New York employers should review the following:

- Additional responsibilities for mass layoffs, plant closings, relocations or reductions in hours under the **regulations**;
- Existing requirements under the federal WARN Act; and
- Other applicable state laws, WARN or otherwise, that may require notice of termination.

## Oregon Expands Family Leave Act

Oregon has enacted legislation (Senate Bill 999), which, for leave purposes, amends the definition of a one-year period, expands who qualifies as a family member and adds employee reinstatement requirements under the Oregon Family Leave Act, among other things. Most of the changes take effect on September 3, 2023.

**The Details:**

*One-Year Period:*

As background, the Oregon Family Leave Act (OFLA) specifies the amount of family leave that an employee may take in a "one-year period."

Effective July 1, 2024, Senate Bill 999 amends the definition of a one-year period to mean:

- A consecutive 12-month period, such as a calendar year or fiscal year; or
- A period of 52 consecutive weeks that starts the Sunday before the date that the OFLA leave begins. For example, the one-year period for an employee's OFLA leave that starts on Wednesday, July 3, 2024, would span from Sunday, June 30, 2024, to Saturday, June 28, 2025.

*Qualifying Family Members:*

Effective September 3, 2023, the definition of a "family member" under the OFLA is expanded to include:

- A domestic partner (regardless of gender) or spouse or domestic partner of sibling, child, grandparent, or grandchild;
- Siblings and step-siblings; and
- An individual related by blood or affinity whose close association with a covered individual is the equivalent of a family member.

The Commissioner of the Bureau of Labor and Industries will adopt rules for determining whether a close association exists (which may include a form) by September 3, 2023.

**Note:** The expanded definition will also apply to the **Paid Leave Oregon Program** (PLO).

*Reinstatement Requirements:*

As background, under OFLA, an employee that returns from their leave must be restored to the same position they held before their leave (or an equivalent position if their previous position no longer exists). Additionally, if an equivalent position is not available at the same job site, the employee may be offered an equivalent job at a different location that is ***within 20 miles*** of the previous job site.

Beginning September 3, 2023, if there is no equivalent position at the same job site, an employer ***must*** offer an equivalent position at a different location if a position is available, but the location only needs to be ***within 50 miles*** of the prior job site. And, if equivalent jobs are available at multiple sites, employers must offer the position at the job site that is closest to the employee's previous job site.

*Benefits Contributions:*

As background, when an employee takes protected leave under OFLA or the PLO, an employer must maintain the employee's health care benefits as if the employee had not been on leave.

Senate Bill 999 clarifies that effective September 3, 2023:

- Employees must continue making regular contributions to their health insurance premiums while on leave; and
- Employers that choose to cover the employee's portion of the insurance premium while the employee is on leave (not mandatory) may deduct those costs from the employee's paycheck upon the employee's return from leave. **Note:** These deductions may not exceed 10 percent of the employee's gross pay.

**Next Steps:**

- Review and update leave policies.
- Consider aligning the FMLA leave year with OFLA and PLO, keeping in mind that under the FMLA:
  - An employer must provide employees at least 60 days' notice before changing the method to calculate a leave year; and
  - The change cannot impact an employee's ability to take 12 weeks of leave.

## Oregon Extends New Hire Reporting Requirements

The State of Oregon has enacted legislation (Senate Bill 184) that extends new hire reporting requirements to independent contractors. Senate Bill 184 takes effect on **January 1, 2024**, and is not retroactive.

**The Details:**

Senate Bill 184 clarifies the following definitions for new hire reporting requirements:

- **Employee:** An individual that is required to file a federal withholding Form W-4 under the Internal Revenue Code.
- **Independent Contractor:** An individual that is required to file a federal Form W-9 under the Internal Revenue Code and is anticipated to perform services for more than 20 days.
- **Re-engage:** To engage an independent contractor who previously performed services as an independent contractor for the same employer, but not within the previous 60 days.
- **Rehire:** To re-employ an individual who was laid off, separated, furloughed, granted a leave without pay or terminated from employment for more than 60 days.

Senate Bill 184 extends the following New Hire Reporting Requirements:

| Existing Law | January 1, 2024 Additions |
|---|---|
| *Employer Reporting Eligibility* | |
| Employers in Oregon must report to the Division of Child Support of the Department of Justice (the Division) the hiring or rehiring of an employee that:<br>• Resides or works in Oregon; and<br>• The employer anticipates paying earnings, provided the employer:<br>A. Has employees that only work in Oregon; or<br>B. Is a multi-state employer that has designated Oregon as its reporting state to the United States Secretary of Health and Human Services. | Senate Bill 184 requires employers in Oregon to also report to the Division of Child Support of the Department of Justice when an independent contractor is engaged or re-engaged.<br><br>Bullet "A" is amended to: "Has employees or independent contractors that only work in Oregon." |

| *Form Submission* | |
|---|---|
| The required report may be submitted on:<br>• A federal Form W-4; or<br>• An equivalent form that is approved by the Division. | Employers with independent contractors may use Form W-9 as a reporting option. |
| *Required Worker Information* | |
| The required report must contain the employer's name, address and federal tax identification number and the employee's name, address and Social Security number. | The required report must contain the employer's name, address and federal tax identification number and the employee or independent contractor's name, address and Social Security number. |
| *Submission Requirements* | |
| An employer must submit the report by mail or other means in accordance with rules adopted by the Department of Justice. | No change. |
| An employer may submit a cumulative report for all individuals hired or rehired during the previous reporting period. | The law adds those that are engaged or re-engaged in the cumulative report requirement. |
| *Timing Requirements* | |
| The report must be made:<br>• No later than 20 days after the date the employer hires or rehires the employee; or<br>• Monthly, at least 12 days apart, and no more than 16 days apart, if electronically submitted. | The timing also applies to the engagement or re-engagement of an independent contractor. |

**Next Steps:**

Oregon employers should review their hiring policies and procedures and train HR personnel to ensure compliance with Senate Bill 184 by January 1, 2024.

## Rhode Island Clarifies and Increases Penalties for Wage Theft and Independent Contractor Misclassification

Rhode Island has enacted legislation (Senate Bill 1079a), which clarifies and increases certain penalties for employers that are found to have violated certain payment laws or misclassified independent contractors. Senate Bill 1079a takes effect on **January 1, 2024**.

**The Details:**

As background, any employer that is found to have violated or failed to comply with laws that prevent wage theft or employer misclassification may face penalties under the law.

*Increased Wage Theft Penalties:*

Senate Bill 1079a clarifies that an employer that fails to pay an employee on time under **the law** may face:

- Penalties for each **pay period** they fail to pay on time;
- A felony charge (with imprisonment of no more than three years) and a fine of up to $5,000, when they are found to have **knowingly and willfully** failed to pay more than $1,500 in unpaid wages on time.

*Increased Penalties for Misclassifying Independent Contractors:*

Senate Bill 1079a also clarifies that a company that is found to have misclassified an employee as an independent contractor may face increased penalties ranging from $1,500 to $5,000 per offense (depending on the number of offenses).

The law also provides increasing penalties for employers in the **construction industry** that are found to have **knowingly and willfully** violated Senate Bill 1079a. Under the law:

- A misclassification that does not exceed $1,500, upon a plea or a conviction, may result in an employer being found guilty of a misdemeanor and being subject to imprisonment for at most one year, a fine of $1,000, or both.

- Employers that are found to have repeatedly violated the law after a previous offense, where the misclassification value exceeds $1,500, may result in the employer being found guilty of a felony and sentenced to a term of imprisonment of up to three years, a fine up to $5,000, or both.

**Next Steps:**

Rhode Island employers should be on the lookout for further materials from the Department of Labor and Training on changes in state law regarding payment of wages and the new penalties.

## Rhode Island Makes Juneteenth a State Holiday

Rhode Island has enacted legislation (Senate Bill 0444A), which will make June Nineteenth (Juneteenth) a state holiday. Senate Bill 0444A takes effect on January 1, 2024.

**The Details:**

Under the law, for Juneteenth National Freedom Day:

- Non-exempt (hourly workers) cannot be forced to work on June 19 (beginning on June 19, 2024), unless there is an applicable exemption; and
- Employees that work on June 19 must receive holiday pay of 1.5 times their normal rate of pay.

**Next Steps:**

- Train payroll and supervisors on the requirements under House Bill 0444A.
- Update holiday and paid time off policies.
- Communicate changes to employees.

## Rhode Island Prohibits Provisions that Conceal Civil Rights Claims

Rhode Island has enacted legislation (Senate Bill 0342aa), which prohibits employers from requiring that an employee enter into a nondisclosure or confidentiality agreement that requires alleged civil rights violations to remain confidential. Senate Bill 0342aa is **effective immediately**.

**The Details:**

As background, the **Rhode Island Fair Employment Practices Act** (FEPA) protects employees' civil rights, which includes protections from discrimination in employment on the basis of race, color, religion, sex, sexual orientation, gender identity or expression, disability, age or country of ancestral origin.

Senate Bill 0342aa provides the following definitions:

- **Confidential:** To remain secret and not to be disclosed to another person or entity.
- **Non-Disparagement Agreement:** An agreement that restricts the individual from taking any action, which includes but is not limited to: speaking or publicizing information that negatively impacts the employer's reputation, products, services, employees and management of the employer.

Senate Bill 0342aa prohibits an employer from requiring an employee, as a condition of their employment, to enter into a "nondisclosure agreement that requires that alleged civil rights violations remain confidential, or a non-disparagement agreement concerning alleged violations of civil rights or alleged unlawful conduct, or any agreement with a clause that requires that alleged violations of civil rights remain confidential."

**Next Steps:**

- Revise nondisclosure, non-disparagement and other confidentiality agreements.
- Consider working with legal counsel to ensure compliance with Senate Bill 0342aa.

# Local

## Edgewater, Colorado Adopts Minimum Wage

The Edgewater, Colorado City Council has adopted **Ordinance 2023-07**, which establishes a local minimum wage. The new ordinance applies to employers with one or more "covered" employees, which are individuals performing, or expected to perform, four or more hours of work for an employer in any given week in Edgewater.

**The Details:**

Edgewater Ordinance 2023-07 provides that the city minimum wage for **non-tipped** employees will be as follows:

| Effective Date | Minimum Hourly Rate |
|---|---|
| January 1, 2024 | $15.02 |
| January 1, 2025 | $16.52 |
| January 1, 2026 | $18.17 |
| January 1, 2027 | $19.99 |
| January 1, 2028 | $21.99 |
| January 1, 2029 | Beginning on January 1, 2029, and each January thereafter, the Edgewater minimum wage rate shall increase by a change in the local area's Consumer Price Index (CPI-W) or match the then-current Denver minimum wage rate, whichever is greater. |

Edgewater Ordinance 2023-07 provides that the city cash minimum wage for **tipped** employees will be as follows:

| Effective Date | Minimum Hourly Rate |
|---|---|
| January 1, 2024 | $12.00 |
| January 1, 2025 | $13.50 |
| January 1, 2026 | $15.15 |
| January 1, 2027 | $16.97 |
| January 1, 2028 | $18.97 |
| January 1, 2029 | Beginning on January 1, 2029, and each January thereafter, the Edgewater minimum wage rate shall increase by a change in the local area's Consumer Price Index (CPI-W) or match the then-current Denver minimum wage rate, whichever is greater. |

**Next Steps:**

Effective January 1, 2024, employers with employees who are performing, or expected to perform, four or more hours of work for an employer in any given week in Edgewater must pay at least the minimum wage rates as noted above. However, should the Colorado state minimum wage exceed the Edgewater minimum wage, then the employer must pay at least the state minimum wage.

Through December 31, 2023, Edgewater employers must pay at least the minimum wage as required by Colorado state law. The current Colorado state minimum wage is $13.65 and the cash minimum wage for tipped employees is $10.63 per hour.

## New York City Releases FAQs on Automated Employment Decision Tools

The New York City Department of Consumer and Worker Protection (DCWP) has released FAQs to help employers understand requirements under Local Law 144.

**The Details:**

As background, **Local Law 144** prohibits employers or an employment agency (agency) from using automated employment decision tools (AEDTs) in New York City for a variety of reasons. The law permits certain exceptions when employers and employment agencies (covered employers) provide required notices and ensure that a bias audit was performed.

The **FAQs** clarify the following about Local Law 144, which took effect on **July 5, 2023**:

| The Law | The FAQs Clarifications |
|---|---|
| **Scope and Geographic Reach** | |
| Local Law 144 covers the use of AEDTs by employers or employment agencies "in the city." | "In the city" means:<br>A. A job is fully remote, but the location associated with it is an office in NYC;<br>B. A job location is at an office in NYC, at least part-time; or<br>C. The location of the agency using the AEDT is NYC (or if the agency is outside of NYC, Bullet A or B is true). |
| **Employer Recruitment or Outreach Efforts** | |
| The use of AEDTs to assess an individual that is not an employee, is being considered for promotion, and has not applied for a specific position for employment is not covered by Local Law 144. | Use of AEDTs for recruitment or outreach efforts (such as scanning resumes, conducting outreach to candidates or for invite applications):<br>• Is not covered under the law; and<br>• May be allowed under federal, state or local anti-discrimination laws. |
| **Bias Audits** | |
| ***Requirements*** | |
| Covered employers must publish a summary of the results of the most recent AEDT bias audit and the date when the use of the AEDT began. | Covered employers:<br>• Must publish the date they began using the AEDT (the distribution date) and a summary of the most recent bias audit. This information must be published by providing an active hyperlink to a website with this information or posting the information on the employment section of their website.<br>**Note:** The summary of results must include:<br>o The date of the most recent AEDT bias audit;<br>o The source and explanation of the data used to conduct the bias audit;<br>o The number of individuals the AEDT assesses and assigns within an unknown category; and<br>o The number of applicants or candidates, the selection or scoring rates, as applicable, and the impact ratios for all categories.<br>• Must follow anti-discrimination laws and rules to determine necessary actions based on the results of an AEDT bias audit; and<br>• Are not required to take any specific action based on the results of an AEDT bias audit (such as when bias is found). |
| ***Employers Use of Test Data**** | |
| Covered employers may use test data to conduct a bias audit if they have minimal historical data or do not collect demographic data. | Where a covered employer has insufficient historical data available, they may also use the historical data of other covered employers to conduct a bias audit.<br>**Note:** Covered employers can only rely on such data if:<br>• They provided historical data from their use of an AEDT to the independent auditor performing the bias audit, or<br>• It is the covered employer's first time using the AEDT. |

| *Employers Are Prohibited from Imputing Demographic Information* | |
|---|---|
| Covered employers that do not collect certain demographic information and will need to determine which data to rely on when performing the bias audit are prohibited from imputing or inferring demographic information where none is available (i.e., by using a proxy methodology). Instead, they may use historical data of other employers or employment agencies or test data. | |
| *AEDT Vendors Performing Bias Audits on Its Own Tool* | |
| The law prohibits AEDT vendors (the entity that creates or develops an AEDT) from performing a bias audit of its own tool. | The facts confirm that covered employers:<br>• May have an independent auditor conduct a bias audit of its tool.<br>• Must not use an AEDT unless:<br>o A bias audit was done; and<br>o The vendor that creates the AEDT is not responsible for a bias audit of that tool. |

*Test data is data used to conduct a bias audit that is not historical data, but the FAQs do not explicitly define "test data." The FAQs state that the summary of the results of a bias audit must include the source and explanation of the data used to conduct the bias audit and explain how the data was sourced or developed (when a covered employer uses test data).

**Next Steps**

- Review the **FAQs** in full to help ensure AEDT policies and practices are in compliance with Local Law 144.
- Ensure all job advertisements target individuals or pools of potential candidates based on objective criteria that align to success in a role, and do not discriminate against a protected characteristic.
- Consult legal counsel on sharing the results of bias audits with the public.
- Be on the lookout for additional guidance from the DCWP.

# Minimum Wage

## Minimum Wage Announcements : 7/16/23 – 8/15/23

The following states or localities have announced new minimum wage increases.

| State or Locality | Minimum Wage Rate | Minimum Tipped Cash Wage | Effective Date(s) | New or Updated Poster Requirement? | Notes |
|---|---|---|---|---|---|
| Santa Rosa, CA | $17.45 | $17.45* | 1/1/24 | Yes | |
| Petaluma, CA | $17.45 | $17.45* | 1/1/24 | Yes | |
| Denver, CO | $18.29 | $15.27 | 1/1/24 | Yes | Once posted may be located here |
| California | $16.00 | $16.00 | 1/1/24 | | Once posted may be located here |

*CA does not allow the use of a tip credit.

Download a PDF of a comprehensive listing of state and local minimum wage rates.

# Federal

### USCIS Announces New Form I-9 and Alternative Verification Procedure

Read the article here.

## 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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