Always Designing for People™

Eye on Washington

Detailed Look at State, Local and Federal Updates

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

Topics covered in this issue:

State/Territory/District

California Adds Employment Protections for Off-Duty Cannabis Use

California has enacted legislation (Assembly Bill 2188) that prohibits employers from discriminating against individuals because of their use of cannabis while off duty. Assembly Bill 2188 takes effect on **January 1, 2024**.

The Details:

Effective January 1, 2024, California employers are prohibited from discriminating against individuals based on:

- Their use of cannabis while off the job and away from the workplace.
- An employer-required drug test that has found non-psychoactive cannabis metabolites in hair, blood, urine or other bodily fluids.

Employers will still be able to prohibit employees from using, possessing or being impaired by cannabis at work. The law also doesn't prohibit an employer from taking adverse action against an individual based on a scientifically valid preemployment drug screening conducted through methods that don't screen for non-psychoactive cannabis metabolites.

Drug Testing:

By way of background, Tetrahydrocannabinol (THC) is the chemical compound in cannabis that can cause impairment and psychoactive effects. After THC is metabolized, it's stored in the body as a non-psychoactive cannabis metabolite. While these metabolites can show cannabis consumption in prior weeks, they don't indicate impairment.

As a result of Assembly Bill 2188, the drug tests that only show the presence of non-psychoactive cannabis metabolites (and not impairment) will generally be off limits to employers beginning in 2024. Instead, employers must rely on valid alternative tests, including impairment tests, which measure an individual employee against their own baseline performance, and tests that identify the presence of THC in an individual's bodily fluids.

Exemptions:

The law doesn't apply to:

- An employee in the building and construction trades.
- Applicants or employees hired for positions that require a federal government background investigation or security clearance in accordance with regulations issued by the United States Department of Defense, or equivalent regulations applicable to other agencies.

The law also doesn't preempt state or federal laws requiring applicants or employees to be tested for controlled substances (and the manner in which they are tested). This includes laws and regulations for receiving federal funding or federal licensing-related benefits, or entering into a federal contract.

Next Steps:

- Consult legal counsel to determine the impact of Assembly Bill 2188 on current drug testing policies and practices, including whether an exemption applies.
- Unless an exemption applies, ensure drug-testing policies and practices comply with Assembly Bill 2188 by January 1, 2024.

California Further Expands Nondiscrimination Law

California has enacted legislation (Senate Bill 523) that will prohibit employers with five or more employees from discriminating against applicants and employees because of their reproductive health decision-making. This change takes effect **January 1, 2023**.

The Details:

Senate Bill 523 also prohibits employers with five or more employees from requiring the disclosure of information related to an applicant's or an employee's reproductive health decision-making as a condition of employment, continued employment or a benefit of employment.

Under the law, reproductive health decision-making includes, but is not limited to, a decision to use or access a particular drug, device, product or medical service for reproductive health.

Beginning in 2024, Senate Bill 523 will also mandate that health plans have expanded contraceptive coverage and reductions in costs for accessing reproductive health services. See the **text of the law** for details.

Note: Separately, California enacted Assembly Bill 2091, which took effect immediately on September 27, 2022. Assembly Bill 2091 prohibits an employer from releasing medical information in response to a subpoena or a request or to law enforcement that would identify an individual or a person related to an individual seeking or obtaining an abortion. This prohibition applies if that subpoena, request, or act of law enforcement is for the purpose of enforcing either another state's laws that interfere with a person's rights to obtain an abortion or a foreign penal civil action.

Next Steps:

Covered employers should review policies and practices to ensure compliance with Senate Bill 523 (and Assembly Bill 2091). Supervisors should also be trained on the laws.

California Protects Employees During Emergency Conditions

California has enacted legislation (Senate Bill 1044) that will prohibit, with limited exceptions, an employer from taking adverse action against an employee for refusing to report to, or leaving, work during emergency conditions. Senate Bill 1044 takes effect **January 1, 2023**.

The Details:

In the event of an emergency condition, employers are prohibited from doing either of the following:

- Taking or threatening adverse action against any employee for refusing to report to, or leaving, a workplace or worksite within the affected area because the employee has a reasonable belief that the workplace or worksite is unsafe. Certain types of workers, such as emergency responders, are exempt from this provision. See the **text of the law** for details.
- Prevent any employer from accessing the employee's mobile device or other communications device for seeking emergency assistance, assessing the safety of the situation, or communicating with a person to verify their safety.

Covered Emergency Conditions:

Senate Bill 1044 defines an emergency condition as the existence of either of the following:

- Conditions of disaster or extreme peril to the safety of persons or property at the workplace or worksite caused by natural forces or a criminal act.
- An order to evacuate a workplace, a worksite, a worker's home, or the school of a worker's child due to natural disaster or a criminal act.

Note: A health pandemic isn't an emergency condition under the law.

Reasonable Belief Defined:

The law establishes that "a reasonable belief that the workplace or worksite is unsafe" means a reasonable person, under the circumstances known to the employee at the time, would conclude there is a real danger of death or serious injury if that person enters or remains on the premises. The existence of any health and safety regulations specific to the emergency condition and an employer's compliance or noncompliance with those regulations are a relevant factor if this information is known to the employee at the time of the emergency condition or the employee received training on the health and safety regulations mandated by law specific to the emergency condition.

Employee Notice Required:

When feasible, an employee must notify the employer of the emergency condition requiring the employee to leave or refuse to report to the workplace or worksite prior to leaving or refusing to report.

When prior notice isn't feasible, the employee must notify the employer as soon as possible of the emergency condition that required the employee to leave or refuse to report to the workplace or worksite.

Next Steps:

- Review policies and procedures to ensure compliance with Senate Bill 1044 by January 1, 2023.
- Train supervisors on how to handle situations in which an employee leaves or refuses to report because of covered emergency conditions.

California Amends Hate Crimes Law

California has enacted legislation (Assembly Bill 2282), which clarifies the state's hate crimes law as it pertains to the workplace, and increases the potential penalties. It takes effect **January 1, 2023**.

The Details:

By way of background, existing law considers the symbol of the Nazi party (commonly referred to as a "swastika"), the noose, and the burning cross as hate symbols and criminalizes their use to terrorize others. However, state law has had different rules both in terms of punishment and the location in which these symbols are expressly prohibited. The purpose of Assembly Bill 2282 is to align the law in these areas.

For example, Assembly Bill 2282 makes clear that the display of these and other symbols is prohibited in the workplace if used for the purpose of terrorizing a person who works at or is otherwise associated with the workplace.

Note: The law states that the intent of the legislature isn't to criminalize swastikas associated with Hinduism, Buddhism, and Jainism.

Assembly Bill 2282 also increases the penalty for a first conviction for violating the law to up to three years in county jail and/or a fine of up to $10,000 for a felony conviction and $5,000 for a misdemeanor conviction. For subsequent convictions, the maximum fine increases to $15,000 for a felony and $10,000 for a misdemeanor.

Next Steps:

- Review policies and procedures to ensure compliance.
- Train supervisors on how to respond to suspected violations.

California Raises Minimum Pay for Overtime Exemptions for 2023

The California Department of Industrial Relations has announced an increase to the pay rates that computer software employees and physicians must receive in order to be exempt from overtime. Additionally, the minimum salary required for the administrative, professional and executive overtime exemptions will also increase. **These new rates take effect on January 1, 2023**.

Background:

Computer software employees and physicians:

Under the California Labor Code Sections 515.5 and 515.6, computer software employees and physicians are exempt from the state's overtime requirements if they meet specific duty requirements and earn a minimum pay rate. These pay thresholds are adjusted annually for inflation.

Administrative, Executive, and Professional Employees:

California also has exemptions for bona fide administrative, professional and executive employees. To be exempt from overtime, these employees must meet certain state salary and duty tests. They must be paid a salary of at least twice the state minimum hourly wage based on full-time employment of 40 hours per week. Since the state's minimum hourly wage will increase to $15.50 per hour on January 1, 2023, regardless of how many employees the employer has, the minimum salary threshold for these exemptions will also increase.

The Details:

Computer Software Employees: **https://www.dir.ca.gov/OPRL/ComputerSoftware.htm**

Computer software employees may be paid on an hourly or a salary basis in order to qualify for exemption from California's overtime requirements. Beginning January 1, 2023, these employees must earn at least:

- **$53.80** per hour (for all hours worked); or
- A monthly salary of **$9,338.78**; and
- An annual salary of **$112,065.20**

Physicians: **https://www.dir.ca.gov/OPRL/Physicians.htm**

To qualify for exemption from the state's overtime requirements in 2023, licensed physicians and surgeons are required to earn an hourly wage of at least $97.99.

Administrative, Professional and Executive Employees:

For the administrative, professional and executive exemptions, employers must pay a salary of at least $1,240 per week beginning January 1, 2023.

Next Steps:

California employers with exempt employees should ensure that they meet the applicable salary and duty tests. Otherwise, these employees must be classified as nonexempt and are entitled to overtime.

Colorado State-Run Retirement Plan Set to Launch

Colorado's state-run retirement program, called Colorado SecureSavings, is set to launch in early 2023. Employers with five or more employees must either facilitate the program or offer a qualifying retirement plan to employees.

The Details:

Colorado SecureSavings is a state-run payroll withholding savings program using Individual Retirement Accounts (IRAs). The program doesn't require, or even allow, employers to contribute to the IRAs. However, unless exempt, employers are required to facilitate the program by registering and enrolling employees, and withholding/remitting employee contributions.

Colorado businesses must facilitate Colorado SecureSavings if they:

- Have been in business for two or more years;
- Employ five or more employees who have worked for them for at least 180 days; and
- Don't already offer a retirement savings plan for any employees.

Employers should receive notices directly from Colorado SecureSavings via mail or email when the program is **open for registration and enrollment** in early 2023. The notices will have an access code for employers to use when registering and should include a deadline. If employers already offer a qualifying retirement plan but still receive a notice, they will need to certify that they are exempt by the deadline.

To register or claim exemption, employers will need their EIN and access code for Colorado SecureSavings. After registering, covered employers will have to provide employee information and payroll information to enroll employees. The Colorado SecureSavings portal will then send each employee a notification. Employees will have 30 days to decide to stay enrolled, opt out of participating, or customize their account settings. After this 30-day opt-out period, employers will need to start payroll deductions for employees who choose to remain in the program.

Next Steps:

- Watch for the notice from Colorado SecureSavings.
- Register and enroll employees (or certify exemption) by the applicable deadline.
- Visit the **Colorado SecureSavings portal** for more information.

Voters in D.C. Approve Measure to Phase Out Tipped Credit

On November 7, 2022, voters in Washington D.C. voted overwhelmingly to phase out by 2027 the tipped employee credit that employers are currently allowed to take when paying its tipped employees. **Measure 82** was approved by over 71 percent of the voters.

The Details:

Under current law, D.C. employers of "tipped workers" may take a credit of $5.05 against tipped wages received by workers to satisfy the minimum wage guaranteed to all workers by law.

Under Measure 82, the tipped credit would be phased out by increasing the required cash wage that tipped employees must be paid until the cash wage meets parity with the D.C. minimum wage. Measure 82 lays out the following phase-out schedule.

Date	Minimum Cash Wage of Tipped Employees
January 1, 2023	$6.00
July 1, 2023	$8.00
July 1, 2024	$10.00
July 1, 2025	$12.00
July 1, 2026	$14.00
July 1, 2027	Minimum cash wage paid to tipped employees must be at least the D.C. minimum wage required to be paid to non-tipped employees.

A similar measure passed in 2018 by a 55 percent vote. However, the D.C. Council repealed it. It has been reported that the Council has no intention of repealing the measure passed in November of 2022. ADP will continue to monitor.

Next Steps:

D.C. employers must increase the minimum cash wage paid to tipped employees to at least the amounts noted above on the scheduled dates.

Nebraska Approves Increase to Minimum Wage

On November 7, 2022, Nebraska voters approved a ballot initiative to increase the state minimum wage. **Initiative 433** was approved on a 58 percent to 42 percent vote.

The Details:

Currently the minimum wage in Nebraska is $9.00 per hour with no scheduled increases. Employers may take a tip credit of $6.87 and need only pay tipped employees at least $2.13 in cash wages assuming the employee earns at least $9.00 per hour in tips and cash wages combined.

Initiative Measure 433 increases the state minimum wage as follows:

Date	Minimum Cash Wage of Tipped Employees
January 1, 2023	$10.50
January 1, 2024	$12.00
January 1, 2025	$13.50
January 1, 2026	$15.00
Beginning January 1, 2027	Adjusted annually to account for increases in cost of living.

Initiative 433 did not address a change to the minimum cash wage for tipped employees so the $2.13 per hour will remain in effect.

Next Steps:

Nebraska employers must pay their employees at least the minimum wage on the scheduled date as indicated above.

Nevada Votes to Modify Minimum Wage

On November 8, 2022, voters in Nevada voted to amend the State Constitution provisions regarding the minimum wage.

The Details:

Currently the minimum wage in Nevada is $10.50 per hour. However, if the employer offers health coverage meeting certain standards, the employer may pay the employee a dollar less or $9.50 per hour. Under current law the minimum amounts will increase to $11.25/$10.25 on July 1, 2023 and $12.00/$11.00 on July 1, 2024.

As a result of the ballot initiative, **effective July 1, 2024**, the minimum wage for all Nevada employees, regardless of whether their employer offers health coverage, will be **$12.00 per hour**.

In addition, increases to the $12.00 minimum will only occur should the federal minimum wage (currently $7.25) exceed $12.00 or an increase is enacted by the Nevada State Legislature.

Next Steps:

Effective January 1, 2024, Nevada employers must pay their employees at least $12.00 per hour regardless of whether the employer offers healthcare coverage. Nevada does not allow the use of a tip credit when paying its tipped employees.

New Hampshire Establishes Voluntary Paid Family Leave Program

New Hampshire has enacted legislation, which creates a voluntary Family and Medical Leave Insurance wage replacement program for employers. To participate in the Paid Family and Medical Leave (NH PFML) Insurance Plan, employers can contract with the state's selected provider (MetLife) or their own provider. Eligible employees may purchase NH PFML for themselves if their employers do not provide NH PFML insurance or an equivalent benefit.

The Details:

Covered Employees and Enrollment:

All employees working in New Hampshire for an employer with a physical presence in NH are eligible for NH PFML benefits.

If employers choose to fund the benefit on behalf of employees, open enrollment is not needed. All employees can be informed of the new benefit and how to file when needed. If employers are passing on some or all of the premium payments to the workforce, then open enrollment is required. Employees are not required to participate in NH PFML's program.

If an employee opts out of the employer plan, they cannot purchase insurance as an individual. New employees will have the ability to enroll within 30 days of their hire date and annual enrollment will allow employees the opportunity to join each year. Terminated employees will have the ability to purchase insurance as individuals if their new employer does not sponsor a NH PFML plan.

Eligible employees may purchase NH PFML for themselves if their employers do not provide NH PFML insurance or an equivalent benefit.

Enrollment Period:

To participate in the NH PFML Insurance Plan, employers can contract with MetLife or their selected provider. The 60-day enrollment period for employers is scheduled to begin on December 1, 2022, and will begin for individuals on January 1, 2023.

Reasons for Leave:

Leave can be taken for several reasons including:

- The birth of the employee's child or a child's placement with the employee for adoption or fostering. Either must occur within the past 12 months;
- A qualifying exigency that arises from foreign deployment with the armed forces or to care for a service member with a serious injury or illness covered under the federal Family and Medical Leave Act (FMLA);
- A family member's serious health condition, including illnesses covered by the FMLA, such as the treatment for an addiction or a mental health condition; or

- The employee's serious health condition, unrelated to employment, when their employer does not offer Short-Term Disability insurance.

Benefit Amount and Taxes:

The NH PFML Insurance Plan includes:

- Paid Family and Paid Medical Leave together in a single insurance policy
- 60 percent wage replacement benefits up to the Social Security wage cap for qualifying leave reasons
- Leave can be taken all at once (continuous) or in partial days (intermittent) with a minimum of four-hour increments
- Employers have the choice of duration to offer under their NH PFML Insurance Plan:
  - Option 1: Six paid weeks of leave
  - Option 2: 12 paid weeks of leave (Note that this option is not available for individual employee plans)

For paid family leave, taxes are not automatically withheld from benefits, but employees can request voluntary tax withholding. Employees need to submit a W-4S tax form to the Metlife claims team and taxes can be withheld. Paid medical leaves are treated like disability income and taxes are automatically withheld from benefits.

Costs and Tax Credits:

Employers will have the ability to work directly with MetLife to customize a plan and premium to meet their business needs within regulatory parameters set by the state.

The NH PFML plan incentivizes employers to purchase six weeks of coverage by providing a Business Enterprise Tax (BET) Credit equal to 50 percent of the premium they pay. Employers will need to complete and submit the most recent Schedule of Business Profits Tax (BPT) Credit (form DP-160) to the NH Department of Revenue administration to claim the NH business tax credit.

An employer may fully fund the premium cost on their employees' behalf, split the premium cost with employees or pass on the full cost to employees (in which case no BET credit would be available).

Employer Purchase Options:

Employers are not required to purchase a plan through MetLife. New Hampshire Department of Insurance regulations allow other insurance companies to seek approval to provide paid family and medical leave benefit plans. However, employers who purchase other paid family and medical leave insurance plans or employer equivalent coverage will not qualify for the BET Tax Credit.

Employers can choose to provide:

- The plan issued by MetLife, the state's insurance partner, and receive the 50 percent BET Credit;
- Other paid family and medical leave insurance plans approved by the New Hampshire Department of Insurance; or
- Self-insured employer equivalent benefit coverage. See the **FAQs** issued by the state for more information on what is considered an equivalent plan.

Employer Requirements:

Employer requirements differ based on employer size.

All Employers

All employers are required to provide wage and leave information, work schedule and other benefit information to MetLife and are prohibited from discriminating or retaliating against employees for taking leave.

As a reminder, under current law, employers are required to provide employees a statement of deductions each pay period.

Employers with 50 or more Employees

Employers with 50 or more employees must:

- Collect premium payments through payroll deduction. This requirement applies whether the employer opts into the NH PFML insurance plan or if employees purchase coverage under a NH PFML individual plan.
- Restore employees to the position they held prior to leave or to an equivalent position.
- Continue to provide health insurance during leave with employees paying any shared costs.

Employers with fewer than 50 Employees:

- Smaller employers are not required to collect premium payments through payroll deductions but can choose to do so.
- Smaller employers can make premium payments through arrangements with MetLife.

Recommendations:

The information above is a summary of key provisions. Visit the **program website** which includes more detailed information on employer responsibilities, the claims process and other helpful FAQs.

Oklahoma Amends Wage Payment Law

Oklahoma has enacted legislation (Senate Bill 1345), which provides wage payment options for employers. Senate Bill 1345 takes effect on **November 1, 2022**.

Background:

Every Oklahoma employer must pay all wages due to an employee at least twice each calendar month on regular paydays. The paydays must be designated in advance by the employer.

Note: This excludes exempt employees, certain state, county and municipal employees, and certain employees of nonprivate foundations, who must be paid a minimum of once each calendar month.

The Details:

Under the new law, Oklahoma employers have the additional option (e.g. in addition to check) of paying all wages due to an employee by:

- Deposit on the payday at a financial institution of the employee's choice. This includes a bank, savings bank, savings and loan association or credit union whose deposits are insured by the Federal Deposit Insurance Corporation, the National Credit Union Administration or any successor institution; or
- If the employee does not consent or designate a financial institution, to a payroll card account.

A payroll card account is a prepaid account, directly or indirectly established through an employer, which receives recurring transfers of the employee's wages, salary, or other compensation. A payroll card is a card or other device used by an employee to access wages from a payroll card account.

Next Steps:

Oklahoma employers should review their pay policies and procedures to ensure compliance with Senate Bill 1345 by November 1, 2022.

Oregon and State of Washington Jointly Issue Paid Family and Medical Leave Guidance

Oregon and Washington have jointly issued guidance that clarifies which state's paid family and medical leave program applies to employees that cross the states' shared border.

The Details:

The Oregon Employment Department and Washington's Employment Security Department have jointly issued paid family and medical leave **guidance** that clarifies where an employee's wages should be reported.

The Guidance:

Under the **guidance**, Oregon and Washington:

- Prioritize a worker's **place of performance** and **physical location** as the first consideration to where an employee's wages should be reported;
- Consider whether one state has a base of operations or direction and control;
- Provide scenarios to help guide employers (see the guidance for further details);
- Acknowledge that the guidance covers a complicated topic; and
- Rely on employers to review related laws and guidance to make a good faith determination on where to report an employee's hours and wages.

Wage Reporting:

Note: In the chart below, "state" refers only to Washington or Oregon.

Where Work is Performed	Where Wages Should Be Reported
All of an employee's work is performed when physically located in one state.	The state where all of the employee's work is performed.
Work is regularly performed in both states, but one state has a base of operations or direction and control.	The state with the base of operations, or direction and control.
Work is regularly performed in both states, but neither state has a base of operations or direction and control.	The state in which the employee resides.

Next Steps:

Employers in Oregon and Washington should review their wage and paid family and medical leave policies and procedures and consult with legal counsel to help ensure compliance with the jointly issued **guidance**.

Oregon Modifies Workers' Compensation Rule

Oregon has enacted House Bill 4138 (HB 4138), which impacts temporary disability benefit payments under the state's Workers' Compensation (WC) system. The changes would apply to all claims that exist on, or arise on or after, January 1, 2024, regardless of the date of injury or the date the claim is filed as long as a final determination on the claim has not been made prior to January 1, 2024.

The Details:

Currently, temporary disability benefits under ORS 656.262 may be suspended under any of the following conditions:

• Worker fails to appear at an appointment with their practitioner and subsequently fails to appear at the rescheduled appointment;

• Insurer fails to receive verification of the worker's inability to work from the worker's practitioner;

• Period of time authorized by the practitioner for the worker to receive temporary disability benefits has expired; or

• Worker enrolled in a managed care organization seeks unauthorized care.

Additionally, under current law, reinstated temporary disability benefits following a suspension may be paid retroactively no more than 14 days prior to authorization by the worker's attending physician or nurse practitioner.

Summary of Changes Made by HB 4138

Changes to Payments of Temporary Disability Benefits:

HB 4138 as enacted, replaces the current 14-day limit with a period for retroactively authorized payments of no more than 45 days prior to the worker receiving written notice of suspension of temporary disability compensation.

However, it is important to note that the 45-day limit does not apply:

- During periods in which there is a denial under the jurisdiction of the Workers' Compensation Board that affects the worker's ability to obtain authorization of temporary disability;
- During periods in which there is a dispute over the identity of, or treatment by, an attending physician or nurse practitioner that affects the worker's ability to obtain authorization of temporary disability; or
- When notice has not been given as required.

Changes to Notice to Workers:

The newly enacted legislation requires that the carrier, or employer when self-insured, send a written notice to the worker, and their attorney if they are represented, that temporary disability benefits will be ended, along with the reason for the benefits ending.

Also, HB 4138 stipulates that the worker's attending physician or nurse practitioner may retroactively authorize disability benefits for up to 45 days prior to the date of the notice.

Additionally, if the required notice is provided more than 45 days after the worker was no longer eligible for benefits, the attending physician or nurse practitioner may retroactively authorize temporary disability back to the date on which benefits were no longer due and payable, provided the authorization is made within 30 days following the earlier of the date of mailing or delivery of the written notice that the eligibility ended.

Closing Claims Based on Medical Status:

Under current law, the carrier of a self-insured employer may close a worker's claim and determine the extent of the worker's permanent disability when the worker has become "medically stationary" and there is sufficient information to determine permanent disability. Medically stationary is the point in time when the worker's healthcare provider determines no further significant improvement is reasonably expected from medical treatment or the passage of time.

HB 4138 prohibits the worker's healthcare provider from retroactively establishing medically stationary status more than 60 days before the worker is notified about their medically stationary status with the exception of worker fraud. Additionally, an insurer or self-insured employer must mail or deliver written notice to a worker and to the worker's attorney, if the worker is represented, within seven days following receipt of information that the worker is medically stationary.

Recovery of Overpayment Changes:

HB 4138 limits the carrier's or self-insured employer's recovery amount in the case of overpayment from a worker's permanent disability compensation to 50 percent of the claimant's total award except in cases of fraud by the worker. Also, an insurer or self-insured employer may not declare an overpayment of any compensation that was paid more than two years prior to the date of an overpayment declaration.

Next Steps:

Employers should review the changes made by **HB 4138** and discuss with legal counsel or their carrier.

Rhode Island Establishes Pregnancy Special Enrollment

Rhode Island has enacted legislation that mandates a special enrollment into healthcare coverage based on pregnancy.

The Details:

Effective January 1, 2023, a pregnant individual must be offered a special enrollment opportunity after the commencement of the pregnancy. The coverage will be effective as of the first day of the month in which the pregnant individual applies for coverage.

This special enrollment mandate apples to individual and group (both small and large) policies written in Rhode Island as well as coverage under the "Rhode Island Health Benefit Exchange."

Next Steps:

Employers in Rhode Island should review **S 2548** and ensure that their health plans, whether insured or self-insured, comply with the new mandate by January 1, 2023.

Utah Amends Mobile Workforce Taxation Rules

Utah has amended its mobile workforce taxation rules, which create a taxation exemption for certain employees who work a limited time in the state annually. The amendments also modify the employer's withholding obligations and penalties associated with that obligation.

The Details:

Beginning with the taxable year starting on or after January 1, 2023, the amendment as enacted by **SB 0039** states:

"A nonresident individual's wages may not be considered income derived from Utah sources if:

(a) the nonresident individual has no other income from sources within this state for the taxable year in which the nonresident individual receives the wages;

(b) the nonresident individual is present in this state to perform employment duties for 20 or fewer days during the tax year; **and**

(c) the nonresident individual's state of residence:

(i) provides a substantially similar exclusion; or

(ii) does not impose a state individual income tax.

This exemption does not apply to the wages paid to a member of a professional athletic team or a professional entertainer. In addition, individuals of prominence who perform services for wages on a per-event basis and individuals who perform construction services to improve real property, predominantly on a construction site, as laborers are not covered by the exemption.

Additionally, under the new legislation, an employer making payment of wages may not deduct or withhold any amount from wages paid to a nonresident individual if the nonresident individual's wages are excluded from state source income under the regulations effective January 1, 2023.

Next Steps:

Employers should review **SB 0039** and discuss with their legal and/or tax advisor to ensure adherence to the rules effective January 1, 2023.

Local

Inglewood, California, Approves Healthcare Worker Minimum Wage Increase

On November 8, 2022, Inglewood, California voters approved a ballot measure that increases the minimum wage for healthcare workers.

The Details:

Effective January 1, 2024, healthcare workers who "work at or by a privately owned covered healthcare facility located within the City of Inglewood" must be paid at least $25.00 per hour.

Next Steps:

Effective January 1, 2024, a privately owned covered healthcare facility located within the City of Inglewood must pay its healthcare workers a minimum wage of at least $25.00 per hour.

To date, Inglewood has yet to release a definition of "healthcare worker." ADP will be monitoring and will release this additional information once available.

Tukwila, Washington, Adopts Minimum Wage

On November 8, 2022, Tukwila, Washington voters approved Measure No. 1, which establishes a minimum wage for the city for hospitality and transportation employees of a "covered employer."

"Covered employer" means an employer that either: (1) employs at least 15 employees regardless of where those employees are employed, or (2) has annual gross revenue over $2 million.

The Details:

Tukwila currently follows Washington state law, which mandates a minimum wage of at least $14.49 per hour, increasing to $15.74 on January 1, 2023. Washington prohibits the use of a tip credit when paying tipped employees.

As a result of **Measure No. 1**, certain Tukwila employers, including hotels, restaurants, and other commercial employers, must pay covered employees an hourly minimum wage comparable to equivalent employees in the city of SeaTac, adjusted by the annual rate of inflation as determined by the Seattle-Tacoma-Bellevue Area CPI-W.

The city of Sea-Tac, Washington, currently has a minimum wage of $17.54 for hospitality and transportation workers, which will increase to $19.06 on January 1, 2023.

Next Steps:

Effective January 1, 2023, covered employers in Tukwila, Washington, must pay their hospitality and transportation employees at least a minimum wage of $19.06 per hour.

Upcoming Minimum Wage Increases

Minimum Wage Announcements October 15 – November 15, 2022

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
Alaska	$10.85	N/A*	1/1/23	Yes	Poster required. Once provided may be found here
Albuquerque, NM	$12.00	$7.20	1/1/23	No	
Delaware	$11.75	$2.23	1/1/23	Yes	
Illinois	$13.00	$7.80	1/1/23	Yes	Poster required. Once provided may be found here
Las Cruces, NM	$12.00	$4.78	1/1/23	Yes	
Los Altos, CA	$17.20	N/A*	1/1/23	Yes	Poster required. Once provided may be found here
Maine	$13.80	$6.90	1/1/23	Yes	Poster required. Once provided may be found here
Maryland (15 or more EEs)	$13.25	$3.63	1/1/23	Yes	
Maryland (14 or less EEs)	$16.45	N/A*	1/1/23		
Massachusetts	$15.00	$6.75	1/1/23	Yes	
Menlo Park, CA	$16.20	N/A*	1/1/23	Yes	
Mountain View, CA	$18.15	N/A*	1/1/23	Yes	Poster required. Once provided may be found here
New Mexico	$12.00	$3.00	1/1/23		Poster required. Once provided may be found here
Novato, CA (100 or more employees)	$16.32	N/A*	1/1/23	Yes	
Novato, CA (26-99 employees)	$16.07	N/A*	1/1/23		
Novato, CA (1-25 employees)	$15.53	N/A*	1/1/23		
Oakland, CA	$15.97	N/A*	1/1/23		Poster required. Once provided may be found here
Oakland, CA Hotel Workers **with** Health Benefits	$17.37	N/A*	1/1/23		

State or Locality	Minimum Wage Rate	Minimum Tipped Cash Wage	Effective Date(s)	New or Updated Poster Requirement?	Notes
Oakland, CA Hotel Workers **without** Health Benefits	$23.15	$10.63	1/1/23		
Ohio	$10.10	$5.05	1/1/23	Yes	
Palo Alto, CA	$17.25	N/A*	1/1/23	Yes	
Portland, ME	$14.00	$7.00	1/1/23	Yes	Poster required. Once provided may be found here
Redwood City, CA	$17.00	N/A*	1/1/23	Yes	
Rhode Island	$13.00	$3.89	1/1/23		Poster required. Once provided may be found here
Rockland, ME	$14.00	$7.00	1/1/23	No	
South San Francisco, CA	$16.70	N/A*		Yes	
Vermont	$13.18	$6.59	1/1/23	No	
Virginia	$12.00	$2.13	1/1/23	No	
West Hollywood, CA (50 or more employees)	$17.50	N/A*	1/1/23	Yes	Poster required. Once provided may be found here
West Hollywood, CA (49 or fewer employees)	$17.00	N/A*	1/1/23		

*AK/CA does not allow the use of a tip credit

Federal

EEOC Updates Required Poster

The U.S. Equal Employment Opportunity Commission (EEOC) has released an updated poster that federal nondiscrimination laws require employers to display. Covered employers must post the new version as soon as possible.

The Details:

Employers covered by federal nondiscrimination laws are required to post a notice describing these laws. The EEOC's poster summarizes these laws and explains that applicants and employees can file a complaint if they believe they have experienced discrimination.

The poster provides information about discrimination based on:

- Race, color, sex (including pregnancy and related conditions, sexual orientation, or gender identity), national origin, and religion
- Age (40 and older)
- Equal pay
- Disability
- Genetic information (including family medical history or genetic tests or services)

The poster also includes information on retaliation for filing a charge, reasonably opposing discrimination, or participating in a discrimination lawsuit, investigation, or proceeding.

The new version of the poster includes these changes:

- Notes that harassment is a prohibited form of discrimination;
- Clarifies that sex discrimination includes discrimination based on pregnancy and related conditions, sexual orientation, or gender identity;
- Adds a QR code for fast digital access to the "how to file a complaint" webpage;
- Provides information about equal pay discrimination for federal contractors; and
- Makes changes to language and formatting.

The poster is **available** in English and Spanish. More languages will be added at a later date.

Next Steps:

- Replace any outdated version of the poster with the new version as soon as possible.
- Ensure the updated poster is displayed in a conspicuous location in the workplace where notices to applicants and employees are customarily posted. The EEOC also encourages employers to post it on their websites in a clearly visible location.

IRS Updates Guidance on WOTC Pre-screening and Certification

Click **here** for the article.

IRS Announces 2023 Benefit Plan Contribution Limits

On October 18, 2022, the Internal Revenue Service (IRS) announced via **Revenue Procedure 2022-38** the dollar limitation for 2023 on employee salary reductions for contributions to health flexible spending accounts; the monthly limitation regarding the aggregate fringe benefit exclusion amount for transportation in a commuter highway vehicle and any transit pass; and the maximum amount that can be excluded from an employee's gross income for the amounts paid for qualified adoption expenses furnished pursuant to an adoption assistance program.

The Details:

Flexible Spending Accounts

The 2023 maximum employee salary reduction contribution to a **health flexible spending account** will be $3,050. The limit was $2,850 in 2022. The Affordable Care Act (ACA) had limited employee salary reductions for contributions to health flexible spending accounts to $2,500 per employee but allowed that limit to be adjusted annually for inflation in increments of $50.

The $3,050 limit applies to both full-purpose and limited-purpose health flexible spending accounts. However, an employer is not required to adopt the maximum amount allowed in its plan design and may choose to allow an amount less than $3,050. The $3,050 limit applies only to employee salary reduction contributions during the benefit plan year and does not impact employer-paid contributions or, if offered, contributions made as a result of the balance carryover option. If an employer provides flex credits that employees may elect to receive either as cash or as a taxable benefit, those flex credits are treated as employee salary reduction contributions and count toward the $3,050 limit.

If a cafeteria plan permits the carryover of unused amounts, the maximum carryover amount is $610 for 2023 as compared to $570 in 2022.

The **dependent care spending account** maximum is set by statute and is not subject to inflation-related adjustments. Consequently, the 2023 dependent care spending account maximum continues to be limited to the smallest of the following amounts:

- $5,000 if the employee is married and filing a joint return or if the employee is a single parent ($2,500 if the employee is married but filing separately);
- The employee's "earned income" for the year; or
- The spouse's "earned income," if the employee is married at the end of the taxable year.

Qualified Transportation/Parking Benefits

Transportation

The monthly limitation regarding the aggregate fringe benefit exclusion amount for transportation in a commuter highway vehicle and any transit pass will increase to $300 in 2023 from $280 in 2022.

Parking

The monthly limitation regarding the fringe benefit exclusion amount for qualified parking will increase to $300 in 2023 from $280 in 2022.

Adoption Assistance Programs

The maximum amount that can be excluded from an employee's gross income for the amounts paid or expenses incurred by an employer for qualified adoption expenses furnished pursuant to an adoption assistance program for adoptions by the employee in 2023 is $15,950. This is an increase of $1,060 over the 2022 maximum of $14,890.

Summary of Changes to Contribution Limits

	2022	2023
Health Flexible Spending Accounts	$2,850/plan year	$3,050/plan year
Qualified Transportation Parking Benefits	$280/month $280/month	$300/month $300/month
Adoption Assistance Programs	$14,890/year	$15,950/year

IRS Information Reporting Penalty Amounts Indexed for Tax Year 2023

The Internal Revenue Service (IRS) has announced via **Revenue Procedure 2022-38** the penalties under the Internal Revenue Code (IRC) for failure to file correct Information Returns, such as Forms W-2, 1099 and 1095-C, by the due date, and failure to furnish correct Information Returns to employees and other recipients by the required due date for **tax year 2023**.

Background

Every employer engaged in a trade or business that makes payments for the year for services performed by an employee must file a Form W-2 for each employee from whom income, Social Security or Medicare tax was withheld, and furnish the Form W-2 to their employees.

Applicable Large Employers (ALEs), generally those that employed at least 50 full-time employees (including full-time-equivalent employees) during the preceding calendar year, must file and furnish Forms 1095-C to employees to report whether they offer full-time employees and any dependents the opportunity to enroll in minimum essential coverage (MEC) under an eligible employer-sponsored plan.

The IRS administers statutory penalties associated with these reporting requirements under Sections 6721 and 6722 of the IRC. Penalty amounts are indexed and may change annually.

Employers must mail or electronically file 2022 Form(s) W-2 and Form W-3 with the Social Security Administration (SSA) by January 31, 2024. Employers must electronically file if required to file 250 or more Forms W-2 or W-2c. Employees must be furnished with their Forms W-2 by January 31, 2024.

ALEs must file 2022 Forms 1094-C and 1095-C with the IRS by February 28, 2024, if filing in paper format or by March 31, 2024 if filing electronically. Electronic filing is required for 250 or more Forms 1095-C. Employees must be furnished with Forms 1095-C by January 31, 2024.

The Details:

Filing with SSA Penalties

If an employer fails to file a correct Information Return by the due date and cannot show reasonable cause, the employer may be subject to a penalty as provided under IRC Section 6721. The penalty applies where an employer:

- Fails to file timely.
- Fails to include all information required to be shown.
- Includes incorrect information.
- Files on paper forms when required to electronically file.
- Reports an incorrect tax identification number; i.e., Social Security Number or Employer Identification Number.
- Fails to report a tax identification number.
- Fails to file paper forms that are machine readable.

The amount of the penalty is based on when a correct form has been filed.

Furnish Form(s) to Employees

Generally, employers must furnish Copies B, C, and 2 of Form W-2 to employees by January 31 following the tax year of January 1 through December 31. Employers will meet the "furnish" requirement if the form is properly addressed and mailed on or before the due date. If employment ends before December 31, employers may furnish copies to the employee at any time after employment ends, but no later than January 31. Generally, Forms 1095-C must be furnished to employees by January 31 for coverage offered the previous calendar year.

Furnishing Penalties

If an employer fails to provide correct Information Returns (Forms W-2 or 1095-C) to its employees and cannot show reasonable cause, the employer may be subject to a penalty as provided under IRC Section 6722. The penalty applies when an employer:

- Fails to provide the statement by January 31, as required.
- Fails to include all information required to be shown on the form.
- Includes incorrect information on the form.

The amount of the penalty is based on when the employer furnishes the correct form.

Note: The penalty under IRC Section 6722 is an additional penalty to that applied under IRC Section 6721 and is applied in the same manner, and with the same amounts. In other words, both penalties may apply; e.g., if an employer neither furnished a form as required nor filed a form as required. Consequently, the amounts below could be doubled.

Revenue Procedure 2022-38 modifies the penalties under IRC Sections 6721 and 6722 for tax year 2023 as follows.

PENALTY PER RETURN	2022 Tax Year – Forms W-2 must be filed and furnished by January 31, 2023	2023 Tax Year – Forms W-2 must be filed and furnished by January 31, 2024
Failure to file/furnish generally, annual cap on penalties	$290/return; $3,532,500 annual cap	$310/return; $3,783,000
Failure to file/furnish generally; lesser cap for persons with gross receipts of not more than $5,000,000	$290/return; $1,177,500 annual cap	$310/return; $1,891,500
Failure to file/furnish when corrected within 30 days of the required filing date; annual cap on penalties when corrected within 30 days of required filing date	$50/return; $588,500 annual cap	$60/return; $630,500
Failure to file/furnish when corrected within 30 days of the required filing date; lesser cap for persons with gross receipts of not more than $5,000,000 when corrected within 30 days of required filing date	$50/return; $206,000 annual cap	$60/return; $220,500
Failure to file/furnish when corrected by August 1 of the year in which the required filing date occurs; cap on penalties when corrected by August 1 of the year in which the required filing date occurs	$110/return; $1,766,000 annual cap	$120/return; $1,891,500
Failure to file/furnish when corrected by August 1 of the year in which the required filing date occurs; lesser cap for persons with gross receipts of not more than $5,000,000 when corrected by August 1 of the year in which the required filing date occurs	$110/return; $588,500 annual cap	$120/return; $630,500
Penalty (per filing) in case of intentional disregard (Note: no cap applies in this case)		

PENALTY PER RETURN	2022 Tax Year – Forms W-2 must be filed and furnished by January 31, 2023	2023 Tax Year – Forms W-2 must be filed and furnished by January 31, 2024
Return other than a return required to be filed under §§ 6045(a), 6041A(b), 6050H, 6050I, 6050J, 6050K, or 6050L (§ 6721(e)(2)(A)) (Examples: Form W-2, 1099-Misc, 1099-R)	Greater of (i) $580, or (ii) 10% of aggregate amount of items required to be reported corrected. No cap.	Greater of (i) $630, or (ii) 10% of aggregate amount of items required to be reported corrected. No cap.
Return required to be filed under §§ 6045(a), 6050K, or 6050L (§ 6721(e)(2)(B))	Greater of (i) $580, or (ii) 5% of aggregate amount of items required to be reported correctly. No cap.	Greater of (i) $630, or (ii) 5% of aggregate amount of items required to be reported correctly. No cap.
Return required to be filed under § 6050I(a) (§ 6721(e)(2)(C))	Greater of (i) $29,440, or (ii) amount of cash Received up to $117,500. No cap.	Greater of (i) $31,520 or (ii) amount of cash Received up to $126,000. No cap
Return required to be filed under § 6050V (§ 6721(e)(2)(D))	Greater of (i) $580, or (ii) 10% of the value of the benefit of any contract with respect to which information is required to be included on the return. No cap.	Greater of (i) $630, or (ii) 10% of the value of the benefit of any contract with respect to which information is required to be included on the return. No cap.

Note: Reduced penalties may be applicable for small employers, as defined (generally those with average annual gross receipts for the most recent three years of under $5,000,000). See the Revenue Procedure for details. To view the IRS Revenue Procedure 2022-38, visit **https://www.irs.gov/pub/irs-drop/rp-22-38.pdf**. See Sections .57 and .58.

Pension Plan Limitations for 2023 Provided by IRS

On October 21, 2022, the Internal Revenue Service (IRS) announced via Notice 2022-55, the cost of living adjustments applicable to dollar limitations for pension plans and other items for tax year 2023.

The Details:

A summary of the 2023 pension limitations as compared to 2022 are as follows:

Plan Maximum Contribution Limits	2022	2023
Section 401(k) Plan or SAR SEP	$20,500	$22,500
Section 403(b) Plan	$20,500	$22,500
Section 408(p)(2)(E) SIMPLE Plan Contributions	$14,000	$15,500
Section 457(e)(15) Limit	$20,500	$22,500
Section 415 Limit for: Defined Contribution Plans Defined Benefit Plans	 $61,000 $245,000	 $66,000 $265,000
Highly Compensated Employees Section 414(q)(1)(B)	$135,000	$150,000
Key Employee Section 416(i)(1)(A)(i)	$200,000	$215,000

Plan Maximum Contribution Limits	2022	2023
Includible Compensation – Section 401(a)(17) --- SEP Compensation SEP Earnings Threshold	$305,000 $305,000 $650	$330,000 $330,000 $750
Limited Governmental Plans (pre 7/1/93)	$450,000	$490,000
Section 409 Employee Stock Ownership Plan Subject to Five-Year Distribution Period Maximum Balance Amount Used to Determine the Lengthening of the Five-Year Period	$1,230,000 $245,000	$1,330,000 $265,000

The 2023 dollar limitation under Section 414(v)(2)(B)(i) for catch-up contributions to an applicable employer plan other than a plan described in Section 401(k)(11) or Section 408(p) for individuals aged 50 is increased from ($6,500 in 2022) to $7,500. The 2023 dollar limitation under Section 414(v)(2)(B)(ii) for catch-up contributions to an applicable employer plan described in Section 401(k)(11) or Section 408(p) for individuals aged 50 is increased from ($3,000 in 2022) to $3,500.

For a copy of Notice 2022-55, click on the link provided below.

https://www.irs.gov/pub/irs-drop/n-22-55.pdf

SECURE Act Brings Major Changes to Employer Retirement and Benefit Plans

The Setting Every Community Up for Retirement Enhancement (SECURE) Act, includes a number of changes to employer-sponsored retirement plans. Of particular interest to employers is a change which requires employers to permit long-term, part-time workers to participate in employer-sponsored retirement plans. This requirement opens eligibility to employees that complete either 1,000 hours within one year or 500 hours in each of three consecutive years.

If the employee enters the Plan under this Long-Term Part-Time (LTPT) rule, employees must be allowed to defer from their own pay, but employers are not required to provide matching contributions on their deferrals, or non-elective contributions for employees who become eligible for the 401(k) plan under this rule.

The calculation period starts for years beginning on January 1, 2021, with the first LTPT employee becoming eligible to participate in the Plan on January 1, 2024. For more information on the LTPT rule review these **Frequently Asked Questions**.

The SECURE Act includes other important provisions. **Click here for more information**.

Note: There is pending legislation in Congress that if passed may reduce the service requirements from three years to two years for Long-term Part-time employees working between 500 and 1,000 hours per year. ADP will continue to monitor the pending legislation.

Next Steps:

Although the SECURE Act targets small businesses specifically, it will have sweeping effects on employers, employees and the retirement industry as a whole.

Employers have decisions in advance of their 2024 plan year regarding plan design, such as whether to provide LTPT employees with employer matching contributions, revising the vesting schedule for employer contributions or even permitting all part-time employees to participate in order to avoid tracking hours. Updates will be required for plan documents, summary plan descriptions and any relevant employee handbook policies.

ADP is continuing to assess our ability to assist clients in determining when employees have met LTPT hours requirements and will communicate the availability of any solutions in the future.

Use Current I-9 for Now; Remote Inspection Allowed Through July 31, 2023

The Department of Homeland Security (DHS) has announced that employers should continue using the current Form I-9 (Employment Eligibility Verification) until further notice. Separately, the DHS announced that employers will be allowed to inspect Form I-9 documents remotely in certain situations related to COVID-19 until July 31, 2023. Prior to the announcement, this temporary policy was set to expire on October 31, 2022.

The Form I-9 is used to verify a new hire's identity and work authorization. All employers must ensure that each employee properly completes the I-9 at the time of hire.

The Details:

I-9 Expiration Date Approaches:

The current edition of the I-9 has an expiration date of October 31, 2022. The DHS says employers should continue using this version until further notice. The DHS will publish a notice to announce the new version of the I-9 once it becomes available.

Remote Inspection:

By way of background, the I-9 is broken out into multiple sections:

Section Name	Section Overview	Completion Deadline
Section 1	Employee must attest that they are authorized to work in the U.S.	The employee's first day of work for pay
Section 2	Employee must present certain identity and work authorization documents. The employer must examine the document(s) to determine whether they reasonably appear to be genuine and relate to the employee. Employers must record the document number(s) here.	Within three business days
Section 3	If an employee's employment authorization expires, they must present new or updated document(s) and the employer must examine and record the document number(s) here. Employers may also be required to complete this section when rehiring a former employee, depending on how much time has passed.	No later than the date employment authorization expires
List of Acceptable Documents	List A documents establish both identity and employment authorization. List B documents establish identity only. List C documents establish employment authorization only.	This section does not need to be completed. It's for informational purposes only.

Generally, employers must inspect Section 2 documents in the employee's physical presence.

Temporary Policy for Remote I-9 Document Inspection:

Under the temporary policy, if employees hired on or after April 1, 2021 work exclusively in a remote setting due to COVID-19-related precautions, they are temporarily exempt from the physical inspection requirements until they undertake non-remote employment on a regular, consistent, or predictable basis, or the extension of the flexibilities related to such requirements is terminated, whichever is earlier. In situations in which the policy applies, employers must inspect the Section 2 documents remotely (such as, over video link, fax or email, etc.) and obtain, inspect, and retain copies of the documents, within three business days for purposes of completing Section 2.

Once normal operations resume, all employees who were onboarded using remote verification, must report to their employer within three business days for in-person verification of identity and employment eligibility documentation for Form I-9. Once acceptable documents have been physically inspected, the employer should add "documents physically examined" with the date of inspection to the Section 2 additional information field on the Form I-9, or to Section 3 as appropriate. Employers should enter "COVID-19" as the reason for the physical inspection delay.

Employers that use this option must provide written documentation of their remote onboarding and telework policy for each employee. This burden rests solely with the employer.

Next Steps:

- Continue to use the current version of the I-9 until further notice from the DHS.
- If you qualify for the temporary exemption from the in-person inspection requirement:
  - Make sure you comply with the rules outlined above.
  - Monitor the **DHS website** for additional updates regarding the temporary policy.

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.**

If you have any questions regarding our services, please call 855-466-0790.

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