

HR Compliance Insights

September & October 2023

Introduction

Hilb Group's HR Compliance Insights delivers summaries of legislative and regulatory updates to your inbox each month.



EEO-1 Reporting Portal Set to Open in Fall 2023

The U.S. Equal Employment Opportunity Commission [announced](#) that the 2022 EEO-1 Component 1 data collection will open on October 31, 2023. The portal, along with a message support center, will also be available. The deadline to file 2022 reporting is December 5, 2023. See our [HR-Alert](#) for more information.

OSHA Releases Electronic Recordkeeping Rules

The Occupational Safety and Health Administration (OSHA) requires most employers to maintain illness and injury logs and post a summary each year in their place of work. OSHA has [restructured](#) its guidelines to maintain these requirements and have added additional guidelines that take effect on January 1, 2024. See our [HR-Alert](#) for more information.

Undue Hardship for Religious Accommodations Redefined

Title VII of the Civil Rights Act of 1964 has been amended to include a higher standard for employers claiming undue hardship for an employee's religious accommodations claim. See our [HR-Alert](#) for more information.

OFCCP Revises Scheduling Letter for Federal Contractors

The Office of Federal Contract Compliance Programs (OFCCP) has released a revised [Supply and Service Letter and Itemized Listing](#), expanding the data and documents that must be provided when a federal contractor is scheduled for a compliance review. The new list is effective through August 31, 2026, and federal contractors must provide the data within 30 days of receiving a Scheduling Letter. Within two weeks of

releasing the expanded itemized listing, the OFCCP issued 1,000 [Corporate Scheduling Announcement Letters](#) (CASL). The CASL does not start the compliance review, however, employers that receive a CASL should begin preparing for their review by pulling the necessary items. Once an employer receives a Scheduling Letter, they have 30 days to submit the proper documentation.

Federal Contractors Issued TikTok Ban on Government Devices

TikTok is banned on government devices for federal contractors and on personal devices for federal contract work. Effective December 29, 2022, the White House issued a [memorandum](#) outlining the steps federal contractors should take in complying with the No TikTok on Government Devices Act. The memorandum is applicable to all government contracts issued, modified, or amended on or after June 2, 2023.



California Releases Amendments to Paid Sick Leave Law

Effective January 1, 2024, California increases the number of paid sick leave from three days (or 24 hours) to five days (or 40 hours) for eligible employees. See our upcoming HR-Alert for more information.

California Seeks to Void Out-of-State Non-Compete Agreements

Effective January 1, 2024, California takes additional measures to ensure [non-competes clauses are unenforceable](#) regardless of where and when the contract was signed. While existing legislation states that non-competes agreements are void, the new legislation outlines that any contract that is considered void in California is unenforceable regardless of when and where the employee signed the contract (including a State where the non-competes is enforceable). California takes a strong stance on restricting anyone from engaging in actions that may prevent economic development of any kind. An employee, former employee, or prospective employee may bring a private action to enforce the law or recovery of damages, or both.

California Expands Fair Employment Housing Act

California expanded the definition of “employer” to include third-party entities, and places liability on the acting party that employers use to perform FEHA-regulated activities, such as pre-employment screenings or leave administration. In a [recent court ruling](#), it was determined that employer agents may be classified as an employer in cases of employment discrimination. In addition, employers who use artificial intelligence in employment decisions may be held liable for discrimination claims if automated-decision systems screen or tend to screen applicants based on a protected category.

California Establishes New Leave for Reproductive Loss

Effective January 1, 2014, covered California workers employed for at least 30 days will be eligible for Reproductive Loss Leave. An employee working for an employer with five or more employees will be eligible for up to five days of unpaid leave for a “reproductive loss event,” which includes a failed adoption, failed surrogacy, miscarriage, stillbirth, or unsuccessful assisted reproduction. If the employee would have been considered a parent had the event been successful, the employee is covered by the law. The five days are not required to be used consecutively, and if the eligible employee suffers more than one event, the employer must provide up to 20 days of leave within 12 months. The leave may be paid or unpaid depending on

company policy. Employees are not required to provide documentation, and employers must maintain confidentiality.

California Expands Background Check Regulations

Effective October 1, 2023, California modified its Fair Chance Act to increase protections for applicants during the hiring process. When disqualifying an applicant due to a disqualifying conviction, employers must provide notice to the applicant and include the disqualifying conviction that was the basis for the rejection, a copy of the report used to determine the disqualification, the applicant's right and deadline to respond to the notice, and explanation of evidence applicants can submit to challenge conviction history or rehabilitation.

California Issues Discrimination Protection for Personal Cannabis Use

Effective January 1, 2024, California prohibits employers from discriminating in hiring, termination, or other terms of employment based on an employee or applicant's use of cannabis in their personal time away from the workplace. The law does not apply to an employer's action based on the results of preemployment drug screening test that does not screen for nonpsychoactive cannabis metabolites but does prohibit employers from discriminating based on a drug test that shows the presence of these substances in a person's hair or bodily fluids. Employees may not possess, be impaired by, or use cannabis while on the job. The law also does not apply to those in the building and construction trades, or those that are subject to federal background checks.

California Enacts Workplace Violence Prevention Plan Requirements

Effective July 1, 2024, California employers will be required to establish, implement, and maintain an effective workplace violence prevention plan (WVPP), along with their Injury and Illness Prevention Plans. Employers will be required to maintain a violent incident log, provide training on workplace violence hazards, and provide periodic reviews of the plan. Healthcare facilities, facilities operated by the Department of Corrections and Rehabilitation, law enforcement agencies, teleworking employees, and employers with fewer than 10 employees who are in compliance and maintain an Injury Illness Prevention Plan are exempt from the WVPP requirement.

California Sets Firearm and Production Set Safety Rules

Effective January 1, 2025, California's Safety on Production Pilot Program, which applies to all film, television, streaming, commercial, and other productions, prohibits the use of firearms, blanks, and ammunition on sets for filming purposes. The use of firearms is only permitted during filming if a qualified firearms master oversees the responsibility and care of the weapons.



Colorado Broadens Anti-Discrimination Act

Colorado's [Protecting Opportunities and Workers' Rights \(POWR\) Act](#) expanded its Anti-Discrimination Act (CADA) to broaden the definition of harassment and establish a lower burden of proof. See our [HR-Alert](#) for more information.



Delaware Amends Reasonable Accommodation Law

Delaware [amended](#) its reasonable accommodations law to include victims of domestic violence. Employers with four or more employees must provide reasonable accommodations if the employer is aware of an employee's limitations due to domestic violence, sexual offenses, or stalking. Under the amendment, accrued leave qualifies as a potential reasonable accommodation. Employers that cannot grant reasonable accommodations must be able to demonstrate that the accommodation would impose an undue hardship.



DeKalb County, Georgia Enacts Antidiscrimination Ordinance

Effective January 1, 2024, DeKalb County, Georgia enacts an [antidiscrimination ordinance](#) that will prohibit discrimination in employment based on protective characteristics, including race, color, religion, sex, pregnancy, age, disability, political affiliation, sexual orientation, parental status, gender identity, marital status, and protective hairstyle, among other characteristics.



Emergency Rules to Clarify Illinois' Day & Temporary Labor Services Act Amendments

Illinois has filed Emergency Rules to clarify recent amendments to its [Day & Temporary Labor Services Act](#).

Illinois Amends Equitable Restrooms Act

Illinois amended its [Equitable Restrooms Act](#) to require single-occupancy restrooms in public locations to be identified as all-gender restrooms. All-gender multiple-occupancy restrooms must display non-gender specific exterior signage, equip bathroom stalls with dividers with sturdy and functioning locking mechanisms, and partition privacy covers. All-gender multiple-occupancy restrooms cannot include urinals. If a multiple-occupancy restroom is converted to an all-gender restroom, the restroom must include a small, covered trash receptacle, a menstrual vending device, and a baby diaper changing station.

Illinois Amends Gender Violence Act

Illinois amended its [Gender Violence Act](#) to place employer liability on any gender-related violence that an employer is directly involved in or takes place while an employee was directly performing job duties when the violence occurred. Employers may be found liable if they failed to supervise, train, or monitor an employee who committed violence, failed to investigate complaints or reports of violence, and failed to take remedial actions in response to complaints. Amendments are effective January 1, 2024.

Illinois Expands Employee Blood Donation Act

Effective January 1, 2024, Illinois employers with 51 or more employees are required to provide leave with pay to donate blood or an organ. The [Employee Blood Donation Leave Act](#) will allow full-time employees that have been employed for a period of six months or more to take up to 10 days of leave in any 12-month period. Employers may request medical documentation for the leave request.

Illinois Expands Prohibition Against Use of Electronic Devices While Driving

Illinois amended its [Transportation Act](#) to update the definition of electronic communication device, prohibit participating in any video conferencing application such as Zoom, Microsoft Teams, WebEx, etc., while driving, and prohibit accessing any social media site, unless using a hands-free or voice-operated device. Amendments will take place June 1, 2024.

Illinois Enacts Transportation Benefits Program Act

Effective June 1, 2024, Illinois' [Transportation Benefits Program Act](#) will allow certain employees to use pre-tax payroll deductions to purchase transit passes. Employers with offices located within a 1-mile distance of a covered transit service location employing more than 50 employees working 35 hours (and in certain locations 25 hours) must offer this benefit. Transportation benefits can be utilized after the first 120 days of employment and must not exceed the maximum amount permitted by the federal tax law.



Maine Passes Protections for Employee Speech

Maine's [new law](#) prohibits employers from taking adverse action against employees who decline to attend or participate in employer-sponsored meetings where the employer discusses their opinions on religious or political matters. The law requires employers to post a notice of these employee rights in the workplace.

Maine Expands Workers' Compensation Law

Maine [amended](#) its workers' compensation self-insurance law to allow for the use of fronting arrangements to insure employees living or working in other states. These arrangements may be used to insure employees starting June 1, 2024, through May 31, 2029.



Maryland Amends Noncompete Agreements

Effective October 1, 2023, Maryland [amended](#) its noncompete agreement law to prohibit employers with 15 or more employees from entering into an agreement with employees who earn equal to or less than 150% of the state minimum wage rate.

Maryland Limits Firearms from Private Property

Effective October 1, 2023, Maryland [limited](#) carrying a firearm in certain privately owned buildings. The law outlines that a person wearing, carrying, or transporting a firearm may not enter or trespass on property unless the owner has posted a clear sign indicating that it is permissible to have a firearm on the property. This excludes law enforcement officials and other official authorized parties.



Massachusetts Amends "Top Off" Rules and Increases Paid Family and Medical Leave Rates for 2024

Effective November 1, 2023, all employees will have the option to "top off" their PFML wage replacement benefits with available accrued paid leave to receive up to 100% of wage replacement during their PFML-qualified leave. Effective January 1, 2024, Massachusetts changes the

employer contribution rates and benefit amounts under the Paid Family and Medical Leave Act (PFMLA). The maximum weekly benefit amount increases to \$1,144.90 per week from the current \$1,129.82 per week. See our [HR-Alert](#) for more information.



Minnesota Prohibits Captive Audience Meetings

Minnesota [banned](#) employers from being able to take adverse action against employees who decline attendance or participation in employer-sponsored meetings and communications regarding employer opinions on religious and political topics, otherwise known as captive audience meetings. The law excludes legally required communications between employers and employees, or an employees' voluntary participation in meetings. Employers must post a notice in the workplace of these changes within 30 days of the effective date.

Minnesota Amends School Activities Leave Law Eligibility

Minnesota has removed the employee hours eligibility requirement from its [School Activities Leave](#). The amendment requires Minnesota employers to provide all employees with 16 hours of time off during any 12-month period to attend their own child's school related activity or conference.



Missouri Enacts Hands-Free Electronic Communication Law

Missouri enacts a [new law](#) which prohibits cell phone use while driving, including email communication and video conferencing. While currently in a grace period, law enforcement officials will issue citations and penalties after January 1, 2025. Electronic devices can be used to report a crime or during a medical or vehicular emergency.



New Hampshire Enacts Lactation Accommodation Law

New Hampshire will [require](#) employers to provide accommodations to working mothers who wish to express breastmilk during work hours. Employers with six or more employees working in the state are required to accommodate paid employees with sufficient space and break periods during the first year of their child's life. Under the law, employers will be required to adopt a policy outlining lactation accommodation rights which must be provided to employees at time of hire. The law is effective July 1, 2025.

New Hampshire Amends Tip Pooling Law

Effective September 26, 2023, New Hampshire [amended](#) its minimum wage law for tips, tip pooling, and sharing. Employers may set up a tip pooling or sharing system if employees request it and as long as they do not coerce employees into participating or agreeing to tip pooling. The state defines tips as including an amount added to a customer's bill as a gratuity or service charge in recognition of service performed.



New Jersey Amends Employment Taxation Law

New Jersey amended its employment taxation law to adopt a “[convenience of employer](#)” rule for employee income tax withholdings. This subjects nonresidents to New Jersey state income tax and withholding when working for a New Jersey employer provided certain conditions are met.

New Jersey Releases Guidance on Unemployment Reporting Regulations

New Jersey’s Division of Unemployment now requires all communication to be completed electronically. Currently, employers only need to register with Employer Access and provide a contact email address to New Jersey’s unemployment division. The Division is currently working on full directions and an online form, but published clarifying [guidance](#) in the interim. Employers should continue responding timely with requests from the Division until the directions and online form are released.

New Jersey Passes Employment Protections for Service Employees

New Jersey has passed [employment protections](#) for service employees during a change of ownership for the company. Employers must notify bargaining representatives and post a notice at least 15 days in advance of a change in property ownership. The employer is required to provide information to the service workers regarding the new employer and provide information to the new employer about the current service employees. The new law defines service employee and successor employer and provides directive to comply with the protections.

New Jersey Issues Clarification Under Family Leave Insurance Benefits

New Jersey [amends](#) its family leave insurance law to clarify multiple provisions. The amendments clarify the definition of family leave, which covers providing care to a family member with a serious health condition, caring for a child in the first 12 months after birth, adoption or foster care placement, when the employee or their family member is a victim of domestic violence or sexually violent offenses, or when a state of emergency is declared by the governor. Additionally, employers must provide notice to employees of their rights under the law. Postings must be accessible to all employees, provided at the time of hire, and within 3 business days of when an employee may need disability benefits.



New York Includes Interns Under Discrimination Protections

New York State’s Human Rights Law has been [expanded](#) to prohibit discrimination against interns based on gender expression or identity. Protected classifications include age, race, color, national origin, citizenship or immigration status, sexual orientation, military status, sex, disability, predisposing genetic characteristics, marital status, and victims of domestic violence.

New York Releases Model Policy for Expressing Breast Milk in the Workplace

New York’s Department of Labor has released a [model policy](#) for breast milk expression in the workplace. Employers are required to provide a compliant policy to new hires, employees returning to work from leave due to a birth, and annually to all employees.

New York Bans Captive Audience Meetings

Effective September 6, 2023, New York [prohibits](#) employers from disciplining employees who refuse to attend employer-sponsored meetings where the employer shares their opinion on religious or political topics. Employers are also prohibited from disciplining employees who decline meetings where the employer attempts to persuade employees against unionizing.

New York Classifies Wage Theft as Larceny

Effective September 6, 2023, New York [added](#) wage theft under the crime of larceny. Employers may be charged with larceny if they do not pay wages at the minimum wage rate and overtime rate, or if a promised wage is greater, the promised wage, to an employee who performed work.

New York City Releases Final Earned Sick and Safe Time Rules

Effective October 15, 2023, New York City's final [amendments](#) to the New York City Earned Safe and Sick Time Act (ESSTA) took effect. See our [HR-Alert](#) for more information.

New York Provides Pay Transparency FAQs and Guidance

New York issued [guidance](#) and [FAQs](#) regarding its [Pay Transparency Law](#) which took effect on September 17, 2023. See our [HR-Alert](#) for more information.

New York Adjusts Unemployment Notices

Effective November 13, 2023, New York [updated](#) its notice requirements of eligibility for unemployment benefits. The current law requires employers to notify employees of their right to file for unemployment benefits upon permanent or indefinite separation of employment. Amendments to the law add notification requirements for those experiencing reduction in hours, temporary separation, or any other interruption of continued employment that results in partial or total unemployment. The notice must be provided in writing on a [form](#) approved by the Department of Labor and include the employer's name, registration number, and address.

New York Increases Paid Family Leave Benefit and Contribution Rates

New York State has [updated](#) its New York Paid Family Leave Law (NYPFL) for 2024 to increase the maximum weekly benefit available to employees and reduce the overall employee contribution for NYPFL benefits. Based off the current New York State Average Weekly Wage (NYSAWW), employees taking leave under NYPFL receive up to a cap of 67% of their average weekly wage. The NYSAWW in 2024 will be \$1,718.15, which brings the maximum weekly benefit to \$1,151.16, a \$20.08 increase from 2023. The employee contribution rate will decrease in 2024, with employees contributing 0.373% of their gross wages towards NYPFL, up to a maximum annual contribution of \$333.25. For leaves beginning in 2023 that extend to 2024, the 2023 rate will apply.

New York Issues Protections for Employee Personal Accounts

Effective March 12, 2024, New York employers will be [prohibited](#) from requesting or requiring employees or applicants to disclose information linked to their personal accounts, including social media accounts. Employers will be unable to request usernames, passwords, or access to personal accounts, or discipline or penalize employees or applicants who refuse to disclose access information.

New York Narrows Validity of Employee Invention Agreements

New York has [invalidated](#) employment agreements that hinder employee ownership over intellectual property created on the employee's own time. Effective immediately, the state has clarified the scope of employment agreements that require employees to assign any rights to their employers for inventions developed entirely on their own time without using the employer's equipment, supplies, facilities, or trade secrets, except in circumstances that relate to the employer's business or result from any work performed by the employee from the employer.



Oregon Expands Victim Leave Coverage

Oregon employers are currently required to provide a reasonable leave of absence to employees that are victims of domestic violence, harassment, stalking, and sexual assault, or are the parents of a minor child or dependent who is a victim. The [amended law](#) extends leave coverage to include victims of a bias crime, which covers crimes that are committed because of the perpetrator's perception of the victim's race, color, religion, gender identity, sexual orientation, disability, or national origin. The amendments are effective January 1, 2024.

Oregon Adopts Paid Family Medical Leave Amendments

Oregon employees became eligible to apply for Oregon Paid Family and Medical Leave (OR PFML) on September 3, 2023. See our previous [HR-Alert](#) for more information. The state has made various [amendments](#) since its inception, including clarification on intermittent leave, how benefits depend on employee's regularly scheduled workweek, how private employer plans should be administered, and the definition of family member. Additionally, effective September 24, 2023, Oregon removes the monetary value of employer and employee contributions cap, currently set at 1% of an employee's wages, up to a maximum of \$132,900 in wages and replaces it with an amount equivalent to the Social Security contribution set by the federal government.



Pennsylvania Defines Protected Classes Under Human Relations Act

The [Pennsylvania Human Relations Act \(PHRA\)](#) has been expanded to clarify the definitions of sex, religious creed, and race. The amended regulations also include CROWN provisions.



Rhode Island Limits Nondisparagement and Nondisclosure Agreements

Rhode Island's [Fair Employment Practices Statute](#) has been amended to make it unlawful to require the use of a nondisparagement or nondisclosure agreement where alleged civil rights violations or unlawful conduct must remain confidential.

Rhode Island Amends Payment of Wages Act

Effective January 1, 2024, Rhode Island will **impose** felony penalties on employers who knowingly and willfully violate wage and hour laws. If an employer fails to pay wages of more than \$1,500, fails to pay vacation pay to eligible employees who separate from the company, or misclassifies workers as independent contractors in the construction industry, they may be prosecuted and receive a fine of up to \$5,000. Additionally, employers may also be prosecuted and fined if they fail to pay wages and benefits owed within 24 hours of the time of separation if the employer is liquidating, merging, or moving the business out of state.
