



Employers State Law Alert

Summarizing Significant New Employment Laws & Regs in All 50 States

Analysis

New Texas law prohibits COVID-19 vaccine mandates by private employers, p. 3.

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More states requiring at least some form of paid leave, with more change to come

by Tammy Binford

Paid leave time, with its many different iterations, is one of many employment issues the pandemic put in the spotlight a few years back. Employees and employers alike began seeing the need to take steps to keep sick employees out of the workplace.

Long before COVID, however, employees were calling for paid time off (PTO) for various purposes, such as to bond with newborns and recover from their own or a loved one’s serious health condition. And in many places, state lawmakers answered the call.

With no federal law mandating any kind of PTO, employers are left to understand their obligations under laws in the states

and municipalities in which they operate, and that can be a challenge because each jurisdiction puts its own spin on the issue.

DIFFERENT TYPES OF PAID LEAVE DEFINED

Even when no law requires leave time—paid or unpaid—employers often offer some form of leave to accommodate employees’ short- or long-term needs. When state or local governments require employers to allow leave, the time usually falls into one of four categories: paid family and medical leave, paid sick time, PTO, and unpaid time off.

The U.S. Department of Labor (DOL) defines *paid family and medical leave laws* as those that enable workers to be paid when they take extended time off for reasons such as bonding with a new child, recovering from one’s own serious illness, or caring for a seriously ill loved one.

The DOL says *paid sick time* provides compensation when workers need to take shorter leaves because of their own or a family member’s illness or to access medical care for themselves or a family member.

PTO provides paid time that can be used for various purposes, including illness, sudden necessities, and planned vacations. Often, employers adopt PTO policies instead of

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separating sick time from vacation, personal leave, or other forms of paid leave.

Unpaid time off provides job protection and continuation of workplace benefits, such as health insurance, but doesn't provide compensation for the time. The federal Family and Medical Leave Act (FMLA) requires covered employers to offer up to 12 weeks of job-protected leave a year to eligible employees.

HOW STATES TACKLE MEDICAL AND FAMILY LEAVE

The DOL counts 13 states plus Washington, D.C., that have passed laws requiring paid family and medical leave. Those laws may include exemptions for employers of a certain size or type.

The state laws typically set out a maximum length of leave and stipulate when and why it can be used. Most laws also allow "qualifying exigency" leave related to a family member's impending or ongoing active military duty.

The states with family and medical leave laws are California, Colorado, Connecticut, Delaware, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New York, Oregon, Rhode Island, and Washington. The laws are similar but do vary from state to state. Here's a look at the DOL's descriptions:

California law allows eight weeks for paid family leave, which is available for the birth, adoption, or foster placement of a child and to care for a family member with a serious health condition. A different law provides time for a worker's own serious health condition. That law provides up to 52 weeks of disability insurance, which provides partial wage replacement benefits.

Colorado law allows a maximum of 12 weeks of paid leave for a worker's own serious health condition or to care for a family member's condition and for the birth, adoption, or foster placement of a child. The benefits became available on January 1, 2024.

Like Colorado, **Connecticut** law provides up to 12 weeks of paid leave for a worker's own serious health condition or that of a family member and for the birth, adoption, or foster placement of a child. The law also stipulates that a worker may qualify for more time under certain circumstances.

Delaware's law provides up to 12 weeks of parental leave and up to six weeks of medical and family caregiving leave in a 24-month period. The maximum for parental leave combined with medical and family leave is 12 weeks a year.

Maine allows up to 12 weeks of paid medical leave and 12 weeks of family leave and 12 weeks total for medical and family leave combined. Like other states, medical leave can be used for a worker's own serious health condition, and family leave can be used to care for a family member's serious health condition, as well as for the birth, adoption, or placement of a child. Benefits are set to begin on May 1, 2026.

Like many states, **Maryland's** law allows workers up to 12 weeks, but it also allows a worker to care for a servicemember with a serious health condition resulting from military service if that person is the covered worker's next of kin. Benefits are to begin January 1, 2025.

In **Massachusetts**, the law allows up to 20 weeks of paid medical leave, 12 weeks for family leave, and 26 weeks for a worker caring for a servicemember. The allowed reasons for medical and family leave match those of other states.

Minnesota's law allows up to 12 weeks of paid medical leave and 12 weeks of family leave or 20 weeks total for medical and family leave combined. Benefits are to begin January 1, 2026.

New Jersey law allows up to 26 weeks of temporary disability leave and 12 weeks of family temporary disability leave. The benefits replace a portion of the worker's pay.

New York law provides up to 26 weeks of disability leave and 12 weeks of family leave, with a total of 26 weeks allowed for disability and family leave combined. The benefits replace a portion of the worker's pay.

Oregon law allows up to 12 weeks of paid family and/or medical leave, with some exceptions, and workers may qualify for more under certain circumstances.

Rhode Island's sick and safe leave law requires covered employers to allow employees to earn and use up to 40 hours per year. The state has a disability leave program providing partial pay for disability and caregiver leave.

In **Washington**, the law allows up to 12 weeks of paid medical leave and 12 weeks of family leave, with a total of 16 weeks for medical and family leave combined.

PAID SICK LEAVE

In addition to the states requiring paid family and/or medical leave, some states require paid sick leave. A list from December 2023 from HR software provider Paycor lists the following states with laws requiring at least some employers to allow paid short-term sick leave: Arizona, California, Colorado, Connecticut, Illinois, Maine, Maryland, Massachusetts, Michigan, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, and Washington.

STATUTES

New Jersey

Workers' Compensation

Public safety and law enforcement personnel

This law revises the law governing workers' compensation coverage for certain injuries to volunteer and professional public safety and law enforcement personnel.

Under current law, there is a rebuttable presumption that any cardiovascular or cerebrovascular injury or death that occurs to individuals who are volunteer and professional public safety and law enforcement personnel while those individuals are engaged in a response to an emergency is compensable if that injury or death occurs while the individuals are responding, under orders from competent authority, to an emergency. This law clarifies that the rebuttable presumption means that a response to an emergency was a work effort sufficient to cause injury or death and is therefore compensable under the workers' compensation law.

The law expands the individuals who are covered by the presumption to include any career emergency medical technicians and paramedics employed by the state, a county, a municipality, or a private sector counterpart who is engaged in public emergency medical and rescue services. It also removes the requirement that the individual be responding to orders under competent authority in order to recover and provides that certain individuals are covered by the presumption when remediating from an emergency. The law also provides that a rebuttal of the presumption of compensability requires clear and convincing medical evidence that the work experience was not a substantial cause of the cardiovascular or cerebrovascular injury.

Cite: 2024 NJ AB5909, NJ Pub. Ch. 348 (3 pages)

Enacted: 1/16/2024

Effective: 1/1/2024

https://pub.njleg.state.nj.us/Bills/2022/A6000/5909_R1.PDF



Texas ANALYSIS

Communicable Diseases

New Texas law prohibits COVID-19 vaccine mandates by private employers

by Connor Curtis, McAfee & Taft

Texas Governor Greg Abbott's latest push against vaccine mandates takes form in a new law now in force in the Lone Star State. Senate Bill 7 (SB 7) prohibits private employers from adopting or enforcing certain COVID-19 vaccine mandates. SB 7 directly conflicts with federal guidance on the issue, which generally supports an employer's right to implement such mandates.

SB 7 NOW IN EFFECT IN TEXAS

The new law, which went into effect on February 6, amends the Texas Health and Safety Code to prohibit private employers from enforcing COVID-19 vaccine mandates and authorizes an administrative penalty for violations of the law.

Under this new legislation, employers can't take an "adverse action" against unvaccinated employees, contractors, or applicants. "Adverse action" is defined by the law as "an action taken by an employer that a reasonable person would consider was for the purpose of punishing, alienating, or otherwise adversely affecting an employee, contractor, applicant for employment, or applicant for a contract position."

The Texas Workforce Commission (TWC) will field complaints about violations of this law, and violations are expected to be costly. The TWC is empowered to impose a penalty of \$50,000 per violation, unless the employer remedies the violation by hiring or reinstating the aggrieved employee or contractor with full back pay and benefits, if applicable. The TWC may also recover investigative costs from the employer, as well as request that the Texas attorney general file suit against the employer.

The new law provides somewhat of an exception for certain healthcare facilities, providers, and physicians in that these groups can require unvaccinated employees and contractors to wear protective medical equipment. The policy must be

“reasonable” and must be “based on the level of risk the individual presents to patients from the individual’s routine and direct exposure to patients.”

NEW LAW CONFLICTS WITH FEDERAL GUIDANCE

Notably, SB 7 directly conflicts with federal guidance regarding COVID-19 vaccine mandates in the workplace. According to guidance issued by the Equal Employment Opportunity Commission (EEOC), private businesses may implement policies requiring workers to be vaccinated against COVID-19. Also, an employer may require documentation or other confirmation that employees are up to date on their vaccinations in accordance with the employer’s policy.

While federal guidance on the issue generally supports an employer’s ability to implement a COVID-19 vaccine mandate for its employees, there are some important exceptions to bear in mind. For example, some employees who refuse the vaccine due to a disability or a sincerely held religious belief may be eligible for reasonable accommodations under the Americans with Disabilities Act or Title VII of the Civil Rights Act of 1964, respectively, according to the EEOC.

NEXT STEPS FOR EMPLOYERS WITH TEXAS OPERATIONS

In light of SB 7, if you’re an employer with Texas operations, including healthcare providers that may meet the exception to the prohibition, it’s imperative you review your current vaccine policies to ensure compliance with the provisions of the new law. McAfee & Taft’s labor and employment group is prepared to assist in that effort and address any future concerns that may arise from the implementation of SB 7.

*Excerpted from Oklahoma Employment Law Letter
Charles S. Plumb, Courtney Bru, Paul Ross, Phil Bruce, and Jacob S. Crawford, Editors
McAfee & Taft*



Sick Leave

Sick leave payout rule for WA construction workers takes effect

by Emily A. Bushaw and Mackenzie Olson, Perkins Coie LLP

Certain construction workers and other employees in the construction industry must be paid the entire balance of accrued and unused paid sick leave if those workers separate from employment before they reach their 90th day of

employment. This requirement, effective January 1, 2024, and prompted by Senate Bill 5111 (SB 5111), applies regardless of whether a worker’s separation is voluntary or involuntary.

BACKGROUND

This change covers workers who fall under the North American Industry Classification System Code 23 (NAICS 23)—construction—even if they aren’t directly involved in actual construction work, such as nonexempt administrative staff. This requirement doesn’t apply to workers who work only in residential building construction (NAICS Code 236100).

However, if a nonexempt worker covered under NAICS 23 performs both residential and nonresidential work as defined by the NAICS, the separation payout requirements apply. Additionally, this requirement also applies to workers covered by a collective bargaining agreement.

If a worker is rehired within 12 months of separation, whether at the worker’s same or a different business location, sick leave previously paid out after separation doesn’t need to be reinstated. But, if rehired, this worker’s previous period of employment must be counted for the purpose of determining the date on which the employee is entitled to use sick leave.

TAKEAWAYS FOR EMPLOYERS

If you’re in the construction industry, you should review your policies to ensure compliance with these changes. Should any questions arise as you work to process a worker’s separation—or to onboard a worker previously employed within the prior 12 months—you should consult with experienced labor and employment counsel to ensure compliance with these requirements.

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

REGULATIONS

Alaska

Healthcare Professionals

Telehealth standards of practice

The Board of Nursing amended, repealed, and replaced rules to clarify the discretion of the board to suspend or revoke licenses if a licensee is found professionally incompetent and to update rules for the practice of telehealth by licensees.

Cite: 12 AAC 44.720; .925 (Alaska Public Notice System, 12/06/2023) (8 pages)

Adopted: 12/6/2023

Effective: 1/5/2024

<https://aws.state.ak.us/OnlinePublicNotices/Notices/Attachment.aspx?id=145124>

Workers' Compensation

Medical fee schedule

The Workers' Compensation Board amended rules to limit reimbursements; update the Medical Fee Schedule to the January 1, 2024 edition; update the Hospital Outpatient Prospective Payment System; and add an editor's note to identify how the payment system can be accessed.

Cite: 8 AAC 45.083 (Alaska Public Notice System, 11/09/2023) (7 pages)

Adopted: 11/9/2023

Effective: 1/1/2024

<https://aws.state.ak.us/OnlinePublicNotices/Notices/Attachment.aspx?id=144671>

Arizona

Healthcare Professionals

Medical assistant training programs

The Medical Board amended its rule for Medical Assistant Training Requirements to allow an option for a physician to design and offer a training program that meets statutory requirements in addition to existing options for preapproved programs or unapproved programs combined with a passing score on national standards examinations.

Cite: A.A.C. R4-16-401 (29 A.A.R. 3684, 12/01/2023) (3 pages)

Adopted: 12/1/2023

Effective: 1/8/2024

https://apps.azsos.gov/public_services/register/2023/48/contents.pdf

California

Agricultural Labor

Labor peace agreements

The Agricultural Labor Relations Board established complaint, investigation, and decision-making criteria and procedures to implement code requiring commercial cannabis cultivation licensees with a stated minimum number of employees to

enter into labor peace agreements and tasked the board with investigating complaints alleging that a licensee has an agreement with a non-bona fide labor organization.

Cite: 8 CCR §§ 20951, 20952, 20953, 20954, 20955 (CRNR 2023, No. 51-Z, 12/22/2023, page 1671) (6 pages)

Adopted: 12/7/2023

Effective: 4/1/2024

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

Civil Rights

Fair employment and housing

The Civil Rights Department amended rules to fair housing regulations to better facilitate compliance and adopted new regulations against discrimination in housing accommodations because of one's source of income.

Cite: 2 CCR §§ 12140.1, 12005, 12040, 12042, 12050, 12051, 12140, 12141, 12179, 12181 (CRNR 2023, No. 48-Z, 12/01/2023, page 1600) (20 pages)

Adopted: 11/22/2023

Effective: 1/1/2024

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

Occupational Safety

Civil penalties for Cal/OSHA citations

The Department of Industrial Relations amended maximum and minimum civil penalties in accordance with statutory adjustments, increasing the maximum civil penalties for regulatory, general, and repeat violations and increasing the minimum and maximum civil penalties for willful violations.

Cite: 8 CCR § 336 (CRNR 2023, No. 52-Z, 12/29/2023, page 1694) (7 pages)

Adopted: 12/19/2023

Effective: 12/19/2023

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

Colorado

Wages

Overtime and minimum pay standards order

The Division of Labor Standards and Statistics amended rules to update the state's overtime and minimum pay standards, except that the provisions of prior orders still govern as to events occurring while they were in effect.

Cite: 7 C.C.R. 1103-1 (46 CR 23, 12/10/2023, page 1267) (20 pages)

Adopted: 11/27/2023

Effective: 1/1/2024

<https://www.sos.state.co.us/CCR/Upload/AGORequest/AdoptedRules02023-00671.docx>

Delaware

Licensure

Supervision of assistants

The Board of Occupational Therapy Practice amended rules to address modifications to the supervision of occupational therapy assistants, allowing the supervisor to assign to a competent occupational therapy assistant the administration of standardized tests, the performance of activities of daily living evaluations, and other elements of patient/client evaluation and reevaluation that do not require the professional judgment and skill of an occupational therapist.

Cite: 24 DE Admin. Code 2000 (27 DE Reg. 440, 12/01/2023) (11 pages)

Adopted: 11/1/2023

Effective: 12/11/2023

<https://regulations.delaware.gov/register/december2023/final/27%20DE%20Reg%20440%2012-01-23.pdf>

Florida

Licensure

Documentation of continuing education

The Board of Professional Engineers amended a rule to update and clarify the rule language for demonstrating compliance, audits, and investigations, eliminating a requirement that 3% of licensees be audited for proof of continuing education and replacing it with language reserving the right of the board to require licensees to provide documentation.

Cite: Fla. Admin. Code R. 61G15-22.006 (49 faw 4488, 12/05/2023) (1 page)

Adopted: 11/28/2023

Effective: 12/18/2023

<https://www.flrules.org/gateway/ruleNo.asp?id=61G15-22.006>

Return to TOC

Illinois

Licensure

Fire sprinkler inspector licensure

The Office of the State Fire Marshal adopted rules pursuant to the Fire Sprinkler Contractor Licensing Act to add and update provisions for fire sprinkler inspector licenses, including qualifications and requirements to obtain a license, compliance standards, administrative fines, administrative appeals, and fees.

Cite: 41 Ill. Admin. Code 109 (47 Ill. Reg. 19159, 12/26/2023) (30 pages)

Adopted: 12/26/2023

Effective: 12/6/2023

https://www.ilsos.gov/departments/index/register/volume47/register_volume47_51.pdf

Indiana

Licensure

Convictions of concern

The Board of Registration for Architects and Landscape Architects adopted a new section of rules regarding convictions of concern that may disqualify an individual for registration by the Indiana board of registration for architects and landscape architects, including an explicit list of such convictions of concern.

Cite: 804 I.A.C. 2 (Indiana Register, LSA Document #23-37, 12/13/2023) (9 pages)

Adopted: 11/16/2023

Effective: 12/13/2023

<http://www.in.gov/legislative/iac/20231213-IR-804230037FRA.xml.pdf>

Maine

Workers' Compensation

Independent medical examiner

The Workers' Compensation Board adopted a rule that adds additional performance criteria for independent medical examiners that require that examiners provide independent, impartial, and objective medical findings in cases assigned to them.

Cite: 90 351 CMR, Ch. 4 Rule 2023-248 (Weekly Notices of State Rulemaking, 12/13/2023) (6 pages)

Adopted: 12/13/2023

Effective: 12/16/2023

https://www.maine.gov/wcb/rules/90-351_WCB_Rules_12-16-2023_rev3.pdf

Minnesota

Occupational Safety

Tracking of workplace injuries and illnesses

The Department of Labor and Industry amended rules to adopt updated federal Occupational Safety and Health standards by reference, with changes to rules for the improvement of tracking of workplace injuries and illnesses.

Cite: Minn. R. 5205.0010, Subp. 1a. Part 1904 (48 SR 559, 12/18/2023) (3 pages)

Adopted: 12/18/2023

Effective: 12/18/2023

<https://www.revisor.mn.gov/rules/pdf/5205.0010/2024-01-03%2010:57:53+00:00>

Missouri

Healthcare Providers

Vaccination protocols

The State Board of Registration for the Healing Arts amended rules regarding authorization for vaccinations by pharmacists administered by protocol under the oversight and responsibility of an authorizing protocol physician, with safety and recordkeeping requirements.

Cite: 20 CSR 2150-5.025 (48 MoReg 2300, 12/15/2023) (3 pages)

Adopted: 12/15/2023

Effective: 1/15/2024

<https://www.sos.mo.gov/cmsimages/adrules/csr/current/20csr/20c2150-5.pdf>

New Mexico

Licensure: Healthcare Professionals

Complaint procedure and institution of disciplinary action

The Medical Board repealed and replaced permanent rules to establish procedures for license denial, revocation of license, suspension of license, probation, censure and reprimand, fines, and costs and stipulations, as well as to establish a procedure for investigating complaints, issuing notices of contemplated action, holding hearings, and making decisions in disciplinary proceedings.

Cite: 16.10.5, 16.10.6 NMAC (34 n m reg 23, 12/05/2023) (11 pages)

Adopted: 12/5/2023

Effective: 12/5/2023

<https://www.nmmb.state.nm.us/docs/rules/nmac-16.10.05-2023-11-22.pdf>; <https://www.nmmb.state.nm.us/docs/rules/nmac-16.10.06-2023-11-22.pdf>

New York

Wages

Minimum wage rates

The Department of Labor adopted new minimum wage rates as set by Labor Law Section 652 amendments passed by the state legislature in 2023.

Cite: 12 NYCRR 141, 142, 143, 146, 190 (2023-52 N.Y. St. Reg. 39, 12/27/2023) (3 pages)

Adopted: 12/7/2023

Effective: 4/1/2024

<https://dos.ny.gov/system/files/documents/2023/10/100423.pdf>

North Carolina

Licensure

Requirements for private protective services

The Private Protective Services Board amended rules for license and trainee permits, training and experience requirements, definitions, and enforcement of rules for close personal protection and digital forensic examiner licensees.

Cite: 14B NCAC 16.0201, .0205, .0403, .0807, .1101, .1501, .1502, .1601, .1701, .1706, .1707 (38:11 NCR 748, 12/01/2023) (7 pages)

Adopted: 11/1/2023

Effective: 11/1/2023

<https://files.nc.gov/oah/documents/2023-12/Volume-38-Issue-11-December-1-2023.pdf?VersionId=sGUEilcVta34WGBxTLHzPU.1vi02ynKr>

Oklahoma

Licensure

Accountancy examination

The Accountancy Board adopted emergency rules to extend CPA examination section scores and individuals' candidacies past the 18-month limit previously set out in the rules, consistent with national standards and practice in order to avoid penalizing in-state candidates in their path to licensure.

Cite: OAC 10:15-18-3 (41 ok reg 329, 12/15/2023) (1 page)

Adopted: 11/14/2023

Effective: 11/14/2023

<https://rules.ok.gov/register#>

Texas

Workers' Compensation

Claims

The Division of Workers' Compensation adopted amendments to rules regarding claims for death benefits,

clarifying how legal beneficiaries may file claims, consistent with the statute and other rules about notice to insurance carriers, and outline what happens after filing.

Cite: 28 TAC §122.100 (48 TexReg 7172, 12/08/2023) (6 pages)

Adopted: 11/21/2023

Effective: 12/11/2023

<https://www.sos.state.tx.us/texreg/archive/December82023/Adopted%20Rules/28.INSURANCE.html#57>

Virginia

Occupational Safety

Industrialized building safety regulations

The Board of Housing and Community Development amended safety rules for industrialized buildings, clarifying that the local building official may approve a change of occupancy of a registered industrialized building; clarifying the options for approval of unregistered industrialized buildings; clarifying that the report to the State Building Codes Office is for moved buildings with active violations; incorporating by reference new International Code Council/Modular Building Institute 1200-2021 and 1205-2021 Offsite Construction Standards; and updating the International Code Council standards incorporated by reference into the regulation to the most current edition.

Cite: 13VAC5-91 (40 va regs reg 885, 12/18/2023) (4 pages)

Adopted: 11/28/2023

Effective: 1/18/2024

<https://register.dls.virginia.gov/vol40/iss09/v40i09.pdf>