

JULY 2021: THE TOP 14 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 14 stories from last month that all employers need to know about:

1. **[CDC Reverses Course and Recommends Fully Vaccinated Individuals in "Substantial" and "High" Transmission Areas Continue to Wear Masks](#)**

The U.S. Centers for Disease Control and Prevention (CDC) announced on July 27 that the agency now recommends that people in areas with "substantial" and "high" COVID-19 transmission should wear masks indoors, regardless of vaccination status. This announcement reverses the **[CDC's May 13 guidance](#)** that vaccinated people do not have to wear masks in non-healthcare settings. The updated guidance comes on the heels of what some call the third (or fourth) surge of COVID-19 infections due to the highly transmissible Delta variant, which CDC Director Dr. Rochelle Walensky indicated behaves "uniquely differently" from prior virus strains. While Director Walensky stressed that the vast majority of severe illness and death is among

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unvaccinated people, she also indicated data shows breakthrough infections can happen in 1 out of 10 vaccinated individuals in a “substantial” or “high” transmission area. So what does this mean for employers and your masking policies?

2. **[President Biden Asks Federal Authorities to Curtail “Unfair” Use of Non-Compete Clauses by Nation’s Employers](#)**

When various news outlets reported that President Biden was considering using his executive authority to ban or limit the use of non-compete restrictions, all manner of speculation arose from employers across the country as to what was coming down the pike. On July 9, the White House released the much-anticipated **[Executive Order](#)**, as well as an accompanying **[Fact Sheet](#)** – and the good news for employers is that it may not have been as drastic as many had feared. What do you need to know about this latest development, and what could be on the horizon?

3. **[Employers Get Even More Support for Mandatory COVID-19 Vaccines From Department of Justice](#)**

Bolstering the renewed emphasis on increasing the number of people who have been vaccinated against COVID-19, a recent **[memo from the U.S. Department of Justice \(DOJ\)](#)** that just became public confirms that the “emergency use” status of vaccines does not prohibit employers, universities, or other entities from requiring them. Although not legally binding, the DOJ’s position revealed on July 26 undercuts a fundamental argument presented in lawsuits challenging vaccination mandates – and provides further support for employers considering or implementing a vaccine requirement. What do employers need to know about this latest development?

4. **[In it for the Long Haul? White House Seeks to Provide ADA Coverage to Those With “Long COVID”](#)**

While employers are excited to see many of their employees return to work following prolonged absences due to the pandemic, one unfortunate consequence is that disability discrimination and failure-to-accommodate claims are likely to increase further in 2021. President Biden just announced his administration’s intent to apply federal disability discrimination law protections to individuals suffering from “long COVID.” Faced with yet



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another effort to increase the scope of the Americans with Disabilities Act (ADA), it is critical for employers to understand the impact of the newly published July 26 [Joint Guidance](#), the distinction between a typical COVID-19 diagnosis and a long COVID diagnosis under the ADA, and the steps that should be taken now to ensure compliance and mitigate risk.

5. [California Echoes CDC's Masking Guidance for Vaccinated](#)

Less than a day after the Center for Disease Control and Prevention (CDC) issued [new masking guidance for fully vaccinated individuals in substantial or high transmission areas](#), the California Department of Public Health (CDPH) quickly followed suit by updating its [Guidance for the Use of Face Coverings](#). Similar to the CDC, the CDPH's July 28 announcement recommends universal masking indoors statewide regardless of vaccination status. What do California employers need to know about this development?

6. [California to Require Healthcare Providers and State Employers to Ascertain Employee Vaccination Status](#)

Not vaccinated yet? Do you work for a healthcare provider in California or the State of California? Then be prepared to get tested for COVID-19 on a weekly basis for the foreseeable future. In an effort to increase the number of vaccinated individuals in California, Governor Newsom just [announced](#) that the state will soon require all healthcare workers and state employees to show proof of a COVID-19 vaccination or be subjected to weekly testing. In doing so, Governor Newsom is "implementing first-in-the-nation standard to require all state workers and workers in health care and high-risk congregate settings to either show proof of full vaccination or be tested once per week, and encourage all local government and other employer to adopt a similar protocol." What do you need to know about this July 26 announcement?

7. [Scabby the Rat to Remain a Fixture at Union Protests](#)

In a 3-1 decision, the National Labor Relations Board (NLRB) ruled on July 21 that unions may continue deploying "Scabby" the Inflatable Rat and similar balloons at demonstrations against non-union businesses. The board considered former NLRB General Counsel Peter



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Robb's argument that the inflatable rat represented unlawful and coercive secondary activity threatening customers and other neutral parties.

8. **[CDC Issues New Back-to-School Guidance with Emphasis on In-Person Learning Insights](#)**

The Centers for Disease Control and Prevention (CDC) substantially relaxed its **[pandemic guidance for K-12 schools](#)**. While certain restrictions remain and the guidance may continue to evolve in the coming months, especially if the COVID-19 vaccine becomes available for younger children, this new guidance provides schools with more information as they plan for the 2021-2022 school year. What do you need to know about this July 9 update?

9. **[California Supreme Court Adds to Employers' Pain by Requiring Higher Rate of Pay for Missed Meals and Breaks: A 3-Step Plan of Action](#)**

The California Supreme Court ruled on July 15 that if an employer fails to provide a legally compliant meal period or rest break, the wage premium they must pay out must be paid at the "regular rate of compensation" – which includes not just hourly wages but all nondiscretionary payments for work performed by the employee. Going one step further, the Court also determined that its ruling applies retroactively and will apply to any past practices that took place before yesterday's decision (subject to applicable statutes of limitation). As a result of the *Ferra v. Loews Hollywood Hotel, LLC* decision, California employers would do well to review their current wage-and-hour practices with regards to meal, rest, and recovery periods, including determining whether violations occur and how premiums should be calculated for such violations. What more do you need to know about this decision? This Insight provides you with a three-step plan to take as a result of the decision.

10. **[Controversial Florida Parents' Bill of Rights Law Took Effect July 1: What Private Schools Should Know](#)**

Florida Governor Ron DeSantis signed into law the Parents' Bill of Rights, enumerating the rights of parents and legal guardians to "direct the upbringing, education, health care, and mental health" of their child. Many are praising the new law as a win for parents and Florida



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families, with the Florida Legislature promoting transparency and parental participation in education while putting all the state statutes governing parental rights in one place. However, the law was not enacted without controversy. The Parents' Bill of Rights has also garnered the attention of various advocacy groups concerned that it may fail to consider the rights of the children it is intended to protect – and may create unintended consequences of potential liability for persons who act in good faith but without express written parental consent when providing medical care to children. Although the new law – effective July 1 – primarily limits state-run entities from infringing on certain fundamental parental rights, private schools in Florida should take note of how the Parents' Bill of Rights may change their practices now and in the future.

11. [New California Guidance Means Masks Will Be Back at K-12 Schools this Fall](#)

Thanks to new guidance just issued by state health officials, students and staff at California's K-12 schools will be required to wear masks at the beginning of the upcoming school year regardless of vaccination status. The California Department of Public Health (CDPH) released updated [2021-2022 COVID-19 Guidance for K-12 Schools](#) on July 12, just days after the Centers for Disease Control and Prevention (CDC) published [its substantially relaxed pandemic guidance](#) for K-12 schools. Throughout the pandemic, California has taken a more stringent approach than federal guidelines or many other states when it comes to COVID-19 issues. The most recent California K-12 Public Health Guidance is no exception. What do California schools need to know about the CDPH update?

12. [The Impact of Governor DeSantis's Mask Order on Florida Private Schools: To Mask or Not to Mask?](#)

In response to several Florida school boards considering mask mandates in advance of school openings, Florida Governor Ron DeSantis just signed an executive order threatening to withhold state funds from any school boards that require mask usage during the upcoming school year. What do Florida private schools need to know about the July 30 [Executive Order 21-175](#), "Ensuring Parents' Freedom to Choose – Masks in Schools"?

13. **Mixed News for Employers as PBGC Releases Multiemployer Bailout Plan Rule**

The federal agency overseeing voluntary private defined benefit pension plans just issued its Interim Final Rule on how withdrawal liability will be impacted by the billions of dollars that will be paid to failing multiemployer pension plans to keep them afloat through 2051. The Pension Benefit Guaranty Corporation's (PBGC's) July 12 announcement will impact what happens as a result of the estimated \$94 billion it expects to be used as part of the latest bailout. What do employers need to know about this latest development?

14. **Two New Louisiana Employment Laws: Pregnancy Accommodations and Limiting the Use of Criminal History in Hiring**

While Louisiana has not typically been at the forefront of introducing concepts into employment law, the state legislature recently acted on two topics that have been seeing increased interest from state and local governments across the country over the last several years: accommodating pregnant employees with pregnancy-related limitations and limiting the use of an applicant's criminal history in hiring. The background check limitations are straight forward, but the new pregnancy accommodation law presents significant room for interpretation. Both new laws take effect on August 1, 2021, so the time is now for Louisiana employers to understand your compliance obligations.

We will continue to monitor developments related to all aspects of workplace law. Make sure you are subscribed to **Fisher Phillips' Insight system** to get the most up-to-date information. If you have questions, contact your Fisher Phillips attorney.