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Eye on Washington

State and Local Update

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

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Leave

Connecticut Enacts Law Providing Employees With Unpaid Time Off to Vote

Governor Ned Lamont has signed into legislation a law that requires employers to provide all employees with two hours of unpaid time off to vote. Highlights of the requirement include:

Eligibility: Any employee in the case of a state election and any employee who is an elector in the case of any special election for United States Senator, Representative in Congress, State Senator or State Representative.

Leave: Two hours of unpaid time from an employee's regularly scheduled work on the day of any covered election during voting hours.

Conditions for approval: An employee must request the time off at least two working days prior to the election.

The law is effective upon enactment until June 30, 2024.

Louisiana to Require Pregnancy Accommodations

Effective August 1, 2021, Senate Bill 215 (SB 215), Louisiana employers will be required to provide reasonable accommodations needed by employees due to pregnancy, childbirth or related medical conditions, except in cases where such accommodations would pose an undue hardship on the employer.

Possible reasonable accommodations under the law include:

- Making facilities used by employees readily accessible to and usable by an applicant or employee (an employer is not required to construct a permanent, dedicated space for expressing milk);
- Providing more frequent breaks;
- Providing light duty, if available;
- Acquiring or modifying equipment devices necessary for performing essential functions; and
- Modifying work schedules.

The law does not require employers to (i) create positions that do not already exist (including light duty), unless the employer does so for other employees who need accommodations, or (ii) discharge or bump another employee to make any accommodations.

The law prohibits an employer from (i) refusing to select a pregnant worker for a training program leading to a promotion, as long as the employee can complete the program at least three months prior to the employee's pregnancy leave, or (ii) discharging a pregnant worker from employment or discriminating against her in compensation or other employment terms.

Employers are required to provide notice of the new requirements to existing employees by December 1, 2021, and to all new employees at the beginning of their employment. The notice must also be posted in a conspicuous area accessible to employees.

For a copy of SB 215, click on the link provided below:

https://legis.la.gov/legis/ViewDocument.aspx?d=1233567

Maine Expands State FMLA to Allow Leave to Care for Serious Health Conditions of Grandchildren

On June 14, 2021, Governor Janet Mills signed L.D. 61, amending the Maine Family Medical Leave Act to allow an employee to take unpaid leave to care for a grandchild or a domestic partner's grandchild. Prior to this enactment, leave was only provided to care for another individual's serious health condition with respect to children, domestic partners' children, parents, domestic partners, siblings or spouses.

The expansion under L.D. 61 can be found at:
http://legislature.maine.gov/legis/bills/getPDF.asp?paper=HP0027&item=5&snum=130

It goes into effect 90 days after the end of the Maine Legislature's present session.

Maryland Paid Leave Expanded to Include Bereavement

Maryland House Bill 56 (HB 56) effective October 1, 2021, has been enacted into law. The purpose of HB 56 is to allow an employee of an employer to use leave with pay to care for an immediate family member who is ill under the same conditions and policy rules that would apply if the employee took leave for the employee's own illness.

The provisions of the state's paid sick leave bill apply to an employer that: (i) provides leave with pay under the terms of a collective bargaining agreement or an employment policy; and (ii) employs 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year

The paid leave also covers the death of an immediate family member, meaning a child, spouse or parent.

For a copy of HB 56, click on the link provided below.

http://mgaleg.maryland.gov/2021RS/Chapters_noln/CH_573_hb0056t.pdf

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Minnesota Changes Lactation and Pregnancy Accommodations Law

Senate File 9 (SF 9) amends the laws regarding lactation accommodations and pregnancy accommodations. These changes become effective January 1, 2022.

Lactation Accommodations

SF 9 amends the lactation accommodations law to specify that employers with 15 or more employees must provide a paid break to employees to express breast milk during the 12 months following the birth of a child. Prior law did not require the break to be paid and did not specify a time period for the lactation accommodations.

Pregnancy Accommodations

Under the new law, employers with 15 or more employees are required to provide reasonable accommodations, upon request and with the advice of a licensed health provider or certified doula, for health conditions related to pregnancy. While an employer may claim undue hardship, it may not be claimed for: (1) more frequent restroom, food and water breaks; (2) seating; or (3) lifting over 20 pounds.

Further SF 9 states (in part) as follows:

> "Reasonable accommodation" may include but is not limited to temporary transfer to a less strenuous or hazardous position, seating, frequent restroom breaks, and limits to heavy lifting. Notwithstanding any other provision of this subdivision, an employer shall not be required to create a new or additional position in order to accommodate an employee pursuant to this subdivision and shall not be required to discharge an employee, transfer another employee with greater seniority or promote an employee.

In addition, the new legislation stipulates that an employer shall not require an employee to take a leave or accept an accommodation.

For a copy of SF 9, click on the link provided below.

https://www.revisor.mn.gov/bills/text.php?number=SF9&version=latest&session=ls92&session_year=2021&session_number=1

Oregon Family Leave Act Expanded

Under House Bill 2474 (HB 2474), the Oregon Family Leave Act (OFLA) is expanded to all employees of a covered employer during a public health emergency, unless the employee was employed for fewer than 30 days prior to commencing leave or worked an average of less than 25 hours per week in the 30 days prior to commencing leave. The legislation allows for restoration of time worked by an employee when the employee returns to work after separation or temporary cessation period. The bill adds the closure of a child-care provider or school due to a public health emergency as a qualifying purpose for which leave may be taken. Employers are allowed to request verification for the need for leave due to such closure.

The effective date of HB 2474 is January 1, 2022.

For a copy of HB 2474, click on the link provided below:

https://olis.leg.state.or.us/liz/2021R1/Downloads/MeasureDocument/HB2474/Enrolled

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Texas Enacts Paid Quarantine Leave

On June 16, 2021, Texas Governor Greg Abbott signed into law House Bill 2073 (HB 2073), which requires political subdivisions to provide paid quarantine leave to fire fighters, peace officers and emergency medical technicians who may have been exposed to a communicable disease (e.g., COVID-19) while on duty.

While on quarantine leave, all employment benefits and compensation — including leave accrual, pension benefits, and health-plan benefits — must continue. Additionally, the worker must be reimbursed for reasonable costs related to the quarantine, including lodging, medical and transportation.

In addition, employers are prohibited from reducing sick, vacation, holiday or other paid leave balances in connection to paid quarantine leave.

The legislation became effective on the date of signing (June 16, 2021).

For a copy of HB 2073, click on the link provided below.

https://capitol.texas.gov/BillLookup/Text.aspx?LegSess=87R&Bill=HB2073

Proposed Rules on Washington State Paid Family and Medical Leave Program Released

It was previously reported that on July 5, 2017, Washington State Governor Jay Inslee signed into law Substitute Senate Bill 5975 (S5975), which created the Family and Medical Leave Insurance Program effective January 1, 2020.

The Paid Family and Medical Leave (PFML) Program will provide everyone in the workforce with up to 12 weeks of paid medical leave, and up to 12 weeks paid time off to care for a new child or an ailing family member. That leave is capped at 16 weeks if the employee needs both types of time off in a one-year period. Women who experience pregnancy complications may receive an additional two weeks of leave.

The Washington PFML Program has released proposed rules on **proration** and **backdating**.

Proposed rules would prorate leave for a partial week based on the employee's typical workweek hours multiplied by the number of days approved for leave, divided by seven. Hours taken are subtracted from the employee's typical workweek hours and is the number of PFML claimed for the week. This amount is then used to determine the percentage used to calculate the employee's benefit payment for the week.

Proposed rules on backdating clarify that backdating an application or weekly claim for benefits is permitted for "good cause," meaning factors "beyond the employee's control."

For more information on the Washington Paid Family and Medical Leave Program, click on the following link.

https://paidleave.wa.gov/

https://paidleave.wa.gov/app/uploads/2021/06/WAC-192-620-035-Proration-6-8-21.pdf

https://paidleave.wa.gov/app/uploads/2021/06/WAC-192-610-040-backdating-6-8-21.pdf

Chicago, Illinois, Amends Paid Sick Leave Ordinance

Effective August 1, 2021, Ordinance O2021-2182 (the "Ordinance"), expands employees' ability to take paid sick leave in the City of Chicago. Following enactment of the Ordinance on June 25, 2021, by the Chicago City Council, the covered reasons for use of Chicago paid sick leave are:

(1) The employee is ill or injured, or for the purpose of receiving professional care, including preventive care, diagnosis, or treatment for medical, mental or behavioral issues, including substance abuse disorders;

(2) A covered family member is ill or injured, or ordered to quarantine, or to care for a family member receiving professional care, including preventive care, diagnosis or treatment, for medical, mental or behavioral issues, including substance abuse disorders;

(3) The employee or a covered family member is the victim of domestic violence or a sex offense (stalking, aggravated stalking, c yber stalking)

(4) The employee's place of business is closed by order of a public official due to a public health emergency;

(5) The employee needs to care for a family member whose school, class or place of care has been closed;

(6) An employee obeys an order issued by the mayor, the governor of Illinois, the Chicago Department of Public Health, or a treating health-care provider, requiring the employee to stay at home to minimize the transmission of a communicable disease, to remain at home while experiencing symptoms or sick with a communicable disease, to obey a quarantine order issued to the employee, or to obey an isolation order issued to the employee; or

(7) Reasons that would provide eligibility for leave under the Federal Family and Medical Leave Act

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

Ordinance No. O2021-2182

City of Los Angeles, California, Revises and Issues New Orders for Paid Sick Leave Related to COVID-19

It was previously reported that the City of Los Angeles Mayor Eric Garcetti issued a Public Order to be effective April 10, 2020, providing supplemental sick leave (SPSL) to workers affected by COVID-19. For a full summary of the Public Order, see the **April 2020 issue of ADP's *Eye on Washington*: State and Local Update**.

On June 24, 2021, City of Los Angeles Mayor Eric Garcetti issued a revised SPSL order providing that: (i) employees can use Los Angeles SPSL to cover time off to receive and recover from a COVID-19 vaccine — including time travelling to and from an appointment, and (ii) while employers continue to be prohibited from requiring a doctor's note or other documentation to substantiate SPSL use, there is an exception permitting employers to verify an employee's receipt of a COVID-19 vaccine.

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

https://www.lamayor.org/sites/g/files/wph1781/files/page/file/20210624%20COVID-19%20Supplemental%20Paid%20Sick%20Leave%20Public%20Order%20Revised%20%281%29.pdf

New Vaccine Paid Sick Leave Due to COVID-19 Order

The City of Los Angeles also enacted a New Vaccine Paid Sick Leave Due to COVID-19 Order (Vaccine PSL), effective retroactive to January 1, 2021. The order requires all employers to provide employees with paid time off, in addition to any other paid sick leave available, to receive a COVID-19 vaccine.

The new order requires all employers to provide covered employees with Vaccine PSL. Vaccine PSL includes both time to receive a COVID-19 vaccine as well as time for an employee to travel to and from the appointment and time for an employee to recover from any side effects from the vaccination that may prevent the employee from being able to work or telework.

Retroactivity: The Vaccine PSL is retroactive to January 1, 2021. Employees who, on or after January 1, 2021, took what would have been qualifying leave had the Vaccine PSL been in effect and who were paid less than what the Vaccine PSL requires can, on or after June 24, 2021, request to receive retroactive payment. Employers must make the payment on or before the payday for the next full pay period after the request. If employers required employees to use leave other than California SPSL or Los Angeles SPSL, an employee can request that the paid leave be reclassified as Vaccine PSL. These requests are not required to be in writing.

Pay Statements: Any reclassification, restoration, or adjustment of other leave previously taken, as well as the remaining hours of Vaccine PSL, must be reflected on the employee's paystub on or before the payday for the next full pay period after the employee's request. There is an exception to this requirement if the leave the employee used qualifies under the Vaccine PSL offset provision.

Covered Employers & Employees: The Vaccine PSL differs from the SPSL because it applies to all private employers. The definition of "employee" is largely the same regarding both requirements — an individual who performs any work within the geographic boundaries of Los Angeles for an employer if the employee has been employed with the same employer for 60 days. One difference is that the Vaccine PSL contains a potential exemption for unionized workforces if there was a collective bargaining agreement (CBA) in effect on June 24, 2021, that provided for paid sick leave for COVID-19 vaccination. CBAs in the future can only waive this requirement if the waiver is explicit in the CBA.

Amount of Leave:

For full-time employees: Full-time employees are (i) those who the employer considers full-time and (ii) those who worked or were scheduled to work, on average, at least 40 hours per week in the two weeks preceding the need for Vaccine PSL. Full-time employees are entitled to a maximum of four hours of Vaccine PSL to obtain each vaccine injection, and a maximum of eight hours of Vaccine PSL to recover from any vaccination-related side effects that prevent the employee from being able to work or telework.

For non-full-time employees: The amount of Vaccine PSL is prorated based on the average number of hours worked in the 60 days preceding vaccination or recovery. The order requiring Vaccine PSL provided the following example:

Employee worked 240 hours in the last 60 days (including non-working days). Dividing 240 by 60 creates a four-hour daily average. Multiplying the daily average by seven produces a 28-hour weekly average. The employee is eligible for 2.8 hours (2 hours 48 minutes) per injection and 5.6 hours (5 hours 36 minutes) for recovery.

Employers with 26 or more employees are only required to provide Vaccine PSL to employees who have exhausted all available California SPSL or Los Angeles SPSL.

Offset: An employer can count certain supplemental benefits hours toward the required amount of Vaccine PSL hours if: (i) the employer already provides another supplemental benefit that is in addition to any other required leave; (II) the supplemental benefit is for leave taken on or after January 1, 2021; (iii) the supplemental benefit is payable for the same Vaccine PSL reasons; and (iv) the supplemental benefit is paid in an amount that equals or exceeds the Vaccine PSL requirement.

Using Leave: An employer must allow the employee to use Vaccine PSL, based on a verbal or written request. Employers can ask employees to provide written verification of their receipt of a vaccine.

Rate of Pay:

For nonexempt employees, employers must pay Vaccine PSL at the highest of the following rates: (i) the employee's normal rate of pay for the workweek the employee takes leave; (ii) Los Angeles minimum wage; or (iii) the employee's average hourly pay for the preceding 60 days (excluding overtime).

For exempt employees, employers can calculate payment in the same manner as they calculate wages for other forms of paid leave. The order caps pay at $511 per day (or $255.50 for each 4-hour period) or $1,022 in the aggregate, unless the federal government establishes a higher pay amount.

Enforcement: Employees can file a civil lawsuit in state court and, if they prevail, a court may award them reinstatement, back pay and Vaccine PSL unlawfully withheld, other legal or equitable relief, and reasonable attorneys' fees and costs.

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

https://www.lamayor.org/sites/g/files/wph1781/files/page/file/20210624%20COVID-19%20Vaccine%20Paid%20Sick%20Leave%20Public%20Order%20%281%29.pdf

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Payroll

California Supreme Court Case: Calculation of Meal, Rest and Recovery Break Premiums

Ferra v. Loews Hollywood Hotel, LLC

On July 15, 2021, the California Supreme Court reversed a California Court of Appeals decision in *Ferra v. Loews Hollywood Hotel, LLC*.

The California Supreme Court, in a unanimous decision, found that meal, rest and recovery break premium payments must be paid using an employee's "regular rate of pay." The "regular rate of pay," which is also used to calculate overtime for a workweek, includes a number of different types of compensation, such as hourly earnings, commissions, nondiscretionary bonuses and shift differentials.

Consequently, employers paying meal, rest and recovery period premiums must pay the premium based on the employee's "regular rate of pay" rather than the employee's base hourly rate.

This Supreme Court decision is effective retroactively.

Background

California Labor Code Section 226.7(c) states, "If an employer fails to provide an employee a meal or rest or recovery period in accordance with state law … the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided."

2019 California Court of Appeals Decision

In *Ferra v. Loews Hollywood Hotel, LLC*, a California Court of Appeals was asked to interpret the meaning of the phrase "regular rate of compensation" in California Labor Code Section 226.7(c). Specifically, whether that phrase means the same as the "regular rate of pay" that California Labor Code 510(a) required to be used to calculate overtime pay, or does it mean that employers can pay just the base hourly rate to their nonexempt employees when paying meal and rest period premiums?

On October 9, 2019, the Court of Appeals determined that paying an employee at their base hourly rate for meal, rest and recovery break premiums complied with the requirements of Labor Code Section 226.7(c).

Impact of California Supreme Court Decision

The California Supreme Court decision on July 15, 2021 is binding on all employers with employees in California, with very limited exceptions (for example, employees subject to certain Industrial Wage Orders). Employers will need to review how they are currently calculating meal, rest and recovery break premiums and may need to modify those calculations to align with this decision.

ADP® is reviewing this decision and is evaluating any impact that it may have on our systems. An update will be provided on any actions clients with California employees may need to take.

A copy of the opinion is available at: **https://www.courts.ca.gov/opinions/documents/S259172.PDF**

Supreme Court of Colorado Rules Policies Requiring Forfeiture of Earned Vacation Unlawful

On June 14, 2021, the Colorado Supreme Court issued a decision in Nieto v. Clark's Market, related to the forfeiture of earned vacation pay. The Colorado Supreme Court agreed with Colorado's Department of Labor and reversed the lower court's decision to hold that an employee's earned vacation time cannot be forfeited.

The decision noted that Colorado employers are not required to provide employees paid vacation time, but employers that do provide paid vacation time must treat the vacation time as compensation. Once the earned vacation is considered a wage under Colorado law, it cannot be forfeited. As a result, the employer's policy that vacation would not be paid at separation to employees who were terminated or did not provide two weeks' notice was unenforceable, and employees were entitled to payment of accrued vacation time at separation.

Indiana Announces Telework Provision to Expire June 30, 2021

In April of 2020, the Indiana Department of Revenue (DOR) updated its COVID-19 frequently asked questions (FAQs) to clarify that, due to new remote work requirements in response to the COVID-19 emergency, DOR will not use an employee's relocation — that is the direct result of temporary remote work (teleworking or telecommuting) requirements — as the basis for establishing Indiana nexus.

The DOR has announced that this temporary accommodation for Indiana residents temporarily working from home due to COVID-19 will expire on June 30, 2021.

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

https://www.in.gov/dor/coronavirus-information/

Louisiana Legislation Exempts Mobile Workers From Income Tax Withholding

Under legislation recently enacted in Louisiana, certain mobile workers are exempt from individual income tax and their employers from withholding tax. Under the legislation, specifically Senate Bill 157 (SB 157), effective June 16, 2021, wages paid to a nonresident individual are exempt if:

(1) the compensation is paid for employment duties performed by an individual in Louisiana for 25 or fewer days in the calendar year;

(2) the individual performed employment duties in more than one state during the calendar year;

(3) the wages are not paid for employment duties performed by the individual in the individual's capacity as a professional athlete, staff member of a professional athletic team, professional entertainer, public figure, or qualified production employee; and

(4) the individual's income is exempt from taxation by this state under the U.S. Constitution or federal statute, or the nonresident individual's state of residence either provides a substantially similar exemption or does not impose an individual income tax. The exemption will not apply if the nonresident individual has any other income derived from sources within Louisiana for the taxable year.

Beginning January 1, 2022, an employer is not required to withhold on wages that are paid to a nonresident employee if, during the calendar year, the number of days an employee spends performing employment duties for the employer and any entity related to the employer in Louisiana exceeds 25 days. If the employee works in-state for more than 25 days in a year, they are subject to state taxation on all days of earnings in the state, including the first 25 days in which the employee performed employment duties in Louisiana.

Wages paid to a nonresident individual that are exempt pursuant to the mobile workforce provisions will not be considered an item of gross income to be designated as allocable income.

For a copy of SB 157, click on the link provided below.

https://www.legis.la.gov/legis/ViewDocument.aspx?d=1235721

Charging of Direct Deposit Fees Disallowed in Maine

On June 10, 2021, Governor Janet Mills signed into law Senate Bill 367 (SB 367), which bars employers from imposing a fee on employees for the direct depositing of their wages. This covers any transaction by which wages are transferred by electronic means directly into an employee's account in an accredited financial institution designated by the employee.

The law went into effect on June 29, 2021.

SB 367, which enacts 26 MRSA §621-A, Sub-§7 states as follows:

> 7. Direct deposit of wages. An employer may not charge a fee for the payment of wages by means of direct deposit. For purposes of this section, "direct deposit" means the transfer of wages through electronic funds transfer directly into an employee's account in an accredited financial institution designated by the employee.

For a copy of SB 367, click on the link provided below.

http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=SP0367&item=3&snum=130

Maine Telework Tax Relief Extended Through 2021

We previously reported that the Maine Revenue Services (MRS) in its October 2020 Tax Alert had clarified that it was offering tax relief to residents of Maine who typically work from locations outside of the state, but are now teleworking from their Maine residences due to the coronavirus (COVID-19) pandemic.

Subsequently the relief was extended through June 30, 2021, and now has been extended again for services performed on or before December 31, 2021.

Section D-4 Extension

Governor Mills signed into law House Bill 891, which contains a provision in Section D-4 extending a credit for Maine resident employees working remotely **during tax year 2021**. For the period of 2021 only, Maine residents who were formerly working from a location outside of the state prior to the declaration of emergency in 2019 due to the coronavirus (COVID-19) pandemic may claim a credit for taxes withheld and paid to another jurisdiction against their Maine income tax withholding liability.

Section D-4 states as follows:

> Sec. D-4. Credit for income tax paid to other taxing jurisdictions. For tax years beginning in 2021, when determining whether compensation for personal services performed as an employee working remotely from a location in this State is derived from sources in another jurisdiction for purposes of the credit for income tax paid to other taxing jurisdictions, allowed pursuant to the Maine Revised Statutes, Title 36, Section 5217-A, notwithstanding Section 5142, the compensation is sourced to that jurisdiction if:
>
> 1. The employee was engaged in performing services from a location outside of this State immediately prior to a state of emergency declared by the Governor due to the pandemic related to coronavirus disease 2019, referred to in this section as COVID-19, or declared by the jurisdiction where the employee was engaged in performing those services;
> 2. The employee commenced working remotely from this State, as to those services or proportion of services referred to in Subsection 1, due to the COVID-19 pandemic and during either this State's or the other jurisdiction's state of emergency related to the COVID-19 pandemic;
> 3. The services were performed prior to January 1, 2022, and during either this State's or the other jurisdiction's state of emergency;
> 4. The compensation is sourced by that jurisdiction as derived from or connected with sources in that jurisdiction under the law of that jurisdiction; and
> 5. The employee does not qualify for an income tax credit in that jurisdiction for Maine income taxes paid as a result of the compensation.
>
> The State Tax Assessor may adopt routine technical rules as necessary to implement this section.

For a copy of the legislation, click on the link below and scroll to Section D-4.

http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=HP0891&item=3&snum=130

Massachusetts COVID-19 Telecommuting Rules Expire September 13, 2021

The Massachusetts Department of Revenue (DOR) has announced that the telecommuting rules that were put in place to minimize disruption for employers and employees during the Massachusetts COVID-19 state of emergency, **will cease to be in effect as of September 13, 2021**. The announcement stated in part as follows:

> For Massachusetts personal income tax purposes, Massachusetts residents are generally taxed on all income from sources inside or outside of Massachusetts. Nonresidents are only taxed on items of gross income from sources within the Commonwealth,

including income derived from or connected with any trade or business, including any employment, in Massachusetts. Employers must withhold Massachusetts tax on any wage income that is subject to the Massachusetts personal income tax whether the employee is a resident or a nonresident of Massachusetts.

There are special rules for wages or other compensation paid to employees who are working remotely (working from home or a location other than their usual work location) due to the COVID-19 pandemic. The special income sourcing rules adopted for telecommuting employees are intended to minimize disruption for employers and employees during the Massachusetts COVID-19 state of emergency. **These rules are effective for the period beginning March 10, 2020 and ending September 13, 2021**.

For a copy of the announcement and additional information on the temporary rules, click on the link provided below.

https://www.mass.gov/info-details/tax-filing-season-frequently-asked-questions#employees-working-remotely-due-to-the-covid-19-pandemic

Background

It was previously announced that Massachusetts released Technical Information Release ("TIR") 20-5 which described the Massachusetts personal income tax, withholding, and corporate excise implications of an employee working remotely in a state other than the state where the employee previously worked, solely due to the 2019 novel Coronavirus pandemic. It also explains the application of the Massachusetts Paid Family and Medical Leave program, where an employee is working remotely in a different state. TIR 20-5 is designed to minimize disruption for employers and employees during the state of emergency and are effective for the period beginning March 10, 2020 and ending on the date on which the Governor gives notice that the state of emergency declared in Executive Order 591 is no longer in effect.

Highlights of TIR 20-5 are found below:

Personal Income and Withholding Tax

- For the duration of the Massachusetts COVID-19 state of emergency, all compensation received for personal services performed by a nonresident who, immediately prior to the Massachusetts COVID-19 state of emergency, was an employee engaged in performing such services in Massachusetts, and who, during such emergency, is performing such services from a location outside Massachusetts due solely to the Massachusetts COVID-19 state of emergency, will continue to be treated as Massachusetts source income subject to personal income tax under M.G.L. c. 62 and personal income tax withholding.
- A resident employee suddenly working in Massachusetts due to a state's COVID-19 state of emergency who continues to incur an income tax liability in that other state because of that state's sourcing rule will be eligible for a credit for taxes paid to that other state under G.L. c. 62, § 6(a). In addition, the employer of such employee is not obligated to withhold Massachusetts income tax for the employee to the extent that the employer remains required to withhold income tax with respect to the employee in such other state.

Sales and Use Tax Nexus

- For the duration of the COVID-19 state of emergency in Massachusetts, the presence of one or more employees that previously worked in another state but, solely due to the COVID-19 pandemic, are working remotely from Massachusetts, will not in and of itself trigger nexus for sales and use tax collection purposes.

Corporate Excise

- For the duration of the Massachusetts COVID-19 state of emergency, the Department (DOR) will not consider the presence of one or more employees working remotely from Massachusetts solely due to the COVID-19 pandemic to be sufficient in and of itself to establish corporate nexus. In addition, such presence will not, of itself, cause a corporation to lose the protections of Public Law 86-272.

Paid Family and Medical Leave (PFML)

Under the Massachusetts PFML program, businesses are required to collect and remit PFML contributions on behalf of individuals who perform services in Massachusetts.

M.G.L. c. 175M, § 1. For the duration of the Massachusetts COVID-19 state of emergency, an individual who previously performed services outside of Massachusetts and was not subject to PFML will not become subject to PFML solely because the individual is temporarily working from home in Massachusetts due to the emergency as declared by such other state. Likewise, an individual who previously performed services in Massachusetts but is temporarily working from home outside of Massachusetts solely due to the Massachusetts COVID-19 state of emergency continues to be subject to the PFML rules.

Nevada Enacts Law Addressing Lump Sum Payments That May Be Subject to Child Support

Nevada Governor Steve Sisolak has signed into law Assembly Bill 37 (AB 37) addressing "lump sum payments" made to employees or other income recipients (obligors) who are subject to a child support income withholding order.

AB 37 defines "lump sum payment" to mean:

- Commission;
- Discretionary or nondiscretionary bonus;
- Productivity or performance bonus;
- Profit-sharing;
- A referral or sign-on bonus;
- An incentive payment for moving or relocation;
- An attendance award;
- A safety award;
- A cash payment award;
- Termination pay;
- Severance pay; and
- Any other one-time, unscheduled or irregular payment of compensation.

Some of the highlights of AB 37, effective October 1, 2021, are as follows:

- Provides that income payers with obligors who are subject to a notice to withhold income of an obligor to inform the enforcing authority before making a lump sum payment of $150 or more to an obligor.

- The income payer (employer) must inform the enforcing authority at least 10 days before it intends to release the lump sum payment to the obligor.

- The enforcing authority, within 10 days after receiving such information, must provide the income payer with a written notice from the Division of Welfare and Supportive Services of the Department of Health and Human Services specifying the amount of the lump sum payment that the income payer must withhold and deliver to the enforcing authority.

- The income payer is prohibited from releasing the lump sum payment to the obligor before: (1) the date that the income payer intends to release the lump sum payment; or (2) the 11th day after providing the information regarding the lump sum payment or the date that the income payer receives the written notice, whichever is earlier.

For a copy of AB 37, click on the link provided below.

https://www.leg.state.nv.us/App/NELIS/REL/81st2021/Bill/7288/Text

Pennsylvania Telework Guidance for COVID-19 Ends June 30, 2021

On November 9, 2020, the Pennsylvania Department of Revenue (DOR) had issued guidance relating to telecommuting and related tax implications. This guidance stipulated as follows:

If an employee is working from home temporarily due to the COVID-19 pandemic, the DOR does not consider that as a change to the sourcing of the employee's compensation. For nonresidents who were working in Pennsylvania before the pandemic, their compensation would remain Pennsylvania-sourced income for all tax purposes, including PA-40 reporting, employer withholding and 3-factor business income apportionment purposes for S corporations, partnerships and individuals.

Conversely, for Pennsylvania residents who were working out-of-state before the pandemic, their compensation would remain sourced to the other state and they would still be able to claim a resident credit for tax paid to the other state on the compensation. For a Pennsylvania employer with a nonresident employee temporarily working from home due to the COVID-19 pandemic in a state that does not have a reciprocity agreement with Pennsylvania, the DOR advises that the employee's compensation remains Pennsylvania sourced, and the employer is required to withhold the compensation.

This guidance will be in effect **until the earlier of June 30, 2021, or 90 days after the Proclamation of Disaster Emergency in Pennsylvania is lifted ("end date").** As of that end date, the guidance is rescinded, and all prior tax rules are applicable.

The DOR announced that the guidance ended on June 30, 2021.

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

https://www.revenue.pa.gov/COVID19/Telework/Pages/default.aspx

Guidance for Remote Workers Updated for Vermont

On June 22, 2021, the Vermont Department of Taxes updated its guidance for remote workers as follows:

Relocated and Remote Workers: Guidance for Employers and Employees

During the pandemic, many people have relocated to Vermont to live and to work remotely. Vermont taxable income includes any wages earned while living in and performing work in Vermont.

For Employers

Although all income earned in Vermont is considered Vermont income, employers are not required to begin withholding Vermont Income Tax until an employee has been working from a Vermont location for thirty days. This applies to your employees working from a home, a rental property, a co-work space, or any other location within Vermont. The Department recommends that employers conduct a review of their employees' work locations to ensure that income tax is withheld and remitted in the correct state where the tax will be due.

What if my business is located outside of Vermont but my employee lives in Vermont?

If the work is performed in Vermont, Vermont Income Tax must be withheld regardless of whether the employer is located inside or outside of Vermont.

Do I need to register my business in Vermont to withhold taxes for my employee?

You must **register for an employer withholding account**. When you register for a Vermont business tax account, be sure to answer the question about hiring employees. If you answer "Yes," then that will prompt the Department to open an employer withholding account for your business.

For Employees

If you live and work remotely in Vermont, then income earned during the entire period of time that you live in Vermont is subject to Vermont income tax. This is true even if you claim another state as your domicile, or even if you perform the remote work for a company that is not located in Vermont. We recommend that you speak with your employer(s) so that the correct amount of Vermont income tax can be withheld.

To access the guidance, click on the link provided below.

https://tax.vermont.gov/coronavirus/working-remotely

Virginia Releases New Overtime Pay Law FAQs

It was previously announced that on March 30, 2021, Virginia Governor Ralph Northam signed into law House Bill 2063 (HB 2063) titled the Virginia Overtime Wage Act (VOWA). Prior to enactment of this bill, Virginia did not have its own overtime law and utilized the federal requirements under the Fair Labor Standards Act (FLSA).

While VOWA, which is effective July 1, 2021, is similar to FLSA in many ways, there are significant differences. Departures from the FLSA include how the regular rate of pay is calculated, a longer statute of limitations to bring potential claims, and the possible damages available.

Like the FLSA, Virginia's new overtime law generally requires payment of time and a half at an employee's regular rate for hours worked in excess of 40 hours in a workweek. Highlights of the variances between the FLSA and VOWA are as follows:

Rate Calculations

Under the FLSA, an employee's regular rate of pay is the sum of all remuneration (e.g., hourly wages, bonus, shift differentials) for employment (barring certain statutory exclusions) divided by total hours worked in a workweek.

The new state law employs a different calculation that depends on whether the employee is paid on an hourly or a salary basis.

Hourly Employees Calculation

The regular rate of pay is the hourly rate plus any other non-overtime wages paid or allocated for the workweek — excluding the same items that would be excluded from the FLSA calculation — and then divided by the total number of hours worked in the workweek. For employees who are salaried or paid on some other regular basis, the regular rate of pay is one-fortieth (0.025) of all wages paid for the workweek.

"Salaried" Employees Calculation

NOTE: The definition under VOWA excludes "any person who is exempt from the federal overtime wage pursuant to 29 U.S.C. Section 213(a) which includes "any employee employed in a bona fide executive, administrative, or professional capacity." Consequently, "salaried" employee under VOWA equates to a salaried nonexempt employees, that is employees that are salaried that are overtime-eligible.

Significantly, the new standard for salaried and other regularly paid employees appears to preclude employers from paying traditionally nonexempt employees a fixed salary to cover wages for hours in excess of 40 in a workweek (including on a fluctuating workweek basis), requiring instead an hourly rate calculation for overtime pay for even these employees in most circumstances.

The VOWA states as follows: "For employees paid on a salary or other regular basis, the regular rate is one-fortieth of all wages paid for that workweek."

Frequently Asked Questions

The Virginia Department of Labor and Industry (DOLI) has now released Frequently Asked Questions (FAQs) regarding the overtime law effective July 1, 2021. A sampling of the FAQs are as follows:

Do Vacation or Sick Leave Hours Count Toward the 40-Hour Threshold?

No. The Overtime law only applies to hours actually worked over 40.

How Is an Employer Required to Calculate the Overtime Rate of Pay for Hourly Employees?

The rate of pay is one-and-one-half times their regular hourly rate. For instance, if the normal hourly rate was $10 per hour, any hours worked over 40 hours must be paid at a rate of $15 per hour.

Are Salaried Employees Exempt From the Overtime Requirement?

No, unless they fall under the exemptions for executives, officers or administrators. Simply being paid by salary rather than hourly does not exempt an employee from being eligible for overtime

How Is the Overtime Rate Calculated for Salaried Employees?

A salaried employee's regular rate is defined as one-fortieth of their salary. For example, if a salary employee was paid $800 per week, their "regular" rate of pay would be considered $20 an hour. Therefore, any overtime they work must be paid out at $30 an hour (one and a half times their hourly rate).

To access all the FAQs, click on the link provided below.

https://www.doli.virginia.gov/labor-law/faqs-virginia-overtime-law/

For a copy of HB 2063, click on the link below.

https://lis.virginia.gov/cgi-bin/legp604.exe?211+sum+HB2063

August 1, 2021, Minimum Wage Increases Reminder

The following jurisdiction has a minimum wage increase taking effect as of August 1, 2021. It is important to note that rates that may be paid in certain cases to individuals under a certain age (e.g. youth wage), or to employees during a "training" period are not reflected.

Jurisdiction	August 1, 2021, Minimum Wage Per Hour
Connecticut	$13.00 (currently $12.00). The minimum cash wage for bartenders will remain at $8.23 per hour. All other tipped employees must receive at least $6.38 per hour in cash wages.

Mini-Warn Act Established in Nevada

Nevada Governor Steve Sisolak has signed into law Senate Bill 386 (SB 386), which creates a state Worker Adjustment and Retraining Notification (WARN) Act. SB 386 requires employers that discharged, laid off, or furloughed employees to offer job positions to those employees under certain conditions. Under current law, these workers are not required to be recalled to their previous positions of employment.

Under SB 386 "employer" is defined as follows:

> "Employer" means any business entity, including an officer or executive of a corporation, who directly or indirectly through an agent or any other business entity, including through the services of a temporary employment service, staffing agency or similar entity, owns or operates a covered enterprise within this State and employs or exercises control over the wages, hours or working conditions of an employee.

Effective July 1, 2021, an employer is required to provide written notice of a layoff, in person or mailed to the last known address of the employee, at the time of layoff or no later than July 21, 2021, if the layoff took place before July 1, 2021.

The notice must include the effective date of the layoff and a summary of the right to reemployment. Employers are required to retain records for no less than two years after an employee is laid off, that contain: the legal name of the employee, the employee's job classification, date of hire, the employee's last known address, last known email address, last known telephone number, a copy of the written notice of layoff, and records of each employment offer including the date and time of the offer.

Employers are required to offer a laid-off employee each job position that becomes available for which the employee is qualified.

Employees must be given 24 hours after the receipt of offer to accept or decline the offer.

The provisions of SB 386 expire on the later of the date the Governor terminates the emergency described in the Declaration of Emergency for COVID-19 issued on March 12, 2020 or July 1, 2023.

For a copy of SB 386, click on the link provided below:

https://www.leg.state.nv.us/App/NELIS/REL/81st2021/Bill/8080/Text

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Oregon Employers Are Prohibited From Requiring a Driver's License for Form I-9 Purposes

On June 11, 2021, Oregon Governor Kate Brown signed into law Senate Bill 458 (SB 548) which stipulates that — effective January 1, 2022 — employers are prohibited from requiring an employee or prospective employee from possessing or presenting a valid driver's license for employment or condition of employment.

Under SB 548, employers are required to accept other forms of identification that are deemed acceptable documents for federal forms such as Form I-9 (Employment Eligibility Verification). These documents are listed on the link below.

https://www.uscis.gov/sites/default/files/document/forms/i-9-paper-version.pdf

For a copy of SB 548, click on the link provided below.

However, employers are permitted to accept a driver's license as identification if voluntarily offered by an employee or prospective employee [L. 2021, S569].

https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/SB569/Enrolled

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Fast-Food Workers in New York City Impacted by New Laws

Effective July 1, 2021, two new laws, specifically Int. No. 1415-A and Int. No. 1396, will have an impact on fast-food employees, specifically in the areas of discharge, scheduling and hiring.

The new laws make changes that expand New York City's Fair Workweek Law to provide "just cause" protections for fast-food workers. The new laws provide that a fast-food employer can't terminate an employee (or significantly reduce an employee's hours) strictly for "just cause." There must also be a "bona fide economic reason," which is defined to mean "the full or partial closing

of operations or technological or organizational changes to the business in response to the reduction in volume of production, sales, or profit." The employer's decision to fire an employee or significantly reduce an employee's hours must be "supported by a fast-food employer's business records showing that the closing or technological or reorganizational changes are in response to a reduction in volume of production, sales, or profit." Any terminations that meet the qualifications must be carried out in reverse order of seniority, and where employees have been fired or have had their hours restricted, the employer may not hire new employees until it has made reasonable efforts to reinstate or restore hours to any of the affected employees.

Furthermore, after January 1, 2022, an employee may file an arbitration demand, in lieu of a lawsuit, to address the wrongful discharge or reduction in hours. NYC's predictive scheduling law is also expanding, with employees with a regular schedule that is a "predictable, regular set of recurring weekly shifts the employee will work each week," and provide a written copy of the schedule before the employee's first shift.

For a copy of the new laws, click on the links provided below.

Int. No. 1415-A

https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3860317&GUID=F97F44AA-CCC8-470B-998E-C3C35A5C0717&Options=&Search=

Int. No. 1396

https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3860321&GUID=76C5427B-7B33-4E55-AA73-37345B8ABEEF&Options=&Search=

ADP Compliance Resources

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

ADP is committed to assisting businesses with increased compliance requirements resulting from rapidly evolving legislation. Our goal is to help minimize your administrative burden across the entire spectrum of employment-related payroll, tax, HR and benefits, so that you can focus on running your business. This information is provided as a courtesy to assist in your understanding of the impact of certain regulatory requirements and should not be construed as tax or legal advice. Such information is by nature subject to revision and may not be the most current information available. ADP encourages readers to consult with appropriate legal and/or tax advisors. Please be advised that calls to and from ADP may be monitored or recorded.

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