



Employers State Law Alert

Summarizing Significant New Employment Laws & Regs in All 50 States



Minnesota's Earned Sick and Safe Time Leave Law takes effect January 1, 2024, p. 6.
Nebraska's 2024 paid sick leave ballot initiative gaining traction, p. 8.
 Statutory developments by state, p. 3.
 Regulatory developments by state, p. 10.

Employers face varying state laws related to guns at work

by Tammy Binford

The mass shootings carried out in Lewiston, Maine, on October 25 sparked panic across the community and dominated headlines nationwide for days while law enforcement searched for the shooter.

Although the deadliest of recent mass killings, the Lewiston shootings—which resulted in the deaths of 18 people in two locations, a bowling alley and a restaurant across town—weren't even the most recent.

The Gun Violence Archive (GVA), an online listing of gun violence incidents, keeps a tally of shootings involving at

least four victims, excluding the perpetrator. The GVA counted six such shootings at various places around the country on November 5 alone.

The Maine shootings don't appear to be employment-related, although the shooter was found dead of a self-inflicted gunshot wound near a recycling center from which he had recently been fired.

But too often, workplaces are the targets of mass shooters. In an effort to respond to the threat of violence, employers often try to devise policies aimed at keeping guns out of workplaces. Just how far such policies can go depends on state laws.

A LOOK AT STATE LAWS

Many employers want to be able to prevent employees from bringing weapons on the premises, including parking lots, and some state laws allow such bans. But total bans are prohibited by law in other states.

Also, many state laws require employers that want to prohibit people from bringing firearms into the workplace to post signs to that effect, and those laws may require that the signs be of a certain size and that they contain specific wording.

In this Issue:

STATUTES

California	
Drugs	3
Employee Benefits	3
Employee Benefits	3
Employee Conduct	4
Employee Safety	4
Employee Safety	4
Labor Laws	5
Noncompete Agreements	5
Public Employers: Labor Laws	5
Wages	6

Minnesota	
Sick Leave	6
Nebraska	
Sick Leave	8
North Carolina	
Employment Discrimination	9
OSHA/Wages	10

REGULATIONS

Alabama	
Licensure: Healthcare Professionals	10
Alaska	
Labor	10
Licensure	10
California	
Labor	11
Licensure	11
Colorado	
Benefits	11
Unemployment Insurance	11

Connecticut	
Licensure: Continuing Education	11
Delaware	
Licensure	12
Illinois	
Discrimination	12
Licensure	12
Indiana	
Licensure	12
Licensure	12
Iowa	
Licensure	13

Texas	
Licensure	13
Licensure	13
Licensure	13
Utah	
Licensure	14
Washington	
Employment Security	14
Occupational Health	14

Approximately half the states have laws that allow employees to have guns locked in cars and out of sight in their employer's parking lot. The laws vary from state to state and contain different requirements about how weapons must be stored.

For example, some state laws say an employee who has a gun in a car must lawfully possess the gun. Also, many laws require that the vehicle containing the gun not be owned or leased by the employer.

State laws also frequently contain exceptions that allow certain kinds of employers to prohibit firearms even if guns are generally allowed by law in parking lots. For example, employers such as schools, childcare centers, jails and nuclear stations and employers involved in national defense are often allowed to ban guns even when they are allowed in parking lots at other kinds of employers.

The extent to which employers can restrict guns on their premises often depends on how restrictive state laws on guns are in general. For example, California is ranked as having the strongest regulation of guns by the Giffords organization, a group aimed at fighting gun violence. It's named for former Arizona Congressional Representative Gabby Giffords, who suffered a brain injury in an assassination attempt carried out with a firearm.

In California, the law allows employers to have policies banning guns from the workplace, even in parking lots.

The Giffords organization ranks Arkansas as having the weakest laws restricting guns, and Arkansas is one state that allows guns in employer parking lots.

Like many states, the Arkansas law allows employees to have guns in parking lots, but it has restrictions, including that the employees must lawfully possess the guns. Also, they must be stored out of sight inside a locked private vehicle, and they must be inside a locked storage container. Guns aren't required to be in the locked storage container until the employees are leaving the vehicle.

FEDERAL LAW

On the federal law front, a gun safety bill was signed into law on June 25, 2022, but no federal law specifically addresses firearms in the workplace. Instead, employers must look to the state laws covering where they do business—a task that can get complicated for multistate employers.

Although it doesn't address employer policies, the 2022 federal law expands background checks for gun buyers under 21, and it provides money for school safety and to help states implement programs to remove guns from people deemed to be a threat to themselves or others.

The 2022 law also attempts to close what's been termed the "boyfriend loophole" by prohibiting gun possession by anyone convicted of a domestic violence crime against someone with whom they are in a "continuing serious relationship of a romantic or intimate nature." The law also provides money for states to cover mental health and drug courts.

SUPREME COURT ACTION

In addition to legislation, U.S. Supreme Court precedent affects employer policies on guns at work. The Court's 6-to-3 decision in the 2022 *New York State Rifle and Pistol Association v. Bruen* case overturned a New York law that required a license to carry concealed weapons in public places.

The Court held the New York law's restrictions on concealed-carry licensure didn't comply with the 2nd and 14th Amendments to the U.S. Constitution. The New York law that was struck down allowed individuals to seek an unrestricted license to carry a concealed firearm outside their home or business for self-defense only if they could establish "proper cause."

Although the *Bruen* decision expanded gun rights, it didn't settle the question of whether employers and others can prohibit guns from sensitive places.

EMPLOYER RESPONSIBILITIES

Regardless of state or federal law, employers bear some responsibilities regarding safety in the workplace.

The federal Occupational Safety and Health Act doesn't specifically cover firearms or other weapons, but the Act's General Duty Clause does require employers to furnish employees with a workplace "free from recognized hazards that are causing or are likely to cause death or serious physical harm." So, that clause means in some cases, employers can face liability for gun-related incidents.

Laws dealing with negligent hiring also come into play when an employee engages in violence at work. If an employee can present evidence the employer acted negligently by hiring the violent worker, the employer may face liability.

STATUTES

California

Drugs

Bars employer requests about drug use

This law makes it unlawful for an employer to request information from an applicant for employment relating to the applicant's prior use of cannabis. Information about a person's prior cannabis use obtained from the person's criminal history could not be considered for employment purposes if related to prior cannabis use off the job and away from the workplace or based upon the results of a prior employer-required drug test that found non-psychoactive cannabis metabolites in their system, unless the employer is permitted to consider or inquire about that information under a specified provision of the California Fair Employment and Housing Act or another state or federal law.

Cite: 2023 CA SB700, CA Pub. Ch. 408 (3 pages)

Enacted: 10/7/2023

Effective: 1/1/2024

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240SB700

Employee Benefits

Leave for reproductive loss

This law makes it an unlawful employment practice for an employer to refuse to grant a request by an eligible employee to take up to 5 days of reproductive loss leave following a reproductive loss event. The law would require that leave be taken within 3 months of the event and pursuant to any existing leave policy of the employer. The law provides that if an employee experiences more than one reproductive loss event within a 12-month period, the employer is not obligated to grant a total amount of reproductive loss leave time in excess of 20 days within a 12-month period. In the absence of an existing policy, the reproductive loss leave may be unpaid. However, the law authorizes an employee to use certain other leave balances otherwise available to the employee, including accrued and available paid sick leave. The law makes leave under these provisions a separate and distinct right from any right under the California Fair Employment and Housing Act. The law makes it an unlawful

employment practice for an employer to retaliate against an individual because of the individual's exercise of the right to reproductive loss leave or the individual's giving of information or testimony as to reproductive loss leave. The law requires the employer to maintain employee confidentiality relating to reproductive loss leave.

Cite: 2023 CA SB848, CA Pub.Ch. 724 (4 pages)

Enacted: 10/10/2023

Effective: 1/1/2024

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240SB848

Employee Benefits

Makes various changes to paid sick leave law

This law makes various changes to California's paid sick leave laws and excludes railroad carrier employers and their employees from law. The law expands paid sick leave entitlements for California employees to 40 hours or 5 days (whichever is greater) per year effective January 1, 2024. Employers will generally have the following three options to choose from for paid sick leave compliance purposes: The employee can accrue 1 hour of sick leave for every 30 hours worked, the employee can receive an upfront grant of 40 hours or 5 days of paid sick leave (whichever is greater) at the beginning of employment and each 12-month period thereafter ("front-loading") (no carryover or accrual of sick leave is required), or the employee can accrue sick leave at a rate other than 1 hour of sick leave for every 30 hours worked, provided the accrual is regular and results in the accrual of no less than 24 hours or 3 days of sick leave by the 120th day of employment and no less than 40 hours or 5 days of sick leave by the 200th day of employment. When sick leave is accrued the law allows employers to impose a maximum accrual cap of 80 hours or 10 days and a use limit of 40 hours or 5 days per 12-month period. This law also changes the sick leave requirement for providers of in-home supportive services and individual providers of waiver personal care services effective January 1, 2024, to permit an upfront grant of 40 hours or 5 days of sick leave, with no accrual or carryover, at the beginning of employment and each 12-month period thereafter. This law provides that these provisions shall preempt any local ordinance to the contrary.

Cite: 2023 CA SB616, CA Pub. Ch. 309 (9 pages)

Enacted: 10/4/2023

Effective: 1/1/2024

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240SB616

Employee Conduct

Creates rebuttable presumption of retaliation

This law creates a rebuttable presumption of retaliation in favor of an employee's claim of unlawful termination due to engaging in protected conduct if an employer engages in any action prohibited by this provision within 90 days of the protected activity specified. This law establishes that in addition to other remedies, an employer is liable for a civil penalty not exceeding \$10,000 per employee for each violation to be awarded to the employee who was retaliated against. The law requires the labor commissioner, in assessing this penalty, to consider the nature and seriousness of the violation based on the evidence obtained during the course of the investigation, as prescribed.

Cite: 2023 CA SB497, CA Pub. Ch. 612 (8 pages)

Enacted: 10/8/2023

Effective: 1/1/2024

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240SB497

Employee Safety

Authorizes collective bargaining representative to seek restraining order; requires workplace violence prevention plans

This law, commencing January 1, 2025, authorizes a collective bargaining representative of an employee to seek a temporary restraining order on behalf of the employee and other employees at the workplace. The law requires an employer or collective bargaining representative of an employee, before filing such a petition, to provide the employee who has suffered unlawful violence or a credible threat of violence from any individual an opportunity to decline to be named in the temporary restraining order. An employee's request to not be named in the temporary restraining order would not prohibit an employer or collective bargaining representative from seeking a temporary restraining order on behalf of other employees at the workplace and, if appropriate, other employees at other workplaces of the employer. The law also requires an employer

to establish, implement, and maintain, at all times in all work areas, an effective workplace violence prevention plan containing specified information. The law requires the employer to record information in a violent incident log for every workplace violence incident. The law requires the employer to provide effective training to employees on the workplace violence prevention plan and provide additional training when a new or previously unrecognized workplace violence hazard has been identified and when changes are made to the plan. The law requires records of workplace violence hazard identification, evaluation, and correction and training records to be created and maintained and violent incident logs and workplace incident investigation records to be maintained as specified. The law requires certain records to be made available to the division, employees, and employee representatives. The law makes these requirements operative on and after July 1, 2024. This law also requires every employer to include the workplace violence prevention plan as part of their effective injury prevention program, a violation of which is a misdemeanor in specified circumstances.

Cite: 2023 CA SB553, CA Pub. Ch. 289 (31 pages)

Enacted: 9/30/2023

Effective: 1/1/2024

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240SB553

Employee Safety

Authorizes employer to seek restraining order

This law authorizes any employer whose employee has suffered harassment to seek a temporary restraining order and an injunction on behalf of the employee and other employees upon a showing of clear and convincing evidence that an employee has suffered harassment, that great or irreparable harm would result to an employee, and that the respondent's course of conduct served no legitimate purpose. The bill would also require an employer seeking such a temporary restraining order to provide the employee whose protection is sought the opportunity to decline to be named in the order before the filing of the petition. The law expressly prohibits a court from issuing such an order to the extent that the order would prohibit speech or activities protected by the federal National Labor Relations Act or specified provisions of law governing the communications of exclusive representatives of public employees.

Cite: 2023 CA SB428, CA Pub. Ch. 286 (21 pages)

Enacted: 9/30/2023

Effective: 1/1/2024

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240SB428

Labor Laws

Prosecution of violations

This law, until January 1, 2029, authorizes a public prosecutor to prosecute an action, either civil or criminal, for a violation of specified provisions of the labor code or to enforce those provisions independently. The law would require moneys recovered by public prosecutors under the labor code to be applied first to payments due to affected workers. The law limits the action of a public prosecutor to redressing violations occurring within the public prosecutor's geographic jurisdiction. The law also authorizes a public prosecutor, in addition to any other remedies available, to seek injunctive relief to prevent continued violations. This law provides that, in any action initiated by a public prosecutor or the labor commissioner to enforce the labor code, any individual agreement between a worker and an employer that purports to limit representative actions or to mandate private arbitration shall have no effect on the authority of the public prosecutor or the labor commissioner to enforce the code. Further, the law provides that any subsequent appeal of the denial of any motion or other court filing to impose such restrictions on a public prosecutor, a division, or the Department of Justice shall not stay the trial court proceedings. This law authorizes the labor commissioner or a public prosecutor to enforce these willful misclassification provisions through specified methods, including by investigating an alleged violation, ordering temporary relief, issuance of a citation, and filing a civil action. The law permits specified employees, the labor commissioner, or a public prosecutor to alternatively recover certain penalties as damages payable to the employee.

Cite: 2023 CA SB594, CA Pub. Ch. 659 (6 pages)

Enacted: 10/10/2023

Effective: 1/1/2024

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240AB594

Noncompete Agreements

Enacts court decision

This law codifies the *Edwards v. Arthur Andersen LLP* (2008) decision by specifying that California's statutory provision voiding noncompete contracts is to be broadly construed to void the application of any noncompete agreement in an employment context or any noncompete clause in an employment contract, no matter how narrowly tailored, that does not satisfy specified exceptions. California's Unfair Competition Law (UCL) makes various practices unlawful and makes a person who engages in unfair competition liable for a civil penalty. The law states that these provisions are applicable to contracts where the person being restrained is not a party to the contract. This law also makes it unlawful to include a noncompete clause in an employment contract, or to require an employee to enter a noncompete agreement, that does not satisfy specified exceptions. The law requires employers to notify current and former employees in writing by February 14, 2024, that the noncompete clause or agreement is void. This law makes a violation of these provisions an act of unfair competition pursuant to the UCL.

Cite: 2023 CA AB1076, CA Pub. Ch. 828 (2 pages)

Enacted: 10/13/2023

Effective: 1/1/2024

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240AB1076

Public Employers: Labor Laws

Protects temporary local public employees

This law supports bargaining rights for temporary employees. The law allows temporary employees of cities and counties to be included in the same bargaining unit as permanent employees who perform similar work.

Cite: 2023 CA AB1484, CA Pub. Ch. 691 (4 pages)

Enacted: 10/10/2023

Effective: 1/1/2024

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240AB1484

Wages

Healthcare workers minimum wage

This law establishes five separate minimum wage schedules for covered healthcare employees, depending on the nature of the employer. Any covered healthcare facility with 10,000 or more full-time equivalent employees (FTEE); any covered healthcare facility employer that is a part of an integrated healthcare delivery system or a healthcare system with 10,000 or more FTEEs; a covered healthcare facility employer that is a dialysis clinic or is a person who owns, controls, or operates a dialysis clinic; or a covered health facility owned, affiliated, or operated by a county with a population of more than 5,000,000, as of January 1, 2023, shall pay a minimum wage to covered healthcare employees of \$23 per hour from June 1, 2024, to May 31, 2025, inclusive; \$24 per hour from June 1, 2025, to May 31, 2026, inclusive; and \$25 per hour from June 1, 2026. This new law also requires, for any hospital that is a hospital with a high governmental payor mix, an independent hospital with an elevated governmental payor mix, a rural independent covered healthcare facility, or a covered healthcare facility that is owned, affiliated, or operated by a county with a population of less than 250,000 as of January 1, 2023, the minimum wage for covered healthcare employees to be \$18 per hour from June 1, 2024, to May 31, 2033, inclusive and \$25 per hour from June 1, 2033, and until as adjusted. The law requires, for specified clinics that meet certain requirements, the minimum wage for covered healthcare employees to be \$21 per hour from June 1, 2024, to May 31, 2026, inclusive; \$22 per hour from June 1, 2026, to May 31, 2027, inclusive; and \$25 from June 1, 2027, and until as adjusted. For all other covered healthcare facility employers, the minimum wage for covered healthcare employees will be \$21 per hour from June 1, 2024, to May 31, 2026, inclusive; \$23 per hour from June 1, 2026, to May 31, 2028, inclusive; and \$25 per hour from June 1, 2028, and until as adjusted. This law provides that a covered healthcare facility that is county-owned, -affiliated, or -operated must implement the appropriate minimum wage schedule described above, beginning January 1, 2025. It also separately requires, for a licensed skilled nursing facility, the minimum wage for certain other covered healthcare employees to be \$21 per hour from June 1, 2024, to May 31, 2026, inclusive; \$23 per hour from June 1, 2026, to May 31, 2028, inclusive; and \$25 per

hour from June 1, 2028. The law makes this minimum wage requirement effective only when a patient care minimum spending requirement applicable to skilled nursing facilities is in effect. The law also requires, for covered healthcare employment where the employee is paid on a salary basis, that the employee earn a monthly salary equivalent to no less than 150% of the healthcare worker minimum wage or 200% of the applicable minimum wage, whichever is greater, for full-time employment in order to qualify as exempt from the payment of minimum wage and overtime. The law requires by March 1, 2024, that the Department of Industrial Relations, in collaboration with the State Department of Health Care Services and the Department of Health Care Access and Information, develop a waiver program that allows a covered healthcare facility to apply for and receive a temporary pause or alternative phase in schedule of the minimum wage requirements.

This law also prohibits any ordinance, regulations, or administrative action that is applicable to a covered healthcare facility and that establishes, requires, imposes, limits, or otherwise relates to wages or compensation for covered healthcare facility employees from being enacted or enforced in or by any city, county, or city and county, except as provided.

Cite: 2023 CA SB525, CA Pub. Ch. 890 (18 pages)

Enacted: 10/13/2023

Effective: 1/1/2024

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240SB525

Minnesota



ANALYSIS

Sick Leave

Statewide Earned Sick and Safe Time Leave Law takes effect January 1, 2024

by Colleen Kaufenberg, Felhaber Larsen

With the effective date of Minnesota's Earned Sick and Safe Time (ESST) Leave Law fast approaching, we present a rundown of frequently asked questions (FAQs) about the law so you can be ready.

FAQS ADDRESSING THE SIGNIFICANT PROVISIONS OF ESST

What is ESST, and when do I need to comply?

Effective January 1, 2024, Minnesota's ESST entitles covered employees to earn paid sick leave for a wide variety of personal and family-related purposes every year.

Who are covered employees?

All employees (including part-time and temporary employees) who work for a Minnesota employer in the state for at least 80 hours in a year are covered. Employees who work out of state for a Minnesota employer aren't covered.

Federal employees and independent contractors aren't covered.

Unless there's a contract stating otherwise, temporary employees supplied by a staffing agency are considered employees of the agency, and the agency is responsible for ESST obligations.

Certain individuals employed by an air carrier as flight deck or cabin crew members aren't covered.

Building and construction industry employees who are represented by building and construction trades labor organizations aren't covered if a valid waiver of ESST requirements is provided in a collective bargaining agreement.

How do employees accrue and carry over ESST?

You must provide each employee working in Minnesota with one hour of ESST for every 30 hours worked, with the ability to accumulate 48 hours each year. You may choose to grant more hours. ESST hours accrue on all hours worked, including overtime hours, unless the employee is exempt from earning overtime compensation.

Exempt employees are presumed to work 40 hours a week for the purposes of ESST accrual. If there's clear evidence an exempt employee's regular workweek is less than 40 hours, ESST may accrue based on that employee's actual regular workweek.

Employees may carry over any unused ESST from year to year, but you may cap the number of hours accrued at 80. You can choose to front-load ESST as an alternative to carrying over. (See below.)

ESST hours are calculated and reported based on hours worked. The amounts accrued and available for use, in addition to amounts used each pay period, must be listed on the employee's earnings statement/paystub.

How does an employer front-load ESST, and how does it affect carryover?

Instead of allowing employees to accrue ESST, you may adopt a front-loading approach whereby you provide an employee with a lump sum of ESST at the beginning of each year or the commencement of employment. Employers that use the front-loading approach aren't required to allow employees to carry over unused ESST at the end of the year. Under this approach, you have two options:

Front-loading with payout and no carryover. Under this approach, you provide 48 hours of ESST to an employee, and it's available for immediate use at the start of the year. Any unused ESST hours are paid out at the end of the accrual year at the employee's hourly rate.

Front-loading with no payout and no carryover. Under this approach, you provide a minimum of 80 hours of ESST to an employee that's available for immediate use at the start of each year. Any hours the employee doesn't use aren't paid out at the end of the accrual year.

How can employees use ESST?

Employees can use ESST for any one of the following reasons:

- To address an employee's mental or physical illness, treatment, or preventive care;
- To care for a family member's mental or physical illness, treatment, or preventive care;
- For absences related to domestic abuse, sexual assault, or stalking of the employee or a family member;
- Time needed when an employee's workplace closes because of weather or another public emergency or when an employee must care for a family member whose school or place of care has been closed because of weather or a public emergency;
- When the employer prohibits an employee from going to work because of health concerns related to the potential transmission of a communicable illness related to a public emergency, while the employee is seeking or awaiting results of a diagnostic test for or a medical diagnosis of a communicable disease related to a public emergency, or when the employee has been exposed to the communicable disease or the employer has requested the test or diagnosis; and
- When it has been determined by a health authority or healthcare professional that the employee or a family member is at risk of infecting others with a communicable disease.

The definition of “family member” is quite extensive under ESST and includes any individual “related by blood or whose close association with the employee is equivalent of a family relationship.” Employees may also designate one individual annually who will be considered a “family member” for purposes of ESST.

What notice of leave and documentation must an employer give an employer?

You may require notice of the need to use ESST leave only if you have a written policy with reasonable procedures for doing so and provide that policy to employees. If the need for ESST leave is foreseeable, you may require up to seven days’ advance notice. If the need is unforeseeable, you may require notice of the need for leave as soon as practicable.

You may require reasonable documentation regarding the need for ESST leave when an employee uses ESST leave for more than three days in a row. Reasonable documentation includes a signed statement from a healthcare professional. If documentation can’t be obtained in a reasonable time or without added expenses, then the employee may provide a written statement indicating the ESST leave is for a qualifying purpose.

The statute also specifies documents related to ESST leave used for other reasons. You’re specifically restricted from requiring an employee to disclose details related to domestic abuse, sexual assault, or stalking or the details of the employee’s or the employee’s family member’s medical condition.

What notice of leave and posting must an employer follow?

Minnesota’s ESST law contains many recordkeeping and notification requirements for employers. You’ll need to notify employees in writing at the start of employment or on January 1, 2024—which is later—of their earned sick and safe leave rights. Although the Minnesota Department of Labor and Industry’s website says a sample employee notice is forthcoming, it hasn’t yet been published.

Under ESST, you must provide written notice that contains various mandatory elements.

What recordkeeping must an employer follow?

In addition to the notice requirements above, there are additional recordkeeping requirements. At the end of each pay period, you must provide each employee with an earning statement, either in writing or by electronic means, that includes the total number of ESST hours accrued and available for use and the total number of ESST hours used during the pay period.

You must retain records documenting hours worked by employees and hours of ESST taken by employees. It appears you’ll need to maintain records for at least three years in addition to the current calendar year.

How do ESST’s antiretaliation provisions work?

You may not discharge, discipline, penalize, interfere with, or otherwise retaliate against an employee for asserting earned sick and safe leave rights, requesting an earned sick and safe leave absence, or pursuing associated remedies.

Also, you may not factor in any employee’s use of earned sick and safe leave into any attendance point system. ESST-related absences are, therefore, “protected,” similar to the way you treat Family and Medical Leave Act (FMLA) leave under federal law.

NEXT STEPS

If you have a paid sick time or paid-time-off (PTO) policy, review it to ensure it meets the requirements of Minnesota’s new ESST law and includes the mandatory elements and required information.

If you don’t have a paid sick time or PTO policy, start planning and adopting written policies.

You should coordinate with your payroll providers to ensure they can provide the necessary information on the statement of earnings.

BOTTOM LINE

Preparing for ESST takes time, planning, and careful consideration in light of your existing sick time and/or PTO programs. With the compliance deadline looming, now’s the time to get moving.

*Excerpted from Minnesota Employment Law Letter
Ryan A. Olson and David Richie, Editors
Felhaber Larson*

Nebraska



ANALYSIS

Sick Leave

Paid sick leave initiative gaining traction

by Bonnie M. Boryca, Erickson | Sederstrom, P.C.

As the 2024 elections approach, several ballot initiatives are gaining momentum in Nebraska, with one particular initiative standing out: Paid Sick Leave for Nebraskans. This initiative, if passed by the majority of Nebraska voters in November 2024, would significantly affect employers across the state. Here’s what you need to know to prepare for this potential change.

KEY PROVISIONS

Accrual of paid sick leave. Under this initiative, all Nebraska businesses would be required to offer paid sick leave to employees. They would earn one hour of paid sick leave for every 30 hours worked.

Carryover of unused leave. Employees may carry over unused paid sick leave to the following year, but the amount shouldn't exceed the maximum number of hours specified in the policy.

Protection from retaliation. The initiative would put into law the ability for employees to earn and use paid sick days without retaliation.

Effective date. If passed, paid sick leave would go into effect on October 1, 2025.

Exemptions. The policy wouldn't interfere with collective bargaining agreements, contracts, or policies that provide employees with more generous paid sick time. It also wouldn't apply to federal, state, or county employees.

WHO BENEFITS?

Paid sick leave is aimed at benefiting working families and businesses alike. It ensures that employees don't have to choose between their paycheck and their family's health. It applies to full-time, part-time, and temporary employees.

Businesses can benefit because paid sick leave may help attract a qualified workforce to the many open jobs across Nebraska, including appealing to workers from other states.

LEAVE ENTITLEMENTS

Under the proposal, the amount of paid sick leave employees would earn varies depending on the size of the employer:

- For employers with fewer than 20 employees, workers may earn up to five days of paid sick leave per year.
- For employers with 20 or more employees, workers may earn up to seven days of paid sick leave per year.

FUNDING AND SUPPORT

The Paid Sick Leave for Nebraskans initiative has gained significant funding support, raising more than \$1.7 million since its launch in July. The Sixteen Thirty Fund—a national organization supporting social change goals—has contributed over \$1.6 million to the campaign.

Local groups such as the Nebraska Appleseed Action Fund, the Women's Fund of Omaha, the Civic Engagement Table, the ACLU of Nebraska Foundation, and Raise the Wage Nebraska have also supported the campaign.

IMPLICATIONS FOR EMPLOYERS

Employers in Nebraska should be aware of the potential changes brought about by the Paid Sick Leave for Nebraskans initiative. If the initiative passes, you will need to adjust your policies and practices to comply with the new paid sick leave requirements. This may include implementing a tracking system for accrued leave, ensuring compliance with carryover limits, and updating company policies to prevent retaliation against employees for using paid sick leave.

The Paid Sick Leave for Nebraskans initiative has the potential to affect employers significantly. With fundraising support and growing public interest, the initiative could change the landscape of paid leave in the state. You should stay informed about the progress of the initiative and be prepared to adapt your policies accordingly if it becomes law in Nebraska.

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

North Carolina

Employment Discrimination

Employee Air Force members

This law is a comprehensive amendment to the state's regulatory reform laws. It prohibits employers from discriminating against or taking any adverse employment actions against an employee based on either the employee's membership in the NC Wing-Air Patrol or the employee's statutorily authorized absence, meaning one that is required to perform duties incident to a state-approved mission or U.S. Air Force authorized mission is no longer than seven consecutive scheduled working days for the employee and that does not exceed 14 scheduled working day absences for the employee in one calendar year. The law permits the employer to require documentation of the employee's mission order. It specifies that the enactment does not require an employer to pay salary or wages to an employee during an authorized absence unless the employee chooses to use paid leave. The law applies to absences occurring on or after December 1, 2023.

Cite: 2023 NC HB600, NC Pub. Ch.137 (46 pages)

Enacted: 10/10/2023

Effective: 1/1/2024 (Veto override)

<https://www.ncleg.gov/Sessions/2023/Bills/House/PDF/H600v8.pdf>

OSHA/Wages

Various changes

This law is the state's appropriations act funding the state's budget for fiscal years 2023 to 2025. Within this budget law are substantive provisions relating to employers. The time during which the North Carolina Department of Labor has to cite an employer for a violation of the Occupational Safety and Health Act of North Carolina is now six months from the date of the violation rather than six months from the date that the inspection began. The North Carolina Department of Labor will have to publish a notice and go through the state's rule making process before adopting any new standard promulgated by the federal Occupational Safety and Health Administration (OSHA). The law also provides that any local ordinances adopted by counties or municipalities establishing minimum wage, overtime, or leave laws that are different from the North Carolina Wage and Hour Act are unenforceable.

Cite: 2023 NC HB259, NC Pub. Ch. 134 (625 pages)

Enacted: 10/3/2023

Effective: Various effective dates

<https://www.ncleg.gov/Sessions/2023/Bills/House/PDF/H259v7.pdf>

REGULATIONS

Alabama

Licensure: Healthcare Professionals

Licensure by endorsement

The Board of Nursing amended rules to reduce fees for a temporary permit to practice nursing, allow LPNs to perform administration through a PICC or midline catheter under specific circumstances, and amend the Loan Repayment Program for Advanced Practice Nursing.

Cite: Ala. Admin. Code r. 610-X-4-.04, .07, .14; 610-X-6-.14; 610-X-12 (Volume XLI, Issue No. 12 AAM, 09/29/2023) (10 pages)

Adopted: 9/22/2023

Effective: 9/29/2023

<http://www.alabamaadministrativecode.state.al.us/>

Alaska

Labor

Union testing for members

The Department of Labor and Workforce Development adopted amendments updating the requirements for examination and application for a certificate of fitness as a plumber or an electrician, allowing a licensee to keep an electronic copy of their certificate, providing alternative testing options for applicants seeking certification by examination, creating a union examination option, and making other conforming changes and updates.

Cite: 8 AAC 61, 90 (Online Public Notice System, 09/29/2023) (14 pages)

Adopted: 9/28/2023

Effective: 10/28/2023

<https://aws.state.ak.us/OnlinePublicNotices/Notices/Attachment.aspx?id=143944>

Licensure

Experience requirements, definitions, and examination requirements

The Board of Registration for Architects, Engineers, and Land Surveyors amended rules regarding experience requirements through mentoring programs and eligibility for structural engineering registration by examination.

Cite: 12 AAC 36 (Online Public Notice System, 09/23/2023) (14 pages)

Adopted: 9/22/2023

Effective: 10/22/2023

<https://aws.state.ak.us/OnlinePublicNotices/Notices/Attachment.aspx?id=143878>

California

Labor

Agricultural labor

The Agricultural Labor Relations Board adopted rules to update filing and service requirements, update procedures in unfair labor practice cases, clarify rights and obligations of parties in unfair labor practices proceedings, update requirements in representation election proceedings, and adopt procedures governing requests for supplemental mandatory mediation and conciliation.

Cite: 8 CCR §§ 20150, 20155, 20160, 20162, 20164, 20166, 20168, 20169, 20170, 20190, 20192, 20216, 20217, 20219, 20220, 20222, 20235, 20236, 20238, 20240, 20241, 20242, 20243, 20246, 20247.1, 20248, 20249, 20250, 20262, 20274, 20282, 20286, 20290, 20291, 20299, 20300, 20305, 20310, 20325, 20330, 20335, 20350, 20355, 20360, 20363, 20365, 20370, 20375, 20377, 20382, 20385, 20390, 20393, 20400, 20401, 20402, 20407, 20408, 20410, 20910 (CRNR 2023, No. 36-Z, 09/08/2023, page 1178) (60 pages)

Adopted: 8/29/2023

Effective: 10/1/2023

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

Licensure

Continuing education

The Board of Optometry amended rules to update continuing education requirements to reflect the increase in online courses, defining self-study and live and interactive courses and increasing the information retention requirements for continuing education providers and licensees.

Cite: 16 CCR § 1536 (CRNR 2023, No. 36-Z, 09/08/2023, page 1177) (4 pages)

Adopted: 8/23/2023

Effective: 8/23/2023

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

Colorado

Benefits

Family medical leave

The Division of Family and Medical Leave Insurance amended regulations concerning premiums and individuals electing coverage, with rules for calculating employer size, localization of employees, and assessments and recomputations of FAML I premiums.

Cite: 7 C.C.R. 1107-1 (46 CR 17, 09/10/2023, page 793) (7 pages)

Adopted: 9/10/2023

Effective: 1/1/2024

<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.sos.state.co.us%2FCCR%2FUpload%2FAGOResults%2FAdoptedRules32023-00360.doc&wdOrigin=BROWSELINK>

Unemployment Insurance

Wage reporting

The Division of Unemployment Insurance amended rules allowing for reasonable measures for the division to obtain accurate wage reporting.

Cite: 7 C.C.R. 1101-2 (46 CR 17, 09/10/2023, page 784) (7 pages)

Adopted: 9/10/2023

Effective: 10/1/2023

<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.sos.state.co.us%2FCCR%2FUpload%2FAGOResults%2FAdoptedRules22023-00388.docx&wdOrigin=BROWSELINK>

Connecticut

Licensure: Continuing Education

Plumbers and electricians

The Department of Consumer Protection amended rules to update requirements for the continuing education of plumbers and electricians, including changes regarding course offerings and rules for online course offerings.

Cite: Regs., Conn. State Agencies § 20-334d-1 (eRegulations System, Tracking Number PR2023-005, 08/01/2023) (12 pages)

Adopted: 8/1/2023

Effective: 8/3/2023

<https://eregulations.ct.gov/eRegsPortal/Search/getDocument?guid={708ABB89-0000-C112-BD3C-4CCA321D69BB}>

Delaware

Licensure

Veterinary education

The Board of Veterinary Medicine amended rules to add the Program for the Assessment of Veterinary Education Equivalence (PAVE) as another method to meet the requirements for licensure when an applicant has not graduated from an AVMA-accredited veterinary school or college.

Cite: 24 DE Admin. Code 3300 (27 DE Reg. 190, 09/01/2023) (14 pages)

Adopted: 8/8/2023

Effective: 9/11/2023

<http://regulations.delaware.gov/register/september2023/final/27%20DE%20Reg%20190%2009-01-23.pdf>

Illinois

Discrimination

Procedural rules

The Human Rights Commission amended procedural rules for the computation of time and the service of pleadings in person, electronically, or by mail.

Cite: 56 Ill. Adm. Code 5300 (47 Ill. Reg. 13492, 09/22/2023) (8 pages)

Adopted: 9/22/2023

Effective: 9/11/2023

https://www.ilsos.gov/departments/index/register/volume47/register_volume47_38.pdf

Licensure

Physical therapy practice and continuing education

The Department of Financial and Professional Regulation amended rules for the enforcement of the Illinois Physical Therapy Act, with changes related to educational curriculum approval, licensure by examination, licensure by endorsement, continuing education, advertising, updated education and practice requirements for intramuscular manual therapy, and the addition of a new section for Physical Therapy Services that requires communication between the physical therapist and the patient's treating physician.

Cite: 68 Ill. Adm. Code 1340 (47 Ill. Reg. 13093, 09/08/2023) (28 pages)

Adopted: 9/8/2023

Effective: 8/24/2023

https://www.ilsos.gov/departments/index/register/volume47/register_volume47_36.pdf

Indiana

Licensure

Convictions of concern: Accountancy

The Board of Accountancy added new rules concerning convictions of concern and related provisions relating to the licensure of accountants.

Cite: 872 I.A.C. 1-7 (Indiana Register, 09/27/2023) (9 pages)

Adopted: 8/29/2023

Effective: 10/26/2023

<http://www.in.gov/legislative/iac/20230927-IR-872230045FRA.xml.pdf>

Licensure

Convictions of concern: Physical therapy

The Board of Physical Therapy added new rules concerning convictions of concern and related provisions relating to the licensure of physical therapists.

Cite: 842 I.A.C. 1-8 (Indiana Register, 09/27/2023) (9 pages)

Adopted: 8/29/2023

Effective: 10/26/2023

<http://www.in.gov/legislative/iac/20230927-IR-842230049FRA.xml.pdf>

Iowa

Licensure

Licensure by verification; veterans; spouses of veterans

The Medicine Board adopted a new rule for licensure by verification and amended rules for veteran and spouse reciprocity to base licensure on a substantially equivalent scope of practice rather than on licensing requirements and to clarify the difference between experience and training.

Cite: 653 IAC 9.5, 18.1, 18.3 (IAB Vol. XLVI, No. 6, 09/20/2023, page 1098) (4 pages)

Adopted: 8/17/2023

Effective: 1/25/2023

<https://www.legis.iowa.gov/docs/aco/bulletin/09-20-2023.pdf>

Texas

Licensure

Architect licensure examination

The Board of Architectural Examiners amended rules to modify the time periods within which a candidate for registration is required to complete the Architect Registration Examination (ARE) or the Landscape Architect Registration Examination (LARE), consistent with a change in policy by the National Council of Architectural Registration Boards, adopting a score validity policy and extension allowances in place of a “rolling clock.”

Cite: 22 TAC §§ 1.43, 1.44, 3.43, 3.44 (48 TexReg 4855, 09/01/2023) (4 pages)

Adopted: 8/17/2023

Effective: 9/6/2023

[https://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac_view=3&ti=22&pt=1](https://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=3&ti=22&pt=1)

Licensure

Licensing, registration, and certification for surveyors

The Board of Professional Engineers and Land Surveyors amended rules to clarify the board’s policy to consider previous enforcement actions against a previous registration holder and to implement changes to examination requirements resulting from a Sunset Commission recommendation, subsequent analysis, and resulting approval by the board to convert to the national NCEES PS exam and a state-specific jurisprudence exam.

Cite: 22 TAC §§ 134.23, .101, .61, .67, .71, .73 (48 TexReg 4857, 09/01/2023) (8 pages)

Adopted: 8/16/2023

Effective: 9/5/2023

[https://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac_view=4&ti=22&pt=6&ch=134](https://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=22&pt=6&ch=134)

Licensure

Professional geoscientists

The Board of Professional Geoscientists adopted amendments to licensing requirements related to examinations and work experience requirements, removing references to a form that is no longer required, removing language that may have been interpreted as the board evaluating an applicant’s “good and ethical” character, and adding clarity and consistent language relating to continuing education used throughout the policy.

Cite: 22 TAC §§ 851.21, .22 (48 TexReg 5550, 09/22/2023) (8 pages)

Adopted: 9/6/2023

Effective: 9/26/2023

[https://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac_view=5&ti=22&pt=39&ch=851&sch=B&rl=Y](https://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=22&pt=39&ch=851&sch=B&rl=Y)

Utah

Licensure

Real estate licensing and practice

The Department of Commerce amended rules for real estate licensing and practice to allow a broker applicant to accumulate partial experience points, allow certain broker applicants who are already licensed as a real estate broker in another state to qualify for licensure in Utah without repeating the national portion of pre-licensing education or the national component of the licensing exam, authorize the Real Estate Commission to designate an acting principal broker in the event of the death or incapacity of a principal broker, add additional topics to the list of approved continuing education core topics, and eliminate the outdated state approved Uniform Real Estate Contract.

Cite: Utah Admin. Code r. 162-2f (23-18 utah bull 235, 09/15/2023) (35 pages)

Adopted: 6/15/2023

Effective: 8/18/2023

<https://adminrules.utah.gov/public/rule/R162-2f/Current%20Rules?searchText=R162-2f>

Washington

Employment Security

Requests for information

The Employment Security Department amended rules to explain the circumstances under which a claimant may requalify for benefits after previously being denied benefits due to failing to respond to a request for information from the department by formalizing two exceptions to the “indefinite period of time” time frame.

Cite: WAC 192-140-035 (WSR 23-19-006, 09/06/2023) (1 page)

Adopted: 9/1/2023

Effective: 10/7/2023

<https://lawfilesexternal.wa.gov/law/wsr/2023/19/23-19-006.htm>

Occupational Health

Worker housing

The Department of Labor and Industries amended and updated emergency rules to protect occupants of temporary worker housing facilities and tents from COVID-19 and similar airborne infectious disease hazards, with changes to definitions, management plan requirements, multilingual notification requirements, cooperation with local health jurisdictions, and training for individuals responsible for executing the communicable disease and prevention response plan.

Cite: WAC 296-307-16103, -16127, -16146, -16147, -16190 (WSR 23-19-073, 09/19/2023) (8 pages)

Adopted: 9/19/2023

Effective: 11/1/2023

<https://lawfilesexternal.wa.gov/law/wsr/2023/19/23-19-073.htm>