

# IN THE KNOW

Bulletins for Benefits & HR Professionals



January 14, 2021

## Moving Without Taking a Pay Cut?

“Tech workers and employers alike are beginning to question location-focused pay scales. A handful of companies are moving to abandon them altogether. ‘If people think the world is going to snap back to where it was 18 months after the pandemic starts, I don’t think that’s realistic,’ said Mr. Spaulding. ‘Your best talent is going to have options coming out of this.’” [Full Article](#)

*Michael Best*



## DOL Issues Final Rule on Tipped Employees – Mandatory Tip Pools and Related Duties

“Under the FLSA, an employer of tipped employees can satisfy its obligation to pay those employees the federal minimum wage by paying those employees a lower direct cash wage (no less than \$2.13 an hour) and counting the employees’ tips as a credit to satisfy the difference between the direct cash wage and the federal minimum wage. (Notably, many states have enacted higher minimum wage rates, including for tipped employees). This credit is known as the ‘tip credit.’ Tipped employees are those who customarily and regularly receive more than \$30 per month in tips. Tips do not include service charges, such as minimum gratuity amounts for large groups of customers, which are considered revenue to the employer.” [Full Article](#)

*Shawe Rosenthal*

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## DOL Issues Opinion Letters Regarding Pay Calculations for Teleworkers, In-Home Caregivers

“On the last day of 2020, the Wage and Hour Division of the U.S. Department of Labor (DOL) ushered out the year with two new Opinion Letters. These may be the final two Opinion Letters of the Trump Administration and perhaps the last two for a while, depending on whether the Biden Administration continues the practice, reimplemented during the current administration, or abandons it, perhaps in favor of the informal administrator interpretation letters issued during the Obama Administration.” [Full Article](#)

*Jackson Lewis*



## Fourth Circuit Speaks: To Be “Qualified” Under the ADA, Disabled Employee Must Comply with Valid Safety Requirements

“Often an employer’s valid safety requirements for a position can be at odds with a disabled employee’s request for a reasonable accommodation. A recent decision from the Fourth Circuit Court of Appeals reaffirms employers’ right to require compliance with valid safety requirements. And it serves as a helpful reminder that employers should ensure that job descriptions and safety requirements are routinely audited, to ensure they are up-to-date, accurate, and enforceable.”

[Full Article](#)

*Seyfarth Shaw*

## The EEOC Releases First Guidance on COVID-19 Vaccination for Employers



“More faith-based federal contractors could be shielded from anti-discrimination suits under the Department of Labor’s new rule. The rule gives organizations a clearer picture of their protections under the law. The Department of Labor’s Office of Federal Contract Compliance Programs (OFCCP) expanded a religious exemption from anti-discrimination laws for federal contractors. The new rule applies the exemption to employers that “are organized for religious purpose, hold themselves out to the public as carrying out a religious purpose, and

engage in activity consistent with and in furtherance of that religious purpose.” The rule takes effect on Jan. 8, 2021.”

[Full Article](#)

*McDermott Will & Emery*

## Employers and Employees Can Contractually Agree to Shorter Claims Periods

“In *Bracey v. Lancaster Foods, LLC*, the employee signed an arbitration agreement that shortened the statute of limitations (i.e. the time within which a claim must be filed) for all employment-related claims to one year. He subsequently brought a discrimination lawsuit against his employer. The employer moved to compel arbitration, and the employee argued that the agreement was unconscionable because it shortened all the applicable statutes of limitation to one year. The Fourth Circuit rejected this argument, noting that it had previously held that parties may agree to shorten limitations period by contract, and that “[c]ourts have frequently found contractual limitations periods of one year (or less) to be reasonable.” [Full Article](#)

*Shawe Rosenthal*

# State & International Compliance

## CALIFORNIA



### Five Important California Employment Law Changes for 2021

"A new year ushers in new legal obligations for employers, particularly those with operations in California. From expanded California Family Rights Act ("CFRA") coverage to new reporting and data-gathering obligations, employers should be aware of these five significant changes for 2021, all of which became effective Jan. 1, 2021." [Full Article](#)

*Brownstein Hyatt Farber Schreck*

## NEW YORK



### New Year, New Rules: New York Employees May Begin Taking Paid Sick Leave January 1, 2021

"The New York State Paid Sick Leave law ("NYSPSL") and the amendments to the New York City Paid Safe and Sick Leave law ("ESSTA") expanding employees' paid sick leave entitlements will go into full effect on January 1, 2021. As we previously reported, NYSPSL went into effect on September 30, 2020 for accrual purposes, but employees are not able to access their accrued sick leave until January 1, 2021." [Full Article](#)

*Sheppard Mullin*

## COLORADO



### Colorado's Extensive Pay Equity Law is Now in Effect

"Colorado's new Equal Pay for Equal Work Act (EPEWA) prohibits gender-based pay discrimination and imposes strict requirements for job postings and equal pay transparency. It became effective on January 1, 2021, and applies to all employers in the state. The main provisions of the EPEWA are summarized below." [Full Article](#)

*Vorys*

## MASSACHUSETTS



### Massachusetts Opens Applications For PFML Bonding Leave For 2020 Births Or Child Placements

"The Department of Family and Medical Leave (Department) has opened applications for Paid Family Medical Leave (PFML) benefits related to family bonding leave for children born, adopted, or placed for foster care during 2020. The Department also issued two sets of Emergency Regulations on December 21, 2020." [Full Article](#)

*Seyfarth Shaw*

## MICHIGAN



### Michigan Employers Get New Year Relief With Revised COVID-19 Anti-Retaliation Law

"Michigan employers got substantial relief from some of the more onerous provisions of the COVID-19 anti-retaliation law that was part of the Oct. 22 COVID-19 compromise legislative package. The amended law is effective as of Dec. 29, 2020, when it was signed by Michigan Governor Gretchen Whitmer." [Full Article](#)

*Barnes & Thornburg*