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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 Updates Guidance and Resources for New Pay Data Reporting Rules

California's Civil Rights Division (CRD) has released **updated guidance and resources** to reflect recent changes to the pay data reporting requirements for employers with 100 or more employees. The changes were a result of the enactment of Senate Bill 1162.

The Details:

Background:

The following chart summarizes the changes to pay data reporting rules made by Senate Bill 1162, which took effect January 1, 2023.

Pay Data Reporting	
Prior to January 1, 2023	**Beginning January 1, 2023**
A private employer that has 100 or more employees and is required to file an annual Employer Information Report (EEO-1) under federal law must submit a pay data report to the state on or before March 31 each year.	A private employer that has 100 or more employees must submit a pay data report covering the prior calendar year to the state on or before the second Wednesday of May each year, **beginning May 10, 2023**, regardless of whether they are required to submit an EEO-1.
	A private employer that has 100 or more employees hired through labor contractors within the prior calendar year must submit a separate pay data report to the state covering those employees. The private employer must also disclose on the pay data report the ownership names of all labor contractors used to supply employees. A labor contractor must supply all necessary pay data to the private employer.

Pay Data Reporting	
Prior to January 1, 2023	**Beginning January 1, 2023**
The pay data report must include the following information: The number of employees by race, ethnicity and sex in each of the following job categories: • Executive senior level officials and managers • First or mid-level officials and managers • Professionals • Technicians • Sales workers • Etc.	In the addition to what was required before January 1, 2023, the pay data report must include the median and mean hourly rate for each combination of race, ethnicity and sex within each job category.
For employers with multiple establishments, the employer must submit a report for each establishment.	A multiple-establishment employer does not submit separate reports for each establishment. Based on the recent guidance (**see below**), this change means a multiple-establishment employer submits a single report that contains all establishments.
An employer can comply with the requirement if they submit a copy of their EEO-1 report, containing the same or substantially similar pay data information required.	Employers can no longer comply by submitting a copy of their EEO-1 report in lieu of a CA pay data report.
Employers may be responsible for the costs associated with the state's efforts to enforce compliance.	Employers that fail to file the required report may be fined up to $100 per employee, and up to $200 per employee for a subsequent failure to file. Employers may also be responsible for the costs incurred with the state's efforts to enforce compliance.

Updated Guidance and Resources:

The state has now updated **answers to frequently asked questions** (FAQs), its **user guide** and **templates** to reflect the changes. For example, in the updated FAQs, the state addresses how employers should calculate individual, mean and median hourly rates, providing the following information.

How do I calculate an employee's hourly rate?

Employers must calculate each employee's individual hourly rate before calculating the mean and median hourly rates. The hourly rate is derived from an employee's total annual earnings for the entire reporting year, as shown on Internal Revenue Service (IRS) Form W-2 Box 5. To calculate the hourly rate, divide the employee's W-2 Box 5 income by the number of hours the employee worked.

> **Example:** An employee's W-2 Box 5 income is $100,000 and they worked 2,080 hours.
>
> To calculate the employee's hourly rate:
>
> Divide $100,000 by 2,080 to get: **$48.08.**

If an employee has wages not reported in Internal Revenue Service (IRS) Form W-2 Box 5, as may be the case for an H-2A visa holder, for example, use W-2 Box 1 for that employee's total annual earnings and divide that amount by the number of hours the employee worked.

How do I calculate the mean hourly rate?

Employers report the mean hourly rate for each grouping of employees with the same establishment, job category, race/ethnicity and sex combination. The mean hourly rate is calculated by adding the individual hourly rates for each employee in the group, then dividing that sum by the number of employees in the group.

Example: Employee A and Employee B are the only two employees grouped in the same establishment, job category, race/ethnicity and sex combination.

Employee A's hourly rate: $20.00
Employee B's hourly rate: $21.00

To calculate the mean hourly rate for the group:

Add Employee A and Employee B's hourly rates ($41.00) and divide by the number of employees (2) to get: **$20.50**.

If there is only one employee grouped in the same establishment, job category, race/ethnicity and sex combination, that employee's hourly rate is reported as the mean hourly rate.

Example: Employee A is the only employee in their same establishment, job category, race/ethnicity and sex combination. Their employer would report Employee A's hourly rate (**$20.00**) as the mean hourly rate.

How do I calculate the median hourly rate?

Employers are required to report the median hourly rate for each grouping of employees with the same establishment, job category, race/ethnicity and sex combination. The median hourly rate is calculated by ordering the hourly wages of each employee in the group from smallest-to-largest and selecting the middle number.

Example: Employees A, B and C are the only three employees grouped in the same establishment, job category, race/ethnicity and sex combination:

Employee A's hourly rate: $20.00
Employee B's hourly rate: $21.00
Employee C's hourly rate: $22.00

To calculate the median hourly rate for the group:

Arrange all three employees' hourly rates in order from smallest-to-largest ($20.00, $21.00, $22.00) and take the middle number to get: **$21.00**.

If there is only one employee grouped in the same establishment, job category, race/ethnicity and sex combination, that employee's hourly rate is reported as the median hourly rate.

Example: Employee A is the only employee in their same establishment, job category, race/ethnicity and sex combination. Their employer would report Employee A's hourly rate (**$20.00**) as the median hourly rate.

If the number of employees in the same establishment, job category, race/ethnicity and sex combination is an even number, the median hourly rate is calculated by arranging the hourly wages of each employee in the group from smallest-to-largest and taking the mean of the two middle numbers. If there are only two employees in the same category, the median hourly rate would be the same as the mean of their two hourly rates.

Example: Employees A thru D are all in the same establishment, job category, race/ethnicity and sex combination.

Employee A's hourly rate: $20.00
Employee B's hourly rate: $21.00
Employee C's hourly rate: $22.00
Employee D's hourly rate: $23.00

To calculate the median hourly rate:

Find the mean (the average) of the two middle numbers. In this case, you would add $21.00 and $22.00 ($43.00) and divide by two to get: **$21.50**.

The guidance also clarifies that employers with multiple establishments must submit a single report that includes each establishment.

Does Senate Bill 1162 mean that multiple-establishment employers have to submit a separate report for each establishment?

No. The California pay data reports are purposefully designed to consolidate all of an employer's relevant data. For that reason, Senate Bill 1162 conformed Government Code Section 12999 to the system built by the CRD. A multiple-establishment employer submits a single Payroll Employee Report and/or a single Labor Contractor Employee Report, depending on which of these reports the employer is required to file.

The guidance also makes clear that when reporting to the CRD, employers must include their employees assigned to California establishments and/or working within California. Unlike in years past, employers may not report employees who are working outside of California and are assigned to an establishment outside of California.

Next Steps:

If you are a covered employer:

- Read the updated **FAQs** and **user guide**.
- Review the templates (**Excel** and **CSV**).
- Determine your "Snapshot Period" to identify the employees who will be included in your report. Employees assigned to California establishments and/or who work from California must be included. The "Snapshot Period" is a single pay period between October 1 and December 31 of the reporting year. You are free to choose the single pay period between those dates that will serve as your 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, 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, 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.
- Within each employee group in each establishment, calculate the group's mean hourly rate and the group's median hourly rate.
- Gather additional information about the employer and its establishments, such as:
    - Address on file with California's 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);
    - Data Universal Number System (DUNS) Number; and
    - Whether you are a state contractor.

- Register in the portal and build the report.
  - First, **in the portal**, provide information about your organization and, if relevant, its parent company, as well as information on all affiliated entities included in the report (Employer Info and Submission Info).
  - Next, provide establishment-level and employee-level information (Establishment and Employee Details) by uploading an Excel file by using CRD's template, uploading a .CSV file, or using the portal's fillable forms.
- Provide any clarifying remarks in the relevant field(s) and correct any errors identified by the portal.
- Certify the final report and submit it by **May 10, 2023**.

If you are required to file a pay data report for labor contractors, you must also follow a similar process for them.

California to Adopt New COVID-19 Prevention Rules

The California Division of Occupational Safety and Health (Cal/OSHA) has approved COVID-19 Prevention Non-Emergency Regulations (NER) to replace Emergency Temporary Standards (ETS). On February 3, 2023, the Office of Administrative Law (OAL) approved the new COVID-19 prevention regulations, which means that these new regulations are in effect as of February 3, 2023 and will remain in effect for the next two years.

The Details:

The NER includes some of the same requirements found in the ETS, as well as new provisions.

Key Changes:

Here are some of the key changes contained in the NER:

- Employers are no longer required to maintain a stand-alone COVID-19 Prevention Plan. Instead, employers must now address COVID-19 as a workplace hazard under the requirements found in **Section 3203** (Injury and Illness Prevention Program, IIPP), and include their COVID-19 procedures to prevent this health hazard in their written IIPP or in a separate document.
- The regulations do not require employers to pay employees while they are excluded from work because of COVID-19. Instead, the regulations require employers to provide employees with information regarding COVID-19-related benefits that they may be entitled to under federal, state or local laws; their employer's leave policies; or leave guaranteed by contract.
- Employers are no longer required to make testing available at no cost/during paid time to employees who have COVID-19 symptoms, but didn't have close contact in the workplace.
- Instead of having specific training requirements, the NER merely states that employers must provide effective COVID-19 hazard prevention training to employees during their IIPP training.
- "Close contact" is now defined by looking at the size of the workplace in which the exposure takes place. For indoor airspaces of 400,000 or fewer cubic feet, "close contact" is now defined as sharing the same indoor airspace with a COVID-19 case for a cumulative total of 15 minutes or more over a 24-hour period during the COVID-19 case's infectious period. For indoor airspaces of greater than 400,000 cubic feet, "close contact" is defined as being within six feet of a COVID-19 case for a cumulative total of 15 minutes or more over a 24-hour period during the COVID-19 case's infectious period. Offices, suites, rooms, waiting areas, break or eating areas, bathrooms or other spaces that are separated by floor-to-ceiling walls shall be considered distinct indoor spaces.
- The regulations use the definition of "infectious period" found in the most recent California Department of Public Health (CDPH) **State Public Health Officer Order**.
- The regulations give more options for employers to provide notice to close contacts.
- Instead of zero new cases, employers may exit from outbreak protocol when there is one or no new COVID-19 cases within a 14-day period.

Cal/OSHA is updating its **resources** to assist employers with understanding their obligations required by the NER.

Key Carryover Provisions:

Here are some of the key requirements found in both the ETS and NER:

- Employers must provide face coverings and ensure they are worn by employees when CDPH requires their use.
- Employers must review CDPH Guidance for the Use of Face Masks to learn when employees must wear face coverings. Employees still have the right to wear face coverings at work and to request respirators from the employer when working indoors and during outbreaks.
- Employers must report information about employee deaths, serious injuries and serious occupational illnesses to Cal/OSHA, consistent with existing regulations.
- Employers must make COVID-19 testing available at no cost and during paid time to employees following a close contact.
- Employers must exclude COVID-19 cases from the workplace until they are no longer an infection risk and implement policies to prevent transmission after close contact.
- Employers must review CDPH and Cal/OSHA guidance regarding ventilation, including CDPH and Cal/OSHA Interim Guidance for Ventilation, Filtration and Air Quality in Indoor Environments. Employers must also develop, implement and maintain effective methods to prevent COVID-19 transmission by improving ventilation.

Next Steps:

- Read the **NER** in full.
- FAQs and an updated model COVID-19 Program are available on the **Cal/OSHA website**.
- Review and amend policies and procedures to ensure they reflect the new rules.
- Train supervisors on the upcoming changes.

Colorado Says PHEL No Longer Applies to Flu and RSV

Colorado's public health emergency leave (PHEL) requirement no longer applies to the flu, respiratory syncytial virus (RSV) and similar respiratory illnesses, according to guidance issued by the Colorado Department of Labor and Employment (CDLE). Beginning **January 8, 2023**, the PHEL requirement applies to COVID-19 only.

The Details:

By way of background, all employers in Colorado must provide up to 80 hours of public health emergency leave (PHEL). Beginning November 11, 2022, PHEL covered not only COVID-19 related absences, but also those related to RSV and the flu due to their inclusion in Colorado's public health emergency (PHE) declaration on that date. However, RSV and the flu were removed from the January 8, 2023 PHE declaration, so only COVID-19 is covered by PHEL, as of that date.

According to the CDLE, employees may use PHEL for a range of PHE-related needs, not just for confirmed cases. These needs include:

- Symptoms of COVID-19.
- Quarantining or isolating due to exposure.
- Testing for COVID-19.
- Vaccination and its side effects.
- Inability to work due to health conditions that may increase susceptibility or risk of COVID-19.
- Needs to care for family (illness, school closure, etc.).

Employers cannot require documentation from employees to show that leave is for PHE-related needs, according to the CDLE guidance.

The 80-hour PHEL requirement will continue until four weeks after all applicable PHE declarations end or are suspended. Based on current emergency declarations, the PHEL requirement will continue at least into May 2023, and may extend longer if either the federal or the state PHE declaration is renewed further into 2023.

Next Steps:

- Ensure leave policies and practices comply with the PHEL requirement.
- Train supervisors on the changes.
- Watch for developments.

Colorado Updates Rules on Calculating Pay Rate for Paid Leave

Colorado's Department of Labor and Employment (CDLE) has issued updated rules on how employers must calculate the rate of pay when employees use paid sick leave and public health emergency leave under the Healthy Families and Workplaces Act (HFWA).

The Details:

Under the HFWA, leave must be paid at the same rate and with the same benefits, including health benefits, as the employee normally earns during hours worked, not including overtime, bonuses or holiday pay. Leave must be paid on the same schedule as regular wages. The CDLE continues to revise the rules on how to make this calculation.

The latest changes took effect January 1, 2023. Under the **latest rules**, employers will no longer be required to use a calculation like the one used for determining an employee's regular rate of pay for overtime purposes.

Rules Effective Through 12.31.22	Rules Effective 1.1.23
The HFWA pay rate: • Must be at least the applicable minimum wage; and • Must be calculated using the same rules applicable to calculating an employee's "regular rate" for overtime purposes, except that: o Bonuses included in the regular rate calculation are excluded from the HFWA pay rate calculation; o HFWA regular rate shall be determined based upon the employee's pay over the 30 calendar days prior to taking leave, unless the employee has not yet worked 30 calendar days, in which case the longest available period must be used.	The HFWA pay rate: • Must be at least the applicable minimum wage; • Must be calculated based upon the employee's pay over the 30 calendar days prior to taking leave; o If an employee has not yet worked 30 calendar days, the longest available period must be used. • Must include any set hourly or salary rates, shift differentials, tip credits and commissions; and • Must not include overtime, bonuses or holiday pay.

Next Steps:

- Ensure paid sick leave and public health emergency leave under the HFWA is paid out in accordance with the updated rules. This includes, but is not limited to, the required 30-day look back period

District of Columbia Delays Increase to Cash Wages for Tipped Employees

The Council of the District of Columbia (D.C.) has moved back the effective date of the Tip Credit Elimination Act from January 1, 2023, to May 1, 2023.

The Details:

On November 8, 2022, voters in D.C. approved Initiative 82 that incrementally eliminates the tip credit that employers may use to pay tipped employees. The first increase to the cash wage of $6.00 per hour was scheduled to take place on January 1, 2023. However, due to the time needed to certify election results, the mandatory congressional review period and the Council's recent inability to transmit legislation to Congress due to the protracted vote for Speaker of the House of Representatives, the D.C. Council in an emergency session, revised the effective date of the $6.00 minimum cash wage for tipped employees to May 1, 2023.

The second increase to the cash wage approved in Initiative 82 to $8.00 per hour is still scheduled to take effect on July 1, 2023. In addition, subsequent annual increases occurring on July 1 of each year are also not affected by the initial delay in the $6.00 cash wage requirement.

Next Steps:

Effective May 1, 2023, D.C. employers of tipped employees must pay a minimum cash wage of $6.00. Until such time, tipped employees are required to be paid $5.35 per hour in cash wages. On July 1, 2023, D.C. tipped employees must be paid a minimum of $8.00 in cash wages.

Illinois Issues Rules on Equal Pay Reporting

The Illinois Department of Labor (IDOL) has published final regulations to implement a requirement for Illinois employers with 100 or more employees to obtain an Equal Pay Registration Certificate (EPRC).

The Details:

Background:

By way of background, the Illinois Equal Pay Act (IEPA) was amended in 2021 to require that private employers report certain payroll information to the IDOL and obtain an EPRC. The requirement applies to any private employer that has 100 or more employees in Illinois and is required to file an annual EEO-1 with the U.S. Equal Employment Opportunity Commission (EEOC).

To obtain an EPRC, the employer must:

- Submit a copy of the business's most recently filed EEO-1 report.
- Provide a list of employees broken down by race, ethnicity and gender.
- Report employee-level data which includes: the total wages paid to each employee during the previous calendar year; the county in which the employee works; and dates of employment, among other information.
- Provide an equal pay compliance certification.
- Include in the certification an explanation of compensation determinations and policies, such as whether the employer uses a market-pricing approach; prevailing wage; a performance pay system; internal analysis or another approach to determine wages and benefits.
- Submit a $150 filing fee.

Final Regulations:

Enrollment:

The final regulations clarify that any covered business that is authorized to transact business in Illinois on or before March 23, 2021 must submit an enrollment form notifying the IDOL that the business is subject to the requirement. A business that becomes authorized to transact business in the state on or after March 24, 2021 must submit an enrollment form by January 1 of the calendar year that immediately follows. The enrollment form must include designated contact information for the business.

Note: Enrollment forms must be submitted via the IDOL's **web-based portal**.

Filing Deadline:

The IDOL is randomly assigning a deadline for applying for an EPRC, with the latest deadline being March 23, 2024. Each employer will receive at least 120 calendar days' notice from the IDOL of their deadline. Once the employer submits a completed application, the IDOL will take up to 45 days to decide whether to issue an EPRC or a rejection notice. If an employer is issued a rejection notice, it will have 30 days to resolve any issues and resubmit the application. Every two years after the initial due date, all covered employers must obtain a new EPRC, unless the employer has fewer than 100 employees on December 31 of the year immediately preceding the application due date.

Employee:

The regulations define "employee" as anyone performing a service for a business whose base of operations, or if there is no base of operations, the place from which the service is directed or controlled, is located within Illinois. It also includes remote workers who are performing a service for a business whose base of operations isn't in any state in which some part of the service is performed, but the individual's residence is in Illinois.

Compliance:

The regulations define what it means when employers certify they are in compliance with applicable nondiscrimination laws when submitting the equal pay compliance statement. Under the regulations, "compliance" means that, as of the date of application or recertification, the business either:

- Hasn't had any final and non-appealable adverse judgment or final and non-appealable administrative ruling entered against it in the preceding two years under:
  - o Title VII of the Civil Rights Act of 1964;
  - o The Equal Pay Act of 1963;
  - o The Illinois Human Rights Act;
  - o The Equal Wage Act; or
  - o the Equal Pay Act of 2003; or
- Has corrected any final and non-appealable adverse judgment or final and non-appealable administrative ruling entered against it under those laws.

Average Compensation:

This means the average wages for a specific occupation in the State of Illinois as determined by the most recent U.S. Bureau of Labor Statistics (BLS) State Occupational Employment and Wage Estimates publication.

Employee-Level Data:

This includes: the total wages paid to each employee during the previous calendar year; the county in which the employee works; and dates of employment, among other information.

Wages:

For reporting purposes, the term "wages" means any compensation paid to an employee by an employer pursuant to an employment contract or agreement between the two parties, including wages, salaries, earned commissions, earned bonuses, stocks and ownership shares. "Wages" does not include the value of retirement benefits, health insurance benefits or other fringe benefits.

Can I use employee's Annual Salary, W2-Box 1, or W2-Box 5 for wages?
W2-Box 5 should have the most complete information for the purposes of the EPRC data reporting.

Information to Include in Application:

The application must include a list of all employees during the payroll year (January 1 through December 31) immediately preceding the application due date, separated by gender, race and ethnicity categories in a text-searchable, sortable Microsoft Excel file or .CSV file format, as well as any other information required by the IDOL on the application form. For the purposes of this report, wages must be reported by either the mean hourly wage (for employees' paid hourly wages) or annual mean wage (for salaried employees). The employer may provide any other information it believes is relevant to explain any pay disparities amongst its employees.

Next Steps:

If you have 100 or more employees in Illinois:

- Read the **regulations** in full (see page 155 of the register, page 161 of the PDF).
- Ensure you have **provided the required contact information** to the IDOL. The IDOL will then provide you with an EPRC application due date, which will be at least 120 calendar days before your application is due.
- See the IDOL's **training presentation** on the EPRC process.
- Prepare to submit your application for an EPRC by your assigned deadline.

Michigan Court Reinstates Scaled Back Minimum Wage and Paid Leave Laws

A three-judge panel of the Michigan Court of Appeals has ruled that the legislature was within its authority 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 minimum wage will stay at $10.10 per hour throughout 2023 and paid sick leave requirements would remain the same as they were in previous years. The plaintiffs are expected to appeal the decision.

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 in July 2022:

On July 19, 2022, the Michigan Court of Claims found the legislature's maneuver was unconstitutional and voided the amended/scaled-back versions of the laws. The decision would have meant 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 the state agencies additional time to accommodate the changes. If the decision had been left standing, the minimum wage would have increased to $13.03 per hour on February 19, 2023, and the paid sick leave requirements would have been significantly expanded, including applying to all employers.

Michigan Court of Appeals Decision in January 2023:

On January 26, 2023, a three-judge panel of the Michigan Court of Appeals ruled that the legislature had the authority to adopt and amend the ballot initiatives in the same legislative session, reversing the Michigan Court of Claims decision. If the panel's decision is left standing, the legislature's scaled back versions of the minimum wage and paid sick leave laws will continue to apply. Under such a scenario, the minimum wage will remain $10.10 throughout 2023, and only employers with 50 or more employees must comply with the state's paid sick leave requirement. The plaintiffs are expected to appeal the decision.

Next Steps:

- Monitor the situation closely for developments, including checking the **Michigan Department of Labor and Economic Opportunity's webpage on the case**.
- Consult legal counsel if you already made changes in anticipation of the original version of the laws taking effect on February 19, and now are contemplating reversing them, including consideration of any notice requirements and potential impact on employee relations.

Minnesota Bans Hairstyle Discrimination

Minnesota has enacted legislation that expressly prohibits discrimination against individuals based on traits associated with race, such as hair texture and hairstyles like braids, locs and twists. The legislation (House File 37) takes effect **August 1, 2023**.

The Details:

The Minnesota Human Rights Act (MHRA) prohibits employers from discriminating against individuals because of their race and certain other characteristics. House File 37 amends the MHRA to clarify that this prohibition includes traits associated with race, including but not limited to, hair texture and hairstyles, such as braids, locs and twists.

Next Steps:

- Review dress codes, appearance policies and training to ensure compliance with House File 37.
- 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.

New Jersey Amends WARN Act

Governor Phil Murphy has signed Assembly Bill 4768 into law, which significantly amends New Jersey's WARN Act (NJ WARN). Assembly Bill 4768 is set to take effect on **April 10, 2023**.

Background:

Covered employers in New Jersey must comply with NJ WARN and the Federal WARN Act when layoffs occur. Amendments to NJ WARN were set to take effect on July 20, 2020, but continued to be postponed by **Executive Order 103** throughout the COVID-19 pandemic.

The Details:

Assembly Bill 4768 will make the following changes to the NJ WARN Act, despite **Executive Order 103** and the State of Emergency still being in effect.

Requirements	Current NJ WARN Provisions	NJ WARN Amendments (Effective 4/10/2023)
Employer Size	100 or more full-time employees (FTEs).	100 or more FTEs or part-time employees, regardless of their hours of work or length of service.
Establishment Definition	A single location or a group of contiguous locations, including groups of facilities that form an office or industrial park or separate facilities just across the street from each other.	A single location or a group of locations, including any facilities located in New Jersey. **Note:** The new law appears to require employers to aggregate all of their New Jersey locations to determine if the 50-employee threshold is met.
Qualifying Layoffs	A layoff that impacts 500 or more FTEs, or 50 employees representing one-third or more of impacted FTEs.	A layoff of 50 or more FTEs or part-time employees within a 30-day period (or a 90-day period under certain circumstances), eliminating the 500-employee and "one-third" requirements.
Notice	60 days	90 days
Severance	When the full 60-day notice period is not met.	One week's salary for each full year of employment (regardless of whether required notice is provided). This is considered back pay and must be paid at the same time as the final paycheck. **Note:** An employer must pay a penalty of an extra four weeks of severance if they are found to not have complied with the notice period, unless in the case of a natural disaster.

Next Steps:

- Follow the amended provisions of Assembly Bill 4768 by **April 10, 2023**.
- Determine full-time and part-time employee counts and assess whether the changes to NJ WARN apply; and
- Plan and budget for mass layoffs in advance, keeping in mind the mandatory four weeks of additional severance payments if the 90-day notice period is not provided.

Note: Be on the lookout for updates in a pending lawsuit, which may impact whether employers will be required to pay severance under Assembly Bill 4768.

State of New York Adds Electronic Posting Requirements

Governor Kathy Hochul signed Senate Bill S6085, which amends Section 201 of the New York Labor Law, adding new employer electronic posting requirements. Senate Bill S6085 is effective immediately.

Previous Law:

New York Labor Law requires employers to physically post workplace notices "in a conspicuous place" on each floor of its premises.

Senate Bill S6085:

The **law**, which is effective immediately, retains the physical posting requirements, and now requires employers to:

- Provide employees with electronic copies of all notices required to be physically posted at a worksite under **federal** and **state law** or regulation. Employers must provide the required copies via e-mail or by posting them on their website; and
- Inform employees that the notices are available electronically.
  Note: Certain notices may require employers to provide postings in multiple languages, or only require posting based on an employer's headcount, industry or federal contractor status.

Next Steps:

- Ensure all required notices are posted electronically.
- Notify employees of the method used to provide electronic notice.
- Continue to physically post required notices in the workplace.
- Consult legal counsel with inquiries on the new notice requirements.

State of New York Further Protects Against Human Trafficking

Governor Kathy Hochul has signed into law several bills to help prevent human trafficking in the hospitality and transportation industries.

The Details:

New York has added the following requirements to help prevent human trafficking.

Hotels, inns, motels, motor courts or other transient lodging.
Training Requirements: All facilities must conduct paid training (in-person or online) on the premises, either as a stand-alone or part of an existing program for any employee that is likely to interact with or come into contact with guests. Current covered employees must receive this training by November 20, 2023, four months from the law's July 20, 2023 effective date. After that, all new covered employees must receive the training within 60 days of their start date. The State, with the Task Force, will make a list of approved programs that will cover, at a minimum, human trafficking, its nature, its definition, how to identify victims and who to contact if a victim is identified. **Recordkeeping Requirements:** Employers must maintain a record for each covered employee that shows they completed the training and keep the record on file during the individual's employment, and for one year following their termination.

Businesses required to provide training to employees to sell alcoholic beverages.
Training Requirements: Covered employers must include a human trafficking awareness component as part of their Alcohol Training Awareness Programs (ATAP). Employers found to have violated the law may have their training certifications denied or revoked.
Airport, truck stop and other transportation businesses.
Posting Requirements: Informational cards and signs on services for human trafficking victims, and the National Human Trafficking Hotline (**1-888-373-7888**) must be posted in commercial service and general aviation airports, Transit Authority and Port Authority airport and bus terminal public restrooms, and truck stops.
Adult entertainment establishments.
Posting Requirements: All covered establishments that are licensed to sell alcoholic beverages for on-premises consumption must display a bilingual notice containing information on human trafficking and the National Human Trafficking Hotline (**1-888-373-7888**) in a conspicuous location. Employers found to have violated the posting requirement may face fines.

Next Steps:

- Review human trafficking training procedures to help ensure compliance.
- Monitor the New York State Department of Labor **website** for updated posting materials and ensure that the required postings are displayed in a conspicuous location.

Pennsylvania Updates Protected Characteristic Definitions; Adds Hairstyle Protections

The Pennsylvania Independent Regulatory Review Commission (IRRC) has approved amendments to the Pennsylvania Human Relations Act (PHRA), which provide new definitions of race, sex and religious creed, and effectively protect against hairstyle discrimination. The new rules are set to take effect within 60 days of their publication in the Pennsylvania Bulletin.

The Details:

The PHRA, and its **amended rules**, cover discrimination in employment, housing, commercial property, education and public accommodations, and apply to businesses that employ four or more individuals or independent contractors.

The amendments expand the following definitions of protected categories that were not previously expressly covered under the law:

Race:

The law clarifies that ancestry, national origin or ethnic characteristics, interracial marriage or association, and Hispanic national origin or ancestry (including people of Mexican, Puerto Rican, Central or South American, or other Spanish origin or culture) are all covered under the definition of race.

The law also protects traits historically associated with race, including, but not limited to:

- Hair texture;
- Protective hairstyles (such as braids, locks and twists); and
- Other national origin or ancestry (as specified by a complainant in a complaint).

Sex:

Under the law, the term sex now encompasses all of the following:

- Pregnancy, childbirth and related medical conditions, and breastfeeding;
- Sex assigned at birth;
- Gender identity or gender expression;
- Affectional or sexual orientation (this includes asexuality, bisexuality, heterosexuality and homosexuality); and
- Differences of sex development, variations of sex characteristics or other intersex characteristics.

See the **text of the law** for further details on the definitions.

Religious Creed:

The amendments make clear that religious creed protects all aspects of religious observance and practice or belief, and includes the failure to provide a reasonable accommodation for a religious observance or practice.

Note: Employers may be exempt from providing a specific accommodation if they can demonstrate that it would cause an undue hardship, requiring more than minimal cost.

Next Steps:

- Review dress codes, appearance policies and training to help ensure compliance with the **amended rules**.
  Note: 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.
- Review non-discrimination and anti-harassment policies, procedures and training programs.

Puerto Rico Announces Pension/Retirement Plan Contribution Limits for 2023

The Puerto Rico Department of Treasury (Departmento de Hacienda) issued a circular letter (CC RI 23-01) with the applicable Pension Plan Contribution and Catch-up Limits beginning on or after January 1, 2023 as shown below.

Note: For Tax Year 2023, the pension plan contribution limits for Puerto Rico residents participating in both PR IRC 1081.01 and IRS 401(K) (dual-qualified plans) are different than the IRS limits.

The Details:

The Puerto Rico Code has limits for certain pension plans that are different from those set by Federal Code. A summary of the 2023 pension/retirement plan contribution limits as compared to 2022 is below:

Puerto Rico Retirement Plan Limits		
Category	**2022 Limit**	**2023 Limit**
Limit on Cash or Deferred Contributions applicable to participants in a qualified retirement plan only under Section 1081.01(a) of the Code (Section 1081.01(d)(7)(A)(i) of the Code).	$15,000.00	$15,000.00
Limit on Additional Contributions applicable to participants in a retirement plan not sponsored by the federal government who have reached the age of 50 (Section 1081.01(d)(7)(C)(i) of the Code).	$1,500.00	$1,500.00
Limit on Cash or Deferred Contributions applicable to participants in a retirement plan sponsored by the US federal government, and participants in a qualified retirement plan both under Section 1081.01(d) of the Code and under Section 401(k) of the Federal Code (Section 1081.01(d)(7)(A)(ii) of the Code). **NOTE: The $22,500.00 limit is the 2023 federal contribution limit set annually by Section 402(g) of the Federal Code. However, Section 1081.01(d)(7)(A)(iii) of the Code provides that for an employee who participates in a qualified plan under Section 1081.01(d) of the Code and under Section 401(k) of the Federal Code, the maximum limit of contributions to the plan may not exceed $20,000.00. Any amount contributed in excess of the limit established by the Code will be taxable.	$20,500.00 **$20,000.00	$22,500.00 **$20,000.00

Puerto Rico Retirement Plan Limits		
Category	**2022 Limit**	**2023 Limit**
Limit on Additional Contributions applicable to participants in a retirement plan sponsored by the US federal government who have reached the age of 50 (Section 1081.01(d)(7)(C)(v) of the Code).	$6,500.00	$7,500.00
Limit on Annual Contributions applicable to the accounts of participants in defined contribution plans (Section 1081.01(a)(11)(B)(i) of the Code).	$61,000.00	$66,000.00
Limit on Annual Compensation applicable for the computation of benefits under qualified retirement plans (Section 1081.01(a)(12) of the Code).	$305,000.00	$330,000.00
Limit on Annual Benefits payable to participants in defined benefit pension plans (Section 1081.01(a)(11)(A)(i) of the Code).	$245,000.00	$265,000.00
Highly Compensated Employee Earnings Limit (Section 1081.01(d)(3)(E)(iii)(III) of the Code).	$135,000.00	$150,000.00
Limit on Voluntary Employee After-Tax Contributions applicable to participants in qualified retirement plans under Section 1081.01(a) of the Code. The limit applies to the participant's aggregate compensation for all years of participation in the plan (Section 1081.01(a)(15) of the Code).	10%	10%
NOTE: For purposes of the above elective deferral limits, dual-qualified plans are plans that meet the requirements of both section 1081.01(d) of the Code and 401(k) of the Federal Code. In addition, the dual-qualified limits will apply to an individual who is a participant in multiple plans of an employer, for example, a US qualified plan and a Puerto Rico qualified plan. Plans sponsored by the US government (such as the federal Thrift Savings Plan) are also considered dual-qualified.		

Local

Albany County, New York, Requires Pay Range Disclosure

Employers in Albany County, New York, are now required to disclose expected pay ranges in job postings under a new pay transparency law (Local Law "E" for 2022). The law will take effect on **March 9, 2023**.

Local Law "E" for 2022:

As a result of the local law, which amends the Omnibus Human Rights Law for Albany County, employers in Albany County, are prohibited from advertising a job, promotion or transfer opportunity without stating the minimum and maximum salary or hourly wage that they "in good faith" believe at the time of the posting they would pay for the posted job, promotion or transfer opportunity. The requirement does not apply to temporary employment at a temporary help firm.

Next Steps:

Review and update job postings with the required salary information to help ensure compliance with Local Law "E" for 2022.

Bloomington, Minnesota, Amends Sick Leave Requirement

Bloomington, Minnesota, has amended an ordinance that will require employers in the city to provide sick leave to employees. The ordinance will still take effect **July 1, 2023**.

The Details:

Background:

Under the ordinance, employers with five or more employees (regardless of location) must provide paid leave. Smaller employers must also provide leave, but it may be unpaid. Employees must accrue a minimum of one hour of sick leave for every 30 hours worked within the geographic boundaries of the city, up to a maximum of 48 hours in a year.

Amendments:

Original Ordinance	Amended Ordinance
Upon request by an employee, the employer must provide, in writing or electronically, information stating the employee's then-current amount of leave available and used.	The employer must provide, in writing or electronically, an earnings statement stating the employee's then-current amount of leave available and used. An employer who chooses to provide an earnings statement by electronic means must provide employee access to an employer-owned computer during an employee's regular working hours to review and print earnings statements.
Sick leave must accrue in one-hour unit increments only, and no accrual of a fraction of an hour of sick leave was allowed.	Sick leave still accrues in one-hour unit increments, but an employer may also allow employees to accrue sick leave in fractions of an hour. For example, an employee who has only worked 25 hours (5/6 of 30 hours) would be allowed to accrue 50 minutes of sick leave (5/6 of 1 hour).

Next Steps:

If you have employees working in Bloomington, Minnesota for at least 80 hours each year:

- Provide sick leave in accordance with the requirements of the amended ordinance beginning July 1, 2023.
- Monitor the **website** of the city attorney's office for the required notices.
- Post the required notices by July 1, 2023.
- Update leave policies and forms and employee handbooks to comply with the ordinance.
- Train supervisors on the ordinance.

Mountain View, California, Adopts Wage Theft Ordinance

Mountain View, California, has adopted a **Wage Theft Ordinance**.

The Details:

The Ordinance, effective January 1, 2023, states that all employers required to have a City of Mountain View business license must complete a "Wage Theft Affidavit" when applying for a city business license and when submitting business license renewals to the tax administrator.

In the affidavit, the employer must affirm either that they: (1) have not been found in violation of any federal, state or local wage-and-hour laws; or (2) are in compliance with or have fully satisfied any final judgment, order or administrative decision issued against them for violating applicable federal, state or local wage-and-hour laws.

Next Steps:

All employers required to have a Mountain View business license should complete the required affidavit when applying or renewing their city business license.

Mountain View has provided a **model Wage Theft Affidavit** for use in fulfilling the requirement.

San Francisco Requires Supplemental Pay for Military Leave

San Francisco, California has enacted an ordinance that will require employers with 100 or more employees to provide supplemental pay for military leave.

The Details:

Effective February 19, 2023, private employers with 100 or more employees worldwide must pay employees who are called for military duty the difference between their gross military pay and their gross pay as employees.

Under the ordinance, military duty is defined as active military service in response to the September 11, 2001 terrorist attacks, international terrorism, the conflict in Iraq, or related extraordinary circumstances, or military service to provide medical or logistical support to federal, state or local government responses to the COVID-19 pandemic, natural disasters, or engagement in military duty ordered for the purposes of military training, drills, encampment, naval cruises, special exercises, Emergency State Active Duty, or like activity.

Eligibility:

To be eligible for the supplemental paid leave, an employee must work within the geographic boundaries of San Francisco and be a member of the reserve corps of the United States Armed Forces, National Guard, or other uniformed service organization of the United States.

Employees Who Fail to Return to Work:

If the employee fails to return to their job within 60 days of release from military duty, the employer has the option of treating the supplemental paid military leave they provided as a loan payable with interest at a rate equal to the minimum amount necessary to avoid imputed income under the Internal Revenue Service Code. In such a case, interest begins to accrue 90 days after the employee's release from military duty or return to fitness for employment, whichever is later. The loan is payable in equal monthly installments over a period not to exceed five years.

Next Steps:

If you are a San Francisco employer with 100 or more employees, review policies and practices to ensure compliance with the ordinance.

St. Paul, Minnesota, Amends Paid Sick Leave Ordinance

St. Paul, Minnesota, has amended an ordinance that requires employers to provide paid sick leave to employees. The changes will take effect February 18, 2023.

Original Ordinance	Amended Ordinance
For every 30 hours worked, employees accrue one hour of paid sick leave.	For every 30 hours worked *within the geographical boundaries* of the city, employees accrue one hour of paid sick leave. The amended ordinance also clarifies that an employer is only required to allow an employee to use paid sick leave when the employee is scheduled to perform work within the geographic boundaries of the city. However, employers may voluntarily allow use when the employee is scheduled to work outside the city.
Employers must permit an employee to carry over accrued but unused sick leave into the following year. Employers may cap total accrual at 80 hours.	Employers must permit an employee who has worked *within the geographic boundaries* of the city for more than one year to carry over accrued but unused sick leave into the following year. Employers may cap total accrual at 80 hours.

Original Ordinance	Amended Ordinance
Employers may satisfy the accrual and carryover requirements by frontloading at least 48 hours of paid sick leave following the initial 90 days of employment for use during the first year, and frontloading at least 80 hours of paid sick leave beginning each subsequent year.	These provisions remain the same, but the amended ordinance clarifies that employers must establish the method of compliance either through carryover or frontloading at the beginning of the year, and employers are prohibited from changing the method until the next year. • Employers that switch between accrual and frontloading compliance must ensure that employees have at least as many paid sick leave hours available on the first day of the new reporting year as the employee had on the last day of the immediately preceding reporting year. • For employers that switch from accrual to frontloading, the total paid sick leave hours frontloaded on the first day of the reporting year must be at least 48 hours for employees in their first year of employment, but need not be greater than 80 hours for all other employees. • For employers that switch from frontloading to accrual, the total balance available to the employee at the start of the first year after the employer has modified the method of compliance must be at least equal to the frontloading balance remaining at the end of the preceding reporting year.

Other Changes:

The amended ordinance also defines "year" for the purposes of the paid sick leave requirements as a regular and consecutive 12-month period, either calendar or fiscal, as determined by an employer and clearly communicated to each employee of that employer.

The anti-retaliation provisions have been expanded. See the **text of the amended ordinance** for details.

Next Steps:

- Provide sick leave in accordance with the requirements of the amended ordinance beginning February 18, 2023.
- Update leave policies and forms and employee handbooks to comply with the amended ordinance.
- Train supervisors on the amended ordinance.

Upcoming Minimum Wage Increases

Minimum Wage Announcements – 1/15/23 – 2/15/23

The following states or localities have announced new minimum wage increases.

State or Locality	Minimum Wage Rate	Minimum Tipped Cash Wage	Effective Date(s)	New or Updated Poster Requirement?	Notes
Los Angeles, CA	$16.78	N/A*	7/1/23	Yes	Once available, the poster will be posted **here**.
Los Angeles County, CA	$16.90	N/A*	7/1/23	Yes	Once available, the poster will be posted **here**.

*CA does not allow the use of a tip credit.

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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Updated on February 20, 2023