

RISQ Review

BUSINESS INSURANCE

Also in this Issue:

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HR, & Compliance**

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Compliance**

Social Inflation, Low Interest Rates, Rising Catastrophes: Recipe for a Hard Market

“Even before the coronavirus crisis hit, the re/insurance industry was in a period of significant rate hardening, which will likely continue over the next two years, or even longer, according to Munich Re.

Such price increases became necessary after 10-plus years of eroding prices and weakening terms and conditions, which has led to a “significantly reduced profitability [for] the whole industry,” said Torsten Jeworrek, CEO of Munich Re’s reinsurance business.” [Full Article](#)

Insurance Journal

Survey Finds 78% of Risk Managers Now Buying Cyber Insurance

“The tenth year of the [Zurich North America and Advisen Cyber Survey](#) reveals that 78% of risk managers now purchase some level of cyber insurance — compared to only 34% in 2011.

Of this record of 78% with some cyber coverage, 55% have a stand-alone policy, while 13% have coverage included in their professional liability and others in another insurance program.” [Full Article](#)

Insurance Journal



Preparing for Flu Season During the COVID-19 Pandemic

“As an employer, you are well-positioned to help keep your employees healthy and minimize the impact that influenza has on your business. The Centers for Disease Control and Prevention (CDC) recommends strategies to help employers fight the flu and talk to employees about what a flu season during the pandemic looks like .” [Full Article](#)

Zywave

RISQ Review

EMPLOYEE BENEFITS, HUMAN RESOURCES, & COMPLIANCE

New Cross-Plan Offsetting Class Action Lawsuit Highlights Exposure to Self-Insured Health Plan Sponsors

“Plaintiffs claim that UnitedHealth breached its fiduciary duties under ERISA when it used assets from the plaintiffs’ plans to recoup financial losses from other separate plans, effectively using plaintiffs’ plan assets for its own benefit. The plaintiffs assert that, ‘By engaging in cross-plan offsetting, United treats the thousands of Plans it administers as one extremely large piggybank, moving more than \$1.2 billion among its Plans each year to suit its own interests. Each cross-plan offset violates ERISA, and in most cases, the money ends up in United’s own pocket.’” [Full Article](#)

Hall Benefits Law



Health Plan Deductibles Are Increasing Across the Board

“Among enrollees with deductibles, there has been an across-the-board increase in deductibles, regardless of plan type or employee demographic, since 2013. One reason for the increase in deductibles is the movement of enrollees from PPO and POS plans to HSA-eligible health plans. The percentage of enrollees in HSA-eligible health plans more than doubled between 2013 and 2018, increasing from 4 percent to 10 percent.” [Full Article](#)

Employee Benefit Research Institute [EBRI]

Discrimination, Benefit Issues to Watch When Returning Furloughed Workers

“Applicable large employers should be aware of how breaks-in-service following a rehire of furloughed employees affect eligibility provisions and waiting periods under the employer’s group health plan. If benefits continued during the furlough, potential employee ‘catch-up’ payments are needed if the employer paid employee premiums during this period. It is also important for employers to review the impact of adjustments to compensation on benefit contributions and eligibility and remind returning employees to review these changes and resume contributions to retirement plans.” [Full Article](#)

Epstein Becker Green



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EMPLOYEE BENEFITS, HUMAN RESOURCES, & COMPLIANCE

The 'High' Court Denies Review of Federal Overtime Case Involving Cannabis Employees

"As you might recall from our previous post, The 10th Circuit Grants Re-leaf to Workers Seeking Overtime Under the FLSA, the 10th Circuit held that cannabis employers are not immune from federal overtime laws even though the cannabis sector is illegal under federal law. The employer in Robert Kenney v. Helix TCS, Inc., sought to clear the haze that the 10th Circuit's ruling created with respect to the "confusion, conflict, and lack of uniformity between state and federal law regarding federal rights and protections accorded" to employees in the cannabis industry by filing a petition for writ of certiorari with the United States Supreme Court." [Full Article](#)

Seyfarth Shaw

Deadline Approaching to Submit Comments on DOL Proposed Independent Contractor Rule

"The U.S. Department of Labor ("DOL") recently released a proposed rule seeking to clarify independent contractor vs. employee status under the Fair Labor Standards Act ("FLSA"). The proposed rule seeks to simplify the "economic realities" test currently applied by federal courts in various forms. "The Department's proposal aims to bring clarity and consistency to the determination of who's an independent contractor under the Fair Labor Standards Act," Secretary of Labor Eugene Scalia explained in the DOL's news release." [Full Article](#)

Hunton Andrews Kurth



Inclusivity and High Performance Begins with Psychological Safety

"A workplace where employees believe they can speak up candidly with ideas, questions, and concerns, and even make mistakes without fear of reprisal or adverse repercussions, contributes to inclusivity and can improve performance. In such a work environment, employees feel comfortable asking questions, admitting what they do not know, or expressing their work-relevant thoughts and feelings. This construct is called psychological safety." [Full Article](#)

Jackson Lewis



COVID-19 Related Litigation Surges: What Employers Can Do To Minimize Exposure

"The much-anticipated surge of COVID-19 pandemic-related litigation has begun. As the pandemic continues to lay siege to the United States economy, claimants' lawyers and government agencies have begun setting their sights on employers. In early May, we blogged here, predicting an uptick in a variety of claims, including those relating to workplace safety, discrimination in furlough and termination decisions, disability issues, leave issues, and wage and hour issues." [Full Article](#)

Akerman

RISQ Review

EMPLOYEE BENEFITS, HUMAN RESOURCES, & COMPLIANCE

Text of Executive Order: An America-First Healthcare Plan

“The Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health and Human Services shall maintain and build upon existing actions to expand access to and options for affordable healthcare. The Secretary of Health and Human Services, in coordination with the Commissioner of Food and Drugs, shall maintain and build upon existing actions to expand access to affordable medicines, including accelerating the approvals of new generic and biosimilar drugs and facilitating the safe importation of affordable prescription drugs from abroad. The Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health and Human Services shall maintain and build upon existing actions to ensure consumers have access to meaningful price and quality information prior to the delivery of care. The Secretary of Health and Human Services, in coordination with the Administrator of CMS, shall maintain and build upon existing actions to reduce waste, fraud, and abuse in the healthcare system.” [Full Article](#)

Executive Office of the President



EXECUTIVE ORDER

What is a Typical Open Enrollment Period?

“More than nine in ten (95%) responding organizations have an open enrollment period. More than three in four (77%) responding organizations begin their open enrollment periods in either October (34%) or November (43%). More than one-half (52%) of responding organizations have an open enrollment period that lasts two weeks. About three in four (75%) respondents have their workers make open enrollment changes online/virtually, while 12% give their workers the choice between making changes online/virtually or using hard copy documents.” [Full Article](#)

International Foundation of Employee Benefit Plans

Supreme Court to Hear ERISA Preemption Dispute

“On October 6, 2020, the U.S. Supreme Court will hear argument on ERISA's preemptive effect on a state law regulating pharmacy benefit managers' (PBMs) generic drug reimbursement rates. The case considers regulation of PBMs under Arkansas law, but because a majority of states have enacted similar laws, the decision in Rutledge will extend beyond Arkansas.” [Full Article](#)

Jackson Lewis



ENROLLMENT

2020 ERISA Welfare Plan Checklist for Participant Disclosures

“Many employers sponsor ERISA welfare benefit plans and are currently undergoing their open enrollment process and issuing related participant communications. This Participant Disclosures Checklist can be used during open enrollment and throughout the plan year.” [Full Article](#)

Bass, Berry & Sims PLC

RISQ Review

EMPLOYEE BENEFITS, HUMAN RESOURCES, & COMPLIANCE

OFCCP Opens Hotline for Complaints of Race and Sex Stereotyping in Workplace Training

“As we previously reported, on September 22, 2020, President Trump issued his “Executive Order on Combatting Race and Sex Stereotyping” (the “Order”), which seeks, among other things, to prohibit government contractors from including certain concepts in diversity and awareness trainings. The Order directed the Office of Federal Contract Compliance Programs (“OFCCP”) to establish a “hotline” to receive and investigate complaints that contractors are implementing employee training programs that violate the Order, as well as Executive Order 11246, and to take “enforcement action and provide remedial relief, as appropriate.” [Full Article](#)

Proskauer Rose LLP

Adjusting to New Economic Realities: Department of Labor Proposes Worker Classification Test

“The Department of Labor (“DOL”) released a proposed rule on September 22, 2020, containing a new test for determining independent contractor status under the Fair Labor Standards Act (“FLSA”).” [Full Article](#)

Jones Day



Managing Intermittent FMLA Leave to Support Your Manufacturing Operations

“Manufacturing employers depend on employees being in the right place at the right time. Yet, compliance with applicable leave laws requires possible disruption. Intermittent leave law may be the most challenging.” [Full Article](#)

Jackson Lewis P.C.

Zip It: Severance Agreement Confidentiality Provisions Upheld

“Many companies tender severance agreements to employees when they are separated from employment under various circumstances. These agreements routinely contain releases of claims that seek to resolve most potential claims a former worker may have against an organization.” [Full Article](#)

Barnes & Thornburg LLP



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EMPLOYEE BENEFITS, HUMAN RESOURCES, & COMPLIANCE

Employers Grapple with Workers' Off-Duty Behavior

“Employees gathering with friends, expressing their political views and posting about these things on social media have created for employers an increasingly urgent question: When the people engaging in unsafe or politically charged behavior are your employees, and the conduct happens off the clock, is it appropriate or even possible to discipline them?” [Full Article](#)

McDermott Will & Emery



What Does President Trump's Executive Order on Combating Race and Sex Stereotyping Mean for Government Contractors?

“On September 22, 2020, President Trump signed Executive Order 13950, Combating Race and Sex Stereotyping (the “EO”), which seeks to “combat offensive and anti-American race and sex stereotyping and scapegoating,” and end so-called “divisive concepts” covered in some of these workplace trainings. The EO establishes requirements aimed at “promoting unity in the Federal workforce,” by prohibiting messages in workplace trainings that imply “an individual, by virtue of their race or sex, is inherently racist, sexist or oppressive, whether consciously or unconsciously.” [Full Article](#)

Ford Harrison

IRS Releases 2020 Forms 1094/1095 and Related Instructions, Including New Rules for ICHRA Reporting

“ALEs should note the new requirement to report the start month of the plan year on Form 1095-C and read the instructions carefully since there are some nuances. ALEs that offered ICHRAs in 2020 will have to collect and report information the IRS needs to evaluate ICHRA affordability. Notably, the instructions indicate that an ALE must report the age of any employee receiving an ICHRA offer, while other ICHRA information is required only for full-time employees receiving an offer of affordable ICHRA coverage.” [Full Article](#)

Thomson Reuters



Waiting on an End to the Extended ERISA Deadline Periods

“Early in the pandemic, the IRS and DOL issued a [temporary rule](#) (published May 4, 2020) extending certain deadlines applicable to retirement plans and health and welfare plans. The examples in the temporary rule assumed an end date of April 30, 2020 for the National Emergency, which would have extended the Outbreak Period through June 29, 2020. As we all now know, this National Emergency did not end on April 30, and in fact it is still in place. As the crisis has extended, the impact of the 'temporary rule' is becoming more of an issue.” [Full Article](#)

Holland & Hart LLP

RISQ Review

STATE & INTERNATIONAL COMPLIANCE

CALIFORNIA



CALIFORNIA REPUBLIC

New California COVID-19 Employment Laws Require Attention

“This month, California Gov. Gavin Newsom signed a trio of new COVID-19-related employment laws.” [Full Article](#)

Akin Gump Strauss Hauer & Feld LLP

CALIFORNIA



CALIFORNIA REPUBLIC

Just in Time for Handbook Season, California Passes Sweeping Expansion of Family Leave

“Effective January 1, 2021, SB 1383 expands the California Family Rights Act (CFRA) to cover smaller employers and provide access to leave for additional covered reasons.” [Full Article](#)

Little Mendelson P.C.

CALIFORNIA



CALIFORNIA REPUBLIC

New California Law Expands Supplemental Paid Sick Leave Requirements

“On September 9, 2020, Governor Gavin Newsom signed Assembly Bill (“AB”) 1867 into law, expanding California’s supplemental paid sick leave requirements for employers with 500 or more employees nationwide and creating two new sections of the California Labor Code.” [Full Article](#)

Vedder Price

DISTRICT OF COLUMBIA



D.C. Mandates on Workplace Posting and Notices, as well as Sexual Harassment Training and Reporting, Finally to Take Effect

“As we reported in our October 2018 E-Update, the District of Columbia had enacted a law imposing certain notice and posting requirements for all employers and broad new training and reporting obligations for employers of tipped workers.” [Full Article](#)

Shawe Rosenthal

PENNSYLVANIA



Federal Court Finds Pennsylvania’s Medical Marijuana Act Contains Implied Private Right of Action

“On September 25, 2020, the U.S. District Court for the Eastern District of Pennsylvania became the first federal court in the Third Circuit to rule that Pennsylvania’s Medical Marijuana Act (MMA) allows an employee to bring a private lawsuit against his or her employer for taking an adverse employment action “solely on the basis of such employee’s status as an individual who is certified to use medical marijuana.” [Full Article](#)

Ogletree Deakins

RISQ Review

STATE & INTERNATIONAL COMPLIANCE

NEW YORK



New York State Paid Time Off for Voting Law Update

“With election day fast approaching, New York State employers should ensure that they are ready to comply with § 3-110 of the New York State Election Law (“Law”)...However, in 2019, § 3-110 was amended to essentially entitle employees to three hours of paid time off to vote, regardless of how much time they had to vote before their workday began or after it ended.” [Full Article](#)

Phillips Lytle

NEW YORK



Reminder: Accrual Requirements Under New York State’s New Paid Sick Leave Law Effective September 30, 2020

“As we previously reported, among the sweeping pieces of legislation signed in the midst of the COVID-19 pandemic was New York State’s permanent sick leave law (“NYSPSL”).” [Full Article](#)

Shepard, Mullin, Richter & Hampton LLP

COLORADO



Colorado Court of Appeals: Terms of Employer’s Vacation Policy Control Whether Accrued, Unused Vacation Time Must Be Paid Out at Separation

“The Colorado Court of Appeals issued a very favorable decision to employers today in a case litigated by Steve Gutierrez and Brad Williams of Holland & Hart, LLP.” [Full Article](#)

Holland & Hart LLP

CONNECTICUT



Connecticut Sexual Harassment Prevention Training Deadline Extended to January 1, 2021

“The Connecticut Commission on Human Rights and Opportunities (CHRO) has extended the deadline to complete sexual harassment training required by the Time’s Up Act by 90 days, to January 1, 2021.” [Full Article](#)

Jackson Lewis P.C.

MICHIGAN



Michigan Agency Continues to Issue Emergency Health Orders and Guidance on Face Coverings and Gatherings

“In light of the Michigan Supreme Court’s October 2, 2020 order nullifying over 100 of the governor’s COVID-19 executive orders, the Michigan Department of Health and Human Services (MDHHS) continues to issue health-related orders to protect Michigan residents.” [Full Article](#)

Little Mendelson P.C.