10 Practical Tips for Compliance with State and Local Employment Laws for Multi-State Employers

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A. INTRODUCTION

These materials address many of the most-common employment compliance issues for Minnesota and national employers. Many new laws affecting employers have been enacted in states and cities across the country in the last few years, and that trend is expected to continue (at least in certain states and many larger cities) in the coming years. Employers should regularly review their employment compliance practices and documents, and should consult with legal counsel to ensure all appropriate steps are taken to comply with applicable employment laws.

B. TEN TIPS

1. UNDERSTAND THE NUANCES OF STATE AND LOCAL PAID SICK LEAVE LAWS

a. Minnesota Requirements

There is no current Minnesota law requiring employers to provide paid sick and safe leave. *But see* Minn. Stat. § 181.9413 (employees of an employer with 21 or more employees that provides personal sick leave may use such sick leave for absences due to illness or injury to an employee's family member or for providing or receiving assistance because of sexual assault, domestic abuse, or stalking).

b. Local Ordinances in Minnesota

i. Minneapolis Sick and Safe Leave Ordinance

Minneapolis's Sick and Safe Leave (SSL) Ordinance requires that employers with a presence within the geographic boundaries of the city provide employees (including part-time employees and temporary employees) performing more than 80 hours of work in a calendar year within the geographic boundaries of the city to provide SSL to such employees. Employers with six or more employees must provide paid SSL. Employers with fewer than six employees must provide SSL, but it may be unpaid. Employers may either front load hours by providing employees 48 hours after 90 days of employment and 80 hours in each subsequent year, or follow an accrual method wherein employees accrue one hour of SSL for every 30 hours worked, up to 48 hours per calendar year. Under the accrual method, employees must be permitted to carry over up to 80 hours to the next calendar year. Accrual begins on an employee's first day of work and employees may begin taking such leave after 90 days of employment. Employers can require that employees use SSL in up to four-hour increments. *See* Minneapolis, Minn., Code of Ordinances tit. 2, ch. 40 (2018); Minneapolis City of Lakes, Sick & Safe Time (Jul. 1, 2017) http://sicktimeinfo.minneapolismn.gov/.

ii. Saint Paul Earned Safe and Sick Time Ordinance

Saint Paul's Earned Safe and Sick Time (ESST) Ordinance is similar to the Minneapolis Ordinance. *See* Saint Paul, Minn., Code of Ordinances tit. XXIII, ch. 233 (2018); St. Paul Minnesota, Earned Sick and Safe Time (Jan. 1, 2018);

https://www.stpaul.gov/departments/human-rights-equal-economic-opportunity/contract-compliance-business-development/earned.

iii. Key Differences Between Minneapolis and St. Paul Ordinances

- New Business – Minneapolis Ordinance permits non-chain establishment, new businesses (operating in first 12 months after the hire date of the employer's first employee) to provide unpaid SSL. This exception sunsets July 1, 2022. Saint Paul Ordinance provides that new business (operating in first six months after the hire date of the employer's first employee) to provide unpaid ESST. This exception sunsets January 1, 2023.

- Small Business – Minneapolis Ordinance permits employers with five or less employees to provide unpaid SSL. Saint Paul Ordinance has no "small" employer exception.

- Definition of "extended family" – Minneapolis Ordinance includes usage for members of the employee's household. Saint Paul Ordinance includes any individual related by blood or affinity whose close associate with the employee is the equivalent of a family relationship.

- Advance notice of foreseeable usage – Minneapolis Ordinance provides that an employer may require advance notice of up to seven days. Saint Paul Ordinances provides that an employer may require an employee to comply with the employer's usual and customary notice and procedural requirements for absences or for requesting leave, provided that such requirements do not interfere with the purposes for which the leave is needed.

- Poster – Minneapolis Ordinance requires display of City created poster in English and other languages. Saint Paul Ordinance requires certain notice to employees, which may be satisfied by posting poster created by the City.

- Enforcement – Saint Paul Ordinance allows for private civil action if the employee alleges interference with or retaliation for requesting or taking ESST.

c. Additional States and Cities with Sick and Safe Leave Requirements

See Attachment A.

d. Practical Tips for Compliance

i. If providing vacation leave, evaluate whether to replace with Paid Time Off (PTO). Assuming PTO may be used for any purpose, most PTO policies may already comply with paid sick and safe leave laws/ordinances, provided that:

- the policy grants employees at least as much time off as required by the paid sick and safe leave law/ordinance and allows for same amount of carryover of accrued but unused PTO (unless frontloaded);

- the policy does not mandate a larger increment of per-time usage (e.g., Minneapolis and Saint Paul Ordinances provide that PTO usage cannot be required in greater than four-hour increments);

- paid leave is compensated at the same rate as required by applicable law (e.g., Minneapolis and Saint Paul Ordinance requires the same wage rate as the employee would have been paid during the period sick and safe leave taken, including any shift differential);

- required employee documentation does not exceed that allowed under applicable law;

- the policy does not interfere with paid sick and safe time use under applicable law and/or require more advance notice of foreseeable use than allowed under applicable law (e.g., Minneapolis Ordinance provides that employer may require advance notice of up to seven days); and

- the policy provides any required notice of an employee's ability to file complaint with governmental entity and/or bring a civil action if the employee alleges interference with retaliation for requesting or using sick and safe leave.

ii. Understand recordkeeping and employee notice required by applicable law (e.g., Minneapolis Ordinance requires employers maintain records for three years showing: (1) for non-exempt employees, hours worked; (2) hours of leave available for sick and safe time purposes; and (3) hours of leave used for sick and safe time purposes; Saint Paul Ordinance requires employers to maintain accurate records documenting hours worked by employees and sick and safe time taken by employees for three years; both ordinances require employers that provides an employee handbook to its employees must include in the handbook notice of employees' sick and safe time rights and remedies). Employers cannot discriminate or retaliate against employees who use paid sick and safe leave.

iii. Employers should understand which state laws and city ordinances apply based on their workforce, and consider options for effectively complying with each applicable law or ordinance. For example, consider developing a "core" PTO policy plus state and local supplements to address applicable sick and safe leave requirements, including for employees who are not eligible for PTO (e.g., part-time or temporary employees).

iv. Consider potential application to other employment policies and agreements (e.g., no-fault attendance policies, collective bargaining agreements).

v. Train human resources personnel and management.

2. KNOW OTHER LEAVE LAWS

a. Minnesota Leave Law Requirements

i. Pregnancy and Parenting Leave. Minnesota law requires employers with 21 or more employees to provide an unpaid leave of absence to an eligible employee who is a natural or adoptive parent in conjunction with the birth or adoption of a child or to a female employee for prenatal care, incapacity due to pregnancy, childbirth, or related health conditions. The length of leave may not exceed 12 weeks, unless agreed to by the employer. The employer may require an employee to provide reasonable notice of start date and duration of leave. Leave may run concurrently with paid parental, sick or vacation leave, and leave taken under the FMLA. Leave taken in conjunction with the birth or adoption of a child may be taken within 12 months after the birth or adoption or within 12 months after the child leaves the hospital when the child must remain in the hospital longer than the mother. Minn. Stat. § 181.940, 181.941, 181.943(a).

ii. Pregnancy Accommodations. An employer with 21 or more employees must provide reasonable accommodations to an eligible employee for health conditions related to pregnancy or childbirth if requested with the advice of the employee's licensed health care provider or certified doula, unless it would impose an undue hardship on the employer. An employer may not claim undue hardship or require an employee to obtain advice from a health care provider or doula for more frequent restroom, food, and water breaks; seating; and limits on lifting over 20 pounds. Minn. Stat. § 181.9414.

iii. Adoptive Parent Leave. Employers who permit paternity or maternity time off to biological fathers or mothers are required, upon request, to grant time off, with or without pay, to adoptive fathers or mothers. The minimum period is four weeks, or, if the employer has an established policy for biological parents which sets a period of less than four weeks, that period is the minimum time off. Minn. Stat. § 181.92.

iv. Nursing Mothers. Minnesota Statutes requires an employer with one or more employees to provide reasonable unpaid break time each day to an employee who needs to express breast milk for her infant child. Employers must make reasonable efforts to provide a room or other location, near the work area, other than a bathroom or toilet stall, shielded from view and free from intrusions from coworkers and the public, with access to an electrical outlet, where the employee can express breast milk in privacy. Minn. Stat. § 181.939, 181.944.

v. Sick and Safety Leave. Minnesota law allows eligible employees of an employer with 21 or more employees to use personal sick leave benefits provided by an employer for absences due to illness or injury to the employee's minor child, adult child, spouse, sibling, parent, parent-in-law, grandchild, grandparent, or

stepparent. Employees may use such leave for reasonable periods of time as the employee's attendance may be necessary, on the same terms upon which the employee is able to use sick leave benefits for the employee's own illness or injury. An employee may use sick leave for safety leave for providing or receiving assistance because of sexual assault, domestic abuse, or stalking. An employer may limit the use of sick leave for an employee's family members to no less than 160 hours in any 12-month period, but this limit does not apply to the illness or injury of the employee's child. Minn. Stat. § 181.9413.

vi. School Conference and Activities Leave. Minnesota law provides that an employer with 21 or more employees must grant an eligible employee unpaid leave of absence up to a total of 16 hours during any 12-month period to attend school conferences or school-related activities related to the employee's child, if the conferences or activities cannot be scheduled during non-work hours. When the leave cannot be scheduled during non-work hours and the need for leave is foreseeable, the employee must provide reasonable prior notice of the leave and make a reasonable effort to schedule the leave so as not to unduly disrupt the operations of the employer. An employee may use any paid vacation leave or other appropriate leave. Minn. Stat. § 181.9412.

vii. Bone Marrow Leave. Minnesota law requires an employer with 20 or more employees to grant paid leave of absence to an eligible employee who seeks to undergo a medical procedure to donate bone marrow. The combined length of the leave may not exceed 40 work hours, unless agreed to by the employer. Minn. Stat. § 181.945, subd. 2.

viii. Organ Donation Leave. Minnesota law requires an employer with 20 or more employees to grant paid leave of absence to an employee who seeks to undergo a medical procedure to donate an organ or partial organ to another person. The combined length of the leave may not exceed 40 work hours, unless agreed to by the employer. Minn. Stat. § 181.9456, subd. 2.

ix. Leave for Families of Mobilized Military Members. Minnesota law requires employers to grant up to ten working days of a leave of absence without pay to an employee whose immediate family member, as a member of the U.S. armed forces, has been injured or killed while engaged in active service. Minn. Stat. § 181.947, subd. 2.

x. Leave to Attend Military Ceremonies. Unless the leave would unduly disrupt the operations of the employer, Minnesota law requires employers with one or more employees to grant a leave of absence without pay to an eligible employee whose immediate family member, as a member of the U.S. armed forces, has been ordered into active service in support of a war or other national emergency. Minn. Stat. § 181.948, subd. 2.

xi. Leave for Civil Air Patrol Service. Unless the leave would unduly disrupt the operations of the employer, an employer with 20 or more employees must grant

an unpaid leave of absence to an eligible employee for time spent rendering service as a member of the civil air patrol. Minn. Stat. § 181.946.

xii. Jury Duty Leave. Employers are prohibited from penalizing employees on leave for jury duty purposes, but Minnesota law does not require that employers pay employees during jury duty leave. Minn. Stat. § 593.50.

b. Other State Leave Laws Creating Employer Responsibilities

i. Mini-FMLA Leave, Pregnancy and/or Parenting Leave. Some states provide that employees are eligible for unpaid family leave. *See, e.g.*, N.J.S.A. 34:11B-1 to 34:11B-16 (New Jersey Family Leave Act); Cal. Gov't Code §§ 12945.1 to 12945.2 and 19702.3 (California Family Rights Act); Conn. Gen. Stat. Ann. §§ 31-51kk to 31-51rr (Connecticut Family and Medical Leave Act); D.C. Code §§ 32-501 to 32-517 (D.C. Family and Medical Leave); Or. Rev. Stat. §§ 659A.150 to 659A.186 (Oregon Family Leave Act); 28 R.I. Gen. Laws § 28-41-35(i) (Rhode Island Parental and Family Medical Act); Vt. Stat. Ann. tit. 21, §§ 470 to 474 (Vermont Parental and Family Leave Act); Wash. Rev. Code. Ann. § 49.78.010 to 49.78.904 (Washington Family Leave); Wis. Stat. § 103.10 (Wisconsin Family and Medical Leave Act). Many states have laws requiring that employers treat pregnancy the same as it treats other temporary disabilities. *See, e.g.,* Ohio Rev. Code § 4112.01 *et seq.*; § 3781.55. Several states also have statutes requiring that employers provide employees unpaid pregnancy or parental leave. *See, e.g.* Conn. Gen. Stat. Ann. §§ 31-51kk to 31-51rr. Some states require that the employee be disabled by pregnancy to become entitled for certain leave. *See, e.g.,* Cal. Lab. Code § 12945(b)(2) (California Pregnancy Disability Leave); Cal. Gov't Code § 12940(a) (granting an employee up to four months of intermittent unpaid leave if the employee is disabled by pregnancy; birth; or a related medical condition, including morning sickness); Iowa Code 216.6 et seq. (granting an employee unpaid leave for either eight weeks or the period of the temporary disability, whichever is less). Other states require employers to provide parental leave to a parent (regardless of gender) for the birth or adoption of a child. *See, e.g.*, 804 Mass. Code Regs. § 8.01; Mass. Gen. Laws Ch. 149, § 105D (requiring employers to provide qualified employees with up to eight weeks of unpaid parental leave); Tenn. Code Ann. § 4-21-408(a) (granting qualified employees four months of unpaid parental leave).

ii. Paid Family Leave. Some states provide that certain employees are eligible for paid family leave. *See, e.g.,* 12 NYCRR pt. 380; N.Y. Workers' Comp. Law §§ 200 to 242 (New York Paid Family Leave Benefits Law); Cal. Unemp. Ins. Code § 2613(b), (c) (California Paid Family Leave); N.J. Stat. Ann. 43:21-26 to 43:21-39 (New Jersey Family Leave Insurance Law); R.I. Gen. Laws § 28-41-35 (Rhode Island Temporary Caregiver Insurance Program). Generally, such paid family leave programs are funded through employee-paid payroll taxes and may be administered through the state.

iii. Jury Duty Leave. Most states have statutes requiring that employers not penalize employees who are absent for jury duty; however, states vary on whether employers must pay employees while they are on leave for jury duty purposes. *See, e.g.*, Ala. Code § 12-16-8 (providing that employers must pay employees their usual compensation); 705 Ill. Comp. Stat. 305/4.1; 705 Ill. Comp. Stat. 310/10.1 (providing that employers are not required to pay employees out on jury duty leave). States that require employers to pay employees on leave for jury duty also vary in the amount employers must pay. *Compare* Colo. Rev. Stat. §§ 13-71-126; 13-71-134(1) (requiring employers to pay up to $50.00 per day in employee wages for jury duty leave for the first three days of leave), *with* Conn. Gen. Stat. §§ 51-247; 51-247a (requiring employers to pay employees full wages in jury duty leave for the first 5 days of leave).

iv. Military Leave. Most states provide that employees are entitled to periods of unpaid leave if they are called to active duty. S*ee, e.g.*, Mich. Comp. Laws § 32.271 *et seq.*; § 35.401 *et seq.* Some states also require that employers provide family members of deployed service members a period of unpaid leave. *See, e.g.*, Me. Stat. tit. 26, §§ 811-14 (requiring an employer to provide an eligible employee with 15 days of unpaid leave when his or her spouse, domestic partner, or parent is deployed for more than 180 days).

v. Small Necessities Leave. This type of leave is required in some states for employees to use for short-term absences for non-illness related reasons. States differ in the type of leave offered, some include: unpaid leave for organ and bone marrow donors, *see e.g.*, Ark. Code § 11-3-205; leave for service in elected office, *see e.g.*, Colo. Rev. Stat. § 24-50-104(7)(b) (permitting leave for up to two days); emergency responder leave, *see, e.g.*, Del. Code Ann. Tit. 19, § 1801 *et seq.*; school visitation leave, *see, e.g.*, 820 Ill. Comp. Stat. § 147/10, 147/20.

vi. Voting Leave. Most states require that employers allow their employees to take time off to vote. Some states require employers to pay their employees for specified periods of time off for voting. *See, e.g.*, Cal. Elec. Code §§ 14000; 14001 (providing that employees are entitled to take up to two hours without loss of pay to vote if they do not have sufficient time outside of working hours to do so).

c. Practical Tips for Compliance

i. Leave entitlements are highly variable from location to location. An employer should know and understand state law and local ordinances addressing paid and unpaid leave requirements in the locations it has employees, particularly in high risk locations where the employer has a significant number of employees and/or any employees (including remote employees) working in employee-friendly locations.

ii. An employer should consider creating state-specific supplements to its core employee handbook to address unique state and local leave laws.

iii. Develop toolkits for human resources personnel (and perhaps management employees) to navigate complex matrix of leave laws, especially where such leave laws interact with other federal, state or local leave laws.

iv. Prior to terminating an employee for absenteeism, confirm that the potential application of all then-current paid and unpaid federal, state and local leave laws has been reviewed.

3. REMAIN APPRISED WITH EVER-INCREASING BAN THE BOX LAWS

a. Minnesota Requirements

i. Minnesota prohibits public and private employers (with limited exceptions) from inquiring into or considering or requiring disclosure of the criminal record or criminal history of an applicant for employment until the applicant has been selected for an interview by the employer or, if there is not an interview, before a conditional offer of employment is made to the applicant. Minn. Stat. § 364.021(a).

ii. Employers may notify applicants that the law or the employer's policy will disqualify an individual with a particular criminal history background from employment in particular positions. Minn. Stat. § 364.021(c).

b. Other Key Issues Occurring at the State and Local Level

i. Timing: When can you ask?

a. *Prohibited on initial application.* Many states prohibit private employers' inquiries into an applicant's criminal history on the initial application. Some examples include:

i. Connecticut. Employers are not allowed to ask about a prospective employee's prior arrests, criminal charges, or convictions on an initial employment application unless permitted by state or federal law. Conn. Gen. Stat. § 31-51i(b). If an employment application form contains a question regarding the applicant's criminal history, the application must contain a notice in clear and conspicuous language that the applicant is not required to disclose the existence of any arrest, criminal charge, or conviction if the records of such have been erased. *Id.* § 31-51i(d).

ii. Massachusetts. Employers are prohibited from requesting criminal offender record information on an initial application form unless the federal or state law creates a mandatory or presumptive disqualification for the position based on conviction or the employer is under a federal or state law obligation not to

employ persons with specific convictions. Mass. Gen. Laws, Ch. 151B, § 4.

iii. New Jersey. An employer may not require an applicant for employment to complete any employment application that makes any inquiries regarding an applicant's criminal record, including an expunged criminal record during the initial employment application process. N.J. Stat. Ann. § 34:6B-14(a)(1). An employer also may not make any oral or written inquiry regarding an applicant's criminal record, including an expunged criminal record, or use an online application that requires the disclosure of an applicant's criminal record, including an expunged criminal record, during the initial employment application process. N.J. Stat. Ann. § 34:6B-14(a)(2). If an applicant discloses any information regarding their criminal record, by voluntary oral or written disclosure, during the initial employment application process, the employer *may* make inquiries regarding the applicant's criminal record during the initial employment application process. N.J. Stat. Ann. § 34:6B-14(b). An employer may require an applicant for employment to complete an employment application or the employer may make oral or written inquiries regarding an applicant's criminal record *after the initial employment application process has concluded*. N.J. Stat. Ann. § 34:6B-14(c). An employer may refuse to hire an applicant for employment based upon the applicant's criminal record, unless the criminal record or relevant portion thereof has been expunged or erased through executive pardon. *Id.*

iv. New York. Unless specifically required or permitted by statute, an employer generally cannot inquire (whether in any form of application or otherwise) about (1) previous arrests or accusations that are not still pending and which did not result in convictions or guilty pleas; (2) youthful offender adjudications; and (3) sealed conviction records. N.Y. Exec. Law § 296(16).

v. Los Angeles, California. An employer cannot include a question on an employment application that seeks the disclosure of an applicant's criminal history. L.A. Cal, Municipal Code, Art. 9, § 189.02(A).

b. Prohibited on initial application, but allowed at or after the first interview.

i. Rhode Island. Employers may not include questions on applications for employment (except in law enforcement agency positions or positions related to law enforcement agencies) or otherwise inquire orally or in writing whether the applicant has

ever been arrested, charged with or convicted of any crime unless federal or state law creates a mandatory or presumptive disqualification. 28 R.I. Gen. Laws § 28-5-7(7). An employer may ask an applicant for information about his or her criminal convictions at the first interview or thereafter, in accordance with all applicable state and federal laws. *Id.*

ii. Minnesota. *See* above.

c. Prohibited on initial application, but allowed after a conditional offer of employment is made.

i. Illinois. An employer or employment agency cannot inquire about or into, consider, or require disclosure of the criminal record or criminal history of an applicant until the applicant has been determined qualified for the position and notified that the applicant has been selected for an interview by the employer or employment agency or, if there is not an interview, until after a conditional offer of employment is made to the applicant by the employer or employment agency. 820 Ill. Comp. Stat. 75/15(a). Employers may notify applicants in writing of the specific offenses that will disqualify the applicant from employment in a particular position due to federal or state law or the employer's policy. *Id.* 75/15(c).

ii. Los Angeles, California. An employer (defined as having ten or more employees and located or doing business in the city) cannot inquire about or require disclosure of an applicant's criminal history unless a conditional offer of employment has been made to the applicant. L.A. Cal, Municipal Code, Art. 9, § 189.02(B).

ii. Consideration of other factors. Some state and local laws require that employers consider factors that mitigate or provide context to an applicant's criminal history.

a. Time-related restrictions.

i. California. Before an employer can deny an applicant a position of employment solely or in part because of the applicant's conviction history, the employer must make "an individualized assessment of whether the applicant's conviction history has a direct and adverse relationship with the specific duties of the job that justify denying the applicant the position." Cal. Gov't Code § 12952(c)(1)(A). In making this assessment, the employer must consider *all* of the following: (A) the nature and gravity of the offense or conduct; (B) the time that has passed since the offense or conduct and completion of the sentence; and (C) the nature of

the job held or sought. Cal. Gov't Code § 12952(c)(1)(A). The employer may, but is not required to, commit the results of the individualized assessment to writing. Cal. Gov't Code § 12952(c)(1)(B).

b. Job-relatedness.

i. Hawaii. A prospective employer may inquire into an individual's criminal history if the conviction record bears a rational relationship to the duties and responsibilities of the position *and* the prospective employee has received a conditional offer of employment. Haw. Rev. Stat. § 378-2.5(a)-(b).

ii. New York. An employer with ten or more employees is prohibited from denying employment to an applicant (or taking adverse employment action against employee) with a previous criminal conviction unless, after considering certain statutory factors, either (1) a direct relationship exists between the offense the position sought by the applicant or held by the employee; or (2) the applicant or employee presents an unreasonable risk to property, or to the safe or welfare of specific individuals or the general public. If an employer denies employment or continued employment to an applicant or employee who has a criminal record, the employer must provide within 30 days a written statement explaining the reasons for the denial on the applicant's or former employee's request. N.Y. Correct. Law §§ 750-755.

iii. Required investigations and/or assessments. Some states and cities require an assessment process before an employer may take an adverse action against an applicant based on that applicant's criminal history. For example, California law imposes several requirements, including limitations on when employers may make inquiries into an applicant's criminal history, and what an employer must do before it can reject an applicant based on the applicant's criminal history. This law applies to employers with five or more employees. C.A. Assembly Bill 1008; Cal. Gov't Code § 12952.

a. Employers cannot include any question that seeks disclosure of an applicant's criminal history on an application for employment before the employer makes a conditional offer of employment to the applicant. Cal. Gov't Code § 12952(a)(1). Employers also cannot inquire or consider the conviction history of an applicant until after making a conditional offer of employment. Cal. Gov't Code § 12952(a)(2).

b. Before an employer can deny an applicant a position of employment solely or in part because of the applicant's conviction history, the employer must make "an individualized assessment of whether the applicant's conviction history

has a direct and adverse relationship with the specific duties of the job that justify denying the applicant the position." Cal. Gov't Code § 12952(c)(1)(A); *see above*.

c. If the employer makes a preliminary decision that the conviction history disqualifies the applicant, the employer must notify the applicant of the decision in writing. The employer may, but is not required to, justify the reasoning for making the preliminary decision. Cal. Gov't Code § 12952(c)(2). The notification must contain all of the following: (A) notice of the disqualifying conviction or convictions that are the basis for the preliminary decision to rescind the offer; (B) a copy of the conviction history report, if any; and (C) an explanation of the applicant's right to respond to the notice of the employer's preliminary decision before that decision becomes final and a deadline to respond. The explanation must inform the applicant that the response may include submission of evidence challenging the accuracy of the conviction history report that is the basis for rescinding the offer, evidence of rehabilitation or mitigating circumstances, or both. Cal. Gov't Code § 12952(c)(2).

d. The employer must give the applicant five business days to respond to the notice. If the applicant notifies the employer in writing that he or she disputes the accuracy of the conviction history report and the applicant is taking specific steps to obtain evidence supporting that assertion, then the employer must give the applicant five additional business days to respond. Cal. Gov't Code § 12952(c)(3).

e. The employer must consider information submitted by the applicant before making a final decision. Cal. Gov't Code § 12952(c)(4).

f. If the employer makes a final decision to deny an application solely or in part because of the applicant's conviction history, the employer must notify the applicant in writing of: (A) the final denial or disqualification, and the employer may but is not required to justify or explain the reasoning for the final denial or disqualification; (B) any existing procedure the employer has for the applicant to challenge the decision or request reconsideration; and (C) the right to file a complaint with the department.

g. The Los Angeles "Fair Chance" Ordinance prohibits employers with at least ten employees who work two or more hours each week within the City of Los Angeles from asking or requiring disclosure of a job applicant's criminal history prior to a conditional offer of employment. Los Angeles Municipal Code § 189.000 et seq. (Ordinance No. 184652).

    i. This includes a prohibition on asking any question that seeks the disclosure of a job applicant's criminal history, such as including a criminal history "check the box" question on a job application or a question during an initial job interview.

ii. Los Angeles employers covered by the ordinance also must engage in a "Fair Chance Process" before withdrawing a conditional offer of employment based on the applicant's criminal history, which includes: (1) a notification and "written assessment" process; (2) providing the applicant five business days to respond; (3) a "written reassessment" if the applicant provides any documentation or information in response; and (4) retaining records of job applications, including the written assessments and reassessments, for three years.

iii. The Fair Chance Ordinance also prohibits retaliation against an employee or applicant for reporting any alleged violation of the Ordinance or for participating in the Fair Chance Process.

iv. In addition, covered employers must: (1) state in every advertisement seeking applicants for employment that they will consider qualified applicants with criminal histories; (2) prepare and post a notice informing applicants of the Fair Chance Ordinance's provisions in a conspicuous place at any location job applicants may visit; and (3) send copies of the posted notice to every labor union with which they have a collective bargaining agreement.

v. Generally, there are no exceptions to the ordinance, unless the employer is required by law to inquire about criminal history or prohibited by law from hiring individuals who have committed certain criminal offenses, or the position requires use of a firearm.

c. <u>Practical Tips for Compliance</u>

i. Know the state-based requirements for criminal history inquiries on applications.

ii. Know what stage of the application process an employer may inquire into an applicant's criminal history.

iii. Know if the state or locality requires the employer to consider other factors before revoking a conditional offer of employment.

iv. Know whether a state or locality requires an assessment or opportunity for an applicant to respond before revoking a conditional offer of employment.

v. Determine whether pre-adverse and adverse action letters required under the Fair Credit Reporting Act should be revised for certain locations (e.g., Los Angeles, California).

vi. Train human resources and management personnel involved in recruiting, interviewing and hiring.

4. COMPLY WITH COMPENSATION INQUIRY PROHIBITIONS

a. States and U.S. Territories with Compensation Inquiry Prohibitions

i. California prohibits employers from relying on a job applicant's salary history as a factor in determining whether to offer employment or in determining what salary to offer. California also prohibits employers from asking applicants about their salary history, including compensation and benefits, either orally or in writing. If an applicant voluntarily discloses salary information, the prospective employer may consider or rely on that voluntarily disclosed salary history information in determining salary for the applicant. Also, employers are required to provide applicants the pay scale for a position upon request. Cal. Lab. Code § 432.3 (Jan. 1, 2018).

ii. Delaware prohibits employers from screening job applicants based on their salary history and from seeking that information from the applicant or a current or former employer. Employers may take salary history into account if applicants voluntarily disclose such information. Employers may seek compensation history *after* a job offer has been extended and accepted but *only* for confirming the applicant's salary history. Del. Code Ch. 7.1, § 709B (Dec. 14, 2017).

iii. Massachusetts prohibits employers from seeking wage or salary history of applicants or requiring that the applicant's prior wage or salary history meets certain criteria. If an applicant voluntarily discloses such information, the prospective employer may confirm prior wages or salary or permit an applicant to confirm prior wages or salary. Employers may seek to confirm an applicant's wage or salary history after an offer of employment with compensation has been negotiated and made to the applicant. Mass. Gen. Laws Ch. 149, § 105A (July 1, 2018).

iv. Oregon prohibits employers from asking job applicants or employees about their salary history or seeking the information from a current or former employer. Employers may ask applicants for written authorization to confirm their prior salary after a job offer including compensation is made. Or. Rev. Stat. § 652.10(3)(a), (b); § 659A.001(4)(a).

v. Puerto Rico prohibits employers from inquiring into an applicant's past salary history, unless the applicant volunteers such information or such information or salary is already negotiated with the applicant and set forth in an offer. in which case an employer can inquire or confirm salary history. P.R. Laws Ann. tit. 29, § 254 (Mar. 8, 2018).

b. Cities with Compensation Inquiry Prohibitions

i. San Francisco, California will prohibit employers from considering or relying on a job applicant's current or past salary in determining whether to offer employment or in determining what salary to offer. San Francisco will also

prohibit employers from inquiring about an applicant's salary history. S.F. Cal., Police, Admin. Code, Art. 33J effective July 1, 2018.

ii. Albany County, New York prohibits employers from screening applicants based on their prior wage or salary history, requesting or requiring as a condition of interview or offer of employment disclosure of prior wage or salary history, or seeking salary history of any applicant from any current or former employer. An applicant may provide written authorization for prospective employer to confirm prior wages or salary history after an offer of employment with compensation has been made to the applicant. Albany Cty., N.Y., Local Law No. P for 2016 effective December 17, 2017.

iii. New York City, New York prohibits employers from asking an applicant about their salary history at any stage of the hiring process. Employers are also prohibited from searching public records for an applicant's salary history. If an employer is aware of an applicant's salary history, the employer may not rely on the information when determining the applicant's salary. N.Y. Admin. Code. tit. 8, ch. 1, §§ 8-107(25) (Oct. 31, 2017).

c. Practical Tips for Compliance

i. If it is the employer's practice to inquire into compensation history, the employer *must* ensure they do not do so in a state or city that prohibits inquiry until a specific stage in the application or offer process.

ii. Consider alternative ways to collect the desired relevant information about an applicant's past compensation (e.g., asking whether the employee received a "President's Club" or similar award for sales performance).

iii. If applicable, recognize that generic salary range statements such as "commensurate with experience" may not be adequate and prepare basic informational forms that identify the pay scale for open positions so these are available upon request.

iv. Educate human resources and management personnel involved in recruiting, interviewing and hiring. Although applicants may voluntarily and without prompting disclose their salary history in certain locations (e.g., California), train recruiters and interviewers to not ask follow-up questions that would violate the law.

5. UNDERSTAND STATE LAW NON-COMPETE ISSUES

a. Minnesota Requirements

i. Enforceability. Minnesota does not have any statute or regulation that governs non-compete agreements generally. The courts disfavor and cautiously scrutinize non-compete agreements, but a court may enforce a non-compete agreement if it is reasonable and carefully linked to the employer's legitimate business interests.

Bennett v. Storz Broad. Co., 134 N.W.2d 892, 898 (Minn. 1965). In Minnesota, the test for enforceability focuses on whether: (1) the restraint is necessary for the protection of the business or good will of the employer; (2) the non-compete imposes a greater restraint than reasonably necessary on the employee to protect the employer's business, taking into consideration (a) the nature and character of the employment; (b) the duration of the non-compete; and (3) the geographical scope of the non-compete. *Id.* at 899.

ii. Consideration. Minnesota recognizes employment as sufficient consideration if the non-compete is entered before an employee accepts an offer of employment. *Overhold Crop Ins. Serv. Co. v. Bredeson*, 437 N.W.2d 698, 702-03 (Minn. Ct. App. 1989). A non-compete signed after the start of employment must be supported by independent consideration providing the employee with substantial economic or professional benefits. *Davies & Davies Agency, Inc. v. Davies*, 298 N.W.2d 127, 131 (Minn. 1980).

b. Other Nationwide Differences at the State and Local Level

i. Enforceability. Non-competes are not enforceable in California and North Dakota unless an exception applies. Cal. Bus. & Prof. Code § 16600; N.D. Cent. Code § 9-08-06.

ii. Pre-employment Notice Requirements. Most states do not require an applicant be given pre-employment notice of a non-compete, but New Hampshire and Oregon are exceptions. New Hampshire requires notice of the non-compete before an applicant accepts a job offer. Oregon requires at least two weeks' notice in a written employment offer that a non-compete agreement is required unless the non-compete is entered on the employee's subsequent bona fide advancement. N.H. Rev. Stat. Ann. § 275:70; Or. Rev. Stat. § 653.295(1) and 653.020(3).

iii. Consideration.

a. *Time of hire*. Most states provide that an offer of at-will employment is sufficient consideration if the non-compete is entered at the time of hire. Texas is one exception, and requires consideration that is reasonably related to or has a factual nexus to a legitimate business interest worthy of protection by the covenant. *Alex Sheshunoff Mgmt. Servs., L.P. v. Johnson*, 209 S.W.3d 644, 649-50 (Tex. 2006). Illinois is another state where initial employment alone may not be adequate consideration. *See Fifield v. Premier Dealer Servs., Inc.*, 993 N.E.2d 938 (Ill. App. 2013).

b. *Continued employment*. More than a dozen states (including Minnesota) do not recognize continued employment as sufficient consideration to support a non-compete agreement entered during employment. In these states, non-compete agreements should be coupled with other consideration, such as promotions, enhanced compensation, or employment in a different capacity. *See e.g.*, *Cox v. Dine-A-Mate, Inc.*, 501 S.E.2d 353, 356 (N.C. Ct. App. 1998);

Van Dyck Printing Co. v. DiNicola, 648 A.2d 898, 901 (Conn. Super. Ct. 1993); *Bilec v. Auburn & Assocs., Inc. Pension Tr.*, 588 A.2d 538, 542 (Pa. Super. Ct. 1991); *Davies & Davies Agency, Inc. v. Davies*, 298 N.W.2d 127, 131 (Minn. 1980); *Rosellini v. Banchero*, 517 P.2d 955, 958 (Wash. 1974).

c. Practical Tips for Compliance

i. If the employer requires a non-compete, the employer should verify whether the state in which the employee works requires any type of pre-employment notification to the employee before signing the non-compete agreement.

ii. If the employer requires an employee to sign a non-compete as a condition of employment, the employer should verify whether the state in which the employee works requires specific consideration to support the non-compete.

iii. Employers should consider developing multiple versions of restrictive covenant agreements, such as one version for most employees that only prohibits non-solicitation of employees (generally enforceable in most states) and one for sales employees, senior management-level employees and perhaps certain other employees that includes non-solicitation of customers and non-compete restrictions.

6. FEDERAL, STATE AND LOCAL WAGE AND HOUR COMPLIANCE

a. Minimum Wage Statutes and Ordinances

i. Minnesota's minimum wage is $9.65 per hour for employers with an annual gross revenue of $500,000 or more. Employers with an annual gross revenue less than $500,000 must pay employees at least $7.87 per hour. *Minn. Stat. § 177.24*

ii. The City of Minneapolis has imposed annual minimum wage increases from 2018 to 2022 for employers with more than 100 employees and increases from 2018 to 2024 for employers with fewer than 100 employees. Code of Ordinances, Minneapolis, Minn. tit. 2, ch. 40 (2018), Art. IV, § 40.390 (2018).

iii. Most states have minimum wage statutes, and a majority of those states require that employees working more than 40 hours per work week be paid 1.5 times their regular rate of pay. Some states, such as Alaska and California, require employers to pay employees daily overtime if they work more than a prescribed number of hours in the day. Alaska and California require overtime payment (1.5 times regular rate of pay) for employees working more than eight hours in a work day. Alaska Stat. § 23.10.060; Cal. Lab. Code § 510; Wage Order No. 7-2001. Maine is unique in that when computing regular rate of pay for overtime purposes, earnings, bonuses, commissions, and other compensation is included. Me. Stat. § 664.

iv. Cities and counties may also have minimum wage ordinances, some of the larger cities include:

a. Flagstaff, Arizona: $11.00 per hour with annual increases through 2022.

b. Los Angeles, California (26 or more employees): $12.00 with increases through 2020.

c. Chicago, Illinois: $11.00 per hour with increases annual through 2020.

d. Cook County, Illinois: $10.00 per hour with annual increases through 2021.

e. New York City, New York (11 or more employees): $13.00 per hour.

f. Seattle, Washington: $14.00 to $15.45 per hour depending on employer size and whether the employer contributes to medical benefits.

b. <u>Tip Credit Issues</u>

i. A vast majority of state laws specifically provide that an employee's actual tips plus wages must equal at least the minimum wage.

ii. Some states provide for a maximum tip credit. *See, e.g.*, 7 Colo. Code Regs. 1103-1:3 (providing a maximum tip credit of $3.02); Iowa Code Ann. § 91D.1; Iowa Admin. Code 875-217.50(1), 875-217.59 (providing a maximum tip credit of 40% of the minimum wage); Me. Rev. Stat. Ann. tit. 26, § 664(2) (providing that the maximum tip credit is 50% of the state minimum wage).

iii. Many states require a "minimum cash wage" that is a percentage of the minimum wage. For example, Michigan requires that 38% of the minimum wage be in cash, and that the actual tips plus cash wage must equal at least minimum wage. Mich. Comp. Laws. § 408.414d. Others provide the "minimum cash wage" as a dollar amount. *See* Del. Code Ann. tit. 19, § 902(b) (providing that $2.23 is the minimum cash wage).

iv. Some states forbid tip credits. *See* Cal. Lab. Code § 351; Minn. Stat. § 177.24.

c. <u>Other Wage/Hour Issues</u>

i. Some states have specific meal and rest break requirements. For example, California law includes very specific requirements for 30-minute meal periods and rest periods tied to the number of hours the employee works. *Cal. Lab. Code §§ 226.7, 512, 550-554; Wage Order 7-2001*.

ii. Other common wage/hour issues include: (1) treatment of accrued and unused vacation/PTO as wages; (2) final paycheck issues; (3) commission arrangements; (4) authorizations for deductions; and (5) fair pay matters.

d. Practical Tips for Compliance

i. An employer should understand the minimum wage and overtime requirements in states in which it has employees, also knowing that the minimum wage of a particular city may differ from the state's minimum wage.

ii. An employer should carefully consider the variety of state law wage/hour issues that may apply to its business, and consider which of those issues should be addressed in the core employee handbook versus applicable state-specific supplements.

iii. If applicable to the employer's business, an employer should know and comply with any tip credit issues.

iv. Train human resources personnel and management.

7. DO NOT CONDUCT IMPERMISSIBLE DRUG AND ALCOHOL TESTING

a. Minnesota: Drug and Alcohol Testing in the Workplace Act (DATWA) Minn. Stat. §§ 181.950-181.957

i. DATWA governs employment-related drug and alcohol testing for public and private employers. Among its provisions, DATWA requires that, prior to testing, an employer implement a written drug and alcohol policy testing policy that includes: who will be subject to testing; the circumstances under which an individual may be tested; the rights of an individual to refuse to be tested; the consequences of refusing to submit to testing; potential disciplinary actions of a confirmed positive test result; an individual's right to explain a confirmed positive test result; and appeals procedures.

ii. Applicant testing. Authorized pursuant to employer's written policy and with advance notification of applicant, but only after offer of employment has been made and only if all candidates for the job are tested.

iii. Employee testing.

a. *Routine physical examination testing.* Acceptable as part of an annual, routine physical exam provided the employee has at least two weeks' written notice.

b. *Random testing.* Only if employees are (1) in a safety-sensitive position, or (2) professional athletes subject to a collective-bargaining agreement allowing testing.

c. *Reasonable suspicion testing.* Permissible if employer has a reasonable suspicion that the employee: (1) is under the influence of drugs or alcohol; (2) has violated the employer's written work rules while the employee is working or while the employee is on the employer's premises or operating the employer's vehicle, machinery, or equipment, provided the work rules are in

writing and contained in the employer's written drug and alcohol testing policy; (3) has sustained or caused another's personal injury, or (4) has caused a work-related accident or was operating machinery, equipment or vehicles involved in a work-related accident.

d. *Treatment program testing.* Testing allowed for a period of up to two years following the completion of any prescribed chemical dependency treatment program. Testing allowed without notice during treatment if referred by the employer for treatment or evaluation or the employee is participating in a treatment under an employee benefit plan.

e. *Conditions/methods for testing.* Testing may be conducted only by certified laboratory. Documentation showing chain of custody and confirming test in case of positive findings are required. Employee must be given written notice of the right to explain the positive test. Employers may not take adverse employment action or discriminate against an employee for positive test result from an initial screening test that has not been verified by a confirmatory test. Additionally, the employer must meet statutory conditions before discharging an employee after a first positive confirmatory test result.

b. <u>Key Differences at State and Local Level</u>

i. <u>No Drug or Alcohol Testing Statutes</u>.

a. *Colorado*. Although recreational marijuana is legal, regulations do not restrict an employer's ability to conduct employment-related drug tests. Colorado employers are not required to allow or accommodate medical marijuana use in the workplace. Colo. Const. Art. XVIII, § 14. They can also prohibit and regulate the "use, consumption, possession, transfer, display, transportation, sale or growing" marijuana on their property. Colo. Const. Art. XVIII, § 16. But, Colorado's Anti-Discrimination Act prohibits employers from firing or taking other adverse employment action against employees for their lawful activity off work premises during non-working hours. Colo. Rev. Stat. § 24-34-402.5.

b. *Illinois*. Illinois has not enacted any employment drug or alcohol testing laws, except for prospective school bus drivers. The Illinois Human Rights Act expressly provides that it is not to be construed as encouraging, prohibiting, or authorizing drug testing of job applicants or employees or making employment decisions based on drug test results. 775 Ill. Comp. Stat. 5/2-104(C)(4).

c. *Other States.* Several other states, including California, have not enacted laws addressing employee drug or alcohol testing.

ii. <u>Applicant Testing</u>. Most states permit pre-employment drug screenings of job applicants with conditional offers of employment and allow employers to reject an applicant with a positive drug test.

iii. Timing of Testing for Current Employees. States differ on when employers may impose a drug or alcohol test on current employees.

a. Some states permit testing on "reasonable suspicion" that the employee is under the influence of alcohol or drugs. The test for what constitutes "reasonable suspicion" may differ state-by-state. In California, "reasonable suspicion" is based on objective factors, such as the employee's appearance, speech, behavior, or other conduct and facts that the employee possesses or is under the influence of unlawful drugs. *Kraslawsky v. Upper Deck Co.*, 56 Cal. App. 4th 179, 188 (1997). In Connecticut, "reasonable suspicion" is determined by the totality of the circumstances surrounding the employee's conduct. *Imme v. Fed. Express Corp.*, 193 F. Supp. 2d 519, 525–26 (D. Conn. 2002). In Massachusetts, courts balance the employer's legitimate business interest in investigating suspected drug use against the "significant invasion" of the employee's privacy. *Folmsbee v. Tech Tool Grinding & Supply, Inc.*, 630 N.E.2d 586, 589 (Mass. 1994).

b. Some states permit random drug testing, but often impose additional requirements. For example, Georgia permits random drug testing, but it must be based on reasonable suspicion. Ga. Code Ann. § 45-23-1. Maine permits random drug testing if authorized by a collective bargaining agreement, the employee works in a position that would create an unreasonable threat to health or safety, or the employer employees more than 50 employees and has a testing policy that was developed in conjunction with an employee committee and the employees chosen for testing are selected by an outside person. Me. Stat. §§ 681 *et seq.*

c. Some states permit drug and alcohol testing following an accident. For example, in Massachusetts, post-accident testing may be permissible, depending on the duties of the employee tested. Post-accident testing of an employee using dangerous equipment has been found sufficiently important to justify requiring the employee to provide a urine sample. *Harrison v. Eldim, Inc.*, 2000 WL 282446, at *5 (Mass. Super. Ct. Feb. 17, 2000).

c. Practical Tips for Compliance

i. Because the timing of permissible drug and alcohol testing varies state-by-state, employers must keep their policies up-to-date with current state laws.

ii. Because drug and alcohol testing is one of several subjects that can vary greatly from state to state, this is a topic that is best addressed outside of the employee handbook.

iii. Employers should consider developing a core drug and alcohol testing policy with applicable state-specific supplements. In developing this policy and the applicable supplements, several issues should be considered, including: (1) testing

circumstances; (2) testing protocols, and (3) potential actions following a positive test.

8. DRAFT EFFECTIVE EMPLOYEE HANDBOOKS

a. Key Issues to Consider

i. Required Content Varies. As discussed above, leave entitlements, wage and hour requirements, and drug and alcohol-related testing requirements vary greatly from state to state. Unless the company is willing to adopt the most employee-friendly version of applicable laws company-wide, addressing entitlements in the core handbook may be inappropriate for employers operating with employees in multiple states. Instead, state-specific supplements may be the better approach.

ii. Workplace Conduct and Social Media. Under the Obama administration, the NLRB scrutinized social media policies and other workplace conduct standards that had the potential to curb a worker's right to engage in protected activity. The current administration appears more employer-friendly. In December 2017 the NLRB revised its test for examining employee handbooks. Under the test, the Board now considers two factors: the nature and extent of the potential impact on NLRA rights; *and* legitimate justifications associated with the requirements. *The Boeing Co.*, 365 NLRB No. 154 (Dec. 14, 2017).

b. Practical Tips for Compliance

i. An employer should review its employee handbook regularly to ensure policies are internally consistent, up to date with current business practices, and comply with current law. Workplace laws are ever changing at the state and local (and sometimes federal) level. Employee handbooks (or certain provisions) often are exhibits in administrative charges and employment litigation.

ii. Off-the-shelf sample handbooks may not be the right fit. Employee handbooks should be tailored to the specific needs of the workplace, including the organizational culture, workforce size, location of employees, and demographics and categories of employees (e.g., employees subject to applicable collective bargaining agreement).

iii. Less is often more. Detailed internal procedural policies may inadvertently create rigid company rules (or contractual obligations), thereafter mandating compliance and consistent implementation. Employers should instead consider implementing more general summaries to provide discretion and flexibility for company interpretation. Where necessary, detailed information may be housed separately from the employee handbook (e.g., develop human resources procedures or toolkits, implement stand-alone policies for travel reimbursement, post work-related instructions on company intranet).

iv. Employers should consider implementing a core employee handbook as an employee resource designed to provide important information regarding key

company policies (e.g., at-will employment, anti-discrimination and non-harassment) and mandatory notices required by applicable law (e.g., FMLA for covered employers).

- Because detailed leave and benefit provisions (e.g., paid parental leave, FMLA, PTO, sick leave) are likely to change more frequently than other policies, employers should consider including this information in one or more supplements rather than the core employee handbook.

- Where an employer has a national footprint, consider creating a core employee handbook that complies with federal law and address applicable state and local variances in supplements to the core handbook. Prioritize supplements for high risk states where the employer has a significant number of employees and/or employee-friendly locations. Confirm the following language is included: "Company is committed to complying with all applicable federal, state and local laws. In the event of any inconsistency between any policy language in this Supplement and the Company's Employee Handbook with respect to any Company employee employed in [applicable state], this Supplement controls. In the event of any ambiguity or any inconsistency between any policy language in this Supplement and applicable law, applicable law controls."

- By limiting content in the core employee handbook and using supplements for state-specific information, employees likely be less overwhelmed by the amount of handbook content.

9. EFFECTIVELY MANAGE AFFIRMATIVE ACTION COMPLIANCE

a. Minnesota Requirements (Goods and Services)

i. Workforce Certificate.

a. Covered Employers. The Minnesota Human Rights Act (MHRA) requires organizations with more than 40 full-time employees in the state of their principle place of business on a single working day during the previous 12 months to have a "certificate of compliance" issued by the Commissioner of the Minnesota Department of Human Rights (MDHR) *before* a state contract or agreement for goods or services that is likely to exceed $100,000 in any one year can be executed. Minn. Stat. § 363A.36; Minn. R. 5000.3410.

b. Certificate of Compliance. Receipt of a certificate of compliance issued by the Commissioner signifies that the business has an affirmative action plan that has been approved by the Commissioner. The certificate is valid for four years. Minn. Stat. § 363A.36.

c. Application. To obtain a certificate of compliance, a business must submit to the MDHR an affirmative action plan that complies with Minn. R. 5000.3400 to 5000.3600 or letters or documentation establishing their compliance with federal or local agency rules together with an affirmative action program for disabled persons. Minn. R. 5000.3560.

d. Affirmative Action Plan. Minnesota Rules provides an extensive list of requirements for contractors when developing an affirmative action plan, which vary depending on whether the contractor is engaged in construction (Minn. R. 5000.3520 through .3540) or not (Minn. R. 5000.3430 through .3500), and vary between minority and female affirmative action plans and affirmative action plans for disabled persons (Minn. R. 5000.3550 through 5000.3600). If a business already has had an affirmative action plan previously approved by the Minneapolis Civil Rights Department, the Saint Paul Human Rights Department or the Office of Federal Contract Compliance Programs (OFCCP), the business can submit documentation to the MDHR as to when the plan was approved. Minn. Stat. § 363A.37, subd. 1; Minn. R. 5000.3560, subpt. 1(B); Minnesota Department of Human Rights, Workforce Certificate Application Form; https://mn.gov/mdhr/certificates/apply-renew/workforce-certificate/certificate-app-form.jsp

e. Annual Compliance Report. Minnesota Rules provide that an annual compliance report must be filed with the MDHR. Minn. R. 5000.3580, subpt. 3. The MDHR mandates that the annual compliance report be filed on the anniversary of the workforce certificate each year during the certification period in accordance with its Certificate of Compliance Annual Reporting Packet. *See* Minnesota Department of Human Rights, Annual Compliance Reporting Packet for Contractors, https://mn.gov/mdhr/certificates/forms-worksheets/annual-reporting-packet/

f. Compliance Review. Contractors are subject to audit, including a desk audit of its affirmative action plan, on-site review of those matters not fully or satisfactorily addressed in the affirmative action plan, and, where necessary, an off-site analysis of information supplied by contractor during on-site review. Minn. R. 5000.3590. The MDHR states that: "Contractors should expect that they will be audited by the Department at least once during the four-year period in which they hold their workforce certificate." *See* Minnesota Department of Human Rights, Workforce Certificate Audits, https://mn.gov/mdhr/certificates/audits/workforce-audit/

ii. Equal Pay Certificate.

a. Covered Employers. State contractors that employ more than 40 full-time employees must obtain an Equal Pay Certificate from the Minnesota

Department of Human Rights *before* executing a state contract for goods or services in excess of $500,000. Minn. Stat. § 363A.44.

b. Certificate of Compliance. Once issued, the Equal Pay Certificate is valid for four years. Minn. Stat. § 363A.44, subd. 1.

c. Application. To obtain a certificate of compliance, a business must submit to the MDHR an application, including a statement by the chairperson or CEO of the business, which certifies: (1) the business is in compliance with federal and state equal pay and human rights acts laws; (2) that the average compensation of its female employees is not consistently below the average compensation for its male employees in each of the major EEO-1 job categories; (3) the business does not restrict employees of one sex to certain job classifications and makes retention and promotional decisions without regarding to sex; (4) wage and benefit disparities are corrected when identified; (5) how often wage and benefits are evaluated to ensure compliance; and (6) identifies what methodology the business uses in setting compensation and benefits. Minn. Stat. § 363A.44, subd. 2.

d. Compliance Review. Contractors are subject to audit and, if audited, must provide additional data regarding the employees expected to perform work under the contract, including the number of male and female employees, average annualized salaries to paid to male and female employees within each major EEO-1 category, information on other elements of compensation, and average length of service. Minn. Stat. § 363A.44, subd. 8; https://mn.gov/mdhr/certificates/audits/equal-pay-audit/

    i. Minneapolis Requirements. The City of Minneapolis requires all contractors to have an approved affirmative action plan on file with the Minneapolis Department of Civil Rights (MDCR) before entering into a City contract that is: over $100,000; an amended contract with a cumulative amount over $100,000; or more than one contract with a combined total over $100,000. The contractor can submit an existing affirmative action plan; submit a template plan (modified affirmative action plan statement or full affirmative action plan); or submit a certificate of compliance from MDHR, the City of Saint Paul, Minnesota Mechanical Contractors Association, or the National Electrical Contractors Association. Plans approved by the City must be submitted via e-mail, are subject to audits, and expire three years after approval. Minneapolis, Minn., Code of Ordinances, tit. 7, ch. 139.50(d) (2018); Minneapolis, Minnesota Department of Civil Rights; Affirmative Action Planning, http://www.minneapolismn.gov/civilrights/civil-rights_affirmative-action-plan.

ii. Saint Paul Requirements. The City of Saint Paul affirmative action and equal employment opportunity efforts apply to all contractors (regardless of the size of the business), whose total accumulated City of Saint Paul contract awards exceeds $50,000 within the preceding twelve- month period. Contractors must: (1) submit an affirmative action program registration; (2) develop and maintain a compliant affirmative action plan; (3) Maintain written records of all personnel activities and documentation of Good Faith Efforts to recruit and hire women, minorities, and people with disabilities; and (4) submit 6-month semi-annual reports to maintain compliance with AA/EEO requirements. If approved, the City will issue a letter that certifies the contractor is registered for a two-year period. *See* Saint Paul, Minn., Code of Ordinances tit. XVIII, ch. 183.04 (2018); St. Paul Minnesota Department of Human Rights, Affirmative Action & Equal Employment Opportunity, https://www.stpaul.gov/departments/human-rights-equal-economic-opportunity/contract-compliance-business-development-1

b. National Differences in Affirmative Action Plan Requirements

States and municipalities all differ in the requirements they may (or may not) place on contractors for receiving state and local contracts. Because of this, employers vying for such contracts must stay up to date on the requirements imposed in each state (and sometimes local) area.

c. Practical Tip for Compliance

Before entering into state or local government contracts, understand any applicable affirmative action compliance requirements, including related investment costs and potential audit legal risks.

10. KNOW DIFFERING EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS

a. Minnesota Human Rights Act

i. The MHRA recognizes as protected classes: race, color, creed, religion, national origin, sex, marital status, status regarding public assistance, familial status, membership or activity in a local commission, disability, sexual orientation (including gender identity), age, and pregnancy or childbirth. Minn. Stat. § 363A.08, Subd. 2, 5.

ii. Under the MHRA, unless based on a bona fide occupational qualification, employers are prohibited from refusing to hire an applicant; maintaining a system of employment that unreasonably excludes a person seeking employment; discharging an employee; discriminating against a person concerning hiring, tenure, or compensation; or discriminating against a person in terms, upgrading,

conditions, facilities, or privileges of employment because of that person's protected status. Minn. Stat. § 363A.08, Subd. 2.

iii. The MHRA also prohibits pre-employment requests or requirements for an individual to furnish information regarding protected class status or to undergo physical examination (unless required by applicable law or national security); also, no employer may seek and obtain for purposes of making a job description, information from any source that pertains to an individual's protected class status. Minn. Stat. § 363A.08, Subd. 4(a).

iv. Courts in Minnesota look to federal statutes such as Title VII, the ADA and the ADEA for interpreting the MHRA. *See Anderson v. Hunter, Keith, Marshall & Co.*, 417 N.W.2d 619, 623 (Minn. 1988); *Kolton v. Cty. of Anoka*, 645 N.W.2d 403, 407-08 (Minn. 2002); *Johnson v. Piper Jaffray, Inc.*, 530 N.W.2d 790, 799 (Minn. 1995).

b. Local Ordinances

i. Minneapolis Ordinance prohibits discrimination based on race, color, creed, religion, ancestry, national origin, sex, including sexual harassment, sexual orientation, gender identity, disability, age, marital status, or status with regard to public assistance or familial status. Minneapolis, Minn., Code of Ordinances tit. 7, ch. 139.10 (b)(2) (2018).

ii. Saint Paul Human Rights Ordinance prohibits discrimination in employment based on race, creed, religion, color, sex, sexual or affectional orientation, national origin or ancestry, familial status, age, disability, marital status or status with regard to public assistance. St. Paul, Minn., Code of Ordinances tit. XVIII, ch. 183 (2018).

c. Discrimination Laws Differ Nationwide

i. Protected Classes Vary.

a. *California Fair Employment and Housing Act*. The California FEHA recognizes as protected classes age (*40 years or older*), ancestry, color, marital status, medical condition, mental disability, national origin, physical disability, race, veteran or military status, religious creed (including religious dress and grooming practices), sex (including gender, gender identity, gender expression, pregnancy, childbirth, breastfeeding or medical conditions related to breastfeeding, and medical conditions related to pregnancy or childbirth), sexual orientation (including heterosexuality, homosexuality, and bisexuality), genetic information (including information about: an individual's genetic tests, a family member's genetic tests, family members' diseases or disorders, an individual's or family member's receipt of, or request for, genetic services, and participation by an individual or their family member in clinical research that includes genetic services), and national origin (including whether an

individual possesses a driver's license). Cal Gov't Code §§ 12926(b), (g), (i)-(s), (v), 12926.1(b), 12940(a).

b. *New York State Human Rights Law*. The NYSHRL prohibits employment and other discrimination on the basis of protected classes, including: age (*18 and older*), color, creed, disability, familial status, marital status, military status, national origin (including ancestry), predisposing genetic characteristic, race, sex, and sexual orientation (including actual *or perceived*: heterosexuality, homosexuality, bisexuality, and asexuality). N.Y. Exec. Law §§ 292 and 296

ii. Prohibited Conduct May Vary.

a. Under the California FEHA, employers are prohibited from (1) discriminating against any employee, applicant, unpaid intern, or volunteer based on a protected characteristic as to: hiring; selection for a training program leading to employment; compensation; termination from employment or a training program; or the terms, conditions, or privileges of employment; (2) harassing employees, applicants, unpaid interns, or volunteers based on a protected characteristic; (3) refusing an employee's right to dress consistently with both the employee's gender identity and gender expression; (4) failing to take all reasonable steps necessary to prevent discrimination or harassment from occurring; (5) making a non-job-related inquiry verbally or through a job notice or application that directly or indirectly expresses any limitation, specification, or discrimination about a protected characteristic; (6) requiring a job applicant to submit to a medical or psychological examination, unless it is limited to asking about an applicant's ability to perform job-related functions or responding to an applicant's request for reasonable accommodation; (7) failing to reasonably accommodate an employee, applicant, unpaid intern, or volunteer's known mental or physical disability, unless the employer can demonstrate undue hardship; (8) subjecting any employee, applicant, or other person to a test to determine the presence of a genetic characteristic; (9) failing to reasonably accommodate an employee or applicant's religious belief, including religious dress and grooming practices, unless the employer can show undue hardship; (10) failing to provide employees disabled because of pregnancy or childbirth with: up to four months of leave; reasonable accommodations for conditions related to pregnancy, childbirth, or related medical conditions, if requested by the employee at the advice of her healthcare provider; temporary transfers to a less strenuous or hazardous position during pregnancy, if the employee requests, with the advice of her physician, where the transfer can be reasonably accommodated; (11) retaliating against a person who reports suspected patient abuse by health facilities or community care facilities; (12) retaliating against a person who has opposed any practices considered unlawful under the FEHA; (13) retaliating or otherwise discriminating against a person for requesting accommodation, regardless of whether the request was granted; (14) refusing to provide an eligible employee family care and medical leave of up to a total of 12 workweeks in any 12-month period or refusing to guarantee the

employee the same or a comparable position of employment after the employee returns from leave; (15) failing to provide individual written notice to employees containing certain information on sexual harassment in the workplace; (16) requiring any employee to be sterilized as a condition of employment; (17) failing to maintain personnel-related records for two years after either: the records are created or received or the employment action was taken; (18) refusing to allow an employee to wear pants because of the employee's sex; (19) enforcing a policy that limits or prohibits the use of any language in any workplace, unless: justified by business necessity and employees have been notified of when and how the language restriction must be observed and consequences of violating the language restriction. Cal. Gov't Code §§ 12940; 12945; 12946; 12947.5; 12949; 12950; 12951.

b. Under the New York SHRL, covered employers cannot refuse to hire, terminate, or otherwise discriminate against any person in wages or other terms and conditions of employment because of membership in a protected class, including domestic violence victim status. N.Y. Exec. Law § 296(1)(a), (3-a). There are exceptions for consideration of age in certain circumstances, certain religious organizations, and certain affirmative action plans. N.Y. Exec Law § 296(1)(f), (3-a), (11), (12). The NYSHRL imposes numerous additional considerations on private employers. N.Y. Exec. Law § 296.

iii. Standards May Vary.

a. For example, in California "physical disability" is defined having a physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that does both of the following: affects an identified bodily system and *limits* a major life activity. Cal. Gov't Code § 12926(m). This standard contrasts with the ADA, which defines "disability" as "a physical or mental impairment that *substantially* limits one or more major life activities of such individual." 42 U.S.C. § 12102.

b. In New York, the SHRL defines "disability" as (a) a physical, mental or medical impairment resulting from anatomical, physiological, genetic or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques or (b) a record of such an impairment or (c) a condition regarded by others as such an impairment, provided, however, that in all provisions of this article dealing with employment, the term shall be limited to disabilities which, upon the provision of reasonable accommodations, do not prevent the complainant from performing in a reasonable manner the activities involved in the job or occupation sought or held.

iv. Cities May Have Ordinances.

a. *San Francisco Anti-Discrimination Ordinance*. Prohibits contractors and subcontractors with the city from engaging in discriminatory employment

practices based on an individual's domestic partner status, AIDS or HIV status, height, weight, race, color, creed, religion, disability, national origin, ancestry, age, sex, sexual orientation, gender identity, marital status, and association with members of a protected class. S.F. Admin. Code § 12B.1

d. Practical Tips for Compliance

i. Because protected classes, prohibited conduct, and other standards may vary, you should take care in verifying that your standard forms and workplace posters conform to the law in the state they are used.

ii. For employment policies which list protected classes, include catch-all for "any other status protected by applicable law."

iii. Be aware of active enforcement efforts. For example, the Minnesota Department of Human Rights routinely requests and reviews applications as part of its standard compliance review (audit) of state contractors' workforce certificates and its Initial Information Requests related to discrimination charges, and has brought Commissioner's charges challenging questions on such applications. Review your current Minnesota application to ensure you are not inadvertently requiring or requesting applicants to furnish information that the MDHR may interpret as pertaining to protected class status (e.g., high school graduation date (age); identifying whether applicant has relatives in workplace (familial status)).

ATTACHMENT A

Location	District of Columbia	Connecticut	California	Massachusetts	Oregon	Vermont
Law/Bill Number	§ 32-131.01 et seq.	Public Act 11-52	Cal. Labor Code §§ 245, 2810.5	Mass. Gen. Laws ch. 149, § 148(c), (d)	ORS §§ 653.601-653.256 & 659A.885	21 Vt. Stat. § 482
Summary	EEs accrue 1 hour paid sick time for every 37 to 87 hours worked & can accrue & use up to 3-7 days, based on ER's size. EEs in certain industries receive one hour for every 43 worked & can accrue & use up to 5 days regardless of ER size. Covers sick time for EE or family members' care & for absences associated with domestic violence, sexual abuse or stalking.	EEs whose place of business has 50 or more EEs accrue 1 hour of paid sick time for every 40 hours worked & can accrue & use up to 40 hours. Covers sick time for EE or family members' care & for absences associated with domestic violence or sexual assault.	EEs accrue 1 hour of paid sick time for every 30 hours worked & can use up to 24 hours & accrue up to 48 hours. ERs may use alternate accrual method if accrual is regular & provides sufficient amount of time. Covers sick time for EE or family members' care & for absences associated with EE's domestic violence, sexual assault or stalking.	EEs whose place of business has 11 or more EEs accrue 1 hour of paid sick time for every 30 hours worked & can accrue and use up to 40 hours. All others receive equivalent unpaid time. Covers sick time for EE or family members' care & for absences associated with EE or dependent child's domestic violence.	EEs whose place of business has 10 or more EEs (six or more EEs if ER is in a city with population above 500k, so that Portland's law remains in effect) accrue 1 hour of paid sick time for every 30 hours worked, & can accrue & use up to 40 hours. All others receive equivalent unpaid time. Covers sick time for EE or family members' care, for OR family leave purposes, for reasons related to a public health emergency & for absences associated with EE or minor child/ dependent's domestic violence, sexual harassment, assault or stalking.	EEs accrue 1 hour of paid sick time for every 52 hours worked & can accrue or use up to 24 hours in 2017 & 2018, & 40 hours in 2019 and following years. Workers in small businesses begin to accrue & use time in 2018. Covers sick time for EE or family members' care, absences associated with EE or family member's domestic violence, sexual or stalking, and closures for public health or safety reasons.

Location	Arizona	Washington	Rhode Island	Maryland
Law/Bill Number	ARS.§ 23-373 to 23-381, ARS.§ 23-364	WAC 296-128-600 to 296-128-760	H. 5413	H.B. 0001
Summary	EEs accrue 1 hour of paid sick time for every 30 hours worked. EEs whose place of business has 15 or more EEs can accrue & use up to 40 hours per year. All others can accrue & use up to 24 hours per year. Covers sick time for EE or family members' care, absences associated with EE or family member's domestic violence, sexual violence, abuse or stalking, closures for public health or safety reasons, and care for EE's or family member's exposure to a communicable disease.	EEs accrue 1 hour of paid sick time for every 40 hours worked. Covers sick time for EE or a family member's care, absences associated with EE or a family member's domestic violence, sexual assault, or stalking, closures for public health reasons.	EEs of ERs with 18 or more EEs accrue 1 hour of paid sick time for every 35 hours worked & can accrue & use up to 24 hours in 2018, 32 hours in 2019, and 40 hours in 2020 & beyond. ERs who employ fewer than 18 EEs are not required to allow workers to accrue paid sick days but must allow use of unpaid sick time of up to 24 hours in 2018, 32 hours in 2019 and 40 hours in 2020. Covers sick time for EE or family members' care, absences associated with EE or family member's domestic violence, sexual assault or stalking, and closures for public health or safety reasons.	EEs whose place of business has 15 or more EEs accrue 1 hour of paid sick time for every 30 hours worked, & can accrue up to 40 hours in a year & 64 hours at any time, & can use up to 64 hours in a year. All others receive equivalent unpaid time. Covers sick time for EE or family members' care & for absences associated with EE or family member's domestic violence, sexual assault or stalking.

San Francisco, CA	Seattle, WA	New York City	Jersey City, Newark, Irvington, Passaic, East Orange, Paterson, Trenton, Montclair, Bloomfield, Elizabeth, Plainfield, Morristown	San Diego, CA	Oakland, CA	Tacoma, WA	Philadelphia, PA	Montgomery County, MD
S.F. Admin. Code Ch. 12W; Initiative Ord. 160034	Ord. 123698	Int. 0097-2010; Int. 0001-2014	Ord. 13.097 & Ord. 15.145; Ord. 13-2010; Ord. MC 3513; Ord. 1998-14; Ord. 2-2014; Ord. 14-040; Ord. 14-47; Ord. Ch. 160; Ord. No. 4617; Ord. MC 2016-08; Ord. O-35-2016	Municipal Code § 39.0101; Ord. No. O-20390	Municipal Code 5.92	Ord. 28453	Bill 141026	Bill 60-14, Bill 32-16
EEs in the private sector accrue 1 hour of paid sick time for every 30 hours worked within the city & can accrue & use up to 40 or 72 hours, depending on ER's size. Covers sick time for EE or family members' care, absences associated with EE's domestic violence, sexual assault or stalking and purposes related to bone marrow or organ donation.	EEs whose place of business has five or more EEs accrue 1 hour of paid sick time for every 30 to 40 hours worked & use up to 40 to 108 hours, depending on ER's size. Accrual is unlimited. Covers sick time for EE or family members' care, absences associated with domestic violence, sexual assault or stalking, and closures due to a public health emergency.	EEs whose place of business has five or more EEs accrue one hour of paid sick time for every 30 hours worked and can accrue and use up to 40 hours. All others receive equivalent unpaid time. EEs in certain industries can accrue and use two paid days after one year of employment regardless of ER size. Covers sick time for EE or family members' care and closures due to a public health emergency.	EEs accrue one hour of paid sick time for every 30 hours worked and can accrue up to 24 or 40 hours, depending on ER's size, and use up to 40 hours. EEs in certain industries receive up to 40 hours regardless of ER size. Covers sick time for EE or family members' care, closures due to a public health emergency and care for a family member exposed to a communicable disease.[6]	EEs accrue one hour of paid sick time for every 30 hours worked and use up to 40 hours. Accrual is unlimited. Covers sick time for EE or family members' care, for absences associated with domestic violence, sexual assault or stalking, and closures due to a public health emergency.	EEs accrue one hour of paid sick time for every 30 hours worked and can accrue and use up to 40 or 72 hours, depending on ER's size. Covers sick time for EE or family members' care.	EEs accrue one hour of paid sick time for every 40 hours worked and can accrue and use up to 24 hours. Covers sick time for EE or family members' care, closures due to a public health emergency and for absences associated with EE or family members' domestic violence, sexual assault or stalking.	EEs whose place of business has 10 or more EEs accrue one hour of paid sick time for every 40 hours worked and can accrue and use up to 40 hours. All others receive equivalent unpaid time. Covers sick time for EE or family members' care and for absences associated with EE or family members' domestic violence, sexual assault or stalking.	EEs whose place of business has five or more EEs accrue one hour of paid sick time for every 30 hours worked and can accrue up to 56 hours and use up to 80 hours. All others receive an equivalent 32 paid and 24 unpaid hours. Covers sick time for EE or family members' care, absences associated with EE or family member's domestic violence, sexual assault or stalking, closures due to a public health emergency, care for a family member exposed to a communicable disease and the birth, adoption, or foster placement of a child.

Location	Emeryville, Berkeley, CA	Pittsburgh, PA	New Brunswick, NJ	Spokane, WA	Santa Monica, CA	Minneapolis, St. Paul, MN	Los Angeles, CA	Chicago, Cook County	Austin, Texas
Law / Bill Number	Ord. 15-004; Municipal Code ch. 13.100	File 2015-1825	Ord. 121501	Ord. No. C-35300	Ord. No. 2515	File 15-01372; Ord. 16-29	Ord. No. 184320	Ord. O2016-2678; Ord. 16-4229	Ord. No. 20180215-049
Summary	EEs accrue one hour of paid sick time for every 30 hours worked and can accrue and use up to 48 or 72 hours, depending on ER's size. Covers sick time for EE or family members' care and (Emeryville only) absences associated with EE's domestic violence, sexual assault or stalking and care for EE or family members' service dog.	EEs whose place of business has 15 or more EEs accrue one hour of paid sick time for every 35 hours worked and can accrue up to 40 hours. All others accrue at the same rate up to 24 unpaid hours in the first year the law is in effect, followed by 24 paid hours after the first year. Covers sick time for EE or family members' care, closures due to a public health emergency and care for a family member exposed to a communicable disease.	EEs accrue one hour of paid sick time for every 35 hours worked and can accrue up to 24 or 40 hours, depending on ER's size, and use up to 40 hours. Part-time EEs may only accrue up to 24 hours a year regardless of ER size. Covers sick time for EE or family members' care, closures due to a public health emergency, care for a family member exposed to a communicable disease and absences associated with EE or family member's domestic violence, sexual assault or stalking.	EEs whose place of business has 10 or more EEs accrue one hour of paid sick time for every 30 hours worked and can use up to 40 hours. All others accrue at the same rate and can use up to 24 hours. Covers sick time for EE or family members' care, absences associated with EE or family member's domestic violence, sexual assault or stalking, closures due to a public health emergency and bereavement leave in connection with a family member.	EEs accrue one hour of paid sick time for every 30 hours worked and can accrue up to 32 or 40 hours in 2017, depending on ER's size, and up to 40 or 72 hours from 2018 onward. There is no annual cap on use of paid sick time. Covers sick time for EE or family members' care and for absences associated with EE's domestic violence, sexual assault or stalking.	EEs accrue one hour of paid sick time for every 30 hours worked and can accrue up to 48 hours. (Minneapolis only: EEs whose place of business has five or fewer EEs must receive equivalent unpaid time.) There is no annual cap on use of paid sick time, but EEs can have no more than 80 accrued but unused hours at one time. Covers sick time for EE or family members' care, absences associated with EE or family member's domestic abuse, sexual assault or stalking and closures due to a public health emergency or other unexpected cause, such as inclement weather or loss of power, heating or water.	EEs accrue one hour of paid sick time for every 30 hours worked and can accrue and use up to 48 hours. Covers sick time for EE or family members' care and for absences associated with EE's domestic violence, sexual assault or stalking.	EEs accrue one hour of paid sick time for every 40 hours worked and can accrue and use up to 40 hours. Covers sick time for EE or family members' care, absences associated with EE or family member being the victim of domestic violence or a sex offense (Chicago)/ domestic violence, sexual violence or stalking (Cook County), or closures due to a public health emergency.	EEs whose place of business has more than 15 EEs accrue one hour of paid sick time for every 30 hours worked and accrue and use up to 64 hours. All others accrue at the same rate and can accrue and use up to 48 hours. Covers sick time for EE or family members' care, absences associated with EE or family member being the victim of domestic violence, sexual assault, or stalking.