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State and Local Update

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Topics covered in this issue:

Leave

California Enacts Supplemental Paid Sick Leave Law for Other Employers

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

According to AB 1867, the CPSL provisions for other employers will become effective "not later than 10 days after the date of enactment." In subsequent released guidance by the California Labor Commissioners office it was stated: "Employers are required to provide COVID-19 Supplemental Paid Sick Leave to **non-food sector employees** starting **September 19, 2020** at the latest."

The requirements to provide supplemental paid sick leave under CPSL for covered workers will expire on December 31, 2020, or upon the expiration of any federal extension of the Emergency Paid Sick Leave Act established by the federal Families First Coronavirus Response Act (FFCRA), whichever is later.

Highlights of AB 1867 Section 4 codified under Labor Code (LC) 248.1 are as follows:

Supplemental Paid Sick Leave for Other Workers

Covered Employers and Employees

New LC 248.1 applies to private "hiring entities" with 500 or more employees in the United States, the District of Columbia, or any U.S. territory, and to individuals who leave their home or place of residence to perform work for a hiring entity that employs them. Moreover, under LC 248.1 (and 248), all covered workers are considered employees, and any hiring entity is considered an employer. LC 248.1 excludes LC 248 employees, i.e., food sector workers, ensuring that food sector workers do not receive double coverage under these new laws. Notably, unlike a number of other paid sick leave laws, LC 248.1 does not contain an exception for unionized workforces.

Additionally, the law applies to any entity – including a public entity – that is subject to the federal FFCRA and elected to exclude health- care provider or emergency-responder employees from the FFCRA's emergency paid sick leave requirements, thereby extending LC 248.1 to such excluded employees.

Amount of Leave

The amount of CPSL an employee receives, and can use, under LC 248.1 depends on whether they are "full" time, not "full" time, or active firefighters.

A covered worker is entitled to 80 hours of CPSL if the hiring entity considers the worker to work "full time" or the worker worked or was scheduled to work, on average, at least 40 hours per week for the hiring entity in the two weeks preceding the date the worker took leave.

- For covered workers who are not "full" time, or firefighters, the amount of leave they receive depends on whether they have a normal weekly schedule or work variable hours. Workers with a normal weekly schedule receive an amount of CPSL equal to the total number of hours they are normally scheduled to work for the hiring entity over two weeks. However, if they work a variable number of hours, they receive 14 times the average number of hours they worked each day for the hiring entity in the six months preceding the date they took leave. If their employment tenure includes fewer than six months, the total length of employment is to be used, unless they have been employed for 14 days or fewer, in which case, the total number of hours worked must be used.
- Active firefighters scheduled to work more than 80 hours for the hiring entity in the two weeks preceding the date the worker took leave are entitled to an amount of CPSL equal to the total number of hours they were scheduled to work for the hiring entity in those two preceding weeks.

LC 248.1 includes a prohibition against requiring workers to use other paid or unpaid leave, time off, or vacation that the hiring entity provides before, or in lieu of, using CPSL.

Under LC 248, if a business already provides a covered worker with a supplemental benefits, such as supplemental paid leave — that is payable for the law's covered reasons and that would compensate the worker in an amount equal to or greater than the amount of compensation the law requires, the business may count the other paid benefit or leave hours toward the total number of CPSL hours it must provide to the covered worker.

Covered Uses

Workers covered by LC 248.1 can use CPSL when they are unable to work when they are: 1) subject to a federal, state, or local quarantine or isolation order related to COVID-19; 2) advised by a health-care provider to self-quarantine or self-isolate due to concerns related to COVID-19; and/or 3) prohibited from working by the hiring entity due to health concerns related to the potential transmission of COVID-19. Unlike the federal FFCRA, and numerous mini-FFCRA ordinances throughout California, employees cannot use CPSL to care for or assist another individual, e.g., they cannot use CPSL if their child's school closes, or childcare provider is unavailable, due to COVID-19. An employer must make CPSL available for immediate use upon the worker's oral or written request.

Rate of Pay

When workers use CPSL, they must be paid their regular rate of pay for the last pay period (including pursuant to any collective bargaining agreement that applies, or the state or local minimum wage, whichever rate is highest). Note, however, that a different pay rate standard applies to firefighters: the regular rate of pay to which the worker would be entitled if the worker had been scheduled to work those hours, pursuant to existing law or an applicable collective bargaining agreement. In either case, the law caps the maximum amount of pay an employer must provide for CPSL at $511 per day and $5,110 overall. Payment for leave taken must be made no later than the payday for the next regular payroll period after leave was taken.

Notice, Paystub and Recordkeeping Requirements

The amendment to CPSL requires that the California Labor Commissioner make available a model notice to provide to workers within seven days of the effective date of the amendment. If workers do not frequent a workplace, a business can disseminate the notice electronically, e.g., by email.

Subsequently two model notices were issued. One notice found at **https://www.dir.ca.gov/dlse/COVID-19-Food-Sector-Workers-poster.pdf** applies to employers with 500 or more employees with food sector workers.

The other notice located at **https://www.dir.ca.gov/dlse/COVID-19-Non-Food-Sector-Employees-poster.pdf** applies to: (1) employers that have 500 or more employees nationwide or (2) public or private employers of health-care providers and emergency responders that have fewer than 500 employees nationwide if the employer excluded those employees from coverage under the federal FFCRA.

LC 248.1 also imposes paystub requirements, which require written notice concerning the amount of leave available on either an itemized wage statement or in a separate written document provided on designated pay dates. It is not clear whether the amount of leave available under the CPSL must be listed separately from the available paid sick leave otherwise provided under California law.

Under LC 248.1, a hiring entity must retain records documenting hours worked, leave provided, and leave used by an employee for at least three years.

Penalties and Relief

Violation of the CPSL carries varying penalties. A willful poster violation carries a civil penalty of not more than $100 per offense. Additionally, an administrative penalty equal to the dollar amount of leave withheld multiplied by three or $250 (whichever amount is greater) can be assessed, up to a $4,000 aggregate penalty. If a violation results in other harm or otherwise results in a violation of rights, the administrative penalty must include a sum of $50 for each day or portion thereof that the violation occurred or continued, not to exceed a $4,000 aggregate penalty. Further, the California Labor Commissioner can recover investigation and enforcement costs of not more than $50 for each day or portion of a day a violation occurs or continues for each employee or other person whose rights were violated. Finally, penalties for paid leave paystub violations are in lieu of the penalties for a violation of California Labor Code section 226, the state's general paystub law.

In terms of relief that is available to remedy a violation, the following relief is available: reinstatement, back pay, payment of leave withheld, payment of an additional sum, not to exceed a $4,000 aggregate penalty, as liquidated damages in the amount of $50 to each employee or person whose rights were violated for each day or portion thereof the violation occurred or continued, plus, if leave was withheld, the dollar amount thereof multiplied by three or $250, whichever amount is greater; injunctive relief; reasonable attorney's fees and costs; interest on all amounts due; and other remedies as may be provided by the laws of California or its subdivisions (including, but not limited to, the remedies available to redress any unlawful business practice under the Unfair Competition Law, Business and Professions Code sections 17200 et seq.).

Frequently Asked Questions (FAQs)

The California Department of Industrial Relations has now provided 27 FAQs regarding the CPSL that may be accessed at the following link.

https://www.dir.ca.gov/dlse/FAQ-for-PSL.html

For a copy of AB 1867, click on the link provided below.

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1867

Family Rights Act Expanded in California

On September 17, 2020, California Governor Gavin Newsom signed into law Senate Bill 1383 (SB), which expands the California Family Rights Act commonly known as the CFRA.

SB 1383, effective January 1, 2021, in addition to other changes, provides that California employers with as few as five employees must provide family and medical leave rights to their employees, and expands the covered reasons for protected leave and the family members whom employees may take leave to care for under the law.

Expanded Eligibility to Small Employers

Under pre-existing law, employers were not required to provide family care and medical leave under the CFRA, if the employee seeking leave worked at a worksite with fewer than 50 employees within a 75-mile radius. Similarly, employers were not required to provide "baby bonding" leave under the New Parent Leave Act (NPLA), if the employee seeking leave worked at a worksite with fewer than 20 employees within a 75-mile radius.

SB 1383 repeals CFRA and NPLA and expands the obligation to provide leave to small employers not previously covered. The new law requires employers with at least five employees to provide an otherwise eligible employee with up to 12 workweeks of unpaid job-protected leave during any 12-month period for certain covered reasons. The employer must maintain and pay for the employee's coverage under a group health plan for the duration of the leave at the level and under the conditions, coverage would have been provided if the employee had continued in employment continuously for the duration of the leave.

Additional Covered Family Members and Expanded Reasons for Leave

SB 1383 also expands the covered family members and potential reasons for which an eligible employee may take leave. Under SB 1383, eligible employees may take leave to bond with a new child of the employee or to care for themselves or a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner.

Under the prior CFRA statute, leave for purposes of caring for a family member was available only if the family member was the employee's child, a parent, spouse, or domestic partner.

With the enactment of SB 1383, all eligible employees will be able to care for grandparents, grandchildren, and siblings, unlike under the prior CFRA statute.

Additional Changes

SB 1383 contains other significant changes. It requires an employer that employs both parents of a child to grant up to 12 weeks of leave to each employee. Under pre-existing law, the employer only had to grant both employees a combined total of 12 weeks of leave.

The new law also requires employers to provide up to 12 weeks of unpaid job-protected leave during any 12-month period due to a qualifying exigency related to the covered active duty or call to covered active duty of an employee's spouse, domestic partner, child, or parent in the Armed Forces of the United States. Lastly, SB 1383 does not permit an employer to refuse reinstatement of "key employees" as was previously allowed by the CFRA under qualifying circumstances.

It is important to note that, under SB 1383, employees will still need to meet eligibility requirements, including 12 months of service and 1,250 hours worked for the employer in the previous 12-month period, to qualify for family and medical leave.

For a copy of SB 1383, click on the link provided below.

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB1383

Maine Releases Earned Paid Leave Final Regulations

We previously reported that on May 28, 2019, Maine Governor Janet Mills signed into law legislation (S.P. 110 - L.D. 369) which provides that employers with more than 10 employees for more than 120 days in any year must allow their employees to earn paid leave. It is important to note that this legislation allows paid leave to be taken for any purpose.

The Maine Department of Labor (DOL) announced it has adopted final rules for the earned paid leave found at:

https://www.maine.gov/labor/news_events/article.shtml?id=3302220

The Maine DOL also released a set of frequently asked questions located at:

https://www.maine.gov/labor/labor_laws/earnedpaidleave/

Highlights of the earned paid leave regulations are as follows:

- An employee is entitled to earn one hour of paid leave for every 40 hours worked, up to 40 hours per year.
- Employees can start accruing leave at the beginning of employment, but the employer is not required to allow the employee to use the accrued leave before the employee has been employed for 120 days.
- An employee while taking earned leave must be paid at least the same base rate of pay that the employee received immediately prior to taking earned leave and must receive the same benefits as those provided under established policies of the employer pertaining to other types of paid leave.
- Absent an emergency, illness or other sudden necessity for taking earned leave, an employee shall give reasonable notice to the employee's supervisor of the employee's intent to use earned leave. Use of leave must be scheduled to prevent undue hardship on the employer, as reasonably determined by the employer.
- The taking of earned leave under this section may not result in the loss of any employee benefits accrued before the date on which the leave commenced and may not affect the employee's right to health insurance benefits on the same terms and conditions as applicable to similarly situated employees.
- Nothing in the legislation prevents an employer from providing a benefit greater than that provided under S.P 110 – L.D. 369.

- A municipality or other political subdivision may not enact an ordinance or other rule purporting to have the force of law under its home rule or other authority regulating earned paid leave.

For a copy of S.P 110 – L.D. 369, click on the link provided below.

http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=SP0110&item=4&snum=129

New York Announces 2021 Paid Family Leave Employee Contribution Limits

Background:

On April 4, 2016, New York Governor Andrew Cuomo signed into law legislation as part of the 2016-17 state budget that provides a 12-week paid family leave policy. 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. Some other highlights of the program are as follows:

- 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.

The New York Paid Family Leave legislation requires that each September 1, 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 2020 versus 2021 rates is shown below:

	2020	2021
*Average Weekly Wage	$1,401.17	$1,450.17
Contribution Rate	0.27%	0.511%
Maximum Contribution	$196.72	$385.34

*Average Weekly Wage is the average weekly wage paid in New York state during the previous calendar year 2019 as reported on March 31, 2020.

For more information on the New York Paid Family Leave contributions and benefits, click on the link provided below.

https://paidfamilyleave.ny.gov/2021

Oregon Provides Job-Protected Leave for Volunteer Firefighters

Governor Kate Brown of Oregon has issued Executive Order No. 20-41 invoking the Emergency Conflagration Act (the "Act") statewide due to wildfires in the state. The Act includes Or. Rev. Stat. § 476.574 that requires a private or public employer to grant an unpaid leave of absence to an employee or independent contractor, who is a volunteer firefighter to perform services. Employees are guaranteed to be restored to the same position or equivalent position upon return with no loss of seniority or benefits.

The Executive Order remains in effect until November 1, 2020, or until the threat is significantly relieved or the fire season ends.

For a copy of Executive Order No. 20-41, click on the link provided below.

https://www.oregon.gov/gov/Documents/executive_orders/eo_20-41.pdf

Emergency Paid Sick Leave Ordinance Enacted in Sonoma County, California

On August 18, 2020, Sonoma County joined the list of California cities and counties that have enacted emergency paid sick leave ordinances. The Sonoma County ordinance took effect immediately and will remain in effect until December 31, 2020, unless the law on which it is modeled, the federal Families First Coronavirus Response Act (FFCRA), is extended. If the FFCRA is extended, Sonoma County's law will extend for an identical period of time.

Sonoma County is now, to date, the 10th California jurisdiction to enact a local emergency paid sick leave ordinance during the coronavirus public health emergency, joining Long Beach, the City of Los Angeles, County of Los Angeles, Oakland, Sacramento, San Francisco, San Jose, County of San Mateo, and Santa Rosa. In addition, there is a statewide emergency paid sick leave requirement for food sector workers. Sonoma County acknowledges the statewide food sector worker requirement in the introduction to the ordinance, but does not address how the county and statewide requirements interact.

Highlights of the Sonoma County law include:

Covered Employers, Employees and Family Members

Sonoma County's law will apply to employers with 500 or more employees in the United States, i.e., those the federal FFCRA does not cover. Additionally, it covers any employee who has worked for an employer for more than two hours in the county's unincorporated areas. The law presumes any worker providing services is an employee and employers must prove an individual's independent contractor status according to California law in order for an independent contractor to be exempt from the ordinance's coverage. Unlike the FFCRA, there is no potential exception for employees who are health-care providers or emergency responders. Additionally, there is no exception available for employers with unionized workforces.

Employees can use supplemental paid sick leave when they have a personal need to be absent from work or to care for an "individual," i.e., an employee's immediate family member, a person who regularly resides in the employee's home, or a similar person with whom the employee has a relationship that creates an expectation that the employee would care for the person if quarantined or self-quarantined, or if their senior care provider, school, or childcare provider is closed or is unavailable in response to a public health or other public official's recommendation. An "individual" does not include persons with whom the employee has no personal relationship. The ordinance is intended to be applicable for the same period of time as the FFCRA.

Amount of Leave

Under the ordinance, full-time employees normally scheduled to work 40 or more hours per week are entitled to up to 80 hours of supplemental paid sick leave (SPSL). Part-time employees normally scheduled to work fewer than 40 hours per week are entitled to an amount of SPSL no greater than the employee's average number of work hours in a two-week period, calculated over the past six months. Employees of joint employers are only entitled to the total aggregate amount of leave specified for employees of one employer.

Generally, subject to the law's "offset" provision, SPSL is in addition to any paid sick leave employees receive under California's pre-COVID-19 statewide paid sick-and-safe-time law, and any pre-existing paid time off benefits (vacation, sick and/or PTO) provided to employees before March 16, 2020. However, the ordinance contains an "offset" provision, which would allow an employer to use other benefits to satisfy its SPSL obligation. To the extent an employee has at least 80 hours of accrued paid sick leave as of August 18, 2020, or at least 160 hours of a combination of paid sick leave, vacation and/or PTO (combined paid leave), the obligation to provide SPSL is deemed satisfied. Further, if an employee's accrued paid sick leave is less than 80 hours, or their accrued combined leave is less than 160 hours, an employer must provide enough SPSL to make up the difference. For example, if an employee's accrued combined leave

bank presently sits at 120 hours, the employer would only need to "top up" the employee's accrued combined leave bank to provide an additional 40 SPSL hours to meet the employer's overall SPSL obligation (i.e., the 80-hour SPSL obligation would be met by allowing an employee to use up to 40 hours of existing accrued combined leave and the 40 "top up" SPSL hours provided). An employer cannot require an employee to use any other paid or unpaid leave, sick pay, paid time off, or vacation time provided by the employer to the employee before an employee uses SPSL.

Covered Uses

Employees can use SPSL when they cannot work, or telework, because:

1. The employee has been advised by a health-care provider to isolate or self-quarantine to prevent the spread of COVID-19;
2. The employee is subject to quarantine or isolation by federal, state or local order due to COVID-19;
3. The employee is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
4. The employee needs to care for an individual who is subject to a federal, state, or local quarantine or isolation order related to COVID-19, or has been advised by a health-care provider to self-quarantine related to COVID-19, or is experiencing COVID-19 symptoms and is seeking a medical diagnosis; or
5. The employee needs to provide care for an individual whose senior care provider, school, or childcare provider is closed or is unavailable in response to a public health or other public official's recommendation.

As noted, the ordinance covers employees who are health care providers and emergency responders (both terms defined per the FFCRA). These employees can use SPSL for all the above reasons.

Requesting and Documenting Leave

An employer must provide SPSL upon an employee's written request, which includes – but is not limited to -- email and text messages. An employer may require employees to follow reasonable notice procedures only for foreseeable absences. Employers may only take reasonable measures to confirm an employee's SPSL eligibility in accordance with the FFCRA. Employers may require employees to identify the basis for which they are requesting leave, but cannot require employees to furnish a doctor's note or other supporting documentation.

Payment for Leave

Employers pay SPSL at the employee's regular rate of pay, as calculated per the FFCRA. However, unlike the FFCRA, the maximum amount of pay for all types of absences is $511 per day and $5,110 in the aggregate – and not capped at two-thirds the regular rate of pay. When employment ends, employers need not cash out unused SPSL.

Posting and Record Keeping

Employers must provide employees notice of their rights by posting a notice in English and Spanish in the workplace, on any intranet or app-based platform or via email. Because the county does not designate an agency to interpret the ordinance, the responsibility for creating a notice lies exclusively with employers. For at least three years, employers must keep a record of each employee's name, hours worked, and pay rate. Although the law does not expressly require employers to keep records about leave use, to protect against allegations of noncompliance, employers should keep such records.

Prohibitions and Enforcements

Any prospective waiver by an employee of any or all of the law's provisions is contrary to public policy, void and unenforceable. Employers cannot require employees to find a replacement worker as a condition of using leave.

Finally, an employer cannot discharge, reduce in compensation, or otherwise discriminate against any employee for:

1) opposing any practice the law prohibits;
2) requesting or using SPSL;
3) participating in proceedings related to the law;
4) seeking to enforce rights under the law by any lawful means; or
5) otherwise asserting rights under the law.

No agency has been designated to enforce the law, so the only recourse for employees claiming a violation is to file a lawsuit in state court. If they prevail, they can receive: A) reinstatement if unlawfully discharged; B) back pay and SPSL unlawfully withheld, calculated at the employee's average rate of pay; C) other legal or equitable relief a court deems appropriate; and D) reasonable attorney's fees and costs.

Philadelphia, Pennsylvania, Expands Paid and Sick Safe Time Law

On September 17, 2020, Philadelphia, Pennsylvania Mayor Jim Kenney signed File Number 200303, an amendment to the city's generally applicable paid sick and safe time law, the Promoting Healthy Families and Workplaces Ordinance (PHFWO). The amendment requires new public health emergency leave (PHEL) for employees, gig workers and others who do not receive leave under the federal Families First Coronavirus Response Act (FFCRA). The emergency leave requirements take effect immediately, but generally will expire on December 31, 2020.

Highlights of the Public Health Emergency Leave are as follows:

- A public health emergency (PHE) is an emergency related to a public health threat, risk, disaster or emergency that affects Philadelphia that is made or issued by a federal, state or local official. How long a PHE remains in effect will depend on the start-end dates the declaration or proclamation uses, or when an official terminates the declaration or proclamation.
- Under the law, covered workers are employees and individuals who perform at least 40 hours of work in Philadelphia in a year for one or more hiring entities, including the following individuals: various domestic workers; individuals providing services under the participant-directed and agency homecare model; individuals who work for food delivery networks, including drivers; individuals who work for transportation network companies, including drivers; and certain health-care professionals. It is important to note that the law not only applies to an "employer," but also to a "hiring entity."
- Notably, the law presumes an individual performing work for a hiring entity is an employee, unless the hiring entity demonstrates all the following conditions are met: A) The individual is free from the hiring entity's control and direction in connection with the performance of the labor or services, under the contract and in fact; B) The individual performs labor or services that are outside the hiring entity's usual course of business; and C) The individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the labor or services performed.
- For hiring entities with unionized workforces, any or all of the law's requirements may be waived via a collective bargaining agreement (CBA) that is in effect. The waiver must be clear, unmistakable, and in the CBA; and the CBA must provide a comparable paid leave benefit.
- A hiring entity must provide public health emergency leave when a public health emergency is declared or proclaimed, or on the covered individual's hiring date during a public health emergency.
- Individuals who work 40 hours or more per week receive 80 hours or an amount of leave equal to their average hours worked over a 14-day period (see below), whichever is greater, up to a maximum of 112 hours. Bona fide executive, administrative, professional and outside sales employees are assumed to work 40 hours in each workweek unless their normal workweek is less than 40 hours, in which case the amount of leave is based on their normal workweek.
- Individuals who work fewer than 40 hours per week receive an amount of leave equal to the number of hours they worked on average in a 14-day period.
- For individuals whose hours vary from week to week, a hiring entity must use the following calculation to determine the average hours in a 14-day period:
    - A number equal to the average hours the individual worked per day over the six-month period ending on the date the public health emergency was declared, multiplied by 14, including any hours for which the individual took leave of any type;
    - If the individual did not work over such period, the individual's reasonable expectation at the time of hiring of the average hours the individual would normally receive in a typical 14-day period.
- A covered individual may use PHEL at any time during the public health emergency (and possibly for one month following the conclusion of such emergency when unable to work due to one or more of the following circumstances:
    - The individual is subject to a federal, state, or local quarantine or isolation order related to the public health emergency;
    - A health-care provider advises the individual to self-quarantine due to concerns related to a public health emergency;
    - The individual is experiencing symptoms related to a public health emergency and is seeking a medical diagnosis;

    - Providing care for an individual who is subject to a federal, state, or local quarantine or isolation order related to the public health emergency, or who a health-care provider advises self-quarantine due to concerns related to a public health emergency;
    - Caring for a child of a covered individual if the child's school or place of care has been closed, or the childcare provider is unavailable, due to precautions taken in accordance with the public health emergency response; or
    - The individual is experiencing any other substantially similar condition specified by the United States Secretary of Health and Human Services in consultation with the United States Secretary of the Treasury and the United States Secretary of Labor.
- A hiring entity is not required to allow a covered individual to use PHEL if the individual can reasonably perform work remotely, considering all relevant circumstances that affect the individual's ability to perform remote work.
- To the extent a federal or state law requires hiring entities to provide paid leave or paid sick time related to a public health emergency, hiring entities may require PHEL to run concurrently with such leave unless the other law prohibits concurrent use of paid leave. Related, the law requires hiring entities to provide additional PHEL to the extent the Philadelphia law's requirements exceed the requirements of other laws.
- Individuals can use PHEL in the smaller of hourly increments or the smallest increment that the entity's payroll system uses to account for absences or use of other time.
- When leave ends, hiring entities must return covered individuals to the position they held when leave began.
- Individuals must provide notice to a hiring entity as practicable and as soon as feasible, but only when the need for leave is foreseeable. The law does not address a notice, if any, individuals must provide for unforeseeable absences. A hiring entity can request that a covered individual submit a self-certified statement asserting that leave was used for a lawful purpose.
- Hiring entities must pay PHEL at the worker's regular rate of pay, and with the same benefits, including health-care benefits, as the individual normally earns from the hiring entity, which cannot be less than the state minimum wage. Interestingly, the law cites the state overtime law for purposes of calculating the "regular" rate, something the general paid sick-and-safe-time ordinance does not expressly do.

Similarly, for tipped employees, rather than incorporate standards in the pre-existing ordinance, the law incorporates pay standards in regulations implementing Philadelphia's fair workweek ordinance:

- If paid at least $7.25 per hour by the hiring entity, the rate of pay is the hourly amount paid to the individual by the hiring entity;
- If paid less than $7.25 per hour by the hiring entity, the rate of pay is the numerical average of the following (published by the Pennsylvania Department of Labor and Industry):
    - The hourly wage for Standard Occupational Classification (SOC) Code 35-3011 "Bartenders";
    - The hourly wage for SOC 35-3031 "Waiters & Waitresses"; and
    - The hourly wage for SOC 35-9011 "Dining Room & Cafeteria Attendants & Bartender Helpers."
- A hiring entity cannot require an individual to find coverage for any shift during which the individual uses PHEL. Additionally, a hiring entity or any other person cannot interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right under the law.
- Hiring entities cannot take retaliatory personnel action or discriminate against an individual for exercising protected rights, including but not limited to, using PHEL, filing a complaint or informing any person about any entity's alleged violation, cooperating with the mayor's Office of Labor in its investigations of alleged violations, and informing any person of the individual's right under the law. Protections apply to a person who mistakenly, but in good faith, alleges a violation. Additionally, there is a rebuttable presumption of retaliation whenever a hiring entity discharges, suspends, demotes, or takes other adverse action against a person within 90 days of the individual (a) filing a complaint alleging a violation with the Office of Labor or a court, (b) informs any person about an entity's alleged violation, (c) cooperates with the Office of Labor or others investigating or prosecuting any alleged violation, or (d) opposes any unlawful policy, practice, or act.
- The law prohibits a hiring entity's absence control policy from counting PHEL as an absence that may lead to or result in discipline, discharge, demotion, suspension, or any other adverse action, though a hiring entity can take action against an individual who uses PHEL for a reason the law does not permit.

- A hiring entity need not cash out unused PHEL upon an individual's termination, resignation, retirement, or other separation from employment. However, if it rehires the individual within six months of separation, the entity must reinstate the previous amount of PHEL the individual had when the working relationship ended.
- Within 15 days of the law taking effect, a hiring entity must provide individuals notice of their rights. Entities must give notice that: (a) individuals are entitled to PHEL, the amount of PHEL, and the terms of its use guaranteed under the law; (b) retaliation against individuals who request or use PHEL is prohibited and that individual has the right to file a complaint or bring a civil action if PHEL is denied or the individual is retaliated against for requesting or using PHEL. Entities comply with this requirement by either supplying each individual a notice that contains the required information or conspicuously displaying a poster that contains the required information in an accessible place in each establishment where such employees are employed. The notice must be provided in English and in any language that is the first language spoken by at least five percent of the employer's workforce.
- If employees telework or work through a web-based platform, or the hiring entity has no physical location, the entity must furnish notice through electronic communication or a conspicuous posting in the web-based platform.
- For a period of two years, entities must keep records documenting hours worked, PHEL taken by employees and payment for PHEL. If the entity does not maintain or retain adequate records, or allow the enforcement agency access, it is presumed that the employer has violated the law, absent clear and convincing evidence otherwise.
- An individual may file a complaint with the mayor's Office of Labor within a year of the date the person knew or should have known of the alleged violation. Alternatively, within two years from the date an alleged violation occurred, an aggrieved individual, or any entity whose member is aggrieved by a violation, can file an individual or class action lawsuit. However, unlike with the paid sick-and-safe-time requirements in the law, an individual need not first file an administrative complaint before filing a lawsuit if a public health emergency has been declared.

For a copy of File Number 200303, click on the link provided below.

https://phila.legistar.com/LegislationDetail.aspx?ID=4432789&GUID=727CFD5B-E677-4893-95E0-4D3177DA6BF5

Payroll

2021 Minimum Wage Announced for Arizona

The Industrial Commission of Arizona has announced that the state minimum wage rate will increase from $12.00 to $12.15 per hour and the tipped employee cash wage has been increased from $9.00 per hour to $9.15 per hour. Both increases are effective January 1, 2021.

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

https://www.azica.gov/sites/default/files/media/THE%20FAIR%20WAGES%20AND%20HEALTHY%20FAMILIES%20ACT%20%286%29.pdf

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Minimum Wage to Increase in Minnesota Effective January 1, 2021

On August 28, 2020, the Minnesota Department of Labor and Industry announced that the state minimum wage would increase effective January 1, 2021 as follows.

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

- Increase from $10.00 per hour to $10.08 per hour.

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

- Increase from $8.15 per hour to $8.21 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 $8.15 per hour to $8.21 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.

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

http://www.dli.mn.gov/business/employment-practices/minimum-wage-minnesota

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Rhode Island Extends Withholding-Tax Relief for Employees Working Remotely Amid Pandemic

It was previously reported that on May 26, 2020, the Rhode Island Department of Revenue Division of Taxation (DOR) issued guidance via Advisory 2020-22 (ADV 2020-22) for income tax withholding on wages of employees temporarily working within and outside of the state due to COVID-19.

In its guidance the DOR provides temporary relief from income tax withholding for employees who are temporarily working from home outside of the state where their employer is located due to the COVID-19 emergency. The original guidance was effective for 120 days ending on September 18, 2020.

The Rhode Island Division of Taxation has now extended the emergency regulation, 280-RICR-20-55-14, by 60 days to November 18, 2020.

The guidance is explained in detail in emergency regulation 280-20-55-14 found at **https://rules.sos.ri.gov/regulations/part/280-20-55-14**.

Highlights of ADV 2020-22 are as follows:

Nonresidents who normally work in Rhode Island, but are temporarily working outside the state due to COVID-19

Under the emergency regulation, the income of employees who are nonresidents temporarily working outside of Rhode Island solely due to COVID-19 will continue to be treated as Rhode Island-source income for Rhode Island withholding tax purposes. Example: A Massachusetts resident works for a Rhode Island employer, normally performs his tasks within Rhode Island, and has wages that are subject to Rhode Island income tax withholding. If the employee is temporarily working within Massachusetts due to the pandemic, the employer should continue to withhold Rhode Island income tax because the employee's work is derived from or connected to a Rhode Island source.

Residents working for an employer outside of Rhode Island and normally work outside of Rhode Island, but are temporarily working within Rhode Island due to COVID-19

Under the emergency regulation, Rhode Island will not require employers located outside of Rhode Island to withhold Rhode Island income taxes from the wages of employees who are Rhode Island residents temporarily working within Rhode Island solely due to COVID-19.

For a copy of ADV 2020-22, click on the link provided below.

http://www.tax.ri.gov/Advisory/ADV_2020_22.pdf

South Carolina Extends Nexus Relief for Employees Telecommuting During COVID-19

ADP recently reported that the South Carolina Department of Revenue (DOR) issued guidance in SC Information Letter #20-11 providing temporary relief from the assertion of nexus and income tax withholding instructions for employees working from home temporarily within and outside of the state due to COVID-19.

In its guidance South Carolina stated as follows:

> The Department will not use changes in an employee's temporary work location due to the remote work requirements arising from, or during, the COVID-19 relief period (March 13, 2020 – September 30, 2020) solely as a basis for establishing nexus (Including for Public Law 86-272 purposes) or for altering apportionment of income.

On August 26, 2020, the DOR via Information Letter No. 20-24 extended the tax relief regarding withholding and nexus for temporary work-at-home employees due to the coronavirus (COVID-19) pandemic, through December 31, 2020.

A summary of the guidance is provided below:

Income Tax Withholding

Under the normal circumstances, South Carolina employers located in the state are required to withhold income tax from the wages of residents and nonresidents working within the state. If South Carolina residents work outside of the state, those wages are not subject to South Carolina income tax withholding if the state where those wages are earned are subject to income tax withholding in that state. (SC Code §12-8-520.) Pursuant to the COVID-19 emergency, and from the period March 13, 2020 through September 30, 2020, the DOR will not use the temporary change of an employee's work location due to COVID-19 to impose the income tax withholding requirement under SC Code §12-8-520; however, this relief does not apply to workers whose status changed from temporary to permanent assignment during this period.

During the COVID-19 relief period, a South Carolina employer's income tax withholding requirement is not affected by the current shift of employees working on the employer's premises in South Carolina to teleworking from outside of South Carolina. Accordingly, the wages of nonresident employees temporarily working remotely in another state instead of their South Carolina business location continue to be subject to South Carolina withholding.

Further, during the COVID-19 relief period, an out-of-state employer is not subject to South Carolina's income tax withholding requirement solely due to the shift of employees working on the employer's premises outside of South Carolina to teleworking from South Carolina. Accordingly, the wages of a South Carolina resident employee temporarily working remotely from South Carolina instead of their normal out-of-state business location are not subject to South Carolina withholding if the employer is withholding income taxes on behalf of the other state.

Nexus

The DOR will not use changes in an employee's temporary work location due to the remote work requirements arising from, or during, the COVID-19 relief period (March 13, 2020 – December 31, 2020) solely as a basis for establishing nexus (Including for Public Law 86-272 purposes) or for altering apportionment of income.

For a copy of Information Letter #20-24, click on the link provided below.

https://dor.sc.gov/resources-site/lawandpolicy/Advisory%20Opinions/IL20-24.pdf

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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