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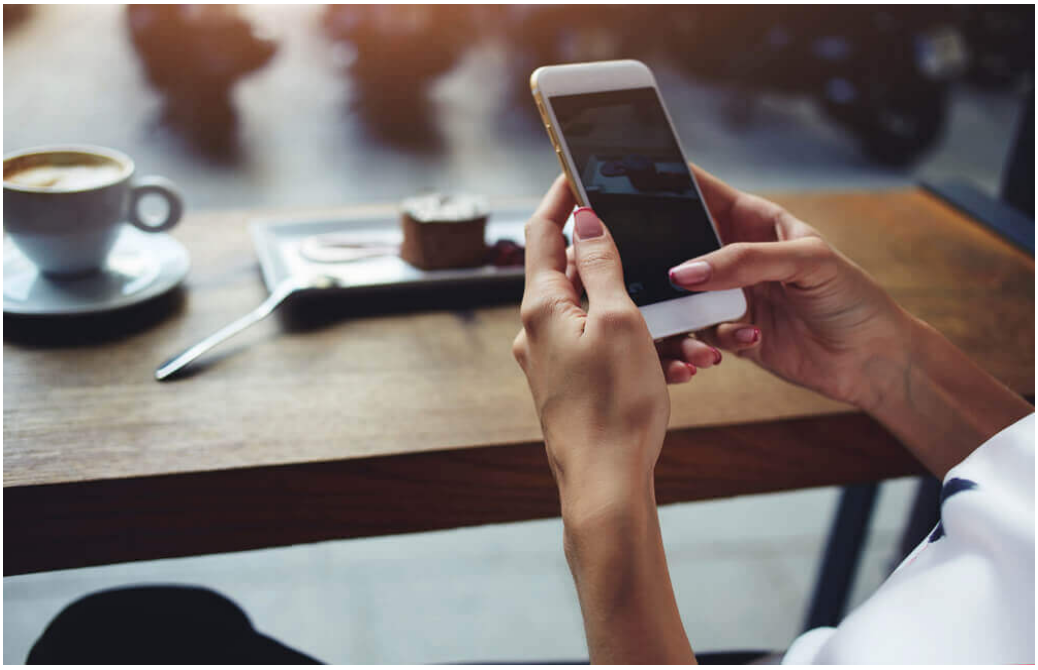
HRK Monthly Roundup: HR, Benefits, and Payroll News



California

- Beginning January 1, 2020, California expanded the definition of racial discrimination. The CROWN Act expands the definition of racial discrimination to include traits or characteristics that are "historically associated with race," to include natural hair texture and "protective hairstyles." Afros are already protected by federal courts under Title VII of the Civil Rights Act, but this new California law also protects all-natural hairstyles such as braids, dreadlocks, and twists. Therefore, discrimination that targets a specific hairstyle associated with race will be categorized as racial discrimination.

Illinois

- Illinois has passed a new law that will bar employers from asking job applicants and current employees about their prior salary or wage history. Beginning September 29, 2019, Illinois employers cannot:
    - Use salary or wage history to screen applicants and require that their pay history meet a certain threshold;

- Request prior salary or wage history from an applicant or employee as a condition of employment;
- Request prior salary or wage history from an applicant's current or previous employer (unless their information is public information under the law); or
- Use salary or wage history to determine whether to hire an applicant for a position or determine their pay range for the position or in the future.

The law clarifies that an employer can provide an applicant with wages or salary currently offered and discuss what an applicant's salary expectations are for the role.

- Effective January 1, 2020, Illinois employers will need to notify job applicants that artificial intelligence (AI) may be used when analyzing an applicant's video interview. The new Artificial Intelligence Video Interview Act applies to any employer who may ask applicants to record video interviews for positions and use an AI analysis to consider an applicant for the position. Also, the new law requires employers to explain how the AI works and what characteristics it uses to evaluate candidates.

  Additionally, employers need an applicant's consent to be evaluated by the AI process. Employers will be permitted to share the videos only with persons whose expertise or technology is needed to evaluate the applicant.

  Finally, employers must delete any recorded interviews and any generated backup copies within 30 days of receiving a request from the applicant to destroy the recording. Employers must instruct any other person who has received copies of the video in question to delete the video as requested by the applicant.

- On July 24, 2019, Chicago's City Council voted to pass the Fair Workweek Ordinance, which will require large employers to provide employees with at least a 10-day advance notice before any new work schedule begins.

  A covered employer includes an employer with 100 or more employees (or 250 or more employees for nonprofit organizations), with at least 50 covered employees primarily engaged in business in a covered industry. A covered employee would include those who are physically present in the City of Chicago for most of their work time, perform their work for a covered industry, and earn $50,000 per year or less for salaried employees or $26 per hour or less for hourly employees. The covered industries in which employees would perform their work would include janitorial and maintenance workers, security services, healthcare, hotel workers, manufacturing businesses, retail workers, warehouse services, and restaurants (with some limitations).

  Covered employers must provide "predictability pay," or one hour of additional pay to the employee for an unscheduled change to their scheduled work hours. Before offering hours or shifts to temporary or seasonal employees, a covered employer must first offer these hours to its covered employees who are qualified to perform the work. However, covered employers are not required to offer hours or shifts to a covered employee who would be paid at a premium rate, or overtime. If a covered employee picks up a shift that would begin less than 10 hours after the end of their last shift, they must be paid at least 1.25 times their regular rate of pay.

Any collective bargaining agreements in place before July 1, 2020 are exempt from this new ordinance, which is expected to be signed by Mayor Lori Lightfoot and take effect on July 1, 2020. Once the ordinance is signed into law, a posting will be made available that covered employers will be required to post to notify employees of their rights. The ordinance also prohibits retaliation and provides for civil fines, damages, costs, and fees for any violation. Covered employers must also maintain records necessary to comply with this new ordinance, for three years, or the duration of any claim, civil action, or investigation, whichever is longer. The Department of Business Affairs and Consumer Protection in Chicago will issue further guidance on or after July 1, 2020.

Maine

- Effective September 19, 2019, veterans employed in the State of Maine may take a leave of absence to attend to scheduled appointments at medical facilities operated by the US Department of Veterans Affairs. The term "veterans" includes those who have served on active duty in the US Armed Forces, National Guard, or Reserves, and were discharged or released with honorable discharge. Under the new law, employees must give notice as soon as reasonably possible, and the leave is only applicable to services provided at a US Department of Veterans Affairs medical facility. If the employer provides paid leave and the employee has paid time available, the paid leave must be provided to the employee. If all paid time is exhausted or the employer does not provide paid leave, the time may be provided as unpaid.

Minnesota

- Minnesota's Wage Theft Law aims to ensure employees are paid the wages they have earned, and that deductions are clearly outlined for employees to see and be able to question. Employers must provide all new employees with a written notice setting forth specific information regarding the employee's employment status and terms of employment. The notice must clearly communicate rate of pay, pay cycle, pay period, and pay date along with employment status (full time, part time, exempt, nonexempt). The notice must also include:

    - Rate, or rates of pay and the basis of such (shift, day, piece, commission etc.)
    - Gross and net wage
    - Number of days in the pay period and the pay date
    - List of deductions (taxes, benefits) from the employee's pay
    - Paid vacation, sick time and other paid time off accruals
    - Employer's legal and operating name (if different)
    - Physical address of employer and mailing address (if different)
    - Employer's telephone number

The amended law took effect on August 1, 2019. Noncompliance brings significant penalties, including fines of up to $100,000 and imprisonment up to 20 years. Minnesota employers need to provide transparent communication about pay to ensure compliance with the newly amended law.

- Effective August 8, 2019, the Minneapolis City Council unanimously voted to pass the Wage Theft Prevention Ordinance which goes into effect on January 1, 2020. The ordinance will require the posting of a mandatory employer's notice (not yet published by the city), and adherence to the Minnesota Wage Theft Law (pre-hire and current employee notices, earning statements, and record keeping). The Wage Theft Prevention Ordinance serves to ensure that Minneapolis employees are paid wages and overtime for hours worked at a rate that the employee is aware of before they begin work. It also guarantees employees the right to question wages paid shown on their wage statements provided with each pay period. Employers may not retaliate against an employee for exercising their rights under this new ordinance. Employers found to have violated the ordinance face a range of penalties based on severity of action, whether it is a repeated offense, and size of the organization. Penalties can also include the requirement to reinstate if termination took place. Minneapolis employers should ensure they are in compliance with both the Minnesota Wage Theft Law and the Minneapolis Wage Theft Prevention Ordinance to avoid costly penalty and potential employee complaints.

Nevada

- Nevada has passed a new law, effective July 1, 2019, on employee misclassification, or the practice of improperly classifying employees as independent contractors to avoid any legal obligation under state labor, employment, and tax laws. The new law creates a state Task Force that will communicate information and make recommendations to employers. The state has provided specific guidance on worker classification for the construction industry. Under this new law, workers are presumed to be employees unless all three (3) of the following can be proved:

    - *Freedom of Control.* The individual is "free from control and direction in connection with the performance of the service";
    - *Service Outside the Usual Course of the Employer's Business.* The service the individual performs must be "outside the usual course of business for which the service is performed"; and
    - *Independent Trade, Occupation, Profession, or Business.* The individual performs a completely separate service to anyone wishing to use their services in a separate independent profession.

  The new law has a required update to the Workers' Compensation Poster that all employers must post in a conspicuous location. Administrative penalties for noncompliance have also been enacted under this new law for any misclassification under the wage and hour laws. An employer may be fined if they are found to have required a person to be classified as a contractor, coerced them to do so, misrepresented the position as a contractor, intentionally misclassified, or failed to properly classify their employees. Fines include $2,500 for a first offense and $5000 for a second or subsequent offenses, in addition to lost wages, benefits, or other economic damages.

- Effective January 1, 2020, Nevada will prohibit employers from refusing to hire applicants solely based on a drug test that tests positive for marijuana. However, there are a few exceptions to this rule that would allow an employer to not hire a candidate. These include:

    1) Candidates are applying for a firefighting or emergency medical technician position;
    2) The state or federal law requires employees to submit to drug tests in order to have the ability to operate a motor vehicle;
    3) The employer states that the use of marijuana while in the specific position would negatively affect the safety of others; or
    4) The rule is not consistent with the federal law, requirements of a federal grant, or an employment contract or collective bargaining agreement.

  The law also states that if employers are requiring employees to take a drug test within their first 30 days of employment, the employee must be given the right to pay for an additional drug test to argue the results from their first test.

- Nevada recently passed a law, effective July 1, 2019, that will raise the minimum wage by $.75 each year until July 1, 2024. The following chart shows the increased amounts each year, with the rate varying based on whether or not an employer offers health benefits:

Effective Date	Rate for Employers Offering Health Benefits	Rate for Employers NOT Offering Health Benefits
July 1, 2019	$7.25	$8.25
July 1, 2020	$8.00	$9.00
July 1, 2021	$8.75	$9.75
July 1, 2022	$9.50	$10.50
July 1, 2023	$10.25	$11.25
July 1, 2024	$11.00	$12.00

- Nevada adopted an Employee Paid Leave Law that takes effect on January 1, 2020. Private employers with 50 or more employees will be required to provide paid leave to all employees, except for temporary, seasonal, and on-call workers. Employees can use this paid leave for any reason and will be compensated at the wage rate they are receiving at the time they use their paid leave. Employers can limit the paid leave to up to 40 hours during the year. However, employers may allow employees to carry over up to 40 hours of unused paid leave to the following year. The new law also requires employers to display a workplace poster that explains this new law to employees and to maintain a record of all accrued and used paid leave for one year.
- Nevada passed new regulations concerning employees calling in sick beginning May 15, 2019. Employers cannot require an employee to be physically present at their workplace in order to notify

the employer of an illness or injury requiring the use of sick leave. Employees are able to notify the employer via phone, email, or text as approved by the employer's policies. Employers who violate these regulations are subject to penalties of up to $5,000 for each violation. Additionally, investigative costs and attorney's fees may be recovered by the Nevada Labor Commissioner.

New Jersey

- On July 2, 2019, New Jersey amended its medical marijuana law to protect employees from adverse employment actions if they use cannabis for a qualifying medical condition. If a job applicant or employee tests positive for marijuana, employers must now notify the individual in writing and give them an opportunity to provide a legitimate medical reason for the test result. The individual also has the right to request a retest of the original sample at their own expense. Employees and job applicants have three (3) working days after receiving the written notice to exercise their rights under the new law. The Act does not require employers to accommodate medical marijuana use in the workplace or reimburse employees for its use. Accordingly, the Act allows employers to take adverse employment action for the possession or use of intoxicating substances during work hours or on workplace premises outside of work hours. Also, employers are not required to take any action that would violate federal law or cause the employer to lose a license-related benefit, funding, or contract under federal law.
- Effective August 6, 2019, New Jersey enacted what may be one of the country's toughest Wage Theft Laws on the books. The law requires employers to provide a clear understanding of wages earned and paid to current employees and new hires. In addition, it gives employees the opportunity to raise questions or concerns over their pay or make a formal complaint with the Commissioner of Labor without the fear of retaliation. New Jersey employers will want to be conscious of claims related to unpaid wages and unpaid overtime as the statute of limitations increases from two to six years and the damages that can be collected can reach 200% of wages owed. To avoid the damages, employers would need to show:

    - The act was accidental;
    - They believed their actions were not a violation of law;
    - They acknowledged they violated the law once it was brought to their attention; and
    - They paid any amounts due within 30 days of learning of the error.

    Additional penalties may be imposed for employers who can't produce proper records of hours worked and wages paid in reference to allegations brought by an employee. The law provides additional protection to those who bring a claim and face subsequent retaliatory actions by the employer. Actions included could be discharging or discriminating against the employee who has made a complaint, insinuating an action, or informing another employee about their concern. The law goes so far as to call attention to what it refers to as a crime of a "Pattern of Wage Nonpayment," which can carry criminal and civil charges including imprisonment. To avoid potential legal repercussion, employers should provide employees with a clear statement of wage and hours and encourage employees to come forward with any questions or concerns.

New York

- New York State has passed a new law that will bar employers from asking job applicants and current employees about their prior salary or wage history. Beginning January 6, 2020, New York employers cannot:
    - Use salary or wage history of an applicant to determine their pay range for the position
    - Use salary or wage history to determine whether to hire an applicant for a position
    - Request prior salary or wage history from an applicant or employee as a condition of employment
    - Request prior salary or wage history from an applicant's current or previous employer
    - Retaliate against or refuse to interview, hire, promote, or employ someone based on salary or wage history or because they have filed a complaint with the NY Department of Labor against an employer

  The law clarifies that an employer can confirm an individual's salary or wage history only if a job offer for a specific amount of pay has been made to a candidate and the candidate voluntarily presents pay information to justify higher compensation.

- The State of New York's Assembly and Senate have passed a potentially groundbreaking Act (S2844B/A486B) that would allow current and former employees to obtain liens, or legal claims against property, on their employer's personal property based on an accusation of wage violations.

  Accusations of wage violations can be made under both federal and state labor laws including claims regarding minimum wage, overtime, hours worked, call-in pay, uniform pay, withholdings of tips, deductions from wages, and meal or tip credits. The definition of employer under these statutes is very broad and could allow employees to obtain liens against individuals including owners, managers, supervisors, or any other person or entity who exercises control over the employee's working conditions. These liens would be a legal claim or right against property in bankruptcy court and make it difficult for employers to sell or transfer ownership of real estate. Accordingly, the Act would allow employees to place a lien equal to the amount of the wage claim. A notice of a lien can be filed for up to three (3) years after the end of employment and allows a lien to remain on a property for the duration of the wage lawsuit. Concurrently, employers would have some recourse to purchase a bond to discharge the lien at any time. If the employer can prove that the employee willfully exaggerated the amount of the lien, then the lien would be discharged, and the employee would lose his or her right to file another lien against the employer based on the same claim. If this Act is signed by Governor Andrew Cuomo, then New York would join several states that permit such liens based on unproven wage violations.

Ohio

- Toledo, Ohio Mayor Wade Kapszukiewicz has signed a new ordinance that will bar employers with 15 or more employees within Toledo from inquiring about, screening, or relying upon a job applicant's salary or wage history. The ordinance refers to "applicant" in very broad terms to include anyone

who applies for a job in the city or whose application was received, regardless of whether or not they received an interview. Beginning July 4, 2020, covered Toledo employers cannot:

- Request prior salary or wage history from an applicant as a condition of employment;
- Use salary or wage history to screen applicants and require that their pay history meet a certain threshold;
- Request prior salary or wage history from an applicant's current or previous employer;
- Use salary or wage history to determine whether to hire an applicant for a position or determine their pay range for the position or in the future; and
- Retaliate against or refuse to interview, hire, or otherwise discredit an applicant based on salary or wage history.

The law goes on to clarify that the candidate can voluntarily present their pay information to an employer. An employer may also engage in a conversation with the candidate about what their pay requirements may be. This new ordinance does not apply to current employees who apply for a transfer or promotion or to former employees who are rehired within five years of the separation. Another exception is that employers may investigate salary history that is voluntarily provided by a candidate via a background check but may not use this information to determine whether to offer a job or determine compensation to the applicant. If a candidate makes a reasonable request, employers must provide them with a "pay scale" for the position, but only after a conditional job offer has been extended. The term "pay scale" is yet to be defined by the ordinance, but it may apply to a wage or salary range for the position.

Oregon

- On June 11, 2019, Oregon enacted a new law that will require employers to adopt a written policy to prevent discrimination and sexual assault. Under this law, employers are prohibited from requiring employees or job applicants to sign nondisclosure or non-disparagement agreements (NDAs) that prevent discussing or disclosing conduct that would be considered discrimination, harassment, or sexual assault. This new law will take effect on October 1, 2020. The law also requires the Oregon Bureau of Labor and Industries (BOLI) to draft model policies and procedures that employers can use to satisfy this requirement. Employers should monitor the BOLI website for a notification once these sample materials are published. Finally, the law also provides exemptions for employees in certain situations, who may enter into limited nondisclosure agreements if they have met these specific conditions:

    1. If an employer determines, in good faith, that an employee has engaged in employment discrimination or sexual assault.
    2. If an employee who has experienced employment discrimination requests that an NDA is a part of their separation or severance agreement, the employee has at least seven days to revoke the agreement. The agreement does not become effective until after the seven-day revocation period has expired.

- Oregon recently amended its Family Leave law to include donating a body part, organ, or tissue as a "serious health condition" that is covered by the law. This amendment becomes effective January 1, 2020 and means eligible employees will be able to take a leave of absence under the law for purposes of donation, including preoperative or diagnostic services, surgery, post-operative treatment, and recovery.
- Beginning January 1, 2020, Oregon employers with six (6) or more employees must provide reasonable accommodations to an employee for pregnancy, childbirth, or related medical conditions and lactation. Reasonable accommodations include providing more frequent or longer breaks, assistance with manual labor, modifying work schedules, modifying work equipment, and more. The law prohibits employers from denying job opportunities to, taking retaliatory actions against, or discriminating against applicants or employees for utilizing these accommodations. The law also prohibits employers from requiring an employee to take a leave of absence if the employer is able to make a reasonable accommodation. The only exception under the law is if these accommodations "impose an undue hardship" on the business. An "undue hardship," which can be difficult for an employer to prove, would occur if providing the accommodation required a significant expense or difficulty to the employer, based on their availability of resources, size, operations, and more.

  When the law becomes effective on January 1, 2020, employers are required to display a poster about employee rights under the new law, in an accessible location for all employees to view. Employers must also provide written notice of this new law to new employees hired after January 1, 2020, at the time of hire, and to existing employees by June 29, 2020. In addition, any employee who notifies their employer of their pregnancy must receive written notice of the law within 10 days of notifying them.

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