Top 50 Workplace Law Stories Of 2019

Insights
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It's hard to keep up with the news these days. It sometimes feels like you can't step away from your phone, computer, or TV for more than an hour or so without a barrage of new information hitting the headlines—and you're expected to consume and immediately understand all of it. It's especially difficult to filter through and absorb information that's relevant for your job as an employer, knowing that you then have to decide whether and how to apply this new material to your day-to-day practices.

The bad news is that 2019 was, once again, one of the more chaotic years in recent memory when it comes to new legal developments in the area of workplace law. The good news? We've compiled the top 50 stories you need to know about from the past year so you can stay in the know.

1. 1. **Late Night Shocker: EEO-1 Used To Gather Pay Data Information** – A federal judge in Washington D.C. sent shockwaves through the employment law community late in the night on March 4 by reinstating a revised version of the EEO-1 report, setting the table for the government to gather compensation information from employers across the country. The resurrection of the controversial revisions, which had been cast aside by the White House shortly after President Trump took over, wasn't the only surprising news related to EEO-1 forms in 2019… (read more here).
   2. **Double Duty: You Have To Turn Over Pay Data From Both 2017 And 2018** – …because the EEOC announced on May 2 that, in order to comply with the court order, most employers would have to turn over compensation information from both 2017 and 2018 when they submit their Component 2 pay data with their EEO-1 submission by September 30 (read more here).
   3. **Pay Data Collection May Just Be A One-Time Predicament** – But there may be a silver lining after all. Citing the high burden on employers and the unproven usefulness of the program, the EEOC announced on September 11that it will halt further collection of pay data during future EEO-1 reporting cycles. While employers still had to turn over compensation information from both 2017 and 2018 when they submitted their Component 2 pay data as part of their EEO-1 submission by September 30, this announcement may mean this will be a one-time effort that may not need to be repeated in 2020 (read more here).
   4. **Independent Contractor Rules Rewritten In California** – The California legislature approved a controversial new law on September 11 that will reshape the way businesses across the state classify workers. While supporters of the bill have emphasized its impact on

independent contractors, the bill also severely impacts legal obligations governing businesses that hire other businesses. In short, the law will make it much more difficult for many companies to treat workers in California as independent contractors, and more difficult for businesses to hire smaller, entrepreneurial businesses. The governor signed the law into effect on September 18, meaning hundreds of thousands of workers across the state will be entitled to increased pay, benefits, and employment law protections – not to mention the possibility of organizing into labor unions. Many businesses, especially those in the gig economy, will need to radically restructure their operations or transform these workers into employees in order to comply with the law. What do you need to know about these developments? (read more here)

5. **USDOL Releases Overtime Rule 2.0 For 2020 –** The suspense is over – the Department of Labor announcedthe revised Overtime Rule on September 24, which will set the minimum salary threshold for the Fair Labor Standard Act's white-collar exemptions at $684 per week, or $35,568 per year. The rule, which will expand overtime pay obligations to an estimated 1.3 million additional workers, will take effect on January 1, 2020 (read more here).
6. **New California Law Prohibits Most Mandatory Arbitration Agreements—For Now** – Despite his predecessor vetoing two similar proposals, California Governor Gavin Newsom signed a bill into law on October 10 that will prohibit employers from entering into mandatory arbitration agreements for nearly all types of employment law claims in California. The new law could have significant impacts on California employers across all industries – if it ever goes into effect. There are significant questions around whether the new statute is invalid. We could see it scaled back or completely tossed out before ever being enforced based on an argument that it is preempted by federal law. Legal challenges are inevitable, and will likely require years of litigation before a final resolution. In the meantime, what do California employers need to know about this development? (read more here)
7. **Pendulum To Swing Back As SCOTUS Prepares For Exciting 2019-2020 Term** – Taking a three-year look back at the Supreme Court's workplace law decisions gives you the sense that the exciting cases only come down every other year. In the ho-hum term that ended in 2017, the Court handled relatively low-impact cases, but the docket heated up in the term ending in June 2018 when the Court issued rulings in blockbuster cases. Last term's decisions returned to the mind-numbing variety, for the most part. This history can only mean that we have exciting things in store for the coming 2019-2020 term, which kicked off on October 7. A sneak peek at the early docket confirms that you can expect to see fireworks over the next nine months, as the Supreme Court has loaded its term with interesting and impactful cases (read more here).
8. **Supreme Court Hears Arguments To Determine LGBT Workplace Bias Issues For The First Time** – In fact, we didn't have to wait long to see a riveting issue crop up at the Supreme Court. On the second day of the 2019 term, three consolidated cases were argued that will determine whether the nation's most prominent workplace discrimination statute prohibits employment discrimination against LGBT workers. The issue that was considered during the

October 8 Court session: whether Title VII's ban against "sex" discrimination covers claims involving sexual orientation and gender identity. By the time the term ends in June 2020, employers will finally have a definitive answer regarding the contours of the federal primary civil rights law as it applies to members of the LGBT community (read more here).

9. **Labor Department's Proposed Four-Factor Rule Would Limit Joint Employment** – The U.S. Department of Labor became the latest federal agency to propose a rule to limit the scope of joint employment liability, this time for wage and hour matters. If the rule released on April 1 is adopted in its current form, the USDOL would examine whether a business is a "joint employer"—equally liable for liability under federal wage and hour laws—through the use of a four-factor balancing test, assessing whether the potential joint employer:
    1. hires or fires the employee;
    2. supervises and controls the employee's work schedule or conditions of employment;
    3. determines the employee's rate and method of payment; and
    4. maintains the employee's employment records.

    If this rule is adopted, it would almost certainly mean that fewer businesses would be found to be a joint employer by a court or agency when it comes to minimum wage, overtime, and other similar liability under the Fair Labor Standards Act (FLSA). The Labor Department's move is in the same vein as the proposal unveiled by the National Labor Relations Board in September 2018, which also aims to fundamentally alter the definition of joint employment in matters related to unionization purposes. What do employers need to know about this development? (read more here)
10. **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 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).
11. **Scalia To Take Labor Department Reins: What Does It Mean For Employers?** – The news that President Trump selected Eugene Scalia to take over as Labor Secretary on July 19 caught some employers by surprise; after all, it was just a week prior that we were analyzing the track record of the soon-to-be-acting Secretary who many expected to helm the Department of Labor for an extended period of time. But all employers soon turned their attention to the same issue: what does this transition mean for the business community? We once again assembled the opinions of some of our firm's foremost thought leaders – including one of our partners who recently worked side-by-side with Scalia on a significant workplace law matter – to help provide a glimpse into what you should expect from the U.S. Department of Labor. The consensus opinion? Scalia will aggressively battle against intrusive

and overreaching regulations that hamstring the country's employers, and will quickly endear himself to the business community (read more here).

12. **What Employers Need To Know About The New EEOC Chair** – Janet Dhillon's confirmation as the new Chair of the EEOC on May 8 will have an impact on employers in more ways than one. Besides installing an agency head that is seemingly in a position to understand and balance the interests of the business community and workers alike, the Senate restored a quorum to the agency for the first time in months – meaning that the agency could get down to work on several critical initiatives. What do employers need to know about the new head of the federal employment law agency? (read more here)
13. **Labor Board Makes It Harder For Employees To Claim Their Complaints Are Protected** – In a 3-1 ruling that should be hailed by employers across the country, the National Labor Relations Board made it harder for employees to successfully claim that their workplace gripes constitute protected concerted activity. The January 11 decision (*Alstate Maintenance, LLC*) reversed a 2011 Obama-era decision that was widely derided as tilting the playing field too far in favor of employees. Under that precedent, essentially any employee complaint made to management in the presence of coworkers was sufficient to qualify as protected concerted activity under the National Labor Relations Act (NLRA). Under *Alstate Maintenance*, however, the NLRB returned to the more stringent standard whereby only those complaints that seek to initiate group action, or that involve truly "group" complaints, will be considered protected concerted activity (read more here).
14. **Supreme Court Strikes Down Significant Pay Equity Case** – The Supreme Court took the unusual step of vacating a 2018 federal appeals court decision because one of the judges counted in the majority was deceased by the time the decision was published, reversing a landmark pay equity ruling that concluded employers could not justify wage differentials between men and women by relying on prior salary. Although the justices did not examine the merits of the 9th Circuit's *Yovino v. Rizo* ruling in the February 25 unsigned five-page opinion, their decision plunges employers back into a state of uncertainty regarding a controversial pay equity practice (read more here).
15. **Labor Board Makes It Easier To Classify Workers As Independent Contractors** – In a significant ruling which will benefit companies, the National Labor Relations Board revised the test it uses for determining whether workers are employees or independent contractors by making it easier for entities to classify them as contractors (*SuperShuttle DFW, Inc.*). The January 25 decision threw a roadblock into unionization efforts involving such workers, as federal law does not permit independent contractors to unionize or join forces with employees in organizing efforts. What do employers need to know about this development? (read more here)
16. **End of the Road: SCOTUS Ruling Means Many Transportation Workers Are Now Exempt From Arbitration** – In a unanimous 8-0 decision, the Supreme Court ruled on January 15 that federal courts can't force interstate transportation workers—including contractors—into arbitration, ruling that the Federal Arbitration Act's Section 1 exemption for these workers is

a threshold question for the court to resolve, not the arbitrator. Perhaps more importantly, the Court also applied the Section 1 "contract of employment" exemption from the FAA to include not only interstate transportation workers with employment agreements, but also to those interstate transportation workers with independent contractor agreements (*New Prime Inc. v. Oliveira*). Nearly 1 million men and women work as truck drivers nationwide. This ruling could open the floodgates to a host of new class and collective action lawsuits against interstate transportation employers in federal and state courts; employers in this industry should immediately coordinate with their labor and employment counsel to determine how this development might affect them (read more here).

17. **Grad Students Cannot Unionize Under Proposed NLRB Rule** – The National Labor Relations Board took the latest step in the long-simmering debate over whether college teaching and research assistants could unionize when it released a proposed rule on September 21 that would once again block such efforts. Declaring that university students should not qualify as employees under federal labor law, the Board took the first step to reverse a 2016 ruling by the Obama-era NLRBthat opened the door for certain graduate and undergraduate students to form unions. The proposed rule still has a way to go before it is finalized and adopted, but you will want to familiarize yourself with this development to the extent it may soon upend the current state of the law and your campus practices (read more here).

18. **Illinois Enacts Minimum Wage Hike To $15 –** Illinois will soon drastically change its minimum wage, reaching $15 per hour over the course of the next six years. Following passage by the legislature on February 14, Governor J.B. Pritzker quickly signed the amendments to the Illinois Minimum Wage Law into law. You should be prepared for the gradual increases (and other changes) to start taking effect on January 1, 2020 (read more here).

19. **Time To Revisit Arbitration Agreements: Employers Dealt A Blow By Unanimous Labor Board** – Employers may be surprised to learn that the Republican-controlled National Labor Relations Board issued a unanimous decision invalidating an employer's mandatory arbitration agreement that could be reasonably interpreted as preventing employees from filing charges with the Board. The June 18 *Prime Healthcare* decision analyzed the employer's arbitration agreement using the relatively new *Boeing Co.* standardfor evaluating facially neutral policies and rules that potentially interfere with employees' protected rights, but fell on the side of the workers. The decision may require you to adjust your arbitration agreements to ensure you stay on the right side of the law (read more here).

20. **Labor Department Issues Proposed Changes To The Tip Credit Regulations** – Employers that utilize the "tip credit" in the federal FLSA, or whose employees receive tips, should carefully consider regulatory changes that were proposed by USDOL on October 7. While many of the proposed regulatory changes were expected, some were not, and even the expected changes will require employers to recalibrate some of their policies assuming that USDOL ultimately adopts the proposals into final law. Employers wishing to comment on these proposals have until December 7 to submit their comments (read more here).

21. **Misclassifying Workers No Longer Constitutes An Unfair Labor Practice** – Employers found to have misclassified 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)

22. **Supreme Court Dims The Light On Class Arbitration** – By a 5-to-4 vote, the Supreme Court ruled on April 24 that the Federal Arbitration Act does not allow a court to compel class arbitration when the agreement does not clearly provide for it. As a result, employers whose valid arbitration agreements do not contain an explicit class action waiver (assuming they do not expressly consent to class arbitration) can rest easy knowing that the agreements allow them to compel alleged class claims to individual arbitration (*Lamps Plus Inc. v. Varela*) (read more here).

23. **Labor Board Proposes Significant Amendments To Union Election Rules** – The 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).

24. **New Jersey Bars Common Workplace Contract And Settlement Terms** – Employers in New Jersey needed to immediately adjust their employment contracts and settlement agreements to come into compliance with a sweeping new law that took effect in 2019. New Jersey's governor signed Senate Bill 121 on March 18, which limits employment contracts and settlement agreements in two major ways:

    - It renders unenforceable any nondisclosure clause that would conceal any details relating to claims of discrimination, retaliation, or harassment; and
    - It prohibits any agreement that waives any substantive or procedural rights or remedy in cases of discrimination, retaliation, or harassment – such as the right to a court and jury trial – effectively barring mandatory workplace arbitration provisions.

    In response to critics' complaints that mandatory arbitration and nondisclosure agreements relating to sexual harassment claims silence workplace victims of sexual assault and harassment, several other states have already banned these commonplace agreements.

Under its new law, however, New Jersey goes further than any other state, banning such agreements with respect not just to harassment but to all claims of workplace discrimination and retaliation. Here's an overview (read more here).

25. **Sexual Harassment Charges Increase Once Again, According To EEOC Stats** – Despite a 10% overall drop in the number of charges of employment discrimination, the Equal Employment Opportunity Commission reportedon April 10 that sexual harassment charges filed with the agency jumped by 13.6 percent from the previous year. The 7,609 sexual harassment charges received in the EEOC's 2018 fiscal year clearly demonstrate that the #MeToo movement is in no way slowing down. What do employers need to know about this development? (read more here)
26. **Labor Board Grants Employers Greater Rights To Limit Union Activity On Premises** – The National Labor Relations Board issued a decision reversing 37 years of precedent and thereby granting employers greater rights to limit union activity on their premises. Under the "public space" exception, employers had to allow nonemployee union representatives access to the public areas of their property, including restaurant dining areas and cafeterias, to engage in promotional or organizational activity. But in the June 14 *UPMC* decision, the Board abolished that exception and held that employers no longer have to allow nonemployee union representatives access to public areas, unless the union has no other reasonable means of communicating with employees or the employer discriminates against the union by permitting similar groups access (read more here).
27. **Labor Board Further Tightens Union Access To Employer Property** – In yet another ruling that levels the labor relations playing field, the National Labor Relations Board ruled on September 7 that employers could rightfully eject outside union representatives soliciting petition signatures from a shared shopping center parking area. When read in conjunction with a June decision conferring greater rights to limit on-premises union activityby abolishing the "public space" exception, and a more recent ruling extending greater latitude when it comes to excluding contractor employees, the Board has significantly restricted union access to private employer property. These rulings have supplied employers with powerful tools to combat prohibited solicitation on their premises. What do you need to know about this latest decision? (read more here)
28. **Federal Appeals Court Says Extreme Obesity Alone Is Not Enough For ADA Coverage** – A federal Court of Appeals ruled that extreme obesity not caused by an underlying physiological disorder or condition does not qualify as an impairment under the ADA. Under the 7th Circuit's June 12 ruling, proof that extreme obesity was caused by an underlying physiological disorder or condition is necessary to implicate coverage under the Americans with Disabilities Act. What can employers take from the *Richardson v. Chicago Transit Authority*decision? (read more here)
29. **Obesity: A New Protected Class In Washington** – The Washington Supreme Court held for the first time that obesity is a protected class under state anti-discrimination law (*Taylor v. Burlington Northern Railroad Holdings, Inc.*). The July 11 decision runs counter to recent

federal court decisions in other parts of the countrythat have said obesity not caused by an underlying physiological disorder or condition does not qualify as an impairment under federal law. The main reason for this distinction is that Washington state disability discrimination law offers broader coverage than the federal Americans with Disabilities Act (ADA). While Washington employers may have grown accustomed to expansive disability discrimination protections in our state, the decision goes further than ever before and may require you to immediately adjust your personnel practices (read more here).

30. **NLRB Advice Memo Could Mean End For "Scabby The Rat"** – An advice memorandum released by the National Labor Relations Board General Counsel's office on May 14 could be the beginning of the end for "Scabby the Rat," "Corporate Fat Cat," and similar oversized balloons often employed by unions to exert pressure on neutral employers as part of secondary picketing actions. The Board's counsel recommended that the NLRB reverse several Obama-era decisions that permitted the use of such balloons, as well as the erection of stationary banners, as lawful non-picketing secondary activity under the NLRA. If the current Board follows the recommendation contained in the advice memo, businesses will have a valuable tool to help them with such union confrontations (read more here).
31. **Oregon Passes Nation's Most Generous Paid Family Leave Law** – While many Oregonians were enjoying a leisurely holiday break in July, Oregon lawmakers were busy enacting the nation's most generous paid leave program. Governor Kate Brown signed into law "HB 2005: Paid Family Leave," which will provide 12 weeks of paid leave to just about everyemployee in the state (yes, even if you only have one employee), to be funded by a new payroll tax paid by both workers and employers with 25 or more employees. While the law will not kick in until 2023, it's never too early to learn about what's around the corner and start to prepare. What do Oregon employers need to know about this groundbreaking new law? (read more here)
32. **California Governor Signs Law Prohibiting Employment Race Discrimination Based On Hairstyles** – California Governor Gavin Newsom signed legislation in July to provide that prohibited employment discrimination based on race under the Fair Employment and Housing Act (FEHA) also includes discrimination based on hair texture and protective hair styles. This new law goes into effect on January 1, 2020. California employers will need to review workplace grooming standards in order to ensure compliance with the law. The legislation, Senate Bill 188by Senator Holly Mitchell (D-Los Angeles), specifically amends the definition of "race" under FEHA to include "traits historically associated with race, such as hair texture and protective hairstyles," including "braids, locks, and twists." The legislation was amended during the process to address similar discrimination in the public school education context. According to the author and supporters of the proposal, the legislation was necessary because societal stereotypes that define European features as the norm for "professionalism" disproportionately impact persons of color, especially African-Americans (read more here).
33. **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).

34. **NLRB Limits Application Of "Micro-Unit" Strategy** – In a blow to national union organization efforts, the National Labor Relations Board just clarified the test for determining whether "micro-units" of employees within a larger workforce can organize on their own. In its September 9 *Boeing Company*decision, the NLRB addressed a union's efforts to utilize a "micro-unit" strategy to target a petitioned-for unit that made up of only two job classifications from a significantly larger, integrated workforce. In reversing a Regional Director's decision to allow a representation election with this smaller subset of employees, the NLRB clarified its traditional community-of-interest standard for evaluating the appropriateness of petition for bargaining units (read more here).

35. **Supreme Court's Decision Not To Review California's Arbitration Framework Means We Have A Roadmap For Compliance** – The U.S. Supreme Court did something that was more than just a bit out of character—it rejected the opportunity to find that California had once again overstepped its bounds by creating judicial rules disfavoring arbitration. It did so by rejecting the highly watched petition for certiorari that arose from *Ramos v. Winston & Strawn*. The October 7 determination not to take up the case for review means that we will have to live with the current state of affairs for the time being, but we now have a solid game plan for crafting arbitration agreements that comply with state law (read more here).

36. **Federal Court Strikes Down HHS "Conscience Rule," Sparking Heated Rhetoric And Potential Confusion –** A New York federal judge struck down a rule that was about to permit the government to withhold federal funds from healthcare providers that don't allow workers to refuse to perform procedures because they violate their religious beliefs or conscience. Judge Paul Engelmayer's 147-page ruling, handed down November 6, has led to heated reactions and spin from both sides of the controversy. However, the decision may not have a big effect on the daily operations of healthcare institutions and employees who want to be excused from participating in certain procedures. Similar laws and accreditation requirements remain in effect (read more here).

37. **California's Groundbreaking Privacy Law Amended** – Governor Gavin Newsom signed into law two amendments to the California Consumer Privacy Act (CCPA) that will have a direct impact on employers doing business in the state. The new amendments, signed on October 11 and taking effect on January 1, 2020, require covered businesses meeting a certain revenue threshold or other criteria to implement policies and procedures that provide consumers – which includes employees – certain privacy rights not previously available under existing law. The first relevant amendment, AB 25, postpones by one year, until January 1, 2021, all the CCPA's requirements pertaining to employee data except for two: (1) reasonable security measures to safeguard the data, and (2) disclosure of the categories of personal information

collected about employees and job applicants and the business purposes for which the information is used. The second relevant amendment, AB 1355, excludes from coverage of the CCPA, until January 1, 2021, specified "business-to-business" communications or transactions. Even though enforcement by the California attorney general does not begin until July 1, 2020, the CCPA compliance deadline is just around the corner. Therefore, employers doing business in California should immediately consider whether the CCPA applies to them and if it does, determine what steps they should take to be ready (read more here).

38. **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).

39. **No-Rehire Provisions Are No More in California Settlement Agreements** – Californians now have one more thing to add to their holiday to-do lists: reviewing their standard settlement agreements to remove any no-rehire provisions. California employers have until the end of the year to revise their agreements to comply with AB 749, the legislation signed into effect by Governor Gavin Newsom on October 12. What do California employers need to know about this new law? (read more here)

40. **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 began prohibiting employers from asking job applicants about their salary history as part of the hiring process. The new law – which took effect on September 29 – also includes other pay equity provisions that will require you to immediately adjust your hiring practices. What do Illinois employers need to know about this significant new development? (read more here)

41. **Hurricane Dorian Slams Southeast U.S. And Creates Workplace Problems** – When Hurricane Dorian worked its way up the coast in early September, it brought along with it many employment-related concerns facing employers in the wake of hurricane-related disasters, including military leave, family and medical leave, unemployment compensation, workplace safety issues, and more. Fisher Phillips updated our Comprehensive FAQs For Employers On Hurricanes And Other Workplace Disasters to assist employers manage through this difficult time (read more here).

42. **An Employer's 7-Step Guide To Navigating Newly Revived No-Match Letters** – In May, the Social Security Administration resurrected its practice of issuing Employer Correction Request notices – also known as "no-match letters" – when it receives employee information

from an employer that does not match its records. If you find yourself in receipt of such a letter, we recommend you take the following seven steps in conjunction with working with your Fisher Phillips counsel (read more here).

43. **Jury Shocker: 93 Million Reasons Why The ILWU May Soon Cease To Exist** – A recent $93.6 million verdict from an Oregon jury has the potential to bankrupt a union that some describe as one of the strongest and most militant in the United States—the International Longshore and Warehouse Union (ILWU). The November 4 federal jury award in favor of ICTSI Oregon Inc., the former operator of a Port of Portland terminal, was handed down after allegations of unlawful boycotts carried out by the ILWU-backed dock workers, which caused significant damages to ICTSI's business. What do employers need to know about this staggering jury award that threatens to upend a national labor law stalwart (read more here)?

44. **Florida Supreme Court Strikes Down Miami Beach Minimum Wage** – The Florida Supreme Court blocked a Miami Beach law that would have raised the minimum wage in the city. The February 5 decision ended a lengthy legal battle over whether cities could set their own minimum wages that do not correspond with what has been set by the Florida Constitution. Miami Beach passed an ordinance in 2016 that would have raised the minimum wage in the city to $13.31 by January 1, 2021. The current minimum wage in Florida is $8.46 per hour. Represented by attorneys from Fisher Phillips, the Florida Retail Association, the Florida Chamber of Commerce, and the Florida Restaurant and Lodging Association fought the ordinance. The business groups argued that state law prevents municipalities from raising their own minimum wage, which could create a confusing mix of minimum wage rates across the state (read more here).

45. **45**. **Employers, Beware: SCOTUS Ruling Creates Title VII Litigation Trap** – The U.S. Supreme Court unanimously ruled on June 3 that Title VII's administrative exhaustion requirement—whereby an aggrieved employee first must file a claim with the EEOC or a state agency before filing a lawsuit—is merely a claim-processing rule, rather than jurisdictional. As a result, an employer who does not assert "failure to exhaust" as an affirmative defense to a lawsuit might waive the ability to seek dismissal on that basis. In light of this decision, employers must ensure they identify an employee's failure to exhaust at the outset of any Title VII litigation to preserve their ability to dismiss the claims on that ground (*Fort Bend County v. Davis*) (read more here).

46. **Department Of Labor Says Certain Gig Workers Are Contractors** – In a major positive development for gig economy businesses, the U.S. Department of Labor issued an opinion letter on April 29 confirming that certain workers providing work for a virtual marketplace company are, indeed, independent contractors. While this letter can only be used as an authoritative legal defense by the specific (unnamed) gig economy business that requested the letter, this publication still provides the federal government's official interpretation on whether a certain business model or practice complies with the law. We now have a solid understanding of how the current USDOL views the misclassification question and will

approach it from an enforcement perspective, and the news is all good for gig businesses (read more here).

47. **Noncompete Reform Continues In New England: Maine, New Hampshire, And Rhode Island All Pass New Laws** – Noncompete reform continues to crop up in New England. We previously wrote about comprehensive reform in Massachusetts late last year, and now three more states have passed legislation in June and July. All three states – Maine, New Hampshire, and Rhode Island – now prohibit employers from entering noncompetition agreements with low-wage employees, though the definition of "low wage" varies by state (read more here).
48. **New York Lawmakers Pass Game-Changing Reforms to State Discrimination Laws –** Still grappling with the expansive sexual harassment reforms passed last year, New York businesses and employers will soon need to manage through yet another expansive suite of amendmentsthat will continue the state's ongoing implementation of stronger, and more burdensome, antiharassment and antidiscrimination laws. On June 20, the last day of its legislative session, the New York State Senate and Assembly passed sweeping reforms meant to overhaul the state's antidiscrimination laws. The amendments will impact every workplace in New York (read more here).
49. **Sweeping Pay Equity Laws On The Way For New York Employers** – The New York State Senate and Assembly passed two pay equity bills in June that will have a significant impact on all New York businesses. The legislation will amend the New York Labor Law to protect a greater number of employees against pay discrimination and prohibit employers from seeking salary history from prospective employees. What do employers need to know about this new legislation? (read more here)
50. **Longest Government Shutdown In History Impacted Workplace Law** – The federal government shutdown ending on January 25 became the longest in our nation's history—and employers felt the sting. While the peculiarities of the federal budget process meant that this shutdown started out by not hitting the nation's employers as hard as prior shutdown events, the lingering nature of the event eventually started to take its toll. Read on to get a better understanding of how employers were impacted (read more here).