

THE
NATIONAL LAW REVIEW

2017 Labor and Employment Legislative Developments: Illinois, California, New York, Washington D.C., Georgia, Michigan, and Texas

Tuesday, January 3, 2017

We ring in the new year with our annual reporting on certain employment-related legislative developments slated to take effect in 2017 on the federal level and in Illinois, California, New York, Washington, D.C., Georgia, Michigan, and Texas.

Federal law

- Executive Order 13706: Establishing Paid Sick Leave for Federal Contractors: Effective January 1, 2017, federal contractors entering into or extending covered contracts with the federal government must provide certain employees paid sick leave annually for illness or medical conditions, preventive care, care of a sick family member, or absences relating to domestic violence or related proceedings. For a summary of these obligations and the contracts to which they apply, please see [here](#).
- Executive Order 13673: Fair Pay and Safe Workplaces “Paycheck Transparency” Provisions: For federal contracts on or after January 1, 2017, that exceed \$500,000.00 (and subcontracts that exceed \$500,000.00 other than commercially available off-the-shelf items), contractors covered by the Fair Labor Standards Act, the Davis-Bacon Act, or Service Contract Act will be required to provide a wage statement each pay period to all individuals performing work on the contract. The statement must include hours and overtime hours worked in the pay period broken down by week, rate of pay, gross pay, and itemization of additions to or deductions from gross pay. Statements to individuals who are overtime-exempt need not include a record of hours worked so long as the contractor informs the individual in writing of his or her overtime exempt status. Contractors subject to these “paycheck transparency” provisions also will be required to inform independent contractors working on covered contracts of their status as an independent contractor. (Note that the provisions of this Order that required disclosure of labor law violations in the contract bidding process (the so-called “blacklisting” rule), and restricted the use of pre-dispute arbitration agreements for certain claims, were enjoined by a Texas federal court in late October 2016.)
- Executive Order 13658: Establishing a Minimum Wage for Contractors: For employers with federal contracts subject to Executive Order 13658 that took effect last year, effective January 1, 2017, the minimum wage rate is increased to \$10.20/hour (up from \$10.15/hour in 2016). Additionally, beginning January 1, 2017, tipped employees performing work on or in connection with covered contracts generally must be paid a minimum cash wage of \$6.80/hour.
- OSHA Injury and Illness Tracking Rule: Under a new rule by the Occupational Safety and Health Administration (OSHA) that takes effect on January 1, 2017, employers will have to submit electronically certain information recorded on on-site OSHA Injury and Illness forms. The data submitted will vary depending on the size of company and type of industry, and the new reporting requirements will be phased

The logo for Schiff Hardin, featuring the name "Schiff" in a blue, cursive-style font above the name "Hardin" in a black, bold, sans-serif font.

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in over two years. Employers with at least 250 employees in covered industries must submit information from their 2016 Form 300A by July 1, 2017, and will be required to submit information from all 2017 forms (300A, 300, and 301) by July 1, 2018. Employers with 20-249 employees in certain high-risk industries must submit information from their 2016 Form 300A by July 1, 2017, and their 2017 Form 300A by July 1, 2018. Beginning in 2019 and every year thereafter, such establishments must submit this information by March 2.

- OSHA Final Rule: Updating Walking-Working Surfaces and Personal Fall Protection Systems Standards: Final rules updating OSHA's Walking-Working Surfaces Standards specific to slip, trip, and fall hazards, and new standards establishing employer requirements for using personal fall protection systems, take effect January 17, 2017. According to OSHA, these rules incorporate advances in technology, industry best practices, and national consensus standards. The rules are designed to better protect workers from these hazards by updating and clarifying standards, and adding training and inspection requirements.
- EEOC Final Rules on Wellness Programs: New Equal Employment Opportunity Commission (EEOC) rules limiting incentives for participation in wellness programs, and requiring notice about the medical information obtained for purposes of such programs and its uses and disclosure, become applicable on the first day of the plan year beginning on or after January 1, 2017, for the health plan that is used to determine the level of permitted incentives.
- Status of DOL Overtime Rule: As we [previously reported](#), the Department of Labor's new overtime rule that was scheduled to become effective on December 1, 2016, was enjoined by the U.S. District Court for the Eastern District of Texas days before its effective date. That decision has since been appealed; the Department of Justice filed a notice to appeal the preliminary injunction to the Fifth Circuit on December 1, and has moved to expedite the appeal. Briefing is anticipated to be completed by January 31, 2017, with oral argument to be scheduled soon thereafter.

The recent trend of litigation challenging new agency rules, and the uncertainty of the Trump administration's agenda with respect to these measures that have been taken by the Obama administration, could result in changes to some of these federal obligations.

Illinois

- Expanded VESSA Coverage for Domestic Violence Victims: Under the prior provisions of the Illinois Victims' Economic Security and Safety Act (VESSA), employers with 50 or more employees are required to provide up to 12 weeks of leave during any 12-month period to address issues related to domestic violence. Effective January 1, 2017, employers with 15 or more employees must provide at least eight weeks of leave, and employers with less than 15 employees must provide four weeks of leave, to employees who are victims of domestic violence or whose family members are victims of domestic violence.
- Expanded Social Media Protections for Employees: Existing provisions of Illinois' Right to Privacy in the Workplace Act prohibit an employer from requesting, requiring, and coercing employees to provide user names or passwords for their personal online accounts. Under amendments that take effect January 1, 2017, employers also are prohibited from requesting, requiring, or coercing an employee or applicant to: (1) authenticate or access a personal online account in the presence of the employer, (2) invite the employer to join a group affiliated with any personal online account of the employee or applicant, or (3) join an online account established by the employer.
- Chicago and Cook County Sick Leave: The City of Chicago passed ordinances that will provide eligible employees working the city and/or county, as applicable, up to 40 hours of paid sick leave every year. Employees become eligible if they worked at least 80 hours within a four-month period. The leave may be used to care for oneself or a close family member, and may be used for routine medical care or illness. Up to 20 hours of leave may be carried over into the next year, however, unused sick leave need not be paid to the employee upon separation of employment. Both ordinances are effective July 1, 2017. The ordinances are the Chicago Minimum Wage and Paid Sick Leave Ordinance, ch. 1-24 (June 22, 2016), and the Establishing Earned Sick Leave for Employees in Cook County, 16-4229 (Oct. 5, 2016).
- Illinois Sick Leave: Effective January 1, 2017, all Illinois employers that provide personal sick leave benefits for employees must permit employees to use that sick leave for absences to care for a family member, on the same terms upon which the employee is able to use sick leave for the employee's own illness, injury or condition. "Family members" is defined broadly and may cover an employee's spouse, child, sibling, parent, mother- or father-in-law, grandchild, grandparent, or step-parent. Absences from work for which compensation is provided need not be expanded to cover employee's family members. See 820 Ill. Comp. Stat. 191/10.
- Child Bereavement Leave: Effective July 29, 2016, employees are entitled to two weeks of unpaid leave to

grieve the recent loss of a child. Employees become eligible if they have been employed for at least 12 continuous months and worked at least 1,250 hours within a year. Bereavement leave must be taken within 60 days of notice from the employee of the need to take the leave. The Act applies to employers with 50 or more employees. See 820 Ill. Comp. Stat. 154/10.

- Illinois Freedom to Work Act: The Act, effective January 1, 2017, provides that no employer shall enter into a covenant not to compete with a “low-wage” employee, defined as employees who make less than the greater of \$13.00/hour or the current minimum wage.
- Retirement Savings: Employers with 25 or more employees working in Illinois must establish and automatically enroll employees into a ROTH style individual retirement account (IRA) by June 1, 2017, or face possible civil penalties. Employers must provide employees with an information packet explaining the benefits, risks, and other details regarding the IRA at the time of hiring or upon launch of the program. Employees can determine their level of contribution and may opt out entirely. If the employee fails to select a contribution amount, then 3 percent of each paycheck must be automatically deducted by default. Employers are not obligated to contribute or match any amount deducted. However, employers are still free to set up, in the alternative, any type of employer-sponsored retirement plan, such as a 401(k) or a Savings Incentive Match Plan for Employees (SIMPLE) plan, instead of having a payroll deposit retirement savings arrangement. See 820 Ill. Comp. Stat. 80/1.

California

- SB 1241: Venue and Choice of Law Clauses in Employment Contracts: SB 1241 prohibits employment contracts that require an employee to litigate disputes arising in California either 1) in another state, or 2) under the law of another state. Any contrary provision is voidable by the employee in a California court under California law. This does not apply to employment contracts in which the employee was represented by individual counsel and those clauses were specifically negotiated. The law applies to contracts entered into or modified on or after January 1, 2017.
- SB 1001: Limitations on Employer Requests Regarding Immigration Status: SB 1001 requires employers to accept as proof of immigration status documents that reasonably appear to be genuine, and prohibits employers from requesting immigration documents other than those required under the federal I-9 process.
- AB 2337: Notice of Domestic Violence Protections: AB 2337 requires employers to inform in writing each new employee (and other employees upon request) of the rights afforded to employees affected by domestic violence. Employers only need to provide this notice once the notice is developed by the Labor Commissioner; the law requires that such a notice be developed by July 1, 2017.
- AB 2535: Itemized Wage Statements: California Labor Code section 226 requires that the paychecks of certain workers list the number of hours worked in a specified format. AB 2535 exempts employers from listing the hours worked for certain categories of employees exempt from minimum wage and overtime requirements under specified statutes. The law takes effect January 1, 2017.
- AB 1676: Wage Differential Based on Prior Salary: AB 1676 amends the Fair Pay Act to ban the practice of using a difference in two employees’ prior salaries as the only reason for any difference in current compensation. This law takes effect January 1, 2017.
- SB 1063: Wage Differential for Race/Ethnicity: SB 1063 amends the Fair Pay Act to prohibit employers from paying less to employees of a one race or ethnicity performing “substantially similar work” to employees of another race or ethnicity. This law takes effect January 1, 2017. (Such a provision already existed with regard to gender.)
- AB 1732: Single-User Restrooms: AB 1732 requires that all single-user restrooms in any business establishment or place of public accommodation be labeled as “all-gender” rather than “men” or “women.” This law takes effect March 1, 2017.
- Proposition 64: Legalization of Recreational Marijuana: California’s Adult Use of Marijuana Act, enacted via ballot initiative Proposition 64 on November 8, 2016, legalizes recreational marijuana use and cultivation for adults age 21 or older. Employers still have the right to enact workplace policies regarding marijuana, including prohibiting its use.
- AB 2899: Appeals of Minimum Wage Violations: AB 2899 requires employers to post a bond when appealing an adverse decision by the California Labor Commissioner on a minimum wage violation. The amount of the bond is equal to the amount of unpaid wages assessed by the Labor Commissioner. This law is effective January 1, 2017.

- AB 1682: Settlement Agreements Prohibiting Disclosure of Certain Sex Offenses: AB 1682 renders void any provision within a settlement agreement that purports to require the signatories to keep confidential any factual information that would establish a civil cause of action for felony sex offenses, child sexual abuse, or sexual assault against an elder or dependent child. The law applies to agreements entered into after January 1, 2017.
- SB 3: Increased Minimum Wage: SB 3 will increase California's statewide minimum wage every year until 2023, ending at \$15/hour. Starting January 1, 2017, employers with fewer than 26 employees will have to pay \$10/hour, while employers with 26 or more employees will have to pay \$10.50/hour.
- AB 1311: Weekly Pay for Temporary Security Guards: The Labor Code required that employers pay most temporary employees on a weekly basis. AB 1311 extends this requirement to security guards employed by temporary services employers. The law goes into effect on January 1, 2017.
- SB 1234: Mandatory Retirement Savings Plan: SB 1234 approves the creation of the California Secure Choice Retirement Savings Trust. Once the state board administering the Trust certifies to the Legislature that the requirements are met, employers with at least five employees will be required to either offer their own retirement savings plan or enroll workers in the new California Secure Choice Retirement Savings Program (SCRSP). The SCRSP would be structured as an individual retirement account, and will include some features of a 401(k), with a small percentage of every paycheck automatically deposited into the program, unless workers opt out. Once the program is launched, it will take as long as three years for all eligible employees to be enrolled. Companies with more than 100 employees will have one year from the program's launch to enroll eligible employees.
- ABX2-7: Smoke-Free Workplace: AB 7 from the California Legislature's Second Extraordinary Session of 2015-16 eliminates most of the exemptions from the state's ban on smoking in the workplace. Specifically, smoking is no longer permitted in those bars, warehouses, banquet rooms, employee break rooms, and owner-operated businesses that had previously received exemptions.
- AB 1066: Overtime Pay Exemption for Agricultural Workers: Agricultural employees are currently exempt from many labor laws regarding hours and other working conditions. AB 1066 will gradually phase out these exemptions, starting in 2019 and ending in 2022, bringing agricultural workers in line with other industries for overtime protection.
- AB 908: Increase to Paid Family Leave: Under California's Paid Family Leave program, employees can currently take up to six weeks of paid leave to spend with a child or care for a family member. Starting on January 1, 2018, AB 908 changes the amount of payment these workers receive from 55 percent of the employee's salary to 60 percent or 70 percent, depending on salary.
- San Francisco Proposition J: Increased Minimum Wage: In 2014, San Francisco voters voted in a ballot initiative to raise the local minimum wage over a four-year period to \$15/hour by 2018 (with automatic cost-of-living increases every July 1 thereafter). The next scheduled increase will be \$14/hour on July 1, 2017.
- San Francisco Paid Parental Leave Ordinance: Employers in San Francisco are required to supplement the benefits employees receive when they take paternity or maternity leave. State benefits provide employees with 55 percent of their salary for up to six weeks of leave; this ordinance requires employers to pay the other 45 percent of their employees' salary, so they employee receives full pay for the leave period. The law goes into effect on January 1, 2017, for employers with 50 or more employees; on July 1, 2017, for remaining employers with 35 or more employees; and on January 1, 2018, for employers with 20 or more employees.
- San Francisco Proposition E: Paid Sick Leave: Proposition E amends San Francisco's paid sick leave ordinance. Beginning on January 1, 2017, the right to take paid sick leave will also apply to employees who take time off for purposes related to bone marrow donation, or to recover from domestic violence or sexual assault. The amendments also conform the San Francisco ordinance to the requirements of California's statewide paid sick leave law, including accrual of paid sick leave on the first day of employment and payment for sick leave no later than the next regular payroll period after the leave was taken.
- Los Angeles Ordinance 184320: Increased Minimum Wage and Paid Sick Leave: Starting July 1, 2017, the Los Angeles minimum wage will increase to \$12/hour for employers with 26 or more employees; for employers with 25 or fewer employees, the minimum wage will increase to \$10.50/hour. The same ordinance established that, as of last July, employers in Los Angeles are required to provide 48 hours (i.e., six work days) of paid sick leave to any full-time employee.

- Los Angeles Ordinance 184652: Criminal Background Inquiries: Starting January 22, 2017, Los Angeles employers with 10 or more employees are not permitted to inquire about an applicant's criminal history until after a conditional offer of employment has been extended to the applicant. The offer cannot be withdrawn unless the employer provides the employee with a written assessment justifying the withdrawal, and offering the employee a chance to respond. Records must be maintained by the employer for three years. Certain categories of employers are exempt, such as those required by law not to hire applicants convicted of a crime or those hiring for positions that require the possession of a firearm.
- San Diego Proposition I: Increased Minimum Wage and Paid Sick Leave: Starting January 1, 2017, San Diego's minimum wage will increase to \$11.50/hour. The same ordinance established that, as of last July, employers in San Diego are required to provide 48 hours (i.e., six work days) of paid sick leave to any full-time employee.
- San Jose: Increased Minimum Wage: Starting January 1, 2017, the San Jose minimum wage will receive a cost-of-living increase by \$0.20/hour to \$10.50/hour.

New York

- Minimum Wage: New York's legislature has passed the following minimum wage increases.
 - New York City: Effective December 31, 2016, the minimum wage for employers in New York City with 11 or more employees increased to \$11.00/hour, and for employers with 10 or fewer employees, to \$10.50/hour. The minimum wage for fast food workers increased to \$12.00/hour (up from \$10.50/hour). On December 31, 2017, the minimum wage rate for New York City employers with 11 or more employees increases to \$13.00/hour, and for employers with 10 or fewer employees, to \$12.00/hour. The minimum wage rate for fast food workers will increase to \$13.50/hour.
 - Nassau, Suffolk, and Westchester Counties: Effective December 31, 2016, the minimum wage for employers in Nassau, Suffolk, and Westchester Counties increased to \$10.00/hour, and will increase by another \$1.00/hour on December 31 of each of the next five years.
 - Elsewhere in New York: For the remainder of the New York State employers, the minimum wage increased effective December 31, 2016, to \$9.70/hour (up from \$9.00/hour), and the minimum wage rate for fast food workers increased to \$10.75/hour (up from \$9.75/hour). On December 31, 2017, the minimum wage will increase to \$10.40/hour, and for fast food workers, to \$11.75/hour.
- Overtime Exemptions: The New York State Department of Labor has adopted wage orders that raise salary thresholds for the executive exemption and administrative exemptions.
 - Effective December 31, 2016, the salary thresholds will increase from \$675/week (\$35,100 annually) up to:
 1. in New York City, \$825/week (\$42,900 annually) for employers with 11 or more employees or \$787.50/week (\$40,950 annually) for employers with 11 or more employees
 2. in Nassau, Suffolk, and Westchester County, \$750/week (\$39,000 annually)
 3. elsewhere in New York, \$727.50/week (\$37,830 annually)
 - Effective December 31, 2017, the salary thresholds will increase as follows:
 1. in New York City, \$975/week for employers with 11 or more employees or \$900/week for employers with 10 or fewer employees
 2. in Nassau, Suffolk and Westchester Counties, \$825/week
 3. elsewhere in New York, \$780/week
 - Going forward, for employers of 11 employees or more, the weekly salary thresholds will see annual increases up to the following rates:
 1. in New York City, \$1,125/week
 2. in Nassau, Suffolk, and Westchester County, \$1,125/week
 3. elsewhere in New York, \$937.50/week

Implementation of the New York wage orders is not impacted by the injunction issued by the Northern District of Texas regarding the federal overtime.

- **Direct Deposit/Payroll Debit Cards**: Effective March 7, 2017, for employees who do not meet the executive, administrative, or professional exemptions, written employee authorization forms for direct deposit must now include: (1) notice of all options for receiving wages, (2) notice that no fees will be charged for the employee to access their full wages, (3) notice that the employer may not require the employee to accept wages by direct deposit or payroll debit card, and (4) if payroll debit cards are offered, a list of locations where employees can access and withdraw wages, at no charge, within a reasonable proximity to home or work. The authorization must be obtained prior to paying an employee by direct deposit, and employees may withdraw their consent for direct deposit at any time. The New York State Department of Labor will make a template form available for employer use. Any authorizations executed before March 7, 2017, are valid only if the notices comply with the requirements of the new rule. In addition, employers that allow employees to use payroll debit cards must provide access to at least one local automated teller machine that offers withdrawals at no cost to the employee, and at least one method for withdrawals that does not require the employee to incur a fee. Employers are prohibited from charging employees a fee for overdrafts, shortages, low balances, inactivity, account closures or the like.
- **Paid Family Leave**: On January 1, 2018, employers will be required to provide eligible employees with up to 12 weeks of paid leave each year for the birth of a new child or a family member with a serious medical condition or the family member's call to active military service. The law will require that all full-time and part-time employees who have worked for six months will receive up to eight weeks of paid family leave at a rate of 50 percent of the employee's weekly wage (to be capped at the 50th percentile of the state's average weekly wage). Beginning January 2019, the employee will be eligible to receive the same level of pay, but may take up to 10 weeks of leave.

Michigan

- **Minimum Wage**: Effective January 1, 2017, under Michigan's Workforce Opportunity Wage Act (WOWA), Michigan's minimum wage will increase from \$8.50/hour to \$8.90/hour, and effective January 1, 2018, the minimum wage will increase to \$9.25/hour. Certain exceptions apply for workers aged 16 and 17, or for workers aged 16-19 in their first 90 days of employment. For tipped employees, effective January 1, 2017, the minimum wage rate is \$3.38/hour (if reported tips average at least \$5.52/hour), and effective January 1, 2018, the tipped employee minimum wage rate is \$3.52/hour (if reported tips average at least \$5.73/hour). WOWA applies to all employers with two or more employees who are age 16 and older.
- **Medical Marijuana**: On December 20, 2016, three laws took effect relating to use of medical marijuana: Public Act 281 (Medical Marijuana Facilities Licensing Act), Public Act 282 (Medical Marijuana Act), and Public Act 283 (Marijuana Tracking Act). Under these new laws, Michigan law now permits qualifying patients to possess marijuana in quantities of 2.5 ounces or less upon presentation of a valid registry identification card and government identification card. The law also legalized use of non-smokable marijuana in the form of food and lotions.

District of Columbia

- **Increase to Minimum Wage**: Effective July 1, 2017, Law Number L21-0144 will increase the minimum wage rate in the District of Columbia to \$12.50/hour for non-tipped workers (up from \$11.50/hour), and \$3.33/hour for tipped workers (up from \$2.77/hour).
- **Paid Family Leave (pending)**: Although not yet signed into law, and not effective until 2019 at the earliest, on December 20, 2016, the Washington D.C. Council passed the "Universal Paid Leave Amendment Act of 2016." If it becomes effective, the law will provide: (1) eight weeks of paid family leave for new parents, (2) six weeks of paid leave for taking care of family members with a serious medical condition, and (3) up to two weeks of personal sick leave for covered employees. The leave will be funded by employers through an increase to the payroll tax and employees will be eligible for up to \$1,000/week. Mayor Muriel Bowser has threatened to veto the bill, but the Council could override the veto.

Georgia

No employment-related statutory developments are anticipated in Georgia this year.

Texas

No employment-related statutory developments are anticipated in Texas this year.

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