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 Expands Paid Sick Leave Requirement

California has enacted legislation that expands the amount of paid sick leave to which employees are entitled, extends some protections to employees covered by a collective bargaining agreement and partially pre-empts local paid sick leave laws. The legislation (Senate Bill 616) takes effect **January 1, 2024**.

The Details:

Current Law	Effective January 1, 2024
Increased Annual Paid Sick Leave	
Current law gives employees the right to use up to 24 hours or three days (whichever is more) of paid sick leave per year.	Employees have the right to use up to **40 hours or five days** (whichever is more) of paid sick leave per year
Increased Alternative Accrual Rate	
Employees generally accrue one hour of paid sick leave for every 30 hours worked. An employer may use a different accrual method, other than providing one hour per every 30 hours worked, provided that the accrual is on a regular basis, so that an employee has no less than 24 hours of accrued sick leave or paid time off by the 120th calendar day of employment or each year.	Employees generally accrue one hour of paid sick leave for every 30 hours worked. An employer may use a different accrual method, other than providing one hour per every 30 hours worked, provided that the accrual is on a regular basis, so that an employee has no less than 24 hours of accrued sick leave or paid time off by the 120th calendar day of employment or each year, **and no less than 40 hours of accrued sick leave or paid time off by the 200th calendar day of employment or each year.**
Current law also provides that an employer may satisfy the accrual requirements by providing not less than 24 hours or three days of paid sick leave that is available to the employee to use by the completion of the employee's 120th calendar day of employment.	An employer may still satisfy the accrual requirements by providing no less than 24 hours or three days of paid sick leave that is available to the employee to use by the completion of the employee's 120th calendar day of employment, **and no less than 40 hours or five days of paid sick leave that is available to the employee to use by the completion of the employee's 200th calendar day of employment.**

Current Law	Effective January 1, 2024
Increased Use Cap	
An employer may limit an employee's use of accrued paid sick days to 24 hours or three days in each year.	An employer may limit an employee's use of accrued paid sick days to **40 hours or five days in each year.**
Increased Frontload Amount to Avoid Accrual and Carryover	
Unused, accrued paid sick leave carries over to the following year of employment. This requirement is satisfied, and no accrual or carryover is required, if the full amount of leave is received at the beginning of each year. "Full amount of leave" for these purposes is defined as three days or 24 hours.	Unused paid sick leave carries over to the following year of employment. This requirement is satisfied, and no accrual or carryover is required, if the full amount of leave is received at the beginning of each year. "Full amount of leave" for these purposes is defined as **five days or 40 hours**.
Increased Rolling Accrual Cap	
An employer is under no obligation to allow an employee's total accrual of paid sick leave to exceed 48 hours or six days, provided that an employee's rights to accrue and use paid sick leave are not otherwise limited.	An employer is under no obligation to allow an employee's total accrual of paid sick leave to exceed **80 hours or 10 days**, provided that an employee's rights to accrue and use paid sick leave are not otherwise limited.
Impact to Pre-Existing Policies	
When the CA sick leave law was originally enacted in 2014, employers with existing paid sick or paid time off policies were not required to provide additional paid sick leave if the policy made an amount of leave available to employees that could be used for the same purposes and under the same conditions as provided under the law and the policy satisfied other specified conditions. One of those conditions requires the employer to have provided paid sick leave or paid time off in a manner that results in an employee's eligibility to earn at least three days or 24 hours of sick leave or paid time off within nine months of employment.	The condition will be changed so that the employee must be eligible to earn **at least five days or 40 hours** of sick leave or paid time off within **six months of employment**.
Impact to Providers of In-Home Supportive Services	
Providers of in-home supportive services and waiver personal care services are entitled to up to a maximum of 24 hours or three days each year of paid sick leave.	Providers of in-home supportive services and waiver personal care services are entitled to up to a maximum of **40 hours or five days** each year of paid sick leave.
Impact to Unionized Employees	
Current law contains an exemption for non-construction unionized employees covered by a valid collective bargaining agreement ("CBA") assuming the CBA provided for (1) certain wage and hour provisions, (2) final and binding arbitration of paid sick day disputes, (3) regular hourly rate or pay of at least 30 percent more than the state minimum wage, and (4) paid sick leave or other paid time off that could be used for paid sick leave reasons.	Employers that rely on the CBA exemption must satisfy certain aspects of the CA paid sick leave law, including **allowing unionized employees to use sick leave for the reasons specified under the law, no requirement to find a replacement worker, and no retaliation for use of paid sick leave.**
Partial Preemption of Local Paid Sick Leave Laws	
The law sets forth provisions on compensation for accrued, unused paid sick leave upon termination of employment and reinstatement of leave upon rehire, the lending of paid sick days to employees, pay statement/separate writing requirements, the calculation of paid sick leave, *reasonable advance notification requirements and the timing of payment of sick leave taken. *As a reminder, paid sick leave must be paid at an employee's "regular rate of pay" (e.g., the same rate used to calculate an employee's overtime rate).	**Local sick leave ordinance provisions with different standards are preempted.**

Next Steps:

- Review policies and procedures to ensure compliance with Senate Bill 616 beginning January 1, 2024.
- Train supervisors on the changes.

California to Increase Fast Food Worker Minimum Wage

California has enacted **Assembly Bill 1228** (AB 1228), which increases the minimum wage of fast food restaurant workers working at a national fast food chain establishment.

The Details:

Effective April 1, 2024, fast food restaurant workers working at a "national fast food chain" establishment must be paid a minimum of $20.00 per hour. The minimum wage may be adjusted upward beginning on January 1, 2025, but the annual increase will be limited to the lesser of 3.5 percent or the Consumer Price Index (CPI) as measured from the previous July 1 to June 30.

AB 1228 defines "national fast food chain" as follows:

> "National fast food chain" means 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.

Exemptions:

- 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.

Next Steps:

Beginning April 1, 2024, "national fast food chain" employers in California must pay their employees a minimum wage of at least $20.00 per hour.

Connecticut Expands Paid Sick Leave Law

Connecticut has enacted legislation that makes changes to the state's paid sick leave law. The legislation (Senate Bill 2) took effect October 1, 2023.

The Details:

Existing Law	Effective October 1, 2023
Connecticut law requires employers with 50 or more employees to provide paid sick leave to hourly "service employees" for the following reasons: • Their own illness, injury, or health condition; the medical diagnosis or treatment of a condition; or preventative care. • Their child's or spouse's illness, injury, or health condition; the medical diagnosis or treatment of their child's or spouse's condition; or preventative care for a child or spouse. • Victims of family violence or sexual assault are entitled to paid leave for medical care or counseling; to obtain services from a victim services organization; to relocate because of the incident; or to participate in any civil or criminal proceedings related to the incident.	Eligible service employees may also use paid sick leave for the following reasons: • A day during which a service worker attends to their emotional and psychological well-being in lieu of attending a regularly scheduled shift. • If they are a parent or guardian of a child who is a victim of family violence or sexual assault, provided the employee isn't the (alleged) perpetrator.

Next Steps:

If you are a covered employer:

- Review policies and practices to ensure compliance with the changes made by Senate Bill 2.
- Train supervisors on the changes and how to respond to leave requests.

Illinois Provides Guidance on New Paid Leave Law

The Illinois Department of Labor (IDOL) has published guidance on the Paid Leave for All Workers Act, which requires employers to provide employees with up to 40 hours of paid leave that they may use for any reason. The law takes effect **January 1, 2024**.

The Details:

Provided in the form of **answers to frequently asked questions**, the guidance is intended to clarify and highlight various aspects of the law and is being updated periodically. Here are some key takeaways from the current version of the guidance:

- Both full-time and part-time workers are covered by the law.
- The law does not apply to employers covered by municipal or county ordinances in effect on January 1, 2024, that provide for paid leave or paid sick leave. However, the FAQs clarify that employers located in jurisdictions (e.g., municipalities in Cook County) that have opted out of a local paid leave law or ordinance are required to comply with the law.
- Accrual begins upon starting employment or January 1, 2024, whichever is later.
- Employees are entitled to begin using the paid leave under the law 90 days following commencement of their employment or March 31, 2024, whichever is later.
- An employer may only make an employee repay borrowed accrued leave if it is disclosed in the employer's written paid leave policy and the employee agrees to that policy in writing prior to taking any leave. All payroll deductions must comply with the requirements of the Illinois Wage Payment and Collection Act.
- The law doesn't require payout of unused leave unless the leave is credited to the employee's paid time off bank or employee vacation account; however, employers should additionally consider their vacation payout obligations under the Illinois Wage Payment and Collection Act.

Employers Currently Providing Paid Time Off:

For employers currently providing paid time off, the FAQs also include the following guidance:

3. My employer already provides paid time off. Do they have to add another 40 hours of leave under the Act?

An employer who already offers paid leave benefits that meet the minimum requirements of the Act does not have to add additional time.

12. Does an unlimited PTO Policy comply with the Act?

To determine whether a specific employer's unlimited PTO policy is compliant with this Act would require a fact-specific analysis upon complaint or formal investigation. One factor the Department would consider in such analysis would be whether the employee in question actually did, or had the ability to, freely take the full 40 hours in a year, consistent with the Act and the Rules. Another factor would be whether the employees were paid their normal rate of pay for time they took off. This is not an exhaustive list of factors the Department may consider.

Next Steps:

- Read the **guidance in full**.
- Consult with legal counsel as needed to determine if existing paid time off policies satisfy the requirements.
- Prepare to comply with the law by January 1, 2024.

Maine Announces Minimum Wage Thresholds for 2024

The Maine Department of Labor (DOL) has announced the state's minimum salary threshold for exempting a worker from overtime pay for 2024.

The Details:

Starting January 1, 2024, the new minimum salary threshold to exempt a worker from overtime pay is $816.35 per week, or $42,450.20 per year.

In its **announcement**, the DOL made clear:

"This is only one of the factors used in determining whether a worker is exempt from overtime pay under federal or state law. An individual can earn more than the minimum salary threshold and still be eligible for overtime. The duties of each worker must be considered as part of this analysis."

Next Steps:

Prior to January 1, 2024, Maine employers should evaluate whether workers that currently qualify as exempt employees (e.g.; executive, professional, administrative) will earn the new minimum salary to remain exempt from overtime pay. If not, employers must either increase the employee's salary or reclassify the employee as non-exempt and pay overtime when working in excess of 40 hours per week.

New Hampshire Adds Lactation Accommodations

New Hampshire has enacted legislation (House Bill 358), which requires employers to provide unpaid time for employees to express milk. House Bill 358 takes effect on **July 1, 2025**.

The Details:

Employers with six or more employees working in New Hampshire must provide employees that need to express milk:

- An unpaid break of approximately 30 minutes to pump, for every three hours of work, which may be taken with break or meal periods provided by the employer.
  - **Note:** The law does not provide a definition for "approximately."
- Reasonable and sufficient spaces in the workplace (permanent or temporary, but not a bathroom) for an employee to express milk for at least one year following the birth of a child. The spaces must be:
  - Within a reasonable walk of the employee's worksite (unless the employer and employee mutually agree to a different location);
  - Clean, shielded from view, and free from intrusion from co-workers and the public;
  - Outfitted with (at a minimum) an electrical outlet and a chair, if reasonable; and
  - Made available when requested (if the space is not solely used for employees expressing milk).

Employers and employees may negotiate different terms for reasonable break periods other than those provided by the law, but employers cannot require employees to make up time for breaks used to express milk.

Note: Under the law, expressing milk is the initiation of lactation by manual or mechanical means, but it does not include breastfeeding.

Employer Policy Requirements:

Employers must adopt a policy to address the provision of sufficient space and reasonable break periods for nursing employees that need to express milk during working hours and provide it to employees at their time of hire.

Employee Notice Requirements:

Employees must provide their employer at least two weeks of notice prior to the need for breaks and a space to express milk.

Exceptions:

Certain employers may be exempt from the law if they can prove an undue hardship that requires significant difficulty or expense when considered in relation to factors such as the size of the business, its financial resources and the nature and structure of its operation.

Additionally, the law does not cover an individual that volunteers their services for a charitable or religious facility without expectation or promise of pay.

Next Steps:

- Adopt a policy to help ensure compliance with the requirements of House Bill 358 by July 1, 2025.
- Train supervisors and hiring personnel on the law's requirements.

New Jersey Adds Protections for Service Employees

New Jersey has enacted legislation (Assembly Bill 4682), which creates various employment protections for service employees during changes of ownership. Assembly Bill 4682 takes effect on **October 22, 2023**.

The Details:

Covered Workers:

Under the law, a service employee is an individual employed or assigned to a covered location on a full- or part-time basis for at least 60 days (previously 90 days) that is responsible for certain:

- Food preparation services at educational facilities;
- Care or maintenance of a building or property; or
- Airport services.

The law does not cover:

- A managerial or professional employee;
- A worker regularly scheduled to work less than 16 hours per week; or
- An individual who performs work on a building, structural, electric, HVAC or plumbing project, if the work requires a municipal building or construction department permit.

See the text of the law for further details on covered workers.

Employer Requirements:

Under the law, an employer that transitions their business to another employer (the successor employer) must fulfill the following requirements at least fifteen days before terminating a service contract, contracting out services that it previously performed, or selling or transferring property where service employees are employed:

- Request (and provide to the successor employer) a list containing the name and limited job information of each employee on the service contract;
- Provide written notice to a collective bargaining representative of the affected service employees of the decision to terminate the service contract, enter into a new service contract, or sell or transfer the property;
- Post in a conspicuous location, a written notice to all affected service employees that describes the pending termination of the service contract, entrance into a service contract, or sale or transfer of the property at any affected work site; and
- Provide the covered employees and their collective bargaining representative the name and address of the successor employer or the purchaser or transferee of the property.

Successor Employer Requirements:

Under the law, a successor employer must:

- Provide an affected service employee a written offer of employment;
- Send a copy of the job offer to an employee's collective bargaining representative; and
- Retain an affected service employee at a covered location for 60 days or until its service contract is terminated (whichever is earlier).

A successor employer:

- Is not required to retain every affected service employee during the 60-day transition period, provided the successor employer:
  - Determines that fewer service employees are required to perform the work;
  - Retains service employees by seniority within each job classification;
  - Maintains a preferential hiring list of those employees not retained; and
  - Hires additional service employees from the list (in order of seniority) until all affected service employees are offered employment.
- May not discharge a service employee without just cause during the 60-day transition period. The law does not define "just cause."

Note: The discharge portion of the law may not apply if a successor employer, on or before the termination of the service contract, agrees to the collective bargaining agreement of the awarding authority or contractor, which provides terms and conditions for the discharge or laying off of employees.

The law also changes to 60 days (previously 90 days) for the definition of the transition period and the duration that a successor employer must:

- Retain an affected service employee at a covered location; and
- Wait before discharging a retained service employee (absent a just cause termination).

Covered Locations:

- A warehouse or distribution center;
- An industrial site or pharmaceutical lab;
- A hospital, nursing care facility, senior care center or other health care provider location;
- A commercial center, complex or office building, or complex that is more than 100,000 square feet; or
- A cultural center or complex, such as an arena, museum, convention center or performance hall.

See the text of the law for further details on locations covered under the law.

Penalties:

Employers that are found to have violated the law may face a maximum fine of $2,500 for a first violation and up to $5,000 for each subsequent violation. Each week that a violation occurs is considered a separate offense.

Next Steps:

If you have questions on your business's compliance with Assembly Bill 4682, consider consulting legal counsel.

State of New York Increases Earnings Threshold for Certain Employee Pay Provisions

The State of New York has enacted **Senate Bill 5572/Assembly Bill 6796**, which increases the earnings threshold for exemption from certain wage payment protections under the New York Labor Law.

The Details:

Currently, individuals employed in an executive, administrative, or professional capacity who earn in excess of $900 per week are exempt from certain wage payment protections relating to, among other things, pay frequency and direct deposit consent. **As of March 13, 2024**, the earnings threshold will increase to in excess of $1,300 per week, and employees who do not meet this threshold will be subject to these wage payment protections.

Note: The increased threshold does not impact the weekly earnings threshold that workers employed in a bona fide executive or administrative capacity must earn to be exempt from overtime pay requirements.

Wage Payment Protections:

Covered exempt employees not earning in excess of $1,300 per week will be subject to the following labor law protections:

- Frequency of Pay: Not less than weekly pay for most manual workers; bi-weekly pay for clerical and other workers, and monthly pay for commission salespersons;
- Direct Deposit: Requires employee consent for direct deposit;
- Benefits and Wage Supplements: Employers must comply with expense reimbursement, employee benefits, vacation, severance, and holiday pay policies;
- Methods of Payment of Wages: Permissible payments under the New York Labor Law are limited to cash, check, direct deposit, and payroll card.

As of March 13, 2024, in addition to pursuing a private action against their employer, executive, administrative, and professional employees not earning in excess of $1,300 per week may file a complaint with the New York Department of Labor (NYDOL) to recover owed wages.

Next Steps:

Employers should note the increased earnings threshold for March 13, 2024, and adhere to the wage payment requirements for all covered employees.

State of New York Adds Electronic Personal Account Protections

New York has enacted legislation (Senate Bill S2518A), which prohibits employers from accessing certain electronic personal accounts. Senate Bill S2518A takes effect on **March 12, 2024**.

The Details:

Senate Bill S2518A protects an employee's right to privacy for an account or profile on an electronic medium where users may create, share and view user-generated content (personal accounts). This includes uploading or downloading videos or still photographs, blogs, video blogs, podcasts, instant messages or internet website profiles or locations that are used by an employee or an applicant exclusively for personal purposes.

The law prohibits employers from requesting, requiring or coercing an employee or applicant to:

- Access the employee or applicant's personal account in the presence of the employer;
- Disclose a username, password or other authentication information to access a personal account through an electronic communications device; or
- Reproduce photos, videos or other information contained within a personal account obtained with unlawful methods.

However, an employer may request or require an employee to disclose access information to an account:

- Known to the employer to be used for business purposes; and
- Provided by the employer that is used for business purposes, if the employee received notice of the employer's right to request or require the access information.

Employers may also take the following actions under the law:

- Access electronic communications devices that the employer paid for (in whole or in part) where the provision of or payment for the device was conditioned on the employer's right to access the device, and the employee had notice of that right and explicitly agreed to such conditions. **Note:** Employers are prohibited from accessing personal accounts on such devices.
- Comply with a court order that requires them to obtain or provide information from or access to an employee's account.
- Restrict or prohibit access to certain websites while an employee uses the employer's network or a device (paid in whole or in part) by the employer, provided the provision of or payment for the device was conditioned on the employer's right to restrict access and the employee had notice and explicitly agreed to such conditions.
- View, access or utilize information about an employee or applicant that:
  - Can be obtained without any required access information;
  - Is publicly available; or
  - Is for the purposes of obtaining reports of misconduct or investigating misconduct, photographs, videos, messages or other information that is voluntarily shared by the employee, client or other third-party that the employee subject to such report or investigation has voluntarily given access to contained within such employee's personal account.
- Access information obtained from an employee or applicant voluntarily adding the employer, agent of the employer or employment agency to their list of contacts associated with their personal account.

Non-Retaliation:

Under the law, an employer cannot:

- Discharge, discipline, penalize or threaten to take such actions against employees who refuse to disclose access information to their personal accounts; or
- Refuse to hire an applicant for refusing to disclose their personal account information.

Note: Employers may require an employee to disclose a username, password or other access means for accounts that are not personal and provide access to the employer's internal computer or information systems.

Next Steps:

- Review data privacy and social media policies and practices to ensure compliance with Senate Bill S2518A by March 12, 2024.
- Train supervisors on the law.

State of New York Announces 2024 Paid Family Leave Employee Contribution Limits

The State of New York has **announced the 2024 contribution rates** for the state's Paid Family Leave program.

The Details:

Background:

As of January 2018, New York's Paid Family Leave (PFL) program provides workers with up to 12 weeks of job-protected, paid leave to bond with a new child, care for a loved one with a serious health condition or help with military exigencies. PFL is funded through employee payroll deductions.

2024 Paid Family Leave Updates:

Effective January 1, 2024:

- The employee contribution rate will be 0.373 percent of:
  - Gross weekly wages for employees paid on a weekly basis; or

- Gross wages for the pay period for employees that are not paid on a weekly basis, such as bi-weekly, semi-monthly or monthly.

- The annual maximum contribution limit will be $333.25 for each employee.
- Employees utilizing PFL benefits will receive 67 percent of their average weekly wage, up to a cap of 67 percent of the New York State Average Weekly Wage (NYSAWW) of $1,718.15.
- The maximum weekly benefit for 2024 will be $1,151.16.
- Employees earning less than the NYSAWW will contribute less than the annual cap of $333.25, consistent with their actual wages.

Next Steps:

Effective January 1, 2024, New York employers should begin to withhold from their employees' wages the amounts noted above and remit in accordance with the PFL regulations.

State of New York Limits Employer Rights to Employee Inventions

New York has enacted legislation (Assembly Bill A5295), which limits an employer's rights to an employee's invention. Assembly Bill A5295 is **effective immediately**.

The Details:

Under the law, a provision in an employment agreement that requires an employee to assign (or offer to assign) any rights of their invention to their employer is unenforceable if the employee:

- Developed the invention entirely on their own time; and
- Did not use their employer's equipment, supplies, facilities or trade secret information.

Exceptions:

The law does not apply to inventions that:

- Result from any work performed by the employee for the employer; or
- Relate at the time of conception (or when brought to physical form) to the employer's business, or actual or demonstrably anticipated employer research or development.

Next Steps:

- Consult legal counsel to discuss the impact of Assembly Bill A5295 on your business.
- Train supervisors on the changes under the law.

State of New York Adds Gender Identity and Expression Protections for Interns

New York has enacted legislation (Senate Bill 7382), which adds gender identity or expression as a protected class to the intern provision of the New York State Human Rights Law (NYSHRL). Senate Bill 7382 is **effective immediately**.

The Details:

As a reminder, Section 296-c of the **New York State Human Rights Law** prohibits all New York employers from taking certain unlawful discriminatory actions on the basis of an intern's age, race, creed, color, national origin, citizenship or immigration status, sex, sexual orientation, military status, disability, predisposing genetic characteristics, marital status, or status as a victim of domestic violence.

Effective immediately, an intern's gender identity or expression is also protected under the NYSHRL.

Next Steps:

- Update policies and sexual harassment prevention training to ensure compliance with Senate Bill 7382.
- Train managers and hiring personnel on the update to the law.

State of New York Expands Unemployment Benefits Notice Requirements

New York has enacted legislation (Senate Bill S4878-A), which expands the circumstances under which an employer must provide notice to employees of their eligibility for unemployment benefits. Senate Bill S4878-A takes effect on **November 13, 2023**.

The Details:

As background, current law requires employers to inform their employees of their right to file an application for unemployment upon the employee's permanent or indefinite separation.

Notice Requirements:

Under the new law, Senate Bill S4878-A, employers must also provide the same notice for:

- Any reduction in hours;
- Temporary separation; or
- Any other interruption of continued employment that results in total or partial unemployment.

The notice must be provided in writing on a form furnished or approved by the New York State Department of Labor (DOL) and must include:

- The employer's name and registration number;
- The address of the employer where a request for remuneration and employment information with respect to such employee must be directed; and
- Other information required by the commissioner.

Next Steps:

- Review unemployment notice distribution practices.
- Train personnel and supervisors on the requirements under Senate Bill S4878-A.

State of New York Prohibits Mandatory Religious or Political Meetings

New York has enacted legislation (Senate Bill 4982), which protects employees who refuse to attend employer-sponsored meetings on religious or political matters, and/or refuse to listen to or view employer communications on religious or political matters. Senate Bill 4982 is **effective immediately**.

The Details:

Employee Protections:

Senate Bill 4982 prohibits employers from discriminating or retaliating against employees who refuse to:

- Attend a meeting sponsored by their employer (or a designee), when the primary purpose is to address matters relating to:
  - **Religious matters:** Religious affiliation and practice, and the decision to join or support any religious organization or association; or
  - **Political matters:** Political office elections, political parties, legislation, regulation and the decision to join or support a political party or political, civic, community, fraternal or labor organization; or

- Listen to speech or view communications that have the primary purpose of communicating an employer's opinion concerning religious or political matters.

Exceptions:

Under the law, the following employer actions are allowed:

- Casual conversations with employees or between an employee and an agent, representative or designee of an employer, if participation in the conversations is not required;
- Communications to managers and supervisors without hindrance; and
- Communications required by law that are necessary for employees to perform work.

Additionally, the law:

- Allows higher educational institutions to communicate regarding academic programs or coursework; and
- Exempts religious entities or educational institutions that are exempt from Title VII with respect to the restrictions on religious speech.

Notice Requirement:

Employers must post a notice informing employees of their rights under the law in every workplace where notices are normally posted.

Next Steps:

Consider consulting legal counsel if you have questions on your company's compliance with Senate Bill 4982.

State of New York Strengthens Wage Theft Penalties

New York has enacted legislation (Senate Bill 2832-A), which amends the state's criminal larceny law to include wage theft. This could subject employers who are found to have committed wage theft to increased penalties. Senate Bill 2832-A is **effective immediately**.

The Details:

Under the law, a person will be considered to have obtained property by wage theft when:

- An employer hires a person to perform services;
- The person performs the services; and
- The employer does not pay wages, at the minimum wage rate and overtime, or promised wage (if greater than the minimum wage rate and overtime) to the person that performed the work.

Note: For a venue or a workforce, all employer non-payments (or underpayments) may be aggregated into one larceny count, even if the violations occurred in multiple counties.

Penalties:

With wage theft now being included under the crime of larceny, employers found to have violated the law may face greater penalties.

Next Steps:

- Review pay policies and practices to ensure compliance under Senate Bill 2832-A.
- Train supervisors on the increased severity of the penalty for wage theft.

Oregon Extends Protections to Registered Apprentices and On-the-Job Training Workers

Oregon has enacted legislation (House Bill 3307), which extends certain workplace protections to registered apprentices and those in private employer on-the-job training programs. House Bill 3307 takes effect on **January 1, 2024**.

The Details:

As background, **Oregon law** provides employees and interns with civil rights, non-discrimination and anti-harassment protections in the workplace. Additionally, **federal law** prohibits discrimination against workers in registered apprenticeships.

Covered Employers:

House Bill 3307 covers a business that:

- Employs or engages the services of an individual;
- Reserves the right to control how the individual's services are (or will be) performed; and
- Sponsors or agrees to provide training under a qualified on-the-job training program.

Extended Worker Protections:

The same **civil rights, non-discrimination and anti-harassment protections** that exist under current law (for employees and interns) will apply to:

- Participants in registered apprenticeship programs; or
- Workers in a private employer's on-the-job training program. This is provided that the participant receives paid work experience at an agreed-upon rate from their employer and that the program:
  - Is for a limited duration of time, as agreed upon by the worker and the employer;
  - Provides the necessary job-specific skills training needed to obtain employment in a skilled trade;
  - Does not require or permit the employer and worker to enter into a contract for employment as a term or condition of the program; and
  - Does not require the employer to commit to hiring the participant.

Exceptions:

The law does not:

- Cover on-the-job training programs that are administered or operated by the Department of Corrections or Oregon Corrections Enterprises;
- Create an employment relationship (for purposes of wage and hour laws, occupational safety and health laws, or workers' or unemployment compensation); and
- Provide rights under the **Oregon Family Leave Act**, **Paid Leave Oregon** or other leave laws.

Next Steps:

- Review and update non-discrimination and anti-harassment policies and procedures.
- Train supervisors on the changes under House Bill 3307.

Local

Columbus, Ohio Prohibits Salary History Inquiries

The City of Columbus, Ohio, has enacted an ordinance to prohibit certain employers from inquiring about an applicant's pay history. The ordinance takes effect on **March 1, 2024**.

The Details:

Under **the ordinance**, employers that operate in Columbus, Ohio are prohibited from asking about an applicant's wage or salary history.

Applicant: A person who applies for employment in the geographic bounds of the City of Columbus, whose application (in whole or in part) will be solicited, received, processed or considered in Columbus.

Covered Employer: An employer that is located in and has at least 15 employees in Columbus. This includes job placement, referral agencies and other employment agencies operating on behalf of an entity.

Employer Requirements:

The ordinance makes it an unlawful discriminatory practice for a covered employer to:

- Ask about an applicant's salary history (current or previous wages, benefits or other compensation). Salary history does not include objective measures of an applicant's productivity, such as revenue, sales or other production reports.
- Screen an applicant on the basis of the applicant's salary history.
- Rely solely on an applicant's salary history in:
  - Deciding whether to offer employment; or
  - Determining wages, benefits or other compensation for the applicant.
- Retaliate against an applicant for not disclosing their salary history to an employer by refusing to hire, disfavoring, or causing injury to the applicant.

Note: Employers may still discuss salary, benefits and other compensation expectations with applicants.

Exceptions:

The ordinance does not apply to:

- Requirements under federal, state or local laws that specifically authorize an employer to rely on salary history to determine employee compensation;
- An applicant's voluntary and unprompted disclosure of their salary history information;
- An applicant's internal transfer or promotion opportunities with their current employer;
- Applicants that are re-hired by the employer within three years of the applicant's most recent date of termination of employment by the employer, if the employer already has internal past salary history data for the applicant;
- Positions where the salary, benefits or other compensation are determined by procedures established by collective bargaining; or
- An employer's attempt to verify an applicant's disclosure of non-salary-related information or conduct a background check.

Note: If the verification or background check discloses the applicant's salary history, the disclosure must not be solely relied on in determining the salary, benefits or other compensation of the applicant during the hiring process. This includes contract negotiation.

Penalties:

Employers that are found to have violated the ordinance may face fines of up to $5,000, depending on the number of offenses.

Next Steps:

Train supervisors and HR personnel on the requirements under **the ordinance**.

New York City Amends Safe and Sick Time Rules

New York City has issued a **Final Rule** relating to the city's Earned Safe and Sick Time Act (ESSTA). The Final Rule addresses several important topics, including but not limited to, calculating employer size, covered employees, calculating the rate of pay for safe and sick time purposes, accrual, pay statement requirements, employee notice and policy requirements and the impact of a business sale or transfer on employees' safe and sick time balances.

The Final Rule takes effect on **October 15, 2023**.

The Details:

Background:

The New York City Earned Safe and Sick Time Act (ESSTA) requires employers to provide the following amounts of Safe and Sick Time (SST) on an annual basis:

Employer Size	Amount of Leave Per Year	Paid or Unpaid?
Four or fewer employees (businesses with net income of $1 million or less in the previous tax year)	40 hours	Unpaid
Four or fewer employees (businesses with net income over $1 million in the previous tax year)	40 hours	Paid
5–99 employees	40 hours	Paid
100 or more employees	56 hours	Paid

Employers must also provide the amount of SST accrued and used during a pay period and an employee's total balance of accrued SST (this information may be reported on a pay statement or a separate written statement). Employers may also require reasonable advance notice of an employee's need to use SST.

The Final Rule:

Calculating Employer Size:

The Final Rule requires employers to calculate headcount based on their total number of workers employed at any point in the U.S. during the calendar year to date.

For purposes of counting employees:

- Part-time employees are considered employed each working day of the calendar week.
- Employees jointly employed by more than one employer are counted by each employer, whether or not their names appear on the employer's payroll.
- Employees on paid or unpaid leave, including SST, leaves of absence, disciplinary suspension, or any other type of temporary absence, are counted as long as the employer has a reasonable expectation that the employee will later return to active employment.

The Final Rule also requires employers to immediately increase their employees' SST when the change in headcount requires the employer to provide more leave during the calendar year. For instance, if an employer's headcount increases from 75 to 115 employees (above 99 employees), the employer must allow their employees to use an additional 16 hours of SST (when applicable) for the remainder of the calendar year to reach the requisite 56 hours.

However, if their headcount falls below 100 employees, employers are prohibited from reducing SST benefits until the following calendar year.

Employers whose headcounts increase to an amount that requires them to provide additional paid SST are not required to retroactively pay employees for any previous, unpaid SST time that was already used by an employee. See the **Final Rule** for additional details and examples.

Covered Employees:

The Final Rule clarifies that:

- All domestic workers are entitled to SST; and
- An employee is entitled to SST if the employee:
  - Physically performs work in New York City, regardless of where the employer is located;
  - Performs remote work while physically located in New York City, regardless of where the employer is located; or
  - Primarily performs work outside of New York City, but regularly performs (or is expected to regularly perform) work within New York City.

Examples in the **Final Rule** clarify that only hours worked within New York City count as hours worked for the purposes of accruing and using SST under the ESSTA.

Fractional Accruals:

The Final Rule indicates that employee accrual of SST must account for all time worked, regardless of whether time worked is less than a 30-hour increment. For the purposes of calculating accrual for time worked in increments of less than 30 hours, employers may round accrued SST to the nearest five minutes, or to the nearest one-tenth or quarter of an hour, provided that it will not result, over a period of time, in a failure to provide the proper accrual of SST to employees for all the time they have actually worked.

Rate of Pay Requirements:

The Final Rule clarifies that an employer must pay an employee for SST at the employee's regular rate of pay at the time the SST is taken, provided that the rate of pay is the highest applicable rate of pay they would be entitled to under all applicable laws.

The Final Rule indicates that if the employee uses SST during hours that would have been designated as overtime, the employer is not required to pay the overtime rate of pay. However, the employer may only deduct the number of hours of SST actually used by the employee from the employee's SST accruals, regardless of whether those hours would have been classified as straight-time or overtime hours.

Employers that have tipped employees are not required to pay employees for lost tips or gratuities, but also cannot take a tip credit for hours that the employee is out on SST. Employers must pay all employees at least the full applicable minimum wage unless a higher applicable rate applies. See the **Final Rule** for examples.

Notice of Safe/Sick Time Accruals and Use on Pay Statements:

The **Final Rule** indicates that employers must report:

- The amount of SST accrued during the pay period.
- The amount of SST used during the pay period.
- The balance of SST available for use.

The Final Rule recognizes that an employee's total SST balance may be greater than the amount of SST the employee actually has available for use in that benefit year. When this occurs, the employer must still inform the employee of the amount of SST they have available to use in that year.

The Final Rule provides that employers can meet the reporting requirements by including the required information on pay statements or by providing other written documentation to employees every pay period.

Providing Required Information - Electronic Option:

The Final Rule provides that the required accrual, usage and available balance information can be provided on a pay statement electronically or through other written documentation electronically if the electronic system:

- Alerts employees each pay period that their accrual, use and available balance information is available for review;

- Makes the required information readily accessible for employees located outside of the workplace; and
- Makes the required accrual, use, and balance information for any past pay periods also readily accessible to employees outside of the workplace.

Employee Notice & Policy Requirements:

The Final Rule indicates that an employer may require an employee to provide reasonable notice of the need to use SST, provided the requirement to provide notice and the method of providing notice are set forth in a written policy.

Unforeseeable SST:

An employer that requires notice of the need to use SST where the need is not foreseeable must provide a written policy that contains reasonable procedures for the employee to provide notice as soon as "practicable."

Examples of such procedures may include, but are not limited to, instructing the employee to:

- Call a designated phone number at which an employee can leave a message;
- Follow a uniform call-in procedure;
- Send an email to a designated email address;
- Submit a leave request in a scheduling software system, provided the employee has access to such system on non-work time, and has been trained on and given written instructions on how to use the system; or
- Use another reasonable and accessible means of communication identified by the employer.

Any procedures for employees to give notice of the need to use SST when the need is not foreseeable may not include any requirement that an employee appear in-person at a worksite or deliver any document to the employer prior to using SST.

In determining when notice is "practicable" in a given situation, an employer must consider the individual facts and circumstances of the situation.

Foreseeable SST:

An employer that requires notice of the need to use SST where the need is foreseeable must have a written policy that contains procedures for the employee to provide reasonable notice, which may include any of the reasonable procedures bulleted above. The policy must not require more than seven days' notice prior to the date SST is to begin. Employers may require that such notice be in writing.

A need is foreseeable when the employee is aware of the need to use SST seven days or more before such use. Otherwise, the need is unforeseeable.

Documentation:

As a reminder, under current law, an employer may require an employee to provide documentation that supports the need for SST, if the leave lasts four or more consecutive workdays.

Under the Final Rule, employers requiring written documentation of an employee's leave under the ESSTA must:

- Reimburse employees for all fees paid to a licensed provider to obtain SST documentation and all reasonable costs or expenses paid to obtain safe time documentation.
- Include a statement of the requirement, the types of written documentation the employer will accept and instructions on how employees can submit the documentation to the employer in a written policy.

The Final Rule also clarifies an employer is prohibited from requiring written documentation before the employee returns to work. Note that if an employer requests such documentation, it must give the employee at least seven days to submit the documents.

Transfer of Employees:

The Final Rule makes clear that business sales, transfers in ownership, and certain subcontracting changes won't impact employees' SST balances. Employers that do not properly transfer an employee's accrued SST to a successor employer may violate the law, and the original and successor employer (and any joint employers) may be held responsible.

Employees must be allowed to use and receive payment for unused and accrued SST from their former employer, if they were entitled to a larger amount of SST under the law at their former employer.

Enforcement:

The Final Rule specifies employer actions that may violate the law. See the **Final Rule** for further details and examples.

Next Steps:

- Review safe and sick leave and pay policies and procedures to ensure compliance with the Final Rule.
- Please contact your dedicated service professional with any questions.

Minimum Wage

Minimum Wage Announcements: 9/16/23 – 10/15/23

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 (all employers)	$16.00	$16.00*	1/1/24	Yes	Once posted may be located here.
Belmont, CA	$17.35	$17.35*	1/1/24	Yes	
El Cerrito, CA	$17.92	$17.92*	1/1/24	Yes	
Hayward, CA (26 or more employees)	$15.57	$15.57*	7/1/24	Yes	
Hayward, CA (25 or fewer employees)	$16.90	$16.90*	1/1/24	Yes	
East Palo Alto, CA	$15.50	$15.50*	1/1/24	Yes	
Palo Alto, CA	$17.80	$17.80*	1/1/24	Yes	Once posted may be located here.
San Carlos, CA	$16.87	$16.87*	1/1/24	Yes	
San Diego, CA	$16.85	$16.85*	1/1/24	Yes	
San Jose, CA	$17.55	$17.55*	1/1/24	Yes	Once posted may be located here.
San Mateo, CA	$17.35	$17.35*	1/1/24	Yes	
Santa Clara, CA	$17.75	$17.75*	1/1/24	Yes	Once posted may be located here.
Connecticut	$15.69	$6.38 Waitstaff $8.23 Bartenders	1/1/24	Yes	
Maine	$14.15	$7.08	1/1/24	Yes	Once posted may be located here.
Maryland (15 or more employees)	$15.00	$3.63	1/1/24	Yes	
Maryland (14 or fewer employees)	$15.00	$3.63	1/1/24	Yes	
Montana	$10.30	$10.30*	1/1/24	Yes	
Albuquerque, NM	$12.00	$7.20	1/1/24	Yes	
Ohio	$10.45	$5.25	1/1/24	Yes	Once posted may be located here.
Washington	$16.28	$16.28*	1/1/24	Yes	Once posted may be located here.
SeaTac, WA (Hospitality and transportation employees)	$19.71*	$19.71*	1/1/24	Yes	

*CA, MT, 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

EEO-1 Reporting to Open October 31 for Covered Employers

The U.S. Equal Employment Opportunity Commission (EEOC) has announced that it will begin accepting EEO-1 reports for 2022 via its portal on **October 31, 2023**. The deadline to file the report is **December 5, 2023**.

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.

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 2022 instruction booklet.
- Prepare to submit your EEO-1 by the December 5, 2023 deadline.

IRS Halts Processing of New Employee Retention Credit Claims

Read the article.

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.

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