



The HR WIRE

ETC HR Employer Compliance News II *Making Compliance Connections*

February 2024

SECTION I: Notices, Reminders & Alerts &

Workplace Notices Updates

- **Model CHIP Notice Updated by DOL**

The U.S. Department of Labor (DOL), through its Employee Benefits Security Administration (EBSA), has released a [new model Employer CHIP Notice](#) with information current as of **Jan. 31, 2024**.

An employer is subject to this annual notice requirement if its group health plan covers participants who reside in a state that provides a premium assistance subsidy, regardless of the employer's location

State Workplace Notices

- **KY** – Updated [Safety & Health on the Job Notice](#) released
- **HI** – Updated Minimum Wage Notice, Unemployment Insurance, Discrimination, Disability Compensation, Dislocated Workers, and OSHA Notices. Updated Notice accessible [HERE](#)
- **WI** – Updated [Unemployment Benefits Notice](#)

Reminders & Alerts!

New! The 2023 EEO-1 Component 1 Data Collection **June 4th Reporting Deadline**

Yes, you read that correctly!

The **2023** EEO-1 Component 1 data collection will open on **Tuesday, April 30, 2024**.

The deadline to file the 2023 EEO-1 Component 1 report is **Tuesday, June 4, 2024**.

All updates about the 2023 EEO-1 Component 1 data collection, including the 2023 EEO-1 Component 1 Instruction Booklet and the 2023 EEO-1 Component 1 Data File Upload Specifications, will be posted to www.eeocdata.org/eeo1 as they become available. The EEOC anticipates posting the 2023 EEO-1 Component 1 Instruction Booklet and the 2023 Data File Upload Specifications by Tuesday, March 19, 2024.

The EEO-1 Component 1 report is a mandatory annual data collection that requires all private sector employers with 100 or more employees, and federal contractors with 50 or more employees meeting certain criteria, to submit workforce demographic data, including data by job category and sex and race or ethnicity, to the EEOC. The authorities under which EEO-1 Component 1 data are collected include: Section 709(c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, et seq., and Sections 1602.7-1602.14, Chapter XIV, Title 29 of the Code of Federal Regulations (CFR); Exec. Order No. 11246, 30 FR 12319 (Sept. 24, 1965) and 40 CFR 60-1.7(a).

New! IRS Releases ACA Pay-or-Play Penalties for 2025

On Feb. 12, 2024, the IRS [released](#) updated penalty amounts for 2025 related to the employer shared responsibility (pay-or-play) rules under the Affordable Care Act (ACA). The 2025 penalty amounts apply for failures to offer affordable, MV coverage during the 2025 calendar year.



For calendar year 2025, the adjusted \$2,000 penalty amount is **\$2,900**, and the adjusted \$3,000 penalty amount is **\$4,350**. This is a decrease from the penalty amounts for the 2024 calendar year, which are \$2,970 and \$4,460, respectively.

The IRS provides a variety of resources on the pay-or-play provisions that provide more information on calculating the penalty. Employers can use the following IRS web pages for more details:

- [Employer Shared Responsibility Provisions](#)
- [Types of Employer Payments and How They Are Calculated](#)

Upcoming! 2023 RxDC Reporting Due to CMS by June 1, 2024

The Consolidated Appropriations Act of 2021 (Transparency) requires all group health plans with pharmacy coverage to submit annually data and financials around their Rx programs either embedded in their medical or carved out separately. **The 2023 data is due June 1, 2024.**

Although most fully-insured plan carriers have taken on this responsibility on behalf of employers, carriers/TPAs/PBMs will still need to collect a couple of financial details from the Employer that includes:

- Average Member Monthly Premium Paid by MEMBER
- Average Monthly Premiums Paid by EMPLOYER

Because these calculations are based on actual costs (not projected), the information will need to be collected from your accounting and/or payroll records. For self and level funded plan reporting obligations vary among health insurance carriers. Be on the lookout for more details from your Carrier and Broker regarding RxDC employer obligations.

Reminder: DOL Issues Independent Contractor Final Rule

On January 9, 2024, the U.S. Department of Labor (DOL) released a [final rule](#), effective **March 11, 2024**, revising the agency's guidance on how to analyze who is an employee or independent contractor under the Fair Labor Standards Act (FLSA). This final rule rescinds the current independent contractor [rule](#) that was published on January 7, 2021, and mirrors the DOL's [proposed rule](#).

Employer Takeaways:

- DOL's final rule rescinds the 2021 Independent Contractor Rule.
- It restores the multifactor, totality-of-the-circumstances when determining whether a worker is an employee or independent contractor under the FLSA.
- It requires entities to analyze all 6 economic realities test factors without assigning a predetermined weight to a particular factor.
- It may result in classifying a greater number of workers as employees, not independent contractors.
- The DOL has released [guidance](#) to help employers comply with the final rule.

Learn More

Under the FLSA, employees are entitled to minimum wage, overtime pay and other benefits. Independent contractors are not entitled to these protections and benefits. According to the DOL, this final rule will reduce the risk of employees being misclassified as independent contractors while providing a consistent approach for businesses that engage with individuals who are in business for themselves.

The DOL published the 2021 Independent Contractor Rule on January 7, 2021. The 2021 rule reasserted the economic realities test (ERT) as the DOL's preferred method to determine whether a worker should be classified as an employee or independent contractor under the FLSA. In doing so, the 2021 rule focused on two core factors: the nature and degree of the worker's control over the work and the worker's opportunity for profit and loss based on initiative and/or investment. These factors carried more weight in determining the status of independent contractors.

The final rule rescinds the 2021 Independent Contractor Rule and returns to the pre-2021 rule precedent. In doing so, the final rule restores the multifactor, totality-of-the-circumstances analysis to assess whether a worker is an employee



or an independent contractor under the FLSA. The final rule ensures that all ERT factors are analyzed equally without assigning a predetermined weight to a particular factor or set of factors. These six factors include the opportunity for profit or loss depending on managerial skill, investments by the worker and the potential employer, the degree of permanence of the work relationship, the nature and degree of control, the extent to which the work performed is an integral part of the potential employer's business, and the worker's skill and initiative.

Reminder: OSHA Form 300A Deadline

Posted by February 1 & Electronically Submitted March 2, if applicable

ETC published on January 17th an e-Alert compliance reminder pertaining to OSHA Form 300A. Be sure you are aware of the applicability of any OSHA recordkeeping and filings to your organization.

Reminder: ACA Reporting Deadlines

Employers subject to Affordable Care Act (ACA) reporting under Internal Revenue Code Sections 6055 or 6056. For the 2023 calendar year, covered employers must:

- Furnish statements to individuals by **March 1, 2024** (an alternative method of furnishing statements to covered individuals is available in certain situations); and
- File paper returns with the IRS by **Feb. 28, 2024**, or **April 1, 2024**, if filing electronically.
- ***Beginning in 2024, employers that file **at least 10 returns** during the calendar year must file electronically.

Penalties may apply if employers are subject to ACA reporting and fail to file returns and furnish statements by the applicable deadlines.

SECTION II: Noteworthy Compliance Happenings, Things to Consider & Points to Ponder

NLRB's General Counsel Says Employers Cannot Bar Outside Employment

Employer Takeaway: If you have a policy strictly prohibiting all outside employment., it may be time to review and update that policy.

Learn More: The National Labor Relations Board (NLRB) is chipping away at employment agreements and other restrictive covenants one clause at a time. In a recent [memorandum](#), the General Counsel said she believes restricting employees from holding outside or secondary employment violates federal labor law, and she intends to urge the NLRB's Democratic-appointed-controlled Board to reach the same conclusion.

The General Counsel said she believes any rule or agreement interfering with an employee's right to moonlight or access other employment is unlawful. Because this provision prevented employees from being an "employee" of another entity, it could be read as prohibiting secondary employment and would be unlawful. The company's rule, she added, implicitly prohibits "salting" – that is, the tactic of union agents acquiring jobs in particular workplaces for the sole purpose of unionizing that business – in violation of the National Labor Relations Act.

Out of Work: Union Strike Activity Surged in 2023

Employer Takeaway: Given the rise in strike activity over the last two years, any employers who have expiring labor agreements coming up would be well-suited to dust off their contingency plans and start getting a game plan in place to address the numerous issues that may arise.

Learn More: Unions continued to dominate headlines in late 2023, with the Starbucks saga [continuing to unfold](#) and the United Auto Workers (UAW) – for the first time in its history – coordinating a [simultaneous strike](#) at the "Big Three" automakers in Detroit.

The UAW's historic strike against American auto manufacturers was not an outlier. According to a [recent article](#) in U.S. News & World Report, "It was called the 'summer of strikes' or 'hot strike summer' – only the movement continued into



fall and winter, too. More than half a million workers staged nearly 400 strikes during the first 11 months of 2023, according to Cornell University's Labor Action Tracker."

What drove the increased strike activity? The article notes that many labor agreements were up for renewal in 2023, which is part of the equation. It further, explains, however, "Workers felt empowered by other highly visible and successful strikes (or threats to strike) and a tight labor market, emboldening them to ask for higher pay and other benefits..."

The confluence of more media attention, perceived labor wins after high-profile strikes (such as with the UAW at the Big Three) and the tight labor market all likely contributed to this uptick. It is also notable that this surge in strike activity comes on the heels of an increase in [2022 as well](#).

A myriad labor law and other legal issues come into play for employers when workers decide to go on strike.

For example:

- If workers strike, they generally cannot be disciplined or terminated – but they may be able to be permanently replaced, depending on the nature of, and circumstances giving rise to, the strike
- In the event union-represented workers sabotage or leave a company's property, equipment, etc., in an unsafe state that results in damage, employers may be able to initiate litigation to recoup damages based on a recent change to labor law
- Unions and employees generally have a right to picket peacefully on public property outside and adjacent to an employer's property. Employers may not engage in surveillance – or even create the impression of surveillance – of lawful picketing activity. Companies often trip up, for instance, by setting up new video cameras to record picketing activity before any illegal conduct occurs.
- In some states, employees on strike get unemployment benefits in certain circumstances and in others they do not
- Most – but not all – benefit plans provide that employees on strike are not eligible for benefits and must elect COBRA, which typically is very costly, to continue coverage

Countless other legal issues come into play as well.

-National Law Review: Thursday, January 25, 2024, BARNES & THORNBURG LLP

HR WORK BREAK PODCAST: HR Work Break: Keeping Employees Engaged

Listen [HERE](#)

Recent research at [Gallup](#) shows that employee engagement continues to decline, in spite of many efforts to revitalize company culture: only 36% of the workforce was engaged in 2020, and it's dropped to a low 32% in 2022. Low levels of employee engagement have a negative effect on productivity, retention, wellbeing, and more. So, what can leaders do to keep their workforce engaged? Shannon Gabriel, Vice President of Leadership Solutions at TBM Consulting, shares her advice and best practices. HR Work Break Podcast Guest: Shannon Gabriel, Vice President of Leadership Solutions at TBM Consulting

Are you up to date on HR's latest lingo?



TODAY'S TOP 5 HR BUZZWORDS

1 Tethered Nomading
When remote workers operate their work-travel lifestyle exclusively within the United States.

Mentioned in the HR Work Break episode, "What Is Tethered Nomading?"



2 Coffee Badging:
When employees check into the office long enough to log in, grab coffee, then return home.

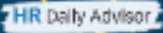
3 Anti-Perks:
Benefits employees perceive as harmful to their productivity or wellbeing, such as nap room, mandatory fun events, and alcohol.



4 Social Loafing:
When employees exert less effort in a group setting than when working alone.

5 Employee Experience:
Often abbreviated as EX; how employees feel about their journey within an organization.







TODAY'S TOP 5 HR BUZZWORDS

UPSKILLING AND EMPLOYEE LEARNING EDITION

1 Content Chaos:
When L&D programs suffer from unmanaged (often superfluous) growth of content.



2 OKRs:
"Objectives and Key Results," or a collaborative approach toward goal-setting with measurable results.

3 CPD:
"Continuing Personal Development," or training that seeks to further develop an employees' professional skill-sets and knowledge.



4 LMS:
"Learning Management Systems", software that helps L&D teams manage and track employee training outcomes.

5 Career Pathing:
When leaders work with employees to identify learning goals for their potential career growth through an organization.



-HR Work Break, HR Work Break: [What Is 'Tethered Nomading?'](#)



SECTION III:

New! Noteworthy State/City Compliance Alerts

California

Employers Must Notify California Employees of Void Non-Competes

Employer Takeaway: Deadline for employers to give their California employees a notice that any non-compete agreements are void was **February 14, 2024**. (Employers who fail to give the notice could face \$2,500 per violation plus sanctions.)

Learn More:

Employee non-compete agreements have long been unlawful in California. Effective this year, California broadened its already expansive prohibitions on employee non-compete agreements by adding new language to the Business & Profession Code 16600 via Senate Bill 699 and Assembly Bill 1076. Generally, any agreement which restrains someone "from engaging in a lawful profession, trade, or business" is against public policy and statutorily void. This explicitly includes non-competes, but courts have also extended the application to employee non-solicitation agreements. There are only narrow exceptions to this prohibition, where a noncompete relates to the sale of a business or dissolution of a partnership.

The recent California amendments require that employers notify any current employees and former employees who were employed on or after January 1, 2022, who signed a non-compete agreement, that the non-compete is void. The required notice must be in an individualized writing to the affected employee and delivered via mail and email. Importantly, violating the new statute by implementing non-compete agreements or failing to provide the required notice now supports a civil claim by employees, which could expose employers to liability and attorney fees.

Reminder: CA Pay Data Reporting filing Deadline May 2024

California law requires private employers of 100 or more employees and/or 100 or more workers hired through labor contractors to annually report pay, demographic, and other workforce data to the Civil Rights Department (CRD).

Portal Opens: 2/2024 Filing Deadline: 5/4/24

See ETC HR's February HR WIRE supplemental publication released Friday, February 9th for additional details and links to resources.

Reminder: New Workplace Violence Prevention Mandate

On September 30, 2023, California Governor Gavin Newsom signed SB 553 into law, creating a new layer to California employers' existing injury and illness prevention programs (IIPP). Under SB 553, employers are required to implement a workplace violence prevention plan (WVPP) no later than July 1, 2024, to provide training to employees regarding the WVPP and to keep records of workplace violence incidents. As of January 1, 2025, the law also expands employers' and employee representatives' rights to obtain restraining orders on behalf of employees affected by threats of workplace violence. To learn more, access a recent McDermott, Will & Emery Legal White Paper & Special Report [HERE](#)

District of Columbia

DC Enacts New Wage Transparency Requirements Eff **June 30, 2024**

On Jan. 12, 2024, the District of Columbia (the District) enacted the [Wage Transparency Omnibus Amendment Act of 2023](#), amending the Wage Transparency Act of 2014. The amended law **requires pay and benefits disclosures, prohibits wage history inquiries and expands employee protections regarding compensation discussions**. The amended law takes effect on **June 30, 2024**, and applies to all nongovernmental employers with at least one employee in the District.



Required Pay and Benefits Disclosures

- Amended law **requires employers to include in all job postings the minimum and maximum salary or hourly pay that they believe, in good faith, they would pay for the position.**
- Pay ranges must be included in both external and internal postings, including those for internal promotions or transfer opportunities.
- Disclosure of health care benefits disclosed prior to each candidate's first interview

Prohibition on Wage History Inquiries

- Screening candidates based on their wage history; this includes requiring that their past compensation satisfy minimum or maximum criteria or requiring candidates to disclose their wage history as a condition of receiving an interview or offer of employment.
- Seeking a candidate's wage history from a former employer.

Expanded Protections for Compensation Discussions

The 2014 law prohibits employers from restricting employee discussions regarding monetary compensation or discharging, disciplining or otherwise retaliating against employees who engage in such discussions. The amended law expands the prohibition to include protections for discussions and inquiries regarding nonmonetary compensation (e.g., health care benefits).

Notice Requirements

- Post a notice of employee rights under the amended law in at least one conspicuous location where employees congregate. ETC will monitor & provide released workplace notices.

Illinois

Reminder: Chicago Delayed Start of New Paid Leave - July 2024

On Dec. 13, 2023, the Chicago City Council voted to delay the implementation of the city's new paid leave and paid sick and safe leave ordinance from Jan. 1, 2024, to **July 1, 2024**. The council also amended the ordinance in other ways, some of which are helpful to employers. The city's existing paid sick leave [ordinance](#) will remain in effect until the new one takes effect in July.

Chicago Paid Leave and Paid Sick and Safe Leave Ordinance

On Nov. 9, 2023, Chicago passed an ordinance that significantly expanded the city's paid sick leave requirement, mandating up to 40 hours of paid leave **and** 40 hours of paid sick and safe leave annually. This leave entitlement was to apply to employees who perform two hours of work in Chicago in any two-week period. All Chicago employers are covered by the ordinance, which was to take effect Jan. 1, 2024.

Amendments to the Ordinance

The amendments delay the start of the ordinance to July 1, 2024, when accrual begins. Furthermore, now leave will apply only to employees who have worked **80 hours** in Chicago in any **120-day period**. Other key changes include that:

- Employers must provide written paid time off policies to each covered employee in the employee's primary language;
- Until July 1, 2026, employees must wait 16 days (or a payroll period) before filing a civil action against employers for violating the ordinance; and
- All employers with employees who work in Chicago must comply with the recordkeeping requirements of the ordinance.

The ordinance requires payout of paid leave on separation of employment or transfer outside Chicago for all but small employers, but it provides a temporary limit (16 hours of paid leave) for medium-sized employers with 51-100 employees. This limit now expires on July 1, 2025, extended from Dec. 31, 2024

Michigan

Michigan Expands Antidiscrimination Protections

As of **February 13, 2024**, Michigan has expanded its antidiscrimination law to prohibit discrimination against employees and applicants on two fronts. This law applies to employers of **all sizes**.

- Expanded the definition of "sex" to include *all* terminations of pregnancy and related medical conditions.
- State added **sexual orientation** and **gender identity or expression** as protected categories under the statute.



Employer Take Away:

Double check your Equal Employment Opportunity (EEO) policy, and any other policies that include protected classes, to ensure sexual orientation and gender identity or expression are included. If they're not included be sure to update it.

New York

Expanded Privacy and Wage Protections

The following changes to New York's employment laws apply to employers of all sizes.

PERSONAL ACCOUNT PRIVACY PROTECTIONS

Beginning **March 12, 2024**, employers will be prohibited from electronically accessing employees' and applicants' personal accounts.

What is a *personal account*, you ask?

A *personal account* is an electronic account used exclusively for personal purposes, where users can create or share their own content. Examples include social media accounts, podcasts, blogs, and instant messages.

Specifically, employers can't ask, require, or pressure employees or applicants to disclose login credentials, access their personal accounts in the employer's presence, or reproduce information contained in their personal accounts.

The law contains some exceptions. For instance, employers are still allowed to make employees provide access information for nonpersonal accounts that provide access to the employer's internal computer or systems, or accounts that are used for business purposes (though, in some cases, prior notice may be required). Employers can also still view, access, and use information about employees and applicants that is publicly available or doesn't require special access.

Action Items

Make sure those involved in the hiring process, as well as all in supervisory roles, are aware of these prohibitions. Check your social media and electronic device policies to make sure they're compliant.

WAGE PAYMENT PROTECTION CHANGES

As of **March 13, 2024**, the state's earnings threshold for the applicability of **wage payment protections** for those employed in a bona fide executive, administrative, or professional capacity will increase from \$900 per week to \$1,300 per week.

This law does **not** change the minimum salary for exempt employees—it simply extends certain longstanding wage payment rules to those who make \$1,300 or less per week.

Action Items

Employers will now need to make sure these employees are:

- Paid wages at least semimonthly, have provided advance written consent for direct deposit, and are
- Paid any benefits or wage supplements (e.g., reimbursements for out-of-pocket business expenses) within 30 days of becoming due.

Oregon

OFLA, PLO & Sick Time Changes

Oregon updated several aspects of the Oregon Family Leave Act (OFLA) to align with its new paid family and medical leave law, Paid Leave Oregon (PLO). The changes should assist employers in managing the overlap between these two benefits. PLO benefits became available on September 3, 2023, which is also when the new definition of "family member" under OFLA takes effect. Because Oregon Sick Time uses the same definition of family member as OFLA, the Sick Time law is effectively amended as well.

Definition of Family Member

The definition of **family member** under OFLA—and Oregon's Sick Time law—will match the PLO definition. The new definition expands the relationships that qualify as family. Family member will now include an employee's: Spouse, Domestic partner, Child, Parent, Grandparent, Grandchild, Sibling (which includes stepsiblings), Spouse or domestic partner of their child, parent, sibling, grandparent, or grandchild and any individual related by blood or affinity whose



close association with a covered individual is the equivalent of a family relationship (e.g., a boyfriend or girlfriend, honorary aunts and uncles, best friends, or roommates)

Leaves Run Concurrently

OFLA must run concurrently with PLO—not in addition to it—when the leave reason qualifies under both laws.

Mandatory Forward-Looking OFLA Benefit Year in 2024

Beginning on **July 1, 2024**, employers will be required to use a forward-looking benefit year for purposes of calculating an employee's OFLA leave entitlement—the same method that's used to calculate an employee's eligibility for PLO. This method tracks the employee's 52-week benefit year beginning the Sunday before their first use of leave.

Employer Action Items

- If your OFLA or Oregon sick leave policies define family member, update the definition to comply with these changes or remove the detailed definition entirely. Updated OR State Handbook addendum forthcoming to include even more added "Family Member" clarification policy language February 2024.
- Ensure that you are running OFLA concurrently with PLO when the absence qualifies for both types of leave
- Implement a forward-looking benefit year for OFLA by **July 1, 2024** (if you don't already use that method), and consider changing your FMLA benefit year to match

Texas

Reminder! Texas Bans COVID-19 Vaccines Effective Feb 7, 2024

The Texas Legislature is in special session and decided to enact a law, which Governor Greg Abbott is promising to sign, that bans the use of COVID-19 vaccine requirements by private employers.

The law, **Senate Bill 7**, takes effect **February 7, 2024**, and prohibits private employers from taking adverse action against contractors or workers who decline to be vaccinated. Violators will be fined \$50,000, although it's unclear whether that is per employee or overall. The Texas Workforce Commission (TWC) will take complaints from employees who assert the law is being violated. The attorney general's office will file suit for violations. There's no private claim, so individuals can't sue their employers under the law.

Vermont

Paid Leave Expansion

The Vermont Family and Medical Leave Insurance Plan (FMLI) program will be expanded to private employers this year, Vermont Governor Phil Scott announced. Beginning on Feb. 15, 2024, Vermont employers with at least two employees will have the opportunity to purchase FMLI benefit plans by a new offering from The Hartford. These plans will provide benefits to eligible employees beginning on **July 1, 2024**.

The FMLI program was rolled out in 2023 for state workers and will be making its scheduled expansion to the private sector. The next and final step in the roll-out of this program, beginning in 2025, will allow individual employees and self-employed workers to become able to purchase individual coverage if their employers do not offer it.

The FMLI program is voluntary in the private sector and will provide Vermont workers with 60-percent wage replacement for up to six weeks of work in a 12-month period if they take time off for qualified events. Vermont employers can access more information concerning the program and design a plan through their employee benefits broker or by visiting The Hartford's website.

Employees who work for businesses electing to participate in the voluntary program or who obtain coverage individually will be able to utilize the paid leave benefits for qualified events, including:

- The birth of a child and to care for the newborn child within one year of birth;
- An employee's adoption of a child or foster care placement and to care for the newly placed child within one year of placement;
- Caring for the employee's spouse, child, stepchild, foster child, ward who lives with the employee, parent, or parent of the employee's spouse who has a serious health condition;
- A serious health condition that makes the employee unable to perform the essential functions of their job; or



- Any qualifying exigency arising out of the fact that the employee's spouse, child, or parent is a covered military member on "covered active duty," or to care for a covered servicemember with a serious injury or illness if the eligible employee is the servicemember's spouse, son, daughter, parent, or next of kin (i.e., "military caregiver leave").

Virginia

Eligible Employers Must Register for RetirePath by Feb. 15, 2024

Employers that are required to participate in Virginia's state-facilitated individual retirement account (IRA) savings program—known as [RetirePath Virginia](#)—must register or certify an exemption for the program before **Feb. 15, 2024**. Businesses that fail to act before the registration deadline may face an annual penalty of up to **\$200** per eligible employee.

Covered Employers

Employers in Virginia must participate in RetirePath if they:

- Are a nongovernmental business, industry, trade, profession or other enterprise—whether conducted on a **for-profit or nonprofit basis**;
- Have **25 or more** eligible employees (i.e., those who are employed at least 30 hours per week);
- Have been in operation for **at least two years** prior to the program's implementation; and
- **Do not offer** a qualified retirement plan to their employees.

Eligible employees are automatically enrolled in RetirePath unless they elect not to participate.

Registration Information

RetirePath Virginia, which opened in 2023, sends a series of emails or letters to eligible employers when it is time to register. These communications include a unique access code, registration deadline and instructions. Employers that are unable to find the access code that was previously sent can [request one here](#).

At registration, employers self-certify their eligibility for RetirePath. Employers that already offer a qualified plan or are otherwise exempt can certify an exemption. More details are available [here](#).

Employer Responsibilities

- **Register** (or certify an exemption) with their employer identification number and unique RetirePath access code by **Feb. 15, 2024**;
- **Upload** payroll information and submit employees' contributions; and
- **Keep employee records up to date**. Payroll details must be submitted each pay period.

Employer Resources

RetirePath provides a webpage dedicated to [resources for employers](#), which includes an employer help center, videos and a registration checklist. [FAQs](#) are also available.

SECTION IV:

Reminders: [Previously Reported Regulatory Matters](#)

FCRA Summary & Employer Obligation Changes

Employer Take-away: Employers utilizing credit reports to deny employment **MUST** ensure the 3rd Party conducting Background Investigations are adhering to this employer obligation.

On March 20, 2023, the Consumer Financial Protection Bureau (CFPB) issued a [final rule](#) which, among other things, updates their [Summary of Your Rights Under the Fair Credit Reporting Act](#) (FCRA) and replaces the 2018 version. The summary details the major rights guaranteed under the act. Employers that use a credit report to deny employment



must provide the applicant with the name, address, and phone number of the agency that provided the credit report information. Although the final rule is effective April 19, 2023, but the mandatory compliance date is **March 20, 2024**.

IRS Limit Updates Annual Benefit Maximums for Health Flexible Spending Accounts & More

Employer Take-away: Ensure limits are updated and reflective in your Payroll System

Each year in the fall, the IRS announces new limits for several types of benefits that have maximums subject to annual indexing. You can find the full list of the latest released amounts for 2024 in [IRS Revenue Procedure 2023-34](#), but we've outlined the most common items employers ask us about.

Health Flexible Spending Account (HFSA): For plan years beginning in 2024, the maximum HFSA contribution limit is \$3,200. For HFSAs that include a carryover feature, the maximum carryover is \$640.

The **dependent care FSA** contribution maximum is not subject to annual indexing and remains \$5,000 (or \$2,500 each if the employee and spouse file separate income tax returns) for calendar year 2024.

The limits for **health savings accounts (HSAs) and high deductible health plans (HDHPs)** limits vary based on whether an individual has self-only or family coverage under an HDHP; the 2024 limits are as follows:

Annual HSA Contribution Limit	Self-only: \$4,150 Family: \$8,300 Catch-up: \$1,000 (age 55 or older)
Minimum Annual HDHP Deductible	Self-only: \$1,600 Family: \$3,200
Maximum HDHP Out of Pocket	Self-only: \$8,050 Family: \$16,100

DOL Proposed Rule - Raising Salary Threshold for Exempt Employees

The United States Department of Labor (DOL) announced recently that it is proposing a rule to raise the salary threshold required for an employee to be exempt from the Fair Labor Standards Act's overtime requirements. An overview of the key provisions of the proposed rule, together with some suggestions for how best to prepare for this rule, are set forth below.

- The proposed rule would raise the threshold to \$1,059 per week or about \$55,000 per year, from its current rate of \$684 per week or about \$35,568 per year, with automatic updates to this earning threshold every three years.
- The proposed rule would also increase the highly compensated employee total annual compensation requirement to \$143,988 per year from its current rate of \$107,432 per year, with automatic updates to this earning threshold every three years.
- The proposed rule does not change the duties tests required for an employee to be exempt; employers will still bear the burden of establishing that an employee is exempt by proving that the employee meets both the salary basis test and the duties test.

Once the proposed rule is officially published in the Federal Register, there will be a time for input and comments concerning the proposed changes before the DOL issues a final rule.

Proposed changes in the law often provide a special opportunity for revisiting a host of wage and hour considerations within the context of an employer's business model. [ETC HR will continue to monitor and provide updates regarding the proposed changes become effective](#)

IRS Announces 2024 Standard Mileage Rates Effective Jan 1, 2024

On Dec. 14, 2023, the IRS [announced](#) the 2024 optional standard mileage rates, which are used to calculate the deductible costs of operating an automobile for business, charitable, medical or moving purposes.

The 2024 standard mileage rates for the use of a car (also vans, pickups or panel trucks) will be:

- 67 cents per mile driven for business use, up 1 ½ cents from the rate for 2023;
- 21 cents per mile driven for medical purposes or for moving purposes for qualified active duty members of the Armed Forces, down one cent from the rate for 2023; and
- 14 cents per mile driven in service of charitable organizations. The rate is set by statute and remains unchanged from 2023.



Under the Tax Cuts and Jobs Act, taxpayers **cannot** claim a miscellaneous itemized deduction for unreimbursed employee travel expenses. Taxpayers also **cannot** claim a deduction for moving expenses, unless they are members of the Armed Forces on active duty moving under orders to a permanent change of station.

Taxpayers always have the option of calculating the actual costs of using their vehicle rather than using the standard mileage rates.

Taxpayers can use the standard mileage rate, but they must opt to use it in the first year the car is available for business use. Then, in later years, they can choose either the standard mileage rate or actual expenses. Leased vehicles must use the standard mileage rate method for the entire lease period (including renewals) if the standard mileage rate is chosen.

DOL Exchange Notice Updated

The Affordable Care Act (ACA) requires employers to notify all workers, regardless of their benefits eligibility status, about the availability of the Health Insurance Marketplaces. All employers, with limited exceptions, are required to distribute the notice to new employees within 14 days of hire. The Department of Labor (DOL) provides customizable model notices to inform workers of their health insurance coverage options. Updated model notices for employers that offer a health plan and that do not offer a health plan are available on the DOL [website](#) in English and Spanish. The model notices have an expiration date of December 31, 2026. The previous versions expired on July 31, 2023, August 31, 2023, September 30, 2023, October 31, 2023, and November 30, 2023.

Updated State Handbook Addendums

Employers should review their policies concerning the subject matters below and edit to ensure compliance.

On **January 23, 2024**, ETC released the updated State Handbook Addendums for the below States with many regulatory enactments effective 1/1/24.

- California
- Colorado
- Georgia
- Illinois
- Minnesota
- Nevada
- New York
- North Carolina
- Oregon

Alabama

AL Employer Reporting Obligations Coming in January 2024

The new state tax law places mandatory reporting requirements on Alabama employers. Employers are required to report for the tax year beginning January 1, 2023, the total amount received by full-time hourly wage-paid employees as compensation for work performed in excess of 40 hours in a week and the total number of employees for which it was paid. **Employers are required to report this information to the Alabama Department of Revenue by **January 31, 2024**.** Second, starting with the tax year beginning on January 1, 2024, Alabama employers must supplement their initial report on either a monthly or quarterly basis.

California

CA Labor Notice Reminders

Updated § 2810.5 Notice

Effective January 1, 2024, employees must receive information about whether a federal or state emergency or disaster declaration applies to where they will work, issued within 30 days before their first day of work, that may affect their



health and safety during employment. The notice must be provided upon hire and is part of a notice already required under California Labor Code § 2810.5. An updated, state-provided template will be available by **March 1, 2024**. The current notice is located [HERE](#). ([CA AB 636](#) was signed by the governor on October 8, 2023)

New Notice Requirement for New Hires

All employers need to provide new employees with notice about any federal or state emergency or disaster declaration that applies to any county where the employee will perform work and that may affect their health and safety on the job, if the declaration was issued in the 30 days prior to their start date. Employees generally excluded from having to receive this notice include those employed by the state (or any subdivision such as city or county), those covered by a collective bargaining agreement, and those exempt from overtime. The Department of Industrial Relations has already updated its [NOTICE TO EMPLOYEE](#) template.

California Updates Criminal History Regulations

California's Fair Employment and Housing Act (FEHA) regulations were updated as of October 1, 2023. The updated regulations govern how employers with five or more employees can use criminal history information when making employment decisions. Here are highlights of the changes:

- The definition of "applicant" will now include existing employees that have applied for or expressed interest in a different position with the employer or whose criminal histories are reviewed because of a change in ownership, management, policy, or practice.
- Employers can't say in job postings, on applications, or in other hiring materials that individuals with criminal histories won't be hired. This includes statements like "no felons" or "must have a clean record."
- If an applicant voluntarily discloses their criminal history, employers can't consider that information until after a conditional job offer is made (assuming the record can be considered at all).
- The fact that a licensing, regulatory, or government agency board has licensed an applicant—despite their criminal history—should be considered strong evidence that their criminal history is not grounds for disqualification from that type of job.
- Employers can, but don't have to, use the [sample notices](#) provided by the California Civil Rights Department when communicating with applicants about employment decisions based on criminal history.

If you are required by law to conduct criminal background checks, or if you regularly use criminal history information in making employment decisions, we recommend that you review the changes in full on the state's Civil Rights Department website, [HERE](#).

Colorado

Updates to Pay Transparency Law

The state now requires employers to **notify employees about all job opportunities** (not including career development or progressions) in advance of filling them. Previously, notice was only required for promotional opportunities. The notification needs to include the rate or range of pay, a general description of other benefits or compensation, and the date the application window is expected to close.

For employers with no physical location in Colorado and 14 or fewer remote employees in the state, only remote job opportunities must be shared.

Employers also have new post-selection notice responsibilities.

Within 30 days of the selected candidate starting the job, employers must communicate the following information to the employees that will regularly work with that individual:

- The name of the person who filled the position
- The person's title
- The person's prior title with the employer, if applicable
- How and where employees can express interest in similar job opportunities

Finally, **all eligible employees must be notified of a position's requirements for career progression** when it's regular or automatic and based on time or other objective metrics; for example, when a junior stylist is automatically promoted to senior stylist after one year in the role. Employees must also be told the pay, benefits, full- or part-time status, duties, and access to advancement.



Illinois

Independent Contractors Included in IL New Hire Reporting Requirements

Effective **January 1, 2024**, employers must include independent contractors in their [new hire reporting](#).

All employers must report new employees to their state's New Hire Directory within 20 days of their first day on the payroll with directory-specified information. ([2023 IL HB 3301](#))

Employers Liable for Gender-Related Violence

Effective **January 1, 2024**, employers are liable if their employees or agents commit gender-related violence at work that results in harm. ([2023 IL HB 1363](#))

However, employers will only be liable if they:

- Failed to supervise, train, or monitor the employee or agent who caused harm; or
- Failed to investigate complaints or reports (to a supervisor, manager, etc.) about the employee or agent who caused harm and didn't try to fix the problem.

Workplaces covered by these protections include:

- Employer premises, including any building, property, and parking area under the employer's control, or any location used by an employee while they're working; and
- Off-premises activities at employer-sponsored events when the employee isn't working.

Personnel Record Copies & Employer-Provided Notices' Changes

Effective **June 1, 2024**, the following Illinois laws will be amended as follows:

- The Illinois Personnel Record Review Act will allow employers to mail or email a copy of requested records and charge a fee limited to the actual cost of duplicating the requested record.
- The Illinois Minimum Wage Law, the Equal Pay Act (EPA), the Illinois Wage Payment and Collection Act, and the Child Labor Law will require employers to provide notices to remote employees via email or by posting on their website. . ([IL HB 3733](#))

Updated State EEO Data Filing Obligations

Additionally, businesses required to file an annual Employer Information Report (EEO-1) with the federal Equal Employment Opportunity Commission will **no longer be required** to submit it to the Illinois Director of Labor. However, they must continue to provide the director with a list of all employees during the past calendar year, separated by gender and race and ethnicity categories as reported in their EEO-1, along with other information as mandated by the [state's EPA](#). ([IL HB 3733](#))

Cook County Transportation Benefits Program Act

Effective **January 1, 2024**, the [Transportation Benefits Program Act](#) (TBPA) will require that Illinois employers in 38 designated transit zones with 50 or employees at an address within one mile of a fixed-route transit service, and within designated transit zones to provide transit benefits to certain covered employees. Covered employees under the TBPA are full-time employees of a covered employer who work an average of at least 35 hours per week for compensation.

Under the TBPA, covered employers must provide a pre-tax commuter benefit to covered employees. The benefit must allow employees to use pre-tax dollars for the purchase of a transit pass via payroll deduction, so that the costs for transit pass purchases may be deducted from the employee's taxable compensation up to the maximum amount permitted by Internal Revenue Code Section 132(f).

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