

Each month, Optimum Employer Solutions gathers the latest updates and changes to federal and state employment law. Read on to learn how these changes may affect you, and how Optimum can help you ensure compliance.

Question of the Month

Question: An employee called out a few days ago by leaving a message with some vague information about being ill and hasn't followed up since. Can we consider this a voluntary resignation and start the termination process?

[Read on for the answer!](#)

Federal/State Updates

FTC's Non-Compete Ban Struck Down For All Employers Nationwide

On August 20, a Texas federal court struck down the FTC's proposed ban on non-competition agreements on a nationwide basis mere weeks before it was set to take effect, meaning employers across the country can breathe a sigh of relief and continue to maintain non-competes as their state laws allow. While there is a slim chance the rule could be resurrected by a federal appeals court in the future, what's for certain after the ruling is that you will not have to comply with the rule by September 4 as originally scheduled.

The FTC could try to breathe new life into the rule by filing an appeal of this decision in the coming weeks. It could also seek an emergency order from the appellate court that would cause the rule to take effect as scheduled.

We will be monitoring the situation and providing updates as the court battles continue.

California

California Supreme Court Held One Racial Slur Justified Lawsuit

On July 29, 2024, the California Supreme Court issued its opinion in the case of [Bailey v. San Francisco District Attorney's Office, et al.](#) The Court held, in effect, that an isolated act of harassment can be actionable under California's Fair Employment & Housing Act (FEHA) if it is severe enough "in light of the

totality of the circumstances,” and the single use of “an unambiguous racial epithet” can meet that standard of severity.

New Hampshire

CROWN Act Prohibits Discrimination Based on Hair

September 1, 2024, New Hampshire's CROWN Act goes into effect. This legislation prohibits discrimination because of a person's protective hairstyle. A protective hairstyle "means hairstyles or hair type, including braids, locs, tight coils or curls, corn rows, Banto knots, Afros, twists, and head wraps."

Employers with grooming/personal appearance policies banning, limiting, or restricting hairstyles listed above will be violating New Hampshire law. In addition, facially neutral policies requiring employees to maintain a “professional,” “neat,” or “tidy” appearance will violate the law if they are discriminatorily applied or selectively enforced.

Employers should review their dress code policy and educate managers on this change. Prohibiting discrimination on the basis of a person's natural hair applies throughout the employment relationship, from recruiting through termination, not just dress codes.

Connecticut

Expansion of Family Violence Victim Leave

Effective October 1, 2024, amendments to the family violence victim leave law require leave for victims of sexual assault in addition to family violence. As amended, employees can take leave for the following qualifying reasons:

- To seek medical care or psychological or other counseling for a physical or psychological injury or disability for a victim of family violence or sexual assault;
- To obtain services from a victim services organization on behalf of a victim of family violence or sexual assault;
- To relocate due to family violence or sexual assault; or
- To participate in any civil or criminal proceeding related to or resulting from family violence or sexual assault.

The law also amended the supporting documentation an employee may provide regarding the need for leave to include documentation related to the sexual assault.

Maryland

Equal Pay Law Amendments

Effective October 1, the Maryland Equal Pay for Equal Work Act is amended to prohibit pay discrimination on the basis of sexual orientation, religious beliefs, race, and disability.

Under the amended law, an employer may not discriminate by paying employees at a rate less than the rate paid to other employees in the same establishment performing work of comparable character or of the same type if the pay difference is based on sex, race, religious beliefs, gender identity, or sexual orientation.

In addition, employers may not provide less favorable employment opportunities based on sex, race, religious beliefs, sexual orientation, disability, or gender identity. Less favorable employment opportunities include

- Assigning or directing the employee into a less favorable career track, if career tracks are offered, or position;
- Failing to provide information about promotions or advancement in the full range of career tracks offered by the employer; or
- Limiting or depriving an employee of employment opportunities that would otherwise be available to the employee but for the employee's sex, sexual orientation, or gender identity.

It is recommended that employers conduct a pay equity analysis whereby they audit employees' pay rate to ensure that employees are being paid fairly for equal work. This audit is aimed at determining whether pay gaps are due to legitimate, non-discriminatory reasons, such as seniority or merit, and not due to a protected class.

Pay Range Required in Job Postings

Effective October 1, 2024, Maryland employers are required to include a wage range in job postings, as well as a general description of benefits and other compensation. This is required for any position that will be performed, at least partially, in Maryland.

This new requirement applies to all Maryland employers, regardless of size and whether the employer directly posts the position or uses a third-party recruiter.

"Wage range" is defined as the minimum and maximum hourly rate or salary set in good faith by reference to either:

- Any applicable pay scale;
- Any previously determined minimum and maximum hourly rate or salary;
- The minimum and maximum hourly rate or salary earned by an individual in a comparable position at the time of posting; or
- The amount budgeted for the position.

The Maryland Department of Labor will develop a form for employers to use to comply with disclosure requirements by:

- Completing the Maryland Department of Labor's form;

- Including the completed form in each public or internal job post; and
- Making the completed form available to applicants.

The law also contains anti-retaliation provisions under which employers may not refuse to interview, hire, promote, or transfer an individual because the person exercised their rights under this law.

Employers must be ready by October 1 to include pay ranges in their jobs posts, even if just posting the job internally. Employers should also educate their recruiters and interviewers about this new law, including the anti-retaliation provision. We are monitoring the [Maryland Department of Labor's website](#) for this form and will include it here for employers to download.