

HR/Employment Law Update for MN 2023/2024



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FLSA & MN Min Wage Update



FLSA Update

Exempt Salary Threshold

- \$844 per week (\$43,888) on July 1, 2024
- \$1128 per week (\$58,656) on January 1, 2025



Minimum Wage

Effective 1/1/25, Minnesota will have one minimum wage regardless of employer size or type of \$11.13 per hour.



CROWN Act



CROWN ACT

- Includes “natural hair” in the definition of race in the MN Human Rights Act.
- “Includes but is not limited to hair texture and hair styles such as braids, locs, and twists.”



Wage Theft



Wage Theft Act

- Requires written notice to employee at the start of their employment of: employment status and exemption status (and basis thereof); number of days in pay period and regularly scheduled payday; date of first paycheck; rate of pay and basis thereof, including whether paid by hour, shift, commission, piece, etc; allowances for meals and lodging; paid time off, how it is accrued and terms of use; list of deductions that may be made; employer's legal and operating name; physical address of employer; and employer phone number.
- Must be signed by each and every employee.



Wage Theft Cont'd

- Must be in English with a multi-language disclaimer which informs the employee the notice can be provided in other languages
- Must be updated and reissued every time a change is to take place PRIOR to the change.



Wage Theft Cont'd

- Earning statement must include the rate of pay and basis thereof and allowances; employer phone number; and employer address
- Must have a list of personnel policies with brief descriptions of each policy that were provided to each employee including the date the policies were given to the employee.
- A copy of the signed notice and any amendments that were provided to each employee.



Wage Theft Cont'd

- Records must be produced within 72 hours of demand by the DOLI
- Created crime of “wage theft”:
 - Intent to defraud
 - Fails to pay all wages, salary, gratuities, commissions, or earnings as required
 - Directly or indirectly causes any employee to give a receipt for wages in an amount greater than actually paid
 - Directly or indirectly demands or receives from any employee any rebate or refund from the wages owed
 - Makes or attempts to make it appear the wages paid to an employee were greater than that actually paid.



Wage Theft Common Issues

- Letting someone start without first having the signed disclosure
- No signature
- Not updating the disclosure
- Misclassifying employees as exempt
- Misclassifying people as independent contractors



IC Rule



Final Independent Contractor Rule

- Effective 3/11/24
- Factors
 - Worker's opportunity for profit and loss
 - Investments made by worker and potential employer
 - Degree of permanence of the relationship
 - Nature and degree of control the employer has over the work
 - Extent to which the work is an integral part of the employer's business
 - Worker's skill and initiative
- No one factor overrides the others



MN Salary Transparency



Salary Transparency

Effective 1/1/25

- 30 or more employees
- Must post pay rates, including min and max, on all job postings.
- Rates/range may not be open-ended



PELRA



Staff Ratios

Staff ratios are now a “term and condition of employment” which the employer must meet and negotiate.



Payroll Dues Deduction

- Employer must rely on the union to provide information about when to start/stop union related deductions, not the employee
- Union must indemnify the employer including reasonable litigation costs for errors



Bargaining Unit Notification

- Beginning Jan 1, employers must begin providing contact info to the union for all bargaining unit employees every 120 days.
- Must notify within 20 days of separation of transfer out of unit



Union Meeting

- Must allow union to meet for up to 30 minutes with all new hires within 30 days of employment without use of PTO or other leave time.
- Must provide at least 10 days' notice of an orientation of the union except for urgent need.



Email

Employers must allow a union rep to communicate with bargaining unit members using their work email address for all union business.



Non-Competes



Non-competes

- Effective July 1, 2023
- Now new non-competes are unenforceable
- Employers cannot require a choice of law venue outside of MN for claims arising in MN
- Applies to employees and independent contractors (including corp., partnership, or LLC., formed for the contract).



Defined as preventing an employee, after termination, from:

- (1) working for another employer for a specified period of time;
- (2) working in a specified geographical area; or
- (3) working for another employer in a capacity that is similar to the employee's work for the employer that is party to the agreement.



Does Not Apply To

- Non-competes for sale of business.
- Protection of trade secrets.
- Confidentiality and similar non-disclosure agreements.
- Non-solicitations of customer agreements.



Pregnancy & Parental Leave



Pregnancy Accommodations

- Applies to all employers with 1 or more employees
- Notice of rights must be provided to all employees on hire and if they ask for parental leave
- Still requires accommodations be made for Pregnant Employees including longer and more frequent restroom/food/water breaks, seating, and limits on lifting
- Employers must engage in the interactive process for reasonable accommodations



Pregnancy and Parenting Leave

- Now applies to all employees regardless of tenure or schedule
- Now applies to all employers
- Still provides 12-week unpaid protected leave (*Paid FMLA addressed later)
- Effective July 1st



Pregnancy & Parenting Leave Benefits

- Employers must now provide continuation of health benefits at the same rate during leave



Intra-Franchise Agreements



Restrictive Franchise Agreements Prohibited

- No franchisor may prohibit franchisees from soliciting or hiring employees from franchisor or other franchisees
- Franchisees must notify effected employees
- Already effective



Paid Family Medical Leave Act



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Reporting

- All employers will file reports quarterly
- First filing is due on 10/31/2024 for period 7/1/24 – 9/30/24
- Same system as UI Insurance
 - If you already report into UI, you have NO more reporting requirement – just keep doing what you do for UI.
 - If you don't report into UI – you will need to create a “Paid Leave Only” UI account
 - 1st premium due by April 30, 2026



Reporting

- PFMLA and UI are distinct legal programs
- Use the same portal/reporting system
- If you have some employees in UI and some not, you will have 2 login accounts: (1) UI account and (2) a Paid Leave Only account



Exemptions

- Employers may apply for an exemption IF:
 - They can prove their alternative plan is sufficiently similar to the state plan



Sick and Safe Time



Minnesota Statewide Sick and Safe Time

- Applies to employees who work at least 80 hours a year in MN.
- Allows care for themselves or family member
- Accrues 1 hour per 30 hours worked, up to 48 hours per year
- Accrued but unused is carried over up to 80 hours per year
- Need to provide a statement of total sick and safe time as well as sick and safe time earned in the pay period on pay stubs.
- Accrual starts first day, can use immediately upon accrual
- Starts January 1, 2024



Alternate Accruals

- More generous plans allowed
- Can front load 48 hours per year if paying for unused at normal hourly rate at the conclusion of each year
- Can front load 80 hours per year and pay for unused at a lesser rate, but not less than minimum wage



Disagreement - Statute

(i) 48 hours, if an employer pays an employee for accrued but unused sick and safe time at the end of a year at the same hourly rate as an employee earns from employment; or (ii) 80 hours, if an employer does not pay an employee for accrued but unused sick and safe time at the end of a year at the same or greater hourly rate as an employee earns from employment. In no case shall this hourly rate be less than that provided under section 177.24, or an applicable local minimum wage."



Disagreement DOLI

Front loading with no pay out and no carryover:

- A minimum of 80 hours of ESST is provided to an employee and made available for immediate use at the start of each year; and
- the ESST hours the employee did not use are not paid out at the end of the accrual year.



Family Member Defined

- Adult/Biological/Foster/In-Locho-Parentis/Legal/Step Children
- Biological/Foster/Step Siblings
- Spouse or Registered Domestic Partners
- Adoptive/Biological/Foster/In-Locho-Parentis/Step Parents
- Biological/Foster/Step Grandchildren
- Sibling's Children
- Parent's Siblings
- Child-in-Law and Sibling-in-Law



Family Member Defined

- “Any other individual related by blood or whose close association with the employee is the equivalent of a family relationship”
- “Up to one individual annually designated by the employee”



Can Be Used For

- An Employee or Family Member's need for mental or physical illness, injury, or health condition; or need for medical diagnosis, care, or treatment; or need for preventative care.
- Absence due to domestic abuse, stalking, or sexual assault of employee or family member including to receive care, services, legal advice, or relocate



Can Be Used For

- Closure of employee's place of business or family member's place of care or school due to weather or public emergency
- Inability to work due to illness or seeking diagnosis of communicable illness related to public health emergency
- Quarantine by health authorities having jurisdiction or health care professional



Employers Can Require

- Notice of foreseeable or immediate need to use Sick and Safe Time, if the employer has a written policy with reasonable procedures and has distributed it to all employees
- Documentation, if leave is more than three consecutive days



Other Rules For Use

- Employers cannot require a replacement worker be found by the absentee employee as a condition of use
- Sick and safe time can be used in the smallest unit of time an employer can track, provided that unit of time is not more than four hours – Typically 15 minutes



Returning From Leave

- Benefits must continue as if the employee had not been on leave (employee still must pay their premiums)
- Must receive same pay and benefits, plus automatic adjustments, and any seniority accrual that would have happened if not on leave
- Employee can return part time without forfeiting right to return to full time after leave



Employers Must

- Provide notice and posting
- Keep records of leave
- Keep medical information confidential
- Not discriminate or retaliate



Paid Family and Medical Leave Act

- The Sick and Safe Time will dovetail into the Paid Family and Medical Leave Act on January 1, 2026
- Will be administered by the state
- Planned to be an additional .7% payroll tax but will rise significantly based on usage and program costs



Paid Family and Medical Leave Act

- 12 weeks for medical leave
- 12 weeks for family leave
- Max of 20 weeks
- Expanded definition of a qualifying family member
- Extremely similar to the unemployment insurance system



Recreational Marijuana



Employment Testing

- Marijuana, or Cannabis, is no longer defined as a “drug”, with some exceptions
- Drug and Alcohol testing doesn’t include cannabis unless specifically stated
- “Cannabis Testing” is now defined by statute



Employment Testing

- Cannot require cannabis testing solely to determine the presence or absence of cannabis unless required by state or federal law
- An employer cannot refuse to hire an applicant solely because of a positive cannabis test



Employment Testing Exceptions

Can test for cannabis as a drug for jobs including:

- Safety sensitive positions & CDL positions
- Peace officers & firefighters
- Positions involved with face-to-face care, training, education, supervision, counseling, consultation, or medical assistance of children, vulnerable adults, and patients
- Positions funded by federal grants or which require testing under federal law



Employer Policies

- If you have a DATWA-compliant drug or alcohol policy, you can add cannabis to it
- You can ban marijuana use, possession, sale, and transfer on your premises and on your equipment



Cannabis Discipline

You can discipline an employee for their use, possession, sale, or transfer of cannabis in your workplace or on your equipment as indicated by a cannabis test if:

- Their clearness of intellect and control of self is impaired;
- The confirmatory retest is positive;
- The rules are in writing in your DATWA policy; or
- As otherwise authorized under state or federal law, or if not doing so would lose federal money or licensing benefit



Pay History



Inquiries Into Pay History Prohibited

- Employers cannot inquire into, consider, or require the disclosure of the pay history of an applicant
- Applicants can voluntarily disclose the info
- Employers may still provide information about wages
- Employers may still ask about expectations of wages





Questions?

(218) 213-7162



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