EYE ON WASHINGTON

Timely, topical insights on a variety of payroll and reporting issues.

Detailed Look at State, Local and Federal Updates

Topics covered in this issue:

State/Territory/District

California Issues Guidance on Fast-Food Minimum Wage; New Legislation Expands Exemptions

The California Department of Industrial Relations (DIR) has released guidance on a new law that entitles certain fast-food restaurant workers to a minimum wage of $20 per hour beginning **April 1, 2024**. The state has also enacted legislation that expands the exemptions from the law **effective immediately**.

The Details:

Background:

Effective April 1, 2024, fast-food restaurant workers in California working at a "national fast-food chain" establishment must be paid a minimum of $20 per hour. The fast-food worker minimum wage will be adjusted for inflation beginning on **January 1, 2025**.

The law defines "national fast-food chain" as follows:

A set of limited-service restaurants consisting of more than 60 establishments nationally that share a common brand, or that are characterized by standardized options for decor, marketing, packaging, products, and services, and which are primarily engaged in providing food and beverages for immediate consumption on or off premises where patrons generally order or select items and pay before consuming, with limited or no table service. For purposes of the definitions in this part, "limited-service restaurant" includes, but is not limited to, an establishment with the North American Industry Classification System (NAICS) Code 722513.

As enacted, the law exempted the following entities from the requirement:

- Establishments operating a bakery that produces bread for sale as a stand-alone item on the establishment's premises; and
- Restaurants located in a grocery establishment where the grocery employs the restaurant workers.

Newly Released Guidance:

The California Department of Industrial Relations has released guidance in the form of **frequently asked questions** on the new law.

The guidance addresses who is covered by the law. Specifically, the guidance states the law applies only to employees of "fast-food restaurants." To be considered a fast-food restaurant, the restaurant must be:

- A "limited-service restaurant" in California. A limited-service restaurant is one that offers limited or no table service, where the customers order food or beverage items and pay for those items before the items are consumed;
- Part of a restaurant chain of at least 60 establishments nationwide. An establishment is a single restaurant location offering food or beverages to customers. Off-site business locations (geographically separate from a restaurant location), at which employees perform administrative, warehouse, or preparatory food production tasks, are not counted as "establishments" toward the 60-establishment minimum; and
- Primarily engaged in selling food and beverages for immediate consumption.

The guidance also says covered employers must post **a supplemental minimum wage poster** and updated wage orders **#5** and **#7** (as applicable).

Assembly Bill 610:

The state also recently enacted legislation that expands the exemptions to the law. **Effective immediately**, a restaurant is also exempt from paying the fast-food worker minimum wage if it is:

- Located in an airport;
- Connected to or operated in conjunction with a hotel, an event center of more than 20,000 square feet or 1,000 seats, a theme park, a public or private museum, or a gambling establishment.

All of the following:

- Located in and operated in conjunction with a building, group of buildings, or campus used for office purposes primarily or exclusively by a single, for-profit corporation and its affiliates;
- Primarily or exclusively serves employees of that corporation or its affiliates rather than the general public;
- Is part of, or subject to, a concession or food service contract covering the building, group of buildings, or campus; and
- Located on land owned by the state, a city or county, or other political subdivision of the state, that is part of a port district or land managed by a port authority or port commission, a public beach, public pier, state park, municipal or regional park, or historic district, and is operated pursuant to a concession agreement or food service contract.

Next Steps:

If you are a covered employer:

- Read the **frequently asked questions in full**.
- Pay the minimum wage of at least $20 per hour for fast-food workers, unless an exemption applies.
- Post updated notices, unless an exemption applies.

New Jersey Provides Guidance on the New Jersey Family Leave Act

New Jersey has created guidance to address frequently asked questions on the New Jersey Family Leave Act (NJFLA).

The Details:

The **New Jersey Family Leave Act** (NJFLA) requires employers with 30 or more employees worldwide to, under a qualifying circumstance, provide up to 12 weeks of unpaid job-protected leave during a 24-month period. Leave under the NJFLA must be provided to an eligible full or part-time employee who has been employed by the company for at least one year and has worked at least 1,000 hours in the past 12 months.

NJFLA Guidance:

New Jersey has released **guidance** to clarify key facts and questions about the NJFLA. See the **NJFLA law**, **NJFLA rules**, and **NJFLA Fact Sheet** for further details.

Employee Eligibility Factors:

The guidance clarifies that eligibility for NJFLA leave depends on factors such as how frequently an employee conducts work outside of New Jersey and whether an employee:

- Works in New Jersey;
- Has a base of operations in (or the place from which their work is directed and controlled is in) New Jersey;
- Has an understanding with their employer on the state their employment is based in; and
- Has tax and employment benefits that suggest they are a New Jersey employee. For instance, the NJFLA would not apply to an employee who pays into the New York unemployment system (they would generally be considered a New York employee).

Note: The guidance clarifies that a covered employer's headquarters does not have to be in New Jersey, and an employee does not have to reside in or complete all of their work in New Jersey.

How to Calculate 1,000 Hours Worked during the Preceding 12-month Period:

An employer must consider the following base hours from the preceding 12-month period when calculating eligibility under the NJFLA:

- Hours for which an employee receives compensation (including overtime) and workers' compensation;
- Hours an employee served in the military which would have otherwise been spent at work; and
- Hours when an employee is laid off or furloughed (up to 90 calendar days) during reduced operations due to a state of emergency. See the **guidance** for further details.

Note: An employer may include the hours an employee receives certain compensation, such as vacation or personal, administrative, or sick leave.

How to Calculate the 24-Month Period:

The methods used to calculate the NJFLA 24-month period are the same as the four methods used to calculate the FMLA 12-month period: 1) The calendar year; 2) A fixed leave year (such as a fiscal year or employee's anniversary date); 3) The 24-month period measured forward from the first date the employee takes leave; or 4) A rolling 24-month look-back period measured from the date the employee takes leave.

Note: An employer must notify its employees of the chosen method, apply it consistently, and provide employees 60 days' notice of a change to the method.

Covered Leave:

Under the NJFLA, "care" includes physical care, emotional support, visitation, assistance in treatment, transportation, arranging for a change in care, assistance with essential daily living matters, and personal attendant services.

An eligible employee is entitled to unpaid job-protected leave under the NJFLA to care for:

- A family member (or someone equivalent to family) with a serious health condition;
- A child (the leave must begin within one year of the child's birth or placement for adoption or foster care). The leave may also be used to bond.

Leave under the NJFLA also covers caregiving related to a state of emergency, natural or man-made disaster, or emergency that the President of the United States, the Governor of New Jersey, or a municipal emergency management coordinator declares a state of emergency.

Caregiving leave may be used to:

- Care for a family member (or someone equivalent to family) who is isolated or quarantined due to suspected exposure to a communicable disease; or
- Provide required care or treatment for a child whose school or place of care is closed by order of a public official due to an epidemic of a communicable disease or other public health emergency.

Note: An employee's own medical condition is not covered under the NJFLA, but may be covered under other leave laws. For example, an employee who seeks leave to care for their pregnancy-related disability or recovery from childbirth may be eligible for leave under the federal Family and Medical Leave Act (FMLA).

Exceptions to the NJFLA's Right to Reinstatement:

An employee is generally entitled to return to the same or equivalent position of seniority, status, benefits, pay, and other terms and conditions of employment (if the position is no longer available) that they had held before their NJFLA leave.

Note: An employee that experiences a reduction in force or layoff event while on NJFLA leave is not entitled to reinstatement (provided that the employee would have lost their position if they had not been on leave).

FMLA Leave Interplay with NJFLA Entitlements:

A leave covered by the NJFLA and FMLA will simultaneously count against both types of leave. However, an employee who first takes FMLA leave for their own disability is entitled to an additional 12 weeks of NJFLA leave within a 24-month period. For example, an employee who uses FMLA leave due to their own pregnancy or childbirth-related disability would also be entitled to 12 additional weeks of NJFLA leave in a 24-month period to care for or bond with their newborn child.

Accrued Paid Leave Interplay with NJFLA Leave:

An employer generally may determine whether an employee must use accrued paid leave, such as vacation, sick, administrative, or other paid time off, during NJFLA leave. The determination is based on the existence and administration of an established policy or practice. Under the **guidance**, an employer:

- May require employees to exhaust all accrued paid leave during NJFLA leave if the employer has an established policy or practice that requires employees to exhaust all accrued paid leave during leaves of absence.
- Cannot require employees to use accrued paid leave during NJFLA leave if:
  - The employer's established policy or practice allows employees to take unpaid leave without first using accrued paid leave.
  - The employee decides not to do so, and the employer does not have an established policy or practice. However, an employee may use accrued paid leave during NJFLA leave at their own discretion.

An employer with different policies or practices that govern different types of leave must treat NJFLA leave as they do leave that most closely resembles NJFLA leave.

Denying Employee Requests for NJFLA Leave:

An employer may generally not deny NJFLA leave to an eligible employee unless:

- The employee is salaried and is one of the highest-paid five percent of employees or seven highest-paid employees (whichever is greater);
- The employer can demonstrate that the leave would cause a substantial and grievous economic hardship to its operations; and
- The employer notifies the employee when it decides to deny the leave.

Note: Employers may not deny leave to such employees during a state of emergency.

Next Steps:

Review the **guidance**, **NJFLA law**, **NJFLA rules**, and **NJFLA Fact Sheet**.

Ruling Increases Hiring and Promotion Protections under New York Laws

Candidates living outside of New York State and New York City who are applying for jobs in either location may be protected under the state's and city's Human Rights laws.

The Details:

Background:

Under New York anti-discrimination laws, an employee or applicant must show that alleged discriminatory conduct had an impact within New York State or New York City to bring certain discrimination claims (i.e., failure-to-hire or failure-to-promote).

Nonresidents who work in New York State or New York City may bring claims under the New York State Human Rights Law (NYSHRL) or the New York City Human Rights Law (NYCHRL).

It was unclear if these protections applied to candidates and employees who did not reside in either location when they applied for a role in New York State or New York City.

Recent Ruling:

The New York State Court of Appeals has ruled that nonresident candidates who proactively sought jobs based in New York State or New York City can bring claims under the NYSHRL or the NYCHRL.

The Court concluded that:

- Discrimination that results in a failure-to-hire or failure-to-promote in New York State or New York City would personally impact an individual because that is where the individual: 1) wished to work at (or relocate to) and 2) was denied the job opportunity.
- Applying for a position based in New York or New York City entitles an individual to the protections of the NYSHRL and the NYCHRL; and
- The NYSHRL and the NYCHRL should be liberally construed to prevent employers from discriminatory hiring practices against nonresidents.

Next Steps:

Review hiring and promotion policies, procedures, and supervisor non-discrimination trainings.

Pennsylvania Modifies Tax Treatment of Dependent Care Assistance Plan Contributions

Pennsylvania modified its tax code to treat Dependent Care Assistance Plan (DCAP) contribution amounts up to $5,000 as being excluded from Pennsylvania state income tax and Pennsylvania local Earned Income Taxes (EIT).

The Details:

With the enactment of Pennsylvania House Bill 1300 (HB 1300), the Tax Reform Act of 1971 was amended to stipulate contributions to an Internal Revenue Code Section 129 DCAP will no longer be subject to the state income tax. Previously, DCAP contributions were only exempt from federal taxation.

Note: Since local EITs under Pennsylvania Act 32 of 2008 use the same taxable wages as state income tax, these contributions are no longer subject to local EIT as well. Philadelphia local income tax is not under PA Act 32 and is, therefore, not impacted.

HB 1300 retroactively modified the state income tax treatment of DCAP contributions back to January 1, 2023. In February, Pennsylvania released guidance to both employers and employees (see below) in the state with information on the process that may be followed to claim a state income deduction for DCAP contributions made during the 2023 tax year.

Act 34 of 2023 - Dependent Care Plan (Section 129) - Employer Info (custhelp.com)

Act 34 of 2023 - Dependent Care Plan (Section 129) - Employee Info (custhelp.com)

Recently, Pennsylvania released further guidance stating in the link below:

"Stop withholding for tax year 2024 on dependent care benefits (up to $5,000)."

Dependent Care Assistance (pa.gov)

Impacted employers should review the guidance above.

Washington State Prohibits Employer-Mandated Religious and Political Meetings

Washington State has enacted legislation (Senate Bill 5778), which protects employees who refuse to attend employer meetings or listen to (or view) employer communications because the meetings or communications involve political or religious matters. Senate Bill 5778 takes effect on June 6, 2024.

The Details:

An employer may not threaten to or actually discipline or discharge, penalize or take adverse employment action against an employee:

- If the employee refuses to:
  - Attend or participate in an employer-sponsored meeting with the employer (or its agent, representative, or designee), if the primary purpose is to communicate the employer's opinion concerning religious or political matters; or
  - Listen to a speech or view communications, including electronic communications, if the primary purpose is to communicate the employer's opinion concerning religious or political matters.
- To require the employee to attend a meeting or participate in communications; or
- That makes a good faith report (orally or in writing) of a violation or suspected violation of Senate Bill 5778. The law also protects an individual acting on behalf of an employee.

Note: This protection does not apply if the employee knows that the report is false.

The law provides the following definitions:

- **Political Matters:** Matters relating to elections for political office, political parties, proposals to change legislation or regulations, and the decision to join or support a political party or political, civic, community, fraternal, or labor association or organization.
- **Religious Matters:** Matters relating to religious affiliation and practice, and the decision to join or support any religious organization or association.

Posting Requirements:

Covered employers must post a notice of employee rights in a place normally used for employment-related notices and in a place commonly frequented by employees.

Note: See the **text of the law** for further details on employers that are exempt from Senate Bill 5778 requirements.

Exceptions:

Under the law, an employer (or its agent, representative, or designee) may:

- Communicate information to employees: 1) to the extent the information is required by law, and 2) information that is necessary for the employees to perform their lawfully required job duties;

- Offer meetings, forums, or other communications about religious or political matters where attendance or participation is voluntary; and
- Require employees to attend a meeting, training or other event that is necessary: 1) for the employee to perform their lawfully required job duties, or 2) to help reduce and prevent workplace harassment or discrimination.

Next Steps:

- Post the **Washington State Department of Labor & Industries' required notice**, once available, by **June 6, 2024**.
- Review disciplinary policies and practices.
- Train supervisors on the requirements under Senate Bill 5778.

Washington State Expands Paid Sick Leave Protections

Washington State has enacted legislation (Senate Bill 5793), which expands paid sick leave protections under state law. Senate Bill 5793 takes effect on **January 1, 2025**.

The Details:

The State of Washington enacted **paid sick leave employer requirements** in 2018.

Senate Bill 5793 expands the circumstances under which an employee may take paid sick leave under the law to include:

- When their child's school or place of care has been closed for a health-related reason; or
- After the declaration of an emergency by a local or state government or agency or by the federal government.

Covered Family Members:

The law also expands the definition of a family member for paid sick leave purposes to:

- Clarify that grandchild and grandparent means the employee's grandchild or grandparent;
- Include a child's spouse in the definition of child;
- Include an individual who:
  - Depends on the employee for care, and the relationship creates an expectation that the employee will care for the individual; or
  - Lives in the employee's home.

Note: The law does not cover an individual who lives in the same home where there is no expectation that the employee will care for the individual.

Next Steps:

- Review paid sick leave policies and practices.
- Train supervisors on the changes under Senate Bill 5793 by **January 1, 2025**.

Local

Duluth, Minnesota Repeals Paid Sick Leave Ordinance

The city of Duluth, Minnesota has repealed its paid sick leave ordinance effective **January 17, 2024**.

The Details:

Since January 1, 2020, Duluth has required employers to provide paid sick leave to employees. However, Minnesota recently enacted a statewide paid sick leave requirement that took effect January 1, 2024.

After the passage of the statewide mandate, Duluth repealed its paid sick leave ordinance effective January 17, 2024. The change wasn't widely reported until recently.

Prior to the repeal, Duluth employers were required to follow the most protective city or state paid sick leave law that applied to their employees. Beginning January 17, 2024, Duluth employers are only required to comply with the state's paid sick leave law.

Next Steps:

Duluth employers should:

- Review policies and procedures and ensure they comply with the state's paid sick leave law.
- Notify employees of any changes made as a result of the review.
- Train supervisors on how to handle paid sick leave requests under state law.

Los Angeles County Enacts 'Fair Chance' Ordinance

Los Angeles County, California has enacted an ordinance that will impose various obligations on covered employers regarding the criminal histories of applicants and employees. The ordinance applies to only the unincorporated areas of Los Angeles County and takes effect **September 3, 2024**.

The Details:

Coverage:

To be a covered employer, an employer must meet both of the following two requirements:

- Be located or doing business in the unincorporated areas of Los Angeles County.
- Employ five or more employees regardless of location, including the owner(s) and management, supervisorial employees, and any person providing services pursuant to a contract in furtherance of an employer's business enterprise.

Covered applicants include any individual who submits an application or other document for employment with a covered employer. This includes an employee who is applying for a promotion with their current employer.

Employer Obligations and Prohibitions:

The **ordinance** includes a myriad of requirements and prohibitions for employers, covering:

- Job postings
- Criminal history inquiries
- Posters and notices to applicants and employees

- Adverse action procedures
- Record retention

Next Steps:

Covered employers should:

- Read the **ordinance in full**.
- Ensure compliance by **September 3, 2024**.
- Train anyone involved in the hiring process on the law.

New York City Requires Know Your Rights at Work Poster

New York City has released a "Know Your Rights at Work" poster, which NYC employers must begin distributing to employees by **July 1, 2024**. The City has also published its "Workers' Bill of Rights" website.

The Details:

Background:

New York City's bill (**Int. 569-B**) requires that employers publish information about the rights and protections under federal, state and local laws that apply to the City's employees, candidates, or independent contractors.

Required Posting:

Under **Int. 569-B**, private employers in New York must:

- Provide each employee with information on their rights at work:
  - No later than **July 1, 2024**; and
  - On or before an employee's first day of work.
- **Post** the rights at work information at the employer's place of business in an area accessible and visible to its employees; and
- Make the rights at work information available online or on a mobile application (if an employer regularly uses these methods to communicate with its employees).

Note: This information must be provided in English and any primary language spoken by at least five percent of employees (if made available by the City).

Enforcement:

An employer that is found to have violated a provision of the law for the second time may face penalties.

Worker Rights Website:

The City has published a **Worker Rights website** that contains information on multiple labor topics, such as:

- The required **poster**
- **The Workers' Bill of Rights**
- **Paid Safe and Sick Leave Laws**
- Workplace protections for **fast food**, **retail**, **freelance**, **delivery**, **paid care**, **grocery**, **building service**, **temporary construction**, and **utility workers**.

- Additional workplace laws (**living wage**, **minimum wage**, **commuter benefits**, **temporary schedule change**)
- Workplace complaints

See the Worker Rights **website** for further details.

Next Steps:

- Review the **Worker Rights website** to help ensure alignment with workplace policies and practices and the laws protecting employees' rights at work.
- Post and distribute the **required poster** by **July 1, 2024**.

Minimum Wage

Minimum Wage Announcements: 3/26/24 – 4/25/24

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

State or Locality	Minimum Wage Rate	Minimum Tipped Cash Wage	Effective Date(s)	New or Updated Poster Requirement?	Notes
California – Healthcare Workers	$23.00	$23.00*	6/1/24	Yes	Poster not yet provided.
California – Hospital or Health Care Facility	$18.00	$18.00*	6/1/24	Yes	Poster not yet provided.
California – Specified Clinics	$21.00	$21.00*	6/1/24	Yes	Poster not yet provided.
California – All Other Covered Health Care Facility Employers	$21.00	$21.00*	6/1/24	Yes	Poster not yet provided.
California – Licensed Skilled Nursing Facility	$21.00	$21.00*	6/1/24	Yes	Poster not yet provided.
Alameda, CA	$17.00	$17.00*	7/1/24	Yes	Poster once provided may be found here.
Emeryville, CA	$19.36	$19.36*	7/1/24		Poster once provided may be found here.
Fremont, CA	$17.30	$17.30*	7/1/24	Yes	
Los Angeles (City) (hotels with 60 or more rooms)	$20.32	$20.32*	7/1/24	No	
San Francisco, CA	$18.67	$18.67*	7/1/24	Yes	
West Hollywood, CA	$19.61	$19.61*	1/1/25	Yes	Poster once provided may be found here.
District of Columbia	$17.50	$10.00	7/1/24	Yes	
Nevada	$12.00	$12.00*	7/1/24	Yes	
Oregon	$14.70	$14.70*	7/1/24	Yes	Poster once provided may be found here.
Oregon – Portland, Urban Growth Boundary	$15.95	$15.95*	7/1/24	Yes	Poster once provided may be found here.
Oregon – Non-Urban Counties	$13.70	$13.70*	7/1/24	Yes	Poster once provided may be found here.
Bellingham, WA	$17.28	$17.28*	7/1/24	No	
Renton, WA (More than 500 EEs worldwide)	$20.29	$20.29*	7/1/24	Yes	Poster once provided may be found here.
Renton, WA (15 to 500 EEs worldwide)	$18.29	$18.29*	7/1/24	Yes	Poster once provided may be found here.

*CA, NV, OR, and WA do not allow the use of a tip credit.

Download a PDF of a comprehensive listing of state and local minimum wage rates.

Federal

DOL Releases Final Overtime Exemptions Rule

Read the article here.

Automatic Extension of Employment Authorization Temporarily Expanded

The U.S. Department of Homeland Security (DHS) has published a rule that temporarily increases the automatic extension period of employment authorization and/or Employment Authorization Document (Form I-766 or EAD) validity from up to 180 days to up to 540 days.

The Details:

Under the temporary rule, eligible employees with EADs that contain **certain category codes** are generally eligible for an automatic extension of their employment authorization and/or EADs for up to 540 days from the "Card Expires" date on the face of the EAD.

The automatic extension of up to 540 days is available to an eligible EAD renewal applicant whose Form I-765 was filed on or after October 27, 2023 and was pending on April 8, 2024, or whose EAD Forms I-797C, Notices of Action, have a "Received Date" from April 8, 2024 through September 30, 2025.

The automatic extension period for qualifying EADs will revert to up to 180 days for applicants who timely file Form I-765 renewal applications after September 30, 2025.

Next Steps:

- Use the **Employment Authorization Document (EAD) Automatic Extension Calculator** from U.S. Citizenship and Immigration Services (USCIS) for additional information and help calculating an employee's extension.
- Read **updated guidance** in the I-9 Handbook for Employers from USCIS.

EEO-1 2023 Reporting to Open Soon for Covered Employers

The U.S. Equal Employment Opportunity Commission (EEOC) has announced that it will begin accepting EEO-1 reports for 2023 via its portal on **April 30, 2024**. The deadline to file the report is **June 4, 2024**.

The Details:

The EEO-1 is an annual report through which covered employers must submit demographic workforce data, including data by race/ethnicity, sex, and job categories, to the EEOC. An EEO-1 report is required for:

- All private sector employers with 100 or more employees.
- Federal contractors with 50 or more employees and contracts of $50,000 or more.

Employers must **submit the report via the EEOC's online portal**.

The 2023 EEO-1 Component 1 Instruction Booklet and 2023 EEO-1 Component 1 Data File Upload Specifications are also now available on the portal.

Note: Some states, such as California and Illinois, have their own pay data reporting requirements.

Next Steps:

If you are covered by the EEO-1 requirement:

- Review the **2023 instruction booklet** and file specifications as needed.
- Prepare to submit your EEO-1 by the **June 4, 2024** deadline.

EEOC Releases Final Rule on Pregnant Workers Fairness Act

The U.S. Equal Employment Opportunity Commission (EEOC) has issued a final rule that implements the federal Pregnant Workers Fairness Act (PWFA). The final rule takes effect **June 18, 2024**.

The Details:

Background:

Effective June 27, 2023, the PWFA requires employers with 15 or more employees 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.

Note: Numerous states and local jurisdictions have their own laws requiring employers to provide such accommodations, some of which cover smaller employers. Check your state and local laws for details.

Final Rule:

The final rule defines what is meant by "pregnancy, childbirth, or related medical conditions" for which employees or applicants may seek reasonable accommodation. According to the **final rule**:

> *"Pregnancy" and "childbirth" refer to the pregnancy or childbirth of the specific employee in question and include, but are not limited to, current pregnancy; past pregnancy; potential or intended pregnancy (which can include infertility, fertility treatment, and the use of contraception); labor; and childbirth (including vaginal and cesarean delivery). "Related medical conditions" are medical conditions relating to the pregnancy or childbirth of the specific employee in question. The following are examples of conditions that are, or may be, "related medical conditions": termination of pregnancy, including via miscarriage, stillbirth, or abortion; ectopic pregnancy; preterm labor; pelvic prolapse; nerve injuries; cesarean or perineal wound infection; maternal cardiometabolic disease; gestational diabetes; preeclampsia; HELLP (hemolysis, elevated liver enzymes and low platelets) syndrome; hyperemesis gravidarum; anemia; endometriosis; sciatica; lumbar lordosis; carpal tunnel syndrome; chronic migraines; dehydration; hemorrhoids; nausea or vomiting; edema of the legs, ankles, feet, or fingers; high blood pressure; infection; antenatal (during pregnancy) anxiety, depression, or psychosis; postpartum depression, anxiety, or psychosis; frequent urination; incontinence; loss of balance; vision changes; varicose veins; changes in hormone levels; vaginal bleeding; menstruation; and lactation and conditions related to lactation, such as low milk supply, engorgement, plugged ducts, mastitis, or fungal infections. This list is non-exhaustive."*

The final rule also provides:

- Examples of reasonable accommodations, such as additional breaks to drink water, eat, or use the restroom; a stool to sit on while working; time off for healthcare appointments; temporary suspension of certain job duties; telework; or time off, among others. More examples are available in the **final rule**.
- Recommendations for early and frequent communication between employers and workers to raise and resolve requests for reasonable accommodations in a timely manner.
- Clarification that an employer isn't required to seek supporting documentation when an employee asks for a reasonable accommodation and should only do so when it is reasonable under the circumstances.
- Explanation of when an accommodation would impose an undue hardship on an employer and its business.

Next Steps:

Covered employers should:

- Read the **final rule** in full.
- Ensure compliance with the PWFA and the **final rule**.
- Train supervisors on how to recognize and handle accommodation requests.

OSHA Clarifies Rights to Employee Representation During Inspections

The U.S. Occupational Safety and Health Administration (OSHA) has published a final rule clarifying the rights of employees to authorize a representative to accompany OSHA compliance officers during an inspection of their workplace. The rule takes effect **May 31, 2024**.

The Details:

The Occupational Safety and Health Act gives the employer and employees the right to authorize a representative to accompany OSHA officials during a workplace inspection.

The final rule clarifies that workers may authorize another employee to serve as their representative or select a non-employee.

For a non-employee representative to accompany the compliance officer in a workplace, they must be reasonably necessary to conduct an effective and thorough inspection.

The rule clarifies that a non-employee representative may be reasonably necessary based on their relevant knowledge, skills, or experience with hazards or conditions in the workplace or similar workplaces, or language or communication skills.

OSHA compliance officers retain the authority to determine whether good cause has been shown why an individual is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace.

Next Steps:

- Read the **final rule in full**.
- Train employees involved in the OSHA inspection process on the new rule.

ADP Compliance Resources

ADP maintains a staff of dedicated professionals who carefully monitor federal and state legislative and regulatory measures affecting employment-related human resource, payroll, tax and benefits administration, and help ensure that ADP systems are updated as relevant laws evolve. For the latest on how federal and state tax law changes may impact your business, visit the ADP ***Eye on Washington*** Web page located at **www.adp.com/regulatorynews.**

ADP, Inc.
One ADP Boulevard, Roseland, NJ 07068
adp.com

Updated on April 30, 2024