

## HR, Benefits, and Payroll Compliance Monthly Roundup: October 2022



### **Employers May Continue to Use the Current Form I-9 After 10/31/22**

The USCIS announced employers should continue to use the current form that notes an expiration of October 31, 2022, until further notice. We will be sending an e-Alert with further details.

### **New NLRB Proposed Joint Employer Standard May Substantially Increase Liability For Employers**

The [National Labor Relations Board \(NLRB\)](#) has proposed a new rule that would deem any 2 or more employers as joint employers if employers frequently need to use another employer's employees to perform work duties. Additionally, any 2 employers would be considered joint employers if they codetermine employees' conditions of employment (hiring, termination, wages, etc.). Employers should be aware that this is a potential risk of liability.

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### **California Law Requires Pay Range in Job Ads**

Beginning January 1, 2023, under CA [Senate Bill No. 1162](#), employers with 15 or more employees must include pay ranges in all job postings. This includes third-party posting used by employers. In addition, the law amended some of the current reporting requirements for private employers with 100 or more employees and changed the timeline for reporting from March to the second Wednesday of May 2023 and annually thereafter. The 2023 report is due May 10, 2023. We will be sending an e-Alert with further details.

### **California Mandates Bereavement Leave**

Beginning January 1, 2023, bill [AB 1949](#) under the California Family Rights Act, requires private employers with five or more employees and at least 30 days of service to provide up to five unpaid days of bereavement upon the death of an employee's spouse, child, parent, sibling, grandparent, grandchild, domestic partner or parent-in-law. The bill does not require the time to be paid, but employees may elect to use other paid leave available.

### **California Expands Definition of Family Member Under CFRA and Sick Leave**

Beginning January 1, 2023, the [definition of a family member](#) has been expanded under both CFRA and Sick leave laws. Under the CFRA, a designated person will mean "any individual related by blood or whose association with the employee is the equivalent of a family relationship." Under the HWHFA, that covers sick leave, a designated person is "a person identified by the employee at the time the employee requests paid sick days" – the individual need not be related by blood to the employee, and their association need not be the equivalent of a family relationship. Subject to guidance from California's Labor Commissioner, a designated person for HWHFA purposes possibly might include a roommate, a new romantic partner, or a next-door neighbor. The state law is silent concerning how the designation interacts with similar local laws, so an employee possibly could designate one person for whom to use leave under a local ordinance and a different person under state law.

### **California Increases Temporary Disability Benefits Amount**

Beginning January 1, 2023, for an individual with a base period wage of

less than \$722.50, the benefit is \$50 per week; for an individual with a base period wage of more than 70% of the state average quarterly wage, the benefit is the greater of 70% of the wages paid during the quarter, divided by 13, as long as it does not exceed the state's maximum workers' compensation weekly benefit or 63% of the state's average weekly wage; and for an individual with a base period wage of more than \$722.50 but less than 70% of the state average quarterly wage, the benefit is 90% of the individual's wages, divided by 13, as long as it does not exceed the state's maximum workers' compensation weekly benefit.

### **California Expands Law on Hate Imagery in Places of Employment and Elsewhere**



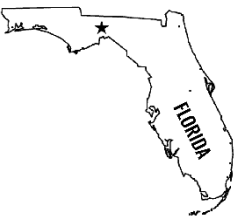
California has expanded the definition of hate crimes in places of employment to include placing or displaying symbols, marks, signs, emblems, and physical impressions including, but not limited to, burned or desecrated crosses or religious symbols, hanging nooses, or Nazi swastikas on private and nonprivate property.

### **California Prohibits Discrimination Based on Reproductive Health Decision-Making**


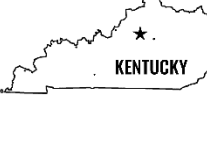
Beginning January 1, 2023, the law has been amended to declare reproductive health decision-making to be a civil right, which amends the [Fair Employment and Housing Act](#) to prohibit discrimination in employment based on an individual's reproductive health decisions. The law also prohibits employers from requiring an applicant or employee to disclose information on their reproductive health decision-making as a condition of employment or receiving benefits. Employers should be aware that this new law and related coverage for contraceptive drugs and other products are not limited to women.

### **California Prohibits Discrimination Based on Personal Use of Cannabis**



Recreational and medicinal marijuana is legal to use in California which means substances may appear in traditional drug screening tests weeks later after consumption. Under this new law, beginning January 1, 2024, employers may not discriminate against an employee who uses cannabis off the job nor determine hiring/terminating based on their relationship with cannabis. Employers may still maintain drug and alcohol-free workplaces as employees may not possess, be impaired by, or use

	<p>cannabis while working. The new law does not apply to employees working in the building and construction trades, nor does it apply to positions subject to a federal background check or testing.</p> <p><b>California Revises Formula for Paid Family Leave (PFL) and State Disability Insurance (SDI) Benefits</b></p> <p>Beginning in 2025, workers who earn 70 percent or less of the state's average wage will be eligible for 90 percent of their regular wages under the PFL and SDI programs. Currently, low-wage earners may be eligible for 70 percent of their regular wages under these programs. Employees can apply for such benefits while on unpaid leaves, such as the California Family Rights Act (CFRA) and the federal Family Medical Leave Act (FMLA).</p>
	<p><b>Connecticut Notice Requirements under FMLA Reminder</b></p> <p>As a reminder, beginning July 1, 2022, employers must provide employees with written notice of their rights and terms to use leave under the CTFMLA, their opportunity to file for wage benefits under the CTPL, as well as retaliation and complaint procedures. Employees must receive this notice upon hire and annually thereafter. See our <a href="#">e-Alert</a> for further details.</p>
	<p><b>Delaware Prohibits Applicants from Disclosing Age</b></p> <p>Effective immediately, a <a href="#">new law</a> sets forth that it is unlawful for employers to require or request a job applicant to disclose their age, date of birth, or dates of attendance or graduation. The exception is if there is a bona fide occupational qualification or need, or if there is another requirement under federal or state law.</p>
	<p><b>Florida Minimum Wage Increase</b></p> <p>Effective September 30, 2022, Florida's minimum wage increased to \$11.00/hour for standard employees and to \$7.98/hour for tipped workers.</p>

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	<p><b>Illinois Amends Meal and Rest Requirements</b></p> <p>Beginning January 1, 2023, employers shall ensure they provide one day of rest every rolling seven days or will otherwise have to obtain waivers from the <a href="#">Illinois Department of Labor</a> to allow the employees to work more than six consecutive days. In addition, employees that work a 12-hour shift shall be provided a second meal break; currently, the employee must be scheduled to work 15 hours to be eligible for a second meal period.</p> <p><b>Illinois Expands Bereavement Leave</b></p> <p>Beginning January 1, 2023, a <a href="#">new law</a> has been enacted to provide unpaid bereavement leave. The Family Bereavement Leave Act – an amendment to the Child Bereavement Leave Act – requires employers with at least 50 employees to provide up to ten days of unpaid leave to cover pregnancy and adoption loss.</p>
	<p><b>Kentucky Releases Final Rule on Equal Pay Provisions</b></p> <p>Kentucky amended its equal pay regulations to include fringe benefits such as vacation and holiday pay, premium payments, and pension benefits. In addition, the amendment clarifies that it is permissible to pay part-time employees less if the part-time employee only works a few hours a day.</p> <p><b>Kentucky Amends Rule on Independent Contractor Test</b></p> <p>The wage and hour regulations used to determine whether an employer-employee relationship exists have been amended in Kentucky as of August 30, 2022. A key point is that the factors that determine whether an individual is an employee, or an independent contractor have not changed. Some factors that have changed are:</p> <ul style="list-style-type: none"> <li>• The place where the work is performed;</li> <li>• The absence of a formal employment agreement;</li> <li>• Whether the state or local government grants a license to the alleged independent contractor;</li> <li>• The measurement, method, or designation of compensation</li> <li>• The fact that no compensation is paid, and the alleged employee must rely entirely on tips if other indications of employment are present; and</li> <li>• Whether the alleged employee is paid by the piece or by the job or on a percentage or commission basis.</li> </ul>

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	<p><b>Kentucky Releases New Rule on Wage and Hour Recordkeeping</b></p> <p>Administrative rules for employee recordkeeping requirements have been updated and employers are now required to prepare reports of any retroactive wage payment and file the original report with the commissioner within 10 days after payment has been made. A copy shall be provided to the employee, and one must be kept in the employee's file. The report must be kept on file at least one year after the date of entry.</p>
	<p><b>Massachusetts PFML 2023 Changes and Written Notice Requirements</b></p> <p>The MA Department of Family and Medical Leave has announced the annual contribution and weekly rate updates to the <a href="#">Paid Family and Medical Leave Act (PFMLA)</a>. Beginning in January 2023, the maximum total weekly amount of PFML benefits will be increased to \$1,129.82. Effective January 1, 2023, the contribution rate on eligible employee wages will be reduced to .63%. These new contribution rates apply equally to employers with private plans; all employers must review and update their plans and contribution rates for January 1, 2023. Additionally, employers are required to give employees a new written notice that includes the updated contribution rates within 30 days of hire and/or 30 days in advance of any contribution rate change. The Department has not issued a model notice, but employers can check <a href="#">here</a> for updates. We will be sending an e-Alert with further details.</p> <p><b>Massachusetts Passes Protections for Reproductive and Gender-Affirming Care</b></p> <p>Access to reproductive health care services and gender-affirming care is now a right under Massachusetts <a href="#">law</a>. The law includes definitions of legally protected healthcare activity and that these services must be performed by a Massachusetts-licensed individual. Abortion or abortion-related care cannot be subject to a deductible, coinsurance, or any cost-sharing requirements unless the plan is governed by the Internal Revenue Code.</p>
	<p><b>New York Paid Family Leave 2023 Changes</b></p> <p>Many pieces of the <a href="#">New York Paid Family Leave Law (NYPFLL)</a> go into effective January 1, 2023. The 2023 Statewide Average Weekly Wage rate (NYSAWW) is \$1,688.19. Employees cap at 67% of that rate for a maximum weekly benefit of \$1,131.08. Employees will contribute 0.455% of their gross wages each pay period. The maximum annual contribution for eligible employees in 2023 has been lowered to \$399.43. In addition, employees</p>

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can now take leave to care for siblings with serious health conditions.

### **New York Adopts the CDC's Guidance for COVID-19 Exposure**

The New York State Health Department has revised its guidance for isolation and exposure to COVID-19. Individuals who are exposed to COVID-19 are no longer required to quarantine but should wear a high-quality mask for 10 days and test after the fifth full day after the exposure.

### **NYC Removes Private Employee COVID-19 Vaccine Mandate**

New York City is ending the City's private employer COVID-19 vaccine mandate effective November 1, 2022. Private employers with employees who report in person can determine if they will continue the vaccination requirement.

### **NYC & Westchester County, NY Salary Transparency Requirements Take Effect Soon**

New York City's Pay Transparency Law goes into effect on November 1, 2022. Employers will need to provide applicants with the minimum and maximum salaries for all advertised jobs, including promotion and transfer opportunities, located in the city. See our [e-Alert](#) and the [City's Fact Sheet](#) for additional information.

Westchester County, New York's [Salary Transparency Law](#) goes into effect on November 6, 2022. Employers will need to ensure job postings have the lowest to the highest salary they would pay for the position at the time of the posting.

### **New York Schools Subject to Healthcare Worker Bonus Program (HWB)**

Under the [Healthcare Worker Bonus Program \(HWB\)](#), part of New York State's 2023 budget has been allocated for the payment of bonuses to certain frontline healthcare workers. Educational institutions that employ [eligible worker titles](#), which includes school nurses, speech pathologists, and occupational/physical therapists, are classified as an eligible employer under the HWB. Eligible employees will be paid based on the number of hours working in the relevant [vesting period](#) and are eligible for up to two vesting periods and a maximum payout of \$3,000. Eligible employers must claim the bonus on behalf of their employees. Claims should be submitted within 30 days after the completion of each vesting

period and paid to the employee within 30 days of receipt of the payment. Educational institutions will use their Statewide Financial System ID to access the [online portal](#) effective October 1, 2022.

**Upcoming Windows to Claim Damages as a Result of Certain Sexual Offenses in New York and Gender-Motivated Violence in New York City**

Governor Hochul signed the Adult Survivors Act into law which creates a one-year window from November 24, 2022, to November 24, 2023, where New York employees who claim to be victims of [sexual offenses](#) can make their claims public and file reports. Employers should be aware that they may be involved in litigation if the offender is associated with the victim's employment. New York City employers should also be aware that the Victims of Gender-Motivated Violence Protection Act (the "VGMVPA") has been amended to include a window for individuals to report claims, which will open on March 1, 2023, and close on March 1, 2025.

**New York City Proposes Regulations to Clarify Requirements for Using Automated Employment Decision Tools**

New York City's [Artificial Intelligence Hiring Law](#) takes effect January 1, 2023, prohibiting employers from utilizing automated employment decision tools to screen applicants and employees unless they can ensure the tools do not have a discriminatory impact. The Department of Consumer and Worker Protection (DCWP) has proposed additional regulations to help clarify ambiguities in the law and a public hearing is scheduled for October 24, 2022. See our [e-Alert](#) for additional information.



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