

IN THE KNOW

Bulletins for Benefits & HR Professionals



MAY 5, 2021

Dear Littler: What are the Wage and Hour Issues with our Wandering Workers?

“Dear Littler: We’re a small company based in Austin, Texas – but we’re growing. We made it through the pandemic, and we’re all looking forward to getting back to work. We recently announced that employees can return to the Austin office voluntarily, starting in August. When HR sent around the email, we heard from dozens of our employees letting us know they didn’t plan to come back; they want to continue working remotely. We anticipated this, and we’re working with them to navigate their individual situations. But one thing we did not anticipate: some of them don’t want to come back because they’ve moved.” [Full Article](#)

Littler Mendelson



The CDC’s Revised Rules for the Fully Vaccinated: What This Means for Employers

“This week, the Centers for Disease Control and Prevention (CDC) further relaxed its COVID-19 protocols for fully vaccinated individuals. Of significance to employers, the CDC continues to assert that such individuals should continue to ‘follow guidance issued by individual employers.’ But what impact might these looser rules have in the workplace?”

[Full Article](#)

Shawe Rosenthal

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OSHA Releases Guidance for Employers Considering Vaccine Requirements

“On April 20, 2021, the Occupational Safety and Health Administration (OSHA) released three new FAQs for employers who recommend or require employees to receive COVID-19 vaccines. OSHA is responsible for enforcing workplace safety standards across the US. McDermott previously reported that employers can require employees to be vaccinated as a condition of employment, though employers should consider several factors before making the decision to require employee vaccinations.” [Full Article](#)

McDermott Will & Emery



Labor Department Further Delays FLSA Tip Regulations Final Rule Until the End of 2021

“On April 28, 2021, the U.S. Department of Labor (DOL) announced that it will further delay, until December 31, 2021, the effective date of portions of the previous administration’s Tip Regulations Final Rule under the Fair Labor Standards Act (FLSA). That Final Rule, issued in late December 2020, originally was scheduled to go into effect on March 30, 2021, but the DOL previously extended that deadline to April 30, 2021.” [Full Article](#)

Jackson Lewis

Can Diversity Initiatives, Religious Freedom and LGBTQ+ Rights Co-Exist at Work? Yes, They Can

“In the wake of the U.S. Supreme Court’s decision in *Bostock v. Clayton County* recognizing that LGBTQ+ employees are protected by Title VII of the Civil Rights Act of 1964, employers are increasingly being placed in the difficult position of weighing often diametrically opposed rights. Religious freedom or LGBTQ+ rights; how do you choose? It’s simple; you don’t.” [Full Article](#)

Ford Harrison



Houston - We Have a Problem: Lessons to Learn from Elon Musk on the National Labor Relations Act and Social Media

“The National Labor Relations Act (“NLRA”) may not be rocket science, but even Tesla CEO and Space X founder Elon Musk can use some guidance from mission control to avoid turbulence from its application. As part of a spate of violations of the NLRA by Tesla, on Thursday March 25, 2021, the National Labor Relations Board (NLRB) upheld a 2019 ruling that found that a 2018 tweet made by Musk violated the NLRA by threatening to revoke benefits from Tesla employees if they joined a union.” [Full Article](#)

Breazeale Sachse & Wilson

State & International Compliance

CALIFORNIA



Coming Soon: Revisions to Cal OSHA's COVID-19 Emergency Temporary Standards Anticipated by June 2021

"If your company has even one employee in Colorado, as of January 1, 2021, Colorado's Equal Pay for Equal Work Act (EPEW) requires employers to notify employees within Colorado of all job postings and promotional opportunities, including those outside of Colorado." [Full Article](#)

Jackson Lewis

ALASKA

Good News for Alaska Employers Faced With Employee Overtime Claims

"In a departure from well-established Alaska precedent, the Alaska Court ruled that Alaska's Wage and Hour Act will be interpreted consistently with the federal FLSA with regard to the employer's burden to prove that the employee falls within the exemption in *Buntin v. Schlumberger Technology Corp.*, Slip Op. No. 7521 (April 23, 2021)." [Full Article](#)

Lane Powell

ILLINOIS



Improper Use of an Employee's Fingerprints, Eyes or Face

"Earlier this year, we published the below summary of the Illinois Biometric Information Privacy Act ("BIPA"). Because of increased litigation in this area over the last couple of months, we are publishing the information again and urging companies to evaluate their use of employee fingerprints, hand scans, retina scans or facial recognition technology anywhere in the workplace." [Full Article](#)

Masuda Funai

NEW YORK



New York Heroes Act Requires Workplace Safety Measures

"In an effort to prevent the occupational exposure to an airborne infectious disease, the New York legislature has passed the aptly named New York Health and Essential Rights Act, or NY HERO Act, which amends the New York Labor Law (NYLL) by adding two new sections.¹ This bill has been delivered to Governor Cuomo's desk and he is expected to sign it into law."

[Full Article](#)

Littler Mendelson

PENNSYLVANIA



Philadelphia City Council Passes Ordinance Banning Pre-Employment Testing for Marijuana

"As a result of a new ordinance passed by Philadelphia City Council, employers, labor organizations, and employment agencies in Philadelphia may not require a prospective employee to submit to testing for the presence of marijuana in the person's system as a condition of employment. The new ordinance is a reflection of the current shift in attitudes concerning marijuana and the movement towards legalization of the drug." [Full Article](#)

Lewis Brisbois