

# Hot Topics in Employment Law: 2020

January 8, 2020



# NFIB Small Business Legal Center

- We are the voice for small business in the courts and the legal resource for small business owners nationwide.
- While the information provided in this presentation is intended to be accurate, it should not be considered legal advice. The Legal Center cannot be held responsible for any errors or omissions.



# Agenda

- Wage & Hour Updates
- Paid Leave
- California Updates
- Medical Marijuana in the Workplace
- #MeToo Legislation: Mandatory Anti-Harassment Training

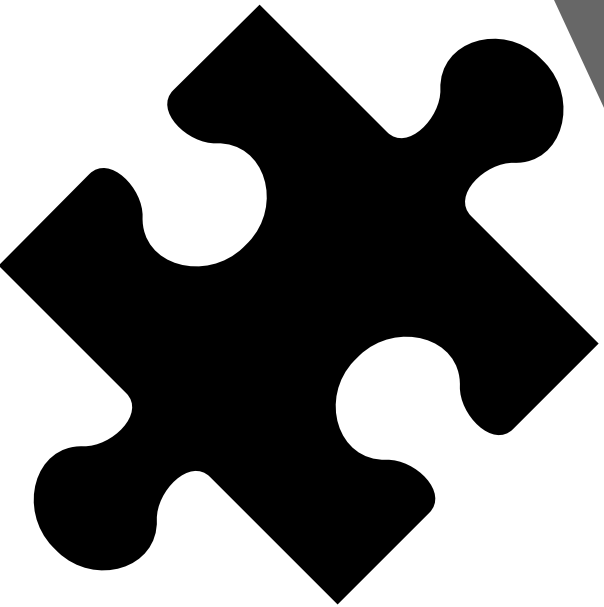
## Focus on State and Local Regulation

“[W]ith so much gridlock in Congress, we’ve seen more and more regulatory action at the state and local level over the past few decades, with legislators and regulators piling-on on top of already complicated federal requirements.”

<https://www.washingtontimes.com/news/2019/jan/22/why-legislators-must-protect-small-businesses-from/>



# Wage & Hour Update



# Wage & Hour Update: Minimum Wage Increases

- Federal minimum wage again remains \$7.25.
- Nearly half of the states will increase their minimum wage sometime in 2020.



# Wage & Hour Update: Minimum Wage Increases

- Many states have enacted laws requiring gradual hikes until achieving a target statewide minimum wage.
- Other states have automatic annual hikes because minimum wage is tied to a consumer index or inflation.
- Some impose varying requirements based on: (i) the number of employees; (ii) annual gross revenue; (iii) contribution to healthcare; (iv) regional divisions within the state; or by (v) industry classification.

# Wage & Hour Update: Minimum Wage Increases

State	New Minimum Wage	Effective Date
Alaska	\$10.19	January 1, 2020
Arizona	\$12.00	January 1, 2020
Arkansas	\$10.00	January 1, 2020
Colorado	\$12.00	January 1, 2020
Connecticut	\$12.00	January 1, 2020
Florida	\$8.56	January 1, 2020
Illinois	\$9.25	January 1, 2020
Maine	\$12.00	January 1, 2020
Maryland	\$11.00	January 1, 2020





# Wage & Hour Update: Minimum Wage Increases

State	New Minimum Wage	Effective Date
Massachusetts	\$12.75	January 1, 2020
Michigan	\$9.65	January 1, 2020
Missouri	\$9.45	January 1, 2020
Montana	\$8.65	January 1, 2020
New Mexico	\$9.00	January 1, 2020
South Dakota	\$9.30	January 1, 2020
Vermont	\$10.96	January 1, 2020
Washington	\$13.50	January 1, 2020



# Wage & Hour Update: Minimum Wage Increases

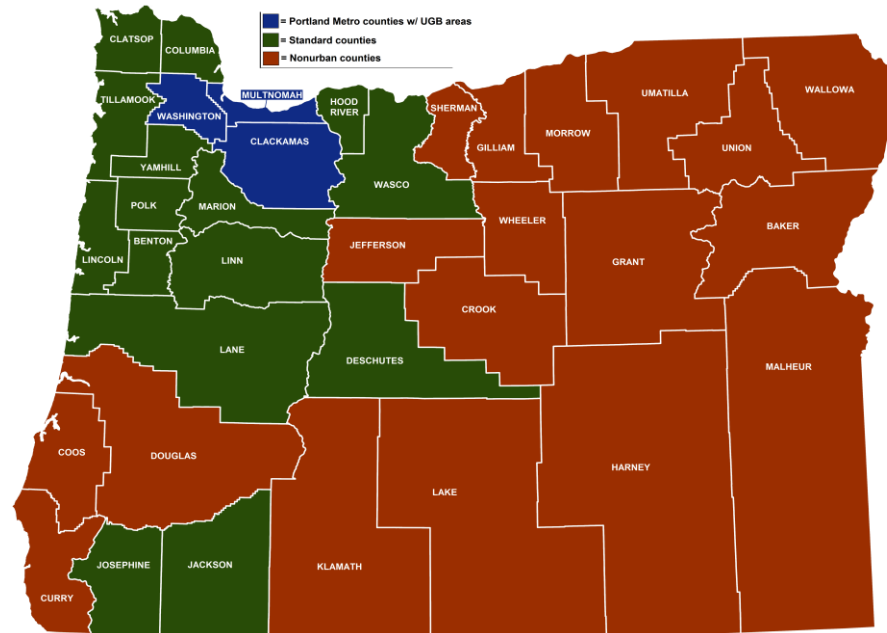
State	Large Employer	Small Employer	Large v. Small Defined
California	\$1 increase → <b>\$13.00</b>	\$1 increase → <b>\$12.00</b>	Large employer is 26 or more employees.
Minnesota	14 cents increase → <b>\$10.00</b>	11 cents increase → <b>\$8.15</b>	Above or below \$500,000 gross annual sales.
New Jersey	\$1 increase → <b>\$11.00</b>	\$1.45 increase → <b>\$10.30</b>	Large employer is 6 or more employees.
Ohio	15 cent increase → <b>\$8.70</b>	Federal Minimum: <b>\$7.25</b>	Above or below \$319,000 gross annual sales.

State	General Minimum Wage	Exception
Nevada	75 cents increase → <b>\$9.00</b>	Offering health qualifies health insurance: <b>\$8.00</b>
New York	70 cents increase → <b>\$11.80</b>	Fast-food: <b>\$13.75</b>

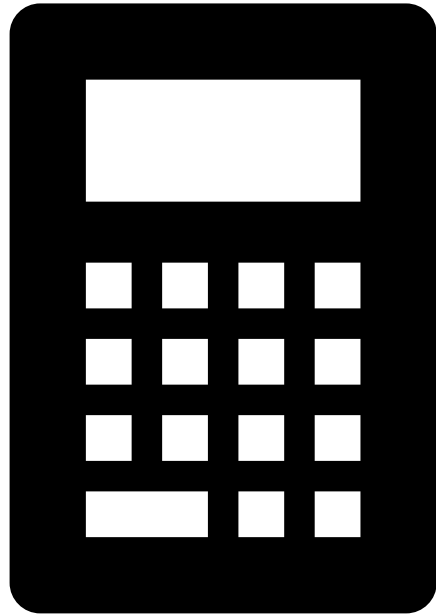


# Wage & Hour Update: Minimum Wage Increases

Oregon by Region	2020 Minimum Wage	After 2022
Standard State Minimum Wage	\$12.00 – Effective July 1 <sup>st</sup>	Tied to U.S. Consumer Price Index.
Portland Metro Minimum Wage	\$13.25 – Effective July 1 <sup>st</sup>	Standard minimum wage + \$1
Rural Oregon Minimum Wage	\$11.50 – Effective July 1 <sup>st</sup>	Standard minimum wage - \$1



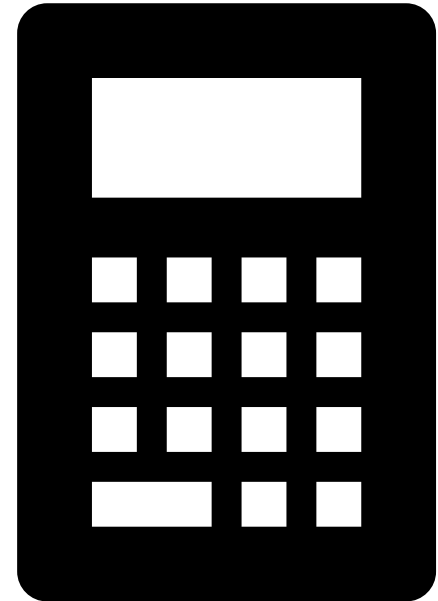
# Wage & Hour Update: New Federal Overtime Threshold



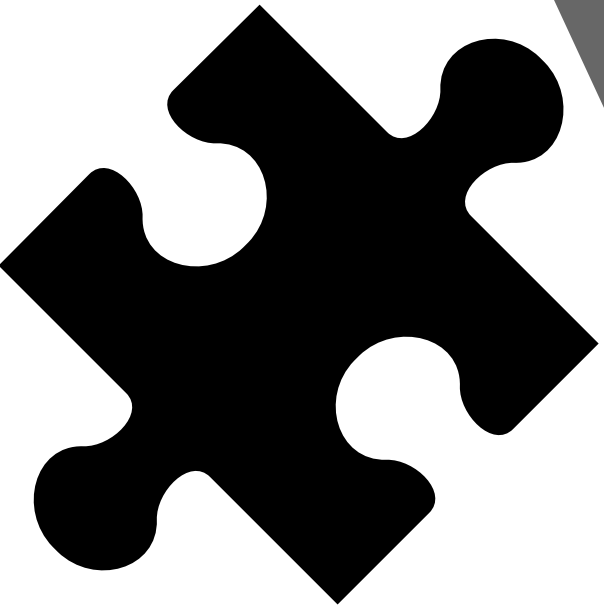
- Salaried exempt employees must make at least \$684 per week (\$35,568 annually).
- Employers may use non-discretionary bonuses and incentive payments (including commission) to satisfy up to 10 percent of the \$684 per week standard.

# Wage & Hour Update: New State Overtime Rules

- **Washington**
  - \$827 per week (\$43,025 annually) for small employers in 2021;
  - \$965 per week (\$50,196 annually) for large employers in 2021.
- **Pennsylvania\***
  - \$780 per week (\$40,560 annually) in 2021.



Paid Leave



# Watch Out for Evolving Rules



We reported a lot more changes in paid sick leave law last year; however, this is an issue to watch.



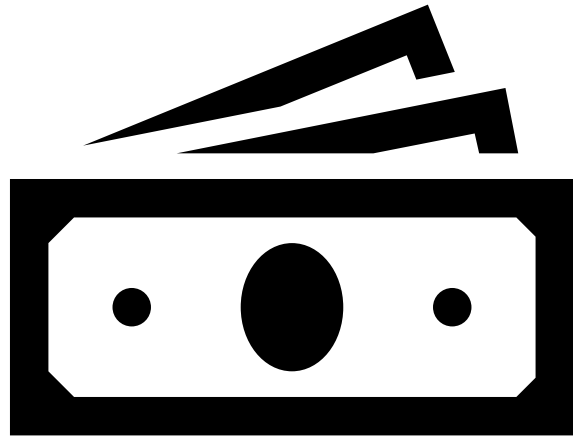
The new trend may be to require paid leave for any reason.



Paid sick leave laws provide stringent protections for employees.

# Paid Leave An Issue to Watch

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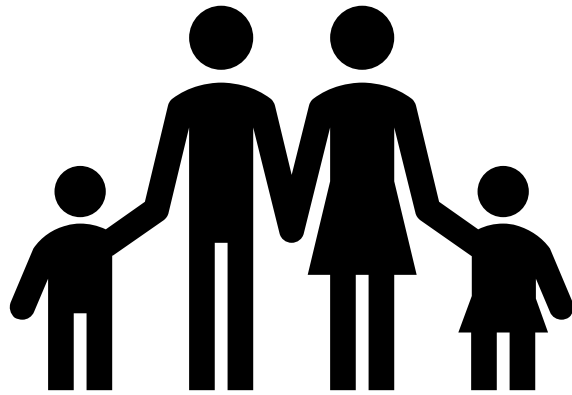


- A bill to require paid sick leave was introduced in Congress in 2017.
- A bill to expand paid sick leave time was introduced in CA in 2019.
  - NFIB defeated this proposal.
  - Labor will push for further expansions in other states & cities.
- Nevada passed a law giving employees paid time off for any reason (i.e., sick leave or personal) beginning in January 2020.
- Maine passed a similar law in 2019, which is set to go into effect in 2021.



# Paid Parental and Medical Leave

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- In addition to the federal Family Medical Leave Act, state law in some jurisdictions require employers to provide paid family leave:
  - Birth or adoption of child
  - Care for self or family member with a serious medical condition.

# Paid Family Leave Laws

State	Maximum Length of Leave	Covered Employers
California	Six weeks family leave increasing to eight weeks beginning on Jul. 1, 2020; 52 weeks for own disability.	All private sector employers
Connecticut	12 weeks; 14 if experiencing severe health condition from pregnancy.	All private sector employers.
District of Columbia	Eight weeks paternal leave; six weeks family care; two weeks for own serious medical condition; no more than eight weeks/year combined.	Private sector employers covered by the D.C. Unemployment Compensation Act.
Massachusetts	12 weeks family leave; 26 weeks caring for covered service member; 20 weeks for own serious medical condition; no more than 26 week/year combined.	Private sector employers and the state government.

# Paid Family Leave Laws

State	Maximum Length of Leave	Covered Employers
Oregon	12 weeks; 14 if experiencing severe limitation from childbirth or pregnancy.	All employers.
New Jersey	Six weeks for family leave increasing to 12 weeks on July 1, 2020; 26 weeks for own disability.	Private and public sector employers covered by the New Jersey Unemployment Compensation Law.
New York	10 weeks for family leave increasing to 12 weeks in 2021 (subject to delay); 26 weeks for own disability.	Most private sector employers.
Rhode Island	Four weeks for family leave; 26 weeks for own disability.	All private sector employers. Only some public sector employers are covered.
Washington	12 weeks for family leave; 12 weeks for own serious medical condition (14 weeks for pregnancy related conditions); no more than 16 weeks/year combined (18 if pregnancy related).	All employers.

# Paid Parental and Medical Leave

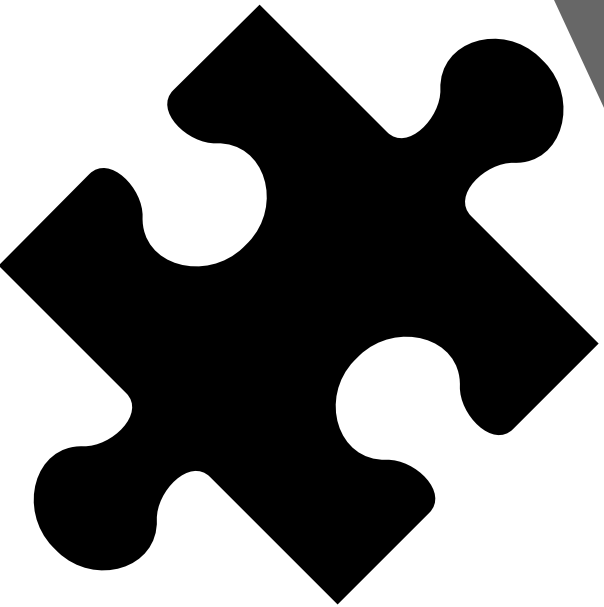
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- Managing leave of absence issues can be especially tricky.
- Check-out our prior webinar for further guidance: “Leave After Leave: Employee Requests for Time Off Under the ADA, Workers' Compensation, and the FMLA.”

<https://www.nfib.com/webinars/leave-after-leave/>

# Two New California Laws with National Impact



# California's Consumer Privacy Protection Act



- CCPA imposes new disclosure and consumer opt-out obligations on businesses collecting personal information.
- Out of state companies are affected if they collect personal information from 50,000 or more California consumers, devices or households.
  - For example, website cookies & email distribution lists.

# California's New Independent Contractor Law: AB5

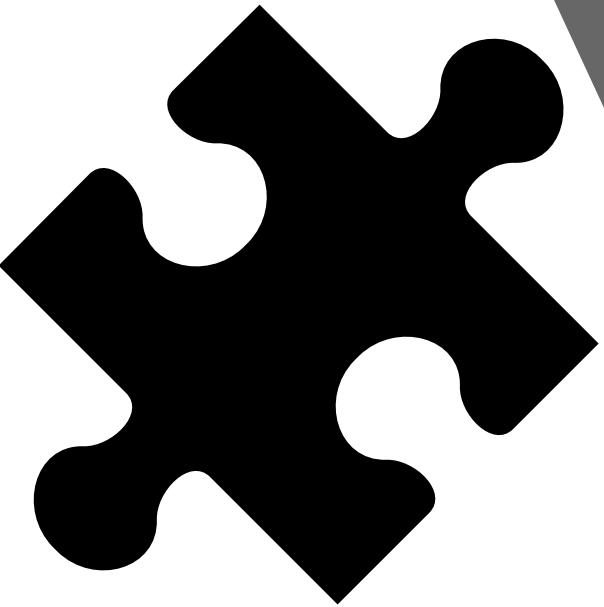
- Regardless of where your business is located, you may be affected by AB 5 if you are working with “contractors” based in California.
  - A company hiring a trucker to deliver a product to Sacramento or Bakersfield.
  - A tour guide company working with contractors in Los Angeles or San Francisco.
  - A company working with a computer programmer in San Diego or Palo Alto.

# California's New Independent Contractor Law: AB 5

- Under AB 5, any worker providing services that are essential to your business model will be deemed an employee, unless an exception applies.
- This is true regardless of how little control you exert over the worker; how many clients they have; whether they've incorporated.
- This means you must comply with CA labor law—including minimum wage, overtime, meal and rest breaks.



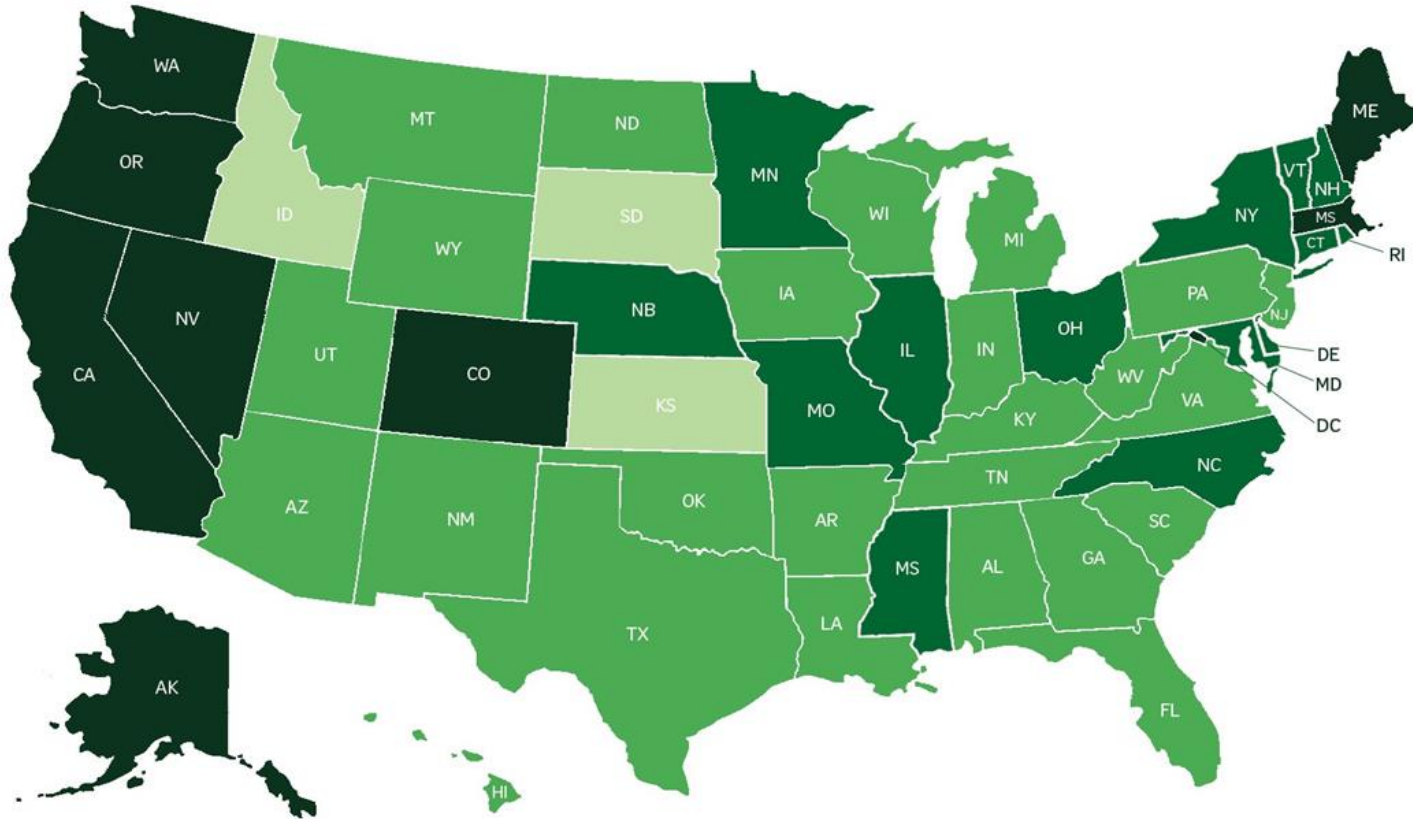
# Medical Marijuana in the Workplace



## An Evolving Area of the Law

- Marijuana is still illegal at the federal level. But, almost half of the states now have medical marijuana laws.
- Numerous states have legalized recreational use.
  - Illinois is now the 12<sup>th</sup> state.
  - New Jersey voters will decide in November 2020.

# MARIJUANA LAWS BY STATE



## Legalized

Adults can purchase, possess and cultivate marijuana for personal use, whether medical or recreational.



## Decriminalized

Typically means no arrest, prison time, or criminal record for the first-time possession of a small amount of marijuana for personal use. All of these states, excluding Nebraska, also allow medical marijuana and/or CBD use.



## Medical/CBD Use Only

No state-level criminal penalties on the use of medical marijuana. Some of these states have CBD-specific laws, singling out the non-psychoactive component of marijuana.



## Illegal

No active laws legalizing the use of marijuana.

SOURCE: WWW.NORML.COM

# States Allowing Zero Tolerance

- Alaska
- California
- Colorado
- D.C.
- Florida
- Georgia
- Michigan

- Montana
- New Hampshire
- New Mexico
- North Dakota
- Ohio
- Oregon
- Vermont
- Washington

**Caution:** Regulators may begin requiring accommodations.

## A State by State Issue

Some states protect medical marijuana users from employment **discrimination** and/or require employers to provide **workplace accommodations** for medical marijuana users.

States  
Prohibiting  
Discrimination  
Against  
Medical  
Marijuana  
Cardholders

- Arizona
- Arkansas\*
- Connecticut
- Delaware
- Hawaii
- Illinois
- Maine
- Minnesota

- Rhode Island
- West Virginia
- New Jersey
- New York

\*Applies to companies  
with 9 or more employees.

## States Requiring Accommodations

- Massachusetts
- Nevada
- New York\*

\*Applies to companies with 4 or more employees.

# Exceptions Vary by State



- Several states provide explicitly that an employer need not tolerate impairment or use while on the job.
- Some states provide explicitly that an employee may be disciplined for possessing on company property.



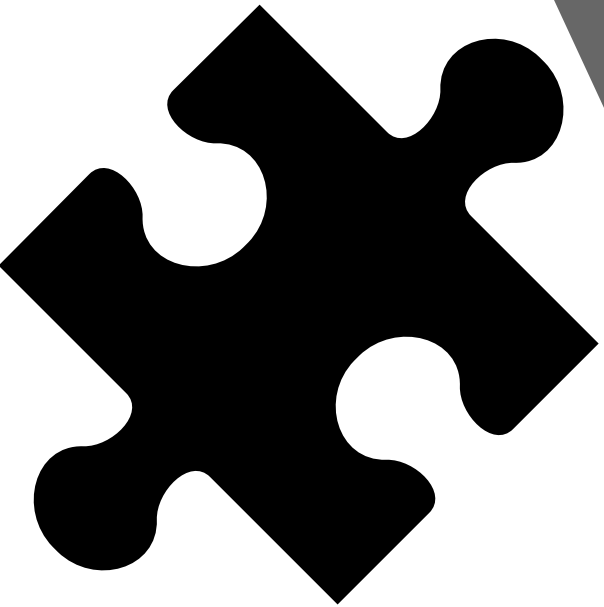
## Exceptions Vary by State

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- Several states provide explicitly that an employer need not accommodate use if it would create a safety risk.
- Most states provide explicitly that an employer need not allow a use if it would cause the company to lose money or a license under federal law.
- A few states explicitly provide that an employer may not discipline an employee even for being impaired on the job **unless it is causing a performance issue.**



# #MeToo Legislation – Mandatory Anti-harassment Training



# States Requiring Harassment Training

State	Requirement	Covered Employers
California	Train once every two years. Managers 2 hours of training; Other employees 1 hour of training.	5 or more employees
Connecticut	Train within six months of start date.	3 or more employees
Delaware	Train within one year of start date, and every other year thereafter.	50 or more employees
Illinois	Annual training beginning Jan. 1, 2020	15 or more employees
Maine	Train within one year of start date.	15 or more employees
New York	Annual interactive training.	All Employers

# Update on California

- California extended its deadline for most employers to comply with anti-harassment training requirements until Jan. 1, 2021 after employers expressed confusion with the requirements of the original law.
- All employees must receive training in 2020, unless they received training in 2019.
- The Cal. Department of Fair Employment Housing is supposed to release an online training that will provide a free option for compliance.

# Thank you!



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