

# ERISA Litigation

Polsinelli brings broad experience and a deep understanding of ERISA Litigation. Polsinelli's ERISA Litigation practice has represented clients in all aspects of ERISA-related matters throughout the nation.

## What Sets Us Apart

- **Unparalleled ERISA knowledge:** With more than 40 executive compensation, employee benefits and ESOP professionals, we have one of the largest and most decorated ERISA practices in the country. Our attorneys have been recognized by *Chambers USA*, *BTI*, *The Legal 500*, and *Best Lawyers* as being best-in-class. Our litigators partner with our experienced multidisciplinary team of regulatory and plan lawyers to ensure that our strategies are practical and comprehensive in theory and application.
- **Nationally capable trial-ready team:** Our ERISA litigators are trial lawyers at heart and advocate for clients across the full range of ERISA and benefits-related issues. We advance our clients' interests at every stage – from risk mitigation and avoidance to compliance monitoring, pre-suit assessments, rights enforcement, trial, and appeal.
- **Practice depth:** Our ERISA litigation team delivers strategic, results-driven representation across the United States. With deep experience in employee benefits law, we handle complex disputes (from pre-litigation counseling to navigating federal courts).
- **Technology integration:** We embrace technology to collaborate with our clients and deliver more transparent, efficient and cost-effective legal services tailored to our clients needs, including case management software, predictive analytics, and advanced e-discovery tools.

Our team of litigators represents employers, ERISA plans, plan sponsors, Committee members, plan administrators, third-party administrators, fiduciaries, trustees, claim adjudicators, underwriters, insurers and others in ERISA litigation matters. We also collaborate with Polsinelli's Employee Benefits and ESOP practices to ensure that our strategy is practical and comprehensive, not just in theory but also in application.

Whether dealing with preemption, removal, exhaustion of administrative remedies, standard or review, scope of review, class actions, motion practice and other strategies associated with ERISA's remedial enforcement scheme, Polsinelli's ERISA litigators use their knowledge of the complexities of ERISA to benefit clients, often obtaining dismissal of such claims or summary judgment in favor of their clients.

## Matters

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- Co-lead defense trial counsel in an ERISA class action brought by a group of former employees seeking enhanced retirement benefits under an ERISA plan.

- Obtained highly favorable resolution on behalf of multinational data networking and telecommunications equipment company following the filing of strategic motions in ERISA action.
- Co-lead defense trial counsel in an ERISA mass action brought by a group of former employees seeking severance benefits. Case successfully resolved following bench trial on the merits.
- Lead defense counsel on behalf of corporate defendants who are accused of several ERISA violations related to the marketing and administration of level-funded group health plans.
- Achieved multiple favorable results on behalf of major health insurance carriers in ERISA denial-of-benefits actions.
- Represented a privately held coal-mining company in an ERISA denial-of-benefits matter involving long-term disability benefits.
- On numerous occasions, resolved threatened ERISA litigation matters against Fortune 100 pharmacy benefit management organizations, medical device manufacturers, and multinational pharmaceutical companies.
- Represented an energy services ESOP to successfully overcome IRS audit and threatened litigation.
- Represented a health insurer in nationwide ERISA and RICO class actions regarding proper reimbursement methodologies for out-of-network claims.
- Successfully obtained summary judgment on behalf of employer and employer's self-funded group health benefits plan in a denial of benefits action in a first impression case involving the Mental Health Parity Act.
- Successfully obtained highly favorable resolution on behalf of multinational data networking and telecommunications equipment manufacturer following the filing of strategic motions in ERISA action where the hospital alleged company breached ERISA by failing to pay benefits and acted fraudulently and in bad faith.
- Obtained a motion for a dismissal in an ERISA dispute in which co-defendant paid approximately \$24 million in settlement.
- Represented financial services company in class action litigation regarding 401(k) investments alleged to have been selected in violation of ERISA's fiduciary duties.
- Successfully dismissed an ERISA claim against a foreign client for allegations of withdrawal liability to a pension plan on the basis of improper jurisdiction. Decision was appealed to the 10th Circuit and successfully obtained an opinion sustaining the dismissal.
- Successfully obtained judgments on behalf of clients in two denials of benefits cases before federal judges, totaling over \$1 million each.

## Polsinelli at Work Blog

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April 28, 2026

### **The New Rules of Federal Contracting: Redefining DEI Compliance**

The federal contracting landscape for diversity, equity and inclusion (DEI) initiatives is shifting rapidly. On March 26, 2026, President Trump issued Executive Order 14398, directing federal agencies to prohibit "racially discriminatory DEI activities" in federal contracts and across the...

April 27, 2026

### **Virginia's New Paid Family and Medical Leave Law Is Not Just FMLA with Pay Added**

Key Highlights On April 22, 2026, Virginia approved a statewide paid family and medical leave (PFML) program, joining several other states across the nation that have enacted such programs. The new program will be administered by the Virginia Employment...

April 24, 2026

### **From Fragmentation to Framework: DOL Proposes a Streamlined Joint Employment Rule**

Key Takeaways: The DOL has proposed a new multi-factor standard addressing vertical and horizontal joint employer status under the FLSA, FMLA and MSAWPA. The proposal could redraw wage-and-hour liability boundaries by expanding when multiple entities share responsibility. The Department...

April 22, 2026

### **New York State Extends Credit Check Restrictions Beyond New York City**

Key Highlights Effective April 18, 2026, New York State now generally prohibits employers from requesting or using consumer credit history for employment purposes, subject to limited statutory exemptions. The statute defines “consumer credit history” broadly enough to reach credit...

April 13, 2026

### **Hot Flashes, New Laws: The Rise of State Menopause Protections**

Key Highlights Menopause protections are emerging at the state level, led by Rhode Island, which became the first state to explicitly prohibit menopause discrimination and require workplace accommodations — highlighting a growing shift in employment law. A significant...

April 8, 2026

### **Where Identity Meets Precedent: The EEOC Addresses Bathroom and Locker Room Access Under Title VII**

Key Highlights The Equal Employment Opportunity Commission has held Title VII permits federal agencies to maintain single-sex bathrooms/locker rooms and exclude transgender employees from opposite-sex facilities. While the decision applies only to the federal sector, it provides a roadmap...

March 27, 2026

### **Washington State Joins Growing List of States Banning Noncompetes**

Key Highlights Washington to Ban Most Noncompetes: ESHB 1155 renders nearly all noncompetition agreements void and unenforceable effective June 30, 2027. The law provides an expanded definition that targets both traditional noncompetes and contractual workarounds, and it will apply to...

March 26, 2026

### **No Papers, No Excuse: New Jersey Supreme Court Safeguards Wage Protections for Undocumented Workers**

Key Takeaways The New Jersey Supreme Court ruled that employers cannot evade state wage obligations based on a worker’s undocumented status in violation of federal immigration law. Employers who knowingly hire or retain undocumented workers must still comply with...

March 20, 2026

### **To Exclude or Not To Exclude: Illinois Supreme Court Expands Employer Wage Liability for Off-the-Clock Work**

Key Takeaways The Illinois Supreme Court Expands the Boundaries of Compensable Hours : The Illinois Supreme Court held that the Illinois Minimum Wage Law (IMWL) does not automatically incorporate federal Portal-to-Portal Act limitations. Rather, the statute requires compensation for...

March 11, 2026

### **DOL Issues Opinion Letter Confirming Inclusion of Bonus Payments in Regular Rate of Pay**

Key Highlights DOL Clarifies Bonus Treatment Under the FLSA: In Opinion Letter FLSA2026-2 (Jan. 5, 2026), the Department of Labor confirmed that certain performance-based bonuses must be included in the “regular rate of pay” when calculating overtime. Advance Promises...

March 4, 2026

### **California Wage-and-Hour Compliance in 2026: Core Labor Code Risks and the Continuing Impact of PAGA**

Key Highlights PAGA reforms elevate the importance of proactive compliance: The 2024 amendments reallocate penalties, expand cure opportunities, and give courts more discretion to reduce penalties for good-faith errors—making prompt remediation and well-documented compliance efforts critical in 2026. Wage-and-hour...

March 3, 2026

### **Turning Back Time: The DOL and NLRB Revive Trump-Era Classification Standards**

Key Takeaways: DOL Moves to Reinstate Business-Friendly Independent Contractor Standard : The Department of Labor has proposed rescinding the 2024 independent contractor rule and returning to a more flexible “economic reality” test that emphasizes two core factors — control...

February 20, 2026

### **From Executive Orders to Enforcement: Polsinelli’s 2026 Playbook**

With a wave of rapid-fire executive orders and the expanding use of artificial intelligence in agency enforcement, 2026 is already shaping up to be a pivotal year in Washington. But beyond the headlines, what do these developments really mean...

February 12, 2026

### **New York City Expands Earned Safe and Sick Time Again**

Key Highlights New York City’s Earned Safe and Sick Time Act (ESSTA) adds 32 hours of frontloaded unpaid safe/sick time to its existing paid safe/sick time requirements for employers. The ESSTA also expands the permissible uses for both types...

February 10, 2026

### **Ninth Circuit Ruling Sets the Stage for the Release of Thousands of EEO-1 Reports**

Over two years ago, the Northern District of California issued an order requiring the OFCCP to disclose EEO-1 Type 2 reports to the Center for Investigative Reporting (“CIR”) over the objections of thousands of employers, as previously reported ....

February 6, 2026

### **FTC Emphasizes Case-By-Case Approach in Workshop on Noncompete Agreements**

The Federal Trade Commission (FTC) has reaffirmed that it will pursue noncompete enforcement through individual cases rather than sweeping rulemaking. In a recent public workshop featuring each of the sitting commissioners and panels of economists and current and former...

February 2, 2026

### **DOJ Challenges Minnesota’s Affirmative Action Hiring Program**

Key Highlights The U.S. Department of Justice (DOJ) filed a lawsuit against the State of Minnesota challenging its affirmative action hiring program. It alleges that Minnesota’s requirement to consider race, sex and other protected characteristics in public employment decisions...

January 29, 2026

### **Are Brand Ambassadors Really Independent Contractors?**

Key Highlights Brand ambassadors and influencers can present growing misclassification exposure. Luxury, retail and hospitality brands increasingly rely on short-term, brand-facing talent and when these workers are closely integrated into marketing, customer engagement and brand presentation, they can trigger...

January 28, 2026

### **California Refines Pay Transparency Requirements for Employers**

At a Glance Clarified Pay Transparency Requirements Effective Jan. 1, 2026: California employers are now able to publish a good-faith estimate of the salary or hourly wage they reasonably expect to pay a new hire at the time of...

January 9, 2026

### **2026 Employment Law Updates**

Effective January 1, 2026, numerous state and local government employment laws have taken effect. Below is a non-exhaustive summary of key employment law updates for January 2026. For additional insights, register for the 2026 Employment Law Developments: Key Considerations...

January 5, 2026

### **New York's "Stay or Pay" Prohibition Could Implicate Common Employee Compensation Arrangements**

Key Highlights New York prohibits arrangements requiring employees to repay or reimburse their employer: The newly enacted Trapped at Work Act bars employers from enforcing agreements that require workers to repay or reimburse training or other costs or payments...

December 29, 2025

### **New York Codifies Disparate Impact Liability Under the State Human Rights Law**

Key Highlights: A recent amendment expressly codifies disparate impact liability under the New York State Human Rights Law (NYSHRL) for employment discrimination claims. This comes as the U.S. Equal Employment Opportunity Commission has backed away from disparate impact theories...

December 19, 2025

### **Not Done Yet: FTC to Hold Workshop in 2026 Regarding Non-Competition Agreements**

Key Takeaways FTC to revisit a national non-compete ban: The FTC will host a Jan. 27, 2026 workshop as it restarts efforts to regulate or potentially ban most non-competition agreements nationwide. Renewed effort follows prior rule's collapse: The workshop...

December 4, 2025

### **OFCCP Raises Jurisdictional Thresholds Under Two Equal Employment Opportunity Mandates**

Key Highlights Under Section 503 of the Rehabilitation Act (Section 503) (extending protection to individuals with disabilities), the basic coverage threshold increased from \$15,000 to \$20,000. Under the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) (extending protection based on...

October 24, 2025

### **A Republican-Led NLRB May Soon Revisit Expanded Remedies and Other Labor Precedents**

Key Highlights NLRB Poised for a Partisan Shift: With the Senate HELP Committee advancing two of President Trump's nominees, the NLRB may soon regain a quorum and shift to its first Republican-led majority since 2021 — potentially signaling changes...

September 24, 2025

### **The \$100,000 Work Visa: Who's Affected and What's Next**

On Sept. 19, 2025, President Trump signed a Proclamation, Restriction on Entry of Certain Nonimmigrant Workers, requiring a \$100,000 payment with any new H-1B petition filed on or after Sept. 21, 2025, including those for the 2026 lottery....

September 18, 2025

### **Not Out of the Woods: FTC Enforcement Priority Keeps Non-Competes in Crosshairs for Certain Industries**

Key Highlights End of nationwide ban efforts: The FTC has officially moved to dismiss its appeals and voted to vacate its proposed nationwide non-compete ban, signaling the end of its push for a universal prohibition. Shift to targeted enforcement:...

August 6, 2025

### **Federal Office of Personnel Management Issues Memorandum Encouraging Employees' Religious Expression in the Public Sector**

On July 28, 2025, the United States Office of Personnel Management ("OPM") issued a memorandum endorsing federal employees expressing their religious beliefs in the workplace. Specifically, OPM Director Scott Kapor instructed government agencies to "allow personal religious expression..."

July 31, 2025

### **Washington's Mini-WARN Act Goes Into Effect**

What You Need to Know: Washington's new mini-WARN Act applies to smaller employers with 50 or more full-time employees, unlike the federal WARN Act, which only applies to employers with 100 or more employees. The new mini-WARN Act includes...

July 18, 2025

### **President Trump Nominates Two for NLRB, Aiming to Restore Quorum**

On July 17, 2025, President Trump announced his selection of two choices for the National Labor Relations Board (NLRB). The President tapped Scott Mayer and James Murphy to fill those seats. If confirmed, Mayer and Murphy would fill two...

July 16, 2025

### **DOL Ends "Double" Damages in Pre-Litigation FLSA Cases**

What you need to know: DOL will no longer seek liquidated (double) damages in pre-litigation FLSA settlements, limiting recovery to unpaid wages. Liquidated damages still apply in court cases, so employers remain at risk in litigation. Early in the...

July 8, 2025

### **Ninth Circuit Confirms Bristol-Myers' Rule Applies to Notice in FLSA Collective Actions**

The Ninth Circuit has now joined a growing number of appellate courts holding that, in Fair Labor Standards Act (FLSA) collective actions, personal jurisdiction must be determined on a claim-by-claim basis when general jurisdiction over the defendant is absent....

June 26, 2025

### **New Restrictions on Non-Compete Agreements Coming to Colorado**

Colorado generally prohibits restrictive covenants, except in narrow circumstances. On May 8, 2025, the Colorado Legislature passed Senate Bill 25-083, which imposes three significant new limitations on the use of restrictive covenants for certain healthcare providers and narrows their...

June 25, 2025

### **DHS Sending Termination Notices to CHNV Foreign Nationals**

On June 12, 2025, the Department of Homeland Security (DHS) began sending termination notices to foreign nationals paroled into the United States under a parole program for Cubans, Haitians, Nicaraguans and Venezuelans (CHNV). The terminations are legally allowed under a...

June 23, 2025

### **Texas Noncompete Shakeup: New Frontier for Health Care Practitioners**

Sweeping changes to noncompete covenants are set to take effect on September 1, 2025, for health care employers in Texas. These changes stem from recent amendments to Texas' noncompete statute. These changes will: Expand Texas' heightened enforceability requirements...

June 6, 2025

### **Supreme Court Rejects Heightened Evidentiary Requirement for Majority Groups in Title VII Cases**

What You Need to Know: Equal Protection Under Title VII: On June 5, 2025, the U.S. Supreme Court unanimously ruled that Title VII's protections apply equally to all individuals, regardless of whether they are in a majority or minority...

June 4, 2025

### **Understanding OSHA's Updated Site-Specific Targeting (SST) Inspection Plan**

What You Need to Know: OSHA's Updated SST Plan Targets High-Risk Workplaces Using New Data : The revised Site-Specific Targeting (SST) Inspection Plan now relies on injury data from OSHA's Injury Tracking Application (ITA), focusing on high-hazard, non-construction establishments...

May 21, 2025

### **2024 EEO-1 Component 1 Report Filing Now Open**

**Key Takeaways** The U.S. Equal Employment Opportunity Commission 2024 EEO-1 Component 1 Report filing opened on May 20, 2025, with a submission deadline of June 24, 2025, and no extensions being granted. Employers must select a workforce snapshot...

May 20, 2025

### **Missouri's Repeal of Paid Sick Leave and Portions of Minimum Wage: What's Next for Proposition A**

On May 14, 2025, the Missouri Senate voted 22-11 to repeal portions of Proposition A, the voter-approved initiative that increases the state's minimum wage and requires employers to provide earned paid sick leave. The legislation repeals two key pieces...

May 14, 2025

### **DOL Abandons 2024 Independent Contractor Test**

**What You Need to Know** The U.S. Department of Labor has announced it will no longer enforce the 2024 independent contractor rule under the Fair Labor Standards Act (FLSA), reverting to the more employer-friendly 2008 "economic reality" test. The...

May 8, 2025

### **EEOC EEO-1 Reporting for 2024: Coming Soon**

**Key Takeaways** The 2024 EEO-1 Report is expected to open May 20 pending approval of the instruction book and justification. The EEO-1 is expected to eliminate the option to report non-binary employees. Employers should confirm how their system collects...

May 2, 2025

### **New Executive Order Seeks To Eliminate Disparate Impact Liability**

**Key Takeaways** Disparate impact liability holds employers accountable for policies that appear neutral, but disproportionately harm a particular race, sex or a protected group, even without discriminatory intent. This EO significantly reduces federal agency enforcement of disparate impact claims,...

April 30, 2025

### **Missouri Supreme Court Upholds Proposition A: Paid Sick Leave Takes Effect May 1, 2025**

On April 29, 2025, the Missouri Supreme Court ruled to uphold Proposition A, the voter-approved initiative that increases the state's minimum wage and requires employers to provide earned paid sick leave. The law will take effect as planned on...

April 4, 2025

### **Preparing for the Implementation of Missouri Paid Sick Time: Key Deadlines and Compliance Requirements**

The earned paid sick time provisions of Proposition A are set to take effect on May 1, 2025. Missouri Proposition A requires employers to provide employees working in Missouri at least 1 hour of sick leave for every 30...

March 27, 2025

### **Navigating Whistleblower Protections and Compliance with DEI Executive Orders**

As Polsinelli has discussed, President Donald Trump issued two Executive Orders, No. 14151 and No. 14173 (the "Orders"), targeting DEI (Diversity, Equity and Inclusion) programs and race- or gender-based preferences. The legal landscape surrounding these Orders continues to evolve....

March 24, 2025

### **EEOC Guidance on DEI-Related Discrimination in the Workplace**

On March 20, 2025, the Equal Employment Opportunity Commission (EEOC) released two key guidance documents focusing on DEI-related discrimination in the workplace. These documents are written as guidance for employees and outline ways the EEOC believes initiatives could lead...

March 24, 2025

**New Executive Order Rescinds the \$17.75 Per Hour Federal Contractor Minimum Wage**

On March 14, 2025, President Trump issued an Executive Order rescinding 18 previous orders, including Executive Order 14026, which had raised the minimum wage for federal contractors to \$17.75 per hour, higher than both the federal and most state...

March 20, 2025

**DEI-Related Executive Orders Move Forward After Fourth Circuit Grants Stay of Preliminary Injunction; Federal Agency Actions**

On March 14, 2025, the Fourth Circuit Court of Appeals allowed the Trump administration to enforce executive orders (EOs) aimed at restricting Diversity, Equity and Inclusion (DEI) programs while litigation continues. These EOs have sparked legal challenges, with the National Association...

February 7, 2025

**Employment Law Updates for the New Year**

Many state and local government employment laws went into effect January 1, 2025. Here is a non-exhaustive list of 2025 employment law updates. Contact your Polsinelli attorney if you have any questions or need assistance regarding employment law compliance...

February 4, 2025

**When ICE Knocks: Immigration Enforcement in the New Administration**

Introduction Since President Trump's inauguration, the administration has underscored its commitment to prioritizing immigration enforcement. This shift includes an increase in U.S. Immigration and Customs Enforcement ("ICE") raids and the rescission of previous policies that restricted federal immigration authorities...

January 23, 2025

**New York's Impending WARN Notice Requirement for Artificial Intelligence Related Layoffs Highlights Proliferating Nationwide Requirements**

During her 2025 State of the State Address on January 14, 2025, New York Governor Kathy Hochul announced a plan to support workers displaced by Artificial Intelligence (AI) by requiring employers who engage in mass layoffs or closings subject...

January 22, 2025

**President Trump Revokes Affirmative Action Requirement for Federal Government Contractors**

On January 21, 2025, President Trump issued an Executive Order revoking Executive Order 11246, which imposes anti-discrimination and affirmative action requirements on federal government contractors and subcontractors. This action, part of the new administration's broader assault on DEI efforts in...

January 16, 2025

**Supreme Court Unanimously Clarifies Burden of Proof for FLSA Exemptions**

On January 15, 2025, the Supreme Court of the United States issued a unanimous decision in *E.M.D. Sales, Inc. v. Carrera*, finally clarifying the standard of proof for employers to demonstrate an employee is properly exempt from minimum-wage...

January 14, 2025

**New York State's Fashion Workers Act Effective Summer 2025**

Governor Hochul signed legislation titled the "New York State Fashion Workers Act" (the "Act"), which has a widespread impact on the modeling industry as it relates to compensation, contractual restrictions, and other workplace protections. The Act takes effect on...

January 8, 2025

**California Court of Appeal Invalidates Headless PAGA Actions**

In a decision with significant impact for employers defending Private Attorney General Act (PAGA) cases, a California 2nd District Court of Appeal panel ruled on December 30, 2024, that plaintiffs cannot circumvent arbitration by filing PAGA suits in...

December 18, 2024

### **State Wage Increases to Ring in the New Year (2025)**

As 2024 comes to a close, employers should be aware of the hourly minimum wage rate increases set to take effect in various jurisdictions on January 1, 2025 . 21 states and 48 local jurisdictions will “ring in” the...

December 11, 2024

### **Legal Challenge Threatens New Missouri Minimum Wage and Paid Sick Leave Law**

The Missouri Chamber of Commerce and Industry, along with other Missouri business groups, recently filed a lawsuit in the Supreme Court of Missouri attempting to stop Proposition A from taking effect. The lawsuit asserts five counts requesting the Supreme...

November 26, 2024

### **Understanding Proposition A's Impact: Key Changes to Missouri's Minimum Wage and Paid Sick Leave**

In the 2024 election, Missouri voters approved Proposition A, a measure that raises the minimum wage beginning January 1, 2025, and introduces mandatory earned paid sick leave for most workers effective May 1, 2025. Key Provisions of Proposition A...

November 25, 2024

### **Effective June 2025: New Jersey Pay Transparency Requirements**

New Jersey recently became the newest state to enact pay transparency legislation. On November 18, 2024, New Jersey Governor Murphy signed Bill S2310 (the “Act”) into enactment. The Act will go into effect on June 1, 2025. The Act applies to...

November 22, 2024

### **OFCCP Issues Its Audit List For FY2025**

On November 15, 2024, the Office of Federal Contractor Compliance Programs (OFCCP) published its Corporate Scheduling Announcement List (CSAL) online, identifying contractors who will be receiving an audit scheduling letter in the coming year. Contractors were selected based on...

November 19, 2024

### **The NLRB Overturns Another Longstanding Rule Involving Employers Expressing Views on Unionization to a “Captive Audience”**

On November 13, 2024, the National Labor Relations Board (“NLRB”) issued a sharply divided decision in Amazon.com Services LLC , overruling yet another decades-old rule and holding that captive-audience meetings violate national labor law after being lawful since 1948....

November 18, 2024

### **DOL's New Exempt Salary Threshold Struck Down**

Employers have been waiting with bated breath on the challenges to the DOL's newest salary increase for exempt employees scheduled to take effect on January 1, 2025. On November 15, 2024, U.S. District Court Judge Sean Jordan for the...

November 13, 2024

### **The NLRB Boomerangs Back to 1969 Standard for Employer Statements Regarding Unionization Efforts**

On November 8, 2024, the National Labor Relations Board (“NLRB”) issued a decision in Siren Retail Corp. d/b/a Starbucks , throwing out an almost 40-year-old rule that categorically allowed employers to tell their employees how unionization will impact the...

October 30, 2024

### **OFCCP Publishes Notice of New FOIA Request for Certain EEO-1 Reports and Calls for Government Contractor Objections by December 9, 2024**

On October 29, 2024, the Office of Contract Compliance Programs (“OFCCP”) published a notice in the Federal Register about a request for Type 2 Consolidated EEO-1 Reports (the “Consolidated Reports”) for 2021. (The request is also for 2022 reports,...

October 25, 2024

### **Stay Tuned... FTC Seeks to Breathe Life Back Into Non-Compete Ban**

This past week, the FTC appealed a Texas federal court's August ruling that blocked nationwide enforcement of the non-compete ban. The non-compete ban will remain blocked during the pendency of the appeal process. However, the outcome of the appeal...

October 10, 2024

### **California's New Health Care Workers Minimum Wage is Finally Set to Increase**

While California SB 525 was originally passed over a year ago, after several delays, it is scheduled to finally go into effect on October 16, 2024. The bill will raise the minimum wage for many health care employees in...

September 13, 2024

### **The Fifth Circuit Confirms the DOL's Authority to Use Salary Basis Test for FLSA Overtime Exemptions**

On September 11, 2024, the U.S. Court of Appeals for the Fifth Circuit in *Mayfield v. U.S. Department of Labor* confirmed that the United States Department of Labor ("DOL") has the authority to use a salary basis to define...

September 11, 2024

### **New York Requires Workplace Violence Prevention Plans for Retailers**

On September 4, 2024, New York Governor Kathy Hochul signed the New York Retail Worker Safety Act (the "Act") into law. The Act can be found here . The Act requires all employers in New York with 10 or...

August 21, 2024

### **Texas Federal Judge Blocks FTC Non-Compete Ban**

Yesterday, Judge Ada E. Brown of the U.S. District Court for the Northern District of Texas in *Ryan v. The Federal Trade Commission* upheld a challenge by business groups to the FTC's non-compete ban. In addition to confirming her...

August 19, 2024

### **November Election Could Bring Changes to Missouri Wage and Leave Law**

Missouri voters will decide in November whether to raise the state's minimum wage and guarantee paid sick leave for workers. On August 13, 2024, Missouri Secretary of State Jay Ashcroft certified a ballot measure advanced by the Missourians for...

July 30, 2024

### **Mid-year Employment Law Updates and Webinar**

Many state and local government employment laws go into effect this summer. Here is a non-exhaustive list of mid-year employment law updates. To hear a discussion on what you need to know from 2024 and more information about complying...

July 29, 2024

### **Pennsylvania Latest to Curtail Use of Non-Competes**

Pennsylvania is joining the growing chorus of states codifying restrictions on the use of non-competes. On July 17, 2024, Pennsylvania Governor Josh Shapiro signed into law the Fair Contracting for Health Care Practitioners Act. Effective January 1, 2025, the...

July 24, 2024

### **Pennsylvania Court Keeps FTC Non-Compete Ban on Life Support**

Yesterday (July 23), a Pennsylvania judge—in *ATS Tree Services, LLC v. Federal Trade Commission*—upheld the legality of the FTC's non-compete ban. This ruling contradicts the ruling recently issued in a parallel proceeding in Texas. Earlier this month, a...

July 3, 2024

### **Texas Federal Judge Partially Blocks FTC Ban on Non-Competes**

On July 3, a Texas judge in the bellwether lawsuit, *Ryan, LLC v. The Federal Trade Commission*, became the first to weigh in on the legality of the FTC's non-compete ban that is set to take effect on...

June 25, 2024

### **No Harm, No Foul: The Supreme Court Reduces “Harm” Standard for Discriminatory Job Transfer Claims under Title VII**

In April, the U.S. Supreme Court unanimously held in *Muldrow v. City of St. Louis*, that to sustain a prima facie case of employment discrimination under Title VII of the Civil Rights Act of 1964 (“Title VII”), plaintiffs...

June 21, 2024

### **California Governor Reaches Deal With Business Leaders on PAGA Reform**

California Governor Gavin Newsom, alongside business leaders, and legislators, announced a significant agreement to reform the state's Private Attorneys General Act (PAGA). PAGA, initially enacted to allow employees to stand in the shoes of the Attorney General and file...

June 7, 2024

### **OFCCP Issues Corporate Scheduling Announcement List for FY2024**

On June 7, 2024, the Office of Federal Contract Compliance Programs (OFCCP) released its first Corporate Scheduling Announcement List (CSAL) for fiscal year 2024. Specifically, this list identifies around 500 federal supply and service contractors and subcontractors that will...

May 31, 2024

### **2023 EEO-1 Reporting Deadline Upcoming and EEOC Files Suit to Enforce Compliance**

Tuesday, June 4, 2024, is the deadline to submit and certify the 2023 EEO-1 Component 1 Report to the Equal Employment Opportunity Commission (EEOC). While the deadline has been extended occasionally in prior years, no such announcement has been...

May 30, 2024

### **FTC Files Brief to Stave Off Challenge to Rule Banning Non-Competes**

Yesterday (May 29), in *Ryan, LLC et al. v. The Federal Trade Commission*, the FTC filed its response in opposition to Plaintiffs' request to stay/enjoin the FTC Rule banning non-competes from taking effect on September 4. The Court...

May 9, 2024

### **Fireworks Are Coming Before Independence Day**

Mark your calendars for July 3—the date we will likely learn whether a Texas Court will enjoin the FTC Rule banning non-competes from taking effect on September 4. This week, Judge Ada Brown, the presiding judge in *Ryan, LLC*...

May 8, 2024

### **Maryland Joins Trend Requiring Salary and Wage Disclosures in Job Listings**

Effective October 1, 2024, Maryland will become the sixth state (plus the District of Columbia), to require that employers provide an upfront disclosure of the wage or salary range for open positions in job listings. The new law follows a recent...

May 1, 2024

### **Equal Employment Opportunity Commission Issues Final Guidance on Workplace Harassment**

On April 29, 2024, the Equal Employment Opportunity Commission (“EEOC”) issued final guidance on workplace harassment. The guidance is effective immediately and is the first time the EEOC has updated its workplace harassment guidance since 1999. It reflects changes...

April 30, 2024

### **Lawsuits Filed Challenging the FTC’s Final Rule Banning Non-Competes**

To date, three lawsuits have been filed challenging the legality of the FTC's Final Rule banning non-competes. The initial two cases were filed in Texas federal court, which is widely viewed as a more hospitable forum for attacks on...

April 24, 2024

### **FTC Final Rule Banning Most Non-Competes Passes – What You Need to Know**

On April 23, 2024, the Federal Trade Commission (“FTC”) conducted a special Open Commission Meeting to vote on a Final Rule (the “Rule”) banning most non-compete clauses as an “unfair method of competition.” By a vote of 3-2, the...

April 23, 2024

### **Finally Final — The DOL Issues Its Long-Expected Final Rule Raising the FLSA Overtime Exemption Salary Thresholds**

As has been expected, and as we addressed at the end of 2023 in our previous blog post , on April 23, the U.S. Department of Labor (“DOL”) at long last issued its final rule raising the salary thresholds...

April 18, 2024

### **Vote Scheduled for FTC Final Rule Banning Non-Competes – What You Need to Know**

FTC Final Rules Banning Non-Competes Vote Next Tuesday As you know , last year, the FTC issued a proposed rule banning virtually all non-compete agreements (which does not include non-solicitation agreements, confidentiality agreements and the like). Yesterday, the FTC...

April 16, 2024

### **The EEOC Issues its Final Rule about the Pregnant Workers Fairness Act**

On April 15, 2024, the EEOC issued its final rule regarding the implementation of the Pregnant Workers Fairness Act (the “PWFA”), a law that went into effect on June 27, 2023. The final rule will be officially published in...

April 1, 2024

### **2024 OFCCP Contractor Portal for Affirmative Action Plan Certification Opens April 1, 2024**

The Office of Federal Contract Compliance Programs (OFCCP) announced that the Contractor Portal for federal contractors and subcontractors to certify compliance with their affirmative action plan (AAP) obligations will open on April 1, 2024 , with contractors and subcontractors...

March 7, 2024

### **What is 13th Month Pay and Why Should Employers Care?**

Most American employers run payroll twelve or twenty-four times across a calendar year. In some countries, there is a “thirteenth month” to think about. In those jurisdictions, employers, customarily or by law, cut one more check (considered “thirteenth month”...

February 28, 2024

### **Update: 2023 EEO-1 Reporting Opening Soon**

On Tuesday, April 30, 2024, the Equal Employment Opportunity Commission (EEOC) will open the 2023 EEO-1 Component 1 Report for employers to report the race, ethnicity and gender of their employees. The EEO-1 reporting period is scheduled to remain...

February 16, 2024

### **To Disclose or Not to Disclose: OFCCP to Appeal Adverse EEO-1 Report Disclosure Order**

As previously reported , in late December 2023, the Northern District of California ordered OFCCP to release the EEO-1 reports of federal contractors it had previously withheld from production based on various exemptions under FOIA. The court set a...

February 9, 2024

### **Supreme Court Rules Retaliatory Intent Not Required Under SOX**

In a groundbreaking decision, the U.S. Supreme Court unanimously ruled today in favor of whistleblower Trevor Murray, dispelling the notion that whistleblowers must prove retaliatory intent to be protected under federal law prohibiting retaliation in the corporate finance space....

February 7, 2024

### **Upcoming Deadline to Notify California Employees Subject to Non-Competes**

As we reported last month, effective January 1, 2024, non-compete agreements in California are unenforceable regardless of where the contract is signed. This means employees who sign non-competes outside California, then move to California and seek new employment in...

February 7, 2024

### **New York to Consider Rolling Back Liquidated Damages for Pay Frequency Violations**

New York Governor Kathy Hochul's proposed budget for fiscal year 2025 includes proposed legislation that would amend New York Labor Law to make clear that liquidated damages are not available as a remedy for certain pay frequency violations. The...

January 31, 2024

### **Breaking Down the Proposed Salary History and Pay Transparency Requirements for Federal Contractors**

On January 31, 2024, several U.S. government agencies released proposals and guidance aimed at imposing new pay transparency and salary history requirements upon federal government contractors and subcontractors. These proposals, should they go into effect, will subject federal contractors...

January 30, 2024

### **Update on the Status of Non-Competes and What to Expect in 2024**

On January 9, 2024, Shareholders in our Restrictive Covenant and Trade Secret Practice Group conducted a webinar covering "What Employers Need to Know About Non-Competes in 2024." A recording of that webinar is available here . Below, the Team...

January 29, 2024

### **Class Action Areas Drive EEOC's Strategic Enforcement Plan for 2024 – 2028**

Late last year, the EEOC quietly announced its most recent Strategic Enforcement Plan, covering 2024–2028. To no surprise, the EEOC has indicated that it will implement a concerted effort to focus its resources on employment practices that often result...

January 24, 2024

### **Federal Court Rejects Objections and Orders OFCCP to Disclose EEO-1 Reports**

Despite objections by thousands of employers and its continuing review of records, the OFCCP has been ordered by a federal court to produce all EEO-1 Type 2 reports of federal prime contractors and first-tier subcontractors from 2016-2020 as requested...

January 18, 2024

### **District of Columbia Requires Salary and Wage Disclosures in Job Listings**

On January 12, 2024, District of Columbia Mayor Muriel Bowser signed the Wage Transparency Omnibus Amendment Act of 2023 , which broadens D.C.'s existing pay transparency laws and requires employers in D.C. to list salary and hourly wage information...

January 16, 2024

### **Must Employers Translate Workplace Documents into Other Languages? Should They?**

Around the world and across the United States, we see so many languages spoken. People around the world communicate in thousands of different languages. Given the wide origins of workers and companies with international operations, the question arises: to...

January 12, 2024

### **New Year, New Severance and Settlement Agreement Rules for New York**

With the New Year in full swing, it is important for New York employers to be aware of recent changes to New York's statutes relating to severance agreements. On November 17, 2023, New York enacted S4516, which provides amendments...

January 9, 2024

### **The Department of Labor Releases the New Independent Contractor Test**

On January 9, 2024, the U.S. Department of Labor released the final details of their Independent Contractor test. This test addressing when companies can classify workers as independent contractors has been hotly debated since the last proposed rule by...

January 8, 2024

### **New York Governor Vetoes Non-Compete Ban – For Now**

On December 22, 2023, New York Governor Kathy Hochul declined to sign legislation ( S3100 ) that would have outlawed noncompete clauses in virtually all employment contracts. If it had gone into effect, New York would have been the...

December 27, 2023

### **24 Employment Law Updates for the New Year**

Many state and local government employment laws go into effect on January 1, 2024. We have posted a non-exhaustive list of 24 employment law updates to ring in the New Year here . Employers should also be aware that...

December 20, 2023

### **New Year, New Rules? 2024 May See Implementation Of The DOL's Proposal For Increased Exemption Salary Thresholds While State-Specific Thresholds Are Also Set To Increase**

As 2023 comes to a close, so did the notice-and-comment period for the U.S. Department of Labor's (DOL) proposed rule increasing the minimum salary required for employees to be exempt under any of the "White Collar Exemptions" from overtime...

December 18, 2023

### **Update: Chicago's New Paid Leave Ordinance Delayed**

Previously, in November 2023, the City of Chicago passed the Paid Leave and Paid Sick and Safe Leave Ordinance to go into effect December 31, 2023. This new law required employers to provide Chicago employees up to 40 hours...

December 14, 2023

### **New York State Enacts Payment Law for Independent Contractors**

On November 22, 2023, Governor Kathy Hochul of New York State signed into law the "Freelance Isn't Free Act" ("Act") , which was modeled after a similar law passed in New York City in 2017. The state law becomes...

December 11, 2023

### **State and Local Hourly Minimum Wage Rate Increases are "Coming to Town" on January 1, 2024**

As 2023 comes to a close, employers should be aware of the hourly minimum wage rate increases set to take effect in various jurisdictions on January 1, 2024. 22 states and more than 40 local jurisdictions will ring in...

December 1, 2023

### **Chicago's New Paid Leave Ordinance and What It Means for Employers in 2024**

Chicago employers will soon need to ensure that they provide leave in accordance with a new Chicago law. Specifically, on December 31, 2023, the Paid Leave and Paid Sick and Safe Leave Ordinance will go into effect in the...

October 18, 2023

### **HANDBOOKS: How? How Much? Can they cross borders? All the ways they can help (or hurt) you.**

Employee Handbooks are an important tool to help communicate policies, establish company culture, and protect an organization. However, they can also cause problems for a company if not drafted and implemented carefully, or used across borders without aligning with...

October 12, 2023

**There Is Such a Thing as Too Many Questions: Individualized Inquiries Doom Class Certification**

A recent case from the Eastern District of California emphasizes the importance of employers having facially neutral and lawful wage-and-hour policies – as such policies can help in defeating class certification. In *Tavares, et al. v. Cargill, Inc., et al.*

September 8, 2023

**Update: 2022 EEO-1 Reporting – The Time Has Come**

On October 31, 2023, the Equal Employment Opportunity Commission (EEOC) will open the 2022 EEO-1 Component 1 Report for employers to report the race, ethnicity and gender of their employees (by job category) with a due date on December...

September 1, 2023

**The Fifth Circuit Lowers Pleading Standard for Title VII Discrimination Claims**

Earlier this month, the Fifth Circuit Court of Appeals (covering Texas, Mississippi, and Louisiana) issued an en banc decision in *Hamilton v. Dallas County* holding employees no longer have to show they were subject to an “ultimate employment decision”...

August 31, 2023

**Department of Labor Proposes Rule to Increase Overtime Protections**

On August 30, 2023, the U.S. Department of Labor (DOL) introduced a proposed rule that would increase the minimum salary required for an employee to be exempt under any of the so-called “White Collar Exemptions” from overtime under the...

August 25, 2023

**What’s Old Is New Again, NLRB Returns to Pre-2019 Union Election Standards**

The National Labor Relations Board has issued a new rule that returns to pre-2019 union election standards. The primary impact is that workers will wait less time to vote on whether to unionize and employers will have less time...

August 24, 2023

**The Real Risks of Artificial Intelligence in the Workplace: EEOC Obtains First Settlement in AI Class Action**

In May 2022, the EEOC filed an age discrimination lawsuit against a group of affiliated companies employing English-language tutors. According to the EEOC, for a brief period in the spring of 2020, those companies programmed application software to automatically...

August 3, 2023

**The NLRB’s New Rule for Workplace Rules**

The National Labor Relations Board (the “Board”) issued its long-awaited decision regarding employer work rules that impacts both unionized and non-unionized workplaces. In *Stericycle*, the Board altered the standard for whether a seemingly neutral workplace rule is nevertheless...

August 2, 2023

**2022 EEO-1 Reporting – Hang Tight For Now**

Under Title VII of the Civil Rights Act, private sector employers with 100 or more employees and certain federal contractors with 50 or more employees are required to provide demographic information of their workforces—otherwise known as EEO-1 Component 1...

July 31, 2023

**The Bar Is Low – But It Does Exist: A Reminder that Defeating (or Limiting) Conditional Certification Is Not Impossible**

In a recent case from the District of Colorado, a federal judge made clear that (at least in the Tenth Circuit) the first step of conditional certification is not just a rubber stamp to move on to the next...

July 10, 2023

### **New Texas Law Prohibits Employers from Race-Based Hair Discrimination**

Governor Greg Abbott recently signed House Bill No. 567, also known as the CROWN Act, into law. Following the bill's enactment on September 1, 2023, Texas law will prohibit race-based hair discrimination in employment, schools, and housing. Under the...

June 30, 2023

### **11th Circuit Data Breach Decision Highlights Employer Obligations to Protect Employee Personal Identifiable Information From Third Parties**

Earlier this month, the United States Court of Appeals for the Eleventh Circuit issued a decision restricting employers' abilities to fight off putative class action claims regarding data breach and cyberattacks on employee personal identifying information ("PII"). In Ramirez...

June 30, 2023

### **The Impact of the U.S. Supreme Court's Affirmative Action Decision on Private Employers**

On June 29, 2023, the United States Supreme Court issued its ruling in Students for Fair Admissions, Inc. v. President and Fellows of Harvard College (along with Students for Fair Admissions, Inc. v. the University of North Carolina, et...

June 7, 2023

### **Department of Labor Issues Guidance on FMLA Leave during a Week with A Holiday**

Just in time for the summer holidays, the United States Department of Labor ("DOL") recently issued an opinion letter providing guidance regarding calculating the amount of leave used when an employee takes federal Family and Medical Leave Act ("FMLA")...

June 6, 2023

### **NYC Employers Prohibited from Discriminating Based on Height or Weight**

On May 26, 2023, New York City Mayor Eric Adams signed into law a bill that expands the protections offered by the New York City Human Rights Law (NYCHRL). Effective November 22, 2023, the NYCHRL will prohibit discrimination in...

May 31, 2023

### **NLRB General Counsel Takes Aim at Non-Competition Agreements**

The General Counsel of the National Labor Relations Board ("NLRB") set her sights on a new target with the latest memorandum: non-competition agreements. The memorandum, while not binding, lays out the General Counsel's belief that the proffer, maintenance,...

May 26, 2023

### **Department of Labor Issues Guidance on New PUMP Act**

On December 29, 2022, President Biden signed the Providing Urgent Maternal Protections ("PUMP") for Nursing Mothers Act into law. The law went into effect immediately, as we previously reported. The United States Department of Labor has now issued...

May 23, 2023

### **Another Circuit Drops 2-Step FLSA Certification Process and Adopts Heightened Notice Standard for Collective Actions**

On May 19, 2023, the United States Court of Appeals for the Sixth Circuit became the second federal appeals court to heighten the standard for plaintiffs to obtain court-authorized notice to potential plaintiffs in Fair Labor Standards Act ("FLSA")...

May 23, 2023

### **EEOC Issues Guidance for Use of Artificial Intelligence in Employment Selections**

So far in 2023, artificial intelligence (AI) has been at the leading edge of the technological revolution, as the potential applications for tools like ChatGPT have drawn considerable buzz. In April 2023, we reported on New York City's first-in-the-nation...

May 2, 2023

### **WARN-ings May Be Required Before a RIF or Shut Down**

Recent layoffs at several high profile companies, and the putative class actions filed in their wake, highlight the importance of legal compliance when making and effecting these difficult decisions. A patchwork of laws at both the federal and state...

May 1, 2023

### **OFCCP Implements New Disability Self-Identification Form**

On April 25, 2023, the Office of Federal Contract Compliance Programs (OFCCP) issued an updated self-identification form for applicants and current employees to voluntarily self-identify as an individual with a disability. Federal contractors and subcontractors subject to Section 503...

April 27, 2023

### **OFCCP Implements New Disability Self-Identification Form**

On April 25, 2023, the Office of Federal Contract Compliance Programs (OFCCP) issued an updated self-identification form for applicants and current employees to voluntarily self-identify as an individual with a disability. Federal contractors and subcontractors subject to Section 503...

April 20, 2023

### **New York City Issues Regulations for Use of Artificial Intelligence Tools in Human Resources**

On April 6, 2023, the New York City Department of Consumer and Worker Protection issued its final rule interpreting the City's Local Law 144 regulating the use of "automated employment decision tools," which went into effect on January 1,...

April 17, 2023

### **Misclassification Concerns in Staffing Relationships**

Employers utilizing staffing agencies should be on high alert given the Department of Labor's ("DOL") recent investigations targeting these arrangements. Specifically, the DOL has been actively investigating businesses that contract with certain types of staffing agencies that rely on placing...

April 5, 2023

### **Navigating State and Local Laws Implicated by Remote Workforces**

As we start to come out of the pandemic, many businesses are deciding to embrace remote workforces on a more permanent basis for a variety of reasons, including cost saving, increased talent pool, and employee satisfaction. However, maintaining a...

March 30, 2023

### **2023 Affirmative Action Plan Certification Portal to Launch March 31, 2023**

On March 20, 2023, the Office of Federal Contract Compliance Programs (OFCCP) announced that the Contractor Portal for federal contractors and subcontractors to certify compliance with their affirmative action plan (AAP) obligations will open on March 31, 2023 ,...

March 29, 2023

### **The Time is Now for Employers to Prepare for Illinois' Paid Leave for All Workers Act**

On January 1, 2024, Illinois will join Maine and Nevada as the only U.S. states to mandate that covered employers provide their employees with earned paid leave that can be used for any reason. Generally, the Paid Leave for...

March 23, 2023

### **Decision Scrutinizing Use of Nondisparagement, Confidentiality Provisions Applies Retroactively and Potentially to Supervisors, Says NLRB General Counsel**

On March 22, 2023, the General Counsel of the National Labor Relations Board (the "Board") issued a memorandum purporting to provide guidance in response to inquiries about the Board's February 2023 decision in McLaren Macomb (which we covered in...

March 6, 2023

### **California Pay Data Reporting Update**

As we previously reported , on September 27, 2022, Governor Gavin Newsom approved SB 1162 to significantly expand the pay data reporting and pay scale requirements for California employers. These requirements became effective January 1, 2023. Pay Data Reporting...

March 2, 2023

### **Today is the Day – Don't Miss the Employer Deadline to Report to OSHA**

Today is the deadline for covered employers to submit their 2022 workplace injury and illness data electronically on Form 300A to the U.S. Occupational Safety & Health Administration ("OSHA"). Covered employers must submit Form 300A electronically via OSHA's online...

March 1, 2023

### **OFCCP Rescinds Trump-Era Expansion of Religious Exemption to Executive Order 11246**

On March 1, 2023, the Office of Federal Contract Compliance Programs (OFCCP) published a Final Rule rescinding a prior rule the agency published late in the Trump administration that broadened the scope of Executive Order 11246's religious exemption ....

March 1, 2023

### **Mandatory Arbitration Agreements Remain Valid in California**

California employers received welcome reassurance last week that they are free to require employees enter into arbitration agreements as a condition of employment. This is the result of an opinion from the Ninth Circuit last week that affirmed a...

February 27, 2023

### **Supreme Court Rules that Even Highly Compensated Employees Must be Paid on a Salary Basis to be Overtime-Exempt**

On February 22, 2023, the U.S. Supreme Court ruled that high-earning professionals can only be overtime-exempt if they are paid on a "salary basis" as defined by the Fair Labor Standards Act ("FLSA"). In Helix Energy Solutions Group Inc....

February 22, 2023

### **Restrictions on Severance Agreements Return – Another NLRB Policy Change with Broad Implications**

The National Labor Relations Board (the "Board") issued another precedent-shifting decision, this time taking aim at provisions commonly included in severance agreements. In McLaren McComb , an employer now violates Section 8(a)(1) of the National Labor Relations Act ("the...

February 20, 2023

### **Divided Illinois Supreme Court Holds that BIPA Claims Accrue with Each Scan, Potentially Opening the Door to Massive Damages Awards**

In a recent 4-3 decision, the Illinois Supreme Court held that claims under sections 15(b) and 15(d) of Illinois' Biometric Information Privacy Act (BIPA) accrue each time a private entity collects a biometric identifier (such as a fingerprint, voiceprint,...

February 13, 2023

### **Missouri Joins States Legalizing Recreational Marijuana – Cutting Through the Haze on Missouri Amendment 3**

This month, businesses in Missouri will be permitted to sell recreational marijuana products. The permitted sales are one of the many changes that came about because of Constitutional Amendment 3, which legalized the recreational use of marijuana in Missouri....

February 9, 2023

### **More Signs of Trouble for Non-Compete Agreements**

Non-competes have had a rough 2023, most recently with President Biden specifically calling them out on Tuesday evening during his State of the Union and emphasizing his Administration's opposition to them. This, of course, is on the heels...

February 8, 2023

### **Biometric Claims Subject to Five-Year Statute of Limitations Under Illinois BIPA**

The Supreme Court of Illinois recently resolved an outstanding and hotly debated question – claims brought under the Illinois Biometric Information and Privacy Act (BIPA) are subject to a five-year statute of limitations. The Court, in *Tims v. Black...*

January 25, 2023

### **FTC Proposed Noncompetes Ban Reinforces Need to Protect Competitive Information Now**

As we recently reported, on January 5, 2023, the Federal Trade Commission proposed a rule banning the use of non-competes in nearly all circumstances. The FTC is seeking comments on the proposed rule until March 20, 2023....

January 12, 2023

### **Pregnant Employees Will Now Be Treated as “Disabled” Under Federal Law for Purposes of Reasonable Accommodation**

Historically, a pregnant woman with a “normal” pregnancy was not considered “disabled” under the Americans with Disabilities Act (“ADA”), and, therefore, there was no requirement for employers to provide her with a reasonable accommodation during pregnancy. Effective June 29,...

January 6, 2023

### **Non-competes Under Attack by FTC**

To ring in the 2023 new year, the Federal Trade Commission (“FTC”) has taken multiple actions targeting the use of non-competes agreements, all of which are consistent with President Biden's July 2021 Executive Order on competition in the labor...

December 28, 2022

### **“Outlook Not So Good” – An Employer's Guide to the NLRB's 2023 Agenda**

One year during the holidays, probably when I was about six or seven, I was gifted a Magic 8 Ball. Hours were spent asking what I believed to be the most salient questions of the day, such as “Will...

December 15, 2022

### **Festive NLRB Provides Holiday Gifts to Unions/Employees**

December never is a “slow” month in “labor law land.” Even though offices are winding down and some are closing for the holidays, the National Labor Relations Board (the “Board”) always enjoys dropping a few seismic cases for unions/employees/employers...

December 8, 2022

### **Employers Must Notify Colorado Employees of FMLI Benefits by January 1, 2023**

In November 2020, Colorado voters approved a ballot initiative for a state-run paid family leave benefits program. Under Colorado's Family and Medical Leave Insurance (“FMLI”) program, employees and most employers will make contributions into the FMLI fund, and employees...

November 22, 2022

### **OFCCP Proposes New Scheduling Letter Increasing the Documentation Federal Contractors Must Provide in Audits**

On November 21, 2022, OFCCP proposed a new Scheduling Letter and Itemized Listing that will greatly increase the amount and specificity of documents and information that federal government contractors must provide in compliance evaluations. The Scheduling Letter is the...

November 15, 2022

### **D.C. Votes to Eliminate the Tip Credit By 2027**

On November 8, 2022, Washington, D.C. voters approved Initiative 82, which will eliminate the ability of employers in the city to rely on a tip credit to meet the minimum wage requirement for employees who regularly receive tips. Once...

November 1, 2022

### **Three Steps Employers Everywhere Should Take as New York City's Pay Transparency Law Takes Effect**

On November 1, 2022, job postings for positions in New York City – including remote positions that can be performed in New York City – must include a salary range listing the minimum and maximum salary or hourly wage...

October 31, 2022

### **OFCCP Updates Required EEO Poster**

The Equal Opportunity Clause in federal contracts requires employers to post a notice for employees regarding nondiscrimination. The Officer of Federal Contractor Compliance Programs (OFCCP) adopted a new updated poster. In order to maintain compliance, all covered federal contractors...

October 25, 2022

### **EEOC Releases Updated Mandatory Posting**

Federal law requires employers to post a notice for employees regarding federal anti-discrimination laws. The Equal Employment Opportunity Commission (the "EEOC") provides the notice, and the EEOC recently released an updated workplace discrimination notice. The notice is titled "Know..."

October 20, 2022

### **Jury Returns First-of-its-Kind Verdict Against Company in Biometric Class Action**

The first jury verdict to address violations under Illinois' Biometric Information Privacy Act (BIPA) resulted in a \$228 million judgment against BNSF Railway. The case involved a class of more than 40,000 truck drivers who had their fingerprints scanned...

October 19, 2022

### **Federal Contractor COVID-19 Vaccine Mandate Looks to Return, With Potential Updates**

As we previously reported, on August 26, 2022, the U.S. Court of Appeals for the Eleventh Circuit issued a decision narrowing the nationwide injunction against the COVID-19 vaccination mandate for federal contractor employees set forth in President Biden's Executive...

October 18, 2022

### **Federal Contractor COVID-19 Vaccine Mandate Looks to Return, With Potential Updates**

As we previously reported, on August 26, 2022, the U.S. Court of Appeals for the Eleventh Circuit issued a decision narrowing the nationwide injunction against the COVID-19 vaccination mandate for federal contractor employees set forth in President Biden's Executive...

October 17, 2022

### **Supreme Court Takes Up FLSA High Earners Exemption**

On October 12, 2022, the U.S. Supreme Court heard oral arguments in a case that considers whether a supervisor who earned over \$200,000 annually may still be eligible for overtime pay under the Fair Labor Standards Act (FLSA). The...

October 17, 2022

### **California Expands Pay Reporting and Pay Scale Disclosure Requirements**

On September 27, 2022, Governor Gavin Newsom approved SB 1162 to significantly expand the pay reporting and pay scale requirements for California employers. These requirements are effective January 1, 2023. Pay Reporting Requirements SB 1162 amends California Government Code...

October 14, 2022

### **What's New for 2023? The Latest Round of Workplace Developments for 2023 and Beyond**

The California State Legislature adjourned on August 31, 2022. Following the adjournment, several bills with significant implications for employers were presented to Governor Newsom for signature or veto by September 30, 2022. Governor Newsom signed multiple bills, now laws,...

October 12, 2022

### **New Independent Contractor Test Increases Risk of Independent Contractor Misclassification**

The U.S. Department of Labor is set to issue a Proposed Rule that will have a significant impact on the test used to determine whether someone is an independent contractor or an employee under the Fair Labor Standards Act...

September 30, 2022

### **Bribes and Kickbacks Don't Happen in My Organization – I think?**

The U.S. Foreign Corrupt Practices Act (FCPA) and the U.K. Bribery Act 2010, along with dozens of trade treaties and conventions, forbid consummated (and attempted) improper or unethical payments to government officials or prospective parties to commercial deals by...

September 15, 2022

### **I Object! – OFCCP Extends Deadline to October 19 to Submit Objections to FOIA Request for All Type 2 Consolidated EEO-1 Reports**

Today OFCCP announced that it is extending the deadline to respond to and submit objections pursuant to its August 19, 2022, Notice in the Federal Register regarding a Freedom of Information Act ("FOIA") request from Will Evans, a Senior...

September 13, 2022

### **Employers Beware: Risks with Reductions in Force Involving a Remote Workforce**

Employers considering a reduction in force involving remote workers may be subject to the Worker Adjustment and Retraining Notification Act (the "WARN Act") (29 U.S.C. §2100 et. seq .) and corresponding state regulations. The WARN Act applies to employers...

September 8, 2022

### **NLRB Poised to Expand Definition of Joint Employers**

The National Labor Relations Board has issued a proposed rule that would, once again, relax the burden to demonstrate joint employer liability. This action is a step toward reversing the Trump administration's rule which provided that an employer only...

September 7, 2022

### **The Future is Now - Episode 2**

We are pleased to release the next episode of "The Future is Now" hosted by Polsinelli's Labor & Employment Practice. In this podcast, Robert E. Entin , Shareholder, and Mark D. Nelson , Senior Partner, review the first year...

August 30, 2022

### **NLRB Shifts to Heightened Scrutiny of Apparel Policies**

This week, the National Labor Relations Board (NLRB) reversed a 2019 decision concerning union apparel bans in the workplace. This decision was the first of the Biden Administration era NLRB to shift precedent. In the split decision, the NLRB...

August 29, 2022

### **Going Public With It – OFCCP Publishes Notice Regarding FOIA Request for All Type 2 Consolidated EEO-1 Reports – and Sets September 19 Deadline to Object**

On August 19, 2022, the U.S. Department of Labor's Office of Federal Contract Compliance Programs ("OFCCP") published a Notice in the Federal Register regarding a Freedom of Information Act ("FOIA") request from Will Evans, a Senior Reporter and Producer...

August 29, 2022

**Eleventh Circuit Significantly Narrows Scope of Federal Contractor Vaccine Mandate Injunction, Allowing Enforcement in Many States**

On August 26, 2022, the Eleventh Circuit Court of Appeals issued its long-awaited decision in the federal government's appeal of a lower court order striking down the Biden Administration's COVID-19 vaccination mandate for federal contractors and subcontractors . Although...

August 29, 2022

**Eleventh Circuit Significantly Narrows Scope of Federal Contractor Vaccine Mandate Injunction, Allowing Enforcement in Many States**

On August 26, 2022, the Eleventh Circuit Court of Appeals issued its long-awaited decision in the federal government's appeal of a lower court order striking down the Biden Administration's COVID-19 vaccination mandate for federal contractors and subcontractors . Although...

August 23, 2022

**District of Columbia Relaxes its Non-Compete Ban to Allow Restrictive Covenants for Certain Employees**

The District of Columbia Council passed the Non-Compete Clarification Act of 2022 ("Act") in late July 2022, setting standards for how and when employers can use and enforce covenants not to compete. The Act notably clarifies and narrows the...

August 22, 2022

**OFCCP Walks Back Portions of Its Controversial Pay Equity Directive, But Contractors Must Still Focus on Proactively Ensuring Equal Pay**

In March 2022, we reported on a controversial directive issued by the Office of Federal Contract Compliance Programs (OFCCP) that appeared to assert, for the first time, that federal contractors and subcontractors are required to conduct statistical pay equity...

August 3, 2022

**OFCCP Reminds Contractors to Certify Affirmative Action Plan Compliance Through the Contractor Portal**

In a July 28, 2022 e-mail communication, OFCCP emphasized the need for federal government contractors to certify their compliance with the affirmative action plan (AAP) requirements of Executive Order 11246 through OFCCP's Contractor Portal. Although the June 30, 2022...

August 1, 2022

**NLRB To Begin Partnering With DOJ To Combat Collusion**

The National Labor Relations Board and The Department of Justice joined forces to sign a memorandum of understanding ("MOU") between the two entities. The MOU follows President Biden's Executive Order in 2021 aimed at increasing competition in the economy....

July 26, 2022

**EEOC Revises COVID-19 Testing Guidance for Employers**

On July 12, 2022, the EEOC revised its informal guidance regarding COVID-19 and related matters in the workplace. In doing so, the EEOC made several revisions concerning employer testing protocols, items to consider for vaccine mandates, among other revisions...

July 21, 2022

**District of Columbia Provides Employment Protections for Off-Duty Cannabis Use**

On June 7, 2022, the D.C. Council approved a bill that limits an employer's ability to test for cannabis. Under the Cannabis Employment Protections Amendment Act , most D.C. employers may not fire, fail to hire, or take other...

July 20, 2022

### **Minimum Wage Increases for Healthcare Workers In the City of Los Angeles**

On July 8, 2022, Mayor Eric Garcetti signed the Healthcare Workers Minimum Wage Ordinance. The ordinance imposes on covered employers a minimum wage of \$25.00 for qualifying healthcare workers who work in the City of Los Angeles. Who is...

July 7, 2022

### **Supreme Court Issues Opinion on Religious Expression for Public Employees**

The Supreme Court addressed the intersection of the First Amendment's Establishment and Free Speech clauses as they relate to a public employee's personal religious expression when done in the public eye. In a 6-to-3 decision, it held that public...

July 6, 2022

### **Dobbs' Impact on Employers**

On June 24, 2022, the United States Supreme Court issued its long-anticipated ruling in *Dobbs v. Jackson Women's Health Organization*. In *Dobbs*, the Supreme Court upheld Mississippi's abortion restrictions making most abortion procedures illegal after 15 weeks...

June 16, 2022

### **U.S. Supreme Court Holds That The Federal Arbitration Act Preempts California's Rule Prohibiting Contractual Arbitration of Individual PAGA Claims**

On June 15, 2022, the U.S. Supreme Court issued its highly anticipated opinion in *Viking River Cruises, Inc. v. Moriana*, which considered whether or not claims brought under the California Private Attorneys General Act ("PAGA") can be waived...

May 26, 2022

### **California Employers Must Know: Meal/Rest Premiums Are 'Wages'**

California reaffirms its reputation as the most employee-friendly state and raises potential liability for employers. On May 23, 2022, the California Supreme Court issued the long-awaited decision in *Naranjo v. Spectrum Security Services, Inc.*, finding that meal and...

May 26, 2022

### **Supreme Court Discards the Prejudice Requirement for Waiving Delayed Arbitration**

Earlier this week, the Supreme Court unanimously held in *Morgan v. Sundance* that litigants are no longer required to show prejudice when opposing a party's delayed attempt to compel arbitration. Previously, an Eighth Circuit decision refused to find that...

May 20, 2022

### **OFCCP Identifies Contractors Selected for FY2022 Compliance Audits**

On May 20, 2022, the Office of Federal Contract Compliance Programs (OFCCP) released its Corporate Scheduling Announcement List (CSAL), which identifies 400 federal supply and service contractor and subcontractor establishments that will be audited by the agency in...

April 21, 2022

### **DOJ's Increased Focus on Antitrust Calls into Question Noncompetition Agreements**

The Department of Justice (DOJ) and federal government continue to aggressively pursue antitrust violations and promote the federal government's interest in heavily limiting the use of non-competition agreements. While the DOJ has recently been unsuccessful in its target of...

April 11, 2022

### **Maryland Enacts New State Paid Family and Medical Leave Entitlement**

Maryland recently joined nine other states (and the District of Columbia) in providing employees in the state with a right to paid family and medical leave. Although employer contributions to the paid family and medical leave program will not...

April 4, 2022

### **EEOC Revises Intake Forms to Include Non-Binary Gender Options**

On March 31, 2022, on Transgender Day of Visibility, the EEOC announced that it will expand the available gender options in the voluntary self-identification questions included on its intake forms. The changes will apply to the following stages of...

April 1, 2022

### **OFCCP Directive on Compliance Evaluation Procedures Signals Renewed Focus on Enforcement**

On March 31, 2022, the Office of Federal Contract Compliance Programs (OFCCP) issued its second Directive, No. 2022-02, of the Biden Administration. The new Directive implements both procedural and substantive changes to OFCCP compliance evaluations that signal that...

March 17, 2022

### **Ban on Salary History Inquiries to Expand to Federal Contractors**

The emerging trend of laws banning inquiries into salary history and promoting pay transparency will soon expand to federal contractors. On March 15, 2022, President Biden issued an Executive Order titled "Executive Order on Advancing Economy, Efficiency, and Effectiveness..."

March 15, 2022

### **OFCCP Issues New Directive Requiring Pay Equity Audits**

On March 15, 2022, the Office of Federal Contract Compliance Programs (OFCCP) issued its first directive of the Biden Administration to address the requirement that federal government contractors and subcontractors perform pay equity audits. Consistent with predictions that the...

March 15, 2022

### **OFCCP Issues New Directive Requiring Pay Equity Audits**

On March 15, 2022, the Office of Federal Contract Compliance Programs (OFCCP) issued its first directive of the Biden Administration to address the requirement that federal government contractors and subcontractors perform pay equity audits. Consistent with predictions that the...

March 7, 2022

### **USDA Seeks to Revive "Blacklist" Rule Requiring Contractors to Certify Labor Violations**

On February 17, 2022, the United States Department of Agriculture (USDA) published a Notice of Proposed Rulemaking updating USDA's Agriculture Acquisition Regulation (AGAR), the agency's counterpart to the Federal Acquisition Regulation (FAR). In the proposed rulemaking, USDA included a...

February 11, 2022

### **Mandatory Arbitration Agreements No Longer Enforceable in Sexual Harassment or Assault Cases**

In a rare showing of bipartisanship, the Senate passed the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act, which allows employees or others to escape mandatory arbitration clauses in connection with any case raising issues of...

January 31, 2022

### **New York City to Require Disclosure of Salary Range in Job Advertisements**

Beginning on May 15, 2022, employers in New York City must begin listing salary ranges in any advertisements for jobs, promotions, or transfer opportunities. The new measure is the latest in a nationwide trend of state and local laws...

January 26, 2022

### **California Brings Back Paid Covid-19 Sick Leave**

On January 25, 2022, California Governor Gavin Newsom, Senate President pro Tempore Toni G. Atkins, and Assembly Speaker Anthony Rendon announced a framework for an agreement to reactivate California's COVID-19 paid supplemental sick leave through September 30, 2022. Although...

January 26, 2022

### **OSHA Withdraws Vax-or-Test Emergency Temporary Standard**

Following the Supreme Court's ruling earlier this month, the Occupational Safety and Health Administration ("OSHA") is withdrawing the vaccination and testing emergency temporary standard ("ETS"). The withdrawal is effective upon publication in the Federal Register, January 26, 2022. State...

January 13, 2022

### **U.S. Supreme Court Rules on Vaccine Mandates from OSHA and CMS**

Today, the United States Supreme Court issued two much-anticipated opinions concerning the Occupational Safety and Health Administration's Emergency Temporary Standard on vaccination and testing ("OSHA ETS") and the CMS Medicare and Medicaid Programs Omnibus COVID-19 Health Care Staff Vaccination...

January 12, 2022

### **EEO-1 Opening Announcement 2021 Report**

The Equal Employment Opportunity Commission (EEOC) announced that it will open the 2021 EEO-1 Component 1 Report on April 12, 2022 with a due date of May 17, 2022. The EEOC's announcement indicates that both dates are "tentative" and...

December 27, 2021

### **The Legal Challenges to the OSHA ETS and CMS Vaccine Mandate move to the Supreme Court**

On December 22, 2021, the Supreme Court of the United States issued orders granting review of legal challenges to the Occupational Safety and Health Administration's COVID-19 Vaccination and Testing Emergency Temporary Standard ("OSHA ETS") and the Centers for Medicare...

December 18, 2021

### **Stay of OSHA Emergency Temporary Standard Lifted By Sixth Circuit – "All Systems Go," For Now...**

A divided panel of the United States Court of Appeals for the Sixth Circuit lifted the stay on the Occupational Safety and Health Association's Emergency Temporary Standard ("OSHA ETS") late Friday night (December 17, 2021). The Sixth Circuit had...

December 15, 2021

### **EEOC Confirms COVID-19 Can Be A Disability Under ADA**

On December 14, 2021, the Equal Employment Opportunity Commission ("EEOC") supplemented its guidance concerning COVID-19, the Americans with Disabilities Act ("ADA"), the Rehabilitation Act, and other Equal Employment Opportunity ("EEO") Laws to confirm that COVID-19 can qualify as a...

December 13, 2021

### **Biden Re-Establishes Non-Displacement Executive Order for SCA Contractors**

On November 18, 2021, President Biden issued Executive Order 14055 that requires successor contractors under federal government service contracts to offer employment to certain employees of the predecessor contractor whose employment would otherwise be terminated as a result of...

December 7, 2021

### **Federal District Judge Enjoins the Federal Contractor COVID-19 Vaccine Mandate Nationwide**

On December 7, 2021, Judge R. Stan Baker of the U.S. District Court for the Southern District of Georgia enjoined the federal government from enforcing Executive Order 14042's COVID-19 vaccination mandate for federal government contractors and subcontractors on a...

December 7, 2021

### **Federal District Judge Enjoins the Federal Contractor COVID-19 Vaccine Mandate Nationwide**

On December 7, 2021, Judge R. Stan Baker of the U.S. District Court for the Southern District of Georgia enjoined the federal government from enforcing Executive Order 14042's COVID-19 vaccination mandate for federal government contractors and subcontractors on a...

December 3, 2021

**OFCCP Launches Contractor Portal to Require Annual Affirmative Action Plan Certification**

On December 2, 2021, OFCCP announced that its Affirmative Action Program Verification Interface (also referred to as the Contractor Portal) is now operative. Through the Contractor Portal, federal government supply and service contractors and subcontractors will be required to...

December 3, 2021

**OFCCP Launches Contractor Portal to Require Annual Affirmative Action Plan Certification**

On December 2, 2021, OFCCP announced that its Affirmative Action Program Verification Interface (also referred to as the Contractor Portal) is now operative. Through the Contractor Portal, federal government supply and service contractors and subcontractors will be required to...

December 1, 2021

**Executive Order 14042's Vaccine Mandate for Federal Government Contractors Enjoined in Tennessee, Ohio, and Kentucky**

On November 30, 2021, the U.S. District Court for the Eastern District of Kentucky threw a wrench into the federal government's efforts to enforce Executive Order 14042's COVID-19 vaccination mandate against federal government contractors by issuing a preliminary injunction...

November 26, 2021

**Sixth Circuit Wins OSHA ETS Lottery to Hear Legal Challenges**

Today, the Sixth Circuit Court of Appeals, based out of Cincinnati, was selected via lottery by the Judicial Panel on Multidistrict Litigation to hear legal challenges to the OSHA ETS. The OSHA ETS was formally issued on November 5,...

November 24, 2021

**Department of Labor Finalizes \$15 Minimum Wage for Employees of Federal Contractors**

On November 16, 2021, the Department of Labor published a Final Rule implementing Executive Order 14026 and raising the federal contractor minimum wage to \$15 per hour under most federal government contracts entered into after January 30, 2022. The...

November 23, 2021

**D.C. Enacts Paid COVID-19 Vaccine Leave and Extends Public Health Emergency Leave Under DC FMLA**

On November 18, 2021, District of Columbia Mayor Muriel Bowser signed the " COVID Vaccination Leave Emergency Amendment Act of 2021 " (the "Act"). The Act applies to nearly all private employers with employees in the District. The Act...

November 19, 2021

**New York Enhances Protections for Whistleblowers**

Effective January 26, 2022, New York will greatly expand whistleblower protections provided to employees and independent contractors, creating new compliance challenges and avenues of liability for employers. Senate Bill S4394A (the "Amendment"), recently signed into law by Governor Hochul...

November 15, 2021

**OFCCP Announces Rescission of 2020 Rule Expanding the Religious Exemption Under Executive Order 11246**

On November 9, 2021, the Office of Federal Contract Compliance Programs (OFCCP) published a proposed rule rescinding its December 2020 Final Rule broadening the religious exemption from Executive Order 11246's nondiscrimination requirements for federal contractors, which went into effect...

November 11, 2021

**Federal Contractor Employees Must Now be Fully Vaccinated Against COVID-19 By January 18, 2022**

On November 10, 2021, the Biden Administration announced another change to the deadline for federal contractors to become fully vaccinated against COVID-19 as required by Executive Order 14042. The deadline is now January 18, 2022 , meaning that employees...

November 11, 2021

### **More Circuits Added to the OSHA ETS Lottery**

Lawsuits challenging the COVID-19 Vaccination and Testing (the “ETS”) issued by the Occupational Safety and Health Administration (“OSHA”) were filed in three additional U.S. Circuit Courts of Appeals on Wednesday, November 10, 2021. Labor unions filed lawsuits in the...

November 6, 2021

### **Fifth Circuit Halts Enforcement of the OSHA ETS...For Now**

As previously reported , Texas, Louisiana, Mississippi, South Carolina, Utah and several other private entities filed suit in the U.S. Circuit Court of Appeals for the Fifth Circuit on November 5 requesting review of the emergency temporary standard regarding...

November 5, 2021

### **Biden Workplace Vaccination Rule Challenged by States**

Twenty-six states have filed suit to challenge the emergency temporary standard regarding COVID-19 Vaccination and Testing (the “ETS”) issued by the Occupational Safety and Health Administration (“OSHA”) on November 4, 2021, and published in the Federal Register on November...

November 4, 2021

### **Biden Administration Delays the Deadline for Federal Contractor Employees to Become Fully Vaccinated Until January 4, 2022**

On November 4, 2021, the Biden Administration issued a Fact Sheet announcing the release of its long-awaited Occupational Safety and Health Administration (OSHA) and Center for Medicare and Medicaid Services (CMS) COVID-19 vaccination mandates. The Fact Sheet delivered significant...

November 4, 2021

### **OSHA Issues Emergency Temporary Standard for COVID-19 Vaccination and Testing**

Today, November 4, 2021, the Occupational Safety and Health Administration (OSHA) issued the emergency temporary standard regarding COVID-19 Vaccination and Testing (the “ETS”) previously unveiled in President Biden’s COVID-19 Action Plan . Employers with a total of 100 or...

October 29, 2021

### **Sending an Employee on a Business Trip? You’ll Have to Pay More for That in Washington State**

In deferring to the Washington Department of Labor and Industries’ (“Department”) interpretation of its own regulation, a Washington Court of Appeals ruled that employee’s’ out-of-town travel time—including travel time to and from the airport, time in the airport, and...

October 25, 2021

### **Texas’ Third Special Legislative Session Ends Without Any Expansion of Governor Abbott’s “Vaccine Mandate Ban” Executive Order**

Texas’ Third Special Session ended on October 19, 2021 without the Texas Legislature codifying any law related to Governor Abbott’s recent Executive Order (GA-40), which prohibits entities (including private employers and businesses) from compelling COVID-19 vaccinations. Polsinelli’s summary of...

October 13, 2021

### **Proposed Colorado Rule Clarifies that Paid Time Off Is Included within State’s Existing Prohibition of Use-It-Or-Lose-It Vacation Policies**

The Colorado Department of Labor and Employment (“CDLE”) recently issued several proposed rules, including new language defining “vacation pay” for purposes of Colorado’s wage laws. Colorado law has long defined “wages” and “compensation” as including “vacation pay earned in...

October 12, 2021

### **Federal District Court Rejects Hospital Employees' Attempt to Stop Vaccination Mandate During Legal Battle**

In September, 40 current and former employees of St. Elizabeth Medical Center in Kentucky sued the privately-owned hospital over its mandatory COVID-19 vaccination policy, alleging violations of their constitutional rights, the Americans with Disabilities Act, and Title VII. The...

October 12, 2021

### **New Texas Executive Order Bans Vaccine Mandates for Private Employers**

On October 11, 2021, Governor Abbott issued Executive Order GA-40, stating that no entity in Texas (including private employers and businesses) can compel COVID-19 vaccination by any individual, including an employee or consumer who objects to such vaccination because...

September 30, 2021

### **Ninth Circuit Decision Creates Uncertainty for California Employers Using Mandatory Arbitration Agreements**

On September 15, 2021, the Ninth Circuit, in a 2-1 split decision, partially upheld a California law passed in 2019 governing the use of mandatory arbitration agreements by employers in California. The state law, AB 51 (codified as California...

September 24, 2021

### **Safer Federal Workforce Task Force Publishes Guidance for Contractor COVID-19 Vaccine Mandate**

On September 24, 2021, the Safer Federal Workforce Task Force (Task Force) published its expected guidance regarding the COVID-19 vaccination mandate for federal government contractors. This Guidance defines the specific parameters of the vaccine mandate, as well as other...

September 24, 2021

### **Safer Federal Workforce Task Force Publishes Guidance for Contractor COVID-19 Vaccine Mandate**

On September 24, 2021, the Safer Federal Workforce Task Force (Task Force) published its expected guidance regarding the COVID-19 vaccination mandate for federal government contractors. This Guidance defines the specific parameters of the vaccine mandate, as well as other...

September 16, 2021

### **The Future is Now - Episode 1**

We are pleased to announce the launch of the first episode in the new Inside Law podcast series, "The Future is Now" hosted by Polsinelli's Labor & Employment practice . In this podcast, Rob Entin and Mark Nelson discuss...

September 14, 2021

### **Missouri Now Provides for Leave and Accommodations to Victims of Domestic or Sexual Violence**

Following the enactment of the Victims' Economic Safety and Security Act (VESSA), Missouri joins over 30 states requiring employers to provide protections to employees who are victims of domestic or sexual violence in the form of leave and accommodations....

September 10, 2021

### **New Executive Order Imposes COVID-19 Vaccine Mandate on Federal Contractor Employers**

In an attempt to contain the continuing COVID-19 pandemic, President Biden issued two Executive Orders on September 9, 2021 that mandate COVID-19 vaccines for federal government employees and employees of federal government contractors . Although key details of these...

September 10, 2021

### **President Biden Mandates COVID-19 Vaccinations: Stay Tuned...**

On September 9, 2021, President Biden unveiled a COVID-19 Action Plan that requires, among other things, millions of private-sector employees, health care workers, federal employees, and employees of federal contractors to be vaccinated against COVID-19. The announcement resulted in...

September 10, 2021

### **New Executive Order Imposes COVID-19 Vaccine Mandate on Federal Contractor Employers**

In an attempt to contain the continuing COVID-19 pandemic, President Biden issued two Executive Orders on September 9, 2021 that mandate COVID-19 vaccines for federal government employees and employees of federal government contractors . Although key details of these...

September 3, 2021

### **OFCCP May Use EEO-1 Data Reported By Employers in Support of Enforcement Efforts**

On September 1, 2021, the Office of Federal Contract Compliance Programs (OFCCP) announced that it would “evaluate” using compensation data reported by federal contractors in annual EEO-1 filings to guide its enforcement efforts in the area of pay equity. ...

August 26, 2021

### **Texas Expands Sexual Harassment Protections for Employees**

Texas Governor Greg Abbott recently signed two new bills, effective September 1, 2021, which will arm employees with new tools and protections for asserting sexual harassment in the workplace claims. Here is what Texas employers need to know: The...

August 25, 2021

### **Illinois Law Places New Limits on Restrictive Covenants**

On January 1, 2022, Public Act 102-0358, an amendment to the Illinois Freedom to Work Act will take effect and impact all non-compete agreements entered into prospectively. The law will ban employers from using non-compete agreements with employees earning...

August 10, 2021

### **Walkout Wednesday—What Rights Do Employers Have?**

Walkouts by non-union employees have increased sharply over the past couple of years. “Walkout Wednesdays” have become a favorite organizing strategy for labor unions. Unions, like SEIU, make a significant investment of their resources to galvanize non-union employees’ support and participation...

July 30, 2021

### **New Vaccination Mandate for On-Site Federal Contractor Employees**

On July 29, 2021, the Biden Administration announced a COVID-19 vaccination mandate for certain employees of federal government contractors. The announcement, released in a Fact Sheet , imposes new safety protocols on the federal contractor workforce, but does not...

July 28, 2021

### **Rising Cases and the Delta Variant Spur Over 50 Health Care Groups to Support Mandatory Vaccinations for Health Care Employees**

On Monday, July 26, 2021, a group of nearly 60 major medical organizations, including the American Medical Association, American Nursing Association, American Pharmacists Association, American College of Physicians, American College of Preventative Medicine, and American Public Health Association advocated...

July 28, 2021

### **California Mandates Vaccinations or Testing for Health Care Employees and State Workers**

On July 26, 2021, California Governor Gavin Newsom announced that California state workers, workers in health care, and workers in high-risk congregate setting will be required to provide proof of Covid-19 vaccination or undergo weekly testing and wear appropriate...

July 22, 2021

### **Department of Labor Issues Proposed Regulations for Contractor Minimum Wage Increase**

On July 21, 2021, the Department of Labor issued a Notice of Proposed Rulemaking to implement President Biden’s Executive Order 14026 increasing the minimum wage for certain employees of federal government contractors and subcontractors to \$15.00 per hour. As...

July 12, 2021

### **EEOC Issues Guidance Regarding Workplace Restrooms**

On the one year anniversary of the Supreme Court's decision in *Bostock v. Clayton County*, the EEOC has issued new guidance to clarify whether employers can segregate workplace restrooms by gender or sex. While not law, this guidance...

July 9, 2021

### **Biden Executive Order Signals Future Restrictions on Non-Compete Agreements**

On July 9, 2021, President Biden made good on a campaign promise to address non-compete agreements by issuing a sweeping executive order that specifically targets barriers to competition. Specifically, the executive order encourages the Federal Trade Commission and other...

July 8, 2021

### **Revised Cal/OSHA Regulations and Governor Newsom's Executive Order Provide Much-Needed Clarity for Employers Amid California's Reopening**

As California moved forward with reopening most of its economy on June 15, 2021, many employers in the state were left wondering whether and when the California Division of Occupational Safety and Health ("Cal/OSHA"), the state agency tasked with...

July 1, 2021

### **OFCCP Issues CSAL List for Fiscal Year 2021 Compliance Audits**

On July 1, 2021, OFCCP issued its Corporate Scheduling Announcement List (CSAL) scheduling 750 federal contractor and subcontractor establishments for compliance evaluations in fiscal year 2021. The CSAL identifies contractors and subcontractors that will receive a Scheduling Letter formally...

June 21, 2021

### **Mastering Remote Work: Does Returning to the Office Mean Bringing Pets to Work?**

With so much of the workforce going remote this past year, there has been a huge shift in the way many people view pet ownership. In fact, the national pet adoption rate jumped more than 30% at the beginning...

June 15, 2021

### **Texas Bellwether Case Affirms the Legality of an Employer's Mandatory Vaccination Policy**

Over the weekend, the U.S. Southern District of Texas issued an order that provides employers—at least in Texas—with greater certainty about the legality of mandatory vaccination policies. In December 2020, the EEOC issued interim guidance that suggested employers may...

June 2, 2021

### **EEOC Issues Guidance on COVID-19 Vaccine Incentives**

On May 28, 2021, the Equal Employment Opportunity Commission ("EEOC") provided long-awaited clarification on an employer's ability to offer incentives to their employees for receiving COVID-19 vaccinations. This new guidance provides welcomed direction to those businesses looking to encourage...

May 14, 2021

### **To Mask or Not to Mask, That is the Question.**

Over the last several months, vaccination rates in the United States increased, COVID-19 cases decreased, and guidance from the Centers for Disease Control and Prevention (the "CDC") regarding fully vaccinated individuals left employers wondering whether loosened COVID-19 face mask...

May 7, 2021

### **Making Time for Small Talk – And Other Tips for Making Remote Work a Success - PART III**

This is part three of a 3-part series, and the second of several posts addressing remote work considerations arising out of the COVID-19 pandemic. This series explores tips from companies that have figured out how to run a business...

May 6, 2021

### **Biden Administration Repeals Trump Rule On Independent Contractors, Restoring The Economic Realities Test, For Now.**

As expected, this week, the Biden administration has formally withdrawn a Trump administration rule that was set to change the standard applicable to independent contractors. Whether a worker is an independent contractor or an employee has long been determined...

April 30, 2021

### **Making Time for Small Talk: And Other Tips for Making Remote Work a Success - Part II**

This is part two of a 3-part series, and the second of several posts addressing remote work considerations arising out of the COVID-19 pandemic. This series explores tips from companies that have figured out how to run a business...

April 28, 2021

### **Executive Order Increases the Minimum Wage for Federal Contractors to \$15**

On April 27, 2021, President Biden signed Executive Order 14026 , which increases the minimum wage for workers on or in connection with a federal government contract to \$15.00 as of January 30, 2022. This Executive Order increases the...

April 28, 2021

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On April 27, 2021, President Biden signed Executive Order 14026 , which increases the minimum wage for workers on or in connection with a federal government contract to \$15.00 as of January 30, 2022. This Executive Order increases the...

April 23, 2021

### **Making Time for Small Talk: And Other Tips for Making Remote Work a Success – Part I**

This is part one of a 3-part series, and the second of several posts addressing remote work considerations arising out of the COVID-19 pandemic. This series explores tips from companies that have figured it out, and have advice on...

April 22, 2021

### **Stay Tuned: EEOC to Issue Guidance Soon on COVID-19 Vaccine Incentives**

As more businesses prepare to return to the workplace, employers everywhere are evaluating whether to mandate COVID-19 vaccination as a condition of employment or simply encourage vaccination. For many employers, this decision hinges on the company's ability to offer employees...

April 1, 2021

### **Retaliation Against a Former Employee Can Give Rise to a False Claims Act Retaliation Claim**

On March 31, 2021, in United States ex rel. Felten v. William Beaumont Hospital , the Sixth Circuit Court of Appeals held that an employer's allegedly retaliatory conduct directed at an employee after the employee's termination can give rise...

April 1, 2021

### **Retaliation Against a Former Employee Can Give Rise to a False Claims Act Retaliation Claim**

On March 31, 2021, in United States ex rel. Felten v. William Beaumont Hospital , the Sixth Circuit Court of Appeals held that an employer's allegedly retaliatory conduct directed at an employee after the employee's termination can give rise...

March 31, 2021

### **OFCCP Announces 2021 Annual Veteran Hiring Benchmark**

On March 30, 2021, the Office of Federal Contract Compliance Programs (OFCCP) announced that it was lowering the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) hiring benchmark again this year. Effective March 31, 2021, the new benchmark is 5.6...

March 30, 2021

### **California Employees Receive Two More Weeks of Supplemental COVID-19 Paid Sick Leave**

On March 19, 2021, California Governor Gavin Newsom signed into law S.B. 95, which requires covered California employers to provide qualifying employees with up to 80 additional hours of COVID-19-related paid sick leave through September 30, 2021, upon oral...

March 25, 2021

### **Illinois Tightens Restrictions on Employer Use of Criminal Background Checks**

Illinois employers have long been prohibited from using arrest records as the basis for employment decisions under Section 103 of the Illinois Human Rights Act ("IHRA"). On March 23, 2021, Illinois Governor J.B. Pritzker signed Senate Bill...

March 24, 2021

### **Remote Work: What If We Keep Our Workforce Remote?**

This is the first of several posts addressing remote work considerations arising out of the COVID-19 pandemic. We are now well into 2021 and more and more employers are considering the return to office plan. But what if you...

March 23, 2021

### **How Does the American Rescue Plan Change FFCRA Paid Leave Options, and Should Employers Pass on This Benefit to Their Employees?**

Employer obligations to provide paid sick and family leave under the Families First Coronavirus Response Act (FFCRA) ended on December 31, 2020. On December 27, 2020, President Trump signed the Consolidated Appropriations Act of 2021 (CAA), extending the payroll...

March 11, 2021

### **American Rescue Plan Brings \$86 Billion in Relief to Failing Multiemployer Pension Plans**

The American Rescue Plan that was sent to President Biden's desk on March 11, 2021 includes an \$86 Billion aid package that provides financial assistance to underfunded multiemployer pension plans facing critical or declining financial status. Upon signature, the...

March 10, 2021

### **New Video Available: Workplace Bullying (Jerks, "Poopgate" and Gov. Cuomo)**

Warning/Apologies: This video contains multiple references to poop and may be offensive to fans of the Dave Matthews Band or Governor Andrew Cuomo of New York. Workplace bullying has not diminished during the pandemic. The Workplace Bullying Institute (WBI)...

March 3, 2021

### **OFCCP Amends CSAL to Eliminate Focused Reviews and Compliance Checks**

On March 2, 2021, the Office of Federal Contract Compliance Programs (OFCCP) amended its Corporate Scheduling Announcement List (CSAL) for supply and service contractors for fiscal year 2020 to remove all of the contractor establishments previously selected for Section...

March 1, 2021

### **California Supreme Court Disapproves of Rounding Meal Periods**

On February 25, 2021, in *In Donohue v. AMN Services, LLC* (2021) San Diego Superior Court, Case No. 37-2014-00012605-CU-OE-CTL, the California Supreme Court weighed in on two important issues pertaining to meal periods. First, the Court held that California...

February 23, 2021

### **New Video Available: Speak Up About Sexual Harassment (How a Really Big Misquote Made Me Rethink Harassment Training)**

This is the first in a new "rethink work" video series. This video aims to rethink how we approach sexual harassment training. As with our prior COVID videos, this is a video that employers can share with their broader...

February 11, 2021

### **OFCCP to Rescind Regulation Expanding Religious Exemption for Federal Contractors**

On February 9, 2021, the Biden administration took another step towards reversing the priorities of the Trump-era Office of Federal Contract Compliance Programs (OFCCP), by notifying the U.S. District Court for the Southern District of New York that it...

February 1, 2021

### **Virginia Establishes Permanent COVID-19 Workplace Safety and Health Standards**

On January 27, 2021, the Commonwealth of Virginia became the first state in the country to adopt permanent COVID-19 workplace safety and health standards. As we noted in a previous article, Virginia adopted an emergency temporary workplace...

January 26, 2021

### **A- on EEOC Report Card For 2020**

On January 19, 2021, the EEOC issued its second Annual Performance Review (or report card), evaluating the agency's accomplishments in FY20 in comparison to the EEOC's Strategic Plan for Fiscal Years 2018-2022. The Plan describes three strategic objectives...

January 22, 2021

### **Biden OFCCP Director Appointment Signals That More Pay Equity Enforcement is on the Horizon for Federal Contractors**

The new Biden administration wasted no time implementing changes at the Office of Federal Contract Compliance Programs (OFCCP). On January 20, 2021, the day of President Biden's inauguration, the administration moved promptly to appoint Jenny Yang to serve as...

January 21, 2021

### **Biden Administration Rescinds Prohibitions on Diversity and Inclusion Training By Government Contractors and Grantees**

The Biden Administration did not waste time in rescinding former President Trump's controversial Executive Order 13950, which limited the ability of federal government contractors and grantees to conduct certain types of diversity and inclusion training. On January 20, 2021, the...

January 20, 2021

### **California Supreme Court Holds "ABC Test" For Independent Contractors Applies Retroactively**

On January 14, 2021, the California Supreme Court held that the "ABC Test" for classifying workers as independent contractors applies retroactively. The high court first articulated this standard, which makes it tougher for businesses and employers to classify their...

January 19, 2021

### **New Video Available: What You Need to Know About COVID-19 Vaccination**

Between now and June of 2021, most Americans will have the chance to be vaccinated against COVID-19. For vaccination to bring the pandemic to an end, a large percentage of Americans will need to get vaccinated. Employers will play...

January 15, 2021

### **OFCCP Issues Opinion Letter Protecting "Controversial" Religious Beliefs**

On January 8, 2021, the Office of Federal Contract Compliance Programs (OFCCP) issued an opinion letter on "Legal Protections for Religious Liberty in the Workplace." The opinion letter builds on OFCCP's recent regulations regarding the religious exemption to provide...

January 13, 2021

### **EEO-1 Reporting Opening April 2021**

The Equal Employment Opportunity Commission (EEOC) announced this week that it will open the EEO-1 Component 1 Report in April 2021. The EEO-1 requires covered employers to report by job category the race, ethnicity and gender of its employees. ...

January 13, 2021

### **EEO-1 Reporting Opening April 2021**

The Equal Employment Opportunity Commission (EEOC) announced this week that it will open the EEO-1 Component 1 Report in April 2021. The EEO-1 requires covered employers to report by job category the race, ethnicity and gender of its employees. ...

January 13, 2021

### **DOL Provides Clarity Regarding Independent Contractors**

Employers now have a clearer picture of how to determine whether a worker is classified as an employee or independent contractor under the Fair Labor Standards Act (FLSA) thanks to a new final rule from the U.S. Department of...

January 13, 2021

### **Fifth Circuit Rejects Two-Step FLSA Collective Action Certification Process**

On January 12, 2021, the United States Court of Appeals for the Fifth Circuit announced a new certification standard for collective actions under the Fair Labor Standards Act (FLSA). The appellate court vacated a grant of conditional certification, ruling...

January 5, 2021

### **After Record Settlements in 2020, Contractors Should Expect More Pay Equity Enforcement Under Biden**

Come Jan. 20, former Vice President Joe Biden will be inaugurated as the U.S.' 46th president. In the run-up to the election, the Biden campaign focused on pay equity issues and closing the wage gap as part of its...

December 31, 2020

### **Happy New Year and Happy Vaccination Day: Maintaining Workplace Safety During the Vaccine Roll-Out**

Numerous employment lawyers and articles have addressed whether employers should mandate or strongly encourage employees to get vaccinated when the COVID-19 vaccination is available to them. Fewer have provided reminders to employers regarding the steps and precautions necessary following...

December 21, 2020

### **District of Columbia Bans the Enforcement of New Non-Compete Agreements**

On December 15, 2020, the District of Columbia Council unanimously passed the Ban on Non-Compete Agreements Amendment Act of 2020, under which the District of Columbia joins California and a small handful of jurisdictions across the country that have...

December 17, 2020

### **EEOC Issues Guidance on COVID-19 Vaccine and the Workplace**

In response to the recent Emergency Use Authorization granted by the U.S. Food and Drug Administration ("FDA") for the COVID-19 vaccine, the Equal Employment Opportunity Commission ("EEOC") published guidance today outlining employer compliance mandates under the Americans with Disabilities...

December 9, 2020

### **OFCCP Issues Final Rule Broadening its Religious Exemption for Federal Contractors**

On December 7, 2020, the Office of Federal Contract Compliance Programs issued a Final Rule codifying an expansion of the agency's exemption from Executive Order 11246's nondiscrimination requirements for federal contractors who are religious corporations, associations, educational institutions, or...

November 17, 2020

### **California Voters Pass Proposition 22, Changing How App-Based Drivers Are Classified**

On November 3, 2020, California voters passed Proposition 22, a ballot measure that classifies certain app-based rideshare and delivery drivers as independent contractors. Under the new law, which will take effect immediately following the certification of California's election results...

November 13, 2020

### **OFCCP Seeks to Provide Certainty to Contractors By Issuing Final Rule on Compliance Evaluation Procedures**

On November 10, 2020, OFCCP published its Final Rule on “Nondiscrimination Obligations of Federal Contractors and Subcontractors: Procedures to Resolve Potential Employment Discrimination.” We previously covered OFCCP’s Notice of Proposed Rulemaking on the subject, which promised to provide additional...

November 9, 2020

### **California Voters Reject Proposition to Reinstate Affirmative Action**

Among the 2020 ballot initiatives, California voters had the opportunity to weigh in on a 24-year ban on affirmative action in California. In 1996, California voters approved the California Civil Rights Initiative (Proposition 209) which amended the California Constitution...

October 21, 2020

### **OFCCP Request for Information and Stakeholder Call Provide Additional Guidance on Diversity & Inclusion Training Restrictions in Executive Order 13950**

On October 21, 2020, the Office of Federal Contract Compliance Programs (OFCCP) continued to address the highly-controversial diversity and inclusion (D&I) training restrictions in Executive Order 13950 . Specifically, OFCCP issued a Request for Information (RFI) regarding contractor D&I...

October 20, 2020

### **OFCCP Updates Employment Referral Resource**

To make the platform more user friendly and conveniently accessible, the Office of Federal Contract Compliance Programs (OFCCP) has revamped the Employment Referral Resource Directory (ERRD). The OFCCP created the ERRD as a compliance tool to assist federal contractors...

October 8, 2020

### **OFCCP Issues FAQ Guidance on Diversity & Inclusion and Bias Training Executive Order**

The September 22, 2020, issuance of Executive Order 13950 limiting federal government contractors’ ability to conduct diversity, inclusion, and unconscious or implicit bias training has roiled the contractor community. Although the Executive Order provided broad categories of themes that...

October 7, 2020

### **With the CROWN Act, Kansas City Amends Definition of Race Discrimination to Include Hair Texture and Style**

On October 1, 2020, the Kansas City, Missouri City Council unanimously voted to enact the “Creating a Respectful and Open World for Natural Hair” Act (“CROWN Act”). The CROWN Act addresses discrimination based on natural hair or particular hairstyles...

September 23, 2020

### **Executive Order Prohibits Federal Contractors and Grantees From Using Many Forms of Diversity and Implicit Bias Training**

On September 22, 2020, President Trump issued an Executive Order Combating Race and Sex Stereotyping that will prohibit federal contractors and grantees from engaging in many forms of diversity, inclusion, and implicit bias training that have gained popularity in...

September 23, 2020

### **Executive Order Prohibits Federal Contractors and Grantees From Using Many Forms of Diversity and Implicit Bias Training**

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September 22, 2020

**OFCCP Seeks to Impose New Certification Requirement on Contractors**

On September 14, 2020, the Office of Federal Contract Compliance Programs (OFCCP) requested approval from the Office of Management and Budget to require government contractors to certify on an annual basis that they are in compliance with their affirmative...

September 22, 2020

**California's Rush of Covid-19 Legislation**

In the last two weeks, the California Legislature has enacted numerous bills relating to employer obligations in light of COVID-19. Five of these bills have already been signed into law by Governor Newsom. The remainder may still be signed...

September 22, 2020

**New California Law Clarifies and Expands Exemptions for Classification of Independent Contractors**

As the nation battles the COVID-19 pandemic, California has been simultaneously grappling with one of the hottest employment law issue: the classification of workers as employees or independent contractors. On September 4, 2020, California Governor Newsom signed into law...

September 22, 2020

**California Enacts "Gap" COVID-19 Sick Leave for Employers Excluded under the FFCRA**

On September 9, 2020, California Governor Newsom signed AB 1867. The new law provides for "gap" paid sick leave coverage for California employees who are otherwise exempt from emergency paid sick leave coverage provided under the federal Families First...

September 15, 2020

**Department of Labor Responds to Loss in Southern District of New York with Revisions to FFCRA Final Rule**

On September 11, 2020, the United States Department of Labor (DOL) issued revisions to the Rule implementing the Families First Coronavirus Response Act (FFCRA) to clarify workers' rights and employers' responsibilities regarding FFCRA paid leave. The revised Rule will...

September 14, 2020

**OFCCP Issues CSAL List for Supply & Service Contractors and Construction Contractors**

On September 11, 2020, the Office of Federal Contractor Compliance Programs (OFCCP) released its Corporate Scheduling Announcement List (CSAL) online for public access. The CSAL identifies contractors who will be receiving an audit scheduling letter. This CSAL includes 200...

September 10, 2020

**OFCCP Issues New Guidance on the Status of Non-Binary Employees in Affirmative Action Programs**

The Office of Federal Contract Compliance Programs ("OFCCP") recently issued new FAQ guidance on how federal government contractors should treat non-binary employees ( i.e. , those who do not exclusively identify as either male or female) in their affirmative...

September 10, 2020

**OFCCP Issues New Guidance on the Status of Non-Binary Employees in Affirmative Action Programs**

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September 1, 2020

**Department of Labor Announces Annual Increase to Minimum Wage for Federal Contractors**

On August 31, 2020, the Department of Labor's Wage and Hour Division published its annual update to the minimum wage for federal government contractors. As of January 1, 2021, employees performing services on or in connection with certain types...

September 1, 2020

### **New Missouri Law Limits Punitive Damages Against Employers**

Missouri Governor Mike Parsons recently signed Senate Bill 591, which impacts Missouri employers by significantly restricting the availability of punitive damages. Beginning August 28, 2020, plaintiffs in Missouri will face a higher pleading requirement and standard of proof for...

August 28, 2020

### **August 28, 1963: The Continuing March from Exclusion to Inclusion**

Today marks 57 years since the August 28, 1963 March on Washington for Jobs and Freedom. The March has become a touchstone in American history and helped bring about the passage of the landmark Civil Rights Act of 1964,...

August 24, 2020

### **DOL Settles Gender Pay Discrimination Allegations against Boehringer**

The Department of Labor ("DOL") settled a claim of gender pay discrimination against Boehringer Ingelheim Animal Health USA Inc., a pharmaceutical company, on August 18, 2020. The Office of Federal Contract Compliance Programs ("OFCCP") investigated allegations that Boehringer paid...

August 18, 2020

### **Are You Prepared for the Trade Secret Litigation Boom?**

It seems everything in the world right now somehow revolves around COVID-19. Stay-at-home orders; the debate over students returning to the classroom; "essential" versus "non-essential" workers; college and professional sports; and the list goes on. In the legal world,...

August 5, 2020

### **Southern District of New York Says Portions of Department of Labor's FFCRA Final Rule "Jumped the Rail" and Are Vacated**

On April 1, 2020, the United States Department of Labor (DOL) issued a Final Rule implementing the Families First Coronavirus Response Act (FFCRA). Shortly thereafter, the State of New York filed suit against the DOL, arguing that several features...

August 4, 2020

### **New Executive Order Lays the Groundwork for Restrictions on the Use of Foreign Labor in Performing Federal Contracts**

On August 3, 2020, President Trump issued an Executive Order titled "Aligning Federal Contracting and Hiring Practices with the Interests of American Workers," signaling that the administration may seek to limit the ability of federal government contractors and subcontractors...

August 4, 2020

### **School is Physically Closed – But Learning is On. Does FFCRA Leave Apply?**

The Families First Coronavirus Response Act (FFCRA) requires covered employers – those with 500 or fewer employees – to provide eligible employees with up to two weeks of paid sick leave and up to twelve weeks (ten of which...

July 28, 2020

### **A Vaccine is Coming: Can Employers Require Employees to Take it?**

As clinical trials continue across the world for a COVID-19 vaccine, many employers are asking whether they will be able to require employees to take the vaccine when it becomes available in the United States. Like with so many...

July 21, 2020

### **The U.S. Supreme Court Expands Protection for Religious Employers Against Discrimination Claims**

On July 8, 2020, the United States Supreme Court expanded the "ministerial exception" – a legal doctrine that exempts religious employers from certain discrimination laws in *Our Lady of Guadalupe School v. Morrissey-Berru*. The decision broadened the reach...

July 20, 2020

### **Stay Healthy As America Reopens**

As part of Polsinelli's efforts to help employers and employees maintain a healthy workplace during the pandemic, we have released the third video in our "Work Together, Healthy Together" series: "Stay Healthy As America Reopens." This video is aimed...

July 20, 2020

### **Virginia Leads the Pack by Adopting COVID-19 Workplace Safety Rules**

On July 15, 2020, the Virginia Department of Labor and Industry's Health and Safety Codes Board ("Board") voted 9-2 to adopt emergency temporary standards designed to prevent the spread of COVID-19 in the workplace. As businesses slowly reopen around...

July 16, 2020

### **Ten Highlights of OFCCP Director Craig Leen's Comments at NILG Webinar July 6, 2020**

Craig Leen, Director of the Office of Federal Contract Compliance Programs (OFCCP) at the U.S. Department of Labor spoke on Monday, July 6, 2020 to lead off the National Industry Liaison Group's 2020 Virtual Conference. Director Leen spoke extensively...

July 16, 2020

### **The Approaching School Year Brings Renewed Focus on Workplace Policies**

While elected-officials determine the feasibility of reopening America's classrooms and workplaces, there is little certainty as to what life will look like in the fall for employers and employees alike. Will students be in classrooms? Will all or most...

July 1, 2020

### **OFCCP Touts the Success of its Early Resolution Procedures**

To increase its efficiency in ensuring the regulatory compliance of supply and services contractors, the OFCCP implemented Early Resolution Procedures (ERP) in 2018. The ERP allows contractors to proactively correct violations during compliance evaluations and quickly enter into agreements...

June 30, 2020

### **ALJ Denies Contractor's Bid for Summary Judgment But Disapproves OFCCP's Open-Ended Pay Discrimination Claim**

On June 24, 2020, a Department of Labor Administrative Law Judge (ALJ) denied J.P. Morgan Chase & Co.'s motion for summary judgment seeking to dismiss an OFCCP enforcement action. The ALJ's decision was preliminary in nature, but contains important...

June 30, 2020

### **Bostock Breakdown: Unanswered Questions in Light of Supreme Court's Title VII Ruling**

In *Bostock v. Clayton County, Georgia*, the United States Supreme Court held that "an employer who fires an individual merely for being gay or transgender violates Title VII." With its decision, however, the Supreme Court left unanswered the...

June 25, 2020

### **NLRB Overrules 2016 Decision Requiring Employers To Negotiate With Newly Certified Union Over Disciplinary Action**

The National Labor Relations Board has overruled a previous Board's 2016 Decision and reset an employer's ability to discipline union-represented employees before reaching a first contract with the union. In 2016, a Democratic-dominated Board created an obligation for employers,...

June 23, 2020

### **President Trump Bans Entry of Certain Temporary Foreign Workers, Extends “Green Card” Ban Through 2020**

President Trump has issued a new Executive Order extending the current ban on immigrant visas for those outside the United States, as well as barring entry of new classes of nonimmigrant visas, namely H-1B, H-2B, L, and J visas...

June 22, 2020

### **Colorado Joins Growing List of Jurisdictions Mandating Paid Sick Leave**

On June 16, 2020, the Colorado Legislature passed the Healthy Families and Workplaces Act which becomes effective on January 1, 2021 for employers with 16 or more employees and on January 1, 2022 for employers with 15 or more employees and creates...

June 18, 2020

### **EEOC Updates Guidance to Prohibit Antibody Testing**

In light of CDC Interim Guidelines stating antibody test results “should not be used to make decisions about returning persons to the workplace,” the EEOC released guidance on June 17, 2020 indicating that employers should not require antibody tests...

June 15, 2020

### **U.S. Supreme Court: Title VII Prohibits Discrimination Based on Sexual Orientation and Gender Identity**

Today, the United States Supreme Court issued its much-anticipated ruling as to whether Title VII of the Civil Rights Act of 1964 protects employees from discrimination based on sexual orientation and gender identity. The Supreme Court’s ruling came on...

May 28, 2020

### **Non-Compete Agreements and COVID-19**

Many employers currently are reviewing the requirements they must meet when re-opening their businesses. Employers should be careful not to overlook another critical issue as they head back into their workplaces – the enforceability of restrictive covenants against employees...

May 12, 2020

### **OFCCP Releases FAQ Guidance on VEVRAA Focused Reviews**

The first round of VEVRAA focused reviews is on the horizon. Last year, OFCCP released its scheduling list identifying the federal contractors who were selected for focused reviews of their compliance with the Vietnam Era Veterans Readjustment Assistance Act. ...

May 11, 2020

### **New Voluntary Self-Identification Form**

On Friday Office of Federal Contractor Compliance Programs (OFCCP) released an updated Voluntary Self-Identification of Disability Form (CC-305) . The new form is much shorter than the previous form and now fits on a single page. The announced purpose...

May 8, 2020

### **EEO-1 Reporting Delayed Until March 2021 Due to COVID-19**

The Equal Employment Opportunity Commission (EEOC) announced May 7, 2020 that it will delay until March 2021 the annual filing of the EEO-1 Component 1 Report, which requires covered employers to report by job category the race, ethnicity and...

May 8, 2020

### **EEO-1 Reporting Delayed Until March 2021 Due to COVID-19**

The Equal Employment Opportunity Commission (EEOC) announced May 7, 2020 that it will delay until March 2021 the annual filing of the EEO-1 Component 1 Report, which requires covered employers to report by job category the race, ethnicity and...

May 7, 2020

### **CDC Leaves Businesses on Their Own: CDC “Guidance for Implementing the Opening Up America Again Framework” Will “Never See the Light of Day”**

States and businesses are on their own based on a CDC official’s statement to the Associated Press that the much-anticipated “Guidance for Implementing the Opening up America Again Framework” (“Guidance”) will “never see the light of day.” The 17-page...

May 5, 2020

### **Returning to Work After COVID-19 Means More Wage & Hour Concerns**

With states, cities and counties taking measures to reopen after COVID-19, businesses are also faced with reopening and returning employees to work while still facing many unknowns. Despite these unknowns, employers must ensure compliance with applicable laws when designing...

May 4, 2020

### **Virginia Increases its Minimum Wage and Creates New Wage and Hour Claims**

Is Virginia the new California? That may be an exaggeration, but in April 2020 the Commonwealth took major steps away from its historically pro-employer climate to provide employees and independent contractors with new potential claims. We previously reported about...

April 30, 2020

### **California Provides COVID-19 Supplemental Paid Sick Leave to Essential Food Sector Workers**

Following a series of local city ordinances aimed at closing the gap left by the Families First Coronavirus Response Act (“FFCRA”), on April 16, 2020, California Governor Gavin Newsom signed into law Executive Order N-51-20, mandating that certain Hiring...

April 29, 2020

### **Passing the Test: EEOC Clarifies That Employers May Test for COVID-19**

As employers begin seeing rays of light at the end of the tunnel and start thinking of reopening, a question at the forefront of those preparations is whether they can test their employees for COVID-19. Such a test would qualify...

April 28, 2020

### **USCIS Releases Update to Employer I-9 Handbook**

On April 27, 2020, USCIS released significant new changes made to the Handbook for Employers: Guidance for Completing Form I-9 . The Handbook is a valuable resource for employers regarding questions on I-9 completion and compliance and addresses many...

April 22, 2020

### **Despite Planning Underway to “Re-Open America,” Gap in Child Care Anticipated to Continue to Impact Workforce**

Due to the COVID-19 pandemic, schools in the United States have generally suspended brick-and-mortar operations nationwide and are almost exclusively conducting classes through remote learning for the remainder of the academic year. Providing learning support and other care to...

April 20, 2020

### **OFCCP Issues Three Directives to Advance Director Leen’s Efficiency and Transparency Agenda**

On April 17, 2020, OFCCP released three new directives that aim to advance outgoing Director Craig Leen’s longstanding focus on increasing the agency’s transparency and efficiency. The new directives are: 1. Directive 2020-02 : Efficiency in Compliance Evaluations 2. ...

April 20, 2020

### **Knock-Knock, OSHA is Here! How to Respond to an OSHA Complaint in the Wake of COVID-19**

Nearly every essential business that remains open during the Coronavirus Disease 2019 (COVID-19) pandemic is faced with the possibility that coronavirus could show up in the workplace, or that its employees are concerned that it will. This leaves employers...

April 17, 2020

### **Virginia Passes Significant Changes to State Employment Discrimination Law**

On April 11, 2020, Virginia Governor Ralph Northam signed the Virginia Values Act (“Act”), which significantly strengthens the Virginia Human Rights Act’s prohibition on employment discrimination. Some of the major changes include: Greatly expanding the class of employers who...

April 17, 2020

### **Illinois Essential Workers Entitled to Workers’ Compensation**

During this COVID-19 pandemic, many unions have argued their members are in a proverbial Catch-22. While employees understand they should not go to work with symptoms of COVID-19, they also cannot miss a paycheck. Complicating matters for those employees,...

April 10, 2020

### **Los Angeles City Ordinance Provides Additional COVID-19 Paid Sick Leave to Employees**

On April 7, 2020, Mayor Eric Garcetti signed into law the ordinance recently passed by the Los Angeles City Council mandating that certain large employers offer up to 80 hours of “COVID-19 Supplemental Paid Sick Leave” to employees working...

April 10, 2020

### **EEOC Issues Additional Guidance Regarding COVID-19, ADA and the Rehabilitation Act**

On April 9, 2020, the Equal Employment Opportunity Commission issued supplemental guidance related to COVID-19. The guidance discusses what questions an employer may ask employees when screening employees in the workplace, storing information about employees’ body temperatures, with whom...

April 9, 2020

### **Summary Judgment Decision in Long-Running Erhart SOX Case Limits the Scope of Protected Activity Under SEC Books and Records and Internal Controls Rules**

On March 31, 2020, the U.S. District Court for the Southern District Court of California entered partial summary judgment in Erhart v. Bofl Holding, Inc ., a prominent, long-running whistleblower lawsuit under the Sarbanes-Oxley and Dodd-Frank Acts. The court’s...

April 8, 2020

### **Let Employees Vote — National Labor Relations Board Publishes Final Employee Free Choice Election Rules**

Update – On April 8, 2020, the NLRB delayed the effective date of the Election Protection Rule 60 days, to July 31, 2020. The Board cited “the ongoing national emergency caused by the coronavirus” for its decision. The National...

April 3, 2020

### **Taking Care of Essential Business Despite Growing Number of Stay at Home Orders**

A growing number of states, along with Puerto Rico, the Navajo Nation and a significant number of counties and municipalities, have issued mandatory “shelter in place” or “stay at home” orders. To read more about these orders, click here...

April 3, 2020

### **Addressing the Additional Employment Law Risks that Can Emerge From PPE Shortage**

As the COVID-19 pandemic continues, health care workers on the front-lines continue to risk their own health to provide care for patients suffering from or who may have been exposed to COVID-19. With growing worries regarding the availability of...

April 2, 2020

### **Hitting 500 – Aggregation of Employees Under the Families First Coronavirus Response Act: Updated Department of Labor Rule**

On March 18, 2020, President Trump signed the Families First Coronavirus Response Act (the “Act”), requiring employers with fewer than 500 employees to provide paid leave benefits related to the COVID-19 pandemic under the Emergency Family and Medical Leave...

April 2, 2020

### **Abrupt Turn Ahead: The Department of Labor’s New Regulations for the Families First Coronavirus Response Act**

On April 1, 2020, the Wage and Hour Division of the Department of Labor (“DOL”) issued temporary regulations (“Regulations”) to implement the Public Health Emergency Leave (“Emergency FMLA Leave”) and Emergency Paid Sick Leave (“Paid Sick Leave”) benefits available...

April 2, 2020

### **NLRB Postpones Postponement of Elections**

On March 20th, the National Labor Relations Board (“NLRB”) suspended all representation elections, including those by mail ballot, through April 3, due to concerns related to the coronavirus. In its announcement, it indicated it was taking this unprecedented action...

April 1, 2020

### **Update: Let Employees Vote—National Labor Relations Board Publishes Final Employee Free Choice Election Rules**

Update – On April 8, 2020, the NLRB delayed the effective date of the Election Protection Rule 60 days, to July 31, 2020. The Board cited “the ongoing national emergency caused by the coronavirus” for its decision. The National...

March 30, 2020

### **Protecting Your Business in the COVID-19 World: NLRB General Counsel Addresses Bargaining Obligations During Times of Crisis**

The COVID-19 crisis challenges unionized employers in unique ways. They are mandated under the National Labor Relations Act (NLRA) to bargain with unions over wages, hours, and working conditions, including schedule changes, safety protocols, furloughs and layoffs. They cannot...

March 29, 2020

### **Need to Know: Expansive Health Care Provider Exemption under the FFCRA**

Since the Families First Coronavirus Response Act was signed on March 18, 2020, employers of health care providers have wondered how much of their workforce would be eligible for paid sick leave and emergency FMLA leave. (Our prior blog...

March 29, 2020

### **ACT Now: Employers Must Be Prepared for an Employee’s Report of Exposure to COVID-19 (Implementing Advance Contact Tracing)**

For any employer that has gone through it, receiving news that one of your employees has been diagnosed with or was exposed to COVID-19 is a scary and revealing experience. What was once – even just 10 days ago...

March 28, 2020

### **NLRB Postpones New Election Rules**

Last week, the National Labor Relations Board (“NLRB”) delayed the implementation of its revisions to the representation election process. In a Notice published on its website, it stated, “[T]o facilitate the resolution of legal challenges, it is postponing the...

March 28, 2020

### **CARES Act Provides Relief Through Employer Sponsored Benefit Plans**

On March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), a \$2 trillion stimulus package aimed to benefit both individual taxpayers and businesses. This update provides a summary of those...

March 27, 2020

### **Business Continuity During the Pandemic: Where You Need to Be By April 7 (ish)**

The current wave of “shelter in place” and other similar orders has triggered concern among many businesses – large and small – about their own business continuity. The lack of clarity around what such restrictions require (and...

March 27, 2020

### **Beware the Fine Print: Union Neutrality Requirement Hidden in COVID-19 Stimulus Legislation**

The \$2 trillion stimulus package that the House of Representatives approved on March 27—and President Trump is expected to sign—contains a provision that may provide a significant stimulus to labor unions. One provision of the bill provides new loans...

March 27, 2020

### **Department of Labor Quietly Adds to Guidance on Families First Coronavirus Act**

Employers have faced many questions as they prepare for the effective date of the Families First Coronavirus Act (FFCRA). Many of those questions remained unanswered after the Department of Labor issued its “Families First Coronavirus Response Act: Questions and...

March 24, 2020

### **E-Verify Extensions Due to COVID-19**

E-Verify has announced that it is temporarily extending the timeframe to take action to resolve Tentative Nonconfirmations (TNC) from the Social Security Administration or Department of Homeland Security due to office closures to the public. Under the new temporary...

March 24, 2020

### **Health Care Workers and Leave Under the Families First Coronavirus Response Act**

On March 18, 2020, President Trump signed the Families First Coronavirus Response Act (the “Act”), requiring employers with less than 500 employees to provide Public Health Emergency Leave and Paid Sick Time to employees impacted by the Coronavirus pandemic. ...

March 24, 2020

### **Department of Homeland Security Provides Flexibility for Form I-9 Compliance During COVID-19 National Emergency**

On March 20, the Department Homeland Security (DHS) announced procedures to provide flexibility for companies navigating Form I-9 compliance in light of the Covid-19 national emergency. All U.S. employers must continue to complete the Form I-9, Employment Eligibility...

March 23, 2020

### **E-Verify Extensions Due to COVID-19**

E-Verify has announced that it is temporarily extending the timeframe to take action to resolve Tentative Nonconfirmations (TNC) from the Social Security Administration or Department of Homeland Security due to office closures to the public. Under the new temporary...

March 23, 2020

### **Top Immigration Updates for U.S. Employers during COVID-19 National Emergency**

The COVID-19 National Emergency has brought a host of challenges to employers in the United States, including travel, compliance with employment verification processes, and hiring and maintaining immigration status for foreign national employees. In the past two weeks we...

March 20, 2020

### **COVID-19 Shuts Down NLRB Representation Elections**

The National Labor Relations Board ("Board") announced today that it will suspend all representation elections, including mail ballot elections, effective immediately through April 3, 2020 because of the COVID-19 pandemic. The Board stated that the election suspension is necessary...

March 19, 2020

### **New Unemployment Standards for COVID-19**

Unemployment benefits are a joint federal-state program. While the federal government provides some guidelines, every state has its own rules on unemployment benefits, making navigation of the rules challenging for employers who have employees in multiple states. Complicating the...

March 18, 2020

### **Immigration Updates: COVID-19 Restrictions and Disruptions**

COVID-19 continues to have far-reaching implications for global mobility and the international workforce in the United States. Polsinelli attorneys are closely monitoring travel restrictions and Department of Homeland Security policy implementations for its impact on workforce mobility and immigration...

March 18, 2020

### **Congress Gets in the Act: Families First Coronavirus Response Act**

Since negotiations began last week, people across the country have been anxious to know how Congress's response to the COVID-19 pandemic would impact them. The Senate has just passed the Families First Coronavirus Response Act ("Act"). The Act will...

March 17, 2020

### **California Supreme Court Expands PAGA Standing**

On March 12, 2020, the California Supreme Court broadened the scope of who can bring a representative action claiming penalties under the 2004 Private Attorneys General Act (PAGA). ( Kim v. Reins International California, Inc. ) By way of...

March 17, 2020

### **Options for Employers When Employees Cannot Work From Home**

Despite many politicians and employers discussing the option for employees to work at home, there are millions of employees who simply cannot do that. Bartenders, restaurant servers, cashiers, and many others have no one to serve and nothing to...

March 16, 2020

### **Employers Tips for Telework**

As you are aware from various updates this past weekend, certain cities have closed their schools (bars and restaurants, etc.), and are encouraging or requiring employees to work from home. People who return from risky travel or learn they...

March 12, 2020

### **IRS Issues Guidance on COVID-19: Coverage for High Deductible Health Plans**

In response to the Coronavirus ("COVID-19"), the Internal Revenue Service advised that a health plan that otherwise satisfies the requirements to be a High Deductible Health Plan ("HDHP") under section 223(c)(2)(A) will not fail to be an HDHP merely...

March 12, 2020

### **Employer Alert: President Trump orders Ban on Travelers from Europe starting Friday, March 13**

On Wednesday, March 11, 2020, President Trump signed an Order that prohibits foreign nationals from traveling to the U.S. if they have been physically in the European countries making up the Schengen area within the 14 days...

March 2, 2020

### **OFCCP Launches Online Contractor Compliance Institute**

On February 21, 2020, OFCCP announced the launch of its new Contractor Compliance Institute as part of its ongoing efforts to provide guidance and training to aid federal government contractors in meeting their compliance obligations. The Institute provides free,...

March 2, 2020

### **OFCCP/NILG Compensation Roundtable Highlights Contractors' Concerns with OFCCP's Compensation Evaluations**

Polsinelli attended the February 18, 2020 Compensation Roundtable jointly hosted by OFCCP and the National Industry Liaison Group (NILG). The event provided valuable insight into the thought processes of senior OFCCP officials as they fielded questions from federal contractor...

March 2, 2020

### **Just What the Doctor Ordered: Employer Guidance for Responding to COVID-19 Outbreak**

According to the Centers for Disease Control and Prevention ("CDC"), there are currently tens of thousands of reported cases of the disease (recently named "COVID-19") in China, with a growing number of cases in various international locations. In the...

February 20, 2020

### **Craig Leen to Depart as OFCCP Director**

On February 3, 2020, President Trump announced that OFCCP Director Craig Leen will be nominated to the position of Inspector General of the Office of Personnel Management. The press release did not provide any details about the timing of...

February 5, 2020

### **Focus on Compliance: Changes and Updates to the Form I-9**

A new version of the Form I-9 has been released by U.S. Citizenship and Immigration Services (USCIS). Employers may choose to use either the prior version (marked with a 7/17/17 revision date) or the new version (revision date of...

January 30, 2020

### **New Jersey Continues to Expand Worker Protections – New Protections for Misclassified Workers; New Potential Liability**

In addition to bolstering the provisions of its mini-WARN Act ( see Part I ), New Jersey Governor Phil Murphy also recently signed into law expansive provisions aimed at deterring worker misclassification. Fines for Employee Misclassification A.B. 5839 authorizes...

January 24, 2020

### **New Jersey Continues to Expand Worker Protections – Mass Layoffs More Expensive**

New Jersey continues to become one of the country's most employee-friendly states. On January 21, 2020, Governor Phil Murphy signed into law a slate of employee-friendly bills. In this post, we discuss the significant expansion of rights for employees...

January 2, 2020

### **SDNY Rejects Director Liability for Sarbanes-Oxley Whistleblower Claims, Creating a Split Among Federal District Courts**

Public company directors, who are under constant threat of claims, received welcome news earlier this month. On December 9, 2019, the U.S. District Court for the Southern District of New York ruled that corporate directors cannot be sued for...

December 31, 2019

### **Counting Down to 2020 and the Department of Defense's Cybersecurity Maturity Model Certification Program**

2019 has been a year of pivotal developments for defense contractors in the realm of cybersecurity compliance. The Department of Defense (DoD) issued six guidance memoranda to assist its acquisition personnel in developing "effective cybersecurity strategies to enhance existing..."

December 30, 2019

### **OFCCP Proposes Rulemaking to Codify Compliance Evaluation Procedures**

On December 30, 2019, OFCCP issued a Notice of Proposed Rulemaking on Nondiscrimination Obligations of Federal Contractors and Subcontractors: Procedures to Resolve Potential Employment Discrimination . The proposed rulemaking codifies aspects of several of OFCCP 2018 directives, including Directive...

December 19, 2019

### **2020 Changes To NLRB Representation Election Rules—Heralding The End to 'Ambush Elections'**

The National Labor Relations Board recently announced significant changes to its rules regarding Representation Elections. The new rules undo many of the controversial 2014 modifications made by the Obama Board, as discussed below. These changes are not scheduled to...

December 18, 2019

### **Tis the Season: NLRB Reverses Multiple Obama Board Decisions**

Tis the season to be jolly, and the National Labor Relations Board ("NLRB" or "Board") was in an especially giving mood for employers over this past week. In the span of five days, it reversed several Obama era union-friendly...

December 10, 2019

### **The H-1B Lottery Line Starts Here**

The New Year will bring significant changes to the H-1B lottery selection process and employers can look forward to a more efficient H-1B cap selection process. USCIS has announced the " Registration Requirement for Petitioners Seeking to File H-1B..."

December 5, 2019

### **National Law Review Awards Government Contractor Update Authors its "Go-To Thought Leader" Award**

On December 5, 2019, the National Law Review awarded Government Contractor Update author Jack Blum its "Go To Thought Leader" award "for the excellent work they do keeping NLR readers informed on OFCCP compliance matters." As NLR noted, the...

November 19, 2019

### **New DOJ Initiative Targets Public Procurement Crimes: Takeaways for Companies in the Public Procurement Space**

Companies that bid on government contracts should take note of a new federal enforcement initiative. Earlier this month, the Department of Justice's Antitrust Division announced the formation of an interagency "Strike Force" dedicated to detecting and prosecuting "bid rigging"...

November 19, 2019

### **E-Verify Records Purge**

United States Citizenship and Immigration Services (USCIS) is reminding E-Verify users that they will purge historical E-Verify records on January 2, 2020. As of this date, companies will no longer have access in E-Verify to records more than...

November 8, 2019

### **OFCCP Disclaims Jurisdiction Over Participants in the Defense Department's SkillBridge Job Training Program**

CP opined that participants in the Department of Defense's SkillBridge Program are not government contractors subject to the obligations of Executive Order 11246, as amended, Section 503 of the Rehabilitation Act, or VEVRAA. The SkillBridge Program aims to provide...

October 30, 2019

### **OFCCP Breaks Record With Over \$40M in Settlements in 2019**

The Office of Federal Contractor Compliance has been busy this year. In 2019, it has obtained over \$40M in settlements from federal contractors to resolve claims of hiring and compensation discrimination. This figure tops the next highest year's record...

October 24, 2019

### **Self-Help Discovery by Whistleblowers: Protected Activity or Terminable Misconduct?**

It has become almost routine for employees pursuing whistleblower and other employment-related claims against their employer to engage in "self-help discovery," using their access to files and databases to collect and gather, in violation of company policy, documents and...

October 18, 2019

### **OFCCP Issues Technical Assistance Guide for Educational Institutions and Trains its Sights on the Tenure Selection Process**

Maintaining its recent focus on compliance issues particular to educational institutions, OFCCP published a technical assistance guide for educational institutions on October 11, 2019. The guide follows a flurry of OFCCP guidance for institutions of higher learning, including an...

October 10, 2019

### **Good News, for a Change, for California Employers in Connection with Wage and Hour Cases**

The Courts were kind to California employers in September, 2019, issuing two decisions which substantially reduce the damages which plaintiffs can recover in wage and hour cases. In the first case, ZB N.A. and Zions Bancorp.v. the Superior Court...

October 8, 2019

### **OFCCP Announces Three Multimillion Dollar Bias Settlements**

The OFCCP opened the month of October by announcing three multimillion dollar settlements with major government contractors. The agency entered into early resolution conciliation agreements with Goldman Sachs & Co. LLC and Dell Technologies, Inc. to resolve claims that...

October 1, 2019

### **Finally Final: Long-Awaited DOL Exemption Threshold Increase Goes Into Effect January 1, 2020**

On September 24, 2019, the US Department of Labor announced a finalized rule increasing the earnings threshold necessary for employees to qualify as exempt from the Fair Labor Standards Act's ("FLSA") minimum wage and overtime pay requirements. It is...

September 24, 2019

### **DOL Implements Procedures for New Tax Whistleblower Claim Under Taxpayer First Act**

On September 11, 2019, the Department of Labor announced that whistleblower retaliation complaints under the Taxpayer First Act (TFA) will be handled by the Occupational Safety and Health Administration (OSHA). TFA was created as part of a broader IRS...

September 20, 2019

### **OFCCP to Hold Town Hall for Academic Institutions**

Following closely on its release of guidance for higher education institutions, and its promise of a forthcoming technical assistance guide for contractors in this field, OFCCP announced it will hold a town hall forum for academic institutions in...

September 18, 2019

### **California Bill AB5 Will Rewrite the Rules for Independent Contractors**

UPDATE: California Governor Gavin Newsom signed AB5 into law on September 18, 2019. In his signing statement, Governor Newsom stated that the “next step is creating pathways for more workers to form a union, collectively bargain to earn more,...

September 16, 2019

### **OFCCP Releases New Guidance for Educational Institutions**

After devoting its first opinion letter to addressing aspects of its jurisdiction over higher education institutions, OFCCP recently provided additional guidance about the AAP obligations of educational institutions. In addition, the agency pledged to publish a technical assistance guide...

September 10, 2019

### **Cintas Agrees to Pay \$650K to Settle OFCCP Compensation and Hiring Bias Claims**

On August 27, 2019, the Department of Labor announced that government contractor Cintas Corp. has agreed to pay nearly \$650,000 to settle claims of sex and race discrimination in its Philadelphia, PA facility and end compliance evaluations at five...

August 19, 2019

### **OFCCP Proposes Rule to Clarify Religious Exemption**

On August 15, 2019, the Office of Federal Compliance Contract Programs (OFCCP) proposed a new rule broadening the religious exemption that applies to its equal employment opportunity regulations. The proposed rule is based on recent Supreme Court opinions addressing...

August 19, 2019

### **Illinois Amends Equal Pay Act to Prohibit Questions About Salary History**

Recently, Illinois amended its Equal Pay Act to include a ban on salary-history inquiries, with the stated goal of reducing gender pay inequities. Specifically, the amendments prohibit employers from asking questions regarding job applicants' pay history either in the...

August 14, 2019

### **New York Governor Cuomo Signs Sweeping Reforms to Anti-Harassment Laws**

On August 12, 2019, New York Governor Andrew Cuomo signed a law which strengthens further the state's Human Rights Law (NYSHRL). The new legislation further amends anti-harassment laws enacted in 2018, discussed here , expanding the individuals covered and...

August 13, 2019

### **NLRB Issues Proposed Rule on Union Election Policies**

On August 9, 2019, the National Labor Relations Board (“NLRB” or “Board”) issued the first of an anticipated sequence of regulations addressing certain union election procedures. The proposed rule, published in the Federal Register , proposes modifying three Board...

August 8, 2019

### **Colorado Court of Appeals Approves “Use or Lose It” Policy Regarding Vacation Pay**

In an unpublished opinion, the Colorado Court of Appeals recently held that a departing employee's right to vacation pay at separation is dependent on the company's policies. Nieto v. Clark's Market, Inc. , 2019 COA 98. In this case,...

August 5, 2019

### **OFCCP Director Craig Leen Describes Agency Priorities in Comments at the National ILG Conference**

On July 31, 2019, OFCCP Director Craig Leen gave the opening remarks at the National Industry Liaison Group conference in Milwaukee, Wisconsin. Director Leen described several new and renewed areas of focus for OFCCP and provided some insight into...

August 2, 2019

### **OFCCP Publishes New Compliance Guides**

On August 2, 2019, OFCCP published six new compliance guides on its website . The new guides include: OFCCP At A Glance, which provides an overview of the functions performed by OFCCP What Federal Contractors Can Expect , which...

August 2, 2019

### **California says “Goodbye” to the De Minimis Doctrine**

For years, courts applied the de minimis doctrine “to excuse the payment of wages for small amounts of otherwise compensable time upon a showing that the bits of time are administratively difficult to record.” Troester v. Starbucks Corp. 5...

July 29, 2019

### **Southern District of New York: New York’s Prohibition on Mandatory Arbitration of Sexual Harassment Claims Preempted by Federal Law**

On July 11, 2018, New York State enacted a sweeping new law aimed at combating sexual harassment in the employment context. A year later, on July 22, 2019, the U.S. District Court for the Southern District of New York...

July 26, 2019

### **OFCCP Opinion Letter Endorses Pre-Approval of PAGs**

In a welcome development for federal government contractors, OFCCP issued its second opinion letter on July 22, 2019. The opinion letter endorsed a process through which contractors can submit proposed pay analysis groups (PAGs) to OFCCP for pre-approval for...

July 19, 2019

### **EEO-1 Update: EEOC Component 2 Online Filing System Opens on Schedule**

On July 15, 2019, the EEOC opened its online filing system for the submission of EEO-1 Component 2 pay data. Employers that are required to file EEO-1 reports can now submit pay data broken down by job category, pay...

July 19, 2019

### **OFCCP Announces Town Hall Meeting Focused on Veterans Compliance Issues**

On August 7, 2019, OFCCP and the Veterans’ Employment and Training Service (VETS) will hold a joint town hall focused on VEVRAA and USERRA compliance issues. This town hall meeting comes as the OFCCP continues to focus its attention...

July 17, 2019

### **Supreme Court of Kentucky Reaffirms Public Policy Claim Must Have “Employment Related Nexus” to Support Wrongful Discharge Suit**

In a recent decision, Marshall v. Montaplast of North America, Inc. , the Supreme Court of Kentucky reaffirmed that a cause of action for wrongful termination based on a violation of public policy may proceed only if the public...

July 12, 2019

### **California Bans Discrimination Against Natural Hair**

On July 3, 2019, Governor Gavin Newsom signed Senate Bill 188, styled “Create a Respectful and Open Workplace for Natural Hair” (the CROWN Act), updating California’s anti-discrimination law, the Fair Employment and Housing Act (FEHA). Specifically, the bill modifies...

July 9, 2019

### **CMS Blocks Union Dues Deductions from Certain Home Care Workers’ Paychecks**

On July 5, 2019, a Centers for Medicare & Medicaid Services (“CMS”) regulation (proposed by the Trump administration in July 2018) went into effect, prohibiting automatic union dues deductions from paychecks of home health workers directly paid by Medicaid. ...

July 1, 2019

**Private Biometric Data: Union Consent to Collection**

On June 13, 2019, the U.S. Seventh Circuit Court of Appeals in *Miller v. Southwest Airlines, Co.*, Case 18-3476 (June 13, 2019), ruled that claims asserted under the Illinois Biometric Information Privacy Act (“BIPA”), in the context of a...

June 26, 2019

**Supreme Court Broadens FOIA Protections for Confidential Information Submitted to the Government**

On June 24, 2019, the Supreme Court issued its opinion in *Food Marketing Institute v. Argus Leader Media*, broadening the protection from disclosure under the Freedom of Information Act (FOIA) for confidential information provided by private parties to...

June 24, 2019

**NLRB Rules That Employers May Ban Nonemployee Union Activity in Areas Open to the Public**

On June 14, 2019, the National Labor Relations Board (“Board”) ruled in a 3-1 decision that employers may prohibit nonemployee union representatives from conducting organizing activities on employer property that is open to the public. *UPMC Presbyterian Shadyside*, ...

June 19, 2019

**Dallas Follows Austin and San Antonio & Enacts Ordinance on Mandatory Paid Sick Leave**

On April 24, 2019, Dallas followed Austin and San Antonio to become the third city in Texas to adopt a mandatory paid sick leave ordinance (the “ordinance”). The ordinance, set to go into effect on August 1, 2019, provides:...

June 13, 2019

**OFCCP Offers Compliance Guidance For Focused Reviews**

This year, OFCCP will for the first time be conducting focused reviews that hone in on contractors’ compliance with disability-related obligations under Section 503 of the Rehabilitation Act. Because Section 503 compliance is a priority for OFCCP’s new leadership,...

June 13, 2019

**Physician not a Hospital “Employee” for Purpose of Title VII Action**

On May 8, 2019, the U.S. Seventh Circuit Court of Appeals reaffirmed its test to determine whether a worker qualifies as an “employee” as defined by and subject to Title VII protections. In this case, the plaintiff was...

June 10, 2019

**NLRB Finds Inflatables Debatable**

“Scabby the Rat” and “Corporate Fat Cat”...beware. A recent National Labor Relations Board (“NLRB” or the “Board”) Advice Memorandum has suggested that the use of oversized inflatable rats may constitute illegal secondary picketing. In the Advice Memorandum released May...

June 9, 2019

**OFCCP Plans Three Proposed Rulemakings in 2019**

On May 22, 2019, the Trump administration released its Spring 2019 Unified Agenda of Regulatory and Deregulatory Actions. This agenda reports on the actions that administrative agencies plan to issue in both the near and long term. Most...

June 7, 2019

**OFCCP Issues its First Opinion Letter Regarding Pell Grants**

On May 23, 2019, the OFCCP -- without fanfare -- issued its first opinion letter since its announcement last year that it would begin issuing opinions to provide guidance to the contractor community. In its opinion letter, OFCCP concluded...

June 4, 2019

### **Mandatory but not Jurisdictional – SCOTUS Decides What Employers Must do to Kick Charge-less Title VII claims**

On June 3, 2019, the U.S. Supreme Court in *Fort Bend County, Texas v. Davis* unanimously held that Title VII's charge-filing requirement is mandatory for claimants, but not jurisdictional. Stated plainly, employees can still file and proceed with Title...

May 30, 2019

### **Colorado Revamps Existing Wage Discrimination Law**

On May 22, 2019, Colorado's Governor Polis signed the Equal Pay for Equal Work Act (the "Act"), which brings significant changes to the existing Wage Equality Regardless of Sex Act. C.R.S. § 8-5-101 et seq. Effective January 1,...

May 22, 2019

### **The Latest on EEO-1 Data Collection Requirements and What Employers Should Do**

The Equal Employment Opportunity Commission (EEOC) requires employers with at least 100 employees (and federal contractors with at least 50 employees) to file an EEO-1 Report with a count of employees by establishment and job category with race, ethnicity,...

May 14, 2019

### **Tenth Circuit Confirms that Compliance Employees Must Satisfy Heavier Burden to Obtain FCA Whistleblower Protection**

On April 30, 2019, the U.S. Court of Appeals for the Tenth Circuit in *United State ex rel. Reed v. KeyPoint Government Solutions* affirmed the dismissal of an employee's False Claims Act (FCA) whistleblower retaliation claim. In its ruling,...

May 10, 2019

### **Five Fast Facts about Washington's New Noncompetition Law**

On May 8, 2019, Washington Governor Jay Inslee signed into law a bill that prohibits employers from entering into noncompetition covenants with employees whose W-2 earnings are less than \$100,000, and with independent contractors paid less than \$250,000 per...

May 7, 2019

### **Colorado Poised to Join States that "Ban the Box"**

Colorado appears poised to join a number of states that prohibit employers from inquiring into a job applicant's criminal history on an initial employment application. On April 30, 2019, the Colorado legislature sent House Bill 19-1025 (the "Bill") to...

May 3, 2019

### **EEO-1 Update: EEOC Announces Both 2017 and 2018 Pay Data Due September 30**

The Equal Employment Opportunity Commission (EEOC) has announced that employers covered by the EEO-1 reporting obligation must submit pay data broken down by job category, pay band, race, ethnicity and sex for both calendar years 2017 and 2018. This...

April 26, 2019

### **EEO-1 Update: Judge Orders Pay Data Component To Be Filed By September 30**

On April 25, 2019, the U.S. District Court for the District of Columbia gave an oral ruling from the bench reportedly accepting the EEOC's proposal to make employers submit their 2018 pay data by September 30, 2019. This is...

April 26, 2019

### **EEO-1 Deadline for 2018 Pay Data Set for September 30, 2019, Questions Remain**

On April 24, 2019, the Federal Court that reinstated the EEO-1 pay data reporting requirement accepted the EEOC's recommendation that employers must submit the EEO-1 form for 2018, including pay data, by Monday, September 30, 2018. Employers with at...

April 25, 2019

### **OFCCP Proposes Updates to Scheduling, Compliance Check, and Focused Review Letters**

On April 12, 2019, the OFCCP submitted new forms of its scheduling, compliance check, and Section 503 focused review letters to the Office of Management and Budget (OMB) for approval. OFCCP also sought OMB's approval of a new scheduling...

April 24, 2019

### **Think Outside the Box: District Court Reminds Employers to Carefully Review EEOC Charges**

Recently, the U.S. District Court for the Southern District of Alabama issued a decision reminding employers to take care when reviewing and responding to charges of discrimination. In *Payne v. Navigator Credit Union*, the defendant employer moved to...

April 23, 2019

### **Polsinelli Insights from Supreme Court Oral Arguments Yesterday Concerning FOIA Disclosure Obligations**

On April 22, 2019, the U.S. Supreme Court heard argument in *Food Marketing Institute v. Argus Leader Media*. Polsinelli attended the oral arguments to provide insight concerning the potential implications for federal government contractors that submit data to...

April 16, 2019

### **DOL Issues Guidance on Compensability of Company-Sponsored Volunteer Work**

Does the adage "no good deed goes unpunished" apply to employers that fail to pay wages to hourly employees during volunteer events? Not necessarily, according to a recent U.S. Department of Labor (DOL) Opinion Letter. Per the Opinion Letter,...

April 12, 2019

### **What Must be Included in the Regular Rate? DOL Proposes Clarification**

On March 28, 2019, the U.S. Department of Labor ("DOL") announced a proposed rule to update the regular rate requirements under 29 CFR part 778 and section 7(e) of the Fair Labor Standards Act ("FLSA"). The FLSA requires employers...

April 11, 2019

### **Law Firms: Are You Ready for OFCCP to Come Knocking?**

"Glaring," "concerning," "troubling," "problematic," and "systemic" were some of the words used by OFCCP Director Craig Leen to describe the underrepresentation of women, minorities, and individuals with disabilities at large law firms at an April 10, 2019 town hall...

April 9, 2019

### **Buyer Beware: Successor Employer Required by Court to Continue Retiree Health Benefits Under Language in Contract**

Mergers and acquisitions can be complicated transactions, particularly when the entity to be acquired has employees covered by a collective bargaining agreement with a union. In a recent case, a federal court in Chicago ruled that a successor owner...

April 8, 2019

### **EEO-1 Update: EEOC Requires Employers to Submit Pay Data By September 30, 2019**

On April 3, 2019, the EEOC announced in a court filing that it will require employers to submit 2018 EEO-1 pay and hours data by September 30, 2019. With EEO-1 reports currently due by May 31, 2019, this announcement...

April 3, 2019

### **U.S. DOL Unveils New Proposed Joint Employer Test**

On April 1, 2019, the U.S. Department of Labor ("DOL") announced proposed changes to its joint-employer test. Specifically, the DOL set out a four-factor balancing test, which inquires whether an entity that does not directly employ an individual employee:...

April 1, 2019

### **NLRB Judge: Requiring Confidential Arbitration is an Unfair Labor Practice**

While the U.S. Supreme Court's recent decisions have generally supported the enforceability of employment-related arbitration agreements, mandatory employment arbitration remains under fire in other contexts. The latest example came on March 21, 2019, when a National Labor Relations Board...

March 29, 2019

### **OFCCP Again Lowers VEVRAA Hiring Benchmark**

On March 27, 2019, the Office of Federal Contract Compliance Programs (OFCCP) announced that it was lowering the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) hiring benchmark again this year. Effective March 31, 2019, the new benchmark is 5.9...

March 28, 2019

### **'Just Give Me Some Space' — Eleventh Circuit Clarifies "Similarly Situated" Standard**

On March 21, 2019, in a 9-3 en banc decision, the U.S. Eleventh Circuit Court of Appeals clarified the "similarly situated" standard for comparator evidence in employment discrimination cases. *Lewis v. City of Union City, Georgia*, 15-11362, 2019...

March 26, 2019

### **2019 Colorado Bills to Watch**

Colorado's 2019 legislative session began on January 4 and concludes May 3, 2019. Several proposed bills may affect employers, including these two: HB19-1025 HB19-1025 is Colorado's 2019 "Ban the Box" proposal. Formally known as the Colorado Chance to Compete...

March 25, 2019

### **OFCCP Releases Corporate Scheduling Announcement List Online**

On March 25, 2019, the OFCCP released its Corporate Scheduling Announcement List (CSAL) online for public access. Contractors can access the CSAL here . The CSAL identifies 3,500 contractor establishments that will be audited by OFCCP, with a portion...

March 22, 2019

### **Generous Employers Beware: FMLA Leave Cannot Be Delayed**

Many employers offer paid leave, including sick leave or paid time off, as a benefit beyond the unpaid leave entitlements of the Family and Medical Leave Act ("FMLA"). State or local laws may also require paid leave beyond FMLA...

March 20, 2019

### **EEOC Not Yet Requiring Pay Data with EEO-1 Submissions, But Uncertainty Remains**

On March 4, 2019 the U.S. District Court for the District of Columbia issued a ruling that immediately reinstated the EEO-1 pay data reporting requirement . The government has not yet appealed or sought to stay the ruling, leaving...

March 19, 2019

### **EEOC Not Requiring Pay Data with EEO-1 Submissions for Now, But Uncertainty Remains**

On March 4, 2019 Judge Chutkan of the U.S. District Court for the District of Columbia issued a ruling that immediately reinstated the EEO-1 pay data reporting requirement . The government has not yet appealed or sought to stay...

March 18, 2019

### **Navigating the FCRA's Standalone Disclosure Requirement**

Since 2011, the number of Fair Credit Reporting Act (FCRA) lawsuits filed annually has continued to climb. The data demonstrates that employers struggle with compliance, especially regarding the FCRA's disclosure requirements. Under the FCRA, an employer must provide an...

March 14, 2019

### **Employers Must Prep for New EEOC Data Reporting Rule**

Employers who thought that they had received a respite from the U.S. Equal Employment Opportunity Commission's proposed requirement to report information about employees' pay and hours worked when submitting their annual EEO-1 forms received a surprise on March 4,...

March 13, 2019

### **Five Points to Know about the December 2018 Amendments to Rule 23**

On December 1, 2018, the amendments to Rule 23 of the Federal Rules of Civil Procedure ("Rule 23"), which governs class actions, went into effect. The amendments codify certain procedures the courts have been requiring or permitting over the...

March 11, 2019

### **OFCCP to Hold Town Halls for the Financial and Legal Industries**

Building off the two town halls it held for the tech industry last month, the OFCCP has announced that it will hold two more town halls in New York City in April. The first will focus on the financial...

March 11, 2019

### **Fifth Circuit Affirms Dismissal of Former VP's SOX Claim as Unreasonable**

In *Wallace v. Andeavor Corp.*, the U.S. Fifth Circuit Court of Appeals affirmed the grant of summary judgment to an employer on a former vice president's Sarbanes-Oxley Act (SOX) whistleblower claim, finding that he could not have reasonably...

March 8, 2019

### **The Wait is Over: DOL Issues New Minimum Salary Threshold for White Collar Exemptions**

Employers have been waiting for the U.S. Department of Labor ("DOL") to respond to the injunction halting the implementation of its 2016 proposal increasing the minimum salary threshold for the white collar exemptions. On March 7, 2019, the DOL...

March 6, 2019

### **And We're Back – EEO-1 Pay Data Collection Requirements May Be Returning**

On March 4, 2019, the United States District Court for the District of Columbia caught the employer community by surprise by ordering the EEO-1 pay data reporting requirement immediately reinstated. Background In September 2016, the U.S. Equal Employment Opportunity...

March 5, 2019

### **Where The Buck Stops: Union Lobbying Not Chargeable to Beck Objectors**

On March 1, 2019, in a long-awaited and unsurprising 3-1 decision, the National Labor Relations Board ("Board") ruled lobbying expenses are not chargeable to employees who work in a union setting and choose not to join or remain a...

March 4, 2019

### **Erin Felix to Moderate Panel on "Revolving Door" Issues Faced by Government Contractors and Federal Employees**

Polsinelli shareholder Erin Felix will moderate the upcoming Ethical Restrictions on Federal Employees/Counsel panel at the American Bar Association Public Contract Law Section's Federal Procurement Institute at 3:15 pm EST on March 15, 2019. The panel will explore pre...

March 4, 2019

### **Ninth Circuit Narrowly Construes Scope of Protected Activity for Sarbanes-Oxley Whistleblower Claim**

In *Wadler v. Bio-Rad Laboratories, Inc.*, the U.S. Court of Appeals for the Ninth Circuit adopted a limited, plain meaning construction of the types of reports that are protected by the Sarbanes-Oxley Act's (SOX) whistleblower provision and in...

March 1, 2019

### **EEO-1 Reporting Opening Soon**

The Equal Employment Opportunity Commission (“EEOC”) recently announced that EEO-1 Reporting will open in early March 2019, and covered employers must submit their EEO-1 reports on or before May 31, 2019. The EEO-1 filing deadline was extended due to...

February 27, 2019

### **Delays for Foreign Workers’ Families May Result From Season of Immigration Change**

With the H-1B cap season upon us, the government continues to churn out substantial updates and changes that impact how this year’s H-1B cap season will progress, including new impacts on the foreign workers’ family members. As discussed in...

February 25, 2019

### **Last Dance, Last Chance . . . For H-1B**

The H-1B season is in full swing. Although U.S. Citizenship and Immigration Services (“USCIS”) has proposed changes to the H-1B , the process remains largely the same for this year. As in past years, the filing window for H-1B...

February 21, 2019

### **OFCCP Announces Voluntary Enterprise-Wide Review Program**

On February 13, 2019, the OFCCP issued Directive 2019-04, which provides the framework for the agency’s new Voluntary Enterprise-Wide Review Program (VERP). The program is designed to incentivize federal contractors to complete voluntary compliance evaluations. It is part of...

February 21, 2019

### **Natural Hair Don’t Care: New York City Commission on Human Rights Issues New Guidance Related to Discrimination Based on Hair & Hairstyles**

In February 2019, the New York Commission on Human Rights (the “Commission”) issued guidance regarding employment discrimination based upon natural hair or hairstyles. Specifically, the Commission announced its position that “grooming or appearance policies that ban, limit, or otherwise...

February 20, 2019

### **OSHA Related Changes in 2019: The New Year Giveth, and the New Year Taketh Away**

As we have reported in previous blog entries , enactment of the Federal Civil Penalties Inflation Adjustment Act of 2015 required federal agencies to make annual inflation adjustments to civil monetary penalties imposed by the federal government. These adjustments...

February 19, 2019

### **New FAR Provision Implements Sweeping Definition of “Recruitment Fees” in Human Trafficking Prohibition**

On January 22, 2019, a new rule went into effect providing much-needed guidance on the definition of “recruitment fees” under the FAR human trafficking prohibition. Many government contractors may be surprised to learn that a wide range of seemingly-innocent...

February 18, 2019

### **Warning: Websites and Apps Must Comply with the ADA**

Recently, the U.S. Ninth Circuit Court of Appeals ruled in *Robles v. Domino’s Pizza* that an employer’s websites and mobile applications, or “apps,” are subject to the strictures of the Americans with Disabilities Act, as amended (“ADA”). In *Robles*...

February 14, 2019

### **OFCCP CSALs Are Just Around the Corner, Including Section 503 Focused Reviews**

With the posting of 2019 CSAL notices possibly imminent , government contractors should prepare for the fact that a portion (approximately 500 out of 3,500 total) of the OFCCP’s FY 2019 compliance evaluations will be Section 503 focused reviews...

February 13, 2019

### **Four Circuits Agree: Regular and Reliable Attendance is an Essential Job Function**

Recently, the United States Eighth Circuit Court of Appeals reaffirmed that regular and reliable attendance is an essential function of most jobs under the Americans with Disabilities Act (“ADA”). *Lipp v. Cargill Meat Solutions Corp.*, 911 F.3d 537...

February 11, 2019

### **OFCCP to Hold Tech Industry Town Halls**

The OFCCP recently announced that it will hold two town hall meetings in the coming weeks to provide compliance assistance to federal government contractors in the tech industry. The town halls are free and open to the public, and...

February 11, 2019

### **7th Circuit: Job Applicants Cannot Bring ADEA Disparate Impact Claims**

On January 23, 2019, the U.S. 7th Circuit Court of Appeals handed employers a welcome ruling and held that the Age Discrimination in Employment Act of 1967 (the “ADEA”) does not protect outside job applicants from disparate impact age...

February 7, 2019

### **EEOC Announces Deadlines (For Now) for Submission of 2018 EEO-1 Data**

On February 1, 2019, the Equal Employment Opportunity Commission (“EEOC”) announced that it would postpone the opening of the submission period for EEO-1 survey responses until “early March 2019” and extend the deadline for submission of EEO-1 data until...

February 7, 2019

### **Employer’s Failure to Compel Arbitration Shows the Tricky Balance Employers Face when Implementing New Mandatory Arbitration Programs**

Employers may choose to implement arbitration programs to manage the costs and risks of employment-related litigation. Arbitration may minimize negative publicity, and may further assist employers to keep costs low and reduce the availability of class or collective actions. A...

February 4, 2019

### **How Should an Employer Keep Time For an Exempt Employee?**

Although it may seem counterintuitive that an employer should keep time for an exempt employee, there may be sound reasons at times for doing so. In a recent case in California, *Furry v. East Bay Publishing, LLC* (January 4,...

January 31, 2019

### **CSALs Are Coming, But Not In The Mail**

It has been reported that the Office of Federal Contract Compliance Programs (OFCCP) will be issuing Corporate Scheduling Announcement Letters (CSAL) in February. A CSAL is a notice to an establishment that it has been selected to undergo an...

January 30, 2019

### **Back to the Future (Again): NLRB Returns to Traditional Independent Contractor Test**

On January 25, 2019, the National Labor Relations Board (“NLRB” or “Board”) in *SuperShuttle DFW, Inc.* (367 NLRB No. 75), overruled the Obama-era 2014 *FedEx Home Delivery* (361 NLRB 610) decision and returned to its traditional common-law independent...

January 28, 2019

### **Super Bowl Fever: Tips for Keeping the Workplace Cool as Temperatures Rise**

Super Bowl LIII is fast approaching. The Big Game always brings excitement, and can stoke friendly rivalries between employees rooting for different teams. To ensure Super Bowl fever doesn’t cause the office to boil over, employers should consider the...

January 28, 2019

**The Eyes are the Window to the Soul...and Liquidated Damages: Illinois Supreme Court Raises the Stakes on Employer Use of Biometric Data**

There is a growing trend to use biometric data for business purposes. For employers, this often includes using fingerprints or facial recognition software for employees to clock-in and out. Using an employee's unique biometric data in this way helps...

January 25, 2019

**Employers: Be Mindful When Implementing Wellness Programs**

In October 2016, the American Association of Retired Persons (AARP) sought an injunction against the implementation of the Equal Employment Opportunity Commission's (EEOC) final rules on wellness programs, alleging that the final rules did not effectively protect the privacy...

January 23, 2019

**Gripe No More: NLRB Reverses Controversial Protected-Activity Precedent**

On January 11, 2019, the National Labor Relations Board ("Labor Board" or "NLRB") overturned an Obama-era Labor Board decision that held that complaints made in front of colleagues always constitute protected concerted activity. By doing so, the NLRB reverted...

January 18, 2019

**Employers Take Note: Minimum Wages Increase in States Across the Country**

With the New Year, employers should make sure that they are up to date on the minimum wage laws applicable to their employees. As of January 1, 2019, the minimum wage has increased in the following 19 states: \*...

January 16, 2019

**The U.S. Supreme Court Ends Arbitration Trend under the FAA for Employee and Contract Transportation Workers**

In *New Prime Inc. v. Oliveira*, -- U.S. -- (2019), the Supreme Court made two primary holdings: First, notwithstanding its recent decision affirming the ability of parties to an arbitration agreement to delegate issues of arbitrability to an...

January 11, 2019

**Back from the Dead: The Revival of the 80/20 Rule**

Recently, we discussed the U.S. Department of Labor's ("DOLs") rescission of the 80/20 rule. Unfortunately, less than two months after the DOL's rescission, the U.S. District Court for the Western District of Missouri rejected the DOL's new guidance,...

January 2, 2019

**D.C. Circuit Wrestles with Board's Controversial Browning-Ferris Decision**

On December 28, 2018, the U.S. D.C. Circuit Court of Appeals upheld the National Labor Relations Board's ("NLRB" or "Board") joint-employer test as articulated in *Browning-Ferris Industries*, 362 NLRB No. 186. Interestingly, the Court further held that the...

December 21, 2018

**Board GC Robb: Proposed Joint Employer Rule "Does Not Go Far Enough"**

On December 10, 2018, National Labor Relations Board ("NLRB" or "Board") General Counsel Peter Robb released a comment to NLRB Board Members regarding the proposed Joint Employer Rule ("Rule"). Not surprisingly, Mr. Robb concurs with the NLRB's attempt...

December 19, 2018

**Guidance for Government Contractors - Navigating the Potential Government Shutdown**

For the second year in row, the federal government could be headed towards a partial shutdown. The shutdown would be smaller in scale than those in recent years because appropriation bills have been passed to fund numerous departments and...

December 17, 2018

### **OFCCP Issues Directive Addressing Focused Reviews of Federal Government Contractors**

Acting OFCCP Director Craig Leen announced at the National Industry Liaison Group annual conference in early August that OFCCP would start conducting focused reviews of federal government contractors. A week later, on August 10, 2018, OFCCP issued Directive 2018-04...

December 17, 2018

### **OFCCP Rescinds Former Compliance Review Procedures In Effort to Audit More Contractors**

Last Friday, OFCCP issued its first three directives of the 2019 fiscal year. With its new Compliance Review Procedures Directive (2019-01), OFCCP rescinds the Obama administration's Active Case Enforcement (ACE) Directive (2011-01). ACE brought with it a fundamental shift in...

December 17, 2018

### **OFCCP Offers Opinion Letters and Desk Help**

On November 30, 2018, the OFCCP made true on OFCCP Acting Director Leen's comments in October that OFCCP was planning to implement an opinion letter program, issuing the Opinion Letters and Desk Help Directive (2019-03). This Directive is also...

December 17, 2018

### **OFCCP Implements Early Resolution Procedures To Expedite Compliance Audits**

The Early Resolution Procedures (ERP) Directive (2019-02) appears to be designed to address a long-standing frustration of OFCCP regarding the structure of the compliance audit process: that it is generally limited to a single establishment or functional unit. Through...

December 17, 2018

### **Have You Been Selected for an Audit?**

A second wave of the Corporate Scheduling Announcement Letters (CSALs) were released to 750 more contractors. As we previously reported, 1,000 CSALs were mailed in February, with scheduling letters that followed on March 19, 2018. CSALs do not...

December 17, 2018

### **OFCCP Acting Director Craig Leen Comments**

On October 18, 2018, OFCCP Acting Director Craig Leen gave a 2-hour presentation at the National Employment Law Institute's Affirmative Action Update on "What's on the OFCCP Director's Desk". Acting Director Leen rapidly went through four principles that the OFCCP...

December 17, 2018

### **The OFCCP's FAAP Program Is Poised for Additional Changes**

For traditional AAP programs, federal contractors and subcontractors are required to develop, implement and self-audit affirmative action programs for every establishment with 50 or more employees. Traditional AAPs contemplate that the employees in that establishment (and reporting into it from...

December 17, 2018

### **OFCCP Issues Long-Awaited Guidance Concerning Compensation Audits**

On August 24, 2018, OFCCP released its long-awaited Directive outlining the standard procedures OFCCP will use during the course of compensation audits of federal government contractors. Concerned that it failed to provide clear guidance to contractors, the Directive rescinds...

December 17, 2018

### **The Franken Amendment Has Lost Much Of Its Anticipated "Bite" Against Mandatory Arbitration of Sexual Harassment Claims**

In an effort to address the issues raised by the #MeToo movement, Congress and state and local lawmakers have introduced a series of laws aimed at eliminating sexual harassment and abuse in the workplace. By mid-2018, over 125 bills...

December 17, 2018

**OFCCP Issues Directive Summarizing – But Not Providing Clear Standards – For The Protection of Religious Exercise**

On August 10, 2018, OFCCP Acting Director Craig Leen issued Directive 2018-03 in an effort to harmonize OFCCP's standards with "recent developments in the law regarding religion-exercising organizations and individuals." Directive provides a summary of OFCCP's regulations, Executive Orders...

December 17, 2018

**To Respond To Contractor Concerns About The Timeliness And Transparency of Compensation Audits, OFCCP Issues "What Contractors Can Expect"**

On August 2, 2018, OFCCP issued a publication called "What Contractors Can Expect ." The document provides "the general expectations that often guide interactions between federal contractors and OFCCP." The publication was designed to address concerns of the contractor...

December 17, 2018

**OFCCP Adopts an "Ombud" Program to Facilitate The Resolution of Concerns of Federal Government Contractors and Other Internal and External Stakeholders**

On September 19, 2018, the OFCCP issued the most recent in a series of Directives designed to facilitate contractors' efforts to self-audit and understand their compliance obligations and increase the transparency and accessibility of the enforcement efforts of OFFCP....

December 17, 2018

**In An Effort to Increase Efficiency And Transparency In The Compliance Audit Process, OFCCP Issues Directive 2018-09**

In addition to Directive 2018-09, summarized here , OFCCP issued on September 19, 2018 Directive 2018-08 addressing the OFCCP compliance review process. OFCCP explains that it is the most recent of a series of Directives designed to increase transparency and...

December 17, 2018

**The U.S. DOL Saves the Day: So Long to the 80/20 Rule**

The application of the 80/20 Rule has been a hot topic in the restaurant industry the last several years because it is the foundation of an onslaught of collective and class action litigation brought by service workers claiming they...

December 14, 2018

**Here we go again: NLRB Announces Proposed Rule to Restore Traditional Joint-Employer Standard**

On September 14, 2018, a three-member majority of the National Labor Relations Board ("NLRB" or "Board") comprised of Members William Emanuel, John Ring, and Marvin Kaplan published a proposed rule in the Federal Register that would restore the Board's...

December 12, 2018

**No Vaccine? No Job! Court Affirms Employer's Ability to Condition Employment Upon Vaccinations**

On December 7, 2018, the U.S. Eighth Circuit Court of Appeals held that an employee who was terminated for refusing to take a rubella vaccine was not discriminated or retaliated against, under the Americans with Disabilities Act, as amended...

December 7, 2018

**New York Court Rejects Class and Collective Certification in Nationwide Sex-Bias Action**

On November 30, 2018, the U.S. District Court for the Southern District of New York determined that a company's decentralized pay and promotion structure made the matter unfit for class and collective certification under Title VII, the Equal Pay...

December 4, 2018

**Clarification of OSHA Rule Regarding Drug Testing and Safety Incentive Programs**

In 2016, the Occupational Safety and Health Administration (“OSHA”) published a rule (the “2016 Rule”) – found in 29 C.F.R. § 1904.35(b)(1)(iv) – related to post-incident drug testing and workplace safety incentive programs that left many employers confused. Fortunately,...

November 30, 2018

**Year End Retirement Plan Checkup: Required Claims Amendment, a Top Ten List for Plan Errors and New EPCRS E-Filing Requirements**

Earlier this year, the U.S. Department of Labor (“DOL”) and the Internal Revenue Service (“IRS”) issued new guidance and rules pertaining to retirement plans. Now is a good time for employers to audit their plans...

November 18, 2018

**No, Stealing Personnel Files Is Not Protected Activity (But the analysis doesn’t end there)**

On November 15, 2018, the United States Fourth Circuit Court of Appeals affirmed the decision of the Middle District of North Carolina in the case of *Netter v. Barnes, et al*, upholding dismissal of Netter’s case because her...

November 14, 2018

**ADEA Given Broader Reach than Title VII: Supreme Court Rules ADEA Covers Political Subdivisions with Less than 20 Employees**

On Tuesday November 6, 2018, the U.S. Supreme Court unanimously ruled that the Age Discrimination in Employment Act (“ADEA”) applies to state and local government employers with fewer than 20 employees. The Supreme Court’s decision, in *Mount Lemmon Fire...*

November 7, 2018

**Employers: Consider Pre-Employment Background Checks**

Recently, a hospital was sued for negligent hiring after one of its surgical technicians exchanged a vial of saline solution for a vial of painkiller before a surgery was set to commence. The surgical technician was caught and promptly...

November 5, 2018

**DOL Reaches Again Into the FLSA Twilight Zone (Part 2 of 2)**

So far in 2018, the U.S. Department of Labor (“DOL”) has issued more than 20 opinion letters navigating the murky waters of the Fair Labor Standards Act (“FLSA” or “Act”). In late-August, the DOL issued several new opinion letters...

October 24, 2018

**The Pendulum has Swung: California Passes Harassment Legislation In Wake Of #MeToo Movement**

Recently, California Governor Jerry Brown signed a series of Bills that add additional protections to victims of sexual harassment and may make it more difficult for employers to defend those claims. Specifically, on or before January 1, 2019, the...

October 22, 2018

**NLRB Approves Unilateral Benefits Changes Consistent with Past Practice**

In a 3-1 decision, the National Labor Relations Board (“NLRB” or “Board”) ruled that E.I. DuPont De Nemours and Company (“DuPont”) did not violate the National Labor Relations Act (“Act”) by implementing unilateral changes to employee benefits without...

October 19, 2018

**Read The Statute: Tenth Circuit Holds Claim For Failure To Accommodate Requires An Adverse Employment Action**

In *Exby-Stolley v. Board of County Commissioners*, No. 16-1412, 2018 WL 4926197 (10th Cir. Oct. 11, 2018), the Tenth Circuit Court of Appeals held that for an individual to succeed on a failure to accommodate claim under the...

October 18, 2018

#### **4 Tips to Protect Trade Secrets and Confidential Information When Terminating Employees**

Employers may face risks of departing employees, particularly involuntarily terminated employees, taking the employer's confidential information or trade secrets with them when they leave. Putting aside the employee's motivation—a desire to compete, spite, or something else entirely—employers should consider...

October 17, 2018

#### **California Court of Appeal Approves Variable Hourly-Based Compensation Plan**

In recent years, California courts have complicated the lives of employers that utilize commission and piece rate compensation systems ( i.e. , “activity-based compensation”). Federal and state courts have repeatedly found activity-based compensation plans to be unlawful under California...

October 15, 2018

#### **New York State's Anti-Sexual Harassment Requirements Now In Effect: What Employers Should Know**

In the wake of the #MeToo Movement, New York enacted legislation that is specifically targeted to sexual harassment in the workplace. On October 1, 2018, New York released final guidance materials regarding the legislation, including a model policy and...

October 10, 2018

#### **From Employers' Mouths to the U.S. Department of Labor's Ears: A Recap of the Department of Labor's Listening Sessions**

Throughout the month of September, 2018, the U.S. Department of Labor (“DOL”) held five listening sessions across the United States to receive feedback from the public on the minimum salary requirements for the white collar exemptions of the Fair...

October 8, 2018

#### **Individual Employees Can Be Liable For Civil Penalties and Attorneys' Fees For A Company's Failure To Pay Overtime And/Or Minimum Wages**

Notwithstanding two previous California Supreme Court decisions which essentially held that “[u]nder the common law, corporate agents acting within the scope of their agency are not personally liable for the corporate employer's failure to pay its employees' wages,” Reynolds...

October 4, 2018

#### **Supreme Court's New Term Includes Major Employment Class**

In spite of all the controversy swirling around Judge Brett Kavanaugh's nomination to take Justice Kennedy's seat, it's business as usual at the United States Supreme Court as the Justices kicked off a new term on October 1. Does...

October 2, 2018

#### **DOL Reaches Again Into the FLSA Twilight Zone (Part 1 of 2)**

So far in 2018, the U.S. Department of Labor (“DOL”) has issued more than 20 opinion letters navigating the murky waters of the Fair Labor Standards Act (“FLSA”). In late-August, the DOL issued several new opinion letters to which...

September 25, 2018

#### **Grieve Now, Ask Later**

Employers subject to collective bargaining relationships often complain about the time they spend responding to objectively meritless grievances. From showing, for example, that it had just cause to terminate an intoxicated employee or justifying why it did not assign...

September 18, 2018

#### **4 Tips to Protect Trade Secrets and Confidential Information When Terminating Employees**

Employers may face risks of departing employees, particularly involuntarily terminated employees, taking the employer's confidential information or trade secrets with them when they leave. Putting aside the employee's motivation—a desire to compete, spite, or something else entirely—employers should consider...

September 14, 2018

**Here we go again: NLRB Announces Proposed Rule to Restore Traditional Joint-Employer Standard**

On September 14, 2018, a three-member majority of the National Labor Relations Board (“NLRB” or “Board”) comprised of Members William Emanuel, John Ring, and Marvin Kaplan published a proposed rule in the Federal Register that would restore the Board’s...

September 7, 2018

**Navigating FMLA: May An Employee Be Entitled to Leave Beyond 12 Weeks?**

In certain circumstances, an employee may begin a leave of absence prior to being eligible to take leave pursuant to the Family and Medical Leave Act (“FMLA”). What if, during the employee’s leave, she subsequently reaches her FMLA eligibility...

September 5, 2018

**NLRB Extends Deadline for Amici to Address Purple Communications Ruling**

On August 31, 2018, the National Labor Relations Board (“NLRB” or “Board”) extended the deadline for public comment regarding whether the Board should revisit its 2014 ruling in Purple Communications , 361 NLRB 126 (2014) . Employers will recall...

August 23, 2018

**Back to School Edition: School-Related Parental Leave Laws**

It’s that time again! The annual run for school supplies, shopping for back to school clothes, and . . . time to review state laws covering school-related parental leave? As kids hurry off to new classrooms throughout the country,...

August 22, 2018

**Identifying Trade Secrets: The First Step to Protecting Employers’ Competitive Advantage**

Employers should be able to definitively identify their “trade secrets” and non-public information. Indeed, employers may miss out on opportunities for relief from misappropriation of their trade secrets by former employees and competitors if they do not take time...

August 17, 2018

**NLRB Finds Hospital’s Solicitation and Distribution Policy Unlawful**

Recently, a 3-member panel of the National Labor Relations Board (“NLRB” or “Board”) ruled that the University of Pittsburgh Medical Center (“UPMC”) unlawfully prohibited off-duty employees from distributing literature in non-patient care areas of its hospitals. Case Background During...

August 15, 2018

**Five Issues When An Employer Is Considering An Employment Agreement**

When operating its business, an employer should consider whether and when to implement employment agreements with certain employees. When considering whether an employee should execute an employment agreement, employers should consider the following five factors: 1. Complex or specialized...

August 9, 2018

**OSHA announces changes to Electronic Recordkeeping Rule**

In the waning days of President Obama’s Administration, the Occupational Safety and Health Administration (“OSHA”) announced sweeping changes to its recordkeeping rule, originally to be effective January 1, 2017, which contained a heightened emphasis on injury reporting and anti-retaliation...

July 30, 2018

**U.S. Department of Labor Issues Field Assistance Bulletin on Employee/Independent Contractor Classification for Home Care Workers**

On July 13, 2018, the U.S. Department of Labor (“DOL”) issued a Field Assistance Bulletin (“FAB”) to provide guidance to field-office staff regarding whether caregivers, such as nurses and health aides, qualify under the Fair Labor Standards Act (“FLSA”)...

July 26, 2018

### **Class Action Waivers: The Law of Unintended Consequences**

In light of the U.S. Supreme Court's decision in *Epic Systems Corp. v. Lewis* [1] that class action waivers in arbitration agreements are enforceable, employers have been rejoicing. However, is their excitement misplaced? As that eminent legal scholar,...

July 24, 2018

### **Three Steps Employers May Take to Avoid Liability When Transferring Employees**

Employers may desire to transfer an employee to a different position, division, or office because of personality conflicts, performance issues, a reorganization, or myriad other reasons. While transferring an employee may resolve an immediate problem, it could also lead...

July 19, 2018

### **NLRB Judge Rejects Proposed Settlement In McDonald's Joint Employer Case**

On July 17, 2018, a National Labor Relations Board ("Board") Administrative Law Judge ("ALJ") rejected a proposed settlement that would have concluded the closely-watched consolidated unfair labor practice case against McDonald's USA, LLC ("McDonald's"), which has been ongoing for...

July 17, 2018

### **NLRB Releases Advice Memos Approving Employer Work Rules Under New Boeing Standard**

On July 13, 2018, the General Counsel of the National Labor Relations Board ("NLRB" or "Board") released several memos authored by the Board's Division of Advice, which offer further guidance to employers about how the Board will evaluate work...

July 2, 2018

### **Time to Dust Off Colorado Physician Liquidated Damage Provisions**

Many Colorado physician employment agreements and equity agreements require physicians to pay liquidated damages if the physician competes with his/her former employer after leaving the organization. The payment of damages are a work-around of the Colorado statute on restrictive...

June 27, 2018

### **Supreme Court Rules Unions Cannot Require Financial Support From Non-Member Public-Sector Employees**

Today, the United States Supreme Court ruled unions cannot compel public employees they represent but who are not members to pay "agency fees," which cover the cost of collective bargaining and processing grievances. In *Janus v. American Federation of...*

June 22, 2018

### **Six Steps Employers Can Take In Advance of a DOL Audit**

If an employer is being audited by the US Department of Labor (DOL), there are several steps the employer can take to proactively prepare for and ultimately defend its practices: 1. Review immediately and react to the audit request...

June 19, 2018

### **The Devil is in the Details: Arbitration Agreements Ruled Invalid Over Signatures**

Employers, dust off your arbitration agreements and take a second look at the signature line. Is it signed by both parties? Did the employer representative sign on behalf of the correct corporate entity? If the answer to either of...

June 15, 2018

### **Coming Soon: NLRB Promises Rulemaking on Joint-Employer Standard by End of Summer**

By letter dated June 5, 2018, National Labor Relations Board Chairman John Ring announced that the Board will issue a proposed regulation to determine when employers may be considered joint employers under the National Labor Relations Act "as soon..."

June 13, 2018

**Summertime: Four Tips for Keeping Workplaces Cool as the Temperatures Rise**

Summertime, and the livin' is easy . . . Ella Fitzgerald's voice brings images of crackling heat, warm breezes and long, languid days. But, when the temperatures rise outside, human resource managers can find their workforce temperatures rising as...

June 7, 2018

**#MeThree: Recommendations for Employers to Avoid Liability for Third Party Harassment**

The #MeToo movement has sparked an increase in sexual harassment investigations and focused attention on the potential liability of employers for the actions of third parties with whom their employees interact for business purposes. We previously noted the importance...

June 4, 2018

**Alphabet Soup: ADA, FMLA, WC, OSHA, GINA --What Laws Apply to a Workplace Injury?**

Employers face a host of compliance challenges under state and federal law when an employee suffers a workplace injury. As we recently reported , employers must consider the legal implications of the Family and Medical Leave Act (FMLA) and...

May 31, 2018

**New Laws Place Additional Restrictions on Washington Employers**

Beginning on June 7, 2018, four new Washington laws will go into effect and place new restrictions on employers in the state. These laws, discussed in detail below, expand the rights and protections afforded to Washington employees, and may...

May 24, 2018

**Employer Beware: Considerations When Hiring a Competitor's Employees**

Restrictive covenants, such as non-competition and non-solicitation agreements, typically assist employers to protect their legitimate business interests. When properly drafted and implemented, an employer can use these types of agreements to limit an employee's ability to unfairly compete after...

May 23, 2018

**Ninth Circuit Certifies Questions to California Supreme Court Regarding Applicability of California Employment Laws to Mobile Workforce**

In three separate cases involving airline employers, the U.S. Ninth Circuit Court of Appeals recently certified five questions to the California Supreme Court for guidance on whether California's labor code provisions apply to non-residents who may be temporarily working...

May 21, 2018

**United States Supreme Court Validates Class and Collective Action Waivers in Arbitration Agreements**

In a 5-4 decision in *Epic Systems Corp. v. Lewis* , No. 16-285 , the United States Supreme Court upheld the use of class and collective actions waivers in arbitration agreements. Employers nationwide may require employees to sign agreements...

May 18, 2018

**NLRB Considers Changing Joint-Employer Standard via Rulemaking Process**

On May 9, 2018, National Labor Relations Board ("NLRB" or "Board") Chairman John F. Ring announced the Board is considering whether to change the current joint-employer standard via the Board's rulemaking process. As we discussed previously here , the...

May 17, 2018

**Employee Grooming Policies and the Limits of Title VII**

Employers may regulate the length, style, and neatness of employees' hair in the workplace through so-called grooming policies, unless the hair style is a matter of sincere religious observance posing no more than a minimal burden on the employer. ...

May 15, 2018

### **U.S. Senate Confirms Nomination of John Ring to NLRB**

Last month, the United States Senate confirmed attorney John Ring by a 50-48 vote to fill the National Labor Relations Board's ("Board") last vacancy. Ring fills the seat vacated by Chairman Philip A. Miscimarra (R) when his term expired...

May 15, 2018

### **Reminders Regarding Non-competition Agreements in California**

On May 4 and May 13, 2017, the New York Times published an op-ed and article in which the authors asserted—in support of arguments disfavoring non-competition agreements—that California voids all non-competition agreements.\* This is an overstatement of California law,...

May 10, 2018

### **Courts Struggle with Questions Regarding Retroactive Application of the MHRA Amendments**

The Missouri legislature enacted sweeping changes to the Missouri Human Rights Act ("MHRA") in 2017, which we previously reported on here . Since the amendments went into effect in August 2017, trial courts have grappled with whether and which...

May 4, 2018

### **California Supreme Court Adopts New Independent Contractor Analysis**

On April 30, 2018, the California Supreme Court adopted a new test to establish independent contractor status pursuant to the California Industrial Wage Orders. In *Dynamex Operations W. v. Superior Court* , 2018 WL 1999120 (Cal. Apr. 30, 2018),...

May 3, 2018

### **Austin Mandatory Paid Sick Leave Ordinance: The First of Many in the Lone Star State?**

On February 15, 2018, Austin became the first city in Texas to adopt a mandatory paid sick leave ordinance (the "ordinance"). To prepare for compliance, Texas employers with employees in Austin will want to review the ordinance's requirements: Effective...

April 25, 2018

### **The Saga Resumes: The Bakery & Confectionery International Pension Fund Again Announces a Two Pool Proposal**

As we reported previously, the Bakery & Confectionery Union and Industry International Pension Fund (B&C Fund) has been underfunded for years, with actuaries estimating that the B&C Fund will become insolvent by January 2030. To address this shortfall, the...

April 23, 2018

### **Eighth Circuit Upholds National Labor Relations Act's Union "Salting" Protections**

On February 21, 2018, the Eighth Circuit Court of Appeals issued new guidance regarding when and how the National Labor Relations Act ("NLRA") protects union "salting" campaigns. A "salting" campaign involves union members, known as "salts," who seek to...

April 19, 2018

### **The Ninth Circuit Flip-Flops on the Equal Pay Act, Butting Heads with the Seventh Circuit**

On April 9, the Ninth Circuit Court of Appeals issued its decision in *Rizo v. Yovino* , which held that salary history may not be used by an employer as a factor when defending gender disparities in initial wages,...

April 18, 2018

### **Caution: Conferring Benefits to Employees May Be An Unfair Labor Practice**

Two recent decisions illustrate that the provision of benefits to employees prior to or during a union organizing campaign may violate the National Labor Relations Act ("NLRA" or "Act"). By way of background, Section 8(a)(1) of the NLRA provides...

April 12, 2018

### **Airlines Association Files Another Lawsuit Challenging Massachusetts Paid Sick Leave Law**

On April 4, 2018, Airlines for America, a trade association and lobbyist organization for U.S. airlines, filed a lawsuit in federal court in Massachusetts against the Massachusetts Attorney General challenging the state's paid sick leave requirements. On behalf of...

April 10, 2018

### **Pennsylvania Federal Court Explores the Contours of the DTSA**

Recently, the U.S. District Court for the Eastern District of Pennsylvania determined a former employee did not violate the Defend Trade Secrets Act ("DTSA") where she disclosed confidential information of her former employer to her husband and her attorney....

April 10, 2018

### **Clear as Mud? The FCRA's "Concrete" Requirement Again Proves to be Slippery**

The Ninth Circuit Court of Appeals recently considered the United States Supreme Court's landmark 2016 decision in *Spokeo, Inc. v. Robins*. Spokeo provided employers some hope in the area of litigation of background checks when it hinted that "harmless"...

April 5, 2018

### **Is the NLRB Returning to the Traditional Interpretation of Spruce-up?**

When purchasing a business, the buyer often desires to set new terms of employment to more efficiently and profitably operate the new enterprise. However, if the seller's employees are members of a bargaining unit, the buyer must -- if...

April 2, 2018

### **New Legislative Action on "Tip Pooling"**

Congress and the President have waded in to the ongoing debate regarding employers' use of "tip pools" under the Fair Labor Standards Act ("FLSA") by passing the Tip Income Protection Act ("TIPA") as part of the omnibus spending bill....

March 27, 2018

### **An End to the McDonald's Joint Employer NLRB Litigation**

The new General Counsel of the National Labor Relations Board ("Labor Board"), Peter Robb, continues to reshape the agency with his vision. Consistent with his January 2018 promise to consider "settlements of any kind that are not inconsistent with..."

March 27, 2018

### **Federal Appeals Court Reverses NLRB: Upholds College's Refusal to Negotiate Over Effects of Unilateral Decision**

A recent decision by the U.S. Court of Appeals for the 7th Circuit provides insight into the sometimes confusing world of when an employer can make decisions unilaterally, and when management must bargain with a union before making a...

March 21, 2018

### **DOL Implements Pilot Payroll Audit Independent Determination ("PAID") Program**

The U.S. Department of Labor (DOL) recently announced a new pilot program, referred to as the Payroll Audit Independent Determination ("PAID") program, which allows employers to conduct self-audits of its pay practices using the DOL's compliance materials. If an...

March 19, 2018

### **NLRB & Workers at Odds Over Budget Cuts**

Peter Robb, General Counsel of the National Labor Relations Board ("NLRB, "Board," or "Agency"), has proposed budget cuts that he contends are necessary to streamline some of the NLRB's internal processes. Per Mr. Robb, despite a steady decline in...

March 9, 2018

**Obesity “Regarded As” Disability Under ADA**

On March 5, 2018, in a decision styled *Shell v. Burlington Northern Santa Fe Railway Company*, Case No. 15-cv-11040 (N.D. Ill. Mar. 5, 2018), the U.S. District Court for the Northern District of Illinois suggested liability could attach...

March 8, 2018

**Second Circuit: Sexual Orientation Discrimination Is Covered Under Title VII**

On February 26, 2018, the U.S. Second Circuit Court of Appeals held that sexual orientation is covered by Title VII of the Civil Rights Act of 1964, aligning with a previous decision issued by the Seventh Circuit. The Second...

March 5, 2018

**National Labor Relations Board Goes Back to The Future**

On February 26, 2018, the National Labor Relations Board (“NLRB”) issued an Order vacating its recent decision on the issue of joint-employer in *Hy-Brand Industrial Contractors & Brandt Construction Co.*, 365 NLRB No. 156 (2017). The 3-0...

February 28, 2018

**Sixth Circuit: Union Acted Properly When Continuing to Collect Dues After Employees Failed to Follow Dues Checkoff Revocation Protocol**

On February 22, 2018, the U.S. Sixth Circuit Court of Appeals determined a union acted properly when it continued collecting union dues from members who did not follow protocol when seeking to revoke consent to their signed dues checkoff...

February 26, 2018

**Supreme Court Adopts Narrow Reading of Dodd-Frank’s Whistleblower Provision**

In *Digital Realty Trust, Inc. v. Somers*, No. 16-1276 (U.S. Feb. 21, 2018), the U.S. Supreme Court determined that the anti-retaliation provision of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”) is limited to individuals who report...

February 21, 2018

**Bag Inspection Policies Should Inform Employees to Remain On-The-Clock**

On January 10, 2018, the Northern District of California certified a state-wide class of non-exempt hourly employees who allege that they were not fully compensated for all time spent submitting to their employer’s bag inspection requirements. (*Heredia v. Eddie Bauer*,...

February 16, 2018

**Federal Court Finds Delivery Drivers Independent Contractors; California Supreme Court Next?**

On February 8, 2018, the U.S. District Court for the Northern District of California ruled that meal delivery drivers working for GrubHub, Inc. are properly classified as independent contractors and not employees. This closely watched case provides “gig economy” companies...

February 15, 2018

**Airlines Association Challenges Washington Paid Sick Leave Requirements**

On February 6, 2018, Airlines for America, a trade association and lobbyist organization for the American airline industry, filed a lawsuit in federal court in Washington State against the Washington Department of Labor & Industries challenging the state’s enforcement...

February 13, 2018

**Expansion of PBGC Missing Participant Program**

The Pension Benefit Guaranty Corporation (“PBGC”) recently updated and expanded its Missing Participant Program. For most defined benefit plans with missing participants, this program has been a required step in the termination process since 2006. The new regulation, effective...

February 12, 2018

### **Check Your Mail - OFCCP Mailed Corporate Scheduling Announcement Letters**

Following last year's trend, the Office of Federal Contract Compliance Programs' ("OFCCP" or "Agency") website indicates that February 1, 2018, the Agency mailed 1,000 Corporate Scheduling Announcement Letters ("CSALs"). The CSALs do not commence an audit – only a...

February 9, 2018

### **NLRB Invites Comments on "Ambush Election" Rule**

In 2014, the National Labor Relations Board ("NLRB" or "Board") published the controversial "ambush election" rule, which was intended to decrease the time between the filing of a petition for representation and a union election. The rule, which became...

February 8, 2018

### **Labor Department Under Attack for Tip Pooling Rule**

The U.S. Department of Labor's ("DOL") Office of the Inspector General ("OIG") is investigating the rule-making process relating to the DOL's new tip pool regulation in response to reports that the DOL buried internal estimates regarding the proposal's impact...

February 2, 2018

### **More Changes at the NLRB**

Recently, NLRB General Counsel Peter Robb announced his intention to restructure the NLRB's field office operations and revamp the NLRB's current case processing procedures. On January 11, 2018, Robb hosted a conference call with the NLRB's Regional Directors to inform them...

February 2, 2018

### **Restrictive Covenant Pitfalls**

As a general matter, many courts disfavor restrictive covenants in the employment context because they restrain trade. However, the law also seeks to prevent unfair competition. As a result, if an employer can point to a legitimate business interest...

February 1, 2018

### **ADA Obligations: We're Not Just Talking Employee Accommodations Anymore**

By now, most employers are familiar with their obligations under the Americans with Disabilities Act of 1990 (ADA) to not discriminate against, and possibly provide accommodations for, qualified individuals with disabilities. However, these same employers may not be aware...

January 27, 2018

### **Four Policy Reviews in Your Next Employee Handbook Update**

The start of the year is prime time for employers to review employee handbooks. Many policies remain the same year after year. Employers may wish to pay attention to certain policies due to recent changes in the law. 1....

January 25, 2018

### **Fighting Back: FMLA Fraud and Abuse**

The Family and Medical Leave Act requires employers with 50 or more employees to permit eligible employees to take covered unpaid medical or caregiver leave. How can an employer respond when an employee approved to take FMLA leave is...

January 23, 2018

### **Final DOT Rule Brings Drug Testing Changes**

The U.S. Department of Transportation's ("DOT") new Final Rule modifying DOT regulation 49 CFR Part 40 ("Final Rule") became effective January 1, 2018. Specifically, the Final Rule affects employers of employees in safety sensitive positions, and includes changes to...

January 18, 2018

### **Obesity-Based Disability Discrimination - New Findings in California**

In 2017, the Centers for Disease Control reported that more than one-third of U.S. adults are obese. But does that mean that one-third of U.S. adults are disabled? Not necessarily. The California Supreme Court decided twenty-five years ago in ...

January 18, 2018

### **U.S. Department of Labor Reissues 17 Bush-Era Opinion Letters**

On January 5, 2018, the Wage and Hour Division (WHD) of the U.S. Department of Labor (DOL) reissued 17 Opinion Letters that were previously issued in January of 2009 in the waning days of the Bush administration. The Obama...

January 16, 2018

### **More on Non-Disclosure Agreements: California Sponsoring State Legislation to Prohibit Confidentiality in Sexual Misconduct Settlements**

It's a new year, and a new session for the active California Legislature. On January 3, 2018, in a likely effort to respond to the #MeToo movement, the Stand Together Against Non-Disclosure Act ("STAND" or the "Bill") was introduced...

January 12, 2018

### **Changing the Guard: What to Expect From a "Trump" NLRB**

When President Elect Trump is inaugurated, he will immediately have the opportunity to appoint two new members of the National Labor Relations Board (NLRB). Both of those appointees will be Republican appointees, and will immediately provide the NLRB with...

January 11, 2018

### **NLRB Poised to Revisit "Confidential" Severance Agreements and Leap Into the National #MeToo Discussion**

As 2017 drew to a close, two key members of the National Labor Relations Board ("NLRB" or "Board") signaled their readiness to revisit the Board's current stance regarding the confidentiality of severance agreements. All employers should take notice. In...

January 11, 2018

### **An Intern by Any Other Name...May Not be an Employee**

The U.S. Department of Labor ("DOL") recently announced that it is abandoning its six-factor test and will use the "primary beneficiary" test first enunciated by the 2nd Circuit in *Glatt et al. v. Fox Searchlight Pictures, Inc. et al.*

January 4, 2018

### **New Year, New Minimum Wage Hikes**

Employers, take note: effective January 1, 2018, 18 states, as well as several cities across the country, increased the minimum wage. Companies with employees in Alaska, Arizona, California, Colorado, Florida, Hawaii, Maine, Michigan, Minnesota, Missouri, Montana, New Jersey, New...

January 2, 2018

### **Tax Reform Requires Employers to Re-Think their Approach to Settlement Agreements**

Employers take note: a provision contained in the recently-passed Tax Cuts and Jobs Act of 2017 (the "Act") now limits tax deductions for certain types of settlement agreements. Specifically, Section 13307 of the Act, styled "Denial Of Deduction For..."

December 21, 2017

### **Cleared for Take-Off: NLRB Establishes New Balancing Standard for Evaluating Handbooks and Workplace Policies**

Recently, we reported that the "new" National Labor Relations Board ("NLRB" or the "Board") has commenced the anticipated roll back of decisions and procedures rendered by the Obama Administration's NLRB. On Friday, December 15, 2017, the NLRB issued another...

December 20, 2017

**California Further Clarifies Rest Break Requirements**

Pursuant to Wage Orders promulgated by California's Industrial Welfare Commission, most non-exempt employees in California are entitled to a paid 10 minute rest break for every 4 hours worked or major fraction thereof. In December 2016 the California Supreme...

December 20, 2017

**Labor Board Supersizes Bargaining Units**

At the end of an unprecedented week of reversals of "Obama Board" precedent, the National Labor Relations Board ("NLRB" or "Board") reversed its 2011 decision in Specialty Healthcare & Rehabilitation Center of Mobile, 357 NLRB 937 (2011), casting aside...

December 19, 2017

**NLRB Jettisons Browning-Ferris; Reverts Back to Longstanding Joint-Employer Test**

On December 14, 2017, the National Labor Relations Board ("NLRB" or the "Board"), issued a case styled Hy-Brand Industrial Contractors, Ltd., 365 NLRB No. 156, that expressly overruled the controversial Browning-Ferris Industries of California, Inc., 362 NLRB No. 186...

December 15, 2017

**"Newly Minted" NLRB Majority Begins to Roll Back Decisions of the Obama Board**

In two recent developments, the "new" National Labor Relations Board ("NLRB" or the "Board"), which includes two Members nominated by President Trump, has commenced the anticipated roll back of decisions and procedures rendered by the previous Administration's NLRB. 1....

December 14, 2017

**San Francisco Publishes "Best Practices" Checklist as New Lactation Ordinance Becomes Effective January 1, 2018**

Earlier this year, we reported that the San Francisco Board of Supervisors passed legislation to assist working mothers by requiring employers to provide additional accommodations for lactation. On January 1, 2018, the Lactation in the Workplace Ordinance (the "Ordinance")...

December 8, 2017

**Proposed Department of Labor Rule Revising Tip Pooling Rules**

On December 4, 2017, the Department of Labor ("DOL") proposed a rule that will rescind the 2011 regulation prohibiting restaurants, bars, and other service industry employers from requiring front-of-house employees, such as servers, to share tips with back-of-house workers,...

December 6, 2017

**Between a Rock and a Hard Place – Maximum Leave Policies and the ADA**

Medical leaves pose operational and legal challenges for employers. As we have previously addressed, those challenges multiply when the employee's medical leave stems from a workplace injury and workers' compensation laws are added to the employer's compliance challenges. Indeed, such...

December 6, 2017

**NLRB General Counsel Releases First Memorandum, Signals Significant Policy Shift**

On December 1, 2017, the newly appointed National Labor Relations Board ("NLRB") General Counsel, Peter Robb, issued a memorandum styled GC Memorandum 18-02 (the "Memorandum"), which provides insight into his likely agenda as General Counsel. While the Memorandum is...

December 4, 2017

**Five Strategies for Protecting Trade Secrets**

In a post-Defend Trade Secrets Act world, employers have a host of civil remedies available to them for the misappropriation of trade secrets under both state and federal law. To obtain relief, an employer must establish that the information...

November 30, 2017

### **A “Two-Pool” Proposal for Employers Who Contribute to the Bakery & Confectionery International Pension Fund**

The Bakery & Confectionery Union and Industry International Pension Fund (“B&C Fund”) has been underfunded for many years. Indeed, since the bankruptcy of Hostess Corporation in 2012, the B&C Fund’s financial position has worsened. The assets of the B&C...

November 29, 2017

### **Supreme Court Considers Whether Dodd-Frank Whistleblower Protection Applies to Internal Reporting**

This week, the United States Supreme Court heard oral argument in Digital Realty Trust, Inc. v. Somers to consider whether the Dodd-Frank Act (“Dodd-Frank”) protects internal whistleblowers and, more broadly, regulatory agencies’ power to interpret federal statutes. The Court’s...

November 21, 2017

### **Just in Time for the Holidays: Scheduling Restrictions Take Effect for NYC Retail Employers**

On November 26, 2017, New York City will join other cities, such as San Francisco and Seattle, when its predictive scheduling laws take effect and require retail employers to give employees a minimum amount of advance notice of their...

November 20, 2017

### **Don’t Ask; Sometimes Tell: Wage History Bans Gain Traction**

Employers across the country should think twice before asking job applicants about their salary history. As we reported earlier this year, a number of state legislatures (and some local governments) considered legislation this past session designed to prohibit...

November 15, 2017

### **Working in a Winter Wonderland – Compensating Employees on Inclement Weather Days**

With the smells of turkey, stuffing, and cranberry sauce about to fill kitchens across the country next week, people are getting ready for the holiday season. And as Norman Rockwell has taught us, nothing says the holidays more than...

November 13, 2017

### **FCRA Update: Courts Continue to Require Injury-in-fact for Article III Standing**

In recent months, we have written about the limits Article III places on plaintiffs bringing Fair Credit Reporting Act (FCRA) claims. ( See here, here, and here ). In October, two federal district courts further illustrated these...

November 8, 2017

### **House Passes Bill to Return to Traditional Joint Employer Standard**

On November 7, 2017, the U.S. House of Representatives voted on and passed the Save Local Business Act, H.R. 3441 (the Act). If passed by the Senate and signed into law by President Trump, the Act would reverse a National...

November 7, 2017

### **Protect Your Business – Restrictive Covenant Agreements**

Many states allow businesses to require employees to sign agreements restricting their competitive activities following the termination of employment. Such restrictive covenant agreements, including non-competition and non-solicitation agreements, can be great tools to protect an employer’s business interests. Business owners...

November 3, 2017

### **Sex-Based Stereotyping Recognized as a Valid Theory of Discrimination**

Neither Title VII nor the Missouri Human Rights Act (the “MHRA”) expressly prohibits discrimination on the basis of sexual orientation. In a prior post, we discussed a developing theory adopted by courts and administrative agencies that extends Title...

October 30, 2017

### **The Saga Continues: What's Next for the White Collar Exemptions?**

On October 30, 2017, the U.S. Department of Labor (DOL) filed an appeal in the United States Court of Appeals for the Fifth Circuit of the August 31, 2017 ruling by the United States District Court for the Eastern...

October 27, 2017

### **Eleventh Circuit: Pregnancy Discrimination Act Prohibits Discrimination Related to Breastfeeding**

On September 7, 2017, the U.S. Court of Appeals for the Eleventh Circuit determined that different treatment based on an employee's breastfeeding is prohibited by the Pregnancy Discrimination Act ("PDA"). In *Hicks v. City of Tuscaloosa*, No. 16-13003, the...

October 26, 2017

### **Bottling Employee Blows his Top, but his Termination Caused a Sticky Situation**

On October 23, 2017, a National Labor Relations Board (NLRB) Administrative Law Judge (ALJ) ruled that Heartland Coca-Cola Bottling Co. (Heartland) unlawfully fired a union steward who uttered profanity during a meeting attended by company executives and employees. While...

October 20, 2017

### **That's A Wrap—Six Important California Employment Legislative Updates Effective January 1, 2018**

As the 2017 California legislative session comes to an end, employers are faced with new employment laws added to the labyrinth of California employment compliance. Governor Brown recently signed into law six new statutory obligations that take effect on...

October 17, 2017

### **Could Relief from PAGA be on the Way for California Employers?**

Since its inception more than a dozen years ago, California's Private Attorneys General Act (PAGA) has been criticized for how it has been used by plaintiff's counsel to secure (sometimes) large attorney's fees awards and penalties from employer-defendants for...

October 16, 2017

### **Time for a Check-up: Increased EEOC Interest in Medical Exams**

Recently, the Equal Employment Opportunity Commission ("EEOC") has focused on filing lawsuits relating to an employer's obligations under the Americans with Disabilities Act ("ADA") when using pre-employment medical exams. During the month of September, the EEOC filed suit against...

October 11, 2017

### **Eight States with Sick Leave Laws – What Employers Should Know**

While the FMLA provides for protected time off, it does not provide for paid sick leave. However, paid sick leave laws are gaining popularity at the state level. Rhode Island is poised to become the eighth state, in addition...

October 9, 2017

### **Thinking About Selling the Company? Six Labor & Employment Skeletons to Consider**

Employers considering selling their business spend large amounts of time preparing the books, improving EBIDTA, fine-tuning marketing strategies, and reducing redundancies, among many other tasks, to improve the sale price. Yet six skeletons in the employment closet, discussed below,...

October 5, 2017

### **Supreme Court Considers Viability of Class-Action Waivers in Employment Agreements**

On October 2, 2017, the United States Supreme Court heard oral argument in *Epic Systems v. Lewis*, which considers the import of the National Labor Relations Act (NLRA) on the enforceability of class action waivers under the Federal Arbitration...

October 5, 2017

### **Unstated Takeaways from the Third Circuit's Recent Decision in the FMLA/Workers' Compensation Arena**

A recent decision rendered by the Third Circuit Court of Appeals serves as a timely reminder that employers must consider the legal implications of the Family and Medical Leave Act (FMLA) and the Americans with Disabilities Act (ADA) when...

October 3, 2017

### **Fair Credit Reporting Act Continues to Fuel Class Action Litigation**

The Fair Credit Reporting Act (FCRA) continues to cause issues for employers that run afoul of its provisions when reviewing consumer background reports as part of the hiring process. Most recently, a proposed class action was filed against Starbucks...

September 29, 2017

### **Seventh Circuit Rules Long Term Leave is Not a Reasonable Accommodation**

It appears to be a common scenario: An employee becomes ill, exhausts his or her Family and Medical Leave Act (FMLA) provided leave, and then requests more leave as a "reasonable accommodation." Must an employer grant additional leave? On...

September 28, 2017

### **New NLRB Member Marvin Kaplan Sides with the Union in his First Decision**

On August 2, 2017, the Senate confirmed Marvin E. Kaplan, President Trump's first nominee to serve on the National Labor Relations Board (NLRB). Prior to joining the Board, Kaplan spent the majority of his career in government practice, most...

September 27, 2017

### **When the Company Needs a Detective: Five Keys to Effective Workplace Investigations**

When a company receives information concerning potentially hidden wrongdoing, the old axiom, "the cover-up is worse than the crime," becomes top of mind. To be sure, this principle should be a guiding force when an employer conducts a workplace...

September 21, 2017

### **Ninth Circuit Creates Circuit Split over 80/20 Rule**

The Ninth Circuit Court of Appeals has created a circuit split with the Eighth Circuit Court of Appeals by rejecting the U.S. Department of Labor's (DOL) interpretation of Fair Labor Standards Act (FLSA) regulations, and issued a restaurant-friendly decision...

September 20, 2017

### **HR Policies: Training, Training, Training**

Employers often spend time and resources on well-crafted policies, but then do not communicate and train to the policies. Time and again, employers are reminded to review and update their HR policies. Of course, it is important for employers...

September 14, 2017

### **California District Court Nixes Security Check "Wait Time" Class Action**

Earlier this week, the U.S. District Court for the Northern District of California granted Nike's motion for summary judgment and dismissed a class action alleging unpaid wages brought by workers who complained they were not paid for time going...

September 11, 2017

### **Employers' Obligations to Employees During Natural Disasters**

Hurricane Harvey and Hurricane Irma serve as a reminder that employers have some legal obligations to employees during natural disasters. Employers should have a plan in place when preparing for a natural disaster, such as an inclement weather policy,...

September 6, 2017

### **Missouri's Petition for Referendum May Delay Right-to-Work**

Missouri's new Right-to-Work legislation, signed by Governor Eric Greitens on February 6, 2017, was scheduled to go into effect on August 28; however, labor union leaders have obtained over 300,000 signatures on a Petition, which, if validated by the Secretary...

September 1, 2017

### **Secondary Consequences of Spokeo: Litigating FCRA Claims in State Court**

The discussion in the wake of the United States Supreme Court's ruling in Spokeo Inc. v. Robbins has focused on an employer's ability to obtain dismissal of a claim under the Fair Credit Reporting Act ("FCRA")—where the plaintiff or...

August 30, 2017

### **Federal District Court Finds Federal Law Does Not Preempt State Medical Marijuana Law's Prohibition Against Employment Discrimination**

On August 8, 2017, the United States District Court for the District of Connecticut held in Noffsinger v. SSC Niantic Operating Co., LLC d/b/a Bride Brook Health & Rehab Ctr. that federal law does not preempt the Connecticut Palliative...

August 28, 2017

### **Workplace Policies Prohibiting Employees' Secret Recordings are not Facially Unlawful under the NLRA**

Despite the National Labor Relations Board's ("NLRB") increasing scrutiny of common workplace policies, including those prohibiting employees from secretly recording conversations in the workplace (i.e., no-recording policies), two recent cases suggest employers may establish overriding business interests justifying restrictions...

August 25, 2017

### **How OSHA Reacts to an Employer's Alleged Failure to Abate**

In the fall of 2014, the Occupational Safety and Health Administration (OSHA) conducted an investigation of a treatment center which provided behavioral health care for adolescents and adults in the form of inpatient and partial hospitalization. OSHA determined that...

August 25, 2017

### **Employer Caution: Use of Consumer Reports when Considering Candidates**

On August 15, 2017, the Ninth Circuit Court of Appeals, in Robins v. Spokeo, Inc., Case No. 11-56843, reversed the district court dismissal of an action, holding that the plaintiff had sufficiently alleged a "concrete injury" to maintain...

August 21, 2017

### **California Court Clarifies Rule Regarding Arbitration of PAGA Representative Actions**

On August 2, 2017, the California Court of Appeal issued a decision clarifying the arbitrability of claims under the Private Attorney General Act (PAGA), finding that those seeking "victim-specific" relief can be subject to mandatory arbitration. The California Supreme Court...

August 15, 2017

### **For Whom the Class Tolls: "No Piggybacking Rule" Does In Would-Be Class in Ongoing Wal-Mart Saga**

In 2011, the United States Supreme Court issued its landmark decision in Wal-Mart Stores, Inc., v. Betty Dukes, et al., decertifying a putative class of approximately 1.6 million current and former female Wal-Mart employees who claimed gender discrimination in...

August 11, 2017

### **Don't Let Vaccinations Make You Sick: The Interactive Process and Vaccination Policies**

The flu season brings additional challenges to hospitals and other health care providers, as they experience an increase in volume of patients who have the flu or flu-related symptoms or who are at higher risk of serious complications from...

August 7, 2017

### **Who Has the Authority to Order Class Arbitration? The Eighth Circuit Weighs In**

Several circuit courts of appeal have considered a critical aspect of class litigation: does the court or arbitrator decide if arbitration agreements permit class arbitration (the “who decides” question)? The U.S. Supreme Court has not yet resolved this issue....

July 26, 2017

### **Massachusetts Employers May Need to Accommodate Medical Marijuana Users**

Massachusetts and 28 states have legalized medical marijuana, and an additional 16 states permit “low THC” use. Federal law, however, still outlaws marijuana use, regardless of ailment or disability. In light of these conflicting laws, how should an employer...

July 18, 2017

### **Important Update: New Form I-9**

On July 17, 2017, the U.S. Citizenship and Immigration Services (“USCIS”) released a new version of Form I-9, Employment Eligibility Verification. USCIS reports that employers can use this revised version immediately or continue using the previous Form I-9 (which...

July 17, 2017

### **The 80/20 Rule and Its Impact on the Restaurant Industry**

The restaurant industry is a major target of Fair Labor Standards Act collective and class action litigation. Employers are experiencing an increase in lawsuits related to the 80/20 “rule” for servers’ duties and how it affects the tip credit. Under...

July 13, 2017

### **Federal Court Certifies FCRA Class in Dispute Over Content of Disclosures**

In recent weeks, we have blogged about a number of employer-friendly decisions related to Article III standing under the Fair Credit Reporting Act (FCRA). ( See here and here ). We have highlighted the standing doctrine and the...

July 11, 2017

### **Department of Labor Takes Position on Enjoined FLSA White Collar Exemption Regulations, But Questions Remain**

As previously reported, on November 22, 2016, the United States Department of Labor (“DOL”) was enjoined nationwide from implementing regulations that would have more than doubled the minimum salary requirement for the overtime pay exemptions under the Fair Labor...

July 7, 2017

### **San Francisco Continues Push for Gender Equality in Employment**

In the past two weeks, the San Francisco Board of Supervisors passed bills to assist working mothers who are nursing their infants and to address gender pay disparities. Lactation Locations The first bill, passed on June 20, 2017, requires...

July 6, 2017

### **Setting Limits on Employee Speech Protected Under the National Labor Relations Act**

On July 3, 2017, the United States Court of Appeals for the Eighth Circuit struck down a decision of the National Labor Relations Board (“NLRB” or the “Board”) in which the Board ruled that employees who disparaged Jimmy Johns’...

July 5, 2017

### **Plaintiffs Don’t Stand Tall in Texas FCRA Class Action**

Last week, the Northern District of Texas weighed in on the proper application of Article III standing requirements in light of the Supreme Court’s 2016 decision in Spokeo, Inc. v. Robins, 136 S.Ct. 1540 (2016), and delivered a...

July 5, 2017

### **Pay Attention to Pay**

Employers must be aware of and comply with a host of state and federal laws related to employee pay. Below, we detail five common mistakes that employers make, and how to avoid them. 1. "Exempt" Employees Misclassified. Employees must meet...

June 29, 2017

### **DOL: Return of the Opinion Letter**

On June 27, 2017, the U.S. Department of Labor (DOL) announced that "Opinion Letters are back!" During a hearing before the Senate Appropriations Subcommittee on Labor, Health, and Human Services, Labor Secretary Alexander Acosta announced that DOL will once...

June 28, 2017

### **YOUR TIME WILL COME - Legislation to Roll Back Obama Board Initiatives Introduced**

With the recent nominations of William Emanuel and Marvin Kaplan to the two vacant positions on the National Labor Relations Board ("NLRB" or "Board"), the current composition of the NLRB consists of two Democrats and one Republican appointment. Employers...

June 26, 2017

### **Words Matter In The Workplace**

Recently, top level executives in the media and tech industries have departed from their positions in the midst of investigations into allegations of workplace conduct that involved comments that were construed to create a hostile environment. Two cases decided...

June 16, 2017

### **Summertime Advice: Three Best Practices Regarding the Employment of Minors**

School's out for summer. While some students will sit by the pool, others are seeking summer employment. Youth employment may provide a relatively simple and cost-effective resource that can help fill seasonal staffing needs. However, employers should be mindful...

June 14, 2017

### **Eleventh Circuit: No Private Right of Action under FLSA for Withheld Tips**

Earlier this week, the Eleventh Circuit Court of Appeals held that the Fair Labor Standards Act ("FLSA") does not provide for a private right of action for withheld tips when minimum wage and overtime claims are not in play...

June 12, 2017

### **Fourth Circuit Strikes a Blow to FCRA Plaintiffs**

Recently, the Fourth Circuit reversed an \$11.7 million verdict in a 69,000 member Fair Credit Reporting Act (FCRA) class action. In *Dreher v. Experian Info. Solutions, Inc.*, 856 F.3d 337 (4th Cir. 2017), the Fourth Circuit applied the...

June 9, 2017

### **Five Privilege Pitfalls Employees and In-House Counsel Should AVOID**

The attorney-client privilege continues to cause issues for in-house counsel who frequently play different roles at different times, and for employees involved in legal communications. The basic elements of the privilege are equally applicable to individual clients as they...

June 9, 2017

### **Department of Labor Withdraws Joint Employer and Independent Contractor Classification Guidance**

On June 7, 2017, the Department of Labor ("DOL") announced that legal guidance promulgated during President Obama's term in office regarding both joint employment and the classification of workers as independent contractors has been withdrawn. In July 2015, the...

June 5, 2017

### **Once More unto the Breach: Practical Tips When Employee Data is Compromised**

In 2016, U.S. private employers and government agencies reported more than 1,000 data security breaches, up 40 percent from 2015. Recent high profile examples include: 2014 theft of unencrypted laptops at Coca-Cola, which compromised sensitive data concerning 74,000 then-current...

June 2, 2017

### **Three Considerations for Using Big Data in Hiring Decisions**

With job candidates posting extensive information on social media and other information available on the Internet, technologists are developing ways to mine and use that data in the hiring process. This field (sometimes referred to as "people analytics") is...

May 31, 2017

### **Board ALJ Nixes Employer Handbook Rules**

A National Labor Relations Board ("NLRB" or "the Board") Administrative Law Judge ("ALJ") has issued another reminder to employers to be careful when drafting employee handbooks. In May 2017, a Board ALJ invalidated 10 different sections of the company's...

May 19, 2017

### **Five Things to Do ASAP After Your Company Receives a Charge of Discrimination**

The U.S. Equal Employment Opportunity Commission's ("EEOC") broad-ranging jurisdiction covers, in short, claims of age, disability, equal pay, gender/pregnancy, genetic information, national/ethnic origin, race/color, and religious/creed discrimination. The EEOC typically sends notice of a charge of discrimination and requests...

May 17, 2017

### **California Supreme Court: Seven Day Rule Applies to Work Week Not Calendar Week**

On May 8, 2017, the California Supreme Court provided clarification on three important issues related to California's mandatory day of rest that have long been murky under existing California law: 1. The Seven Day period for determining the "Day...

May 17, 2017

### **Tenth Circuit Addresses Required Level of Specificity of EEOC Charge in Quid Pro Quo Case**

On May 12, 2017, a divided Tenth Circuit addressed the level of detail that must be contained in an EEOC charge when a plaintiff alleges quid pro quo harassment. In *Jones v. Needham*, No. 16-6156 (10th Cir. May...

May 10, 2017

### **Employer Relief in Missouri: Amendments Headed to the Governor**

On May 8, 2017, the Missouri House gave final approval to a much anticipated, heavily debated, and still highly controversial bill that will significantly modify the law applicable to "unlawful employment practices" in the state. Governor Eric Greitens has...

May 9, 2017

### **The Missouri Legislature Deals Another Blow to Unions by Limiting the Use of Project Labor Agreements**

The Missouri legislature recently sent a new bill designed to severely limit the use of project labor agreements to Governor Greitens' desk. Known as Missouri Senate Bill 182 ("S.B. 182"), its stated purpose is to ensure a more competitive...

May 9, 2017

### **NYC Bans Private Employers From Asking Applicants: "How Much Money Do You Make?"**

On May 4, 2017, Mayor de Blasio signed a bill passed by the New York City Council that prohibits private employers from asking applicants how much money they make or otherwise making salary history inquiries. The legislation, which will...

May 5, 2017

### **Proceed with Caution: Pay Differential Based on Prior Salary Can Be Lawful**

Equal Pay litigation continues to cause angst for employers doing business in California. In addition to the federal Equal Pay Act, employers operating in California must comply with laws requiring equal pay for men and women for substantially similar...

May 4, 2017

### **Less is More: Complying with the FCRA's Disclosure and Authorization Requirements**

An earlier post noted an internet search of "FCRA Settlement 2016" returned over 1,800 results. In the three months since that post, that number has grown exponentially—to nearly 55,000 results—demonstrating the current popularity of both individual and class FCRA...

May 3, 2017

### **Compensatory Time Comes to the Private Sector?**

On May 2, 2017, the U.S. House of Representatives passed the Working Families Flexibility Act (the "Act"), which would extend the option of accruing compensatory time to private sector employees. Presently, and for many years under the Fair Labor...

April 25, 2017

### **Losing my Religion: NLRB Extends Jurisdiction over Religious Institutions**

After millions of Americans celebrated Easter and Passover this month, the National Labor Relations Board (NLRB or the "Board") provided a "celebration" of sorts to labor unions. In four decisions—three from the Board and one at the Baltimore regional...

April 19, 2017

### **Stay Diligent: 4 Steps to Avoid the New Wave of Harassment and Discrimination Cases**

This past year has seen an increase in gender discrimination and sexual harassment claims. More recently, these claims have not only been brought by women, but also by individuals using Title VII's "sex" protected class to bring claims for...

April 17, 2017

### **Five Employment Cases at the Supreme Court This Term**

The employment and labor law cases we previously reviewed have now been resolved by the eight Justices. Despite the possibility of deadlock, a majority ruling was issued by the Court in most of the cases. A brief update: The...

April 6, 2017

### **Seventh Circuit Extends Title VII Coverage to Include Sexual Orientation**

Reversing prior Seventh Circuit precedent, an en banc opinion from the United States Court of Appeals for the Seventh Circuit held that Title VII of the Civil Rights Act of 1964 extends to discrimination based on sexual orientation. In...

April 4, 2017

### **Supreme Court: Circuit Courts to Apply Deferential Standard When Reviewing District Enforcement of EEOC Subpoenas**

On April 3, the U.S. Supreme Court held that a district court's decision whether to enforce or quash an Equal Employment Opportunity Commission (EEOC) subpoena should be reviewed only for an abuse of discretion, not de novo, by...

March 23, 2017

### **Planning for International Trade Secret Protection**

Your company has worked hard to ensure that its trade secrets are protected under the applicable state laws, and modified its contracts and policies to reflect the new federal trade secret protection standards. When your company has grown internationally,...

March 17, 2017

### **Ninth Circuit Confirms that PAGA Claims Can Be Compelled to Arbitration; California Appellate Court Disagrees**

In two unpublished decisions this month, the Ninth Circuit ruled in *Wulfe v. Valero Refining Co. California* and *Valdez v. Terminix International Company, et al.* that California Private Attorney General Act (PAGA) claims can be forced into arbitration based...

March 17, 2017

### **Companies May Be Liable for Hostile Environment Caused by Non-Employees**

A recent decision by the United States District Court for the District of Delaware serves as an important reminder that employers may be held liable for acts of harassment by individuals with whom their employees come in contact, even...

March 14, 2017

### **Strategic Discovery of Third-Party Litigation Funding in Class and Collective Actions**

Third-party litigation funding is marketed as a means of broadening access to justice by providing plaintiffs with resources to litigate in exchange for a cut of any monetary recovery. Some commenters have rebuked third-party litigation funding as an ethical...

March 10, 2017

### **DC Circuit Overturns NLRB's Assertion of Jurisdiction over Airline Contractor**

In an important decision for the airline industry and its contractors, the United States Court of Appeals for the DC Circuit in *ABM Onsite Services – West, Inc. v. NLRB* overturned a decision by the National Labor Relations Board...

March 8, 2017

### **California Court of Appeals Confirms Non-Exempt Commissioned Employees Must Be Paid Enhanced Rest Break Compensation**

On February 28, 2017 the California Court of Appeals confirmed in *Vaquero v. Stoneledge Furniture LLC*, that non-exempt commissioned employees are entitled to enhanced compensation during rest and recovery periods. This ruling brings commissioned employees into alignment with...

March 8, 2017

### **USCIS to Suspend Premium Processing of H-1B Applications**

Beginning on April 3, 2017, the United States Citizenship and Immigration Services (USCIS) will suspend processing of all H-1B petitions. USCIS reports the suspension may last up to six months. The suspension applies to all H-1B petitions filed on...

March 6, 2017

### **HAVE YOU SEEN HIS FACEBOOK!? Two Social Media Pitfalls Employers Must Avoid**

Facebook, YouTube, Instagram, Snapchat, Twitter—now ubiquitous symbols of interpersonal communication -- mere years ago were fledgling ideas or unknowns. Today, social media is everywhere, and has brought countless new challenges for employers. However, businesses that successfully navigate two...

March 3, 2017

### **Saint Louis is Raising the Minimum Wage**

On February 28, 2017, the Missouri Supreme Court issued its long-awaited opinion in *Cooperative Home Care, Inc., et al. v. City of St. Louis, Missouri, et al.*, ruling that the City of St. Louis can proceed with a...

February 28, 2017

### **Are You Still Minding the Gap? A Check-Up for Navigating the Line Between Political and Hate Speech and Workplace Acceptability**

In December 2015, we broadly reviewed concerns and compliance issues for employers when managing employees engaged in workplace political speech or those accused of engaging in "hate" speech in the workplace. A brief scan of headlines so far into...

February 24, 2017

### **Ninth Circuit Confirms FCRA Disclosure Cannot Include Liability Waiver**

Earlier this month, the Ninth Circuit further confirmed the importance of strict compliance with the Federal Credit Reporting Act's (FCRA) disclosure requirements. In *Syed v. M-I, LLC*, the Ninth Circuit held that the employer willfully violated the FCRA...

February 23, 2017

### **Is Ignorance Bliss When it Comes to Restrictive Covenants?**

In *Acclaim Systems, Inc. v. Infosys, Ltd, et al.*, the Third Circuit demonstrated that ignorance can sometimes be bliss when it comes to restrictive covenants. In that case, a large cable provider contracted with Acclaim Systems to provide...

February 15, 2017

### **California Teachers Renew Challenge to Union "Fair Share" Fees**

On February 6, 2017, The Center for Individual Rights (CIR)—a Washington, D.C. non-profit, public interest law firm—filed a federal lawsuit on behalf of a group of California public school teachers against the State and California Teachers Association to challenge...

February 8, 2017

### **Four Changes to Make Now if Your Company is Covered by the Federal Contractor Sick Leave Order**

The Department of Labor's (DOL) final rule establishing paid sick leave for employees of federal contractors is effective as of January 1, 2017. The final rule follows President Obama's September 7, 2015 Executive Order 13706 (the "Executive Order") on this...

January 26, 2017

### **Eighth Circuit Holds that ADA Compensatory Damages Claims Survive Employee's Death**

On January 19, 2017, the U.S. Court of Appeals for the Eighth Circuit determined that a claim for compensatory damages under the Americans with Disabilities Act ("ADA") survives the death of the aggrieved party. In *Guenther ex rel. Guenther*...

January 25, 2017

### **The Patient Freedom Act: The First Step Towards Replacing the Affordable Care Act?**

It is full steam ahead from the executive and legislative branches on plans to "repeal and replace" the Affordable Care Act (ACA). As a result, employer medical plan coverage may again be significantly altered. On January 23, 2017, Senators...

January 19, 2017

### **Expect Changes in 2017 to Employment Related Causes of Action in Missouri**

Following the 2016 election of Missouri's Republican governor, Eric Greitens, the majority Republican legislature wasted no time reviving amendments to the Missouri Human Rights Act (MHRA) that were vetoed by then Governor Nixon in 2011. One of three separate...

January 18, 2017

### **Precedent Setting Work From Home Arrangements: 7th Circuit FMLA Decision Shows Need for Proper Training and Caution**

On January 9, 2017, the 7th Circuit (in a decision by Judge Richard Posner) issued a timely reminder that employers should exercise caution when renegeing on work-at-home promises. In *Wink v. Miller Compressing Company*, the employer initially granted...

January 17, 2017

### **Four Things to Consider When Your Company is Ordered to Mediation**

Mediation of employment matters is on the rise. When faced with an employment case, your company may be ordered to mediation or the court rules may require it. It is also common to receive a letter from the Equal...

January 11, 2017

### **Answering 4 Key Questions Raised by Arizona's New Independent Contractor Law**

In August 2016, the Arizona legislature implemented a new statute governing the relationship between independent contractors and the entities with which they contract. Here are four key questions raised by the new law, known as the Declaration of Independent...

January 9, 2017

### **Did Minimum Wage Increase in My State?**

With the New Year, minimum wage increases have taken effect in nineteen states. Two of these states, Massachusetts and Washington, now require employers to pay \$3.75 more per hour than the federal minimum wage of \$7.25, which has remained...

January 6, 2017

### **Avoiding ADA Pitfalls: Navigating Employee Mental Illness**

The Americans with Disabilities Act of 1990 ("ADA") treats mental illness the same as physical disabilities for purposes of coverage. However, dealing with an employee's mental health condition can be particularly challenging for employers because the traits that confer...

January 5, 2017

### **EEOC's Final Wellness Regulations Take Effect Despite AARP Challenge**

The Equal Employment Opportunity Commission's (EEOC) final rules on wellness programs have withstood an initial legal challenge from the American Association of Retired Persons (AARP). On May 16, 2016, the EEOC issued final rules that, among other things, clarified...

January 4, 2017

### **Four More States Pass New Marijuana Laws**

This past election, voters in California, Maine, Massachusetts, and Nevada approved ballot measures to legalize marijuana for recreational purposes. As discussed in a previous blog post, California's ballot measure passed overwhelmingly in favor of legalization. Below, we discuss Maine,...

December 30, 2016

### **Five Tips for Complying with California's Rest Break Requirements in Augustus v. ABM Security Services, Inc.**

On December 22, 2016, the California Supreme Court issued its decision in Augustus v. ABM Security Services, Inc. and held that, during required rest breaks, "employers must relieve their employees of all duties and relinquish any control over how...

December 29, 2016

### **Blog Two: How the Trump Administration Can Change the Country's Labor and Employment Landscape with the Stroke of a Pen**

In this series, we consider changes that President-elect Trump's administration could effect through federal agency action (or inaction), including at the Equal Employment Opportunity Commission (EEOC), the Department of Labor (DOL), the Occupational Safety and Health Administration (OSHA), and...

December 20, 2016

### **Expanding Union's Organizing Rights: Miller & Anderson, 364 NLRB No. 39 (2016)**

In Miller & Anderson, 364 NLRB No. 39 (2016), the National Labor Relations Board ("NLRB") ruled that employer consent would no longer be required for bargaining units consisting of employees both solely and jointly employed. "Employer consent," wrote...

December 19, 2016

### **How the Trump Administration MIGHT Change the Labor and Employment Landscape with the Stroke of a Pen**

After the inauguration in January 2017, President-elect Trump will be presented with a number of regulatory issues that can change the labor and employment landscape. Congressional and administrative action are not required to effect all such changes in the...

December 16, 2016

### **City of Los Angeles Follows Trend: Votes to “Ban the Box”**

On December 9, 2016, Los Angeles Mayor Eric Garcetti signed the “Fair Chance Initiative” prohibiting employers from considering a job applicant’s criminal history, except in limited circumstances. Private employers in Los Angeles may no longer ask job applicants about...

December 16, 2016

### **Seventh Circuit: “Play is not work” and Division I College Athletes Are Not Entitled to Minimum Wage under the FLSA**

In a decision issued December 5, 2016, the Seventh Circuit ruled that Division I student athletes are not entitled to minimum wage under the Fair Labor Standards Act (“FLSA”). (Berger, et al., v. National Collegiate Athletic Association, et al.,...

December 14, 2016

### **Weed at Work? Prop 64 in the Workplace**

On November 8, California, along with Massachusetts and Nevada, legalized the recreational use of marijuana. With marijuana now legal in seven states, “the percentage of Americans living in states where marijuana use is legal for adults rose above 20...

December 14, 2016

### **That Was Fast: Jimmy John’s Nixes Non-Competes**

This week, Jimmy John’s Enterprises, LLC (Jimmy John’s), a sandwich chain known for its “freaky fast” delivery service, promised to end its practice of forcing its employees to sign non-competition agreements. In doing so, Jimmy John’s settled a June 2016...

December 13, 2016

### **California Employers: Brace for Legislative Changes in New Year**

The California legislature has given employers a slew of reasons to be nervous in recent years. From mandatory paid sick leave to the Fair Pay Act, the waters remain treacherous for California employers. The following summarizes the notable legal...

December 12, 2016

### **It’s Beginning to Look a lot Like. . . a Potential Compensation Issue – Compensating Employees who Perform Exempt and Non-Exempt Work**

With the gift-giving season upon us, many employees are looking for opportunities to work extra hours to earn more money. This raises questions regarding the proper treatment, classification, and compensation of employees performing both non-exempt and exempt work, as...

December 6, 2016

### **Time to Get III: Illinois Employees Gain Additional Sick Leave Protections in 2017**

With the New Year just weeks away, employers with Illinois employees should be aware of several new statutory sick leave provisions that will go into effect in 2017. Specifically, Chicago, Cook County (which encompasses Chicago and many of its...

November 29, 2016

### **National Origin Discrimination: The Next Enforcement Frontier?**

While it remains to be seen what effect a Trump presidency will have on federal employment laws, the EEOC has made clear that it will continue to emphasize protections afforded to individual employees based on their national origin. The...

November 23, 2016

### **San Jose is Latest Silicon Valley City to Increase Minimum Wage to \$15 Per Hour**

Employers in Silicon Valley now face another local hike in the minimum wage. On Tuesday, the San Jose City Council unanimously approved a multi-year increase in the City's minimum wage, which will reach \$15.00 per hour on January 1,...

November 22, 2016

### **Five Things to Know About Arizona's Paid Sick Leave Law**

On November 8, 2016, voters in Arizona approved a ballot measure requiring Arizona businesses to provide employees with paid sick leave. In approving the new Minimum Wage and Paid Time Off Initiative, Arizona joins a handful of states (as...

November 22, 2016

### **Federal Court Blocks DOL from Implementing Amendments to White Collar Exemption**

On November 22, 2016, U.S. District Judge Amos Mazzant enjoined the Department of Labor (DOL) from implementing amendments to certain overtime rules, including an amendment that would approximately double the minimum salary requirement for an employee to be considered...

November 18, 2016

### **Airline Contractors Facing Increasing Turbulence in Labor Relations as NLRB Asserts Jurisdictional Control**

The New York Regional Director of the National Labor Relations Board (NLRB) recently issued a decision asserting jurisdiction over employees of an airline independent contractor ("AIC") and ordered that the contractor's workforce vote concerning whether to unionize. See PrimeFlight...

November 17, 2016

### **Two Courts Diverge on the FCRA in the Wake of Spokeo**

It seems that employers were right to be concerned with the United States Supreme Court's decision to "punt" in its May 2016 opinion in Spokeo Inc. v. Robins , after two United States District Courts reached opposite outcomes in...

November 3, 2016

### **Six Audit Steps to Avoid FLSA Pitfalls**

The number of collective class actions filed continues to rise year after year. Employers should be vigilant in ensuring compliance with the Fair Labor Standards Act ("FLSA"). With the new Department of Labor ("DOL") regulations going into effect December...

November 2, 2016

### **California Bolsters Pay Parity Laws on the Grounds of Race, Ethnicity, and Gender**

With some of the strongest equal pay laws in the country, California recently expanded its equal pay protections with the passage of two new bills which will take effect on January 1, 2017: (1) The Wage Equality Act of...

November 1, 2016

### **The Duty to Accommodate: When is the Employer on Notice?**

The number of charges filed with the US Equal Employment Opportunity Commission alleging disability discrimination has increased steadily over the past five years . In its recently updated Strategic Enforcement Plan , the EEOC announced that one of its key...

October 27, 2016

### **Employee Background Checks: Beware of State Law**

Employers that use background checks should be familiar with the requirements of the federal Fair Credit Reporting Act ("FCRA"). As we have discussed on this blog, prior to obtaining a consumer report on an employee or applicant for...

October 25, 2016

### **Defrosting your Solicitation and "Other Work" Policies: 4 Tips to NLRA Compliance**

Employers want their employees focused on work tasks while at work and not on personal business. Relatedly, employers, and many employees, want the work environment to be free from co-worker solicitations, regardless of topic. To achieve these goals, some...

October 20, 2016

### **EEOC Updates Five Year Strategic Enforcement Plan**

On October 17, 2016, the U.S. Equal Employment Opportunity Commission issued an update to its strategic enforcement plan (SEP), thereby unveiling the areas upon which it intends to focus over the next five years. Although the EEOC continues to...

October 19, 2016

### **Five Things Every Employer Must Know Before Engaging in a Reduction in Force**

For obvious reasons, reductions in force ("RIFs") are never a happy topic. A company's decision to lay off a substantial number of workers is a somber one. That being said, RIFs are most often undertaken to secure the long-term...

October 13, 2016

### **Practical Tips for Addressing Suspected FMLA Abuse**

With the holiday season approaching, now is a good time to review some practical tips for an employer when addressing suspected abuse of FMLA leave by an employee, although these tips represent best practices year round. An earlier post provided insight...

October 12, 2016

### **Eleventh Circuit: ADEA Does Not Permit Job Applicants To Bring Disparate Impact Claims**

In an en banc decision issued October 5, 2016, the Eleventh Circuit Court of Appeals ruled that job applicants cannot bring disparate impact claims under the Age Discrimination in Employment Act ("ADEA"). ( *Villarreal v. R.J. Reynolds Tobacco Co.*...

October 10, 2016

### **Pet Policies at Work: Considerations for Employers**

As millennials continue to negotiate workplace perks, such as flexible hours, gourmet cafeterias, gym memberships, and on-demand laundry services, employers may be confronted with employees who seek to bring pets to work for convenience, companionship, or to promote creativity...

October 7, 2016

### **Natural Disasters and the FLSA: Avoiding Business Interruption and Wage Liability**

Hurricane Matthew provides yet another opportunity for employers to consider the challenges presented by natural disasters. Our thoughts and prayers are with the good people of Florida and coastal Georgia, North Carolina, and South Carolina as they prepare for...

October 4, 2016

### **The NLRB Strikes Back: An Employer's Duty to Bargain Now (Again) Precedes First Contract Agreement**

Previously – In 2012, the National Labor Relations Board issued its controversial *Alan Ritchey, Inc.* decision, requiring employers to bargain before making discretionary discipline decisions in certain first contract situations where there was no established contract or grievance procedure...

September 28, 2016

### **Unused Vacation Not “Priceless” in Colorado**

Time off is important to employee morale and productivity. However, because the Colorado Wage Act requires employers to pay for accrued but unused vacation time in an employee’s final paycheck, overly generous policies can be costly. Accrued unused vacation...

September 16, 2016

### **5 Tips for Handling Employee Secret Recordings**

Employees’ secret workplace recordings are nothing new to many employers, but a recent, high-profile settlement may tempt employees to record their employers more often. In early September 2016, Fox News settled sexual harassment and retaliation claims of former anchor Gretchen...

September 15, 2016

### **What Does it Mean To “Blow the Whistle” Under The Dodd-Frank Act? Courts Provide Different Answers**

As discussed in our September 12, 2016 Labor & Employment blog post , the U.S. Securities and Exchange Commission (SEC) continues to incentive employees to “blow the whistle” on their employers for alleged securities violations. What happens when the complaint...

September 13, 2016

### **Fluctuating Workweek Pay Method: Quick “Fix” for the Upcoming FLSA Salary Threshold Change?**

The impending change to the salary threshold for the “white collar” overtime exemptions under the Fair Labor Standards Act (“FLSA”) (from \$23,660 to \$47,476) has employers making tough decisions—“Should we raise an employee’s salary above the threshold?” “ Do our...

September 12, 2016

### **Can You Hear The Whistles Blow? Valued At More Than \$100 Million, You Bet You Can!**

Some very loud whistles have been blowing across corporate America since 2011 – whistles valued at \$107 million, in fact. The United States Securities and Exchange Commission announced on August 30, 2016, that since its whistleblower program began in...

September 9, 2016

### **Circuit Split Widens Over Enforceability of Arbitration Agreements Containing Class/Collective Action Waivers**

Are employer/employee arbitration provisions containing class/collective action waivers enforceable? The law on this issue is anything but settled at this point. For now, it may depend upon where a case is filed, and the Supreme Court likely will resolve...

September 8, 2016

### **3 Best Practices to Avoid the Unintended Consequences of “Ban the Box” Laws**

In a prior post, we discussed the building momentum for “ban the box” regulations (i.e., prohibiting a criminal history check-box on an employment application) seeking to eliminate racial disparities in hiring. New research by Amanda Agan, a Princeton economist,...

September 7, 2016

### **Buying a Company? Don’t Let the “I” in M & A Be MIA**

In any merger and acquisition or other business reorganization, one critical piece should not be MIA: the consideration of immigration issues. If a purchaser ignores or postpones immigration issues until after closing, it can result in very serious consequences,...

August 31, 2016

### **What Happens to Multiemployer Pension Plan Reform Now? The Treasury Department’s Rejection of Central States Fund’s Application and the Future of Multiemployer Pension Plan Reform.**

Congress passed the Multiemployer Pension Plan Reform Act of 2014 (MPRA) in an effort to aid the many failing multiemployer pension plans. At the time of its passage, the MPRA was regarded as the most significant legislation in decades....

August 29, 2016

### **New DOL Rule on Salary Threshold for Exempt Status Under Challenge in Federal Court, But Don't Defer Compliance Efforts...**

Litigation challenging the new DOL regulations that, among other things, set a minimum salary threshold of \$47,476 for exempt status, white-collar workers, was recently filed in U.S. District Court for the Eastern District of Texas. A group of 21...

August 23, 2016

### **Will Your Part-Time and Seasonal Employee Policy Result in an ACA Penalty?**

In recent guidance, the IRS advised that policies implemented by employers to prevent part-time and seasonal employees from working 30 hours or more per week may not be sufficient to prevent liability under the Affordable Care Act (ACA) employer...

August 22, 2016

### **Three Employee-Friendly Bills That May Be Affected By Upcoming Elections**

In the past few years, Democratic members of Congress have introduced several decidedly pro-employee bills, none of which have yet passed, but which may be impacted by the elections in November. Such bills were first introduced in the 113th...

August 19, 2016

### **Three Things To Know About Massachusetts' New Pay Equity Law**

On August 1, 2016, Massachusetts became the latest State to pass a so-called "pay equity" law. Massachusetts' new law, which is modeled after pay equity statutes already implemented in other states, also amends the Massachusetts Equal Pay Act (MEPA)....

August 12, 2016

### **Pokémon Go: While Employees are Out "Catching 'em all," Who is Watching Your Proprietary Information?**

On July 6, 2016, Pokémon Go was released in the United States. Almost overnight, the location-based, augmented reality game became a national, if not global, phenomenon. You cannot turn on the television, listen to the radio, read news headlines,...

August 11, 2016

### **The Four Things You Might be Forgetting When Calculating the "Regular Rate" of Pay**

Employers with nonexempt employees are familiar with the concept of regular rate of pay when calculating overtime for these employees. The regular rate of pay is more than just an employee's hourly rate. Rather, the regular rate of pay includes...

August 9, 2016

### **The Employer's Obligation to Continue Health Insurance Coverage During Leave or Extended Absence**

When employees are absent from work for an extended period of time due to injury, illness, or other reason, a common question that arises is whether employers must continue providing health insurance during the absence. The answer depends upon...

August 4, 2016

### **Are the Days of Mandatory Post-Incident Drug Testing and Safety Incentive Programs Numbered? - Four Things You Need to Know About OSHA's New Anti-Retaliation Protections**

OSHA's recently announced rulemaking changes have major implications for employers. Effective January 1, 2017, certain employers will be required to electronically submit injury and illness data to OSHA, which will then be posted to the OSHA website. Currently, employers are...

August 3, 2016

### **Colorado Bill Grants Employees the Right to Review Their Personnel Files**

The Colorado General Assembly recently enacted a statute that gives employees the right to review and copy their personnel file at least annually and at least one time after the termination of employment. House Bill 16-1432 passed the legislature...

July 28, 2016

### **Federal Agencies Focusing on Religious Discrimination in the Workplace**

The U.S. Equal Employment Opportunity Commission (EEOC) and several other federal agencies recently participated in a series of roundtable meetings through the Combating Religious Discrimination Today initiative. In July, the initiative released a report containing several recommendations which may...

July 25, 2016

### **The Labor Board's Knockdown of the Joint Employer Relationship**

On July 11, 2016, a combination punch thrown by the National Labor Relations Board ("NLRB") scored a technical knockout of a decades old joint employer relationship test. The uppercut landed against employers who use temporary/contracted employees and, combined with the...

July 19, 2016

### **A (Potentially Temporary) Win for Car, Boat and Farm Equipment Dealerships**

In an April 13, 2015 blog post, we discussed a Ninth Circuit ruling holding that the FLSA's Dealership Exemption did not apply to individuals employed as service advisors. In *Navarro v. Encino Motor Cars, LLC*, the Ninth...

July 14, 2016

### **EEOC's Revised EEO-1 Report Requirements – Wage Parity Reform**

In January 2016, the U.S. Equal Employment Opportunity Commission (EEOC) proposed revising the Employer Information Report EEO-1 (otherwise known as the EEO-1 Report) to require all employers with 100 or more employees, including federal contractors, to also provide a...

July 12, 2016

### **Update Company Policies for Transgender Employees**

Although no federal statute explicitly prohibits employment discrimination based on gender identity, the Equal Employment Opportunity Commission has actively sought out opportunities to ensure coverage for transgender individuals under Title VII's sex discrimination provisions under its Strategic Plan for...

July 11, 2016

### **California Private Attorney General Act Amendments May Impose Additional Hurdles on Employers**

On June 27, 2016, Governor Jerry Brown signed the California budget for the upcoming fiscal year. This budget, approved by the legislature on June 15, 2016, makes a number of significant changes to the California Labor Code's Private Attorneys General Act...

July 5, 2016

### **"Look Before You Leap" to a Pay Increase Under the New DOL Rules**

Now that the DOL has released its salary threshold for "white collar" overtime exempt employees (from \$23,660 to \$47,476 annually, effective December 1, 2016), employers may be faced with decisions to change the pay classification of employees under the...

June 30, 2016

### **Two Unanswered Questions from Gomez Keep Employers Guessing on Rule 68 Offers of Judgment**

Earlier this year, the United States Supreme Court, in *Campbell-Ewald Co. v. Gomez*, applied contract principles to hold that an unaccepted Rule 68 offer of judgment did not moot an individual's claims or class or collective actions claims....

June 28, 2016

### **Arizona Businesses: Beware of Serial ADA Plaintiffs**

A few ambitious lawyers in Arizona have been hitting commercial property owners and tenants with lawsuits for not complying with the Americans with Disabilities Act (ADA), specifically alleging that the properties have certain barriers that restrict access for disabled...

June 27, 2016

### **The Home Care Final Rule—When Is It Really Final?**

As many employers are keenly aware, misclassification claims under the Fair Labor Standards Act (“FLSA”) are becoming more prevalent. Employers may face a number of pitfalls that can expose them to potential liability. First, whether or not an employee...

June 27, 2016

### **Federal Court Blocks Implementation of Department of Labor’s Persuader Rule**

On Monday, June 27, the U.S. District Court for the Northern District of Texas issued a nationwide preliminary injunction barring the U.S. Department of Labor from implementing the revised Persuader Rule that was scheduled to become effective on July 1,...

June 20, 2016

### **Ninth Circuit Approves Neutral Rounding of Employee Time Clock Punches**

Both federal and California agencies have long permitted employers to round employees’ start and stop work times to the nearest quarter-hour, so long as such policies are applied in a neutral manner. Despite the widespread use of rounding, the...

June 16, 2016

### **Is Mandatory Paid Family Leave In Your Future?**

Several large employers announced the adoption of paid family leave policies in 2015. Some employers have implemented these policies as “good ideas” and others because several states have passed legislation that mandates paid family leave. Since California enacted the first...

June 15, 2016

### **Politics at the Water Cooler?**

Now that the two major parties have presumptive presidential nominees, the heated discussions and press coverage of the primary season will turn to conventions and the general election. Divisive political discourse may continue to escalate. While many employees will...

June 14, 2016

### **Five “Must-Haves” for an Unpaid Internship Program**

Unpaid internships can present perils for the unwary employer. Many employers are hesitant to establish unpaid internship programs for fear that they will be found to be in violation of the Fair Labor Standards Act. Conversely, students are eager...

June 10, 2016

### **Paid Sick Leave Picks Up Speed: Los Angeles & San Diego Pass New Laws**

On June 2, 2016, Los Angeles Mayor Eric Garcetti signed an ordinance into law that will entitle eligible employees in L.A. to up to 48 hours of paid sick leave per year. On June 7, San Diego voters approved a...

June 9, 2016

### **3 Steps for Employers to Preserve Rights and Remedies Under the Recently Enacted Defend Trade Secrets Act**

On May 11, 2016, President Obama signed into law the federal Defend Trade Secrets Act (DTSA), which now provides a federal claim for misappropriation of trade secrets. Under the new law, owners of trade secrets may seek remedies, including damages,...

June 8, 2016

### **The National Labor Relations Board's Power of Positivity**

On April 29, 2016, the National Labor Relations Board deemed several handbook policies overbroad because employees could "reasonably construe the language [of the policy] to prohibit Section 7 rights" under the National Labor Relations Act. Most notably, the Board...

June 7, 2016

### **The Seventh Circuit Split from the Circuits on Arbitration Agreements in Lewis**

In a unanimous decision on May 26, 2016, in *Lewis v. Epic Systems Corporation*, the United States Court of Appeals for the Seventh Circuit invalidated an individual arbitration agreement waiving class and/or collective actions and held that if...

June 2, 2016

### **Colorado Anti-Discrimination Act: New Pregnancy Provision Taking Effect in August**

On August 10, 2016, a new pregnancy provision of the Colorado Anti-Discrimination Act ("CADA") will take effect. While the CADA had previously been interpreted as prohibiting pregnancy discrimination and requiring accommodations for pregnancy, the new provision strengthens and clarifies those...

May 31, 2016

### **Are Class Action Plaintiffs Standing in Concrete After Spokeo?**

The United States Supreme Court may have finally offered employers some cover in their ongoing battle against Fair Credit Reporting Act ("FCRA") class actions. On May 16, 2016, the Court handed down its decision in *Spokeo, Inc. v. Robins*...

May 26, 2016

### **Administration Proposes Immigration Increase . . . in Immigration Fees that is.**

On May 4, 2016, U.S. Citizenship and Immigration Services published a notice of proposed rulemaking regarding changes to the USCIS filing fee schedule. USCIS is proposing to raise immigration benefit application filing fees by an average of over...

May 24, 2016

### **When Employees Market Passwords for Profit: Four Business Security Challenges and Strategies to Combat Them**

Employees are developing a new, alternative income market, and it poses a direct security threat to employers. A recent Sailpoint survey found 20% of employees, or 1 in every 5, would sell their work-related passwords to an outsider. This...

May 24, 2016

### **Rearranging Furniture on the Titanic: The NLRB General Counsel Seeks to Overturn the Levitz Furniture Decision**

American workers are increasingly turning away from union representation. According to the U.S. Bureau of Labor Statistics, between 2011 and 2015, the rate for union membership, which is the percent of wage and salary workers who were members of unions, fell...

May 19, 2016

### **Four Lessons for Winning the Employment Agreement Forum Selection Chess Match**

In *Medtronic, Inc. v. Amanda Ernst and Nevro Corporation*, a state court forum selection clause in an employment agreement was not enforced, and remand to state court was denied. Because the former employer served the new employer, and...

May 18, 2016

### **Breaking: At Long Last, DOL Announces Final Amendments to 'White Collar' Overtime Exemptions**

As anticipated, the United States Department of Labor issued publicly this morning its final regulations amending the so-called "white collar exemptions." The key features of the final regulations are: Increase in the minimum salary level to meet the...

May 17, 2016

### **Safe Harbor Guidance from the NLRB on Employer Work Conduct Policies?**

These are difficult times for employers to craft lawful policies regarding employee conduct, behavior and communications. Over the past six years, the National Labor Relations Board (Board) has issued many decisions striking down employer conduct and behavior policies because they...

May 13, 2016

### **EEOC Speaks on Transgender Bathroom Rights**

The EEOC continues to provide protections from discrimination for the LGBT community. Last week the EEOC issued a new fact sheet on bathroom access rights for transgender employees under Title VII of the Civil Rights Act of 1964 ("Title...

May 12, 2016

### **School's Out! 5 Tips for Parents Hiring Summer Help**

It's that time of year for parents. School is out, the kids are home, and you still have to go to work. For many households, this means it is time to consider hiring summer childcare, e.g., nannies, babysitters, or au pairs...

April 28, 2016

### **5 Steps to Stay Ahead of the New California FEHA Amended Regulations That Take Effect on April 1, 2016 March 28, 2016**

On April 1, 2016, California will institute amended anti-discrimination regulations as part of the Fair Employment and Housing Act ("FEHA"). The new regulations broaden the scope of FEHA, including the definition of covered employers and the legal requirements for...

April 28, 2016

### **Shh, Be Quiet! Employers May Wish to Consider Additional Language When Drafting Confidentiality Agreements**

A well-drafted employee confidentiality and non-disclosure agreement can protect confidential information from flying out the door with current and former employees. Employers should, however, carefully define the "confidential information" sought to protect. A boilerplate definition of "confidential information" may...

April 28, 2016

### **Production and Maintenance Units: Going Separate Ways**

The presumptive appropriateness of a single site unit of production and maintenance employees has for many years been a given under well-established law of the National Labor Relations Board. *J & L Plate, Inc.*, 310 NLRB 429 (1993)...

April 27, 2016

### **DOL Releases New Employer Guide to FMLA – New FMLA Poster May Soon Follow**

Compliance with the Family and Medical Leave Act ("FMLA") continues to cause employers frequent confusion and consternation. Even human resources professionals well-versed in the FMLA's ins and outs throw their hands in the air in exasperation over how to handle...

April 21, 2016

### **Update on Proposed Amendments to FLSA "White Collar Exemption" Regulations**

As we have noted in prior blog posts, the Department of Labor (DOL) anticipates soon publishing and making effective its final amendments to the so-called "white collar exemption" regulations, which define the FLSA exemptions for certain executive, administrative,...

April 19, 2016

### **Lottery Ticket Not Selected? 6 Options in Lieu of H-1B**

On April 7, 2016, the U.S. Citizenship and Immigration Service (USCIS) announced that it had received "enough" H-1B petitions to reach the statutory cap – 236,000 for the combined 65,000 visas for fiscal year 2017 and the 20,000 additional...

April 14, 2016

### **Eighth Circuit: Obesity Itself Not a Disability**

The scope of the Americans with Disabilities Act (“ADA”) was broadened through the ADA Amendments Act of 2008 (the “Amendments”). Prior to the Amendments, various Supreme Court holdings had narrowed the scope of what qualified as a disability under...

April 13, 2016

### **Quick Take: 4 Things Employers Should Know About Marijuana and the Workplace**

Employers take heed: the landscape with respect to state marijuana laws is shifting, seemingly week to week. Currently, almost half of the states have legalized marijuana in some form or fashion, with four states and the District of Columbia...

April 12, 2016

### **Four Potential Issues for Purchasers Exploring the Acquisition of a Unionized Business**

Experienced business people and lawyers are aware of the thorough due diligence necessary during the acquisition of any business. When a purchaser is exploring the acquisition of a business whose employees are represented by a union or by multiple...

April 11, 2016

### **The Four Things You Might be Forgetting When Calculating the “Regular Rate” of Pay**

Employers with nonexempt employees are familiar with the concept of regular rate of pay when calculating overtime for these employees. The regular rate of pay is more than just an employee’s hourly rate. Rather, the regular rate of pay includes...

April 7, 2016

### **3 Steps To Minimize The Risk of Trade Secret Litigation With Departing Employees**

It happens often: a key employee notifies her supervisor that she has accepted a job with a competitor and will be leaving the company. The initial reaction is panic—“she can’t leave, she knows everything about our business, she knows...

April 6, 2016

### **3 Common Separation Agreement Provisions Stricken By NLRB**

Separation and severance agreements are intended to provide finality to the employment relationship. Without careful drafting, however, this goal can be frustrated by the National Labor Relations Act (“Act”), which applies to non-management employees, both union and non-union, including...

April 5, 2016

### **HR Directors May be Individually Liable Under the FMLA**

Human resources employees might assume they cannot be held individually liable for actions taken within the scope of their employment. A recent decision by the Second Circuit Court of Appeals, however, calls this assumption into question, at least with...

April 4, 2016

### **California Passes Legislation to Phase-In \$15 Minimum Wage By 2022**

On April 4, 2016, California Governor Jerry Brown signed into law a bill that will increase California’s minimum wage statewide to \$15 per hour by 2022. The Governor and Legislature reached a compromise deal in recent weeks to thwart a...

March 31, 2016

### **3 Tips to Proper Wage Withholdings Under the Kansas Wage Payment Act**

Employers with Kansas operations should be familiar with the 2013 amendments to the wage withholding and deduction provision of the Kansas Wage Payment Act (KWPA). The amendments added two new subsections to expand when employers may withhold or deduct...

March 30, 2016

#### **Five “Warnings” When Paying In Lieu Of WARN**

The Worker Adjustment and Retraining Notification Act (“WARN”) requires an employer with 100 or more full-time employees to provide 60 days’ notice to all employees who will be affected by a mass layoff or plant closing at a single...

March 25, 2016

#### **Department of Labor’s Revised “Persuader Rule” Requires Greater Disclosure**

On March 23, the U.S. Department of Labor issued a Final Rule that significantly expands reporting requirements by employers and their consultants and attorneys related to “advice” given regarding employees joining a union or collective bargaining. As a result,...

March 22, 2016

#### **Weingarten Rights and Drug and Alcohol Testing**

Recent NLRB decisions have expanded Weingarten rights – especially as they affect drug and alcohol testing procedures and an employer’s right to conduct a prompt test. For decades, union represented employees had the right to the presence of a...

March 18, 2016

#### **An OSHA Violation Today Can Cost You Almost 80% More in Penalties After August 1, 2016**

The maximum penalty that the Occupational Safety and Health Administration (OSHA) can assess for a violation of an OSHA standard has been a constant source of consternation within the agency as well as with workers’ rights advocates. The statutory maximum,...

March 16, 2016

#### **When is a Unilateral Change not a Unilateral Change?**

Employers subject to collective bargaining agreements should consider how to address changes to health insurance and other plans and that arise during the term of the agreement. It is well established that no unlawful unilateral change occurs under Section 8(a)(5)...

March 16, 2016

#### **DOL White Collar Exemption Minimum Salary Set to More than Double in 2016**

The new salary minimum for the so-called white collar exemptions for certain executive, administrative, and professional employees may soon take effect, according to the Department of Labor (DOL). Solicitor of Labor, M. Patricia Smith, was on record at a recent...

March 14, 2016

#### **DHS Expands STEM OPT Extension from 17 to 24 Months**

The Department of Homeland Security has released a much anticipated final rule , amending regulations on the F-1 nonimmigrant student visa optional practical training (“OPT”), for certain students with U.S. degrees in science, technology, engineering, or mathematics (STEM) fields....

March 8, 2016

#### **Colorado’s Off-Duty Conduct Statute Does Not Protect Employee From Missing an Important Meeting Just Because He Was on Pre-Approved Vacation**

Colorado, like a number of other states, has enacted a state statute that prohibits job action, such as termination of an employee, for engaging in lawful off-duty conduct during non-working hours. The Colorado statute contains two primary exceptions that...

March 3, 2016

#### **Five Employment Cases at the Supreme Court: What Employers Might Expect this Term**

With the recent death of Supreme Court Associate justice Antonin Scalia, the highest court has lost its most staunch conservative voice. His absence will likely impact the outcome of pending cases, including several employment law cases. There are several...

March 2, 2016

### **Anticipating the Unimaginable: Workplace Violence Policies**

In recent years, churches, movie theaters, schools, and office buildings have all been affected by headline-grabbing violence. Not all workplace violence makes the news, however. The United States Department of Labor defines workplace violence as “any act or...

March 1, 2016

### **The Cornerstone of Employment - 8 Tips For A Well Crafted Job Description**

A job description is a useful tool for employers from hiring through termination of employment. Often times, though, job descriptions are not given the time and attention they deserve. This is unfortunate because job descriptions are the cornerstone of...

March 1, 2016

### **California DFEH Announces Guidance to Employers Regarding Transgender Rights in the Workplace**

Individuals who identify as transgender are protected under California’s Fair Employment & Housing Act (Cal. Govt. Code §12940)(“FEHA”). FEHA protection was extended in 2012 to include gender identity and gender expression categories, and defines “gender expression” to mean a...

February 29, 2016

### **More Than Bargained For: Court Requires Federal Contractor to Accommodate Independent Contractor’s Disability**

Over the past several years, the line between independent contractors and employees has blurred. The Department of Labor’s zeal to convert independent contractors to employees has led to a significant increase in the number of misclassification investigations, and the...

February 26, 2016

### **5 New Challenges for Employers Facing Retaliation Allegations - the EEOC’s Proposed Enforcement Guidance on Retaliation**

On January 21, 2016, the EEOC issued for public comment its proposed enforcement guidance on retaliation , which has not changed since 1998. Upon a close look, the EEOC is doing much more than “updating” its guidance based upon recent...

February 24, 2016

### **Sprucing Up a Perfectly Clear Doctrine for Purchasing a Unionized Business**

When purchasing the assets of a business with unions, employers have long enjoyed much leeway in establishing initial terms and conditions of employment without having to collectively bargain those terms. This may be about to change, and employers should...

February 15, 2016

### **Dave & Busted? Court Allows ERISA Claims to Continue Against Company Over Hours Reductions and ACA Coverage Mandate**

Under the Affordable Care Act (ACA), employers with at least 50 full-time employees (“FTEs) must generally offer qualifying health insurance to all employees who work at least 30 hours or more per week. A company that fails to satisfy...

February 9, 2016

### **Join Us March 8th for Next "Ruby Files" Webinar**

In the second of our webinars on The Ruby Files: Managing the Challenging Employee, we continue to follow Ruby as her changing circumstances present her employers with a variety of legal complications. Still employed by a major hospital, Ruby...

February 8, 2016

### **More from the NLRB: Employers Cannot Ban Secret Recordings, Videos or Photographs at Work**

A policy that prohibits employees from recording conversations without the knowledge or consent of others may violate the National Labor Relations Act. In addition, a policy that prohibits employees from taking photos at work may violate the Act too....

February 4, 2016

### **A Win for Wellness**

Employer-sponsored wellness programs have served as an excellent resource to assist employers in cutting the cost of providing health care for employees, improving employee productivity and increasing company stock performance. Often, wellness programs include health assessments and biometric testing....

February 2, 2016

### **Office Romances and the "Love" Contract?**

" Heaven has no rage like love to hatred turned, Nor hell a fury like a woman scorned ," spoken by Perez in Act 3, Scene 2, The Mourning Bride (1697). William Congreve's words (often misattributed to Shakespeare) might...

January 28, 2016

### **Three Reasons that Plaintiffs Heart the FCRA**

An internet news search containing the keywords "FCRA Settlement 2016" returns over 1,800 results in less than a second. Just a few weeks from Valentine's Day, it's clear that plaintiffs' love letters to the 45-year-old federal law are still...

January 27, 2016

### **Three Steps for Complying with the Requirements of the Fair Credit Reporting Act in Employee Hiring**

Many employers work with consumer reporting agencies to conduct background checks on applicants and current employees. When a background check report raises a red flag on an applicant or employee, employers must be careful to comply with the federal...

January 21, 2016

### **Six Best Practices of HR Documentation**

Most likely, you have heard employment attorneys speak about the importance of documenting employee performance, behavior and discipline. Because such documentation can be key evidence when defending against a claim or litigation brought by a current or former employee,...

January 17, 2016

### **ICYMI: Listen to Recorded Version of First "Ruby Files" Webinar Now**

The first webinar is now available in our year-long analysis of Ruby R. Breaker, a fictitious employee whose workplace behavior is based on real life employment situations. Listen here . "Non-Exempt and the DOL Audit? It Really Isn't a...

January 14, 2016

### **Collective Bargaining Agreements and Discrimination Claims, Part 1: Binding Arbitration Clauses**

When an employee threatens a discrimination claim, many fundamental questions immediately come to mind. What type of discrimination is alleged? Is this discrimination under federal or state law, or is it a claim that derives from contractual language? What...

January 13, 2016

### **New Rule Bars Pay Secrecy Policies by Federal Contractors and Subcontractors**

Employers that choose to do business with the federal government now have another pay regulation to mind. The Department of Labor's Office of Federal Contract Compliance Programs ("OFCCP") recently issued a Final Rule that prohibits federal contractors and their...

January 13, 2016

### **The Federal Arbitration Act Trumps State Law Again**

Employers routinely include arbitration provisions in employment agreements in an effort to manage risks associated with costly litigation. Specifically, class arbitration waivers have become increasingly popular. As every savvy employer knows, each state in which an employer operates may...

January 12, 2016

### **You Are Not the Boss of Me: The Freedom to Choose in a Union Shop**

On Monday January 11, 2016, the United States Supreme Court heard argument in the case of Friedrichs v. California Teachers Association and, although nothing is certain until the Court issues its opinion, it appears likely that the Court will...

January 7, 2016

### **Tis the Season – The H-1B Cap Season, That Is . . .**

Many of us like to make New Year's resolutions, and I am no exception. This year I have resolved to dust off all of the exercise equipment in my house and get into shape. I seem to have this resolution...

January 5, 2016

### **Hiding in Plain Sight: ERISA Discrimination**

When employers consider potential discrimination claims to avoid, the analysis should not stop with Title VII, the Age Discrimination in Employment Act ("ADEA") and the Americans with Disabilities Act ("ADA"). Hiding in plain sight, but not to be overlooked, is...

January 4, 2016

### **Happy New Year: Looking Back and Looking Ahead at the EEOC's Strategic Plan**

In December 2012, the EEOC adopted its Strategic Enforcement Plan for Fiscal Years 2013-2016 (the "SEP"), in which it highlighted the agency's enforcement priorities for the coming three years. Now two years into the plan, the EEOC continues to...

December 23, 2015

### **Four New Year's Resolutions to Avoid the Damaging Loss of Trade Secrets**

On December 21, 2015, an Illinois jury awarded Miller UK Ltd. \$73.6 million against Caterpillar Inc. Miller supplied couplers for Caterpillar's equipment, and the jury concluded that Caterpillar used its leverage as Miller's largest customer to demand access to...

December 22, 2015

### **Mind the Gap: Navigating the Line Between Political and Hate Speech and Workplace Acceptability**

One "casual" Friday afternoon, one of your employees walks by wearing a cap emblazoned "America: Love it or Leave it." You groan inwardly; not another supporter of "that" candidate, you ask yourself. You can't resist and blurt out, "Great..."

December 17, 2015

### **Nine Tips for Curbing the Risk of FMLA Abuse in 2016**

As we head into 2016, it is a good time to review and revise leave and certification policies under the Family and Medical Leave Act ("FMLA"), to limit the risk of FMLA abuse by employees. Below are nine tips...

October 15, 2015

### **Employment-Related Cases on the United States Supreme Court's Agenda**

Monday, October 5, 2015, marked the beginning of this year's term of the United States Supreme Court. This year, the Supreme Court has already granted review in several employment-related cases. A brief summary of some of these cases and how...

October 13, 2015

### **Are Over-the-Road Truck Drivers Required to be Compensated for 16 Hours Per Day?**

Are over-the-road trucking companies required to account for drivers' sleeper berth time when determining whether the drivers are paid minimum wage? According to the United States District Court for the District of Nebraska, sleeper berth time is compensable time,...

October 1, 2015

### **Contract Labor Isn't What It Used To Be**

On August 27, 2015, the National Labor Relations Board, according to its own press release, "refined its standard for determining joint employer status" in the Browning-Ferris Industries of California decision. In reality, the NLRB did far more than...

September 29, 2015

### **Fight or Flight? Wrongful Termination of Worker Who Engages in Self-Defense While on the Clock**

Employers across the country may soon have to think twice before firing an employee who chooses to "fight" rather than take "flight" when faced with threats of violence at work. In a recent decision, *Ray v. Wal-Mart Stores, Inc.*...

September 28, 2015

### **Filing of Certain Green Card Applications Delayed**

On September 25 USCIS rolled back the program granting certain foreign nationals the ability to file to adjust status to permanent resident (Form I-485). Previously, USCIS had announced a coordinated effort with the Department of State (DOS) to revise...

September 24, 2015

### **State and Local Laws Against Sexual Orientation and/or Gender Identity Discrimination – Is My Business Covered?**

An estimated nine million people in the United States identify as lesbian, gay, bisexual, or transgender, and many of these individuals are in the workforce. Despite Americans' growing acceptance and support for LGBT rights, many LGBT individuals risk facing...

September 22, 2015

### **More Changes For Federal Contractors: Pay Disclosure Discrimination**

On September 10, the Office of Federal Contract Compliance Programs (OFCCP) published a Final Rule prohibiting discrimination for compensation disclosure and discussion. The Final Rule follows Executive Order 13665, which was signed by the President in April 2014. The...

September 17, 2015

### **Another Executive Order for Federal Contractors: The Web of Paid Sick Leave Laws Gets More Complicated**

In an active year for federal contractors and subcontractors, President Obama continued the trend of mandating certain policies by fittingly signing a new executive order on Labor Day. While federal legislation has yet to be implemented that would require...

September 16, 2015

### **California Employers: Prepare Now for Changes Resulting from New Fair Pay Act**

On August 31, 2015, the California Senate unanimously passed (39-0) Senate Bill 358, the California Fair Pay Act (CFPA), and sent the bill to the desk of Governor Jerry Brown, who intends to sign it into law. The purpose...

September 15, 2015

### **DC Circuit Upholds DOL Revisions to Home-Health Care Workers Exemption**

Sweeping changes to the Department of Labor's wage and hour regulations, which extended the federal minimum wage and overtime requirements to home health workers, were recently upheld by the United States Court of Appeals for the District of Columbia...

September 14, 2015

### **Wearable Technology in the Workplace: Big Data, Big Responsibilities**

Wearable technology in the workplace has evolved far beyond 20th-century relics such as wireless headsets and walkie-talkies. Employers now can track and analyze proprietary measures of worker productivity and other results-driven metrics through devices worn on the wrist or...

September 11, 2015

### **Uber Hits A Roadblock in California Drivers' Class Action**

On September 1, 2015, United States District Court Judge Edward Chen certified a class of Uber drivers who claim that the ridesharing and technology company misclassified them as independent contractors and deprived them of tips that Uber advertised but...

September 10, 2015

### **USCIS Announces New Procedures for Applicants Waiting to File for Adjustment of Status**

As announced on September 9th, effective October 1st U.S. Citizenship and Immigration Services (USCIS) is changing procedures for determining visa availability for applicants waiting to file for employment-based or family-sponsored preference adjustment of status. The revised process will allow...

September 9, 2015

### **OSHA Weighs in on Restroom Usage for Transgender Employees**

One of your most valued employees walks in the door of your office and announces that she is transgender, and is starting the process of transitioning from a male to a female. Of course, you want to support your...

September 3, 2015

### **H-1B Worksite Changes and More Changes: Updated Guidelines from USCIS**

Thanks to a revised guidance memo from U.S. Citizenship and Immigration Service (USCIS), the summer scramble to file H-1B amendments spurred by the April 9, 2015 Administrative Appeals office (AAO) decision in Matter of Simeio Solutions, LLC , 26...

September 1, 2015

### **Micro-Bargaining Units: Can Employers Win Before the NLRB?**

The National Labor Relations Board has ruled, once again, that an employer failed to show "an overwhelming community of interest" between employees in the small ( i.e., "micro" ) bargaining unit sought by the union. Few, if any, employers...

August 31, 2015

### **NLRB Expands "Joint Employer" Definition**

In a pivotal decision on August 27, the National Labor Relations Board "refined" its test for determining joint-employer status, broadening the scope of employers subject to joint collective bargaining and concerted activity obligations imposed by the National Labor Relations...

August 31, 2015

### **California DLSE Attempts to Clarify "No Accrual or Carry-Over" Option of Paid Sick Leave Law, Questions Remain**

On August 7, 2015 the California Division of Labor Standards Enforcement ("DLSE") issued an opinion letter attempting to clarify the minimum accrual and maximum use standards for employers who elect the lump sum "no accrual or carry-over" option for...

August 27, 2015

### **The NLRB and Civility: A 2015 Update (Part II of II)**

This is my second post in a series discussing recent NLRB decisions thought by some to have fostered a decline of civility in the workplace . Relatedly, some commenters have criticized recent NLRB decisions finding so-called courtesy work rules...

August 25, 2015

### **The NLRB and Civility: A 2015 Update (Part I of II)**

One year ago, a number of authors contended the NLRB, because of several decisions, was responsible for the decline in civility in the workplace. They suggested the NLRB “condoned workplace profanity and insubordination”; others suggested the NLRB had “killed”...

August 20, 2015

### **Misclassification Battles in the Skies**

A battle rages concerning worker classification in the aviation and aerospace industry, and employers with private aircraft are often on the defensive in a surprise attack by the IRS. The IRS is a particularly formidable foe, and seeing the...

August 20, 2015

### **Federal Court Considers Expansion of FCA Retaliation**

In a potential expansion of protections afforded to whistleblowers under the federal False Claims Act (“FCA”), a federal judge in the Eastern District of Virginia reserved ruling on whether the anti-retaliation provision of the FCA, 31 U.S.C. § 3730(h),...

August 18, 2015

### **Protecting the Company Purse: Six Rapid Responses to Secure Company Information When an Employee Bolts for a Competitor**

Employers in today’s fast-paced business climate may feel like they are racing in circles when attempting to trust employees with critical company information and also protect that very same information from misuse. Diligent use of non-disclosure agreements from the...

August 13, 2015

### **Employer Beware: Develop a Social Media Policy Before It’s Too Late**

There are approximately 1.44 billion active monthly Facebook users and 316 million active monthly Twitter users, in addition to millions who blog or use Instagram and Snapchat. More likely than not, your employees, customers, and clients are social media...

August 11, 2015

### **Same Sex Marriage and Benefits – What Now?**

By now it’s likely most people have caught a breaking news story, a Twitter feed, a Facebook post, or our June 26, 2015 blog , on the ground-breaking Supreme Court same-sex marriage ruling in Obergefell v. Hodges . The ruling,...

August 4, 2015

### **What Lies Ahead When Employment Arbitration Agreements Are Silent Regarding Class Arbitration**

Your company has been served with a putative employment discrimination class action. You know the named plaintiff signed an arbitration agreement, but it is silent as to whether class arbitration is permitted or prohibited. Does this mean that your...

July 30, 2015

### **An Opportunity to Save Failing Pension Plans: The PBGC Issues New Regulations on “Partitions” of Multiemployer Pension Plans**

The Multiemployer Pension Reform Act of 2014 (“MPRA”) was passed as a part of a Congressional effort to aid failing multiemployer pension plans. Partition is one tool the MPRA provides to the Pension Benefit Guaranty Corporation (the “PBGC”) to...

July 29, 2015

### **Love And Marriage . . . Just Don’t Plan On Living In The United States**

The recent Supreme Court decision in Kerry v. Din places limits on immigrant families’ ability to live together in the United States. In the Din case, a US citizen, petitioned to have her husband immigrate to the United States...

July 28, 2015

### **Is Sexual Orientation Discrimination A Claim Under Existing Civil Rights Laws?**

Title VII does not specifically prohibit discrimination based upon sexual orientation. Even so, courts and the EEOC have recently been willing to afford Title VII protection from sex discrimination to individuals on the basis of sexual orientation. The rationale...

July 21, 2015

### **Phoning It In: Employee Use of Smartphones While Off Duty**

As discussed in our June 30, 2015 blog post , the Department of Labor (“DOL”) recently proposed changes to the salary requirements of the Fair Labor Standards Act’s (“FLSA”) white collar exemptions – putting many currently classified exempt employees in...

July 16, 2015

### **California Management Supreme Court Watch**

The next term for the California Supreme Court will be robust with employment decisions. We provide you with the hottest cases to watch that may affect your business over the course of the next year. The court is poised to...

July 16, 2015

### **California Enacts Clean-Up Amendments to the New Paid Sick Leave Law**

After protracted negotiations, the California State Legislature passed AB 304 as urgent legislation to amend California’s mandatory paid sick leave law, also known as Healthy Workers, Healthy Families Act of 2014 or AB 1522 (the “Act”). The bill was...

July 15, 2015

### **U.S. Department of Labor Issues Administrator’s Interpretation on Employee / Independent Contract Classification**

On July 15, 2015, the Wage & Hour Division of the United States Department of Labor issued a 15-page Administrator’s Interpretation offering the DOL’s view on how the Fair Labor Standards Act’s (“FLSA”) definition of “employ,” meaning “suffer or...

July 14, 2015

### **Crime Scene Investigation – Don’t Try This at Work**

Are you impressed by how conclusively the tests on CSI and similar shows solve their investigators’ cases? Apparently the Loss Prevention Manager for Atlas Logistics Group Retail Services, LLC was. When he was charged with the unenviable task of...

July 10, 2015

### **Tread Carefully with Internship Programs, An Update**

In 2013, the U.S. District Court for the Southern District of New York held that two employees were improperly classified as unpaid interns, relying on the Department of Labor’s six-factor test (previously discussed here ), and granted another unpaid...

July 9, 2015

### **Double-Check Before You Background Check: Know the Current Legal Landscape Before Conducting Employment Screening**

Many employers conduct some level of background screening on applicants and, at times, current employees. From the employer perspective, the benefit is clear—employers want to know who they are hiring and avoid potential claims of negligent hiring. More and...

July 7, 2015

### **Tread Carefully with Internship Programs, 365 Days Per Year**

While many employers see summer as the primary season for interns, these temporary employees are frequently placed throughout the school year, and the employment considerations that accompany them must be front of mind all year long. Through internship programs,...

July 1, 2015

### **United States Supreme Court to Consider Striking Down “Fair Share” Fees Paid by Non-Union Public Employees**

In a development many view as a sign of an anti-union majority, the United States Supreme Court has agreed to hear a case that could reverse four-decades of pro-union precedent and strike another, potentially significant blow to organized labor...

June 30, 2015

### **Proposed Rulemaking on FLSA White Collar Exemptions**

On June 30, 2015, the United States Department of Labor issued proposed rules revamping the Fair Labor Standards Act “white collar” exemptions. The “white collar” exemptions include the executive, administrative, professional, outside sales, and computer employee exemptions from the...

June 26, 2015

### **Right to Marriage for Same-Sex Couples—“Equality, Dignity in the Eyes of the Law”**

In the most anticipated decision of the year, the United States Supreme Court ruled 5-4 that the 14th Amendment guarantees same-sex couples the right to marry. The decision, penned by swing-vote Justice Anthony Kennedy, held that marriage is a...

June 25, 2015

### **What Not to Wear...The NLRB Episode**

Earlier this month, the National Labor Relations Board (“NLRB” or the “Board”) again answered the question of “what not to wear” in unsurprising but disappointing fashion. Continuing its crusade against handbook policies, an administrative law judge (“ALJ”) held that...

June 23, 2015

### **Employee or Independent Contractor? U.S. Department of Labor Will Soon Weigh In**

On Friday, June 5, 2015, Wage & Hour Division Administrator David Weil announced the United States Department of Labor will “very soon” release an administrator interpretation about the criteria needed for an employer to properly classify a worker as...

June 19, 2015

### **Dave & Busted? ERISA Class-Action Lawsuit Alleges that Employer Cannot Reduce Work Schedules to Get Around Health Insurance Mandate under the ACA**

Since its enactment in 2010, the Affordable Care Act (the “ACA”) has required employers to make numerous changes in the types of health insurance coverage they offer to their employees, and endure continued uncertainties around compliance issues as the...

June 18, 2015

### **Uber Watch: California Labor Commission Rules That A Former Uber Driver Is An Employee**

As we have noted in our ongoing Uber Watch post series, Uber’s revolutionary sharing economy business model has been challenged in several lawsuits disputing whether Uber drivers are properly classified as independent contractors, rather than employees. These cases...

June 17, 2015

### **Gender Transitioning in the Workplace: Why it Matters to You**

The term transgender – and the public’s understanding of gender reassignment – has become more commonplace since Diane Sawyer’s April 2015 interview with former Olympian and TV personality, Bruce Jenner and the more recent Vanity Fair coverage of Caitlyn...

June 16, 2015

### **Colorado Supreme Court: Terminating an Employee for Marijuana Use Does Not Violate the Colorado Lawful Activities Statute**

On June 15, 2015, the Colorado Supreme Court held that the Colorado Lawful Activity Statute does not prohibit an employer from terminating the employment of an employee for off-the-job use of medical marijuana. However, this may not be the...

June 10, 2015

### **Feeling Deflated Over Text Messages at Work?**

Thanks to Tom Brady and the New England Patriots, workplace text messages are back in the spotlight. The Super Bowl champions' protestations of innocence have been deflated by a series of text messages between two equipment managers and their...

June 9, 2015

### **Freedom Isn't Free: Upfront Approaches to Non-Competes When It's Time to Go**

The prospect of non-compete litigation can be a source of extreme anxiety for employers and employees alike. The costs of pursuing or defending non-compete litigation can prove enormously costly in terms of legal fees and expenses and the unpredictable...

June 8, 2015

### **Facebook and Twitter and Google, Oh My!**

"If you don't read the newspaper, you're uninformed; if you read the newspaper, you're misinformed." – Mark Twain Facebook, Twitter, Google, and other tech companies have acknowledged the gender gap in their industry and have demonstrated...

June 5, 2015

### **Purple E-mail Eaters: NLRB Dramatically Increases Union Ability To Use Employer E-mail For Organization and Recruiting**

A recent landmark ruling by the NLRB could allow unions to take full advantage of modern and inexpensive methods of communication to boost their organizing and recruiting campaigns in the workplace. Just months ago, an NLRB judge invalidated an...

June 4, 2015

### **GPS Devices and Employees: Who's Watching, and Should They Be Watching?**

The MTV Generation is well-familiar with the hooks of Rockwell's 1984 hit, "Somebody's Watching Me:" I'm just an average man, with an average life. I work from nine to five; hey hell, I pay the price. All I want...

June 2, 2015

### **Will Floods in Texas Lead to a Flood of FLSA Claims?**

Last month there was enough rain in Texas to cover the entire state with eight inches of water. This tragic flooding is a timely reminder of storm-related issues that employers need to bear in mind when natural disasters strike....

June 2, 2015

### **SCOTUS: Abercrombie's Failure to Hire Based on Assumed Religious Conflict Violates Title VII**

Yesterday in EEOC v. Abercrombie & Fitch Stores, Inc. the Supreme Court held that making employment decisions based on assumptions related to religion (or any other protected class for that matter) can trigger liability under Title VII. In an...

June 2, 2015

### **Will Floods in Texas Lead to a Flood of FLSA Claims?**

Last month there was enough rain in Texas to cover the entire state with eight inches of water. This tragic flooding is a timely reminder of storm-related issues that employers need to bear in mind when natural disasters strike....

May 28, 2015

#### **Ten Quick Facts on California's New Paid Sick Leave Law**

Beginning July 1, 2015, virtually all California employees are entitled to accrue paid sick leave, which may be taken as early as September 30, 2015. To ensure timely compliance and minimal disruption to business operations, California employers of all...

May 27, 2015

#### **Roadmap to Religious Accommodations in the Workplace**

In *EEOC v. Abercrombie and Fitch Stores, Inc.*, argued before the United States Supreme Court in February, 17-year-old Samantha Elauf applied to work as a sales representative at Abercrombie. During the interview, she wore a traditional Muslim headscarf...

May 26, 2015

#### **New York City Enacts Strict Law Banning Credit Checks in Hiring Decisions**

Beginning on September 2, 2015, the Stop Credit Discrimination in Employment Act, which amends the New York City Human Rights Law, goes into effect and prohibits all New York City employers with four or more employees from running credit...

May 21, 2015

#### **Uber Watch: The Battle to Define "Employment"**

The Uber mobile app, which matches consumers requesting rides with nearby drivers, is available in over 200 cities worldwide. Uber's revolutionary business model has been a remarkable commercial success and has inspired sharing economy startups in a variety of...

May 20, 2015

#### **Overburdened Immigration Service Temporarily Suspends Expedited Visa Processing**

The U.S. Citizenship and Immigration Services (USCIS) announced on May 19, 2015 that the agency will temporarily suspend premium processing for all H-1B Extension of Stay petitions until July 27, 2015. This action reflects the need to shift resources...

May 19, 2015

#### **The NLRB Wants to Rewrite Your Employee Handbook**

Over the past few years, the National Labor Relations Board ("NLRB") has increasingly focused on employer handbooks and policies as part of employee protections under the National Labor Relations Act ("NLRA"). This focus impacts both non-union and unionized workplaces...

May 14, 2015

#### **To Contest or Not to Contest, That is the Question**

Most employers are keenly aware of the state and federal taxes they must pay to fund unemployment benefits. Many employers routinely include "no contest" provisions in their separation agreements whereby they agree not to contest unemployment benefit applications. While...

May 11, 2015

#### **The Old-Fashioned Reference Check in a Digital World**

Among other things, the Fair Credit Reporting Act ("FCRA") regulates how credit agencies operate and how employers use consumer reports to vet job applicants. The Plaintiffs in *Sweet, et al. v. LinkedIn Corporation*, No. 3:14-cv-04531 (N.D. Cal.), seek...

May 7, 2015

#### **EEOC Issues Proposed Rules on Employer Wellness Programs**

On April 20, 2015, the EEOC issued a notice of proposed rulemaking ("Proposed Rule") designed to clarify how employer wellness programs that are part of a group health plan interact with Title I of the Americans with Disabilities Act...

May 6, 2015

### **DOL Announces Status of Revised White Collar Exemptions Regs**

Yesterday, Secretary of Labor Tom Perez announced via the U.S. Department of Labor Blog that the DOL has submitted its proposed rules revising the regulations concerning the Fair Labor Standards Act's so-called "white collar exemptions" for review by the...

May 5, 2015

### **No-Rehire Clauses Get the Axe in California?**

California employers should take note of *Golden v. Cal. Emergency Physicians Medical Group*, No. 12-16514 (9th Cir. Apr. 8, 2015), in which the Ninth Circuit used a broad interpretation of California Business and Professions Code Section 16600 to...

May 1, 2015

### **Not So Fast My Friend!: Supreme Court Checks EEOC By Requiring Meaningful Conciliation Efforts**

In *Mach Mining, LLC v. EEOC*, No. 13-1019, 575 U.S. \_\_\_\_ (2015), the United States Supreme Court ruled that the Equal Employment Opportunity Commission's pre-suit obligation to attempt to conciliate alleged unlawful workplace practices is subject to judicial...

April 30, 2015

### **Navigating the Difficult World of BYOD (Bring Your Own Devices)**

The pervasive explosion in technology has blurred the line between the workplace and home. Nowhere is this line less clear than for employees who prefer (or are encouraged by their employer) to bring their own electronic devices to work....

April 29, 2015

### **Podcast: Abercrombie & Fitch drops controversial "Look Policy", still faces SCOTUS decision**

Abercrombie & Fitch announced this week it is discontinuing its iconic "Look Policy" The former policy banned French-tip manicures and certain hair-styling products, as well as extreme makeup or jewelry. The Supreme Court of the United States is expected...

April 27, 2015

### **You Got To Know When To Hold 'Em: Preserving Documents and Electronically Stored Information (ESI) in Class and Collective Actions**

Timely preservation of documents and electronically stored information can be costly and challenging to implement, particularly when defending collective and class actions under the Fair Labor Standards Act and state wage & hour laws. The preservation duty evolves with each...

April 15, 2015

### **Alert: DOL Releases Controversial Proposal, Signifying Regulatory Intent to Expand Fiduciary Standard**

On April 14, 2015, the U.S. Department of Labor ("DOL") released a controversial proposal that would require financial advisors to put their clients' interests ahead of their own when recommending retirement investments. Businesses and financial advisors that manage retirement...

April 13, 2015

### **Car, Boat, and Farm Equipment Dealership Service Advisors Exemption in Peril**

Car, boat, and farm equipment dealerships that pay their service advisors on a salaried or commission basis should take note of a recent Ninth Circuit case holding that service advisors may not be exempt from overtime compensation under the...

April 6, 2015

### **Alert: FMLA Rights Extend to Same Sex Spouses**

The Department of Labor recently published its final rule amending the definition of "spouse" in the Family Medical Leave Act ("FMLA") regulations to include eligible employees in legal same-sex marriages. Beginning on March 27, 2015, same-sex spouses will be...

March 31, 2015

**Alert: U.S. Supreme Court Reinstates Pregnancy Discrimination Suit Against UPS**

On March 25, 2015, in a case that garnered significant attention from employers prior to hearing, the U.S. Supreme Court created by a 6-3 vote a new approach for proving and defending against pregnancy discrimination and accommodation cases. The...