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Eye on Washington
State and Local Update

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

Topics covered in this issue:

Leave

California Clarifies Paid Sick Leave Can Be Used During Coronavirus

The California Department of Industrial Relations (DIR) has released a list of frequently asked questions (FAQs) on laws that are enforced by the Labor Commissioner's Office. The FAQs clarify that employees may use California Paid Sick Leave for absences due to the coronavirus (COVID-19) pandemic ranging from the illness and its diagnosis to treatment and preventative measures including quarantine. Employers are reminded if an employee reports to work and is sent home, the employee must be paid for at least two hours, but no more than four hours, of reporting time pay. However, in the case of a declared state of emergency, reporting time pay would not apply when businesses are ordered to close or cease operations.

A few examples of the FAQs are provided below:

Can an employee use California Paid Sick Leave due to COVID-19 illness?

Yes. If the employee has paid sick leave available, the employer must provide such leave and compensate the employee under California paid sick leave laws.

Paid sick leave can be used for absences due to illness, the diagnosis, care or treatment of an existing health condition or preventative care for the employee or the employee's family member.

Preventative care may include self-quarantine as a result of potential exposure to COVID-19, if quarantine is recommended by civil authorities. In addition, there may be other situations where an employee may exercise their right to take paid sick leave, or an employer may allow paid sick leave for preventative care. For example, where there has been exposure to COVID-19 or where the worker has traveled to a high-risk area.

Can an employer require a worker who is quarantined to exhaust paid sick leave?

The employer cannot require that the worker use paid sick leave; that is the worker's choice. If the worker decides to use paid sick leave, the employer can require that they take a minimum of two hours of paid sick leave. The determination of how much paid sick leave will be used is up to the employee.

Is an employee entitled to compensation for reporting to work and being sent home?

Generally, if an employee reports for their regularly scheduled shift but is required to work fewer hours or is sent home, the employee must be compensated for at least two hours, or no more than four hours, of reporting time pay.

For example, a worker who reports to work for an eight-hour shift and only works for one hour must receive four hours of pay, one for the hour worked and three as reporting time pay, so that the worker receives pay for at least half of the expected eight-hour shift.

For a copy of all the FAQs, click on the link provided below:

https://www.dir.ca.gov/dlse/2019-Novel-Coronavirus.htm

Temporary Emergency Rule Issued in Colorado Requiring Paid Sick Leave

On March 11, 2020, the Colorado Department of Labor and Employment issued Colorado Health Emergency Leave with Pay ("Colorado HELP") Rules that require certain employers provide paid sick leave for employees with flu-like symptoms who are being tested for COVID-19. The rules take effect immediately and will remain in effect for 30 days, or for the duration of the declared state of emergency, whichever is longer, up to 120 days.

The Colorado HELP Rules cover employers engaged in the following industries or workplaces:

- Leisure and hospitality;
- Food services;
- Child care;
- Education at all levels and related services, including but not limited to cafeterias and transportation to, from, and on campuses;
- Home health care (working with elderly, disabled, ill, or otherwise high-risk individuals);
- Nursing homes; and
- Community living facilities.

Covered employers must provide employees who have flu-like symptoms and are being tested for COVID-19 with up to four paid sick leave days. The paid leave entitlement ends when the employee receives a negative COVID-19 test result.

If employers already offer a sufficient amount of paid leave, they need not provide additional paid sick leave, unless employees have exhausted such leave and then experience a qualifying event.

Sick leave pay is due for an employee's regularly worked hours at the employee's regular rate. Employers must use the same formula they use when calculating the regular rate for overtime purposes. The regular rate includes all forms of wages and compensation. For tip-credit employees, the regular rate is the full minimum wage. If an employee's pay rate or hours worked varied before the absence, employers must use the employee's average daily pay for the preceding month.

To the extent possible, the Colorado HELP Rules state that employers and employees should comply with federal Family and Medical Leave Act (FMLA) procedures for requesting and providing leave. However, employers cannot fire employees if they are unable to provide documentation during a covered absence. Additionally, the rules incorporate the anti-retaliation protections of the Colorado Overtime and Minimum Pay Standards (COMPS) Order Number 36. The Colorado HELP Rules reinforce that the FMLA does not narrow rights and responsibilities the rules mandate.

A failure to provide paid sick leave will be akin to a failure to pay wages. The state labor department will enforce the rules and investigate alleged violations. Additionally, a private right of action is available.

For a copy of the Colorado HELP Rules and frequently asked questions for employees and employers, click on the link provided below:

https://www.colorado.gov/pacific/cdle/colorado-health-emergency-leave-pay-%E2%80%9Ccolorado-help%E2%80%9D-rules

Nevada Releases Guidance on Paid Sick Leave and Coronavirus

On March 11, 2020, the Office of the Nevada Labor Commissioner (ONLC) has released guidance regarding employees' rights to use and employers' obligations to provide mandatory paid leave due to the coronavirus. Specifically, the guidance addresses whether employers may require employees to use any paid leave hours they may have accrued under Nevada's recently enacted paid leave law, if they are unable to report for work as a result of a mandatory government quarantine.

The Nevada paid sick leave law that was effective January 1, 2020, stated that "every employer in private employment in the State of Nevada with 50 or more employees in the State of Nevada shall provide paid leave that accrues at a minimum of 0.01923 hours of paid leave for each hour of work performed. An employee is eligible to use leave on the 90th day of employment."

Other provisions of the Nevada paid sick leave law are as follows:

- Employers with fewer than 50 employees in Nevada need not comply with the law.
- Businesses in the first two years of operation are exempt from the law.
- The law expressly states that its provisions do not apply to an employer if, "pursuant to a contract, policy, collective bargaining agreement or other agreement," the employer provides paid leave in an amount equivalent to at least 0.01923 hours of leave per hour of work performed.
- An employee who works 40 hours a week for a full year is entitled to approximately 40 hours of paid leave.
- Employees may take leave without providing a reason for the leave to his or her employer.
- Employees must provide their employer with notice of their use of paid leave "as soon as practicable."
- The law also allows employers to require that employees use paid leave in a minimum time increment, not to exceed 4 hours.
- Employers are prohibited from retaliating against employees for using paid leave.
- Employers have the option of granting paid leave hours on an accrual basis or by frontloading the hours on the first day of the benefit year
- Employers may, but are not required to, pay an employee for any unused paid leave upon separation from employment.
- If the employee is rehired within 90 days after separation, any previously unused paid leave must be reinstated, provided the separation was not the result of a voluntary resignation.
- Employers must compensate employees for paid leave "on the same payday as the hours taken are normally paid" and "at the rate of pay at which the employee is compensated at the time such leave is taken."
- In the case of employees paid by the hour, the rate of pay is calculated by the employee's hourly rate. The rate of pay for employees paid on a non-hourly basis – such as by salary, commission, or piece rate – must be calculated by dividing the employee's total wages earned during the immediately preceding 90 days by the number of hours worked during that period.
- The calculation of total wages includes nondiscretionary bonuses earned by the employee. However, an employer does need not to include bonuses earned at the sole discretion of the employer, overtime pay, hazardous duty pay, holiday pay, or tips.
- Law provides that employers must "maintain a record of the receipt or accrual and use of paid leave" for a period of at least one year, which must be made available to the Labor Commissioner upon request.
- Employers must "provide to each employee on each payday an accounting of the hours of paid leave available for use by that employee." Employers may provide the accounting through the "system" used to pay their employees.

Coronavirus Guidance:

The ONLC in its release provided the following guidance:

1. If an employee is subject to a mandatory government quarantine by a state, federal, or local agency and is unable to report to work, the employer should not count the mandatory government quarantine time as leave that is counted against the employee or taken from their leave balance. Because employees may not be accruing any type of leave or pay while under a mandatory government quarantine situation, this type of separation and/or leave from employment should not be counted against them.

2. An employer is encouraged and can certainly choose to pay an employee for the time they are out on a mandatory government quarantine and offer alternative working arrangements, such as teleworking, or additional paid time off, but is not required to do so.
3. The employee could also choose to request to use paid leave or other applicable leave if available, while out on a mandatory government quarantine, but that would be at the option of the employee. Family and Medical Leave Act (FMLA) leave may also apply to the employee's situation, condition, and length of absence.

For a link to the ONLC guidance, click on the link provided below:

https://nvhealthresponse.nv.gov/wp-content/uploads/2020/03/COVID-19-and-Paid-Leave.pdf

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New Jersey DOL Releases Guidance on Coronavirus and Earned Sick Leave Law

On March 12, 2020, theNew Jersey Department of Labor (DOL) released information about state benefits and protections afforded to New Jersey employees amid the coronavirus (COVID-19) outbreak. In its guidance, the DOL provided the following:

- Employees who test positive or have symptoms of COVID-19 and are unable to work (1) may be entitled to use accrued, unused earned sick leave time under the New Jersey Earned Sick Leave Law, (2) may be eligible for temporary disability insurance, and (3) may be eligible for Workers' Compensation benefits.
- To the extent an employee's place of work is closed, either temporarily or otherwise due to COVID-19, or if an employee's hours are reduced by more than 20 percent a week, the employee may be eligible for full or partial unemployment benefits.
- If an employer sends an employee home because there is a possibility the employee was or may have been exposed to COVID-19, the employee may be eligible for unemployment benefits. The DOL noted that such a claim would be considered a temporary layoff, and employees seeking such benefits would be relieved of the obligation to show they are able, available, and actively seeking work in order to receive these benefits.
- Employees may be entitled to use accrued, unused earned sick leave time under the New Jersey Earned Sick Leave Law if they are (1) told to self-quarantine due to COVID-19, (2) unable to work because of a workplace closure or the closure of a child's school by order of a public official because of COVID-19, or (3) are caring for a relative who has COVID-19 or symptoms of COVID-19.
- Employees may be eligible for Family Leave Insurance (FLI) if they are caring for a family member who is confirmed to have COVID-19 or has symptoms of the virus.

For the complete guidance, click on the link provided below:

https://www.nj.gov/labor/worker-protections/earnedsick/covid.shtml

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New York State Enacts Emergency Paid Sick Leave

On March 18, 2020, New York Governor, Andrew Cuomo, signed into law legislation (S08091) that provides paid leave benefits and job protection to "each employee who is subject to a mandatory or precautionary order of quarantine or isolation issued by the State of New York, the department of health, local board of health, or any governmental entity duly authorized to issue such order due to COVID-19."

The provisions of the quarantine legislation take effect immediately.

In summary, the legislation provides for the following

- Employers with 10 or fewer employees and a net income less than $1 million will provide job protection for the duration of the quarantine order and guarantee their workers access to Paid Family Leave and disability benefits (short-term disability) for the period of quarantine including wage replacement for their salaries up to $150,000.

- Employers with 11-99 employees and employers with 10 or fewer employees and a net income greater than $1 million will provide at least five days of paid sick leave, job protection for the duration of the quarantine order, and guarantee their workers access to Paid Family Leave and disability benefits (short-term disability) for the period of quarantine including wage replacement for their salaries up to $150,000.
- Employers with 100 or more employees, as well as all public employers (regardless of number of employees), will provide at least 14 days of paid sick leave and guarantee job protection for the duration of the quarantine order.
- Upon return to work following leave, an employee must be restored by his or her employer to the position of employment held by the employee prior to any leave taken with the same pay and other terms and conditions of employment.
- An employee shall not receive paid sick leave benefits or any other paid benefits if the employee is subject to a mandatory or precautionary order of quarantine because the employee has returned to the United States after traveling to a country for which the Centers for Disease Control and Prevention has a level two or three travel health notice and the travel to that country was not taken as part of the employee's employment or at the direction of the employee's employer, and if the employee was provided notice of the travel health notice to such travel. Such employee shall be eligible to use accrued leave provided by the employer, or to the extent that such employee does not have accrued leave or sufficient accrued leave, unpaid sick leave shall be provided for the duration of the mandatory or precautionary quarantine or isolation.

For a copy of S08091, click on the link provided below:

https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=S08091&term=2019&Summary=Y&Text=Y

Washington State Releases Guidance on Paid Sick Leave and Coronavirus

The Washington State Department of Labor & Industries has released guidance in the form of "Common Questions" regarding the use of the state's paid sick leave mandate in relation to the coronavirus. Under Washington law, at a minimum, employees must be provided one hour of paid sick leave for every 40 hours worked. Employers must provide paid sick leave to all their employees regardless of full-time, part-time, temporary, or seasonal status. All hours that an employee works must be counted towards accrual, regardless of how many hours they work in a given week or pay period, including overtime hours.

For more information on the state paid leave requirements please click on the link provided below:

https://www.lni.wa.gov/workers-rights/leave/paid-sick-leave/paid-sick-leave-minimum-requirements#accruing-paid-sick-leave

A sampling of the Common Questions is provided below:

If an employee's place of business is closed by a public official in connection with COVID-19, can the employee use paid sick leave to cover the absence?

Yes, an employee can use accrued paid sick leave if their place of business is shut down by a public official due to a health-related reason.

If a school or place of care of an employee's child is temporarily closed by a public official because of COVID-19, can the employee use accrued paid sick leave to cover an absence while they stay home to care for their child?

Employees can use accrued paid sick leave if their child's school or place of care is closed for a health-related reason.

If an employer chooses to temporarily close their place of business to mitigate the risk of exposure to COVID-19, can an employee use paid sick leave to cover the absence?

An employer is not required to allow workers to use paid sick leave if the business decides on its own to temporarily close in response to COVID-19. However, an employer may allow use of paid sick leave in this situation if they choose.

Can an employee who is required to leave work because they may have been exposed to COVID-19 use accrued paid sick leave while absent?

An employee may use accrued paid sick leave if required to leave work under these circumstances. However, the employer cannot force or require the worker to use their accrued paid sick leave to cover the absence.

Can an employee use accrued paid sick leave if they are seeking medical diagnosis, care, treatment, or preventive medical care for illness or symptoms that may be related to COVID-19?

Employees can use accrued paid sick leave to cover work time missed for medical diagnosis, care, treatment, and preventive medical care.

For access to all the Common Questions, click on the link provided below:

https://lni.wa.gov/agency/outreach/paid-sick-leave-and-coronavirus-covid-19-common-questions

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Philadelphia, Pennsylvania, Expands Use of Paid Sick Leave Due to Coronavirus

On March 18, 2020, Philadelphia (the "City") announced an expansion to its "Promoting Healthy Families and Workplace Act" (the "Act") as result of the coronavirus outbreak.

The Act applies to all full-time and part-time employees who work 40 hours in a year. The Ordinance excludes independent contractors, seasonal workers, adjunct professors, interns, health-care professional pool employees, state and federal employees and employees hired for a term of less than six months. Under the law, employees accrue one hour of sick time for every 40 hours worked (including overtime hours). Employees who are exempt administrative, executive or professional employees accrue sick time based on the employee's normal workweek or a 40-hour workweek, whichever is less.

Employers must allow employees to use the 40 hours of paid sick time on the employee's oral or written request for his or her own qualifying need, or that of a "family member," for:

- Diagnosis, care or treatment of an existing health condition;
- Preventative care; or
- Issues related to the employee being a victim of domestic violence, sexual assault or stalking.

Fair Workweek Ordinance

The City also announced that it will not enforce the predictability pay requirements of the City's Fair Workweek Ordinance. This policy had required covered businesses to pay compensation to employees when the employee's schedule was changed from the employer's estimate of expected scheduled hours.

Specifically, if an employee's schedule changes within 10 days of the schedule being delivered (and increasing to 14 days beginning January 1, 2021), unless an employee consents to the change, the employer must do the following:

- 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.
- 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.

Pittsburgh, Pennsylvania, Provides Guidelines on Paid Sick Leave

The City of Pittsburgh (the "City") has provided guidelines on its website regarding the city's Paid Sick Days Act (the "Act") that was due to take effect on March 15, 2020. The website also provided frequently asked questions, a copy of the required employee notice and the ordinance itself.

The Act requires employers with 15 or more employees to allow employees to accrue up to 40 hours of paid sick leave per year for every 35 hours worked for an employer within the geographic boundaries of Pittsburgh. Employers with fewer than 15 workers must allow employees to accrue paid sick leave up to 24 hours per year, and only unpaid sick time during the first year the Act is in effect (employees may accrue paid sick time beginning one year after the effective date of the Act).

Background:

On August 3, 2015, the Pittsburgh City Council passed an amended bill, requiring virtually all employers within the City of Pittsburgh to provide paid sick leave, that Mayor Bill Peduto subsequently signed into law.

However, on December 21, 2015, Allegheny County Common Pleas Court Judge Joseph James struck down the City's Paid Sick Leave Ordinance. Judge James in his opinion stated as follows: "The home rule charter and optional plans law limits the power of the City to those expressly provided statutes enabled by the Legislature," wrote James. "Absent that statutory authority, the City cannot enact this type of ordinance. For these reasons, the plaintiffs' motion for judgement on the pleading is granted."

The City appealed the ruling, which an appellate court affirmed on May 17, 2017. The City again appealed to the state supreme court which ruled in favor of Pittsburgh on July 17, 2019. Subsequently, Pittsburgh announced that the effective date of the City's paid sick leave ordinance is March 15, 2020.

Some highlights of the newly provided guidelines are as follows:

- Accrual towards paid sick days will begin on March 15 and any hours worked in January or February of 2020 will not count towards accrual.
- Employers that currently provide paid vacation, sick or other leave that meets or exceeds the requirements under the Act are not required to provide additional time.
- For the purposes of counting employees, all employees (regardless of work location) of an employer are counted for the determination of accrual rate and caps, but only employees who have worked at least 35 hours in a calendar year in Pittsburgh will receive paid time accrued.
- Time spent by employees, who regularly drive through Pittsburgh as part of job duties (such as truck drivers) but never stop in Pittsburgh, is considered time "performing work within the geographic boundaries of the City."

A link to the Pittsburgh Paid Sick Days Act website is provided below:

https://pittsburghpa.gov/mayor/paidsickleave

San Francisco, California, Issues Guidance on Paid Sick Leave During Coronavirus Outbreak

On March 9, 2020, the San Francisco Office of Labor Standards Enforcement (OLSE) has issued guidance regarding the use of San Francisco (the "City's") paid sick leave for situations involving the recent coronavirus outbreak.

By way of background, the San Francisco Paid Sick Leave Ordinance (PSLO) requires employers to provide paid sick leave to all employees (including temporary and part-time employees) who perform work in San Francisco. Employees earn one hour of paid sick leave for every 30 hours worked. Employers with 10 or more employees may cap an employee's sick time balance at 72 hours. Employers with fewer than 10 employees may cap an employee's sick time balance at 40 hours.

Coronavirus Outbreak Guidance:

Employers covered by the City's paid sick leave ordinance must allow covered employees to use accrued sick leave in situations that include taking time off from work because:

1. Public health officials or health-care providers require or recommend an employee isolate or quarantine to prevent the spread of disease;
2. The employee falls within the definition of "vulnerable population" (a person at least 60 years old or who has a health condition);
3. The business or work location temporarily ceases operations in response to a public health or other public official's recommendation;
4. The employee needs to care for a family member who is not sick but for whom public health officials require or recommend isolation or quarantine; or
5. The employee needs to provide care for a family member whose school, child-care provider, senior-care provider, or work temporarily ceases operations in response to a public health or other public official's recommendation.

For a copy of OLSE guidance, click on the link provided below:

https://sfgov.org/olse/sites/default/files/OLSE%20Guidance%20-%20PSLO%20%26%20Coronavirus_2.pdf

Minneapolis, Minnesota, Provides Guidance on Paid Sick Leave and COVID-19

On March 18, 2020, the City of Minneapolis, Minnesota, issued a frequently asked questions guide (FAQs) regarding the application of Minneapolis' Sick and Safe Time Ordinance to absences related to COVID-19. The FAQs clarify that an employee may use accrued sick and safe leave for absences related to:

1. Testing;
2. Care or quarantine due to COVID-19 symptoms or infection;
3. Quarantine following close contact with a COVID-19-infected or symptomatic person;
4. Caring for family members whose school or place of care was closed due to COVID-19; and
5. Workplace closures by order of a public official.

The FAQs also clarify that "preemptive closures" (i.e., absent an order by a public official) and "preemptive self-quarantines" (i.e., without reason to believe the employee has contracted the illness) are not covered uses under the ordinance. Finally, the FAQs also clarify that employees may only use sick and safe time to cover scheduled shifts or the shifts the employee would have expected to work had their work not been ordered closed by a public official.

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

http://sicktimeinfo.minneapolismn.gov/uploads/9/6/3/1/96313024/covid-19_and_sst_3_18_20.pdf

For more information on the Minneapolis Sick and Safe Time Ordinance, click on the link provided below:

http://sicktimeinfo.minneapolismn.gov/

COVID-19 Paid Sick Leave Guidance Issued by Duluth, Minnesota

The City of Duluth, Minnesota, has issued frequently asked questions (FAQs) regarding its Earned Sick and Safe Time Ordinance. The FAQs clarify that an employee may use "sick time" for an employee's own medical diagnosis, care, treatment, or preventative care or to care for a family member who needs medical diagnosis, care, treatment, or preventative care. The FAQs also imply that employers should not "prevent an employee from working" based on travel to particular areas. However, the FAQs do not address an employer's ability to request that employees work from home following travel, self-quarantine by employees after contact with an individual who has contracted coronavirus, or whether leave could be used for absences associated with closures ordered by a public official (including schools and child-care facilities).

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

https://duluthmn.gov/media/9458/covid19-info.pdf

A link has been provided below, should you want to access information on the Duluth Earned Sick and Safe Time Ordinance.

https://duluthmn.gov/city-clerk/earned-sick-safe-time/about-earned-sick-safe-time/

Payroll

California Supreme Court Holds Bag Security Check Time Is Compensable

On February 13, 2020, the California Supreme Court ruled, in a unanimous decision, that time spent on a company's premises waiting for, and undergoing required exit searches of packages, bags or personal technology devices voluntarily brought to work purely for personal convenience by employees, is considered hours worked within the meaning of California Wage Order 7.

California Wage Order 7 requires employers to pay employees for all "hours worked," which is defined as the time an employee is subject to direction and control of the employer and includes all time the employee is suffered or permitted to work (whether required to or not).

In its ruling, the court concluded that employees are subject to the company's control while waiting for and during its exit searches. The searches require a significant degree of control, are imposed for the company's benefit and are enforced through the threat of discipline. Therefore, the court determined the employees must be paid according to the "hours worked" clause for the time spent waiting and undergoing these searches.

The California Supreme Court ruling resolved a U.S. Ninth Circuit Court of Appeals question about hours worked and employees who voluntarily brought bags or personal electronics to the workplace.

Background:

All the company's employees are subject to personal package and bag searches upon exiting the store for any reason (i.e., break, lunch or end of work shift).

The company initially prevailed in this case at the trial court level because the company's mandatory security-check policy only applied when employees chose to bring bags and other personal items into the workplace. In reaching this decision, the lower court looked at a California Court of Appeal opinion that said the time spent on an employee parking lot shuttle is not compensable time because employees have the choice whether or not to use the shuttle. In other words, because employees had a choice, they were not under their employer's control and did not need to be paid.

The California Supreme Court agreed in its decision that employee choice is a consideration but ruled that it was not the only consideration. Instead, the court provided a multi-factor test within which to analyze the employee-choice issue. Particularly with respect to "onsite employer-controlled activities," whether the time is compensable depends on a number of factors, which include:

- the mandatory nature of the activity;
- the location of the activity;
- the degree of the employer's control;
- whether the activity primarily benefits the employee or employer; and
- whether the activity is enforced through disciplinary measures.

The California Supreme Court found that the time spent on bag checks at the company cut in favor of compensable time under several of these factors: it occurred on the employer's premises, employees subject to the policy were prevented from leaving the premises while waiting for and undergoing the security check; and it was enforced through disciplinary measures. The Supreme Court rejected the company's argument that security checks benefit employees and found that the security-check policy primarily benefitted the employer as a theft prevention measure. This is a key distinction, because in the parking lot shuttle case the lower court used to justify its decision in favor of the company, the fact pattern hinged on a service — the employee parking lot shuttle — that primarily benefited the employees.

It is important to note that the Supreme Court held that its decision is retroactive meaning that any employers that do not pay employees for time spent on security checks should evaluate their policies under these factors and should understand that they could be facing liability for past actions.

Oregon Issues Predictive Employee Scheduling and Coronavirus Pandemic Guidance

The Oregon Bureau of Labor and Industries (BOLI) has issued guidance stating the penalties and obligations for providing additional compensation in relation to the state predictive scheduling law will not be enforced during the coronavirus pandemic.

Under the Fair Work Week Act (the "Act"), among other things, employers provide employees with at least seven days' advance written notice of their work schedules. This increases to 14 days' advance notice on July 1, 2020.

If the employer makes changes to the schedule after notice has been provided, the employer must:

- Provide employees with timely notice of the change, and the employee may decline any work shift not included in the written work schedule;
- Pay employees an additional hour of pay at their regular rate, in addition to wages earned, if the schedule change results in the addition of more than 30 minutes of work to their shift, changes the date or start or end time of the shift with no loss of hours, or schedules an employee for an additional work shift or on-call shift; or
- Pay employees one-half times their regular rate for each scheduled hour not worked if the schedule change results in the subtraction of hours from a work shift, changes the date or start or end time of the shift resulting in a loss of work shift hours, cancels the work shift, or does not require an employee to perform work when they are scheduled for an on-call shift.

For more information on the Act, click on the link provided below:

https://www.oregon.gov/boli/WHD/docs/ProposedRules/Permanent%20BLI_15-2018.pdf

In its announcement BOLI stated in part as follows:

The law provides for employer relief from penalties and obligations for providing additional compensation under extenuating circumstances such as natural disasters or declarations of public officials.

- Commissioner Hoyle believes that a declaration of public officials clearly includes emergency declarations by the Governor of Oregon and local elected officials.
- Commissioner Hoyle's interpretation and application of the law's requirements and its penalties will account for these realities and common sense.
- The Commissioner and BOLI encourages and appreciates good faith efforts of employers to balance scheduling predictability with pandemic-driven public health concerns and federal, state, and local emergency declarations.

For a copy of the BOLI communication, click on the link provided below:

https://www.oregon.gov/boli/TA/docs/COVID19_Predictive%20Scheduling.pdf

Rhode Island Minimum Wage Set to Increase

On March 10, 2020, Rhode Island Governor Gina M. Raimondo signed legislation that increases the state minimum wage by $1.00 to $11.50 effective October 1, 2020. Rhode Island's minimum wage has been $10.50 since January 1, 2019.

For a copy of S. 2147A, click on the link provided below:

http://webserver.rilin.state.ri.us/BillText/BillText20/SenateText20/S2147A.pdf

Vermont Minimum Wage Veto Overridden

It was previously reported in the February 2020 Tech Flex that on February 10, 2020, Vermont Governor Phil Scott vetoed Senate Bill 23 which stipulated a minimum wage increase from its current level of $10.96 per hour. Currently, the state minimum wage is increased annually using the Consumer Price Index (CPI) which was 1.7% last year. The tipped minimum cash wage is equal to 50% of the full minimum wage, currently $5.48 per hour.

Subsequently, on February 13, 2020, the Vermont Senate voted 24 to 6 to override the Governor's veto. On February 25, 2020, the Vermont House followed suit by a vote of 100 to 49.

Consequently, the minimum wage in Vermont will be increased as follows:

$11.75 Effective January 1, 2021

$12.55 Effective January 1, 2022

The minimum cash wage for tipped employees will equal to 50 percent of the amounts noted above.

Each subsequent January 1st, the minimum wage rate will 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, under Senate Bill 23 a task force will be created to study whether the tipped employee cash wage minimum should be abolished in the state.

Hours Worked on Wage Statements for Salaried Employees Are Not Required in Virginia

As previously communicated, effective January 1, 2020, Virginia required that "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; and
5. the amount and purpose of any deductions therefrom.

The Virginia Department of Labor & Industry (the "Department") clarified via an announcement that the hours worked by all employees entitled to the information must appear on the employee wage statement. **This included salaried and piece work employees.** However, the announcement noted that the Department would delay enforcement of the requirement until July 1, 2020. This nonenforcement policy was in part due to a bill being introduced (Virginia House Bill 689) that, if enacted, 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).

Virginia House Bill 689 Becomes Law

On February 11, 2020, the House voted 99 to 0 and the Senate on February 20, 2020 voted 40 to 0 in favor of Virginia House Bill 689. On March 10, 2020, the bill was signed into law by Governor Ralph Northam and its provisions became effective immediately.

As a result, Virginia Section 40.1-29.C. is amended to read as follows. The amended language is noted in **red**.

> 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 pa,; the gross wages earned by the employee during the pay period; and the amount and purpose of any deductions therefrom. The paystub or online accounting shall include sufficient information to enable the employee to determine how the gross and net pay were calculated. 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.

Consequently, Virginia law does not require that the hours worked by a salaried employees be shown on such employee's wage statements unless such 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).

For a copy of Virginia House Bill 689, click on the link provided below:

https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+HB689ER

San Carlos, California, Adopts Minimum Wage

On February 27, 2020, the San Carlos City Council adopted Minimum Wage Ordinance 1559, which will increase the City's minimum wage rate to $15.00 per hour effective July 1, 2020.

San Carlos currently follows the California state minimum wage which is $13.00 for employers with 26 or more employees and $12.00 for employers with 25 or less employees.

San Carlos' minimum wage rate will be adjusted based on the Consumer Price Index (CPI) (up to 3.5%), beginning January 1, 2021. Learner employees may be paid no less than 85% of the minimum wage rate for the first 160 hours of employment.

Employers are not allowed to utilize a tip credit in paying tipped employees.

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

https://www.cityofsancarlos.org/business/minimum-wage

ADP Compliance Resources

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

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

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