Engage PEO Client Alert: Minnesota

Minnesota Year-End Legislative Updates

MINNESOTA ADDS STATEWIDE PAID SICK AND SAFE LEAVE

What's New: As of January 1, 2024, Minnesota's Earned Safe and Sick Time (ESST) law will require employers to provide up to 48 hours of paid safe and sick leave in a 12-month period to most workers.

What it Means: The new law applies to any employer that employes one or more employees and has employees who work at least eighty (80) hours per year for that employer in Minnesota. Temporary and part-time employees are eligible for sick and safe time, but independent contractors are not.

An employee may use earned sick and safe time for several reasons, including:

- The employee's mental or physical illness, treatment, or other health condition (including preventive care);
- A family member's mental or physical illness, treatment, or preventive care;
- Absence due to domestic abuse, sexual assault, or stalking of the employee or a family member;
- Closure of employee's workplace due to "weather or other public emergency" or closure of a family member's school or care facility due to the same causes; and
- When a health authority or healthcare professional determines an employee or family member is at risk of infecting others with a communicable disease.

Employees may use earned sick and safe time for the following family members:

1. their child, including foster child, adult child, legal ward, child for whom the employee is legal guardian or child to whom the employee stands or stood in loco parentis (in place of a parent);
2. their spouse or registered domestic partner;
3. their sibling, stepsibling or foster sibling;
4. their biological, adoptive or foster parent, stepparent or a person who stood in loco parentis (in place of a parent) when the employee was a minor child;
5. their grandchild, foster grandchild or step-grandchild;
6. their grandparent or step-grandparent;
7. a child of a sibling of the employee;
8. a sibling of the parents of the employee;
9. a child-in-law or sibling-in-law;
10. any of the family members listed in 1 through 9 above of an employee's spouse or registered domestic partner;
11. any other individual related by blood or whose close association with the employee is the equivalent of a family relationship; and
12. up to one individual annually designated by the employee.

Employers may provide paid leave using either the front-load method **or** the accrual method. Here are the key highlights of the Act:

Front-Load Method: Rather than permit employees to accrue paid leave, an employer can elect to grant employees a lump-sum grant of either (1) 48 hours of safe and sick leave each year if the employee **pays out** the accrued safe and sick leave (see below) or (2) 80 hours of safe and sick leave each year if the employer **does not pay out** the safe and sick leave at the end of the year.). Employers that frontload the minimum number of hours of paid leave are not required to allow employees to **carryover** any paid leave time from year to year.

Accrual Method: For employers that do not want to frontload paid leave, an employer can lawfully require their employees to accrue paid leave time based on number of hours worked, at a rate of one hour of safe and sick leave for every 30 hours worked up to a maximum of 48 hours in a year. An employer may agree to allow employees to accrue more than 48 hours of safe and sick leave in a year.

Additionally, properly classified **exempt** employees under the Fair Labor Standards Act are considered to work 40 hours in each workweek unless their normal workweek for the exempt employee is less, in which case the lesser hours in the workweek are used.

Repayment: The state law provides an alternative procedure that allows an employer to front-load 48 hours of earned sick and safe time in the first year of employment, pay out in cash the value of unused hours at the end of the designated year, and not carry over any unused hours into the next year. The other option is to frontload 80 hours with no pay out at the end of the year.

Notice Requirements: The Minnesota Department of Labor and Industry has prepared a uniform notice form for employers to use that provides the notice information required, along with a uniform notice in the five most common languages spoken in Minnesota. The notice should be posted with other required labor posters in the language(s) spoken by employees. Additionally, employers that provide an employee handbook to employees must include in the handbook notice of employee rights and remedies under the new law.

Requesting and Using Leave: Employees can start using safe and sick time as soon as it is accrued/earned. Employers may require advance notice of up to seven (7) days, if the need is foreseeable. If the need is unforeseeable, employers may require the notice to be given "as soon as practicable." Additionally, if employees use earned sick and safe time for more than three (3) consecutive days, employer may require "reasonable documentation" reflecting "that the earned sick and safe time is covered."

Carryover: Employees must be allowed to carry over up to eighty (80) hours of unused sick and safe time into the following year. However, as mentioned above, in lieu of carry over, employers that **front-load** the minimum number of hours of paid leave are not required to allow employees to carryover any paid leave time from year to year.

Calendar Year: For the purposes of the law, a "year" is a regular and consecutive 12-month period, as determined by the employer. The employer must clearly communicate to employees how the year is calculated (calendar year, work anniversary, etc.).

Interaction with Local Sick Leave Ordinances: The cities of Minneapolis, St. Paul, Duluth and Bloomington have already passed sick leave ordinances and this new law will not preempt those laws.

According to the Minnesota Department of Labor, "employers must follow the most protective law that applies to their employees."

Interaction with Existing Policy: Paid time off plans or other paid leave policies (e.g., sick or vacation time) can satisfy the new law, if they meet or exceed the requirements under the law and do not otherwise conflict with the law. A policy or plan does not have to be called earned sick and safe time to meet the requirements of the law, although employers may want to consider referencing safe and sick time in their policy.

In Payout Upon Termination: In general, employers are **not** required to pay unused safe and sick leave when an employee terminates, resigns or retires. However, if an employee is transferred to a separate division, entity or location of the same employer, the employee is entitled to all accrued safe and sick leave at the prior division, entity or location and is entitled to use all earned ESSL. Further, if an employee is rehired within 180 days of separation by the same employer, previously accrued and unused safe and sick leave must be reinstated.

What Employers Should Do: Minnesota employers should review the Minnesota Department of Labor and Industry's FAQ's as well as their current sick time policies to ensure that they currently meet or exceed **the minimum requirements** of the Act.

Additionally, employers should review and, as necessary, revise anti-retaliation, attendance, conduct, and discipline policies to prevent retaliation against employees for taking time off under the Act.

MINNESOTA SALARY HISTORY BAN

What's New: As of January 1, 2024, Minnesota employers will be prohibited from inquiring into, considering, or requiring disclosure of the pay history of an applicant for employment for the purposes of determining wages, benefits, salary or other compensation.

What it Means: Employers should refrain from asking about an applicant's current or past pay either on an application, an interview, or as part of salary negotiations. However, job applicants can voluntarily and unprompted share past and/or current- pay to negotiate higher pay.

What Employers Should Do: All hiring managers and committees should be reminded they cannot ask a job applicant their current salary or salary history.

MINNESOTA PROHIBITS NON-COMPETE AGREEMENTS FOR ALL EMPLOYEES

What's New: Minnesota employers are prohibited from entering into non-competition agreements with employees and independent contractors. Non-competition agreements restrict an employee's ability to work for a competitor after they separate employment. Notably, the bill's definition of a "covenant not to compete" does *not* include nondisclosure, confidentiality, trade secret, or non-solicitation agreements.

Why It Matters: All current non-compete agreements unenforceable with very limited exceptions *regardless of the employee's income*. Non-competition agreements will only be valid and enforceable if

they restrict similar business in a reasonable geographical area for a reasonable period of time and are agreed to: (1) during the sale of a business; or (2) in anticipation of the dissolution of a business. The bill is not retroactive in effect. Therefore, any agreements entered into between employers and employees before July 1, 2023 will remain enforceable in Minnesota.

What Employers Should Do: To ensure compliance, Minnesota employers should review any agreements that they require new or current employees to sign. As of July 1, 2023, any agreement that prohibits an employee's ability to work for a competitor following their separation will be unenforceable unless one of the two limited exceptions described above applies.

MINNESOTA BROADENS PROTECTIONS FOR PREGNANT AND LACTATING EMPLOYEES

What's New: Minnesota increased pregnancy accommodation rights and broadened protections for lactating employees. All Minnesota employers will also now be required to provide reasonable accommodations for pregnant employees.

Why It Matters: Previously, only employers with 15 or more employees were required to provide reasonable accommodations for pregnant employees. Minnesota amended this law so that employers with "at least one employee" are subject to this provision. The amendments also extended the scope of "reasonable accommodations" for pregnant employees to include: temporary leaves of absences, modifications in work schedules or job assignments and more frequent/longer break periods.

Additionally, Minnesota employers must inform employees of their rights during pregnancy "at the time of hire" and when an employee makes an inquiry about or requests parental leave. Moreover, employers must provide such information in an employee's identified primary language. Minnesota's required notice can be found here.

Furthermore, Minnesota employees were previously only entitled to paid breaks to express breast milk up to twelve months following the birth of a child. As of July 1, 2023, this one-year limitation has been eliminated, allowing employees greater access to paid time to express milk for their child beyond the previous twelve-month limitation. In addition to the current requirement which requires employers to provide a space that is in close proximity to the work area and free from intrusion from coworkers and the public to express breast milk, employers will also be required to provide a space that is "clean, private, and secure." Employers are not limited to only offering twelve months and my choose to offer more.

What Employers Should Do: Employers should review their pregnancy and lactation policies. Please reach out to your HRC with any questions.

MINNESOTA EMPLOYEES ENTITLED TO 12 WORK WEEK OF UNPAID PARENTAL LEAVE

What's New: Employers with one or more employees will be required to offer 12 weeks of job-protected parental leave immediately upon the commencement of employment.

Why It Matters: The Minnesota Pregnancy and Parental Leave Law provides eligible employees with up to 12 work weeks of unpaid leave for the birth or adoption of a child. This leave can also be used to cover prenatal care, incapacity due to pregnancy, childbirth, or related health conditions. Prior to the

recent amendments, the law only applied to employers with 21 or more employees. In addition, employees were only eligible for the leave when the following conditions were met: (1) employed by the same employer for at least 12 months preceding the request; and (2) had worked for an average number of hours per week equal to one-half the full-time equivalent position in the employee's job classification immediately preceding the leave.

Employers with at least one employee are subject to the law. In addition, employees will be eligible for the leave immediately upon hire. The retaliation provision was also updated to prohibit employers from discharging, disciplining, penalizing, interfering with, threatening, restraining, coercing, or discriminating against employees for requesting or obtaining the leave.

These new Minnesota amendments effectively requires all Minnesota employers to provide 12 weeks of job-protected parental leave to all employees immediately upon the commencement of employment.

What Employers Should Do: Employers should review their policies to confirm compliance with the law.