



The HR WIRE

ETC HR Employer Compliance News II *Making Compliance Connections*

April 2024

SECTION I: Notices, Reminders & Alerts

Workplace Labor Notice Updates

Reminders & Alerts!

- **Reminder! Upcoming CA Pay Data Reporting Is Due May 8, 2024** (Now With New Requirements)
- **Reminder! Upcoming! IL Equal Pay Act Registration Certification Filing Deadline March 23, 2024 - See State Section**
- **Reminder! The 2023 EEO-1 Component 1 Data Collection June 4th Reporting Deadline**
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**.
- **Reminder! 2023 RxDC Reporting Due to CMS by June 1, 2024 – ALL EMPLOYERS Offering Pharmacy Benefits as Part of their Health/Group Medical Benefit**
- **Reminder for Federal Contractors! OFCCP Affirmative Action Plan Submission/Certification Due July 1**

New Alert! FTC Announced Major Changes Regarding Non-compete Agreements

On April 23, in a long-anticipated move that dramatically alters the employment landscape, the FTC voted to approve [final regulations](#) it refers to as the Non-Compete Clause Rule.

The rule effectively prohibits the use of almost all noncompete clauses. While employers should be prepared for these changes, it is widely anticipated that there will be lawsuits emerging in the coming weeks to challenge the FTC ruling. As it stands currently, employers will be prohibited from entering into non-compete clauses and will be required to rescind existing non-compete clauses with the rule scheduled to become effective 120 days after publication in the Federal Register. Employers would be wise to begin a review of their existing non-competes and work with their legal advisors to identify potential impacts.

According to [Littler Mendelson](#), employers may continue to leverage confidentiality and non-solicitation agreements to help protect proprietary information and prevent client poaching.

Ogletree Deakins in their [April 23rd article](#) on the matter also addresses several employer options at present:

- **Do Nothing.** Wait and see what happens. As noted, worst case, employers will have 120 days after publication of the rule to comply with it. And it is more likely that the legal challenges to the rule will result in a stay of its effective date, meaning it may be years before the rule is effective, if ever. New FTC Commissioners Holyoak and Ferguson discussed several of these issues during the Open Commission



Meeting. But even under this option, employers should continue to be thoughtful about narrowly tailoring non-competes, nonsolicits, and/or nondisclosure covenants. If the FTC / federal efforts fail, many states are still heading in the direction of limiting the use of restrictive covenants.

- **Embrace the potential future.** Prepare as though the rule will become effective in 120 days by rewriting template contracts to remove noncompetes. These employers can retain nondisclosure and nonsolicitation of customers provisions but should narrow them significantly. They should do the same with any other provisions that are at risk for being “de facto” noncompetes.
- **Occupy a middle ground.** Retain non-competes (and “de facto” noncompetes) for high level executives and other significantly compensated employees, counting on the courts to force a modification of the FTC rule there are risks and benefits with all these approaches and each employer will decide what best suits its legitimate business interests moving forward.

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New Alert! EEO-1 Reporting & Revised Racial and Ethnic Categories

The federal government has revised the racial and ethnic categories that apply to data collection efforts across federal agencies, including the EEO-1 survey administered by the Equal Employment Opportunity Commission (EEOC) and the Department of Labor’s Office of Federal Contract Compliance Programs (OFCCP).

The changes:

- Add Middle Eastern or North African (MENA) as a racial and ethnic category.
- Eliminate the distinction between race and ethnicity.
- Replace the “two or more races” category with an option to select all categories that apply, including detailed sub-categories.

Although the new demographic categories took effect immediately, federal agencies with demographic reporting requirements, including the EEOC and OFCCP, have 5 years to implement the new standards. Agencies must publish an “action plan” within the next 18 months describing how they intend to comply by the deadline of **March 28, 2029**.

Employer Takeaway:

Although employers may want to update their voluntary self-disclosure forms immediately to align with the new categories and new detailed sub-categories, doing so too soon may be imprudent. The EEOC and OFCCP likely will use the old EEO-1 categories for at least another reporting year, if not longer. Thus, any changes to an employer’s data collection categories should be done in a manner that allows employers to continue reporting under the existing EEO-1 framework, in addition to collecting the new information.

New Alert! Federal: DOL Increases Exempt Employee Minimum Salaries

On April 26, 2024, the U.S. Department of Labor (DOL) published the much-anticipated final rule that will increase the minimum salary for many exempt employees. The increase will take effect in two steps. If you’d like to review the regulations yourself, they are available here—the relevant changes start on page 130 of the downloadable PDF.

Executive, Administrative, and Professional Employees

Under the new rule, exempt *executive*, *administrative*, and *professional* employees (often referred to collectively as “EAP” employees) must be paid at least:

- **\$844 per week** (\$43,888 per year) beginning on **July 1, 2024**
- **\$1,128 per week** (\$58,656 per year) beginning on **January 1, 2025**

Exceptions



Teachers and practicing doctors and lawyers are exempt from these minimum salary requirements under federal law but may be subject to different state minimums. School-specific minimums apply to academic administrative employees.

Computer Employees

Exempt computer employees can be paid on a salary or hourly basis. If salaried, they're considered part of the EAP group and need to make the minimums listed above. Alternatively, they can be paid at least \$27.63 per hour—this hourly rate was not changed by the rule.

Highly Compensated Employees (HCE)

Employees who are exempt under the HCE exemption must be paid at least the minimums listed above on a salary basis *and* receive total annual compensation of at least:

- **\$132,964 per year** beginning **July 1, 2024**
- **\$151,164 per year** beginning **January 1, 2025**

State Law

As usual, if a state law requires higher minimum salaries than what is required by the federal rule, the state minimums must be followed.

Potential Challenges

The last time the DOL attempted a significant change to the salary minimums, the rule was challenged and ultimately blocked just weeks before taking effect. While we have no way of predicting if that will happen again, it's very likely that this final rule will be litigated.

See also, April & May Supplemental Publications of the The HR WIRE regarding this topic.

New Alert! Pregnant Workers Fairness Act – Final Regulations Published

The [final rule](#) implementing the Pregnant Workers Fairness Act (PWFA), which applies to employers with 15 or more employees, takes effect June 18, 2024. THE PWFA regulations initially went into effect back in June 27, 2023, requiring employers to provide “reasonable accommodations” or changes at work for a worker’s known limitations related to pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an undue hardship.

Employer Take Aways: Failure to comply with the PWFA may result in substantial penalties, including injunctive relief (e.g., reinstatement), back pay, compensatory damages, punitive damages, front pay, and attorneys’ fees and costs. Therefore, employers should familiarize themselves with the final rule and ensure they are in compliance with their obligations under the PWFA.

Make sure your policy addressing the PWFA accurately reflects the regulations. You should also educate your managers (and anyone else likely to receive a request) on the *presumptively reasonable* accommodations, the limitations on asking for supporting documentation, and the importance of prompt accommodation. If you don’t have high confidence in your managers’ abilities to respond appropriately, you may want to require that anyone who receives a request immediately communicate it to HR.

- EEOC [FAQs](#) - What You Should Know About the Pregnant Workers Fairness Act
- EEOC [Overview](#) - Pregnancy Discrimination and Pregnancy-Related Disability Discrimination
- EEOC [Summary](#) - Key Provisions of the EEOC’s Final Rule to Implement the Pregnant Workers Fairness Act

Learn More:

Below are some key takeaways to be aware of even if you expect to accommodate most requests:



Some Accommodations Are Presumptively Reasonable

The following accommodations for pregnant employees are presumed to be reasonable, meaning an employer will need an *exceptionally* good rationale for denying them based on undue hardship:

1. Allowing an employee to carry or keep water near and drink, as needed
2. Allowing an employee to take additional restroom breaks, as needed
3. Allowing an employee whose work requires standing to sit and whose work requires sitting to stand, as needed
4. Allowing an employee to take breaks to eat and drink, as needed

For instance, if a pregnant employee tells you they need more bathroom breaks or to sit on occasion, you should allow it. You'll want to document the conversation so you have a record of saying yes, but there shouldn't be a protracted back and forth with the employee about whether their request can be granted. If you believe any of these accommodations *do* create an undue hardship, we recommend speaking with an attorney before denying them.

Requests for Documentation Are Limited

Employers can only ask for documentation to support a request for accommodation when it's *reasonable under the circumstances*. Blanket policies that automatically require documentation aren't permitted.

In the following situations, seeking supporting documentation is considered unreasonable and *isn't allowed*:

1. When the limitation and accommodation needed are obvious
2. When the employer already has sufficient information to determine that the employee has a limitation and needs an accommodation because of it
3. When a pregnant employee requests one of the presumptively reasonable accommodations listed in the section above
4. When the employee requests an accommodation related to pumping at work (or nursing, if feasible)
5. When the requested accommodation is available to employees with a non-PWFA limitation *without* providing documentation

When collecting documentation *is* permitted, employers can only request the minimum amount that confirms the employee's condition, verifies that it's related to pregnancy, childbirth, or a related condition, and describes the adjustment that the employee needs.

The Definitions Are Broad (and Might Surprise You)

Known limitations that must be accommodated can be modest, minor, or episodic and don't need to rise to the level of a disability—they also include medical care, meaning you need to allow time off for appointments. *Pregnancy and childbirth* include (among other things) infertility, fertility treatment, and the use of contraception. And *related medical conditions* (among *many* other things) include termination of pregnancy, including by miscarriage, stillbirth, or abortion.

Employers Can't Require "Magic Words" or Special Forms

An employee's request for accommodation can be made orally, in writing, or by any other effective means. Employers can't require that it be in a specific format or use specific language for them to acknowledge the request. Employers also can't require that supporting documentation be on a specific form.

Accommodations Should Be Provided Without Delay

Once an employee makes a request for accommodation, the employer should do their best to provide it (or an interim accommodation) as soon as possible, even if supporting documentation will ultimately be required. The EEOC made it clear that they will frown upon delays, particularly with respect to simple or presumptively reasonable accommodations.



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

New! U.S. Supreme Court: Mandatory Job Transfer Can Be Discriminatory Under Title VII

On April 17, 2024, the Supreme Court held through a unanimous decision in *Muldrow v. City of St. Louis* that a mandatory job transfer can be discriminatory under Title VII if it results in some harm with respect to a term or condition of employment even if the harm is not significant.

Key Takeaway: The Court's decision in *Muldrow v. St. Louis* requires plaintiffs only to prove "some injury" respecting employment terms or conditions in discrimination cases.

Learn More:

Supreme Court Ruling

The Supreme Court vacated the lower court's ruling and remanded it back to the lower courts, holding that a forced job transfer can be discriminatory if the transfer brought about some harm with respect to an identifiable term or condition of employment but that **harm need not be significant**. Here, the Supreme Court held that a change in the plaintiff's responsibilities, perks and schedule may constitute sufficient harm to show illegal discrimination under Title VII. The Supreme Court also ordered circuit courts that previously required a showing of significant harm to apply this lower evidentiary standard.

Impact on Employers

Employers may consider greater care in mandating employee transfers, including lateral job transfers, to ensure that such decisions are not discriminatory and do not result in even insignificant harm with respect to identifiable terms and conditions of employment. For example, employers could revise existing transfer policies to ensure any decisions are based on objective, nondiscriminatory criteria and that such criteria are appropriately documented.

Background of the Case

Title VII makes it unlawful for an employer "to fail or refuse to hire or to discharge any individual, or otherwise discriminate against any individual" with respect to "compensation, terms, conditions or privileges of employment" on the basis of race, color, religion, sex or national origin (referred to as protected characteristics). Historically, the circuit courts have disagreed on whether a forced job transfer may be unlawful discrimination even if the transfer does not significantly disadvantage the employee (e.g., does not result in lower compensation or a loss of professional opportunities).

In *Muldrow*, the plaintiff was a female St. Louis Police Department officer. After working for years in the same position, she was forced to transfer to a different division where she retained the same compensation and title but experienced changes to her responsibilities, perks and schedule. Following her transfer, her employer placed a male officer in her prior position. Although her transfer did not result in any change to her pay or rank, the plaintiff alleged that she was subject to a discriminatory job transfer because of her gender. The lower courts held in favor of the defendant, stating that the transfer did not violate Title VII because the plaintiff did not suffer a material employment disadvantage.

New! IRS Addresses Tax Treatment of Work-life Referral Services

The IRS has issued [frequently asked questions](#) (FAQs) addressing the tax treatment of work-life referral (WLR) services employers provide through their benefits offerings to their employees. These FAQs provide that WLR services



qualify as a de minimis fringe benefit for tax purposes and **are thus excluded from income and exempt from employment taxes.**

Because the FAQs are not official IRS guidance, the IRS cannot rely on them to resolve a specific taxpayer's case, and established tax laws control a taxpayer's liability if the FAQs are inconsistent with such laws. However, the FAQs provide helpful insight into the IRS' view on the tax treatment of WLR services.

WLR Services

A WLR program is an employer-funded fringe benefit that helps employees locate resources for solutions to personal, work or family challenges through informational and referral consultations. For example, WLR programs may provide employees with support, information or referrals in connection with identifying health care or child care, using paid leave programs, navigating the health care system, and connecting with financial planning professionals.

WLR programs are often incorporated into an employee assistance program or may otherwise be bundled with other types of services or programs offered by an employer. WLR programs may be available to a significant portion of an employer's employees, but they are used infrequently by employees and only when an employee faces one of the challenges the programs are designed to address. WLR programs often rely on third-party providers that charge the employer a per-eligible-employee monthly fee, regardless of how many employees actually utilize the WLR services.

Tax Treatment

Federal tax law provides that all employee compensation is taxable unless a specific exemption applies. When compensation is taxable, it must be included in gross income on the employee's Form W-2 and is subject to federal employment taxes.

De minimis (or minimal) benefits are one type of nontaxable employee fringe benefit. A de minimis fringe benefit is one that, considering its value and the frequency in which it is provided, is so small that accounting for it would be unreasonable or administratively impracticable. The law does not specify a specific value or frequency threshold for benefits to qualify as de minimis. The determination will depend on facts and circumstances.

The IRS' FAQs provide that the use of employer-provided WLR services qualifies as a de minimis fringe benefit that is excluded from an employee's gross income and is not subject to employment taxes (such as FICA, FUTA and income tax withholding).

Employers are encouraged to seek answers to any related questions from their tax advisors.

SECTION III:

New & Upcoming! Noteworthy State/City Compliance Alerts

California

Reminder! Upcoming Cal/OSHA Issues Awaited Guidance & Model Workplace Violence Prevention Plan

As previously communicated, starting **July 1, 2024**, California employers across all industries must have a written Workplace Violence Prevention Plan ("WVPP") in place.

On March 18, 2024, California's Division of Occupational Safety and Health ("Cal/OSHA"), the agency responsible for enforcing the new law's requirements, announced the creation of its [Cal/OSHA Workplace Violence Prevention Guidance and Resources webpage](#). The webpage contains guidance and educational materials on the new law and workplace violence prevention, a [model WVPP](#), fact sheets, and other resources for employers and employees.



Employer Takeaway: Although the provided model WVPP reflects the procedures required by section 6401.9, employer likely need to customize to their industry and worksite-specifics to ensure compliance.

Final Reminder! Upcoming 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: 5/8/24

The CRD has published “important announcements” regarding changes to this year’s reporting requirements, including the following (March 2024):

- **New data fields for remote workers:** Employers must now report information regarding the extent to which its workforce is remote during the “Snapshot Period” (i.e., a single pay period of the employer’s choice between October 1 and December 31, 2023). Specifically, the CRD added three new reporting fields: (1) the number of remote employees located within California; (2) the number of remote employees located outside of California; and (3) the number of employees that do not work remotely. For purposes of this reporting, the CRD defines a “remote worker” as “[a] payroll or labor contractor employee who is entirely remote, teleworking, or home-based, and has no expectation to regularly report in person to a physical establishment to perform work duties.” Therefore, hybrid employees are not considered “remote” for these purposes.
- **Race, ethnicity, sex for Labor Contractor Employee Reports:** Reporting “unknown” race/ethnicity or sex of a labor contractor employee is no longer permitted. According to the CRD, employee self-identification is the preferred method of identifying race/ethnicity and sex information; however, if an employee declines to state their sex or voluntarily provide their race/ethnicity, the employer should report using current employment records, other reliable records or information, or observer perception. When a reporting entity must rely on observer perception, the CRD encourages specifying this through clarifying remarks (e.g., “The race/ethnicity of [number] individuals in this grouping is being reported based on observer perception.”).
- **Filing deadline:** Reports are due by **May 8, 2024**. Unlike last year’s reporting period, it does not appear that the CRD will be accepting or granting any pay reporting submission deferral requests.

Employers are well-advised to use this year’s reporting templates and consult the updated User Guide available [here](#).

California employers also may wish to consult the [CRD’s Updated FAQs](#)

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

District of Columbia

Reminder: Upcoming DC Enacts New Wage Transparency Requirements Effective 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.

([DC B 194](#) was signed by the mayor on January 1, 2024)

Delaware

Reminder! Upcoming State's Family and Medical Leave Regulations Amended

On March 11, 2024, the following amendments to the Delaware Family and Medical Leave Act's regulations will take effect:

- Employees can't be required to use more than 75% of their earned, unused paid time off (PTO) before accessing their Paid Family and Medical Leave (PFML) benefits.
- Employees must be provided notice about their employer's PTO/PFML coordination policy.
- Employees may use PTO to supplement their wages (up to 100% of their average weekly wage) in an agreement with their employer.
- Employers must provide a written PMFL notice, provided by the state, to existing Delaware employees at least 30 days before the start of contributions on **January 1, 2025**. This notice must also be provided to employees upon hire, when they submit a leave request, or when the employer "acquires knowledge" that an employee's leave may qualify for PFML.
- All notices can be delivered by email.

(Delaware 1401 [final rule](#))

Illinois

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

On December 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.

Maine

Reminder! Upcoming Maine Retirement Investment Trust Savings Program Registration Deadlines Approaching

The Maine Retirement Investment Trust Savings Program (MERITSaves), signed into law on June 23, 2021, is a retirement savings program designed for most private sector employees who lack access to qualified employer-sponsored retirement plans.

Employers registered in Maine with 15 or more covered employees that do not provide an employer-sponsored retirement program must register with the state by April 30, 2024. Employers with 5–14 covered employees must register by **June 30, 2024**. Employers offering a qualified retirement program may certify exemption through MERITSaves.

Details about the program may be found on the [Maine Retirement Investment Trust Savings Program](#) page and on the MERITSaves [website](#).

New York

New! Mandated Paid Prenatal Leave

The State of New York has become the first state to mandate paid prenatal leave. The legislature on April 19, 2024, passed an amendment to New York Labor Law § 196-b that will require employers to provide up to 20 hours of paid leave in a 52-week period for pregnant employees to attend prenatal medical appointments and procedures. The leave entitlement was included in [New York's final budget for fiscal 2025](#). This is the first law of its kind in the United States as it provides a separate bank of paid, protected leave for pregnant employees for prenatal care above and beyond existing paid leave entitlements.

Employer Takeaway: This amendment takes effect **January 1, 2025**. ETC will release an updated State Handbook Addendum in advance of the effective date.

Learn More:

This “paid prenatal personal leave,” as it is called in the amendment, can be used by pregnant employees for healthcare services, testing, or procedures that relate to their pregnancy. Paid prenatal leave does not appear to be an accrued benefit, and the text of the amendment suggests it must be made immediately available to employees in its entirety at the time they are hired. The 20 hours of paid leave can be taken in hourly increments. Per the amendment, employees are to receive compensation for paid prenatal personal leave at the employee’s regular rate of pay or the applicable minimum wage, whichever is greater.

Paid prenatal personal leave is in addition to paid sick and safe leave (40 or 56 hours, depending on the size of the employer) and paid family leave employees in New York are currently entitled to, and in addition to the separate bank of paid safe leave available to employees working in Westchester County, New York. Note that under existing programs, employees can use up to 26 weeks of short-term disability and paid family leave benefits in a 52-week period. Employees who qualify are eligible for up to 12 weeks of paid family leave at 67% of their average weekly wage, with certain maximum benefit caps that apply.

Some employees may also be eligible for unpaid leave under the Family and Medical Leave Act (FMLA) for serious health conditions. The statute does not restrict the number of times paid prenatal leave can be taken by a single employee over time, other than to limit the use to 20 hours in a 52-week period.



The amended law provides that unused paid prenatal personal leave is not a benefit that needs to be paid out upon an employee's termination, resignation, or other separation from employment.

New! Expanded Criminal History Protections

New York law, at the state level and particularly at the city level, sets a range of parameters on whether, when and how employers can consider an individual's criminal history in the context of employment decisions. Augmenting the strictures New York imposes on employers, a new state law that takes effect **November 16, 2024**, called the Clean Slate Act will seal certain categories of records at various intervals, so that it will no longer be possible for employers to learn of certain types of criminal history. Employers that are unfamiliar with the range of New York protections in this context may unwittingly create liability issues for themselves through their hiring practices.

New York employers can legally check conviction records, but when evaluating the results of a criminal history check, state law requires that employers consider the relevance of the underlying conduct to the position for which the individual is being hired, consistent with a range of factors delineated in Article 23-A of the state **Correction Law**.

Those factors include:

- the state's public policy in favor of hiring those previously convicted of criminal offenses;
- the specific duties and responsibilities of the job;
- the extent to which the criminal offense will impact the applicant's fitness or ability to do the job;
- how much time has elapsed since the conviction;
- how old the person was at the time of the offense;
- the seriousness of the offense;
- evidence of rehabilitation and good conduct; and
- the employer's interest in protecting its property and the safety and welfare of specific individuals or the general public.

Clean Slate Act Means Less Access

Once the Clean Slate Act takes effect, misdemeanor records will be sealed effective three years after the date the individual was released from incarceration or, if the individual was not incarcerated then from the date of sentencing. Felony records will be accessible for a longer period and sealed eight years after release from incarceration, provided the individual does not then have another criminal charge pending and is not under probation or parole. Certain convictions, including Class A felonies for which a maximum sentence of life imprisonment could be imposed, and convictions requiring sex offender registration, are not eligible to be sealed at any point in time.

Employers will, therefore, remain able to screen for the most egregious criminal behaviors, regardless of how far back the conviction occurred. For lesser offenses, the state law will effectively take the decision making process out of employers' hands because older historic information will be unavailable.

Oregon

Reminder & Resources: Upcoming State's 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

Resources:

- [Family Leave Act](#) (OFLA)
- [Paid Leave Oregon](#) (PLO)
- [SB 1515](#)

Vermont

Reminder! Upcoming State’s 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").

Washington

New! State Enacts Employee Free Choice Act

On March 28, 2024, Washington state enacted the [Employee Free Choice Act](#) to protect workers from retaliation for refusing to attend meetings or listen to their employer's speech on religious or political matters, including speech regarding labor unions. The law takes effect on **June 6, 2024**.

Employer Takeaway: In preparation for the new law, employers may consider reviewing formal and informal meeting and communication practices to ensure compliance with the new law. Employers may also consider training supervisors on their obligations and restrictions with respect to political and religious speech. Finally, employers should prepare a notice of employee rights.

Learn More:

"Political matters" means matters regarding elections, political parties, proposals to change legislation or regulations, and the decision to join or support a labor organization.

"Religious matters" means matters regarding religious affiliation and practice, and the decision to join or support a religious organization.

Prohibitions

The new law prohibits employers from disciplining, discharging or otherwise penalizing an employee for:

- Refusing to attend or participate in employer-sponsored meetings where the primary purpose is to communicate the employer's religious or political opinions;
- Refusing to listen to speech or view communications (including electronic communications) where the primary purpose is to communicate the employer's religious or political opinions; and
- Making a good faith report of a suspected violation of the new law

The law does **not** prohibit employers from:

- Communicating information that the employer is legally required to communicate;
- Offering voluntary meetings, forums or communications about religious or political matters;
- Communicating information or requiring attendance at meetings necessary for the employee to perform their job duties; or
- Requiring attendance at any training to reduce and prevent workplace harassment or discrimination.

Workplace Notice

Employer must post a notice of employee rights under the new law in a place that is normally reserved for employment-related notices and commonly frequented by employees. Once the Notice is released, ETC will notify employers

Penalties for Noncompliance

Employees alleging violations of the new law may bring a civil action within 90 days of the alleged violation to seek injunctive relief, reinstatement, back pay, reestablishment of any employee benefits and any other appropriate relief as determined by the court.

New! State Expands Paid Sick Leave

On March 28, 2024, Washington Gov. Jay Inslee signed into law a [bill](#) expanding the definition of "family member" in the state's paid sick leave law and adding to the qualified reasons for leave under the law. The changes take effect **January 1, 2025**. More to come closer to the effective date.

Changes at a Glance:



- Adds as “family members” individuals whose relationship with an employee creates an expectation of care from the employee.
- Allows employees to take leave for public emergency closures.

Reminder! State Law Expands and Clarifies Non-Compete Statute

On March 13, 2024, Governor Jay Inslee signed into law Substitute Senate Bill 5935 (S.B. 5935), amending Washington’s 2019 non-compete statute (RCW 49.62) and expanding the already significant restrictions it places on employers doing business in Washington. The bill will become effective on **June 6, 2024**. Employers with Washington operations that have (or want) non-compete or non-servicing agreements with their employees, or that are considering hiring individuals who have entered into such agreements with other employers, need to understand the implications of these changes. Access Littler’s March 27th Publication [HERE](#) to learn more

SECTION IV: **Previously Reported Regulatory Matters**

Effective April 2024, please see separate , standalone publication for a listing of previously reported regulatory matters.

The WIRE is for informational purposes only and should not be construed as legal advice.