

Labor and Employment Law Developments: Staying on Top of Your Game

It's a Wrap! Year End Review and 2023 Forecast

December 14, 2022

Meet The Team



Laurie Holmes

Partner
Faegre Drinker



Christine Binotti

President, ACC Chicago
Lead Counsel, Employment Law
Motorola Solutions, Inc.



Elizabeth (Liz) Sheyn Brown

General Counsel & Chief Administrative
Officer
CSC Generation Holdings, Inc.



Welcome



Christine Binotti
President, ACC Chicago
Lead Counsel, Employment Law
Motorola Solutions, Inc.



Benefits of ACC:

- Free CLE, Roundtables, Women's & Professional Development Programs
- Socials, Pop Ups, Special Networking Groups, Annual Celebration Event
- Community Outreach, Diversity Initiatives & Pro Bono Offerings
- Leadership and Speaking Opportunities, Chicago Lawyer Subscription
- Access to ACC Global Resources, including:
 - ACC Docket Magazine & Newsstand (searchable legal news feed)
 - ACC Survey Portal, Resource Library, Contracts Portal & Legal Ops Section
 - E-Groups and Committees on Substantive Practice Areas

Spoiler Alert: Everything Old is New Again



Restrictive Covenants





What Does the Future Hold for Restrictive Covenants?

- Trend of legislative and judicial hostility toward restrictive covenants suggests that it may not be long before other states ban or limit use in employee agreement context.



State Law Regulation

During the past few years, many states have enacted legislation banning or limiting employee restrictive covenants, particularly for low-wage workers:

- **District of Columbia** – total ban
- **Illinois** – ban on non-competes for employees making less than \$75k/year; ban on non-solicits for employees making less than \$45k/year
- **Maine** – ban for employees who make less than 400% of poverty level
- **Maryland** – ban for employees making \$15/hour or less
- **Massachusetts** – ban for non-exempt employees



State Law Regulation

- **Nevada** – ban for hourly employees
- **New Hampshire** – ban for employees who make less than 200% of minimum wage
- **Oregon** – ban for non-exempt employees and exempt employees earning less than roughly \$100k/year
- **Rhode Island** – ban for non-exempt employees and those who make less than 250% of federal poverty level
- **Virginia** – ban for those that make less than state average weekly wage
- **Washington** – ban for those making \$100k/year



Avoid “One Size Fits All” Agreements – There is No Such Thing



Pay Equity





Pay Equity

- Equal pay for equal work, considering education, experience/skill level, tenure with company and performance



The Wage Gap: 2021 Fact Sheet NWLC

FTE women are paid 83 cents for every \$1.00 paid to their male counterparts

FTE Black women make 64 cents for every dollar paid to white non-Hispanic male counterparts

FTE Latina women make 57 cents for every dollar paid to white non-Hispanic male counterparts

Pay gap is widest for women ages 55-64

Women at all education levels experience a wage gap

Mothers are paid 75 cents for every dollar paid to fathers

Average earnings of transgender women fall 1/3 after transition

[2021-who-what-why-wage-gap.pdf \(nwlc.org\)](https://nwlc.org/2021-who-what-why-wage-gap.pdf)



The Biden Administration's Focus on Pay Equity

- Repeated references to closing wage gaps
- Reinstate EEOC pay data collection and pay transparency efforts
- Expand enforcement activity
- Federal ban on use of salary history to set wages/hiring decisions
- WH Council on Women and Girls and Council on Gender Equality to address equal pay
- Legislation such as proposed Paycheck Fairness Act to eliminate the “factor other than sex” defense, protect against retaliation for discussing pay and require pay data reporting
- March 15 Equal Pay Day – how far into the new year women must work to be paid what men earned during the preceding year





How Do We Get to Pay Equity?

- Salary History Bans
- Pay Transparency

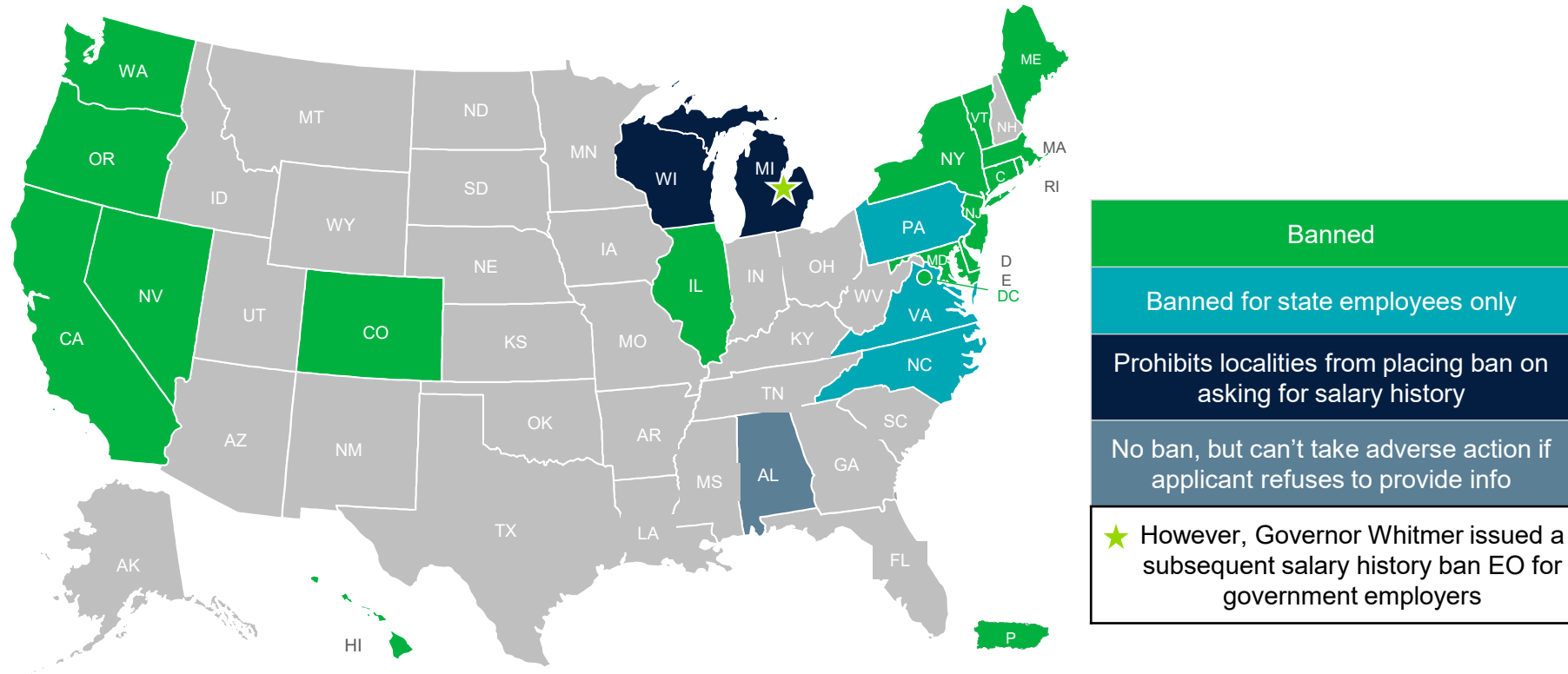


Salary History Ban

- Prohibits employers from asking applicants for their salary history
- Prohibits relying on salary history even if voluntarily disclosed
- Does not prohibit asking applicant for expectations

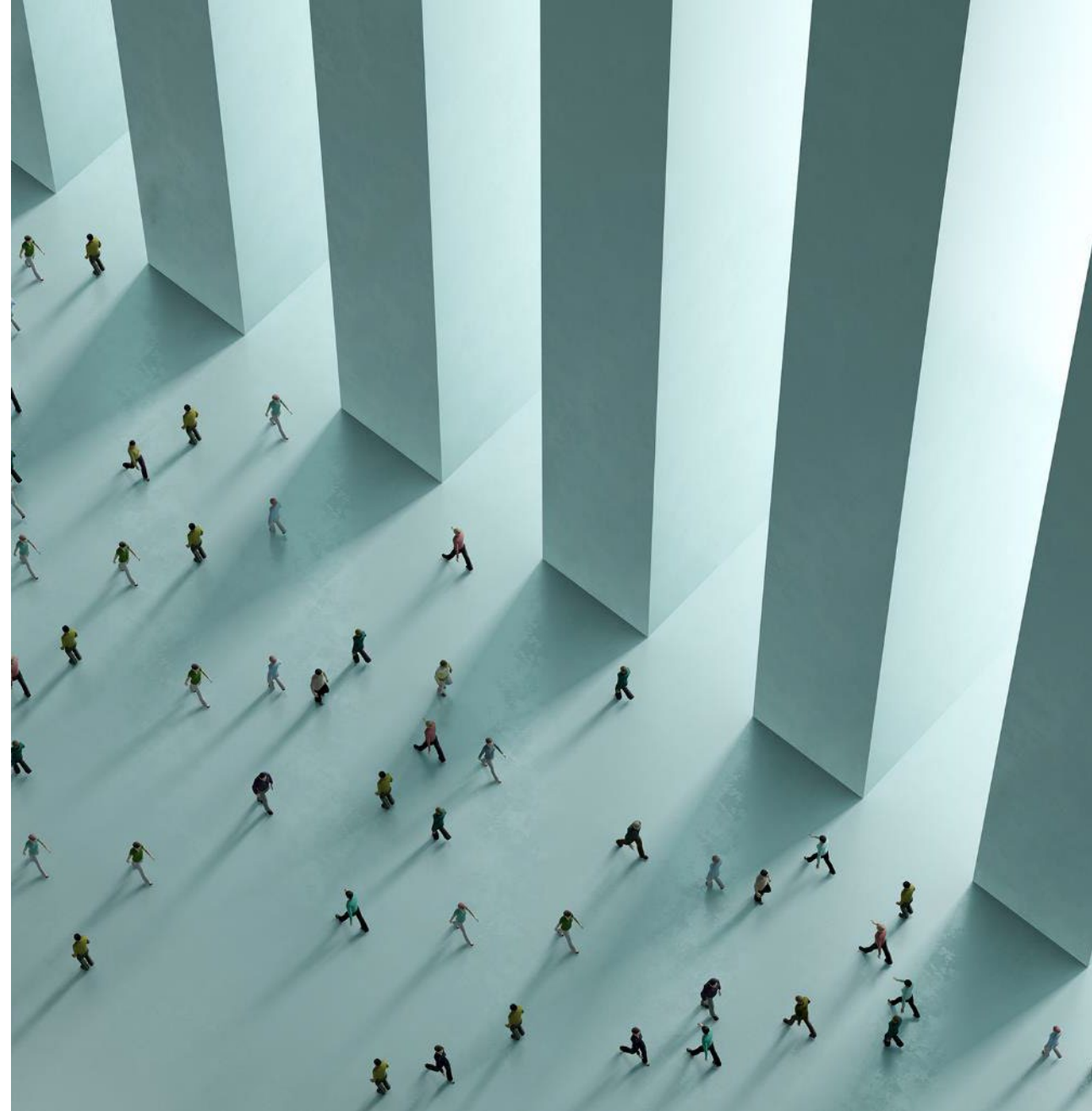


Salary History Ban Laws

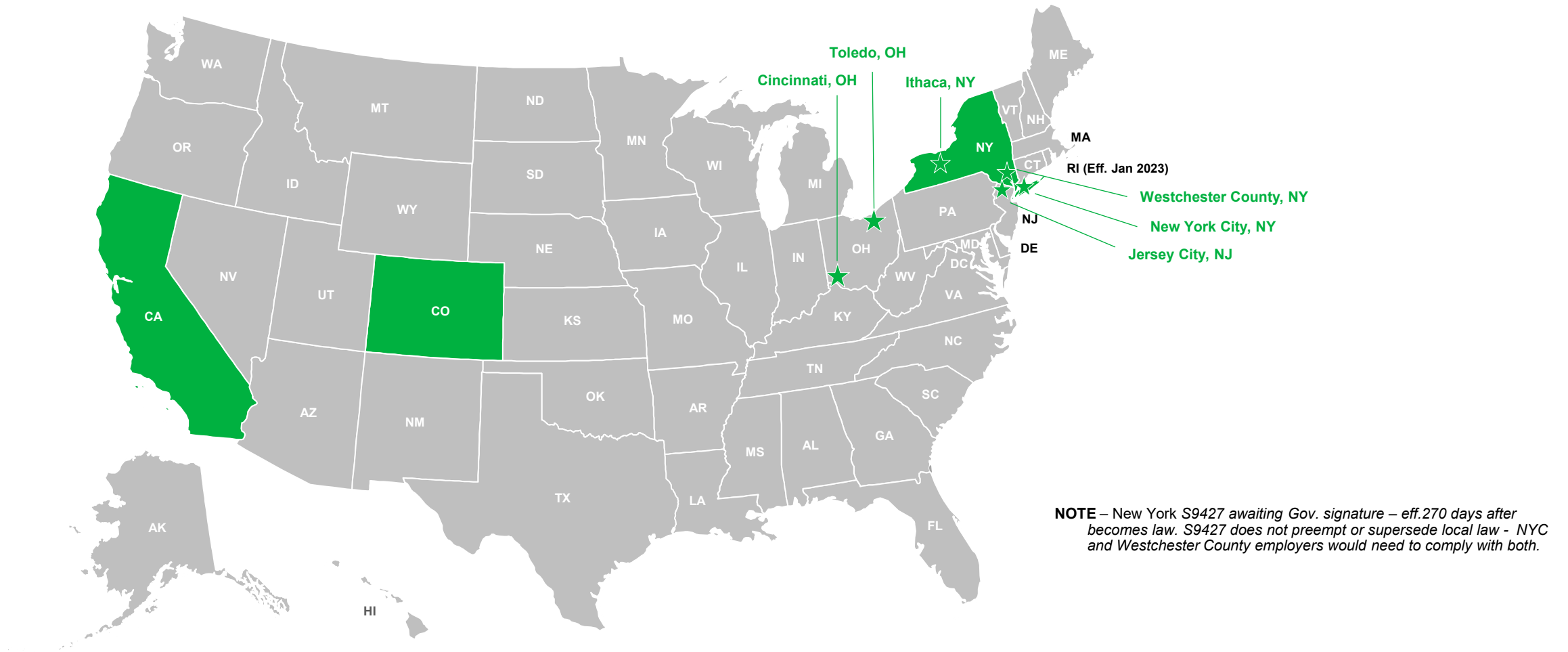


Pay Transparency

- Requires employers to disclose salary ranges for open position in job posting (or at some other point in time)



Pay Band/Range Disclosure Laws



Further Disclosure of Pay Scale/Salary

Upon request after the applicant's initial interview

- Maryland
- Rhode Island (1/23)
(or if asked during the interview or before discussing compensation)

Automatically after the initial interview (even if there is no request)

- Nevada

Upon request after conditional offer of employment

- Washington state
- Toledo, OH
- Cincinnati, OH

When offer is made, or when requested, whichever occurs first

- Connecticut



Illinois Equal Pay Act

Employers must apply for Equal Pay Registration Certificate (EPRC)

- **Who's covered?**
 - Private employers: 100+ employees in Illinois; required to file an EEO-1
- **What's the reporting deadline?**
 - Deadline varies (i.e., assigned by IDOL, with at least 120 days to report)
 - Recertification every two years
- **What needs to be submitted?**
 - Wage records
 - Equal pay compliance statement



EPRC: Equal Pay Compliance Statement

What are you certifying?

- Corporate officer or authorized agent to certify accuracy
- Certify females and minorities are ***on average*** paid at a rate not consistently below males and non-minorities, and ***disparities are corrected*** when identified
- Identify frequency of wage/benefit reviews
- Identify method used to set wages
- Certify compliance with Title VII, EPA, IHRA, *et al.*



Ways to Manage Risk

- **Privileged Pay Equity Audits**
 - Document legitimate business reasons for disparities
 - Remedial action as appropriate
- **Review Job Descriptions/Titles/Salary Bands**
 - Determine salary range before posting
- **Evaluate Processes for Compensation and Promotion Decisions**
 - Remove prior salary as basis for pay
 - Train managers making compensation/promotion decisions
 - Establish guardrails before modifying compensation with documentation of legitimate factors justifying adjustment





Remote Working

Now that remote work has become the norm, employers need to consider:

- Tracking time for non-exempt employees
- Tax issues
- Corporate registration issues
- Compliance with state employment laws
- Performance management
- Expense reimbursement





Post-*Dobbs* Policies

- Expansion of benefits
- Travel reimbursement
- Paid leave
- Child-care benefits
- Criminal liability?
- Informal assistance/case by case



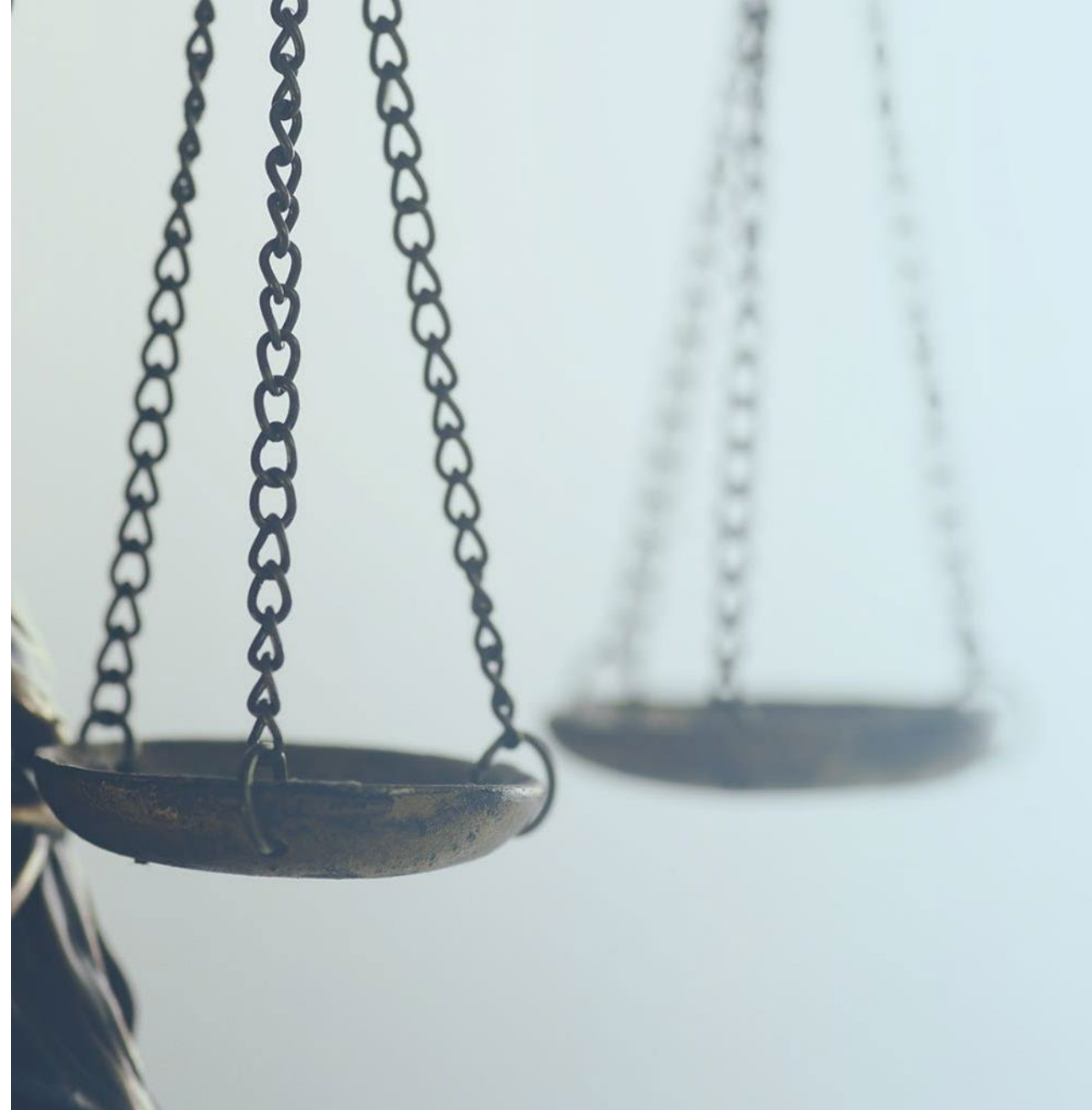
States With Paid Sick Leave Laws

- Arizona
- California
- Colorado
- Connecticut
- District of Columbia
- Maine
- Maryland
- Massachusetts
- Michigan
- Nevada
- New Jersey
- New Mexico
- New York
- Oregon
- Rhode Island
- Vermont
- Virginia
- Washington



(Really) New for 2023

- Federal Speak Out Act
- Illinois Laws effective 1/1/23
 - CROWN Act
 - ODRISA amendments
 - Child Bereavement Leave Act was amended and is now the Family Bereavement Leave Act



Questions?

Thank You for Attending



Please take a moment to **complete our event survey**.



Download the presentation slides from the Resource Center.



Certificates of attendance will be sent via email to those who have qualified. For any state where this program has been approved for CLE and a Sponsor is required to report attendance, we will report your attendance directly to that state.



If a question you asked did not get answered during the live webcast, **one of the presenters will answer your question via email**.

