RHRA NOVEMBER 2026 EMPLOYMENT LAW UPDATE

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Minnesota Paid Family and Medical Leave (PFML) Updates

- PFML officially launched January 1, 2026.
- For 2027, the premium rate remains unchanged: .88% of an employee's taxable wages.
  - Qualifying small employer premiums are .66%
    - 30 employees or less, average employee wage less than 150% of state average ($27,745), and prior period reporting compliance.

Minnesota Paid Family and Medical Leave (PFML) Updates

cont.

- Tax Reporting Relief for Medical Benefits Expires:
  - For 2026: Medical leave benefits are classified as "third party sick pay" and do not need to be reported on W-2. The State will issue 1099-G.
  - For 2027: that portion of the medical leave benefit that is attributable to the employer's share of the premium contribution must be reported as taxable wages on the employee's W-2 and subject to FICA and FUTA.

Minnesota Paid Family and Medical Leave (PFML) Updates

cont.

- Will the law be invalidated?
  - The legality of Minnesota's PFML program is facing active litigation in state court.
  - The claim is the 2024 omnibus bill which covered many subjects including PFML violated Article IV, Section 17 of the Minnesota State Constitution, which requires that no law shall embrace more than one subject.
  - A Ramsey County court previously struck down a separate gun-related provision (a binary trigger ban) from the same 2024 omnibus package on single-subject grounds, giving challengers their argument.
  - What happens if it's invalidated? What about all the taxes paid and benefits paid out?
- Will a new legislature fix it if overturned?

Earned Sick and Safe Time (ESST) Program Updates

- Minnesota Dept. of Labor and Industry (DOLI) issued Permanent Rules, effective July 6, 2026:
  - Suspected misuse documentation is now permitted. Employers may require reasonable documentation from an employee if there is a pattern of suspected ESST misuse. BUT employer cannot deny a current, qualifying ESST request based on past misuse.
  - If employer does not designate a benefit year, default to calendar year. The ESST year must be communicated to employers in the ESST Notice.
  - Exempt employees must accrue and deduct ESST hours at the same rate.
  - DOLI explicitly stated that the PFML is separate and independent of ESST (so no "double dipping"). PFML is a salary continuation benefit and cannot be used to satisfy an employer's ESST minimum standards.

Earned Sick and Safe Time (ESST) Program Updates

cont.

- DOLI rules defined the activities that constitute Bereavement Leave to include funeral and memorial arrangements, attending services, and addressing post-death legal or financial matters.
  - Applies to a broadly defined group of family members, including biological, marital, adopted, foster, and designated or "equivalent relationship relatives."
- Employers may require up to 7 days of notice for foreseeable leave and can request reasonable documentation for absences exceeding two consecutive days.

Earned Mandatory Break Requirements

- Effective January 1, 2026, employers are obligated to provide employees rest and meal breaks, based on consecutive time worked.
- Rest break
  - Employees are now entitled to a 15-minute paid rest break when working four or more consecutive hours.
- Meal break
  - Employees are entitled to a lunch breach of at least 30 minutes, unpaid, when working six or more consecutive hours.
- Exceptions? Yes.
- Only applies to Minnesota's Fair Labor Standards Act "employees", which does not include:
  - Certain drivers;
  - Certain agricultural workers;
  - Individuals employed in bona fide executive, administrative, or professional capacities; and
  - Certain seasonal day camp staff members.

EEOC Strategic Plan

- The agency is prioritizing intentional discrimination claims over disparate impact, targeting certain DEI practices, elevating religious liberty and anti-Christian bias protections, and anti-American national origin discrimination.

Proposed EEOC Rule to Eliminate EEO-1 Reporting

- July 23, 2026, EEOC issued notice of proposed rule to eliminate EEO-1 reporting obligations, citing high employer costs, potential unconstitutionality, and lack of narrow tailoring.
- The announcement has drawn widespread criticism from civil rights organizations, researchers, and state agencies, who argue EEO-1 demographic data is a vital tool for uncovering systemic workplace discrimination and tracking minority and female employment trends
- EEO-1 reporting is required for private sector employers (including nonprofits) with 100+ employees, and federal contractors and subcontractors with 50+ employees.
- Public hearing on August 11, 2026, and comment period ended August 24, 2026.
- EEOC is determining whether to make the rule final.
- No immediate impact for now, however, and those that are obligated to file EEO-1 must continue to do so and continue their requisite data collection practices.

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Proposed EEOC Rollback of Longstanding Hiring Guidelines and Guidance on Criminal Background Checks and Hiring

- In October 2026, EEOC moved to roll back longstanding hiring guidelines and rescinded guidance on criminal background checks and hiring.
- In part these changes are an effort to limit or eliminate disparate impact claims or claims that hiring decisions have a disparate impact on a class of employees.
- These changes likely do not mean a lot for us for two reasons. One, disparate impact claims have been recognized by the US Supreme Court and remain the law here in Minnesota.

Will EEOC Deadlines for Employers to Respond to Discrimination Claims Change?

- Employers currently have 30 days to respond to discrimination claims.
- Bloomberg Law reported in October that the EEOC was moving to shorten the deadline to just 15 days.
  - Less time for employers to investigate.
  - Emphasizes the importance of maintaining good documentation throughout an employee's tenure.
  - Enough time to get an insurer involved?
- Will this lead to more employer mistakes?

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Watch Out for Challenges to Minnesota's Captive Audience Law

- Minnesota's Employer-Sponsored Meetings or Communications Act (Minn. Stat. § 181.531) took effect in August 2023.
- Employers cannot terminate, discipline, penalize, or threaten workers who decline to attend meetings or listen to communications where the employer expresses its opinions on political or religious matters. The law defines "political matters" to include the employer's views on union-organizing campaigns.
- This is consistent with an NLRB ruling from 2024.
- This has been challenged in Minnesota and one federal appeals court recently called into question the legality of such laws.
- What will the Trump NLRB do?

Possible Pregnant Workers Fairness Act (PWFA) Revisions

- The administration is reportedly planning to revise PWFA regulations to narrow the definition of "related medical conditions".
- Proposed updates are expected to look to remove accommodations for elective abortions, contraception, menstruation and menopause.

ICE Enforcement Actions

- ICE enforcement actions continue.
- Make sure your documentation is in order, and your employees are lawfully able to work.

DOL Enforcement Actions

- DOL/DOLI enforcement actions continue focusing on wage and hour violations.
  - Child labor.
  - Overtime pay issues for employers with multiple entities/locations. The claim is employers are allowing employees to work at different locations without paying overtime.

Misclassification of Employees and Independent Contractors

- What is the difference and why does it matter?

Independent Contractors

- Independent contractors are separate business entities contracted to perform a specific service or project.
- Contractors are typically paid a negotiated flat fee or per-project rate (reported on a 1099) and have the genuine opportunity to realize a profit or suffer a loss.
- They control the means and manner of their work, furnish their own tools and materials, set their own hours, and actively offer their services to the public.
- Lack of Protections: True independent contractors are entirely responsible for their own taxes and insurance, and they are not entitled to workers compensation, state employment benefits, minimum wage, or overtime.

Independent Contractors

cont.

- Addressing misclassification of independent contractors is a stated enforcement priority of DLI the last couple years after being given increased enforcement authority by the legislature in 2024.
- Fines can reach as high as $10,000 per misclassified worker, and there is no requirement that the misclassification be purposeful.
- Employees misclassified as independent contractors can also now sue on their own behalf (rather than relying on state agency enforcement actions), and seek back wages, overtime, the value of ESST, PFML, lost employment benefits, interests on unpaid wages, liquidated damages, reimbursement of out-of-pocket payments for self-employment taxes and insurance.

Independent Contractors

cont.

- Who is an independent contractor and who is an employee?
- An independent contractor agreement will not determine the question.
- MN and federal authorities implement a multi-factor analysis, examining:
  - Right to control the means and manner of performance (historically the most critical factor).
  - Mode of payment (e.g., hourly wage vs. flat project fee).
  - Furnishing of material and tools (contractors typically provide their own).
  - Control of the premises where the work is performed.
  - Right to discharge the worker (the ability to fire at will suggests an employment relationship).

Employees

- An employee is an individual performing services subject to an employer's right to control what work is done and how it is performed. :
  - Employees are paid an hourly wage or salary (reported on a W-2) and are legally entitled to state minimum wage and overtime premiums.
  - The employer generally dictates the schedule, provides the necessary tools and equipment, and directs the specific methods of work.
  - Employees are guaranteed access to state-mandated benefits, including Minnesota's Earned Sick and Safe Time (ESST), Paid Family and Medical Leave (PFML), workers' compensation, and unemployment insurance.

Exempt vs. Non-Exempt Employees

- Job titles or paying a worker a salary does not automatically exempt an employee from wage and overtime requirements.
- Under the FLSA, an exempt employee must the three "white collar" tests:
  - Salary Basis Test: The employee must be paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed.
  - Salary Level Test: The employee must meet a minimum weekly earnings threshold. (the federal minimum salary threshold is $684 per week, or $35,568 annually).
  - Duties Test: The employee's primary duty must involve specific executive, administrative, or professional tasks that require the customary exercise of discretion and independent judgment.
  - Certain professions are exempt from various portions of the test (doctors and lawyers are exempt solely based on their duties; teachers are exempt from both salary tests; etc).
  - There is also a highly compensated employee exception (>$107,432).

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Exempt vs. Non-Exempt Employees

cont.

- Misclassifying a nonexempt employee as exempt—meaning the worker is wrongly treated as salaried and denied overtime pay—exposes an employer to compounding financial, legal, and tax liabilities under both the federal Fair Labor Standards Act (FLSA) and state law.
- Because every pay period where overtime was worked but not paid constitutes a separate violation, the monetary exposure stacks quickly.
- Recovery to the employee includes back pay for unpaid overtime for the last two years (3 if the violation was willful), liquidated damages of double the amount of back pay.
- The employer may also be required to recalculate taxes and benefits.
- Agency enforcement penalties include up to $1,000 for each repeated or willful violation of the FLSA's minimum wage or overtime requirements.
- Minnesota DLI can also assess similar, significant penalties as well.

Minnesota Minimum Wage Update

- Minnesota increased its minimum wage in 2026, and additional increases will continue annually in 2027 and beyond, tied to inflation.
- Elimination of "small employer" tier that previously allowed low rate
- Uniform rate across all employer sizes now in effect ($11.41)
- Effective September 10, 2026, Minnesota passed a new minimum wage law specific to nursing homes and skilled nursing care facilities, regardless of size.
  - New wages range from $19/hour for general workers, to $27/hour for LPNs.

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Minnesota Human Rights Act – Disability Accommodation

- Starting in August 2026, MHRA was modified to make clear it is an unfair discriminatory practice under state law to fail to engage in a good-faith interactive process to determine whether a reasonable accommodation exists for individuals with disabilities in employment, housing, or public service.
- These requirements were already in federal law.

Minnesota Secure Choice Retirement Program

- The Phased rollout has begun beginning with larger employers of 100+ and scaling down through 2028, requiring private-sector employers with 5 or more employees who do not sponsor a retirement plan to facilitate auto-enrollment payroll IRAs.
- All contributions are voluntary and come only from the employees.
- No fiduciary responsibility or liability for employers.
- No cost to employers other than the administrative time needed to handle the payroll deductions.

Non-Compete Agreements Remain Unlawful

- Non-compete agreements (entered after July 1, 2023) remain unlawful.
- Employers cannot use choice of law provisions to get around the law.
- Efforts to carve out exceptions have failed.
  - Highly compensated employees.
  - Employees with access to confidential information or R&D duties.
- Non-disclosure agreements and agreements not to solicit customers, clients or contact lists can be valid.

Legal Cannabis

- Cannabis remains legal.
- Limits to pre-employment screening continue.
- Employers do not have to tolerate employees being under the influence or use at work.

Why Document?

- Documentation provides evidence that performance issues were addressed with the employee in a timely manner.
- Documentation offers a history of the employee's improvement or failure to improve, the manager's actions, and events as they occur.
- Documentation provides evidence that supports unfavorable actions such as discipline or termination.
- Documentation offers proof that an employee deserves an available promotion or opportunity over other employees.
- The documentation can support management's actions in terminating an unsuccessful employee and show an employee was terminated for lawful reasons.

Why Document?

cont.

- Reduces the risk of wrongful termination claims.
- Juries demand documentation.
  - Juries distrust employers.
  - Juries expect employers to document performance and discipline problems.

What is Proper Documentation?

- Documentation can include the following:
  - Notes.
  - Performance reviews.
  - Memorandum in file.
  - Warnings to employee.
  - Work samples.

What is Proper Documentation?

cont.

- Documentation should:
  - Be fair and accurate.
  - Be complete.
  - Contain facts, not conclusions.
  - Contain enough detail to explain what happened.
  - Be sufficient to refresh recollection even years later.
  - Should be simultaneous.
  - Should be confidential.
  - Remember the w's: Who, what, why, when, where, and witnesses

What is Proper Documentation?

cont.

- Remember a third-party may review your documentation.
- Your personal documentation about employees is relevant and discoverable if a dispute arises no matter where it is kept so be cautious.
- Your documentation should appear professional, neat, and organized.
- Remember your audience - you never know who may review your documentation.

What is coming next?

cont.

- Remember the last time we did not have divided government?
  - ESST
  - PFML
- What's next?

Any Questions?

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