

RISQ Review

BUSINESS INSURANCE

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HR, & Compliance**

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Compliance**

Insurers Looking Into Rise in Lawsuits Against Firms Over Lack of Diversity

“U.S. insurers are taking a closer look at the recruiting and succession practices of corporate customers, worried about mounting lawsuits over a lack of diversity among top executives and directors, industry sources said.

Insurers are meeting company officials to examine diversity practices before renewing or signing new so-called D&O policies to cover lawsuits against directors and officers, insurers and brokers said.” [Full Article](#)

Insurance Journal

Combating Workplace Safety Complacency

“As an employer, you want your staff to feel comfortable in their job roles and capable of performing workplace tasks effectively. However, this comfort shouldn’t come at the cost of safety.

Employees acting complacent and ignoring hazards on the job can increase the likelihood of serious safety incidents happening in your workplace—including near-misses, injuries and even fatalities. After all, even if you have taken steps to ensure healthy and safe working conditions within your organization, safety incidents can still occur if your employees engage in careless acts or unsafe behaviors.” [Full Article](#)

Zywave



Insurers Winning Most, But Not All, Covid-19 Business Interruption Lawsuits

“In the multibillion-dollar fight over insurance coverage for pandemic-related business losses, a Florida gynecologist succeeded where more than a dozen professional baseball teams and an iconic Hollywood restaurant failed.

Since Covid-19 sparked government-ordered shutdowns in March, judges have dismissed more than four times as many business-interruption lawsuits as they’ve allowed to proceed, according to a preliminary analysis by the University of Pennsylvania Law School. But some plaintiffs are finding weak spots in the industry’s legal defenses.” [Full Article](#)

Insurance Journal

RISQ Review

EMPLOYEE BENEFITS, HUMAN RESOURCES, & COMPLIANCE

Loss of Jobs with Health Coverage During the Pandemic Reveals Significant Industry Differences

“Manufacturing workers were most affected by loss of jobs with employer health insurance because manufacturing has one of the highest rates of ESI coverage (66 percent). Because only 40 percent of workers in retail had ESI pre-pandemic, these workers accounted for 12 percent of lost jobs with ESI.” [Full Article](#)

Employee Benefit Research Institute [EBRI]



Will New Health Care Transparency Requirements Lower Cost and Improve Quality?

“Consumers looking to compare hospital prices will have both the hospital and plan data to look to, beginning in 2023. However, there are several key differences between the new price transparency rule for plans and issuers and the price transparency rule for hospitals, as outlined in a chart.” [Full Article](#)

Epstein Becker Green

State Trends in Employer Premiums and Deductibles, 2010-2019

“Premium contributions and deductibles in employer plans accounted for 11.5 percent of median household income in 2019, up from 9.1 percent a decade earlier. Premium contributions and deductibles were 10 percent or more of median income in 37 states in 2019, up from 10 states in 2010. Nine states have combined costs of 14 percent or more of median income. The total cost of premiums and potential spending on deductibles across single and family policies ranged from a low of \$5,535 in Hawaii to a high of more than \$8,500 in nine states.” [Full Article](#)

The Commonwealth Fund



IRS Addresses Options for Qualified Transportation Benefits Unused Due to COVID-19

“[IRS Information Letter 2020-0024](#) explains that unused compensation reduction amounts can be carried over to subsequent periods under an employer's plan and used for future commuting expenses, so long as the employee has made a valid compensation reduction election and remains employed by the employer. The letter cautions that the qualified transportation plan rules do not allow refunds of qualified transportation fringe benefits that are provided through a compensation reduction agreement.” [Full Article](#)

Thomson Reuters / EBIA

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EMPLOYEE BENEFITS, HUMAN RESOURCES, & COMPLIANCE

OFCCP Issues Final Rule Outlining Procedures for Resolving Employment Discrimination

“On November 10, 2020, OFCCP published in the Federal Register a final rule on procedures to resolve potential employment discrimination. This rule purports to address some of these criticisms by adopting standards that are intended to “increase clarity and transparency for federal contractors, establish clear parameters for OFCCP resolution procedures, and enhance the efficient enforcement of equal employment opportunity laws.” [Full Article](#)

Little Mendelson

Tenth Circuit: No Adverse Action Necessary to Prove a Violation of the ADA's Accommodation Requirements

“The Tenth Circuit recently held that a disabled employee was not required to show that she suffered a separate adverse employment action to establish a failure to accommodate claim under the American’s with Disabilities Act (ADA). *Exby-Stolley v. Board of County Commissioners*. Plaintiff alleged that the employer failed to accommodate her physical limitations, which stemmed from a workplace injury and which compelled her to resign.” [Full Article](#)

Jackson Lewis



It's The Holiday Season – Can Employers Restrict Personal Travel?

“It’s that time of year when many folks look forward to seeing family members near and far. In the context of the pandemic, however, the CDC and many state and local officials are recommending that folks avoid travel and gatherings with those outside of the immediate household. Given the workplace impact of employees’ holiday travel – with possible infections, exposures, and quarantines – employers are wondering whether they can prohibit employees from traveling during the holidays. And the answer, of course: It’s complicated.” [Full Article](#)

Shawe Rosenthal



Employment Spotlight: Can an Employer Vary the Terms of an Employee's Employment Agreement Without the Employee's Consent?

“In light of COVID-19, many employers have been considering ways to reduce their overhead costs. Employees’ wages often account for a large share of the employer’s expenses, consequently, employees are increasingly being asked to vary their employment terms by agreeing to take no pay leave and/or a reduction to their wages. Often these requests are premised as an alternative to redundancy. This article examines the rights of both employers and employees in a relation to a variation of the employment contract.” [Full Article](#)

Gall

RISQ Review

EMPLOYEE BENEFITS, HUMAN RESOURCES, & COMPLIANCE

COVID-19 Extension Guidance Makes the Interplay Between COBRA and Medicare (A Bit) Trickier

“Because the deadline for a qualified beneficiary to make a COBRA election typically occurs close in time to the date his or her coverage terminates, some employers have incorrectly assumed that COBRA continuation coverage must be offered only if the qualified beneficiary was entitled to Medicare before the qualified beneficiary's loss of coverage or qualifying event.... Because, under the Joint Notice, a qualified beneficiary's COBRA election could take place months after his or her qualifying event or loss of coverage date, employers must be sure to provide COBRA election notices to, and credit the COBRA elections of, qualified beneficiaries who enroll in Medicare after their qualifying event or loss of coverage date.” [Full Article](#)

Verrill Dana LLP



Transparency in Coverage Regs Add Expansive Cost-Sharing Disclosures for Health Plans and Insurers

“The regulations implement a trove of new disclosures for group health plans, and January 2022 will arrive sooner than we can imagine. Although a 'good faith' safe harbor allows for errors and temporary website inaccessibility (so long as the issue is corrected as soon as practicable), plans and insurers face significant work to implement these new requirements.” [Full Article](#)

Thomson Reuters

Employers Paid 67 Percent of Premiums for Family Health Care Coverage in 2020

“Employers paid 67 percent of premiums for family medical care coverage in March 2020. Civilian workers participating in these plans paid the remaining 33 percent. Employers paid 59 percent of premiums for workers with the lowest 25 percent of wages and 71 percent of premiums for workers with the highest 25 percent of wages.” [Full Article](#)

U.S. Bureau of Labor Statistics



Massive Healthcare Fraud Takedown Focused on Fraudulent Telemedicine Schemes

“The Department of Justice (DOJ), along with the [FBI], [HHS] Office of Inspector General, and the Drug Enforcement Administration (DEA) announced enforcement actions involving 345 individuals across 51 districts in what the U.S. government described as the 'largest healthcare fraud takedown in the agency's history.' Collectively, the cases announced in this nationwide enforcement operation alleged more than \$6 billion in false and fraudulent claims to private insurers and federal healthcare programs.” [Full Article](#)

Goodwin Procter

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EMPLOYEE BENEFITS, HUMAN RESOURCES, & COMPLIANCE

COVID-19 Liability Shields: Today's Legislative Trend, Tomorrow's Legal Defense

"State lawmakers continue to search for ways to pave the path for their economies to reopen amidst the COVID-19 pandemic."

[Full Article](#)

Seyfarth Shaw LLP

With Remote Workers in Different States, What About Jurisdiction?

"With the explosion of remote work arrangements during the COVID-19 pandemic, employers are more likely to have remote employees who live in different states." [Full Article](#)

Bradley Arant Boult Cummings LLP



Being Unbiased is Everyone's Job: Sixth Circuit Upholds Termination of Public Employee for Her Out-of-Work, Public Social Media Post

"When and how public employers should respond to the out-of-work speech of public employees is a complicated but increasingly important topic for public employers."

[Full Article](#)

Frost Brown Todd LLC

Federal Appeals Court Deals Blow to OSHA's Ability to Cite Repeat Violations

"On Tuesday, October 27, 2020, the U.S. Court of Appeals for the Tenth Circuit issued a long-awaited decision in *Sec'y of Labor v. Wynnewood Refining Co., LLC*." [Full Article](#)

Jackson Lewis P.C.

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EMPLOYEE BENEFITS, HUMAN RESOURCES, & COMPLIANCE

Administration Finalizes Drug Pricing Rebate Rule

“There appear to be no major structural changes between the NPRM and Friday's final rule (which is now scheduled to take effect in 2022, rather than in 2020, as originally proposed). But there are at least two points worth noting about the new release: removing Medicaid Managed Care Organizations and changing course by confirming that premiums and spending will not rise. Like the most-favored-nation rule, the release of the final rebate rule came with additional legal complications that may jeopardize its implementation.” [Full Article](#)

Rachel Sachs, in Health Affairs Blog

Enhanced Employer Record-Keeping Requirements Relating to COVID-19

“One subject that has not received a lot of attention relating to COVID-19 requirements for employers is the obligation to make and preserve certain records. Depending on what the record is, and who is making it, these mandates will require employers to maintain records for longer periods of time than under many, if not most, record-keeping policies. As a result, employers should be reviewing and updating if necessary, their record-keeping policies when it comes to employee monitoring, leaves of absence, and sick pay.”

[Full Article](#)

Cozen O'Connor



Agencies Issue Regs on Coverage of COVID-19 Vaccines

“The regulations implement the CARES Act requirement that most group health plans cover, without cost-sharing, qualifying coronavirus preventive services, including immunizations, that receive specified recommendations from the CDC ... To address plan concerns about providers failing to post cash prices, the regulations provide further posting instructions and details about how the requirement will be enforced. The agencies seek comments on related issues.” [Full Article](#)

Thomson Reuters



The Future of Workplace Law Under President-Elect Joe Biden

“As President-elect Joe Biden selects members of his Cabinet and prepares for his transition into the presidency, he and a Democratic majority in the House of Representatives may pursue a number of significant pieces of federal workplace legislation. Many of these employment law measures successfully passed the House in 2019 and 2020.” [Full Article](#)

Jackson Lewis

RISQ Review

STATE & INTERNATIONAL COMPLIANCE

CALIFORNIA



CALIFORNIA REPUBLIC

The Delay Continues – California Passes Prop 24 And Employers Must “Wait and See”

“Last week, California voters passed Proposition 24, the California Privacy Rights Act of 2020 (“CPRA”), which expands and clarifies certain rights and obligations under the California Consumer Privacy Act of 2018 (“CCPA”). Relevant to California employers, Proposition 24 extends the moratorium on certain rights and obligations related to job applicant and employee data to January 1, 2023.” [Full Article](#)

Paul Hastings

NEW YORK



Sick and Safe Leave: NYS Releases FAQs and NYC Issues Notice

“Michigan has enacted significant new legislation that prohibits employees with “the principal symptoms” of COVID-19 from reporting to work and forbids employers from discharging, disciplining, or retaliating against employees who stay home because they have been diagnosed with or exposed to COVID-19.” [Full Article](#)

Jackson Lewis P.C.

NEW YORK



New York Court Dismisses Amazon Workers’ COVID-19 Health and Safety Claims

“On November 2, 2020, the Eastern District of New York issued a notable decision regarding an employer’s compliance with federal and state public health law during the COVID-19 pandemic. This is not the only case of its kind during the pandemic, and we certainly don’t expect that it will be the last as employers should be prepared to defend claims that they did not follow the governing health protocols or otherwise ensure the health and safety of their employees.” [Full Article](#)

Proskauer

COLORADO



Colorado Voters Pass the Paid Family and Medical Leave Insurance Act

“On November 3, 2020, Colorado voters passed Proposition 118, a ballot initiative establishing a paid family and medical leave program. The new law, known as the “Paid Family and Medical Leave Insurance Act,” provides for 12 weeks of paid family and medical leave funded through a payroll tax paid by employers and employees in a 50/50 split. The act is codified at C.R.S. §§ 8.13.3.401-424. The act provides an additional four weeks of leave for pregnancy or childbirth complications.” [Full Article](#)

Ogletree Deakins

COLORADO



Colorado’s Proposed ‘Equal Pay Transparency Rules’ May Affect Employers Nationwide

“The Colorado Department of Labor and Employment (DLE) has published proposed “Equal Pay Transparency Rules” (EPT Rules), providing details on new affirmative obligations under the state’s Equal Pay for Equal Work Act going into effect on January 1, 2021.” [Full Article](#)

Jackson Lewis P.C.

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STATE & INTERNATIONAL COMPLIANCE

ARIZONA



Arizona Passes Initiative to Allow Recreational Marijuana Use

“Arizona 2020 voters decidedly adopted Proposition 207 – The Smart and Safe Arizona Act – which legalizes the possession and use of marijuana by adults age 21 and over for recreational or non-medical use. The initiative passed with roughly a 20% margin.” [Full Article](#)

Little Mendelson P.C.

ILLINOIS

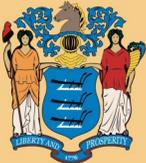


Employers Must Train Illinois Employees on Sexual Harassment Prevention by

“This year, Illinois joined a growing number of states that require employers to provide comprehensive sexual harassment training. The Illinois Workplace Transparency Act (IWTA) provides that “every employer with employees working in [Illinois]” must provide sexual harassment prevention training “at least once a year to all employees.” [Full Article](#)

Lewis Rice

NEW JERSEY



Governor Murphy Signs Executive Order Outlining COVID-19 Protocols for the Workplace

“On October 28, 2020, Governor Murphy signed Executive Order 192 (“E.O. 192”), which sets forth workplace safety protocols in response to the recent increase in reported COVID-19 infections across New Jersey.” [Full Article](#)

Saiber LLC

VIRGINIA



7 Steps Virginia Employers Should Take in Light of New Laws

“During the COVID-19 pandemic, Virginia lawmakers enacted a series of employee-friendly laws that will change the commonwealth for decades to come.” [Full Article](#)

Hunton Andrews Kurth LLP