

## 2023 Employment Law Changes – And Steps To Take Before 2024

The 2023 legislative session saw a substantial number of changes to employment laws in Minnesota. As you and your business enter 2024, the team at Winthrop & Weinstine has prepared a summary of the changes that may impact your business, as well as helpful checklists to guide you as you comply with those changes.

### Sick and Safe Time Law:

**Effective:** January 1, 2024

**What's New:** Starting on January 1, employers will be required to provide all employees that work at least 80 hours per year in Minnesota with “earned sick and safe time” (“ESST”) or paid leave that can be used for certain specified reasons set forth in the statute, including when an employee is sick, needs to care for a family member, needs to seek assistance because the employee or their family member has experienced domestic abuse, or for closure of an employee’s workplace or family member’s school or place of care.

### How to Plan and Prepare to Provide ESST in 2024:

- Determine if the new law applies to your business. Do you have one or more employees that work 80 or more hours a year in Minnesota?
- Think about the types of employees you have: hourly workers, salaried workers, etc. What paid time off policies do you currently have in place, and do they need to be modified?
- Decide whether you want to provide ESST through the Accrual or Frontload Method described in the statute.
  - ALL employees must either start accruing hours on January 1, 2024, OR have at least 80 hours frontloaded, depending on whether you intend to pay out ESST at the end of a year.
  - If you decide on the Accrual Method, determine how you will keep track of each employee’s accrued hours (1 hour is accrued for every 30 hours worked).
- Draft a written notice to all employees regarding ESST rights and provide it to all employees no later than January 1, 2024. If you have an employee handbook you must include the written ESST notice in the handbook as well.
- Contact your payroll provider and ensure that ESST information will be included on paystubs for the first pay period of 2024. The total ESST hours accrued and available for use and the total number of ESST hours used during the pay period must be contained on each employee’s paystub.
- Update Policies and Procedures:
  - Include a notice of employee rights and remedies in any employee handbook.
  - Update existing PTO, vacation and related policies to ensure that they are in compliance with the new law.

## Non-Competition Ban:

**Effective:** July 1, 2023

**What's New:** A covenant not to compete entered into on or after July 1, 2023, is considered void and unenforceable under Minnesota law, with few exceptions (e.g., in the context of the sale or dissolution of a business.)

### How to Plan and Prepare to Protect Your Business in 2024:

- Remove non-competition provisions from your existing agreement templates.
- Non-Compete Agreements entered into prior to July 1, 2023, are still in effect. The new law is not retroactive.
- Be careful not to void your existing non-competition restrictions by amending agreements that contain those provisions. Consider entering into new agreements instead.
- Analyze and consider revising/bolstering non-solicitation and confidentiality provisions in your agreements. The new law does not prohibit the use of non-solicitation agreements (i.e., agreements restricting the ability to use client or contact lists or solicit customers of the employer).
- Non-competition restrictions agreed upon during the sale of a business or in anticipation of the dissolution of a business are still valid and enforceable as long as the restrictions are temporary and reasonable.

## Recreational Marijuana/Changes to Drug Testing:

**Effective:** July 1, 2023

**What's New:** Employee use, possession, or distribution of cannabis products in the workplace can still be prohibited by Minnesota employers. However, testing job applicants for cannabis use is not allowed unless the testing is required by state or federal law or there is a statutory exception. Safety-sensitive employees are carved out as an exception, and can still be tested for cannabis pre-employment and in other circumstances.

### How to Plan and Prepare Your Business in 2024:

- Revise your Drug Free work policy to make clear that employees are not permitted to be under the influence of cannabis products at work. Prohibiting “drugs” or referring to “drug testing” is not sufficient, because cannabis products are removed from the definition of “drug” under Minnesota’s Drug and Alcohol Testing in the Workplace Act.
- Make sure any drug testing policy is in compliance with Minnesota’s Drug and Alcohol Testing in the Workplace Act.
- Stop pre-employment testing for cannabis unless the individual’s job is safety-sensitive or another exception applies.
- Update your employee handbook and/or employment policies with regard to any cannabis-related policies.
- Consider training your managers regarding how to comply with the new law.

## Pregnancy Accommodations:

**Effective:** July 1, 2023

**What's New:** If requested, pregnant employees must be provided with longer restroom, food, and water breaks (not just more frequent breaks); pregnant employees may also be entitled to a temporary leave of absence, work schedule or job assignment modifications, and more frequent or longer breaks.

### How to Plan and Prepare to Provide These Accommodations in 2024:

- Ensure you have a written notice in place advising employees of their right to receive pregnancy accommodations, and provide the notice at the time of hire and when an employee makes an inquiry about, or requests, parental leave.
- Update any employee handbook with language regarding an employee's right to pregnancy accommodations.

## Parental Leave:

**Effective:** July 1, 2023

**What's New:** As of July 1, 2023, regardless of employer size or how long an employee has been employed with that employer, an employee has a right to up to 12 weeks of unpaid leave for the birth or adoption of a child or for pregnancy, childbirth, or related health conditions.

### How to Plan and Prepare to Provide These Accommodations in 2024:

- Update any employee handbook with proper language regarding employees' rights to take parental leave accommodations.

## Nursing Mothers and Lactating Employees:

**Effective:** July 1, 2023

**What's New:** Provides workplace protections for expectant employees and new parents. Requires that an employer provide *all* nursing and lactating employees reasonable break times — regardless of whether that time would unduly disrupt the employer's operations — to express milk, regardless of the child's age, in a location or space that is "clean, private, and secure."

### How to Plan and Prepare to Provide These Accommodations in 2024:

- Ensure you have a written notice in place for employees advising of their right to express milk at the time of hire and when an employee makes an inquiry about, or requests, parental leave.
  - Update any employee handbook with appropriate language regarding nursing employees' workplace rights.
  - Breaks are no longer limited to 12 months after a child's birth.
  - Remove any language that states breaks do not have to be provided if the break unduly disrupts the company's operation.
  - Make sure nursing employees do not have their pay docked for taking nursing breaks.
  - Make sure employees can take a break to express milk regardless of whether the break time aligns with already-provided breaks.
- Provide appropriate training on these new procedures to supervising employees.

## Captive Audience:

**Effective:** August 1, 2023

**What's New:** Beginning August 1, 2023, employers cannot take adverse action against employees who choose not to participate in meetings for religious or political reasons.

### How to Plan and Prepare Your Business in 2024:

- Ensure you have a written notice in place for employees advising of their right to decline to attend meetings for religious or political reasons.
- Update any employee handbook with language regarding employees' rights with regard to company meetings.

## Veterans Benefits/Services:

**Effective:** January 1, 2024

**What's New:** Beginning January 1, 2024, all employers must display a new veterans' benefits poster as provided by the DLI.

### How to Plan and Prepare Your Business to Provide These Benefits in 2024:

- Post DLI poster, which is available at: <https://www.dli.mn.gov/posters>

## Pay History Ban

**Effective:** January 1, 2024

**What's New:** Beginning January 1, 2024, *all* employers are prohibited from inquiring into an applicant's current wage, salary, benefits, or other compensation for purposes of determining the compensation that will be paid to the applicant. The prohibition further applies to an employer's use of publicly available salary information. An employer may not actively try to access publicly available information with the intention of using it to determine the applicant's potential wages, salary, earnings, benefits, or other compensation. The prohibition *does not apply* if an applicant's salary history is shared voluntarily. If voluntarily shared, employers can use this information to potentially offer a higher wage or salary than their initial offer.

### How to Plan and Prepare Your Business in 2024:

- Remove any requests for pay history from all application and interview materials.
- Train all employees involved in the hiring process on this change so they know they cannot inquire about previous pay.
- Begin planning how compensation will be determined, and clearly communicate this change to employees involved in hiring.
- Update any employee handbook and/or policies and procedures regarding determining compensation or interview questions.

## Minnesota Paid Family and Medical Leave:

**Effective:** January 2026

**What's New:** Provides partial wage replacement for employees for 12-20 weeks in a 52-week period for medical leave, bonding, caring for a family member, safety leave, or qualifying exigency leave. *All* employers with one or more employees must provide paid leave in accordance with the law. Paid leave will be available to all employees on the first day of employment; an employer does not have to require the employee to work for 12 months to receive the benefit. Note: the paid leave will be provided through a state fund and will be funded through a payroll tax.

### How to Plan and Prepare for 2026:

- Watch for information from DEED and DLI about how this program will be implemented.
- Start reviewing existing policies and procedures and consider handbook revisions.
- Prepare for having to provide notice and posting requirements.