

RISQ Recap

PROPERTY & CASUALTY INSURANCE

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Compliance

2022 SET TO BE “HANGOVER” YEAR FROM 2021’S CYBER EPIDEMIC

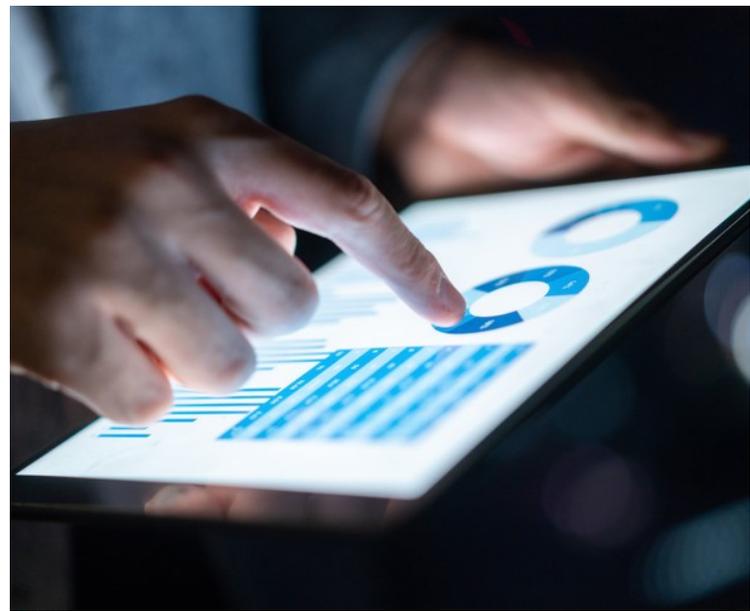
“Much of the cyber turmoil that plagued the world in 2021 will continue into 2022, with individuals remaining the top source of risk in an irrevocably online society, according to Experian’s annual Data Breach Industry Forecast for 2022. ‘In a sense, 2022 will be a sort of hangover from 2021’s cyberdemic,’ commented breach resolution firm in its report. ‘Since so much of our lives now take place online, the digitization of society means that our infrastructure, institutions and personal lives are more exposed than ever to malicious actors. Big institutions remain vulnerable, despite spending millions on security, and cybercriminals have plenty of opportunities to exploit weak technologies.’” [Full Article](#)

Zywave

3 EMERGING AND FUTURE TRENDS IN WORKERS’ COMPENSATION

“Executives from Enlyte provided their perspective on the impact of pharmacy (including medical marijuana), return to work, and mental health treatment trends in the field of workers’ compensation. Enlyte experts from disparate disciplines reflected recently on three emerging and future trends in workers’ compensation. Enlyte is the parent company of Mitchell, Genex and Coventry, which provides technology, clinical services and network solutions for the property and casualty insurance industry.” [Full Article](#)

Risk & Insurance



EXTREME WEATHER IN 2021 BRINGS ABOVE-AVERAGE CLAIMS TO GLOBAL INSURERS: SWISS RE

“Extreme weather events in 2021, including a deep winter freeze, floods, severe thunderstorms, heatwaves and a major hurricane, resulted in estimated annual insured losses from natural catastrophes of US\$105 billion, the fourth highest since 1970, according to Swiss Re Institute’s preliminary sigma estimates.” [Full Article](#)

Insurance Journal

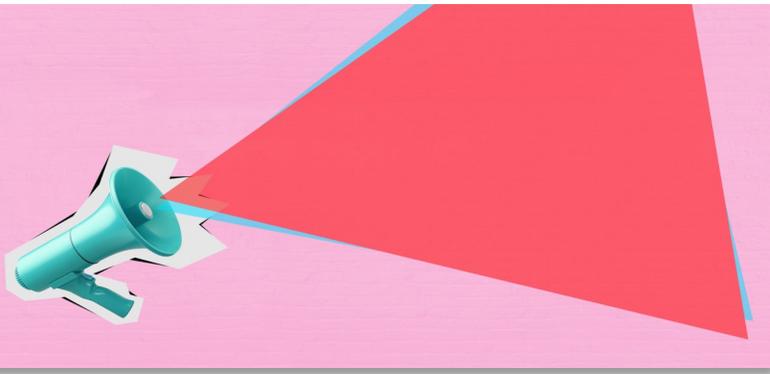
RISQ Recap

EMPLOYEE BENEFITS, HUMAN RESOURCES, & COMPLIANCE

TO DEDUCT OR NOT TO DEDUCT: WASHINGTON CARES ACT DILEMMA REQUIRES EMPLOYERS TO MAKE A CHOICE THIS JANUARY

“It makes sense to collect the premium given that the Act is currently the law and it requires employers to deduct premiums beginning on January 1, 2022. If the legislature changes the law, employers will likely need to refund those premiums quickly or risk a wrongful wage withholding claim. All signs seem to point to a change in the law, or even repeal, and the lack of civil penalties may make the risk of not following the current law more attractive.” [Full Article](#)

Fisher Phillips



IRS ANNOUNCES PCORI FEE AMOUNTS FOR THE 2022 REPORTING PERIOD

“The original PCORI fee assessments under the ACA were scheduled to end after September 30, 2019, but Congress extended these fees for another ten years, until at least September 30, 2029. The updated PCORI fee is now \$2.79 per covered life for all plan years ending on or after October 1, 2021, and before October 1, 2022, up from \$2.66 for the prior period.” [Full Article](#)

Jackson Lewis P.C.

NO SURPRISES ACT IMPLEMENTATION:

WHAT TO EXPECT IN 2022

“Monitoring of the law's impact, as well as compliance, will be accomplished in various ways. Data reporting by IDR entities will provide some information. Annual health plan audits conducted by federal agencies can also yield information about prices charged and paid for surprise bills. State systems may also yield important data as to how the law is working. To a large extent, oversight and enforcement will rely on complaints.” [Full Article](#)

Henry J. Kaiser Family Foundation



PREMIUM INCREASE UPON RETIREMENT WAS A COBRA QUALIFYING EVENT

“The appellate court agreed that the employee's placement on unpaid leave was not a qualifying event, explaining that there was a reduction of hours ... but not a corresponding loss of health coverage. Because the retirement (a termination of employment for COBRA purposes) resulted in a higher premium for the same health coverage (because it was now considered retiree coverage, the employee experienced a loss of coverage, resulting in a COBRA qualifying event.” [Full Article](#)

Thomson Reuters / EBIA

RISQ Recap

EMPLOYEE BENEFITS, HUMAN RESOURCES, & COMPLIANCE

EFFECTIVELY IMPLEMENTING SOCIAL MEDIA POLICIES IN THE WORKPLACE

“The stated goal of the National Labor Relations Board (“NLRB”) is to ensure that employers are not violating Section 8(a)(1) of the National Labor Relations Act (the “Act”) by implementing a work rule that would “reasonably tend to chill employees in the exercise of their Section 7 rights.” In particular, the NLRB has focused on the precise wording and language used in employment handbooks. Although the NLRB’s yardstick in this area is apparently flexible rather than rigid, a careful understanding of applicable NLRB opinions can help employers regulate social media usage more effectively.” [Full Article](#)

Klein, Moynihan, Turco

IMMIGRATION UPDATES IN COVID-19 TIMES

“International borders have been closed for 18 months, U.S. embassies abroad have been operating at a limited capacity, and yet employers struggle to find and retain talent. Corporate immigration, including H-1Bs and other visas, continues to provide a solution for savvy employers. Here are the most important immigration changes within the last year.” [Full Article](#)

Holland & Hart



FEDERAL CONTRACTORS MUST BAN THE BOX

“The Fair Chance to Compete for Jobs Act of 2019 took effect on December 20, 2021 and requires agencies to include a clause in federal contracts that prohibits contractors from requesting, either verbally or in writing, the criminal history of an applicant for work under a federal contract until after a conditional offer of employment has been made. (The “box” refers to the box on many employment applications, which must be checked if the applicant has a criminal record). There are exceptions where a criminal background check prior to the offer is required by law, the position is related to law enforcement or national security duties, or the position has access to classified information.” [Full Article](#)

Shawe Rosenthal



COWORKING SPACES: COVID-19 CONSIDERATIONS

“As workplaces are reimagined, employers and operators of coworking spaces need to consider how to operate safely in the age of the COVID-19 pandemic. Coworking spaces have become an intriguing work alternative for remote employees, hybrid workers, self-employed individuals, independent contractors, and others. Employers and operators of coworking spaces should consider such issues as the security of sensitive company or employee information and compliance with COVID-19 health and safety rules, among others.” [Full Article](#)

Jackson Lewis

RISQ Recap

EMPLOYEE BENEFITS, HUMAN RESOURCES, & COMPLIANCE

EIGHTH CIRCUIT CONCLUDES THAT ERISA DOES NOT PREEMPT STATE LAW REGULATING PBMS

“This was a fairly straightforward application of the Supreme Court's Rutledge ruling, which held that ERISA does not preempt state laws that merely increase costs or alter incentives for ERISA plans. While these cases involved PBM laws, this line of reasoning could apply to other state laws governing entities or processes that have some relationship to ERISA plans, such as laws regulating TPAs and other service providers.” [Full Article](#)

Thomson Reuters / EBIA



ELEVENTH CIRCUIT HIGHLIGHTS IMPORTANCE OF UNAMBIGUOUS DISCLAIMERS IN SPDS

“At times, Allstate made representations to employees, both orally and in writing, that their retirement life insurance benefits were 'paid up' or 'for life.' Because the SPDs unambiguously gave Allstate the right to change, amend, or terminate the plan at any time, and expressly clarified that employees had no vested rights under the plan, the appellate court agreed with the district court that plaintiffs failed to establish that benefits were actually 'due' under 'the terms of the plan' for purposes of ERISA Section 502(a) (1)(B).” [Full Article](#)

Jackson Lewis P.C.

SUPREME COURT CHARACTERIZES ETS AS PUBLIC HEALTH MEASURE OUTSIDE OF OSHA'S JURISDICTION

“The Court asserted that OSHA has failed to show evidence of 'grave danger' in many industries, and absolves employers of the requirement to ensure that unvaccinated employees engage in weekly testing. With the ETS set to expire in May, it is unclear whether it will ever become law and again be enforced. The government will need to determine whether to continue to press its merits case at the Sixth Circuit before a possible return engagement with the Supreme Court.” [Full Article](#)

Seyfarth Shaw LLP



DOL INCREASES CIVIL MONEY PENALTIES FOR 2022

“A table reflects the DOL's 2022 annual inflation adjustments to the civil money penalties for violations of certain requirements under ERISA, effective January 15, 2022.” [Full Article](#)

Thomson Reuters Practical Law

RISQ Recap

EMPLOYEE BENEFITS, HUMAN RESOURCES, & COMPLIANCE

LABOR AGENCIES PURSUE AGGRESSIVE AGENDAS IN 2022

“Executive Order 12866 requires federal agencies to publish an agenda of regulations they plan to propose, promulgate, or review in the coming one-year period. The Department of Labor’s regulatory agenda showed ambitious goals for its agencies in 2022, as does President Biden’s Build Back Better Framework. Employers should brace themselves for increased enforcement activity from agencies such as the Equal Employment Opportunity Commission (“EEOC”), the Occupational Safety and Health Administration (“OSHA”), and the Office of Federal Contract Compliance Programs (“OFCCP”).” [Full Article](#)

Hunton Andrews Kurth

AVOID POSSIBLE TRAGEDY IN THE FUTURE BY PREPARING FOR DISASTERS AND EMERGENCIES NOW

“Employers have a duty to provide a safe workplace for employees, and that includes when there is a natural disaster or other emergency situation. According to the federal Occupational Safety and Health Administration (OSHA), a workplace emergency is a situation that threatens workers, customers, or the public; disrupts or shuts down operations; or causes physical or environmental damage.” [Full Article](#)

Akerman



NLRB AND DEPARTMENT OF LABOR JOIN FORCES: WHAT DOES THIS MEAN FOR EMPLOYERS?

“Earlier this month, the U.S. Department of Labor’s Wage and Hour Division and the National Labor Relations Board announced a Memorandum of Understanding (MOU) described as “strengthening the agencies’ partnership and outlining procedures on information-sharing, joint investigations and enforcement activity, as well as training, education and community outreach.” [Full Article](#)

Barnes & Thornburg

DEPARTMENT OF LABOR PROPOSES NEW FORMULA FOR H-2A GUEST WORKER WAGES

“As December began, the U.S. Department of Labor (“DOL”) proposed a modified formula for calculating minimum wages for agricultural guest workers on H-2A visas. The proposal was necessitated by a federal judge in California striking down a prior proposal in December 2020 for the DOL failing to provide sufficient justification for two fundamental changes.” [Full Article](#)

Hall Benefits Law

RISQ Recap

STATE & INTERNATIONAL COMPLIANCE

NEW YORK

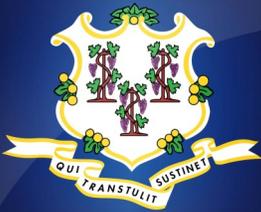


NEW YORK DEPARTMENT OF LABOR RELEASES FINAL REGULATIONS FOR STATE SICK LEAVE LAW

“The New York Department of Labor issued final regulations regarding the New York State Sick Leave Law (NYSSLL), which has been in effect since September 30, 2020. The final regulations do not contain any changes to the rules initially proposed on December 9, 2020.” [Full Article](#)

Littler Mendelson

CONNECTICUT



CONNECTICUT PAID LEAVE PAYMENTS AND CONNECTICUT FMLA CHANGES COMING

“As we speed closer to January 1, the date when payments will begin under Connecticut’s Paid Family and Medical Leave Act and the effective date of changes to Connecticut’s Family and Medical Leave Act (CT FMLA), below are some updates and considerations for employers.” [Full Article](#)

Jackson Lewis

MINNESOTA



A BLIZZARD OF ACTIVITY FROM MINNESOTA OSHA IN THE NEW YEAR

“On January 3, 2022, Minnesota OSHA adopted the ETS by reference in the State Register. For Minnesota employers with 100 or more employees this means they must develop and implement a COVID-19 vaccination and testing policy by January 10, 2022. (MNOSHA indicated it will not issue citations for noncompliance with any requirements of the ETS before Jan. 10.) Further, employers must make the testing requirements of their policies operational by February 9, 2022.” [Full Article](#)

Littler Mendelson

WASHINGTON



WASHINGTON LONG-TERM CARES FUND UPDATE: EMPLOYERS ADVISED TO WITHHOLD PREMIUMS STARTING JANUARY 1

“Governor Jay Inslee has clarified that, starting January 1, “employers will still be legally obligated to pay the full amount owed to state ESD [Employment Security Department] to begin the long-term care program” under the Washington Long-Term Services and Supports Act, until the legislature changes the law.” [Full Article](#)

Jackson Lewis

CALIFORNIA



CALIFORNIA ADOPTS NEW CDC GUIDANCE REGARDING QUARANTINE AND ISOLATION PERIODS WITH ITS OWN TWISTS

“The California Department of Public Health (CDPH) released updated guidance to conform to the new CDC guidelines but added additional requirements, including testing to exit isolation or quarantine after the fifth day. Notably, the new guidance also introduces a distinction between boosted and non-boosted individuals for the first time.” [Full Article](#)

Hunton Andrews Kurth

RISQ Recap

STATE & INTERNATIONAL COMPLIANCE

NEW JERSEY



NEW JERSEY GOVERNOR SIGNS BILL EXPANDING PARKING LOT LIABILITY FOR EMPLOYERS

“On a cold January morning, New Jersey Gov. Phil Murphy trudged through the snow-covered statehouse parking lot and, with one swipe of his pen, shifted the landscape for injuries that occur in employer parking lots. On January 10, 2022, Gov. Murphy signed S771 into law, expanding workers’ compensation liability in parking lots.” [Full Article](#)

Goldberg Segalla

ILLINOIS



BEWARE OF THE ILLINOIS EMPLOYEE WHO INSISTS ON INDEPENDENT CONTRACTOR STATUS

“Imagine that your company contracts with a salesperson, consultant, or other professional, who insists on an independent contractor arrangement. Your company accommodates by paying a daily rate for services, setting up a payment-upon-invoicing system, paying as a 1099 contractor, and signing a written contract stating your agreement that he is an independent contractor.” [Full Article](#)

Krieg Devault

NEW YORK



FEDERAL AND NEW YORK CITY WORKPLACE VACCINATION AND TESTING MANDATES: A PRIMER

“At President Biden’s urging, in late 2021, different arms of the federal government issued three high-visibility vaccine mandates to private employers, applying to federal contractors, many health care workers, and mid-sized and large employers. Those were followed by a sweeping order in New York City requiring businesses there to verify that their on-site employees have been vaccinated.” [Full Article](#)

Skadden Arps

NEW HAMPSHIRE



SUPREME COURT OF NEW HAMPSHIRE WEIGHS IN ON REASONABLE ACCOMMODATIONS FOR MEDICAL MARIJUANA USERS

“The Supreme Court of New Hampshire reversed a trial court decision that dismissed a former employee’s complaint alleging his employer failed to consider whether it could reasonably accommodate his use of marijuana for medicinal purposes.” [Full Article](#)

Seyfarth Shaw

LOUISIANA



LOUISIANA SUPREME COURT UPHOLDS PRIVATE EMPLOYER VACCINE MANDATE

“In *Hayes v. University Health Shreveport, LLC*, 2022 WL 71607 (La. Jan. 7, 2022), the Louisiana Supreme Court ruled that a hospital – or any other private employer – may impose an absolute vaccination requirement and fire any employee who fails to comply.” [Full Article](#)

Reed Smith