



HR Compliance Trends to Watch in 2018

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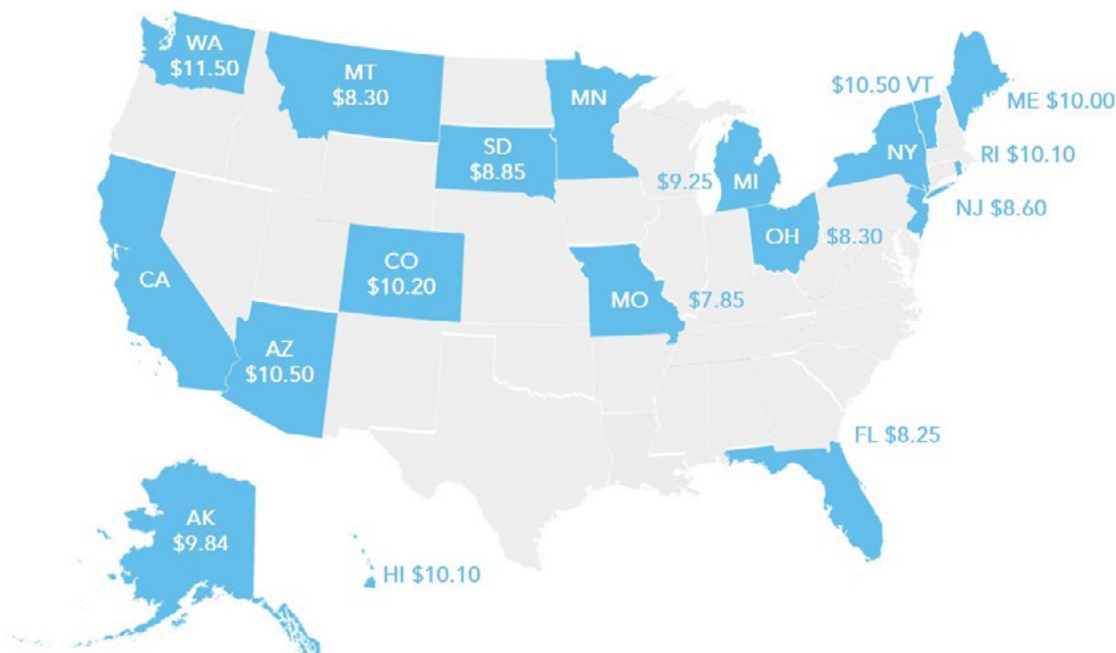




2018 Minimum Wage Rates: What You Need to Know

Under federal law, employers must pay non-exempt employees a minimum wage of at least \$7.25 per hour. However, many jurisdictions have higher minimum wage rates, some of which increased at the start of 2018. Below, we provide a summary of these changes and guidelines to help you comply.

Minimum Wage Changes Effective January 1, 2018*:



* New York's minimum wage changes took effect on December 31, 2017.

2018 Minimum Wage Rates: What You Need to Know

Additional Information & Local Increases:

Note: This list includes minimum wage increases for larger U.S. cities. Several smaller cities also increased their minimum wage rates for 2018. Check your local minimum wage to ensure compliance.

California

For employers with 26 or more employees, \$11 per hour. For employers with 25 or fewer employees, \$10.50 per hour.

- San Jose, CA: \$13.50 per hour.
- Oakland, CA: \$13.23 per hour.

Minnesota

\$9.65 per hour for large employers (annual gross revenue of \$500,000 or more) and \$7.87 an hour for smaller employers (annual gross revenue of less than \$500,000).

- Minneapolis, MN: For employers with more than 100 employees, \$10.00 per hour.

Albuquerque, NM

\$8.95 per hour (\$7.95 if the employer provides healthcare and/or childcare benefits to the employee equal to or in excess of \$2,500 per year).

New York (effective 12/31/17)

- New York City: \$13.00 per hour for employers with 11 or more employees and \$12.00 per hour for smaller employers; \$13.50 per hour for fast food workers in the city.
- Nassau, Suffolk and Westchester Counties: \$11.00 per hour
- Rest of the state: \$10.40 per hour

Washington State: \$11.50 per hour

- Seattle, WA: \$14.00 per hour for employers with 500 or fewer employees. Employers can satisfy this requirement through a combination of direct cash wages (of at least \$11.50 per hour), tips, and medical benefits. Larger employers must pay employees \$15.45 per hour and can satisfy this requirement through a combination of direct cash wages (of at least \$15.00 per hour) and medical benefits.
- Tacoma, WA: \$12.00 per hour.



2018 Minimum Wage Rates: What You Need to Know

Multiple Minimum Wages:

If an employee is subject to more than one minimum wage requirement (such as federal, state, and local), comply with the rate that's most generous to the employee. For example, if your state minimum wage is \$10.00 and the local minimum wage is \$11.00, pay the employee at least \$11.00 per hour, since it is higher than the state and federal minimum wage rates. Additionally, if your business is located in one state, but you have employees (such as remote workers) working in another jurisdiction, the minimum wage in the location where the employee performs work generally applies.

Although coverage may vary by jurisdiction, state and local minimum wage laws also typically apply to almost all employers and employees. However, some requirements only apply to businesses of a certain size, or employees who perform a certain number of work hours in that jurisdiction. Check your applicable law for details.

New Minimum Wage May Mean New Posters:

Most jurisdictions require employers to post a minimum wage notice in the workplace. If you're subject to this requirement, make sure you post the most up-to-date version.

Employees Earning More than the Minimum Wage:

When the minimum wage increases, some employers wonder if they should also provide a raise to employees already earning equal to or more than the new rate. For example, if the minimum wage increases from \$9.00 per hour to \$10.00 per hour, should an employee already earning \$10.00 per hour also get a raise? While the employer is under no obligation to provide a raise, some employees may be expecting one. Consider the potential impact on labor costs, employee morale, internal equity (how employees are paid when compared with other employees within your company), employer brand, and your typical merit increase schedule.

Pay for Nonproductive Work Time:

Under the federal FLSA and many state laws, employees must be paid for time actually spent working as well as certain nonproductive time, such as rest breaks, travel time, and training time. As long as the rate meets or exceeds the highest applicable minimum wage, you may pay a different wage for nonproductive time than you do for productive time. For example, if the employee's normal wage is \$15.00 per hour and the highest applicable minimum wage is \$11.50 per hour, you may pay them \$11.50 per hour (but not lower) for time spent in training. It is a best practice, and a requirement in certain jurisdictions, to notify the employee in writing of the separate rate before they perform nonproductive work.

Expense Reimbursement:

Throughout the course of their work, employees may incur business expenses for travel and other work-related items. In most cases, under the FLSA, any work-related expense incurred by an employee that would bring his or her pay below the minimum wage (or cut into overtime pay) must be reimbursed. Generally, it is a best practice (and some states expressly require employers) to reimburse all employees for any reasonable business expenses they incur.

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Potential Impacts on Overtime Exemptions:

In some states, an increase in the minimum wage can also affect minimum salary requirements for exempt employees. For example, both California and Alaska require employers to pay a salary of at least twice the minimum wage to bona fide administrative, professional, and executive employees.

Note: State and federal laws require employees to meet specific duties tests in order to qualify for an overtime exemption.

Conclusion:

Ensure that you understand the minimum wage rules that apply to your employees and post updated minimum wage notices in each work location.

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Fair Scheduling: Requirements & Best Practices

“Fair” or “predictive” scheduling laws require employers to follow certain scheduling practices and typically cover employees in the retail, food services, and in some cases, hospitality industries. Here is an overview of fair scheduling laws.

Typical Requirements:

While rules differ among jurisdictions, fair scheduling laws typically have the following components in common:

- **Good faith estimate.** At the time of hire, employers must provide a written, good faith estimate of the number of hours an employee can expect to work per week.
- **Advance notice of schedules.** Employers must provide a written work schedule in advance (usually at least 14 days) that outlines regular and on-call shifts.
- **Work schedule requests.** Employees have the right to identify preferences for the hours or locations of work and to request to not be scheduled for certain shifts or locations.
- **Notice of schedule changes.** Employers must provide employees with a certain amount of advance notice before any schedule changes.
- **Premium pay for certain schedule changes.** Employers must provide employees with premium pay if they change their schedule outside the minimum notice window.

Fair Scheduling: Requirements & Best Practices

- **Access to additional work hours.** Employers must offer additional work hours to qualified existing employees before hiring external employees.
- **Poster.** Employers must post a notice of employees' rights under the law.
- **Recordkeeping.** Employers must retain certain records related to scheduling employees.

Current Fair Scheduling Laws:

The following jurisdictions have enacted scheduling laws:

Jurisdiction	Covered Employers	Effective Date
San Francisco, CA	<u>Formula Retail Employee Rights Ordinances (FRERO)</u> : Formula retail establishments (or chain stores) with at least 40 establishments worldwide and 20 or more employees in San Francisco. Excludes non-profit corporations.	FRERO: October 3, 2015
	<u>Family Friendly Workplace Ordinance (FFWO)</u> : Employers with 20 or more employees. Includes all employees inside and outside of San Francisco, regardless of their status or classification as seasonal, commissioned, permanent or temporary, or full-time or part-time.	FFWO: January 1, 2014
<u>San Jose, CA</u> (this law is generally limited to access to additional hours)	Private and non-profit employers with 36 or more non-exempt employees that are either subject to the city's business license tax or have a location in the city that's exempt from the state's business license tax.	March 13, 2017
<u>Emeryville, CA</u>	Retail firms with 56 or more non-exempt employees globally. Fast food firms with 56 or more non-exempt employees globally and 20 or more non-exempt employees within the city.	July 1, 2017

Fair Scheduling: Requirements & Best Practices

Jurisdiction	Covered Employers	Effective Date
Seattle, WA	Retail and food service establishments with 500 or more employees worldwide. To be covered, full-service restaurants must also have 40 or more locations worldwide.	July 1, 2017
New York City, NY	Fast food chains (including franchises) that are one of 30 or more establishments nationally. Retail employers that sell consumer goods in NYC and have 20 or more full-time, part-time, or temporary employees.	November 26, 2017
Oregon	Retail, food services, and hospitality industries employing 500 or more employees worldwide, including but not limited to a chain or an integrated enterprise.	July 1, 2018

Best Practices:

Here are some scheduling best practices for all employers to consider:

- **Make accurate projections.** Make projections based on the amount and type of work that needs to get done, when it must be done, and the talent and resources you have available. Consider your employees' availability, preferred shifts, and desired number of hours per week.
- **Ensure proper balance.** During each shift, make sure you have enough supervisors and experienced employees to ensure that your business runs smoothly.
- **Keep an eye on overtime.** Extensive overtime can drive up labor costs and lead to lower productivity and morale. Monitor overtime closely and consider its impact when scheduling employees.
- **Provide enough time off between shifts.** Provide employees with enough rest in between shifts, especially for safety-sensitive positions. **Note:** Certain laws place restrictions on the number of hours an employee can work per week and how much time off must be provided between shifts.
- **Track vacation, sick, and other paid time off.** Track time-off requests closely and look for certain times of the year or days of the week where requests spike and plan accordingly.
- **Use pilots for new product or service launches.** If you are unsure how a new product or service may

Fair Scheduling: Requirements & Best Practices

affect your staffing needs, consider using a pilot to help gauge the impact.

- **Consider shift swaps and cross-training.** Allowing employees to swap shifts can make it easier to maintain adequate staffing levels and give employees flexibility when work-life conflicts arise. Consider cross-training employees to make it easier to find a back-up for unscheduled absences.

Conclusion:

Covered employers should review workplace policies, practices, and training to ensure compliance with fair scheduling requirements. Even if you aren't currently subject to a fair scheduling law, this trend is expected to continue, so watch for developments.

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A photograph of two men sitting at a table in a modern office setting, engaged in a conversation. The man on the left is wearing a patterned shirt, and the man on the right is wearing a light blue shirt and glasses. They are both looking at each other. The background shows a large window with a cityscape view. The image is overlaid with a geometric pattern of yellow and orange triangles.

Salary History Bans: What You Need to Know

Several jurisdictions are expanding gender-based pay discrimination laws, most notably restricting employers from making inquiries into an applicant's pay history during the hiring process. This is because a candidate's pay history may reflect discriminatory pay practices of a previous employer, which then could result in lower wages in the new job.

Overview:

While these laws differ among jurisdictions, they typically prohibit employers from seeking compensation history from an applicant or his/her current or former employer. Generally, employers are also prohibited from screening applicants based on their pay histories, including by requiring that an applicant's prior compensation satisfy minimum or maximum criteria.

Jurisdictions with Salary History Bans:

The following jurisdictions have enacted these types of restrictions:

- Oregon
- New York City, NY
- Delaware
- Massachusetts (effective July 1, 2018)
- San Francisco (effective July 1, 2018)
- Philadelphia (blocked due to pending litigation – watch for developments)

Salary History Bans: What You Need to Know

If you are covered by one of these laws, remove salary history questions from application forms and train supervisors and hiring managers to avoid salary history questions during the pre-employment process. This trend is expected to continue, so employers in other jurisdictions should watch for developments closely.

Best Practices:

Here are some general best practices for promoting pay equity in your workplace:

- **Conduct internal audits.** Consider working with legal counsel to conduct an internal audit of pay practices to confirm that employees working in similar positions are paid equitably based on skill, merit, and other nondiscriminatory factors.
- **Examine policies and procedures.** Review pay-related policies and procedures to ensure compliance with all applicable laws. Develop a clear written equal employment opportunity policy and include a complaint process for employees to raise concerns.
- **Train supervisors.** Provide training on the company's compensation-related policies and procedures and commitment to equal pay.
- **Consider pay transparency.** Clearly communicate how the company determines employees' compensation.
- **Promptly respond to all complaints.** Take all complaints seriously and conduct a prompt, impartial, and thorough investigation.
- **Document.** Confirm employment decisions are made for legitimate, nondiscriminatory reasons and properly document all pay and performance-related decisions.

Conclusion:

Pay decisions must be based on legitimate nondiscriminatory reasons. Regularly review your compensation practices to ensure compliance with all applicable laws.

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Paid Family Leave Programs: Understanding the Basics

A growing number of jurisdictions provide partial wage replacement when employees take leave for certain family or medical reasons. These paid family leave (PFL) programs are typically funded through payroll deductions.

Current PFL Laws:

The following jurisdictions have enacted PFL laws:

- [California](#)
- [San Francisco*](#)
- [New Jersey](#)
- [New York](#)
- [Rhode Island**](#)
- [District of Columbia](#)
- [Washington](#)

* San Francisco employers with 20 or more employees must supplement the state's benefits when an employee takes time off to bond with a new child.

** Rhode Island's PFL program is referred to as Temporary Caregiver Insurance.

Paid Family Leave Programs: Understanding the Basics

Covered Absences:

Eligibility for wage replacement benefits varies under each law, but the benefits generally cover time off for an employee to:

- Bond with a newborn or a newly placed adopted or foster child.
- Care for a family member with a serious health condition

DC and Washington state also cover time off for the employee's own serious health condition. And, New York and Washington state cover time off for families to manage the responsibilities that ensue when a family member is on active duty or has been notified of an impending call to active duty.

The federal Family and Medical Leave Act (FMLA) and similar state laws entitle covered employees to unpaid, job protected leave for absences that may also be covered by PFL. In such cases, the leave generally can run concurrently under the various laws.

Wage Replacement Benefits:

Apart from Washington state, San Francisco, and DC, PFL programs are funded solely by employees via payroll deductions and provide partial wage replacement benefits when an employee has a covered absence from work.

Washington state's premiums will be funded via payroll deductions starting January 1, 2019. Employers with 50 or more employees are responsible for 37% of the total contribution and employees are responsible for 63%. Employers with less than 50 employees are not required to pay the employer portion of the premium. However, small employers that choose to pay the employer contribution are eligible for state grants.

DC's program will be funded by employers via a tax on employees' wages. San Francisco is phasing in a requirement to provide full wage replacement benefits, but it only applies to time off for bonding with a newborn or newly placed child. Employers in San Francisco will be required to supplement the state benefit by paying the remaining portion of the employee's normal pay.

Maximum Duration of Benefits:

The maximum duration of benefits in each jurisdiction is:

Jurisdiction	Duration of Benefits
California / San Francisco	6 weeks in a 12-month period
New Jersey	6 weeks in a 12-month period
New York	8 weeks in 2018
	10 weeks in 2019
	12 weeks in 2021
Rhode Island	4 weeks in a benefit year

Paid Family Leave Programs: Understanding the Basics

Jurisdiction	Duration of Benefits
District of Columbia	8 weeks for child bonding
	6 weeks to care for a family member
	2 weeks for the employee's own health condition (PFL is limited to 8 workweeks of benefits in a 52-workweek period, regardless of the number of qualifying events)
Washington	Up to 12 weeks for family leave (including qualifying exigencies)
	Up to 12 weeks for medical leave for a serious health condition (up to 14 weeks if the serious health condition is related to pregnancy)
	Up to 16 weeks for combined family and medical leave (up to 18 weeks if the serious health condition is related to pregnancy)

Job Protection:

Some of these laws have express job-protection provisions. For example, in New York, Washington, and Rhode Island, employees returning from PFL must be reinstated to the position they held before the start of the leave, or to a comparable/equivalent position. In other states, the PFL programs may merely provide a financial benefit rather than a leave entitlement with job protection. However, even in states without express job-protection provisions for PFL, employees may be protected under another federal, state, or local law, such as the federal FMLA or a state/local family and medical leave or paid sick leave law.

Notices:


PFL laws generally require employers to provide a notice to employees about their rights and/or post a notice in the workplace.

Conclusion:

If you have employees in any of the jurisdictions covered above, understand your rights and obligations under the law and train supervisors on how to respond to leave requests.

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5 Lessons Learned from the Recent Harassment Complaints

Nondiscrimination laws require employers to maintain a work environment that is free from sexual and other types of harassment. Beyond compliance, promoting a harassment-free workplace is the right thing to do and critical to maintaining a productive workforce. However, recent scandals in the media, academia, Hollywood, and Congress are indications that sexual harassment remains a significant problem in the workplace. Here are five key takeaways to help you assess your anti-harassment efforts:

#1: A policy isn't enough.

While having a written anti-harassment policy is important (and even required in some jurisdictions), it will mean little if you don't enforce it. If you observe or are put on notice that misconduct may have occurred, launch a prompt, impartial, and thorough investigation. Depending on the circumstances, consider whether an internal investigation is sufficient or if you need to have an outside third party conduct an impartial investigation. If an investigation reveals that harassment occurred, take immediate and appropriate corrective action to remedy the harassment and prevent it from recurring. Administer your disciplinary policy on a consistent basis regardless of who is involved. If employees see you treating certain employees more leniently than others, it will likely breed a culture of mistrust and prevent employees from coming forward with complaints in the future.

#2: Training must improve.

Whether you're required by law to provide training or not, it's a best practice to train all employees on sexual and other types of harassment, from your top executives down to entry-level employees. Use training to show that harassment is not only against the law but also against your company's values. Make clear that severe or pervasive conduct that affects an individual's employment, unreasonably interferes with their work

5 Lessons Learned from the Recent Harassment Complaints

performance, or creates a hostile or offensive work environment is prohibited, as well as any unwelcome conduct of a sexual nature. Additionally, prohibit any actions where it is expressed or implied that submission to unwelcome behavior will be used as the basis for employment decisions, such as promotions or benefits.

#3: Many victims fear reporting.

Sometimes victims of sexual harassment don't report it, citing a concern that it will impact their career or cause additional trauma if they came forward. In some cases, there is a significant power differential between the accused and the accuser (for example, a top executive and an employee just beginning their career), which can make responding to and reporting harassment especially difficult. That's why it's critical to encourage all employees to report inappropriate conduct immediately, without fear of reprisal. Offer employees multiple avenues to report potential violations, and assure employees that you take all complaints seriously and will investigate the allegations. Never tell an employee who complains that he or she should "grow a thicker skin" or "that is just the way it is." Following the investigation, discuss your findings (and planned corrective action, if applicable) with the employee. Confirm that they have been properly heard and understood, even if they disagree with the results. Continue to watch for warning signs that you may have a problem with a particular supervisor or department, such as elevated turnover or transfer requests and monitor that the conduct is no longer occurring and that no retaliation has taken place.

#4: Men, women, and non-binary individuals can be victims.

While women still represent a majority of the victims of harassment, men and non-binary individuals are also coming forward in growing numbers. Make sure you take all complaints seriously and handle them consistently, regardless of sex or gender of the alleged victim or harasser.

#5: Harassment is an "open secret" in some cases.

A common thread that has emerged from the recent scandals is that individuals subsequently came forward to say that they knew of the alleged misconduct, or heard rumors about alleged misconduct, but didn't say anything at the time. Getting bystanders to report can be a challenge, but it is important to encourage employees to come forward when they witness or suspect harassment. The Equal Employment Opportunity Commission is currently researching bystander intervention training to show employees how to spot unwelcome and offensive behavior and how to step in and take action when needed.

Conclusion:

Employers must be diligent about preventing and responding to harassment not only when the spotlight is on sexual harassment but also when it fades.

