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January 2018

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IRS Extends Deadline for 1095-B and 1095-C Statements

Arthur J. Gallagher & Co.

Under Section 6056 of the Patient Protection and Affordable Care Act ("PPACA"), Applicable Large Employers ("ALEs") are required to provide statements about offers of coverage to full-time employees. Under PPACA Section 6055 health insurers and employers with self-insured health plans are required to provide statements about minimum essential (health) coverage to covered individuals using Forms 1095-B. Employers that are ALEs that sponsor self-insured health plans use Forms 1095-C to report both offers of coverage and actual coverage. The IRS uses the information provided on these Forms to administer PPACA's Individual and Employer Mandates.

Forms 1095-C must be provided to all full-time employees and to other individuals covered under the employer's self-insured plan such as part-time employees and retirees. If the health plan is insured and the employer is an ALE, then the employer provides Form 1095-C with information about offers of coverage to all full time employees and the health insurer provides coverage information using Forms 1095-B. If the employer is not an ALE, but the coverage is self-insured, then the employer must provide Forms 1095-B with information about coverage. Information is reported on a calendar year basis and the Forms must be provided by the end of January of the following calendar year. On December 22, 2017, the IRS issued Notice 2018-06 (click here for a copy) which provides for a 30-day extension on the due date for providing statements to individuals. The statements must be provided by March 2, 2018 rather than January 31, 2018. Additional extensions will not be available.

Although Notice 2018-06 extends the deadline for providing statements for the 2017 calendar year, it does not change the due date for reporting to the IRS. ALEs, health insurers, and employers that sponsor self-insured health plans must still report on coverage and offers of coverage for calendar year 2017 using Forms 1094-B (transmittal form), 1095-B, 1094-C (transmittal form), and 1095-C to the IRS by April 2, 2018 if filing electronically or February 28, 2018 if filing paper forms.

The IRS also provides some good-faith transition relief with respect to penalties. This transition relief may be available to employers that can show that they made good-faith efforts to comply with the Forms 1095-C and 1095-B reporting and statement requirements. The relief is limited to filings (and/or statements) that are incomplete or contain some incorrect information. The relief is **not** available for failure to file required reports with the IRS or for failure to provide statements as required. This relief is similar to the relief previously provided in IRS Notice 2016-70.

In determining whether the employer made a good faith effort, the IRS will consider whether the employer made reasonable efforts to prepare for reporting and providing statements by taking steps such as gathering the necessary information, transmitting the information to an agent to prepare for submission to the IRS, or testing its ability to transmit information to the IRS. The IRS will also take into account the extent to which the employer is taking steps to ensure that it will be able to report and provide statements for coverage offered (and provided under a self-insured health plan) for calendar year 2018.

More detailed information about PPACA's health coverage reporting requirements is available in GBS's Section 6055 and 6056 Reporting Requirements Toolkit (click here to access).

Tax Cuts and Jobs Act of 2017 Has Limited Impact on Health & Welfare Benefits

Arthur J. Gallagher & Co.

On December 22, 2017, the President signed the Tax Cut and Jobs Act (the "Act") into law. Although the bill includes substantial tax reform, the Act included only a limited number of provisions that will affect employers that sponsor health and welfare plans.

Perhaps the most significant provision – the elimination of the individual mandate as of January 1, 2019 – may only indirectly impact employers. The Individual Mandate is the requirement that individuals maintain minimum essential (health) coverage or pay a penalty. The requirement became effective in 2014 with an initial penalty of $95 per person (or 1% of adjusted taxable income if greater) which was increased to $695 (or 2.5% of adjusted taxable income if greater) for 2016 and beyond. The Act essentially "repealed" the Individual Mandate by permanently reducing the penalty to zero beginning in 2019. As such, for years after 2018, individuals will no longer be penalized for not having minimum essential coverage. As a result of the elimination of the penalty, some individuals who would have purchased coverage under an employer-sponsored health plan in order to avoid a penalty might choose to forgo the purchase of coverage, thus reducing the employer's health plan cost. Furthermore, the repeal of the Individual Mandate may also indirectly reduce an employer's potential for penalties under the Employer Mandate because individuals who might have enrolled in a Marketplace health insurance plan that is a prerequisite for triggering an employer penalty, might choose not to purchase health insurance from the Marketplace.

In addition, the Act will directly impact employers that offer transportation assistance plans. For tax years beginning on January 1, 2018 and later, the employer deduction for transportation fringe benefits (e.g., parking and mass transit), is eliminated. However, the exclusion from income for such benefits received by an employee is retained (if an employer treats the transportation fringe benefits as taxable W-2 wages to the employee, the employer can deduct the expenses of providing those benefits). In addition, an employer may not deduct transportation expenses that are the equivalent of employee commuting expenses, except as provided for the safety of the employee. Finally, the $20 per month exclusion for bicycle commuting expenses is suspended beginning on January 1, 2018.

Although a number of other changes were considered during the legislative process, those changes were not included in the final bill which was signed by the President. For example, there were no changes to the "Cadillac Plan" tax scheduled to take effect in 2020 and no changes to the rules governing Health Savings Accounts. However, some of the provisions which were considered at some point in the debates may be included in future legislation. Others, such as the repeal of the Employer Mandate or limit on the deduction for employer-provided health coverage, appear less likely to be included in future bills. However, only time will tell what changes Congress will choose to consider in the future.

Federal Judge Enters Order Vacating as of January 2019 Portions of Wellness Rules

Arthur J. Gallagher & Co.

On December 20, Judge Bates of the U.S. District Court for the District of Columbia issued a revised order in the wellness lawsuit brought by AARP against the Equal Employment Opportunity Commission ("EEOC"). The revised order modifies the Court's August 22, 2017 ruling which found the EEOC's use

of a 30% maximum penalty for wellness programs subject to the Americans with Disabilities Act ("ADA") and the Genetic Information Nondiscrimination Act ("GINA") to be arbitrary. The December order vacates, effective January 1, 2019, the wellness rules establishing the extent to which employers may penalize employees for failing to provide health information regarding themselves or their spouses without violating the ADA and GINA.

Prior to his most recent ruling, in August 2017, Judge Bates ruled that the EEOC must reconsider its May 2016 final ADA and GINA regulations. In that decision the Judge stated that the regulations, which permit an incentive/penalty of up to 30%, is arbitrary and capricious because the EEOC did not provide sufficient justification for its decision to use 30% as the threshold for defining "voluntary." Although the August 2017 Court order required the EEOC to review, and potentially modify, its May 2016 final wellness regulations, the Court order did not vacate those regulations. Instead, the Court determined that it would be appropriate to leave the regulations in effect until the EEOC had finished its review. The Court had also instructed the EEOC to provide a timeline for that review. See our September 2017 Directions article *"EEOC Must Reconsider ADA and GINA Wellness Regulations"* for more information about the August 2017 decision (click here to access).

In September 2017, the EEOC provided a timeline for review of the May 2016 final wellness regulations. In its timeline, the EEOC indicated that it expected to issue a notice of proposed rulemaking by August 2018 and did not plan to issue a final rule until October 2019. The EEOC also noted that because employers need time to review rules and bring their plans into compliance, any new final rule "likely would not be applicable until the beginning of 2021." Judge Bates stated that he had expected that the EEOC would address his August ruling in a "timely manner" and that the EEOC's timeline is not what he had envisioned when he issued his ruling. Because the EEOC's proposed timeline would result in a three year delay, Judge Bates decided to modify the Court's order to vacate the "voluntary" provision of the final regulations beginning on January 1, 2019. Judge Bates declined to vacate those immediately in order to reduce the potential for confusion. He also stated that he will hold the EEOC to his deadline of August 2018 for the issuance of proposed regulations.

The Court's order vacating the use of a 30% maximum incentive/penalty is not effective until 2019. As a result employers with wellness programs may want to continue to adhere to the 30% rule contained in the EEOC's May 2016 final wellness regulations for now and wait to see the outcome of the EEOC's review (and/or any additional court actions). In addition, although the Court's ruling does vacate the 30% rule for "voluntary" incentives/penalties beginning in 2019, **it does not change any of the other provisions in the May 2016 final regulations.** Employers that have wellness programs, or are adding a wellness program, will want to be sure that their program design complies with all of the other requirements in the May 2016 final regulations.

DOL Announces Indexed ERISA Penalties

Arthur J. Gallagher & Co.

The Inflation Adjustment Act requires an annual adjustment, based on inflation, of certain penalties under ERISA. On January 2, 2018, the Department of Labor ("DOL") published the 2018 indexed penalties; along with one updated penalty under the Family and Medical Leave Act ("FMLA." The new dollar amounts apply to penalties assessed after January 2, 2018.

The DOL's January 2 regulations also include inflation-adjusted penalties for other types of plans such as pension plans, as well as, increases in penalties for other labor-related requirements such as requirements

under the Fair Labor Standards Act. This article focuses on the increases applicable to health and welfare plans subject to ERISA (including the one increased FMLA penalty).

Requirement	2017 Penalty	2018 Penalty
Form 5500 Filing	Up to $2,097 per day	Up to $2,140 per day
Form M-1 Filing (MEWA)	Up to $1,527 per day	Up to $1,558 per day
Provide Plan Documents requested by DOL (e.g., SPD, SMM)	Up to $149 per day, not to exceed $1,496 per request	Up to $152 per day, not to exceed $1,527 per request
Annual CHIP Notice	Up to $112 per day for each failure	Up to $114 per day for each failure
Disclosure to States about coordinating with Medicaid, CHIP enrollment	Up to $112 per day for each failure	Up to $114 per day for each failure
GINA Violations	$112 per day, per participant and beneficiary during non-compliance period	$114 per day, per participant and beneficiary during non-compliance period
• Maximum for De Minimis Failures under GINA	$2,790	$2,847
• Minimum Penalty for Failures not corrected under GINA	$16,742	$17,084
• Cap on unintentional failures under GINA	$558,078	$569,468
Failure to Provide Summary of Benefits and Coverage	Up to $1,105 per failure	Up to $1,128 per failure

In addition to the indexed ERISA penalties, the DOL also increased the penalty for failure to post an FMLA notice in a prominent location at worksites. That penalty increases from $166 to $169 for each separate offense.

HHS Posts Q&As on National Medical Support Notices

Arthur J. Gallagher & Co.

In mid-December the Department of Health and Human Services ("HHS") posted 19 Questions and Answers about Medical Child Support Notices ("NMSNs") on its website that address general requirements of the process, coverage requirements, and aspects of the administrative process.

A NMSN is a standard notice used by state child support agencies to obtain group health coverage for children in response to a child support order. A properly completed NMSN is a Qualified Medical Child Support Order ("QMCSO") that employers and plan administrators are required to follow. A state agency will complete its portion of the NMSN and send the NMSN to an employer when appropriate. For example, a state agency will be required to engage this process when there is a new child support order requiring a parent to provide medical coverage or if an existing order is being modified. The NMSN has two parts – Part A and Part B. Part A is the Notice to Withhold for Health Coverage and employee

contributions required for the children enrolled in the employer's group health plan. Part B is the Medical Support Notice to the Plan Administrator, which the plan administrator uses to enroll children covered by a support order. The NMSN contains both Part A and Part B of the notice along with specific instructions for the employer and group health plan administrator. A copy of the current NMSN with instructions can be obtained in a PDF format from the HHS website at: https://www.acf.hhs.gov/css/resource/national-medical-support-notice-form. HHS has also posted a flowchart of the NMSN process which is available at: https://www.acf.hhs.gov/css/resource/national-medical-support-notice-flowchart.

HHS's recent publication provides a total of 19 questions and answers on its website which are subdivided into three categories: (1) general, (2) coverage requirements, and (3) administrative questions. The four general questions define the NMSN, provide information about when and to whom it may be sent, and confirm that a health plan may respond to an NMSN from a state child support agency without violating the privacy rule under the Health Insurance Portability and Accountability Act. The coverage requirements section (eight questions) covers certain issues such as the employee's loss of eligibility for coverage, COBRA coverage, union plans, changes in plans, options or providers, and employees with insufficient income to cover required contributions. The third section covers administrative issues related to withholding requirements, contacts for questions, steps in the NMSN process such as who completes which parts, and one question about "reasonable cost" for child support versus "affordability" under the Patient Protection and Affordable Care Act. The complete questions and answers can be found at: https://www.acf.hhs.gov/css/resource/medical-support-answers-to-employers-questions

Employers subject to ERISA are also required to comply with ERISA's requirements for QMCSO. For example, the plan administrator should notify the participant and alternate recipient when an NMSN is received and provide a description of the plan's QMCSO procedures. The Department of Labor published a 56-page guide to QMCSOs in 2008 which can be accessed at: https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/publications/qualified-medical-child-support-orders.pdf

DOL Issues Proposed Regulations on Association Health Plans

Arthur J. Gallagher & Co.

On January 5th, the U.S. Department of Labor ("DOL") published proposed regulations that would significantly change the way that association health plans ("AHPs"), which allow small employers to pool together to buy insurance, are regulated. The proposed regulations were in response to President Trump's executive order that directed the DOL to consider relaxing regulatory requirements related to AHPs. The executive order directed the regulators to consider adopting a broader interpretation of ERISA's definition of "employer," and to consider other ways to ultimately allow AHPs to be offered across state lines to organizations within the same line of business.

Proposed Regulations

The proposed rule would allow employers to join together as a single group to purchase insurance in the large group market. These plans would be exempt from some requirements of PPACA; they would, for example, not have to provide certain essential health benefits like mental health care, emergency services, maternity and newborn care and prescription drugs. In addition, the presumption is that by joining together, employers may reduce administrative costs through economies of scale, strengthen their bargaining position to obtain more favorable deals, enhance their ability to self-insure, and offer a wider

array of insurance options to members. The DOL states that this will result in more affordable coverage for participants.

As proposed, the rule would:

- Allow employers to band together for the sole purpose of obtaining health coverage;
- Require the association to have an organizational structure and be functionally controlled by its employer members;
- Limit participation in the group health plan to working owners, employees or former employees (and their families or other beneficiaries) of employer members; and
- Prevent AHPs from excluding or charging individuals higher premiums based on health factors.

Each of these features is discussed in greater detail below.

Employers Could Band Together for the Single Purpose of Obtaining Health Coverage

The proposed regulation would remove existing restrictions in the DOL's sub-regulatory guidance to allow employers to more easily join together in organizations for the purpose of offering group health coverage to member employers and their employees. Specifically, the proposed regulations would allow employers to band together if they either are:

(1) in the same trade, industry, line of business, or profession; or

(2) have a principal place of business within a region that does not exceed the boundaries of the same state or the same metropolitan area.

The Group or Association Must Have an Organizational Structure and Be Functionally Controlled by its Employer Members

The proposed regulations require that the association have a formal organizational structure with a governing body and have by-laws or other similar indications of formality appropriate for the legal form in which the association operates. In addition, the association's member employers must control the functions and activities of the association, including the establishment and maintenance of the group health plan, either directly or through the regular election of directors, officers, or other similar representatives.

Group or Association Plan Coverage Must Be Limited to Working Owners, Employees or Former Employees of Employer Members

Enrollment in an AHP has generally been limited to employees and former employees of a member employer, as well as their families. However, in a significant change from current rules, the proposed regulations would change the definition of an employer under ERISA to include certain self-employed individuals. Working owners that are eligible for other subsidized group health plan coverage under a group health plan sponsored by any other employer, including a spouse's employer, cannot participate in an AHP.

To qualify as a working owner, an individual must earn income from the trade or business for providing personal services. In addition, a working owner must either provide an average of at least 30 hours of personal services to the trade or business per week (or 120 hours of such service per month), or have

earned income derived from such trade or business that is at least equal to the cost of coverage under the AHP. The association is not required to verify a working owner's eligibility; rather the association can rely, absent any knowledge to the contrary, on a written representation from the individual seeking to participate that these conditions are satisfied.

Health Nondiscrimination Protections

The proposed regulations preclude AHPs from restricting membership in the association based on any health factor of an employee, former employee, or family member. The association must comply with the existing nondiscrimination rules that govern benefit eligibility and premiums for group health plan coverage. These rules prohibit discrimination within groups of similarly situated individuals. By applying the existing nondiscrimination rules to AHPs, the DOL hopes to prevent AHPs from treating different employer members differently, thus limiting their ability to engage in employer-by-employer risk rating.

Conclusion

While there is no question that the proposed regulations, which at their core loosen the commonality of interest requirement, will make it easier for interested employers to join together to create associations; there are still important issues that need to be addressed. The proposed regulations neither alter existing statutory authority governing MEWAs, nor do they modify the states' authority to regulate health insurance issuers or the insurance policies they sell to AHPs. As such, it is hoped that the final rule, once it is published will provide guidance as to how these newly formed associations will be regulated.

International

Malaysia: As of 2018, the Employees Provident Fund will no longer accept cash contributions

Arthur J. Gallagher & Co.

Effective 2 January 2018, employers are required to transfer employee contributions to the Employee Provident Fund (EPF) electronically. The EPF will no longer accept cash or other physical forms of payment for employee contributions. The EPF has created an electronic system known as "e-Bayar" to facilitate employee contribution payments, and this system will be mandatory for all employers paying contributions. The general manager of the EPF, Azmi Awang, made the announcement on 3 October 2017.

The EPF is a social security institution which provides retirement benefits for members. Membership in the EPF is mandatory, though many employees in the informal sector and otherwise casually employed do not have active EPF accounts.

Applicable legislation

The EPF is administrated under the Employees Provident Fund Act 1991 (Act 452), enacted on 11 April 1991.

Affected employees

Employees are not directly affected, as contributions are paid by the employers. However, membership in the EPF is mandatory for all employees.

Affected employers

All employers located in Malaysia and with employees in Malaysia are affected, as all employers are required to pay any contributions for their employees through the e-Bayar system.

Payments system

Currently, many employers make contribution payments in cash, delivering them in person at an EPF office. Other currently-available methods of payment include postal orders, checks and money orders.

At the time of the announcement, the general manager said that 35 percent of employers in the province of Sabah had used e-Bayar already.

Reaction

The Sarawak Business Federation, a large group of employers and business owners, called on the government to institute a longer grace period before requiring the switch. The Federation called for a grace period of six months to a year. The Federation claimed that small and rural employers may not have the savvy to set up an electronic payment system, and that the government should provide support, including high-speed internet access, to such employers.

About GVISOR

GVISOR tracks changes in local employee benefits regulations and trends. All Compliance Alerts include suggestions of next steps a company should consider taking in order to comply with reported changes. GVISOR also includes Country Manuals, which are comprehensive guides to employee benefits in various countries. Covered topics include retirement, death, disability, workers' compensation, unemployment, maternity, medical, leave, holidays, employment conditions, termination, and incentives and perquisites.

For more information on GVISOR, contact us at +1.202.299.9377 or stacy_hayashi@ajg.com.

Retirement

How 3 Generations Prepare for Retirement

January, 2018
Think Advisor

Expect widely held assumptions about retirement to change, according to new research from Transamerica Center for Retirement Studies.

In its 18th annual Transamerica Retirement Survey, TCRS examines three generations currently represented in the workforce: baby boomers, Generation X and millennials.

"The landscape is now changing so rapidly that it is clear that their retirement will be different from their parents' generation and from each other's as well," according to TCRS.

The online survey was conducted between August 9 and Oct. 28 among a nationally representative sample of 6,372 workers age 18 or older, of which 2,593 were millennials, 1,586 were Gen Xers, 2,076 were baby boomers and 117 were born prior to 1946.

Millennials

Millennial workers, which TCRS defines as those born between 1979 and 2000, are a "digital do-it-yourself generation of retirement savers," according to TCRS.

The survey finds that most millennials (80%) are concerned that Social Security will not be there for them when they get ready to retire.

Unlike their parents' generation, more than half expect their primary source of retirement income to be self-funded through retirement accounts (e.g., 401(k)s, 403(b)s, IRAs) or other savings and investments.

According to the survey, 71% are saving for retirement in a company-sponsored 401(k) or similar plan, and/or outside the workplace.

"They are getting an early and strong start with their retirement savings, but they need to learn more about investing," according to TCRS. "And they are hungry for more information on how to achieve their retirement goals."

The median age that millennials started saving for retirement was 24, according to the survey. However, the survey also finds that one in four say that they are "not sure" how their retirement savings are invested and 76% say they would like to receive more information and advice from their employers on how to achieve their retirement goals.

Generation X

Generation X workers, which TCRS defines as those born from 1964 to 1978, are the first generation to have access to 401(k) plans for the majority of their working careers, according to TCRS.

"Generation X entered the workforce in the late 1980s just as 401(k) plans were making their first appearance and defined benefit plans were beginning to disappear," according to TCRS.

As a result, Gen Xers have high plan participation rates. According to the survey, 80% are saving for retirement in a company-sponsored 401(k) or similar plan and/or outside the workplace.

However, the median age that Generation X started saving for retirement (age 30) is considerably higher than millennials.

The survey also finds that many Gen Xers should be saving more, and some have taken loans and early withdrawals. According to the survey, 34% have taken a loan, early withdrawal or hardship withdrawal from their retirement savings.

The survey finds 8% is the median percentage that Generation X participants are contributing to 401(k) or similar plans, and $72,000 is the median amount saved in all household retirement accounts.

"Their retirement confidence is lacking and many are behind on their savings; however, it's important for them to know that they still have time to catch up before they retire," according to TCRS.

At the time of the survey, only 14% of Gen Xers are "very confident" that they will be able to fully retire with a comfortable lifestyle.

Baby Boomers

According to TCRS, baby boomers — those born between 1946 and 1964 — are the generation that has rewritten societal rules at every stage of their life.

"Many were already mid-career when the retirement landscape shifted from defined benefit plans to 401(k) or similar plans," according to TCRS. "They have not had a full 40-year time horizon to save in 401(k)s."

Many were also hit hard during the Great Recession and, unlike younger generations, they have less time to financially recover before they retire, according to TCRS.

Likely as a result of this, many boomer workers are planning to work to older ages than previous generations. The survey finds that two-thirds plan to or already are working past age 65 or do not plan to retire and 54% plan to continue working after they retire and most for financial and healthy aging-related reasons.

Yet, the survey also finds that few have a backup plan if forced into retirement unexpectedly. According to the survey, 28% of the boomers surveyed have a backup plan for retirement income if unable to work prior to their planned retirement.

Only 26% of the boomers surveyed plan to immediately stop working and retire when they reach a certain age or savings goal, according to the survey.

In contrast to other generations, 39% expect their primary source of retirement income to be self-funded accounts such as 401(k)s, 403(b)s, and IRAs or other savings. And 38% expect Social Security to be their primary source of income when they retire.

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Human Resources View

What Else Can Organizations do to Rein in Harassment?

Arthur J. Gallagher & Co.

By Charlotte Jensen, HR and Compensation Consulting

As the #metoo movement[1] takes on a life of its own, many organizations who were once absolutely certain #notme are now wondering #isitme? Human Resources professionals are scrambling to ensure policies and training are up to date. But, is that really the issue… or the answer?

[1] #metoo is an active movement on social media to get people to understand the prevalence of sexual harassment and assault in society. It that it takes something that women had long kept quiet about and transforms it into a movement. Unlike many kinds of social-media activism, it isn't a call to action or the beginning of a campaign,

In 2016, the Equal Employment Opportunity Commission (EEOC) released a study[2] that showed sexual harassment training is generally ineffective. Why? Among other things, research shows that such trainings do not have much impact on changing employees' attitudes.

Wait. What? Anti-harassment training isn't about checking the compliance box? It's supposed to change attitudes?

As long as there are laws and attorneys, there will always be a need for compliance training. And to be fair, training on the fundamentals is critical. Employees and managers alike need to be familiar with the law; they need to understand what harassment is – and what it isn't; they need to know the company's complaint procedures and subsequent investigation process; and they need to be clear about retaliation.

Traditional training accomplishes this. The problem is, that's where traditional training often stops. Symptoms are reviewed, but underlying causes are ignored.

This is where the #metoo movement and wave of public firings can create a meaningful shift in how we look at harassment in the workplace. As important as compliance training is, it usually doesn't impact employee attitudes, and it doesn't look at the organization's culture to see how that might be creating an environment that lends itself to harassment. It's uncomfortable to ask this of ourselves, but the volume of people coming forward to share their stories leaves us no choice.

I recently sat with a group of senior level managers to discuss their harassment concerns in their office. They were not looking for formal training per se; they just wanted to talk and ask questions specific to their workplace. Yes, we covered the basics so they would have a solid foundation, but we largely let their questions and examples dictate the flow. This meant creating an environment where open discussion felt "safe" and ensuring the managers understood we weren't there to judge or discipline past behaviors but to acknowledge and learn from them. Realizing that they weren't alone in this and that most organizations out there are having the same conversation made that much easier to do than it might otherwise have been – a key reason why employers need to act while the issue is receiving so much attention; there may never be another time so well-suited to create honest, open dialog.

As mentioned, this discussion developed around the managers' own experiences, scenarios, and questions, not the canned ones that normally come with traditional training. Believe me, there is no lack of examples most of us can personally draw upon, and once the first person in the room was willing to share something, everyone else was more comfortable doing so. It's almost as though people, male and female alike, feel that as a society, we've now granted permission to have this discussion.

The key was not to let any example be a wasted opportunity. Every situation that was shared with the group was discussed--whether it potentially rose to the level of harassment, how and why or why not, how others in the room perceived the same set of circumstances, how tricky situations could be handled, and perhaps most importantly, how to talk about it with each other without getting defensive. This created the outcome that any training should strive to achieve – practical knowledge that participants could personally relate to and could realistically apply in their lives.

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culminating in a series of protests and speeches and events. It's simply an attempt to get people to understand the prevalence of sexual harassment and assault in society.

[2] https://www.eeoc.gov/eeoc/task_force/harassment/report_summary.cfm

Without a doubt, this was one of the most productive discussions I've ever witnessed on the topic. The group was engaged, willing to share personal experiences, and open to acknowledging how their own behaviors or lack of awareness could contribute to a concerning environment. What evolved over the course of our conversation was a meaningful, grassroots understanding of harassment within a context that made sense to them – the kind of intrinsic awareness that can lead to a shift in attitudes and an evolution of the organization's culture. That honesty and "active" awareness is what traditional compliance training typically does not accomplish but is the key to moving the workplace from #metoo to #nomore.

State Law Review

Final Regulations and Guidance Issued for Massachusetts Increased Employer Medical Assistance Contribution Rates and Supplement

Arthur J. Gallagher & Co.

In August 2017, Massachusetts enacted a law that imposed a temporary increase in existing employer fees and created a new supplemental payment requirement. These initiatives were intended to help fund MassHealth, which provides subsidized health care to low-income residents of Massachusetts through Medicaid and the Children's Health Insurance Program ("CHIP"). The Massachusetts Division of Unemployment Assistance ("DUA") issued proposed regulations on the supplement and FAQs in November 2017, and released final versions of the guidance in December 2017.

The law temporarily increases the amount of the Employer Medical Assistance Contribution ("EMAC"), which generally applies to employers with more than five employees. Required contributions are based on a percentage of the first $15,000 of each employee's wages paid during the calendar year. The required contribution rate increases from 0.34% (a maximum of $51 per employee) to 0.51% (a maximum of $77 per employee). Employers newly subject to the EMAC rules are exempt from making contributions for the first three years and then subject to lower rates in the fourth and fifth years of applicability. These rates increase from 0.12% in the fourth year to 0.18%, and from 0.24% in the fifth year to 0.36%. To offset the costs of these increased contributions, DUA reduced previously scheduled increases to employer unemployment insurance contributions for 2018 and 2019.

In addition, the law requires payment of an EMAC supplement by employers who have non-disabled employees receiving MassHealth insurance coverage (other than a premium assistance program) or subsidized coverage through the Connector, the Massachusetts state marketplace, for a continuous period of at least 56 days. All employers with more than five employees will be required to pay five percent of the first $15,000 of each employee's wages paid during the calendar year (up to $750). The EMAC supplement will first be assessed on an employer's first quarter Unemployment Insurance liability statements in April 2018, and payment will be due on or before the last day of the first month after the quarter in which wages were paid and reported. Employers required to pay an EMAC supplement may request a hearing to dispute liability for the supplement or contest the amount of the liability.

The EMAC rate increases and supplement will only apply in 2018 and 2019. Beginning on January 1, 2020, EMAC rates will revert to previously applicable levels and the supplement will no longer apply. However, additional changes are expected in the future, as Governor Baker has signaled that he intends to work with the state legislature to propose additional reforms that will help control the rising costs of the MassHealth program.

States expand family, military, and sick leave protections

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Family medical leave

California. The *New Parent Leave Act* has been enacted to increase workplace protections for new parents who work for small businesses. The bill provides up to 12 weeks of unpaid maternity or paternity leave for Californians who work for companies with 20 to 49 employees and protects these new parents from losing their jobs and health care benefits. Current law only provides that those who work for an employer of 50 or more are eligible for job-protected leave.

Specifically, employees who have been employed more than 12 months with the employer, and who have at least 1,250 hours of service with the employer during the previous 12-month period, and who work at a worksite in which the employer employs at least 20 employees within 75 miles, will be able to take, upon request, the parental leave to bond with a new child within one year of the child's birth, adoption, or foster care placement. Employees will be entitled to use accrued vacation pay, paid sick time, other accrued time off, or other paid or unpaid time off negotiated with the employer, during the period of parental leave.

Employers are prohibited from refusing to hire, or from discharging, firing, suspending, expelling, or discriminating against, an individual who exercises his or her right to such parental leave (Ch. 686 (S. 63), L. 2017).

Delaware. The state has enacted a law providing that mothers who are full time state employees may have up to six weeks of unpaid leave following the newborn discharge from the hospital, even if their FMLA benefits have been exhausted (Ch. 166 (H. 64), L. 2017).

District of Columbia. The District of Columbia has enacted the *Universal Paid Leave Amendment Act of 2016*, establishing a paid leave program for individuals employed in the District. The program will be funded by payroll contributions from employers (Act 21-682 (B21-415), L. 2015, enacted Feb. 17, 2017, eff. April 7, 2017).

The program allows for paid leave for a qualifying event, namely: (1) up to six workweeks within a 52-week period for qualifying family leave to provide care or companionship to a family member because of a serious health condition of a family member; (2) up to two workweeks for a qualifying medical leave event of being diagnosed or the occurrence of a serious health condition of an eligible individual; and (3) up to eight workweeks of qualifying parental leave, relating to (a) the birth of a child of an eligible individual or (b) placement of a child with the individual for adoption or foster care or (c) placement of a child with an eligible individual for whom the eligible individual legally assumes and discharges parental responsibility.

The Mayor is required, by July 1, 2019, to begin collecting from covered employers contributions for the Universal Paid Leave Implementation Fund equal to 0.62 percent of the wages of each covered employee.

Hawaii. The *Hawaii Family Leave Law* was amended to extend job protections when an employee requests leave to care for a sibling with a serious health condition. This law provides employees who work for employers with 100 or more employees with up to four weeks of unpaid leave, annually, upon the birth or adoption of an employee's child, or to care for the employee's child, spouse, reciprocal beneficiary, sibling, or parent with a serious health condition (Act 128 (H. 213), L. 2017).

Nebraska. The state expanded its breastfeeding rights to include accommodations for mothers at private, denominational and parochial day schools that meet certain requirements for legal operation (L.B. 427, L. 2017).

Nevada. Certain public and private employers are required to provide reasonable break times and a place for an employee who is a nursing mother to express breast milk. Employers will be prohibited from retaliating against an employee for certain actions relating to this requirement (Ch. 271 (A. 113), L. 2017, eff. July 1, 2017).

New York. The *New York Paid Family Leave Law*, which becomes effective January 1, 2018, will, when fully phased in, result in eligible employees being entitled to up to 12 weeks of paid family leave when they are out of work for certain qualifying reasons. The paid family leave program is intended to be funded entirely through employee payroll deductions.

Under the statute, the New York Department of Financial Services was tasked with setting the maximum employee contribution by June 1, 2017, and annually thereafter. On June 1, the maximum employee contribution was set at 0.126% of an employee's weekly wage, up to and not to exceed 0.126% of the statewide average weekly wage.

Disability benefits. In February 2017, the New York Workers' Compensation Board proposed adding Paid Family Leave regulations to the state's disability benefits laws. The rules were adopted on July 10, and went into effect on July 19, 2017. Governor Cuomo stated, "By enacting and implementing the strongest paid family leave program in the nation, this administration is taking yet another step forward to providing economic justice to all New Yorkers."

Oklahoma. State agencies shall provide or contract to provide, through the State Employee Assistance Program, debriefing and counseling services for state employees who are involved in, witness or are otherwise exposed to a violent or traumatic event in the workplace. State employees who are affected by such events shall be encouraged to participate in debriefing or counseling services, and paid administrative leave shall be provided. Note that employees have the option to refuse services offered (S. 532, L. 2017, eff. Nov. 1, 2017).

Texas. The state enacted a law providing that it is an unlawful employment practice for an employer's leave policy not to permit an employee to use leave to care for the employee's foster child (H. 88, L. 2017, eff. Sept. 1, 2017).

Utah. The state enacted a law requiring the Department of Human Resource Management to publicize the organ donor leave provision to state employees during the month of April (H. 267, L. 2017).

Military leave

Alabama. When any active member of the Alabama National Guard, or a member of the national guard of another state who is employed in Alabama, in time of war, armed conflict, or emergency proclaimed by the Governor or by the President of the United States, is called or ordered to state active duty or federally funded duty for other than training, the provisions of the federal *Servicemembers Civil Relief Act* (SCRA) and the federal *Uniformed Services Employment and Reemployment Rights Act* (USERRA) apply. Also, an active member of the Alabama National Guard, or a member of the national guard of another state who is employed in Alabama, called or ordered to active duty for a period of 30 consecutive days or more is eligible for military differential pay and restoration of annual or sick leave (Act 258 (S. 97), L. 2017).

Arkansas. The state enacted a law clarifying its statutes concerning leave of absence for certain training programs of the National Guard or of the United States Armed Forces (Act 529 (H. 1530), L. 2017).

California. California's *Military and Veterans Code* prohibits discrimination against service members based on their membership or service, including discrimination with respect to his or her employment.

This law has been amended to expand the scope of these prohibitions by prohibiting discrimination "in terms, conditions, or privileges" of employment, which would expand the scope of a crime, and thus impose a state-mandated local program (Ch. 591 (A. 1710), L. 2017).

Also, the public employment military leave law has been amended to provide that a member of the State Military Reserve is to be granted military leave and other benefits, including reinstatement after such service, on the same basis as for a member of the National Guard or other military reserve member (Ch. 92 (A. 1711), L. 2017).

Connecticut. Military leave and reemployment rights and protections for members of the armed forces and reserves have been extended to also apply to the National Guard of any state (P.A. 17-27 (S. 917), L. 2017).

In addition to the protections described in the SCRA, any such member ordered into active state service may terminate any contract for telecommunication services, Internet services, television services, satellite radio services or membership at an athletic club or gym, at any time after the date such member receives military orders directing such member to a location, for a period of 90 days or more, that does not support any such contract (P.A. 17-197 (H. 7179), L. 2017).

District of Columbia. The District of Columbia *Government Comprehensive Merit Personnel Act of 1978* has been amended to expand the pay differential authorization for agency and independent agency employees who serve in the reserve units of the United States Armed Forces and who are called or ordered to active duty in preparation for or as a result of Operation New Dawn, Operation Odyssey Dawn, or any other specified contingency (Act 648 (B. 298), L. 2015, enacted Jan. 24, 2017).

Florida. Employees who are members of the Florida Wing of the Civil Air Patrol are eligible to take up to 15 days of unpaid Civil Air Patrol leave for training or mission annually (Ch. 73 (S. 370), L. 2017).

Iowa. Military leave protections were expanded to provide that military leave and reemployment protections apply equally to members of the national guard of another state, an organized reserve unit in another state, or a civil air patrol unit in another state who are employed in Iowa. Such members are also protected from discrimination based on such membership (S. 373, L. 2017).

Missouri. Members of the state military forces of Missouri who are ordered to active state duty by the governor, any Missouri employee who is a member of the national guard of another state and who is called into active state duty by the governor of that state, or any member of any reserve component of the Armed Forces of the United States who is called to active duty shall, upon being relieved from such duty, be entitled to the same reemployment rights provided by federal and state law (S. 108, L. 2017).

New Mexico. Military leave and reemployment protections were amended to extend rights, benefits and protections to members of the National Guard in New Mexico or any other state in the United States (Ch. 26 (H. 83), L. 2017, eff. July 1, 2017).

Also, the rights, benefits and protections under the federal SCRA shall apply to a member of the national guard of this state or any other state or territory of the United States ordered to state active duty for a

period of 30 or more consecutive state duty days or to any federally funded duty performed in an operational role for homeland security in accordance with federal law, 32 U.S.C. 502. The federally funded duty is in addition to and different from any federally funded unit training, assembly or drill pursuant to Section 20-4-7 NMSA 1978.

In addition, the rights, benefits and protections of the federal USERRA shall apply to a member of the national guard of this state or any other state or territory of the United States ordered to federal or state active duty (Ch. 26 (H. 83), L. 2017, eff. July 1, 2017).

Oklahoma. The state amended its military leave law to adopt specified federal law, namely the SCRA and the USERRA (S. 42, L. 2017). In other legislation, the state amended its law with respect to leave of absence from civil employment and pay provisions. Military leave and reemployment rights have been amended to limit paid leave for state and local government employees to 240 hours in a federal fiscal year (S. 233, L. 2017).

Texas. Military leave for public employees has been changed to provide that an employee of Texas or a municipality, a county, or another political subdivision of the state with at least five full-time employees who is a member of the Texas military forces, a reserve component of the armed forces, or a member of a state or federally authorized urban search and rescue team and who is ordered to duty by proper authority is entitled, when relieved from duty, to be restored to the position that the employee held when ordered to duty (H. 2486, L. 2017).

Virginia. The rights of members of the U.S. Armed Forces and the Virginia National Guard called to active duty for 30 days or more have been changed to extend protections. Those who receive permanent change of station or temporary duty orders in excess of three months' duration will be allowed to terminate certain consumer service contracts without penalty (Ch. 293 (H. 1537), L. 2017, eff. July 1, 2017).

In addition, the law relating to public officers and employees called to active duty was amended to require each school board member who is relieved from the duties of his office by reason of engaging in the war service of the United States when called forth by the Governor (for active duty in the state militia) or being called to active duty in the Armed Forces of the United States to submit to the school board a list of names of suitable persons to perform the duties of such office as acting school board member during the period in which the regular school board member is engaged in such war service or active duty. The school board is required to consider appointing and may appoint an acting school board member from such list of names. If the school board does not make an appointment from such list, the school board shall notify the submitting member in writing of the rationale for its decision. The bill provides that during such period, the acting school board member shall be vested with all the powers, authority, rights, and duties of the regular school board member for whom he is acting (Ch. 509 (H. 1490), L. 2017, eff. July 1, 2017).

Sick leave

Georgia. The state has amended Chapter 1 of Title 34 of the Official Code of Georgia Annotated to allow employees to use sick leave for the care of immediate family members (Act 203 (S. 201), L. 2017, enacted May 8, 2017, and eff. July 1, 2017).

Illinois. Illinois' Employee Sick Leave Act was amended to provide that an employment benefit plan or paid time off policy does not include long term disability, short term disability, an insurance policy, or other comparable benefit plan or policy. Also, among other changes, the law now includes a stepchild and

domestic partner to the list of persons for whom an employee may use personal sick leave benefits (P.A. 99-921 (S. 2799), L. 2015, enacted and eff. Jan. 13, 2017).

New York. Officers and employees of the state, a public authority or any municipal corporation outside of a city with a population of one million or more who filed a notice of participation in World Trade Center rescue, recovery or cleanup operations and subsequently develop a qualifying World Trade Center condition while employed by the state, a public authority or such municipal corporation or public authority shall be granted line of duty sick leave commencing on the date that such employee was diagnosed with a qualifying World Trade Center condition regardless of whether such officer or employee was employed by his or her current employer at the time that such officer or employee participated in World Trade Center rescue, recovery or cleanup operations. The officer or employee shall be compensated at his or her regular rate of pay for those regular work hours during which the officer or employee is absent from work. Such leave shall be provided without loss of an officer or employee's accrued sick leave (Ch. 273 (A. 7901), L. 2017).

Rhode Island. Starting in 2018, Rhode Island employees will be guaranteed three days of paid sick leave. The mandated paid sick time only applies to businesses with 18 or more employees. The number of guaranteed paid sick days will jump to four days in 2019, and five days in 2020. Rhode Island joins other states, including Massachusetts and Connecticut, in codifying into law the value of work (*Rhode Island Office of the Governor Press Release*, September 28, 2017; Ch. 347 (H. 5413 and S. 290), L. 2017).

Washington. Governor Jay Inslee signed Substitute Senate Bill 5975 on July 5, 2017, to enact a paid family and medical leave program for the state of Washington. The new law was approved in the state legislature on June 30, 2017, and will be in place by 2020. S. 5975 creates the Family and Medical Leave Insurance Program, which will provide everyone in the workforce with up to 12 weeks of paid medical leave, and up to 12 weeks' paid time off to care for a new child or ailing family member. That leave is capped at 16 weeks if the employee needs both types of time off in a one-year period. Women who experience pregnancy complications may receive an additional two weeks of leave. Depending on earnings, employees will receive up to 90 percent of their wage or salary, or up to $1,000 per week during their leave. Employees become eligible for the program after working 820 hours.

The cost of the new program will be shared between the employer and the employee through a payroll tax. Workers will pay 63 percent, and employers will pay 37 percent of the premiums, but the employer could decide to pay more. For example, a full-time worker earning $15 dollars an hour would contribute $1.51 a week toward the benefit, while the employer would pay 89 cents. According to the Washington Employment Security Department, the new legislation directs the Department to begin collecting premiums on January 1, 2019, and benefits will be available to eligible applicants by January 1, 2020.

Businesses with fewer than 50 employees will not be required to pay the employer share of the premium, but those businesses can still opt in. Businesses with fewer than 150 employees who pay into the program are eligible for grants of $1,000 to $3,000 each to cover the cost of an employee on leave (*State of Washington, Office of the Governor, News Release*, July 5, 2017; S. 5975, L. 2017).

What's New in State Laws

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For busy Human Resources professionals who want ready access to what is new and what has recently changed in State laws, here is a brief update.

Alaska Minimum Wage

Reminder: The minimum wage in Alaska is scheduled to increase from $9.80 per hour to $9.84 per hour, effective January 1, 2017. School bus drivers must be paid two times the minimum wage rate (*The State of Alaska, Department of Labor and Workforce Development, Administrative Services Division, Research and Analysis Section, Minimum wage Determination*, October 3, 2017).

Arizona Minimum Wage

Reminder: The minimum wage in Arizona is scheduled to increase from $10 per hour to $10.50 per hour on January 1, 2018. Arizona's state minimum wage does not apply to small businesses that have less than $500,000 in annual gross revenue and that are exempt under federal law.

California Background Checks

"Ban the box" ("Fair Chance" hiring) legislation is revised effect effective January 1, 2018.

Existing law prohibits an employer, whether a public agency or private individual or corporation, from asking an applicant for employment to disclose, or use as a factor in determining any condition of employment, information concerning an arrest or detention that did not result in a conviction, or information concerning a referral or participation in, any pretrial or post-trial diversion program, with certain exceptions.

The prohibition on a state or local agency from asking an applicant for employment to disclose information regarding a criminal conviction is repealed. Instead, it will be an unlawful employment practice under the Fair Employment and Housing Act (FEHA) for an employer with five or more employees to include on any application for employment any question that seeks the disclosure of an applicant' s conviction history, to inquire into or consider the conviction history of an applicant until that applicant has received a conditional offer, and, when conducting a conviction history background check, to consider, distribute, or disseminate information related to specified prior arrests, diversions, and convictions.

An employer who intends to deny an applicant a position of employment solely or in part because of the applicant's conviction must make an individualized assessment of whether the applicant's conviction history has a direct and adverse relationship with the specific duties of the job, and must consider certain topics when making that assessment. An employer who makes a preliminary decision to deny employment based on that individualized assessment must also provide the applicant written notification of the decision. New law is added to the California Government Code and existing law under the California Labor Code (Section 432.9) is repealed (Ch. 789 (A. 1008), L. 2017).

California Employment Verification/Immigration

Reminder: Under the California Labor Code, all protections, rights, and remedies available under state law, except as prohibited by federal law, are available to individuals regardless of immigration status who have applied for employment or who are or have been employed. Effective January 1, 2018, for the purpose of enforcing state labor, employment, civil rights, consumer protection, and housing laws, a person's immigration status is irrelevant to the issue of liability, and no inquiry shall be permitted into the person's immigration status, except where necessary to comply with federal immigration law (Ch. 160 (A. 1690), L. 2017).

Employers must post notice in the language the employer normally uses to communicate employment-

related information to employees of any inspections of I-9 Employment Eligibility Verification forms or other employment records conducted by an immigration agency within 72 hours of receiving notice of an inspection.

In addition, except as otherwise required by federal law, employers are not to provide voluntary consent to an immigration enforcement agent to enter any nonpublic areas of the workplace. Employers are also not to provide voluntary consent to an immigration enforcement agent to access, review, or obtain the employer's employee records without a subpoena or judicial warrant. Employers are not prohibited from challenging the validity of a subpoena or warrant in a federal district court. This does not serve to limit or restrict an employer's compliance with a memorandum of understanding governing use of the federal E-Verify system (Ch. 492 (A. 450), L. 2017).

California Equal Pay

Reminder: The California Equal Pay Act is amended effective January 1, 2018, to extend coverage to public-sector employees. The measure adds a definition of "employer" to include "public and private employers." The misdemeanor penalty provision for violations would not apply to public employers, however (Ch. 776 (A. 46), L. 2017).

New law has been added effective January 1, 2018, that will prohibit all employers, including the legislature and state and local governments, from seeking or relying on salary history information (including compensation and benefits) of a job applicant as a factor in determining whether to offer the applicant employment or what salary to offer the applicant. Also, employers will be required, upon reasonable request, to provide the pay scale for the position being applied for. Applicants would not be prohibited from voluntarily and without prompting disclosing salary history information, and likewise would not prohibit the employer from considering or relying on that voluntarily disclosed information in determining salary. This provision will apply to all employers, including state and local government employers and the legislature, but does not apply to salary history information disclosable to the public pursuant to federal or state law (Ch. 688 (A. 168), L. 2017).

California Family and Medical Leave Law

The "New Parent Leave Act" has been enacted to increase workplace protections for new parents who work for small businesses. The bill provides up to 12 weeks of unpaid maternity or paternity leave for Californians who work for companies with 20 to 49 employees and protects these new parents from losing their jobs and health care benefits. Current law only provides that those who work for an employer of 50 or more are eligible for job-protected leave. Employers are prohibited from refusing to hire, or from discharging, firing, suspending, expelling, or discriminating against, an individual who exercises his or her right to such parental leave (Ch. 686 (S. 63), L. 2017).

California Farm Labor/Sexual Harassment Training

Reminder: Law requiring farm labor contractors to provide agricultural employees with training on sexual harassment prevention is amended to require a licensee, as part of the application for license renewal, to provide the labor commissioner with the total number of agricultural employees trained in the calendar year prior to the month of the renewal application. Failure to comply with training requirements will subject a farm labor contractor to citation and civil penalty (Ch. 424 (S. 295), L. 2017).

California Military Service Discrimination

Reminder: The Military and Veterans Code is amended to expand protections from discrimination based

on membership or service "in terms, conditions or privileges of employment" and to provide that members of the State Military Reserve are to be granted military leave and other benefits, including reinstatement after such service, on the same basis as members of the National Guard or other military service members (Ch. 591 (A.1710) and Ch. 91 (A. 1711), L. 2017).

California Minimum Wage

The minimum wage is scheduled to increase to $11 per hour for employers with 26 employees or more and $10.50 for employers with 25 or fewer employees on January 1, 2018. State law requires that most California workers be paid the minimum wage. Some cities and counties have a local minimum wage that is higher than the state rate. Currently, the state minimum wage is $10.50 per hour for employers with 26 or more employees and $10 per hour for employers with 25 or fewer employees (*State of California, Department of Industrial Relations, News Release No. 2017-110,* December 4, 2017, http://www.dir.ca.gov/DIRNews/2017/2017-110.pdf).

The San Francisco Minimum Compensation Ordinance (MCO) generally requires City Contractors and tenants at the San Francisco International Airport to pay a minimum hourly wage rate to their covered employees. For agreements entered into or amended on or after October 14, 2007, the MCO for-profit rate for employees is $14.02 per hour effective January 1, 2018. Nonprofits must pay no less than the San Francisco minimum wage of $14 per hour, effective as of July 1, 2017. For agreements entered into prior to October 14, 2007, for work performed with the City of San Francisco, vendors must pay no less than the San Francisco minimum wage of $14 per hour (effective July 1, 2017); For work performed outside of San Francisco, vendors must pay $10.77 per hour (*City and County of San Francisco, Office of Labor Standards Enforcement, Notice of Minimum Compensation Ordinance Changes Effective January 1, 2018*).

California Overtime

Reminder: Effective January 1, 2018, the minimum wage rate computer software employees must receive to be exempt from state overtime requirements is adjusted to provide that, to be exempt, employee's must earn at least $43.58 per hour, $7,565.85 per month, or an annual salary of at least $90,790.07. For licensed physicians and surgeons, the minimum hourly rate of pay exemption is $79.39 (State of California, Department of Industrial Relations, Office of the Director—Research Unit, Memorandum from Maria Y. Robbins, Deputy Chief, Office of the Director, to Christine Baker, Director, DIR, on the subject of Overtime Exemption for Computer Software Employees, October 3, 2017, http://www.dir.ca.gov/oprl/ComputerSoftware.pdf; State of California, Department of Industrial Relations, Office of the Director—Research Unit, Memorandum from Maria Y. Robbins, Deputy Chief, Office of the Director, to Christine Baker, Director, DIR, on the subject of Overtime Exemption for Licensed Physicians and Surgeons, October 3, 2017, http://www.dir.ca.gov/oprl/Physicians.pdf.

An exemption from overtime compensation requirements under Labor Code Section 510 that applies to teachers of private elementary and secondary institutions if certain conditions are met is amended to specify that the standards apply to full-time employees and prescribes a revised earnings standard for exemption from overtime requirements for part-time employees (Ch. 99 (S. 621), L. 2017).

California Prevailing Wages

Reminder: California law relating to public works requires, among other things, payment of prevailing wages. Private residential projects built on private property are exempt unless the project is built pursuant to an agreement with a state agency, redevelopment agency, or local public housing authority. This law

has been amended to also provide that the exemption would not apply to a residential project built pursuant to an agreement with a successor agency to a redevelopment agency (Ch. 610 (A. 199), L. 2017).

Also, the definition of “public works” for payment of prevailing wages includes construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds. Effective January 1, 2018, the definition of “public works” is expanded to include tree removal work on such projects (Ch. 616 (A. 1066), L. 2017).

California law relating to apprentices and prevailing wages is amended to require an apprenticeship program, to be eligible to receive grant funds from the council, to agree to keep adequate records that document the expenditure of those grant funds and make all records available to the department so that the department is able to verify that grant funds were used solely for training apprentices (Ch. 553 (A. 581), L. 2017, effective January 1, 2018).

California Veterans' Preference

Reminder: The state has enacted a law relating to civil service examination exemptions and certain hiring preferences for veterans. The new law authorizes the Department of Human Resources or a designated appointing authority to use a signed document by an applicant's commanding officer of the military to verify an applicant's military service (Ch. 237 (S. 410), L. 2017).

California Wage Payment

Reminder: For private construction project contracts entered into on or after January 1, 2018, a direct contractor making or taking a contract in California for the erection, construction, alteration, or repair of a building, structure, or other work, is to assume, and will be liable for, debt owed to a wage claimant that is incurred by a subcontractor, at any tier, acting under, by or for the direct contractor for the wage claimant's performance of labor. Liability applies to unpaid wages, fringe benefits and other benefits or contributions, including interest owed, but does not extend to penalties or liquidated damages. A third party owed fringe or other benefit payments or contributions on a wage claimant's behalf, as well as a joint labor-management cooperation committee, may bring a civil action against a direct contractor to enforce liability (Ch. 804 (A. 1701), L. 2017).

Also, new law has been enacted to require commission wages paid to any employee who is licensed under the Barbering and Cosmetology Act to be due and payable at least twice during each calendar month on a day designated in advance by the employer as the regular payday and would authorize the employee and employer to agree to a commission in addition to the base hourly rate. Commission wages are wages paid to an employee who is licensed under that act for providing services for which a license is required when paid as a percentage or a flat sum portion of the sums paid to the employee by the client receiving the service, and for selling goods, provided that the employee is paid a regular base hourly rate of at least two times the state minimum wage rate in addition to commissions paid. The employee may be compensated for rest and recovery periods at a rate of pay not less than the employee's regular base hourly rate (Ch. 831 (S. 490), L. 2017).

Retaliation for filing wage claims is prohibited in California. This law has been amended to provide that the Labor Commissioner, during the course of an investigation under the law, upon finding reasonable cause to believe that any person has engaged in or is engaging in a violation, may petition the superior court in any county in which the violation in question is alleged to have occurred or in which the person resides or transacts business, for appropriate temporary or preliminary injunctive relief, or both temporary and preliminary injunctive relief (S. 306, L. 2017).

California Whistleblower Protections

Reminder: The California Whistleblower Protection Act is amended to require that the auditor create an alternative system for submission to an independent investigator of allegations of improper governmental activity engaged or participated in by employees of the office (Ch. 605 (A. 31), L. 2017).

In any civil action or administrative proceeding, an employee may petition the superior court for temporary or preliminary injunctive relief. The law has also been amended to provide notice procedures and criteria for the court to evaluate in granting or denying the application for injunction. Injunctive relief granted under these provisions is not stayed pending appeal (Ch. 460 (S. 306), L. 2017).

Also, a licensed health facility is prohibited from discriminating or retaliating against a patient, employee, member of the medical staff, or any other health care worker of the health facility because that person has presented a grievance, complaint, or report to the facility, or has initiated, participated, or cooperated in an investigation or administrative proceeding related to the quality of care, services, or conditions at the facility. The maximum fine for willfully violating the law has been increased from not more than $20,000 to not more than $75,000 (Ch. 275 (A. 1102), L. 2017, effective January 1, 2018).

Colorado Minimum Wage

The minimum wage in Colorado is scheduled to increase to $10.20 per hour on January 1, 2018. The minimum wage for tipped employees will increase to $7.18 per hour. If the employee's tips plus cash wage of $7.18 per hour do not equal $10.20 per hour, the employer must make up the difference.

The new minimum wage is required by Article XVIII, Section 15 of the Colorado Constitution. Under the Constitutional provision, the minimum wage is increased annually by 90 cents each January 1 until it reaches $12 per hour on January 2020. Starting in 2021, the minimum wage is to be adjusted annually for cost-of-living increases, based on the Consumer Price Index used for Colorado. This minimum wage rate applies to employees who receive the state or federal minimum wage. For tipped employees, no more than $3.02 per hour in tip income may be used to offset the minimum wage.

The Department of Labor and Employment, Division of Labor Standards and Statistics, has adopted Colorado Minimum Wage Order Number 34 (7 CCR 1103-1) to reflect the change (*December Colorado Register, Notice of Permanent Rules Adopted, for the Division of Labor Standards and Statistics*, December 10, 2017, http://www.sos.state.co.us/CCR/RegisterContents.do?publicationDay=12/10/2017&Volume=40&yearPublishNumber=23&Month=12&Year=2017).

Colorado Unemployment Insurance

For 2018, the taxable wage base in Colorado will be $12,600, up $100 from the 2017 taxable wage base, which was $12,500.

Delaware Equal Pay

Reminder: Effective December 14, the state's Pay Equity law is amended to prohibit employers from inquiring into an applicant's compensation history. An applicant may voluntarily disclose the information if he or she wishes to do so, and the bill explicitly permits discussion and negation of compensation expectations between an employer and applicants, so long as the employer does not affirmatively seek compensation history in the course of discussion and negotiation. An employer is permitted to seek and confirm such information after an offer, including compensation, has been negotiated, made, and

accepted. The effective date of the bill is delayed by six months to allow employers to update their policies (Ch. 41 (H. 1, with amendment by Senate Amendment 1), L. 2017).

Florida Minimum Wage

Reminder: The minimum wage in Florida will increase from $8.10 per hour to $8.25 per hour on January 1, 2018 (*Florida Department of Economic Opportunity, 2018 Florida Minimum Wage Calculations,* October 13, 2017).

Hawaii Minimum Wage

Reminder: The minimum wage in Hawaii is scheduled to increase from $9.25 per hour to $10.10 per hour on January 1, 2018.

Idaho Unemployment Insurance

Contribution rates in Idaho for 2018 will range from 0.393% to 1.309% for positive-ratio employers and from 2.355% to 5.4% for deficit-ratio employers. The standard rate will be 1.374% in 2018.

Illinois Disaster and Emergency Services Leaves

Reminder: Effective January 1, 2018, the Volunteer Emergency Worker Job Protection Act is amended by adding a new part that prohibits a public employer from disciplining an employee who is a volunteer emergency worker if the employee, in the scope of acting as a volunteer emergency worker, responds to an emergency phone call or text message during working hours that requests that person's volunteer emergency services (P.A. 100-0324 (S. 1895), L. 2017).

Illinois Employee Training

Reminder: The Data Security on State Computers Act requires certain state employees to annually undergo training by the Department of Innovation and Technology concerning cybersecurity. The department may make the training an online course. Training must include detecting phishing scams, preventing spyware infections and identity theft, and preventing and responding to data breaches (P.A. 40 (H. 2371), L. 2017).

Illinois Violence in the Workplace

Reminder: The state has amended the Criminal Code of 2012 with respect to cyberstalking. A person commits illegal electronic monitoring when he or she knowingly installs, conceals, or otherwise places an electronic tracking software or spyware on an electronic communication device without the consent of all owners and primary users of the device for the purpose of monitoring or following the user or users of the software. Exceptions are provided (P.A.166 (H. 3251), L. 2017).

Iowa Unemployment Insurance

Iowa contribution rates will be determined under Rate Table 7 in 2018, and will range from 0.0% to 7.5%. New nonconstruction employers will pay 1.0%, and new construction employers will pay 7.5%. Employers that receive a 0.0% rate still are required to file timely reports.

Kentucky Unemployment Insurance

For 2018, the rates listed in Schedule B are in effect. Those rates range from 0.40% to 2.70% for positive-balance employers, and from 6.75% to 9.25% for negative-balance employers. The new employer rate for

2018 is 2.7%, except new construction employers will pay 9.25%.

Maine Minimum Wage

Reminder: The minimum wage in Maine is scheduled to increase from $9 per hour to $10 per hour on January 1, 2018. For tipped employees, the minimum direct service wage is $5 per hour and the maximum tip credit on January 1, 2018, will be $5 per hour.

Michigan Minimum Wage

Reminder: The minimum wage in Michigan is scheduled to increase from $8.90 per hour to $9.25 per hour on January 1, 2018.

Minnesota Minimum Wage

Reminder: The minimum wage in Minnesota is scheduled to increase from $9.50 per hour to $9.65 per hour. Small employers must pay a minimum wage of $7.87 per hour (increased from $7.75 per hour).

Large employers are those businesses with annual gross revenues of $500,000 or more. Smaller employers are those with annual gross revenues of less than $500,000. The youth rate of $7.87 per hour may be paid to employees younger than 18 years of age (*Minnesota Department of Labor and Industry, News Release,* August 17, 2017).

Missouri Minimum Wage

The minimum wage in Missouri will increase from $7.70 per hour to $7.85 per hour on January 1, 2018.

All businesses are required to pay at least the $7.85 hourly rate, except for retail and service businesses whose annual gross sales are less than $500,000. Per state law, the minimum wage rate is calculated once a year and may increase or decrease based on the cost of living as measured by the previous year's Consumer Price Index. Missouri law does not allow the state's minimum wage rate to be lower than the federal minimum wage rate (currently $7.25 per hour).

Compensation for tipped employees must also total at least $7.85 per hour. Employers are required to pay tipped employees at least 50 percent of the minimum wage, or the amount necessary to bring the employee's total compensation to a minimum of $7.85 per hour (*Missouri Department of Labor and Industrial Relations, Press Release,* November 20, 2017, https://labor.mo.gov/news/press-releases/missouri-minimum-wage-rate-set-2018).

Montana Minimum Wage

Reminder: The minimum wage is scheduled to increase from $8.15 per hour to $8.30 per hour on January 1, 2018.

For employers whose gross annual sales are $110,000 or less, employers may pay employees a minimum wage rate of $4.00 per hour (However, if an individual is producing or moving goods between states or is otherwise covered by the federal Fair Labor Standards Act, the employee must be paid the greater of either the state or federal minimum wage rates (*Montana Department of Labor and Industry, Commissioner's Office, Minimum Wage Determination,* September 29, 2017).

Nevada Child Labor

Reminder: Nevada's child labor law provides that no child under the age of 16 may be employed at any

gainful occupation, other than domestic service, as a performer in the production of a motion picture or work on a farm, more than 48 hours in any one week, or more than eight hours in any one day. The exemption from these work hour restrictions for domestic work will be removed as of January 1, 2018 (Ch. 550 (S. 232), L. 2017).

Nevada Garnishment

The maximum amount of the aggregate disposable earnings of a person which are subject to garnishment may not exceed: (a) 18% of the person's disposable earnings for the relevant workweek if the person's gross weekly salary or wage on the date the most recent writ of garnishment was issued was $770 or less; (b) 25% of the person's disposable earnings for the relevant workweek if the person's gross weekly salary or wage on the date the most recent writ of garnishment was issued exceeded $770; or (c) the amount by which the person's disposable earnings for that week exceed 50 times the federal minimum hourly wage prescribed by section 206(a)(1)of the federal Fair Labor Standards Act of 1938, 29 U.S.C. Sections 201 et seq., in effect at the time the earnings are payable, whichever is less. These restrictions do not apply in the case of: (a) any order of any court for the support of any person; (b) any order of any court of bankruptcy; (c) any debt due for any state or federal tax (Ch. 329 (S. 230), L. 2017, effective October 1, 2017).

Nevada Jury Duty and Court Attendance Leaves

Reminder: Effective January 1, 2018, employers are required to provide leave to an employee who has been employed with the employer for at least 90 days and who is the victim of domestic violence, or to such an employee whose family or household member is a victim of domestic violence and the employee is not the alleged perpetrator. An employee will be entitled to 160 hours of leave during a 12-month period. Such leave: (1) may be paid or unpaid; (2) must be used within the 12 months immediately following the date on which the act which constitutes domestic violence occurred; (3) may be used consecutively or intermittently; and (4) under certain circumstances, must be deducted from leave permitted by the federal Family and Medical Leave Act of 1993 (Ch. 496 (S. 361), L. 2017, effective January 1, 2018).

Nevada Minimum Wage

Reminder: Effective as of January 1, 2018, employers, under the Domestic Workers' Bill of Rights law, are required to provide written notice to employees specifying wages and hours and other conditions of employment. Employers must pay workers at least the minimum wage specified in Section 16 of Article 15 of the Nevada Constitution (Ch. 550 (S. 232), L. 2017).

Nevada Overtime Pay

Reminder: Effective January 1, 2018, overtime requirements do not apply to a domestic worker who resides in the household where he or she works if the domestic worker and his or her employer agree in writing to exempt the domestic worker from the requirements (Ch. 550 (S. 232), L. 2017).

Nevada Posters

Reminder: Effective January 1, 2018, Nevada employers are required to post in the workplace a bulletin issued by the Labor Commissioner that sets forth employee rights under the domestic violence leave law (Ch. 496 (S. 361), L. 2017).

Nevada Recordkeeping Requirements

Reminder: Effective January 1, 2018, employers are required per the Nevada Domestic Workers' Bill of

Rights law to keep a record of the wages and hours of domestic workers employed, as required by Section 608.115 (Ch. 550 (S. 232), L. 2017).

New Jersey Minimum Wage

Effective January 1, 2018, the state minimum wage will increase from $8.44 per hour to $8.60 per hour. The change for 2018 is based on an increase in the cost of living of 1.9% for the period August 2016 to August 2017 (CPI-W, U.S. City Average) (*State of New Jersey Department of Labor and Workforce Development, Division of Wage and Hour Compliance, Notice of Administrative Changes, Minimum Wage,* September 29, 2017; N.J.A.C. 12:56-3.1, as amended, http://lwd.dol.state.nj.us/labor/forms_pdfs/lwdhome/MinWage.pdf.

The New Jersey Administrative Code (N.J.A.C. 12:56-3.1(a)) requires employees to be paid not less than the calculated minimum wage rate of $8.60 per hour, the federal minimum hourly wage rate (per 29 U.S.C. 206(a)(1)), or the rate provided under state statute 34:11-56a4, whichever is greatest. Since $8.60 is the higher rate, the new rate of $8.60 per hour will go into effect on January 1, 2018. Employers are required to post in a conspicuous place the New Jersey State Wage and Hour Law Abstract (MW-220 (R-1-18), which has been updated for 2018, at http://lwd.dol.state.nj.us/labor/forms_pdfs/lsse/mw-220.pdf.

Also, the minimum wage for full-time county employees working at least 40 hours per week in Bergen County is now $15 per hour, per Executive Order signed by Bergen County Executive Jim Tedesco on November 21, 2017 (B*ergen County, New Jersey, Press Release,* November 21, 2017, https://www.co.bergen.nj.us/ArchiveCenter/ViewFile/Item/372).

New Jersey Posting Requirements

Employers are required to post in a conspicuous place the New Jersey State Wage and Hour Law Abstract (MW-220 (R-1-18)), which has been updated for 2018, at http://lwd.dol.state.nj.us/labor/forms_pdfs/lsse/mw-220.pdf).

New Mexico Minimum Wage

The Las Cruces City Council has amended the city's Minimum Wage Ordinance to prevent an increase to the hourly rate based on the cost of living from taking effect January 1, 2018. As a result, the minimum wage will remain at $9.20 per hour, and $3.68 per hour for tipped workers through 2018. The next increase will take effect January 1, 2019, when the rate will increase to $10.10 per hour, and for tipped workers, $4.04 per hour. Increases to the minimum wage based on the Consumer Price Index will commence on January 1, 2020, and will be evaluated and assessed annually thereafter (*City of Las Cruces Official Notice,* http://www.las-cruces.org/en/departments/public-information-office/hot-topics/minimum-wage-adjustment).

New York Health Insurance Benefit Coverage

The state has amended its insurance law with respect to mammograms, allowing specified screenings to be provided by breast tomosynthesis (Ch. 414 (A. 5677), L. 2017).

New York Military Leave

Military leave for public officers and employees is amended to authorize additional paid leave for combat veterans employed by the state.

Every public officer or employee employed by the state of New York who served in a combat theater or

combat zone of operations as documented by a copy of his or her DD214, certificate of release or discharge from active duty, or other applicable department of defense documentation, shall be paid his or her salary or other compensation for any and all periods of absence while using any healthcare-related services related to such duty, not exceeding eight working days, in any one calendar year (Ch. 406 (S. 2911), L. 2017, effective March 11, 2018).

New York Minimum Wage

Reminder: The minimum wage in New York is scheduled to increase December 31, 2017, as follows: $13 per hour for large employers in New York City with 11 or more employees; $12 per hour for small employers in New York City with 10 or fewer employees; $11 per hour in Long Island and Westchester; and $10.40 per hour for the remainder of the state.

The New York Department of Labor has proposed rulemaking to amend the Minimum Wage Order for Miscellaneous Industries and Occupations (12 NYCRR 142-2.3 and 142-3.3) to strengthen protections for employees who report to work, report for unscheduled shifts, have shifts cancelled at the last minute, are required to be on-call, and who are required to call-in to be scheduled for work. The proposed regulation includes provisions addressing the calculation and applicability of call-in pay under various circumstances. The proposed rule does not apply to local governments. The proposed rules, published in the November 22, 2017, New York State Register, are subject to a 45-day comment period *(New York Department of Labor, Proposed Rule Making, Employee Scheduling (Call-in Pay),* New York State Register, November 22, 2017, I.D. No. LAB-47-17-00011-P, https://docs.dos.ny.gov/info/register/2017/nov22/pdf/rulemaking.pdf).

North Carolina Employee Misclassification

Reminder: Effective December 31, 2017, the Employee Fair Classification Act is enacted. The Act establishes the Employee Classification Section within the Industrial commission. The Section will have the duty of being available during business hours to receive reports of employee misclassification, by telephone, in writing or by electronic communication; investigate reports of employee misclassification; coordinate with state agencies in recovering any back taxes, wages, benefits, penalties, or other monies owed as a result of such misclassification; provide information to state agencies to facilitate possible violations; create a publicly available notice that includes the definition of employee misclassification; and develop methods and strategies to inform and educate employers, employees and the public about proper classification of employees and the prevention of employee misclassification (Session Law 2017-203 (S. 407)).

North Carolina Minimum Wage

Reminder: Effective December 31, 2017, employers covered under the North Carolina Wage and Hour Act are required to display a poster summarizing the major provisions of the Act in every covered establishment (Session Law 2017-203 (S. 407)).

North Carolina Posters

Employers are required to display posters provided by the North Carolina Department of Labor. The posters are printed in two sections to include the Wage and Hour Notice to Employees and the Occupational Safety and Health Notice. The posters have been updated to include the required information pertaining to the North Carolina Employee Fair Classification Act. The new information is included on the Wage and Hour Notice to Employees section of the posters. In addition, the posters have been updated to include the Department's new Internet address, https://www.labor.nc.gov/.

The required official posters are available free of charge from the Department, 1-800-625-2267 (*North Carolina Department of Labor, News Release,* December 7, 2017, https://www.labor.nc.gov/news/news-release/2017/12/07%20/free-labor-law-posters-updated-include-information-about-employee).

North Carolina Unemployment Insurance

The taxable wage base in North Carolina for 2018 will be $23,500, up $400 from the 2017 taxable wage base amount of $23,100 (ESC Communication).

Ohio Minimum Wage

Reminder: The minimum wage in Ohio is scheduled to increase from $8.15 per hour to $8.30 per hour, effective January 1, 2018. For tipped employees, the minimum wage will increase from $4.08 per hour to $4.15 per hour, plus tips. The minimum wage will apply to employees of businesses with annual gross receipts of more than $305,000 per year.

Employers who gross less than $305,000 must pay employees no less than the current federal minimum wage rate, which is $7.25 per hour. Employees under the age of 16 must be paid no less than the current federal minimum wage rate, $7.25 per hour.

Ohio Unemployment Insurance

For 2018, Ohio contribution rates will range from 0.3% to 9.0%. The mutualized rate is 0.0%. The new employer rate for 2018 will be 2.7%, except that new employers in the construction industry will pay a rate of 6.0%. The maximum rate (delinquency rate) will be 11.3%. The taxable wage base for 2018 will be $9,500, an increase of $500 from the 2017 amount of $9,000.

Oregon Maximum Hours and Overtime

Reminder: Effective January 1, 2018, an exemption from the regulation of hours of employment of employees engaged in production, harvesting, packing, curing, canning, freezing or drying any variety of agricultural crops, livestock, poultry or fish is removed, and maximum hour and overtime requirements are put in place for these occupations as well as for seafood processors (Ch. 685 (H.B. 3458), L. 2017).

Oregon Wage payment

Employers are prohibited from coercing an employee to create, file or sign documents containing information the employer knows is false related to hours worked or compensation received by the employee. In addition to any other remedy available by law, an employee has a private right of action for such violations. The court may award actual damages or $1,000 for each violation, whichever is greater, injunctive relief, attorney fees and costs. Each pay period in which a violation occurs or continues is considered a separate violation.

In addition, the Commissioner of the Bureau of Labor and Industries may assess a civil penalty not to exceed $1,000 for each violation, with each pay period in which a violation occurs or continues as a separate violation (Ch. 211 (H. 3008), L. 2017, effective January 1, 2018).

Rhode Island Minimum Wage

Reminder: The minimum wage in Rhode Island will increase from $9.60 per hour to $10.10 per hour on January 1, 2018 (H. 5175), L. 2017).

South Dakota Minimum Wage

Reminder: The minimum wage in South Dakota is scheduled to increase from $8.65 per hour to $8.85 per hour on January 1, 2018.

The hourly minimum wage for tipped employees will increase from $4.325 per hour to $4.425 per hour effective January 1, 2018, half the minimum wage for non-tipped employees (*South Dakota Department of Labor and Regulation, News Release,* September 21, 2017).

Vermont Minimum Wage

Reminder: The minimum wage in Vermont is scheduled to increase from $10 per hour to $10.50 per hour on January 1, 2018.

Vermont Pregnancy/Maternity Discrimination

Reminder: Effective January 1, 2018, it will be an unlawful employment practice for an employer to fail to provide a reasonable accommodation for an employee's pregnancy-related condition, unless to do so would impose an undue hardship. “Pregnancy-related condition” is defined to mean a limitation of an employee's ability to perform the functions of a job caused by pregnancy, childbirth, or a medical condition related to pregnancy or childbirth. (H. 136, L. 2017).

Washington Minimum Wage

Reminder: Washington's minimum wage rate will increase to $11.50 per hour beginning January 1, 2018, the Washington State Department of Labor and Industries announced on September 29, 2017. Workers who are 14 or 15 years old may be paid 85% of the minimum wage, or $9.78 per hour on January 1. This increase is part of a series of scheduled increases put in place by 2016 voter-approved Initiative 1433, which provides for the minimum wage to increase annually to $11.50 per hour in 2018, $12 in 2019, and to $13.50 in 2020. Starting January 2021, the minimum wage will be calculated by the Department based on inflation. In addition, starting January 1, 2018, employers in Washington will be required to provide their employees with paid sick leave (*Washington State Department of Labor and Industries, 2018 Minimum Wage Announcement,* September 2017).

Wisconsin Unemployment Insurance

For 2018, Schedule D is in effect. Rates (including the solvency rate) under Schedule D range from 0.00% to 12.0%. In addition, the rate for newly liable construction employers with payrolls of $500,000 and over is 3.90% for 2018 and the rate for newly liable construction employers with payrolls under $500,000 is 3.75%. The general new employer rate is 3.25% for employers with payrolls of $500,000 and over and the general new employer rate is 3.05% for employers with payrolls under $500,000.

Important Reminder!

Upcoming Deadlines

Arthur J. Gallagher & Co.

Keeping track of all of the compliance requirements that face employers sponsoring health and welfare plans has always been a challenge. The additional requirements imposed on employers by the Patient Protection and Affordable Care Act (“PPACA”) has added significantly to the burden. Each month this

article will provide information on deadlines that are coming up in the next three months for a calendar year plan. Key requirements for February, March, and April 2018 are listed below.

Dates are based on the timing for a calendar year plan (except as noted); employers with non-calendar year plans will need to modify dates as appropriate.

Deadlines for February, March, and April 2018

- **February 28, 2018 –** deadline to submit paper copies of Forms 1094-B and 1095-B (reports from insurers and certain self-insured plans on Minimum Essential Coverage provided in 2017), and Form 1094-C and Forms 1095-C (reports by Applicable Large Employers on offers of coverage to full-time employees in 2017) to the IRS. (Electronic filing deadline is April 2, 2018 since March 31, 2018 is a Saturday). Employers who are unable to file Forms 1094-B and Forms 1095-B, or Forms 1094-C and Forms 1095-C with the IRS by the applicable deadline may apply for a 30-day extension by the filing deadline to avoid incurring penalties.
- **February 28, 2018 –** deadline for disclosure of creditable/noncreditable drug coverage to CMS on the CMS website.
- **March 1, 2018** – due date for submitting report of HIPAA privacy and security breaches discovered in calendar year 2017 that involve fewer than 500 individuals.
- **March 2, 2018** – deadline to furnish Forms 1095-B and 1095-C to individuals. The original January 31, 2018 deadline was extended to March 2, 2018 by the IRS on December 22, 2017 (IRS Notice 2018-06).
- **April 2, 2018 –** deadline for filing Forms 1094-B,1094-C,1095-B, and 1095-C with the IRS. The deadlines for filing Forms 1094-B, 1094-C, 1095-B and 1095-C electronically, which is normally March 31, will be April 2, 2018 because in 2018 March 31 is a Saturday.
- **April 30, 2018 –** last day to file the San Francisco healthcare Security Ordinance Annual Reporting Form. This requirement applies to employers with respect to employees that work in San Francisco regardless of the employer's primary location. Click here for more detailed information.
- **April 30, 2018 –** due date for quarterly payment of the Michigan Health Insurance Claims Assessment (an assessment based on health claims paid in Michigan with a limit of $10,000 per individual). Click here for more detailed information.

Indexed Medicare and HSA Values

Updated 2018 values for Medicare Part D and HSAs were released in April 2017. See our May 2017 articles *"Medicare Part D Benefit Parameters for 2018"* and *"IRS Releases 2018 HSA Dollar Values"* in our May 2017 Directions (click here for a copy). Updated values for Medicare Parts A and B were released in November, see our article December 2017 Directions article *"CMS Announces 2018 Medicare Parts A and B Values"* click here to access.

Ongoing Activities (Selected)

Many compliance requirements apply every month. Some of the key ongoing requirements are:

- Marketplace notices - to all newly hired employees within 14 days of hire
- Provide the following materials when an employee becomes eligible for/enrolled in the health plan:
    - Summary of Benefits and Coverage ("SBC") – upon eligibility
    - HIPAA Notice of Privacy Practices – upon enrollment
    - COBRA General (Initial) Notice – to employee (& spouse if married) – upon enrollment
    - HIPAA Special Enrollment Rights Notice – upon eligibility
    - Medicare Part D certificate of creditable/non-creditable drug coverage – upon enrollment

In addition to federal requirements, some states have additional requirements such as reporting on the availability of dependent health coverage. Employers should check with their state(s) to determine what requirements and deadlines will apply.

Note: We include information about the above required communications indicating whether the requirement is triggered by the employee's eligibility or enrollment in the plan. Exact timing varies by requirement.

Our list focuses on major federal and, in some cases state, requirements that will impact a significant number of employers. It is not intended to be a comprehensive list.