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Eye on Washington
State and Local Update

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

Topics covered in this issue:

Benefits

California Requires FSA Claim Deadline Notification

On August 30, 2019, California Governor Gavin Newsom signed into law Assembly Bill 1554 (AB 1554). Effective January 1, 2020, AB 1554 requires an employer to notify an employee who participates in a flexible spending account (FSA) — including, but not limited to, a dependent care flexible spending account, a health flexible spending account, or adoption assistance flexible spending account — of any deadline to withdraw funds before the end of the plan year.

AB 1554, in part, states:

(a) [. . .] Notice shall be by two different forms, one of which may be electronic.

(b) Notices made pursuant to subdivision (a) may include, but are not limited to the following:

(1) Electronic mail communication.

(2) Telephone communication.

(3) Text message notification.

(4) Postal mail notification.

(5) In-person notification.

A copy of A 1554 may be found at the link below:

http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB1554

Leave

New York Announces 2020 Paid Family Leave Employee Contribution Limits

Background:

On April 4, 2016, New York Governor Andrew Cuomo signed legislation as part of the 2016-17 state budget that provides a 12-week paid family leave benefit. The New York benefits were phased in beginning in 2018 at 50 percent of an employee's average weekly wage, capped to 50 percent of the statewide average weekly wage, and will be fully implemented in 2021 at 67 percent of an employee's average weekly wage, capped to 67 percent of the statewide average weekly wage. Below are highlights of the program:

- Eligible employees will be able to take paid leave to:
    - Bond with a new child (including an adopted or foster child) within the first 12 months after the birth, adoption, or placement;
    - Provide physical or psychological care for the serious health condition of the employee's child, spouse, domestic partner, parent (including stepparent or legal guardian), parent-in-law, sibling, grandchild, or grandparent; or
    - Address certain exigent needs when a spouse, domestic partner, child, or parent of the employee is called to active military service.
- Paid leave time may be taken intermittently in increments of one full day or one-fifth of the weekly benefit.
- Employers may require paid leave under the law to run concurrently with any unpaid leave to which an employee is eligible under the federal Family and Medical Leave Act ("FMLA").
- Provides job protection guarantees for all employees taking leave and requires the continuation of health-care benefits during the leave period.
- The program will be funded entirely through a nominal payroll deduction from employees.
- Employees are eligible to participate after having worked for their employer for six months.
- Employees must also provide their employers with written notice and proof of the need for family leave from the family leave care recipient's health-care provider. Further, family leave care recipients may be required to undergo a physical examination by a qualified health-care provider for additional verification.
- Employers will be required to conspicuously post notice indicating that they have complied with the paid family leave requirements and must provide employees who take paid family leave for more than seven consecutive days a written notice of their rights under the law. Penalties for noncompliance with the notice requirements include monetary fines ranging from $100 to $2,000 and/or potential imprisonment.

Updated Rates for 2020

The New York Paid Family Leave legislation requires that each September 1st, the Department of Financial Services (DFS) must publish the maximum employee contribution that an employer is authorized to collect from each of its employees to fund family leave benefits.

A chart showing the 2019 versus 2020 rates are shown below:

	2019	2020
*Average Weekly Wage	$1,357.11	$1,401.17
Contribution Rate	0.153%	0.27%
Maximum Contribution	$107.97	$196.72

*Average Weekly Wage is the average weekly wage paid in New York state during the previous calendar year 2018 as reported on March 31, 2019.

Bernalillo County, New Mexico, Passes Paid Leave Ordinance

On August 20, 2019, the Bernalillo County Board of Commissioners passed Ordinance 2019-17 mandating employer paid time off to employees within Bernalillo County. Effective July 1, 2020, employers in the county must provide paid leave that can be used for any reason to full-time, part-time, seasonal, and temporary employees (including County employees) who have worked at least 56 hours in the year and who are eligible for the state minimum wage rate.

Note: New local businesses are exempt from the ordinance for the first 12 months of operation.

Highlights of Ordinance 2019-17 are as follows:

- Employees will accrue one hour for every 32 hours worked.
- Frontloading of hours is permitted.
- The maximum accrual will be adjusted over three years:
    - Effective July 1, 2020, the maximum accrual is 24 hours per year.
    - Effective July 1, 2021, the maximum accrual is 40 hours per year.
    - Effective July 1, 2022, the maximum accrual is 56 hours per year.
- Accrual begins on the 90th day of employment or the effective date of the ordinance for current employees.
- Exempt employees will be considered to work 40 hours per week for the purposes of accrual calculations.
- Employees must be allowed to carry over any unused accrued hours to the following year up to the maximum accrual required for the current year.
- Accrued leave may be taken on the 90th day of employment, or the effective date of the law, whichever is later.
- Employers are required to retain records that include the amount of earned paid time off accrued or used for each pay period for each employee for up to four years.
- Employers who have a paid time off policy that is more generous may use such policy and are not required to provide additional time off or track paid time separately.
- Employers must provide notice upon hire or display a poster regarding earned paid leave that includes the amount of time off provided and how time may be used, how to request time off, retaliation protections, and the right to file a complaint.
- Violations of the paid leave ordinance are subject to a civil penalty of $50 per week for each separate violation up to a maximum of $500 for each offense.

Payroll

Illinois Amends Nonresident Withholding Threshold

The Illinois Income Tax Act has been amended via Senate Bill 1515 and now contains provisions to establish a nonresident withholding threshold and requires the use of a time and attendance system, when available, to determine the number of days worked in the state.

Withholding Threshold

Under current law, employers must withhold income tax from wages, salaries, or other compensation paid to employees if:

- the employee performs services for the employer entirely in Illinois;
- the employee performs some services for the employer in Illinois and the employee's base of operations is in the state;
- the employee performs some services for the employer in Illinois and the place from which the services is directed or controlled is in the state; or
- the employee is an Illinois resident.

For tax years ending on or after December 31, 2020, employers must withhold income tax from compensation paid to employees if:

- the employee performs some services for the employer in Illinois;
- the services performed in Illinois are not incidental to services performed outside the state; and
- the employee performs the services in Illinois for more than 30 "working days" during the tax year.

Note: The 30-day threshold also does not apply to the credit residents can claim for taxes paid to another state or jurisdiction.

The amount of compensation paid in Illinois must include the portion of the taxpayer's total compensation for services performed on behalf of his or her employer which the number of working days spent within Illinois bears to the total number of working days spent both within and without Illinois during the tax year.

Working Days in Illinois

A working day covers all days during the tax year in which employees perform duties for their employer. It does not include:

- weekends;
- vacation days;
- sick days;
- holidays; or
- other days in which employees perform no duties for their employer.

Employees spend a working day in Illinois if:

- they spend a greater amount of time that day performing services for their employer in the state than outside the state; or
- the only service they perform for their employer on that day is traveling to a destination in the state and they arrive on that day.

Record Keeping for Nonresident Employees

Employers who maintain a time and attendance system that tracks where employees perform services on a daily basis must use the system to determine compensation paid in Illinois to nonresident employees. A time and attendance tracking system is a tool that:

- requires employees to record their work location for every day worked outside the state where the employment duties are primarily performed; and
- allows the employer to divide the employee's wages among all states in which the employee performs services.

Otherwise, employers must get a written statement from nonresident employees of the number of days that the employee expects to spend performing services in Illinois during the tax year.

Disaster Relief Services and Other Exceptions

Working days spent in Illinois do not include any days that employees spend performing services in the state during a disaster period. The exception applies only to a disaster or emergency relief request made to an employer by:

- Illinois state and local government agencies or officials; or
- businesses in the state.

The exception covers the period that:

- begins 10 days before the date of the state's proclamation or federal declaration of a disaster, whichever is earlier; and
- extends for 60 calendar days after the end of the declared disaster or emergency.

Disaster services consist of activities that relate to infrastructure that has been damaged or destroyed by the disaster or emergency.

For a copy of Senate Bill 1515, please click on the link provided below:

http://www.ilga.gov/legislation/fulltext asp?DocName=&SessionId=108&GA=101&DocTypeId=SB&DocNum=1515&GAID=15&LegID=118434&SpecSess=&Session=

Minimum Wage to Increase in Minnesota Effective January 1, 2020

On August 21, 2019, the Minnesota Department of Labor and Industry announced that the state minimum wage would increase effective January 1, 2020 as follows.

Large employers (those with annual gross sales of $500,000 or more, exclusive of retail excise taxes):

- Increase from $9.86 per hour to $10.00 per hour.

Small Employers (those with annual gross sales of less than $500,000, exclusive of retail excise taxes):

- Increase from $8.04 per hour to $8.15 per hour.

The 90-day training wage for workers under the age of 20, and the youth wage for workers under the age of 18, will also increase from $8.04 per hour to $8.15 per hour.

It is important to note that these state minimum wage rates will not apply to work performed in the city of Minneapolis, which has higher minimum-wage rates.

New Hampshire Governor Vetoes Minimum Wage Increase

On August 9, New Hampshire Governor Chris Sununu vetoed Senate Bill 10 (SB 10), which would have raised the state's minimum hourly rate in stages to $12 per hour by 2022.

SB 10, if enacted, would have provided that no person, firm, or corporation could employ any employee at an hourly rate lower than that set forth in the federal minimum wage law, as amended, or the following, whichever is higher:

- From January 1, 2020 to December 31, 2021, $10 per hour.
- From January 1, 2022 and thereafter, $12 per hour.

Governor Sununu stated "I will not be the Governor that signs a bill that will lead to lost jobs, cut hours, and less money in the pockets of hard-working Granite Staters. There is nothing positive about reducing a worker's chances of getting a job. New Hampshire's economy is booming, and I will do everything in my power to ensure we continue that trend, not hinder it."

Washington, D.C., Garnishment Change Effective October 1, 2019

Effective for creditor garnishment writs issued on or after October 1, 2019, Washington, D.C. withholding limits from wages for creditor garnishments are modified as follows:

- 25 percent of weekly disposable earnings in excess of 40 times the District of Columbia minimum hourly wage in effect. Currently the minimum wage in the District of Columbia is $14.00 per hour.
- Employers may not withhold from an employee in any week in which their disposable wages do not exceed 40 times the District of Columbia minimum hourly wage.

Note: When there is more than one attachment on the employee's wages, the amount taken for a higher priority lien reduces the amount available for deducting for the creditor garnishment.

Writs issued prior to October 1, 2019, are subject to withholding limits of 25 percent of disposable wages for that week, or (2) the amount by which disposable wages for that week exceeds 30 times the federal minimum hourly wage effect at the time the wages are payable, whichever is less.

The change was originally reported to be effective for writs issued on or after April 11, 2019, but the District of Columbia Council has confirmed that the change is effective for writs issued on or after October 1, 2019, to coincide with the District's Fiscal Year 2020 budget.

For a copy of the legislation modifying the withholding limits, please click on the link provided below.

http://lims.dccouncil.us/Download/39180/B22-0572-SignedAct.pdf

Minneapolis, Minnesota, Adds to State Wage Theft Act

Minneapolis, Minnesota, has enacted an ordinance titled the "Minneapolis Wage Theft Prevention Ordinance" (Ordinance) that provides for additional requirements on employers in addition to those already outlined under the Minnesota Wage Theft Act (Act). While the Act is effective July 1, 2019, **the Ordinance is effective January 1, 202**0.

For information on the Minnesota Wage Theft Act, please see the article from the June 2019 Tech Flex titled "Minnesota Enacts Wage Theft Act" at the following link:

https://viproom.adp.com/home/clients/fsa_cobra/tf/Tech_Flex_Newsletter_June_2019.pdf

It is important to note that employers subject to the **Ordinance** must also meet the requirements of the **Act**.

Wage Statements:

Under the **Act**, the following information must be provided on employee's wage statements:

(1) the name of the employee;

(2) the rate or rates of pay and basis thereof, including whether the employee is paid by hour, shift, day, week, salary, piece, commission, or other method;

(3) allowances, if any, claimed pursuant to permitted meals and lodging;

(4) the total number of hours worked by the employee unless exempt from Chapter 177;

(5) the total amount of gross pay earned by the employee during that period;

(6) a list of deductions made from the employee's pay;

(7) the net amount of pay after all deductions are made;

(8) the date on which the pay period ends;

(9) the legal name of the employer and the operating name of the employer, if different from the legal name;

(10) the physical address of the employer's main office or principal place of business, and a mailing address, if different; and

(11) the telephone number of the employer.

In addition to the requirements of the Act, the **Ordinance** requires employers to also include the number of hours of "Sick and Safe Time accrued and unused by the employee" as provided for under the Minneapolis Sick and Safe Time Ordinance.

Both the **Act and Ordinance** require that an employer must provide earnings statements to an employee in writing, rather than by electronic means, if the employer has received at least 24- hours' notice from an employee that the employee would like to receive earnings statements in written form. Once an employer has received notice from an employee that the employee would like to receive earnings statements in written form, the employer must comply with that request on an ongoing basis.

New Hire Notice:

Under the Act at the start of employment, an employer must provide each employee a written notice containing the following information:

(1) the rate or rates of pay and basis thereof, including whether the employee is paid by the hour, shift, day, week, salary, piece, commission, or other method, and the specific application of any additional rates;

(2) allowances, if any, claimed pursuant to permitted meals and lodging;

(3) paid vacation, sick time, or other paid time-off accruals and terms of use;

(4) the employee's employment status and whether the employee is exempt from minimum wage, overtime, and other provisions of Chapter 177, and on what basis;

(5) a list of deductions that may be made from the employee's pay;

(6) the number of days in the pay period, the regularly scheduled pay day, and the pay day on which the employee will receive the first payment of wages earned;

(7) the legal name of the employer and the operating name of the employer, if different from the legal name;

(8) the physical address of the employer's main office or principal place of business, and a mailing address if different; and

(9) the telephone number of the employer.

In addition to the requirements of the Act, Minneapolis employers must provide the following additional information in the New Hire Notice:

(1) The date on which the employment is to begin.

(2) A notice of the employee's rights under the Sick and Safe Time Ordinance, including the date on which the employee will begin to accrue Sick and Safe Time.

(3) The employer's policy regarding gratuities, if applicable to the position.

(4) The overtime policy applicable to the employee's position, if any, including when overtime shall be paid and the applicable rate or rates of pay.

Under the **Ordinance**, the written notice may provide this information by explicit reference to an employee handbook, if employees are directed to the specific sections of the handbook in which such information is provided. An employer must also keep a copy of the notice signed by an employee acknowledging receipt and indicating the date the notice was received by the employee.

The **Act** requires that the employer must keep a copy of the notice signed by each employee acknowledging receipt of the required notice.

Record Keeping:

Under the Act, every employer subject to the Minnesota Fair Labors Standards Act must make and keep a record of:

(1) the name, address, and occupation of each employee;

(2) the rate of pay, and the amount paid each pay period to each employee;

(3) the hours worked each day and each workweek by the employee, including for all employees paid at piece rate, the number of pieces completed at each piece rate;

(4) a list of the personnel policies provided to the employee, including the date the policies were given to the employee and a brief description of the policies;

(5) a copy of the notice provided to each employee, as required, including any written changes to the notice;

(6) for each employer subject to the State Projects and State Highway Construction Public Policy and while performing work on public works projects funded in whole or in part with state funds, the employer shall furnish under oath signed by an owner or officer of an employer to the contracting authority and the project owner every two weeks, a certified payroll report with respect to the wages and benefits paid each employee during the preceding weeks, specifying for each employee: name; identifying number; prevailing wage master job classification; hours worked each day; total hours; rate of pay; gross amount earned; each deduction for taxes; total deductions; net pay for week; dollars contributed per hour for each benefit, including name and address of administrator; benefits account number; and telephone number for health and welfare, vacation or holiday, apprenticeship training, pension, and other benefits programs.

(7) other information the commissioner finds necessary and appropriate to enforce the law.

Under the **Ordinance**, an employer must keep the following records:

(1) The name, address, and position of each employee;

(2) The prehire notice(s) and any changes;

(3) The required statements of earnings required, together with any additional information required to demonstrate how the total amount of gross pay earned by the employee was calculated. This information includes, but is not limited to, the hours worked each day and workweek for employees paid on an hourly basis; the number of pieces completed for employees paid at a piece rate; and the method of calculating commissions for employees paid on a commission basis; and

(4) A list of personnel policies provided to the employee, including the date the policies were given to the employee and a brief description of the policies.

The **Act** requires the records must be kept for three years in the premises where an employee works except each employer subject to sections State Projects and State Highway Construction Public Policy, and while performing work on public works projects funded in whole or in part with state funds, the records must be kept for three years after the contracting authority has made final payment on the public works project. All records required to be kept must be readily available for inspection by the commissioner upon demand. The records must be either kept at the place where employees are working or kept in a manner that allows the employer to comply with this paragraph within 72 hours.

The **Ordinance** requires records must be retained while the employee is employed by the employer and for at least three (3) years after the termination of the employment, except for the required statement of earnings, which shall be retained for at least three (3) years after the date upon which the statement was provided to the employee. An employer must allow an employee to inspect records required relating to the employee at a reasonable time and manner.

For a copy of the Ordinance, please click on the link provided below:

https://lims.minneapolismn.gov/Download/File/2594/Wage%20Theft%20Ordinance%20(4)%20Corrected%20July29.pdf

South San Francisco, California, Adopts Minimum Wage

The city of South San Francisco has enacted Ordinance 19-437 (Ordinance) which increases the minimum wage in the city to $15.00 per hour, effective January 1, 2020. The Ordinance applies to employees if they perform at least two hours of work a week within South San Francisco boundaries. A learner's subminimum wage will be $12.75 per hour (85% of the minimum wage) in 2020 for the first 160 hours of employment. Currently the minimum wage rate in South San Francisco is the California state minimum wage, $12.00 per hour. The use of tip credits to pay tipped employees is not allowed in California.

The minimum wage will be adjusted for inflation in 2021 and the city is required to publish a minimum wage notice for employers with the inflation adjusted minimum wage rate each year.

A $50 penalty may apply for each employee per day a wage violation of the minimum wage requirements occur.

For a copy of Ordnance 19-437, please click on the link provided below.

https://ci-ssf-ca.legistar.com/LegislationDetail.aspx?ID=4116978&GUID=B3942E0C-AC63-4CD4-BED2-BB3120FD0E2B

Time and Labor

Illinois Expands Human Rights Act to Cover All Employers

Illinois has enacted legislation (House Bill 252) that will amend the Illinois Human Rights Act to cover all employers. House Bill 252 takes effect July 1, 2020.

Background

Currently, the Illinois Human Rights Act prohibits employers with 15 or more employees from discriminating against applicants and employees because of their race, color, religion, national origin, ancestry, age, sex, pregnancy, disability, marital status, order of protection status, military status, sexual orientation, or unfavorable discharge from military service.

Note: The law applies to all employers when a complainant alleges a civil rights violation due to unlawful discrimination, based upon their disability, pregnancy, or sexual harassment.

House Bill 252

Effective July 1, 2020, the Illinois Human Rights Act's prohibitions on employment discrimination will apply to all employers with one or more employees in the state.

House Bill 252 also makes clear that the definition of employer does not cover, among other exceptions already in the law, places of worship with respect to employees whose work is connected with the place of worship.

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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