



MINNESOTA EMPLOYMENT LAW CHANGES

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- This session is being recorded
- A PDF of the slides for today's presentation should appear in the Chat function
- After the webinar, you will receive an email with a link to the recording and a copy of the PDF of the slides
- Unfortunately, we won't be able to answer questions during the webinar, due to the very large number of people who have registered
 - If you are enrolled in our Hotline service, you can contact the Hotline with any questions you may have
 - Some questions, especially those related to ESST and PFML, may not have answers yet, as we expect a lot of agency guidance to be forthcoming between now and the laws' effective dates



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Agenda

1. Non-compete prohibitions
2. Recreational cannabis
3. Earned Sick and Safe Time (ESST)
4. Minnesota Parental Leave Act revisions
5. Paid Family and Medical Leave
6. Breast milk expression enhancements
7. Pregnancy accommodations enhancements
8. Pay history inquiry prohibitions
9. CROWN Act
10. Wage disclosure protections enhancement
11. Employer-sponsored meetings
12. Harassment settlements
13. Secure Choice retirement program

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Non-Compete Prohibitions

- Historically, MN courts have viewed non-competes with disfavor
 - Non-competes undermine the basic right to at-will employment
- Legislature has now formally banned most “covenants not to compete” with employees or independent contractors that restrict:
 - Working for another employer for a specified period of time
 - Working in a specified geographical area
 - Working for another employer in a capacity similar to the employee’s position
- Exception for non-competes signed in connection with sale/dissolution of a business
- Effective July 1, 2023
 - Agreements entered into **prior to 7/1/23** are still enforceable
- Doesn’t prohibit
 - Confidentiality / non-disclosure / protection of trade secrets restrictions
 - Non-solicitation / prohibition on use of client or contact lists clauses

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Recreational Cannabis

- Medical marijuana and gummies already legal, now all forms of cannabis will be legal for recreational consumption
- Amends the criminal code and expunges certain low level drug convictions
- Amends Minnesota drug testing laws
 - Preemployment testing cannot screen for cannabis except for specific positions
 - “Safety-sensitive”, peace officers, firefighters, direct care providers (children, vulnerable adults, certain patients), CDL drivers, positions funded by federal grant, positions required to test under state or federal law
 - Can still be included in post-hire random and reasonable suspicion testing, including:
 - Post-injury/accident
 - Under suspicion of violation of written work rules re: possession, use, impairment, etc.
 - Suspicion that employee “does not possess that clearness of intellect and control of self that the employee otherwise would have”
- Amends Minnesota lawful consumable products laws
 - Cannabis now included in list of “lawful consumable products”, so employers can’t discriminate or make negative employment decisions based on general usage
- Employers can still prohibit possession or use at work, and discipline or terminate for being under the influence, violating policy, etc. (*i.e., just like alcohol*)
- Employment related provisions effective August 1, 2023

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Earned Sick and Safe Time

- Effective January 1, 2024
- All employees earn at least 1 hour of ESST for every 30 hours worked, up to 48 hours per year
 - Exempt employees will usually be deemed to work 40 hrs/wk
 - Employers can allow accruals beyond 48 hours
- Time can be used as it's accrued
 - Unlike existing ESST laws, no 90-day usage waiting period from date of hire
- Time can't be counted against attendance
 - No exceptions for no-fault attendance policies/point systems
- Employees cannot be required to find a replacement as condition of using ESST
- Time doesn't have to be paid out upon termination
 - Balance has to be reinstated if an employee is rehired within 180 days
 - Mergers/acquisitions: unused ESST balances carry over to new employer for both stock and asset purchases
- Time can be used in smallest increment used by employer, so long as the increment is not greater than 4 hours



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Earned Sick and Safe Time

- Employers must keep records of hours worked and ESST used by each employee
- Time can be used for:
 - An employee's own illness, injury, health condition, and preventive care
 - A "family member's" illness, injury, health condition, and preventive care
 - Leave related to an employee or family member's needs in connection with domestic violence, sexual assault, or stalking
 - Closure of an employee's business or a family member's school/place of care due to weather or public emergency
 - An employee's inability to work/telework due to employer-imposed quarantine due to health concerns related to the potential transmission of a communicable illness related to a public emergency, or while awaiting diagnostic test results
 - When a health authority or health care professional determines that an employee or family member's presence in the community would jeopardize the health of others



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Earned Sick and Safe Time

- “Family member” includes:
 - Child, foster child, adult child, legal ward, child for whom the employee is legal guardian, or child to whom the employee stands or stood in loco parentis
 - Spouse or registered domestic partner
 - Sibling, stepsibling, or foster sibling
 - Biological, adoptive, or foster parent, stepparent, or a person who stood in loco parentis when the employee was a minor child
 - Grandchild, foster grandchild, or step-grandchild
 - Grandparent or step-grandparent
 - Child of a sibling of the employee (*nieces/nephews*)
 - Sibling of the parents of the employee (*aunts/uncles*)
 - Child-in-law or sibling-in-law
 - Any of the family members listed above of a spouse or registered domestic partner
 - Any other individual related by blood or whose close association with the employee is the equivalent of a family relationship
 - Up to one individual annually designated by the employee



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Earned Sick and Safe Time

- For absences of greater than 3 days, employers can request documentation
 - Employee/family member medical conditions
 - Doctor’s note
 - If employee/family member didn’t see a doctor or doctor’s note would impose an added expense, then written confirmation from the employee can be requested
 - Safety
 - Court record, or a document signed by victim services organization, cop, attorney, or anti-violence counsellor
 - Work/school closure
 - Written statement from the employee stating that time is being used for covered reason
- Employees can carry over up to 80 hours of ESST per year, unless:
 - Unused ESST is paid out at year end and 48 hours of ESST front-loaded in next year, or
 - 80 hours of ESST is front-loaded in next year
- Existing policies (including PTO) can be substituted if they’re generous enough
 - Employers can have different approaches between different classes of employees
- Employer notice:
 - Individual notice in employee’s primary language and also must be included in handbook
 - Paystubs include both available ESST and ESST used during pay period



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Minnesota Parental Leave Act

- **Old law**
 - Covered employers: employers with 21 or more employees at one or more locations
 - Covered employees: employees who've worked at least 12 consecutive months preceding leave need, and who've averaged at least ½ of the employer's full-time schedule during the 12 months preceding leave need
- **New law**
 - Covered employers: employers with 1 or more employees
 - Covered employees: all employees regardless of length of service or hours worked
- Changes effective 7/1/23

Paid Family and Medical Leave

- Provides up to 20 weeks of leave and wage replacement benefits per “benefit year”
 - “Benefit year” for private plan = FMLA; for state plan, based on account establishment
 - ERs cannot penalize employees for exercising rights; EEs have a right of reinstatement
 - Right to reinstatement begins “ninety calendar days from the date of hire”
 - No more than 12 weeks of leave/benefits can be used for a single qualifying reason
- May be taken intermittently for all forms of protected leave, including bonding
- Almost all employers employing anyone in MN are covered, regardless of size
 - Exception for employees of federal government and certain self-employed individuals
- Almost all employees are covered (regardless of FT/PT status) if they:
 - Perform 50% or more of their work in MN
 - Perform some employment in MN, but reside in MN for 50% or more of the year
 - Perform no work in MN, but MN is the place from where their employment is controlled/directed
 - Exception: seasonal hospitality EEs working fewer than 150 days/year are not covered
 - Employers must apply to DEED and certify that workers meet seasonal definition
- Scope of coverage / leave protections much broader than existing FMLA, MPLA, etc.

Paid Family and Medical Leave

- Benefits and leave available for the following reasons:
 - Serious health condition
 - Inpatient care
 - Continuing treatment/supervision by healthcare provider (*telemedicine visits count*)
 - 7 or more days of incapacity with treatment 2 or more times within 30 days of incapacity onset, or 1 treatment with healthcare provider that results in regimen of continuing treatment
 - Incapacity due to chronic health condition with 2 or more visits with healthcare provider per year
 - Incapacity due to long-term/permanent condition for which treatment may not be effective
 - Absences to receive multiple treatments and recovery therefrom for “restorative surgery” or a condition that would result in 7 or more days of incapacity if not treated
 - Medical care related to pregnancy (*includes prenatal care, recovery from childbirth, stillbirth, and miscarriage*)
 - Family care for a family member’s or military member’s serious health condition
 - Bonding
 - Ends 12 months after birth, unless baby remains in hospital longer than mom
 - Can be used for time off in connection with adoption
 - Safety leave for employee or family member’s domestic assault, sexual assault, stalking
 - Qualifying exigencies arising from family member’s military active duty



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Paid Family and Medical Leave

- “Family members” for whom leave can be taken include:
 - Spouse, domestic partner, child (including in loco parentis, legal guardian, and “de facto” parent), parent/legal guardian, sibling, grandparent (including spouse’s grandparent), grandchild, son/daughter-in-law, and
 - *“an individual who has a relationship with the applicant that creates an expectation and reliance that the applicant care for the individual, whether or not the applicant and the individual reside together”*
- Benefits eligibility usually (but not always) requires a “seven-day qualifying event”
 - Days “must be consecutive, unless the leave is intermittent”
 - Bonding benefits not subject to the 7-day qualifying event requirement
- Employees may choose to use sick/vacation/PTO in lieu of PFML benefit, and if they do so, they are still subject to job protections of the law
 - Employer can’t require sick/vacation/PTO usage
- Employers may choose to provide “supplemental benefit payments”
 - Sick/vacation/PTO can be designated as voluntary supplemental benefit payments
- Interaction with ESST unclear at this stage (*guidance likely*)



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Paid Family and Medical Leave

- Employer notices
 - Post official DEED notice(s) in English and primary language of 5 or more EEs/ICs
 - Within 30 days of hire or 30 days before premium collection, provide individual written notice in the primary language of the employee that includes:
 - Explanation of availability of benefits and right to reinstatement, the amount of premium deductions, specific employer information, instructions on how to file a claim for benefits, and contact information for DEED
 - Notice can be in paper or electronic format, and EEs must acknowledge receipt
 - Paystubs must reflect any premium deductions and amounts paid by the employer
- Employee notice to employer
 - At least 30 days in advance of foreseeable leaves
 - As soon as practicable for unforeseeable leaves
 - As soon as practicable if need for leave changes (e.g., frequency, duration, etc.)
 - May be required to follow normal call-in/reporting procedures
 - Employees cannot be required to find a replacement



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Paid Family and Medical Leave

- Benefits managed by DEED and employees will file claims directly with the state
 - Amount of benefits paid determined by formula that uses employee's base wages up to a max equal to the state's average weekly wage (\$1,287 for 2023)
 - Benefits received are taxable and are reduced by any PTO used
- Paid for via a payroll tax of .7% up to the FICA annual maximum (\$160,200 for 2023)
 - Employers can cover full amount of tax, or deduct up to 50% of the tax from employee wages (*i.e., employees can pay no more than 50% of the premiums*)
 - Employers with fewer than 30 employees will have lower tax rate
- Employers can substitute a private plan approved by the state
 - Fee will be charged for initial plan approval and upon any amendment
 - \$250 <50 EEs; \$500 for 50-499 EEs; \$1,000 for 500+ EEs
 - ERs can have partial state plan and partial private plan
 - Tax = .4% for ERs in med program only; .3% for ERs in family benefit program only
 - Successor employers will have to maintain private plan for at least 90 days



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Paid Family and Medical Leave

- Much like the FMLA, health insurance benefits must be maintained
 - Employees can be required to continue paying their portion of premiums
 - ERISA preemption
- Effective dates:
 - November 1, 2025
 - Requirement to post notice of rights provide individual notice to employees of rights
 - Protection from retaliation, prohibition on interference (*employees can file application for benefits up to 60 days before leave need starts*)
 - January 1, 2026
 - Benefit availability
 - Right to reinstatement (*i.e., right to take protected leave*)
 - Start payroll deductions and include on paystubs

Nursing & Pregnancy Accommodations

- Breast milk expression revisions (*effective 7/1/23*)

An employer must provide reasonable break times each day to an employee who needs to express breast milk for her infant child during the twelve months following the birth of the child. The break times must, if possible, may run concurrently with any break times already provided to the employee. An employer is not required to provide break times under this section if to do so would unduly disrupt the operations of the employer. An employer shall not reduce an employee's compensation for time used for the purpose of expressing milk.
- Pregnancy accommodation revisions (*effective 7/1/23*)

The employee and employer shall engage in an interactive process with respect to an employee's request for a reasonable accommodation. Reasonable accommodation may include but is not limited to temporary transfer to a less strenuous or hazardous position, temporary leave of absence, modification in work schedule or job assignments, seating, more frequent restroom breaks or longer break periods, and limits to heavy lifting.
- Amendments to both laws require that employees be provided with notice of their rights (*DOLI has created sample notice*):
 - At the time of hire
 - Upon inquiry
 - When requesting covered leave or accommodation
 - Notice of rights and remedies must be included in employee handbook

Prohibiting Pay History Inquiries

- Effective January 1, 2024
 - Amends Minn.Stat. 363A.08
- Employers shall not “inquire into, consider, or require disclosure from any source the pay history of an applicant for employment for the purpose of determining wages, salary, earnings, benefits, or other compensation for that applicant”
 - Compensation data that is a matter of public record can be viewed, but it cannot be used for the “purpose of determining wages, salary, earnings, benefits, or other compensation for that applicant”
- Employers are allowed to:
 - Provide “information about the wages, benefits, compensation, or salary offered in relation to a position” (*i.e., share with applicants the wage range, benefits, etc. of the open position*)
 - Inquire about/discuss an applicant’s “expectations or requests with respect to wages, salary, benefits, or other compensation”

Other Laws

- CROWN Act (*effective February 1, 2023*): definition of race for purposes of discrimination protections is expanded as follows :
 - “Race” is inclusive of traits associated with race, including but not limited to hair texture and hair styles such as braids, locs, and twists.
- Wage Disclosure (*effective 7/1/23*): protections expanded :
 - An employer ~~may~~ shall not discharge, discipline, penalize, interfere with, threaten, restrain, coerce, or otherwise retaliate or discriminate against an employee for asserting rights or remedies under this section.
- Employer-Sponsored Meetings (*effective 8/1/23*): employees cannot be punished for refusing to participate in meetings to communicate the employer’s opinion regarding:
 - Religious matters; or
 - Political matters (includes “captive audience” anti-union meetings)
 - Notice of rights must be posted wherever notices are “customarily placed”

Harassment Settlements


- Creates new statute specific to sexual harassment/abuse settlements:
 - 181.141 Sexual Harassment or Abuse Settlement; Payment as Severance or Wages Prohibited**
 - In a sexual harassment or abuse settlement between an employer and an employee, when there is a financial settlement provided, the financial settlement cannot be provided as wages or severance pay to the employee regardless of whether the settlement includes a nondisclosure agreement.
- If settlements for “sexual harassment or abuse” aren’t “wages or severance pay”, then they aren’t subject to taxation and won’t impede unemployment
 - How will this interact with global settlements that aren’t just for “sexual harassment or abuse”?
 - What exactly constitutes a “settlement”?
 - Are standard separation agreements containing claims waivers impacted?
- Effective the day following enactment


Secure Choice Retirement Program

- Private employers with 5 or more employees that do not sponsor or contribute to an employee retirement savings plan (e.g., 401k, 403b, SEP, etc.) must enroll covered employees in a state-run retirement program
 - Appears to cover any private employers with 5 or more employees anywhere in the country (i.e., don’t have to have 5+ in Minnesota)
 - Public employers not covered, nor are private employers who haven’t engaged in business in MN in the past 12 months
 - Minors aren’t covered, nor anyone covered by Railway Labor Act or Taft/Hartley
- Program funded by employee contributions
 - Contribution rate will be determined by program board
 - Employee contributions immediately vest
 - Enrollment is automatic/required, but employees will have annually (or more frequently as determined by the board) to change or cease contributions
- ERs will have to provide board-created notice to EEs 30 days prior to first payroll deduction
- Program starts up January 1, 2025

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