

### Washington Establishes Pay Requirements For Ride-hailing Company Drivers

Effective December 31, 2022, transportation network companies (TNCs; e.g., Uber, Lyft) – also sometimes referred to as ride-hailing companies – in *Washington* will be required to ensure drivers are paid at least a minimum amount of compensation. Effective January 1, 2023, TNCs will also be required to provide itemized pay statements and notices to drivers, and certain wage deductions will be prohibited [H.B. 2076, L. 2022].

#### Minimum wage

Effective December 31, 2022, a TNC must ensure a driver is paid a minimum wage based on a city's population.

In large cities with populations of more than 600,000, on a per trip basis, the driver must be paid the greater of: (1) \$0.59 per passenger platform minute for all passenger platform time for that trip, and \$1.38 per passenger platform mile for all passenger platform miles driven on that trip; or (2) a minimum of \$5.17 per dispatched trip.

In small cities with populations of 600,000 or less, on a per trip basis, the driver must be paid the greater of (1) \$0.34 per passenger platform minute and \$1.17 per passenger platform mile; or (2) a minimum of \$3.00 per dispatched trip.

For trips starting in small cities and ending in large cities: the compensation standard for large cities applies for passenger platform time spent within the large city and for passenger platform miles driven in the large city on that trip. The small city compensation standard applies for passenger platform time spent outside the large city and passenger platform miles driven outside the large city on that trip.

The law defines a dispatched trip to be transportation by a driver for a passenger engaged via a TNC's application dispatch system. Passenger platform time is the period of time when the driver is transporting one or more passengers on a trip. Passenger platform miles are all miles driven during passenger platform time as recorded in a TNC's driver platform.

For shared rides, the per trip minimum will apply only to the entirety of the shared ride, and not on the basis of an individual passenger's trip within the shared ride. A shared ride is a dispatched trip in which the trip fare is split among multiple passengers.

The rates will be adjusted annually based on the rate of increase of the state minimum wage. The Washington Department of Labor and Industries (DLI) will announce adjusted rates by September 30, to go into effect on January 1 of the following year.

#### Tips, fees

*Tips.* A TNC will be required to remit all tips to drivers. Tips paid to a driver will be considered to be in addition to, and may not count towards, the driver's minimum required compensation.

*Fees.* Amounts charged to a passenger and remitted to the driver for tolls, fees, or surcharges incurred during a trip must not be included in calculating compensation for purposes of meeting the compensation standard.

#### Notice

Effective January 1, 2023, a TNC must provide each driver with a written notice of rights in a form and manner sufficient to inform drivers of their rights, including by providing information on the driver's right to: (1) the applicable per minute rate and per mile rate or per trip rate (i.e., the applicable compensation standard); (2) be protected from retaliation for exercising in good faith the rights protected; and (3) seek legal action or file a complaint with the DLI for violations of minimum compensation standards and other requirements under the new law.

The TNC must provide the notice of rights in an electronic format that is readily accessible to the driver. The notice of rights must be made available to the driver via smartphone application or online web portal, in English and the five most common foreign languages spoken in Washington.

#### Pay statements

Also effective January 1, 2023, on a weekly basis, TNCs must provide written notice to drivers containing the following information for trips, or a portion of a trip, that occurred in the prior week: (1) the driver's total passenger platform time; (2) total mileage driven by the driver during passenger platform time; (3) the driver's total tip compensation; (4) the driver's gross payment, itemized by: (a) rate per minute; (b) rate per mile; and (c) any other method used to calculate pay including, but not limited to, base pay, percentage of passenger fare, or any applicable price multiplier or variable pricing policy in effect for the trip; (5) the driver's net payment after deductions, fees, tolls, surcharges, lease fees, or other charges; and (6) itemized deductions or fees, including all tolls, surcharges, commissions, lease fees, and other charges, from the driver's payment.

#### Trip notices

Effective December 31, 2022, within 24 hours of completion of each dispatched trip, a TNC must transmit an electronic receipt to the driver that contains specific

information for each unique trip, or portion of a unique trip, including tip compensation, gross pay, net pay, and itemized deductions. Note that this must be provided in addition to the pay statement.

Effective January 1, 2023, a TNC must make driver per trip receipts available in a downloadable format, such as a comma-separated values file or PDF file, via smartphone application or online web portal for a period of two years from the date the TNC provided the receipt to the driver.

## Untimely Payment on Termination Costly for Massachusetts Employers

The *Massachusetts* Supreme Judicial Court – the highest appellate court in the state – issued an opinion clarifying that penalties for an employer’s failure to pay an employee’s final wages within the time required by law are set by statute at three times the amount of late wages. The appellate court’s decision reversed the finding of a lower court that only awarded three times the interest that would have accrued during the time between the date of termination and the date of the late payment [*Reuter v. Methuen*, No. *SJC-13121* (Mass., 4-4-22)].

**WHAT THE LAW SAYS** – The final payment of wages is due to discharged employees on the date of discharge. Employees who quit can be paid on the next regular payday (*M.G.L. ch. 149, §148*).

**Penalty.** The penalty for failure to pay wages within the time period required by law is treble (three times the amount of) damages, as liquidated damages, for any lost wages and other benefits. The employee is also entitled to be awarded the costs of litigation and reasonable attorneys’ fees (*M.G.L. ch. 149, §150*).

### Background

The employee, Beth Reuter, worked as a custodian at a school. She was fired by the city for misconduct after she was convicted of larceny. On the date of termination, the city owed her \$8,952.15 for accrued vacation time. Rather than paying this amount on the date of termination, the employer paid it three weeks later. After a demand from Reuter’s lawyer over a year after that, the city paid Reuter \$185.42, which represented the trebled interest for the three weeks between her termination and the payment of the vacation pay. Reuter sued the school, alleging a violation of the state wage act.

### Analysis

According to the appellate court opinion, there is no dispute over whether the city violated the law’s requirements: both sides agree that the amount owed Reuter for accrued vacation time was paid late. The dispute is over the proper calculation of damages under the law. The opinion emphasized employee protection as the law’s underlying purpose.

### Reason for statutory damages

Statutory damages were established to acknowledge the consequential damages of late payments that can be severe for workers living paycheck to paycheck, but can

### Deductions from wages

Also effective January 1, 2023, except as required by law, a TNC may only deduct compensation when the driver expressly authorizes the deduction in writing and does so in advance for a lawful purpose. Any authorization by a driver must be voluntary and knowing. The TNC may make deductions required under state or federal law or as directed by a court order. ■

be “too obscure and difficult” to prove. Like the rest of the statute, the liquidated damages provision applies without regard to the employer’s intent.

### Difficulty of determining final amount of pay acknowledged

The opinion goes on to say the statute “leaves no wiggle room.” For discharged employees, the statute is “clear and emphatic: ... [p]ayment, including vacation pay, is to be made in full on the day of the discharge.”

The opinion acknowledges that it puts employers in a difficult position when immediately terminating employees for misconduct, such as in this case. Because wages and other benefits are due to employees on the day they are discharged, and it may be unclear how much an employee must be paid on short notice, employers would be liable for treble damages if they miscalculated the amount owed.

The law provides a reasonable grace period when the employee quits, which may be beyond the employer’s control and might mean the employer does not have advance notice. The employee is also more likely to have secured a new job and have planned ahead for a delay in receiving the final paycheck.

### Short-term suspension recommendation

When the employer chooses to terminate the employee, however, it must be prepared to pay the employee in full when it does so. This is true even when, like in the present case, the employee has engaged in illegal or otherwise harmful conduct. According to the opinion, this might mean the employee may have to be suspended rather than terminated for a short period of time until the employer can comply with the law.

### Triple amount of late payment

Finally, the appellate court found the trial judge’s conclusion that interest is the proper measure of damages for late payment of wages to be unsupported by the statute and inconsistent with its purpose. Because of the strict time-defined payment requirements and the damages provision providing for triple damages for “lost wages and other benefits,” the opinion concluded that an employer is responsible for triple the amount of the late wages (\$8,952.15 x 3 = \$26,856.45 in this case), but not triple interest (\$185.42 x 3). The former employee is also entitled to attorneys’ fees and costs. ■

## Maine to Require Vacation Pay on Termination

All unused vacation time accrued pursuant to an employer's vacation policy in *Maine* after January 1, 2023, must be paid to the employee on termination [H.B. 160, L. 2022]. There are exceptions for employers with 10 or fewer employees and public employers.

### Current law and paid vacation policy

Under current Maine law, whenever the terms of employment or an employer's established practice includes provisions for paid vacations, vacation pay on termination of employment has the same status as wages earned.

*Earned paid leave.* Certain Maine employers with more than 10 employees for more than 120 days in any calendar year are required to provide earned paid leave – which is like paid sick leave but can be used for any reason. Currently, earned paid leave must be paid on termination if an employer's policy either: specifically requires payout of earned paid leave on termination or - if there is no provision specific to earned paid leave - if the policy provides for payout of unused, accrued vacation on termination (see Maine Department of Labor (DOL) [FAQs](#)). Employers are permitted to establish separate policies for each type of paid leave offered.

### New requirements in 2023

Effective January 1, 2023, private employers with 11 employees or more will be required to pay out all accrued, unused vacation on termination of employment. This

covers situations where an employee leaves the job, as well as when a business shuts down.

When employees are covered by a collective bargaining agreement (CBA) that includes provisions addressing payment of vacation pay on termination, the CBA will govern the payment.

The requirement does not apply to public employers. The law defines a public employer as “the state, a county, a municipality, the University of Maine system, the Maine Community College system, a school administrative unit, and any other political body or its political or administrative subdivision.”

Note that the DOL earned paid leave FAQs have not yet been updated to reflect the change in the law, effective January 1, 2023.

### Actions for unpaid wages include vacation pay

An employer found to be in violation of the law in an action brought by an affected employee or the DOL will be liable for the amount of unpaid wages and all accrued vacation pay that must be paid to the employee on termination of employment. A judgment in favor of an employee will include a reasonable rate of interest, an amount equal to twice the amount of unpaid wages and the accrued vacation pay as liquidated damages, and costs of the action, including reasonable attorneys' fees. ■

## Nine States, Virgin Islands Still Face a Credit Reduction for 2022

The U.S. Department of Labor (DOL) updated the [balances](#) on outstanding loans from state/territory Federal Unemployment Accounts (FUAs). As of April 22, 2022, nine states and the U.S. Virgin Islands have an outstanding FUA loan balance.

### States with outstanding loans

If states have an outstanding FUA loan on January 1 of at least two consecutive years *and* on November 10 of the second year, they are subject to a credit reduction on their Federal Unemployment Tax rate until the loan has been paid off. Each year a loan continues to be unpaid, the credit reduction increases by 0.3%, though states that have made an effort to keep their balances in check have some opportunities to avoid the reduction (see [The Payroll Source](#)®, §7.1-6).

Employers in these states will be subject to FUTA credit reductions for 2022 if the state began borrowing in 2020 and the FUA loans remain unpaid on January 1, 2021, January 1, 2022, and November 10, 2022. The additional FUTA tax would be due on January 31, 2023. If these states do not repay the loans by November 10 of this year, they will be subject to an initial credit reduction of 0.3%.

As of April 22, 2022, the following nine states have an outstanding loan balance, in addition to the Virgin Islands: *California, Colorado, Connecticut, Illinois, Massachusetts,*

*Minnesota, New Jersey, New York, and Pennsylvania.* These states all had loan balances in January 2022 (see [PAYSTATE UPDATE, Issue 2, Vol. 24](#)).

### Virgin Islands credit reduction

The Virgin Islands began borrowing in August 2009, has a current outstanding balance of \$96,348,605.06, and might be subject to a FUTA credit reduction of 4.1% for 2022. The potential credit reduction of 4.1% includes a basic reduction of 3.6% and Benefit Cost Rate (BCR) add-on of 0.5% (which could be waived and has been in years past). The 2022 determination will be made after the loan due date of November 10, 2022.

The territory was subject to a credit reduction of 3.3% for 2021 (see [PAYSTATE UPDATE, Issue 23, Vol. 23](#)). The additional FUTA tax was due, along with the 2021 Form 940, *Employer's Annual Federal Unemployment (FUTA) Tax Return*, by January 31, 2022.

### Additional add-ons

Once a state/territory has had outstanding FUA loans for several years, additional types of credit reduction might also be added, including a 2.7% add-on and/or a BCR add-on. States/territories may apply to the DOL for a waiver of the BCR by July 1 of a tax year. The Virgin Islands was approved for the BCR add-on waiver for 2021. It will likely apply again for the waiver in 2022. ■

## Garnishment and Wage and Hour Resources for Employers Updated for 2022

Garnishments and wage and hour laws are two areas that can be tricky for payroll professionals because of the many requirements. Learn how to confidently handle garnishments using the [2022 online edition](#) of APA's *Guide to Federal and State Garnishment Laws*. This book features easy-to-read state charts covering child support withholding orders, creditor garnishments, state tax levies, and voluntary wage assignments. It provides information on federal tax levies, bankruptcy orders, student loans, federal agency debt collections, restrictions on deductions,

new hire reporting, and more. It is also available as a [print publication for 2022](#).

Compliance with wage and hour laws is made easier with the [2022 online edition](#) of APA's *Guide to Federal and State Wage & Hour Laws*. This book contains information on federal and state laws governing minimum wages, overtime, exempt vs. nonexempt employees, child labor restrictions, and more. Important state requirements are presented in easy-to-read charts. It is also available as a [print publication for 2022](#). ■

## STATE-BY-STATE

### CALIFORNIA

**COVID-19 supplemental paid sick leave law violations.** The Labor Commissioner's Office (LCO) cited three temporary staffing agencies (Viking Staffing CA LLC, Human Bees Inc., and Marcos Renteria Ag Services Inc.) and joint employers Foster Farms, LLC and Foster Poultry Farms for almost \$3.8 million for failing to inform 3,476 workers of available COVID-19 supplemental paid sick leave. The LCO opened an investigation into Foster Poultry Farms in 2020 after COVID-19 outbreaks were reported at the worksite. The investigation included an audit of payroll records, which determined that the temporary staffing agencies hired staff to fill in for permanent workers affected by COVID-19 outbreaks at the processing plant, but failed to inform the temporary staff of their rights to supplemental paid sick leave. The LCO found the temporary staffing agencies, Foster Farms, LLC, and Foster Poultry Farms jointly liable for the violations [Department of Industrial Relations, [News Release](#), 4-26-22].

### MAINE

**Penalties for failure to file Forms W-2.** Effective for information returns, including Forms W-2 due on or after 1-31-22, employers that fail to file returns or that willfully file false or fraudulent returns are subject to a penalty of \$50 for each failure or false filing [Code Me. R. 803.07(E)(2); Revenue Services, [Maine Tax Alert](#), April 2022 - #2].

### NEW JERSEY

**Certain commercial fishermen exempt from UI coverage.** Effective 1-10-22, services provided by a commercial fisherman – whose compensation is comprised solely of a percentage of fish caught or a percentage of the proceeds from the sale of the catch – are not deemed employment under the unemployment compensation law. In other words, unemployment insurance (UI) contributions do not need to be taken out of payments for those services [[S.B. 3501](#), L. 2021].

### NEW YORK

**Construction contractors liable for subcontractor failure to pay wages.** Effective retroactive to 1-4-22, a contractor making or taking a construction contract is liable for any unpaid wages owed to an employee, independent contractor, or third party on the employee's behalf, incurred by a subcontractor acting under, by, or for the contractor or its subcontractors for the employee's performance of labor. This does not limit the liability of a subcontractor for unpaid wages. The general contractor will be considered to be "joint and severally liable" (i.e., legally responsible, along with the subcontractor, for up to the entire amount owed plus penalties) for actions against subcontractors for unpaid wages, benefits, or wage supplements, and for failure to provide required wage notices and pay statements. If the court cannot get the amount from the subcontractor, it will require the contractor to pay. "Contractor" includes construction managers, general or prime contractors, and joint ventures entering into a construction contract with an owner [[S.B. 7773](#), L. 2022].

### OHIO

**Overtime pay not required for time spent traveling to and from worksites under certain circumstances.** Effective 7-6-22, an employer is not required to pay overtime to an employee for any time the employee spends: (1) walking, riding, or traveling to and from the actual place of performance of the principal activity or activities the employee is employed to perform; (2) engaged in activities preliminary to or postliminary to the principal activity or activities; or (3) engaged in activities requiring insubstantial or insignificant periods of time beyond the employee's scheduled working hours. This applies to an activity that occurs either before or after the time on any particular workday at which the employee performs their principal activity or activities.

Employers **are** required to pay overtime – meaning the

exception does not apply – if the employee performs the activity: (1) during the regular workday or during prescribed hours; (2) at the specific direction of the employer; (3) pursuant to an express provision of a written or unwritten contract in effect, at the time of performance, between the employee or the employee's agent or collective bargaining representative and the employer; or (4) pursuant to a custom or practice applicable to the activity, in effect at the time of performance, at the establishment or other place where the employee is employed, and the custom or practice is not inconsistent with a contract as described in (3) [S.B. 47, L. 2022].

## SOUTH CAROLINA

**Nexus requirements reinstated and extended, withholding guidance issued.** The Department of Revenue (DOR) has issued a revenue ruling reinstating relaxed nexus requirements that previously expired on 3-31-22 (see [PAYSTATE UPDATE, Issue 8, Vol. 24](#)). The relaxed requirements are effective retroactive to 3-13-20 until 6-30-22 and provide that the DOR will not use the temporary change of an employee's work location during the COVID-19 relief period to impose withholding tax requirements.

The ruling clarifies that South Carolina withholding is not required on a resident employee's wages when the employee is working outside the state if the wages are subject to the withholding laws of the state in which they are earned and the employer is withholding income tax on behalf of the other state. The wages of nonresident employees working exclusively outside of South Carolina are not subject to withholding. The wages of a nonresident employee working partially in and partially outside of South Carolina are subject to South Carolina withholding only to the extent the wages are for services performed in South Carolina [DOR, [Revenue Ruling 22-3](#), 4-21-22].

**Online tax portal guidance issued.** The Department of Revenue (DOR) reminds employers that [MyDORWAY](#), the portal for online filing and tax payment, has a virtual assistant. Called Dorwin, it can help users navigate the portal without waiting to speak to a representative. The DOR also recently posted tips for using the portal, including information about account access, using the virtual assistant, locating a file number, password, and user name, and login and payment issues. For withholding accounts that require pre-payments, the payment will be displayed

on the portal's Manage Payment & Returns screen until the employer files the return that the payment is associated with [DOR, [News Release](#), 4-19-22].

## VIRGINIA

**Employer administrative fee for child support orders clarified.** Effective 7-1-22, the employer administrative fee that may be withheld is **up to a maximum of \$5** for each reply or remittance of an employee, which may be charged by the employer and withheld from the employee's income in addition to the child support amount to be withheld. Currently, the administrative fee is \$5. The change clarifies that an employer can charge an administrative fee of less than \$5 [H.B. 808, L. 2022].

**Overtime wage pay requirements to revert to FLSA requirements.** Effective 7-1-22, state overtime requirements will revert back to requirements under the federal Fair Labor Standards Act (FLSA) and all applicable exemptions, overtime calculation methods, methods of overtime payment, or other overtime provisions within the FLSA, and any applicable federal regulations, guidance, or rules will apply (this amends some previous changes to the overtime law; see [PAYSTATE UPDATE, Issue 8, Vol. 23](#)). Remedies, damages, and relief for violations will be the same as those required under the FLSA. Actions must be brought within two years, which also mirrors the FLSA. A workgroup led by the state Labor Secretary will review overtime issues and submit recommendations by 11-1-22 to the governor and legislative committees [H.B. 1173, S.B. 631, L. 2022].

## WASHINGTON

**Employer must reimburse employee fees when paycheck is returned for insufficient funds.** Effective 6-9-22, when an employer pays an employee's wages in a manner that is subsequently returned for insufficient funds, the employer must reimburse the employee for a fee charged by the employee's financial institution. The employee must provide proof to the employer within 30 days of receipt of the fee. The employer is not liable to reimburse any fees incurred by the employee if the employer presents written confirmation by the employer's financial institution that the instrument was returned for insufficient funds due to an error [H.B. 1794, L. 2022].

**PAYSTATE UPDATE—Publisher, Executive Director** - Dan Maddux; **Senior Director of Customer Service, Publications, Vendor Relations** - Eileen Gaughran; **Director of Publications** - Laura Lough, Esq.; **Managing Editor, Senior Manager of State Payroll Information Resources** - Lia Coniglio, Esq.; **Editor** - Mavanee Anderson, Esq.; **Graphic Designer** - Caren J. Bennett; **Web Implementation** - Rosemary Birardi and Edward Kowalski, Esq.

PayState Update (ISSN 1526-1948) is published biweekly by the American Payroll Institute, Inc., in cooperation with The American Payroll Association, 660 North Main Avenue, Suite 100, San Antonio, TX 78205-1217; Tel: 210-226-4600; Fax: 210-226-4027. Subscription rate per year is \$433.00. PayState Update is designed to provide authoritative information in regard to the subject matter covered. It is provided with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought. © Copyright 2022 American Payroll Institute, Inc. All rights reserved. Printed in the USA.

## APA Bookshelf Tips – First Quarter Content Update

We are pleased to bring you the first 2022 content update of the four essential APA texts that are part of the [APA Bookshelf](#). The major changes and developments important for your company's payroll operations are listed below.

[The Payroll Source](#)® has been updated to include:

- Federal income tax withholding guidance from 2022 Publication 15-T, *Federal Income Tax Withholding Methods*, and information from 2022 payroll forms including Form W-4, *Employee's Withholding Certificate*, Form W-4P, *Withholding Certificate for Periodic Pension or Annuity Payments*, Form W-4R, *Withholding Certificate for Nonperiodic Payments and Eligible Rollover Distributions*, Form 1099-NEC, *Nonemployee Compensation*, and Form 1099-MISC, *Miscellaneous Information*

- Annually adjusted: pension plan limits; retirement plan contribution and benefit limits; transportation fringes, FSA deferral limit, and the foreign earned income exclusion amount; business standard mileage rate; and wage amount for government control employees

- Annually adjusted: civil penalty amounts for Fair Labor Standards Act (FLSA) and Family and Medical Leave Act (FMLA) violations, immigration-related violations, and HIPAA violations and misuse of information in the National Directory of New Hires

[Federal Payroll Tax Laws & Regulations](#) has been updated to include:

- Final regulations governing when a credit for foreign income taxes may be taken
- Proposed rules relating to reporting by applicable large employers on health insurance coverage offered under an employer-sponsored plan

[Federal Payroll Non-Tax Laws & Regulations](#) has been updated to include:

- Regulations increasing the minimum wage requirements for federal contractors
- Regulations correcting and partially withdrawing tip regulations under the FLSA
- Regulations implementing annual inflation-driven increases in civil penalties for FLSA and FMLA violations
- Regulations implementing annual inflation-driven increases in immigration-related employment verification penalties

[APA's Guide to State Payroll Laws](#) has been updated to include:

- New state nonresident withholding threshold requirements
- Pay data reporting requirements in California, Connecticut, and Illinois
- State and local minimum wage rates for 2022, including adjustments for inflation and scheduled increases
- State disability insurance, paid family leave, and long-term care (LTC) insurance program contribution rates for 2022, including updates related to the delay of Washington LTC contributions
- Extensions and expiration dates for pandemic-related paid leave and premium pay

For more tips on the [APA Bookshelf](#), see the [How to Use the APA Bookshelf guide](#) and read the [FAQs](#). If you have any questions, please contact our Customer Service Department at 210-224-6406, Monday – Friday, 7 a.m. – 5 p.m. CT, or email [customerservice@americanpayroll.org](mailto:customerservice@americanpayroll.org).

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