



Keeping Up With Compliance Quarterly

1st Quarter 2024

Keeping up with compliance developments can be difficult and time-consuming. This quarterly update highlights recent legal developments to help your organization stay on top of new requirements and minimize its compliance risks.

For more information on these topics, please contact OneDigital.

Recent Federal Developments

DOL Issues Independent Contractor Final Rule

On Jan. 10, 2024, the U.S. Department of Labor (DOL) issued a [final rule](#), effective March 11, 2024, revising its guidance on how to analyze who is an employee or independent contractor under the Fair Labor Standards Act (FLSA). The DOL's new rule reinstates the multifactor and totality-of-the-circumstances analysis, which is generally viewed as more employee-friendly. As a result, the new rule will likely lead to more workers being classified as employees.

DOL Updates Model Employer CHIP Notice

The DOL has released a [new model employer Children's Health Insurance Program \(CHIP\) notice](#) with information current as of Jan. 31, 2024. An employer is subject to this annual notice requirement if its group health plan covers participants who reside in a state that provides a premium assistance subsidy under a Medicaid plan or a CHIP, regardless of the employer's location. The DOL's model notice, which employers may use for this disclosure, is updated periodically to reflect changes in the states that offer premium assistance subsidies.

Employers Must Use New Form I-9

As of Nov. 1, 2023, employers are required to use the newest version of the Employment Eligibility Verification form ([Form I-9](#)). The new Form I-9 includes updated instructions and many notable changes, including alternative remote verification procedures that employers enrolled in E-Verify can use to comply with their Form I-9 obligations. Employers should ensure they are using the new Form I-9, as continuing to use the outdated Form I-9 can trigger penalties.

NLRB Issues New Joint Employer Final Rule

On Oct. 27, 2023, the National Labor Relations Board released a [final rule](#) establishing new, broader criteria for determining joint-employer status. Joint employment situations can happen when two or more employers share personnel hiring, supervision and management practices. When a joint employment status exists, joint employers are equally responsible for compliance with applicable laws and regulations. The final rule had been set to take effect on Feb. 26, 2024. However, on Feb. 22, 2024, a federal judge in the U.S. District Court for the Eastern District of Texas delayed the implementation of the final rule to Mar. 11, 2024.

DOL Increases Civil Penalty Amounts for 2024

On Jan. 11, 2024, the DOL [released](#) its 2024 inflation-adjusted civil monetary penalties that may be assessed on employers for violations of a wide range of federal laws, including the FLSA, ERISA, the Family and Medical Leave Act, and the Occupational Health and Safety Act. For example, the maximum penalty for failing to file a Form 5500 for an employee benefit plan increased from \$2,586 to \$2,670 per day. Employers should periodically review their pay practices, benefit plan administration and safety protocols to ensure compliance with federal requirements.

EEOC Increases Enforcement Activity

The U.S. Equal Employment Opportunity Commission (EEOC) is a federal agency responsible for enforcing federal employment discrimination laws, such as Title VII of the Civil Rights Act, the Americans with Disabilities Act and the Pregnant Workers Fairness Act. The EEOC experienced several noteworthy changes in 2023, including new leadership, structural changes and an increased budget. It also multiplied its enforcement efforts; at the end of fiscal year 2023, the agency reported a 52% increase in lawsuit filings from the previous year. These efforts are likely to continue in 2024.

Recent State Developments

Minnesota Employers Must Provide Paid Sick Leave in 2024

Effective Jan. 1, 2024, nearly all Minnesota employers are required to provide their workers with [paid earned sick and safe time](#) (ESST). Employees are eligible for ESST if they work at least 80 hours in a year in Minnesota. Leave accrues at a rate of one hour of ESST for every 30 hours worked, up to a maximum of 48 hours per year. Employers must give notice to all employees that they are entitled to ESST, and any employee handbooks must include a notice of employee rights and remedies.

California Updates Paid Sick Leave FAQs and Employee Notices

Effective Jan. 1, 2024, California expanded its paid sick leave requirement to 40 hours (five days) per year, up from 24 hours (three days). The California Division of Labor Standards Enforcement has updated its [answers to frequently asked questions](#) (FAQs) about paid sick leave for this change, as well as the paid sick leave [poster](#) and [employee notice](#). California employers should ensure they post the new notice and provide employees with a new copy of the notice if they provided less than five days or 40 hours of paid sick leave per year prior to 2024.

California Employers Must Provide Separation Notices in 2024

In September 2023, California enacted a [law](#) requiring employers to immediately notify an employee in writing of any separation or other change in the employee's relationship with the employer. This law also allows certain unemployment and tax notices to be emailed if an employee provides written consent. As of Jan. 1, 2024, employers must begin providing these separation notices and may ask employees to opt in to receive certain unemployment and tax notices electronically.

New York Increases Salary Threshold for Exempt Employees

On Sept. 15, 2023, New York State [amended](#) its Labor Code to increase the salary threshold executive, administrative and professional (EAP) employees must meet in order to qualify for the state's exemptions from pay frequency laws. Beginning March 13, 2024, EAP employees who earn less than \$1,300 per week (up from \$900 per week) will be subject to the same wage payment protections as other nonexempt employees.