



FP Forecast: January 2022 Edition

Insights

1.25.22

Welcome to FP Forecast, a monthly outlook featuring Fisher Phillips thought leaders providing their insights into what employers can expect in 2022 and beyond. By following along each month, you'll be in the best position to anticipate the expected changes and prepare your organization for what lies ahead. This month we look at the future of vaccines, workplace safety, cryptocurrency and blockchain – and take a special look at what PEO employers should prepare for.

Workplace Safety

Todd Logsdon, Travis Vance – Co-Chairs of FP's Workplace Safety Practice Group

- **Pandemic Will Become Endemic** – By the end of the year – perhaps as soon as by the second quarter – COVID-19 will reach “endemic” status across the majority of the country. While it might take longer for the World Health Organization to remove the pandemic tag due to global disparities, more and more states will call an end to their emergencies and the CDC will eventually pull back from its state of emergency. The workplace law implications could be profound, as you may have to adjust COVID-19 workplace law protocols to pre-pandemic levels.
- **Feds Address Infectious Diseases** – OSHA will take a long-range approach and begin work to regulate future pandemics and infectious diseases through the administrative rulemaking process. While the Biden administration may also spur Congress to take up similar measures, these efforts will fall flat and be put on the back burner as midterms approach.
- **OSHA to Flex Muscles** – Beyond the pandemic, OSHA will flex its newly carved muscles and accelerate the pace of its work. The agency has been on a hiring spree since shortly after the inauguration and newly hired inspectors will soon be completing their training and launching a swarm of workplace visits – including at settings not accustomed to OSHA inspections. We'll also see the agency push for increased criminal prosecutions in workplace fatality cases and cooperate with other federal agencies on enforcement activity.
- **Corporate Boards Will Prioritize Safety** – Finally, as part of corporate ESG (environmental, social, and governance) efforts, we'll see employers elevating workplace safety to a primary concern, no longer relegated as an afterthought. Boards of directors and company executives – not to mention corporate investors – will place greater emphasis on safety records in 2022, meaning you will need to keep close tabs on your citation history and injury data.

COVID-19 Vaccines

Kevin Troutman, Emily Litzinger – Co-Chairs of FP's Vaccine Subcommittee

- **Say Farewell to Mandatory Vaccinations** – As the pandemic evolves to endemic status, COVID-19 vaccinations will become less important and prevalent across the board, especially as more therapeutic drugs also become available. By the start of next flu season toward the end of 2022, COVID-19 vaccines will be on par with flu shots, encouraged but not mandated in most workplaces except in healthcare and other similar settings.
- **Incentives Take Center Stage** – Employers will increasingly offer incentives to encourage COVID-19 vaccinations, including lower monthly premiums for vaccinated health plan participants. This will lead employers to revisit the pros and cons of establishing other lifestyle incentives for participants in their medical plans beyond vaccinations.
- **Data Breaches Will Sting Employers** – But before vaccine mandates fade away, employers will have more methods and options for tracking employees' vaccination status through the first two quarters of 2022, especially as boosters become necessary in order to be considered "fully vaccinated." This will raise renewed emphasis on employee privacy – especially medical privacy. And because news stories about data breaches involving employee medical information will inevitably reach the national stage in the coming months, employers will want to proactively address data privacy before they land in the headlines.
- **Vaccine Passports Will No Longer Court Controversy** – As the immediate pressures of the pandemic and mandatory vaccination policies begin to ease, resistance to a re-branded or re-named form of vaccine passports may be less controversial, particularly as vaccinations are not required in as many circumstances as they are now. The use of so-called vaccination passports will raise issues about whether all employees have had equal access to the vaccines, although that issue should be mostly resolved by the end of the year.
- **Battles Will Continue in the States** – In the absence of an overarching federal law requiring or prohibiting vaccinations, states and some localities will continue to consider and may even pass measures either to require vaccinations in certain circumstances – or to prohibit mandatory vaccinations in all but very limited circumstances. As the pressure of the pandemic begins to ease, the political heat associated with these measures may ease, although the issue of mandates is likely to remain volatile for the first half of 2022.

Cryptocurrency and Blockchain

Phillip Bauknight, Chair of FP's Cryptocurrency and Blockchain Taskforce

- **Crypto to Serve as Escape Hatch** – As the labor shortage continues into 2022, many employees will continue to reorder their life's priorities and core values, especially those in hospitality, retail, healthcare, and manufacturing sectors. Given these changes, cryptocurrency investing

and blockchain technology will continue to provide opportunities for current employees and new applicants to switch or walk away from unsatisfying jobs.

- **“Do You Accept Bitcoin?”** – Over the course of 2022, an increasing number of companies will need to have internal discussions about accepting payments in Bitcoin or another cryptocurrency. While you may not get a flood of requests from clients and vendors to be paid in crypto, there will be an uptick in clients and vendors who want to know whether this is an option. Before the year is out, you will need to have an answer to this question.
- **“Do You Pay in Bitcoin?”** – Meanwhile, employees, job applicants, and contractors will inquire whether you permit workers to be paid in cryptocurrency – a portion of their salary or bonuses – either directly or through third-party processors. Many companies will also field their first questions in 2022 about whether you provide any other crypto-related benefits, such as crypto 401(k)s. As an increasing number of sports teams, athletes, and celebrities enter the crypto space through NFTs and sponsorship deals, crypto’s mainstream profile will continue to rise – resulting in more discussion among your workers about crypto wage options. Just as with clients and vendors, you will need to prepare a response, while recognizing that you could be at a competitive disadvantage in the market if your answer is “not interested.”
- **NFTS Will Emerge** – More companies will get into the business of utilizing NFTs to bring attention to their products, services, and intellectual property in the new year. In addition, more companies will begin to evaluate the use cases of NFTs beyond serving as mere collectibles and PFP (picture for proof) – although implementation of these inevitabilities may not happen until 2023 and beyond.
- **Metaverse Slowly Becomes Reality** – Finally, the Metaverse captured mainstream attention at the end of 2021 and many wonder what’s in store for 2022. Some believe the Metaverse is the future of work and will be here this year or in a few years, while others believe it is decades away. No one knows for sure, but certainly the “Metaverse” as well as “Web 3” will be popular crypto terms in 2022 that will increasingly draw your attention. Like everything in the crypto space, many companies will use the terms as a cash grab to bring attention to their products and services. But underneath the hood, there will also be many companies actually performing substantive evaluations to determine how these technological developments will impact the changing employment equation.

PEO and Staffing Industry

John Polson, Co-Chair of FP’s PEO and Staffing Industry Team

- **Hiring Regrets Will Lead to Increased Litigation** – The incredible lack of available talent has led many employers to hire candidates who never would have been hired in a normal environment – those lacking skills and experience, with spotty employment histories – presenting risks that most hiring managers would never have accepted in the “before times.” This means that 2022 will see an increase in employee terminations either through performance management or downsizing as the ship begins to right itself by mid-year. While employers may be tempted to just

downsizing as the ship begins to right itself by mid-year. While employers may be tempted to just replace them with more qualified workers without going through the usual risk management procedures, taking such a streamlined approach to these terminations will make it more difficult to defend them when the expected wave of discrimination or retaliation cases hits. Now is a good time to plan for well-reasoned and documented grounds for upgrading positions when the time comes.

- **The Tax Collector Cometh** – Workers have dispersed across the country and across the world throughout 2020 and 2021, using COVID-19-driven remote work policies as an opportunity to relocate. This has created major headaches for employers attempting to comply with local and international tax rules implicated by employees working in a different jurisdiction than the one in which they were hired. An employee hired in one state who then begins working from a different state may trigger various unemployment insurance and other payroll tax problems. International relocations can lead to even bigger tax problems – not to mention immigration concerns. Even a change in the employee’s residence within the U.S can trigger immigration issues for someone working on a visa. This may all sound like old news to many payroll and financial managers who have been dealing with these issues throughout the pandemic. The big change coming in 2022 and beyond is *enforcement*. Domestic and international governments have been too distracted by the pandemic to scrutinize employers who are not in compliance. When those governments turn their attention to generating additional revenue by the second quarter of this year, they will look to employers. Now is the time to review compliance and make necessary corrections.
- **Every Day Will Be Cyber Monday** – Ransomware and other cyberattacks will continue to be one of the greatest threats to all employers in 2022 – but especially to staffing companies due to the large body of private information residing in their payroll systems. Staffing companies must continue to be vigilant to guard against breaches that could lead to significant liability. Expect to see more state and federal legislative efforts in this area, which could require substantial technology and operational investments to comply.

Conclusion

We will deliver monthly FP Forecast insights forecasting what to expect across the entire spectrum of workplace law over the entire course of 2022, so make sure that you are subscribed to [Fisher Phillips’ Insights](#) to get the most up-to-date information direct to your inbox. If you have further questions, contact your Fisher Phillips attorney or the authors of this Insight.

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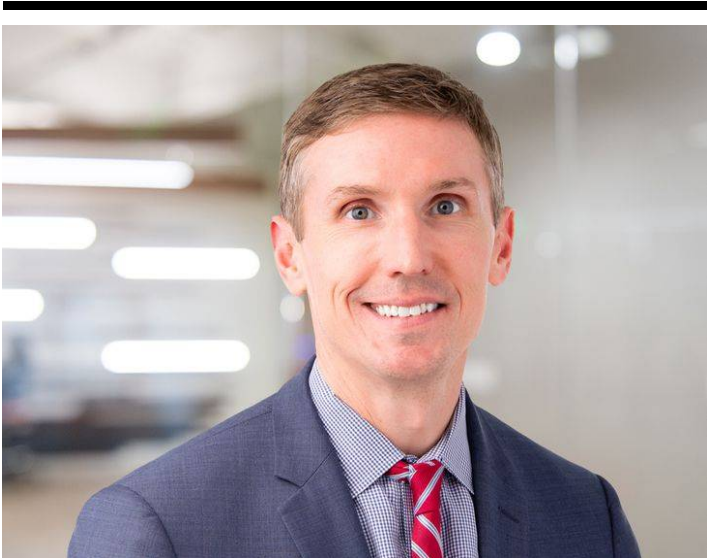


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