

Time to Update Your Handbook: The 2014 Women's Economic Security Act

On Mothers' Day, May 11, 2014, Gov. Dayton signed the Women's Economic Security Act (WESA) into law with many sections of WESA becoming effective the following day, May 12, 2014. As a result, employers should familiarize themselves with the new requirements and update their handbooks as soon as possible. Below is a brief summary of some of the more notable requirements that became effective on May 12, 2014.

Provisions Impacting All Employers Regardless of Size:

Wage Disclosure Protections: Under WESA, employers cannot prohibit employees from disclosing their wages as a condition of employment or take adverse action against an employee for discussing their wages. Employees can bring civil action against employers for violating these provisions, and seek back pay, reinstatement, restoration of lost service credit and attorney fees. WESA explicitly requires a notice of these rights, protections, and remedies in an employer handbook, if the employer provides a handbook.

Nursing Mother Accommodations: Under WESA, employers must provide nursing mothers with a room or other location that: (1) is not a bathroom or bathroom stall; (2) is shielded from view, free from intrusion; and (3) includes access to an electrical outlet for expressing milk. Employers may not retaliate against employees for asserting this right. Additionally, employees may bring a civil action against employers for violating these provisions, seeking damages and attorney's fees.

Provisions Impacting Employers With 21 or More Employees:

Pregnancy And Parental Leave: Prior to WESA, employers with 21 or more employees were required to provide employees with up to six weeks of unpaid leave to an employee for the birth or adoption of a child if the employee worked at least half-time for the past 12 months prior to the leave. WESA expands the amount of available unpaid leave for eligible employees to up to 12 weeks of unpaid leave. Additionally, unpaid leave must be granted to an employee who is: (1) a biological or adoptive parent for the birth or adoption of a child; or (2) a female employee for prenatal care, or incapacitated due to the pregnancy, child birth or related condition.

Pregnancy Accommodations: Employers with 21 or more employees must provide reasonable accommodations to an employee for conditions related to pregnancy, childbirth, or related health conditions, if an employee requests one, with the advice of her healthcare provider. A reasonable accommodation requires employers to engage in the interactive process with the employee and could include temporarily transferring the pregnant female employee to a less strenuous or hazardous position for the duration of her pregnancy, if requested. An employee does not need to get advice from her healthcare provider to request accommodations for more frequent restroom breaks, snack or water breaks, seating, or limits on lifting over 20 pounds. The employer also does not have to provide a reasonable accommodation that imposes an “undue hardship” on the operation of the business. An employer may not retaliate against employees for requesting such accommodations.

Expansion of Sick Leave: Employees may now use accrued personal sick leave benefits provided by the employer for absences due to an illness of or injury to the employee's mother-in-law, father-in-law, and grandkids (including step-grandchildren, biological, adopted or foster grandchildren). Previously, employees could use accrued personal sick leave for absence due to an illness of or injury to the employee's child, spouse, sibling, parent, grandparent, or stepparent under the sick leave statute.

Safety Leave: Under WESA, employees may also use accrued personal sick leave time for “safety leave”, which is “leave for the purpose of providing or receiving assistance because of sexual assault, domestic abuse, or stalking.” Employees may take safety leave to obtain their own assistance or to obtain assistance for a relative covered under the sick leave statute (see above). Once again, an employer may not retaliate against an employee for requesting or using sick leave.

No Discrimination based on Familial Status: The Minnesota Human Rights Act was also amended to prohibit discrimination based on a person’s familial status. “Familial status” means having one or more minor children living with (1) their parent or parents or the minor's legal guardian, or (2) the designee of the parent or parents or guardian with the written permission of the parent or parents or guardian. These protections against discrimination also apply to any person who is pregnant or is in the process of securing legal custody of a minor.

Additionally, WESA includes the following provisions that impact certain employers.

Pay Equity Certification: Most businesses who have more than 40 full-time employees on any day in the last 12 months and a contract of more than \$500,000 with the State of Minnesota, a state agency, the Metropolitan Council, Metropolitan Parks and Open Space Commission, the Metropolitan Airports Commission or the Metropolitan Sports Facilities Commission, will have to obtain a certificate of pay equity compliance.

In order to obtain a certificate, the chairperson of the board or chief executive officer of the businesses will be required to submit a signed statement that provides, among other things:

- (1) the business is in compliance with Title VII of the Civil Rights Act of 1964, the Equal Pay Act of 1963, Minnesota Human Rights Act, and Minnesota Equal Pay for Equal Work Law;
- (2) that the average compensation for its female employees is not consistently below the average compensation for its male employees within each of the major job categories in the EEO-1 employee information report for which an employee is expected to perform work under the contract, taking into account factors such as length of service, requirements of specific jobs, experience, skill, effort, responsibility, working conditions of the job, or other mitigating factors;
- (3) that the business does not restrict employees of one sex to certain job classifications and makes retention and promotion decisions without regard to sex;
- (4) that wage and benefit disparities are corrected when identified to ensure compliance with the laws cited above; and
- (5) how often wages and benefits are evaluated to ensure compliance with the laws cited above.

The equal pay compliance statement will also require the business to indicate whether it sets employee compensation and benefits by utilizing: (1) a market pricing approach; (2) the state prevailing wage or union contract requirements; (3) a performance pay system; (4) an internal analysis; or (5) an alternative approach to determine what level of wages and benefits to pay its employees. If the business uses an alternative approach, the business must provide a description of its approach..

Businesses that are required to get certification will need to pay a \$150 filing fee when submitting the compliance statement. This provision applies to any solicitation made on or after August 1, 2014.

Extension of Unemployment Benefits: Starting October 5, 2014, employees who are forced to quit their jobs as a result of a sexual assault or stalking of either the employee or the employee's immediate family member are eligible for unemployment compensation.

Please feel free to contact Tom Revnew with any questions regarding these changes and how best to address the challenges these new legislative burdens impose on your business.