EYE ON WASHINGTON

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Detailed Look at State, Local and Federal Updates

Topics covered in this issue:

State/Territory/District

Illinois Adds Employment Verifications Protections

Illinois has enacted legislation that will prohibit employers from imposing work authorization or re-verification requirements that are greater than those required by federal law. The new law (Senate Bill 508) also requires employers who use E-Verify or another electronic employment verification system to provide certain notices if an employer asserts that a discrepancy exists in an employee's employment verification information. Senate Bill 508 takes effect **January 1, 2025**.

The Details:

Background:

E-Verify is an internet-based system operated by the federal government that enables employers to determine a new hire's eligibility to work in the United States. E-Verify checks whether the information on a new hire's Form I-9 matches government records in Department of Homeland Security (DHS) and Social Security Administration (SSA) databases, and whether the new hire is authorized to work in the United States.

Existing Illinois law includes training and notice requirements for employers.

Senate Bill 508:

The new law prohibits Illinois employers from imposing work authorization or re-verification requirements that are greater than those required by federal law and adds to the existing notice requirements. For example, if an employer uses E-Verify or another electronic employment verification system and contends that there is a discrepancy in an employee's employment verification information, the employer must provide the employee with:

- The specific document(s), if made available to the employer, that the employer deems to be deficient and the reason why the document(s) is deficient. Upon request by the employee or the employee's authorized representative, the employer must give to the employee the original document forming the basis for the employer's contention of deficiency within seven business days.
- Instructions on how the employee can correct the alleged deficient documents if required to do so by law.

- An explanation of the employee's right to have representation present during related meetings, discussions, or proceedings with the employer, if allowed by a memorandum of understanding concerning the federal E-Verify system.
- An explanation of any other rights that the employee may have in connection with the employer's contention.

When an employer receives notification from any federal or state agency, including, but not limited to, the Social Security Administration or the Internal Revenue Service (IRS), of a discrepancy as it relates to work authorization, the following rights and protections are granted to the employee.

- The employer is prohibited from taking any adverse action against the employee, including re-verification, based on the receipt of the notification.
- The employer must provide a notice to the employee and, if allowed by a memorandum of understanding concerning the federal E-Verify system, to the employee's authorized representative, if any, no more than five business days after the date of receipt of the notification, unless a shorter timeline is provided for under federal law or a collective bargaining agreement. The notice to the employee must include:
    - An explanation that the federal or state agency has notified the employer that the employee's work authorization documents presented by the employee don't appear to be valid or reasonably relate to the employee; and
    - The time period the employee has to contest the federal or state agency's determination.
- The employer must notify the employee in-person and deliver the notification by hand, if possible. If hand delivery isn't possible, then the employer must notify the employee by mail and email, if the email address of the employee is known, and must notify the employee's authorized representative. Upon request by the employee or the employee's authorized representative, the employer must give to the employee the original notice from the federal or state agency within seven business days. This original notice must be redacted in compliance with state and federal privacy laws and must relate only to the employee receiving the notification.
- The employee may have a representative of the employee's choosing in any meetings, discussions, or proceedings with the employer.
- The procedures described above do not apply to inspections of an employer's I-9 Employment Verification Forms (I-9s) by an inspecting entity (e.g., the U.S. Immigration and Customs Enforcement, United States Customs and Border Protection, or any other federal entity enforcing I-9 requirements).

Additional Notice Requirements:

Except as otherwise required by federal law, an employer must provide a notice to each current employee, by posting in English and in any language commonly used in the workplace, of any inspections of I-9s or other employment records conducted by the inspecting entity within 72 hours after receiving notice of the inspection. Written notice must also be given within 72 hours to the employee's authorized representative, if any.

- The posted notice must contain the following information:
    - The name of the entity conducting the inspections of I-9 forms or other employment records.
    - The date that the employer received notice of the inspection.
    - The nature of the inspection to the extent known by the employer; and
    - A copy of the notice received by the employer. An employer, upon reasonable request, must provide an employee with a copy of the Notice of Inspection of I-9 forms.
- On or before six months after January 1, 2025, the state will develop a template posting that employers may use to comply with the requirements to inform employees of a notice of inspection. The state will make the template available on its website so that it is accessible to employers.
- Except as otherwise required by federal law, if during an inspection of the employer's I-9 forms by an inspecting entity, the inspecting entity makes a determination that the employee's work authorization documents don't establish that the employee is authorized to work in the United States and provide the employer with notice of that determination, the employer must provide a written notice to the employee within five business days, unless a shorter timeline is provided for under federal law or a collective bargaining agreement.

- The employer must notify the employee in-person and deliver the notification by hand, if possible. If hand delivery isn't possible, then the employer must notify the employee by mail and email, if the email address of the employee is known, and must notify the employee's authorized representative. The employer's notice to the employee must contain the following information:
    - An explanation that the inspecting entity has determined that the employee's work authorization documents presented by the employee don't appear to be valid or reasonably relate to the employee.
    - The time period for the employee to notify the employer whether the employee is contesting the determination by the inspecting entity.
    - If known by the employer, the time and date of any meeting with the employer and employee or with the inspecting entity and employee related to the correction of the inspecting entity's determination that the employee's work authorization documents presented by the employee do not appear to be valid or reasonably relate to the employee.
    - Notice that the employee has the right to representation during any meeting scheduled with the employer and the inspecting entity.
- If the employee contests the inspecting entity's determination, the employer will notify the employee within 72 hours after receipt of any final determination by the inspecting entity related to the employee's work authorization status. Upon request by the employee or the employee's authorized representative, the employer must give the employee the original notice from the inspecting entity within seven business days. This original notice must be redacted in compliance with state and federal privacy laws and must relate only to the employee receiving the notification.
- The law does not require a penalty to be imposed for a failure to provide notice to an employee at the express and specific direction or request of the federal government.

Next Steps:

- Review policies and practices to ensure compliance with the law.
- Some commentators have noted that the new law could be read to prohibit Illinois employers from using E-Verify unless required to use it by federal law. We expect the Illinois Department of Labor (IDOL) to issue guidance in the future. In the interim, you should consult with appropriate legal counsel if you have questions.
- Train supervisors on the changes.

Illinois Adds New Work Protections for Minors Under Age 16

Illinois has enacted legislation that sets new standards for working conditions for employees under 16 years of age, including limiting hours of work and updating the list of jobs minors are prohibited from holding. The changes were enacted via Senate Bill 3646 and take effect on **January 1, 2025**.

The Details:

Hours of Work Restrictions:

With limited exceptions, employers are prohibited from allowing employees under 16 years of age from working:

- More than 18 hours during a week when school is in session;
- More than 40 hours during a week when school isn't in session;
- More than eight hours in any single 24-hour period;
- Between 7 p.m. and 7 a.m. from Labor Day until June 1 or between 9 p.m. and 7 a.m. from June 1 until Labor Day; or
- More than three hours per day, or more than eight hours total of work and school hours on days when school is in session.

Exceptions to Hours of Work Restrictions:

An employer may allow an employee under the age of 16 to work a maximum of eight hours on each Saturday and on Sunday during the school year if: 1) the minor doesn't work outside of school hours more than six consecutive days in any one week; and 2) the number of hours worked by the minor outside of school hours in any week doesn't exceed 24 hours. **See the text of the law** for other exceptions to the restrictions on hours of work.

Prohibited Occupations:

The law includes more than 30 occupations from which employees under the age of 16 are prohibited from working. **See the text of the law for details**.

Employer Responsibilities:

Employers are prohibited from allowing a minor under the age of 16 from working, unless the minor obtains an employment certificate authorizing the minor to work for that employer.

Employers must provide that minor with a notice of intention to employ to be submitted by the minor to the minor's school issuing officer with the minor's application for an employment certificate.

Every employer of one or more minors under 16 years of age must maintain, on the premises where the work is being done, records that include the name, date of birth, and place of residence of every minor who works for that employer, notice of intention to employ the minor, and the minor's employment certificate.

Every employer, during the period of employment of a minor and for three years thereafter, must keep on file, at the place of employment, a copy of the employment certificate issued for the minor.

Every employer of minors under the age of 16 must ensure that all minors are supervised by an adult 21 years of age or older, on-site, at all times while the minor is working.

Employers are prohibited from allowing any minor under the age of 16 to work for more than five hours continuously without an interval of at least 30 minutes for a meal period.

Notice Requirements:

Every employer who employs one or more minors under the age of 16 must post in a conspicuous place where minors are employed, allowed, or permitted to work, a notice summarizing the requirements of the law.

An employer with employees who don't regularly report to a physical workplace, such as employees who work remotely or travel for work, must also provide the summary and notice by email to their employees or by conspicuous posting on the employer's website or intranet site, if the 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. The notice will be created by the state.

In the event of the work-related death of a minor engaged in work subject to the law, the employer must, within 24 hours, report the death to the Department of Labor and to the school official who issued the minor's work certificate for that employer.

In the event of a work-related injury or illness of a minor that requires the employer to file a report with the Illinois Workers' Compensation Commission, the employer must submit a copy of the report to the Department of Labor and to the school official who issued the minor's work certificate for that employer within 72 hours of the deadline by which the employer must file the report to the Illinois Workers' Compensation Commission.

Employment Certificate Process:

The Illinois Child Labor Law has long required school officials to review a minor's work opportunity and, with the permission of the minor's parent or guardian, issue an employment certificate to the minor before they can lawfully work.

Senate Bill 3646 updates the school certification process by:

- Requiring the issuing officer to consider the "health, welfare, and education" of the minor when assessing an employment certificate application, including consideration of past reports of death/injury of a minor at that workplace.
- Requiring that a minor's work permit include the minor's school schedule.
- Clarifying the certification process for minors who are experiencing homelessness or who don't have a birth certificate.

Video Content Creators:

The law creates rules specific to influencers and other individuals or families who create video content in exchange for compensation, and the video content features minors under the age of 16. These changes took effect July 1, 2024. **See the text of the law for details**.

Next Steps:

Illinois employers who intend to employ minors under the age of 16 should ensure compliance with Senate Bill 3646 by **January 1, 2025** and train supervisors on the changes.

Illinois Amends Law on Employee Access to Personnel Records

Illinois has enacted legislation that amends and clarifies the state's Personnel Record Review Act. The new law (House Bill 3763) takes effect **January 1, 2025**.

The Details:

Here's a summary of the changes made by House Bill 3763 to the Personnel Record Review Act.

Prior to January 1, 2025	Beginning January 1, 2025
Upon an employee's request, which the employer may require be in writing on a form supplied by the employer, the employer must permit the employee to inspect any personnel documents that are, have been or are intended to be used in determining the employee's qualifications for employment, promotion, transfer, additional compensation, discharge, or other disciplinary action.	Upon request **in writing** to their employer, every employee has a right to inspect, copy, and receive copies of the following documents: • 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, **benefits**, discharge, or other disciplinary action; • Any **employment-related contracts or agreements** that the employer maintains are legally binding on the employee; • Any **employee handbooks** that the employer made available to the employee or that the employee acknowledged receiving; and • Any **written employer policies or procedures** that the employer contends the employee was subject to and that concern qualifications for employment, promotion, transfer, compensation, benefits, discharge, or other disciplinary action.

Prior to January 1, 2025	Beginning January 1, 2025
The employer must grant at least two inspection requests in a calendar year when such requests are made at reasonable intervals, unless otherwise provided in a collective bargaining agreement.	The employer, upon an employee's **written request**, must grant at least two requests in a calendar year **to inspect, copy, and receive copies of records** to which that employee has a right under the law. Requests must be made at reasonable intervals, unless otherwise provided in a collective bargaining agreement; and be made to a person responsible for maintaining the employer's personnel records, including the employer's human resources department, payroll department, the employee's supervisor or department manager, or to an individual as provided in the employer's written policy. **The written request must:** • Identify what personnel records the employee is requesting or if the employee is requesting all of the records allowed to be requested. • Specify if the employee is requesting to inspect, copy, or receive copies of the records. • Specify whether records need to be provided in hardcopy or in a reasonable and commercially available electronic format. • Specify whether inspection, copying, or receipt of copies will be performed by that employee's representative, including family members, lawyers, union stewards, other union officials, or translators; and • If the records being requested include medical information and medical records, include a signed waiver to release medical information and medical records to that employee's specific representative.
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 for the purpose of receiving the copy of requested record. An employer may charge a fee for providing a copy of the requested record. The fee must be limited to the actual cost of duplicating the requested record.	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 for the purpose of receiving the copy of requested record. An employer may charge a fee for providing a copy of the requested record. The fee must be limited to the actual cost of duplicating the requested record. The new law also makes clear that the **fee may not include the imputed costs** of time spent duplicating the information, the purchase or rental of copying machines, the purchase or rental of computer equipment, the purchase, rental, or licensing of software, or any other similar expenses.

Prior to January 1, 2025	Beginning January 1, 2025
The right of the employee to inspect their personnel records doesn't apply to: • Letters of reference for that employee or external peer review documents for academic employees of institutions of higher education. • Any portion of a test document, except that the employee may see a cumulative total test score for either a section of or the entire test document. • Materials relating to the employer's staff planning, such as matters relating to the business' development, expansion, closing or operational goals, where the materials relate to or affect more than one employee, provided, however, that this exception does not apply if such materials are, have been or are intended to be used by the employer in determining an individual employee's qualifications for employment, promotion, transfer, or additional compensation, or in determining an individual employee's discharge or discipline. • Information of a personal nature about a person other than the employee if disclosure of the information would constitute a clearly unwarranted invasion of the other person's privacy. • An employer who doesn't maintain any personnel records. • Records relevant to any other pending claim between the employer and employee which may be discovered in a judicial proceeding. • Investigatory or security records maintained by an employer to investigate criminal conduct by an employee or other activity by the employee which could reasonably be expected to harm the employer's property, operations, or business or could by the employee's activity cause the employer financial liability, unless and until the employer takes adverse personnel action based on information in such records.	The right of the employee to inspect their personnel records doesn't apply to: • Letters of reference for that employee or external peer review documents for academic employees of institutions of higher education. • Any portion of a test document, except that the employee may see a cumulative total test score for either a section of or the entire test document. • Materials relating to the employer's staff planning, such as matters relating to the business' development, expansion, closing or operational goals, where the materials relate to or affect more than one employee, provided, however, that this exception does not apply if such materials are, have been or are intended to be used by the employer in determining an individual employee's qualifications for employment, promotion, transfer, compensation, **or benefits**, or in determining an individual employee's discharge or discipline. • Information of a personal nature about a person other than the employee if disclosure of the information would constitute a clearly unwarranted invasion of the other person's privacy. • An employer who doesn't maintain any personnel records. • Records relevant to any other pending claim between the employer and employee which may be discovered in a judicial proceeding. • Investigatory or security records maintained by an employer to investigate criminal conduct by an employee or other activity by the employee which could reasonably be expected to harm the employer's property, operations, or business or could by the employee's activity cause the employer financial liability, unless and until the employer takes adverse personnel action based on information in such records. • **An employer's trade secrets, client lists, sales projections, and financial data.**

Next Steps:

- Review policies and practices to ensure compliance with the law.
- Train supervisors on the changes.

Illinois Bars Mandatory Employer-Sponsored Meetings on Religious or Political Matters

Illinois has enacted legislation that prohibits employers from taking adverse action against employees because they refuse to attend an employer-sponsored mandatory meeting that communicates the opinion of the employer about religious or political matters. The changes take effect **January 1, 2025**.

The Details:

Employers are prohibited from taking or threatening any adverse employment action against an employee because the employee refuses to attend or participate in an employer-sponsored meeting or declines to receive or listen to communications from the employer if it is to communicate 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, regulations, or public policy, and the decision to join or support any political party or political, civic, community, fraternal, or labor organization.

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

Employer Notice:

Within 30 days of January 1, 2025, employers must post a notice of employee rights under the law where employee notices are customarily placed. The law doesn't indicate whether the **Illinois Department of Labor** will develop such a notice.

Exceptions:

The law does not:

- 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 to conduct meetings involving religious or political matters, so long as attendance is voluntary, or to engage in communications, so long as receipt or listening is voluntary;
- Limit the rights of an employer from communicating to its employees any information that is necessary for the employees to perform their required job duties;
- Prohibit an employer from requiring its employees to attend any training intended to foster a civil and collaborative workplace or reduce or prevent workplace harassment or discrimination;
- Prohibit an institution of higher education, or any agent, representative, or designee of the institution, from conducting meetings or participating in any communications with its employees concerning any coursework, symposia, research, publication, or an academic program at the institution;
- Prohibit a political organization, a political party organization, a caucus organization, a candidate's political organization, or a not-for-profit organization that is exempt from taxation from requiring its staff or employees to attend an employer-sponsored meeting or participate in any communication with the employer for the purpose of communicating the employer's political tenets or purposes;
- Prohibit the General Assembly or a state or local legislative or regulatory body from requiring their employees to attend an employer-sponsored meeting or participate in any communication with the employer for the purpose of communicating the employer's proposals to change legislation, regulations, or public policy; or
- Prohibit a religious organization from requiring its employees to attend an employer-sponsored meeting or participate in any communication with the employer for the purpose of communicating the employer's religious beliefs, practices, or tenets.

Next Steps:

- Post the required notice within 30 days of January 1, 2025.
- Review policies and practices to ensure compliance with the law.
- Train supervisors on the new law.

Illinois Enacts New Pay Statement Requirements

With the enactment of SB 3208, Illinois has implemented new pay statement requirements for employers.

The Details:

Effective January 1, 2025, Illinois employers must meet certain pay statement requirements in relation to recordkeeping and employee requests for copies of pay statements.

Record Retention:

Employers must retain copies of pay statements for a period of three years as measured from the date of the payment of wages, regardless of whether the employee's employment ends during this period.

Request for Copies of Pay Statements:

Under SB 3208, in addition to providing a pay statement for each pay period, an employer must provide copies of pay statements to current and former employees upon request in accordance with the following rules:

- Employers may require that any request for copies of pay statements be made in writing.
- Requests from either a current or former employee must be made to a person responsible for maintaining the employer's payroll such as a designated individual in the employer's payroll or human resources department.
- Upon receipt of a written request, employers must provide copies of the pay statements within 21 calendar days.
- Employers are not required to fulfill more than two requests for pay statement records within a 12-month period.
- Employers are not required to grant pay statement requests from former employees made more than one year after the date of separation.
- Former employees may request whether they would prefer to receive the pay statements in a physical or electronic format.
- If an employer furnishes electronic pay statements that a former employee cannot access for at least a full year after separation, the employer, upon the employee's separation, must offer to provide the outgoing employee with a record of their pay statements from the year preceding their separation. The offer must be made by the end of the outgoing employee's final pay period. The employer must record in writing the date of the offer was made and the outgoing employee's response.

Penalties:

Employers who fail to comply with the requirements of SB 3208 may be subject to a civil penalty of up to $500 per violation payable to the Illinois Department of Labor.

Next Steps:

Illinois employers should begin to discuss and then implement the processes necessary to meet the requirements of SB 3208 prior to the January 1, 2025 effective date.

Illinois Establishes Guardrails Against Discrimination from AI

Illinois has enacted legislation that expressly prohibits discrimination by employers that deploy Artificial Intelligence (AI) to help them make employment decisions. The law (House Bill 3773) also requires employers that use AI to provide a notice to applicants and employees. House Bill 3773 takes effect **January 1, 2026**.

The Details:

House Bill 3773 prohibits employers from using AI for employment purposes if it has the effect of subjecting employees to discrimination on the basis of protected classes, such as race, under state law, or to use zip codes as a proxy for protected classes under state law.

Under House Bill 3773, an employer must also provide a notice to applicants and employees if the employer uses AI for employment purposes, such as recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure, or the terms, privileges, or conditions of employment.

The law directs the Illinois Department of Human Rights (IDHR) to issue regulations to implement the law, including the notice requirement.

Definitions:

The law defines AI as a machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments.

Under the law, AI includes generative artificial intelligence, which is defined as an automated computing system that, when prompted with human prompts, descriptions, or queries, can produce outputs that simulate human-produced content, including, but not limited to, the following:

- Textual outputs, such as short answers, essays, poetry, or longer compositions or answers;
- Image outputs, such as fine art, photographs, conceptual art, diagrams, and other images;
- Multimedia outputs, such as audio or video in the form of compositions, songs, or short-form or long-form audio or video; and
- Other content that would be otherwise produced by human means.

Next Steps:

- Review policies and practices to ensure compliance with the law.
- Watch for developments on the notice requirement.
- Consult legal counsel as needed.
- Train supervisors on the changes.

Illinois Prohibits Discrimination Because of Family Responsibilities

Illinois has enacted legislation that prohibits employers from discriminating against employees because of their family responsibilities. The changes take effect **January 1, 2025**.

The Details:

The law defines "family responsibilities" as an employee's actual or perceived provision of personal care to a family member.

The law defines "personal care" as activities to ensure that a covered family member's basic medical, hygiene, nutritional, or safety needs are met, or to provide transportation to medical appointments, for a covered family member who is unable to meet those needs themselves. It also means being physically present to provide emotional support to a covered family member with a serious health condition who is receiving inpatient or home care.

The definition of "family member" includes an employee's child, stepchild, spouse, domestic partner, sibling, parent, mother-in-law, father-in-law, grandchild, grandparent, or stepparent.

Exceptions:

The law doesn't require employers to make accommodations or modifications to reasonable workplace rules or policies for an employee based on family responsibilities, including accommodations or modifications related to leave, scheduling, productivity, attendance, absenteeism, timeliness, work performance, referrals from a labor union hiring hall, and benefits, as long as the rules or policies are applied in accordance with the state's nondiscrimination and anti-harassment law.

Next Steps:

- Review policies and practices to ensure compliance with the law.
- Train supervisors on the changes.

Illinois Prohibits Discrimination Because of Reproductive Health Decisions

Illinois has enacted legislation that prohibits employers from discriminating against employees because of their reproductive health decisions. The changes take effect **January 1, 2025**.

The Details:

Under the law, reproductive health decisions are defined as "a person's decisions regarding the person's use of: contraception; fertility or sterilization care; assisted reproductive technologies; miscarriage management care; healthcare related to the continuation or termination of pregnancy; or prenatal, intranatal, or postnatal care."

Next Steps:

- Review policies and practices to ensure compliance with the law.
- Train supervisors on the changes.

Minnesota Amends Paid Family and Medical Leave Program – Quarterly Reports Due by October 31, 2024

As we previously reported, Minnesota has enacted legislation that amended the state's paid family and medical leave program beginning January 1, 2026. The purpose of this communication is to focus on wage detail reporting requirements and the extent to which ADP can provide support. Clients with employees not covered by the state's unemployment insurance law will need to file wage detail reports directly with the state.

Wage Detail Reporting:

The first wage detail reports will be due on October 31, 2024, and will be based on wages paid between July 1, 2024, and September 30, 2024. The state's Paid Leave Division will leverage the existing Unemployment Insurance (UI) online system to collect wage detail reports for the program. Employers will need to provide the first and last name, Social Security Number (SSN), wages paid and hours worked for each employee. This is identical to information provided to the UI division. The method of reporting depends on whether the employer is covered by the state's UI program.

All Employees Covered by the UI Program:

If all employees are covered by the UI program, then employers will be able to submit a single wage detail file for both UI and Paid Leave programs when they pay their UI taxes. The data used in the UI filing will be used to report wages directly to the Paid Leave program. An employer's UI account will be automatically converted into a joint UI/Paid Leave account to allow submission of the wage detail report using the same process that is currently used today. Review additional information **here**.

No Employees Covered by the UI Program:

This means if an employer has any employees, even if they are not covered by Unemployment Insurance, they are likely covered by Paid Leave. Such employers will need to register for a "Paid Leave Only" account through the **UI Online system**. Review additional information **here**.

Some Employees Covered and Some Not Covered by the UI Program:

This means if an employer has:

- Already registered with UI – they will need to **register** for a Paid Leave Only account for employees not covered by UI.
- Not already registered with UI – they will need to **register** twice. They will register for both a Joint UI/Paid Leave account and a Paid Leave Only account.

Review additional information **here**.

Review the state's **website** for more information on covered vs. noncovered employment under the UI program as well as **FAQs**.

Next Steps:

- For clients with all employees covered by the UI program, no action is required if ADP is currently submitting a wage detail file for the UI program on your behalf.
- Clients with no employees covered by the UI program should **register** for a Paid Leave Only account and should also plan to file wage detail reports, including the first report due on October 31, 2024. ADP is continuing to evaluate its system capabilities for future reporting.
- Clients with some employees covered and some employees not covered by the UI program and currently registered with a UI program account, should **register** for a Paid Leave Only account. These clients should also plan to file wage detail reports for the Paid Leave Only account, including the first report due on October 31, 2024. As indicated above, ADP is continuing to evaluate its system capabilities for future reporting.

New Jersey Protects Immigrant Workers from Employer Coercion

New Jersey has enacted legislation (Senate Bill 2869), which prohibits an employer from coercing workers based on immigration status to violate state employment or labor-related laws. Senate Bill 2869 is **effective immediately**.

The Details:

Under the law, an employer found to have **coerced** or attempted to coerce an employee using the worker's immigration status to violate a state employment or labor-related law may face a civil penalty. See the **text of the law** for exceptions.

Penalties cannot exceed $1,000 for the first violation, $5,000 for a second violation and $10,000 for subsequent violations, and are in addition to penalties that may be imposed by other laws.

For example, an employer that does not pay appropriate wages may face penalties under the "New Jersey State Wage and Hour Law" or the wage payment law. If an employer fails to pay appropriate wages and then threatens an employee based on the employee's immigration status (to prevent the employee from reporting the violation), the employer may face extra penalties.

Covered state employment or labor-related laws include, but are not limited to:

- The **New Jersey Prevailing Wage Act**;
- The **New Jersey State Wage and Hour Law**;
- The **New Jersey Temporary Disability Benefits Law**;
- The **New Jersey Gross Income Tax Act**; and
- New Jersey's **Workers Compensation** and **Unemployment Compensation** laws.

See the **text of the law** for further examples.

Next Steps:

New Jersey employers should update relevant employment policies and train supervisors to help ensure compliance with Senate Bill 2869.

State of New York Takes Action to Prevent Violence in Retail

New York has enacted legislation (Assembly Bill A8947C), which will require certain retail employers to take action to help prevent workplace violence and to install panic buttons. Assembly Bill A8947C's workplace prevention requirements take effect on **March 4, 2025**. The panic button requirements take effect on **January 1, 2027**.

The Details:

The **Retail Worker Safety Act** (the Act) requires employers with 10 or more retail employees to implement a **workplace violence prevention policy** and provide training and notice on workplace violence prevention to employees. The Act also requires panic buttons for employers with 500 or more retail employees.

Note: The Act defines a retail employee as an individual who works at a store that sells consumer commodities at retail and is not primarily engaged in selling food for consumption on the premises. A workplace is defined as a location away from an employee's home (permanent or temporary) where an employee performs a work-related duty in the course of employment by their employer.

Policy Requirements:

Effective **March 4, 2025**, employers with 10 or more retail employees must:

- Adopt either the state's model workplace violence prevention plan (to be updated by the state every four years beginning in 2027) or a custom policy that meets or exceeds the state model's minimum requirements.

The New York model policy will:

- Clearly state that it is unlawful to retaliate against an individual who: 1) complains of workplace violence or the presence of factors or situations in the workplace that might place a retail employee at risk of workplace violence; or 2) testifies or assists in a proceeding under the law.
- Outline factors or situations that might put retail employees at risk of workplace violence, such as working alone, in small numbers, late at night or early morning hours; exchanging money with the public; or uncontrolled access to a workplace.
- List ways for employers to help prevent incidents of workplace violence, such as creating and implementing reporting systems for incidents of workplace violence.
- Have federal and state statutory provision information (including a statement that there may be applicable local laws) regarding violence against retail employees and the remedies available to such victims.

Training Requirements:

Employers must:

- Train on workplace violence prevention using the state's model training program or a custom program that meets or exceeds the state's model training program.
- Provide the training to all retail employees upon hire and annually thereafter.
- The training program must be interactive and include:
    - Information on the Act's requirements;
    - Training on previous security problems;
    - Emergency procedures, de-escalation tactics, and active shooter drills;
    - Examples of ways retail employees can help protect themselves when faced with workplace violence from customers or other co-workers;
    - Instruction on security alarms, panic buttons, and other related emergency devices; and
    - Information that addresses supervisor conduct and responsibilities, including ways to address workplace-specific emergency procedures.

Employer Notice Requirements:

Beginning **March 4, 2025**, covered employers must provide every employee upon hire and annually at each workplace violence prevention training thereafter:

- A copy of the written workplace violence prevention plan;
- A notice in writing (in English and the employee's primary language) that contains the employer's retail workplace violence prevention policy and the information presented at the workplace violence prevention training program; and
- A site-specific list of emergency exits and meeting places in case of emergency.

Panic Buttons:

Under the law, beginning **January 1, 2027**, employers with 500 or more retail employees nationwide must provide access to panic buttons throughout their workplaces. If an employer chooses to use wearable or mobile phone-based panic buttons, the employer must provide the panic buttons to each of its retail employees.

Note: Mobile phone-based panic buttons must only be installed on employer-provided equipment, and wearable and mobile phone-based panic buttons cannot be used to track employee locations (except when the panic button is triggered).

Next Steps:

- Employers with 10 or more retail employees should review and update workplace safety policies, procedures, and trainings to help ensure compliance with Assembly Bill A8947C by **March 4, 2025**.
- Employers with 500 or more retail employees nationwide should ensure panic buttons are installed by **January 1, 2027**.
- All covered employers should monitor the **New York Workplace Violence Prevention** site for updates.

Rhode Island Requires Veterans Benefits and Services Poster

Rhode Island has enacted legislation (House Bill 7058), which will require employers with more than 50 employees to post a veterans' benefits and services poster. House Bill 7058 takes effect on **January 1, 2025**.

The Details:

Beginning **January 1, 2025**, Rhode Island employers with 50 or more employees must display a veterans' benefits and service poster (to be created by the Rhode Island Department of Labor and Training and the Office of Veterans Services) in a conspicuous place, accessible to employees in the workplace.

The poster will include information regarding the following services available to veterans:

- Contact and website information for the Office of Veterans Services and the department's veterans' program;
- Substance abuse and mental health treatment;
- Educational, workforce, and training resources;
- Tax benefits;
- Rhode Island state veteran drivers' licenses and non-driver identification cards;
- Eligibility for unemployment insurance benefits under state and/or federal law;
- Legal services; and
- Contact information for the United States Department of Veterans Affairs (VA) veterans crisis line.

Next Steps:

- Review **Rhode Island workplace posters**, policies and procedures and display the required poster by January 1, 2025.

Minimum Wage

Minimum Wage Announcements: 8/21/24 – 9/20/24

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

State or Locality	Minimum Wage Rate	Minimum Tipped Cash Wage	Effective Date(s)	New or Updated Poster Requirement?	Notes
Flagstaff, AZ	$17.85	$16.85	1/1/25	Yes	Once available found here.
California	$16.50	$16.50*	1/1/25	Yes	Once available found here.
Petaluma, CA	$17.97	$17.97*	1/1/25	Yes	Once available found here.
San Carlos, CA	$17.32	$17.32*	1/1/25	Yes	
Minnesota (Employer annual gross volume exceeds $500k)	$11.13	$11.13*	1/1/25	Yes	Once available found here.
Minnesota (Employer annual gross volume exceeds $500k)	$11.13	$11.13*	1/1/25	Yes	Once available found here.
Minneapolis, MN	$15.97	$15.97*	1/1/25	Yes	
St. Paul, MN (101 to 10,000 EEs)	$15.97	$15.97*	1/1/25	Yes	Once available found here.
St. Paul, MN (6 to 100 EEs)	$15.00	$15.00*	7/1/25	Yes	Once available found here.
St. Paul, MN (5 or fewer EEs)	$13.25	$13.25*	7/1/25	Yes	Once available found here.
Maine	$14.65	$7.33	1/1/25	Yes	

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

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

Federal

Federal Appeals Court Strikes Down Tipped Employee 80/20/30 Rule

On August 23, 2024, a three-judge panel of the United States Fifth Circuit Court of Appeals unanimously struck down the 2021 Department of Labor (DOL) Final Rule regarding tipped employees.

The Details:

Under the Fair Labor Standards Act (FLSA), employers are allowed to count a portion of tips received by a "tipped employee" toward meeting the federal minimum wage. A "tipped employee" is defined as "any employee engaged in an occupation in which he customarily and regularly receives more than $30 a month in tips." Currently, an employer may take a tip credit of $5.12 per hour and pay a cash wage of $2.13 per hour. However, the cash wage of $2.13 and the tips received must equal at least $7.25 (federal minimum wage). If the cash wage and tips are less than $7.25, the employer must pay the employee the additional amount necessary to bring the employee to at least $7.25.

In 1967, the Department of Labor (DOL) issued the "dual jobs" regulation addressing situations where an employee engages in distinct jobs for the same employer. Under that regulation, for example, a maintenance worker in a hotel who also works as a server in the hotel's restaurant would be considered a "tipped employee" only when working as a server. **The August 2024 Federal Appeals Court decision did not impact the DOL "dual jobs" rule**.

80/20 Rule:

In 1988, the DOL revised its Field Operations Handbook (FOH) to specify there are three categories of activity for tipped employees as follows:

(1) tip-producing work, like taking a customer's order; (2) activities related to tip-producing work, like re-filling salt and pepper shakers; and (3) activities unrelated to tip-producing work, like taking garbage to the dumpster. The FOH declared that employers may take no tip credit for time spent on the third "unrelated" category, and that the employer would lose the tip credit for any time spent on the second "related" category, if the employee spends more than 20 percent of the workweek on that type of activity.

The 80/20 rule proved to be controversial. The Bush administration rescinded the rule, only to have the Obama administration reinstate it. Subsequently, the Trump administration adopted a regulation stating that workers could be paid the tipped minimum wage if they primarily performed tipped duties.

80/20/30 Rule:

In October 2021, the Biden administration issued a Final Rule known as the 80/20/30 rule and established three categories of work:

1. Directly tip-producing work, such as a server providing table service.
2. Directly supporting work, such as setting and bussing tables.
3. Work that is not part of the tipped occupation, such as preparing food.

The Final Rule stipulated that an employer may take a tip credit for tip-producing work. If an employee spends more than 20 percent of his or her working time on directly supporting work, the employer cannot take the tip credit for any time beyond 20 percent. Additionally, a new rule was introduced stating that if an employee spends more than 30 continuous minutes in directly supporting work, then the employer cannot take a tip credit for the time after the first 30 minutes. Finally, any time spent in the third category (work that is not part of the tipped occupation) had to be compensated at full minimum wage (e.g., no tip credit could be taken).

Challenges to 80/20/30 Final Rule:

Several restaurant industry groups sought to halt the rule on the grounds that it is "arbitrary, capricious, contrary to the FLSA, promulgated in violation of the Administrative Procedures Act, and a violation of separation of powers." A lower federal court judge, Robert Pittman, ultimately sided with the DOL and denied the industry groups' request relying on the "Chevron doctrine," which required courts to defer to a federal agency's position (such as the DOL) on the law when a statute is open to interpretation.

The restaurant groups appealed the lower federal court decision to the Fifth Circuit Court of Appeals (Fifth Circuit) which has jurisdiction over Louisiana, Mississippi and Texas. The following June, in unrelated litigation, the United States Supreme Court overturned the Chevron doctrine in *Loper Bright Enterprises v. Raimondo* and directed courts to make their own independent determination of an agency's authority rather than deferring to agencies.

80/20/30 Final Rule Vacated:

As noted above, on August 23, 2024, the Fifth Circuit vacated the 80/20/30 Final Rule. The Fifth Circuit relied in part on the *Loper Bright* decision mentioned above in concluding that the Final Rule is "arbitrary and capricious because it draws a line for application of the tip credit based on impermissible considerations and contrary to the statutory scheme enacted by Congress." In short, the Fifth Circuit found that tipped employees are no longer tipped employees only if they engage in unrelated occupations; not because of the amount of time they spend within their tipped occupations performing tasks that may not generate tips. The Fifth Circuit indicated, by way of example, that if a core duty of a tipped employee server is bussing and setting up tables, the server is still undoubtedly engaged in their occupation. It does not matter whether they are tipped or not for those duties.

Next Steps:

As of now, the DOL has not responded to the Fifth Circuit panel ruling, so it is not known whether the DOL will appeal to the full Fifth Circuit Court. By vacating the Final Rule, the Fifth Circuit intended for their ruling to override the 80/20/30 rule on a nationwide basis. However, other appeals courts may rule that the Fifth Circuit did not have the authority to rule on a nationwide basis. This is yet to be seen.

Employers with tipped employees should discuss with their legal counsel whether to apply the Fifth Circuit ruling on a nationwide basis or apply the ruling only to employers under the jurisdiction of the Fifth Circuit (e.g. Louisiana, Mississippi and Texas).

Employers should also keep in mind that state law may differ. For example, some states have different requirements relating specifically to tips – with some completely prohibiting use of the tip credit.

ADP will continue to monitor and report on further developments.

New IRS Guidance on Employer Matching of Student Loan Payments to Retirement Savings

Read the article here.

ADP Compliance Resources

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

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

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