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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

District of Columbia Approves New Employment Protections for Victims of Domestic Violence

The District of Columbia has enacted legislation (Act A22-0609) that will provide additional employment protections to victims and family members of victims of domestic violence, sexual offenses and stalking. Act A22-0609 applies to all employers and is effective March 14, 2019.

Act A22-0609 amends the District of Columbia Human Rights Act to prohibit discrimination against victims and family members of victims of domestic violence, sexual offenses and stalking.

Specifically, the law prohibits employers from discriminating against an employee, based wholly or partially on the fact that:

- They attended, participated in, prepared for, or requested leave for a criminal, civil, or administrative proceeding, including meetings with an attorney or law enforcement officials;
- They sought physical or mental health treatment or counseling; or
- An individual caused a disruption at the employee's workplace or made a threat to an employee's employment.

Employers must also provide reasonable accommodations for an employee who is a victim or a family member of a victim of domestic violence, a sexual offense or stalking when an accommodation is necessary to ensure the person's security and safety, unless such an accommodation would cause the employer undue hardship.

For the purposes of the law, a reasonable accommodation may include:

- Transfer
- Reassignment
- Modified schedule
- Leave
- Changed work station

- Changed work phone number or email address
- Installed lock
- Assistance in documenting domestic violence, a sexual offense or stalking that occurs in the workplace
- The implementation of another safety procedure in response to actual or threatened incidents

An undue hardship is defined as any action that requires significant difficulty or expense when considered in relation to factors such as the size of the employer, its financial resources, and the nature and structure of its operation.

The law also prohibits employers from disclosing any information related to an employee's status as a victim or family member of a victim.

For details, click on the link provided below:

https://legiscan.com/DC/text/B22-0014/2017

Kentucky Enacts Pregnancy Accommodation Law

On April 10, 2018, Governor Matt Bevin signed into law Senate Bill 18 titled "Kentucky Pregnant Workers Act" (SB 18) which amends Kentucky Revised Statues 344.030 to include within the definition of "reasonable accommodation" accommodations made for pregnancy, childbirth and related medical conditions. SB 18 makes it unlawful for an employer to fail to accommodate an employee affected by pregnancy, childbirth, or a related medical condition and requires employers to provide notice to all employees regarding the right to be free from discrimination for pregnancy, childbirth and related medical conditions.

The Kentucky Constitution specifies that new laws take effect 90 days after the adjournment of the legislature unless they have a special effective date, are general appropriations measures, or include an emergency clause that makes them effective immediately upon becoming law. SB 18 did not provide for a special effective date, indicate that it was a general appropriations measure or include an emergency clause.

Some of the highlights of SB 18 are as follows:

- Employer means a person who has fifteen (15) or more employees within the state in each of twenty (20) or more calendar weeks in the current or preceding calendar year.
- Employee means an individual employed by an employer, but does not include an individual employed by his parents, spouse, or child, or an individual employed to render services as a domestic in the home of the employer.
- Reasonable accommodation for an employee's own limitations related to her pregnancy, childbirth or related medical conditions; may include more frequent or longer breaks, time off to recover from childbirth, acquisition or modification of equipment, appropriate seating, temporary transfer to a less strenuous or less hazardous position, job restructuring, light duty, modified work schedule and private space that is not a bathroom for expressing breast milk.
- It is unlawful for an employer to fail to make reasonable accommodations for any employee with limitations related to pregnancy, childbirth or a related medical condition who requests an accommodation, including but not limited to the need to express breast milk, unless the employer can demonstrate the accommodation would impose an undue hardship on the employer's program, enterprise or business.
- The following shall be required as to reasonable accommodations:
    - An employee shall not be required to take leave from work if another reasonable accommodation can be provided;
    - The employer and employee shall engage in a timely, good faith and interactive process to determine effective reasonable accommodations; and
    - If the employer has a policy to provide, would be required to provide, is currently providing, or has provided a similar accommodation to other classes of employees, then a rebuttable presumption is created that the accommodation does not impose an undue hardship on the employer.

- An employer shall provide written notice of the right to be free from discrimination in relation to pregnancy, childbirth and related medical conditions, including the right to reasonable accommodations, to:
    - o New employees at the commencement of employment; and
    - o Existing employees not later than thirty (30) days after the effective date of this Act.
- An employer shall conspicuously post a written notice of the right to be free from discrimination in relation to pregnancy, childbirth and related medical conditions, including the right to reasonable accommodations, at the employer's place of business in an area accessible to employees.

For a copy of the legislation, paste the following into your browser and search for SB 18.

https://apps.legislature.ky.gov/lrcsearch#tabs-6

Massachusetts Posts Family and Medical Leave Toolkit

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

Background:

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 benefits 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% on the first $132,900 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.

Toolkit:

Massachusetts has now released additional information This toolkit includes contribution rate calculators, informative videos, workplace posters and other useful information designed to assist businesses and individuals with the requirements of the Family and Medical Leave Program.

For a link to the toolkit, please click on the link provided below:

www.mass.gov/dfml

Michigan Launches Paid Sick Leave Website

The Michigan legislature passed and the Governor signed Senate Bill 1175, which established the "Paid Medical Leave Act" (the Act), a paid sick-leave law, effective on **March 29, 2019**.

Michigan, via the state Department of Licensing and Regulatory Affairs, has now launched a website regarding the new law, featuring frequently asked questions and a model poster. Please find below a sampling of the guidance provided:

What employers are covered by the Act?

The Act applies to employers with 50 or more employees, regardless of full or part-time status or how many hours they work. It does not apply to the United States government, other states, or to political subdivisions of other states.

When does an eligible employee begin to accrue paid medical leave?

Accrual begins on March 29, 2019, or upon commencement of the employee's employment, whichever is later.

How does an eligible employee accrue paid medical leave?

Paid medical leave is accrued at a rate of one hour for every 35 actual hours worked; however, an employer is not required to allow accrual of over one hour in a calendar week or more than 40 hours in a benefit year.

What is a benefit year?

A benefit year is any consecutive 12-month period used by an employer to calculate an eligible employee's benefits.

May an employer provide the total amount of paid medical leave all at once?

Yes. An employer may provide at least 40 hours of paid medical leave at the beginning of the benefit year or on the date that the individual becomes eligible during the benefit year on a prorated basis. If an employer adopts this practice, it does not have to permit employees to carry over unused leave to the next benefit year.

Does paid medical leave have to be taken in one-hour increments?

Yes. Paid medical leave must be used in one-hour increments unless the employer has a different increment policy set forth in writing in an employee handbook or other employee benefits document.

When can an eligible employee use paid medical leave?

Employees may take paid medical leave for the following:

- Physical or mental illness, injury, or health condition of the employee or his or her family member.
- Medical diagnosis, care, or treatment of the employee or employee's family member.
- Preventative care of the employee or his or her family member.
- Closure of the employee's primary workplace by order of a public official due to a public health emergency.
- The care of his or her child whose school or place of care has been closed by order of a public official due to a public health emergency.
- The employee's or his or her family member's exposure to a communicable disease that would jeopardize the health of others as determined by health authorities or a health-care provider.

For domestic violence and sexual assault situations, employees may use paid medical leave for the following:

- Medical care or psychological or other counseling.
- Receiving services from a victim-services organization.
- Relocation.
- Obtaining legal services.
- Participation in any civil or criminal proceedings related to or resulting from domestic violence or sexual assault.

Who is considered a family member?

Family member includes:

- Biological, adopted or foster child, stepchild or legal ward, or a child to whom the employee stands in loco parentis.
- Biological parent, foster parent, stepparent, adoptive parent or legal guardian of an employee.
- Spouse or individual to whom the employee is legally married under the laws of any state.
- Person who stood in loco parentis when the employee was a minor child.
- Grandparent.
- Grandchild.
- Biological, foster and adopted siblings.

What is the required wage rate for paid medical leave calculations?

Paid medical leave must be paid at a pay rate equal to the greater of either an employee's regular rate of pay or the Michigan minimum wage rate. The regular rate for a tipped employee is the applicable minimum wage rate.

For a copy of all the frequently asked questions, paste the following into your browser:

https://www.michigan.gov/documents/lara/Paid_Medical_Leave_Act_FAQ_003_644567_7.pdf

Paste the following into your browser for the poster that covered-employers with 50 or more employees are required to post "in a conspicuous place accessible to eligible employees."

https://www.michigan.gov/documents/lara/Paid_Medical_Leave_Act_Poster_644565_7.pdf

For a copy of Senate Bill 1175, please click on the link provided below.

https://www.legislature.mi.gov/documents/2017-2018/publicact/pdf/2018-PA-0369.pdf

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New York Voting Leave Law Amended

On April 1, 2019, Governor Andrew Cuomo of New York, announced amendments to the state's 2020 fiscal year budget including an amendment to New York Election Law Section 3-110. The changes took effect immediately upon the Governor signing the budget bill which he did on April 12, 2019.

Under the voting leave law amendment, all registered voters may request up to three hours of time off, regardless of their schedule, without loss of pay to enable the employee to vote in any public election. Previously, employees were eligible to request up to two hours of paid time off to vote if they did not have four or more consecutive hours off between: (i) the time when the polls opened and they began their shift; or (ii) the end of their shift and the closing of the polls. The new amendment removes the requirement that the employee not have sufficient time before or after work when the polls are open to vote, and allows employees up to three hours of paid time off. Employers may designate whether the time off will be taken at the beginning or end of the employee's shift.

It is important to note that, in order to be entitled to voting time off, employees must be registered to vote and must provide at least two days' advance notice of the need for time off to vote. The amendment is silent on whether an employer can require proof of voting after the employee takes paid time off, or whether the employer may charge time off taken by an employee to vote against the employee's general paid time-off bank, provided by the employer's paid time-off policies.

The requirement that employers must conspicuously post in the place of work, where it can be seen by employees, a notice setting forth the voting time-off entitlement, at least 10 days before a public election, remains intact. Such notice must remain posted until the polls close.

For more information, click on the link below:

https://www.nysenate.gov/legislation/laws/ELN/3-110

Utah Enacts Emergency Services Volunteer Leave

On March 22, 2019, Utah Governor Gary Herbert signed into law House Bill 173, titled the Emergency Services Volunteer Employment Protection Act (the Act).

The Act, which is effective July 1, 2019, prohibits a public or private employer from terminating an employee for being an emergency services volunteer.

Some of the highlights of the Act are as follows:

- An employer may not terminate the employment of an employee, who is an emergency services volunteer, for being absent from or late to work, if at the time the employee is absent from or late to work the employee is responding to an emergency as an emergency services volunteer.
- An employer may reduce the regular pay of an employee who is an emergency services volunteer, for time the employee misses work because the employee is responding to an emergency as an emergency services volunteer.
- An employer may request that an employee, who is an emergency services volunteer and misses time from work to respond to an emergency, provide the employer with a written statement that: (a) is from the supervisor or acting supervisor of the employee when the employee is in the course of performing duties as an emergency services volunteer; (b) states that the employee responded to an emergency; and (c) states the time and date of the employee's service as an emergency services volunteer.
- If an employer terminates an employee in violation of this Act, the employee may bring a civil action against the employer within one year after the day on which the employer terminates the employee.

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

https://le.utah.gov/~2019/bills/hbillenr/HB0173.pdf

State of Washington Announces Family and Medical Leave Insurance Program Reporting Deadline Delayed

On July 5, 2017, Washington State Governor Jay Inslee signed into law Substitute Senate Bill 5975 (S5975), which creates the Paid Family and Medical Leave Insurance Program, effective January 1, 2020.

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

Employers with 50 or more employees and all employees in Washington will be making contributions to the program, beginning on January 1, 2019. The premium for 2019 is 0.4% of an employee's gross wages, up to the Social Security taxable wage base of $132,900. Employers may elect to pay all of their employees' share of the premium, or may split the cost of the program by withholding up to 63.333% of the premium from employees' paychecks. The employer is responsible for paying the other 37.667%, and remitting total premiums to the Washington Employment Security Department (ESD) on a quarterly basis starting in April 2019. Employers with fewer than 50 employees will collect and remit employee premiums through withholding and report employee wages, hours worked and more on a quarterly basis to the ESD.

Depending on earnings, employees will receive up to 90 percent of their wage or salary, up to $1,000 per week during their leave. Employees become eligible for the program after working 820 hours or more in the qualifying period. The qualifying period is either:

- The first four of the last five completed calendar quarters; or
- The last four completed calendar quarters.

Businesses with fewer than 50 employees will not be required to pay the employer share of the premium, but those businesses can still opt in. Businesses with fewer than 150 employees who pay into the program are eligible for grants of $1,000 to $3,000 each to cover the cost of an employee on leave.

In December of 2018, the Washington Employment Security Department (ESD) launched a new website to provide guidance to employers, workers, and health-care providers regarding the new Paid Family and Medical Leave Program. The website includes frequently asked questions (FAQs) for employers and workers, links to an employer webinar and a premium calculator.

In this guidance it was stated:

> **Reporting process**
>
> In April 2019, employers will submit employee hours, wages and more for the first time. The process is currently in development and we plan to make it like reporting for Unemployment Insurance. However, it will be a separate report from Unemployment Insurance and other state programs. We expect most employers will submit reports online through our customer account management system. Bulk filing and alternative reporting options will both be available.

The ESD has now announced that the Paid Family and Medical Leave Program reporting deadline for the first quarter (April 30) will be pushed back to July 31, 2019. Employers will now report and remit premiums for quarters one and two between July 1 and July 31, 2019. Please note this deadline change only applies to Paid Family and Medical Leave for 2019. Employers will file two separate reports — one for each quarter. ESD notes that the new deadline applies only to Paid Family and Medical Leave. Unemployment Insurance deadlines are unaffected. Penalties and interest will not be assessed for first-quarter premiums submitted by July 31.

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

https://www.paidleave.wa.gov/employers?utm_medium=email&utm_source=govdelivery

For a link to the ESD website, please click on the link provided below.

https://paidleave.wa.gov/

For a copy of S5975, please click on the link provided below.

http://lawfilesext.leg.wa.gov/biennium/2017-18/Pdf/Bills/Senate%20Passed%20Legislature/5975-S.PL.pdf

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Notice and Paid Sick Leave Guidance Released by Westchester County, New York

It was previously reported that on October 1, 2018, the Westchester County Board of Legislators adopted Local Law Intro No. 10623-2018 and it was signed into law by Westchester County Executive George Latimer on October 12, 2018.

The law, **effective April 11, 2019**, amended the Laws of Westchester to add a new Chapter 585- Earned Sick Leave Law and mandates earned sick leave for certain employees.

Beginning April 10, 2019, employers with five or more employees in Westchester County must provide paid sick leave. Employers with fewer than five employees must provide unpaid sick leave. Employers who have one or more domestic workers, who are employed for more than 80 hours in a calendar year, must provide paid sick leave.

Model Notice:

Employers covered by the earned sick leave law must provide written notice to new employees when they begin employment and to existing employees by July 10, 2019. The Westchester County Human Rights Commission (HRC) has now released a model notice that can be used to meet the notice requirements. A link to the model notice is provided below:

https://humanrights.westchestergov.com/images/stories/pdfs/2019sickleaveemployee.pdf

Further Guidance:

HRC has provided further guidance for employers in a Question and Answer (Q&A) format. A few examples are provided below:

Are all employees covered by the Earned Sick Leave Law?

The Earned Sick Leave Law does not cover employees who work 80 hours or less in a calendar year; participants in a work-experience program established by a social services district; participants in a work-study program under 42 U.S.C. § 2753; and employees compensated by or through qualified scholarships under 26 U.S.C. § 117.

I've always given my employees sick leave at the beginning of the year. Do I have to change my policy?

Employers have the option of applying the Earned Sick Leave Law or, in lieu of calculating the accrual of earned sick time, an employer can provide for sick time and personal time equal to 40 hours or more at the beginning of the employer's year. This is sometimes known as "front-loading" or "up-front" leave. This practice will be deemed compliant with the Earned Sick Leave Law so long as there are no restrictions placed on an employee's ability to use the leave.

When can an employee use earned sick leave?

Covered employees can use sick leave when:

The employee has a mental or physical illness, injury, or health condition; the employee needs to get a medical diagnosis, care, or treatment of mental or physical illness, injury or condition; the employee needs preventative medical care.

- The employee must care for a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition, or who needs preventative medical care.
- Your business closes due to a public health emergency or the employee needs to care for a child whose school or child-care provider closed due to a public health emergency.

A "family member" is the employee's child, spouse, domestic partner, parent, sibling, grandchild, or grandparent. A "family member" also includes the child or parent of the employee's spouse, domestic partner or a member of the employee's household. A "child" includes a biological child, adopted, foster child, legal ward or a person to whom the employee stands in loco parentis, regardless of age.

Can I require an employee to provide a doctor's note when they use earned sick leave?

You can require documentation from a health-care provider if the employee uses more than three consecutive workdays as sick leave. You may not require the health-care provider to specify the medical reason for sick leave.

What records must I keep documenting compliance with the Earned Sick Leave Law?

You must keep records clearly documenting the hours worked by employees, earned sick time accrued, and earned sick time used, for a period of three years. Failure to do so will be used as a rebuttable presumption of a violation of the Earned Sick Leave Law.

A link to the Q&A, provided by the HRC, may be found below.

https://humanrights.westchestergov.com/images/stories/pdfs/2019slemployerfaq.pdf

Payroll

Arkansas Amends Minimum Wage Act

With the enactment of House Bill 1751 (HB 1751) on April 10, 2019, the state of Arkansas has amended the state minimum wage statute. The changes go into effect 90 days after the legislative session in which the bill is enacted ends. The legislative session is currently slated to formally adjourn on April 24. Some of the highlights of the changes provided under HB 1751 are as follows:

- An employer of an employee engaged in any occupation in which board, lodging, apparel, or other items and services are customarily and regularly furnished to the employee for his or her benefit shall be entitled to an allowance for the reasonable value of board, lodging, apparel, or other items and services as part of the hourly minimum wage rate provided in an amount not to exceed the fair and reasonable cost of the board, lodging, apparel, or other items and services. Currently the law is written as "in an amount not to exceed thirty (30 cents) per hour."
- A provision was added to stipulate that it is lawful for an employer to pay its employees by automatic deposit or by providing a debit card preloaded with the amount of wages. If wages are paid by providing a preloaded debit card, at least one (1) free withdrawal shall be available for the funds for each deposit of wages loaded on to the debit card.
- An employer that discharges an employee is required to pay all wages due by the next regular payday. Currently involuntary terminated employees must be paid within seven (7) days from termination.
- An employer that fails to make the payment required within seven (7) days of the next regular payday shall owe the employee double the wages due. Currently the penalty provision for untimely payment of wages to involuntary terminated employees is continuation of wages from discharge date until paid, but not for more than 60 days.

For a copy of HB 1751, please click on the link provided below:

http://www.arkleg.state.ar.us/assembly/2019/2019R/Bills/HB1751.pdf

Overtime Pay Schedule for California Agricultural Employees Announced

On September 12, 2016, then Governor Jerry Brown signed a law designed to phase in a 40-hour workweek for agricultural employees over a period of four years. The stated purpose of the law is to "provide any person employed in an agricultural occupation in California, as defined in Order No. 14-2001 of the Industrial Welfare Commission (revised 07-2014) with an opportunity to earn overtime compensation under the same standards as millions of other Californians." The measure, called the Phase-In Overtime for Agricultural Workers Act of 2016, did not begin to take effect until 2019.

On March 14, 2019, the California Labor Commissioner's Office issued guidance on the new pay schedule for agricultural workers that took effect January 1, 2019.

In the guidance, among other information, the following was provided. The number of hours worked per day or per week before overtime pay is required at a rate of one and one-half times the agricultural employee's regular rate of pay will phase-in according to the following schedule:

Effective date for employers with 26 or more employees:	Effective date for employers with 25 or fewer employees	Overtime (1.5x regular rate of pay) required after the following hours per day / hours per workweek:
January 1, 2019	January 1, 2022	9.5 / 55
January 1, 2020	January 1, 2023	9 / 50
January 1, 2021	January 1, 2024	8.5 / 45
January 1, 2022*	January 1, 2025*	8 / 40

*Double the regular rate of pay required after 12 hours in a workday.

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

https://www.dir.ca.gov/dlse/Overtime-for-Agricultural-Workers.html

District of Columbia Implements Tip Reporting Changes

It was previously reported the District of Columbia enacted legislation (B22-0913) requiring employers to meet certain notice, reporting, policy and training requirements with respect to its employees and additional requirements related to employers with tipped employees.

Requirements for All Employers:

All employers will be required to post a notice that contains information about the District's various employment and nondiscrimination laws, including a link to a new District website that will have information for employees and the current hourly and tipped minimum wage. Employers must also maintain copies of the information posted on the website and compile it in a single source, such as a binder, which should be placed wherever a poster is posted. Employers must verify the information is up to date at least monthly. To access the updated minimum wage poster, please paste the following into your browser.

https://does.dc.gov/sites/default/files/dc/sites/does/page_content/attachments/Minimum%20Wage%20Poster.pdf

Requirements for Employers of Tipped Employees:

B22-0913 makes several changes that apply to employers of tipped employees.

Harassment Training:

Employers of tipped employees must provide harassment training either in-person or online as follows:

- Employees hired after the law takes effect must receive training within 90 days of their date of hire, unless they have participated in such training within the past two years.
- Employees hired before the law takes effect must receive training within two years of the effective date.
- Managers must receive training at least once every two years.
- Owners and operators must receive training at least once every two years.

Within 30 days of completion of the training, employers who use a certified training provider must submit a certification to the Office of Human Rights demonstrating that the individual participated in the training. The District will provide a sexual harassment training course or must certify a list of providers who can provide the required training. The training will include how to respond to, intervene in and prevent sexual harassment by coworkers, management and patrons.

Harassment Policy:

By July 1, 2019, employers of tipped employees must:

- Provide the Office of Human Rights with a policy outlining how employees can report sexual harassment to the employer and the Office of Human Rights.
- Distribute the policy to employees and post the policy in the workplace.
- Begin reporting to the Office of Human Rights, annually, the number of instances of sexual harassment, including whether the reported harassers were managers, owners or operators, or nonmanagerial employees (employers must begin documenting such information by the effective date of the law).

Training on Wage Payment and Collection Law:

If an employer has at least one tipped employee, business owners, operators, and managers must receive training on the District's wage payment and collection law (D.C. Official Code $ 32-1301 et seq.) at least annually. These employers must also provide employees with an opportunity to attend at least one training on the requirements of the law.

By December 31 each year, covered employers must certify that they have met all of the requirements of the law.

Quarterly Reporting Requirements:

Prior to January 1, 2020, employers of tipped employees must submit such quarterly reports to the District of Columbia Department of Employment Services (DOES), no later than 30 days after the end of each quarter, certifying that each tipped employee was paid at least the required minimum wage, including gratuities. The first quarterly reports are due on April 30, 2019. An online portal was created by DOES for reporting tipped wages in conjunction with the quarterly wage reports for unemployment insurance tax. Paste the following into your browser to that portal.

https://essp.does.dc.gov/

Paste the following into your browser to locate the Tipped Wages Reporting – File Format Documentation.

https://essp.does.dc.gov/ESSP%20Tipped%20Wages%20File%20Format%20Spec.pdf

When reporting via the portal, employers must input the following information:

- The employer-paid hourly rate for each tipped employee.
- The total hours worked by the tipped employee while being paid the stated rate.
- Gross wages that were paid by the employer for the hours reported.
- Total amount of tips received by employees from customers or tip pools and reported as wages.

Use of third-party payroll providers required in 2020:

By January 1, 2020, employers of tipped employees, except hotels, must use a third-party for payroll. By January 1, 2020, third-party payroll providers and hotels must begin submitting a quarterly report to the District that certifies that each employee has been paid at least the minimum wage, including tips and provides the following information.

- Name of each employee.
- Number of hours each employee worked each week during the quarter.
- The total pay, including tips, received by each employee each week during the quarter.
- The average weekly wage for each employee during the quarter.
- The employer's current tip-out policy supplied to the third-party payroll provider for the calculation of wages during the quarter.

Notices:

To use the tip credit, an employer must first meet the following requirements:

- The employer must provide notice of:
  - The provisions of D.C. Official Code Section 32-1003(f);
  - If tips are not shared, that the tipped employee must retain all tips received;
  - If tips are shared, the employer's tip-sharing policy; and
  - The percentage by which tips paid via credit card will be reduced by credit card fees.
- All tips received by the employee must be retained by the employee, except for a valid tip-sharing arrangement.
- If the employer uses tip sharing, the employer must have posted the tip-sharing policy.

Tipped employees must be provided with a copy of the employer's tip-sharing policy (if any) at the time of hire.

Itemized Statements:

Existing law requires employers to furnish to each employee at the time of payment of wages an itemized statement showing the following:

- Date of the wage payment;
- Gross wages paid;
- Deductions from and additions to wages,
- Net wages paid; and
- Hours worked during the pay period.

B22-0913 adds two additional requirements, effective January 1, 2020:

- The statement must include a separate line for tips.
- The statement must include the employee's tip declaration form for the pay period, delineating cash tips and credit-card tips.

A "tip declaration form" is defined as a printed form provided by an employer to an employee that shows the total tips received, including the amount of the tip outs or share of a tip pool that an individual employee provided to another employee or the amount of the tip outs or share of a tip pool that the employee received from another employee, and the calculation by which the amount was determined, such as total tips received and hours worked.

The term "tip out" is defined as the amount or percentage of directly tipped employees' tips that they share with other employees such as bussers, bartenders, back waiters, hosts and hostesses.

Tip Credit:

The minimum cash wage required for tipped employees will be as follows:

- 3.89 per hour through June 30, 2019.
- $4.45 per hour from July 1, 2019 through June 30, 2020.
- $5.00 per hour beginning July 1, 2020.

If the employee's tips and direct cash wages don't equal or exceed the applicable minimum wage, the employer must make up the difference.

For a copy of DC B22-0913, please click on the link provided below.

https://legiscan.com/DC/text/B22-0913/id/1823458

Maryland Assembly Overrides Maryland Governor's Veto on Minimum Wage

On March 28, 2019, the Maryland Assembly voted to override Governor Larry Hogan's veto of House Bill 166 enacting legislation to increase the state minimum wage. The Maryland House of Delegates and Senate had previously approved the legislation with more than enough votes to override the veto.

As a result, the Maryland state minimum wage will be increased as shown below (the current minimum wage in the state is $10.10 per hour):

Large Employers (15 or more employees):

January 1, 2020	$11.00
January 1, 2021	$11.75
January 1, 2022	$12.50
January 1, 2023	$13.25
January 1, 2024	$14.00
January 1, 2025	$15.00

Small Employers (14 or fewer employees):

January 1, 2020	$11.00
January 1, 2021	$11.60
January 1, 2022	$12.20
January 1, 2023	$12.80
January 1, 2024	$13.40
January 1, 2025	$14.00
January 1, 2026	$14.60
July 1, 2026	$15.00

The enacted legislation keeps the current level of $3.63 minimum cash wage for tipped employees.

In addition, House Bill 166, effective June 1, 2019, requires that an employer pay an employee under the age of 18 a wage equal to 85 percent of the state's minimum wage and regulations are to be adopted that require restaurant employers that include a tip credit as part of the wage of a tipped worker to provide a written or electronic wage statement for each pay period that shows the effective hourly tip rate as derived from the employer-provided cash wages plus all reported tips for each workweek of the pay period.

The legislation states 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 and wage statement regulations on the department's website.

For a copy of House Bill 166, please click on the link provided below.

http://mgaleg.maryland.gov/2019RS/bills/hb/hb0166e.pdf

Montana Amends Child Support Withholding Laws

On April 10, 2019, Montana Governor Steve Bullock signed into law Senate Bill 64 (SB 64), which revises certain provisions regarding child support enforcement laws in the state.

Effective October 1, 2019, the following changes, among others, will take place:

- Expands the definition of "Income" subject to withholding by deleting the word "periodic" as shown below:

  "Income" means any form of periodic payment to a person, regardless of source, including commissions, bonuses, workers' compensation, disability payments, payments under a pension or retirement program, interest, and earnings and wages.

- Provides for the following in situations where an employee has more than one withholding order: (Strikethrough = deleted language – underline = added language)

  (3) (a) Whenever there is more than one order for withholding against a single obligor, the payor shall honor all withholding orders to the extent that the total amount withheld from the obligor's wages or salary does not exceed the limits set in 40-5-416. In no case may the allocation result in a withholding for one of the support obligations not being implemented. (b) Withholding of current support that is less than the amount of current support due all obligees must be prorated among the obliges, based on the amount of current support due each obligee. (c) Withholding of support arrears must be distributed equally among the obligor's cases.

Montana follows federal law in relation to the maximum amount that may be withheld for child support, specifically up to 50 percent of this individual's disposable income may be attached "to enforce any order for the support of any person." If the wage earner is not supporting a second family, then up to 60 percent of this individual's disposable income may be attached to enforce a child-support order. However, if the wage earner is more than twelve weeks delinquent in the payment of the support obligation, then the 50 percent and 60 percent ceilings are increased to 55 percent and 65 percent respectively.

For a copy of SB 64, please click on the link provided below:

https://leg.mt.gov/bills/2019/sesslaws/ch0131.pdf

Nevada Minimum Wage to Remain Unchanged

On April 1, 2019, the Nevada Office of the Labor Commissioner announced that the minimum- wage requirements will remain the same as of July 1, 2019. Specifically, the minimum wage for employees who are offered qualified health benefits from their employer will remain at $7.25 per hour and the minimum wage for employees who are not offered qualified health benefits from their employer will remain at $8.25 per hour.

By way of background, the 2006 Minimum Wage Amendment to the Nevada Constitution requires the minimum wage to be recalculated and adjusted each year effective July 1, based on increases in the federal minimum wage, or, if greater, by the cumulative increase in the cost of living.

In addition, daily overtime rate requirements will also remain the same as of July 1, 2019. Employees who are offered qualified health benefits from their employers and earn less than $10.875 per hour, and employees earning less than $12.375 per hour who are not offered qualified health benefits by their employers must be paid overtime whenever they work for more than eight hours in a 24-hour period. Nevada is one of a few states with a daily overtime requirement in addition to the requirement that employees be paid overtime for working more than 40 hours in a workweek. Overtime requirements do not apply to exempt employees.

Qualified health benefits that permit an employer to pay the lower minimum wage rate must:

- Cover all categories of health-care expenses an employee would generally be able to deduct from their federal income tax return, pursuant to 26 USC 213 and any related regulations, if they paid for the expenses themselves; or

- Provide health benefits, pursuant to a Taft-Hartley Trust, which:
  - o if formed pursuant to 29 USC 186(c)(5); and
  - o qualifies as an employee welfare benefits plan under:
  - o Internal Revenue Service guidelines; or
  - o the Employee Retirement Income Security Act (ERISA)
- Be made available to the employee and any dependents, which is evidenced by:
  - o The employer maintains contracts for health insurance for the class of employees being paid the lower minimum wage, subject only to conditions required to complete coverage that are applicable to similarly situated employees in the same class; and
  - o Employees do not have to wait more than six (6) months to be eligible to participate in the health insurance plan.
- Require that employees pay no more than 10 percent of their gross taxable income for premiums.

For a copy of the Nevada announcements, paste the following into your browser.

State of Nevada Minimum Wage 2019 Annual Bulletin

http://labor.nv.gov/uploadedFiles/labornvgov/content/About/Forms/2019%20Annual%20Bulletin%20Minimum%20Wage.pdf

State of Nevada Daily Overtime 2019 Annual Bulletin:

http://labor.nv.gov/uploadedFiles/labornvgov/content/About/Forms/2019%20Annual%20Bulletin%20Daily%20Overtime.pdf

New Mexico to Increase Minimum Wage

On April 1, 2019, Governor Michelle Grisham of New Mexico, signed into law Senate Bill 437, which increases the state minimum wage as noted below. The current state minimum wage is $7.50 per hour.

January 1, 2020	$9.00
January 1, 2021	$10.50
January 1, 2022	$11.50
January 1, 2023	$12.00

The minimum cash wage for tipped employees, currently $2.13 per hour, will be increased as follows:

January 1, 2020	$2.35
January 1, 2021	$2.55
January 1, 2022	$2.80
January 1, 2023	$3.00

The employer may consider tips as part of wages, but the tips combined with the employer's cash wage shall not equal less than the minimum wage rate. All tips received by such employees shall be retained by the employee, except that pooling of tips among wait staff is allowed.

Senate Bill 437 also provides provisions regarding students and deductions from the minimum wage.

Students:

Effective January 1, 2020, an employer who employs a student regularly enrolled in secondary school to work after school hours or when school is not in session must pay the student a minimum wage rate of at least eight dollars fifty cents ($8.50) an hour.

Deductions from the minimum wage:

An employer furnishing food, utilities, supplies or housing to an employee who is engaged in agriculture may deduct the reasonable value of such furnished items from any wages due to the employee.

It is important to note that the minimum wage does not apply to:

- an individual employed in domestic service in or about a private home;
- an individual employed in a bona fide executive, administrative or professional capacity and forepersons, superintendents and supervisors;
- an individual employed by the United States;
- an individual engaged in the activities of an educational, charitable, religious or nonprofit organization where the employer-employee relationship does not, in fact, exist or where the services rendered to such organizations are on a voluntary basis;
- salespersons or employees compensated upon piecework, flat-rate schedules or commission basis;
- registered apprentices and learners otherwise provided by law;
- persons eighteen years of age or under who are not students in a primary, secondary, vocational or training school;
- G.I. bill trainees while under training;
- seasonal employees of an employer obtaining and holding a valid certificate issued annually by the director of the labor relations division of the workforce solutions department;
- any employee employed in agriculture;
- an employee engaged in the handling, drying, packing, packaging, processing, freezing or canning of any agricultural or horticultural commodity in its unmanufactured state; or
- employees of charitable, religious or nonprofit organizations who reside on the premises of group homes operated by such charitable, religious or nonprofit organizations for persons who have a mental, emotional or developmental disability.

For a copy of Senate Bill 437, please click on the link provided below:

https://www.nmlegis.gov/Sessions/19%20Regular/final/SB0437.pdf

North Dakota Prohibits Local Minimum Wages

On March 26, 2019, the Governor of North Dakota, Doug Burgam, signed into law House Bill 1193 which prohibits local minimum wages in excess of the state minimum wage. The North Dakota minimum wage is currently $7.25 per hour, the same as the federal minimum wage.

House Bill 1193 states:

> A political subdivision may not enact, maintain, or enforce by charter, ordinance, purchase agreement, contract, regulation, rule, or resolution a living wage mandate in an amount greater than the applicable minimum wage rate of this state.

Although the legislation does not explicitly provide an effective date, the bill states "This Act applies to a living wage mandate, regardless of whether enacted before or after the effective date of this Act."

For a copy of House Bill 1193, please click on the link provided below.

https://www.legis.nd.gov/assembly/66-2019/documents/19-0283-03000.pdf

Tennessee Amends Priority of Child Support Orders

As a result of the enactment of Senate Bill 788 (S788), effective April 3, 2019, Tennessee has clarified the priority an employer must give to all orders of income assignment against an individual for child, medical or spousal support.

S788 requires that an employer who receives more than one order of income assignment against an individual, is required to comply by:

(1) Giving first priority to all orders for amounts due for current support credited in the following order: child support, medical support and spousal support; and

(2) Giving second priority to all orders for amounts due for arrearages credited in the following order: child support, medical support and spousal support.

Previously, an employer that received more than one order was required to give priority in the following order:

(1) All orders due for current support for a child,

(2) All arrearages due a child,

(3) Support orders for a spouse, and

(4) All orders for spouse arrearages.

For a copy of S788, please click on the following link:

http://www.capitol.tn.gov/Bills/111/Bill/SB0788.pdf

Virginia Amends Wage Statement Requirements

On April 3, 2019, Virginia enacted Senate Bill 1696, which amends the information that must be provided by employers to employees on their wage statements provided at the time of pay. Effective, January 1, 2020, the information required to be provided is as follows.

On each regular pay date, each employer, other than an employer engaged in agricultural employment including agribusiness and forestry, shall provide to each employee a written statement by a paystub or online accounting that shows:

1. The name and address of the employer.
2. The number of hours worked during the pay period.
3. The rate of pay.
4. The gross wages earned by the employee during the pay period.
5. The pay period.
6. The amount and purpose of any deductions therefrom.

When requested by an employee, an employer engaged in agricultural employment, including agribusiness and forestry, must furnish the employee a written statement of the gross wages earned by the employee during any pay period and the amount and purpose of any deductions therefrom.

Currently, Virginia requires that wage statements must be provided upon request by an employee that includes the following information: (1) gross wages earned by the employee during any pay period and (2) the amount and purpose of any deductions therefrom.

For a copy of Senate Bill 1696, please click on the link provided below:

https://lis.virginia.gov/cgi-bin/legp604.exe?191+ful+SB1696ER2

District of Columbia Amends Wage Garnishment Law

Following the expiration of the 30-day congressional review period, the provisions of the Wage Garnishment Fairness Amendment Act of 2018 (the Act) is now in effect for the District of Columbia (DC).

Under the Act, effective April 11, 2019, the amount exempt from garnishment increases to the greater of 75 percent of disposable weekly wages or 40 times the DC minimum wage. Currently the minimum wage is $13.25 per hour. On July 1, 2019, the DC minimum wage will increase to $14.00 per hour.

Prior to April 11, 2019, the exempt amount was the greater of 75 percent of disposable weekly wages or 30 times the federal minimum wage. The federal minimum wage is $7.25 per hour.

In addition, the Act provides the following provisions:

- Permits the judgment debtor to file a motion to exempt wages from garnishment by claiming undue financial hardship.
- Requires the judgment creditor to give notice to the judgment debtor of wage garnishment.
- Only one attachment upon the wages of a judgment debtor may be satisfied at one time.

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

http://lims.dccouncil.us/Download/39180/B22-0572-SignedAct.pdf

Increase to Minimum Wage Announced by Portland, Maine

The City of Portland, Maine, has announced that effective July 1, 2019, the minimum wage will increase from $10.90 per hour to $11.11 per hour.

The service employee (tipped employee) cash wage will increase from the current level of $5.00 to $5.50 per hour on the same date. A service employee is someone who regularly receives more than $30 a month in tips.

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

https://www.portlandmaine.gov/1671/Minimum-Wage

ADP Compliance Resources

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

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