

Election 2022: Key employment ballot measures

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Across the country, voters will have the chance to weigh in on many statewide ballot measures that will set state minimum wages and other employment laws.

Minimum wage

Nebraska's ballot measure would incrementally raise the minimum wage until it reaches \$15.00 by 2026.

Similarly, Nevada is asking voters to consider an increase in the minimum wage to \$12.00 by July 1, 2024.

D.C. voters will consider whether to eliminate tip credits, which allow employers with tipped employees to take a credit against tipped wages to satisfy minimum wage requirements.

City-level initiatives in California pertaining to the minimum wage for healthcare and hotel workers are on the ballots.

Unionization

With the increase in union activity in various industries, such as retail, it is no surprise there are ballot measures pertaining to unionization. While only two such measures are on the ballot this November, the increased efforts by labor organizers since the COVID-19 pandemic may mean more of these initiatives in future elections.

*In the wake of the U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, several states have ballot measures pertaining to reproductive health.*

Illinois has a ballot measure to amend its constitution to protect employees' rights to organize and to bargain collectively. While the National Labor Relations Act generally preempts state labor laws in the private sector, the amendment would take workers' rights a step further and constitutionally prohibit a right-to-work law in Illinois.

At the other end of the spectrum, Tennessee seeks to join 28 other states with "right to work" laws that make it illegal for workplaces

to require mandatory labor union membership as a condition for employment.

Marijuana and mushrooms

Several states have marijuana legalization on the ballot. These include Arkansas, Maryland, North Dakota, and South Dakota. Colorado has a ballot measure to decriminalize psychedelic plants and fungi.

Employers should become familiar with the ballot measures in states and the local ballot issues in cities where they operate as this is another channel for legislation to be passed that affects employment practices and procedures.

Such legalization in other states has complicated issues of discipline for drug use and drug testing for employers. None of the initiatives on the ballots — or any existing protections — would obligate employers to allow employees to be under the influence in the workplace.

However, each state is taking a different approach as to how these laws could affect employers, ranging from incorporating anti-discrimination law for legal off-duty use of marijuana to allowing employers to terminate employees for legal use of marijuana. If any of these measures are passed, employers would need to consider policies that may limit employees' rights to participate in legal activities outside of work.

Reproductive rights

In the wake of the U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*,¹ several states have ballot measures pertaining to reproductive health.

Much like the legalization of certain drugs, these initiatives do not set specific obligations or prohibitions for employers. The potential changes in state laws, however, may affect employers' policies and procedures.

Other measures

Among the other measures employers should watch is a proposal to add a section to the Nevada constitution to include the following equality-of-rights language:

Equality of rights under the law shall not be denied or abridged by this State or any of its political subdivisions on account of based on race, color, creed, sex, sexual orientation, gender identity or expression, age, disability, ancestry or national origin.

Such an amendment could implicate employers' equal employment and harassment prevention policies.

Employers should become familiar with the ballot measures in states and the local ballot issues in cities where they operate as this is another channel for legislation to be passed that affects employment practices and procedures.

Jackson Lewis attorneys will continue to track legislation and ordinances that affect employers across the country.

Notes

¹ <http://bit.ly/3EgHsWF>

About the authors



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