

Weekly Digest

• August 26, 2022 •

Human Resources

Have We Reached The New Normal? The CDC's Revised COVID-19 Rules

"As the COVID-19 pandemic continues to evolve, the Centers for Disease Control and Prevention (CDC) has once again issued new guidance on August 11, 2022. What has changed? The CDC has further loosened its COVID-19 guidance and, in particular, its guidance related isolation. The main change is that individuals, regardless of their vaccination status, are no longer recommended to quarantine after being exposed to the virus, as long as they don't feel sick." [Full Article](#)

Shawe Rosenthal LLP



Implementing Diversity, Equity, and Inclusion Initiatives in Hiring Without Running Afoul of Anti-Discrimination Laws

"Promoting diversity in the workforce has become a key focus for many employers. Organizations have increasingly recognized the many benefits of employing a workforce with diverse backgrounds, perspectives, and experiences, and, more specifically, employees who belong to a variety of different characteristics protected by federal and state employment laws, including race, gender/sexual orientation, age, religion, and disability, among others." [Full Article](#)

Venable LLP

In This Digest

PAGE 1

Have We Reached The New Normal? The CDC's Revised COVID-19 Rules

By, Shawe Rosenthal LLP

Implementing Diversity, Equity, and Inclusion Initiatives in Hiring Without Running Afoul of Anti-Discrimination Laws

By, Venable LLP

PAGE 2

With So Many Nonexempt Employees Working Remotely, What Should Be Our Key Wage and Hour Compliance Priorities?

By, Littler Mendelson PC

NLRB Awards Bargaining Expenses to Union

By, Snell & Wilmer LLP

EEOC States Employers Must Show Business Necessity to Test Workers for COVID-19

By, Hunton Andrews Kurth LLP

Nasty Language May be Protected Concerted Activity, Court Says

By, Constangy Brooks, Smith & Prophete LLP

PAGE 3

State & International Compliance Updates

With So Many Nonexempt Employees Working Remotely, What Should Be Our Key Wage and Hour Compliance Priorities?

“A key priority with nonexempt employees working remotely is managing time and tracking hours worked. Employers need to clearly define what constitutes work – including checking email and managing non-work interruptions – and instruct employees when they can and cannot perform work. It’s important to train your supervisors on what to do when they have reason to believe an employee is not working during scheduled hours or working outside scheduled hours.” [Full Article](#)

Littler Mendelson PC



EEOC States Employers Must Show Business Necessity to Test Workers for COVID-19

“The U.S. Equal Employment Commission (“EEOC”) has recently updated its Technical Assistance Questions and Answers, ‘What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws (Q&A),’ and taken the position that employers may only screen employees for COVID-19 if it is a business necessity that is justified by ‘current pandemic circumstances and individual workplace circumstances’.” [Full Article](#)

Hunton Andrews Kurth LLP

NLRB Awards Bargaining Expenses to Union

“In a recent case, the Court of Appeals for the 9th Circuit (Court) enforced an order of the National Labor Relations Board (NLRB or Board) requiring an employer to reimburse the union for the expenses that the union incurred during collective bargaining negotiations. *NLRB v. Ampersand Publishing*, 9th Cir., No. 21-71060, 8/11/22. The bargaining negotiations expenses included the legal fees the union had paid to outside counsel for consultation during the negotiations.” [Full Article](#)

Snell & Wilmer LLP



Nasty Language May Be Protected Concerted Activity, Court Says

“Non-union employers, this goes for you, too! An employee's use of bad language doesn't necessarily mean that the employer can take action against him. Even if the language arguably violates the employer's no-harassment policy. If the bad language concerns terms and conditions of employment, it may be protected by the Section 7 of the National Labor Relations Act. If so, and if there is a "causal relationship" between the protected concerted activity and the action taken against the employee, the employer's action would be an unfair labor practice.” [Full Article](#)

Constangy, Brooks, Smith & Prophete LLP

STATE & INTERNATIONAL COMPLIANCE

COLORADO



Colorado Continues to Whittle Away at Non-Compete Agreements

“Effective August 10, 2022, Colorado’s laws governing restrictive covenants shall be amended to provide additional limitations and hurdles for employers who seek non-compete and non-solicit agreements with their employees, including compensation thresholds and notice requirements. The new law also sets forth steep penalties for any violations. This article provides the details of these new restrictions.”

[Full Article](#)

McDermott Will & Emery

MASSACHUSETTS



Massachusetts Appeals Court Says Home Inspectors Were Independent Contractors – Not Employees

“On August 11, 2022, Governor Hochul signed the Green CHIPS On July 13, 2022, the Massachusetts Appeals Court issued a decision in Tiger Home Inspection, Inc. v. Dir. of the Dep’t of Unemployment Assistance. The Appeals Court held that home inspectors were classified properly as independent contractors under the state Unemployment Insurance (“UI”) law. In so holding, the Appeals Court reversed both a state agency and a lower court that found the home inspectors at issue were misclassified employees.”

[Full Article](#)

Seyfarth Shaw LLP

CONNECTICUT



Connecticut’s Pandemic “Hero Pay” Program Goes into Effect

“Private-sector essential employees who worked in Connecticut during the pandemic may receive up to \$1,000 in premium pay (i.e., “hero pay”), through a \$30 million fund established under the state budget approved by the General Assembly and Governor Ned Lamont.”

[Full Article](#)

Jackson Lewis PC

CALIFORNIA



Cal/OSHA Releases Revised Draft of Workplace Violence Prevention Regulation

“The California Division of Occupational Safety and Health (Cal/OSHA) released a revised workplace violence prevention regulation draft. If Cal/OSHA adopted the regulation, it would become a part of the General Industry Safety Order (GISO) of the California Code of Regulations. Cal/OSHA seeks interested parties to submit written comments on the draft no later than July 18, 2022.”

[Full Article](#)

Hall Benefits Law LLC

WASHINGTON



Washington State Adopts Emergency Heat and Wildfire Rules

“This summer is shaping out to be another scorcher and Washington State employers should know about the Department of Labor & Industries (“LNI”) new emergency requirements for heat and smoke protections for outdoor employees effective June 15 through September 29.”

[Full Article](#)

Jackson Lewis PC