

With 2022 now in the past, employers should ensure they are aware of the multitude of new and changed laws that have gone into effect (or will be going into effect shortly) to ensure compliance as we kick off 2023.

As an initial matter, state and local governments continue to lead the charge to **higher minimum wage rates and exempt employee salary thresholds**. Our updated minimum wage chart, with rates in effect as of January 1, 2023, is available [here](#). Our updated exempt employee salary threshold chart, with rates in effect as of January 1, 2023, is available [here](#).

In addition to continued protections in some jurisdictions for employees who needed to take leave for COVID-19-related reasons, 2022 saw lawmakers pass laws increasing pay equity through pay disclosure laws and curtailing employer use of noncompete agreements. A number of state-paid family and medical leave laws are taking effect, and legal protections for victims of sexual harassment and other forms of discrimination have continued to increase.

For 2023, we anticipate seeing many COVID-19-related laws phased out. We also anticipate seeing more laws mandating pay disclosures, expanded laws protecting against discrimination and harassment, additional restrictions on noncompete agreements and increased protections for employees needing to take leave for family and/or medical reasons.

Now, for the updates!

California

- As we reported in our [California Legislative Year-End Review](#), California's legislature was active in 2022, with many new laws taking effect January 1, 2023, including the following:
 - Employees can now “designate” an individual for the purposes of using leave under the California Family Rights Act or paid sick leave
 - California employers are now required to provide up to five days of unpaid bereavement leave to employees upon the death of a family member (defined as a spouse or a child, parent, sibling, grandparent, grandchild, domestic partner or parent-in-law)
- As we also covered previously ([here](#)), effective January 1, 2023, many California employers will be required to include pay scale information in job postings and disclose pay scale information to current employees

- And, to top it off (although giving you a bit of extra time for compliance), we also reported in our California Legislative Year-End Review ([here](#)) the upcoming protections for off-duty cannabis use – effective January 1, 2024, employers will be prohibited from discriminating against employees and applicants for cannabis use while off the job, with some exceptions.

But we cannot forget about the local laws!

- **Los Angeles Fair Work Week** – Under the [ordinance](#), Los Angeles retail employers with 300 or more employees globally will be required to provide employees with at least 14 days' advance notice of their schedule by either posting or transmitting them by electronic means, provide at least 10 hours' rest between shifts, and also provide a good-faith estimate of a schedule within 10 days of an employee's request. Employees can also decline hours not included in their original schedule if an employer changes the schedule; any consent to a schedule change must be in writing. The ordinance is set to take effect on April 1, 2023.
- **San Francisco Public Health Emergency Leave** – San Francisco's [Public Health Emergency Leave Ordinance](#) (PHEL) went into effect October 1, 2022, providing permanent paid public health emergency leave, in addition to other required paid time off (e.g., paid sick leave). Employers with 100 or more employees worldwide are required to provide employees with up to 80 hours of PHEL each calendar year. Employees are permitted to use PHEL during a Public Health Emergency (PHE), which includes local or statewide health emergencies related to any contagious, infectious or communicable disease (declared by San Francisco's or California's health officer), when they are unable to work or telework due to (a) the recommendations or requirements of an individual or general federal, state or local health order related to the PHE; (b) the employee or family member the employee is caring for has been advised by a healthcare provider to isolate or quarantine; (c) the employee or family member the employee is caring for is experiencing symptoms and seeking medical diagnosis or has received a positive medical diagnosis of possible infectious, contagious or communicable disease associated with the PHE; (d) the employee is caring for a family member if the school or place of care is closed, or the care provider is unavailable, due to the PHE; or (e) there is an Air Quality Emergency and the employee is a member of the vulnerable population and primarily works outdoors.



- **San Francisco Family Friendly Workplace** – Amendments to the [San Francisco Family Friendly Workplace Ordinance](#) went into effect on July 12, 2022, expanding the ordinance's protections for employers with 20 or more employees to include employees teleworking into San Francisco from a location outside of the city, if the employer maintains an office or worksite within San Francisco where the employee may work or was permitted to work prior to COVID-19. The amendments also broaden the scope of qualifying caregiver responsibilities to care for any person over 65 years old who is in a "family relationship" with the caregiving employee (where the original ordinance was limited to care for a parent). "Family relationship" is defined as a relationship in which a caregiver is related by blood, legal custody, marriage or domestic partnership to another person as a spouse, domestic partner, child, parent, sibling, grandchild or grandparent.

Colorado

- **Wage Theft** – While certain [amendments](#) to Colorado's wage theft laws went into effect on August 10, 2022, a number of other changes go into effect on January 1, 2023, including that:
 - Employers who do not pay wages owed within 14 days after an employee makes a written demand or files a civil suit or administrative claim will face a penalty of two times the amount of the unpaid wages or \$1,000, whichever is higher.
 - Employees can make demands for unpaid wages on behalf of a group of similarly situated employees.
 - In order to make a deduction from an employee's final paycheck for the value of property that the employee did not return, within 10 days of separation, the employer must provide a written document to the employee specifying what the employee failed to pay or return, the replacement value of the property, when the money or property was provided to the employee and when the employer believes the employee should have paid the money or returned the property. If the employee pays the employer back, the employer must refund any deduction made within 14 days.
- **Public Health Emergency Leave** – Colorado's Public Health Emergency Leave law requires employers to provide employees with a bank of two weeks of paid leave upon the declaration of a public health emergency. This leave can be used until four weeks after all applicable public health emergency declarations end or are suspended. Initially, this leave could be used for certain COVID-19-related reasons. However, effective November 11, 2022, PHEL leave may also be used for respiratory syncytial virus (RSV), influenza and other respiratory illnesses.
- **Paid Sick Leave** – Colorado's Department of Labor and Employment (CDLE) issued [additional guidance](#) on the state's paid sick leave law. Of note, the guidance clarifies that unused paid sick leave that carries over to a subsequent year counts toward that year's paid sick leave entitlement (meaning an employee who does not use any paid sick leave in year one will carry it over and will not accrue any additional leave in year two). Additionally, the guidance clarifies the interaction between paid sick leave and PHEL.
- **Protected Health/Safety and Whistleblowing** – Under [amendments](#) to Colorado's Protected Health/Safety Expression and Whistleblowing law (PHEW – originally passed during the COVID-19 pandemic), employees and independent contractors who have a reasonable, good faith belief that their employer is in violation of any health or safety laws or that there is otherwise a significant health or safety threat can file a complaint with the CDLE. Employers are prohibited from retaliating against employees or contractors who report such violations, and policies or provisions of agreements that would limit or prevent such disclosures are void and unenforceable. The law also protects employees who wish to wear their own personal protective equipment on the job, provided they can safely perform their job duties while doing so. Employers are required to post an updated [notice](#).
- **Noncompete and Nonsolicitation Agreements** – As we noted previously [here](#), Colorado has sharply restricted noncompete and nonsolicitation agreements with certain "low-wage" workers, as of August 10, 2022.
- **Family and Medical Leave Insurance** – [Colorado's Family and Medical Leave Insurance Program \(FAMLI\)](#) will provide covered employees with up to 12 weeks of paid family and medical leave (plus additional amounts available for certain pregnancy- and childbirth-related reasons). The program is paid for with both employer and employee contributions, and while employees cannot take leave until 2024, premium payments begin in 2023. Most employers will need to [register](#) with the state before the first premium payments are due on April 30, 2023. Colorado has also issued a new FAMLI [poster](#), which employers must post by January 1, 2023.

Connecticut

- **Connecticut Family and Medical Leave Act** – Revisions to Connecticut's Family and Medical Leave Act [regulations](#) went into effect on August 3, 2022. The revisions broadened the scope of the law's coverage. For example, an employee is now eligible for CT FMLA if they have been employed for at least three consecutive months (down from 12 months). Additionally, the law expands the list of family members for whom eligible employees can take leave. The law also provides for up to 12 work weeks of leave in any 12-month period (previously, 16 work weeks of leave in any 24-month period). There are a number of other changes; employers should review the amended law and ensure their policies are up to date.
- Relatedly, Connecticut released **a new [notice of employee rights](#)** under the Connecticut Family and Medical Leave Act and the Connecticut Paid Leave Act.
- **Domestic Violence Leave** – Finally, under [SB5](#), Connecticut now prohibits discrimination against employees based upon their status as a domestic violence victim and requires employers to provide such employees with leave for certain domestic violence-related reasons.



Delaware

- **Job Application Prohibitions** – Effective September 8, 2022, employers in Delaware are prohibited from asking about an applicant's age, date of birth, or school attendance or graduation dates on initial job applications, unless such information is based upon a bona fide occupational qualification or the information is needed to comply with applicable state or federal law or the requirements of a regulatory, licensing or certifying body or organization.
- **Access for Retirement and Necessary Savings Program** – Additionally, effective August 18, 2022, under [H.B. 205](#), employers with five or more eligible employees in Delaware must facilitate those employees' participation in the Delaware Expanding Access for Retirement and Necessary Savings (EARNs) program. The EARNs program is designed to provide a convenient way for all workers to save for retirement, particularly middle- and low-income workers who lack access to employer-sponsored plans and small businesses that are unable to provide such a benefit.

District of Columbia

- **Ban on Noncompete Agreements Amendment Act** – On October 1, 2022, Washington DC's Ban on Noncompete Agreements Amendment Act went into effect. As we have discussed previously [here](#), [here](#) and [here](#), the law essentially prohibits employers from including noncompete provisions in any employment contracts and policies, with few exceptions. Additionally, the act contains certain notice and anti-retaliation provisions. Importantly, it only applies prospectively; it does not affect existing noncompete agreements. However, employers should ensure any new agreements comply with the act, review any policies that prohibit outside employment, and provide employees with the requisite notices required under the act.
- **Homelessness as a Protected Characteristic** – The DC Human Rights Act was [amended](#), effective as of October 1, 2022, to add homelessness as a protected characteristic, to safeguard independent contractors from discrimination on the same basis as employees, and to broaden the protections against harassment.
- **Marijuana Testing Restricted** – Washington DC, which [already prohibits](#) pre-employment marijuana testing, has [passed a law](#) limiting the ability of employers to test for marijuana. Specifically, except in certain circumstances, employers cannot take adverse action based upon an employee's use of cannabis, status as a medical cannabis program patient, or the presences of cannabinoid metabolites in their bodily fluids absent additional factors indicating impairment.

Florida

- **Stop W.O.K.E. Act** – In *Honeyfund.com, Inc. v. DeSantis*, No. 4:22-cv-227-MW/MAF (N.D. Fla. Aug. 18, 2022), the US District Court for the Northern District of Florida granted a preliminary injunction of Florida H.B. 7, the Stop W.O.K.E. Act, which made it unlawful for employers to require employee training on certain concepts related to race, color, sex or national origin, on the basis that the law violates the First and Fourteenth Amendments of the US Constitution. Governor DeSantis appealed the decision granting the preliminary injunction, and the suit has been stayed pending resolution of the appeal.
- **Miami Beach Hairstyle Discrimination** – Miami Beach has passed an [ordinance](#) that prohibits employment discrimination based on hairstyle and/or hair texture. Employers may establish or continue to enforce any workplace safety policies or rules related to hairstyle and/or hair texture, provided that those policies and rules do not result in any disparate treatment.

Georgia

- **Expanded Employment Definition** – With the passage of [H.B. 389 \(Act 809\)](#), Georgia expanded its definition of employment, meaning that many more independent contractors will likely be considered to be employees. Previously, whether an individual was an employee or contractor turned on control; now, there is a multifactor test that takes into consideration the nature and scope of the work, among other things. The law specifically addresses criteria for evaluating workers of ride-sharing networks and in the music industry. In addition, the law establishes various civil penalties for misclassification. While the expanded definition of "employee" applies in the unemployment context, because employee is undefined in many other Georgia employment laws, the definition will likely be used in those other contexts also.
- **Restrictions on Scheduling Laws** – In an employer-friendly move, Georgia also passed [a law](#) precluding local governments from passing or enforcing local regulations governing employee work hours or scheduling, so fair workweek laws, like those in place in San Francisco, New York City and Chicago, will not be coming to Atlanta.
- **Atlanta** – On October 17, 2022, Atlanta passed an ordinance adding gender expression and criminal history status to the [list of factors](#) employers may not use to discriminate against an employee or applicant; the ordinance applies to employers with 10 or more employees. The ordinance clarifies that it does not prohibit an employer from making an adverse employment decision based on criminal history status when related to positions where certain convictions or violations are a bar to employment in that position under state or federal law, including, but not limited to, positions that involve work with children and positions in law enforcement.

Hawaii

- **Wage and Hour Violations** – Under [S.B. 2298](#), employers that violate [Hawaii's wage and hour law](#) will now be guilty of a Class C felony, and subject to a fine of between \$500 and \$5,000 for each offense.
- **Retirement Savings Act** – The Hawaii Retirement Savings [Act](#) establishes the Hawaii Retirement Savings Program to provide a state-facilitated payroll-deduction individual retirement savings plan to private-sector employees who do not have access to employer-sponsored retirement savings plans. The plan does not require automatic enrollment, but, rather, allows employees to opt in. Though the law took effect immediately upon passage, there will be an implementation period determined by the Hawaii Retirement Savings Board.
- **Nondisclosure Agreements** – Under [HB 2495](#), Hawaii employers are now prohibited from entering into nondisclosure agreements that prevent employees from disclosing or discussing sexual harassment or sexual assault occurring in the workplace, at work-related events, between employees or between an employer and an employee (previously, employers were merely prohibited from requiring employees to enter into such agreements as a condition of employment).

Illinois

- **Hairstyle Discrimination** – The Illinois Human Rights Act has been amended to expand the definition of “race,” prohibiting discrimination based on hair texture or hairstyle, including traits associated with race, such as hair texture and protective hairstyles such as braids, locks and twists. The Illinois [CROWN Act](#) takes effect January 1, 2023.
- **Family Bereavement Leave** – Illinois's [Family Bereavement Leave Act](#), which takes effect January 1, 2023, expands the leave requirements under the Child Bereavement Leave Act to cover pregnancy loss, failed adoptions or surrogacy agreements, unsuccessful reproductive procedures and other diagnoses or events negatively impacting pregnancy or fertility. The amendments also provide for leave after the loss of family members, now including spouses, domestic partners, siblings, grandparents and stepparents. Under the law, employees may take up to 10 working days of unpaid leave for any of these events to attend a funeral or to make arrangements necessitated by the death of the family member.



- **One Day Rest in Seven** – Illinois has [amended](#) its One Day Rest in Seven Act, with the amendments taking effect January 1, 2023. Employers now must provide employees with one day of rest in “every consecutive seven-day period” and a 20-minute meal break for the first 7.5 hours worked, followed by another 20-minute meal break for each additional 4.5-hour period worked after this initial 7.5-hour period. The penalties for violations are also increasing. For employers with fewer than 25 employees, the civil penalty may not exceed \$250 per offense, and for employers of 25 or more employees, the civil penalty may not exceed \$500 per offense. Employers may also be required to pay damages to affected employees, again up to \$250 and \$500, respectively. The amendments also require employers to post a notice summarizing the requirements and information on how to file a complaint.
- **Retirement Savings Program** – Under [regulations](#) implementing the Illinois Secure Choice Retirement Savings Program, employers must automatically enroll each employee who has not opted out of participation in the program and deposit their payroll deductions in the program on behalf of those employees. Employers who fail to take these steps could face fines of \$250 to \$500 per employee.
- **Chicago Sexual Harassment Law** – The City of Chicago [amended](#) its anti-harassment law, effective as of July 1, 2022. Employers are now required to have a written anti-harassment policy, which, among other requirements, should be written in the employee's primary language, provided to employees within their first week of employment and include the definition of sexual harassment and state that sexual harassment is illegal. Employers must also provide annual sexual harassment prevention training for employees; the first set of trainings shall be completed by June 30, 2023, and all subsequent trainings between July 1 and June 30, annually. Further, employers must display the posters (one in English and one in Spanish) designed by the Chicago Commission on Human Relations setting forth sexual harassment prohibitions and retain their written records of their policies and annual trainings for at least five years or the duration of any claim, civil action or investigation pending pursuant to the amendments, whichever is longer.
- **Pay Data Reporting** – As we previously reported ([here](#)), Illinois employers with 100 or more employees in Illinois must begin submitting certain Equal Employment Opportunity (EEO) and other pay data by March 24, 2024, in order to obtain an equal pay registration certificate from the state. Employers should note that the state has administratively suspended the EEO-1 filing requirement for 2023. Additional information is available from the Illinois Department of Labor [site](#).

Indiana

- Under [H.B. 1351](#), employers who maintain personal information on Indiana residents (including employees and applicants) must make required security breach notifications within 45 days after discovering a breach.

Louisiana

Louisiana has joined the list of jurisdictions prohibiting discrimination against employees on the basis of traits typically associated with race or national origin, including natural, protective or cultural hairstyle. The [law](#) defines the terms, natural, protective or cultural hairstyle to include Afros, dreadlocks, twists, braids, cornrow braids, Bantu knots, curls and hair styled to protect hair texture or for cultural significance.

Maine

Maine [law](#) now requires that all unused paid vacation that accrues on and after January 1, 2023, be paid out to the employee upon termination of employment, regardless of the employer's policy; the law applies to employers with 11 or more employees.

Maryland

- **Expanded Definition of Sexual Harassment and Harassment** – Effective October 1, 2022, Maryland has [expanded](#) the scope of conduct that can support a claim of unlawful harassment or sexual harassment beyond the federal “severe or pervasive” requirement. Under the expanded definition, conduct can support a claim of harassment or sexual harassment when, inter alia, based upon the totality of circumstances, it unreasonably creates a working environment that a reasonable person would perceive to be abusive or hostile. With these changes, employers can expect more charges to survive administrative review and for more claims to survive a motion to dismiss or motion for summary judgment.
- **Personal Information Protection Act Amendment** – Maryland [amended](#) the Personal Information Protection Act to reduce the amount of time data owners (including employers) have to report data breaches to affected individuals (who include employees, applicants and others who reside in the state). Notification now must be made within 45 days of discovering or being notified of a breach.

Massachusetts

Massachusetts now prohibits discrimination on the basis of hair texture or hairstyles associated with race, including, but not limited to, natural and protective hairstyles, such as braids, locks, twists and Bantu knots.

Michigan

- **Sick Time Reversion** – As you may recall, in 2018 Michigan voters passed a ballot measure, the Earned Sick Time Act (ESTA), requiring employers to provide employees with paid sick leave. The Michigan legislature then decided to amend the ballot measure, gutting many of the provisions of the ballot measure approved by voters in the Paid Medical Leave Act (PMLA). Under the amended version instituted by legislators, the law only applied to larger employers (those with 50 or more employees), only required 40 hours of paid leave and only required paid leave for non-exempt employees. After a lengthy legal battle, the Michigan Court of Claims has restored the ESTA; the changes are set to go into effect on February 19, 2023. Under the ESTA, employers with 10 or more employees must provide up to 72 hours of paid sick leave to all employees (exempt and non-exempt) annually; employers with up to nine employees must provide up to 40 hours of paid sick leave to employees annually. Sick leave will accrue at the rate of one hour for every 30 hours worked (rather than one hour per every 35 hours worked under the PMLA). There are additional changes, including, notably, the presumption that any adverse action taken by an employer within 90 days of the employee's use of sick leave constitutes a rebuttable presumption of retaliation and the availability of a private cause of action for aggrieved employees. Employers should review and adjust their sick leave policies and systems accordingly.
- **Minimum Wage Reversion** – The Michigan Court of Claims also restored the Improved Workforce Opportunity Wage Act, a minimum wage ballot measure by voters in 2018 and, like the ESTA, significantly modified by the legislature. This restoration effects an immediate increase in the state's minimum wage to \$12 (from \$9.87), with additional changes to the minimum wage and tip credit for tipped employees.

Nevada

In *Ceballos v. NP Palace, LLC*, No. 82797, 2022 BL 279342 (Nev. Aug. 11, 2022), the Nevada Supreme Court found that off-duty marijuana use is not protected by a provision of the state fair employment law prohibiting discrimination against employees on the basis of off-premises use of lawful products during nonworking hours. The court reasoned that although Nevada has decriminalized recreational marijuana use, it is illegal under federal law; therefore, its use is not lawful in the state.



New Jersey

- **Marijuana Guidance** – As we previously reported [here](#), back in 2021, New Jersey legalized recreational marijuana use and also prohibited employers from taking adverse action against an employee or applicant based solely upon the presence of cannabinoid metabolites in a substance test (with some exceptions). In September 2022, the New Jersey Cannabis Regulatory Commission issued [interim guidance](#) on workplace impairment, providing a [sample](#) Reasonable Suspicion Observed Behavior Report and recommending that employers maintain a “Standard Operating Procedure” setting out a process for completing that report.
- **Revised Notice Requirements** – New Jersey [has specified](#) that employers may satisfy the posting requirements of various employment laws by posting any state-required employment posters that must be displayed at the workplace on an internet or intranet site to which all employees have access and where the employer posts other notices for employees (as an alternative to posting on a physical bulletin boards). Employers must also distribute copies of the posters to employees annually, on or before December 31 of the year, and upon first request of an employee. Distribution can be by email, hard copy, or by website (so long as the employer provides notice to employees of the posting).

New Mexico

New Mexico published [Final Rules](#) and [FAQs](#) relating to the state’s [Healthy Workplaces Act](#), which went into effect on July 1, 2022.

New York

- **Pay Transparency Laws** – As we previously discussed [here](#), New York City’s pay transparency law went into effect last month. After the New York City law was originally passed, other New York localities – namely, the City of Ithaca and Westchester County – followed suit, passing their own pay transparency laws. Now the State of New York has officially joined the party. On December 21, 2022, New York Governor Kathy Hochul signed the state’s pay transparency bill into [law](#). In some respects, the New York law is even broader than New York City’s. For example, employers covered under the statewide law must not only disclose the compensation or range of compensation in any advertised job, promotion or transfer opportunity that can or will be performed, at least in part, in New York, but must also include a job description (if one exists), and a description of other forms of benefits (e.g., fringe benefits, bonuses, stock options, commissions). The statewide law, which goes into effect on September 18, 2023, explicitly provides that it “shall not be construed or interpreted” to preempt any local laws. Nevertheless, it may have that effect on at least Westchester County’s pay transparency [law](#), which is to become “null and void on the day that statewide legislation goes into effect” if the Westchester County Legislature determines that the statewide law “incorporat[es] either the same or substantially similar provisions” as the Westchester County law.
- **Electronic Notice of Workplace Posters** – On December 16, 2022, Governor Hochul signed an [amendment](#) of NY Labor Law § 201 into law. Effective immediately, New York employers are required to (1) furnish electronic versions of required workplace posters or abstracts, either on an employer’s website or by email; and (2) provide notice to their employees that all such posters or abstracts are available electronically. The law is drafted broadly to cover not just workplace posters mandated under NY Labor Law, but also “[a]ll other documents required to be physically posted at a work-site pursuant to state or federal law or regulation.”
- **Lactation Accommodation** – New York state has [amended](#) its existing lactation break law that in large part mirror the provisions of New York City’s lactation accommodation law. Under the amendments, which go into effect on June 7, 2023, employers must meet additional requirements for providing compliant space for employees to express breast milk (for example, the space must now include a chair, a working surface, access to nearby clean running water and an electrical outlet) and must adopt a lactation accommodation policy, which must be provided to employees upon hire, after childbirth, and annually.
- **New York City Vaccine Mandate** – On September 20, 2022, New York City Mayor Eric Adams [announced](#) that, effective November 1, 2022, the city’s COVID-19 vaccine mandate for private-sector employees would be optional.
- **Freelance Isn’t Free Act Vetoed** – On December 23, 2022, New York Governor Kathy Hochul vetoed the [Freelance Isn’t Free Act](#). The act, which was initially passed by the New York State Legislature on June 2, 2022, would have required businesses to, among other things, put all contracts with freelancers in writing, containing certain mandatory terms. As a reminder, New York City employers must still comply with city’s [Freelance Isn’t Free Act](#), which remains in effect.
- **New York City Automated Employment Decisions Tool** – On December 12, 2022, the New York City Department of Consumer and Worker Protection (DCWP) [announced](#) that enforcement of the city’s Automated Employment Decision Tools [Law](#) (AEDTL), which was scheduled to take effect on January 1, 2023, will be delayed until April 15, 2023. DCPW will also hold a [second public hearing](#) on proposed rules to the AEDTL on January 23, 2022. By way of background, under the AEDTL, New York City employers will be prohibited from using an “automated employment decision tool” (essentially any AI tool) to make any employment decision unless the employer (1) subjects the AI tool to a “bias audit” no more than one year prior to its use, and (2) publicizes a summary of the results of the most recent bias audit on its website prior to its use.

Oklahoma

Pursuant to a recent [amendment](#) to the state’s labor law, Oklahoma employers may now (as of November 1, 2022) pay their employees either (1) by direct deposit to a financial institution of the employee’s choice, or (2) if the employee does not consent to direct deposit, via a payroll card account.

Pennsylvania

- **Philadelphia Employee Commuter Transit Benefit Program** – Philadelphia adopted a mass transit benefits [ordinance](#) that requires employers with at least 50 covered employees (i.e., those who worked in Philadelphia for an average of at least 30 hours a week for the same employer within the past 12 months) to provide those employees with one of the following transit benefits programs: a pre-tax payroll deduction for mass transit expenses or qualified bicycle expenses, an employer-paid benefit where the employer provides covered employees with a fare instrument for mass transit expenses, or a combination of the two programs.
- While Philadelphia's Public Health Emergency Leave requirements are no longer in effect, the city has passed a [law](#) that requires employers with 25 or more employees to provide up to 40 hours of additional paid sick leave to eligible employees when they are unable to work for certain COVID-19 reasons. This entitlement is outside of, and in addition to, existing accrued paid time-off banks, and must be provided immediately, with no waiting period. The law is effective through December 31, 2023.

Rhode Island

- **Pay Discrimination** – Rhode Island has passed extensive pay equity [legislation](#) prohibiting employers from paying employees less based upon protected characteristics. Effective January 1, 2023, employers must provide a wage range for a position upon hire, when a current employee moves into a new position, or when an employee or applicant requests. Employers are prohibited from seeking or relying on the wage history of an applicant, and may only consider any wage history information that was voluntarily provided after an initial offer is made to justify increasing the compensation already offered. Employee wage histories cannot be used to justify a pay differential. Through June 30, 2026, employers who conduct a self-evaluation of their pay practices and eliminate any unlawful wage differentials identified in such self-evaluation will have an affirmative defense to liability to any suit commenced within two years of the evaluation. The state has made available a self-evaluation form, and has issued additional guidance regarding the law, available [here](#).
- **Tip Pool Changes** – Under [H.B. 7510](#), employees must retain all tips they earn except for tips charged on a credit card or when there is a valid tip pool arrangement. Employers with tip pools must notify employees of any required contribution amounts and only can take a tip credit for the tips that each employee ultimately receives. Nontipped employees covered by the federal Fair Labor Standards Act's minimum wage and overtime provisions can participate in tip pools only if their employer pays the full minimum wage to tipped employees and does not take a tip credit.

Tennessee

Effective July 1, 2022, the Tennessee [CROWN Act](#) prohibits discrimination against employees on the basis of wearing ethnic hairstyles, including braids, locks, twists, Bantu knots or in other manners that are part of the cultural identification of or physical characteristic of the employee's ethnic group.

Texas

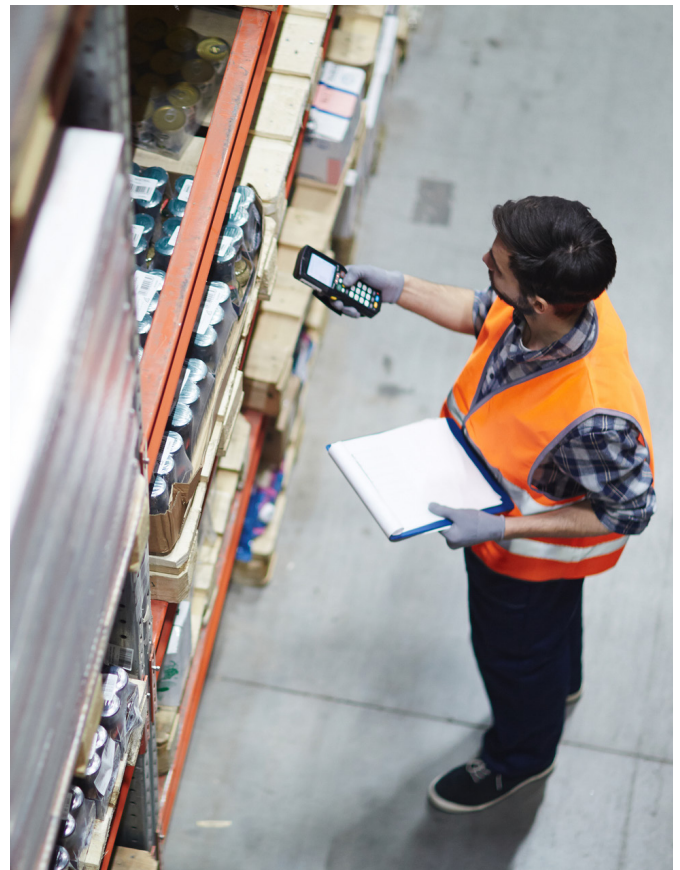
Austin has become the first city in Texas to [prohibit](#) discrimination against employees based on "protective hairstyles." This is defined as a hairstyle necessitated by, or resulting from, the characteristics of a hair texture or hairstyle commonly associated with race, national origin, ethnicity, or culture, and includes, but is not limited to, Afros, Bantu knots, braids, cornrows, curls, locks, twists or hair that is tightly coiled or tightly curled.

Vermont

Vermont has [amended](#) its Crime Victim Leave law, replacing the definition of a covered "crime victim" with the definition of an "alleged victim" as a person who is eligible to take leave from work to attend criminal proceedings in which the person is the alleged victim or the family member of an alleged victim. The law defines an "alleged victim" as a person who (1) is alleged in an affidavit filed by law enforcement with a prosecuting attorney to have sustained physical, emotional or financial injury or death as a direct result of the commission or attempted commission of a crime or act of delinquency; or (2) is the family member of the alleged victim, if the alleged victim is a minor, is found incompetent, suffered physical or emotional injury or was killed as a result of a violent crime or act of delinquency.

Virginia

Virginia [amended](#) the Virginia Human Rights Act (VHRA), the state's employment anti-discrimination law, by adding a new definition of religion. The VHRA, as amended, now defines "religion" to include "any outward expression of religious faith, including adherence to religious dressing and grooming practices and the carrying or display of religious items or symbols."



Washington

- **Pay Transparency** – Washington joins the growing list of states requiring employers to proactively provide a position's wage or salary information to applicants. Effective January 1, 2023, employers must [disclose](#) in each job posting the wage scale or salary range and a general description of all benefits and other compensation to be offered to the applicant. "Posting" is defined as any solicitation intended to recruit job applicants for a specific available position, including recruitment done directly by an employer or indirectly through a third party, and includes any postings done electronically or in hard copy that include qualifications for desired applicants. Employer must also disclose this information for internal transfer positions. Additional guidance regarding the law is available [here](#).
- **Discrimination** – Washington [updated](#) its discrimination rules to better align with H.B. 1097, which took effect earlier this year. The rules now note that employees who believe they have been discriminated against under RCW 49.17.160 have up to 90 days to allege a violation, rather than 30 days. It also clarifies that if an employee's engagement in protected activities was a substantial factor in bringing about disciplinary action against the employee, then the employer has violated the regulations. It also clarifies the grounds that will be used to determine whether an employee who walked off a job due to unsafe conditions did so in good faith. Finally, the rule sets penalties ranging from \$5,000 to \$14,000 for violations of the regulations.

- **Noncompete Earning Thresholds** – Washington has also [adjusted the earnings thresholds](#) for employee and independent contractor noncompetes for 2023. The 2023 earnings threshold for employees is \$116,593.18 (up from \$107,301.04) and for independent contractors is \$291,482.95 (up from \$268,252.59). Only employees or independent contractors who earn more than these thresholds can be held to noncompetition agreements.

You can find our state updates from the first half of 2022 [here](#) and [here](#).

Authors



Shennan Harris
Senior Associate, Columbus
T +1 614 365 2791
E shennan.harris@squirepb.com



Ariel Cohen
Associate, Columbus
T +1 614 365 2774
E ariel.cohen@squirepb.com



Scott Held
Associate, New York
T +1 212 872 9819
E scott.held@squirepb.com



The opinions expressed in this update are those of the author(s) and do not necessarily reflect the views of the firm, its clients, or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.