



What You Need to Know to Hire in New States in 2023

March 16, 2023

Agenda

1 Wage Transparency
and Hiring
Considerations

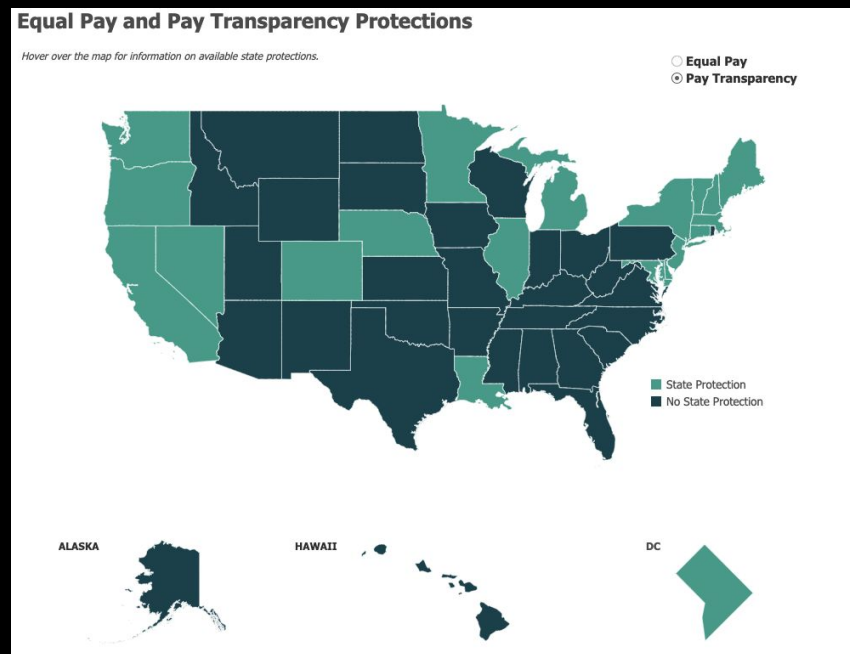
2 Employment
Agreements

3 Employee
Handbook Updates
and Acknowledgments

4 Questions &
Answers

Wage Transparency

- According to the US Department of Labor, 19 states (and the D.C.) have some type of wage transparency protections.
- Protections can be broken into two groups:
 - Active
 - Passive



Passive Protections

Passive protections are those that require inaction from employers. Under these type 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

Nebraska

Louisiana

New Hampshire

Maine

New Jersey

Michigan

Oregon













Minnesota

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).

Registrations & Regulations To-Do List for Hiring in a New State

- ❑ Register to do business in the new state
- ❑ Find a registered agent (if one is required)
- ❑ Report your new hire to the appropriate state office
- ❑ Obtain unemployment, workers' compensation, and/or short-term disability insurance
- ❑ Register to withhold state income tax
- ❑ Understand state pay frequency and overtime requirements
- ❑ Determine whether you need to register for a state retirement program
- ❑ Post or distribute required signs and notices

Crafting Offer Letters in New States

Trend: More states are requiring notices and disclosures prior to the start of employment. The offer letter is the best place to include those.

Pay Transparency

- CT example: If not requested earlier, employer must disclose the wage range for the position to the applicant at the latest by the time of offer.
- Possible penalties for violation: compensatory damages, attorney's fees and costs, and punitive damages

Notice of Restrictive Covenants

- Employer must notify potential employee that a restrictive covenant is a required condition of employment and advise to seek counsel
- Employer must comply with required notice periods
- Penalties: Non-enforceable restrictive covenant, civil penalties, damages, attorney's fees

How to Draft Employment Agreements for New States

- Governing Law Issues
- Non-Competition and Non-Solicitation Agreements
- Non-Disclosure Agreements
- Arbitration Agreements

Which state's laws govern your employment agreements?

Lawyer answer: it depends

General rule: the law of the state where the employee works

Employment Agreements

Non-Compete/Non-Solicitation

- Complete bans (will federal law follow these states?)
- Income thresholds
- Notice and disclosure requirements
- Reasonableness requirements
 - Duration
 - Geography
 - Scope
- Legitimate business interest

NDAs

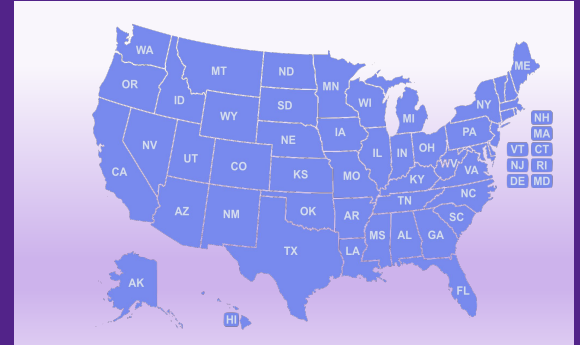
- Prohibition on limiting disclosure of sexual harassment/assault
- Prohibition on limiting disclosure of all forms of discrimination and workplace violations
- Trade secrets and other confidential information not affected
- Movement at the federal level

Arbitration

- Federal limits on arbitration of sexual assault/harassment claims
- State bans on arbitration of any employment claims
- Potential conflict between federal and state law that is unresolved

Checklist for ensuring employment contracts are legally compliant:

- ❑ Know where your employees are located and have a written relocation policy
 - Require preapproval
 - Have list of preapproved states
 - At minimum, require notice of relocation
- ❑ For new hires, ensure contract provisions comply with the law of the state where the employee is located
 - Including non-compete/non-solicit, non-disclosure, arbitration, proprietary invention and assignment, jury trial waivers, and others
- ❑ For relocating employees, determine if current contract complies with the law of the new state and, if not, execute a new or modified contract
 - “Consideration” for new contract can be permission to relocate



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 Leave

Colorado & Oregon Paid FMLA Insurance Programs

Up to 12 weeks of paid leave

Employers already
contributing

Employees can receive
benefits beginning
September 3, 2023 (Oregon)
January 1, 2024 (Colorado)

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

Illinois Paid Leave for All Workers Act

40 hours of paid leave
for any reason during a
12 month period

Effective date January
1, 2024

3rd state to pass Paid
Leave for any reason

Protected Characteristics & CROWN Act

California - reproductive health decision-making

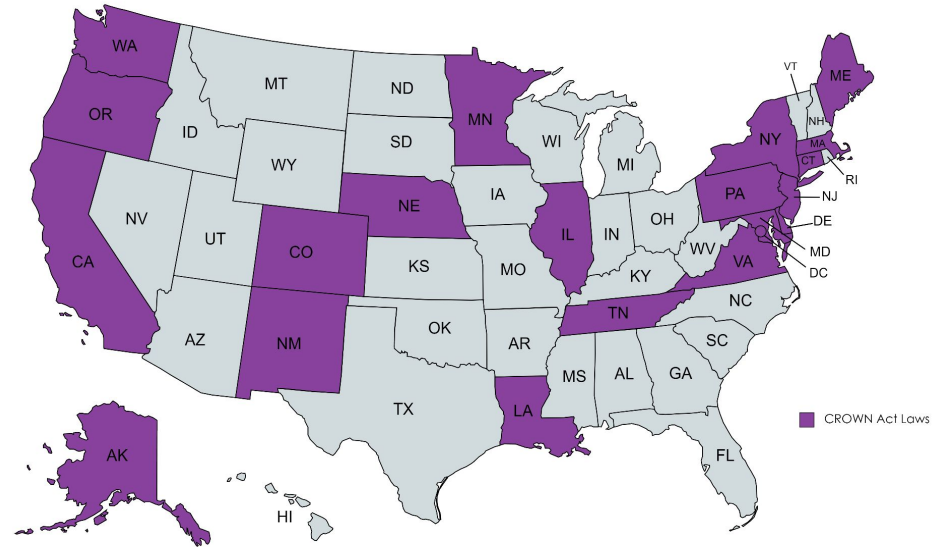
New York - citizenship status and immigration status

Pennsylvania - sexual orientation and racial hairstyles

Minnesota - racial hairstyles

CROWN Act laws (20 states & DC)

Fed considering CROWN Act laws



Created with mapchart.net

California



- SB 1044 – Employees rights during emergency conditions
- AB 1041 – Designated Person for CFRA
- AB 1949 – Unpaid Bereavement Leave Stalled (Awaiting Referendum Vote)
- AB 257 – Fast Food Accountability and Standards Recovery Act

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 your employee handbook every month for updates
 - Consider any new laws, states, and employee counts
 - Depending on your company complexity you may need to make many or no changes
 - 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 →

- **California** passed [SB 523](#) which amended the Fair Employment and Housing Act to prohibit employment discrimination on the basis of an individual's reproductive health decision-making. The [EEO](#) policy has been updated accordingly.
- **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 employees beginning September 3, 2023. The Oregon [FMLA policy](#) has been updated accordingly.

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?
- An Employee Handbook is not a contract
- Different Approaches:
 - Send out for acknowledgement every time there is a significant change
 - Make employees aware of changes and send out for acknowledgment once a year
 - Make employee aware of changes but only get acknowledgments when employees start

Thank you!



Scan to see SixFifty's
Employment Tools