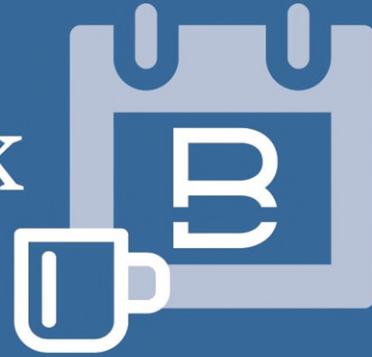


# The Work Week

Bassford Remele Employment Practice Group



May 23, 2023

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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## A Historic Legislative Session for Minnesota Employment Law Concludes

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Minnesota's 93rd legislative session closed last night, ending a historic session for Minnesota employment law. The Democratic-led House and Senate passed a wave of new employment legislation that is sure to alter the dynamics of Minnesota workplaces for years to come.

Below is an overview of all of the new employment legislation that was passed, presented in order of effective date. Many of these bills will be signed into law by Governor Walz within the next few days. (Note: the title of each law contains a hyperlink to the final legislation, many of which are included in the Omnibus Jobs, Economic Development, Labor, and Industry appropriations; the pending statutory cite for each bill in the Omnibus link is provided for you to use to search.)

### [The CROWN Act](#) (Minn. Stat. § 363A.03, Subd. 36a; Currently in Effect):

Governor Walz signed the CROWN Act into Law on January 31, 2023. The CROWN Act broadens the definition of "race" under the Minnesota Human Rights Act to include "hair texture and hair styles such as braids, locs and twists." As a result, Minnesotans are now protected from discrimination based on race-based hair styles or hair textures. The Act went into effect immediately upon signing and employers should be updating their anti-harassment policies and employee handbooks to reflect this significant development.

### [Prohibition of Non-Compete Agreements](#) (Minn. Stat. § 181.988; Effective July 1, 2023):

Governor Walz is expected to sign a bill passed by the legislature that would significantly curtail the use of non-compete agreements in Minnesota. The bill defines a "Covenant not to Compete" as any agreement that restricts an individual's ability to: (1) work for another employer for a certain length of

time; (2) work in a specific geographical area; or (3) work in a capacity that is similar to the individual's previous employment duties. Importantly, the bill applies to both employees and independent contractors. The only scenario in which a newly created non-compete agreement would be enforceable is if it relates to the sale or a dissolution of a business, as long as all parties agree to the provision.

This bill does not impact existing non-compete agreements—just agreements entered on or after July 1, 2023. Additionally, this prohibition only relates to non-compete agreements and not to other restrictive covenants, such as non-solicitation or confidentiality provisions.

The bill also forbids employers from running an end-around by including a choice-of-law provision involving a jurisdiction that allows non-compete agreements. Finally, the bill contains an attorney's fee provision entitling employees and independent contractors to recover litigation costs incurred in enforcing this non-compete ban. Employers should update their employment agreements and independent-contractor agreements to remove non-compete provisions over the next few weeks.

#### **Nursing Mothers and Lactating Employee Protection (Minn. Stat. § 181.939; Effective July 1, 2023):**

In addition to the recent protections afforded by the federal PUMP Act covered in another edition of *The Work Week* last month, the Minnesota legislature expanded protections for nursing mothers and lactating employees under state law as well. The 2022 amendments to Section 181.939 confined an employee's right to take breaks to express milk to the 12-month period after the birth of a child. This 12-month limitation has now been removed, allowing employees to continue to take breaks to express milk after a child turns one year old. The current amendment also removed the language exempting employers from granting breaks if doing so would "unduly disrupt operations," leaving employers with no basis to deny breaks to allow employees to express milk. The current amendment also redefines "employer" as an employer employing one or more employees in Minnesota, rather than the 15-employee threshold in the prior version.

Significantly, the new amendment also requires employers to provide notice of the rights under this statute at the time of hire and when an employee makes an inquiry about or requests parental leave. This statute takes effect on July 1, 2023, so employers need to develop this notice of rights within the next few weeks as well.

#### **Ban Against Requiring Attendance at Political or Religious Events (Minn. Stat. § 181.531; Effective August 1, 2023):**

This bill prohibits employers from taking any adverse employment action against an employee who declines to attend any meeting or event at which the employer intends to express viewpoints on political or religious matters. "Political matters" are defined as "matters relating to elections for political office, political parties" and proposals to change legislation, regulation, and public policy. "Religious matters" are defined as "matters relating to religious belief, affirmation, and practice," including "the decision to join or support any religious organization or association." Aggrieved employees are entitled to back pay, reinstatement, injunctive relief, and attorney's fees, provided the civil action is brought within 90 days after the alleged violation. This law takes effect on August 1, 2023.

**Wage Protection for Construction Workers (Minn. Stat. § 181.165; Effective August 1, 2023):**

Effective August 1, 2023, contractors will be responsible for any failure of their subs to pay earned wages. The bill provides that for any construction contracts entered into, renewed or modified on or after August 1, 2023, the contractor shall assume and is liable for any unpaid wages, benefits, and penalties owed to a claimant by a subcontractor acting under, by or for the contractor or its subcontractors for the claimant's performance of labor. Additionally, the bill provides that no agreement by an employee or subcontractor to indemnify a contractor, or otherwise release or transfer liability assigned to a contractor, shall be valid. However, if a contractor satisfies an employee's claim for unpaid wages, the contractor may then pursue damages from a subcontractor who caused the contractor to incur those damages.

**Earned Sick and Safe Time (Minn. Stat. § 181.9445, *et seq.*; Effective January 1, 2024):**

One of the most-publicized bills during this legislative session was the Earned Sick and Safe Time legislation. Effective January 1, 2024, employers will be required to provide paid sick and safe time to their employees. Covered employees include full-time, temporary and part-time employees—any employee who performs at least 80 hours of work per year in Minnesota. And covered employers include any employer who has one or more employees. Under the law, employees will begin to accrue sick and safe time immediately upon commencement of employment and may use earned sick and safe time as it accrues.

Employees accrue a minimum of one hour of earned sick and safe time for every 30 hours worked up to a maximum of 48 hours of earned sick and safe time per year. Employees must be permitted to carry over accrued and unused sick time into the following year. Employers can, however, cap accrued sick and safe time at 80 hours. The bill also provides an alternative to carrying over accrued sick and safe time, which includes various combinations of front-loading accrued sick and safe time and payouts for unused time.

Employees will be permitted to use sick and safe time for their own, or a family member's, illness or injury, as well as for preventative health care. Sick and safe time may also be used where an employee is absent from work due to domestic abuse, sexual assault, or stalking of the employee or employee's family member.

The bill broadly defines family member to include, among other relationships, children, spouses, registered domestic partners, siblings, parents, grandchildren, grandparents, nieces, nephews, aunts, uncles, in-laws, and "any other individual related by blood or whose close association with the employee is the equivalent of a family relationship." The definition even includes "up to one individual annually designated by the employee."

The bill also includes provisions that outline: (1) when an employer may require notice of the need to use earned sick and safe time; (2) when an employer can require documentation to substantiate the need for sick and safe time; and (3) pay and benefits that must be provided when an employee uses sick and safe time. Finally, the bill includes a prohibition on retaliation for utilizing sick and safe time and requires employers to provide employees with notice of their rights under the statute. This notice provision will require employers to develop another written notice in addition to updating policies and potentially overhauling their PTO processes and procedures.

**Paid Family and Medical Leave (Minn. Stat., § 268B.01, et seq.; Effective January 1, 2026):**

An [equally publicized](#) piece of legislation was the Minnesota Paid Family and Medical Leave Act. The Minnesota Paid Family and Medical Leave Act grants employees the ability to take up to twelve weeks of paid medical leave per year and twelve weeks of paid family leave per year, provided an employee does not take more than 20 combined weeks of paid medical leave and paid family leave in a calendar year.

The Paid Family and Medical Leave program will function similar to Minnesota's Unemployment Insurance program. An employee may file an application for benefits with the soon-to-be-created Family and Medical Benefit Insurance Division of the Department of Employment and Economic Development. The exact weekly benefit amount will be determined on a sliding scale based on the applicant's average weekly wage in comparison to the state average, with a maximum of 90% of weekly wages paid to lower earners and a minimum of 55% paid to higher earners. The program will be funded through an initial investment from the State, followed by quarterly employer premiums of 0.7% total wages paid. Employers may collect half these premium amounts from employees through payroll withholdings. Employers with less than 30 employees are eligible for reduced premiums, and all employers have the option of obtaining private coverage in lieu of paying premiums under the program.

To be eligible under the Act, employees will need to have earned at least 5.3% of the state average annual wage in total over a designated 12-month base period prior to the start of leave. Based on the State's current average annual wage, employees would need to have earned about \$3,500 in the base period to qualify.

Employees will be entitled to use 12 weeks of paid medical leave for their own "serious medical condition," which is defined as "a physical or mental illness, injury, impairment, condition, or substance use disorder" that requires extensive medical treatment. Employees will also be entitled to use a total of 12 weeks for four different types of family medical leave: (1) caring for a family member with a serious medical condition; (2) "bonding leave," which pertains to the birth of a child, adoption, and the placement of a foster child; (3) "safety leave" related to medical attention stemming from domestic abuse, sexual assault, or stalking; and (4) "qualifying exigency leave" involving the military service of a family member. The Act provides a cap of 20 total weeks of paid medical leave and paid family medical leave taken by an employee in any calendar year, however.

As mentioned in last week's edition of [The Work Week](#), the definition of "family member" under the Act is far more expansive than under the FMLA. The Act also prohibits employers from interfering with or retaliating against an employee utilizing paid medical or family leave. Finally, the Act also requires employers to reinstate employees to their same or similar position upon return from leave, even if their position was filled or restructured during the leave, subject to certain exceptions like the elimination of a position.

The Act is currently awaiting signature from Governor Walz and is set to take effect on January 1, 2026. Although the final version of the Act was modified to push back the effective date by one year, employers should be proactive in updating their policies and procedures to ensure compliance. The Act provides for administrative fines in the amount of \$1,000 to \$10,000 per violation, in addition to other civil damages available to aggrieved employees.

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As you can see, this was a historic legislative session for employers. With these changes, employers will need to draft new policies, such as an earned sick and safe time policy, and amend their existing policies and agreements. In addition, beginning in a few weeks, employers will need to provide employees with notice of nursing-mother protections both at the time of hire and whenever parental leave is requested. If you have any questions regarding these employment-law updates, or need assistance drafting or amending your policies and agreements, the Bassford Remele Employment Law Practice Group is here to help!

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