

# IN THE KNOW

Bulletins for Benefits & HR Professionals

SEPTEMBER 8, 2021



## Biden Administration Encourages Federal Agency to Clear the Muddy Waters of Non-Compete Agreements

“Citing concerns about worker mobility and advocating for increased market competition, President Biden signed Executive Order No. 14036: Promoting Competition in the American Economy, on July 9, 2021. The Order, published in the Federal Register on July 14, 2021, encourages the Federal Trade Commission to use its statutory authority to ‘curtail the unfair use of non-compete clauses and other clauses or agreements that may unfairly limit worker mobility.’” [Full Article](#)

*Benesch Friedlander Coplan & Aronoff*



## What the FDA’s Regular Approval of the COVID-19 Vaccine Means for Employers

“On August 23, 2021, Pfizer-BioNTech COVID-19 vaccine received regular approval from the Food and Drug Administration. Moderna has submitted its application for regular approval, and it is expected that such approval is forthcoming shortly. With these developments, certain legal hesitation regarding vaccine mandates — including by employers — has fallen away.” [Full Article](#)

*Shawe Rosenthal*

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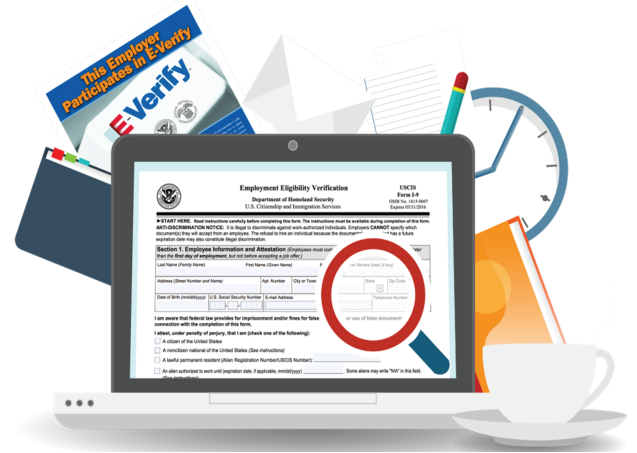
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State & International Compliance Updates

## Immigration and Customs Enforcement Further Extends COVID-19 Related I-9 Compliance

“On August 31, the day the current extension was set to expire, ICE announced that it extended the flexibilities relating to Form I-9 compliance for an additional four months, through December 31, 2021, due to ongoing COVID-19 precautions. This extension will continue to apply the guidance previously issued for employees hired on or after April 1, 2021 who work exclusively in a remote setting due to COVID-19-related precautions.” [Full Article](#)

*Morgan Lewis*



## Racist Slurs in a Foreign Language Is Still Harassment

“In *Johnson v. PRIDE Indus., Inc.*, a Hispanic supervisor used “mayate,” which is the Spanish equivalent of the N-word, to refer to a Black employee in that employee’s presence, as well as on a regular basis with fellow Hispanic employees to refer to other Black employees. The Black employee also claimed that the Hispanic supervisor only called him “mijo” (son) or “manos” (hands) rather than by name. Additionally, the supervisor gave the Black employee less preferable assignments and hid his applications for promotion on several occasions, as well as hiding materials the Black employee needed to do his job.” [Full Article](#)

*Shawe Rosenthal*



## Vaccination Accommodation: Is that Religious Request Sincere?

“Now that employers are becoming more aggressive in requiring employees to be vaccinated against COVID-19, we are also seeing a lot of requests from employees for religious exemptions. The guidance issued by the U.S. Equal Employment Opportunity Commission says that employers can require employees to be vaccinated without violating federal law. However, they must try to accommodate employees who are unvaccinated due to a medical condition that precludes vaccination (which could include pregnancy) or a religious objection to the vaccine.” [Full Article](#)

*Constangy Brooks Smith & Prophete*

## To Screen or Not to Screen? Selective Drug Screening by Job Category

“Question: Can we mandate a drug screening upon hire for some job types and not others?”

Answer: For some categories of heavily regulated jobs, such as those overseen by the U.S. Department of Transportation (e.g., over-the-road truck drivers, rail operators), drug screening as a condition of employment is mandatory by law. So, distinguishing between those categories of jobs and others is essentially necessary.” [Full Article](#)

*Holland & Hart*

# State & International Compliance

## TEXAS

### Reminder to Texas Employers: Update Your Harassment Policies and Training

“As we reported in June, the Texas Labor Code was amended effective September 1 to expand liability for employers as to employee claims of sexual harassment. Specifically, the amendments to the Labor Code: 1) Impose liability for sexual harassment claims on more employers, by expanding the protections of the Labor Code to employers with as few as one employee; 2) Open the door for potential individual liability by owners, supervisors, and managers for claims of sexual harassment; 3) Require an employer to take “immediate” and appropriate corrective action in response to a claim of sexual harassment, potentially accelerating an employer’s need under federal law to take “prompt” remedial action; and 4) Increase the Charge-filing period for those claiming sexual harassment from 180 days to 300 days.” [Full Article](#)

*Dykema Gossett*

## ILLINOIS

### Illinois Expands the Victims’ Economic Security and Safety Act

“On August 20, 2021, Governor J.B. Pritzker signed Illinois House Bill 3582, which takes effect on January 1, 2022 and amends the Victims’ Economic Security and Safety Act (VESSA) in several ways. This law entitles employees who are victims of domestic violence, sexual violence, or gender violence (or whose family members or household members are victims of such violence) to take unpaid leave from work to address issues related to the violence.” [Full Article](#)

*Little Mendelson*

## NEW YORK

### NY HERO Act Update: Deadline to Distribute and Post Safety Plan Days Away

“As previously reported, the New York Department of Labor has published general and industry-specific model disease prevention protocols under the New York HERO Act. Employers were required to either adopt one of the DOL’s models or create their own airborne disease prevention plan that meets or exceeds the minimum requirements of the law.”

[Full Article](#)

*Seyfarth Shaw*

## NEW JERSEY

### New Jersey Cannabis Regulatory Commission Temporarily Waives Requirement for Employers to Conduct Physical Examinations in Connection with Cannabis Drug Testing

“On August 19, 2021, the New Jersey Cannabis Regulatory Commission (the “Commission”) published its long-awaited first set of Personal Use Cannabis Rules (the “Initial Rules”) regarding recreational cannabis use for adults age 21 and over under the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (“NJCREAMMA”).”

[Full Article](#)

*Cole Schotz*

## SOUTH CAROLINA

### Withholding Requirements for Remote Workers

“Due to the rise in remote work caused by the pandemic, the State has provided further guidance with respect to employer withholding requirements for South Carolina employees who are working remotely due to COVID-19, extending temporarily relief on certain nexus and withholding requirements through December 31, 2021.” [Full Article](#)

*Womble Bond Dickinson*