



New Year, New Handbook

February 16, 2023

Agenda

1 Emerging
Employment law
Issues for 2023

2 What goes where?
Employee Handbook
vs. Employee Contract

3 When to Update
Your Employee
Handbook and Seek
Acknowledgements

Pregnancy & Lactation Accommodation

Pregnant Workers Fairness Act (PWFA)

- Employers with 15+ employees must make reasonable accommodations related to pregnancy, childbirth, or related medical conditions.

Providing Urgent Maternal Protection for Nursing Mothers Act (PUMP Act)

- Employers must provide lactating employees with reasonable break time and a private location to express milk for up to one year following childbirth
- Employers with less than 50 employees may be exempt if complying would cause “an undue hardship imposing significant difficult or expense.”

Paid Family Leave

Colorado Paid FMLA Insurance Program

Up to 12 weeks of paid leave

Employers begin paying into Colorado's My FAMILI+ **January 1, 2023**

Employees can receive benefits beginning **January 1, 2024**

Oregon Paid FMLA Insurance Program

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

California



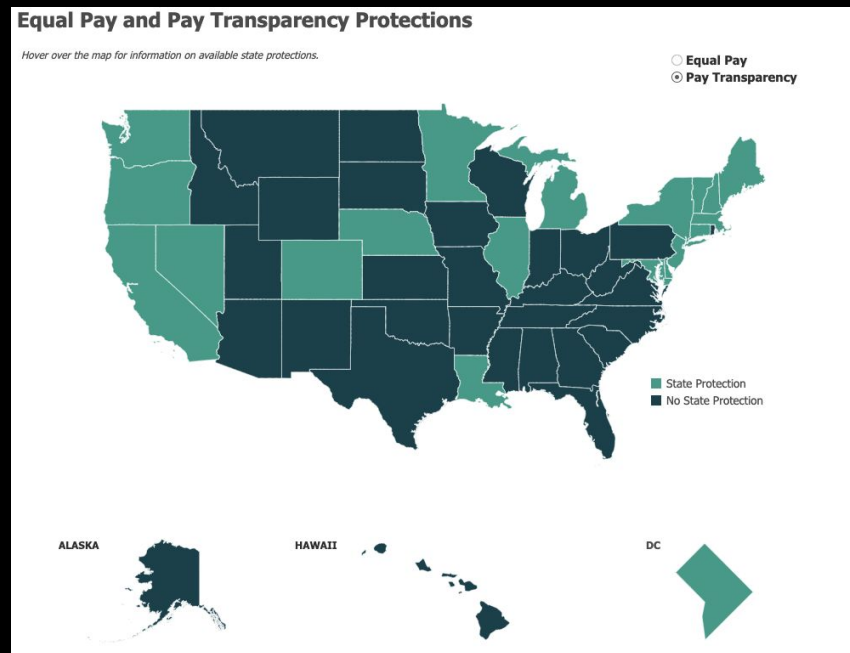
- SB 1044 – Employees rights during emergency conditions
- AB 1041 – Designated Person for CFRA
- AB 1949 - Bereavement Leave
- AB 523 - Reproductive Health Decision Making and Employment Discrimination

Stalled

- AB 257 – Fast Food Accountability and Standards Recovery Act

Wage Transparency

- Companies are increasingly being open about the compensation provided to current and prospective employees
- Transparency furthers two goals:
 - Legal Compliance
 - Pay Equity



Passive Protections

Under these types of laws, employers may not prohibit employees from disclosing, discussing, or inquiring about wages. Further, they prohibit employers from retaliating against employees for exercising their rights around wage sharing.

Delaware

Louisiana

Maine

Michigan

Minnesota

Nebraska

New Hampshire

New Jersey













Oregon

Vermont

Washington D.C.

Active Protection

Active protections require employers to make certain disclosures or maintain certain records.

	CA	CO	CT	IL	MD	NV	NY	RI	WA
Affirmative Disclosure	 *								 *
Upon Request									

*Applicable for employers with 15+ employees

States with Significant Requirements

These states go above and beyond when it comes to wage transparency.

California

All employers must disclose the pay scale for a job to applicants upon request after an initial interview and keep a record of titles and wage rates for 3 years after employment ends. Employers with 15 or more employees must include wage range in all job postings. Employers with 100 or more employees must submit a wage data Report with CA Civil Rights Dep't.

Colorado

All job postings must include the wage range, a general description of any bonuses, commissions, etc., and a description of all employment benefits. Employers must also maintain a record of job descriptions and wage rates for each employee during their employment and for two years after their employment ends.

New York

Employers with 4 or more employees must include wage ranges, job descriptions, and promotion opportunities (if applicable) in all job postings. Employers must obtain written acknowledgment that applicants have received notice of their payment details. Employers must maintain records of compliance.

Illinois

Upon hiring, employers must notify employees of their pay rate, and of the time and place of payment, in writing. If possible, the notice should be acknowledged by both parties. Employers with over 100 employees must obtain an Equal Pay Registration Certificate (EPRC).

EEO Trends in 2023:

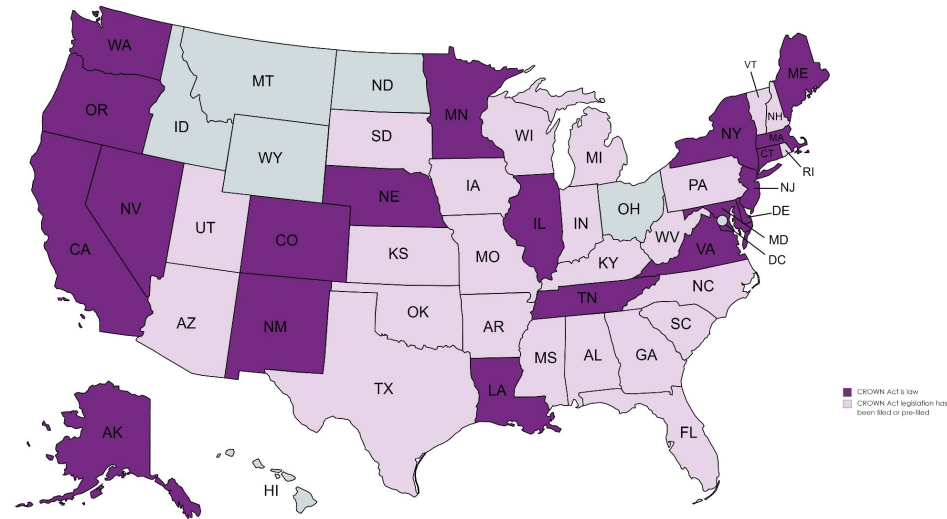
- 2022 Year-End Report Highlights Pay Equity Enforcement
 - Class-actions and settlement values increased in 2022, including sex-bias claims rooted in inequitable pay
 - Report signals emphasis on EEO enforcement in 2023
- Companies should critically evaluate wage practices
 - Can you justify wage discrepancies among existing employees?
 - Burden can fall on employer

CROWN Acts & New Protected Characteristics

Pennsylvania - racial hairstyles
 -CROWN Act law (19 states & DC)

New York - citizenship status and immigration status

California - reproductive health decision-making



CROWN Act States

Expanded Bereavement Leave

California becomes the fifth state to require some form of bereavement leave, and Illinois expands its existing law in a novel direction.

California

- Amends the California Family Rights Act to add bereavement allotment
- Applies to employers with 5 or more employees
- Up to 5 days of unpaid leave per death
- Employer can ask for supporting documentation

Illinois

- Amends Illinois' already generous law
- Applies to employer with 50 or more employees
- Up to 10 days of leave per occurrence
- Expands permitted uses to encompass a variety of reproductive health-related events



Employment Agreements

VS.

Employee Handbooks

Employment Agreements

- Employment agreements are legal documents binding employers and employees to its terms.
- Enforceable in court
- Cannot be unilaterally amended



Employee Handbooks



- Handbooks set out company policies and standards of conduct expected of employees and employers.
- Can be unilaterally modified by the employer
- Employers should take care that their handbooks are not considered binding contracts.
 - Mandatory language (“must,” “shall”)
 - Contract disclaimer

Arbitration

- Commonly included in employment agreements.
- Some employers who don't use employment agreements will add arbitration provisions to their handbook.
- However, mutuality of obligation is required, so the handbook is not the best place for arbitration provisions.



Other Common Agreements

Confidentiality Agreements

Agreements in which parties agree not to reveal facts or details of a dispute or event to other parties.

Non-Competition Agreements

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.

Non-Solicitation Agreements

Non-solicitation agreements restrict employees from from soliciting customers, contractors, and other employees away from the company.

Updating Your Employee Handbook

- How often do you need to update your employee handbook?
- How can you keep current on legal changes that affect your employee handbook?



Best Practice:

- Review legal changes that could affect your employee handbook every month
- Update your handbook when there are changes to (1) relevant laws or (2) your organization's needs
 - This approach keeps your handbook up to date
 - A little time each month saves you a lot of time down the road
- A lot can change in a month
 - SixFifty Employee Handbook Update for November 2022 >

- Colorado's [new paid FMLA](#) program begins taking employer and employee contributions on January 1, 2023. Paid leave will be available to employees beginning January 1, 2024. The Colorado FMLA policy will be updated close to the effective date of the law.
- The **District of Columbia** [updated its Paid Leave Act](#) to increase available leave to: (i) twelve weeks of paid parental leave, (ii) twelve weeks of paid family leave, (iii) twelve weeks of paid medical leave, and (iv) two weeks of paid prenatal leave, up to a maximum of twelve weeks paid leave in any fifty-two-workweek period. The DC Paid Leave policy has been updated in the [Parental Leave policy](#).
- **Illinois** [decreased the employee count threshold for sexual harassment training](#) from 15 or more employees to 1 or more employee. The [Sexual Harassment policy](#) has been updated accordingly.
- **Illinois** [expanded bereavement leave](#) to include leave resulting from pregnancy loss, unsuccessful IVF treatment, a failed adoption or surrogacy, or a diagnosis that impacts pregnancy. The [Bereavement Leave policy](#) has been updated accordingly.
- **New York** [added siblings to the definition of family member](#) for the purpose of paid family leave. The [Parental Leave](#) and New York [FMLA policy](#) have been updated accordingly.
- **Oregon's** [new paid leave program](#) begins taking employer and employee contributions beginning January 1, 2023. Paid leave will be available to

Staying Up to Date on Legal Changes

Third-Party Services

- Third-party services can help you stay current on changes to state and federal laws.
- At SixFifty, we send our customers a monthly update on legal changes and a redline of how we've updated our document creation engines.

Law Firms

- Some companies rely on their outside counsel to alert them when the law changes.
- Some law firms send out emails or have web pages where they summarize changes to the law.

Do It Yourself

- Some companies assign members of their HR or Legal teams to monitor the law in the states where they have employees and update their employee handbooks.

Signatures and Acknowledgements

- When do you need to send your employee handbook to employees for signature or acknowledgement?
- Different Approaches:
 - Send out for acknowledgement everytime there is a significant change.
 - Send out for acknowledgment once a year and make employees aware of changes between acknowledgements.
 - Send out for acknowledgment every year and do not make changes between acknowledgements.
 - Require acknowledgments when employees start and make them aware of changes that occur afterward.

A woman with curly hair and glasses is sitting on a red shag rug on the floor, using a laptop. She is wearing a white long-sleeved shirt and blue jeans. The background shows a modern living room with a white sofa, a large green plant, and a window with blinds. A purple decorative line runs diagonally across the top right of the image.

Questions?

Thank you!



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