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Eye on Washington
State and Local Update

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

Topics covered in this issue:

Leave

Massachusetts Provides Updated Guidance for PFML Contributions

The Massachusetts Department of Family and Medical Leave (DFML) has announced that, because of comments received from employers, it is adjusting the required withholding for the Paid Medical and Family Leave program.

Withholding will be based on the date that wages are paid, not the date the services were performed. For example, if an employee receives a paycheck on or after October 1, 2019, where some of those wages were for services performed prior to October 1, 2019, then all of the wages in the paycheck will be subject to contributions.

Previously, DFML required that contributions would be due for services performed by an employee on or after October 1.

For more information on the Massachusetts PFML, click on the link provided below.

https://www.mass.gov/info-details/paid-family-and-medical-leave-exemption-requests-registration-contributions-and

Oregon Enacts Paid Family and Medical Leave Law

On August 9, 2019, Governor Kate Brown of Oregon signed into law House Bill 2005 (HB 2005), which 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. Oregon is the eighth state to approve paid family and medical leave benefits, following California, Connecticut, Massachusetts, New Jersey, New York, Rhode Island and Washington. Lawmakers governing Washington, D.C. have also approved such leave.

Benefits will be available to Oregon workers beginning in 2023, but contributions to fund the paid leave will begin in 2022. Some of the highlights of HB 2005 are as follows:

- Paid family and medical leave insurance will be available to all Oregonians who made at least $1,000 in a calendar year.
- The program will be supported with payroll assessment, not to exceed one percent, split between employees and employers. Employers with more than 25 employees will contribute 40 percent of the overall contribution. Employees will contribute 60 percent.
- An employer shall make and file a combined quarterly report of wages earned and contributions paid on a form prescribed by the Department of Revenue. The report shall be filed by employers with the Department of Revenue on or before the last day of the month following the quarter to which the report relates, and shall be deemed received on the date of mailing. The report shall be accompanied by payment of any contributions due.
- All employers shall maintain payroll records, including account records that document employee contributions and expenses, and employment records that reflect the total hours worked by all employees and the amount of leave taken by employees for the current calendar year and the three prior calendar years. The Director of the Employment Department may inspect the payroll and employment records of employers. Employers must provide the director with all pertinent payroll and employment records upon request.
- Small employers with fewer than 25 employees will not have to contribute, though employees still will be able to utilize the program. Small businesses choosing to pay into the program will be eligible for grant programs to help cover the cost of replacement workers.
- If a worker earns less than 65 percent of Oregon's average weekly wage, they will receive a 100 percent wage replacement during their leave. The wage replacement decreases as average weekly income increases.
- "Employee" means: An individual performing services (including a home-care worker) for an employer for remuneration or under any contract of hire, written or oral, express or implied. Employee does not include an independent contractor.
- "Employer" means any person that employs one or more employees working anywhere in Oregon including a political subdivision of this state or any county, city, district, authority or public corporation, or any instrumentality of a county, city, district, authority or public corporation. "Employer" does not include the federal government or a tribal government.
- "Family member" means:
  - The spouse of a covered individual.
  - A child of a covered individual or the child's spouse or domestic partner.
  - A parent of a covered individual or the parent's spouse or domestic partner.
  - A sibling or stepsibling of a covered individual or the sibling's or stepsibling's spouse or domestic partner.
  - A grandparent of a covered individual or the grandparent's spouse or domestic partner.
  - A grandchild of a covered individual or the grandchild's spouse or domestic partner.
  - The domestic partner of a covered individual.
  - Any individual related by blood or affinity whose close association with a covered individual is the equivalent of a family relationship.
- "Medical leave" means leave from work taken by a covered individual that is made necessary by the individual's own serious health condition.
- Any family leave or medical leave taken under the provisions of HB 2005 must be taken concurrently with any leave taken by an eligible employee under the Oregon Family Medical Leave Act (OFLA) or under the federal Family and Medical Leave Act.
- An employer may permit an employee to use paid sick time, vacation leave or any other paid leave earned by the employee in addition to receiving paid family and medical leave insurance benefits to replace an employee's wages up to 100 percent of the eligible employee's average weekly wage during a period of leave taken for family leave, medical leave or safe leave.
- An employer must provide written notice to each employee of the duties and rights of an eligible employee.
- An employer may require an eligible employee to give the employer written notice at least 30 days before commencing a period of family leave, medical leave or safe leave if the leave is foreseeable. The employer may require the employee to include in the notice an explanation of the need for the leave.
- An eligible employee may commence leave without 30 days' advance notice if the leave is not foreseeable, as in circumstances including but not limited to:
  - An unexpected serious health condition of the employee or a family member of the employee.
  - A premature birth, unexpected adoption or unexpected foster placement by or with the employee.
  - Safe leave.

- After a period of family leave, medical leave or safe leave, an eligible employee is entitled to be restored to the position of employment held by the employee when the leave commenced, if that position still exists, without regard to whether the employer filled the position with a replacement worker during the period of leave. If the position held by the employee at the time leave commenced no longer exists, the employee is entitled to be restored to any available equivalent position with equivalent employment benefits, pay and other terms and conditions of employment.
- During a period in which an eligible employee takes leave, the employer shall maintain any health-care benefits the employee had prior to taking such leave for the duration of the leave, as if the employee had continued in employment continuously during the period of leave. In addition, the employee does not lose any employment benefits, including seniority or pension rights, accrued before the date on which the leave commenced.
- An employer shall make and file a combined quarterly report of wages earned and contributions paid on a form prescribed by the Department of Revenue. The report shall be filed with the Department of Revenue on or before the last day of the month following the quarter to which the report relates and shall be deemed received on the date of mailing. The report shall be accompanied by payment of any contributions due.

For a copy of HB 2005, click on the link provided below.

https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/HB2005/Enrolled

Puerto Rico Enacts New Leave Law

On August 1, 2019, then Puerto Rico Governor Ricardo Rosselló signed into law new legislation providing that employees in Puerto Rico may take up to 15 days of unpaid leave each calendar year to address situations related to domestic or gender-based violence, child abuse, sexual harassment in employment, sexual assault, lewd acts, or felony stalking. This "Special Leave" is in addition to any other leave to which the employee might be entitled under law. It is important to note that the victim need not file a police report to be entitled to take Special Leave and the perpetrator of the abusive conduct is not entitled to take leave under the new law. The new law took effect immediately upon enactment.

Highlights of the Special Leave are as follows:

Leave for Association With a Victim of Abuse

Employees may take Special Leave when the victims are their family members. Covered family members include:

- Children;
- Spouses;
- Partners united by an affective relationship;
- Parents; and
- Minors, persons of advanced age, or those with disabilities over which the employee has custody or guardianship.

Use of Leave

Among other reasons, an employee may use Special Leave to:

- Seek advice and obtain a restraining order or court order;
- Seek and obtain legal assistance; and
- Seek and obtain safe housing or space in a shelter.
- Leave time may be taken on a fractioned or intermittent basis.
- The employee is not entitled to carry over unused leave from prior years.

Supporting Documentation

An employer may request supporting documentation detailing the time spent by the employee addressing the situation needing Special Leave. The employee must provide the documentation within a reasonable period, but no later than two business days after the employee's last absence under the Special Leave. Employers may not require evidence of a conviction or arrest as a condition of use.

The law provides the following examples of documents an employee may submit:

- A restraining order.
- Documentation under the letterhead of a court, agency, public or private service provider that assisted in an incident of abuse.
- A police report.
- Documentation evidencing the offender's conduct.
- Documentation of medical treatment received by the employee or family member as a result of the abuse.
- Certification by a therapist, certified counselor, religious leader, shelter director, attorney, or other qualified professional who assisted the employee or family member as a result of the abuse.
- A sworn statement provided by another employee who witnessed the abuse to the employee or family member.
- Any other document that credibly reflects that the employee was making arrangements for themselves or a family member victim of abuse.

Reasonable Accommodation

Employees may request reasonable accommodation or flexible work conditions to address an abuse situation. Examples of accommodations include change of work location, modification of tasks assigned to the employee, change in working times, or others that allow the employee to obtain the necessary assistance to address the situation.

Any request must be in writing and may be denied only if it is "unreasonable" and only after evaluating all the possible accommodation for the employee.

Notification of Need for Special Leave

Generally, an employee must provide at least two business days' notice, unless the circumstances do not permit earlier notification. Notice may be provided by the employee, family, therapist, certified counselor, religious leader, shelter director, attorney, or other qualified professional who has assisted the employee or family member as a result of the abuse. Notice may be provided by fax, in person, by email, in writing, or any other reliable method of communication.

Job Protection

- Employees have a right under the law to be restored to their employment when the Special Leave has been exhausted.
- Failure to provide reinstatement entitles the employee to a claim for back pay and damages.

Confidentiality

Documents submitted or created in relation to the Special Leave must be kept confidential. However, the law provides an exception for responding to a subpoena or request from a government entity. Any documentation submitted by the employee must be filed in the employee's personnel file under seal.

Dallas, Texas, Paid Sick Leave Now In Effect – For Now

It was previously reported that the Dallas, Texas, City Council passed an ordinance requiring employers to provide paid sick leave beginning as early as August 1, 2019.

On July 30, 2019, the Texas Public Policy Foundation filed suit and a "Motion for Preliminary Injunction" in federal court to halt the implementation of the Dallas paid sick leave ordinance on August 1, 2019, arguing that the ordinance is not constitutional as it violates the Texas Minimum Wage Act.

However, as the court has yet to act on the suit, Dallas has announced (see link below) that its Paid Sick Leave Ordinance is now in effect despite the lawsuit filed to halt implementation. The announcement stated in part as follows:

"With the exception of the anti-retaliation provision the ordinance will not be enforced until April 1, 2020, for employers with six or more employees. No part of the ordinance goes into effect for employers with five or fewer employees until August 1, 2021."

ADP® will continue to monitor this situation as events unfold and report.

Pennsylvania Supreme Court Backs Pittsburgh on Paid Sick Leave Ordinance

On July 17, 2019, the Pennsylvania Supreme Court held that the city of Pittsburgh, under the Paid Sick Days Act (PSDA), has the authority to require businesses to provide paid sick leave to its employees. The 4-3 majority in its opinion stated that the ordinance was a valid exercise of the City's "express statutory authority to legislate in furtherance of disease control and prevention."

Background

On August 3, 2015, the Pittsburgh City Council passed an amended bill, requiring virtually all employers within the city of Pittsburgh to provide paid sick leave, that Mayor Bill Peduto subsequently signed into law.

However, on December 21, 2015, Allegheny County Common Pleas Court Judge Joseph James struck down the city's Paid Sick Leave Ordinance. Judge James in his opinion stated as follows: "The home rule charter and optional plans law limits the power of the city to those expressly provided statutes enabled by the Legislature," wrote James. "Absent that statutory authority, the city cannot enact this type of ordinance. For these reasons, the plaintiffs' motion for judgement on the pleading is granted."

Pittsburgh appealed the ruling, which an appellate court affirmed on May 17, 2017. The city again appealed to the State Supreme Court which ruled in the favor of Pittsburg, on July 17, 2019. To date, *Pittsburgh has yet to announce an effective date of its paid sick leave ordinance.*

Attempts to Override by Pennsylvania

Although Pittsburgh has prevailed in court on the matter, there has been an ongoing effort in the Pennsylvania legislature to stop local governments from passing labor law policies on private businesses.

House Bill 331 has been introduced in the 2019-2020 Regular Legislative Session which states in part as follows:

> Regulation or enforcement prohibited — Notwithstanding any other law to the contrary, a municipality may not in any manner regulate employer policies or practices or enforce any mandate regarding employer policies or practices.

The same legislation was introduced in 2017 – 2018, but was not enacted into law. The current bill was referred to the Labor and Industry Committee of the House on February 1, 2019.

ADP® will continue to monitor the progress of House Bill 331 and will report any developments.

For a copy of House Bill 331, paste the following into your browser.

https://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2019&sessInd=0&billBody=H&billTyp=B&billNbr=0331&pn=0309

Some highlights of the PSDA are listed below.

Covered Employees and Employers

The PSDA Ordinance applies to all full-time and part-time employees working in the City of Pittsburgh. Any employer located or conducting business in Pittsburgh, and who employs one or more people in exchange for compensation, will be required to provide paid sick leave. Independent contractors, state and federal employees, any member of a construction union covered by a collective bargaining agreement, and seasonal employees who are notified in writing when they are hired that they will work no more than 16 weeks during the calendar year are excluded from the Ordinance.

Accrual and Caps

Under the Ordinance, employees will accrue one hour of paid sick time for every 35 hours worked (including overtime hours) in Pittsburgh, unless the employer provides for a faster accrual rate. Employees who are exempt from overtime requirements under the federal Fair Labor Standards Act will accrue paid sick time based on either the employee's normal workweek or a 40-hour workweek, whichever is less.

The accrual of paid sick time is subject to the following caps:

- Employers with 15 or more employees must permit employees to accrue 40 hours of paid sick time per year; and
- Employers with fewer than 15 employees must permit employees to accrue 24 hours of paid sick time per year.

Of important note, for employers with fewer than 15 employees, employers are only required to provide unpaid sick leave for the first year after the Effective Date of the Ordinance. Unpaid leave will accrue at the same rate of one hour for every 35 hours of work in Pittsburgh.

Sick Leave Uses

Employees may use accrued paid sick time for any of the following reasons:

- An employee's own mental or physical illness, injury, or health condition, including diagnostic, treatment, and preventative medical care;
- Care of a family member with a mental or physical illness, injury, or health condition, including diagnostic, treatment, and preventative medical care;
- Closure of the employee's place of business by order of a public official due to a public health emergency;
- An employee's need to care for a child whose school or place of care has been closed by order of a public official due to a public health emergency; and/or
- An employee's need to care for a family member when it has been determined by health care authorities or providers that the family member's presence in the community would jeopardize the health of others because of the family member's exposure to a communicable disease.

Employee Notice and Documentation

- Paid sick time must be provided upon an employee's oral request.
- An employer may maintain a reasonable notification policy that dictates how long before a shift begins employees must make their oral request.
- If the need to use sick time is unforeseeable, an employee must make a "good faith effort" to provide the employer with notice as soon as possible.
- If an employee's need for paid sick time is foreseeable, such as a scheduled appointment with a health-care provider, employers may require "reasonable advance notice" of intent to use paid sick time (not to exceed seven days).
- Employers may require reasonable documentation of the reason for using sick time only if an employee uses paid sick time for three or more consecutive days. In those instances, for personal or family medical treatment, a health-care professional's documentation is deemed reasonable. Employers cannot require that the documentation explain the precise nature of the illness.

Notice and Posting Requirements

Employers must provide written notice to employees of their entitlement to paid sick time, the amount to which they are entitled, the terms under which leave can be used, the guarantee against retaliation, and the right to file a complaint regarding violations of the Ordinance.

Prior to the Effective Date, the City Controller will determine the mechanism by which employers may comply with these notice and posting requirements and will make all materials necessary for an employer to comply with the Ordinance available on the City of Pittsburgh's website.

Record Keeping

Employers must maintain records documenting the hours worked and sick time taken by employees for a period of two years.

Existing Leave Policies

Employers may continue to maintain other paid leave policies, such as vacation, sick, floating holidays, personal days or other paid time off (PTO), and satisfy the requirements of the Ordinance if those policies meet or exceed the accrual requirements of the Ordinance and allow employees to use the leave for the same purposes and under the same conditions as paid sick leave under the Ordinance. This same rule applies to leave provisions in collective bargaining agreements.

Payroll

Maryland Provides Proposed Regulations on Tipped Employee Required Information

It was recently reported that enacted Maryland House Bill 166 (HB 166) requires the adoption of regulations to address how restaurant employers will comply with the requirement to provide a written or electronic wage statement to employees whose wages include a tip credit.

HB 166 stated as follows:

> (D) (1) THE COMMISSIONER SHALL ADOPT REGULATIONS, IN CONSULTATION WITH PAYROLL SERVICE PROVIDERS AND RESTAURANT INDUSTRY TRADE GROUP REPRESENTATIVES, TO REQUIRE RESTAURANT EMPLOYERS THAT INCLUDE A TIP CREDIT AS PART OF THE WAGE OF AN EMPLOYEE TO PROVIDE TIPPED EMPLOYEES WITH A WRITTEN OR ELECTRONIC WAGE STATEMENT FOR EACH PAY PERIOD THAT SHOWS THE EFFECTIVE HOURLY TIP RATE AS DERIVED FROM EMPLOYER–PAID CASH WAGES PLUS ALL REPORTED TIPS FOR TIP CREDIT HOURS WORKED EACH WORKWEEK OF THE PAY PERIOD.
>
> (2) THE COMMISSIONER SHALL PROVIDE NOTIFICATION OF THE TIP CREDIT WAGE STATEMENT REGULATIONS ON THE DEPARTMENT'S WEBSITE.

Proposed Regulations:

On July 19, 2019, proposed regulations were released addressing the requirements. Of importance, the proposed regulations provided that the requirements related to a wage statement for these specific employees may be satisfied by providing an online system through which an employee may obtain the employee's tip credit wage statement. This means that the information is not required to be on the employee's wage statement, but may be furnished by online means.

For a copy of the proposed regulation, see page 664 on the link provided below.

http://www.dsd.state.md.us/MDR/4615.pdf

Texas Exempts Health Savings Accounts From Garnishment

On April 10, 2019, Governor Steve Bullock signed into law Senate Bill No. 64 (SB 64) that modernizes the state's child support laws. Texas has enacted House Bill HB 2779 (HB 2779) which exempts "for certain savings plans, including health savings accounts from attachment, execution, or other seizure for a creditor's claim."

HB 2779, effective September 1, 2019 states in part as follows:

The term (qualified savings plans) includes:

(1) A retirement plan sponsored by a private employer, government, or church.
(2) A retirement plan for self-employed individuals.
(3) A simplified employee pension plan.
(4) An individual retirement account or annuity, including an inherited individual retirement account or annuity.
(5) A Roth IRA, including an inherited Roth IRA.
(6) A health savings account.
(7) A Coverdell education savings account.
(8) A plan or account established under Subchapter F, Chapter 54, Education Code, including a prepaid tuition contract.
(9) A plan or account established under Subchapter G, Chapter 54, Education Code, including a savings trust account.

(10) A qualified tuition program of any state that meets the requirements of Section 529, Internal Revenue Code of 1986.
(11) A qualified ABLE program of any state that meets the requirements of Section 529A, Internal Revenue Code of 1986.
(12) An annuity or similar contract purchased with assets distributed from a plan or account described by this subsection.

It is important to note the exemption does not apply for above numbers one through seven and 11, 12 for child support orders but does apply for above numbers eight, nine and 10 for child support orders "established under Subchapter G, Chapter 157, Family Code."

Link to Subchapter G, Chapter 157, Family Code:

https://statutes.capitol.texas.gov/Docs/FA/htm/FA.157.htm#157

Link to HB 2779:

https://capitol.texas.gov/tlodocs/86R/billtext/pdf/HB02779F.pdf#navpanes=0

Link to HB 2779 Digest:

https://hro.house.texas.gov/pdf/ba86r/hb2779.pdf#navpanes=0

Time and Labor

California Domestic Partner Law Amended

On July 30, 2019, California Governor Gavin Newsome signed into law Senate Bill 30 (SB 30), which amends the California Family Code in relation to the state's domestic partner law.

Under current domestic partnership law, one of the specified requirements for entering into a domestic partnership included that the domestic partners be either of the same sex or of the opposite sex and over 62 years of age.

SB 30 amends Section 297 of the Family Code to eliminate the requirement that the domestic partner must be of the same sex or, if of the opposite sex, at least one partner must be at least age 62. Accordingly, Section 297, as amended, contains the following requirements for entering into a domestic partnership:

1. Both persons must be adults who have chosen to share one another's lives in an intimate and committed relationship of mutual caring;
2. Both persons must file a notarized "Declaration of Domestic Partnership" form with the California Secretary of State (such form will be made available at the Secretary of State's office or on its website);
3. Neither person must be married to anyone else or be a member of another domestic partnership with someone else that hasn't been terminated, dissolved, or adjudged a nullity;
4. Both persons cannot be related by blood in a way that would prevent them from being married to each other in California;
5. Both persons must be at least 18 years of age (unless a court order is obtained granting the underage person permission to enter into the partnership); and
6. Both persons must be capable of consenting to the partnership.

Per a call to the California Secretary of State office, the changes made by SB30 will go into effect on January 1, 2020.

For a copy of SB 30, click on the link provided below.

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB30

Chicago, Illinois, Approves Predictive Scheduling Ordinance

On July 24, 2019, the Chicago City Council approved an expansive predictive scheduling law that will go into effect on July 1, 2020. Some of the highlights of the "Chicago Fair Workweek Ordinance" (Ordinance) are as follows:

Definition: Covered Employees

The Ordinance applies to hourly employees paid no more than $26.00 per hour and salaried employees who earn no more than $50,000 annually and who work in the building services, health-care, hotel, manufacturing, restaurant, retail, or warehouse services industry.

Covered Employers

The Ordinance is enforced on businesses in the building services, health-care, hotel, manufacturing, restaurant, retail, or warehouse services industry that have at least 100 employees globally and have 50 employees that meet the definition of a covered employee.

Nonprofits are subject to the predictive scheduling requirements if they employ 250 workers globally and have 50 workers who meet the definition of a covered employee.

Restaurant employers are covered if they have at least 250 workers and more than 30 locations globally.

Predictive Scheduling Provisions

- As of July 1, 2020, covered employers must provide covered employees with notice of their work schedules 10 days in advance.
- The required notice of work schedules will increase to 14 days beginning on July 1, 2022.
- Employers are required to give covered employees a good faith estimate of their projected days and hours of work for the first 90 days of employment at the time of hire.
- If a covered employer changes work schedules after the notice deadline (e.g., 10 days), a covered employee may decline to work any previously unscheduled hours.
- The Ordinance allows a covered employee to decline to work a shift that starts less than 10 hours from their last shift worked. If the covered employee agrees to work such a shift, the covered employee must be paid 1.25 times their regularly hourly rate of pay.
- Where a covered employer modifies a covered employee's schedule after the notice deadline, the employer must pay the covered employee an additional hour of pay along with their regular pay.
- If a covered employer cancels a shift or reduces hours with notice of less than 24 hours, the covered employer must pay the covered employee an amount equal to at least 50 percent of their normal pay for any scheduled hours. This rule applies to on-call shifts and in cases where the covered employee is sent home early from a shift.
- Extra shifts must be offered to existing employees qualified to do the work before using temporary or seasonal employees.

Exceptions to Late Notice Penalties

A covered employer will not be subject to the late notice penalties under the following circumstances:

- If the schedule is changed due to civil unrest or threats, utility outages, acts of nature, or a disaster declaration for health care;
- A mutually agreed-upon shift trade or coverage arrangement between covered employees if the employer has an existing policy related to exchanging shifts;
- If the covered employee and employer mutually agree and confirm in writing;
- If a covered employee requests a shift change in writing;
- Subtraction of hours for disciplinary reasons for just cause (discipline must be in writing);
- A canceled banquet or ticketed event;
- Events outside of the control of manufacturing employers (such as a production delay).

Penalties for Violating the Ordinance

Fines will range between $300 and $500 for each offense. If the employer is found to have discriminated or retaliated against an employee for exercising any right under the Ordinance, they will be subjected to a $1,000 fine.

The Department of Business Affairs and Consumer Protection will enforce the Ordinance. Employees also will have a private cause of action against the employer for violation of the Ordinance; however, they must first lodge a complaint with the Department of Business Affairs and Consumer Protection before they can proceed to court.

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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