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2019 Year in Review and 2020 Forecast: Employment Law Updates in D.C., Maryland, and Virginia

Over the past year, there were a number of changes in the employment law landscape throughout the District of Columbia, Maryland, and Virginia. To keep employers apprised of the latest developments in these jurisdictions, below is a recap some of the key laws that took effect or were enacted in 2019 and a forecast of potential changes on the horizon in 2020.

DISTRICT OF COLUMBIA

✘ Tipped Wage Workers Fairness Amendment Act of 2018 Not Fully Funded: The D.C. City Council enacted the Tipped Wage Workers Fairness Amendment Act in October 2018, which had the immediate impact of repealing Ballot Initiative 77 – a voter-approved ballot that eliminated the use of the tip credit in D.C. Thus, employers with tipped employees are still permitted to take a tip credit toward meeting minimum hourly wage requirements. But the Act also imposes certain training, reporting, and notice requirements for all employers of tipped employees – many of which have yet to take effect due to the lack of funding.

As explained in our previous [blog article](#), the Act imposes certain training and notice requirements on all employers of tipped employees. The date on which employers must implement sexual harassment prevention training and provide the requisite notice to tipped employees, however, has not yet been determined, as a majority of the Act's requirements have not been approved through budget funding. To date, the only provisions of the Act that are in effect, besides the repeal of Ballot Initiative 77, are related to employee and manager training on D.C.'s Minimum Wage Act Revision Act, certain notices to employees regarding their tips, and third-party payroll and wage reporting requirements (beginning Jan. 1, 2020). Employers should monitor this law throughout 2020, as it will likely be funded sometime next year.

Employees Can Claim D.C. Paid Leave Act Benefits Beginning July 1, 2020: D.C.'s [Universal Paid Leave Amendment Act of 2016](#) ("Paid Leave Act") provides up to eight weeks of parental leave to bond with a new child, six weeks of family leave to care for an ill family member with a serious health condition, and two weeks of medical leave to care for one's own serious health condition. D.C. employees who take paid leave will be eligible to receive up to \$1,000 per week, depending on their wage level. The leave program is funded by a quarterly 0.62% payroll tax on businesses that expected to generate a total of \$250 million each year.

July 1, 2019 marked the date on which the District began collecting taxes from employers in preparation to administer paid leave benefits beginning on July 1, 2020. Employers should ensure that they have the [Paid Family Leave Notice](#) posted in their workplace, along with other labor law posters, by February 1, 2020, and ensure that all new employees hired after February 1, 2020 are provided with an electronic or hard copy of the notice. The [proposed benefits regulations](#) that contain instructions on how employees file for benefits are being finalized by the D.C. Department of Employment Services (“DOES”) and are expected to be rolled out in the next few months. Employers should familiarize themselves with this rule and the anticipated regulations, especially if they have not paid the quarterly taxes that DOES began collecting six months ago.


For further details on the D.C. Paid Leave Act and employer obligations, please check out our prior [blog post](#).

Minimum Wage Increase in 2020: Under [D.C.’s Fair Shot Minimum Wage Amendment Act of 2016](#), the minimum wage in the District of Columbia increased from \$13.25 per hour to \$14.00 per hour on July 1, 2019, and the base minimum wage for tipped employees increased from \$3.89 per hour to \$4.45 per hour. The law also provides for a progressive increase to \$15.00 per hour on July 1, 2020, and a base increase of \$5.00 per hour for tipped employees.

Drug Testing/Marijuana Updates Expected in 2020: The D.C. City Council is considering two bills that would eliminate drug testing employees for marijuana. Possession of marijuana and its recreational use is legal in D.C., and many employees have a valid prescription for medicinal marijuana. However, under current law, employees can still be disciplined at work if they test positive for marijuana.

The [Prohibition of Marijuana Testing Act of 2019](#) proposes to eliminate marijuana testing as a condition of employment unless required by law. The second bill, the [Medical Marijuana Program Patient Protection Amendment Act of 2019](#), would prohibit discriminating against D.C. government employees who are enrolled in the medical marijuana program, and would do away with marijuana testing on such employees who have a valid prescription under the program. This rule was already rolled out as emergency legislation in June 2019 but only went into effect for 90 days. Although neither of these laws are final, and private sector employers have not been impacted by these proposals yet, it is certainly something to keep a close eye on. Many states across the country have already, or are beginning to, incorporate employee protections in marijuana legislation, which significantly alters traditional employer policies, procedures, and practices related to drugs and drug testing policies.

MARYLAND

 **Law Regarding Noncompete and Conflict of Interest Clauses Imposed Restrictions on Employment Agreements:** A new Maryland [law](#) that went into effect on October 1, 2019 prohibits employers from including noncompete or conflict of interest clauses in any employment contract with an employee earning \$15 or less per hour or \$31,200 or less annually. Such provisions are considered void as against public policy. However, the bill specifically provides that employers may still prohibit such employees from taking client lists or other proprietary client-related information. Employers should carefully review their employment agreements with employees who are considered lower wage earners and revise them, as necessary, to ensure that company interests are protected while still complying with the law.

Workplace Harassment Amendment Expanded Scope of Liability for Employers: On October 1, 2019, under [HB 679/SB 872](#), several changes to Maryland’s anti-discrimination law went into effect, which vastly expanded the scope of liability for employers under State law. For instance, the definition of “employee” was expanded to include independent contractors; the definition of “employer” was revised to increase the scope of liability for cases of harassment from any employer with 15 or more employee to any employer with a single employee; and a definition of harassment was specifically provided in the statute. Additionally, the time period for filing a complaint of harassment with the local human rights commission was expanded from six months to two (2) years, and the time period for filing a lawsuit alleging harassment in violation of the state anti-discrimination law was expanded from two (2) years to three (3) years. Employers should be wary of these changes to Maryland’s discrimination laws, as it certainly expands the risk of employer liability in Maryland and makes Maryland courts a more attractive forum to pursue such claims.

Equal Pay Law Penalties Increased: Penalties for Maryland’s Equal Pay for Equal Work law increased on October 1, 2019. Employers found to have violated the law two (2) or more than three (3) times within a three-year period may be assessed a penalty equal to 10% of the damages owed by the employers, which are paid into the General Fund of the State of Maryland.

Organ Donation Leave: Under the [HB 1284](#), which took effect on Oct. 1, 2019, employers with 15 or more employees are required to provide eligible employees (employed for at least 12 months and at least 1,250 hours during the previous 12 months) up to 60 business days of unpaid leave in any 12-month period to serve as an organ donor, and up to 30 business days of unpaid leave in any 12-month period to serve as a bone marrow donor. Employers should consider adding a new provision to their leave policies in their Employee Handbooks and pay particularly close attention to any requests from employees for time off to donate an organ or bone marrow. Notably, such organ donor leave *does not* run concurrently with leave taken pursuant to the Family and Medical Leave Act.

Ban the Box Legislation Vetoed by Governor Hogan: Legislation [passed](#) by the Maryland General Assembly prohibiting employers with 15 or more employees from asking about an applicant’s criminal record prior to the first in-person interview was vetoed by Governor Larry Hogan in May 2019. Note, however, that there are several local ban-the-box laws throughout Maryland, including those enacted by Baltimore City, Prince George’s County, and Montgomery County – all of which provide greater restrictions on employers than what was proposed under the proposed bill.

Minimum Wage Increase in 2020: Beginning on Jan. 1, 2020, the minimum wage in Maryland will increase from \$10.10 per hour to \$11.00 per hour. Please note, however, that employers in [Montgomery County, MD](#) and [Prince George’s County, MD](#) are subject to separate, higher minimum wage rates, which may also vary depending on the size of the employer.

Maryland OSHA Still Has Not Adopted the E-Recordkeeping Rule: Maryland OSHA (“MOSH”) is the only state-plan safety and health agency in the country that has [not adopted](#) federal OSHA’s e-Recordkeeping Rule, which was promulgated back in May 2016. Under the [revised federal rule](#) issued in January 2019, which MOSH is required to adopt, establishments with 250 or more employees and establishments with 20 or more employees in high hazard industries are required to submit their 300A data by March 2nd of every year through federal OSHA’s [Injury Tracking Application](#). Covered establishments should closely monitor this rule and be prepared to

submit their 300A data, as it is will likely be finalized prior to the upcoming March 2, 2020 data submission deadline.

VIRGINIA

✘ Repeal of Jim Crow-era Minimum Wage Exemptions: [HB 2473](#) was enacted in March 2019 in an effort to modernize Virginia’s minimum wage law and to repeal certain Jim Crow-era provisions that endorsed wage discrimination against African Americans. The legislation rescinded exemptions that allowed employers to pay less than the minimum wage to newsboys, shoeshine boys, ushers, doormen, concession stand attendants, cashiers in theaters, and babysitters who work 10 hours or more per week.

Written Wage Statements Now Required in Virginia: Beginning on January 1, 2020, Virginia employers (with the exception of agricultural employers) must provide paystubs to employees on each regularly scheduled payday. Virginia Code § 40.1-20 was [amended](#) in April 2019 to require employers to provide a written statement by pay stub or online, which must include the following:

1. The name and address of the employer;
2. The number of hours the employee worked during the pay period;
3. The employee’s rate of pay;
4. The gross wages earned by the employee during the pay period; and
5. The amount and purpose of any deductions.

Given that the current law only requires employers to provide a written statement of employees’ gross wages and any deductions upon request, this may be a significant change for many employers. It is prudent to take steps to ensure that accurate pay stubs are provided beginning on January 1, 2020. Employers that already issue pay stubs should review their current payroll systems to verify that all of the code’s requirements, as listed above, are included in employee pay stubs.

Bi-Partisan Bill Limiting Non-Compete Agreements Not Put Up for Vote: A proposed bill that prohibits employers from entering into, enforcing, or threatening to enforce non-compete agreements with low-wage workers passed the Senate and House Commerce and Labor Committee. But the General Assembly did not put this bill up for a vote in the House during the last legislative session. Virginia employers should pay close attention to this bill moving forward, as it has bi-partisan support and other states have have continued to enact similar provisions, including Maryland.

Efforts to Increase Minimum Wage Fall Short: At least four bills were introduced in the General Assembly in 2019 to raise Virginia’s minimum wage, which is currently set at the federal floor of \$7.25 an hour. Most of these bills were left in committee. One bill that did pass the Senate Commerce and Labor Committee would have mandated annual increases to the hourly minimum wage, raising it to \$8 this year and reaching a final rate of \$11.25 in 2022. Another bill that would have increased the minimum wage to \$10 this year, \$13 next year, and \$15 by 2021 made it through committee but was then struck down by a Senate vote of 21-19. While none of these bills managed to increase the state minimum wage, efforts to increase the state minimum wage will certainly be an agenda item during the next legislative session. Given the narrow split on the issue, it is only a matter of time before Virginia’s minimum wage increases.

Marijuana Legislation at the Forefront of Issues for 2020: Currently, marijuana is strictly prohibited in Virginia and previous marijuana legislation efforts in the General Assembly have failed. However, with the advent of the November 2019 elections and democrats now controlling both the House of Delegates and the Senate, it appears that marijuana legislation is on the horizon.

Delegate Lee Carter pre-filed a bill ([HB 87](#)) for the 2020 legislative session that would decriminalize marijuana and allow adults 21 and older to possess and purchase cannabis from licensed retailers. Additionally, the bill would impose a 10 percent tax to fund veteran initiatives, transportation, and local municipalities. The bill also contains specific prohibited employment practices, which appear to limit an employer's ability to discipline employees for use of marijuana outside of the workplace. Finally, Democratic Attorney General Mark Herring recently held a "Cannabis Summit" in Richmond to discuss decriminalizing marijuana and comprehensive marijuana reform, which includes recreational legalization. This topic is gaining significant attention heading into 2020, so employers should pay close attention to the bill pre-filed with Virginia General Assembly.