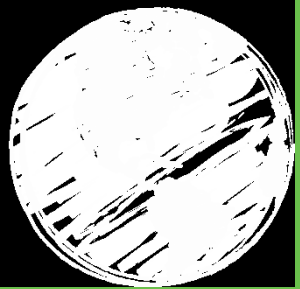


Recent Developments in Minnesota Law



Littler

Presented by



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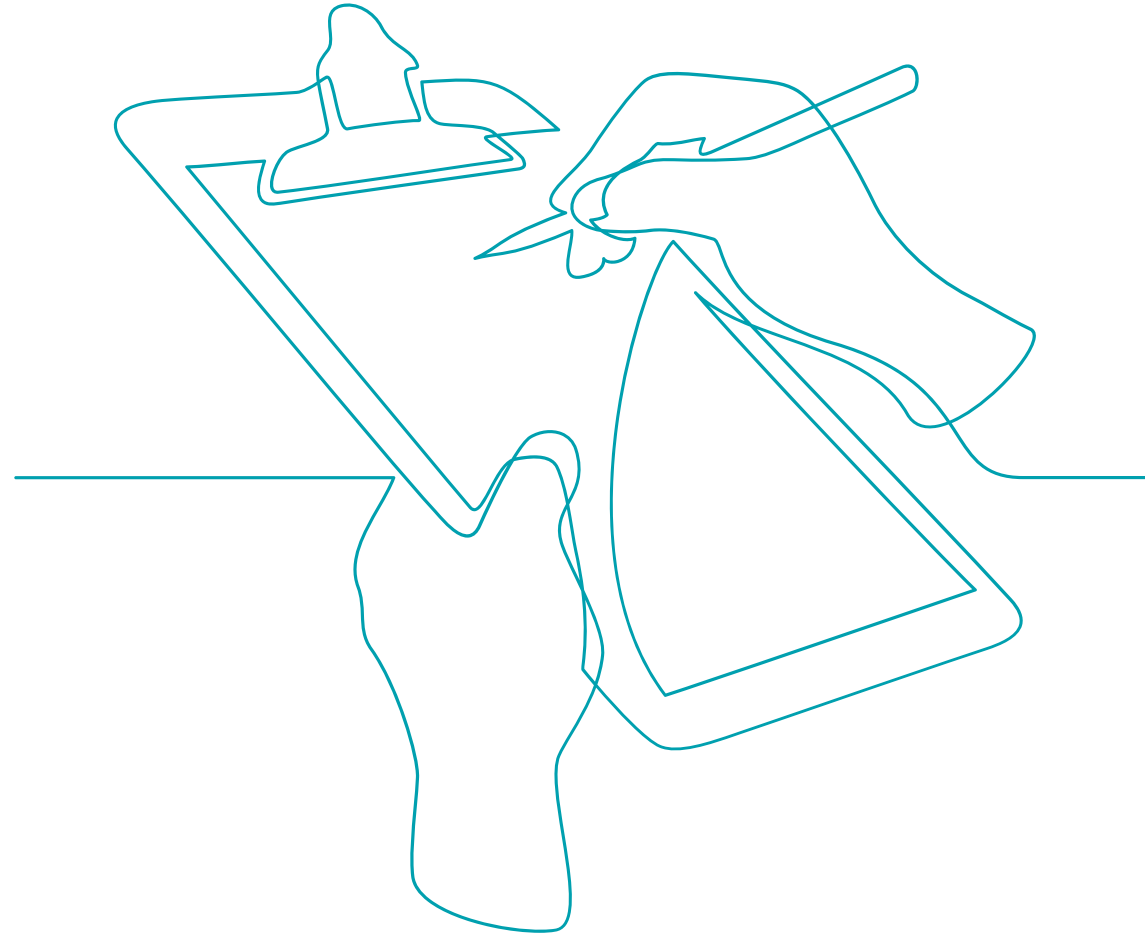
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Agenda

- Salary Transparency
- State-Wide Earned Safe and Sick Leave
- Banning Non-Competes in Service Contracts
- Drug Testing – Quickie Tests
- Paid Family Leave Amendments





Salary Transparency

Job Postings – Effective January 1, 2025

Employers with more than 30 employees must disclose in each posting for each job opening:

- (1) the starting salary range (i.e., minimum and maximum salary or hourly range of compensation), and
- (2) a general description of all of the benefits and other compensation, including but not limited to any health or retirement benefits.

"Posting" means any solicitation intended to recruit job applicants for a specific available position, including recruitment done directly by an employer or indirectly through a third party, and includes any postings made electronically or via printed hard copy, that includes qualifications for desired applicants.



Earned Safe and Sick Leave

Earned Sick and Safe Time – (Effective Immediately)

- **Effective**: January 1, 2024.
- **Applicability**:
 - All employers.
 - All employees who **are reasonably anticipated to** work at least eighty (80) hours in a year with accruals commencing upon employment
- **Accrual Amount**: Employees earn one (1) hour from every thirty (30) hours worked up to forty-eight (48) in a year. Allowed to carry over up to eighty (80) hours, unless the employer pays out unused leave at the end of the year.

Earned Sick Leave – New Penalties (Effective Immediately)

New Penalties.

If an employer fails to provide employees with ESST or fails to allow employees to use ESST, the employer is liable for:

- (a) an amount equal to all ESST that should have been provided or could have been used;
- (b) plus an equal amount of liquidated damages.

If an employer does not possess records that show the ESST an employee should have received, the employer is liable to the employee for:

- (a) 48 hours of ESST for each year ESST was not provided;
- (b) plus an additional equal amount as liquidated damages.

Earned Sick Leave – Rate of Pay Clarified (Effective Immediately)

Clarifying Rate of pay for ESST.

The amendments substitute “base rate” for “hourly rate.”

- (1) “base rate” does not include commissions, shift differentials in addition to an hourly rate, overtime pay, premium payments for holidays or certain days of the week, bonuses, or gratuities.
- (2) For employees paid on an hourly basis who receive multiple hourly rates, the “base rate” is the amount the employee would have been paid for the period of time when leave was taken.
- (3) Salaried employees receive the same rate as if the employee had not taken the leave.
- (4) For employees who are paid on a basis other than hourly or salary, such as commission or piecework, the amendments clarify that such employees receive ESST at a rate no less than the applicable minimum wage.

Earned Sick Leave – Additional Changes (Effective Immediately)

- **New Bereavement Leave Right**: Employees may now use ESST to make arrangement for or to attend funeral services or a memorial or to address financial or legal matters arising from a family member's death.
- **Clarifying Increments of Use**. The amendments clarify that employers need not allow ESST to be taken in increments of less than 15 minutes but that they cannot require use of ESST in increments of more than four hours.
- **Rule Making**. DOLI will have rulemaking authority for Earned Sick and Safe Time Law.
- **Earnings Statements**. The Act originally required employers to provide information about available and used ESST on employees' *earnings statements*. Employer may now choose either the earnings statement or an electronic system where employees can access the information.
 - Employees must have access to an employer-owned computer during regular work hours to review and print the information.
 - These records must be maintained for three years and must be made available to the Department of Labor & Industry upon demand within 72 hours

Earned Sick Leave – More Generous Policies – Effective January 1, 2025

- **More Generous Policies**. The Amended Act contains a provision, stating: “All paid time off and other paid leave made available to an employee by an employer in excess of the minimum amount required . . . [by the Act] for absences from work due to personal illness or injury, but not including short-term or long-term disability or other salary continuation benefits, must meet or exceed the minimum standards and requirements” for the use of sick and safe time.
 - According to DOLI, this amendment requires an employer with a “paid time off” (PTO) policy that provides a greater amount of PTO than is required under the Act to allow employees to use all of the PTO under such a policy as protected ESST.



Non-Competes in Service Agreements

Non-Competes in Service Agreements – Effective July 1, 2024

Service providers may not restrict, restrain, or prohibit in any way a customer from directly or indirectly soliciting or hiring an employee of a service provider.

- Any provision of an existing contract that violates this provision is void and unenforceable;
- When a provision in an existing contract violates this section, the service provider must provide notice to their employees of this section and the restrictive covenant in the existing contract that violates this section.

“Service provider” means any partnership, association, corporation, business, trust, or group of persons acting directly or indirectly as an employer or manager for work contracted or requested by a customer.



Drug Testing

Saliva Testing

- Effective: August 1, 2024.

- Oral fluid testing: an employer may request an employee or job applicant to undergo oral fluid testing as an alternative to using the services of a testing laboratory.
 - The employee must be informed of the test result at the time of the oral fluid test.
 - Within 48 hours of an oral fluid test that indicates a positive test result or that is inconclusive or invalid, the employee or job applicant may request drug or alcohol testing or cannabis testing at no cost to the employee or job applicant using the services of a testing laboratory.
 - Employees are still entitled to the same rights and notices if oral fluid testing is conducted (i.e., notice of positive test result, offer of rehabilitation following first positive test, etc.)
-
- "Oral fluid test" means analysis of a saliva sample for the purpose of measuring the presence of the same substances as drug and alcohol testing and cannabis testing that:
 - (1) can detect drugs, alcohol, cannabis, or their metabolites in levels at or above the threshold detection levels for laboratories; and
 - (2) does not require the services of a testing laboratory under section 181.953, subdivision





Minnesota's Marijuana Laws

Recreational Marijuana Legalization



- Effective: August 1, 2023.
- Minnesota becomes the 23rd state to legalize recreational marijuana use.
 - Adults 21 years of age and older can purchase up to
 - 2 ounces of cannabis flower to possess or transport in public;
 - 2 pounds of cannabis flower to possess at home;
 - 8 grams of concentrate; and
 - 800 milligrams of edible products at a time.
- May grow up to 8 plants at home, though only four plants can be mature at a time.
- Records for misdemeanor convictions for marijuana will be expunged automatically, though the process will take up to a year.
 - A committee will be established to consider expunging felony level offenses.

Cannabis at Work

- Employer not required to permit or accommodate cannabis use, possession, impairment, sale, or transfer while employee is working, on employer's premises, or operating the employer's vehicle machinery or equipment
- Employer may enact and enforce work rules prohibiting cannabis use, possession, impairment, sale, or transfer while employee is working, on employer's premises, or operating employer's vehicle, machinery, or equipment
 - Must be in written, DATWA-compliant policy
 - Helpful for reasonable suspicion testing

Cannabis Outside Work

- Cannabis is a “lawful consumable product” regardless of federal status
- Unless failing to do so would violate federal law or cause loss of monetary or licensing-related benefit, employer cannot refuse to hire applicant or discipline employee for off-duty cannabis use
- Does not apply to work hours or work premises





Cannabis Testing Changes





**Drug
Testing**

**Alcohol
Testing**

**Cannabis
Testing**

Drugs vs. Cannabis

Drugs

- Schedule I-V controlled substances, Minn. Stat. § 152.02

Cannabis

- Marijuana
- Cannabis metabolites (THC, CBD)
- Cannabis flower
- Cannabis products
- Lower-potency hemp edibles
- Hemp-derived consumer products

Pre-Employment Cannabis Testing

Pre-August 1, 2023 restrictions:

- Applicant must have received conditional job offer
- Same test must be required of all applicants for position at issue

New restrictions:

- Only available for certain positions

**Pre-employment
cannabis testing
allowed**

**Pre-employment
cannabis testing
prohibited**

**Safety-
sensitive
positions**

**Federal, state
testing
requirements**

**Face-to-face
care
positions**

**Peace
officers,
firefighters**

**DOT/CDL
drivers**

**Federal-
grant
positions**

**All other
workers**

Safety-Sensitive Positions

- All supervisory and management positions
- Any position in which impairment caused by drug, alcohol or cannabis usage would threaten the health or safety of any person





Paid Family Medical Leave

Paid Family Medical Leave

- Effective: January 1, 2026.
- Applicability:
 - All employers.
 - All employees are ninety (90) days of employment.
- Funding: Employers fund at least half the program through a payroll tax.
- Benefits Available: Based upon a progression scale similar to unemployment insurance.
- Reinstatement: Employees are entitled to their job after completing their leave if they have been in the position for at least 90 days.

Paid Family Medical Leave

- First wage detail report, which will detail the quarterly wages received and hours worked for each employee, will be due October 31, 2024 for wages between July-September, 2024.
- Starting in late 2025, employers must notify their employees about the program. The Paid Leave program will provide language for this notification.
- Starting in January 2026, employers will also be required to submit any premium payments due.

Paid Family Medical Leave - Amendments

- **Appeals**: A lengthy, detailed appeal mechanism, which includes a hearing and the ability to appeal to the court of appeals. This section is effective November 1, 2025.
- **Small Employers**: Employers with 30 or fewer employees (now, regardless of the employer's gross annual revenue) and who have an average wage rate less than or equal to 150% of the state's average wage in covered employment for the prior year may apply for assistance grants. The amendments create a "small employer premium rate" for such employers, which is 75% of the annual premium rate. Employers must pay a minimum of 25% of the rate and may not deduct from employee pay to fund the employer portion of the premium. Employees must pay the remaining portion due, if any, not paid by the employer, and the employer must make wage deductions as necessary to fund the employee portion. This section is effective January 1, 2026.



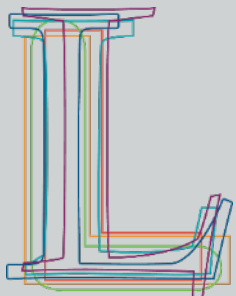
Other Notable Items

Minnesota Secure Choice Retirement

- Operational at the earliest January 1, 2025
- Impacts employers with 5 or more employees;
- Under the program, if a covered employer does not have a retirement saving program, they must participate in the state program;
- The state will establish IRAs for employees, allowing them to contribute a portion of their pay.
- Must notify the employees of the program and provide information at least 30 days prior to the first deduction;
- Must enroll covered employees into the program and withhold payroll deduction contributions unless the employee elects not to participate.
 - Contribution rates are set by the state
 - Vesting is 100%

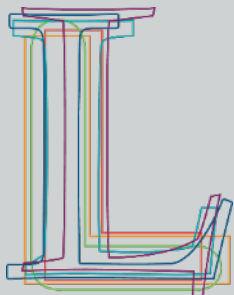
Changes to the MHRA:

- Familial status amended to include: “Residing with and caring for one or more individuals who lack the ability to meet essential requirements for physical health, safety, or self-care because the individual or individuals are unable to receive and evaluate information or make or communicate decisions.”
- The limitations period to file a civil action after dismissal of a charge from the MDHR is increased from 45 to 90 days;
- MDHR must generally make a determination within one year of the charge filing.
- The prospect of an administrative hearing has been removed;
- The standard to award a civil penalty has been adjusted and a penalty is mandatory upon a finding of a violation;
- Punitive damages for private employers is now governed by Minn. Stat. 529.20 and is uncapped; and
- The amendments clarify that if tried to a jury, the jury decides ALL damages, including treble damages.



Questions?

This information provided by Littler is not a substitute for experienced legal counsel and does not provide legal advice or attempt to address the numerous factual issues that inevitably arise in any employment-related dispute. Although this information attempts to cover some major recent developments, it is not all-inclusive, and the current status of any decision or principle of law should be verified by counsel.



Thank You!

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