

# Legislative Snippets

## Special Interest Articles:

- Amendment 70: Colorado \$12 Minimum Wage
- Amendment 71: Colorado Imposition of Distribution and Supermajority Requirements
- Guidance on National Origin Discrimination
- Anti-Retaliation Rules
- New "Smart" I-9 Form
- Local HR Professionals Engage in Advocacy

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Advancing the Profession.



## A Note from Lara...Thanks for the memories

Welcome to the last edition of my Legislative Snippets. This final edition has news on the outcomes of the election, legislation updates, changes you need to know about, court cases and other interesting snippets for you to put on your radar as well as in your legislative/legal toolkit.



This is my last Snippets as your State Legislative Affairs Director since this position is term limited and I have exhausted the amount of times I can hold this position. It has been an honor and pleasure to serve in this role. Thank you for your support over the last five years!

## DOL to Appeal Injunction on Overtime Rule

*Husch Blackwell reports:* On December 1, 2016, the Department of Labor (DOL) notified the U.S. District Court for the Eastern District of Texas that it plans to file an appeal with the Fifth Circuit Court of Appeals challenging the District Court's recent ruling that blocked enactment of the expanded overtime rule. (Read more about the injunction in our [previous alert](#).) Coincidentally, this notice was given on the same day the new overtime rule was supposed to take effect.

The appeal is not surprising, as the DOL was widely expected to seek a higher court's opinion on the preliminary injunction.

## No Stay for Other Pay-Related Regulations

*ebn reports:* A trio of recent court decisions staying implementation of the controversial persuader rule, most of the much-criticized Fair Pay and Safe Workplaces ("FPSW") executive order, and the Department of Labor's highly publicized overtime rule are a breath of fresh air for employers who have been struggling to keep up with the onslaught of new regulatory requirements advanced by the Obama administration. However, as the year winds down, employers should keep in mind that, as of yet, there has been no stay of the other pay-related regulations finalized earlier this year.

Although the regulations implementing the labor violation reporting and anti-arbitration aspects of the FPSW were temporarily blocked on Oct. 24, 2016, the paycheck transparency requirements are still slated to take effect on January 1, 2017. These requirements are applicable to federal contractors and subcontractors who enter into covered contracts exceeding \$500,000 (after Jan. 1) and require covered contractors to:

- Include certain required information (including hours worked and overtime hours by work week) on the paystubs for workers performing work on covered contracts;
- Provide written notice of exempt status to all exempt employees performing work on covered contracts;
- Provide written notice of independent contractor status to independent contractors performing work on covered contracts; and
- Incorporate language referencing the rule's requirements into all covered subcontracts. Click [here](#) to read more.

## SHRM Issues its Post-Election Outlook for HR Public Policy

*SHRM reports:* President-elect Donald Trump and his transition team have already begun to release details on policy priorities for his incoming administration in concert with efforts to assemble his cabinet. In addition, the 115th Congress will convene on January 3 with Republicans in control of both chambers of Congress. With President-elect Trump scheduled to be sworn into office as President on January 20, Republicans will control the White House and Congress for the first time since 2007. As with the start of every new Congress and administration, SHRM looks forward to working with the incoming presidential administration and Congress to advance effective workplace policies. Click [here](#) to read more.

## Election Results

### Amendment 70: Colorado \$12 Minimum Wage

Amendment 70 will amend Section 15 of Article XVIII of the Colorado Constitution. The following underlined text would be added and ~~struck through~~ text would be deleted:

**Section 15. State minimum wage rate.** Effective January 1, 2007~~17~~, Colorado's minimum wage ~~shall be~~ is increased to ~~\$6.85~~ \$9.30 per hour and ~~shall be~~ is ~~adjusted~~ increased annually by 0.90 each January 1 until it reaches \$12 per hour effective January 2020, and thereafter ~~is adjusted annually for inflation~~ cost of living increases, as measured by the Consumer Price Index used for Colorado. This minimum wage shall be paid to employees who receive the state or federal minimum wage. No more than \$3.02 per hour in tip income may be used to offset the minimum wage of employees who regularly receive tips.

Click [here](#) to read more.

### Amendment 71: Colorado Imposition of Distribution and Supermajority Requirements for Citizen-Initiated Constitutional Amendments

Amendment 71 will amend Section 1 of Article V and Section 2 of Article XIX of the Colorado Constitution. The following underlined text was added:

#### Article V

##### Section 1. General assembly - initiative and referendum.

(2.5) In order to make it more difficult to amend this constitution, a petition for an initiated constitutional amendment shall be signed by registered electors who reside in each state senate district in Colorado in an amount equal to at least two percent of the total registered electors in the senate district provided that the total number of signatures of registered electors on the petition shall at least equal the number of signatures required by subsection (2) of this section. For purposes of this subsection (2.5), the number and boundaries of the senate districts and the number of registered electors in the senate districts shall be those in effect at the time the form of the petition has been approved for circulation as provided by law.

(4) (a) The veto power of the governor shall not extend to measures initiated by or referred to the people. All elections on measures initiated by or referred to the people of the state shall be held at the biennial regular general election, and all such measures shall become the law or a part of the constitution, when approved by a majority of the votes cast thereon or, if applicable the number of votes required pursuant to paragraph (b) of this subsection (4), and not otherwise, and shall take effect from and after the date of the official declaration of the vote thereon by proclamation of the governor, but not later than thirty days after the vote has been canvassed. This section shall not be construed to deprive the general assembly of the power to enact any measure.

(b) In order to make it more difficult to amend this constitution, an initiated constitutional amendment shall not become part of this constitution unless the amendment is approved by at least fifty-five percent of the votes cast thereon; except that this paragraph (b) shall not apply to an initiated constitutional amendment that is limited to repealing, in whole or in part, any provision of this constitution.

#### Article XIX

##### Section 2. Amendments to constitution - how adopted.

(1) (a) Any amendment or amendments to this constitution may be proposed in either house of the general assembly, and, if the same shall be voted for by two-thirds of all the members elected to each house, such proposed amendment or amendments, together with the ayes and noes of each house thereon, shall be entered in full on their respective journals. The proposed amendment or amendments shall be published with the laws of that session of the general assembly. At the next general election for members of the general assembly, the said amendment or amendments shall be submitted to the registered electors of the state for their approval or rejection, and such as are approved by a majority of those voting thereon or, if applicable the number of votes required pursuant to paragraph (b) of this subsection (1), shall become part of this constitution.

(b) In order to make it more difficult to amend this constitution, a constitutional amendment shall not become part of this constitution unless the amendment is approved by at least fifty-five percent of the votes cast thereon; except that this paragraph (b) shall not apply to a constitutional amendment that is limited to repealing, in whole or in part, any provision of this constitution.

Click [here](#) to read more.

**For more election results, visit any of these sites:**

<http://results.enr.clarityelections.com/CO/63746/184350/Web01/en/summary.html>

<http://data.denverpost.com/election/results/2016/>

[https://ballotpedia.org/Colorado\\_elections,\\_2016](https://ballotpedia.org/Colorado_elections,_2016)

## National Legislation

### Pending Legislation

#### House Bill 612 – National Right-to-Work Act

To preserve and protect the free choice of individual employees to form, join, or assist labor organizations, or to refrain from such activities. Click [here](#) to read more.

#### House Bill 932 – Healthy Families Act

To allow Americans to earn paid sick time so that they can address their own health needs and the health needs of their families. Click [here](#) to read more.

#### House Bill 987 – Davis-Bacon Repeal Act

To repeal the wage rate requirements commonly known as the Davis-Bacon Act. Click [here](#) to read more.

#### House Bill 1147 – Legal Workforce Act

To amend the Immigration and Nationality Act to make mandatory and permanent requirements relating to use of an electronic employment eligibility verification system, and for other purposes. Click [here](#) to read more.

#### House Bill 1439 – Family and Medical Insurance Leave Act

To provide paid family leave benefits to certain individuals, and for other purposes. Click [here](#) to read more.

#### House Bill 1619 – Paycheck Fairness Act

To amend the Fair Labor Standards Act of 1938 to provide more effective remedies to victims of discrimination in the payment of wages on the basis of sex, and for other purposes. Click [here](#) to read more.

#### House Bill 1787 – Fair Pay Act of 2015

To amend the Fair Labor Standards Act of 1938 to prohibit discrimination in the payment of wages on account of sex, race, or national origin, and for other purposes. Click [here](#) to read more.

#### House Bill 2654 – Pregnant Workers Fairness Act

To eliminate discrimination and promote women's health and economic security by ensuring reasonable workplace accommodations for workers whose ability to perform the functions of a job are limited by pregnancy, childbirth, or a related medical condition. Click [here](#) to read more.

#### House Bill 2260 – Sarah Grace-Farley-Kluger Act

To amend the Family and Medical Leave Act of 1993 to provide leave because of the death of a son or daughter. Click [here](#) to read more.

#### House Bill 3071 – Schedules That Work Act

To permit employees to request changes to their work schedules without fear of retaliation and to ensure that employers consider these requests, and to require employers to provide more predictable and stable schedules for employees in certain occupations with evidence of unpredictable and unstable scheduling practices that negatively affect employees, and for other purposes. Click [here](#) to read more.

#### House Bill 3222 – Employee Rights Act

To provide protections for workers with respect to their

right to select or refrain from selecting representation by a labor organization. Click [here](#) to read more.

#### House Bill 4773 – Protecting Workplace Advancement and Opportunity Act

This bill declares that the proposed or the final rule of the Department of Labor entitled "Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees" shall cease to have any force or effect. The rule revises the "white collar" exemption of executive, administrative, professional, outside sales, and computer employees from minimum wage and maximum hour, or overtime, requirements of the Fair Labor Standards Act of 1938 (FLSA). Click [here](#) to read more.

#### House Bill 5813 – Overtime Reform and Enhancement Act

This bill directs the Department of Labor, by December 1, 2016, to revise the rule published in the Federal Register on May 23, 2016, relating to exemptions (from the minimum wage and overtime pay requirements of the Fair Labor Standards Act) regarding the rates of pay for executive, administrative, professional, outside sales, and computer employees. Click [here](#) to read more.

#### Senate Bill 30 – Forty Hours is Full Time Act of 2015

Amends the Internal Revenue Code, with respect to the employer mandate to provide health care coverage, to: (1) modify the formula for calculating the number of full-

time employees employed by an applicable large employer subject to the mandate; and (2) define a "full-time employee" as an employee who is employed on average at least 40 hours per week (currently, 30 hours). Click [here](#) to read more.

#### Senate Bill 233 – Working Families Flexibility Act of 2015

Amends the Fair Labor Standards Act of 1938 to authorize private employers to provide compensatory time off to private employees at a rate of 1 1/2 hours per hour of employment for which overtime compensation is required. Authorizes an employer to provide compensatory time only if it is in accordance with an applicable collective bargaining agreement or, in the absence of such an agreement, an agreement between the employer and employee. Click [here](#) to read more.

#### Senate Bill 497 – Healthy Families Act

To allow Americans to earn paid sick time so that they can address their own health needs and the health needs of their families. Click [here](#) to read more.

#### Senate Bill 3464 – Overtime Reform and Review Act

To provide incremental increases to the salary threshold for exemptions for executive, administrative, professional, outside sales, and computer employees under the Fair Labor Standards Act of 1938, and for other purposes. Click [here](#) to read more



## News from the EEOC

### EEOC Issues Enforcement Guidance on National Origin Discrimination

*EEOC reports:* The U.S. Equal Employment Opportunity Commission (EEOC) has issued its updated enforcement guidance on national origin

discrimination to replace its 2002 compliance manual section on that subject, the federal agency announced today.

The Commission has also issued two short user-friendly resource documents to

accompany the guidance: a question-and-answer publication on the guidance document and a small business fact sheet that highlights the major points in the guidance in plain language. Click [here](#) to read more.



## News from OSHA

### OSHA Anti-Retaliation Rules Survive Challenge

*SHRM reports:* A federal judge decided not to stop a new Occupational Safety and Health Administration (OSHA) record-keeping rule's anti-retaliation provisions from taking effect on Dec. 1.

The controversial provisions will require employers to inform employees about their right to report workplace injuries and illnesses without facing retaliation. They will also restrict workplace safety incentives and drug-testing programs.

Several businesses and trade associations challenged OSHA's authority to create these provisions in a lawsuit filed with the U.S. District Court for the Northern District of Texas. Click [here](#) to read more.



## News from Healthcare Reform

### IRS Delays Employers' Deadline to Distribute ACA Reporting Form 1095 to Employees

*SHRM reports:* In a move that caught many in the benefits

community by surprise, the [IRS issued Notice 2016-70](#) on Nov. 18, giving employers subject to the Affordable Care Act's (ACA's) 2016 information-reporting

requirements up to an additional 30 days to deliver these forms to employees. Click [here](#) to read more.



## Education

### SHRM Employment Law and Legislative Conference

Monday, March 13<sup>th</sup> – 15<sup>th</sup>  
Washington, DC  
Click [here](#) to register.

## In Other News...

### Government Contractor Minimum Wage to Rise

*SHRM reports:* When President Obama signed Executive Order 13658 establishing a minimum wage for federal contractors, he also authorized the Secretary of Labor to determine the hourly

rate for subsequent years. With this authority, the Secretary of Labor has announced the new minimum hourly rate effective Jan. 1, 2017. Click here to read more.

### Start Using New 'Smart' Form I-9 by Jan. 22

*SHRM reports:* The newest version of the Form I-9 is now available. Employers must start using the new version no later than Jan. 22, 2017, when all previous versions will be invalid.



## Advocacy

### Get Involved

SHRM understands how vital member participation is to advancing the views of the profession on Capitol Hill or in state legislatures. The **SHRM Advocacy Team** initiative is designed for HR professionals to participate and influence federal/state public policy and regulatory efforts. As an advocate for the HR community, it is

important that you keep your elected officials informed on how public policy issues can affect employees, employers, and the HR profession as a whole.

SHRM provides our members with other opportunities to "put a face" behind HR and to let their voices be heard. Our

Relationship Building Activities with public policymakers include:

- [Write Your Elected Official](#)
- [Day Inside the Beltway](#)
- [Day Inside the District](#)

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## SHRM's Advocacy App

Use the app to keep up-to-date on all legislative and agency proposals affecting the workplace. Among its features:

- Take Action button: Immediately respond to calls to action on HR-related issues before state or federal lawmakers.

- Lawmaker Directory button: Connect with your state and federal lawmakers.
- Advocacy Team Resources button: Join SHRM's A-Team and access advocacy resources.

- Key Issues button: Get briefings on public-policy issues affecting the workplace and SHRM position statements, as well as talking points on those issues.
- Lawmaker Event Feedback button: Send feedback to SHRM

about the result of a meeting or conversation with a lawmaker.

- Spread the Word button: Engage with elected officials and fellow HR professionals on social media.

Click [here](#) to learn more.

## SHRM's A-Team Advocacy Captains

Reach out to your Advocacy Captain to partner with them on A-Team events and initiatives. They are waiting to hear from you!

### Senator Michael Bennet

Lisa Ponder  
[lisa.ponder@gmail.com](mailto:lisa.ponder@gmail.com)

### Senator Cory Gardner

Dani Kimlinger  
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### House Representative Ken Buck

Marla Jones-Newman  
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### House Representative Mike Coffman

Sylvia Francis  
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### House Representative Diana DeGette

Karen Bamburger  
[Karen\\_bam@yahoo.com](mailto:Karen_bam@yahoo.com)

Meredith Burcham  
[mburcham@ctsi.org](mailto:mburcham@ctsi.org)

### House Representative Doug Lamborn

Jonathan Liepe  
[jonathanliepe@gmail.com](mailto:jonathanliepe@gmail.com)

Linda Sommer  
[lksommer@comcast.net](mailto:lksommer@comcast.net)

### House Representative Ed Perlmutter

Jim Kingen  
[jdkingen@gmail.com](mailto:jdkingen@gmail.com)

### House Representative Jared Polis

April Duffy  
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Adrienne Robinson  
[Adriennehr@msn.com](mailto:Adriennehr@msn.com)

### House Representative Scott Tipton

Shelly Williams  
[shellyw@gjcity.org](mailto:shellyw@gjcity.org)

## Local Human Resource Professionals Participate in DOL Overtime Round Table

On August 9<sup>th</sup> and 10<sup>th</sup>, the Small Business Administration held round tables with the Department of Labor to discuss changes to the overtime regulations. Two of our esteemed HR leaders: Sylvia Francis, CO-SHRM Past Director and Liz Wilson, BAHRA President-Elect participated along with Meredith Nethercutt, SHRM Senior Associate for Member Advocacy.

Sylvia reported, "The most important takeaway I had was learning the reality of the FLSA changes on small businesses. The changes actually will have

little impact on RTD but listening to the small business owners and hearing how the change will impact their organizations, their bottom lines and possibly their livelihood was pretty powerful."

Liz commented, "The small business advocacy event was a great experience on several levels. As a SHRM chapter leader, it raised my awareness to the challenges of small and growing businesses in the Boulder region as well as the vast resources owners can tap into locally and federally. I also got to know a talented, rising HR professional who will be

active in our chapter. Our presence has already raised awareness in the Boulder business community, as evidenced by two recent requests to provide expert input for the SBDC and a local school district long-term strategic plan. As a business owner myself who relocated to the area several years ago, I made solid connections with other HR and business leaders. Finally, as a member of the HR and SHRM communities, I expanded my network, which is ALWAYS valuable."

It is great to see human resource professionals engaging in these types of activities because their voice is so valuable on both sides of the table. Plus, it's a win-win for the participants due to their expanded knowledge on the topic as well as making great networking connections! I hope to hear about more of these types of events and HR professional's involvement.

Submitted by: Lara Makinen

## Interesting Cases...

### Court Upholds Disney's IT Outsourcing

*SHRM reports:* Several months ago, the media reported on Disney's outsourcing of its IT staff—and the company's requirement that laid-off employees train their replacements, who were immigrants with H-1B visas.

One group of affected employees recently filed a challenge in the U.S. District Court for the Middle District of Florida, alleging that both Disney and contractor HCL America Inc. violated civil racketeering laws. The court, however, found that the allegations were not sufficient to demonstrate unlawful racketeering or conspiracy.

Leo Perrero was an IT worker employed by Walt Disney Parks and Resorts U.S. Inc. until he received a 90-day notice of his termination in January 2015. Perrero, along with several hundred other Disney IT workers, were allegedly told that they would be replaced by individuals employed by HCL America, who were foreign nationals holding H-1B visas. Click [here](#) to read more.

### Employers Can Require Arbitration of USERRA Claims

*SHRM reports:* A reservist employee fired after being called into active duty in Afghanistan had to arbitrate his Uniformed Services Employment and Reemployment Rights Act (USERRA) claim based on the arbitration clause in his employment agreement, the 9th U.S. Circuit Court of Appeals ruled.

Kevin Ziober served in the U.S. Navy Reserve and worked in his civilian life as an operations director for defendant BLB Resources Inc., a real estate marketing and management firm. Approximately six months after joining the company, Ziober signed a bilateral arbitration agreement. This agreement required arbitration of "any controversy, claim or dispute between Employee and the Company ... relating to or arising out of employee's employment or the cessation of that employment."

Ziober told the company that the Navy was recalling him to active duty in Afghanistan. On Ziober's last scheduled day of work, BLB informed him that he would not have a job upon his return to civilian life. Click [here](#) to read more.

### Court Agrees with Federal Agency's Position that Sexual Orientation Discrimination is a Form of Sex Discrimination Prohibited by Title VII

*EEOC reports:* The U.S. Equal Employment Opportunity Commission (EEOC) announced today that a federal court has denied a motion to dismiss a sex discrimination lawsuit filed by EEOC, ruling that sexual orientation discrimination is a form of sex discrimination prohibited by Title VII of the Civil Rights of 1964.

On March 1, EEOC filed the U.S. government's first sex discrimination lawsuit based on sexual orientation, U.S. EEOC v. Scott Medical Health Center (Case 2:16-cv-00225-CB), in U.S. District Court for the Western District of Pennsylvania in Pittsburgh. In its complaint, EEOC charged that a gay male employee was subjected to sex discrimination in the form of harassment because of his sexual orientation and then forced to quit his job rather than endure further harassment. In response to EEOC's lawsuit, the defendant filed a motion to dismiss the case. Click [here](#) to read more.



## Well Said...

As an HR professional, I have spent most of my career telling newcomers into the field that being a "people person" isn't always the key to being a great HR professional because we need to be seen as neutral so as not to develop a perceived bias when called upon in employee relations and other situations. This article from [www.shrm.org](http://www.shrm.org) sums up my sentiments on this topic perfectly....

### HR and Friendship: A Tricky Business

For HR professionals, workplace friendships can be tricky. Should you have friends at work?

"I feel isolated in my HR department of one," a peer told me. "But I can't make friends here—I'm afraid it will come across as wrong with the

employees I *don't* make friends with."

She described the experience of a colleague at another organization who became close to a senior leader. "Because of their friendship, employees there questioned HR's objectivity in performance management debriefs and in other situations," she said.

It's important for you as an HR professional to make ties with people, getting them to trust, confide in and even like you (sometimes). Building and maintaining internal and external relationships, and helping employees navigate relationships within and outside of the workplace, are essential elements of the *Relationship*

*Management* competency. After all, HR is about people. But it's also about *Ethical Practice*, the competency that includes maintaining confidentiality and avoiding bias.

Reprinted from: [www.shrm.org](http://www.shrm.org)



## Colorado SHRM State Council

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We're on the Web!

Check us out at:  
[www.COSHRM.org](http://www.COSHRM.org)

### Check Out the CO-SHRM Government Affairs Page

Have you been to the CO-SHRM Government Affairs page lately? Here are some of the links you can find at [www.coshrm.org](http://www.coshrm.org) on the Government Affairs page:

- SHRM Government Affairs News

- Back issues of Legislative Snippets
- SHRM Monthly Legislative Update
- Colorado Legislative Information

- Colorado General Assembly Information
- Local Chapter Legislative Affairs Contact Information
- Colorado Voting Information
- As well as numerous internet resource links.

### Let Recruiters Find You!

SHRM's Resume Center attracts employers who are in search of the best HR candidates. (Your name and your employer's name can

remain anonymous.) Add your resume to the Center and get noticed by employers.

Click [here](#) for the SHRM Jobs page.

Reprinted from [www.shrm.org](http://www.shrm.org)

### If You Are Certified, You Should Read This:

Many HR professionals are certified and seek to obtain the necessary credits in order to recertify every three years. But, many also do not know simple tricks to help rack up credits in a very easy way.

For example, did you know that you can receive credit for:

- attending conferences
- being a member of SHRM
- being a member of the SHRM Advocacy Team

- writing letters to Congress
- participating in certain SHRM surveys
- attending certain webinars
- volunteering with your local SHRM chapter.

### Stay Informed...

Here are some resources to help keep you up to date:

[www.whitehouse.gov](http://www.whitehouse.gov)  
[www.dol.gov](http://www.dol.gov)  
[www.justice.gov](http://www.justice.gov)  
[www.supremecourt.gov](http://www.supremecourt.gov)  
[www.senate.gov](http://www.senate.gov)  
[www.house.gov](http://www.house.gov)  
[www.congress.org/news](http://www.congress.org/news)  
[www.congress.gov](http://www.congress.gov)  
[www.leg.state.co.us](http://www.leg.state.co.us)

[www.colorado.gov/cs/Satellite/CGA-LegislativeCouncil/CLC/1200536089188](http://www.colorado.gov/cs/Satellite/CGA-LegislativeCouncil/CLC/1200536089188)  
[www.findlaw.com](http://www.findlaw.com)  
[www.realclearpolitics.com](http://www.realclearpolitics.com)  
[www.pocketgov.com](http://www.pocketgov.com)  
[www.legispeak.com](http://www.legispeak.com)  
[www.shrm.org/advocacy](http://www.shrm.org/advocacy)  
[www.hrlegalnews.com](http://www.hrlegalnews.com)  
[www.blr.com](http://www.blr.com)  
[www.elc.com](http://www.elc.com)

### SHRM Express Request: Colorado State Law Resources

SHRM's Information Center has compiled a variety of online employment law resources applicable to your state. Click [here](#) to sign up.