

# The State of Employment Law: Top Compliance Issues Facing Small Businesses

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# What We'll Cover

- Overview of top state and local employment law trends for 2019
- Rapidly growing city and county requirements
- Expanded employee notification requirements (beyond labor law posters)
- Tips to help you navigate through all of these changes

# State and Local Trends to Watch

- Minimum Wage
- Equal Pay, Wage Transparency & Salary History
- Ban-the-Box
- Paid Sick Time
- Predictable Scheduling & Opportunity to Work
- Anti-Discrimination
- Sexual Harassment Training

# Minimum Wage

- Federal minimum wage has been \$7.25/hour since July 2009
- For certain federal contractors, minimum wage is \$10.60/hour (as of January 1, 2019)
- 29 states have higher minimum wage rates than federal law
- More than half the states and hundreds of cities have pending legislation to increase minimum wage rates in 2019 and beyond
- Most states and cities/counties with minimum wage laws have posting requirements and/or handout requirements
- As an employer, you must pay the highest rate that applies, but display all required postings (even if the posters seem to conflict)

# 2019 MW Increases (State Laws)

State	New Minimum Wage	Effective Date
Alaska	\$9.89	January 1, 2019 (Mandatory Poster Update)
Arizona	\$11.00	January 1, 2019 (Mandatory Poster Update)
Arkansas	\$9.25	January 1, 2019 (Mandatory Poster Update)
California	\$12.00 (employers with 26+ employees)	January 1, 2019 (Mandatory Poster Update)
Colorado	\$11.10	January 1, 2019 (Mandatory Poster Update)
Delaware	\$8.75 (\$9.25 effective 10/1/19)	January 1, 2019 (Mandatory Poster Update)
District of Columbia	\$14.00	July 1, 2019
Florida	\$8.46	January 1, 2019 (Mandatory Poster Update)
Maine	\$11.00	January 1, 2019 (Mandatory Poster Update)
Massachusetts	\$12.00	January 1, 2019 (Mandatory Poster Update)
Michigan	\$9.45	March 29, 2019 (Mandatory Poster Update)
Minnesota	\$9.86 (annual gross revenues of \$500,000+)	January 1, 2019 (Mandatory Poster Update)
Missouri	\$8.60	January 1, 2019 (Mandatory Poster Update)
Montana	\$8.50	January 1, 2019 (Mandatory Poster Update)
New Jersey	\$8.85 (\$10.00 effective 7/1/2019)	January 1, 2019 (Mandatory Poster Update)
New York	Variable rates based on location	December 31, 2018 (Mandatory Poster Update)
Ohio	\$8.55	January 1, 2019 (Mandatory Poster Update)
Oregon	Variable rates based on location	July 1, 2019
Rhode Island	\$10.50	January 1, 2019 (Mandatory Poster Update)
South Dakota	\$9.10	January 1, 2019
Vermont	\$10.78	January 1, 2019 (Mandatory Poster Update)
Washington	\$12.00	January 1, 2019

# 2019 MW Increases (Local Laws)

State	City	New Minimum Wage	Effective Date
Arizona	Flagstaff	\$12.00	January 1, 2019
California	Belmont	\$13.50	January 1, 2019
	Cupertino	\$15.00	January 1, 2019
	El Cerrito	\$15.00	January 1, 2019
	Los Altos	\$15.00	January 1, 2019
	Mountain View	\$15.65	January 1, 2019
	Oakland	\$13.80	January 1, 2019
	Palo Alto	\$15.00	January 1, 2019
	Redwood City	\$13.50	January 1, 2019
	Richmond	\$15.00	January 1, 2019
	San Diego	\$12.00	January 1, 2019
	San Jose	\$15.00	January 1, 2019
	San Mateo	\$15.00	January 1, 2019
	Santa Clara	\$15.00	January 1, 2019
	Sunnyvale	\$15.65	January 1, 2019
New Mexico	Albuquerque	\$9.20	January 1, 2019
	Bernalillo County	\$9.05	January 1, 2019
	Las Cruces	\$10.10	January 1, 2019
Washington	Seattle	\$16.00 (for employers w/ 501+ employees and medical benefits)	January 1, 2019
	Tacoma	\$12.35	January 1, 2019

Note: All increases listed above required mandatory poster updates; some also required mandatory handouts

# Equal Pay, Wage Transparency & Salary History

- States and cities are expanding Equal Pay protections already afforded by federal law
- Relevant federal laws are the Equal Pay Act of 1963 and the 2016 Pay Transparency Executive Order for Federal Contractors
- State and local laws are being passed to bridge the wage gap between men and women
- “Wage Transparency” laws prohibit employers from discriminating or retaliating against employees for discussing their wages with coworkers
  - Pending legislation in Indiana, South Carolina, West Virginia, and many cities/counties

# Equal Pay, Wage Transparency & Salary History (continued)

- “Salary History” laws restrict employers from asking job applicants about salary history, including private employers in:
  - Albany County, NY
  - California
  - Connecticut
  - Cincinnati, OH (03/2020)
  - Delaware
  - Hawaii
  - Massachusetts
  - New York City, NY
  - Oregon
  - Puerto Rico
  - Vermont
  - San Francisco, CA
  - Suffolk County, NY
  - Westchester County, NY
- Pending legislation in Georgia, Illinois, New York, Pennsylvania, West Virginia, and many cities/counties
- New laws require employers to update job applications
- Equal Pay mandatory postings are required in Georgia, Maryland, New Hampshire, and Pennsylvania; Salary History poster required in San Francisco



# Ban-the-Box

- Ban-the-box refers to the question commonly included in job applications: “Have you ever been convicted of a crime?”
- Ban-the-box laws seek to protect individuals from being excluded from employment and other opportunities based on their criminal record
- Currently 33 states and more than 150 cities/counties have ban-the-box laws in place restricting pre-employment inquiries about criminal history
- Some laws restrict criminal background questions until after an interview; some require waiting until a conditional job offer is made

# Ban-the-Box (State Laws)

- There are currently 33 states that have ban-the-box laws in place:

- Arizona
- California\*
- Colorado
- Connecticut\*
- Delaware
- Georgia
- Hawaii\*^
- Illinois\*
- Indiana
- Kansas
- Kentucky
- Louisiana
- Maryland
- Massachusetts\*^
- Michigan
- Minnesota\*
- Missouri
- Nebraska
- Nevada
- New Jersey\*
- New Mexico
- New York
- Ohio
- Oklahoma
- Oregon\*
- Pennsylvania
- Rhode Island\*
- Tennessee
- Utah
- Vermont\*
- Virginia
- Washington\*
- Wisconsin

\* Law extends to private employers

^ Mandatory posting requirement

# Ban-the-Box (Local Laws)

- More than 150 cities/counties have ban-the-box laws in place:
  - CA: Los Angeles\*^, San Francisco\*^
  - CO: Denver
  - FL: Miami-Dade County, Broward County
  - GA: Atlanta
  - MD: Baltimore\*, Montgomery County\*, Prince George's County\*
  - MO: Columbia\*, Kansas City\*
  - NY: Buffalo\*, New York City\*, Rochester\*, Westchester County\*
  - PA: Philadelphia\*^
  - TX: Austin\*
  - WA: Seattle\*^

\* Law extends to private employers

^ Mandatory posting requirement


# Paid Sick Time

- Currently, there are limited federal requirements for sick leave
  - Family and Medical Leave Act (1993) provides unpaid leave for up to 12 weeks for a “serious health condition”
  - Executive Order 13706 provides up to 7 days per year of paid sick leave for certain employees of federal contractors
  - Pending federal legislation would expand protections (e.g., FAMILY Act, Healthy Families Act, FMLA to cover death of a child)
- States and cities are passing their own laws requiring private employers to offer paid sick leave
  - Eleven states and Washington D.C.
  - More than 15 cities and counties
  - Additional legislation pending


# Paid Sick Time (State Laws)

- Eleven states and Washington D.C. currently have paid sick leave laws:

- Arizona
- California
- Connecticut
- District of Columbia
- Maryland
- Massachusetts
- Michigan
- New Jersey
- Oregon
- Rhode Island
- Vermont
- Washington



**BOLI**  
Bureau of Labor and Industries



Karl Paulsen, Director

**REQUIREMENTS OF OREGON'S SICK TIME LAW**

(Effective January 1, 2015, employers that employ employees in the state of Oregon are required to implement sick time policies and provide sick time to employees. Employers are discouraged from providing employees with a notice of the law's provisions. This notice is provided to users as the major provision of the law, but should not be relied upon as a full and complete summary of the law. The full text of the law and administrative rules adopted by the bureau are available at [www.oregon.gov/boli](http://www.oregon.gov/boli).

**How much sick time does the law require?** Employees begin accruing sick time on the first day of employment and accrue one (1) hour of sick time for every 30 hours worked or 1.25 hours for every 60 hours worked. Employees may use accrued sick time on the 90<sup>th</sup> calendar day of employment and then use sick time as it accrues.

Employers may choose to simply give employees 160 or 180 hours of sick time at the beginning of the year rather than accrue the number of sick time hours accrued. Employees may also select the 12-month period to be used as the designated "year", e.g., calendar year, fiscal year, employee anniversary date, etc.

Employees may carry over up to 48 hours of unused sick time from one year to the next; however, employers may adopt policies that limit employees to accruing no more than 48 hours of sick time or using no more than 48 hours of sick time in a year.

Paid time off (PTO) policies that include time off for other purposes (such as vacation and other personal time) off comply with the sick time law as long as the policy is substantially equivalent to or more generous than the requirements of the law.

Employers must use accrued sick time in hourly increments unless to do so would pose an undue hardship to the employer, in which case the employer may require sick time to be taken in minimum increments of two hours if the employer allows employees to use at least 5 hours of paid leave per year.

**When must sick time be paid?** Employees with full or part-time employment (5 or more hours per week) in the state must pay employees for sick time taken at the employee's regular rate of pay. All other employees must be provided unpaid sick time.

The number of all employees employed by the employer in Oregon must be counted – including full-time, part-time and temporary employees.

**Notice and Verification:** In addition to providing a notice to employees of the requirements of the law, employers are required to provide quarterly notifications to employees of the amount of accrued and unused sick time.

Employers may require employees to provide notices, verifications and completion for using sick time under certain circumstances. For example, if the need for sick time is foreseeable, employers may require employees to provide up to 10-day notice of the need to use sick time. Refer to the law and related information.

**Discrimination/Retaliation Prohibited:** It is unlawful for an employer to deny, interfere with, restrain or fail to pay for sick time to which an employee is entitled, or retaliate or in any way discriminate against an employee because the employee has inquired about the provisions of the law, submitted a request for or taken sick time. Complaints may be filed with the Bureau of Labor and Industries.

**Collective Bargaining Agreements Exceptions:** The sick time law does not apply to certain employees who are covered by a collective bargaining agreement, employed through a hiring hall and whose benefits are provided by a joint multi-employer employee trust or benefits plan.

**For what purposes may employees use accrued sick time?**

- For an employee's or physical illness, injury or medical diagnosis of the employee's medical condition.
- To care for an infant or child over 18 if the child has a medical condition.
- To care for a family member.
- To recover from an acute health condition that needs performance at least one of the employee's job.
- To care for a child of the employee or to attend to the funeral arrangements, reasonable funeral expenses or grieving the death of an employee or family member.
- To seek legal or law enforcement services related to assault, harassment or employee or employer's retaliation.
- To attend sick time qualifying purposes if the following such as:
  - For domestic violence, sexual assault, or harassment.
  - For sexual assault, or harassment.
  - For domestic violence, sexual assault, or harassment.
  - For domestic violence, sexual assault, or harassment.

Division of Labor Standards Enforcement      Office of the Labor Commissioner

**THIS POSTER MUST BE DISPLAYED WHERE EMPLOYEES CAN EASILY READ IT**  
(Poster may be printed on 8 1/2" x 11" letter size paper)

**HEALTHY WORKPLACES/HEALTHY FAMILIES ACT OF 2014**

**PAID SICK LEAVE**

**Entitlement:**

- An employee who, on or after July 1, 2015, works in California for 30 or more days within a year from the beginning of employment is entitled to paid sick leave.
- Paid sick leave accrues at the rate of one hour per every 30 hours worked, paid at the employee's regular wage rate. Accrual shall begin on the first day of employment or July 1, 2015, whichever is later.
- Accrued paid sick leave shall carry over to the following year of employment and may be capped at 48 hours or 6 days. However, subject to specified conditions, if an employer has a paid sick leave, paid leave or paid time off (PTO) that provides no less than 24 hours or three days of paid leave or paid time off, no accrual or carry over is required if the full amount of leave is received at the beginning of each year in accordance with the policy.

**Usage:**

- An employee may use accrued paid sick days beginning on the 90<sup>th</sup> day of employment.
- An employer shall provide paid sick days upon the oral or written request of an employee for themselves or a family member for the diagnosis, care or treatment of an existing health condition or preventive care, or specified purposes for an employee who is a victim of domestic violence, sexual assault or stalking.
- An employer may limit the use of paid sick days to 24 hours or three days in each year of employment.

Retaliation or discrimination against an employee who requests paid sick days or uses paid sick days or both is prohibited. An employee can file a complaint with the Labor Commissioner against an employer who retaliates or discriminates against the employee.

For additional information you may contact your employer or the local office of the Labor Commissioner. Locate the office by looking in the list of offices on our website <http://www.dir.ca.gov/OfficeLocations> using the alphabetical listing of cities, locations, and communities. Staff is available in person and by telephone.

**DISE Paid Sick Leave Posting**      California Paid Sick Leave Required by CA Labor Code      EOGAD 12-14

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# Paid Sick Time (Local Laws)

- More than 15 cities and counties have paid sick leave requirements:
  - CA: Berkeley, Emeryville, Los Angeles, Oakland, San Diego, San Francisco, Santa Monica
  - IL: Chicago, Cook County
  - MD: Montgomery County
  - MN: Minneapolis, St. Paul
  - NY: New York City, Westchester County
  - PA: Philadelphia
  - TX: San Antonio
  - WA: Seattle, Tacoma

# Predictable Scheduling & Opportunity to Work

- Predictable Scheduling Laws – require employers to provide employees with advance notice of their schedule and, in some instances, compensate employees for last-minute changes
  - Laws passed in Oregon, San Francisco, Emeryville, NYC, Philadelphia, and Seattle
  - Pending legislation in Arizona, Hawaii, Kentucky, and Washington
- Opportunity to Work Laws – require employers to offer additional work hours to existing part-time employees before hiring new employees
  - Laws passed in San Jose (all industries) and San Francisco (industry-specific)
  - Both require mandatory postings

# Anti-Discrimination

- Federal law doesn't specifically prohibit discrimination on the basis of sexual orientation or gender identity
  - 7<sup>th</sup> Circuit and 2<sup>nd</sup> Circuit have ruled that sexual orientation discrimination is prohibited under federal law
  - Executive Order 11246, as amended, now includes these protections but only for federal contractors
- More than 20 states and more than 200 cities/counties now have LGBT anti-discrimination laws in place
- Mandatory posting requirements in: California, Colorado, Connecticut, Delaware, District of Columbia, Hawaii, Illinois, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New Mexico, New York, Rhode Island, and Wisconsin



# Sexual Harassment Training Laws

- Several new state/local laws have been passed recently to strengthen prohibitions against sexual harassment
- These laws require training and, in most cases, mandatory employee notifications (posters and written policies/handouts)
- Training is now required for private employers in:
  - California – employers with 5 or more employees
  - Connecticut – employers with 50 or more employees
  - Delaware – employers with 50 or more employees
  - Maine – employers with 15 or more employees
  - New York – all NY employers
  - New York City – employers with 15 or more employees

# Tips to Manage Your Business

Here are some tips to help you navigate in this climate of change:

1. Conduct an internal audit of all employment practices to ensure compliance with federal, state and local laws
2. Follow the provisions of each applicable law that are most generous to the employee
3. Address any areas that require updates to written policies, job applications, and related HR practices
4. Consider uniform practices across locations (consistency vs. cost)
5. Display local postings in addition to mandatory federal and state postings, even if the information conflicts
6. Assign internal resources or use an outsourced partner for posting and employee handout compliance to stay abreast of changing federal, state and local laws

# Thank you!

For more information, please contact

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