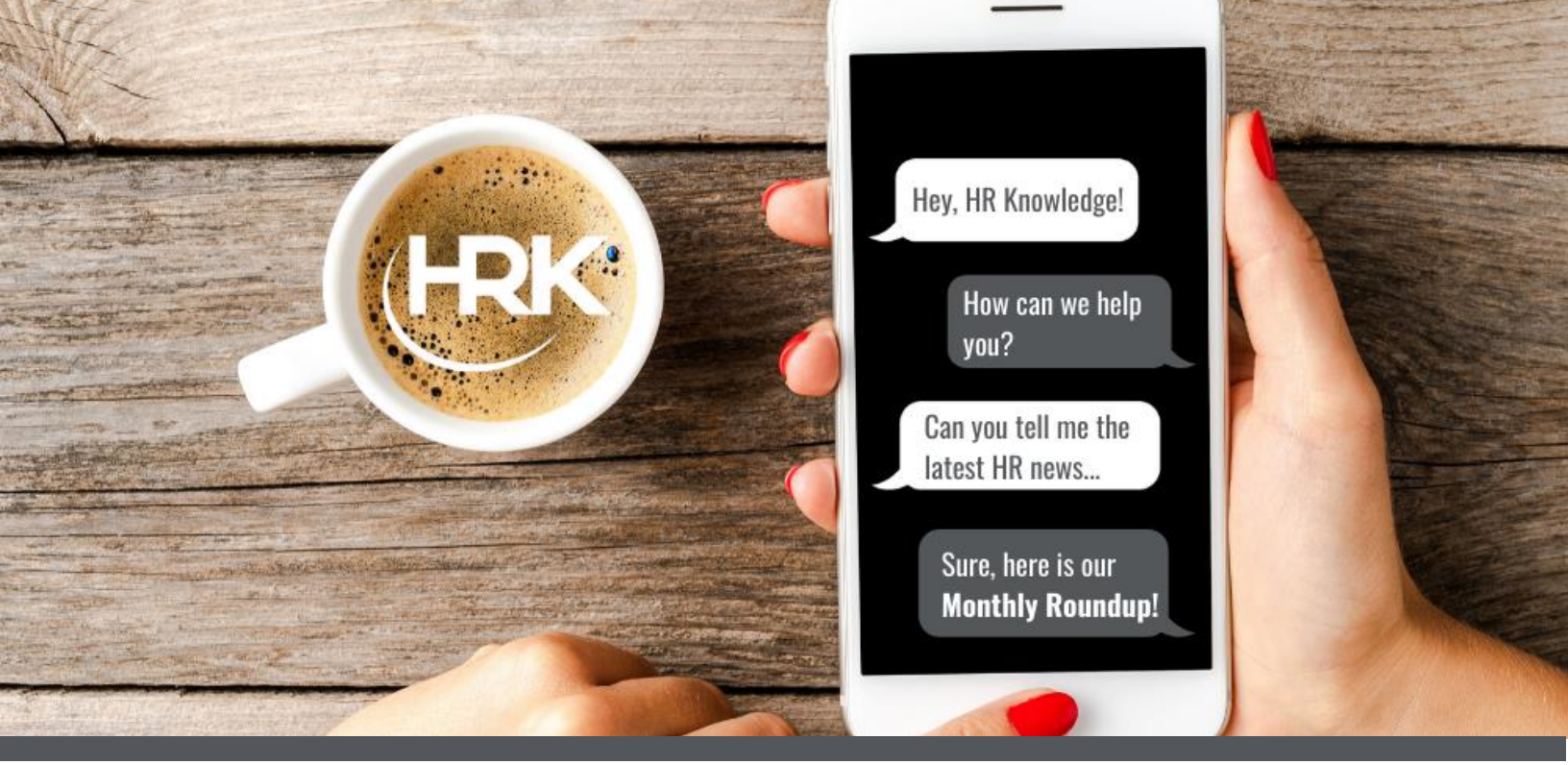

HR, Benefits and Payroll Compliance Monthly Roundup: April 2021

Voluntary Paid Sick and Family Leave

On March 11, 2021, President Joe Biden signed into law the American Rescue Plan Act (ARPA), a $1.9 trillion relief bill containing financial benefits for individuals, businesses, state and local governments, and more. For a full summary of the Families First Coronavirus Response Act (FFCRA) Extensions, see our recent e-Alert: COVID Stimulus Update.

Guidance on American Rescue Plan Act COBRA Subsidy

The U.S. Department of Labor (DOL) issued FAQs and model notices for the COBRA premium assistance provisions of the American Rescue Plan Act (ARPA) on April 7, 2021. The ARPA provides 100% subsidy for employer-sponsored group health insurance continued under COBRA along with similar state continuation of coverage programs for those who are eligible. The subsidy applies from April 1, 2021, through September 30, 2021. The FAQs and model notices can be found on the DOL website, dedicated to providing guidance on the ARPA COBRA Subsidy. For a full summary of the ARPA COBRA Subsidy, see our recent e-Alert: DOL Issues Model Notices and FAQs for ARPA COBRA Subsidy.

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	COVID Relief Bills Offer Dependent Care FSA Flexibility Two recent pieces of pandemic relief legislation intended to provide employees with financial relief from the effects of COVID-19 offer employers additional flexibility to make changes to dependent care flexible spending accounts (FSAs). Employers should decide whether and to what extent they wish to amend their plans to incorporate these changes and communicate the new options to employees quickly to allow them to realize the greatest benefit. For a full summary of the Dependent Care FSA Flexibility, see our recent e-Alert: COVID Relief Bills Offer Dependent Care FSA Flexibility. **IRS Guidance for 2021 Employee Retention Credit** On April 2, 2021, the Internal Revenue Service (IRS) published Notice 2021-23 to provide guidance for employers claiming the employee retention credit (ERC) for the first two quarters of 2021. The ERC was originally created by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), and has since been modified and extended by other laws — most recently, the American Rescue Plan Act (ARPA) on March 11, 2021. For a full summary of the IRS Guidance, see our recent e-Alert: IRS Publishes Guidance for 2021 Employee Retention Credit for Q1 & Q2.
	**New Law Providing Certain Entities with Immunity from COVID-19 Claims** Retroactively effective as of March 13, 2020, Alabama has passed a law providing limited civil immunity for covered entities for damages claimed by individuals that were exposed to COVID-19 and/or contracted COVID-19. A covered entity is identified as: • A business entity • A health care provider • An educational entity • A church • A governmental entity • A cultural institution • Any director, offer, trustee, manager, member, employee, or agent of a covered entity with respect to any act or omission performed while acting on behalf of the covered entity. Additional clarification of liability: • Immunity under the law does not apply if the damages, injury, or death is due to reckless, willful, or intentional misconduct. • A covered entity is not liable for negligence, premises liability, or

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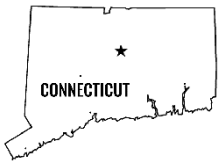
	for any non-wanton, non-willful, or non-intentional civil cause of action to which the new law applies. • A covered entity is not liable for damages from mental anguish or emotional distress or for punitive damages; however, the entity may be liable for economic compensatory damages in a cause of action that does not involve serious physical injury. The new law is set to expire December 31, 2021, or one year after the declared COVID-19 health emergency expires.
	**California Supplemental Paid Sick Leave (CSPL)** California recently passed Senate Bill 95, which requires employers with more than 25 employees to provide COVID-19 supplemental paid sick leave to their employees, in addition to regular paid sick leave offered. **The leave requirement took effect March 29, 2021, but is retroactive to January 1, 2021.** The new leave requirement is **in addition to** other leave provided by the employer. For a full summary of the new supplemental paid sick leave, see our recent e-Alert: California Employers to Provide COVID-19 Supplemental Paid Sick Leave (CSPL) Retroactive to January 1. **Sacramento, California extends Supplemental Paid Sick Leave** Sacramento, California previously enacted a supplemental paid sick leave ordinance. The City Council has now extended the effective period to June 30, 2021.
	**Discrimination Law based on Ethnic Traits** Effective March 4, 2021, Connecticut has made amendments to their employment discrimination law. The Connecticut law prohibits employment discrimination based on race, color, religious creed, age, sex, gender identity or expression, marital status, national origin, ancestry, present or history of mental disability, intellectual disability, learning disability, physical disability, or status as a veteran. The amendment defines the term "race" and "protective hairstyles," Race: Ethnic traits historically associated with race, such as hair texture and protective hairstyles. Protective hairstyles: Wigs, headwraps, and hairstyles such as individual braids, cornrows, locs, twists, Bantu knots, afros, and afro puffs.

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Repeal and Replacement Law on COVID-19 Safety

Effective February 26, 2021, the District of Columbia enacted the Workplace Safety During the COVID-19 Pandemic Emergency Amendment Act of 2021. This Act repeals and replaces The Protecting Businesses and Workers from COVID-19 Temporary Amendment Act of 2020 and The Protecting Businesses and Workers from COVID-19 Congressional Review Emergency Act of 2021.

This new law addresses workplace safety policies, retaliation, workers' compensation, and unemployment benefits.

Workplace Safety Policies

- Requires employers to adopt and implement social distancing and workplace protection policies in accordance with the requirements of all applicable COVID-19 safety orders of the Mayor.
- Enables employers to establish a workplace policy to require an employee to report to the employer a positive test for an active COVID-19 infection. Employers are not able to disclose the name of the employee except to the Department of Health or another District, state, or federal agency response for contact tracing.

The law prohibits retaliation against employee actions that include:

- Complying with the requirements of a Mayor's Order,
- Attempting to prevent or stop a violation of the requirements of the Mayor's order;
- Submitting a complaint to the Mayor or the Attorney General regarding the Act;
- Raising reasonable concerns about workplace health and safety practices to the employer, government agency, or the public; or
- Attempting to secure any other right or protection in the Act or stopping violations of the Act.

The law prohibits retaliation against an employee who:

- Tested positive for COVID-19 (if the employee did not physically report to the workplace within two weeks after receiving a positive test result or during the time frame recommended for quarantine by current CDC guidance);
- Had close contact with someone who has a confirmed case of COVID-19 or was exposed to someone experiencing COVID-19

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symptoms;
- Needs to quarantine in accordance with CDC guidance;
- Is sick with COVID-19 symptoms or awaiting a COVID-19 test result; or
- Is caring for someone who is sick with COVID-19 symptoms or quarantined due to CDC guidance.

Unemployment & Workers' Compensation Eligibility:

- COVID-19 is a compensable illness under workers' compensation coverage.
- An employee that voluntarily quits work due to an unsafe workplace is eligible for unemployment benefits.

Enforcement:
The District's Mayor and Attorney General may choose to conduct investigations, hold hearings, and assess penalties up to $1,000 per employee for an employer's failure to adopt and implement social distancing and workplace protection policies and up to $2,000 per employee for violation of the Act's anti-retaliation provisions.

Extension of COVID-19 Measures and Public Health Emergency Leave
As of March 17, 2021, the District of Columbia has extended the effective dates of B 869 (Coronavirus Support Second Congressional Review Emergency Amendment Act of 2020) and B 757 (Coronavirus Support Emergency Amendment Act of 2020) regarding paid leave and unemployment insurance), until June 15, 2021.

D.C. Bans Noncompete Agreements
Effective March 16, 2021, the District of Columbia has enacted the Ban on Non-Compete Agreements Amendment Act of 2020. This Act will prohibit employers from requiring or requesting that an employee performing work in D.C. to sign an agreement that includes a noncompete provision. For any existing noncompete agreements, the Act does not have a retroactive effect; however, noncompete provisions entered after the Act's applicability date are void and unenforceable.

Noncompete provisions: A written agreement that prohibits an employee from being simultaneously or subsequently employed by another person, performing work, or providing services for pay for another person, or

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	operating the employee's own business. The definition does not include provisions restricting employees from disclosing their employer's confidential, proprietary, or sensitive information, client list, customer list, or trade secrets. Employers cannot have a workplace policy that prohibits an employee from: • Being employed by another person, • Performing work or providing services for pay for another person, or • Operating the employee's own business. Employers are prohibited from retaliating or threatening to retaliate for: • Refusing to agree to a noncompete provision, • Allegedly failing to comply with a noncompete or workplace policy made unlawful by the Act, • Asking, informing, or complaining to an employer, coworker, employee's lawyer or agent, or a governmental entity about the existence, applicability, or validity of a noncompete provision or a workplace policy that the employee reasonably believes is prohibited, or Written Notice Requirements: • Employers must provide employees with the following written notice "No employer operating in the District of Columbia may request or require any employee working in the District of Columbia to agree to a noncompete policy or agreement, in accordance with the Ban on Non-Compete Agreements Amendment Act of 2020." • Employers must provide this notice to existing employees within 90 days after the Act's applicability date, to newly hired employees within seven days of their start date, and to an employee within 14 days after receiving the employee's request for the written statement. Please keep in mind that the Act took effect on March 16, 2021, and many of the legal obligations it established also became effective on that date. The Act states that its **applicability date** does not occur until the fiscal effect of the Act is included in an approved budget and financial plan, which is not at least for several more months. The following

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	provisions in the law are not tied to the applicability date, and it is therefore safest to assume that they took effect on March 16, 2021: • The ban on anti-moonlighting policies; • The anti-retaliation provision; • The requirement to provide written notice to newly hired employees and any employee who requests such notice; and • The private right of action.
	**Immunity from Certain COVID-19 Liabilities** Effective March 29, 2021, Florida passed a new law regarding immunity from COVID-19 liability claims. • If an individual files a COVID-19-related civil suit, the individual must also file a physician's affidavit stating that the physician believes the plaintiff's COVID-19-related damages, injury, or death, occurred because of the defendant's actions or omissions. • The defendant will be immune from civil liability if the court determines the defendant made a good faith effort to comply with government-issued COVID-19 health and safety standards. • Even if the court determines the defendant did not make a good faith effort to comply, the defendant will not be held liable unless the plaintiff can truly prove gross negligence. • COVID-19-related claim: a civil claim against a person, business entity, educational, or religious institution, or governmental entity that arises from or is related to COVID-19. In COVID-19-related claims against health care providers, this law requires the plaintiff to show that the provider was grossly negligent or engaged in intentional misconduct. The law establishes several affirmative defenses for a health care provider: • Substantial compliance with government-issued health standards related to COVID-19 or other infectious diseases; • Substantial compliance with government-issued health standards was impossible due to shortages of supplies and personnel or lack of time; and • Substantial compliance with any applicable government-issued health standards when standards were in conflict. COVID-19-related claim against a health care provider: • Diagnosis or treatment of COVID-19, including novel or experimental treatment;

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	• Transmission of COVID-19; • Delay or cancellation of a surgery, medical procedure, test, or appointment based on the health care provider's interpretation of government-issued health standards; • Act or omission related to an emergency medical condition resulting in lack of resources caused by the COVID-19 pandemic; and • Treatment of a person with COVID-19 whose injuries were related to an exacerbated preexisting condition due to COVID-19.
	**Restrictions in Criminal History** Illinois has amended their Human Rights Act to prohibit discrimination based on prior conviction records and to expand the criminal background check procedures. The law prohibits employers from using conviction records as a basis to refuse to hire or impact employment decisions including recruitment; hiring; promotion; renewal of employment; selection for training or apprenticeships; discharge; discipline; tenure; or terms, privileges, or condition of employment unless: • There is a substantial relationship between one or more of the previous criminal offenses and the employment sought or held, or • The granting or continuation of the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the public. Conviction Record: Information indicating that a person has been convicted of a felony, misdemeanor, or other criminal offense; placed on probation; fined; imprisoned; or paroled pursuant to any law enforcement or military authority. Substantial Relationship: Consideration of whether the employment position offers the opportunity for the same or a similar offense to occur and whether the circumstances leading to the conduct for which the person was convicted will recur in the employment position. If any employer makes a preliminary decision that the individual's conviction record disqualifies the individual, the employer must notify the individual of this decision in writing. The notification must include the following: • Notice of the disqualifying conviction or convictions that are the basis for the preliminary decision and the employer's reasoning for

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	the disqualification, • A copy of the conviction history report (if any), • An explanation of the employee's right to respond to the notice of the employer's preliminary decision before that decision becomes final. The explanation must inform the employee that the response may include, but is not limited to, submission of evidence challenging the accuracy of the conviction record that is the basis for the disqualification, or evidence in mitigation, such as rehabilitation. The individual has at least five business days to respond/provide evidence to this notice before the employer can make their final decision. **Guidance on Employee Time Off for COVID-19 Vaccination** The Illinois Department of Labor has issued guidance regarding employee leave for the COVID-19 vaccination. Mandatory vaccination: • The time employees take for vaccination is likely compensable under the Illinois Minimum Wage Law and the Federal Labor Standards Act, even if the time is nonwork time. • Employers should combine mandatory vaccination with paid leave or other compensation. Optional vaccination: • Employees should be allowed to use sick leave, vacation time, or other paid time off for voluntary vaccination. • Employers are not required to offer paid time off; however, they should be considering offering employees flex time so they can be vaccinated without having to take unpaid time. Another alternative is offering the flexibility of taking unpaid time off for the vaccination. Vaccination of family members: • Based on the Illinois Employee Sick Leave Act (ESLA), COVID-19 vaccine appointments are permissible medical appointments in which the sick leave is allowed for certain family medical purposes on the same terms as the employee's own illness or injury.

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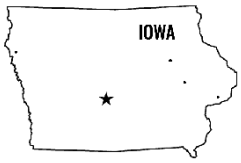	**Expansions to Military Leave** Effective July 1, 2021, Iowa enacted a law to provide employment protections to members of the United States Coast Guard. Employers must allow employees a leave of absence for periods of status active duty, national guard duty, federal active duty, or civil air patrol duty. Employers cannot discriminate against an employee for their membership in those services. Once the duty or service is completed, the employer must restore the employee to the position held prior to the leave of absence or in a position of like seniority, status, and pay. The employee must provide evidence of satisfactorily completing the duty/service and demonstrate that they remain qualified to perform the duties of the position they are returning to. The law also provides that an employer's unemployment compensation administration fund should not be charged with benefits paid to a permanent employee who is a member of the national guard, organized reserves of the armed forces of the United States, or the civil air patrol who has completed an active-duty period and provided sufficient proof of completion. The employer's account will also not be charged for benefits paid to a member of the Coast Guard who meets the same criteria. Lastly, dependent insurance protections for full-time students under 25 have been expanded to include Coast Guards.
	**Amendments to Adoption Leave** Effective June 30, 2021, Kentucky has passed a law requiring employers to provide the same leave and benefits to adoptive parents as provided to birth parents. Currently, when employers receive a written adoption leave request from an employee, the employer must grant reasonable personal leave, not to exceed six weeks. The updated regulations clarify that if an employer has an established policy providing time off for birth parents that is greater than six weeks, then that period of leave time must be the minimum period of leave likewise available to adoptive parents. If an employer provides paid leave, those same benefits must be provided to adoptive parents following the adoption of a child. The law has been amended to allow employees to utilize leave for the adoption of a child under the age of 10, rather than under the age of seven.

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Whistleblower Protections

Effective March 25, 2021, Montana enacted the Whistleblower Award and Protection Act. The new law provides monetary awards to whistleblowers who voluntarily provide original information that leads to successful enforcement of an administrative or judicial action under applicable security regulations.

Under the new law, employers are prohibited from taking any adverse action or retaliating against an employee. The new law provides that an employee is not protected if:

- The individual knowingly makes a false, fictitious, or fraudulent statement or misrepresentation;
- The individual uses a false writing or document knowing that the writing or document contains false, fictitious, or fraudulent information; or
- The individual knows that the disclosure is of original information that is false, fictitious, or fraudulent.

Individuals that allege any act of retaliation may bring a civil action. The action must be filed within three years after the date on which the violation occurred or three years after the date when the facts material to the right of action are known or reasonably should have been known by the employee, but not more than six years after the date on which the violation occurred.

Paid Leave in 2022

Effective July 1, 2022, New Mexico employers will be required to provide employees with Paid Leave. The requirement of the new law is included in the state's new Healthy Workplaces Act which was passed on April 8, 2021.

Eligible employers:

- All private employers
- Government employers are the only exception to this law.

Eligible employees:

- All employees are eligible, including part-time, seasonal, and temporary employees.

Paid Leave:

- Employees accrue one hour of paid leave for every 30 hours worked.
- Employers may choose to frontload 64 hours of paid leave on

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	January 1 of each year. • Leave will begin accruing on July 1, 2022, when the law becomes effective. • Leave will carry over year to year; however, employees will be capped at 64 hours of usage annually. • Employers with equivalent benefits are not required to provide additional leave. Employers are required to notify their employees of the new law at the start of their employment and in a compliance poster displayed in the workplace.
	**Paid Leave for COVID-19 Vaccinations** New York has passed a law requiring employers to provide employees with paid leave to receive a COVID-19 vaccine. The law took effect immediately on passage on March 12, 2021, and expires December 31, 2022. Employees are entitled to four hours per injection. For a full summary of NY Paid Leave, see our recent e-Alert: NY Employers Must Provide Paid Leave for COVID-19 Vaccination. **Recreational Marijuana Use Passed** Effective March 31, 2021, New York enacted the New York Marijuana Regulation and Taxation Act, which legalizes the recreational use of marijuana. This act prohibits employers from discriminating against workers based on the legal use or possession of marijuana products while off duty and outside the workplace. The Act allows employers to continue fundamental drug-free workplace rules: • Employers may still prohibit marijuana use or possession during work hours, on employer premises, and while using an employer's equipment or other property. • Employers may continue to take adverse action against employees who engage in off-duty marijuana use if: o so required by state/federal law, regulation, ordinance, or other state/federal governmental mandate; or o complying with the Act would require an employer to violate federal law or would result in the loss of a federal contract or federal funding.

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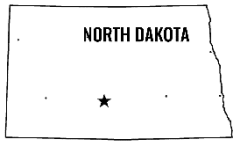
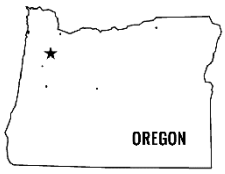
	• An employer may prohibit and take adverse action against marijuana users under the Act based on an employee's workplace "impairment." • The Act does not excuse an individual from driving while impaired by marijuana under New York marijuana DUI/impairment laws. Employers cannot reject an applicant or take adverse action solely on an employee's away-from-work marijuana use or by testing positive for marijuana on a work-related drug test.
	**Local Paid Family Leave** Effective August 1, 2021, North Dakota passed a new law to prevent political subdivisions from adopting or enforcing an ordinance that mandates employers to provide paid family leave that exceeds the requirements of federal or state laws and rules. Under this law an employer is a person who does business in the state of North Dakota, excluding public employers. Paid Family Leave: Employment benefit that allows an employee to take time off work to care for an ill family member or to bond with a new child entering the family.
	**Amendments to Family Leave Act** Effective March 18, 2021, Oregon permanently amended the rules implementing the Oregon Family Leave Act (OFLA). The Act provides eligible employees up to 12 weeks of leave within any one-year period for qualifying reasons. Employees may use leave to care for their child whose school or place of care has been closed due to the statewide public health emergency. The final rules define several terms involved in childcare provision: • A **childcare provider** is defined as a place of care or person who cares for a child; this includes individuals paid to provide childcare such as a nanny, au pair, babysitter, or individual who provides childcare at no cost or without a license, such as a grandparent. • A **place of care** is defined as a physical location where childcare is provided such as day care facility, preschool, before or after school care program, school, home, summer camp, summer enrichment program, and respite care program. • **Closure** is defined as that which is ongoing, intermittent, or

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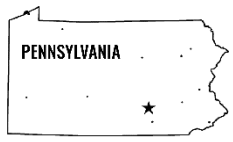
	reoccurring, that restricts access to the child's school or childcare provided. Employers may request verification for an employee's need for leave. However, employers may not request medical verification for leave in connection with a school or childcare provider closing. Employers may ask for verification of the leave by means of requesting: • The child's name; • The closed school or childcare provider's name; • An employee statement that no other family is willing and able to provide childcare; or • A statement that special circumstances exist that require the employee to provide care during daylight hours, if the child is older than 14.
	**Predictability Pay Provisions of Fair Workweek Ordinance** On April 1, 2020, the Philadelphia Fair Workweek Employment Standards Ordinance took effect. Shortly before the Ordinance went into effect, the City's Office of Benefits and Wage Compliance communicated it would delay the implementation of the predictability pay provisions, though covered retail, hospitality, and food services establishments were still expected to comply with the other portions of the Ordinance. The City has confirmed the predictability pay provisions will take effect on June 1, 2021. **COVID-19 Employee Leave** A new Philadelphia Public Health Emergency Leave (PHEL) law mandates up to 80 hours of paid employee leave for specific COVID-19-related reasons. Leave became available under the law on March 29, 2021, and employers are required to notify employees about the law by April 13, 2021. A model notice provided by the city compares the current PHEL law with a similar law that expired in December 2020. The PHEL law remains in effect until one week after the end of the public health emergency. For a full summary on PHEL, see our recent e-Alert: Philadelphia Requires COVID-19-related Employee Leave.
	**Fair Scheduling Ordinance Passed** Effective December 7, 2020, Euless, Texas passed a fair scheduling ordinance. The ordinance requires written work schedules, premium pay for certain shifts, pay for reduced work hours, and notices for covered employees. Covered Employers: Those with 200 or more employees, excluding

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	hospitals and medical facilities. Covered Employees: Those that work within the city and are covered by the overtime premium pay provisions of state or federal law. Advance Notice of Work Schedule – Employer Requirements: • Must post written notice of the work schedule at least 10 days before the first day of a new schedule. • Must include all the employee's regular shifts during a work week (including specific start and end times for each shift). • Must include employees' shifts at the worksite and state whether they are scheduled to work that week. • The schedule can be posted electronically, only if all employees have access to it in the workplace. Declining Shifts: • Employees may decline to work hours or shifts that are not included in their original work schedule. • If an employee agrees to work, they must provide written consent on each day of the additional shift(s). Emergency Shifts: • Based on the new ordinance, in the case of an emergency, an employer can require an employee to work additional hours or shifts that are not included in the original work schedule. For these emergency hours or shifts, an employee must be paid three times their regular hourly rate. • The new ordinance defines an emergency as a fire, flood, natural disaster, severe weather that threatens the employee or public safety, threats to an employer or the employer's property, a state of emergency declared by the government, or a significant disruption or risk or significant disruption to passenger air travel. Reduction in Hours: • If an employer reduces an employee's hours from the hours stated in the posted work schedule, the employer must pay the employee for one half of the total hours reduced at the employee's regular hourly rate. In the case of reduction in hours due to emergencies, the employer will not need to pay the employee a premium rate. Employers are required to keep a log for any employees that work additional shifts or hours due to emergencies. This log should include the

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following:

- The name of each affected employee;
- The additional hours or shifts worked;
- The rate of pay actually paid to the affected employee; and
- The specific reason for the emergency.

Employers are required to keep similar logs when they have reduced an employee's hours from what was originally stated in their posted work schedule. The log should include the following:

- The name of each affected employee;
- The hours reduced;
- The reason for the reduction in hours (i.e., whether the reason was due to an emergency); and
- The amount actually paid (if any) for that reduction.

The record retention of these logs is one year, and the logs should be readily available for inspection by any employee.
When the employer requires employees to work additional shifts or hours due to emergencies, the employer must also file a report with the city by the end of the following month. This report should include:

- The dates and hours of the additional shifts required;
- The number of employees affected;
- The specific reason for each emergency; and
- The total emergency overtime hours that were required (for the total month).

Employers may not take any form of retaliation against an employee under this new ordinance.

Federal Court Strikes Down Dallas Paid Sick Leave Ordinance
The US District Court for the Eastern District of Texas has enjoined the controversial Dallas ordinance requiring employers to provide paid sick leave benefits to certain employees. Dallas was the third city in Texas to enact a paid sick leave ordinance, following similar ordinances in Austin and San Antonio. The federal court's discretion is that the city of Dallas has exceeded its authority with requiring the ordinance, as the ordinance violates the Texas Minimum Wage Act, and is therefore unconstitutional.
The court concluded that the plaintiff (employers) would have suffered irreparable harm had the ordinance remained in effect because they would have been forced to bear certain costs associated with

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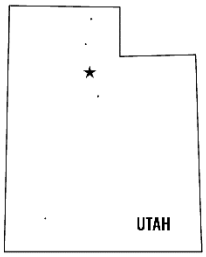
	compliance. The court concluded that it is in the public's best interest to uphold the structure of the government under the Texas Constitution, preventing local governments from issuing regulations that raise the minimum wage requirements. This is the first case in Texas to reach a final decision, but may impact other jurisdictions. Overall, attempts to create mandatory paid sick leave benefits within the private sector in Texas are deemed to be turned down immediately. Employers should continue to monitor the lawsuits challenging the ordinances in Austin and San Antonio in case unexpected developments allow those ordinances to take effect.
	**Termination of Certain COVID-19 Public Health Orders** Effective March 24, 2021, Utah enacted a law that terminates certain emergency powers and public health orders related to COVID-19 due to reaching thresholds of positivity rates, case rates, intensive care facility capacities, and vaccine doses. Any public health order related to the COVID-19 emergency declared by the Department of Health (DOH) or local health departments is terminated when the following thresholds are met: • The state's 14-day case rate is less than 191 per 100,000 people; • The statewide seven-day average COVID-19 ICU utilization is less than 15%; and • The DOH provides notice that 1,633,000 prime doses of the COVID-19 vaccine have been allocated to the state. Terminated Health Orders: • Any DOH health orders regarding safety measures for K-12 schools may remain in place, but must be terminated no later than July 1, 2021. • Statewide mask requirement must be terminated on April 10, 2021. However, the order may remain in effect if this pertains to a gathering of 50 or more people and an individual at the gathering is unable to physically distance at least six feet from another individual who is not a member of the individual's party. **Affirmative Defense to Data Security Breach Claims** Effective May 4, 2021, Utah law requires a covered entity to investigate when there is a breach of the entity's data security system. If an investigation determines that personal information will likely/may have

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	been misused, then the entity must comply with the state's data security breach notification requirements. This new law creates the Cybersecurity Affirmative Defense Act. Based on the new law, a business that creates, maintains, and reasonably complies with a written cybersecurity program that meets specified requirements (that is in place at the time of a breach) has an affirmative defense to claim that the business failed to implement reasonable information security controls, resulting in a breach. A business has an affirmation defense to a claim that the business failed to appropriately respond to a breach or notify an individual whose personal information was compromised if: • The entity creates, maintains, and reasonably complies with a written cybersecurity program that meets the requirements of this law and is in place at the time of the breach, and • The written cybersecurity program had protocols at the time of the breach for responding to a breach that reasonably complied with the written cybersecurity program. Parameters for a written cybersecurity program: • Coordinates a program that provides administrative, technical, and physical safeguards; • Has practices and procedures to detect, prevent, and respond to a breach of system security; • Trains and manages employees in the practices and procedures, • Conducts risks assessments to test and monitor the practice and procedures including risk assessments on the network and software design; information processing, transmission, and storage of personal information; and the storage and disposal of personal information; and • Adjusts the practices and procedures considering changes or new circumstances needed to protect the security, confidentiality, and integrity of personal information. Compliant cybersecurity program safeguards: • Designed to protect the security, confidentiality, and integrity of personal information; protect against any anticipated threat or hazard to the security, confidentiality, or integrity of personal information; and protect against a breach of system security; • Reasonably conforming to a recognized cybersecurity framework;

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	and • Being of appropriate scale and scope considering the size and complexity of the entity, the nature and scope of the activities of the entity, the sensitivity of the information to be protected, the cost and availability of tools to improve information security and reduce vulnerability, and the resources available to the entity. Keep in mind that the affirmative defense is not available to a business if the business had actual notice of a threat or hazard to the security, confidentiality, or integrity of personal information, and the entity did not act in a reasonable amount of time to protect the personal information against the threat/breach. **Garnishment for State Tax Liability** Effective July 1, 2021, Utah has passed legislation to authorize garnishment orders for state tax liability. The law provides a maximum amount subject to garnishment, as well as the process for an administrative garnishment order with which employers must comply. The maximum portion of a taxpayer's disposable earnings subject to garnishment is the lesser of: • 25% of the taxpayer's disposable earnings, or • The amount by which the taxpayer's disposable earnings of a pay period exceeds the number of weeks in that pay period, multiplied by 30 times the federal minimum wage. Employer Responsibilities: Within seven days after the day on which an administrative garnishment order is served on an employer, the employer must: • Answer each interrogatory; • Serve the answers to the interrogatories on the Commission; • Serve the taxpayer and any other person know to the employer to have an interest in the property a copy of the administrative garnishment order and the answers to the interrogatories; and • Inform the taxpayer of their right to reply to the answers. Employers who act in accordance with the administrative garnishment order are released from liability. If employers fail to comply with the administrative garnishment order without a court or final administrative order directing otherwise, they are liable for an amount including:

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	• The lesser of the value of the property or the balance owed under the warrant; • Reasonable costs and fees; and • Attorney fees incurred by the parties because of the employer's failure.
	**New Overtime Wage Rules** Effective July 1, 2021, Virginia has adopted the Virginia Overtime Wage Act. This Act will require employers to compensate their nonexempt employees for overtime work at a rate of 1½ the employees' regular wage rate. The Act follows a new formula to calculate an employee's regular wage rate. The regular wage rate is the sum of all remuneration paid for employment (less certain statutory exclusions) divided by the total number of hours worked during the workweek. The regular wage rate formula will depend on whether the employee is salaried or hourly. Hourly employees' formula: • Add all wages earned at the hourly rate and any other non-overtime wages paid or allocated for the worksheet. Divide the sum by the total number of hours worked in the workweek. Salaried employees' formula: • The regular rate of pay is one-fortieth (0.025) of all wages paid for the workweek. Workweek is defined as a fixed and regularly occurring period of 168 hours or seven consecutive 24-hour periods. It need not coincide with the calendar week and may begin on any day and at any hour. Additional changes under the Act: • Employees will be able to file claims for unpaid overtime wages for up to three years after the event takes place. • The good faith defense for employers that fail to pay overtime wages is removed. Penalties and Damages • Employers that knowingly fail to pay overtime as required are subject to a civil penalty not to exceed $1,000 for each violation. • Employers that willfully and with intent to defraud or refuse to pay

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	overtime commit a Class 1 misdemeanor if the value of wages is less than $10,000 and commit a Class 6 felony if the value exceeds $10,000. • An employer commits a Class 6 felony, regardless of the amount owed if convicted of a second or subsequent wage payment violation. • Any employer that fails to pay overtime is liable for the payment of all wages due, and an additional equal amount as liquidated damages, plus interest at an annual rate of eight percent accruing from the date the wages were due. **Paid Sick Leave for Home Health Workers** Effective July 1, 2021, Virginia has passed a new law requiring employers of home health workers to provide paid sick leave for the needs of the workers or their family members. Covered employees: • "Home health worker" – an individual who provides personal care, respite, or companion services to an individual who receives consumer-directed services under the state plan for medical assistance services. • Home health workers who work on average at least 20 hours per week or 90 hours per month. Not Covered: • Licensed, registered, or certified by a health regulatory board within the Department of Health Professions. • Employed by a hospital licensed by the Department of Health. • And those that work on average, no more than 30 hours per month. Paid Sick Leave: • Workers will be accrued one hour of leave for every 30 hours worked. • Accrual begins at the start of employment. • Carry-over and frontloading apply per client discretion, however accrual and use of paid sick leave may be capped at 40 hours per year. • Leave must be provided on employee's request however the employee must try to provide notice as soon as reasonable possible.

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- Employers with equivalent benefits are not required to provide additional leave.

Covered uses:

- Mental or physical illness, injury, or health condition of an employee or family member;
- Need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition of an employee or family member; and
- Preventive medical care for an employee or family member.

Amendments to Wage Garnishments

Effective July 1, 2021, Virginia has amended their wage garnishment law. The law provides a limit to the amount of an employee's wages that can be garnished. Under the new law, the amount of an employee's wages that can be garnished must not exceed the lesser of:

- 25% of the employee's disposable weekly earnings, or
- The amount by which the employee's disposable weekly earnings exceed 40 times the federal minimum wage or Virginia's minimum wage, whichever is greater.

Please keep in mind that Virginia's minimum wage is set to increase every January until it reaches $15.00 per hour as of January 1, 2026. Currently, the minimum wage is $7.25 per hour and will increase on May 1, 2021, to $9.50 per hour.

Disability Discrimination

Effective July 1, 2021, the Virginia Human Rights Act (VHRA) prohibits employers from discriminating against an individual based on race, color religion, sex, sexual orientation, gender identity, marital status, pregnancy, childbirth, or related medical conditions including lactation, age, veteran status, or national original. This amendment now includes individuals with disabilities as a protected class.

The updated law makes it unlawful discriminatory practice for an employer to refuse to provide reasonable accommodation for the known physical and mental impairments of an otherwise qualified person with a disability, if necessary, to assist the person in performing a particular job. "Otherwise, qualified person with a disability": A person qualified to perform essential functions of a job with or without reasonable

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	accommodations. An employer is not required to provide accommodations that would result in an undue hardship. Undue hardship would be one of the following factors: • Hardship on the conduct of the employer's business, considering the nature of the employer's operation, including composition and structure of the employer's workforce; • Size of the facility where employment occurs; • The nature and cost of the accommodations needed; • The possibility that the same accommodations may be used by other prospective employees; and • Safety and health considerations of the person with a disability, other employees, and the public. Impacted Employers: • Generally, the law applies to employers with 15 or more employees; for purposes of unlawful discharge based on a protected category, covered employers are those with more than five employees. • Reasonable accommodations for individuals apply to employers with more than five employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year. Employer Next Steps: • Employers are required to post a notice informing employees of their rights to reasonable accommodation for disabilities in a conspicuous location. • This information should also be included in any employer handbook. • Employers must directly provide notice to new employees upon start of their employment and any employee within 10 days of the employee's providing notice to the employer that the employee has a disability. **Discrimination based on Military/Veteran Status** Effective July 1, 2021, Virginia has updated their employment discrimination laws regarding a person's military status. Previously, under the Virginia Human Rights Act (HRA), an employer was prohibited from discriminating against an individual because of their status as a veteran. The updated employment law replaces veteran status with military status.

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Military Status: Status as a member of the uniformed forces of the United States or the armed forces reserves, a veteran, or a dependent.

Dependent: Service member's spouse, child, or an individual for whom the service member provided more than one-half of their support for 180 days immediately before an application for relief under federal law. Under the amended law, the support provided by the service member to the dependent must have been provided within 180 days immediately before any alleged unlawful discrimination.

Employee Use of Cannabis Oil

Effective July 1, 2021, Virginia has passed amendments for the use of cannabis oil for the treatment of various medical conditions. Employers may not discharge, discipline, or discriminate against an employee for the employee's lawful use of cannabis oil pursuant to a valid written certification issued by a doctor for treatment or to eliminate symptoms of the employee's diagnosed condition or disease.

This amendment does create protections for employers; however, it does not:

- Restrict an employer's ability to take any adverse employment action for any work impairment caused using cannabis oil;
- Restrict an employer's ability to prohibit possession of cannabis oil during work hours;
- Require an employer to commit any act that would cause the employer to be in violation of federal law or that would result in the loss of a federal contract or federal funding; or
- Require any defense industrial base sector employer or prospective employer to hire or retain any applicant or employee who tests positive for THC more than 50 ml for a urine test or 10 mg for a hair test.

Consumer Data Protection Act

Effective January 1, 2023, Virginia passed the Consumer Data Protection Act to provide consumers certain controls over their personal data.

The new law defines personal data to mean any information linked or linkable to an identifiable natural person. It permits a consumer to exercise the following rights:

- To confirm whether a controller is processing the consumer's personal data;

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	• To access personal data; • To correct inaccuracies in personal data; • To delete personal data; • To obtain a copy of the personal data that the consumer provided to the controller in a portable and readily usable format; and • To opt out of personal data processing for targeted advertising, sale, or profiling. A consumer is a person who is a resident of Virginia acting only in an individual or household context. It does not include a natural person acting in a commercial or employment context. The law will apply to a person that conducts business in the state, or provides products or services targeted to the residents of the state that control or process the personal data of at least 100,000 consumers, or control or process the personal data of at least 25,000 consumers while deriving over 50% of their gross revenue from the sale of personal data. Controller: Person that determines the purpose and means of processing personal data. Processer: Entity that processes personal data on behalf of the controller.
	**COVID-19 Jobs Protection Act** Retroactively effective as of January 1, 2020, West Virginia passed the COVID-19 Jobs Protection Act. The purpose of the Act is to eliminate liability and to "preclude all suits and claims against any persons for loss, damages, personal injury, or death arising from COVID-19" and to "provide assurances to businesses that reopening will not expose them to liability for a person's exposure to COVID-19." The new law has cited article 19 to West Virginia Code chapter 55, stating there is "no claim against any person, essential business, business, entity, health care facility, health care provider, first responder, or volunteer for loss, damage, physical injury, or death arising from COVID-19, COVID-19 care, or impacted care." The law protects those who design, manufacture, label, sell, distribute, or donate defined products in response to COVID-19, and those who repurposed businesses to provide household disinfectants, cleaning supplies, and personal protective equipment in response to COVID-19. The Act will not provide protection to any person who had knowledge of

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	a defect in a product and "acted with conscious, reckless, and outrageous indifference to a substantial and unnecessary risk that the product would cause serious injury to others; or acted with actual malice." Workers' compensation benefits will be deemed the sole and exclusive remedy for those whose work-related injury, disease, or death was caused by COVID-19 during and resulting from covered employment.
	**New Law Providing Immunity from Certain COVID-19 Liability** Effective February 27, 2021, Wisconsin enacted a law to provide civil immunity in relation to claims for exposure to COVID-19. Employers will not become immune from civil liability for death or injury to any individual or from damages caused by an act or omission resulting in or relating to exposure to COVID-19. This immunity is not available if the employer's act or omission involves reckless or wanton conduct or intentional misconduct.

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