

**Roadmap to Compliance: Major Employment Laws
Effective as of January 2021 and Beyond**

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While state legislatures focused much-needed attention on pandemic-related legislation throughout most of 2020, many continued to alter their employment laws in significant ways, or simply had previously passed laws scheduled to take effect at the start of 2021.

Some of the most prominent trends at the state and local level include creating or expanding paid leave benefits, pay equity, and anti-discrimination rules; restricting criminal background checks; and limiting the scope of non-compete laws. Employers should review these developments and consider updating their policies and procedures accordingly.

This Advisory provides a summary of major employment-related laws that take effect in 2021 in the following states and localities:¹

California	Colorado	Connecticut	Georgia	Hawaii
Illinois	Maine	Massachusetts	Minnesota	Missouri
Montana	New Jersey	New York	Oregon	Virginia
Washington			Washington, D.C.	

Note that this summary does not include minimum wage requirements. For that information, please review our recent blog post regarding [2021 minimum wage increases](#). For information on changes in the exempt salary threshold requirements by state, see the chart at the end of this Advisory.

¹ This is not an exhaustive list. Employers are encouraged to consult with counsel to ensure compliance with any applicable laws in the jurisdictions and/or industries in which they operate.

California

California Family Rights Act

The California Family Rights Act (“CFRA”) has been expanded through [SB-1383](#). Effective January 1, 2021, it is unlawful for any employer with five or more employees to refuse to provide covered employees up to 12 workweeks of unpaid, job-protected leave during any 12-month period to bond with a new child or to care for their own serious medical condition or that of the employee’s child, parent, spouse, or domestic partner. The law adds three categories of family members—grandparents, grandchildren, and siblings—and also eliminates the 75-mile radius for purposes of counting employees (but keeps the eligibility requirement that the employee must have worked at least 1,250 hours for the employer during the previous 12-month period). In addition, if both parents are employees, employers must now provide both of them with up to 12 weeks of bonding leave. Notably, the new law also repeals the New Parent Leave Act as of January 1, 2021, because the expanded CFRA now covers smaller employers and subsumes these requirements.

Paid Family Leave

California’s Paid Family Leave program was expanded by [AB 2399](#), which as of January 1, 2021, tracks the amendments to CFRA and permits taking time off to participate in a qualifying exigency related to the covered active duty or call to covered active duty of an individual’s spouse, domestic partner, child, or parent in the U.S. Armed Forces.

Kin Care

Under the original law, employers had to allow employees to use at least half of their accrued sick leave to care for a family member with an illness (“kin care”). [AB-2017](#) amends the kin care law to provide, effective January 1, 2021, that the designation of sick leave for kin care purposes is at the “sole discretion” of the employee. However, employees must still be permitted to use all of their mandatory paid sick time provided pursuant to the California Healthy Workplace, Healthy Families Act, and applicable local ordinances, to care for a family member. The kin care law only applies to additional sick leave time voluntarily provided by an employer where the employer limits the amount of that additional time that an employee may use to care for family members.

Employer Pay Data Reporting

[SB-973](#) requires, on or before March 31, 2021—and on or before March 31 each year thereafter—a private employer that has 100 or more employees to submit a pay data report to the California Department of Fair Employment and Housing containing certain wage information for specified job categories by race, ethnicity, and sex.

Paid Time Off for Crime Victims

[AB-2992](#) amends the California Labor Code to provide victims of violent crimes and families of homicide victims with expanded job-protected, unpaid leave. Specifically, in addition to protections for victims of domestic violence, sexual assault, or stalking, the

law now prohibits discharging, discriminating against, and retaliating against employees who take time off because they are victims of “other crime or abuse ... that caused physical injury or that caused mental injury and a threat of physical injury” or when “a person whose immediate family member is deceased as the direct result of the crime.” The law also prohibits employers with 25 or more employees from discharging or discriminating or retaliating against employees who are victims of covered crimes for taking time off to seek medical care, counseling, or other related services.

Settlement Agreements in Employment Disputes

Currently, California’s Code of Civil Procedure section 100.2 prohibits the use of no-rehire provisions in settlement agreements of employment-related disputes, except if the employer has made a good faith determination that the aggrieved party engaged in sexual harassment or sexual assault. [AB-2143](#) amends the law to permit a no-rehire provision if the aggrieved party has engaged in criminal conduct. For the sexual harassment/sexual assault/criminal conduct exception to apply, an employer must have made and documented in good faith a determination of such conduct before the aggrieved party filed the claim against the employer. The law also clarifies that to be considered an “aggrieved party” covered by the statute, employees must file their claim against the employer in good faith.

Statute of Limitations for Labor Code Complaints

Effective January 1, 2021, [AB-1947](#) allows a person who believes that they have been discharged or otherwise discriminated against in violation of any law enforced by the Labor Commissioner to file a complaint with the Department of Labor Standards Enforcement within one year (previously six months) after the alleged violation.

Representation for Financially Disabled Persons in Arbitration

Also effective January 1, [SB-1384](#) expands the Labor Commissioner’s representation in arbitrations for claimants who cannot afford counsel, requires employers to serve petitions to compel arbitration on the Labor Commissioner, and allows the Labor Commissioner to represent claimants in proceedings to determine whether arbitration agreements are enforceable.

Child Abuse and Neglect Reporting

Beginning January 1, 2021, the California Child Abuse and Neglect Reporting law, [AB 1963](#), which requires certain individuals to report suspicions of child abuse to the proper authorities, adds human resource professionals who work for businesses that employ five or more employees and employ minors to the list of mandated reporters. Under the law, mandated reporters must receive required training and a written statement of their obligations.

Diversity on Corporate Boards

[AB-979](#) will require publicly held domestic or foreign corporations with principal executive offices in California to have at least one director from an underrepresented community by

the end of 2021, and additional directors from an underrepresented community by the end of 2022, depending on the total number of directors. Prior law required such corporations to have a minimum number of female directors on their boards, depending on the total number of directors.

For more information on these and other updates, please review our recent [Act Now Advisory](#) on new California laws.

COVID-19-Related Laws

Effective January 1, 2021, [AB-685](#) requires employers to:

- provide written notification to all employees at an exposed worksite of potential exposure to COVID-19 within one business day of notice of potential exposure, and
- notify local public health agencies within 48 hours of becoming aware of an “outbreak” (defined as three or more confirmed cases of COVID-19 within a two-week period among employees who live in different households).

The law allows California’s Division of Occupational Safety and Health (“Cal/OSHA”) to issue orders to shut down entire worksites, or specific worksite areas, that expose employees to an imminent hazard related to COVID-19, and enables Cal/OSHA to issue citations for serious violations related to COVID-19 without giving employers 15-days’ notice before issuance.

For more information on these and other COVID-19 related laws, please review our COVID-19-specific [Act Now Advisory](#) on emergency regulations and our recent [Act Now Advisory](#) on new California laws.

Colorado

Paid Sick Leave

Effective January 1, 2021, Colorado requires that all employers with 16 or more employees grant paid sick leave to employees. On January 1, 2022, paid sick leave obligations will apply to all employers, regardless of size. For details on accrual and permissible uses, please see our recent [Act Now Advisory](#) and [recent interpretive guidance](#) from the Colorado Department of Labor and Employment (“Colorado DLE”).

Public Health Emergency Paid Sick Leave (“PHEL”)

On December 23, 2020, the Colorado DLE published [interpretive guidance](#) clarifying that, as a result of the ongoing COVID-19 public health emergency, employers of all sizes must provide employees access to up to 80 hours of PHEL as of January 1, 2021. The entitlement to 80 hours of PHEL in 2021 may not be reduced by any COVID-19 PHEL provided in 2020.

Unemployment

On July 14, 2020, Colorado enacted [SB 20-170](#), which substitutes (and defines) the term “severance allowance” for the term “remuneration” when calculating how unemployment benefits will be delayed because the employee received severance pay. Effective January 1, 2021, the law also eliminates documentation requirements for employees who assert that they left their job because of domestic violence when a worker reasonably believes that continued employment would jeopardize the worker’s safety, or the safety of any member of the worker’s immediate family.

Equal Pay

Effective January 1, 2021, the [Equal Pay for Equal Work Act](#) mandates, among a host of other requirements, transparency in wages and notice to employees of promotional opportunities, which must include the hourly or salary compensation, or, at the very least, a pay range. The law also prohibits discrimination based on sex and gender identity, and bans employers from seeking salary history or criminal history from job applicants. For more information, please see our [blog post](#) and the [recently published interpretive guidance](#) from the Colorado DLE.

Wages

On November 10, 2020, the Colorado DLE’s Division of Labor Standards and Statistics published the final version of Colorado Overtime and Minimum Pay Standards Order Number 37 ([COMPS #37](#)), which took effect on January 1, 2021. Significantly, COMPS #37 incorporates updates to Colorado’s exemptions from state minimum wage and overtime requirements.

Connecticut

Paid Family and Medical Leave

As of January 1, 2021, employees must make quarterly payroll contributions, at one-half of one percent of wages, to the Connecticut Paid Leave Authority trust fund. Connecticut employers are not responsible for making any contributions to the program. Benefit payments for approved paid leave applications begin in January 2022. For more information, please review our [Act Now Advisory](#) and the newly created [Connecticut Paid Leave](#) website.

Georgia

Criminal Background Information

Effective January 1, 2021, [SB 288](#) provides for the expungement of certain misdemeanor convictions and provides liability protection for employers. SB 288 prohibits introduction of criminal history information of any employee in an action against an employer based upon the conduct of such employee under certain circumstances.

Wage Garnishments

[SB 443](#), effective January 1, 2021, limits the maximum amount of wages that are subject to garnishment for specified educational or student loans to 15 percent of an individual's weekly disposable earnings.

Hawaii

Domestic Violence and Sexual Assault Leave

As of January 1, 2021, [SB 2638](#) amends Section 378-2 of Hawaii's Revised Statutes by changing the types of documents an employer may request of an employee to verify that the employee is a victim of domestic or sexual violence.

Illinois

Predictive Scheduling (Chicago)

Chicago's [Fair Workweek Ordinance](#), which was originally slated to become effective July 1, 2020, was delayed for six months and took effect on January 1, 2021. For employees making equal to or less than \$26/hour or \$50,000 annually, the ordinance requires certain employers (including restaurants, hotels, health care employers, building services, manufacturing, warehouse services, and retail employers) with at least 100 employees globally (250 employees and 30 locations for a restaurant) to, among other things:

- provide written work schedules at least 10 days (14 days beginning July 1, 2022) in advance of the first day of any new schedule and additional pay if changes are made within the 10 days;
- at the time of hire, give written, good faith (but not binding) estimates of projected days and hours of work to new workers for the first 90 days of employment, and, if a new hire requests modifications to their projected work schedule, provide written acceptance or rejection within three days of such request;
- post schedules at least 10 days prior to the first day of scheduled work;
- advise employees in writing within 24 hours of any schedule change (an employee may be entitled to compensation if this change occurs within the 10- or 14-day advance notice period); and
- provide employees the right to decline previously unscheduled hours.

Massachusetts

Paid Family and Medical Leave Law

On December 15, 2020, workers became eligible to take paid family leave to bond with a newborn, newly adopted child, or new foster child. In addition, effective January 1, 2021, workers may take:

- 1) paid family leave to care for a sick family member and/or manage family affairs for a family member if that family member is on active military duty in a foreign country, and
- 2) medical leave to manage a personal illness or serious injury.

Beginning July 1, 2021, paid family and medical leave benefits will become available to care for any covered family member with a serious health condition. For more information, please review our recent [Act Now Advisory](#).

Maine

Paid Leave

Effective January 1, 2021, employers with more than 10 employees in the usual and regular course of business for more than 120 days in any calendar year, with certain exceptions, must provide paid leave to employees, accrued at a rate of one hour for every 40 hours worked, up to 40 hours per year ([SP 110 – LD 369](#)). Employees can use this benefit for *any reason*, including, but not limited to, emergencies, illness, sudden necessity, or planned vacations. For more information, please see our [Act Now Advisory](#) and the [rules](#) promulgated by the Maine Department of Labor governing notice requirements, scheduling, and penalties for denial of paid leave.

Minnesota

Freelance Worker Protections (Minneapolis)

Effective January 1, 2021, Minneapolis [Ord. No. 2020-040](#) (“Ordinance”) creates protections for freelance workers. The Ordinance mandates, among other requirements, that contracts for service worth \$600 or more be reduced to writing and paid in a timely manner. Hiring parties that fail to follow the Ordinance’s requirements may be subject to penalties, fines, and damages.

Missouri

Ban the Box (St. Louis)

As of January 1, 2021, [St. Louis Ord. No. 71074](#) prohibits employers with 10 or more employees in the City of St. Louis from basing job hiring or promotion decisions on an applicant’s criminal history, or inquiring about the applicant’s criminal history until after it has been determined that the applicant is otherwise qualified for the position. However,

employers are permitted to use criminal history in hiring and promotion decisions if they can demonstrate the employment-related decision is based on all information available, and the criminal history is reasonably related to, or bears upon, the duties and responsibilities of the position. For more information, please see our recent [blog post](#).

Montana

Marijuana

Montana voters approved [Ballot Initiative No. 190](#) (known as “I-190”), which, as of January 1, 2021, legalizes the use and possession of up to one ounce of marijuana by all persons who are at least 21 years old. The Montana Department of Revenue will issue further rules and regulations by October 1, 2021. For a list of additional states that recently passed marijuana-related ballot initiatives, please review our [blog post](#).

New Jersey

Marijuana

New Jersey voters chose to legalize the possession and use of marijuana for recreational use by adults age 21 and older, effective January 1, 2021. [Public Question 1](#) amends the state constitution to legalize marijuana and authorizes the State’s existing Cannabis Regulatory Commission to oversee the new adult marijuana market, but leaves it up to the New Jersey Legislature and local governments to promulgate further rules and regulations. Notably, Public Question 1 is silent with regard to its effect on private employers. Thus, any direct employment implications will arise from subsequent legislation or regulations.

Note: As we previously [reported](#), New Jersey employers may need to provide reasonable accommodations for medical marijuana users.

For a list of additional states that recently passed marijuana-related ballot initiatives, please review our [blog post](#).

Amendment to the Millville Dallas Airmotive Plant Job Loss Notification Act

As previously [reported](#), New Jersey Governor Phil Murphy signed into law an [amendment](#) to the New Jersey Millville Dallas Airmotive Plant Job Loss Notification Act, commonly referred to as the “NJ WARN Act.” The NJ WARN Act was modified to, among other things, require payment of severance to eligible employees who suffer a NJ WARN Act-covered termination of employment and to require 90 days’ notice of such terminations (the “January 2020 Amendment”). The January 2020 Amendment was scheduled to take effect in July of 2020, but a further [amendment](#) was signed into law on April 14, 2020, that has [postponed the January 2020 Amendment’s](#) effective date to until 90 days following the termination of the State of Emergency that was declared in [Executive Order 103](#). Consistent with the extension of the current Public Health Emergency (also declared in Executive Order 103, now extended by [Executive Order 215](#)), the January 2020 Amendment will not take effect until, at least, May 2021.

New York

New York Paid Sick Leave

Employees began to accrue paid sick leave on September 30, 2020, and, effective January 1, 2021, they became eligible to use their accrued leave. For further details, please see our recent [blog post](#).

New York Paid Family Leave

On January 1, 2021, paid family leave benefits in New York increased from 10 weeks, capped at 60 percent of the statewide average weekly wage, to 12 weeks, capped at 67 percent of the statewide average weekly wage.

Gender-Neutral Single-Occupancy Bathrooms

As discussed in our recent [blog post](#), on December 23, 2020, Governor Andrew Cuomo signed into law [Assembly Bill A5240A](#), amending New York State's Civil Rights Law and Education Law to make all single-occupancy bathrooms located in public places, including schools, restaurants, bars, and other establishments, gender-neutral. The new law goes into effect on March 23, 2021.

Earned Sick and Safe Time (New York City)

As we previously [reported](#), New York City recently amended its Earned Sick and Safe Time Act ("ESSTA") to align with the New York State Paid Sick Leave Law as to employer size and income thresholds for determining an employer's safe and sick leave obligations. As of January 1, 2021, employees can use any additional paid leave time accrued as a result of the ESSTA amendments' adoption of the State law. The ESSTA amendments also added a requirement that employers provide the amount of each employee's accrued and used sick and safe leave and the employee's remaining leave balance on the employee's pay stubs, or in a separate writing provided to the employee each pay period. Although the disclosure requirement went into effect on September 30, 2020, the City's Department of Consumer Affairs advised employers through its [website](#) that it extended the deadline for compliance without penalty to January 1, 2021.

Ban the Box² (New York City)

On January 10, 2021, the New York City Council enacted [Int. 1314-A](#), which becomes effective on or about July 28, 2021. The law expands job applicants' protections under New York City's Fair Chance Act ("FCA"), otherwise known as the "ban the box" law. Among other things, the new law (1) expands the scope of FCA protections to include pending arrests and other "criminal accusations," (2) requires the same FCA protections for current employees as applicants, and (3) prohibits **at any time**—even after an employer makes a conditional job offer—inquiries related to non-pending arrests and

² As previously [reported](#), effective August 25, 2020, Suffolk County, New York, became the state's fifth locality to enact a "ban the box" law. Similar measures have been adopted by Buffalo, Rochester, and [Westchester County](#).

criminal accusations, adjournments in contemplation of dismissal, youthful offender adjudications, and certain sealed convictions.

Oregon

Decriminalization of Controlled Substances

With the passage of [Measure 110](#), Oregon became the first state to decriminalize the personal, non-commercial possession of small amounts of Schedule I-IV controlled substances, including heroin, cocaine, and methamphetamines. The law will take effect February 1, 2021. Measure 110 is silent with respect to employment, and thus does not currently impose additional obligations on employers.

Virginia

Independent Contractors

[HB 1407](#), which became effective on January 1, 2021, prohibits misclassification of workers as independent contractors and imposes certain penalties for such misclassification. The law also creates a presumption that a worker is an employee unless either party proves that the worker is an independent contractor based on application of the Internal Revenue Service's guidelines.

Non-Compete Agreements

[SB 480](#) bans agreements with "low wage" employees entered into on or after July 1, 2020, that restrain, prohibit, or otherwise restrict workers' ability to compete with former employers after termination of employment.

Virginia also enacted numerous employment-related laws that became effective on July 1, 2020. For more information, please review our [Act Now Advisory](#).

Washington

Non-Compete Agreements

On January 1, 2020, but purportedly retroactive, H.B. 1450 (which amended [Chapter 49 of the Revised Code of Washington](#)) modified the non-compete law in Washington. Specifically, the 2020 amendments deter overly broad agreements, set income thresholds and an 18-month duration, require mandatory "garden leave," prohibit out-of-state forum selection clauses, and set disclosure requirements. For more information, please see our [blog post](#) on this law. On January 1, 2021, the 2020 income threshold of \$100,000 increased to \$101,390 for employees, and, for contractors, the 2020 income threshold of \$250,000 increased to \$253,475.

Payroll Expense Tax (Seattle)

Seattle, via [Ordinance No. 126108](#), established a local payroll expense tax applicable to all employers in the City. The payroll deductions began on January 1, 2021, and are graduated, depending on the amount of the business's payroll expenses.

Washington, D.C.

Non-Compete Agreements

On January 11, 2021, Mayor Muriel Bowser signed [B23-0494](#), the Ban on Non-Compete Agreements Amendment Act of 2020 ("Act"), which prohibits the use and enforcement of non-compete agreements for all employees except certain highly paid physicians. The Act will go into effect after the expiration of the 30-day congressional review period and publication in the *District of Columbia Register*.

Exempt Salary Threshold Increases

Except where noted below, effective January 1, 2021, the following states increased their minimum salary thresholds for the administrative, professional,³ and executive exemptions.

Jurisdiction	2020 Annual Salary	2021 Annual Salary
Alaska	\$42,390.40	\$43,014.40
California (\leq 25 employees)	\$49,920	\$54,080
California (\geq 26 employees)	\$54,080	\$58,240
Colorado	\$35,568	\$40,500.20
Maine	\$36,000	\$36,450
New York (Nassau, Suffolk, Westchester Counties) ⁴ <i>(effective December 31, 2020)</i>	\$50,700	\$54,600
New York (Outside of New York City and Nassau, Suffolk and Westchester Counties) <i>(effective December 31, 2020)</i>	\$46,020	\$48,750
Pennsylvania <i>(effective October 3, 2021)</i>	\$35,568	\$40,560
Washington (\leq 50 employees)	\$35,100	\$42,712.80
Washington (\geq 51 employees)	\$35,100	\$49,831.60

³ New York's minimum salary threshold applies only to the administrative and executive exemptions—and not the professional exemption. Employers in New York State that rely upon the professional exemption need only comply with the federal salary threshold, and not the increased New York State threshold.

⁴ New York City's salary threshold will remain at \$58,500.

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