



New & Noteworthy Employment Laws Creating Employee Rights and Employer Obligations



2022 Edition

Dear Clients and Friends,

This publication is our first annual survey that highlights major labor and employment developments in the United States. It summarizes some of the more significant state laws, executive orders, and ballot measures enacted, or which became effective, in 2022. It also outlines other notable employment law developments, such as federal legislation, rules issued by federal regulatory authorities, and court decisions that may significantly impact employers.

State legislation in 2022 created many additional employee protections and employer obligations. With regard to wages, while some jurisdictions were proactive in amending their minimum wage laws, the rise in inflation caused others to be reactive. Additional new and revised laws also covered such issues as the expansion of prohibited bases of discrimination, leave of absence entitlements, firearms, and marijuana, as well as other miscellaneous laws involving such matters as privacy, pay equity, wage theft, reductions-in-force, child labor laws, non-competition agreements, independent contractor determinations, workers' compensation, and background checks. Please note, this is not a comprehensive summary of all changes but is intended to provide you with the key highlights that we think are most relevant.

We hope this 2022 summary is of assistance to you and/or your colleagues. Should you have any questions or comments, please reach out to your Seyfarth attorney.



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2022 DEVELOPMENTS BY STATE

<p>AL Alabama</p>	<ul style="list-style-type: none"> Employers must provide up to 12 weeks of unpaid family leave for the birth or adoption of a child. Marketplace contractors classified as independent contractors for purposes of unemployment insurance/workers' compensation laws if certain conditions are met. Effective 1/1/23, state amends conditions under which employees can keep firearms and ammunition in their personal vehicles in an employer's parking lot.
<p>AK Alaska</p>	<ul style="list-style-type: none"> On 1/1/23, the minimum wage will increase from \$10.34 to \$10.85. On 1/1/23, the weekly salary threshold for exempt executive, administrative, and professional employees will rise from \$827.20 to \$868. State extended employer hiring preferences to military spouses and dependent children, including surviving spouses of deceased service members.
<p>AZ Arizona</p>	<ul style="list-style-type: none"> On 1/1/23, the minimum wage will increase from \$12.80 to \$13.85. On 1/1/23, the hourly tipped minimum wage will rise from \$9.80 to \$10.85, based on a \$3 hourly tip credit. State expanded definition of employer under its Civil Rights Act for purposes of sexual harassment claims. Effective 12/31/22, individual may file a petition to seal all case records related to a criminal offense if the individual was: (a) convicted of a criminal offense and has completed all of the terms and conditions of the sentence that was imposed by the court, including the payment of all monetary obligations and restitution to all victims; (b) charged with a criminal offense and the charge was subsequently dismissed or resulted in a not guilty verdict at a trial; or (c) arrested for a criminal offense and no charges were filed. <u>Flagstaff</u>: On 1/1/23, the minimum wage will increase from \$15.50 to \$16.80. Minimum cash wage for tipped employees \$14.80. <u>Tucson</u>: On 1/1/23, the minimum wage will increase from \$13 to \$13.85. Next increase 1/1/24 to \$14.25. Minimum cash wage for tipped employees \$10.85 due to state rate.
<p>AR Arkansas</p>	<p><i>No noteworthy developments located.</i></p>
<p>CA California</p>	<ul style="list-style-type: none"> On 1/1/23, the minimum wage will increase to \$15.50, regardless of the size of the employer. On 1/1/23, the minimum salary requirement for exempt employees will increase to \$64,480 annually (\$5,373.33 monthly). The computer software employee's minimum hourly rate of pay exemption will increase from \$50.00 to \$53.80, the minimum monthly salary exemption from \$8,679.16 to \$9,338.78, and the minimum annual salary exemption from \$104,149.81 to \$112,065.20. The licensed physicians and surgeons' minimum hourly rate of pay exemption will increase from \$91.07 to \$97.99. Effective 1/1/23, employers will be required to provide pay ranges on job postings and to requesting employees to increase pay transparency for applicants and employees. Employers with 100 or more employees must comply with expanded pay data reporting obligations as of May 10, 2023. On 5/23/22, in <i>Naranjo v. Spectrum Security Services, Inc.</i>, the California Supreme Court ruled that violations related to meal periods and rest breaks can form the basis for claims for waiting time penalties and wage statement penalties under California law. The decision held that employers must pay meal period and rest break premium payments within the statutory deadline for all wages due to employees upon separation of employment. State has enacted a law prohibiting retaliation against an employee who refuses to work during emergency conditions. Effective 1/1/23, call center employers must provide notice of mass layoff, relocation, or termination. Effective 1/1/23, businesses open to the public must have restrooms available for employees who have Crohn's disease, ulcerative colitis, irritable bowel syndrome, or any other similar medical condition. Effective 1/1/23, CA will remove requirement for specified individuals in home healthcare facilities to sign a declaration regarding prior criminal convictions. State has enacted a law banning discrimination based on reproductive health decision making. The current rebuttable presumption that an employee's illness resulting from COVID-19 was sustained in the course of employment for purposes of workers' compensation benefits has been extended to January 1, 2024. Effective 1/1/23, the definition of hate crimes in places of employment will expand to include the display of hate imagery. Effective 1/1/23, hotel employers will be liable for human trafficking penalties if a supervisory employee knew or acted with reckless disregard of sex trafficking activity.

2022 DEVELOPMENTS BY STATE

CA California CONTINUED

- Effective 1/1/23, CA will amend the FEHA to toll right-to-sue notice deadlines during mandatory or voluntary dispute resolution proceedings.
- Effective 1/1/23, the California Vehicle Code will restrict using devices as alternatives to the conventional license plates, stickers, tabs, and registration cards to monitor employees and require employers choosing to install in vehicles devices that could locate, track, watch, listen to, or otherwise surveil employees to provide certain notices to employees before using those devices.
- Unemployment and wage replacement benefits will increase for low-wage employees under the family temporary disability insurance program, for disabilities or covered incidents occurring on or after January 1, 2025.
- Effective 1/1/23, the Agricultural Labor Relations Voting Choice Act gives agricultural workers the option to vote by mail in union representation elections.
- The state has reduced the maximum amount of wages that may be subject to garnishment.
- The state has enacted a law requiring employers to provide up to five days of bereavement leave upon the death of a family member.
- The state has amended its family and medical leave and paid sick leave laws to allow employees to use leave to care for a designated person, now defined as an individual related by blood or whose association is the equivalent of a family relationship.
- Effective 1/1/24, the state will prohibit employment discrimination based on off-duty use of marijuana.
- The state has passed the Fast Food Accountability and Standards Recovery Act, which authorizes the creation of the Fast Food Council, tasked with regulating the wages and working environment in fast food restaurants. Per a referendum petition, voters will decide whether the law should take effect in November 2024.
- Applicants for home healthcare licenses may now request transfers of criminal record clearance online.
- The definition of “eligible employer” under the CalSavers program has been expanded to include those with one or more employees; employers with one or more employees that do not offer a retirement savings program must implement a payroll deposit retirement savings arrangement by 12/31/25.
- A California Superior Court held that the Women on Boards law, which required corporate boards of publicly held companies to include at least three women, is unconstitutional. *Robin Crest, et al. v. Alex Padilla* (May 13, 2022).
- California Court of Appeal held that an employer may be liable under Cal. Lab. Code § 970 based on its representations to an employee about job duties even if the employee is at-will. *White v. Smule, Inc.* (Ct. App. Jan. 27, 2022).
- California Supreme Court held that the evidentiary standard for whistleblower retaliation claims under Cal. Lab. Code § 1102.5 is the standard prescribed in §1102.6, not the McDonnell Douglas test. *Lawson v. Ppg Architectural Finishes* (Jan. 27, 2022).
- California Court of Appeal found that (1) the sale of a business’s goodwill that serves as an exemption to the prohibition against restrictive covenants in Cal. Bus. & Prof. Code § 16601 could be reasonably inferred rather than explicit, and (2) that the exempt covenant does not need to be contained in a particular type of document. *Blue Mountain Enters., LLC v. Owen*, 74 Cal. App. 5th 537 (2022).
- Effective 1/1/23, Labor Code § 1400 is amended to include additional Labor Commissioner enforcement mechanisms for (Cal mini-WARN) Act notice violations.
- The state has clarified that pre-employment drug testing is not compensable.
- Effective 1/1/23, the state will substantially expand the privacy and information security obligations of most employers doing business in California, requiring significant changes to existing policies, procedures, and practices for handling HR Individuals’ personal information.
- Under the new Cal. Lab. Code § 1139, it is now unlawful for employers to take or threaten adverse action against an employee for refusing to report to or leave a workplace due to a reasonable belief that the workplace is unsafe due to a “emergency condition.”
- Multiple local jurisdiction healthcare worker minimum wage ordinances were enacted (Downey, Inglewood, Long Beach, Los Angeles and Monterey Park). Before some of these laws took effect, referendum petitions were filed to have voters decide the outcome. Follow Duarte, Inglewood, Downey, Long Beach, Los Angeles, and Monterey measures in 2023.
- Alameda: Effective 7/1/22, the minimum wage will increase from \$15 to \$15.75.
- Belmont: Effective 1/1/23, the minimum wage will increase from \$16.20 to \$16.75.
- Berkeley: Effective 7/1/22, the minimum wage increased from \$16.32 to \$16.99. New predictive scheduling ordinance has been enacted (effective January 2023, but operative in 2024).
- Burlingame: Effective 1/1/23, the minimum wage will increase from \$15.60 to \$16.47.

2022 DEVELOPMENTS BY STATE

CA California CONTINUED

- Cupertino: Effective 1/1/23, the minimum wage will increase from \$16.40 to \$17.20.
- Daly City: Effective 1/1/23, the minimum wage will increase from \$15.53 to \$16.07.
- East Palo Alto: Effective 1/1/23, the minimum wage will increase from \$15.60 to \$16.50.
- El Cerrito: Effective 1/1/23, the minimum wage will increase from \$16.37 to \$17.35.
- Emeryville: Effective 7/1/22, the minimum wage increased from \$17.13 to \$17.68.
- Foster City: Effective 1/1/23, the minimum wage will increase from \$15.75 to \$16.50.
- Fremont: Effective 7/1/22, the minimum wage increased from \$15.25 to \$16.00. Rate no longer dependent on size of employer.
- Half Moon Bay: Effective 1/1/23, the minimum wage will increase from \$15.56 to \$16.45.
- Hayward: Effective 1/1/23, the minimum wage will increase to \$16.34 (26+ employees).
- Los Altos: Effective 1/1/23, the minimum wage will increase from \$16.40 to \$17.20.
- Los Angeles: Effective 7/1/22, the minimum wage increased from \$15 to \$16.04 per hour. In unincorporated areas of the county, the hourly wage is now \$15.96. Effective April 2023, retailers must provide schedules two weeks in advance; employers who are unable to adhere to provided schedules will be penalized.
- Menlo Park: Effective 1/1/23, the minimum wage will increase from \$15.75 to \$16.20.
- Milpitas: Effective 7/1/22, the minimum wage increased from \$15.65 to \$16.40.
- Mountain View: Effective 1/1/23, the minimum wage will increase from \$17.10 to \$18.15.
- Novato: Effective 1/1/23, the minimum wage will increase based on business size to: \$16.32 per hour for very large businesses with 100 or more employees (adjusted based on CPI-W); \$16.07 per hour for large businesses with 26-99 employees; and \$15.53 per hour for small businesses with 1-25 employees.
- Oakland: Effective 1/1/23, the minimum wage will rise from \$15.06 to \$15.97. Effective 1/1/23, the Hotel Minimum Wage Rate goes up to \$17.37 (with health benefits), and \$23.15 (without health benefits).
- Palo Alto: Effective 1/1/23, the minimum wage will increase from \$16.45 to \$17.25.
- Pasadena: Effective 7/1/22, the minimum wage increased from \$15 to \$16.11.
- Petaluma: Effective 1/1/23, the minimum wage will increase from \$15.85 to \$17.06 regardless of the size of the employer.
- Redwood: Effective 1/1/23, the minimum wage will increase from \$16.20 to \$17.00.
- San Carlos: Effective 1/1/23, the minimum wage will increase from \$15.77 to \$16.32.
- San Diego: Effective 1/1/23, the minimum wage will increase from \$15 to \$16.30.
- San Francisco: Effective 7/1/22, the minimum wage increased from \$16.32 to \$16.99. The city's Public Health Emergency Leave went into effect, providing for paid leave to employees for public health emergencies. The Family Friendly Workplace Ordinance also went into effect which requires employers to engage in an interactive process with employees who request a flexible or predictable working arrangement and provides additional protections for employees who make such requests.
- San Jose: Effective 1/1/23, the minimum wage will increase from \$16.20 to \$17.00.
- San Mateo: Effective 1/1/23, the minimum wage for city will increase from \$16.20 to \$16.75. Effective 4/1/23, unincorporated areas of San Mateo County \$16.50.
- Santa Clara: Effective 1/1/23, the minimum wage will increase from \$16.40 to \$17.20.
- Santa Monica: Effective 7/1/22, the minimum wage increased from \$15 to \$15.96.
- Santa Rosa: Effective 1/1/23, the minimum wage will increase from \$15.85 to \$17.06.
- Sonoma: Effective 1/1/23, the minimum wage will increase from \$16 to \$17.
- South San Francisco: Effective 1/1/23, the minimum wage will increase from \$15.80 to \$16.70.
- Sunnyvale: Effective 1/1/23, the minimum wage will increase from \$17.10 to \$17.95.
- West Hollywood: Effective 7/1/2022, minimum wage increased from \$15.50 to \$16.50. In addition, qualified employees must be eligible to use accrued paid compensated time off after the first six months of employment or consistent with company policies, whichever is sooner.

2022 DEVELOPMENTS BY STATE

CO

Colorado

- Effective 1/1/23, regulations under Colorado's Healthy Families and Workplaces Act will once again change how employers calculate the rate of pay when employees use paid sick and safe leave and/or public health emergency leave.
- Effective 1/1/23, the state minimum wage will increase from \$12.56 to \$13.65. Minimum cash wage for tipped employees \$10.63.
- Effective 1/1/23, as proposed, the weekly minimum salary threshold for white-collar workers will increase from \$865.38 to \$961.54. For purposes of highly compensated employees, the annualized salary will increase from \$101,250 to \$112,500.
- On 11/8/22, voters passed a ballot initiative to decriminalize possession of and legalize limited use of psychedelic mushrooms and other plant- and fungi-derived psychedelic drugs by those 21 years of age or older.
- Effective 1/1/23, the Paid Family and Medical Leave Insurance program will become effective. While employees cannot take benefits until 2024, premiums are due under the program.
- Effective 8/10/22, the state non-compete law became effective.
- Effective 7/1/23, the CPA protects personal data collected about individuals and allows them to opt out or correct such information. However, the act does not apply to job applicants and exempts information maintained for employment records purposes.
- The state has expanded whistleblower protections for workplace health and safety violations.
- The state has expanded notice requirement for unemployment benefits upon termination.
- Effective 3/1/22, the state began criminalizing overreaching restrictive covenants.
- Effective 8/9/22, employers must provide specified notices to terminated employees regarding payroll deductions within 10 calendar days. If employee pays money or returns item that was the basis of the deduction within 14 days, the employer must pay the amount of the deduction within 14 days. See written notice requirements.
- State amended additional wage theft laws increase penalties for employers that do not timely pay wages, allow employees to demand wages on behalf of a class of similarly situated employees, permit the DLSE to investigate such demands on a class-wide basis, and limit employers' ability to recover attorney's fees.
- State has expanded protections and penalties for wage and hour retaliation claims.
- State has amended its Anti-Discrimination Act to extend the time to file an administrative charge and provide for additional damages for age discrimination claims.
- State has enacted the Clean Slate Act, which will automatically seal any arrest records that do not result in conviction and set timeframes for sealing records of criminal convictions, other than violent crimes.
- The state has enacted a law restricting non-compete agreements for individuals making less than the state's threshold for highly compensated workers.
- The state has amended notice requirements and employer penalties for restrictive covenants.
- The state now prohibits employers from disclosing employee mental health records unless it is reasonably necessary or ordered by ALJ or the DWC.
- Denver: Effective 1/1/23, the minimum wage will increase from \$15.87 to \$17.29. Minimum cash wage for tipped employees \$14.27.

CT

Connecticut

- On 1/1/23, Connecticut's "Clean Slate" law will become effective, expanding protections for applicants or employees with criminal records.
- Effective 7/1/22, the state minimum wage increased from \$13 to \$14. It will increase again to \$15 on 6/1/23.
- New regulations under the Connecticut Family and Medical Leave Act expand coverage and provide broadened benefits to covered employees.
- The state now prohibits employment discrimination against victims of domestic violence and mandates that employers provide reasonable accommodation to employees for seeking services/medical attention related to domestic violence.
- Effective 7/1/22, provisions of the state recreational marijuana law took effect that address an employer's right to test, prohibit, accommodate, and take adverse action against employee for possession/use. The law establishes employee/applicant right to file a civil suit in state court within 90 days of the violation.
- The state now bans mandatory employer-sponsored meetings about political or religious opinion.

2022 DEVELOPMENTS BY STATE

<p>DE Delaware</p>	<ul style="list-style-type: none"> Effective 1/1/23, the state minimum wage will increase from \$10.50 to \$11.75. The state now mandates that the wages of an employee who separates from employment before a payday are payable either on the next date that wages would normally be paid or three business days after the last day worked, whichever later. Payment must be made by the usual method of payment, but the employee can request payment by mail to the address provided in the employee's request; if no address is provided, the most recent address provided to the employer. A new law providing penalties for wage theft has been added, prohibiting employers from (a) employing an individual without reporting the individual's employment to appropriate agencies and failing to pay applicable taxes and fees; (b) failing to properly withhold state and federal taxes from the employee; (c) failing to forward money withheld from the employee's wages to appropriate state or federal agency within seven days of the pay period; (d) paying an employee less than the minimum wage. The law also prohibits misclassification of workers as independent contractors for purposes of avoiding wage, tax, or workers' compensation obligations. The state now prohibits employers from asking a prospective employee's age (or details that would indicate age), with limited exceptions. The state has enacted the Healthy Delaware Families Act, which provides employees with up to 12 paid parental or medical caregiving leave per year. See new notice requirements. The Act is scheduled to go into effect in January 2025, with benefits available to workers beginning in 2026.
<p>DC District of Columbia</p>	<ul style="list-style-type: none"> On 7/1/22, the DC minimum wage increased from \$15.20 to \$16.10. In 11/22, voters approved the "Tip Credit Elimination Act of 2021" which will eliminate the tip credit in the District by 7/1/27. The initiative established the following minimum wages for tipped employees: \$6.00 by 1/1/23; \$8.00 by 7/1/23; \$10.00 by 7/1/24; \$12.00 by 7/1/25; \$14.00 by 7/1/26; and equal to non-tipped employee minimum wage by 7/1/27. The minimum cash wage is currently \$5.35, and the maximum tip credit is \$10.75. See recently effective sexual harassment training requirements for tipped workers. Amendments to the Universal Paid Leave have taken effect, increasing the maximum number of weeks of paid leave and eliminating the one-week waiting period. In July 2022, the DC mayor signed a modified non-compete ban. DC will prohibit testing for marijuana as a condition of employment except under certain circumstances. <i>This measure will not become operative and enforceable unless and until it is funded through inclusion in an approved budget, which cannot be determined at this time.</i>
<p>FL Florida</p>	<ul style="list-style-type: none"> Effective 9/30/22, the state minimum wage increased from \$10 to \$11. Minimum wage is set to increase again on 9/30/23 to \$12.00. A federal judge has issued a preliminary injunction blocking part of state's Individual Freedom Act (Stop Woke Act) on the grounds that the law violates the First Amendment. <i>Honeyfund.com Inc. v. Ron DeSantis Order and Preliminary Injunction.</i> Miami Beach: Employment discrimination prohibited on the basis of natural or protective hairstyles commonly associated with race and national origin.
<p>GA Georgia</p>	<ul style="list-style-type: none"> The state has amended the test used to determine whether a worker is an employee or independent contractor under the state's Employment Security Law. The state now restricts local laws regulating work hours. Effective 7/1/22, workers will be presumed to be employees under state unemployment law unless the worker is (and will continue to be) free from the employer's control and direction, and is customarily engaged in an independently established trade, occupation, profession or business. See details on the definition of employment, certain exemptions and civil penalties available. Employers now may not condition employment on a prospective employee's agreement not to enter the parking lot access a firearm possessed and stored lawfully within the employee's vehicle. Atlanta: Anti-discrimination law amended to include protection on the basis of "criminal history status" as well as "gender expression."
<p>HI Hawaii</p>	<ul style="list-style-type: none"> On 6/22/22, Hawaii Gov. David Ige signed legislation raising the state's minimum wage to \$18 an hour by 2028. The measure, HB 2510, raised the state's minimum wage gradually from \$10.10 per hour, first to \$12 on Oct. 1, 2022 and then in increments (\$14 in 2024, \$16 in 2026) until it reaches \$18 on Jan. 1, 2028. The state's tip credit of 75 cents per hour also will rise incrementally to \$1.50, increasing the amount employers can offset the hourly wages they must pay to workers who earn tips: to \$1 on 1/1/22, \$1.25 on 1/1/24, and \$1.50 on 1/1/28. Hawaii now allows employers to count tips an employee receives toward the minimum wage if the employee's wage from their employer plus tips they receive equal at least \$7.00 more than the minimum wage.

2022 DEVELOPMENTS BY STATE

<p>ID Idaho</p>	<p><i>No noteworthy developments located.</i></p>
<p>IL Illinois</p>	<ul style="list-style-type: none"> • On 1/1/23, the state minimum wage will increase from \$12 to \$13. • Illinois voters approved an amendment to the state constitution giving employees a right to “organize and bargain collectively through representatives of their own choosing for the purpose of negotiating wages, hours, and working conditions, and to protect their economic welfare and safety at work.” • Effective 1/1/23, employers must allow most employees at least twenty-four consecutive hours of rest in every consecutive seven-day period. An employee who works in excess of 7½ continuous hours is entitled to an additional 20-minute meal period for every additional 4½ continuous hours worked. • Employers with 100+ employees in Illinois now must obtain an equal pay registration certificate from the Department of Labor. Employers must also file an Annual Employer Information Report EEO-1 with the Equal Employment Opportunity Commission. • The state has enacted a CROWN Act, which amends the state’s Human Rights Act to include traits associated with race, including hair texture/styles. • Effective 1/1/23, rights afforded under the Employee Sick Leave Act serve as the minimum standard in a negotiated collective bargaining agreement. • State’s unpaid bereavement leave expanded to cover absences due to pregnancy loss, failed adoptions, unsuccessful reproductive procedures, and other diagnoses or events impacting pregnancy and fertility. • The Illinois Supreme Court held that the exclusivity provisions of the state’s workers’ compensation law do not preempt claims for statutory damages under its biometric privacy law. <i>McDonald v. Symphony Bronzeville Park</i>, No. 126511, 2022 Ill. LEXIS 194 (Feb. 3, 2022). • On 6/10/22, state expanded contractors’ liability for unpaid wages of subcontractors’ workers. • Chicago: On 7/1/22, the city’s minimum wage increased from \$15 to \$15.40 (21+ employees), \$14 to \$14.50 (4-20 employees). Minimum cash wage: \$9.24 and Maximum tip credit: \$6.16. Minimum wage for city contracts or concessionaire agreements is \$14.75 (or \$8.00 for tipped workers). Effective 7/1/22, notice requirements for schedule changes were revised under Chicago’s Fair Workweek Notice Act. The city also strengthened sexual harassment prevention requirements, including new policies and training requirements, expanded recordkeeping requirements and more severe penalties. • Cook County: On 7/1/22, the county minimum wage increased from \$13 to \$13.35. Minimum cash wage: \$7.40, Maximum tip credit: \$5.95.
<p>IN Indiana</p>	<p><i>No noteworthy developments located.</i></p>
<p>IA Iowa</p>	<p><i>No noteworthy developments located.</i></p>
<p>KS Kansas</p>	<p><i>No noteworthy developments located.</i></p>
<p>KY Kentucky</p>	<ul style="list-style-type: none"> • On 11/17/22, state’s governor signed Executive Order protecting medical marijuana use.
<p>LA Louisiana</p>	<ul style="list-style-type: none"> • State enacted CROWN Act prohibiting hairstyle-based discrimination. • State passed legislation to mitigate workplace violence against healthcare workers.

2022 DEVELOPMENTS BY STATE

ME

Maine

- Effective 1/1/23, the state minimum wage will increase from \$12.75 to \$13.80. Minimum cash wage for tipped employees \$6.90.
- Effective 1/1/23, the annualized rate to exceed for an overtime exemption will increase from \$38,251 to \$41,001.
- Effective 1/1/23, employers must pay employees, on the cessation of employment, all unused paid vacation accrued pursuant to the employer's vacation policy. The new law's provisions do not address employers' ability to set annual caps on carryover of unused paid leave.
- State amended its Whistleblowers' Protection Act to extend to employees in unionized places of employment.
- Employer now prohibited from requiring an employee, intern, or applicant to enter into a contract or agreement that (1) waives or limits the right to report or discuss work-related discrimination, retaliation, or harassment, or (2) limits the right to participate in enforcement of employment discrimination laws.
- Definition of race amended under Human Rights Act to include traits associated with race, including hair texture and hairstyles.
- Portland: Effective 1/1/23, the city minimum wage will increase from \$13 to \$14.
- Rockland: Effective 1/1/23, the city minimum wage will increase from \$13 to \$14.

MD

Maryland

- Effective 1/1/23, the state minimum wage will increase from \$12.50 to \$13.25.
- Maryland voters amended the state constitution to legalize recreational marijuana.
- The Maryland Court of Appeals held that because the federal Portal-to-Portal Act has not been adopted by Maryland's wage laws, state law may require employers to compensate employees for more time than required by federal law. *Amaya v. DGS Constr., LLC*, 2022 Md. LEXIS 272 (Jul 13, 2022).
- Definition of harassment expanded under Fair Employment Practices Act to explicitly include certain unwelcome conduct and sexual harassment.
- Duty to reasonably accommodate disabilities expanded to also apply to applicants for employment.
- Paid family and medical leave insurance program enacted to provide up to 12 weeks of leave (or up to 24 weeks in some cases) for covered purposes. Contributions to the program begin in October 2023 and employees may begin taking leave in January 2025.
- Montgomery County: On 7/1/22, the county minimum wage rates increased to \$15.65 (for 51+ ees; 11-50 \$14.50; 10 or less \$14). Maximum tip credit is \$ 11.65 (for 51+ ees; 11-50 \$10.50; 10 or less \$100).
- Howard County: Effective 1/1/23, the county minimum wage will increase from \$14 to \$15 (\$12.50 to \$13.25 for small employers).

MA

Massachusetts

- Effective 1/1/23, the state minimum wage will increase from \$14.25 to \$15.
- State passed the CROWN Act, which bars discrimination based on hair styles or hair texture associated with race.
- Massachusetts Supreme Judicial Court held that plaintiffs cannot recover damages under the state Wage Act for overtime claims based solely on violations of the FLSA. *Devaney v. Zucchini Gold, LLC*, 2022 Mass. LEXIS 156 (Apr. 14, 2022).
- Massachusetts Supreme Judicial Court held that an employer who pays wages after the deadline required by the Wage Act, but before the employee files suit, is liable for treble the amount of the late wages, not trebled interest. *Reuter v. Methuen*, 489 Mass. 465 (2022). Massachusetts employers may now be liable for treble damages if even one day late with employee's final wage payment.
- The Massachusetts Supreme Judicial Court confirmed the importance of legitimate franchise relationships, and made clear that before any consideration of the state's independent contractor three-prong test, there is a threshold question: a franchisee claiming to be a misclassified employee must first establish that the franchisee is an "individual performing any service" for the franchisor. *Patel v. 7-Eleven Inc.*, 2022 Mass. LEXIS 146 (2022).

2022 DEVELOPMENTS BY STATE

<p>MI Michigan</p>	<ul style="list-style-type: none"> • According to the Michigan Department of Labor and Economic Opportunity (LEO), effective 1/1/23, the state minimum wage will increase from \$9.87 to \$10.10 (and tipped wages to \$3.84) regardless of whether the decision in <i>Mothering Justice v. Dana Nessel et al.</i>, (Mich. Ct. 7/29/22) is overturned. The LEO further announced that if the Court of Claims decision stands, the standard and tipped employee minimum wage rates will increase again, to \$13.03 and \$11.73, respectively, on 2/20/23. If, on the other hand, the Court of Claims decision is overturned and the 2018 legislative amendments are upheld, then the \$10.10 standard minimum wage and \$3.84 tipped employee minimum wage will remain in place throughout 2023 and will increase again in January 2024, in accordance with the tiered structure set forth in the 2018 amendments. • Michigan Court of Claims held that the state legislature's amendments to voter initiatives regarding sick leave and minimum wage, which were to become effective in 2019, were unconstitutional. The Court stayed order through 2/19/23 as the state appeals. <i>Mothering Justice v. Dana Nessel et al.</i>, (Mich. Ct. 7/29/22). The original ballot initiative required 72 hours of paid sick leave for large employers and 40 hours of paid leave and 32 hours of unpaid leave for small employers, with employees accruing one hour of sick leave for every 30 hours worked. By contrast, the current Paid Medical Leave Act only requires covered employers to provide 40 hours of paid sick time, with employees accruing an hour of sick leave for every 35 hours worked. • Michigan Supreme Court holds that the prohibition against employment discrimination based on sex in the state's civil rights act includes discrimination based on sexual orientation. <i>Rouch World, LLC v. Dep't of Civil Rights</i>, 2022 Mich. LEXIS 1487 (July 28, 2022).
<p>MN Minnesota</p>	<ul style="list-style-type: none"> • Effective 1/1/23, the state minimum wage will increase to \$10.59 for large employers and \$8.63 for small. Currently \$10.33 (large), \$8.42 (small). • Minnesota employers must now provide notice to eligible frontline workers regarding potential additional benefits available to them. • Employers may continue to prohibit their employees from possessing or using THC products while working. • <u>Bloomington</u>, City requires employers to provide paid sick and safe leave at the rate of one hour for every 30 hours worked, up to 48 hours a year. • <u>Minneapolis</u>: Effective 7/1/22, the city minimum wage increased from \$14.25 to \$15. Businesses with 100 or fewer employees, \$13.50. • <u>St. Paul</u>: Effective 7/1/22, the minimum wage for macro businesses (10,000 employees) increased from \$12.50 to \$15. Large (more than 100 employees) (7/1/22, \$13.50; 7/1/23, \$15.00; CPI increases 7/1/24); Small (100 or less) (7/1/22, \$12.00; 7/1/23, \$13.00; 7/1/24, \$14.00; 7/1/25, \$15.00); Micro (5 or less) (7/1/22, \$10.75; 7/1/23, \$11.50; 7/1/24, \$12.25; 7/1/25, \$13.25; 7/1/26, \$14.25; 7/1/27, \$15.00).
<p>MS Mississippi</p>	<ul style="list-style-type: none"> • Equal Pay for Equal Work Act prohibits employers from paying an employee a wage rate less than it pays an employee of the opposite sex for work requiring equal skill, education, effort, and responsibility and performed under similar working conditions. • On 4/21/22, Mississippi held that “[A]n employee of any public or private employer who has a sincerely held religious objection to receiving a vaccine for COVID-19 shall not be required to receive a vaccine for COVID-19.” • Mississippi has enacted a law legalizing medical marijuana.
<p>MO Missouri</p>	<ul style="list-style-type: none"> • Effective 1/1/23, the state minimum wage will increase from \$11.15 to \$12. • Missouri voters legalized recreational marijuana.
<p>MT Montana</p>	<ul style="list-style-type: none"> • Effective 1/1/23, the state minimum wage will increase from \$9.20 to \$9.95.
<p>NE Nebraska</p>	<ul style="list-style-type: none"> • Effective 1/1/23, per a ballot measure, the state minimum wage will increase to \$10.50 (\$12.00 1/1/24; \$13.50 1/1/25; and \$15.00 1/1/26).

2022 DEVELOPMENTS BY STATE

<p>NV Nevada</p>	<ul style="list-style-type: none"> Effective 7/1/22, the state minimum wage increased from \$9.75 to \$10.50. Per a ballot measure, it will increase the minimum wage to \$12 by 7/1/24. The measure removed provisions that set different rates for the minimum wage based on whether the employer offered certain health benefits to employees. In <i>Martel v. HG Staffing, LLC</i>, the Nevada Supreme Court addressed issues involving the statute of limitations for wage claims; requirements of a valid collective bargaining agreement; the overtime exemption; and extension of limitations periods for underlying wage claims. <i>Martel v. HG Staffing, LLC</i>, (Aug. 11, 2022). Nevada Supreme Court holds that use of recreational marijuana is not a lawful activity for the purposes of the state's law protecting employees from discrimination for lawful off-duty conduct. <i>Ceballos v. NP Palace, LLC</i>, 2022 Nev. LEXIS 55 (Aug. 11, 2022). Voters amended state constitution by adding guarantee that "equality of rights under the law shall not be denied or abridged by the State or any of its cities, counties, or other political subdivisions on account of race, color, creed, sex, sexual orientation, gender identity or expression, age, disability, ancestry, or national origin."
<p>NH New Hampshire</p>	<ul style="list-style-type: none"> The Supreme Court of New Hampshire held that medical marijuana may be a reasonable accommodation under the state's anti-discrimination law. <i>Paine v. Ride-Away, Inc.</i>, 2022 N.H. LEXIS 6 (Jan. 14, 2022).
<p>NJ New Jersey</p>	<ul style="list-style-type: none"> Effective 1/1/23, the minimum wage will increase from \$13 to \$14.13. Minimum cash wage for tipped employees: \$5.26. Effective 6/1/23, minors 16 and 17 may work up to 50 hour/week and 10 hours/day during their summer breaks, up from previous caps of 40 hours weekly and eight hours/day. A minor 14 or 15 may work up to 40 hours/week during the period beginning on the last day of a minor's school year and ending on Labor Day of each year until 9 p.m. of any day. During the school year, a minor 14 or 15 years may work during non-school hours, for no more than three hours on a school day and no more than 18 hours in a school week, and up to eight hours on a non-school day during a school week. Child labor work permit no longer needed. Effective 7/28/22, minors between 16 and 18 years of age may serve at an election between the hours of 5:30 a.m. and 9:00 p.m. on a day that the election is held. No minor under eighteen may now be employed or permitted to work for more than six (was 5) hours continuously without an interval of at least thirty minutes for a lunch period, and no period of less than thirty minutes shall be deemed to interrupt a continuous period of work. NJ Supreme Court held that corporate formation documents were not alone sufficient to show that an entity is an independent business for the purposes of determining independent contractor status under the state's unemployment compensation law. <i>E. Bay Drywall v. Dep't of Labor & Workforce Dev.</i>, 251 N.J. 477 (2022). Effective 11/16/22, NJ law provides job protections for health care workers following a change in control at their employer. Effective 4/18/22, employers must provide notice before using tracking devices on vehicles used by employees. Under legislation headed to Gov. Phil Murphy for his signature, New Jersey businesses would have to give severance pay to workers who are terminated as part of a mass layoff. Jersey City: The city ordinance now applies to all employers that have 5+ persons working in Jersey City, including independent contractors. The employer no longer has to 1) have its principal place of business within the city, or 2) disclose the "benefits" for a position, only minimum/maximum annual salary or hourly wage.
<p>NM New Mexico</p>	<ul style="list-style-type: none"> Effective 1/1/23, the state minimum wage will increase from \$11.50 to \$12.00. The minimum wage for tipped employees will increase from \$2.80 to \$3. Task, piece, and commission wages must now be paid within ten days of discharge. On 7/1/22, the state paid sick leave law became effective. Las Cruces: The city will adopt the state's \$12 minimum wage effective 1/1/23, but the minimum wage for tipped employees will be based on local rules. The city's hourly minimum wage for tipped employees will increase to \$4.78 from \$4.60. Sante Fe: The city's minimum wage currently \$12.95. Date of next annual adjustment 3/1/23. Bernalillo County: Effective 7/1/22, employees working for employers with 35 or more employees must not accrue or use more than 56 hours of earned paid time off in a year, unless the employer's policy provides for a higher limit on use or accrual. Unused accrued earned paid time off shall be carried over to the following year, but employees shall not carry over more than the total annual amount available to accrue, unless the employer's policy provides otherwise.

2022 DEVELOPMENTS BY STATE

NY New York

- Effective 12/12/22, in areas outside New York City, Long Island and Westchester County, the state minimum wage will increase from \$13.20 to \$14.20. In those three areas, the minimum wage will remain at \$15 an hour. The weekly salary threshold for exempt status outside NYC, Nassau, Suffolk and Westchester Counties will be \$1,064.25. Minimum cash wage for tipped employees: For service employees \$11.85 (NYC, Nassau, Suffolk and Westchester counties - \$12.50); food service \$9.45 (NYC, Nassau, Suffolk and Westchester counties - \$10).
- Effective 2/19/23, employers prohibited from “assessing any demerit, occurrence, any other point, or deductions from an allotted bank of time, which subjects or could subject an employee to disciplinary action” based upon the use of “any legally protected absence pursuant to federal, local, or state law.” The law likewise makes it unlawful for employers to discriminate or retaliate against employees for their use of lawful absences.
- The state launched toll-free, confidential hotline for workplace sexual harassment complaints. Information about hotline should be included in materials employers provide to employees regarding sexual harassment.
- Effective 11/6/22, authorized deductions limited to payments for insurance premiums, pension or health and welfare benefits, contributions to charitable organizations, payments for United States bonds, payments for dues or assessments to a labor organization, and similar payments for the benefit of the employee.
- Effective 10/1/22, state established a minimum wage for home care aides.
- State law now requires many hospitality industry employers to provide specific anti-human-trafficking awareness training and posters to employees.
- As of 11/24/22, state law provides individuals with a one-year window to assert legal claims of alleged sexual offenses that would otherwise be time-barred by the statute of limitations. During the one-year period, from November 24, 2022 to November 23, 2023, individuals will be permitted to bring civil actions.
- Effective 9/17/23, employers must disclose to applicants and employees, in an advertisement for a job, promotion, or transfer opportunity that can or will be performed, at least in part, in the state of New York: (1) the compensation or a range of compensation for such job, promotion, or transfer opportunity; and (2) the job description for such job, promotion, or transfer opportunity, if such description exists. For jobs, promotions, or transfer opportunities paid solely on commission, employers must disclose in writing in a general statement that compensation shall be based on commission.
- Effective 12/23/22, employers are prohibited from discriminating, harassing, or retaliating against any individual because of his or her citizenship or immigration status.
- Effective 12/16/22, employers must make mandatory workplace postings available electronically. Digital versions of these posters can be made available through the employer’s website or issued via email. Employers also must provide notice to their employees that documents required for physical posting are also available electronically.
- Effective 6/7/23, employers must designate a room or location to allow employees to pump breast milk. Pumping spaces must be convenient and private, include seating, and have access to running water and electricity and a working space. The new law will also require employers to develop and implement a written policy regarding employee rights when breastfeeding in the workplace.
- Effective 3/21/23, the new Warehouse Worker Protection Act will protect warehouse workers in certain warehouse distribution centers from unreasonably demanding work quotas by requiring distribution centers to disclose work speed data to current and former employees to inform workers about their performance and their rights in the workplace. Notice requirements apply.
- It is now a crime to carry a firearm onto private property unless owner has posted signage permitting firearms on the property or otherwise given express consent.
- New York federal court permanently enjoined requirement that employee handbooks include a notice of rights and remedies under the state law prohibiting discrimination based on reproductive health decision making. *Compasscare V. Cuomo* (N.D.N.Y. 2022).
- Definition of “retaliation” amended to include disclosing personnel file because employee opposed practice under NYSHRL or filed a complaint, testified or assisted in any proceeding under the NYSHRL unless disclosure in context of commencing or responding to a complaint in a civil, criminal, or administration proceeding.
- Effective 1/1/23, siblings added to the definition of family member for the purposes of paid family leave.
- **New York City:** City now requires employers to disclose the minimum and maximum salary for a position in any advertisements for a job, promotion, or transfer opportunity. Effective 4/15/23, employers in the city that use AI decision tools must notify candidates. City has proposed to set the minimum wage for app-based food delivery workers at \$23.82 per hour by 2025 that will be scrutinized during an upcoming hearing. The City also finalized fair workweek regulations and just cause laws.
- **Westchester County:** Effective 11/6/22, employer must include minimum and maximum salary on a posting for a job, promotion, or transfer opportunity.

2022 DEVELOPMENTS BY STATE

<p>NY New York CONTINUED</p>	<ul style="list-style-type: none"> • <u>Ithaca</u>: The city has enacted law making it an unlawful employment practice to advertise jobs without stating minimum and maximum salaries. • <u>Albany County</u>: The County will require employers to post the minimum and maximum salary or hourly wage for any job posting, promotion or transfer in Albany County. The County Executive signed the law on 11/14/22 and the law will take effect 90 days after it is filed with the Secretary of State.
<p>NC North Carolina</p>	<ul style="list-style-type: none"> • State has clarified that qualified youth 15+ may enroll in courses in fire training at community colleges, the required age for beer and wine wholesaler salesmen is now 18, and workers who are 15 may temporarily be employed in certain establishments affected by labor shortages, until a specified date.
<p>ND North Dakota</p>	<p><i>No noteworthy developments located.</i></p>
<p>OH Ohio</p>	<ul style="list-style-type: none"> • Effective 1/1/23, the state minimum wage will increase from \$9.30 to \$10.10 (The minimum wage applies to employees of businesses with annual gross receipts of \$371,000+ per year). Minimum cash wage for tipped employees: \$5.05. • Minimum wage law amended to except travel time, performance of preliminary and postliminary tasks, and other de minimis activities from the overtime requirement. • <u>Cincinnati</u>: City added gender identity/expression, sex, breastfeeding status, military status, and familial status as protected under antidiscrimination ordinance.
<p>OK Oklahoma</p>	<ul style="list-style-type: none"> • Employers may now pay wages by direct deposit to a financial institution, or to a payroll card if the employee does not designate a financial institution. • Effective 11/1/22, for purposes of unemployment compensation, PEOs and their clients are considered co-employers of covered employees.
<p>OR Oregon</p>	<ul style="list-style-type: none"> • Effective 7/1/22, the state minimum wage increased from \$12.75 to \$13.50 (general), \$14 to \$14.75 (urban), and \$12 to \$12.50 (nonurban). • Effective 1/1/23, certain employers classified within the NAICS will be prohibited from taking adverse employment action against any employee who refuses to work mandatory overtime unless employer has provided employee with at least five days' advance notice of the overtime shift, including date and time of the overtime shift. • Expiration date of temporary amendments to Oregon's Equal Pay Act extended. • Oregon amended its Workplace Fairness Act, including its application, penalties, and scope of restrictions regarding settlement agreements. • Effective 1/1/23, scope of retaliation provisions expanded under the workers' comp statute and definitions of "beneficiary," "child," and "dependent" amended. • Effective 1/1/23, provisions that prohibit employers from entering into nondisclosure agreements include discrimination, sexual assault, or workplace harassment. • Effective 1/1/23, employers must provide notice, including reason, before suspending temporary disability benefits. • Effective 1/1/23, family-leave insurance benefits will be available to eligible employees. • Effective 1/1/23, state will remove provision that exempts certain employees covered under collective bargaining agreement from sick leave requirements. • The Oregon Employment Department has issued a model notice poster for employers to inform employees about rights and requirements under Paid Leave Oregon, which employers must post at each worksite and share electronically or by mail with remote workers by 1/1/23. • Oregon and Washington have issued a joint letter on how to report employees for their respective state paid leave programs, which provides guidance regarding several scenarios related to "place of performance" or "localization" and clarifies the state where employers should report an employee's subject wages. • Oregon OSHA adopted heat illness prevention standard.

2022 DEVELOPMENTS BY STATE

<p>PA Pennsylvania</p>	<ul style="list-style-type: none"> Effective 8/5/22, an employee must be engaged in an occupation in which they customarily and regularly receive more than \$135 per month in tips to be considered a tipped employee. The tip regulations now incorporate by reference the “tip pooling” provisions of the federal regulations found at 29 C.F.R. § 531.54. Employers who implement tip pools maintain a record of the names and position of each participant in the tip pool and the amount distributed to each participant in the tip pool. On 12/8/22, the Independent Regulatory Review Commission approved a regulation proposed by the Pennsylvania Human Relations Commission (PHRC) in March 2022 that provides comprehensive definitions for the terms “sex,” “religious creed,” and “race” as they are used in the Pennsylvania Human Relations Act (PHRA) and other Pennsylvania anti-discrimination statutes. PHRC’s position is that the robust definitions simply codify existing law under the PHRA. On 3/21/22, the state approved a final rule that eliminates the use of the “fluctuating workweek” for salaried nonexempt employees. <u>Philadelphia</u>: Effective 12/31/22, employer with 50+ employees must provide a mass transit and bicycle commuter benefit program.
<p>PR Puerto Rico</p>	<ul style="list-style-type: none"> Puerto Rico has amended its sexual harassment law to expand coverage to interns who provide services with or without pay, and to require employers to adopt a protocol to investigate sexual harassment allegations. Employers must now pay a new premium rate for nonexempt employees who work on the weekly day of rest required after 6 consecutive workdays. If the employee is a “student” the premium payment is 2 times the regular rate of pay (premium rate for small and midsize business is 1.5 times the regular rate of pay). Puerto Rico amended its disability discrimination statute to extend coverage to registered and authorized medical cannabis patients.
<p>RI Rhode Island</p>	<ul style="list-style-type: none"> Effective 1/1/23, Rhode Island’s minimum wage will increase from \$12.25 to \$13. Rhode Island enacted a law barring employers from keeping a percentage of tips earned by employees. The law carves out an exception for tips left using a credit card and provides three requirements that must be met before the employer can deduct a portion of the employee’s tip for purposes of paying the credit card company. Effective 1/1/23, upon request, an employer must provide to a job applicant the wage range for the position for which the applicant applied. The employer should provide a wage range prior to discussing compensation. An employer must provide a current employee the wage range for the employee’s position: (1) at hire; (2) when the employee moves into a new position; or (3) upon the employee’s request. Effective 1/1/23, employers must not: (1) rely on the wage history of an applicant when deciding whether to consider the applicant for employment; (2) require that an applicant’s prior wages satisfy minimum or maximum criteria; (3) rely on the wage history of an applicant to determine wages to be paid upon hire; or (4) seek the wage history of an applicant. Effective 1/1/23, the equal pay law protected categories include race, or color, or religion, sex, sexual orientation, gender identity or expression, disability, age, or country of ancestral origin. A “comparable work” standard will apply. A wage differential is permitted under enumerated circumstances. Service charges are now part of the employer’s gross receipts. Sums distributed to employees from service charges cannot be counted as tips received, but may be used to satisfy the employer’s minimum wage and overtime requirements. If an employee receives tips in addition to the compulsory service charge, those tips may be considered in determining whether the employee is a tipped employee and in the application of the tip credit. An employer that pays the full minimum wage and takes no tip credit may allow non-exempt employees who are not tipped employees to participate in the tip pool. Effective 1/1/23, special enrollment provision for pregnant employees to obtain health insurance coverage at any time after the commencement of the pregnancy. State has enacted a law legalizing recreational marijuana, including employment protections for off-duty use.
<p>SC South Carolina</p>	<p><i>No noteworthy developments located.</i></p>
<p>SD South Dakota</p>	<ul style="list-style-type: none"> Effective 1/1/23, the state minimum wage will increase from \$9.95 to \$10.80. Minimum cash wage for tipped employees: \$5.40. State has clarified that employers are not required to accommodate employees’ use of medical cannabis in the workplace.

2022 DEVELOPMENTS BY STATE

TN Tennessee	<ul style="list-style-type: none">• State enacted the CROWN Act, which prohibits employers from adopting a policy that does not permit employees to wear their hair in braids, locks, twists, or another manner that is a physical characteristic, or part of the cultural identification, of the employee's ethnic group.• Tennessee approved a right-to-work amendment that makes it illegal for any workplace to require labor union membership for employees as a condition of employment. While Tennessee already has a right-to-work law in place, it has now put such protections into its constitution.• State has increased amount of time to file a discrimination complaint with the state agency to 185 days.• There is no longer a subminimum wage allowable for employees with impaired capacity.
TX Texas	<ul style="list-style-type: none">• The Texas Supreme Court has clarified the standard for payment of commissions when an employment agreement is silent.
UT Utah	<ul style="list-style-type: none">• Effective 1/1/23, Utah will modify employer withholding obligations from certain nonresident employees.
VT Vermont	<ul style="list-style-type: none">• Effective 1/1/23, the state minimum wage will increase from \$12.55 to \$13.18. Hourly rate for tipped employees will increase from \$6.28 to \$6.59.• State amended its crime victim leave law.• The state now requires that employment discrimination and public accommodation actions be commenced within six years of the event.• Vermont has launched a voluntary paid family and medical leave program.
VA Virginia	<ul style="list-style-type: none">• Effective 1/1/23, the state minimum wage will increase from \$11 to \$12.• On 4/11/22, state rolled back the provisions of the VOWA and realigned Virginia's overtime obligations and exemptions with those of the federal FLSA.• Effective 1/1/23, hotel employees must complete a training course to identify instances of human trafficking.• Virginia enacted a law expanding definition of religion to include "any outward expression of religious faith, including adherence to religious dressing and grooming practices and the carrying or display of religious items or symbols."

2022 DEVELOPMENTS BY STATE

<p>WA Washington</p>	<ul style="list-style-type: none"> • Effective 1/1/23, the state minimum wage will increase to \$15.74. Exempt employees of small employers must earn at least \$1,101.80 per week (\$57,293.60 per year) to meet the minimum salary requirement to be exempt from overtime requirements. Large employers (51+) must pay exempt employees at least \$1,259.20 per week (\$65,478.40 per year). Exempt computer professionals paid on an hourly versus salary basis must earn at least \$55.09 per hour. • Effective 1/1/23, employers must include pay ranges and benefits information in job postings. Upon request of an employee offered an internal transfer to a new position or promotion, the employer must provide the wage scale or salary range for the employee's new position. • State established minimum pay and benefits for drivers of transportation network companies. • Paid Family and Medical Leave law amended to allow employees to use seven days of leave after the death of a child whose birth or placement would have entitled the employee to medical or family leave. The law also clarifies that leave taken during the first six weeks after birth is presumed to be medical leave and does not require medical certification of a serious health condition. • State now prohibits an employer from requesting or requiring an employee to sign a nondisclosure or non-disparagement agreement that restricts the employee from discussing illegal discrimination, harassment, sexual assault, retaliation, wage and hour violations, or any other conduct against public policy. • Drivers for rideshare services are now in most situations classified as independent contractors but are eligible for minimum compensation, paid sick leave, workers' comp coverage, and a process to appeal disputes. • On 11/1/22, the Washington Supreme Court upheld amendments to the state's prevailing wage statute that pins the wage rate to the highest collective bargaining statute in each separate county. • Oregon and Washington issued a joint letter on how to report employees for their respective state paid leave programs, which provides guidance regarding several scenarios related to "place of performance" or "localization" and clarifies the state where employers should report an employee's subject wages • Employers now face new rules to protect workers from outdoor heat exposure and wildfire smoke. • Washington now prohibits use of non-disclosure and non-disparagement clauses to restrict disclosure of discrimination and other illegal conduct. • <u>Seattle</u>: Seattle's Independent Contractor Protections Ordinance now requires that covered independent contractors be provided with timely payment and a written pre-contract disclosure, payment disclosure with each compensation, and notice of rights under the ordinance. Seattle has enacted ordinance to provide minimum wage and other Protections for App-Based Delivery Workers. The minimum wage for large employers (501+ employees) will be \$18.69; small employers (who do not pay at least \$2.19/hour toward the employee's medical benefits and/or where the employee does not earn at least \$2.19/hour in tips) will be \$18.69 (otherwise) \$16.50. • <u>Sea Tac</u>: On 1/1/23 the city minimum wage for nonexempt Hospitality and Transportation Employees will increase from \$17.53 to \$19.06. • <u>Tukwila</u>: Effective 7/1/23, every large employer must pay covered employees an hourly wage of not less than the 2022 "living wage rate" in the City of SeaTac.
<p>WV West Virginia</p>	<ul style="list-style-type: none"> • State now permits employers to unilaterally decide whether to use the payroll card method, so long as they provide written disclosure of any applicable fees associated with the payroll card, ensure that the employee has the ability to make at least one withdrawal or transfer from the card per pay period for any amount without paying costs or fees, and ensure that the employee can make in-network withdrawals or transfers from the payroll card without paying costs or fees.
<p>WI Wisconsin</p>	<ul style="list-style-type: none"> • State now prohibits employers from discriminating against applicants and employees on the basis of their arrest and conviction records. • In <i>Cree, Inc. v. Palmer</i>, the Wisconsin Supreme Court provided relief to employers by clarifying the law, easing employers' burden for proving a substantial relationship, and rejecting the Labor and Industry Review Commission's view that domestic violence crimes cannot be substantially related to employment.
<p>WY Wyoming</p>	<ul style="list-style-type: none"> • The Wyoming Supreme Court held that courts are prohibited from revising, or "blue penciling," noncompete agreements to be reasonable and enforceable under the law. The Court noted that public policy and "established black letter rules of contract interpretation" supported its decision to prohibit employers from requesting that the court revise noncompete agreements that are otherwise unenforceable. <i>Hassler v. Circle C Res.</i>, 2022 WY 28 (2022).

2022 DEVELOPMENTS: FEDERAL

Federal Rule

Federal Legislation/Executive Orders

- On 3/3/22, President Biden signed the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act into law, which prohibits employers from forcing workers to arbitrate sexual harassment and assault claims.
- On 9/29/22, President Biden signed into law S. 2293, the Civilian Reservist Emergency Workforce Act of 2021 (CREW Act), extending employment and reemployment protections under USERRA to FEMA reservists deploying to major disaster sites.
- President Biden issued “Executive Order on Advancing Economy, Efficiency, and Effectiveness in Federal Contracting by Promoting Pay Equity and Transparency.”
- President Biden has signed the Speak Out Act, which will limit enforceability of nondisclosure and nondisparagement provisions in pre-dispute agreements with employees and independent contractors relating to sexual harassment and sexual assault allegations.
- On 12/13/22, President Biden signed the Respect for Marriage Act into law, guaranteeing marriage equality for same-sex and interracial couples under federal law.
- On December 23, 2022, President Biden signed into law two measures that expand the rights of pregnant and breastfeeding workers: the Pregnant Workers Fairness Act and the Providing Urgent Maternal Protections for Nursing Mothers (PUMP) Act. Both measures were included in the 2023 Consolidated Appropriations Act and will impose new federal requirements on employers with respect to accommodations for pregnancy- and childbirth-related conditions and nursing mothers.

US Supreme Court

- In *Torres v. Texas Dep’t of Pub. Safety*, the Supreme Court held that US states are subject to civil lawsuit under the USERRA (U.S. June 29, 2022).
- In *Morgan v. Sundance, Inc.*, the US Supreme Court held that courts may not create arbitration-specific procedural rules to advance the FAA’s policy favoring arbitration. In doing so, the court rejected an Eighth Circuit rule that required a plaintiff to show prejudice when determining if a defendant waived its contracted right to arbitration because it initially pursued litigation instead of arbitration. (U.S. May 23, 2022).
- In *Badgerow v. Walters*, the US Supreme Court held that the “look-through” approach to determining federal question jurisdiction for petitions to compel arbitration under Section 4 of the FAA does not apply to requests to confirm or vacate domestic arbitral awards under Sections 9 and 10 of the FAA (Mar. 31, 2022).
- The court found that a PAGA claim can be bifurcated into an “individual” component that is based on the named plaintiff’s alleged individual labor code claims; and a “representative” component - i.e. PAGA claims arising out of alleged labor code claims affecting other individuals. The FAA allows for the enforcement of an agreement to arbitrate the plaintiff’s “individual” PAGA claim. Once the individual PAGA claim is compelled to arbitration, the plaintiff loses standing to pursue the remaining representative claims (based on the SCT’s view of standing under CA law). The court allowed to stand the CA SCT’s prohibition on a “blanket” waiver of the right to pursue a PAGA claim. The CA SCT has accepted for review in the *Adolph v. Uber* case, the question of whether or not a plaintiff retains standing to pursue a representative PAGA claim in court after her individual PAGA claim has been compelled to arbitration.
- In *Viking River*, the Supreme Court found that a PAGA claim can be bifurcated into an “individual” component that is based on the named plaintiff’s alleged individual labor code claims; and a “representative” component - ie PAGA claims arising out of alleged labor code claims affecting other individuals. The FAA allows for the enforcement of an agreement to arbitrate the plaintiff’s “individual” PAGA claim. Once the individual PAGA claim is compelled to arbitration, the plaintiff loses standing to pursue the remaining representative claims (based on the SCT’s view of standing under CA law). The court allowed to stand the CA SCT’s prohibition on a “blanket” waiver of the right to pursue a PAGA claim. The CA SCT has accepted for review in the *Adolph v Uber* case, the question of whether or not a plaintiff retains standing to pursue a representative PAGA claim in court after her individual PAGA claim has been compelled to arbitration.

Second Circuit

- In *Williams v. MTA Bus Co.*, the Second Circuit held that an employer is not required to provide an accommodation for a preemployment exam to a disabled job applicant who is not otherwise qualified for the position sought (2d Cir. Aug. 12, 2022).
- In *Felder v. United States Tennis Ass’n*, the Second Circuit held, in a matter of first impression for the circuit, that when determining whether an entity is a joint employer in a Title VII case, courts should review non-exhaustive factors derived from the common law of agency, including control over an employee’s hiring, firing, training, promotion, discipline, supervision, and handling of records, insurance, and payroll (2d Cir. Mar. 7, 2022).
- In *Estle v. International Business Machines Corp.*, the Second Circuit held that bringing a collective action is a procedural, not substantive, right under the ADEA and that disclosure requirements for a valid ADEA waiver are inapplicable to waivers of collective actions (2d Cir. Jan. 20, 2022).
- In *Samake v. Thunder Lube, Inc.*, the Second Circuit held that the FLSA limits the automatic operation of unilateral dismissals under Federal Rule of Civil Procedure 41 (2d Cir. Jan. 27, 2022).

2022 DEVELOPMENTS: FEDERAL

Federal Rule CONTINUED

Third Circuit

- In *Uronis v. Cabot Oil & Gas Corp.*, the Third Circuit held that the FLSA's anti-discrimination provision, Section 15(a)(3), applies to employees who have filed, or intend to soon file, a consent to join a collective action (3d Cir. Sept. 14, 2022).
- In *Fischer v. Fed. Express Corp.*, the Third Circuit furthered a circuit split by holding that in an FLSA collective action in federal court, where the court lacks general personal jurisdiction over the defendant, all opt-in plaintiffs must establish specific personal jurisdiction over the defendant by demonstrating that their individual claims arise out of or relate to the defendant's minimum contacts with the forum state (3d Cir. July 26, 2022).
- In *Canada v. Samuel Grossi & Sons, Inc.*, the Third Circuit held that an employer's motivation for investigating an employee can be relevant to pretext in a Title VII discrimination case (3d Cir. Sept. 15, 2022).
- In *Groff v. DeJoy*, the Third Circuit furthered a circuit split by holding that a religious accommodation is not reasonable under Title VII unless it entirely eliminates the conflict between religious practice and work requirements (3d Cir. May 25, 2022).

Fourth Circuit

- In *Williams v. Kincaid*, the Fourth Circuit held that gender dysphoria is protected as a disability under the ADA (4th Cir. Aug. 16, 2022).
- In *Conner v. Cleveland Cty., N. Carolina*, the Fourth Circuit created a circuit split in recognizing that an overtime gap time claim is cognizable under the FLSA (4th Cir. Jan. 5, 2022).
- In a dispute involving employer-sponsored health coverage, a Maryland district court held that a religious employer violated Title VII's prohibition against sex discrimination by revoking health coverage for an employee's same-sex spouse under a health plan exclusion prohibiting coverage for same-sex spouses. *Doe v. Catholic Relief Servs.*, (D. Md. Aug. 3, 2022).

Fifth Circuit

- A federal court in Texas held that the Department of Labor's delay and withdrawal of its independent contractor rule (86 Fed. Reg. 1168) in 2021 was unlawful, and thus the rule became effective as of March 8, 2021 and remains in effect. *Coalition for Workforce Innovation v. Walsh*, No. 1:21cv130 (E.D. Tex. Mar. 14, 2022).

Sixth Circuit

- In *Render v. FCA US, LLC*, the Sixth Circuit clarified that the McDonnell Douglas burden-shifting framework applies to an FMLA interference claim only when the plaintiff relies on circumstantial evidence and does not apply when the plaintiff presents direct evidence of interference (5th Cir. Nov. 16, 2022).

Seventh Circuit

- In *EEOC v. Wal-Mart Stores East, L.P.*, the Seventh Circuit found the EEOC failed to provide sufficient evidence that Walmart's policy for offering temporary light duty only to workers injured on the job imposed a significant burden on pregnant workers, ruling that it was motivated instead by the need to limit the company's liability under workers' compensation law and avoid the costly process of hiring new workers. (7th Cir. Aug. 16, 2022).
- In *Simon v. Cooperative Educational Service Agency #5*, the Seventh Circuit held, in a matter of first impression, that the FMLA's authorization for equitable relief includes a declaratory judgment, which allowed the district court to grant attorney's fees to the plaintiff (7th Cir. Aug. 16, 2022).
- In *Zicarelli v. Dart*, the Seventh Circuit held that an employer can violate the FMLA by discouraging an employee from exercising rights under the FMLA without actually denying an FMLA leave request (7th Cir. June 1, 2022).

8th Circuit

- In *Anderson v. Hansen*, the Eighth Circuit held, as matter of first impression, that tort claims related to allegations of sexual assault by an independent contractor against an employee at a work conference do not fall within the scope of the employee's mandatory employment arbitration agreement (8th Cir. Aug. 30, 2022).

2022 DEVELOPMENTS: FEDERAL

Federal Rule CONTINUED

Ninth Circuit

- Ninth Circuit held that the time call center workers spend turning their computers on and off is an “integral and indispensable” part of their job and is therefore compensable under the FLSA. *Cadena v. Customer Connexx LLC* (9th Cir. 2022).
- In *Mobilize the Message LLC v. Bonta*, the Ninth Circuit, in denying a preliminary injunction for plaintiffs, held that AB 5’s exemption of certain occupations but not others does not violate the First Amendment because it does not constitute content-based discrimination (9th Cir. Oct. 12, 2022).
- In *Bowerman v. Field Asset Servs., Inc.*, the Ninth Circuit held that for business expense and joint employment claims arising from conduct that occurred pre-California Assembly Bill 5 (AB 5), the employee status test discussed in *Borello*, rather than the test found in *Dynamex*, is applicable (9th Cir. July 5, 2022).
- In *National Railroad Passenger Corp. v. Su*, the Ninth Circuit held that the federal Railroad Unemployment Insurance Act (RUIA) preempts California’s Healthy Workplaces, Healthy Families Act of 2014 as to railroad employees (9th Cir. June 26, 2022).

Eleventh Circuit

- In *Owens v. Governor’s Office of Student Achievement*, the Eleventh Circuit held that the Rehabilitation Act requires an employee to provide enough information to allow an employer to understand how a requested accommodation would address her disability’s limitation (11th Cir. Nov. 9, 2022).
- In *Patterson v. Georgia Pac*, the Eleventh Circuit held that Title VII provides retaliation protection from current employer for an individual who opposes the practices of a former employer and that there is no exception to protection from retaliation for a HR manager who opposes employer’s unlawful conduct (11th Cir. 7/5/22).

DC Circuit

- In *Johnston v. S.E.C.*, the DC Circuit held that two or more individuals could be joint whistleblowers eligible for an incentive award for providing original information to the SEC under 15 U.S.C. § 78u-6 (the Dodd-Frank Act), regardless of who developed the original information.
- In *Webster v. Del Toro*, the DC Circuit held that a federal employee may not pursue in court a Title VII retaliation claim identified by the EEOC without first exhausting administrative remedies (D.C. Cir. Sept. 20, 2022).
- In *Chambers v. DC*, the DC Circuit overruled the established precedent of *Brown v. Brody*, holding that an employer that transfers an employee or denies an employee’s transfer request because of the employee’s race, color, religion, sex, or national origin violates Title VII (D.C. Cir. June 3, 2022).

EEOC

- EEOC released a new version of its mandatory workplace posting regarding federal antidiscrimination laws. See EEOC, “Know Your Rights: Workplace Discrimination is Illegal” Poster.
- The EEOC issued, “Protections Against Employment Discrimination for Service Members and Veterans,” describing federal protections for service members and veterans from unlawful employment discrimination.
- Announcement of the release of “The Americans with Disabilities Act and the Use of Software, Algorithms, and Artificial Intelligence to Assess Job Applicants and Employees,” providing guidance for employers and workers about the impact of artificial intelligence and algorithmic fairness and the ADA.
- The EEOC published a Final Rule adjusting for inflation the civil monetary penalty for violating the notice posting requirements in Title VII, the ADA, and GINA.
- Launch of EEOC and OFCCP Hiring Initiative to Reimagine Equity (HIRE) a collaborative effort designed to engage stakeholders in expanding job access for workers from underrepresented communities and help address hiring and recruitment challenges. HIRE will identify strategies to remove barriers that limit job opportunities based on race, color, ethnicity, gender, LGBTQ+ status, religion, disability, age, and veteran status.

2022 DEVELOPMENTS: FEDERAL

Federal Rule CONTINUED

DOL

- The DOL published in the Federal Register notices of minimum wage rate changes, effective January 1, 2023, for federal contractors covered by: Executive Order 13658, increasing to \$12.15 per hour and \$8.50 per hour for tipped employees (87 Fed. Reg. 59468 (Sept. 30, 2022)); and Executive Order 14026, increasing to \$16.20 per hour and \$13.75 per hour for tipped employees (87 Fed. Reg. 59464 (Sept. 30, 2022)).
- Launch of Seven Child Labor Best Practices for Employers, guidance that focuses on training, sharing information, and using practical tools to identify hazardous occupations young workers should avoid. WHD has enhanced outreach and strengthened enforcement in an effort to significantly reduce child labor injuries and violations.
- The WHD published a notice of proposed regulation to implement Executive Order 14055, Nondisplacement of Qualified Workers Under Service Contracts, which establishes a federal government policy requiring service contracts succeeding contracts for the same or similar services, and solicitations of the contracts, to include a non-displacement clause that requires contractors and their subcontractors to offer qualified employees employed under the predecessor contract a right of first refusal of employment under the successor contract.
- Announcement of new guidance Field Assistance Bulletin No. 2022-4 “Enforcement of the Rehabilitation Act Section 511 Requirements for Workers with Disabilities in the Section 14(c) Program.”
- Announcement of new guidance on workers’ rights to take leave under the FMLA for serious mental health conditions. The guidance includes Fact Sheet # 280: Mental Health Conditions and the FMLA and Frequently Asked Questions on the FMLA’s mental health provisions.
- Announcement of renewal of a multi-year nationwide initiative to help workers and increase federal compliance by food service employers. The “Essential Workers, Essential Protections” initiative combines enforcement with outreach and education to raise awareness of common violations of the FLSA and other federal labor laws. The initiative also aims to combat retaliation by employers.
- The DOL published Field Assistance Bulletin (FAB) 2022-02, Protecting Workers from Retaliation, together with other guidance, to provide information about the anti-retaliation provisions of the laws the DOL’s WHD administers and enforces, including the FLSA, the FMLA, certain nonimmigrant visa programs, and more.

OFCCP

- Announcement of the launch of an online portal to aid contracting officers, contractors, and subcontractors in providing required notices of federal construction contracts and subcontract awards. Executive Order 11246.
- OFCCP published Directive (DIR) 2022-01 Revision 1 “Advancing Pay Equity Through Compensation Analysis” to provide guidance on how OFCCP will evaluate federal contractors’ compliance with compensation analysis obligations and clarify OFCCP’s authority to access and review documentation of compensation analyses conducted under 41 C.F.R § 60-2.17(b)(3).
- Announcement of directive DIR 2022-02 “Effective Compliance Evaluations and Enforcement” to promote effective enforcement and greater federal contractor compliance with equal employment opportunity laws.
- OFCCP issued a new directive providing guidance on how it will evaluate federal contractor compliance with annual pay equity audit obligations and clarify the agency’s authority to access and review pay equity audits, which aim to prevent pay disparities based on gender, race, or ethnicity.

DOJ

- The DOJ issued “Algorithms, Artificial Intelligence, and Disability Discrimination in Hiring,” guidance that explains how algorithms and artificial intelligence can lead to disability discrimination in hiring by state and local government employers.

SEC

- The SEC published a Final Rule adopting amendments to rules implementing its whistleblower program. (87 Fed. Reg. 54140 September 2, 2022).
- Announcement of the adoption of amendments to its rules to require registrants to disclose information reflecting the relationship between executive compensation actually paid by a registrant and the registrant’s financial performance.

DOE Office of Civil Rights

- Release of new resource describing protections for students and employees from discrimination based on pregnancy-related conditions under Title IX of the Education Amendments of 1972.

2022 DEVELOPMENTS: FEDERAL

Federal Rule

CONTINUED

NLRB

- NLRB holds that employers may not unilaterally stop union dues checkoff after a collective-bargaining agreement expires.
- The National Labor Relations Board clarified its rerun election procedures in cases of uncontested election misconduct. *Dynamic Concepts*, 371 NLRB No. 117 (July 22, 2022).
- *American Steel Construction*, 372 NLRB No. 23 (Dec. 14, 2022): The Board overruled *PCC Structurals*, 365 NLRB No. 160 (2017), and *The Boeing Co.*, 368 NLRB No. 67 (2019) and returned to its previous test to determine whether additional employees must be included in a petitioned-for unit in order to render it an appropriate bargaining unit. Under this test, as enunciated in *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011), a petitioned-for-unit will be found to be an appropriate unit if it is “readily identifiable as a group” and the workers share a “community of interest.” This test opens the door for the organization of “micro-units” within a given workplace.
- *Bexar County (II)*, 372 NLRB No. 28 (Dec. 16, 2022): In this case, the Board held that a property owner may only exclude the employees of its contractors from engaging in protected activity on the worksite if such activity would significantly interfere with the use of the property, or where exclusion is justified by another legitimate business reason. In doing so, the Board reinstated the previous test as enunciated in *New York New York Hotel & Casino*, 356 NLRB 907 (2011).
- *Sunbelt Rentals*, 372 NLRB No. 24 (Dec. 15, 2022): In this case, the Board determined that the employer unlawfully interrogated two employees when preparing its defense to unfair labor practice charges. When doing so, the Board reaffirmed the long-standing *Johnnie’s Poultry*, 176 NLRB 770 (1964) standard, which requires employers to explain the purpose of the questioning, assure workers that they won’t face retaliation, and get employees to voluntarily participate.
- *New York Presbyterian Hudson Valley Hospital*, 372 NLRB No. 15 (Dec. 5, 2022): In this case, the Board determined that a hospital in New York state unlawfully discharged a registered nurse who left a patient during a surgery because the nurse was going to discuss issues related to the bargaining unit. In a vigorous dissent, the minority contended that the decision “shocked the conscience,” and that the nurse’s decision to leave the patient mid-surgery was so indefensible as to lose its protection under the Act.

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Seyfarth's Survey Center directly addresses the compliance challenges faced by multistate employers. Our new platform is a powerful tool that provides guidance for common issues across all 50 states.

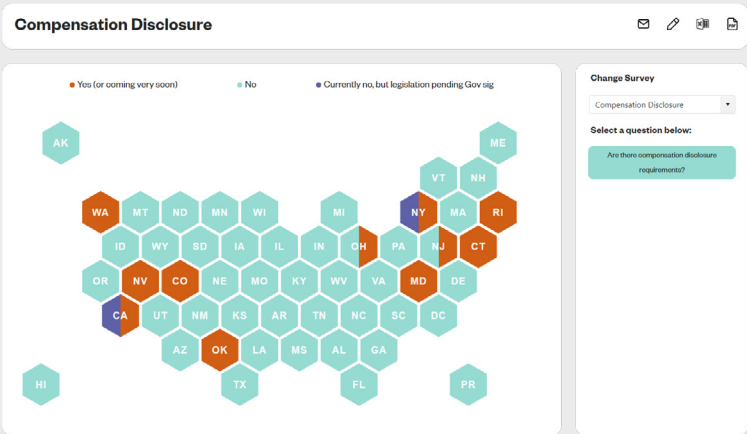
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- Develop more effective training programs**
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