

WEBINAR SERIES

Essential Insights on Regulatory Compliance for the West Coast, Colorado, and Arizona

January 31, 2024



Today's Presenters



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Today's Agenda

- Federal Employment Law Updates
- Case Law Updates
- State Law Updates
- Employment Law Trends and Hot Topics for 2024

Webinar Forum

All participants are muted.

Please type questions in the side navigation panel and we will try to address most questions during today's session.

Today's presentation will be posted online at prestigepeo.com/webinars



Federal Employment Law Updates

US DOL Overtime Rule Update

- Last updated in 2019 with a prior effective date of January 1, 2020.
- New rule was proposed on August 30, 2023.
- Sets the minimum salary threshold for overtime exemptions under the FLSA from **\$35,568** (or \$684/week) to **\$55,068** (\$1,059/week).
- Increases the threshold for highly compensated individuals from \$107,432 per year to \$143,988 per year.
- Comment period closed on November 7, 2023.
- Rule has a mechanism to periodically increase the salary threshold going forward.

US DOL Overtime Rule Update

- Final rule slated for April 2024 release.
- Likely to go into effect 60 days after the release of the final rule.
- Reminders/Takeaways:
 - Employers should plan now for these changes.
 - While some states (e.g. NY, CA) already have higher minimum salary thresholds for exempt employees, many states follow the federal overtime rule.

US DOL Independent Contractor Rule Update

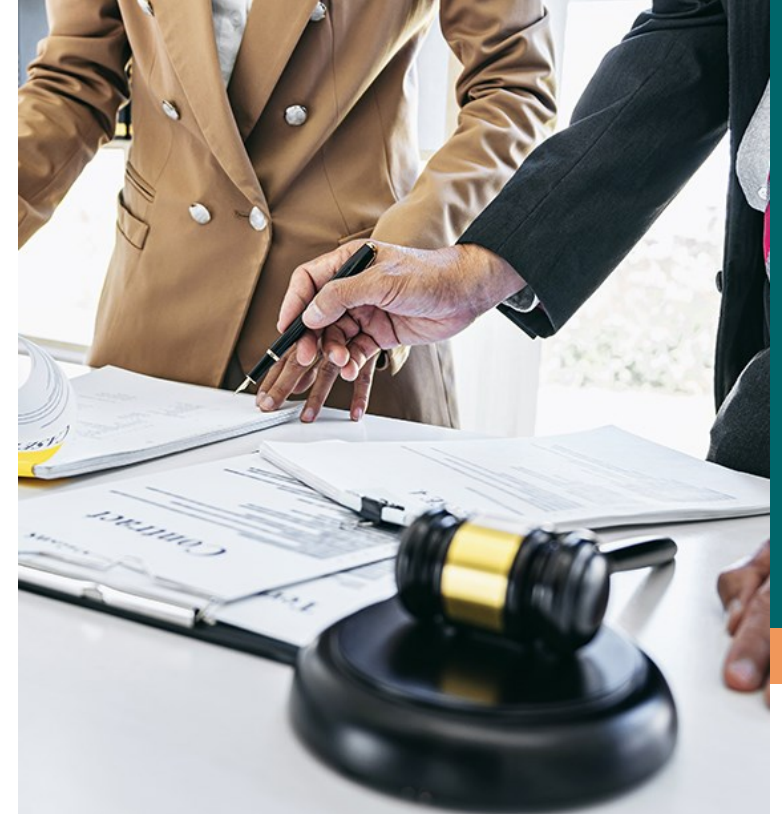
- On January 9, 2024, US DOL released its final rule for independent contractors.
- New rule is effective March 11, 2024.
- It restores a six-factor totality of the circumstances analysis:
 - (1) Opportunity for profit or loss depending on managerial skill
 - (2) Investments by the worker and the potential employer
 - (3) Degree of permanence of the work relationship
 - (4) Nature and degree of control
 - (5) Extent to which the work performed is an integral part of the potential employer's business
 - (6) Skill and initiative
- Prior rule did not provide equal weight to the above factors.



NLRB Joint Employer Rule

NLRB Joint Employer Rule

- NLRB issued a new joint employer rule with an effective date of February 26, 2024.
- NLRB is made up of political appointees who serve for a few years.
- Current NLRB is more employee friendly.
- New joint employer rule replaces the rule that was issued in 2020, which was more employer friendly.
- Primarily impacts employers that are franchisors/franchisees; however, other employers need to be aware of the possible impact of this rule on their businesses.



NLRB Joint Employer Rule

- New rule: an entity may be considered a joint employer of a group of employees if each entity has an employment relationship with the employees and they share or codetermine **one or more of the employees' essential terms and conditions of employment**,
- Terms and Conditions of Employment:
 - (1) wages, benefits, and other compensation;
 - (2) hours of work and scheduling;
 - (3) the assignment of duties to be performed;
 - (4) the supervision of the performance of duties;
 - (5) work rules and directions governing the manner, means, and methods of the performance of duties and the grounds for discipline;
 - (6) the tenure of employment, including hiring and discharge; and
 - (7) working conditions related to the safety and health of employees.
- NLRB released a fact sheet about the new rule, which can be found [here](#).

Case Law Update

Muldrow v. City of St. Louis

Case Synopsis

- Issue was whether Title VII prohibits job transfers that don't cause "significant disadvantage" to workers can be considered discrimination in violation of Title VII.
 - Does Title VII require a showing of harm to the employee for a discrimination claim to prevail?
- Why are we talking about this?
 - At the District Court level and Court of Appeals, the employer prevailed.
 - However, the case was appealed to the Supreme Court, who heard oral arguments on December 6, 2023
 - SC Justices seemed sympathetic to employee.
 - If the Court rules in favor of the employee, it will open the door for additional claims
- Written decision is likely to be released in June 2024.



Eisenhauer v. Culinary Institute of America

- Federal Case about both the Federal Equal Pay Act and New York's Equal Pay Act.
- Plaintiff alleged its employer violated both laws by paying her less than male colleagues.
- Court noted that
- Federal EPA allows for unequal pay if it is based on “any other factor other than sex.”
 - NY law, however, adds the additional requirement that the factor other than sex must be job-related for the position in question.
- While Defendant prevailed under the Federal EPA, the Appellate Court clarified that these statutes were very different and they remanded the matter to state court under the state's Equal Pay Act, which had a higher standard.
- This case serves as a reminder that often state laws have more protections for employees than federal laws.

State Law Updates

California - Enhanced Paid Sick Leave Benefits, effective January 1, 2024

- Increases paid sick days from three (3) to **five (5)** days (40 hours)
- Increases the accrual cap from 48 hours or six days to **80 hours or 10 days**
- When sick leave is accrued (i.e., it is not being frontloaded), these changes allow employers to impose a maximum accrual cap of **80 hours or 10 days** and a use limit of **40 hours or five days per 12-month period**.
- Preempts local paid sick leave ordinances that are less generous.
- Provides that certain procedural and non-retaliation provisions of the law apply even to union employees that have a CBA that provides for different paid sick leave amounts.



California - Enhanced Paid Sick Leave Benefits, continued

Compliance - Next Steps:

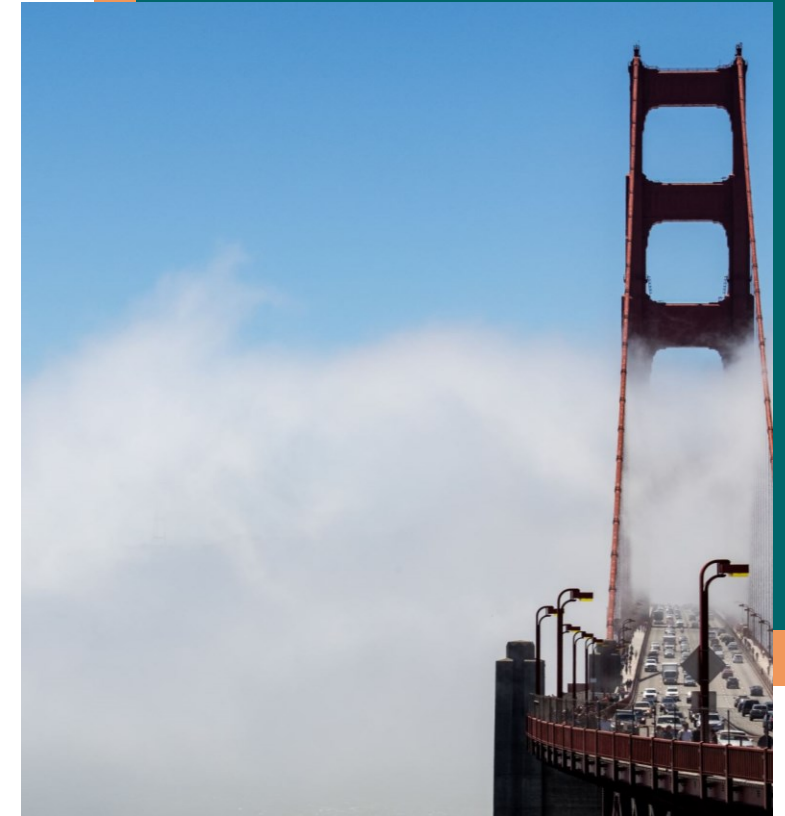
- Update **written sick leave policies**, employee handbooks, and training materials
- Train **managers and supervisors**
- Make sure you are correctly **carrying over and capping the** appropriate amounts of PSL to which employees are entitled



California - Employee Leave Entitlement for Reproductive Loss

Protected Leave for Reproductive Loss

- Effective January 1, 2024
- This new law requires employers provide an eligible employee up to **five (5) days** of leave following a reproductive loss event.
- While the protected leave need not be used consecutively, it must be used within **three (3) months** of the qualified event. If an employee suffers multiple reproductive loss events, the new law allows for a maximum of 20 days of protected leave over a 12-month period.
- All protected leave is **unpaid** unless an employer has an already established policy providing to the contrary. However, an employee taking protected leave must be permitted to use any acquired sick, vacation, or other paid time off.



California - Updated Wage Theft Prevention Notice, effective January 1, 2024

Updated Wage Theft Prevention Notice Published by the California Labor Commissioner:

California Labor Code Section 2810.5 requires employers to provide each employee with written notice (referred to as a Wage Theft Prevention Notice), at the time of hiring, with the basic terms of employment as set forth in California Labor Code Section 2810.5, such as:

- Rate(s) of pay,
- Payday,
- Legal name of the employer and any "doing business as names,"
- Address, workers' compensation information, and
- Paid sick leave information,
- And other additional information indicated on the notice.
- The Wage Theft Prevention Act Notice also comes in different languages (Vietnamese, Spanish, Korean, Chinese and Tagalog) https://www.dir.ca.gov/dlse/governor_signs_wage_theft_protection_act_of_2011.html

See Notice on next slide.

California Updated Wage Theft Prevention Notice

NOTICE TO EMPLOYEE <i>Labor Code section 2810.5</i>	
EMPLOYEE	
Employee Name:	
Start Date:	
EMPLOYER	
Legal Name of Hiring Employer:	
Is hiring employer a staffing agency/business (e.g., Temporary Services Agency, Employee Leasing Company, or Professional Employer Organization [PEO])? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Other Names Hiring Employer is "doing business as" (if applicable):	
Physical Address of Hiring Employer's Main Office:	
Hiring Employer's Mailing Address (if different than above):	
Hiring Employer's Telephone Number:	
If the hiring employer is a staffing agency/business (above box checked "Yes"), the following is the other entity for whom this employee will perform work:	
Name:	
Physical Address of Main Office:	
Mailing Address:	
Telephone Number:	
WAGE INFORMATION	
Rate(s) of Pay:	Overtime Rate(s) of Pay:
Rate by (check box): <input type="checkbox"/> Hour <input type="checkbox"/> Shift <input type="checkbox"/> Day <input type="checkbox"/> Week <input type="checkbox"/> Salary <input type="checkbox"/> Piece rate <input type="checkbox"/> Commission	
<input type="checkbox"/> Other (provide specifics):	
Does a written agreement exist providing the rate(s) of pay? (check box) <input type="checkbox"/> Yes <input type="checkbox"/> No	
If yes, are all rate(s) of pay and bases thereof contained in that written agreement? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Allowances, if any, claimed as part of minimum wage (including meal or lodging allowances):	
<small>(If the employee has signed the acknowledgment of receipt below, it does not constitute a "voluntary written agreement" as required under the law between the employer and employee in order to credit any meals or lodging against the minimum wage. Any such voluntary written agreement must be evidenced by a separate document.)</small>	
Regular Payday:	

DLSE-NTE (rev 11/2023)

California - New Requirement to Develop and Implement a Workplace Violence Prevention Plan, effective July 1, 2024

New Requirement to Develop and Implement a Workplace Violence Prevention Plan:

This law section of the California Labor Code requires nearly all California employers to establish, implement, and maintain an "effective" workplace violence prevention plan by **July 1, 2024**.

Under the new law, a covered employer must establish a workplace violence prevention plan that includes, among other things, the following:

- The names or job titles of the individuals responsible for implementing the plan,
- Procedures:
 - To obtain the active involvement of employees in developing and implementing the plan,
 - For the employer to respond to reports of workplace violence and to prohibit retaliation against the employee who reported the incident,
 - To develop and provide training on the employer's plan,
 - To correct workplace violence hazards in a timely manner,
 - For post-incident response and investigation, and
 - For the employer to review and update the plan for effectiveness at least annually, or when a deficiency is observed, or after an incident of violence.
- Covered employers are required to **record** specific information in a “**violent incident log**” about every incident, response, and the investigation performed and maintain records

California - Changes to COVID Rules

On January 9, 2024, **the California Department of Public Health (CDPH) issued an update** that their official recommendations for Californians would now move away from the five-day rule in favor of “instead focus[ing] on clinical symptoms to determine when to end isolation.”

- Now, **the new guidance for COVID-positive Californians** says that they should still stay home until their symptoms improve and wear a mask around others indoors for ten (10) days.

The new guidance for COVID-positive Californians who have symptoms:

- Stay home until symptoms improve and any fever has been gone for 24 hours or more without medication,
- Wear a mask indoors around others for 10 days,
- Avoid higher-risk people for 10 days,
- However, COVID-positive people *without* symptoms can leave their homes and be in public, CDPH says — albeit as long as they stay masked for that period.

California - Non-Compete Agreement Prohibition

California law already made Non-Compete Agreements generally unenforceable, but two new laws raise the stakes:

- The new law prohibits employees from entering into or attempting to enforce non-compete agreements, which are void under state law.
- Employers are affirmatively prohibited from entering into noncompetition agreements (existing law established that noncompetition agreements were void against public policy, but there was no affirmative prohibition) or from attempting to enforce a noncompetition agreement.
- Employees have a private right of action to enforce the law and can obtain injunctive relief, actual damages, and an award of attorneys' fees if they prevail.

California - Non-Compete Agreement Prohibition, continued

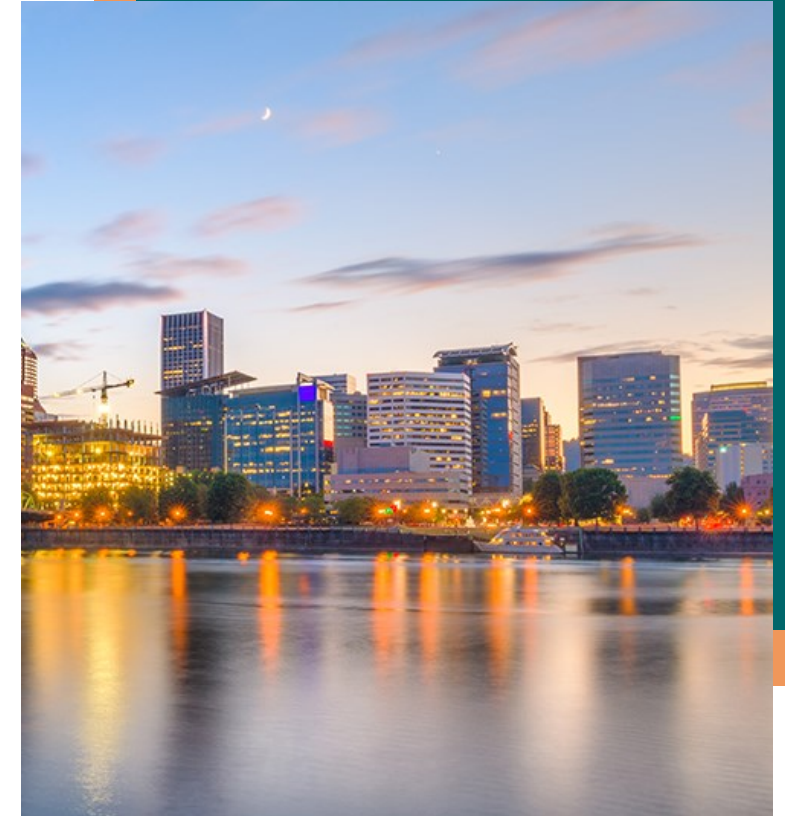
New Notice Requirements

- Requires employers to notify current and former employees (employed after Jan. 1, 2022) whose contracts include non-competes that the clause is void;
- The notice must be in writing and sent to employee's last known physical address and email address; and
- The notice **must** be provided by Feb. 14, 2024.

Oregon – Leave of Absence for Active Service of the State

Leave of Absence for Active Service of the State

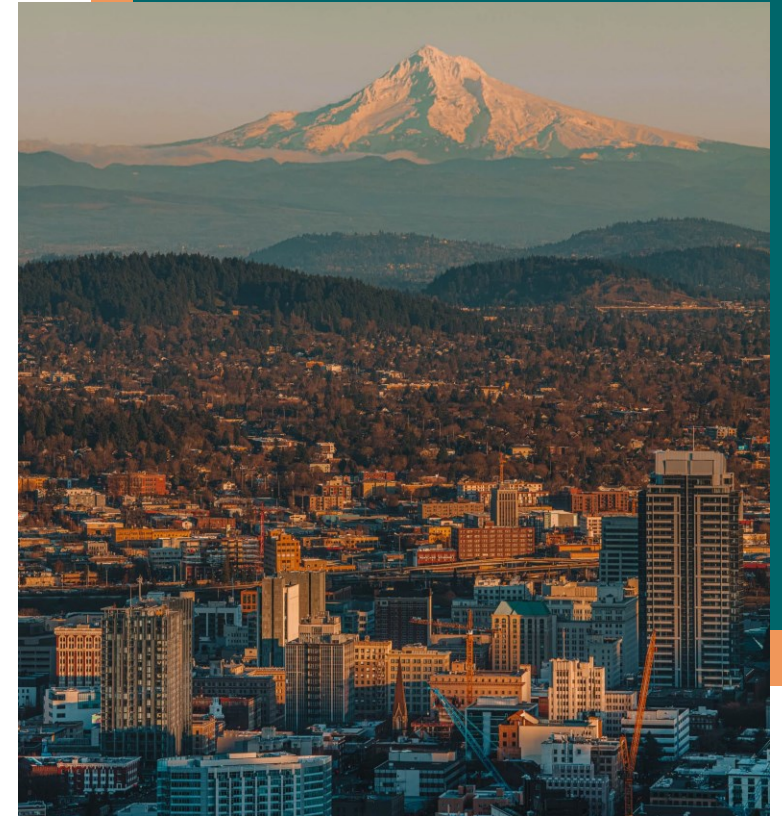
- Effective January 1, 2024
- Eligible employees are military personnel who are called into active state service by the Governor of the State.
- What does it mean for the employer:
 - Must grant the employee a leave of absence until release from active state service permits return to work.
 - The employee cannot be subject to removal or discharge from the position because of the leave.
 - The employer is not required to pay wages or other monetary compensation during a leave.
 - The State of Oregon will continue coverage under an employer-sponsored health plan.



Oregon – Expanded Protected Leave Benefits for Bias Crime Victims

Expanded Protected Leave Benefits for Bias Crime Victims

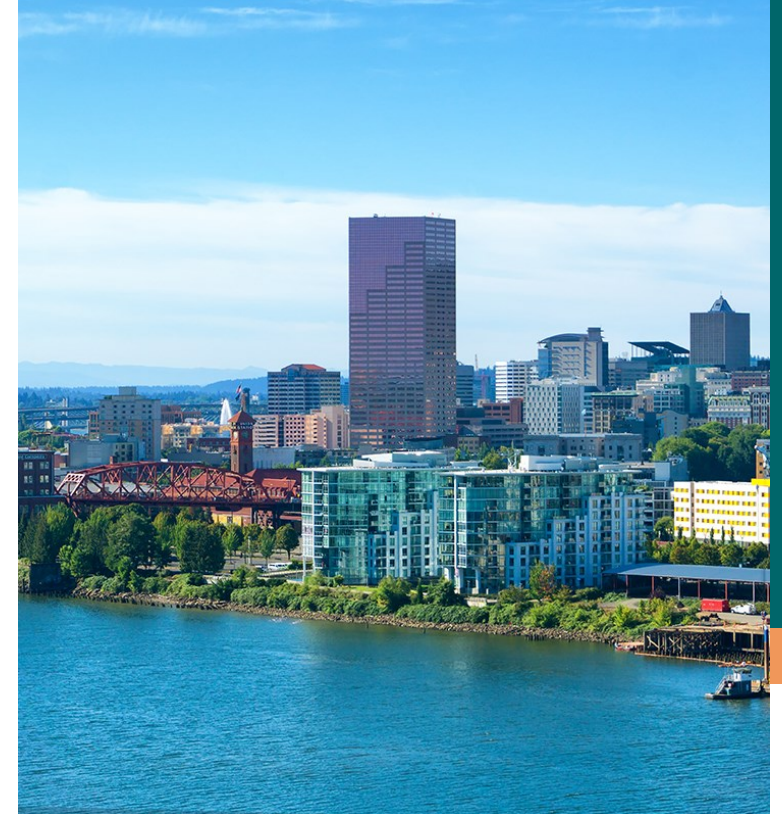
- Effective January 1, 2024, the Oregon law expands eligibility for protected leave to bias crime victims.
- Under the established law, employees have been eligible for crime victim leave as a victim of domestic violence, harassment, sexual assault, or stalking, or as a parent or guardian of a minor child or dependent who is a victim of domestic violence. This new law expands the protected leave.
- What is a bias crime: crimes that target individuals due to their race, color, religion, gender identity, sexual orientation, disability, or national origin and have been subjected to a crime due to the perpetrator's perception of those characteristics.
- What does it mean for employers:
 - Employers with at least six employees in Oregon are required to follow the law.



Oregon – Expanded Employee Rights

Expanded Employees Rights regarding Discrimination, Retaliation, and Workplace Safety

- Effective January 1, 2024
- The new law bars employers from retaliating or discriminating against employees who refuse to do work that would expose them to serious harm, provided the employee acted “in good faith and with no reasonable alternative.”
- **What types of working conditions can be considered hazardous?**
 - Farm work;
 - Operating heavy machinery;
 - Handling potentially harmful pesticides;
 - Working during extreme weather conditions;
 - Any other work that would expose them to hazardous conditions.

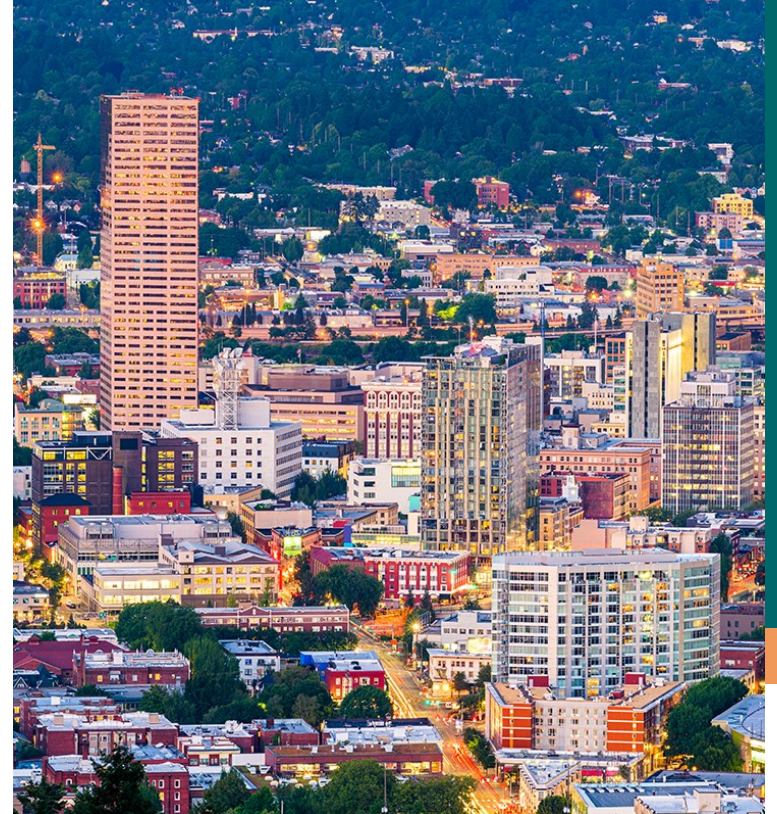


Oregon – Expanded Employee Rights, continued

Expanded Employees Rights regarding Discrimination, Retaliation, and Workplace Safety, continued

What should employers know about employee rights:

- Employees should notify the employer of any violations of the law or standard pertaining to safety and health in the place of employment when the violation becomes known.
- Employees are protected from retaliation when they reject assignments that pose grave threats to their lives; provided there is no reasonable alternative, and they act in good faith.
- An employee or prospective employee alleging to have been barred or discharged from employment or otherwise discriminated against in compensation, or in terms, conditions, or privileges of employment may file a complaint within a year with the Commissioner of the Bureau of Labor and Industries.



Washington – New Salary Thresholds for Exempt Employees

New Salary Thresholds for Overtime Exempt Employees

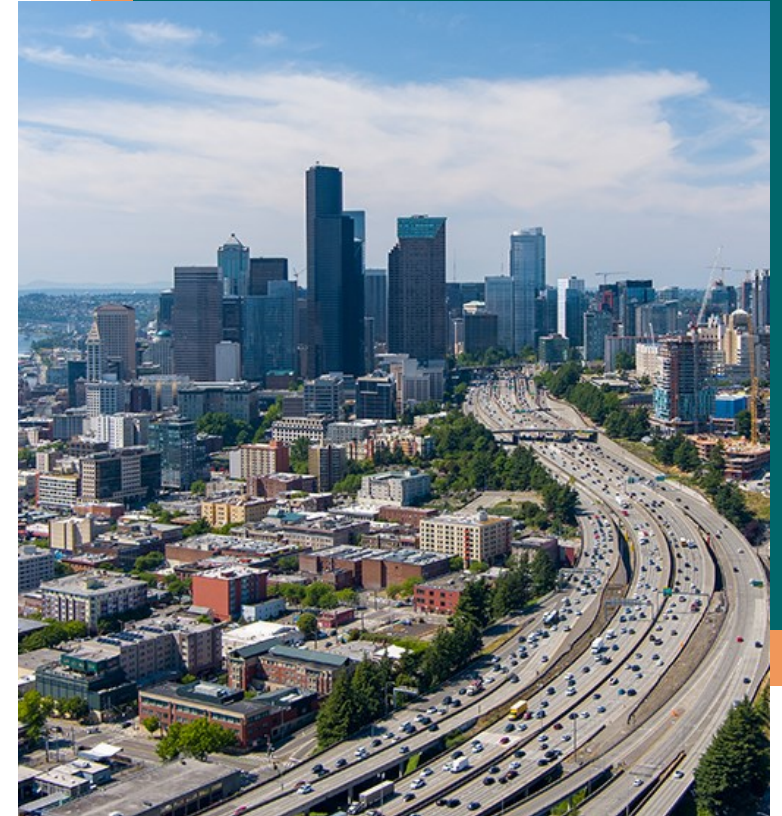
- Effective January 1, 2024.
- Washington's threshold for employees exempt from the Minimum Wage Act will increase due to the minimum wage increases.
- The new threshold will apply to all employers, both large and small, and will be two times the state minimum wage.
- An employee must earn at least \$1,302.40 a week or \$67,724.80 a year to be exempt from overtime pay.
- These rules also apply to computer professionals, who must be paid at an hourly rate rather than salary. Computer professionals are exempt if they earn not less than 3.5 times the state minimum wage.



Washington – Non-Compete Agreement Modifications

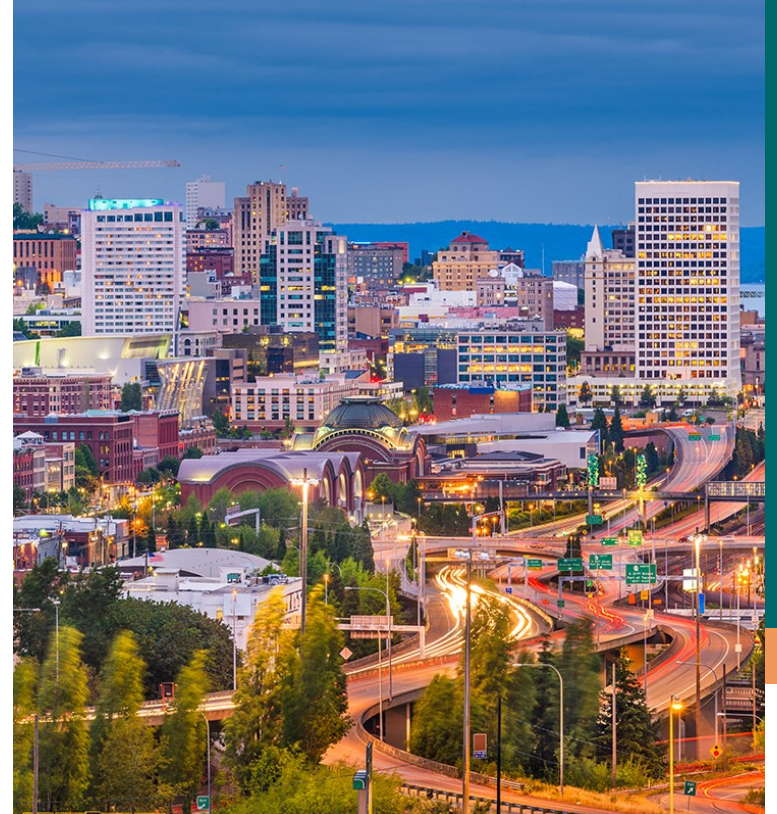
Modifications to the minimum annual threshold for enforceable Non-Compete Agreements

- Effective January 1, 2024, the minimum annual threshold for enforceable non-compete agreement has increased.
- Non-Compete Agreements are void against:
 - Employees whose annual salaries earned are less than \$120,559.99, and
 - Independent contractors whose annual salaries earned are less than \$301,399.98.
- If a Non-Compete Agreement is found to be void, an employer can be liable for an employee's actual damages or \$5,000, whichever is higher, along with attorneys' fees and costs.



Washington – Pre-Employment Drug Testing for Off-Duty Cannabis Use Now Prohibited

- This new law prohibits:
 - pre-employment drug testing for off-duty cannabis use, and
 - prohibits employers from making a hiring decision in the pre-employment process related to the applicant’s off-duty use of cannabis.
- Applies to all employers, with few exceptions such as law enforcement, fire department, first responders, airline or aerospace industry, or safety-sensitive positions.
- Employers may still conduct pre-employment drug testing for other drugs through methods that do not screen for non-psychoactive cannabis metabolites and still conduct post-accident testing and testing when there is a reasonable suspicion of being under the influence while on duty.
- Employers may also continue to enforce a drug and alcohol-free workplace.



Colorado – Changes to the POWR Act

Changes to the Protecting Opportunities and Workers' Rights **(POWR) Act** amends several components of the Colorado Anti-Discrimination Act (CADA) and apply to all private employers with at least one employee in Colorado.

Changes include:

- New standard and definition of Unlawful “Harassment,”
- Updated Defenses to Harassment and Disability Claims,
- Inclusion of Marital Status as a Protected Class in the Employment Context,
- New Employment Records Keeping Requirements related to discriminatory or unfair labor practices,
- Strict Requirements for Non-Disclosure Agreements (NDAs).

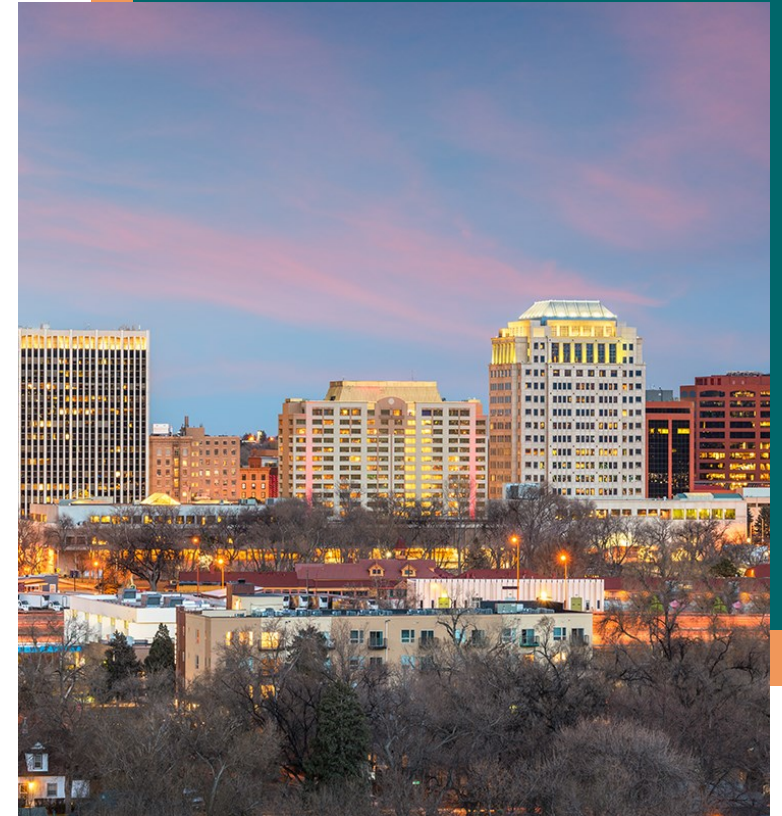


Colorado – Changes to the POWR Act, continued

New standard and definition of Unlawful “Harassment”

POWR Act explicitly rejects the federal “severe and pervasive” standard for unlawful harassment and replaces it with a lower standard which prohibits any “unwelcome physical or verbal conduct or any written, pictorial, or visual communication” that is:

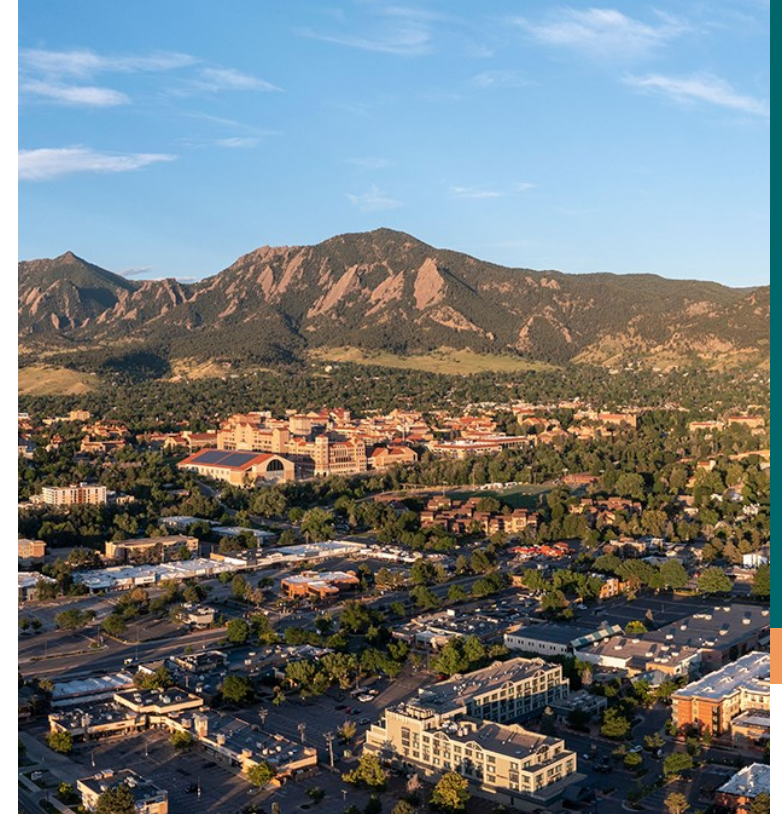
- Directed toward an individual or group of individuals on the basis of a protected class,
- Subjectively offensive to the individual alleging harassment, and
- Objectively offensive to a reasonable individual who is a part of the same protected class.



Colorado – Changes to the POWR Act, continued

New standard and definition of Unlawful “Harassment,” continued:

- For the conduct or communication to be unlawful, one of three things must be true:
 - Submission to the conduct must be a condition of employment,
 - Objection or submission to the conduct must be the basis for an employment decision, or
 - The conduct must unreasonably interfere with the individual’s work performance, such that it creates a hostile work environment.
 - POWR Act further provides that the frequency with which harassment occurs and the nature of the work are no longer relevant in determining if harassment has occurred.



Colorado – Changes to the POWR Act, continued

Updated Defenses to Harassment Claims

Employers' rights and responsibilities:

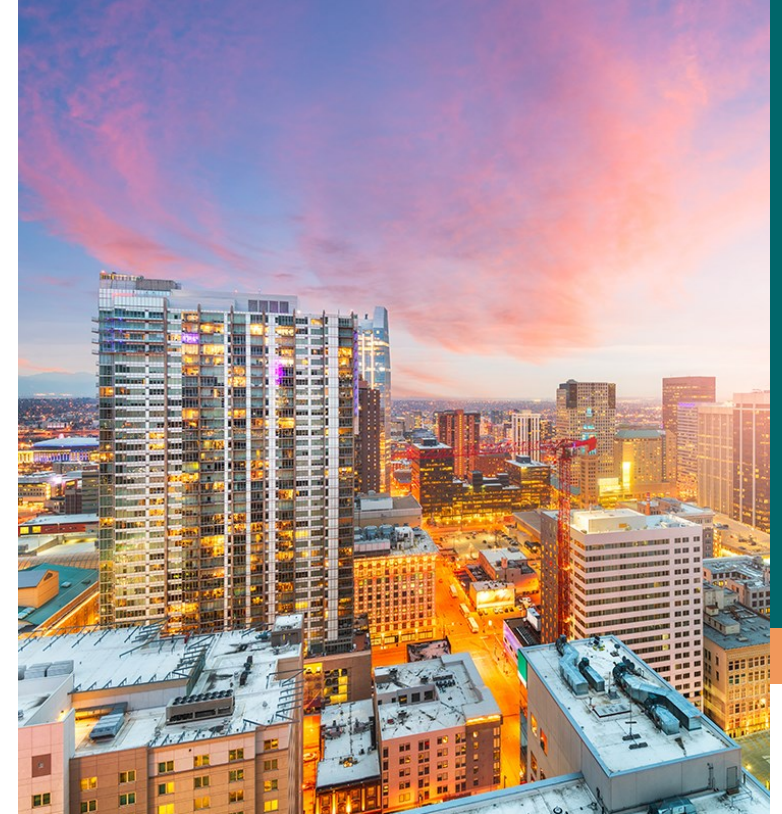
- For harassment claims based on a supervisor's conduct, an employer may now only assert an affirmative defense if it can show that:
 - The employer has established a program that is reasonably designed to prevent harassment;
 - The employer has communicated the existence of the program to all employees; and
 - The complainant has unreasonably failed to take advantage of the program.



Colorado – Changes to the POWR Act, continued

Strict Requirements for Non-Disclosure Agreements (NDAs).

- Under the POWR Act, all NDA's entered into or renewed on or after August 7, 2023, will be void unless they meet the following six requirements:
 - Must be mutually applicable to all parties involved;
 - It does not prevent the employee or prospective employee from disclosing the underlying facts of any alleged discriminatory or unfair employment practice (including the existence and terms of a settlement agreement) to select entities;
 - It explicitly states that a lawful disclosure does not constitute disparagement;
 - If the NDA contains a non-disparagement provision and the employer disparages the employee or prospective employee, the employers' rights are limited;
 - Any liquidated damages provision within the NDA must provide for an amount that is reasonable, proportionate, and not punitive;
 - The parties have signed and attached to the NDA an addendum exhibiting compliance with the other five requirements.



Colorado – Changes to the POWR Act, continued

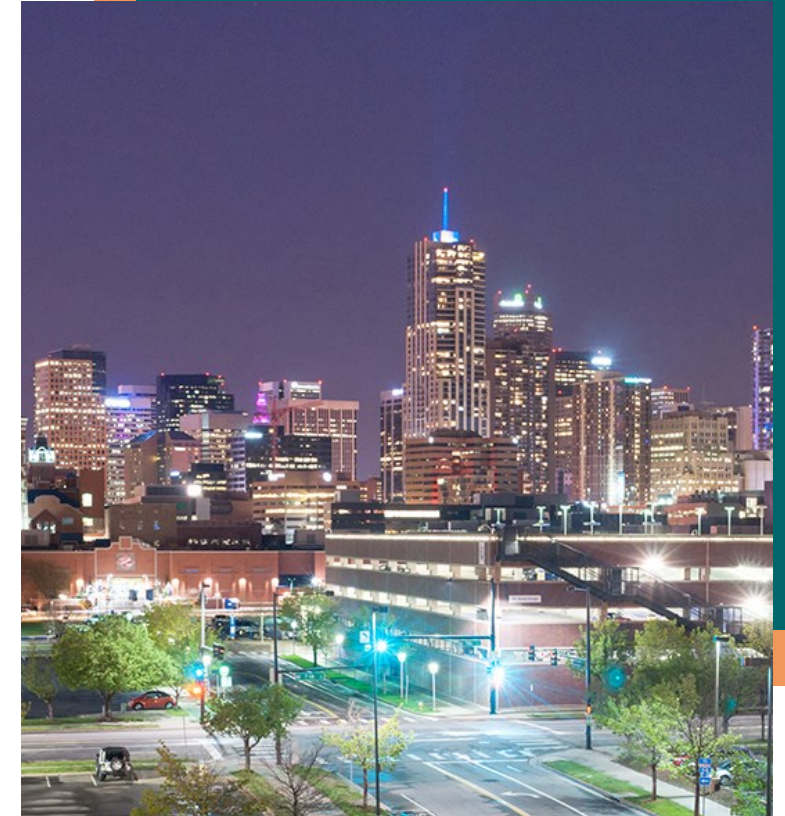
POWR Act now requires the Inclusion of Marital Status as a Protected Class in the Employment Context

- The POWR Act now includes marital status as a new protected category under Colorado's employment discrimination provisions. This was previously only extended to CADA's public accommodations provisions.

New Employment Record Keeping Requirements

- The POWR Act requires employers to preserve records of complaints related to discriminatory or unfair labor practices for at least five years.
- Employers must also maintain an “accurate, designated repository of all written or oral complaints of discriminatory or unfair employment practices,” including the date of the complaint, the alleged perpetrator, the complaining party (unless made anonymously), and the actual substance of the complaint.

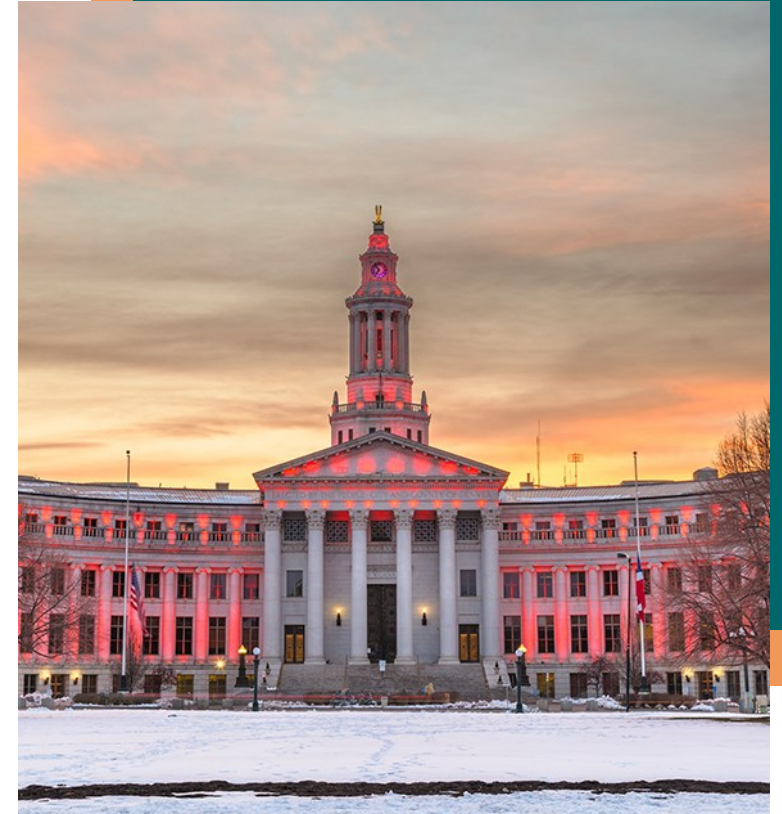
*There are additional modifications to the POWR Act, so please reach out to your HR Business Partner with any questions.



Colorado– Equal Pay for Equal Work Act

Effective January 1, 2024, Colorado employers will have new disclosure and notice requirements under the state’s Equal Pay for Equal Work Act, including but not limited to:

- An obligation to provide notice to employees for each “job opportunities” (rather than a promotional or advancement opportunity);
- In addition to salary and benefit information, an obligation to include in job notifications the date the application window for that job is anticipated to close;
- New disclosure obligations for positions that follow career progressions; and an obligation to make reasonable efforts to disclosure information regarding selected candidates to employees with whom the candidate will likely work.



Colorado – HFWA Changes

Amendments to the Colorado Healthy Families and Workplace Act (HFWA)

- Employees are now eligible for leave for two new types of absences:
 - To grieve the death of a covered family member, to attend a funeral/memorial for a covered family member, or to handle legal or financial matters in the wake of a covered family members' death, and
 - To evacuate from their residence or to care for a covered family member whose school or place of care has been closed due to inclement weather, loss of power, loss of heating, loss of water, or other unexpected occurrences or events.

*Reminder that HFWA already permits employees to use paid sick leave for a variety of other health and safety concerns.



Arizona – Updates

Arizona Minimum Wage Law updates:

- Effective January 1, 2024, minimum wage is set to increase to **\$14.35** per hour, except for Flagstaff, Arizona which requires:
 - Hourly workers - \$17.40
 - Tipped workers - \$15.90

Labor Law poster updates:

- All business within the State of Arizona must display the new posters related to:
 - Fair Wages and Healthy Families Act,
 - Know Your Rights: Workplace Discrimination is Illegal, and
 - Employee Rights Under the Fair Labor Standards Act,
 - along with other state mandated posting requirements where they are sufficiently accessible and viewable to all employees.





Employment Law Trends and Hot Topics for 2024

Pay Transparency

- States are pushing for pay transparency in job postings and to employees interested in internal job openings.
- Goal is to level the playing field for women and minorities.
- Employers posting for new jobs should review their job postings for compliance with applicable state law.



Data Privacy

- Data Privacy laws continue to trend across the country.
- Employers should review their internal processes to make sure they have a data privacy policy that complies with the laws in the states in which they do business.



Non-Competes

- On both the federal and state levels, non-competes continue to face a high level of scrutiny.
- The government is concerned with employees being able to move and maintain employment.

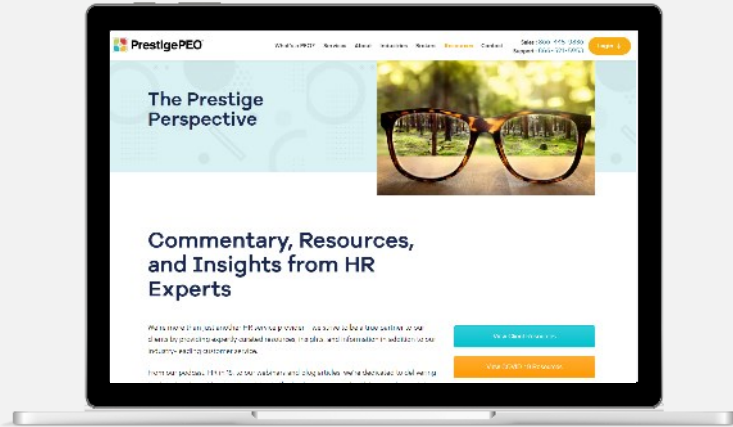


Paid Family Leave Funding

- We continue to see states enact paid family leave laws and fund paid family leave through employee and sometimes employer contributions.
- Employers entering into new states should carefully review the paid leave family laws of each state for compliance.



Questions / Comments / Discussion?



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