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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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## Arizona Supreme Court Denies Review of Decision Allowing Locals to Enact Benefits Ordinances

The Supreme Court of Arizona has denied review of the decision by the Arizona Court of Appeals, Division One, holding as unconstitutional legislation enacted in 2016, which prohibited local jurisdictions from adopting regulations that require employers to provide “nonwage compensation” (e.g., fringe benefits, sick leave).

### Background:

On May 11, 2016, Arizona Governor Doug Ducey signed into law legislation that prohibits cities, towns and counties from regulating paid time off, retirement plans or other employee benefits.

The enacted legislation states in part as follows:

The regulation of employee benefits, including nonwage compensation, paid and unpaid leave and other absences, meal breaks and rest periods, is of statewide concern. The regulation of nonwage employee benefits, pursuant to this chapter and federal law, is not subject to further regulation by a city, town or other political subdivision of this state.

Nonwage compensation includes fringe benefits, welfare benefits, child or adult care plans, sick pay, vacation pay, severance pay, commissions, bonuses, and retirement plan or pension contributions.

On August 29, 2017, the Superior Court of Arizona for Maricopa County ruled that this legislation prohibiting cities, towns, and other political subdivisions from adopting regulations that require private employers to provide “nonwage compensation” (e.g., fringe benefits, sick leave) — was unconstitutional.

In its opinion, the Court noted that in 2006, Arizona taxpayers voted in favor of a minimum wage initiative (Proposition 202) that included a provision allowing local jurisdictions to regulate minimum wage and nonwage benefits. The Court found that the enacted legislation failed to receive the required three-fourths vote in the legislature to modify a voter-approved initiative, as required by the Arizona constitution.

On February 5, 2019, the Arizona Court of Appeals, Division One, affirmed the Superior Court ruling that the legislation from 2016 (L. 2016, H2579), which prohibits cities, towns, and other political subdivisions from adopting regulations that require private employers to provide “nonwage compensation” (e.g., fringe benefits, sick leave), was unconstitutional. The Court found that H2579 was unconstitutional because it violated the Voter Protection Act (VPA).

The decision was appealed to the Arizona Supreme Court which denied reviewing the decision leaving the previous ruling intact with the result being that local jurisdictions retain the authority to enact benefits ordinances.



### California Family Rights Act Amended for Flight Crews:

On October 10, 2019, California Governor Gavin Newsom signed into law Assembly Bill 1748 (AB 1748) reducing the hours of service eligibility requirement for leave under the California Family Rights Act (CFRA) for flight deck and cabin crew employees from 1,250 to 504 hours of service, provided other conditions are met.

The CFRA is similar to the federal Family Medical Leave Act (FMLA) and provides 12 weeks of job-protected bonding leave to eligible employees. An employee is typically eligible if he/she has worked at least 1,250 hours within the last year for an employer with 50 or more employees within 75 miles of the work location. In 2009, the federal Airline Flight Crew Technical Corrections Act amended the FMLA to reduce the qualifying hours of service from 1,250 to 504 for flight attendants. This state legislation amends the CFRA in a manner consistent with the federal FMLA regarding flight attendant qualifications.

For a copy of AB 1748, click on the link provided below.

[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201920200AB1748](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1748)

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### Nevada Provides Further Guidance on Paid Leave

On June 12, 2019, Governor Steve Sisolak of Nevada signed into law Senate Bill 312 (SB 312) that requires an employer who has 50 or more employees in Nevada, at a minimum, to provide employees 0.01923 hours of paid leave for each hour worked that may be used by an employee beginning on the 90th calendar day of employment.

It is important to note that SB 312, effective January 1, 2020, provides that an employee may use paid leave available for use by that employee without providing a reason to his or her employer for such use.

On October 4, 2019, the Nevada Department of Business & Industry published an Advisory Opinion “intended to provide as much guidance as possible on SB 312.” Some of the highlights of the Advisory Opinion provided in Question and Answer format are as follows:

- **Question:** How should the 50-employee threshold be counted?

**Answer:** Similar to the Family Medical Leave Act, the Labor Commissioner will determine the 50-employee threshold as a private-sector employer with 50 or more employees working in Nevada (out-of-state employees will not count) in 20 or more workweeks (does not have to be consecutive) in the current preceding calendar year, including a joint employer or successor in interest.

- **Question:** Do part-time employees count toward the 50-employee threshold?

**Answer:** Yes. The Labor Commissioner may also impose an administrative penalty of up to \$5,000.00 against employers who intentionally do not count part-time employees as part of the 50-employee threshold or who misclassify employees for the purpose of circumventing the 50-employee threshold.

- **Question:** Do temporary employees or seasonal employees count toward the 50-employee threshold?

**Answer:** No.

- **Question:** Does the intent, language and exemption set forth in Section 1 - Subdivision 8(a) apply to employers who already provide paid leave at a rate of at least 0.01923 hours of paid leave per hour of work performed pursuant to a contract, policy, collective bargaining agreement or other agreement?

**Answer:** Yes. The intent and explicit, plain, and unambiguous language of Section 1 - Subdivision 8(a) clearly provides that employers already providing leave that matches or exceeds the 0.01923 hours of paid leave per hour of work performed pursuant to a contract, policy, collective bargaining agreement or other agreement are explicitly exempt from the other requirements of Senate Bill 312.

- **Question:** Does SB 312 allow for the front loading of leave?

**Answer:** Yes. Pursuant to Section 1 — Subdivision 1(b) (1) "An employee may, as determined by the employer, obtain paid leave by: Receiving on the first day of each benefit year the total number of hours of paid leave that the employee is entitled to accrue in a benefit year."

- **Question:** Does SB 312 allow for the accrual of leave?

**Answer:** Yes. Pursuant to Section 1 — Subdivision (1)(b)(2) "An employee may, as determined by the employer, obtain paid leave by: "Accruing over the course of a benefit year the total number of hours of paid leave that the employee is entitled to accrue in a benefit year."

- **Question:** How much accrued leave can be carried over?

**Answer:** Pursuant to Section 1 — Subdivision (1)(c) "Paid leave accrued pursuant to subparagraph (2) of paragraph (b) may carry over for each employee between his or her benefit years of employment, except an employer may limit the amount of paid leave for each employee carried over to a maximum of 40 hours per benefit year."

- **Question:** An employee terminated employment and then came back and was reinstated. What paid leave needs to be reinstated?

**Answer:** Pursuant to Section 1 — Subdivision 1(i) "If an employee is rehired by the employer within 90 days after separation from that employer and the separation from employment was not due to the employee voluntarily leaving his or her employment, any previously unused leave hours available for use by that employee must be reinstated."

- **Question:** How should an employer track the accrual and taking of paid leave?

**Answer:** Pursuant to Section 1 — Subdivision 1(h) "An employer shall provide to each employee on each payday an accounting of the hours of paid leave available for use by that employee. An employer may use the system that the employer uses to pay its employees to provide the accounting of the hours of paid leave available for use by the employee."

- **Question:** Does an employer need to track the accrual and paid leave taken of salaried or exempt employees, such as executives?

**Answer:** The Labor Commissioner is not requiring this. However, it is recommended that employers have some basic record keeping for these types of employees.

- **Question:** When can an employee start using paid leave? Does an employee have to give a reason? What are the minimum increments of paid leave that can be taken?

**Answer:** Pursuant to Section 1 — Subdivision 2 (a)(b): "An employer shall allow an employee to use paid leave beginning on the 90th calendar day of his or her employment. An employee may use paid leave available for use by that employee without providing a reason to his or her employer for such use." A "Benefit Year" means a 365-day period used by an employer when calculating the accrual of paid leave," and should be considered to start the day the employee starts employment. Section 1 – Section 1 - Subdivision 1(g) also states: "An employer may set a minimum increment of paid leave not to exceed four hours, that an employee may use at any one time."

- **Question:** How much notice does an employee have to give to take paid leave?

**Answer:** Pursuant to Section 1 — Subdivision 2(c): "An employee shall, as soon as practicable, give notice to his or her employer to use the paid leave available for use by that employee."

- **Question:** How should paid leave be calculated?

**Answer:** Pursuant to Section 1 — Subdivision 1(d)(1) and (2):

(1) "Compensate an employee for the paid leave available for use by that employee at the rate of pay at which the employee is compensated at the time such leave is taken, as calculated pursuant to paragraph (e); and (2) Pay such compensation on the same payday as the hours taken are normally paid."

(e) "For the purposes of determining the rate of pay at which an employee is compensated pursuant to paragraph (d), the compensation rate for an employee who is paid by:

(1) Salary, commission, piece rate or a method other than hourly wage must:

(I) Be calculated by dividing the total wages of the employee paid for the immediately preceding 90 days by the number of hours worked during that period;

(II) Except as otherwise provided in sub-paragraph III, include any bonuses agreed upon and earned by the employee; and

(III) Not include any bonuses awarded at the sole discretion of the employer, overtime pay, additional pay for performing hazardous duties, holiday pay or tips earned by the employer."

- **Question:** How should an employer calculate the hourly wage for paid leave?

**Answer:** Section 1 — Subdivision 1(e)(2) "Hourly wage must be calculated by the hourly rate the employee is paid by the employer."

- **Question:** How should the rate of paid leave be calculated for salaried or exempt employees?

**Answer:** The employer should use a reasonable calculation and be consistent. For example, for salaried employees, the employer could convert the salary to a daily equivalent as follows:

(1) Convert the base salary, i.e., weekly, monthly, etc., to an annual salary;

(2) Divide the annual salary by 260 (52 weeks x 40 hours per week = 2080 hours per year);

(3) 2080 hours per year/8 hours per day = 260 workdays per year);

(4) The result should be the daily wage rate that could then be divided into an hourly rate (i.e., eight hours) or another hourly calculation.

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

<http://labor.nv.gov/uploadedFiles/labornvgov/content/About/AO%20SB%20312%20Paid%20Leave.pdf>

Click on the following link for a copy of Nevada SB 312.

<https://www.leg.state.nv.us/App/NELIS/REL/80th2019/Bill/6553/Text>

## Governor Requests Texas Supreme Court Void Local Paid Sick Leave Laws

Texas Governor Greg Abbott has filed a brief with the Texas Supreme Court requesting that the Court void the Austin, Dallas and San Antonio paid sick leave ordinances, and bar all future local paid sick leave ordinances from being enacted. In the brief, Abbott asserts that paid sick leave ordinances are pre-empted by the state minimum wage law which prohibits municipal regulation of wages in private employment. The Governor argues that paid sick leave ordinances require private employers to provide employees additional compensation, in the form of paid sick leave, for each 30-hour block of time worked, thus violating the state minimum wage law.

ADP will continue to monitor the paid sick leave issue in Texas and report as developments arise.

A copy of the brief filed by Governor Abbott with the Texas Supreme Court may be found at the following link.

<http://www.search.txcourts.gov/SearchMedia.aspx?MediaVersionID=1db52e03-8dd6-46f1-a18c-fa8b2cbe7bf9&coa=cossup&DT=BRIEFS&MediaID=5661b914-9182-4ccc-bb6d-af05153ee81f>

## Bernalillo County, New Mexico, Amends Paid Leave Ordinance

On August 20, 2019, the Bernalillo County Board of Commissioners passed Ordinance 2019-17 mandating employer paid time off to employees within Bernalillo County. Effective July 1, 2020, employers in the County must provide paid leave for any reason to full-time, part-time, seasonal, and temporary employees (including County employees) who have worked at least 56 hours in the year and who are eligible for the state minimum wage rate.

Note: New local businesses are exempt from the ordinance for the first 12 months of operation.

## **Amendments:**

On October 15, 2019, the Bernalillo County Commission approved Ordinance No. 2019-29. Ordinance No. 2019-29 contains amendments to Ordinance No. 2019-17, including changes to the maximum hours that two of the employee tiers can accrue and a **change in the ordinance effective date from July 1, 2020 to January 1, 2020.**

The changes to the original ordinance are noted in **red** below:

### **Covered Employers**

Covered employers are any person, estate, business trust, association, receiver, cooperative association, club, corporation, nonprofit corporation, company, firm, partnership, joint venture, syndicate, legal representative, or other entity or group of persons or entities that is required to apply for a business registration from the County. This includes the entities' corporate officers or executives.

Employers are considered covered employers if they:

- Have a physical premises within the unincorporated limits of the County, and
- Employ two or more employees within the unincorporated limits of the County.

Employer also includes the County of Bernalillo.

The following types of employers are not covered:

- New local businesses with their principal office or place of business in the County's unincorporated limits are exempt for the first 12 months of operation.
- Employers located in incorporated communities such as Albuquerque, Los Ranchos de Albuquerque, and Tijeras.

### **Covered Employees**

Any person as an employee, as defined in this Ordinance, suffers or permits to perform work for monetary compensation for at least 56 hours in a year within the unincorporated limits of the County. Employee must include persons who perform work for an employer on a full-time, part-time, seasonal, or temporary basis.

Employee does not include:

- Any person who is excluded from the definition of employee under NMSA 1978, §§ 50-4-21(C)(2)-(4), (6) of the New Mexico Minimum Wage Act, except that persons employed by the County of Bernalillo are employees.
  - o This exclusion includes individuals who are:
    - employed in a bona fide executive, administrative or professional capacity
    - employed as forepersons, superintendents, and supervisors
    - employed by the United States, the state or any political subdivision of the state
    - engaged in the activities of an educational, charitable, religious or nonprofit organization where:
      - the employer-employee relationship does not exist, or
      - the services rendered to such organizations are on a voluntary basis
    - students regularly enrolled in primary or secondary schools working after school hours or on vacation
- Interns working for an employer for academic credit in connection with a course of study at an accredited school, college or university
- Employees working for an accredited school, college or university pursuant to a work-study program while attending that school, college or university
- Any seasonal employee or disabled individual who has received a certificate from the state labor commission pursuant to NMSA 1978, § 50-4-23 or § 50-4-21(C)(11)
- Independent contractors or per diem employees
- Any person employed by a parent, spouse, sibling, aunt, uncle, or cousin

## Accrual & Use

### Accrual

Employees must accrue a minimum of one hour of earned paid time off for every 32 hours worked.

- Earned paid time off must begin to accrue on:
  - ~~the employee's 90th day of employment~~ the employee's date of employment, or
  - on the effective date of this ordinance if the employee is already employed ~~90 days on that date, or~~
  - ~~whichever is later.~~
- Employers may choose a higher accrual rate.

The requirement to provide paid time off must be enacted via three incremental increases ~~of 16 hours per year~~ over three years. Unless the employer's policy provides for a higher limit on use or accrual:

- Effective July 1, 2020, employees ~~working for employers with two or more employees~~ may not accrue ~~or use~~ more than ~~24~~ 28 hours of earned paid time off in a year.
- Effective July 1, 2021, employees ~~working for employers with 11 or more employees~~ may not accrue ~~or use~~ more than ~~40~~ 44 hours of earned paid time off in a year.
- Effective July 1, 2022, employees ~~working for employers with 35 or more employees~~ may not accrue ~~or use~~ more than 56 hours of earned paid time off in a year.

Flat amount (frontloading) - Employers may provide for the accrual of all earned paid time off (frontload earned paid time off) at the beginning of the year. Employers may, but are not obligated, to loan earned paid time off to an employee in advance of accrual or eligibility by such employee.

Unless the employer selects a higher limit, employees exempt from overtime requirements under federal and state law will be assumed to work no more than 40 hours in each workweek for the purposes of earned paid time off accrual.

### Use

An employer must permit an employee to use the earned paid time off accrued for any use.

- Employees are not be entitled to use accrued earned paid time off until the employee has worked 56 hours in a year.
- Employees are entitled to use accrued earned paid time off:
  - beginning on the 90th calendar day following the date of employment, or
  - the effective date of this law, or whichever is later.
- The employer's policy may provide that employees may use accrued time earlier than the 90th calendar day.

### Carryover Limit

Unused accrued earned paid time off must be carried over to the following year. Unless the employer's policy provides otherwise, employees may not carry over more than the total annual amount available to accrue.

Rehires – An employer who rehires an employee within 12 months after leaving employment is required to reinstate all previously accrued and unused earned paid time off to the employee up to a maximum of 56 hours. Employers may choose to provide more. Employers who previously chose to pay out the earned paid time off upon separation are not required to reinstate the previously accrued and unused earned paid time off.

### Rate of Pay Requirements

Earned paid time off must be compensated at the same hourly rate and with the same benefits, including health-care benefits, as the employee normally earns during hours worked.

## Notice Requirements

At the time of employment, each subject employer must provide notice to each employee at the time of employment:

- of the entitlement to earned paid time off for employees, the amount of paid time off provided to employees and the terms under which earned paid time off may be used;
- ways in which an employee may submit a request for, or notify, an employer of the use of paid time off, whether orally, in writing or electronically, and to whom;
- that retaliation by the employer against the employee for requesting or using paid time off for which the employee is eligible is prohibited; and,
- that the employee has a right to file a complaint with the County for any violation of this Ordinance.

Employers may comply with the provisions of this section by displaying a poster in a conspicuous place, accessible to employees, at the employer's place of business that contains the information required by this section in both English and Spanish.

The County may adopt regulations to establish additional requirements concerning the means by which employers shall provide such notice. On or before the effective date of this Ordinance, the County shall make available on its website a summary notice to employees in English and Spanish of each provision of this Ordinance.

## Pay Statement Requirements

No pay statement requirements are provided at this time.

However, employers must accurately track and record the amount of earned paid time off accrued or used by each employee for each pay period in any format the employer chooses. Upon an employee's request, an employer must inform the employee of earned paid time off accrued and used by the employee.

Click on the link below for a copy of Ordinance 2019-29.

[https://www.berncogov/uploads/files/Paid%20Time%20off%20Ordinance%20Amendment%209\\_10\\_2019.pdf](https://www.berncogov/uploads/files/Paid%20Time%20off%20Ordinance%20Amendment%209_10_2019.pdf)

For a copy of the summary of changes made by Ordinance 2019-29, click on the link provided below.

<https://www.berncogov/boards-commissions/news.aspx?f42793dd65f54df6be448b9008a67366blogPostId=4e95ccbbc57247e8b8248eb92496239e#/BlogContent>

A copy of Ordinance 2019-17 may be found at the following link.

<https://www.berncogov/uploads/files/Ordinance%202019-17.pdf>

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## Dallas, Texas, Updates Paid Sick Leave Front-Loading Guidance

As previously reported, the Dallas, Texas, City Council passed an ordinance requiring employers to provide paid sick leave to its employees. The ordinance took effect on August 1, 2019, for all covered employers with six or more employees. The effective date is delayed until August 1, 2021 for employers with fewer than six employees at any time in the preceding 12-month period.

Under the ordinance, employees earn one hour of sick time for every 30 hours worked, but there are caps on accrual, depending on the employer's size. An employer that has had 16 or more employees at any time in the preceding 12-month period must provide at least 64 hours of paid sick leave per year, whereas an employer with fewer than 16 employees must provide at least 48 hours of paid sick leave per year.

Dallas has now updated its paid sick time ordinance frequently asked questions to clarify that employers may "front-load" the required annual paid sick time amount if the following requirements are met.

- All required paid sick time hours must be provided at the beginning of the year.
- Employees must get immediate access to the front-load hours at the beginning of each benefit year.
- Carryover of unused paid sick leave hours is not required if the employer uses the front-load method.

- In order for an employer to utilize the front-loaded method an employer must provide a statement to employees at the beginning of the year providing employee name, employer name, statement date, statement period, total amount of front-loaded paid sick leave, total amount of paid sick leave during the statement period and total amount of available paid sick leave.
- Exempt employees are presumed to work 40 hours per week for the calculation.

Note: 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 effective August 1, 2019 arguing that the ordinance is not constitutional as it violates the Texas Minimum Wage Act. However, the court has yet to rule on the matter so the Dallas paid sick leave ordinance remains in effect. ADP will continue to monitor and report on future developments.

For a copy of the Dallas paid sick leave frequently asked questions, click on the link provided below.

<https://dallascityhall.com/departments/fairhousing/paid-sick-leave/Pages/Frequently-Asked-Questions.aspx>

## Duluth, Minnesota, Provides Further Paid Sick Leave Guidance

On May 29, 2018, the Duluth City Council passed an Earned Sick and Safe Time (ESST) Ordinance (Ordinance No. 10571). This ordinance amended the Duluth City Code by adding a new Chapter 29E entitled Earned Sick and Safe Time. This ordinance takes effect on January 1, 2020.

Some of the highlights of the ordinance are as follows:

### Covered Employers

Employer means an individual, corporation, partnership, association, nonprofit organization or a group of persons that has five or more employees whether or not the employees work in the city.

- The number of employees is determined based on the average number of employees per week during the previous calendar year.
- Absent a contractual agreement stating otherwise, a temporary employee supplied by a staffing agency or similar entity will be considered an employee of the staffing agency for all purposes of this chapter.

For purposes of this chapter, employer does not include:

- The United States government;
- The state, including any officer, department, agency, authority institution, association, or other body of the state including the legislature and the judiciary; or
- Any county or local government, except the city of Duluth.

### Covered Employees

Employee means any person who is:

- employed by an employer who performs work within the geographic boundaries of the city for more than 50 percent of the employee's working time in a 12-month period; or
- is based in the city of Duluth and spends a substantial part of his or her time working in the city and does not spend more than 50 percent of their work-time in a 12-month period in any other particular place.

For the purposes of this chapter, "employee" does not include the following:

- Independent contractors;
- Student interns;
- Seasonal employees; and
- Any person entitled to benefits under or otherwise covered by the Federal Railroad Unemployment Insurance Act, 45 U.S.C. Sections 351 et seq.

## **Accrual & Use**

### **Accrual**

From the date earned sick and safe time begins to accrue for an employee, the employee must accrue one hour of earned sick and safe time for every 50 hours worked.

- Earned sick and safe time must accrue only in hour-unit increments.
- There should be no accrual of a fraction of an hour of earned sick and safe time.

Employers will permit an employee to accrue up to 64 hours of earned sick and safe time per year.

- Calendar year means a consecutive twelve-month period as determined by an employer and may be based on an employee's employment anniversary date.

*Flat amount (frontloading)* – An employer may satisfy the requirements by providing at least 40 hours of earned sick and safe time following the initial 90 days of employment for use by the employee during the first year and providing at least 40 hours of earned sick and safe time beginning each subsequent year.

### **Use**

After 90 calendar days of employment, employees may use up to 40 hours of earned sick and safe time each year if they are unable to work all or part of a scheduled shift.

### **Carryover Limit**

Employers must permit an employee to carry over up to 40 hours of earned but unused sick and safe time into the following year.

*Rehires* – An employee who is rehired by an employer within six months following separation of employment from that employer may use any earned sick leave available to the employee at the time of separation.

### **Rate of Pay Requirements**

An employer must compensate an employee for used sick and safe time at the employee's standard hourly rate, for hourly employees, or an equivalent rate, for salaried employees.

- Employees are not entitled to compensation for lost tips or commissions.
- Compensation is required only for hours that an employee is scheduled to have worked.

### **Notice Requirements**

Employers must give notice of the following:

- Employees are entitled to earned sick and safe time;
- The amount of earned sick and safe time;
- The terms of its use guaranteed under this chapter;
- That retaliation against employees who request or use earned sick and safe time is prohibited; and
- That each employee has the right to file a written complaint to the city clerk if earned sick and safe time, as required by this section of Chapter 29E, is denied by the employer or the employee is retaliated against for requesting or taking earned sick and safe time.

### **Pay Statement Requirements**

There are no pay statement requirements provisions at this time.

Duluth has now released a set of frequently asked questions (FAQs). A sampling of these FAQs are as follows:

- **Who is considered a "family member" under the ordinance?**

A "family member" under the ordinance includes a child, stepchild, adopted child, foster child, legal ward, child for whom the employee is a legal guardian, spouse, domestic partner, sibling, stepsibling, foster sibling, parent, stepparent, mother-in-law, father-in-law, grandchild, foster grandchild, grandparent, step-grandparent, and any other individual related by blood or whose close association with the employee is the equivalent of a family relationship.

- **Does an employee have to live in Duluth in order to receive ESST?**

No. An employee does not need to live in Duluth to receive ESST. However, they must work within the city for at least 50 percent of their working time in a 12-month period.

- **Must an employer allow for ESST hours to accrue when an employee is not working (e.g., on vacation or out sick)?**

No. ESST hours only accrue when an employee is working.

- **How frequently must an employer calculate and record sick and safe time hours?**

Employers may calculate and record sick and safe time hours at the same frequency as the employer's other typical payroll practices (e.g., per pay period, weekly, bi-weekly, twice-per-month, etc.)

- **What happens to unused ESST at the end of the year?**

Employees can carry over up to 40 hours of earned but unused sick and safe time into the following year. Note that if an employer chooses to "front-load" ESST, they are not required to allow for ESST hours to carry over.

- **Under what circumstances may an employee use "sick time"?**

An employee may use "sick time" for an absence from work resulting from the employee's own mental or physical illness, injury or health condition. This includes the employee's need for medical diagnosis, care, treatment, or preventative medical care.

An employee may also use "sick time" to provide care for a family member with a mental or physical illness, or health condition. This includes care for a family member who needs medical diagnosis, care or treatment of a mental or physical illness, injury, health condition or preventative care.

- **Under what circumstances may an employee use "safe time"?**

An employee may use "safe time" in the event of an absence due to domestic assault, sexual assault, or stalking of the employee or of the employee's family member. An employee may use sick and safe time hours for activities such as:

- Medical and psychological counseling
- Relocation, victim services, and other safety planning
- Seeking a restraining order or legal counsel
- Participating in a legal proceeding or filing a police report

- **If an employee uses ESST, how much are they paid?**

- An employer must compensate employees using ESST at their standard hourly rate. Employees are not entitled to additional compensation for lost tips or commissions and compensation is only required for hours that they are scheduled to work.

- **If an employee is paid a salary, how is their hourly rate calculated for ESST pay?**

Divide the employee's salary by the number of weeks worked per year to get their weekly salary and then divide the weekly salary by the number of hours in a normal work week.

**Example:** Adam is a salaried employee for a company in downtown Duluth. He earns \$65,000 annually working 52 weeks a year and generally works 50 hours a week. Adam's rate of pay for ESST is:  $\$65,000/52 \text{ weeks} = \$1,250$ ;  $\$1,250/50 \text{ hours} = \$25.00/\text{hour}$ .

- **Does an employer have to "cash out" or pay employees for unused ESST when they leave their job?**

No. An employer is not required to "cash out" or pay employees for unused ESST.

To access all of the FAQs, utilize the following link.

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

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

<http://www.duluthmn.gov/city-clerk/earned-sick-and-safe-time/>

## San Antonio, Texas, Revises Paid Sick Leave Provisions

On August 16, 2018, the San Antonio, Texas, City Council voted 9 to 2 to adopt a paid leave ordinance which will require all employers in San Antonio to provide paid leave to their employees.

On July 15, 2019, a number of business groups that collectively employ thousands in San Antonio filed a lawsuit in Bexar County District Court seeking to stop the San Antonio paid sick leave ordinance from going into effect on August 1, 2019. The plaintiffs argued that the San Antonio ordinance passed is unconstitutional because it is preempted by the Texas Minimum Wage Act.

In response to the suit, San Antonio delayed the effective date of the paid sick leave ordinance until December 1, 2019 to allow resolution of the matter in the courts.

The San Antonio City Council has now made a number of changes to the paid sick leave ordinance. Highlights of these changes are as follows:

- Any individual who performs work for pay within the City of San Antonio for a covered employer is eligible to accrue sick and safe leave, unless otherwise exempted under ordinance. Independent contractors, paid and unpaid interns, employees subject to a collective bargaining agreement, and employers subject to the Railway Labor Act are exempt from coverage under the ordinance. Under the original ordinance, eligibility was limited to individuals who perform at least 80 hours of work in a year.
- Employees who are typically based outside the City of San Antonio (that is, for more than 50 percent of their work hours in a year) but who perform work in the city on an occasional basis are covered by the ordinance only if they perform more than 240 hours of work in San Antonio within a year.
- A modified accrual schedule for sick and safe leave will apply across all businesses, regardless of size. Specifically, employees will be eligible to accrue one hour of paid sick and safe leave for every 30 hours worked, up to 56 hours per year. The original ordinance would have required larger businesses to provide up to 64 hours of leave while smaller businesses would have been required to provide up to 48 hours of leave.
- While sick and safe leave begins to accrue from the first working day for new employees, employers may require that new employees wait up to 90 days before using any accrued time. Under the original ordinance, the waiting period for new employees was capped at 60 days and was only applicable if the employer could establish that the employee's term of employment was at least one year.
- The definition of a covered family member under the ordinance will now include an employee's: (i) spouse, domestic partner, or different-sex or same-sex significant other; (ii) any other family member within the second degree of consanguinity or affinity; and a member of the covered employee's household, as well as a minor's parents, regardless of the sex or gender of either parent. In addition, the concept of parenthood "is to be liberally construed without limitation as encompassing legal parents, foster parents, same-sex parent, stepparents, those serving in loco parentis, and other persons operating in caretaker roles." Under the original ordinance, a covered family member included an employee's spouse, child, parent, or any other individual related by blood or whose close association with the employee is the equivalent of a family relationship.
- An employer may not request medical documentation or other verification of the use of paid sick or safe leave under the ordinance until an employee's fourth consecutive day of using leave. Employers may also request documentation where they reasonably suspect abuse of sick and safe leave. Under the original ordinance, documentation was allowed only after three consecutive days of absence.
- While the ordinance is now slated to take effect on December 1, 2019, penalties will not be assessed until April 1, 2020, except in cases of retaliation against an employee.

It is important to note that the revised ordinance specifies that sick and safe leave under the ordinance "is a fringe benefit as defined by the Texas Labor Code and not a wage or a component of salary." To that end, the ordinance "does not require the payment of sick and safe leave upon separation from employment and it does not require that sick and safe leave be calculated as an increase to salary or wages of an employee." The significance of this is that the legal challenges assert that local paid sick leave ordinances violates the Texas Minimum Wage Act by requiring private employers to provide employees additional compensation, in the form of paid sick leave, for each 30-hour block of time worked.

A final decision to the court challenges in the three jurisdictions enacting paid sick leave ordinances (Austin, San Antonio and Dallas) have not yet been decided. ADP will continue to monitor and report as developments unfold.

For a copy of the approved revisions to the San Antonio paid sick leave ordinance, click on the link provided below.

<https://www.sanantonio.gov/Portals/0/Files/health/PaidSickLeave/City%20Council%20Rec%20Revisions%20-%20side-by-side%20-post%2019-0923.pdf?ver=2019-09-23-150717-567>



## California Amends Final Pay Requirements for Two Types of Employees

Generally, California law requires that an employee who is discharged must be paid all of his or her wages, including accrued vacation, immediately at the time of termination. In that event, an employee without a written employment contract for a definite period of time gives at least 72 hours prior notice of his or her intention to quit, and quits on the day given in the notice, that employee must be paid all of his or her wages, including accrued vacation, at the time of quitting. If such employee, quits without giving 72 hours prior notice that employee must be paid all of his or her wages, including accrued vacation, within 72 hours of quitting.

An employer who willfully fails to pay any wages due a terminated employee (discharge or quit) in the prescribed time frame may be assessed a waiting time penalty. The waiting time penalty is an amount equal to the employee's daily rate of pay for each day the wages remain unpaid, up to a maximum of thirty (30) calendar days.

Legislation was enacted that provides an exception to the final pay requirements described above for two specific types of employees:

### **California Professional-Baseball Events Employees:**

Senate Bill 286 provides that California events employees who provide services at professional baseball games may, upon termination, be paid all wages earned by the next regular payday. This measure goes into effect on January 1, 2020.

### **Photo-Shoot Employees:**

Senate Bill 674, effective immediately, allows the employers of print-shoot employees to pay wages owed at the time of termination on the next regular payday, rather than immediately. A "print-shoot employee" means an individual hired for a period of limited duration to render services relating to or supporting a still image shoot, including film or digital photography, for use in print, digital, or internet media. The payment may be mailed or made available at a specified location in the county where the employee was hired or performed labor. A valid collective bargaining agreement may establish alternative provisions for the final payment of wages.

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## California Increases Wage Payment Penalties

California recently enacted Assembly Bill 673 resulting in an increase in the penalty for failures to pay wages. Effective January 1, 2020, the penalty amounts for wage payment violations in California will be increased to \$100 for each failure to pay each employee for an initial violation and \$200 for each subsequent or willful or intentional violation plus 25 percent of the amount unlawfully withheld. Currently, the penalty for failure to pay wages as provided under the California Labor Code, including laws governing equal wage rates, is \$50 for the initial failure per employee and \$100 plus 25 percent of the amount unlawfully withheld for subsequent violations or willful and intentional violations.

Note: Assembly Bill 673 did not increase the penalty amounts for wage statement failures under California Labor Code 226 which remain at \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of \$4,000.

For a copy of Assembly Bill 673, click on the link provided below:

[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201920200AB673](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB673)

## California Releases 2020 Minimum Earnings Thresholds

According to the California Labor Code, computer software professionals and licensed physicians and surgeons may be exempt from California's overtime requirements, if certain criteria are met. One of the criteria is that the employee's hourly rate of pay is not less than a certain rate, which is determined by the California Department of Industrial Relations (the "Department") each year. The Department adjusts this rate each year on October 1, with the new rate becoming effective on January 1st of the following year.

On October 22, 2019, the Department released the rates applicable to these exemptions for 2020 as follows:

- Computer software professionals are exempt from overtime, if they are paid at least \$46.55 per hour (currently, \$45.41 per hour), or (1) are paid on a salary basis, (2) earn an annual salary of at least \$96,968.33 (currently, \$94,603.25), and (3) are paid at least \$8,080.71 monthly (currently, \$7,883.62 monthly).
- Licensed physicians and surgeons are exempt from overtime beginning in 2020 if they are paid at least \$84.79 per hour (currently, \$82.72 per hour).

Links to updated relevant publications by the California Department of Industrial Relations can be found below:

Computer Software Professionals

<https://www.dir.ca.gov/oprl/ComputerSoftware.pdf>

Licensed Physicians and Surgeons

<https://www.dir.ca.gov/oprl/Physicians.pdf>

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## Florida Raises Minimum Wage Effective January 1, 2020

The Florida Department of Economic Opportunity (DEO) has announced the minimum wage rate will increase from \$8.46 per hour to \$8.56 per hour and the minimum cash wage for tipped employees will increase from \$5.44 per hour to \$5.54 per hour. Both increases will be effective January 1, 2020.

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

<http://www.floridajobs.org/business-growth-and-partnerships/for-employers/display-posters-and-required-notice>

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## Guam to Increase Minimum Wage

On October 14, 2019, the Governor of Guam, Lou Leon Guerrero, signed into law Bill No. 136-35 to raise the Guam minimum wage from its current rate of \$8.25 per hour as follows:

Effective March 1, 2020	\$8.75 per hour
Effective March 1, 2021	\$9.25 per hour

Guam does not allow employers to utilize a tip credit to pay tipped employees and must pay the full minimum wage to tipped employees.

For a copy of Bill No. 136-35, click on the link provided below:

[http://www.guamlegislature.com/Bills\\_Introduced\\_35th/Bill%20No.%20136-35%20\(COR\).pdf](http://www.guamlegislature.com/Bills_Introduced_35th/Bill%20No.%20136-35%20(COR).pdf)

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## New Jersey Minimum Wage to Increase on January 1, 2020

The New Jersey Department of Labor and Workforce in a press conference announced that the state minimum wage will increase to \$11.00 per hour from its current level of \$10.00 per hour on January 1, 2020. The cash wage for tipped employees will increase from \$2.63 to \$3.13 per hour on the same date.

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

[https://nj.gov/labor/lwdhome/press/2019/20191015\\_minwage.shtml](https://nj.gov/labor/lwdhome/press/2019/20191015_minwage.shtml)

## Bernalillo County, New Mexico, Announces 2020 Minimum Wage

The County of Bernalillo County, New Mexico, has announced that the minimum wage effective January 1, 2020 for "employees who work within the unincorporated area of Bernalillo County, outside of the city limits" is as follows:

\$9.20 per hour (up from \$9.05 per hour) where the employee's employer does NOT provide health care and/or childcare benefits to the employee.

\$8.20 per hour (up from \$8.05 per hour) where the employee's employer DOES provide health care and/or childcare benefits to the employee during any pay period and the employer pays an amount for these benefits equal to or in excess of an annualized cost of \$2,500.00.

### Tipped Employees:

Where the employee's employer does NOT provide health care and/or childcare benefits to the employee.

Minimum Cash Wage	\$2.13
Maximum Tip Credit	\$7.07
Minimum Hourly Rate	\$9.20

Where the employee's employer DOES provide health care and/or childcare benefits to the employee during any pay period and the employer pays an amount for these benefits equal to or in excess of an annualized cost of \$2,500.00.

Minimum Cash Wage	\$2.13
Maximum Tip Credit	\$6.07
Minimum Hourly Rate	\$8.20

It is important to note that the Bernalillo County minimum wage ordinance states as follows:

Minimum wage rate. For employers who provide health care and/or childcare benefits to an employee during any pay period for which the employer pays an amount for those health care benefits equal to or in excess of annualized cost of \$2,500.00, beginning April 1, 2013 and each year thereafter, the minimum wage for that employee shall be an hourly rate of \$1.00 less than the current minimum wage otherwise applicable to employees who do not receive such benefits.

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

<https://www.bernco.gov/county-manager/news.aspx?2db258aa42a04430b8b8a83f4c866d4ablogPostId=eca4433de8c142739b529a3280e778ba>

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## City of Albuquerque, New Mexico, Announces 2020 Minimum Wage

The City of Albuquerque, New Mexico, has announced the minimum wage rate is increasing from \$9.20 to \$9.35 per hour, effective January 1, 2020.

However, the minimum wage will be \$8.35 per hour (increased from \$8.20 per hour) if the employee's employer provides health care and/or childcare benefits to the employee during any pay period and the employer pays an amount for these benefits equal to or in excess of an annualized cost of \$2,500.00.

The minimum cash wage rate for all tipped employees will increase from \$5.50 to \$5.60 per hour on January 1, 2020.

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

<http://www.cabq.gov/legal/news/albuquerque-minimum-wage-2020>

## Novato, California, Adopts Minimum Wage Ordinance

The City of Novato, California, that will incrementally increase the minimum wage rate based on the size of the employer as shown below. Novato currently adheres to the California state minimum wage, which are currently \$11.00 for employers with 25 or less employees, and \$12.00 for employers with 26 or more employees.

Employers with 25 or less employees:

January 1, 2020	\$12.00
July 1, 2020	\$13.00
January 1, 2021	\$14.00
January 1, 2022	\$15.00

Employers with 26 to 99 employees:

January 1, 2020	\$13.00
July 1, 2020	\$14.00
January 1, 2021	\$15.00

Employers with 100 or more employees:

January 1, 2020	\$13.00
July 1, 2020	\$15.00

After the \$15.00 per hour minimum wage rate is reached for each employer size, the minimum wage will be adjusted based on the Consumer Price Index.

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## City of SeaTac, Washington, Announces 2020 Minimum Wage

The City of SeaTac, Washington, has announced that the minimum wage rate for hospitality and transportation industry employees working in and near the Seattle-Tacoma International Airport will increase from \$16.09 per hour to \$16.34 per hour, effective January 1, 2020.

The announcement stated as follows:

### City of SeaTac Announces 2020 Minimum Wage Adjustments

The City of SeaTac is announcing the mandatory annual adjustments to the City's Minimum Employment Standards Ordinance for Hospitality and Transportation Industry Employers.

2020 Minimum Wage: \$16.34 per hour

The increase in the living wage rate (1.53%) has been calculated using the Consumer Price Index for urban wage earners and clerical workers, (CPI-W) for the twelve (12) months prior to September 1 as calculated by the United States Department of Labor.

Therefore, in accordance with SeaTac Municipal Code (SMC) Section 7.45.050, the living wage rate in effect for hospitality and transportation employees within the City will increase to \$16.34, effective January 1, 2020.

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## Seattle, Washington, Announces 2020 Minimum Wage

The Seattle Office of Labor Standards (OLS) has announced that the 2020 minimum wage for all large employers (employing more than 500 workers worldwide) will be \$16.39 per hour, an increase of 39 cents over the current rate of \$16.00 per hour.

Also, beginning on January 1, 2020, small employers (with 500 or fewer employees) must pay at least \$15.75 (currently \$15.00) per hour. Small employers can meet this requirement by paying no less than \$13.50 (currently \$12.00) per hour in wages and contributing at least \$2.25 (currently \$3.00) per hour toward an employee's medical benefits and/or reported tips.

For a copy of the announcement, copy and paste the following into your browser:

<https://www.seattle.gov/Documents/Departments/LaborStandards/Press%20Release%20January%202020%20Minimum%20Wage%20Increase%2010-3-19FINAL.pdf>

## Tacoma, Washington, Conforms to State Minimum Wage

Currently the minimum wage in the city of Tacoma, Washington, is \$12.35 per hour and the Washington state minimum wage is \$12.00 per hour. Therefore, employees working in Tacoma are entitled to the higher minimum wage of \$12.35 per hour.

However, effective January 1, 2020, the state minimum wage will increase to \$13.50 per hour while the Tacoma minimum wage is scheduled to increase to only \$12.54 per hour. As a result, Tacoma workers will be entitled to the state minimum wage of \$13.50 per hour as of January 1, 2020.

The use of tip credits to pay tipped employees is not allowed in Washington State so tipped employees must be paid at least the minimum wage in cash wages per hour.

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## 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](http://www.adp.com/regulatorynews).

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