



## Legislatures are off to the Races!

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Most state legislatures are back in session, and they are poised to address a wide range of labor and employment issues this year. Since January 1, 2017, more than 500 employment-related bills have been proposed in more than 40 states. New York leads the pack, with roughly 90 such bills pending, while Connecticut, Hawaii and Missouri have at least 30 each to date. As a practical matter, few of these bills will become law, but they nonetheless reveal current trends at the local level. This month's State of the States highlights some of these noteworthy trends.

### Minimum Wage

Not surprisingly, minimum wage continues to be a significant source of local legislative activity across the country. More than half of the states currently have at least one bill pending that concerns minimum wage rates, and several states have multiple proposals in the works. Readers interested in more detail on this topic should consult *WPI Wage Watch*, a Littler feature focusing exclusively on breaking minimum wage developments coast-to-coast.<sup>1</sup>

### Equal Pay

Equal pay remains a hot-button issue as well. Earlier this month, New Jersey lawmakers were unable to muster the votes necessary to withstand Governor Christie's veto of a bill that would have increased penalties for wage discrimination based on sex. While New Jersey's proposal fell short for now, equal pay bills have been introduced in at least 11 other states. Indiana legislators have proposed a bill that generally prohibits employers from discriminating in pay based on an employee's sex, race, or national origin, for work on equivalent jobs. Such bills may not gain much traction in Republican-controlled legislatures, but the debate over equal pay is unlikely to subside.

### Wage Transparency

A few states are considering another tactic in their efforts to ensure equal pay. Florida, Hawaii, Iowa, Montana, Oklahoma, Virginia, and Washington, for example, have proposed wage transparency statutes. If passed, these bills would prohibit employers from retaliating

or discriminating against employees who disclose or otherwise discuss their wages with other workers. Several of the pending equal pay measures noted above also include similar provisions.

## Salary History

On a related note, Philadelphia, Pennsylvania recently joined Massachusetts by enacting a law banning employers from asking job applicants about their prior salary history.<sup>2</sup> These laws are intended to narrow the gender wage gap by preventing employers from setting pay based in whole or in part on an applicant's wages and benefits at a prior job. These bans encourage employers to set compensation based on job responsibilities, rather than prior wage history. Similar laws are pending in other jurisdictions, including California, Connecticut, Nebraska, New York, and Washington.

## Right to Work

Several state legislatures are considering right-to-work measures, which make it unlawful to require employees to join a union or to pay union dues as a condition of their employment. Kentucky enacted a right-to-work law just a few weeks ago.<sup>3</sup> Bills are advancing in New Hampshire and Missouri, both of which are expected to follow suit this term. As of now, right-to-work bills are also being floated in Colorado, Connecticut, Maine, South Carolina, and Washington. A federal right-to-work proposal, moreover, was just introduced. On the other hand, Arizona is contemplating repealing its right-to-work laws, by submitting a proposed constitutional amendment to voters at the next general election.

## Scheduling

In recent years, a couple of cities have passed "secure scheduling" or "fair scheduling" ordinances.<sup>4</sup> These laws require employers to provide their employees with advance notice of their schedules and, in some instances, to compensate employees for last-minute changes to those schedules. Some states, such as Minnesota, New York, and Oregon, are mulling similar legislation.

## Preemption and Anti-Preemption

As many employers are painfully aware, local laws governing employment matters have been cropping up in states and cities across the country. In the absence of federal action, states and municipalities have passed laws on a variety of topics, such as paid sick leave, secure scheduling, protections for LGBTQ workers, and the minimum wage.

In response to this development, and to alleviate the headaches it can bring to the employer community, some states are attempting to enact "preemption" laws. These preemption laws would prohibit cities from imposing requirements on employers that are stricter than existing federal and state law mandates. For example, a new Ohio law stripped Cleveland of the authority to raise its minimum wage, which had been set for a vote this year. Various types of preemption bills are pending in Illinois, South Carolina, Minnesota, Oregon, Maryland, and Pennsylvania. The Minnesota proposal, by way of example, precludes localities from setting a higher minimum wage, while the Pennsylvania proposal focuses on leave benefits.

On the flip side, a couple of states—Texas and Hawaii—are considering "anti-preemption" bills that would specifically authorize localities to address such issues. These proposals thus would allow municipalities to raise the minimum wage applicable to operations within their borders.

## Paid Leave

Several types of paid leave bills are also percolating through the state legislatures, with some states considering more than one approach. At least eight states (including Alaska, New York, Maryland, and South Dakota) are contemplating measures that would entitle employees to accrue paid sick leave. A handful of states (including Georgia, New Hampshire, and Minnesota) have proposed a leave insurance-type of program or wage replacement system to cover family and/or sick leave. Paid family leave bills are also pending in at least five jurisdictions (including Connecticut and Mississippi).

## Ban-the-Box

The popularity of so-called “ban-the-box” bills continues to spread nationwide. These laws limit an employer’s ability to inquire into a job applicant’s criminal history at different stages in the hiring process. Some versions prevent an employer from asking about criminal history until after an interview, while others require the employer to wait until after a conditional offer of employment. Ban-the box legislation has been introduced in at least 13 states thus far this year, from Florida to Washington. Similarly, six states are weighing bills that would restrict an employer’s ability to run credit checks for job applicants.

## Weapons in the Workplace

Another area of potential interest to employers is the spate of bills concerning possession of weapons in the private workplace. Some bills under consideration would

allow employers to prohibit firearms on their premises, while other bills would deprive them of that option. In three states, proposed laws would make an employer responsible for the safety and defense of individuals on its property if it forbids the lawful carrying of weapons there and someone is harmed. In a twist on that theme, a pending bill in Oklahoma would immunize employers from liability if they permit weapons on their property or in employer-owned vehicles.

## Next Steps

Employers should remain cognizant of these ongoing developments, particularly those with operations in multiple jurisdictions. We will continue to follow the progress of all significant labor and employment bills and will continue to report on state-level developments as the year unfolds.

1. Libby Henninger et al., *WPI Wage Watch: Minimum Wage & Overtime Updates (January Edition)*, Littler Insight (Jan. 31, 2017), <https://www.littler.com/publication-press/publication/wpi-wage-watch-minimum-wage-overtime-updates-january-edition>.
2. See Martha J. Keon & Denise M. Maher, Philadelphia’s Wage Equity Bill Set to Go into Effect on May 23, 2017, Littler ASAP (Jan. 25, 2017), <https://www.littler.com/publication-press/publication/philadelphia%E2%80%99s-wage-equity-bill-set-go-effect-may-23-2017>; Denise M. Maher & Martha J. Keon, *The Philadelphia Wage Equity Bill Will Ban Employers From Asking Prospective Employees About Their Past Wages and Fringe Benefits*, Littler Insight (Dec. 14, 2016), <https://www.littler.com/publication-press/publication/philadelphia-wage-equity-bill-will-ban-employers-asking-prospective>.
3. See, e.g., LaToi D. Mayo, *Kentucky Enacts Right-to-Work Law*, Littler ASAP (Jan. 10, 2017), <https://www.littler.com/publication-press/publication/kentucky-enacts-right-work-law>.
4. See, e.g., Doug Smith, *Seattle City Council Approves Secure Scheduling Ordinance*, Littler Insight (Sept. 20, 2016), <https://www.littler.com/publication-press/publication/seattle-city-council-approves-secure-scheduling-ordinance>; Michael Brewer, et al., *San Francisco Ordinance Imposes New Burdens on ‘Formula’ Retail Employers*, Littler Insight (Dec. 9, 2014), <https://www.littler.com/san-francisco-ordinance-imposes-new-burdens-formula-retail-employers>.

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