

RISQReview

BUSINESS INSURANCE

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Layoff Considerations and How to Prepare for Potential Claims

“In fact, it’s not unheard of for layoffs (and even just the threat of layoffs) to increase workers’ compensation claims, particularly in a tight job market. This is because individuals faced with a loss of income, temporary unemployment benefits and the likelihood of unaffordable health insurance may look to workers’ compensation as a way to sustain their income. Although employers must never attempt to stop any individual from filing a workers’ compensation claim (legitimate or otherwise), there are steps you can take to help minimize your business’s liability for future claims.” [Full Article](#)

Zywave

6 Factors Driving Commercial Auto Losses

“A variety of trends have contributed to the rise of commercial auto losses. These trends have contributed to a difficult market for buyers of commercial auto insurance. Here is a look at the most significant factors driving commercial auto losses across the country.

- **More vehicles on the road-** A record number of vehicles on the road means more traffic and congestion, which increases the risk of collisions.
- **Distracted driving-** Today's drivers face more distractions than ever before. Distracted driving can reduce awareness, decision-making and performance that can result in an accident.” [Full Article](#)

Zywave



Preventing Human Trafficking

“Human trafficking is commonly referred to as a hidden crime, as language barriers, fear of their traffickers or fear of law enforcement prevent victims from seeking help. In the hospitality industry, hotel and motel staff are often some of the only people who interact with victims outside of the traffickers themselves.

As such, it’s critical for your employees to be aware of human trafficking, what to look for and how to report suspicious activity. Some states even have specific training requirements related to human trafficking in the hospitality industry, underscoring the importance of continued education.” [Full Article](#)

Zywave

RISQReview

EMPLOYEE BENEFITS, HUMAN RESOURCES, & COMPLIANCE

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.” [Full Article](#)

Little Mendelson



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.” [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.”

[Full Article](#)

Shawe Rosenthal



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.” [Full Article](#)

Shawe Rosenthal

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EMPLOYEE BENEFITS, HUMAN RESOURCES, & COMPLIANCE

Department of Treasury and IRS Clarify Tax Treatment of Direct Primary Care Arrangements and Health Care Sharing Ministries

“The **Proposed Rule** does not address any issues under Title I of ERISA, such as whether any particular arrangement or payment constitutes, or is part of, an employee welfare benefit plan within the meaning of ERISA Section 3(1). However, the Proposed Rule highlights that an employer's funding of a benefit arrangement, in most circumstances, is sufficient to treat an arrangement that provides health benefits to employees as an ERISA-covered plan. Thus, DPCAs that are funded, in whole or part, by an employer subject to ERISA will likely be treated as employer group health plans for purposes of ERISA.” [Full Article](#)

Winston & Strawn LLP

EEOC Will Advance New Wellness Regs

“In a public meeting on June 11, 2020, the EEOC voted to advance a new notice of proposed rulemaking on wellness programs. The EEOC intends to move forward with the proposed rule after parts of its last regulation were invalidated in court and even as the value of wellness programs has been refuted in several recent studies. This post summarizes the status of regulations for wellness programs, the comments made during the public meeting, and what to expect next.” [Full Article](#)

Katie Keith, in Health Affairs



Don't Leave Eligible FFCRA Tax Credits on the Table

“Employers can choose to pay employees on qualified leave more than the CARES Act provides, but the Credit cannot exceed those amounts. Employers that choose to pay more should consider whether it is more advantageous to count an employee's pre-tax salary reductions for health benefits as wages or as health plan expenses.” [Full Article](#)

Frost Brown Todd LLC

What Employers Should Know about ACA Shared Responsibility Payments

“A recent **TIGTA report** shows a wide gap between the ACA shared responsibility payment amounts the IRS initially predicted would be assessed in 2015 and 2016 (approximately \$17 billion) and the actual amounts assessed once employers were given a chance to contest the proposed amounts (\$749 million). The TIGTA also estimates that longer term revenue from these payments will fall very short of the amount estimated by Congress. For the 10-year period starting with fiscal year 2016, the Joint Committee on Taxation's earlier projection was that the shared responsibility payments would generate revenue of \$167 billion. Using the actual assessment rates, the TIGTA's projection for this same period is approximately \$8 billion. The TIGTA's report also identified areas where IRS procedural issues or improper employer reporting resulted in an inaccurate initial calculation.” [Full Article](#)

Proskauer

RISQReview

EMPLOYEE BENEFITS, HUMAN RESOURCES, & COMPLIANCE

COVID-19 Antibody Testing: Useful Screening Tool or Impermissible Medical Examination?

“As the United States still struggles with testing capacity for active COVID-19 infections, employers are increasingly asking “may we require our employees be tested for the presence of COVID-19 antibodies?” This is particularly true following the Equal Employment Opportunity Commission’s position that employers were permitted to test for the presence of active COVID-19 infection, set forth in its [What You Should Know About COVID-19](#) resource (Q&A 6).” [Full Article](#)

Shawe Rosenthal LLP



COVID-19: OSHA issues Updated Guidance on wearing Masks in the Workplace

“The U.S. Department of Labor’s Occupational Safety and Health Administration (OSHA) has published a series of frequently asked questions and answers regarding the use of masks in the workplace.” [Full Article](#)

Duane Morris LLP

“But I Don’t Want to Come Back to the Office!”

“As employers ask employees who have been furloughed or who have been teleworking to return to the office, they may encounter some resistance from some workers who don’t want to come back .” [Full Article](#)

Vinson & Elkins LLP



EEOC Issues Update on Coronavirus and Discrimination Laws

“Yesterday the Equal Employment Opportunity Commission updated its FAQs on coronavirus and discrimination. For those who are already familiar with the federal anti-discrimination laws, most of the new material will not be a surprise. But there are a few wrinkles that might be helpful to employers who are bringing employees back to work after the shutdowns.” [Full Article](#)

Constangy Brooks, Smith & Prophete LLP

The President Signs PPP Reform Bill: Loosening PPP Use and Forgiveness Standards and Expands Payroll Tax Deferral

“Today, June 5, 2020, the President signed into law H.R.7010 that extends and modifies provisions of the Paycheck Protection Program (PPP).” [Full Article](#)

Michael Best & Friedrich LLP

RISQReview

EMPLOYEE BENEFITS, HUMAN RESOURCES, & COMPLIANCE

The HEROES Act: Key Retirement, Health and Welfare, and Tax Provisions

“The Act reflects the House Democratic majority’s priorities, and some of the provisions could be included as part of a bipartisan compromise package. This alert first summarizes key provisions of the HEROES Act impacting retirement plans and health insurance. It then discusses other provisions that may impact employers and individuals.” [Full Article](#)

Groom Law Group



The Return to the Supreme Court

“The Court could decide that neither Texas (nor the states that joined it) nor the individuals that sued had standing, and therefore, that this case should have been dismissed from the beginning. The Court could decide that, although the individual mandate no longer raises revenue for the United States, it is still a ‘tax’ and therefore, still constitutional under NFIB. The authors think the most likely outcome is that the Court strikes down the individual mandate on the basis that it is no longer a constitutionally permitted tax, but severs the mandate from the statute, allowing implementation of the law to proceed essentially as it is now.” [Full Article](#)

Groom Law Group

Rethinking Employee Benefits in Light of COVID-19

“As the United States begins to open back up, many employers are re-evaluating a return to the traditional workplace and are exploring continuing work from home arrangements, either permanently or on an intermittent basis. Employers who offer extended WFH arrangements should consider the following benefit modifications or enhancements: stipends or expense reimbursements, flexible work schedules and paid time off, childcare assistance, mental health benefits, financial wellness programs, and health checks.” [Full Article](#)

Wilkins Finston Friedman Law Group LLP



Cases Highlight Importance of Governing Law Clauses in ERISA Plan Documents

“The U.S. Court of Appeals for the Tenth Circuit recently held that the choice of law provision contained in a long-term disability insurance policy controlled when determining which state law applied to the case. The U.S. District Court for the Southern District of Florida dismissed Apex Technology’s claims against the flexible benefits plan of Oracle (the employer). This district court previously found that the forum selection clause in Oracle’s plan document was enforceable. The court held that dismissal was the proper mechanism for enforcing the forum selection clause and thus, Apex was required to refile its claims in the proper forum.” [Full Article](#)

Haynes and Boone, LLP

RISQReview

STATE & INTERNATIONAL COMPLIANCE

CALIFORNIA



CALIFORNIA REPUBLIC

Cal/OSHA Issues Hazard Alert to Healthcare Facilities Regarding the Availability of COVID-19 PPE

“On June 5, 2020, the California Department of Occupational Safety and Health (Division), also known as Cal/OSHA, issued a [hazard alert to healthcare facilities](#) regarding the availability of COVID-19 personal protective equipment (PPE).” **Full Article**

Little Mendelson P.C.

CALIFORNIA



CALIFORNIA REPUBLIC

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.” **Full Article**

Buchalter

ILLINOIS



ILLINOIS

COVID-19 Sent Many Employees Home to Work Remotely - Remember to Reimburse their Expenses

“Illinois law requires employers to reimburse employees for work-related expenses, subject to certain restrictions. Due to the risks of liability employers face under Illinois law for unreimbursed work-related expenses, it is important for employers to have a written reimbursement policy in place and to reimburse employees for qualifying expenses in a timely manner.” **Full Article**

Masuda Funai Eifert & Mitchell Ltd

ILLINOIS



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.” **Full Article**

Ford Harrison

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STATE & INTERNATIONAL COMPLIANCE

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](#)

Mitz

MASSACHUSETTS



Hearing Scheduled On Proposed Amendments to Massachusetts Paid Family and Medical Leave Law

"On June 11, 2020, the Department of Family and Medical Leave ("DFML") will hold a virtual public hearing on its recent [proposed amendments](#) to the final regulations pertaining to the [Massachusetts Paid Family and Medical Leave Law](#) ("PFML") issued in June 2019." [Full Article](#)

Proskauer Rose LLP

NEW JERSEY



New Jersey Department of Labor Releases Posters for Employers to Utilize to Satisfy Employee Misclassification Posting Requirements

"At the beginning of this year, New Jersey Governor Phil Murphy signed a package of legislation aimed at protecting the rights of workers who have been misclassified as independent contractors. One of these new laws, Assembly Bill 5843, requires employers to post notices regarding employee misclassification. The New Jersey Department of Labor and Workforce Development has now published the required posting in two different sizes ([11 x 17](#) and [8.5 x 11](#))." [Full Article](#)

Sheppard, Mullin, Richter & Hampton LLP

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](#)

Little Mendelson