

Several state ballot initiatives affect employers and the workplace.

Much of the focus of the most recent election has been on the president and congressional votes, but several initiatives on the ballot for voters in several states impact employers and the workplace. Some represent significant changes to policies in the workplace and, although they are being enacted on the state level, may influence national policies.

Examples include the treatment and classification of independent contractors in the “gig economy” and rights to individual privacy. Other policies on the state ballot may indicate continued momentum around certain trends, including paid leave expansion, the legalization of cannabis, and higher minimum wage thresholds. We have summarized several of the key ballot initiatives and how they impact you as an employer.

California Proposition 22, App-Based Drivers as Contractors and Labor Policies Initiative – Approved

Proposition 22 considers app-based transportation providers, or drivers, to be independent contractors rather than employees. As a result, labor laws in effect in California will not extend to app-based drivers, including minimum wage laws. This ballot initiative only applies to app-based drivers, not other types of workers who are subject to California Assembly Bill 5 (AB 5).

Proposition 22 also enacts certain labor and wage policies applicable to app-based drivers and companies, including:

- Payment of the 120% of the minimum wage for engaged time
- Health benefits subsidy payments
- Insurance (accident, disability, etc.)
- Antidiscrimination and sexual harassment policies
- Training programs (driving, misconduct, etc.)
- Zero-tolerance policies for drugs or alcohol
- Criminal background checks for drivers

As a result of Prop 22 and its new requirements for drivers, companies must:

- Develop anti-discrimination and sexual harassment policies
- Develop training programs for drivers related to driving, traffic, accident avoidance, and recognizing and reporting sexual assault and misconduct.
- Enact zero-tolerance policies for drugs or alcohol
- Conduct criminal background checks for drivers.

California legislature is restricted in its ability to amend the law by setting a majority threshold for legislative approvals of 88 percent and permitting only amendments that are consistent with and further the purposes of the Act. Prop 22 represents a significant exemption from California's expansive definition of employment under AB 5. It also sets

a precedent for an additional category of workers for gig economy workers who offer services via a platform or app, separate from independent contractors.

California Proposition 24 Consumer Privacy Rights Act (CPRA) – Approved

The Proposition 24 ballot initiative creates a new California Privacy Protection Agency that is responsible for implementing and enforcing the rules under the CPRA. This agency will also exempt employment-related and business-to-business data through 2022. The initiative serves to expand upon and modify the Consumer Privacy Act in the following ways:

- Allowing consumers to prevent businesses from sharing personal information
- Correcting inaccurate personal information
- Limiting business use of sensitive personal information including geolocation, race, ethnicity and health information.

In order to comply, organizations will need to update their California privacy programs to include as a new category of personal information, which is called "sensitive data" and includes government identifiers, account and log-in information, geolocation data, race or ethnic origin, religious beliefs, etc.

Colorado Proposition 118, Paid Family and Medical Leave Insurance - Approved

Proposition 118 was approved, creating a new Paid Family and Medical Leave program for Colorado employees. The program will provide 12 weeks of paid leave, with an additional four weeks available in specific circumstances. This program will be administered by the Colorado Department of Labor and Employment.

Beginning in 2023, employers will pay a payroll tax of 0.9% of wages, split evenly between the employer and employee. After 2024, the tax rate will be reset based on aggregate benefits paid in the prior calendar year.

Businesses with fewer than 10 employees are exempt from the employer share (i.e., will pay only the 0.45 percent withheld from employees). Companies can apply for exemption if they have an equivalent paid leave plan that meets the criteria specified in the new program.

Beginning in 2024, Individuals will be eligible for benefits after they have earned \$2,500 and have been employed for at least 180 days.

Colorado is the first state to establish an ongoing paid family and medical leave program through a voter initiative, although other states have enacted short-term paid sick leave mandates through ballot measures.

Florida Amendment 2, \$15 Minimum Wage Initiative – Approved

Amendment 2 will increase the Florida state minimum wage, currently \$8.56 per hour, to \$15.00 per hour in 2026. Increases will occur gradually, as follows:

- \$10.00 effective September 30, 2021;
- \$11.00 effective September 30, 2022;
- \$12.00 effective September 30, 2023;
- \$13.00 effective September 30, 2024;
- \$14.00 effective September 30, 2025; and
- \$15.00 effective September 30, 2026.

The minimum wage will be continue to be adjusted annually thereafter based upon the Consumer Price Index.

Currently 29 states have a minimum wage above the federal minimum wage of \$7.25. In addition to Florida, several states have laws that will eventually raise the state minimum wage to \$15 per hour. These states include California, Connecticut, Illinois, Maryland, Massachusetts, New Jersey and New York. The District of Columbia adopted a minimum wage of \$15 beginning July 1, 2020.

Cannabis Legalization Initiatives – Approved

Five states had ballot initiatives regarding either medical or recreational cannabis use. All of these measures passed. Voters in Arizona, Montana, and New Jersey voted to legalize recreational marijuana, while voters in Mississippi and South Dakota voted to legalize medical marijuana, under the following propositions and initiatives:

- **Arizona Proposition 207**
- **Mississippi Initiative 65 and Alternative 65a**
- **Montana Ballot Issue CI-118 and Amendment Ballot Issue I-190**
- **New Jersey Question 1**
- **South Dakota Constitutional Amendment A and Initiative Initiated Measure 26**

Some of the states that previously voted to legalize medical or recreational marijuana established programs that provide guidance for employers. Additionally, several of these latest ballot initiatives contain guidance for employers, while some states plan to develop more specific guidance.

Despite cannabis legalization laws passing in many states, cannabis is still against federal law. Employers in states where medical and/or recreational use has been legalized on a state level need to consider what this means for their pre workplace drug testing and pre-hiring policies, particularly those in industries directly regulated by federal law, such as transportation, and federal contractors.

Ballot Measures That Failed to Pass

Portland, OR Measure 26-218 would have created a payroll tax of 0.75% on employers with 26 or more employees to fund transportation, beginning in 2022.

Illinois constitutional measure would have allowed a graduated income tax.

Illinois Constitutional Amendment 1 would have removed constitutional language barring progressive personal income taxation, and legislation passed earlier in the year would have set rates based on income.

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