



WHITE PAPER

July 2024

Minnesota Legislature Enacts Pay Transparency Law and Updates Paid Sick Leave and Other Employment Laws

Minnesota employers should be aware of several new employment laws that were included in the Omnibus Labor and Industry Policy bill and Omnibus Tax bill that were signed into law at the end of May, just before the close of the 2024 legislative session. Some of these laws take effect next year, but others take effect as soon as July and August 2024. We summarize the most significant enactments and updates in this *White Paper*.

All companies with employees in Minnesota are subject to new pay transparency obligations and additional requirements under Minnesota's recently enacted Earned Safe and Sick Time law. The legislature also passed a variety of updates to existing employment laws, including changes to the Minnesota Paid Family and Medical Leave law, increased penalties for employee misclassification, and a ban on non-solicitation agreements in service contracts.

Immediate actions for employers include reviewing the new laws, implementing changes to hiring and sick leave policies, and ensuring human resources and management personnel are aware of the changes. Employers with questions should consult knowledgeable employment counsel about these laws.

MINNESOTA'S PAY TRANSPARENCY LAW, MINN. STAT. § 181.173

Minnesota joined a growing number of states and localities that have enacted pay transparency laws to combat wage inequality, including California, Colorado, Connecticut, District of Columbia, Illinois, Hawaii, Maryland, Nevada, New York, New York City, Rhode Island, and Washington.¹ While each jurisdiction's law varies in its requirements, the trend is toward increased pay transparency.²

Minnesota's law, which takes effect on January 1, 2025, will require certain employers to disclose pay ranges and benefits in their job postings. Covered employers must have 30 or more employees and may include nonprofits, corporations, partnerships, individuals, and governmental subdivisions. Specifically, employers must disclose a "good faith estimate" of the starting salary range for any job postings that are made by or on behalf of the covered employer. The starting salary range must include the minimum and maximum rate of compensation. If employers do not intend to offer a salary range for a job, they must post a "fixed pay rate." In addition, the job postings must include a general description of all benefits and compensation, such as health care and retirement benefits.

Next Steps for Employers. Starting on January 1, 2025, Minnesota employers must ensure all job postings contain the required pay and benefits information. Management, human resources, and any other personnel who participate in the hiring process should also be trained on the new law, including how to respond to prospective employee inquiries about this information. Employers should consider conducting an internal pay equity audit of their workforce to identify any pay disparities and confirm that the pay ranges provided in postings are "good faith estimates" of the pay for the position.

MINNESOTA'S EARNED SAFE AND SICK TIME LAW, MINN. STAT. §§ 177.27, 177.50, 181.032, 181.9445, 181.9446, 181.9447, 181.9448

The Minnesota Legislature passed changes to Minnesota's Earned Safe and Sick Time ("ESST") law in the Omnibus Tax bill. The ESST law, which went into effect January 1, 2024, requires employers to provide each eligible employee at least one hour of paid leave for every 30 hours worked, up to at least 48 hours

of accrued ESST a year. Employees are eligible to receive the ESST benefits if they work at least 80 hours a year in Minnesota.

The following changes to the ESST law are effective immediately:

- Removes the requirement that accrued and used ESST must be listed on an earning statement. Instead, employers must provide a statement to employees at the end of each pay period reflecting the employee's accrued and used ESST. Employers must keep these records for three years.
- Revises the increments of time for which ESST can be accrued. Employers are now required to allow employees to use ESST in the same increment of time for which employees are paid, provided that an employer is not required to provide ESST in smaller than 15-minute increments or require that employees use ESST in more than four-hour increments.
- Modifies the rate of pay that ESST must be paid out at from an employee's "hourly rate" to an employee's "regular rate" of pay.
- Adds funeral and memorial services and other arrangements related to the death of a family member to the list of eligible uses for ESST.
- Provides that employers can request reasonable documentation for ESST use only when the employee uses ESST for more than three consecutive scheduled workdays.
- Allows employers to waive documentation requirements for the use of ESST exceeding three consecutive scheduled workdays when the employer provides paid leave beyond the minimum amount required by this law, provided that the waiver is done explicitly and unambiguously.
- Changes the definition of "employee" from a person who "performs work for at least 80 hours in a year" to a person who is "anticipated by the employer to perform work for at least 80 hours a year."
- Requires that any sick time provided by an employer in excess of the law's requirements meets or exceeds the standards required under the ESST law.

Critically, changes to the ESST law also provide additional remedies for noncompliance. If an employer is found liable for failing to provide ESST, the employer must pay the employee an amount equal to the time the employee should have received, plus an additional equal amount as liquidated damages. If the employer fails to keep required records, then the employer must pay the employee an amount equal to 48 hours of ESST

at the employee's regular rate of pay, plus an additional equal amount as liquidated damages.

Next Steps for Employers. Companies with Minnesota employees should ensure that their policies, recordkeeping, employee earnings statement practices, and leave policies comply with the updates to the ESST law. Employers should also confirm that their payroll providers are properly calculating and paying ESST at the employee's regular rate. Employers who decide to offer additional sick leave in excess of the law's requirements will need to confirm that this time also satisfies the ESST law requirements.

Employers should also make sure they are using the [updated version of the ESST workplace poster](#), which was updated in June 2024.

OTHER NOTABLE UPDATES TO MINNESOTA EMPLOYMENT LAWS

Minnesota Paid Family and Medical Leave, Minn. Stat.

§§ 268B.001 et seq.

The Omnibus Tax bill also made changes to Minnesota's upcoming Paid Leave law, which will require Minnesota employers to provide almost all employees paid family and medical leave for up to 12 weeks for serious health conditions, caring for a family member or new child, certain military-related events, or certain personal safety issues, beginning January 1, 2026. Notable changes to the law include:

- Clarifying or adding definitions like "benefit year," "financially eligible," "effective date of leave," and "typical workweek," among others.
- Expanding the definition of "family members" to include the children of domestic partners, as well as children to whom the applicant is a "de facto custodian" rather than a "de facto parent."
- Providing guidance on the use of intermittent leave, including that intermittent leave must be taken in increments consistent with the employer's policies for other forms of leave, and applicants cannot apply for benefits associated with intermittent leave until accruing eight hours of leave time ("unless more than 30 calendar days have lapsed since the initial taking of the leave").

- Allowing an authorized representative, as defined by the statute, to apply for leave on an employee's behalf.

The law also provides reduced premium rates for eligible "small employers" who have 30 or fewer employees and whose average wage is less than or equal to 150% of the state's average wage in covered employment.

While paid leave under the law does not begin until 2026, employers should prepare to comply with the law, including the following:

- Employers' first wage detail reports, based on wages paid between July 1, 2024, and September 30, 2024, are due on October 31, 2024.
- Employers must post a prescribed notice of employee rights under this law by November 1, 2025; this notice has not yet been published.
- Employers must start providing leave and make premium payments beginning January 1, 2026. Prior to this time, employers will need to update their leave policies and practices to reflect the law's requirements.

Employee Misclassification Prohibitions, Minn. Stat.

§§ 177.27, 181.722, 181.723

Effective July 1, 2024, the law imposes harsher penalties on Minnesota employers misclassifying employees. The new law, which is enforced by the Minnesota Department of Labor and Industry, enhances penalties for employers who:

- Fail to correctly classify employees;
- Fail to report or disclose a person as an employee when required to do so; or
- Require or request an employee to misclassify himself as a non-employee or complete any documents that misrepresent the person's status as an independent contractor.

Penalties for failure to comply with the above requirements include: (i) compensatory damages, including but not limited to the value of supplemental pay, overtime, shift differentials, vacation pay, sick pay, other forms of paid time off, health insurance, life insurance, retirement plans, savings plans, and any other costs and expenses incurred by the individual as a result of the misclassification; (ii) a penalty of up to \$10,000 for each misclassified person or related violation; and (iii) a penalty of up to \$1,000 for each person who delays, obstructs, or

fails to cooperate during an investigation of violations of the classification law.

Non-Solicitation Clauses Prohibited in New Service Contracts, Minn. Stat. § 181.9881

Under the new law, service contracts cannot contain non-solicitation provisions that cover the employees of contracting entities. The law now prevents a company that provides services to a customer from restricting the customer from soliciting or poaching one of its employees, too. Accordingly, any “service provider,” defined as any partnership, association, corporation, business, trust, or group of persons acting directly or indirectly as an employer or manager for work contracted or requested by a customer, may not enter a contract restricting a customer from hiring its employees.

Independent contractors are included in the definition of “employee” under the law.

The new law does not apply to workers who provide professional business consulting for computer software development and related services. These workers are exempt from the ban if they want to become permanently employed by a customer at a later date.

The ban is non-retroactive, meaning that it does not apply to agreements entered into before July 1, 2024.

Minnesota Human Rights Act, Minn. Stat. §§ 363A et seq.

The Labor and Industry Policy Omnibus bill broadens the Minnesota Human Rights Act’s (“MHRA”) definition of certain protected classes, including individuals with a disability and family status, as well as the definition of “discrimination.” Changes were also made related to the complaint procedure, statutes of limitation, and remedies. Specifically:

- “Disability” now includes any person who has an impairment that is episodic or in remission and would materially limit a major life activity when active, mirroring the federal Americans with Disabilities Act’s definition of “disability.”
- “Family Status” includes residing with or caring for minors who have legal status or custody with the family, or other individuals who lack the ability to meet essential requirements for physical health and safety.
- “Discrimination” was updated to include harassment generally, as opposed to only sexual harassment.

The MHRA was also amended to increase the time a charging party can bring a civil action after receiving a dismissal or no probable cause determination from the commissioner from 45 to 90 days.

Other amendments (§§ 363A.08 to 363A.19; § 363A.28, subd. 10) include enhanced penalties and punitive damages against employers. Compensatory damages now explicitly include emotional damages, which are subject to treble damages (along with front pay and back pay). The amendment also eliminates the \$25,000 punitive damages cap against private employers.

These changes will be effective August 1, 2024.

Saliva Permitted as a Form of Drug Testing, Minn. Stat. §§ 181.950, 181.951, 181.953

Effective August 1, 2024, Minnesota’s Drug and Alcohol Testing in the Workplace Act will permit employers to administer oral fluid testing as an alternative form of drug, alcohol, and cannabis testing, provided it complies with the statute’s procedures and requirements.³ All testing must be done pursuant to a written testing policy that meets or exceeds the statute’s requirements.

Unlike laboratory testing, oral fluid testing provides immediate results. Accordingly, the legislature modified the statute to provide that employees who have taken an oral fluid test must be informed of the test result at the time of the test. If the test is positive, inconclusive, or invalid, employees can request an alternative test within 48 hours through a laboratory at no expense to the employee. If the testing laboratory result is positive, any retesting is done at the employee’s own expense.

Jury Duty Alternative Shift Prohibition, Minn. Stat. § 593.50

Requirements for jury duty have been updated so that employers cannot require an employee to work an alternative shift on any day the employee is required to report to the courthouse for jury duty. This means that an employer cannot require that an employee work a later shift on the day of jury service to account for missed work, but must provide the entire day off to the employee, regardless of work schedule.

Nothing under the law prohibits employees from voluntarily requesting to work an alternative schedule on a day they report to jury duty. But an employer cannot “encourage, prompt, or ask for the employee to make such a request.”

LAWYER CONTACTS

Brian West Easley

Minneapolis / Chicago

+1.612.217.8845 / +1.312.269.4230

beasley@jonesday.com

Kristin Berger Parker

Minneapolis

+1.612.217.8847

kparker@jonesday.com

Matthew W. Lampe

Practice Leader

New York

+1.212.326.8338

mwlampe@jonesday.com

Elizabeth B. McRee

Practice Leader

Chicago

+1.312.269.4374

emcree@jonesday.com

Bonny Birkeland, Valkyrie Jensen, and Kristin M. Simonet, associates in the Minneapolis Office, contributed to this White Paper.

ENDNOTES

- 1 “From Illinois to Hawaii, States Race to List Salaries in Job Ads,” Bloomberg (May 24, 2023); “Pay Transparency Laws: A State-by-State Guide,” Rippling (2024); “Quick Facts About State Salary Range Transparency Laws,” American Progress (Mar. 9, 2023).
- 2 “Pay Attention to State Pay Transparency Laws When Posting Jobs,” Bloomberg (Feb. 16, 2023).
- 3 Oral fluid tests can use a saliva sample to measure the presence of drugs, alcohol, or cannabis at the same or better levels as existing lab programs. Brian Basham, “Lawmakers Want to Add Oral Test Option as Preemployment Alternative to Drug Screening,” Minn. House of Representatives (Feb. 15, 2024).

Jones Day publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information purposes only and may not be quoted or referred to in any other publication or proceeding without the prior written consent of the Firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our “Contact Us” form, which can be found on our website at www.jonesday.com. The mailing of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship. The views set forth herein are the personal views of the authors and do not necessarily reflect those of the Firm.