I. Background

On Friday, May 9, 2014, the Minnesota Legislature passed the Women’s Economic Security Act ("WESA"), a controversial, comprehensive bill designed to further promote opportunities for women in the workplace. Minnesota Governor Mark Dayton signed the bill into law on May 11, 2014. WESA is comprised of multiple pieces of legislation and is touted as the first of its kind nationwide. WESA’s primary provisions are summarized below.

II. Workforce Development Council/Jobs Grant Program

The Governor will appoint an individual to the Workforce Development Council with expertise in assisting women to obtain employment in high-wage, high-demand, nontraditional occupations. The Commissioner of the Department of the Employment and Economic Development (DEED) will establish the Women and High-Wage, High-Demand, Nontraditional Jobs Grant Program. The Commissioner will make grants to eligible organizations for programs that encourage and assist women to enter for instance occupations in the skilled trades, science, technology, engineering and math.

III. State-Administered Retirement Savings Plan

The Commissioner of Management and Budget must report to the legislature by January 15, 2015 on the potential for a state-administered retirement savings plan for employees without access to either an automatic enrollment payroll deduction IRA offered by their employer or a multiemployer retirement plan or other qualifying retirement plan or arrangement.
IV. New Protections against “Familial Status” Discrimination

- WESA amends the Minnesota Human Rights Act effective as of May 12, 2014 to prohibit employers, labor unions and employment agencies from discriminating against applicants and employees based on “familial status,” thus adding to the list of protected classes in Minnesota (e.g., race, gender, age, sexual orientation, marital status, etc.).

- The “familial status” protection applies to a person who is pregnant or who is in the process of securing legal custody of a minor. “Familial status” further is defined as “the condition of one or more minors being domiciled with (1) their parent or parents or the minor’s legal guardian or (2) the designee of the parent, parents or guardian” with written permission. In short, familial status means the status of raising a child in your home.

- The Minnesota Human Rights Act applies to employers with one or more employees, and protects applicants, employees and commission sales persons who reside or work in Minnesota.

- By letter dated May 7, 2014, the Minnesota Department of Human Rights, the agency charged with enforcing the Minnesota Human Rights Act, provided insight into employer conduct that will not be deemed to be familial status discrimination. This letter can be found at the end of these materials.

V. Expansion of Minnesota Parenting Leave Act From 6 to 12 Weeks of Leave

- Prior to the WESA amendments, Minnesota employers with 21 or more employees at at least one site were required to provide up to six weeks of unpaid leave to a male or female employee upon the birth or adoption of a child. Employees who had worked for the employer for at least 12 consecutive months and who worked on average at least half time (.5) the employer’s FTE for his/her position during such period were eligible for this leave.

- Effective July 1, 2014, WESA extends the available unpaid leave from 6 to 12 weeks, and allows for leave in the additional circumstances where a female employee needs leave for prenatal care, or for an incapacity due to pregnancy, childbirth or related health conditions. In addition, eligible employees need only have been employed as of the start of the leave for 12 total months, not for 12 consecutive months.

- Under the WESA amendments, employers may require employees to use any paid time off (e.g., sick time, vacation, PTO) during and concurrently with the 12 weeks of parenting leave. Employers no longer need to allow an employee who has given birth to use her paid sick time, if applicable, before her parenting leave begins.

- Under the WESA amendments, for leave taken upon the birth or adoption of a child, the employer may require the leave to begin within 12 months of the birth or adoption of the child, except in the case where the child is in the hospital longer than the mother, the leave may begin within 12 months after the child leaves the hospital.
VI. Expansion of Minnesota Paid Sick Leave for Care of Relatives

- Minnesota law requires employers with 21 or more employees at at least one site to allow employees to use accrued personal sick leave benefits for absences due to an illness or injury of the employee’s child (including a minor or adult child, stepchild or foster child), spouse, sibling, parent, stepparent or grandparent on the same terms the employee is able to use sick leave benefits for the employee’s own illness or injury.

- An eligible employee is one who has been employed by the employer for a total of 12 months and worked at least .5 the employer’s FTE for his/her position in the 12 month period prior to use of paid sick time.

- Effective July 1, 2014, WESA amends the sick leave statute to expand the current list of covered family members to include the employee’s mother-in-law, father-in-law, or grandchild (including a step-grandchild and a biological, adopted or foster grandchild).

- Under WESA, an employee of a covered employer may also use sick leave for “safety leave” whether or not the employer’s sick leave policy allows for use of sick leave for this purpose. Safety leave is broadly defined to cover employee absences for the purpose of providing or obtaining assistance because of sexual assault, domestic abuse or stalking of the employee or of any relatives of the employee as noted above.

- Employers may not retaliate against an employee for requesting or obtaining time off under WESA.

VII. Reasonable Accommodation of Pregnant Employees

- Effective as of May 12, 2014, WESA requires employers that have 21 or more employees at at least one site to provide reasonable accommodation to an employee for health conditions related to pregnancy or childbirth unless the employer demonstrates that the accommodation would impose an undue hardship on the operations of the employer’s business.

- An eligible employee is one who has been employed by the employer for a total of 12 months and worked at least .5 the employer’s FTE for his/her position in the 12 month period prior to her request.

- The accommodation is required upon request of the employee with the advice of her licensed health care provider or certified doula (labor coach).

- However, an employer may not claim undue hardship, and the employee may not be required to obtain the advice of her licensed health care provider or certified doula for the following accommodations:
  - More frequent restroom, food, and water breaks,
  - Seating, and
• Limits on lifting over 20 pounds

• The employer and employee are required to engage in an interactive process with respect to the employee’s request for a reasonable accommodation.

• WESA provides that “reasonable accommodation” may include, but is not limited to, temporary transfer to a less strenuous or hazardous position, seating, frequent restroom breaks, and limits to heavy lifting.

• WESA also provides that an employer “shall not be required to create a new or additional position in order to accommodate an employee” and “shall not be required to discharge any employee, transfer any other employee with greater seniority, or promote any employee” in order to accommodate a pregnant employee.

VIII. Expansion of Nursing Mothers Break Time Statute

• Minnesota law provides that Minnesota employers with one or more employees provide a nursing mother unpaid break time each day to express breast milk for her infant child.

• Effective July 1, 2014, WESA expands the Minnesota Nursing Mothers statute to require that a covered employer make reasonable efforts to provide a room or other location to express milk in privacy that (1) is in close proximity to the work area, other than a bathroom or toilet stall, (2) is shielded from view and free from intrusion from coworkers and the public; and that (3) includes access to an electrical outlet.

• WESA also prohibits retaliation against an employee for asserting rights or remedies under the statute.

IX. Protection of Employees’ Right to Disclose Wages

• Under WESA, Minnesota employers are now prohibited by statute from restricting an employee’s ability to disclose his or her wages, requiring an employee to sign a waiver or other document denying the employee the right to disclose his or her wages, or retaliating against an employee for disclosing his or her wages or discussing another employee’s wages that were disclosed voluntarily.

• The new law does not require an employer or an employee to disclose wages, nor does it permit an employee to disclose company proprietary or trade secret information, or information protected under legal privilege or applicable law.

• An employer may not retaliate against an employee for asserting rights or remedies under the new law.

• Effective July 1, 2014, if the employer provides an employee handbook to employees, the employer must include in the handbook a notice of rights and remedies under the new law.
• Under federal law, specifically the National Labor Relations Act, a non-supervisory employee’s right to discuss wages with other employees has been protected for quite some time as protected, concerted activity. In addition, the Equal Employment Opportunity Commission (EEOC) takes the position that all employees may discuss terms and conditions of employment with one another.

X. Unemployment Compensation

• The Minnesota Unemployment Insurance Law, at section 268.095, subd. 1, provides an extensive list of circumstances where an employee may resign from employment and still collect unemployment compensation benefits. One such circumstance is where the employee’s resignation is necessitated by domestic abuse of the employee or of an immediate family member. WESA expands this list to include circumstances where an employee’s resignation is necessitated by the sexual assault, or stalking either of the employee or of an immediate family member. Domestic abuse carries the definitions set forth in the Minnesota Domestic Abuse Act, and sexual assault and stalking are as defined in Minnesota’s criminal code.

• Under the Unemployment Insurance Law, employees who are terminated due to misconduct as defined in Section 268.095, subd. 6, are ineligible for benefits. The law contains a list of employee conduct that will not constitute employment misconduct. WESA adds to the list any conduct by the employee that was a consequence of the employee or an immediate family member being a victim of domestic abuse, sexual assault or stalking.

• These amendments are effective as of October 5, 2014.

XI. Pay Equity Certification for State Contractors

• Companies that have contracts with the state, certain state agencies and departments, or the Metropolitan Council in excess of $500,000 and have more than 40 full-time employees will, in addition to their current State affirmative action requirements, need to obtain an equal pay certificate. The certification is valid for four years.

• In order to obtain a certificate, the employer must submit to the commissioner a statement signed by the Chief Executive Officer or Chair of the Board of the company confirming that:
  • The business is in compliance with Title VII, the federal Equal Pay Act, the Minnesota Human Rights Act, and the Minnesota Equal Pay for Equal Work Law;
  • The average compensation for female employees is not consistently below the average compensation for male employees within each EEO-1 job category, taking into consideration such factors as length of service, requirements of the jobs, experience, skill, effort, responsibility, working conditions, and other mitigating factors;
• The business does not restrict employees of one sex to certain job classifications and the business makes retention and promotion decisions without regard to sex; and

• Wage and benefit disparities are corrected when identified.

The statement must also indicate how often wages and benefits are evaluated to ensure compliance with the above laws and requirements, and what system the company uses to determine wage and benefit levels (i.e., a market pricing approach, state prevailing wage, collective bargaining agreement wage scales, performance pay system, etc.).

• Certain state contractors are exempt from the new requirements, and the provisions will not apply if the Commissioner of Administration determines that compliance would cause undue hardship to the company.

• These amendments are effective August 1, 2014.

XII. Action Items for Minnesota Employers

A. Update and Reissue Employee Handbook As Soon As Possible

• Update employee handbook to include required notice of rights and remedies with respect to employees’ right to disclose wages. (All Minnesota employers)

• Update equal employment opportunity and anti-harassment and discrimination policies to include “familial status” in the list of protected classes in Minnesota. (All Minnesota employers)

• Update reasonable accommodation policy to comply with accommodation of pregnant employees. (Minnesota employers with 21 or more employees at at least one site)

• Update Minnesota Parenting Leave Act policy to provide for 12 weeks of leave and other changes such eligibility requirements, availability of leave for an employee’s prenatal care or incapacity due to pregnancy, childbirth, or related health conditions, rule regarding use of paid time off (e.g., sick, vacation, PTO) concurrently with parenting leave, and rule regarding when leave must commence by. (Minnesota employers with 21 or more employees at at least one site)

• Coordinate Family and Medical Leave Act (FMLA) policy with Minnesota Parenting Leave Act policy. (Minnesota employer with 50 or more employees).

• Update polices to ensure that there is no prohibition of use of paid sick time for absences due to an injury or illness of a family member, which now includes a child, adult child, spouse, sibling, mother-in-law, father-in-law, grandchild, grandparent, or stepparent. (Minnesota employers with 21 or more employees at at least one site)
• Update policies to ensure that there is no prohibition on use of paid sick time for “safety leave” absences related to sexual assault, domestic abuse, or stalking of the employee or his/her covered family member. (Minnesota employers with 21 or more employees at at least one site)
B. Training and Compliance

Human Resources staff and supervisors should be trained on the new requirements that WESA imposes in order to avoid violations of the new laws. Of particular importance are WESA’s provisions regarding (as applicable depending on the number of employees employed by the employer):

- right to discuss wages,
- familial status discrimination,
- parenting leave,
- accommodation of pregnant employees,
- breaks for nursing mothers, and
- use of paid sick time

C. Nursing Mothers’ Room

Under WESA, by July 1, 2014, all Minnesota employers must provide a nursing mother with a room or location (other than a toilet stall) to express milk in privacy that is in close proximity to the work area, is shielded from view and free from intrusion by coworkers or the public, and that includes access to an electrical outlet. Determine if your company has such a room or one can be designated. Notify nursing mothers of the designated area(s). If compliance is not possible, consult with legal counsel to determine appropriate documentation of the company’s efforts to comply and communication with nursing mothers.

D. Unemployment Compensation: Eligibility Determinations

Effective October 5, 2014, if an employee resigns or is terminated related to the domestic abuse, sexual assault or stalking, either of the employee or of his/her immediate family member, the employee may be eligible for unemployment compensation benefits.

XIII. Questions? Need Assistance With Updated Policies, Training, Etc.?

Please do not hesitate to contact any of the attorneys in Fredrikson & Byron’s Employment & Labor Law Group.