THE BENEFITS GROUP
ACRISURE Agency Partner

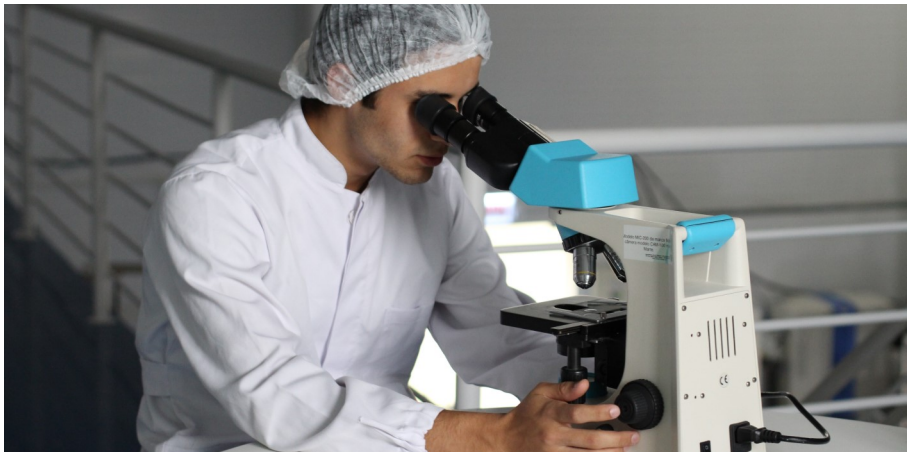
# Human Resources WEEKLY DIGEST

February 12, 2020

## Responding to the Coronavirus (2019-nCoV) Outbreak: Best Practices for Employers

"Employers are faced with balancing their obligation to maintain a safe and healthful workplace with an employee's right to be free from discrimination. In this Advisory, we have addressed the legal framework pertaining to Coronavirus risks in the workplace. The information from public health officials is changing quickly as the disease spreads, so employers should continue—as we are—to monitor guidance provided by agencies charged with guiding the public, such as the U.S. Centers for Disease Control and Prevention ("CDC") and local public health agencies." **Full Article**

***Epstein Becker Green***



## Retailers Take Note – DOL Releases its "Joint Employer" Final Rule

"The Department of Labor (DOL) has released its much-anticipated final rule on the often-litigated "joint employer" issue under the Fair Labor Standards Act and its statutory requirements relating to minimum wage and overtime obligations. This final rule represents the first significant revisions to DOL's regulations on this subject in more than 50 years. As expected, the final rule represents good news for retailers and other employers, as it sets forth a standard that is more difficult for plaintiffs to meet. The final rule becomes effective March 16, 2020." **Full Article**

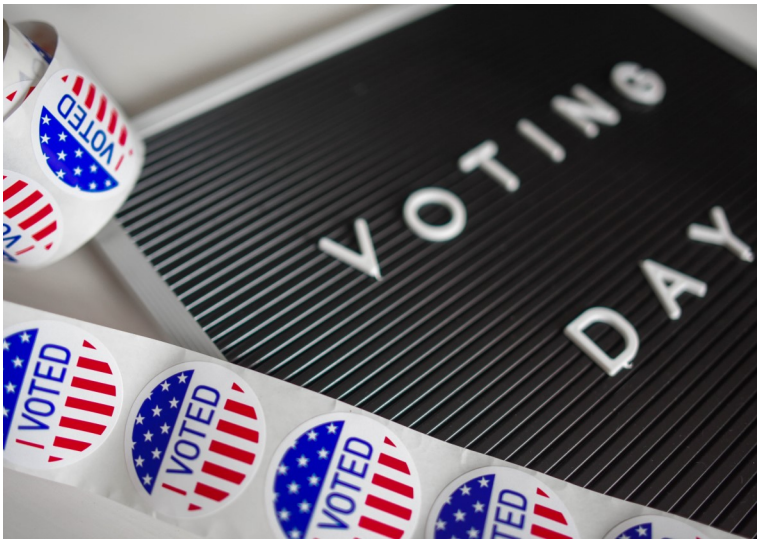
***Crowell Moring***

## In This Digest

## Election season is here: Can your employees leave work to vote?

"With the 2020 presidential primaries underway, now is the time for employers to review their voting leave policies to ensure that supervisors and human resources departments understand applicable law. In addition to avoiding legal liability, compliance with voting-related laws helps employers maintain workplace harmony during a potentially contentious period. Currently, 30 states (and Puerto Rico) require private employers to provide time for employees to vote. These statutes vary, however, on the issues of whether the leave is paid, notice requirements, minimum amount of leave, and employer control over when employees take leave." **Full Article**

***Reed Smith***




## "OK, Boomer": From Social Media to the Supreme Court

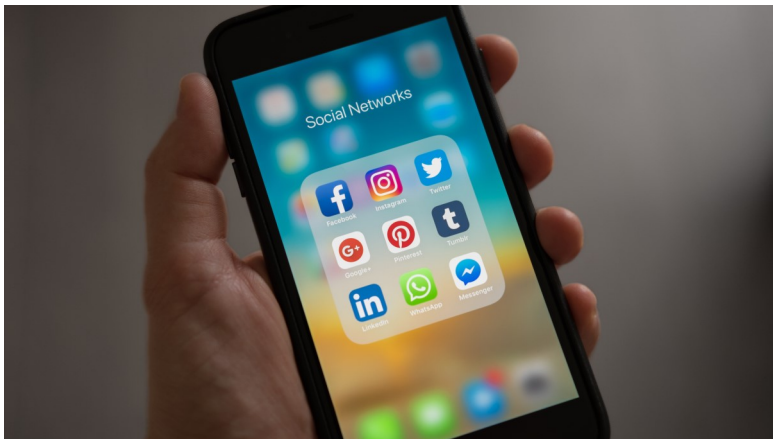
""OK, Boomer," a meme popularized by younger generations on social media, made its first (and likely only) appearance in the United States Supreme Court last month. If you are unfamiliar with the meme, it is a tongue-in-cheek retort used by young people – often on social media apps like TikTok and Twitter – to criticize older generations for being "out of touch." Chief Justice John Roberts, 65, invoked the viral meme during oral arguments in *Babb v. Wilkie*, an age discrimination case." **Full Article**

***Porter Wright***

## Exclusion for Gender Reassignment Surgery May Violate Title VII and the Equal Protection Clause

"On December 23, 2019, District Judge Rosemary Marquez ruled, in connection with a motion to dismiss, that Title VII does protect discrimination based on a person's transgender status, and that a health insurance plan's exclusion for gender reassignment surgery may not be 'rationally related to a legitimate government interest.'" **Full Article**

***Seyfarth Shaw***




## Employers, Help Me To Help You—Please, Document!

"Folks, I am here to tell you that if an employee issue or problem is not documented, it's like it did not happen. I kid you not. Whether we're talking about poor performance, attendance, tardiness, KPIs, or following company policies, a talking-to is not enough. Supervisors and managers must document these conversations—and they should do so in real time. Why? An employer's adequate documentation of the legitimate basis for an adverse action can squash, if not just defend against, a wrongful termination claim (as long as you didn't discriminate, right?)." **Full Article**

***Fisher Broyles***

# STATE & INTERNATIONAL COMPLIANCE

## ILLINOIS


### Is BIPA Preempted? – Illinois Appellate Court Considers Workers' Compensation Exclusivity Question

"The Illinois Supreme Court's 2019 decision in *Rosenbach v. Six Flags Entertainment Corp.* was the first opinion to provide interpretive guidance of BIPA, and specifically, what type of injury is required for a person to have standing to bring a private right of action under the statute. Another argument being raised by defendants, which has now received the attention of the Illinois Appellate Court, is that BIPA claims that arise in the employment context—typically based on an employer's use of biometric time clocks—are preempted by the Illinois Workers' Compensation Act ("IWCA"), 820 ILCS 305/ et seq." **Full Article**

***Sheppard Mullin***

## NEW JERSEY

### New Jersey Ramps Up Misclassification Laws, But Businesses Dodge Bullet (For Now)

"The six bills signed into effect last week emerged from a worker misclassification task force, but thanks in part to the controversy that has plagued California's AB-5 – which codified the infamous ABC test and has caused countless headaches in workers and businesses alike – the state decided not to pursue a proposal that would have approached that same territory. But the reprieve may only be temporary: lawmakers and worker advocates alike are already heard at work in the 2020 legislative session to pass a modified ABC test that would upend the current classification structure." **Full Article**

***Fisher Phillips***

## CALIFORNIA


### California's Injury and Illness Prevention Plans: New Rules on Employee Access

"California's Occupational Safety and Health Standards Board adopted a new safety rule on January 16, 2020, requiring employers to provide employees with access to their written Injury and Illness Prevention Plan (IIPP) within five days of an employee's request. If the rule is approved by the Office of Administrative Law, the rule will take effect April 1, 2020. California's Occupational Safety and Health Division (Cal/OSHA) frequently cites employers for failing to maintain an IIPP that complies with the detailed requirements set forth in Cal/OSHA's IIPP rule at 8 CCR § 3203. In addition to verifying that their IIPP complies with those requirements, employers will want to ensure that their IIPPs comply with this new access requirement by determining—and documenting—how requests for access can be made and how employees will be provided access to the IIPP." **Full Article**

***Beveridge & Diamond***

## MICHIGAN


### Michigan's Paid Medical Leave Act – A Year Out

"Nearly one year ago, the MPMLA made Michigan the eleventh state to enact mandatory sick leave pay for employees. In Michigan, employers must (as of March 29, 2019) allow employees to accrue up to 1 hour of sick leave for every 35 hours worked. The act further requires that an employer shall allow an eligible employee to use up to 40 hours of sick leave per 12-month period of eligibility. In addition, an employee may carryover (or bank) up to 40 hours of unused sick pay under the new law." **Full Article**

***Wilson Elser***

## PENNSYLVANIA

### Court Finds Implied Wrongful Discharge Cause of Action Under PA Medical Marijuana Act

"In a recent decision, a Pennsylvania county court ruled that the state's Medical Marijuana Act creates a private cause of action for employees who have been terminated for their off-duty use of prescribed medical marijuana. *Palmiter v. Commonwealth Health Systems, et al.*, No. 19 CV 1315 (Pa. Com. Pl. Lackawana Cnty. Nov. 22, 2019). The ruling is the first of its kind in Pennsylvania, but follows a line of cases from other jurisdictions that have similarly found that lawful medical marijuana users can sue their employers under similar circumstances." **Full Article**

***Cozen O'Connor***