



HR Compliance: What Every Employer Should Know

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 Oakland, CA

www.virgilhr.com



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Agenda

1. Upcoming Employment and Labor Laws in 2024
2. Outstanding FLSA & FMLA Proposals
3. New Independent Contractor Rule
4. Case Studies
5. Ways to Stay Up-to-Date
6. Incorporating Compliance into Your People Strategy
7. Q&A

Disclaimer: This session is intended to be educational and is not considered legal advice. Therefore, you should not make decisions or take any actions or inactions based solely on the webinar content and should engage with an attorney.

2024 Employment & Labor Laws



Examples of Employment and Labor Laws in 2024:

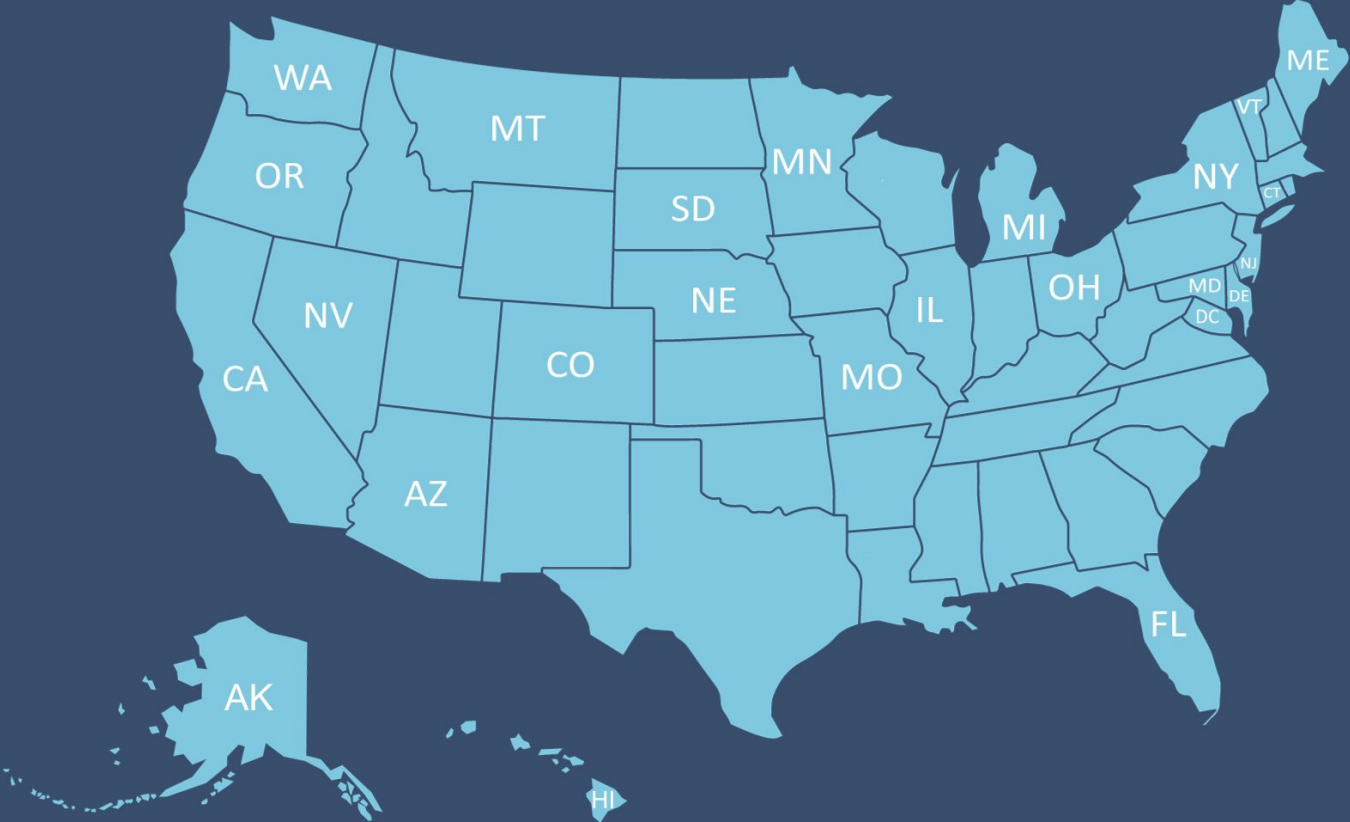
- Minimum Wage
- Leave
- Joint Employment
- Non-Competes
- Equal Pay



Minimum Wage



Minimum Wage



California



- State change to \$16/hour
 - **Effective Date:** January 1, 2024
- Changes to 41 cities and counties, ranging from \$16/hour to \$19.08/hour
 - **Effective Date:** Ranging from January 1 – July 1, 2024

Maryland

- Maryland - \$15/hour
- Howard County - \$14/hour small employers, \$15/hour large employees
- Montgomery County - \$14.50/hour small employers, \$15/hour mid-sized employers, \$16.70/hour large employers
- Prince George's County - \$15/hour

Effective Date: January 1, 2024

New York

- New York - \$15/hour
- New York City - \$16/hour
- Nassau, Suffolk, and Westchester Counties - \$16/hour

Effective Date: January 1, 2024

Leave



Leave

California



Colorado



Nevada



Washington



Illinois



Oregon



California



Sick Leave

- Sick leave has increased to 40 hours/year.
- Requires employers increase the carryover cap to 80 hours. However, no accrual cap is needed if the employer provides 40 hours of paid sick leave upfront each year of employment, calendar year, or 12 month period.

Effective Date: January 1, 2024

California



Reproductive Loss Leave

- Employers must grant an eligible employee up to 5 days of leave following a ‘reproductive loss event’.
- An event includes the day or, for a multiple-day event, the final day of a failed adoption, failed surrogacy, miscarriage, stillbirth, or an unsuccessful assisted reproduction.

Effective Date: January 1, 2024

Colorado

Paid Family and Medical Leave Insurance

- Social insurance, in which the state pays employees a portion of their weekly wages.
- Employers are not responsible for the salary or wages while someone is on leave, other than normal health insurance benefits.
- Most CO employees become eligible to take 12 weeks of paid leave (or 16 weeks for complicated births) after they have earned at least \$2,500 in wages within the state within the last four calendar quarters.

Effective Date: January 1, 2024

Illinois

Illinois Paid Leave for All Workers

- Requires nearly all covered IL employers to provide their covered employees up to 40 hours of paid leave per year for any purpose.

Effective Date: January 1, 2024

Organ Donation Leave

- Grants organ donors 10 days of paid leave in a 12-month period, in addition to allowance for blood donation.

Effective Date: January 1, 2024

Illinois

Illinois VESSA Revisions

- Leave for employees related to family or household members killed due to violent crimes
- Entitled to two weeks of leave

Effective Date: January 1, 2024

Bereavement Leave

- Offers six to twelve weeks of unpaid, protected leave for employees grieving the loss of a child due to suicide or homicide.

Effective Date: January 1, 2024

Chicago

Paid Time Off - Chicago

- Provides employees 10 days of paid time off per year – 5 sick days and 5 vacation days
- Certain payout provisions based on company size

Effective Date: Delayed to July 1, 2024

Non-Compete Agreements



Non-Compete Agreements

- Non-Compete Agreements in the state of California are now illegal.
- Law both 1) emphasizes that non-compete agreements and clauses are generally void and 2) makes non-competes not only void, but illegal.
- The law requires employers to notify current or former employees employed after January 1, 2022, whose contracts include a non-compete agreement or clause, that the agreement or clause is void.

Effective Date: January 1, 2024.

The notice to current or former employers must occur by **February 14, 2024**

Equal Pay



California



Connecticut



New York



Hawaii



District of Columbia



Maryland



Rhode Island



Colorado



Nevada



Washington



Cities & Counties:

- Jersey City (NJ)
- New York City (NY)
- Ithaca (NY)
- Westchester County (NY)
- Cincinnati (OH)
- Toledo (OH)

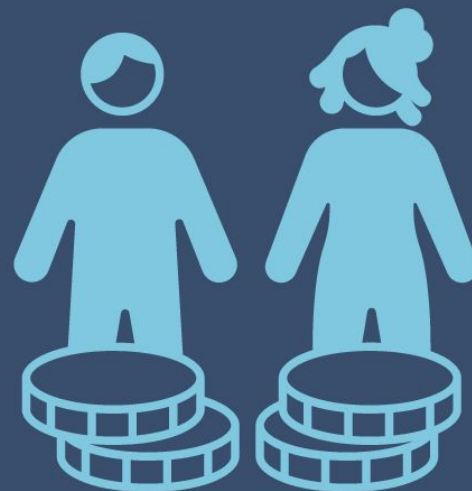
California



- Employers with 1 or more employees must disclose position's salary range to current employees upon request.
- California employers with 15 or more employees will be required to include the pay scale for a position in any job posting, including jobs that can be done remotely from the state (whether posted by the employer or via a third-party).

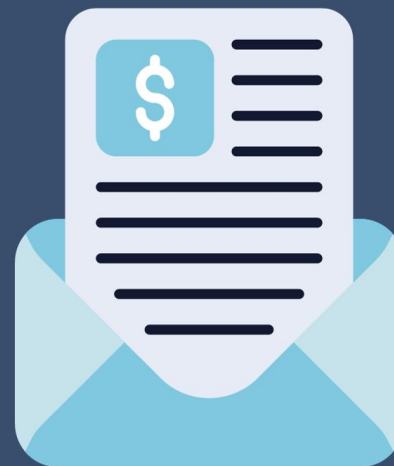
Hawaii Pay Transparency Bill

- **Salary Disclosure:** Job listings must include expected hourly rate or salary range from January 1, 2024.
- **Equal Pay Expansion:** Law now prohibits pay discrimination in substantially similar work across all protected categories.
- **Exceptions:**
 - Internal transfers/promotions.
 - Public positions under collective bargaining.
 - Employers with <50 employees.



Colorado Equal Pay For Equal Work Act

- **Vacancy Communication:** Notify employees of vacancies; in-line promotions exempt.
- **Remote Employee Notice:** Required for certain employers until 07/01/2029.
- **Job Postings:** Must include application deadline, salary, and benefits.
- **Candidate Info Sharing:** Communicate details about new hires to the team.
- **Career Path Transparency:** Clearly outline progression requirements and benefits.
- **Effective:** 01/01/2024.



California Labor Code Amendment

- **Rebuttable Presumption:** Favors employee claims of discrimination for engaging in protected activities.
- **Protected Activities Include:**
 - Challenging unequal wage rates based on gender for similar work.
 - Discussing, disclosing, or inquiring about wages.
 - Taking action to invoke wage equality rights.
- **Employer Obligations:** Must demonstrate legitimate reasons for wage discrepancies.
- **Protection from Retaliation:** Employees shielded against discrimination or retaliation for invoking these rights.
- **Effective Date:** January 1, 2024.



Outstanding FLSA & FMLA Proposals



Restore and Extend Overtime Protections

- The DOL announced a notice of proposed rulemaking that would restore and extend overtime protections to 3.6M salaried workers.
- The proposed rule would guarantee overtime for most salaried workers earning less than \$1,059/week, about \$55,000/year. The current salary limit is \$684/week or \$35,568/year.

The Job Protection Act

- Expand employees eligible for leave under the FMLA.
- This proposal would reduce the length of service requirement from 12-months to 90-days.
- This proposal would eliminate the requirement that the employee work at a site with 50 employees within a 75-mile radius.
- This proposal would eliminate the requirement that the employee have worked at least 1,250 hours.
- The proposal would expand eligible employers by eliminating the 50 employee count requirement and reducing to only one or more employees.

The Caring for All Families Act

- This proposal would amend the FMLA to permit leave to care for the following with a serious health condition:
 - A domestic partner
 - Parent-in-law
 - Adult child; or
 - Another related individual
- Would allow the employee to take, as additional leave, parental involvement and family wellness leave to participate in a child's educational and extracurricular activities or meet family care needs.

New Independent Contractor Rule



New Independent Contractor Rule

- The DOL revised the Department's guidance on how to analyze who is an employee or independent contractor under the FLSA.
- Instead of using the “core factors” set forth in the 2021 IC Rule, the final rule returns to a totality-of-the-circumstances analysis of the economic reality test in which the factors do not have a predetermined weight and are considered in view of the economic reality of the whole activity.



New Independent Contractor Rule

What does this mean?

- The previous rule identified five economic reality factors to guide the inquiry into a worker's status, to include:
 - The opportunity for profit or loss
 - Permanency
 - Control
 - Whether the work is an integral part of the business
 - Skills and initiatives
- Nature and degree of control over the work and the worker's opportunity for profit or loss were designated as "core factor" and were the most probative and carried the greatest weight.



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New Independent Contractor Rule

- The six factors are:
 - Opportunity for profit or loss based on managerial skill
 - Investment by the worker and the potential employer
 - Degree of permanence of the relationship
 - Nature and degree of control
 - Extent to which the work performed is an integral part of the potential employer's business
 - Skill and initiative
- The difference? No single factor is determinative; rather, the “totality of the circumstances” controls. Additional factors may be considered if they are relevant to the overall question of economic dependence.



New Independent Contractor Rule

What is wage theft?

- Minimum wage violations
- Overtime violations
- Off-the-clock violations
- Meal break violations
- Illegal deductions
- Tipped minimum wage violations
- Misclassification violations



Case Studies



Case Study #1: Pay Transparency

- Roughly 40 lawsuits alleging companies like Adidas and Marriott International failed to advertise pay range and benefits in Washington state.
- Each case could potentially cover hundreds of job applicants.
- Minimum damages include \$5,000 per person in the Washington statute.
- Key legal questions will include whether the job applicant can show they suffered any injury to merit an award of damages simply by seeing a job ad without a salary range and clicking “submit” on an application.
- Most have been filed in the last month, so it’s too early to tell.

Case Study #2: EEOC v Estee Lauder

- Allegations that over 200 male employees were provided with less paid leave for new child bonding than females and denied male employees return to work benefits following the bonding period provided to female employees.
- The parental leave at issue was separate from medical leave for the mothers.
- The lawsuit resolved with a consent decree, which required Estee Lauder to pay \$1.1M.
- The decree also required Estee Lauder to revise its paid parental leave and return to work flexibility policies and benefits that ensure equal benefits regardless of gender or caregiver status.

Ways to Stay Up-to-Date



The HR compliance technology that analyzes HR compliance requirements, provides instant legal guidance, and offers HR compliance resources.

- ✓ **Receive legal guidance** on ad-hoc compliance and labor law employer requirements through the VirgillHR chatbot and HR expert center
- ✓ **Develop and maintain** compliant HR/Legal documents and employee handbooks
- ✓ **Research legal requirements** using the multi-state comparison tool and legal library
- ✓ **Alert & monitor** to reduce high risk employment decisions and keep HR up-to-date



- Sign up for email subscription alerts, such as SHRM's employment and labor law updates.
- Keep abreast of employment law blogs and websites.
- Adopt VirgilHR's technology to automatically stay up-to-date on changes and leverage our customizable compliance calendar.

Incorporating Compliance into Your People Strategy



Incorporating compliance into your people strategy is crucial for ensuring that your organization operates ethically, legally, and in alignment with industry regulations.

- Identify Compliance Requirements
- Integrate Compliance into Policies and Procedures
- Training and Awareness Programs
- Leverage Technology
- Compliance Monitoring and Auditing
- Leadership Commitment and Accountability
- Incorporate Compliance into Performance Management
- Provide Resources and Support
- Continuous Improvement

By integrating compliance into your people strategy, you can foster a culture of ethical behavior, reduce the risk of legal and regulatory violations, and enhance trust and credibility both internally and externally.

Questions?



Schedule a Demo of
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