

2024 Rural Minnesota Health Forum

Tips and Traps for Managing Today's Workforce

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Agenda

- Impact of Laws Passed in 2023
 - Earned sick and safe time
 - Protections for nursing mothers and pregnant employees
 - Unpaid parental leave
 - Paid family and medical leave
 - Legal cannabis and impact on drug testing and work rules
 - Prohibition on post-employment covenants not to compete
- New Employment Laws Passed in 2024
 - Salary ranges required in job postings
 - Oral fluid drug testing and limitations
 - Prohibition on employee non-solicitation restrictions in service contracts
 - New minimum wage rates determined annually
 - Other new laws?
- National Labor Relations Board developments and impact on employer policies and agreements
- Managing remote and hybrid workers
- Other common issues

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Tips and Traps for Managing Today's Workforce



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Earned Sick and Safe Time

- Key requirements
 - Provide minimum earned sick and safe time (ESST) hours
 - All employees (not independent contractors) who work 80 or more hours in MN are covered
 - Immediate accrual and no waiting period for use
 - Permitted use in minimum increment of time tracked by employer's payroll system, with 4-hour maximum increment
 - Earnings statements must identify number of ESST hours available and hours used during last pay period



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Earned Sick and Safe Time (cont'd)

- Options for compliance
 - Accrual method: 1 hour for every 30 hours worked
 - Front load 48 hours: Employer must pay out unused at the end of the year
 - Front load 80 hours: No payout required at the end of the year
 - Separate ESST policy or satisfy requirements through paid time off (PTO) policy



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Earned Sick and Safe Time (cont'd)

- ESST may be used for absences due to an expansive list of reasons, including:
 - To care for an employee's own or to care for a family member's mental or physical illness, injury, or other health condition, medical diagnosis, care, or treatment;
 - Due to domestic abuse, sexual assault or stalking of the employee or the employee's family member;
 - Closure of the employee's place of business due to weather or the need to care for a family member whose school or place of care has been closed due to weather or other public emergency;
 - The employee's inability to work or telework because the employee is prohibited from working by the employer due to health concerns related to the potential transmission of a communicable illness; or
 - Due to the determined by the health authorities or a health care professional that the presence of the employee or family member of the employee in the community would jeopardize the health of others because of the exposure of the employee or family member of the employee to a communicable disease



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Earned Sick and Safe Time (cont'd)

- “Family member” includes: nieces and nephews, aunts and uncles, children-in-law, siblings-in-law, and any “individual related by blood or whose close association with the employee is the equivalent of a family relationship” and “up to one individual annually designated by the employee”
- Notice requirement and more information: www.dli.mn.gov/sick-leave



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Protections For Nursing Mothers

- Must provide “reasonable break times each day to an employee who needs to express milk”
 - Break times may run concurrently with any break times already provided to the employee
 - An employee's compensation may not be reduced for time used for the purpose of expressing milk
- Previously, Minn. Stat. § 181.939 limited the requirement to provide break times for employees needing to express breast milk to only the 12 months after birth; that 12-month limitation was removed
- Nursing mothers room requirements:
 - A clean, private, and secure room or other location, in close proximity to the work area, other than a bathroom or a toilet stall;
 - Shielded from view and free from intrusion from coworkers; and
 - Includes access to an electrical outlet
- Notice requirement and more information: www.dli.mn.gov/newparents



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Protections For Pregnant Employees

- No health care provider certification may be required for more frequent or longer restroom, food, or water breaks
- Reasonable accommodations to consider should include:
 - A temporary leave of absence;
 - Modification of work schedules or job assignments;
 - Lifting-related changes; and
 - Providing longer break periods



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Unpaid Parental Leave

- Key requirements:
 - Up to 12 weeks of unpaid leave for (1) a biological or adoptive parent in conjunction with the birth or adoption of a child; or (2) a female employee for prenatal care, or incapacity due to pregnancy, childbirth, or related health conditions
 - Leave must begin within 12 months of the birth or adoption; except that, in the case where the child must remain in the hospital longer than the mother, the leave must begin within 12 months after the child leaves the hospital
- What changed in 2023?
 - “Employee” means a person who performs services for hire for an employer (no minimum service length requirement)
 - “Employer” means a person or entity that employs one or more employees



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Paid Family and Medical Leave

- Key requirements:
 - Provide paid family and medical leave for up to 12 weeks with partial wage replacement related to a serious health condition and up to 12 weeks with partial wage replacement related to leave for pregnancy, bonding, safety, family care, or a military member's active-duty service or impending call to active duty in the United States armed forces, with a total combined cap of 20 weeks per year
 - Exceptions from coverage: independent contractors, self-employed individuals, federal government employees and seasonal employees
 - To be funded by a payroll tax
 - First deadline for wage reporting for joint UI/PFML accounts is 10/31/2024 for the period from 7/1/24 through 9/30/24



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Legal Cannabis and Impact on Work Rules and Testing

- Medical marijuana
- Recreational cannabis
- Testing requirements and limitations
 - General rule: Cannabis is excluded from Drug and Alcohol Testing in the Workplace Act's definition of a "drug"
 - Cannabis can be treated as a "drug" for safety-sensitive positions and certain other types of positions, including "a position requiring face-to-face care, training, education, supervision, counseling, consultation, or medical assistance to patients who receive health care services from a provider for the treatment, examination, or emergency care of a medical, psychiatric, or mental condition"
- Cannabis is now a "lawful consumable product"
- Permissible work rules



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Prohibition on "Covenants Not to Compete"

- Minn. Stat. § 181.988
- "Covenant not to compete" means an agreement between an employee and employer that restricts the employee, after termination of the employment, from performing:
 - work for another employer for a specified period of time;
 - work in a specified geographical area; or
 - work for another employer in a capacity that is similar to the employee's work for the employer that is party to the agreement



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Prohibition on “Covenants Not to Compete” (cont’d)

- “Covenant not to compete” does not include:
 - a nondisclosure agreement;
 - an agreement designed to protect trade secrets or confidential information;
 - a nonsolicitation agreement; or
 - an agreement restricting the ability to use client or contact lists, or solicit customers of the employer
- “Employee” includes independent contractors
- Exceptions for agreements entered in in connection with:
 - the sale of a business; or
 - in anticipation of the dissolution of a business



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New Employment Laws Passed in 2024

- Salary ranges required in job postings
- Oral fluid drug testing and limitations
- Prohibition on employee non-solicitation restrictions in service contracts
- New minimum wage rates determined annually
- Other new laws?



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NLRB Developments

- Feb. 2023: *McLaren Macomb* – The Board held that broad confidentiality clauses and non-disparagement clauses cannot be included in employee severance agreements
- May 2023: NLRB General Counsel issued a memo stating that in most circumstances non-compete agreements violate the National Labor Relations Act, which covers non-supervisor employees
- Aug. 2023: *Stericycle* – The Board adopted a new legal standard for evaluating employer work rules challenged as facially unlawful under Section 8(a)(1) of the National Labor Relations Act, overruling *Boeing Co.* (2017), which was later refined in *LA Specialty Produce Co.* (2019)
- Aug. 2023: *Cemex* – The Board adopted a new standard for union recognition; now if a union requests or demands that an employer recognize it as the representative of its employees, and that union has proof that a majority of those employees have designated the union as their representative (i.e., the majority of employees have signed cards designating a union as their representative), then the employer can no longer decline the request and simply wait to see if the union proceeds by filing an NLRB petition



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Managing Remote and Hybrid Workers

- Tracking work hours for non-exempt employees
- Travel time and work from home expenses
- Effective professional development and performance management
- Other common issues



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Other Common Employment Issues

- Disability accommodations
 - Interactive process
 - What is a “reasonable accommodation”
 - What is an “undue hardship”
- Leave management
 - Family Medical Leave Act
 - Other types of leave
- Noncompetition and nonsolicitation enforcement
- Physician and other employment agreements



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Questions?

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