

LEAVE AND DISABILITY REGULATORY COMPLIANCE

Summary of legislative and regulatory changes

Private employer sector | Second Quarter 2023

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California: Anaheim

Ordinance No. 38015 (accommodations following incident of workplace violence)

Enacted Jun. 27, 2023

Effective Jan. 1, 2024

The city of Anaheim, California, has enacted an [ordinance](#) that requires hotel employers in the city to provide hotel workers with personal safety devices designed to alert hotel security or managerial staff when a hotel worker reasonably believes that violent or threatening conduct or an emergency is occurring on hotel property or in the workplace and in the hotel worker's presence. The ordinance requires hotel employers to allow a hotel worker up to three hours paid time off to redress an incident of workplace violence and, upon request, to provide reasonable accommodations to a hotel worker who has been subjected to violent or threatening conduct. Reasonable accommodations may include a modified work schedule, reassignment to a vacant position, or other reasonable adjustment to job structure, workplace facility or work requirements. The ordinance also requires hotel employers to provide training to hotel workers and to retain records of incidents for three years.

Colorado

SB 172 (protecting opportunities and workers' rights act)

Enacted Jun. 6, 2023

Effective Aug. 7, 2023

Colorado has amended its employment practices law to include marital status as a protected classification, redefine the standards for harassment claims and clarify nondiscriminatory employment practices related to employees with disabilities. In addition, the amendments outline the necessary requirements for an enforceable nondisclosure agreement relating to discriminatory or unfair employment practices and add certain recordkeeping requirements for employers.

This [amendment](#) makes a slight change to the standard for determining whether an employer's decision to discharge, demote or refuse to hire or promote a person with a disability is a discriminatory practice. Rather than considering whether the disability would have a significant impact on the job, the amendment specifies that discharge, demotion or refusal to hire or promote a person with a disability will not be an unfair or discriminatory employment practice if there is no reasonable accommodation that can be made that would allow the individual to satisfy the "essential functions of the job." In addition, the disability must actually disqualify the individual from the job.

The new law also requires an employer to maintain "any personnel or employment record" the employer made or received for at least five years and, with regard to complaints of discriminatory or unfair employment practices, to maintain those records in a designated repository. "Personnel or employment records" are defined to include (1) requests for accommodation; (2) employee complaints of discriminatory or unfair employment practices; (3) application forms submitted by applicants for employment; and (4) other records related to hiring, promotion, demotion, transfer, termination, rates of pay or other terms of compensation, and selection for training or apprenticeship, and records of training provided to or facilitated to employees.

Notably, the recordkeeping requirement as to complaints applies to all written or oral complaints of discriminatory or unfair employment practices, including the date of the complaint, the identity of the complaining party (if known), the identity of the alleged perpetrator and the substance of the complaint.

Minnesota

SB 3035 (omnibus jobs bill)

Enacted May 24, 2023

Effective Jul. 1, 2023

Minnesota has enacted the Omnibus Jobs Bill. The [new law](#) contains provisions impacting many facets of Minnesota employment law, including increasing protections for pregnant workers; providing for a reasonable accommodation fund; and requiring additional notices for employers.

The new law amends the state's pregnancy and lactation accommodation statutes. Existing Minnesota law limits the need to provide breaks to express milk to the first 12 months following the birth of a child. The new law removes the 12-month time period, so that the need to provide reasonable breaks to express milk will no longer be time-bound. The new law also removes provisions permitting employers to deny breaks if doing so would unduly disrupt operations. Employers may no longer deny reasonable break time for employees to express milk. The lactation space provided must also now be a "clean, private, and secure" room or other location close to the work area. The space must also include access to an electrical outlet.

With respect to pregnancy accommodation, the new law adds the following actions as potential reasonable accommodations: (1) more frequent or longer restroom, food, and water breaks (note: employers may not claim undue hardship with respect to requests of this nature); (2) temporary leaves of absence; (3) modification in work schedule or job assignments; and (4) more frequent or longer break periods.

The law has also been expanded to cover employers with one or more employees. Previously, the statute applied to employers with 15 or more employees. In addition, the new law expands reinstatement rights to allow any employee who has been on a leave related to pregnancy and related medical conditions, including lactation, to return to their same position or one of comparable duties.

Notice provisions have also been added, requiring employers to inform employees of their rights under the law at the time of hire as well as when an employee makes an inquiry about or requests parental leave. The notice must be provided in English and any primary language as identified by the employee. For employers that maintain a handbook, the notice must be included in it. The Department of Labor and Industry will make a model notice available.

The new law provides for a reasonable accommodation fund for certain employers domiciled and having their principal place of business in Minnesota with 500+ employees. The grant program will reimburse eligible employers for the cost of expenses incurred in providing reasonable accommodations for individuals with disabilities who are applicants or employees. Reimbursement awards will be capped at \$30,000 per eligible employer in a fiscal year, with additional caps for one-time reasonable accommodation expenses. The fund is created as part of an account in the special revenue fund. The section will expire in 2025, or when money appropriated for its purpose expires, whichever is later.

Nevada

AB 163 (employment protections for sexual assault victims)

Enacted Jun. 5, 2023

Effective Jun. 5, 2023

Nevada has amended its statute providing domestic violence leave for employees. The [amendment](#) expands the law to allow an employee to use this leave if the employee or the employee's family or household member is a victim of sexual assault. The amendments also add accommodation requirements and create anti-retaliation and unemployment-related protections for victims of sexual assault.

State law requires employers to provide up to 160 hours of leave during a 12-month period to an employee who is a victim of domestic violence, or an employee whose family or household member is a victim of domestic violence. As amended, the law requires employers to provide this leave to a victim of an act that constitutes sexual assault under state law.

The amended law also expands the state's reasonable accommodation requirements for domestic violence victims to victims of sexual assault. As amended, the law requires an employer to provide reasonable accommodations to an employee who is a victim of sexual assault or whose family or household member is a victim of sexual assault. An employer is not required to provide reasonable accommodations if doing so would impose an undue hardship on the employer's operations.

The amendments also ensure eligibility for unemployment benefits for a victim of sexual assault if the person's reason for leaving employment is connected with the incident of sexual assault. The amended law prohibits the Employment Security Division of the Department of Employment, Training and Rehabilitation from denying a person's claim for unemployment compensation benefits if that person left employment to protect themselves or a family or household member from sexual assault and the person is actively engaged in an effort to preserve employment.

Finally, the amended law creates antiretaliation and antidiscrimination protections for sexual assault victims. The amendment prohibits an employer from conditioning employment or taking certain employment actions because: (1) the employee/prospective employee is a victim of sexual assault; (2) the employee/prospective employee's family or household member is a victim of sexual assault; or (3) of other circumstances related to being a victim of sexual assault.

Nevada

AB 259 (subminimum wage repeal)

Enacted Jun. 15, 2023

Effective Jan 1, 2025

Nevada has amended its minimum wage law. State law authorizes a provider of jobs and day training services (“Provider”) to enter an arrangement with an employer to provide employment to a person with an intellectual disability or developmental disability and pay them at a rate less than the state minimum wage if: (1) the person was employed as of July 22, 2016, and the employer holds a federal certification authorizing the employer to pay less than the state minimum wage; or (2) before the person began employment, the person received certain employment-related services and applied for federal vocational rehabilitation services.

The [amendment](#) prohibits a Provider from entering a contract that provides for a recipient of jobs and day training services (“Recipient”) to receive a wage less than the state minimum wage on or after January 1, 2025. It further prohibits the payment of a wage that is less than the state minimum wage to a Recipient on or after January 1, 2028.

The amendment additionally requires that a Provider paying Recipients less than minimum wage and holding the required federal certification to annually submit a plan to the Aging and Disability Services Division of the Department of Health and Human Services (“Division”) to: (1) transition Recipients earning less than the state minimum wage to earning at least the state minimum wage by January 1, 2028, or in obtaining competitive integrated employment, supported employment or community activities related to the goals of the person; and (2) assist Recipients in participating in unpaid activities that are not related to employment.

The plan must be accompanied by a report that includes certain benchmarks showing the progress the Provider is making toward transitioning Recipients to earning at least the state minimum wage. The amendment also authorizes a person with a disability who is earning less than the state minimum wage to choose an advocate for any meeting concerning employment with their employer or staff of a Provider. It requires the Division to assist the person in finding such an advocate if requested.

Virginia

HB 1924 (subminimum wage amendments)

Enacted Apr. 12, 2023

Effective Jul 1, 2023

Virginia has passed a law amending the definition of “employee” under the Virginia Minimum Wage Act to remove the exemption to the minimum wage requirement for individuals with disabilities paid a subminimum wage, and sunsetting the use of special certificates to pay individuals with disabilities a subminimum wage on July 1, 2030.

Under the Minimum Wage Act, employers are allowed to pay individuals with disabilities subminimum wages under special certificates issued by the U.S. Secretary of Labor under the federal Fair Labor Standards Act. This [amendment](#) allows employers who hold special certificates to employ individuals with disabilities at a subminimum wage before July 1, 2023 to continue to do so, as long as those individuals were employed at a subminimum wage by that employer prior to July 1, 2023 pursuant to the special certificate. The amendment also requires all employers to pay individuals with disabilities the full minimum wage beginning July 1, 2030.

The Information contained within this document is intended to provide summary level information on proposed or enacted laws related to family and medical leave. It is not intended to provide guidance on the application of these legal requirements or as an update to your Company’s attendance and/or leave policies. We recommend you consult with Legal Counsel to determine what changes, if any, should be applied to Company Policy.

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