Always Designing for People™

Eye on Washington
State and Local Update

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

Topics covered in this issue:

Leave

Vermont Paid Family Leave Bill Vetoed Again; Override Fails

On January 31, 2020, Governor Phil Scott vetoed legislation that would have established a paid family leave program in Vermont. The proposed program would have offered workers 12 weeks off of work per year to care for a newborn child, and eight weeks to care for an ailing family member.

Governor Scott had previously vetoed a more robust paid family leave bill in May of 2018.

In his veto message regarding the latest proposal, the Governor stated:

> *"For years, Vermonters have made it clear they don't want, nor can they afford, new broad-based taxes. We cannot continue to make the state less affordable for working Vermonters and more difficult for employers to employ them – even for well-intentioned programs like this one. Vermonters can't afford for us to get this wrong, especially at their expense."*

Override Fails

The bill passed Vermont's Senate last month by a vote of 20 to 9, surpassing the two-thirds majority needed to override a veto. However, it passed the Vermont House by a vote of only 89 to 58, falling 11 votes short of passing.

In a subsequent vote in the House to override the veto, the measure failed by one vote. The override measure needed 100 votes to pass but only received 99 votes.

Lincolnwood Village, Illinois, Opts Back In to Cook County Paid Sick Leave Ordinance

On January 7, 2020, the Lincolnwood Village Board of Trustees voted to opt back in to the Cook County paid sick leave ordinance.

Cook County, Illinois, where Lincolnwood Village is located, passed a paid sick leave ordinance effective July 1, 2017, requiring employers to provide their workers with one hour of paid sick time for every 40 hours worked. However, 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."

The Lincolnwood Village Board of Trustees had voted to opt out of the Cook County paid sick leave ordinance in June of 2017. However, with the vote of January 7, 2020 to opt back in, the paid sick leave ordinance will be in effect for Lincolnwood Village on July 1, 2020.

Additional highlights of the Cook County paid sick leave ordinance are as follows:

- It requires Cook County employers to provide one hour of paid sick leave for every 40 hours worked to employees who worked in the county for at least 80 hours in a 120-day period.
- Earned sick leave may be used when an employee or a family member are ill, receiving medical care, or is the victim of domestic violence or stalking, or if a public health emergency closes work, school or daycare.
- Employees must be paid for earned sick leave at their usual rate of pay, no later than the next payroll period.
- Maximum accrual and use of earned sick leave generally are 40 hours per year.
- Earned sick leave, not used in a given year, may be carried over to the following year up to a maximum of 20 carryover hours.

Payroll

Minnesota Supreme Court Upholds Minneapolis Minimum Wage Ordinance

It was previously reported that on June 30, 2017, the Minneapolis City Council passed a minimum wage ordinance that will increase the minimum wage to $15.00 for "large business" by 2022 and by 2024 for "small business."

A "large business" is defined as all employers that employ more than one hundred (100) employees and a "small business" is defined as all employers that employ one hundred (100) or fewer employees.

The tiered wage increases are as follows:

Date	Large business: five years	Small business: seven years
Jan. 1, 2018	$10.00	No increase
July 1, 2018	$11.25	$10.25
July 1, 2019	$12.25	$11.00
July 1, 2020	$13.25	$11.75
July 1, 2021	$14.25	$12.50
July 1, 2022	$15.00	$13.50
July 1, 2023	$15 indexed to inflation	$14.50
July 1, 2024	$15 indexed to inflation	$15.00

A large business, based in Minneapolis, filed a law suit in 2017 attempting to stop the Minneapolis minimum wage ordinance from taking effect but lost that case when a Hennepin County judge ruled in favor of the city. The business appealed the decision arguing the city's law is preempted by the Minnesota Fair Labor Standards Act (MFLSA). However, on March 4, 2019, the Court of Appeals of Minnesota, in a 2 to 1 vote, ruled that the Minneapolis minimum wage ordinance is not preempted by state law and declared the ordinance valid and enforceable. The large business appealed the Court of Appeals ruling to the Minnesota State Supreme Court.

On January 22, 2020, the Minnesota Supreme Court affirmed the state's Court of Appeals decision thus upholding the Minneapolis minimum wage. The wage ordinance, which was approved in June 2017, provides that for 2020, the minimum wage for "large" employers (those with more than 100 employees) is $12.25 per hour, and the minimum wage for "small" employers (those with 100 or fewer employees) is $11.00 per hour. This is higher than the minimum wage rates set forth in the Minnesota Fair Labor Standards Act (MFLSA), which provides a minimum wage of $10.00 per hour for large employers (those with an annual gross volume of sales or business of $500,000 or more) and a minimum wage of $8.15 per hour for small employers (less than $500,000 in business) for 2020.

Opponents of the law argued that the ordinance is preempted by the MFLSA. The state Supreme Court held that the law and the ordinance are not in conflict because the MFLSA requires that employers pay "at least" the minimum wage, indicating that a higher minimum wage is permissible. The court stated that the MFLSA "prohibits employers from paying wages less than the statutory minimum-wage rate; it does not set a cap on the hourly rate that employers can pay. If employers comply with the ordinance, which requires minimum-wage rates above the state minimum-wage rates, employers comply with the MFLSA. And if employers can comply with both the municipal regulation and the state statute, the provisions are not irreconcilable, and therefore no conflict exists."

New Jersey Amends Wage Statement Law

On January 20, 2020, New Jersey Governor Phil Murphy signed into law Senate Bill 1791 (SB 1791) expanding current obligation by requiring that all employers, public and private, provide employees with a statement of earnings for each pay period to include the list below, in addition to any deductions made. Prior to the enactment of SB 1791, New Jersey 34:11-4-6(c) required private employers to furnish each employee with a statement of all deductions made from the employee's wages for each pay period in which deductions were made. The statement of earnings must now include the following:

Every employer with 10 or more employees, including public employers, shall include in that statement:

(1) the employee's gross wages;

(2) the employee's net wages;

(3) the employee's rate of pay; and

(4) if relevant to the wage calculation, the number of hours worked by the employee during the pay period.

In addition, SB 1791 provides that an employer may provide the statement electronically, unless the employee requests that the statement be provided in a paper format.

"Public employers" are defined as the State of New Jersey, or the several counties and municipalities thereof, or any other political subdivision of the state, or a school district, or any special district, or any authority, commission, or board, or any branch or agency of the public service.

The effective date of SB 1791 is the "120th day next following enactment" which is May 19, 2020.

Law Mandating Severance Pay Enacted in New Jersey

On January 21, 2020, New Jersey Governor Phil Murphy signed into law Senate Bill 3170 (SB 3170) amending the Millville-Dallas Airmotive Plant Job Loss Notification Act (aka New Jersey WARN Act), which is analogous to the federal Worker Adjustment and Retraining Notification Act.

Prior to enactment of SB 3170, the New Jersey WARN Act generally required New Jersey private employers with 100 or more full-time workers (including employees outside the state) to provide 60 days' advance notice in the event of a "mass layoff" or a "transfer" or "termination" of operations at a covered "establishment" within the state, and mandated the payment of severance only if the employer failed to provide affected employees with the required amount of advance notice before such termination or layoff.

SB 3170 lengthens the notice period from 60 days to 90 days and expands the definitions of "mass layoff" and "establishment." The bill also requires covered employers to pay severance to both full- and part-time employees impacted by such events, even if the employer timely complies with all applicable notice requirements.

All Employees Receive Severance

The prior version of the New Jersey WARN Act provided that employers were only required to make severance payments if they failed to provide the required amount of notice of termination or layoff. SB 3170 requires that an employer conducting a "mass layoff" or a "transfer" or "termination" of operations must pay each affected employee one week of severance for each full year of his or her employment, even if the employer provides the full 90 days' notice. An employer that fails to provide such notice to any affected employee must pay that employee an additional four weeks of pay above the required severance. An employee's right to receive severance cannot be waived without approval of the waiver by a court or the commissioner of Labor and Workforce Development. If affected employees are entitled to severance under a collective bargaining agreement "or for any other reason," the employer is required pay either the statutorily mandated severance or the severance provided for such "other reason," whichever is greater.

It is important to note that under the amendment, mandated severance is "regarded as compensation due to an employee . . . earned in full upon the termination of the employment relationship," suggesting it is possible that such severance must be included with the employee's final payment of wages. It remains unclear whether the employer can delay providing such payment pending an employee's decision of whether to accept a greater offer of severance conditioned on a release of claims. Hopefully, New Jersey will provide us with clarification on these issues shortly.

Extended Notice Period

Previously, the law required covered employers to provide 60 days' written notice to affected employees (and any collective bargaining units or other employee representatives) and certain state and local government officials of a mass layoff, transfer of operations, or termination of operations. SB 3170 increases the required period of advance notice to 90 days for covered employers.

Reduced "Mass Layoff" Minimum Threshold

Under the old rules, "mass layoff" was defined as the termination of employment within any 30-day period (or 90-day period within which two or more group terminations can potentially be aggregated) of either (1) 500 or more full-time employees at an establishment, or (2) 50 or more full-time employees comprising at least 33percent of the full-time employees at an establishment. The new law removes the 500-employee and 33percent requirements and counts both employees "at" an establishment and employees "reporting to" an establishment. Accordingly, 50 or more qualifying terminations will trigger notice and severance requirements regardless of what percentage of the workforce that may constitute.

Both Full-Time and Part-Time Employees Are Now Counted

Before the amendment, the separation of "part-time" employees (working fewer than 20 hours per week on average or employed for fewer than six of the preceding 12 months) was not counted when calculating whether a New Jersey WARN event had occurred. The amendment removes the distinction between "full-time" and "part-time" employees. Now, all employees (regardless of their hours or the length of their employment) count toward New Jersey WARN trigger thresholds, and if New Jersey WARN is triggered, all

employees must receive notice and severance. Furthermore, New Jersey WARN, as amended, now covers all employers with 100 or more employees (including employees outside the state), regardless of how many are "full time" or "part time." Previously only those employers with 100 full-time employees were covered.

Separations At All Facilities Across the State Are Aggregated

Previously, New Jersey WARN Act analysis was site-specific, conducted separately for each different "establishment," which was defined as either a single location operated for longer than three years or a group of contiguous such locations, such as a group of buildings forming an office park. The new law removes "contiguous" from this definition, meaning that all of an employer's facilities within New Jersey are considered one aggregated "establishment." Only temporary construction sites and operations in effect for three years or less are excluded. For example, an employer with 50 facilities throughout the state that separates one employee at each of those facilities (all within a 30-day period) will have conducted a "mass layoff" triggering advance notice and severance requirements — regardless of where in the state those facilities are located.

Individuals May Be Held Liable for Payment of Severance

SB 3170 amends the definition of "employer" to include "any individual" who "act[s] directly or indirectly in the interest of an employer in relation to an employee"; "any person who, directly or indirectly, owns and operates" either the employing entity or a corporate subsidiary owning and operating the employing entity; and "any person who . . . makes the decision responsible for the employment action that gives rise to a mass layoff subject to notification."

Because the revised New Jersey WARN Act compels "employers" to provide severance when the act is triggered, individuals (such as owners, operators, managers, and decision makers) may now be exposed to personal liability for triggering the New Jersey WARN Act and/or failing to provide requisite advance notice.

For a copy of SB 3170, click on the link provided below.

https://www.njleg.state.nj.us/2018/Bills/S3500/3170_R3.HTM

Vermont Governor Vetoes Minimum Wage Increase

On February 10, 2020, Vermont Governor Phil Scott vetoed Senate Bill 23 which would have raised the minimum wage from its current level of $10.96 per hour. The state minimum wage is increased annually using the Consumer Price Index (CPI) which was 1.7 percent last year. The tipped minimum cash wage is equal to 50 percent of the full minimum wage, currently $5.48 per hour.

Under the proposed legislation, the minimum wage would have been increased to $11.75 effective January 1, 2021, and increased again on January 1, 2022, to $12.55 per hour. Each subsequent January 1, the minimum wage rate would be increased by five percent or the percentage increase of the Consumer Price Index, CPI-U, U.S. city average, not seasonally adjusted, or successor index, as calculated by the U.S. Department of Labor or successor agency for the 12 months preceding the previous September 1, whichever is smaller, but in no event would the minimum wage be decreased.

Also, if Senate Bill 23 had been enacted, a task force would have been created to study whether the tipped employee cash wage minimum should be abolished in the state.

Virginia Clarifies Hours Worked Must Appear on Wage Statements for Salaried Workers

It was previously reported in the April 2019 Tech Flex that on April 3, 2019, Virginia enacted Senate Bill 1696, now codified under Code of Virginia § 40.1-29 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 amount and purpose of any deductions therefrom.

Code of Virginia § 40.1-29 states in part as follows:

> "No employer shall withhold any part of the wages or salaries of any employee except for payroll, wage or withholding taxes or in accordance with law, without the written and signed authorization of the employee. 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 the name and address of the employer, the number of hours worked during the pay period, the rate of pay, the gross wages earned by the employee during the pay period, and the amount and purpose of any deductions therefrom. An employer engaged in agricultural employment including agribusiness and forestry, upon request of its employee, shall 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."

Virginia Clarification:

Virginia has now clarified via an announcement that the hours worked by all employees, other than employees for an employer engaged in agricultural employment, including agribusiness and forestry, must appear on the employee wage statement. **This includes salaried and piece work employees.**

The announcement by the Virginia Department of Labor & Industry stated:

> "Effective on January 1, 2020, §40.1-29.C will require all employers, other than an employer engaged in agricultural employment, including agribusiness and forestry, to provide the number of hours worked during the pay period on the employee's paystub. The law applies to all employees, even those who are not paid on an hourly basis, such as salaried and piece work employees for example. For salaried, piece work employees, and others who are not traditionally paid on an hourly basis whose hours worked are not reported on the paystub, the Department will not take any steps to enforce the requirement for those employers who do not report the hours worked for such employees until July 1, 2020. This enforcement policy applies only to the hours of work requirement and not to any of the other provisions of §40.1-29.C."

Note:

Virginia House Bill 689 has now been introduced potentially amending current Virginia law. If enacted, House Bill 689 would eliminate the need to show the number of hours worked by an employee on the wage statement for the pay period for salaried and piece work employees unless a salaried employee is paid less than the amount required to be exempt from overtime pay under the Fair Labor Standards Act, which for 2020 is $684 per week ($35,568 annually).

House Bill 689 proposes the language underlined below be added to Code of Virginia § 40.1-29.C.:

> "No employer shall withhold any part of the wages or salaries of any employee except for payroll, wage or withholding taxes or in accordance with law, without the written and signed authorization of the employee. 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 the name and address of the employer, the number of hours worked during the pay period, if the employee is paid on the basis of (i) the number of hours worked or (ii) a salary that is less than the standard salary level adopted by regulation of the U.S. Department of Labor pursuant to § 13(a)(1) of the federal Fair Labor Standards Act, 29 U.S.C.§ 213(a)(1), as amended, establishing an exemption from the Act's overtime premium pay requirements; the rate of pay, the gross wages earned by the employee during the pay period, and the amount and purpose of any deductions therefrom. An employer engaged in agricultural employment including agribusiness and forestry, upon request of its employee, shall 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."

ADP will continue to monitor and report on the progress of Virginia House Bill 689.

Click on the following to access the announcement.

https://www.doli.virginia.gov/labor-law/virginia-labor-laws/

For a copy of Code of Virginia § 40.1-29, click on the link provided below:

https://law.lis.virginia.gov/vacode/40.1-29/

City of Santa Fe, New Mexico, Announces Increase to Minimum Wage for 2020

The City of Santa Fe, New Mexico, has announced that effective March 1, 2020, the living wage rate in Santa Fe will increase from $11.80 to $12.10 per hour. All employers required to have a business license or registration from the City of Santa Fe must pay at least the living wage rate to employees for all hours worked within the Santa Fe city limits. All employees, including temporary and part-time workers, must be paid this rate.

Tipped employees may be paid a minimum cash wage of $2.13 per hour if tips are sufficient to bring the employee's hourly wage to $12.10 per hour. If tips are not sufficient, the employer must make up the difference.

For a copy of the announcement, click on the following link.

https://www.santafenm.gov/living_wage_information

Santa Fe County, New Mexico, Minimum Wage to Increase

The County of Santa Fe, New Mexico, has announced that effective March 1, 2020, the minimum wage in Santa Fe County will increase from $11.80 to $12.10 per hour.

The cash wage for tipped employees will also increase from $3.53 per hour to $3.62 per hour on the same date.

Half Moon Bay, California, Adopts Minimum Wage

On February 4, 2020, the Half Moon Bay City Council adopted an ordinance that raises the minimum wage to $15.00 to take effect on January 1, 2021. The minimum wage will apply to all businesses in the city regardless of the number of employees.

Currently, Half Moon Bay adheres to the California state minimum wage which is $13.00 (for businesses with 26 or more employees), $12.00 (with 25 or less employees).

Hayward, California, Increases Minimum Wage

On February 4, 2020, the Hayward City Council voted unanimously to increase the minimum wage rate for employees working within the city.

Large Employers (26 or more employees):

Effective July 1, 2020, the minimum wage rate will increase from $13.00 per hour to $15.00 per hour. Thereafter, the minimum wage rate for large employers will be determined annually each July 1, based on the Consumer Price Index (CPI).

Small Employers (25 or less employees):

Effective July 1, 2020, the minimum wage rate will increase to $14.00 per hour from the current level of $12.00 per hour. It will adjust annually thereafter, based on the CPI until July 1, 2023, when the California minimum wage of $15.00 for small employers takes effect.

Federal, state and other local government agencies (including public school districts) are exempt from the Hayward minimum wage requirements.

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

https://www.hayward-ca.gov/sites/default/files/press-releases/200205-Minimum-Wage.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**.

If you have any questions regarding our services, please call 855-466-0790.

ADP, LLC.
One ADP Boulevard, Roseland, NJ 07068
adp.com

Updated on February 20, 2020