

State Law Round-Up: Year-End Edition (US) (Part 2 of 2)

Article By:

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Welcome to Part 2 of the 2021 Year-End Edition of the State Law Round-Up, covering states in the second half of the alphabet. Part 1, covering the first part of the alphabet, can be found [here](#).

Maine:

Maine's "ban-the-box" law, [HP 845](#), went into effect October 18, 2021. The law prohibits private employers from requesting criminal history record information on an initial application form or stating on an initial application form or advertisement that a person with a criminal history may not apply or will not be considered for a position. Violators may be subject to a daily penalty per violation of up to \$500 per day. Employers are exempt from these requirements if federal or state law, regulation or rule provides that (i) a criminal conviction disqualifies an applicant, (ii) imposes an obligation on an employer not to hire anyone convicted of a certain offense, or (iii) requires employers to conduct a criminal history record check.

Maryland:

- **Flexible Leave Act Amendments.** Effective October 1, 2021, Maryland's Flexible Leave Act, as amended by [HB 56](#), will require employers with 15 or more employees to permit their employees to use any existing accrued paid leave for bereavement purposes in the event of a death of an immediate family member (spouse, parent, or child, broadly defined).
- **Employment Discrimination.** Effective October 1, 2021, Maryland's Fair Employment Practices Act (FEPA), as amended by [HB 290](#), extends the time period for filing a charge alleging unlawful employment discrimination with the Maryland Commission on Civil Rights (MCCR) from six months to 300 days for charges other than harassment. Claimants still have two years to file claims of harassment with the MCCR.

Minnesota:

Minnesota has expanded its pregnancy accommodation and lactation break requirements. Currently, employers must provide employees who need to express breast milk with reasonable break times each day. Beginning on January 1, 2022, employers are prohibited from reducing an employee's

compensation for taking such breaks, and breaks are only required for 12 months after the birth of the child. While employers can ask employees to try to take breaks concurrently with already provided breaks, if additional breaks are needed, they must be paid. Also beginning on January 1, 2022, the state's pregnancy accommodation protections apply to employers with 15 or more employees (down from 21), and there are no length of service or hour requirements that employees must meet to be protected.

Missouri:

Effective August 28, 2021, employers must make reasonable safety accommodations for an employee's known limitations related to being a victim or having a family or household member who is a victim of domestic or sexual violence, unless it would be an undue hardship to the employer. Additionally, employers with 20 or more employees must provide unpaid, job-protected leave for certain specified reasons to employees who are, or whose family or household members are, victims of domestic or sexual violence. If the employer has 20-49 employees, employees may take up to one workweek of unpaid leave in a 12-month period; if the employer has 50 or more employees, employees may take up to two workweeks of unpaid leave in a 12-month period. The employer must maintain the employee's group health plan coverage during the leave. Employers must [notify](#) employees of their rights.

Montana:

Effective March 31, 2021, Montana amended its Wrongful Discharge from Employment Act (WDEA) for the first time in over 30 years with the passage of [HB 254](#). Under existing Montana law, employers must show "good cause" before terminating an employee's employment, unless the employee is within the probationary period (by default, six months from the date of hire). Under the new amendments, the default probationary period increases to 12 months from the date of hire. However an employer may have a policy extending the probationary period to up to a maximum of 18 months. Additionally, the new amendments modified the definition of "good cause" to mean any reasonable job-related grounds for an employee's dismissal based on: the employee's failure to satisfactorily perform job duties; the employee's disruption of the employer's operation; the employee's material or repeated violation of an express provision of the employer's written personnel policies; or other legitimate business reasons determined by the employer while exercising the employer's reasonable business judgment.

New Mexico:

Beginning on July 1, 2022, New Mexico employers must provide paid sick leave to employees pursuant to the Healthy Workplaces Act. Under the Act, employees earn one hour of PSL for every thirty hours worked, up to a maximum of 64 hours per year; unused PSL carries over to the next year, but employees are limited to using 64 hours of PSL each year. Employees may use PSL for (a) their own or their family member's mental or physical illness, injury or health condition, medical diagnosis, care or treatment of a mental or physical illness, injury or health condition, or preventive medical care; (b) absences due to a school meeting related to their child's health or disability; or (c) absences due to domestic abuse, sexual assault, or stalking suffered by an employee or an employee's family member provided the absence is to obtain medical or psychological treatment or other counseling, relocate, or participate in legal proceedings.

New York City:

Amendments to New York City's Fair Chance Act (FCA) went into effect on July 29, 2021. The FCA, as amended, prohibits employers from asking about or considering certain offenses – including non-pending criminal accusations or arrests, adjournments in contemplation of dismissal, sealed convictions, or youthful offender adjudications – prior to making a conditional offer of employment. Moreover, employers are prohibited from taking any adverse employment action against current employees based on a conviction during employment, or applicants or current employees based on a pending arrest or criminal accusation, unless the employer complies with the "Fair Chance Process," which requires (1) considering a number "relevant fair chance factors," and (2) making a determination that either (i) a direct relationship between the employment sought/held and the alleged criminal wrongdoing exists, or (ii) granting/continuing the employment would pose "an unreasonable risk to property or to the safety or welfare of specific individuals or the general public."

Nevada:

- **Salary History.** Effective October 1, 2021, Nevada employers cannot request or rely upon an applicant's salary history to determine the applicant's rate of pay or to otherwise discriminate or retaliate against the applicant. Unlike other similar bans, Nevada's law does not include an exception for employers to consider an employee's wage or salary history if an applicant voluntarily discloses such information.
- **Kin Care.** Effective October 1, 2021, employers providing paid or unpaid sick leave must allow an employee to use that leave to assist an immediate family member to the same extent and under the same conditions that apply to use of the leave for other reasons. Employers must [post a bulletin](#) of the law's provisions in a conspicuous location in each workplace.
- **Non-Compete Restrictions.** Effective October 1, 2021, employers cannot have non-compete agreements with employees paid solely on an hourly wage basis, exclusive of tips or gratuities. Moreover, employers may not file an action to restrict former employees from providing services to a former customer or client if (i) the former employee did not solicit the former customer or client, (ii) the customer or client voluntarily chose to seek services from the former employee, and (iii) the former employee is otherwise in compliance with the noncompetition covenant. The law further provides that employees may recover attorneys' fees and costs if they challenge a prohibited non-compete or if the employer seeks to enforce a prohibited non-compete. Employers should review and revise any existing non-competes with affected Nevada employees and update their agreements moving forward.

Ohio:

Ohio has updated several posters and notices, including its (i) [2022 Minimum Wage poster](#); (ii) [Equal Employment Opportunity is the Law](#) poster – which now prohibits pregnancy discrimination and includes sexual orientation and gender identity in the definition of sex discrimination following the Supreme Court's decision in *Bostock v. Clayton Cty.*, 140 S. Ct. 1731 (2020); and (iii) its [unemployment insurance poster](#).

Oregon:

- **Oregon Paid Family and Medical Leave.** Oregon's Paid Family and Medical Leave Insurance program (PFMLI) has been delayed. The program is funded by employee

contributions and by employer contributions (if the employer has 25 or more employees). Contributions are now set to begin January 1, 2023, and employees are scheduled to be eligible to receive benefits beginning on September 3, 2023.

- **Oregon Family Leave Act.** Effective January 1, 2022, amendments to the Oregon Family Leave Act (OFLA) take effect. Under the amendments, employees will now be entitled to OFLA leave during a public health emergency, if they have worked a weekly average of 25 hours or more for at least 30 days (down from 180 days) prior to taking leave. Additionally, employees who are eligible for OFLA leave but are separated from employment (even temporarily) and return to work within 180 days will maintain OFLA leave eligibility. Finally, OFLA leave can now be used by employees who must care for a child “who requires home care due to the closure of the child’s school or child care provider as the result of a public health emergency.”

Pennsylvania:

- **Organ and Tissue Donation Leave.** Pennsylvania passed the [Living Donor Protection Act](#) on January 26, 2021. Among other provisions, the Act requires employers to allow employees to use any available FMLA leave when the employee is preparing for or recovering from surgery related to organ or tissue donation or when they are unable to work because they need to care for their spouse, child, or parent who is preparing for or recovering from surgery related to organ or tissue donation.
- **Allegheny County Paid Sick Leave.** Allegheny County enacted [Ordinance No. 11988-21](#), which requires employers with 26 or more employees to provide employees with one hour of paid sick leave for every 35 hours worked. Employees can accrue and use up to 40 hours of sick leave per year, and up to 40 hours of unused sick leave carries over to the next year. The law went into effect on December 14, 2021.

Virginia:

- **Criminal Record Sealing:** As of March 1, 2021 employers are prohibited from requiring an applicant for employment to admit or disclose information concerning any arrest, charge, or conviction that has been sealed, with certain limited exceptions.
- **Overtime:** Virginia also passed the Virginia Overtime Wage Act, effective July 1, 2021. Employers of salaried non-exempt employees should take careful note as the Act departs from the FLSA’s overtime calculation method, instead requiring employers to calculate overtime by summing the hourly rate plus any other non-overtime wages paid or allocated for the workweek and then dividing that sum by the total number of hours worked in the workweek. For salary workers, the regular rate is one-fortieth (1/40) of all wages paid for the workweek. This new standard precludes employers from paying traditionally non-exempt employees a fixed salary to cover wages in excess of 40 hours a week. The Act also imposes greater penalties for misclassifying employees as exempt under the new law. For calculating misclassification liability, the employer sums the wages paid in a workweek, divides that sum by the hours worked (capped at 40 hours) and multiplying that hourly rate by 1.5. The employer then pays that new overtime rate for all hours over 40 hours worked in a workweek for the misclassified employee.

- **Drug Testing:** Effective July 1, 2021, pursuant to [HB 1862](#), Virginia employers cannot take adverse action against an employee or applicant for their lawful use of cannabis oil.

Washington:

- Washington's [Health Emergency Labor Standards Act](#) (HELSA), effective May 11, 2021 provides expansive protections for workers during a public health emergency. HELSA creates a rebuttable presumption that an infectious or contagious disease contracted by a frontline worker during a public health emergency is occupational in nature, entitling the worker to workers' compensation. The presumption may be rebutted by showing that exposure occurred while working at home or from non-employment activities. HELSA also requires employers with 50 or more employees to report to the state within 24 hours if 10 or more employees test positive for a disease that is the subject of a public health emergency. If an employer (regardless of workforce size) receives notice that an employee at the worksite was potentially exposed, the employer must, within one business day, provide written notice to all employees and employers of subcontracted employees who were at the worksite on the same day as the infected employee. Finally, the law protects high-risk workers who seek accommodations regarding exposure from being discharged, replaced, or otherwise discriminated against.
- **Family and Medical Leave.** Effective July 25, 2021, the definition of "family member" under Washington's Paid Family and Medical Leave law (PFML) was expanded to include "any individual who regularly resides in the employee's home or with whom the relationship creates an expectation that the employee care for the person, and that individual depends on the employee for care."

Scott Held also contributed to this article.

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