

# IN THE KNOW

Bulletins for Benefits & HR Professionals



MARCH 10, 2022

## Time Is Money: A Quick Wage-Hour Tip on ... Salaried Nonexempt Status

“When it comes to paying office workers who do not qualify for an overtime exemption, businesses often look for ways to treat those workers as much like exempt personnel as possible, including by paying wages in the form of a salary rather than hourly pay. Salaried nonexempt status ordinarily starts with good motives, but it frequently ends with claims for unpaid overtime.” [Full Article](#)

*Epstein Becker Green*



## To Test or Not to Test: Considerations for Employers Pondering the Future of Their Cannabis Testing Practices

“The latest Gallup poll shows that 68% of Americans support cannabis legalization. Further, the rate of positive cannabis test results has jumped in the last decade. And according to recent news reports, some large employers have stopped testing job applicants for cannabis. As a result, other employers may be pondering whether to change their approach to an increasingly popular drug that is legal for medicinal or recreational use in most states. However, the decision may not be so easy.” [Full Article](#)

*Seyfarth Shaw LLP*

## In This Issue

### Page 1

Time Is Money: A Quick Wage-Hour Tip on ... Salaried Nonexempt Status  
*Epstein Becker Green*

To Test or Not to Test: Considerations for Employers Pondering the Future of Their Cannabis Testing Practices  
*Seyfarth Shaw LLP*

### Page 2

Senate Introduces Bill Requiring Corporate Audits to Uncover Forced Labor Practices in Supply Chains  
*Jones Day*

The Duty to Preserve Documents and Data When on Notice of Litigation or Threatened Litigation  
*White & Williams*

EEOC Ramps Up Enforcement Lawsuits  
*Dickinson Wright*

The H-1B Cap Lottery for FY 2023 is Less Than One-Month Away. Are you ready?  
*Benesch, Friedlander, Coplan & Aronoff*

### Page 3

State & International Compliance Updates

## Senate Introduces Bill Requiring Corporate Audits to Uncover Forced Labor Practices in Supply Chains

“On February 3, 2022, Senators Joshua Hawley (R) and Kirsten Gillibrand (D) introduced a bill aimed at preventing the use of forced labor in corporate supply chains by requiring certain publicly traded companies to perform detailed, annual audits and disclose the results to the federal government. The Slave-Free Business Certification Act of 2022 would require certain covered entities to annually audit their operations for evidence of forced labor, including suppliers, secondary suppliers, and on-site servicers. The Act defines a "covered business entity" broadly: any issuer, as defined in the Securities Act of 1933, involved in mining, production, or manufacture of goods for sale, that has annual revenue exceeding \$500 million.” [Full Article](#)

*Jones Day*



## The Duty to Preserve Documents and Data When on Notice of Litigation or Threatened Litigation

“When an employer receives notice of a lawsuit or a threat of a lawsuit, the employer has a duty to preserve records, including personnel, employment and any other records that may relate to the matter. Courts will assess sanctions against an employer when it determines that the employer failed to preserve information that was in the employer’s control, the employer failed to take reasonable steps to preserve the information, and the loss of the information impacts the litigation. As a result, it is critical that a litigation hold notice be issued upon notice of a lawsuit or a threat of a lawsuit.” [Full Article](#)

*White & Williams*



## EEOC Ramps Up Enforcement Lawsuits

“Protection against unlawful treatment in the workplace is a goal shared by employers and employees alike. Employers that may have relaxed their compliance with federal employment and discrimination laws during the pandemic take note: the U.S. Equal Employment Opportunity Commission (EEOC) has been ramping up its enforcement activities; meaning employers should refocus on their internal review, implementation, and compliance with anti-discrimination, harassment, retaliation laws under the EEOC’s enforcement arm to avoid EEOC changes, investigations, and lawsuits.”

[Full Article](#)

*Dickinson Wright*

## The H-1B Cap Lottery for FY 2023 is Less Than One-Month Away. Are you ready?

“U.S. Citizenship and Immigration Services (“CIS”) is once again requiring employers that want to sponsor a worker for an H-1B visa—which is awarded to employees who possess highly specialized knowledge and a bachelor’s or higher degree in a specific specialty—to register for a chance to be one of 85,000 applicants permitted to submit their H-1B petitions for processing. Registration for the H-1B cap lottery for the 2023 fiscal year starts at noon on Tuesday, March 1, and closes at noon on Friday, March 18. CIS intends to notify lottery winners by March 31.” [Full Article](#)

*Benesch, Friedlander, Coplan & Aronoff*

# State & International Compliance

## NEW YORK



### New York Employers: Continue Implementing Your Airborne Infectious Disease Exposure Prevention Plans and Review Your Masking Policies

“New York employers must continue to implement airborne infectious disease exposure prevention plans, pursuant to the New York Health and Essential Rights (NY HERO) Act, through at least March 17, 2022. The law, however, no longer requires many New York employers to mandate their employees wear masks in the workplace.” [Full Article](#)

*Greenberg Traurig*

## CALIFORNIA



### California Supreme Court Clarifies Burden of Proof in Whistleblower Retaliation Claims

“The California Supreme Court has clarified that state whistleblower retaliation claims should not be evaluated under the McDonnell Douglas test, but rather under the test adopted by the California legislature in 2003, thus clarifying decades of confusion among the courts.” [Full Article](#)

*Hunton Andrews Kurth*

## ILLINOIS



### Illinois Supreme Court Eliminates Defense to Biometric Privacy Class Actions

“Illinois’ Biometric Information Privacy Act (BIPA) has spawned a tsunami of class actions against employers who utilize biometric timekeeping or security systems. Now, the Illinois Supreme Court in McDonald v. Symphony Bronzeville Park, LLC has eliminated a defense invoked by employers facing claims under BIPA: the exclusivity of workers’ compensation.”

[Full Article](#)

*McDermott Will & Emery*

## D.C.

### D.C.’s Non-Compete Law Poised To Be Delayed Until October 1, 2022

“The District of Columbia’s ban on non-compete agreements is delayed again. As we previously reported, the DC Government enacted The Ban on Non-Compete Agreements Amendment Act in January 2021, which creates one of the most comprehensive non-compete bans in the country.” [Full Article](#)

*Proskauer Rose*

## VIRGINIA



### Virginia Begins Process to Revoke Permanent COVID-19 Workplace Safety Standard

“The Virginia Department of Labor and Industry’s (DOLI’s) Safety and Health Codes Board convened and voted to recommend revoking the Commonwealth’s COVID-19 permanent workplace safety standard. This action comes after newly-elected Governor Glenn Youngkin issued Executive Order 6 directing the Board to convene an emergency meeting to consider whether there is a continued need for the permanent workplace safety standard.”

[Full Article](#)

*Reed Smith*