



2020 HR Compliance Update



January 30, 2020

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Federal: New DOL Overtime Rule

CHANGES TO THE OVERTIME EXEMPTION RULES: 4 IMPORTANT CHANGES

Effective date: January 1 , 2020

1. Increase in minimum earnings needed to meet salary threshold requirements
 2. 10% rule
 3. Increase in total compensation needed to meet highly compensated exemption
 4. No automatic increases
- Minimum salary level increase:
\$684 per week in any work in which employees perform work, **\$35,568 annualized**.
 - Highly compensated level increased to **\$107,432**. Minimum compensation amount of **\$684** must be met; however, bonuses and commissions can be considered as part of the threshold.

Federal: New DOL Overtime Rule

CHANGES TO THE OVERTIME EXEMPTION RULE: 10% RULE

Up to 10 % of the minimum salary may be commissions and incentive pay

What counts toward minimum salary?

- All commissions
- Nondiscretionary bonuses based on individual performance, productivity or hours worked
- Nondiscretionary bonuses based on company performance
- Nondiscretionary safety bonuses
- Nondiscretionary retention bonuses

What happens if the annual nondiscretionary bonus is short?

- Only one pay period, at the end of a given 52-week period, to make one make-up payment to meet threshold.
- If employees are paid even \$1 less than required, overtime is required for the entire prior 52 week period.

Federal: New DOL Overtime Rule

CHANGES TO THE OVERTIME EXEMPTION RULES:

Steps to help prepare for January 1, 2020

- Review your current salary thresholds for your workforce to identify areas of possible risk.
- Review current employee status to ensure compliance with new requirements.
- Review current compensation to ensure compliance with new FLSA requirements.
- Your TriNet representative is available to help answer questions.
- Note: states may have higher salary thresholds that also must be met for exemptions.

California Updates

AMENDS ORGAN DONOR LEAVE

Effective Date: January 1, 2020

Employers Impacted: California employers with 15 or more employees

Existing state law already required employers to provide:

- 30 days of paid leave in a one-year period measured from the date the employee's leave begins and consists of 12 consecutive months to qualified employees who participate in organ donation
- 5 days of paid leave within a one-year period measured from the date the employee's leave begins and consists of 12 consecutive months to qualified employees who participate in bone marrow donation

The amended law now requires employers to provide an additional 30 days of unpaid leave to qualified employees.

Action Items:

- Review current organ donation policy to ensure it meets the new unpaid leave of absence requirements.

California Updates

EXPANDS LACTATION ACCOMMODATION

Effective Date: January 1, 2020

Employers Impacted: California employers (undue hardship exception may apply for employers with fewer than 50 employees)

A new bill California significantly increases the accommodations and break periods employers are required to provide employees who have a need to express milk.

Break Time Clarification:

The existing accommodation law states that the break time required for lactation accommodations should run concurrently with any break time the employer is already providing, but if these needed breaks are outside those designated break periods then those additional break times may be unpaid.

The updated law specifies that these breaks (either paid or unpaid) must be given each time an employee has need to express milk.

The Labor Commissioner may issue a citation and may impose a civil penalty in the amount of one hundred dollars (\$100) for each day that an employee is denied reasonable break time or adequate space to express milk.

California Updates

EXPANDS LACTATION ACCOMMODATION

New Lactation Room Requirements:

Existing state law already required California employers to provide a private and nearby space for employees to express milk, other than a bathroom. The updated law requires:

- The room to be shielded from view and cable of locking from the inside
- It must be free from intrusions
- It must be a clean area
- It must be safe and clear of any potentially hazardous materials
- A stable service (such as a table, desk, or shelf) must be provided to place the breast pump or any needed supplies on
- The room must have a place to sit
- The room must contain a source of electricity the employee can use to power or charge their breast pumping device
- The lactation room is used for other purposes, breaks taken to express breast milk must take precedence over any other use, and
- The lactation room must be in close proximity to the employee's workspace

California Updates

EXPANDS LACTATION ACCOMMODATION

Additional Requirements:

- The updated law does not require the lactation room have running water, employers must provide, within close proximity to the employee's workspace, with a sink and running water the employee can use to rinse their lactation devices as needed.
- Employers must offer a refrigerator or other type of cooling device reserved for the storage of expressed milk in close proximity to the employee's workspace. The refrigerator cannot be shared by other employees who are storing unrelated items such a food or drinks.

Temporary Space:

If an employer does not have the available space to designate as a compliant lactation room, it is permissible to use a temporary space or booth for the duration of time needed. This temporary space must be in close proximity to the employee's workspace.

California Updates

EXPANDS LACTATION ACCOMMODATION

New Policy Requirements:

Employers must inform their employees about this new law by creating a Lactation Accommodation policy. This new policy must inform employees of the following:

- Their rights to request a lactation accommodation
- The process of how they can request a lactation accommodation
- The laws pertaining to the employer's obligation to provide appropriate lactation accommodation
- How the employee can file a complaint with the Labor Commissioner if the employer is not complying with the requirements of this law

Action Items:

- Update current lactation policy to ensure compliance and notify employees
- Review current lactation room based on the updated requirements to ensure compliance
- Train supervisory staff on the new lactation accommodation requirements

California Updates

AMENDED LAW ON ARBITRATION AGREEMENTS (AB 51)

Effective Date: Scheduled to be effective January 1, 2020, but now on hold due to a temporary restraining order is in effect until the case is concluded and court renders its decision until January 31, 2020.

Who's Affected? All CA employers

What's Changing? Prohibited from requiring employees to sign mandatory arbitration agreements for claims arising out of the California Fair Employment and Housing Act and the Labor Code; does not apply to agreements already in existence.

Action Items: Be prepared to change your California arbitration agreements in accordance with the final requirements of AB 51. TriNet will keep you posted as the case works its way through the courts.

California Updates

PROHIBITION OF DISCRIMINATION BASED ON HAIRSTYLE

Effective Date: January 1, 2020

Employers Impacted: California employers

The CROWN Act expands the definition of race to include both hair texture and protected hairstyles that closely associate with race.

The update attempts to break down previous stereotypes – that, somehow, wearing your hair a certain way is a reflection on the company, a position, or a profession. It specifically

- Defines “race” to be inclusive of traits closely associated with race, including, but not limited to, hair texture and protective hairstyles.
- Defines “protected hairstyles” to include, but not limited to, such hairstyles as braids, locks, and twists.
- Prohibits dress code policies from prohibiting natural hairstyles, such as curls, unprocessed hair, ~~such as~~ braids, locks, and twists.

Action Items:

- Review current dress code policy and ensure compliance.

California Updates

AMENDED HUMAN TRAFFICKING NOTICE

Applies to: Hospitality industry employers in California

Training Requirement: Hotel/motel employers to provide training relating to human trafficking to certain employees

Training must be at least 20 minutes long and include the following:

- Definition of human trafficking and the commercial exploitation of children;
- Guidance on how to identify individuals who are most at risk for human trafficking;
- The difference between labor and sex trafficking;
- Guidance on the role of hospitality employees in reporting and responding to this issue;
- The contact information to the appropriate government industries (including the National Human Trafficking Hotline) and local law enforcement

Training can also include information and materials provided by the Department of Justice, the Blue Campaign of the federal Department of Homeland Security, and various other nonprofit organizations that represent the interests of victims of human trafficking.

California Updates

AMENDED HUMAN TRAFFICKING NOTICE (CONT.)

Training Requirement (Cont.)

Training must be provided to all employees who have “reoccurring interactions with the public.” This can include, but is not limited to the following types of employees:

- Employees who work in the reception area of the hotel,
- Housekeeping employees,
- Bellhops, and
- Employees who drive customers.

Applicable employers must provide human trafficking training to employees by January 1, 2020 and every two years after that. For new employees, the training must occur within six months of employment in that role.

Action Items: Implement a process to train required employees

Updates For Hospitality Workers

Panic Button Requirements

Washington:

- Requires panic buttons for hospitality workers who typically work alongside two or fewer coworkers.
- Hotels and motels with 60 or more rooms must comply by January 1, 2020; all others must comply January 1, 2021.
- Provide human trafficking training to employees by 1/1/20 and every two years after that. For new employees, the training must occur within six months of employment in that role.
- Provide employees with a list of resources, including contact information for the Equal Employment Opportunity Commission, the Washington State Human Rights Commission, and local advocacy groups focused on preventing sexual harassment and assault.
- The Department of Labor and Industries is expected to publish guidance for panic button implementation.

Updates For Hospitality Workers

Panic Button Requirements

Illinois:

- Hotel and Casino Employee Safety Act requires certain hotel and casino workers in Illinois to have emergency “panic button” devices in an effort to improve their safety and offer greater protection from guests and other workers.
- Employers also have special obligations to develop written policies protecting employees from harassment and sexual assault. These new policies will need to be provided to all employees in English, Spanish and any other language predominant among the employer’s workforce.
- The policies must also be posted in conspicuous places in the areas of the hotel or casino where employees can reasonably be expected to see them.
- Effective July 1, 2020

LEGALIZES MARIJUANA FOR RECREATIONAL USE

Effective Date: Jan 1., 2020

Who's Affected? All IL employers

What's Changing? Marijuana has been legal in IL since 2014 for medical purposes. Now, anyone over 21 is allowed to use or buy marijuana. Employers may still have drug free workplace policies in place and check employees under reasonable suspicion as defined by the law.

Action Items: Review current drug testing procedures and policies that address use of drugs for compliance.

COLORADO TOUGHENS WAGE THEFT PENALTIES

Effective Date: January 1, 2020

Employers Impacted: Colorado employers

Colorado wage payment law is amended to include the following:

- Redefines wage theft as “criminal theft.”
- Prohibit an employer from willfully refusing to pay wages, or falsely denying the amount of a wage claim.
- If the wage amount is over \$2,000, the employer may be found liable for a felony theft offense.

Action Items:

- Review current pay practices to ensure you are meeting wage payment requirements.

Illinois Updates

WORKPLACE TRANSPARENCY ACT

Effective Date: January 1, 2020 (New annual reporting obligations for employers effective July 1, 2020.)

Employers Impacted: Illinois employers

- The Illinois General Assembly passed the Workplace Transparency Act (WTA), on June 2, 2019, and in September, Governor, J.B. Pritzker, signed it into law. The WTA adds additional requirements and limitations for Illinois employers beginning in 2020. Employment agreements, such as severance, separation, or settlement agreements, will now have several new exceptions and conditions. The WTA specifically addresses claims that involve discrimination and harassment and limits non-disclosure and non-disparagement clauses.
- Timing of Nondisclosure/Non-Disparagement Clauses under the WTA, any claims for harassment or discrimination must occur before any non-disclosure or non-disparagement clause is enacted. With consideration of those types of prior claims, both parties must agree to any non-disclosure or non-disparagement clauses that are included. Also, the employee must be given at least 21 days to consider any such agreement and have no less than 7 calendar days after the execution of the agreement, to revoke the agreement.
- Additional Limitations claims that involve discrimination and harassment are prohibited from being arbitrated, under the WTA, unless the employee chooses to arbitrate the claim. The WTA also requires that all arbitration agreements specifically mention that employee are not obligated to arbitrate when the claim involves discrimination or harassment.

Action Items:

- Review existing employment agreements such as severance, separation, or settlement agreements, which will now have several new exceptions and conditions

GENDER NEUTRAL BATHROOM REQUIREMENT

Effective Date: January 1, 2020

Employers Impacted: Illinois employers

- All single-occupancy restrooms in existing and future places accessible to the public, including public buildings, must be identified as all-gender.
- The new law also requires that all single-occupancy restrooms have exterior signage that marks the single-occupancy restroom as a restroom and does not indicate any specific gender.

Action Items:

- Review current restrooms and ensure appropriate signage.

Maine Updates

RESTRICTS REQUESTS FOR JOB APPLICANTS SOCIAL SECURITY NUMBERS

Effective Date: January 1, 2020

Employers Impacted: Maine employers

- Employers will no longer be permitted to ask prospective employees for social security numbers on employment applications or during the employment process, unless it is for purposes of substance abuse testing or a pre-employment background check.
- The law also does not apply to employer requests for an employee's SSN after they are hired.

Action Items:

Review job applications and recruitment processes-to ensure they do not request social security numbers outside of the limited exceptions.

Minneapolis, Minnesota Updates

MINNEAPOLIS WAGE THEFT PROTECTION ORDINANCE ADDITIONAL REQUIREMENTS

Employers impacted: All Minnesota employers with employees who work at least 80 hours per year in Minneapolis.

Effective Date: January 1, 2020

The ordinance targets the following forms of wage theft:

- Improperly calculating employee wages, including overtime
 - Failing to pay employees
 - Allowing employees to work “off the clock”
 - Taking illegal or unauthorized deductions
 - Denying rest or meal breaks
 - Failing to pay minimum wage
 - Withholding gratuities
- New Compliance Elements

Minneapolis, Minnesota Updates

MINNEAPOLIS WAGE THEFT PROTECTION ORDINANCE ADDITIONAL REQUIREMENTS

Written notice is essential, so Minneapolis employers must obtain signatures from employees before implementing changes in their overtime, gratuity, sick, and safe time policies.

New employees must receive written notice of these policies before their start day and also before any changes are implemented.

- Written earnings statements, including accrued and unused sick time, must be provided to employees upon request.
- There are additional recordkeeping requirements and guidelines regarding record retention and employee access.
- Employers must post a notice from the Minneapolis Department of Civil Rights in a prominent location. The notice should be in English as well as any language that is spoken onsite by at least five percent (5%) of the employees. Violation penalties can be assessed if the Minneapolis Department of Civil Rights determines employers have failed to comply.
- Penalties range from \$250 to \$3,000, depending on the type of violation and an employer's history.
- Discriminating or retaliating against employees who take action is strictly prohibited.

MINNEAPOLIS WAGE THEFT PROTECTION ORDINANCE ADDITIONAL REQUIREMENTS

Action Items:

- Ensure employees receive appropriate written notice that complies with both laws.
- Comply with posting, recordkeeping, and policy implementation requirements.

Duluth, Minnesota Updates

Duluth Earned Sick and Safe Leave Law

Effective Date: January 1, 2020

Employers Impacted: All employers with 5 or more employees (any location) and at least one eligible employee.

Eligible Employees: Any employee working more than 50% the time in Duluth in a 12-month period, or is based in Duluth, working a substantial part of the time in Duluth and not working more than 50 percent of time elsewhere.

Employees may use Sick and Safe Time for:

- The employee's or a family member's mental or physical illness, injury or health condition; need for medical diagnosis, care or treatment; and need for preventive medical care; and
- An absence due to domestic abuse, sexual assault or stalking of the employee or a family member.
- Accrue one hour of ESST for every 50 hours worked, up to 64 hours in a year, beginning January 1, 2020, or when employment begins, whichever is later.
- An employee may use up to 40 hours of ESST a year, beginning after 90 calendar days of employment.

Duluth, Minnesota Updates

Duluth Earned Sick and Safe Leave Law

Action Items:

- Ensure leave policies include sick and safe leave for all eligible employees.
- Employers should train managers and Human Resources personnel on the new sick and safe leave law.
- Must provide covered employees a notice explaining their rights and protections under the law, including details about their entitlement to and amount of leave, terms of use, rules prohibiting retaliation, and that employees can file a complaint with the city.

Nevada Updates

Nevada Prohibition on Pre-employment Drug Testing

Employers Impacted: All employers hiring employees in Nevada

Effective Date: January 1, 2020

Nevada became the first state banning pre-employment drug testing for marijuana.

The law prohibits employers from refusing to hire applicants for testing positive for marijuana.

Exceptions:

- Firefighters and EMTs
- Motor vehicle operators subject to federal or state testing
- Positions funded by federal grants and subject to the Drug Free Workplace Act
- Applicants who waive right subject to employment agreement or collective bargaining agreement
- Employees who Affect the Safety of Others

Nevada Prohibition on Pre-employment Drug Testing

Action Items:

- Review and revise drug testing and recruitment/hiring policies and processes to ensure compliance.
- Employers should train all managers, Human Resources personnel and employees involved in the hiring process on the new law.

Nevada Updates

Nevada Paid Leave Law

Employers Impacted: All employers with 50 or more employees working in Nevada

Effective Date: January 1, 2020

Nevada becomes the second state to require certain employers to provide paid leave. The leave may be used for any purpose.

- Leave accrues at a minimum of 0.01923 hour for every hour worked, but employers may frontload leave time at the beginning of the benefit year.
- Accrual begins on January 1, 2020, or a new employee's first day of work.
- Employees may use accrued leave after 90 days of employment.
- Employers may cap use at 40 hours per year.

Action Items:

- Review and revise policies to ensure compliance
- Train all managers and Human Resources personnel on the new law.

Prohibition on Electronic Cigarettes in the Workplace

Employers Impacted: All employers with an indoor workspace in Nevada.

Effective Date: January 1, 2020

Nevada expanded the Clean Indoor Air Act to include the prohibition of smoking electronic smoking devices in an indoor workspace.

Under the amendments, *electronic smoking device* means “any product containing or delivering nicotine, a product made or derived from tobacco or any other substance intended for human consumption that can be used by a person to simulate smoking in the delivery of nicotine or any other substance through inhalation of vapor or aerosol from the product...”

Action Items:

- Review and revise smoking policies to ensure compliance.

New Jersey Updates

New Jersey Ban on Salary Inquiries

Effective Date: January 1, 2020

Employers Impacted: All employers hiring for a position in New Jersey.

This law prohibits employers from asking job applicants their salary history, including

- Screening job applicants based on their salary history, which includes, prior wages, salaries or benefits.
- Requiring that an applicant's salary history satisfy any specific criteria.
- Basing employment decisions on whether or not an applicant provides wage information.

Employers may not penalize applicants for refusing to provide salary history.

New Jersey Updates

New Jersey Ban on Salary Inquiries

The law provides for a few exceptions:

- Employers with multistate applications may include a question about salary history but must include a disclaimer notifying New Jersey applicants not to respond to the question.
- If an applicant voluntarily reveals salary history, employers may verify the information but may not use the information to determine the applicant's compensation.
- An employer may, with written authorization from an applicant, verify salary history with prior employers after an offer with compensation is made to the applicant.
- The law does not apply to internal candidates for transfer or promotion.
- An employer may discuss prior incentive and compensation plans as long as they do not ask about specific dollar amounts.

Action Items: Action Items:

- Review and revise hiring/recruitment processes, policies and applications to ensure compliance.
- Train all managers and Human Resources personnel on the new law.

Panic Button Requirements

- Hotel and Casino Employee Safety Act requires New Jersey hotels with 100 or more guest rooms will be required to provide free panic buttons to employees (both full and part time, as well as contractors and subcontractors) who work in those rooms without other employees present.
- Effective January 1, 2020
- Other requirements include:
 - Train hotel employees on panic button use and their rights if they must activate the button.
 - Notify hotel guests that employees carry panic buttons
 - Reassign employee who activates a panic button to another location away from the accused guest; give other employees option to either service the room in pairs or opting out during a guest's stay.
 - Investigate each accusation; If the hotel gathers enough information and the employee provides a "certified statement of the incident", the guest must be prohibited from staying in the hotel for a minimum of three years.
 - Notify law enforcement when criminal conduct is reported
 - Notify employees assigned to a guest room where a reported incident has occurred of the presence and location of the accused guest named on the hotel's list. (And provide them with the option of servicing the accused guest's room with a partner or declining to serve the accused guest's room for the duration of the accused guest's stay.)
 - Require guests to acknowledge the policy as part of the hotel terms and conditions upon checking into the hotel; or place signs on the interior side of guest room doors in a prominent location and in large font, detailing the panic device policy and the rights of hotel employees.

New York Updates

NEW YORK STATE HUMAN RIGHTS LAW

Effective Date: Successive dates starting on October 1, 2019-October 12, 2020

Employers Impacted: New York employers with one or more employees

The New York State Human Rights law requires that employers must conduct annual anti-sexual harassment training for all employees.

- Sexual Harassment Prevention Training – Employers need to train current employees and implement a plan to train new hires.
- **Effective October 9, 2019:** as part of the compliance requirement, employers must provide written copies of the company's sexual harassment prevention policy and program training materials to employees when hired and once more at an annual training session. The materials must be in English as well as the employee's primary language.
- **Effective October 12, 2019:** modified requirements to prove discriminatory harassment – The Legislature's new law lowers the standard of proof required of individuals claiming harassment, so it is more in line with the NYCHRL's "treated less well" standard. Plaintiffs no longer need to identify a fellow employee as a means to compare they've been subjected to "inferior terms, conditions, or privileges of employment."
- **Effective October 12, 2019:** New Defense Available – Employers need not be concerned about "defenses" available in litigation; that's your lawyer's role. Employers should know that liability can only be avoided if an alleged harassment "does not rise above the level of what a reasonable victim of discrimination would consider petty slights or trivial inconveniences." This is a very low standard.
- **Effective October 12, 2020:** Statute of Limitations Extended to Three Years – Employees may now file sexual harassment claims within three years of the incident. Recovery of Punitive Damages and Attorney's Fees – Under the new law, prevailing employees are entitled to recover punitive damages and reasonable attorney's fees.

New York State Updates

New York Further Limits NDAs in Sexual Harassment Claims

Effective Date: January 1, 2020

Employers Impacted: All employers with four or more employees in New York State

The New York State Legislature amended the law limiting employee non-disclosure agreements related to sexual harassment allegations.

- Any agreements related to sexual harassment allegations that limit disclosure of factual information without a specific carve-out for law enforcement agencies, state or local human rights agencies or attorneys representing employees are void and unenforceable.

Action Items: Ensure all agreements and contracts related to sexual harassment claims provide a carve-out if limiting the disclosure of factual information.

New York State Updates

NY Paid Family Leave Benefits Rate Increase

Effective Date: January 1, 2020

Employers Impacted: All employers with employees in New York State

- The rate of pay for employees taking Paid Family Leave increases to the lower of 60% of the employees average weekly wage, or 60% of the state average weekly wage. This is an increase from 55% in 2019.
- The maximum weekly benefit for 2020 is \$840.70.

New York State Updates

New York Salary History Ban

Effective Date: January 6, 2020

Employers Impacted: All employers hiring for a position in New York State

The law prohibits employers from inquiring into an applicant's salary history when considering interviewing, hiring or determining pay rate.

Applicants or current employees may voluntarily, and without prompting, disclose or verify wage or salary history.

Action Items:

- Review and revise policies and applications to ensure compliance.
- Train all managers and Human Resources personnel on the new law.

EQUAL PAY PROTECTIONS EXPANSION

Effective Date: January 1, 2019

An employer is prohibited from:

- Engaging in wage discrimination based on race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability, and age.
- Screening applicants based on current and past compensation or seeking an applicant's salary history, either from the applicant or from his or her current or former employer; and
- Determining compensation based on the current or past compensation of a prospective employee.
- Provides employers a safe harbor if they conduct a pay equity analysis. However, unlike Massachusetts, this safe harbor is not a complete defense to a violation.

Notice Requirement: Employers are required to post notice of the law's requirements.

Action Items:

- Post the notice in every location where employees work.
- Review and revise policies and procedures.
- Provide training to staff, who are involved in the hiring process, to ensure awareness and compliance with these requirements.

Oregon Updates

MODIFIES NONCOMPETE LAW

Effective Date: January 1, 2020

Employers Impacted: Oregon employers

- Applies to noncompete agreements entered into on or after January 1, 2020.
- Oregon employers must provide a signed written copy of the noncompete agreement to employees within 30 days *after* the termination of-employment.

Action Items:

- Review noncompete agreements and termination procedures and update procedures to ensure they are compliant.
- Recommendation is to provide the noncompete agreement the day following the termination date and not the actual termination date as the law indicates “30 days after termination date”.

EXPANDS PAID FAMILY LEAVE LAW TO INCLUDE ORGAN DONATION

Effective Date: January 1, 2020

Employers Impacted: Oregon employers

Oregon Family Leave Act expanded to include:

- Employees who miss work in connection with donating a body part, organ, or tissue.
- Updates the definition of “serious health condition” to include “any period of absence for the donation of a body part, organ or tissue, including preoperative or diagnostic services, surgery, post operative treatment and recovery”
- Requires employers to extend Oregon Family Leave Act to employees who serve as organ donors.

Action Items:

Review leave of absence policies to ensure compliance.

PREGNANCY AND LACTATION ACCOMMODATIONS NOTICE

Effective Date: January 1, 2020

Employers Impacted: Oregon employers with 6 or more employees

Expands employers' requirements to provide reasonable accommodations to employees and job applicants who have known limitations related to pregnancy, childbirth, including lactation, or pregnancy-related medical conditions. Under the statute, reasonable accommodation may include, but is not limited to:

- Acquisition or modification of equipment or devices;
- More frequent or longer break periods or periodic rest;
- Assistance with manual labor; or
- Modification of work schedules or assignments.

PREGNANCY AND LACTATION ACCOMMODATIONS NOTICE

In addition, the new law also expands protections against pregnancy-related discrimination by making it unlawful for an employer to:

- Deny employment opportunities to an applicant or employee if the denial is based on the need of the employer to make reasonable accommodation to the known limitations.
- Fail or refuse to make reasonable accommodation to the known limitations, unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the employer.
- Take an adverse employment action or in any manner discriminate or retaliate against an applicant or an employee, with respect to hire or tenure, or any other term or condition of employment, because the applicant or employee has inquired about, requested or used a reasonable accommodation.
- Require an applicant or an employee to accept a reasonable accommodation that is unnecessary for the applicant or the employee to perform the essential duties of the job or to accept a reasonable accommodation if the applicant or employee does not have a known limitation.
- Require an employee to take family leave or any other leave, if the employer can make reasonable accommodation to the known limitations.

PREGNANCY AND LACTATION ACCOMMODATIONS NOTICE

Finally, employers will be required to post a notice that informs employees of the new employment protections which are described on the new Oregon Workplace Accommodations Notice. In addition, employers are required to provide a written notification of the Employer Accommodation for Pregnancy Act to

- All new hires at the time of hire (starting on January 1, 2020);
- Within 180 days of the Act's effective date (i.e., by June 29, 2020) to all existing employees; and
- Within 10 days to an employee who has informed her employer of a pregnancy.

Action Items:

- Review current pregnancy related policies to ensure compliance
- Train managers regarding the new prohibitions regarding pregnancy related discrimination
- Post required notice from the Oregon Bureau of Labor and Industries in a “conspicuous and accessible” location on the premises where employees work;
- Provide written notification by January 29, 2020 and update new hire process to include that notice is given to all new hires effective January 1, 2020.

Philadelphia Fair Workweek Ordinance

Effective Date: April 1, 2020 (postponed from January 1, 2020)

Employers Impacted: Covered employers defined as, “A Retail Establishment, a Hospitality Establishment or a Food Services Establishment” employing 250 or more employees (regardless of where they work), and has 30 or more locations worldwide.

The ordinance requires covered employers to:

- give existing employees the right of first refusal to work additional hours before hiring new employees;
- post and provide advance written notice of work schedules;
- provide predictability pay for any departures from the posted schedules; and
- permit a rest period of nine hours between shifts.

Action Items:

- These are brief summaries of the requirements, there are a lot of details and nuances to each of these four bullet points, so we encourage you to fully understand all of the requirements if you are an employer.
- Review and revise scheduling policies to ensure compliance
- Train all managers and HR Personnel on the ordinance

Rhode Island Updates

Rhode Island Non-Compete Law

Effective Date: January 15, 2020

Employers Impacted: All employers with covered employees in Rhode Island

The law makes noncompete agreements unenforceable towards

- Any employee who is classified as nonexempt under the Fair Labor Standards Act;
- Undergraduate or graduate students who participate in an internship or otherwise enter into a short-term employment relationship with an employer—whether paid or unpaid—while enrolled in an “educational institution;
- Employees aged 18 and under; and
- Low-wage employees.

The law does not prohibit agreements preventing the sharing of proprietary information.

Action Items:

- Review and revise agreements to ensure compliance.
- Employers might also consider alternative protections to noncompete agreements, including bolstering confidentiality and nonsolicitation agreements for employees with access to sensitive and/or confidential information.

Washington Updates

PAID FAMILY MEDICAL LEAVE

Effective Date: January 1, 2019; Employees may access paid family benefits effective January 1, 2020.

Beginning January 1, 2019, employers may **collect employee** contributions to fund paid family medical leave benefits.

Beginning January 1, 2020, employees may **access paid** family medical leave benefits.

Employees may take paid family medical leave for the following qualifying reasons:

- Medical leave, for the employee's own serious health condition; and
- Family leave, for: A family member's serious health condition; Bonding with a newborn or newly placed child; and A qualifying exigency related to a family member being on active military duty.
- The maximum duration of leave an employee may take during a 52-consecutive-calendar-week period ranges from 12 to 18 weeks, depending on the reason for taking leave.

Action Items:

- Review and revise policy to ensure compliance.
- Train HR and supervisory staff on the new requirements.

Washington Updates

NONCOMPETE LAW TAKES EFFECT

Effective Date: January 1, 2020

A noncompetition covenant in any type of employment (or work agreement) will be unenforceable against:

- Employees who earn less than \$100,000 per year; and
- Independent contractors whose earnings from the company are less than \$250,000 per year.
- These amounts can be adjusted on an annual basis at the rate of inflation.

Assuming the above financial thresholds are met, “noncompetition covenants” are unenforceable for “highly paid employees” unless:

- The employer discloses the terms of the covenant in writing to the prospective employee no later than the time of the acceptance of the offer of employment and, if the agreement becomes enforceable only at a later date due to changes in the employee's compensation, the employer specifically discloses that the agreement may be enforceable against the employee in the future; or
- If the covenant is entered into after the commencement of employment, unless the employer provides independent consideration for the covenant.

Finally, a “noncompetition covenant” with a duration of over 18 months following termination is presumed unreasonable and unenforceable.

The new law also applies to non-compete agreements executed before January 1, 2020, if the employer decides to attempt to enforce the noncompete provisions after January 1, 2020.

Washington Updates

NONCOMPETE LAW TAKES EFFECT

Moonlighting Policies:

The new law places restrictions on moonlighting policies. Employers are prohibited from enforcing a moonlighting policy against an employee who earns less than two times the state minimum wage. This restriction does not apply where the specific services to be offered by the employee:

- Raises issues of safety for the employee, coworkers, or the public, or
- Interferes with the reasonable and normal scheduling expectations of the employer.

Action Items:

- Review noncompete covenants to ensure compliance with new requirements.
- Review moonlighting policies and update them to comply with the salary threshold.