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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:

Benefits

Massachusetts Announces 2020 Parking and Transportation Limits

Massachusetts has released Technical Release Number 19-16 (TR 19-16) which provides the maximum amounts of parking and transit limits that are excluded from state income tax for tax year 2020.

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 19-16 stipulates that for tax years beginning in 2020, the Massachusetts monthly exclusion amounts are $270 for employer-provided parking, and $140 for the combined value of transit pass and commuter highway vehicle transportation benefits.

The federal amounts for 2020 are $270 for employer-provided parking, and $270 for the combined value of transit pass and commuter highway vehicle benefits.

Consequently, the $270 limit for qualified parking expenses is excluded from employee taxable income in 2020 for both state and federal income taxes. However, the qualified transportation expenses tax is excluded for employees up to $270 for federal taxation and $140 for Massachusetts state taxation in 2020.

For a copy of TR 19-16, click on the link provided below.

https://www.mass.gov/technical-information-release/tir-19-16-massachusetts-exclusion-amounts-for-employer-provided

Leave

Illinois Amends School Visitation Rights Act

Under the Illinois School Visitation Rights Act (Act), employers of 50 or more employees in Illinois are required to provide up to eight hours of leave per year (if the employee has exhausted any vacation, personal, or other available leave) to attend school conferences or classroom activities related to the employee's child, if the conference or activity cannot be scheduled during non-work hours.

Effective August 1, 2020, the Act has been amended to stipulate that such leave can be used "to attend school conferences, behavioral meetings or academic meetings ..."

In addition, the amended Act provides that employers cannot terminate an employee's employment based solely on an absence for one of these reasons by stipulating as follows:

> An employer may not terminate an employee for an absence from work if the absence is due solely to the employee's attendance at a school conference, behavioral meeting or academic meeting.

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

http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=101-0486

Bernalillo County, New Mexico, Paid Leave Ordinance to Be Effective July 1, 2020

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

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

Amendments:

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

Note: The agency has advised that the effective date may be changed back to July 1, 2020, in a future amendment to the ordinance that they were scheduled to discuss in a meeting on October 29, 2019. However, the rest of the amended items will remain intact. If the effective date is changed back to July 1, 2020, another communication to this effect will be issued.

On December 13, 2019, Bernalillo County provided the new release shown below stating that effective date of paid leave ordinance has been changed back to July 1, 2020.

BERNALILLO COUNTY STATE OF NEW MEXICO

NEWS RELEASE

County Commission Approves Amendments to Paid Time Off Ordinance

12/13/2019
11:57 AM
Tom Thorpe, O (505) 314-0403, C (505) 414-0485 - tthorpe@bernco.gov

Bernalillo County – The Bernalillo County Commission approved amendments to the paid time off ordinance, known as the "Employee Wellness Act."

The amendments are:

- **Change the effective date of the ordinance to July 1, 2020.**
- Add language clarifying that those employers subject to the ordinance will be required to provide paid time off to their employees, regardless of their employees' daily work location.
- Clarify that the paid time off ordinance is not intended to interfere with a collective bargaining agreement's grievance process, eligibility requirements, or accrual processes.

"These new amendments clarify the intent of the PTO ordinance and how it will be implemented in a way that's clear to both workers and employers," says Commission Chair Maggie Hart Stebbins. "We have an obligation to make sure that everyone understands what's expected and required when the ordinance goes into effect."

All amendments were approved on a unanimous vote except for the change in language regarding employee daily work location and business location. That amendment passed on a 4 – 1 vote with Commissioner Lonnie Talbert as the dissenting vote.

The paid time off ordinance, once amended and signed by commissioners, will be available on the Bernalillo County website at **www.bernco.gov**.

San Antonio, Texas, Paid Sick Leave Temporarily Blocked

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

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

In November, attorneys representing both sides presented oral arguments to Bexar County District Judge Peter Sakai. Attorneys for the plaintiffs argued the ordinance violates the Texas Minimum Wage Act, as the required paid sick leave actually is a wage increase. Attorneys for San Antonio contended the ordinance offered a benefit, not a wage, under the federal Fair Labor Standards Act.

On November 22, 2019, Judge Sakai granted a temporary injunction via a letter, keeping the ordinance from going into effect on December 1, 2019. Sakai also ordered that a full trial be conducted but did not set a date for one to take place.

For a copy of Judge Sakai's letter, click on the link provided below.

https://pslatwork.files.wordpress.com/2019/11/112219-order-granting-pi-recv0605.pdf

Payroll

Chicago, Illinois, to Increase Minimum Wage

On November 26, 2019, the City Council of Chicago approved the proposed minimum wage increase put forth by Mayor Lori Lightfoot in her 2020 budget. The current minimum wage in Chicago is $13.00 per hour.

Under the approved Minimum Wage Ordinance (Ordinance), the minimum wage in Chicago will increase as follows:

Employers with more than 20 employees:

July 1, 2020	$14.00 per hour
July 1, 2021	$15.00 per hour

Employers with 4-20 employees:

July 1, 2020	$13.50 per hour
July 1, 2021	$14.00 per hour
July 1, 2022	$14.50 per hour
July 1, 2023	$15.00 per hour

Tipped employees must be paid a minimum of 60 percent of the minimum wage in cash wages. Consequently, the minimum cash wage for tipped employees in Chicago will increase as follows:

Employers with more than 20 employees:

July 1, 2020	$8.40 per hour
July 1, 2021	$9.00 per hour

Employers with 4-20 employees:

July 1, 2020	$8.10 per hour
July 1, 2021	$8.40 per hour
July 1, 2022	$8.70 per hour
July 1, 2023	$9.00 per hour

Micro-businesses, with fewer than 4 employees, will not be subject to the Ordinance.

For a copy of Mayor Lightfoot's press release, click on the link provided below.

https://www.chicago.gov/content/dam/city/depts/mayor/Press%20Room/Press%20Releases/2019/November/RaiseChicagosMinimumWage.pdf

Denver, Colorado, Adopts Minimum Wage

On November 25, 2019, the Denver City Council passed Council Bill Number 19 (CB-19) by an 11-0 vote which increases the minimum wage in the city. Currently Denver adheres to the Colorado state minimum wage of $11.10 per hour and $8.08 cash wage for food and beverage workers. The state minimum wage in Colorado is scheduled to increase to $12.00 per hour as of January 1, 2020. Food and beverage workers on that same date must be paid a minimum of $8.98 in cash wages.

Denver Minimum Wage:

Effective:

January 1, 2020	$12.85
January 1, 2021	$14.77
January 1, 2022	$15.87

Annual adjustments will be based on the Consumer Price Index each year thereafter.

Under the CB-19, a "tip credit" of $3.02, matching the state constitutional level, is available to employers when paying food and beverage workers.

CB-19 states in part as follows:

> Tips regularly and actually received by a food and beverage worker may be applied to an employer's obligation to pay such food and beverage worker the Denver minimum wage. However, no more than $3.02 per hour in tip income ("Tip Credit") may be used to partially offset payment of the Denver minimum wage.

Consequently, the minimum cash wage that can be paid to a food and beverage worker in Denver is as follows.

Effective:	
January 1, 2020	$9.83
January 1, 2021	$11.75
January 1, 2022	$12.85

Click on the links below to access these documents:

Mayor's Office Announcement

https://www.denvergov.org/content/denvergov/en/mayors-office/newsroom/2019/minimum-wage-increase-for-denver-workers-adopted.html

Council Bill Number CB-19

https://www.denvergov.org/content/dam/denvergov/Portals/728/documents/minimum-wage/Clean_MW_Bill_Nov_12_Committee.pdf

Denver Minimum Wage Fact Sheet

https://www.denvergov.org/content/dam/denvergov/Portals/728/documents/minimum-wage/Denver_Citywide_Minimum_Wage_UPDATED_11.18.201.pdf

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Mountain View, California, Announces 2020 Minimum Wage

Mountain View, California, has announced that effective January 1, 2020, the minimum wage in the city will increase from $15.65 per hour to $16.05 per hour. The announcement stated in part as follows:

Beginning January 1, 2020, 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 $16.05 per hour.

For a copy of the announcement, 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=30686

Time and Labor

Colorado Proposes Changes to State Wage and Hour Laws

Proposed regulations have been released by the Colorado Department of Labor and Employment (CDLE) that, if adopted, would result in major changes in relation to minimum salary requirements for exempt status, rest and meal periods and other wage and hour laws.

The proposed provisions are collectively known as the Colorado Overtime & Minimum Pay Standards Order ("COMPS Order").

In addition, on December 19, 2019, the CDLE will adopt its proposed rule on vacation pay, placing certain restrictions regarding "use-it-or-lose-it" provisions and requiring that unused vacation pay be paid out upon separation of employment.

The following is an overview of the new vacation pay rules, as well as a summary of some of the key provisions of the proposed COMPS Order.

Vacation Pay

Under current law, Colorado provides that, upon separation of employment, an employer must pay an employee all vacation pay "earned and determinable in accordance with the terms of any agreement." In June 2019, the Colorado Court of Appeals held that an employer may place restrictions on payment of accrued but unused vacation pay at separation as part of its policies or agreements. In that case, the court upheld an employer's policy stating that employees "forfeit all earned vacation pay benefits" upon discharge for any reason.

In response to that court decision, the CDLE issued the new regulation, stating that Colorado's vacation pay law does not allow for forfeiture of any earned vacation upon separation of employment. That is, under the new regulation, separating employees must be paid out for any "earned and determinable" vacation and employers cannot maintain a policy that requires employees to forfeit their earned vacation pay upon separation.

In addition, the regulation provides that employers may maintain "use-it-or-lose-it" vacation policies that "disallow carryover after employees accrue a year of vacation pay," but only where such policies "do not forfeit any of that years' worth." So, for example, an agreement or policy providing for ten paid vacation days per year may provide that employees can accrue more than ten days by allowing carryover of vacation from year to year or may cap employees at ten days, but it may not provide that after an employee accrues ten days, that amount diminishes below ten days for any reason, other than due to use by the employee.

Proposed COMPS Order:

Employer/Employee Coverage

The Colorado wage and hour laws currently only apply to employees in the Retail and Service, Food and Beverage, Commercial Support Service, and Health and Medical industries. The proposed change would expand coverage to employees across all industries, unless otherwise specifically excluded. Certain individual and industry-specific exemptions would be provided, including "owners" of a business and "proprietors" of a nonprofit, certain interstate transportation and taxi drivers, certain "in residence" workers (such as property managers who reside in the property being managed) and certain salespersons and mechanics.

Minimum Salary for Exempt Status

Under the current rules, an executive, professional, or administrative employee may be classified as exempt from overtime eligibility and required meal and rest breaks under state law, if they perform certain exempt duties and receive a minimum annual salary of $35,568. Under the proposed COMPS Order, beginning July 1, 2020, the salary threshold for such exemptions would increase to $42,500, with annual fixed adjustments thereafter until reaching $57,500 in 2026. An adjustment would be made annually, based on the Consumer Price Index.

It is important to note that the Colorado minimum salary to be exempt for overtime would exceed the federal rule as of July 1, 2020, as under the Fair Labor Standards Act (FLSA) the amounts required to be earned by an employee for that employee to be exempt from the FLSA overtime requirements will be $684 per week ($35,568 annually).

Calculating Pay Rates for Nonexempt Employees Not Paid Hourly

Clarification on how to calculate regular and overtime pay rates for nonexempt employees with salaried or other non-hourly pay structures is provided under the proposed COMPS Order as follows:

Would allow for the use of the so-called "fluctuating workweek" calculation as follows — a nonexempt employee's weekly salary or other non-hourly pay may be paid as straight time pay for all work hours, and the regular rate each workweek would be the total paid divided by hours worked, if the parties have a "clear mutual understanding" that the salary is:

(1) compensation for all hours each workweek, apart from any overtime premium;
(2) at least the applicable minimum wage for all hours in workweeks with the greatest hours;
(3) supplemented by extra pay for all overtime hours at one-half of the regular rate; and
(4) paid for whatever hours the employee works in a workweek.

In situations where the above requirements are not met, however, an employee's hourly regular rate for purposes of overtime pay calculation would be the applicable weekly pay divided by 40, the number of hours presumed to be in a workweek for an employee who receives no overtime.

Wage Credits and Security Deposits

The proposed COMPS Order would continue to allow employers to reduce employee wages by taking a "credit" for providing meals or lodging, but would modify the rules for such credits.

Meal Credits

- Would eliminate the existing requirement that a meal "must be consumed before deductions are permitted," and would instead only require that accepting a meal be voluntary for the employee. The existing requirement that meals must be provided at cost or value would be maintained.

Lodging Credits

Would increase the dollar limit for such credits, and also would add requirements that the employee's acceptance of the lodging be voluntary, that it be for the employee's benefit and not primarily for the employer's own convenience, and that the lodging agreement be appropriately documented.

The proposed COMPS Order also would prohibit employers from requiring employees to provide a security deposit for required work uniforms.

Rest Periods

Colorado law provides that employers generally are required to permit a compensated 10-minute rest period for every four hours of work, or major fractions thereof. The proposed COMPS Order clarifies that, "to the extent practical," rest periods shall be provided in the middle of each four-hour work period. In addition, employees who do not receive such required paid rest breaks must be provided with an additional 10 minutes' worth of compensation.

Notice to Employees

Colorado employers are presently required to display a Minimum Wage Order poster in each workplace. The proposed COMPS Order states that if such posting is impractical, given the nature of the workspace or where employees work remotely, the employer must instead provide a copy of the posting (or of the COMPS Order itself) to each employee.

Employers with Spanish-speaking employees would be required to display a Spanish language version of the COMPS Order poster. For employees speaking languages other than English or Spanish, employers would be required to contact the CDLE and request a copy of the COMPS Order poster in the employees' spoken language. Employers who fail to display or distribute the COMPS Order poster in accordance with these provisions would be prohibited from claiming any employee-specific exemptions or credits under the Order.

In addition, employers would be required to include a copy of the COMPS Order or the COMPS Order poster in their employee handbook. Further, if employers require employees to sign a handbook acknowledgment, employees also must sign an acknowledgment stating they received either the COMPS Order or poster.

For a copy of the proposed regulations, click on the link below:

https://www.colorado.gov/pacific/sites/default/files/7%20CCR%201103-1%20Colorado%20Overtime%20%26%20Minimum%20Pay%20Standards%20Order%20%28COMPS%29.pdf

Oregon Court Holds Employers Must Ensure Employees Take Meal Breaks

On November 14, 2019, the Oregon Court of Appeals in *Maza* v. *Waterford Operations, LLC* held that an employer not only must allow employees to take breaks, but may be held liable to ensure that employees take the meal breaks which they are entitled to.

Background:

Under Oregon regulations, Oregon employers must provide employees who work a shift of more than six hours with a 30-minute, unpaid meal period. In cases where the employee works 14 or more hours, a second unpaid meal period must be provided. Based on the regulation, the Oregon Supreme Court held that employees did not have a private right of action against employers who failed to provide the required meal period break. The court stated the employees could sue an employer who required work during the unpaid meal period but did not have a right of action against employers who paid employees for all time spent working but failed to provide a full 30-minute, continuous meal period.

Subsequent to the Oregon Supreme Court ruling, the regulations were amended in 2010 to stipulate that "if an employee is not relieved of all duties for 30 continuous minutes during the meal period, the employer must pay the employee for the entire 30-minute meal period." Employers widely interpreted this to mean the employers must give employees the opportunity to take a meal break, but did not read this regulation to require that they monitor employees to ensure they took such meal breaks.

Oregon Court of Appeals Ruling:

However, in its decision, the Oregon Court of Appeals held that employers are strictly liable to pay for the full 30 minutes if the employee fails to receive an uninterrupted, 30-minute meal period, regardless of the reason the employee did not receive his or her full meal break. Therefore, even if an employee voluntarily returns to work one minute shy of 30 minutes, and even if the employer is unaware that the employee has returned to work before the full 30-minute period has expired and did nothing to require or encourage the employee to return early, the employee may sue the employer to recover a full 30 minutes of pay.

It is important to note that although Waterford Operations argued that it not only permitted its employees with the opportunity to take meal breaks, its employee handbook expressly informed employees that taking their meal breaks was mandatory and could not be waived. It further provided that employees were required to notify human resources if an employee was ever required to forego a meal period or work off the clock. Based on these facts, the employer posited that it "provided" meal breaks under the plain language of the regulation. However, the court rejected this defense.

To access a copy of *Maza v. Waterford Operations, LLC*, click on the link provided below:

https://cdm17027.contentdm.oclc.org/digital/pdf.js/web/viewer.html?file=/digital/api/collection/p17027coll5/id/25147/download#page=1&zoom=auto

Philadelphia, Pennsylvania, Delays Effective Date of Fair Workweek Law

It was previously reported that on December 8, 2018, the City Council of Philadelphia passed a "Fair Workweek" bill, which was signed into law on December 20 by Philadelphia Mayor Jim Kenney. The law applies to employers in the retail, fast-food, and hotel industries with more than 30 locations and 250 employees. It will require covered employers to:

- Provide employees with a written, good faith estimate of the employee's schedule when hired
- Engage in an interactive process regarding the employee's availability
- Give employees two weeks' advance notice of their schedules
- Provide "predictability pay" if schedules change within ten days of the schedule being delivered (and increasing to 14 days beginning January 1, 2021), unless an employee consents to the change
  - o If hours are added to an employee's schedule, or the schedule is changed with no loss in hours to the employee, the employer must pay one hour of predictability pay
  - o If hours are reduced, the employer must pay predictability pay at a rate of time and a half for all hours not worked as a result of the change
  - o Some exceptions for extenuating circumstances, such as natural disasters, apply
- Offer available shifts to existing employees before hiring new ones
- Provide employees with at least a nine-hour break between shifts
- Maintain records of their compliance with the law
- Any part of the ordinance may be waived in a bona fide collective bargaining agreement

Delayed Effective Date:

The "Fair Workweek" law was originally scheduled to take effect on January 1, 2020. However, the Mayor's Office of Labor has announced that the effective date of the law has now been postponed until April 1, 2020. The Mayor's office also confirmed that the final regulations of the law will be released by the end of 2019.

The full text of the law can be found at the following link:

https://phila.legistar.com/LegislationDetail.aspx?ID=3529951&GUID=18AD5BAB-1BFE-4D7D-B1B2-53F0C06A7648

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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