

# RISQReview

## BUSINESS INSURANCE

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### Common Employment Practices Claims Arising Out of COVID-19

“As COVID-19 continues to spread throughout the United States, there has been a massive upheaval of the American workplace. Employers have found themselves drafting and implementing policies and procedures addressing a wide array of issues including remote work, layoffs, furloughs, pay cuts, workplace conditions and many more. Not surprisingly, the uncertainty wrought by COVID-19 has left employers at an increased risk of exposure to employment-related claims alleging wrongful termination, discrimination, retaliation and many others.” [Full Article](#)

Zywave

### Stop-Work Authority Explained

“At a glance, SWA programs provide employees with both the responsibility and obligation to stop working if they recognize a perceived unsafe behavior or condition in the workplace. From there, employees must halt work processes until the problem has been corrected.

Although these programs are not required by OSHA, they are strongly encouraged as a way to get employees more involved in workplace health and safety processes and strengthen an organization’s overall safety culture. However, keep in mind that it is still the employer’s—not the employees’—legal responsibility to ensure a hazardfree work environment.” [Full Article](#)

Zywave



### COVID-19 Reopening Considerations for Hair and Nail Salons

“While the COVID-19 pandemic has forced many organizations to close their doors for an extended period, states across the country have officially begun implementing reopening measures, allowing some employers to resume operations. However, as organizations prepare to open their doors once again, there are numerous factors to consider in order to preserve the health and safety of both employees and customers.

Specifically, hair and nail salon owners face unique challenges in minimizing the risks of reopening. After all, the nature of these organizations can make it extremely difficult to maintain social distancing measures, avoid person-to-person contact and keep high-touch surfaces clean—all of which contribute to the spread of COVID-19.” [Full Article](#)

Zywave

# RISQReview

## EMPLOYEE BENEFITS, HUMAN RESOURCES, & COMPLIANCE

### CMS Releases Notice of Benefit and Payment Parameters for 2021

“Major takeaways from the new rule include: 1.) the finalization of the user fee rates; 2.) the adoption of new rules regarding special enrollment; 3.) an increased focus on value-based plan designs; 4.) clarification regarding the use of drug manufacturer coupons; 5.) the application of category limitations for dependents; 6.) the treatment of wellness incentives in MLR calculations; and 7.) the implementation of MLR reporting requirements for outsourced activities.” [Full Article](#)

*Frost Brown Todd LLC*



### COBRA in the Time of COVID-19

“Employers will have to consider how to address the potential lag in premium payments. For fully-insured health plans, the insurance carrier might require full payment of the COBRA premium by the employer so that coverage does not lapse altogether. For self-funded health plans, employers might continue to pay claims and seek recoupment from the COBRA participant if coverage is retroactively terminated, or they might consider pending claims until the premiums are received. Pending claims might become challenging if the Outbreak Period lasts for several months.” [Full Article](#)

*Foley & Lardner LLP*

### Tenth Circuit Upholds Health Plan’s Denial of Surrogacy Expenses

“The Tenth Circuit held that the plan unambiguously excluded coverage for expenses related to surrogate pregnancy. In reaching this conclusion, the court rejected the participant’s argument that the plan excluded non-traditional medical services during surrogate pregnancy, but covered traditional medical services related to surrogate pregnancy. The facts of this case also underscore a practical difficulty for plan administrators in enforcing a plan’s surrogacy exclusion -- namely, that the plan may not always know that a surrogate pregnancy is occurring.” [Full Article](#)

*Thompson Reuters Practical Law*



### The Cost of Healthcare During Retirement: Expectations and Concerns of Older Workers

“Across wealth levels, many workers are concerned about their ability to pay for health expenses in retirement. Yet most individuals have not saved specifically for such costs, nor have they reviewed their employer-provided retiree health care benefits. Those who are unfamiliar with their benefits exhibit higher levels of concern about retiree health care costs. Most people expect to rely primarily on Social Security and/or their retirement plan assets to fund health care costs in retirement.” [Full Article](#)

*TIAA Institute*

# RISQReview

## EMPLOYEE BENEFITS, HUMAN RESOURCES, & COMPLIANCE

### IRS Reverses Course on the Application of Qualified Healthcare Expenses to the Employee Retention Tax Credit

“Q&As [#64](#) and [#65](#) now state that employers can claim the ERTC for qualified healthcare expenses, regardless of whether the employee is paid qualified wages. The revised Q&As clarify this new interpretation with five examples -- in each example, qualified healthcare expenses paid to furloughed employees are considered qualified wages for purposes of the ERTC.” [Full Article](#)

*Squire Patton Boggs*



### Text of HHS Fact Sheet on 2021 Notice of Benefit and Payment Parameters Final Rule

“Overall, the final rule minimizes the number of significant regulatory changes to provide states and issuers with a more stable and predictable regulatory framework that facilitates a more efficient and competitive market. These changes further the Administration’s goals of lowering premiums, promoting program integrity, stabilizing markets, enhancing the consumer experience, and reducing regulatory burden.” [Full Article](#)

*Centers for Medicare & Medicaid Services, U.S. Department of Health and Human Services*

### IRS Provides Additional Time to Contribute to HSAs

“Contributions to HSAs may be made up until July 15, 2020. Additionally, if excess contributions had been made in 2019 and were treated as being taxable, individuals can avoid the 6% excise tax if the excess amount (plus income on that amount) is withdrawn by July 15, 2020. This does not apply to contributions that were made via salary reduction or if deductions were taken on the excess amounts.” [Full Article](#)

*Fraser Trebilcock*



### Educational Assistance Programs Allow Employers to Pay Their Employees’ Student Loans with Pre-Tax Dollars

“Not all student loan payments qualify. The statute requires that the payments must be made by the employer on or after the date of enactment (March 27, 2020) and before January 1, 2021. The loan with respect to which the payments are made must have been incurred by the employee for the employee’s education. Loans taken out by a parent of the employee will not qualify.” [Full Article](#)

*Boutwell Fay LLP*

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## EMPLOYEE BENEFITS, HUMAN RESOURCES, & COMPLIANCE

### COVID-19 Coronavirus Business Impact: Further Guidance on Holiday Entitlements

“On 13 May 2020, following the announcement of the extension of the Job Retention Scheme until the end of October 2020, the Government published guidance on holiday entitlement and pay during coronavirus (COVID-19) (the “Guidance”). Guidance issued in April addressed the issue of holiday for those who had been furloughed but this additional guidance extends to all workers and provides some welcome clarification, in particular in relation to the carryover of holiday following the amendments made to workers’ ability to roll over their statutory holiday entitlements into subsequent holiday years by the Working Time (Coronavirus) (Amendment) Regulations 2020 (the “Regulations”).” [Full Article](#)

*Dechert LLP*

### Coronavirus Economic Response Update: The Road to Recovery

“As an increasing number of governors plan to reopen state economies, Congress is under pressure to pass a fourth stimulus package to help businesses and individuals navigate economic recovery. This weekly newsletter outlines the latest developments in Washington, including major tax, small business and financial services developments related to CARES 4.0 negotiations and newly-issued regulatory guidance from various agencies.” [Full Article](#)

*Brownstein Hyatt Farber Schreck, LLP*



### Old Rules, “New Normal”

“Most employers have settled into maintaining a virtual workforce. It’s now time to begin to plan for a tentative return to the workplace. Whether virtual or in returning to the office, it is important to remember that the laws that govern “the workplace” -- discrimination, disability, and other laws -- remain in full force and effect.” [Full Article](#)

*Porzio, Bromberg & Newman, P.C.*

### Key Issues to Consider While Reopening Or Partially Reopening

“As state and local governments relax their “stay-at-home” orders, businesses must look at how to revamp and reinvent their day-to-day operations to comply not only with a wide variety of new regulations, but also legal implications from existing laws and regulations. Often, these issues are overlapping and involve more than one area of law.” [Full Article](#)

*Brownstein Hyatt Farber Schreck, LLP*



# RISQReview

## EMPLOYEE BENEFITS, HUMAN RESOURCES, & COMPLIANCE

### States Expand Workers' Compensation Law for "Front Line" Workers in Response to COVID-19

"Employers should be aware of recent changes in state workers' compensation laws which expand protections for "front-line" workers in response to the ongoing COVID-19 pandemic. These laws make it easier for certain categories of employees to obtain workers' compensation benefits for COVID-19 infections." [Full Article](#)

*Hogan Lovells*

### DWZ– Drinking While Zooming (and Other Telework Dilemmas)

"By now we probably all have seen the YouTube Video of poor Danny, who finished his Zoom video meeting with his colleagues and forgot to end the call as he walked away from the screen, his colorful boxer short underwear in plain sight (along with his backscratching stretch to loosen his muscles). Or the son of the late Steve Reeve of Superman fame (Will), a reporter who was spied at the end of a news piece he broadcasted from home without any suit pants! Ah, Danny and Will! But, other things are happening while employees work from home that raise concerns. For example, the employee who during a conference call is slurring his speech as if intoxicated." [Full Article](#)

*Shawe Rosenthal*



### The "Laker Effect" Continues: Ongoing Uncertainty with PPP Borrowers' Uncertainty Certification

"Probably the best known provision of the CARES Act is the creation of the forgivable payroll protection program (PPP) loan, but the devil truly has been in the details and those trying to keep up with the changing landscape could be forgiven if they throw their hands up in frustration. While it initially appeared that Congress had greatly expanded the pool of eligible borrowers, PPP funds were quickly depleted and a backlash flared up when it came to light that some publicly-traded companies had been early beneficiaries. Comments by the Treasury Secretary and others, followed by a somewhat cryptic FAQ, dictated that borrowers exercise caution when representing the effect of current economic uncertainty on their business." [Full Article](#)

*Lane Powell*



### OSHA State Plan Agencies Issue COVID-19 Guidance

"Over the past several months, the federal Occupational Safety and Health Administration (OSHA) has steadily issued guidance to both employers and agency officials on strategies to navigate regulatory matters related to the COVID-19 pandemic, as we have discussed here, here, here, here, and here. However, federal OSHA is not the only government agency addressing the crisis at hand. Below is an outline of efforts OSHA State Plan agencies have also implemented, as of April 23, 2020, to address COVID-19 issues in the workplace. Should you operate in any one or more of these jurisdictions, you will want to be cognizant of the guidance outlined below." [Full Article](#)

*Squire Patton Boggs*

# RISQReview

## STATE & INTERNATIONAL COMPLIANCE

### CALIFORNIA



#### California COVID-19 Emergency Local Paid Sick Leave Chart

“In response to COVID-19, local governments across California have enacted various measures to expand paid sick leave to workers in their jurisdictions. We’ve compiled a chart summarizing the COVID-19 local paid sick leave laws passed in California to date, including Emeryville, Los Angeles, San Francisco, and San Jose.” [Full Article](#)

*Davis Wright*

### NEW YORK



#### New York Issues Guidance on Face Masks for Essential Business Employees

“Governor Cuomo recently issued an Executive Order directing essential businesses to provide face coverings to their employees when in direct contact with customers or members of the public, at the expense of the employer. The New York State Department of Health (NYSDOH) just issued guidance for such essential businesses to comply with the order.” [Full Article](#)

*Fisher Phillips*

### MINNESOTA



#### Minnesota Legislative Update: COVID-19 Testing Initiated

“Governor Walz announced an agreement with the University of Minnesota and the Mayo Clinic to expand the state’s ability to test for COVID-19. The agreement is intended to significantly expand testing capacity and the coordination of testing, with \$36 million in initial funding authorized by the Governor. New executive orders extending school closures through the remainder of the current school year, while also allowing additional businesses to open beginning Monday, April 27.” [Full Article](#)

*Faegre Drinker*

### CONNECTICUT



#### Faces Masks are the Rule in the Connecticut Workplace

“On April 17, 2020, Governor Ned Lamont issued Executive Order 7BB requiring state residents “who are unable to or do not maintain a safe social distance of approximately six feet from every other person” in a public place to “cover their mouth and nose with a mask or cloth face-covering.” [Full Article](#)

*Ogletree Deakins*

### VIRGINIA



#### Virginia Continues Sweeping Employment Reforms

“Although Virginia’s recent amendments to its Human Rights Act have garnered the most media attention, Gov. Ralph Northam has also signed or proposed amending several other laws that will significantly impact Virginia employers. Most notably, Gov. Northam signed a new law prohibiting employers from entering or enforcing noncompetition agreements with certain employees, strengthened protections for employees protesting illegal activity or cooperating with law enforcement, and proposed that the first in a series of increases to the state minimum wage take effect on May 1, 2021.” [Full Article](#)

*McGuireWoods*

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## STATE & INTERNATIONAL COMPLIANCE

### MASSACHUSETTS



#### Governor Outlines Four-Phased Approach to Reopening State's Economy

"On May 11, 2020, Massachusetts Governor Charlie Baker outlined the state's Four-Phased Approach to Reopening the Massachusetts economy, and provided Mandatory Workplace Safety Standards, which will apply to all workplaces when Phase 1 of the reopening plan begins. Phase 1 may begin on May 18, 2020, provided the state meets certain public health metrics." [Full Article](#)

*Seyfarth Shaw LLP*

### NEW YORK



#### New York Announces Additional Reopening Guidance, Including a Regional Monitoring Dashboard

"As we previously detailed, last week New York State Governor Andrew Cuomo outlined guidelines for when Empire State businesses can reopen and return to "in-person" operations. Under the Governor's plan, reopening's will be determined, first, on a region-by-region and then, once a region is eligible to reopen, on a phased industry-by-industry basis." [Full Article](#)

*Reed Smith LLP*

### NEW JERSEY



#### State Expands Protections of the Family Leave Act and Amends Mini-WARN Act Amid COVID-19 Pandemic

"On April 14, 2020 New Jersey Gov. Phil Murphy signed legislation through Senate Bill S2374 that expands protections of the New Jersey Family Leave Act (NJFLA) to employees taking time off to care for a family member during the COVID-19 outbreak." [Full Article](#)

*Goldberg Segalla*

### PENNSYLVANIA



#### Pennsylvania Court Allows Unemployment Benefits for CBD User

"A Pennsylvania court affirmed an order of the Unemployment Compensation Board of Review holding a claimant to be eligible for unemployment benefits after her employer terminated her employment for testing positive for marijuana. *Washington Health System v. Unemployment Compensation Board of Review*, No. 886 C.D. 2019 (May 11, 2020)." [Full Article](#)

*Jackson Lewis P.C.*

### MICHIGAN



#### Legislators Propose Amendment to Workers' Compensation Law to Benefit Certain COVID-19 Positive Employees

"As you will recall, the Director of the Michigan Department of Labor and Economic Opportunity promulgated Emergency Rules ("Rules") on March 30, 2020 in response to the COVID-19 pandemic. As we discussed in a previous blog post, the Rules establish a rebuttable presumption of personal injury for "first response employees" who are diagnosed with COVID-19. Now, the Michigan legislature is getting involved in the issue." [Full Article](#)

*Foster Swift Collins & Smith PC*