



Employment Law Update

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Purpose

To provide updates on key state and federal laws.



Laws and Updates Covered

- ☐ Americans with Disabilities Act
- ☐ Family Medical Leave Act
- ☐ Pregnancy Workers Fairness Act
- ☐ Earned Sick and Safe Time Leave
- ☐ Fair Labor Standard Act
- ☐ Laws related to drug testing
- ☐ Other new laws in Minnesota



Americans with Disabilities Act



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- ❑ Prohibits discrimination against persons with disabilities.
 - ❑ Requires employers to provide “reasonable accommodations” to “otherwise qualified persons” with a “disability.”

Key Definitions:

- ☐ Disability
- ☐ Reasonable Accommodation
- ☐ Essential Functions
- ☐ Undue Hardship

Interactive Process:

- ☐ Employer best practices
- ☐ Medical inquiries

Common Accommodation Requests and Issues:

- ☐ Simple Ones
- ☐ Light Duty
- ☐ Alternative Jobs
- ☐ Alternative Schedules
- ☐ Leave

Family Medical Leave Act



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- ☐ 12 weeks of leave for certain conditions
 - ☐ Interaction with the ADA
 - ☐ Intermittent Leave and Schedule
 - ☐ General Updates

Minnesota Human Rights Act

❑ Minn. Stat. 363A.02

It is the public policy of this state to secure for persons in this state, freedom from discrimination: (1) in employment because of one or more of the following: race, color, creed, religion, national origin, sex, gender identity, marital status, disability, status with regard to public assistance, sexual orientation, familial status, and age[.]”

New Protections

- ☐ Definition of Disability
- ☐ Definition of Familiar Status
- ☐ “one or more”

New Protections in Minneapolis

☐ Justice Impacted Status

☐ Housing Status

☐ Height and Weight



Pregnancy Workers Fairness Act



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- ❑ Law went into effect June 27, 2023
 - ❑ New, final regulations and interpreting released April 15, 2024, and became effective 60 days from April 19, 2024
 - ❑ Note: Title VII prohibits discrimination, ADA requires accommodation
 - Some pregnancy related conditions, like severe morning sickness, could be considered disabilities, but pregnancy itself is not a disability.

Covered Conditions

- ☐ Pregnancy
- ☐ Childbirth
- ☐ Related medical conditions, including
 - uncomplicated pregnancies
 - vaginal deliveries or cesarian sections
 - Miscarriage
 - Postpartum depression
 - edema
 - placenta previa
 - lactation
- ☐ Potential pregnancy
- ☐ Use of birth control
- ☐ Fertility / Infertility Treatments
- ☐ Etc.

Specific Prohibitions

- ☐ No essential functions
- ☐ Leave treated differently
- ☐ Undue Hardship
 - Significant difficulty or expense

Examples of Reasonable Accommodations



Limitations on Ability to Request Documentation

☐ Can't for obvious limitations/needs:

- Sitting
- Having water available
- Needing additional restroom breaks or to eat/drink

☐ If you do seek it:

- Get to confirm condition/need for accommodation;
 - swollen ankles, back pain, lifting restriction, etc.
- Confirm it arises out of pregnancy or related conditions; and
- Describe the accommodation needed.

Updates

What we are seeing after two years



Earned Sick and Safe Time Law

Effective January 1, 2024, with updates January 1, 2025



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- ❑ Paid leave employers must provide to employees in Minnesota that can be used for certain reasons, including:
 - when an employee is sick
 - to care for a sick family member
 - to seek assistance if an employee or their family member has experienced domestic abuse, sexual assault or stalking
 - closure of workplace, school, or daycare

 - ❑ Minnesota's Earned Sick and Safe Time Law requires employers to provide paid leave to employees who work in the state.
 - An employee is anyone who works at least 80 hours in a year for an employer in Minnesota but does not include independent contractors (or federal employees or certain airline employees).
 - Temporary and part-time employees are covered under the law.

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- ❑ Employers must provide each employee in Minnesota with one hour of ESST for every 30 hours worked, with the ability to accumulate at least 48 hours of ESST each year. An employer's existing leave policy, such as PTO, may already meet Minnesota's ESST requirements

Level of Documentation Allowed

- ☐ An employer may require notice up to seven days in advance if leave is foreseeable.
- ☐ An employer may require an employee to provide reasonable documentation of ESST use only when more than three consecutive days of ESST are used.

Options for Handling ESST Accumulation

- ☐ Option 1: Accrual Basis with Carry Over

Alternatively, an Employer can choose either of the following two options:

- ☐ Option 2: Front loading 48 hours with annual pay out and no carry over; or
- ☐ Option 3: Front loading 80 hours with no annual pay out and no carry over.



Updates to ESST as of January 1, 2025

Most significant – Expansion of protections to all leave banks/impact on other leave banks

Laws used to be:

No effect on more generous sick and safe time policies.



New Law – Effective January 1, 2025 (exceptions for CBAs)

- ❑ All paid leave which could be covered under the ESST is subject to these protections meaning ESST applies to other paid time off.

- ❑ Options for handling:
 - All leave complies with ESST requirements
 - Create separate sick leave and vacation leave banks
 - Having provisions in current PTO that says if any leave is ESST leave, that leave will be subject to protections and coded as such.

Minnesota Paid Leave Law

January 1, 2026

- ❑ Paid leave, managed through the state, for family and medical leave (and military) circumstances
- ❑ The law will cover nearly all employees in Minnesota, including both private sector and state and local government employees.
- ❑ It will cover employees regardless of employer size and include both full-time and part-time workers, with a limited exception excluding certain seasonal workers from coverage.
- ❑ Self-employed people will be able to voluntarily opt in to coverage.



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- ❑ Initially, the program will be funded through substantial appropriations from the State's general fund. This initial funding will jump-start the program's insurance fund, making it possible for benefits to begin at the same time workers and employers begin paying in, without waiting for contributions to build up in the fund.
 - ❑ Going forward, the program will be funded with payroll premiums split evenly between employers and employees.

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- ❑ Like other state paid leave programs, Minnesota's new law will create an insurance system.

This means that, typically, when workers need benefits, they will apply to the State, which will process their claim and pay benefits out of the State insurance fund. Employers will not need to pay employees while they are on leave.

- ❑ The Minnesota Earned Sick and Safe Time law currently requires employers to allow employees to earn paid time off for covered purposes related to illness and safety. In contrast, Minnesota Paid Leave is a paid benefit, administered by the Department, that will provide eligible employees up to a certain amount of wage replacement and job protection if they experience a qualifying event.

Drug Testing Updates in Minnesota

Federal Contractor Status as health care provider
Executive Order January 1, 2025



Minnesota Drug and Alcohol Testing in the Workplace Act (DATWA)

- ❑ Minnesota Statutes 181.951

- ❑ Testing is allowed with some exceptions:
 - Pre-employment
 - Routine Physical Exams
 - Testing is permitted annually as part of a routine physical exam, with two weeks' written notice.
 - Random Testing
 - For employees in safety-sensitive positions, random testing is allowed.
 - Reasonable Suspicion
 - Testing is allowed if there's reasonable suspicion of drug or alcohol use, a violation of the employer's policy, or a work-related accident.
 - Treatment Programs
 - If an employee is referred for treatment or participating in a treatment program, testing may be required.



❑ Testing Procedures:

- Employers must have a written drug and alcohol policy that complies with the DATWA and provides specific information to employees.
- Testing must be conducted by qualified laboratories.
- Employers must inform employees of test results within three working days.
- Employees have the right to request a copy of their test results.

❑ Important Notes:

- Employers cannot test on an arbitrary or capricious basis.
- Employers cannot require employees to contribute to testing costs.
- Employees have certain rights regarding test results and retesting.

Cannabis

- ❑ Minnesota legalized adult-use cannabis in 2023.
- ❑ As of 2024, Minnesota law provides certain protections for applicants and employees who recreationally use cannabis under Minnesota's Drug and Alcohol Testing in the Workplace Act (DATWA).
- ❑ The law excludes cannabis from the definition of “drug” and creates two different workplace drug testing schemes based on whether positions are exempt from the cannabis testing prohibitions.

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- ❑ Protections for job applicants and employees if they use cannabis (including cannabis products, lower-potency hemp edibles, and other hemp-derived products) away from work during non-work hours.
 - ❑ However, employers can discipline for onsite use or use while operating an employer's vehicle, machinery, or equipment if:
 1. As a result of consuming the substance, the employee does not possess that clearness of intellect and control of self that the employee otherwise would have.
 2. Employer has clear written policies.
 3. The use is confirmed.

Cannabis Pre-Employment Testing

Unless the employer is otherwise required to do so by state or federal law, an employer can no longer require or request a job applicant to undergo pre-employment cannabis-specific testing or refuse to hire an applicant solely because the person tests positive for cannabis as a result of an authorized pre-employment drug test.



Exceptions for Pre-Employment or Routine Testing

An Employer may continue pre-employment or routine cannabis testing for the following:

- ☐ Safety-sensitive positions
 - *A job (including supervisory or management positions) in which an impairment caused by drug, alcohol, or cannabis use would threaten the health or safety of any person*
- ☐ Peace officer positions
- ☐ Firefighter positions



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- ☐ Positions requiring face-to-face care, training, education, supervision, counseling, consultation, or medical assistance to:
 - Children
 - Vulnerable adults
 - Patients who receive health care services from a provider for the treatment, examination, or emergency care of a medical, psychiatric, or mental condition
 - ☐ Positions requiring a commercial driver's license or requiring an employee to operate a motor vehicle for which state or federal law requires drug or alcohol testing of a job applicant or an employee.
 - ☐ Positions of employment funded by a federal grant.
 - ☐ Positions for which state or federal law requires cannabis testing of an employee or job applicant.



Reasonable Basis for Testing Cannabis

- ☐ Cannot be arbitrary
- ☐ Suspect employee is under the influence
- ☐ Suspect employee has violated workplace cannabis rules
- ☐ Employee has been involved in a work-related incident or sustained a personal injury.



Pay Laws



Federal Fair Labor Standards Act

Law regulates pay of employees for minimum wage and overtime.



Applicable Overtime Exceptions:

- ☐ Executive Exemption
- ☐ Administrative Exemption
- ☐ Professional Exemption
- ☐ Computer Employee Exemption
- ☐ Outside Sales Exemption
- ☐ Highly Compensated Employees
 - Highly compensated employees performing office or non-manual work and paid total annual compensation of \$107,432 or more (which must include at least \$684 per week paid on a salary or fee basis) are exempt from the FLSA if they customarily and regularly perform at least one of the duties of an exempt executive, administrative or professional employee identified in the standard tests for exemption.

New Overtime Rules Struck Down:

- ❑ In 2024, there was a new FLSA overtime rule that was set to increase the salary threshold for employees to be considered exempt from overtime pay in two phases: July 1, 2024, and January 1, 2025. However, a federal court decision in November 2024 invalidated the rule, meaning the increases to the salary threshold did not go into effect.
- ❑ Therefore, the salary threshold for executive, administrative, and professional (EAP) employees to be paid at least a minimum salary amount to be exempt from the FLSA minimum wage and overtime requirements remains at the previous level of \$684 per week (\$35,568 annually). The salary threshold for highly compensated employees (HCE) also remains at the previous level of \$107,432 annually.



Overtime: Breaks

- ❑ Federal law does not require lunch or coffee breaks
- ❑ If given unpaid, must be bona fide meal breaks.
 - Employee completely relieved of duties
 - At least 30 minutes
 - Documentation: best practices

Minnesota Fair Labor Standards Act Updates:

New Minimum Wage Requirements:

- ❑ Minnesota Fair Labor Standards Act can be found in Minn. Stat. Sections 177.21 to 177.35.
- ❑ Effective Jan. 1, 2025, the state's minimum-wage rates for all employers, including large employers, small employers, youth and J-1 visa wages for hotels, motels and lodging establishments, increased to \$11.13 an hour. The law still allows for a 90-day training wage for workers under age 20, which increased to \$9.08.
 - See <https://www.dli.mn.gov/minwage>.
- ❑ Minnesota law requires employers to display state-mandated posters in a location where employees can easily see them, which may need to be updated for new minimum wage rates.
 - Posters can be found at the Minnesota Department of Labor website.



New Pay Transparency Requirements

Beginning on January 1, 2025, employers with 30 or more employees in Minnesota must disclose in each posting for each job opening with the employer the following:

- ❑ the starting salary range
 - "Salary range" means the minimum and maximum annual salary or hourly range of compensation, based on the employer's good faith estimate, for a job opportunity of the employer at the time of the posting of an advertisement for such opportunity. Minn. Stat. 181.173(1)(d).
 - The included salary range may not be open ended.
 - For example, a posting that states pay is “starting at \$20/hour” is not sufficient. Minn. Stat. 181.173(2)(b).
- ❑ a general description of all the benefits and other compensation
 - including but not limited to any health or retirement benefits, to be offered to a hired job applicant.

Minn. Stat. 181.173(2)(a)



Changes to Personnel Record Review and Access

- ❑ As of May 24, 2024, Minnesota's personnel record review and access law (Minn. Stat. § 181.960) applies to any employer who employs at least one person in the state
- ❑ Previously, that law only applied to employers with 20 or more employees in Minnesota.



No Inquiry into Past or Current Pay

This falls under Minnesota's anti-discrimination law

- ❑ Effective January 1, 2024, Minnesota employers may not ask about or consider an applicant's past or current pay during the hiring process, with limited exceptions (such as pay history is public record).
- ❑ Minn. Stat. Section 363A.08(8)



New Rules and Remedies Designed to Target Misclassification of Employees

- ❑ Minnesota has strengthened its laws relating to the misclassification of employees in general, and in the construction industry specifically.
- ❑ For non-construction employers, damages and penalties available that can be imposed for the misclassification of a worker as an independent contractor include:
 - Compensatory damages to the individual wrongly classified, which can include:
 - Value of supplemental pay including minimum wage, overtime, shift differentials
 - Vacation and sick pay and other forms of paid time off
 - Health insurance
 - Life and disability insurance
 - Retirement and related savings plans
 - Social security and Medicare
 - Any other cost and expense incurred by the individuals



New Rules and Remedies Designed to Target Misclassification of Employees

- A penalty of up to 10,000 for each individual wrongly classified or related violations of the statute;
- A penalty of \$1,000 for any delay, obstruction, or failure to cooperate in an investigation by the commissioner (each day of delay, obstruction, or failure to cooperate constitutes a separate violation).

❑ See *Minn. Stat. 181.722*



General Best Practices

- ☐ Discipline of Providers and Medical Staff Members
 - ☐ Utilize the Peer Review Process
- ☐ Generally review Policies and Procedures annually



Questions?



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