



Human Resources WEEKLY DIGEST

November 20, 2019

As The Workplace Is Evolving, New Federal Labor Laws May Be On The Horizon

"On October 23, 2019, the House Committee on Education and Labor held its first hearing on the "future of work." The "future of work" has caught the attention of lawmakers. Indeed, the Health, Employment, Labor and Pensions Subcommittee and the Workplace Protections Subcommittee are focusing their efforts on revamping laws related to workers' rights. Issues like the decline in labor organizing, deregulation in high risk sectors, and wage stagnation are prompting lawmakers to consider passing new laws to address employee protections." [Full Article](#)

Seyfarth Shaw

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Sixth Circuit Confirms Standard for 'Regarded As' Discrimination Under the ADA

"The U.S. Court of Appeals for the Sixth Circuit recently confirmed the standard to establish a claim under the "regarded as" prong of discrimination under the Americans with Disabilities Act (ADA). Applying the correct standard for such claims, the Sixth Circuit reversed the district court's decision granting summary judgment in favor of the defendant employer. In *Babb v. Maryville Anesthesiologists, P.C.*, the Sixth Circuit reversed the district court's grant of summary judgment in favor of the defendant employer. The plaintiff, a certified registered nurse anesthetist (CRNA), had been diagnosed with a degenerative eye condition, but according to plaintiff, her condition did not affect her ability to perform her job responsibilities." [Full Article](#)

Barnes & Thornburg

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Readers should contact legal counsel for legal advice.

Five USERRA Responsibilities Employers Should Know Regarding Soldiers In The Workplace

"Veterans Day is a good time to refresh employers on the federal rights entitled to their employees who serve our country in the uniformed services. U.S. employees who take leave from their civilian jobs to serve in the armed services have certain reinstatement rights to their jobs under the Uniformed Services Employment and Reemployment Rights Act (USERRA). These rights apply to employees on active duty or in the reserves, and employees who are not deployed but also must be away from work at intervals to perform their service. It is important for employers to understand if the law applies and, if so, what it requires. Failure to abide by USERRA's requirements can result in receipt of an investigation inquiry or citation from the Department of Labor, as well as legal liability." [Full Article](#)

Haynsworth Sinkler and Boyd

Can an Employer Refuse to Hire an Employee Because of the Employee's Risk of Developing a Disability?

"The Seventh Circuit joins the Eighth, Ninth and Tenth Circuits in holding that such a refusal would not violate the Americans with Disabilities Act. In *Shell v. Burlington Northern Santa Fe Railway Company*, No. 19-1030, the appellate court addressed the certified question 'whether the ADA's regarded-as provision encompasses conduct motivated by the likelihood that an employee will develop a future disability within the scope of the ADA.'" [Full Article](#)

Jackson Lewis



DOL Proposes a More Practical Rule for Electronic ERISA Disclosures

"On Oct. 23, 2019, the Department of Labor (DOL) released a proposed rule for electronic delivery of ERISA disclosures. Although the DOL already allows for electronic delivery under the 2002 Electronic Safe Harbor, its availability is limited and technology quickly outpaced its usefulness. The proposed rule creates a new, additional safe harbor the DOL calls the "Notice and Access" safe harbor that will allow for electronic delivery as a default method of delivery for certain ERISA Title I disclosures. At this point, the safe harbor applies only to ERISA-governed retirement plans, and does not reach health and welfare benefit plans, though the DOL reserves a section in the proposed regulations for potential future application to required disclosures for such plans " [Full Article](#)

Porter Wright



Mushroom Farm: The Poison of Sexual Harassment Grows In The Dark

"The EEOC says that "[p]rotecting vulnerable workers, including immigrant and migrant workers, and underserved communities from discrimination is one of the Commission's Strategic Enforcement Plan (SEP) priorities." What is a "vulnerable worker?" Workers are "vulnerable" to discrimination and harassment for many reasons and in many situations, mostly evidenced by their powerlessness and the low status of their jobs. For example, they may fear running afoul of immigration laws; they may be unable to speak English; they may be physically isolated in the job, be it in a field or a warehouse; or perhaps they are mentally challenged." [Full Article](#)

FisherBroyles

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STATE & INTERNATIONAL COMPLIANCE

MINNESOTA



Duluth, Minnesota Issues Paid Sick and Safe Leave Rules & Revises FAQs

"The City of Duluth has published final rules and revised FAQs implementing its Earned Sick and Safe Time Ordinance. The Ordinance takes effect January 1, 2020 for employers with five or more employees, regardless of whether they work in Duluth. Under the law, employees accrue, or an employer frontloads, paid sick and safe time (SST) that employees can use for themselves or to care for or assist a covered family member for..." [Full Article](#)

Little Mendelson

MARYLAND



Maryland Sexual Harassment Disclosure Reporting Now Live

"The survey for the July 1, 2020 reporting period is now live. Employers can electronically submit their responses by visiting the commission on Civil Rights website. Any responses submitted now satisfy the reporting period through July 1, 2020. There is no reason for employers to delay providing the information once it is collected." [Full Article](#)

Crowell Moring

NEW JERSEY



New Jersey Bill Would Codify a Stricter Version of ABC Test for Determining Independent Contractor Status

"On November 7th a bill was introduced in the New Jersey legislature that would, like California's AB 5 (see our previous blog here), codify a stricter version of the ABC test for determining independent contractor classification. The bill, S4204 (text available here), also affirms New Jersey courts' use of the ABC test under the state's unemployment law, Wage and Hour Law, Wage Payment Law, and other contexts." [Full Article](#)

Sheppard Mullin

TEXAS



Baring Arms Part 1: Texas Tips on Implementing a Lawful Firearms Policy

"For three years, Texas law has allowed folks with a concealed license the right to carry their firearms openly. Texas continues to expand the rights of gun owners. In September, a spate of new gun reform legislation in Texas became effective, including looser restrictions on firearms during states of emergency and natural disasters, as well as new prohibitions against landlords from restricting gun ownership within their rented properties. Given this new legislation, we are starting a mini-series dedicated to helping employers navigate the changing landscape of gun rights and regulations in the Lone Star State." [Full Article](#)

Dinsmore & Shohl LLP

NEW YORK



New York Releases Updated Guidance on Expansion of State Human Rights Law

"New York State has updated its guidance on the new rules under the New York State Human Rights Law ("NYSHRL") regarding discrimination, harassment, and retaliation claims. In particular, the Frequently Asked Questions ("FAQs") now provide additional clarity on employers' obligations under the expanded NYSHRL, as detailed in our earlier Advisory " [Full Article](#)

Epstein Becker Green

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