

RISQ Review

PROPERTY & CASUALTY INSURANCE

Also in this Issue:

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

**Page 7: State & International
Compliance**

Lessons from the Pandemic for Workers' Compensation

“The COVID-19 pandemic has taught us tough lessons. We have learned the strengths and limitations of globalization, our public health systems, and our ability to respond during a crisis.

In the U.S. workers' compensation system, the pandemic has reinforced the necessity of workplace safety, the flexibility required of employers, employees, and policymakers, and the vital role that our system plays in the economy. It has also taught us lessons about being alert and watchful for future issues.”

[Full Article](#)

Insurance Journal

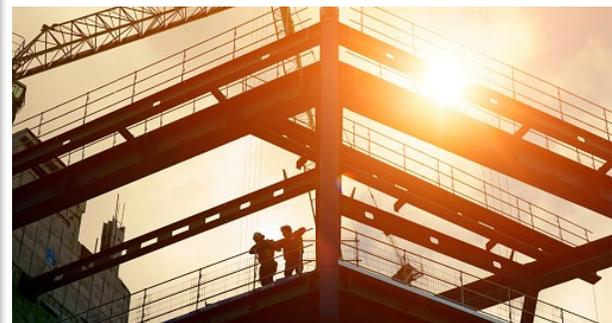
Insurance Implications of Rising Building Costs

“The rising cost of building materials is quickly outpacing inflation rates, and the high demand for qualified workers and widespread global supply chain pressure, are only adding to the increasing costs, creating new risks for business customers who may need to rebuild after a property loss. Fortunately, independent agents are well positioned to help educate their clients on important insurance coverage requirements and considerations.

Total reconstruction costs increased 8.1% countrywide, on average, between January 2020 and January 2021, according to Verisk's (ISO) most recent 360Value Quarterly Cost Update, rising from lows of about 6% to almost as much as 12%, depending on the state. Costs for materials rose by 15.2%, with lumber costs alone posting an 85% jump.”

[Full Article](#)

Insurance Journal



Ransomware Considerations for Board Members

“Organizations of all sizes and sectors are facing increased cybersecurity risks. Specifically, ransomware attacks—which leverage malware to compromise a victim's data and demand them to make a large payment to recover it—have quickly become a rising threat across industry lines. In fact, recent research found that these types of attacks have surged by 150% in the past year alone, with the average amount paid by victims jumping by over 300%. Such attacks have also become more sophisticated over the years as cybercriminals have developed a wide range of different ransomware-use techniques.”

[Full Article](#)

Zywave

RISQ Review

EMPLOYEE BENEFITS, HUMAN RESOURCES, & COMPLIANCE

New NLRB Rule Prohibits Solicitation of Voters' Mail Ballots in Union Elections

"The National Labor Relations Board has established a new standard under which a union or employer's offer to collect a voter's mail ballot is objectionable conduct that can result in setting aside the results of an election. The Board's new prohibition on ballot solicitation was handed down in a June 9 decision in which representatives of a UEW local called and texted multiple voters and offered to collect and mail their ballots. The new no-solicitation standard is significant, particularly given that the NLRB is continuing to conduct the overwhelming majority of elections through mail ballots due to COVID-19 related considerations." [Full Article](#)

Barnes & Thornburg



How to Legally Focus on Diversity, Equity, and Inclusion in the Workplace

"June brings the confluence of Pride Month as well as the newly minted federal holiday, Juneteenth. Over the last few years, as social justice issues have been at the forefront, many companies have published statements or made pledges committing support to such important topics and issues. The struggle for employers has always been turning words into action, in a fair, supportive, helpful, and legal way." [Full Article](#)

Holland & Hart

Trends in Employment Anti-Discrimination Training: Why Employers Are Addressing Unconscious Bias in the Workplace

"As anti-harassment and anti-discrimination training becomes more prevalent across the country, and as issues like racial and gender inequality become increasingly important both within and outside the workplace, the subject matter of this training is evolving. Increasingly, employers are incorporating "implicit bias" or "unconscious bias" training into their anti-harassment and anti-discrimination training, and with good reason, since the Equal Employment Opportunity Commission has included unconscious bias within its definition of discrimination." [Full Article](#)

Venable



EEOC Issues LGBTQ+ Restroom Guidance on One-Year Anniversary of Bostock

"Employers remember the seminal Supreme Court decision in *Bostock v. Clayton County, Ga.*, where the Court held that Title VII's "because of sex" protections extend to sexual orientation and transgender status. (See our previous blog entry.) Now, on the one-year anniversary of that influential case, the EEOC has issued guidance to clarify whether employers can segregate bathrooms by gender or sex. That question was conspicuously left unresolved in *Bostock*." [Full Article](#)

Hunton Andrews Kurth

RISQ Review

EMPLOYEE BENEFITS, HUMAN RESOURCES, & COMPLIANCE

Calculating the ARP COBRA Premium Subsidy Tax Credit

“The calculations may be less than straightforward depending on the facts and circumstances, particularly where post-termination coverage is subsidized, or if the plan voluntarily provides continued coverage to individuals who are not otherwise qualified beneficiaries.” [Full Article](#)

Proskauer

Report of 2021 Stop-Loss and Health High-Cost Claims and Injectable Drug Trends

“Over half of all stop-loss claims are from the top ten conditions. In the four-year benefit year period from 2016--2019, 22% of employers had a member with over \$1 million in claims. Million-dollar+ claims are up 9% in 2020 compared to the prior year, and up 31% since 2017. Total spend related to mental disorders was up 25% in 2020 compared to 2019. Cancer conditions continue to be the number 1 and number 2 high-cost claims, with cancer drugs making up 9 of the top 10 high-cost injectable drugs in 2020.” [Full Article](#)

SunLife



New Study Will Examine Whether Plans Provide 'Fair Access' to Drugs

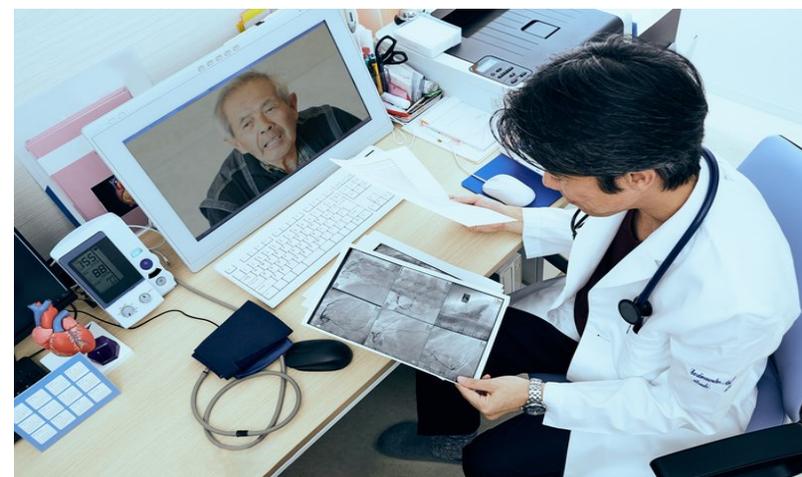
“On May 12, 2021, the Institute for Clinical and Economic Review (ICER or the Institute) released plans to begin an annual examination into health insurance drug coverage policies to assess 'fair access' to prescription drugs. The new project is notable because it marks a deepening of ICER's look at payer policies and how they impact beneficiary access to medications.” [Full Article](#)

Faegre Drinker

Oregon Looks to Provide Parity for Telehealth

“The Bill expands coverage of and reimbursement for telehealth services in Oregon, promoting equitable and safe access to care. The Bill went into effect on June 1, 2021, continuing a recent trend among states to offer parity for telehealth, encouraging the use of telehealth for providing access to treatment services for its residents.” [Full Article](#)

Sheppard Mullin



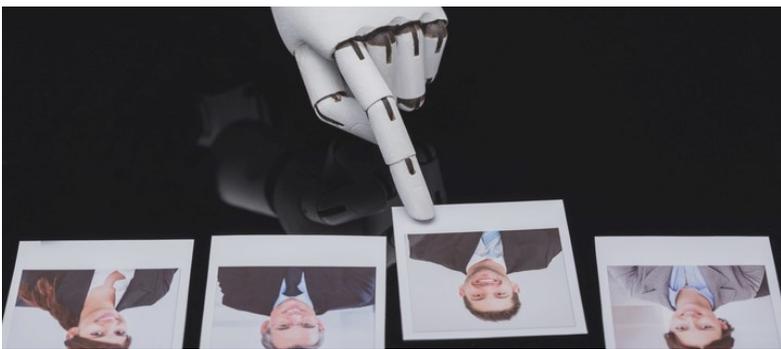
RISQ Review

EMPLOYEE BENEFITS, HUMAN RESOURCES, & COMPLIANCE

Chronic Considerations: Employment Implications of Marijuana Legalization

“Marijuana use is legal in seventeen states and the District of Columbia, and an additional nineteen state allow its use for medical reasons. Ten years ago, marijuana was not legal in any state. The brisk pace of marijuana legalization at the state level raises significant questions about the enforcement of workplace drug policies, especially where those policies are required by federal law. At the federal level, marijuana is still illegal, is still covered by the Drug-free Workplace Act, and is still prohibited under the Department of Transportation testing requirements.” [Full Article](#)

Venable LLP



Beat the Bots: Employer Risk in Delegating Hiring Practices to Artificial Intelligence—A Dilemma Worth Solving

“As the hiring market surges in the post COVID-19 world, companies may be tempted to automate hiring systems by adopting artificial intelligence (AI), freeing up human resources professionals to engage with candidates at a higher level. After the European Commission’s April 12, 2021 proposed legal framework for AI, it is time for U.S. labor and employment and data privacy lawyers to address the looming issues AI use poses domestically when used for hiring purposes.” [Full Article](#)

Adams and Reese LLP

OSHA Issues New Guidance for Protecting Unvaccinated or Otherwise At-risk Workers from Exposure to COVID- 19

“On June 10, 2021, OSHA updates its COVID-19 guidance from January 29, 2021. In its updated guidance, OSHA recognizes that unless otherwise required by federal, state, local, tribal, or territorial laws, rules and regulations, most employers no longer need to take steps to protect fully vaccinated workers who are not otherwise at-risk from COVID-19 exposure. Thus, the updated guidance focuses only on protecting unvaccinated or otherwise at-risk workers in their workplaces (or well-defined portions of workplaces).”

[Full Article](#)

Haynes & Boone LLP



Ready or Not, Back to the Workplace We Might Go...

“Before the pandemic hit, remote work was, in most cases, a thing of the future. Concern about the productivity of the remote workers caused many employers to resist these arrangements. Employees they thought, would rather be taking care of laundry or kids than taking care of their duties. Enter COVID-19—and most employers around the world were left without a choice: life threw remote work upon them and it became-in most instances-their only alternative.” [Full Article](#)

Jackson Lewis

RISQ Review

EMPLOYEE BENEFITS, HUMAN RESOURCES, & COMPLIANCE

Congressional Leaders Ramp Up Efforts to Craft Health Insurance Public Option

“Two congressional committee leaders sent out a May 26 [request for information](#) to stakeholders, seeking input by July 31. The American Hospital Association (AHA) and the Federation of American Hospitals (FAH) expressed their opposition to the general concept. Both groups support expanded healthcare coverage, but the preference is for that to take place through the commercial market.” [Full Article](#)

Healthcare Financial Management Association [HFMA]

Court Dismisses Participants’ Challenge to Cross-Plan Offsetting

“In a case involving the same TPA, the Eighth Circuit held that cross-plan offsetting was not permitted by the terms of the plans involved but declined to decide whether the practice necessarily violates ERISA. Given that awareness of cross-plan offsetting seems to be on the rise and the DOL has taken the position that it violates ERISA, administrators performing cross-plan offsets may wish to proceed with caution.” [Full Article](#)

Thomson Reuters / EBIA



Addressing Mental Health in the Workforce

“There are things employers can do to encourage their employees to ask for help: 1). Make EAP available and accessible; 2). Publish a list of resources; 3). Make sure mental health care is covered by your health plan.; 4). Create opportunities for employees to socialize; 5). Ensure all employees understand how to request an accommodation.” [Full Article](#)

FordHarrison

The 411 on the 941: Everything You Need to Know About How to Claim The COBRA Subsidy Tax Credits

“[Notice 2021-31](#) provides some direction regarding the rules for claiming the tax credit. The IRS has released the draft Forms and Instructions for claiming the COBRA subsidy tax credit — [Forms 941](#) (along with [Schedule R](#)) and [7200](#). Keep in mind the next Form 941 is due on July 31, 2021, but employers and insurers can generally begin reducing their employment tax deposits now.” [Full Article](#)

Groom Law Group

RISQ Review

EMPLOYEE BENEFITS, HUMAN RESOURCES, & COMPLIANCE

Rehiring after COVID-19 Cutbacks: Unique Legal Challenges and Priority Considerations

“As vaccination rates continue to increase in the United States and abroad, hotels are counting on a summer travel boom to kickstart their economic recovery. But staffing up remains a critical and difficult situation for hotels to navigate. In a recent article for HotelExecutive.com, Nelson Mullins partners Bret Cohen, Suhail Seth, and associate Jack Foster describe the hotel industry’s unique COVID-related legal challenges and top considerations to ensure rehiring and recruiting success.” [Full Article](#)

Nelson Mullins

Backpay: So, How Much Do I Owe the NLRB?

“When employers owe money for labor law violations in National Labor Relations Board (NLRB) proceedings, it’s virtually always in the form of backpay of some kind to current or former employees. The NLRB recently announced that some changes to its backpay determination procedures may be on the horizon.” [Full Article](#)

Barnes & Thornburg

DOL Plans to Roll Back Joint Employer & Independent Contractor Rules

“On March 11, 2021, the U.S. Department of Labor (DOL) announced proposals to rescind the Independent Contractor Final Rule and the Joint Employer Rule, stating that the rules would “significantly weaken protections afforded to American workers under the Fair Labor Standards Act.” The Independent Contractor Final Rule, issued January 7, 2021, established new standards for employers in determining whether a worker is an employee or independent contractor under FLSA.” [Full Article](#)

Hall Benefits Law



Employers Do Not Need To Record Adverse COVID-19 Vaccine Reactions on Their OSHA Form 300 Log

“OSHA recently issued additional guidance addressing whether employers need to record an employee’s adverse vaccine reaction on their 300 Log. Earlier this year, we blogged about OSHA’s guidance that an adverse reaction to the COVID-19 vaccine is recordable if the reaction is: (1) work-related, (2) a new case, (3) meets one or more of the general recording criteria in 29 CFR 1904.7 (e.g., days away from work, restricted work or transfer to another job, medical treatment beyond first aid), and (4) the vaccine is required for employees.” [Full Article](#)

Seyfarth Shaw

Page 6

RISQConsulting.com

July 2021

RISQ Review

STATE & INTERNATIONAL COMPLIANCE

CALIFORNIA



CALIFORNIA REPUBLIC

California Workers Can't Ditch Masks Just Yet

"On June 3, 2021, California's Occupational Safety & Health Standards Board approved controversial amendments to the Emergency Temporary Standards ("ETS") related to COVID-19. If approved by the Office of Administrative Law within the 10 day review period, the new ETS will require (among many other things) most California workers (whether or not they are vaccinated) to continue to wear face masks." [Full Article](#)

Proskauer Rose

CALIFORNIA



CALIFORNIA REPUBLIC

Santa Clara County Now Requires Employers to Inquire About, and Keep Records Regarding Employees' Vaccination Status

"On May 18, 2021, Santa Clara County, California, issued a health order imposing new and significant obligations on employers in light of the increasing number of individuals that are being vaccinated against COVID-19. The most significant requirement under the new health order, is employers must inquire into, and continue to keep track of, the vaccination status of all personnel. [Full Article](#)

Hogan Lovells

Rhode Island



Rhode Island Joins List of States Enacting \$15 Minimum Wage Law

"On May 20, 2021 Governor Dan McKee signed an amendment to Rhode Island law that will see the Ocean State's minimum wage increase to \$15.00 per hour by 2025. Beginning January 1, 2022, Rhode Island's minimum wage will increase from its current \$11.50 to \$12.25. On January 1, 2023 it will increase to \$13.00 and then increase another \$1.00 per hour each January 1, until reaching \$15.00 in 2025." [Full Article](#)

Jackson Lewis

NEW YORK



NY HERO Act: New York Enacts Workplace

Law to Prevent Airborne Infectious Diseases

"Effective June 4, the New York Health and Essential Rights Act, otherwise known as the NY HERO Act (Senate Bill 1034-A/ Assembly Bill 2681-B), requires the development of model airborne infectious disease prevention standards, directs private-sector employers to adopt these standards or develop their own comprehensive airborne infectious disease exposure prevention plan, gives employees a voice in the development process, and establishes penalties for violations." [Full Article](#)

Loeb & Loeb

Michigan



Michigan Accelerates Path to Normalcy with Relaxation of Rules

"On May 20, 2021, Michigan Governor Gretchen Whitmer announced an acceleration of the "Vacc to Normal" plan. The acceleration takes place as Whitmer reported more Michiganders have received vaccines and the CDC announced revised facemask guidance for vaccinated individuals. According to governor's announcement, "[a]s of June 1, capacity limits will lift for outdoor events." [Full Article](#)

Littler Mendelson

RISQ Review

STATE & INTERNATIONAL COMPLIANCE

MASSACHUSETTS



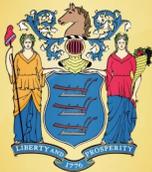
Massachusetts COVID-19 Emergency Paid Sick Leave

“Massachusetts Governor Charlie Baker recently signed legislation requiring employers to provide COVID-19 emergency paid sick leave (“COVID-19 EPSL”) to employees who are unable to work for COVID-19-related reasons. In this post, we summarize and answer some frequently asked questions.”

[Full Article](#)

Mintz

NEW JERSEY



You've Been WARNed! Amendments to the New Jersey WARN Act May soon Go Into Effect

“On January 21, 2021, New Jersey Governor Philip Murphy signed into law sweeping amendments to the New Jersey WARN Act, which could soon become the most expansive business closing/mass-layoff notification law in the nation and the first to impose mandatory severance pay to affected employees.” **[Full Article](#)**

Lewis Brisbois

PENNSYLVANIA



Pennsylvania's Living Donor Protection Act Provides FMLA Leave for Organ Donating Surgery

“Beginning June 26, 2021, Pennsylvania’s Living Donor Protection Act (the “LDPA”) will provide time off to organ and tissue donors to cover time off for donation surgery, including necessary preparation and recovery.” **[Full Article](#)**

Epstein Becker Green

COLORADO



Colorado Joins Coalition of States Expanding Antidiscrimination Laws to Include Protections for Gender Identity and Gender Expression

“On May 20, 2021, Colorado Gov. Jared Polis signed into law HB21-1108, known as the Gender Identity Expression Anti-Discrimination Act (the Act). The Act updates Colorado’s nondiscrimination provisions applicable to individuals seeking protection on the basis of “sexual orientation” including by adding the terms “gender expression” and “gender identity” to 48 areas of state law.” **[Full Article](#)**

Baker & Hostetler

VIRGINIA



Virginia Enacts New Overtime Wage Law

“On 30 March 2021, Governor Ralph Northam signed into law the Virginia Overtime Wage Act (VOWA), creating new wage and hour requirements for Virginia employers. Set to take effect July 1, 2021, the VOWA also includes numerous employee protections. The VOWA amends the Virginia Code to authorize collective actions and allows for a lengthier statute of limitations period and increased damages provisions.” **[Full Article](#)**

Ford Harrison