



2023 MINNESOTA EMPLOYMENT LAW UPDATES

THIS UPDATE SUMMARIZES NEW EMPLOYMENT LAWS ADOPTED IN MINNESOTA DURING 2023, ORGANIZED CHRONOLOGICALLY BY EFFECTIVE DATE, STARTING WITH THOSE THAT HAVE ALREADY TAKEN EFFECT.

LAW UPDATES AT-A-GLANCE

Clicking on the linked text will take you to the law overview and detail.

<u>CROWN Act</u>	Immediate, Signed into law January 31, 2023
<u>Minnesota Parental Leave Act - Amendment</u>	July 1, 2023
<u>Wage Disclosure Protection - Amendment</u>	July 1, 2023
<u>Ban on Noncompete Agreements</u>	July 1, 2023
<u>Additional Protections for Nursing Mothers and Pregnant Employees</u>	July 1, 2023
<u>Recreational Cannabis Law/Changes to Drug and Alcohol Testing in the Workplace Act</u>	August 1, 2023
<u>Take Pride Act</u>	August 1, 2023
<u>Earned Sick and Safe Time</u>	January 1, 2024
<u>Pay History Ban</u>	January 1, 2024. Or the effective date of any applicable collective bargaining agreement that is after January 1, 2024.
<u>Paid Family and Medical Leave</u>	The law is effect in stages. The payment of benefits and the payroll tax will go into effect on January 1, 2026.

CROWN Act

(Minn. Stat. § 363A.03, subd. 36a)

Effective Date: Immediate (signed into law January 31, 2023)

Overview: The Act expands the Minnesota Human Rights Act’s definition of “race” to include “traits associated with race.” The MHRA now prohibits discrimination based on hair texture and styles, such as braids, locs, and twists. Standard MHRA remedies (lost wages, emotional distress, attorneys’ fees) apply.

Requirements: Employers are advised to review and update EEO policies and train supervisors and managers accordingly.

Minnesota Parental Leave Act – Amendment

(Minn. Stat. §§ 181.940-.944)

Effective Date: July 1, 2023

Overview: The existing law requires covered employers (employers with 21 or more employees) to provide up to 12 weeks of unpaid leave to qualified employees. The amendment extends protection by redefining the MPLA’s definition of “employer” to mean any employer with “one or more employees.” Relatedly, employees are now eligible upon hire for up to 12 weeks of unpaid leave because the requirement to work for at least one year was removed.

Requirements: Employers should review parental leave policies to ensure compliance with these expanded protections.

Wage Disclosure Protection – Amendment

(Minn. Stat. § 181.172)

Effective Date: July 1, 2023

Overview: The existing law makes it a violation for employers to prohibit employees from disclosing their own wages to others, and expressly prohibits employers from retaliating against an employee who asserts their rights under the law. The amendment revises the “employer restrictions” to include that an employer “shall not discharge, discipline, penalize, interfere with, threaten, restrain, coerce, or otherwise retaliate or discriminate” against employees who assert their rights under the law.

Requirements: The statute requires employers who provide an employee handbook to employees to include a notice of employee rights and remedies under the statute in the handbook. Employers are advised to update their employee handbook to reflect the amended language.

Ban on Noncompete Agreements

(Minn. Stat. § 181.988)

Effective Date: July 1, 2023

Overview: The law bans non-competes for employees and independent contractors. The law applies these bans to any contract—including agreements governing employment, contractor status, intellectual property rights, equity, separation, and severance.

Requirements:

- **Choice of Law.** The law bans non-Minnesota choice-of-law and choice-of-venue provisions for non-competes in employment agreements.
- **Remedies.** Gives employees and contractors the right to void those provisions and to seek attorneys’ fees associated with litigation to enforce that right.
- **Exceptions.** The bill does not ban sale-of-business non-competes, or carefully crafted customer non-solicits, employee non-solicits, or non-disclosure agreements—but those provisions remain subject to increasingly skeptical court consideration.
- **Retroactivity.** The ban is not retroactive, so existing non-competes remain potentially enforceable.

Additional Protections for Nursing Mothers and Pregnant Employees

(Minn. Stat. § 181.939)

Effective Date: July 1, 2023

Overview: Under the existing law, the requirement to provide break times for employees needing to express breast milk was limited to 12 months after childbirth. The amendments remove the 12-month limitation. The law now permits that break times used for expressing breast milk may run concurrently with other breaks, but they are not required to do so. In addition, the amendments remove language that previously allowed employers to deny employees a break to express milk if it would “unduly disrupt operations.” The law also provides expanded protections under the pregnancy accommodation provisions (see below).

Requirements:

- **Accommodations.** Pregnancy accommodations not requiring a health care provider’s certification include longer restroom, food and water breaks (not just more frequent restroom, food and water breaks). Additional accommodations employers should consider include a temporary leave of absence and modification of work schedules or job assignments. These accommodations are in addition to the seating or lifting-related accommodations identified by the pre-existing statute.
- **Notice.** Employers are now expressly required to inform employees of their rights under the law at the time of hire, and if/when an employee asks about or requests parental leave. This notice must be included in the employee handbook, if one is maintained by the employer. Sample notice language is provided by the MN Department of Labor and Industry.

Recreational Cannabis Law/Changes to Drug and Alcohol Testing in the Workplace Act

(Minn. Stat. §§ 181.950-.957.)

Effective Date: August 1, 2023

Overview: Cannabis use is now legal for persons 21 years of age and older. The new law impacts employer drug testing for cannabis and employee discipline for use of cannabis, meaning some modifications are likely required to most drug-testing and/or drug-free workplace policies and practices.

Requirements:

- **Pre-employment testing** for marijuana is now banned for most applicants.
- **Random** cannabis testing is prohibited for current employees in most positions.
- **Reasonable suspicion testing** is permitted if the employer has reasonable suspicion that the employee is under the influence of marijuana; has violated employee policies regarding use/being under the influence of cannabis while at work; has sustained or caused a personal injury; or has caused a work-related accident or was involved in a work-related accident.
- **Positions Exempted from Drug-Testing Changes.** The changes to the drug testing statute do not apply to the following positions: safety-sensitive positions, including peace officers and firefighters; positions requiring face-to-face care, training, education, supervision, counseling, consultation, or medical assistance to children, vulnerable adults, or healthcare patients; positions requiring a commercial driver’s license, or where federal or state law otherwise requires testing to be done to job applicants or employees for cannabis; and positions funded by federal grants.
- **Employee Discipline for Use of Cannabis.** The law prohibits discipline based on use of recreational cannabis off work premises and outside of working hours. But employers may discipline employees for conduct occurring during the workday or on its premises.

Take Pride Act

(HF 1655/SF 1886)

Effective Date: August 1, 2023

Overview: The Take Pride Act helps clarify critical protections for LGBTQIA+ Minnesotans, including housing and workplace protections, by removing outdated and prejudicial language from the Minnesota Human Rights Act and updating the definition of gender identity.

Requirements: Employers are advised to review and update EEO policies and train supervisors and managers accordingly.

Earned Sick and Safe Time

(Minn. Stat. §§ 181.9445-9448 and § 177.50)

Effective Date: January 1, 2024

Overview: The new law requires all Minnesota employers with one or more employees to provide paid sick and safe leave. The law explicitly states that it does not “preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for a greater amount, accrual, or use by employees of paid sick and safe time or that extends other protections to employees.” This means employers with employees in Minneapolis, St. Paul, Duluth, or Bloomington must continue to ensure compliance with any applicable local ordinances that may provide greater protections.

Requirements:

- **Accrual.** Employees must accrue one hour of paid sick leave for every 30 hours worked, up to 48 hours in a year, and rollover any unused time up to a maximum bank of 80 hours. Exempt employees are presumed to work 40 hours per week for purposes of accrual.
- **Frontloading.** In lieu of an accrual system, employers may frontload sick time. However, if the employer does not frontload at least 80 hours, the employer must pay out the balance of unused time at the end of the year.
- **Use of Paid Sick Leave.** Employees may use paid sick time for the following reasons:
 - The employee’s own mental or physical illness, injury, or other health condition; need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or for preventive medical or health care;
 - To care for a family member for the same reasons stated above;
 - For an absence due to domestic abuse, sexual assault, or stalking of the employee or employee’s family member, provided the absence is to:
 - Seek medical attention related to physical or psychological injury or disability caused by domestic abuse, sexual assault, or stalking;
 - Obtain services from a victim services organization;
 - Obtain psychological or other counseling;
 - Seek relocation or take steps to secure an existing home due to domestic abuse, sexual assault, or stalking; or
 - Seek legal advice or take legal action, including preparing for or participating in any civil or criminal legal proceeding related to or resulting from domestic abuse, sexual assault, or stalking;
 - Closure of the employer’s place of business due to weather or other public emergency or an employee’s need to care for a family member whose school or place of care has been closed due to weather or other public emergency.
 - The employee’s inability to work or telework because the employee is:
 - prohibited from working by the employer due to health concerns related to the potential transmission of a communicable illness related to a public emergency; or
 - seeking or awaiting the results of a diagnostic test for, or a medical diagnosis of, a communicable disease related to a public emergency and such employee has been exposed to a communicable disease or the employee’s employer has requested a test or diagnosis; and

- When it has been determined by the health authorities having jurisdiction or by a health care professional that the presence of the employee or family member of the employee in the community would jeopardize the health of others because of the exposure of the employee or family member of the employee to a communicable disease, whether or not the employee or family member has actually contracted the communicable disease.
- **Rate of Pay.** An employee must receive paid sick time at the “same hourly rate” they earn from employment. How this applies to employees with multiple hourly rates, commissions, bonuses, or shift differentials will need to be resolved by forthcoming agency guidance.
- **Notice of Leave.** An employer can require employees to provide advance notice of leave, but only up to seven days if the leave is foreseeable, and as soon as practicable if it is not foreseeable. Importantly, employers must have a written policy containing notice requirements, or else they are unenforceable.
- **Documentation.** Employees may require documentation to substantiate a need for leave, but in some cases, this may be satisfied by a written statement from the employee, rather than a doctor’s note. Information provided to an employer must be treated as confidential.
- **Retaliation/Replacement Worker.** Employers may not retaliate against an employee who exercises their rights under the law. Specifically, employers cannot assign attendance “points” for absences covered by the law. Employees cannot be required to search for a replacement worker. The law provides for reinstatement rights.
- **Posting.** Under the new law, employers must provide specific notice of the law by displaying a poster (forthcoming) or providing a copy electronically or in paper to employees. Certain information must also be included in employee handbooks, to the extent the employer maintains a handbook. The Minnesota Wage Theft law also requires employers to provide notice of leave benefits to employees. In addition to notice, employers must also inform employees about their accrued and used amounts of sick and safe time via their wage statements.
- **Family Member.** The term “family member” as defined under the law is broad and permits employees to designate up to one individual annually regardless of relation.

Pay History Ban

(Minn. Stat. § 363A.08 subd. 8 – Unfair Discriminatory Practices Relating to Employment or Unfair Employment Practice)

Effective Date: January 1, 2024. Or the effective date of any applicable collective bargaining agreement that is after January 1, 2024.

Overview: New legislation amends the Minnesota Human Rights Act to provide that employers can no longer inquire into, consider, or require disclosure from any source the pay history (current or past pay) of a job applicant for the purpose of determining wages, salary, earnings, benefits, or other compensation for that applicant. This includes inquiries in an application, interview, or as part of salary negotiations. The law also applies to current employees seeking an internal promotion or transfer. Employers are not prohibited from providing applicants with “information about wages, benefits, compensation, or salary offered in relation to a position” or from “inquiring about or otherwise engaging in discussions with an applicant about the applicant’s expectations or requests with respect to wages, salary, benefits, or other compensation.”

Requirements:

- **Voluntary Disclosure.** A job applicant or employee may voluntarily share their pay history for purposes of negotiating wages, salary, benefits, or other compensation. If an applicant voluntarily discloses their pay history, then the employer may consider or act on that information to “support a wage or salary higher than initially offered by the employer.”
- **Other Exceptions.** Prohibition does not apply if the job applicant’s pay history is a matter of public record under federal or state law, unless the employer sought access to those public records with the intent of obtaining the applicant’s pay history for the purpose of determining their wages, salary, earnings, benefits, or other compensation.

Paid Family and Medical Leave

(Minn. Stat. §§ 268B.01-29)

Effective Date: The law is effective in stages. The payment of benefits and the payroll tax will go into effect on January 1, 2026.

Overview: All Minnesota employers, regardless of size, will be required to provide to almost all employees paid family and medical leave for up to 12 weeks with partial wage replacement related to a serious health condition and up to 12 weeks with partial wage replacement related to leave for pregnancy, bonding, safety, family care, or a military member's active-duty service or impending call to active duty. These two "buckets" of leave are subject to a combined cap of 20 weeks per benefit year. In other words, the maximum amount of leave time an employee may take within the same benefit year under the law is 20 weeks.

Requirements:

- **Method of obtaining payments.** The program is administered by the MN Department of Employment & Economic Development (DEED), similar to unemployment insurance. Employees will apply through DEED, and DEED determines employees' eligibility for benefits and benefit amounts.
- **Covered Employees.** Only seasonal employees are removed from program coverage (and independent contractors as non-employees). A seasonal employee means the individual is employed for no more than 150 days during any consecutive 52-week period.
- **Covered Employment.** Note that 268B.01, subd. 15, provides a detailed definition of "covered employment." There is no residency requirement; however, the employee's residence and the percentage of work performed in Minnesota, or any other state, may impact what is deemed covered employment. If an employee performs 50% or more of their work during the calendar year within Minnesota, the employee's entire employment during the calendar year is "covered employment." This is true regardless of whether the employee resides in Minnesota.
- **Family Members.** The definition of "family member" is expanded to include "an individual who has a relationship with the applicant that creates an expectation and reliance that the applicant care for the individual, whether or not the applicant and the individual reside together."
- **Reinstatement.** Upon return from medical or family leave, an employee is entitled to be returned to the same position they held when their leave commenced, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. An employee's right to reinstatement is subject to some limitations similar to those imposed under the FMLA.
- **Partial Wage Replacement.** The program replaces wages on a progressive scale at 55% – 90% (average of 66%) of an employee's regular pay, depending on the employee's average typical workweek and weekly wage as calculated against the state's average weekly wage.
- **Premiums.** Except for employers with an approved private plan, family and medical leave premiums are paid quarterly on the taxable wages paid to each employee in covered employment. Beginning January 1, 2026, the employer premium rate for employers participating in both the family and medical benefit programs is 0.7%. Premium rates are reduced for employers participating in one of the two mandatory programs, so long as the employer has an approved private plan.
- **Employee Charge Back.** Employers must pay a minimum of 50% of the annual premiums paid. Employees, through payroll deduction, must pay the remaining portion subject to all applicable wage and hour laws. Deductions for any given employee must be in equal proportion to the premiums paid based on the wages of that employee.
- **Employee Notice.** If the need for leave is foreseeable, an employee must provide at least 30 days' advance notice before leave is to begin. If 30 days' notice is not practicable, notice must be given as soon as practicable. Employees may file an application for benefits up to 60 days before leave is taken. Employers may require employees to comply with their usual and customary notice and procedural requirements for requesting leave, including attendance or call-out policies and procedures, as well as a designated contact, absent unusual circumstances or other circumstances caused by the reason for the employee's need for leave.
- **Posting.** Employers must post in a conspicuous place on each of its premises a notice (forthcoming) providing notice of benefits in English and any other language that is the primary language of five or more employees or contractors of the workplace. Employers must also issue written notice to each employee within 30 days from hire, or 30 days before premium collection, whichever is later. This requirement is slated to begin on November 1, 2025.
- **Wage Statements.** Wage statements must include any deductions for the employee-paid portion of the premium, and the amount paid by the employer.

- **Recordkeeping.** Starting July 1, 2024, employers must keep accurate employee records for a period of not less than four years in addition to the current calendar year.
- **Relationship to Other Leaves.** An employer may require leave taken under this statute to run concurrently with leave taken for the same purpose under the FMLA or MPPL.
- **Employer Private Plans.** Employers' obligations under the law may be satisfied by the substitution of a private plan that provides paid family, paid medical, or paid family and medical benefits. Employers must apply through DEED.
- **Substitution of Vacation Pay, Sick Pay, or PTO.** Employees may use vacation pay, sick pay, or other PTO in lieu of program benefits. However, employers cannot compel an employee to exhaust accumulated sick, vacation, or PTO before or while taking leave under this statute.