

WorkSmarts Virtual Seminar

State by State: Compliance Challenges in Colorado, Minnesota, Arizona

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Colorado

Colorado: L&E Mile High View

- Equal Pay for Equal Work Act
- Family and Medical Leave Insurance Program

Colorado: An Introduction

- Robust L&E Legislation
 - Whistleblower protections
 - Accrued paid sick leave
 - More lenient standards for proving harassment
 - “Ban the box” and no pre-hiring inquiries about a candidate’s age
 - Strict restrictive covenants statute (non-competes and non-solicits)
 - Minimum wage, meal and rest breaks, time worked, bonuses and vacation time
 - *Except* – marijuana protections (employers can enforce drug-free policies)
- CDLE: Colorado Department of Labor and Employment
- Denver minimum wage (\$18.29 in 2024) and civil wage theft ordinance

Colorado Equal Pay for Equal Work Act

- Effective in 2019, amendments effective in 2024
- Applies to all employers with at least one employee in Colorado
- Cannot set pay based on, or even ask about, prior pay rates in hiring
- Cannot restrict employees from discussing pay
- Pay equity
- Pay transparency

Colorado Equal Pay for Equal Work Act (Part 1)

- Pay Equity: Bans unequal pay, intentional or not, between employees of a different sex for “**substantially similar work.**”
 - Substantially similar work is based on a mix of skill, effort, and responsibility
 - Job title is mostly not relevant
 - Does not require the work be identical or equal (broader than federal law)
- A defense against liquidated damages is a thorough and comprehensive pay audit with the specific goal of identifying and remedying pay disparities

Colorado Equal Pay for Equal Work Act (Part 1)

- Pay disparities allowed where ***employer proves all the following***:
 - Unequal pay is based on:
 - (a) seniority system;
 - (b) merit system;
 - (c) system that measures earnings by quantity or quality of production;
 - (d) geographic location of work;
 - (e) education, training, or experience reasonably related to the work; or
 - (f) travel is regular and necessary to the work.
 - The above factors are applied reasonably.
 - The above factors account for the entire pay gap.
 - Prior wage history was not relied on to justify unequal pay.

Colorado Equal Pay for Equal Work Act (Part 2)

- Pay Transparency: Employers must
 - Disclose pay in all job postings (both internally and externally)
 - Disclose available job opportunities (and promotions) to **all** employees
 - Disclose how to advance through “career progressions”
- Contents Required: All job postings must include
 - Compensation to be offered (a reasonable range is permissible)
 - Benefits to be offered
 - How and when to apply and the application deadline

Colorado Equal Pay for Equal Work Act (Part 2)

- Post-Selection Notice: Employees whom the employer intends a selected candidate to work with regularly must receive the post-selection notice
 - Name of candidate selected and selected candidate's former job and new job titles
 - Information on how employees may demonstrate interest in future opportunities
- Out of State Coverage
 - All employees in Colorado must be notified (whether the job is in Colorado or not)
 - Employees entirely outside Colorado are exempt from notices
 - Postings for job opportunities to be performed entirely outside Colorado are exempt
 - Remote work that may be performed in Colorado must comply

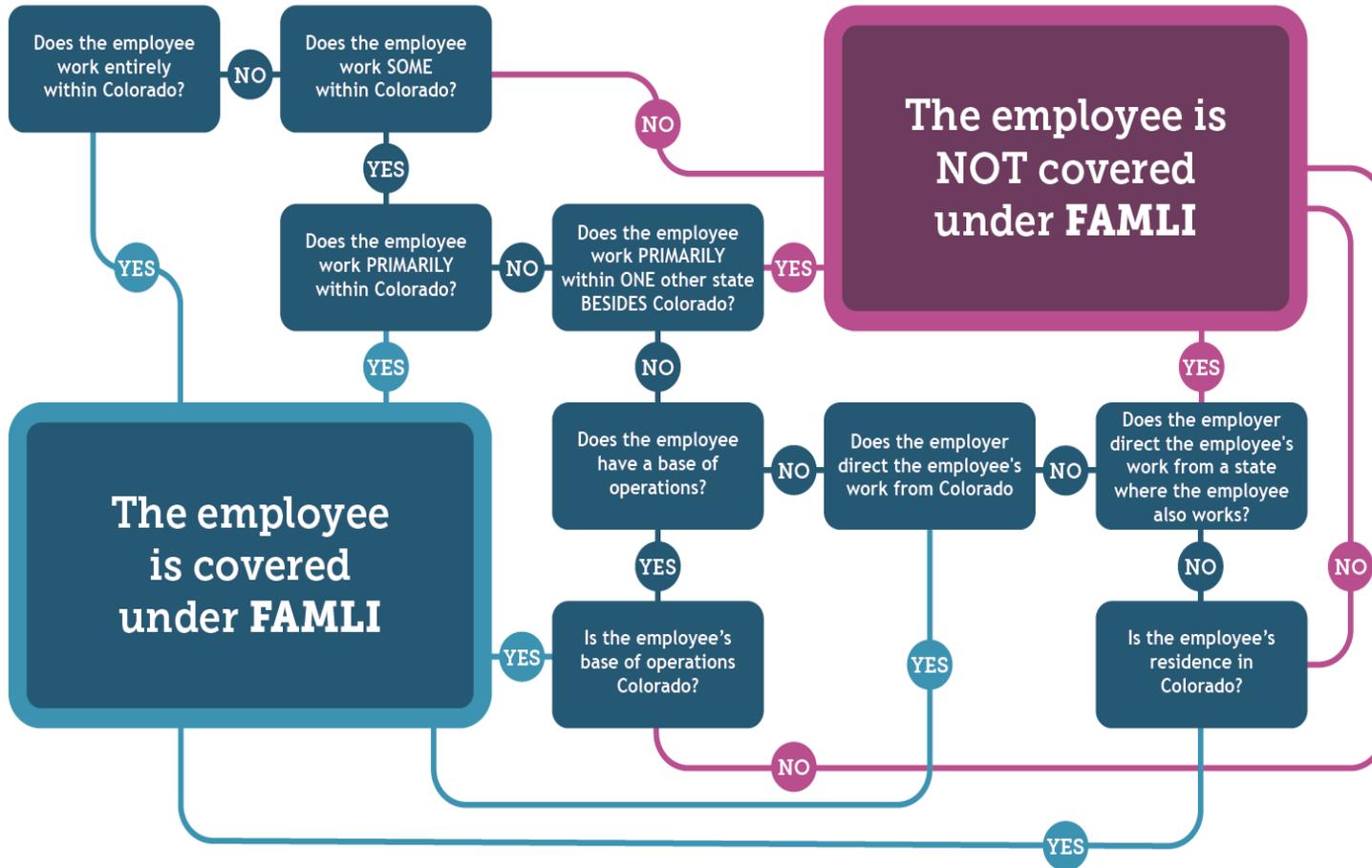
Family & Medical Leave Insurance Program (FAMLI)

- FAMLI started providing benefits to employees beginning January 1, 2024
- FAMLI is a social insurance program:
 - Both the employee and employer contribute to an insurance program (each 0.45% of wages post-tax) run by the state.
 - The employee applies for benefits through the FAMLI program; the FAMLI division (the state agency) will determine eligibility.
 - The state pays employees a portion of their weekly wages directly; employers are not responsible for paying wages during FAMLI leave.
- FAMLI runs concurrently with FMLA, and health insurance continues

Family & Medical Leave Insurance Program (FAMLI)

- Covered Employers and Employees: Virtually all employers and employees
- Permitted Reasons for Leave: FMLA reasons plus “safe leave”
- Definition of Family Member: Any individual with whom the employee has a significant personal bond akin to a family relationship
- FAMLI payment is capped at \$1,100 per week: Employers may allow employees to use paid time off to cover the remaining balance
- Amount of FAMLI Leave: Equivalent 12-week FMLA period plus 4 weeks for serious health condition related to pregnancy or childbirth
- Job Protection: An employee who has worked at least 180 days is entitled to return to the same or equivalent position

Is this employee covered under FAMLI?

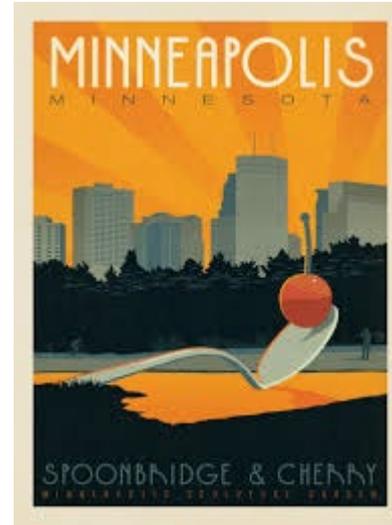


Minnesota



Minnesota

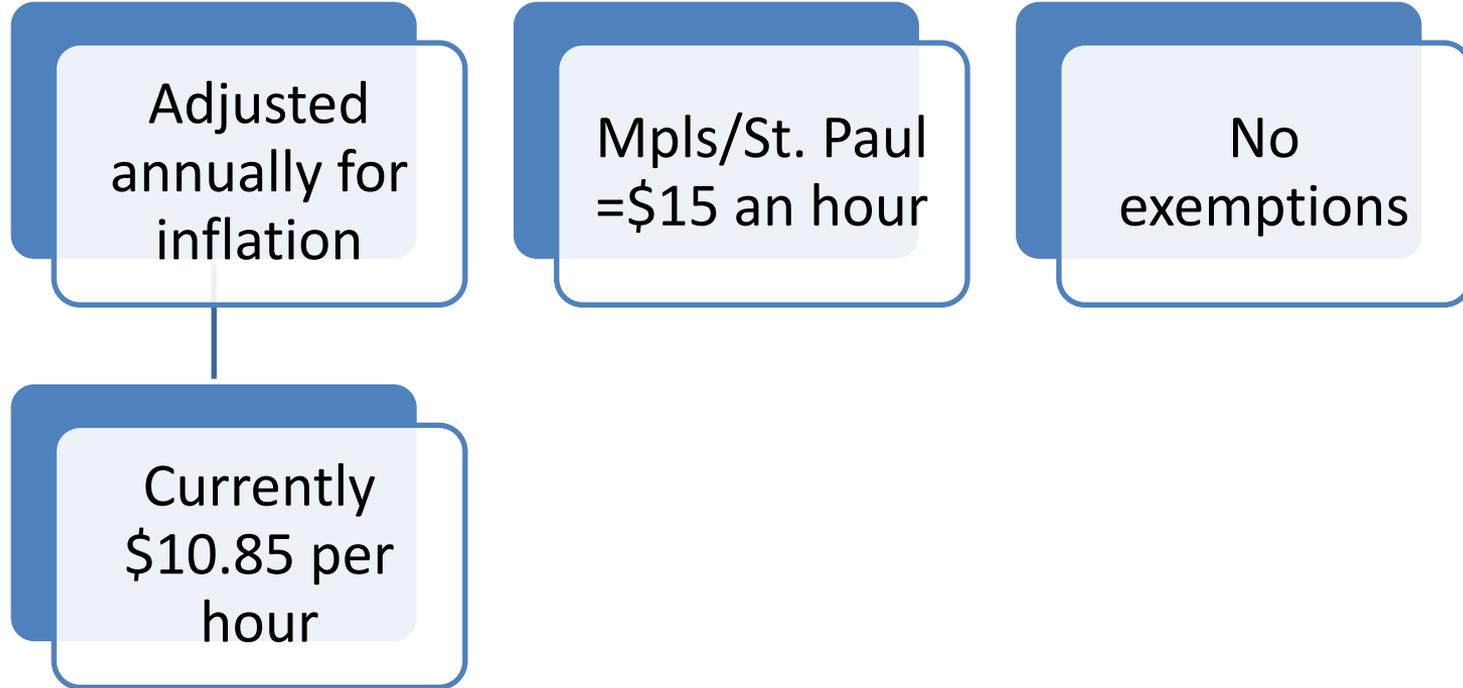
- Minimum Wage
- Inquiries into Pay History
- Earned Sick and Safe Time (ESST)
- Marijuana (Workplace Drug Testing)
- Prohibition on Non-Competes
- Captive Audience Ban



Minimum Wage Changes



Minnesota Minimum Wage Changes



Notice Requirements

Employers must display a poster with the new minimum-wage rates, and, if employees will have their wages increased as a result of the change, employers must provide written notice to those employees of the change.

**JUST
DON'T
ASK**

Inquiries into Salary History



Prohibition on Pay History Inquiries

- Starting January 1, 2024, Minnesota employers cannot inquire into or consider the pay history of a job applicant during the hiring process.
- Pay history is defined as past wages, salaries, benefits, or any other form of compensation.
- You cannot ask, encourage or prompt applicants for this information.



Earned Sick and Safe Time (ESST)

ESST

- Starting January 1, 2024, Minnesota employers must provide paid sick and safe leave to eligible employees.
- The benefits apply to all Minnesota employees who perform work for at least 80 hours in a year in Minnesota, but do not apply to independent contractors.

When can employees use this leave?

- 1 To care for their physical or mental health, or for that of a family member;
- 2 For absences addressing domestic violence concerns for an employee or a family member;
- 3 In the event of school or work closures resulting from weather or public emergencies; and,
- 4 In connection with communicable disease obstacles or health protocols.

Accrual Method

- Employees can accrue up to 48 hours in a year.
- Accrued hours must be permitted to roll over into the following year, but an employer may cap the total amount of accrued time at 80 hours.
- Upon an employee's termination, an employer is not required to pay out unused sick and safe time.

Frontloading Option

An employer may front-load sick and safe time by:

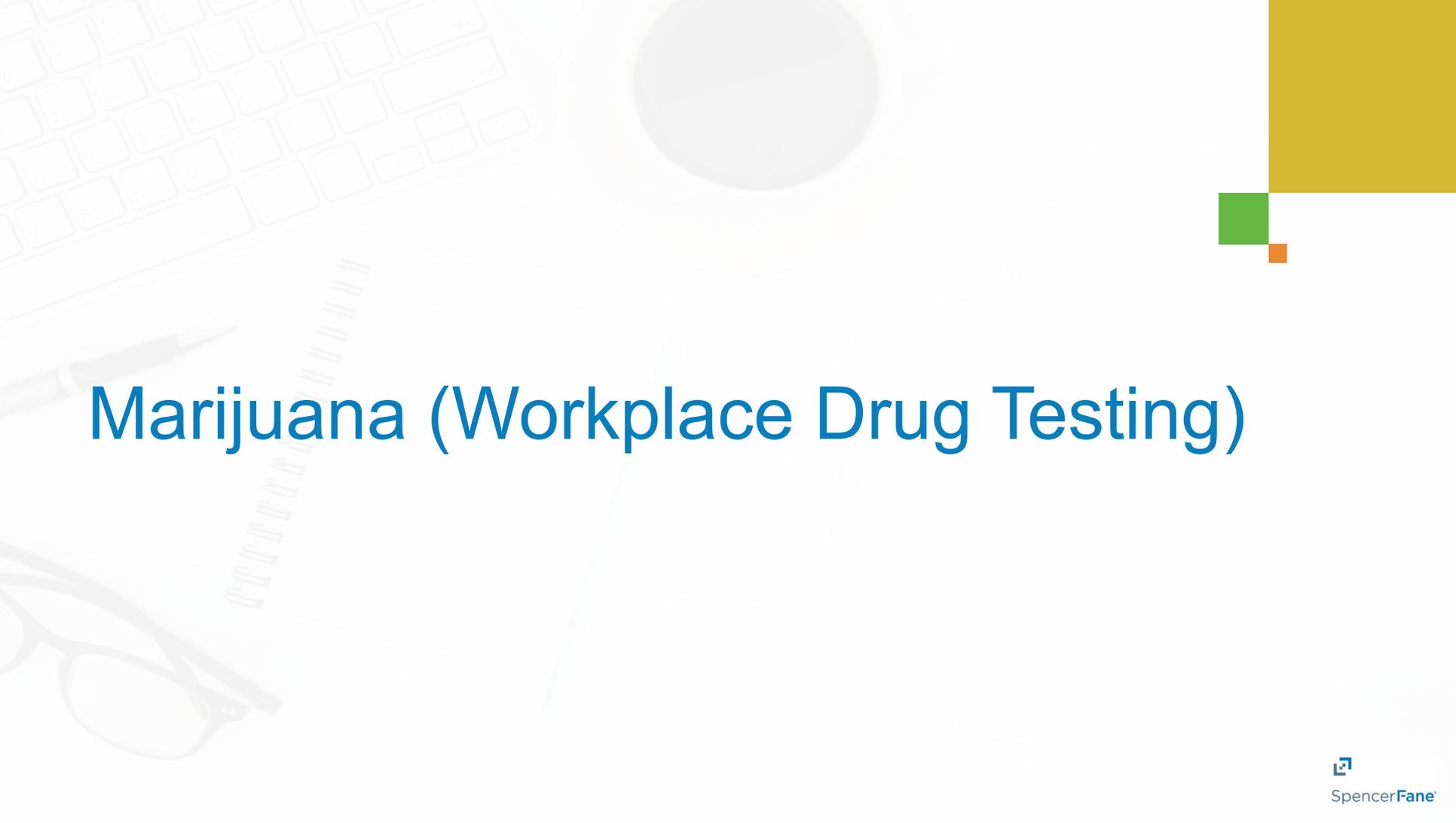
- granting 48 hours at the beginning of the year, if the employer pays out unused time at the end of the year;
- granting 80 hours at the beginning of the year, if the employer does not pay out unused time.

Notice Requirements

- Must be provided via a physical posting, by sending a paper or electronic copy to employees, or through a conspicuous posting on an employee work platform.
- The notice must be provided at the start of employment or by the effective date.

Paid Family and Medical Leave will be here soon!

- Effective January 1, 2026
- Duration of Benefits: up to 12 weeks of medical leave; up to 12 weeks of family/bonding/safety/Qualifying Exigency Leave; maximum of 20 weeks total.
- Eligibility requirements: employee must make 5.3% of state average annual wage (\$3,546 in 2023) in base period and work primarily in Minnesota.
- Employers can choose to provide benefits directly or use the state program.



Marijuana (Workplace Drug Testing)



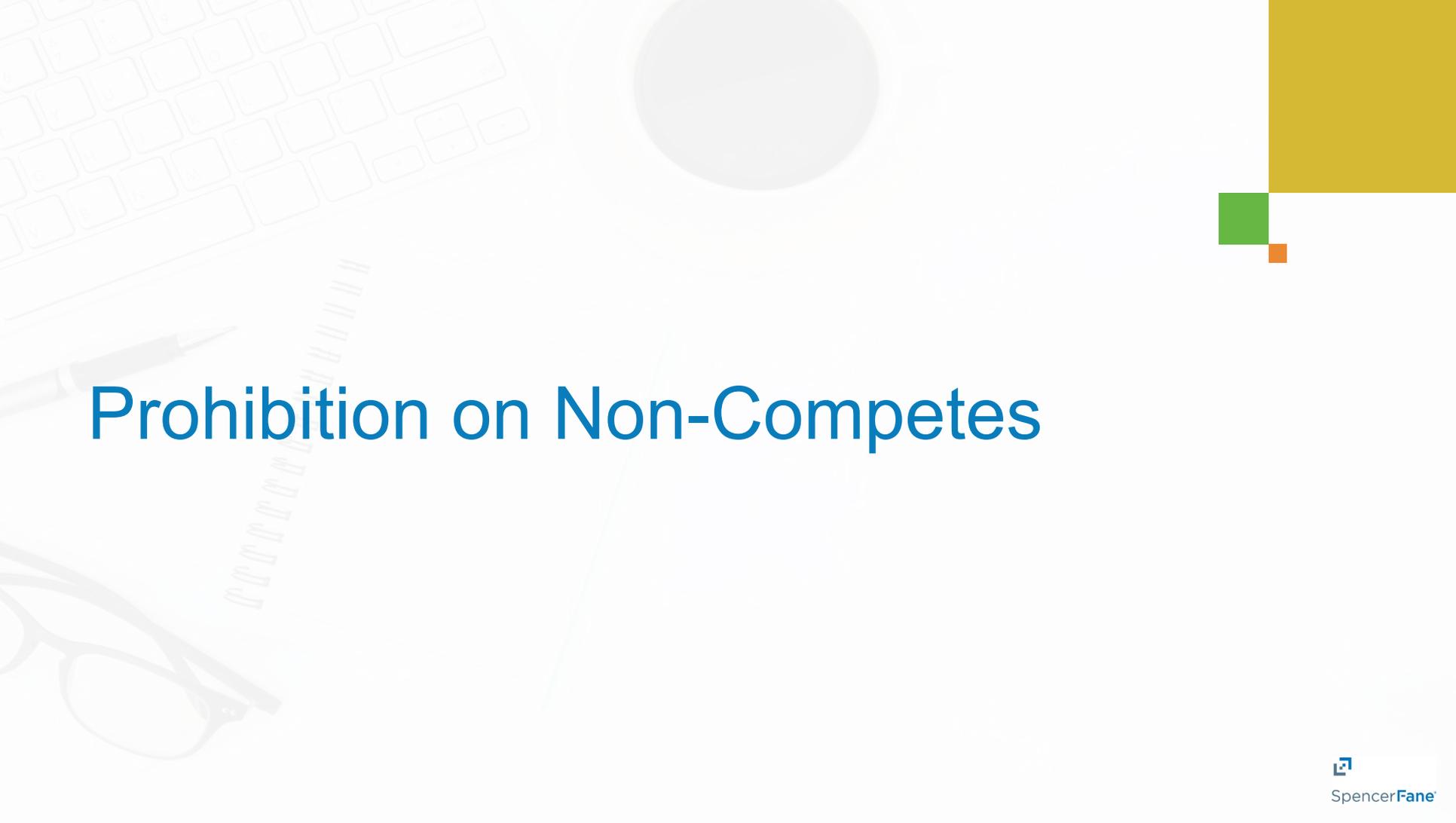
Major changes to the Minnesota Lawful Consumable Products Act (“CPA”)

- The new law amends the CPA to protect employees’ off-duty use of cannabis products. The CPA prohibits employers from disciplining or terminating employees (or refusing to hire applicants) who “use or enjoy lawful consumable products” outside of work.
- However, the new law does allow employers to discipline or discharge employees who use, possess, are impaired by, sell, or transfer cannabis products during work hours, on work premises, or while operating an employer’s vehicle, machinery, or equipment.

Cannabis specific testing

- An employer can no longer require or request a job applicant to undergo pre-employment cannabis-specific testing or refuse to hire an applicant solely because the person tests positive for cannabis as a result of an authorized pre-employment drug test.
- Also, employers may not request or require an employee or job applicant to undergo testing for cannabis on an arbitrary or capricious basis.



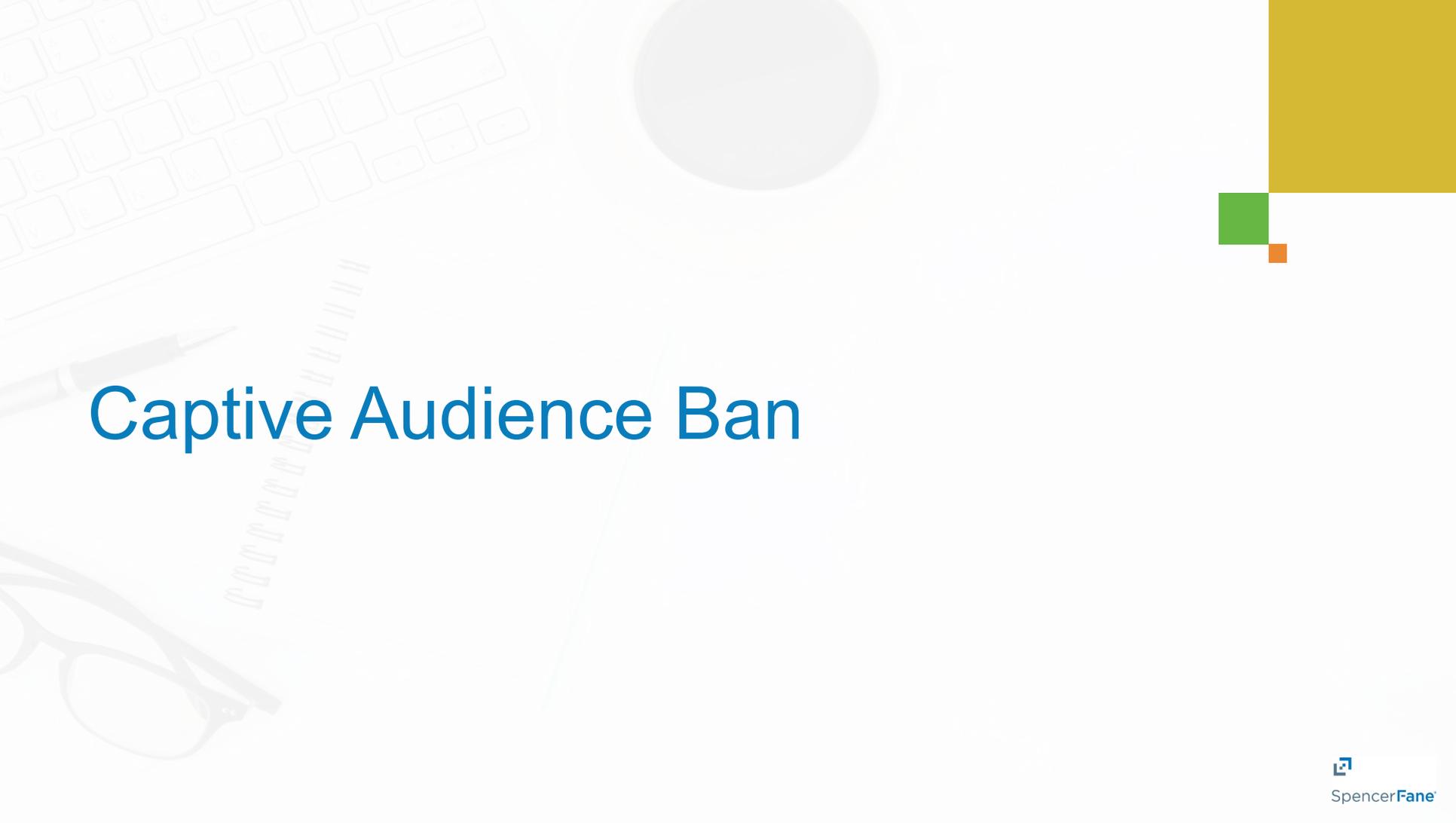


Prohibition on Non-Competes

Non-Compete Ban

- The new law prohibits enforcement of non-competes entered into after July 1, 2023, but leaves existing agreements in place for the nearly 300,000 Minnesotans it is estimated had a non-compete before the law passed.
- The law does not apply to confidentiality or non-solicitation provisions.

PROHIBITED



Captive Audience Ban

Captive Audience Prohibition

This Minnesota state law bars employers from firing or otherwise disciplining employees for refusing to participate in employer-sponsored meetings — or listen to communications — relating to the employer's political opinions or religious beliefs.

A federal challenge was filed in February 2024 and is currently pending.



Questions?



Arizona

Arizona

- Minimum Wage
- Marijuana
- Paid sick leave
- Ninth Circuit

Minimum Wage



Arizona Minimum Wage Act

Automatic Increases

- Currently \$14.35 per hour

Allows for greater
local wages

No exemptions

Marijuana



“Dude, you do not get to get high at work.”



Arizona law provides for non-discrimination based on cardholder status.

- No discrimination in any term or condition of employment. A.R.S. § 36-2813(B)(1).
- Terms and Conditions of Employment
 - Hiring
 - Termination
 - Wages?
 - Other Discipline?
 - Transfers?

Whitmire v. Wal-Mart

- Employers can be sued under the Arizona Medical Marijuana Act
- Walmart was not justified in firing the worker under AMMA, but . . .
- Employee did not succeed on claim of disability discrimination.

Whitmire v. Wal-Mart Stores Inc., 359 F. Supp. 3d 761 (D. Ariz. 2019)

Paid Sick Leave

Arizona Paid Sick Leave



**Up to 24 or 40
hours of leave**



Multiple purposes



**Applies to all
employees
(temporary, part
time)**



**May not use
absence due to sick
leave in
disciplinary policy**



**May be PTO or
separate sick and
other leaves**

Frequently Asked Questions



Do we have to allow employees to carry over paid sick leave?

What if we want to have PTO for full time employees?

How do we keep track of paid sick leave for exempt employees?

Why does the paid sick leave statute impact our attendance policy?

Can we have a “Flexible PTO policy?”

Anti-Retaliation

- Employer presumed to retaliate if adverse employment action occurs within 90 days of exercise of right under statute.
- Absent clear and convincing evidence of legitimate, non-retaliatory reason for adverse action.
- Document, Document, Document

Ninth Circuit

- ADA Accommodations
- Equal Pay Act
- FMLA



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