

## WEB EXCLUSIVE - AUGUST 2019: THE TOP 11 LABOR AND EMPLOYMENT LAW STORIES

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It's hard to keep up with all the recent changes to labor and employment law. While the law always seems to evolve at a rapid pace, there have been an unprecedented number of changes for the past few years—and this past month was no exception.

In fact, there were so many significant developments taking place during the past month that we were once again forced to expand our monthly summary well beyond the typical "Top 10" list. In order to make sure that you stay on top of the latest changes, here is a quick review of the Top 11 stories from last month that all employers need to know about:

1. **[Federal Appeals Court Strikes Down EEOC's Criminal Background Guidance In Texas: 3 Things For Employers To Know](#)** – A federal appeals court ruled on August 6 that the 2012 guidance document from the Equal Employment Opportunity Commission (EEOC) that cautioned employers not to apply blanket bans against hiring those with criminal records could not be enforced against the state of Texas, handing the agency a stinging loss. The sweeping decision from the 5th Circuit Court of Appeals calls into question not only the future of the guidance as applied to other employers across the country, but also the EEOC's power to issue such guidance in the first place. Here are three things all employers should know about the ruling ([read more here](#)).
2. **[Misclassifying Workers No Longer Constitutes An Unfair Labor Practice](#)** – Employers found to have misclassified

### Related People



**Sheila M. Abron**

Partner

803.740.7676



**Cheryl L. Behymer**

Senior Counsel

803.255.0000

employees as independent contractors will no longer face the prospect of unfair labor practice charges for such actions alone, according to a new ruling handed down by the National Labor Relations Board. Although the NLRB's previous General Counsel and several administrative law judges had previously concluded that hiring entities could face the one-two punch of misclassification litigation followed by a federal labor law violation, the current Board wiped this concern off the table with its August 29 ruling in *Velox Express, Inc.* What do businesses need to know about this positive development? ([read more here](#))

- [Labor Board Proposes Significant Amendments To Union Election Rules](#)** – The National Labor Relations Board (NLRB) announced on August 9 its intent to publish a proposed "Election Protection Rule" that would amend regulations governing the filing and processing of petitions for secret ballot union elections. A Board majority explained that the proposed amendments would "better protect employees' statutory right of free choice on questions concerning representation by removing unnecessary barriers to the fair and expeditious resolution of such questions through the preferred means of a Board-conducted secret ballot election." To that aim, the Board proposed amendments to its: (1) blocking charge policy; (2) voluntary recognition bar rule; and (3) recognition rules in the construction industry. It should be noted that this represents the first of what may ultimately be several forays into rulemaking to amend the current representation process ([read more here](#)).

- [Labor Department Confirms That Certain School Meetings Are FMLA-Protected](#)** – In an eye-opening opinion letter issued on August 8, the U.S. Department of Labor confirmed that parents attending certain school meetings for the benefit of their children are entitled to FMLA leave for their absences. The agency concluded that the need to attend school meetings to discuss individualized education programs for children with serious health conditions triggers intermittent FMLA leave protection. Employers should make note of this opinion and revise their family leave policies and practices as necessary in response ([read more here](#)).

- [New York Expands Workplace Protections For Domestic Violence Victims](#)** – Governor Andrew Cuomo just signed into effect an amendment to New York law expanding the protections employers must provide to employees who



**Melissa Camire**

Partner

212.899.9965



**Benjamin M. Ebbink**

Partner

916.210.0400



**Joshua D. Nadreau**

Regional Managing Partner  
and Vice Chair, Labor  
Relations Group

617.722.0044

are victims of domestic violence. In addition to expanded protections against discrimination, the amendment obligates employers to provide reasonable accommodations to domestic violence victims who must be absent from work for certain specified reasons. The amendment, signed on August 20, becomes effective November 18, 2019. What do you need to know in order to be in compliance come November? ([read more here](#))

6. **[How To Complete EEO-1 Report With Non-Binary Employees](#)** – The EEOC [recently released guidance](#) to assist those employers filling out their EEO-1 reports who have non-binary employees – those who choose not to identify as male or female – in their workforces. This question has become more pressing given the [increase in the number of states](#) permitting individuals to classify themselves as non-binary on government-issued identification forms, especially as employers begin the task of completing their EEO-1 reports before next month’s deadline. What do employers need to know about this latest development? ([read more here](#))
7. **[Illinois Enacts Sweeping Legislation In Response To #MeToo Movement](#)** – Illinois recently enacted sweeping legislation in an effort to combat sexual harassment in the workplace. Illinois Senate Bill 75 created the Workplace Transparency Act, amended the Illinois Human Rights Act and the Victims’ Economic Security and Safety Act, and introduced the Sexual Harassment Victim Representation Act and the Hotel and Casino Employee Safety Act. Additionally, Illinois House Bill 252 amended the Illinois Human Rights Act, further changing the legal landscape for Illinois employers. Both new measures will significantly impact how employers do business in Illinois. The implications are vast, ranging from what constitutes an “employer” in Illinois to the validity of certain employment agreements (and almost everything in between) ([read more here](#)).
8. **[Illinois Employers Barred From Salary History Inquiries](#)** – Joining the ranks of several other states and local jurisdictions that have taken similar steps in the fight against pay disparity, Illinois will soon prohibit employers from asking job applicants about their salary history as part of the hiring process. The new law – set to take effect on September 29, 2019 – also includes other pay equity provisions that will require you to immediately adjust your



**Regina A. Petty**

Partner and Chief Diversity Officer

[213.330.4500](#)



**Franklin Z. Wolf**

Partner

[312.580.7807](#)

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hiring practices. What do Illinois employers need to know about this significant new development? ([read more here](#))

9. **What You Need To Know About California's New Emergency Wildfire Smoke Protection Regulation** – California has been wrought with devastating wildfires in recent years. Last year, in fact, the state suffered one of its most destructive wildfire seasons ever recorded; there were over 8,500 wildfires and the largest area of acreage was burned. The good news, for now, is that Cal Fire has reported that wildfires are down 90% in 2019. Even with this recent decline, in anticipation of continued fires for the foreseeable future, the California Occupational Safety and Health Standards Board (Cal-OSHA) developed a set of rules to protect outdoor workers from the harmful effects of wildfire smoke. The emergency regulation will be in place through January 28, 2020, with two possible 90-day extensions. What are an employer's obligations under the new regulation? ([read more here](#))
  
10. **New York Protects Religious Garb And Facial Hair In The Workplace** – New York Governor Cuomo signed into effect an amendment to state law on August 9 which expressly prohibits discrimination against employees based on clothing or facial hair worn in accordance with the employee's religion. The amendment is set to take effect October 8, 2019. What do New York employers need to know about this development? ([read more here](#))
  
11. **California Employers Should Monitor These 10 Critical Bills As The Legislative Year Comes To A Close** – As the 2019 legislative year is about to come to a close, there are a number of critical labor and employment proposals still making their way to Governor Newsom's desk. With just four short weeks remaining for the Legislature to pass bills, there will be a flurry of activity as everyone watches to see which bills cross the finish line on or before the September 13 deadline. As California employers are used to by now, the Legislature continues to push the envelope when it comes to labor and employment proposals and many of these bills, if signed into law, will greatly impact the employer community. This is also Governor Newsom's first year in office, so there is an element of high drama as nobody really knows what action he might take on these legislative proposals. But we will all find out shortly, as the Governor has until October 13 to sign or veto measures. In the meantime, California employers should closely monitor the following bills ([read more here](#)).

If you have any questions about these developments or how they may affect your business, please contact your Fisher Phillips attorney.

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*This Legal Alert provides an overview of specific legal developments. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.*