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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

Minnesota Supreme Court Upholds Minneapolis Paid Sick Time Law

ADP® previously reported that Minneapolis Mayor Betsy Hodges on May 31, 2016, signed into law the Minneapolis Sick and Safe Time Ordinance (the "Ordinance"). The Ordinance requires employers with six or more employees to provide paid sick-and-safe-time of up to 48 hours per year with a maximum accrual cap of 80 hours. Employers with fewer than six employees are required to provide leave, but the leave may be unpaid. The Ordinance has been in effect since July 1, 2017.

With limited exceptions, the Ordinance applies to all employees — full-time, part-time and temporary — who work within Minneapolis for at least 80 hours in a "calendar" year, or approximately 1.5 hours per week. As a result, the Ordinance would have applied to many employers with a limited connection to Minneapolis, including employers based in other cities and with no brick-and-mortar offices or other facilities within Minneapolis city limits.

For more information on the Ordinance, click on the following link:

http://sicktimeinfo.minneapolismn.gov/

Legal Challenges to the Ordinance

The Minnesota Chamber of Commerce ("the Chamber") joined other business groups and individual employers to challenge the Ordinance in Minnesota state court, moving for a temporary injunction to stop the Ordinance from going into effect on July 1, 2017. Specifically, the plaintiffs argued that the Ordinance was preempted by and conflicted with state law, and that Minneapolis did not have the authority to enforce the Ordinance because it inappropriately extended beyond the geographic borders of Minneapolis. On January 19, 2017, Hennepin County Judge Mel Dickstein issued an order rejecting the Chamber's preemption and conflict arguments. On April 29, 2019, the Minnesota Court of Appeals declined to enjoin the Ordinance.

Supreme Court Decision:

After failing at the County and Court of Appeal levels, the Chamber appealed to the Minnesota Supreme Court. On June 10, 2020, a divided court rejected the Chamber's challenge to the Minneapolis Ordinance.

According to the majority opinion, the Chamber challenged the law on two grounds: one, that it was preempted by state law; and two, that it wrongly extended to employers outside of the city in violation of the so-called extraterritoriality doctrine. The Minnesota Supreme Court did not agree with the plaintiffs' arguments.

According to the decision by the majority, there was no conflict preemption, since the Minnesota statute the Chamber pointed to didn't expressly give employers a right not to provide sick time, and the differing terms of the state and local laws didn't create an irreconcilable conflict.

"A rule of law that finds a conflict wherever an ordinance adds a requirement different from state law — no matter the substance of the statute or the ordinance — would preempt every local ordinance setting a standard higher than the floor set by the legislature," Justice Natalie E. Hudson wrote in the opinion.

New York Provides Guidance on COVID-19 Paid Leave for Health-Care Workers

On May 17, 2020, the New York State Department of Health and the New York State Department of Labor have issued a joint guidance document on the use of COVID-19 sick leave for health-care employers.

The guidance defines "health-care worker" as follows:

> a "health-care employee" is a person employed at a doctor's office, hospital, long-term care facility, outpatient clinic, nursing home, end stage renal disease facility, post-secondary educational institution offering health care instruction, medical school, local health department or agency, assisted living residence, adult care facility, residence for people with developmental disabilities, home health provider, emergency medical services agency, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, including any permanent or temporary institution, facility, location, or site where medical services are provided that are similar to such institutions.

In addition, the guidance provides scenarios where a health-care worker would be entitled to leave under the COVID-19 provisions. These include situations where an employer tells a health-care employee not to work, or prohibits the employee from work, because the employer believes the employee has:

(1) been exposed to COVID-19;

(2) exhibits symptoms of COVID-19; and/or

(3) is diagnosed with COVID-19.

Under this scenario, the employee "shall be deemed to be subject to a mandatory order of quarantine from the Department of Health." The health-care employee is entitled to the paid sick leave under the NYS COVID-19 Sick Leave Law with no additional documentation required.

Another scenario where a COVID-19 Order is not required is where a health-care employee has tested positive for COVID-19 and/or is symptomatic for COVID-19, and the "employee must not report to work."

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

https://coronavirus.health.ny.gov/system/files/documents/2020/05/doh-dol_healthcareguidance_051720_0.pdf

Supreme Court of Texas Rejects Austin Paid Sick Leave Appeal

ADP previously reported that on November 16, 2018, the Third Court of Appeals in Austin, Texas, held that the Austin paid sick leave was unconstitutional. The Court of Appeals held that the ordinance establishes a "wage" and, as such, it is preempted by the Texas Minimum Wage Act. The Texas Minimum Wage 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 Texas Minimum Wage 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 consistent with its ruling.

The City of Austin petitioned the Texas Supreme Court for a review of the Third Court of Appeals decision. On June 5, the Supreme Court of Texas issued a one-line decision, without explanation, denying the City of Austin's petition for review of an appellate decision temporarily enjoining the Austin paid sick leave ordinance. As a result, the appellate court's decision, which justified the temporary injunction on grounds that the ordinance was unconstitutional, stands and the Austin ordinance remains enjoined.

The Dallas and San Antonio paid sick leave ordinances also remain enjoined pending further court action.

Washington State Extends Proclamation Protecting COVID-19 High-Risk Employees

On June 9, 2020, Washington State Governor Jay Inslee issued a new Proclamation (the "Proclamation") that extends until 11:59 p.m. on August 1, 2020, the job protections in place for "high-risk" Washington employees. The job protections were to expire at 11:59 p.m. on June 12, 2020, under the previous Proclamation.

High-risk employees are (1) any individual 65 years or older, (2) anyone living in a nursing home or long-term care facility, and (3) people with certain chronic underlying health conditions such as the following:

- Chronic lung disease or moderate-to-severe asthma
- Serious heart conditions
- Immunocompromised
  - Many conditions can cause a person to be immunocompromised, including cancer treatment, smoking, bone marrow or organ transplantation, immune deficiencies, poorly controlled HIV or AIDS, and prolonged use of corticosteroids and other immune-weakening medications
- Severe obesity (body mass index [BMI] of 40 or higher)
- Diabetes
- Chronic kidney disease undergoing dialysis
- Liver disease

The Proclamation provides the following protections for high-risk employees:

- When employees request alternative work assignments to protect themselves from the risk of exposure to COVID-19 on the job, employers must utilize all available options, including telework, alternative or remote work locations, reassignment, and social distancing measures. If alternative work arrangements are not feasible, the employer must allow the employee to use all of the employee's employer-granted accrued leave options. It is the employee's decision to use accrued leave or unemployment insurance in any sequence.
- If the employee's paid time off is exhausted during the period of leave, the employer must fully maintain all employer-related health insurance benefits until the employee is deemed eligible to return to work. The Proclamation does not indicate how exactly the employee would be "deemed" eligible to return to work. It also does not explain what it means to "fully maintain" insurance.
- Employers may not retaliate against or take adverse employment action in a way that would result in the permanent replacement of employees who exercise their rights under the Proclamation.
- Employers and unions cannot enforce any provisions in an employment contract that contradict or interfere with the Proclamation.
- The Proclamation should be generally construed to protect employees from loss of their positions, employment benefits, and retaliation for decisions related to the Proclamation.
- The Proclamation does not prohibit hiring a temporary employee, as long as it does not negatively affect the "permanent" employee's right to return to their existing position without any negative ramifications.
- Employers may require employees who do not report to work in reliance of the Proclamation to give the employer up to five days' notice of the employee's intention to report or return to work.
- Employers may take employment action when "no work reasonably exists," such as a reduction in force. However, where no work exists, employers may not take action that may adversely affect the employee's eligibility for unemployment benefits.

Any violations of the Proclamation are subject to criminal penalties.

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

https://www.governor.wa.gov/sites/default/files/proclamations/20-46.1%20-%20COVID-19%20High%20Risk%20Ext%20%28tmp%29.pdf

Chicago, Illinois, Amends Paid Sick Leave Ordinance

On May 20, 2020 the Chicago City Council approved Substitute Ordinance 2020-2343 (the "Ordinance") that contains an anti-retaliation provision to protect employees from adverse employment actions taken during the coronavirus (COVID-19) pandemic. The Ordinance also contains revisions to Chicago's paid sick leave ordinance regarding covered employees that will take effect on July 1, 2020.

Background

The Chicago Paid Sick Leave Ordinance (CPSLO) mandates that all Chicago businesses provide paid sick leave to employees. Any employee who works at least 80 hours for an employer in Chicago within any 120-day period is covered by the ordinance and is eligible for paid sick leave. Employees begin to accrue paid sick leave on the first calendar day after they begin their employment. For every 40 hours worked, employees accrue one hour of paid sick leave.

For more information on the CPSLO, click on the link provided below.

https://www.chicago.gov/content/dam/city/depts/dol/rulesandregs/Minimum%20Wage%20and%20Paid%20Sick%20Leave%20Rules.pdf

Ordinance 2020-2343

Generally, the Ordinance prohibits employers from retaliating against an employee who complies with an order or direction to quarantine as a result of or in connection with the COVID-19 virus. The anti-retaliation provision of the Ordinance states as follows:

> (a) An Employer shall not take adverse action against a Covered Employee for obeying an order issued by the Mayor, the Governor of Illinois, the Chicago Department of Public Health, or, in the case of subsections (a)(2), (3), and (4) below, a treating health-care provider, requiring the Covered Employee to:
>
> (1) Stay at home to minimize the transmission of COVID-19;
> (2) Remain at home while experiencing COVID-19 symptoms or sick with COVID-19;
> (3) Obey a quarantine order issued to the Covered Employee;
> (4) Obey an isolation order issued to the Covered Employee; and
> (5) Obey an order issued by the Commissioner of Health regarding the duties of hospitals and other congregate facilities.
>
> In addition, an Employer may not take adverse action against a Covered Employee for caring for an individual subject to subsections (a)(1) through (3) above.
>
> (b) If an Employer takes adverse action against a Covered Employee for obeying the directive of the Mayor, the Governor of Illinois, the Chicago Department of Public Health, or a health-care provider in violation of subsection (a), that shall be considered retaliation under Chapter 1-24 and the Commissioner may take action against the Employer to cure the violation and may institute an action in administrative hearings or a court of law against the Employer.
>
> (c) It shall be an affirmative defense to a violation of this Section that an Employer relied on a reasonable interpretation of an order and, upon learning of the violation of this Section, it cured the violation within 30 days.

Modification of Definition of Employee

The Ordinance was also modified to include certain employees as eligible for the CPSLO who were previously excluded from the protections of the CPSLO as follows:

(1) Outside salespersons,
(2) Members of a religious corporation or organization,
(3) Students at and employed by an accredited Illinois college or university, and
(4) Motor carriers regulated by the U.S. Secretary of Transportation or State of Illinois.

Paid Sick Leave Notice

The Ordinance requires that Employers must provide Covered Employees, including the expanded types mentioned above (effective July 1, 2020), with a paid sick leave notice with their first paycheck subject to the CPSLO.

The notice may be found at the following link:

https://www.chicago.gov/content/dam/city/depts/bacp/OSL/20200518mwandpslfinal51820.pdf

District of Columbia Amends Emergency Paid Leave Amendments

On May 27, 2020, District of Columbia Mayor Muriel Bowser signed a bill that amends D.C. emergency paid leave requirements. Although many changes are stylistic and do not affect the substance of the law, one change clarifies an issue concerning when the new obligation began, and others detail when employees can use leave and how employers can comply via existing paid leave policies.

Background:

On April 10, 2020, D.C. enacted B23-0733, a 90-day emergency law that expanded the district's paid sick leave law to require employers with between 50 and 499 employees to provide emergency paid leave for the same reasons employees can take emergency paid sick leave under the federal Families First Coronavirus Response Act (FFCRA). On May 21, 2020, D.C. enacted identical amendments via B23-0734, a 225-day temporary law scheduled to remain in effect until January 1, 2021.

On May 27, 2020, however, D.C. enacted another emergency 90-day measure, B23-0757, which made amendments to the amendments, and is set to expire on August 25, 2020. Moreover, identical amending amendments are included in B23-0759, a 90-day emergency measure sent to the mayor, who had to take action on the bill by June 9, the same day the D.C. Council could hold a second hearing concerning B23-0758, yet another 225-day temporary law that also makes these changes.

Start Date to Provide Emergency Paid Leave

Confusion arose after D.C. enacted the original legislation because its "effective" date – April 10 – differed from the "applicable" date – March 11. The most recent changes confirm that D.C. did not intend to impose a retroactive compliance obligation; instead, the new paid leave requirement began on April 10, 2020.

Sequencing of Leave

Originally, the law said employers could require employees to exhaust any available leave under federal law, D.C. law, or an employer's policies before using emergency paid leave. The May 27 amendments, however, change the standard. As clarified, employees can only use emergency paid leave concurrently with or after exhausting any other paid leave to which they are entitled under federal law, D.C. law, or an employer's policies for reasons employees can use emergency paid leave. If employees elect to use leave concurrently, employers can reduce the monetary benefit of emergency paid leave by the amount of the monetary benefit employees will receive for paid leave under federal law, D.C. law, or the employer' policies. If employees elect to use emergency paid leave after exhausting other paid leave, employers can reduce the number of emergency paid leave hours that employees can use by the number of paid leave hours they took under federal law, D.C. law, or the employer's policies.

Using Existing Policies

Before the emergency leave law provisions were added to D.C.'s Accrued Sick and Safe Leave Act (ASSLA), employers with a paid leave policy providing paid leave options (e.g., PTO) were not required to modify their policy if employees could accrue and use leave under terms and conditions that are at least equivalent to what the ASSLA requires, and the ASSLA detailed what it meant for a policy to be equivalent, i.e., employees accrue leave at a rate at least equal to what ASSLA requires and can use leave for ASSLA purposes. The May 27 amendments add to the equivalency list the ability to access and use emergency paid leave.

District of Columbia Enacts Paid Voting Leave Act

The District of Columbia ("D.C.") has enacted D.C. Act 23-301 (the "Act") which requires employers to, upon request of an employee, provide at least two hours of paid leave to vote in person. The Act will go into effect after a 30-day period of congressional review.

Highlights of the Act are as follows:

- It covers both resident and nonresident employees of D.C. employers, allowing them to vote in person in any jurisdiction in which they are eligible to vote.
- Employers may not reduce salary, wages, or accrued leave to account for the paid voting leave.
- Prohibits retaliation for request for the leave and also contains a noninterference clause.
- Employees must actively request with reasonable time in advance of the election.
- Employers are allowed to specify the hours during which the employee may take the leave, including requiring the employee to use early voting periods or the beginning or end of their working hours.

- Students are covered by the provisions of the Act.

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

https://lims.dccouncil.us/downloads/LIMS/41621/Signed_Act/B23-0031-SignedAct.pdf

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Long Beach, California, Enacts Supplemental Paid Sick Leave

On May 19, 2020, Long Beach, California, enacted ORD-26 (the "Ordinance") requiring supplemental paid sick leave for COVID-19 purposes. The Ordinance went into effect immediately but has no current sunset date. Under the Ordinance, the city manager is required to report to the city council and mayor every 90 days, and the city council will determine whether and when the law will end.

There are now six local emergency paid leave ordinances in California: Three in Southern California (Long Beach, Los Angeles (City), Los Angeles (County)) and three in Northern California (Oakland, San Francisco, San Jose) — plus a statewide mandate for food sector workers covered by California Executive Order N-51-20.

Highlights of the Ordinance are as follows:

Covered Employers & Employees

This Ordinance applies to employers with 500 or more employees nationally who are not required, in whole or in part, to provide paid sick leave benefits under the federal Families First Coronavirus Response Act (FFCRA) and covers any individual the employer employs who performs any work in Long Beach. As with predecessor local emergency paid leave ordinances in California, the law notes that, generally, California Labor Code section 2750.3, aka "AB 5," determines whether a worker is an employee or an independent contractor. Employers may exclude from the law's requirements employees who are health-care providers and emergency responders.

Amount of Leave

The Ordinance provides the following requirements:

- Coverage for Full- and Part-Time Employees: Employers must provide 80 leave hours to full-time employees and, for part-time employees, an amount equal to the number of hours an employee works, on average, over a two-week period. For part-time employees, the Ordinance contains a calculation employer must use to determine how many daily hours of leave employees can take, which is the daily average during the six-month period (or period of employment) preceding May 19.
- Generous Leave Exemption: Employers with a paid leave or paid time off policy that provides a minimum of 160 hours of paid leave annually are exempt from the obligation to provide supplemental paid sick leave to any employee who received such generous paid leave.
- Offset: An employer can reduce the amount of leave it must provide by the number of paid leave hours — excluding previously accrued hours — it provided an employee on or after March 4, 2020, that employees could use for reasons the law requires or in response to an employee's inability to work due to COVID-19.
- Existing Leave: Supplemental paid sick leave is in addition to preexisting paid leave benefits. The Ordinance provides that employees need not exhaust sick leave or other leave they accrued before using supplemental paid sick leave hours. Notably, the Ordinance prohibits employers from changing any paid time off policies on or after May 19, except to provide additional paid leave.

Covered Uses

Employees can use — immediately — supplemental paid sick leave for any of the following purposes, unless they can work from home and are healthy enough to do so:

- Employee is subject to quarantine or isolation by federal, state or local order due to COVID-19, or is caring for someone who is quarantined or isolated due to COVID-19;
- Employee is advised by a health-care provider to self-quarantine due to COVID-19 or is caring for someone who is so advised by a health-care provider;
- Employee experiences symptoms of COVID-19 and is seeking medical diagnosis;
- Employee is caring for a minor child because the child's school, daycare, or child-care provider is closed or unavailable because of COVID-19 and the employee is unable to secure a reasonable alternative caregiver.

Requesting, Verifying & Documenting Absences

Employers can require employees to follow reasonable notice procedures to use leave, but only for foreseeable absences. Although employers can require employees to identify the basis for requesting leave, they cannot require a doctor's note or other documentation to substantiate an absence.

Payment for Leave

Employers must pay leave at an employee's regular rate of pay but may pay leave at two-thirds an employee's regular rate if an employee uses leave to care for another. The maximum value of "personal use" leave is $511 per day ($5,100 overall), and $200 per day ($2,000 overall) for "caregiver" leave. If employment ends and an employee has unused leave, employers need not cash out such leave.

Prohibitions

The Ordinance contains replacement worker, retaliation and waiver prohibitions. Employers cannot require employees to find a replacement as a condition of approving leave. Aside from valid Community-Based Alternatives (CBA) waivers, a waiver by an employee of any or all of the Ordinance's requirements is contrary to public policy, void and unenforceable. Employers cannot discharge, reduce in compensation or otherwise discriminate against any employee for: 1) opposing any practice the law proscribes; 2) requesting to use or actually using leave; 3) participating in proceedings related to the Ordinance; 4) seeking to enforce rights under the Ordinance by any lawful means; or 5) otherwise asserting rights under the Ordinance.

Enforcement

The Ordinance does not designate an agency to interpret or enforce the requirements. Instead, employees' sole recourse is a private lawsuit in state court where, if they prevail, a court can award actual and punitive damages, reinstatement, reasonable attorney's fees and costs, and any other legal or equitable relief the court deems just and appropriate.

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

http://longbeach.legistar.com/View.ashx?M=F&ID=8453986&GUID=6F2359A2-DAF6-4583-B78E-31288864BBA3

Seattle, Washington, Enacts Ordinance Providing COVID-19 Paid Sick-and-Safe-Time for Gig Workers

On June 12, 2020, Seattle Mayor Jenny Durkan signed into law an ordinance (the "Ordinance") temporarily requiring certain companies that rely on "gig economy" workers to provide paid sick and safe time ("PSST") to those workers for the duration of the COVID-19 emergency. The Ordinance is effective July 12, 2020.

Background

Since 2012, Seattle's paid sick-and-safe-time ordinance has required nearly all private-sector employers to provide to employees who work in Seattle specified amounts of accrued, job-protected paid time off for personal illness, family care and other purposes. Since gig workers are categorized as independent contractors, they currently do not accrue paid sick and safe time under state and local laws. Thus, this is a temporary expansion allowing paid sick and safe time to independent contractors, although the method of accruing and compensating for the leave and some of the reporting requirements are quite different from the regular Seattle paid sick leave law.

New Ordinance Highlights

Companies covered by the gig workers ordinance have some almost immediate reporting requirements to the Seattle Office of Labor Standards (described below) and to workers (notice of rights and policy), and will need to develop systems for workers to request paid sick and safe time, and to provide monthly reporting to workers regarding the status of paid sick-and-safe-time availability, use and accrual.

Which Companies Are Covered?

The Ordinance applies to companies operating in Seattle that provide food delivery service, as well as to "transportation network" companies.

- A "food delivery network company" is one that offers prearranged delivery services for compensation using an online-enabled application or platform, such as an application dispatch system, to connect customers with workers for delivery from one or more of the following: (1) eating and drinking establishments, (2) food processing establishments, (3) grocery stores, or (4) any facility supplying groceries or prepared food and beverages for an online order. A food delivery network company includes any such entity or person acting directly or indirectly in the interest of a food delivery network company in relation to the food delivery network company worker.

- A "transportation network company" is one that offers prearranged transportation services for compensation using an online-enabled application or platform, such as an application dispatch system, to connect passengers with drivers using a "transportation network company endorsed vehicle," as defined in Seattle Municipal Code Chapter 6.310.

For the purposes of this ordinance, covered companies are limited to those who hire 250 or more gig workers worldwide. This may include separate entities that form an integrated enterprise or where a separate entity controls the operation of another entity.

What Is the Required Rate of Accrual for Paid Sick and Safe Time?

Workers will accrue "at least" one day of paid sick and safe time for every 30 days worked. Accrual begins October 1, 2019, or on the date the worker commences work with the covered company, whichever is later. Thus, the maximum a worker can accrue in a year is 12 days (if they made at least one "commercial trip" to Seattle every day of the month). A worker who worked five days a week in Seattle (perhaps a more typical schedule) would accrue nine days in a year.

For workers hired before the effective date of the Ordinance, the covered company must choose how to accrue the paid sick leave in the time period before the effective date. Covered companies may choose either: (a) one day for every 30 worked in Seattle since October 1, 2019, or (b) five days on the effective date of the Ordinance and then one day for every 30 days worked. The covered company is required to select the same accrual method for all workers covered by the Ordinance. Covered companies must file information on their chosen accrual method with the Office of Labor Standards within 14 calendar days after the effective date of this ordinance.

In order to count as a "day worked," a worker needs to make just a single "commercial stop" in Seattle in a calendar day, such as shopping in stores to fulfill online deliveries, making those deliveries, or picking up or dropping off customers. A "commercial stop" does not include stopping for refueling, for a personal meal or errands, time spent in Seattle solely for the purpose of travelling through Seattle from a point of origin outside Seattle to a destination outside Seattle with no commercial stops in Seattle.

Workers will continue to accrue paid sick and safe time until 180 days after the COVID-19 emergency orders covering Seattle have been lifted at both the local and state levels.

Is Carryover Required?

Workers must be allowed to carry over at least nine days of accrued, unused paid sick and paid safe time to the following year. Companies may allow for a more generous carryover. The "year" may be set as the calendar year, fiscal year, service year, or any other fixed, consecutive 12-month period established by the covered company, as long as it is used in the ordinary course of the company's business for the purpose of calculating compensation to gig workers. If the company does not establish a year, it will be set as the calendar year.

Can the Covered Company Frontload vs. Accrue?

As an alternative to accrual, companies may, but are not required to, frontload paid sick and paid safe time to a worker in advance of the required accrual. Frontloaded paid sick and paid safe time must meet requirements for accrual, use and carryover, and shall otherwise comply with the provisions of the Ordinance. The company must correct any discrepancies, between the frontloaded paid sick and paid safe time and the amount of paid sick and paid safe time the employee would have accrued no later than 30 days after discovery or notice of the discrepancy. Companies may not request or require reimbursement from a worker who uses frontloaded paid sick and paid safe time that exceeds the amount of paid sick and paid safe time the worker would have accrued absent frontloading.

What Is the Required Rate of Pay?

Workers must be paid their "average daily compensation," which is their average daily income during their highest-paid month, once again looking back to October 1, 2019. The qualifying income includes payments from the company, bonuses, commissions and tips. Moving forward, the average daily compensation would be recalculated every month.

How Quickly Must Workers Be Paid?

Companies must compensate the worker for the requested day(s) of paid sick time and paid safe time no later than 14 calendar days or the next regularly scheduled date of compensation following the requested day(s) of paid sick and paid safe time. If verification is required by the company, the worker must be compensated for the requested day(s) of paid sick and safe time no later than the worker's next regularly scheduled date of compensation after the verification is provided.

How Can a Worker Request to Use PSST?

Companies shall establish an accessible system for workers to request and use paid sick and paid safe time. Such system shall be available to the worker via smartphone application or online web portal.

Are Covered Companies Entitled to an Offset for Other Paid Leave Used by a Worker for a PSST Purpose?

Yes, when compensating workers for paid sick and safe time, companies may subtract the amount of compensation provided to a worker for other paid leave used for a paid sick-and-safe- time purpose between October 1, 2019 and the Ordinance's effective date.

When May a Worker Use PSST?

Companies must make accrued days of paid sick and safe time available for use no more than one week after the date of accrual. A worker may only use accrued sick and safe time if they performed work for the company in whole or part in Seattle within the 90 days prior to their request. In addition, a worker is entitled to use paid sick and paid safe time during a deactivation or other status that prevents work for the company, unless such status is due to a verified allegation of sexual assault perpetrated by the worker.

What Are the Covered Uses?

Workers may use paid sick and safe time for several different reasons, consistent with the city's rules under the regular paid sick and safe time law:

- For a personal mental or physical illness, injury or health condition; to accommodate the gig worker's need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or a gig worker's need for preventive medical care; and
- For care of a family member with a mental or physical illness, injury or health condition; care of a family member who needs medical diagnosis, care or treatment of a mental or physical illness, injury or health condition; or care of a family member who needs preventive medical care.

A worker may use paid safe time for the following reasons:

- When the company has suspended or otherwise discontinued operations by order of a public official, for any health-related reason, to limit exposure to an infectious agent, biological toxin, or hazardous material;
- When the company has reduced, suspended or otherwise discontinued operations for any health- or safety-related reason;
- When the gig worker's family member's school or place of care has been closed; and
- For any of the following reasons related to domestic violence, sexual assault, or stalking:
    - Seek legal or law enforcement assistance or remedies to ensure the health and safety of the gig worker or family or household members, including but not limited to, preparing for, or participating in, any civil or criminal legal proceeding related to or derived from domestic violence, sexual assault, or stalking;
    - Seek treatment by a health-care provider for physical or mental injuries caused by domestic violence, sexual assault or stalking, or to attend to health-care treatment for a victim who is the gig worker's family or household member;
    - Obtain, or assist a family or household member in obtaining, services from a domestic violence shelter, rape crisis center or other social services program for relief from domestic violence, sexual assault or stalking;
    - Obtain, or assist a family or household member in obtaining, mental health counseling related to an incident of domestic violence, sexual assault or stalking, in which the gig worker or the gig worker's family or household member was a victim of domestic violence, sexual assault or stalking; or
    - Participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the gig worker or gig worker's family or household members from future domestic violence, sexual assault or stalking.

Covered Relations

For purposes of determining eligibility for paid sick and safe time:

- "Family member" means a child, parent, spouse, registered domestic part**ner, grandparent, grandchild, or sibling;**
- "Child" means a biological child, adopted child, foster child, stepchild, or a child to whom a gig worker stands in loco parentis, is a legal guardian, or is a de facto parent, regardless of age or dependency status; and
- "Parent" means a biological parent, adoptive parent, de facto parent, foster parent, stepparent, or legal guardian of a gig worker or the gig worker's spouse or registered domestic partner, or a person who stood in loco parentis when the gig worker was a minor child.

For purposes of determining eligibility for paid safe time:

- "Family member" also includes any individual whose relationship to the gig worker can be classified as a parent-in-law or person with whom the gig worker has a dating relationship.
- "Household members" means, domestic partners, former spouses, former domestic partners, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past, persons 16 years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

How Much PSST Can a Worker Take at One Time?

The time must be used in 24-hour increments. This is in contrast to traditionally covered employees, who are permitted to use any and all hours that they have accrued and in increments as small as the smallest amount of time that an employer tracks work time (but no longer than an hour).

When Can Companies Request Verification of Absence?

During a civil emergency proclaimed by a public official in response to COVID-19, it shall automatically be considered an unreasonable burden for a company to require verification from a health-care provider.

Otherwise, consistent with Seattle's existing paid sick-and-safe-time law, when a worker uses more than three consecutive days of paid sick and paid safe time, the company may require reasonable verification that the worker used paid sick time and paid safe time for an authorized purpose. A company's requirements for verification may not result in an unreasonable burden or expense on the worker and shall not intrude upon the worker's privacy. Thus, in those instances where the company is allowed to request verification, the employer must take the following steps:

- The company shall notify the worker of the right to provide an oral or written explanation asserting that the worker used paid sick and paid safe time for an authorized purpose and describing how the company's verification requirement would create an unreasonable burden or expense.
- If the worker provides an explanation, a company shall respond within 10 calendar days and shall provide alternatives for the worker to meet the verification requirement in a manner that does not result in an unreasonable burden or expense on the worker. Examples of such alternatives include a company's:
    - Acceptance of a worker's oral or written statement that the worker used paid sick time for an authorized purpose;
    - Acceptance of documentation from a different source than identified in the initial verification requirement, such as documentation from a service provider indicating that the worker used paid sick time or paid safe time for an authorized purpose; or
    - Payment for at least half the cost of the worker's out-of-pocket expenses to obtain the verification.

When Can Companies Withhold Payment for PSST?

If a company establishes that the paid sick and safe time was not used for an authorized purpose (i.e., not for a paid sick leave purpose), or the worker fails to provide the requested verification (if allowed to request), or if a worker accepts an offer of prearranged services for compensation from the company during the 24-hour period(s) for which the worker requested day(s) of paid sick and paid safe time, a company may withhold compensation for the requested day(s) of paid sick and paid safe time, under the following procedure:

- The company shall provide the worker with written notification, in a format that is readily accessible to the gig worker, of the company's decision to withhold compensation.
- The company shall provide a method of contact and accessible procedure for the worker to contest the withholding of compensation and to assert that the worker's use of paid sick and paid safe time was for an authorized purpose.
- The company shall not subsequently restrict the worker's future use of such paid sick and safe time or deduct it from the worker's days of paid sick and paid safe time available for use.
- The company shall not take adverse action against the worker, other than withholding compensation for the applicable days of paid sick and paid safe time.

Is Monthly Reporting Required?

At least monthly, the company must provide workers with written notification of the following:

- Current rate of average daily compensation for use of paid sick and paid safe time;
- An updated amount of accrued paid sick and paid safe time since the last notification;
- Reduced paid sick and paid safe time since the last notification;
- Any unused paid sick and paid safe time available for use; and
- In the event the company provided other paid leave to the worker between October 1, 2019 and the effective date of the Ordinance, any amount that the company subtracts from the worker's compensation for use of this other paid leave.

The company may choose a reasonable system for providing this notification, including but not limited to, a pay stub, a weekly summary of compensation information or an online system where workers can access their own paid sick and paid safe time information. The company is not required to provide this notification if the worker has not worked any days since the last notification.

What Are the Company's Recordkeeping Requirements?

Companies must retain records that document compliance with the Ordinance for each worker, including: date of commencement of work; days worked in whole or part in Seattle; compensation for days worked in whole or part in Seattle; rates of average daily compensation as calculated every calendar month; paid sick and paid safe time accrued, and any unused paid sick and paid safe time available for use; and paid sick and paid safe time reductions, including, but not limited to, paid sick and paid safe time used, paid sick and paid safe time donated to a co-worker through a shared leave program, or paid sick and paid safe time not carried over to the following year. These records must be retained for three years from the date of days worked or the date of use of paid sick and paid safe time.

Is a Notice of Rights and Written Policy Required?

Companies are required to provide each worker eligible to accrue paid sick and paid safe time with a written notice of rights established by the Ordinance and of the company's policy and procedure meeting the requirements of the Ordinance. The notice and policy must be provided to workers in an electronic format that is readily accessible and be made available to the worker via smartphone application or online web portal, in English and any language that the company knows or has reason to know is the primary language of the workers.

Are Returning Workers Entitled to Reinstatement of Accrued PSST?

Yes, if a worker separates from work due to inactivity, deactivation or other reason, and commences working within 12 months of separation by the same company, then:

- Previous work must be counted for purposes of determining the worker's eligibility to use accrued paid sick and safe time, except that, if separation does occur, the total time of work used to determine eligibility must occur within three years.
- Previously accrued, unused paid sick and safe time must be retained by the worker and the worker is entitled to use such paid sick and safe time.

If a worker separates from work and commences work after 12 months of separation by the same company, the worker is not entitled to retain previously accrued paid sick and safe time, and the worker is considered to have newly commenced work.

What Entity Enforces the Ordinance?

The Office of Labor Standards is authorized to enforce the legislation.

Is Retaliation Prohibited?

As with other paid leave laws, retaliation is strictly prohibited. No company or person may interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this ordinance. Retaliation includes the prohibition against taking any adverse action against any person because the person has exercised in good faith the rights protected under this ordinance. "Adverse action" towards a worker involves any aspect of work, including compensation, work hours, responsibilities, or other material change in the terms and conditions of work, including: reducing the compensation paid to the worker, garnishing gratuities, temporarily or permanently denying or limiting access to work, incentives, or bonuses, offering less desirable work, demoting, terminating, deactivating, putting a worker on hold status, failing to rehire after a seasonal interruption of work, threatening, penalizing, retaliating, engaging in unfair immigration-related practices, filing a false report with a government agency, or otherwise discriminating against the worker for any

reason prohibited by the Ordinance. "Adverse action" also encompasses any action by the company or person acting on the company's behalf that would dissuade a reasonable person from exercising any right afforded by the Ordinance.

The Ordinance also imposes a rebuttable presumption of retaliation if an adverse action is taken within 90 days of a person's exercise of rights under the ordinance and imposes a heightened standard of proof of "clear and convincing evidence" for the company to rebut this presumption.

What Penalties Are Available?

For a first violation of this Ordinance, the city may assess a penalty of up to $546.07 per aggrieved party. For a second violation, there is a penalty of up to $1,092.13 per aggrieved party, or an amount equal to 10% of the total amount of the unpaid compensation, whichever is greater. For a third or any subsequent violation of this ordinance, there is a penalty of up to $5,462.70 per aggrieved party, or an amount equal to 10 percent of the total amount of unpaid compensation, whichever is greater. The maximum penalty for a violation of this ordinance is $21,849.79 per aggrieved party, or an amount equal to 10 percent of the total amount of unpaid compensation, whichever is greater. At least 50 percent of the penalty shall be paid to the "aggrieved party," but the enforcement agency may specify that the entire penalty is payable.

The city may also assess fines (which may be payable to the aggrieved party) of up to $546.07 per aggrieved party (except for retaliation, which is $1,092.13 per aggrieved party), for the following:

- Failure to establish an accessible system for a worker to request and use paid sick and paid safe time;
- Failure to provide notification of the current rate of average daily compensation and an updated amount of paid time available for use as paid sick and paid safe time;
- Failure to provide workers with written Notice of Rights;
- Failure to provide workers with the hiring entity's written policy and procedure for meeting paid sick and paid safe time requirements; and
- Failure to comply with prohibitions against retaliation for exercising rights.

In addition, the city may impose fines for failure to retain required records for three years of $546.07 per missing record, and failure to provide notice of investigation to workers ($546.07).The maximum amount that may be imposed in fines in a one-year period for each type of violation listed above is $5,462.70 unless a fine for retaliation is issued, in which case the maximum amount is $21,849.79.

Is There a Private Right of Action?

In addition to the above penalties, any person or class of persons that suffers financial injury as a result of a violation of this ordinance, or is the subject of prohibited retaliation, may bring a civil action in court. Workers may be awarded reasonable attorneys' fees and costs and such legal or equitable relief as may be appropriate to remedy the violation including, without limitation: the payment of any unpaid compensation plus interest due to the worker, liquidated damages in an additional amount of up to twice the unpaid compensation, and a penalty payable to any aggrieved worker of up to $5,462.70 plus interest if the aggrieved worker was subject to prohibited retaliation.

When Does the Ordinance Expire?

The ordinance expires on December 31, 2023, or three years after the termination of the COVID-19 emergency declarations, whichever is later. However, workers will only accrue and be able to use paid sick and safe time through 180 days after the COVID-19 emergency orders covering Seattle have been lifted at both the local and state levels.

What is the Statute of Limitations?

The Office of Labor Standards must commence its investigation within three years of the alleged violation. To the extent permitted by law, the applicable statute of limitations for civil actions is tolled during any investigation under this ordinance and any administrative enforcement proceeding under this ordinance based upon the same facts.

Are There Enforceability Issues?

It is expected that affected companies will challenge the enforceability of the Ordinance on various grounds, including to the extent that it mandates that companies cannot reduce the business they are doing in Seattle as a result of the Ordinance.

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

http://seattle.legistar.com/LegislationDetail.aspx?ID=4538824&GUID=D6D81875-E8F2-4C8D-B9B1-4B623D196828&Options=ID%7CText%7C&Search=sick

Click on the link below for more information on the Seattle paid sick and safe time ordinance

https://library.municode.com/wa/seattle/codes/municipal_code?nodeId=TIT14HURI_CH14.16PASITIPASATI

Payroll

July 1, 2020, Minimum Wage Increases Reminder

The following is a list of cities, counties and states where the minimum wage will increase as of July 1, 2020, where notification was provided in previous editions of Eye on Washington. It is important to note that rates that may be paid in certain to individuals under a certain age (e.g. youth wage) or to employees during a "training" period are not reflected.

Jurisdiction	July 1, 2020 Minimum Wage Per Hour
Alameda, California	$15.00 (currently $13.50). Tipped Credit not allowed in California.
Berkeley, California	$16.07 (currently $15.59). Tipped Credit not allowed in California.
Emeryville, California	$16.84 (currently $16.30). Tipped Credit not allowed in California.
Fremont, California (26 or more EEs)	$15.00 (currently $13.50). Tipped Credit not allowed in California.
Fremont, California (25 or less EEs)	$13.50 (currently $11.00). Tipped Credit not allowed in California.
Long Beach, California (Hotel Workers)	$15.47 (currently $14.97). Tipped Credit not allowed in California.
Long Beach, California (Concessionaire Workers)	$15.30 (currently $14.72). Tipped Credit not allowed in California.
Los Angeles, California (26 or more EEs)	$15.00 (currently $14.25). Tipped Credit not allowed in California.
Los Angeles, California (25 or less EEs)	$14.25 (currently $13.25). Tipped Credit not allowed in California.
Los Angeles County, California (26 or more EEs)	$15.00 (currently $14.25). Tipped Credit not allowed in California.
Los Angeles County, California (25 or less EEs)	$14.25 (currently $13.25). Tipped Credit not allowed in California.
Malibu, California (26 or more EEs)	$15.00 (currently $14.25). Tipped Credit not allowed in California.
Malibu, California (25 or less EEs)	$14.25 (currently $13.25). Tipped Credit not allowed in California.
Milpitas, California	$15.40 (currently $15.00). Tipped Credit not allowed in California.
Novato, California (100 or more EEs)	$15.00 (currently $13.00). Tipped Credit not allowed in California.
Novato, California (26-99 EEs)	$14.00 (currently $13.00). Tipped Credit not allowed in California.
Novato, California (25 or less EEs)	$13.00 (currently $12.00). Tipped Credit not allowed in California.
Pasadena, California (26 or more EEs)	$15.00 (currently $14.25). Tipped Credit not allowed in California.
Pasadena, California (25 or less EEs)	$14.25 (currently $13.25). Tipped Credit not allowed in California.
San Francisco, California	$16.07 (currently $15.59). Tipped Credit not allowed in California.
San Leandro, California	$15.00 (currently $14.00). Tipped Credit not allowed in California.
Santa Monica, California (26 or more EEs)	$15.00 (currently $14.25). Tipped Credit not allowed in California.
Santa Monica, California (25 or less EEs)	$14.25 (currently $13.25). Tipped Credit not allowed in California.
Santa Rosa, California (26 or more EEs)	$15.00 (currently $13.00). Tipped Credit not allowed in California.

Jurisdiction	July 1, 2020 Minimum Wage Per Hour
Santa Rosa, California (25 or less EEs)	$14.00 (currently $12.00). Tipped Credit not allowed in California.
District of Columbia	$15.00 (currently $14.00). Tipped employees must be paid at least $5.00 (currently $4.45) in cash wages.
Illinois	$10.00 (currently $9.25). Tipped employees must be paid at least $6.00 (currently $5.55) in cash wages.
Chicago, Illinois (20 or more EEs)	$14.00 (currently $13.00). Tipped employees must be paid at least ($8.40) (currently $6.40) in cash wages.
Chicago, Illinois (4 -19 EEs)	$13.50 (currently $13.00). Tipped employees must be paid at least $8.10 (currently $6.40) in cash wages.
Cook County, Illinois	$13.00 (currently $12.00). Tipped employees must be paid at least $6.00 (currently $5.55) in cash wages.
Montgomery County, Maryland (51 or more EEs)	$14.00 (currently $13.00). Tipped employees must be paid at least $4.00 (currently $4.00) in cash wages.
Montgomery County, Maryland (11 – 50 EEs)	$13.25 (currently $12.50). Tipped employees must be paid at least $4.00 (currently $4.00) in cash wages.
Montgomery County, Maryland (10 or less EEs)	$13.00 (currently $12.50). Tipped employees must be paid at least $4.00 (currently $4.00) in cash wages.
Minneapolis, Minnesota (more than 100 EEs)	$13.25 (currently $12.25). Tipped Credit not allowed in Minnesota.
Minneapolis, Minnesota (100 or fewer EEs)	$11.75 (currently $11.00). Tipped Credit not allowed in Minnesota.
St. Paul, Minnesota (employ more than 100 EEs)	$11.50 (currently $9.86). Tipped Credit not allowed in Minnesota.
St. Paul, Minnesota (employ 100 or less EEs)	$10.00 (currently $9.86). Tipped Credit not allowed in Minnesota.
St. Paul, Minnesota (employ 5 or less EEs)	$9.25 (currently $8.04). Tipped Credit not allowed in Minnesota.
Nevada (no health benefits offered)	$9.00 (currently $8.25). Tipped Credit not allowed in Nevada.
Nevada (health benefits offered)	$8.00 (currently $7.25). Tipped Credit not allowed in Nevada.
Oregon	$12.00 (currently $11.25). Tipped Credit not allowed in Oregon.
Portland, Oregon, Urban Growth Boundary	$13.25 (currently $12.50). Tipped Credit not allowed in Oregon.
Oregon Non-Urban Counties	$11.50 (currently $11.00). Tipped Credit not allowed in Oregon.

Illinois Issues Guidance Regarding Teleworking Withholding Requirements

The Illinois Department of Revenue (DOR) issued Informational Bulletin No. FY 2020-29 intended to assist out-of-state employers, whose employees are Illinois residents and are now working from home due to the coronavirus (COVID-19) crisis.

The informational bulletin advises that employers are subject to Illinois withholding requirements if the employee has been teleworking in Illinois for more than 30 days as employee compensation is subject to Illinois withholding if an employee has performed normal work duties in Illinois for more than 30 working days. If this is the case, the employer is required to register with the DOR and withhold Illinois income tax from the employee.

It is important to note that the bulletin does not impact out-of-state employers from states with a reciprocal agreement with Illinois, which include Iowa, Kentucky, Michigan and Wisconsin.

Illinois requires that most employers must register with the DOR electronically using MyTax Illinois or via mail using Form REG-1 (Illinois Business Registration Application). However, the DOR will waive penalties and interest for out-of-state employers who do not withhold Illinois income taxes when the sole reason the employee is working from home is due to the COVID-19 crisis.

Employees will be required to make estimated tax payments if they expect their tax liability to exceed $1,000 after subtracting Illinois withholding and credits. Employees should complete and return a Form IL-W-4 to employers to ensure proper Illinois tax is withheld.

The informational bulleting may be found at the following link:

https://www2.illinois.gov/rev/research/publications/bulletins/Documents/2020/FY2020-29.pdf

Iowa Provides Temporary Telecommuting Guidance

Iowa Department of Revenue (DOR) has issued guidance in the form of frequently asked questions (FAQs) on whether the presence of employees temporarily telecommuting from within Iowa solely as a result of the COVID-19 emergency establish Iowa income tax nexus for a business that does not otherwise have nexus in Iowa.

In its guidance, the DOR stated that in light of the unusual circumstances presented by the COVID-19 pandemic in which workers are required or strongly encouraged by state and federal governments to remain at home and limit social contact, DOR does not believe that the presence of employees who normally work outside of Iowa, but who are now working remotely from within the state solely as a result of the COVID-19 pandemic state of emergency represents the same type of business activity on the part of the employer contemplated by the law that would create nexus.

Consequently, while Iowa's state of emergency in response to COVID-19 remains in effect, DOR will not consider the presence of one or more employees working remotely from within Iowa solely due to the COVID-19 pandemic, by itself, sufficient business activity within the state to establish Iowa corporate income tax nexus. Nor does DOR consider such presence by non-sales employees due to the pandemic sufficient, by itself, to cause a corporation to lose the protections of Public Law 86-272.

It is important to note the Iowa DOR position only applies to states of emergency declared in response to COVID-19 and does not extend to other facts and circumstances. [DOR, COVID-19 Income Tax FAQS, updated 05/15/2020].

For a copy of the FAQs, click on the link provided below and go to the Income Tax FAQs.

https://tax.iowa.gov/COVID-19

Minnesota Amends Limitation on Wage Garnishments

On May 16, 2020, the Minnesota Governor signed Senate Bill 3357, which includes an amendment to Minnesota Statute 571.922 "Limitation on Wage Garnishments".

Effective August 1, 2020, a creditor garnishment may not exceed the lesser of:

- Twenty-five percent of the debtor's disposable earnings; or
- The amount by which the debtor's disposable earnings exceed the greater of:
    - Forty times $9.50 (the state hourly wage described in section 177.24, subdivision 1, paragraph (b), clause (1), item (iii)), times the number of workweeks in the pay period; or
    - Forty times the federal minimum hourly wages, times the number of workweeks in the pay period.

Previously a creditor garnishment could not exceed the lessor of:

- Twenty-five percent of the weekly disposable earnings, or
- Forty times the federal minimum wage in effect, times the number of workweeks in the pay period.

Note: The amendment applies to all earnings garnished or levied, or all attorney's summary execution upon earnings, on or after August 1, 2020.

Senate Bill 3357 also extends the period during which court-ordered garnishment may continue from 70 days to 90 days.

For a copy of Senate Bill 3357, click on the link provided below:

https://www.revisor.mn.gov/bills/text.php?number=SF3357&version=1&session=ls91&session_year=2020&session_number=0&format=pdf

Rhode Island Issues Withholding-Tax Guidance for Working Remotely Amid Pandemic

On May 26, 2020, the Rhode Island Department of Revenue Division of Taxation (DOR) issued guidance via Advisory 2020-22 (ADV 2020-22) for income tax withholding on wages of employees temporarily working within and outside of the state due to COVID-19.

In its guidance the DOR provides temporary relief from income tax withholding for employees who are temporarily working from home outside of the state where their employer is located due to the COVID-19 emergency. The guidance is explained in detail in emergency regulation 280-20-55-14 found at **https://rules.sos.ri.gov/regulations/part/280-20-55-14**.

ADV 2020-22

Nonresidents who normally work in Rhode Island, but are temporarily working outside the state due to COVID-19

Under the emergency regulation, the income of employees who are nonresidents temporarily working outside of Rhode Island solely due to COVID-19 will continue to be treated as Rhode Island-source income for Rhode Island withholding tax purposes. Example: A Massachusetts resident works for a Rhode Island employer, normally performs his tasks within Rhode Island, and has wages that are subject to Rhode Island income tax withholding. If the employee is temporarily working within Massachusetts due to the pandemic, the employer should continue to withhold Rhode Island income tax because the employee's work is derived from or connected to a Rhode Island source.

Residents working for an employer outside of Rhode Island and normally work outside of Rhode Island, but are temporarily working within Rhode Island due to COVID-19

Under the emergency regulation, Rhode Island will not require employers located outside of Rhode Island to withhold Rhode Island income taxes from the wages of employees who are Rhode Island residents temporarily working within Rhode Island solely due to COVID-19.

For a copy of ADV 2020-22, click on the link provided below.

http://www.tax.ri.gov/Advisory/ADV_2020_22.pdf

South Carolina Provides Tax Withholding Guidance for Employees Telecommuting During COVID-19

The South Carolina Department of Revenue (the "Depeartment") issued guidance in SC Information Letter #20-11 to provide temporary relief from the assertion of nexus and income tax withholding instructions for employees working from home temporarily within and outside of the state due to COVID-19.

Income tax withholding

Under the normal circumstances, South Carolina employers located in the state are required to withhold income tax from the wages of residents and nonresidents working within the state. If South Carolina residents work outside of the state, those wages are not subject to South Carolina income tax withholding if the state where those wages are earned are subject to income tax withholding in that state. (SC Code §12-8-520.) Pursuant to the COVID-19 emergency, and from the period March 13, 2020, through September 30, 2020, the Department will not use the temporary change of an employee's work location due to COVID-19 to impose the income tax withholding requirement under SC Code §12-8-520; however, this relief does not apply to workers whose status changed from temporary to permanent assignment during this period.

During the COVID-19 relief period, a South Carolina employer's income tax withholding requirement is not affected by the current shift of employees working on the employer's premises in South Carolina to teleworking from outside of South Carolina. Accordingly, the wages of nonresident employees temporarily working remotely in another state, instead of their South Carolina business location, continue to be subject to South Carolina withholding.

Further, during the COVID-19 relief period, an out-of-state employer is not subject to South Carolina's income tax withholding requirement solely due to the shift of employees working on the employer's premises outside of South Carolina to teleworking from South Carolina. Accordingly, the wages of a South Carolina resident employee temporarily working remotely from South Carolina instead of their normal out-of-state business location are not subject to South Carolina withholding if the employer is withholding income taxes on behalf of the other state.

Nexus

The Department will not use changes in an employee's temporary work location due to the remote work requirements arising from, or during, the COVID-19 relief period (March 13, 2020 – September 30, 2020) solely as a basis for establishing nexus (including for Public Law 86-272 purposes) or for altering apportionment of income.

For a copy of Information Letter #20-11, click on the link provided below.

https://dor.sc.gov/resources-site/lawandpolicy/Advisory%20Opinions/IL20-11.pdf

Vermont Provides Guidance Regarding Teleworking Employees

On June 12, 2020, the Vermont Department of Taxes (DOT) has updated its "COVID-19 Update" webpage with guidance regarding employees who working remotely in Vermont. In summary, the guidance stipulates as follows:

- Employers who have remote workers located in Vermont temporarily are not required to change the employee's withholding state. However, employers and their workers may wish to discuss a change to the employee's withholding state if the worker will be working remotely in Vermont for an extended period of time, even if only temporarily.
- Workers who have moved to Vermont permanently and make Vermont their domicile will need to have their withholding location changed.
- Nonresidents temporarily working in Vermont are subject to Vermont income taxes for income earned while performing work in Vermont regardless if the employer is located within the state.

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

https://tax.vermont.gov/coronavirus

Time & Labor

Maryland Amends Reduction in Operations Notice Requirements

Maryland Senate Bill 780 (S780) has been enacted into law which amends the "Maryland Economic Stabilization Act" (the "Act"). The amendment goes into effect on October 1, 2020.

S780 requires employers with at least 50 employees operating an industrial, commercial or business enterprise to provide written notice at least 60 days before initiating a reduction in operations to specified employees, collective bargaining representatives, individuals, elected officials in the worksite jurisdiction and the dislocated worker unit within the Division of Workforce Development and Adult Learning (DWDAL) of the Maryland Department of Labor (MDL). Currently, employers are required to provide 90 days notice.

Under the Act, a reduction in operation includes a relocation from one worksite to another or a shutdown or reduction in operations that reduces the number of employees by the greater of 25 percent or 15 employees over any three-month period.

The notice must include the following information:

(1) The name and address of the workplace the reduction will occur;
(2) An employee contact for further information;
(3) A statement that indicates whether the reduction is permanent or temporary; and
(4) The expected date the reduction in operations will begin.

Violations of the Act are subject to a civil penalty of up to $10,000 per day for each day notice is not provided.

For a copy of S780, click on the link provided below

http://mgaleg.maryland.gov/2020RS/bills/sb/sb0780T.pdf

Chicago, Illinois, Provides More Guidance on Upcoming Predictive Scheduling Ordinance

ADP previously reported that on July 24, 2019, the Chicago City Council approved an expansive predictive scheduling law that will go into effect on July 1, 2020.

The law will require covered employers to provide covered employees ten days' notice of their work schedule. Save for certain exceptions, schedule changes after that time will require payment of "Predictability Pay" to the impacted employee. The City recently published additional guidance on the law, which includes, among other things, clarification on the impact of COVID-19-related schedule changes and the calculation of Predictability Pay for covered salaried-exempt employees.

Find the links below to the recently released guidance:

Final Rule: **https://www.chicago.gov/content/dam/city/depts/dol/rulesandregs/Fair%20Workweek%20Rules.pdf**

Fair Workweek FAQs: **https://www.chicago.gov/content/dam/city/depts/bacp/OSL/20200518fwwshortfaqfinalmb.pdf**

Employee Notice: **https://www.chicago.gov/content/dam/city/depts/bacp/OSL/20200518fwwshortfaqfinalmb.pdf**

See below for highlights of the "Chicago Fair Workweek Ordinance" (the "Ordinance"):

Definitions

Covered Employees

The Ordinance applies to hourly employees paid no more than $26.00 per hour and salaried employees who earn no more than $50,000 annually and who work in the building services, health-care, hotel, manufacturing, restaurant, retail- or warehouse services industry.

Covered Employers

The Ordinance is enforced on businesses in the building services, health-care, hotel, manufacturing, restaurant, retail or warehouse services industry that have at least 100 employees globally and have 50 employees that meet the definition of a covered employee.

Noprofits are subject to the predictive scheduling requirements if they employ 250 workers globally and have 50 workers who meet the definition of a covered employee.

Restaurant employers are covered if they at least 250 workers and more than 30 locations globally.

Predictive Scheduling Provisions

- As of July 1, 2020, covered employers must provide covered employees with notice of their work schedules 10 days in advance.
- The required notice of work schedules will increase to 14 days beginning on July 1, 2022.
- Employers are required to give covered employees a good faith estimate of their projected days and hours of work for the first 90 days of employment at the time of hire.
- If a covered employer changes after the notice deadline (e.g., 10 days), a covered employee may decline to work any previously unscheduled hours.
- The Ordinance allows a covered employee to decline to work a shift that starts less than 10 hours from when their last shift worked. If the covered employee agrees to work such a shift, the covered employee must be paid 1.25 times their regularly hourly rate of pay.
- Where a covered employer modifies a covered employee's schedule after the notice deadline, the employer must pay the covered employee an additional hour of pay along with their regular pay.
- If a covered employer cancels a shift or reduces hours with notice of less than 24 hours, the covered employer must pay the covered employee an amount equal to at least 50 percent of their normal pay for any scheduled hours. This rule applies to on-call shifts and in cases where the covered employee is sent home early from a shift.
- Extra shifts must be offered to existing employees qualified to do the work before using temporary or seasonal employees.

Exceptions to Late Notice Penalties

- A covered employer will not be subject to the late notice penalties under the following circumstances:
    - o If the schedule is changed due to civil unrest or threats, utility outages, acts of natureor a disaster declaration for healthcare;
    - o A mutually agreed-upon shift trade or coverage arrangement between covered employees if the employer has an existing policy related to exchanging shifts;
    - o If the covered employee and employer mutually agree and confirm in writing;
    - o If a covered employee requests a shift change in writing;
    - o Subtraction of hours for disciplinary reasons for just cause (discipline must be in writing);
    - o A canceled banquet or ticketed event; or
    - o Events outside of the control of manufacturing employers (such as a production delay).

Penalties for Violating the Ordinance

Fines will range of between $300 and $500 for each offense. If the employer is found to have discriminated or retaliated against an employee for exercising any right under the Ordinance, they will be subjected to a $1,000 fine.

The Department of Business Affairs and Consumer Protection will enforce the Ordinance. Employees also will have a private cause of action against the employer for violation of the Ordinance; however, they must first lodge a complaint with the Department of Business Affairs and Consumer Protection before they can proceed to court.

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

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