

Weekly Digest

• July 27, 2023 •

Human Resources

NLRB Issues Advice Memo Designating Workplace Discussions of Racism as Protected Activity

"The National Labor Relations Board (NLRB) recently issued an advice memo confirming its earlier position that workplace discussions about racism are protected concerted activity under the National Labor Relations Act (NLRA). As a result, employers cannot fire, discipline, or take any adverse employment action against employees who publicly raise concerns about racism in the workplace." [Full Article](#)

Hall Benefits Law



More Than "De Minimis" — The Supreme Court Clarifies Title VII Undue Hardship Standard

"Title VII also creates an affirmative obligation to accommodate the religious practices of employees and applicants unless doing so would impose an 'undue hardship' on the conduct of the employer's business. But what exactly constitutes an "undue hardship" under Title VII? That is the question the Supreme Court recently addressed in *Groff v. DeJoy*." [Full Article](#)

Vinson & Elkins LLP

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Revolutionary Change but No Free Lunch: What to Know About Algorithmic Discrimination and AI

“The capacity and deployment of artificial intelligence (“AI”) is dizzying. As businesses vet and/or actively integrate AI into their business processes, it is critical to understand not only AI’s potential but the potential risks. This includes inadvertently contributing to systemic discrimination issues and being subject to claims of violation of existing legal protections.” [Full Article](#)

Brownstein Hyatt Farber Schreck, LLP



Spike in Religious Discrimination Charges Stemming from COVID-19 Vaccine Mandates Fuels Increase in EEOC Charges

“In FY 2022, the EEOC saw the number of charges leap by more than 10,000 over the prior year. This uptick appears to be almost entirely attributable to the COVID-19 pandemic: a striking rise of over 600% in religious discrimination claims, with many filed by applicants and employees seeking religious exemptions to companies’ COVID-19 vaccine mandates.” [Full Article](#)

Seyfarth Shaw LLP

Employers Seek to Delay Start of Mandatory I-9 Re-inspections

“Employers are reportedly urging the Biden Administration to delay the current August 30 deadline for in person re-inspections of I-9 documents that were submitted virtually during the COVID-19 pandemic. The employers argue that the delay is justified because final regulations are expected in August that might make virtual verification and other alternative options permanent.” [Full Article](#)

*Constangy Brooks
Smith & Prophete, LLP*



OSHA: Targeting Warehouses, Distribution and Retail

“Effective July 13, 2023, OSHA has launched a National Emphasis Program (NEP) targeting inspections on workplace hazards in warehouses, processing facilities, distribution centers, and high-risk retail establishments.” [Full Article](#)

Michael Best & Friedrich LLP

STATE COMPLIANCE UPDATES

NEW YORK

NYC to Consider Indoor Air Quality Regulations



"The COVID-19 pandemic and wildfire smoke shrouding the skies over the East Coast this summer have drawn more attention to indoor air quality, leading the New York City Council to propose indoor air quality resolutions."

[Full Article](#)

Seyfarth Shaw LLP

MAINE

Maine Legislative Roundup: New Employment Laws Were Enacted This Session



"The First Special Session of the 131st Maine Legislature included debate about more than 2,000 bills. Many that were adopted will impact employers in the Pine Tree State. Below is a brief summary of important employment law changes enacted this session." [Full Article](#)

Little Mendelson P.C.

OHIO

Ohio Federal Court Denies Conditional Certification in an Early Application of the Sixth Circuit's "Strong Likelihood" Standard, Signaling a New Normal for Wage & Hour Lawsuits



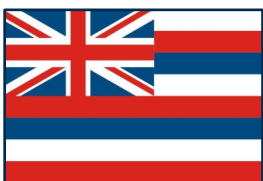
"On May 19, 2023, the Sixth Circuit replaced the long-standing lenient test for facilitating notice under the Fair Labor Standards Act (FLSA) with a more rigorous test akin to the standard used to obtain a preliminary injunction."

[Full Article](#)

Duane Morris LLP

HAWAII

Hawaii Enacts Pay Transparency and Expands Equal Pay Legislation

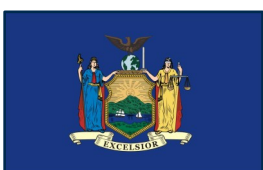


"On July 3, 2023, Hawaii Governor Josh Green signed S.B. 1057 into law, expanding equal pay protections and making Hawaii the latest state to require certain employers to disclose salary information in their job advertisements. The law takes effect on January 1, 2024." [Full Article](#)

Proskauer Rose LLP

NEW YORK

NYC Releases Automated Employment Decision Tools FAQs Addressing Certain Lingering Questions



"The New York City Department of Consumer and Worker Protection ("DCWP") has released its highly anticipated FAQs, providing additional guidance to employers seeking to comply with Local Law 144." [Full Article](#)

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.