
# HR, Benefits, and Payroll Compliance Monthly Roundup: February 2021

**New Federal Law Establishes Antirust Whistleblower Protections**

- The US has enacted the Criminal Antitrust Anti-Retaliation Act of 2019. Under the law, employers cannot retaliate against an employee for providing information relating to or assisting the federal government with (1) any violation of antitrust laws or (2) any violation of another criminal law committed in conjunction with a violation of antitrust laws. The law was enacted on December 23, 2020 and took effect immediately.

**Federal Government Passes Additional COVID-19 Relief, Including Tax Cuts for Voluntary FFCRA Compliance**

- A final package of federal COVID-19 relief includes several provisions:
  - Tax Cuts for Voluntary FFCRA Compliance: The bill does not extend FFCRA leave requirements past December, but it does allow employers to *voluntarily* provide Emergency Paid

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| | Sick Leave or Emergency Paid Family and Medical Leave under the FFCRA and to take tax credits associated with the leave through March 31, 2021. Employers should remain mindful of other state and local paid leave requirements as well.<br>o Direct Payments to Individuals: The bill provides an additional round of direct payments of $600 for individuals making up to $75,000 per year and $1,200 for couples making up to $150,000 per year, as well as a $600 payment for each child dependent.<br>o Unemployment Insurance (UI): The bill provides $300/week in increased federal benefits. Under the bill, UI recipients receive an additional $300 per week through March 14, 2021. The bill also extends both the Pandemic Unemployment Assistance (PUA) program and the Pandemic Emergency Unemployment Compensation (PEUC) program and increases the maximum number of weeks an individual may claim benefits through a combination of state unemployment and the PEUC program, or through the PUA program, to 50 weeks. Additionally, the bill provides an extra benefit of $100 per week for certain workers who have both wage and self-employment income but whose base UI benefit calculation does not account for the self-employment income.<br>o Paycheck Protection Program (PPP) Extension & Changes: The bill provides $284.5 billion for another round of PPP loans, defining eligibility for PPP second-draw loans as a small business with no more than 300 employees and can demonstrate at least a 25% reduction between comparable quarters in 2019 and 2020. The maximum amount for a second-draw PPP loan is $2 million, and borrowers must have fully spent the loan proceeds from their first PPP loan before they can receive a second. The bill also changes the existing PPP and allows for full deductibility of business expenses on forgiven PPP loans for both first- and second-draw loans and expands PPP allowable expenses.<br>o Tax Provisions: The legislation expands the employee retention credit intended to prevent layoffs. It also includes a two-year tax break for businesses and rolls over a variety |

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| | of temporary tax breaks known as "extenders," some for multiple years. Finally, it extends a payroll tax subsidy for employers offering workers paid sick leave and boosts the Earned Income Tax Credit.<br>○ Federal Contractors: The bill includes a three-month extension of a program that allows federal contractors to keep employees on the payroll if they are unable to work due to the pandemic. The legislation extends this provision through March 31, 2021. It allows the federal government to reimburse federal contractors that grant paid or sick leave to employees who cannot access federal facilities during the pandemic and are unable to telework.<br><br>On December 27, 2020, President Trump signed an appropriations bill into law that does not extend the paid sick leave and expanded family and medical leave mandates created by the Families First Coronavirus Response Act (FFCRA). Therefore, employers will no longer be required to provide paid leave under the FFCRA after December 31, 2020.<br><br>However, under the law, employers that *voluntarily* provide paid FFCRA leave will continue to receive full reimbursement from the federal government through tax credits and/or refunds through March 31, 2021.<br><br>***Taking Advantage of Tax Credit Extension:***<br>Employers wishing to take advantage of this tax credit extension should be aware that the relief package does not change:<br>• Qualifying reasons for which employees may take FFCRA leave<br>• FFCRA documentation requirements for reimbursement<br>• Caps on the amount of pay employees are entitled to receive<br>• The amount of leave that employees are entitled to take under the FFCRA<br>○ Full-time employees are entitled to a one-time allotment of 80 hours of paid sick leave and 12 weeks of expanded family medical leave.<br>○ If an employee has already used 80 hours of Emergency Paid Sick Leave (EPSL) in 2020, they will not be able to take any additional hours in 2021 and the employer will not be able to claim the tax credit for those hours.<br>○ If an employee only used 40 hours of EPSL, the employer may voluntarily choose to extend the employee's deadline to use the remaining 40 hours from December 31, 2020, until March 31, 2021, while still applying for the payroll tax credits. |

***IRS Updates FAQs on FFCRA Tax Credits:***
The IRS has added or updated more than 80 answers to questions in its series of FAQs on "COVID-19-Related Tax Credits for Required Paid Leave Provided by Small and Midsize Businesses."

Tax credits provide employers with funds to cover costs of the employee leave required by law. Specifically, the tax credits are available for:

- Qualified sick leave wages
- Qualified family leave wages
- Qualified health plan expenses allocable to employee leave wages
- The employer's portion of Medicare tax related to the qualified wages

For a full summary of the COVID-19 Relief Law, see our recent e-Alert: COVID-19 Relief Law Signed: What You Need to Know.

**DOL Issues Final Rule on Handling Tips and Eliminating the 80/20 Rule**

- On December 22, 2020, the Department of Labor announced a final rule revising its tipped employee regulations to address amendments made to section 3(m) of the Fair Labor Standards Act (FLSA) by the Consolidated Appropriations Act of 2018 (CAA). The CAA amendment prohibits employers from keeping tips received by their employees, regardless of whether the employer takes a tip credit. Additionally, it prohibits employers from allowing managers or supervisors to keep any portion of employees' tips. It also amends its regulations to state that an employer that collects tips to facilitate a mandatory tip pool must fully redistribute the tips no less often than when it pays wages. Further, the final rule codifies the Department's guidance regarding the tip credit — how that credit applies to employees who perform tipped and nontipped duties and which nontipped duties are related to a tip-producing occupation.
- The CAA did not affect long-standing regulations that apply to employers that take a tip credit under the FLSA. For example, employers that claim a tip credit must ensure that a mandatory "traditional" tip pool includes only workers who customarily and regularly receive tips. This means, for example, that employees such as cooks or dishwashers cannot be part of such a tip pool. However, the CAA removed the regulatory restrictions on an employer's ability to require tip pooling when it does not take a tip credit; those employers may now implement mandatory, "nontraditional" tip pools, which may include employees such as cooks and dishwashers.

**DOL Confirms It Will Comply with New Court Order on Wage Rates**
The US Department of Labor has announced that it plans to comply with a new US district court order ruling that the agency violated the Administrative Procedure Act by failing to engage in the proper rule-making process for a new interim final rule (IFR) that implemented significant and immediate increases in prevailing wage rates for skilled foreign workers. The court order, issued December 1, 2020, is effective nationwide and sets aside the IFR in its entirety, which had raised wage rates significantly (tripling minimum wage rates for certain locations and occupations). In response, the DOL confirmed it will comply with the court order and will issue revised wage rates to replace the wage source data improperly implemented under the IFR.

**EEOC Issues Guidance on COVID-19 Vaccination Policies**
The US Equal Employment Opportunity Commission (EEOC) issued guidance to employers considering COVID-19 vaccination programs. In particular the EEOC has outlined the following with regards to the Americans with Disabilities Act (ADA):

- The EEOC guidance is clear that the administration of a vaccine or an employer's requirement of proof of the vaccine, themselves, do not directly implicate the ADA, subject to very specific caveats.
- The ADA would still require employers to provide reasonable accommodation to any employee whose disability prevents them from being vaccinated, unless doing so presents an "undue hardship."
- Under Title VII, an employer is similarly required to accommodate employees who have a sincere religious belief that prevents them from being vaccinated, unless doing so creates an "undue hardship." It is worth noting that the "undue hardship" standard under Title VII is less stringent than the ADA threshold.

See HRK's full summary of EEOC Guidance on COVID-19 Vaccinations here.

**DOL Issues Opinion Letter on Telework and Compensability of Travel Time**
Recently, the Department of Labor (DOL) Issued an opinion letter to clarify the compensability of travel time for an employee who chooses to telework for a partial day and work at the office for a partial day, with time in between to perform personal tasks. The DOL concluded that the travel time would not be compensable because the employee was either not on duty or was engaging in a normal commute while traveling.

**DOL Opens the Door for Staffing Firms to Exempt Workers from Overtime as "Retail or Service Establishments"**
Recently, an opinion letter from the DOL's Wage and Hour Division (WHD)

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| | clarified that staffing firms can qualify as "retail or service establishments" under the Fair Labor Standards Act (FLSA) section 7(i). The section 7(i) exemption only applies to employees (1) who work at a retail or service establishment; (2) whose regular rate of pay exceeds one and one-half times the applicable minimum wage; and (3) whose earnings in a representative period are composed of more than 50% commissions. The WHD now makes it clear that staffing firms can be "retail or service establishments" and have the overtime exemption apply to its employees, provided the other elements are satisfied.<br><br>As this opinion letter was issued on the eve of President Biden's inauguration, the guidance could be withdrawn. Staffing firms should consult with legal counsel to determine the extent to which the exemption and state equivalents could apply to their workers.<br><br>**DOL Issues Opinion Letter on Applicability of the FLSA's Creative Professional Exemption to Journalists**<br>On January 19, 2021, the DOL released an opinion letter that examines the industry conditions that may make journalists exempt from overtime wages under the creative professionals exemption. The DOL's Wage and Hour Division (WHD) concluded that the creative professional test applies to all journalists, regardless of the size of the employer.<br><br>To satisfy the creative professional exemption, an employee must (a) be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than $684 per week; and (b) have the primary duty of performing work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor. Musicians, composers, conductors, and soloists are examples of creative professionals. Journalists will not satisfy the requirement if they simply collect, organize, and record information that is routine in nature or already public information, or if they do not contribute a unique interpretation or analysis to a news product.<br><br>Media employers should review their journalist positions as well as job descriptions and ensure they are properly classifying employees based on the conclusions of the opinion letter.<br>**President Biden Revokes Trump Executive Order on Diversity and Inclusion, Adopts Policies "Advancing Racial Equity" and Extending LGBT Protections**<br>On January 25, 2021, President Biden formally rescinded Executive Order 13950, which sought to limit federal contractors and federal grant recipients from discussing "divisive" topics of diversity and inclusion (D&I) in workplace training. The executive order was controversial and formally overturned by the new administration.<br><br>In its place, President Biden signed Executive Order 13985, which stated |

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| | that "the Federal Government should pursue a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality."<br><br>The president also signed an order, "Preventing and Combatting Discrimination on the Basis of Gender Identity or Sexual Orientation," which reinforces the prohibition of discrimination on the basis of gender identity or sexual orientation. The executive order further directs the leadership of all federal agencies to ensure they are consistent in their protection of LGBT status. |
|  | **Oakland Expands and Extends Emergency Paid Sick Leave**<br>Effective immediately, Oakland, California's city council enacted an emergency ordinance to extend and modify its existing emergency paid sick leave (EPSL) ordinance. The extension is effective retroactively from December 31, 2020, through the end of the city's COVID-19 Emergency Declaration unless the city council further extends the law.<br>• The extension does not require employers to provide a new leave bank, but rather allows employees to use any unused portion of the up to 80 hours of EPSL they received in 2020.<br>• The original ordinance required employers to provide EPSL to certain employees and used a formula for EPSL that must be provided depending on whether an employee either: 1) works at least 40 hours per week or is classified by their employer as full-time; or 2) works fewer than 40 hours per week.<br>• The extended ordinance adds a third calculation for employees who performed labor or services for remuneration for fewer than 14 days over the period of January 1 through January 21, 2021: an amount equal to the number of hours the employee worked in Oakland over the 14 days.<br>• The amendment now clarifies that employers can offset their Oakland EPSL obligation by the number of EPSL hours they provided an employee under the Families First Coronavirus Response Act (FFCRA) and/or California's two statewide supplemental paid sick leave laws.<br>• Covered employers will need to begin examining 2021 leave requests for covered absences by employees to ensure EPSL banks were not exhausted in 2020.<br><br>**LA County Expands and Extends COVID-Related Supplemental Paid Sick Leave**<br>Retroactive to January 1, 2021, the Los Angeles County Board of Supervisors enacted an ordinance extending and expanding the supplemental paid sick leave (SPSL) ordinance in the county's unincorporated areas (incorporated areas include the cities of Long |

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| | Beach and LA, which have their own laws). This law will remain in effect until two weeks after the county's COVID-19 local emergency ends.<br><br>The original ordinance applied to employers with 500 or more US employees in the county's unincorporated regions. For employers with 499 or fewer US employees that were not initially covered, the requirements will retroactively be applied to January 1, 2021.<br><br>Although the county extended the duration and scope of the regulation, it does not require employers to provide a new bank of SPSL. The amended ordinance provides that employees who used all available SPSL or FFCRA emergency paid sick leave in 2020 are ineligible for additional SPSL in 2021. The ordinance also allows employers to offset the amount of SPSL they must provide employees by the amount of leave they provided them under the FFCRA.<br><br>**Sonoma County Extends Supplemental Paid Sick Leave Ordinance**<br><br>Posted on January 29, 2021, the Sonoma County Board of Supervisors enacted an ordinance that immediately extends its Supplemental Paid Sick Leave (SPSL) through June 30, 2021. Unlike LA County, the extension is not retroactive. Therefore, employees needing leave are not covered between the previous expiration date of December 31, 2020, and the effective date.<br><br>**San Jose Revises Emergency Paid Sick Leave**<br>On January 5, 2021, San Jose enacted a revised emergency paid sick leave ordinance that revises the COVID-19 paid sick leave ordinance originally enacted in April 2020. As this was an urgency ordinance, the law took effect immediately, retroactive to January 1, 2021, and will remain in effect through June 30, 2021.<br><br>The revised ordinance applies to all employers, and covered employees are eligible if they work at least two hours in San Jose.<br><br>Employees can use leave when they are unable to work because they:<br>• Are subject to a federal, state, or local quarantine or isolation order related to COVID-19, or are caring for an individual subject to an order;<br>• Have been advised by a health care provider to self-quarantine due to concerns related to COVID-19, or are caring for an individual so advised; or<br>• Are experiencing symptoms of COVID-19 and seeking a medical diagnosis.<br><br>Additionally, employees can use leave if their child's school or place of care is closed, or childcare provider is unavailable, due to COVID-19 |

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| | precautions. The revised ordinance also includes a telework exception that if an employee can work from home, they do not receive leave.<br><br>Full-time employees continue to receive 80 hours of leave, and part-time and variable-hour employees will receive a prorated amount as determined by the ordinance's provided calculation.<br><br>For additional information and FAQ's, employers should monitor the San Jose Office of Equity Assurance's emergency paid sick leave webpage.<br><br>**CA Department of Health Shortens Quarantine**<br>The California Department of Public Health (CDPH) has issued guidance that shortens the quarantine period from 14 days to 10 days for asymptomatic "close contacts" of an infected individual (those who were within six feet of an infected individual for a total of 15 minutes or more over a 24-hour period) with or without testing.<br><br>During times of critical staffing shortages, the new guidance allows essential critical infrastructure workers to return to work after day seven from the date of their last exposure if they received a negative PCR test result for COVID-19 from a specimen collected after day five:<br>• Exposed asymptomatic health care workers and<br>• Exposed emergency response and social service workers who work with clients in the child welfare system or in assisted facilities.<br><br>These shortened quarantine periods are intended to align with the Centers for Disease Control and Prevention's guidance issued on December 2, 2020, which shortens the quarantine period based on burdens and risks of noncompliance associated with the longer 14-day quarantine period the CDC had previously recommended. The shortened quarantine periods will apply, unless there is a local health order that prescribes a longer exclusion period.<br><br>**LA Board Permits Public Health Councils**<br>The Los Angeles County Board of Supervisors has permitted a program allowing third-party organizations in the food, apparel manufacturing, warehousing and storage, and restaurant sectors to create "Public Health Councils" effective immediately. The purpose of these councils is to educate workers on health orders and help workers report health and safety violations. In November, the Board adopted the Ordinance 2020-0065U regarding anti-retaliation. This ordinance states that an employer may not take any adverse action against an employee for reporting to the county, "non-County agencies or entities, the Worker's Employer, other Workers, or Public Health Councils" any information about an employer's or another worker's noncompliance with any County health |

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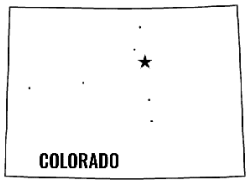
| | officer orders or provision of Title 11 (Health and Safety) of the Los Angeles County Code. Employers may not retaliate against an employee for "forming or belonging to a Public Health Council." This ordinance does allow an employee to file a suit for any retaliations. Prior to filing the suit, the claimant must provide the employer with written notice of any alleged violations, along with a statement of facts to support the allegations. The employer then has 15 days to cure any violation before the employee can bring a lawsuit. |
|  | **Colorado enacts Healthy Families and Workplace Act**<br>In 2020, Colorado enacted the Healthy Families and Workplace Act (HFWA) which requires three types of paid sick leave:<br>• Up to 80 hours of COVID-19 emergency paid sick leave (CO-EPSL);<br>• Up to 48 hours of paid sick and safe time (PSST); and<br>• Supplemental public health emergency paid sick leave (PHEL) (up to a maximum of 80 hours) from the day a public health emergency (PHE) is declared until four weeks after the PHE ends. Employees can use PHEL for the following reasons:<br>1. Self-isolating or excluded from the workplace due to exposure, symptoms, or diagnosis of the communicable illness in the PHE;<br>2. Seeking a diagnosis, treatment, or care (including preventive care) of such an illness;<br>3. Unable to work due to a health condition that may increase susceptibility to or risk of such an illness; or<br>4. Caring for a child or other family member in category (1) – (3), or whose school or childcare is unavailable due to the PHE.<br><br>**Colorado Confirms All Colorado Employers Must Allow Public Health Emergency Leave on January 1, 2021**<br>On December 23, 2020, The Colorado Department of Labor and Employment (CDLE) issued guidance regarding whether employers must provide employees access to up to 80 hours of PHEL as of January 1, 2021, due to the COVID-19 public health emergency which was declared on March 11, 2020. The CDLE answered yes, and here's how it works:<br>• Employers can count any accrued but unused PSST hours employees have on the date the PHE is declared toward the supplemental amount of PHEL they must provide to employees. For example, employers that frontload 48 hours of PSST on January 1, 2021, will be required to supplement their employees' sick leave banks with up to an additional 32 hours of PHEL. In contrast, if an employer intended to have their employees accrue time for 2021, and the employee starts out the year with a zero balance of PSST, the employer will be required to supplement the employee's sick |

leave bank with up to 80 hours of PHEL, and the employee will continue to accrue PSST at a rate of one hour for every 30 hours worked, up to the 48-hour annual accrual cap.

- Employers need only provide the PHEL supplement once during the entirety of a PHE. Once employees exhaust their supplemental PHEL, the law does not entitle them to any additional leave for that same PHE. Consequently, if the COVID-19 PHE extends into 2022, and an employee had used their entire PHEL allotment during 2021, they would not be entitled to additional PHEL in 2022.
- The guidance also clarifies that employers cannot credit any CO-EPSL provided to employees during 2020 against their 2021 PHEL obligation. Meaning, even if an employee used 80 hours of CO-EPSL for their own quarantine in 2020, the PHEL obligation in 2021 is an entirely new supplement of available paid time.

Small employers may have believed themselves to be exempt from the PHEL provisions in 2021 prior to this new CDLE guidance, because under the HFWA, small employers — those with 15 or fewer employees — do not need to provide the 48 hours of PSST until 2022. Importantly, however, Interpretative Notice & Formal Opinion (INFO) #6C clarifies that all Colorado employers, regardless of size, must provide employees access to PHEL in 2021. Thus, even though small employers do not have to provide PSST hours to employees, they will be required to provide their employees with the required PHEL hours.

**Colorado Updates COMPS Order #36**

In 2020, the Colorado Division of Labor Standards and Statistics had issued Colorado Overtime and Minimum Pay Standards Order #36 (COMPS Order 36) that implemented changes in the wage and hour law. This order required employers to include a copy of the COMPS Order 36 in their handbook, manual, or written or posted policies distributed to employees. If employees are required to sign any handbook, manual, or policy, the employer must then require their employees to sign an acknowledgment of receipt of the COMPS Order 36.

The Colorado Division of Labor Standards and Statistics has replaced COMPS Order #36 with COMPS Order #37. The updated order incorporates new definitions of covered employees and employers for the purpose of the HWFA. The order also makes updates to the state's minimum wage rate and the following the salary threshold:

- Employees in highly technical computer-related occupations must now receive at least the lesser of $778.85 per week or $28.38 per hour in 2021.
- Field Staff of seasonal camps or seasonal outdoor education programs who primarily provide supervision or education of minors

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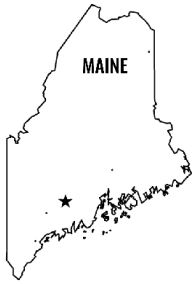
| | or adults are exempt if the employer pays $317.44 per week to adult employees ($231.20 for adults at a nonprofit) and $239.82 to minors ($153.58 for minors working for a nonprofit).<br>• This rule also details certain exemptions for drivers and driver helpers who are subject to the federal Motor Carrier Act.<br><br>Here is a link to the revised COMP Order #37 poster. |
|  | New Orleans has made an amendment to their antidiscrimination ordinance, where discrimination due to "protected cultural hairstyle" could be deemed discrimination based on race or national origin. "Protected cultural hairstyle" is any hairstyle or hair texture commonly associated with a particular race or national origin including locs, cornrows, twists, braids, Bantu knots, and any hairstyle in which hair is tightly coiled or tightly curled. |
|  | Effective January 1, 2021, Maine is the first state to require private employers to provide Earned Paid Leave to employees not just for sick time, but for any reason. This new rule implements the paid leave law by creating procedures for accruing paid leave, providing notice of the need to use the leave, and scheduling the leave. See HRK's e-Alert for a Summary of Provisions. |
|  | Montgomery County has made amendments to their ban-the-box legislation. Initially, this bill prohibited employers with 15 or more full-time employees in Montgomery County from conducting a criminal background check of a job applicant, or otherwise inquiring about the criminal or arrest history of an application, prior to the completion of a first interview. The amendment extends the scope by prohibiting background checks until after a conditional job offer has been extended. An employer is now defined as having one or more full-time employees in Montgomery County. |

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|  | Effective July 1, 2021, Mississippi voters have amended the legalized limit amounts of marijuana for individuals with a debilitating medical condition. Individuals who have been diagnosed with a debilitating medical condition and have been issued a physician certification may receive up to two-and-a-half ounces of medical marijuana during any one 14-day period from a medical marijuana treatment center. Employers are not required to provide reasonable accommodation for the use of medical marijuana or require any on-site use in any place of employment. Read more on what classifies as debilitating medical conditions. |
|  | Effective January 1, 2021, Montana voters have passed a new law enacting measures legalizing possession and use of marijuana. This law allows individuals above 21 years of age or older to possess, use, or cultivate marijuana, subject to possession limits.<br><br>**Employers and Private Premises:**<br>• Employers are not required to permit or accommodate conduct otherwise allowed under this law in any workplace or on employer property.<br>• Employers may discipline employees for violation of workplace drug policy or for working while intoxicated by marijuana.<br>• Employers may decline to hire an individual or choose to discharge, discipline, or take adverse action against an individual because the individual has violated the workplace drug policy.<br>• Businesses may choose to restrict or regulate the consumption, cultivation, distribution, processing, sale, or display of marijuana products on any property they own, lease, occupy, or manage.<br>• Lease agreements executed after the effective date may not prevent a tenant from lawfully possessing and consuming marijuana by means other than smoking unless required by federal law.<br><br>**Resentencing for Marijuana-Related Crimes:**<br>• Any person currently serving a sentence for an act that is now permitted or punishable by a lesser sentence is now able to petition for an expungement or resentencing.<br><br>Currently, the Montana expungement statute does not contain provisions related to consideration of expunged records in employment applications or background checks. |

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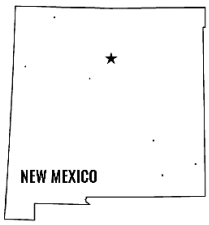
|  | New Jersey voters have amended the state constitution, legalizing the possession and use of marijuana for individuals 21 years or older. The amendment includes cultivation, processing, consumption, manufacturing, preparing, packaging, transferring, and retail purchasing. This amendment will allow for retail sales and local tax on cannabis products. Until the state enacts legislation and regulations implementing the legalization of cannabis, recreational marijuana will not be legal, resulting in, no changes to the state marijuana laws under this amendment. |
|  | Effective January 26, 2021, Albuquerque has amended their Human Rights Ordinance to prohibit discrimination based on traits commonly associated with race or ethnicity such as hair types, hair texture, volume of hair, length of hair, protective hairstyles, or cultural headdresses. "Race-Related hairstyle" includes but is not limited to braids, locs, afros, tight coils or curls, bantu knots, and twists. |
|  | **New York Enacts New Law on Gender Neutral Single Occupancy Bathrooms**<br>Effective March 23, 2021, New York has enacted a new law requiring all single-occupancy bathrooms to be gender neutral. The new law requires that all single-occupancy bathrooms located in public places, including schools, restaurants, bars, mercantile establishments, and factories, must be designated as gender neutral for use by no more than one occupant at a time or for family or assisted use. The gender-neutral bathroom should be clearly designated by a poster on or near the entry door of each facility.<br><br>**New Laws Passed Impacting Employer-Employee Relationship in Fast-Food Employers in New York**<br>Effective July 4, 2021, New York City has passed two new laws that will alter the employer-employee relationship for fast-food employers in New York City. These laws prohibit employers from terminating fast-food employees' employment, reducing hours by 15% of their regular schedule or by 15% of any weekly work schedule at any time within the previous 12 months, or indefinitely suspending employees unless the fast-food employer has "just cause" to do so or is compelled to do so by bona fide economic concerns.<br><br>**New York City's Fair Workweek Law (FWWL) Definition of Fast-Food Employers:**<br>• Employer whose primary purpose is serving food or drink items |

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| | • Where patrons order or select items and pay before eating and such items may be consumed on the premises, taken out, or delivered to the customer's location<br>• Offers limited service<br>• Is part of a chain<br>• Is one of 30 or more establishments nationally, including<br>A) an integrated enterprise that owns or operates 30 or more such establishments in the aggregate nationally or<br>B) an establishment operated pursuant to a franchise where the franchisor and the franchisees of such franchisor own or operate 30 or more such establishments in the aggregate nationally.<br>• A franchise that has only two total locations within its network in New York City can still be considered a "fast-food employer" if the franchise brand has more than 30 locations across the country.<br><br>**Requirements for Employers:**<br>• Adopt clear policies on standards of conduct and progressive discipline, perform "adequate training" on employer's standards, and conduct "fair and objective investigation into job performance or misconduct."<br>• For employees terminated due to economic reasons, this law requires the selection of laid-off employees to be in reverse seniority order with recall rights for a period of up to 12 months.<br>• Employers are required to provide a fast-food employee with a written explanation of the "precise reasons" for the action within five days of discharging the employee.<br>• Employees will have the right to file for arbitration to challenge whether an employer had a "just cause" for its action or otherwise complied with the law.<br>• If an employee challenges the termination, the fast-food employer will be bound by the reasoning in the termination letter they provided within five days of discharging the employee. The fact finder may not consider any explanation for the termination other than the reasons in the written explanation provided to the fast-food employee.<br><br>**Requirements for Determining "Just Cause":**<br>• The fast-food employee knew or should have known the fast-food employer's policy, rule, or practice that is the basis for progressive discipline or discharge;<br>• The fast-food employer provided relevant and adequate training to the fast-food employee;<br>• The fast-food employer's policy, rule, or practice, including the utilization of progressive discipline, was reasonable and applied |

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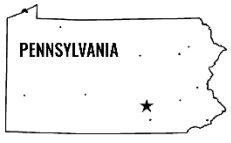
| | consistently;<br>• The fast-food employer undertook a fair and objective investigation into the job performance or misconduct; and<br>• The fast-food employee violated the policy, rule, or practice or committed the misconduct that is the basis for progressive discipline or discharge.<br><br>**Progressive Discipline:**<br>• Potential methods may include verbal or written disciplinary warnings, coaching, additional training, job relocation, and/or suspension/loss of shifts depending on the severity of the fast-food employee's infraction.<br>• Unless a fast-food employee commits an egregious failure to perform their duties or egregious misconduct, the fast-food employer cannot terminate the employment of the fast-food employee unless the employer can demonstrate that they documented progressive discipline with the employee.<br>• The law also includes a sunset clause, where the fast-food employer cannot utilize progressive discipline issued more than one year before the date of termination.<br><br>**Employer Scheduling Practices:**<br>• Fast-food employers are required to provide new fast-food employees with a schedule on or before their first day of work.<br>• The law now specifies that fast-food employers must develop and implement "scheduling practices that provide each fast-food employee with a regular schedule that is predictable for future weeks.<br>• This new amendment prohibits employers from making significant adjustments to schedules to reflect seasonal changes in demand unless disclosed and scheduled in a compliant manner at the time of hiring. |
|  | Effective immediately, Columbus, Ohio, amended their antidiscrimination ordinance to clarify that discrimination based on hair texture, or protective or cultural hairstyles is deemed discrimination based on race. |
|  | Effective immediately, the Pittsburgh City Council has passed a Temporary COVID-19 Paid Sick Leave Ordinance. Employers of 50 or more total employees are required to provide up to 80 hours of paid COVID-19 sick time in addition to any leave employers provide currently. The paid leave will remain in effect until the public health emergency officially ends. |

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| | **Covered Employees:**<br>• Employees that are currently working, including those who are teleworking in the City of Pittsburgh.<br>• Employees who normally work in the City of Pittsburgh but are teleworking from another location because of COVID-19.<br>• Employees who spend 51% or more of their time working in the city of Pittsburgh.<br>• Employees that have been employed for at least 90 days.<br><br>**Qualifying Reasons for Sick Time:**<br>• Determination by a public official, public health authority, health care provider, or employer that the employee's or employee's family member's presence on the job or in the community would jeopardize the health of others because of the individual's exposure to COVID-19 or because the individual has symptoms that might jeopardize the health of others regardless of whether they have been diagnosed with COVID-19.<br>• An employee or employee caring for a family member that must:<br>o Self-isolate after being diagnosed with COVID-19 or experiencing symptoms of COVID-19<br>o Seek or obtain a medical diagnosis, care, or treatment of symptoms of an illness related to COVID-19<br><br>**Sick Time Entitlements:**<br>• Eligible employees are entitled to up to 80 hours of COVID-19 sick time if they work 40 or more hours per week.<br>• Employees who work less than 40 hours per week are entitled to an amount equal to the amount they are otherwise scheduled to work, on average, in a 14-day period.<br>• Time is made available immediately to eligible employees.<br>• Time may be used intermittently and in the smallest increment that the employer's payroll system uses to account for absences.<br>• Employees need only give employers notice of the need for COVID-19 sick time as soon as practicable.<br>• Employers are prohibited from requiring employees to find someone to replace them if they were to take sick time.<br><br>**Interaction with Pittsburgh Paid Sick Days Act**<br>• Employers with 50 or more employees must provide COVID-19 Sick Time in addition to the 40 hours per calendar year that is provided under the Pittsburgh Paid Sick Days Act (PSDA).<br>• The ordinance requires employers to make the maximum amount of leave immediately available to employees upon hiring if an employee's requested use is due to COVID-19.<br>• The ordinance prohibits employers from changing their paid leave |

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| | policies that were in effect on December 8, in attempts to minimize financial and operational impact of this new leave.<br><br>**Families First Coronavirus Response Act (FFCRA) Interaction**<br>• Private employers with fewer than 500 employees and covered public employers may choose to voluntarily extend FFCRA leaves; please read our e-Alert to learn more.<br>• FFCRA-covered employers can qualify for full reimbursement of leave through tax credits; employers would cover the full cost of providing COVID-19 Sick Time under this ordinance.<br><br>The ordinance provides that employees may use leave provided under federal or state law to satisfy their obligations for the Paid Sick Leave Ordinance. However, if the leave entitlements under the ordinance exceed the requirements of federal or state law, employers must provide the leave entitlements required by the ordinance. |
|  | South Dakota voters have passed legislation allowing medical marijuana use for qualifying patients, effective July 1, 2021. The state has defined a qualifying condition as a debilitating medical condition such as a chronic or debilitating disease or condition, or its treatment, that produces one or more of the following:<br>• Cachexia or wasting syndrome;<br>• Fever, debilitating pain;<br>• Severe nausea;<br>• Seizures;<br>• Severe and persistent muscle spasms, including characteristics of multiple sclerosis; or<br>• Any other medical condition or its treatment.<br><br>Individuals with a debilitating medical condition may register with the state and use marijuana for medical purposes. A qualified user of medical marijuana has the same rights under state and local law when it comes to the person's employer (i.e., drug testing) as a person would have if they were prescribed a pharmaceutical medication. This provision does not apply if it conflicts with an employer's obligations under federal law or would disqualify the employer from a federal monetary or licensing benefit.<br>• The new law does not allow employees to ingest or be under the influence of marijuana while in the workplace.<br>• The law does not prohibit employers from disciplining an employee who ingests or is under the influence or marijuana while in the workplace.<br>• An employer cannot be penalized or denied benefits under state law for employing qualified patients with registry cards. |

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| | South Dakota voters have also amended the state constitution to legalize the recreational use of marijuana. This amendment legalizes the possession, use, transportation, and distribution of marijuana and related paraphernalia for anyone 21 years of age or older. An employer is not required to permit or accommodate an employee's use of marijuana and can restrict the use of marijuana by employees. |
|  | Dane County has amended their antidiscrimination ordinance, extending it to include hair texture and protective hairstyles (e.g., braids, locs, and twists) as a form of discrimination based on race. |

# The People Simplifying HR

For almost twenty years, HR Knowledge has made it our mission to demystify the complex and daunting process of HR management. We do more than just provide the level of service and technology you'd expect from an industry leader. We combine unparalleled passion for service with our decades of HR, payroll, and benefits experience to provide our clients with personalized and actionable advice that is second—to—none. From managed payroll to employee benefits to HR support, we can help your organization thrive, grow, and reduce operating costs—no matter what industry you serve. Whether you're interested in our Full-Service solution or just need your employee handbook written, HR Knowledge can help you minimize risk while staying on top of compliance regulations. The bottom line? We're not just another cloud-based technology company that also does HR, #WeAreHR. Get the scoop on how we can help you simplify HR.

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