Always Designing for People™

Eye on Washington

Detailed Look at State, Local and Federal Updates

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

Topics covered in this issue:

State Leave

California Requires COVID-19 Supplemental Paid Sick Leave Again

California has enacted legislation (Senate Bill 114) that requires employers with more than 25 employees to provide up to 80 hours of COVID-19 supplemental paid sick leave to employees. The COVID-19 supplemental paid sick leave requirement is effective on February 19, 2022, is retroactive to January 1, 2022, and will remain in effect through September 30, 2022. ADP is actively working to assess any impact the new law may have on our systems and will provide an update on any actions you may need to take as soon as possible.

The Details:

For employees who work 40 or more hours (or the employer considers the employee full time), the employer must provide up to 40 hours of COVID-19 supplemental paid sick leave if the employee is unable to work or telework because they:

- Are subject to a quarantine or isolation period related to COVID-19.
- Have been advised by a health-care provider to isolate or quarantine.
- Are attending a vaccine or vaccine booster appointment for employee or family member.
- Are experiencing symptoms or caring for a family member with vaccine symptoms (this can be limited to three days or 24 hours, unless employee provides verification from a health-care provider that the employee or family member is continuing to experience symptoms).
- Are experiencing symptoms of COVID-19 and seeking medical diagnosis.
- Are caring for a family member who is subject to a quarantine or isolation period or who has been advised to isolate or quarantine.
- Are caring for a child whose school or place of care is closed or otherwise unavailable for reasons related to COVID-19.

Additional Leave Allotment:

In addition to the leave described above, employees are entitled to take up to 40 hours of paid sick leave if the employee, or a family member for whom the employee is providing care, tests positive for COVID-19. Employees are not required to exhaust the other bank of COVID-19 supplemental paid sick leave before accessing the 40 hours additionally provided as a result of a positive COVID-19 test.

Note: If the employee tests positive for COVID-19, an employer may require the employee to submit to a diagnostic test on or after the fifth day after the test was taken and provide documentation of those results. The employer must make such a test available at no cost to the employee.

Part-Time Employees:

For each of the two banks of leave, employees who work less than 40 hours and work a normal schedule are entitled to the total number of hours they are normally scheduled to work over one week. A different calculation is used for part-time employees who work a variable schedule. See the **text of the law** for details.

Pay During Leave:

During COVID-19 supplemental paid sick leave, a nonexempt employee must be compensated at a rate at least equal to one of the following:

- Calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, regardless of whether the employee actually works overtime in that workweek.
- Calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total non-overtime hours worked in the full pay periods occurring within the prior 90 days of employment.

An exempt employee must be compensated at a rate calculated in the same manner as the employer calculates wages for other forms of paid leave.

Note: For such leave, employers are not required to compensate employees more than $511 per day or $5,110 in total.

Wage Statement Requirements:

Employers must provide employees with written notice that sets forth the amount of COVID-19 supplemental paid sick leave the employee has used through the pay period in which it was due to be paid, either on an itemized wage statement or in separate writing provided on the designated pay date. Employers will have until the next full pay period after February 19, 2022, to comply with this requirement. COVID-19 supplemental paid sick leave must be set forth separately from paid sick leave.

Note: The employer must list zero hours used if the employee has not used any COVID-19 supplemental paid sick leave.

Poster Requirements:

Employers must post a notice about employees' rights under the law. An employer may satisfy this requirement for workers who do not frequent a workplace by disseminating the notice through electronic means, such as e-mail.

Retroactive Payments:

Employers have until February 19, 2022, to start providing such leave. Since the law applies retroactively to January 1, 2022, if an employee took qualifying leave from January 1, 2022, to February 19, 2022, and makes a request for retroactive payment, the employer must provide it. The retroactive payment must be paid on or before the payday for the next full pay period after the request and should be reflected on the written notice for the pay period. If an employee makes such a request and was already compensated in an amount equal to or greater than the amount required under COVID-19 supplemental paid sick leave, the employee should be credited for the leave hours that were used.

Interaction with Other Leave Laws and Policies:

The COVID-19 supplemental paid sick leave is in addition to any paid sick leave that may be available under existing law. Employers are prohibited from requiring an employee to use any other paid or unpaid leave, paid time off, or vacation time provided by the employer to the covered employee before the covered employee uses COVID-19 supplemental paid sick leave or in lieu of COVID-19 supplemental paid sick leave.

Employers are also prohibited from requiring an employee to first exhaust their COVID-19 supplemental paid sick leave before satisfying any requirement to provide paid leave for reasons related to COVID-19 under Cal-OSHA COVID-19 Emergency Temporary Standards or the Cal-OSHA Aerosol Transmissible Diseases Standard.

However, if an employer paid another supplemental benefit for leave taken on or after January 1, 2022, that is payable for the reasons listed in Senate Bill 114 and that compensates the employee in an amount equal to or greater than required above, the employer may generally count it toward meeting the requirements of Senate Bill 114. This cannot include paid sick leave required under **Labor Code Section 246**. It also cannot include leave provided under Labor Code Section 248(e) (a now expired COVID-19 leave for food sector employees) or Labor Code Section 248.1(f) (a now expired COVID-19 leave for employees of employers with 500 or more employees), but it may include leave under federal law and local ordinances if the criteria are met. See the **text of the law** for details.

Special Rules:

There are special rules for in-home supportive services and firefighters under the law. See the **text of the law** for details.

Next Steps:

Covered employers should:

- Read the **text of the law** in full and ensure compliance.
- Train supervisors on how to handle requests for the leave.
- Post the required notice when made available by the state (expected on or before February 16, 2022).
- Review and revise policies and practices if necessary.

District of Columbia Extends Vaccination-Leave Requirement, DCFMLA Changes

The District of Columbia has enacted legislation that will extend a requirement that employers provide paid leave to employees for the time they, or their minor child, spend obtaining and recovering from COVID-19 vaccination. The legislation also extends an expansion of the DC Family and Medical Leave Act (DCFMLA). These changes were set to expire on February 3, 2022.

The Details:

To extend the changes beyond February 3, 2022, the District of Columbia enacted two pieces of legislation. One (**PR24-0547**) covers the period from February 3, 2022, to whenever the other piece of legislation takes effect, which is projected to be on or about February 18, 2022. The other (**B24-0405**) will extend the changes another 225 days, to on or about October 1, 2022.

Here's a summary of the vaccination and recovery leave requirements and expansion of DCFMLA:

Vaccination and Recovery Leave:

Covered Employees:

All employers must provide paid vaccination and recovery leave to any employee who commenced work for the employer at least 15 days before the request for leave.

Amount of Leave:

Employees are entitled to up to two hours of paid leave per injection to obtain, or for a child under the age of 18 to obtain, the COVID-19 vaccine, including any boosters. Employees are also entitled to up to eight hours of paid leave per injection during the 24-hour period following the two-hour vaccination leave period. The eight hours of paid leave is to be provided to the employee for purposes of recovering, or caring for a child who is recovering, from the side effects of COVID-19 vaccination.

Note: An employee is entitled to no more than 48 hours of paid leave, in the aggregate, in a year under the Accrued Sick and Safe Leave Act.

Relationship to Other Leave Policies:

Generally, the paid vaccination and recovery leave required must be in addition to any other paid leave an employer provides an employee under an existing leave policy.

Extension of Changes to DCFMLA:

Prior legislation amended the DCFMLA to add a new category of leave called COVID-19 leave. The leave may be unpaid. Unlike the other types of DCFMLA leave, employees are eligible for COVID-19 leave if they have worked at least 30 days for an employer.

Eligible employees may use up to 16 weeks of unpaid leave if they are unable to work because the employee:

- Has tested positive for COVID-19 or is caring for a family member or individual with whom the employee shares a household who has tested positive for COVID-19 and must quarantine under Department of Health guidelines,
- Has a recommendation from a health-care provider or a directive from an employer that the employee isolate or quarantine due to COVID-19, including because the employee or an individual with whom the employee shares a household is at high risk for serious illness from COVID-19,
- Must care for a family member or an individual with whom the employee shares a household, who is isolating or quarantining under Department of Health guidance, the recommendation of a health-care provider, or the order or policy of the family member's or individual's school or childcare provider; or
- Must care for a child whose school or place of care is closed or whose childcare provider is unavailable to the employee due to COVID-19.

Note: Prior legislation also extended the DCFMLA's COVID-19 leave requirement to all employers, but the District of Columbia has clarified that this provision was removed as of November 5, 2021. Therefore, the COVID-19 leave requirement applies only to employers with 20 or more employees in the District of Columbia.

Next Steps:

Employers should:

- Ensure compliance with the leave requirements.
- Display up-to-date notices in the workplace.
- Amend policies if necessary.
- Notify supervisors and employees of the extension.
- For details about COVID-19 leave under the DCFMLA, go **here**.

State of New York Issues Final Rule on Sick Leave Requirements

The New York Department of Labor (DOL) has issued a final rule to clarify sick leave requirements. The final rule took effect December 22, 2021.

Background:

The state of New York had previously enacted legislation that provides for up to 40 hours of sick leave. If you have five or more employees or a net income of more than $1 million, you must provide paid sick leave. If you employ fewer than five employees and have a net income of $1 million or less, you must provide unpaid sick leave.

The Details:

The final rule clarifies:

- Definitions of confidential information, domestic partner, family offense, human trafficking, mental illness, net income, preventative medical care, sexual offense and stalking. See the **text of the law** for further details; and
- Accrual, documentation protocol and employee counts for the purposes of sick leave.

Leave Accrual:

Under the final rule, accrued leave must account for all time that your employee works, even if the time worked is less than a 30-hour increment. You may round an employee's accrued leave to the nearest five minutes, or the nearest one-tenth or quarter of an hour, if it will not result in a failure to provide the proper amount of leave for all the time that employees have worked.

Employer Requests for Documentation:

If sick leave lasts for three or more consecutive or previously scheduled workdays or shifts, you may request an attestation from:

- An employee of their eligibility for leave; or
- A licensed medical provider that supports the need for leave, the amount of leave needed and the date that the employee may return to work.

Prohibited Actions:

Under the final rule, employers cannot ask for:

- The reason for an employee's leave,
- An employee to pay the costs or fees associated with obtaining medical or other verification of eligibility for use of their sick leave,
- An employee to provide confidential information, such as the nature of an illness, the prognosis, treatment, or other related information,
- Details or information regarding the leave taken; or
- For an employee's attestation to explain the nature of the illness or details that relate to their safe leave (domestic violence, sexual offense, family offense, human trafficking, or stalking).

Employee Count:

To determine the number of employees employed during a calendar year, use the highest total number of employees that are employed at the same time, at any point during the calendar year to date. This includes part-time employees and employees on paid or unpaid leave (sick leave, leaves of absence, disciplinary suspension, or any other type of temporary absence), who you reasonably expect to return to work.

Note: An employee that is jointly employed must be counted by each employer, even if the employee is not on an employer's payroll.

Increased Employee Count:

If an employee count increases during the calendar year above a paid sick leave threshold:

- You must ensure that the accrual of additional required leave up to what an employee is entitled to is prospective from the date of the increase. However, that does not entitle employees to reimbursement for previously used unpaid leave or to use more than the maximum amount of leave that you have set,
- You may credit prior accruals of sick leave (used and unused paid leave and used unpaid leave) in a calendar year toward increased paid leave obligations, but you cannot credit prior accruals of unused and unpaid leave toward paid leave obligations; and
- You must retain all existing accruals of paid and unpaid leave notwithstanding an increase in the number of employees during a calendar year.

If you reduce the number of employees below a threshold, you cannot reduce the sick leave an employee is entitled to until the following calendar year.

Next Steps:

Train HR personnel and managers on the applicable updated sick leave requirements and visit the **DOL website** for updates. Contact your dedicated service professional with any questions.

State Payroll

California Releases Further Guidance on Pay of Garment Workers

The California Department of Industrial Relations has released frequently asked questions regarding the Garment Worker Protection Act, which took effect on January 1, 2022. This law addresses proper payment of employees in the garment industry and the responsibility for parties contracting to have garment operations performed.

Background:

On September 27, 2021, California Governor Gavin Newsom signed into law Senate Bill 62 (SB 62), which prohibits employers from paying employees engaged in garment manufacturing on a piece-rate basis, except in limited circumstances. This new law does not apply to workplaces where employees are covered by a bona fide collective bargaining agreement.

SB 62 also increased the amount of time garment manufacturers must keep certain records. Prior law required every employer engaged in the business of garment manufacturing to keep certain records for three years, including, contract worksheets indicating the price per unit agreed to between the contractor and manufacturer. The new law requires every employer engaged in the business of garment manufacturing to keep all contracts, invoices, purchase orders, work orders, style or cut sheets, and any other documentation pursuant to which garment manufacturing work was, or is being, performed for four years.

Among other penalties, SB 62 stipulates that employers will be subject to compensatory damages of $200 per employee for each pay period the worker was paid by a piece rate.

Frequently Asked Questions:

The guidance specifically provides key definitions and addresses the elimination of piece rate for garment workers, employer liability, recordkeeping responsibilities, licensing and registration requirements under the new law, and enforcement matters.

For a copy of the frequently asked questions, click on the link provided below.

https://www.dir.ca.gov/DLSE/GarmentFAQs/

Next Steps:

Employers subject to the law should be familiar with the new requirements of SB 62, review the frequently asked questions for clarifications and discuss with their legal counsel where appropriate.

For a copy of SB 62, click on the link provided below.

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB62

State of Washington Cares Act Officially Delayed

On January 27, 2022, Governor Jay Inslee signed into law two bills, House Bill 1732 and House Bill 1733, which became effective at signing. These new bills will delay and make significant changes to the Washington Cares Act.

What You Need to Know

On April 21, 2021, Governor Inslee signed into law Senate Bill 1323 (SB 1323) implementing a payroll tax to support the nation's first state-run, long-term care (LTC) services and support trust program. Under the legislation, beginning January 1, 2022, Washington employers were required to withhold 0.58 percent from all employee wages and remit those payments to the state quarterly.

On December 17, 2021, Governor Inslee, along with Senator Andy Billig and Speaker Laurie Jinkins, announced that the requirement for employers to remit to the state any LTC premiums withheld from employee's pay was being delayed until April 2022. The Governor and the legislative leaders stated that they would instruct the relevant agencies not to require remittance until April and not to impose any penalties, stating "while we cannot direct employers not to collect, we strongly encourage them to pause on collecting premiums from employees" while the Washington state legislature took up the bills modifying the Washington Cares Act.

In December, ADP communicated that we would modify our systems and not withhold the WA Cares premiums from employees' wages based upon the statements made by the Governor and legislative leaders on December 17, 2021.

Immediate Next Steps:

- Employers should cease collecting premiums for the Washington Cares Act immediately and refund any premiums that have been deducted in accordance with HB 1732 which requires refunds to be made within 120 days of the collection of the premiums.
- Employers should continue to monitor the WA Cares Act for further developments at the following link: **https://wacaresfund.wa.gov/**

Additional Information

House Bill 1732 Summary

- **Delays the start date for collection of premiums by employers from employees for the Long-Term Services and Supports Trust Program (LTSS Trust Program) from January 1, 2022, to July 1, 2023.**
- Delays the date benefits become available under the LTSS Trust Program from January 1, 2025 to July 1, 2026.
- Allows individuals born before January 1, 1968, who do not meet the LTSS Trust Program's vesting requirements, to receive partial benefits based on the number of years of premium payments.
- **Requires employers to refund employees within 120 days of collection of any LTSS Trust premiums collected from employees prior to the passage of House Bill 1732.**

House Bill 1733 Summary

Establishes exemptions from the payment of premiums under the LTSS Trust Program for certain veterans, spouses and registered domestic partners of military service members, nonimmigrant temporary workers, and employees who work in the state of Washington and maintain a primary residence outside of Washington.

Resources

For more information on House Bill 1732, a copy of the bill can be found at the following link:

https://lawfilesext.leg.wa.gov/biennium/2021-22/Pdf/Bills/House%20Passed%20Legislature/1732-S.PL.pdf?q=20220128075303

For more information on House Bill 1733, a copy of the bill can be found at the following link:

https://lawfilesext.leg.wa.gov/biennium/2021-22/Pdf/Bills/House%20Passed%20Legislature/1733-S.PL.pdf?q=20220128080313

Increase to Santa Fe County, New Mexico, Minimum Wage Announced

The County of Santa Fe, New Mexico, has announced that effective March 1, 2022, the minimum wage in Santa Fe County will increase from $12.32 to $12.95 per hour. The requirements apply to businesses located throughout Santa Fe County, outside of the incorporated boundaries of the City of Santa Fe, City of Española and the Town of Edgewood. All employees of these covered businesses – whether employed on a full-time, part-time or temporary basis, including contingent or contracted workers and those working through a temporary service or an employment agency – are entitled to at least the minimum wage.

Exceptions

Tipped employees may be paid a minimum cash wage of $3.88 per hour (up from $3.69) if tips are sufficient to bring the employee's hourly wage to $12.95 per hour. If tips are not sufficient, the employer must make up the difference.

Next Steps:

As of March 1, 2022, employers subject to the County of Santa Fe, New Mexico, minimum wage ordinance must pay at least $12.95 per hour to non-tipped employees for all hours worked. Tipped employees must be paid at least $3.88 in cash wages.

For a copy of the Santa Fe County announcement, click on the link below.

https://www.santafecountynm.gov/livingwage/print

City of Los Angeles Announces Increase to Minimum Wage

The city of Los Angeles, California, has announced that, beginning July 1, 2022, the minimum wage will increase by $1.04 from $15.00 per hour to $16.04 per hour for all employers. The increase is applicable to employees who work at least two hours within the geographic boundaries of the city.

Note: California does not allow the use of a tip credit when paying tipped employees.

Compliance Recommendations:

City of Los Angeles employers should pay all covered nonexempt employees at least $16.04 per hour beginning July 1, 2022. Employers should also post an up-to-date minimum wage notice in the workplace.

It is important to note that the notice must be in English, Spanish, Chinese, Hindi, Vietnamese, Tagalog, Korean, Japanese, Thai, Armenian, Russian, and Farsi, and any other language spoken by at least five percent of the employees in the workplace.

The minimum wage notice in the 13 designated languages may be found at the following link:

Office of Wage Standards | Wages LA (lacity.org)

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

The City of Santa Fe, New Mexico, has announced that effective March 1, 2022, the living wage rate in Santa Fe will increase from $12.32 to $12.95 per hour. All employers required to have a business license or registration from the City of Santa Fe must pay at least the living wage rate to employees for all hours worked within the Santa Fe city limits. All employees, including temporary and part-time workers, must be paid this rate.

Exceptions:

Tipped employees may be paid a minimum cash wage of $2.80 per hour if tips are sufficient to bring the employee's hourly wage to $12.95 per hour. If tips are not sufficient, the employer must make up the difference. Workers who customarily receive more than one hundred dollars ($100.00) per month in tips or commissions are considered tipped employees.

Next Steps:

As of March 1, 2022, employers within the City of Santa Fe, New Mexico, must pay at least $12.95 per hour to non-tipped employees for all hours worked within city limits. Tipped employees must be paid at least $2.80 in cash wages.

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

Announcement

State Time & Labor

New Deadline Set for California Pay-Data Reporting in 2022

The deadline for California employers with 100 or more employees to report pay and other data to the Department of Fair Employment and Housing (DFEH) is April 1, 2022.

The Details:

Under state law, employers of 100 or more employees (with at least one employee in California) must report to the DFEH pay and hours-worked data by establishment, job category, sex, race and ethnicity. The deadline for filing the pay-data report is March 31 each year. However, because March 31, 2022, is a state holiday (Cesar Chavez Day), the deadline to file the pay-data report for the reporting year 2021 is April 1, 2022.

Employers must use the state's **online portal** to submit their annual pay-date reports to the DFEH. For this reporting period, the portal has been updated with new pay bands that employers must use, and the state has added new **reference materials**, including **answers to frequently asked questions**. The portal also includes a new registration process and a new interface to upload data.

Next Steps:

If you are required to report pay data to the DFEH for 2021:

- Determine your "Snapshot Period," which is a single pay period between October 1 and December 31 of the reporting year (in this case, 2021). The Snapshot Period is used only to identify employees who must be reported on in the pay-data report. Importantly, when identifying the employees to be reported on, it doesn't matter whether an employee was paid during the Snapshot Period; it only matters whether the employee was employed during the Snapshot Period.
- Determine which establishments you have and gather information about each establishment.
- For all employees in the Snapshot Period, identify each employee's establishment, job category, race/ethnicity, sex, pay band and hours worked.
- Within each establishment, group employees who have the same job category, pay band and race/ethnicity/sex combination. Some groups may be a group of one employee if no other employee in the establishment shares that employee's job category, pay band, race/ethnicity and sex.
- Within each employee group in each establishment, calculate the total hours worked by the group.
- Gather additional information about your company and its establishments, such as your address on file with the California Employment Development Department (EDD), total number of employees in the United States, total number of employees in California, Federal Employer Identification Number (FEIN), California Employer Identification Number (SEIN), North American Industry Classification System (NAICS) code(s), DUNS Number, and whether you are a state contractor.
- Register in the portal and build the report. Provide establishment-level and employee-level information by uploading an Excel file by using the DFEH's template, uploading a .CSV file, or using the portal's fillable forms.
- Provide any clarifying remarks and correct any errors identified by the portal.
- Certify the final report and submit by April 1, 2022.
- Consider consulting legal counsel if you have specific questions about your reporting obligations.

Medical Marijuana May Be a Reasonable Accommodation in New Hampshire

The New Hampshire Supreme Court has ruled that an employee may be entitled to use medical marijuana as an accommodation under the New Hampshire Law Against Discrimination (NHLAD).

Background:

Under the federal Controlled Substances Act of 1970, it is illegal to possess, use, buy, sell, or cultivate cannabis. However, some states have enacted laws that provide protections to applicants and employees using medical marijuana outside the workplace.

The federal Americans with Disabilities Act (ADA) (for employers with 15 or more employees) and the NHLAD (for employers with six or more employees) require employers to provide reasonable accommodation to employees with known physical or mental limitations, unless doing so would impose an undue hardship on the business.

The Details:

A New Hampshire employer that denied an employee's request to use medical marijuana outside of work as an accommodation for PTSD, told the employee that he could no longer work for the company if he used marijuana, and terminated the employee after he notified the business that he intended to use medical marijuana to treat his disability.

The employee, whose written request did not ask for permission to use or keep marijuana at work, sued the employer for failing to make an exception from its drug testing policy as an accommodation. The Superior Court sided with the employer, stating the request was unreasonable because marijuana is illegal under federal law.

The Supreme Court later reversed the Superior Court's decision, finding that:

- The NHLAD doesn't explicitly exclude medical marijuana as an accommodation;
- An employer's decision to terminate an employee is not protected by the NHLAD's exclusion of the use or addiction to a federally controlled substance as a disability; and
- In this case, the employee's disability was PTSD, not drug use or addiction.

Next Steps:

New Hampshire employers should review their policies, procedures and training, and consider employee requests to use medical marijuana outside of the workplace as a potential reasonable accommodation.

New Jersey Limits Employer Vehicle Tracking

New Jersey has enacted legislation (Assembly Bill 3950), which requires an employer to notify its employees before using a vehicle tracking device. Assembly Bill 3950 takes effect on April 19, 2022.

The Details:

New Jersey employers must provide written notice to employees before knowingly using a device that is solely designed or intended to track a vehicle, person, or device.

Note: This does not include expense reimbursement documentation devices.

Enforcement:

Employers that are found to have violated the law may face a penalty of up to $1,000 for the first violation and up to $2,500 for subsequent violations.

Next Steps:

New Jersey employers should review their policies and procedures to ensure compliance with **Assembly Bill 3950**.

NY State and City Add Protections for Domestic Workers

The state of New York and New York City have amended their Human Rights laws to add employment protections for domestic workers. The state's protections went into effect on December 31, 2021, and the city's protections will take effect on March 12, 2022.

The Details:

Domestic workers are those employed at homes or residence as housekeepers, home health-care aides, nannies or in similar roles.

New York State:

Background:

The New York State Human Rights Law (NYSHRL) protects employees from discrimination on the basis of age, race, religion, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, among other protected characteristics. Under state law, a person doesn't need to live with an employer to be a domestic worker, but they are not considered a domestic worker under law if they're employed by their parents, spouse, or a child.

Senate Bill S5064:

New York has enacted legislation (Senate Bill S5064), which amends the NYSHRL to add domestic workers to the definition of "employees" and grants domestic workers the protections afforded to employees under the law. It also prohibits employers from retaliating against a domestic worker for opposing any unlawful practices under the law or because the worker has filed a complaint. Senate Bill S5064 took effect December 31, 2021.

Note: The New York Division of Human Rights has released additional **guidance** for employers on the new protections under the NYSHRL.

New York City:

Background:

The New York City Human Rights Law (NYCHRL) provides employment protections against discrimination, harassment and retaliation to domestic workers, including entitlements to certain reasonable accommodations under the law.

Int. No. 339-B:

New York City has enacted legislation (Int. No. 339-B), which will extend the law to require all employers with one or more domestic workers to provide nondiscrimination protections, beginning March 12, 2022. The NYCHRL also prohibits sexual harassment from employers, family members and others in a household.

The NYC Commission on Human Rights has released **FAQs** on topics such as hiring, workplace conduct, nondiscrimination, background and reference checks, termination, and non-retaliation measures for domestic employment. The protections cover most full-time and part-time workers.

Under the guidance, employers cannot take the following actions toward domestic workers:

- Discriminate on the basis of race, national origin, sex, religion, age, perceived immigration status, or other protected characteristic,
- Inquire about salary history or credit history while hiring. However, employers may check an applicant's employment references, education history and criminal convictions,
- Provide a bad reference (or no reference) to retaliate against a domestic worker that engages in protected activity. However, they may provide negative references, provided they are truthful,
- Retaliate because a domestic worker raised a complaint of discrimination; or
- Use language in job ads that limit the employment of a domestic worker of a certain race, gender, national origin, religion, or other protected class. However, employers may seek specific job skills.

Next Steps:

Employers in New York State and New York City should review their policies, procedures and training to ensure compliance with the law. While New York state protections are already in effect, New York City's protections take effect March 12, 2022.

New York City Enacts Salary Transparency Law

The New York City Council has enacted a law (Int. No. 1208-B) which requires New York City employers to include the minimum and maximum starting salary for advertised jobs, promotions or transfer opportunities. The law takes effect on May 15, 2022.

The Details:

Under the amended New York City Human Rights Law, New York City employers with four or more employees (including independent contractors) must disclose a salary range for an advertised job, promotion or transfer opportunity starting May 15, 2022. The range must be from the lowest to the highest salary that an employer in good faith believes it would pay at the time of the posting.

Next Steps:

New York City employers should review their application forms, positions, policies and practices, and train HR personnel and supervisors to ensure compliance by May 15, 2022. Contact your dedicated service professional with any questions.

NYC Limits Use of Automated Tools in Employment Decisions

New York City has enacted legislation (Int. No. 1894-A), that amends the New York City Human Rights Law and regulates the use of automated tools in certain employment decisions. The law takes effect on January 1, 2023.

The Details:

The legislation regulates New York City employers and employment agencies' use of artificial intelligence, data analytics, machine learning, or statistical modeling (automated employment decision tools) that are used to substantially assist or replace discretionary decision making for employment decisions.

The law generally applies to computerized tools or software programs based on algorithms to identify, select, evaluate, or recruit candidates, such as:

- Recruiting tools that review résumés, chat with or rank applicants, or conduct behavioral analysis of candidates; and
- Tools used to assess workers' skills, performance, and productivity or monitor field-based or remote employees.

Note: The law does not include a tool that does not automate, support, substantially assist or replace discretionary decision-making processes and that does not materially impact people, including, but not limited to, a junk email filter, firewall, antivirus software, calculator, spreadsheet, database, data set, or other compilation of data. The law is also silent on tools that identify employees for termination or reductions in force.

Notice Requirement:

Under the law, employers must notify a New York City resident that applied for a position (at least 10 business days before using the tool) if their application will be subject to an automated tool as part of the decision-making process and what specific job qualifications and characteristics the tool will use to assess workers and candidates. The notice must also inform candidates of their right to request an alternative selection process or accommodation.

Using an Automated Employment Decision Tool:

To use an automated employment decision tool, covered employers must retain an independent auditor to assess whether the tool's

selection criteria result in disparate impact based on race, ethnicity, or sex on an annual basis. They must also publish a summary of the results and the distribution date of the tool on their websites.

The law also requires covered employers to retain information about the source and type of data collected for the tool and the businesses' data retention policy. Employers must disclose this information on their website or provide it to an applicant within 30 days of a written request, unless prohibited by law.

Penalties:

Employers who fail to comply may face fines of up to $500 for a first violation and $500 to $1,500 for subsequent violations.

Next Steps:

If considering the use of automated employment decision tools, New York City employers should:

- Create a process for conducting independent audits as required by law;
- Comply with the notice requirements above and consider issuing the required notice to all applicants for New York City openings and promotions to help minimize issues with capturing NYC residency;
- Allow for employees and candidates to opt-out of the automated employment tool process; and
- Update data-retention policies to ensure compliance with the law.

Covered employers should also anticipate further regulations from the City that clarify their obligations under the law. Contact your dedicated service professional with any questions.

Federal Benefits

DOL Issues 2022 Adjusted Penalty Amounts

On January 14, 2022, the Department of Labor (DOL) announced the 2022 annual adjustments to the civil monetary penalties for a wide variety of benefits-related violations. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 directed federal agencies to adjust civil penalties for inflation by January 15 of each year. Some of the highlights are as follows:

Note: The 2022 adjustments are effective for penalties assessed after January 15, 2022 with respect to violations occurring after November 2, 2015.

- **Form 5500.** The maximum penalty for failing to file Form 5500 (which must be filed annually for most ERISA plans) increases from $2,259 to $2,400 per day that the filing is late.
- **Summary of Benefits and Coverage (SBC).** The maximum penalty for failing to provide the SBC increases from $1,190 to $1,264 per failure.
- **Other Group Health Plan Penalties.** Violations of the Genetic Information Nondiscrimination Act (GINA), such as establishing eligibility rules based on genetic information or requesting genetic information for underwriting purposes, and failures relating to disclosures regarding the availability of Medicaid or children's health insurance program (CHIP) assistance, may result in penalties of $127 per participant per day, up from $120.
- **401(k) Plan Disclosure, Recordkeeping and Reporting.** For plans with automatic contribution arrangements, penalties for failure to provide the required ERISA § 514€ preemption notice to participants increase from $1,788 to $1,899 per day. Penalties for failing to provide blackout notices (required in advance of certain periods during which participants may not change their investments or take loans or distributions) or notices of diversification rights increase from $143 to $152 per day. And the maximum penalty for failure to comply with the ERISA § 209(b) recordkeeping and reporting requirements increases from $31 to $33 per employee.

- **Multiple Employer Welfare Arrangement (MEWA) Filing.** Penalties for failure to meet applicable filing requirements, which include annual Form M-1 filings and filings upon origination, increase from $1,644 to $1,746 per day.

Adjustments have also been made to other benefits-related DOL penalties, such as for failure to provide certain information requested by the DOL.

For a copy of January 14, 2022 Federal Register, click on the link provided below.

https://www.govinfo.gov/content/pkg/FR-2022-01-14/pdf/2022-00144.pdf

IRS Releases 2022 Version of Publication 15-A

The Internal Revenue Service (IRS) has posted the 2022 version of Publication 15-A, the Employer's Supplemental Tax Guide located at **https://www.irs.gov/pub/irs-pdf/p15a.pdf** .

Background:

IRS Publication 15-A supplements IRS Publication 15 (Circular E), by providing more specialized and detailed employment tax information on certain topics covered in IRS Publication 15.

There are sections in IRS Publication 15-A on: (1) Who Are Employees; (2) Employee or Independent Contractor; (3) Employees of Exempt Organizations; (4) Religious Exemptions and Special Rules for Ministers; (5) Wages and Other Compensation; (6) Sick Pay Reporting; (7) Special Rules for Paying Taxes; and (8) Pensions and Annuities.

A few of the highlights under "What's New" are as follows:

Redesigned Form W-4P and new Form W-4R. Form W-4P, Withholding Certificate for Periodic Pension or Annuity Payments (previously titled Withholding Certificate for Pension or Annuity Payments), has been redesigned for 2022. The new Form W-4P is now used only to request withholding on periodic pension or annuity payments. Previously, Form W-4P was also used to request additional withholding on nonperiodic payments and eligible rollover distributions. Starting in 2022, additional withholding on nonperiodic payments and eligible rollover distributions is requested on new Form W-4R, Withholding Certificate for Nonperiodic Payments and Eligible Rollover Distributions. Although the final redesigned Form W-4P and new Form W-4R are available for use in 2022, the IRS is postponing the requirement to begin using the forms until January 1, 2023. Payers should update their system programming for these forms and are encouraged to begin using them in 2022 as soon as programming is in place but may otherwise continue to use the 2021 Form W-4P in 2022. See section 8 for more information about withholding on pensions and annuities. See Pub. 15-T to figure withholding on periodic pension and annuity payments.

Social Security and Medicare tax for 2022. The rate of Social Security tax on taxable wages, including qualified sick leave wages and qualified family leave wages paid in 2022 for leave taken after March 31, 2021, and before October 1, 2021, is 6.2% each for the employer and employee, or 12.4% for both. Qualified sick leave wages and qualified family leave wages paid in 2022 for leave taken after March 31, 2020, and before April 1, 2021, aren't subject to the employer share of Social Security tax; therefore, the tax rate on these wages is 6.2%. The Social Security wage base limit is $147,000. The Medicare tax rate is 1.45% each for the employee and employer, unchanged from 2021. There is no wage base limit for Medicare tax.

Social Security and Medicare taxes apply to the wages of household workers to whom you pay $2,400 or more in cash wages in 2022. Social Security and Medicare taxes apply to election workers who are paid $2,000 or more in cash or an equivalent form of compensation in 2022.

Next Steps:

Employers should review Publication 15-A to learn the requirements in 2022 regarding employment taxation.

2022 IRS Publication 15-B Released

The Internal Revenue Service (IRS) has released the 2022 version of Publication 15-B (Employer's Tax Guide to Fringe Benefits), which contains information for employers on the employment tax treatment of various fringe benefits, including accident and health coverage, adoption assistance, company cars and other employer-provided vehicles, dependent care assistance, educational assistance, employee discount programs, group term life insurance, moving expense reimbursements, health savings accounts (HSAs), and transportation (commuting) benefits. (Publication 15-B uses the term "employment taxes" to refer to federal income tax withholding as well as Social Security and Medicare (FICA) and federal unemployment (FUTA) taxes.) Publication 15-B is a supplement to Publication 15 (circular E) and IRS Publication 15-A (Employer's Supplemental Tax Guide).

A few of the highlights under "What's New" are as follows:

Cents-per-mile rule. The business mileage rate for 2022 is 58.5 cents per mile. You may use this rate to reimburse an employee for business use of a personal vehicle, and under certain conditions, you may use the rate under the cents-per-mile rule to value the personal use of a vehicle you provide to an employee. The rate in 2021 was 56 cents per mile.

Qualified parking exclusion and commuter transportation benefit. For 2022, the monthly exclusion for qualified parking is $280 and the monthly exclusion for commuter highway vehicle transportation and transit passes is $280. This is a $10 increase for both parking and transit from 2021.

Contribution limit on a health flexible spending arrangement (FSA). For plan years beginning in 2022, a cafeteria plan may not allow an employee to request salary reduction contributions for a health FSA in excess of $2,850. This is an increase of $100 from 2021.

For a copy of IRS Publication 15-B "Employer's: Tax Guide to Fringe Benefits" (For Benefits Provided in 2022), click on the link provided below.

https://www.irs.gov/pub/irs-pdf/p15b.pdf

2021 Version of Publication 502 Released by IRS

The Internal Revenue Service (IRS) has released the latest version of Publication 502, which describes what medical expenses are deductible by taxpayers on their 2021 federal income tax returns. This publication provides guidance on what qualifies as a medical expense under Code § 213(d), and thus helps identify the expenses that may be reimbursed or paid by health flexible spending accounts (health FSAs), health savings accounts (HSAs), or health reimbursement arrangements (HRAs), or covered on a tax-favored basis under other group health plans (e.g., an employer-sponsored medical plan).

In addition, Publication 502 explains the itemized deduction for medical and dental expenses that a taxpayer can claim on Schedule A (Form 1040) and discusses what expenses, and whose expenses, a taxpayer can and cannot include in figuring the deduction. It also explains how to treat reimbursements and how to figure the deduction and informs taxpayers on how to report the deduction on their tax return and what to do if taxpayers sell medical property or receive damages for a personal injury.

Under the "What's New" Section, the 2021 Publication 502 states as follows:

Standard mileage rate.

The standard mileage rate allowed for operating expenses for a car when you use it for medical reasons is 16 cents a mile.

For a copy of Publication 502 (Medical and Dental Expenses for preparing 2021 Returns), click on the link provided below:

https://www.irs.gov/pub/irs-pdf/p502.pdf

IRS Releases 2021 Version of Publication 503

The Internal Revenue Service (IRS) published Publication 503 for use in preparing 2021 tax returns, which describes the tests a taxpayer must meet in order to claim the credit for child and dependent care expenses and explains how to calculate and claim the credit.

Under the "What's New" Section, the 2021 Publication 503 states as follows:

Changes to the credit for child and dependent care expenses for 2021. For 2021, the American Rescue Plan Act of 2021 (the ARP) increases the amount of the credit for child and dependent care expenses. It also makes the credit refundable for taxpayers that meet certain residency requirements, increases the percentage of employment-related expenses for qualifying care considered calculating the credit, and modifies the phaseout of the credit for higher earners. For 2021, you may claim the credit on qualifying employment-related expenses of up to $8,000 (previously $3,000) if you had one qualifying person, or $16,000 (previously $6,000) if you had two or more qualifying persons. The maximum credit in 2021 increases to 50% of your employment-related expenses, which equals a maximum credit of $4,000 if you had one qualifying person (50% of $8,000), or $8,000 (50% of $16,000) if you had two or more qualifying persons. The more a taxpayer earns, the lower the percentage of employment-related expenses that are considered in determining the credit.

Under the ARP, the adjusted gross income level at which the credit percentage starts to phase out is raised to $125,000 for 2021. Above $125,000, the 50% credit percentage goes down as income rises. For 2021, the credit figured on Form 2441, Child and Dependent Care Expenses, line 9a, is unavailable for any taxpayer with an adjusted gross income over $438,000; however, you may still be eligible to claim a credit on Form 2441, line 9b, for 2020 expenses paid in 2021. See line 8 instructions for Form 2441 for the 2021 Phaseout Schedule. The refundable credit is reported on Form 2441, line 10. The nonrefundable credit is reported on Form 2441, line 11.

Changes to dependent care benefits for 2021. The ARP permits employers to increase the maximum amount that can be excluded from an employee's income through a dependent care assistance program. For 2021, the maximum amount is increased to $10,500 (previously $5,000). For married employees filing separate returns, the maximum amount is increased to $5,250 (previously $2,500).

Temporary special rules for dependent care flexible spending arrangements (FSAs). Section 214 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020 provides temporary COVID-19 relief for dependent care FSAs. This legislation allows employers to amend their dependent care plan to allow unused amounts to be used in a subsequent year. It also allows employers to amend their dependent care plan to allow participants to use amounts in a subsequent year if a dependent turned age 13 before the funds were used. Unused amounts from 2020 are added to the maximum amount of dependent care benefits that are allowed for 2021.

For a copy of Publication 503 (Child and Dependent Care Expenses for 2021 Returns), click on the link provided below:

https://www.irs.gov/pub/irs-pdf/p503.pdf

Additional Guidance on Coverage of Home COVID-19 Tests

Federal Time & Labor

OSHA Withdraws ETS Regarding the COVID-19 Vaccine Mandate

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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