

Rhode Island Legislative Update

Description

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It is that time of year again, when the Rhode Island legislature ends its session and passes a number of laws that affect businesses with Rhode Island based employees. 2023 was no different. Following is a short summary of the more important new laws that Rhode Island businesses must be aware of.

Wage Theft – Independent Contractor Misclassification (S.1079 SubAaa / H.5902 SubAaa). Effective January 1, 2024.

The so-called “Wage Theft” law amends the current Rhode Island law on Payment of Wages to provide that any employer who knowingly and willfully fails to pay wages in a timely fashion (as required by applicable law) shall be guilty of a felony if the unpaid wage amount is greater than \$1,500. The specific wage payment requirements mentioned in this law are the requirement to pay wages (i) on a regular pay date, (ii) at the time of termination, and (iii) in the event of the employee’s death. The law goes so far as to provide that, in the event of a plea of guilty or a conviction, the “employer” shall be imprisoned for a term not exceeding three years, or by a fine not exceeding \$5,000.

This Wage Theft law also modifies existing law as it relates to the misclassification of employees as independent contractors. Specifically, the law now provides that any company that misclassifies a worker is liable for civil penalties ranging from \$1,500 to \$5,000 per offense, depending on the nature of the offense. Businesses in the construction industry that knowingly and willfully violate this law will also be deemed guilty of a misdemeanor if the value of the offense is \$1,500 or less, and a felony if the value is over \$1,500.

The Wage Theft law includes a process for the prosecution of misclassification claims. The process starts with the Department of Labor and Training (DLT) investigating the classification using the current test developed under the Federal Fair Labor Standards Act. This test is well-known and far more “business friendly” than the so-called “ABC test” that was included in earlier versions of the bill and that has caused so much turmoil in states such as Massachusetts, New Jersey, and California, all of which implemented a version of the ABC test. If the DLT’s investigation determines that misclassification has occurred, it may pursue civil remedies or recommend criminal prosecution to the Rhode Island Attorney General’s office. Any decision to pursue criminal prosecution will rest with the Attorney General’s office.

Non-disclosure Agreements (S.342aa). Effective June 22, 2023.

This new law amends the Fair Employment Practices Act (FEPA) by making it unlawful for an employer to require any employee, as a condition of employment, to sign an agreement that requires the employee to keep any alleged civil rights violations confidential, or a non-disparagement agreement concerning alleged violations of civil rights or alleged unlawful conduct, or any agreement with a clause requiring that alleged civil rights violations remain confidential. The law deems any such contract to be void. The law goes on to define a “non-disparagement” agreement as any agreement restricting the person “from taking any action to include, but not be limited to, speaking or publicizing information that negatively impacts the other party to the agreement to include the reputation, products, services, employees and management of the protected party.”

Juneteenth (S.0444 SubA / H.5380 SubA). Effective January 1, 2024.

Juneteenth National Freedom Day is now a state holiday. As with other state holidays, unless there is an applicable exemption, non-exempt (hourly paid) employees cannot be forced to work this day and, if they do work on June 19, they must be paid 1.5 times the employee's normal rate of pay.

Private Right of Action for Holiday and TCI Claims (S.0828). Effective June 22, 2023.

This law creates a new private right of action (meaning the employee can bring a lawsuit directly and not through the Department of Labor and Training) for claims under the existing Sunday/Holiday and Temporary Caregiver Insurance (TCI) leave laws.

As a reminder, the Sunday/Holiday laws provide that, absent an exemption, any work performed by non-exempt employees on these days must be voluntary and paid at 1.5 times the employee's regular rate of pay.

The TCI law allows eligible employees to take up to 6 weeks of leave to (i) bond with a newborn child or a child newly placed for adoption or foster care, or (ii) to care for a child, parent, parent-in-law, grandparent, spouse, or domestic partner, with a serious health condition. Employees are eligible to collect benefits during this time from the State's TDI fund. Any employee who exercises the right to TCI leave is entitled to be restored to the position held by the employee when the leave commenced, or to a position with equivalent seniority, status, employment benefits, and pay.

Rhode Island businesses should review and, if necessary, revise their existing policies and practices to ensure compliance with these new requirements.

As with any new set of laws, there is likely to be some confusion over the scope and/or meaning of various provisions. Partridge Snow & Hahn Partner [Michael A. Gamboli](#) and the Employment & Labor team are ready to answer any questions relating to these new laws. For additional information and resources, visit [Employment & Labor](#).

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