

July 2019 HR Regulatory Updates by State

ALABAMA

Alabama Governor Signs Pay Equity Legislation

House Bill (HB) 225 was signed on June 11, 2019, making Alabama the next state to adopt equal pay legislation. The act prohibits an employer from paying an employee a lower wage rate than an employee of another race or sex for equal work. The act creates an exception where the employer bases wage differential on any of the following factors:

- A seniority system
- A merit system
- A system that measures earning by quantity or quality of production
- A differential based on any factor other than sex or race

Federal law already prohibits employers from paying an employee less than employee of another sex for equal work. AL's act adopts the federal Equal Pay Act, but adds some differences. AL's act goes a step further by prohibiting an employer from refusing to interview, hire, or employ an applicant, or retaliate against an applicant because the applicant does not provide wage history. Additionally, the penalties provided in AL's act are not as substantial as the federal law. An employer who violates the act may be liable to the employee for the wage difference caused by the violation, but if an employee files claims under both state and federal law and recovers damages under both, the employee will be required to return to the employer the lesser amount recovered under either state or federal law.

Overall, the act does not substantially increase the existing burden on Alabama employers. The federal Equal Pay Act applies to only sex, while the Alabama act prohibits wage discrimination based on both race and sex.

Link:

<https://legiscan.com/AL/text/HB225/id/1964436/Alabama-2019-HB225-Introduced.pdf>

CALIFORNIA

California Extends Paid Family Leave Benefits to 8 Weeks

The state of California signed Senate Bill (SB) 83, which will extend the maximum duration of paid family leave (PFL) benefits from six to eight weeks beginning on July 1, 2020. SB 83 also requires that the governor of California propose further benefit increases and job protections for individuals receiving PFL benefits by November 2019.

Employers in the state of California should review leave policies, procedures, and practices, as well as any parental and other paid leave benefits before this takes effect next year.

Link:

https://www.edd.ca.gov/Disability/paid_family_leave.htm

DELAWARE

Delaware's Sexual Harassment Prevention Information Requirement

Delaware employers with 4 or more employees are being required to distribute a copy of the “Delaware Sexual Harassment Notice” to all current employees by July 1, 2019 and to all new employees upon hire. This notice states that employers will be liable if they should have known or did not take necessary steps to correct and investigate sexual harassment complaints. The law also prohibits retaliation against any adverse reports protecting victims and witnesses.

Link:

<https://dia.delawareworks.com/discrimination/documents/Delaware%20Sexual%20Harassment%20Notice.pdf>

FLORIDA

Workplace Vaping Banned

Effective July 1, 2019, employees are prohibited from vaping or using e-cigarettes in enclosed workspaces. The state defines “enclosed workspaces” are an indoor space where one or more persons are working and the area is closed in with physical barriers on all sides, regardless of whether the barrier has uncovered or partial openings, screens, windows, doors, etc.

Employers should review all smoking policies and update accordingly.

Link:

<http://www.flsenate.gov/Session/Bill/2019/7012/BillText/er/PDF>

ILLINOIS

Illinois Legalizes Recreational Marijuana Use

Effective January 1, 2020, the Cannabis Regulation and Tax Act will allow anyone 21 or older to possess, use, or buy marijuana for recreational purposes.

The act contains a number of provisions that employers who wish to maintain drug-free workplaces may find helpful. The act specifically provides that:

- Nothing in the act prohibits an employer from adopting a reasonable zero-tolerance or drug-free workplace policy or employment policy concerning drug testing, smoking, consumption, storage or use of cannabis in the workplace or while ‘on call’ provided that the policy is applied in a nondiscriminatory manner.
- Nothing in the act requires an employer to allow an employee to be under the influence or use cannabis at work, while performing job duties, or while ‘on call’.
- Nothing in the act shall limit or prevent an employer from disciplining or terminating an employee for violating the employer’s employment policies or workplace drug policy.

Additionally, because drug tests generally cannot detect current marijuana impairment, employers will be prohibited by the Illinois Right to Privacy Act from taking adverse actions for positive marijuana drug test results in most situations except for reasonable suspicion. For a pre-employment drug test, the marijuana use always will be off-duty and off-premises, and therefore employers are prohibited from taking adverse actions against applicants who use marijuana. Illinois employers should review their drug-testing policies and practices, and consult with counsel to ensure compliance.

Link:

https://www2.illinois.gov/IISNews/20242-Summary_of_HB_1438_The_Cannabis_Regulation_and_Tax_Act.pdf

MASSACHUSETTS

Massachusetts Delays Start to Paid Family and Medical Leave Program

The state of Massachusetts announced a three-month delay to the start of the required contributions for the paid family and medical leave program in order to allow employers adequate time to prepare. Employers will now have until October 1, 2019 to begin the required contributions.

Link:

<https://www.mass.gov/news/notice-to-massachusetts-employers-about-pfml-delay>

MINNESOTA

Minneapolis: Sick and Safe Time Ruling Applies to Non-Minneapolis Employers

Minneapolis-based employees now qualify for paid sick and safe time regardless of their employer's location. Employers are now required to track the time accruals and the use of this time for employees based on Minneapolis. Employees will earn 1 hour of sick and safe time for every 30 hours worked.

Employers with employees located in Minneapolis should identify employees that qualify, as well as review and update their policies accordingly.

Link:

http://sicktimeinfo.minneapolismn.gov/employer-resources.html?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term

NEVADA

Nevada Curbs Use of Pre-Employment Test for Marijuana

Starting January 1, 2020, Nevada employers will be prohibited from refusing to hire job candidates who test positive for marijuana on a pre-employment drug test. It is important to note that not all jobs are covered under this new ban. Employers are permitted to screen and refuse to hire applicants for jobs as drivers, firefighters, and emergency medical technicians who test positive for marijuana.

Nevada employers should review and revise their pre-employment drug testing policies before this new law takes effect. Employers who currently drug test new hires should remove marijuana from the testing panel and review job descriptions to determine which positions are exempt from the ban.

OREGON

Paid Family Leave Is Coming to Oregon

Starting in 2023, many Oregon employees will be eligible for paid family and medical leave benefits. Lawmakers in Oregon passed House Bill (HB) 2005 and the governor plans to sign the bill into law. If passed, Oregon will be the 8th state to approve paid family and medical leave benefits.

Link:

<https://olis.leg.state.or.us/liz/2019R1/Downloads/ProposedAmendment/16785>

SOUTH DAKOTA

e-Cigarettes Banned from South Dakota Workplaces

Effective July 1, 2019, e-cigarettes are banned from all South Dakota workplaces and public buildings. Employers should review and update their smoking policies accordingly.

Link:

<https://www.publichealthlawcenter.org/resources/us-e-cigarette-regulations-50-state-review/sd>

VIRGINIA

Virginia Employers Must Comply with a New Personnel Record Law

Effective July 1, 2019, Virginia employers are required to provide employees with copies of certain personnel records when a written request for such information is received. Responses are required within 30 days, or within 60 days if the employer can provide a reason for the delay. Documents related to the following must be provided upon request:

- Dates of employment
- Wages or salary
- Job description and job title
- Any injuries on the job

There are no federal laws that govern employee access to personnel files. This new law is the first of its kind in Virginia. It is recommended that employers in the state of Virginia develop internal policies and procedures for reviewing and responding to personnel file requests.

WASHINGTON

Washington State Proposal Would Radically Increase Exempt Salary Threshold

The Washington Department of Labor and Industries proposed amendments to the state's white-collar overtime exemption regulations. If adopted, the proposed amendments would increase the minimum salary level to \$49,140/ year and \$35,100/year for employers with 50 or fewer employees effective July 1, 2020.

Comments on the proposed amendments are due by September 6, 2019, and the proposal has a projected adoption date of December 3, 2019.

Salary History Banned

Effective July 28, 2019, Washington employers with 15 or more employees are prohibited from reviewing an applicant's wage or salary history. Employers may confirm salary information if the applicant willingly volunteers the information or after the employer has already made a job offer that includes a compensation amount.

Washington employers should review their interview processes to be sure that salary history questions are eliminated from interviews and/or applications. Managers or other hiring staff should be trained on

this new law to ensure that they know how to interview and respond to questions related to an applicant's salary history.

Link:

<https://legiscan.com/WA/text/HB1696/id/2019110/Washington-2019-HB1696-Chaptered.pdf>

WASHINGTON D.C.

Paid Family Leave Coming to the District of Columbia July 2020

On July 1, 2020, Washington D.C. will begin administering paid leave benefits to eligible workers. The paid leave act provides up to 8 weeks to bond with a new child, 6 weeks to care for a family member with a serious health condition, and 2 weeks to care for one's own serious health condition.

Starting July 1, 2019, the District will collect taxes from all employers to fund the Paid Family Leave benefit. The payroll tax will be paid by covered employers, even if the employer provides additional leave benefits to its' workers.

Link:

<https://does.dc.gov/page/district-columbia-paid-family-leave>