

IN THE KNOW

Bulletins for Benefits & HR Professionals



NOVEMBER 2, 2021

The FMLA: Issues Employers Don't Want to Get Wrong

"The Family and Medical Leave Act of 1993 ("FMLA") is nothing new. For 28 years, it has granted unpaid, job-protected leave to eligible employees for certain family and medical reasons. FMLA compliance issues are increasingly common, and during the pandemic we have seen an increased spotlight on employer leave policies."

[Full Article](#)

Venable



EEOC Issues Expanded Guidance on Religious Objections to COVID-19 Vaccine Mandates

"On October 25, 2021, the US Equal Employment Opportunity Commission (EEOC) updated and expanded its technical assistance related to the COVID-19 pandemic by addressing questions regarding vaccine mandates and religious accommodations at a time when COVID-19 vaccination mandates are becoming more widespread. This expanded technical assistance provides important information for employers, employees, and applicants when navigating vaccine-related religious accommodation requests."

[Full Article](#)

Holland & Hart

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Senate Confirms President Biden's Nominee to Head OSHA

“Employers implementing mandatory COVID-19 vaccine policies are facing an avalanche of requests for exemptions as religious accommodations, far more than for medical exemptions. Fortunately, while employers are generally obligated to explore accommodations for requests based on a sincerely held religious belief, they are not necessarily obligated to grant exemptions.”

[Full Article](#)

Greenberg Traurig



Disability in the Workplace

“There are approximately 5.5 million employees in the United States who have some type of disability, according to the U.S. Bureau of Labor Statistics, and these employees account for at least 4% of the employed population. It is likely that almost all large employers have had disabled employees at some point in time. This has not always been the case, however. Until the passage of the Americans With Disabilities Act (ADA) in 1990, disabled persons in the United States were often denied employment opportunities.”

[Full Article](#)

Nelson Mullins Riley & Scarborough LLP

DOL Publishes Final Rule to Resurrect 80/20 Rule for Tipped Employees

“In the October 28, 2021 final rule, the DOL has declared that a tipped employee’s work duties must be divided into three categories: (1) tip-producing work; (2) directly supporting work; and (3) work that is not part of a tipped occupation. According to the preamble to the final rule, this categorization of work duties is part of a “functional test to determine when a tipped employee is

engaged in their tipped occupation because they are performing work of the tipped occupation, and therefore the employer may take a tip credit against its minimum wage obligations.”

[Full Article](#)

Littler Mendelson

Freaky Fast: NLRB Continues To Quicken Case Processing

“A few years ago, former National Labor Relations Board (NLRB) General Counsel Peter Robb launched an initiative to quicken the pace at which the agency processes its cases. Although Robb was unceremoniously terminated by President Biden on the first day of his presidency, Robb’s efforts continue to yield remarkable results at the agency.”

[Full Article](#)

Barnes & Thornburg

State & International Compliance

NEW YORK



New York Department of Labor Issues Guidance on Cannabis and the Workplace

“The New York State Department of Labor (“NYDOL”) has issued FAQ guidance addressing common questions regarding recreational cannabis use by employees in and outside of the workplace in light of the enactment earlier this year of the Marijuana Regulation and Taxation Act (“MRTA”).” [Full Article](#)

Proskauer Rose

OREGON



Oregon Safe Employment Act Amended to Create Presumption of Retaliation Under Certain Circumstances

“An amendment to the Oregon Safe Employment Act signed by Governor Kate Brown creates a “rebuttable presumption” of discrimination or retaliation if an employer takes an adverse action against any employee or prospective employee who engaged in certain protected activities within 60 days.” [Full Article](#)

Jackson Lewis

COLORADO



Colorado Proposes Expanded Definition of Vacation Pay, and Other Revisions to Wage Regulations

“The Colorado Department of Labor Division of Labor Standards and Statistics has proposed modifications to its Wage Protection Rules and has published proposed Colorado Overtime and Minimum Pay Standards (COMPS) Order #38. If adopted for 2022, the Wage Protection Rules would significantly expand the definition of “vacation pay” under Colorado law.” [Full Article](#)

Little Mendelson

CALIFORNIA



Bonuses And Their Impact On Meal And Rest Period Premium Pay

“Under California law, if an employer fails to provide non-exempt employees with a required meal or rest period, they must pay the employee one additional hour of pay at the employee’s “regular rate of compensation” for each work day that the meal or rest period was not provided.” [Full Article](#)

Hopkins Carley

NEW JERSEY



New Jersey Quietly Rolls Back Temporary Suspension of Employer Withholding Rules for Teleworking Employees

“Effective October 1, 2021, the New Jersey Division of Taxation (the “NJDT”) ended the temporary relief period with regard to employers’ obligation to withhold income taxes for teleworking employees who work in New Jersey.” [Full Article](#)

Little Mendelson