

IN THE KNOW

Bulletins for Benefits & HR Professionals



APRIL 7, 2022

Department of Labor Issues Strong Caution on Use of Cryptocurrencies in 401(k) Plans

“The U.S. Department of Labor (the DOL) has issued a compliance release that provides strong caution against ERISA fiduciaries of 401(k) and 403(b) plans including cryptocurrencies as plan investment options. In an unusual move, the DOL has cautioned fiduciaries to “exercise extreme care before they consider adding a cryptocurrency option to a 401(k) plan’s investment menu for plan participants.”

[Full Article](#)

Cozen O’Connor



Restaurant’s Mandatory Service Charge is Not a “Tip” Under FLSA

“Tipped employees at Miami’s Nusr-et Steakhouse sued their employer, alleging that the restaurant violated the Fair Labor Standards Act by counting payments to employees from the restaurant’s mandatory 18% “service charge” as part of the employees’ “regular rate of pay,” rather than as tips. The district court rejected the employees’ claim and granted the restaurant’s motion for summary judgment, holding that the service charge was not a tip. In *Compere v. Nusret Miami, LLC*, 2022 U.S. App. LEXIS 7293 (11th Cir. Mar. 18, 2022), the Eleventh Circuit affirmed.” [Full Article](#)

Eversheds Sullivan

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Is an Emoji Worth a Thousand Words? The Impact of Emojis in the Workplace

“Work does not always occur within the physical confines of a workplace. Indeed, due to the interconnectivity of today’s world, work often takes place in the digital space, where employees regularly use pictorial icons and images known as emojis and emoticons to express themselves. Although emojis and emoticons are not hieroglyphics, they can be difficult to interpret, and courts have increasingly had to grapple with them as evidence in discrimination and harassment claims.” [Full Article](#)

Littler Mendelson



Five Employment Law Remarks in President Biden's State of the Union Address

“In his March 1, 2022 State of the Union Address, President Biden briefly touched upon a handful of employment reforms he is urging Congress to pass. This article is intended to help employers understand five of President Biden's remarks, summarize what those remarks referenced, and describe the status of potential legislation relating to them.” [Full Article](#)

Venable

Recall Message! Do Yourself (and Your Employer) a Favor and Sharpen Your Email Game



“Email isn’t a new technology. By now, we all know that our work emails aren’t private, and most of us exercise some discretion in deciding what to “put in writing” in our business communications. We’ve heard horror stories of incriminating emails turning up in business lawsuits. Yet, despite our awareness of these risks, the problem persists. Time and again, bet-the-company lawsuits turn on the content of internal work emails. And it’s not just so-called “smoking

gun” emails where an employee admits wrongdoing. More often, the key emails are seemingly innocuous co-worker communications that, due to their poor wording, are taken out of context and made to look malicious, heavy-handed, or insensitive.”

[Full Article](#)

Robins Kaplan

OFCCP Releases New Directive Setting Expectations of Contractors During Compliance Reviews

“Directive 2022-02: Effective Compliance Evaluations and Enforcement issued March 31, 2022 is intended to “strengthen OFCCP compliance evaluations and reduce delay by promoting the timely exchange of information”. It also sets a number of expectations for contractor conduct and compliance during reviews, rescinding a number of previous Directives that set out transparency and expectations and timelines for submission of information – commonly known as previous OFCCP Director Craig Leen’s Four Pillars.” [Full Article](#)

Jackson Lewis

State & International Compliance

WASHINGTON



New Washington Law Bans Nondisclosure and Nondisparagement Provisions and Applies Retroactively

“Governor Bill Lee has signed into law a bill that expands protections for employees who are subject to employer COVID-19 vaccine mandates. The new law supplements existing state law that prohibits private employers and other entities from compelling or taking “adverse action” against a person to compel the person to provide proof of vaccination.” [Full Article](#)

Nelson Mullins

CALIFORNIA



Updated California Supplemental Paid Sick Leave FAQs Answer Some Big Questions

“California’s Labor Commissioner has updated its FAQs concerning 2022 COVID-19 supplemental paid sick leave (CPSL), answering some of employers’ more pressing questions about how this year’s more unique law operates. The answers are welcome news to many.” [Full Article](#)

Littler Mendelson

UTAH



Utah Amends Vaccination and Testing Requirements to Include Exemption for Previous COVID-19 Infection

“On March 22, 2022, Utah Governor Spencer J. Cox signed HB 63 into law, amending legislation passed in the Utah Legislature’s second special session of 2021 related to vaccine mandates in the workplace. The law will become effective on May 3, 2022 (60 days from adjournment of the 2022 legislative session).” [Full Article](#)

Littler Mendelson

OREGON



Oregon Amends the Workplace Fairness Act to Further Restrict Agreements Resolving Discrimination Claims

“On March 24, 2022, Oregon Governor Kate Brown signed into law Senate Bill 1586, which amends Oregon's Workplace Fairness Act to further restrict what an employer may request in a settlement or separation agreement with an employee claiming discrimination under ORS 659A.030, 659A.082, or 659A.112. The amendments will be effective January 1, 2023.”

[Full Article](#)

Davis Wright Tremaine

INDIANA



Indiana Enacts New Law on Employer COVID-19 Vaccination Mandates

“Indiana Governor Eric Holcomb has signed into law House Bill 1001, curbing COVID-19 vaccine mandates by employers. Under the law, which went into effect immediately, most Indiana employers who require employees to receive the COVID-19 vaccine must allow employees to opt out from the requirement based on any of the following: (1) medical reasons; (2) religious reasons; or (3) employee immunity from COVID-19 based on a prior infection with COVID-19.”

[Full Article](#)

Jackson Lewis