

RISQ Review

BUSINESS INSURANCE

Also in this Issue:

**Page 2: Employee Benefits,
HR, & Compliance**

**Page 8: State & International
Compliance**

Self-Driving Tech Could Put Motor Carriers Back in the Driver's Seat

“Over 30 automakers and technology companies are working to make trucks fully autonomous, and many states have already passed self-driving legislation that allows for testing on public roads. But, even though this technology offers motor carriers a way to increase efficiency and improve safety, there are a number of topics your business needs to consider before adopting self-driving trucks.”

[Full Article](#)

Zywave

Texting Ban for Commercial Truck Drivers

“In order to combat the growing number of fatalities caused by distracted driving, the Federal Motor Carrier Safety Administration (FMCSA) enacted a federal rule banning commercial motor vehicle operators from texting while driving.

In addition, motor carriers may not allow or require their drivers to text while driving, although there is an exception for texting when necessary to communicate with law enforcement officials or other emergency services.”

[Full Article](#)

Zywave



Social Inflation Increasing Casualty Risks

“Ongoing weakness in the U.S. economy from the coronavirus pandemic is keeping inflation low, but that isn't stopping social inflation from driving up the cost of risk in casualty lines.

A number of factors are causing social inflation — a term that includes changing attitudes toward litigation, rollbacks of tort reform, and legal trends such as litigation funding — primarily in commercial casualty. Lines affected most by social inflation are commercial automobile, general liability, management liability, and commercial umbrella. As a result, a recent survey found liability risk is one of the five most concerning risks for mid-sized businesses.” [Full Article](#)

RISQ Review

EMPLOYEE BENEFITS, HUMAN RESOURCES, & COMPLIANCE

Tracking Telehealth Changes State-by-State in Response to COVID-19

"Updated Sep. 18, 2020. "As states and federal agencies continue to combat the COVID-19 pandemic, they are also beginning to develop and implement permanent telehealth policy changes in order to continue to expand access to telehealth services beyond the pandemic period. [A set of charts describes current and proposed] state and federal guidance, regulations, and legislation."

[Full Article](#)

Manatt, Phelps & Phillips, LLP

Employer May Be Held Liable for Service Provider's Error

"The Second Circuit Court of Appeals has held that a plaintiff properly pled her breach of fiduciary duty claim for equitable relief against an employer in connection with a third party administrator's clerical error in calculating life insurance benefits payable to her under the employer's ERISA welfare plan." [Full Article](#)

The Wagner Law Group

Health Insurer Pays \$6.85 Million to Settle Data Breach Affecting Over 10.4 Million People

"Premera Blue Cross (PBC) has agreed to pay \$6.85 million to OCR and to implement a corrective action plan to settle potential violations of the HIPAA Privacy and Security Rules related to a breach affecting over 10.4 million people. This resolution represents the second-largest payment to resolve a HIPAA investigation in OCR history." [Full Article](#)

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

2021



2020 End of Year Plan Sponsor 'to Do' List, Part 1: Health and Welfare Plans

"Amidst a once in a 100-year pandemic, many employers found themselves having to furlough and lay-off employees due to the related economic downturn. As a result, many Americans found themselves without health and life insurance when they needed it most. Depending on the outcome of the election, 2021 could bring significant changes to our employer-based health care system, but for now, ACA remains the law of the land and employers must continue to comply with its requirements." [Full Article](#)

Snell & Wilmer

RISQ Review

EMPLOYEE BENEFITS, HUMAN RESOURCES, & COMPLIANCE

Federal Judge Strikes Down Department of Labor Joint Employer Rule

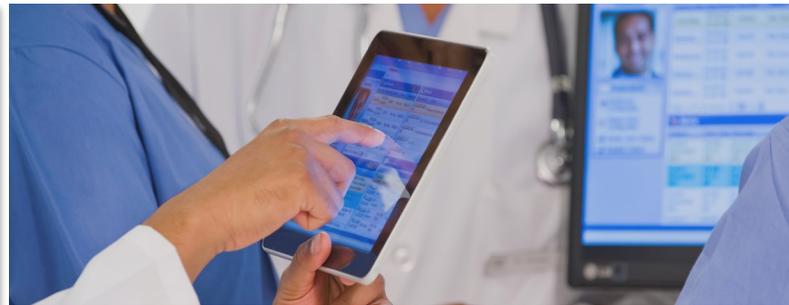
“On September 8, 2020, Judge Gregory Woods of the U.S. District Court for the Southern District of New York struck down the heart of the U.S. Department of Labor’s (DOL) final rule revising DOL regulations on joint employer status under the Fair Labor Standards Act (FLSA). The government has not yet announced whether it will appeal the ruling. However, a group of trade associations intervened in the district court case and may advocate for the government to challenge the ruling.” [Full Article](#)

K&L Gates

Ministerial Exemption Does Not Bar Hostile Work Environment Claim For Gay Church Employee

“Can an employee sue his church employer after his supervisor, a priest, created a hostile work environment claim because of the employee’s sexual orientation once the priest learned of the employee’s plans to marry his long-term partner? Yes, yes it can, according to the United States Court of Appeals for the Seventh Circuit in *Demkovich v. St. Andrew The Apostle Parish*, No. 19-2142 (7th Cir. 2020), decided on August 31, 2020.” [Full Article](#)

Fisher Broyles



OSHA Updates Rule on Medical Records Access

“The Occupational Safety & Health Administration (OSHA) has issued a final rule revising its procedures for accessing employee medical records, with specific requirements for safeguarding electronic medical records that are more consistent with current medical recordkeeping practices. The revisions also shift authority to manage the procedures from the OSHA Assistant Secretary to an OSHA Medical Records Officer (MRO), which OSHA views as a more “efficient” process. As a result of these revisions, employers may learn at an earlier point in the inspection process whether OSHA personnel will be authorized to review medical records and should have greater clarity about the protocols OSHA will follow when reviewing that information.” [Full Article](#)

Beveridge & Diamond



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

Compendium of State Regulatory Materials for Health Insurance Operations and Coverage Related to the COVID-19 Pandemic (PDF)

“A 15-page hyperlinked list of administrative materials, organized by state jurisdiction, issued by state insurance departments to provide guidance to both the insurance industry, health plans, and consumers relating to health insurance coverage and COVID-19.” [Full Article](#)

Sidley Austin LLP



HIPAA Covered Entities and Business Associates Need an IT Asset Inventory List, OCR Recommends

“While the creation of an IT asset inventory list is not required under the HIPAA Security Rule, it could be helpful in the development of a risk analysis, and in turn and implementing appropriate safeguards -- which are HIPAA Security Rule requirements. Essentially, if an organization doesn't know what IT assets it has or where its ePHI is, how can it effectively assess the risks associated with those assets and information and protect them?” [Full Article](#)

Jackson Lewis

COVID-19 Could Prompt More Employers to Offer Telemedicine Health Benefit (PDF)

“Many insurers have automatically waived copays for telemedicine provided by in-network providers under their policies. Self-insured employers have the power to choose how they want to handle cost-sharing, although many have already been defaulted into waiving cost-sharing unless they affirmatively opted out. While these opportunities have been available in one form or another for years, their value in the workplace has become much more apparent as a result of the pandemic.” [Full Article](#)

Nelson Mullins



RISQ Review

EMPLOYEE BENEFITS, HUMAN RESOURCES, & COMPLIANCE

Decision by Committee Cannot Overcome Supervisor's Racist Statements

"The U.S. Court of Appeals for the Fourth Circuit (which includes Maryland, North and South Carolina, Virginia, and West Virginia) found that, although the promotion decision in question was made by committee, the decision was nonetheless led – if not controlled – by a racist supervisor." [Full Article](#)

Shawe Rosenthal LLP

Reasonable, Not Required: DOL Says IRS Mileage Rate Is Not Only Expense Reimbursement Method

"The U.S. DOL has confirmed that there is no per se violation of the FLSA's minimum wage requirement when low-wage employees are reimbursed for their use of a personal vehicle at a reasonable rate that is less than the IRS standard mileage rate and clarified that, in many cases, not all vehicle-related expenses need to be reimbursed." [Full Article](#)

Seyfarth Shaw LLP



A "Reason to Believe": DOL Says the Obligation to Determine Remote Employees' Hours of Work is "Not Boundless"

"Employers must pay for all hours they know or "have reason to believe" employees worked. But can employers simply rely on teleworking employees to report all of their hours worked, or must they instead investigate whether their employees have accurately reported their work time? With the huge increase in teleworking since the start of the COVID-19 pandemic, this question should be top-of-mind for employers." [Full Article](#)

Baker & McKenzie LLP

Department of Labor Issues Opinion Letter Clarifying Availability of Fluctuating Workweek Method of Calculating Overtime

"In the U.S., employees must be paid overtime compensation at a rate of one-and-one-half times their regular rate of pay for all hours worked in excess of forty (40) per workweek unless specifically exempted by law. For many employees, this means payment of a straight time hourly rate, and then payment of one-and-one-half times that hourly rate for each of their weekly overtime hours." [Full Article](#)

Squire Patton Boggs

RISQ Review

EMPLOYEE BENEFITS, HUMAN RESOURCES, & COMPLIANCE

LGBTQ Issues for Employee Benefit Plans in Light of Bostock

“Examples of benefit program provisions that warrant review: [1] Eligibility rules that provide benefits to opposite-sex spouses, but not same-sex spouses; [2] Eligibility rules that provide coverage to same-sex domestic partners, but not opposite-sex domestic partners; [3] Medical plan provisions that exclude gender dysphoria treatments; [4] Enrollment forms that require enrollees to identify their sex, and the role that such an identifier plays in the plan’s administration; [5] Benefit plans that do not cover family planning benefits for LGBTQ employees if such benefits are covered for opposite-sex employees; and [6] Short-term or long-term disability plans that do not provide benefits in connection with leaves for gender dysphoria treatment or gender affirmation surgeries.” [Full Article](#)

Warner Norcross & Judd LLP



President Trump Orders HHS to Rescind Discount Safe Harbor for PBMs, But Questions Remain

“Questions remain as to whether HHS has the legal authority to carry out the Order and, if it does, whether it can do so in a manner that will not increase costs. This article provides a background on the legal issues surrounding HHS’s approach to the use of rebates by pharmaceutical manufacturers, then addresses the February 2019 proposed rule in light of the Order, and concludes with a discussion of future considerations.” [Full Article](#)

Seyfarth Shaw LLP

Employer May Face Equitable Remedies for Fiduciary Breach Due to Service Provider's Error

“Two key ERISA issues are highlighted here: the possibility of monetary relief for fiduciary breach, and the importance of monitoring service providers. While an employer held liable for a service provider’s gross negligence might seek recovery from the service provider, contract terms could limit the service provider’s exposure. This case also illustrates the importance of fully investigating possible errors as they arise.” [Full Article](#)

Thomson Reuters / EBIA



RISQ Review

EMPLOYEE BENEFITS, HUMAN RESOURCES, & COMPLIANCE

Administration Finalizes Drug Importation Plans, But Legal and Practical Questions Remain

“HHS released a **final rule** aiming to permit states or other specific actors to establish programs to import prescription drugs from Canada. If it is not blocked in court, the rule will become effective 60 days after its publication in the Federal Register, which is scheduled for October 1. This rule is one element of the Trump Administration's broader agenda on drug pricing, but it faces several large obstacles which are likely to derail its implementation.” [Full Article](#)

Rachel Sachs in Health Affairs Blog

October 14 Is the Last Day to Provide Medicare Part D Notice of Creditable (or Non-Creditable) Coverage

“Employers offering group health plans with prescription drug coverage are required to disclose to all Part D-eligible individuals who are enrolled in or were seeking to enroll in the group health plan coverage whether such coverage was 'actuarially equivalent,' i.e., creditable. This notice is required to be provided to all Part D eligible persons, including active employees over age 65.” [Full Article](#)

Fraser Trebilcock

DOL Announces Revisions to FFCRA That Will Seriously Impact Healthcare Providers

“On September 11, 2020, the U.S. Department of Labor's Wage and Hour Division (WHD) announced revisions to regulations that implement the paid sick leave and expanded family and medical leave provisions of the Families First Coronavirus Response Act (FFCRA). Most significantly, the revised rule will require healthcare providers to provide FFCRA protected/paid leave to a broader range of employees than previously believed. The revisions also clarify other employers' responsibilities regarding FFCRA paid leave.” [Full Article](#)

Breazeale, Sachse & Wilson

U.S. Equal Employment Opportunity Commission Updates Guidance for Employers on COVID-19 and EEO Laws

“On September 8, 2020, the U.S. Equal Employment Opportunity Commission (EEOC) issued a substantive update to its “What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws.” Much of this update incorporates and confirms guidance offered in previous sources. While guidance on this topic continues to evolve, this most recent update provides a useful snapshot to employers of what issues the EEOC feels are important to clarify.” [Full Article](#)

Sidley Austin



RISQ Review

STATE & INTERNATIONAL COMPLIANCE

CALIFORNIA



CALIFORNIA REPUBLIC

California Privacy Update: California Legislature Extends CCPA Employee and B2B

“In a flurry of legislative activity, the California legislature passed a number of last-minute privacy bills that now await the signature of Governor Gavin Newsom in order to go into effect.” [Full Article](#)

Wilmer Cutler Pickering Hale and Dorr LLP

CALIFORNIA



CALIFORNIA REPUBLIC

California to Potentially Expand Family and Medical Leave Entitlements

“California is likely to significantly expand its family and medical leave laws, by expanding the obligation to provide job-protected leave to small businesses with as few as five employees, allowing leave to be taken for additional reasons, and eliminating certain exceptions to employer obligations to provide leave.” [Full Article](#)

Sheppard, Mullin, Richter & Hampton LLP

CALIFORNIA



CALIFORNIA REPUBLIC

California Requires New COVID-19

“On September 9, 2020, Governor Newsom signed Assembly Bill (AB) 1867 into law, adding section 248.1 to the Labor Code. Under this new section, “hiring entities” are required to provide supplemental COVID-19 paid sick leave (CPSL) to “covered workers.” This is in addition to any paid sick leave that may be available to the covered workers under California’s Healthy Workplace Healthy Family Act of 2014 (HWHFA).” [Full Article](#)

Reed Lewis

NEW JERSEY



New Jersey Enacts COVID-19 Workers’ Compensation Presumption Bill for Essential Workers

“On September 14, 2020, New Jersey Governor Phil Murphy signed Senate Bill (SB) 2380 into law. SB 2380 creates a rebuttable presumption of workers’ compensation coverage for COVID-19 cases contracted by “essential employees” during a public health emergency declared by an executive order of the governor. The law is effective immediately and retroactive to March 9, 2020.” [Full Article](#)

Ogletree Deakins

NEW JERSEY



New Jersey Employees’ Children Not Going Back to In-person School – Now What?

“The changing legal landscape and uncertainty that emerged in March with the onset of the COVID-19 pandemic will likely continue well into the Fall. Indeed, employers continue to struggle in determining their employees’ entitlement to time off for COVID-19-related reasons, especially given the varying status of in-person and remote learning across New Jersey school districts.” [Full Article](#)

Day Pitney LLP

RISQ Review

STATE & INTERNATIONAL COMPLIANCE

OHIO



Anxious About Tort Liability? Ohio Enacts House Bill 606, 'Good Samaritan Expansion Bill,' to Limit Employer Liability for COVID-19 Exposure

"Ohio Gov. Mike DeWine signed HB 606 into law on Monday, Sept. 16, 2020. Known as the "Good Samaritan Expansion Bill," the law protects employers, both private and public, from civil action lawsuits for damages stemming from COVID-19 exposure, except in reckless or wanton exposure cases." [Full Article](#)

Baker Hostetler

PENNSYLVANIA



Philadelphia Mandates Two Weeks of Paid Sick Leave for Workers Impacted by COVID-19

"Continuing a national trend that has seen many cities and municipalities enact strong worker-protection laws, Philadelphia's City Council has passed a sweeping new ordinance that makes two weeks of paid sick leave available to thousands of Philadelphia workers impacted by COVID-19." [Full Article](#)

Cozen O'Connor

NEW YORK



Reminder to New York Employers: Sick-Leave Law Compliant Policy due September 30, 2020

"New York recently enacted a permanent sick leave policy requiring all employers in New York State, regardless of size, to provide sick leave to their employees. Although employers are not required to allow employees to use sick leave until January 1, 2021, employees may begin accruing the sick leave on September 30, 2020." [Full Article](#)

Patterson Belknap Webb & Tyler

VIRGINIA



Virginia Adopts First-in-Nation COVID-19 Workplace Safety Standards

"On July 27, 2020, Virginia's COVID-19 Emergency Temporary Standard ("ETS"), 16VAC25-220, went into effect after being adopted by the Department of Labor and Industry's (DOLI) Virginia Occupational Safety and Health (VOSH) Program and the Virginia Safety and Health Codes Board."

[Full Article](#)

Shawe Rosenthal LLP

GEORGIA



Take a Break! Georgia Amends Its Lactation Break Law

"The state of Georgia has had a lactation break law on the books for quite some time, but with House Bill 1090 the legislature made some important changes, effective August 5, 2020." [Full Article](#)

Ogletree, Deakins, Nash, Smoak & Stewart, P.C.