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 Workplace Violence Prevention Requirements Take Effect Soon

Many employers in California must implement an effective written plan and take certain other actions to prevent workplace violence by **July 1, 2024**. The requirements are a result of the enactment of Senate Bill 553.

The Details:

Written Plan Required:

Unless exempt (see below), employers must adopt a workplace violence prevention plan that is in writing and made available and easily accessible to employees, authorized employee representatives, and representatives of the state at all times. The plan must be in effect at all times and in all work areas. The plan must be specific to the hazards and corrective measures for each work area and operation. The written plan may be incorporated as a stand-alone section in the written injury and illness prevention program or maintained as a separate document.

Required Plan Elements:

The written plan must include the following elements:

- Names or job titles of the individuals responsible for implementing the plan. If there are multiple individuals responsible for the plan, their roles must be clearly described.
- Effective procedures to obtain the active involvement of employees and authorized employee representatives in developing and implementing the plan, including, but not limited to, through their participation in identifying, evaluating, and correcting workplace violence hazards, in designing and implementing training, and in reporting and investigating workplace violence incidents.
- Methods the employer will use to coordinate implementation of the plan with other employers, when applicable, to ensure that those employers and employees understand their respective roles, as provided in the plan. These methods must ensure that all employees are provided the training required, and that workplace violence incidents involving any employee are reported, investigated and recorded.

- Effective procedures for the employer to accept and respond to reports of workplace violence, and to prohibit retaliation against an employee who makes such a report.
- Effective procedures to ensure that supervisory and non-supervisory employees comply with the plan.
- Effective procedures to communicate with employees regarding workplace violence matters, including, but not limited to, both of the following:
  - How an employee can report a violent incident, threat, or other workplace violence concern to the employer or law enforcement without fear of reprisal.
  - How employee concerns will be investigated, and how employees will be informed of the results of the investigation and any corrective actions to be taken.
- Effective procedures to respond to actual or potential workplace violence emergencies, including, but not limited to, all of the following:
  - Effective means to alert employees of the presence, location and nature of workplace violence emergencies.
  - Evacuation or sheltering plans that are appropriate and feasible for the worksite.
  - How to obtain help from staff assigned to respond to workplace violence emergencies, if any, security personnel, if any, and law enforcement.
  - Procedures to develop and provide the training required.
  - Procedures to identify and evaluate workplace violence hazards, including, but not limited to, scheduled periodic inspections to identify unsafe conditions and work practices, and employee reports and concerns. Inspections must be conducted when the plan is first established, after each workplace violence incident, and whenever the employer is made aware of a new or previously unrecognized hazard.
  - Procedures to correct workplace violence hazards identified and evaluated in a timely manner.
  - Procedures for post-incident response and investigation.
  - Procedures to review the effectiveness of the plan and revise the plan as needed, including, but not limited to, procedures to obtain the active involvement of employees and authorized employee representatives in reviewing the plan. The plan must be reviewed at least annually, when a deficiency is observed or becomes apparent, and after a workplace violence incident.
  - Procedures or other information required by the state as being necessary and appropriate to protect the health and safety of employees.

The California Division of Occupational Safety and Health (Cal/OSHA) has released a model workplace violence prevention plan to help general industry employers comply with the requirement.

The **model plan is a fillable template** for employers to complete. Instructions in red font enclosed in brackets indicate where employers must enter their worksite-specific information.

Note: Employers aren't required to use the model plan. They may create their own plan, use another Workplace Violence Prevention Plan (WVPP) template, or incorporate workplace violence prevention into their existing Injury and Illness Prevention Program (IIPP) as a separate section, provided it includes all of the required elements.

Recording Incidents:

Effective July 1, 2024, Senate Bill 553 requires employers to record information in a violent-incident log for every workplace violence incident. Information that is recorded in the log for each incident must be based on information solicited from the employees who experienced the workplace violence, on witness statements, and on investigation findings.

The employer must omit any element of personal identifying information sufficient to allow identification of any person involved in a violent incident, such as the person's name, address, email address, telephone number, Social Security number, or other information that, alone or in combination with other publicly available information, reveals the person's identity.

The log must be reviewed during the periodic reviews of the plan.

The information recorded in the log must include all of the following:

- The date, time and location of the incident.
- The workplace violence type(s), as described in the law, involved in the incident.
- A detailed description of the incident.
- A classification of who committed the violence, including whether the perpetrator was a client or customer, family or friend of a client or customer, stranger with criminal intent, co-worker, supervisor or manager, partner or spouse, parent or relative, or other perpetrator.
- A classification of circumstances at the time of the incident, including, but not limited to, whether the employee was completing usual job duties, working in poorly lit areas, rushed, working during a low staffing level, isolated or alone, unable to get help or assistance, working in a community setting, or working in an unfamiliar or new location.
- A classification of where the incident occurred, such as in the workplace, parking lot or other area outside the workplace, or other area.
- The type of incident.
- Consequences of the incident, including, but not limited to:
  - Whether security or law enforcement was contacted and their response.
  - Actions taken to protect employees from a continuing threat or from any other hazards identified as a result of the incident.
- Information about the person completing the log, including their name, job title, and the date completed.

Required Training:

The law also requires employers to provide effective training to employees. Training material appropriate in content and vocabulary to the educational level, literacy and language of employees must be used.

The employer must provide employees with initial training when the plan is first established, and annually thereafter, on all of the following:

- The employer's plan, how to obtain a copy of the employer's plan at no cost, and how to participate in development and implementation of the employer's plan.
- The definitions and requirements of the law.
- How to report workplace violence incidents or concerns to the employer or law enforcement without fear of reprisal.
- Workplace violence hazards specific to the employees' jobs, the corrective measures the employer has implemented, how to seek assistance to prevent or respond to violence, and strategies to avoid physical harm.
- The violent incident log required and how to obtain copies of records.
- An opportunity for interactive questions and answers with a person knowledgeable about the employer's plan.

Additional training must be provided when a new or previously unrecognized workplace violence hazard has been identified and when changes are made to the plan. The additional training may be limited to addressing the new workplace violence hazard or changes to the plan.

Recordkeeping:

Records of workplace violence hazard identification, evaluation and correction must be created and maintained for a minimum of five years.

Training records must be created and maintained for a minimum of one year and include training dates, contents or a summary of the training sessions, names and qualifications of persons conducting the training, and names and job titles of all persons attending the training sessions.

Violent incident logs must be maintained for a minimum of five years.

The above records must be made available to employees and their representatives, upon request and without cost, for examination and copying within 15 calendar days of a request.

Records of workplace violence incident investigations conducted must be maintained for a minimum of five years. These records must not contain "medical information."

Employers That Are Exempt:

The following employers/places of employment are exempt from the requirements of Senate Bill 553:

- Healthcare facilities, service categories and operations covered by **Section 3342 of Title 8 of the California Code of Regulations.**
- Employers that comply with **Section 3342 of Title 8 of the California Code of Regulations.**
- Facilities operated by the Department of Corrections and Rehabilitation, if the facilities are in compliance with **Section 3203 of Title 8 of the California Code of Regulations**.
- Certain law enforcement agencies (**see the text of the law for details**).
- Employees teleworking from a location of the employee's choice, which isn't under the control of the employer.
- Places of employment where there are fewer than 10 employees working at the workplace at any given time and that aren't accessible to the public, if the workplaces are in compliance with **Section 3203 of Title 8 of the California Code of Regulations**.

Next Steps:

Unless exempt, California employers should ensure compliance with Senate Bill 553 by **July 1, 2024.**

Florida Amends Hours-of-Work Restrictions on Certain Minors

Florida has enacted legislation that will allow certain teenagers to work more hours under state law. The law (House Bill 49) takes effect **July 1, 2024**.

The Details:

Here's a summary of the changes made by House Bill 49:

Existing Law	House Bill 49
Minors who are 16 years old or 17 years old are prohibited from working before 6:30 a.m. or after 11:00 p.m.	Minors who are 16 years old or 17 years old are prohibited from working before 6:30 a.m. or after 11:00 p.m. **when school is scheduled the following day.**
When school is in session, minors who are 16 years old or 17 years old are prohibited from working more than 30 hours in a workweek.	When school is in session, minors who are 16 years old or 17 years old are prohibited from working more than 30 hours in a work-week, **unless the minor's parent or custodian, or the school superintendent, waives the limitation** in a form required by the Department of Business and Professional Regulation and provided to the employer.
Minors who are 16 years old or 17 years old are prohibited from working more than eight hours in any one day when school is scheduled the following day.	Minors who are 16 years old or 17 years old are prohibited from working more than eight hours in any one day when school is scheduled the following day, **except when the day of work is on a holiday or Sunday.**
Minors 17 years old or younger are prohibited from working for more than six consecutive days in any one week.	Minors **15 years old or younger** are prohibited from working for more than six consecutive days in any one week.
Minors 17 years old or younger are not allowed to work for more than four hours continuously without an interval of at least 30 minutes for a meal period.	Minors **15 years old or younger** are not allowed to work for more than four hours continuously without an interval of at least 30 minutes for a meal period. Minors **16 and 17 years old who work for eight hours or more in any one day** are not allowed to work more than four hours continuously without an interval of at least 30 minutes for a meal period.
No specific exemption for home-schooled individuals.	**New exemption** from the above restrictions for minors 16 and 17 years of age who are in a home education program or who are enrolled in an approved virtual instruction program in which the minor is separated from the teacher by time only.

Next Steps:

Florida employers should:

- Read **the text of the amended law in full**.
- Review policies and procedures to determine if changes should be made.
- Train supervisors on any changes.

Illinois Releases Regulations on Paid Leave Law

The Illinois Department of Labor has released regulations that implement a paid leave law that went into effect January 1, 2024. The regulations took effect **April 30, 2024**.

The Details:

Effective January 1, 2024, Illinois law requires employers to provide employees with up to 40 hours of paid leave that they may use for any reason. Unused paid leave must typically be carried over to the following year. The new regulations clarify and define various aspects of the law.

Frontloading:

The regulations clarify that an employer may provide some of its employees paid leave in the form of frontloading, and other employees paid leave via accrual, if the employer's paid leave policy or policies meet all the requirements of the law.

Employers that frontload the leave must give written notice to the employee informing the employee of how many paid leave hours that employee is receiving on or before the first day of their initial employment or on or before the first day of the initial 12-month period, and before the employer changes the amount of leave the employee receives via frontloading.

If an employer chooses a fixed date for the beginning of the 12-month period, such as January 1 or July 1, the employer may prorate the amount of frontloaded paid leave time that an employee who begins employment mid-12-month period would receive. The employer must then frontload the full 12-month period's paid leave time to that employee at the next regular fixed date.

An employer may choose to use each employee's employment start date as the start of that employee's 12-month period.

An employer may not retroactively diminish benefits that the employer has already provided to an employee. Therefore, an employer may not recoup or require an employee to repay paid leave time that was frontloaded at the beginning of the 12-month period if the employee's employment ends before the end of the 12-month period.

Use:

The regulations also clarify that an employee isn't entitled to use more than 40 hours of paid leave in a 12-month period, unless the employer allows them to do so.

Carryover:

As for carryover, the regulations make clear that an employer and employee may mutually agree, in writing and on an annual basis, that unused paid leave will be paid out to the employee at the end of the 12-month period instead of being carried over into the new 12-month period.

Next Steps:

Illinois employers should **review the regulations in full** and ensure compliance with the law.

Maryland Modifies Wage Statement Requirements and Adds New Hire Notice Mandate

Maryland has enacted legislation that modifies the required information that employers must provide on employee's wage statements and creates a new hire notice mandate. The law is effective **October 1, 2024.**

The Details:

On April 25, 2024, Maryland Governor Wes Moore signed into law **House Bill 385** (HB 385), which modifies and expands employee wage statement requirements as well as mandating that employers provide a new hire notice.

Wage Statement:

Under current law, Maryland employers are required to display "a statement of the gross earnings of the employee and the deductions from those gross earnings" on employee wage statements for each pay period.

Effective October 1, 2024, employers must provide written pay statements on the physical pay stub or on the online pay statement with the following information:

1. The employer's name registered with the state, address, and telephone number.
2. The date of payment and the beginning and ending dates of the pay period for which the payment is made.
3. Unless the employee is exempt from overtime under federal and state law, the number of hours worked during the pay period.
4. The rates of pay.
5. The gross and net pay earned during the pay period.
6. The amount and name of all deductions.
7. A list of additional bases of pay, including bonuses, commissions on sales, or other bases.

For each employee paid at a piece rate, the applicable piece rates of pay and number of pieces completed at each piece rate.

The enacted legislation requires that "the commissioner shall create and make available to an employer at no charge a pay stub template that may be used by the employer to comply with this section."

Other provisions in HB 385 include:

- Employers that violate the pay statement provisions will be subject to an administrative penalty of up to $500 per employee.
- A description of the process that is necessary for an employer to be assessed an administrative penalty.
- Employers are required to provide, at least one pay period in advance, notice of any change in a payday of wage.
- An employer may increase an employee's wage without advance notice.

New Hire Notice:

HB 385 also establishes a new mandate that requires employers to provide written notice upon hire that includes the following:

- Rate of pay of the employee;
- Regular paydays that the employer sets; and
- Leave benefits.

Next Steps:

Prior to October 1, 2024, Maryland employers should update the wage statements provided to employees on payday as well as develop a new hire notice with the information as required under **House Bill 385**.

New York State Adds Paid Protections to Express Milk

A New York State budget amendment adds additional paid protections for employees that need to express milk for their nursing child. The protections take effect on **June 19, 2024**.

The Details:

Under **existing law**, New York employees may use reasonable unpaid break time or existing paid break or meal time to express milk during the workday for up to three years following childbirth.

New Paid Time to Express Milk:

Beginning **June 19, 2024**, the New York Fiscal Year 2025 budget amends **Labor Law § 206-c** to provide eligible employees with an additional 30 minutes of paid break time to express breast milk for their nursing child.

Note: An employee may supplement the above 30 minutes with their existing paid break time or mealtime when needed.

Next Steps:

- Update workplace lactation policies and procedures.
- Train supervisors on the law by **June 19, 2024.**

New York State Requires Paid Prenatal Leave

A New York State budget amendment will require employers to provide pregnant employees with additional paid prenatal personal leave. The paid prenatal personal leave requirement takes effect on **January 1, 2025**.

The Details:

New York's Fiscal Year 2025 executive budget expands **Labor Law § 196-b** to require all New York employers to provide 20 hours of paid prenatal personal leave to eligible employees beginning on **January 1, 2025.**

Note: The required paid prenatal leave is in addition to existing **paid sick leave** requirements.

Covered Leave:

New York employers must provide eligible employees 20 hours of paid prenatal personal leave in a 52-week calendar period for the following healthcare services during an employee's pregnancy or related to the pregnancy:

- To attend physical examinations;
- Medical procedures;
- For monitoring and testing; or
- For discussions with a healthcare provider.

Employees may take paid prenatal personal leave in hourly increments.

Pay Requirements:

Employers must pay employees at their regular rate of pay or the applicable minimum wage (whichever is greater). The benefits for paid prenatal personal leave must be paid in hourly installments.

Note: Employers are not required to pay an employee for unused paid prenatal leave upon the employee's termination, resignation, retirement, or other separation from employment.

Next Steps:

- Review paid leave policies and procedures.
- Ensure compliance with the law by **January 1, 2025.**
- Train supervisors on how to respond to leave requests.

Oregon Aligns State Family Leave Act and Paid Leave Laws

Oregon has enacted legislation (Senate Bill 1515), which helps align the Oregon Family Leave Act (OFLA) to Paid Leave Oregon (PLO). Many changes under Senate Bill 1515 take effect on **July 1, 2024.**

The Details:

As a reminder, the federal Family Medical Leave Act (FMLA) applies to employers with 50 or more employees. OFLA applies to employers with at least 25 employees and PLO applies to all employers with at least one employee in Oregon. Senate Bill 1515 helps align the OFLA and PLO, reduces the stacking of employee leaves under the law, and limits bereavement leave to four weeks per year.

Below is a breakdown of the main areas of OFLA and PLO. We've included information on what is effective through June 30, 2024 and what changes take place beginning on **July 1, 2024.**

PTO and Other Leave Use and Accrual:

Effective Through June 30, 2024:

Employees may use other paid leave benefits (in addition to PLO benefits), but the employer may also deny the use of other paid leave benefits.

Effective July 1, 2024:

Employees taking PLO are entitled to use any accrued employer paid leave in addition to receiving PLO benefits up to 100 percent of full wage replacement. However, employees may draw from additional paid leave banks more than 100 percent of full wage replacement when their employer permits. In either scenario, employers may dictate the order of use of employer provided paid time off, unless the employer and employee agree otherwise.

Definitions of a One-Year Period:

Effective Through June 30, 2024:

There are different definitions of a one-year period under OFLA and PLO:

- Under OFLA, an employer may use a measurement period that aligns with the federal Family and Medical Leave Act (FMLA).
- Under PLO, it is 52 consecutive weeks beginning the Sunday immediately preceding the date the family leave begins.

Effective July 1, 2024:

OFLA will align with the PLO definition of a one-year period: 52 consecutive weeks that begin on the Sunday immediately preceding the date that the family leave begins.

Changes to Scheduling Requirements and Exceptions:

Effective Through June 30, 2024:

Oregon requires certain employers to provide written work schedules to employees at least two weeks in advance of the first day of work on the schedule.

An employer generally must pay a penalty wage to an employee for changes to the work schedule that are made without at least 14 days' notice.

Effective July 1, 2024:

The law lifts certain employer penalties and scheduling requirements under OFLA leave, PLO, and other protected leaves when:

- An employee fails to provide the 14 days' advance notice; and
- The employer needs to replace or accommodate an employee.

Family Leave Act Changes under OFLA:

Effective Through June 30, 2024:

Under OFLA, an employee may receive up to 12 weeks of unpaid, protected leave to:

- Care for themselves or a family member with a serious health condition, or care for their or a domestic partner's child: 1) That is sick (does not have to be a serious health condition) and requires home care (sick child leave); 2) Whose school or childcare provider has been closed in conjunction with a declared public health emergency; or 3) After the birth or placement for adoption or foster care. The employee may also use the leave to be with the child (parental bonding leave); and
- Address a disability due to their own pregnancy, childbirth or related medical condition.

Note: This includes prenatal care absences (pregnancy-related disability leave).

Employees may also be entitled to up to 12 weeks (and possibly up to an additional 12 weeks) in any leave year (pregnancy-related disability leave). Parents who use all 12 weeks of parental bonding leave may also take up to 12 weeks of sick-child leave. Under the law, pregnancy-related leaves can reach a maximum of 36 weeks of OFLA leave.

Under OFLA, an employee may also receive up to 12 weeks of unpaid, protected leave to make arrangements after the death of a family member to attend the funeral or memorial service or grieve. Employees may receive up to two weeks of bereavement leave per family member death, up to a maximum of 12 weeks total bereavement leave.

Effective July 1, 2024:

OFLA leaves are in addition to (not concurrent with) PLO leaves.

Employees may only use OFLA leave:

- To care for their or a domestic partner's child whose school or childcare provider has been closed in conjunction with a declared public health emergency;
- For sick child leave;
- For bereavement purposes (up to four weeks per year); and
- For pregnancy-related disability leave (in addition to other leaves under OFLA and PLO).

OFLA sick child leave will also expand to include home care of a child if the child needs home care for a serious health condition.

Bereavement leave is only available under OFLA. Employees may take up to two weeks of family bereavement leave per death of a family member, up to four weeks total of bereavement leave in a one-year period. Employees must use bereavement leave within 60 days of the date they are notified of the family member's death.

Paid Leave Changes under PLO:

Effective Through June 30, 2024:

Under PLO, an employee may:

- Use up to 12 weeks of paid leave:
  - To care or bond during the first year after their child's birth or placement through foster care or adoption. Employees may qualify for up to two additional weeks for limitations relating to pregnancy, childbirth, or a related medical condition (including lactation); or
  - To care for a family member with a serious health condition.
- Care for their own serious health condition (medical leave).
- Address domestic violence, harassment or stalking (safe leave).

Effective July 1, 2024:

Beginning July 1, 2024, family leave and serious health condition leave will only be covered and paid under PLO.

PLO's coverage for leave related to the foster or adoption legal process is not available until January 1, 2025. As a result, a temporary amendment (from July 1, 2024 thru December 31, 2024) will provide an eligible employee a total of two weeks to set up the legal process required to place a foster child or adopt a child.

The employee must provide:

- Oral notice within 24 hours of beginning adoption or foster care legal process leave; and
- Written notice within three days after they return to work.

Next Steps:

- Review paid leave policies and practices.
- Train supervisors on the changes under Senate Bill 1515 by **July 1, 2024**.

Utah Broadens Employee Religious Protections in the Workplace

Utah has enacted legislation (House Bill 396), which expands employer religious accommodation requirements. House Bill 396 is **effective immediately.**

The Details:

Background:

The **Utah Antidiscrimination Act:**

- Requires employers to allow employees to express their religious or moral beliefs and commitments in the workplace, provided their expression is in a reasonable, non-disruptive, and non-harassing manner.
- Prohibits employers from retaliating against employees who express religious beliefs outside the workplace (unless the employee's expression directly conflicts with the employer's essential business-related interests).

House Bill 396:

House Bill 396 expands employees' religious protections in the workplace by prohibiting employers from making employees engage in religiously objectionable expression (expression that offends or burdens a sincerely held religious belief).

Religiously objectionable expressions can include dress and grooming requirements, speech, work scheduling, prayer, and abstention, including abstentions relating to healthcare.

Requests for Accommodation:

An employee may request a religious accommodation from their employer when they believe they are being required to engage in a religiously objectionable expression, provided that:

- The employee provides the employer with a reasonable opportunity to make the accommodation after making the request; and
- The accommodation would not:
  - Cause an undue burden to the employer (something that would substantially interfere with the employer's core mission or ability to conduct business in an effective or financially reasonable manner); and
  - Substantially interfere with the employer's ability to provide training and safety instruction for the job.

Note: The law does not require employers with fewer than 15 employees to provide scheduling accommodations.

Next Steps:

Utah employers should evaluate their religious accommodation policies and procedures to help ensure compliance with House Bill 396.

Washington State Requires Retirement Program

The State of Washington has enacted legislation (Senate Bill 6069) that creates a new state-run retirement program (Washington Saves). Washington Saves is set to take effect on **July 1, 2027**.

The Details:

Beginning July 1, 2027, the Washington Saves program entitles employees to contribute a portion of their pay to an individual retirement account (IRA) on a pre-tax basis to save for retirement. See the **text of the law** for additional details.

Note: An individual who is either unemployed or employed by a noncovered employer, and is a former Washington Saves participant, must be allowed to continue to contribute to their individual retirement account under Washington Saves, and is subject to IRA rules.

Washington Saves:

Employers must automatically enroll covered employees (employees who are at least 18 years of age and who have been continuously employed for at least one year) in IRAs in alignment with Washington Saves.

Under the law, a covered employer:

- Has been in business in Washington for at least two years;
- Has a physical presence in Washington as of the immediately preceding calendar year;
- Does not offer a qualified retirement plan (401a, 401k, 403b) to covered employees; and
- Employs (and at any time during the immediately preceding calendar year employed) employees that worked for a combined minimum of 10,400 hours.

The automatic enrollment rate, set by the state, must at least meet three percent, and not exceed seven percent, of an employee's compensation. Contribution rates will increase by one percent per year, up to a maximum of 10 percent of compensation.

Note: Employees may change their contribution amounts or opt out of contributions at any time.

Penalties:

The law provides protection from certain penalties for the first several years after July 1, 2027. See the **text of the law** for further details.

Next Steps:

ADP is currently reviewing the impact of Washington Saves on its products and services and will communicate a plan of action in the future.

Local

Anne Arundel County, Maryland Enacts Ordinance Prohibiting Discrimination

Anne Arundel County, Maryland has enacted an ordinance that will expressly prohibit discrimination in employment. The ordinance takes effect **June 8, 2024.**

The Details:

The ordinance prohibits employers from engaging in any of the following based on an applicant's or employee's membership in a protected class:

- Taking adverse action against an individual;
- Failing to make a reasonable accommodation for an otherwise qualified applicant's or employee's known disability;
- Engaging in harassment; and
- Discriminating against individuals for refusing to submit to a genetic test.

Under the ordinance, protected class is defined as actual or perceived age, ancestry, citizenship, color, creed, disability, familial status, gender identity or expression, marital status, national origin, occupation, race, religion, sex, sexual orientation, or source of income.

Next Steps:

Employers with employees in Anne Arundel County should:

- Read **the ordinance in full**.
- Review policies and procedures to ensure compliance with the ordinance.
- Train supervisors on the ordinance.

Chicago Issues Final Rule on Paid Leave Requirements

The Chicago Department of Business Affairs and Consumer Protection (BACP) has issued a final rule that defines and clarifies various aspects of a new ordinance requiring employers to allow employees to accrue up to 40 hours of paid sick leave per 12-month period and up to 40 hours of paid leave per 12-month period that employees can use for any reason. The ordinance and final rule take effect **July 1, 2024.**

The Details:

Here is a summary of the **final rule**.

Covered Employees:

Under the final rule, day laborers are considered employees. Therefore, a day laborer who works at least 80 hours within any 120-day period for an employer while physically present within the geographic boundaries of the city is a covered employee.

Accrual:

The final rule clarifies that only hours worked within the City of Chicago count toward accrual of paid leave and paid sick leave.

Remote workers (who meet the definition of a covered employee) and those who telecommute (who meet the definition of a covered employee) are covered by the ordinance, even if the employer is physically located outside of the geographical boundaries of the city.

Covered employees don't accrue either leave for the hours they aren't physically working within the geographical boundaries of the city, even if the employer is located within the geographical boundaries of the city.

For accrual, commissioned employees whose hours aren't tracked should be treated as exempt employees would be treated.

An employer isn't required to allow accrual of leave during an employee's use of any paid or unpaid leave.

Frontloading:

If an employer grants employees the 40 hours of paid leave no later than 90 days after the employee began working for the employer, then the employer isn't required to provide additional paid leave that can be used for any reason.

If an employer grants employees 40 hours of paid sick leave no later than 30 days after the employee begins working for the employer, then the employer isn't required to provide additional paid sick leave.

Frontloading of paid sick leave done in this manner relieves the employer from having to follow the requirements of accrual but not of carryover.

If an employer elects to offer a single bucket of 80 hours of leave, as opposed to offering two buckets of 40 hours, the employee is eligible to use such leave by the 30th calendar day following commencement of employment. This rule applies regardless of whether the employer uses the accrual method or immediately grants paid leave at the beginning of a benefit year.

Carryover:

At the end of their 12-month accrual period, employees may carryover up to:

- 16 hours of paid leave; and
- 80 hours of paid sick leave.

If an employee carries over accrued and unused paid leave to the following benefit year, accrual of paid leave in the subsequent benefit year must be in addition to the hours that were accrued and unused in the previous benefit year and carried over.

If an employee carries over accrued and unused paid sick leave to the following benefit year, the accrual of paid sick leave in the subsequent benefit year must be in addition to the hours accrued and unused in the previous benefit year and carried over.

Pay:

If an employee is paid on a commission basis, the employer must pay paid leave and paid sick leave to the employee at the hourly rate of pay based on the base wage or the highest hourly rate of the federal minimum wage, the Illinois minimum wage or the full Chicago minimum wage (without any allowance or credit for tips), whichever is greater.

If an employee receives gratuities, the employer must pay the leave to the employee at the highest hourly rate of the federal minimum wage, the Illinois minimum wage or the full Chicago minimum wage (without any allowance or credit for tips).

Employer Notice Requirements:

The employer must provide notice to all covered employees with their first paycheck and in communal areas at a workplace. Notices must be provided in English and any language spoken by employees that don't speak English proficiently (by a significant portion of its workers who are not literate in English). For the purpose of this rule, "significant portion" means five percent or more of covered employees at a jobsite. Notices in six languages will be provided by the Department of Business Affairs and Consumer Protection on the **Office of Labor Standards website**.

Notices can be provided as part of an employee handbook or part of a paid leave policy.

An employer may choose a reasonable system for giving notice to its covered employees of the availability and use of the leave, including, but not limited to:

- Listing updated amounts of the available leave to each covered employee on pay stubs or regular payroll statements;
- Developing an online system where covered employees can access such information; or
- Providing a hand-written record of available time.

Regardless of the method of notification, employers are still required to maintain copies of these records.

An employer isn't required to provide notifications to an employee who hasn't worked any hours since the last notification.

If an employer chooses to frontload, the employer must make written notification of the fact and the availability of the hours to an employee at the beginning of the benefit year. An employer that frontloads hours is obligated to keep its employees apprised of their available and used benefits.

Next Steps:

Chicago employers should review the final rule in full and ensure compliance with the ordinance by **July 1, 2024.**

Lehigh County, Pennsylvania Adds Nondiscrimination, Salary History and Criminal Record Protections

Lehigh County, Pennsylvania, has enacted the Human Relations Ordinance (the Ordinance), which adds nondiscrimination, and salary and criminal history protections. The Ordinance takes effect on **June 1, 2024.**

The Details:

The Ordinance:

- Covers individuals and organizations with one or more employees, but does not include an individual employed by their parents, spouse or child.
- Does not:
  - Prohibit an institution or organization for persons with disabilities from limiting or giving preference in employment to disabled persons; or
  - Require an employer to hire, promote or retain an employee who is not qualified or unable to perform the job for which they are applying or were hired to do.

Protected Characteristics and Employer Coverage:

The Ordinance prohibits employers from discriminating against an employee on the basis of the following characteristics (actual or perceived):

- Race, color, ethnicity, national origin or ancestry;
- Marital, familial, veteran, or citizenship status;
- Religion or creed;
- Age (a person over the age of 35), height, weight, or genetic information;
- Sex (including pregnancy, childbirth, breastfeeding, and related medical conditions), gender identity, gender expression, sexual orientation;
- Genetic information;
- Domestic or sexual violence victim status;
- Physical or mental disability, relationship or association with a disabled person, use of guide or support animals and/or mechanical aids;
- Source of income (such as earned income, child support, alimony, insurance and pension proceeds, unemployment insurance, Social Security and all forms of public assistance); and
- Earning a GED rather than a high school diploma.

The Ordinance also prohibits employers from denying employment because of an individual's prior disability or inquiring whether an individual has a disability (or inquiring as to the severity of such disability) prior to an offer of employment.

Note: An employer may inquire about the applicant's ability to perform the essential functions of the position(s) sought.

See the Ordinance for further details on protected individuals.

Prohibited Actions:

Under the Ordinance, employers may not:

- Elicit information, make or keep a record of, or use an application containing questions or entries concerning an applicant's protected class.

Note: An employer may collect demographic data after hiring, provided the employee volunteers the information, and their provision of information is not a condition of employment.

- Ask a job applicant about their:
  - **Salary history** (Asking what their salary is (or was) in a current or previous role).
  - **Criminal history** (Asking on an employment application whether the individual was convicted of a crime).

Note: Employers cannot require a job applicant to disclose prior criminal convictions before the initial interview is concluded or consider an applicant's suitability for employment using irrelevant conviction records.

- Refuse to hire, employ or contract with, ban, terminate, or otherwise discriminate against individuals or independent contractors (on the basis of the individual's protected class), with respect to their compensation, hiring, volunteering, tenure, terms, or conditions or privileges of employment or contract if the individual is the best able and most competent to perform the services required.
- Print or publish (or cause to be printed or published) a notice or advertisement relating to employment or membership, indicating any preference, limitation, specification or discrimination on the basis of protected class.
- Discriminate against an individual who has made a charge, testified, or assisted in a discrimination investigation, proceeding or hearing under the Ordinance or other nondiscrimination laws or regulations.
- Directly or indirectly, prohibit, coerce or prevent a person from complying with the provisions of the Ordinance.

See the Ordinance for further details on prohibited actions.

Next Steps:

- Review and update hiring policies and procedures.
- Train supervisors and human resources staff on the Ordinance by **June 1, 2024**.

Minimum Wage

Minimum Wage Announcements: 4/26/24 – 5/20/24

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
Milpitas, CA	$17.70	$17.70*	7/1/24	Yes	.
Montgomery County, MD (51 or more EEs)	$17.15	$4.00	7/1/24	Yes	Once available can be found here.
Montgomery County, MD (11-50 EEs)	$15.50	$4.00	7/1/24	Yes	Once available can be found 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

Payroll Tax Deposit Timeline for Equity Compensation Shortened

Read the article here.

EEOC Updates Guidance on Anti-Harassment Protections

The U.S. Equal Employment Opportunity Commission (EEOC) has published new guidance on federal laws prohibiting harassment in the workplace. This is the first update to the EEOC's guidance on prohibiting harassment since 1999. While guidance doesn't carry the same weight as a regulation or law, it does demonstrate how the EEOC intends to enforce federal laws.

The Details:

Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA), the Age Discrimination in Employment Act (ADEA) and the Genetic Information Nondiscrimination Act (GINA) are federal laws that prohibit harassment in the workplace based on race, color, religion, sex, pregnancy (including childbirth and related medical conditions), sexual orientation, gender identity, national origin, disability, age (40 or older), or genetic information.

With the exception of the ADEA, these federal laws cover employers with 15 or more employees. The ADEA covers employers with 20 or more employees. Many states and local jurisdictions have their own anti-harassment laws that cover smaller employers.

The EEOC's new guidance on federal protections from harassment in the workplace builds on the agency's previous work, addresses legal developments and covers emerging issues.

For example, under the section on harassment based on sexual orientation and gender identity, the EEOC states that unlawful harassment based on these two characteristics includes but isn't limited to:

- Epithets regarding sexual orientation or gender identity;
- Physical assault;
- Outing (disclosure of an individual's sexual orientation or gender identity without permission);
- Harassing conduct because an individual doesn't present in a manner that would stereotypically be associated with that person's sex;
- Repeated and intentional use of a name or pronoun inconsistent with the individual's known gender identity (misgendering); or
- The denial of access to a bathroom or other sex-segregated facility consistent with the individual's gender identity.

Under the section on harassment based on pregnancy, childbirth or related medical conditions, the EEOC states that this type of unlawful harassment "can include issues such as lactation; using or not using contraception; or deciding to have, or not to have, an abortion."

Harassment based on these situations or decisions generally would be covered if it is linked to a targeted individual's sex including pregnancy, childbirth or related medical conditions, according to the guidance.

The guidance also:

- Includes more than 70 scenarios illustrating unlawful harassment, including situations involving older workers, immigrant workers, and survivors of gender-based violence.
- Illustrates how employees may be subjected to unlawful harassment not only by co-workers or supervisors, but also by customers, contractors, and other third-parties.
- Addresses the growth of virtual work environments and the increasing impact of digital technology and social media on how harassment occurs in the work environment.

Next Steps:

Employers with 15 or more employees should:

- Read the guidance in full.
- Determine whether changes are needed to any policies or practices.
- Train supervisors on the updated guidance.

IRS Releases 2025 HSA and HDHP Limits

The Internal Revenue Service (IRS) via **Revenue Procedure 2024-25** has released the inflation-adjusted contribution limitations for calendar year 2025 in relation to health savings accounts (HSAs) and high-deductible health plans (HDHPs).

These limits are indexed for inflation and released annually by June 1st for the following year, as required under the Tax Relief and Health Care Act of 2006.

The Details:

	2025 HSA and HDHP Coverages	
	Self-only HDHP	**Family HDHP**
Annual HSA Contribution Limits	**$4,300*** (Up $150 from 2024)	**$8,550*** (Up $250 from 2024)
Annual HDHP Minimum Deductibles	**$1,650** (Up $50 from 2024)	**$3,300** (Up $100 from 2024)
HDHP Out-of-Pocket Limits**	**$8,300** (Up $250 from 2024)	**$16,600** (Up $500 from 2024)

*An individual who has reached the age of 55 by the end of the calendar year may contribute an additional $1,000 per year.

**Includes deductibles, co-payments, and other amounts, but not premiums.

Next Steps:

Employers offering HDHP plans with an HSA should notify employees of the 2025 contribution limits prior to their 2025 plan open enrollment period.

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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