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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:

Leave

California Adopts New COVID-19 Prevention Requirements Including Paid Leave

As we previously reported, the California Department of Industrial Relations (DIR) has adopted emergency rules related to protecting workers from COVID-19, including a requirement for employers to adopt a written prevention program which must include processes to exclude employees from work under certain circumstances and provide the employee with paid leave.

Specifically, with respect to exclusion/leave requirements employers must:

- Ensure that COVID-19 cases are excluded from the workplace until return to work requirements are met (see details in next section).
- Exclude employees with COVID-19 exposure from the workplace for 14 days after the last known COVID-19 exposure to a COVID-19 case.

Paid Leave Required

For employees excluded from work under these rules and who are otherwise able and available to work, employers must continue and maintain an employee's earnings, seniority and all other employee rights and benefits, as if the employee had not been removed from their job. Employers may use employer-provided employee sick leave benefits for this purpose and consider benefits payments from public sources in determining how to maintain earnings, rights and benefits, where permitted by law, and when not covered by workers' compensation.

However, these requirements don't apply:

- To any period of time during which the employee is unable to work for reasons other than protecting persons at the workplace from possible COVID-19 transmission.
- Where the employer demonstrates that the COVID-19 exposure isn't work-related.

At the time of exclusion, the employer must provide the employee with information regarding COVID-19-related benefits to which the employee may be entitled under applicable federal, state, or local laws. Employers must also inform employees of the rights and benefits extended to employees excluded from work under the rules, but who are otherwise able and available to work.

Employees who haven't been excluded or isolated by the local health department need not be excluded by the employer, if they are temporarily reassigned to work where they don't have contact with other persons until the return to work requirements are met.

Processing Exclusion Pay

Exclusion pay is not considered hours worked and therefore would not count toward "total hours worked" for California wage statement compliance purposes (which requires in relevant part that total hours worked be displayed on the pay statement).

Exclusion pay hours would also not count toward overtime.

To process these payments you should contact your Payroll Advisor to have an hours/earnings code established for exclusion pay that is not to be included in total hours worked or overtime calculations.

Return to Work Criteria

Under the emergency rules, an employee with COVID-19 symptoms is prohibited from returning to work until:

- At least 24 hours have passed since a fever of 100.4 or higher has resolved without the use of fever-reducing medications;
- COVID-19 symptoms have improved; and
- At least 10 days have passed since COVID-19 symptoms first appeared.

In the event an employee tested positive but never developed COVID-19 symptoms, the individual is prohibited from returning to work until a minimum of 10 days have passed since the date of specimen collection of their first positive COVID-19 test. The rules prohibit requiring a negative COVID-19 test for an employee to return to work.

If an order to isolate or quarantine an employee is issued by a local or state health official, the employee is prohibited from returning to work until the period of isolation or quarantine is completed or the order is lifted. If no period was specified, then the period is 10 days from the time the order to isolate was effective, or 14 days from the time the order to quarantine was effective.

If there are no violations of local or state health officer orders for isolation or quarantine, the DIR may, upon request, allow employees to return to work on the basis that the removal of an employee would not create undue risk to a community's health and safety. In such cases, the employer must develop, implement and maintain effective control measures to prevent transmission in the workplace including providing isolation for the employee at the workplace and, if isolation isn't possible, the use of respiratory protection in the workplace.

For a copy of the California Emergency Rule frequently asked questions, click on the link provided below.

https://www.dir.ca.gov/dosh/coronavirus/COVID19FAQs.html#exclusions

California State COVID-19 Supplemental Paid Sick Leave Returns

On March 19, 2021, California Governor Gavin Newsome signed into law Senate Bill 95 (SB 95) found at **https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB95** which resurrects the statewide COVID-19 Supplemental Paid Sick Leave.

It was previously reported that earlier this year, Governor Newsom signed Executive Order (EO) N-51-20, which provided COVID-19 supplemental paid sick leave (CPSL) for food sector workers and on September 9, 2020, California Governor Gavin Newsom signed Assembly Bill 1867, that adds CPSL requirements for other employers under California Labor Code 248.1.

The requirements to provide supplemental paid sick leave under CPSL for covered workers expired on December 31, 2020 as the mandatory federal extension of the Emergency Paid Sick Leave Act established by the federal Families First Coronavirus Response Act was not extended.

March 19, 2021 Enacted Legislation

SB 95 takes effect on the date of signing by the Governor, is retroactive back to January 1, 2021 and will remain in effect until September 30, 2021. However, the requirement to provide CPSL will take effect 10 days after the date of enactment.

Highlights of SB 95 are as follows:

Employers Subject
Employers in the state of California with 25 or more employees. Small businesses employing 25 or fewer workers are exempt from the legislation, but may offer supplemental paid sick leave and, if eligible, receive a federal tax credit.

Employees Covered
Employees who are not able to work or telework for any of the "qualified reasons" noted in the following section. There is no length of service requirement for the leave entitlement.

Qualified Reasons
- The employee is subject to a quarantine or isolation period related to COVID-19;
- The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- The employee is attending an appointment to receive a vaccine for protection against COVID-19;
- The employee is experiencing symptoms related to a COVID-19 vaccine that prevents the employee from being able to work or telework;
- The employee is experiencing symptoms related to COVID-19 and seeking medical diagnosis;
- The employee is caring for a family member who is subject to a quarantine or isolation order or has been advised to self-quarantine;
- The employee is caring for a child whose school or place of care is closed or otherwise unavailable for reasons related to COVID-19 on the premises.

Leave Amount
- Full-time employees are entitled to 80 hours of COVID-19 supplemental paid sick leave. Full-time is defined as either an employee who is classified as full-time by the employer or who was scheduled to work, on average, 40 hours or more per week in the two weeks preceding the date on which leave is taken.
- If an employee is not classified as full-time, the employee's schedule and length of employment will determine the amount of their leave entitlement as follows:
- An employee with a regular schedule is entitled to the total number of hours the employee is normally scheduled to work for the employer over two weeks.
- An employee with a variable schedule is entitled to 14 times the average number of hours the employee worked each day for the employer in the six months preceding the leave.
- An employee with a variable schedule who has worked for the employer for 14 days or less is entitled to the total number of hours the employee has worked for the employer.

Amount of Pay
- The rate of pay for the leave for non-exempt employees shall be calculated by the highest of the following:
- The employee's regular rate of pay for the workweek in which the employee uses the leave.
- A formula of dividing the covered employee's total wages not including overtime by the employee's total hours worked in the full pay period of the prior 90 days of employment
- The state minimum wage
- The local minimum wage to which the employee is entitled
- For exempt employees, the leave will be paid at the rate that the employer calculates wages for other forms of paid leave time. The amount paid for supplemental paid sick leave is capped at $511 per day and $5,110 in aggregate.

Note: Due to the retroactive effect of the legislation, employers will need to consider retroactive payments for leave. Any retroactive payment of leave must be paid on or before the payday for the next full pay period after the oral or written request of the employee.

Notice Requirements
Employers will need to provide employees with notice of this new law. The new law states the Labor Commissioner's office will release a model notice within 7 days of the passing of the bill. Employers will also need to provide employees (other than home health care providers) with written notice of available leave balances. For employees who work a variable schedule, this leave balance notice can be satisfied by performing an initial calculation of hours and indicating "(variable)" next to that calculation.

Frequently Asked Questions:
The California Department of Industrial Relations has released frequently asked questions (FAQs) addressing the SB 95 provisions. One of particular importance is regarding wage statement requirements in relation to the CPSL as follows:

> **20. Should 2021 COVID-19 Supplemental Paid Sick Leave be listed separately from regular Paid Sick Leave on the itemized paystub or separate writing at the time wages are paid?**
>
> Yes. The 2021 COVID-19 Supplemental Paid Sick Leave law is clear that the obligation to provide COVID-19 Supplemental Paid Sick Leave is in addition to regular paid sick leave. The itemized wage statement or separate writing requirement ensures covered employees understand how many separate hours they have available for 2021 COVID-specific sick leave. For example, consider a full-time covered employee who has used all of the covered employee's regular paid sick leave but is entitled to 80 hours of 2021 COVID-19 Supplemental Paid Sick Leave. If an itemized wage statement specifies that there are 0 hours of paid sick leave and 80 hours of 2021 COVID-19 Supplemental Paid Sick Leave available, the covered employee would be on notice that they lack available paid sick leave for non-COVID-related absences. On the other hand, if the itemized wage statement simply said 80 hours of paid sick leave available without differentiating between paid sick leave and 2021 COVID-19 Supplemental Paid Sick Leave, a covered employee might take paid sick leave for non-COVID related reasons without realizing that there were no sick leave hours available.

All of the CPSL FAQs may be found at the link provided below.

https://www.dir.ca.gov/dlse/COVID19Resources/FAQ-for-SPSL-2021.html

Illinois Provides Guidance About COVID-19 Vaccine Leave

The Illinois Department of Labor (DOL) has released new employer guidance aimed at instructing employers about providing leave, time and flexibility for coronavirus (COVID-19) vaccinations. Some of the highlights of this guidance are as follows:

- Mandatory vaccination programs imposed by employers must provide compensable time to employees obtaining the vaccine, even if the vaccination takes place during nonworking hours.
- Employers imposing optional vaccination programs should provide employees with flex time in lieu of paid leave, to avoid the employee having to take unpaid time to receive vaccinations.
- The Employee Sick Leave Act (ESLA) requires employers who provide sick leave benefits to allow their employees to use those benefits for absences due to appointments for treatment, and in this case vaccination, for the employees' spouses, children or other immediate family members.

For a copy of the Illinois guidance, click on the link provided below.

https://www2.illinois.gov/idol/Documents/IDOL_Vaccine%20Leave%20Guidance.pdf

New York State Enacts COVID-19 Vaccine Paid Leave

On March 12, 2021, Governor Andrew Cuomo signed legislation, specifically Senate Bill 2588A (S2588A), granting public and private employees paid leave for COVID-19 vaccinations. The law provides for up to four hours of paid leave per vaccine injection, to be paid at the employee's regular hourly rate. The law is effective immediately and will expire and be deemed repealed on December 31, 2022.

Key provisions of S2588A are as follows:

Four Hours of Paid Vaccination Leave Per Injection: All New York employers are now required to provide a paid leave of absence to employees for "a sufficient period of time, not to exceed four hours per vaccine injection," to obtain the COVID-19 vaccine. For employees receiving the authorized Moderna and Pfizer vaccinations, each of which requires two consecutive doses weeks apart, the new leave law requires employers to grant up to eight hours of total leave for vaccination (up to four hours on two different occasions). For the newer Johnson & Johnson vaccination, which is administered in a single shot, an employee would only be entitled to one four-hour leave period. Presumably, if COVID-19 vaccination booster shots were later recommended, the law would cover leave needed for those later injections as well. The new law is, however, specific to COVID-19 vaccinations, and does not apply to other types of vaccination.

Vaccination Leave Must Be in Addition to Other Required Leaves: Importantly, employers cannot require employees to use any sick leave to which they might already be entitled (such as leave provided under a company's sick leave policy, under the New York State Paid Sick Leave Law, or under the New York City Earned Sick and Safe Time Act). The new vaccination leave is required to be provided on top of any such leaves.

Regular Rate of Pay: Employers must pay employees at their regular rate of pay for any hours of vaccination leave.

Retaliation Prohibited: The law prohibits employers from retaliating against employees who request or take vaccination leave, or otherwise exercise their rights under the new law.

Collective Bargaining Agreements: The law makes explicit that where employees are granted vaccination leave rights by a collective bargaining agreement (CBA), the CBA controls, but only where the CBA references the new provision of the New York Labor Law.

It is important to note that the new law is silent on what, if any, documentation an employer can request of employees to verify their authorized use of vaccination leave.

For a copy of S2588A, click on the link provided below.

https://www.nysenate.gov/legislation/bills/2021/S2588/amendment/A

Oregon Releases More Guidance Regarding COVID-19 Paid Sick Leave

It was previously reported that on September 11, 2020, the Oregon Labor Commissioner had issued permanent rules to permit Oregon workers to take up to 12 weeks in a given leave year of Oregon Family Leave Act (OFLA) protected time off to care for children whose school or childcare provider had been closed due to the coronavirus (COVID-19) pandemic by using "sick child leave."

Background:

OFLA requires employers to provide eligible employees up to 12 weeks of job-protected leave during a leave year in certain qualifying situations as follows:

- Parental leave (either parent can take time off for the birth, adoption or foster placement of a child). If employee uses all 12 weeks on this, employee can take up to 12 more weeks for sick child leave.
- Serious health condition (employee's own, or to care for a spouse, parent, parent-in-law or child)
- Pregnancy disability leave (before or after birth of a child or for prenatal care). Employee can take up to 12 weeks of this in addition to 12 weeks for any reason listed here.
- Sick child leave (for employee's child with an illness or injury that requires home care but is not serious).
- Military family leave (up to 14 days if employee's spouse is a service member who has been called to active duty or is on leave from active duty).
- Bereavement leave (up to two weeks of leave after the death of a family member).

Oregon workers that work for an employer with at least 25 employees and have been on the job for at least 180 days are eligible for parental leave.

For all other OFLA leave benefits, workers must have been employed for at least 180 days and also work at least an average of 25 hours a week during the 180 days before leave begins.

A permanent rule has been made to OFLA to permit Oregon workers to take up to 12 weeks in a given leave year of protected time off to care for children whose school or childcare provider has been closed due to the coronavirus (COVID-19) pandemic. The definition of "sick child leave" has been expanded to include job-protection for an employee if their child's school or childcare provider is closed due to a public health emergency. Sick child leave is available to an employee who has worked an average of at least 25 hours per week for six months (180 days) beforehand for an employer with at least 25 employees. OFLA sick child leave is available on an ongoing, intermittent basis and recurring periods for the times when the school or place of care of an employee's child is closed in conjunction with COVID–19. However, if physical access to the facility is not restricted, OFLA sick child leave would not be available. For example, if an employee has a choice between on-site instruction and remote learning and the employee opts for remote learning, OFLA sick child leave would not be available unless the child is under a quarantine order or has been advised by a health-care provider to self-isolate or self-quarantine.

BOLI Updated Guidance:

The Oregon Bureau of Labor and Industries (BOLI) has updated its webpage to provide further guidance including frequently asked questions (FAQs). A sampling of these FAQs is as follows:

How is my job protected while I'm on leave?

Your employer must return you to your former job or to an equivalent job if the former position no longer exists.

How much leave can I take?

With some notable exceptions, employees are entitled to 12 weeks within any one-year period. That exhausts the FMLA leave entitlement except for military caregivers leave, which can extend to 26 weeks in one leave year. Under OFLA, an employee may take up to 12 weeks of pregnancy disability leave in addition to the 12 weeks available for any OFLA purpose. Either parent who has taken a full 12 weeks of parental leave (e.g., to care for a newborn, newly adopted child or newly placed foster child) is also entitled to take up to an additional 12 weeks of leave to care for a child with a nonserious health condition requiring home care.

Am I paid for this leave?

There is no requirement that family leave time is paid by the employer (in 2023, paid family leave is coming to Oregon). However, you must be allowed to use any existing accrued paid leave, including sick leave, vacation leave or any paid leave offered in lieu of vacation leave.

Note: Employers can also require that employees use accrued paid leave during OFLA leave, and can dictate the order in which the leave is to be used as long as: Prior to the commencement of OFLA leave, the employer provides written notice to the employee that accrued paid leave is to be used during OFLA leave; or within five (5) business days of the employee's notice of unforeseeable leave, the employer provides written notice to the employee; and to do so is consistent with a collective bargaining agreement or other written agreement between the eligible employee and the covered employer or an employer policy. If using Oregon Military Family Leave, you are entitled to use accrued paid leave and may dictate the order in which it is used.

Click on the link provided below to access all of the FAQs.

https://www.oregon.gov/boli/workers/pages/oregon-family-leave.aspx

Texas Appeals Court Rules Texas Minimum Wage Law Preempts San Antonio Paid Sick Leave Ordinance

On March 10, 2021, the Texas Fourth Court of Appeals upheld a previous preliminary injunction that prevented San Antonio's amended Sick and Safe Leave Benefits Ordinance from taking effect since December 2019. In its decision, the appellate court held that San Antonio's ordinance violates the Texas Minimum Wage Act. As detailed below, this decision is one in a line of decisions that has prevented these kinds of ordinances from taking effect across Texas over the last several years.

Background:

On August 16, 2018, the San Antonio City Council voted 9 to 2 to adopt a paid leave ordinance which will require all employers in San Antonio to provide paid leave to their employees. On July 15, 2019, a number of business groups that collectively employ thousands in San Antonio filed a lawsuit in Bexar County District Court seeking to stop the San Antonio paid sick leave ordinance from going into effect on August 1, 2019. The plaintiffs argue that the San Antonio ordinance passed is unconstitutional because it's preempted by the Texas Minimum Wage Act.

In response, San Antonio delayed the effective date of the paid sick leave ordinance until December 1, 2019, to allow resolution of the matter in the courts.

The City of San Antonio was the second city in Texas to enact a paid sick and safe leave benefits ordinance, following Austin's enactment of such an ordinance two years earlier.

The Fourth Court of Appeals' decision regarding San Antonio's ordinance is consistent with its sister court's ruling regarding the nearly identical ordinance in Austin. On November 16, 2018, the Third Court of Appeals held Austin's ordinance was unconstitutional for the same reason, resulting in a preliminary injunction that likewise prevented the Austin law from taking effect. Observing the fate of the Austin ordinance, San Antonio officials amended their ordinance and delayed its effective date, in an effort to overcome the same constitutional scrutiny that doomed the Austin ordinance.

San Antonio officials have not yet disclosed whether they will be appealing the decision to the Texas Supreme Court. That Court refused last year to review the decision from the Third Court of Appeals regarding the Austin ordinance, suggesting that it is unlikely the high court would hear an appeal filed by San Antonio now.

While the Texas Supreme Court has yet to weigh in on this issue, two Texas appellate courts have now ruled that municipal ordinances requiring private employers to provide sick and safe leave benefits are unconstitutional, and one Texas federal district court has agreed with this conclusion. Dallas was the third Texas City to enact such an ordinance, and it similarly was met with staunch opposition and a lawsuit seeking to prevent its enforcement. The federal district court overseeing this lawsuit followed a similar path to its state court counterparts and preliminarily enjoined Dallas's ordinance from taking effect on March 30, 2020.

None of these lawsuits have concluded, and the decisions to date have all been preliminary in nature. But, taken together, these decisions make clear the courts' conviction that paid sick and safe leave ordinances (at least in their current form) violate Texas law, dealing a significant blow to the chances that these ordinances will ever go into effect.

Payroll

Connecticut Enacts Telecommuting Legislation

On March 4, 2021, Connecticut Governor Ned Lamont signed House Bill 6516 (HB 6516) into law that extends the taxes paid to other states tax credit to workers telecommuting due to the COVID-19 pandemic for the taxable year commencing January 1, 2020. The bill also prohibits the Connecticut Department of Revenue Services (DRS) from considering the activities of any employees who worked remotely from Connecticut during the 2020 tax year solely due to COVID-19 in determining whether an employer has nexus with Connecticut for any state tax.

HB 6515 provides tax relief for 2020 only for employees working remotely who would have potentially had their wages taxed by two states. The bill provides particular relief to Connecticut residents who are required to pay income taxes for the 2020 tax year to other states that use some version of the "convenience of the employer" rule, for example, providing relief to Connecticut residents who telecommuted to Massachusetts and New York-based employers.

Generally, states using the convenience of the employer rule treat wages paid to nonresident telecommuting employees as wages sourced to that state, if the employee telecommutes for his or her own personal convenience

Currently six states formally impose some version of the convenience of the employer rule: Arkansas, New York, Connecticut, Delaware, Nebraska and Pennsylvania. Additionally, in response to the COVID-19 pandemic, Massachusetts published an emergency regulation declaring that income earned by a nonresident working outside of Massachusetts would be considered Massachusetts source income if, prior to the COVID-19 state of emergency, the employee performed such services in Massachusetts.

In summary, HB 6516 provides:

- Connecticut residents with a full credit for income taxes paid to another state — if the Connecticut resident worked in Connecticut but paid income taxes to another state due to that other state's convenience of the employer rule. This relief was not provided under prior Connecticut law.
- For the taxable year commencing on January 1, 2020, "any resident who paid income tax to any other state that uses a convenience of the employer rule shall be allowed a credit against such resident's Connecticut income tax, for the tax paid to such other state on income earned by such resident while working 'remotely' from Connecticut."
- A full credit will be allowed in the 2020 tax year for "any resident who paid income tax to any other state that has enacted a law or rule requiring a nonresident employee to pay nonresident income tax to such other state on income earned while such nonresident employee was working remotely from this state due to COVID-19 if, immediately prior to March 11, 2020, such nonresident employee was performing such work within such other state." This provision of the bill appears to be a clear response to the emergency regulation adopted by Massachusetts."

For a copy of HB 6516, click on the link provided below:

https://www.cga.ct.gov/2021/TOB/H/PDF/2021HB-06516-R00-HB.PDF

Guam Delays Increase to Minimum Wage

We previously reported that on October 14, 2019, the Governor of Guam, Lou Leon Guerrero, signed into law Bill No. 136-35 to raise the Guam minimum wage from its current rate of $8.25 per hour as follows:

Effective March 1, 2020	$8.75 per hour
Effective March 1, 2021	$9.25 per hour

Delay:

On March 1, 2021, the Guam Department of Labor published a revised minimum wage poster stating that the effective date of the scheduled minimum wage increase to $9.25 in 2021 is changed from March 1st to September 1st.

Guam does not allow employers to utilize a tip credit to pay tipped employees and must pay the full minimum wage to tipped employees.

For a copy of the poster, click on the link provided below.

https://dol.guam.gov/wp-content/uploads/min-wage-poster.pdf

Massachusetts Releases Directive Regarding Taxation of Telecommuters

We previously reported that on December 8, 2020, the Massachusetts Department of Revenue (DOR) issued a technical information release — Technical Release 20-15 (TIR 20-15) —that extended and revised the TR 20-10 Massachusetts tax relief in situations in which employees work remotely due solely to the COVID-19 pandemic. TIR 20-15 makes the relief provisions effective until 90 days after the state of emergency in Massachusetts is lifted. In summary, if a business is located within Massachusetts, a nonresident who telecommutes will continue to have his or her wages considered to be Massachusetts-sourced wages for the purpose of income tax withholding.

Directive:

The DOR has now issued a Working Draft Directive (the "Directive") for individuals who teleworked in 2020, due to the COVID-19 pandemic. The Directive discusses tax implications for nonresidents who worked in Massachusetts prior to the pandemic but are now working remotely from their homes outside of Massachusetts.

Part of the Directive provided answers to common questions as follows:

> **How do nonresident telecommuting employees and resident telecommuting employees determine the amount of their wages that is subject to the personal income tax in 2020?**
>
> For 2020, nonresident telecommuting employees who worked in Massachusetts prior to the Massachusetts COVID-19 state of emergency and who later telecommuted from locations outside Massachusetts due to a pandemic-related circumstance must continue to source their wages earned from such subsequent employment to Massachusetts. Nonresident employees who, prior to the Massachusetts COVID-19 state of emergency, apportioned their wages to Massachusetts pursuant to 830 CMR 62.5A.1(5)(a) must determine the amount of their wages that is Massachusetts source income, based on either the percentage of their work days spent in Massachusetts during the period January 1 through February 29, 2020, or the apportionment percentage properly used to determine the portion of their wages from that employer that constituted Massachusetts source income, as reported on their 2019 Massachusetts personal income tax return.
>
> For 2020, resident telecommuting employees who worked in a state other than Massachusetts prior to the Massachusetts COVID-19 state of emergency and subsequently telecommuted from Massachusetts due to a pandemic-related circumstance will be eligible for a credit for taxes paid to that other state to the extent allowed under M.G.L. c. 62, § 6(a) if the other state applies similar sourcing rules.
>
> **Do days spent in Massachusetts by individuals in 2020 due to a pandemic-related circumstance count for purposes of establishing Massachusetts statutory residency under the 183-day presence test?**
>
> Yes, individuals who spent more than 183 days in, and maintained a permanent place of abode in Massachusetts during 2020 were Massachusetts statutory residents for such year — regardless of whether the 183-day threshold was exceeded because of a pandemic-related circumstance.

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

https://www.mass.gov/directive/working-draft-directive-personal-income-tax-guidance-for-employees-who-telecommuted-in

For a copy of Massachusetts TIR 20-15, click on the following link:

https://www.mass.gov/technical-information-release/tir-20-15-revised-guidance-on-the-massachusetts-tax-implications-of

Michigan Provides Continued Hazard Pay to Direct-Care Workers

On March 9, 2021, Michigan Governor Gretchen Whitmer signed into law House Bill 4047 (H4047) that appropriates federal funding allocated for coronavirus (COVID-19) relief for the continuance and enhancement of direct-care worker hazard pay.

H4047 extends the COVID-19 direct-care worker hazard pay adjustment from February 28, 2021 to September 30, 2021, and increases the amount from $2.00 additional dollars per hour to $2.25 per hour. Eligible worker types have also been expanded to include employees of licensed adult foster-care homes, homes for the aged, direct support employees and job coaches working in supported employment arrangements. Also included is a smaller, $2.00 hazard pay allotment for workers employed in child-caring institutions.

Below is a link to H4047.

http://www.legislature.mi.gov/documents/2021-2022/billenrolled/House/htm/2021-HNB-4047.htm

Montana Not Accepting Truncated/Masked Social Security Numbers on Tax Forms

We previously reported that the Internal Revenue Service (IRS) issued final regulations (Use of Truncated Taxpayer Identification Numbers on Forms W-2, Wage and Tax Statement, Furnished to Employees), which would allow employers to truncate employees' Social Security Numbers on copies of Forms W-2 that are furnished to employees, effective for Forms W-2 required to be furnished after 12/31/2020 (i.e., Forms W-2 for calendar year 2020).

Background

Section 409 of the Protecting Americans from Tax Hikes (PATH) Act of 2015 (P. L. 114-113) authorized the IRS to permit employees' Social Security Numbers to be truncated on Forms W-2 (e.g., XXX-XX-9999). However, IRS regulations were necessary to implement the provision.

Employers May Truncate Social Security Numbers (SSNs) on Employee Forms W-2

The final regulation explains that "To aid employers' efforts to protect employees from identity theft, these regulations ... permit employers to voluntarily truncate employees' Social Security Numbers (SSNs) on copies of Forms W-2, Wage and Tax Statement, that are furnished to employees ..." Truncated SSNs are formatted as XXX–XX–1234 or ***–**–1234." Truncation is permitted on the following copies of Forms W-2:

- B — To Be Filed With Employee's FEDERAL Tax Return
- C — For EMPLOYEE'S RECORDS
- 2 — To Be Filed With Employee's State, City, or Local Income Tax Return
- D — For Employer

No Truncation of EINs or of SSNs on Employer Filings to Tax Authorities

Employers are not permitted to truncate their own Employer Identification Numbers (EINs) on Forms W-2 furnished to employees. In addition, employers may not truncate SSNs on Forms W-2 that are filed with the Social Security Administration (SSA) or any state or local tax authority.

Montana

On February 18, 2021, the Montana Department of Revenue (DOR) announced that it will not accept truncated or masked employee Social Security Numbers (SSNs) on any forms filed with it, including state copies (Copy 1) of Forms W-2 and Forms 1099.

However, Montana's Department of Revenue (DOR) has clarified that the employee reference and filing copy (Copy 2) of the tax form may contain a truncated SSN with the following statement:

"You may provide your employees with Forms W-2 or 1099 with truncated identifying numbers. But you may not submit truncated identification numbers to the IRS, Montana Department of Revenue, or Social Security Administration."

The DOR guidance provides:

- Payers may not truncate the payee's SSN on any forms filed with the DOR, IRS or SSA.
- Payers may not truncate their own identification number on any forms given to the payee or filed with the DOR, IRS or SSA.

This means that no SSN truncation is allowed by either the employer or the employee. If the forms with truncated information are incorrectly submitted to the DOR, it may ask for the forms to be resubmitted using the correct format.

For a copy of the DOR guidance, click on the link provided below.

https://mtrevenue.gov/2021/02/18/truncated-forms-w2-and-1099/

Virginia Modifies Wage Garnishment Rules

On February 25, 2021, Virginia Governor Ralph Northam signed into law House Bill 1814 (HB 1814). It provides that the Virginia minimum hourly wage shall be used to calculate the amount of a person's aggregate disposable earnings protected from garnishment, if it is greater than the federal minimum hourly wage.

Currently in Virginia, the maximum part of the aggregate disposable earnings of an individual for any workweek that is subjected to garnishment may not exceed the lesser of the following amounts: (1) Twenty-five percent of the employee's disposable earnings for that week, or (2) The amount by which the employee's disposable earnings for that week exceed 40 times the federal 18 minimum hourly wage.

Effective July 1, 2021, the current rule will be modified as follows:

"...the maximum part of the aggregate disposable earnings of an individual for any workweek that is subjected to garnishment may not exceed the lesser of the following amounts: (1) Twenty-five percent of the employee's disposable earnings for that week, or (2) The amount by which the employee's disposable earnings for that week exceed 40 times the federal minimum hourly wage prescribed by U.S.C. 19 § 206(a)(1) **or the Virginia minimum hourly wage prescribed by § 40.1-28.10, whichever is greater, in effect at the time earnings are payable."**

For a copy of Virginia HB 1814, click on the link provided below.

https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+HB1814+pdf

Numerous California Locales Enact Hazard Pay Ordinances

We have previously reported on a number of California local jurisdictions that have enacted hazard pay ordinances requiring employers to provide premium pay. Find below a summary of some of those jurisdictions and ordinances enacted to date. Other jurisdictions are contemplating similar ordinances.

Coachella

On February 10, the City Council of Coachella passed the Premium Pay for Agricultural, Grocery, Restaurant and Retail Pharmacy Workers Ordinance, requiring employers in the agricultural, grocery, restaurant and retail pharmacy spaces to provide employees of these entities, who work in Coachella, an additional $4 per hour for every hour worked. The law (link below) applies to those covered entities that employ at least 300 workers nationally and more than five employees per location in Coachella. It also prohibits employers from reducing worker pay to offset the law's enhanced pay requirements, prohibits retaliation, mandates the posting of notices and includes a private right of action for aggrieved employees.

https://www.coachella.org/home/showpublisheddocument?id=8130

Irvine

Effective March 25, 2021, certain grocery and drug stores that employ 300 or more employees nationwide and at least 20 employees at a retail establishment in the city must pay a premium of $4.00 per hour worked by covered employees within the city at that establishment. The ordinance (link below) will remain in effect for 120 days.

https://irvine.granicus.com/MetaViewer.php?view_id=&event_id=1754&meta_id=113287

Long Beach

Effective January 19, 2021, certain grocery stores that employee over 300 grocery workers nationally and more than 15 employees per grocery store in the city must pay a premium of $4.00 per hour for every hour worked in the city. The ordinance (link below) will remain in effect for 120 days unless extended by the city council.

http://longbeach.legistar.com/View.ashx?M=F&ID=9170171&GUID=086E8A6E-AD2B-44CF-A733-829202DD1384

Los Angeles County

Effective February 26, 2021, certain retail, grocery and drug stores that are either public companies traded on the stock exchange or with 300 employees nationwide and with more than 10 employees per store must pay employees a hazard pay premium of $5.00 per hour for services performed in a store within the unincorporated limits of the county. The ordinance (link below) will remain in effect for 120 days. An employee can choose to receive paid leave in lieu of hero pay under certain conditions.

http://file.lacounty.gov/SDSInter/bos/supdocs/153999.pdf

Montebello

Effective January 27, 2021, certain grocery and drug stores with at least 300 employees nationwide and more than 15 employees per store within the city of Montebello must pay covered employees working within the city an additional $4.00 per hour. The ordinance (link below) will remain in effect for 180 days unless extended by the city council.

https://www.cityofmontebello.com/images/administration/Press_Releases/01.28.21%20Hero%20Pay%20Release.pdf

Pomona

This city's "hero pay" ordinance (link below) requires qualifying retail establishments to provide premium pay of an additional $4.00 per hour to their workers for at least 120 days. This requirement went into effect immediately on March 1, 2021, and will be in place until June 29, 2021, unless it is extended. Any grocery store, retail pharmacy or "big box retailer" who employs 300 or more employees nationally and employs more than 10 employees per location in Pomona must make these premium payments to their employees.

https://www.ci.pomona.ca.us/mm/calendar/pdf/Urgency_Ord._No._4300.pdf

For more information, see the "Hero Pay" website at the link below:

http://www.ci.pomona.ca.us/mm/calendar/pdf/Pomona_-_Hero_Pay_Covid-19_Fact_Sheet-c1.pdf

Oakland

Effective February 2, 2021, grocery stores with 500 or more employees nationally must pay a hazard pay premium of $5.00 per hour to employees covered by the California state minimum wage law for work performed in Oakland. Hazard pay requirements (link to ordinance below) will remain in effect for the duration of high-risk periods under city or state health orders.

https://oakland.legistar.com/LegislationDetail.aspx?ID=4760091&GUID=AD7080F2-26F9-4661-9D63-748068B0F89D&Options=&Search=

San Francisco – ANTICIPATED TO BECOME LAW

The San Francisco Office of Labor Standards Enforcement (OLSE) has announced that on March 9, 2021 the San Francisco Board of Supervisors unanimously voted to adopt the COVID-Related Hazard Pay Ordinance (the "Ordinance") (link below). It requires grocery stores and drug stores with 500 or more employees worldwide, including at least 20 employees in San Francisco, and janitorial and security contractors at these stores, to pay employees an additional $5.00 per hour (up to $35 per hour) during the public health emergency related to COVID-19. If approved by San Francisco Mayor Breed, the Ordinance will become effective three days after her signature. The OLSE anticipates the Ordinance effective date to be March 22, 2021.

https://sfgov.org/olse//sites/default/files/COVID-Related%20Hazard%20Pay%2003.09.21.pdf

San Jose

Effective March 25, 2021, grocery stores with 300 or more employees nationwide must pay covered employees a premium of $3.00 for every hour worked within the city. The Ordinance (link below) will expire 120 days after the effective date unless extended by the City Council.

https://sanjose.legistar.com/LegislationDetail.aspx?ID=4789982&GUID=417DE12D-1AD1-4679-A3B9-13E173BEE067&Options=&Search=

San Leandro

Effective February 16, 2021, certain retail food establishments (e.g., grocery stores) with 300 or more employees nationwide must pay employees, covered by the California state minimum wage law, a hazard premium of an additional $5.00 per hour for all hours worked in San Leandro during the pandemic. Hazard pay premium requirements (link to ordinance below) will remain in effect for 120 days from the effective date, until the end of high-risk levels under state orders or until all covered employees are vaccinated, whichever comes first.

https://sanleandro.legistar.com/LegislationDetail.aspx?ID=4797405&GUID=D02A04CC-CE3D-48E6-8BE0-3C3E2DE250B1

San Mateo

The City Council on March 1, 2021, adopted an emergency ordinance requiring employees of large grocery stores or pharmacies to be paid an additional $5.00 hourly wage due to the risks of COVID-19 exposure. The ordinance applies to businesses with at least 750 employees nationwide and that are grocery stores, drug stores or retailers dedicating at least 10 percent of their space to grocery sales. The emergency ordinance will be in effect for 90 days, and the Council is in the process of adopting a regular ordinance that would last until July 13, 2021.

https://www.cityofsanmateo.org/DocumentCenter/View/83654/Emergency-Ordinance-Hazard-Pay-for-Grocery-Pharmacy-Workers-3121

Santa Ana

The "Premium Pay" Ordinance (link below) requires that large grocery stores and pharmacies provide their workers with premium pay of $4.00 for each hour worked. The Ordinance went into effect on March 3, 2021 and will expire on June 30, 2021. The Ordinance defines covered employers as grocery store or retail pharmacy "hiring entities" that employ more than 300 workers nationally and more than 15 employees per grocery store or pharmacy in the city.

https://www.santa-ana.org/PremiumPay

Santa Monica

Santa Monica's hero pay ordinance is an urgency ordinance effective March 4, 2021, with the following provisions:

- Applies to operators of retail grocery stores, retail drug stores and large retail stores that are publicly traded or that employ 300 or more workers nationwide, and employ more than 10 employees per store;
- Requires retail grocery stores, retail drug stores and large retail stores (85,000 square feet or more) that dedicate more than 10 percent of their floor space to grocery or drug sales to pay employees an extra $5.00 per hour;
- Provides store operators with a credit against the required hero pay for voluntarily provided hazard pay;
- Establishes enforcement mechanisms, including a prohibition on retaliation against any employee who seeks to enforce the hero pay provisions, administrative fines and private causes of action for employees; and
- Provides that the emergency Ordinance will sunset after 120 days.

West Hollywood

Effective February 16, 2021, grocery stores that employ more than 300 grocery workers nationally and more than 15 employees per grocery store in the city of West Hollywood must pay covered employees a premium of $5.00 per hour for work performed in the city. The ordinance (link below) will remain in effect for 120 days or until the end of the emergency period, whichever is longer.

https://www.weho.org/home/showpublisheddocument?id=49213

Portland, Maine, to Increase Minimum Wage

As a result of the passage of the 2020 Citizen-Initiated Referendum Question A this past November, the minimum wage in Portland, Maine, will increase as shown below. The current minimum wage in the city is $12.15 per hour. The minimum cash wage that may be paid to tipped employees is $6.08 which is 50 percent of the minimum wage.

Effective Date	Minimum Hourly Rate
January 1, 2022	$13.00
January 1, 2023	$14.00
January 1, 2024	$15.00

The minimum **cash wage for tipped employees** will continue to be 50 percent of the minimum wage and be increased asfollows.

Effective Date	Minimum Cash Wage
January 1, 2022	$6.50
January 1, 2023	$7.00
January 1, 2024	$7.50

On January 1, 2025 and each January 1st thereafter, the minimum hourly wage will be increased by the increase, if any, in the Consumer Price Index from All Urban Consumers (CPI-U) as of August of the previous year and rounded to the nearest $0.05.

Also, effective January 1, 2022, employees performing certain work during an emergency declared by the state or city must be 1.5 times the local minimum wage if the emergency applies to the employee's geographical workplace. The emergency minimum wage does not apply to work performed under a telework arrangement during the declared emergency.

For more information on the minimum wage rules, click on the links provided below.

https://www.portlandmaine.gov/1671/Minimum-Wage

https://www.portlandmaine.gov/1671/Minimum-Wage#:~:text=Effective%20January%201,%202021,%20employersbe%20paid%20to%20tipped%20workers

Rockland, Maine, Establishes Minimum Wage

As a result of a referendum passed by the voters on November 3, 2020, the city of Rockland, Maine has established a minimum wage.

Effective January 1, 2022, employers with more than 25 employees must pay a minimum wage of $13.00 per hour for work performed within the city limits. The minimum wage will increase again on January 1, 2023, to $14.00 per hour and on January 1, 2024, to $15.00 per hour.

The minimum cash wage for tipped employees is 50 percent of the minimum wage. Consequently, minimum cash wages for tipped employees will be $6.50 on January 1, 2022; $7.00 on January 1, 2023; and $7.50 on January 1, 2024.

Annual adjustments based on inflation will commence on January 1, 2025.

The current minimum wage in Maine is $12.15 per hour while tipped employees must be paid at least $6.08 in cash wages per hour. The state minimum wage is adjusted annually each January 1st.

For a copy of the Rockland ordinance, click on the link below.

https://rocklandmaine.gov/clerks-office/local-minimum-wage-ordinance/

San Francisco, California, Announces Increase to Minimum Wage

San Francisco has announced that effective July 1, 2021, all employers must pay all employees who work in San Francisco (including temporary and part-time employees) at least $16.32 per hour. This minimum wage requirement applies to adult and minor employees who work two or more hours per week.

The current San Francisco minimum wage is $16.07 per hour. California law prohibits the use of a tip credit when paying tipped employees.

For a copy of the announcement, click on the link below.

https://sfgov.org/olse/sites/default/files/minimum%20wage%20poster%202021.pdf

Seattle, Washington, Hazard Pay Ordinance Includes Wage Statement Requirements

It was previously reported that on January 25, 2021, the Seattle City Council passed an Ordinance that requires large grocery store employers to pay workers an additional $4.00 per hour until the end of the COVID-19 pandemic emergency.

The measure does not apply to convenience stores or farmers' markets. Employers that fall under the new rules must post rights related to the Ordinance within 30 days and maintain records related to the hazard pay for at least three years.

Seattle's hourly minimum wage for employers with more than 500 employees is $16.69.

Wage Statement Requirement:

Part of the ordinance states as follows:

> Employers shall provide written itemization of the hazard pay separately from payment for wages and other compensation pursuant to Seattle Municipal Code subsection 14.20.025.E.

Seattle Municipal Code subsection 14.20.025.E states:

Each time compensation is paid, employers shall give written notice that contains the following information:

All hours worked with regular and overtime hours shown separately;

All rate or rates of pay whether paid on hourly, salary, commission, piece rate or combination thereof, or other basis during the pay period. Workers paid on a rate other than hourly or salary are entitled to a detailed printed accounting of commissions, piece rate or other methods of payment earned during the pay period:

Tip compensation;
Pay basis (e.g., hour, shift, day, week, commission);

Gross wages; and
All deductions for that pay period.

As a result, hazard pay must be itemized on the employee's wage statement as such and indicate the hours of hazard pay and the rate paid for the hazard pay.

For more information, including frequently asked questions and fact sheets, click on the following link to access the Seattle Office of Labor Standards webpage.

https://www.seattle.gov/laborstandards/ordinances/grocery-employee-hazard-pay

For a copy of the ordinance, click on the link below.

https://www.seattle.gov/Documents/Departments/LaborStandards/LEG%20Hazard%20Pay%20for%20Grocery%20Employees%20ORD_Code%20Revised.pdf

Time & Labor

California Pay Data Reporting Due by March 31, 2021

Refer to the article **here** for details.

California Supreme Court Rules Employers Cannot Round Meal-Period Time Punches

Refer to the article **here** for details.

Philadelphia, Pennsylvania, Predictability Pay Ordinance Enforcement Date Announced

It was previously reported that the Philadelphia Office of Benefits and Wage Compliance (OBWC) had announced the enforcement of its predictability pay ordinance would be postponed until further notice via the following statement:

In response to the COVID-19 health emergency, the Office of Benefits and Wage Compliance paused the enforcement of predictability pay as of the April 1, 2020, effective date of the Fair Workweek law until further notice. However, employers are still expected to comply with other portions of the law.

On March 1, 2021, the Philadelphia Department of Labor announced that its Office of Worker Protections will begin enforcing the predictability pay requirement from Philadelphia's Fair Workweek Law on June 1, 2021.

Background:

On December 8, 2018, the City Council of Philadelphia passed a "Fair Workweek" bill, which was signed into law on December 20 by Philadelphia Mayor Jim Kenney. The law applies to employers in the retail, fast-food and hotel industries with more than 30 locations and 250 employees. It will require covered employers to:

- Provide employees with a written, good-faith estimate of the employee's schedule when hired
- Engage in an interactive process regarding the employee's availability
- Give employees two weeks' advance notice of their schedules
- Provide "predictability pay" if schedules change within ten days of the schedule being delivered (and increasing to 14 days beginning January 1, 2021) unless an employee consents to the change
    - If hours are added to an employee's schedule, or the schedule is changed with no loss in hours to the employee, the employer must pay one hour of predictability pay.
    - If hours are reduced, the employer must pay predictability pay at a rate of time and a half for all hours not worked as a result of the change.
    - Some exceptions for extenuating circumstances, such as natural disasters, apply.
- Offer available shifts to existing employees before hiring new ones
- Provide employees with at least a nine-hour break between shifts
- Maintain records of their compliance with the law
- Any part of the Ordinance may be waived in a bona fide collective bargaining agreement.

For a copy of the announcement, regarding the enforcement date of the Philadelphia Ordinance, click on the link provided below.

https://us12.campaign-archive.com/?e=_test email_&u=48732a6251c09f25e0086d47a&id=e2bffa16f2&mc_cid=9f5bd73916&mc_eid=96a7882840

For a copy of the "Fair Workweek" law, click on the following link.

https://www.phila.gov/documents/fair-workweek-resources/?mc_cid=9f5bd73916&mc_eid=96a7882840

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Updated on March 23, 2021