The Work Week

Bassford Remele Employment Practice Group

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Welcome to another edition of *The Work Week with Bassford Remele.* Each Monday morning, we will publish and send a new article to your inbox to hopefully assist you in jumpstarting your work week.

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2024 Minnesota Legislative Update on Employment Laws

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Knock on wood, employers: Two weeks in to the 2024 legislative session, there is nowhere near the amount of employment legislation that we saw during the historic 2023 session. There are, however, some significant changes proposed to last year's Earned Sick and Safe Time ("ESST") law and the Paid Family and Medical Leave Act. Below is a quick summary of the bills currently in committee:

ESST Updates:

The first key update relates to the new ESST law that went into effect on January 1, 2024. The bill, which is currently in committee in both the house and the senate, would result in several important changes:

- The requirement that employee paystubs include both the total number of ESST hours accrued and used would be eliminated. Instead, employers would be required to provide this information to employees in an alternative means, including access to the information through separate electronic means. Employers would also be required to preserve all electronic records of ESST information for three years.
- Compensation for an employee's pay rate would be clarified. Under the current version of the ESST law, employees are entitled to be compensated at the "same hourly rate as an employee earns." The amendment removes that language in favor of an "employee's regular rate of pay." This amendment will help safeguard against situations in which employees receive a temporary pay raise and then take ESST.
- Relatedly, the law would be amended to allow ESST to be used in no less than 15-minute increments. Employers' ability to impose minimum-hour increments would be capped at a floor of four hours, meaning employers could not require employees to use ESST in less than half-day increments.

- The rules related to documentation would be changed. First, the law would be amended to clarify that employers can only request documentation when an employee uses ESST for three consecutive "scheduled" workdays. Second, documentation related to the use of ESST for domestic violence would be relaxed to allow employees to simply submit a written statement detailing their use of ESST.

- Finally, and importantly, the law would be *significantly* amended with respect to damages. Employers who violate the ESST law would be subject to a liquidated damages penalty in an amount equal to the ESST that should have been provided under the law, effectively imposing a double-damages penalty. Additionally, if an employer does not maintain the necessary records to determine the amount of ESST accrued and owed, the employer would be liable to employees for the equivalent of 48 hours of ESST plus an equal amount of liquidated damages. This change would substantially increase liability for employers that do not comply with the record-keeping requirements.

Paid Family and Medical Leave Updates:

The second update relates to the new Paid Family and Medical Leave Act set to take effect on January 1, 2026. The bill, which is also in committee at both the house and the senate, would amend the Act as follows:

- The definition of "covered employer" would be amended to exclude seasonal employers who, for less than 50 percent of the year, close entirely for a period of 30 or more consecutive days. The definition of qualified employees would be similarly amended.

- The expansive definition of "family member" for whom an employee may take leave would be changed in several material respects:
    - "Parent or legal guardian" of the employee would be changed to "parent or parent of a spouse or domestic partner" of the employee.
    - "Spouse's grandparent" would be removed in its entirety.
    - "Son-in-law or daughter-in-law" would be removed in their entirety.
    - The following catch-all category would also be eliminated: "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."

- The cap on usage would be reduced from 20 weeks to 12 weeks for any combination of the following events:
    - An employee's serious health condition or pregnancy;
    - Bonding, safety leave, or family care;
    - Leave related to multiple qualifying events

  Notably, the reduced proposed cap can be expanded by two weeks for pregnancy complications. Usage for "bonding" leave would also be subject to the employer's agreement.

- Intermittent leave usage would also be modified such that an employee must undertake "reasonable efforts" to ensure that the intermittent leave does not "unduly disrupt" the operations of the employer.

- The notice provision would be amended to clarify that employees can provide verbal notice of leave usage, in addition to written notice.

The Act would also be amended such that any employee employed for more than 90 days is entitled to reinstatement upon returning from a qualified leave.

At Bassford Remele, we regularly monitor changes to employment laws to keep our clients both apprised and compliant. We'll continue to monitor the legislative docket during the 2024 legislative session and keep you informed of the same. Feel free to reach out with questions or for assistance in the meantime!

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