



# Employers Should Be Tracking These 11 State and Local Workplace Trends

Insights

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While federal employment laws set nationwide standards, state and local laws often go well beyond – not only creating additional compliance obligations but also a patchwork of workplace rights to navigate. These laws vary from state to state and govern a wide range of workplace standards, including the use of artificial intelligence, wage and hour requirements, data privacy laws, anti-discrimination efforts, and more. Employers with operations in multiple locations need to pay particular attention to how these varying requirements impact your policies and procedures – as well as your ability to set consistent and fair standards across locations. Here are 11 key trends you should be tracking now.

## 1. Higher Exempt Salary Thresholds

The U.S. Department of Labor [just announced](#) that it will be significantly increasing the federal exempt salary threshold for employees to be exempt from overtime pay under the executive, administrative, and professional exemptions — which are collectively known as the “white-collar” exemptions. You should also note that some states have their own, higher exempt salary threshold. In some states, like California, the threshold calculation is tied to the state minimum wage, so as the minimum wage goes up, so does the exempt salary threshold. In New York State, the exempt salary thresholds for executive and administrative employees are based on region and have been steadily increasing each year. So, in addition to tracking the new federal threshold, make sure you know what changes are on the horizon for the specific locations where you have employees.

## 2. Minimum Wage Hikes

Although the federal minimum wage has been \$7.25 an hour since 2009, many states, counties, and cities have steadily increased their minimum hourly wage every year, with some reaching or exceeding \$15 an hour. At the statewide level, California, Connecticut, Maryland, Massachusetts, New York, New Jersey, Washington State, and Washington, D.C., all have a minimum wage of at least \$15 an hour as of January 2024. Several more states have approved a gradual increase to that level or higher over the next few years or tied minimum wage hikes to inflation. You can expect more states to join the trend.

## 3. Artificial Intelligence

Artificial intelligence advancements have had a huge impact on the workplace in recent years. AI tools are capable of predicting periods of high overtime and labor demand, allowing employers to manage staffing levels proactively. AI-driven scheduling tools – taking into account employee preferences, business needs, and applicable laws – can optimize workforce management. AI systems can also track working hours, calculate overtime, and process payroll with precision, reducing human error and ensuring legal compliance.

State and local lawmakers, however, are concerned about the use of AI in the workplace. For example, New York City's Local Law 144 was the first law aimed at preventing workplace bias when using AI. The law requires covered employers to take several critical steps, such as arranging for an independent bias audit and complying with notice requirements. Additionally, at least two proposed bills pending before the New York State Legislature (S7623 and A9315) would force employers to conduct bias audits and provide high levels of transparency if they use AI-fueled automated employment decision tools for employment decisions. This is something that NYC's bias audit law was supposed to accomplish but in some ways fell short.

In California, lawmakers are considering more than 30 AI-related bills across a wide range of topics while the state's privacy agency is considering ambitious regulations targeting AI's impact on California consumers. If passed, some rules would directly target workplace issues while others would be broad enough to impact certain employers. California's landmark proposals could inspire similar action in other states, so businesses across the country will want to take note.

#### **4. Pay Transparency**

Pay transparency is one of the hottest trends impacting the workforce today, and it affects all aspects of workplace relationships – including hiring, recruitment, and retention efforts; supervision and leadership; and compensation and benefits. A patchwork of new state laws makes multistate compliance complicated, particularly since the details of each law vary.

Colorado was the first state to enact a pay transparency law in 2021 and other jurisdictions followed suit. 2023 brought expanded pay equity rules to workplaces in Rhode Island, and New York State's salary disclosure law took effect in September 2023. Hawaii's law took effect this year on January 1, and Illinois also enacted a pay transparency law, which will take effect in 2025. Which other states may join the trend? All eyes are on Massachusetts and New Jersey for now.

Failure to comply with state pay transparency laws has begun to spawn costly litigation. For example, the 2023 job posting requirements to Washington State's pay transparency law have led to an avalanche of class action litigation filed on behalf of "job applicants" seeking to recovery statutory damages in the amount of \$5000 per applicant to any noncompliant posting, plus attorneys' fees and prejudgment interest.

#### **5. Pay Data Reporting**

California employers with at least 100 employees are likely familiar with the pay data reporting requirements that were enacted in 2020 and amended for 2023. Covered employers must annually report to the state detailed pay data categorized by gender, race, and ethnicity. More states may soon follow the lead of California and mandate pay reporting. In particular, you should watch for developments in New York, New Jersey, Massachusetts, Illinois, and Washington.

## 6. Data Privacy Laws

The California Consumer Privacy Act (CCPA) was the first law of its kind in the country, requiring affected businesses to take various steps to protect the personal information they collect about consumers, employees, and job applicants. A string of states passed new laws in 2023, including Delaware, Connecticut, Florida, Iowa, Montana, Oregon, Tennessee, Texas, and Washington. To date, 15 states have passed consumer privacy laws, and more are expected to continue this momentum in 2024. We expect that these new states will follow the post-CCPA trend of excluding employment-related data from protection under these new laws, unlike California, where such data is subject to the CCPA/CPRA requirements.

Meanwhile, a bipartisan group of federal lawmakers just unveiled a sweeping proposal in April 2024 to pass the nation's first data privacy law. While it would create a consistent framework across the country and eliminate the confusing patchwork of state laws that businesses now have to navigate, it would also expose more businesses to potential litigation and increase compliance obligations for tens of thousands of organizations. The primary hurdles to passage of a federal law relate to disagreements over preemption of state laws and whether consumers should have private right of action for violations of a federal law.

## 7. Paid Sick Leave Laws

State and local paid sick leave requirements continue to raise compliance challenges. Currently, about a third of the states and Washington, D.C., have their own paid sick leave laws. Each one has different requirements when it comes to the amount of time employees can take, the reasons they can take leave, the ways leave accrues and carries over from year to year, and more. The push for paid leave at the state and local level is expected to continue for the foreseeable future. This means you should have a game plan for tackling the complex issues that come with managing such policies and programs, particularly across multiple locations with unique requirements.

## 8. Hairstyle Equity

Racial discrimination based on hairstyles is a part of everyday life for many Black adults, according to a study by the CROWN Coalition — which was founded by Dove, National Urban League, Color of Change, and Western Center on Law and Poverty. “CROWN” stands for **C**reating a **R**espectful and **O**pen **W**orld for **N**atural **H**air.

Calls for social justice over the past few years led many jurisdictions to pass laws combating workplace racial bias based on hairstyle. In fact, 23 states and many localities have passed a version of the CROWN Act, which prohibits employers from discriminating against employees and job applicants based on natural or protective hairstyles. “Natural hair” means hair that has not been treated with chemicals that alter color or texture — such as bleach or straightener. Protective hairstyles — such as braids, locs, twists, or bantu knots — tuck the ends of the hair away to protect from sun, heat, and other damage.

While lawmakers often don’t agree on much, legislatures in red and blue states have successfully passed legislation addressing hairstyle equity. In addition to the 23 states that have already passed the CROWN Act, legislative efforts are currently underway in more than a dozen states, including Arizona, Florida, Georgia, Pennsylvania, North Carolina, and South Carolina.

## **9. Mandatory E-Verify Use**

E-Verify is an electronic employment verification tool that matches Form I-9 data with the information in various government databases. Ultimately, its goal is to help employers stay compliant with federal employment and immigration regulations. E-Verify is voluntary for most employers but mandatory for federal contractors and some employers in certain states — including Alabama, Arizona, Colorado, Florida, Georgia, Idaho, Indiana, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Virginia, and West Virginia.

More states may join the trend as the federal government updates and streamlines its processes. Notably, U.S. Citizenship and Immigration Services (USCIS) is expected to release a new product in 2024, E-Verify NextGen, which the agency says will modernize the I-9 and employment verification process for employers and employees alike. Among other features, employees will be able to enter their own information through a portal – with the goal of reducing data entry errors – and notifications will be streamlined.

## **10. Bans on “Captive Audience Meetings”**

A recent state-level trend that impacts labor relations is the effort to ban “captive audience meetings.” For example, Minnesota prohibits employers from requiring, under threat of discharge, discipline, or some other penalty, employee attendance or participation in employer-sponsored meetings or otherwise requiring them to listen or receive communications regarding employer opinions on “religious” or “political” matters. Connecticut, Maine, and New York all passed captive audience laws in 2022 or 2023, and Oregon has had a similar law on the books since 2010. Additionally, Washington State just finalized a new law that takes effect on June 6, 2024. Colorado could be next, as state lawmakers consider HB24-1260.

These states have largely justified such restrictions by asserting that they coercively interfere with employee freedom of speech. Nonetheless, they face a multitude of potential legal challenges since

employee freedom of speech. Nonetheless, they face a multitude of potential legal challenges since captive audience bans prevent employers from making a reasonable case as to why employees may not want to vote in favor of union organization.

## 11. Industry-Specific Requirements

You should also note industry-specific employment laws in certain states. For example, California recently rolled out a \$20 minimum wage for fast-food workers and new minimum wage requirements for most healthcare workers in the state will take effect on June 1, 2024. Additionally, at the local level in Irvine, hotel employers had to implement additional requirements beginning in May 2023 under the city's new Hotel Worker Protection Ordinance – which includes stringent workload limitations for room attendants. We expect to see other states follow California's lead. On the local level, New York City has special employment laws for fast-food workers.

## Conclusion

Staying informed about state and local workplace trends is critical for compliance in 2024 and beyond. You will need to periodically review your handbooks, policies, and practice to ensure they are up to date with the latest requirements and consistently applied. If you have operations in multiple jurisdictions, you may want to set standard practices across locations – or at least ensure fairness with an emphasis on employee morale when the laws and policies vary among location.

We will monitor developments, so make sure you are subscribed to Fisher Phillips' Insight System to get the most up-to-date information. For further information, contact your Fisher Phillips attorney or the authors of this Insight.

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