

Voters Weigh In on Workplace Issues

By Lisa Nagele-Piazza, J.D., SHRM-SCP

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Voters have approved ballot measures that will impact the workplace in several states by raising the minimum wage, establishing a statewide program for paid family and medical leave, and legalizing marijuana. Here's what employers need to know.

Minimum Wage

The federal minimum wage has not been increased since 2009 and currently stands at \$7.25 per hour. However, 29 states and numerous counties, cities and multistate employers have minimum wages higher than the federal minimum.

On Election Day, voters in Florida

([https://ballotpedia.org/Florida_Amendment_2%2c_\\$15_Minimum_Wage_Initiative_%282020%29](https://ballotpedia.org/Florida_Amendment_2%2c_$15_Minimum_Wage_Initiative_%282020%29)) approved an amendment to gradually increase the state's minimum wage to \$15 an hour as follows:

- \$10 on Sept. 30, 2021.
- \$11 on Sept. 30, 2022.
- \$12 on Sept. 30, 2023.
- \$13 on Sept. 30, 2024.
- \$14 on Sept. 30, 2025.
- \$15 on Sept. 30, 2026.

Starting Sept. 30, 2027, increases to Florida's minimum wage will be based on the Consumer Price Index for Urban Wage Earners and Clerical Workers.

[Looking for state-specific information? See [State & Local Updates](http://www.shrm.org/ResourcesAndTools/legal-and-compliance/state-and-local-updates/Pages/default.aspx) (www.shrm.org/ResourcesAndTools/legal-and-compliance/state-and-local-updates/Pages/default.aspx)]

The COVID-19 crisis curbed efforts to put minimum-wage hikes on the ballot in other states, observed Adam Sencenbaugh, an attorney with Haynes and Boone in Austin and San Antonio, Texas. "Similar efforts in Ohio and Idaho failed in large part because shelter-in-place orders made it much harder to safely obtain signatures needed to advance the measures," he said.

Sencenbaugh noted that Florida's minimum-wage increase passed with strong margins, which may encourage efforts to continue in other states.

Paid Family and Medical Leave

"Paid leave also continues to be popular with voters, as Colorado joined the handful of other states that mandate paid time off for employees," Sencenbaugh said.

Colorado voters passed a ballot measure

(https://ballotpedia.org/Colorado_Proposition_118%2c_Paid_Medical_and_Family_Leave_Initiative_%282020%29) establishing a statewide program for paid family and medical leave. The measure will allow eligible workers to take 12 weeks of paid leave, which will be funded

through a payroll tax on employers and employees. An additional four weeks of leave will be allowed for pregnancy or childbirth-related complications.

The law will offer job-protected paid-leave benefits to workers who have earned at least \$2,500 with their employer and have been on the job for at least 180 days.

"Employers should be proactive in creating a timeline for implementing the new payroll tax," said Kristin White, an attorney with Fisher Phillips in Denver. "Employers will need to communicate this new policy to their employees and provide for procedures related to implementing this initiative."

Businesses with fewer than 10 employees will be exempt from the employer premium, and companies can opt to go with their own leave program instead of participating in the statewide program if the alternative program meets certain criteria.

Marijuana Legalization

"The trend of states legalizing both the medicinal and adult-use sale of cannabis will continue for the foreseeable future," said Robert DiPisa, an attorney with Cole Schotz in Hackensack, N.J.

Voters in five states passed ballot measures to legalize medical or recreational marijuana use. In Arizona (https://ballotpedia.org/Arizona_Proposition_207%2c_Marijuana_Legalization_Initiative_%282020%29), Montana (https://ballotpedia.org/Montana_CI-118%2c_Allow_for_a_Legal_Age_for_Marijuana_Amendment_%282020%29) and New Jersey (https://ballotpedia.org/New_Jersey_Public_Question_1%2c_Marijuana_Legalization_Amendment_%282020%29)—where medicinal use is already permitted—voters approved recreational use. South Dakota voters agreed to legalize both recreational (https://ballotpedia.org/South_Dakota_Constitutional_Amendment_A%2c_Marijuana_Legalization_Initiative_%282020%29) and medical (https://ballotpedia.org/South_Dakota_Initiated_Measure_26%2c_Medical_Marijuana_Initiative_%282020%29) marijuana use. Mississippi (https://ballotpedia.org/Mississippi_Ballot_Measure_1%2c_Initiative_65_and_Alternative_65A%2c_Medical_Marijuana_Amendment_%282020%29) voters decided to legalize medical marijuana in the state.

Independent-Contractor Status

California voters passed Proposition 22 (www.shrm.org/ResourcesAndTools/legal-and-compliance/state-and-local-updates/Pages/California-Voters-Approve-Prop-22.aspx), a measure exempting app-based gig-economy drivers from the scope of AB 5, a state law that took effect on Jan. 1 to make it more difficult to classify workers as independent contractors rather than employees. App-based drivers were defined on the ballot as workers who either:

- Provide delivery services on an on-demand basis through a business's online-enabled application or platform.
- Use a personal vehicle to provide prearranged transportation services for compensation through a business's online-enabled application or platform.

The ballot measure ensured app-based drivers will receive certain benefits, including:

- Minimum net earnings of 120 percent of the state's or locality's minimum wage and 30 cents per mile.
- Health care subsidies.
- Occupational accident insurance.
- Accidental death insurance.

Under the measure, companies will have to develop anti-discrimination and sexual-harassment policies, and drivers will be limited to working 12 hours during a 24-hour period.

Ballot Measures

"With every election cycle, employers need to pay close attention to the initiatives that are passed at the state and local levels," said Mark Goldstein, an attorney with Reed Smith in New York City. "While most employment laws are passed during legislative sessions, we are increasingly seeing the election ballot being used as a mechanism to effectuate change in the workplace."

Ballot initiatives allow citizens to vote on certain measures that are usually determined by the state legislature or local government. A citizen-initiated measure, which is allowed in about half the states (https://ballotpedia.org/Ballot_measure), is put on the ballot after a petition is signed by a minimum number of registered voters. Another type of ballot measure is a legislative referendum, through which a state legislature may refer a measure to voters for approval.

Voters in 32 states decided 120 state-ballot measures on Nov. 3, according to Ballotpedia (https://ballotpedia.org/2020_ballot_measures), a nonpartisan online political resource, and eight additional measures were approved for pre-November election dates. The total number of ballot measures nationwide is down from 162 in 35 states during 2016 (https://ballotpedia.org/2016_ballot_measures).

The COVID-19 pandemic made it difficult for advocates to get ballot measures in front of voters this election cycle, Sencenbaugh noted.

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