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If you have a question, please reach out to the appropriate contact below.

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Contact your Account Manager directly
or email ClientExperience@FrankCrum.com

HR questions:
Contact your FrankAdvice HR Consultant directly
or email FrankAdvice@FrankCrum.com

Risk management questions:
Email SafetyandRisk@FrankCrum.com

Tax questions:
Email Tax_Group@FrankCrum.com

Unemployment questions:
Email UnemploymentClaims@FrankCrum.com

You can also find more information and resources for employers on our blog, *FrankBlog* for Business Owners.
**This newsletter is for information purposes and not legal advice.*

What's in this Issue?

EEOC Delays EEO-1 Data Collection

With some exceptions, private employers with 100 or more employees and federal contractors with 50 or more employees must complete an EEO-1 report each year. Covered employers must provide information on the form regarding race, ethnicity, gender, and job category of employees.

The EEOC has announced it will delay the data collection for this year and expects to begin collecting the 2019 and 2020 EEO-1 data in March 2021, pending approval from the White House.

Upon request, FrankCrum submits the EEO-1 report for clients required to do so, and those that don't wish to handle the process themselves. Covered clients (100 or more employees/50 or more employees, if a federal contractor) will be contacted later this year about EEO-1 reporting in 2021.

CDC Releases Detailed Guidance for Reopening

The CDC has just released a 60-page document that includes the most extensive guidance to date from the health agency. The document includes specific guidance for businesses, restaurants, schools, etc.

View the Document Here

Coronavirus Resource Center

COVID-19 has already made an impact on businesses. Federal, state, and local regulations are changing rapidly, yet the long-term implications are still unknown.

At FrankCrum, we're dedicated to providing our clients with accurate, timely insights on COVID-19 that are relevant to their businesses. Although we send out news alerts via email regularly, you can visit and bookmark the FrankCrum Coronavirus Resource Center to see our latest publications and links to trusted sources.

Minimum Wage Increases for July 2020

Here is a list of minimum wage increases for July 2020.

View Minimum Wage Updates

DOL Updates

Fluctuating Workweek Method of Computing Overtime Clarified

On May 20, 2020, the U.S. Department of Labor (DOL) announced a final rule that allows employers to pay bonuses or other incentive-based pay to salaried, non-exempt employees whose hours vary from week to week.

The rule provides needed clarification on several related issues and will allow employers and employees to better utilize flexible work schedules. “This is especially important as workers return to work following the COVID-19 pandemic,” the DOL said. “Some employers are likely to promote social distancing in the workplace by having their employees adopt variable work schedules, possibly staggering their start and end times for the day.”

However, not all states permit a fluctuating workweek.

The rule takes effect 60 days after the date of publication in the Federal Register.

Fluctuating Workweek Method

More Retailers Can Claim Overtime Exemption for Commissioned Salespersons

More than 100 types of businesses – including accounting firms, credit bureaus, banks, building contractors, engineering firms, and real estate companies – may find it easier to claim an overtime exemption for commissioned salespersons now.

The U.S. Department of Labor (DOL) has withdrawn a Fair Labor Standards Act (FLSA) regulation, which had listed 134 different establishments that lack a "retail concept" and therefore had long been considered to be categorically ineligible for the classified salespersons’ exemption.

Those businesses still must satisfy the criteria for the commissioned salespersons' exemption, which remains unchanged. Among other things, they still must pay commissioned salespersons a regular rate

at least one and a half times the minimum wage and provide commissions that comprise more than half the employee's compensation for a representative period.

However, the formerly blacklisted businesses will no longer automatically be assumed to be ineligible in the eyes of the DOL.

Sexual Harassment Prevention Training Updates

California's Department of Fair Employment and Housing (DFEH) has introduced a free online sexual harassment prevention program for nonsupervisory employees in the state. Every 2 years, employers in California with five or more employees are required to provide one hour of training to non-supervisors and two hours of training to supervisors. The initial training deadline was January 1, 2020 but many employers have till January 1, 2021. Afterward, new employees and newly promoted supervisors must be trained within 6 months. According to the DFEH, the program is interactive, can be used on mobile devices, and is accessible for workers with disabilities. The DFEH plans to release a similar training program for supervisors.

The **Illinois** Department of Human Rights (IDHR) has released a model training program that employers may use. Employers may also hire a third party or create a video with the minimum requirements. Covered employers must provide annual sexual harassment prevention training by December 31, 2020, and annually after that.

Recognizing that employers have had challenges in ensuring employees complete **Connecticut's** mandatory sexual harassment training requirements during the COVID-19 pandemic, the Connecticut Commission on Human Rights and Opportunities (CHRO) has authorized employers to apply for a 90-day extension to complete training for employees who were hired after October 1, 2019.

Employers may request an extension by emailing the CHRO at CHRO.questions@ct.gov. The CHRO's guidance does not contemplate modification of the existing deadline for training all employees hired before October 1, 2019. Training for those employees must be completed on or by October 1, 2020.

Voting Updates

Utah employers are prohibited from directly or indirectly inducing or compelling an individual to vote or refrain from voting at an election, or to refrain from voting for a particular individual measure at an election by:

- Using force, violence or restraint
- Inflicting or threatening to inflict injury, damage, harm or loss; or
- Intimidation

New York has reverted back to the old law of allowing two hours of PTO to vote if an employee does not have sufficient time outside of working hours to vote. If an employee has four consecutive hours between the start or end of their shift and the opening or closing of the polls, they are presumed to have sufficient time, and the employer need not allow them to take PTO to vote during the workday. Employees must provide their employers at least two working days' notice of intent to take voting time off. Employers must ensure updated notices are posted conspicuously in the workplace at least ten working days before the next election. Time Off To Vote Notice

Washington, D. C. enacted the Leave to Vote Amendment Act of 2020, which, once funded by the D.C. government, will grant all D.C. employees paid leave to vote in person. Upon an employee's request, an employer will be required to provide at least two hours of paid leave to vote in person in any public election in the District. Employees ineligible to vote in D.C. may also receive two hours of paid leave to vote in person in any election run by the jurisdiction in which the employee is eligible to vote. Employers can require that employees requesting voting leave provide notice a reasonable length of time in advance – the law does not provide the amount or form of the notice. Employers must also post a notice, which will be developed by the D.C. Board of Elections. The law will not go into effect until its fiscal impact is included in an approved budget and financial plan.

Hairstyle Discrimination Updates

Effective June 11, 2020, an amendment to the **Washington** Law Against Discrimination provides that the term “race” includes traits historically associated or perceived to be associated with race, including hair texture and protective hairstyles. Protective hairstyles include hairstyles such as afros, braids, locks, and twists.

Effective October 1, 2020, an amendment to the **Maryland** Fair Employment Practices Act provides that the term “race” includes traits associated with race, including hair texture, afro hairstyles, and protective hairstyles. The term “protective hairstyle” includes braids, twists, and locks.

TEST YOUR KNOWLEDGE!

Which of these employees are entitled to take the Families First Coronavirus Response Act (FFCRA) leave to care for their child?

A. A third shift employee who is home during school hours

B. An employee who requests leave to care for his girlfriend's child

C. An employee working from home with a 17-year old

D. An employee whose child is a disabled adult

See the end of the newsletter for the answer.

STATE UPDATES

CALIFORNIA

Employee Access to Injury and Illness Prevention Program (IIPP)

As of July 1, 2020, California employers will need to provide access to their **IIPPs** upon request of an employee, the employee's authorized representative, or the employee's union representative. Access must be given within five business days after the request is received. Employers are to provide a printed copy unless the employee agrees to receive an electronic copy. Employers can also provide access via a company intranet or website instead.

Paid Family Leave Update

California will extend the maximum duration of paid family leave benefits from six to eight weeks beginning July 1, 2020. San Francisco paid parental leave requirements will automatically increase from six to eight weeks as well.

Los Angeles Adopts COVID-19 Right-of-Recall and Worker-Retention Laws

Los Angeles employers in industries, especially hard hit by the coronavirus, must rehire employees furloughed or laid off due to COVID-19 in a specified manner, rather than at the employers' discretion, under a pair of new city ordinances.
The ordinances are aimed at protecting the jobs of workers who were employed by:

- Airport employers;
- Event center employers;
- Hotel employers; and
- Commercial property employers (including contractors or subcontractors) that employ 25 or more janitorial, maintenance or security service workers

The recall ordinance mandates that laid-off non-supervisory employees must be rehired under a recall procedure. Under the ordinance, a *laid-off* worker means any person:

- Who performed at least two hours of work in a given week within the City of Los Angeles;
- Who worked for the employer for six months or more; and
- Whose most recent separation from active employment occurred on or after March 4, 2020, due to a lack of business, reduction in force (RIF), or another non-disciplinary reason

To qualify for recall, the laid-off worker must have held the same or similar position at the same site of employment at the time of the most recent separation; or would be qualified for the position with the same

training that would be provided to a newly-hired worker in that position.

If more than one laid-off worker is entitled to preference for a position, the ordinance states that the employer must offer the position to the laid-off worker with the greatest length of active service with the employer. Also, a laid-off worker who is offered a position must be given at least five business days to accept or decline the offer.

Under the worker retention ordinance, which applies to the same employers covered by the recall ordinance, when a covered business experiences a "change in control," the successor employer must give preference to hiring workers from the previous employer's recall list. This preference must last for at least six months after the business is open to the public under the successor employer.

A successor employer must provide a worker with a written employment offer for this transition period and hold that offer open for at least ten business days from the date of the offer. These employers also must retain each worker hired under the ordinance for at least 90 days and may let them go only for cause.

Both ordinances are effective June 14, 2020, and include anti-retaliation provisions protecting workers who exercise their rights. They also note that employers with collective bargaining agreements that include right of recall or worker retention provisions will supersede these ordinances.

The ordinances give covered workers the right to bring lawsuits in California state courts for damages if **the employers do not remedy violations within 15 days of receiving notice about them.**

COVID-19 Right of Recall Ordinance
COVID-19 Worker Retention Ordinance

Subminimum Wage for Disabled Workers

Effective June 16, 2020, Maine has eliminated the subminimum wage that was paid to some workers with disabilities. Under the law, an employer may not pay less than the minimum wage to those with a mental or physical disability. A special certificate that authorized the subminimum wage for employers becomes invalid after the law takes effect.

NEW YORK

Wage Theft Prevention Act Amended

The Wage Theft Prevention Act (WTPA) currently requires employers to provide employees, at the time of hiring, a written wage notice. The notice must be provided to the employees in English and in their primary language. It must be signed and dated by the employee and must be maintained for six years.

Recent amendments to the WTPA will require home healthcare employers to specify the benefits the employee is receiving under New York's Wage Parity Law. This requirement goes into effect on October 1, 2020.

The WTPA is also amended to address employers covered by New York's prevailing wage law. Employers will be required to specify on an employee's new hire form the prevailing wage supplements, if any are claimed. The amendments require this additional information for covered employers to take effect on June 23, 2020.

Home care worker's paystubs are to reflect the benefit as defined by the Wage Parity Law, and prevailing wage employee's pay stubs are to reflect the prevailing wage supplements claimed.

The WTPA has been amended to impose additional record keeping obligations on employers. Home care employers are to maintain records of the benefit portion of the minimum rate of home care aide total compensation for at least six years. This is scheduled to go into effect on October 1, 2020.

Finally, the WTPA, as amended, will require **ALL** employers to additionally maintain records of the amount of sick leave provided to each employee for at least a six-year period. This is scheduled to go into effect on September 30, 2020.

OHIO

Toledo Pay History Inquiries Restricted

Effective June 25, 2020, employers in Toledo with 15 or more employees may not ask for, nor screen job applicants, based on their pay history. They may not require that an applicant's pay history, benefits, or other compensation satisfy minimum or maximum criteria.

Pregnancy Accommodation Law

On January 1, 2020, Oregon expanded employer responsibilities requiring reasonable accommodation be provided to employees (and job applicants) who have known limitations related to pregnancy, childbirth, lactation, or pregnancy-related medical conditions. Employers are required to post a notice of the new employment protections and provide written notice to all new hires at the time of hire, and within ten days to an employee who has informed her employer of a pregnancy.

By June 29, 2020, employers are to provide written notice to existing employees. A template and additional information can be found **here.**

New Employment Legislation Effective July 1, 2020

- **Virginia Values Act** – expands the Virginia Human Rights Act to prohibit discrimination in employment on the basis of sexual orientation or gender identity.

- **Restrictive Covenant Law** – restricts the use of non-competes for low-wage employees. A low wage employee is defined as making less than the current average weekly wage in Virginia, which is $998.82 or approximately $52,000 annually. Employees paid primarily from sales commissions, incentives, or bonuses are not low-wage employees under the law. The law only applies to non-competes entered into on, or after, July 1, 2020. Employers are required to post a Virginia Department of Labor and Industry approved summary of the law.

- **Virginia Wage Payment Act amended** – the Act already regulated the time and manner in which employers had to pay their employees. The amendments now permit employees to sue their employers under state law, instead of filing an administrative complaint with the Virginia Department of Labor and Industries. The amended law permits the recovery of wages owed (plus interest) and potential criminal penalties for knowing violations.

- **H.B.984** – allows misclassified employees to bring a civil action for damages against their employer. There is a presumption that any individual performing services for a person for remuneration is an employee (not an independent contractor) of the person who paid such remuneration.

- **H.B.622** – prohibits an employer from retaliating against an employee because the employee inquired about, or discussed with another employee, information about either the employee's own wages or about any other employee's wages. The law permits the Virginia Department of Labor and Industry to assess a civil penalty not to exceed $100 for each violation.

- **H.B.827/S.B.712** – amends the Virginia Human Rights Act to expand the protections relating to pregnancy, childbirth and related medical conditions, and lactation for employers with 5 or more employees. Notice must be given to new employees upon commencement of employment, existing employees within 120 days of July 1, 2020 (October 29, 2020), and information about the law to an employee within 10 days of such employee providing notice to the employer that she is pregnant. The law also requires a covered employer to conspicuously post a notice and include information in an employee handbook regarding the prohibition against unlawful discrimination and the right to reasonable accommodations.

- **Whistleblower Law** – protects workers from retaliation for:

1. Reporting to a supervisor or any government body violations or suspected violations of state or federal law
2. Refusing to engage in a criminal act or follow an order that would violate state or federal law
3. Otherwise engaging in protected activity by participating in an investigation

Virginia is also joining other states and localities that have passed hair discrimination laws (noted in last month's newsletter). For questions on any Virginia law, please reach out to your FrankAdvice Human Resources Consultant.

WASHINGTON

Paid Family and Medical Leave Law Amended

Washington Governor Jay Inslee signed into law HB 2614 amending the Washington Paid Family and Medical Leave Law (WA PFML). These amendments are not COVID-19 related, but instead offer some clarifications and add new provisions to the existing WA PFML law.

Highlights of the Significant WA PFML Changes

- **Effective date:** June 11, 2020
    - **Note:** The changes to definitions became effective immediately upon enactment on March 25, 2020
- **Definitions** – new defined terms and clarifications (effective immediately):
    - **"Casual labor:"** work that is performed infrequently (12 or fewer times per calendar quarter) and irregularly (i.e., not on a consistent cadence) is not considered covered employment for purposes of WA PFML eligibility
    - The definition of **"child"** now includes a spouse's child
    - **"Supplemental benefit payments"** are defined as payments made by an employer to an employee as salary continuation or as paid time off (as defined below), and these payments must be paid by employers, in addition to any PFML benefits the employee is receiving
    - **"Paid time off"** is defined to include vacation leave, personal leave, medical leave, sick leave, compensatory leave, or any other paid leave offered by an employer under the employer's established policy; this is important when determining if an employer offers "supplemental benefits" (see above)
    - **"Typical workweek hours"** for an hourly employee is clarified to mean the average number of hours worked per week by an employee within the qualifying period
- **Waiting period changes:**
    - Eliminates waiting period for qualifying military exigency leaves
    - Clarifies that waiting period begins on the previous Sunday of the week that an employee takes leave for the minimum claim duration
    - Clarifies that employees may receive paid time off from their employer during the waiting period.
- **No reduction in state PFML benefits for employer-provided benefits:** The state will not prorate or reduce an employee's weekly PFML benefit amount due to the employee receiving supplemental benefit payments from his or her employer; this may allow employees to "double-dip" unless restricted by the employer's benefits policy.
- **Conditional waiver change:** Previously, an employee would have to be "physically based" outside of Washington to be eligible for a conditional waiver of PFML premiums for that employee; the test is now whether the employee "primarily performs work" outside of the state, is employed

in Washington on a limited or temporary work schedule, and is not expected to be employed in the state for 820 hours or more in a period of four consecutive completed calendar quarters.

- **Successive Periods of WA PFML:** This amendment eliminates the four-month limitation on successive periods of PFML so that leaves for the same or related injury or condition are deemed a single period of PFML without a time restriction.
- **Concurrent Workers' Compensation:** The amendment specifies that an employee is disqualified from receiving PFML benefits for any week in which the employee receives (or will receive) workers' compensation but only for those employees with a permanent total disability or temporary total disability.
- **Violations of the WA PFML law:** Previously, alleged violations of the WA PFML law could only be handled through the state agency, but this amendment provides that employees alternatively may file a private lawsuit against their employer (including on a class action basis) to recover damages. All such lawsuits must be filed within three years of the date of the alleged violation. Employees do not have to file an administrative complaint before filing a lawsuit in court. If an employee prevails, he or she will be entitled to recover reasonable attorneys' fees, expert witness fees, and other court costs on top of any damages.

What Washington Employers Need to Consider

Employers with covered WA employees should consider:

- Will any leave benefits need to be revised to address the potential double-dipping scenario where an employee may be eligible to collect both WA PFML and supplemental benefit payments?
- Will the change in conditional waivers mean that additional workers (who primarily work outside of WA) will be entitled to a waiver and, therefore, not subject to premiums?
- Will any policies, handbooks, or communications that you provide to employees need to be updated to reflect these WA PFML amendments?

Answer: All of them!

A. The Third Shift Employee Who's Home During School Hours

Round the Clock, Inc. has 100 employees, one of whom is Lisa. Lisa works third shift, so she is always home during school hours. Her son's school is closed for the rest of the year due to the COVID-19 pandemic. In the past, Lisa's mother comes to stay with her son overnight when Lisa is at work, but her mother is following her state's stay-at-home orders to help flatten the curve. Lisa requests to take 80 hours of Emergency Paid Sick Leave (EPSL), and 12 workweeks of Emergency Family and Medical Leave Expansion Act (EFMLEA) leave under the FFCRA to care for her son.

Why is Lisa eligible for FFCRA leave? Because a qualifying event for EPSL and EFMLEA is that the employee is caring for his or her child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons. Here, Lisa's mother, who usually stays with the child while Lisa is at work, is not available due to the state's stay-at-home order, which is a COVID-19 related reason.

The Department of Labor's (DOL) FAQs clarify a child care provider "includes individuals paid to provide child care, like nannies, au pairs, and babysitters," as well as "individuals who provide child care at no cost and without a license on a regular basis, for example, grandparents, aunts, uncles, or neighbors."

Round the Clock should approve Lisa's request. The way Lisa structured her request was for 80 hours of EPSL, followed by 12 weeks of EFMLEA leave. Therefore, after her 80 hours of EPSL, she would have two workweeks of unpaid EFMLEA leave, and then ten workweeks of paid EFMLEA leave. At the conclusion, Lisa would have exhausted all her FFCRA benefits. Round the Clock should have Lisa document her request using an EFMLEA Leave Request Form and EPSL Leave Request Form.

B. The Employee Who Requests Leave to Care for His Girlfriend's Child

Ergo Office Supplies has less than 500 employees. Dan is one of those employees and works during school hours. He lives with his girlfriend and her child. Dan requests eight workweeks of EFMLEA leave to care for his girlfriend's child whose school is closed. Dan's manager knows Dan is not the father of the child and knows the text of the FFCRA law states leave is available when the employee needs to care for the employee's son or daughter – not just anyone's son or daughter.

Why is Dan eligible for FFCRA leave? It is true, the text of the FFCRA states leave is available "to care for the son or daughter under 18 years of age of [the] employee if the school or place of care has been closed." However, as clarified in the DOL's FAQs, the definition of "son or daughter" is the same as under FMLA – it includes a biological, adopted, or foster child, a stepchild, a legal ward, or a child for whom the employee stands in loco parentis, (i.e., someone with day-to-day responsibilities to care for or financially support a child.)

Dan stands in loco parentis to his girlfriend's child, as he shares day-to-day responsibilities for the child's care (and likely assists with financially supporting the child).

Dan requested eight workweeks of EFMLEA leave, of which the first two workweeks are unpaid. Ergo Office Supplies should inform Dan he is eligible for 80 hours of EPSL he can use if he wants to be paid during the first two workweeks of EFMLEA. Ergo Office Supplies should have Dan document his request using an EFMLEA Leave Request Form, and EPSL Leave Request Form.

C. The Employee Working from Home with a 17-Year Old

Health Revive has ten employees, all of whom have been able to work from home during the COVID-19 pandemic. Robert is one of these employees, so while his 17-year old daughter's school was closed due to the virus, he has been able to be home with her. However, due to some issues at home, his daughter has been acting out, and Robert has not been able to focus on completing his work. He requests to take five workweeks of EFMLEA and use his 80 hours of EPSL during the first two workweeks of EFMLEA, so his entire leave is paid. Robert's manager questions why Robert should get FFCRA leave when he is able to telework, and he has a teenager who is largely self-sufficient.

Why is Robert eligible for FFCRA leave? FFCRA leave is available for when an employee cannot work – or telework – due to the need to care for a child whose school is closed due to COVID-19. Even though Health Revive is allowing Robert to telework, Robert is not able to because he is caring for his daughter, who is having behavioral problems.

Health Revive should have Robert document his request using an EFMLEA Leave Request Form, and EPSL Leave Request Form. As required by the IRS for a tax credit, when an employee requests leave to provide care for a child older than 14-years during daylight hours, the employee must include a statement that special circumstances exist requiring the employee to provide care.

D. The Employee Whose Child is a Disabled Adult

Super Sandwiches employs 90 people in stores across the state, one of whom is Maya. Maya has a disabled child who is over the age of 18. Her son had been receiving care from an in-home nurse, but the

nurse was directed by her health care provider to self-quarantine because she is at a high risk of serious complications if she were to contract COVID-19. Since the nurse is no longer available due to COVID-19 related reasons, Maya requests 12 workweeks of EFMLEA leave to care for her adult son and wants to use her 80 hours of EPSL during the first two unpaid workweeks of EFMLEA leave. Her manager knows the text of the FFCRA law states leave is available to care for a "son or daughter under 18 years of age," so questions whether Maya is entitled to the leave requested.

Why is Maya eligible for FFCRA leave? As stated in the above example involving Dan, the definition of "son or daughter" is the same as under the FMLA. Therefore, as the DOL clarified in its FAQs, a "son or daughter" is "also an adult son or daughter (i.e., one who is 18 years of age or older), who (1) has a mental or physical disability, and (2) is incapable of self-care because of disability." Since Maya's son meets these requirements, she is eligible for FFCRA leave.

Super Sandwiches should have Maya document her request using an EFMLEA Leave Request Form, and EPSL Leave Request Form. As in the example above with Robert, and as required by the IRS for a tax credit, when an employee requests leave to provide care for a child older than 14-years during daylight hours, the employee must include a statement that special circumstances exist requiring the employee to provide care.