

RISQ Review

BUSINESS INSURANCE

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HR, & Compliance**

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Compliance**

The Benefits of Telematics for Commercial Fleets

“Managing a fleet and drivers can be a challenge, particularly given the potential for accidents, employee injuries, liability concerns and increased costs associated with vehicle upkeep. Nevertheless, your fleet—whether it be a handful of cars or dozens of commercial vehicles— plays a major role in the success of your organization. As such, it’s crucial to take a proactive approach to fleet management. To help accomplish this, many businesses have started to equip vehicles with devices known as telematics. These devices can help reduce numerous fleet risks, improve efficiency and promote safe driving behaviors.” [Full Article](#)

Zywave

Representation and Warranty Insurance

“Mergers and acquisitions are common tools for many organizations. While important for continued growth, mergers and acquisitions can open organizations up to a variety of transactional risks, particularly if a statement made by a seller in a purchase and sale agreement turns out to be false. This often occurs as unintentional breaches of representations and warranties that are discovered after a deal is closed. To protect against these transactional risks, an increasing number of organizations are turning to representation and warranty insurance (RWI).” [Full Article](#)

Zywave



CVSA Officially Reschedules Annual International Roadcheck

“Due to concerns about public health and safety in the midst of the COVID-19 pandemic, the Commercial Vehicle Safety Alliance (CVSA) postponed its annual International Roadcheck back in March. While it was previously scheduled for May 5-7, the CVSA recently announced that the event has been officially rescheduled for Sept. 9-11, 2020. The International Roadcheck is an annual, three-day enforcement initiative that emphasizes the importance of commercial motor vehicle and driver safety through a blitz of high-visibility roadside inspections across North America.” [Full Article](#)

Zywave

RISQ Review

EMPLOYEE BENEFITS, HUMAN RESOURCES, & COMPLIANCE

California Provides Details on Employer Reporting for the State Individual Mandate

“Information released by the State indicates that employers will be allowed to use the same forms the employer submits to the IRS (Forms 1094 and 1095 B/C) to satisfy the California employer reporting requirement. Of particular note is that employers that sponsor a fully-insured health plan can rely upon the insurer to submit the necessary Forms 1095-B to the State.” [Full Article](#)

State of California Franchise Tax Board

IRS Addresses Reconciliation and Recapture Rules for Tax Credits Under FFCRA and CARES Act

“In issuing its [temporary regulations](#), the IRS indicated that a refund, credit, or advance of any part of the credits to an employer that is more than the amount to which the employer is entitled is an erroneous refund for which the IRS will seek repayment through a recapture process.” [Full Article](#)

Thomson Reuters Practical Law



HHS Secretary's Report Calls for Congressional Action to Combat Surprise Billing and Promote Price Transparency

“Surprise medical billing is a widespread and costly problem in the United States. Research shows that 41 percent of insured adults nationwide were surprised by a medical bill in the past two years alone, and that two thirds of adults worry about their ability to afford an unexpected medical bill. Practices such as surprise billing leave many patients vulnerable to the financial burdens presented by a nationwide pandemic.” [Full Article](#)

U.S. Department of Health and Human Services [HHS]



RISQ Review

EMPLOYEE BENEFITS, HUMAN RESOURCES, & COMPLIANCE

Federal Appellate Courts Apply Different Analyses of “Transitory and Minor” Impairments Under the ADA

“The U.S. Court of Appeals for the Fifth Circuit found that an employee’s impairment lasting less than six months was “transitory and minor,” and therefore she was not entitled to the protections of the Americans with Disabilities Act. The Fifth Circuit’s holding, however, is at odds with that of the Third Circuit, which we discussed in the June 2020 E-Update.” [Full Article](#)

Shaw Rosenthal LLP

Can Employers Be Liable for COVID-19 Cases?

“Legal claims based upon possible COVID-19 exposure in the workplace are increasingly being asserted.” [Full Article](#)

Thompson Coburn LLP



EEOC Update: The Commission Resumes Issuance of Charge Closure Documents

“On August 3, 2020, the EEOC announced in a press release that it will resume issuing charge closure documents, or “Notices of Right to Sue.” The Commission had previously suspended issuing closure documents as a result of the COVID-19 pandemic in an effort to help preserve the rights of charging parties and employers.” [Full Article](#)

Seyfarth Shaw LLP



No COVID Extension: VETS-4212 Filing Deadline is September 30, 2020

“Although the 2020 EEO-1 deadline was extended due to the pandemic, contractors and subcontractors who have a current contract covered by the Vietnam Era Veterans’ Readjustment Assistance Act (VEVRAA) or had a contract as of January 1, 2020, must file a VETS-4212 report by September 30, 2020.” [Full Article](#)

Michael Best & Friedrich LLP

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EMPLOYEE BENEFITS, HUMAN RESOURCES, & COMPLIANCE

Employers May Need to Provide Employees with Documentation of Qualified Health Coverage Under Michigan No-Fault Auto Insurance Reform

“Michigan's no-fault law no longer requires Michigan drivers to carry unlimited medical coverage (PIP coverage). Under certain circumstances, individuals with qualified health coverage (QHC) may be able to opt-out of PIP coverage under their no-fault policy, which generally will lead to a lower premium. Carriers of fully insured group health plans must provide documentation to plan participants about whether their coverage under the group health plan is QHC. Private employers sponsoring self-funded group health plans are not required to comply with the bulletin's obligations because of ERISA preemption.” [Full Article](#)

Miller Johnson



Avoiding COVID-19 Benefits-Related Litigation

“1). Did employee layoffs trigger a partial termination of your plan that requires accelerated vesting? 2). Were there any changes to investments during the COVID-19 pandemic period and, if so, were those actions documented? 3). Were decisions whether or not to continue benefits to laid off or furloughed employees made consistently and uniformly? 4). Were separating employees timely notified of their COBRA rights and continuation of other benefits? 5). Have you recorded any changes to your COVID -19-related benefits strategy in plan documents?” [Full Article](#)

Hall Benefits Law

State Health Insurance Marketplaces Increasingly Take Over Obamacare Exchanges from Feds

“Pennsylvania is one of six states shifting in the next several years from the federal insurance exchange to run their own online marketplaces. They will join 12 states and the District of Columbia with self-contained exchanges. The transitions come amid mounting evidence that state marketplaces attract more consumers, especially young adults, and hold down prices better than the federal exchange.” [Full Article](#)

Kaiser Health News



HIPAA Enforcement Relaxed But Not Abandoned

“OCR announced in March 2020 that it would exercise discretion in enforcement actions related to HIPAA restrictions that might otherwise limit the good faith provision of telehealth services. But with the pandemic and the implementation of work-from-home policies, health care providers -- so called 'Covered Entities' -- must be more vigilant than ever to employ commercially reasonable efforts to safeguard the protected health information (PHI) of patients.” [Full Article](#)

Hodgson Russ LLP

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EMPLOYEE BENEFITS, HUMAN RESOURCES, & COMPLIANCE

Federal Court Ruling Partially Vacating the DOL's FFCRA Rules Creates Dilemma for Employers

"Racing to respond to the devastating impact from the COVID-19 pandemic, Congress passed the Families First Coronavirus Response Act (FFCRA). The FFCRA created Emergency Paid Sick Leave (EPSL) and Emergency Paid Family and Medical Leave (EFML) to employees unable to work for qualifying reasons due to COVID-19. The New York State Attorney General later sued under the Administrative Procedure Act (APA), challenging portions of these regulations, and arguing that the DOL exceeded its authority. A federal court for the Southern District of New York agreed with the New York Attorney General, and issued a ruling on August 3, striking down several of DOL's rules. The reach of the court's order remains unclear, particularly for employees working outside of New York State. Nevertheless, if broadly applicable, the court's interpretation of the FFCRA represents a sea change on when leave must be granted under the FFCRA." [Full Article](#)

Lane Powell



As the EEOC Resumes Sending out Right-To-Sue Letters, Employers Should Expect an Increase in Discrimination Lawsuits

"In a little-publicized move near the beginning of the U.S. coronavirus lockdown, the EEOC temporarily suspended issuing right-to-sue letters with respect to most charges of discrimination. That decision was made as a part of the EEOC's efforts to operate in accordance with public health guidelines. Since March 21, 2020, right-to-sue letters have typically been issued only to charging parties who have requested them. However, the EEOC resumed sending out right-to-sue letters on August 3, 2020, and announced that any suspended notices would be sent out between that date and September 30, 2020." [Full Article](#)

Hunton Andrews Kurth



Labor Board Decision Broadly Approves Holding ULP Trials by Video

"The National Labor Relations Board (NLRB) upheld an administrative law judge's (ALJ) ruling directing that an unfair labor practice trial be conducted by videoconference because of the COVID-19 pandemic. William Beaumont Hospital, 370 NLRB No. 9 (Aug. 13, 2020). This decision may have broad effect even after COVID-19 concerns have passed." [Full Article](#)

Jackson Lewis

Making Green Mean "Go" Rather Than "Oh No" for Employers

"Most states have lifted certain COVID-19 mitigation limitations and businesses have understandably been eager to resume or expand operations. Employers, however, face many new challenges that may have them putting on the breaks and saying "Oh No" rather than "Go" as they try to drive their business forward." [Full Article](#)

Leech Tishman

RISQ Review

EMPLOYEE BENEFITS, HUMAN RESOURCES, & COMPLIANCE

Preparing to Deal With Employee Absences as Schools Move to Remote and Alternate Schedules

“As the fall nears, the school year is about to kick off. While employees juggling work and school obligations can always present an issue, this year could prove to be a little more complicated than usual. Although some schools are preparing to go back to school in-person, others are utilizing a variety of modified schedules, or going totally remote.” [Full Article](#)

Foster Swift



New EEOC Guidance Answers Opioid Addiction and Employment Questions

“The U.S. Department of Labor (“DOL”) has released new and significantly revised versions of its model notice of rights, certification, and designation forms under the federal Family and Medical Leave Act (“FMLA”). According to a press release by the DOL, the new forms, which are now currently in effect and can be found on the DOL’s website, seek to “streamline” the prior forms by making them ‘simpler and easier for employees, employers, leave administrators and healthcare providers to understand and use.” [Full Article](#)

Proskauer

IRS Allows Employees to Donate Paid Leave to Charity in 2020

“[Notice 2020-46](#) requires that the value of the leave be donated to a Code Section 170(c) charitable organization for the relief of victims of the COVID-19 pandemic in one of the 50 U.S. states, the District of Columbia or five U.S. territories. The Notice also requires that the employer make the cash payments to the charity (or charities) by January 1, 2021.” [Full Article](#)

Frost Brown Todd LLC



Implications of COVID-19: Coverage Under Private Group Health and Disability Plans (PDF)

“While some states have regulations concerning short-term disability leave benefits for employees who are unable to work because they have COVID-19 symptoms, were exposed to COVID-19, or have been subject to mandatory or precautionary quarantine, states lack the authority to regulate most employer-sponsored benefits plans governed by ERISA. The DOL has not yet announced any analogous regulations specific to COVID-19. Overall, COVID-19 fears and financial instability caused by the pandemic are likely to cause a spike in the number of disability benefit claims that are filed over the next few months.” [Full Article](#)

Robinson & Cole LLP, via For The Defense

RISQ Review

STATE & INTERNATIONAL COMPLIANCE

CALIFORNIA



San Francisco Clarifies Back to Work Ordinance Requirements

"In July, San Francisco's Back to Work ordinance went into effect. The ordinance requires employers operating in San Francisco to offer reemployment to eligible employees laid off as a result of the COVID-19 pandemic and the related stay at home and shelter in place orders issued by the City of San Francisco when they are rehiring for the same or similar classifications." [FAQ Page](#) [Full Article](#)

Jackson Lewis

CALIFORNIA



California Department of Public Health Issues COVID-19 "Employer Playbook"

"On July 24, 2020, the California Department of Public Health ("CDPH") issued guidance entitled "COVID-19 Employer Playbook For a Safe Reopening." The CDPH then revised the 32-page Employer Playbook a week later, on July 31st." [Full Article](#)

Sheppard, Mullin, Richter & Hampton LLP

WASHINGTON



Extended Rights for "High-Risk" Employees in Washington State

"As the COVID-19 pandemic continues, Washington State Governor Jay Inslee has extended and clarified a proclamation granting high-risk employees the right to decline to return to the workplace." [Full Article](#)

Foster Garvey P.C.

WASHINGTON



Washington Governor Creates COVID-19 Food Production Workers Paid Leave Program

"Under the Washington COVID-19 Food Production Workers Paid Leave Program, no food production employer in Washington may operate from August 18, 2020, to November 13, 2020, unless the employer provides its workers with paid leave for certain qualifying events. The Program was created by Governor Jay Inslee under Proclamation 20-67." [Full Article](#)

Jackson Lewis

LOUISIANA



Louisiana Expands its Non-Compete Statute in Favor of Companies

"In a strengthening of company contractual rights, the Louisiana Legislature recently expanded its state non-compete statute by permitting a corporation, partnership, or limited liability company to enter into agreements with their shareholders, partners, or members, respectively, that prevent them from becoming employees of a competing company under certain circumstances." [Full Article](#)

Seayfarth Shaw

RISQReview

STATE & INTERNATIONAL COMPLIANCE

MARYLAND



Maryland Salary History Ban and Wage Range Notice Requirement to Take Effect October 1

“The new law amends Maryland’s existing Equal Pay for Equal Work (EWEW) law. Its requirements, which will apply to all private, state, and local government employers in Maryland, add to existing provisions that set nondiscrimination and equal pay standards and prohibit employers from requiring employees to keep their pay information confidential.” [Full Article](#)

Hogan Lovells

NEW JERSEY



New Jersey Supreme Court Clarifies Procedures for Implementing Employee Arbitration Agreements

“The New Jersey Supreme Court handed down a company-friendly decision this week clarifying New Jersey law on employers’ implementation of arbitration agreements for disputes with employees, even without the employee’s affirmative consent. The Court’s guidance is also applicable to other changes in the terms of employment of current employees.” [Full Article](#)

Lowenstein Sandler

MASSACHUSETTS



Massachusetts Department of Paid Family

“Following a truncated period of public comment and hearings, the Massachusetts Department of Family and Medical Leave (Department) released the final regulations under the Massachusetts Paid Family and Medical Leave Law (PFML), effective July 24, 2020.” [Full Article](#)

Little Mendelson P.C.

NEW YORK



New York Court Vacates Four Provisions of the FFCRA Final Rule

“Earlier this week a federal court in New York vacated four key provisions of the U.S. DOL’s Final Rule implementing the Families First Coronavirus Response Act.

In April, the State of New York sued the DOL claiming that the DOL had exceeded its statutory authority in a way that denied FFCRA leave to eligible employees. The District Court largely agreed with the state of New York and vacated four provisions of the DOL’s Final Rule.” [Full Article](#)

Breazeale, Sachse & Wilson, L.L.P.

WISCONSIN

WISCONSIN



1848

Immediate Action Required for Employers Seeking Relief From Unemployment Insurance Benefits Charged to Their Accounts Due to COVID-19

“The Wisconsin Department of Workforce Development (“DWD”) has announced that employers may qualify for relief from COVID-19-related unemployment insurance (“UI”) benefits that were charged to their accounts between May 17, 2020 to June 30, 2020, but they must act fast due to filing deadlines.” [Full Article](#)

Quarles & Brady LLP