

# RISQ Review

## PROPERTY & CASUALTY INSURANCE

### Also in this Issue:

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### Business Owners' Risk Management Acumen Falls Short in Modern Era: Broker

"In an era of increased business risk, the owners, CEOs and founders of small-medium enterprises (SME) and technology startups are falling short in both evaluating these risks and showing the right acumen for risk management. According to a report released by Embroker, a digital business insurance brokerage, these owners' and founders' perception of business risk is not aligned with how they manage and transfer that risk. They acknowledge critical business risks like labor shortages and product malfunctions, yet only 22% have read and understood all of their insurance policies and half are relying on their brokers to sign up for coverage." [Full Article](#)

*Insurance Journal*

### CAPTCHA Turns To GOTCHA: How Online Criminals Are Upping Their Phishing Game To Incorporate Fake Security Credentials

"Cybersecurity firm, Proofpoint, released a new report that focuses on the human factor in cybersecurity attacks. The results show that users continue to be the key for most malicious attacks, those involving ransomware and business email compromise (BEC). Researchers examined over two billion emails, 35 billion URLs, 200 million attachments, and 35 million cloud accounts from last year to better understand cyberattacks that specifically target the user. According to the report, about 66 percent of malicious emails employed consumer and corporate credential phishing techniques, which is a starting point for BEC and data theft activities." [Full Article](#)

*Travelers*



### Employees May Not Be Working Inside Office Buildings, But Cyber Criminals Are

"Justin Fier, director for cyber intelligence and analytics at cybersecurity technology company Darktrace, says [...] that office buildings emptied during the pandemic can present concerns ranging from something as sophisticated as entrepreneurial criminals setting up Bitcoin mining systems in closets that nobody knows about, or something as simple as a criminal walking into a building and plugging into an empty ethernet port." [Full Article](#)

*Insurance Journal*



# RISQ Review

## EMPLOYEE BENEFITS, HUMAN RESOURCES, & COMPLIANCE

### Vaccine Mandates Don't Eliminate the Duty to Bargain in Unionized Workplaces

“As unionized employers are aware, section 8(a)(5) of the National Labor Relations Act (NLRA) requires bargaining with unions over hours and other terms and conditions of employment. This includes work rules such as vaccination or testing requirements. Whether the company’s implementation of such requirements is a voluntary choice or a government mandate, the employer’s duty to bargain must be considered.” [Full Article](#)

*Jackson Lewis*



### Court Finds Elevated Risk of COVID-19 Complications is Not a Covered Disability under Federal Law

“On September 28, 2021, Venable LLP attorneys Brian Clark and Allison Gotfried secured for a client what could prove to be a far-reaching ruling on the issue of whether individuals with an underlying condition that places them at an “elevated risk of complications” from exposure to COVID-19, without more, are qualified as “disabled,” entitling them to job accommodations under the Federal Americans with Disabilities Act (ADA) and the Rehabilitation Act of 1973 (Rehabilitation Act). Background: the case involved a registered nurse (RN) who worked in the surgical intensive care unit (ICU) at a hospital.” [Full Article](#)

*Venable LLP*

### Employee Vaccine Information: Privacy Concerns

“Given the COVID-19 vaccine mandates, employers—including healthcare entities—will need to confirm their employees’ vaccination status. Employers and healthcare providers must ensure they comply with privacy rules relating to employee vaccination information, including those imposed by the Health Insurance Portability and Accountability Act (HIPAA) and Americans with Disabilities Act (ADA).” [Full Article](#)

*Holland Hart*



### Vaxxed and in Class: A COVID-19 Vaccination Mandate Q&A for Independent Schools

“Fall 2021 has already been a busy one. Although the COVID-19 Delta variant continues to spread, there are positive developments for independent schools: the Biden administration’s announcement of a vaccination requirement for certain employers and schools, full approval of Pfizer’s COVID-19 vaccine for those ages 16 and older, continued availability of the Pfizer vaccine under Emergency Use Authorization for those ages 12-15, and the anticipated approval under Emergency Use Authorization for the Pfizer vaccine for ages 5-11.” [Full Article](#)

*Venable LLP*

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## EMPLOYEE BENEFITS, HUMAN RESOURCES, & COMPLIANCE

### COBRA Election and Payment Periods: Does One Year of “Tolling” Really Mean One Year?

“In Notice 2021-58, the IRS (with the blessing of DOL and HHS) clarified that the one-year Tolling Relief periods for COBRA elections and initial premium payments run concurrently not consecutively. That means that a qualified beneficiary generally will have only one year of total disregarded time for the election and initial payment periods” [Full Article](#)

*Proskauer*

### New Guidance on COVID-19 Vaccine-Related Premium Surcharges and Discounts

“In the new guidance, the Tri-Agencies take the position (without explanation) that vaccine premium incentive programs are 'activity-only' health-contingent programs. Similar to other non-tobacco premium incentives, vaccine incentives increase the cost of coverage for employer mandate purposes. This means that if the incentive is a premium discount, the discount is treated as not earned, and thus, affordability is based on the assumed increased premium cost for the participant.” [Full Article](#)

*Groom Law Group*

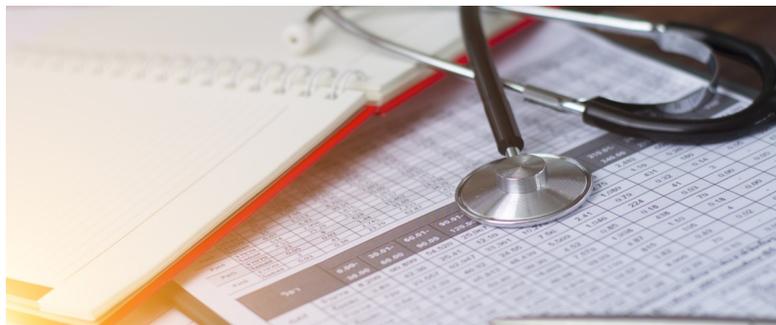


### More Surprises on Surprise Billing: Will Federal or State Law Control?

“This article provides an overview of the concurrent jurisdiction Congress created through the No Surprises Act (NSA) and discusses key issues stakeholders should consider as the Departments continue to release regulations in preparation for the NSA's January 1, 2022, effective date.”

[Full Article](#)

*Epstein Becker Green*



### IRS's Draft 2021 ACA Reporting Forms and Instructions Incorporate Some Expected Changes But Omit Others

“Between The end of certain forms of relief is unsurprising, given the language of the 2020 extension notice. However, the 250-return threshold for electronic filing differs from the recent proposed regulations reducing the filing thresholds and aggregating different return types and suggests that the IRS may not finalize the proposal in time for the March 31, 2022 electronic filing deadline.” [Full Article](#)

*Thomson Reuters / EBIA*

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## EMPLOYEE BENEFITS, HUMAN RESOURCES, & COMPLIANCE

### The Employee Is Not Entitled to Their Preferred Accommodation – Only a Reasonable One

“A recent case is a good reminder to employers that, while the Americans with Disabilities Act requires employers to provide disabled employees with reasonable accommodations to enable them to perform their essential job functions or enjoy the privileges and benefits of employment, the choice of accommodation is the employer’s – not the employee’s.” [Full Article](#)

*Shawe Rosenthal*



### Handling Requests for Religious Exemptions from Mandatory Vaccination Policies

“Employers implementing mandatory COVID-19 vaccine policies are facing an avalanche of requests for exemptions as religious accommodations, far more than for medical exemptions. Fortunately, while employers are generally obligated to explore accommodations for requests based on a sincerely held religious belief, they are not necessarily obligated to grant exemptions.” [Full Article](#)

*Akerman*

### Practical Strategies for Manufacturers Managing COVID Testing, Vaccine Mandates

“Manufacturing employers continue to feel the brunt of emerging and evolving trends related to the COVID-19 pandemic: workplace safety, labor shortages, absence management, remote technology, and employee retention — just to name a few. On the workplace safety front, mask mandates, testing protocols, and vaccine issues continue to make headlines, including President Joe Biden’s September 9, 2021, announcement regarding vaccine and testing requirements for companies with 100 or more employees.”

[Full Article](#)

*Jackson Lewis*



### New Wellness Program Guidance Issued for COVID-19 Vaccine Premium Surcharges

“As the number of people receiving a COVID-19 vaccine has decreased, employers have tried to find ways to incentivize their employees to get vaccinated. While some employers have imposed COVID-19 vaccine requirements, others have searched for alternative methods to motivate employees to receive the vaccines. One method some employers have considered is imposing a surcharge on health insurance premiums for employees and their dependents who are unvaccinated. The Department of Health and Human Services, the Department of Labor, and the Department of the Treasury issued guidance this week that addresses COVID-19 vaccine premium surcharges.” [Full Article](#)

*Greensfelder*

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## EMPLOYEE BENEFITS, HUMAN RESOURCES, & COMPLIANCE

### “How To” Guide for Health Plan Premium Incentives for the COVID-19 Vaccine

“Determine the incentive amount. Make uniform offers. Decide timing. Give formal notice and an offer of a reasonable alternative. Give a new opportunity each year. Watch your affordability math. Discount now, but don't implement a surcharge until the change of the plan year. Don't require shots on-site. Consider your union.” [Full Article](#)

*Foley & Lardner LLP*

### Stronger ... Services Agreements for Benefit Plans

“Request and review a copy of the provider's standard contract as part of the request for proposal (RFP) process. Consider business objectives and business events at the outset. Indemnification. Privacy & cybersecurity. Disguised transfers of risk under the contract.” [Full Article](#)

*Holland & Hart LLP*



### IRS Clarifies Key Time Extensions of COBRA Election and Payment Deadlines

“Specifically, Notice 2021-58 addresses: the extension of deadlines for COBRA elections and premium payments, and the interaction of the extended deadlines with the COBRA subsidy available under ARPA.” [Full Article](#)

*Miller Johnson*

### Are Your Employee Benefits Plans Ready for the New Year, or Is It the Same Auld Lang Syne?

“For retirement plans, hardship distribution amendments are due by December 31, 2021. For welfare plans, flexible spending account amendments are due by December 31, 2021, and a number of the provisions of the Consolidated Appropriations Act, 2021 need to be implemented by the plan year beginning on or after January 1, 2022. This article provides a quick year-end checklist for employee benefit plans.” [Full Article](#)

*Ogletree Deakins*

# RISQ Review

## STATE & INTERNATIONAL COMPLIANCE

### MASSACHUSETTS



#### Massachusetts Governor Signs Extension Of COVID-19 Emergency Paid Sick Leave Law

“Massachusetts Governor Charlie Baker signed an extension of the Massachusetts COVID-19 Emergency Paid Sick Leave Law. The law, created a new sick leave entitlement for employees who are, or whose family members are, affected by COVID-19. In addition, the law established a \$75 million fund for certain employers to seek reimbursement for paid leave provided to employees.” [Full Article](#)

*Seyfarth Shaw*

### ILLINOIS



#### Illinois Courts Begin Clarifying the Biometric Information Privacy Act

“Earlier this year, McGuireWoods reported that, in 2021, Illinois courts are expected to decide several open issues related to the state’s Biometric Information Privacy Act (BIPA). Those opinions have recently begun to be issued, providing answers regarding BIPA’s statute of limitations and certain preemption arguments.” [Full Article](#)

*McGuire Woods*

### D.C.



#### October Brings Changes to D.C. Universal Paid Leave Law and D.C. Family and Medical Leave Act

“The District of Columbia has enacted emergency legislation expanding the District’s Universal Paid Leave Act (UPLA). In addition, the D.C. Mayor signed legislation to make these changes permanent. That legislation is in its 30-day Congressional review period. The legislation also expands eligibility for leave under the District’s Family and Medical Leave Act.” [Full Article](#)

*Jackson Lewis*

### CALIFORNIA



CALIFORNIA REPUBLIC

#### California Enacts New Law Targeting Warehouse Distribution Center Production Quotas

“On Sept. 22, 2021, Governor Gavin Newsom signed Assembly Bill 701 (AB 701). Effective Jan. 1, 2022, it will become the first state law of its kind to regulate and set parameters around the use of production quotas at warehouse distribution centers in California.” [Full Article](#)

*McGuire Woods*

### CALIFORNIA



CALIFORNIA REPUBLIC

#### California Enacts Massive Changes to Cal/OSHA’s Enforcement Authority Over California Employers

“Senate Bill 606 (“SB 606”), which was signed into law on September 27, 2021, and will become effective on January 1, 2022, significantly expands the California Division of Occupational Safety and Health’s (“Cal/OSHA”) enforcement authority, and creates two new categories of violations.” [Full Article](#)

*Hopkins Carley*

# RISQ Review

## STATE & INTERNATIONAL COMPLIANCE

### CONNECTICUT

#### Connecticut Publishes Guidance Regarding Disclosure of Salary Range for Vacant Positions

“In reviewing this guidance, employers should be mindful that it does not constitute legal advice and is non-binding. A court may have a different interpretation of the law’s provisions. The guidance reiterates that the law applies to any employer within the state using the services of one or more employees for pay, even if those employees are located outside the physical confines of the state.” [Full Article](#)

*Jackson Lewis*



### OHIO

#### Ohio's Minimum Wage Set to Increase in 2022

“Ohio’s minimum wage will increase to \$9.30 per hour for non-tipped employees and \$4.65 per hour for tipped employees, effective January 1, 2022. This new minimum wage will apply to employees of businesses with annual gross receipts of more than \$342,000 per year.” [Full Article](#)

*Epstein Becker Green*



### NEW JERSEY

#### New Jersey Expands Law Against Discrimination to Combat Age Discrimination

“On October 5, 2021, New Jersey Governor Phil Murphy signed into law new legislation that expands the scope of the New Jersey Law Against Discrimination (NJLAD) in order to combat age discrimination in the state.” [Full Article](#)

*Greenbaum Rowe Smith & Davis*



### TEXAS

#### Texas Governor Issues Executive Order Limiting Employer Vaccine Mandates

“Executive Order GA-40 prohibits all entities from compelling any employee or consumer within the state of Texas to get a COVID-19 vaccine who objects because of (1) personal conscience; (2) religious belief; or (3) medical reasons, including prior recovery from COVID-19.” [Full Article](#)

*Baker Hostetler*



### NEVADA

#### New Nevada Law Requires Translation of Certain Financial Legal Documents

“A new Nevada law, effective October 1, 2021, makes it a deceptive practice to not provide translations for certain financial contracts, agreements and disclosures.” [Full Article](#)

*McGuire Woods*

