



# Human Resources WEEKLY DIGEST

December 17, 2019

## Festivus Time of the Year

“As the end of the year descends upon us, it is time for workplaces to have their December gatherings, and like everything else in the employment setting these days, employers must be on their guard to not create situations that could lead to potential legal liabilities. The following is a quick reminder of considerations for holiday parties.” [Full Article](#)

*Atkinson, Andelson, Loya, Ruud, & Romo*



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## EEOC Conciliation Agreement Over Criminal History Background Checks

“After six years of litigation, on November 18, 2019, the Equal Employment Opportunity Commission (“EEOC”) announced a multi-million settlement with a national employer, which resolved litigation that claimed the employer’s use of criminal history had a disparate impact on minority job applicants. The announcement is a reminder to employers to carefully draft and implement their screening policies as they relate to use of an applicant’s criminal history.” [Full Article](#)

*Seyfarth*

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*Readers should contact legal counsel for legal advice.*

## An Employer is Not Required to Continue Unreasonable Accommodation

"According to the U.S. Court of Appeals for the Eleventh Circuit, "just because an employer has, in the past, done more than required to accommodate an employee who cannot fulfill all the requirements of his job does not mean that the employer must continue to do so." The Eleventh Circuit found that punctuality was an essential function of the firefighter's job. The employer established the importance of having a full staff ready to respond to emergencies, and that when a firefighter is late, someone must stay longer to cover, which was a safety concern due to fatigue and also increased overtime costs." [Full Article](#)

*Shawe Rosenthal*

## Should a Company Ban All Workplace Personal Relationships?

"In the age of the #MeToo movement, it is understandable why many businesses are seeking to impose such a policy. Such relationships can place risk on a business if the relationships end badly or where the relationship is between a manager and their direct report and there are concerns of abuse of power. A relationship involving a junior colleague could lead to allegations of sexual harassment or sex discrimination." [Full Article](#)

*Radcliffes LeBrasseur*

## Can Cross-Generational Viral Internet Phrases in the Workplace Create Unlawful Age Discrimination?

"'OK Boomer' is having a moment on the internet, appearing often in viral jokes and memes. It is widely considered an all-purpose retort by the younger generations of Millennials and Gen Z'ers to dismiss thoughts and ideas they view as too old-fashioned. Some even use 'OK Boomer' to discount opinions stereotypically attributed to the Baby Boomer generation." [Full Article](#)

*Jackson Lewis*



## When Poorly Performing Employees Suddenly Get Sick

"You finally sit down with an employee who has performed poorly for months, and you give him or her both a detailed performance improvement plan spelling out your expectations and a time frame by which they must demonstrate substantial improvement. The very next morning, the previously healthy employee calls in sick and soon thereafter requests medical leave, supported by a doctor's excuse, to obtain treatment for work-induced stress and depression." [Full Article](#)

*Vinson & Elkins*

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## STATE & INTERNATIONAL COMPLIANCE

### ILLINOIS



#### Governor Signs Employer-Friendly Amendments to Recreational Marijuana

"The amendments clarify an employer's ability to conduct pre-employment and random drug tests (employers may also conduct reasonable-suspicion and post-accident tests), and to take action due to a failure of a drug test. The amendments specifically provide, 'Nothing in this Act shall be construed to create or imply a cause of action for any person against an employer for actions taken pursuant to an employer's reasonable workplace drug policy.'" [Full Article](#)

*Ogletree Deakins*

### NEW YORK

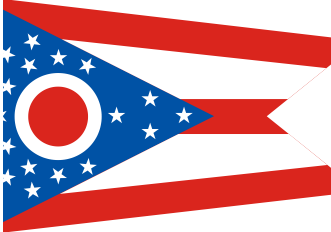


#### New York Prohibits Reproductive Health Decision-Making Discrimination

"Following in the footsteps of New York City, which earlier this year prohibited employers from discriminating against applicants or employees based on their sexual and reproductive health decisions, New York State has followed suit and passed its own law. On November 8, 2019, Governor Cuomo signed a bill prohibiting employers from discriminating against an employee based on the employee's or dependent's 'reproductive health decision making.'" [Full Article](#)

*Fisher Phillips*

### OHIO



#### Labor and Employment Alert: Cuyahoga County, Ohio, Prohibits Sexual Orientation and Gender Identity Discrimination

"Twenty-one states and the District of Columbia currently prohibit discrimination on the basis of sexual orientation and/or gender identity and expression. At least 19 cities in Ohio currently have similar anti-discrimination laws that recently adopted an ordinance creating a comprehensive civil rights law that prohibits sexual orientation discrimination." [Full Article](#)

*Vorys Sater*

### MASSACHUSETTS



#### State Supreme Judicial Court Ruling Affects Overtime, Premium Pay for Commissioned Employees

"A recent decision from the Massachusetts Supreme Judicial Court may require retail employers to reevaluate their pay practices for nonexempt employees who earn commissions. This edition of Morgan Lewis Retail Did You Know?" [Full Article](#)

*Morgan Lewis*

### CALIFORNIA



#### Are More Exemptions Warranted to New Legislation Codifying and Expanding Dynamex's "ABC Test" for Independent Contractor Status?

"There may soon be a fair number of big rig trucks for sale in California, as well as computers, desks and other material investments of persons who determine that they may no longer offer their services as independent contractors and must shut down their small businesses, a potential repercussion of new legislation intended to restrict the use of independent contractor status in the state." [Full Article](#)

*Epstein Becker and Green*

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