



2022 End-of-Year Employment Law Update

December 8, 2022

* Although we will be providing legal information during this webinar, we will not be providing legal advice.

Agenda for Today

Employment laws have changed significantly in a number of different areas in 2022. We're going to focus our webinar today on the following topics.

1 Changes to COVID Rules and Regulations

2 Changes to Leave Laws and Requirements

3 Changes to Employee Training Requirements

4 Changes to Employment Contract Laws

Three Levels of COVID Rules and Regulations

□ Federal

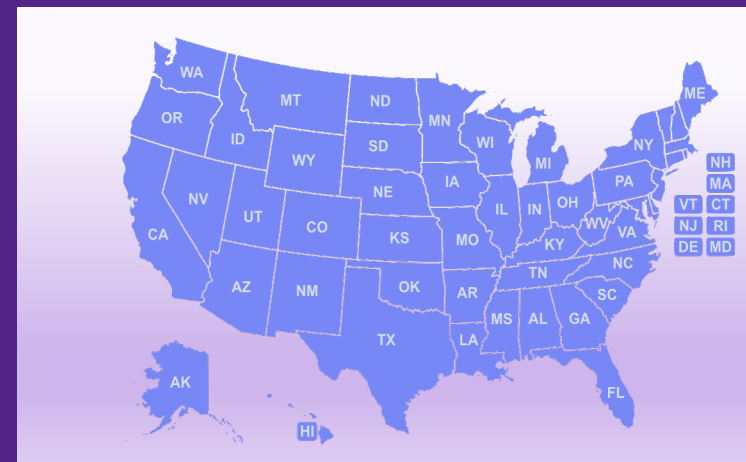
- Centers for Disease Control and Prevention (CDC)
- Equal Employment Opportunity Commission (EEOC)
- Occupational Safety and Health Administration (OSHA)

□ State

- Governors' Offices
- State OSHA
- State Departments of Public Health

□ Local Governments

- Counties
- Cities



Federal Changes

CDC

- **Mask Guidance**
 - Currently based on COVID-19 Community Level
- **Quarantine and Isolation Guidance**
 - If exposed, wear a mask for 10 days and get tested after 5 days
 - If sick, isolate for 5 days after positive test or first symptoms
- Vaccination
 - Stay up to date

EEOC

What You Should Know Document

- At the outset of the pandemic the standard for requiring a viral COVID test was always met.
- In July, EEOC determined that going forward businesses must meet the “Business Necessity” standard to require a viral COVID test.

OSHA

Emergency Temporary Standard

- OSHA tried to implement federal Emergency Temporary Standard that included a “shot-or-test” requirement. It was challenged in court, stayed by the Supreme Court, and ultimately withdrawn.
- OSHA with Health Care ETS and may still adopt permanent standards.

State Changes

- Many Governors are continuing to extend emergency proclamations.
- Cal/OSHA is still enforcing its ETS and is in the process of creating permanent COVID-related requirements.
- New York has adopted the Hero Act, which requires companies to create an airborne infectious disease exposure prevention plan that can be put in place when required by the NY Commissioner of Health.

Local Changes

- Most local COVID-related laws and regulations have been lifted.
- Los Angeles County's mask rules are based on the COVID-19 infection rate.
 - The infection rate reached Medium in November and LA County updated its mask rules on November 18, 2022, to “strongly recommend” that people wear masks in “indoor public settings.”
 - COVID cases are continuing to rise and could reach High by later this week. If that happens, LA County's mask mandate will automatically go back into effect, requiring masks in all businesses and indoor public settings.

Wage Transparency

When do you need to include a pay scale or wage range?

All Employers – Current employee request & keep a record

15+ Employees – Job Postings

100+ Employees – Submit separate annual pay data

California

NYC – Nov 1, 2022
For most job postings

Westchester County –
Nov 6, 2022
When advertising a job, promotion, or transfer opportunity

New York

At the request of an employee or an applicant

Before discussing compensation with a job applicant

At the time of hire and when an employee moves into a position

Rhode Island

Job Postings –

Disclose hourly or salary compensation and a general description of benefits

Washington

Family Leave Expansions

- California added “designated person” to the list of individuals employees can take leave for under the California Family Rights Act
- New York added **sibling** to the definition of “family member” for New York Paid Family Leave.

California Safety Leave

- Employers cannot punish employees for leaving work or refusing to report to work during an “emergency condition”
- Employees must be allowed access to mobile devices during these conditions

Bereavement Leave

- **California** – Employers with 5+ employees must provide 5 days of unpaid bereavement leave
 - Must be taken within 3 months of the death of a family member
- **Illinois** – Expanded existing 10 days unpaid bereavement leave to include leave resulting from
 - Pregnancy loss
 - Unsuccessful IVF Treatment
 - Family Adoption or surrogacy
 - Diagnosis that impacts pregnancy



Paid Family Leave

Colorado Paid FMLA

- Up to 12 weeks of paid leave
- Employers begin paying into Colorado's My FAMLI+ **January 1, 2023**
- Employees can receive benefits beginning **January 1, 2024**

Oregon Paid FMLA

- Up to 12 weeks of paid leave
- Employers must withhold premiums beginning **January 1, 2023**
- Employees can receive benefits beginning September 3, 2023

DC Paid Family Time

- Expanded to up to 12 weeks of paid
 - Parental Leave
 - Family Leave
 - Medical Leave
- An additional 2 weeks
 - Paid Prenatal Leave
- Maximum of 14 weeks in any 52 week period

Decorative graphic elements consisting of thick, solid lines in dark purple and light green. These lines form abstract, angular shapes that resemble stylized steps or paths, extending from the top and bottom edges of the slide towards the center.

Notable Training Requirements from 2022

Chicago Passes New Look Sexual Harassment Training Requirement

Requirements for all employers:

- Create and implement written sexual harassment policy
- Provide sexual harassment prevention training to all employees
 - Supervisory and managerial employees must receive additional training
- Provide bystander intervention training to all employees
 - First requirement of its kind

New York to Require Industry Specific Human Trafficking Training

Covered employers must train employees on:

- What human trafficking is
 - Including the legal definition
- How to identify victims
- How to report instances of human trafficking

New York to Require Industry Specific Human Trafficking Training

Law specifically tailored to industries where employees are likely to encounter victims of human trafficking

- Lodging Industry (hotels, motels, etc.)
- Businesses that serve alcohol (restaurants, bars, etc.)
 - Requirement actually falls on businesses that develop alcohol awareness trainings for restaurants/bars

Key Takeaways

1. State governments are becoming increasingly willing to impose training requirements on businesses to combat social harm
2. Legislatures are getting creative in how they structure these requirements and what businesses to impose them on
3. Businesses should consider adopting more robust training programs and internal policies to get out in front of new laws

Employment Agreements

There have been significant changes in employment law this year, both federally and at the state level.

Arbitration

Arbitration agreements are contracts in which parties agree to refrain from taking legal action against the other if any dispute arises, and instead submit it to an arbitrator.

Non-Disclosure

NDA's are agreements in which parties (or a party) agrees not to reveal facts or details of a circumstance to other parties.

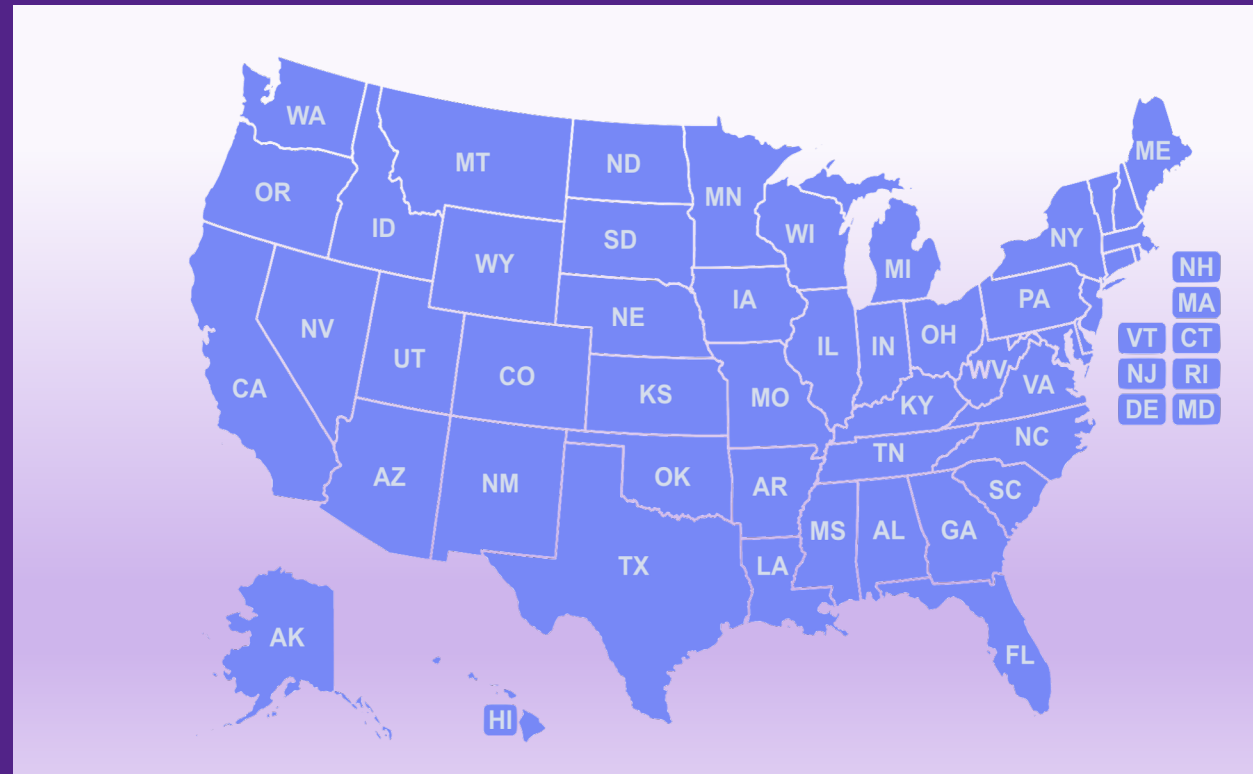
Non-Competition

In the employment context, Non-Competes are agreements in which an employee agrees not to take part in activities that would compete with the employer's business, post employment.

Arbitration Agreements

Federal Updates

- **Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act**
 - Bans pre-dispute arbitration agreements for sexual assault/harassment claims
 - Effective March 3
- **Forced Arbitration Injustice Repeal Act**
 - Prohibits mandatory arbitration agreements for employment, consumer, antitrust, or civil rights disputes
 - Protects collective actions
 - Passed by the House-awaiting Senate



Arbitration Agreements

State Updates



State Updates

- California
- Illinois
- Maryland
- New Jersey
- New York
- Vermont
- Washington

California

Viking River Cruises, Inc. v. Moriana

Decided June 15

PAGA SAGA

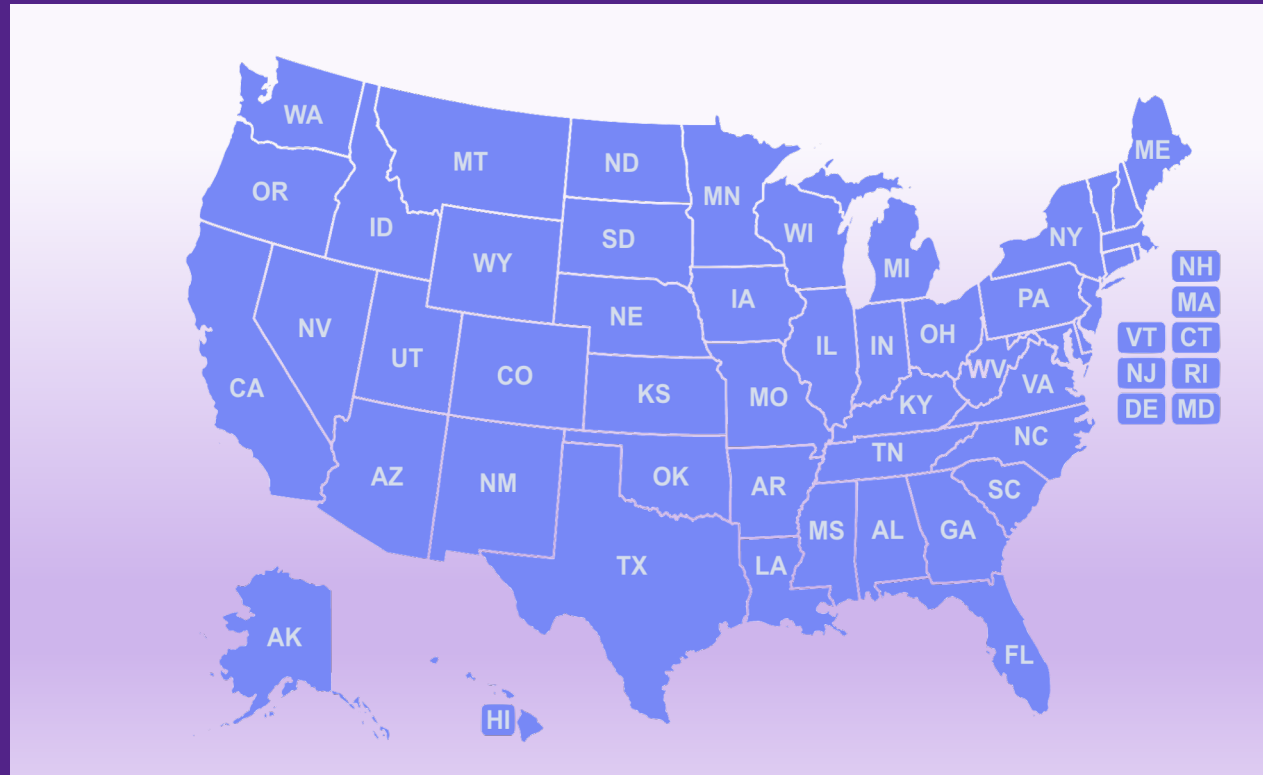
- California Private Attorney General Act (PAGA)
 - Allows private employees to sue for Labor Code violations
- CA law: employers cannot require arbitration of PAGA claims
- The CA Supreme Court held that law to be valid and employers could not require arbitration of those claims
- The US Supreme Court changed that in *Viking River Cruises*, ruling that the Federal Arbitration Act preempted state law, permitting enforcement of arbitration agreements, even in PAGA claims

Non-Disclosure Agreements

Federal Updates

- **Speak Out Act**

- Prohibits pre-dispute NDAs that would prevent victims from disclosing any sexual assault or sexual harassment
- Passed by Congress on September 29
- Sent to President Biden on December 1
- Signed yesterday, December 7



Non-Disclosure Agreements

State Updates



State Updates

- California
- Colorado
- Maine
- Oregon
- Washington

Washington

Silenced No More Act

Effective June 9

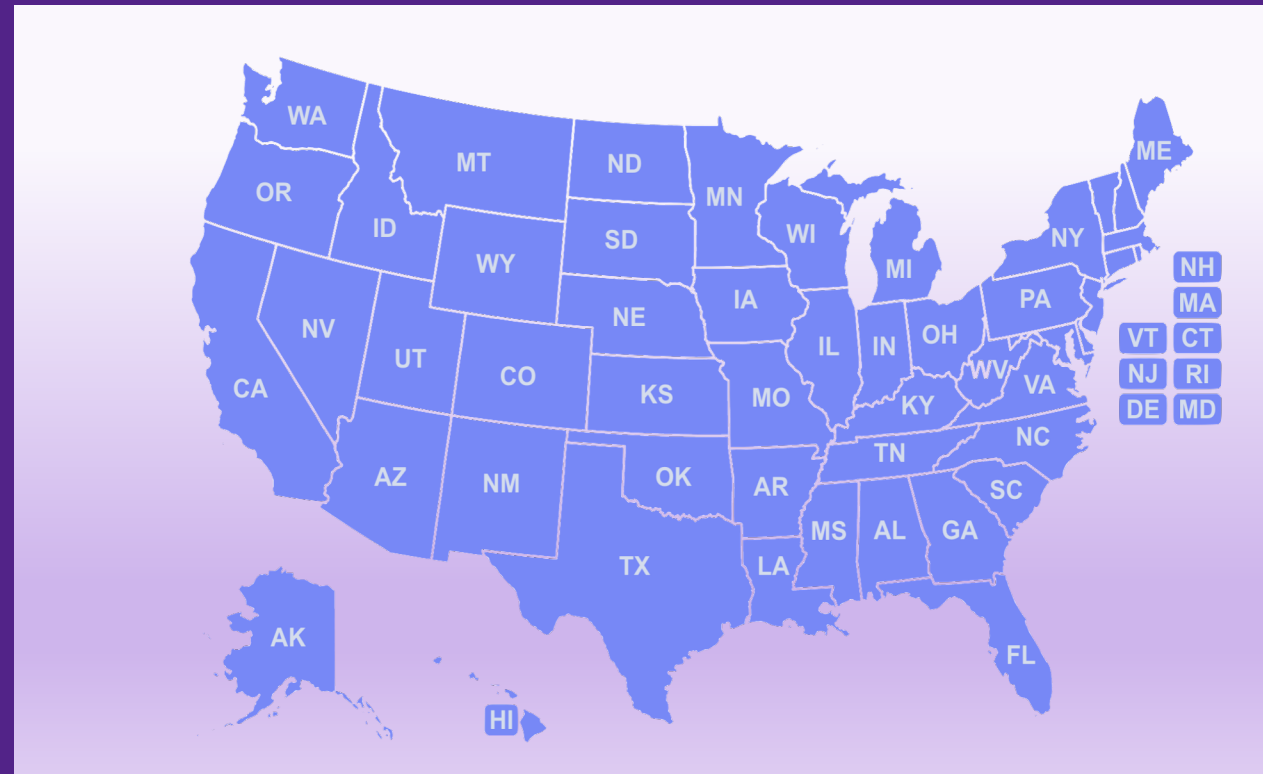
Details

- Expands existing state law restricting the use of pre-dispute NDAs covering sexual assault and sexual harassment
- Now, pre-dispute NDAs are banned if they cover “illegal discrimination, illegal harassment, illegal retaliation, a wage and hour violation, or sexual assault
- Applies retroactively, invalidating many agreements
- Imposes penalties of up to \$10,000 plus attorney’s fees and costs
- Applies to all employment agreements containing NDAs

Non-Compete Agreements

Federal Updates

- Executive Order: Promoting Competition in the American Economy
 - While this Order does not have direct implications for employers, it imposes a responsibility on the Federal Trade Commission to “ban or limit non-compete agreements”
 - We can expect to see federal regulations around non-competes in the foreseeable future



Non-Compete Agreements

State Updates



Over 20 states have imposed or have considered limitations this year, including:

- Colorado
- DC
- Illinois
- New Jersey*
- Washington
- Oregon

State Updates

- Income thresholds
 - Non-Competes: \$107,250
 - Non-Solicitations:
 - \$60,750
- Notice requirements
 - Must be separate from any other agreement, and identify, specifically, where the NCA/NSA is and what it does
- Penalties
 - Civil: up to \$5,000 plus attorney's fees
 - Criminal: up to 12 months in prison

Colorado

HB 22-1317

Effective August 10



Thank You!

Visit us at sixfifty.com to view our offerings and set up a free demo