

TYPES NOT MAPPED YET January 30, 2023 | TTR not mapped yet | Susan M. Lorenc

New year, new laws: A potpourri of new employment laws that went into effect in 2023

The new year brought with it a wide range of new laws, both on the state and federal level, regarding human resources topics such as restrictive covenants, wage laws, leave laws, and things like lactation protections and WARN act amendments. Here is a high-level list of some of the recent changes that may impact you and your work force.

Non-compete and non-disclosure laws

- **Colorado's new(ish) law**
 - Colorado's [new law](#) restricting noncompete agreements took effect on August 10, 2022. The law severely restricts the utilization of noncompete and non-solicitation agreements, except where they are required to protect trade secrets as specifically defined under state law.
 - Under the new law, noncompete agreements are unenforceable unless they are part of the sale of a business or involve an employee who earns more than \$101,250 annually. Additionally, non-solicitation agreements are invalid unless they involve employees making more than \$60,750 annually.
 - Colorado employers must notify job applicants about noncompete agreements and allow them to review the agreements before they accept any job offers. If employers wish to impose noncompete agreements on current employees, they must provide written notice to the employees at least 14 days before the agreement goes into effect.
- **Federal "Speak Out Act"**
 - The [Speak Out Act](#) prohibits judicial enforcement of nondisclosure and nondisparagement clauses with respect to sexual harassment and sexual assault disputes when the clause was entered into **before the dispute arose**. It applies to "claims" filed on or after December 7, 2022.
 - Specifically, under the Act:
 - A **nondisclosure clause** is unenforceable if it (i) was entered into before a dispute alleging sexual assault or sexual harassment under federal, state, or tribal law and (ii) "requires the parties not to disclose or discuss the conduct, a settlement involving the conduct, or information covered by the terms and conditions of the contract or agreement"; and
 - A **nondisparagement clause** is unenforceable if it (i) was entered into before a dispute alleging sexual assault or sexual harassment under federal, state, or tribal law and (ii) requires one or more parties "not to make a negative statement about another party that relates to the contract, agreement, claim, or case."
 - It does not limit the use of nondisclosure or nondisparagement clauses in agreements, such as separation or settlement agreements, entered into **after** a dispute concerning sexual harassment or sexual assault arises, nor does it impact agreements regarding employer trade secrets and other proprietary information.

New wage laws

- **California**

- California's [Pay Data Reporting bill](#) requires private employers with 100 or more employees to submit a pay data report to the California Civil Rights Department annually on or before the second Wednesday of May, beginning May 10, 2023.
 - The pay data report is separate from an employer's EEO-1 and must include the median and mean hourly rate for each combination of race, ethnicity and sex within each job category.
 - Additionally, beginning Jan. 1, 2023, employers with 15 or more employees - and at least one employee in California - must include the pay scale for a position in any job posting. Employers must also provide an employee with the pay scale for the employee's current position upon the employee's request
 - the term "pay scale" only requires disclosure of the salary or hourly wage range the employer reasonably expects to pay for the position - and not other types of compensation or benefits. But the pay scale must include piece rate or commission wages.
 - An employer must include the pay scale in job postings for roles that may be filled in California, either in-person *or remotely*.
 - An employer *may not* link to the salary range in an electronic posting or include a QR code in a paper posting that will take an applicant to the salary information - it must be stated in the posting itself.
 - An employer must keep records of a job title and wage rate history for each employee throughout their employment, plus three years after. The records must be open to inspection by the Labor Commissioner to determine whether there is still a pattern of wage discrepancy.
 - Pay transparency violations may be subject to civil penalties of no less than \$100 and no more than \$10,000 per violation.
- **New York**
 - Effective September 17, 2023, [New York's law](#) requires that virtually every job, promotion or internal transfer opportunity that is advertised by a New York business include the compensation or a "range of compensation" for such job, promotion or transfer opportunity. The law defines "range of compensation" as "the minimum and maximum annual salary or hourly range of compensation for a job, promotion or transfer opportunity that the employer in good faith believes to be accurate at the time of the posting of an advertisement for such opportunity."
 - The law also requires that any such advertisement include the job description for the corresponding job, promotion, or transfer opportunity, if such description exists.
 - The law also includes provisions providing separate rules for job advertisements for roles that are paid solely on a commission basis; barring retaliation against individuals who exercise their rights under the law; and imposing additional recordkeeping requirements on employers.
 - **Washington**
 - Washington State's [Equal Pay and Opportunities Act](#) requires employers with 15 or more employees to "disclose in each posting for each job opening the wage scale or salary range."
 - It also requires employers to provide a "general description of all the benefits and other compensation to be offered to the hired applicant." Under the State's [administrative policy](#), this description should include, but is not limited to "health care benefits, retirement benefits, any benefits permitting days off (including more generous paid sick leave accruals, parental leave, and paid time off or vacation benefits), and any other benefits that must be reported for federal tax purposes, such as fringe benefits."
 - **Rhode Island**
 - Rhode Island's [Pay Equity Act](#), was amended to impose new pay transparency requirements. The Rhode Island law does not expressly require employers to post anticipated salary ranges in postings.
 - It does, however, provide that, upon request, employers must "provide . . . an applicant for employment the wage range for the position for which the applicant is applying." Employers "should" disclose the range "prior to discussing compensation" for the position with the applicant.
 - However, even if not requested, employers "shall provide an employee the wage range for the employee's position both at time of hire and when the employee moves into a new position."
 - Further, employers must provide a wage range for an employee's current position at their request at any time "during the course of employment."

- “Wage range” is defined as the “lower and upper bounds that an employer is willing to pay an applicant for employment or does pay an employee.”

New leave laws

• Illinois's Family Bereavement Act

- Illinois renamed its Child Bereavement Leave Act the “[Family Bereavement Leave Act](#)” and expanded its scope to require employers with 50 or more employees to give their workers up to two (2) weeks of unpaid bereavement leave for more family members.
- Effective January 1, 2023, “covered family members” include stepchildren, spouses, domestic partners, siblings, parents, and a spouse’s parents, grandchildren, grandparents and stepparents.
- And workers can now also take that protected leave for reasons such as a miscarriage, failed adoptions or unsuccessful reproductive and fertility procedures.

• California's expanded CFRA

- [This bill](#) expands on the categories of individuals for whom an employee may take leave to care for under the California Family Rights Act (CFRA) and California’s Healthy Workplaces Healthy Families Act (HWHFA).
- Under the amended CFRA, an employee may take unpaid leave to care for a “designated person,” defined as “any individual related by blood or whose association with the employee is the equivalent of a family relationship.” Similarly, an employee may take paid leave to care for a “designated person” under the amended HWHFA, defined as “a person identified by the employee at the time the employee requests paid sick days.”
- Under both the amended CFRA and HWHFA, an employee may identify a designated person at the time they request leave. An employer, however, may limit an employee to one designated person per 12-month period.

• California's bereavement leave

- [AB 1949](#) requires covered employers to offer employees up to five (5) days of bereavement leave. Under AB 1949, employees who have been employed for at least 30 days may take five (5) days of bereavement leave for a family member, defined as a spouse, domestic partner, child, parent, parent-in-law, sibling, grandparent or grandchild.
- Bereavement leave need not be taken consecutively, but, it must be completed within three (3) months of the death.
- The statute does state, however, that leave “shall be taken pursuant to any existing bereavement leave policy of the employer.”
- In all situations, employees may use vacation, personal leave, sick leave or other compensatory time off to substitute for unpaid leave. Interfering with leave or improperly denying leave are unlawful employment actions; however, an employer is permitted to ask for proof of documentation of death within 30 days of the first day of leave.

Miscellaneous new laws of interest

• Federal PUMP Act

- The 2023 federal omnibus spending act also included the [Providing Urgent Maternal Protections for Nursing Mothers Act](#) (“PUMP” Act). This new law expands the existing lactation accommodations for nursing mothers under the Fair Labor Standards Act (FLSA).
- The FLSA was amended in 2010 to require employers to provide reasonable break time as needed and a private place, other than a bathroom, for nursing mothers to express breast milk for one year following a child’s birth. This requirement, however, applied only to non-exempt employees and did not apply to any employer with fewer than 50 employees who could establish that compliance would impose an undue hardship.
- The PUMP Act expands the breastfeeding accommodations to include exempt, as well as non-exempt, employees. It also provides that the employee must be completely relieved from work, otherwise the time is counted as hours worked, which means that non-exempt employees could count that time for purposes of calculating compensation and overtime. The new law does, however, maintain the exception for small employers for whom compliance would impose an undue hardship.
- Employers are also required to provide “a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.” Employers have 10 days after an employee notifies them of their need for nursing breaks to come into

compliance with the location requirement, and an employee can bring a lawsuit against the employer if it fails to do so.

- **Illinois's CROWN Act**

- Effective January 1, 2023, the Illinois Human Rights Act was amended via the [Create a Respectful and Open Workplace for Natural Hair Act](#) (the "CROWN Act") to provide that the IHRA's definition of "race" include traits associated with race, and lists certain hairstyles, such as braids, locs and twists, as an example.

- **New Jersey's WARN Act amendments:**

- [Amendments to New Jersey's Worker Adjustment and Retraining Notification Act](#) (WARN) will take effect on April 10, 2023
- The substantial changes to NJ WARN include:
 - Timing of required advance notice before the employment action is taken under NJ WARN has been increased from 60 days to 90 days.
 - The amendments eliminate the distinction between part-time employees and full-time employees, making NJ WARN applicable to all employers with 100 or more employees anywhere in the United States, as long as the employer has operated in New Jersey for more than three years, regardless of tenure or hours worked.
 - The amendments also expand the definition of "establishment" to incorporate all of an employer's New Jersey locations in operation for longer than three years, requiring employers to consider employment actions happening at all their locations cumulatively within the state.
 - NJ WARN is now applicable in all instances where 50 or more employees, located anywhere in the state, are terminated.
 - The NJ WARN amendments require employers to provide one week of severance pay for each year of completed service to employees impacted by an action protected under NJ WARN even if proper notice is given. Moreover, employees may not waive their right to severance under NJ WARN without state or court approval.
 - If an employer does not provide proper notice of layoffs, New Jersey employers will be required to pay each impacted employee an additional 4 weeks of severance pay.

- **Illinois's One Day Rest in Seven Act amendment**

- Effective January 1, 2023, [amendments to the One Day Rest in Seven Act](#) require that employers give non-exempt employees 24 hours of rest in each consecutive seven-day period (as opposed to the prior rule of a day of rest in each calendar week).
- Employers can request permits from the Illinois Department of Labor authorizing the employer to require employees to work on designated days of rest based on business necessity and economic viability.
- The amendments also affect meal break requirements. Prior to January, employers had to provide non-exempt employees who work a 7.5-hour shift with a 20-minute meal break that occurs no later than five hours after the start of the shift. Beginning January 1, employers must provide another 20-minute meal break for each additional 4.5-hour period an employee works.

If you have questions about these laws or any other employment-related law and their impact on your policies and procedures, please contact us.

[Susan Lorenc](#) is a partner in Thompson Coburn's Labor & Employment practice.

authorsTest

susan

Susan M. Lorenc