



2022 Employment Law Updates – What Employers Need to Know



**Every New Year Brings
New Employment
Laws...and 2022 Is No
Different**



Change At The Federal Level

There are several employment law changes at the federal level that may affect your organization.

- The Office of Federal Contractor Compliance Programs (OFCCP) has long required contractors to create Affirmative Action Plans (AAP), but to date the only tool the OFCCP had to verify that federal contractors were creating, and following, AAPs was subjecting contractors to random audits. This looks to change dramatically in 2022, once the OFCCP opens its “AAP-VI” online reporting system. Although the date the new AAP-VI reporting system will go online is uncertain, what is almost certain is that all federal contractors will likely have to submit yearly AAPs to the system.
- Beginning January 30, 2022, under Executive Order 14026, all new federal contracts, renewals of contracts, and extensions of existing contracts must now comply with the \$15 minimum wage requirement.
- We now see a shift from the employer-friendly NLRB of the Trump administration to the Biden administration’s NLRB, which has vocalized the intent to be more employee friendly and early returns show that to be true. In Biden’s first year in office the acting general counsel for the NLRB announced a return to “vigorous enforcement” of employee rights under the NLRA.

Changes At The Federal Level (that may be coming)

- Overtime Changes – The Department of Labor under the Biden Administration is expected to increase the minimum salary level for most exempt employees to as much as \$47,000, while also changing the duties tests for the executive, administrative and professional exemptions.
- Union Protections – The Biden administration has made clear it wants to maximize union participation throughout the American workforce, both public and private. The Biden administration is now gearing up to issue pro-worker rules surrounding overtime pay and gig worker benefits, while also seeking to make it easier for employees to organize.
- Minimum Wage Adjustments – The Biden Administration may revisit the Raise the Wage Act that the House of Representatives passed in 2019. This Act would increase the minimum wage to \$15 per hour over a six-year period and would index it to inflation. The Act would also phase out the reduced minimum wage that certain tipped employees currently receive. It recently was defeated as part of the Reconciliation Bill

Changes At The Federal Level (that may be coming)

- Paid Leave – President Biden has long supported the expansion of paid leave for employees in the public and private sectors, but it faced stiff resistance in Congress, and while the administration pressed for 12 weeks of paid leave for many of the events that fall under the existing unpaid FMLA provisions, then later amended it to 6 weeks, the legislation so far remains dead in Congress.

DOT/FMCSA

The Federal Motor Carrier Safety Administration had delayed implementation of the Training Provider Registry and Entry Level Driver Training Requirements, which were to become effective in 2019, until February 7, 2022.

This regulation requires states to have proof of entry level driver training provided by a listed provider before granting a new commercial driver license or upgrading class of CDL for any applicant beginning the process after February 7th. This will also be required for adding passenger, school bus or hazardous materials endorsements to an existing CDL.

OFCCP

In addition to the new Contractor Portal for AAP submission mentioned previously, a proposed rule would allow federal contractors to set specific goals based on race or ethnicity in an AAP rather than combining all races and ethnicities in a single goal.

State Leave Overview

- This is the first year that PFML benefits are available in Connecticut.
- Oregon has delayed the start of contributions to its program from 2022 until 2023, with benefits starting later that year.
- Colorado's voter-approved PFL program contributions will begin in 2023, with benefits first available in 2024.
- In addition, New Hampshire's voluntary PFML program, established by the Granite State Paid Family Leave Act ([2021 Ch. 91](#), HB 2), has a target start date of Jan. 1, 2023. More details on New Hampshire's program are expected to emerge after the March 31, 2022, deadline to begin an insurance bidding process.

State Leave

Colorado

- Starting January 1, 2022, **employers of all sizes** are required to provide access to paid sick leave. In 2021, the law only applied to employers with at least 16 workers. Employers must allow workers to accrue 1 hour of paid sick leave for every 30 hours worked. Employees can accrue up to a maximum of 48 hours of leave per year.
- Any remaining hours may be carried over to the next year. The leave may be used for:
 - Mental or physical illness, injury, or health condition
 - Need for a medical diagnosis, treatment, or preventative medical care
 - The care of a family member for the reasons listed above
 - Absences due to domestic abuse, sexual assault or harassment
 - Closure of school or childcare facility due to a public health emergency

State Leave

Connecticut

- While Connecticut's Paid Family and Medical Leave program has been in place since January 2021, employees will be able to apply for paid family leave benefits beginning January 1, 2022.
- Amendments to the [Connecticut Family and Medical Leave Act](#) (CTFMLA) will go into effect on January 1, 2022. Pursuant to the changes, employers with at least 1 worker must provide up to 12 weeks of unpaid, job-protected leave over a 12-month period.
- The law allows for up to 16 weeks of military caregiver leave, and an additional 2 weeks of leave for pregnancy complications.

State Leave

California

- An amendment to the [California Family Rights Act](#) expands the definition of family member to include parents-in-law. The change means that employees can take family and medical leave to care for a parent-in-law with a medical condition.

State Leave

Washington DC

- The recent [Universal Paid Leave Emergency Amendment Act](#) of 2021 modified Washington DC's paid leave law with changes that went into effect **October 1, 2021**. Eligible employees may now take 2 weeks of paid prenatal leave for:
 - Routine and specialty appointments, exams, and treatments associated with a pregnancy
 - Pregnancy complication treatment
 - Required bedrest
 - Prenatal physical therapy
 - The amendment also adds medical care related to a miscarriage to the list of qualifying medical events for which paid leave can be taken.
- Washington DC also extended paid leave durations. Employees with approved claims or leave dates that begin on or after September 26, 2021, through September 30, 2022, can now take 6 weeks of job-protected leave.

State Leave

Oregon

- Oregon is expanding its [Family Leave Act](#), which applies to businesses with at least 25 employees:
- Employees can take leave during a public health emergency if they worked for at least 30 days and an average of at least 25 hours per week.
- Employees who regain employment after a separation within 180 days can take leave.
- The amendment removed gendered language from childbirth-related leave, clarifying that any eligible employee may take leave for their own pregnancy or childbirth conditions.

Other Leaves

Allegheny County, PA

- On December 15, 2021 or at the commencement of employment, whichever is later. Workers can begin to use accrued paid sick time after 90 days from the start of employment. The law applies to employers with 26 or more employees.

Legalizing Marijuana for Adults

- Delaware — HB 305 would legalize and regulate cannabis for adults 21 and older. It is similar to 2021's HB 150, which passed out of two committees, but includes revisions to increase support.
- Florida — H 467, H 549, H 551, S 776, S 1624, S1626, S 1696, and S 1658
- Georgia — HR 281 would refer to voters a constitutional amendment to legalize and regulate cannabis for adults 21 and older; SB 263 would set up a regulatory framework to legalize and regulate cannabis for adults if voters approved a legislatively referred constitutional amendment to legalize and regulate cannabis.
- Hawaii — SB 767, HB 1202, HB 238, SB 1376, SB 704, and HB 7 would legalize and regulate cannabis for adults. The Senate approved SB 767 in a 20-5 vote on March 9, 2021 but included an effective date more than 100 years in the future. However, the chair of the House Health, Human Services, and Homelessness Committee failed to grant the bill a hearing before a legislative deadline, thus killing it for the year. The legislature reconvenes on January 19, 2022, and the bills carry over.
- Indiana — HB 1311 and SB 414 would legalize and regulate cannabis for adults 21 and older; HB 1070 and SB 324 would legalize possession but would not legalize sales; HB 1049 would not legalize cannabis, but it would create an advisory commission to “regulate the growth, processing, distribution, and sale of legal cannabis in Indiana;” HB 1212 would legalize adult and medical use of cannabis, but only after federal law changes.

Legalizing Marijuana for Adults

- Iowa — SF 83, HF 751, SF 406, and SF 83 would legalize adults' possession of up to an ounce; HF 751 and SF 406 would legalize and regulate cannabis and expunge convictions. The bills carried over from 2021. In addition, three senators are introducing a bill to refer to voters a constitutional amendment to legalize cannabis.
- Kansas — HB 2430 would legalize and regulate cannabis for adults. It did not advance before a crossover deadline, but it carries over to 2022.
- Kentucky — HB467 and HB461 would legalize and regulate cannabis for adults. The bills carried over from 2021.
- Maryland — HB 1 is a pre-filed resolution to refer the issue of legalization and regulation to voters. Legalization would not take effect until July 2023, and the legislature would need to craft all the details first.
- Minnesota — SF 757, HF 1511, SF 2067, and HF 600 would legalize and regulate cannabis for adults. On May 13, 2021, the House approved HF 600 to legalize cannabis in a 72-61 vote. The legislature's regular session ended, but the bill carries over to 2022. Session begins on January 31, 2022.
- Mississippi — SB 2183
- Missouri — HJR 83, which was pre-filed, would refer a constitutional amendment on legalizing cannabis to voters.
- Nebraska — LB 546 would legalize and regulate cannabis for adults; LR2CA, if approved by the legislature, would refer a constitutional amendment on legalizing cannabis to voters. The bills carried over from 2021.
- New Hampshire — HB 629, which carried over from 2021, would legalize possession and home cultivation of cannabis; the House of Representatives sent the bill to the Senate on January 6, 2022, in a 241-113 vote. Several new legalization bills were introduced in 2022: HB 1348 would legalize personal possession and cultivation for adults 21 and older, without establishing a legal, regulated market; HB 1468 would legalize personal possession of an unlimited amount for adults 18 and older, without establishing a legal, regulated market; HB 1598 would legalize and regulate cannabis for adults 21 and older and require sales to occur in state-run stores (which would be preempted by federal law); CACR 20 would refer to voters a constitutional amendment legalizing adults' personal possession of cannabis; CACR 34 would refer to voters a constitutional amendment legalizing the use, sale, or cultivation of cannabis for adults 18 and older; and CACR 35 would refer to voters a constitutional amendment to legalize cannabis for adults.

Legalizing Marijuana for Adults

- North Carolina — H576, H617, and S646 would legalize and regulate cannabis for adults. They did not advance before the legislature adjourned in 2021. It reconvenes on May 18, 2022, and the bills carry over.
- Ohio — HB 382, HB 498, and HB 210
- Oklahoma — HB 1961 would refer to voters a constitutional amendment legalizing and regulating cannabis for adults.
- Pennsylvania — HB 1180 and HB 2050 would legalize and regulate cannabis for adults. Both carried over from 2021.
- South Carolina — S 335 would legalize and regulate cannabis for adults; also, S 268 would create an advisory referendum on legalization in 2022. Neither advanced before crossover, but they carry over to 2022. The legislature reconvenes on January 11, 2022.
- South Dakota — HB 3 would legalize and regulate cannabis for adults.
- Tennessee — HB 1587 and SB 1477 would legalize, regulate, and tax adult-use cannabis; HB 1099 would legalize cannabis upon federal legalization.
- West Virginia — SB 15, HB 2291, and HB 2912 would legalize and regulate cannabis for adults. HB 2291 and HB 2912 carried over from 2021.
- Wisconsin — SB 545 would create a medical cannabis program, in addition to legalizing and regulating cannabis for adults.

Marijuana & Employment

Employers, especially multi-state employers, face a complex patchwork of state laws legalizing marijuana and conflicting federal laws when developing and implementing workplace drug policies. Because marijuana is still considered illegal under federal law, marijuana usage is not protected by federal laws, including the Americans with Disabilities Act. Any duty to accommodate marijuana users or to permit off-duty marijuana usage varies by state law.

State Law Changes (Minimum Wage Changes)

New January 1, 2022 State Minimum Wages

State	2021 Minimum Wage	2022 Minimum Wage
Arizona	\$12.15	\$12.80
Arkansas	\$11.00	TBD
California	\$14 per hour for employers with 26 or more employees; \$13 per hour for employers with 25 or fewer employees	\$15 per hour for employers with 26 or more employees; \$14 per hour for employers with fewer than 25 employees
Colorado	\$12.32	\$12.56
Delaware	\$9.25	\$10.50
Illinois	\$11.00	\$12.00
Maine	\$12.15	\$12.75
Maryland	\$11.75 (15+ employees) \$11.60 (14 or fewer)	\$12.50 (15+ employees) \$12.20 (14 or fewer)

State Law Changes (Minimum Wage Changes)

New January 1, 2022 State Minimum Wages

Massachusetts	\$13.50	\$14.25
Michigan	\$9.65	\$9.87 (unless the state's unemployment rate for 2021 exceeded 8.5%, in which case the current \$9.65 rate will remain in effect for 2022)
Minnesota	\$10.08 for large employers; \$8.21 for small employers	\$10.33 for large employers; \$8.42 for small employers
Missouri	\$10.30	\$11.15
Montana	\$8.75 \$12.00 for most employers	\$9.20 \$13.00 for most employers
New Jersey	\$11.10 for small employers (fewer than 6 employees)	\$11.90 for small employers (fewer than 6 employees)

State Law Changes (Minimum Wage Changes)

New January 1, 2022 State Minimum Wages

New Mexico	\$10.50	\$11.50
New York	\$12.50, eff. 12/31/2020	\$13.20, eff. 12/31/2021
Ohio	\$8.80	\$9.30 (for employers with annual gross receipts of \$342k per year; otherwise, the federal minimum wage applies)
Puerto Rico	\$7.25	\$8.50
Rhode Island	\$11.50	\$12.25
South Dakota	\$9.45	\$9.95

State Law Changes (Labor Changes)

- CA SB 572 Allows the Labor Commissioner to place a lien on real property to recover penalties owed for violations of the labor code.
- CA SB 657 Authorizes employers to provide required notices and postings via email. Does not change employer obligations to physically display required postings.
- CT SB 72 Creates a tax credit for employers that make payments on certain student loans for full time employees working for qualifying businesses.
- DC B 285 Amends the Universal Paid Leave Act to increase the amount of paid leave per fiscal year to six workweeks of medical leave and two workweeks of prenatal leave; sets an operative date for the Ban on Non-Compete Agreements Amendment Act of 2020.
- IL HB 117 Amends the Illinois Secure Choice Savings Program Act to apply to employers with at least five employees, rather than 25 or more employees. Includes automatic increases to contributions.
- IL SB 672 Employers shall not enter into noncompete agreements with employees who earn or are projected to earn \$75,000 or less on an annualized basis.

State Law Changes (Labor Changes)

- NYCRR 380-2.5 Clarifies the number of intermittent leave days eligible employees can take. Qualifying employees that work at least 5 days a week can take a maximum of 60 days of intermittent leave per year.
- OR SB 169 Clarifies the definition of a protectible interest required for an enforceable noncompete agreement. Shortens the duration of noncompete agreements to 12 months from the date of an employee's termination. Agreements longer than 12 months are void.
- WA SB 5355 Allows all employees, except for highly compensated employees as defined by statute, to place liens on their employer's real or personal property to satisfy a wage claim.

State Law Changes (Texas)

- Measures to legalize recreational marijuana once again failed in the 2021 Texas legislative session. But, in June 2021, Governor Greg Abbott signed into law a modest expansion to the state's medical-use or compassionate-use low-THC cannabis statute. The law took effect on September 1, 2021.
- The Texas legislature has [broadened the scope of protections](#) afforded to victims of workplace sexual harassment in several notable ways. Most importantly, [SB 45](#) and [HB 21](#) amend the Texas Labor Code to allow even small employers (with fewer than 15 employees) to be sued for sexual harassment, to permit sexual harassment claims to be brought against individuals, and to allow administrative charges to be filed for up to 300 days after the alleged conduct. These are significant changes that can be expected to increase the number of sexual harassment claims filed under Texas state law.
- As of September 1, 2021, the Firearm Carry Act of 2021 ([HB 1927](#)) allows most Texans over the age of 21 to carry holstered handguns without a permit and without training. This relaxed standard, however, does not curtail an employer's right to prohibit possession of firearms on its premises, *except* that it remains unlawful for most employers to prohibit employees from keeping a firearm they lawfully possess in their personal, locked vehicles in a company parking area.
- All bills introduced during the regular legislative session to require private employers to provide employees with paid sick leave have failed, and similar bills pending in the second legislative session have yet to gain traction. At the local level, city ordinances adopted by Austin, Dallas, and San Antonio that would have required paid sick leave have been thwarted by legal challenges. Therefore, no Texas state or local law currently requires Texas employers to provide paid sick leave. Efforts to pass preemption laws in the most recent legislative sessions, which would prohibit city and county governments from adopting any rule or ordinance requiring employee leave or benefits beyond those required by federal or state law, have stalled for the time being.

COVID-19 Leave

In CA, employees unable to work due to COVID-19 may be able to use employer provided paid sick leave or qualify for benefits under the state disability (SDI) or paid family leave (PFL) programs.

In CO, in addition to a general accrued paid sick leave requirement, the law requires all employers in CO, regardless of size, to provide up to 80 hours of supplemental paid leave during a public health emergency. Employers can count any unused accrued paid sick leave toward the supplemental leave.

In MD, supplemental leave is available, provided that the state authorizes funding.

In MA, supplemental leave is available through April or until state funding is exhausted.

In NV, employers with 50 or more employees must provide up to 4 hours of paid leave to allow employees to get a 2-shot vaccination or 2 hours of leave for a 1-shot vaccination.

COVID-19 Leave

In NY, If you are under a mandatory or precautionary order of quarantine or isolation issued by the State, New York State Department of Health, local Board of Health, or other authorized government entity you may be eligible for job-protected sick leave and compensation through a combination of disability and Paid Family Leave COVID-19 quarantine leave benefits.

If you work for an employer with 10 or fewer employees as of January 1, 2020 and your employer made less than \$1 million in 2019: Your employer is required to provide you with job protected leave and you may be eligible for a combination of Paid Family Leave and disability COVID-19 quarantine leave benefits.

If you work for an employer with 10 or fewer employees as of January 1, 2020 and your employer made more than \$1 million in 2019: Your employer is required to provide you with five days of paid sick leave. After those days are used, you may be eligible for a combination of Paid Family Leave and disability COVID-19 quarantine leave benefits.

If you work for an employer with between 11-99 employees as of January 1, 2020: Your employer is required to provide you with five days of paid sick leave. After those days are used, you may be eligible for a combination of Paid Family Leave and disability COVID-19 quarantine leave benefits.

If you work for an employer with 100 or more employees as of January 1, 2020: Your employer is required to provide you with 14 days of paid sick leave, which should cover the period of mandatory or precautionary quarantine or order of isolation.

If you work for a public employer: All public employers (for example, town, public school, public college or university, district, county, city, village, fire district and state), must provide at least 14 days of paid sick leave, regardless of how many employees they have.

US Supreme Court

The Supreme Court is poised to decide very important issues that could impact employers in 2022 and beyond.

- Atop the list is a challenge to a restrictive abortion law enacted by Mississippi in 2018, [*Dobbs v. Jackson Women's Health Organization*](#). The law bans most abortions after 15 weeks
- The Supreme Court also will be taking up a major Second Amendment case, [*New York State Rifle & Pistol Association Inc. v. Bruen*](#), which deals with a New York law that limits a person's ability to carry concealed guns. Specifically, the law requires that applicants show "proper cause" for a license to possess and carry a handgun outside the home.
- Questions surrounding religious freedom and the separation of church and state also are on the docket this term in [*Carson v. Makin*](#). In this case, several families are challenging a law in Maine that forbids families from applying for state tuition assistance if those funds would be used to pay for a students' secondary school education at a school that, in addition to providing academic instruction, taught religion.



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QUESTIONS?

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Thank you for joining us!

