

Weekly Digest

• October 19, 2022 •

Human Resources

NLRB Rules Employers Cannot Unilaterally Cease Dues Checkoff After CBA Expiration

“On October 3, 2022, in a 3-2 decision, the National Labor Relations Board (NLRB or Board) reversed its previous ruling from 2019 and held that a union dues checkoff provision should be treated as part of the status quo that the employer cannot unilaterally change following contract expiration.” [Full Article](#)

Ford Harrison LLP



Medical Marijuana and the Construction Job Site

“The changing legal landscape relating to marijuana usage means that employers, especially those with safety sensitive positions or who are subject to federally mandated compliance requirements, need to review their current policies and approaches to positive drug tests reflecting marijuana usage to ensure they follow applicable federal, state, and local laws regarding marijuana in the workplace.” [Full Article](#)

Jackson Lewis PC

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An Employer Must Not Retaliate Against an Employee for Others' Activity

"In several recent cases, the National Labor Relations Board reminds employers that illegal retaliation against a worker can occur even if they were not directly involved in the protected actions of others – whether co-workers or unions." [Full Article](#)

Shawe Rosenthal LLP



DOL Proposes New Regulation Regarding Employees vs. Independent Contractors

"Today the U.S. Department of Labor (DOL) published a new proposed rule defining employee versus independent contractor status under the Fair Labor Standards Act (FLSA). The proposed regulation would move the "economic realities" test closer to prior interpretations of the FLSA, replacing a regulation published in January 2021 at the end of the Trump administration. The new rule proposes to return to a multi-factor test that looks at the totality of the circumstances and does not weigh or elevate any factor above another." [Full Article](#)

Davis Wright Tremaine LLP

UPDATE: Employers Should Anticipate Significant Rise in Minimum Wage Rates Tied to Inflation

"Employers in approximately a dozen states and twice as many cities and counties should expect significant hikes in minimum wage rates for 2023. Many of these hikes are due to state and local laws which account for inflation by automatically tying increases in the Consumer Price Index (CPI) to minimum wage rates. This year's unusually high inflation and resultant CPI growth, however, threatens to raise hourly wages by nearly \$1 or more in certain locales." [Full Article](#)

By, Benesch Friedlander, Coplan & Aranoff LLP



Bipartisan Legislators Introduce Bill with Some Legal Protections for Gig Workers

"A bipartisan group of legislators recently introduced H.R.8442 – Worker Flexibility and Choice Act, a bill allowing businesses to maintain gig workers as independent contractors. The bill also would provide some legal protections for those workers, despite their independent contractor status." [Full Article](#)

Hall Benefits Law LLC

STATE & INTERNATIONAL COMPLIANCE

CALIFORNIA



California Prohibits Retaliation Against Employees for Refusal to Report to Work During Emergency Conditions

"On September 29, 2022, California's Governor Gavin Newsom signed Senate Bill (SB) 1044, which prohibits an employer in the event of an emergency condition from taking or threatening adverse action against any employee for refusing to report to or leave a workplace or worksite within the affected areas because the employee has a reasonable belief that the workplace or worksite is unsafe." [Full Article](#)

Jackson Lewis PC

NEW JERSEY

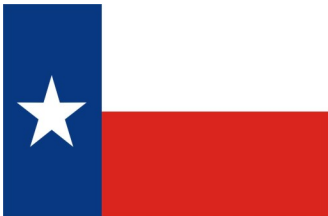


Attention New Jersey Employers: NJ Cannabis Regulatory Commission Issues Interim Guidance on Workplace Impairment

"On Sept. 9, 2022, the NJ Cannabis Regulatory Commission (NJ-CRC) issued interim guidance on detecting "workplace impairment" following the passage of the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (CREAMMA) almost two years ago." [Full Article](#)

Greenburg Traurig LLP

TEXAS



Texas District Court Holds EEOC Guidance on Sexual Orientation and Gender Identity Discrimination Unlawful

"On October 1, 2022, the United States District Court for the Northern District of Texas held that Equal Employment Opportunity Commission ("EEOC") guidance addressing sexual orientation and gender identity discrimination in the workplace is unlawful." [Full Article](#)

Proskauer Rose LLP

WASHINGTON



Washington State Employers to Face Significant Minimum Wage and Salary Threshold Increases

"Starting January 1, 2023, the Washington state minimum wage will be \$15.74 per hour. This is a \$1.25 increase from the current 2022 minimum wage of \$14.49 per hour. Because the salary threshold for exempt employees in Washington is tied to a multiple of the minimum wage, the exempt salary threshold for all employers with Washington-based employees will also increase." [Full Article](#)

Davis Wright Tremaine LLP

COLORADO



Colorado Gears Up for Sweeping New Paid Family and Medical Leave Insurance Program

"Colorado employers may want to begin preparing for the implementation of Colorado's new state-run Paid Family and Medical Leave Insurance (FAMLI) program." [Full Article](#)

Ogletree Deakins LLP