Eye On Washington
State and Local Updates

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Topics Covered In This Issue

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

Benefits

Massachusetts Announces 2019 Parking and Transportation Limits

Massachusetts has released Technical Release Number 18-12 (TR 18-12) which provides the maximum amounts of parking and transit limits that are excluded from state income tax.

Background:

The federal "Protecting Americans from Tax Hikes Act of 2015" ("PATH Act") created parity between parking and transportation limits, and provided for an increase to the limits based on inflation. Massachusetts did not adopt the increase in the federal monthly exclusion.

TR 18-12 stipulated that for tax years beginning in 2019, the Massachusetts monthly exclusion amounts are $265 for employer-provided parking and $140 for the combined value of transit pass and commuter highway vehicle transportation benefits.

The federal amounts for 2019 are $265 for employer-provided parking and $265 for the combined value of transit pass and commuter highway vehicle benefits.

Consequently, the $265 limit for qualified parking expenses is excluded from employee taxable income in 2019 for both state and federal income taxes. However, although qualified transportation expenses are tax-excluded for employees up to $265 for federal taxation in 2019, the maximum amount of transportation expenses that is allowed to be tax-excluded in 2019 is $140 regarding Massachusetts state taxation.

For a copy of TR 18-12, please click on the link provided below.

https://www.mass.gov/technical-information-release/tir-18-12-massachusetts-exclusion-amounts-for-employer-provided

Leave

Massachusetts Launches Paid Family and Medical Leave Website

It was reported in the July Tech Flex that Governor Charles Baker of Massachusetts on June 28, 2018, signed into law legislation (H.4640) that provides for a Paid Family and Medical Leave ("PFML") program. The Massachusetts Department of Family and Medical Leave ("DFML") 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.

Job Protection:

It is important to note, language in H.4640 provides that "an employee who has taken family or medical leave shall be restored to the employee's previous position, or to an equivalent position, with the same status, pay, employment benefits, length of service credit and seniority as of the date of leave."

Payroll Income Tax to Fund Program

The law creates a new payroll income tax effective July 1, 2019. The payroll tax would 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.

The tax would not apply to employers with less than 25 employees in Massachusetts. The threshold would apply to businesses with a workforce that includes more than 50 percent of individuals who are independent contractors.

Employers will pay the tax at the initial rate of 0.63 percent on an individual's earnings up to the Social Security wage base. For 2019, the Social Security tax rate is 6.2 percent of the wage base limit of $132,900. Contributions are not required for employees' wages above the Social Security wage base limit.

The treasurer and receiver for the new Family and Employment Security Trust Fund ("Trust Fund") would set employer contribution rates each year. Employers could not deduct more than 40 percent of the contributions from an employee's wages for medical leave. However, employers could deduct to up to 100 percent of the contributions from an employee's wages for family leave.

New Guidance:

The Massachusetts DFML has now launched a website to provide guidance to employers and employees on the Massachusetts PFML program. The site currently contains frequently asked questions ("FAQs") for both employers and employees.

Examples of the Employer FAQs are as follows:

> ***I'm already offering family and medical leave benefits. Am I exempt from the state contribution?***
>
> You will be able to apply for annual exemptions from making contributions for both medical leave and family leave if you offer a private plan option that is at least as generous as what is required under the PFML law. If your business receives this exemption, your employees will not be covered by the state PFML plan.

What is the contribution rate and how is it collected?

The contribution rate is 0.63 percent on the first $128,400 of an individual's annual earnings. You are responsible for remitting the full contribution to the department, but may deduct from an employee's wages to cover the employee's share.

Businesses with fewer than 25 employees in Massachusetts must remit contributions to the DFML on behalf of their workers but are not required to pay the employer share of the contribution for family and medical leave.

Businesses that issue 1099s for more than 50 percent of their workforce must remit contributions for their Form 1099 workers ("covered individuals") as well as their employees. If your business has 25 or more workers in total, you must pay the employer share of the contribution for family and medical leave for both employees and covered individuals.

How much can I deduct from pay to cover the employee or covered individual PFML contribution share?

- Up to 40 percent of the total medical leave contribution required for an individual
- Up to 100 percent of the total family leave contribution required for an individual

Employers and businesses with fewer than 25 workers in Massachusetts must remit contributions to the DFML on behalf of their workers but are not required to pay the employer share of the contribution for family and medical leave.

Examples of the Employee FAQs are as follows:

Under what circumstances am I eligible for PFML benefits?

- To deal with your own serious medical condition
- To care for a family member who has a serious health condition
- To bond with your child during the first 12 months after the child's birth or the first 12 months after the placement of the child with you for adoption or foster care
- To deal with any qualifying exigency arising out of the fact that a family member is on active duty or has been notified of an impending call or order to active duty in the Armed Forces
- To care for a family member who is a covered service member with a serious injury or illness incurred or aggravated in the line of duty

When must I begin paying the PFML contribution?

Contributions to PFML begin on July 1, 2019.

How much is the benefit?

The weekly benefit amount is calculated as a percentage of your earnings and so will vary for each individual.

The maximum benefit is $850 per week.

Please find below the link to the DFML/PFML website.

https://www.mass.gov/orgs/department-of-family-and-medical-leave

Some other highlights of the Massachusetts Paid Family and Medical Leave Program are as follows:

- "Average weekly wage" is defined as an amount, rounded to the next highest dollar, equal to one-twenty-sixth of the total wages reported for an individual in the two highest quarters of his or her base period; provided, that if wages reported include not more than two quarters in said base period, his or her weekly wage shall be deemed to be one-thirteenth of the total reported for the highest quarter.
- "Family member" is defined as the spouse, domestic partner, child, parent or parent of a spouse or domestic partner of the covered individual; a person who stood in loco parentis to the covered individual when the covered individual was a minor child; or a grandchild, grandparent or sibling of the covered individual.

- A "covered individual" may not take more than 26 weeks, in the aggregate, of family and medical leave under PFML in the same benefit year. A covered individual can take a medical leave during pregnancy or recovery from childbirth if supported by documentation by a healthcare provider immediately followed by family leave. In such a case, the seven-day waiting period for family leave is not required.
- "Benefit year" is defined as the period of 52 consecutive weeks beginning on the Sunday immediately preceding the first day that job-protected leave under PFML commences for the covered individual.
- ''Employee" is defined as any individual employed by any employer subject to PFML and in employment, subject thereto.
- ''Employer" is defined as any employing unit subject to PFML, Massachusetts, its instrumentalities, political subdivisions, their instrumentalities, any instrumentality of more than one of the foregoing, and any instrumentality of any of the foregoing and one or more other states or political subdivisions. An instrumentality of a political subdivision may include municipal hospitals, municipal electric companies, municipal water companies, regional school districts and any such other instrumentalities as are financially independent and are created by statute.
- Leave taken under the Massachusetts PFML Program runs concurrently with leave taken under the Family Medical Leave Act ("FMLA"). Employees who take leave under the Massachusetts leave program, while ineligible for leave under the FMLA, shall be permitted to take leave under the FMLA in the same benefit year only to the extent they remain eligible for concurrent leaves under the Massachusetts Paid Family and Medical Leave Program.
- Except in the case of medical leave due to childbirth, no Massachusetts family or medical leave benefits shall be payable during the first seven calendar days of such leave; provided, however, that an employee may utilize accrued sick or vacation pay or other paid leave provided under an employer policy during the first 7 calendar days of such leave.
- Each employer and covered business entity must post in a conspicuous place on each of its premises a workplace notice prepared or approved by the DFML providing notice of benefits available under this chapter. The workplace notice shall be issued in English, Spanish, Chinese, Haitian Creole, Italian, Portuguese, Vietnamese, Laotian, Khmer, Russian and any other language that is the primary language of at least 10,000 or one-half of one percent of all residents of Massachusetts. The required workplace notice must be in English and each language other than English which is the primary language of five or more employees or self-employed individuals of that workplace, if such notice is made available by the DFML.
- Each employer must issue to each employee not more than 30 days from the beginning date of the employee's employment, the following written information in the employee's primary language:

  (i) an explanation of the availability of family and medical leave benefits, including rights to reinstatement and continuation of health insurance;

  (ii) the employee's contribution amount and obligations;

  (iii) the employer's contribution amount and obligations;

  (iv) the name and mailing address of the employer;

  (v) the identification number assigned to the employer by the DFML;

  (vi) instructions on how to file a claim for family and medical leave benefits;

  (vii) the mailing address, email address and telephone number of the DFML; and

  (viii) any other information deemed necessary by the DFML.

- Delivery of the required written information is considered made when an employee provides written acknowledgement of receipt of the information, or signs a statement indicating the employee's refusal to sign such acknowledgement.
- The employee must give not less than 30 days' notice to the employer of the anticipated starting date of the leave, the anticipated length of the leave and the expected date of return; or shall provide notice as soon as practicable if the delay is for reasons beyond the employee's control.

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

https://malegislature.gov/Bills/190/H4640

Northbrook and Wilmette Opt In to Cook County Earned Sick Leave Ordinance

On October 5, 2016, the Cook County (Illinois) Board voted to require that employers give workers paid sick time. The "Earned Sick Leave Ordinance" ("Ordinance") went into effect on July 1, 2017. Under the Ordinance, "Employers" have to provide their workers with one hour of paid sick time for every 40 hours worked. A "Covered Employee" can accrue a maximum of 40 hours of paid sick leave per year, or about five work days, unless their employer sets a higher limit.

Illinois law allows cities and villages within a county to opt out of laws enacted by counties. Section 6(c) of the Illinois Constitution provides that if "a home rule county ordinance conflicts with an ordinance of a municipality, the municipal ordinance shall prevail within its jurisdiction." Over 100 municipalities in the County opted out of the Ordinance.

County-Wide Vote:

On November 6, 2018, a referendum on the ballot asked voters whether they believed their municipality should grant paid sick leave. Over 86 percent of voters agreed that their municipality should provide sick leave in accordance with the Ordinance.

Opt In:

The Village of Northbrook and the Village of Wilmette governments have now voted to opt back into the Ordinance. Northbrook employers must comply with the Ordinance as of January 1, 2019, and Wilmette employers must comply by March 1, 2019.

Western Springs, Illinois, had previously voted to opt back in as of May 18, 2018.

It is expected, based on the results of the November 6, 2018 referendum, that other municipalities with the County will opt back in as well. ADP will continue to monitor and report on this matter.

Some highlights of the Cook County Ordinance are as follows:

- A "Covered Employee" is any employee employed for at least 80 hours by an Employer within a 120-day period.
- "Employer" means: Any person employing one or more employees, or seeking to employ one or more employees: If the person has its principal place of business within Cook County; or does business within Cook County.
- The term Employer does not mean:
    - The government of the United States or a corporation wholly owned by the government of the United States;
    - An Indian tribe or a corporation wholly owned by an Indian tribe;
    - The government of the State or any agency or department thereof; or
    - The government of any municipality in Cook County.
- A Covered Employee who is exempt from overtime requirements shall be assumed to work 40 hours in each workweek for purposes of paid sick leave accrual, unless his or her normal workweek is less than 40 hours, in which case paid sick leave shall accrue based upon that normal workweek.

- For each Covered Employee, there shall be a cap of 40 hours paid sick leave accrued per 12-month period, unless his or her Employer sets a higher limit. The 12-month period for a Covered Employee shall be calculated from the date he or she began to accrue paid sick leave.
- At the end of a Covered Employee's 12-month accrual period, he or she shall be allowed to carry over to the following 12-month period half of his or her unused accrued paid sick leave, up to a maximum of 20 hours.
- If an Employer is subject to the Family and Medical Leave Act, each of the Employer's Covered Employees shall be allowed, at the end of his or her 12-month paid sick leave accrual period, to carry over up to 40 hours of his or her unused accrued paid sick leave.
- An Employer shall allow a Covered Employee to begin using paid sick leave no later than on the 180th calendar day following the commencement of his or her employment.
- A Covered Employee may use paid sick leave when:
    - He or she is ill or injured, or for the purpose of receiving medical care, treatment, diagnosis or preventative medical care.
    - Assisting a member of his or her family while receiving medical care, treatment, diagnosis or preventative medical care.
- An Employer shall not require, as a condition of a Covered Employee taking paid sick leave, that he or she search for or find a replacement worker to cover the hours during which he or she is on paid sick leave.
- If a Covered Employee's need for paid sick leave is reasonably foreseeable, an Employer may require up to seven days' notice before leave is taken. If the need for paid sick leave is not reasonably foreseeable, an Employer may require a Covered Employee to give notice as soon as is practicable on the day the Covered Employee intends to take paid sick leave by notifying the Employer via phone, e-mail, or text message. For purposes of this subsection, needs that are "reasonably foreseeable" include, but are not limited to, prescheduled appointments with healthcare providers for the Covered Employee or for a family member, and court dates in domestic violence cases. Any notice requirement imposed by an Employer pursuant to this subsection shall be waived in the event a Covered Employee is unable to give notice because he or she is unconscious, or otherwise medically incapacitated.
- Where a Covered Employee is absent for more than three consecutive work days, his or her Employer may require certification that the use of paid sick leave was authorized under this section.
- If any Employer violates any of the paid sick leave provisions, the affected Covered Employee may recover in a civil action damages equal to three times the full amount of any unpaid sick time denied or lost by reason of the violation, and the interest on that amount calculated at the prevailing rate, together with costs and such reasonable attorney's fees as the court allows.

For a copy of the Cook County Ordinance, please click on the link provided below.

https://cook-county.legistar.com/LegislationDetail.aspx?ID=2775571&GUID=CCBEEF29-D744-4015-91A1-7948EEE28668&Options=&Search=&FullText=1

Court Rules Austin, Texas, Paid Sick Leave Ordinance Unconstitutional

It was previously reported that on August 17, 2018, an Austin-based State Appeals Court ruled to temporarily block the Austin paid sick leave ordinance from going into effect while other parts of the case are litigated.

Background:

On February 16, 2018, the Austin, Texas City Council approved an ordinance, generally effective October 1, 2018, establishing a paid sick leave requirement that applies to all private employers located within the City. The ordinance provides that employees accrue one hour of earned sick time for every 30 hours worked for the employer in the City of Austin.

In April, the Texas Public Policy Foundation ("TPPF") filed a lawsuit claiming that the Austin paid sick leave ordinance asserting the city measure violated the Texas Minimum Wage Act and, as noted above, a State Appeals Court temporarily blocked the ordinance from taking effect.

Ordinance Ruled Unconstitutional

On November 16, 2018, the Third Court of Appeals ("the Court") in Austin held that the Austin paid sick leave was unconstitutional. The Court held that the ordinance establishes a "wage" and, as such, it is preempted by the Texas Minimum Wage Act ("the Act"). The Act specifically precludes municipalities from regulating the wages paid by employers who are subject to the Fair Labor Standards Act ("FLSA") and specifically provides that the Act supersedes a "wage" established in an ordinance governing wages in private employment. The Court of Appeals remanded the case back to the District Court, instructing the lower court to grant the State's application for temporary injunction and for further proceedings to be consistent with its ruling.

It is also important to note that a bill (House Bill 222) has been pre-filed prior to the start of the next Texas State Legislative Session which begins on January 8, 2019. If enacted into law, House Bill 222 would prohibit municipalities from adopting or enforcing any ordinance mandating paid sick leave.

ADP will continue to monitor and report as the situation develops.

Payroll

District of Columbia Adopts New Requirements for Employers

Overview: The District of Columbia ("the District") has enacted legislation (B22-0913) that will require employers to meet certain notice, reporting, policy and training requirements.

Effective Date: The law will become effective in parts, after a 30-day Congressional review and publication in the District's register. Only days when at least one chamber of Congress is in session count toward the 30-day review period. Given each chamber's tentative calendar for the remainder of 2018, parts of the law are expected to begin taking effect in early 2019. We will continue to monitor the status of the law and provide exact effective dates once they are known.

Details:

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. The poster will be drafted by the District. 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.

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 co-workers, 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 their 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 non-managerial employees (employers must begin documenting such information by the effective date of the law).

Training Regarding 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 Section 32-1301 et seq.) at least annually. These employers must also provide employees with an opportunity to attend at least one training session regarding the requirements of the law.

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

Payroll:
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. Prior to January 1, 2020, employers of tipped employees must submit such a quarterly report. The report must include the:

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

The reports must generally be submitted online.

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:
Despite efforts to eliminate the "tip credit," the tip-credit option for employers will remain. Employers may take a "tip credit" against their minimum wage obligations for employees who receive tips, as long as the direct cash wages and tips equal or exceed the minimum wage.

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

Michigan Scales Back Minimum Wage Increase, Paid Leave Requirement

It was noted in the September 2018 Tech Flex that on August 23, 2018, the State of Michigan Court of Appeals — in a 2-1 decision in the case *Michigan Opportunity v. Board of State Canvassers* — has ordered the Michigan Secretary of State, the Board of State Canvassers, and the Director of Elections to include the One Fair Wage petition to be placed on the ballot in November. The One Fair Wage petition raises the minimum wage. Another ballot measure "MI My Time to Care," which provides paid sick leave to Michigan employees, is also scheduled to be on the November ballot.

Under state law, the Michigan Legislature had the option of taking up the issue and keep the issue off the ballot, place an alternative measure on the November ballot, or do nothing and allow the measure to go on the ballot as it was proposed.

On September 5, 2018, Michigan lawmakers passed two laws adopting the two ballot measures as currently written. The first law raises the state's minimum wage, and the second requires employers to provide their employees with paid sick leave. Consequently, the ballot measures regarding the minimum wage and paid sick leave will not be on the Michigan November ballot.

It was also noted in the September Tech Flex that it was widely anticipated that attempts to amend these bills will occur in the November and December lame-duck sessions as legislation increasing the minimum wage and providing paid sick leave was passed and enacted by a Republican-held Legislature that generally opposed the ballot measures. Republicans hold a 27-10 majority in the Senate and a 63-46 advantage in the House of Representatives until December 31, 2018, as well as the Governor's mansion. Had the ballot measure appeared on the November ballot and passed, a three-fourth majority of the Legislature would have been required to amend the ballot measures. However, because the Legislature adopted the ballot measures by enacting legislation, only a simple majority of the Legislature is needed to amend the provisions of the new minimum wage and paid sick leave laws. As expected, the Michigan Legislature has adopted two pieces of legislation (Senate Bill 1171 and Senate Bill 1175) that will scale back increases to the minimum wage and require certain employers to provide paid sick leave (and now call it paid medical leave).

Effective Date:

Senate Bill 1171 and Senate Bill 1175 take effect 90 days after adjournment of the Legislature. The Legislature is scheduled to adjourn between December 20 and December 31, which would put the effective date between March 20 and April 1, 2019. At the time of this writing, the Michigan Legislature was still in session, so a firm date is not yet known. We will continue to monitor and report when an actual effective date is known.

Senate Bill 1171:

Senate Bill 1171 scales back the schedule of increases to the minimum wage that were approved in September. Under Senate Bill 1171, the minimum wage will increase to $9.45 in 2019 and then increase each subsequent year until it reaches $12.05 in 2030. However, a scheduled increase won't take effect if Michigan's unemployment rate is 8.5 percent or higher for the year preceding the scheduled increase.

Below is the schedule for the increases to the minimum wage: The current minimum wage in Michigan is $9.25 per hour. Under Michigan law, tipped employees must receive 38 percent of the minimum wage, currently $3.52 per hour.

Effective Date	Minimum Wage/Cash Wages to Tipped Employees Per Hour
Between March 20 and April 1, 2019	$9.45/$3.59
January 1, 2020	$9.65/$3.67
January 1, 2021	$9.87/$3.75
January 1, 2022	$10.10/$3.84
January 1, 2023	$10.33/$3.93

Effective Date	Minimum Wage/Cash Wages to Tipped Employees Per Hour
January 1, 2024	$10.56/$4.01
January 1, 2025	$10.80/$4.10
January 1, 2026	$11.04/$4.20
January 1, 2026	$11.29/$4.29
January 1, 2028	$11.54/$4.39
January 1, 2029	$11.79/$4.48
January 1, 2030	$12.05/$4.58

The law passed in September would have increased the minimum wage as follows:

January 1, 2019	$10.00
January 1, 2020	$10.65
January 1, 2021	$11.35
January 1, 2022	$12.00

Senate Bill 1171 also eliminates inflation-adjustment provisions in the legislation approved in September. Therefore, the minimum wage won't be adjusted for inflation.

Tipped Employees:

Senate Bill 1171 also significantly scales back changes to the rules for tipped employees. The measure approved in September would have eventually required employers to pay the full minimum wage to tipped employees. Instead, Senate Bill 1171 provides that the minimum cash wage employers must pay tipped employees will be 38 percent of the applicable minimum wage. If the employee's direct cash wage and tips fail to meet or exceed the applicable minimum wage, the employer must make up the difference.

The law also removes a few other tipped-employee provisions that were in the measure approved in September, including one that would have required employers to provide employees with a written notice of their plan to distribute service charges.

For a copy of Senate Bill 1171, please click on the link provided below.

https://www.legislature.mi.gov/documents/2017-2018/publicact/pdf/2018-PA-0368.pdf

Senate Bill 1175:

The other measure approved by the Legislature in September, Senate Bill 1175 significantly amends Michigan's Earned Sick Time Act. Among other things, Senate Bill 1175:

- Renames the law the Paid Medical Leave Act.
- Includes greater restrictions regarding who is eligible.
- Changes the accrual rate and decreases the number of hours that can be accrued.
- Limits the reasons for which employees may take leave.
- Narrows the definition of covered family members.
- Revises rules regarding pay during leave.
- Amends employer and employee notice requirements.
- Removes a provision related to rules about finding replacement workers.
- Eases recordkeeping requirements.

Employee Eligibility:

Under the amended law, to be eligible for paid medical leave employees must work, on average, 25 or more hours during the previous calendar year for an employer with 50 or more employees.

Certain types of employees aren't eligible for paid medical leave. They include but are not limited to:

- Employees who are classified as exempt from overtime.
- A "variable-hour employee" as defined by the Affordable Care Act (ACA); and
- Individuals employed for 25 weeks or fewer in a calendar year for a job scheduled for 25 weeks or fewer.

By contrast, the measure approved in September would have generally applied to all employers and employees who work in the state.

Accrual and Carryover:

Under Senate Bill 1175, eligible employees are entitled to accrue one hour of paid medical leave for every 35 hours worked, up to a maximum of 40 hours of paid medical leave per benefit year (under the measure approved in September, the accrual rate would have been one hour for every 30 hours worked, up to a maximum of 72 hours). Employers may limit accrual to one hour of paid medical leave in a calendar week. Employees are entitled to begin accruing paid medical leave on their date of hire or the effective date of the law, whichever is later.

Employees are generally entitled to carry over up to 40 hours of unused paid medical leave to the following benefit year. However, if an employer provides at least 40 hours to an eligible employee at the beginning of the benefit year, no carryover is required. For employees hired during the benefit year, Senate Bill 1175 allows employers to prorate the amount of leave provided.

Use:

Employers may make employees wait until they have been employed for 90 days before they can use accrued paid medical leave. Employers may limit use to 40 hours of paid medical leave per benefit year. Employees are entitled to use paid medical leave for:

- The employee's or a family member's mental or physical illness, injury, or health condition;
- The employee's or a family member's medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition, or preventive medical care;
- For medical care, counseling, obtaining legal services, or participating in a civil or criminal proceeding when the employee or a family member is a victim of domestic violence or sexual assault; and
- The closure of the employee's primary workplace due to a public health emergency, the closure of their child's school or place of care due to a public health emergency, or when a healthcare provider has determined that the employee's or a family member's presence in the community would jeopardize the health of others.

Senate Bill 1175 removes a provision that would have allowed eligible employees to use such leave to attend meetings at their child's school.

As amended, the law defines a family member as:

- A child, stepchild, legal ward, or a child to whom the employee stands in place of a parent;
- Grandchild;
- Grandparent;
- Parent or spouse's parent;
- Sibling; and
- Spouse.

Senate Bill 1175 removes from the definition references to domestic partners and individuals related by blood or affinity.

Pay During Leave:

During the leave, employers must pay eligible employees a rate at least equal to the greater of either their normal hourly or base wage or the applicable minimum wage. For the purposes of paid medical leave, employers are permitted to exclude overtime, holiday pay, bonuses, commissions, supplemental pay, piece-rate pay, and gratuities from the calculation of an eligible employee's normal hourly wage or base wage.

Replacement Workers:

Senate Bill 1175 removes a provision that would have expressly prohibited employers from requiring an employee to find a replacement worker as a condition for using the leave.

Employee Notice and Documentation:

Under Senate Bill 1175, employees requesting paid medical leave must comply with their employer's usual and customary notice, procedural, and documentation requirements for requesting leave. Employers must give employees at least three days to provide documentation.

Note: The law has specific rules for requesting documentation when the leave is related to domestic violence and sexual assault.

Employer Notice:

Senate Bill 1175 retains a requirement for employers to display a poster regarding the law, but it removes a requirement for employers to give employees written notice by April 1, 2019. Senate Bill 1175 also removes a requirement that the notice be given in Spanish and other languages.

Record Keeping:

Employers must keep records documenting the hours of work and paid medical leave taken by employees for at least one year (instead of the three years that would have been required under the measure approved in September).

Relationship to Other Leave Policies:

Senate Bill 1175 establishes that there is a "rebuttable presumption" that an employer is in compliance with the law if the employer provides at least 40 hours of paid leave (such as paid vacation) to eligible employees each benefit year. Employers may want to consult legal counsel to determine if and how this provision may apply to their existing policies.

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

New York State Extends Wage Deduction Amendment Rules

On December 7, 2018, New York Governor Cuomo signed into law Bill A10615, immediately extending for eight years the 2012 amendments to New York Labor Law 193 that permits employers to make deductions from wages for items such as overpayments and advances against wages, subject to certain procedures governed by Labor Department regulations. The amendments to the New York Labor law were set to expire on November 6, 2018. Bill A10615 states as follows:

> The People of the State of New York, represented in the Senate and Assembly, do enact as follows:
>
> Section 1. Section 3 of Chapter 451 of the laws of 2012, amending the labor law relating to permitted deductions from wages, as amended by Chapter 386 of the laws of 2015, is amended to read as follows:
>
> This act shall take effect on the sixtieth day after it shall have become a law and shall expire and be deemed repealed eight years after such effective date.
>
> This act shall take effect immediately.

Background:

The state of New York Department of Labor amended the New York Code of Rules and Regulations, specifically 12 NYCRR Part 195, which amended wage deduction regulations. These new rules took effect on October 9, 2013. These regulations are intended to establish provisions governing authorized deductions for the benefit of employees, for recovery of overpayments due to clerical or mathematical errors, and for repayment of advances. The regulations apply to all employers and their employees, where the term "employer" includes any person, corporation, limited liability company, or association employing any individual in any occupation, trade, business or service, and where the term "employee" means any person employed for hire by an employer in any employment. The regulations do not apply to government agencies.

Under these regulations, no employer may make any deductions for wages, except those that fall within the following four categories:

(1) Any deductions made in accordance with any law, rule or regulation issued by any governmental agency.
(2) Deductions authorized by, and for the benefit of, the employee.
(3) Deductions for the recovery of overpayments.
(4) Deductions for the repayment of wage advances.

The new regulations prohibit any deductions for employee purchases of tools, equipment and attire required for work; recoupment of unauthorized expenses; repayment of employer losses, including for spoilage and breakage, cash shortages, and fines or penalties incurred by the employer through the conduct of the employee; fines or penalties for tardiness, excessive leave, misconduct or quitting without notice.

It is important to note that under the new regulations, employers must follow specific rules in order to collect an overpayment of wages from an employee. A brief description of some of the highlights of the overpayment of wages requirements are found below:

- Timing and duration. The employer may only recover overpayments that were made in the eight (8) weeks prior to the issuance of the notice of intent to recover such overpayments. An employer may take deductions to recover overpayments for a period of six (6) years from the original overpayment. The requirements for the notice of intent are described below.
- Frequency. The employer shall recover overpayments by wage deduction no more frequently than once per wage payment, provided that such deduction complies with the wage deduction rules.
- Limitations on the Periodic Amount of Recovery. An employer may recover overpayments by deducting the amount of the overpayment from the employee's wages if the deduction complies with the following:
  - Where the entire overpayment is less than or equal to the net wages earned after other permissible deductions in the next wage payment, the employer may recover the entire amount of such overpayment in that next wage payment.
  - Where the recovery of an overpayment exceeds the net wages after other permissible deductions in the immediately subsequent wage payment, the recovery may not exceed 12.5 percent of the gross wages earned in that wage payment nor shall such deduction reduce the effective hourly wage below the statutory state minimum hourly wage.
- Notice of Intent. Prior to commencing recovery, an employer is required to provide the employee with notice of the intent to commence the deductions to recover the overpayment. In such cases where the entire amount of the overpayment may be reclaimed in the next wage payment, notice must be given at least three days prior to the deduction. In all other cases, notice shall be given at least three weeks before the deductions may commence. The notice must contain the following information:
  - Amount overpaid in total and per pay period.
  - Total amount to be deducted and the date each deduction will occur followed by the amount of each deduction.
  - The notice must also provide notice to the employee that he or she may contest the overpayment, provide the date by which the employee shall contest, and include the procedure by which the employee may contest the overpayment and/or terms of recovery, or provide a reference to where such procedure can be located.

- Procedure. The employer shall implement a procedure by which the employee may dispute the overpayment and terms of recovery, and/or seek a delay in the recovery of such overpayment. Dispute resolution provisions in collective bargaining that provide at least as much protection to the employee as required in the wage deduction rules are deemed to be in compliance with the requirements.
- The employee may only respond within one week from the date of the receipt of the notice of intent to recover overpayments.
- The employer must reply to the employee's response within one week of receipt of the employee's response and address the issues raised by the employee in his or her response. In addition, the employer reply must contain a clear statement indicating the employer's position with regard to the overpayment, including whether the employer agrees with the employee's position(s) regarding the overpayment or disagrees with the employee's position(s) and provide a reason why the employer agrees or disagrees.
- The employer must give the employee written notice of the opportunity to meet with the employer within one week of receiving the employer's reply to discuss any disagreements that remain regarding the deductions.
- The employer must provide the employee with written notice of the employer's final determination regarding the deductions within one week of this meeting.
- Should an employee appeal utilizing the required procedure, the employer may not commence taking the deduction until at least three weeks after issuing the final determination.
- Where the entire overpayment may be reclaimed in the next wage payment after the overpayment, the employee must provide his or her response to the employer within two days of receipt of the notice as outlined in the bullet above titled "Notice of Intent."

For a copy of A10615, please click on the link provided below:
https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A10615&term=2017&Summary=Y&Text=Y

For a copy of the regulations that were set to expire on November 6, 2018, and now have been extended for an additional eight years, please click on the link provided below:
https://labor.ny.gov/legal/laws/pdf/wage-deduction/12-NYCRR195-Wage-Deductions-Text.pdf

Mountain View, California, Announces 2019 Minimum Wage

Mountain View, California, has announced that effective January 1, 2019, the minimum wage in the city will increase from $15.00 per hour to $15.65 per hour. The announcement stated in part as follows:

> Beginning January 1, 2019, employers who are subject to the Mountain View Business License Tax OR who maintain a facility in Mountain View must pay to each employee who performs at least two (2) hours of work per week in Mountain View, minimum wages not less than $15.65 per hour. The minimum wage requirement set forth in the Mountain View Minimum Wage Ordinance applies to adult AND minor employees who work two (2) or more hours per week (tips not included). Beginning January 1, 2019, and annually thereafter, the City will adjust the minimum wage based on the Regional Consumer Price Index.

On December 4, 2018, Mountain View Councilmember, John McAlister, moved to introduce an Ordinance amending Section 42.14 of the Mountain View City Code to delay the start of annual consumer price index (CPI) adjustments to the minimum wage from January 1, 2019 to January 1, 2020 and resume cost of living increases in 2020.

However, the motion did not pass when no other councilmember was willing to second the motion.

Consequently, the Mountain View, California, minimum wage will increase as scheduled from its current level of $15.00 to $15.65 effective January 1, 2019. California does not allow the use of a tip credit when paying tipped employees.

For a copy of the announcement, please click on the link provided below.
https://www.mountainview.gov/depts/comdev/economicdev/city_minimum_wage.asp

It is important to note that employers must post the "Minimum Wage Official Notice" (link below) in the workplace, informing employees of the rate and their rights.
https://www.mountainview.gov/civicax/filebank/blobdload.aspx?BlobID=27763

Oakland, California, Announces January 1, 2019 Minimum Wage

Oakland, California, has announced that the city minimum wage will increase to $13.80 per hour, effective January 1, 2019. This is an increase of 57 cents per hour over the current rate of $13.23 per hour.

The state of California does not allow employers to take a tip credit when paying tipped employees, so the city minimum wage is the same for tipped and non-tipped employees.

It is also important to note that employers subject to the Oakland minimum wage must provide notice to employees and prominently display posters on the new minimum wage increase by December 15, 2018.

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

http://www2.oaklandnet.com/oakca1/groups/contracting/documents/marketingmaterial/oak061391.pdf

San Diego, California, Announces Increase to Minimum Wage

San Diego has announced that effective January 1, 2019, "all employers must pay each employee, for each hour worked within the geographic boundaries of the City, wages "not less" than $12.00 per hour.

It is important to note that although the $12.00 San Diego per hour rate will equal the California state minimum hourly rate for employers with 26 employees or more, it will exceed by $1.00 per hour the state minimum of $11.00 per hour effective January 1, 2019 for employers with 25 employees or less, as the San Diego minimum wage rate applies to all employers regardless of size.

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

https://www.sandiego.gov/treasurer/minimum-wage-program

2019 Minimum Wage Announced for Sunnyvale, California

Sunnyvale, California, has announced that effective January 1, 2019, the minimum wage in the city will increase from $15.00 per hour to $15.65 per hour. The announcement stated in part as follows:

> Employers must post the Minimum Wage Official Notice in the workplace, informing employees of the rate and their rights. In part, the Notice states as follows:
>
> Beginning January 1, 2019, employers who are subject to the Sunnyvale Business License Tax or who maintain a facility in Sunnyvale must pay to each employee who performs at least two (2) hours of work per week in Sunnyvale wages of not less than $15.65 per hour. The minimum wage requirement set forth in the Sunnyvale Minimum Wage Ordinance applies to adult and minor employees who work two (2) or more hours per week (tips not included). Each year, the City will adjust the minimum wage based on the U.S. Department of Labor's Regional Consumer Price Index

A link to the Notice is provided below.

https://sunnyvale.ca.gov/civicax/filebank/blobdload.aspx?blobid=25949

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

https://sunnyvale.ca.gov/business/doingbusiness/wage.htm

St. Paul, Minnesota, Enacts Minimum Wage Ordinance

On November 14, 2018, St. Paul, Minnesota Mayor Melvin Carter signed Ordinance 18-54 that, effective January 1, 2020, gradually increases the minimum wage rate until it reaches $15.00 per hour. The timing of the increase depends on the size of the employer. Generally, an employer's business size for the current calendar year is based upon the average number employees per week during the previous calendar year. It is important to note that the ordinance does not include a tip credit. Gratuities paid to tipped workers may not be applied against the minimum wage rate.

The current minimum wage in St. Paul is the state of Minnesota minimum wage of $9.65 per hour, scheduled to raise to $9.86 per hour on January 1, 2019. The use of a tipped credit in paying tipped employees is not allowed under state law.

Ordinance 18-54 stipulates that the St. Paul minimum wage will be increased as follows:

Macro Businesses: all employers that employ more than 10,000 persons. Includes City of St. Paul.

- On January 1, 2020, the hourly wage shall be $12.50.
- On July 1, 2022, the hourly wage shall be $15.00.

No later than September 1 of each year, beginning in 2022, the director shall determine the increase in the minimum wage rates to be paid by the City of St. Paul and macro businesses based on inflation.

Large Businesses: all employers that employ more than 100 persons

- On July 1, 2020, the hourly wage shall be $11.50.
- On July 1, 2021, the hourly wage shall be $12.50
- On July 1, 2022, the hourly wage shall be $13.50.
- On July 1, 2023, the hourly wage shall be $15.00.

Beginning on July 1, 2024, the City Minimum Wage rate that applies to the City of St. Paul shall apply to large businesses.

Small Businesses: employers that employ 100 or fewer persons

- On July 1, 2020, the hourly wage shall be $10.00.
- On July 1, 2021, the hourly wage shall be $11.00.
- On July 1, 2022, the hourly wage shall be $12.00.
- On July 1, 2023, the hourly wage shall be $13.00.
- On July 1, 2024, the hourly wage shall be $14.00.
- On July 1, 2025, the hourly wage shall be $15.00.

On July 1, 2026, the City Minimum Wage that applies to the City of St. Paul shall apply to small businesses.

Micro Businesses: all employers that employ five or fewer persons,

- On July 1, 2020, the hourly wage shall be $9.25.
- On July 1, 2021, the hourly wage shall be $10.00.
- On July 1, 2022, the hourly wage shall be $10.75.
- On July 1, 2023, the hourly wage shall be $11.50.
- On July 1, 2024, the hourly wage shall be $12.25.
- On July 1, 2025, the hourly wage shall be $13.25.
- On July 1, 2026, the hourly wage shall be $14.25.
- On July 1, 2027, the hourly wage shall be $15.00.

On July 1, 2028, the City Minimum Wage that applies to the City of St. Paul shall apply to micro businesses.

Time and Labor

New York City Fair Workweek Law Subject to Legal Challenge

Several industry organizations have brought a lawsuit that seeks to invalidate New York City's Fair Workweek law. In mid-2017, the New York City Council passed a series of bills, collectively called the "Fair Workweek" laws that imposed new requirements around the scheduling of employees working in the restaurant and retail industries. After being signed into law by Mayor Bill De Blasio, the laws took effect on November 26, 2017.

The laws require fast food employers to provide employees with a good faith written estimate of the number of hours the employee can expect to work per week for the duration of the employee's employment. The estimate must include the expected dates, times and locations for the scheduled work hours. If a long-term or indefinite change is made to the good-faith estimate, the employer must update the estimate as soon as possible. The law further requires fast food employers to provide written work schedules to each fast food employee, spanning a period of at least seven days. Various penalties apply to employers that make changes to employees' written schedules within certain time frames.

According to the lawsuit, brought by the International Franchise Association, the National Restaurant Law Center and the New York State Restaurant Association on December 3, 2018, the laws have created a heavy burden on businesses in New York City. The lawsuit claims that "perfect compliance" with the laws is a "virtual impossibility." The suit argues that the Fair Workweek law should be struck down because New York State alone maintains the authority to enact laws that limit the right of employers to change their employees' work schedules. No hearings have yet been scheduled.

A copy of the lawsuit can be found at this link:

https://www.franchise.org/sites/default/files/Summons%20and%20Complaint.pdf

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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