

RISQ Review

PROPERTY & CASUALTY INSURANCE

Also in this Issue:

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

**Page 7: State & International
Compliance**

The Evolution Of Ransomware Creates More Severe Risks For All Organizations

“Five months before the ransomware gang DarkSide shutdown the Colonial Pipeline, two cybersecurity researchers discovered that DarkSide was using the same digital keys to lock and unlock multiple victims. The researchers, who work with a volunteer group called the Ransomware Hunting Team that has cracked more than 300 major ransomware strains and variants, were quietly looking for victims to help.” [Full Article](#)

Travelers

White House, Big Tech, Insurers Vow to ‘Raise the Bar’ on Cybersecurity

“The U.S. government on Wednesday said it would work with industry to hammer out new guidelines to improve the security of the technology supply chain, as President Joe Biden appealed to private sector executives to “raise the bar on cybersecurity.” At White House meetings with Biden and members of his Cabinet, executives from Big Tech, the finance industry and infrastructure companies said they would do more about the growing threat of cyber attacks to the U.S. economy.” [Full Article](#)

Insurance Journal



FDA’s COVID Vaccine Approval Makes Challenges to Mandates Tougher to Win

“Formal U.S approval of the Pfizer Inc /BioNTech SE COVID-19 vaccine will make it nearly impossible to successfully challenge mandates by employers, legal experts said. The decision by the Food and Drug Administration to give full approval to the vaccine is “seismic,” said Brian Dean Abramson, an author on vaccine law. He said it will become extremely difficult to challenge the FDA’s decision and the mandates that flow from it. On Monday, the Pfizer/BioNTech vaccine became the first to secure full FDA validation, prompting calls for governments and private employers to make the shots mandatory.” [Full Article](#)

Insurance Journal



RISQ Review

EMPLOYEE BENEFITS, HUMAN RESOURCES, & COMPLIANCE

No More Balance Billing for Some Out-of-Network Services

“Effective beginning January 1, 2022, the CAA prohibits plans and providers from billing patients more than in-network cost-sharing amounts in certain circumstances. The prohibition applies to both emergency care and certain non-emergency situations where patients do not have the ability to choose an in-network provider.” [Full Article](#)

Holland & Hart LLP

Health Plan Premium Surcharges for Those Not Vaccinated for COVID-19?

“Implementing a COVID-19 premium surcharge wellness program to provide an incentive for more plan participants to get vaccinated comes with some compliance challenges. Those challenges depend largely on the design of the program and the administration of it. And, unfortunately, the guidance surrounding wellness programs, particularly from the Equal Employment Opportunity Commission (EEOC), remains less than clear.” [Full Article](#)

Jackson Lewis P.C.



OSHA Updates COVID-19 Guidance for Fully Vaccinated Workers

“On Friday, August 13, 2021, OSHA updated its COVID-19 Guidance to complement the CDC’s mask and testing recommendations for fully vaccinated people. Echoing the CDC’s July 27, 2021 guidance, OSHA urges employers to consider requiring face coverings in indoor work settings, even for fully vaccinated people.” [Full Article](#)

Kilpatrick Townsend

NON-COMPETE AGREEMENT

1. Purpose

This agreement, when countersigned below, shall constitute an agreement regarding certain confidential and proprietary information and trade secrets (“Confidential Information”) relating to the business of _____ hereinafter referred to as the “Company” and hereinafter referred to as the “Recipient” (collectively referred to as the “Parties”), as of the date executed by the Company (the “Effective Date”).

Recipient shall strictly maintain the confidentiality of the Confidential Information. Proprietary information may be shared by the Recipient with its employees, contractors, and subcontractors as necessary for the performance of its duties and practices for the Company and its clients.

2. Non-Compete/Disclosure

During the tenure of the Recipient with the Company, the Recipient shall not:

(Check All that Apply)

Business Practices - Provide services, or engage in any other work of a similar nature to the business of the Company, or disclose Confidential Information to any third party, without the prior written consent of the Company, or in violation of the terms of this agreement.

Noncompete Agreements and The Great Resignation

““The Great Resignation” is upon us. For months, pundits have predicted that millions would leave their jobs as the pandemic subsides, and those predictions have proven prescient. According to The Wall Street Journal, the percentage of people leaving their jobs is higher now than it has been in a generation, and Microsoft’s Work Trend Index reports that more than 40% of the workforce intends to leave their employer this year. Some of these employees will be subject to noncompete/nonsolicitation agreements and may possess confidential trade secrets, so their departures may raise difficult questions for prospective and former employers.” [Full Article](#)

Troutman Pepper

RISQ Review

EMPLOYEE BENEFITS, HUMAN RESOURCES, & COMPLIANCE

Equal Pay: The Emerging Legal Landscape

“Over the course of the past year, several states—including Colorado, Connecticut, and Rhode Island—have proposed and passed novel pay equity legislation. The impact of these laws is notable, including because they subject employers to significant notice requirements, which may require sweeping changes to workplace practices and policies. The impact of these laws is even more profound in the midst of the COVID-19 pandemic, due to the explosion of remote work opportunities resulting in more companies having multi-state footprints than ever before.” [Full Article](#)

Quarles & Brady



Approaching the New Normal in the Workplace

“Here is a sentence that I never thought I would write: TikTok has helped me be a better attorney. It’s true and not because there is an abundance of critical legal thought on the app or because #AttorneyTok offers any content of meaningful substance. However, the platform has over one billion users globally and a great many of them (like me) are employees. And what do one billion people log onto TikTok to talk about? The answer, for better or for worse, is everything—but especially their jobs.” [Full Article](#)

Ice Miller

Keeping the Wellness Program Healthy

“For years, employers have used wellness programs with the hope they would help improve employees’ overall health while simultaneously reducing group health plan costs. The pandemic has presented challenges for wellness programs though, as employees have found it more difficult to meet the requirements for discounts because of lockdowns and fears of COVID-19. To address these challenges, some employers are considering modifications to their programs to allow employees to qualify for discounts if they obtain a flu or COVID-19 vaccine.” [Full Article](#)

Haynes Boone



Be Careful About Restricting Employee Communications with Media

“Employers that bar staff from communicating with the media should take another look at those prohibitions, following a recent federal appellate decision finding such a policy unlawful under the National Labor Relations Act (NLRA). An employee’s critical letter to the editor might be embarrassing, but taking action against the author for writing it may be unlawful.” [Full Article](#)

Akerman

RISQ Review

EMPLOYEE BENEFITS, HUMAN RESOURCES, & COMPLIANCE

United Behavioral Health, United Healthcare Insurance Co. Plans to Pay 15.6M, Take Corrective Actions After Federal, State Investigations

“An investigation by the department's Employee Benefits Security Administration found that going back to at least 2013, United reduced reimbursement rates for out-of-network mental health services, thereby overcharging participants for those services, and flagged participants undergoing mental health treatments for a utilization review, resulting in many denials of payment for those services.” [Full Article](#)

Employee Benefits Security Administration [EBSA], U.S. Departments of Labor [DOL]

Discounted Premiums on Individual Disability Policies Do Not Create ERISA Plan

“While it was clear that the employer paid no portion of the policy premiums, the insurer argued that the premium discount was effectively a company contribution. But the court rejected this contention, explaining that discounted premiums are not considered employer contributions unless the employer negotiated or was otherwise involved with the discount.” [Full Article](#)

Thomson Reuters / EBIA



ARPA COBRA Subsidies and the Remaining Action Item for Plan Sponsors

“Assistance eligible individuals (or AEIs) receiving subsidized coverage must be sent notice of the end of their subsidy no less than 15 days and no more than 45 days in advance. While this requirement has applied all along, these notices must be sent to the vast majority of the AEIs between August 16 and September 15 to reflect the end of the COBRA subsidy period generally on September 30, 2021.”

[Full Article](#)

Jackson Lewis P.C.

Best Practices for Mental Health Parity: Considerations for Implementation

“While these requirements specific to NQTLs are unique to MHPAEA, the associated documentation and comparative analyses activities should feel familiar because they mirror some of the traditional documentation and auditing and monitoring functions of a corporate compliance program. Ultimately, plans and insurers need to demonstrate, upon request, that they are continually maintaining compliance with regard to parity. In effect, maintaining the capacity to rebut a presumption of noncompliance at any time.” [Full Article](#)

Epstein Becker Green, via Compliance Today

RISQ Review

EMPLOYEE BENEFITS, HUMAN RESOURCES, & COMPLIANCE

Sarah's Boss Does NOT Have It Going On

"Sarah's boss has consistently asked her to get drinks after work and she always says no but does not give a reason why. Sarah's boss has also suggested if the two of them developed an outside work relationship Sarah could benefit, but again, Sarah is not interested. Once Sarah's boss got the hint, Sarah noticed her boss's attention shift to her co-worker Emily. Emily confessed to Sarah that their boss was now asking her on dates and she always declined, but felt very uncomfortable about the situation. At that point, Sarah wrote a complaint to the Human Resources Department." [Full Article](#)

Graydon



OSHA Gives Health Care Employers Green Light to Continue Permitting Facemask Exemptions, Despite New CDC Guidance

"In light of rising cases of COVID-19, the CDC has recently reversed its prior facemask guidance, and has now required that both vaccinated and unvaccinated individuals wear masks indoors in public spaces in areas where there is significant transmission of COVID-19. Certain local jurisdictions have adopted similar rules that renew requirements for facemasks. In a significant move, OSHA has announced on its website that it has reviewed the latest guidance, science and data on COVID-19, and is not otherwise amending its COVID-19 Emergency Temporary Standard for Healthcare at this time." [Full Article](#)

Seyfarth Shaw

Legality of Mandatory COVID-19 Testing

"To enter Canada, all travelers over the age of 5, including those who are fully vaccinated, are required to provide proof of a negative COVID-19 test. Samples to test for COVID-19 can be collected through a nose swab, throat swab, or saliva sample. Many employers are now mandating, or considering mandating, that employees get COVID-19 testing, either once, or at regular intervals, in order to enter the workplace, or in some cases, to continue working. What does the law have to say about policies addressing mandatory COVID-19 testing?"

[Full Article](#)

Spring Law



Forging Commitments: How Manufacturers Can Promote Retention After Investing in Employee Training

"The labor shortage has forced many manufacturers to adopt new strategies to meet their staffing needs. As commentators in the Jackson Lewis Manufacturing Industry Group have previously written, these include adjusting background check requirements, working with public school systems to train and recruit students, revising drug testing criteria, and placing greater emphasis on diversity and inclusion." [Full Article](#)

Jackson Lewis

RISQ Review

EMPLOYEE BENEFITS, HUMAN RESOURCES, & COMPLIANCE

Can Employers Offer COVID-19 Vaccine Incentives for Employees?

“Incentives may take many forms, such as a one-time bonus, a gift card or a few extra vacation hours. Employers can get creative. There are two issues to consider when implementing a vaccine incentive program for purposes of complying with employment and benefits laws: the concepts of coercion and reasonable accommodation.” [Full Article](#)

McDermott Will & Emery

Proposed Regulations Would Substantially Expand Mandatory Electronic Filing of Information Returns

“The requirement to aggregate returns when calculating electronic filing thresholds, combined with the lower thresholds themselves, will likely eliminate paper filings for all but the smallest employers. The regulations’ impact would be especially acute for smaller applicable large employers (ALEs), who have been able to file Forms 1094-C and 1095-C on paper when reporting information for employer shared responsibility. Since ALEs by definition have at least 50 full-time-equivalent employees, they are likely to pass the 100-return threshold when taking into account Forms W-2 and 1095-C.” [Full Article](#)

Thomson Reuters / EBIA



HHS and DOJ Issue Guidance on 'Long COVID' as a Disability

“Although the guidance acknowledges that long COVID is not always a disability, it indicates that an individualized assessment is necessary to determine whether a person’s condition or symptoms substantially limit a major life activity. The guidance also provides examples of when long COVID could meet that definition under applicable law.” [Full Article](#)

Jackson Lewis P.C.



RISQ Review

STATE & INTERNATIONAL COMPLIANCE

PENNSYLVANIA

Security (And Other?) Screening Time Is Compensable

“The Pennsylvania Supreme Court recently held that workers must be paid for the time spent waiting in line and undergoing a security screening process. Of note, the principles in this holding have broader application and, in the context of the pandemic, would likely require Pennsylvania employers to pay for COVID-19 screening time” [Full Article](#)

Shaw Rosenthal



ILLINOIS

Chicago Amends Minimum Wage and Paid Sick Leave Ordinance: What Employers Need to Know

“The City of Chicago has amended its [Minimum Wage and Paid Sick Leave Ordinance](#) (the “Ordinance”), providing new reasons for taking paid sick leave under the Ordinance, and adding a new remedy for Chicago employees alleging wage theft against their employers (collectively, the “Amendments”). The Amendments are in full effect as of August 1, 2021.” [Full Article](#)

Bryan Cave Leighton Pisner



NORTH CAROLINA

Employers with NC employees note: Wage payment requirements have changed

“Gov. Roy Cooper (D) has signed into law important changes to employers’ obligations to notify North Carolina employees about their wages. The changes to the North Carolina Wage and Hour Act (available here, beginning at the bottom of page 3) are effective now.” [Full Article](#)

Constangy, Brooks, Smith & Prophete



MICHIGAN

Loaded Questions: Are Noncompetition and Nonsolicitation Clauses Really Enforceable in Michigan?

“Restrictive covenants can be excellent tools for employers to protect their business’ reputation, competitiveness, and confidential information. And in Michigan, such covenants will generally be enforceable, provided that they are reasonable.” [Full Article](#)

Dickinson Wright



FLORIDA

Florida Ban Requiring Vaccine Passports Banned (For Now)

“Florida employers can require employees to obtain COVID-19 vaccinations, submit records of such vaccination, and can implement other safety measures for their workplaces, notwithstanding national publicity suggesting that recent Florida rules, orders, and laws prohibit or discourage these public health measures.” [Full Article](#)

Littler



RISQ Review

STATE & INTERNATIONAL COMPLIANCE

CALIFORNIA



CALIFORNIA REPUBLIC

California Department of Health's Vaccination and Testing Order

"In response to evidence that the majority of COVID-19 infections and outbreaks were among unvaccinated people, and because the current requirements of masking health care employees is proving insufficient to prevent transmission of the highly virulent Delta variant, the California Department of Public Health ("CDPH") has issued two new Orders regarding health care worker vaccinations." [Full Article](#)

Gordon & Rees

COLORADO



Colorado Updates, Clarifies Official Pay Transparency Guidance

"The Colorado Department of Labor and Employment (CDLE) has issued an update. CDLE issued final Equal Pay Transparency (EPT) Rules in November 2020. And, in December 2020, it released Interpretive Notice & Formal Opinions (INFO) #9, which clarified how CDLE will interpret the Rules." [Full Article](#)

Jackson Lewis

CONNECTICUT



Employment Law Updates from the 2021 Session of the Connecticut General Assembly

"In its 2021 session, the Connecticut General Assembly passed several pieces of legislation that Connecticut employers should be aware of in anticipation of their October 1, 2021 effective dates." [Full Article](#)

Morgan, Brown & Joy

CONNECTICUT



Connecticut Limits Inquiries into Prospective Employees Ages

"On June 24, 2021, Governor Lamont signed into law Public Act 21-69, which adds to Connecticut's Fair Employment Practices Act an explicit ban on Connecticut employers inquiring into the ages of prospective employees "on an initial employment application." The new law, An Act Deterring Age Discrimination in Employment Applications, goes into effect on October 1, 2021." [Full Article](#)

Little

OHIO



New Ohio Law Modifies the Legal Requirements for State Employment Discrimination Claims

"The Ohio Employment Law Uniformity Act, effective April 15, 2021, clears the muddled waters of state-law discrimination litigation and creates a more employer-friendly forum for such cases." [Full Article](#)

Jones Day