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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

Colorado Provides COVID-19 Vaccine Paid Leave Guidance

It was previously reported that on December 23, 2020, the Colorado Division of Labor Standards and Statistics (DLSS) adopted a temporary emergency rule that will allow employees to use 80 hours (or proportionally fewer for part-time employees) of paid leave for COVID-19 needs, beginning January 1, 2021.

The Colorado DLSS recently updated guidance that explains when employees must have paid leave, including for obtaining a coronavirus (COVID-19) vaccination. The guidance states, in part:

> When Employees Must Have Paid Leave, For What Conditions and Needs:
>
> An employer must provide paid leave for various health- and safety-related needs (C.R.S. 8-13.3-404(1)):
>
> (1) a mental or physical illness, injury, or health condition that prevents work;
>
> (2) obtaining preventive medical care (including a vaccination), or a medical diagnosis, care, or treatment, of any mental or physical illness, injury, or health condition;
>
> (3) being a victim of domestic abuse, sexual assault, or criminal harassment who needs leave for medical attention, mental health care or other counseling, victim services (including legal), or relocation;
>
> (4) care for a family member who has a mental or physical illness, injury, or health condition, or who needs the sort of care listed in category (2) or (3);
>
> (5) due to a public health emergency, a public official closed the employee's (A) place of business, or (B) child's school or place of care, requiring the employee to care for the child.

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

https://cdle.colorado.gov/sites/cdle/files/INFO%20%236B%20%284-8-21%29_%202021%20Paid%20Leave%20under%20HFWA.pdf

Employee Sick Leave Act Expanded in Illinois

It was previously reported that on August 19, 2016, then-Illinois Governor Bruce Rauner signed into law The Employee Sick Leave Act (ESLA) which went into effect on January 1, 2017. Under the ESLA, an employee may use personal sick leave benefits provided by the employer for absences due to an illness, injury, or medical appointment of the employee's child, spouse, sibling, parent, mother-in-law, father-in-law, grandchild, grandparent, or stepparent for reasonable periods of time as the employee's attendance may be necessary, on the same terms upon which the employee is able to use sick leave benefits for the employee's own illness or injury.

On April 27, 2021, current Illinois Governor J.B. Pritzker signed into law House Bill 158 (HB 158) amending the ESLA to cover leave for a family member's "personal care." Personal care includes activities to help ensure that the family member's basic medical, hygiene, nutritional, or safety needs are met, or to provide transportation to medical appointments for a family member who is unable to meet their own needs. Personal care also means being physically present to provide emotional support to a family member, with a serious health condition, who is receiving inpatient or home care.

The amendment to the Illinois ESLA became effect upon the current Governor's signature.

For a copy of HB 158, click on the link provided below.

https://ilga.gov/legislation/102/HB/10200HB0158enr.htm

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

http://www.ilga.gov/legislation/BillStatus.asp?DocNum=6162&GAID=13&DocTypeID=HB&LegId=95699&SessionID=88&GA=99

Nevada Labor Commissioner Offers COVID-19 Vaccination Leave Guidance

The Nevada Office of the Commissioner of Labor has provided guidance with respect to time off for employees to receive their (COVID-19) vaccinations.

The guidance notes that under the Fair Labor Standards Act (FLSA), if an employer is requiring employees to get vaccinated, the time off for obtaining the vaccine, even if it is not during scheduled working hours, is compensable.

If an employer makes the vaccine optional, or the employee decides to receive the vaccine with no work-related requirement, the employee should be allowed to use paid or regular leave (or flex time) to receive either the first or second dose of the vaccine.

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

http://labor.nv.gov/uploadedFiles/labornvgov/content/Employer/COVID-19%20Vaccination%20Leave%20Guidance.pdf

Pennsylvania Enacts Living Donor Protection Act

As previously reported, the Dallas, Texas, City Council passed an ordinance (the "Ordinance") requiring employers to provide paid sick On April 27, 2021, Pennsylvania Governor Tom Wolf signed the Living Donor Protection Act (the Act). This law that will provide leave for the preparation and recovery necessary for surgery related to organ or tissue donation by or for the eligible employee or the eligible employee's spouse, child or parent.

The new law, which is effective June 26, 2021, applies only to employees otherwise eligible for leave under the federal Family and Medical Leave Act (FMLA). An employer subject to the FMLA is required to provide the same leave to which an eligible employee is entitled under the FMLA when an eligible employee is unable to work because of a serious health condition or must care for the eligible employee's spouse, child or parent.

To be an eligible employee under the FMLA, an employee must:

- work for a covered employer
- have worked at least 1,250 hours during the 12 months prior to the start of leave
- work at a location where 50 or more employees also work or within 75 miles of it
- have worked for the employer for at least 12 months

In order to be a covered employer under the FMLA, a private employer must have at least 50 employees during at least 20 calendar weeks in the current or preceding calendar year. Government agencies (including local, state and federal employers) and public and private elementary and secondary schools are covered by the FMLA regardless of the number of employees.

FMLA leave is for up to 12 weeks in the 12-month period identified by a covered employer in its policy. Leave under the Living Donor Protection Act will typically run concurrently with leave under the FMLA. because an organ donation would qualify as a serious medical condition whenever it results in an overnight stay in a hospital and the post-surgery recovery qualifies as a serious health condition.

A link to the Act is provided below.

https://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2021&sessInd=0&act=11

Virginia Requires Paid Sick Leave for Certain Home Health Workers

Under a new law effective July 1, 2021, specifically Virginia House Bill 2137 (HB 2137), employers are required to provide paid sick leave to home health workers who provide personal care, respite, or companion services to an individual who receives consumer-directed services under the state plan for medical assistance services.

Highlights of HB 2137 are as follows:

- An employee as described above is eligible for paid sick leave if the employee is an essential worker and works on average at least 20 hours per week or 90 hours per month.
- An eligible employee will earn at least one hour of paid sick leave benefit for every 30 hours worked.
- An eligible employee may not use more than 40 hours of earned paid sick leave in a year, unless the employer selects a higher limit.
- Earned paid sick leave may be used for (i) an employee's mental or physical illness, injury, or health condition; an employee's need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or an employee's need for preventive medical care or (ii) 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.
- Employers are prohibited from taking certain retaliatory actions against employees related to leave.

For a copy of HB 2137, click on the link provided below.

https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+CHAP0449

Payroll

Indiana Requires Payroll Service Providers Registration

On April 22, 2021, Indiana Governor Eric Holcomb signed into law Senate Bill 234 (S234) which requires all "payroll service providers" to register annually with the Indiana Department of Revenue (DOR) via the DOR's online INTIME portal. The registration requirement is effective starting January 1, 2022.

Under S234 "payroll service provider" means a third-party service provider that is authorized to prepare and file returns, withdraw funds and hold the funds in the payroll service provider's bank account, remit payment, and take other similar reporting and compliance actions on behalf of a business client with regard to that client's tax withholding and remittance duties. However, Professional Employer Organizations, which are required to be registered under Indiana law, are excluded.

The law requires that registered payroll service providers supply a list of company officers and other employees, who collect and pay withholding deposits for clients, to be considered "responsible persons" for the purposes of liability in the case of failure to pay or file taxes on behalf of their payroll clients.

The term "responsible persons" is defined as "an officer or director of a payroll service provider, or an employee or any other person affiliated with a payroll service provider, who is responsible for collecting, accounting for, and paying withholding taxes on behalf of a business client of the payroll service provider."

S234 provides that the DOR is required to provide a registration form that must include: (1) a list of all responsible persons of the payroll service provider that provide third-party payroll services. (2) a certification and acknowledgment by the payroll service provider that the bank account that is used by the payroll service provider for employer withholding tax deposits shall only be used for employer withholding tax liabilities.

Additionally, the new legislation provides:

- A payroll service provider is permitted to retain any income generated on client funds while held in a payroll service provider's legal possession pending remittance to authorized payees if the client agreement expressly permits it and the payroll service provider meets certain conditions.
- A contract entered into by a business client with a payroll service provider for third party payroll services must include a provision stipulating that, if failure to deposit or remit employer withholding taxes when due occurs as a result of an error or omission of the provider, the provider must reimburse the client for the payment of any penalties or interest assessed as a result of that failure.
- If a payroll service provider knowingly or intentionally fails to remit taxes withheld, the payroll service provider is liable and the responsible persons of the payroll service provider shall be personally liable for such taxes that were withheld by the employer and collected by the payroll service provider and not remitted, along with any penalties and interest on such taxes.
- The DOR is required to provide an electronic notice to each employer that is registered in the department's online tax filing program if a monthly withholding tax report or remittance is more than seven days past due. The department will advise the employer to check the employer's online portal account for an important message to advise them of any past-due payments of returns.
- The employer's address is to be used with the DOR for withholding tax purposes and payroll service providers may not change the address of record.

For a copy of S234, click on the link provided below.

http://iga.in.gov/legislative/2021/bills/senate/234#document-f20dbdf1

New Hampshire Enacts Law Allowing Wage & Hour Records to Be Kept Electronically

On April 23, 2021, Governor Chris Sununu signed into law House Bill 258 (HB 258) to be effective June 22, 2021.

HB 258 stipulates that employer wage and hour records may be signed, acknowledged, approved and retained electronically. Employers will continue to be required to keep accurate records of the hours worked by and wages paid to each employee, and the classification of employment (when necessary), as required under current law. In addition, employers must keep the records for three years.

For a copy of HB 258, click on the link provided below.

https://legiscan.com/NH/text/HB258/2021

New Mexico Amends Garnishment Law

Governor Michelle Grisham of New Mexico has signed into law House Bill 98 which stipulates, effective July 1, 2021, the maximum amount of disposable earnings subject to levy will be the lesser of 25 percent or the amount exceeding 40 times the state minimum wage. The current New Mexico state minimum wage is $10.50 per hour.

Currently, the amount subject to garnishment is based on the federal minimum wage of $7.25 per hour.

For a copy of House Bill 98, click on the link provided below.

https://www.nmlegis.gov/Sessions/21%20Regular/final/HB0098.pdf

Teleworking Taxation Regulations Extended Again in Rhode Island

It was previously reported that the Rhode Island Division of Taxation (DOT) had announced that an emergency regulation (280-RICR-20-55-14) that provides withholding tax guidance for employers that have employees who are temporarily working remotely due to the coronavirus (COVID-19) pandemic has been extended to May 18, 2021.

The DOT has now announced the effective date of the emergency regulation has been extended through July 17, 2021.

The emergency regulation stipulates generally that the income of employees, who are nonresidents temporarily working outside of Rhode Island solely due to the COVID-19 pandemic will continue to be treated as Rhode Island-source income for Rhode Island withholding tax purposes. In addition, 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 the COVID-19 pandemic.

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

http://www.tax.ri.gov/COVID/Documents/Emergency_Regulation_280_RICR_20_55_14.pdf

Virginia Increases Minimum Wage Effective May 1, 2021

Virginia House Bill 395 (HB 395) has been enacted into law which increases the state minimum wage as shown below. Prior to the law going into effect, Virginia adhered to the federal minimum wage of $7.25 per hour.

From May 1, 2021, until January 1, 2022, every employer shall pay to each of its employees' wages at a rate not less than the greater of (i) $9.50 per hour or (ii) the federal minimum wage.

From January 1, 2022, until January 1, 2023, every employer shall pay to each of its employees wages at a rate not less than the greater of (i) $11.00 per hour or (ii) the federal minimum wage.

From January 1, 2023, until January 1, 2025, every employer shall pay to each of its employees' wages at a rate not less than the greater of (i) $12.00 per hour or (ii) the federal minimum wage.

From January 1, 2025, until January 1, 2026, every employer shall pay to each of its employees' wages at a rate not less than the greater of (i) $13.50 per hour or (ii) the federal minimum wage.

From January 1, 2026, until January 1, 2027, every employer shall pay to each of its employees' wages at a rate not less than the greater of (i) $15.00 per hour or (ii) the federal minimum wage.

From and after January 1, 2027, every employer shall pay to each of his employees' wages at a rate not less than the greater of (i) the adjusted state hourly minimum wage or (ii) the federal minimum wage.

HB 395 did not modify the minimum cash wage currently in place for tipped employees which is $2.13 per hour.

For a copy of HB 395, click on the link provided below.

https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+HB395ER2

Washington State Enacts New Payroll Tax

On April 21, 2021, Governor Jay Inslee signed Senate Bill 1323 (SB 1323), amending Revised Code of Washington (RCW) 50B.04 to provide that, beginning January 1, 2022, Washington employers must withhold 0.58 percent from all employee wages and remit those payments to the state quarterly. There is no cap on the amount of wages to be withheld and, unlike the Washington Paid Family Medical Leave (WPFML) law, there is no employer-funded premium under the new law.

Covered Employers, Employees

All private and public employers with a Washington employee, except for the federal government and federal tribes, must collect the new tax. In general, all Washington employees must pay the new tax.

Limited exceptions include:

1. Self-employed individuals (unless they elect otherwise);
2. Employees of federal tribes (unless the tribe elects otherwise) or the federal government;
3. Employees subject to a collective bargaining agreement in existence as of October 19, 2017, unless and until such agreement is reopened, renegotiated, or expired.

Covered employees have a small window to receive an exemption from paying the tax if they attest to having sufficient long-term care insurance purchased before November 1, 2021. The Employment Security Department (ESD) will accept applications for this exemption only between October 1, 2021, and December 31, 2022. If ESD approves the application, the exempt employee must submit written notification to the employer. Employers must retain those notifications. Exempted employees cannot opt back into the program.

Benefits Provided

In general, beginning January 1, 2025, qualified employees can get up to $100 per day, up to a maximum lifetime amount of $36,500 (adjusted annually), for approved long-term care services and support for one year. The range of approved services is quite broad and includes nursing facilities, assisted-living facilities or adult family homes, home healthcare, wheelchair ramps, emergency alert devices, Meals on Wheels, transportation, caregiver support, memory care and much more.

Qualified employees include those who:

1. Paid premiums under the program for a total of 10 years without interruption of five or more consecutive years; or
2. Paid premiums for three of the last six years from the date of the application for benefits; and
3. Worked at least 500 hours during each of the 10- or three-year timeframes, respectively.

To receive benefits, eligible employees must receive a determination from the Department of Social and Health Services that they require assistance with at least three activities of daily living.

For a copy of SB 1323, click on the link provided below.

http://lawfilesext.leg.wa.gov/biennium/2021-22/Pdf/Bills/House%20Passed%20Legislature/1323-S.PL.pdf?q=20210510142616

To access RCW 50B.04 titled "Long-Term Services and Supports Trust Program," click on the link provide below

https://app.leg.wa.gov/RCW/default.aspx?cite=50B.04

Minimum Wage to Increase in Berkeley, California

Berkeley, California has announced that effective July 1, 2021, the city minimum wage will be $16.32 per hour. This amount will be an increase of 25 cents per hour over the current minimum of $16.07 per hour. The minimum wage will be increased based on the Consumer Price Index (CPI) on July 1, 2022.

California does not allow employers to take a tip credit when paying tipped employees.

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

https://www.cityofberkeley.info/MWO/

Time & Labor

Right to Recall Law Enacted in California

On April 16, 2021, California Governor Gavin Newsom signed into law Senate Bill 93 (SB 93). SB 93, which became effective on the date of enactment and will remain in effect through December 31, 2024, requires an employer, as defined by the law, to offer its laid-off employees specified information about job positions that become available for which the laid-off employees are qualified, and to offer positions to those laid-off employees based on a preference system, in accordance with specified timelines and procedures.

The bill defines "employer" as any person, including a corporate officer or executive, who directly or indirectly or through an agent or any other person, including through the services of a temporary service or staffing agency or similar entity, owns or operates an enterprise and employs or exercises control over the wages, hours, or working conditions of any employee.

"Laid-off employee" means any employee who was employed by the employer for six months or more in the 12 months preceding January 1, 2020, and whose most recent separation from active service was due to a reason related to the COVID-19 pandemic, including a public health directive, government shutdown order, lack of business, a reduction in force, or other economic, non-disciplinary reason due to the COVID-19 pandemic.

SB 93 stipulates that an "employer" as defined above must provide "laid-off employees" with specified information about job positions that become available for which they are qualified, and must offer positions to those laid-off employees based on a preference system.

An employer that declines to recall a laid-off employee on grounds of lack of qualifications and instead hires someone other than a laid-off employee must provide the laid-off employee with a written notice within 30 days, and must include specified reasons for the decision and other information about those hired.

The legislation requires that employers must keep related records for at least three years.

For a copy of SB 93, click on the link provided below.

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB93

Massachusetts Updates COVID-19 Employee Rights & Employer Obligations Information

The Massachusetts' Attorney General's Fair Labor Division (FLD) has updated its "Frequently Asked Questions About COVID-19: Employee Rights and Employer Obligations" pamphlet to include information outlining employer responsibilities regarding vaccination leave, programs and employee rights.

Questions 17-to-23 address guidance on vaccine-related issues. Three of the highlights from the frequently asked questions are as follows:

17. Q: Can my employer require me to get the vaccine in order to keep my job?

A: Maybe unless you are not able to be vaccinated because of a protected legal right such as a disability or sincerely held religious belief. According to the EEOC, "the Americans with Disabilities Act allows an employer to have a qualification standard that includes 'a requirement that an individual shall not pose a direct threat to the health or safety of individuals in the workplace.'" In most cases, employers have an obligation to engage in a flexible, interactive process with an employee who informs them that they are not vaccinated due to a disability, sincerely held religious belief, or other legally-protected reason. For more information, visit the EEOC's What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws.

19. Q: If my employer requires me to get the vaccine, is the time spent getting the vaccine compensable working time?

A: In Massachusetts, "working time" includes all time during which an employee is required to be on the employer's premises or at any other location. Therefore, if your employer mandates that you receive the vaccine at a specific location and/or on a specific date, this is

likely to be considered "working time" and therefore is compensable. If your employer simply requires proof of a vaccine, but does not mandate when, where and how you obtain it, this is unlikely to be considered compensable time. For a formal opinion, please contact the Massachusetts Department of Labor Standards at **dlsfeedback@state.ma.us**.

20. Q: Is my travel time to and from the vaccination site compensable time? Does my employer have to reimburse me for mileage?

A: If an employee who regularly works at a fixed location is required to report to a location other than his or her regular work site, the employee must be compensated for all travel time in excess of his or her ordinary travel time between home and work and must be reimbursed for associated transportation expenses. Therefore, if your employer mandates that you receive the vaccine at a specific location and/or on a specific date, travel time and travel expenses may be compensable. If your employer simply requires proof of a vaccine, but does not mandate when, where and how you obtain it, travel to and from the vaccination site is unlikely to be considered compensable time. For a formal opinion, please contact the Massachusetts Department of Labor Standards at **dlsfeedback@state.ma.us**.

To access all of the guidance, click on the link provided below.

https://www.mass.gov/doc/covid-19-employee-rights-and-employer-obligations-faq-21921/download

COVID-19 Vaccine Ordinance Effective in Chicago, Illinois

The City of Chicago, Illinois, passed an ordinance (the "Ordinance"), effective April 21, 2021, prohibiting Chicago employers (defined as "engage the service of at least one individual for payment") from the following:

- retaliating against workers who receive the COVID-19 vaccine during working hours; and
- requiring that workers receive the COVID-19 vaccine only during nonworking hours.

It is important to note that the Ordinance defines "worker" to mean "an individual that performs work for an employer, including as an employee or as an independent contractor."

Under the Ordinance, an employer cannot require that its workers receive the COVID-19 vaccine during nonworking hours. If a worker elects to receive a COVID-19 vaccine, the employer must allow the worker to use any available paid sick leave or paid time off.

In addition, if the employer has implemented a mandatory vaccine policy, under which workers are required to receive a COVID-19 vaccine, the employer must compensate the worker for time spent receiving the vaccine, up to four hours per dose, if the dose is administered during working hours. Such compensation must be at the worker's normal rate of pay. An employer that requires workers to receive a vaccination also cannot require that the worker use paid sick leave or paid time off for the time taken to receive the vaccine.

The Ordinance stipulates that a worker subjected to an adverse employment action for taking time out of the work day to receive the COVID-19 vaccine can pursue a private right of action and recover:

- reinstatement;
- damages equal to three times the full amount of wages that would have been owed had the retaliatory action not taken place;
- any other actual damages directly caused by the retaliatory action; and
- costs and reasonable attorney's fees.

Additionally, the Commissioner of Business Affairs and Consumer Protection or the Director of Labor Standards can also pursue violations of the Ordinance in an administrative hearing or in a court of law. Finally, a violation of the Ordinance will also result in a fine between $1,000 and $5,000.

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

https://pic.datamade.us/chicago/document/?filename=O2021-1219&document_url=http://ord.legistar.com/Chicago/attachments/d6189fe0-1e12-4531-8cd4-d5979a4d0966.pdf

ADP Compliance Resources

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

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

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