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Eye on Washington

Detailed Look at State, Local and Federal Updates

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

Topics covered in this issue:

State/Territory/District

California Supreme Court Rules Missed Break Payments Are Wages

Click **here** for the article.

Connecticut Protects Employees from Required Political/Religious Meetings at Work

Connecticut has enacted legislation (Senate Bill 163) that prohibits employers from disciplining employees for refusing to attend an employer-sponsored meeting concerning religious or political matters. Senate Bill 163 takes effect **July 1, 2022**. Notably, the law's definition of political matters includes organized labor.

The Details:

Under the law, employers are prohibited from disciplining or threatening to discipline an employee for their refusal to:

- Attend an employer-sponsored meeting that has the primary purpose of communicating the employer's opinion concerning religious or political matters; or
- Listen to speech or view a communication that has the primary purpose of communicating the employer's opinion concerning religious or political matters.

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

Under the law, religious matters are defined as those relating to religious affiliation and practice and the decision to join or support any religious organization or association.

Note: Existing law already prohibited employers from disciplining employees for exercising their rights guaranteed by the First Amendment to the U.S. Constitution or sections 3, 4 or 14 of the first article of the state Constitution, provided such activity doesn't substantially or materially interfere with the employee's bona fide job performance or the working relationship

between the employee and the employer. Senate Bill 163 amends this provision to also expressly prohibit employers from threatening to discipline employees for exercising such rights.

Exceptions:

The law doesn't prohibit:

- Employers from communicating to employees any information that the employer is required by law to communicate, but only to the extent of such legal requirement;
- Employers from communicating to employees any information that is necessary for such employees to perform their job duties;
- Casual conversations between employees or between an employee and an agent, representative or designee of an employer, provided participation in such conversations isn't required; or
- A requirement limited to the employer's managerial and supervisory employees.

Next Steps:

- Ensure policies and practices comply with Senate Bill 163.
- Train supervisors on the new law.

Florida Restricts Employee Training on Certain Concepts

Florida has enacted legislation (Senate Bill 7) that prohibits employers with 15 or more employees from subjecting an individual to training that endorses certain concepts about discrimination. Senate Bill 7 takes effect **July 1, 2022**.

The Details:

Senate Bill 7 establishes that covered employers engage in an unlawful employment practice if they subject individuals to training that promotes, advances or compels the individual to believe that any of the following concepts constitutes discrimination based on race, color, sex or national origin:

- Members of one race, color, sex, or national origin are morally superior to members of another race, color, sex, or national origin.
- An individual, by virtue of their race, color, sex, or national origin, is inherently racist, sexist, or oppressive, whether consciously or unconsciously.
- An individual's moral character or status as either privileged or oppressed is necessarily determined by their race, color, sex, or national origin.
- Members of one race, color, sex, or national origin cannot and shouldn't attempt to treat others without respect to race, color, sex, or national origin.
- An individual, by virtue of their race, color, sex, or national origin, bears responsibility for, or should be discriminated against or receive adverse treatment because of actions committed in the past by other members of the same race, color, sex, or national origin.
- An individual, by virtue of their race, color, sex, or national origin, should be discriminated against or receive adverse treatment to achieve diversity, equity, or inclusion.
- An individual, by virtue of their race, color, sex, or national origin, bears personal responsibility for and must feel guilt, anguish, or other forms of psychological distress because of actions, in which the individual played no part, committed in the past by other members of the same race, color, sex, or national origin.
- Such virtues as merit, excellence, hard work, fairness, neutrality, objectivity, and racial colorblindness are racist or sexist, or were created by members of a particular race, color, sex, or national origin to oppress members of another race, color, sex, or national origin.

However, the law states it shouldn't be construed to prohibit discussion of the concepts listed above as part of a larger course of training, provided such training is given in an objective manner without endorsement of the concepts.

Next Steps:

If you have 15 or more employees:

- Consult legal counsel to discuss the impact of Senate Bill 7 on your employee training.
- Revise employee training, if necessary, by July 1, 2022.
- Watch for developments closely as Senate Bill 7 is already being challenged in court.

Georgia Clarifies Independent Contractor Test for Unemployment Benefits

Georgia has enacted legislation (House Bill 389) that clarifies the test used to determine whether an individual is an independent contractor or employee for the purpose of unemployment benefits in the state. House Bill 389 takes effect July 1, 2022.

The Details:

Under existing Georgia unemployment law, an individual who performs services for wages will be deemed an employee unless it is shown that:

1. The individual:

- Has been, and will continue to be, free from control or direction over the performance of such services, both under the individual's contract of service and in fact; and
- Is customarily engaged in an independently established trade, occupation, profession, or business; or

2. The individual and the services performed are the subject of an SS-8 determination by the Internal Revenue Service, which decided against employee status. House Bill 389 amends the law to clarify the factors to consider when determining whether an individual is free from control or direction from the employer. These factors include whether the individual:

- Isn't prohibited from working for other companies or holding other employment contemporaneously;
- Is free to accept or reject work assignments without consequence;
- Isn't prescribed minimum hours to work or, in the case of sales, doesn't have a minimum number of orders to be obtained;
- Has the discretion to set their own work schedule;
- Receives only minimal instructions and no direct oversight or supervision regarding the services to be performed, such as the location where the services are to be performed and any requested deadlines;
- When applicable, has no territorial or geographic restrictions; and
- Isn't required to perform, behave, or act in a manner that is determined by the Georgia Department of Labor to demonstrate employment.

House Bill 389 also clarifies exemptions from unemployment benefits for music industry professionals and individuals working for network companies. See the text of the law for details.

Next Steps:

- Ensure independent contractor determinations for unemployment purposes use the criteria indicated in House Bill 389.
- When in doubt, err on the side of caution by classifying the individual as an employee. Remember that different tests may be used to determine independent contractor status under other laws.

Illinois Amends Rules for Day of Rest and Meal Periods

Illinois has enacted legislation (Senate Bill 3146) that amends the state's rules governing a day of rest and meal periods. Senate Bill 3146 takes effect January 1, 2023.

The Details:

Senate Bill 3146 amends the state's "One Day Rest in Seven Act" as follows:

	Current Law	Amended Law Effective 1/1/23
Day of Rest	With limited exceptions, employers must allow employees at least 24 consecutive hours of rest in every calendar week in addition to the regular period of rest allowed at the close of each working day.	With limited exceptions, employers must allow employees at least 24 consecutive hours of rest in every consecutive seven-day period in addition to the regular period of rest allowed at the close of each working day.
Meal Periods	With limited exceptions, employers must permit employees who are to work for 7 1/2 continuous hours or longer at least 20 minutes for a meal period beginning no later than 5 hours after the start of the work period.	With limited exceptions, employers must permit employees who are to work for 7 1/2 continuous hours at least 20 minutes for a meal period beginning no later than 5 hours after the start of the work period. An employee who works in excess of 7 1/2 continuous hours is entitled to an additional 20-minute meal period for every additional 4 1/2 continuous hours worked. A meal period doesn't include reasonable time spent using the restroom facilities.
Notice	Before the first day of a calendar workweek, employers must post a schedule containing a list of employees who are required or allowed to work on Sunday and designating the day of rest for each.	Before the first day of a calendar workweek, employers must post a schedule containing a list of employees who are required or allowed to work on Sunday and designating the day of rest for each. Employers must also post a notice in each workplace summarizing the requirements of the law and providing information about filing a complaint. An employer with employees who don't regularly report to a physical workplace, and instead work remotely or travel for work, must also provide the notice by email to its employees or on a website, regularly used by the employer to communicate work-related information, that all employees are able to regularly access, freely and without interference.

Senate Bill 3146 also amends the penalties that employers may face for violating the law. See the **text of Senate Bill 3146** for details.

Next Steps:

- Ensure compliance with the day of rest and meal period changes by January 1, 2023.
- Watch for the new required notice, which will be published by the **Illinois Department of Labor**.
- Provide the notice as required.
- Train supervisors on the changes.

Illinois Expands Bereavement Leave Law

Illinois has enacted legislation (Senate Bill 3120) expanding the requirement that employers with 50 or more employees provide bereavement leave. Senate Bill 3120 takes effect January 1, 2023.

The Details:

Existing Law	Effective January 1, 2023
Eligible employees may use up to two weeks of unpaid bereavement leave to: • Attend the funeral (or an alternative to a funeral) of a *child*. • Make arrangements necessitated by the death of a *child*; ***or*** • Grieve the death of the *child*.	Eligible employees may use up to two weeks of unpaid bereavement leave to: • Attend the funeral (or an alternative to a funeral) of a covered family *member*. • Make arrangements necessitated by the death of a covered family *member*; • Grieve the death of a covered family *member*; or • Be absent from work because of: o A miscarriage; o An unsuccessful round of intrauterine insemination or an assisted reproductive technology procedure (e.g., artificial insemination or embryo transfer); o A failed adoption match or an adoption that isn't finalized because it is contested by another party; o A diagnosis that negatively impacts pregnancy or fertility; or o A stillbirth.

Covered Family Members:

Senate Bill 3120 defines a covered family member as the employee's:

- Child or stepchild;
- Spouse or domestic partner;
- Sibling;
- Parent, stepparent, mother-in-law, or father-in-law; or
- Grandchild or grandparent.

Employee Eligibility:

To be eligible for bereavement leave, the employee must:

- Have at least 12 months of service with the employer;
- Have worked at least 1,250 hours during the 12-month period prior to the leave; and
- Work at a location where 50 or more employees are employed by the employer within 75 miles.

The leave must be completed within 60 days of the employee receiving notice of the death of a covered family member or within 60 days of the date of the covered event.

If an employee experiences the death of more than one family member in a 12-month period, the employee is entitled to up to a total of six weeks of bereavement leave during the 12-month period.

Note: The state law doesn't create a right for unpaid leave that exceeds the unpaid leave allowed under the federal Family and Medical Leave Act (FMLA). Therefore, if an employee exhausts all of their FMLA leave during the applicable 12-month period, the employer isn't required to provide additional bereavement leave.

Notice and Documentation:

When reasonable and practical, employees must provide at least 48 hours' advance notice of their intention to take bereavement leave.

With certain limitations, employers may require reasonable documentation of the need for leave. See the **text of the law** for details.

Next Steps:

If you have 50 or more employees:

- Ensure compliance with the expanded bereavement leave requirements by January 1, 2023.
- Update policies and forms to reflect the expanded leave entitlement.
- Train supervisors on the new law.

https://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=102-1050

Minnesota Requires Employers to Provide Notice of Frontline Worker Pay

Minnesota has enacted legislation (Senate File 2677) that requires employers of frontline workers to notify them that they may be eligible for a one-time payment from the state. The payments are meant to compensate these workers for responding to the extraordinary circumstances of the COVID-19 pandemic.

The Details:

No later than 15 days after the application period is opened, employers in the frontline sector must provide notice advising all current workers of the potential benefit and how to apply for it. The Minnesota Department of Labor and Industry is currently developing a form that can be used to meet this requirement, which will be available **here** when published. Employers must provide notice using the same means used to provide other work-related notices to employees.

Under the law, a frontline worker is defined as an individual employed in one of the following sectors:

- Long-term care and home care;
- Healthcare;
- Emergency responders;
- Public health, social service, and regulatory service;
- Courts and corrections;
- Child care;
- Schools, including charter schools, state schools, and higher education;
- Food service, including production, processing, preparation, sale, and delivery;
- Retail, including sales, fulfillment, distribution, and delivery;
- Temporary shelters and hotels;
- Building services, including maintenance, janitorial, and security;
- Public transit;
- Ground and air transportation services;
- Manufacturing; and
- Vocational rehabilitation.

To be eligible for the payments, frontline workers must meet the following criteria:

- Employed for at least 120 hours in Minnesota in one or more frontline sectors from March 15, 2020 through June 30, 2021;
- Wasn't able to telework due to the nature of the individual's work and worked in close proximity to individuals outside of the worker's household;
- Meets specified income requirements; and
- Didn't receive unemployment insurance benefits for more than 20 weeks between March 15, 2020 and June 26, 2021.

Next Steps:

- Monitor the Department's **Frontline Worker Pay** page for updates and the model notice.
- Provide notice within 15 days of the opening of the application period.
- Document when and to whom you provided the notice.

Pennsylvania Adopts Final Rule on Regular Rate for Salaried Nonexempt Employees and Final Rule for Tipped Employee

The Pennsylvania Department of Labor and Industry (DOLI) has adopted a final rule addressing tipped employees and the calculation of overtime pay for salaried nonexempt employees. The final rule takes effect on August 5, 2022.

Background:

Fair Labor Standards Act (FLSA) Tipped Employees:

Under the FLSA, a tipped employee is an employee engaged in an operation in which they customarily and regularly receive more than $30 a month in tips. Tip pooling is allowed among employees that customarily and regularly receive tips; and tips are the property of the employee.

FLSA Nonexempt Salaried Employees:

The U.S. Department of Labor (DOL) allows employers to use the **fluctuating workweek** (FWW) method to determine a nonexempt salaried employee's regular rate of pay. This method pays an employee a flat weekly salary regardless of the regular hours they work in a week (which can vary by week). Under the FWW, overtime pay is based on the average hourly rate produced by dividing the employee's fixed salary and any non-excludable additional pay (e.g., commissions, bonuses, or hazard pay) by the number of hours actually worked in a specific workweek. For each hour worked that exceeds 40 in a week, the employee receives at least an additional 0.5 times (or additional "half time") that rate for each hour worked beyond 40 in the workweek.

Note: The fluctuating workweek method cannot be used if the employee's salary is understood to be compensation for a specific, fixed number of hours per workweek.

Pennsylvania Tipped Employees:

Pennsylvania employers generally must pay employees a minimum wage of at least $7.25 per hour, but special provisions exist for tipped employees:

- An employer must pay a minimum cash wage of $2.83 to tipped employees.
- Employers may take a tip credit of $4.42 as long as the tips received by the employee and cash wage of $2.83 equal at least $7.25 per hour.

Details:

Pennsylvania Final Rule for Tipped Employees:

Definition of Tipped Employee:

The final rule increases the tipped employee threshold to $135 per month from the FLSA threshold of $30 per month. Consequently, as of August 5, 2022, a Pennsylvania employer may only take the tip credit of $4.42 per hour if an employee receives over $135 in tips in a month.

Service Charges:

Under the final rule, an employer may distribute a collected service charge to its employees, but the amounts distributed to employees must count as remuneration relating to the employees' regular rates of pay; it may not count as a tip.

Tip Pooling:

The final rule aligns with the DOL's tip-pooling rules in that:

- An employer that requires a tipped employee to perform work that is not part of the worker's tipped occupation may not take a tip credit for that time; and
- Work that is performed is not part of a tipped occupation if it does not:
  - Provide service to customers for which a tipped employee receives tips; and
  - Directly support tip-producing work.

The final rule also restricts tip pools to those who perform tipped work. A tip pool that includes non-managerial workers who perform non-tipped work must pay $7.25 per hour.

Notice Requirements:

An employer must provide written notice to affected employees in a tip-pooling arrangement:

- At or before the time they make an employment offer, or
- At least one pay period before the tip-pooling arrangement takes effect.

Recordkeeping:

Employers with tip-pooling arrangements must keep records of the employees who partake in the tip pool and the dates and amounts of tips disbursed to employees.

Note: Employers should prepare to make these records available to the DOLI upon request.

Credit Card and Processing Fee Deductions:

The final rule also prohibits an employer that permits patrons to pay tips by credit card (and other non-cash payments) from deducting credit card payments or fees that are charged to the employer from an employee's tips or from a tipping pool.

Non-Tipped Duties:

Under the final rule, an employer may take a tip credit for the time a tipped employee performs work that directly supports but is not tip-producing work, so long as the time does not exceed:

- 30 continuous minutes; or
- 20 percent of the hours in the workweek that an employer has taken a tip credit.

The first 30 minutes of such continuous work may be compensated at a tip-credit rate ($2.83 per hour), but employers must pay at least $7.25 per hour for any time over the 30 minutes.

Note: The 20 percent limitation refers only to hours for which the employer has taken a tip credit.

Final Rule Pay Requirements for Nonexempt Salaried Employees:

The final rule formally prohibits an employer from using the FWW method to calculate a salaried, nonexempt employee's overtime pay. The Pennsylvania Supreme Court previously held that the FLSA's fluctuating workweek pay method does not apply under Pennsylvania law.

Consequently, when determining the regular rate of pay for nonexempt salaried employees, an employer will divide the total non-excludable compensation for the week and divide by 40 rather than divide by the total number of hours worked in the week.

Next Steps:

Pennsylvania employers that are subject to the FLSA and the final rule with tipped employees and nonexempt, salaried employees should:

- Update their pay policies and procedures and train employees to ensure compliance by **August 5, 2022**;
- Provide written notice of tip-pool arrangements to tipped employees; and
- Keep records of employees that participate in tip pools.

Tennessee Prohibits Natural Immunity Discrimination, Sets COVID-19 Laws Sunset Date

Tennessee has enacted legislation (Senate Bill 1884 and House Bill 1871), which create a sunset date for COVID-19 related laws and adds employee protections for natural COVID-19 immunity. Senate Bill 1884 takes effect on July 1, 2023, and House Bill 1871 is effective immediately.

The Details:

House Bill 1871:

The law defines natural immunity as immune system resistance to COVID-19 that is acquired naturally as the result of an individual's prior infection with COVID-19.

Under the law, Tennessee employers in the private sector are prohibited from adopting or enforcing a rule, policy, procedure or practice as a result of the COVID-19 pandemic that:

- Treats those with natural immunity differently than those who received a COVID-19 vaccination; or
- Fails to recognize natural immunity as being at least as protective as a COVID-19 vaccination.

Senate Bill 1884:

Tennessee has set **July 1, 2023**, as the termination date for its laws related to COVID-19 other than House Bill 1871, excluding government entities, schools and local education agencies mandates.

Next Steps:

Tennessee employers should consult legal counsel to discuss the impact of Senate Bill 1884 and House Bill 1871 on their policies and practices.

Tennessee Prohibits Subminimum Wages

Tennessee has enacted legislation (Senate Bill 2042), which prohibits employers from paying an employee who is impaired by age, physical or mental deficiency, or injury less than the federal minimum wage. Senate Bill 2042 will take effect on July 1, 2022.

The Details:

The "Tennessee Integrated and Meaningful Employment Act" requires employers to pay an employee who is impaired by age, physical or mental deficiency, or injury no less than the federal minimum wage under the **Fair Labor Standards Act**, regardless of **federal subminimum wage laws**.

Covered Employers:

The law covers an individual, partnership, association, corporation, business trust, legal representative, or organized group of persons, not involved in interstate commerce, acting directly or indirectly in the interest of an employer in relation to an employee.

Covered Employees:

Under the Act, an employee as a person that is employed by an employer and is born or naturalized in, and subject to the laws of, the United States; or is legally present in the country.

Next Steps:

Tennessee employers should ensure compliance with applicable minimum wage requirements.

Tennessee Requires Time Off for Veterans Day

Tennessee has enacted legislation (House Bill 2733) that requires an employer to allow a veteran employee to take all of Veterans Day off as a non-paid holiday under certain circumstances. House Bill 2733 is effective immediately.

House Bill 2733:

Under the law, Tennessee employers must allow qualifying veterans to take the entirety of November 11th (Veterans Day) as an unpaid day off from work.

Note: Employers may also choose to make it a paid holiday.

Covered Employees:

The law defines a veteran as a former member of the U.S. armed forces or a former or current member of a reserve or Tennessee National Guard unit that has been called into active service. The law does not cover independent contractors.

Notice Requirements:

To request Veterans Day as an unpaid day off, a veteran must provide their employer with:

- At least one month's written notice; and
- Proof of their status as a veteran, such as a DD Form 214 or other comparable discharge papers from the armed forces.

Exceptions:

A veteran's absence, alone or combined with other veteran employee absences, cannot:

- Impact public health or safety; or
- Cause an employer significant economic or operational disruption.

Next Steps:

Tennessee employers should:

- Review, update, clearly communicate and consistently apply their policy on holiday pay;
- Maintain accurate records of leave requests; and
- Document and keep confidential an employee's veteran status for purposes of the leave.

Local

Bloomington, Minnesota, Requires Employers to Provide Sick Leave

Bloomington, Minnesota, has enacted an ordinance that will require employers in the city to provide sick leave to employees. Employers with five or more employees (regardless of location) must provide paid leave. Smaller employers must also provide leave, but it may be unpaid. The ordinance is effective July 1, 2023.

Employee Coverage:

The ordinance covers all employees (including temporary and part-time employees) who perform work within the geographic boundaries of Bloomington for at least 80 hours in a year for their employer.

Employer Coverage:

The ordinance covers all private employers with covered employees.

Accrual and Frontloading:

Accrual

Employees begin accruing leave on July 1, 2023, or on 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 permit employees to carry over accrued but unused sick leave into the following year. However, employers may cap total accrual at 80 hours.

Frontloading

An employer may satisfy the requirements by providing at least 48 hours of sick leave following the initial 90 days of employment for use by the employee during the first calendar year and providing at least 80 hours of sick leave beginning each subsequent calendar year.

Use of Leave:

Employees may use accrued leave beginning 90 calendar days after the start of their employment. After 90 calendar days of employment, employees may use leave as it accrues.

An employee may use the sick leave for:

1. The employee's or family member's mental or physical illness, injury, or health condition; need for medical diagnosis; care, including prenatal care; treatment of a mental or physical illness, injury, or health condition; or need for preventive medical or healthcare.
2. The death of a family member.
3. An absence due to domestic abuse, sexual assault, or stalking of the employee or employee's family member, provided the absence is to:

    a. Seek medical attention or psychological or other counseling services related to physical or psychological injury or disability;

    b. Obtain services from a victim services organization;

    c. Seek relocation; or

    d. Seek legal advice or take legal action, including preparing for or participating in any civil or criminal legal proceeding.

- The closure of the employee's place of business by order of a public official to limit exposure to an infectious agent, biological toxin, hazardous material, or other public health emergency.

- The employee's need to care for a family member whose school or place of care has been closed by order of a public official to limit exposure to an infectious agent, biological toxin, hazardous material, or other public health emergency.
- The employee's need 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 closure.

The ordinance defines a family member as:

- The employee's:
  - Child, stepchild, adopted child, foster child, or adult child;
  - Spouse;
  - Sibling;
  - Parent, stepparent, mother-in-law, or father-in-law;
  - Grandchild or grandparent;
  - Guardian or ward; or
- Members of the employee's household.

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.

If the absence is for illness, injury, or medical care (reasons 1 and 3a above) and is more than three consecutive days, the employer may require reasonable documentation that the absence is covered by the ordinance but only if the employer provides healthcare benefits to the employee.

Paid Leave:

Employers with five or more employees must compensate the employee at their regular rate of pay for the hours the employee was scheduled to work during the time the employee uses their sick leave. Compensation is only required for hours that an employee is scheduled to have worked. Smaller employers must provide leave, but it may be unpaid.

Note: There are special rules for the construction industry. See the **ordinance** for details.

Notice and Recordkeeping Requirements:

Employers must post a notice created by the city in a conspicuous place at any workplace or job site where any covered employee works. The notice must be posted in English, and any language spoken by at least five percent of the employees at the workplace or job site if published by the city attorney's office.

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

Upon request by an employee, the employer must provide, in writing or electronically, information stating the employee's then-current amount of leave available and used.

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 sick leave available and used. The records must be retained for a period of at least three years in addition to the current calendar year. An employer must allow an employee to inspect records at a reasonable time and place.

Next Steps:

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

- Provide sick leave in accordance with the requirements of the ordinance beginning July 1, 2023.
- Monitor the **website** of the city attorney's office for the required notices.

- Post the required notices by July 1, 2023.
- Update leave policies and forms and employee handbooks to comply with the ordinance.
- Train supervisors on the ordinance.

Chicago Announces Increase to Minimum Wage

Chicago, Illinois, has **announced** an increase to the City's minimum wage.

The Details:

As of July 1, 2022, the minimum wage in Chicago will be as follows:

For employers with 21 or more workers:

$15.40 per hour (currently $15.00 per hour)

$9.24 cash wage per hour for tipped employees (currently $9.00 per hour)

For employers with 4 to 20 workers:

$14.50 per hour (currently $14.00 per hour)

$8.70 cash wage per hour for tipped employees (currently $8.40 per hour)

Note: If a tipped worker's wages plus tips do not equal at least the full minimum wage, the employer must make up the difference.

Next Steps:

Effective July 1, 2022, Chicago employers must pay at least the applicable minimum wage as outlined above. In addition, employers must provide a Minimum Wage notice to all covered employees with their first paycheck and in communal areas at a workplace. Notices must be in English, and any language spoken by employees that do not speak English proficiently, as long as the Department of Business Affairs and Consumer Protection provides a notice in that language on the Office of Labor Standards website. The 2022 Notice may be found at the following link:

https://www.chicago.gov/city/en/depts/bacp/supp_info/minimumwageinformation.html

Cook County Minimum Wage Increase Effective July 1

Cook County, Illinois, has **announced** that its minimum wage will increase.

The Details:

On July 1, 2022, the minimum wage in Cook County, Illinois, will increase to $13.35 per hour. The minimum cash wage for tipped employees will increase to $7.40 per hour. The current minimum wage in the County is $13.00 and the cash minimum wage for tipped employees is $7.20 per hour.

The County's minimum wage applies to hourly, salaried, and tipped employees over the age of 18, working in Cook County, even those who may be working within the County to make deliveries or driving within the County limits.

Note: The Cook County minimum wage does not apply to the City of Chicago. Although the City is in Cook County, Chicago has its own minimum wage.

Next Steps:
Effective July 1, 2022, employers in Cook County with the exception of Chicago must pay at least $13.35 per hour and pay at least a cash wage of $7.40 per hour to tipped employees.

Foster City, California, Establishes Minimum Wage

On May 16, 2022, the Foster City Council adopted a minimum wage **ordinance**.

The Details:

Effective July 1, 2022, Foster City, California employers must pay its employees at least $15.75 per hour. The minimum wage rate will again increase to $16.50 per hour effective January 1, 2023.

Under the ordinance, beginning in 2024, the minimum wage rate will increase up to 3 percent annually every January 1 based on changes in the Consumer Price Index.

Note: California currently does not allow local jurisdictions to have a minimum cash wage or tip credit. Tipped employees must be paid the full federal, state, or local minimum wage, whichever is the highest.

Next Steps:

Effective July 1, 2022, Foster City employers must pay its employees at least $15.75 per hour.

Under the ordinance, employers must give written notice of the Foster City minimum wage ordinance to all current employees and to new employees at the time of hire. In addition, such notice must be posted prominently in the workplace.

The city is authorized to create sample notices, which employers may use to comply with the notice requirements. Sample notices once provided may be found at **https://www.fostercity.org/**.

New York City Clarifies and Delays Pay Transparency Law

The New York City Commission on Human Rights (NYCCHR) has released additional guidance on its pay transparency law, which was scheduled to take effect on May 15, 2022, but is now delayed to November 1, 2022.

Update May 2022:

The New York City Council approved **Introduction 134-A**, which delays the new pay transparency law from May 15, 2022 to **November 1, 2022**, and:

- Clarifies that the law applies to advertised roles paid either by an annual salary or an hourly wage;
- Confirms that the law does not apply to positions that cannot or will not be performed at least partly in New York City;
- Limits private lawsuits to those brought by current employees against their employers for using a non-compliant advertisement for a job, promotion, or transfer opportunity; and
- Protects an employer (or employment agency) from monetary penalties for an initial violation of the law if they provide written or electronic proof that the violation was fixed within 30 days.

The Details:

The NYCCHR had clarified several aspects of its pay transparency law.

Covered Employers:

The law covers employment agencies, employers with four or more employees (which counts owners and individual employers), and employers with one or more domestic workers. The workplace is covered if at least one of the four employees works in New York City. The law also applies to employers that work with temporary help firms, but it excludes temporary help firms that hire employees to perform work for other businesses.

Covered Job Listings:

The law covers any advertisement for an available job, promotion or transfer opportunity performed at least in part in New York City. An "advertisement" is defined as a written description, regardless of the medium, publicized to a pool of potential applicants. This includes a posting on an internal bulletin board, internet advertisement, printed flyer at a job fair, and newspaper advertisement.

The law applies to advertisements for independent contractors, full-time and part-time employees, interns, domestic workers, and any other category of worker protected by the NYC Human Rights Law.

Note: Employers may hire without using an advertisement and are not required to create an advertisement to hire.

Salary Range Requirements:

Employers must include the minimum and maximum salary that they in good faith are willing to pay for an advertised job, promotion or transfer. This means the salary range they honestly believe at the time of the posting that they are willing to pay the successful applicant(s). Job ads that cover multiple opportunities can include salary ranges specific to each opportunity.

The guidance specifies that the range must include the base wage or rate of pay, regardless of the frequency of payment. For example, employers may list a dollar amount per hour or a dollar amount per year. However, the range cannot be open-ended, such as $15 per hour and up or a maximum of $50,000 per year. However, if there is no flexibility in salary, the minimum and maximum salary may be the same.

Employers may also include, but are not required to disclose, other forms of compensation and benefits such as:

- Health, life, or other employer-provided insurance;
- Time off work, such as paid sick or vacation days, leaves of absence, or sabbaticals;
- Retirement benefits, such as 401(k)s or employer-funded pension plans; or
- Severance, overtime pay, commissions, tips, bonuses, stock, the value of employer-provided meals or lodging, or other perks in pay.

Enforcement:

Covered employers that are found to have violated the law may face penalties of up to $250,000. They may also be required, among other things, to amend their job ads and postings, create or update policies, conduct training, and provide notices of rights to employees or applicants.

Next Steps:

New York City employers should:

- Review their job advertisements
- Train supervisors to help ensure compliance with the law
- Take note of the delayed effective date of November 1, 2022

West Hollywood, California, Amends Minimum Wage and Leave Ordinance

On May 16, 2022, the West Hollywood, California, City Council approved amendments to the City's minimum wage and leave ordinance that took effect January 1, 2022.

The Details:

Minimum Wage:

Under the ordinance, the minimum wage in West Hollywood increased on January 1, 2022, and will increase again on July 1, 2022, January 1, 2023, and July 1, 2023 as follows:

January 1, 2022

Hotel workers	$17.64 per hour
Employers with 50 or more employees	$15.50 per hour
Employers with 49 or fewer employees	$15.00 per hour

July 1, 2022

Hotel workers	$18.35 per hour
Employers with 50 or more employees	$16.50 per hour
Employers with 49 or fewer employees	$16.00 per hour

January 1, 2023

Hotel workers	To be determined based on inflation
Employers with 50 or more employees	$17.50 per hour
Employers with 49 or fewer employees	$17.00 per hour

July 1, 2023

Hotel workers	To be determined based on inflation
Employers with 50 or more employees	$17.64 per hour + CPI from July 1, 2022
Employers with 49 or fewer employees	$17.64 per hour + CPI from July 1, 2022

Leave:

Paid Leave

The ordinance requires that employers provide full-time employees at least 96 compensated hours of time off per year for sick leave, vacation, or personal necessity. Full-time employees are entitled to accrue at least 96/52 (1.846) hours of compensated time off each week of employment. Compensated time off doesn't accrue for work in excess of 40 hours a week. Full-time employees who work less than 40 hours a week will receive the compensated time off in proportional increments.

Unpaid Leave

In addition to the paid leave, employers must permit full-time employees to take at least 80 additional hours per year of uncompensated time off to be used for sick leave for the employee's or their immediate family member's illness where the employee has exhausted their compensated time off for that year. Full-time employees who work less than 40 hours a week will receive the uncompensated time off in proportional increments.

Amendments:

Major amendments to the West Hollywood ordinance include the following:

- To determine employer coverage, existing employers should calculate their employee count based on the number of employees employed per quarter during the most recent calendar year. A new employer's initial determination of size should be based on the actual number of hires at the time of opening. After the business has opened, the employee count should be determined by the average number of employees per week in the first 90 days.
- Eliminating the cash payout requirement once every 30 days for accrued compensation time over the maximum accrual. Under the original law, once employees accumulated 192 paid leave hours, employers were required to provide a cash payment once every 30 days for accrued leave that exceeded the accrual cap, paid at the rate the employee was paid at the time of cash-out.
- Extending the one-year waiver for financial hardship to comply with the paid leave portions of the ordinance. The original provisions of the law provided that the City Manager could provide a one-year waiver if the employer demonstrated by documentation that they would experience financial hardship in complying with the leave provisions. Specifically, that the employer would need to show that in order to avoid bankruptcy or a shutdown, they had to reduce their workforce by more than 20 percent or curtail their employees' total hours by more than 30 percent. The amendment also added a second hardship condition for a waiver. Specifically, that it will be a hardship to implement the compensated and uncompensated leave provisions

due to the existing payroll and human resources processes and platforms the employer has in place. The City Manager may grant up to two three-month waivers based on the second hardship provided the second three-month waiver shall only be granted if implementation hardships remain and the employer has made diligent progress towards implementing the provisions. Total waivers granted cannot exceed one year.

In addition, the City published administrative regulations to help in the implementation of the ordinance.

Next Steps:

Employers subject to the West Hollywood minimum wage and leave ordinance should review the following documents to ensure they are administering the ordinance as required.

Minimum wage and leave ordinance

Approved amendments

Administrative regulations

Federal

Automatic Extension Period for Certain Employment Authorizations Increased

U.S. Citizenship and Immigration Services (USCIS) has announced that the automatic extension period for certain employment authorizations and employment authorization documents (EADs) has been temporarily increased from 180 days to 540 days. The extension period is provided to certain renewal applicants to help prevent gaps in employment authorization due to delays in processing.

The Details:

To be eligible for the extension of up to 540 days from the expiration date stated on their current EADs, individuals must:

- Have timely filed an application to renew their employment authorization and/or EAD on Form I-765 (Application for Employment Authorization) before the EAD expires, and their Form I-765 EAD renewal application remains pending.
- Have been issued a Form I-797C (Notice of Action) issued for the corresponding Form I-765 EAD renewal application, that states an eligibility category that is the same as the eligibility category stated on the front of the EAD (with limited exceptions).
- Be within one of the eligibility categories that qualify for the 180-day automatic extension that was previously in place. The eligible categories are published on the **USCIS Automatic EAD Extension** webpage.

For eligible renewal applicants, a Form I-797C (Notice of Action) and their expired EAD will serve as acceptable proof of employment authorization and/or EAD validity during the 540-day automatic extension period.

Note: The employee's Form I-797C may refer to an automatic EAD extension of 180 days, but when combined with their EAD, it is acceptable evidence of the extension of 540 days, provided that the eligibility requirements above are satisfied.

Next Steps:

- Review the USCIS **guidance** and **information** on automatic extensions.
- Follow the USCIS **guidance** on completing/updating an I-9 for new hires and employees who presented an EAD that has been automatically extended.

IRS Adjusts Business Use Mileage Reimbursement Rate Mid-Year

The Internal Revenue Service (IRS) has announced an adjustment to rates used to calculate the deductible costs of operating an automobile for business purposes for calendar year 2022.

The Details:

On December 17, 2021, the IRS stated via **Notice 22-03** that the 2022 optional standard mileage rates used to calculate the deductible costs of operating an automobile for business expenses was 58.5 cents per mile.

On June 9, 2022, the IRS issued **Announcement 2022-13** modifying Notice 22-03 by revising the standard mileage rate. For business mileage expenses paid or incurred on or after July 1, 2022, the standard mileage is increased to **62.5 cents per mile** from 58.5 cents per mile.

Note: The standard business mileage rate of 58.5 cents as outlined in Notice 22-03 will remain in effect for business expenses paid or incurred by the employee between the dates of January 1, 2022, through June 30, 2022.

Next Steps:

Employers may reimburse employees for business mileage at the rate of 62.5 cents per mile for expenses paid or incurred on or after July 1, 2022.

IRS Increases Medical Mileage Rate Mid-Year

The Internal Revenue Service (IRS) has announced a mid-year increase to the standard mileage rate for use of an automobile to obtain medical care.

Transportation expenses, such as automobile mileage, that qualify as tax deductible medical expenses under Internal Revenue Code Section 213 generally can be paid or reimbursed on a tax-free basis by a health flexible spending arrangement, health reimbursement arrangement, or health savings account if the expense is "primarily for, and essential to, medical care."

The Details:

On December 17, 2021, the IRS issued **Notice 22-03** announcing that the standard mileage rate, effective January 1, 2022, for use of an automobile to obtain medical care was 18 cents per mile. This represented an increase of two cents from the 2021 rate of 16 cents per mile.

On June 9, 2022, the IRS issued **Announcement 2022-13** modifying Notice 22-03 by revising the standard mileage rate. For medical mileage expenses paid or incurred for medical expenses on or after July 1, 2022, the standard mileage is increased to 22 cents per mile from 18 cents per mile.

Note: The standard medical mileage rate of 18 cents as outlined in Notice 22-03 will remain in effect for expenses paid or incurred by the employee between the dates of January 1, 2022 and June 30, 2022.

Next Steps:

Employers may reimburse employees for medical mileage at the rate of 22 cents per mile for expenses paid or incurred on or after July 1, 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.**

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

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