



The HR WIRE

ETC HR Employer Compliance News II *Making Compliance Connections*

October 2024

SECTION I: Notices, Reminders & Alerts & SECTION II: Noteworthy Compliance Happenings

Workplace Labor Notice Updates

- **TN - Tennessee** [Unemployment Insurance Notice](#) has been updated to reflect new requirements for weekly certification. Employees must now complete a minimum of four work search activities per week and document these activities during the weekly certification process. Previously, only three work search activities were required. Failure to meet the new requirement of four work search activities may result in a loss of unemployment benefits.

Reminders & Alerts!

Compliance Deadline Reminder: Gag Clause Attestation Is Due by Dec. 31, 2024

Effective in 2020, the [Consolidated Appropriations Act, 2021 \(CAA\)](#) prohibits health plans and health insurance issuers from entering into contracts with health care providers, third-party administrators (TPAs) or other service providers that contain gag clauses (i.e., clauses restricting the plan or issuer from providing, accessing or sharing certain information about provider price and quality and de-identified claims).

The attestation requirement applies to **fully insured and self-insured group health plans**, including ERISA plans, nonfederal governmental plans and church plans. Additionally, this requirement applies regardless of whether a plan is considered “grandfathered” under the ACA. However, plans that provide only excepted benefits and account-based plans, such as health reimbursement arrangements (HRAs), are not required to submit an attestation.

The deadline for submitting the next attestation is Dec. 31, 2024.

Employer Takeaway: Employers should review their contracts with issuers, TPAs or other health plan service providers to confirm they do not contain prohibited gag clauses.

Also, employers should review what actions they may need to take to comply with the gag clause attestation requirement:

- Employers with fully insured health plans do not need to provide an attestation if their plan’s issuer provides the attestation; and
- Self-insured employers can enter into written agreements with their TPAs to provide the attestation, but the legal responsibility remains with the health plan. While some TPAs are willing to submit attestations on behalf of their self-insured groups, other TPAs may be unwilling to do so.
- Employers with level funded health plans must check with their health plan carrier to see what the carrier is and is not doing for employers as this varies.

Employers who submit their own attestations should review the latest instructions and user manual for submitting attestations electronically through the Centers for Medicare and Medicaid Services (CMS).



Resources:

- [FAQs](#) from the Departments regarding the CAA's prohibition on gag clauses in provider agreements
- CMS [website](#) for submitting gag clause attestations
- The latest instructions and user manual for submitting attestations available [here](#)

Compliance Deadline Reminder: Beneficial Ownership Information (BOI) Reporting – Jan 1, 2025

Starting January 1, 2024, a new federal requirement is for small entities (less than 20 Full Time employees) that are NOT one of the 23 exemptions are required to register their business ownership information (BOI) to the Financial Crimes Enforcement Network (FinCen). The Corporate Transparency Act ("CTA") went into effect January 1, 2024, requiring most legal entities in the United States to file a beneficial ownership information report ("BOI Report") with the U.S. Financial Crimes Enforcement Network ("FinCEN"). Before January 1, 2025, *all* covered entities must file a BOI Report through FinCEN's electronic [filing system](#).

Beneficial ownership information reporting is not an annual requirement.

Unless a company needs to update or correct information, a report only needs to be submitted once.

For details on who, when, and how to fulfill this new federal reporting requirement, please visit: [Beneficial Ownership Information Reporting | FinCEN.gov](#)

If you find that you need assistance and/or wish to have this obligation completed by a Third Party, ETC can provide employers with the contact details of a party who can assist.

Reminder: Minimum Salary Thresholds for Exempt Employees Increases – Jan 2025

In order for employers to take advantage of the Overtime Exemption, positions must meet specific criteria. The 2 tests a position must meet in order to qualify for an exemption from overtime under The Department of Labor's Federal Labor Standards Act – The **Salary Test** & The **Duties Test**.

A salaried employee in an exempt position must receive a salary meeting BOTH the **federal & state** minimum salary thresholds, if such differs from the federal threshold, in order to meet the exemption criteria.

On April 23, 2024, as communicated earlier this year in TEC publications, the U.S. Department of Labor (Department) announced a final rule which will take effect on July 1, 2024, regarding the federal salary exempt **employees minimum salary thresholds**.

EFFECTIVE DATE	SALARY LEVEL	HIGHLY COMPENSATED EMPLOYEE TOTAL ANNUAL COMPENSATION THRESHOLD
<u>Before</u> July 1, 2024	\$684/week (\$35,568/year)	\$107,432/year
July 1, 2024	\$844/week (\$43,888/year)	\$132,964 per year
January 1, 2025	\$1,128/week (\$58,656/year)	\$151,164 per year
July 1, 2027 & every 3 years thereafter	To be determined	To be determined

****Updated State Minimum Salary thresholds for overtime exemptions forthcoming**



Resources have been uploaded to the [ETC HR Platform Website](#) to assist

- ETC's FLSA Evaluation of Positions – FLSA Exempt Criteria Worksheet
- FLSA Decision Making Guide
- FLSA Implementation Guide
- Sample: Employee Reclassification Letter

<https://www.dol.gov/agencies/whd/overtime/rulemaking>

New! Federal Retirement & Benefit Limits – 2025

2025 Retirement Plan Maximums

On November 1, 2024, the IRS released the 2025 limits for retirement plans and individual retirement accounts. You can find the full list of the new amounts in [IRS Notice 2024-80](#).

A few of the notable changes include the following:

- The annual contribution limit for 401(k) plans will increase nominally to \$23,500 (from \$23,000)
- The annual catch-up contribution limit remains the same at \$7,500 for participants age 50 and over
- A new category of catch-up contributions, introduced by the SECURE Act 2.0, allows participants between ages 60 to 63 to contribute up to \$11,250 annually

2025 Annual Benefit Maximums

The IRS published the 2025 limits for several types of benefits that have maximums subject to annual change. You can find the full list of the new amounts in the [IRS Revenue Procedure 2024-40](#).

The most commonly asked about limits are below and are applicable to taxable years starting in 2025.

Health Flexible Spending Account (HFSA)

The HFSA contribution limit is \$3,300. For HFSA's that include a carryover feature, the maximum carryover is \$660.

Qualified Small Employer Health Reimbursement Arrangement (QSEHRA)

The maximum total for all QSEHRA reimbursement and payments is \$6,350 for single coverage and \$12,800 for family coverage.

Adoption Assistance Programs

The maximum employee tax credit and amount an employer can provide for adoption assistance is \$17,280. The tax credit begins to phase out for individuals with a modified adjusted gross income above \$259,190 and is completely phased out at \$299,190 and above.

Qualified Commuter Plans—Mass Transit and Parking

The monthly limits for both qualified parking and mass transit is \$325.

Reminder: Draft Forms & Instructions for 2024 ACA Reporting Now Available

For more information, see the September HR WIRE

Deadline Reminders:

March 3, 2025 - Individual statements for 2024 must be furnished within 30 days of Jan. 31, 2025. An alternative method of furnishing Form 1095-B is available. Because the deadline falls on a weekend, the individual statements must be furnished by the next business day, which is March 3, 2025.

March 31, 2025 - Electronic IRS returns for 2024 must be filed by March 31, 2025.

Resources:

The IRS provides the following resources for reporting entities:

- [Information Reporting by Providers of Minimum Essential Coverage](#)
- [Q&As: Information Reporting by Health Coverage Providers \(Section 6055\)](#)
- [Information Reporting by Applicable Large Employers](#)
- [Q&As: Employer Information Reporting on Form 1094-C and Form 1095-C](#)
- [Q&As: Reporting of Offers of Health Insurance Coverage by Employers \(Section 6056\)](#)

Should you have any ACA needs, please do not hesitate to reach out to ETC.

Reminder: ACA & Affordability - 2025



The Internal Revenue Service (IRS) has released [Rev. Proc. 2024-35](#), which contains the inflation adjusted amounts for 2025 used to determine whether employer-sponsored coverage is “affordable” for purposes of the Affordable Care Act’s (ACA) employer shared responsibility provisions and premium tax credit program.

As shown in the table below, for plan years beginning in 2025, the affordability percentage for employer mandate purposes is indexed to 9.02%. This is a slight increase from 2024. Employer shared responsibility payments are also indexed and decreased for the first time in 2025.

See the September HR WIRE for more information.

Reminder: HIPAA Policies/Practices for New Reproductive Health Care Rights

Beginning **December 23, 2024**, regulated entities and their business associates must comply with stricter [HIPAA privacy protections](#) for reproductive health care.

Important dates

Dec. 23, 2024 - Regulated entities must comply with the new privacy restrictions for reproductive health care.

Feb. 16, 2026 - Covered entities (which an employer may be) must update their **HIPAA notice of privacy practices** for the new requirements.

These new protections **prohibit regulated entities from using or disclosing protected health information (PHI) related to lawful reproductive health care:**

- For a criminal, civil or administrative investigation into (or proceeding against) a person in connection with reproductive health care; or
- To identify an individual, health care provider or other person for purposes related to such an investigation or proceeding.

In addition, regulated entities must **obtain a valid attestation when a request is made to use or disclose PHI potentially related to reproductive health care** for certain purposes to ensure that the use or disclosure is permissible.

The new privacy protections **do not impact employers with fully insured health plans that do not have access to PHI (other than the limited types listed above).**

Although the new privacy protections do not specifically require updates to business associate agreements, if applicable, employers should review the terms of their agreements to determine if updates should be made. Lastly, the U.S. Department of Health and Human Services has provided a [model attestation form](#) that **employer-sponsored health plans may use** to ensure a requested use or disclosure of PHI complies with the new privacy protections.

Cases to Watch Update: FTC Appeals Federal District Court Ruling Blocking Noncompete Ban

On **Oct. 18, 2024**, the Federal Trade Commission (FTC) filed a [notice of appeal](#) challenging the U.S. District Court for the Northern District of Texas’ [order](#) in *Ryan LLC v. FTC* that blocked the commission’s noncomplete ban for all employers and prevented the ban from taking effect on Sept. 4, 2024. The U.S. Court of Appeals for the 5th Circuit will hear the appeal.

Employer takeaway: The Texas court’s ruling blocking the FTC’s noncompete ban remains in effect as the FTC appeals the decision to the 5th Circuit. Consequently, employers do 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, in light of the FTC’s appeal, employers should continue to monitor this case for updates because the ban, if implemented, would prohibit nearly all noncompete agreements nationwide.

Cases to Watch Reminder: 5th Circuit Upholds DOL’s Authority to Set Minimum Salary Requirement for White-collar FLSA Exemptions



If you have been following current federal cases potentially impacting employers, On Sept. 11, 2024, in *Mayfield v. U.S. Department of Labor*, the U.S. Court of Appeals for the 5th Circuit [held](#) that the U.S. Department of Labor's (DOL) **has** the authority to define and delimit the terms of the executive, administrative and professional (EAP) exemptions including the power to set a minimum salary for exemption under the Fair Labor Standards Act (FLSA).

In *Mayfield*, the plaintiff, a small business owner, challenged the DOL's 2019 final rule, arguing that the agency lacks the authority to define the FLSA executive, administrative and professional (EAP) exemptions in terms of salary level.

Decision Impact: The 5th Circuit's ruling is significant, as it provides support for the DOL's authority to implement its [2024 final rule](#) that amended current requirements employees in white-collar occupations must satisfy to qualify for an overtime exemption under the FLSA. The final rule took effect on July 1, 2024, increasing the standard salary level from \$684 to \$844 per week (\$35,568 to \$43,888 per year) for EAP employees and \$107,432 to \$132,964 per year for HCEs. On Jan. 1, 2025, the salary level will again increase from \$844 to \$1,128 per week (\$43,888 to \$58,656 per year) for EAP employees and \$132,964 to \$151,164 per year for HCEs. The rule also enables the DOL to update the salary levels automatically every three years starting July 1, 2027. The DOL's 2024 final rule is currently facing several other legal challenges from businesses in multiple jurisdictions. ETC will continue to monitor and report developments as there remain several other legal challenges to the upcoming increased salary threshold effective Jan 1, 2025.

While the DOL rule is still involved in pending legal challenges, employers should take note of the next scheduled increase taking effect **January 1, 2025.**

SECTION III:

New & Upcoming! Noteworthy State/City Compliance Alerts

California

New! [San Diego County](#) Passes new Criminal Record Screening Regulations – Oct 10, 2024

Effective October 10, 2024, the latest local [ordinance](#) will take effect in the unincorporated areas of San Diego County. Employers that comply with California state law will *mostly* satisfy their obligations under the San Diego County ordinance. See attached resource for additional details.

New! State Healthcare Minimum Wage Increase – Oct 16, 2024

California's new statewide minimum wage and salary threshold for healthcare workers will take effect on October 16, 2024. Covering 20 different facility types, the health care worker minimum wage law implements different rates and scheduled rate increases depending on the facility type. Plus, covered health care employers must post a [supplemental minimum wage notice](#) in the workplace alongside the regular statewide minimum wage notice.

Employers who are unsure whether their facilities are covered should consult with legal counsel.

The supplemental minimum wage order can be found [here](#).

More information, including which healthcare facilities are covered and the minimum wage schedule by type of facility, can be found in the state's [FAQs](#).

The [Notification Pertaining To Health Care Minimum Wage Increases](#) was released October 1, 2024.

New! Upcoming Local Minimum Wage Ordinance Increases – Jan1, 2024

On January 1, the following jurisdictions are expected to increase their local minimum wage:

Belmont, Burlingame, Cupertino, Daly City, East Palo Alto, El Cerrito, Foster City, Half Moon Bay, Hayward, Los Altos, Menlo Park, Mountain View, Novato, Oakland, Palo Alto, Petaluma, Redwood City, Richmond, San Carlos, San Diego, San Jose, San Mateo, Santa Clara, Santa Rosa, Sonoma, South San Francisco, Sunnyvale and West Hollywood. Some



localities have already announced their new 2025 local minimum wage; for instance, Mountain View's will increase to \$19.20/hour (up from \$18.75/hour), Santa Clara's will increase to \$18.20/hour (up from \$17.75/hour) and West Hollywood's will increase to \$19.65/hour (up from \$19.08/hour).

New! State Expands Discrimination Protections – Jan 1, 2025

FEHA prohibits employers with **5 or more employees** from discriminating against employees based on their protected characteristics (e.g., race, sex, disability, religion and age).

California amended the FEHA ([CA S 1137](#)) to:

- **Broaden** the definition of "**race**" to include traits associated with race, including hair texture and protective hairstyles, including braids, locs and twists
- **Protect** employees from discrimination on the basis of their actual or perceived **combination of protected traits** (i.e., intersectionality).

AB 1815 – This revision to Crown Act amends the definition of "race" in the anti-discrimination provisions of the California Government Code as well as the definition of "protective hairstyles."

Under the amendment, race is defined as "inclusive of traits associated with race, including but not limited to hair texture and protective hairstyles." "Protective hairstyles" is revised to "include but are not limited to such hairstyles as braids, locs, and twists."

Employer Takeaway: The word "historically" was removed from the definition of protective hairstyles because it was found to be vague and confusing. Employer utilizing this term in their Handbook should remove the term.

Driver's License Requirements ([CA S 1100](#))

California further **amended** the FEHA to prohibit employers with **5 or more employees** from requiring job candidates to have a **driver's license** in a job advertisement, posting, application or other materials unless it is reasonably believed:

- Driving will be a job function for the position; and
- Satisfying this function using an alternative form of transportation (e.g., rideshare, taxi, carpooling, bicycling, carpooling or walking) would not be comparably efficient or cost-effective for the employer.

Employers should remove any driver's license requirement from your job ads or applications, unless the exception applies.

Enforcement of Local Laws

Under an **amendment** to the FEHA, the act will **not** prohibit any city, county or other political subdivision of California from enforcing local laws prohibiting employment discrimination if local enforcement:

- Concerns an employment complaint filed with the California Civil Rights Department (CCRD);
- Takes place after the CCRD issued a right-to-sue notice;
- Begins before the expiration of the time to file a civil action; and
- Is pursuant to a local law that is at least as protective as the FEHA.

New! State Passes Freelance Worker Protections Act – Jan 1, 2025

California passed the **[Freelance Worker Protection Act, SB 988](#)**, which imposes minimum requirements for freelance contracts. The law applies to any person or organization in California (other than the state, federal or foreign governments or individuals hiring services for themselves, their family or their homestead) that retains a freelance worker.

"Freelance workers" are defined as individuals who are hired or retained as individual contractors to provide professional services in exchange for \$250 or more, by itself or in the aggregate, over the immediately preceding 120 days.

Compensation and Contract Requirements

Under the act, the hiring party:



- Must pay freelance workers on or before the date compensation is due under their contract or, if not specified, no later than **30 days** after the completion of the worker's services; and
- May not require as a condition of timely payment that the freelance worker accept less compensation than agreed upon in the contract or that the freelance worker provide more goods or services than agreed upon in the contract once the freelance worker has started work under the contract.

The act also requires that all contracts are in writing, that the hiring party provide a signed physical or electronic copy of the written contract to the freelance contract, and that the hiring party retain a copy of the contract for at least **four years**. Written contracts for freelance services must contain the following:

- Name and mailing address of each party;
- Itemized list of services to be provided, the value of such services, and the rate and method of compensation;
- The date compensation will be paid or the mechanism through which the date will be determined; and
- The date by which the freelance worker must provide a list of services rendered to the hiring party to ensure timely payment of compensation.

Other Prohibited Conduct and Enforcement

Hiring parties may not discriminate against or take any adverse action against a freelance worker to penalize or deter the freelance worker from asserting their rights under the law. An aggrieved freelance worker or public prosecutor may bring a civil action seeking attorney fees and costs, injunctive relief and other damages deemed appropriate.

New! Paid Sick Leave Expansion – Jan 1, 2025

[SB 1105](#), revises California's paid sick leave, expressly allowing **agricultural employees** to use accrued paid sick leave to avoid smoke, heat or flooding conditions created by a local or state emergency. The bill states that the revision doesn't constitute a change in the law; rather, it's a clarification of, or "declaratory of," existing law to the extent that the sick days are necessary for an employee's preventive care.

New! State Amends Victim Leave for Employees – Jan 1, 2025

California has amended its Healthy Workplaces, Healthy Families Act law addressing employee leave for victims of domestic violence, sexual assault and other specified "qualifying acts of violence." The amendments list 10 of these reasons, which include purposes such as seeking restraining orders, counseling, safety planning, relocating, caring for a family member who is a victim and participating in legal proceedings.

The definition of **victim** will be broadened to include victims of any *qualifying act of violence* (QAOV). A QAOV means domestic violence, sexual assault, stalking and any act or pattern of conduct that:

- Causes bodily injury or death
- Involves a firearm or other dangerous weapon
- Involves force, or the threat of force, to cause injury or death

Additionally, employees will be protected from discrimination or retaliation based on a *family member's status* as a victim, and reasonable accommodations must be provided to an employee whose family member is a victim.

Unlike the existing law, the amendments also require that employers with 25 or more employees allow leave when employees' family members are victims. Employers with **25 or more employees** will be able to limit the leave an employee may take as follows:

- Twelve weeks for leave for victims of a qualifying act of violence;
- Five days for relocation or enrolling a child in a new school or child care facility when the family member was the victim of a nonfatal crime; and
- Ten days for leave when an employee's family member was the victim of a nonfatal crime.



Moreover, in addition to the existing circumstances in which employees may take paid safe time leave, employees may take safe time leave to do any of the following in relation to a qualifying act of violence:

- Enroll children in a new school or child care;
- Seek, obtain or assist a family member in seeking or obtaining legal services;
- Prepare for, participate in or attend any civil, administrative or criminal legal proceeding; and
- Seek, obtain or provide child care or care to a care-dependent adult if such care is necessary to ensure their safety.

Leave of Absence

AB 2499 ([CA A 2499](#)) permits employees who are victims of qualifying acts of violence to take paid sick leave under the state's Healthy Workplaces, Healthy Families Act for any of the expanded reasons for victim leave, including when an employee's family member is a victim. This applies to leave required of all employers and the additional leave requirements that apply only to employers with 25 or more employees, and the California Civil Rights Department (CRD) will have enforcement authority.

The changes take effect **Jan. 1, 2025**, and include, among other things, revised definitions, expanded reasons for leave, permitted limits on leave and enforcement by the state's Civil Rights Department.

The amendments were contained in [Assembly Bill \(AB\) 2499](#), enacted Sept. 29, 2024.

Lastly, employers also must provide employees with written notice of their rights to victim leave upon hire, annually, and any time an employee informs an employer that they or their family member is a victim. The Civil Rights Department is required to develop a notice for employer use by July 1, 2025. The notice requirement does not take effect until the department posts the model notice on its website.

ETC will be revising State Handbook Addendums and publishing updates early 2025 reflective of this change.

New! Jury & Witness Duty Leave Oversight & Enforcement Change– Jan 1, 2025

[AB 2499](#) also moves jury and witness duty leave from the Labor Code to the Fair Employment and Housing Act (FEHA) meaning the California Civil Rights Department (CRD) will also have enforcement authority over this leave entitlement.

New! State Passes Captive Audience Ban – Jan 1, 2025

California passed the [California Worker Freedom from Employer Intimidation Act, CA S 399](#), which prohibits all employers from discriminating against individuals who refuse to attend an employer-sponsored meeting or decline to participate in, receive or listen to employer communications, in each case the purpose of which is to communicate the employer's views on religious or political matters (including labor organization efforts).

However, under the law:

- Employers may communicate information that they are legally required to communicate (including requiring employee trainings to comply with the employer's legal obligations) or that is necessary for employees to perform their job;
- Higher education institutions may communicate information on coursework, symposia or academic programs;
- Public entities may communicate information related to one of its policies or any law or regulation such entity is responsible for administering;
- Religious entities may communicate information regarding relevant religious matters;
- Political organizations may communicate information regarding relevant political matters; and
- Nonprofit, tax-exempt training programs may require a student or instructor to attend classes, complete fieldwork or perform community service hours on relevant political or religious matters.

Employers who violate the law may be subject to civil penalties of \$500 per employee for each violation, as well as injunctive relief and damages.

New! Expanded Use of CA Paid Sick Leave – Jan 1, 2025

Under [CA A 2499](#), employees will be able to use paid sick leave for the following:



- Jury duty
- To appear in court under a court order as a witness in a judicial proceeding
- For any reason covered under the victim leave law when they or their family member is a victim of a QAOV

ETC's Updated State Handbook Addendums forthcoming.

New! CA Employers Lose Option to Require Vacation Leave Before PFL – Jan 1, 2025

Effective Jan. 1, 2025, California employers will no longer be allowed to require their employees to take two weeks of accrued vacation leave before taking paid family leave under the state's [family temporary disability insurance program](#). The change was brought about by [Assembly Bill \(AB\) 2123](#), enacted Sept. 29, 2024.

Employer Takeaway: The above change allows the possibility of longer employee absences overall, as employees will be able to take their full amount of paid family leave without first using any accrued vacation time.

New! Workplace Safety Enacted Provisions Effective Jan 1, 2025

On January 1, 2025, certain provisions from last year's [SB 428](#) take effect; it expands the scope of the state's workplace violence temporary restraining order (TRO) laws. Currently, an employer can seek a TRO on behalf of an employee who has suffered unlawful violence or a credible threat of violence that was or could be carried out at the workplace. Beginning January 1, 2025, the employee's collective bargaining representative can also seek a TRO, not just the employer.

Also in January, workplace TROs may be sought when an employee suffers "harassment," which in this case means a "knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose." The conduct must be something that causes a "reasonable person to suffer substantial emotional distress and must actually cause substantial emotional distress."

New! CA Disability Insurance Updates – Jan 1, 2025

Effective January 1, 2025, the California State Disability Insurance (SDI) and Paid Family Leave (PFL) programs will undergo significant changes outlined in [CA S 1090](#).

Key highlights include:

- Advanced claims filing: Employees can initiate their claims process up to 30 days in advance of their anticipated first compensable day.
- Updated weekly benefit amounts: The weekly benefit amount for eligible claims will increase to approximately 70% to 90% of the employee's wages, up to the maximum amount.

New! Small Employer Mediation Program – Permanent – Jan 1, 2025

[AB 2011](#) passing now makes the CRD's Small Employer (5-19 Employees) Mediation Program permanent as it was scheduled to end this year. The program is expanded to cover reproductive loss leave disputes in addition to California Family Rights Act (CFRA) and bereavement leave disputes. Access the [CA Civil Rights Department's](#) webpage to learn more.

New! CA PAGA FAQ Published

The California Labor & Workforce Development Agency (LWDA) recently published [answers to frequently asked questions](#) (FAQs) on the state's Private Attorneys General Act (PAGA). In general, PAGA authorizes aggrieved employees to file lawsuits to recover civil penalties on behalf of themselves, other aggrieved employees and the state of California for Labor Code violations. The FAQs provide an overview of the law and guidance for employers on the new procedures introduced by recent amendments, which took effect on July 1, 2024, and significantly reformed the law.

What is PAGA?

PAGA allows employees to assist the state in enforcing labor laws by suing their employers on behalf of the state for violations of the Labor Code to recover civil penalties. Civil penalties assessed and collected under PAGA help deter unlawful conduct and encourage compliance with labor protections. These civil penalties are separate from and additional to other remedies, including damages, available for labor law violations through a separate non-PAGA lawsuit.



Employees may bring other types of claims instead of, or in addition to, a PAGA claim, such as filing a lawsuit in court to recover unpaid wages, statutory damages and statutory penalties for certain Labor Code violations.

Additional information can be found at:

[Cal/OSHA](#) for health and safety violations

[Labor Commissioner's Office](#) (LCO) for wage theft and retaliation claims

AB 1034 (Extension of PAGA Exemption for Certain Collective Bargaining Agreements): AB 1034 extends an existing exemption from the Private Attorneys General Act ("PAGA") available to contractors that are signed to a Collective Bargaining Agreement ("CBA") until January 1, 2038. AB 1034 specifically provides an exemption from PAGA for unionized employees in the construction industry.

In order to qualify for the exemption, the CBA must:

1. Explicitly cover wages, hours of work, and working conditions.
2. Provide premium wage rates for all overtime hours worked.
3. Ensure employees receive a regular hourly pay rate of at least 30% more than the state minimum wage.
4. Contain a grievance and binding arbitration procedure to address labor code violations.

The law defines an employee in the construction industry as an "employee performing work associated with construction, including work involving alteration, demolition, building, excavation, renovation, remodeling, maintenance, improvement, repair work, and other work."

Reminder: State Transparency Requirements-Child Labor Practices–Jan 1, 2025

On September 22, 2024, California Gov. Gavin Newsom signed [Assembly Bill \(AB\) 3234](#) into law, which imposes transparency requirements for employers who audit their child labor practices. The bill will take effect on January 1, 2025. To learn more, access the September HR WIRE

Colorado

New! Holiday Incentive Pay in Regular Rate of Pay Calculation

The Supreme Court of Colorado recently, [Hamilton v. Amazon.com Services LLC](#), ruled that holiday incentive pay (extra pay for hours worked on a company holiday) is a type of *shift differential* compensation, and therefore must be included in the calculation of an employee's *regular rate of pay* (RROP) for overtime purposes.

This is different from federal law, which doesn't require that extra compensation for work on holidays—if paid at a premium rate of at least 1.5x an employee's usual rate of pay—be included in the RROP calculation.

Delaware

New! State Adds Housing Status as a Protected Characteristic – Sept 26, 2024

The state's employment discrimination law, which applies to employers with four or more employees in the state, now includes *housing status* as a protected characteristic. *Housing status* means a person or family's overnight residence, regardless of permanence or habitability. [DE H 440](#) was enacted *and* effective on September 26, 2024.

Employers should add housing status to their Equal Employment Opportunity (EEO) policies at their earliest convenience and ensure that employment decisions are not being made on this basis.

Illinois

New! Cook County Updates Paid Leave Guidance

Cook County has amended its Paid Leave rules.

While many of the amendments were made to further align with the Paid Leave Ordinance, notable substantive changes include, but aren't limited to, the following:



- Paid Leave must continue to accrue *during* an employee's use of Paid Leave
- Paid Leave must be paid out within the same pay period in which it was used
- Employers must post the county's Workplace Posting, which can be found on the Cook County Paid Leave Ordinance [website](#)

The county also released updated [Frequently Asked Questions](#) (FAQs).

The amendments to the Paid Leave Ordinance Interpretive and Procedural Rules were [approved](#) by the Cook County Board of Commissioners on October 24, 2024, and became effective immediately.

Reminder: Banned Coerced Participation - Political or Religious Meetings - Jan 1, 2025

Illinois enacted the [Worker Freedom of Speech Act](#). This law protects workers from punishment or retaliation for refusing to attend meetings or listen to their employer's speech on religious or political matters, including speech regarding labor unions. The new law takes effect on **Jan. 1, 2025**.

Employer Takeaway: To ensure compliance with the new law, employers may consider reviewing formal and informal meeting and communication practices and preparing a notice of employee rights under the law. To learn more, read the September HR WIRE

Reminder: State Expands Protected Classes, Statute of Limitations and Penalties for Discrimination Claims – Jan 1, 2025

Illinois has passed four amendments to its Human Rights Act (the Act). The amendments, which take effect on **Jan. 1, 2025**, prohibit employment discrimination on the basis of an individual's reproductive health decisions and family responsibilities, extend the Act's statute of limitations to two years and increase penalties for violations of the Act.

Employer Takeaways: Prior to the effective date, ETC will release a revised State Handbook Addendum to detail and reference the newly protected classes for the State. To learn more, read the September HR WIRE

Reminder: State Enacts New Child Labor Laws – Jan 1, 2025

Illinois has enacted [Senate Bill 3646](#). Known as the Child Labor Law of 2024 (the "Act"), it repeals and replaces the state's existing child labor laws. The Act was enacted to safeguard all working minors' health, safety, welfare and access to education. It establishes standards for working conditions for children 15 years old and younger, including limiting work hours, outlining permitted jobs, requiring employment certificates, enhancing enforcement and updating penalties for violations. The Act becomes effective **Jan. 1, 2025**.

Employment Certificates

Under the Act, it's unlawful for employers to employ minors without ensuring the minor holds a valid employment certificate issued by a school issuing officer. Employers seeking to employ a minor must provide the minor with a signed notice of intention to employ, setting forth the specific nature of the occupation and the exact hours of the day and number of hours per day and days per week the minor will be employed. The minor must submit this notice to their school's issuing officer along with their employment certificate application. "**School issuing officer**" means a regional or district superintendent of schools or their duly authorized agent.

Supervision

The Act requires that all minors are supervised at all times by an adult of 21 years of age or older.

To read/learn more, access the Illinois Child Labor Law webpages [HERE](#)

Reminder: State Grants Employees the Right to Inspect Pay Stubs Upon Request – Jan 1, 2025

Aug. 9, 2024, Illinois amended the Illinois Wage Payment and Collection Act (IWPCA) to allow employees to inspect their pay stubs. The amendments also impose new recordkeeping requirements on employers, expand the information employers must provide employees in their pay stubs, and create penalties for employers that fail to furnish current and former employees with pay stubs. These amendments become effective **Jan. 1, 2025**.



Maryland

New! Maryland Adopts Heat Stress Standards – September 20, 2024

Maryland has adopted new heat stress standards that will take effect on September 30, 2024. They apply when employees are exposed to a heat index (aka the “feels like” temperature) of 80 degrees Fahrenheit or more during work, with some exceptions. The standards require that employers take steps to protect workers, such as establishing a written heat illness prevention and management plan and providing employees with water, access to shade, and heat stress training.

The [Heat Stress Standards](#) were published in the Maryland Register on September 20, 2024. To read the full text of the adopted standards, see the [Notice of Proposed Action 24-081-P](#).

Massachusetts

New! Amended State Earned Sick Time to Cover Reproductive Loss – Nov 21, 2024

Massachusetts has amended its earned sick time [law](#) to provide leave for employees experiencing reproductive loss. The [amendment](#) takes effect Nov. 21, 2024.

The change allows a new reason for employees’ earned sick time use: to address their physical and mental health needs and those of their spouse if the employee or the employee’s spouse experiences pregnancy loss or a failed assisted reproduction, adoption or surrogacy.

Employer Reminder: Earned sick time in Massachusetts applies to all private employers and employees. Employers with 11 or more employees must compensate the leave, while smaller employers may provide the time as unpaid. Employees accrue one hour of leave for every 30 hours worked, and they may use up to 40 hours of earned sick time annually.

New! MA 2025 PFML Benefit to Increase – 2025

The Massachusetts paid family and medical leave (PFML) [contribution rates](#) will remain at their 2024 levels for 2025, but the maximum employee [benefit](#) will increase. Beginning Jan. 1, 2025, the maximum weekly PFML benefit for covered employees will be \$1,170.64, up from \$1,149.90 in 2024. The rate is based on the state’s average weekly wage.

Michigan

New! State Issues FAQs and Other Materials for Earned Sick Time Act – Feb 21, 2025

The Michigan Department of Labor and Economic Opportunity has published answers to frequently asked questions ([FAQs](#)) about the upcoming [Earned Sick Time Act](#) (ESTA) that will take effect Feb. 21, 2025. The department has also posted a [brochure](#) and sample [workplace poster](#) on its website, along with a recorded webinar discussing the law.

Minnesota

Reminder: State Paid Leave Wage Reports - Oct 31, 2024

Minnesota employers of all sizes will be required to submit their first employee **wage reports** to the state by October 31, 2024, as part of their obligations under the state’s Paid Leave law. The reports must include each employee’s name, Social Security number, hours worked, and wages paid for the period of July 1, 2024, through September 30, 2024. Employers will need to submit this information quarterly through the state’s Unemployment Insurance (UI) online system. Employers that are covered by the UI program will be able to submit a single wage detail file for both programs when they pay their UI taxes. Employers not covered by UI are required to set up a “Paid Leave Only” account in the UI system.

For more information, see [Minnesota’s Paid Leave employer website](#) or the September HR WIRE



New Jersey

Reminder: Upcoming Deadlines for RetireReady NJ - Sept & Nov 2024

Employers that are required to participate in New Jersey's state-facilitated individual retirement account (IRA) savings program—known as [RetireReady NJ](#)—**must register or certify an exemption this Fall**. To learn more access the September HR WIRE.

- Sept. 15, 2024 - Employers with 40 or more employees must register by this date.
- Nov. 15, 2024 - Employers with 25-39 employees must register by this date.

New York

New! NY Expands Protections for National Guard Service – Sept 27, 2024

New York now provides employment protections for employees who have been away from work on state active duty with the National Guard pursuant to a call of the governor of New York or any other state. This law [NY 3710](#) took effect immediately upon signing on September 27, 2024, and applies to employers of all sizes.

Employer Takeaway: If your handbook policy related to protected military and National Guard leave is not already expansive enough to cover this type of use, update it as needed.

New! New York PFL Contribution and Benefit Rates to Increase in 2025

New York state has published paid family leave (PFL) updates for 2025 on [its website](#) for the program. Both the employee contribution rate and the maximum weekly benefit for the program will see increases over the rates for 2024. New York PFL is fully funded by employees through payroll deductions. Employers are not required to contribute.

- The weekly employee benefit for New York state PFL leave will be capped at \$1,177.32 in 2025, an increase from 2024.
- The 2025 employee contribution rate for PFL will be 0.388% of gross wages, also increased from 2024.
- The maximum annual employee contribution for PFL in 2025 will be \$354.53.

Recap:

New York's [PFL law](#) provides eligible employees with up to 12 weeks of PFL. PFL coverage is typically added as a rider on an employer's existing disability insurance policy. Leave may be used for:

- Caring for a family member with a serious health condition;
- Birth, adoption or fostering of a child;
- A spouse's, domestic partner's, child's or parent's active military duty or impending active military duty; or
- Certain COVID-19-related reasons.

"Family member" is defined expansively and includes siblings.

Reminder: Clean Slate Act (Expanded Criminal History Protections)– Nov 16, 2024

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.

Rhode Island

Reminder: State Enacts New Consumer Data Privacy Law – Jan 1, 2025

Rhode Island enacted the Rhode Island Data Transparency and Privacy Protection Act (DTPPA), a comprehensive consumer data protection law. The DTPPA provides Rhode Island residents with new rights related to their personal information and imposes requirements on how personal information can be collected, controlled and shared by certain businesses referred to as "controllers." The new law takes effect on **Jan. 1, 2026**. To learn more access the September HR WIRE.

SECTION IV: **Previously Reported Regulatory Matters**

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

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