



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

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Leave

New Hampshire Enacts Voluntary Paid Leave Plan

Governor Chris Sununu signed into law the Granite State Paid Family Leave Plan (Plan), as part of the New Hampshire state budget. The Plan provides 60 percent of wage replacement for up to six weeks of work per year. The wage replacement is capped at 60 percent of the Social Security Wage Base contribution amount. The Plan is voluntary, meaning both individuals and employers can choose to opt in. However, the 10,000 employees of the state will receive this benefit automatically. The law requires that the insurance carrier or carriers that are awarded the state employee insurance contract allow all public employers, as well as private employers with more than 50 employees, to enroll in the Plan.

Coverage under the Plan must be provided by January 1, 2023. Employees who elect to enroll may utilize the paid leave for the following reasons:

- The birth of a child of the employee, within the past 12 months.
- The placement of a child with the employee for adoption or fostering within the past 12 months.
- The serious health condition of a family member.
- Any qualifying exigency arising from foreign deployment with the Armed Forces, or to care for a service member with a serious injury or illness as permitted under the federal Family and Medical Leave Act (FMLA).
- A personal serious health condition that is independent of employment, if the employer does not offer Short Term Disability insurance.

Employers that opt-in to the program must participate in payroll deductions and provide heightened employment protections, such as continuation of health insurance coverage during leave, as well as protection from discrimination and retaliation from utilizing the leave.

Oregon Paid Family and Medical Leave Effective Date Delayed

It was previously reported that on August 9, 2019, Governor Kate Brown of Oregon signed into law House Bill 2005 (HB 2005). It provides workers who make more than \$1,000 a year with 12 weeks of paid leave to care for their own illness or a sick family member; for baby bonding; or to deal with issues related to domestic violence, sexual assault, stalking or harassment.

Under HB 2005, benefits were to be available to Oregon workers beginning January 1, 2023, and contributions to fund the paid leave were to begin on January 1, 2022.

House Bill 3398 Delays Effective Dates

On July 27, 2021, Governor Brown signed into law House Bill 3398 (HB 3398) delaying the implementation of the Oregon paid and family leave law. HB 3398 delays the date contributions are to begin to fund the program by one year, specifically January 1, 2023. The date that employees may collect program benefits is delayed by a little over eight months, with that date now being moved to September 3, 2023.

For a copy of HB 3398, click on the following link.

<https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/HB3398/Enrolled>

Oregon Temporarily Expands Sick Leave Law

On July 22, 2021, the Oregon Bureau of Labor and Industries (BOLI) issued a temporary rule that expands the reasons employees can use leave under Oregon's paid sick and safe leave law during a public health emergency. The temporary rule is effective immediately and will remain in effect through January 17, 2022.

Background:

In July of 2015, Oregon enacted a sick leave law that, as of January 1, 2016, required all private employers and covered public employers with at least 10 employees in the state to provide up to 40 hours of paid sick time per year to eligible employees. Employers with fewer than 10 employees must provide unpaid sick time. Employers that employ at least 10 employees working anywhere in the state must implement a sick-time policy that allows an employee to earn and use up to 40 hours of paid sick time per year. Employee's paid sick time must accrue at the rate of at least one hour of paid sick time for every 30 hours the employee works or one-and-one-third hours for every 40 hours the employee works. Employers with fewer than 10 employees working anywhere in the state must implement a sick-time policy that allows an employee to earn and use up to 40 hours of unpaid sick time per year. Unpaid sick time must accrue at the rate of at least one hour of unpaid sick time for every 30 hours the employee works or one-and-one-third hours for every 40 hours the employee works.

Prior to the temporary rule, employees could use leave during a public health emergency for the following reasons:

- In the event of a public health emergency, including but not limited to:
 - o Closure of your place of business, or the school or place of care of your child, by order of a public official due to a public health emergency.
 - o A determination by a lawful public health authority or a health-care provider that your presence or that of your family member in the community would jeopardize the health of others.
 - o Your exclusion from the workplace under any law or rule that requires your employer to exclude you from the workplace for health reasons.

The temporary rule stipulates that eligible employees may take covered leave for absences connected to:

- An emergency evacuation order of level 2 (BE SET to Evacuate) or level 3 (GO Evacuate Now) issued by a public official with the authority to do so, if the affected area subject to the order includes either the location of the employer's place of business or the employee's home address.
- A determination by a public official with the authority to do so that the air quality index or heat index are at a level where continued exposure to such levels would jeopardize the health of the employee.

For a copy of the temporary rule, which includes all of the reasons an employee may take sick leave, click on the link provided below.

<https://www.oregon.gov/boli/about/Documents/BLI 9-2021-Temporary.pdf>

Duluth, Minnesota, Amends Paid Sick Leave Ordinance

It was previously reported that on May 29, 2018, the Duluth City Council passed an Earned Sick and Safe Time (ESST) ordinance (Ordinance No. 10571). This ordinance took effect on January 1, 2020.

On July 19, 2021, Duluth Mayor Emily Larson signed File No. 21-23-0 which expands the reasons that leave may be used under the ESST. The amendments to the ESST as follows are effective August 19, 2021.

- Employees may use leave when they miss work hours when their place of employment is closed for public health reasons. Other reasons employees can use leave include illness, injury, or health condition preventive medical care, and for reasons connected to domestic abuse, sexual assault or stalking.
- If employers maintain an employee handbook, it must include a copy of the company's ESST policy or, if the employer uses a substantially equivalent paid leave benefit such as paid time off to comply with the ordinance, a copy of that paid leave policy.
- Employers must either display or provide the city-created poster to employees or provide a company-created notice that advises employees of their rights under the paid sick leave ordinance. The amendments allow employers to comply with this notice requirement by providing new employees a copy of their ESST or the company policy that is substantially equivalent to the ESST.
- In addition to other legal or equitable relief available, the city will be able to order employers to provide employees with written notice of a violation and the corrective action taken.

For access to File No. 21-23-0, click on the link provided below.

<https://duluth-mn.legistar.com/LegislationDetail.aspx?ID=5007984&GUID=E0346678-9177-4D8C-926C-7C605AD6DA04&Options=ID%7cText%7c&Search=21-023-0>

For more information on the ESST, click on the following link to access the Duluth ESST frequently asked questions.

<https://duluthmn.gov/city-clerk/earned-sick-safe-time/frequently-asked-questions/>

Pittsburgh, Pennsylvania, Enacts New Emergency Paid Sick Leave Ordinance

It was previously reported that, on December 9, 2020, Pittsburgh Mayor Bill Peduto signed Ordinance 626A (626A) granting COVID-19 sick time to certain employees working within the City. This ordinance supplemented the Pittsburgh Paid Sick Days Act (PSDA). The ordinance became effective immediately upon the Mayor's signature and remained in effect through June 17, 2021.

New Emergency Paid Sick Leave Ordinance

On July 29, 2021, Mayor Peduto signed a new Temporary COVID-19 Paid Sick Leave Ordinance, specifically 626B. The provisions of 626B were in effect as of the date of the Mayor's signature and will remain in effect until at least July 29, 2022 (for at least 365 days).

The language of 626B largely follows that of 626A, but there are some significant differences as follows:

- 626B adds a new qualifying reason for leave: the employee's or family member's need to obtain a vaccine or vaccine booster;
- For absences connected to an employee's or family member's isolation when experiencing COVID-19 symptoms, 626B adds "under the guidelines promulgated by the Allegheny County Health Department";
- When referencing COVID-19, 626B includes "or any of its variants,"
- 626B does not contain a one-week grace period to use leave after the public health emergency ends, as did 626A.

Although not specifically stipulated in 626B, it appears that employers must provide a new bank of leave to employees who in 2021 used all available 626A. This is because 626B is a separate ordinance rather than an amendment to or extension of 626A. We will continue to monitor this matter and report if and when this matter is clarified.

Highlights of 626B are as follows:

- Pittsburgh employers with more than 50 employees working in the City must provide paid COVID-19 sick time to their employees for COVID-19 or any of variants-related reasons.
- 626B applies to employees who are (a) working for that employer within Pittsburgh after the effective date of this ordinance, (b) normally work for that employer within the City of Pittsburgh but are currently teleworking from any other location as a result of COVID-19 including its variants, or (c) work for that employer from multiple locations or from mobile locations, provided that 51 percent or more of such employee's time is spent within the City of Pittsburgh.
- The COVID-19 sick-time entitlement is based on whether the employee works 40 or more hours per week or less than 40 hours per week. For employees who work 40 hours or more per week, their sick time entitlement is 80 hours, unless the employer designates a higher limit.
- Employees who work fewer than 40 hours in a week are entitled to sick time in an amount equal to the amount of time the employee is otherwise scheduled to work or works on average in a 14-day period, whichever is greater and unless the employer designates a higher limit. In the case of an employee whose schedule varies from week to week, the employer can use a number equal to the average number of hours that the employee was scheduled over the past 90 days of work, including hours for which the employee took leave of any type.
- The ordinance stipulates that eligible employees may take COVID-19 sick time leave for the following reasons, if they are unable to telework:
 - o Determination by a public official or public health authority, a health-care provider, or an employee's employer that the employee's presence on the job or in the community would jeopardize the health of others because of the employee's exposure to COVID-19 or because the individual is exhibiting symptoms that might jeopardize the health of others, regardless of whether the individual has been diagnosed with COVID-19 or any of its variants.
 - o Care of a family member of the employee due to a determination by a public official or health authority, a health-care provider, or the family member's employer that the presence of the family member on the job or in the community would jeopardize the health of others because of the family member's exposure to COVID-19 or any of its variants. Or a determination by the employer that the employee is a danger to the health of others because they are exhibiting symptoms

that might jeopardize the health of others, regardless of whether a family member has been diagnosed with COVID-19.

- o An employee's need to: (a) self-isolate and care for oneself because the employee is diagnosed with COVID-19; (b) self-isolate and care for oneself because the employee is experiencing symptoms of COVID-19 or any of its variants; or (c) seek or obtain medical diagnosis, care, or treatment if experiencing symptoms of an illness related to COVID-19 or any of its variants.
- o Care of a family member who: (a) is self-isolating due to being diagnosed with COVID-19; (b) is self-isolating due to experiencing symptoms of COVID-19 or any of its variants; or (c) needs medical diagnosis, care, or treatment if experiencing symptoms of an illness related to COVID-19 or any of its variants.
- o An employee's need to obtain a vaccine or vaccine booster for themselves or a family member.

For a copy of 626B, click on the link provided below.

<https://pittsburgh.legistar.com/LegislationDetail.aspx?ID=5036037&GUID=F215435F-126F-45BC-805D-1204CDACD9A6&FullText=1>



Delaware to Increase Minimum Wage

Delaware Senate Bill 15 (SB 15) has been enacted into law. It will raise the current state minimum wage of \$9.25 per hour as follows:

January 1, 2022	\$10.50 per hour
January 1, 2023	\$11.75 per hour
January 1, 2024	\$13.25 per hour
January 1, 2025	\$15.00 per hour

The minimum cash wage per hour for tipped employees will not increase and will remain at \$2.23 per hour.

It is also important to note that SB 15 states the following:

"Upon the establishment of a federal minimum wage in excess of the state minimum wage, the minimum wage in this State shall be equal in amount to the federal minimum wage, except as may otherwise be provided under this chapter."

For a copy of SB 15, click on the link provided below.

<https://legis.delaware.gov/json/BillDetail/GenerateHtmlDocument?legislationId=48445&legislationTypeId=1&docTypeId=2&legislationName=SB15>

Threshold for Nonresident Income Tax Withholding Established in Louisiana

Louisiana Governor John Bel Edwards has signed into law Senate Bill 157 (SB 157) that states for tax years beginning on or after January 1, 2022, employers are not required to withhold Louisiana income tax from nonresident employee wages for services performed within Louisiana, unless the nonresident employee spends more than 25 days performing employment duties for the employer in Louisiana. Under current law, employers in the state must withhold for all nonresidents regardless of the number of days worked in Louisiana.

If, during the calendar year, the number of days an employee spends performing employment duties in Louisiana exceeds the 25-day threshold, an employer is required to withhold and remit taxes for every day in the calendar year, including the first 25 days, on which the employee performs employment duties in Louisiana. However, the threshold does not apply to professional athletes, professional entertainers, public figures, qualified production employees (related to the motion picture industry), and staff members of professional athletic teams.

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

<http://legis.la.gov/legis/BillInfo.aspx?sessionId=21RS&billtype=SB&billno=157>

Maine Increases Service Tip Minimum Amount Requirement

Governor Janet Mills of Maine has signed into law Legislative Document 1489 (LD 1489) increasing the amount of tips an employee must receive to be considered a "service employee." Under current law, an employee must receive at least \$30.00 per month in tips in order for an employer to utilize a tip credit when paying the employee. - In 2021, when utilizing a tip credit in Maine, the employer must pay the employee a minimum cash wage of \$6.08 per hour. The employee must also receive tips in an amount that brings the employee's minimum wage to at least the state minimum wage of \$12.15 per hour worked. - If the employee does not receive sufficient tips to receive the state minimum wage per hour, the employer must make up the difference to bring the employee to the state minimum wage per hour.

As a result of the enactment of LD 1489, effective October 18, 2021, the amount that an employee must receive in tips that allows an employer to utilize a tip credit when paying tipped employees is increased to \$175.00. If the employee does not receive at least \$175.00 in tips for the month, the employee must be paid at least the state minimum wage for non-tipped employees (currently \$12.15 per hour) plus tips.

LD 1489 also contains a provision for inflation adjustments stating:

On January 1, 2022, and every January 1st thereafter, the monetary amount over which an employee is considered a service employee under this subsection must be increased by the same percentage of the increase, if any, in the cost of living.

For a copy of LD 1489, click on the link provided below.

<http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=HP1103&item=1&snum=130>

Maine Limits Employer Recovery of Employee Overpayments

On July 8, 2021, Governor Janet Mills of Maine signed into law Legislative Document 610 (LD 610). It limits the amount and ability that an employer may recover "overcompensation" made to employees in error. LD 610 amends 26 MRSA §635.

Overcompensation is defined as follows:

"... any compensation paid to an employee that is greater than that to which the employee is entitled under the compensation system established by the employer, but does not include fringe benefits, paid leave, awards, bonuses, settlements or insurance proceeds in respect to or in lieu of compensation, expense reimbursements, commissions or draws or advances against compensation."

Under current law, an employer who has overcompensated an employee through employer error may not withhold more than 10 percent of the net amount of any subsequent pay without the employee's written permission.

Under LD 610, that amount has been reduced to 5 percent.

However, the provision that allows an employer the right to deduct the full amount of overcompensation from any wages due if the employee voluntarily terminates employment remains in the revised statute.

The revised statute also contains a clause stipulating that an employer may not recover more than the amount of overcompensation paid to that employee in the three years preceding the date of discovery of the overcompensation.

The provisions of LD 610 amending 26 MRSA §635 become effective October 18, 2021.

For a copy of LD 610, click on the link provided below.

<http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=HP0446&item=1&snum=130>

North Carolina Enacts Changes to Wage and Hour Laws

On July 7, 2021, North Carolina Governor Roy Cooper signed into law Senate Bill 208 (SB 208), which revises some of the state's wage and hour laws as follows.

- Employees whose employment is discontinued for any reason shall be paid all wages due on or before the next regular payday, either through regular pay channels or by trackable mail if requested by the employee in writing. Previously, the use of trackable mail was not required, and the employee did not need to make the request in writing.
- Employers must notify its employees, in writing at the time of hiring, regarding the promised wages and the day and place for payment. Previously, an employer was allowed to provide such information orally.
- Employers must advise employees of any decrease in wages at least one pay period before the decrease takes effect. Previously, notice had to be provided at least 24 hours in advance.
- Employees must notify employees in writing at least one pay period prior to any changes in promised wages. Wages may be retroactively increased without the prior notice otherwise required. Previously, employers could notify employees in writing or through a posted notice maintained in a place accessible to its employees, at least 24 hours prior to any changes in promised wages.

The law became effective upon the date of signature by Governor Cooper.

For a copy of SB 208, click on the link provided below.

<https://ncleg.gov/Sessions/2021/Bills/Senate/PDF/S208v6.pdf>

Rhode Island Extends Teleworking Taxation Regulations Through September 15

The Rhode Island Division of Taxation (DOT) had previously announced an emergency regulation (280-RICR-20-55-14) that provides withholding tax guidance for employers that have employees, who are temporarily working remotely due to the coronavirus (COVID-19) pandemic, has been extended to July 17, 2021.

DOT has now announced the effective date of the emergency regulation has been extended through September 15, 2021.

The emergency regulation stipulates generally that the income of employees who are nonresidents temporarily working outside of Rhode Island solely due to the COVID-19 pandemic will continue to be treated as Rhode Island-source income for Rhode Island

withholding tax purposes. In addition, Rhode Island will not require employers located outside of Rhode Island to withhold Rhode Island income taxes from the wages of employees, who are state residents and are temporarily working within Rhode Island solely due to the COVID-19 pandemic.

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

http://www.tax.ri.gov/COVID/Documents/Emergency_Regulation_280_RICR_20_55_14.pdf

Virginia Releases More 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). Previous to the enactment of this bill, Virginia did not have its own overtime law and utilized federal rules under the Fair Labor Standards Act (FLSA).

While VOWA, which was 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 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, bonuses, shift differentials) for employment (barring certain statutory exclusions) divided by total hours worked in a workweek.

VOWA employs a different calculation that depends on whether the employee is paid on an hourly or a salaried 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 includible 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 who are salaried and 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

At the end of June, the Virginia Department of Labor and Industry (DOLI) released 10 Frequently Asked Questions (FAQs) regarding the overtime law effective July 1, 2021. The DOLI has now added an additional 10 FAQs. Three of the new FAQs explain how piece-rate, commission-only and tipped employees are paid for overtime.

How is overtime calculated for piece-rate employees?

A piece-rate employee who works more than 40 hours in a week is entitled to overtime for all hours over 40. The regular rate for piece-rate employees is calculated by taking their total earnings for that week and dividing those earnings by the hours worked (similar to hourly employees). They shall then be paid an overtime premium of half the regular rate for all hours worked over 40. The piece-rate compensation has already covered their base pay for those hours, assuming it results in a rate above the Virginia minimum wage.

How is a tipped employee's overtime rate calculated?

Tipped employees are assumed to have a wage rate of the state minimum wage unless there is an agreement that they should receive more and must be paid one and one half times the minimum wage. Tips earned are credited toward that rate.

How is a commissioned employee's overtime rate calculated?

Commissioned employees are treated similarly to tipped employees. Unless there is an employment agreement that says otherwise, these employees are assumed to have a wage rate of the state minimum wage and must be paid one-and-one-half times the minimum wage for overtime hours. Commission earned is credited toward that rate.

If there is an agreement for a higher wage, the overtime rate will be calculated as one-and-one-half times that base rate (base rate divided by 40 if salary, and base rate divided by the hours worked if hourly). Commission earned is then credited toward the overtime rate.

To access all 20 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>

September 1, 2021, Minimum Wage Increase Reminder

The following jurisdiction has a minimum wage increase taking effect as of September 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	September 1, 2021 Minimum Wage Per Hour
Guam	\$9.25 (currently \$8.75). Guam does not allow the use of a tip credit when paying tipped employees.



Tax Credits

New York State Provides Relief for Restaurants With a Return-to-Work Tax Credit

To be responsive to the needs of COVID-impacted restaurants, New York has implemented a Restaurant Return-To-Work Tax Credit. The \$35 million Restaurant Return-to-Work Tax Credit Program provides an incentive to COVID-impacted restaurants to bring restaurant staff back-to-work, and to increase hiring at NYS restaurants in New York State (NYS).

Qualifying businesses are eligible for a tax credit of \$5,000 per new worker hired, up-to \$50,000 per business. The Program is open to eligible restaurants located in New York City, or in an area outside of New York City that was designated an Orange or Red Zone for at least thirty consecutive days.

The Restaurant Return-to-Work Tax Credit provides a Fast Track Option, which allows a business to claim the credit before the end of the tax year.

Restaurants may claim the credit after August 31, 2021 (Fast Track Option), if the business can demonstrate a net employee increase of at least one full-time employee as measured from April 1, 2021 to August 31, 2021. Alternatively, restaurants can choose to claim the tax credit on their 2021 NYS tax return if the business can demonstrate a net employee increase of at least one full-time employee as measured from April 1, 2021 to December 31, 2021.

ADP has confirmed that this credit is not available on the NYS-45 Return supported by Payroll Tax Filing.

For details on this program and how to apply, click on the following link.

<https://esd.ny.gov/restaurant-return-work-tax-credit?emci=f0193fdc-abf0-eb11-b563-501ac57b8fa7&emdi=031f6e4c-b6f0-eb11-b563-501ac57b8fa7&ceid=879175#how-to-apply>

ADP Compliance Resources

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

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