ETC HR

The HR WIRE

ETC HR Employer Compliance News II *Making Compliance Connections*

September 2024

SECTION IV:
Previously Reported Regulatory Matters

Workplace Notices Updates (YTD)

DOL Updated Model Employer CHIP Notice

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

DOL Updates Model Employer CHIP Notice - 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 **July 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.

An employer can choose to provide the notice on its own or concurrent with the furnishing of:

- Materials notifying the employee of health plan eligibility;
- Materials provided to the employee in connection with an open season or election process conducted under the plan; or
- The summary plan description (SPD).

State Workplace Notices (YTD in Alphabetical order)

- **CA** - California **Unemployment Insurance Notice** has been updated with a clearer and more user-friendly format. It now includes direct links for applicants to quickly find information on applying for Unemployment Insurance, Disability Insurance, and Paid Family Leave benefits, making it easier for employees to access essential claims and informational resources. (Note: Although it reflects a revision date of 1/22, it was added to EDD's website as of 5/24.)
- **CO** - **Colorado Discrimination in Employment Notice** has been updated following an amendment to the 2020 CROWN Act. This amendment broadens existing anti-discrimination laws to include hair length as a characteristic commonly associated with race, thereby expanding the CROWN Act protections. Additionally, the timing for filing requirements has been modified. Similarly, the **Colorado Discrimination in Housing Notice** has revised the CROWN Act section to expand hair length as protected.
- **DC –** Primary Election Tiem Off to Vote for Employees
- **DE- R**evised **Workers' Compensation Notice** with notable changes. The language has been refined to offer better clarity regarding the responsibilities of both employers and employees. Additionally, an email contact for the Office of Workers' Compensation has been added to facilitate smoother communication and information. Finally, we have added the recommended Delaware Sexual Harassment Notice to the poster.

- **HI** – Updated Minimum Wage Notice, Unemployment Insurance, Discrimination, Disability Compensation, Dislocated Workers, and OSHA Notices. Updated Notice accessible HERE
- **IL (Chicago) –** Newly released Paid Leave and Paid Sick Leave Notice (Employers to provide to employees with their first applicable paycheck—in July 2024, or after hire, whichever comes first—and annually thereafter in July.
- **IN – New Veteran Benefits and Services** Poster Released. It must be posted by employers with 51 or more full-time equivalent (FTE) employees.
- **KS** - **Kansas Workers' Compensation Notice** has been updated to reflect new reporting timelines for accidents or injuries. Employees now have 30 calendar days to report an incident to their employer. Additionally, if the employee is no longer working for the employer, they have 20 calendar days from their last day of work to report an accident or injury.
- **KY** – Updated Safety & Health on the Job Notice released
- **LA –**
  - Louisiana **Minors Labor Law Notice** now requires that minors under 16 years old receive at least a 30-minute meal break for every five-hour work period. This requirement previously applied to employees under 18 years old.
  - A new **Workers' Compensation Fraud Notice** has been issued, providing significantly more extensive information than the previous version.
- **MD** – Due to the state's prohibition of vaping in the workplace, employers are responsible for posting a sign that says "NO SMOKING OR VAPING" near every public entrance to their place of employment.
- **ME** – Updated Veterans' Benefits and Services labor notice released
  - Maine **Minimum Wage Notice** has been revised to reflect the new minimum salary requirement for employees to qualify as exempt from overtime under the Fair Labor Standards Act. Starting July 1, 2024, the minimum salary will be $844 per week.
- **MS -** The Mississippi **Unemployment Insurance Notice** has been updated to reflect changes in the filing process for unemployment insurance benefits. The Mississippi Unemployment Insurance poster now features a new phone number for filing claims and an updated email address for further information.
- **NV -** updated notices that will become mandatory on July 1, 2024: Annual Minimum Wage Bulletin ($12.00), Daily Overtime Annual Bulletin, Rules to be Observed by Employers, and the Domestic Violence Notice
- **NY State –**
  - Updated mandatory model policy released New York State Department of Labor's Policy on the Rights of Employees to Express Breast Milk in the Workplace. New York State employers must ensure they (1) provide paid break times to employees for expression of breast milk and (2) issue the revised notice when required.)
  - Second, the "New York Discrimination Notice" has been revised to include citizenship or immigration status and domestic violence victim status as new protected categories.
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- **NYC –**
  - Workers' Bill of Rights - posting due date 7.1.24
  - Know Your Rights at Work poster that employers must display in a conspicuous location in the workplace by July 1. The poster must also be distributed to all current New York City employees by July 1 and to new hires on or before their first day of work. Employers must also make the poster available on their intranet and/or mobile app if "such means are regularly used to communicate" with employees.
- **OR** – Updated OSHA "It's The Law" Notice**.** Updates include modifications to information regarding employees' rights during hazardous tasks, work-related exposure records, and injury logs. Furthermore, the address for registering complaints has been amended, and a QR Code has been incorporated to provide easy access to whistleblower rights information.
- **TN** - issued an updated **Wage Regulation and Child Labor Notice**. The revised notice includes changes to the wording in the Payday section, clarifying protections and requirements. Additionally, in the section on

Occupations Prohibited for Minors Under 18, there are updates regarding certain occupations that the commissioner may classify as hazardous.

- **VA** - revised **VOSHA, Job Safety and Health Notice**. This update includes several key changes. First, the new notice features an updated URL for accessing OSHA standards. Second, The penalties have been increased for mandatory, optional, and willful or repeated offenses. Third, the address for the Virginia OSHA Headquarters has been updated.

  The state released an updated Unemployment Insurance Notice which has changes throughout and now includes a requirement that employers must also provide a copy of the notice to each worker at the time of separation from employment.
  - Eff 7.1.24- employers that deny a covered employee's request for workers' compensation benefits in Virginia must provide a specific notice regarding the employee's rights to dispute the denial.

    Text of Required Notice

    The amendment requires any letter denying an employee's request for workers' compensation benefits to include the following text: "EMPLOYEE RIGHT TO DISPUTE DENIAL OF WORKERS' COMPENSATION BENEFITS. IF YOU DISAGREE WITH THIS DENIAL, YOU HAVE THE RIGHT TO DISPUTE THE DECISION BY FILING A REQUEST FOR A HEARING WITH THE VIRGINIA WORKERS' COMPENSATION COMMISSION. IT IS YOUR RESPONSIBILITY TO DISPUTE THE DECISION AS SOON AS PRACTICABLE. THE WORKERS' COMPENSATION COMMISSION IS A STATE AGENCY RESPONSIBLE FOR MAKING FINAL DECISIONS ON DISPUTED WORKERS' COMPENSATION CLAIMS. HOWEVER, SUCH CLAIM MAY BE LOST IF YOU DO NOT FILE IT WITHIN THE TIME LIMIT PROVIDED BY LAW, WHICH IS TYPICALLY TWO YEARS AFTER THE INJURY."

    The letter must also include the address, telephone number and website an employee may use to contact the state workers' compensation commission.

    The amendment applies to all employers that are subject to the Virginia Workers' Compensation Act. These include any employer that regularly employs **three or more employees**, all underground coal mine operators regardless of the number of employees, and all "statutory employers."
- **WA -** has implemented new legislation prohibiting employers from requiring employees to attend meetings for religious or political purposes. With the enactment of SB 577, employers are now required to post a notice informing employees of their rights under these new protections. Please see the attached resource for this Notice Statement.
- **WI** – Updated Unemployment Benefits Notice

Employee Handbook Policy Updates:

- **Released July 2024:**
  - Updated EEO Policy
  - Social Media & use of "Twitter" vs "X"

Updated State Handbook Addendums

- **Released July 2024**:
  - **CA**
  - **CO**
  - **CT**
  - **IL**
  - **MN**
  - **NY**
  - **MN**
  - **OR**
  - **PA**
  - **VT**

- **WA**

- **OR** – Updated to reflect OFLA's expanded definition of *serious health condition*
- **MN** – Updated to remove Duluth Sick & Safe Policy as the city ordinance was repealed and replaced with the State-wide Sick & Safe Leave Regulations

Released February 2024

- **CA**
- **OR**

Released **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**

USCIS has extended the expiration date of the current Form I-9 to May 31, 2027.

Employers that use the Form I-9 with the expiration date of July 31, 2026, can continue using it until that date. Effective July 31, 2026, only Form I-9 (Rev. 08/01/23) with the expiration date of May 31, 2027, will be accepted.
Form I-9 with the updated expiration date can be found on the USCIS website.
USCIS announced Form I-9's new expiration date on August 2, 2024.

FTC Noncompete Ban Struck Down Nationwide

The U.S. District Court for the Northern District of Texas's decision in *Ryan v. Federal Trade Commission* was issued on August 20, 2024, with a federal judge striking down the Federal Trade Commission (FTC)'s rule that banned virtually all noncompete clauses. The court concluded that the FTC exceeded its authority when it issued the rule and that the rule itself was overbroad because it applied to *all* noncompete clauses rather than targeting those that were harmful. Access the federal order.

Employer Takeaway: In light of the Texas court's ruling, employers will not need to take steps in the immediate term to invalidate existing noncompetes, update agreements or issue notices. Employers may also continue to rely on state-level guidance regarding the enforceability of noncompetes. However, the FTC will likely appeal the ruling, so employers should continue to monitor for updates in this case.

Increased Civil Penalty Amounts for SBC, MSP, HIPAA Violations

Aug. 8, 2024, the U.S. Department of Health and Human Services (HHS) published a final rule increasing key penalties affecting group health plans.
HHS adjusts these penalty amounts for inflation each year to improve their effectiveness and maintain their deterrent effect.

Employer Takeaway: Because these penalties are substantial, employers with group health plans should periodically review their benefit plan administration protocols to ensure full compliance.

Summary of Benefits and Coverage (SBC) (Typically distributed at Open Enrollment)
The Affordable Care Act requires group health plans and health insurance issuers to provide participants and beneficiaries with a summary of benefits and coverage (SBC). Failure to provide the SBC may now result in a penalty of up to $1,406 per participant or beneficiary (up from $1,362).

Medicare Secondary Payer (MSP)
When Medicare is the secondary payer, employers cannot discourage employees from enrolling in their group health plan and cannot offer any "financial or other incentive" for an individual entitled to Medicare not to enroll or to terminate enrollment in a group health plan that would otherwise be primary. A violation of the prohibition on offering incentives can now trigger penalties of up to $11,524 (up from $11,162). The penalty for insurers, third-party administrators, or fiduciaries of a group health plan that fail to provide information identifying situations where the group health plan is or was primary is now $1,474 (up from $1,428).

HIPAA Privacy and Security Rules
Penalties for a covered entity or business associate violating the Health Insurance Portability and Accountability Act's (HIPAA) privacy and security rules will depend on the type of violation involved. Penalties are broken down into "tiers" that reflect increasing levels of knowledge about the violation. Each tier carries a minimum and maximum penalty with an annual cap, all of which have increased as follows:
Tier One: For violations where the covered entity or business associate did not know about the violation (and by exercising reasonable diligence, would not have known about the violation), the penalty amount is between $141 and $71,162 for each violation, with an annual cap of $2,134,831.

- Tier Two: If the violation is due to reasonable cause, the penalty amount is between $1,424 and $71,162 for each violation, with an annual cap of $2,134,831.
- Tier Three: For corrected violations that are caused by willful neglect, the penalty amount is between $14,232 and $71,162 for each violation, with an annual cap of $2,134,831.
- Tier Four: For violations caused by willful neglect that are not corrected, the penalty amount is $71,162 for each violation, with an annual cap of $2,134,831.

Compliance Reminder: SAR Is Due by Sept. 30 for Calendar Year Plans *(for Some Employers)*

Many employers that must file Form 5500 on behalf of their employee benefit plans must also provide plan participants with a summary annual report (SAR). The SAR is a summary of the information included in the Form 5500. (Reminder: Employers with large fully insured welfare plans with 100 or more employee plan participants must adhere to Form 5500 7 SAR obligations each year. Employers with self-insured, unfunded plans are not subject to the SAR requirement, regardless of plan size.)

Covered Employers with plans that operate on a calendar year basis and have Form 5500 compliance obligations must provide the SAR by **Sept. 30, 2024**.
The SAR requirement only applies to plans that must file a Form 5500. Also, self-insured welfare plans, regardless of size, are not required to provide a SAR if they are unfunded.
The DOL has released a model SAR relating to welfare plans for plan years beginning in 2023 and later. Acceptable delivery methods for the SAR include U.S. mail, in-hand delivery and electronic delivery, if certain requirements are satisfied.

IN THE NEWS! Fifth Circuit Strikes Down the DOL Tip Credit Rule

On August 23, 2024, in *Restaurant Law Center v. U.S. Department of Labor*, the U.S. Court of Appeals for the Fifth Circuit vacated the U.S. Department of Labor's ("DOL") December 2021 final rule that had set strict limits on the amount of time that employers could apply a "tip credit" to tipped employees performing non-tipped job duties (the "Tip Credit Rule"). As a result, the Tip Credit Rule has been voided on a nationwide basis.

The FLSA and Tip Credits

Under the Fair Labor Standards Act ("FLSA"), employers may take advantage of a "tip credit" for employees engaged in occupations in which they customarily and regularly receive more than $30 per month in tips. This "tip credit" allows the employer to pay tipped employees $2.13 per hour, so long as the employee makes at least $7.25 per hour (i.e., the federal minimum wage) when tips are added to the total amount of wages paid to the employee.

The Tip Credit Rule
In 1988, the DOL first published the "80/20" rule in its Field Operations Handbook. Under that rule, if an employee spends more than 20% of their time during a workweek performing non-tipped job duties (i.e., setting tables, making coffee, etc.), the employer must pay the employee the full minimum wage for the time spent on such "directly supporting work" and may not apply any tip credit to lower the employee's wages for that work.

The 80/20 rule remained in place until the DOL rescinded the guidance in a 2009 opinion letter, but the rule was later re-issued in 2018 under the Trump administration. In December 2021, the DOL issued the Tip Credit Rule, which largely codified the 80/20 rule described above, but identified three categories of work that dictated whether employers could apply a tip credit to work performed by tipped employees. Namely, the categories of work included:
(1) tip-producing work (i.e., providing table service);
(2) directly supporting work (i.e., setting tables); and
(3) work not part of the tipped occupation (i.e., preparing food).
The Tip Credit Rule also stated that an employee must be paid the full minimum wage if they spend more than 30 minutes on "directly supporting work" at any given time.

Employer Takeaway
The *Restaurant Law Center v. U.S. Department of Labor* decision is seen as a big win for hospitality employers. **Employers no longer need to distinguish between tip-producing and tip-supporting work or monitor the time spent performing tip-supporting duties.** However, employers are still subject to local or state laws that are more beneficial to employees or that prohibit tip credits entirely. And as was the case before, employers can't take a tip credit when an employee performs tasks *unrelated* to their tipped occupation.
That being said, employers should stay tuned for any future developments as the DOL may appeal the decision and it is possible that other courts outside of the Fifth Circuit may rule that the Court lacked authority to impact the Tip Credit Rule on a nationwide basis. Notably, this ruling does not impact the DOL's "dual jobs" regulation, which provides that when an employee is working for the same employer in both a tipped and non-tipped occupation (i.e., a waiter and a maintenance person), the employer may only take tip credits for the work performed as part of the employee's tipped occupation. Employers should also be wary of any state or local laws or regulations governing tipped employees.

Compliance Reminder - Form 5500 Reporting

For employers with **calendar-year benefit plans** who ALSO had **at least 100 covered employee participants** (covered employees and former employees on COBRA) on the first day of the plan year….Form 5500 is due by July 31st, unless an extension is requested.

Most benefit plans with less than 100 covered participants will not be subject to Form 5500 reporting, but you should contact your Health & Welfare Broker to ensure you qualify for this exception. See also ETC's Compliance Clander Resource. If you are need of Form 5500 Services, please reach out to ETC today at hr_help@etctracking.com

OSHA Issues Proposed Health Rule (Indoor & outdoor) Work

The Occupational Safety and Health Administration announced its long-anticipated ***proposed rule*** Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings on July 2, 2024.
The proposed rule takes a large-scale approach to regulating heat injury and illness issues, requiring employers to develop robust Heat Injury and Illness Prevention Plans for indoor and outdoor heat hazards, regularly monitor temperatures at the work site, and implement control measures at two distinct heat exposure thresholds.

Under the new Rule:

- The proposed rule applies to all employers with a "reasonable expectation" of employee exposure to certain heat thresholds, it provides for some limited exceptions.
- There are two, defined applicable heat thresholds & detailed employer procedures
- Employers must develop a Prevention Plan, conduct training as well as perform monitoring requirements

Once published in the Federal Register, the public is encouraged to submit written comments on the rule.
To learn more, access the July 10th Morgan Lewis article HERE

NLRB Voluntarily Withdraws Joint-employer Rule Appeal

Timeline

- On March 8, 2024, a federal judge blocked the implementation of the NLRB's 2023 joint-employer standard, which was set to take effect on March 11, 2024.
- On May 7, 2024, the NLRB appealed the federal judge's decision to the U.S. Court of Appeals for the 5th Circuit.
- On July 19, 2024, the NLRB voluntarily dismissed its appeal.
- **The 2020 joint-employer rule remains in effect.**
- Employers should rely on the 2020 joint-employer rule to determine where joint employment exists.

On July 19, 2024, the National Labor Relations Board (NLRB) voluntarily dismissed its appeal of the U.S. District Court for the Eastern District of Texas decision vacating the NLRB's 2023 joint-employer rule. The rule, which had been set to take effect on March 11, 2024, ***would have expanded*** the types of control over job terms and conditions that trigger joint employment.

2020 Joint-employer Standard Recap:
The 2020 standard considers the "**substantial direct and immediate control**" employers have over essential terms and conditions of employment for individuals who are employed by another organization.
Specifically, the 2020 joint-employer standard indicates that a business is a joint employer of another employer's employees **only if** the degree of joint control is of sufficient magnitude to conclude that the joint employer meaningfully affects matters relating to the employment relationship.

Employer Takeaway: Employers should ensure they rely on the 2020 joint-employer standard to determine where joint employment exists.

Labor and Employment Issues in a Post-Chevron World

With the US Supreme Court's June 28 decision in *Loper Bright Enterprises v. Raimondo* and *Relentless v. Department of Commerce*, the four-decades *Chevron* doctrine is no longer. While the Court's decision has altered **administrative jurisprudence** as we have come to know it, its impact on labor and employment agency action may vary from sweeping change to a continuation of the status quo.

With *Loper Bright*, federal courts have been directed not to defer to administrative agencies' interpretations of ambiguous or broad statutes, save for narrow exceptions such as express delegations. Instead, federal courts must exercise independent judgment when reviewing statutory text and use traditional tools of statutory construction to find the "best meaning" of the statute. The agency simply presenting a "reasonable" or "permissible" construction of an ambiguous statute is not sufficient for it to prevail.

That said, the Supreme Court made clear in *Loper Bright* that all existing judicial decisions upholding agency rules and orders are not automatically overruled by the new decision, even if courts relied on *Chevron* in those earlier decisions. Time will certainly provide greater insight into the implications of the recent Decision.

IN THE NEWS - Texas Federal District Court Partially Blocks the FTC's Employer Noncompete Ban

Timeline:

- In April, the Federal Trade Commission (FTC) issued an administrative rule that will essentially ban all noncompete agreements effective September 4, 2024.
- On July 3, 2024, the Northern District of Texas put the FTC noncompete ban on hold, only with respect to the plaintiffs, until it issues a final decision in a case challenging the ban's validity.
- For all other employers, the noncompete ban is still scheduled to take effect on **Sept. 4, 2024**.
- The court stated that it intends to rule on the merits of the case on or before **Aug. 30, 2024.**
- Depending on the outcome, the ruling could affect the ban's effective date nationwide, so employers should continue to monitor for updates.

On July 3, 2024, the U.S. District Court for the Northern District of Texas granted the plaintiffs' motion in ***Ryan LLC v. FTC*** for a preliminary injunction to block the Federal Trade Commission's (FTC) noncompete ban while the court considers the merit of the case. The injunction applies only to the plaintiffs in the case: a Texas employer, the U.S. Chamber of Commerce and other business organizations. As such, **employers who are NOT parties to the suit are not covered under the injunction**. The court intends to rule on the merits of the case by Aug. 30, 2024, before the ban's scheduled effective date of Sept. 4, 2024.

Impact on Employers:

Per the court's decision, the effective date of the noncompete ban is stayed only for the plaintiffs; it does not apply nationwide. Therefore, other employers may still take steps to ensure compliance with the law on the effective date of Sept. 4, 2024. However, the court indicated its plan to issue a ruling by Aug. 30, 2024.

In addition, the U.S. District Court for the Eastern District of Pennsylvania scheduled a hearing in a separate case seeking a preliminary injunction of the noncompete ban on July 10, 2024, and is expected to issue a ruling by July 23, 2024. Employers should continue to monitor for updates and wait to implement any final changes, as the final ruling in this case or other legal challenges could still result in the ban being modified, delayed or even vacated.

Additionally, on April 23rd, the same day of the filing of the Ryan LLC lawsuit, the U.S. Chamber of Commerce (the nation's largest business advocacy group) filed a similar lawsuit in the Eastern District of Texas seeking to do the same. Since then, another lawsuit was filed in the Eastern District of Pennsylvania (*ATS Tree Services, LLC v. Federal Trade Commission et al.*). Each of these lawsuits take similar form. They contend the FTC lacks authority to engage in rulemaking of substantive competition rules (i.e., prohibit noncompetes), and seek a declaratory judgment and injunctive relief to prevent the Final Rule from taking effect 120 days after its publication in the Federal Register, September 4th.

IN THE NEWS - Texas Judge Suspends DOL's Ability to Enforce New FLSA's White-Collar Exemption

As of July 1, 2024, the U.S. Department of Labor (DOL) instituted a significant change affecting the Fair Labor Standards Act's (FLSA) white-collar exemption. The new rule increases the minimum salary threshold for employees to qualify for the white-collar exemption from overtime pay requirements.
Under the FLSA, the white-collar exemption applies to certain executive, administrative, and professional employees who meet specific criteria, including being salaried and earning above a set threshold. Prior to the DOL's rule, the threshold was $35,568 annually. Employees who met these criteria were exempt from overtime pay, meaning they did not receive time-and-a-half for hours worked beyond 40 per week.

Key Changes Under the New Rule
The DOL's final rule raised the minimum salary threshold to $43,888 as of July 1. Starting Jan. 1, 2025, this threshold will increase to $58,656, with subsequent updates every three years. This change expands overtime eligibility to millions of additional workers.

Legal and Practical Implications
The new rule has generated mixed reactions. Proponents argue that it ensures fair pay for overtime work. Critics, including many business groups and the state of Texas, contend that the increased threshold will significantly raise payroll costs and lead to job cuts.
To address these concerns, the state of Texas filed for a preliminary injunction against the rule, arguing that it would cause irreparable harm by increasing state payroll expenses and straining budgets. On June 28, 2024, a federal judge in Texas granted a preliminary injunction, halting the rule's implementation and enforcement against the state of Texas as an employer. Private sector employers and other states remain subject to the new rule.

Addressing Compliance
For employers, the immediate priority is to assess the new salary threshold's effects on their workforce. To comply, companies must identify employees who will become newly eligible for overtime pay and adjust payroll practices accordingly. Additionally, employers should be prepared for the threshold adjustments scheduled for January 2025 and beyond. Access the original July 10th Barnes & Thornburg, LLP article HERE

ETC will continue to monitor the situation. In the interim, employers are best positioned adhering to the federally enacted changes.

EEOC Announces "Failure to File" Deadline for 2023 EEO-1 Reports - July 9

The U.S. Equal Employment Opportunity Commission (EEOC) announced that it had entered the "Failure to File" phase for EEO-1 reporting, as described in the agency's recently updated EEO-1 Reporting Instruction Booklet. The EEOC offers a fact sheet regarding the failure to file deadline.

This announcement means that if an employer failed to submit a required EEO-1 Report by the "Published Due Date" of June 4, 2024, the EEOC will send it a Notice of Failure to File letter requesting that it complete the submission as soon as possible but no later than **July 9, 2024**.

After this date, which is deemed the **"Failure to File" deadline**, no additional 2023 EEO-1 Component 1 Reports will be accepted, and employers that remain out of compliance with EEO-1 reporting requirements may expect to face EEOC lawsuits in federal District Court to compel them to file. In fact, the EEOC recently filed lawsuits against 15 employers for failing to submit their mandatory workforce demographic reports.

Reminder: Who is a Covered Employers?
The following entities are subject to EEO-1 reporting:

- A **private employer** that has **100 or more employees** (with limited exceptions for schools and other organizations);
- A **private employer** with **between 15 and 99 employees** if it is part of a group of employers that legally constitutes a single enterprise that employs a total of 100 or more employees; and
- A **federal contractor** that has **50 or more employees**; is either a prime contractor or first-tier subcontractor; and has a contract, subcontract or purchase order amounting to **$50,000** or more.

Federal: DOL Increases Exempt Employee Minimum Salaries - July 1

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.

HHS Updates HIPAA FAQs Regarding Change Healthcare Cybersecurity Incident

On May 31, 2024, the U.S. Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) updated its frequently asked questions (FAQs) regarding HIPAA and the recent cybersecurity incident involving Change Healthcare, a unit of UnitedHealth Group. OCR enforces the HIPAA Privacy, Security and Breach Notification Rules (HIPAA Rules), which require covered entities and their business associates to protect the privacy and security of protected health information (PHI) and notify HHS and affected individuals following a breach.

FAQ Updates
The updates to the FAQs address the **responsibility for providing breach notification to HHS, affected individuals and, where applicable, the media.** Specifically, the FAQs provide that:

- Covered entities affected by the Change Healthcare breach may delegate to Change Healthcare the task of providing the required breach notifications on their behalf;
- Only one entity (which could be the covered entity or Change Healthcare) needs to provide breach notifications; and
- If covered entities ensure that Change Healthcare provides the required breach notifications in a manner consistent with the HIPAA Rules, they will not have additional HIPAA breach notification obligations.

Employer Takeaway: In connection with the Change Healthcare cybersecurity incident, OCR has encouraged HIPAA-covered entities (e.g., health plans, health insurance issuers and healthcare providers) and their business associates to **review their cybersecurity measures "with urgency"** to ensure that health information is protected.
While many employers do not have access to PHI from their health plans, employers that use third-party vendors, such as third-party administrators (TPAs) and pharmacy benefit managers (PBMs), should investigate and verify these vendors' cybersecurity measures during the selection process. Employers should also ensure they have business associate agreements in place that include adequate security protections for electronic PHI.

Compliance Resources

Safeguarding PHI is a top priority for OCR. To help covered entities and business associates protect their systems from cyberattacks, OCR has provided a variety of resources, including:

- HIPAA Security Rule Guidance Material
- OCR Webinar on HIPAA Security Rule Risk Analysis Requirement
- HIPAA Security Risk Assessment Tool
- Fact Sheet: Ransomware and HIPAA

OFCCP Releases New Vietnam Era Veterans' Readjustment Assistance Act Resources

The U.S Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) enforces the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA). Under VEVRAA, federal contractors and subcontractors are prohibited from engaging in discrimination in employment practices against veterans and required to provide equal employment opportunity in recruiting, hiring, promoting, and retaining protected veterans.

OFCCP continues to release new resources to help contractors understand their obligations under VEVRAA. Published on June 14th is a new example illustrating the use of the VEVRAA national benchmark, which is a yardstick contractors use to measure their progress toward achieving equal employment opportunity for protected veterans. OFCCP also published an updated VEVRAA Affirmative Action Program (AAP) sample. The update includes additional information for contractors on how to use the hiring benchmark effectively to monitor their veteran hiring and recruitment efforts.

Corporate Transparency Act

The Corporate Transparency Act (CTA), which became effective **Jan. 1, 2024**, requires certain business entities, or CTA "reporting companies," to report their beneficial ownership information (BOI) and certain related information to the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN).

The CTA aims to combat illicit financial activity, including money laundering, the financing of terrorism, tax fraud and drug trafficking, by creating a centralized database of information about the individuals who ultimately own or control certain businesses that do business in the United States. The CTA generally targets small, privately held businesses and exempts many organizations from its requirements, including large employers and publicly held companies.

The reporting requirements may be unfamiliar to many small businesses that have not been subject to similar requirements in the past. Therefore, businesses that are considered reporting companies under the CTA should familiarize themselves with their reporting obligations and take steps now to ensure that they will be in compliance by their initial reporting deadline.
Starting January 1, 2025 reporting companies created or registered to do business in the United States before Jan. 1, 2024, must file their initial BOI reports.

Employer Take away: Tough outside of the scope of consulting by ETC HR, businesses should carefully review the CTA to determine whether they are subject to its reporting requirements or qualify for one of the 23 listed exemptions. Businesses that meet the definition of reporting companies under the law may begin gathering all the necessary information, including information regarding the company and its beneficial owners, to ensure that they are prepared to comply with the CTA before their initial reporting deadline. As FinCEN began accepting reports on Jan. 1, 2024, reporting companies may submit finalized reports at any time prior to such deadline. See also attached resource.

Resources:

- FinCEN – BOI Homepage
- FinCEN – BOI Informational Brochure
- FinCEN – BOI Frequently Asked Questions
- FinCEN – BOI Small Entity Compliance Guide

EEOC's Workplace Guidance to Prevent Harassment

On April 29, 2024, the U.S. Equal Employment Opportunity Commission (EEOC) published its final guidance on harassment in the workplace, which went into effect immediately upon issuance. This is the first updated enforcement guidance on workplace harassment in 25 years and it explains how the EEOC may enforce equal employment opportunity (EEO) laws against an employer when workplace harassment is alleged or suspected.

Since the Commission last issued guidance on workplace harassment, notable changes in the law have occurred, including the Supreme Court's decision in *Bostock v. Clayton County* and new issues such as online harassment. The new guidance updates, consolidates, and replaces the agency's five guidance documents issued between 1987 and 1999, and serves as a single, unified agency resource on EEOC-enforced workplace harassment law. It reflects the Commission's consideration of the robust public input that it received after the guidance was posted for public comment in fall 2023.

Resources:

- Enforcement Guidance on Harassment in the Workplace.
- "Summary of Key Provisions" document,
- document for employees, and a
- fact sheet for small businesses.

Learn more:

Covered Bases and Causation

The first section of the guidance examines the covered bases for a claim of workplace harassment and the factors to be considered in determining whether particular conduct rises to the level of actionable workplace harassment. It also examines the characteristics protected by federal EEO laws and provides insight into the scope of protection provided for these characteristics.

Among the highlights in the new guidance:

- Race harassment includes harassment based on *traits or characteristics linked to a person's race*, such as a person's name, cultural dress and accent or speech pattern. Protection based on race extends to a person's physical characteristics, including their appearance standards, hair texture, and hair style.
- *National origin* harassment includes harassment *based on traits* such as "physical characteristics, ancestry, or ethnic or cultural characteristics (e.g., attire or diet), and linguistic characteristics (e.g., non-English language accent or a lack of fluency in English)."
- The prohibition on religious harassment extends to *religious stereotypes and requests for or receipt of religious accommodations in the workplace*. Atheists and those without any religious beliefs are also protected from religious harassment. Religious harassment also includes explicit or implicit coercion by employees to have their coworkers engage in religious practices at work.
- Title VII of the Civil Rights Act's prohibition on sex-based harassment also includes harassment based on *pregnancy, childbirth, and related medical conditions such as lactation, morning sickness, use or non-use of contraception, and decisions related to abortions*.
- *Sex-based* harassment under Title VII includes conduct based on an individual's sexual orientation or gender identity, including how that identity is expressed. This includes "outing" a person's sexual orientation or gender identity, repeated or intentional misgendering (using a pronoun inconsistent with a person's gender identity) and "dead naming" (using a name used by a person prior to their transition), and denying a person access to a bathroom or other sex-segregated facility consistent with the person's gender identity. Sexual orientation or gender identity harassment also includes conduct directed toward a person because the person presents themselves in a manner that is different from that which would be stereotypically associated with that person's sex.
- Harassment prohibited by the *Age Discrimination* in Employment Act includes encouraging an older employee to retire or pressuring an older employee to accept a transfer to a position that uses less technology based on a stereotype that older workers are technologically illiterate.

- *Disability harassment* under Title I of the Americans With Disabilities Act includes conduct based on the person's *disability-related traits or characteristics* such as how the person speaks, looks, or moves. Harassment based on an individual's request for or receipt of an accommodation for their disability, the incorrect perception that a person has a disability, a person's past disability, or a person's association with a disabled person is also prohibited.
- The *prohibition on retaliation* under EEO statutes extends to what the guidance describes as "*retaliatory harassment," or harassment suffered by the employee due to their protected activity*. Under the guidance, the threshold for establishing retaliatory harassment is different than the standard for establishing a hostile work environment. The guidance noted that an employer can be found liable for retaliatory harassment that is *not sufficiently severe or pervasive to support a hostile work environment claim* because the Supreme Court has held the EEO statutes' anti-retaliation provisions protect against a broader range of behaviors by prohibiting any conduct that might deter a reasonable person from engaging in protected activity.
- The guidance provides that an individual can be found to have engaged in prohibited harassment against another individual *even if both are in the same protected class*, referred to *as intraclass harassment.*
- Harassment can also be based on more than one protected characteristic or be actionable under more than one EEO statute, which is referred to *as intersectional harassment*.

DOL Issues Guidance on AI

The Wage and Hour Division (WHD) of the U.S. Department of Labor recently published a Field Assistance Bulletin (FAB) No. 2024-1 warning that the use of artificial intelligence (AI) and other automated systems could cause employers to violate laws WHD enforces, including Fair Labor Standards Act (FLSA), the Family and Medical Leave Act (FMLA), and other federal labor laws due to the use of AI and automation technologies.

Employer take-away: Employers need to be aware that there will be heightened attention on their use of AI from the DOL and other federal agencies. While these principles are not mandatory, employers can certainly expect that the DOL will likely find violations of the law where the principles are ignored.

Learn More:
When used responsibly, AI has the potential to help improve compliance with the law but without proper human supervision, however, technologies can pose potential risks with respect to labor standards and may result in violations of the laws enforced by WHD. There exists the potential for use of AI in the workplace to pose a risk of creating systemic violations. Employers should proceed with the responsible use of AI.

So, what's in the DOL's released Principles?

- **Centering Worker Empowerment**: Workers and their representatives, especially those from underserved communities, should be informed of and have genuine input in the design, development, testing, training, use, and oversight of AI systems for use in the workplace.
- **Ethically Developing AI**: AI systems should be designed, developed, and trained in a way that protects workers.
- **Establishing AI Governance and Human Oversight**: Organizations should have clear governance systems, procedures, human oversight, and evaluation processes for AI systems for use in the workplace.
- **Ensuring Transparency in AI Use**: Employers should be transparent with workers and job seekers about the AI systems that are being used in the workplace.
- **Protecting Labor and Employment Rights**: AI systems should not violate or undermine workers' right to organize, health and safety rights, wage and hour rights, and anti-discrimination and anti-retaliation protections.
- **Using AI to Enable Workers:** AI systems should assist, complement, and enable workers, and improve job quality.
- **Supporting Workers Impacted by AI**: Employers should support or upskill workers during job transitions related to AI.

- **Ensuring Responsible Use of Worker Data:** Workers' data collected, used, or created by AI systems should be limited in scope and location, used only to support legitimate business aims, and protected and handled responsibly.

The Whitehouse Publishes Critical Steps to Protect Workers from Risks of Artificial Intelligence

Last year the White House weighed in on the use of artificial intelligence (AI) in businesses.
Since the executive order, several government entities including the Department of Labor have released guidance on the use of AI.
And now the White House published principles to protect workers when AI is used in the workplace.
The principles apply to both the development and deployment of AI systems. These principles include:

- **Awareness –** Workers should be informed of and have input in the design, development, testing, training, and use of AI systems in the workplace.
- **Ethical development** – AI systems should be designed, developed, and trained in a way to protect workers.
- **Governance and Oversight –** Organizations should have clear governance systems and oversight for AI systems.
- **Transparency –** Employers should be transparent with workers and job seekers about AI systems being used.
- **Compliance with existing workplace laws –** AI systems should not violate or undermine worker's rights including the right to organize, health and safety rights, and other worker protections.
- **Enabling** – AI systems should assist and improve worker's job quality.
- **Supportive during transition** – Employers support workers during job transitions related to AI.
- **Privacy and Security of Data –** Worker's data collected, used, or created by AI systems should be limited in scope and used to support legitimate business aims.

2025 Inflation-Adjusted HSAs & HDHPs Amounts + ACA Out-of-Pocket Limits

On May 9, 2024, the IRS released Rev. Proc. 2024-25, announcing the 2025 health savings accounts (HSAs) and high deductible health plans (HDHPs) inflation-adjusted amounts:

- Annual HSA contribution limits:
  - Self-coverage only: $4,300 ($150 increase from 2024)
  - Family coverage: $8,550 ($250 increase from 2024)
- Annual catch-up contribution maximum remains unchanged at $1,000 for HSA-eligible individuals age 55 or older
- Minimum annual HDHP deductible:
  - Self-coverage only: $1,650 ($50 increase from 2024)
  - Family coverage: $3,300 ($100 increase from 2024)
- Maximum annual HDHP out-of-pocket expenses (deductibles, copayments, and other nonpremium amounts):
  - Self-coverage only: $8,300 ($250 increase from 2024)
  - Family coverage: $16,600 ($500 increase from 2024)

This applies to all HDHPs regardless of whether they're for essential health benefits or not.

These amounts differ from the Affordable Care Act (ACA) maximum out-of-pocket limits for plan years beginning in 2025 (proposed by the Department of Health and Human Services in November 2024) for non-grandfathered health plans, which are:

- Self-coverage only: $9,200 ($250 decrease from 2024)
- Family coverage: $18,400 ($500 decrease from 2024)

Unlike the HDHP out-of-pocket maximums, the ACA out-of-pocket maximums apply to in-network essential health benefits.

2023 RxDC Reporting Due to CMS by June 1, 2024 – ALL EMPLOYERS Offering Pharmacy Benefits as Part of their Health/Group Medical Benefit

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 reference year (calendar year) RxDC data report is due by **June 3, 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

The Centers for Medicare and Medicaid Services (CMS) published the 2023 reference year instructions. The key updates include:

1. Exclusion of certain products: Clarification that medical devices, nutritional supplements, and over-the-counter drugs are to be excluded from the prescription drug lists (sections D3, D4, D5, D7, and D8) unless the product's National Drug Code (NDC) is listed on the CMS Drug and Therapeutic Class Crosswalk.
2. Simplification of premium calculation: The method for calculating the average monthly premium has been simplified. Instead of calculating this on a per-member basis, the total annual premium is now divided by 12.
3. Modification of premium equivalents calculation: The calculation for premium equivalents has been simplified by removing the requirement to report on a cash basis and using paid claims rather than incurred claims.
4. Updates to benefit carve-out field: Instructions for filling out the benefit carve-out field in section P2 have been updated.
5. Clarification on reporting prior year and restated rebates: Additional details have been provided on how to report information in the prior year columns in section D5 and the restated rebate columns in sections D6, D7, and D8.
6. Guidance on retained rebates reporting: New instructions have been provided for reporting entities on how to report information on retained rebates when exact amounts are unknown.
7. Submission of large data files: Instructions on how to submit data when plan list or data files exceed the maximum allowable size limit in the Health Insurance Oversight System (HIOS) have been included.
8. Enforcement of aggregation restriction: The enforcement of the aggregation restriction has been announced, which pertains to how data are aggregated for reporting purposes.
9. Addition of enrollment column to D6: A new column to collect enrollment data has been added to section D6.

Read more on the CMS Prescription Drug Data Collection (RxDC) web page

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. ETC can also provide guidance and assistance; please reach out with questions today!

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).

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.

OFCCP Affirmative Action Plan Submission Due July 1

On April 1st the Office of Federal Contract Compliance Programs (OFCCP) will open the Contractor Portal for the 2024 Affirmative Action Program (AAP) certification period: **April 1 – July 1, 2024**.

Employer Takeaway: Covered federal contractors are urged to begin certifying their AAP compliance through the portal today to meet the July 1, 2024, deadline. If you are in need out outsourced assistance with this compliance obligation, reach out to ETC HR today @HR_Help so that we can facilitate an introduction!

Learn More: Covered federal contractors and subcontractors must use the portal to certify, on an annual basis, whether they have developed and maintained an AAP for each establishment and/or functional/business unit, as applicable. New contractors have 120 days to develop their AAP(s) and must register and certify compliance through the Contractor Portal within 90 days of developing their AAP(s).

Visit OFCCP's Contractor Portal information page before starting the certification process to access Frequently Asked Questions and step-by-step How-To videos, along with User Guides and other pertinent information.

Contractors can refer to the pre-recorded webinar on the Contractor Portal information page that demonstrates how a contractor can enter its establishment and/or functional/business unit's AAP start date and certify compliance through the Contractor Portal.

Please submit your Contractor Portal questions to the Applications Technical help desk using the OFCCP Applications Technical Help Request Form or call the OFCCP help desk at 1-800-397-6251, press 1 for English or 2 for Spanish, then press 1 to reach technical support for assistance.

- Instructions for registering and certifying for the Contractor Portal
  - How-to Videos
  - User Guide
- Frequently Asked Questions

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.

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

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.

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.

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.

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.

Webcast: Reasonable Accommodation: A Deeper Dive into the Interactive Process under the ADA and Title VII

This webcast takes a deeper look at the workings of reasonable accommodation and the interactive process. Many employers are getting "tripped up" on this process by not vetting additional options leading to adverse verdicts under the ADA. It will also address the potential unintended consequences of being overly accommodating, as well as the growth of requests for religious accommodations. Access the March 21st recording, click here

CDC Issues New COVID-Related Guidance

For the first time since 2021, the Center for Disease Control and Prevention (CDC) issued new guidance relaxing the quarantine requirements for COVID-19. The new guidance is the result of fewer COVID-related deaths and hospitalizations in the United States. For the first time since 2021, the Center for Disease Control and Prevention (CDC) issued new guidance relaxing the quarantine requirements for COVID-19. The new guidance is the result of fewer COVID-related deaths and hospitalizations in the United States.
Employer Takeaway: Employer Handbook with COVID-19 Protocols or Policy should be updated to reflect any outdated Guidance or requirements still being referenced.

Employers Should Monitor Both Pro & Anti DEI Court Challenges & Legislation

Key Takeaways

- In the wake of the U.S. Supreme Court's 2023 decision on consideration of race in university admissions, litigants have begun to challenge some DEI training programs, alleging that they constitute racial discrimination and compelled speech, and/or cultivate a hostile work environment.
- State legislators on both sides of the aisle have passed bills and introduced others to either pare back or promote DEI initiatives.
- In light of the state regulations and intense public debates, DEI initiatives will likely continue to face challenges in court. Companies should look closely at their programming to ensure compliance with applicable and evolving laws and directives.

State Legislation Relating to DEI Initiatives
In addition to private court challenges to DEI trainings, several states have introduced or passed legislation that prohibits or restricts DEI offices and staff, mandatory DEI training, diversity statements and/or identity-based preferences for hiring and admissions. As of March 2024, nine of these bills have become law.
Most recently, on March 20, 2024, the governor of **Alabama** signed Senate Bill (SB) 129 into law, a sweeping measure that prohibits state agencies and schools from sponsoring DEI programs or requiring their employees or students to participate in them. Meanwhile, **Utah**'s governor signed into law House Bill (HB) 261, which prohibits public institutions from requiring DEI training or asking job applicants questions about initiatives that promote differential

treatment based on personal identity characteristics. It also bans policies or programs with "diversity, equity, and inclusion" in their names.
Notably — and importantly, for private employers — while HB 261 passed quickly, a bill covering employers in the private sector, HB 111, did not fare as well. The measure, which would have prohibited such employers from mandating DEI trainings, passed the Utah House but was voted down in the Utah Senate in February 2024.

Florida, North Carolina, North Dakota, Tennessee and Texas have also enacted anti-DEI bills.

- **Texas** adopted SB 17, which bans DEI offices and faculty and staff diversity trainings at public institutions.
- **Tennessee** signed into law HB 158, which prohibits certain public institutions from mandating implicit bias training.

At the same time, other states have moved to require DEI initiatives.

- **Washington** SB 5462 would require school districts to adopt curricula that tell the perspectives of LGBTQ+ Washingtonians.
- And in **California**, SB 54 requires venture capital companies to report the diversity of the founding members of businesses in which they invest.

Pay Transparency (Ohio, Minnesota & DC Updates)

Employer Takeaway:
Pay transparency laws are in effect in 9 states: California, Colorado, Connecticut, Hawaii, Maryland, Nevada, New York, Rhode Island, and Washington. The District of Columbia and Illinois pay transparency laws are scheduled to go into effect on June 30, 2024, and January 1, 2025, respectively. Additionally, at least 7 local jurisdictions have pay transparency laws in effect, and proposed legislation is pending in many other state and local jurisdictions. As employers, it is essential to proactively adapt to the upcoming pay transparency legislation to ensure compliance and foster a fair and inclusive work environment. Start by familiarizing yourself and your team with the specific provisions of these laws, including any requirements related to salary history inquiries, disclosure of salary ranges in job postings, and prohibitions on screening applicants based on wage history.
Learn More: In the pursuit of fair and equitable compensation practices, jurisdictions worldwide are implementing new laws to promote pay transparency and combat wage disparities. These legislative initiatives aim to address historical inequalities by prohibiting employers from inquiring about an applicant's salary history, disclosing salary ranges in job postings, and restricting the use of pay history in determining compensation. As we delve into the overview of three jurisdictions' upcoming pay transparency laws set to take effect in 2024, we'll examine the specifics of these regulations and their implications for employers and job seekers alike.
Columbus, Ohio: Effective March 1, 2024, Columbus prohibits employers with 15 or more employees from inquiring about an applicant's salary history. Ordinance 0709-2023 extends to screening applicants based on past compensation and making hiring decisions solely on salary history. Employers are also prohibited from searching publicly available records to obtain salary history. It does not apply to internal transfers or promotions or to applicants rehired within three years of separation.
While employers can discuss salary expectations with applicants, as well as other monetary incentives the applicant would forfeit by resigning from their current employment, they are not required to share pay scales. Exceptions include federal, state, or local law mandates, voluntary disclosures by applicants, and internal transfers or promotions. Violating employers may face civil fines of up to $5,000.
Minnesota: Since January 1, 2024, Minnesota prohibits all employers, regardless of size, from inquiring into an applicant's pay history unless it is publicly available or voluntarily disclosed by the applicant. Employers may discuss salary expectations with applicants but cannot prompt pay history disclosure. Employers must offer salaries based on the current job market taking into consideration the applicant or employee qualifications, and not their former salary. The Wage Disclosure Protection law exempts certain federal, state, or local law provisions and voluntary disclosures by applicants.
Washington, D.C.: Scheduled for enactment on June 30, 2024, Washington, D.C.'s new Pay Scale and Benefits Disclosure Amendment Act of 2023, also known as the Wage Transparency Omnibus Amendment of 2023, mandates private employers, regardless of size, to disclose minimum and maximum salary ranges in internal and external job postings and advertisements. Screening job applicants based on wage history is forbidden. Employers must also

disclose other benefits before the first interview and post notices informing employees of their rights. Violations may result in civil fines ranging from $1,000 to $20,000 per occurrence, with the attorney general empowered to investigate and seek remedies.

NLRB Blocked from Implementing Expansive Joint Employer Rule in Advance of the March 11th Effective Date

A federal district court recently vacated the National Labor Relations Board's 2023 joint employer rule (2023 Rule), which would have expanded the standard to hold separate companies joint employers based on indirect or reserved control, even if never actually exercised.

The district court's ruling preserves the National Labor Relations Board's (NLRB's or Board's) 2020 joint employer rule (2020 Rule), which requires "substantial direct and immediate control" to establish joint employer status.

The NLRB has several response options at this stage: (1) appeal the district court's ruling; (2) rescind the 2020 Rule, which will reinstate the pre-2020 joint employer standard, and then address future joint employer issues through case-by-case adjudication; or (3) issue a new and revised joint employer rule.

BACKGROUND

On March 8, 2024, the US District Court for the Eastern District of Texas vacated a 2023 rule issued by the NLRB, which would have vastly expanded the circumstances under which separate companies can be considered joint employers.[1] Joint employer status can have significant legal consequences, including obligations to recognize a union, bargain with that union, and be bound by a collective bargaining agreement; joint liability for unfair labor practices; and legal vulnerability to union picketing during labor disputes.

The district court's ruling preserves the NLRB's 2020 Rule on the joint employer standard, which the 2023 Rule sought to rescind and replace. Under the 2020 Rule, a company is deemed a joint employer of another company's employees only if it actually exercises "substantial direct and immediate control" over the employees' essential terms and conditions of employment—for example, wages, benefits, hours of work, hiring, discharge, discipline, supervision, and direction.[2]

The 2023 Rule, which would have gone into effect on March 11, 2024, deems virtually any company that contracts for third-party labor as a joint employer. The 2023 Rule provided that a company would be a joint employer if it exercised control over (whether directly, indirectly, or both), or had the right to control (whether directly, indirectly, or both), one or more of the employees' essential terms and conditions of employment—even if that control was only reserved and never actually exercised.[3]

The 2023 Rule also broadens the definition of "essential terms and conditions of employment" to include "work rules and directions governing the manner, means, and methods of the performance of duties and the grounds for discipline," and "working conditions related to the safety and health of employees."[4]

In its March 8 decision, the district court held the 2023 Rule contrary to the NLRB's authority because it exceeded the bounds of the common law definition of an employer.[5] The court also found that the Board failed to provide a sufficient justification for rescinding the 2020 Rule.

'Substantial Direct and Immediate Control' is the Operative Standard – For Now

Given the district court's ruling, the 2020 Rule's "substantial direct and immediate control" standard is the operative NLRB joint employer standard—at least for the time being. The district court's ruling is the latest development in an area of law that has been in flux for much of the last decade. The Board is likely to take action in response to the district court's decision, which may include one or more of the following:

- **Appeal District Court's Ruling to the US Court of Appeals for the Fifth Circuit:** A successful appeal by the NLRB could result in reinstatement of the expansive standard set forth in the 2023 Rule. Alternatively, if only the 2023 Rule's rescission of the 2020 Rule were to be upheld, the joint employer standard would revert to the Board's prior precedent in *Browning-Ferris,* which established an approach similar to—although not quite as expansive as—the 2023 Rule.[6] The Board may then choose to abandon rulemaking for the joint employer standard and establish future joint employer policy through case-by-case adjudication (see below).
- **Rescind 2020 Rule and Promulgate New Joint Employer Standard Through Adjudication:** The Board could engage in new rulemaking to rescind the 2020 Rule, which would require a lengthy notice and comment process.

As noted above, a rescission of the 2020 Rule would restore the Board's prior precedent in *Browning-Ferris,*[7] which established an approach similar to the 2023 Rule. The Board could then decide future joint employer issues through case-by-case adjudication, which is how the Board addressed joint employer issues prior to the 2020 Rule.[8] The Board could adopt a new standard under this case adjudication approach that is very similar, if not identical, to the 2023 Rule without engaging in rulemaking.

Whatever approach or combination of approaches the Board ultimately decides to take, employers can expect that the current Board will continue to pursue an expansion of the joint employer standard because it creates additional leverage and impact for union organizing, collective bargaining, and labor law litigation. As a result, companies should continue to consider ways to structure their contractual relationships and draft contractual terms to minimize the risk of a joint employer finding to address potential application of a "reserved and indirect" control standard in the future. However, for the time being, the current Board's effort to adopt that standard is stalled. Original Morgan Lewis Lawflash dated March 27th. Access it HERE

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 analyzes 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.

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-appointee-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

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.

Alabama

Minimum Wage Increases – July 1

Effective June 1, 2024, Alabama will no longer require minors to provide an Eligibility to Work Form for employment. The amended law can be found here: AL S 53 .

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

San Francisco-Based Employees & Health Care Expenditures May Be Required

The San Francisco Health Care Security Ordinance (HCSO) requires employers to make certain health care expenditures on behalf of their San Francisco-based employees, even if the employer is not located in the City.

Employer Take-aways:

- Determine if organization is a Covered Employer
- Determine Employer Spending Requirements
- Maintain Records
- Post the 2024 HCSO Poster (effective January 1, 2024) in all workplaces with covered employees.
- Submit an HCSO Annual Reporting Form to the OLSE by April 30th of each year.

Access the San Franscico. Gov Health care Security Ordinance website to learn more, access training, administrative Code & FAQs

Minimum Wage Increases – July 1

MINIMUM WAGE FOR HEALTHCARE WORKERS DELAYED - The new minimum wage rates and salary threshold will now take effect July 1, 2024 (instead of June 1)

LOCAL MINIMUM WAGE INCREASES

On July 1, 2024, numerous cities and counties across California will increase their hourly minimum wage. The new rates are as follows:

Alameda: $17
Berkeley: $18.67
Emeryville: $19.36
Fremont: $17.30
Long Beach hotels with 100+ guest rooms: $18.16
Los Angeles City: $17.28
Los Angeles City hotels with 60+ guest rooms: $20.32
Unincorporated Los Angeles County: $17.27
Malibu: $17.27
Milpitas: $17.70
Pasadena: $17.50
San Francisco: $18.67
Santa Monica: $17.27
Santa Monica hotels: $20.32
West Hollywood hotels: $19.61

Cal/OSHA Passes Indoor Heat Regulation

On June 20, 2024, the California Occupational Safety and Health Standards Board (Cal/OSHA) unanimously adopted a new standard for Heat Illness Prevention in Indoor Places of Employment.

Employer Obligations

For workplaces subject to the regulations employers will be required to do some or all of the following depending on the heat index at the workplace:

- Provide drinking water. Where drinking water is not plumbed or otherwise continuously supplied, employers shall provide sufficient quantities at the start of the shift to provide one quart per employee per hour of drinking for the entire shift.
- Provide access to cool-down areas which are defined as an indoor or outdoor area that are blocked from direct sunlight and shielded from other high radiant heat sources.
- Assess temperature and heat index and evaluate risk factors of heat illness.
- Establish and maintain accurate records of either the temperature or heat index measurements.
- Use control measures to minimize the risk of heat illness including engineering controls, and administrative controls.
- Develop emergency response procedures and conduct employee training.

The Cal/OSHA Board has requested that the Office of Administrative Law (OAL) expedite its effective date. If this happens the standard will take effect in early **August 2024.** If the rule is not expedited, then it will take effect on **October 1, 2024**.

Cal/OSHA Issues Guidance & Model Workplace Violence Prevention Plan-July 1

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.

Employers are required to provide employees with training on the workplace violence plan when it's first established and annually thereafter. Additional training has to be provided when a new workplace violence hazard is identified or when changes are made to the plan, but this training can be limited to covering those specific topics.

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.

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.

CA Supreme Court Clarifies Whether Employers Must Pay for Certain Pre-Shift Activities

In *Huerta v. CSI Electrical Contractors*, No. S275431 (March 25, 2024), the California Supreme Court issued an important decision relating to whether California employers must pay non-exempt employees for certain pre-shift activities, including time spent traveling on-premises before they begin productive work.

- First, the Court concluded that time spent by an employee waiting to undergo a vehicular search to enter the employer's premises is compensable, when that search includes a visual inspection of the employee's vehicle.
- Second, the Court held the time an employee spends traveling from an employer's security check to the jobsite is not compensable as "hours worked" (but might be compensable as "employer-mandated travel" for employers subject to Wage Order No. 16), notwithstanding that the employee may be subject to certain rules and restrictions while driving.
- Third, the Court held that Labor Code section 512(e)—which exempts employees in certain occupations (including construction) from state meal period requirements if they work under a labor agreement that meets specific requirements—does not allow employers to pay less than minimum wage for "on-duty" meal periods.

Employer Takeaways:

- Employers who have implemented mandatory screening procedures before employees may enter or leave the premises should read this decision carefully, particularly if the process involves visual scanning or searches by security personnel as the **Court concluded:**
  - **that when an employee is required to spend time on the employer's premises waiting to undergo an employer-mandated security procedure, that time is compensable**.
  - **that the time an employer prohibits an employee from leaving the employer's premises, which prevents the employee from engaging in otherwise feasible personal activities, is considered "hours worked" and is therefore compensable**.
- Employers should also consider whether the restrictions, if any, they place on employees while on the premises fall into the category of rules furthering safe, lawful, and orderly conduct, which *Huerta* said were insufficient to make on-site travel compensable.
- Last, employers should review their policies and procedures regarding meal periods and ensure they do not place restrictions on their employees' ability to perform personal activities during that time.

California Fast Food Minimum Wage Exemptions

The California Department of Industrial Relations initially updated its FAQs to indicate that the April 1 minimum wage increase for fast food workers will also increase the *minimum salary threshold* for exempt executive, administrative, and professional (EAP) employees in fast food restaurants.

The new minimum salary for these employees will be $83,200 per year. This increase is happening because under California law, EAP employees must earn a monthly salary of at least two times the *state minimum wage*, and the new $20 rate will function as the *state minimum wage* for fast food restaurant employees.
Impacted employers have two options:

1. Ensure that employees in EAP positions are paid $83,200 per year, or
2. Reclassify these employees as nonexempt and provide them with the rights and benefits that nonexempt employees are entitled to (overtime, breaks, lunches, and reporting time pay, to name a few)

Required Notice
Employers with covered employees are required to post a supplement to the minimum wage order in a place where employees will frequently see it.

Future Increases
The newly created Fast Food Council will have the authority to raise this minimum wage annually beginning January 1, 2025
Then with a mere seven days before the new minimum wage for employees of *fast food restaurants* is set to take effect in California, the legislature added new exemptions to the law. In addition to
the original exemptions for certain bakeries and restaurants inside grocery stores, the law will **not** apply to restaurants that are any of the following:

- Located in an airport
- Connected to or operated in conjunction with a hotel, event center, theme park, museum, or gambling establishment
- Located in and operated in conjunction with a for-profit corporation's office building or campus, are primarily serving the corporation's employees or its affiliates, and are part of a concession or food service contract covering the building or campus
- Located on land owned by the government and operated pursuant to a concession or food service contract

Please note that each of these exemptions has a more detailed definition under the law, which you should make sure applies before considering your establishment exempt.
Due to the most recent change, the state's FAQs have not been updated yet, but we expect that they will be shortly.

LA County Fair Chance Ordinance Applicable to Unincorporated Areas

At the end of February, the Los Angeles County Board of Supervisors passed an ordinance adding several compliance requirements to the California Fair Chance Act requirements for employers considering the criminal history of applicants and employees in making employment decisions.
The Fair Chance Ordinance (FCO) applies to employers with **5 or more employees** in **unincorporated areas of Los Angeles County**.
The ordinance takes effect **March 28, 2024**, and is operative **September 3, 2024**.
The ordinance's requirements impacts:

- Job Postings
- Background Checks
- Preliminary Notice and Notice of Adverse Action
- Recordkeeping

Impacted employer should access the March 13th Jakson Lewis publication HERE or the LA County government website HERE to learn more.

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.

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

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

Employment Applications, Expanded Protections for Race & Organ Donations – July 1

APPLICANT AGE-RELATED INQUIRIES PROHIBITED

Beginning July 1, 2024, employers will be prohibited from asking for an applicant's age, birth date, or school attendance or graduation dates on an initial job application. (These limitations don't apply to applications for jobs that will be performed entirely outside of Colorado, though inquiring as to any age-related data could potentially run afoul of Age Discrimination and EEO regulations)

Employers can ask applicants to *verify their compliance* with certain age requirements imposed by any of the following:

- A bona fide occupational qualification (BFOQ) related to public or occupational safety
- A federal law or regulation
- A state or local law or regulation based on a BFOQ

This means you can ask for a yes or no answer to a question like, "This job involves serving liquor and requires that you be at least 21 years old. Do you meet the age requirement?"

Additionally, employers can require that an applicant provide additional application materials (e.g., a resume) with their initial application, but only if they notify the applicant that they can redact information that identifies their age, birth date, or dates of schooling.

The Colorado Department of Labor and Employment has provided additional guidance on the law in INFO #9B.

Employer Takeaway:

- Review employment applications and remove any questions prohibited by the law.
- Train those involved in the interview process not to ask questions that are likely to reveal the applicant's age.

PROTECTIONS FOR RACE EXPANDED

The state has expanded the definition of *race* in its antidiscrimination statute to include hair length. If you have dress or grooming policies that regulate hair length, consider whether they're absolutely necessary for your organization. If you believe they are, consider consulting with an attorney to ensure they don't run afoul of this law. This law was passed on June 3, 2024, and took effect immediately.

Employer Takeaway: If necessary, update Equal Employment Opportunity (EEO) policy, and any other policies that include protected classes, to include *hair length* in the definition of race (if you include this level of detail). ETC will be updating & communicating an updated EEO Policy to include hair length.

ORGAN DONORS PROTECTED

Employers are prohibited from discriminating or taking adverse action against employees who donate an organ. The new law doesn't specifically require that employers provide organ donation *leave*, but employees who donate an organ should be allowed to use any leaves that a similarly situated employee would be entitled to, such as a personal leave of absence. This law was passed on June 3, 2024, and took effect immediately.

Employer Takeaway: Update your Equal Employment Opportunity (EEO) policy, and any other policies that include protected classes, to include *organ donors*.

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.

State AI Bill - Regulating Employment Decisions

On May 17, 2024, Colorado Governor Jared Poils signed Colorado SB 24-205, making Colorado the first state to enact broad legislation regulating employers' use of AI to make "consequential decisions." The law, effective on February 1, 2026, will require businesses to use reasonable care to avoid discrimination when using AI for consequential decision-making (such as hiring, termination and other employment decisions). More to come as the effective date approaches.

Key Takeaways: Colorado is now the first state to enact such broad-based AI legislation but not likely the last. Employers using or considering using AI in their employment processes should evaluate their current AI risk management practices against the requirements of Colorado SB 205 and consider whether enhancements are necessary to align their current practices with these emerging expectations. ETC will continue to monitor this along with other AI-related regulations pertaining to employers and employment activities.

Overview: Colorado SB 24-205 broadly covers a wide range of AI applications, including employment, and incentivizes AI risk management practices that have long been the subject of discussion by regulators at the federal, state, and international level. For many applications, the bill requires impact assessments, consumer-facing disclosures, and notifications regarding Colorado residents' ability to opt-out. As a result, Colorado SB 205 could potentially chill the use of AI applications in various employment applications beyond sourcing, selection, and termination. The disclosure requirements in Colorado SB 205 apply broadly to Colorado consumers affected by AI-driven consequential decisions, encompassing both Colorado consumers in the traditional sense and Colorado residents applying for jobs.

Under Colorado SB 205, deployers of high-risk AI systems must provide "consumers," including job applicants, with information regarding their right to opt out of the processing of their personal data, consistent with Colorado's existing privacy law.

Additionally, the bill requires AI deployers using covered systems to notify Colorado consumers, including job applicants, that such a system is being used, disclose the purpose and nature of the decision, provide contact information for the deployer, and offer a plain-language description of the AI system.

Colorado SB 205 also requires AI deployers to conduct impact assessments for high-risk AI systems.

Colorado SB 205 includes additional specific items that an impact assessment must include. Among other things, it requires the impact assessment to include:

- A description of the categories of data the system processes as inputs and the outputs it produces;
- An overview of the categories of data used to customize the system, if applicable;
- The metrics used to evaluate the system's performance and known limitations; and

- A description of transparency measures taken, including measures to disclose the use of the system to consumers.

Connecticut

CT Passes Significant Expansion of Paid Sick Leave Benefits

On May 6, 2024, the Connecticut Senate passed legislation that, once signed into law, will significantly expand the State's paid sick leave statute, including broadening the statute's scope to cover almost all employers and workers in Connecticut. Governor Ned Lamont is expected to sign the bill into law shortly, with an effective date of January 1, 2025.

Currently, employers with 50 or more Connecticut employees are required to provide paid sick leave. The revised statute will lower this threshold in three phases between January 1, 2025, and January 1, 2027, until virtually all employers are covered by the law. The schedule is as follows:

- As of January 1, 2025: Employers with 25 or more employees in the State will be covered
- As of January 1, 2026: Employers with 11 or more employees in the State will be covered
- As of January 1, 2027: Employers with one or more employees in the State will be covered

The new legislation also expands the scope of employees who are entitled to paid sick leave. Starting January 1, 2025, virtually all employees will be entitled to paid sick leave, with some limited exceptions for seasonal and certain unionized workers.
Employees start to accrue paid sick leave on their first day of work but cannot use it until after 120 calendar days of employment. Leave must accrue at a minimum rate of 1 hour of leave for every 30 hours worked, up to a maximum of 40 hours of leave. Moreover, employers must allow employees to carry over up to 40 hours of accrued, unused paid sick leave. Alternatively, employers may provide employees with a bank of front-loaded sick time in lieu of any carryover.
Further, the new law expands the reasons for which an employee may take this type of leave.
More to comes as the effective date draws closer including the release of any labor notices as well as changes to the Oregon State Handbook Addendum.

Delaware

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)

District of Columbia

Minimum Wage Increases – July 1

On July 1, 2024, the District of Columbia minimum hourly wage will increase to $17.50. The minimum base wage for tipped employees will increase to $10 per hour.

New District Voting Leave Regulations

Employer Take-away: Post the voting leave notice (which appears to be updated each year) at least 60 days before any scheduled election and provide notice to employees who don't have access to a physical poster.

Learn More: On May 10, 2024, D.C. published final regulations affecting the District's voting leave law that took effect immediately. The new regulations require employers to post the Time Off to Vote notice in a conspicuous location in the workplace at least 60 days before all scheduled elections (including special elections). For remote employees and those who don't have access to a physical poster, the notice should be provided by any reasonable means (such as email), and employers need to collect a signed acknowledgment of receipt. The regulations also clarify that employers can't require employees to provide more than seven days' notice to take voting leave unless an already existing policy requires more.

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

Employer Take-away:

- Ensure each job posting has a good faith estimate of the position's pay range
- Remove salary history questions from your job applications (or at least make them clearly optional)
- Train hiring managers on what they can and cannot ask about as well as what they must disclose
- Post the required notice

Learn More:

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. D.C. has not yet made a template notice available, but employers that are eager to comply can print and post these in the workplace: pay disclosure and salary history. Once a workplace Notice is released, ETC will alert employers via the HR WIRE publication.

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

Hawaii

Captive Audience Ban – July 2, 2024

Hawaii enacted a captive audience ban, protecting workers from retaliation for refusing to attend meetings or listen to their employer's speech on political matters. The new law, HI S 2715, became effective on July 2, 2024.
The state's ban, which prohibits employers from taking adverse employment actions against employees who refuse to attend meetings or listen to communications regarding the employer's political views, took effect.

The new law prohibits employers from discharging, disciplining, or otherwise penalizing or threatening any adverse employment action against an employee because they decline to:

- Attend or participate in an employer-sponsored meeting, or any portion of a meeting, that communicates the employer's opinions about political matters; or
- Receive or listen to a communication from the employer that communicates the employer's opinions about political matters.

Under the new law, "political matters" means anything related to an attempt to influence a future vote made by individuals in an audience.
The new law does **not** prohibit an employer from conducting meetings or engaging in communications involving political matters as long as attendance by the employee is entirely voluntary.

Illinois

State Amends Biometric Information Privacy Act – Aug 2024

On Aug. 2, 2024, Illinois enacted Senate Bill (SB) 2979, which amends the Illinois Biometric Information Privacy Act (BIPA). SB 2979 limits potential statutory damage awards under BIPA and allows private entities to obtain consent from individuals for the collection, use, disclosure and storage of their biometric information through electronic signature. The amendments to BIPA went into effect immediately on Aug. 2, 2024.

SB 2979 effectively overrules the Illinois Supreme Court's decision in *Cothron v. White Castle System* by limiting the number of violations an individual can accumulate under BIPA. Under the act, as amended by SB 2979, multiple instances of the same violation involving the same biometric data from the same person and the same method of collection or dissemination will be treated as a single violation under the law.

Additionally, SB 2979 clarifies that BIPA's written consent release requirement may be met by an "electronic signature," now defined as "an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record."

Freelance Worker Protection Act – July 1, 2024

The Freelance Worker Protection Act provides protections for independent contractors who provide products or services in Illinois or who work for a hiring entity located in Illinois when the value of that work is equal to or greater than $500 in a 120-day period.

Under the law, freelance **workers are entitled to** all of the following:

- A written contract (see templates below) that includes:
  - Name and contact information of both the hiring entity and freelance worker
  - Itemization of products and services
  - Rate and method compensation
  - Date of compensation due
  - Dates of services to be provided
- Full payment for the services by the due date in the contract, or if the due date is not specified, within 30 days of completing the services outlined in the contract
- Protection from retaliation and/or other negative action for exercising rights under the FWPA

Of note: The law only applies to contracts taking effect **after July 1, 2024**. Illinois provides See model contracts on their sate website HERE To learn more, access the State's Frequently Asked Questions

Minimum Wage Increases – July 1

LOCAL MINIMUM WAGE INCREASES

Chicago

For employers with four or more employees, the minimum hourly wage will increase to $16.20. The minimum hourly base wage for tipped employees will increase to $11.02—this is the first rate increase that's part of the gradual phase out of the tip credit, which will be eliminated in 2028.

Cook County

The minimum hourly wage will increase to $14.05. The minimum hourly base wage for tipped employees will remain at $8.40.

Chicago Fair Workweek Threshold Increase - July 1

CHICAGO FAIR WORKWEEK THRESHOLD INCREASE

The threshold for coverage under the Fair Workweek Ordinance will increase to $61,149.35 per year (if salaried) or $31.85 per hour (if paid hourly).

Chicago Start of New Paid Leave

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.

Recap of New Paid Leave & Paid Sick & Safe Leave Regulations:

Under the city's new Paid Leave and Paid Sick and Safe Leave Ordinance, which applies to employers of all sizes, employees will be entitled to accrue two separate types of leave: Paid Leave (PL) that can be used for any reason and Paid Sick and Safe Leave (PSL) that can be used for the reasons allowed by Chicago's previous paid sick leave law.

Accrual

Both types of leave begin to accrue on July 1, 2024 (or upon hire, if after that) at a rate of one hour for every 35 hours worked *in Chicago.* An employee who works 35 hours will have earned one hour of PL and one hour of PSL. Employers can cap *annual* accrual at 40 hours for each type of leave.

Carryover
Employees can carry over up to 16 hours of PL from one benefit year to the next unless their employer frontloads PL, in which case no PL needs to carry over. Employees can carry over up to 80 hours of PSL from one benefit year to the next, *regardless* of whether the employer frontloads.
Use
Employers can't cap use of either type of leave (except up to the amount that an employee has accrued). Employers can deny PL requests if the denial is based on a rationale covered by their written policy—they must also provide employees with a written explanation for the denial. Employers can impose a 30-day waiting period on use of PSL and a 90-day waiting period on use of PL from the time an employee begins to accrue.
Payout at Termination
Employers don't have to pay out any unused PSL but may need to pay out *accrued but unused* PL at termination, according to the following rules:

- Employers with 1–50 employees are exempt from PL payout
- Employers with 51–100 employees must pay out up to 16 hours of PL through June 30, 2025, and all unused, accrued PL after that date
- Employers with 101 or more employees must pay out all unused, accrued PL

Notice to Employees
Employees need to be given a notice about PL and PSL with their first applicable paycheck—in July 2024, or after hire, whichever comes first—and annually thereafter in July. The notice also needs to be posted in the workplace. The notice, made by the city, is available in six languages here.
Employers also need to give employees written notification of their available PL and PSL, and their accrual rate, each time they're paid. Employers can meet this obligation in several ways, including by putting the information on a paystub or having it available online where employees can easily access it.
Documentation for Use of Leave
Employers can't require any documentation for use of PL. Employers can require that employees provide certification of their need for PSL if they're gone for *more* than three consecutive scheduled workdays. Note that the FAQs are a bit misleading in saying that an employer can ask for a note "after" an employee uses three days in a row—that's only true if the employee also uses PSL for all or part of a *fourth* scheduled workday in a row.

For More Information

- Paid Leave and Paid Sick Leave Ordinance
- Paid Leave and Paid Sick Leave Rules
- Paid Leave and Paid Sick Leave FAQs
- Business Affairs and Consumer Protection public notices

Illinois Issues Final Rules for Paid Leave for All Workers Act

The Illinois Department of Labor (IDOL) has published final rules for the state's Paid Leave for All Workers Act (the Act), which took effect January 1, 2024. The rules which took effect upon publication on April 30, 2024, address the implementation of varied aspects of the law and include helpful examples.

IL Equal Pay Act Registration Certification Filing Deadline March 23, 2024

State's Equal Pay Act Registration Certificate Filing Deadline Is March 23

Employer Takeaway: Employers who have not yet filed for an Illinois Equal Pay Act Registration Certificate (EPRC) must do so by March 23, 2024. This only applies to employers who have not filed for an EPRC in the past two years.

The Illinois Equal Pay Act requires employers with 100 or more employees in Illinois to obtain an Equal Pay Registration Certificate certifying the employer's compliance with laws prohibiting gender, race and other forms of discrimination based on wages.

In order to obtain the certificate, employers must file with the Illinois Department of Labor certain wage records, their most recent EEO-1 Report and an equal pay compliance statement signed by a corporate officer, legal counsel,

or registered agent that certifies, among other things, statutory compliance with the Illinois Equal Pay Act and other state and federal equal opportunity laws, a lack of wage disparity between male, female and minority employees and that there are no sex-based personnel decisions.

Employers with less than 100 employees must file for an exemption by completing an Exemption-Business form and e-mail it to DOL.EPRC@illinois.gov. In order to determine whether an employer had less than 100 employees, the employer must have had less than 100 current employees on December 31, 2023. Employers who do not comply with the filing deadline or request an exemption are subject to a $10,000 fine.

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).

Louisiana

Updates Meal Breaks for Minors – Aug 1, 2024

As of August 1, 2024, the law requiring meal breaks for minors will *only* apply to minors who are 15 years old or younger. HB 156 was signed by the governor on June 11, 2024.

Maine

Maine Retirement Investment Trust Savings Program Registration Deadlines Approach

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.

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Maryland

State Prohibits Vaping in the Workplace – July 1, 2024

Effective July 1, 2024, Maryland's Clean Indoor Air Act will be expanded to prohibit vaping in almost all indoor places of employment. *Vaping* includes using any electronic smoking device or other device that allows the user to inhale aerosol tobacco, cannabis, or hemp. Employers are required to post a sign that says "NO SMOKING OR VAPING" near every **public** entrance to their place of employment. MD H 238

Montgomery County Increases Minimum Wage – July 1, 2024

On July 1, 2024, the minimum hourly wage in Montgomery County will increase as follows:

- 1–10 employees: $15
- 11–50 employees: $15.50
- 51 or more employees: $17.15
- 11 or more employees and the employer is tax exempt under § 501(c)(3): $15.50
- 11 or more employees and the employer provides *home health services* or *home or community-based services* (as defined by federal law) and receives at least 75% of gross revenues through Medicaid: $15.50

The minimum base wage for tipped employees remains $4 per hour.
More information can be found here.

FAQs Released - State's Paid Family and Medical Leave Insurance Program

The Maryland Department of Labor's Division of Family and Medical Leave Insurance (FAMLI) has released a detailed FAQ document addressing 59 questions surrounding the new paid family and medical leave system that is (now) slated to launch in 2026.

Maryland Passes Pay Transparency Law

Maryland Governor Wes Moore signed a pay transparency requirement into law on April 25, 2024, requiring that all employers in Maryland include wage ranges and benefit information in all job postings as of October 1, 2024.

Employer take-away: In advance of the October 1 effective date, all employers that expect to hire employees who work at least part of their time in Maryland should review all public and internal-facing job postings and advertisements for the new roles to ensure these materials include the required wage and benefit information. Because existing Maryland law already requires employers to provide wage information to applicants upon request, employers may be able to leverage such information in updating postings, as needed.

The law, Equal Pay for Equal Work – Wage Range Transparency, will go into effect on October 1, 2024. In passing this law, Maryland joins in on a rapidly growing trend as multiple other states have passed similar requirements over the last few years, including California, Colorado, Connecticut, Hawaii, Nevada, New York, Rhode Island, and Washington. The new Maryland requirements are in addition to the state's existing pay equity legislation, including a salary history ban and a pay range upon request requirement, both passed in 2020.

Coverage Under the Law

The law applies to all employers (or persons who act directly or indirectly with an employee on behalf of another employer) that engage "in a business, industry, profession, trade, or other enterprise in" Maryland. There is no minimum employee requirement for coverage under this law.

The law also states that the disclosure requirements only pertain to positions that "will be physically performed, at least in part," in Maryland. The legislature has not defined "at least in part" and thus it is unclear whether the law applies to positions that are based in another state but performed remotely in Maryland on occasion.

The law also applies to any solicitation intended to recruit applicants for a specific position, which includes indirect recruitment through a third party. For example, if an employer utilizes a recruiting agency, the agency would also need to include the necessary disclosures in its advertisements.

Massachusetts

State Requires Pay Range Disclosure and Pay Data Reporting – Feb 2025 & July 2025

On July 31, 2024, Massachusetts Governor Maura T. Healey signed into law regulations requiring employers to disclose pay range information.

Employers will have some time to get ready for these new requirements:

Date	Covered Employer	Obligation
February 1, 2025	Employers with 100 or more employees in Massachusetts and subject to federal EEO filing requirements	Submit demographic and pay data to the Secretary of the Commonwealth
July 31, 2025	Employers with 25 or more employees in Massachusetts	Pay range disclosure obligations go into effect

Employer-away: To prepare for this new requirement, Covered Employers with 25 or more employees in Massachusetts should take measures to comply *before* July 31, 2025. More to come as the effective date approaches

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.

Minnesota

Employment Law Updates – Aug 2024

The below take effect August 1, 2024, and apply to employers of all sizes:

ANTIDISCRIMINATION LAW EXPANDED
Minnesota's antidiscrimination statute has had minor updates to several definitions.
First, the definition of ***disability*** has been updated to include impairments that are episodic or in remission if they would materially limit a major life activity when active. This brings Minnesota's definition in line with the federal Americans with Disabilities Act (ADA) (which only applies to employers that have 15 or more employees).
Second, the definition of ***discriminate*** has been broadened to include any form of harassment, not just sexual harassment.
Finally, the definition of ***familial status*** has been broadened to include, among other things, having custody of a minor child (even when they don't live with you) and caregiving for an incapacitated person whom the employee lives with.
Employer takeaway: If your Equal Employment Opportunity (EEO) policy includes these definitions (which is unlikely), update it by August 1.

EARNINGS STATEMENTS MUST BE RETAINED
All employers must keep a record of earnings statements for each nonexempt employee for every pay period for at least three years as part of their recordkeeping requirements under the state's Fair Labor Standards Act. While federal law already requires that pay records of nonexempt employees be kept for three years, the state law is more specific in requiring that earnings statements (aka pay stubs) be retained.

PREGNANCY AND PARENTING LEAVE CHANGES
The provisions regarding the continuation of benefits in the Pregnancy and Parenting Leave law and the pregnancy accommodations law have been updated to align with the state's upcoming Paid Leave law.
Employers are required to maintain coverage and continue paying their share of any group insurance premiums during any period of benefits or leave granted under these statutes. Employees are responsible for maintaining their portion of the premium payments.
Additionally, employers can't reduce an employee's Pregnancy and Parenting Leave entitlement by any period of paid or unpaid leave an employee takes for prenatal care medical appointments.
Employer takeaway: Adjust language in your policies as needed and ensure that you pay the group insurance premiums during covered pregnancy and parenting leaves.

TIPS RECEIVED BY ELECTRONIC MEANS
Employers must credit any tips an employee receives through electronic means (like a credit card) in the pay period they are received and must distribute the *full amount of the tip* that was indicated in the payment to the employee no later than the next scheduled pay period.
Employer Takeaway: Work with your payroll or accounting department to ensure tips are distributed in a timely fashion and are not reduced by credit card service (or other) fees.

ORAL FLUID DRUG TESTING
Employers will be permitted to conduct applicant and employee oral fluid (saliva) testing for drugs, alcohol, and cannabis under specific circumstances, without having to use a testing laboratory to conduct the initial test. The law requires that employers follow specific procedures regarding notifying the employee of the test results and confirming a positive test result at an employee's request. Due to the overall complexity of Minnesota's employment drug testing laws, we recommend consulting with an attorney if you're interested in doing this kind of testing.

Minimum Wage Update – July 1

Minneapolis
The minimum wage will be $15.57 for employers of *all* sizes.
St. Paul
Employers with 1–5 employees: $12.25
Employers with 6–100 employees: $14
Employers with 101 or more employees: $15.57

Minnesota Amends Sick Leave, Paid Family and Medical Leave

Minnesota has enacted the 2024 Transportation, Housing and Labor Omnibus Budget Bill, which makes numerous changes to the state's earned sick and safe time (ESST) and paid leave laws.

Amended Sick & Safe Leave Law:
The most significant changes relate to reporting and usage requirements, and a majority of the clarifications and updates to the ESST law are effective immediately. The changes of most practical importance to companies employing workers in Minnesota relate to tracking ESST, reporting requirements, using paid time off to satisfy ESST requirements, and covered employees:

- The amendments override the Minnesota Department of Labor and Industry's position that employers must track ESST using the smallest increment of time the employer uses for tracking time worked. Instead, employers are permitted to require ESST use in increments of no less than 15 minutes.
- Employers are no longer required to include information about accrued and used ESST on each earnings statement issued to an employee. Instead, employers have the option of making the information available to employees through an electronic system, as long as the employer provides access to a computer that employees can use to check their ESST balance during regular working hours.
- Effective Jan. 1, 2025, employers who meet their ESST obligations through a general paid time off policy will have to follow ESST requirements with respect to all such paid time off. In other words, employers who do not maintain a separate ESST bank will be required to allow all available time off that can be used for personal illness or injury to be taken as ESST, as long as the time qualifies as ESST under the statute.
- An employee is immediately covered and may begin using ESST if it is anticipated that the employee will work at least 80 hours in a year for an employer in Minnesota. The previous statutory language had suggested that an employee was not eligible for ESST until they had actually worked 80 hours in the state.

The amendments also include new information on how to calculate pay for ESST and use of ESST as bereavement leave.

Under Minnesota's Paid Leave Law (PLL) that was passed in 2023, eligible employees may take up to 20 weeks per year of paid leave during certain family and medical leave events starting in January 2026. The PLL created a state-run family and medical leave insurance account modeled after the unemployment insurance fund. By October 31, 2024, employers must submit their first quarterly wage detail report. This first report will be based on wages paid between July 1, 2024, and September 30, 2024. Reports will be submitted through DEED's employer portal. DEED's website explains in detail what must be included on a wage detail report and how to submit it.

Minnesota Employers Must Provide Paid Sick Leave in 2024

Effective Jan. 1, 2024, nearly all Minnesota employers are required to provide their workers with paid earned sick and safe time (ESST). Employees are eligible for ESST if they work at least 80 hours in a year in Minnesota. Leave accrues at a rate of one hour of ESST for every 30 hours worked, up to a maximum of 48 hours per year. Employers must give notice to all employees that they are entitled to ESST, and any employee handbooks must include a notice of employee rights and remedies.

Significant Changes to State's Independent Contractor & Employment Laws - Updates to Employee Misclassification Prohibitions – July 1

Effective July 1, 2024, all employers, as well as their owners, risk significantly increased penalties for misclassifying employees as independent contractors. In addition, it changes the independent contractor test for those performing building construction or improvement services. Under the new statute, no person may:

- Fail to classify, represent, or treat an individual who is an employee as an employee under applicable law.
- Fail to report a person as an employee when required by applicable law.
- Require an employee to misrepresent or misclassify themselves as non-employees, including as an independent contractor.

Officers or agents who engage in the above prohibited activities can be deemed personally liable. Compensatory damages to any misclassified person may be available, along with penalties of up to $10,000 for each misclassified person and each violation, and a penalty of up to $1,000 for each person who fails to cooperate or obstructs an investigation into violations of the classification law. Additional clarifications and additions specific to construction employees and contractors have also been added.

Key Takeaway: Employers operating in Minnesota should carefully evaluate whether the independent contractors with whom they conduct business are properly classified under state law. In particular, in the construction industry, contractors have until March 1, 2025, to review their business models and contracts to ensure that their subcontractors meet the new 14-factor test. With the new 14-factor test focused on the time at which the services were provided, construction contractors will want to be extra vigilant to ensure that their subcontractors' registrations and licenses remain valid through the entire time when they are performing work for the contractor. Inadvertent lapses in registrations/licensure could lead to significant misclassification liabilities.
(Minn. Stat. §§ 177.27, 181.722, 181.723)

New Pay Transparency Disclosure Requirements - Jan 1, 2025

The Minnesota legislature continues to expand protections for job applicants. In 2023, Minnesota enacted legislation that prohibits employers from inquiring into an applicants' pay history during the hiring process. Minnesota Gov. Walz signed the Omnibus Labor and Industry policy bill, including new job posting requirements. This law is in addition to existing Minnesota wage disclosure protections for employees. Now, most employers will be required to disclose salary ranges in their job postings. The pay transparency law will take effect January 1, 2025.

Who must comply with the pay transparency requirements?

The pay transparency requirements apply to any person or entity that employs 30 or more employees at one or more sites in Minnesota.

What must be included in job postings?

Covered employers must disclose in each posting for each job opening the starting salary range, and a general description of all benefits available and other compensation to be offered to a hired applicant. This could include health insurance, retirement options, bonuses, or other financial perks that come with the position.

"Salary range" means the minimum and maximum annual salary or hourly range of compensation for a job opportunity at the time of the posting of an advertisement for that job opportunity. Salary ranges can be based on the employer's good faith estimate but must not be open-ended. An employer that does not plan to offer a salary range for a position must list the fixed pay rate.

What is a "posting"?
A job posting means anything intended to recruit job applicants for a specific available position. This could include recruiting done directly by the employer or indirectly through a third party. It includes postings made electronically or via printed hard copy.
Employer Take away: Minnesota employers should review their current pay rates, hiring practices, and job postings in anticipation of the January 1, 2025, effective date.

Nevada

Updated Minimum Wage Increase – July 1

Beginning July 1, 2024, the hourly minimum wage in Nevada will increase to $12 for *all employers*.
As of that date, the tiered minimum wage rates currently allowed by the state based on whether employers offer qualifying health benefits will be eliminated, and a single minimum wage rate will apply to all employers.

New Hampshire

Hampshire Prohibits Hairstyle Discrimination – Sept 1, 2024

New Hampshire law will prohibit employers of all sizes from discriminating against applicants and employees based on their protective hairstyle. Protective hairstyles are defined as hair type or style, including braids, locs, tight coils or curls, cornrows, Bantu knots, Afros, twists, and head wraps. NH H 1169 was signed by the governor on July 3, 2024.

Employer Takeaways:

- Employers that have dress or grooming policies that regulate hairstyles should consider whether those policies are truly necessary for the organization.
- Employers should review policies to ensure your equal employment opportunity (EEO) policies to include protective hairstyles

State Adds Protections for Volunteer Firefighters and EMTs – Aug 2024

Effective August 13, 2024, employers of all sizes will be prohibited from taking adverse action against volunteer firefighters and emergency medical technicians (EMTs) for reporting late to work because they are responding, in their official capacity, to an emergency they come across or witness while heading to work. Employers are not required to compensate nonexempt employees for the time missed.

Guns in Trunks State Regulation – Jan 1, 2025

Starting January 1, 2025, employers of all sizes will be subject to new limitations with respect to firearms stored in employees' personal vehicles. Specifically, *all* employers can't:

- Require that employees disclose whether there is a firearm or ammunition in their vehicle
- Search an employee's vehicle for a firearm or ammunition

Additionally, employers *that are state or federal government contractors* can't prohibit employees from storing a firearm or ammunition in their vehicle on the employer's property if the employee can legally possess a firearm, the vehicle is locked, and the firearm or ammunition isn't visible. HB 1201 and HB1336 were signed by the governor on July 12, 2024.

New Jersey

State's Secure Choice Retirement Savings Program Operational on June 30, 2024

Beginning June 30, 2024, the New Jersey Secure Choice Retirement Savings Program will be accepting registration for private employers with 25 or more employees. The state will notify employers with instructions and deadlines to register for or certify exemption from the program. The implementation deadlines are:

- September 15, 2024, for covered employers with 40 or more employees; and
- November 15, 2024, for covered employers with 25 to 39 employees.

Details can be found on the New Jersey Secure Choice Retirement Savings Program page.

State Issues FAQs on Family Leave Act

Enacted in 1989, the NJFLA applies to private employers with 30 or more employees worldwide and to state and local government agencies.

The New Jersey Division on Civil Rights has published answers to frequently asked questions (FAQs) about the New Jersey Family Leave Act (NJFLA). According to the division, the guidance is intended to facilitate compliance with the NJFLA by clarifying and explaining the division's understanding of the law's requirements. The FAQs do not impose any new requirements, rights or obligations that are not included in the NJFLA.

New York

New York Requires Paid Lactation Breaks - June 19

Paid Lactation Breaks

Effective June 19, 2024, all private sector employers (regardless of size) will be required to provide 30 minutes of ***paid*** break time to employees who need to express breast milk for a nursing child at work. Employees must also be allowed to use any existing paid break or meal time for breast milk expression in excess of 30 minutes. The law does not explicitly cap the number of paid lactation breaks employees are entitled to per day. Rather, the law provides that employers are required to provide paid lactation breaks "each time such employee has reasonable need to express breast milk," suggesting that employees may be entitled to multiple paid lactation breaks per day.

Currently, New York employers are only required to provide "reasonable unpaid break time" for breast milk expression up to three years following childbirth. The new law retains this three-year limitation but significantly departs from existing law by requiring that such breaks be compensated. Note that 2023 amendments to New York's lactation accommodation law required employers to distribute a lactation accommodation policy to all employees which meets or exceeds the model policy developed by the New York Department of Labor. Although that model policy has not yet been updated, employers are encouraged to update their policies to reflect changes to the law.

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.

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.

State's 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

MINIMUM WAGE INCREASES 7.1.24
The hourly minimum wage in Oregon will increase as follows:

- Portland Metro (within Portland's Urban Growth Boundary): $15.95
- Nonurban Counties: $13.70
- All Other ("Standard") Counties: $14.70

Predictive Scheduling Exceptions Broadened

The state's predictive scheduling law (which only applies to employers in the retail, hospitality, and food services industries with 500 or more employees) will contain a new exception for short-notice schedule changes due to PLO, OFLA, and related leaves. Specifically, when an employer is provided with less than 14 days' notice of an employee going out on, or returning from, a protected leave, they won't owe predictive scheduling pay to an employee who is temporarily covering the absent employee's shifts.
Employer Takeaways: If this law applies to you and your policy includes exceptions to required pay, update it to include this scenario.

Oregon Family Leave Act – July 1

Employers covered by the Oregon Family Leave Act (OFLA) (those with 25 or more employees in Oregon) should be aware of the following significant changes to the law.
Forward-Looking Leave Year Required
Employers will be required to use a forward-looking leave year to determine the amount of OFLA leave an employee is entitled to take within a given one-year period. The forward-looking leave year is a consecutive 52-week period, beginning on the Sunday immediately preceding the date on which leave begins. Employers that don't currently use a forward-looking leave year calculation will have to transition to one as of July 1.
Many Covered Reasons for Leave Eliminated
OFLA's covered reasons for leave will be significantly reduced to limit overlap with Paid Leave Oregon (PLO). OFLA will *no longer cover* the following reasons for leave:

- To care for an infant or newly adopted or foster child

- To care for a family member with a serious health condition (except for caring for a sick or injured child at home)
- To recover from, or seek treatment for, the employee's own serious health condition

Employees' leave entitlement under OFLA will be limited to the following:

- Up to 12 weeks of leave per year to either care for a child at home because they are sick or injured (for both serious and nonserious health conditions) or because their school or care provider is closed due to a public health emergency.
- Up to four *total* weeks of leave per year for bereavement (employees are still allowed to take two weeks of leave for each death, but the total amount of leave has been reduced from 12 weeks to four weeks).
- Up to 12 weeks of leave for any illness, injury, or condition related to their own pregnancy or childbirth that prevents them from performing any available job duties offered by the employer. (As before, this time is available in addition to an employee's use of OFLA for other purposes.)
- Up to 14 days per deployment under the Oregon Military Family Leave Act.

Additionally, from July 1, 2024, through December 31, 2024, OFLA will provide employees with two weeks of leave to complete the necessary legal steps for the placement of a foster child or the adoption of a child. These two weeks are available in addition to an employee's use of OFLA for other purposes. Beginning January 1, 2025, this will be covered under PLO.

Rescinding Previously Designated OFLA Leaves

Oregon's Bureau of Labor and Industries (BOLI) requires employers to take certain steps with respect to rescinding approvals for OFLA leaves that are currently covered under the law but won't be as of July 1, 2024. Employers can use the model notice provided by the Oregon Employment Department for these communications. See the platform for more information or the recently updated BOLI page covering the changes.

OFLA and PLO Won't Run Concurrently

OFLA and PLO will no longer run concurrently. This means that any leave taken under one law will be *in addition to* any leave taken under the other.

Employer Takeaways:

- Update your OFLA policies if still needed
- Prepare for the new forward-looking OFLA leave year
- Provide necessary notices for leaves that will no longer be covered by OFLA

PLO & Use of Accrued Paid Leave

Employees on PLO leave will be entitled to use any accrued paid leave in conjunction with PLO benefits, up to the amount that would result in full wage replacement. Employers will also have the *option* of allowing the use of accrued paid leave in an amount that would result in the employee getting *more* than full wage replacement. Additionally, if multiple types of accrued leave are available to an employee, the employer can determine the order in which the different types of accrued leave are used.

Employer Takeaways: Update your PLO policy to state that employees have the option to use any accrued paid leave they have available to make themselves whole and specify whether they will be permitted to use accrued paid leave to *exceed* full wage replacement.

State's OFLA, PLO & Sick Time Changes

NOTE: Under a temporary rule, Oregon employers have until **June 1, 2024**, to inform workers if their previously approved leave will not meet the requirements of the Oregon Family Leave Act (OFLA) as of July 1, 2024. On March 20, 2024, Governor Tina Kotek signed into law Senate Bill 1515, which eliminated some qualifying reasons for leave under the Oregon Family Leave Act (OFLA) that overlapped with qualifying reasons for leave under Paid Leave Oregon, effective July 1, 2024. On **May 8, 2024**, the Oregon Bureau of Labor and Industries issued a temporary administrative order to address the fact that some employers will have approved employees take OFLA

leave for reasons that, as of July 1, 2024, will no longer qualify for OFLA leave but that will qualify for Paid Leave Oregon.

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

Oregon Updates Leave Regulations

On February 29, 2024, Oregon finalized regulations affecting the Oregon Family Leave Act (OFLA) and the Sick Time law—(BLI 9-2024)- took effect just a few days later on March 2, 2024. While many of the updates were technical adjustments to bring continuity and clarification to the state's various leave laws, there were some more substantive changes, and we've provided the highlights below.

The updated regulations:

- Allow employers to require that employees document the existence of an "affinity" relationship when using sick leave or OFLA leave to care for or grieve a family member and provide sample language.
- Eliminate the requirement, under both laws, that a domestic partner (as a type of family member) be of the same sex as the employee.
- Require employers to count any hours of protected leave the employee has taken when calculating an employee's average hours per week for OFLA eligibility purposes.
- Expand OFLA's definition of *serious health condition* to include disability resulting from the termination of a pregnancy and absences due to fertility or infertility treatments (reasons employees can take pregnancy disability leave).

- Allow employees who qualify for leave under both OFLA and Paid Leave Oregon (PLO) to use any available paid time off during that dual-coverage leave.
- Require employers that transition to a rolling-forward, one-year period to provide all eligible employees with a new, full leave bank at the beginning of the new OFLA leave year.
- Clarify that when an employer receives notice (from any source) that an employee has applied for PLO, they have sufficient information to temporarily designate the absence as OFLA leave.

Employer Takeaway: Update your leave policies to include these details if they are topics you have covered within those policies

Rhode Island

State Passes Secure Choice Retirement Savings Program

On June 26, 2024, Senate Bill 2045 was signed into law, establishing a state-operated retirement savings program called Rhode Island Secure Choice. Employers who do not already offer a retirement savings plan will be required to offer workers access to the Secure Choice program, which will be administered by the Office of the General Treasurer and implemented in phases. An "eligible employer" is generally defined as one that has five or more employees. Employers with less than five employees have the option of participating in the program. Rhode Island employers with at least five employees that do not already offer a retirement plan will be required to sign up for Secure Choice.

Phased Implementation:
There will be a phased implementation period, as follows:

- Employers with **100 or more employees** will have to participate **within 12 months** of the program opening;
- Employers with **50 or more employees** will have to participate **within 24 months** of the program opening; and
- All other eligible employers will have to participate within **36 months** of the program opening.

Employer Takeaway: Employers will have no liability or fiduciary duty to employees in relation to the program; however, employers will be subject to penalties of $250/eligible employee if the employer fails to allow the eligible employees to participate. More to come as guidance and details are released.

Soth Dakota

State Clarifies Medical Cannabis Protections – July 1

South Dakota has updated its workplace medical cannabis law to clarify that employers can refuse to hire an applicant for a safety-sensitive job or take adverse action against an employee in a safety-sensitive job based on a test result that is positive for cannabis metabolites. The law takes effect July 1, 2024.
Employer Takeaway: Ensure that all safety-sensitive positions are documented as such in job descriptions and ads. If you plan to make employment decisions based on a positive test result for cannabis metabolites with respect to safety-sensitive positions, make that clear in all related policies.

Texas

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.

Utah

State Adds Military Protections

Utah has re-enacted and expanded its military protections—the Utah National Guard Amendments law was signed and took effect immediately on March 18, 2024. The law requires employers of **all sizes** to provide military leave and other employment rights.

Specifically, employers are required to:

- Provide up to five (5) years of leave to employees who are members of a reserve component of the U.S. Armed Forces when they are ordered to active duty (including for training), inactive duty training, or state active duty
- Provide employees who are called to service in the Utah National Guard or the Utah State Defense Force with the same rights and protections provided by federal law for employees that are called to federal military service
- Restore these employees to their job at the completion of their service with the seniority, status, rate of pay, and rate of vacation accrual that they would be entitled to under the Uniformed Services Employment and Reemployment Rights Act (USERRA)

Action Item

Review your Company's USERRA/Military Leave Policy to ensure no updates are needed.

ETC's USERRA/Military Leave Policy does not pose a compliance issue or conflict with state protected State Defense Force services, although employers may elect to add additional clarification language, if so inclined.

Below is Paragraph 1 extracted from ETC's USERRA/Military Leave Policy with policy clarification language added for review, consideration and possible inclusion in your own Policy:

> In compliance with the Uniformed Services Employment and Reemployment Rights Act ("USERRA"), all employees are immediately eligible for an unpaid military leave of absence. A military leave will be granted if an employee is absent in order to serve in the uniformed services of the United States for a period of up to 5 years (not including certain involuntary extensions of service). Employees who perform and return from service in the Armed Forces, the Military Reserves, the National Guard, Federal Emergency Management Agency reserves, certain Public Health Service positions and/or any other category designated by the President in time of war or emergency, and/or State Defense Force or the like, when mandated by state regulations will retain certain rights with respect to reinstatement, seniority, layoffs, compensation, length of service promotions, and length of service pay increases as required by applicable federal or state law.

Utah Voids Confidentiality Pacts for Sexual Assault and Harassment

Under a new Utah law, House Bill (HB) 55, certain nondisclosure and nondisparagement (confidentiality) agreements related to sexual assault and harassment required as a condition of employment are rendered void and unenforceable. The new law is retroactive to Jan. 1, 2023. Enacted on Feb. 28, 2024, the law also prohibits employers from retaliating against an employee for alleging sexual misconduct or refusing to enter confidentiality agreements.

Unenforceable Agreements

Under HB 55, an agreement is deemed void and unenforceable if it is between an employee (or former employee) and employer (of any size) and either:

- Prevents, or has the effect of preventing, an employee from disclosing or discussing sexual assault, sexual harassment or allegations of sexual assault or harassment; or
- Prohibits, or has the effect of prohibiting, an employee from making a negative statement about the employer related to a claim of or dispute involving sexual assault or sexual harassment.

Permitted Agreements

Employers may still require an employee who has alleged sexual misconduct not to disclose the monetary amount of a settlement. In addition, employers may still require employees to sign post-employment restrictive covenants and agree not to disclose nonpublic trade secrets, proprietary data and confidential information that does not involve illegal acts.

Employer Takeaway:

If an employer attempts to enforce a confidentiality clause deemed void under the new law, the employer may not obtain monetary damages resulting from a breach of the clause and instead may be ordered to all costs, including reasonable attorney fees, resulting from the legal action.

Vermont

State Limits Captive Audience Meetings – July 1, 2024

Beginning July 1, 2024, employers of all sizes can't take—or threaten to take—adverse action against an employee to get them to attend, or for not attending, an employer-sponsored meeting if its primary purpose is to express the employer's opinion on religious or political matters as per VT S 102 which was enacted on May 28, 2024.

The same applies to participating in or viewing communications for this purpose. These types of laws are primarily aimed at preventing employees from being forced to attend anti-unionization meetings.

This law defines matters as *religious* if they relate to religious affiliation and practice and the decision to join or support any religious organization or institution. Matters are considered *political* if they relate to any of the following:

- Political affiliation
- Elections for political office
- Political parties
- Legislative proposals
- The decision to join or support any political party or political, civic, community, fraternal, or labor organization
  The law contains several exceptions, including communications that are legally mandated or essential for an employee's job duties and requiring attendance at meetings necessary for an employee to perform their job or to discuss the employer's business operations. Additionally, the restrictions on religious communications don't apply to religious organizations and the political communication restrictions don't apply to political organizations.

Employer Takeaway: Allow employees to opt out of any meeting or communication covered by this law and make sure supervisors understand the law.

State Requires Pay Ranges in Job Postings – July 1, 2025

Beginning July 1, 2025, employers with five or more employees will be required to include a compensation range with most job ads.

Any written posting for a job that will be physically performed in the state, or a remote position that mainly does work *for* a location in the state, must include the compensation or compensation range. This includes internal postings for transfers and promotions. It doesn't include general announcements that don't identify specific job openings or verbal announcements made in person, on the radio or TV, or by other electronic means (because they aren't *written*).

For commission-based positions, employers must indicate in the job posting that compensation is commission-based, and they don't have to provide a pay rate or range. For tipped positions, employers must include the pre-tip compensation or range and note that the position is tipped.

Compensation ranges must include a minimum and maximum annual salary or hourly rate, and must be provided in good faith, meaning they should be a reasonable estimation of what that open position will actually pay.

The Attorney General's Office is expected to publish guidance on its website by January 1, 2025. VT H 704 was signed by the governor on June 4, 2024.

Employer Takeaway: Employers should amend job postings to include the required information by July 1, 2025.

VT Expands Protections for Race - July 1

Benning July 1, 2024, Vermont has an updated definition of race in its discrimination statute, which applies to employers of all sizes. Race will include traits associated with or perceived to be associated with race. This specifically includes hair type and texture, hairstyles, and protective hairstyles including (but not limited to) braids, cornrows, locs, afros, wigs, headwraps, and other head coverings.

This definition creates a *very* broad set of protections for employees and has the potential for wide application, such as protecting dialect and styles of dress.

Employer Take-aways:

- Ensure your EEO Policy includes an expanded definition of race:
- Sample Policy language:

  COMPANY is an Equal Opportunity Employer that does not discriminate on the basis of actual or perceived race, and traits commonly or historically associated with race including but not limited to hair texture and hair styles such as afros, braids, twists, knots, locks and high-top fades, creed, color, religion, alienage or national origin, ancestry, citizenship status, age, physical or mental disability, pregnancy, sex (including pregnancy, childbirth and related medical conditions), gender identity or expression (including transgender status), marital status, veteran status, sexual orientation, genetic information, arrest record, service in the Armed Forces of the United States, status as a veteran or special disabled veteran, or any other characteristic protected by applicable federal, state or local laws.
- IF you have dress or grooming policies that regulate hairstyles or head coverings, consider whether they're absolutely necessary for your organization. If you believe that they are, consider consulting with an attorney to ensure they don't run afoul of this law.
- Train managers and those involved in the hiring process to not make judgments about professionalism or cultural fit based on how someone wears their hair and to ensure their own unconscious bias doesn't negatively affect candidates or employees.
- Update your equal employment opportunity (EEO) policy to make it clear that race includes traits associated with or perceived to be associated with race

(VT H. 363 was signed by the governor on April 25, 2024)

Upcoming State's Paid Leave Expansion – July 1

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

New Notice Required for Workers' Compensation Claim Denials – July 1

Under an amendment that goes into effect on **July 1, 2024**, employers that deny a covered employee's request for workers' compensation benefits in Virginia must provide a specific notice regarding the employee's rights to dispute the denial.

Covered Employers

The amendment applies to all employers that are subject to the Virginia Workers' Compensation Act. These include any employer that regularly employs **three or more employees**, all underground coal mine operators regardless of the number of employees, and all "statutory employers."

Text of Required Notice

> The amendment requires any letter denying an employee's request for workers' compensation benefits to include the following text: "EMPLOYEE RIGHT TO DISPUTE DENIAL OF WORKERS' COMPENSATION BENEFITS. IF YOU DISAGREE WITH THIS DENIAL, YOU HAVE THE RIGHT TO DISPUTE THE DECISION BY FILING A REQUEST FOR A HEARING WITH THE VIRGINIA WORKERS' COMPENSATION COMMISSION. IT IS YOUR RESPONSIBILITY TO DISPUTE THE DECISION AS SOON AS PRACTICABLE. THE WORKERS' COMPENSATION COMMISSION IS A STATE AGENCY RESPONSIBLE FOR MAKING FINAL DECISIONS ON DISPUTED WORKERS' COMPENSATION CLAIMS. HOWEVER, SUCH CLAIM MAY BE LOST IF YOU DO NOT FILE IT WITHIN THE TIME LIMIT PROVIDED BY LAW, WHICH IS TYPICALLY TWO YEARS AFTER THE INJURY."

The letter must also include the address, telephone number and website an employee may use to contact the state workers' compensation commission.

Enforcement

An employer (or its insurance carrier) that fails to comply with the new notice requirement may be subject to a civil penalty of up to $500 per violation. If a violation is willful, the penalty may be increased to between $500 and $5,000.

Captive Audience Meetings Limited & Race Protections Expanded – July 1

LIMITS ON CAPTIVE AUDIENCE MEETINGS

Employers can't take—or threaten to take—adverse action against an employee to get them to attend, or for not attending, an employer-sponsored meeting if its primary purpose is to express the employer's opinion on religious or political matters. The same applies to participating in or viewing communications for this purpose. Laws of this type are primarily aimed at preventing employees from being forced to attend anti-unionization meetings.

This law defines matters as *religious* if they relate to religious affiliation and practice and the decision to join or support any religious organization or institution. Matters are considered *political* if they relate to any of the following:

- Political affiliation
- Elections for political office
- Political parties
- Legislative proposals
- The decision to join or support any political party or political, civic, community, fraternal, or labor organization

The law contains several exceptions, including communications that are legally mandated or essential for an employee's job duties and requiring attendance at meetings necessary for an employee to perform their job or to discuss the employer's business operations. Additionally, the restrictions on religious meetings and communications don't apply to religious organizations and the political restrictions don't apply to political organizations.

Employer Take-away: Allow employees to opt out of any meeting or communication covered by this law and make sure supervisors understand the law.

State Expands Protections for Race

Vermont has updated the definition of race in its antidiscrimination statute to include traits associated with or

perceived to be associated with race. This specifically includes hair type and texture, hairstyles, and protective hairstyles including (but not limited to) braids, cornrows, locs, afros, wigs, headwraps, and other head coverings.
This definition creates a very broad set of protections for employees and has the potential for wide application, such as protecting dialect and styles of dress.
Employer Take-away: If you have dress or grooming policies that regulate hairstyles or head coverings, consider whether they're absolutely necessary for your organization. If you believe that they are, consider consulting with an attorney to ensure they don't run afoul of this law. Additionally, train managers and those involved in the hiring process to not make judgments about professionalism or cultural fit based on how someone wears their hair and to ensure their own unconscious bias doesn't negatively affect candidates or employees.
Lastly, consider updating your Equal Employment Opportunity (EEO) policy to make it clear that race includes traits associated with or perceived to be associated with race. ETC's EEO Policy does include the reference "actual or perceived race, and traits commonly or historically associated with race including but not limited to hair texture and hair styles such as afros, braids, twists, knots, locks and high-top fades."

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.

Washington

Local Changes & Regulatory Enactments – July 1

LOCAL MINIMUM WAGE INCREASES
The following minimum wage increases are effective July 1, 2024.
Tukwila

- Large Employers: $20.29 per hour

- Mid-Size Employers: $19.29 per hour
- All other employers: state minimum wage

Renton

- Large Employers: $20.29 per hour
- Mid-Size Employers: $18.29 per hour
- All other employers: state minimum wage

For both cities, *Large Employers* are defined as those with more than 500 employees worldwide, and all franchisees associated with a franchise that employs more than 500 employees combined. *Mid-Size Employers* are those with 15–500 employees or that have annual gross revenue of over $2 million generated within city limits.

Renton Extra Hour Offerings

Also beginning July 1, 2024, Renton (like Tukwila) will require that any additional hours be offered and distributed to an employer's part-time workers who have the skills and experience to perform the work before hiring new employees, contractors, or temporary workers.

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. One 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.

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

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 comes 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.

Wyoming

State OSHA Increases Civil Penalties – Eff July 2024

The Wyoming OSHA Commission amended its rules to align Wyoming civil penalties for occupational safety and health citations with the corresponding federal OSHA penalties.

Penalty Changes Overview

Wyoming changes to penalty fees include minimum and maximum penalties for each type of citation. The civil penalties changes are as follows:

- Willful violation—The penalty minimum increased from $11,162 to $11,524 per violation, and the maximum amount per violation increased from $156,259 to $161,323.
- Repeated violation—The penalty minimum increased from $11,162 to $11,524 per violation, and the maximum amount per violation increased from $156,259 to $161,323.
- Serious violation—The penalty minimum increased from $1,116 to $1,190 per violation, and the maximum amount per violation increased from $15,625 to $16,131.
- Other-than-serious violation—The maximum penalties increased from $15,625 to $16,131.
- Failure to correct violation—The maximum penalties increased from $15,625 to $16,131.
- Posting, reporting or recordkeeping violation—The maximum penalties increased from $15,625 to $16,131.

In addition, a gravity-based penalty (GBP) will be proposed for a repeated other-than-serious violation that otherwise would have no initial penalty. The GBP will be $460 for the first repeated violation, $1,152 for the second violation and $2,304 for the third violation.

Employer Takeaway: Employers should become familiar with the new penalty amounts and review their safety protocols to ensure compliance with Wyoming OSHA regulations.

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