

What's Next

Major Labor Law Trends Likely to Impact Your Workplace in 2021

November 2020



What We'll Cover

- Overview of top state and local employment law trends for 2021
- 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 and salary history
- Ban-the-box laws
- Paid sick time
- Predictable scheduling and opportunity to work
- Anti-discrimination
- COVID-19 workplace safety standards



Trend to Watch Minimum Wage

Minimum Wage

- Federal minimum wage has been \$7.25/hour since July 2009
- For certain federal contractors, minimum wage is \$10.80/hour as of January 1, 2020 (\$10.95/hour on January 1, 2021)
- 29 states have higher minimum wage rates than federal law

Minimum Wage (cont.)

- More than half the states and hundreds of cities have pending legislation to increase minimum wage rates in 2021 and beyond
- Most states, cities and 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 posters seem to conflict)



2021 MW Increases (State Laws)

State	New Minimum Wage	Effective Date	
Alaska	\$10.34	January 1, 2021	(Poster Update Pending)
Arizona	\$12.15	January 1, 2021	(Poster Updated)
Arkansas	\$11.00	January 1, 2021	(Previous Poster Acceptable)
California	\$14.00 (employers with 26+ employees)	January 1, 2021	(Poster Update Pending)
Colorado	TBA	January 1, 2021	(Poster Update Pending)
Connecticut	\$13.00	August 1, 2021	(Previous Poster Acceptable)
District of Columbia	TBA	July 1, 2021	(Poster Update Pending)
Florida	\$8.65 (\$10.00 on September 30, 2021)	January 1, 2021	(Poster Updated)
Illinois	\$11.00	January 1, 2021	(Previous Poster Acceptable)
Maine	\$12.15	January 1, 2021	(Poster Updated)
Maryland	\$11.75 (employers with 15+ employees)	January 1, 2021	(Previous Poster Acceptable)
Massachusetts	\$13.50	January 1, 2021	(Previous Poster Acceptable)
Michigan	\$9.87	January 1, 2021	(Previous Poster Acceptable)
Minnesota	\$10.08 (annual gross revenues of \$500,000+)	January 1, 2021	(Poster Updated)
Missouri	\$10.30	January 1, 2021	(Poster Updated)
Montana	\$8.75	January 1, 2021	(Poster Updated)
Nevada	\$9.75 (w/o benefits)	July 1, 2021	(Previous Poster Acceptable)
New Jersey	\$12.00 (employers with 6+ employees)	January 1, 2021	(Previous Poster Acceptable)
New Mexico	\$10.50	January 1, 2021	(Poster Update Pending)
New York	Variable rates based on location	December 31, 2020	(Poster Update Pending)
Ohio	\$8.80 (gross revenues \$323,000+)	January 1, 2021	(Poster Updated)
Oregon	Variable rates based on location	July 1, 2021	(Poster Update Pending)
South Dakota	\$9.45	January 1, 2021	(No Poster Update for 2021)
Vermont	\$11.75	January 1, 2021	(Poster Updated)
Virginia	\$9.50	May 1, 2021	(No Poster Update for 2021)
Washington	\$13.69	January 1, 2021	(No Poster Update for 2021)

2021 MW Increases (Local Laws)

State	City	New Minimum Wage	Effective Date
Arizona	Flagstaff	TBA	January 1, 2021
California	Belmont	\$15.90	January 1, 2021
	Cupertino	TBA	January 1, 2021
	Daly City	\$15.00	January 1, 2021
	El Cerrito	\$15.61	January 1, 2021
	Hayward	\$15.00 (26+ employees)	January 1, 2021
	Mountain View	TBA	January 1, 2021
	Oakland	\$14.36	January 1, 2021
	Petaluma	\$15.20 (26+ employees)	January 1, 2021
	Redwood City	\$15.62	January 1, 2021
	San Diego	\$14.00	January 1, 2021
	San Jose	\$15.45	January 1, 2021
	San Mateo	\$15.62	January 1, 2021
	Colorado	Denver	\$14.77
New Mexico	Albuquerque (w/o benefits)	\$10.50	January 1, 2021
	Bernalillo County (w/o benefits)	\$9.35	January 1, 2021
	Las Cruces	\$10.50	January 1, 2021
Washington	Seattle (employers with 501+ employees)	\$16.69	January 1, 2021

Note: All increases listed above require mandatory posters; some also require mandatory handouts.

Trend to Watch Equal Pay, Wage Transparency and Salary History

Equal Pay, Wage Transparency and Salary History

- States and cities are expanding equal pay protections already afforded by federal law
- Relevant federal laws: Equal Pay Act of 1963 and the 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

Equal Pay, Wage Transparency and Salary History (cont.)

- “Salary history” laws restrict employers from asking job applicants about salary history, including private employers in:
 - California
 - Colorado (01/21)
 - Connecticut
 - Delaware
 - Hawaii
 - Illinois
 - Maine
 - Maryland
 - Massachusetts
 - Missouri
 - New Jersey
 - New York
 - Oregon
 - Puerto Rico
 - Vermont
 - Washington

Equal Pay, Wage Transparency and Salary History (cont.)

- New laws require employers to update job applications
- Alabama does not restrict the salary history question but employers cannot refuse to interview, hire, promote or employ an applicant for refusing to provide wage history
- Equal pay mandatory postings are required in: Georgia, Illinois, Maryland, New Hampshire, Oregon and Pennsylvania; salary history poster is required in San Francisco



Trend to Watch Ban the Box

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, more than 35 states and 150 cities/counties have ban-the-box laws in place restricting pre-employment inquiries about criminal activity
- Some laws restrict criminal background questions until after an interview; some require waiting until a conditional offer is made

Ban the Box (State Laws)

- There are currently 36 states that have complete ban-the-box laws in place:

- Arizona
- California*
- Colorado*
- Connecticut*
- Delaware
- Georgia
- Hawaii*^
- Illinois*
- Indiana
- Kansas
- Kentucky
- Louisiana
- Maine
- Maryland*
- Massachusetts*^
- Michigan
- Minnesota*
- Missouri
- Nebraska
- Nevada
- New Hampshire
- New Jersey*
- New Mexico*
- New York
- North Dakota
- 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: Albany, Atlanta, Augusta
 - IA: Waterloo*
 - MD: Baltimore*, Montgomery County*, Prince George's County*
 - MO: Columbia*, Kansas City*, St. Louis*
 - NY: Buffalo*, New York City*, Rochester*, Westchester County*
 - OR: Portland*
 - PA: Philadelphia*^
 - TX: Austin*
 - WA: Seattle*^, Spokane*

* Law extends to private employers

^ Mandatory posting requirement

Trend to Watch Paid Sick Time

Paid Sick Time

- Currently, there are limited federal requirements for sick leave
 - Families First Coronavirus Response Act (2020) provides paid leave for various COVID-19 reasons
 - 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 seven days per year of paid sick leave for certain employees of federal contractors
- States and cities are passing their own laws requiring private employers to offer paid sick leave
 - Fifteen states and Washington D.C.
 - More than 20 cities and counties

Paid Sick Time (State Laws)

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

- Arizona
- California
- Colorado (2021)
- Connecticut
- District of Columbia
- Maine (2021)
- Maryland
- Massachusetts
- Michigan
- Nevada
- New Jersey
- New York
- Oregon
- Rhode Island
- Vermont
- Washington



BOLI
Bureau of Labor and Industries



REQUIREMENTS OF OREGON'S SICK TIME LAW

Effective January 1, 2016, employers that employ employees in the state of Oregon are required to implement sick time policies and provide sick time to employees. Employers are also required to provide employees with a notice of the law's provisions. This notice is intended to assist in the proper 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.

How much sick time does the law require? Employees begin accruing sick time on their first day of employment and earn one (1) hour of sick time for every 30 hours worked or 1.527 times the number of hours worked. Employees may use accrued sick time on the 91st calendar day of employment in any calendar year. Employees may choose to apply sick time to employees ("three leav") at least once each year. Employees may use accrued sick time for any purpose that includes time off for other purposes (see example) with the sick time law as long as the policy is substantially equivalent to the law.

When must sick time be paid? Employees with 20 or more employees (or more in Portland) in the state must pay employees for sick time taken at the employee's regular rate of pay. All other employers must provide 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 notice to employees of the requirements of the law, employers are required to provide appropriate verification to employees of the amount of accrued and unused sick time. Employees may require employees to provide notice, verification and certifications 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 rule for more information.

Discrimination/Retaliation Prohibited: It is unlawful for an employer to deny, interfere with, threaten 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 requested or taken sick time. Complaints may be filed with the Bureau of Labor and Industries.

Collective Bargaining Agreements: Employees who are covered by a collective bargaining agreement, employed through a hospital and whose benefits are provided by a joint multi-employer employee trust or benefit plan.

Provision of this notice to employees complies with the requirements of the law to post the requirements of the law to employees. For more information, visit our website at www.oregon.gov/boli or contact the Bureau of Labor and Industries.

Division of Labor Standards Enforcement

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 policy (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 90th 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 at the list of offices on our website www.dir.ca.gov/dlse/LocalOffices.htm using the alphabetical listing of cities, locations, and communities. Staff is available in person and by telephone.

DLSE Paid Sick Leave Posting

Office of the Labor Commissioner

SCAG 15-1

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: Duluth, Minneapolis, St. Paul
 - NY: New York City, Westchester County
 - PA: Philadelphia, Pittsburgh
 - WA: Seattle, Tacoma

Trend to Watch Anti-Discrimination Laws

Anti-Discrimination

- Federal law now protects against workplace discrimination based on sexual orientation and gender identity
- More than 20 states and more than 200 cities/counties now have LGBTQ anti-discrimination laws in place
- Mandatory posting requirements in: California, Colorado, Connecticut, Delaware, District of Columbia, Hawaii, Illinois, Maryland, Massachusetts, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, Rhode Island and Wisconsin

Trend to Watch Predictable Scheduling and Opportunity to Work

Predictable Scheduling

- **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, New York City, Philadelphia, Seattle and Chicago

Opportunity to Work

- **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

Trend to Watch COVID-19 Workplace Safety Standards

COVID-19 Workplace Safety Standards

- Currently, no mandatory nationwide COVID-19 workplace safety standard
- Virginia was the first in the nation to pass a standard that went into effect in July 2020
- Any existing state laws require training and, in most cases, mandatory employee notifications (posters and written policies/handouts)

Other Trends to Watch

Other Trends We Are Watching in 2021

- Expansion of anti-discrimination laws relating to race and religion
- Smoking policies to include vaping and e-cigarettes
- Marijuana law changes

Tips to Manage Your Business

Tips to Manage Your Business

1. Conduct an internal audit of all employment practices to ensure compliance with federal, state and local law
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 notification compliance to stay abreast of changing federal, state and local laws

Solutions to Protect Your Business

For more information, contact:

Peter Kettwig

Compliance Specialist

954.970.5688

pkettwig@hrdirect.com



Thank You!