



Employers State Law Alert

Summarizing Significant New Employment Laws & Regs in All 50 States



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Right-to-work advocates see both defeat and victory in recent months

by Tammy Binford

Just over half the states in the country currently have some kind of right-to-work law, either in the form of a state constitutional amendment, a statute, or both.

But in late March, Michigan became the first state since the 1960s to repeal a right-to-work law. That victory for organized labor in Michigan followed a union defeat a few months earlier when another state—Tennessee—voted overwhelmingly in favor of a right-to-work amendment to the state’s constitution.

The Michigan statute had been on the books since 2012. Its repeal marked the first time a state revoked a right-to-work law since Indiana did so in 1965. In 2012, Indiana again changed course when it passed a new right-to-work law.

WHAT RIGHT TO WORK MEANS

Workers in right-to-work states can’t be forced to join a union and pay dues even if they work in a unionized workplace. They also are free to withdraw from a union at any time.

In unionized workplaces in right-to-work states, private-sector workers who don’t join the union are still part of the bargaining unit and are covered under union-negotiated collective bargaining agreements. Union advocates maintain that such workers benefit from the union without paying any of the expenses related to collective bargaining.

In states without right-to-work laws, private-sector workers can be required to pay what are called “fair share” or “agency” fees, which are intended to cover the costs of collective bargaining.

Public-sector workers covered by union collective bargaining agreements are able to avoid paying union dues even in states without right-to-work laws. Public-sector workers won those rights in a 2018 U.S. Supreme Court ruling, *Janus v. American Federation of State, County, and Municipal Employees (AFSCME), Counsel 31*.

Foes of right-to-work laws say those laws as well as the *Janus* ruling leave unions deprived of a funding source while still representing the rights of workers who choose not to join the union. As they fight right-to-work efforts, union advocates frequently label those workers as “freeloaders” or “free riders.”

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Advocates of right-to-work laws claim union dues mostly go toward union political efforts instead of being used to negotiate collective bargaining agreements and protect worker rights.

SOME HISTORY

The drive for right-to-work laws at the state level ramped up in earnest with the passage of the federal Labor Management Relations Act of 1947, known as the Taft-Hartley Act. That law allows states to enact right-to-work laws that ensure workers won't be compelled to join a union even if they work in a unionized workplace.

Many of the state right-to-work laws were passed in the 1940s and '50s. Currently, 26 states have a right-to-work law, constitutional amendment, or both.

Tennessee, which already had a right-to-work statute, passed a constitutional amendment in November 2022. In explaining the Tennessee ballot initiative, Ballotpedia chronicled how right-to-work ballot measures across the country fared from 1944 through 2018. There were 28 measures, with 12 gaining approval and 16 being defeated.

Of the 28 measures, 18 were constitutional amendments, seven were statutes, and three were referendums on statutes that had been passed by the legislature. Of the 18 right-to-work constitutional amendments, eight were approved and 10 were defeated. Two statutes were approved and five were defeated, according to Ballotpedia.

Prior to the 2022 vote in Tennessee, the most recent vote on a right-to-work law took place in 2018 in Missouri, according to Ballotpedia. Missouri's right-to-work law was repealed with 67.47% of voters rejecting it and 32.53% voting to uphold it.

The U.S. Bureau of Labor Statistics (BLS) reported in January that the union membership rate nationwide was 10.1% in 2022, down from 10.3% in 2021. The 2022 unionization rate is the lowest since statistics have been compiled. In 1983, the first year with available data, the union membership rate was 20.1%.

BLS statistics show that in 2022, men continued to have a higher union membership rate (10.5%) than women (9.6%). That shows a narrowing of the gap between men and women since 1983, when the unionization rate for men was 24.7% and the rate for women was 14.6%.

The statistics for 2022 also show that Black workers continued to have a higher union membership rate (11.6%) than white workers (10.0%), Asian workers (8.3%), and Hispanic or Latino workers (8.8%).

STATE PICTURE

Here is a list—compiled by the National Conference of State Legislatures—of the right-to-work states and when they passed their laws, constitutional amendments, or both:

Alabama: Statute enacted in 1953, constitutional amendment adopted in 2016.

Arizona: Statute in 1947, amendment in 1946.

Arkansas: Statute in 1947, amendment in 1944.

Florida: Statute in 1943, amendment in 1968.

Georgia: Statute in 1947.

Idaho: Statute in 1985.

Indiana: Statute in 2012. (Indiana previously had passed a right-to-work statute in 1957, but it was repealed in 1965.)

Iowa: Statute in 1947.

Kansas: Amendment in 1958.

Kentucky: Statute in 2017.

Louisiana: Statute in 1976.

Mississippi: Statute in 1954, amendment in 1960.

Nebraska: Statute in 1947, amendment in 1946.

Nevada: Statute in 1952.

North Carolina: Statute in 1947.

North Dakota: Statute in 1947.

Oklahoma: Statute and amendment in 2001.

South Carolina: Statute in 1954.

South Dakota: Statute in 1947, amendment in 1946.

Tennessee: Statute in 1947, amendment in 2022.

Texas: Statute in 1993.

Utah: Statute in 1955.

Virginia: Statute in 1947.

Wisconsin: Statute in 2015.

West Virginia: Statute in 2016.

Wyoming: Statute in 1963.

Kansas is the only state to have a constitutional amendment without also having a statute. Why have both? Some states have chosen to amend their constitutions after passing right-to-work statutes to guard against new legislation repealing right-to-work laws.

STATUTES

Arkansas



ANALYSIS

LEGISLATION

Legislative update on 2023 Arkansas General Assembly

by Steve Jones, Jack Nelson Jones, PLLC

The 94th Arkansas General Assembly is now in session, and bills related to employment are being introduced. Of course, the mere introduction of a bill doesn't mean that it will ultimately be reported out of committee, much less voted into law.

However, you may wish to keep an eye on potential legislation of interest and, maybe, even inform your representative and senator regarding your views on proposed legislation.

HB 1006

House Bill (HB) 1006 seeks to add Section 11-5-119 to Chapter 5 of Title 11 of the Arkansas Code, "Working Conditions Generally," to require 12 weeks of paid maternity leave for employees of companies offering abortion coverage under their health benefit plans.

Status: HB1006 seems to be on a fast track for adoption. It has already been reported out of committee and passed by the House. It has been transmitted to the Senate where it has been read the first and second time and was referred to the Senate Public Health, Welfare, and Labor Committee on February 13.

Update: There has been no change in the status of this bill. It remains pending before the Senate Public Health, Welfare, and Labor Committee

HB 1400

HB 1400 proposes to create a state income tax credit for employers that provides paid leave under the federal Family and Medical Leave Act (FMLA). The credit would be the same as the federal income tax credit provided under 26 U.S.C. §45S. The federal credit requires an employer to have a policy that provides no less than two weeks paid FMLA leave. The credit is on a sliding scale of 12.5% to 25% of the wages paid while employees are on FMLA leave.

Status: It was referred to the House Revenue and Tax Committee on February 13 and no further action has been taken.

HB 1451

HB 1451 would require private employers who aren't otherwise providing paid holiday leave for Veterans Day (November 11) to allow any veteran unpaid leave to observe that holiday. The employee must provide 30-day written notice of the intent to be off that day and a copy of a Certificate of Release of Discharge from Active Duty, generally referred to as DD Form 214. Employers could refuse only if permitting the absence would adversely impact the public health and safety or would cause significant economic or operational disruption to the employer.

Status: HB 1451 was filed on February 16, read twice, and submitted to the House Committee on Public Health, Welfare, and Labor the same day. On February 21 the Committee returned the bill with a "Do Pass" recommendation. A later attempt to amend the bill failed, so it remains before the House with a "Do Pass" recommendation.

HB 1575

HB 1575 would amend Arkansas unemployment compensation law, Ark. Code Ann. §11-10-507. It would require someone claiming unemployment compensation to have taken specific acts seeking employment, such as making at least five works search contacts per week. Such contacts could include applications, interviews, attending a job fair, attending job skills training at a workforce center, or training in a demand occupation. The bill also requires the Division of Workforce Services to audit at least 100 of all weekly work search reports for verification purposes.

Status: There has been substantial legislative activity regarding HB 1575. It was filed on March 8, read twice, and referred to the House Public Health, Welfare, and Labor Committee on the same day. It was amended on March 13 and returned by the Committee on March 14 with a "Do Pass" recommendation. It was passed by the House on March 15 and transmitted to the Senate where it has been read twice and referred to the Senate Public Health, Welfare, and Labor Committee.

SB 352

Senate Bill (SB) 352 calls for the creation of tax incentives for employers who provide or assist employees in obtaining dependent care. It would create a credit for employers of 50% of the amount paid for employee's dependent care.

Status: The bill was filed on March 3, read twice and referred to the Senate Revenue and Tax Committee the same day. No further action has occurred.

BOTTOM LINE

While it's likely that most of these bills won't be enacted into law, it's still good to keep an eye on them and inform your legislators of your positions.

*Excerpted from Arkansas Employment Law Letter
Steve Jones, Audra Hamilton, and Nathan Read, Editors
Jack Nelson Jones, PLLC, and Mitchell Williams*

Unemployment

Unemployment compensation benefits

This law disqualifies a claimant from collecting unemployment compensation benefits for any week they fail to respond to an offer of employment or fail to appear for a previously scheduled job interview. The law requires an individual to be disqualified from benefits if they don't accept suitable work within five business days of the job offer. An individual will also be disqualified if they fail to appear for a previously scheduled job interview on at least two occasions without notifying the prospective employer of the need to cancel or reschedule the job interview. Under the law a prospective employer may notify the Division of Workforce Services of the individual's failure to appear for a scheduled job interview through an online portal established by the division or through an email or telephone number designated for reporting noncompliance.

Cite: 2023 AR HB1197, AR Pub. Ch. 106 (2 pages)

Enacted: 2/23/2023

Effective: 1/1/2024

<https://www.arkleg.state.ar.us/Bills/FTPDocumentpath=%2FBills%2F2023R%2FPublic%2FHB1197.pdf>

Colorado

Employee Benefits

Leave for National Guard Service

This law clarifies that a member of the Colorado National Guard or the reserve forces of the United States who is an employee of a private employer is entitled to a leave of absence from employment to receive military training with the

United States armed forces for the equivalent of 3 weeks of work on their regular work schedule each year. The employee is entitled to use any paid leave available or to use unpaid leave for the period of absence for military training. The law clarifies that a private employee is entitled to use any paid leave available to the employee or to use unpaid leave to engage in active service in the Colorado National Guard.

Cite: 2023 CO HB1045 (4 pages)

Enacted: 3/10/2023

Effective: 3/10/2023

https://leg.colorado.gov/sites/default/files/2023a_1045_signed.pdf

Employee Benefits

Paid family and medical Leave

Current law specifies that a covered individual's weekly paid family and medical leave benefit is determined based on their average weekly wage earned during the base period or alternative base period from the job or jobs from which they are taking paid family and medical leave, which excludes from the calculation recent wages from previous jobs. The law eliminates the limit on calculating the benefit based on the average weekly wage earned only from the job or jobs from which the individual is taking paid family and medical leave.

Cite: 2023 CO SB46 (3 pages)

Enacted: 3/23/2023

Effective: 3/23/2023

https://leg.colorado.gov/sites/default/files/2023a_046_signed.pdf

Idaho

Unemployment Compensation

Extends benefits for domestic violence and military spouses

This law would allow unemployment insurance benefits to individuals who must leave their employment because they are a victim of domestic violence or because their military spouse is being transferred.

Cite: 2023 ID SB1019, ID Pub. Ch. 75 (8 pages)

Enacted: 3/20/2023

Effective: 7/1/2023

<https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2023/legislation/S1019.pdf>

Illinois

Paid leave

New Illinois law mandates paid leave for any reason

by Steven L. Brenneman, Fox, Swibel, Levin & Carroll, LLP

The Illinois Paid Leave for All Workers (PLFAW) Act was passed by the Illinois legislature in January and was signed into law by Governor J.B. Pritzker on March 13, 2023. Effective January 1, 2024, it will require nearly all private sector employers in Illinois to provide employees a minimum of 40 hours of paid leave per year, which can be used for any reason. PLFAW makes Illinois the third state in the country to mandate paid time off for any reason.

AND YOU THOUGHT TRACKING TIME OFF WAS ALREADY DIFFICULT?

PLFAW will require virtually all employees to be provided paid leave at a rate of 40 hours per year. It's important to note that unlike vacation or other PTO that must be paid out upon an employee's separation from employment (according to the Illinois Wage Payment and Collection Act), paid leave under PLFAW that is accrued but unused doesn't have to be paid upon termination.

The main feature of PLFAW is that employees may use the paid leave for any reason, and employers can't ask about the reasons for taking such leave. In addition, employers can't retaliate because an employee uses PLFAW leave or otherwise exercises their rights under the Act. They also can't consider an employee's use of PLFAW leave as a negative factor in any employment action.

Employers may base the leave on an accrual method (one hour of leave for every 40 hours worked), or employers may "frontload" all 40 hours at the beginning of the leave year. The leave will carry over annually if the accrual method is used, but no carryover is required if employers frontload all 40 hours at the beginning of each year. If employers choose to use the

accrual method (rather than frontloading the leave), then employees must begin to accrue at the start of employment or on the effective date of PLFAW, whichever is later. Additionally, exempt employees are deemed to work 40 hours per week for purposes of accruing PLFAW leave.

Employers can require reasonable notice for taking the leave (seven days for foreseeable leave), but it must have a written policy that contains procedures for any notice requirements. In addition, employers can require that employees use this leave in increments not greater than two hours. However, employers can't require employees to find a replacement worker to cover the hours during which an employee takes PLFAW leave.

EVERYTHING ELSE YOU NEED TO KNOW

Employers already covered by the mandatory paid sick leave ordinances in Cook County or the City of Chicago won't be covered by the new law. The State of Illinois and units of local government are covered by PLFAW, but school districts, park districts, certain transportation and construction employees, and short-term and student employees of institutions of higher education aren't covered. The PLFAW requirements may be waived via a bona fide collective bargaining agreement that includes a clear and unambiguous waiver.

It's also important to note that the time off must be paid at the employee's regular hourly rate of pay. Special rules apply for employees who earn tips and/or commission, however.

PLFAW also requires employers to create and maintain records documenting hours worked, leave accrual (unless leave is frontloaded), and remaining PLFAW balances, and be prepared to confirm this information upon an employee's request.

To make sure employees understand these new requirements, a notice of PLFAW rights must be posted.

NEXT STEPS FOR EMPLOYERS

Illinois employers should begin now to plan for this new law. Many employers already have paid leave policies that provide at least 40 hours of leave per year. However, even employers that already provide PTO will want to consider updating their leave policies in light of PLFAW's provisions.

*Excerpted from Illinois Employment Law Letter
Steven L. Brenneman and Kelly Smith-Haley, Editors
Fox, Swibel, Levin & Carroll, LLP*

Kentucky

Professional Employer Organizations

Financial statement requirements

This law changes the financial statement requirements for a professional employer organization's initial and renewal registration. It provides that initial registration shall be valid for one fiscal year for any professional employer organization that completed its initial prior to July 15, 2024. The law also includes professional employer organization groups. It requires annual renewal registrations to be included in the financial statement requirements. The law requires a professional employer organization to submit required wage reports and pay all contributions to the Office of Unemployment Insurance.

Cite: 2023 KY HB394, KY Pub. Ch. 88 (11 pages)

Enacted: 3/24/2023

Effective: 7/1/2023

<https://apps.legislature.ky.gov/recorddocuments/bill/23RS/hb394/bill.pdf>

Worker Health and Safety

Health care worker safety

This law requires health facilities to create a workplace safety assessment and a workplace safety plan. It obligates health facilities to provide trainings on the workplace safety assessment and plan and to develop internal reporting requirements for incidents of workplace violence. The law also prohibits discrimination against a healthcare worker who reports an incident of workplace violence.

Cite: 2023 KY HB176, KY Pub. Ch. 100 (7 pages)

Enacted: 3/24/2023

Effective: 7/1/2023

<https://apps.legislature.ky.gov/recorddocuments/bill/23RS/hb176/bill.pdf>

Michigan

Employee Discrimination

Prohibits discrimination based on sexual orientation, gender identity or expression

This law prohibits discrimination based on sexual orientation and gender identity or expression. "Sexual orientation" would mean having an orientation for heterosexuality, homosexuality, or bisexuality or having a history of such an orientation or being identified with such an orientation. "Gender identity or expression" would mean having or being perceived as having a gender-related self-identity or expression regardless of whether it's associated with an individual's assigned sex at birth.

Cite: 2023 MI SB4, MI Pub. Ch. 6 (6 pages)

Enacted: 3/16/2023

Effective: 6/16/2023

<https://www.legislature.mi.gov/documents/2023-2024/publicact/pdf/2023-PA-0006.pdf>

Legislation

Michigan Legislature amends ELCRA to include LGBTQIA+ protections

by Amanda McSween Empey, Bodman PLC

On March 16, 2023, Governor Gretchen Whitmer signed a bill that expands the Elliott-Larsen Civil Rights Act (ELCRA) to include protections for LGBTQIA+ individuals.

ELCRA AMENDMENTS

Originally enacted in 1977, ELCRA currently prohibits employment discrimination based religion, race, color, national origin, age, sex, height, weight, and marital status. The bill amends this list of enumerated protected classes to include "sexual orientation" and "gender identity or expression."

The bill defines "gender identity or expression" as "having or being perceived as having a gender-related self-identity or expression whether or not associated with an individual's assigned sex at birth."

"Sexual orientation" is defined as "having an orientation for heterosexuality, homosexuality, or bisexuality or having a history of such an orientation or being identified with such an orientation."

PRACTICAL EFFECT

Sexual orientation and gender identity have been protected under federal law since 2020, when the U.S. Supreme Court held that firing individuals because of their sexual orientation or transgender status violates Title VII of the Civil Rights Act of 1964's prohibition on discrimination "because of sex."

Sexual orientation has also been protected under Michigan law since July 2022, when the Michigan Supreme Court held that ELCRA's prohibition on discrimination "because of . . . sex" encompassed discrimination based on sexual orientation. However, while the Michigan Court of Claims previously held that "gender identity" was included under ELCRA's prohibition on discrimination because of sex, the Michigan Supreme Court didn't address gender identity or gender expression.

Therefore, the bill will concretely add "gender identity or expression" to the list of protected classes and will codify the protection of "sexual orientation" under Michigan law.

TAKEAWAYS

These amendments are significant because the Michigan Civil Rights Commission will be able to investigate claims of discrimination based on gender identity or expression and file administrative claims.

Furthermore, claims filed under ELCRA are procedurally and substantively different from federal Title VII claims. Unlike under federal law, ELCRA doesn't require that employees exhaust their administrative remedies before filing an employment discrimination suit. And supervisors can be found individually liable under ELCRA's employment provision, but they can't under Title VII.

The bill will take effect 90 days after its enactment. To avoid liability, employers should review their policies and procedures regarding discrimination and provide corresponding training to human resources and managerial employees.

*Excerpted from Michigan Employment Law Letter
Gary Fealk and John Below, Editors
Bodman PLC*

Montana

Workers' Compensation

Injuries during social or recreational activities

This law clarifies that employees do not receive compensation for injuries resulting from engaging in an unpaid social or recreational activity, regardless of whether they pay for any portion of the activity or whether the activity occurs at the worksite of the employer. A "social or recreational activity" is defined as an activity that is generally undertaken by individuals for exercise, relaxation, pleasure, or voluntary or optional preparation related to the employment.

Cite: 2023 MT HB178, MT Pub. Ch. 84 (8 pages)

Enacted: 3/23/2023

Effective: 2/23/2023

<https://leg.mt.gov/bills/2023/billpdf/HB0178.pdf>

Nebraska

Parental Leave

Lincoln becomes first city in Nebraska to provide paid parental leave to employees

by Mark M. Schorr, Erickson | Sederstrom, P.C.

For a number of years, there have been several proposals in the Nebraska Legislature to require private employers to provide paid parental leave, none of which have gotten any traction to date. On April 10, 2023, however, the Lincoln City Council passed a resolution making it the first city in Nebraska to provide paid parental leave. Let's examine the details.

SIX WEEKS PAID

As a result of the Lincoln City Council's unanimous vote, city employees will now be provided with six weeks of paid parental leave in connection with the birth, adoption, or fostering of a new child within the first year. Previously, city employees could take up to 12 weeks of unpaid leave, similar to the Family and Medical Leave Act (FMLA) currently in place for most employers with over 50 employees.

The six weeks of paid parental leave must be taken within the 12-month period following birth, adoption, or taking on a new foster child. There's no waiting period following initial employment, and paid parental leave will be available to full-time employees as soon they begin their employment with the city.

Paid parental leave will be available on a prorated basis to part-time city employees who are employed for at least 20 hours a week.

CITY EMPLOYEES ONLY

Mayor Leirion Gaylor Baird is expected to sign the measure, and it could be implemented as soon as May 1, 2023.

It must be emphasized that this is a benefit only for city employees. Although benefits will be available only to those employees, it's a significant development. Historically, governmental entities are the first to adopt new measures of this type, and Nebraska employers should watch these and other developments closely.

STATE-LEVEL PAID LEAVE PENDING BUT UNLIKELY

Legislative Bill (LB) 57—which is currently pending before the Nebraska Legislature—would adopt the Paid Family and Medical Leave Insurance Act and create a paid family and medical leave insurance program to provide partial wage replacement for eligible workers to care for themselves or a family member experiencing a serious illness, or to care for a new child through birth, foster care, or adoption.

LB57 would apply to a broad range of employers, including private employers, and the leave would be funded through employer contributions to the program. It's patterned after the FMLA, but it isn't expected to gain traction or have a chance of passing in the current legislative session.

The Nebraska Employment Law Letter in the Upper Midwest Employment Law Letter will keep you abreast of any further developments in this area.

*Excerpted from Nebraska Employment Law Letter
Mark M. Schorr, Bonnie Boryca, and Heather Veik, Editors
Erickson | Sederstrom, P.C.*

Nevada**Workers' Compensation****Lump sum payments for permanent partial disability**

This law authorizes a claimant who is injured on or after July 1, 2017, and whose injury does not exceed 30 percent to elect to receive their compensation in a lump sum.

Cite: 2023 NV AB165 (4 pages)

Enacted: 3/22/2023

Effective: 3/22/2023

<https://www.leg.state.nv.us/App/NELIS/REL/82nd2023/Bill/9846/Text>

New York**Employee Safety****Amends the Warehouse Worker Protection Act**

This law makes various changes to the Warehouse Worker Protection Act. It clarifies the definition of employee to be an employee who isn't exempt from minimum wage and overtime compensation provisions of the Labor Law and any applicable minimum wage orders and who works at a

warehouse distribution center and is subject to a quota. It also clarifies that such employees don't include drivers or couriers who travel to or from a warehouse distribution center. It would also clarify that "aggregated work speed data" is a compilation of employee work speed data for multiple employees.

The law increases the employee threshold for multiple warehouse distribution centers under the definition of qualifying "employers" from 500 to 1,000 employees. It includes a technical change to determining the number of employees employed at a warehouse and to the definition of the term "quota." It also excludes farm product warehousing and storage from the definition of "warehouse distribution center." It includes requirements that employers providing employees information regarding quotas and work speed data must provide the written description in English and in the employee's identified primary language.

The law limits employer record keeping requirements of specified documents to three years. It also provides that an employee can request their quota, personal work speed data from the most recent 90 days, and aggregated work speed data for the same time period when facing disciplinary action. Finally, the law limits a former employee to one request for such information and extends the time in which an employer that receives requests for information has to comply to 14 calendar days from the date of the request.

Cite: 2023 NY AB1000, NY Pub. Ch. 43 (5 pages)

Enacted: 3/3/2023

Effective: 3/3/2023

https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=AB1000&term=&Text=Y

Employee Safety**Crimes involving death or injury of employee**

This law revises the definition of "employee" to mean any person providing labor or services for remuneration for a private entity or business within New York state, without regard to immigration status, and shall include part-time workers, independent contractors, apprentices, domestic workers, home care and personal care workers, day laborers, farmworkers, and other temporary and seasonal workers.

Cite: 2023 NY AB1322, NY Pub. Ch. 61 (2 pages)

Enacted: 3/3/2023

Effective: 3/3/2023

<https://legiscan.com/NY/text/A01322/2023>

Labor Laws

Establishment of workplace safety committee

This law changes the time within which an employer must recognize the establishment of a workplace safety committee from within 5 days to within 15 days.

Cite: 2023 NY SB848, NY Pub. Ch. 47 (1 pages)

Enacted: 3/3/2023

Effective: 3/3/2023

https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=SB848&term=&Summary=Y&Actions=Y&Memo=Y&Text=Y

Oregon

Wage and Hour

Loan program to compensate for certain overtime requirements

This law directs the Oregon Business Development Department to develop and administer a loan program to provide financial assistance to eligible employers to mitigate costs associated with compliance with agricultural overtime compensation requirements.

Cite: 2023 OR HB2058 (4 pages)

Enacted: 3/27/2023

Effective: 3/27/2023

<https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/HB2058/Enrolled>

South Dakota

Drugs

Employers acquiring opioid antagonists

This law authorizes employers to acquire and make available opioid antagonists and allows a licensed healthcare professional to, directly or by standing order, dispense or distribute an opioid antagonist to an employer. An employer

may acquire and make available on its premises an opioid antagonist that is dispensed or distributed by a licensed healthcare professional if it develops a protocol for the transport, storage, maintenance, and location of the opioid antagonists and provides training and instruction (developed by the Department of Health and made available on the Department of Health website) to employees or personnel authorized to administer an opioid antagonist on the employer's premises. If the employer makes the opioid antagonist accessible to the public, it must prominently post instructions on the administration and post-administration protocol. An employer, employee, or other authorized personnel of an employer may not be held liable for any death, injury, or damage that arises out of the administration of, the self-administration of, or the failure to administer an opioid antagonist, if such action or inaction constitutes ordinary negligence.

The law also provides that a healthcare professional who is authorized to prescribe or dispense an opioid antagonist isn't subject to any disciplinary action or civil or criminal liability for the prescribing or dispensing of an opioid antagonist to an employer or a person whom the healthcare professional reasonably believes may be in a position to assist or administer the opioid antagonist to a person at risk for an opioid-related drug overdose.

Cite: 2023 SD HB1162 (1 page)

Enacted: 3/8/2023

Effective: 7/1/2023

<https://sdlegislature.gov/Session/Bill/24030/250410>

Utah

Employee Privacy

Prohibits requesting immunity status by employers

This law enacts a prohibition on the use of an individual's immunity status by places of public accommodation, governmental entities, and employers. The law defines "immunity status" as an indication of whether an individual is immune to a disease, whether through vaccination or infection and recovery. The law makes it unlawful discrimination for an employer to require proof of immunity status and prohibits a governmental entity or employer from requiring an individual to receive a vaccine.

Cite: 2023 UT HB131 (10 pages)

Enacted: 3/15/2023

Effective: 3/15/2023

<https://le.utah.gov/~2023/bills/hbillenr/HB0131.pdf>

Employee Safety

Creates workplace violence protective order

This law allows an employer to petition for a workplace violence protective order. The law requires an employer to notify certain individuals when seeking a workplace violence protective order. It establishes relief a court may include as part of a workplace violence protective order. The law requires a court to take certain action after issuing a workplace violence protective order and establishes circumstances under which a court may modify or vacate a workplace violence protective order. The law also requires a court to set a date for a hearing on a workplace violence protective order within a certain period. It establishes provisions related to the service, expiration, modification, and extension of a workplace violence protective order and provides a penalty for violating a workplace violence protective order. It limits the liability of an employer for seeking or failing to seek a workplace violence protective order.

Cite: 2023 UT HB324 (12 pages)

Enacted: 3/14/2023

Effective: 7/1/2023

<https://le.utah.gov/~2023/bills/hbillenr/HB0324.pdf>

Hiring

Job opportunities for persons with criminal histories

This law establishes provisions related to a web portal that will connect individuals with criminal histories to available job opportunities. It requires the Department of Workforce Services to create and maintain a web portal through which a business in this state, including a state or local entity, may post job opportunities available to individuals with criminal histories and related employment information.

Cite: 2023 UT HB181 (4 pages)

Enacted: 3/13/2023

Effective: 3/13/2023

<https://le.utah.gov/~2023/bills/hbillenr/HB0181.pdf>

Public and Private Employers: Background Checks

Hiring mental health professionals

This law prohibits certain public employers and contractors from considering certain arrests or criminal convictions or denying employment based on certain criminal convictions or participation in substance use treatment when hiring a mental health professional. The law also prohibits a private employer from excluding an applicant from an interview for a juvenile adjudication, certain arrests, or an expunged criminal offense when hiring a mental health professional.

Cite: 2023 UT HB468 (30 pages)

Enacted: 3/17/2023

Effective: 3/17/2023

<https://le.utah.gov/~2023/bills/hbillenr/HB0468.pdf>

Public Employers: Employee Health

First responders' mental health

This law concerns mental health services for first responders and spouses of first responders. It requires the Department of Health and Human Services to reimburse certain expenses incurred by volunteers who provide critical incident stress management services to emergency service workers. The law also broadens the scope of individuals who are considered eligible for mental health services. It also provides that mental health services shall be provided on a regular and continuing basis.

Cite: 2023 UT HB59 (4 pages)

Enacted: 3/1/2023

Effective: 3/1/2023

<https://le.utah.gov/~2023/bills/hbillenr/HB0059.pdf>

Virginia

Employee Privacy

Exclusions for employers from genetic data privacy laws

This law provides exclusions from the genetic data privacy laws, for genetic data used or maintained by an employer, or disclosed by an employee to an employer, to the extent that the use, maintenance, or disclosure of such data is necessary to comply with a local, state, or federal workplace health and safety ordinance, law, or regulation.

Cite: 2023 VA SB1087, VA Pub. Ch. 526 (4 pages)

Enacted: 3/26/2023

Effective: 7/1/2023

<https://lis.virginia.gov/cgi-bin/legp604.exe?231+ful+SB1087ER+pdf>

Nondisclosure Agreements

Sexual harassment

This law provides that no employer may require an employee or prospective employee to execute or renew any provision in a nondisclosure or confidentiality agreement, including any provision regarding nondisparagement, that has the purpose or effect of concealing the details of a sexual harassment claim. Any such provision is against public policy and is void and unenforceable.

Cite: 2023 VA HB1895, VA Pub. Ch. 511 (1 page)

Enacted: 3/26/2023

Effective: 7/1/2023

<https://lis.virginia.gov/cgi-bin/legp604.exe?231+ful+CHAP0511+pdf>

OSHA

Employer notification

This law authorizes the use of commercial delivery services with signed and dated acknowledgment of delivery by the Commissioner of Labor and Industry when providing notice to an employer of any proposed penalty for a violation of a safety or health provision or of the employer's failure to abate a violation of a safety or health provision. Under current law, the Commissioner is authorized to provide such required notices only through certified mail or personal service.

Cite: 2023 VA HB2179, VA Pub. Ch. 100 (3 pages)

Enacted: 3/21/2023

Effective: 7/1/2023

<https://lis.virginia.gov/cgi-bin/legp604.exe?231+ful+CHAP0100+pdf>

Wyoming

Public Employers: Employee Privacy

Confidentiality related to peer support

This law defines the term “peer support specialist” and provides for the confidentiality of communications made between a peer support specialist and a participant in peer support counseling. It specifies when confidentiality applies and sets out exemptions.

Cite: 2023 WY SF112, WY Pub. Ch. 149 (2 pages)

Enacted: 3/2/2023

Effective: 7/1/2023

<https://wyoleg.gov/2023/Enroll/SF0112.pdf>

REGULATIONS

Arizona

Occupational Safety

Safety requirements

The Industrial Commission's Division of Occupational Safety and Health amended and adopted rules to provide new definitions and to update references to incorporated safety rules.

Cite: 20 A.A.C. R5 (29 A.A.R. 512, 2/03/2023) (7 pages)

Adopted: 1/9/2023

Effective: 1/9/2023

https://apps.azsos.gov/public_services/register/2023/5/contents.pdf

Record keeping

Employer records

The Industrial Commission of Arizona adopted amendments to clarify the rules by including new definitions, which will ease the regulatory burden of record keeping with respect to specific employees who are under contract and granted benefits that exceed those contained in A.R.S. § 23-376, ease the regulatory burden of record keeping by eliminating unnecessary employer records, and modernize the rules by allowing for service by electronic mail with a party's consent.

Cite: 20 A.A.C. R5 (29 A.A.R. 607, 2/24/2023) (6 pages)

Adopted: 2/9/2023

Effective: 2/9/2023

https://apps.azsos.gov/public_services/register/2023/8/contents.pdf

California

Licensure

Continuing education programs

The Board of Accountancy adopted rulemaking actions to amend continuing education program requirements to add technical subject areas, update nontechnical subject areas, and establish three new continuing education programs.

Cite: 16 CCR §§ 87, 88, 88.1, 88.2, 89, 90 (CRNR 2023, No. 6-Z, 02/10/2023, page 144) (6 pages)

Adopted: 2/1/2023

Effective: 7/1/2023

<https://govt.westlaw.com/calregs/Search/Index>

Unemployment Insurance

Appeals

The California Unemployment Insurance Appeals Board adopted, amended, and repealed regulations regarding the following: (1) definitions of terms used throughout the Board's regulations; (2) the applicability of the California Public Records Act (commencing with Government Code section 6250) to and confidentiality of records prepared and produced in connection with the administrative hearings; (3) filing deadlines; (4) scheduling hearings; (5) the circumstances under which an administrative law judge may order an appeal or petition dismissed without a hearing; and (6) updating cross-references.

Cite: 22 CCR §§ 5000, 5007, 5010, 5050, 5054, 5062, 5066, 5066.1, 5067, 5068, 5111 (CRNR 2023, No. 6-Z, 02/10/2023, page 145) (11 pages)

Adopted: 2/1/2023

Effective: 4/1/2023

<https://govt.westlaw.com/calregs/Search/Index>

Workers' Compensation

Administration of QME program

The Division of Workers' Compensation made permanent emergency regulations that allow medical-legal evaluations to be performed remotely. In addition, the division added changes that were not part of the emergency regulations. The timeframe to obtain an appointment with a selected Qualified Medical Examiner (QME) has been extended. The regulations now specify that remote health evaluations must be consistent with the AMA Guides Fifth Edition. Further, both

QME Form 31.5 and QME Form 108 have been updated to reflect changes made in the regulations.

Cite: 8 CCR §§ 31.3, 31.5, 34(b), 34(d), 34(e), 34(f), 46.3, 108 (CRNR 2023, No. 7-Z, page 161) (8 pages)

Adopted: 2/2/2023

Effective: 2/2/2023

<https://govt.westlaw.com/calregs/Search/Index>

Colorado

Civil Rights

Updated terms related to gender and sexuality

The Civil Rights Commission amended regulations to update terms used to comport with definitions introduced or revised, including "gender expression," "gender identity," and "sexual orientation," in HB 21-1108 and to harmonize the rules to the revised jurisdictional time limits set forth in HB 22-1367, including removal of a party's ability to request extensions.

Cite: 3 C.C.R. 708-1 (46 CR 4, 02/25/2023, page 425) (9 pages)

Adopted: 1/27/2023

Effective: 3/30/2023

<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.sos.state.co.us%2FCCR%2FUpload%2FAGOResults%2FAdoptedRules2022-00769.doc&wdOrigin=BROWSELINK>

Occupational Safety: Occupational Health

Log and reporting provisions

The Department of Labor adopted the federal OSHA's reporting requirements related to COVID-19 that healthcare employers continue to maintain and make available a COVID-19 log and to report to OSHA all COVID-19-related fatalities and hospitalizations.

Cite: Regs., Conn. State Agencies § 31-374-3 (eRegulations System, Tracking Number PR2022-010, 03/16/2023) (8 pages)

Adopted: 3/13/2023

Effective: 3/16/2023

<https://eregulations.ct.gov/eRegsPortal/Search/getDocument?guid={C0B4EA86-0000-CF1D-BE63-9900DB63121C}>

Florida

Workers' Compensation

Benefit eligibility for post-traumatic stress disorder

The Division of Workers' Compensation amended rules to add correctional officers to the categories of workers for whom workers' compensation benefits for PTSD may be available under certain circumstances.

Cite: Fla. Admin. Code R. 69L-3.009 (49 faw 613, 02/21/2023) (2 pages)

Adopted: 2/16/2023

Effective: 3/8/2023

https://www.flrules.org/gateway/notice_Files.asp?ID=26672010

Iowa

Benefits

Employee stock ownership plan formation assistance

The Economic Development Authority amended rules for the Employee Stock Ownership Plan formation assistance program, correcting contact information, clarifying eligible costs, clarifying application scoring, and making engagement of outside application reviewers optional.

Cite: 261 IAC 56.2, 56.3, 56.4 (IAB Vol. XLV, No. 17, 2/22/2023, page 2259) (3 pages)

Adopted: 1/20/2023

Effective: 3/29/2023

<https://www.legis.iowa.gov/docs/aco/bulletin/02-22-2023.pdf>

Employment Security

Unemployment insurance

The Workforce Development Department amended rules for unemployment insurance regarding overpayments, voluntary shared work, maximum number of benefit weeks, misconduct, salary guidelines, contested cases, and appeals.

Cite: 871 IAC 23, 24, 26 (IAB Vol. XLV, No. 17, 02/22/2023, page 2316) (5 pages)

Adopted: 1/24/2023

Effective: 3/29/2023

<https://www.legis.iowa.gov/docs/aco/bulletin/02-22-2023.pdf>

Workers' Compensation

Filing

The Workers' Compensation Division amended rules to update language for consistency with the implementation of the electronic filing system, to update the waiver provisions for the electronic filing system, to allow represented parties more flexibility in reaching settlements, to update outdated language, and to increase the filing fee.

Cite: 876 IAC 1, 2, 3, 4, 6, 8, 9, 11 (IAB Vol. XLV, No. 16, 02/08/2023, page 2124) (21 pages)

Adopted: 1/4/2023

Effective: 3/15/2023

<https://www.legis.iowa.gov/docs/aco/bulletin/02-08-2023.pdf>

New Mexico

Occupational Safety

Material license for use of radioactive material

The Environment Department adopted rules for specific licenses for well logging and specific licenses for irradiators when certain categories of radioactive material are used in the processes.

Cite: 20.3.12 NMAC; 20.3.15 NMAC (34 n m reg 128, 02/14/2023) (2 pages)

Adopted: 2/14/2023

Effective: 2/14/2023

<https://www.srca.nm.gov/nmac/nmregister/pdf/xxxiv03.pdf>

New York

Wages

Overtime threshold for farm laborers

The Department of Labor adopted the Wage Board's recommendation that the overtime pay threshold for farm laborers, which is currently set at 60 hours, be reduced to 40 hours over 10 years with reductions of four hours on a biannual basis.

Cite: 12 NYCRR 190-2.4 (2023-8 N.Y. St. Reg. 7, 02/22/2023) (1 page)

Adopted: 2/7/2023

Effective: 2/22/2023

<https://dol.ny.gov/farm-laborers-wage-board>

Oregon

Licensure: Healthcare Professionals

Suspensions

The Oregon Medical Board amended rules to authorize the Executive Director or Medical Director to issue final orders of license suspensions and reinstatements that occur by operation of law and for continuing medical education deficiency cases.

Cite: OAR 847-001-0035 (Oregon Bulletin, February 2023) (1 page)

Adopted: 1/11/2023

Effective: 1/11/2023

<https://secure.sos.state.or.us/oard/viewReceiptTRIM.action?ptId=9317222>

Wages

Prevailing wage rate determination

The Bureau of Labor and Industries amended rules to publish a determination of wage rates for workers upon public works in each trade or occupation in the locality where work is performed for the period beginning January 5, 2023.

Cite: OAR 839-025-0700 (Oregon Bulletin, February 2023) (1 page)

Adopted: 1/10/2023

Effective: 1/11/2023

<https://secure.sos.state.or.us/oard/viewReceiptTRIM.action?ptId=9317207>

Texas

Healthcare Professionals

Nursing practice

The Board of Nursing adopted amendments to clarify the professional and individual scope of practice for Advanced Practice Registered Nurses, with provision for a broad range of health care services to patients in a variety of practice settings, consistent with the Nursing Practice Act, board rules, and other applicable laws and regulations affecting their practice in the state.

Cite: 22 TAC §221.12 (48 TexReg 671, 02/10/2023) (8 pages)

Adopted: 1/25/2023

Effective: 2/14/2023

<https://www.sos.state.tx.us/texreg/archive/February102023/Adopted%20Rules/22.EXAMINING%20BOARDS.html#107>

Professional Conduct

Detrimental practice actions

The Board of Physical Therapy Examiners adopted an amendment to rules to add “failing to respond to agency correspondence” and “failing to complete the requirements of an agreed order” to the list of actions considered detrimental practice.

Cite: 22 TAC §322.4 (48 TexReg 892, 02/17/2023) (2 pages)

Adopted: 1/30/2023

Effective: 3/1/2023

[https://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=22&pt=16&ch=322&rl=4](https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=22&pt=16&ch=322&rl=4)

Utah

Occupational Safety

Safety codes and rules for boilers and pressure vessels

The Labor Commission amended rules to adopt the 2021 editions of the American Society of Mechanical Engineers (ASME) Sections I, IV, and VIII and the National Board Inspection Code (NBIC or NB) Part 3 and to repeal the NB 132 Rev 4 Recommended Administrative Boiler and Pressure Vessel Safety Rules and Regulations.

Cite: Utah Admin. Code r. 616-2-3 (23-04 utah bull 124, 02/15/2023) (5 pages)

Adopted: 1/1/2023

Effective: 2/8/2023

<https://adminrules.utah.gov/public/rule/R616-2/Current%20Rules?searchText=undefined>

Workforce Development

Workforce innovation and opportunity act

The Department of Workforce Services amended rules related to the Workforce Innovation and Opportunity Act to update several sections concerning eligibility requirements for

Workforce Innovation and Opportunity Act (WIOA) programs, add definitions, and change the requirements for training providers seeking to be included on the Utah Eligible Training Provider List (ETPL).

Cite: Utah Admin. Code r. 986-600 (23-04 utah bull 125, 02/15/2023) (11 pages)

Adopted: 12/15/2022

Effective: 1/24/2023

<https://adminrules.utah.gov/public/rule/R986-600/Current%20Rules?searchText=986-600>

Washington

Licensure

Professional conduct

The Board of Accountancy amended regulations to simplify rules by paralleling the rules with the AICPA Code of Professional Conduct and specifically listing any exceptions to the AICPA Code.

Cite: WAC 4-30-040, 4-30-042, 4-30-044, 4-30-046, 4-30-048, 4-30-050, 4-30-052, 4-30-054, 4-30-056, 4-30-058 (WSR 23-04-088) (14 pages)

Adopted: 1/31/2023

Effective: 3/3/2023

<https://lawfilesexternal.wa.gov/law/wsrpdf/2023/04/23-04-088.pdf>