EYE ON WASHINGTON

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

Detailed Look at State, Local and Federal Updates

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State/Territory/District

Alabama to Exclude Overtime Pay from State Taxation

Alabama has enacted **House Bill 217 (HB 217)**, which excludes from gross income for state income tax purposes amounts received by a full-time, hourly wage-paid employee as compensation for work performed in excess of 40 hours in a week.

The exemption provided under HB 217 will be in effect for tax years that begin after December 31, 2023, and end prior to June 30, 2025.

The Details:

As a result of HB 217, beginning January 1, 2024, and ending on June 30, 2025, amounts received by a full-time, hourly wage-paid employee as compensation for work performed in excess of 40 hours in a week will be excluded from Alabama state income tax.

HB 217 also requires that employers with employees subject to Alabama state income tax must submit to the Alabama Department of Revenue (DOR) on forms prescribed by the DOR the following information:

- No later than January 31, 2024, the total amount received by full-time, hourly wage-paid employees as compensation for work performed in excess of 40 hours in a week and the total number of employees for which it was paid for the tax year beginning January 1, 2023.
- For the tax year beginning on or after January 1, 2024, and each tax year thereafter, the total amount received by full-time, hourly wage-paid employees as compensation for work performed in excess of 40 hours in a week and the total number of employees for which it was paid. This information must be provided monthly or quarterly and will be due no later than the due date for the corresponding monthly or quarterly withholding tax returns.

Next Steps:

Effective January 1, 2024, and prior to June 30, 2025, employers with employees subject to Alabama state income tax should not include the total compensation paid to full-time employees working in excess of 40 hours in a week in the gross income for Alabama state income tax purposes.

Employers subject to the provisions of HB 217 must submit to the Alabama DOR the required information as noted in the bullets above.

Arkansas Removes Youth Work Certificate Requirement

Arkansas has enacted legislation (House Bill 1410) that will remove a requirement for individuals under the age of 16 to obtain a work certificate from the state Department of Labor. House Bill 1410 takes effect on **July 30, 2023**.

The Details:

Under existing law, employers of workers under the age of 16 must obtain a work certificate issued by the Arkansas Department of Labor and Licensing (ADOLL). Employers must keep the certificate on file.

Effective July 30, 2023, employers of workers under the age of 16 will no longer be required to obtain the certificate. However, employers will still need to comply with federal and state restrictions on the jobs and hours these workers can work.

Next Steps:

- Continue obtaining a work certificate for workers under the age of 16 until House Bill 1410 takes effect.
- Continue retaining certificates for workers who were hired prior to the effective date.
- Review and adjust hiring procedures to reflect the changes.
- Train anyone involved in the hiring process on the changes and when they take effect.

Indiana Enacts Legislation Impacting Income Tax on Non-Residents and Tax Withholding Penalties

Indiana has enacted **S419**, which impacts tax withholding on non-residents and penalties in relation to deficient tax withholding by employers.

The Details:

Tax Withholding on Non-Residents:

As of January 1, 2024, compensation received by a non-resident of Indiana in relation to their employment duties performed in the state for 30 days or less during the calendar year is exempt from the state's adjusted gross income.

However, the exemption does not apply to compensation received for duties performed in the individual's capacity as a professional athlete, professional entertainer or public figure.

Withholding Tax Penalties:

Effective January 1, 2024, the Indiana Department of Revenue may not require the payment of any penalties otherwise applicable for a failure to deduct and withhold income taxes if, when making the determination of whether withholding was required, either of the following applied:

(1) the employer relied on a time and attendance system maintained by the employer specifically designed to allocate employee wages for income tax purposes among all taxing jurisdictions in which the employee performs employment duties for the employer; or

(2) the employer did not maintain a time and attendance system and the employer relied on the employee's annual determination of the time the employee expected to spend performing employment duties in Indiana. The second part applies if the employer did not have actual knowledge of fraud on the part of the employee in making the determination, and the employer and employee did not collude to evade taxation in making the determination.

Next Steps:

Employers in Indiana should review the provisions of **S419** and make any necessary adjustments prior to January 1, 2024.

Kentucky Allows Medicinal Use of Cannabis

Kentucky has enacted legislation (Senate Bill 47) that will allow adults to use medicinal cannabis for certain medical conditions beginning in 2025. The law also addresses employers' rights regarding medicinal cannabis.

The Details:

Beginning January 1, 2025, adults who obtain a state registration card will be able to use medicinal cannabis for certain medical conditions.

The law doesn't:

- Require an employer to permit or accommodate the use, consumption or possession in the workplace;
- Prohibit an employer from implementing policies promoting workplace health and safety by:
  - Restricting the use of medicinal cannabis by employees; or
  - Restricting or prohibiting the use of equipment, machinery or power tools by an employee who is a registered qualified patient, if the employer believes that such use by an employee who is a registered qualified patient poses an unreasonable safety risk;
- Prohibit an employer from including contract provisions that prohibit the use of medicinal cannabis by employees;
- Permit a cause of action against an employer for wrongful discharge or discrimination under the medicinal cannabis law itself;
- Prohibit an employer from establishing and enforcing a drug testing policy, drug-free workplace, or zero-tolerance drug policy; or
- Prohibit an employer from exercising their ability to determine impairment of an employee who is a cardholder.

Good-faith determinations of impairment permitted under the law include behavioral assessments of impairment and a secondary step of testing for an employee who is a cardholder for the presence of cannabis. Under the law, considering a registered cardholder under the influence of cannabis solely because of the presence of tetrahydrocannabinol metabolites is prohibited.

If an employer determines that an employee who is a cardholder is impaired by the use of cannabis from the behavioral assessment and testing, the burden of proving non-impairment then shifts to the employee to refute the findings of the employer.

An employee who is discharged from employment for consuming medicinal cannabis in the workplace, working while under the influence of medicinal cannabis, or testing positive for a controlled substance is ineligible to receive unemployment benefits, if such actions are in violation of an employment contract or established personnel policy.

Next Steps:

Kentucky employers should review policies and procedures to determine if changes should be made in light of Senate Bill 47.

Maryland Delays Paid Family and Medical Leave

Maryland has enacted legislation (Senate Bill 828) that will delay implementation of a law that will provide job protection and wage-replacement benefits to employees who need time off from work for certain family and medical reasons.

The Details:

By way of background, Maryland enacted legislation, Senate Bill 275, in 2022. Under the law, employees will be entitled to job protection and wage-replacement benefits if they need time off from work for certain family and medical reasons. The wage-replacement benefits will be funded by a payroll tax paid by covered employees and employers with 15 or more employees.

Senate Bill 828 makes changes to the timeline for implementing the program and amends and clarifies other aspects of the law.

As Enacted by Senate Bill 275	As Amended by Senate Bill 828
Contributions by covered employees and employers with 15 or more employees were set to begin October 1, 2023.	Contributions by covered employees and employers with 15 or more employees will begin October 1, 2024.
Beginning January 1, 2025, employees would have been entitled to begin receiving wage-replacement benefits when they take leave for a covered reason.	Beginning January 1, 2026, employees will be entitled to begin receiving wage-replacement benefits when they take leave for a covered reason.
Employers with 15 or more employees would have paid 25 percent of the contribution and employees would have paid 75 percent of it. The split would have then been adjusted every two years.	Employers with 15 or more employees will be required to pay 50 percent of the contribution, with employees paying the other half. The contribution split won't be subject to adjustment by the state. An amendment also clarifies that employers may elect to pay all or part of the employee contribution, provided they notify the employee of the actual contribution rates the employer and employee will pay.
One of the covered reasons for leave is to care for a child during the first year after their birth or placement through foster care, kinship care or adoption.	An amendment clarifies that employees may also take the leave to bond with the child.
Employees were required to exhaust all their employer-provided leave that isn't required by law before receiving benefits under the program.	Employees may not be required to exhaust their paid vacation, paid sick leave or other paid time off before, or while, receiving benefits under the program. However, employers may give employees the option of supplementing their wage-replacement benefits with paid vacation, paid sick leave or other paid time off so they receive 100 percent of their regular pay. An employer can also require that benefits under the program be coordinated with benefits or leave provided under another employer policy due to parental care, family care, or military leave or disability policy.

Senate Bill 828 also clarifies:

- The rules for employers that want to establish a private plan to satisfy the requirements.
- The definition of wages for the purposes of the program.

See the **text of the law** for details.

Next Steps:

- Review leave policies and update if necessary.
- Watch for the sample notice that must be provided to employees.
- Once published, provide the sample notice to new hires and existing employees.
- Prepare to begin making contributions on October 1, 2024.
- Train supervisors on how to handle leave requests.
- Begin providing leave for the covered reasons by January 1, 2026.

Minnesota Expands Pregnancy Accommodation, Lactation Break and Leave Laws

Minnesota has enacted legislation (Senate File 3035) that will expand requirements for employers to provide lactation breaks, reasonable accommodations for pregnancy, and pregnancy and parental leave. Senate File 3035 takes effect July 1, 2023.

The Details:

<table>
<tr><th>Current Law</th><th>Effective July 1, 2023</th></tr>
<tr><td colspan="2">Lactation Breaks</td></tr>
<tr><td>Employers must provide reasonable paid break times each day to an employee who needs to express breast milk for their infant child during the 12 months following the birth of the child.</td><td>The 12-month limit on the entitlement is repealed.</td></tr>
<tr><td>The break times must, if possible, run concurrently with any break times already provided to the employee.</td><td>The break times may run concurrently with any break times already provided to the employee.</td></tr>
<tr><td>An employer isn’t required to provide break times if doing so would unduly disrupt the operations of the employer.</td><td>This provision is repealed.</td></tr>
<tr><td>The employer must make reasonable efforts to provide a room or other location, in close proximity to the work area, other than a bathroom or a toilet stall, that is shielded from view and free from intrusion from co-workers and the public, and that includes access to an electrical outlet, where the employee can express milk in privacy.</td><td>The employer must make reasonable efforts to provide a clean, private and secure room or other location, in close proximity to the work area, other than a bathroom or a toilet stall, that is shielded from view and free from intrusion from co-workers and the public, and that includes access to an electrical outlet, where the employee can express milk in privacy.</td></tr>
<tr><td colspan="2">Reasonable Accommodations for Pregnancy</td></tr>
<tr><td>Employers with 15 or more employees must provide reasonable accommodations for health conditions related to pregnancy or childbirth if the employee requests an accommodation with the advice of their healthcare provider or certified doula, unless doing so would impose an undue hardship on the business.</td><td>Employers with one or more employees must provide reasonable accommodations for health conditions related to pregnancy or childbirth if the employee requests an accommodation with the advice of their healthcare provider or certified doula, unless doing so would impose an undue hardship on the business.</td></tr>
<tr><td>Reasonable accommodations include, but are not limited to:
• Temporary transfer to a less strenuous or hazardous position;
• Seating;
• Frequent restroom breaks; and
• Limits to heavy lifting.</td><td>Reasonable accommodations include, but are not limited to:
• Temporary transfer to a less strenuous or hazardous position;
• Temporary leave;
• Modification in work schedule or job assignments;
• Seating;
• More frequent or longer break periods; and
• Limits to heavy lifting.</td></tr>
<tr><td>A pregnant employee must not be required to obtain the advice of a licensed health care provider or certified doula, nor may an employer claim undue hardship for the following accommodations:
1. More frequent restroom, food and water breaks;
2. Seating; and
3. Limits on lifting over 20 pounds.</td><td>A pregnant employee must not be required to obtain the advice of a licensed health care provider or certified doula, nor may an employer claim undue hardship for the following accommodations:
1. More frequent or longer restroom, food and water breaks;
2. Seating; and
3. Limits on lifting over 20 pounds.</td></tr>
<tr><td colspan="2">Employer Notice</td></tr>
<tr><td>No requirement.</td><td>Employers must inform employees of their rights under the law at the time of hire and when an employee makes an inquiry about or requests parental leave. Information must be provided in English and the primary language of the employee. An employer that provides an employee handbook to its employees must include in the handbook notice of employee rights and remedies under the law. The state will make available to employers the text to be included in the notice required in English and the five most common languages spoken in Minnesota. The notices will be available here.</td></tr>
<tr><td colspan="2">Pregnancy and Parental Leave</td></tr>
<tr><td>Employers with 21 or more employees at any one site must provide unpaid pregnancy and parental leave.</td><td>Employers with one or more employees must provide unpaid pregnancy and parental leave.</td></tr>
<tr><td>To be eligible for pregnancy and parental leave under state law, an employee must work at least 12 months preceding the request; and for an average number of hours per week equal to one-half the full-time equivalent position in the employee's job classification as defined by the employer's personnel policies or practices or pursuant to the provisions of a collective bargaining agreement, during the 12-month period immediately preceding the leave.</td><td>The length-of-service and hours-worked requirements are repealed.</td></tr>
</table>

Next Steps:

Minnesota employers should review policies and practices to ensure they comply with the changes made by Senate File 3035 by July 1, 2023.

Nevada Clarifies Timing of Wages Paid to Temporarily Laid Off Employees

Nevada has enacted **Senate Bill 147** (SB 147) to clarify when employers must pay employees who are placed on "nonworking status" their final wages. The law goes into effect on July 1, 2023.

The Details:

Current Nevada law requires that when an employee is involuntarily terminated, they must be paid wages due immediately. NRS 608.020 states "Whenever an employer discharges an employee, the wages and compensation earned and unpaid at the time of such discharge shall become due and payable immediately."

SB 147 now provides that whenever an employer places an employee on "nonworking status," any wages due to the employee must also become payable immediately.

"Nonworking status" means the temporary layoff of an employee by the employer where the employee remains employed and may be called back to work by the employer at a future date.

The term does not include an employee who an employer:

- Places on suspension pending an investigation relating to employment;
- Places on suspension pursuant to a disciplinary action relating to employment;
- Places on-call for available work;
- Approves to take a leave of absence.

SB 147 provides that if an employer fails to pay the wages of an employee on nonworking status within three days after the wages become due, the employee will continue to earn wages at the same rate from the day the employee was placed on nonworking status until paid, or for 30 days, whichever is less.

It is important to note that SB 147 does not require immediate payment of "any bonus or arrangement to share profits."

Next Steps:

Effective July 1, 2023, employers in Nevada who place an employee on "nonworking status" must pay out wages earned immediately.

New Jersey Strengthens Unemployment Laws

New Jersey has enacted several laws that impact unemployment processes by adding employer requirements and employee protections during labor disputes.

The Details:

New Jersey Governor Phil Murphy signed into law:

- **Amendments** that add employer reporting requirements and amend certain deadlines in the benefits determination process. These changes take effect on July 1, 2023.
- **Assembly Bill 4772**, which expedites unemployment payments during certain labor disputes. The law took effect immediately and is retroactive to unemployment claims filed on or after January 1, 2022.

Amendments:

Reporting Requirements:

As background, employers must provide **Form BC-10** immediately to employees upon their separation from employment. Under the amendments, employers must also, upon the separation of a New Jersey employee, simultaneously and electronically send to the New Jersey Department of Labor (NJDOL):

- A copy of Form BC-10; and
- A new form (to be published by the NJDOL with submission instructions) with specific information to enable the NJDOL to make a benefit determination, regardless of whether the separating employee files a claim. Employers must also provide this new form to separated employees.

Initial Benefits Determination Deadlines:

Under the amendments, the following initial benefits determination deadlines take effect beginning on July 31, 2023:

Deadline	Current Law	Law Effective July 31, 2023
DOL Notification to Employer Notification	N/A	Within seven days of the first occurrence of: • The filing of a claim; or • The employer providing benefit determination information
Employer Response to DOL Request for Information	10 days	Seven days
Initial Benefits Determination	Two weeks	Three weeks
Employer Initial Benefit Determination Appeal	Seven days after delivery.	Seven days after confirmed receipt, including by electronic means.
Appeals of Subsequent Benefits Determination (if benefits were terminated or reduced).	N/A	Claimant has seven days following notification of written explanation.

Penalties:

An employer that willfully fails or refuses to provide the required information (including the required separation information) would be required to pay a $500 fine or 25 percent of the amount "fraudulently withheld," whichever is greater. Each day the failure or refusal occurs is treated as a separate offense.

Assembly Bill 4772:

Assembly Bill 4772 applies to unemployment benefit claims filed on or after January 1, 2022. The amended law now allows unemployment insurance benefits to be paid to employees:

- During an employer lockout, even if a strike did not immediately precede the lockout.
- In 14 days (previously 30 days) following a strike.
- Immediately, regardless of the timeframe, if replacement workers are hired on either a permanent or temporary basis.

Finally, the amended law makes clear that employees may still receive benefits if an issue in the labor dispute is:

- A failure or refusal of the employer to comply with an agreement or contract between the employer and the claimant, including a collective bargaining agreement with a union representing the claimant; or
- An employer's failure or refusal to comply with a state or federal law pertaining to hours, wages or other conditions of work.

Next Steps:

New Jersey employers should review the new requirements and train HR personnel and supervisors on their obligations under the law.

North Dakota Strengthens Pregnancy Protections

The North Dakota Human Rights Act prohibits employers of all sizes from failing or refusing to make reasonable accommodations for an otherwise qualified individual with a physical or mental disability because that individual is pregnant.

North Dakota has enacted House Bill 1450, which takes effect August 1, 2023, and clarifies that "pregnant" includes pregnancy, childbirth and related medical conditions.

Next Steps:

North Dakota employers should review their policies and procedures covering pregnancy in the workplace and train supervisors to ensure compliance with House Bill 1450 by August 1, 2023.

Texas Bans Hairstyle Discrimination

Texas has enacted legislation (House Bill 567), which expressly prohibits discrimination against individuals based on traits associated with race, such as hair texture and hairstyles like braids, locs and twists. House Bill 567 takes effect September 1, 2023.

The Details:

House Bill 567 prohibits a Texas employer, labor union or employment agency from adopting or enforcing a dress or grooming policy that discriminates against a hair texture or protective hairstyle commonly or historically associated with race, including protected hairstyles such as braids, locs and twists.

Next Steps:

- Review dress codes, appearance policies and training to ensure compliance with House Bill 567 by September 1, 2023.
- If your policy simply indicates that employees must maintain kempt hair, consider clarifying that kempt means that the hair is clean and well-combed or arranged, and that employees can comply with a variety of hairstyles that meet those criteria.

State of Washington Employers May Not Rely on Off-Duty Use of Marijuana in Hiring Decisions

Washington has enacted legislation (Senate Bill 5123), which prohibits employers from making a hiring decision based on an individual's off-duty use of cannabis or certain positive pre-employment drug test results. Senate Bill 5123 takes effect on January 1, 2024.

The Details:

Employment drug tests can generally detect non-psychoactive cannabis metabolites for up to 30 days after use. These test results may impact an employer's decision to hire an individual.

Senate Bill 5123 further protects an individual's use of recreational marijuana by prohibiting an employer from making a hiring decision based on an individual's:

- Off-duty and away from the workplace use of cannabis; or
- Positive pre-employment drug test results that show that an applicant has non-psychoactive cannabis metabolites in their hair, blood, urine or other bodily fluids.

Note: Current drug tests do not distinguish between psychoactive and non-psychoactive metabolites. Under the law, Washington employers will not be able to test for marijuana on a pre-employment drug test if such a test is not developed by January 1, 2024.

Exceptions:

Senate Bill 5123 does not preempt a state or federal law that requires an applicant to test for drug use, such as testing:

- Related to the receipt of federal funding or federal licensing-related benefits; or
- Required by a federal contract.

The law also does not apply to:

- A safety-sensitive role, where impairment while working presents a substantial risk of death. An employer must identify these roles prior to a candidate's application for employment;
- First responders (such as 911 dispatchers);
- Corrections officer positions;
- Certain law enforcement or fire department positions; or
- Positions:
  - o That require a federal government background investigation or security clearance; or
  - o In the airline or aerospace industries.

Permissible Tests:

Under the law, an employer may:

- Conduct drug tests for marijuana as part of lawful tests unrelated to hiring, such as post-accident and reasonable suspicion tests;
- Test for other drugs, such as alcohol;
- Base initial hiring decisions on scientifically valid drug screening that is conducted through methods that do not screen for non-psychoactive cannabis metabolites; or
- Require an applicant to be tested for a spectrum of controlled substances (including cannabis), as long as the cannabis results are not provided to the employer.

Note: Employers may maintain a drug and alcohol-free workplace, and the law does not affect any other rights or obligations of an employer under federal law or regulation.

Next Steps:

Washington employers should review their drug and alcohol testing policies to ensure compliance with Senate Bill 5123 by January 1, 2024.

State of Washington Enacts Lump Sum Reporting for Child Support

Washington Governor Jay Inslee has signed into law **House Bill 1262** establishing a requirement for employers to report lump sum payments, such as a bonus, to the Division of Child Support (DCS) where the employer has received a withholding order on the employee's wages for child support. The law is effective July 23, 2023.

The Details:

House Bill 1262:

- Requires an employer to notify the DCS before making any lump sum payment of $500 or more to a parent who is responsible for child support where the income withholding order "includes a provision for payment toward child support arrears."
- Permits the employer to disburse one-half of the disposable earnings portion of the lump sum payment to the responsible parent and prohibits the employer from disbursing the remaining amount of the lump sum payment within a specified time period after notifying the DCS.

- Requires the DCS to respond to the notifying employer by releasing the lump sum payment for disbursement to the responsible parent or by specifying the amount of the lump sum payment to be remitted to the DCS on behalf of the responsible parent.
- Exempts an employer from liability for reporting or withholding and remitting a lump sum payment.

The legislation defines lump sum payment as "income other than a periodic recurring payment of earnings on regular paydays and does not include reimbursement for expenses. Lump sum payment includes, but is not limited to, discretionary and nondiscretionary bonuses, commissions, performance bonuses, merit increases, safety awards, signing bonuses, moving and relocation incentive payments, holiday pay, termination pay, and severance pay. Lump sum payment also includes workers' compensation, insurance settlements, and personal injury settlements paid as replacement for wages owed."

Next Steps:

Employers in Washington who have or will receive income withholding orders on its employees for child support should review **House Bill 1262** with their legal counsel and implement the necessary procedures to comply with the lump sum reporting to the DCS.

Local

New York City Establishes Minimum Wage for App-Based Restaurant Delivery Workers

On June 12, 2023, the New York City Department of Consumer and Worker Protection (DCWP) released the **final rule** regarding the required minimum wage for app-based restaurant delivery workers. **The rule goes into effect with the first pay period on or after July 12, 2023.**

The Details:

Prior to the final rule, there were no minimum pay protections for app-based food delivery workers who work for a third-party delivery service as independent contractors.

Now, beginning with the first pay period on or after July 12, 2023, app-based restaurant delivery workers must be paid a minimum wage as follows:

- Apps that pay for all the time a worker is connected to the app (i.e., time waiting for trip offers and trip time) must pay at least **$17.96 per hour**, which is approximately $0.30* per minute, not including tips. This rate will increase to $18.96 on April 1, 2024, and $19.96 on April 1, 2025, plus an adjustment for inflation each year; or
- Apps that only pay for trip time (i.e., time from accepting a delivery offer to dropping off the delivery) must pay at least **approximately $0.50* per minute**, not including tips. This rate will reach approximately $0.53* per minute on April 1, 2024, and $0.55* per minute on April 1, 2025, plus an adjustment for inflation each year.

*According to the DCWP, due to rounding, these rates are approximate. Apps must calculate exact pay in accordance with DCWP Rule.

Important definitions regarding the final rule are as follows:

Food delivery worker. A "food delivery worker" is someone who is hired, retained or engaged as an independent contractor by a licensed third-party food delivery service or a third-party courier service to deliver food, beverage or other goods from a business to a consumer in exchange for compensation.

Food service establishment. A "food service establishment" is a business establishment located within the city where food is provided for individual portion service directly to the consumer whether such food is provided free of charge or sold, and whether consumption occurs on or off the premises or is provided from a pushcart, stand or vehicle.

Third-party courier service. A "third-party courier service" means a service that (i) facilitates the same-day delivery or same-day pickup of food, beverages or other goods from a food service establishment on behalf of such food service establishment or a third-party food delivery service; (ii) that is owned and operated by a person other than the person who owns such food service establishment; and (iii) is not a third-party food delivery service.

Third-party food delivery service. A "third-party food delivery service" is any website, mobile application or other internet service that: (i) offers or arranges for the sale of food and beverages prepared by, and the same-day delivery or same-day pickup of food and beverages from, a food service establishment; and (ii) that is owned and operated by a person other than the person who owns such food service establishment.

Trip. A "trip" is the time spent, distance travelled and route followed by a worker to provide delivery services to a consumer through a third-party food delivery service or third-party courier service, including travel to a business, picking up the food, beverage or other goods for delivery, and taking and depositing such delivery at a different location as requested.

Next Steps:

Effective the first pay period beginning on or after July 12, 2023, businesses contracting with app-based restaurant delivery workers as independent contractors must pay at least a minimum wage as outlined above. Businesses impacted by the DCWP final rule should consult with their legal or accounting advisors to ensure compliance.

New York City Prohibits Height and Weight Discrimination

New York City has enacted a law (Intro. 209-A) that prohibits employers from discriminating on the basis of an individual's height or weight. Intro. 209-A takes effect on November 22, 2023.

The Details:

The New York City Human Rights Law (NYCHRL) prohibits employers with four or more employees in New York City from discriminating against employees, applicants, independent contractors and interns on the basis of certain protected characteristics. These include race, age, gender identity, pregnancy, and immigration status, among many others.

New York City Mayor Eric Adams has signed into law Intro. 209-A, which amends the NYCHRL, adding height and weight as protected characteristics under the law.

Prohibited Actions:

Employers cannot, because of the actual or perceived height, or weight of an individual:

- Represent that employment or a position is not available when in fact it is available;
- Refuse to hire or employ an individual, or discharge them from employment; or
- Discriminate in compensation or in terms, conditions or privileges of employment.

The law also prohibits employers from conducting the following actions, if the actions express height or weight discrimination:

- Declaring, printing or circulating a statement, advertisement or publication;
- Using an application for employment; or
- Asking a question in connection to prospective employment.

Exceptions:

The law does not prevent employers from offering incentives that support weight management as part of a voluntary wellness program.

Employers may also take certain employment actions based on an individual's height or weight when:

- Required by a federal, state or local law or regulation; or
- New York City Commission on Human Rights (NYCCHR) regulations identify jobs (or categories of jobs) where an individual's height or weight:
  - Is reasonably necessary for the execution of normal business operations; or
  - Could prevent the performance of essential job requirements, and the NYCCHR has no alternative accommodation that an employer could reasonably take for individuals to perform the essential requirements of the job (or category of jobs).

The law also allows employers to use an affirmative defense to show that an employment decision is not an unlawful practice if they can establish that the consideration of height and/or weight is necessary for the essential functions of a job or business operations, and there's no less discriminatory means to satisfy the occupational qualifications.

Next Steps:

To help ensure compliance with Intro. 209-A, covered employers should:

- Review and update all applicable:
  - Policies (such as EEO and non-discrimination);
  - Procedures (such as non-discrimination and harassment prevention training).
- Train HR personnel and supervisors on the new requirements under the law.

Upcoming Minimum Wage Increases

Minimum Wage Announcements – 5/16/23 – 6/15/23

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
Emeryville, CA	$18.67	N/A*	7/1/23	Yes	
Cook County, IL	$13.70	$8.00	7/1/23	Yes	
Puerto Rico	$9.50	$2.13	7/1/23		None located
Tukwila, WA (more than 500 employees worldwide)	$18.99	N/A*	7/1/23	Yes	
Tukwila, WA (15 to 500 employees worldwide)	$16.99	N/A*	7/1/23		
Tukwila, WA (less than 15 employees worldwide)	$15.74	N/A*	7/1/23		
Chicago, IL (21 or more employees	$15.80	$9.48	7/1/23	Yes	
Chicago, IL (four to 20 employees)	$15.00	$9.00	7/1/23		

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

Minimum Wage Changes Effective – 7/1/23

The following chart shows the current minimum wage for non-tipped and tipped employees and the increase effective July 1, 2023. Rates listed in black were enacted by federal, state, district, territory, or commonwealth law. Rates listed in red were enacted by city or county ordinance. It is important to note that minimum wages that may be paid to individuals under a certain age (i.e., youth wage), to employees during a "training" period, or to employees working for a non-profit are not reflected.

State / Local	Current Minimum Wage Per Hour	Current Tipped Employee Cash Wage Per Hour	Next Scheduled Increase Minimum Wage Per Hour	Next Scheduled Increase Tipped Employee Cash Wage Per Hour
Alameda City, CA	$15.75	$15.75	$16.52 (7/1/23)	$16.52 (7/1/23)
Berkeley, CA	$16.99	$16.99	$18.07 (7/1/23)	$18.07 (7/1/23)
Emeryville, CA	$17.68	$17.68	$18.67 (7/1/23)	$18.67 (7/1/23)
Fremont, CA	$16.00	$16.00	$16.80 (7/1/23)	$16.80 (7/1/23)
Long Beach, CA (Hotel Workers)	$16.73	$16.73	$17.55 (7/1/23)	$17.55 (7/1/23)

State / Local	Current Minimum Wage Per Hour	Current Tipped Employee Cash Wage Per Hour	Next Scheduled Increase Minimum Wage Per Hour	Next Scheduled Increase Tipped Employee Cash Wage Per Hour
Long Beach, CA (Concessionaire Workers)	$16.55	$16.55	$17.36 (7/1/23)	$17.36 (7/1/23)
Los Angeles, CA (City)	$16.04	$16.04	$16.78 (7/1/23)	$16.78 (7/1/23)
Los Angeles, CA (Unincorporated County)	$15.96	$15.96	$16.90 (7/1/23)	$16.90(7/1/23)
Los Angeles, CA Hotel Workers	$18.86 (hotels with 60 or more rooms)	$18.86 (hotels with 60 or more rooms)	$19.73 (7/1/23) (hotels with 60 or more rooms)	$19.73 (7/1/23) (hotels with 60 or more rooms)
Malibu, CA	$15.96	$15.96	$16.90 (7/1/23)	$16.90 (7/1/23)
Milpitas, CA	$16.40	$16.40	$17.20 (7/1/23)	$17.20 (7/1/23)
Pasadena, CA	$16.11	$16.11	$16.93 (7/1/23)	$16.93 (7/1/23)
San Francisco, CA	$16.99	$16.99	$18.07 (7/1/23)	$18.07 (7/1/23)
Santa Monica, CA	$15.96	$15.96	$16.90 (7/1/23)	$16.90 (7/1/23)
Santa Monica, CA (Hotel EEs)	$18.86	$18.86	$19.73 (7/1/23)	$19.73 (7/1/23)
West Hollywood, CA (Hotel Workers)	$18.35	$18.35	$19.08 (7/1/23)	$19.08 (7/1/23)
West Hollywood, CA (50 or more EEs)	$17.50	$17.50	$19.08 (7/1/23)	$19.08 (1/1/23)
West Hollywood, CA (49 or fewer EEs)	$17.00	$17.00	$19.08 (7/1/23)	$19.08 (7/1/23)
District of Columbia	$16.10	$6.00	$17.00 (7/1/23)	$8.00 (7/1/23)
Chicago, IL (21 or more employees)	$15.40	$9.24	$15.80 (7/1/23)	$9.48 (7/1/23)
Chicago, IL (four to 20 employees)	$14.50	$8.70	$15.00 (7/1/23)	$9.00 (7/1/23)
Cook County, IL	$13.35	$7.80	$13.70 (7/1/23)	$8.00 (7/1/23)
Montgomery County, MD (51 or more EEs)	$15.65	$4.00	$16.70 (7/1/23)	None
Montgomery County, MD (11 to 50 EEs)	$14.50	$4.00	$15.00 (7/1/23)	None
Montgomery County, MD (10 or fewer EEs)	$14.00	$4.00	$14.50 (7/1/23)	None
Minneapolis, MN (100 or fewer EEs)	$13.50	$13.50	$14.50 (7/1/23)	$14.50 (7/1/23)
St. Paul, MN (employ more than 100 EEs)	$13.50	$13.50	$15.00 (7/1/23)	$13.50 (7/1/23)
St. Paul, MN (employ 100 or fewer EEs)	$12.00	$12.00	$13.00 (7/1/23)	$13.00 (7/1/23)
St. Paul, MN (employ five or fewer EEs)	$10.75	$10.75	$11.50 (7/1/23)	$11.50 (7/1/23)
Nevada (no health benefits offered)	$10.50	$10.50	$11.25 (7/1/23)	$11.25 (7/1/23)

State / Local	Current Minimum Wage Per Hour	Current Tipped Employee Cash Wage Per Hour	Next Scheduled Increase Minimum Wage Per Hour	Next Scheduled Increase Tipped Employee Cash Wage Per Hour
Nevada (health benefits offered)	$9.50	$9.50	$10.25 (7/1/23)	$10.25 (7/1/23)
Oregon	$13.50	$13.50	$14.20 (7/1/23)	$14.20 (7/1/23)
Oregon Portland, Urban Growth Boundary	$14.75	$14.75	$15.45 (7/1/23)	$15.45 (7/1/23)
Oregon Non-Urban Counties	$12.50	$12.50	$13.20 (7/1/23)	$13.20 (7/1/23)
Puerto Rico	$8.50	$2.13	$9.50 (7/1/23)	None
Tukwila, WA (more than 500 employees worldwide)			$18.99 (7/1/23)	$18.99 (7/1/23)
Tukwila, WA (15 to 500 employees worldwide)			$16.99 (7/1/23)	$16.99 (7/1/23)
Tukwila, WA (less than 15 employees worldwide)			$15.74 (7/1/23)	$15.74 (7/1/23)

Read the article Current State and Local Minimum Wage Rates and Planned Increases Across the US.

Federal

IRS Releases 2024 HSA and HDHP Limits

The Internal Revenue Service (IRS) via **Revenue Procedure 2023-23** has released the inflation-adjusted contribution limitations for calendar year 2024 in relation to health savings accounts (HSAs) and high-deductible health plans (HDHPs).

These limits are indexed for inflation and released annually by June 1st for the following year, as required under the Tax Relief and Health Care Act of 2006.

The Details:

2024 HSA and HDHP Coverages		
	Self-only HDHP	Family HDHP
Annual HSA Contribution Limits	**$4,150*** (Up $300 from 2023)	**$8,300*** (Up $550 from 2023)
Annual HDHP Minimum Deductibles	**$1,600** (Up $100 from 2023)	**$3,200** (Up $200 from 2023)
HDHP Out-of-Pocket Limits[1]	**$8,050** (Up $550 from 2023)	**$16,100** (Up $1,100 from 2023)

[1]Includes deductibles, co-payments, and other amounts, but not premiums.

*An individual who has reached the age of 55 by the end of the calendar year may contribute an additional $1,000 per year.

IRS Releases Guidance on Flexible Spending Account Substantiation

Recently, the Internal Revenue Service (IRS) released a **Chief Counsel Memo** confirming its long-standing position that all flexible spending account (FSA) expenses must be substantiated.

The Details:

Health FSA claims must be substantiated with two items:

1. Information from an independent third-party describing the service or product, the date of the service or sale, and the amount of the expense.
2. A statement from the participant providing that the medical expense has not been reimbursed and that the participant will not seek reimbursement for the expense under any other health plan coverage.

Dependent care claims need only be substantiated with the requirements noted in number one above.

The IRS in the memo stated that certain practices do not meet the mandated substantiation requirements. These include:

- Self-certification by the employee;
- Sampling (i.e.; every third claim substantiated);
- De minimis (only substantiating claims above a certain dollar amount);
- Favored providers (not substantiating claims from "trusted providers");
- Substantiation in advance (claims must first be incurred prior to reimbursement from an FSA).

The IRS stipulated in its guidance that unsubstantiated claims are taxable reimbursement to the employee for federal income tax, Social Security, and Medicare. Unsubstantiated claims would in most cases also be subject to state income tax as well.

Further, the failure to substantiate all claims submitted under an employer's cafeteria plan would invalidate the plan, resulting in taxation for not only health and dependent care FSA claims, but also for all deductions for medical insurance premiums. Additionally, all the tax benefits afforded to the employer, such as reduced Social Security and Medicare taxes, would be lost.

Next Steps:

Employers sponsoring cafeteria plans which include health and dependent care FSAs must ensure that 100 percent of claims submitted under the plan are substantiated and have recordkeeping in place that can demonstrate that all claims were substantiated as required prior to reimbursing the employee.

DOL Releases Updated FLSA and FMLA Posters

The United States Department of Labor (DOL) has released updated posters regarding the Fair Labor Standards Act (FLSA) and the Family Medical Leave Act (FMLA), which must be posted in a conspicuous location in the workplace where employees can read them.

The Details:

FLSA Minimum Wage Poster:

The DOL has revised its FLSA minimum wage poster to include information on employee rights under the Providing Urgent Maternal Protections for Nursing Mothers (PUMP) Act. Under the PUMP Act, as of December 29, 2022, nearly all FLSA-covered employees have the right to lactation accommodations for up to one year after a child's birth. However, employers with fewer than 50 employees are not subject to the FLSA break time and space requirements if compliance with the provision would impose an undue hardship.

The DOL has noted all prior versions of the poster no longer meet FLSA requirements.

Access the updated FLSA poster.

FMLA Poster:

The FMLA poster has been updated to explain what is considered a covered employer for FMLA purposes. However, the DOL has communicated that the April 2016 and February 2013 versions may still be used to meet the FMLA posting requirement.

Access the updated FMLA poster.

Next Steps:

Employers, if they have not done so already, should replace their current version of the FLSA minimum wage poster with the April 2023 version.

Employers subject to the FMLA may choose to replace the April 2016 or February 2013 versions posted in the workplace with the updated April 2023 version.

ADP Compliance Resources

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