



# Employers State Law Alert

Summarizing Significant New Employment Laws & Regs in All 50 States



**Michigan** becomes latest to pass a version of the CROWN Act, p. 5.  
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## At midyear, more states continue trend toward higher minimum wage

by Tammy Binford

This summer is bringing a pay boost to minimum wage workers in three states, continuing a trend that puts most state minimum wages far above the federal \$7.25-an-hour rate.

Connecticut kicked off the summer season on June 1 with a \$1 increase to \$15 an hour. Then on July 1, Nevada and Oregon ushered in increases. Here’s a look at the three newest state minimums:

**Connecticut:** The move to \$15 an hour—a level a few states have met or have plans to meet—is the result of legislation enacted four years ago. The law launched a series of \$1 increases that started in October 2019, culminating in the

current \$15 level. Beginning on January 1, 2024, the minimum wage will be tied to the employment cost index calculated by the U.S. Department of Labor (DOL).

**Nevada:** The increase is a result of a 2019 law that raises the minimum by 75 cents annually through 2024. Nevada has a two-tier system tied to whether an employer offers health benefits to employees. On July 1, the minimum rose to \$10.25 per hour for employees with health benefits and \$11.25 per hour for employees not offered health benefits.

**Oregon:** The state has a three-tier system: a “standard” rate, a rate for the Portland metro area, and another rate for “nonurban counties.” On July 1, the standard rate rose from \$13.50 to \$14.20; the Portland rate went from \$14.75 to \$15.45, and the nonurban county rate went from \$12.50 to \$13.20 an hour.

Another state, **Florida**, is scheduled to raise its minimum from \$11 to \$12 an hour on September 30.

The states with mid- and late-year increases join 23 other states that increased their minimum wages at the beginning of the year.

Those states and their 2023 minimums are: Alaska, \$10.85; Arizona, \$13.85; California, \$15.50; Colorado, \$13.65; Delaware, \$11.75; Illinois, \$13; Maine, \$13.80; Maryland, \$13.25; Massachusetts, \$15; Michigan, \$10.10; Minnesota, \$10.59 for

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large employers; Missouri, \$12; Montana, \$9.95; Nebraska, \$10.50; New Jersey, \$14.13 but \$12.93 for businesses with fewer than six employees and seasonal employees; New Mexico, \$12; New York, \$14.20 for most of the state but \$15 for New York City, Long Island, and Westchester County; Ohio, \$10.10; Rhode Island, \$13; South Dakota, \$10.80; Vermont, \$13.18; Virginia, \$12; and Washington, \$15.74.

### **MOST STATES ABOVE FEDERAL MINIMUM**

With all the state increases over the last several years, 30 states and Washington, D.C., now have minimum wages above the federal minimum, according to the DOL. Another 15 states have minimums that match the federal minimum, and five states have no state minimum wage.

The states that don't have their own minimums are Alabama, Louisiana, Mississippi, South Carolina, and Tennessee. In those states, the federal minimum wage set by the federal Fair Labor Standards Act (FLSA)—\$7.25 an hour—applies to all workers covered under the law.

The states that have minimums matching the federal minimum are Georgia, Idaho, Iowa, Indiana, Kansas, Kentucky, North Carolina, North Dakota, New Hampshire, Oklahoma, Pennsylvania, Texas, Utah, Wisconsin, and Wyoming. Two of those states—Georgia and Wyoming—actually have state minimum wages of \$5.15 an hour, but because that's lower than the \$7.25-an-hour federal minimum, the federal rate applies.

Four states and Washington, D.C., have minimums that have hit or exceeded the \$15 an hour mark: California (\$15.50), Connecticut (\$15), Massachusetts (\$15), Washington (\$15.74), and Washington, D.C., (\$17).

The rate has hit \$15 in parts of two other states. In New York, the rate is \$15 an hour for minimum wage workers in New York City, Long Island, and Westchester County, and it's \$15.45 in Portland, Oregon.

Besides increasing minimums above the federal level, another trend among states is the practice of indexing their minimums to inflation so that new legislation isn't necessary so often.

As of March 1, the Economic Policy Institute counts 19 states and Washington, D.C., that automatically adjust their rates annually based on inflation. Those states are Alaska, Arizona,

Colorado, Connecticut, Florida, Maine, Minnesota, Missouri, Montana, Nebraska, Nevada, New Jersey, New York, Ohio, Oregon, South Dakota, Vermont, Virginia, and Washington.

A number of cities and counties also have their own minimum wages. The Economic Policy Institute's minimum wage tracker counts 47 localities that have adopted minimum wages higher than their state's minimum wage.

### **EMPLOYERS INSTITUTING MINIMUMS, TOO**

It's not just states and localities adopting their own minimum wages. A number of companies are implementing minimum wages that exceed the federal and state minimums.

For example, Bank of America has increased its minimum several times in recent years, with the latest increase occurring in May 2022 when the minimum was set at \$22 per hour for the company's U.S. employees. The company plans to increase its minimum to \$25 an hour by 2025.

In March, Walmart raised starting wages for its U.S. hourly workers to \$14 an hour. The company said the move would increase its average hourly wage to \$17.50 from \$17 an hour. A company spokesperson said the increase puts the salary range for staff at U.S. stores at \$14 to \$19 an hour depending on location.

Another retail giant, Target, also has raised its minimum wage in recent years. A February 2022 announcement from the company noted it already had hit a goal of setting its starting wage at \$15 an hour and was setting a new minimum as high as \$24 an hour depending on the job, market, and local wage data.

McDonald's and Starbucks also have set starting minimums higher than many state rates. Financial news site Investopedia reported in February that McDonald's raised its wages to \$9.90 an hour in 2015, and the average hourly pay at McDonald's had grown to \$12.10 an hour at the time of the February report.

Starbucks raised its starting pay in 2016, and Investopedia said its average hourly salary was \$13.50 at the time of the report.

# STATUTES

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## Colorado

### Employee Benefits

#### Paid sick leave

*This law allows an employee to use accrued paid sick leave when the employee needs to: care for a family member whose school or place of care has been closed due to inclement weather, loss of power, loss of heating, loss of water, or other unexpected occurrence or event that results in the closure of the family member's school or place of care; grieve, attend funeral services or a memorial, or deal with financial and legal matters that arise after the death of a family member; or evacuate the employee's place of residence due to inclement weather, loss of power, loss of heating, loss of water, or other unexpected occurrence or event that results in the need to evacuate the employee's residence.*

**Cite:** 2023 CO SB17 (3 pages)

**Enacted:** 6/2/2023

**Effective:** 8/2/2023

<https://legiscan.com/CO/text/SB017/id/2793356/Colorado-2023-SB017-Enrolled.pdf>

### Employment Discrimination

#### Creates the Protecting Opportunities and Workers' Rights Act

The Protecting Opportunities and Workers' Rights (POWR) Act directs the Colorado civil rights division to include "harassment" as a basis or description of discrimination on any charge form or charge intake mechanism. It adds a new definition of "harass" or "harassment" and repeals the current definition that requires creation of a hostile work environment. It adds protections from discriminatory or unfair employment practices for individuals based on their "marital status." The law specifies that in harassment claims, the alleged conduct need not be severe or pervasive to constitute a discriminatory or unfair employment practice. Employers are no longer exempt from accommodating an individual with a disability who is otherwise qualified for the job by asserting the individual's disability has a significant impact on the job. The law also specifies that it is a discriminatory or an unfair

employment practice for an employer to fail to initiate an investigation of a complaint or to fail to take prompt, reasonable, and remedial action. The law specifies the requirements that must be satisfied for a nondisclosure provision in an agreement between an employer and an employee or a prospective employee to be enforceable. The law also requires an employer to maintain personnel and employment records for at least 5 years and, with regard to complaints of discriminatory or unfair employment practices, to maintain those records in a designated repository. The law prohibits a nondisclosure agreement between an employer and an employee from limiting the ability of the employee to discuss or disclose any alleged discriminatory or unfair employment practice, unless certain requirements are met. Any employer that includes a nondisclosure provision that violates the bill requirements is liable for actual damages and a fine of \$5,000 per violation. The law allows the Civil Rights Commission and an employee presented with a nondisclosure provision that violates the law's requirements to immediately bring an action for penalties, actual damages, reasonable costs, and attorneys' fees. A court may reduce relief if the employer shows that the act leading to the action was in good faith and had reasonable grounds for believing their actions were in compliance with the law.

**Cite:** 2023 CO SB172 (19 pages)

**Enacted:** 6/6/2023

**Effective:** 8/2/2023

[https://leg.colorado.gov/sites/default/files/2023a\\_172\\_signed.pdf](https://leg.colorado.gov/sites/default/files/2023a_172_signed.pdf)

### Public Employers: Nondisclosure Agreements

#### Limits nondisclosure agreements

This law prohibits state and local government agencies from requiring current and prospective employees to sign a nondisclosure agreement (NDA) as a condition of employment, unless the NDA is necessary to protect privacy interests of the employee or to keep matters confidential as required by federal or state law. Retaliatory action against an employee for failing to sign an NDA is also prohibited. Employers are liable for any employee attorneys' fees to defend against the failure to sign the NDA.

**Cite:** 2023 CO SB53 (18 pages)

**Enacted:** 6/2/2023

**Effective:** 8/2/2023

[https://leg.colorado.gov/sites/default/files/2023a\\_053\\_signed.pdf](https://leg.colorado.gov/sites/default/files/2023a_053_signed.pdf)

### **Public Employers: Workplace Protections**

#### **Creates Protections for Public Workers Act**

This law creates the Protections for Public Workers Act. The law specifies that public employees have the right to: discuss or express views on workplace issues and employee rights and representation; engage in protected, concerted activity for the purposes of mutual aid or protection; participate in the political process while off duty without discrimination, intimidation, or retaliation; speak with members of the public employer's governing body about conditions of employment; and form or join, or refrain from participating in, an employee organization. A public employer must not discriminate against an employee for engaging in the rights listed above, interfere with the administration of an employee organization, or discriminate against an employee who has joined an employee organization or has filed a complaint related to this law. The law does not codify the right to recognize or negotiate a collective bargaining agreement.

**Cite:** 2023 CO SB111 (8 pages)

**Enacted:** 6/6/2023

**Effective:** 8/2/2023

[https://leg.colorado.gov/sites/default/files/2023a\\_111\\_signed.pdf](https://leg.colorado.gov/sites/default/files/2023a_111_signed.pdf)

## **Connecticut**

### **Employee Discrimination**

#### **Adds to protected classes**

*This law amends the state's antidiscrimination laws by adding "age" to the list of protected classes. It also repeals the definition of the term "sexual orientation" and replaces it with a new definition that specifies that "sexual orientation" includes any identity that a person is perceived by another person to hold, relating to the gender or genders to which a person is romantically, emotionally, or sexually attracted.*

**Cite:** 2023 CT HB6638, CT Pub. Ch. 23-145 (7 pages)

**Enacted:** 6/26/2023

**Effective:** 7/1/2023

<https://www.cga.ct.gov/2023/ACT/PA/PDF/2023PA-00145-R00HB-06638-PA.PDF>

## **Maine**

### **Employee Safety**

#### **Workplace harassment and assault**

*This law ensures accountability for workplace harassment and assault by removing intentional acts and omissions from the workers' compensation exemptions.*

**Cite:** 2023 HP28, ME Pub. Ch. 126 (2 pages)

**Enacted:** 6/4/2023

**Effective:** 6/29/2023

<http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=HP0028&item=3&snum=131>

### **Workers' Compensation**

#### **Various changes**

This law amends the state's workers' compensation laws. It addresses independent contractor and construction subcontractor status. It allows a worker to file a statement that the worker performs work as an independent contractor. The statement creates a rebuttable presumption, valid for one year from the date the statement is received by the board, that the worker is an independent contractor in any later claim for benefits. The law also revises the reimbursement rate if the medical fee schedule is not established or updated. If no medical fee schedule is established or updated, the fee is the amount established by the medical fee schedule in effect on the date the update is due. The law provides that an insured employer may be required to reimburse the insurer for any penalty that is due as a result of the insured employer's failure to give timely notice or information to its insurer.

**Cite:** 2023 ME SP728, ME Pub. Ch. 205 (5 pages)

**Enacted:** 6/16/2023

**Effective:** 6/29/2023

<http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=SP0728&item=3&snum=131>

## Michigan



### ANALYSIS

#### Legislation

#### Michigan prohibits hair-based racial discrimination

by Amanda McSween Empey, Bodman PLC

On June 15, 2023, Governor Gretchen Whitmer signed Senate Bill 90, which amends the Elliott-Larsen Civil Rights Act (ELCRA) to prohibit discrimination based on traits historically associated with race, such as hair texture and protective hairstyles. The amendment has immediate effect.

#### CROWN ACT

The ELCRA currently prohibits employment discrimination based on religion, race, color, national origin, age, sex, height, weight, and marital status.

Known as the Creating a Respectful and Open World for Natural Hair (CROWN) Act, Senate Bill 90 expands the protected class of “race” to be “inclusive of traits historically associated with race, including but not limited to, hair texture and protective hairstyles.” Protective hairstyles include braids, locks, and twists.

#### RULE OF THREE

This is the third time Michigan has amended the ELCRA this year. In March 2023, Michigan added “sexual orientation” and “gender identity or expression” to the list of enumerated protected classes.

In May 2023, Michigan amended the ELCRA to prohibit employer discrimination based on abortion by amending the definition of “sex” to include “pregnancy, childbirth, the termination of a pregnancy, or a related medical condition.”

Unlike the CROWN Act, these prior amendments will take effect 90 days after the end of the 2023 Regular Legislative Session, which will likely be mid- to late March 2024.

#### BOTTOM LINE

The CROWN Act has immediate effect as of June 15, 2023. To avoid liability, you should review your 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*

## Nevada

### Employee Benefits

#### Expands domestic abuse leave law

This law expands Nevada’s domestic abuse leave law to include victims of sexual assault. It permits a victim of sexual assault to take up to 160 hours of leave in one 12-month period and requires an employer to make reasonable accommodations for such an employee. The law requires an employer to provide such leave to a victim of an act that constitutes sexual assault. The law authorizes an employee to use the leave for certain purposes and requires an employer to maintain a record of the use of the hours of leave for each employee for a 2-year period and to make those records available for inspection by the labor commissioner. The law prohibits denying a person unemployment compensation benefits if the person: left employment to protect himself or herself, or his or her family or household member, from an act that constitutes sexual assault; and actively engaged in an effort to preserve employment. The law prohibits an employer from conditioning the employment of an employee or prospective employee or taking certain employment actions because: the employee or prospective employee is a victim of an act that constitutes sexual assault; the employee or prospective employee’s family or household member is a victim of an act that constitutes sexual assault; or of other circumstances related to being a victim of an act which constitutes sexual assault.

**Cite:** 2023 NV AB163, NV Pub. Ch. 207 (5 pages)

**Enacted:** 6/5/2023

**Effective:** 6/5/2023

[https://www.leg.state.nv.us/Session/82nd2023/Bills/AB/AB163\\_EN.pdf](https://www.leg.state.nv.us/Session/82nd2023/Bills/AB/AB163_EN.pdf)

### Wages

#### Payment upon discharge

This law provides that whenever an employer places an employee on nonworking status, the wages earned and unpaid at the time of such placement also become due and payable immediately. The term “nonworking status” means the temporary layoff of an employee whereby the employee remains employed and may be called back to work at a future date. The term does not include an employee who an



employer: places on suspension pending an investigation; places on suspension pursuant to a disciplinary action; places on-call for available work; or approves to take a leave of absence. The law also provides that if an employer fails to pay the wages of an employee placed on nonworking status within 3 days after the wages become due, the wages also continue at the same rate from the day the employee was placed on nonworking status until paid or for 30 days, whichever is less. The law also makes a conforming change to provide that the term “wages” includes amounts due to an employee placed on nonworking status. This law seeks to ensure that Nevada’s wage and hour laws relating to wages due upon discharge include employees who are laid off.

**Cite:** 2023 NV SB147, NV Pub. Ch. 113 (3 pages)

**Enacted:** 5/31/2023

**Effective:** 7/1/2023

[https://www.leg.state.nv.us/Session/82nd2023/Bills/SB/SB147\\_EN.pdf](https://www.leg.state.nv.us/Session/82nd2023/Bills/SB/SB147_EN.pdf)

## Oregon

### *Employee Benefits*

#### **Modifies paid family leave laws**

Defines “one-year period” for purposes of determining amount of family leave an eligible employee may take within a one-year period under the Oregon Family Leave Act (OFLA). Modifies definition of “one-year period” under OFLA and specifies an operative date of July 1, 2024. Requires consideration of whether there is a significant personal bond resembling a family relationship for purposes of determining whether a person qualifies as a family member by reason of affinity under OFLA and Paid Leave Oregon. Redefines “family member” within OFLA. Requires employer to offer employee, who has returned from OFLA leave or leave under Paid Leave Oregon and whose position no longer exists, an equivalent position at a job site located within 50 miles of the original job site. Specifies that leave taken under OFLA must be taken concurrently with federal Family and Medical Leave Act (FMLA) and Oregon Paid Leave, if the OFLA leave qualifies as protected under FMLA or qualifies as leave under Paid Leave Oregon. Requires employee to continue to make any regular contributions to health insurance premiums cost when on leave under Paid Leave Oregon.

Permits employer to deduct money from employee’s pay when employee has returned from paid leave when employer advanced certain payments while employee was on leave.

**Cite:** 2023 OR SB999, OR Pub. Ch. 203 (6 pages)

**Enacted:** 6/7/2023

**Effective:** 6/7/2023

<https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/SB999/Enrolled>

### *Employee Safety*

#### **Unlawful employment practices**

This law makes it an unlawful employment practice for any person to bar or discharge from employment or discriminate against an employee or prospective employee because they have refused to expose themselves to serious injury or death from a hazardous condition at a place of employment, with no reasonable alternatives and in good faith.

**Cite:** 2023 OR SB907, OR Pub. Ch. 196 (3 pages)

**Enacted:** 6/7/2023

**Effective:** 1/1/2024

<https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/SB0907/Enrolled>

### *Workers’ Compensation*

#### **Temporary disability benefits**

This law modifies a provision allowing an injured worker with an accepted disabling compensable injury to receive temporary disability benefits when the injured worker is required to leave work for specified reason by removing a requirement that the injured worker must be required to leave work for a minimum of four hours. It allows an insurer to require a worker to confirm the period that the worker is absent from work. The law also exempts this provision from specified insurer or self-insured employer temporary disability benefit notice requirements.

**Cite:** 2023 SB418, OR Pub. Ch. 142 (3 pages)

**Enacted:** 6/1/2023

**Effective:** 6/1/2023

<https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/SB418>

## Workplace Safety

### Requires model respectful workplace policy

This law requires the Bureau of Labor and Industries to prepare a model respectful workplace policy that employers may adopt. In preparing the model policy, the bureau shall take into consideration existing respectful workplace policies. The bureau shall create informational materials that identify the harms to employees and employers caused by workplace bullying and make the materials available to employers.

**Cite:** 2023 OR SB851, OR Pub. Ch. 165 (1 page)

**Enacted:** 6/6/2023

**Effective:** 1/1/2023

<https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/SB851/Enrolled>

## Rhode Island

### Employee Benefits

#### Enforcing rights to continuation of benefits

*This law allows employees who return to work from being a temporary caregiver to enforce their rights to a continuation of their medical benefits, reinstatement of status, seniority, payment, and other benefits. It also extends those protections to employees who engage in whistleblower and job-related investigations, as well as those who allege work violations on holiday and Sundays.*

**Cite:** 2023 RI SB828, RI Pub. Ch. 249 (3 pages)

**Enacted:** 6/22/2023

**Effective:** 6/22/2023

<http://webserver.rilegislature.gov/BillText/BillText23/SenateText23/S0828aa.pdf>

### FLSA

#### Wage theft and misclassification

This law provides for misdemeanor and felony penalties as it relates to wage theft. This law also requires the Department of Labor and Training to use the Fair Labor and Standards Act as it relates to a determination of misclassification of employees. It would provide for a stop work order as it relates to misclassification. As it relates to the construction industry, it provides for enhanced criminal penalties and provides for a felony when an employer has misclassified an employee.

**Cite:** 2023 RI HB5902, RI Pub. Ch. 244 (9 pages)

**Enacted:** 6/22/2023

**Effective:** 6/22/2023

<http://webserver.rilegislature.gov/BillText/BillText23/HouseText23/H5902Aaa.pdf>

### Nondisclosure Agreements

#### Prohibits certain nondisclosure agreements

This law prohibits an employer from requiring an employee to execute a nondisclosure agreement or nondisparagement agreement, regarding alleged violations of civil rights or criminal conduct, as a condition of employment. It would also add the definition of “confidential” to the fair employment practices statute.

**Cite:** 2023 RI SB342, RI Pub. Ch. 252 (7 pages)

**Enacted:** 6/22/2023

**Effective:** 6/22/2023

<http://webserver.rilegislature.gov/BillText/BillText23/SenateText23/S0342aa.pdf>

### Workers' Compensation

#### Various changes

This law amends the workers' compensation law relating to benefits and medical services to be provided by the employer, employees not entitled to compensation, and additional compensation for specific injuries.

**Cite:** 2023 RI HB6461, RI Pub. Ch. 205 (7 pages)

**Enacted:** 6/21/2023

**Effective:** 6/21/2023

<http://webserver.rilegislature.gov/BillText/BillText23/HouseText23/H6461.pdf>

## Texas

### Employee Safety

#### Workplace violence reporting

This law requires the Texas Department of Licensing and Regulation (TDLR) to establish and maintain a 24-hour toll-free hotline in English and Spanish for workplace violence

reports in the state. A report made to the hotline could be anonymous and would be referred to the appropriate local or state law enforcement agency for investigation. The law also requires each employer to post a notice to employees of the hotline in a conspicuous place, in sufficient locations to be convenient to all employees, in English and Spanish.

**Cite:** 2023 TX HB915 (4 pages)

**Enacted:** 6/14/2023

**Effective:** 9/1/2023

<https://capitol.texas.gov/tlodocs/88R/billtext/pdf/HB00915F.pdf#navpanes=0>

## Vermont

### *Employee Discrimination*

#### **Amends Fair Employment Practices Act**

This law amends the Fair Employment Practices Act in several ways. It prohibits pay discrimination based on race, national origin, sexual orientation, gender identity, and disability. It prohibits agreements to settle a claim of employment discrimination from including a provision that prevents the employee from working for the employer or an affiliate of the employer in the future. It also provides that harassment and discrimination need not be severe or pervasive to be unlawful. The law provides that, except when an employee is alleging pay discrimination or disparate impact discrimination, the employee is not required to identify another employee to whom the employee's treatment can be compared for purposes of showing that unlawful discrimination occurred. The law defines and provides statutory direction on the interpretation of the term "harass" for purposes of employment discrimination.

**Cite:** 2023 VT SB103, VT Pub. Ch. 80 (10 pages)

**Enacted:** 6/28/2023

**Effective:** 7/1/2023

<https://legislature.vermont.gov/Documents/2024/Docs/ACTS/ACT080/ACT080%20As%20Enacted.pdf>

## REGULATIONS

### Arizona

#### *Licensure*

##### **Examination and application requirements**

The Board of Accountancy amended rules to extend Uniform CPA examination credits for an 18-month period, remove an application requirement that an applicant submit a letter of recommendation, change "correspondence" education programs to "self-study" programs, and update references to the current AICPA standards and the current Code of Professional Conduct.

**Cite:** A.A.C. R4-1-229, -341, -453, -454, -455 (29 A.A.R. 1184, 05/26/2023) (7 pages)

**Adopted:** 5/29/2023

**Effective:** 7/3/2023

[https://apps.azsos.gov/public\\_services/register/2023/21/contents.pdf](https://apps.azsos.gov/public_services/register/2023/21/contents.pdf)

### California

#### *Licensure*

##### **Clinical service requirements**

The Physical Therapy Board of California amended clinical service requirements for foreign educated applicants to adopt, and incorporate by reference, the Federation of State Boards of Physical Therapy's Supervised Clinical Practice Performance Evaluation Tool (PET).

**Cite:** 16 CCR § 1398.26.5 (CRNR 2023, No. 20-Z, 05/19/2023, page 687) (2 pages)

**Adopted:** 5/9/2023

**Effective:** 5/9/2023

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

#### **Occupational Safety: Occupational Health**

##### **Rules of practice and procedure**

The Occupational Safety and Health Appeals Board amends regulations pertaining to the rules and practices of procedure for hearings, including procedures for videoconference hearings.



**Cite:** 8 CCR §§ 372.6, 372.8, 376, 376.8 (CRNR 2023, No. 19-Z, 05/12/2023, page 678) (9 pages)

**Adopted:** 4/27/2023

**Effective:** 7/1/2023

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

## Illinois

### Background Checks

#### Healthcare worker background check code

The Department of Public Health amended regulations implementing the Health Care Worker Background Check Act, updating rules related to training courses, replacing a reference to “he or she” with “the individual,” and allowing for an individual’s federal taxpayer identification number to be included as an alternative to their Social Security number on the Department’s Health Care Worker Registry.

**Cite:** 77 Ill. Adm. Code 955 (47 Ill. Reg. 6567, 05/12/2023) (8 pages)

**Adopted:** 5/12/2023

**Effective:** 4/27/2023

[https://www.ilsos.gov/departments/index/register/volume47/register\\_volume47\\_19.pdf](https://www.ilsos.gov/departments/index/register/volume47/register_volume47_19.pdf)

## Iowa

### Licensure

#### Licensure by verification; veterans; spouses of veterans

The Professional Licensure Division amended license by verification rules to comply with legislation that removed residency and active duty requirements from the license by verification process for applicants seeking professional licensure who have been licensed in another state and added military spouses as individuals who can be licensed under special veteran reciprocity rules.

**Cite:** 645 IAC 19.1, 20.1, 20.3 (IAB Vol. XLV, No. 23, 05/17/2023, page 2739) (7 pages)

**Adopted:** 4/17/2023

**Effective:** 6/21/2023

<https://www.legis.iowa.gov/docs/aco/bulletin/05-17-2023.pdf>

## Massachusetts



### ANALYSIS

#### Regulations

#### Massachusetts issues revised Paid Family and Medical Leave Act regulations

by Meaghan E. Murphy, Skoler, Abbott & Presser, P.C.

Late last year, the Department of Family and Medical Leave released proposed revisions to the Massachusetts Paid Family and Medical Leave Act (PFML) regulations. As expected, at the beginning of January 2023, the department issued the final revisions to the regulations. Employers should familiarize themselves with the changes to ensure they are in compliance with the most up-to-date regulations.

#### PFML REFRESHER AND THE DEPARTMENT’S ANNUAL REPORT

Since January 1, 2021, the PFML has allowed eligible employees to take paid leave from work for certain qualifying reasons. In general, employees are entitled to take 20 weeks of paid leave for their own serious health condition, 12 weeks of paid leave to care for a family member (as defined by the law) with a serious health condition, and 12 weeks to bond with a new biological, adopted, or fostered child. There are also military exigency and servicemember care leaves, but they’re used much less frequently. In a single benefit year, no employee can take more than 26 weeks of PFML leave.

Since the PFML went into effect just over 2 years ago, tens of thousands of employees have sought to take advantage of this new paid leave benefit. In the fiscal year 2022, the department approved 112,531 applications, while denying 27,507 applications.

Of the approved claims, 59% were medical leaves, 31% were family bonding leaves, and 10% were leaves to care for a family member (and less than 1% were military exigency and servicemember care leaves). Over the course of the same year, the department issued more than \$602 million in paid leave benefits. Clearly, many Massachusetts employees are knowledgeable about their PFML rights and are actively exercising them.

To provide employers and employees with more information about how the PFML program would be administered, the department issued regulations back when the law first went into effect in January 2021. After about 2 years of administering the program, the department made some changes to the original regulations and recently issued revised regulations earlier this year.

## HIGHLIGHTS OF THE REVISED PFML REGULATIONS

The revisions center on changed contribution rates, benefit amounts, and health insurance coverage for employees on PFML leave. Here are the highlights:

### Revised contribution rates and benefit changes.

Effective, January 1, 2023, the maximum weekly benefits under the PFML increased from \$1,084.31 to \$1,129.82 per week. At the same time, however, the contribution rates decreased.

For employers with 25 or more covered individuals, the employer contribution rate lowered from 0.68% to 0.63% of eligible employee wages (0.52% for medical leave and 0.11% for family leave).

For employers with fewer than 25 employees, the employer contribution rate went from 0.344% to 0.318% (0.208% for medical leave and 0.11% for family leave). Employers should ensure their payroll company, or their own internal payroll systems, reflect the revised contribution rates.

**Employee notices.** Employers are required to communicate the contribution rate and benefit changes to employees. The department issued sample notifications that can be found on its website.

Notices must be provided to all existing employees immediately (if not already done) and to all new employees within 30 days of their hire dates. Employers must also display the poster made available by the department on its website.

**Maintenance of health insurance.** The revised regulations clarify that employers are required to continue to provide and contribute to employees' health-related benefits while out on PFML leave on the same or equivalent terms as if they were actively working. They further explain that employers are required to "otherwise maintain" the health insurance coverage for employees on leave, which should be interpreted broadly in favor of employees. This includes maintaining the employees' costs for such coverage, such as premium contributions, copays, and deductibles.

The regulations include additional examples of ways employers may "otherwise maintain" health insurance coverage for their employees on leave, including doing so through COBRA by paying the employer portion, plus any COBRA-related fees.

Employers should be cautious about maintaining health insurance through COBRA, however, if the employee wouldn't be eligible for coverage immediately upon their return to work.

If utilizing COBRA to maintain benefits would result in any waiting period to reinstate benefits upon the employee's return, the employer should not "maintain" health benefits through COBRA.

Importantly, the revised regulations make clear that employers aren't required to provide for, contribute to, or otherwise maintain health insurance benefits for employees who don't receive or aren't eligible for such benefits at the time their leave begins or for employees who resign before or during leave.

## EMPLOYER TAKEAWAYS

The PFML is here to stay. It is fast becoming—and in some respects, has already become—part of the fabric of working life in Massachusetts. Employers should expect more and more employees to apply for paid leave benefits in the coming months and years.

As a result, it is imperative that employers understand all of their rights and obligations under the PFML, so they don't run afoul of the law or accompanying regulations and end up on the wrong side of a PFML interference or retaliation lawsuit.

*Excerpted from Massachusetts Employment Law Letter  
Amelia J. Holstrom, Marylou V. Fabbo, Timothy F. Murphy, John S. Gannon, Erica E. Flores, and Meaghan E. Murphy, Editors  
Skoler, Abbott & Presser, P.C.*

## Michigan

### Licensure

#### Counseling licensure

The Department of Licensing and Regulatory Affairs amended and added new rules governing educational requirements, training, applications, supervisor training, telehealth, and general provisions related to the licensure and practice of counseling.

**Cite:** AC, R 338.1751, 1758, 1761, 1763, 1765, 1771, 1772, 1774, 1775, 1776, 1777, 1781 (2023 MR 8, 05/15/2023, page 110) (7 pages)

**Adopted:** 4/26/2023

**Effective:** 5/3/2023

[https://www.michigan.gov/lara/-/media/Project/Websites/lara/moahr/ARD/2023-Michigan-Register/MR8\\_051523.pdf?rev=61713b11c191446aa1c00d43f3bade07&hash=719C164DB8C3E9B7053257F80A47E783](https://www.michigan.gov/lara/-/media/Project/Websites/lara/moahr/ARD/2023-Michigan-Register/MR8_051523.pdf?rev=61713b11c191446aa1c00d43f3bade07&hash=719C164DB8C3E9B7053257F80A47E783)

## Licensure

### Occupational therapist licensure

The Department of Licensing and Regulatory Affairs rescinded, amended, and adopted new rules for the education, examination, practice, delegation of tasks, licensure by endorsement, telehealth, and continuing education of occupational therapists and occupational therapist assistants.

**Cite:** AC, R 338.1211, 1215, 1221, 1222, 1223, 1223a, 1224, 1225, 1226, 1227, 1229, 1229a, 1231, 1232, 1233, 1233a, 1234a, 1235, 1236, 1251, 1252, 1241, 1243 (2023 MR 8, 05/15/2023, page 117) (17 pages)

**Adopted:** 4/26/2023

**Effective:** 5/3/2023

[https://www.michigan.gov/lara/-/media/Project/Websites/lara/moahr/ARD/2023-Michigan-Register/MR8\\_051523.pdf?rev=61713b11c191446aa1c00d43f3bade07&hash=719C164DB8C3E9B7053257F80A47E783](https://www.michigan.gov/lara/-/media/Project/Websites/lara/moahr/ARD/2023-Michigan-Register/MR8_051523.pdf?rev=61713b11c191446aa1c00d43f3bade07&hash=719C164DB8C3E9B7053257F80A47E783)

## New Mexico

### Wages

#### Public works minimum wage act policy manual

The Department of Workforce Solutions amended regulations providing job classifications and descriptions to add new descriptions for certain jobs, and updated prevailing wage and fringe benefit and apprenticeship contribution rates.

**Cite:** 11.1.2 NMAC (34 n m reg 395, 05/16/2023) (16 pages)

**Adopted:** 5/16/2023

**Effective:** 5/16/2023

<https://www.srca.nm.gov/nmac/nmregister/xxxiv/11.1.2amend.html>

## New York

### Workers' Compensation

#### Disability benefits

The Workers' Compensation Board amended and adopted new rules to update and clarify disability benefit claims processes and ensure the rules conform to statutory requirements, including organ donation as a covered injury or sickness, amending rules for the denial of claims, and adding a new subdivision of rules covering disability due to pregnancy or childbirth.

**Cite:** 12 NYCRR 355.4, 363.1, 363.11, 363.13, 363.15, 363.16 (2023-19 N.Y. St. Reg. 23, 05/10/2023) (3 pages)

**Adopted:** 4/24/2023

**Effective:** 1/1/2024

<https://dos.ny.gov/system/files/documents/2023/05/051023.pdf>

### Workforce Development

#### Excelsior jobs program

The Department of Economic Development adopted amendments to the Excelsior Jobs program to allow for the eligibility of Green CHIPS projects and to provide rules for the administrative process allowing for that eligibility, including requirements for sustainability plans, community plans, and jobs schedules.

**Cite:** 5 NYCRR 190-197 (2023-18 N.Y. St. Reg. 6, 05/03/2023) (23 pages)

**Adopted:** 4/13/2023

**Effective:** 5/3/2023

<https://esd.ny.gov/sites/default/files/ExcelsiorRegs%20-2023-GC-updated-final-050123.pdf>

## North Carolina

### Licensure: Healthcare Professionals

#### Clinical nurse specialist practice

The Board of Nursing amended rules for the licensure of clinical nurse specialists to perform advanced practice registered nursing activities, updating regulations for Board approval of applicants, certification and education requirements, application procedures, and certification standards for national credentialing bodies.

**Cite:** 21 NCAC 36.0228 (37:21 NCR 2103, 05/01/2023) (2 pages)

**Adopted:** 4/1/2023

**Effective:** 4/1/2023

<https://files.nc.gov/oah/documents/2023-05/Volume-37-Issue-21-May-1-2023.pdf?VersionId=XsDVoKdIQycGNjaZ17zKlsfVNS92RjzD>

## Oregon

### Wages

#### Prevailing wage rate determination

The Bureau of Labor and Industries amended the prevailing wage rate as determined by the Commissioner of the Bureau of Labor and Industries for the period beginning April 5, 2023.

**Cite:** OAR 839-025-0700 (Oregon Bulletin, May 2023) (3 pages)

**Adopted:** 4/5/2023

**Effective:** 4/5/2023

<https://secure.sos.state.or.us/oard/viewReceiptTRIM.action?ptId=9427085>

## South Carolina

### Unemployment

#### Filing claims for benefits and registration for work

The Department of Employment and Workforce amended rules to remove references to local, physical offices and incorporate modern usage of the Department's online benefits system and the SC Works Online Services (SCWOS) system, clarify the procedural differences and claimant obligations when a job attached claim is filed by an employer compared to an individual claimant, and resolve questions about a claim's effective date when it is filed on a Sunday.

**Cite:** S.C. Code Regs. 47-21 (47-5 sc reg 45, 05/26/2023) (6 pages)

**Adopted:** 5/26/2023

**Effective:** 5/26/2023

[https://www.scstatehouse.gov/state\\_register.php?first=FILE&pdf=1&file=Sr47-5.pdf](https://www.scstatehouse.gov/state_register.php?first=FILE&pdf=1&file=Sr47-5.pdf)

### Workers' Compensation

#### Request for hearing

The Workers' Compensation Commission amended regulations that address a party's continuing obligation to update a request for hearing and answer to allow for a streamlined process by which to add or remove a party and to clarify procedures for filing and responding to such amended forms.

**Cite:** S.C. Code Regs. 67-610 (47-5 sc reg 604, 05/26/2023) (2 pages)

**Adopted:** 5/26/23

**Effective:** 5/26/23

[https://www.scstatehouse.gov/state\\_register.php?first=FILE&pdf=1&file=Sr47-5.pdf](https://www.scstatehouse.gov/state_register.php?first=FILE&pdf=1&file=Sr47-5.pdf)

## Texas

### Licensure: Healthcare Professionals

#### Residency programs

The State Board of Pharmacy adopted amendments to remove the requirement that a residency program be accredited by the American Society of Health System Pharmacists for a resident to be eligible for designation as an extended-intern, and specify that a pharmacist-intern registration expires due to failing the NAPLEX or Texas Pharmacy Jurisprudence Exam only if the intern fails either exam more than once.

**Cite:** 22 TAC §§283.2, 283.4 (48 TexReg 2576, 05/19/2023) (8 pages)

**Adopted:** 5/4/2023

**Effective:** 5/24/2023

[https://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=4&ti=22&pt=15&ch=283&rl=Y](https://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=22&pt=15&ch=283&rl=Y)

## Washington

### Employment Security

#### Program operations

The Employment Security Department adopted rule amendments for the paid family and medical leave program, with new reporting requirements to include a new data field to employer quarterly reports for employees' dates of birth, and a report of "no payroll" for up to a maximum of eight quarters when employers have no paid wages to report.

**Cite:** WAC 192-500-195, 192-510-010, 192-540-030, 192-800-150 (WSR 23-11-083, 05/17/2023) (4 pages)

**Adopted:** 5/17/2023

**Effective:** 7/1/2023

<https://lawfilesexxt.leg.wa.gov/law/wsr/2023/11/23-11-083.htm>



## ANALYSIS

### Family and Medical Leave

#### Washington state issues new rules for paid family and medical leave

by Shannon McDermott, Perkins Coie LLP

The Washington Employment Security Department (ESD) adopted new rules for the state's Paid Family and Medical Leave (PFML) Act regarding employer reporting requirements, child placement, and self-employment elective coverage requirements. The new rules became effective July 1, 2023.

#### EMPLOYER REPORTING REQUIREMENTS

Washington employers are currently required to file a quarterly report with the ESD that includes information on their employees' wages and hours and pay premiums to comply with PFML reporting requirements. Additionally, with the WA Cares Fund premium assessment beginning July 1, 2023, the ESD has decided to use one employer report for both PFML and the WA Cares Fund programs.

The new rules regarding employer reporting were adopted to capture the information necessary for both programs.

#### EMPLOYEE BIRTHDATES

The rules add a new data field to the employer quarterly reports for employees' dates of birth. In its rule explanation, the ESD stated that adding dates of birth to employer reports will help ensure employee work history and premium assessments are complete, as well as determine employee eligibility for prorated benefits for the WA Cares Fund.

#### NO PAYROLL

The rules require employers to file a report of "no payroll" for up to a maximum of eight consecutive quarters when employers have no paid wages to report. Alternatively, an employer may notify the ESD before the end of the eight consecutive quarters that it has no employees to report at that time and in the foreseeable future.

This rule was created partly because the reports of "no payroll" will ensure the ESD doesn't flag a missing report for audit when determining employer compliance with premium payments.

You can find more information on employer reporting requirements on the Washington PFML [website](#).

#### CHILD PLACEMENT

PFML currently provides eligible employees with up to 12 weeks of bonding leave in the first year after a child's birth or placement by adoption, guardianship, foster care, or nonparental custody. The new rule clarifies the definition of "placement" by outlining circumstances that won't qualify for paid family leave to bond with a child.

Specifically, the rule provides that paid family leave to bond with a child placed for adoption, guardianship, foster care, or nonparental custody doesn't include:

- Any arrangement whereby the child is already in the care and custody of a parent and remains in that same parent's care and custody, and
- Any arrangement whereby a child is returned to the care and custody of a parent or is placed with a parent whose entitlement to family leave to bond with that child has already expired.

#### SELF-EMPLOYMENT ELECTIVE COVERAGE REQUIREMENTS

Self-employed individuals in Washington are currently permitted to elect coverage for PFML benefits. The new rule clarifies that hours worked in self-employment before the effective date of coverage election don't count toward establishing an individual's benefit eligibility.

Self-employed individuals include sole proprietors, joint venturers or members of a partnership, members of a limited liability company, independent contractors, or individuals otherwise in business for themselves.

More information on self-employment under PFML can be found on the Washington PFML [website](#).

#### TAKEAWAYS

You should take steps to gather the information necessary to comply with the new quarterly reporting requirements, as well as review your handbooks and leave policies to ensure compliance with the new rules regarding eligibility for PFML benefits.

*Excerpted from Washington Employment Law Letter  
Chelsea Dwyer Petersen and Emily Bushaw, Editors  
Perkins Coie LLP*



## Labor

### Apprenticeship programs

The Department of Labor and Industries adopted updated rules regarding timelines, procedures, and content for new apprenticeship program applications, including a new sustainability assessment required by recent legislation.

**Cite:** WAC 296-05-003, 296-05-011, 296-05-219 (WSR 23-11-124, 05/23/2023) (7 pages)

**Adopted:** 5/23/2023

**Effective:** 6/23/2023

<https://lawfilesexternal.wa.gov/law/wsr/2023/11/23-11-124.htm>

## Wisconsin

### Workers' Compensation

#### Computation of wages for part-time employees

The Department of Workforce Development amended rules for the computation of wages for part-time employees pursuant to new legislation, under which those wages will be calculated as the greater of either the actual average weekly earnings of the employee for the 52 weeks before the injury or the hourly earnings multiplied by the average number of hours worked in the 52 weeks before the injury.

**Cite:** Wis. Admin. Code § DWD 80-81 (Wis. Admin. Reg. No. 809B, 5/30/2023) (6 pages)

**Adopted:** 5/30/2023

**Effective:** 6/1/2023

[https://docs.legis.wisconsin.gov/code/register/2023/809B/register/final/cr\\_22\\_072\\_rule\\_text/cr\\_22\\_072\\_rule\\_text](https://docs.legis.wisconsin.gov/code/register/2023/809B/register/final/cr_22_072_rule_text/cr_22_072_rule_text)

### Workforce Development

#### Employment and training

The Department of Workforce Development repealed, amended, and created new rules related to the Wisconsin Fast Forward Workforce Training Grants program, with revisions to terminology, applications for grants, department actions on applications, matching contributions, and the use of grant funds.

**Cite:** Wis. Admin. Code § DWD 801 (Wis. Admin. Reg. No. 809B, 5/30/2023) (7 pages)

**Adopted:** 5/30/2023

**Effective:** 6/1/2023

[https://docs.legis.wisconsin.gov/code/register/2023/809B/register/final/cr\\_22\\_056\\_rule\\_text/cr\\_22\\_056\\_rule\\_text](https://docs.legis.wisconsin.gov/code/register/2023/809B/register/final/cr_22_056_rule_text/cr_22_056_rule_text)

## Wyoming

### Licensure: Healthcare Professionals

#### Standards for nursing education programs

The Board of Nursing adopted updated rules governing nursing education programs, including sections for definitions, general standards, programmatic standards, prelicensure programs, jurisdiction, process for approval of new programs, reports and notifications, site visits and evaluations, approvals and reinstatements.

**Cite:** 054-002-006 Wyo. Code R. (Wyoming Secretary of State website, 06/21/2023) (26 pages)

**Adopted:** 6/21/2023

**Effective:** 6/21/2023

[https://rules.wyo.gov/DownloadFile.aspx?source\\_id=21714&source\\_type\\_id=81&doc\\_type\\_id=110&include\\_meta\\_data=Y&file\\_type=pdf&filename=21714.pdf&token=011150107111155255049127228197235207096186135233](https://rules.wyo.gov/DownloadFile.aspx?source_id=21714&source_type_id=81&doc_type_id=110&include_meta_data=Y&file_type=pdf&filename=21714.pdf&token=011150107111155255049127228197235207096186135233)