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

Alaska Updates Regulations on Board and Lodging Deductions

The Alaska Department of Labor and Workforce Development (LWD) has issued **updated regulations** detailing how employers may deduct the reasonable cost of board and lodging for employees from the state minimum wage. These regulations are effective **July 28, 2023**.

The Details:

The updated regulations stipulate that employers may make deductions from the Alaska state minimum wage (currently $10.85 per hour) if the following conditions are met:

(1) The board or lodging facilities are customarily furnished by the employer to the employee.

(2) The cost to the employee is reasonable and without profit to the employer.

(3) The employer provides prior written notice to the employee of the deduction to the minimum wage. The written notice must be signed by the employee and state that acceptance of the deduction is voluntary. The employer must also provide a basic description of the boarding/lodging to be deducted and the amount to be deducted.

Next Steps:

Alaska employers utilizing the board and lodging deduction toward the state minimum wage should review the **updated regulations** and implement the necessary procedures to meet the requirements of the updated regulations, while considering the impact of federal law.

Arkansas Bans Hairstyle Discrimination

Arkansas has enacted legislation (House Bill 1576), which expressly prohibits employers with nine or more employees from discriminating against individuals based on a natural, protective or cultural hairstyle. The changes take effect **July 31, 2023**.

The Details:

Under state law, all employers with nine or more employees are prohibited from discriminating against individuals because of race and certain other characteristics.

House Bill 1576 makes clear that the definition of "because of race" includes actions taken on account of an individual's natural, protective or cultural hairstyle.

For purposes of the law, a natural, protective or cultural hairstyle includes afros, twists, locs, braids, cornrow braids, Bantu knots, curls, and hair styled to protect hair texture or for cultural significance.

Next Steps:

- Review dress codes, appearance policies and training to ensure compliance with House Bill 1576.
- If your policy simply indicates that employees must maintain kempt hair, consider clarifying that kempt means that the hair is clean and well-combed or arranged, and that employees can comply with a variety of hairstyles that meet those criteria.

Colorado Expands Non-Discrimination Law

Colorado has enacted legislation (Senate Bill 23-172), which prohibits discrimination based on marital status, redefines harassment under state law, clarifies the protections for individuals with disabilities, and extends recordkeeping requirements. The changes take effect **August 7, 2023**.

The Details:

Marital Status:

Under existing law, employers are prohibited from discriminating against any qualified individual because of disability, race, creed, color, sex, sexual orientation, gender identity, gender expression, religion, age, national origin or ancestry.

Senate Bill 23-172 amends the list of protected characteristics to also include marital status.

Harassment:

Senate Bill 23-172 redefines harassment under state law as unwelcome conduct or communication related to an individual's membership in a protected class where submission to the conduct is a condition of the individual's employment, is used as a basis for employment decisions or interferes with the individual's work, or would objectively be offensive to a reasonable person in the same protected class.

The law makes clear that harassment doesn't need to be severe or pervasive to constitute a discriminatory or unfair practice under state law. Petty slights or annoyances or lack of good manners don't constitute harassment, unless when taken into consideration with the totality of the circumstances, the conduct meets the standards set in the law. See the **text of the law** for details.

Senate Bill 23-172 also establishes that an employer may be able to assert as a defense in response to a claim for harassment that:

- The employer has a harassment prevention program through which:
  - The employer takes prompt, reasonable action to investigate or address discriminatory or unfair employment practices;
  - The employer takes prompt, reasonable remedial action, when warranted, in response to complaints;
- The employer has communicated the existence and details of the program to both supervisory and non-supervisory employees; and
- The employee has unreasonably failed to take advantage of the employer's program.

Disabilities:

Under state law, employers must provide reasonable accommodations to individuals with disabilities, unless there is no reasonable accommodation that the employer can make that would allow the individual to satisfy the essential functions of the job.

Senate Bill 23-172 eliminates the ability of an employer to assert that an individual's disability has a significant impact on the job as a rationale for being unable to accommodate an individual who is otherwise qualified for the job.

Recordkeeping:

Under Senate Bill 23-172, employers must retain personnel or employment records for at least five years from the later of:

- The date the employer made or received the record.
- The date of the personnel action about which the record pertains or the final disposition of a discrimination complaint.

The law defines personnel or employment records as:

- Requests for accommodation;
- Employee complaints of discriminatory or unfair employment practices;
- Application forms submitted by applicants for employment;
- Records related to hiring, promotion, demotion, transfer, termination, rates of pay or other terms of compensation; and
- Selection for training or apprenticeship, and records of training provided or facilitated to employees.

Employers must maintain an accurate, designated repository of all written or oral complaints of discriminatory or unfair employment practices. The repository must contain the:

- Date of the complaint;
- Identity of the complaining individual, unless the complaint was made anonymously;
- Identity of the accused; and
- Substance of the complaint.

Other Changes:

The law also prohibits a non-disclosure agreement between an employer and an employee from limiting the ability of the employee to discuss or disclose any alleged discriminatory or unfair employment practice, unless certain requirements in the law are met. Any employer that includes a non-disclosure provision that violates the requirements could be liable for actual damages and a fine of $5,000 per violation.

Next Steps:

- Review policies and practices to ensure compliance with Senate Bill 23-172.
- Train supervisors on the changes made by Senate Bill 23-172.

Colorado Amends Pay and Opportunity Transparency Rules

Colorado has enacted legislation (Senate Bill 23-105), which amends the state's rules for pay and opportunity transparency in internal and external job postings. The law takes effect **January 1, 2024**.

The Details:

Here is a summary of the changes made by Senate Bill 23-105:

Existing Law	Effective January 1, 2024
Employers must make reasonable efforts to announce, post or otherwise make known all opportunities for promotion to all current employees on the same day and prior to making a promotion decision. In all job postings, employers must disclose the pay rate or pay range and a general description of benefits for the position.	Employers must make reasonable efforts to announce, post or otherwise make known each job opportunity to all employees on the same day and prior to the date on which the employer makes a selection decision. However, if an employer is only physically located outside of Colorado and has fewer than 15 employees working in Colorado, all of whom work remotely, then through July 1, 2029, the employer is only required to provide notice of remote job opportunities. An employer must in good faith disclose the following in the notification of each job opportunity: • The hourly or salary compensation or range of the hourly or salary pay; • A general description of benefits and other compensation applicable to the job opportunity; and • The date the application window is expected to close.
No applicable provision.	Employers must make reasonable efforts to announce, post or otherwise make known, within 30 calendar days after a candidate who is selected to fill a job opportunity begins working, the following information to, at a minimum, the employees with whom the selected candidate is expected to work regularly: • The name of the selected candidate; • The selected candidate's former job title, if hired from within the company; • The selected candidate's new job title; and • Information on how employees may express interest in similar future opportunities, including identification of contacts to reach out to for more information. The law doesn't require identification of the selected candidate in any manner that would violate their privacy rights or would place their health or safety at risk.

A "job opportunity" is defined as a current or anticipated vacancy for which the employer is considering or interviewing candidates, or that the employer externally posts.

The definition of "job opportunity" excludes:

- "Career progression," which is defined as a regular or automatic movement from one position to another based on time in a specific role or other objective metrics. Note that employers with career progression are subject to certain notice requirements. See the **text of the law** for details.
- "Career development," which is defined as a change to an employee's terms of compensation, benefits, full-time or part-time status, duties, or access to further advancement in order to update the employee's job title or to compensate the employee to reflect work performed or contributions already made by the employee.

Next Steps:

- Ensure compliance with the changes made by Senate Bill 23-105 by January 1, 2024.
- Train anyone involved in the hiring process on the new requirements.

Colorado Expands Paid Sick Leave

Colorado has enacted legislation (Senate Bill 23-017) that expands the reasons employees may use paid sick leave under state law. Senate Bill 23-017 takes effect **August 7, 2023**.

The Details:

Existing Law:

Under current Colorado law, employees may use paid sick leave for the following purposes:

- The employee's or a family member's mental or physical illness, injury or health condition;
- The employee's or a family member's need for a medical diagnosis, care or treatment related to an illness, injury or condition;
- The employee or a family member needs to obtain preventive medical care;
- The employee or a family member has been the victim of domestic abuse, sexual assault or harassment, and needs to:
  - Seek medical attention;
  - Get assistance from a victims' services organization;
  - Obtain mental health or other counseling;
  - Seek relocation services; or
  - Obtain legal services, including preparation and participation in legal proceedings.
- A public official has ordered the closure of the school or place of care of the employee's child or the employee's place of business due to a public health emergency.

Senate Bill 23-017:

Effective August 7, 2023, employees will also be entitled to use paid sick leave to:

- Care for a family member whose school or place of care has been closed due to inclement weather, loss of power, loss of heating, loss of water, or other unexpected occurrence or event that results in the closure of the family member's school or place of care;
- Grieve, attend funeral services or a memorial, or deal with financial and legal matters that arise after the death of a family member; or
- Evacuate the employee's place of residence due to inclement weather, loss of power, loss of heating, loss of water, or other unexpected occurrence or event that results in the need to evacuate the employee's residence.

Next Steps:

Colorado employers should review policies and procedures to ensure compliance with Senate Bill 23-017 by August 7, 2023.

Colorado Prohibits Age-Related Inquiries

Colorado has enacted legislation (Senate Bill 23-058) that expressly prohibits employers from making age-related inquiries on an initial employment application. The law takes effect **July 1, 2024**.

The Details:

Senate Bill 23-058 expressly prohibits employers from inquiring on an initial employment application about an applicant's age, date of birth and dates of attendance at or date of graduation from an educational institution.

An employer may require candidates to provide copies of certification, transcripts and other materials created by third parties, at the time of the initial employment application, if the employer notifies the individual that they may redact information that identifies their age, date of birth or dates of attendance at or date of graduation from an educational institution.

An employer may request an individual to verify compliance with age requirements imposed pursuant to or required by:

- A bona fide occupational qualification pertaining to public or occupational safety;
- A federal law or regulation; or
- A state or local law or regulation based on a bona fide occupational qualification.

However, such verification requests must not require on an initial employment application the disclosure of an individual's specific age, date of birth or dates of attendance at or date of graduation from an educational institution.

Next Steps:

Colorado employers should review initial job applications to ensure compliance with Senate Bill 23-058 by July 1, 2024.

Georgia Amends Rules for Time Off for Voting

Georgia has enacted legislation (Senate Bill 129) that amends the rules governing an employee's entitlement to time off to vote in elections. The changes take effect **July 1, 2023**.

The Details:

Existing Law	Effective July 1, 2023
Each employee must, upon reasonable notice to their employer, be permitted to take any necessary time off to vote in any municipal, county, state or federal political party primary or election for which such employee is qualified and registered to vote on the day on which such primary or election is held. However, the time off must not exceed two hours.	Each employee must, upon reasonable notice to their employer, be permitted to take any necessary time off to vote in any municipal, county, state or federal political party primary or election for which such employee is qualified and registered to vote *either on one of the days that are designated for advance in-person voting or on the day on which such primary or election is held.* However, the time off must not exceed two hours.
If the hours of work of the employee commence at least two hours after the opening of the polls or end at least two hours prior to the closing of the polls, then the time off for voting isn't available.	This provision is repealed.
The employer may specify the hours during which the employee may be absent.	No changes.

Next Steps:

- Review policies and practices to ensure compliance with Senate Bill 129.
- Train supervisors on the changes.

Hawaii to Require that Job Listings Disclose Pay Information

Hawaii has enacted legislation (Senate Bill 1057), which requires employers with 50 or more employees to disclose in job listings the hourly rate or salary range for the position. Senate Bill 1057 also broadens the state's equal pay law. The changes take effect **January 1, 2024**.

The Details:

Effective January 1, 2024, employers with 50 or more employees must disclose in job listings an hourly rate or salary range that reasonably reflects the actual expected compensation for the position.

The pay disclosure requirement doesn't apply to job listings for:

- Positions that are internal transfers or promotions within a current employer; or
- Public employee positions for which salary, benefits or other compensation are determined pursuant to collective bargaining.

Senate Bill 1057 also broadens the state's equal pay law, which applies to all Hawaii employers, as follows:

Current Law	Effective January 1, 2024
Employers are prohibited from discriminating against employees because of sex by paying wages to employees in an establishment at a rate less than the rate at which the employer pays wages to employees of the opposite sex in the establishment for equal work on jobs the performance of which requires equal skill, effort and responsibility, and that are performed under similar working conditions.	Employers are prohibited from discriminating against employees because of any characteristic that is protected under state law by paying wages to employees in an establishment at a rate less than the rate at which the employer pays wages to other employees in the establishment for substantially similar work on jobs the performance of which requires equal skill, effort and responsibility, and that are performed under similar working conditions.
Pay differentials don't violate the law if they result from: • A seniority system; • A merit system; • A system that measures earnings by quantity or quality of production; • A bona fide occupational qualification; or • A differential based on any other permissible factor other than sex.	Pay differentials don't violate the law if they result from: • A seniority system; • A merit system; • A system that measures earnings by quantity or quality of production; • A bona fide occupational qualification; or • A differential based on any other permissible factor other than any characteristic that is protected under state law.

Next Steps:

Covered Hawaii employers should review policies and procedures to ensure compliance with the applicable provisions of Senate Bill 1057.

Louisiana Requires Leave for Genetic Testing and Cancer Screening

Louisiana has enacted legislation (Senate Bill 200), which will require employers with 20 or more employees to provide leave to employees for genetic testing and cancer screening when medically necessary. The changes take effect **August 1, 2023**.

The Details:

When medically necessary, an employer must grant an employee a day's leave of absence from work to obtain genetic testing or preventive cancer screening.

To be considered medically necessary, the testing or screening must be in accordance with generally accepted evidence-based medical standards, or that are considered by most physicians or independent licensed practitioners within the community of their respective professional organizations to be the standard of care.

The services must also be deemed reasonably necessary to diagnose, correct, cure, alleviate or prevent the worsening of a condition or conditions that endanger life, cause suffering or pain, or have resulted or will result in a handicap, physical deformity or malfunction, and those for which no equally effective and less costly course of treatment is available or suitable for the recipient.

Employee Notice and Documentation:

An employee who wishes to request such leave must provide at least 15 days' notice to the employer prior to the leave, and make a reasonable effort to schedule the leave to avoid unduly disrupting the operations of the employer.

The employee must provide documentation confirming the performance of such genetic testing or cancer screening, when requested by the employer. An employee mustn't be required to disclose the results of genetic testing or a preventative cancer screening.

Pay During Leave:

The leave may be unpaid. However, an employee must be permitted to substitute any accrued vacation time or other appropriate paid leave for this purpose.

Employer Notice:

Covered employers must post a notice in a conspicuous location setting forth the requirements of the law. The notice will be prepared by the Louisiana Workforce Commission.

Next Steps:

Covered Louisiana employers should review policies and procedures to ensure compliance with Senate Bill 200 by August 1, 2023, and post the required notice.

Michigan Bans Hairstyle Discrimination

Michigan has enacted legislation (Senate Bill 90), which expressly prohibits employers from discriminating against individuals based on traits historically associated with race, such as hair texture and protective hairstyles. The changes took effect immediately on June 15, 2023.

The Details:

Under state law, all employers are prohibited from discriminating against individuals because of race and certain other characteristics.

Senate Bill 90 makes clear that the definition of race includes traits historically associated with race, including, but not limited to, hair texture and protective hairstyles.

For purposes of the law, protective hairstyles include, but aren't limited to, braids, locs and twists.

Next Steps:

- Review dress codes, appearance policies and training to ensure compliance with Senate Bill 90.
- If your policy simply indicates that employees must maintain kempt hair, consider clarifying that kempt means that the hair is clean and well-combed or arranged, and that employees can comply with a variety of hairstyles that meet those criteria.

Michigan Further Expands Non-Discrimination Law

Michigan has enacted legislation (Senate Bill 147), which prohibits all employers from discriminating against applicants and employees based on the individual's termination of a pregnancy. The law takes effect on the 91st day after adjournment of the state legislature. The legislature is expected to adjourn in late December 2023.

The Details:

Senate Bill 147 makes the following changes:

Current Law	Senate Bill 147
Employers are prohibited from discriminating against applicants and employees based on sex, which includes, but isn't limited to, pregnancy, childbirth or a related medical condition related to pregnancy or childbirth that doesn't include non-therapeutic abortion not intended to save the life of the mother.	Employers are prohibited from discriminating against applicants and employees based on sex, which includes, but isn't limited to, pregnancy, childbirth, the termination of a pregnancy or a related medical condition.
Employers are prohibited from treating an individual affected by pregnancy, childbirth or a related medical condition differently for any employment-related purpose from another individual who isn't affected, but is similar in ability or inability to work. For purposes of this provision, a medical condition related to pregnancy or childbirth doesn't include non-therapeutic abortion not intended to save the life of the mother.	Employers are prohibited from treating an individual affected by pregnancy, childbirth, the termination of a pregnancy or a related medical condition differently for any employment-related purpose from another individual who isn't affected, but is similar in ability or inability to work.

Next Steps:

- Watch for the adjournment of the state legislature to determine the exact effective date.
- Review policies and practices to ensure compliance with Senate Bill 147.
- Train supervisors and those involved in the hiring process or in making other employment decisions on the protections.

Minnesota Creates State-Run Retirement Plan

Minnesota has enacted legislation (House File 782), which creates a state-run retirement program that workers in the private sector can join and requires participation by employers if they have five or more employees and don't offer a retirement plan. The law doesn't set a timeline for implementing the program. However, the program's board of directors must begin operation of the program no earlier than January 1, 2025.

The Details:

House File 782 establishes the Minnesota Secure Choice program, 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.

Minnesota employers must facilitate the Secure Choice program if they:

- Employ five or more covered employees; and
- Don't sponsor or contribute to, and didn't in the immediately preceding 12 months, sponsor or contribute to a retirement savings plan for their employees.

Note: Employers that contract with employee leasing companies, professional employer organizations, or other similar entities to obtain workers are also covered under the program, unless that entity has a retirement savings plan that exempts it from the program.

To facilitate the program, covered employers must:

- Enroll employees in the program and withhold payroll deduction contributions from each covered employee's paycheck, unless the covered employee has elected not to contribute;
- Timely remit contributions to the program; and
- Provide information about the program to employees at least 30 days prior to the date of the first paycheck from which employee contributions could be deducted for transmittal to the program, if the covered employee doesn't elect to opt out of the program.

The information to provide to employees and the timeline for implementing the program, including when enrollment and contributions must begin, will be developed by the program's board of directors.

Next Steps:

Employers are not required to take any immediate action at this time. The program's board of directors must first develop procedures to administer the program. We will continue to keep clients informed of any future developments.

Minnesota to Establish Paid Family and Medical Leave Program

Minnesota has enacted legislation (House File 2) that will create a paid family and medical leave program in the state. Contributions to the program and wage-replacement benefits will begin **January 1, 2026**. Employers can opt to have a private plan to meet the requirements, provided the plan is approved by the state.

The Details:

Covered Employers:

The program covers all employers with at least one employee performing services for wages (covered employment). For the purposes of the law, covered employment means an employee's entire employment during the calendar year, if 50 percent or more of the employment during the calendar year:

- Is performed in Minnesota;
- Isn't performed in Minnesota or any other state, or Canada, but some of the employment is performed in Minnesota and the employee's residence is in Minnesota during 50 percent or more of the calendar year; or
- Isn't performed in Minnesota or any other state, or Canada, but the place from where the employee's employment is controlled and directed is based in Minnesota.

Covered Employment doesn't include:

- A self-employed individual;
- An independent contractor; or
- Employment by a seasonal employee (as defined by the law).

Reasons for Leave:

The program will cover the following absences:

- For pregnancy or to recover from giving birth (medical leave);
- For an employee's own serious health condition (medical leave);
- To bond with a new child (bonding leave);
- To care for a family member with a serious health condition or a family member who is a military member (family care leave);

- A need arising out of a military member's active duty service or notice of an impending call or order to active duty in the United States armed forces, including providing for the care or other needs of the family member's child or other dependent, making financial or legal arrangements for the family member, attending counseling, attending military events or ceremonies, spending time with the family member during a rest and recuperation leave or following return from deployment, or making arrangements following the death of the military member (qualifying exigency leave); and/or
- So the employee or a family member may seek medical attention, victim services, counseling, relocation or legal advice because of domestic abuse, sexual assault or stalking (safety leave).

Under the law, "family member" is defined as:

- A spouse or domestic partner;
- A child, including a biological, adopted, or foster child, a step-child, or a child to whom the employee stands i*n loco parentis*, is a legal guardian, or is a *de facto* parent;
- A parent or legal guardian of the employee;
- A sibling;
- A grandchild;
- A grandparent or spouse's grandparent;
- A son-in-law or daughter-in-law; and
- An individual who has a relationship with the applicant that creates an expectation and reliance that the applicant care for the individual, whether or not the applicant and the individual reside together.

Amount of Leave:

The maximum number of weeks that an employee may receive benefits in a single benefit year for medical leave is the lesser of 12 weeks, or 12 weeks minus the number of weeks within the same benefit year that the employee received benefits for bonding, safety, family care or qualifying exigency leave plus eight weeks.

The maximum number of weeks that an employee may receive benefits in a single benefit year for bonding, safety, family care or qualifying exigency leave is the lesser of 12 weeks, or 12 weeks minus the number of weeks within the same benefit year that the employee received benefits for medical leave plus eight weeks.

An employer may require leave taken under this law to run concurrently with leave taken under the federal Family and Medical Leave Act. However, employers are prohibited from compelling an employee to exhaust accumulated sick, vacation or personal time before or while taking paid family and medical leave.

With the exception of bonding leave, any claim for benefits must be based on a single qualifying event of at least seven calendar days. There is no minimum for bonding leave.

Employees may begin using leave January 1, 2026.

Employee Notice:

If the need for leave is foreseeable, an employee must provide the employer at least 30 days' advance notice before the leave. If 30 days' notice isn't possible, notice must be given as soon as possible. Whether leave is to be continuous or is to be taken intermittently, notice need only be given one time, but the employee must advise the employer as soon as possible if dates of scheduled leave change or are extended, or were initially unknown.

An employee must provide at least oral, telephone or text message notice sufficient to make the employer aware that the employee needs leave allowed under the law and the anticipated timing and duration of the leave.

An employer may require an employee to comply with the employer's usual and customary notice and procedural requirements for requesting leave.

Reinstatement:

Upon return from leave, subject to certain limitations, an employee who has worked at least 90 days for an employer is entitled to be returned to the same position the employee held when leave commenced, or to an equivalent position with equivalent benefits, pay and other terms and conditions of employment. An employee is entitled to reinstatement, even if the employee has been replaced or the employee's position has been restructured to accommodate the employee's absence. See the **text of the law** for details on limitations on reinstatement rights.

Employer Notice:

Effective November 1, 2025, employers must notify their employees about the program. Each employer must issue to each employee no more than 30 days from the beginning date of the employee's employment, or 30 days before premium collection begins, whichever is later, the following written information provided by the state Department of Employment and Economic Development in the primary language of the employee:

1. An explanation of the availability of family and medical leave benefits provided, including rights to reinstatement and continuation of health insurance;
2. The amount of premium deductions made by the employer;
3. The employer's premium amount and obligations;
4. The name and mailing address of the employer;
5. The identification number assigned to the employer by the state Department of Employment and Economic Development;
6. Instructions on how to file a claim for family and medical leave benefits;
7. The mailing address, email address, and telephone number of the Department of Employment and Economic Development; and
8. Any other information required by the Department of Employment and Economic Development.

Employers must also obtain a written or electronic acknowledgment of receipt of the information, or a signed statement indicating the employee's refusal to sign such acknowledgment.

The notice may be provided in paper or electronic format. For notice provided in electronic format only, the employer must provide employee access to an employer-owned computer during an employee's regular working hours to review and print required notices.

The state Department of Employment and Economic Development will prepare a uniform employee notice form for employers to use that provides the notice information required. The commissioner will prepare the uniform employee notice in the five most common languages spoken in Minnesota.

Wage Statements:

In addition to the information already required, wage statements must include any amount deducted by the employer for the employee's portion of the premium and the amount paid by the employer for their portion of the premium.

Employer Contributions:

For 2026, the premium rate for the program is 0.7 percent of an employee's wages, but will be adjusted based on usage in subsequent years. Employers must pay at least 50 percent of the applicable premium rate (that is 0.35 percent of an employee's wages in 2026).

There is a small business exclusion through which employers with fewer than 30 employees will pay a reduced premium amount. See the **text of the law** for details.

Employee Contributions:

Employees, through a deduction, must pay the remaining 50 percent (0.35 percent of their wages in 2026) of the premium not paid by the employer. Deductions for premiums are prohibited from causing an employee's wage, after the deduction, to fall below the rate required to be paid to the worker by law.

Small Employer Grants:

Employers with 30 or fewer employees and less than $3,000,000 in gross annual revenues may apply to the state Department of Employment and Economic Development for grants. Grants must be used to hire temporary workers or to increase wages for current employees. The department may approve a grant of up to $3,000 if the employer hires a temporary worker, or increases another existing worker's wages, to substitute for an employee on family or medical leave for a period of seven days or more. The maximum total grant per eligible employer in a calendar year is $6,000.

Next Steps:

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

Minnesota to Require Employers to Provide Paid Sick Leave

Minnesota has enacted legislation (Senate File 3035) that will require employers to provide paid sick leave to employees. The requirement takes effect **January 1, 2024**.

The Details:

Employee Coverage:

The law covers all employees (including temporary and part-time employees) who perform work for at least 80 hours in a year in Minnesota.

The requirements won't apply to building and construction industry employees who are represented by a building and construction trades labor organization, if a valid waiver of these requirements is provided in a collective bargaining agreement.

Employer Coverage:

The law covers all private employers with covered employees.

Accrual and Frontloading:

Accrual:

Employees are entitled to begin accruing paid sick leave on January 1, 2024, or their date of hire, whichever is later. Employees must accrue a minimum of one hour of sick leave for every 30 hours worked, up to a maximum of 48 hours in a year.

Employers must typically permit employees to carry over accrued, but unused sick leave into the following year. However, employers may cap total accrual at 80 hours.

Frontloading:

In lieu of allowing carryover into the following year, an employer may provide an employee with paid sick leave for the year that meets or exceeds the requirements of the law that is available for the employee's immediate use at the beginning of the subsequent year as follows:

- 48 hours, if an employer pays an employee for accrued, but unused paid sick leave at the end of a year at the same hourly rate as an employee earns from employment; or
- 80 hours, if an employer doesn't pay an employee for accrued, but unused paid sick leave at the end of a year at the same or greater hourly rate as an employee earns from employment.

Use of Leave:

An employee may use the paid sick leave as it accrues for:

- The employee's mental or physical illness, treatment or preventive care;
- A family member's mental or physical illness, treatment or preventive care;
- Absence due to domestic abuse, sexual assault or stalking of the employee or a family member;
- Closure of the employee's workplace due to weather or public emergency or closure of a family member's school or care facility due to weather or public emergency; and
- When determined by a health authority or healthcare professional that the employee or family member is at risk of infecting others with a communicable disease.

A "family member" is defined as a:

- Child, including foster child, adult child, legal ward, child for whom the employee is legal guardian or child to whom the employee stands or stood *in loco parentis* (in place of a parent);
- Spouse or registered domestic partner;
- Sibling, step-sibling, or foster sibling;
- Biological, adoptive or foster parent, step-parent, or a person who stood *in loco parentis* (in place of a parent) when the employee was a minor child;
- Grandchild, foster grandchild or step-grandchild;
- Grandparent or step-grandparent;
- A child of a sibling of the employee;
- A sibling of the parents of the employee;
- A child-in-law or sibling-in-law;
- Any of the family members listed above of an employee's spouse or registered domestic partner;
- Any other individual related by blood or whose close association with the employee is the equivalent of a family relationship; and
- Up to one individual annually designated by the employee.

Pay During Leave:

Employees who use paid sick leave must be paid at the same hourly rate they earn when they are working.

Employee Notice and Documentation:

If the need for use is foreseeable, employers may require up to seven days' advance notice of the need for leave. If the need is not foreseeable, an employer may require an employee to give notice of the need for leave as soon as practical. An employer that requires notice of the need to use paid sick leave must have a written policy containing reasonable procedures for employees to provide notice, and must provide a written copy of such policy to employees.

If the absence is more than three consecutive days, the employer may require reasonable documentation that the absence is covered by the law. See the **text of the law** for details on what is considered reasonable documentation.

Notice, Wage Statements and Recordkeeping:

Employers must provide notice to employees about their rights under the law. The notice must include specified information and must be provided in English and the primary language of the employee. The notice must be provided by January 1, 2024 or at the start of employment, whichever is later. The Minnesota Department of Labor and Industry will prepare a uniform employee notice that employers can use and will make it available in English and the five most common languages spoken in Minnesota.

The means used by the employer must be at least as effective as the following options for providing notice:

- Posting a copy of the notice at each location where employees perform work and where the notice must be readily observed and easily reviewed by all employees performing work;
- Providing a paper or electronic copy of the notice to employees; or
- A conspicuous posting in a web-based or app-based platform through which an employee performs work.

Employers that provide an employee handbook to their employees must include in the handbook the notice of employee rights under the law.

In addition to the employment and payroll records required by the state, an employer must maintain accurate records for each employee showing hours of work, as well as the paid sick leave taken. The records must be retained for a period of at least three years. An employer must allow an employee to inspect records at a reasonable time and place.

Wage statements must include the total number of paid sick leave hours accrued and available for use, as well as the amount of sick leave hours used during the pay period.

Existing Local Paid Sick Leave Ordinances:

Paid sick leave ordinances already exist in certain cities in Minnesota. When Minnesota's paid sick leave law goes into effect January 1, 2024, employers must follow the most protective law that applies to their employees.

Existing Paid Time Off Policies:

Employers that provide paid sick leave under a paid time off policy or other paid leave policy that may be used for the same purposes and under the same conditions as the law requires, and that meets or exceeds, and doesn't otherwise conflict with, the minimum standards and requirements provided by the law, aren't required to provide additional paid sick leave.

Retaliation Prohibited:

Employers are prohibited from taking adverse action against an individual because they have exercised or attempted to exercise rights protected under the law.

Unused Leave:

Employers aren't required to pay an employee for unused paid sick leave upon the employee's termination, resignation, retirement or other separation from employment.

Next Steps:

If you have employees working in Minnesota for at least 80 hours each year:

- Provide paid sick leave in accordance with the requirements of the law beginning January 1, 2024.
- Monitor the website of the Minnesota Department of Labor and Industry for the required notices.
- Provide the required notices by January 1, 2024, or the start of employment, whichever is later.
- Update leave policies and forms and employee handbooks to comply with the law.
- Train supervisors on the law.

Minnesota's New Cannabis Law Includes Off-Duty Protections

Minnesota has enacted legislation (House File 100) that permits recreational cannabis use among adults age 21 and older beginning **August 1, 2023**. The law includes protections for off-duty cannabis use.

The Details:

House File 100 expressly adds cannabis to the state's definition of a "lawful consumable product," meaning an employer is prohibited from taking adverse action against an individual because of their use of cannabis or cannabis products outside of work during non-working hours.

Unless otherwise provided by state or federal law, an employer isn't required to permit or accommodate cannabis use, possession, impairment, sale or transfer while an employee is working, or while an employee is on the employer's premises or operating the employer's vehicle, machinery or equipment.

An employer may only enact and enforce written work rules prohibiting cannabis use, possession, impairment, sale or transfer while an employee is working or while an employee is on the employer's premises or operating the employer's vehicle, machinery or equipment. The written policy must contain the minimum information required by the **Minnesota Drug and Alcohol Testing in the Workplace Act** (DATWA), as amended.

Limitations on Discipline of Current Employees:

House File 100 amends the DATWA to extend certain existing disciplinary protections. For example, effective August 1, 2023, the DATWA will require that instead of termination, employers must first offer counseling or rehabilitation to employees who test positive for cannabis for the first time.

House File 100 also adds new protections specifically for cannabis. Under these provisions, an employer may only discipline, discharge or take other adverse personnel action against an employee for cannabis use, possession, impairment, sale or transfer while an employee is working on the employer's premises, or operating the employer's vehicle, machinery or equipment as follows:

- If, as the result of consuming cannabis, the employee doesn't possess that clearness of intellect and control of self that the employee otherwise would have;
- If cannabis testing verifies the presence of cannabis following a confirmatory test;
- As provided in the employer's written work rules for cannabis and cannabis testing, provided that the rules are in writing and in a written policy that contains the minimum information required; or
- As otherwise authorized or required under state or federal law or regulations, or if a failure to do so would cause an employer to lose a monetary or licensing-related benefit under federal law or regulations.

Drug Testing Applicants:

With limited exceptions, employers are prohibited from requesting or requiring a job applicant to undergo pre-employment cannabis testing solely for the purpose of determining the presence or absence of cannabis as a condition of employment, unless otherwise required by state or federal law. Unless otherwise required by state or federal law, employers are prohibited from refusing to hire a job applicant solely because the job applicant submits to a cannabis test and the results of the test indicate the presence of cannabis.

Exceptions:

The limitations on pre-employment testing for cannabis don't apply to:

- A safety-sensitive position (i.e., a job in which an impairment caused by drug, alcohol or cannabis usage would threaten the health or safety of any person);
- A peace officer position;
- A firefighter position;
- A position requiring face-to-face care, training, education, supervision, counseling, consultation or medical assistance to: children, vulnerable adults, or patients who receive health care services from a provider for the treatment, examination or emergency care of a medical, psychiatric or mental condition;
- A position requiring a commercial driver's license or requiring an employee to operate a motor vehicle for which state or federal law requires drug or alcohol testing of a job applicant or an employee;
- A position of employment funded by a federal grant; or

- Any other position for which federal law requires testing of a job applicant for cannabis.

Next Steps:

In consultation with employment counsel, review and update drug-free workplace policies to ensure compliance with the changes made by House File 100.

Minnesota Bars Mandatory Employer Meetings on Religious or Political Matters

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

The Details:

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

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

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

Poster Required:

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

Next Steps:

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

Texas Blocks Local Paid Sick Leave Ordinances

Texas has enacted legislation (House Bill 2127), which preempts local jurisdictions from adopting and enforcing laws related to conduct that is governed by the state's labor code, among other things. As such, the law blocks the Austin, Dallas and San Antonio paid sick leave ordinances. House Bill 2127 takes effect on **September 1, 2023**.

The Details:

As background, the cities of Austin, Dallas and San Antonio, Texas, had attempted to enact ordinances that would require employers to provide paid sick leave to covered employees.

Texas has enacted legislation (House Bill 2127), which overrides certain municipal and county regulations, including the Austin, Dallas and San Antonio paid sick leave ordinances. House Bill 2127 takes effect September 1, 2023.

Under House Bill 2127:

- A municipality or county may not adopt, enforce or maintain an ordinance, order or rule regulating conduct in a field of regulation that is occupied by a provision of this code, unless expressly authorized by another law.
- An ordinance, order or rule that violates House Bill 2127 is void and unenforceable.

Next Steps:

The law, among other things, effectively prohibits the Austin, Dallas and San Antonio paid sick leave ordinances from taking effect. It may impact other local workplace laws as well. Employers should:

- Review their policies, forms, practices and supervisor trainings.
- Watch for developments in this area as the law is challenged.

State of Washington Issues Final Rule on Outdoor Heat Exposure

The State of Washington's Department of Labor & Industries (DOLI) has adopted a **Final Rule** to permanently protect workers from outdoor heat exposure. The Final Rule takes effect on **July 17, 2023**.

The Details:

As background, the State of Washington requires ready access to at least one quart of drinking water per worker per hour, an outdoor heat exposure safety program with training and an appropriate response to workers who are experiencing heat-related illness symptoms.

In 2021, the state also issued a temporary **Emergency Rule** to provide increased protection for employees exposed to extreme heat.

The Final Rule:

Washington State has adopted a **Final Rule** that addresses minimum requirements to prevent heat-related illness and reduce traumatic injuries for outdoor workers associated with heat exposure. The Final Rule takes effect on July 17, 2023.

Worker Protections:

The Final Rule, among other things:

- Lowers the temperature at which employer action is required to 80° Fahrenheit for most outdoor work; and
- Adds requirements for acclimatization and exposure to high heat to address the need to adapt to working in the heat over time.

Requirements:

The Final Rule's temperature-based action levels apply to specific portions of the rule, such as drinking water and shade, and include specifics on when and how much shade must be provided.

Employers must:

- Allow workers to take preventative cool-down periods as needed to prevent overheating;
- Closely observe the following:
  - All workers during heat waves; and
  - Any worker who is newly assigned to working in the heat or returning from an absence of up to 14 days.
- Follow high-heat procedures that require close observation of workers and mandatory cool-down periods of:
  - 10 minutes every two hours when the temperature reaches 90° Fahrenheit; and
  - 15 minutes every hour when the temperature reaches 100° Fahrenheit; and
- Update outdoor heat exposure safety programs, and train workers and supervisors on the plan and the new requirements.

See the **Final Rule** for further details.

Next Steps:

- **Required:** Update outdoor heat exposure safety programs, and train workers and supervisors on the plan and the new requirements. **Note:** Be on the lookout for model outdoor heat exposure safety programs and training materials from the DOLI.
- Update policies, procedures and supervisor training to ensure compliance with the **Final Rule**.
- See the DOLI's **Be Heat Smart** website for additional guidance.

State of Washington Prohibits Employers from Searching Employee Vehicles

Washington has enacted legislation (House Bill 1491), which prohibits an employer from searching an employee's privately owned vehicle. House Bill 1491 takes effect on **July 23, 2023**.

The Details:

Under the law, employees and job candidates have the right to:

- Possess private property in their vehicle (unless prohibited under the law); and
- Not have their privately owned vehicle, located on their employer's parking lot, garage or on an access road to these locations, be searched by an employer or an employer's agent.

Employers are also prohibited from requiring employees and candidates to waive these protections as a condition of employment.

Exceptions:

An employer (or their agent) may search an employee or candidate's privately owned vehicle:

- When the vehicle is owned or leased by an employer;
- When an employer requires or authorizes an employee's personal vehicle for work-related activities and needs to ensure the vehicle is suitable for such activities;
- If conducted by law enforcement;
- On state and federal military installations and facilities for security purposes;
- When a reasonable person believes it is necessary to prevent an immediate threat to human health, life or safety;
- At specific employer areas subject to searches under state or federal law; or
- When an individual consents to a search (conducted by a business owner, owner's agent or a licensed private security guard), for probable cause that they unlawfully possess:
  - A controlled substance that is prohibited by both federal law and an employer's written policy prohibiting drug use; or
  - Employer property.

An individual:

- Must provide consent immediately prior to a search, upon which, they also have the right to select a witness to be present for the search.
- May not be required to waive consent of the search as a condition of employment.

Non-Retaliation:

House Bill 1491 also prohibits an employer from adverse action (taken or threatened) against an employee that exercises their rights under the law, such as:

- Denying the use of, or delaying, wages or other amounts owed to an employee;
- Terminating, suspending, demoting or denying a promotion;

- Threatening or taking action on the basis of an employee (or their family member's) immigration status; or
- Reducing an employee's:
  - Number of scheduled work hours; or
  - Rate of pay.

Next Steps:

- Review and update policies and practices on workplace searches.
- Train supervisors and human resources personnel to ensure compliance with House Bill 1491 by July 23, 2023.

Local

New York City Delays Implementation of Minimum Wage for Delivery Workers

It was previously reported that on June 12, 2023, the New York City Department of Consumer and Worker Protection (DCWP) released the **final rule** regarding the required minimum wage for app-based restaurant delivery workers.

New York City has announced that the minimum wage rate requirements for delivery workers of third-party food delivery services scheduled to take effect on July 12, 2023 have now been postponed due to pending lawsuits.

The Details:

Under the final rule now delayed, app-based restaurant delivery workers were to be paid a minimum wage as follows:

- Apps that pay for all the time a worker is connected to the app (i.e., time waiting for trip offers and trip time) must pay at least **$17.96 per hour**, which is approximately $0.30* per minute, not including tips. This rate will increase to $18.96 on April 1, 2024, and $19.96 on April 1, 2025, plus an adjustment for inflation each year;

or

- Apps that only pay for trip time (i.e., time from accepting a delivery offer to dropping off the delivery) must pay at least approximately $0.50* per minute, not including tips. This rate will reach **approximately $0.53* per minute** on April 1, 2024, and $0.55* per minute on April 1, 2025, plus an adjustment for inflation each year.

**According to the DCWP, due to rounding, these rates are approximate. Apps must calculate exact pay in accordance with DCWP Rule.*

Next Steps:

As a result of the final rule being delayed, establishments paying app-based restaurant delivery workers are not required to pay the minimum wage as described above. New York City has provided the following link for businesses impacted to monitor future updates.

nyc.gov/DeliveryApps

Federal

EEO-1 Reporting Expected to Begin in Fall for Covered Employers

The U.S. Equal Employment Opportunity Commission (EEOC) has announced that it is tentatively scheduled to begin accepting EEO-1 reports for 2022 via its portal in the fall of 2023. Previously, the EEOC had expected to start the process in mid-July 2023.

The reason for the delay is that the EEOC is currently completing a mandatory, three-year renewal of the EEO-1 Component 1 data collection by the Office of Management and Budget (OMB).

The Details:

The EEO-1 is an annual report through which covered employers must submit demographic workforce data, including data by race/ethnicity, sex, and job categories, to the EEOC. An EEO-1 report is required for:

- All private sector employers with 100 or more employees.
- Federal contractors with 50 or more employees and contracts of $50,000 or more.

Note: Some states, such as California and Illinois, have their own pay data reporting requirements.

Next Steps:

If you are covered by the EEO-1 requirement:

- Monitor the **reporting portal** for updates, instructions and resource materials from the EEOC.
- Prepare to submit your EEO-1 by the deadline, once announced.

U.S. Supreme Court Clarifies Right to Religious Accommodations

Read this article.

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.**

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

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