

WEBINAR SERIES

# Essential Insights on Regulatory Compliance in the Midwest

March 6, 2024



# Today's Presenters



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# Today's Agenda

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- 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](https://prestigepeo.com/webinars)*



# Federal Employment Law Updates

# US DOL Overtime Rule Update

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- 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.
- Rule has a mechanism to periodically increase the salary threshold going forward.
- Proposed rule does not make any changes to the executive, administrative, or professional (EAP or white-collar exemptions) duties test or the salary basis requirement, the two other prongs required under the regulation for the exemption to apply.
- Comment period closed on November 7, 2023. DOL received over 33,000 comments in response to its notice of the proposed rule.

# US DOL Overtime Rule Update

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- **Final rule slated for April 2024 release.**
- Would go into effect 60 days after the release of the final rule, if adopted.
- 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

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- 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; and
  - (6) Skill and initiative.
- Prior rule did not provide equal weight to the above factors.

# Partnership with other Agencies

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- The Department of Labor (DOL) has entered into a formal agreement with the Equal Employment Opportunity Commission (EEOC) to collaborate and share information with the intention improving both agencies' enforcement efforts.
- Based on the Memorandum of Understanding (MOU) that was signed by agency officials on September 13, 2023, the DOL and EEOC are “forming this partnership to encourage greater coordination between them through information sharing, joint investigations, training, and outreach.”
- This means that some typical DOL audits and investigations could lead to investigations by the EEOC under, for example the Equal Pay Act, Title VII of the Civil Rights Act, and Title I of the American with Disabilities Act.
- This will include sharing of information regarding suspected violations as well as advising the employee who brought the charge or complaint that the employee may be able to file a charge or complaint with the other agency.
- It also signals that the agencies are gearing up for more enforcement activity.



# PUMP Act guidance

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- The PUMP Act was adopted along with the Pregnant Workers Fairness Act in December 2022.
- The DOL has finally issued internal guidance for agency officials responsible for enforcing the FLSA's "pump at work" provisions, including those enacted under the 2022 Providing Urgent Maternal Protections for Nursing Mothers Act (PAUMP Act).
- These guidelines provide a glimpse into how the Wage and Hour Division (WHD) understands and will enforce the rights available to employees under the FLSA, which requires reasonable break time and a place to express breast milk at work for a year after a child's birth.
- Employees are entitled to breaks every time they need to pump.
- The length and frequency of breaks will vary by employee.
- ER's and EE's may agree to a schedule based on the EE's need to pump, but the agency advises that ER's cannot require EE's to comply with a fixed schedule.
- Time for pump breaks may be unpaid, unless otherwise required by federal, state, or local law.

# CDC updated its COVID isolation guidance

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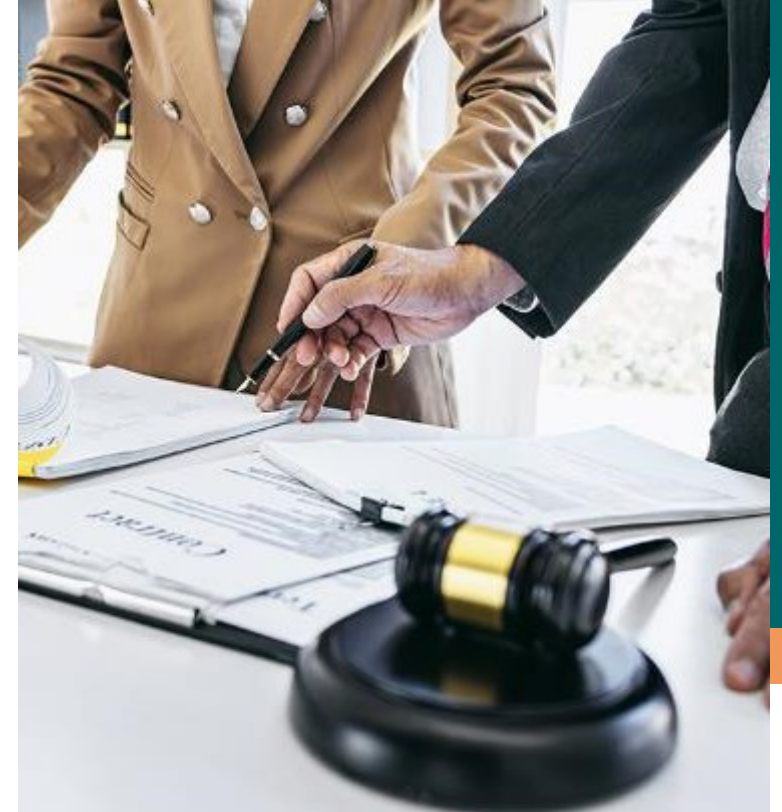
- The Centers for Disease Control and Prevention dropped its isolation guidance for people with COVID-19.
- Previously, those who test positive are advised to stay home for at least five days to reduce the chances of spreading COVID to others.
- This shift now advises those who test positive to rely on symptoms instead.
- This means that if a person does not have a fever for at least 24 hours and the symptoms are improving, they can still go to work or school.
- These new guidelines were released March 1, 2024.

# NLRB Updates

# NLRB Joint Employer Rule

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- NLRB issued a new joint employer rule with an effective date of **March 11, 2024**.
- The effective date originally was going to be February 26, 2024; however, a federal judge stayed the effective date after a hearing held on February 13, 2024. The US Chamber of Commerce has challenged the Rule in court, alleging it violates federal labor law. A decision will be forthcoming.
- 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

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- 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](#).

# Political Messages and the Workplace

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On February 21, 2024, the National Labor Relation Board (NLRB) ruled that Home Depot violated the National Labor Relations Act when it prohibited an employee from wearing an apron that said “BLM” in support of the Black Lives Matter movement. The NLRB further stated that prohibiting an employee from writing “Black Lives Matter” on the employee’s uniform violated their rights to concerted workplace activity.

## **What is a concerted activity?**

Under the National Labor Relations Act, employees - union and non-union - have the right to talk about working conditions with their co-workers.

## **Why did the NLRB find that wearing BLM markings on the uniform was a concerted activity?**

In this matter, the concerted activity was a “logical outgrowth” of protests about racial discrimination in the workplace and an attempt to bring the issue to the attention of the employer.

The activity was determined to be for the mutual aid or protection of other employees.

# Political Messages and the Workplace

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## What Should Employers Do?

- Review Your Dress Code Policy- The dress code policy itself in this case was not the issue. The NLRB held that the employer's dress code policy was facially neutral because it prohibited political messages "unrelated to the workplace." You should review and, if necessary, revise policies to prohibit **all forms** of political messaging that are unrelated to the workplace.
- Ensure Consistency in Practice- Ensure that you are consistently enforcing your policies to avoid the appearance of disparate treatment. In this case, the NLRB found that the facially neutral policy was used to restrict concerted protected activity.
- Carefully Consider the Message Being Sent- Carefully and thoughtfully consider the message represented by an employee's otherwise political display. Is the employee advocating for any terms or conditions of employment? If so, take the employee's concerns seriously.
  - Navigating political issues in the workplace is never easy, but remember Prestige is here to help you navigate these issues.

# 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

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- 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.

# Arizona v. Walsh

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- One of several federal cases challenging the increased minimum wage for federal contractors.
- Plaintiffs are the states of Arizona, Idaho, Indiana, Nebraska and South Carolina (collectively, “the States”).
- On April 27, 2021, President Biden signed Executive Order 14026, which increased the minimum wage for federal contractors to \$15.00 per hour, beginning January 30, 2022.
- The DOL’s implementing regulations for Executive Order 14026 require the department to determine the applicable minimum wage rate every year, beginning January 1, 2023.
- Effective January 1, 2024, the minimum wage for workers who perform work on or in connection with federal contracts will increase from **\$16.20** per hour to **\$17.20** per hour. This will apply to most federal contractors entered or extended after January 30, 2022. However, several states in different circuits filed suit challenging the law.
- Texas, Louisiana, and Mississippi successfully challenged the EO for their states.
- For the States in this case, though, the EO was upheld in the district court. However, an appeal is pending in the U.S. Court of Appeals for the Ninth Circuit. Oral argument in **Walsh, No. 23-15179, was scheduled for Feb. 6, 2024, and the matter is currently pending mediation.**
- Depending on the outcome of this case, we may see the Supreme Court take up this issue.

# State Law Updates

# Illinois- Illinois Equal Pay Act (IEPA)

- On August 11, 2023, Illinois Governor J.B. Pritzker signed a new law that amends the Illinois Equal Pay Act (IEPA) to mandate pay transparency in job postings for most Illinois employers.
- The provision will apply to positions that either are physically performed in the state or positions that report to a supervisor or worksite in Illinois.
- The amendments will make it unlawful for an employer with at least **15** employees to fail to include the pay scale and benefits for a specific job in a job posting in Illinois.
- The amendment also applies to remote positions for employees who (1) will be physically performed, at least in part, in Illinois or (2) will be physically performed outside of Illinois, but the employee reports to a supervisor, office, or other work site in Illinois.



# Illinois- Illinois Equal Pay Act (IEPA) Continued

## Fines, Penalties for Violations

The Illinois Department of Labor may initiate investigations (for both active and inactive job postings) of alleged violations of the IEPA upon receiving a complaint from any person who claims to be aggrieved or at the Department's own discretion.

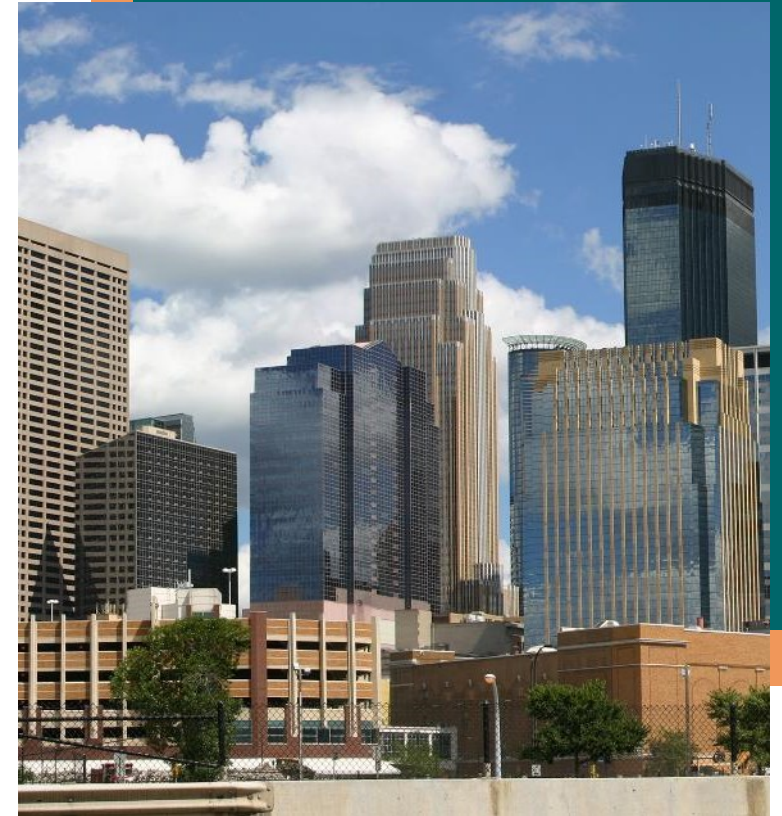
- If the Department determines that a violation has occurred, it may assess fines of up to:
- \$500 for a first offense,
- \$2,500 for a second offense, and
- \$10,000 for a third or subsequent offense. Before fines are levied, employers will be given a short notice and cure period for first (14 days) and second (seven days) offenses.
- However, employers will incur automatic penalties without a cure period for five years following a third offense (which will restart if, during that period, an employer receives a subsequent notice of violation from the Department).
- The requirements under the law will go into effect on **January 1, 2025**.



# Minnesota – Laws passed in 2023

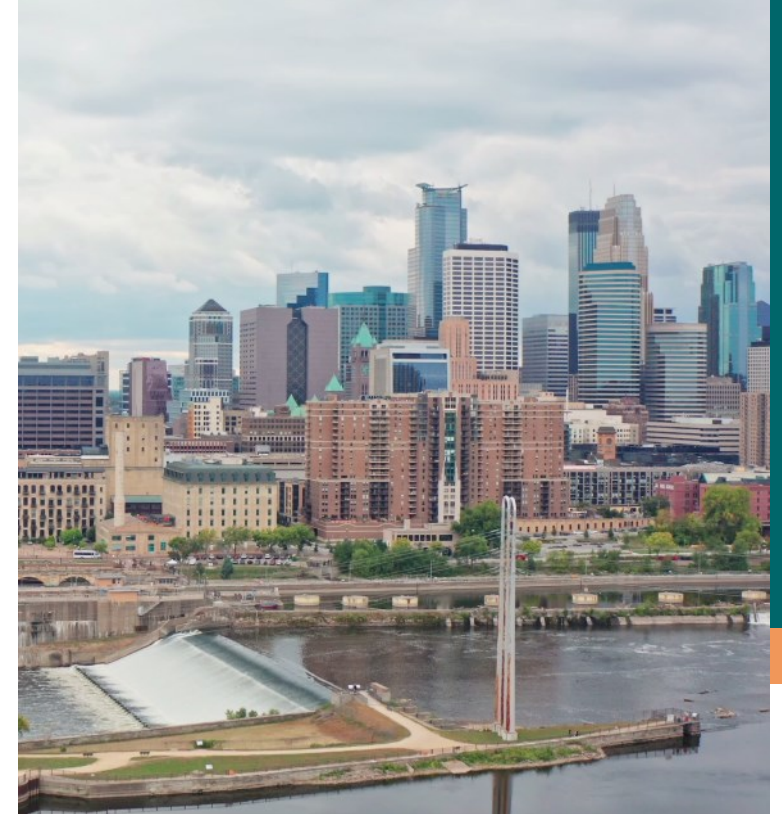
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- As of July 2023, Minnesota's Wage Disclosure Protection law amendment is in effect. This law forbids employers from prohibiting employees to disclose their pay. Employers must not take adverse action or retaliate against an employee if the employee discusses their own wage or another employee's wage, so long as the other employee's wage has been disclosed voluntarily.
- As of August 2023, Minnesota provided employees and job applicants protections for recreational cannabis use outside the workplace. This new law amended Minnesota's Drug and Alcohol Testing in the Workplace Act (DATWA) and Minnesota's Consumable Products Act (CPA).



# Minnesota – Laws passed in 2023 recap continued

- Effective as of July 1 ,2023, workplace protections for pregnant and lactating employees are in place:
  - Requiring all nursing and lactating employees receive break times to express milk regardless of their child's age without losing compensation.
  - Requiring workplace lactation spaces be clean, private and secure.
- On August 1, 2023, a Minnesota’s Construction Worker Wage Protection Act (CWWPA) took effect. It holds contractors liable for unpaid wages, fringe benefits, penalties and liquidated damages owed to construction workers by a subcontractor under the contractor.



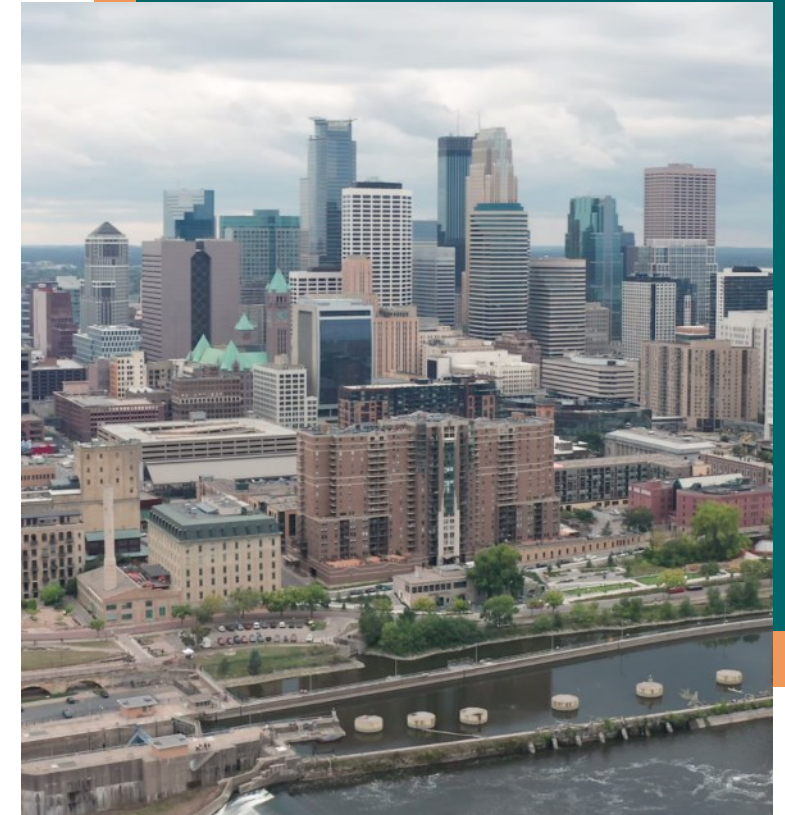


# Minnesota– Earned Sick and Safe time law

Minnesota's earned sick and safe time (ESST) law became effective on January 1, 2024. Employers must provide each employee in Minnesota at least one hour of paid sick and safe time for every 30 hours worked, up to at least 48 hours of accrued ESST a year.

## What are employers required to do?

- Employers must have provided notice to their employees of the Earned Safe and Sick Time law by January 1, 2024, or provide it at the start of an employee's employment (whichever is later). Minnesota has prepared a sample notice document to assist employers; it can be found [here](#).
- If an employer has an employee handbook, they must include a safe and sick time notice to their employees within the handbook.
- Employers must include an employee's total amount of earned sick and safe time hours used and available for use on employee earnings statements at the end of each pay period.



# Minnesota– Minimum Wage Updates

## Minnesota

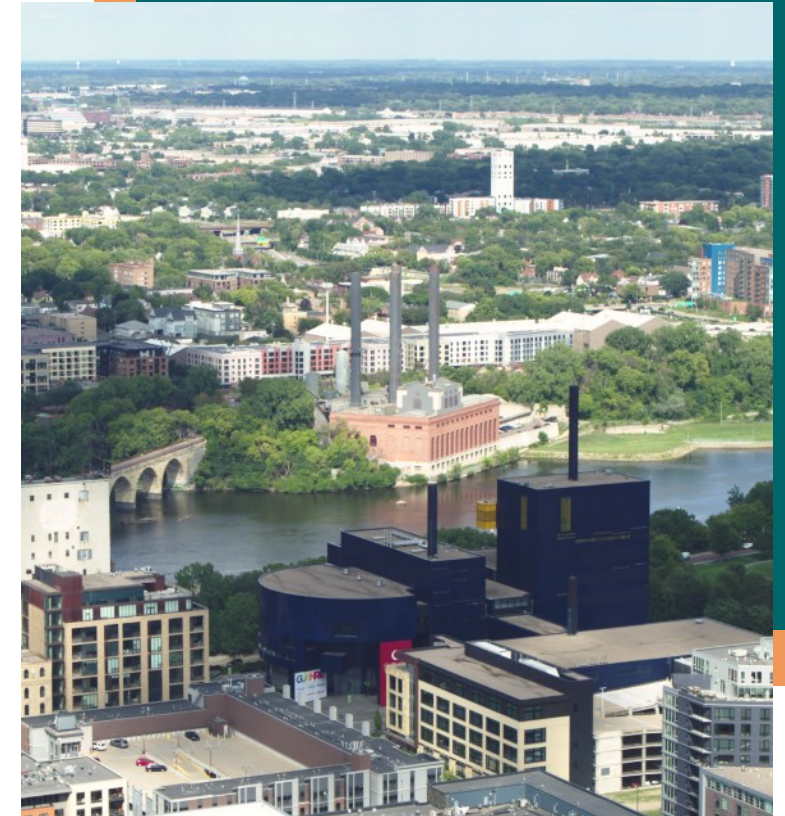
- For Large employers, the minimum wage is increasing to **\$10.85** (effective January 1, 2024);
- For Small employers, the minimum wage is increasing to **\$8.85** (effective January 1, 2024).

## Minneapolis

- Large employers (more than 100 total employees): **\$15.57**(effective January 1, 2024);
- Small Employers (100 or fewer total employees): **\$15.57** (effective July 1, 2024)

## St. Paul

- Macro Businesses (10,001 or more total employees): **\$15.57** (effective January 1, 2024)
- Small Businesses (6 to 100 total employees): **\$14.00** (effective July 1, 2024)
- Micro Businesses (5 or fewer employees): **\$12.25** (effective July 1, 2024).



# Wisconsin – Meal Breaks

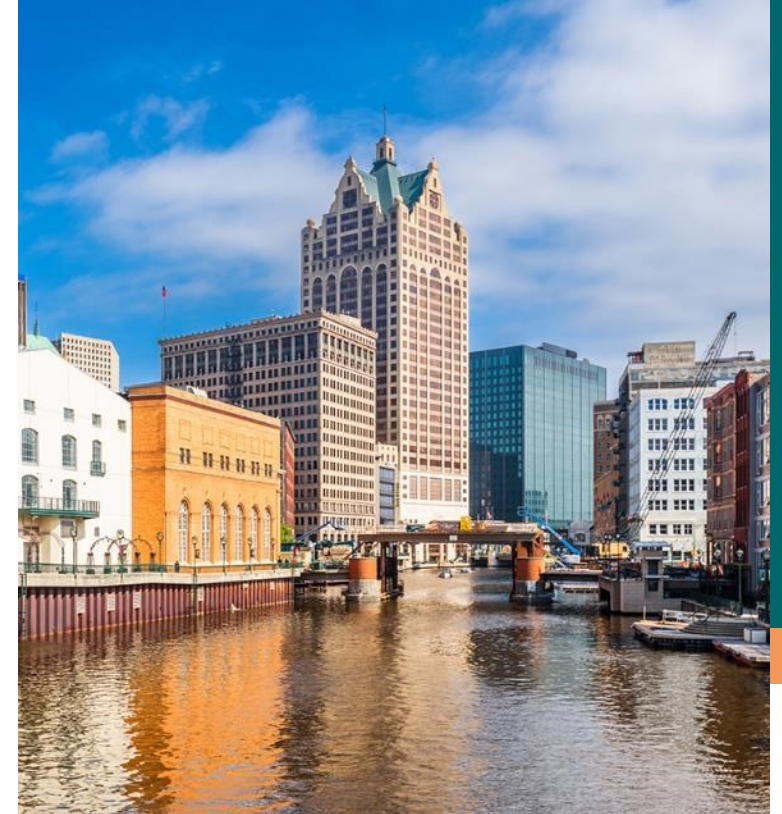
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Wisconsin, like many other states, does not require employers to pay employees for legitimate meal breaks.

There are, however, a few strings attached.

Meal periods may be non-compensable for non-exempt employees only so long as:

- (1) the meal period is actually a meal period and not a rest break, coffee break, or snack break;
- (2) the meal period is thirty minutes (30) or longer;
- (3) the employee is completely relieved of their duties; and
- (4) the employee is permitted to leave the company premises.



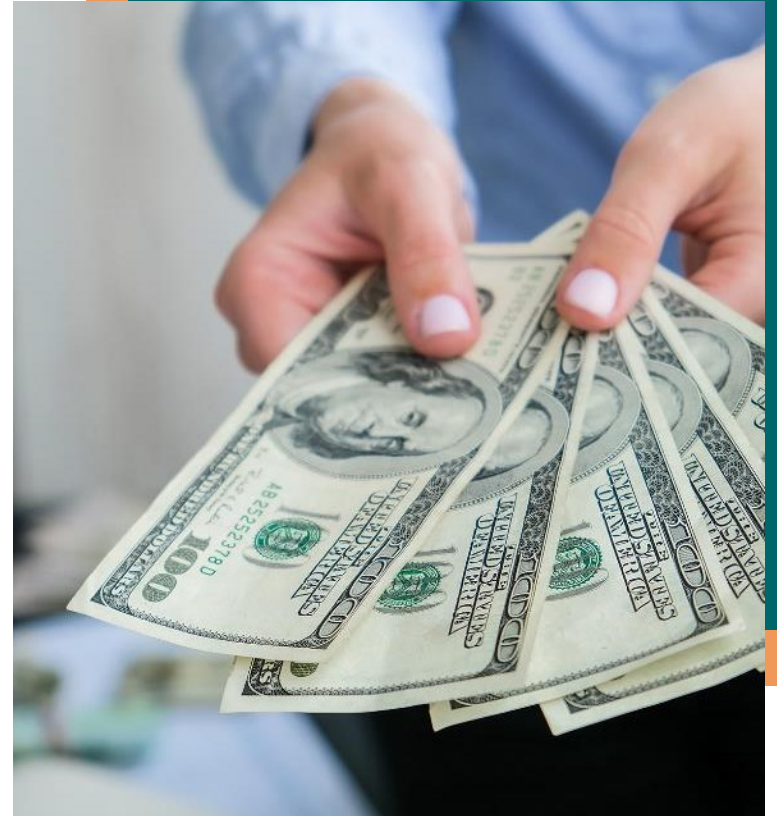


# Other Minimum Wage Updates for *Midwestern* States in 2024

# Minimum Wage Updates 2024- IL, MI, MO, NE, OH, SD

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- Illinois- \$14.00 (effective January 1, 2024); Cook County- \$14.00 (effective January 1, 2024)
- Michigan- \$10.33 (effective January 1, 2024)
- Missouri- \$12.30 (effective January 1, 2024)
- Nebraska- \$12.00 (effective January 1, 2024)
- Ohio- \$10.45 (effective January 1, 2024)
- South Dakota- \$11.20 (effective January 1, 2024)





# Employment Law Trends and Hot Topics for 2024

# Pay Transparency

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- 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

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- 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.

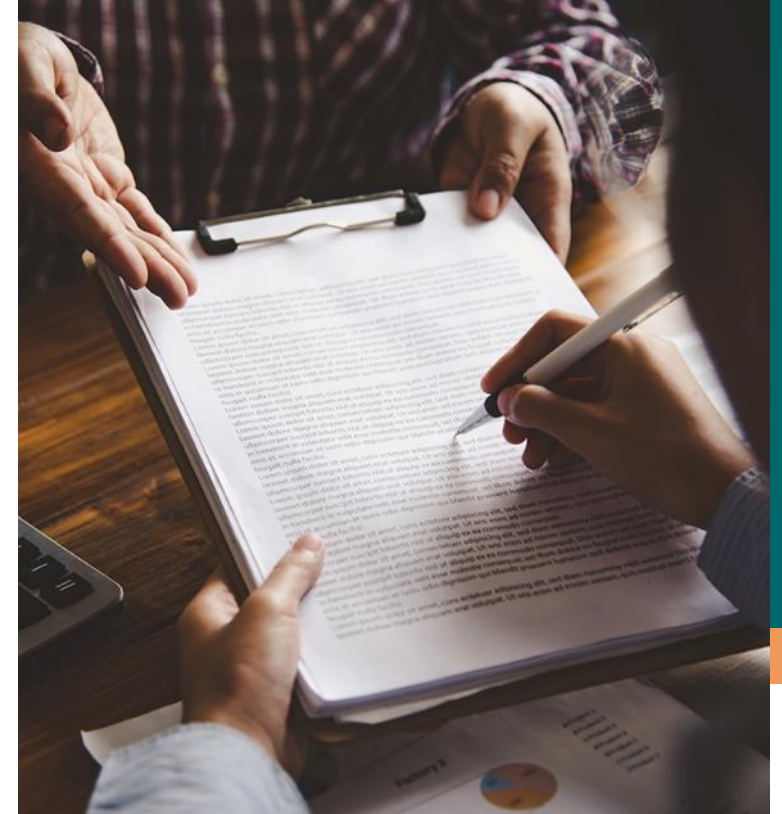




# Non-Competes

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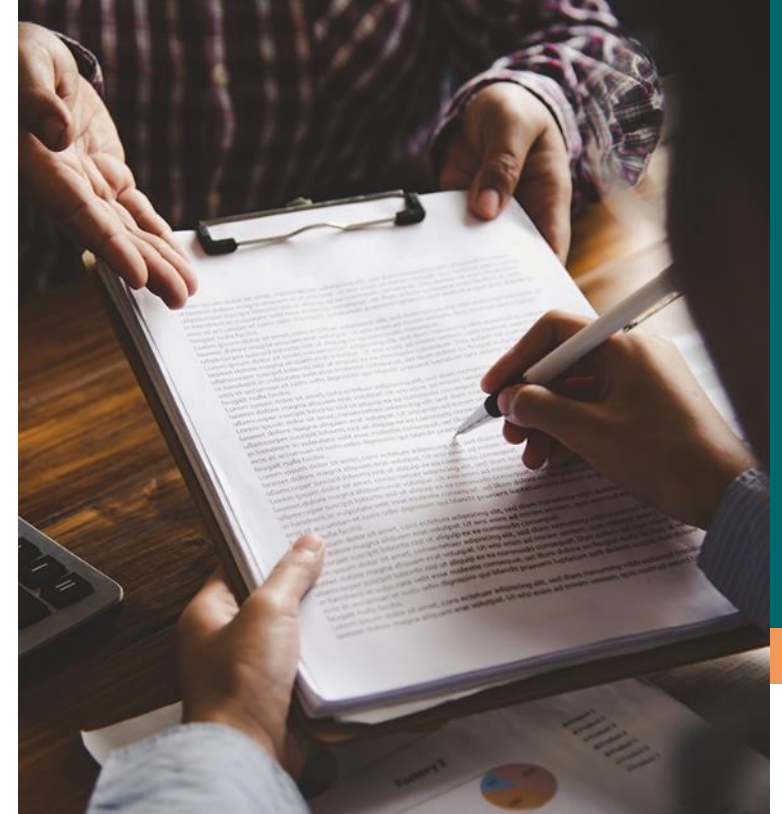
- A non-compete is defined as any agreement or clause contained in an agreement between an employer and employee that restricts the employee from obtaining certain employment after the current employment has ended.
- Bloomberg had an interesting article on this that cited that 44% of New York workplaces use non-competes. Certain groups (law firms, banks, private equity) are looking for exceptions.
- Other groups, like the tech industry, is in favor of the ban.



# Non-Competes

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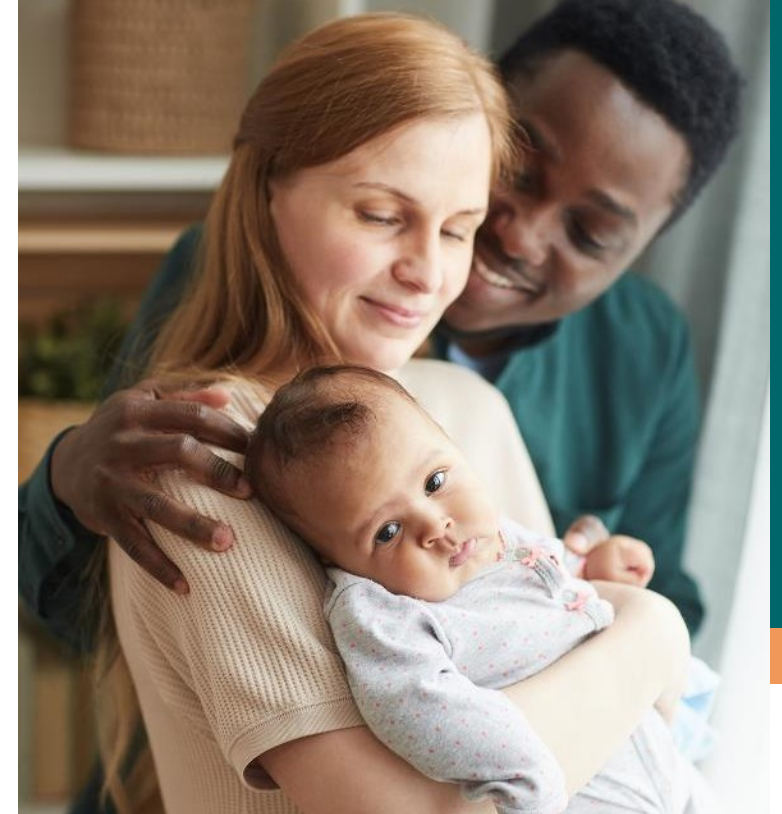
- On both the federal and state levels, non-competes continue to face a high level of scrutiny.
- At the federal level, in April 2024 the Federal Trade Commission is scheduled to announce a decision on banning them. If it passes, it is likely to be challenged, however, there is an increase in state legislation banning or severely constraining non-compete agreements.
- These states include Colorado, Minnesota, North Dakota, California, and Oklahoma.
- Other regulatory and legislative bodies are challenging the legality and enforceability of these binding agreements.
- The government is concerned with the public policy aspects of non-competes which otherwise preclude the free movement of workers and the ability to maintain employment.



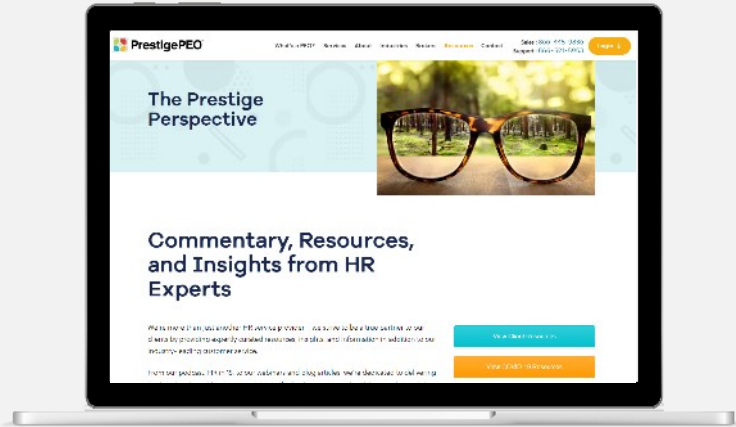
# Paid Family Leave Funding

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- 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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