

NOVEMBER 2020: THE TOP 16 LABOR AND EMPLOYMENT LAW STORIES

Publication
Nov 30, 2020

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 16 stories from last month that all employers need to know about:

[1. Top 11 Workplace Law Developments To Expect Under President Biden](#) – It's official: Joe Biden will soon be our nation's 46th president. Now the work begins to forecast what the next four years will bring. We've spent some time gathering our firm's collective wisdom on what the next administration will mean for workplace law and the nation's employers. Here are our predictions in 11 key areas ([read more here](#)).

For deeper dives in specific practice areas, check out these additional stories:

- **[Expect These 8 Changes To OSHA Under The Biden Administration](#)** – Joe Biden will soon become the 46th president of the United States, and will begin taking actions that will immediately impact employers. You should begin preparing now for managing a workforce under the Biden administration, which has pledged to

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make significant changes to the American workplace, including an expansion of worker's rights. What do employers need to know about the changes we can expect at the federal workplace safety agency? ([read more here](#))

- **[Back To The Future: It's Time To Prepare For A Rollback Of Employer Rights At The NLRB](#)** – As you prepare for the prospect of a Biden presidency, businesses large and small should consider the potential impact on decision-making and regulatory reform at the National Labor Relations Board (NLRB) – whether or not your workforce is unionized. The new administration can be expected to fulfill promises made to organized labor by rolling back Trump Board measures that have inured to the benefit of unionized and non-union employers alike. As made clear in a recent campaign position paper, President-elect Biden plans to push for adoption of pro-union elements within the Protecting the Right to Organize Act (PRO Act) passed by the House earlier this year as a cornerstone of his Administration's regulatory labor agenda ([read more here](#)).
- **[What's Next For Employers: Top 10 Immigration Developments To Expect Under The Biden Administration](#)** – While the election results may still be debated until officially certified and litigation is resolved, employers should be looking ahead to what a Biden administration will mean for immigration. Prior to this tumultuous year, immigration was one of the biggest hot button topics in the country. But due to the pandemic, social unrest, and the national economic downturn, immigration has grabbed fewer headlines. Regardless, immigration policy will be one of the areas most significantly impacted by the change in administration. This article will cover the top 10 developments that employers can expect in immigration law under President Biden ([read more here](#)).
- **[The Crystal Ball Says These 6 Issues Will Demand The Attention Of Healthcare Employers During Biden Administration's First Year](#)** – We have already taken a broad look at workplace law developments likely to emerge under Joe Biden's administration, unless the political landscape shifts suddenly and dramatically. The healthcare industry is of course already unique and challenging, especially as the COVID-19 pandemic continues. After all, reports of increased demands for staff, personal protective equipment (PPE), supplies, and



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treatment have been in the headlines throughout the crisis. The Centers for Disease Control and Prevention (CDC) has premised much of its fundamental guidance on its efforts to safeguard the capacity of the nation's healthcare system. This is a primary reason the CDC has repeatedly stated that getting flu shots is more important this year than ever. When a COVID-19 vaccine becomes available, that will obviously be another huge development. With this background in mind, here are our predictions – in order of likelihood and potential significance – regarding the six biggest workplace issues that are likely to be especially important to healthcare employers under President Biden's administration ([read more here](#)).

- **[Top 3 Mine Safety Changes To Expect Under The Biden Administration](#)** – With Joe Biden now being called the president-elect, we can expect changes to the Mine Safety and Health Administration (MSHA) once he takes office in January 2021. Right now, while there is speculation as to who will be the next Secretary of Labor and who will be the next Assistant Secretary of Labor for MSHA, we can be confident that the expansion of workers' rights, a key focus for the Biden administration, will include some significant changes in MSHA's focus. Now is the time for operators to prepare for a shift from MSHA's enforcement posture over the past four years. Here are the top three significant changes we can expect from MSHA under a Biden administration ([read more here](#)).

[2. The Top 9 Things Employers Need To Know About Cal/OSHA's New Emergency COVID-19 Standard](#) – The Cal/OSHA Standards Board just adopted an emergency standard related to COVID-19 prevention in the workplace, imposing some significant requirements on California employers. Most notably, the new rule finalized on November 19 provides that employees excluded from work for having or being exposed to COVID-19 must continue to be paid while they are off work. Employers do not have a lot of time to comply with the new mandates. This new standard will require California employers to take immediate action on many COVID-19 fronts. So what do California employers need to know? Here are the top nine takeaways for California employers – including specific recommendations about what you need to do in response to each new obligation ([read more here](#)).



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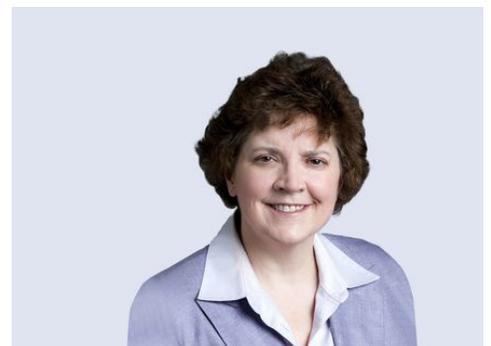
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3. Businesses Nationwide Face New Privacy Obligations

Thanks To California Vote – Californians passed a ballot measure on Election Day that will soon expand the nation’s most stringent data privacy law – and it will have an impact on employers across the country. By voting in favor of Proposition 24 – the California Privacy Rights Act of 2020 (CPRA) – employers and businesses will face an expansion of the state’s landmark privacy law, the California Consumer Privacy Act of 2018 (CCPA). Most provisions of the CPRA go into effect on January 1, 2023, although some provisions have a 12-month lookback, as explained below. What do employers and businesses need to know about this dramatic new legal obligation – especially those beyond the California border who may not recognize their obligations? ([read more here](#))

4. CDC Finalizing Rule To Shorten Coronavirus Quarantine

Period – The Centers for Disease Control and Prevention (CDC) is finalizing a rule to shorten the quarantine period for people exposed to COVID-19 from 14 days to seven to 10 days, according to a November 24 exclusive report in Wall Street Journal. Henry Walke, the CDC’s coronavirus incident manager, indicated that a shortened quarantine period would include a requirement that the person receive a negative test before ending their quarantine period ([read more here](#)).

5. EEOC Announces Record-High Recovery Against

Employers In FY2020 – The federal agency charged with enforcing the nation’s main workplace discrimination laws just announced that it recovered over \$535 million from employers on behalf of aggrieved workers and applicants this past fiscal year, a figure that shattered the previous record and set an all-time high. The EEOC’s November 16 financial report also touted successes in clearing old inventory of charges, increasing the percentage of resolutions achieved in favor of charging parties, and mediating thousands of charges to conclusion. The report further indicated that the EEOC filed the second-lowest number of merits lawsuits against employers in over two decades. What are the top five takeaways for employers from this latest report? ([read more here](#))

6. 5 Things Florida Employers Need To Know About Vote To

Increase Minimum Wage – Florida voters approved a [constitutional amendment](#) on November 3 that will gradually raise the state minimum wage to \$15 per hour in 2026. What does this mean for employers? Here are the top



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five things you need to know about this groundbreaking election result ([read more here](#)).

7. Colorado Passes Paid Family And Medical Leave Insurance Program: What Do Employers Need To Do Now?

– Colorado voters passed Proposition 118 on Election Day, creating Paid Family and Medical Leave obligations for all employers in the state. This initiative mandates that employers provide 12 weeks of leave for Colorado employees, plus an additional four weeks in case of medical complications. What do employers need to know about this groundbreaking new law? ([read more here](#))

8. Recent CDC Guidance Could Bolster Argument For Cloth Face Coverings To Be Personal Protective Equipment

– A recent update from the Centers for Disease Control and Prevention (CDC) released on November 10 could eventually lead federal workplace safety authorities to conclude that employers have significant additional obligations when it comes to their employees wearing cloth face masks. While the heavy lifting may not start until President-elect Biden takes office, employers may want to track recent developments so you are prepared to quickly pivot if compliance changes do take place ([read more here](#)).

9. Washington Supreme Court Grants Dairy Workers Overtime Pay As Fundamental Right, Raising Concerns For Agricultural Employers

– In a sweeping 5-4 opinion, the Washington Supreme Court held that dairy workers are entitled to overtime pay, concluding that a state statutory exemption violated the Washington State Constitution. For the previous 60 years, Washington's Minimum Wage Act (RCW 49.46.130(2)(g)) had expressly exempted agricultural workers from receiving weekly overtime premium pay for any work performed above 40 hours in a workweek. But in the November 5 decision in *Martinez-Cuevas, et al. v. DeRuyter Brothers Dairy, Inc.*, the court found that the overtime exemption impermissibly granted agricultural employers an unconstitutional privilege or immunity from paying otherwise mandatory overtime pay to these high-risk workers. What do Washington agricultural employers need to know about this decision? ([read more here](#))

10. CDC Recommends Tighter Quarantine Standards For Exposed Critical Infrastructure Sector Employees

– The Centers for Disease Control and Prevention (CDC) recently released updated guidance recommending that critical infrastructure employers only permit asymptomatic workers

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to continue working after potential COVID-19 exposure in limited and rare circumstances. The updated guidance, released on November 16, continues to provide an exemption from the usual 14-day self-quarantine recommendation for critical infrastructure workers who have had a close contact exposure to an individual with a confirmed or suspected case of COVID-19, but now recommends the exemption should only be exercised as “a last resort and only in limited circumstances.” Further, it recommends that only employers involved in or impacting “public health and safety” can enjoy this exemption. What do employers need to know about this new guidance? ([read more here](#))

11. New SBA Questionnaire Raises Stakes For Businesses That Borrowed Over \$2 Million In PPP Loans

– The Small Business Administration (SBA) released loan necessity questionnaires in early November that lenders must issue to over 50,000 borrowers that received \$2 million or more in funds from the Paycheck Protection Program (PPP) – and the questions indicate that borrowers may face a higher hurdle than originally anticipated when it comes to forgiveness. Businesses may need to demonstrate that they suffered actual economic harm as a result of the pandemic in order to be eligible for full forgiveness, which is a change from what many initially believed at the time the applications were submitted. Borrowers only have 10 days from the time they receive the questionnaire to complete it and submit supporting documentation, so those who received \$2 million or more from the PPP should begin preparing to respond to the questionnaire now ([read more here](#)).

12. What Employers And Educational Institutions Need To Know About EEOC’s Proposed Guidance On Religious Discrimination

– The EEOC recently released a draft of its updated guidance on religious discrimination, which – if adopted and finalized – could alter the legal standards applied in workplace disputes for the nation’s employers generally and educational institutions specifically. While the November 17 release will not be finalized and adopted until a public comment period expires in mid-December and the commissioners have an opportunity to address specific concerns, the upcoming changes at the White House will not necessarily slow down the process. What do employers need to know about this development? ([read more here](#))

13. 5 Biggest Questions After California Voters Pass Landmark Gig Economy Law

– The dust is beginning to

settle after [California voters overwhelmingly approved a new test](#) for determining whether app-based rideshare and delivery drivers are considered employees or independent contractors, essentially overturning the ABC Test as it applies to a wide swath of the gig economy. But now that Proposition 22 proved to be wildly successful, what's next? Here are the five biggest questions – and some answers – that remain in light of this groundbreaking development ([read more here](#)).

[14. ICE Clarifies And Extends “Relaxed” I-9 Rules Until End Of Year](#) – Federal immigration officials [announced](#) on November 18 that the relaxed rules for completing I-9 forms has been extended until December 31, 2020. Officials also recently issued guidance that should further help employers navigate these unprecedented times. What do employers need to know about these developments? ([read more here](#))

[15. JPMorgan Settles Gender Pay Bias Suit For \\$9.8 Million](#) – JPMorgan Chase recently signed a conciliation agreement with the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) agreeing to settle a long-running pay equity lawsuit alleging that it underpaid some of its female employees. Key provisions of the November 2 agreement require JPMorgan to pay \$800,00 in back pay and interest to affected female employees, to conduct an annual pay equity analysis of its U.S. employees for the next five years, and to allocate \$9,000,000 during the five-year period for pay adjustments for women and minorities to address pay equity ([read more here](#)).

[16. Federal Court Strikes Down Trump Administration's DACA Rollback, But Immigration Officials Show No Signs of Compliance](#) – A federal judge recently struck down the Trump administration's recent efforts to significantly restrict the Deferred Action for Childhood Arrivals (DACA) program, which provides protection from deportation for approximately 700,000 young immigrants who were brought to the U.S. as children and no longer have lawful immigration status. However, federal immigration officials have not yet begun complying with the November 14 decision, leaving the country in a state of temporary limbo. What do employers need to know about this development? ([read more here](#))

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

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.