



THE LAST 60 DAYS OF ACTION IN EMPLOYMENT LAW

December 2, 2020

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Federal

On November 3, 2020, the United States Department of Labor issued two opinion letters that clarify when employers must compensate employees for continuing education or travel time. See our Client Alert on this topic [here](#).

On September 23, 2020, the United States Securities and Exchange Commission adopted a final rule implementing changes to its whistleblower program that are intended to provide greater transparency, efficiency, and clarity to whistleblowers to ensure that they are properly incentivized and to continue to properly award them to the maximum extent appropriate and with maximum efficiency. The Commission also made several technical amendments and adopted interpretive guidance. See [Release No. 34-89963](#).

Arizona

In the General Election on November 3, 2020, Arizonians voted to legalize recreational marijuana and allow expungement of marijuana offenses. See [Proposition 207](#).

California

In the General Election on November 3, 2020, Californians voted to allow app-based

rideshare and delivery companies to hire drivers as independent contractors. Drivers may decide when, where, and how much to work, but would not be entitled to standard benefits and protections that businesses must provide to employees. See [Proposition 22](#).

On October 16, 2020, California adjusted its overtime exemption rate for computer software employees to \$47.48, and increased the minimum annual salary exemption to \$98,907.70, reflecting the 2% increase in the California Consumer Price Index for Urban Wage Earners and Clerical Workers. The change is effective January 1, 2021. See State of California Department of Industrial Relations [Overtime Exemption for Computer Software Employees](#).

On September 30, 2020, California enacted a law requiring publicly held companies headquartered in the state to have a minimum number of directors from underrepresented communities. The law will become effective on December 31, 2021. See 2020 Cal. AB 979.

On September 30, 2020, California enacted a law, effective March 31, 2021, requiring employers with 100 or more employees to annually report pay data categorized by

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gender, race, and ethnicity. See 2020 Cal. SB 973.

On September 28, 2020, California amended its Labor Code to provide leave and antidiscrimination protections to employees who suffer physical or mental injury due to crime, regardless of whether anyone is arrested, prosecuted, or convicted of committing the crime. The law becomes effective on January 1, 2021. See 2019 Cal. AB 2992.

Colorado

In the General Election on November 3, 2020, Colorado voters voted to establish paid family and medical leave funded by a payroll tax paid 50/50 by employers and employees. Payroll premiums will begin in 2023. Employees may take leave beginning in 2024, receiving up to 90% of their weekly pay, capped at \$1,100 per week. See [Proposition 118](#).

Florida

In the General Election on November 3, 2020, Floridians voted to raise the state minimum wage to \$15.00 by 2026. See [Ballot Initiative 18-01](#).

Maryland

On October 16, 2020, Montgomery County, Maryland amended its Human Rights Law to lower the standard for proving workplace harassment. The law rejects the “severe or pervasive” standard that applies under federal law and replaces it with the following standard: “[whether] a reasonable victim of discrimination would consider the conduct to be more than a petty slight, trivial inconvenience, or minor annoyance.” An alleged victim also must prove one of the

following three elements: (1) submission to the conduct is made either explicitly or implicitly a term or condition of an individual’s employment; (2) submission to or rejection of the conduct is used as a basis for employment decisions affecting the individual; or (3) The conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating a working environment that is perceived by the victim to be abusive or hostile. The law becomes effective on January 15, 2021. See [Montgomery County Bill 14-20](#).

Effective October 1, 2020, Maryland enacted a law that requires an employer to provide to a job applicant, on request, the wage range for the position for which the applicant applied. The law also prohibits an employer from seeking or relying on the wage history of an applicant when screening or considering the applicant for employment or in determining the applicant’s wages. See Md. HB 123.

Mississippi

In the General Election on November 3, 2020, Mississippi voted to legalize medical marijuana. See [Initiative Measure No. 65](#).

Missouri

On October 1, 2020, Kansas City, Missouri amended its antidiscrimination law to prohibit discrimination based on traits that historically are associated with race, including hair texture and protective hairstyles. The amendments became effective on November 1, 2020. See [Ordinance 200837](#).

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New Jersey

In the General Election on November 3, 2020, New Jersey voted to amend the state constitution to legalize recreational marijuana. [See Resolution No. 183.](#)

New Mexico

Effective October 1, 2020 (delayed from its original July 1, 2020 implementation date), Bernalillo County, New Mexico enacted an ordinance that requires employers to allow employees to accrue paid time off to use for any reason. The Ordinance is based, in part, on the belief that paid time off will reduce recovery time from illness and provide other benefits. [See Employee Wellness Act Guidance.](#)

New York

Under New York's Worker Adjustment and Retraining Notification (WARN) Act, an employer may not order a mass layoff, relocation, or employment loss unless, at least 90 days before the order takes effect, the employer, among other things, gives written notice of the order to various people and entities. On November 11, 2020, New York amended its WARN Act to expand the list of government entities that employers must notify of a triggering event to include the chief elected official of the unit or units of local government and the school district or districts in which the mass layoff, relocation, or employment loss will occur; and each locality that provides police, firefighting, emergency medical, or ambulance services or other emergency services to the site of employment subject to the mass layoff, relocation, or employment loss. [See 2020 NY A.B. A10674a.](#)

On October 20, 2020, the New York Department of Labor issued Frequently Asked Questions regarding the state's paid sick leave law, addressing use of leave, carrying over leave, and other issues. [See FAQs.](#)

Oregon

In the General Election on November 3, 2020, Oregon voters passed a ballot measure to decriminalize possession of heroin, methamphetamine, LSD, oxycodone, and other hard drugs. Instead of going to trial and facing jail time, someone with a personal-use amount of these hard drugs would have the option of paying a \$100 fine or attending new addiction recovery centers funded by the regulated legalized marijuana industry. The measure takes effect on December 3, 2020, the punishment changes take effect on February 1, 2021, and addiction recovery centers must be available by October 1, 2021. [See Drug Addiction Treatment and Recovery Act.](#)

Pennsylvania

On October 23, 2020, Allegheny County and the City of Pittsburgh amended their antidiscrimination laws to prohibit discrimination based on hairstyle and hair textures commonly associated with race. [See Allegheny County Ordinance 11599-20](#) and [City of Pittsburgh Ordinance 2020-0769.](#)

Effective on October 3, 2020, Pennsylvania's revised overtime regulations took effect. The regulations raise the salary threshold and bring the definition of executive, administrative, and professional positions in line with the requirements under the Fair Labor Standards Act. Pennsylvanians employed

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in a bona-fide executive, administrative, or professional capacity are not entitled to overtime compensation if their salary meets the minimum threshold, which will increase annually over the next three years: October 3, 2020, \$684 per week, or \$35,568 annually; October 3, 2021, \$780 per week, or \$40,560 annually; October 3, 2022, \$875 per week, or \$45,500 annually. Beginning in 2023, the salary threshold will adjust based on the average wages of exempt occupations in the Commonwealth. Pennsylvania's changes to the duties tests bring them more in line with federal law, but key differences remain, including that Pennsylvania does not recognize the highly compensated employee exemption; Pennsylvania does not have an exemption for computer employees; the exemption for outside sales employees is different under Pennsylvania law; and the regulations that exist under the Fair Labor Standards Act regarding the salary basis rules do not exist in Pennsylvania. Where differences exist between Pennsylvania and federal law,

employers must comply with the more protective law. See 50 Pa.B. 5459.

South Dakota

In the General Election on November 3, 2020, South Dakotans voted 54% in favor of an amendment to the State Constitution to legalize, regulate, and tax marijuana and require the Legislature to pass laws regarding hemp, including laws to ensure access to marijuana for medical use. See [Statewide Ballot Questions](#).

Tennessee

Effective October 1, 2020, Tennessee enacted the Tennessee Pregnant Workers Fairness Act, which requires that every employer with at least 15 employees make a reasonable accommodation for an employee's or prospective employee's medical needs arising from pregnancy, childbirth, or related medical conditions, unless such accommodation would impose an undue hardship on business operations. See 2020 Tenn. SB 2520.

To discuss any of these changes, contact Patricia Tsipras at 610.408.2029 or ptsipras@rubinformunato.com.

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