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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/Territory/District

California Announces January 1, 2023, Minimum Wage

The California Department of Finance has **announced** that the minimum wage will increase to $15.50 per hour for all employees effective January 1, 2023.

The Details:

Under California law, once the minimum wage reached $15.00 per hour, the Director of Finance on or before August 1 each year, must determine and certify to the Governor and the Legislature whether an adjustment for inflation will be applied to the minimum wage beginning the following January 1st. The minimum wage of $15.00 per hour became effective as of January 1, 2022, for employers who employ 26 or more employees and is scheduled to become effective for January 1, 2023, for employers who employ 25 or fewer employees.

California law also requires that when the rate of increase in inflation exceeds 7 percent in the first year in which the minimum wage for employers with 26 or more employees is $15.00 per hour, the minimum wage for employers with 25 or fewer employees must be set to the same amount as for employers with 26 or more employees.

Consequently, it has been determined that the minimum wage for employees, regardless of whether they are employed by employers with 26 or more or 25 or less employees will be $15.50 per hour effective January 1, 2023.

Note: California does not allow the use of a tip credit when paying tipped employees so tipped employees will be entitled to at least the minimum wage of $15.50 per hour in addition to tips.

Next Steps:

Effective January 1, 2023, employers regardless of their number of employees, must pay all employees at least $15.50 per hour.

Illinois Prohibits Hairstyle Discrimination

Illinois has enacted legislation (Senate Bill 3616) that expressly prohibits employers from discriminating against individuals based on their hair texture or protective hairstyle. Senate Bill 3616 takes effect January 1, 2023.

The Details:

The Illinois Human Rights Act (IHRA) prohibits employers from discriminating against individuals based on their race and certain other characteristics. Senate Bill 3616 amends the IHRA to make clear that the definition of race includes traits associated with race, including but not limited to hair texture and protective hairstyles, such as braids, locks and twists.

Next Steps:

- Review dress codes, appearance policies and training to ensure compliance with Senate Bill 3616.
- If your policy simply indicates that employees must maintain kempt hair, consider clarifying that kempt means that the hair is clean and well-combed or arranged, and that employees can comply with a variety of hairstyles that meet those criteria.

Massachusetts Bans Hairstyle Discrimination

Massachusetts has enacted House Bill 4554 that expressly prohibits discrimination against individuals based on traits associated with race, such as hair texture, hair type, hair length and protective hairstyles. House Bill 4554 takes effect October 24, 2022.

The Details:

Existing Massachusetts law prohibits employers with six or more employees from discriminating against individuals because of their race and certain other characteristics. House Bill 4554 amends state law to clarify that this prohibition includes traits historically associated with race, including but not limited to, hair texture, hair type, hair length and protective hairstyles. The definition of protective hairstyle includes, but isn't limited to, braids, locs, twists, Bantu knots, hair coverings and other formations.

Next Steps:

- Review dress codes, appearance policies and training to ensure compliance with House Bill 4554.
- If your policy simply indicates that employees must maintain kempt hair, consider clarifying that kempt means that the hair is clean and well-combed or arranged, and that employees can comply with a variety of hairstyles that meet those criteria.

Michigan Court Voids Amended Minimum Wage and Paid Leave Laws

The Michigan Court of Claims has ruled that the legislature violated the state's Constitution when it adopted, and then amended, ballot initiatives to increase the minimum wage and require paid sick leave. If left standing, the ruling means the original versions of those laws would apply and the minimum wage could increase to $12.00 per hour and paid sick leave requirements could expand significantly as early as February 19, 2023.

The Details:

Background:

A proposed minimum-wage increase and paid-sick-leave requirement were set to be part of the voter ballot in the general election in November 2018. However, the Michigan legislature stepped in to adopt both measures in September 2018, removing them from the ballot. Because many in the legislature opposed the ballot measures, the passage of the laws was seen as a strategic maneuver to give the legislature a better opportunity to amend the laws and scale them back, which the legislature eventually did with Senate Bill 1171 and Senate Bill 1175 in the same legislative session.

Michigan Court of Claims Decision:

On July 19, 2022, the Michigan Court of Claims found that the legislature's maneuver was unconstitutional and voided the amended/scaled-back versions of the laws. The decision as it stands would mean the original versions of the laws would apply. On July 29, 2022, the same court entered an order delaying the effect of its decision until February 19, 2023, to give employers and state agencies additional time to accommodate the changes.

Note: The defendants in the case may ask for a longer stay of enforcement while their appeal is being litigated, which would delay the effective date further if the request is granted. Employers should watch for developments closely.

Summary of Changes:

Here's a summary of what would change if the original laws do go into effect on February 19, 2023.

- Minimum Wage:
  - The minimum wage for the remainder of 2023 would be the product of multiplying $12.00 per hour by the rate of inflation. The inflation-adjusted minimum wage would be calculated by the state and announced by the Michigan Department of Labor and Economic Opportunity (MDLEO) in the fall of this year. It would apply from February 19, 2023 through December 31, 2023.
  - The minimum cash wage for tipped employees would increase to 90 percent of the minimum wage for the remainder of 2023. In 2024 and thereafter, the minimum cash wage for tipped employees would be 100 percent of the minimum wage.
  - The minimum wage would also be adjusted for inflation each subsequent year.
- Paid Sick Leave:
  - The paid sick leave requirement would apply to all employers (as opposed to those with 50 or more employees) and all employees.
  - The accrual rate would change and the number of hours that can be accrued would increase.
  - The reasons for which employees may take leave would expand.
  - The definition of covered family members would expand.
  - The rules regarding pay during leave would change.
  - Employer and employee notice requirements would change.
  - Recordkeeping requirements would expand.

Paid Sick Leave Details:

Here are details on the paid sick leave rules if the original laws go into effect on February 19, 2023.

Coverage:

The paid sick leave requirement would generally apply to all employers and all employees who work in the state.

Accrual and Carryover:

Employees would be entitled to accrue one hour of sick leave for every 30 hours worked. Employers would be required to carryover unused sick leave to the following year. While there are generally no caps on accrual and carryover, employers may establish caps on use.

Use:

Employees of employers with 10 or more employees (for 20 or more calendar weeks in either the current or preceding year) would be entitled to use up to 72 hours of accrued paid sick leave per year. For the purpose of determining whether the 10-employee threshold is met, all individuals working for compensation on a full-time, part-time or a temporary basis must be counted.

Employees of employers with fewer than 10 employees would also be entitled to use up to 72 hours of accrued sick leave per year, but only 40 hours of it must be paid (the other 32 hours may be unpaid).

Employees would be entitled to use accrued sick leave for the following purposes:

- The employee's or a family member's mental or physical illness, injury or health condition
- The employee's or a family member's medical diagnosis, care or treatment of a mental or physical illness, injury or health condition, or preventive medical care
- For medical care, counseling, obtaining legal services, or participating in a civil or criminal proceeding when the employee or a family member is a victim of domestic violence or sexual assault
- The closure of the employee's place of business due to a public health emergency, the closure of their child's school or place of care due to a public health emergency, or when a healthcare provider has determined that the employee's or a family member's presence in the community would jeopardize the health of others

Family member would be defined as:

- A child, stepchild, legal ward, a child of a domestic partner, or a child to whom the employee stands in place of a parent
- Grandchild
- Grandparent
- Parent, or parent of spouse or domestic partner
- Sibling
- Spouse or domestic partner
- Any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship

Employee Notice:

If the need for leave is foreseeable, employers may require employees to provide up to seven days' advance notice. If the need for leave is not foreseeable, employers may require employees to provide notice as soon as practical.

Employer Notice:

Employers would be required to provide written notice to existing employees and new hires about their rights under the law. The notice must be provided in English, Spanish and any other language spoken by at least 10 percent of the employer's workforce (provided the state has translated the notice into that language). Employers must also display a poster in the workplace.

The state's Department of Licensing and Regulatory Affairs is responsible for creating a notice and poster for employers to use.

Records:

Employers would be required to retain a record of all hours worked and sick leave taken by employees for at least three years.

Documentation:

If employees use more than three consecutive days of sick leave, employers would be able to require reasonable documentation that the leave has been used for a covered reason. See **the law** for details on requiring documentation.

Pay During Leave:

During paid sick leave, employers would be required to pay employees their normal hourly wage or the minimum wage, whichever is greater. For employees whose hourly wage varies depending on the work performed, the "normal hourly wage" would be the average hourly wage during the pay period immediately prior to the use of the leave.

Relationship to Existing PTO Policies:

Employers would be able to use their existing paid time off policy to satisfy the law, as long as:

- Leave accrues at a rate equal to or greater than required by the law;
- Employees are entitled to use at least the same amount of leave that the law requires; and
- The leave may be used for the same purposes and under the same conditions as the law requires.

Note: Employers with fewer than 10 employees must allow employees to use paid leave before using unpaid leave.

Retaliation Prohibited:

Employers would be prohibited from retaliating against employees for exercising their rights under the law.

Next Steps:

- Prepare to comply with the expanded minimum wage and paid sick leave requirements if/when they go into effect. As of now, employers should expect the expanded requirements to go into effect on February 19, 2023.
- Monitor the situation closely for developments, including checking the **MDLEO's webpage on the decision**.
- Watch for updates from ADP.

Nebraska Amends Child Labor Laws

Nebraska has enacted Legislative Bill 780 that amends an employer's requirements for child labor certificates. Legislative Bill 780 is effective immediately.

Background:

Nebraska helps regulate child labor by requiring schools or the Nebraska Department of Labor to issue **employment certificates** to minors that are 14 and 15 years old.

Under the original law, Nebraska employers that employ such minors must:

- Keep complete lists of every minor employed in the building; one on file and one that is clearly visible and posted near the main entrance of the building where a minor is employed;
- Procure and maintain records of minors' employment certificates, and make them accessible to the Department of Labor and school attendance officers; and
- Provide the employment certificate to the minor upon termination of employment.

Additionally, a superintendent of the district where the minor resides (or a person authorized by the district officers if there is no superintendent) must approve an employment certificate.

Legislative Bill 780:

Legislative Bill 780 amends previous child labor laws in the following ways:

- Employers must keep a complete list of every minor employed in the building on file;
- Employers must provide the employment certificate to the child upon demand (as well as upon termination of employment); and
- A principal of the school the minor attends (or the chief administrative officer of the school or the superintendent of the school district in which the child resides) must approve an employment certificate.

Next Steps:

Nebraska employers should update their hiring policies and practices and train managers and HR personnel to help ensure compliance with Legislative Bill 780.

Oregon Enacts Final Rule on Heat Hazards

Oregon has enacted a final rule that requires employers to provide protections to workers that are exposed to high heat. The final rule is effective immediately.

Background:

The Oregon Occupational Safety and Health Administration (OSHA) had adopted an emergency rule in July 2021 that added protections for workers against heat hazards.

The Details:

The final rule creates a permanent safety standard that requires Oregon employers to take steps to prevent heat illness when temperatures meet or exceed certain temperatures. The standard also defines safety terms and provides limited exceptions to the requirements. See the **text of the law** for definitions and exceptions.

Heat Thresholds:

The standard applies to indoor and outdoor environments and adds requirements for when the temperature in the work area meets or exceeds 80 degrees Fahrenheit **(high heat)** and when the temperature exceeds 90 degrees Fahrenheit **(extreme heat)**.

The standard does not apply to:

- Employee transportation, when employees are in a vehicle and are not performing work;
- Work activities with less than 15 minutes of exposure in a 60-minute period;
- Buildings and structures that have a mechanical ventilation system that keeps the heat index below 80 degrees Fahrenheit;
- Emergency services; or
- Other less common exceptions. See the **text of the law** for further details.

High Heat Requirements:

Training Requirements:

Employers must provide annual training on heat illness prevention before employees begin work that would reasonably be anticipated to expose them to the risk of heat illness.

The training must be provided to all employees, including new employees, supervisory and non-supervisory employees, and be in a language and vocabulary that is readily understood and in a manner that facilitates employee feedback.

The training must cover the following factors:

- Heat acclimatization and what affects the tolerance of heat stress;
- Common signs and symptoms of the types of heat-related illness;
- Employee and employer rights and obligations;
- Environmental and personal risk factors relating to heat illness;
- The reasons to quickly report signs or symptoms of illness.

Note: Employees that work from home must also be provided this training.

Recordkeeping Requirements:

Employers must prepare and maintain written or electronic training records that can be provided to Oregon OSHA upon request and contain the:

- Name or identification of each employee trained;

- Date(s) of the training; and
- The name of the person who conducted the training.

Note: Employers must maintain each employee's most recent annual training record.

Cooldown Requirements:

Under the standard, when the temperature of a work area reaches the high-heat threshold, an employer must provide the following to employees:

- Access to an adequate supply of free cool or cold drinking water (enough for each employee to have 32 ounces of water per hour);
- Ample opportunity to drink water; or
- A shaded area that meets certain specifications or, if that is not safe or not feasible, includes other cooling measures.

Extreme Heat Requirements:

Employers with workers that may be exposed to extreme heat must:

- Develop and implement effective acclimatization practices that, through gradual exposure, allow for the temporary adaptation of the body to work in heat;
- Assign responsibility to at least one employee per worksite to make emergency medical service calls;
- Maintain effective worksite communication between supervisors and employees;
- Ensure that employees are observed and monitored for signs and symptoms of heat illness through:
  - The creation of a mandatory buddy system;
  - Ensuring regular communications to employees that work alone; or
  - Another equally effective system of observation or communication;
- Have all employees take required rest breaks in a shaded or temperature-controlled area;
- Implement a rest break schedule model as required by law, either:
  - A National Institute for Occupational Safety and Health plan;
  - An employer-made schedule that is based on the effect of clothing and PPE, work intensity, and the location and relative humidity at the work location; or
  - Oregon OSHA's simplified schedule. This requires longer and more frequent breaks as temperatures at the worksite increase, and requires breaks lasting at least 10 minutes every two hours.

See the **text of the law** for further breakdowns of the models.

Emergency Medical Plan Requirements:

Employers must maintain an effective emergency medical plan that addresses topics, such as:

- What to do if a worker is observed to have or reports signs or symptoms of heat illness (the worker must be relieved from duty, provided with means to reduce body temperature, and be offered on-site first aid or provided with access to emergency medical services); and
- The procedures (how and when) to contact emergency medical services.

Next Steps:

Oregon employers should ensure their health and safety policies meet all applicable final rule requirements, and provide training, water and appropriate rest spots to covered employees.

Oregon Requires Wildfire Smoke Exposure Training

Oregon has enacted a final rule that requires employers to take certain safety steps related to wildfire smoke exposure. The final rule took effect on **July 1, 2022**.

Background:

Due to an increase in wildfires, Oregon employees have faced increased health risks associated with wildfire smoke inhalation when the air quality is at or above a certain **threshold**.

The Details:

Under the final rule, Oregon employers must implement wildfire smoke training, monitor employee smoke exposure levels and the use of **filtering facepiece respirators** and communicate related smoke hazards to employees.

Monitoring and Controlling Exposure:

Employers must monitor their workers' exposure to wildfire smoke and measure the air quality when employees are, or are likely to be, exposed to certain levels of particulate matter. They must take measurements at the start of each shift and during the day as needed, using one or more of the following methods:

- Check the current average and forecasted Air Quality Index (AQI) value for PM 2.5 fine particles
- Monitor air quality advisories due to wildfire smoke
- Directly measure workplace air quality for PM 2.5 using the testing device's instructions

Employers must also implement safety controls whenever employees are exposed to AQI levels that meet or exceed 101, 251 and 501. See the **text of the law** for further details.

Training Requirements:

Employers must provide annual training to every employee that may experience exposure to certain air quality levels. The training must be provided before employees may be exposed to smoke, and be in a language and vocabulary readily understood, given in a way that facilitates employee feedback, and at a minimum, cover:

- The symptoms, risks, and acute and chronic health effects of wildfire smoke exposure (including chronic exposure);
- Information on filtering facepiece respirators, such as:
  - Their importance, limitations and benefits;
  - How to use and maintain them; and
  - Which job tasks workers should not perform while using respirators due to increased health risks.
- Steps for supervisory personnel to follow when an employee reports or has symptoms indicating a need for immediate medical attention (asthma attacks, chest pain, difficulty breathing, etc.);
- An employee's right to report health issues related to wildfire smoke exposure and get medical treatment without the fear of retaliation;
- Employer-implemented protections, such as:
  - Explaining the two-way communication system for wildfire smoke exposure control and making required filtering facepiece respirators readily accessible.
- How employees can obtain:
  - The current average and forecasted ambient air concentration for PM 2.5 and equivalent AQI value for their work location; and
  - Respirators before exposure (and replace them when needed).
- How workers can operate and interpret smoke exposure results.

Employer Communication Requirements:

Employers must create and implement a two-way communication system to share wildfire smoke information between supervisors and employees. The system must notify exposed employees concerning any changes in air quality, and encourage employees to relay changes in air quality issues with exposure control and health symptoms that may require medical attention.

Recordkeeping Requirements:

Employers must keep training records for each employee. The records must be kept for one year and include an employee's name or ID number, training dates and each trainer's name.

Exceptions:

The final rule exempts the following locations and circumstances from these requirements:

- Employees who work from home;
- When an employer predetermines that its operations will be suspended to prevent employee exposure to wildfire smoke (at an air quality level that meets or exceeds the threshold); or
- Enclosed buildings where the air is filtered by a ventilation system and enclosed vehicles where the air is filtered by a properly maintained cabin air filter system.

Note: Both the building and vehicles must have windows, doors, bays and other exterior openings that are kept closed, except when necessary to briefly enter or exit.

Next Steps:

Oregon employers should:

- Train managers and supervisory personnel on the rule;
- Create and implement the two-way communication system; and
- Ensure all worksites meet the safety requirements.

Puerto Rico Enacts New Law on Remote Workers of Out-of-State Employers

The Governor of Puerto Rico signed into law Act 52-2022 (the "Act") stipulating that beginning after December 31, 2021, out-of-state businesses with remote workers in Puerto Rico will not be considered "engaged in industry or business in Puerto Rico."

The Details:

As a result, out-of-state businesses with remote workers in Puerto Rico will not be required to withhold income tax, **if**:

(1) during the taxable year, the business does not have an office or other fixed business place in Puerto Rico;

(2) there is no economic nexus with Puerto Rico during the taxable year;

(3) the business is not considered a merchant under Sec. 4010.01 of the Internal Revenue Code of 2011;

(4) the teleworker is not an officer, director or majority shareholder of the taxpayer;

(5) the remote worker's services are provided for the benefit of clients or businesses of the taxpayer that do not have a connection with Puerto Rico; and

(6) the business reports the income paid to the telecommuter on Form W-2 or Form 499R-2/W-2PR.

Under the Act, an employer will not be considered to have established a nexus when a business has a remote worker in Puerto Rico even when:

(1) the remote worker's home office is necessary or a condition of employment;

(2) there is a business purpose allowing the employee's home to be used as their office;

(3) the employee is forced to attend to some basic duties of their job from an employer's location; and

(4) some expenses are reimbursed by the employer to the remote worker for a home office.

Next Steps:

Out-of-state businesses with remote workers in Puerto Rico should consult with their legal counsel and/or tax advisor to determine whether they should withhold income tax on their Puerto Rico remote worker's wages.

Vermont Adds Whistleblower Protections

Vermont has enacted legislation (House Bill 515) that prohibits employers from retaliating against whistleblowers. House Bill 515 is effective immediately.

The Details:

Vermont has enacted the Vermont Whistleblower and Protection Act (the "Act"), which prohibits employers from taking adverse action, such as terminating, discharging, demoting, suspending, threatening, harassing, directly or indirectly, or in any other manner retaliating against an individual who:

- Provides information to the state or a law enforcement agency concerning a possible violation of state or federal securities laws, including rules or regulations adopted under such laws, that has occurred, is ongoing, or is about to occur;
- Initiates, testifies or assists in an investigation or administrative or judicial action of the Commissioner of the Securities and Exchange Commission (SEC) or other law enforcement agency based upon or related to such information;
- Makes disclosures:
  - Required by or protected under the Sarbanes-Oxley Act of 2002; The Securities Act of 1933; The Securities Exchange Act of 1934; the state's Securities Act; or any other law, rule, or regulation subject to the federal SEC's jurisdiction.
  - To a supervisory authority or to another person working for the employer who has the authority to investigate, discover, or terminate misconduct on items subject to the Commissioner of the Vermont Department of Financial Regulation or the SEC's jurisdiction.

Under the Act, employers also cannot:

- Take action that impedes an individual from communicating directly with the Commissioner about a possible securities law violation (see **the text of the law** for further details); or
- Waive the rights and remedies established under the Act with any agreement, policy form, or condition of employment.

Protected Information:

The Act exempts from public disclosure information that could reasonably be expected to reveal a whistleblower's identity. It does not prevent using certain information as evidence in certain legal proceedings (see **the text of the law** for further details).

Enforcement:

Under the Act, individuals that are retaliated against:

- May be eligible for reinstatement with the restoration of their previous compensation, fringe benefits, and seniority;
- May bring an action within the later of:
  - Six years after the date on which the violation occurred; or
  - Three years after the date when an employee knows (or reasonably should know) the facts necessary for a claim.

Note: The law prohibits claims that occur more than ten years after the date of the violation.

Exceptions:

The Act does not protect an individual that knowingly or recklessly makes false, fictitious, or fraudulent statements, or uses false documents, as part of, or in connection with, the information provided.

Next Steps:

Vermont employers should review and revise whistleblowing and anti-retaliation policies and practices.

Vermont Amends Crime Victim Leave Law

Vermont has enacted legislation (House Bill 477), which extends protections under its crime victim leave law. House Bill 477 is effective immediately.

Background:

Vermont employers must provide unpaid leave to certain employees who are the victims of a crime to attend a deposition or court proceeding. Employers must also post a written notice regarding an employee's right to crime victim leave.

Covered Individuals:

The law covers a person who has obtained a relief from abuse order, an order against stalking or sexual assault or an order against abuse of a vulnerable adult; or someone who sustains physical, emotional, or financial injury or death as a direct result of the commission or attempted commission of a crime or act of delinquency.

It also includes an employee's family member, provided they are a minor, a person who has been found to be incompetent or a homicide victim.

Note: A victim must be identified as such in an affidavit filed by a law enforcement official with a prosecuting attorney; and must include the victim's child, foster child, parent, spouse, stepchild or ward of the victim who lives with the victim, or a parent of the victim's spouse, provided that the person is not identified in the affidavit as the defendant.

House Bill 477:

The law is expanded to include ***alleged*** victims (those that are alleged in a qualifying affidavit) who sustain physical, emotional, or financial injury or death as a direct result of the commission or attempted commission of a crime or act of delinquency, and their family members as defined under current law.

House Bill 477 also amends the following definitions:

Violent Crime:

The law clarifies that a violent crime under law is a "**listed crime**" under Vermont law, and includes any comparable offense in another jurisdiction.

Family Member:

An alleged victim is a person who is either a minor; was found to be incompetent; is alleged to have suffered physical or emotional injury, or was killed, due to the violent crime or act of delinquency. They must also not be identified in an affidavit as the defendant, and be the alleged victim's:

- Child, foster child, stepchild, or ward who lives with the alleged victim;
- Spouse or civil union partner;
- Domestic Partner: Individuals who have an enduring domestic relationship of a spousal nature, as long as they:
  - Are at least 18 years of age;

- Have shared a residence for at least six consecutive months;
- Are not married to or considered a domestic partner of someone else;
- Meet the blood relation requirements under state law; and
- Have agreed between themselves to be responsible for the welfare of each other.

- Sibling;
- Grandparent;
- Grandchild;
- Legal guardian, parent or a parent of the alleged victim's spouse, domestic partner, or civil union partner; or
- An individual for whom the alleged victim has day-to-day responsibilities to care for and financially support; or, for an alleged victim, an individual who had such responsibility for the alleged victim when the alleged victim was a child.

Next Steps:

Vermont employers should review their leave policies and procedures to ensure compliance with House Bill 477.

Vermont Sets Discrimination Claim Timeframe

Vermont has enacted legislation (House Bill 729) that limits the time an employee may file a discrimination claim to six years. House Bill 729 is effective immediately.

The Details:

Vermont's Fair Employment Law prohibits employers from discriminating on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, ancestry, place of birth, age, crime victim status, or physical or mental condition.

House Bill 729 limits the period of time that an individual may file a discrimination claim to six years.

State of Washington Clarifies Paid Family and Medical Leave Waiting Period

Washington has enacted a final rule that clarifies how the seven-day waiting period impacts Washington's Paid Family and Medical Leave program. The final rule is effective immediately.

Background:

Under state law, qualified workers in Washington are generally eligible for up to 12 weeks of paid family and medical leave per year after a seven-day waiting period to:

- Bond with a child after a child's birth or placement; or
- Use the leave for a qualifying military purpose.

The Details:

The final rule clarifies that the waiting period does not:

- Apply to medical leave taken upon the birth of a child; or
- Reduce the maximum duration of an employee's available paid family or medical leave.

Next Steps:

Washington employers should review their paid family and medical leave policies and practices to ensure compliance with the **final rule**.

State of Washington Prohibits Nondisclosure Agreements and Retaliation

Washington has enacted legislation (House Bill 1795), which prevents employers from discriminating or retaliating against employees for disclosing certain employment law violations, and prohibits related nondisclosure agreements. House Bill 1795 is effective immediately.

Background:

Washington had enacted **legislation** (Senate Bill 5996) in 2018 that restricted the use of nondisclosure agreements that prohibited the disclosure of sexual assault or sexual harassment. House Bill 1795 changes this law and adds new provisions to address nondisclosure agreements, policies and employee discipline.

House Bill 1795:

Under the new law, an employer cannot discharge, discriminate or retaliate against a candidate, current or former employee, or independent contractor who discloses or discusses conduct that:

- They reasonably believe violates an anti-harassment, nondiscrimination, nonretaliation, wage and hour, or sexual assault prevention law; and
- Occurs in the workplace or at work-related events whether on or off the employer's premises.

In addition, employers cannot request or require a covered individual to enter into an employment agreement, or enforce such agreement, that violates House Bill 1795. However, employers may take lawful actions to protect trade secrets, proprietary information or confidential information.

Enforcement:

Employers that are found in violation of the law may face penalties.

Next Steps:

Washington employers should review, and revise where necessary, agreements and policies with nondisclosure provisions and consult legal counsel to ensure compliance with House Bill 1795.

Local

Austin, Texas, Bans Hairstyle Discrimination

Austin, Texas, has amended its city code to prohibit employers from discriminating against individuals on traits associated with race, such as hair texture, hair type, hair length and protective hairstyles. The amendment is effective immediately.

The Details:

Employers are prohibited from discriminating on the basis of a protective hairstyle, which the law defines as a hairstyle necessitated by, or resulting from, the characteristics of a hair texture or hairstyle commonly associated with race, national origin, ethnicity or culture.

Protective hairstyles include afros, Bantu knots, braids, cornrows, curls, locs, twists and hair that is tightly coiled or tightly curled.

Next Steps:

Employers in Austin should review their dress codes, appearance policies and training to ensure compliance.

Note: If your policy indicates that employees must maintain kempt hair, consider clarifying that kempt means that the hair is clean and well-combed or arranged, and that employees can comply with a variety of hairstyles that meet those criteria.

City of Los Angeles Enacts Healthcare Workers Minimum Wage Ordinance

Los Angeles Mayor Eric Garcetti on July 7, 2022, signed into law the Healthcare Workers Minimum Wage Ordinance (the "Ordinance").

The Details:

Under the Ordinance, **effective August 13, 2022**, the minimum wage for "healthcare workers" employed at privately-owned healthcare facilities within the City of Los Angeles will be no less than $25.00 per hour.

"Healthcare Worker" includes a clinician, professional, nonprofessional, nurse, certified nursing assistant, aide, technician, maintenance worker, janitorial or housekeeping staff, groundskeeper, guard, food service worker, laundry worker, pharmacist, nonmanagerial administrative worker and business office clerical worker, but does not include a manager or supervisor.

In addition, beginning January 1, 2024, the $25.00 minimum wage will be increased annually based on the cost of living.

The Ordinance defines "Covered Healthcare Facility" as the following types of facilities, provided that they are privately owned and are located within the boundaries of the City of Los Angeles:

1. A licensed general acute care hospital as defined in Section 1250(a) of the California Health and Safety Code.
2. A clinic, as defined in Section 1206(d) of the California Health and Safety Code, that is conducted, operated, or maintained as an outpatient department of a general acute care hospital or acute psychiatric hospital.
3. A licensed acute psychiatric hospital as defined in Section 1250(b) of the California Health and Safety Code, including an acute psychiatric hospital that is a distinct part of another health facility.
4. A licensed skilled nursing facility, as defined in Section 1250(c) of the California Health and Safety Code, that is a distinct part of a general acute care hospital or acute psychiatric hospital.
5. A licensed residential care facility for the elderly, as defined in Section 1569.2 of the California Health and Safety Code, that is located or licensed at the same address as an acute psychiatric hospital or is located on the same campus or parcel of real property as an acute psychiatric hospital.
6. A licensed chronic dialysis clinic as described in Section 1204(b)(2) of the California Health and Safety Code.
7. All facilities that are part of an Integrated Healthcare Delivery System.

It is important to note that the Ordinance allows a one-year, court-granted waiver under the conditions as described below:

> This article is not intended to cause reduction in employment or work hours for Healthcare Workers. Therefore, a court may grant a one-year waiver from the Minimum Wage requirements of this article if an employer can demonstrate by substantial evidence that compliance with this article would raise substantial doubt about the employer's ability to continue as a going-concern under generally accepted accounting standards. The evidence must include documentation of the employer's financial condition, as well as the condition of any parent or affiliated entity, and evidence of the actual or potential direct financial impact of compliance with this article. A one-year waiver granted by a court pursuant to this section does not exempt an employer from complying with any and all federal, state, or local laws and regulations, including any other applicable federal, state, or local minimum wage requirement.

Next Steps:

Employers at privately-owned healthcare facilities, unless granted a one-court granted waiver, must as of August 13, 2022, pay covered employees at least $25.00 per hour.

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

22-1100-S4_ord_187566_08-14-2022.pdf (lacity.org)

Additional New York State Jurisdictions Require Wage Transparency

Westchester County and Ithaca, New York, have joined New York City in requiring employers to provide greater wage transparency.

Background:

The New York City Council enacted a pay transparency law, which requires New York City employers to include the minimum and maximum starting salary for advertised jobs, promotions or transfer opportunities beginning November 1, 2022.

Additional Jurisdictions Join in Requiring Wage Transparency:

Westchester County and Ithaca, New York have joined New York City in enacting wage transparency laws:

Westchester County:

Westchester County employers will be prohibited from advertising a job, promotion or transfer opportunity without also including the minimum and maximum salary for the job, promotion, or transfer in the job posting or advertisement beginning November 6, 2022.

Under the **amended Human Rights Law**:

- The requirements apply to postings for positions that are required to be performed, in whole or in part, in Westchester County, whether in an office, in the field or remotely.
- Wage range is defined as the lowest-to-highest salary that an employer in good faith believes it would, at the time of the posting, pay for the position.
- Job posting is defined as a written or printed communication, whether electronic or hard copy, where the employer is recruiting and accepting applications for a particular role.

The amendment also specifically excludes general requests for applications, if the requests only indicate that an employer is accepting applications without reference to a particular role, such as a help wanted sign.

Ithaca:

Ithaca employers with four or more employees must disclose the minimum and maximum hourly or salary compensation for an employment opportunity, such as a job, promotion, or transfer opportunity, in job postings, beginning September 1, 2022.

The amended Human Rights Ordinance will make it an unlawful discriminatory practice for an employment agency or employer (or their employees or agents) to advertise an employment opportunity without stating the minimum and maximum hourly or salary compensation that the employer in good faith believes at the time of posting it would pay for the advertised job, promotion or transfer opportunity.

Note: The Ordinance does not contain guidance on geographic or jurisdictional scope.

Next Steps:

Employers should:

- Review and update job advertisements, recruiting and hiring practices.
- Train HR personnel on the new wage transparency requirements.

Philadelphia Enacts Commuter Transit Benefit Requirement

Philadelphia Mayor Jim Kenney has signed into law the Employee Commuter Transit Benefit Ordinance.

The Details:

Effective December 31, 2022, "covered employers" in Philadelphia with 50 or more employees must provide covered employees with a commuter transit benefit program.

A covered employer is defined as an individual, co-partnership, association, corporation, or other entity that employs 50 or more covered employees for compensation (excluding government employers).

A covered employee is one who works at least 30 hours per week for compensation within the geographic boundaries of Philadelphia for the same employer within the previous 12 months.

Under the ordinance, a "covered employer" must make available for any "covered employee" at least one of the following:

- Election of a pre-tax, payroll deduction for a fare instrument (pass, token or fare card) or transportation in a commuter highway vehicle ($280 per month indexed for 2022) or a qualified bicycle expense;* or
- An employer-paid benefit whereby the employer supplies a pass, token or fare card for a covered employee's mass transit expense; or
- Any combination of the above.

*Note that qualified bicycle commuting reimbursement was suspended for tax years 2018-2025 under the 2017 Tax Cuts and Jobs Act.

Next Steps:

Covered employers in Philadelphia must provide the required commuter transit benefit to covered employees no later than December 31, 2022.

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

http://phlcouncil.com/wp-content/uploads/2022/04/CM-Gym-4.21-Commuter-Benefits-Ordinance.pdf

Federal

EEOC Updates Guidance on COVID-19 Testing & Related Issues

Click **here** for the article.

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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