



Human Resources WEEKLY DIGEST

June 4, 2020

Is COVID-19 Fakery a Federal Crime?

"The Atlanta Office of the U.S. Department of Justice has filed a criminal complaint against a man who allegedly falsely told his employer that he had COVID-19, and then sent a phony doctor's note to the employer. According to the affidavit in support of the DOJ complaint, the employer had to shut down to have the facility sanitized, and had to send home at least four other workers who had been in close contact with the alleged miscreant -- with full pay, for 14 days. These actions cost the employer more than \$100,000. If the allegations are true, then the employer deserves legal recourse. But you may wonder how the U.S. government determined that this was a federal crime." [Full Article](#)

Constangy Brooks



DOL Issues Final Rule on Fluctuating Workweek Method of Computing Overtime under Fair Labor Standards Act

"On May 20, 2020, the U.S. Department of Labor (DOL) released its final rule revising its so-called "fluctuating workweek" regulation. The final rule confirms that incentive payments—such as bonuses, commissions, and other premium payments—made in addition to the salary are compatible with the use of the fluctuating workweek method of compensation. The DOL also clarifies other aspects of the fluctuating workweek method that have confused courts and employers alike. The final rule provides much-needed clarity to the regulated community and provides additional flexibility to employees and employers in structuring compensation arrangements that align with their objectives." [Full Article](#)

Littler Mendelson

In This Digest

PAGE 1

Is COVID-19 Fakery a Federal Crime?

By, Constangy Brooks

DOL Issues Final Rule on Fluctuating Workweek Method of Computing Overtime under Fair Labor Standards Act

By, Littler Mendelson

PAGE 2

CDC Issues Reopening Guidance for Offices – "Change the way people work"

By, Shawe Rosenthal

Fewer Commissioned Employees Eligible for Overtime Under New Employer-Friendly Department of Labor Rule

By, Greenberg Traurig

OSHA Revises COVID-19 Enforcement and Workplace Illness Recording Policies

By, Shawe Rosenthal

Return to Work: OSHA Obligations in the Event an Employee Tests Positive for COVID-19

By, Nutter McLennen & Fish

PAGE 3

State and International Compliance

CDC Issues Reopening Guidance for Offices – “Change the way people work”

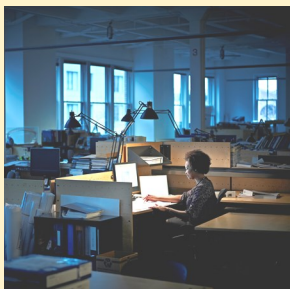
“Without fanfare on May 27, 2020, the Centers for Disease Control and Prevention (CDC) issued guidance for employers of office workers (as well as updated guidance for restaurants and bars). This is the first guidance that is targeted at white collar workers, with the message that employers will need to “[c]hange the way people work.” The CDC offers various categories of advice, which we summarize below, highlighting particular statements of interest:

Create a COVID-19 workplace health and safety plan. The CDC refers employers to its CDC Interim Guidance for Businesses and Employers for guidelines and recommendations on creating a plan.” [Full Article](#)

Shawe Rosenthal

Fewer Commissioned Employees Eligible for Overtime Under New Employer-Friendly Department of Labor Rule

“The United States Department of Labor (DOL) issued revised regulations on May 18, 2020, effectively expanding the exemptions under Section 7(i) of the Fair Labor Standards Act (FLSA), which permits certain commissioned employees of “retail or service establishments” to be considered exempt from overtime. Designed to “reduce confusion,” the new rule, which takes effect immediately, removes from the existing regulations two lists: a partial list of industries that were presumed to have “no retail concept” and a non-exhaustive list of business that “may be recognized as retail.”¹ By doing so, certain businesses previously on the non-retail list may now qualify for the Section 7(i) exemption if they otherwise meet the DOL’s criteria for the exemption. In other words, all businesses, regardless of their industry, will be treated consistently. This change therefore may increase the number of employers that qualify as “retail” businesses falling under the Section 7(i) exemption.” [Full Article](#)



Greenberg Traurig

OSHA Revises COVID-19 Enforcement and Workplace Illness Recording Policies

“After initially easing its enforcement and recording rules in light of the COVID-19 pandemic, the Occupational Safety and Health Administration has reversed direction, with increased in-person workplace inspections and recording obligations. Revised Enforcement Guidance – On April 10, 2020, OSHA issued an Interim Enforcement Response Plan, setting forth the instructions and guidance to OSHA personnel with regard to handling COVID-19-related complaints, referrals and severe illness reports. On-site inspections were essentially limited to situations involving high risk of transmission, with non-formal phone/fax investigations for those involving employees in medium or lower exposure risk jobs. In an updated Enforcement Guidance, effective May 26, 2020, OSHA states that it is



increasing in-person inspections at all types of workplaces, although it will continue to prioritize COVID-19 inspections.”

[Full Article](#)

Shawe Rosenthal

Return to Work: OSHA Obligations in the Event an Employee Tests Positive for COVID-19

“Beginning May 26, 2020, employers with more than 10 employees must undertake a reasonable investigation to determine if an employee’s diagnosis of COVID-19 is work-related and recordable under the Occupational Safety and Health Administration (“OSHA”) requirements. On May 19, 2020, OSHA published new enforcement guidance outlining when employers are obligated to record employee COVID-19 cases, and announcing that previously issued enforcement guidance dated April 10, 2020 would be rescinded.” [Full Article](#)

Nutter McLennen & Fish

STATE & INTERNATIONAL COMPLIANCE

COLORADO



Colorado Issues Guidance on Accommodations in the Age of COVID-19

"On May 21, 2020, Colorado Governor Jared Polis issued Guidance to Employers and Places of Public Accommodation Regarding Equal Opportunity Employment and Reasonable Accommodations Due to the Presence of COVID-19 (the "Colorado Guidance"). The Colorado Guidance discusses non-discrimination and reasonable accommodations for those with disabilities, "Vulnerable Individuals," those with COVID-19, those who have been exposed to COVID-19, and those with symptoms of COVID-10. It also tracks, in large part, the EEOC's own guidance on Pandemic Preparedness in the Workplace and the Americans with Disabilities Act (the "EEOC Pandemic Guidance"), thereby providing clarity to Colorado employers on how to accommodate employees, applicants, and customers in the time of COVID-19." [Full Article](#)

Littler Mendelson

CALIFORNIA



California's Employment Training Panel Extends COVID-19 Assistance

"California created the Employment Training Panel ("ETP") cash grant program in 1982 to provide funds to California businesses for job-related vocational skills training for businesses creating new jobs or retraining current workers. The program is funded by the Employment Training Tax (a payroll tax) paid by California employers. Since its inception in 1982, the ETP has provided over \$1 billion to California employers. Businesses wishing to receive ETP funds generally need to apply for a contract with the ETP.

The program provides cash grants up to \$650,000 to qualifying employers (\$26 per hour of training per employee). Employers train the employees, must meet certain requirements, must retain the employee for a fixed amount of time, and are typically reimbursed by the ETP upon completion of the training." [Full Article](#)

Buchalter

VIRGINIA



Two Steps Forward, One Step Back: Virginia Prepares for Statewide Entry Into "Phase One" of Reopening, While Issuing New Face Covering Mandate

"Virginia Governor Ralph Northam announced on May 27, 2020 that the Northern Virginia Region, the City of Richmond, and Accomack County – which delayed implementing "Phase One" of the Commonwealth's reopening protocol by two weeks – will move into Phase One on May 29, 2020. These areas join the rest of the Commonwealth in the first step of the planned incremental reopening during the COVID-19 pandemic." [Full Article](#)

MASSACHUSETTS



Massachusetts' Reopening Plan: What Businesses in Phase 1 Need to Know

"On May 18, 2020, the Baker-Polito Administration revealed its four-phased approach to reopening the Massachusetts economy and getting people back into the workplace in a safe manner, all while gradually easing social restrictions in order to minimize the negative health impacts of COVID-19. The plan is set out in the Reopening Advisory Board's report, Reopening Massachusetts. The report details the Commonwealth's four phases to reopening: Phase 1: Start; Phase 2: Cautious; Phase 3: Vigilant; and Phase 4: New Normal." [Full Article](#)

Mintz

ILLINOIS



Illinois Model Sexual Harassment Training: Best Practices for Implementation

"More than four months after the Illinois Workplace Transparency Act (WTA) went into effect, the Illinois Department of Human Rights (IDHR) has now uploaded onto its website the "model" sexual harassment training required under the WTA for all employers (it can be accessed here). Now that employers can and must begin preparing to comply with the new training requirements, employers should consider whether this model training is enough to effectively combat sexual harassment and how best to implement it. Unfortunately, although many employers were expecting a form of self-contained online training, such as a video or some other type of computer-based presentation, the IDHR simply published a set of PowerPoint slides." [Full Article](#)

Ford Harrison