

Weekly Digest

• December 16, 2022 •

Human Resources

The EEOC Is Bulldozing Its Way Through the Construction Industry

"The U.S. Equal Employment Opportunity Commission (EEOC) has a new target—the construction industry. During a public hearing earlier this year, the EEOC accused the construction industry of perpetuating a culture of racism and sexual harassment." [Full Article](#)

Venable LLP



Federal Restrictions on NDAs for #MeToo Claims Expected To Become Law

"The "Speak Out Act" (H.R. 8827), a #MeToo inspired bill prohibiting pre-dispute nondisclosure and non-disparagement clauses when sexual harassment or assault is alleged, has cleared Congress. Previously, President Biden issued a statement signaling that he strongly supports the bill and will sign. The bill will become effective upon his signature." [Full Article](#)

Davis Wright Tremaine

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Remote Work May Be a Reasonable Accommodation Where the Employee Has Been, Well, Working Remotely

“In the context of the COVID-19 pandemic, many employees suddenly began working remotely and as we move into a new normal, many employees would like to continue telecommuting. However, from a legal standpoint, employers need not agree to continued remote work unless it is required as a reasonable accommodation under the American with Disabilities Act or analogous state laws. But when can an employer argue that continued remote work is unreasonable?”

[Full Article](#)

Shawe Rosenthal LLP



Employer WARN-ing: Layoffs Could Trigger WARN Notice Requirements This Time Around

“Studies show that as many as 98% of CEOs are anticipating a global recession in the next 12-18 months, which means that companies have already started focusing on cutting costs and redistributing resources to best position themselves to survive.”

[Full Article](#)

Baker McKenzie LLP

Work Beyond Pay Grade Can Be Grounds for Constructive Termination, Court Rules

“The federal court for the Northern District of California recently declined to dismiss a former Al Jazeera International employee’s constructive wrongful termination claim against the news outlet, finding that requiring an employee to perform tasks more advanced than their pay level, without promotion, could constitute “intolerable” working conditions.” [Full Article](#)

Proskauer Rose LLP



Juries Are More Likely To Find Retaliation Than Discrimination

“On October 25, 2022, a federal jury in Houston awarded a woman \$365,000,000 in punitive damages and over \$1,000,000 in compensatory damages, after finding that her employer had terminated her in retaliation for complaining about race discrimination. While this amount may not stand after appeal, the case and the sums at issue are notable.” [Full Article](#)

Vinson & Elkins LLP

STATE COMPLIANCE UPDATES

CALIFORNIA



Who is a “Designated Person”? Changes To California’s Medical Leave

“The Expansion of California Family Rights Act, AB 1041, was signed into law by Governor Newsom on September 29, 2022. AB 1041 expands the class of people for whom an employee may take leave to care for under the California Family Rights Act (“CFRA”) to include a “designated person.” [Full Article](#)

Sheppard Mullin LLP

NEW YORK



New York Bars Discipline for Legally Protected Employee Absences

“On November 21, 2022, New York Governor Kathy Hochul signed a law clarifying that it is unlawful for an employer to penalize an employee for any absence protected under federal, state or local law. (S.1958/A.8092). The law goes into effect on February 19, 2023.” [Full Article](#)

Jackson Lewis P.C.

COLORADO



New Guidance on Bonuses and Commissions May Cause Headaches for Employers

“Organizations commonly require employees to be employed on the date a commission or bonus is paid to receive the commission or bonus. The Colorado Department of Labor and Employment (CDLE), which interprets and administers Colorado’s Wage Act, recently indicated that practice is not permissible, which means employers will need to revisit their bonus agreements and commission plans sooner rather than later.” [Full Article](#)

Holland & Hart LLP

ILLINOIS



Illinois Appellate Court Holds Businesses Must Implement Biometric Retention and Destruction Policies Before Collecting Biometric Data

“On November 30, 2022, the Illinois Second District Appellate Court reversed the trial court’s grant of summary judgment in Defendant’s favor in a case entitled *Mora v. J&M Plating, Inc.*” [Full Article](#)

Seyfarth Shaw LLP

WASHINGTON



Washington State’s Pay Transparency Law Takes Effect January 1, 2023

“SB 5761 amends Washington’s Equal Pay and Opportunity Act (RCW 49.58) to require employers with 15 or more employees to include in each job posting the wage scale or salary range of the job and a general description of all of the benefits offered and to identify other compensation offered.” [Full Article](#)

McDermott Will & Emery LLP