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

Illinois Amends Notice and Personnel Records Access Requirements

Illinois has enacted legislation that amends the state's rules for providing certain notices to remote workers and amends the requirements for providing access to employees' personnel records. The changes made by the legislation (House Bill 3733) take effect **January 1, 2024**.

The Details:

Existing Law	Effective January 1, 2024
Every employer subject to any provision of the state's Minimum Wage Law, Equal Pay Act, Wage Payment and Collection Act, or Child Labor Law must keep a summary of the law posted in a conspicuous and accessible place at each worksite. The Minimum Wage Law also requires employers to post a copy of its regulations.	If the employer has **employees who don't regularly report to a physical workplace**, such as employees who work remotely or travel for work, the **employer must also provide the summary (and regulations if applicable) by email** to its employees **or conspicuous post them on the employer's website or intranet site**, if such site is regularly used by the employer to communicate work-related information to employees and is able to be regularly accessed by all employees, freely and without interference.
Every employer must, upon an employee's request, permit the employee to inspect any personnel documents that are, have been or are intended to be used in determining that employee's qualifications for employment, promotion, transfer, additional compensation, discharge or other disciplinary action. If an employee demonstrates that they are unable to review their personnel record at the employing unit, the employer must, upon the employee's written request, mail a copy of the requested record to the employee.	Every employer must, upon an employee's request, permit the employee to inspect any personnel documents which are, have been or are intended to be used in determining that employee's qualifications for employment, promotion, transfer, additional compensation, discharge or other disciplinary action. The employer must, **upon the employee's written request, email or mail** a copy of the requested record to the employee **by the email address or mailing address identified by the employee.**

Next Steps:

- If you have remote employees, review workplace notice/poster procedures to ensure compliance with the changes.
- Review procedures for providing employees access to their personnel records.
- Train supervisors on the changes.

Illinois Clarifies Equal Pay Reporting Requirements

Illinois has enacted legislation that clarifies a requirement for employers with 100 or more employees working in Illinois to obtain an Equal Pay Registration Certificate (EPRC). The legislation (House Bill 3733) takes effect **January 1, 2024**.

The Details:

In 2021, the state amended the Illinois Equal Pay Act (IEPA) to require that private employers report certain payroll information to the Illinois Department of Labor (IDOL) and obtain an EPRC. The requirement applies to any private employer that has 100 or more employees in Illinois and is required to file an annual EEO-1 with the U.S. Equal Employment Opportunity Commission (EEOC).

The pay data reporting requirements had originally called for covered employers to file their federal EEO-1 with the IDOL, but the IDOL had administratively suspended the EEO-1 filing requirement for employers who were given an initial filing deadline in the calendar year 2023.

House Bill 3733 codifies that change for future years. As such, employers won't be required to submit their federal EEO-1 when they apply for an EPRC in 2024 or thereafter.

To obtain an EPRC, covered employers must certify, among other things, that the average compensation for their female and certain other employees isn't consistently below the average compensation for their counterparts within each of the major job categories in the EEO-1, taking into account factors such as length of service, requirements of specific jobs, experience, skill, effort, responsibility, working conditions of the job, education or training, job location, use of a collective bargaining agreement, or other mitigating factors.

House Bill 3733 clarifies that for the purposes of the above provision, "compensation" means remuneration or compensation an employee receives in return for services rendered to an employer, including hourly wages, overtime wages, commissions, piece rate work, salary, bonuses, or any other basis of calculation for services performed.

Next Steps:

If you have 100 or more employees in Illinois and are required to file an annual EEO-1 with the EEOC, make sure you comply with the Illinois pay data reporting requirements, as amended.

Illinois Enacts Pre-Tax Transportation Benefits Requirement

The Governor of Illinois has signed into law **HB 2068**, the "Transportation Benefits Program Act" (the "Act"), which requires employers with 50 or more employees located in specific areas to offer a pre-tax commuter benefit to "covered employees." Covered employees are defined as any person who performs an average of at least 35 hours of work per week for compensation on a full-time basis.

The Details:

Under the Act, effective January 1, 2024, employers in Illinois with 50 or more employees with an office located within one mile of a fixed-route transit service in the following locations must offer its covered employees an opportunity to use pre-tax dollars for the purchase of a "transit pass," via payroll deduction.

"Transit pass" means any pass, token, fare card, voucher or similar item entitling a person to transportation on public transit.

Locations:

Cook County, Warren Township in Lake County, Grant Township in Lake County, Frankfort Township in Will County, Wheatland Township in Will County, Addison Township, Bloomingdale Township, York Township, Milton Township, Winfield Township, Downers Grove Township, Lisle Township, Naperville Township, Dundee Township, Elgin Township, St. Charles Township, Geneva Township, Batavia Township, Aurora Township, Zion Township, Benton Township, Waukegan Township, Avon Township, Libertyville Township, Shields Township, Vernon Township, West Deerfield Township, Deerfield Township, McHenry Township, Nunda Township, Algonquin Township, DuPage Township, Homer Township, Lockport Township, Plainfield Township, New Lenox Township, Joliet Township, and Troy Township.

This benefit must be offered to all covered employees starting on the employee's first full pay period after 120 days of employment.

The maximum amount that may be used to purchase a transit pass on a pre-tax basis (and be exempt from state income tax) is equal to the federal tax-exempt maximum, which is currently $300 per month. This amount is adjusted by the Internal Revenue Service (IRS) annually.

Next Steps:

Employers located in the locations above, as of January 1, 2024, must offer covered employees after 120 days of employment the opportunity to pay for a transit pass on a pre-tax basis up to the federal limit announced for 2024.

Illinois Expands Bereavement Leave Requirements

Illinois has enacted legislation that expands requirements for certain employers to provide bereavement leave to employees. The legislation (Senate Bill 2034) takes effect **January 1, 2024**.

The Details:

Under the new law, an employee of an employer with 250 or more full-time employees in Illinois is entitled to use a maximum of 12 weeks of unpaid leave if the employee experiences the loss of a child by suicide or homicide.

An employee of an employer with 50 to 249 full-time employees in Illinois is entitled to use up to six weeks of unpaid leave if the employee experiences the loss of a child by suicide or homicide.

The leave may be taken in a single continuous period or intermittently in increments of no less than four hours, but leave must be completed within one year after the employee notifies the employer of the loss.

To be eligible for such leave, the individual must:

- Be a full-time employee of an employer with at least 50 full-time employees in Illinois.
- Work for the employer for at least two weeks.

An employee who is entitled to take paid or unpaid leave pursuant to federal, state or local law, a collective bargaining agreement, or an employment benefits program or plan may elect to substitute any period of such leave for an equivalent period of leave provided under Senate Bill 2034.

Notice and Documentation:

An employer may require reasonable advance notice of the employee's intention to take leave, unless providing such notice isn't reasonable and practical.

An employer may require reasonable documentation, such as a death certificate, a published obituary, or written verification of death, burial or memorial services from a mortuary, funeral home, burial society, crematorium, religious institution or government agency. An employer may require that the documentation include the cause of death.

Job Reinstatement:

Upon returning from leave, the employee is entitled to:

- Be restored by the employer to the position of employment held by the employee when the leave commenced; or
- Be restored to an equivalent position with equivalent employment benefits, pay and other terms and conditions of employment.

Interaction with Existing Bereavement Leave Law:

Under an existing bereavement leave law, employers with 50 or more employees must provide eligible employees up to two weeks of unpaid bereavement leave to:

- Attend the funeral (or an alternative to a funeral) of a covered family member;
- Make arrangements necessitated by the death of a covered family member;
- Grieve the death of a covered family member; or
- Be absent from work because of:
  - A miscarriage;
  - An unsuccessful round of intrauterine insemination or of an assisted reproductive technology procedure (e.g., artificial insemination or embryo transfer);
  - A failed adoption match or an adoption that isn't finalized because it is contested by another party;
  - A diagnosis that negatively impacts pregnancy or fertility; or
  - A stillbirth.

Employees who use leave under the new law because of the death of a child are prohibited from using leave under the existing law because of the death of the same child.

Next Steps:

If you are a covered employer:

- Review policies and practices to ensure compliance with the changes made by Senate Bill 2034 by January 1, 2024.
- Train supervisors on the changes and how to respond to leave requests.

Illinois Requires Certain Employers to Offer Organ Donation Leave

Illinois has enacted legislation that will require employers with 51 or more employees to provide paid organ donation leave to employees. The law (House Bill 3516) takes effect **January 1, 2024**.

The Details:

To be eligible for paid organ donation leave, the employee must:

- Be employed full-time;
- Be employed by the employer at least six months; and
- Work for an employer with 51 or more employees.

An employee may use up to 10 days of leave in any 12-month period to serve as an organ donor.

Note: Under existing law, employees who meet the eligibility requirements noted above are entitled to use up to one hour of paid time off to donate blood every 56 days.

An employee may use the organ donation or blood donation leave only after obtaining approval from the employer.

Next Steps:

If you are a covered employer:

- Review policies and practices to ensure compliance with the changes made by House Bill 3516 by January 1, 2024.
- Train supervisors on the changes and how to respond to leave requests.

Illinois to Require Pay Scale in Job Ads

Illinois has enacted legislation (House Bill 3129), which requires employers with 15 or more employees to include in job postings the pay scale and benefits for the position. House Bill 3129 takes effect **January 1, 2025**.

The Details:

The requirement for job postings only applies to positions that:

- Will be physically performed, at least in part, in Illinois; or
- Will be physically performed outside of Illinois, but the employee reports to a supervisor, office, or other worksite in Illinois.

The law defines "pay scale and benefits" as the wage or salary, or the wage or salary range, and a general description of the benefits and other compensation, including, but not limited to, bonuses, stock options, or other incentives the employer reasonably expects in good faith to offer for the position.

The range may be set by reference to any applicable pay scale, the previously determined range for the position, the actual range of others currently holding equivalent positions, or the budgeted amount for the position, as applicable.

Employers may satisfy the requirement by including a hyperlink to a publicly viewable webpage that includes the pay scale and benefits.

If an employer engages a third-party to announce, post, publish or otherwise make known a job posting, the employer must provide the pay scale and benefits, or a hyperlink to the pay scale and benefits, to the third-party. The third-party must include the pay scale and benefits, or a hyperlink to the pay scale and benefits, in the job posting.

If no job posting will be made by the employer or a third-party, employers must disclose the pay scale and benefits for the position prior to any offer or discussion of compensation and at the applicant's request.

Promotional Opportunities:

An employer must announce, post, or otherwise make known all opportunities for promotion to all current employees no later than 14 calendar days after the employer makes an external job posting for the position.

Anti-Retaliation:

Employers are prohibited from taking adverse action against an applicant or an employee for exercising any rights under the law.

Recordkeeping:

In addition to existing recordkeeping requirements, employers must preserve records that document the pay scale and benefits for each position for at least five years.

Next Steps:

Covered Illinois employers should review policies and procedures to ensure compliance with the applicable provisions of House Bill 3129.

Maine Amends Tip Pooling Rules

Maine has enacted legislation that will allow employees who don't customarily and regularly receive tips to participate in tip pooling, provided the employer pays the full minimum wage and doesn't use the tip credit. The change will take effect **October 25, 2023**.

The Details:

Background:

Under state law, employers may take a "tip credit" against their minimum wage obligations for employees who customarily and regularly receive more than $175 a month in tips (that is, service employees). A tip credit is permitted as long as the service employee receives at least the minimum wage per hour when their tip credit is combined with tips received. For 2023, the maximum tip credit is $6.90 per hour under state law.

Tip pooling is an arrangement among employees to share a portion of their tips received with others in the pool. State law allows employers to institute mandatory tip pooling among service employees, provided it doesn't violate federal and state law.

New Law:

Once the new law takes effect, mandatory tip pooling between service and non-service employees will be allowed, as long as the employer pays service employees (and non-service employees) at least the full minimum wage ($13.80 in 2023) in direct cash wages and doesn't take the tip credit. The employer, managers and supervisors are prohibited from receiving tips from such a tip pool.

Note: If employers take the tip credit, mandatory tip pooling with non-service employees is still prohibited by state law (as well as federal law).

Next Steps:

- If you intend to allow tip pooling between service and non-service employees:
  - Make sure you pay service employees at least the full minimum wage in direct cash wages.
  - Notify service employees and impacted non-service employees about the change in advance.

Maine Bars Mandatory Employer Meetings on Religious or Political Matters

Maine has enacted legislation that prohibits employers from taking adverse action against employees because they refuse to attend an employer-sponsored meeting that communicates the opinion of the employer about religious or political matters. The changes take effect **October 25, 2023**.

The Details:

The protection from adverse action also applies to employees who refuse to receive or listen to communications from the employer if the purpose is to convey the opinion of the employer about religious or political matters.

The law defines "political matters" as those relating to elections for political office, political parties, proposals to change legislation, rules, regulations or public policy and the decision to join or support any political party or political, civic, community, fraternal or labor organization.

The law defines "religious matters" as those relating to religious belief, affiliation and practice and the decision to join or support any religious organization or association.

Exceptions:

The law doesn't:

- Prohibit communications of information that the employer is required by law to communicate, but only to the extent of the lawful requirement;

- Limit the rights of an employer in conducting meetings involving religious matters or political matters, as long as attendance is wholly voluntary or to engage in communications, as long as receipt or listening is wholly voluntary; or
- Restrict the rights of an employer in communicating any information that is necessary for employees to perform their lawfully required job duties.

The law also doesn't apply to religious employers.

Poster Required:

Within 30 days after the effective date of the law, employers must post a notice of employee rights under the law where employee notices are customarily placed. The text of the law doesn't indicate whether the state will develop a sample notice.

Next Steps:

- Post the required notice within 30 days of October 25, 2023.
- Review policies and practices to ensure compliance with the changes.
- Train supervisors on the new law.

Minnesota Clarifies Anti-Retaliation Provision in Ban on Pay Secrecy Policies

Minnesota has enacted legislation that clarifies the anti-retaliation provision of a state law that generally prohibits employers from preventing employees from disclosing their own pay information. The changes took effect **July 1, 2023**.

The Details:

Before July 1, 2023	Effective July 1, 2023
Employers are prohibited from: • Forbidding, as a condition of employment, employees from disclosing their own pay information. • Requiring employees to waive their right to disclose their own pay information. • Taking adverse action against an employee for disclosing their own pay information.	Employers are prohibited from: • Forbidding, as a condition of employment, employees from disclosing their own pay information. • Requiring employees to waive their right to disclose their own pay information. • Taking adverse action against an employee for disclosing their own pay information.
Employers are also prohibited from retaliating against an employee for asserting their rights or remedies under the law.	Employers are also prohibited from **discharging, disciplining, penalizing, interfering with, threatening, restraining, coercing, or otherwise** retaliating or discriminating against an employee for asserting their rights or remedies under the law.

Next Steps:

- Amending policies to add the specific examples of prohibited retaliation.
- Training supervisors on the specific examples of prohibited retaliation.

Montana Modifies Taxation of Tipped Income

Effective **January 1, 2024**, tipped income will become taxable in the State of Montana.

The Details:

Under current law, effective through December 31, 2023, tipped income is not considered taxable income for Montana state income tax purposes.

The current version of Montana 15-30-2501 (Montana Individual Income Tax Definitions) states in part:

> "(b) The term (wage) does not include:
>
> (i) tips and gratuities exempt from taxation under 15-30-2110."

The current version of 15-30-2110 (Montana Adjusted Gross Income) states in part:

> "(2) Notwithstanding the provisions of the Internal Revenue Code, adjusted gross income does not include the following, which are exempt from taxation under this chapter:
>
> (f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January 1, 1983, received by a person for services rendered to patrons of premises licensed to provide food, beverage, or lodging."

As a result of the enactment of **Montana Senate Bill 399**, both of these provisions are repealed effective January 1, 2024, resulting in tipped income becoming taxable to employees for Montana state income tax purposes.

Next Steps:

Montana employers with tipped employees should notify these employees that, beginning January 1, 2024, tips received will be considered taxable income for Montana state income tax purposes and the appropriate Montana state tax will be withheld, as well as the usual federal taxes.

In addition, the Montana Department of Revenue has indicated that it will be updating the Montana Employer and Information Agent Guide with Montana Withholding Tax Tables in October of 2023, and it is recommended that Montana employers review this updated guidance with their legal and/or tax advisors.

New Hampshire Clarifies Tip Sharing and Pooling

New Hampshire has enacted legislation (Senate Bill 269), which clarifies the circumstances in which an employer may administer a tip pool or tip-sharing agreement. Senate Bill 269 takes effect on **September 26, 2023**.

The Details:

As background, under New Hampshire law, a "tip" means money:

- Given to an employee by a customer, in cash or its equivalent; or
- Transferred to the employee by the employer pursuant to directions from a credit card customer who designates a sum to be added to the bill. The sum may be a tip or added as a gratuity (or service charge) to a customer's bill in recognition of the service performed.

Senate Bill 269:

The law removes "service charge" from the definition of "tip" and clarifies the following information on tip pools and tip-sharing agreements:

EmployeE Protections:

Senate Bill 269 clarifies that:

- Tips are wages that are the property of the employee receiving the tip;
- An employee retains their tips unless they voluntarily, and without coercion from the employer, agree to participate in a tip pooling or tip-sharing arrangement; and
- An employee that participates in a tip pool may agree (if the agreement is voluntary and free from employer coercion) to give a portion of the common tip pool to other employees (regardless of job category) that participated in providing service to customers.

Employer Tip Pool and Tip Agreement Administration:

Under the law, employers may administer a valid tip pooling or tip-sharing arrangement. This includes the following actions:

- Suggesting reasonable and customary practices;
- Documenting agreed upon practice; and
- Mediating disputes between employees (provided the employer does not require or coerce employees to participate in the tip pooling or tip-sharing arrangement).

Next Steps:

Employers should review their pay policies and practices and train supervisors to help ensure compliance with Senate Bill 269 by September 26, 2023.

Texas Adds Human Trafficking Prevention Training Requirements for Transportation Network Companies

Texas has enacted legislation (House Bill 2313), which requires Transportation Network Company employers to provide training on human trafficking awareness and prevention. House Bill 2313 takes effect on **September 1, 2023**.

The Details:

As background, a **Transportation Network Company** (TNC) is an entity that enables a passenger to digitally prearrange a ride with a driver through the entity's digital network.

Employer Requirements:

Beginning September 1, 2023, a TNC employer must provide human trafficking awareness and prevention training materials on an annual basis to each driver and to each new driver (before that driver is authorized to log in and provide prearranged rides using the company's digital network).

Training Materials:

Under the law, training materials must be:

- At least 15 minutes long;
- Approved by the attorney general; and
- Provided in:
  - English and Spanish; and
  - Digital video format or internet-based video format.

The training materials must include the following:

- An overview of human trafficking, which includes a description of:
  - The experience of human trafficking;
  - How and why human trafficking takes place in the transportation industry;
  - How human trafficking is defined under state and federal law;
  - Guidance on how to identify those that are most at-risk for human trafficking;
- Information on the difference between labor and sex trafficking, as that relates to the identification of human trafficking in the transportation industry;
- Guidance on the role of a driver in reporting and responding to human trafficking; and
- The contact information of appropriate entities to report human trafficking to, including:

- The National Human Trafficking Hotline toll-free telephone number and text line;
- A telephone number designated by the attorney general for reporting suspected human trafficking; and
- Appropriate law enforcement agencies.

Recordkeeping:

A TNC must maintain records that are necessary to establish that they provided the training required under the law.

Next Steps:

By September 1, 2023, covered TNC employers in Texas should do the following to help ensure compliance with House Bill 2313:

- Review and update their sexual harassment prevention policies and procedures.
- Train their supervisors on the changes under the law.

Texas Adds Labor Law Protections

Texas has enacted legislation (House Bill 2459) to further protect certain employees from labor law violations. House Bill 2459 takes effect on **September 1, 2023**.

The Details:

As background, **Texas labor laws** cover and provide certain employment **protections** to employees, including those under 18 years of age.

Under House Bill 2459, an employer that is found to have violated child and **other covered labor laws** may face a financial penalty of up to $10,000. The amount will depend on the seriousness of the violation, which includes:

- The nature, circumstances, extent and gravity of the violations;
- The history of previous violations;
- The amount necessary to deter future violations;
- Efforts to correct the violation; and
- Other relevant matters.

Next Steps:

To help ensure compliance with House Bill 2459:

- Review and update child labor policy and practices, such as, but not limited to, pay, overtime, age and hour restrictions.
- Train supervisors and hiring personnel.

Texas Protects Workers from Violence in the Workplace

Texas has enacted legislation (House Bill 915) that requires all employers to post a notice containing contact information on where to report workplace violence. House Bill 915 takes effect on **September 1, 2023**.

The Details:

Under the law, an employer must provide a notice to employees that contains the contact information for reporting instances of workplace violence or suspicious activity to the Department of Public Safety.

Posting Requirements:

Employers must post the notice:

- In a conspicuous place in the employer's place of business;
- In sufficient locations that are convenient to all employees; and
- In English and Spanish, as appropriate.

Next Steps:

Employers should look out for the **notice from the Texas Workforce Commission**, which will:

- Contain the contact information for reporting instances of workplace violence or suspicious activity to the Department of Public Safety; and
- Inform employees of the right to make an anonymous report to the Department of Public Safety.

Vermont Enacts New Child Care Payroll Tax

With the enactment of **HB 217,** Vermont created a new payroll tax to fund its Child Assistance Program, which subsidizes child care costs for certain families.

The Details:

Effective July 1, 2024, the payroll tax will be 0.44 percent of an employee's covered wages. Covered wages consist of all wages and benefits that are subject to federal income tax withholding.

"Covered employers" are required to pay a minimum amount equal to 75 percent of the required 0.44 percent payroll tax for each "covered employee."

Covered Employers are defined as a person or entity who employs one or more covered employees and is required to withhold Vermont income tax from wages paid to their employees.

Covered Employees are defined as individuals who receive payments with respect to services performed for an employer from which the employer is required to withhold Vermont income tax.

Under HB 217, employers are allowed to deduct 25 percent of the tax, or 0.11 percent from employee's wages. If employees are under withheld, the employer is responsible for the full amount of any unpaid employee contributions.

Employers are required to remit the employee and employer contributions to the Vermont Department of Taxes (VDOT), in the same manner as employees' income tax withholding.

Self-employed individuals are required to pay 0.11 percent of their self-employment income and remit to the VDOT at the same time and in the same manner as their estimated Vermont withholding income tax.

Next Steps:

Effective July 1, 2024, Vermont covered employers must remit to the VDOT 0.44 percent of covered employees' wages to the "Child Care Contribution Fund." Employers have the option to withhold 0.11 percent of employees' wages to offset the employer's 0.44 percent obligation. The employer is responsible for remitting the entire 0.44 percent required.

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**.

Minimum Wage

Minimum Wage Announcements: 8/16/23 – 9/15/23

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
Minnesota (Employers with at least $500,000 in gross sales)	$10.85	$10.85*	1/1/24	Yes	Once posted may be located here.
Minnesota (Employers with less than $500,000 in gross sales)	$8.85	$8.85*	1/1/24	Yes	Once posted may be located here.
St. Paul, MN (10,000 + employees)	$15.57	$15.57*	1/1/24	Yes	
St. Paul, MN (101-10,000 employees)	$15.57	$15.57*	7/1/24	Yes	
St. Paul, MN (6-100 employees)	$14.00	$14.00*	7/1/24	Yes	
St. Paul, MN (Five or fewer employees)	$12.25	$12.25*	7/1/24	Yes	
Minneapolis, MN (More than 100 employees)	$15.57	$15.57*	1/1/24	Yes	
Minneapolis, MN (100 or fewer employees)	$15.57	$15.57*	7/1/24	Yes	
Flagstaff, AZ	$17.40	$15.90	1/1/24	Yes	Once posted may be located here.

*MN does not allow the use of a tip credit.

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

Federal

U.S. DOL Proposes Increase to Minimum Salary for Exempt Employees

Read the article here.

Treasury Delays SECURE 2.0 Mandatory Roth Catch-Up Contributions to 2026

Read the article here.

NLRB Adopts New Standard for Reviewing Workplace Policies

The National Labor Relations Board (NLRB) has adopted a new standard for determining whether an employer's policy violates Section 7 of the National Labor Relations Act (NLRA). The NLRB began applying the standard immediately.

The Details:

Background:

Under Section 7 of the NLRA, employees have the right to act together, with or without a union, to improve wages and working conditions, and to discuss wages, benefits, and other terms and conditions of employment. The NLRB's interpretations of how employer policies may violate Section 7 protections have changed over the years.

New Standard:

The NLRB recently announced that it is adopting a new standard for reviewing employer policies that builds on and revises a standard that was adopted during the Obama Administration, but was later replaced during the Trump Administration.

Under the new standard (see ***NLRB Case Number 04-CA-137660***), the NLRB will:

- Analyze whether a challenged work rule has a reasonable tendency to chill/discourage employees from exercising their Section 7 rights; and
- Interpret the rule from the perspective of a reasonable employee who is economically dependent on their employer (and thus inclined to interpret an ambiguous rule to prohibit protected activity in which they would otherwise engage).

If it is shown that an employee could reasonably interpret a rule to restrict or prohibit Section 7 activity, the rule will be considered presumptively unlawful even if:

- The rule could also reasonably be interpreted not to restrict Section 7 rights; and
- The employer didn't intend for its rule to restrict Section 7 rights.

However, an employer may rebut that presumption by proving that:

- The rule advances a legitimate and substantial business interest; and
- The employer is unable to advance that interest with a more narrowly tailored rule.

Next Steps:

- With the help of legal counsel, make sure policies are drafted carefully and narrowly, providing sufficient details and context to make it clear that the employer's rules don't infringe on protected activity.
- Watch for additional guidance from the NLRB.

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.**

If you have any questions regarding our services, please call 855-466-0790.

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