

RISQ Review

PROPERTY & CASUALTY INSURANCE

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Minimizing Outdoor Dining Risks

“Outdoor dining quickly emerged as a way to keep restaurants operational during the COVID-19 pandemic. Due to the increasing popularity of eating outdoors and lingering pandemic concerns, many restaurants will continue offering outdoor dining options in the short and long term.

Despite widespread acceptance, temporary and permanent outdoor dining areas carry a unique set of risks for restaurant owners to consider. Offering outdoor dining without proper precautions and safety procedures poses risks for employees and customers, and it could lead to unforeseen legal complications.” [Full Article](#)

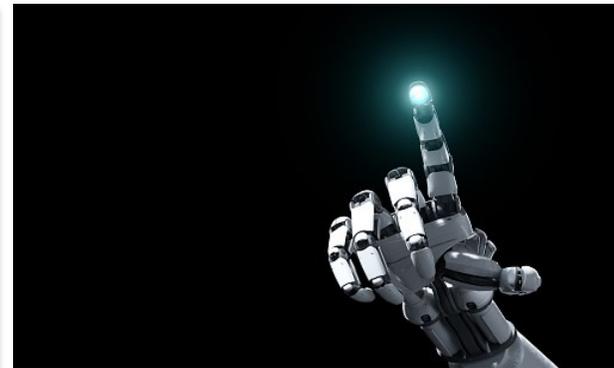
Zywave

Robot Lawyer DoNotPay, Valued at \$210 Million, Plans to Target Small Businesses

“DoNotPay, a startup that describes itself as a robot lawyer striving to beat bureaucracy, has more than doubled its valuation to about \$210 million, according to Chief Executive Officer Joshua Browder.

The firm raised \$10 million from Andreessen Horowitz, Lux Capital, Tribe Capital, Day One Ventures and Felicis Ventures, Browder said in an interview. They were joined by investors including billionaire FTX CEO Sam Bankman-Fried, former Coinbase Global Inc. Chief Technology Officer Balaji Srinivasan and UiPath Inc. CEO Daniel Dines. Yuri Milner’s investment firm, DST Global, also participated in the round, people with knowledge of the matter said.” [Full Article](#)

Insurance Journal



‘Zoombombing’ Costs Zoom \$85 Million Privacy Settlement

“Zoom Video Communications Inc. agreed to pay \$85 million and bolster its security practices to settle a lawsuit claiming it violated users’ privacy rights by sharing personal data with Facebook, Google and LinkedIn, and letting hackers disrupt Zoom meetings in a practice called Zoombombing.

A preliminary settlement filed on Saturday afternoon requires approval by U.S. District Judge Lucy Koh in San Jose, California.”

[Full Article](#)

Zywave

RISQ Review

EMPLOYEE BENEFITS, HUMAN RESOURCES, & COMPLIANCE

Do You Have to Negotiate The Vaccine With Your Union?

“COVID-19 vaccination efforts continue around the country, and many employers are mandating or otherwise encouraging their employees to get vaccinated. While courts, at least so far, generally have upheld an organization’s right to require the vaccine, employers with union-represented workforces face an additional legal nuance: collective bargaining. In fact, the Teamsters have just filed a federal lawsuit in Chicago against a union health fund – the TeamCare fund – challenging the fund’s mandate that its workers get vaccinated or face termination. The Teamsters represent workers at TeamCare.” [Full Article](#)

Barnes & Thornburg



For Manufacturers Struggling With Labor Shortage, Time to Review Background Check Process

“While some manufacturers are turning to automation as a solution to the labor shortage, other companies are grappling with the decision of whether to hire workers they may have traditionally excluded from manufacturing positions, such as workers with a history of criminal convictions or who test positive for medical or recreational marijuana use in states where it might still be permissible to do so.” [Full Article](#)

Jackson Lewis

DOL is Reviewing Overtime Pay Threshold

“During testimony before the House Committee on Education and Labor on June 9, 2021, Secretary of Labor Marty Walsh told lawmakers that the DOL is reviewing the current overtime pay threshold that he said is too low and should be subject to automatic and regular updates.” [Full Article](#)

Hall Benefits Law



EEOC Locks onto Bostock: New Guidance on Sexual Orientation and Other Gender Issues

“Now the EEOC — or more specifically the EEOC’s Chair Charlotte Burrows — has published guidance on what may constitute discrimination based on sexual orientation and/or gender identity. There is drama around whether Burrows sought the approval of the other members of the EEOC before issuing the guidance, whether the guidance exceeds the scope of Bostock, and whether the guidance violates employers’ and employees’ religious and speech protections. We will monitor any updates around the issues and let you if anything changes, but as of now we assume that this is the EEOC’s stance on the issues.” [Full Article](#)

Bradley Arant

RISQ Review

EMPLOYEE BENEFITS, HUMAN RESOURCES, & COMPLIANCE

Insurer Filings Suggest COVID-19 Pandemic Will Not Drive Health Spending in 2022

“This brief reviews initial 2022 premium rate filings for Marketplace-participating individual market insurers in 13 states and the District of Columbia. Most of these insurers expect health utilization patterns to return to pre-pandemic levels and therefore most are factoring in no additional costs or savings related to COVID-19 into their 2022 premiums. These insurers also tended to make similar assumptions about how COVID-19 would affect their group market costs.” [Full Article](#)

Henry J. Kaiser Family Foundation

Mental Health Parity Remains a DOL Priority: MHPAEA Compliance in Response to the CAA

“The DOL has already started to collect the nonquantitative treatment limitation (NQTL) analyses mandated by the Consolidated Appropriations Act and is already issuing findings letters based on their initial reviews. The level of detail demanded by regulators surrounding the evidentiary factors -- including numeric support for parity -- is very detailed, and has not typically been maintained by plans or issuers.” [Full Article](#)

Groom Law Group



Military Personnel in a Civilian Workforce: Frequently Asked USERRA Questions

“[1] Is an employer required to accommodate leave for military duty when an employee does not have orders? [2] Does an employee continue to accrue vacation leave while on military leave? [3] Is an employer required to accommodate leave for voluntary deployments? [4] May an employer permit an employee to continue working in a full- or part-time status while on military orders? [5] Does USERRA cover temporary employees?” [Full Article](#)

Ogletree Deakins



RISQ Review

EMPLOYEE BENEFITS, HUMAN RESOURCES, & COMPLIANCE

Employers—Do Not Ask About Pandemic Passion Projects!

“Last month, the following Tweet went viral: “I don’t want to alarm anyone, but I’ve just been asked in a job interview if I used lockdown ‘to pursue any passion projects or personal development.’” Please, employers, I beg of you— find a different trendy interview question. While Pinterest and Instagram are full of people (I would speculate these folks do not have children at home and had white-collar jobs that lent themselves to remote work) chronicling their pandemic passions like learning a new language or taking up an interesting hobby, many struggled just to survive.” [Full Article](#)

Shawe Rosenthal



New OSHA Guidance for Recording Obligations When Mandating Vaccination

“The Occupational Safety and Health Administration (OSHA) recently issued new guidance on recording obligations for COVID-19 vaccine-related injuries for those employers required to keep OSHA 300 logs. In newly added FAQs on its website, OSHA states that, if an employer is subject to OSHA’s general recordkeeping requirements for serious work-related injuries and illnesses, it must record an employee’s adverse reaction to the COVID-19 vaccine if the adverse reaction meets three criteria: 1) the reaction is work-related; 2) the reaction is a new case; and 3) the reaction meets one or more of the criteria under 29 CFR 1904.7, resulting in the employee having to take one or more days off of work, receive medical treatment beyond first aid, or the like as per the standard.” [Full Article](#)

Holland & Knight

The Dust Hasn’t Settled Yet: Employers Must Continue to Be Thoughtful About Criminal Record Screening Policies

Last month, the new chair of the EEOC, Charlotte A. Burrows, was the keynote speaker at a conference regarding new research on criminal recidivism. 1) The EEOC has been mostly quiet on the topic of criminal background checks and Title VII since the U.S. Court of Appeals for the Fifth Circuit upheld an order enjoining the EEOC from enforcing its Enforcement Guidance against the State of Texas. 2) Chair Burrows’ comments reveal the EEOC remains keenly interested in this subject. But this is just one of the reasons why employers, particularly those operating in multiple jurisdictions with a high concentration of entry-level jobs, must continue to be thoughtful about criminal record screening policies.” [Full Article](#)

Littler Mendelson



Squeaky COVID Wheel Doesn’t Get the Grease

“Workplace complaints often can constitute protected activity under various labor and employment laws, including the National Labor Relations Act (NLRA). A recent advice memo released by the National Labor Relations Board (NLRB), however, illustrates some limits in this context.” [Full Article](#)

Barnes Thornburg

RISQ Review

EMPLOYEE BENEFITS, HUMAN RESOURCES, & COMPLIANCE

Fourth Circuit: HIPAA Does Not Create a Private Right of Action

“There is no private cause of action to address an improper disclosure of medical information under HIPAA, the U.S. Court of Appeals for the Fourth Circuit has held for the first time. Although this case unfolded in a prison setting, this ruling could have implications in the workforce and reminds employers to treat confidential medical information of its workers carefully.” [Full Article](#)

Jackson Lewis P.C

Employers Consider More Pet-Friendly Benefits in the Postpandemic Workplace

“A survey released in March found that 57% of surveyed pet owners said they would be most happy returning to their workplace if they could bring their pets with them. According to the same survey, one in two C-suite executives surveyed said they are planning to allow pets in the workplace once employees return to the office, and 59% would allow more flexibility for workers wanting to stay remote with their pets.” [Full Article](#)

International Foundation of Employee Benefit Plans [IFEFP]



Primer on Severance Plans Under ERISA and the Tax Code

The DOL has created a safe harbor rule for severance plans under which an arrangement providing for the payment of severance benefits on account of termination of employment will be treated as a severance plan and not a pension plan, provided [certain criteria are satisfied. Employers may have additional responsibilities when maintaining a severance program subject to ERISA but there are advantages. Certain bona fide severance arrangements that provide separation pay upon an involuntary termination of employment or pursuant to a window program are excluded from Code Section 409A.” [Full Article](#)

Verrill Dana LLP



RISQ Review

EMPLOYEE BENEFITS, HUMAN RESOURCES, & COMPLIANCE

President Biden Signs Executive Order Directing Federal Agency to Take Action To Limit Employment Non-Competition Agreements

“On July 9, 2021, President Joseph Biden signed an expansive Executive Order that includes directives to consider federal regulations significantly limiting employment non-competition agreements. Although the Executive Order is not yet a regulation, it represents a first step, and directs the Federal Trade Commission (“FTC”) to exercise its authority “to curtail the unfair use of non-compete clauses and other clauses or agreements that may unfairly limit worker mobility.” [Full Article](#)

Morgan, Brown & Joy

E-Voting in Union Elections at the NLRB?

“As our two major political parties wage battle in statehouses around the country regarding the ways in which citizens cast their votes, the National Labor Relations Board (NLRB) seems primed to implement electronic voting (“e-voting”) in union elections. E-voting has long been on Labor’s wish list. As we transition out of a pandemic that significantly reduced the number of manual (read: in-person, onsite) representation elections, it appears that the Democratic-controlled Board and Congress are prepared to dedicate resources to add an e-voting system to the Board’s manual and mail-ballot election processes.” [Full Article](#)

Shawe Roesenthal



Drug Pricing and Other Healthcare Policy Changes Targeted in Executive Order on Promoting Competition

“Initiatives described in the [Executive Order](#) include calls to combat 'excessive pricing,' to enhance domestic pharmaceutical supply chains, to reduce the cost of drugs to the Federal government, and to address 'price gouging'; additional actions to support the implementation of Canadian drug importation and to promote low-cost generics and biosimilars. A number of the proposals may be inconsistent with existing statutory and regulatory authority, with litigation likely to follow if these proposals are finalized and implemented.” [Full Article](#)

Sidley Austin LLP

No More Surprises? New Rule on Surprise Medical Bills

“The rule requires plans to treat certain services from out-of-network providers and facilities as in-network in applying cost-sharing, such as deductibles and co-insurance. Similarly, the rule forbids out-of-network providers from billing participants for amounts in excess of the participant’s in-network cost-sharing responsibility, subject to the participant’s ability to waive this protection in some situations.” [Full Article](#)

Bradley

RISQ Review

STATE & INTERNATIONAL COMPLIANCE

CALIFORNIA



CALIFORNIA REPUBLIC

California Supreme Court Holds Break Premiums Must Account For Nondiscretionary Payments In Addition to the Hourly Rate of Pay

"In Ferra v. Loews Hollywood Hotel, LLC, the California Supreme Court held that premiums paid for missed meal, rest or recovery periods must include nondiscretionary pay, not just hourly wages. The decision applies retroactively and significantly alters how employers must calculate meal and rest break premiums." [Full Article](#)

Akin Gump

CALIFORNIA



CALIFORNIA REPUBLIC

City of Los Angeles Requires Vaccine Leave for Employees Working in the City

"The state and some local COVID-19 supplemental paid sick leave requirements continue through the summer. And the City of Los Angeles' mayor issued a public order mandating additional paid leave. Under the order, employees who work within the City of Los Angeles and have been employed by their employer for 60 days are entitled to paid time off to get vaccinated for COVID-19." [Full Article](#)

Jackson Lewis

MAINE



Maine's highest court finds Portland hazard pay ordinance constitutional, but not effective until 2022

"On July 6, 2021, the Maine Supreme Judicial Court unanimously ruled in Portland Regional Chamber of Commerce v. City of Portland that the voter-initiated legislation establishing an emergency minimum wage was constitutional but does not take effect until January 1, 2022." [Full Article](#)

Littler Mendelson

MAINE



Maine Legislative Update: Back to Work Incentives, Ban the Box, Tip Minimum, and Other Developments Affecting Employers

"On The First Special Session of the 130th Maine Legislature ended on July 19, 2021 with a flurry of votes on pending bills. Many of the newly-enacted laws, which were adopted with little debate, will significantly impact almost all employers in the Pine Tree state." [Full Article](#)

Littler Mendelson

NEW YORK



With COVID-19 Restrictions Lifted, NYS Workers' Compensation Board Prepares for Labor Market Attachment

"On June 29, 2021, the New York Workers' Compensation Board issued notification of certain changes in light of the declaration of the end of the state of emergency. These are provided on the New York State Workers' Compensation Board website under the header of COVID-19 updates (see June 2021 guidance)." [Full Article](#)

Goldberg Segalla

RISQ Review

STATE & INTERNATIONAL COMPLIANCE

ILLINOIS



Illinois Imposes New Restrictions on Employers Utilizing Non-Competition and Non-Solicitation Agreements

“The Illinois General Assembly recently passed amendments to the Illinois Freedom to Work Act (“IFWA”) which seek to significantly restrict Illinois employers in how they utilize non-competition and non-solicitation agreements with their employees.” [Full Article](#)

Masuda Funai

CONNECTICUT



Connecticut Allows Some Training Portability, Amends Law Barring Discriminatory Practices

“In its 2021 Session, the Connecticut General Assembly amended the Connecticut Fair Employment Practices Act (CFEPA), which prohibits discriminatory practices, and other related laws on sexual harassment training and affirmative action plans, among others provisions.” [Full Article](#)

Jackson Lewis

DELAWARE



Delaware Set to Increase Minimum Wage to \$15 by 2025

“On July 19, 2021, Delaware Governor John Carney signed legislation that will gradually increase the state’s minimum wage to \$15 per hour by 2025. This is a substantial increase from Delaware’s current minimum wage of \$9.25 per hour. The minimum wage requirements apply to all employers who employ individuals in the state.” [Full Article](#)

Epstein Becker Green

OHIO



Repeal of Ohio Sales and Use Taxes on Employment

“Effective October 1, 2021, the Ohio sales and use taxes on employment services and employment placement services are repealed. These services remain taxable through September 30. These taxes have been very controversial, and the repeal is most welcome.” [Full Article](#)

Baker Hostetler

MASSACHUSETTS



Massachusetts Proposed Pay Scale Legislation

“A bill pending before the Massachusetts Legislature would add obligations to the Massachusetts Equal Pay Act requiring employers to provide information on the pay range for a given position to employees or applicants upon request.” [Full Article](#)

Seyfarth Shaw