IN THE KNOW

Bulletins for Benefits & HR Professionals

VCG

June 1, 2022

SCOTUS Resolves Circuit Split: A Showing of Prejudice Not Required to "Waive" Right to Arbitration

"On May 23, in a unanimous opinion, the U.S. Supreme Court held that employers who do not act promptly to invoke an arbitration clause may be held to waive arbitration. In so holding, the Court resolved a circuit court split over whether a party arguing waiver had to demonstrate prejudice. The Court held that prejudice was not a requirement. The Court's holding departs from its generally pro-arbitration holdings over the last 15 years. The opinion is instructive in both employment law and arbitration law." **Full Article**

Troutman Pepper

Employers and Foreign Nationals Can Avoid Employment Gaps with New Automatic Work Permit Extension

"U.S. employers and qualified foreign nationals should take advantage of USCIS' recent move to increase the automatic extension period for foreign nationals waiting on employment authorization renewals. This automatic extension would make a large number of foreign nationals eligible for employment by providing up to 540 days of employment authorization. It will also help U.S. employers and their impacted employees avoid gaps in employment caused by processing backlogs." **Full Article**

Phelps Dunbar LLP

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Adjusting Business Policies to COVID 19 Conditions for the Future

"Over the past several months as the rates of new COVID 19 cases dropped, there has been a collective celebration and a return to some sense of normal. Hopefully, we will stay there. Everyone is, frankly, tired of the Pandemic and wants to stop talking about it. This raises the questions we have been asked frequently over the past several weeks. Can I get rid of my mask requirement? What should my policy say now? Can I just get rid of my COVID 19 policy? Most employers have lifted their mask mandate and understand that it is ok to do so, as long as the rate of new cases is low. But what exactly should the policy be going forward?" **Full Article**

Michael, Best and Friedrich LLP

Court Allows Leeway to Employers Under Fair Credit Reporting Act

"A recent decision from the 8th Circuit U.S. Court of Appeals granted employers some modest flexibility in conducting and relying on background checks for potential new hires covered by the Fair Credit Reporting Act ("FCRA"). The court made two key rulings: Employers have no obligation under the FCRA to provide job applicants with the opportunity to explain negative but accurate background check results. A job applicant cannot bring legal action against the employer based on a "technical" violation under the FCRA that does not result in concrete harm to the applicant." **Full Article**

Hall Render PC

Holding On, Loosely: Incentives for Employee Retention

"Let's talk about problems with retention bonuses and overtime—as if finding qualified workers wasn't tough enough.

According to the most recent report from the Bureau of Labor Statistics, nonfarm employment rose by 428,000 in April 2022. However, some sectors are still struggling and "now hiring" or "help wanted" signs are everywhere. As a result, many employers have resorted to offering financial incentives, including "sign-on" or "retention" bonuses to encourage people to sign up and to stick around." **Full Article**

Ice Miller LLP

The NLRB is Actively Using the Strongest Weapon in its Arsenal – Quick Injunctions

"General Counsel Jennifer Abruzzo of the National Labor Relations Board (NLRB) has continued to forcibly push the pro-union agenda by revealing the NLRB's intent to explore doctrinal shifts in numerous key areas of labor law and opining on numerous issues ranging from her belief that some student-athletes at the collegiate level are "employees," to urging regional staff to aggressively seek injunctions under Section 10(j) of the National Labor Relations Act. The bottom line is that defending against a 10(j) petition is a costly undertaking for employers, and therefore, employers need to be aware of the consequences of taking actions that could invite a 10(j) petition." **Full Article**

Akerman LLP

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State & International Compliance

CALIFORNIA

California Supreme Court Finds Meal and Rest Premiums Subject to Wage Statement and Final Pay Requirements

"The California Supreme Court's decision in Naranjo v. Spectrum Security Services, Inc. answered in the affirmative, finding that meal and rest premium payments prescribed by the California Labor Code are "wages" subject to California's wage statement and final pay requirements." **Full Article**

Seyfarth Shaw LLP

DELAWARE

Delaware Becomes Latest State to Institute Paid Family and Medical Leave

"Delaware Governor John Carey signed into law a bill that will require private employers with ten or more employees in Delaware to provide up to 12 weeks of paid family and medical leave beginning in January 2026, one year after payroll tax deductions to fund the program begin on January 1, 2025." **Full Article**

Proskauer Rose LLP

NEW YORK

Remote Workers Outside NY Can't Bring Bias Claims Under NY State and City Human Rights Laws, Court Says

"A federal court recently ruled that an employee working remotely from New Jersey cannot assert claims under New York State's and New York City's Human Rights Laws. Judge Edgardo Ramos said that the alleged discriminatory conduct must have an impact on the plaintiff in New York State for the NYSHRL to apply and in New York City for the NYCHRL to apply." **Full Article**

Constangy, Brooks, Smith, Prophete LLP

OHIO

No Such Thing as a Free Lunch: Compensability of Workers' Compensation Claims During Unpaid Lunch Breaks

"In Ohio, R.C. 4123.01(C) specifies that a compensable injury must occur in the "course of, and arising out of, the injured employee's employment." The ability to participate in the workers' compensation system is dependent on whether a causal connection exists between an employee's injury and their employment, either through the activities, the conditions, or the environment of the employment." **Full Article**

Ice Miller LLP

ILLINOIS

Illinois Amends One Day Rest in Seven Act, Adding Stricter Penalties and More Stringent Notice Requirements

"Illinois Governor J.B. Pritzker signed into law SB3146, amending the provisions of the Illinois One Day Rest in Seven Act (ODRISA), which addresses both day of rest and meal break requirements for employees in the state. Fortunately for employers, the amendments do not take effect until January 1, 2023, so there is plenty of time for Illinois employers to make sure their policies and process conform to these changes, which are significant." **Full Article**

Littler Mendelson PC

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