

# Weekly Digest

• March 9, 2023 •

Human Resources

## **NLRB Prohibits Confidentiality and Non-Disparagement Provisions in Severance Agreements with Broad Implications**

"On February 21, the National Labor Relations Board (NLRB or Board) reversed course from its own Trump-era precedent when it held that an employer's offer of employee severance agreements with broad confidentiality and non-disparagement provisions is an unfair labor practice in violation of Section 8(a)(1) of the National Labor Relations Act." [Full Article](#)

*Troutman Pepper*



## **OSHA Implements Pilot Program to Streamline Complaint Intake Process**

"This pilot program aims to relieve the strain on OSHA's investigative resources by allowing an investigator to administratively close a complaint without needing to contact the Complainant." [Full Article](#)

*Proskauer Rose*

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## **Supreme Court Upholds Ruling That FLSA Overtime Exemption Didn't Apply to Day-Rate Rig Worker**

"On Sept. 9, 2021, the U.S. Court of Appeals for the Fifth Circuit held a highly compensated rig worker was not exempt from the Fair Labor Standards Act's (FLSA's) overtime requirements because the employee was paid on a day rate as opposed to a guaranteed salary. On Feb. 22, 2023, the U.S. Supreme Court affirmed this decision." [Full Article](#)

**McGuire Woods**

## **DOL Issues Internal Guidance on Telework Under the FLSA & FMLA**

"FAB 2023-1 addresses FLSA regulations governing "hours worked," rules related to break time and privacy for nursing employees, and regulations regarding FMLA eligibility factors." [Full Article](#)

**Jackson Lewis**

## **Paid Leave for USERRA? We Recommend a Comparability Analysis**

"The Ninth Circuit recently addressed the issue of whether an employer is required to provide pay for employees taking short-term military leave when it offers other types of short-term paid leave. In *Clarkson v. Alaska Airlines, Inc.*, the Ninth Circuit revived a class action claiming discrimination under the Uniformed Services Employment and Reemployment Rights Act (USERRA) for the failure to pay short-term military leave." [Full Article](#)

**Baker McKenzie**

# STATE COMPLIANCE UPDATES

## CALIFORNIA

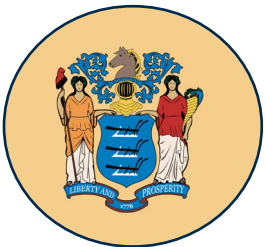


### A Win for Employers: Ninth Circuit Holds That California AB 51 Prohibiting Mandatory Arbitration is Preempted by the Federal Arbitration Act

"As of February 15, 2023, employers in California may once again require mandatory arbitration as the US Court of Appeals for the Ninth Circuit held that the Federal Arbitration Act (FAA) preempts Assembly Bill 51 (AB 51), a law that prohibited "forced arbitration" as a condition of employment." [Full Article](#)

*McDermott Will & Emery*

## NEW JERSEY



### New Jersey Enacts First-of-Its-Kind Temporary Workers' Bill of Rights

"Under the law, employers must pay temporary workers no less than the average rate of pay and cost of benefits provided to company employees in similar positions who perform the same or substantially similar work. It also gives temporary workers rights to certain information on the terms and conditions of their engagement and imposes significant obligations on staffing agencies and their clients." [Full Article](#)

*Morgan Lewis & Bockius*

## WASHINGTON



### Seattle Becomes the First U.S. Jurisdiction to Prohibit Caste Discrimination

"On February 21, 2023, the City of Seattle, Washington became the first U.S. city – or any U.S. jurisdiction for that matter – to add caste to its list of categories protected against discrimination." [Full Article](#)

*Littler Mendelson*

## ILLINOIS



### Illinois Supreme Court Rules BIPA Claims Accrue With Each Scan

"On February 17, the Illinois Supreme Court issued its long-awaited decision in *Cothron v. White Castle*, holding that a claim under Illinois' Biometric Information Privacy Act (BIPA) is triggered upon each biometric scan, rather than just the first." [Full Article](#)

*Troutman Pepper*

## MASSACHUSETTS



### Massachusetts May Be Next in Line to Enact Pay Transparency Laws

"The proposed law focuses on a broad range of employee and wage data, including the number of employees by race, ethnicity, and gender that fall within certain job categories or roles, and their corresponding wage information." [Full Article](#)

*Nelson Mullins Riley & Scarborough*