

FEBRUARY 2021: THE TOP 17 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 17 stories from last month that all employers need to know about:

1. **[House Passes American Rescue Plan; Next Stop, The Senate](#)** – In the early morning hours of Saturday, February 27, the U.S. House of Representatives passed President Biden's \$1.9 trillion latest COVID-19 stimulus bill, containing a slew of employment-related initiatives that could have long-term impacts on American workplaces. Next up for the legislation known as the American Rescue Plan: the U.S. Senate, which is aiming to pass some version of the measure before March 14 – the date that a portion of the unemployment benefits from the last pandemic relief bill expire. What do employers need to know about this legislative proposal, which is inching ever-closer to passage? ([read more here](#))
2. **[The Widespread Availability Of COVID-19 Vaccines May Be Here Sooner Than You Think: A 10-Step Action Plan For Employers](#)** – With over 40 million Americans having received at least one dose of the COVID-19 vaccine, Dr.

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Anthony Fauci recently declared that he expects the availability of vaccinations to significantly increase – predicting an “open season” on vaccine doses by as early as April. While he later tempered this news by noting that the vaccine may not be available to the general public until May or June, and President Biden announced in a February 16 town hall that he believes the country should have enough doses to vaccinate every American by July, these statements follow recent poll numbers indicating that 71% of those surveyed are willing to get vaccinated, up from 65% in late December and the highest number since July 2020. Despite the imminent widespread availability of vaccines and an increasing likelihood that workers will want to receive the shot, many employers remain unprepared to deal with vaccinating their workforces. What should employers do now to prepare for the imminent widespread distribution of vaccines? This alert provides a suggested 10-step plan for you to consider ([read more here](#)).

- [3. CDC Substantially Relaxes Quarantine Requirements For Those Fully Vaccinated](#)** – Stopping short of completely eliminating quarantine requirements for people who have been fully vaccinated for COVID-19, the Centers for Disease Control and Prevention (CDC) **[substantially relaxed its recommended isolation requirements](#)** for those who have completed the vaccine regimen. While certain restrictions still remain and the guidance is almost certain to change in the coming months, this new guidance provides employers yet additional motivation to encourage their workers to get inoculated. What do employers need to know about the February 10 announcement? ([read more here](#))
- [4. Employers Ask EEOC For COVID-19 Vaccine Incentive Guidance](#)** – Citing the uncertainty surrounding the state of the law when it comes to offering incentives to employees who receive the COVID-19 vaccination, a collection of over 40 business groups and associations recently submitted a letter to the Equal Employment Opportunity Commission seeking guidance on what’s allowed and what might violate federal law. **[The February 1 letter](#)** is the product of significant concern regarding the legality of a vaccination incentive program as summarized in **[a recent FP Legal Alert](#)** and highlighted in **[a just-released FP Flash Survey which revealed 43% of employers are unsure about how to proceed](#)**. What do



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employers need to know about this development? ([read more here](#))

5. **[A Resurrected PRO Act Could Pay Dividends For Big Labor This Time Around](#)** – As [we recently forecasted](#), the House of Representatives has reintroduced a bill designed to radically transform the labor relations landscape, substantially tilting the playing field towards organized labor. The “Protecting the Right to Organize Act of 2021,” or PRO Act, was introduced on February 4 after an earlier version of the same legislation failed to clear the Senate last year. However, now that both houses of Congress and the White House are controlled by the Democratic party, this proposal stands closer than ever to becoming law. What do employers – both unionized and non-unionized – need to know about this startling prospect, and what can you do to help prevent it from becoming reality? ([read more here](#))

6. **[Proposed FAMILY Act Would Usher In Federal Paid Leave Law](#)** – New York Senator Kristen Gillibrand and Connecticut Representative Rose DeLauro recently introduced [the Family and Medical Insurance Leave \(FAMILY\) Act](#) in Congress, a proposed law that would mandate partially paid leave for all employers. What do employers need to know about this potential new federal law introduced on February 4? ([read more here](#))

7. **[House Passes Federal LGBTQ Anti-Bias Law; What's Next For The Equality Act?](#)** – The U.S. House of Representatives just passed a landmark bill that aims to amend several federal laws to prohibit discrimination on the bases of sexual orientation and gender identity. The Equality Act, passed on February 25 by a vote of 224-206, previously passed the House in 2018 only to stall in the Senate. If passed by the Senate this time around, the law would go further than simply codifying the recent Supreme Court decision holding that “sex” includes a person’s sexual orientation and gender identity for purposes of Title VII. It would also add protections against discrimination and segregation on the bases of sex, sexual orientation, and gender identity for purposes of accommodations and education. What do businesses need to know about this development? ([read more here](#))

8. **[Immigration Day In D.C.: New Executive Orders And Homeland Security Chief Herald Changing Times For Employers](#)** – In the span of a single day, President Joe



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Biden signed three Executive Orders on immigration while the Senate confirmed Alejandro Mayorkas as Secretary of Homeland Security – actions that will eventually have an impact on many workplaces around the country. February 2 marks another pivotal milestone in the Biden administration’s efforts to hit the reset button on the overall attitude of American immigration policy. The Executive Orders seek to promote the fair, humane, and efficient administration of our immigration system, in full recognition of the social and economic value that immigrants bring to our country, while Secretary Mayorkas’s role as head of DHS will bring about sweeping changes in the way in which the federal government handles immigration matters. By taking these clear and purposeful initial steps, the Biden administration took another step in its considered plan to move carefully and deliberately while undertaking the enormous task of revisiting, and potentially overhauling, our broken immigration system. What do employers need to know about these pivotal actions? ([read more here](#))

9. **[Biden’s Proposed Legislation Is Next Step Along Immigration Reform Path](#)** – President Biden promised sweeping changes to U.S. immigration law should he be elected president. In accordance with these campaign promises, Democratic lawmakers introduced a sweeping immigration bill backed by the president in February. The U.S. Citizenship Act of 2021 reflects some of the priorities outlined by the president in [an executive order issued on his first day in office](#). The bill’s lead sponsors — Sen. Bob Menendez, D-N.J., and Rep. Linda Sanchez, D-Calif. — unveiled the legislation to provide an earned path to citizenship, address the root causes of migration and responsibly manage the southern border, and reform the immigrant visa system, among other things. However, the legislation faces an uphill battle in the closely divided Congress, with some lawmakers already suggesting a piecemeal approach might win more bipartisan support. What do employers need to know about the proposals contained in this legislation? ([read more here](#))

10. **[Double The Mask, Double The Protection? What Employers Should Know About CDC’s Latest Double-Mask Guidance](#)** – Since the COVID-19 pandemic began, the Centers for Disease Control and Prevention (CDC) has recommended the use of a face mask to help stop the spread of the virus. State and local governments followed



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suit, in some cases issuing directives requiring masks be worn in public areas, including the workplace. The CDC recently released [a new report](#) and guidance urging Americans to “double-mask” — wearing a cloth mask over a surgical mask — to slow the spread of COVID-19 and the more contagious variants of the virus. While the CDC’s latest guidance merely encourages double-masking, employers may want to track this recent development so that you are prepared to quickly pivot if compliance changes take place. Here’s what employers need to know about the February 10 release ([read more here](#)).

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11. **[Employers Should Prepare For March’s H-1B Lottery – But Wage-Based Selection System Pushed Off Until Next Year](#)** – Federal immigration officials recently announced that the annual process for determining who will be able to apply for an H-1B visa will be held in largely the same manner as it was held last year – meaning that the proposed wage-based selection system will be put off until at least 2022. The February 5 announcement from U.S. Citizenship and Immigration Services (USCIS) confirmed that it will accept applications from March 9 through March 25, once again using a lottery system to select which applications would be accepted. Those individuals selected will then be able to file their petition for the H-1B visa, which comes with the significant benefit of authorizing the visa holder to work in the United States. What do employers need to know in advance of this crucial time – and what can you do to prepare? ([read more here](#))
12. **[Scabby The Inflatable Protest Rat Dodges Extermination](#)** – Labor officials with the newly installed Biden administration have begun their work dismantling many of the initiatives taken during the Trump era – and one of the beneficiaries of a new lenient approach to workplace protests seems to be a 12-foot tall inflatable rat. Through a series of actions taken in early February, the Biden team has seemingly breathed new life into Scabby the Rat, a common sight at many union protests across the country, and taken the next step in rewriting the labor-management relations playbook. What do employers need to know about this development? ([read more here](#))
13. **[Federal Appeals Court Severely Limits Subsequent Violation Rate For California PAGA Penalties](#)** – In a win for

employers, the U.S. Court of Appeal for the 9th Circuit just ruled that heightened penalties for subsequent violations under California's Private Attorney General Act (PAGA) cannot be imposed until the employer has been notified of the violation by the Labor Commissioner or a court. While the February 23 ruling in *Bernstein v. Virgin America Inc.* essentially reiterates the 2008 holding in a California state appeal (*Amaral v. Cintas Corp. No. 2*), the practical impact of the 9th Circuit's decision is that California employers defending PAGA claims now have complete clarity on whether alleged California Labor Code violations will give rise to heightened penalties that would increase potential liability exposure. What do California employers need to know about this key ruling? (read more here)

14. **[Virginia Poised To Enact Strict Data Protection Law](#)** – First Europe installed a strict data privacy scheme when it enacted its General Data Protection Regulation (GDPR), then the trend crossed the Atlantic as California lawmakers passed their own data privacy law known as the California Consumer Privacy Act (CCPA). Up next is ... Virginia? The Commonwealth of Virginia is poised to enact the Consumer Data Protection Act (CDPA), which would take effect and impact many businesses across the state beginning in January 2023. What do you need to know about this impending shift? ([read more here](#))
15. **[Biden DOL Shreds Trump-Era Gig Economy Guidance Letter](#)** – The new administration's efforts to reverse course on many of the gains that gig economy businesses achieved under previous White House leadership took another step on February 19 as [the Department of Labor \(DOL\) withdrew a guidance letter](#) that indicated typical gig workers are independent contractors. By scrapping the April 29, 2019 letter, the Biden DOL sent yet another signal to businesses that they will have an uphill battle in classifying workers as contractors for at least the next four years. What do businesses need to know about this activity? ([read more here](#))
16. **[Indiana Businesses Are Now Protected From COVID-19 Liability – But What About Employment Claims?](#)** – At the beginning of its 2021 legislative session, the Indiana General Assembly vowed to fast track a bill to provide civil tort immunity to businesses for damages arising on their premises from COVID-19. On February 15, less than

two months into its session, lawmakers made good on their word with Senate Bill 1, which was signed into law by Governor Eric Holcomb last week. Senate Bill 1 shields certain Indiana businesses and individuals that permit the public to enter their premises from personal injury liability for damages arising from COVID-19. The new law also protects individuals and businesses from liability for COVID-19 damages that occur during activities they manage, organize, or sponsor. The good news for businesses is that the scope of the bill is quite sweeping and applies retroactively to all activity since March 1, 2020 – the beginning of the COVID-19 pandemic. The bad news is that the new law is vague with respect to protections in employment settings. What do Indiana employers need to know? ([read more here](#))

17. **Hazard Pay Implemented For Oakland's Grocery Store Workers** – The Oakland City Council approved a Hazard Pay Ordinance in early February requiring certain grocery store employers to pay an additional \$5.00 per hour in hazard pay for all part-time and full-time employees, and comply with other new legal obligations. This Ordinance took effect immediately and is set to expire when Oakland's risk level drops to "minimal" under California's Blueprint for a Safer Economy (defined as an adjusted case rate of less than 1 daily new COVID-19 case per 100,000 people in the county). While there have already been court challenges to the new Ordinance, it currently remains in effect for all covered employers. Although this Ordinance is limited to large grocery store employers in Oakland, other California cities have already implemented similar hazard or "hero" pay ordinances, including Long Beach and Santa Monica. Los Angeles, San Jose, and Berkeley are considering similar proposals in the coming weeks. What do California employers need to know about this new law? ([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.