HR, Benefits and Payroll Compliance Monthly Roundup: June 2021

EEOC Updates Guidance on Employer Policies and COVID-19 Vaccines

On May 28, 2021, the Equal Employment Opportunity Commission (EEOC) updated the guidance for employers requiring COVID-19 vaccinations for employees to return to the workplace. To read our full summary, see our e-Alert: EEOC Updates Guidance on Employer Policies and COVID-19 Vaccines.

List of City "Right to Recall" Laws

The following California cities have adopted Right to Recall Laws:

- Carlsbad
- County of Los Angeles
- Glendale
- Long Beach
- Los Angeles City

- Monterey County
- Oakland
- Pasadena
- San Diego
- San Francisco
- Santa Clara
- Santa Monica

Cities in other states have adopted similar ordinances:

- Baltimore
- Minneapolis
- New Haven
- New York City
- Philadelphia
- Washington, D.C.

One state has also adopted a Right to Recall law:

- California

Federal Executive Order Increases Minimum Wage and Phases Out Tip Credit for Federal Contractors

Under the executive order, federal contractors will be required to pay workers a minimum wage of $15 per hour beginning January 30, 2022.

Tipped Employees:

- Effective January 30, 2022 – tipped workers must be paid a minimum case wage of $10.50 per hour.
- Effective January 1, 2023 – the minimum wage will increase to 85% of the minimum wage then in effect for hourly workers of federal contractors.
- January 1, 2024 – federal contractors will be required to pay tipped employees the same — 100% of the minimum wage in effect for federal contractors — as all other hourly workers.

When a tipped employee does not receive sufficient tips to equal the standard minimum wage, the employer must make up the difference. Up until January 1, 2024, the FLSA's rules regarding tip pools will continue to apply. Starting in 2024, contractors can no longer claim a tip credit and must pay tipped employees the full minimum wage in direct wages, and

	contractors will have the ability to implement mandatory, "nontraditional" tip pools, which may include all nonmanagerial employees such as cooks and dishwashers. Once the tip credit is phased out for federal contractors, this shift would allow the overall compensation of nonservice, back-of-the-house workers to be subsidized by the tips received by front-of-the-house workers.
	**Alabama Prohibits Businesses from Refusing Service Based Upon Immunization Status and Prohibits Vaccine Passports** Effective May 24, 2021, Alabama has enacted a new law that prohibits entities or businesses from refusing goods, services, or admission to a customer based on the customer's immunization status, such as for COVID-19, or lack of immunization documentation. Prohibitions of the new law: • Prohibits a state or local government entity from issuing vaccine or immunization passports, vaccine or immunization passes, or any other standardized documentation for the purpose of certifying the immunization status of an individual, or otherwise requiring the publication or sharing of immunization records or similar health information for an individual. • Prohibits a state or local government from requiring that an individual receive an immunization or present documentation of an immunization as a condition for receiving any government service or for entry into a government building. Higher education institutions may continue to require a student to provide vaccination status as a condition of attendance, only for the specific vaccines that were already required by the institution as of January 1, 2021, unless there is an exemption for students with a medical condition or religious belief that is preventing them from receiving the vaccine. **Alabama Establishes New Test for Independent Contractor Classification** Alabama has passed a new law, effective July 1, 2021, establishing the test for determining whether a worker is an employee or an independent contractor — for purposes of the state fair employment practices law, income taxation, and unemployment insurance. This law does not apply to the state's workers' compensation laws. The affected state laws apply the following worker classification tests: • Unemployment insurance law: the common law "right to control" test incorporating the Internal Revenue Service's 20 Factor Test; • Fair employment practices law: no worker classification test specified; and

	• Income tax law: Internal Revenue Service's 20 Factor Test.
	**Alaska Provides Immunity from Liability Related to COVID-19** Alaska enacted a new law regarding immunity from civil liability for businesses and employees for damages from COVID-19 while operating within the health guidelines. The new law creates a presumption that COVID-19 contracted by health care providers is work-related for purposes of workers' compensation benefits. Immunity from Civil Liability: • A person who engages in business and an employee of that person working in the business are immune from civil liability for sickness, death, economic loss, and other damages suffered by a customer from exposure to COVID-19 while patronizing the business. • To qualify for immunity, the person engaging in business must have been operating the business in substantial compliance with the applicable federal, state, and municipal laws and health mandates in effect at the time of the customer's exposure to COVID-19. • This immunity does not apply to exposure to COVID-19 resulting from gross negligence, recklessness, or intentional misconduct. The law provides that an employee who contracts COVID-19 is presumed to have contracted an occupational disease arising out of or in the course of employment if, during the public health disaster emergency, the employee: • Is employed as a firefighter, emergency medical technician, paramedic, peace officer, or health care provider; • Had work-related, in-person contact with a member of the public outside of the employee's home within 14 days before receiving a diagnosis of or positive laboratory test for COVID-19; and • Receives a COVID-19 diagnosis by a physician, presumptive positive COVID-19 test result, or laboratory-confirmed COVID-19 diagnosis.

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<td>Tucson, Arizona Amends Antidiscrimination Law
Effective April 20, 2021, Tucson, Arizona has amended their antidiscrimination ordinance to clarify that “Race” includes hair texture, hair type, and protective hairstyles.

Scottsdale, Arizona Passes Antidiscrimination Ordinance
Effective May 20, 2021, Scottsdale, Arizona has passed an ordinance that prohibits discrimination in employment based upon actual or perceived race, color, religion, sex, age, disability, national origin, sexual orientation, or gender identity.

The law applies to employers with one or more employees in the City of Scottsdale, who have been working within 20 or more calendar weeks in the current or preceding calendar year.</td>
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<td>LA County Requires Paid Employee Leave for COVID-19 Vaccine
Los Angeles County passed the urgency ordinance requiring all private employers to provide paid leave for COVID-19 vaccination for employees in unincorporated parts of the county. This ordinance is retroactively effective, back to January 1, 2021.

Covered Employers:
• All employers who directly or indirectly employ or exercise control over the wages, hours, or working conditions of any employee are covered by the law.
• Employers who hire workers through a temporary service or staffing agency are explicitly covered by the law.
• Federal, state, and local government agencies are exempt from the law.

Covered Employees:
• Anyone who performs work for an employer in unincorporated areas of LA County is considered an employee and covered by the law.

Coordination with other Leaves:
• Workers entitled to COVID-19 supplemental paid sick leave under California law must first exhaust that leave before taking the new vacation leave.
• Vaccine leave must be provided in addition to paid sick leave.</td>
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	Leave Entitlements: • Full-time employees are allowed up to four hours of paid leave per injection. • Part-time employees receive a prorated amount of leave based on their work hours during the two weeks before the injection. • The leave includes travel time to and from vaccine appointments and time to recover from any vaccine-related symptoms that prevent the employee from being able to work or telework. Employers may require written verification of the vaccination. The leave requirement will expire August 31, 2021. **Sonoma County, California Extends and Retroactively Expands Emergency Paid Sick Leave** Sonoma County enacted an urgency ordinance that extends and amends their emergency paid sick leave (EPSL) ordinance, which is retroactively effective to January 1, 2021. New "End" Date: • The ordinance was set to expire on July 1, 2021. However, the ordinance will remain in effect through September 30, 2021 (expiring October 1), unless the county chooses to further extend. New Bank of Leave: • As part of the most recent round of amendments, the county requires employers to provide 80 hours of 2021 EPSL to employees whose normal work schedule is 40 or more hours per week, and a proportionate amount for other employees based on the average number of hours they work, which employees can use from January 1, 2021, through September 30, 2021. • Employers can offset the amount of Sonoma County 2021 EPSL by the amount of similar paid leave they must provide under California's 2021 supplemental paid sick law or CAL/OSHA exclusion pay requirements, or that they voluntarily provide (and received federal tax credits for) under the federal Families First Coronavirus Response Act (FFCRA). New Covered Uses: • The amended ordinance allows employees to use EPSL if they have

an appointment to receive a COVID-19 vaccine or are ill after receiving the vaccine and cannot work or telework.

Santa Clara County, California Issues Health Order Requiring Employers to Ascertain Employees' Vaccine Status

Effective May 19, 2021, the Santa Clara County Health Officer has issued an order that requires businesses and governmental entities to ascertain the vaccination status of all personnel.

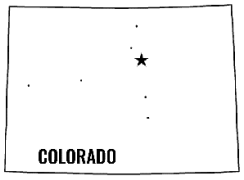
Vaccine Benchmarking:

- Requires businesses and government entities to ascertain the vaccination status of all personnel. This includes employees, contractors and subcontractors, independent contractors (including "gig workers"), vendors permitted to sell goods onsite, volunteers, and other individuals who regularly provide services onsite at the request of the business.
- Businesses and governmental entities must keep a record of who is vaccinated and who is not vaccinated until the order is no longer in effect — the deadline to collect this information was June 1, 2021.
- Businesses and governmental entities that have individuals that decline to disclose vaccine status information must document this and treat these individuals as if they have not been vaccinated.
- Businesses and governmental entities must request an updated vaccine status every 14 days from those individuals who are not fully vaccinated or who have declined to disclose their status.
- Any business that fails to ask about, and record, the vaccination status of its workers is subject to enforcement and may be required to pay fines of up to $5,000 per violation per day.

All businesses and governmental entities must require that all personnel immediately alert the business or governmental entity if:

- They test positive for COVID-19 and were present in the workplace within the 48 hours prior to the onset of symptoms or within 10 days after onset of symptoms if they were symptomatic, or
- Within 48 hours prior to the date on which they were tested or within 10 days after the date on which they were tested and found positive for COVID-19 if they were asymptomatic.

Upon learning that one of its personnel is a confirmed-positive COVID-19

	case and was at the workplace within the prescribed time frame, the business or governmental entity is required to report the positive case to the county health department within 24 hours. The business or governmental entity is then required to comply with all case investigation and contact tracing measures directed by the county.
	**Colorado Prohibits Discrimination Based on Gender Expression and Gender Identity** Colorado has made amendments to their discrimination law. Colorado law currently prohibits discrimination in employment based upon disability, race, creed, color, sex, sexual orientation, religion, age, national origin, or ancestry. This amendment expands that prohibition to prohibit discrimination based on gender identity and gender expression: • "Gender identity" is defined as an individual's innate sense of their own gender, which may or may not correspond with the sex assigned at birth. • "Gender expression" means an individual's way of reflecting and expressing the individual's gender to the outside world, typically demonstrated through appearance, dress, and behavior. The amendment clarifies the definition of "sexual orientation." As amended, "sexual orientation" means an individual's identity, individual's perception, in relation to the gender or genders which one is sexually or emotionally attracted and the behavior or social affiliation that may result from the attraction.
	**D.C. Extends Protections for Workers Displaced by COVID-19** Previously, on May 3, 2021, the District of Columbia had extended the Displaced Workers Right to Reinstatement and Retention Emergency Amendment Act. The Act required employers to give preference to retrain or reinstate employees who had been terminated or laid off because of COVID-19. The Act is retroactive to April 11, 2021, and set to expire by August 1, 2021. Eligible Employers: • The Act covers certain employers in the hospitality, services, and retail industries. • Employers are recommended to review the Act to become familiar with applicable size and industry requirements.

	Eligible Employees: • Employees are eligible for the Act's protections if they worked for a covered employee and were displaced because of COVID-19. • Exceptions apply to certain exempt employees, employees who resigned voluntarily, those who were terminated for cause, and employees that received severance. Overview of Law: • Requires employers to reinstate eligible employees to their previous position or a similar one. • If multiple employees are eligible for one position, employers can reinstate employees based on seniority. • Reinstatement offers must be sent in writing to eligible employees using their last known address. • Offers can be sent by mail, email, text, or any other method documented and retained by the employer. • Employees must be given at least three days from the date the offer is received to either accept or decline the offer of employment. • Employees who accept a reinstatement offer must report to work within seven days of when the offer is received unless the employer requests a later start date. **D.C. Requires Employers to Adopt Workplace COVID-19 Safety Policies** Currently effective, the District of Columbia has passed the Workplace Safety During the COVID-19 Pandemic Temporary Amendment Act of 2021. The Act requires employers (on a temporary basis) to adopt and implement workplace safety policies. The policies will adhere to the mayor's orders related to the COVID-19 public health emergency. The Act now repeals previous emergency amendments that required employers to adopt and implement social distancing policies and prohibited retaliation related to COVID-19. Employers failing to follow the Act's requirements are subject to possible inspections and penalties. Employers should review the Act and update their current workplace safety and health policies. Employers should continue to monitor the district's communications for additional guidance and updates. The Act is set to expire on October 28, 2021. **District of Columbia Extends the Effective Period of COVID-19 Measures, including Public Health Emergency Leave**

	D.C. previously had enacted an emergency measure on March 17, 2021, to assist residents who may face work stoppage due to a quarantine or actual sickness by providing wage replacement. The emergency measure required employers to provide paid leave for COVID-19 illnesses and created a grant program for small businesses to help cover employee salaries and benefits, operating costs, or loan repayments. The emergency measure was set to expire on June 15, 2021. This temporary measure will extend the provisions in the emergency measure, and is projected to expire June 29, 2021. **District of Columbia Announces 2021 Minimum Wage Rate** Effective July 1, 2021, the District of Columbia's Office of Wage and Hour announced the minimum wage rate will increase from $15 to $15.20 per hour for all workers. The minimum wage rate applies to all employers, regardless of size. Employers should review and adjust their payroll systems to make sure nonexempt employees receive wages that are at least equal to the minimum wage rate. Employers should consult with a knowledgeable legal professional regarding exceptions to the district's minimum wage laws. Tipped Employees: Effective July 1, 2021, the minimum wage for tipped employees will also rise from $5 to $5.05 per hour. Employers must ensure that each tipped employee's wages (when combined with the employee's tips) allow the employee to receive wages that are at least equal to the minimum wage requirements.
	**Georgia Extends Effective Period of Immunity from COVID-19 Liability** Georgia has extended their law that provides liability protections for certain businesses related to COVID-19 exposure. Previously effective August 2020, the law provided that no entity or individual be held liable for damages in an action involving COVID-19 liability claims unless the claimant proved that the entity or individual showed gross negligence, willful and wonton misconduct, reckless infliction of harm, or intentional inflection of harm. The law has been extended until July 14, 2022.

Illinois Expands Sick Leave Act for Personal Care of Family Members

Effective April 27, 2021, Illinois has amended their Employee Sick Leave Act. Illinois does not require employers to provide **paid** sick leave. The Illinois Employee Sick Leave Act allows employees to use any personal sick leave benefits their employers do provide for specific reasons related to the care of certain family members.

The amendment now allows workers to use their sick leave for a family member's "personal care." "Personal Care" means:

- Activities to ensure that a covered family member's basic medical, hygiene, nutritional, or safety needs are met;
- Activities to provide transportation to medical appointments for a covered family member who is unable to meet those needs; and
- Being physically present to provide emotional support to a covered family member with a serious health condition who is receiving inpatient or home care.

Covered Family member:

- Child, stepchild, spouse, domestic partner, sibling, parent, mother-in-law, father-in-law, grandchild, grandparent, or stepparent.

Illinois Passes Significant Restrictive Covenant Reform Bill

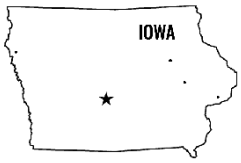
The Illinois Legislature recently passed a bipartisan bill that significantly amends the Illinois Freedom to Work Act, imposing restrictions on the use of noncompetition and nonsolicitation restrictive covenants for Illinois employees. The bill is anticipated to take effect on January 1, 2022, applying to restrictive covenants entered on or after January 1, 2022.

Salary Requirements:

- The bill prohibits employers from entering into noncompetition agreements with employees who earn $75,000 per year or less.
- The salary threshold amounts will increase every five years by $5,000 for noncompete agreements until January 1, 2037, when the amount would equal $90,000.
- The law would prohibit employers from entering into nonsolicit agreements with employees who earn $45,000 per year or less.
- The salary threshold amounts will increase every five years by $2,500 for nonsolicit agreements until January 1, 2037, when the amount would equal $52,000.

	Notice Requirements: • The bill will require employers to advise employees to consult with an attorney before entering a noncompete or nonsolicit agreement. • Employers must provide employees at least 14 days to review the agreement and decide whether they choose to sign. • Employees have the option of signing the agreement before the 14-day period has ended. Clarifications: • The bill provides clarification that a covenant not to compete or solicit is illegal and void unless (1) the employee receives adequate consideration, (2) the covenant is ancillary to a valid employment relationship, (3) the covenant is no greater than what is required for the protection of a legitimate business interest of the employer, (4) the covenant does not impose undue hardship on the employee, and (5) the covenant is not injurious to the public. • To determine whether the employer has a legitimate business interest, the bill states, "the totality of the facts and circumstances of the individual case shall be considered." Factors to be considered in the analysis include (but are not limited to) the employee's exposure to the employer's customer relationships or other employees; the near permanence of customer relationships; and the employee's acquisition, use, or knowledge of confidential information through the employee's employment, time restrictions, place restrictions, and the scope of the activity restrictions. • The bill the defines "Adequate consideration" that is sufficient to support a noncompete or nonsolicit restriction as follows (1) the employee worked for the employer for at least 2 years after the employee signed an agreement containing a covenant not to compete or a covenant not to solicit, (2) the employer otherwise provided consideration adequate to support an agreement to not compete or solicit, or (3) the employer otherwise provides consideration adequate to support an agreement to not compete or to not solicit. • The bill clarifies that a court may refrain from "wholly rewriting contracts," it may decide to reform or sever provisions of a covenant not to compete or not to solicit rather than deem the covenant unenforceable. Courts may consider factors such as the

	fairness of the restraints as originally written, whether the original restriction reflects a good-faith effort to protect a legitimate business interest of the employer, the extent of such reformation, and whether the parties included a clause authorizing such modifications in their agreement. COVID-19: • The bill prohibits employers from entering restrictive covenants with employees who lost their jobs due to the COVID-19 pandemic unless enforcement of the covenant not to compete includes compensation equivalent to the employee's base salary at the time of termination. Remedies: • If an employee prevails on a claim filed by an employer seeking to enforce a covenant not to compete or a covenant not to solicit, the employee can recover all costs and reasonable attorney's fees from the employer regarding the claim.
	Indiana passed a law that provides COVID-19-related protections for employees, effective April 29, 2021. The provisions of the new law apply to acts and omissions during the COVID-19 state of disaster emergency declared after February 29, 2020, and before April 1, 2022. Health care providers are immune from professional discipline for acts or omissions in treatment arising from a disaster emergency unless the act or omission constitutes gross negligence, willful or wanton misconduct, or intentional misrepresentation. The new law provides that the following, during a declared emergency in response to COVIID-19, do not constitute such acts or omissions: • Providing services without required personal protective equipment (PPE) caused by a shortage or inability to timely acquire PPE; • Providing services without access to adequate or reliable testing for COVID-19; • Using equipment, medicine, or supplies in a manner that is not approved by the federal Food and Drug Administration; • Providing services under a reallocation of staff or resources; • Providing services that are outside of an individual's expertise or specialty.

	The new law provides that a health care provider or health care employer is not liable for loss, damage, injury, or death arising from COVID-19 unless the claimant proves that the person caused the loss, damage, injury, or death by an act or omission constituting gross negligence, willful or wanton misconduct, or intentional misrepresentation.
	**Iowa Passes Law Prohibiting Businesses from Requiring Proof of COVID-19 Vaccination** Effective May 20, 2021, Iowa has passed a new law that prohibits a business from requiring a customer, patron, client, patient, or other person who is invited onto the premises of the business to provide proof of having received the COVID-19 vaccination prior to entering the premises. The law does not prohibit a business from implementing a COVID-19 screening protocol if it does not require proof of COVID-19 vaccination. "Business": a retailer required to obtain a sales tax permit, a nonprofit, a not-for-profit organization, or an establishment that is open to the public at large or where entrance is limited by a cover charge or membership requirement but does not include a health care facility. **Iowa Preempts Local Masking Ordinances** Effective May 20, 2021, Iowa enacted a law that prohibits counties, cities, and schools from implementing facial covering policies that are more stringent than the state's policies. Under the new law, a county or city may not adopt an ordinance, motion, resolution, or amendment that requires the owner of real property to implement a facial coverings policy that is more stringent than a policy imposed by the state. Schools: • The law prohibits the board of directors, superintendent or chief administering officer of a school district, or authorities of a nonpublic school to have a policy that requires employees, students, or members of the public to wear a facial covering on the school district's or accredited nonpublic school's property. • Exceptions may be made if the facial covering is necessary for a specific extracurricular or instructional purpose, or is required by any other law.

Maryland Essential Workers' Protection Act (EWPA)

This law focuses on imposing workplace requirements for employers who operate during health emergencies and are considered essential during a crisis. This only applies to essential businesses in Maryland during a state of emergency including COVID-19.

Essential businesses are identified by both federal and state officials and/or entities. On December 16, 2020, those businesses included:

- Health care
- Pharmaceutical
- Chemical Manufacturers
- Emergency Services
- Financial Services
- Education
- Food and Agriculture
- Energy
- Water and Wastewater Systems
- Transportation and Logistics
- Communications and IT

Essential workers are defined as employees who "perform a duty or work responsibility during an emergency that cannot be performed remotely." In addition, these employees are deemed to be essential to the business operation.

This Act requires covered essential employers who provide services during a health emergency to:

- Ensure working conditions meet safety standards of federal and state agencies
- Ensure there is an adequate and abundant amount of safety equipment readily available
- Create, communicate, and post protocols regarding any applicable safety standards in effect during the emergency
- Report all positive COVID tests to the Maryland Department of Health
- Provide employees with certain emergency paid leave
- Be proactive in mitigating the spread of infection and providing tests free of charge to confirm and move forward with protocols
- Ensure that any other recommendations or mandates in place via local, state, or federal ordinances are exercised

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<td>Massachusetts Enacts COVID-19 Emergency Paid Sick Leave
On May 28, 2021, Massachusetts employers, in accordance with Senate Bill H-3702, were required to provide paid sick leave to employees as well as applicable family members for COVID-19-related health issues. This program will expire on September 30, 2021, or when the $75 million in government funding exhausts, whichever comes first. However, employers are eligible for reimbursement of any sick leave paid out under this new program. To read our full summary, see our e-Alert: Massachusetts Enacts COVID-19 Emergency Paid Sick Leave Law.</td>
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<td>Montana Amends Military Leave Law
Effective April 30, 2021, Montana has made amendments to their Military Service Employment Rights Act. The Act provides employment protections to members of the National Guard that are called to state or federal military duty. The amendments clarify that the protections apply whether the military service is voluntary or involuntary.

A person may file a lawsuit to remedy alleged violations of the Act. A court may order an employer who willfully violated the Act to pay liquidated damages if the suit is successful. The amended law would require the employer to pay treble damages as liquidated damages and punitive damages if it willfully violated the Act.

Montana Amends Wrongful Discharge Act
Effective March 31, 2021, Montana has made amendments to their Wrongful Discharge Act. Under the Act, employers may be held liable for wrongful discharge if they terminate an employee who has completed a probationary period of employment without good cause. However, during an employee's probationary period, employers may terminate an employee for any reason and are not subject to wrongful termination lawsuits in response.

Probationary Period:
• Previously, if a probationary period was not established at the time of hire, the default period would be six months.
• Amendments indicate that 12 months is the default probationary period.
• An employer may extend the probationary period prior to its expiration, but the original probationary period, together with any periods of extension, cannot exceed 18 months.</td>
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	• There is a presumption in the law that a leave of absence does not count as part of the probationary period, though employers can affirmatively elect to include a leave of absence as part of the probationary period. "Good Cause": • "The employee's material repeated violation of an express provision of the employer's written policies" Notifying Employees: • Previously, the law required employers to notify discharged employees of internal procedures for appealing a discharge within seven days of discharge. • The amendment has changed the requirement to notifying employees within 14 days. **Montana Amends Workers' Compensation and Unemployment Laws** Effective July 1, 2021, Montana has made amendments to their workers' compensation and unemployment insurance laws, disqualifying individuals who fail or refuse to take drug tests from eligibility for benefits. Unemployment Insurance: • After separation from employment, an individual may receive unemployment benefits for any week of total unemployment within the benefit year that the individual meets specified criteria required under the statute. • Under the amendment, an individual is disqualified from receiving unemployment benefits if the individual refuses to take, or fails to pass, a drug test in violation of the individual's employer's written workplace drug policy. • The testing procedures must comply with all federal and state drug testing statutes and regulations. • The amendment does not apply to drug tests administered to registered medical marijuana users. Workers' Compensation: • Insurers providing workers' compensation insurance to employers are required to pay compensation to a covered employer's employee for all qualifying injuries that the employee receives

during employment.

- However, an employee is not eligible for workers' compensation benefits if the employee's use of alcohol and drugs not prescribed by a physician is a major contributing cause of the injury-causing accident.
- Under the amendment, if an employee fails or refuses to take a drug test after an accident, there is a presumption that the major contributing cause of the accident was the employee's use of nonmedicinal drugs.

Montana Legalizes Marijuana for Recreational Use and Will Protect Lawful Off-Work Use

Effective January 1, 2022, legislation will amend Montana's definition of "lawful products" to include marijuana. Employers cannot reject an applicant or take adverse action against an employee solely because they use or test positive for marijuana. Employers will be prohibited from taking adverse action against an employee for lawful use of marijuana when off-duty, subject to various exceptions within the law.

Workplace Use/Possession Can be Prohibited

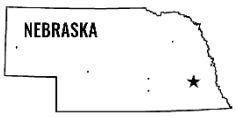
- Employers may still prohibit marijuana use or possession during work hours, on employer premises, and while using an employer's equipment or other property.

Driving Under the Influence or Impaired Not Permitted

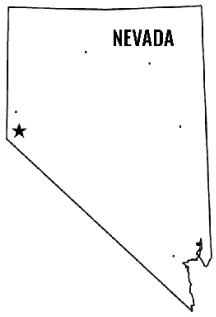
- The statute specifically prohibits the operation of motor vehicles, trains, aircrafts, motorboats, or other motorized forms of transport while under the influence of marijuana or marijuana products.

Employers may continue to take adverse action against employees if their off-duty marijuana use:

- Affects employees' ability to perform job-related employment responsibilities or the safety of other employees;
- Conflicts with a bona fide occupational qualification that is reasonably related to the employee's employment; or
- Violates a personal service contract with an employer and the unique nature of the services provided authorizes the employer to limit the use of marijuana (or other products).

	An employer may continue to prohibit the use of marijuana and take adverse action against marijuana users if the employer acts based on the belief that its actions are permissible under an established substance abuse or alcohol program or policy, professional contract, or collective bargaining agreement. **Montana Amends Mental Health Parity Act** Montana has amended their Mental Health Parity Act that will take effect January 1, 2022. The amendments ensure the state law provides parity between mental and physical health in insurance benefits. The law states that care provided under a primary care behavioral health model and a psychiatric collaborative care model are considered outpatient benefits that must be paid by insurers. Primary care behavioral health model: Evidence-based, integrated behavioral health care service model in a primary or specialty care setting, recognizing licensed psychologists as both consultants and direct service providers. Psychiatric collaborative care model: Evidence-based, integrated behavioral health service delivery method, where the care provided: • Is delivered by a primary care team that collaborates with a psychiatric consultant; • Is directed by the primary care team; • Includes structured care management and regular assessments of clinical status; and • Involves regular consultations between the psychiatric consultant and the primary care team to review the clinical status and care of patients and to make recommendations.
	**Nebraska Law Passes Providing Immunity from COVID-19 Liability** The state enacted this law to provide immunity from civil liability for damages caused by exposure to COVID-19 on or after May 25, 2021. The exception would be if exposure were caused due to negligence or willful and reckless misconduct. In rare cases, where the accused is not in full compliance with public health guidance applicable to the specific individual, liabilities would be reinstated. Public Health Guidance includes written or oral guidance from the: • Centers for Disease Control and Prevention (CDC);

	• The Centers for Medicare and Medicaid Services of the U.S. Department of Health or;
	• Occupational Safety and Health Administration (OSHA)
	
	Nebraska Amends EEO Law to Prohibit Discrimination based on Skin Color, Hair Texture, and Protective Hairstyle
	The Nebraska Fair Employment Practice Act includes prohibitions regarding discrimination based on race. The state amended this act to also define and expand on "Race" to include characteristics such as:
	• Skin Color
	• Hair Texture
	• Protective Hairstyles
	  ○ Braids
	  ○ Locs
	  ○ Twists
	
	In addition, the amendment does clarify that it is not unlawful for an employer to have consistent health and safety regulations in place associated with race if they can demonstrate that the following applies:
	• The standard is not being adopted for discriminatory purposes
	• Without implementation, the health and safety of the employee could be at risk
	• The standard is applied equally to all employees
	• Employers have engaged, attempted and communicated reasonable accommodations.

	**Nevada Adopts Kin Care Law** The State of Nevada has enacted a new law that requires employers to provide paid sick leave to employees who need to take care of a covered family member. The family member would need to have an injury or illness, medical appointment, or other authorized medical issue for the law to apply. Covered Family Members include: • Child, Foster Child, or Grandchild • Spouse or Domestic Partner • Sibling • Parent, Stepparent or Grandparent • Mother or Father In-Law

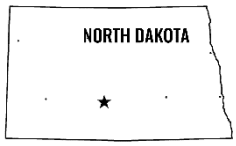
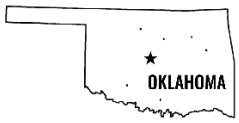
	The new law does not: • Limit or abridge any other rights, remedies, or procedures available under law; • Negate any other rights, remedies, or procedures available to an aggrieved party; • Prohibit, preempt, or discourage any contract or other agreement that provides a more generous sick leave benefit or paid time off benefit; or • Extend the maximum amount of leave to which an employee is entitled under the federal Family and Medical Leave Act. Employers must also post the bulletin issued by the Labor Commissioner within each workplace site or provide to employees electronically.. **Nevada Paid Leave Law Amended to Include Vaccination Leave** On, June 9, 2021, the State of Nevada passed amendments to the current paid leave law to include providing leave to employees for receiving the COVID-19 vaccination. Employees would be required to provide at least 12 hours' notice to their employer regarding their leave request. Businesses that employ 50 or more employees are required to provide four (4) hours of leave to receive two (2) doses of the vaccine and only two (2) hours of leave for individuals receiving one (1) dose of the vaccine. Note: Exempt employers are those who provide a vaccine clinic on the worksite. Employers are also required to post bulletins created by the Office of the Nevada Labor Commissioner in a visible area of the workplace that outlines the new provisions. Additionally, the new law amends that such leave under the paid leave law includes, but is not limited to: • Receiving preventative care or medical diagnosis • Receiving treatment for a mental or physical illness, injury, or health condition • Caregiving to a family member receiving medical diagnosis or medical care/treatment Employees may use leave without providing a reason.

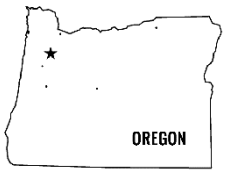
	**New Hampshire Minimum Wage Law Amended to Permit Electronic Wage and Hour Records** The existing minimum wage law required that employers keep true and up-to-date records of hours worked, wages paid, and classifications determined for each employee and that these records must be maintained for three years. The amendment permits these records to be acknowledged, approved, and retained through electronic means.
	**New York HERO Act Requires Inclusion of Industry-Specific Workplace Safety Plans in Handbooks** Effective June 5, 2021, the State of New York passed the Health and Essential Rights or HERO Act which includes two sections that identify health emergency preparedness for employers. Section 1 requires employers to create safety plans to mitigate the spread of infection to include COVID-19 as well as prohibit discrimination and retaliation against employees who exercise their rights. Section two outlines the establishment of workplace safety committees. The Commissioner for the Department of Labor will be tasked with creating model plans that are industry-specific and provide baseline standards for preventing the spread of infection. The following protocols will be included in this model plan: • Health Screenings • Face Coverings • Personal Protective Equipment (PPE) • Hand Hygiene • Cleaning and Disinfecting of Surfaces (Equipment, Supplies, Doorknobs, Restrooms, etc.) • Social Distancing • Isolation and Quarantine Orders • Engineering Controls • Assignment of Enforcement Responsibility • Compliance with Employee Notice Requirements • Verbal Review of Standards **Note**: Employers also have the option of implementing their own model;

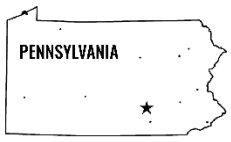
	however, the model must ensure that all requirements are met. Additionally, this law prohibits discriminating or retaliating against an employee for exercising their rights or reporting violations. Section 2 applies to employers with 10 or more employees with a combined payroll of over $800,000. The organization must also have a workers' compensation experience rating of at least 1.2. Covered employers may establish workplace safety committees that consist of two-thirds nonsupervisory employees who are chosen by nonsupervisory employees. **Note**: Employers are not permitted to interfere in the selection of committee members. The committees will be permitted to address the following: • Health and safety issues • Review and comment on current workplace processes • Review policies, laws, and executive orders • Participate in government site visits • Review employer-filed reports related to health and safety • Schedule and meet once a quarter during working hours **New York Updates Reopening Guidance** On June 8, 2021, New York State released guidance on office reopening that includes recommendations on a variety of topics to ensure businesses are complying and employees are safe. Governor Andrew Cuomo announced that these recommendations would become optional once 70% of New Yorkers received at least one dose of the vaccine, which did occur on June 16, 2021. Proof of Vaccination: • Obtaining proof of vaccination or relying on the honor system • Conducting daily health screenings: ○ Screening questions can include COVID symptoms, positive tests, and close contacts • Pertains to all employees, whether vaccinated or not Face Coverings:

	• Fully vaccinated individuals need not wear a mask • Unvaccinated individuals need to continue wearing a mask Fully Vaccinated Sections and Social Distancing: • Enables businesses to have both vaccinated and unvaccinated areas in a workspace • Fully Vaccinated employees have no capacity limits and do not need to socially distance or wear a mask • Non-vaccinated employees do have capacity limits that must meet the six-foot threshold between each other and require that a face mask be worn **New York State Significantly Amends HERO Act** On July 5, 2021, the HERO Act amendments signed into law by Governor Andrew Cuomo will take effect requiring all employers to adopt a COVID-19 prevention plan. Additionally, the second section of the amendment, which permits the creation of workplace safety committees, will take effect on November 1, 2021. The amendment applies to any space deemed a workspace, whether in a vehicle or building, or on-site or off-site location where work will be performed. See summary of timeline below: Model Prevention Plan: The amendments will direct both the Commissioner of the New York Department of Labor, in collaboration with the New York Department of Health, to create a prevention plan model that will demonstrate a strategy for combating airborne infectious disease exposure in the workplace. Deadlines to Establish a Prevention Plan: Once the Commissioner publishes the model prevention plan, employers will be required to adopt the model plan or an alternative plan meeting the minimum requirements within 30 days of publishing. The employer will then have 30 days to communicate the plan to employees. **Note**: Employees are required to provide notice to employers of any

	alleged violation of the law and cannot bring any civil action until after 30 days of notice being provided. The new amendments allow employers to also obtain attorneys' fees and costs if an employee brings forward a frivolous lawsuit. Workplace safety committees will have the ability to meet once a quarter for no longer than two hours to discuss organizational compliance with the applicable prevention plan as well as any concerns that need to be addressed or resolved to ensure safety of employees from COVID-19. **New York City Mandates Retirement Savings Program** Effective August 9, 2021, New York City has established an auto-enrollment payroll deduction IRA program for private-sector employees whose employers do not provide a retirement plan. Covered Employees: • Anyone over 21 years of age; and • Employed by Covered Employer; and • Works 20 hours per week; and • Regular duties occur in the city Covered Employers: • Have been operating for at least two years; and • Have not offered a retirement plan in the preceding two years; and • Employ five or more employees whose regular duties occur in the city; and • Have employed five or more employees continuously for one calendar year Covered employers must allow employees to set up automatic payroll deductions for the amount of their choosing unless they choose the default rate of 5%. In addition, employees should be automatically enrolled with the option to opt out. (Employers must not contribute to the account or endorse the program in a way that describes it as an employee benefit, which it is not.) **Note**: It is the responsibility of the employer to provide information about the program, including benefits and risks associated as well as guidance on procedures for selecting contributions, payroll deductions, opting out,

	or filing a grievance. Employers must also maintain records and provide reports once a year or when requested by an employee.
	**North Dakota Law on Vaccination Documentation** Effective May 20, 2021, the State of North Dakota has passed a law strictly prohibiting employers from requiring vaccination status documentation such as COVID-19. It also prohibits local and state government entities from requesting this documentation for any reason prior to permitting access to state property, funding, or any other services. The publishing or sharing of a private vaccination record or any medical documentation pertaining to an individual is prohibited. Obtaining physical or electronic documentation that includes the following is prohibited: Vaccination Status • Presence of pathogens/antigens • Presence of antibodies • Individuals' post-transmission recovery status **Note**: Health care providers and higher education institutions are exempt.
	**Oklahoma Amends Law to Allow Garnishment for Unpaid Taxes** The State of Oklahoma has amended its current wage garnishment law to include garnishment for repayment of state taxes. The garnishment notice may be issued after 90 days in which the tax has become delinquent. The delivery of the notice would be via mail or Commission field agent. The employer would then need to comply by withholding said amount identified in the notice and remit the deducted amount back to the Oklahoma Tax Commission. The total withholding is not to exceed 25% of the employee's total earnings per pay period. (This will be reflected in the garnishment notice.) **Note**: Earnings are defined but not limited to wages, commissions, or any other type of compensation nonexempt. The taxpayer will also have 10 days after delivery of the notice to the employer to provide any additional information to the commission.

	Additionally, seven days after the end of each pay period, or 10 days if not on a regular pay cycle, the employer is required to withhold the amounts due or to become due or provide an explanation as to why the funds were not withheld. The employer must also immediately notify the commission if the employee has been separated. **Note**: If an employer refuses to respond to or act on remittance of garnishment, they will become liable for the total amount identified in the notice of garnishment.
	**Oregon COVID-19 Risk Mitigation in the Workplace** The Oregon Occupational Safety and Health Administration has adopted a temporary rule for mitigating and preventing the spread of COVID-19 in the workplace. The final rule, enacted on May 4, 2021, requires employers to comply with a multitude of mandates aimed at curbing the spread of infection from COVID-19. The law not only clarifies standards for sanitation, face covering, and physical distancing, but also requires employers to: • Conduct a COVID-19 Risk Assessment • Create an infection control plan • Establish processes that quickly notify employees if they have had work-related contact with someone who later tested positive for COVID-19. **Note**: Special requirements have been in place for workplaces with a high risk of exposure, such as patient care or first responders. **Oregon Amends Law on Noncompetes** On January 1, 2022, amendments to Oregon's current noncompetition law will go into effect. Please see highlights of current law below: • Most noncompetition agreements are considered void and unenforceable • Organization must have a protectable interest such as trade secrets, competitively sensitive business information, or the employee has a position as an on-air talent in broadcasting • Agreement must be provided to employee two weeks prior to start date in a written offer of employment • Organization must provide written agreement within 30 days of termination

	• Duration of noncompete not to exceed 18 months • Terminated employee must be compensated at least 50% of yearly earnings or 50% of the median income for a family of four as determined by the Census Bureau for the duration of the agreement Amendments: • For noncompete agreements to be enforceable, employee's gross salary or compensation must exceed $100,533.00 per year • Duration of noncompete not to exceed 12 months • Terminated employee must be compensated at least 50% of yearly earnings or 50% of the $100,533.00 for the duration of the agreement
	**Pennsylvania Employers Must Provide Leave to Organ Donors** Beginning June 26, 2021, all employers are required to approve leave for employees eligible for FMLA who are preparing or recovering from organ and tissue donation surgery. This can be surgery for the employee or a covered member of their family, which includes a spouse, child, or parent. Employers may request documentation in order to consider a request for a leave of absence due to this type of surgery. State Legislature Enactment. **Domestic Violence Now Included in Philadelphia Leave Laws** The City of Philadelphia enacted amendments that added "coercive control" to the definition of domestic abuse. This will impact the "Promoting Healthy Families and Workplaces" ordinance as well as the "Domestic Violence, Sexual Assault, or Stalking" ordinance. Both laws provide unpaid safe time leave. The definition of "coercive control" is a pattern of threatening or humiliating actions toward an individual to instill fear and punishment. The very definition is perceived under the law as removing the individual's "liberty, freedom or sense of self, safety or bodily integrity." The following actions are included under the law: • Intimidating or threatening the victim through displaying or referring to weapons

	• Isolating the victim from support network
	• Controlling the victim's economic and other resources (such as transportation)
	• Closely monitoring victim's activities, communications or movements,
	• Repeatedly degrading or demeaning the victim
	• Threatening to kill or otherwise harm the victim or the victim's children, relatives or pets; or to take steps to separate the victim from the victim's children or pets
	• Threatening to publicize or publishing sexualized, false, or embarrassing information, videos, photographs, or other depictions of the victim
	• Forcing the victim to engage in unlawful activity.
	
	The ordinances and amendments to them permit employees to take job-protected leave if they or a family member are victims of domestic violence. Please see leave and pay status requirements below:
	• Sick and Safe Time Ordinance: Employers with 10 or more employees must provide paid leave and employers with less than 10 must provide unpaid leave.
	• Unpaid Safe Time Leave Ordinance:
	  ○ Employers with 50 or more employees on each working day for at least 20 calendar weeks must provide eight weeks of leave in a 12-month period.
	  ○ Employers with 50 or fewer employees on each day during 33 weeks of the calendar year must allow four weeks of leave.
	
	Note: Both ordinances do not run concurrently. This means that once one leave is exhausted, the employee is entitled to a continuation of leave under the unused safe time.

	**South Carolina Amends Open Carry Law** The original Open Carry with Training Act enacted in Tennessee allows anyone who is a permit holder to carry a concealable weapon openly on their person. Employers and businesses have the right to allow or prohibit individuals from carrying any weapons onto the premises, and this also applies to property owners. The law was amended to expand on the definition of a concealed

	weapon to include any weapon that is concealed and openly carried. Employers and businesses may post signs regarding whether or not weapons are allowed on the premises. **South Carolina Provides COVID-19 Liability Protections to Businesses and Health Care Providers** Effective from March 13, 2020, and up to 180 days after the final COVID-19 state of emergency is lifted, covered businesses and health care providers will have immunity from civil action. This is only under the assumption that no misconduct occurred that would give rise to a claim. COVID-19 Claim: If a COVID-19 claim were submitted by an employee or customer, this would be as a result of actual or alleged exposure to or infection from the virus. This exposure or contraction could be caused by the simple presence of the individual at the worksite or caused by products and/or services received while on or off-site. Claims could also include the following: • Prescribing medication for off-label use to combat infection • Providing out-of-scope health care services • Misconduct in the utilization of equipment or supplies • Donation of PPE due to shortages **Note**: Immunity does not apply if a claimant can provide evidence that the improper use of medication or health care services provided did not adhere to public health guidance, therefore causing damage due to reckless and negligent misconduct. Covered Entity: • For profit or not-for-profit business entity • State governmental agency • Health care facility or provider
	**Tennessee New Law on Negligent Hiring** The new law that took effect on May 12, 2021, shields employers from liability in lawsuits that allege negligent hiring, training, retention, and supervision. The definition of negligence in any case would be based solely on whether the employee in question was convicted of a criminal offense.

	This liability shield also applies to contracting parties of independent contractors. There are several exceptions to this law, and it does not protect against liability when an employer knew or should have known of prior conviction. Exceptions include: • Criminal offense was committed while employee was performing similar job duties or performing in similar conditions • Criminal offense was violent or sexual in nature • Criminal offense was regarding fraud or misuse of funds or property of an employer or third party **Tennessee Law Prohibits Government Entities from Designating Workers as Essential versus Nonessential** This law permits any employer to operate during a crisis or public health emergency and bars any government entity or official from designating essential versus nonessential workers for the purposes of determining which businesses are essential. **Tennessee Passage of Bathroom Sign Law** The State of Tennessee enacted a law that requires businesses to allow the member of either biological sex to utilize any public restroom within a building or facility. The business must place a notice at the restroom and at the entrance of the facility indicating the following: "THIS FACILITY MAINTAINS A POLICY OF ALLOWING THE USE OF RESTROOMS BY EITHER BIOLOGICAL SEX, REGARDLESS OF THE DESIGNATION ON THE RESTROOM." Note: The size, color, and language of the notice are specified in the law. Covered Public Restrooms Include: • Dressing Rooms • Shower Facilities • Any restroom generally open to the public • Any restroom with a biological sex designation **Note**: Family, unisex, and single occupant restrooms need not apply.

Washington Amended Law Clarifies that Employees Can Still Enforce Violations of Unpaid Family and Medical Leave Law (No Longer in Effect)
Effective January 1, 2020, the new Paid Family and Medical Leave (PFML) law went into effect; however, the previous law had enforcement provisions in place for employees who alleged the law had been violated by employers.

The state has now amended the new law to include these provisions; however, the rights are still applicable for any conduct, acts, or omissions that took place prior to December 31, 2019.

Washington Paid Family and Medical Leave (PFML) on Employment Successors and Calculating Hours Worked
The Paid Family Medical Leave Act in Washington has a requirement similar to the federal Family and Medical Leave Act. For an employee to be approved and hold the right to position reinstatement after the employee's return, they would need to work for the employer for at least 12 months or 1,250 hours.

Note: The hours an employee has worked at a predecessor employer are also considered hours to be worked at the current employer if within a 12-month period.

Washington Amendments to Paid Family and Medical Leave (PFML) Regulation on Employer Size Calculations
All employers are covered under the PFML law; however, employers with 50 or more employees are required to pay a portion of the benefits premium. The Economic Security Department will calculate the size of the benefits premium each employer will have to pay.

Note: New employers with 50 employees or more will only be calculated after they have been in operation for two calendar quarters.

Washington Amends Workplace Safety Law to Clarify Anti-Retaliation Provisions
Effective, July 25, 2021, new amendments to the current workplace safety law will go into effect allowing employers the right to contest an order or citation received as a result of a safety or health violation in the workplace.

	State law requires that employers provide a safe and healthy workspace free of hazards. If a hazard arises and is found, based on inspection of the Director of the Department of Labor, to be in violation of safety and health codes, a citation or order is rendered to resolve the issue immediately. The amendments provides that if the Director of the Department of Labor has reason to believe that an employer violated an order to immediately restrain a condition, practice, method, or means in the workplace, the Director will then notify the employer. The Director will provide notification of 1) the violation 2) any resulting penalties and 3) the 15 working days the employer has from the communication to then notify the Director if the employer wish es to appeal the notification. **Note**: Failure to appeal within 15 days will result in the citation or order becoming finalized. Employers can expect to be notified within 90 days of the department receiving a complaint alleging violation. In addition, employers are restricted from retaliating against an employee for filing a grievance or exercising any right because of these amendments. Employees now have 90 days to file a complaint that alleges retaliation or discrimination. **Note**: If a violation is found, the appropriate equitable relief and civil penalty will be calculated by the Department of Labor. Relief may include the reinstatement of a position, work schedule, or back pay with interest. Any employer who continues to receive violations for the same issue will receive increased penalties.

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