

Eye On Washington State and Local Updates



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Topics Covered In This Issue

Leave:

- Massachusetts Provides Paid Family and Medical Leave Program Contribution Rate

Payroll:

- Massachusetts Provides Guidance on New Rule for Calculating Minimum Wage for Tipped Employees
- New Jersey Increases Minimum Wage
- Glenview, Illinois, Opts Back In to Cook County Ordinances
- Minimum Wage Increased in Santa Fe County, New Mexico
- Local Minimum Wage Ordinance Enacted in Daly City, California
- Fremont, California, Passes Minimum Wage Ordinance
- City of Santa Fe, New Mexico, Announces Increase to Minimum Wage

Time and Labor:

- California Appellate Court Holds That Employees Required to Call In Are Entitled to Reporting Pay

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

Leave

Massachusetts Provides Paid Family and Medical Leave Program Contribution Rate

On June 28, 2018, Governor Charles Baker of Massachusetts signed into law legislation (H.4640) that introduces a new Paid Family and Medical Leave (PFML) program. The Massachusetts Department of Family and Medical Leave (the Department) will begin to pay benefits on January 1, 2021.

The program will provide employees who contribute to the program the ability to take paid leave for up to 12 weeks a year to care for a family member or bond with a new child; 20 weeks a year to deal with a personal medical issue; and up to 26 weeks to deal with an emergency related to deployment of a family member for military service. Weekly benefit amounts will be calculated as a percentage of the employee's average weekly wage, with a maximum weekly benefit of \$850. Self-employed persons may opt in to the program. For the law to apply to municipal employees, the city or town involved must vote to accept participation in the program.

The law creates a new payroll income tax, effective July 1, 2019. The payroll tax will apply to most Massachusetts employers, including state and municipal government agencies. The tax would also apply to:

- self-employed individuals who elect to receive benefits; and
- businesses that employ independent contractors and must report payments for services on federal Form 1099-MISC.

On January 23, 2019, Massachusetts released the "Initial Contribution Rate." The state will collect contributions from employers, employees, and the self-employed at an initial rate of 0.63 percent on the first \$128,400 of an individual's annual earnings. It is important to note that contributions shall not be required

for employees' wages or other qualifying earnings or payments above the contribution and base limit established annually by the federal Social Security Administration for purposes of the Federal Old-Age, Survivors, and Disability Insurance program limits.

In addition, Massachusetts issued draft regulations which, among other topics, addressed the allocation of the contribution.

The statute states that employers may deduct up to 100 percent of the contributions for family leave from employees' wages, but may deduct only 40 percent of the contributions for medical leave from employees' wages. In the draft regulations, the Department provided information as to how employers should allocate that 0.63 percent payment. For employers with 25 or more employees, the Department stated that 0.52 percent of the Initial Contribution Rate is designated for medical leave, while the remaining 0.11 percent of the Initial Contribution Rate is designated as family leave.

Accordingly, based on the allocation provided by the Department, employees are responsible for the entire 0.11 percent of the Initial Contribution Rate, which is designated as family leave. In addition, employees are responsible for up to 40 percent of the 0.52 percent Initial Contribution Rate, which is designated as medical leave. In other words, for each \$1,000 of wages earned at an employer with 25 or more employees, the employer would contribute \$3.12, while the employee would contribute \$3.18 through a payroll deduction. Smaller employers (24 or fewer employees) can have the contributions funded exclusively through employee payroll deductions.

The draft regulations, although not binding, provide further insight into what the final regulations may require. According to the state of Massachusetts website: "The statutory deadline for the publication of PFML regulations is March 31, 2019." An analysis of the final regulations will be provided at the time of release.

For a copy of the draft regulations, please click on the link provided below.

<https://www.mass.gov/files/documents/2019/01/23/DRAFT%20DFML%20Regulations.pdf>

Payroll

Massachusetts Provides Guidance on New Rule for Calculating Minimum Wage for Tipped Employees

As a result of the enactment of Bill H.4640, effective January 1, 2019, Massachusetts employers who utilize a tip credit in paying tipped employees must calculate the minimum wage rate at the end of each shift.

Under previous law, the calculation of whether a tipped employee earned enough tips plus the cash wage to bring him or her to at least the minimum wage is done on a weekly basis.

Massachusetts has now provided the following additional guidance.

Effective January 1, 2019, a new method of service rate/tip differential calculation is required.

Beginning January 1, 2019, employers must calculate the difference between the service rate and earned tips at the completion of each shift worked by the employee to ensure the employee earned at least the minimum wage for all hours worked when the service rate and earned tips are added together. The employer is required to add any amount due to the employee's next pay check.

For example:

- Assume that the minimum wage is \$12.00 per hour and the service rate is \$4.35 per hour
- A restaurant server works one five-hour shift on Tuesday and one five-hour shift on Saturday during the same pay week

- On Tuesday, the slow day, the employee earns \$21.75 in service rate wages + \$20.00 in tips for a total earned of \$41.75
- The law requires that the employee receive at least \$60.00 for the shift (5 hours x \$12.00 minimum wage rate)
- The employer is required to add \$18.25 to the employee's next pay check to cover the differential for this shift
- On Saturday, the busy day, the employee earns \$21.75 in service rate wages + \$100 in tips for a total earned of \$121.75. Since this total exceeds the \$12.00 per hour minimum wage rate for each hour worked, the employer is not required to add any amount to the employee's next pay check for this shift.
- Total gross wages to be paid to this employee for this pay week = \$181.75

For a copy of the Massachusetts guidance, please click on the following link.

<https://www.mass.gov/guides/pay-and-recordkeeping#tips>

For a copy of the enacted version of H.4640, please click on the link provided below:

<https://malegislature.gov/Laws/SessionLaws/Acts/2018/Chapter121>

New Jersey Increases Minimum Wage

On February 4, 2019, New Jersey Governor Phil Murphy signed into law Assembly Bill Number 15 (A-15) which raises the state minimum wage through a series of gradual increases to \$15.00 per hour by the year 2024. The bill increases the minimum wage from the current \$8.85 per hour as follows:

July 1, 2019	\$10.00
January 1, 2020	\$11.00
January 1, 2021	\$12.00
January 1, 2022	\$13.00
January 1, 2023	\$14.00
January 1, 2024	\$15.00

Minimum cash wages for tipped employees will also be increased from the current rate of \$2.13 per hour as follows:

July 1, 2019	\$2.63
January 1, 2020	\$3.13
January 1, 2021	\$4.13
January 1, 2022	\$5.13
January 1, 2023	\$5.13
January 1, 2024	\$5.13

For seasonal and small employers (five or fewer employees), the minimum wage increases to \$10.30 per hour on January 1, 2020, with 80 cents per hour increases scheduled annually until the minimum wage reaches \$14.30 per hour in 2025, and a 70 cents per hour increase to \$15.00 per hour on January 1, 2026.

For agricultural workers, the minimum wage will increase to \$10.30 per hour on January 1, 2020, and \$10.90 on January 1, 2022, with subsequent 80 cents per hour increases every January 1st until reaching \$12.50 per hour in 2024.

Additionally, beginning in 2020, employers are permitted to pay a "training wage" of at least 90 percent of the minimum wage for the first 120 hours of work performed by employees enrolled in a training program.

For a copy of A-15, please click on the link provided below:

https://www.njleg.state.nj.us/2018/Bills/A0500/15_U1.PDF

Glenview, Illinois, Opts Back In to Cook County Ordinances

The Glenview Board of Trustees voted unanimously on February 7, 2019, to opt back in to the Cook County, Illinois, minimum wage and paid leave provisions effective July 1, 2019. Glenview had previously voted to opt out of the Cook County ordinances and to follow the Illinois state minimum wage, currently \$8.25 per hour.

Effective July 1, 2019, the minimum wage in Glenview, consistent with the Cook County provisions, will be \$12.00 per hour.

It is important to note the Glenview ordinance contains a provision that if Illinois passes a statewide minimum wage increase, the ordinance would be repealed.

Glenview will also be following the Cook County paid sick leave ordinance, which requires employers to provide one hour of paid sick leave for every 40 hours worked to employees who worked in the county for at least 80 hours in a 120-day period.

Minimum Wage Increased in Santa Fe County, New Mexico

The County of Santa Fe, New Mexico, has announced that, effective March 1, 2019, the minimum wage in Santa Fe County will increase from \$11.40 to \$11.80 per hour. The cash wage for tipped employees will also increase from \$3.41 per hour to \$3.53 per hour on March 1.

For a copy of the Santa Fe County announcement, please click on the link below.

<http://www.santafecountynm.gov/livingwage>

Local Minimum Wage Ordinance Enacted in Daly City, California

Daly City, California, has enacted a minimum wage ordinance that will increase the minimum wage in the city to \$15.00 per hour by the year 2021. Currently, Daly City adheres to the California state minimum wage rules, which are \$11.00 per hour for employers with 25 employees or less and \$12.00 per hour for employers with 26 employees or more. The California law stipulates that the state minimum wage will reach \$15.00 In January of 2022.

Under the enacted ordinance, the minimum wage for any employee working at least two or more hours per week in Daly City is as follows:

February 13, 2019	\$12.00
January 1, 2020	\$13.75
January 1, 2021	\$15.00

It is important to note that the first step in the increase is effective February 13, 2019.

After 2021, the rate will increase by the lesser of 3.5 percent or a percentage equal to the prior year's regional Consumer Price Index. Violations of the minimum wage ordinance are subject to a civil penalty of \$40 per employee, per day of violation.

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

<http://www.dalycity.org/Assets/Departments/City+Clerk/Minimum+wage.pdf>

Fremont, California, Passes Minimum Wage Ordinance

On February 5, 2019, the City Council in Fremont, California, voted in favor of an ordinance to increase the minimum wage for employees who work at least two hours in a calendar week in the city. The increase is as follows:

Employers With 26 or More Employees:

July 1, 2019	\$13.50 per hour
January 1, 2020	\$15.00 per hour

Beginning on July 1, 2021, and thereafter, the minimum wage will receive a cost-of-living adjustment not to exceed five percent.

Employers With 25 or Fewer Employees:

July 1, 2020	\$13.50 per hour
July 1, 2021	\$15.00 per hour

On July 1, 2022, the minimum wage will be the same for all employers regardless of size.

Until the noted effective dates above, Fremont adheres to the California state minimum wage rules, which are \$11.00 per hour for employers with 25 employees or less and \$12.00 per hour for employers with 26 employees or more. The California law stipulates that the state minimum wage will reach \$15.00 In January of 2022.

It is important to note that the Fremont minimum wage ordinance provides that employees up to 21 years of age employed by a nonprofit organization are exempt from the local minimum wage for the first 120 days of employment. The minimum wage also does not apply to the time employees spend on stand-by or on-call duty.

City of Santa Fe, New Mexico, Announces Increase to Minimum Wage

The City of Santa Fe, New Mexico, has announced that, effective March 1, 2019; the living wage rate in Santa Fe will increase from \$11.40 to \$11.80 per hour. All employers required to have a business license or registration from the City of Santa Fe must pay at least the living wage rate to employees for all hours worked within the Santa Fe city limits. All employees, including temporary and part-time workers, must be paid this rate.

Tipped employees may be paid a minimum cash wage of \$2.13 per hour if tips are sufficient to bring the employee's hourly wage to \$11.80 per hour. If tips are not sufficient, the employer must make up the difference.

For a copy of the announcement, please paste the following into your browser.

https://www.santafenm.gov/news/detail/santa_fes_workers_will_see_wage_increase_in_march_1

Time and Labor

California Appellate Court Holds That Employees Required to Call In Are Entitled to Reporting Pays

Pursuant to California Wage Order No. 1-15, employees who report to work on a scheduled workday but are not put to work, or are furnished with less than half their usual or scheduled day's work, are entitled to be paid for half the usual or scheduled day's work, but in no event for less than two hours nor more than four hours, at his or her regular rate of pay. Employees who are required to report to work for the second time in a single workday and are furnished with less than two hours of work on the second reporting are entitled to be paid two hours at the employee's regular rate of pay. Reporting time pay is not considered hours worked and need not be included in calculating the employee's regular rate of pay. https://www.dir.ca.gov/dlse/FAQ_ReportingTimePay.htm

A recent decision by a California Court of Appeals held that where an employee is required to call in – but not physically report to work two hours before the start of a shift to determine whether they needed to report to work – that employee is entitled to be paid reporting pay. In *Ward v. Tilly's, Inc.*, the court held that being required to telephone the employer two hours prior to the start of a shift to see if an employee needed to physically come in to work, could be considered “reporting for work” under the Wage Order, 2019 WL 421743 (Cal. Ct. App. Feb. 4, 2019). Employees required to make such calls would therefore be eligible for reporting pay of at least two hours at the employee’s regular rate. The court reasoned that employees required to make such calls as part of their regular schedules should be entitled to reporting pay because this type of scheduling practice subjects employees to the inconvenience and potential expenses associated with being available to work, such as the costs of family care, travel expenses and foregoing other employment opportunities.

The Court’s decision did not address whether this decision should apply only on a going-forward basis, or whether it should apply retroactively. It also did not address what proximity to the shift would be considered close enough to render an employee eligible for reporting pay. For example, it is not clear whether an employee required to call in six hours before a shift to see whether they needed to report to work would be eligible for reporting pay under this decision.

This decision may, at some point, be addressed by the Supreme Court of California. For now, however, employers should consult with their legal counsel to determine how to proceed in light of the appellate court’s ruling.

A copy of the Court’s decision can be found here:

<https://www.courts.ca.gov/opinions/documents/B280151.PDF>

ADP Compliance Resources

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