State Law Round-Up: New Sick Leave, Sexual Harassment Laws and Other State Law Developments (MA, MD, MN, NJ, NYC, TX, VT)

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Massachusetts Imposes One-Year Cap and Other Restrictions On Non-Compete Agreements

The Massachusetts Noncompetition Agreement Act (see link, at Section 24L) (“MNAA”) effective October 1, 2018, places new restrictions on the length and applicability of non-compete agreements between employers and employees who work within the state of Massachusetts. (Note that the law defines employees to include independent contractors.) Post-termination non-competes are prohibited for (1) non-exempt employees, (2) employees who are terminated without cause (including as a result of a layoff), (3) interns and (4) minors. For other employees, non-competes are significantly restricted. First, non-competes are limited to a term of one year (except in the event of an employee breach of fiduciary duty to the company or theft of company property) and employers must compensate employees
during this period of non-competition. The MNAA also limits the geographic scope of non-competition agreements and the types of post-termination activities employers may prohibit during the period of non-competition. Finally, the law imposes certain notice requirements upon employers. New employees must receive notice that a non-compete agreement will be required as a condition of their job offer either (1) before the job offer is communicated, or (2) 10 days prior to their first day of work, whichever is earlier. Existing employees subject to a new non-compete agreement must have at least 10 days to review the agreement.

**Massachusetts Establishes State Paid Family and Medical Leave Program; Raises Minimum Wage**

Another [new Massachusetts state law](#), referred to as the “Grand Bargain” due to the compromise reached through its enactment among various interested parties, contains several provisions affecting employers. First, the law establishes a higher minimum wage for all hourly employees. The state minimum wage for regular hourly workers, which is currently $11.00, will increase to $12.00 as of January 1, 2019, and gradually thereafter to a maximum of $15.00 by 2023. Tipped hourly employees, whose currently hourly minimum wage is $3.57, will see an increase to $4.35 on January 1, 2019, and gradually thereafter to $6.75 by 2023.

The Grand Bargain also eliminates the requirement for retail employees to be paid premium pay for work on Sundays and certain holidays; the premium pay requirement first decreases on January 1, 2019 (from 1.5 to 1.4 times the regular rate) and then decreases gradually over the next five years; it will be eliminated entirely by 2023.

Finally, the Grand Bargain establishes a state-wide program for paid family and medical leave. Effective January 1, 2021, employees may take:

- Up to 12 weeks/year of **family leave** to bond with a newborn, newly adopted, or recently placed foster child, or to care for a family member with a serious health condition.

- Up to 26 weeks/year of leave to address a qualifying emergency due to a family member’s call to active military duty, or to care for a family member who is a covered military service member.

- Up to 20 weeks/year of **medical leave** per year for their own serious health condition.

While family, military, and medical leave are each considered separate leave allowances, not exclusive to one another, under the law, employers are only required to provide a maximum of 26 weeks of leave, in the aggregate, in any one benefit year. Wage replacement during these leaves is paid through a state trust fund, managed similarly to state disability benefits funds. Leaves under this law are job protected.

**Austin and San Antonio, Texas Enact Sick Leave Laws; Austin Ordinance On Hold**
Earlier this year, Austin, Texas enacted a new city ordinance, under which all employees who work a minimum of 80 hours per calendar year within the City of Austin are entitled to accrue and use paid sick leave at a rate of 1 hour of leave for every 30 hours worked. Accrual and use of paid sick leave are both subject to annual caps, based on the employer’s size. Employers with 16 or more employees must provide a minimum of 64 hours of paid sick leave; employers with 1 to 15 employees must provide a minimum of 48 hours of paid sick leave. Employees may use paid sick leave for: (1) their own or a family member’s physical or mental illness, injury or health condition, or preventative treatment, or (2) absences due to medical treatment, relocation, or legal proceedings arising out of themselves or a family member being a victim of domestic or sexual abuse, or stalking.

The Austin ordinance was supposed to go into effect on October 1, 2018 for employers with 5 or more employees (October 1, 2020 for employers of up to 4 employees), however, on August 17, 2018 the Texas State Appellate Court temporarily enjoined the ordinance pending resolution of an appeal filed by parties including the Texas State Attorney General and employer interest groups. The lawsuit, originally denied on the merits by the Texas state trial court, alleges the ordinance violates state minimum wage laws. In granting the plaintiff’s injunction, the Appellate Court noted it was not ruling on the merits of the claim.

On August 16, 2018, just one day before the Texas Appellate Court ruling on the Austin sick leave ordinance, San Antonio City enacted its own paid sick leave ordinance, which largely mirrors the Austin sick leave ordinance. San Antonio’s ordinance is scheduled to become effective January 1, 2019. Smaller employers (5 or fewer employees) have until August 1, 2020, to comply. Given the ordinance’s similarity to Austin’s, it is likely destined for the same fate, whatever that ends up being.

**Duluth, Minnesota Paid Sick Leave Ordinance**

Following in the footsteps of the Twin Cities, Duluth, Minnesota enacted a paid sick leave and safe time ordinance that becomes effective on January 1, 2020. The law applies to all private employers with 5 or more employees nationwide. Workers are covered if they spend 50% of their work time performing services in Duluth or are based in Duluth. Under the law, employees accrue 1 hour of paid sick leave for every 50 hours worked, up to a maximum of 64 hours per year. Employees are limited to using 40 hours of sick leave per year, and may rollover up to 40 hours of accrued, unused leave to the following year. As with other sick leave laws, leave may be used for absences resulting from: (1) their own or a family member’s physical or mental illness, injury or health condition, including any diagnosis or preventative treatment; or (2) absences due to domestic or sexual abuse, or stalking.

**New Jersey Enacts State Paid Sick Leave Law; Preempts Local Paid Sick Leave Laws**

New Jersey’s new Paid Sick Leave Act, which preempts the 13 local sick leave laws in New Jersey, becomes effective on October 29, 2018. Under the law, employers must provide 1 hour of paid sick leave for every 30 hours worked, but may cap accrual and use of this paid leave to 40 hours per year. Up to 40 hours of accrued,
unused sick time carry over to the subsequent year. As with other paid sick leave laws, leave can be used for absences due to: (1) diagnosis, treatment, care, or recovery from their own or a family member’s physical or mental health condition, or for preventative care, (2) themselves or a family member being a victim of domestic or sexual violence, (3) the closure of the employee’s workplace or their child’s child care or school, if either are due to a public health emergency, or (4) school-related conferences, functions, or events for the employee’s child. Notably, employers who take adverse action against an employee within 90 days of an exercise of rights under this law are presumed to have retaliated against the employee, absent sufficient evidence to the contrary. Additionally, an employer’s failure to properly record leave time accrual and usage may result in a presumption that they failed to provide required leave.

**New York City Sexual Harassment Mandatory Posting and Information Sheet Now Available**

As you may recall from our prior post, beginning on April 1, 2019, New York City employers with 15 or more employees must establish policies and annual training meeting the requirements of the “Stop Sexual Harassment in NYC Act.” In connection with that law, on September 6, 2018, New York City employers must post new sexual harassment rights and responsibilities posters in English, Spanish, and other languages as applicable, and distribute an information sheet to employees at the time of hire. The New York City Commission on Human Rights has now released a copy of the mandatory posting, as well as the required information sheet.

**Maryland Sexual Harassment Protections**

Maryland enacted the Disclosing Sexual Harassment in the Workplace Act of 2018, which addresses contracts commonly used by employers to limit the potential exposure and publicity of sexual harassment claims. First, the law provides that, effective immediately, any provision in an employment contract or policy that requires employees to waive any future substantive or procedural right relating to a claim of sexual harassment or retaliation for exercising rights based on actual or potential sexual harassment is null and void. This includes the right to sue in court, making mandatory arbitration agreements that include claims of sexual harassment invalid under state law. (Note, however, that the Federal Arbitration Act, which the Supreme Court ruled protects employer arbitration agreements, may be found in the future to preempt this state law.) The Maryland law prohibits employers from taking adverse action against any employee who refuses to sign an agreement with an illegal waiver provision. The second component of this law requires all employers with 50 or more employees to provide a survey to the Maryland Commission on Civil Rights on July 1, 2020, and again on July 1, 2022, that includes the following: (1) the number of settlements it has entered into with an employee after the alleged sexual harassment, (2) the number of times in the past 10 years an employer has paid a settlement to resolve harassment allegations against a particular employee, (3) the number of settlements made after allegations of sexual harassment that contained confidentiality provisions, and (4) whether the employer took personnel action against any employee subject to any such settlement agreements. Employers’ survey submissions will be made available to members of the public, upon request.

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Vermont Sexual Harassment Laws Designed to Increase Disclosure

The State of Vermont has also made efforts to eliminate sexual harassment in the workplace by passing An Act Relating to the Prevention of Sexual Harassment, which aims to increase accountability of employers subject to sexual harassment claims and settlement agreements. The law (which went into effect July 1, 2018), provides that agreements to settle a sexual harassment claim cannot contain a termination or no-rehire provision, and must expressly state that the agreement does not prohibit the employee from participating in any government or legal proceedings or exercising other legally-protected rights regarding sexual harassment claims. The law also prohibits employers from requiring employees to sign agreements as a condition of employment that waive rights to oppose, disclose, report, or participate in sexual harassment investigations, or other legally-protected rights or remedies provided under state or federal law regarding sexual harassment. Additionally, the law requires employers to provide a copy of the written sexual harassment policy to new employees at the time of hire and to promptly distribute any updates subsequently thereafter.

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