



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

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Reminder - Connecticut's Expanded FMLA Took Effect January 1

Effective January 1, 2022, Connecticut's family and medical leave law expanded to cover all private sector employers and include other changes. Additionally, the state's new paid family leave program will provide wage-replacement benefits to employees who take leave for covered reasons.

The Details:

Background

CTFMLA:

Currently, Connecticut's Family and Medical Leave Act (CTFMLA) requires private-sector employers with at least 75 employees in the state to allow eligible employees to take up to 16 weeks of unpaid leave during a 24-month period:

- For the birth of a child,
- For the placement of a child with the employee for adoption or foster care,
- To care for their spouse, child, or parent who has a serious health condition,
- For their own serious health condition,
- To serve as an organ or bone marrow donor,
- Because of a qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is on active duty or has been notified of an impending call or order to active duty, in the armed forces.

The law also allows eligible employees to take a one-time benefit of 26 workweeks of unpaid leave during a 12-month period if the employee has a spouse, child, parent, or next of kin who is a member of the armed forces undergoing medical treatment, recuperation, or therapy, or on the temporary disability retired list for a serious injury or illness incurred in the line of duty.

To be eligible for CTFMLA leave, an employee must have worked for the employer for at least:

- 12 months (which do not have to be consecutive); and
- 1,000 work-hours during the 12 months prior to the leave.
- Domestic Violence Leave:
- The state also has a law that requires employers with three or more employees to provide leave to victims of family violence, so they can:

- Seek medical care or psychological or other counseling for physical or psychological injury or disability for the victim,
- Obtain services from a victim services organization on behalf of the victim,
- Relocate due to family violence; or
- Participate in any civil or criminal proceeding related to family violence.
- An employer may limit unpaid family violence leave to 12 days in a calendar year.

Changes Effective January 1, 2022

CTFMLA Expansion:

Effective **January 1, 2022**, the CTFMLA was expanded in several ways. Here's a summary of those changes:

- More employers will be covered. All private-sector employers with employees in the state will be required to provide CTFMLA leave.
- The amount of leave will change. Eligible employees will be entitled to up to 12 weeks of CTFMLA leave in a 12-month period. Eligible employees may take up to two additional weeks of leave for a serious health condition resulting in incapacitation that occurs during a pregnancy.
- Eligibility threshold will be lower. To be eligible for CTFMLA leave, an employee just needs to be employed for three months immediately preceding their request for leave. There will no longer be an hours-of-work requirement.
- Additional family members will be covered. Eligible employees may take CTFMLA leave to care for the following family members who have a serious health condition: a spouse, sibling, son or daughter, grandparent, grandchild, or parent, or an individual related to the employee by blood or affinity whose close association the employee shows to be the equivalent of those family relationships.
- New restrictions will apply to leave-substitution rules. The law limits the extent to which an employer may require an employee taking CTFMLA leave to use their employer-provided paid leave.

Note: The definitions of parent, sibling, grandchild, and grandparent include those related to the individual by marriage, adoption, and foster care.

Paid Leave Program

Beginning January 1, 2022, eligible employees are entitled to up to 12 weeks of wage-replacement benefits for CTFMLA and family violence leave. An employee may be entitled to up to two more weeks of benefits for a serious health condition resulting in incapacitation that occurs during a pregnancy. To be eligible for wage-replacement benefits, employees must meet certain wage-base thresholds.

The program is funded by employee contributions, which began January 1, 2021. While employers aren't required to contribute to the program, they are required to withhold and remit employee contributions to the program.

The law allows employers to provide benefits through a private plan, which must provide employees with at least the same level of benefits, under the same conditions and employee costs, as the state program.

Employer Notice

Effective July 1, 2022, employers must provide written notices to employees at the time of hire and annually thereafter about:

- The entitlement to CTFMLA leave and family violence leave under state law and the terms under which the leave may be used,
- The opportunity to file a claim for benefits under the paid leave program,
- The prohibition on retaliation against the employee for requesting, applying for or using family and medical leave for which the employee is eligible; and
- The employee's right to file a complaint with the Labor Commissioner for a violation of the laws.

Next Steps:

If you have employees in Connecticut, review your policies and practices to ensure compliance with the changes.

Colorado Paid Sick Leave Law Now Applies to Small Employers

Effective January 1, 2022, Colorado requires employers with 15 or fewer employees to provide paid sick leave to employees. Larger employers were already subject to the requirement.

The Details:

Accrual and Carryover:

Paid sick leave must accrue at a rate of at least one hour for every 30 hours worked, up to a maximum of 48 hours. For employers with 15 or fewer employees, accrual begins when employment starts or January 1, 2022, whichever is later. However, employers have the option of providing all the paid sick leave at the beginning of the year, a practice commonly known as frontloading.

Employees are entitled to carry over up to 48 hours of unused paid sick leave to the following year.

Use:

Employees may use paid sick leave as it is accrued. The leave may be used 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 family member has been the victim of domestic abuse, sexual assault, or harassment and needs to:
 - o Seek medical attention,
 - o Get assistance from a victims' services organization,
 - o Obtain mental health or other counseling,
 - o Seek relocation services,
 - o Obtain legal services, including preparation and participation in legal proceedings; or
- 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.

Pay During Leave:

The leave must be paid at least at the same rate the employee normally earns during hours worked.

Employee Notice and Documentation:

When the need for leave is foreseeable, the employee must make a good-faith effort to provide advance notice and schedule the leave so that it doesn't unduly disrupt the employer's operations. While employers may have a policy with reasonable procedures for providing notice when the need for leave is foreseeable, employers are prohibited from denying leave based on noncompliance with the policy.

For absences of four or more consecutive workdays, employers may require reasonable documentation that the leave is for a covered purpose.

Employer Notice:

Employers must post a notice of workers' rights under the law. Employers may satisfy the notice requirements with the [Colorado Paid Leave & Whistleblower Poster](#).

Employers must also provide each employee direct "written notice" of their rights, satisfying this requirement by simply providing each employee with the [Colorado Paid Leave & Whistleblower Poster](#).

The required poster and notice must be in English and any language that is the first language spoken by at least five percent of the employer's or principal's workforce.

Next Steps:

Review your policies and practices to ensure compliance with paid sick leave requirements. Please contact your dedicated service professional with any questions.

Allegheny County, PA Announces Paid Sick Leave Effective Date

Allegheny County approved an Ordinance that requires certain employers to provide paid sick leave (PSL). The Ordinance takes effect 90 days after the county makes employer-notice material available through its [website](#).

Updated: Allegheny County has posted its paid sick leave ordinance notice, guidelines and FAQs to its website. Although the Ordinance required employers' notice obligations to begin immediately once the law was approved, and for the other provisions of the Ordinance to take effect 90 calendar days after the notice was posted, the County has changed the effective date of all parts of the Ordinance to be December 15, 2021.

Note: The Ordinance is silent on its interplay with the Pittsburgh Paid Sick Days Act, which went into effect in March 2020 and provides paid sick leave to eligible employees who work in the City of Pittsburgh, which is located in Allegheny County. Further guidance on this issue is anticipated.

Covered Employers:

Employers with 26 or more employees must provide PSL to employees who work in Allegheny County.

Accrual:

Employees are entitled to accrue at least one hour of PSL for every 35 hours worked in Allegheny County (up to 40 hours of PSL per calendar year). Current employees begin accruing PSL on the effective date of the Ordinance. Employees hired after the effective date begin to accrue PSL on their date of hire. All employees may begin using accrued PSL on the 90th calendar day after they start working for the employer.

Note: Under the Ordinance, exempt employees are assumed to work 40 hours per week unless their normal workweek is less than 40 hours.

Carryover:

Employers that provide 40 hours of PSL each January 1 (commonly known as frontloading) aren't required to carry over unused PSL to the following year. Otherwise, employers must allow employees to carry over up to 40 hours of unused PSL.

Use of Leave:

Under the Ordinance, an employee may use their PSL for:

- The care, medical diagnosis, or treatment of their own, or a family member's, mental or physical illness, injury, or health condition; and preventive medical care,
- The closure of their place of business by order of a public official due to a public health emergency or an employee's need to care for a child whose school or place of care has been closed by order of a public official due to a public health emergency; or
- The care for a family member when it has been determined by the health authorities or a healthcare provider that their presence in the community would jeopardize the health of others because of their exposure to a communicable disease, regardless of whether the family member has contracted the disease.

Covered Family Members:

Family members include a grandchild, domestic partner, biological, foster, or adopted sibling; or:

- An employee's child (biological, adoptive, or foster child, step-child, legal ward, domestic partner's child, or a child to whom the employee stands in place of a parent),

- A biological, foster, adoptive, or step-parent, or legal guardian of an employee or an employee's spouse or domestic partner or a person who stood in place of a parent when the employee was a minor child,
- A person to whom the employee is legally married under the laws of any state,
- A grandparent or spouse or domestic partner of a grandparent; or
- Any individual for whom the employee has requested and received permission from the employer to care.

Pay During Leave:

Employers must compensate employees with at least at the same base rate of pay and with the same benefits (including health care) as an employee would have earned. This excludes compensation for lost tips or commissions.

Employers aren't required to provide financial or other reimbursements for an employee's unused, accrued PSL if an employee is terminated, resigns, retires, or undergoes other separation from employment. However, if the separated employee is rehired within six months by the same employer, the employer must reinstate any previously accrued PSL and allow the employee to use and accrue upon their rehire date.

Employer Requirements:

Notice:

Effective immediately, employers must provide employees with written notice (to be provided by the county and posted on its website) on their entitlement to PSL, the amount of PSL, the terms of its use, that retaliation against employees who request or use PSL is prohibited, and that each employee has the right to file a complaint with the county if the employer denies or retaliates against them for using PSL required under the Ordinance.

Recordkeeping:

Employers must retain records that document hours worked and PSL taken by employees for a period of two years.

Notification Policy:

An employer may set their own notification policy on how soon before an employee's shift the employee must make their request for PSL, provided that:

- The policy is reasonable and doesn't obstruct an employee's use of PSL.
- If the employer doesn't maintain their own notification policy, the employee's request must be provided at least one hour before their shift.
- If the need for PSL isn't foreseeable by the employee, the employee makes a good-faith effort to notify the employer as soon as possible.

Employee Notice and Documentation:

Employees must request PSL from their employer and, when possible, include the request the anticipated duration of the absence.

If an employee knows of their need to use PSL in advance, such as a scheduled appointment with a healthcare provider, employers may require reasonable advance notice as long as it doesn't exceed seven days prior to the start of the anticipated PSL.

An employee must make a reasonable effort to schedule PSL in a manner that doesn't unduly disrupt business operations.

Reasonable Documentation:

For PSL that lasts three (or more) full, consecutive days, employers may require an employee to present reasonable documentation that the PSL was used for a purpose covered under the Ordinance. Documentation that is signed by a healthcare professional indicating the necessity of the PSL must be considered reasonable documentation. An employer may not require an explanation containing the precise nature of the illness.

Prohibited Employer Actions:

Under the Ordinance, employers are prohibited from:

- Requiring an employee to use accrued PSL time to search for or find a replacement worker to cover the time that they take PSL as a condition for providing PSL; or
- Having a control policy to count PSL taken under the Ordinance as an absence that may lead to or result in discipline, discharge, demotion, suspension, or any other adverse action unless the employee doesn't follow the required notification and documentation procedures.

Nonretaliation and Enforcement:

Employers are prohibited from retaliating or discriminating against an employee who exercises their rights under the Ordinance. Employers will be presumed to have retaliated if they take adverse action against an employee within 90 days of an employee:

- Filing a complaint with the county or a court alleging a violation,
- Informing anyone about, or cooperating in the investigation or prosecution of, an employer's alleged violation,
- Opposing any policy, practice, or act that is unlawful under the Ordinance; or
- Informing anyone of their rights under the Ordinance.

Confidentiality and Nondisclosure:

Employers are prohibited from requiring the disclosure of details relating to an employee's or an employee's family member's medical condition as a condition of providing PSL. Such information is confidential and may only be disclosed with the employee's written permission under applicable federal and state privacy laws.

Compliance Recommendation:

Employers in Allegheny, PA should review their policies and procedures to ensure compliance with the paid sick leave requirements under the Ordinance and the updated effective date of **December 15, 2021**, for the entire ordinance.

New York City Requires COVID-19 Child Vaccination Leave

New York City has amended its Earned Safe and Sick Time Act (Int. 2448-2021) to allow employees to use paid sick time for COVID-19 child vaccinations. The amendments are retroactive to November 2, 2021 and are set to expire on December 31, 2022.

The Details:

Employers in New York City must provide an employee who is a parent of a child under the age of 18 or the parent of an older child who is incapable of self-care due to a mental or physical disability four hours of paid sick leave to accompany a child to receive a COVID-19 vaccine injection or to care for a child experiencing temporary side effects from a COVID-19 vaccine injection. This time must be granted per vaccine injection and per child.

Note: A parent is defined as biological, foster, step- or adoptive parent, or a legal guardian of a person, or a person who currently stands in place of a parent.

Pay Requirement:

Under the law, employers must pay employees their regular rate of pay (not including tip credits or allowances) for COVID-19 child vaccination time by the next regular payday after an employee uses the COVID-19 vaccination time.

Retroactivity Requirements:

The law is also retroactive for employees who took unpaid time off between November 2, 2021, and December 24, 2021. Employers should compensate their employees for the time spent on any applicable COVID-19 child vaccination no later than the payday for the next regular payroll period beginning after December 24, 2021.

Employee Notification:

Under Int. 2448-2021, employers may require reasonable advance notice, up to seven days prior to using COVID-19 child vaccination time, when the need is foreseeable. Otherwise, employers may require an employee to provide notice as soon as practicable.

Reasonable Documentation:

Employers can also require employees who use Child COVID-19 Vaccination time to provide reasonable documentation within seven days that shows the employee's child received a COVID-19 vaccination.

Prohibited Employers Actions:

The law bans employers from requiring an employee to work extra hours or find a replacement employee due to an absence taken for COVID-19 child vaccination time or from taking adverse actions against employees that use COVID-19 child vaccination time or exercise their rights under Int. 2448-2021.

Enforcement:

An employer who fails to comply could face penalties equal to the greater of three times the wages they should have paid or \$250 for each instance they unlawfully compensated an employee for COVID-19 child vaccination time. Employers may also face penalties of \$500 for each instance of COVID-19 child vaccination time that they unlawfully deny or charge against an employee's accrued paid safe and sick time.

The law also includes a 60-day phase-in period during which the Department of Consumer and Worker Protection will provide a written notice to noncompliant employers. Noncompliant employers will then have 15 days to ensure compliance before facing penalties.

Next Steps:

New York employers should review their time-off policies, time and attendance records, forms, and practices. They should also train their supervisors to ensure compliance with Int. 2448-2021 and refer to legal counsel with implementation inquiries. Please contact your dedicated service professional with any questions.

New York City Enacts Employee Vaccination Requirements

New York City has enacted an Order that establishes worker COVID-19 vaccination requirements, creates recordkeeping obligations, and includes a posting requirement. The Order took effect on December 27, 2021.

The Details:

All private-sector employers in New York City must verify that their employees are vaccinated against COVID-19.

Covered Workers:

All workers in New York City that perform in-person work or interact with the public while conducting business must show proof that they received at least one dose of a COVID-19 vaccine, starting **December 27, 2021**. This includes requiring non-employee workers, such as contractors, to provide vaccination proof to their employers.

Note: The **Order** does not apply to covered entities or individuals that are already subject to another Order of the Commissioner of the Department, Board of Health, the Mayor, or a State or federal entity that requires them to maintain or provide proof of full vaccination. Entities covered by the OSHA ETS rule that allows either employee vaccination or testing must still comply with this order and require workers to be vaccinated if they do not have a reasonable accommodation.

Workplace Vaccination Requirement:

Workers in New York City that perform in-person work or interact with the public while conducting business must show proof that they received at least one dose of a COVID-19 vaccine, starting December 27, 2021. After which, workers who received a first dose of a two-dose vaccine will have 45 days to show proof of their second dose.

Under the Order, businesses may request that a contractor's employer confirm proof of vaccination. Those that do so must keep a log of the requests and confirmations.

Note: Workers are prohibited from submitting a weekly negative COVID-19 test as an alternative to getting vaccinated.

Prohibited Actions:

Businesses are prohibited from allowing an unvaccinated worker to come to the workplace. This includes a vehicle if an employee works in the presence of at least one other person.

Verifying Worker Vaccinations:

Employers must verify each worker's proof of vaccination. This may be done using the [proofs of vaccination that are accepted for Key to NYC](#) (a photo or hard copy of a CDC vaccination card, NYC COVID Safe App, New York State Excelsior Pass, CLEAR's Digital Vaccine Card, CLEAR Health Pass, Official Vaccine Record, or a photo or hard copy of the official vaccination record of a vaccine administered outside the U.S. for one of the following vaccines: AstroZeneca/SK Bioscience, Serum Institute of India/COVISHIELD and Vaxzevria, Sinopharm, or Sinovac).

Employers may verify an employee's proof of COVID-19 vaccination by either:

- Having a copy of a worker's proof of vaccination or a record of reasonable accommodation with supporting documentation,
- Checking each worker's proof of vaccination before they enter the workplace each day and keeping a record of each verification; or
- Creating a paper or electronic record for each worker that includes the worker's name, whether the worker is fully vaccinated, and a record of reasonable accommodation with supporting documentation. The record for workers who submitted proof of their first dose must also contain the date by which the employee can provide proof of a second dose (no later than 45 days after submitting proof of the first dose).

Recordkeeping Requirement:

Employers must treat all records that are created or maintained as confidential and be prepared to make their records available for inspection, as required by law.

Notice Requirement:

Employers must complete and post in a public place a [certificate](#) that affirms they are in compliance with the Order. This must be done by December 27, 2021.

Exceptions:

The Order does not require employers to collect proof of COVID-19 vaccination for people that:

- Work alone (at home or otherwise) and who do not have in-person contact with co-workers or others while conducting business,
- Enter the workplace briefly for a limited purpose (for example: using the restroom);
- Are non-NYC resident performing artists, college or professional athletes, and anyone who accompanies them; or
- Have requested reasonable accommodations for either medical or religious reasons.

Reasonable Accommodation:

Workers who have a sincerely held religious belief (not a social or political belief) or a medical condition that prevents them from being vaccinated may apply for a reasonable accommodation. Workers who request such an accommodation must do so by December 27, 2021. While a reasonable accommodation request is pending, employers may permit workers to continue coming into the workplace.

New York City published checklists to guide employers in evaluating requests for reasonable accommodations, which can be found [here](#). New York City has stated that employers who complete checklists to evaluate accommodation requests should maintain copies to serve as a record for any exemptions or accommodations that are granted.

Note: With regard to religious exemption requests, New York City published a form that includes questions an employer may ask of employees to determine the sincerity of their religious accommodation request. Employers should review the questions included on the form with their legal counsel to ensure they comply with other antidiscrimination laws that may apply to the employer, such as Title VII and the New York State Human Rights Law.

Penalties:

Employers who refuse to comply may be subject to a fine of \$1,000 and escalating penalties thereafter if the violations persist.

Next Steps:

New York City employers should consult with legal counsel to discuss the impact of the Order on their vaccination policies and practices and review the [FAQs sheet](#) provided by the City.

For further help with the Order, small businesses may call the NYC Department of Small Business Services hotline (888-727-4692) or visit [COVID-19 Commissioner Orders and Advisories](#) to review existing vaccine requirements that may impact their business or employees.



Payroll

California Releases 2022 Publication DE 44

The California Employee Development Department (EDD) has issued the January 2022 version of the California Employer's Guide commonly known as Publication DE 44 (Pub 44). The Pub DE 44 is published annually and provides California employers guidance on a number of topics including:

- Definition of employee (vs contractor)
- State payroll taxes
- Definition of wages
- Amounts to be withheld for California personal income tax
- California withholding schedules and tables
- Unemployment insurance taxes
- Unemployment benefits

Compliance Recommendations:

Clients should review the information contained in Pub DE 44 to verify their understanding of the employer's responsibilities in withholding and remitting California state income taxes.

For a copy of Pub DE 44, click on the link provided below.

https://edd.ca.gov/pdf/pub_ctr/de44.pdf

State of Washington Delays Collection of Long-Term Care Payroll Tax

It was previously reported that on April 21, 2021, Washington State Governor Jay Inslee signed into law Senate Bill 1323 (SB 1323) implementing a payroll tax to support the nation's first state-run long-term care (LTC) services and support trust program. Under the legislation, beginning January 1, 2022, Washington employers were required to withhold 0.58 percent from all employee wages and remit those payments to the state quarterly. **The requirement to withhold the LTC premiums starting January 1, 2022 and remit to the state has now been delayed.**

Delay:

On December 17, 2021, Governor Jay Inslee along with Senator Andy Billig and Speaker Laurie Jinkins announced that the requirement for employers to remit LTC premiums paid by its employees to the state has now been delayed. The announcement stated in part as follows:

"I have been in ongoing discussions with legislators about the long-term care bill, which is set to begin collecting funds in January. This bill will help provide much-needed care and coverage for Washingtonians as they age. However, legislators have identified some areas that need adjustments and I agree. We need to give legislators the opportunity to make refinements to the bill. Therefore, I am taking measures within my authority and ordering the state Employment Security Department not to collect the premiums from this program from employers before they come due in April. My actions mean that the state will not collect those funds until the Legislature sorts through these issues. While legislation is under consideration to pause the withholding of LTC fees, employers will not be subject to penalties and interest for not withholding fees from employees' wages during this transition." - Gov. Jay Inslee

“Delaying implementation of the Washington Cares Fund premium assessment through the 2023 legislative session allows the Legislature time to pass the policy reforms that are ready to go now and to consider further recommendations from the Long Term Care Commission.

“In addition to delaying the premium assessment, we also support employers pausing premium collections from employees in Washington so lawmakers can take necessary action. While we cannot direct employers not to collect, we strongly encourage them to pause on collecting premiums from employees, giving us time to pass legislation extending implementation dates until next year. We know that this extra time will allow us to find solutions and craft updates to the Fund that allows Washingtonians to age with dignity in their own homes.” - Sen. Andy Billig and Speaker Laurie Jinkins.

To access, Governor Inslee’s announcement on the delay, click on the link provided below.

<https://www.governor.wa.gov/news-media/inslee-billig-jinkins-statement-delaying-wa-cares-fund-premium-assessment>

For more information on the Washington Long Term Act, click on the link provided below which provides a copy of SB 1323.

<http://lawfilesexternal.wa.gov/biennium/2021-22/Pdf/Bills/House%20Passed%20Legislature/1323-S.PL.pdf?q=20210510142616>

Howard County, MD Enacts Local Minimum Wage

Howard County, MD has enacted a minimum wage ordinance that requires employers to pay at least a certain minimum wage rate for work performed in Howard County depending on whether the employer is a government employer, large employer, small employer or paying a tipped employee.

Note: As of January 1, 2022, the minimum wage in Maryland is \$12.50 per hour and tipped employees must receive at least \$3.63 cash wages. The federal minimum wage remains at \$7.25 per hour and tipped employees must receive at least \$2.13 cash wage for tipped employees. Where employees are entitled to more than one minimum wage, employers must pay the higher amount.

Howard County Government Employers:

Effective July 1, 2022	\$15.00 per hour
Effective July 1, 2024	\$16.00 per hour

Large Employers (15 or more employees):

Effective April 1, 2022	\$14.00 per hour
Effective January 1, 2023	\$15.00 per hour
Effective January 1, 2025	\$16.00 per hour

Small Employers (employers with 14 or fewer employees, tax exempt employers under Code Sec. 501(c)(3), employers providing “home health services,” or food service facilities employers). A food service facility generally includes: A restaurant, coffee shop, cafeteria, short order cafe, luncheonette, tavern, sandwich stand, soda fountain, retail market, or retail bakery outlet.

Effective April 1, 2022	\$12.50 per hour
Effective January 1, 2023	\$13.25 per hour
Effective January 1, 2024	\$14.00 per hour
Effective January 1, 2025	\$14.75 per hour
Effective January 1, 2026	\$15.50 per hour
Effective July 1, 2026	\$16.00 per hour

Note: The minimum wage rates will be adjusted annually beginning on January 1, 2027, based on the annual average increase in the consumer price index for urban consumers (CCPI-U Baltimore-Columbia-Towson, Maryland averages).

Tipped Employees:

Tipped employees must be paid at least \$3.63 in cash wages per hour.

Exceptions:

The amounts noted above for Howard County do not apply to the following types of employees:

- Employees under age 18 (**Note:** Employers must pay these employees at least 85% of Howard County minimum wage),
- Employees under age 16 and who work no more than 20 hours per week,
- Those employed as part of the training in a special education program,
- Individuals employed as a hand-harvest laborer and paid on piece-rate basis,
- A child, parent, spouse, or another member of the immediate family; and
- An employee who is in a non-administrative capacity at an organized camp.

Compliance Recommendations:

Employers subject to the Howard County provisions should pay in accordance with the rates noted above for services provided by their employees within Howard County.

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

<https://apps.howardcountymd.gov/olis/LegislationDetail.aspx?LegislationID=12879>

Portland, ME Hazard Pay Regulations Expired After January 13, 2022

On January 3, 2022, the Portland, Maine Council revoked the city's COVID-19 emergency order, which had been in place since March 2020. However, the order remained in effect through January 13, 2022.

The order contains a provision that requires hazard pay of one and a half times (1.5) Portland's regular minimum wage which, as of January 1, 2022, is \$13.00. Consequently, employees through January 13, 2022, needed to be paid at least \$19.50 per hour. Under the Portland minimum wage ordinance, tipped employees must be paid at least 50 percent of the minimum wage resulting in a cash minimum wage of at least \$9.75 per hour through January 13, 2022.

The Details:

Portland, Maine voters approved a referendum in November of 2020 amending the city's minimum wage ordinance by incrementally increasing the regular minimum wage \$1.00 per hour annually as follows:

January 1, 2022	\$13.00 per hour
January 1, 2023	\$14.00 per hour
January 1, 2024	\$15.00 per hour

On January 1, 2025, and each January 1st thereafter, the minimum hourly wage then in effect must be increased by the increase, if any, in the cost of living.

The amended ordinance also included a provision requiring hazard pay as follows:

"For work performed during a declared emergency, effective Minimum Wage rate established by this ordinance shall be calculated as 1.5 times the regular minimum wage rate."

"Employer" is defined as "[a]ny individual, group of individuals, partnership, association, corporation, business trust, or any other entity or group of persons or entities who employs or exercises control over the wages, hours, or working conditions of any Employee and who has a place of business within the City limits."

“Employee” means “[a]ny person who performs work for an Employer for monetary compensation within the municipal limits of the City.”

Consequently, nearly every employee (e.g., full-time, part-time, seasonal, and temporary workers) performing work in Portland will be eligible for a hazard minimum wage of \$19.50 per hour through January 13, 2022.

Exception:

The hazard pay provision does **not** apply; however, “to work performed under a teleworking arrangement allowing the employee to work from home.”

Next Steps:

Portland, Maine employers through January 13, 2022, must have paid employees (with the exception of remote employees) at least \$19.50 per hour and tipped employees must have been paid at least \$9.75 in cash wages. Effective January 14, 2022, employers must pay employees at least \$13.00 per hour and tipped employees must be paid at least \$6.50 per hour in cash wages.



Time & Labor

California Amends COVID-19 Prevention Rules Again

The California Division of Occupational Safety and Health (Cal/OSHA) has revised emergency rules related to protecting workers from COVID-19. The changes took effect **January 14, 2022**.

The Details:

By way of background, Cal/OSHA adopted COVID-19 prevention emergency temporary standards (ETS) in late 2020. Under the Cal/OSHA ETS, most employers must establish, implement, and maintain an effective, written COVID-19 Prevention Program that contains specified elements. Cal/OSHA last amended its ETS in June 2021.

Key Changes Effective January 14:

Here are some of the key changes to the Cal/OSHA ETS that will take effect January 14, 2022:

- The notice requirements for situations in which there is workplace exposure to a COVID-19 case are clarified.
- Employees who are exempted from wearing a face covering due to a medical or mental health condition, or disability and cannot wear a non-restrictive alternative must physically distance at least six feet from others and either be fully vaccinated or tested at least weekly for COVID-19.
- In addition to the scenarios already covered by existing rules, employers must make COVID-19 testing available at no cost and during paid time to employees who were fully vaccinated before the “close contact” with a COVID-19 case occurred, even if they are asymptomatic.
- During outbreaks and major outbreaks, employers must make weekly testing (outbreaks) or twice-weekly testing (major outbreaks) available even to asymptomatic fully vaccinated employees in the exposed group.
- Asymptomatic employees who have recently recovered from COVID-19 and those who are fully vaccinated aren’t required to be excluded from the workplace after “close contact” but must wear a face covering and maintain six feet of physical distancing for 14 calendar days following the last date of contact. Employers must provide these employees with information about any applicable precautions that the California Department of Public Health (CDPH) recommends employees take after having close contact with a COVID-19 case.
- The period of time before an employee can return to work after “close contact” or COVID-19 illness has been revised to be consistent with current CDPH guidelines. These timeframes will automatically update if CDPH updates its guidelines.

- The definition of “worksites” is amended to specifically exclude the employee’s personal residence, locations where an employee works alone, and remote work locations chosen by the employee.
- The definition of “COVID-19 test” is amended to provide more detailed information on acceptable tests and specifically exclude tests that are self-administered and self-read unless observed by the employer or an authorized telehealth proctor.
- The definition of “face coverings” is amended to include more specific detail on the different types of acceptable face coverings.
- The definition of “fully vaccinated” is amended to note the minimal amount of time workers need to wait between the first and second shot of a two-dose vaccine.

Next Steps:

- Read the revised Cal/OSHA ETS in full (a preview is available [here](#)).
- Ensure your written COVID-19 Prevention Program complies by January 14, 2022.

Note: Cal/OSHA is expected to publish an updated model COVID-19 Prevention Program soon, which will be available [here](#).

Minnesota OSHA Suspends Enforcement of Vaccination and Testing Rule

Minnesota OSHA (MNOSHA) has announced that it will suspend enforcement of the state’s emergency temporary standard (ETS), which requires that employers with 100 or more employees ensure that employees either be vaccinated against COVID-19 or produce a weekly negative test.

The Details:

The state’s ETS is identical to a federal ETS issued in late 2021. On January 13, 2022, the U.S. Supreme Court blocked the federal government from enforcing the federal ETS pending future court proceedings. Shortly after the U.S. Supreme Court’s decision was released, MNOSHA announced it will suspend enforcement of the state ETS pending future developments.

Next Steps:

If you have 100 or more employees and fall within the requirements of the state ETS, watch for developments closely. For now, MNSOHA won’t enforce the state ETS but strongly encourages employers to continue to implement the requirements of the ETS.

Oregon Amends Final Rule on COVID-19 Workplace Risks

The Oregon Occupational Safety and Health Division has amended its rule (OAR 437-001-0744), which covers requirements for masks, physical distancing, and cleaning to combat COVID-19. The amended rule went into effect December 21, 2021.

The Details:

Cleaning Protocols:

Previous Rule: Employers were required to regularly clean and sanitize all common areas. In addition, employers must clean and disinfect common areas, high-touch-surfaces, and any shared equipment under the employer’s control that a person who has COVID-19 either used or had direct physical contact with, depending on the timing of the exposure.

What’s Changed: The amended final rule now only requires employers in healthcare settings to regularly clean or sanitize all common areas. However, employers must provide employees time and supplies to clean more frequently than required, or if they use shared equipment. Employers are still required to clean and disinfect areas known to be infected with COVID-19.

Masks:

What's Changed: Employers must provide masks, face coverings or shields at no cost and allow an employee to wear a face covering even when it is not required. They must also implement the indoor mask requirements of OR. Admin. [R. 333-019-1025](#), unless the person is:

- Under five years of age (or under two years of age in public transportation or transport hubs),
- Doing an activity that makes wearing a mask, face covering or face shield not feasible, for instance, while showering, eating, drinking, or sleeping,
- Is in a room or vehicle that is shared solely with members of the same household; or
- Is required to briefly remove their mask, face covering, or face shield because their identity needs to be confirmed, such as security checks at banks or with law enforcement. While the covering is removed, the person should limit their speaking.
- Under the amended rule, healthcare employers must also ensure that all individuals in the workplace wear a mask, face covering, or face shield when:
 - Working inside and social distancing of six feet can't be consistently maintained; or
 - An employee shares a room with one or more others and the total square feet does not provide at least 100 square feet per person.

Social Distancing:

Existing Rule: All employers must ensure social distancing of six feet from co-workers.

What's Changed: Oregon OSHA only requires the implementation of social distancing in healthcare and transit settings. All healthcare employers must ensure that work activities and workflows eliminate the need for an employee to be within six feet of another person to perform their duties unless the employer determines and can show that social distancing is not feasible for certain work activities.

Protected Benefits for Medical Removal:

Existing Rule: Employees ordered to quarantine or isolate by a healthcare or local public official (medical removal) must be permitted to return to their previous duties, if still available, without any adverse action because they had to quarantine or isolate.

What's Changed: Certain healthcare employers with more than 10 employees must provide the following benefits to employees who are engaged in direct patient care or in direct support of such care if the employee undergoes medical removal:

- The benefits the employee would normally be entitled to while working,
- **Employers with 500 or more employees:** The same regular (non-overtime) pay the employee would have received had the employee not been absent from work, up to a maximum of \$1,400 per week, until the employee is able to return to work; or
- **Employers with fewer than 500 employees:** The same benefits as required by employers with 500 or more employees, but starting the third week of an employee's removal, an employer may reduce the pay to two-thirds of the same regular pay the employee would have received had they not been absent from work, up to \$200 per day (generally \$1,000 per week).

Note: Employers will only be responsible for compensating the amount they owe, less the amount of compensation for lost earnings that an employee receives from any other source.

Next Steps:

Oregon employers should train employees on the updated COVID-19 information and safety requirements and ensure that their health and safety policies align with the amended regulations. Please contact your dedicated service professional with any questions.

Rhode Island Enacts COVID-19 Emergency Enforcement Rules

Rhode Island has enacted emergency rules to help prevent the spread of COVID-19. The rules are in effect from December 29, 2021, to April 21, 2022.

The Details:

Covered Employers:

The emergency rules cover recreation, entertainment, historical and cultural establishments, along with retail and service businesses, restaurants and bars, venues of religious and faith-based organizations, catered events, and office-based and other public and private employers.

Masking Requirements:

Establishments with indoor capacities of 250 or more people must require everyone to wear a mask while indoors, regardless of their vaccination status. Those with a capacity of fewer than 250 people may exempt a person from the indoor mask requirement if the person can provide proof of vaccination. Under the rules, capacity is the maximum number of people allowed by the fire marshal, not the actual number of people present.

For catered events, capacity is the number of guests in attendance. In these events, if there are more than 250 guests, everyone must be masked, regardless of vaccination status. However, if there are fewer than 250 guests, the event host and/or venue operator must implement either: (1) an event-wide indoor masking requirement; (2) a proof of vaccination requirement; or (3) require individuals to either show proof of vaccination or wear masks indoors.

Notice Requirements:

Employers must post a sign about the mask requirement at all entrances of an establishment as well as information on proof of vaccination requirements, if applicable. Although Rhode Island's Department of Health provides examples of appropriate posters ([Masks, Proof of Vaccination](#), and [Masks or Proofs of Vaccination](#)), an employer can also create their own poster. Those that do must include one of the following applicable statements on their poster in bold print:

- A MASK OR PROOF OF VACCINATION IS REQUIRED IN THIS ESTABLISHMENT,
- MASKS ARE REQUIRED IN THIS ESTABLISHMENT, or
- PROOF OF VACCINATION IS REQUIRED IN THIS ESTABLISHMENT.

Enforcement:

Each individual violation of the rules may result in a penalty of up to \$500, and every individual that is allowed to enter a premise against the rules counts as a separate and distinct violation.

Next Steps:

Rhode Island employers should display the workplace poster that is applicable to their business, enforce the required protective protocols, and train their managers and HR personnel on the rules. Please contact your dedicated service professional with any questions.

Tennessee Enacts Emergency COVID-19 Quarantine Guidance

Tennessee has issued an emergency rule that sets forth quarantine procedures related to COVID-19. The rule is effective from December 22, 2021, to June 20, 2022.

The Details:

The emergency rule provides guidance on quarantine and isolation procedures for businesses and individuals to help prevent the transmission of COVID-19.

Business Quarantine:

Under the emergency rule, a private business may be temporarily quarantined when the Commissioner of Health or their designee determines that the potential for transmission of COVID-19 to people on an employer's premises poses a serious public health or safety threat that is not effectively managed by mitigation measures.

Note: An employer's quarantine will end when the serious public health or safety threat no longer exists.

Individual Quarantine:

Under the emergency rule, a person who tests positive for COVID-19 must immediately isolate for at least 10 days from the date of:

- Their specimen collection that resulted in the positive test result (for individuals without COVID-19 symptoms); or
- The initial onset of symptoms. They must continue to isolate until they can show improvement in symptoms and have been fever-free (without using fever-reducing medication) for at least 24 hours.

Note: A person may end isolation at any time following a negative test result for COVID-19.

Next Steps:

Tennessee employers should train their management, HR personnel and employees on the emergency rule. Please contact your dedicated service professional with any questions.

Boston Adopts Vaccination Mandate for Certain Employers

Boston has announced that certain employers will be required to verify employees are fully vaccinated against COVID-19. Covered employers must check proof of vaccination and post a notice about the COVID-19 vaccine requirement.

The Details:

Covered Employers:

The vaccination mandate applies to employees (and patrons) of the following types of businesses:

- Indoor portions of food service establishments offering food and drink (e.g., bars and restaurants);
- Indoor entertainment, recreational, and event venues (e.g., movie theaters, museums, and music halls); and
- Indoor gym and fitness settings (e.g., commercial gyms and yoga studios).

A full list of covered establishments is available [here](#).

Compliance Deadlines:

- By January 15, 2022, employees must show proof of one at least dose of COVID-19 vaccination.
- By February 15, 2022, employees must show proof of full vaccination.

Employees may show proof by providing:

- Their CDC vaccination card;
- A digital image of their CDC card;
- An image of their official immunization record; or
- Verification via a city of Boston app or any other COVID vaccine verification app.

Reasonable Accommodations:

The city has provided [guidance](#) for handling employee and patron requests for reasonable accommodations. The guidance indicates that reasonable accommodations must be provided to employees who require them because of a medical condition, disability, or other civil-rights-related reason, unless if it would cause a direct threat to other customers or employees, including through risk of COVID-19 infection, or impose an undue hardship on the business.

If an employee requests an exception to the vaccine requirement or additional time to provide their proof of vaccination for one of the reasons listed above, employers must engage with them in a cooperative dialogue, or a good faith discussion, to see if a reasonable accommodation is possible, according to the guidance.

Reasonable accommodations can take many forms, such as allowing an employee to work remotely, perform their job duties outside or isolated from other employees or customers, or taking a leave of absence. Notably, the guidance says weekly testing isn't an acceptable accommodation.

Note: Employers may have additional reasonable accommodation obligations under federal and/or state law. Additionally, certain employers may be subject to federal vaccination requirements. Employers should consult legal counsel to discuss the impact of these laws on their vaccination policies and practices.

Next Steps:

If you are a covered employer:

- Consult legal counsel to discuss the impact of the requirement and federal and state law on your vaccination policies and practices.
- Refer to the city's [resources](#).
- Notify employees.
- Place a public notice at the front entrance stating that proof of vaccination is required. The notice is available for download [here](#).
- Train supervisors on how to enforce the requirements.

Chicago Adopts Vaccination Mandate for Certain Employers

Chicago has issued a public health order that requires certain employers to verify employees are fully vaccinated against COVID-19. If employees aren't fully vaccinated, they must wear a mask when interacting with patrons and provide proof of a weekly negative COVID-19 test. The requirements take effect **January 3, 2022**.

Note: The Order also requires covered employers to verify the vaccination status of patrons.

The Details:

Covered Employers:

The [public health order](#) applies to the following entities:

- **Indoor Dining:** Establishments where food or beverages are served, including, but not limited to, restaurants, bars, fast food establishments, coffee shops, tasting rooms, cafeterias, food courts, dining areas of grocery stores, breweries, wineries, distilleries, banquet halls, and hotel ballrooms; and
- **Indoor Fitness:** Gyms and fitness venues, including, but not limited to, gyms, recreation facilities, fitness centers, yoga, Pilates, cycling, barre, and dance studios, hotel gyms, boxing and kickboxing gyms, fitness boot camps, and other facilities used for conducting indoor group fitness classes; and
- **Indoor entertainment and recreation venues where food or beverages are served:** Including, but not limited to, movie theaters, music and concert venues, live performance venues, adult entertainment venues, commercial event and party venues, sports arenas, performing arts theaters, bowling alleys, arcades, card rooms, family entertainment centers, play areas, pool and billiard halls, and other recreational game centers.

Requirements for Covered Employers:

All covered employers must:

- Determine the vaccination status of each employee.
- Require each vaccinated employee to provide acceptable proof of vaccination status, including whether they are fully or partially vaccinated.
- Treat any employee who doesn't provide one of the acceptable forms of proof of vaccination as not fully vaccinated.
- Covered employers must ensure that employees who aren't fully vaccinated and who report at least once every seven days to a workplace where other individuals such as coworkers or customers are present are:

- Tested for COVID-19 at least once every seven days; and
- Provide documentation of the most recent COVID-19 test result to the employer no later than the seventh day following the date the employee last provided a test result.
- Covered employers must also ensure that employees who aren't fully vaccinated and don't report during a period of seven or more days to a workplace where other individuals are present are:
 - Tested for COVID-19 within seven days prior to returning to the workplace; and
 - Provide documentation of that test result upon return to the workplace.
- If an employee doesn't provide documentation of a COVID-19 test result as required, the employer must keep that employee removed from the workplace until they provide a test result.

In addition, when an employee has received a positive COVID-19 test or has been diagnosed with COVID-19 by a licensed healthcare provider, the employer must remove the employee from the workplace immediately and until they meet criteria for return and may not require that employee to undergo COVID-19 testing for 90 days following the date of their positive test or diagnosis.

Note: Employees who aren't fully vaccinated must also wear a face mask when interacting with patrons.

Written Plan Required:

Covered employers must develop and keep a written plan describing the protocol for implementing and enforcing the requirements of the order. The city has created a [sample compliance plan](#) that employers may use.

Recordkeeping:

Covered employers must maintain a record and a roster of each employee's vaccination status. Employers must also maintain a record of each test result provided by each employee. This information is subject to applicable legal requirements for confidentiality of medical information. These records must be preserved while the order is in effect.

Next Steps:

If you are a covered employer:

- Refer to the [city's resources](#).
- Develop, implement, and enforce a written compliance plan.
- Notify employees.
- Display [signs](#) at all entrances.
- Train supervisors on how to enforce the requirements.
- Amend written policies if necessary.

Los Angeles County Requires Employers to Provide Masks to Employees

The Los Angeles County, California, Department of Public Health (LACDPH) has issued an order requiring all employers to provide masks to employees who work indoors and in close contact with other works or the public. Employers must provide masks as soon as possible but no later than January 17, 2022.

The Details:

Under the LACDPH's order, employers must provide employees with and require them to wear a well-fitting medical grade mask, surgical mask, or higher-level respirator, such as an N95 filtering facepiece respirator, or KN95, at all times while indoors at the worksite or facility. The mask requirement applies regardless of vaccination status.

Note: Employers are also subject to mask requirements set by the state. Employers should consult legal counsel to discuss the impact of these rules on their policies and practices.

Exceptions:

A list of exemptions from the county's mask requirement is available [here](#). Under the order, workers who cannot feasibly wear a mask while performing their work and aren't fully vaccinated and boosted (if eligible) must be tested for COVID-19 twice per week. Workers who cannot feasibly wear a mask while performing their work and are fully vaccinated and boosted (if eligible) should be tested for COVID-19 once per week.

Next Steps:

- Read the LACDPH's [order](#).
- Refer to the county's [guidance](#) on masks.
- Notify employees.
- Make sure supervisors are trained on how to enforce the requirement.
- Coordinate compliance with state requirements for masks and consult legal counsel if necessary.
- Watch for developments.

California Extends Mask Requirement

The California Department of Public Health (CDPH) has extended a requirement to use face masks indoors through at least February 15, 2022, regardless of the individual's COVID-19 vaccination status. Before the extension, the mask requirement was set to end on January 15, 2022.

The Details:

The CDPH says individuals must wear masks in indoor public settings from through February 15, 2022, regardless of whether they are vaccinated. The requirement applies to all workplaces, regardless of whether they serve the public, or are open to the public, according to the CDPH. The CDPH recommends surgical masks or higher-level respirators.

Note: Under rules set by the California Division of Occupational Safety and Health (Cal/OSHA), employers must provide face coverings and ensure they are worn by employees when required by orders. The Cal/OSHA rules define what is considered an acceptable mask, but county and city rules may have additional requirements.

Exemptions:

The following individuals are exempt from the state's mask requirement:

- Those younger than two years old (because of the risk of suffocation).
- Those with a medical condition, mental health condition, or disability that prevents wearing a mask.
- Those who are hearing impaired, or communicating with a person who is hearing impaired, where the ability to see the mouth is essential for communication.
- Those for whom wearing a mask would create a risk to the person related to their work, as determined by local, state, or federal regulators or workplace safety guidelines.

Additionally, exceptions apply in the following circumstances:

- While actively eating or drinking.
- When working alone in a closed office or room.
- When performing at indoor live or recorded settings or events such as music, acting, or singing.
- When obtaining a medical or cosmetic service involving the nose or face for which temporary removal of the face covering is necessary to perform the services.
- When wearing respiratory protection, per Cal/OSHA requirements.

Next Steps:

- Refer to CDPH's guidance for more information.
- Notify employees of the extension.
- Continue to display notices at all entrances.
- Make sure supervisors are trained on how to enforce the requirement.
- Check county and city rules to determine if they have additional mask requirements.
- Watch for developments to determine if the state's mask requirement is extended beyond February 15, 2022.

ADP Compliance Resources

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

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