

IN THE KNOW

Bulletins for Benefits & HR Professionals



June 29, 2022

U.S. DOL Releases Guidance on FMLA Leave and Mental Health

"On May 25, 2022, the U.S. Department of Labor announced that the Wage and Hour Division (WHD) published new Family and Medical Leave Act (FMLA) Guidance. The newly issued Fact Sheet #280 explains when eligible employees may take FMLA leave to address mental health conditions, and new Frequently Asked Questions (FAQs) offer explanations on how to address various scenarios that employers and employees could face in which use of job-protected leave available under the FMLA would be appropriate." [Full Article](#)

Epstein Becker & Green PC



NLRB Releases Spring Rulemaking Agenda Forecasting Changes to Joint Employer Standard and Representation Election Procedures

"On June 21, 2022, the National Labor Relations Board ("NLRB") released its rulemaking agenda for Spring 2022, indicating the Board is considering revisions to two significant and tumultuous topics pursuant to the rulemaking process: (1) the joint-employer standard under the National Labor Relations Act ("NLRA"), and (2) representation procedures, including those relating to blocking charges, voluntary recognition and bargaining relationships in the construction industry." [Full Article](#)

Proskauer Rose LLP

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Checking Applicant Backgrounds? Be Careful!

“Background checks are a great idea — unless you fail to do them correctly. Mistakes can be costly. One online retailer paid \$5 million to settle a class action filed by 454,000 job applicants alleging violations of the Fair Credit Reporting Act (FCRA), a key federal law governing the conduct of background checks. The number of such lawsuits continues to rise: it doubled between 2009 and 2018, and every year since then has marked a new high. There were 5,406 FCRA lawsuits filed in 2021 alone and, based on the 1,500 filed in the first three months of 2022, this year there will be even more. Accordingly, now is the time to take a careful look at your company’s hiring documents and the way you screen potential employees.” [Full Article](#)

Akerman LLP



Employee Talent Wars Gain Unprecedented Ammunition from Changing Antitrust Landscape

“The labor market has become more challenging for employers following COVID-19, and the need for well-trained, experienced employees far exceeds the supply. In addition to undermining investments in training and professional development, rampant departures are threatening the ability of employers to maintain confidential and proprietary information – including trade secrets. The legal landscape also is affecting the labor market, with enforcement of traditional non-compete agreements by employers becoming more difficult in recent years.” [Full Article](#)

Holland & Knight LLP

You Have Mail (Better Read It): District Court Finds EEOC 90-Day Deadline Starts When Email Received



“If a letter from the EEOC is in your virtual mailbox but you never open it, have you received it? Most of us are familiar with the requirement that a claimant who files an EEOC charge has 90 days to file a lawsuit after receiving what is usually required a “right-to-sue” letter from the agency. This is one of the deadlines that both plaintiff and defense

counsel track on their calendars. But when is that notice officially “received” by the claimant — especially in these days of electronic correspondence? In *Paniconi v. Abington Hospital-Jefferson Health*, one Pennsylvania federal court decided to draw a hard line on when that date actually occurs.” [Full Article](#)

Bradley Arant Boult Cummings LLP

Metaverse in the Workplace: What Do Employers Need to Know?

“Emerging technologies are creating a host of new legal issues for employers. The rise of the metaverse has been one of the most anticipated expansions over the last few years. The metaverse is a virtual world that allows users to interact with each other in simulated environments. The metaverse in the workplace has been expanding rapidly as businesses explore the use of virtual reality and augmented reality to improve workflows and communication.” [Full Article](#)

Brennan Manna Diamond LLC

State & International Compliance

D.C.

Washington, DC, Takes Steps to Protect Employees' Off-Duty Marijuana Use

"DC city Council unanimously passed a bill on June 7. Under the act, employers cannot base an adverse employment action on (1) an individual's legal, off-duty use of cannabis; (2) an individual's status as a medical cannabis program patient; or (3) the presence of cannabinoid metabolites on a drug test, without additional evidence of on-the-job impairment."

[Full Article](#)

Morgan, Lewis & Bockius LLP

RHODE ISLAND

Rhode Island Legalizes Recreational Marijuana and Protects Off-Duty Use for Employees

"Rhode Island Governor Dan McKee signed a bill on May 25 legalizing recreational marijuana in the state. The law, which took effect immediately, prohibits basing adverse employment actions on off-duty marijuana use, unless certain limited exceptions apply." [Full Article](#)

Morgan, Lewis & Bockius LLP

NEW YORK

New York State Legislature Approves Statutory Protections for Independent Contractors

"New York State Freelance Isn't Free Act, if signed by Governor Kathy Hochul, would take effect 180 days after signing and would apply to contracts entered into with certain independent contractors on or after that effective date. Employers that contract with freelancers and other independent contractors should begin to prepare for compliance, including by ensuring that any contracts will satisfy the Act's requirements." [Full Article](#)

Proskauer Rose LLP

MARYLAND

Maryland Employers: Your Sexual Harassment Disclosure Survey Response Is Due by July 1, 2022

"Maryland employers with 50 or more employees are required to submit a report by July 1, 2022 to the Maryland Commission on Civil Rights regarding any sexual harassment settlements during the past two years. The Maryland General Assembly passed the "Disclosing Sexual Harassment in the Workplace Act of 2018" that, in part, requires larger employers to submit two reports on sexual harassment settlements – the first of which was supposed to have occurred in 2020, and the second by July 1, 2022." [Full Article](#)

Shaw Rosenthal LLP

ILLINOIS

Illinois Expands Its Bereavement Leave Act

"Illinois recently amended its Child Bereavement Leave Act to expand the reasons for leave, including miscarriage and stillbirth, and adds additional covered family members. The law will now be called the "Family Bereavement Leave Act" and goes into effect on January 1, 2023." [Full Article](#)

Seyfarth