

Local and State Employment Law Update: Non-Competes and Protected Classes in the Workplace

Labor & Employment Law Update

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Many states are prohibiting employers from entering into non-competes with their employees. Read the full article to determine whether any of these new laws apply to you!

CALIFORNIA

A state superior court stayed the enforcement of any regulation implementing the California Privacy Rights Act (CPRA) until 12 months after the regulation is finalized. The CPRA required the adoption of regulations by July 1, 2022, with enforcement beginning on July 1, 2023; however, the first set of regulations was not finalized until March 29, 2023.

The CPRA amended the California Consumer Privacy Act (CCPA), which governs the collection and use of personal information (Cal. Chamber of Commerce v. Cal. Privacy Prot. Agency, Cal. Super. Ct., No. 34-2023-80004106 (June 30, 2023)).

CONNECTICUT

The non-compete law in S.B. 9 has been amended with regard to physicians and was effective as of July 1, 2023.

HAWAII

Under S.B. 1057, certain job listings must include an hourly rate or salary range by the effective date of January 1, 2024. The legislation also prohibits pay discrimination, based on any protected class under the fair employment practices law, between employees performing substantially similar work in the same establishment.

MAINE

S.B. 1058 revises Maine's personal information protection laws. Effective July 1, 2023, enforcement provisions were revised for a law requiring employers and other entities to safeguard personal information that they possess and to create

a privacy protection policy if they collect Social Security numbers in the course of business. Effective October 1, 2023, the definition of “personal information” in the security breach notification law will include a person’s precise geolocation data. The law applies to employers and other entities that maintain computerized personal information on state residents.

L.D. 258 establishes a state family and medical leave program effective January 1, 2026, though monetary contributions (i.e., the 1% payroll tax, split evenly between the employer and employee) will begin on January 1, 2025. Covered employees may claim up to 12 weeks of benefits a year. The weekly benefit amount is 90% of an employee’s average weekly wage that is equal to or less than 50% of the state average weekly wage, and 66% of an employee’s average weekly wage that is more than 50% of the state average weekly wage.

S.P. 702 (L.D. 1756) prohibits adverse actions by employers against employees for declining to attend or participate in employer-sponsored meetings where the employer expresses its opinion on political or religious matters, including matters related to labor organizations, or for declining to receive communications from the employer on such matters. The legislation also prohibits retaliation for reporting violations of the law in good faith. The effective date is 91 days after adjournment of the first special session of the State’s 131st legislature. The session has not adjourned as of mid-July 2023 and there is no statutory limit on its duration.

PENNSYLVANIA

The Pennsylvania Human Relations Commission adopted new regulations regarding protected classes under the fair employment practices law. Several new protected classes are defined as follows:

- “Religious creed” includes religious observances, practices, or beliefs and the need for reasonable accommodations related to those observances or practices.
- “Religious beliefs” include moral, ethical, or personal beliefs.
- “Sex” includes pregnancy, sex assigned at birth, gender (e.g., gender identity or expression), affectional or sexual orientation (e.g., heterosexuality, homosexuality, bisexuality, or asexuality), and sex development differences, sex characteristic variations, or other intersex characteristics.
- “Pregnancy” includes childbirth, breastfeeding, the use of assisted reproductive technology, the postpartum period, and pregnancy-related medical conditions.
- “Race” includes ancestry, national origin, ethnic characteristics, interracial marriage or association, and traits associated with race (e.g., hair texture or protective styles).
- “Ethnic characteristics” are physical, linguistic, behavioral, cultural, or environmental characteristics related to ethnicity.

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The regulations will go into effect on August 16, 2023.

RHODE ISLAND

S.B. 342 amends Rhode Island's fair employment practices law to prohibit employers from requiring employees or prospective employees to execute, as a condition of employment, a nondisclosure agreement or a non-disparagement agreement that requires alleged violations of civil rights or unlawful conduct to remain confidential. The amendments took effect on June 22, 2023.

TENNESSEE

S.B. 378 permits the sale and use of hemp-derived cannabinoids by people age 21 and older. Employers are not required to accommodate the use of a hemp-derived cannabinoid in the workplace or an employee working while under the influence. Employers are permitted to establish, continue, or enforce drug-free workplace programs or policies, and the law does not create a cause of action against an employer for wrongful discharge or discrimination. The law will take full effect on July 1, 2024; however, various sections took effect on July 1, 2023.

TEXAS

S.B. 240 requires hospitals and health-care facilities in Texas to adopt, implement, and enforce a written workplace violence prevention policy and plan aimed at protecting employees and preventing acts of violence. The law also requires facilities to take certain steps after an incident, including providing medical care and not discouraging employee(s) from reporting the incident. The law takes effect on September 1, 2023, and facilities must adopt their policies and plans by September 1, 2024.

UTAH

H.B. 251 allows employees to bring an action in court with jurisdiction under Title 78 of Utah statutes, instead of a civil action in district court, if their employer retaliates against them for attending a deposition or hearing in response to a subpoena. It also allows the Utah Unemployment Insurance Division to commence a suit against an employer in court, instead of in the district court of the county where the employer resides or employs workers, for failing to deposit a bond or security with the division as required. The effective date is July 1, 2024.

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