

# Local and State Employment Law Update: COVID-19, Wage Transparency and Criminal Records

## Labor & Employment Law Update

on April 22, 2022

Below are some of the latest state updates –

### INDIANA

Indiana Code 24-4.9-3-3, which addresses “reasonable” delays in reporting data security breaches, was amended by H.B. 1351 to impose a forty-five (45) day limit on reporting breaches of certain personal information. Effective July 1, 2022, employers must notify Indiana residents, including employees and applicants, no later than forty-five (45) days after discovering a breach of certain personal information.

### MASSACHUSETTS

The COVID-19 Massachusetts Emergency Paid Sick Leave Program ended on March 15, 2022. However, employers may continue to seek reimbursement for qualifying leave costs taken between May 28, 2021 and March 15, 2022 until April 29, 2022.

### MINNESOTA

The Minnesota Department of Labor and Industry has launched a new webpage and published factsheets outlining the state’s sick and safe leave law (which requires certain employers to allow employees time off for to care for an ill or injured family member or to address abuse or harassment):

- Covered employers include those (i) that have at least 21 employees at a single site, and (ii) who offer personal sick leave benefits for absence from work due to an employee’s illness or injury.
- Covered employees include those that (i) have worked for the employer for at least 12 months; and (ii) worked at least half-time during the past twelve 12 months.

- Unless an employer provides paid time off for the illness or injury of its employee, sick leave need not be paid under the law.
- Employers are not required to pay employees for accrued PTO, sick or vacation time upon leaving their job (although a policy or contract indicating that unused time will be paid may be enforceable).

#### NEW YORK

Beginning May 15, 2022, employers advertising jobs in New York City must include a good faith salary range for every job, promotion, and transfer opportunity advertised. According to the Salary Transparency FAQs posted by the Commission on Human Rights, covered employers are expected to follow the new law when advertising for positions that can or will be performed, in whole or in part, in New York City, whether from an office, in the field, or remotely from the employee's home. Thus, if a New York City employer seeks to fill a position with remote work that can be performed in the city, a salary range must be disclosed, regardless of the applicant's geographical location and where the job is ultimately performed.

Under the New York City Human Rights Law (NYCHRL), a private right of action can be brought within three years for compensatory and punitive damages, attorneys' fees, and costs. The Commission is also authorized to impose civil penalties on its own up to \$125,000, and up to \$250,000 for willful violations. Covered employers may also be required to amend advertisements and postings, create and update policies, conduct training, provide notices or rights to employees or applicants, and engage in other forms of affirmative relief.

A potential amendment to the above law has been filed. If passed, it would (i) exclude businesses with fewer than 15 employees, (ii) allow for hiring notices that do not specify positions, (iii) exempt remote positions that may be performed outside New York City, and (iv) delay the law's effective date until November 1, 2022.

#### UTAH

Utah's genetic testing privacy law has been amended under Utah SB 144 to protect employees and applicants from unlawful genetic testing. Effective May 4, 2022, employers may not request or require employees or applicants, or their relatives, to submit to genetic procedures in connection with an employment decision. According to such amendments, "genetic procedures" include therapies, treatments or medical procedures intended to interfere with inherited DNA or normal DNA functions.

#### WASHINGTON

- Job Posting Wage Disclosures

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Washington SB 5761 amends the state's wage disclosure provision. Effective January 1, 2023, employers must immediately disclose wage scales or salary ranges in job postings for specific available positions.

- NDA's Related to Employment Law Violations

Washington HB 1795 makes provisions in agreements between employers and employees void and unenforceable, if to prevent disclosure or discussion of conduct, or the existence of a settlement involving conduct, that employees reasonably believe to be illegal discrimination, illegal harassment, illegal retaliation, a wage and hour violation, or recognized as against a clear mandate of public policy. Agreements may contain provisions prohibiting disclosure of the amount of settlement.

#### WISCONSIN

Wisconsin has clarified the "Substantially Related Test" for assessing applicants with criminal records showing domestic violence. On March 10, 2022, the Wisconsin Supreme Court held that an employee may be lawfully discharged or not hired because of a domestic-related criminal record, if "the circumstances material to fostering criminal activity" are "substantially" related to employment.

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