



Major Bills Advance in September, With More on Deck for October

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The baseball pennant races are about to kick off, but not all the action is on the field. Roughly a dozen state legislatures were in session during September, and they considered more than 50 labor and employment bills. California went swinging for the fences, sending several employment-related bills to Governor Brown's desk.¹ The Rhode Island legislature, meanwhile, passed six labor and employment measures, several of which still await Governor Raimondo's decision.

As in prior months, proposals concerning protected time off (e.g., family or paid sick leave) received a lot of fanfare. This month's State of the States reviews those bills and other noteworthy developments.

Protected Time Off

Rhode Island—already one of only a handful of states with a paid family leave program—enacted new paid sick leave legislation (H 5413, S 290).² Governor Raimondo

signed the Healthy and Safe Families and Workplaces Act on September 28, 2017, and it will take effect in July 2018. Covered employees working for employers with at least 18 employees in Rhode Island must earn at least one hour of paid "sick and safe time" for every 35 hours worked. They may accrue up to 24 hours in 2018, 32 hours in 2019, and 40 hours for each year thereafter. Employees can use leave for themselves or to care for or assist a "family member," which includes children, grandchildren, grandparents, parents and parents-in-law, siblings, spouses, members of an employee's household, and individuals for whom the employee is responsible for providing or arranging health or safety related care. Paid sick and safe time can be used for the following purposes: (1) mental or physical illness, injury, or health condition; (2) medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; (3) preventive medical care; (4) if an employee or family member is a victim of domestic violence, sexual assault, or stalking; (5) closure of the employee's place of business, or a child's school or place of care, due to a public health emergency; and (6) when health authorities or a health care provider determines the employee's or family member's presence in the community may

¹ See Bruce Sarchet, Corinn Jackson & Sebastian Chilco, [California Countdown: Which Labor & Employment Bills Will the Governor Sign?](#) Littler ASAP (Sept. 20, 2017). Governor Brown has until October 15, 2017 to decide whether, or how, to act on the various bills.

² For more information on this new law, see Jillian Folger-Hartwell and Sebastian Chilco, [On the Rhode Again: Paid Sick Leave Drought Ends with New Rhode Island Law](#), Littler Insight (Oct. 2, 2017).

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jeopardize others' health because of their exposure to a communicable disease.

In September, the City of Chicago, Illinois adopted rules interpreting its minimum wage and paid sick leave laws. The regulations address exemptions, mandatory employer records, and numerous other details concerning operation of the city's new paid sick leave ordinance.

The city council of Tacoma, Washington approved an ordinance that seeks to align the city's code with the state of Washington's paid sick leave law, which requires employers to provide one hour of paid sick leave for every 40 hours worked.

A bill pending in California (SB 63) would amend the California Family Rights Act (CFRA) to allow employees who work at worksites that employ at least 20 employees within 75 miles to take 12 weeks of unpaid leave for new child bonding purposes. To be eligible, an employee must have more than 12 months of service and at least 1,250 hours of service with the employer during the previous 12-month period. The bill expands the number of employees entitled to such leave, as currently the CFRA applies only to employees who work at worksites where at least 50 employees work within 75 miles. SB 63 has passed both legislative chambers but it is unclear whether Governor Brown will veto the measure, as he did a similar bill last year.

Portland, Maine introduced an ordinance that would require employers to provide employees with one hour of earned sick time for every 30 hours of work, up to a maximum of 48 hours in one year. If enacted, the ordinance would take effect on July 1, 2018.

Finally, the Minnesota Court of Appeals declined to strike down the City of Minneapolis's paid sick leave mandate, which took effect on July 1, 2017. Nonetheless, the court limited the scope of the new law, ruling that it cannot impose obligations on employers that are not physically based within the city limits.

Salary History / Pay Equity

The California legislature has placed two pay equity measures before Governor Brown. First, California bill

AB 1209 would require large businesses to file certain reports every two years, beginning July 1, 2019. Under this proposal, businesses with 500 or more employees in the state must file a statement of information with the Secretary of State to report the difference between the mean and median wages of male and female employees who are exempt administrative, executive, or professional employees, or board members, in California.

The second California bill, AB 168, would limit an employer's ability to ask about or rely on an applicant's salary history when making employment decisions. It further requires employers to provide, upon request, a position's pay scale information. AB 168, if not vetoed, would become operative on January 1, 2018.³

Another salary history bill was introduced on the opposite coast, in Westchester County, New York. The Westchester measure is fairly broad and prevents employers from relying on salary history information in setting wages, unless the information is voluntarily offered by a candidate "to support a wage higher than the wage offered by the employer."⁴ The ordinance also would prohibit a potential employer's request for such information from an applicant's current or prior employer, unless: (1) an offer has been made; (2) the candidate discloses prior wages to support a wage higher than the wage offered; (3) the candidate authorizes, in writing, the potential employer's inquiry; and (4) the employer uses the information only to confirm the amount of prior wages.

Discrimination / Harassment

A bill in California (SB 396) would add training requirements concerning protections afforded to employees in the LGBTQ community. The measure would require employers with 50 or more employees to include, in their sexual harassment training to supervisory employees, training on harassment based on gender identity, gender expression, and sexual orientation. It would further require employers with five or more employees to prominently display in the workplace a

³ A salary history ordinance was recently adopted in San Francisco and takes effect on July 1, 2018. See Bruce Sarchet & Corinn Jackson, [Another San Francisco Treat: Mayor Lee Signs Salary History Ban](#), Littler ASAP (July 20, 2017).

⁴ The full text of the proposed ordinance is available [here](#).

Department of Fair Employment and Housing poster regarding transgender rights.

On a related topic, Ohio introduced a measure (SB 174) that would make it illegal for employers to discriminate in the payment of wages on the basis of an individual's sexual orientation or gender identity. The bill is currently in committee. The Ohio house is also weighing a bill (HB 193) that would prohibit discrimination against employees who did not, or will not, get the influenza vaccine for any reason, including medical, religious, or philosophical. The bill specifies that it would not cover any other type of vaccination.

Predictive Scheduling

Predictive scheduling proposals continue to catch on, with a new bill introduced in September in Massachusetts (SD 2331). This measure would require employers to post a written notice of the seven-day schedule in a conspicuous location for each employee, at least seven days prior to the first day of that work schedule. Under the bill, employers that change the schedule so as to reduce or eliminate hours must compensate affected employees with "predictability pay," the amount of which depends on the type of change to the schedule and the advance notice given.

Criminal Background Checks

In addition to its proposed salary history ban, California is taking aim at criminal history inquiries. A "ban-the-box" bill (AB 1008) has passed both chambers—and Governor Brown is expected to sign it.⁵ The measure would amend the California Fair Employment and Housing Act to generally prohibit employers, with five or more employees, to ask questions about an applicant's conviction history before a conditional offer of employment is made. The bill would also limit consideration of arrests that did not result in convictions, diversion program participation and/or convictions that were sealed, dismissed, expunged, or eradicated, and would prescribe steps that must be taken if an employer intends to deny employment solely or partly because of conviction history.⁶

5 See Rod Fliegel & Allen Lohse, [California Statewide Ban-the-Box Law Approved by Legislature](#), Littler ASAP (Sept. 26, 2017).

6 For more information on these types of laws, see Jennifer Mora, [It's Not Just a Box: Understanding How "Ban-the-Box" Laws Go Beyond Your Employment Application](#), Littler Insight (Feb. 27, 2017).

A pending bill in Rhode Island (SB 1029) would amend the state's current ban-the-box statute. This measure would loosen existing restrictions and would permit an employer to include on an application a question about whether an applicant has ever been convicted of any offense that a federal or state law or regulation makes a mandatory or presumptive disqualification.

Privacy

Some states are entertaining interesting questions concerning the scope of employee privacy. In New York, for example, lawmakers introduced a bill (SB 6874) that would prohibit employers from microchipping employees as a condition of securing or continuing employment.

Governor Rauner of Illinois, meanwhile, vetoed a bill that would have required companies to obtain consent from smartphone users before using their location information or sharing it with other companies. The Geolocation Privacy Protection Act had been viewed by advocates as a potential step forward for consumer and employee privacy, and by opponents as an obstacle to business innovation.

Right to Work

Right-to-work proponents received two court victories in September, in West Virginia and Wisconsin. The West Virginia Supreme Court of Appeals lifted a preliminary injunction imposed by a lower court that had blocked implementation of the state's new right-to-work law. That law prohibited employers and labor organizations from requiring employees to join, remain a member of, or financially support a labor organization as a condition of employment. A union had challenged the statute, arguing that it unconstitutionally deprived the union of funding while it is nonetheless obligated to represent all employees in a bargaining unit whether they pay dues or not. The state supreme court rejected that argument.

The Wisconsin Court of Appeals reached the same conclusion in a similar dispute over that state's right-to-work law, enacted in 2015. The appellate court found that the law did not give rise to an unconstitutional "taking" of funds; to the contrary, and like the West Virginia court, the Wisconsin panel held that the union was not entitled to fees from non-members. This ruling is consistent with a holding earlier this

year in federal court, when the U.S. Court of Appeals for the Seventh Circuit dismissed a federal lawsuit attacking the Wisconsin law on the same theory.

Wage Theft / Joint Employer Liability

Governor Brown has one more labor and employment-related bill to consider this term: California AB 1701. This proposal provides that, for certain construction contracts entered into on or after January 1, 2018, direct contractors must assume and are liable for unpaid wages, benefits, or contributions a subcontractor owes for labor connected to the contract. It would require subcontractors to provide required payroll records upon a direct contractor's request. The bill was quite popular in the legislature but Governor Brown has not indicated whether he will support the measure.

Wage & Hour

Wage and hour issues in general remain hot-button topics. Readers interested in more detail on these subjects are encouraged to consult *WPI Wage Watch*, a Littler feature focusing exclusively on breaking minimum wage developments.⁷

⁷ See Libby Henninger, Sebastian Chilco, and Corinn Jackson, *WPI Wage Watch: Minimum Wage and Overtime Updates (September Edition)*, WPI Report (Sept. 29, 2017).

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