Insights, News & Events

# TOP 10 WORKPLACE LAW UPDATES FROM NOVEMBER 2022

Insights
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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 order to ensure you stay on top of the latest changes, here is a quick review of the Top 10 stories from last month that all employers need to know about:

**1. Congress Voids Sexual Harassment NDAs: 10 Things Employers Need to Know**

Congress passed a law on November 17 that will prevent employers from forcing victims of sexual harassment and assault to remain quiet in response to alleged abuse, requiring some businesses to alter their business practices – and serving as yet another incentive for you to curb unprofessional and illegal workplace behavior. President Biden has indicated that he supports the law, also known as the Speak Out Act, so we can expect him to move quickly and enshrine this bill into law. It will take immediate effect upon his signature, rendering void any noncompliant nondisclosure agreement (NDA) or non-disparagement agreement that is challenged thereafter. It will not, however, prevent employers from entering into standard confidentiality agreements with claimants upon settlement of assault or harassment claims or demands. Here are the 10 things you need to know as a result of this impending new law – including a handy compliance checklist.

**2. Labor Board Proposal Aims to Make it Harder to Remove Unions**

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The National Labor Relations Board recently took the first step towards scrapping Trump-era rules that had made it easier for workers to undo union representation, the next pro-labor move from an increasingly active federal agency. The NLRB's November 3 proposal would formally scrap 2020 agency rules issued during the previous administration that cleared the path for easier decertification procedures – allowing them to vote on the issue even after unions allege illegal interference with the process (also known as "blocking" charges). The proposal would also reinstate a prior doctrine shielding voluntarily recognized unions from prompt decertification and would once again ease the way for union recognition in the construction sector. What do employers need to know about this latest proposal, which could come into effect soon after the start of the new year?

### 3. Federal Appeals Court Throws Up a Flare for Intermittent FMLA Leave Compliance

A federal appeals court just ruled that an employee had provided sufficient notice for his need for intermittent FMLA leave and subsequent absences due to "flare ups" of recurrent depression – even though he had only provided that notice the first time he sought approval for the leave. The Sixth Circuit Court of Appeals (which hears cases arising in Kentucky, Michigan, Ohio, and Tennessee) found that the employee did not have to give any "formal notice" each time he called into to use the FMLA leave in order to be protected by the statute. When you combine the nuances of "intermittent leave" under the federal Family and Medical Leave Act (FMLA) with the ongoing mental health crisis gripping many of those in the U.S. workforce, this decision is bound to create problems for employers. What can employers learn from the November 16 decision in *Render v. FCA US, LLC*?

### 4. MLB's Collusion Investigation of Aaron Judge Free Agency Can Teach Antitrust Lessons to Employers

Major League Baseball recently announced that it will investigate possible collusion between the New York Mets and Yankees involving prized free agent Aaron Judge – a situation that can teach employers of all types some important and timely lessons on antitrust law compliance. According to a November 3 media report, team sources said the Mets decided earlier this year not to bid for Judge if he became a free agent in the off season, given that Mets owner Steve Cohen and Yankees owner Hal Steinbrenner


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"enjoy a mutually respectful relationship, and do not expect to upend that with a high-profile bidding war." And while recent reports suggest that the Commissioner's office has already dismissed the allegations, what can the situation teach you about antitrust law in the workplace setting?

**5. No Fault No More: New York Bans Discipline for Legally Protected Absences**

New York employers who maintain no-fault attendance policies will soon need to change their practices to ensure employees are not penalized in any way for any absence legally protected under federal, state or local law. New York lawmakers passed an amendment to the New York Labor Law earlier this year that prohibits employers who maintain "no fault" attendance policies from assessing points or demerits for absences or otherwise disciplining employees who have used any absence protected under federal, state, or local law. Governor Hochul signed the legislation into law on November 21, and it will take effect February 20, 2023. Here's what employers need to know about this new measure.

**6. The Los Angeles Fair Work Week Ordinance – 10 Key Points Retail Employers Need to Know**

Los Angeles is set to strengthen protections for retail workers in a sweeping law known as the Fair Work Week Ordinance, which the city council approved on November 29. The ordinance — which is expected to impact about 70,000 retail and grocery workers in Los Angeles — aims to improve working conditions by providing more predictable schedules. If approved by the mayor, the ordinance will take effect in April 2023 and will apply to retail businesses with at least 300 employees globally. Here's what you need to know and what you can do to prepare for the ordinance to ultimately become law.

**7. Colorado Update: What the 2022 Election Results Might Mean for Employers**

Colorado is no longer a purple state. That much is clear after the results of the November 8 election that saw Democrats win every statewide race on the ballot, maintain control of the state senate, and gain a veto-proof majority in the state house — all in what many predicted would be a down year for the president's party. What do these recent


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developments, culminating in this year's election results, mean for Colorado businesses?

**8. Tip-Lash: D.C.'s Tipped Minimum Wage Back on the Chopping Block**

It's déjà vu for District restaurant owners and other employers of tipped workers as D.C. voters once again approved an initiative that will gradually increase minimum wage for tipped employees over the next five years. The Tip Credit Elimination Act of 2021, which was just passed this Election Day as Initiative 82, will eventually eliminate employers' ability to rely upon tips in satisfying their DC minimum wage (currently $16.10) obligation to employees. In 2018, the District passed similar legislation that would have eliminated an employers' ability to rely upon the so-called "tip credit" by 2026, but the D.C. Council struck down the law before it went into effect. This time, however, the Council does not appear to be poised to take such an action. Here are some tips for employers affected by the legislation.

**9. 5-Step Plan for Employers as Missouri Legalizes Marijuana**

When Missouri voters approved Amendment 3 this Election Day to legalize personal use of marijuana by adults 21 and older, employers were sure to have questions. Besides legalizing the recreational use of marijuana (also referred to as cannabis), the new law also allows individuals to petition for release from prison, expunge certain arrests and conviction records of non-violent marijuana offenses, and enacts a 6% tax on the retail sale of the product. Because Amendment 3 also has notable legal changes for Missouri employers, we've answered your top seven questions about how the legalization of recreational marijuana may impact your business – and provided you with a five-step plan to prepare for the impending changes.

**10. Kentucky Governor Signs Executive Order Protecting Medical Marijuana Use: 6 FAQs for Employers**

In a historic move, Governor Andy Beshear issued an executive order allowing Kentuckians diagnosed with certain medical conditions and receiving palliative care to purchase, possess, and use medical cannabis. Prior to this order, legislative efforts to legalize medical marijuana failed. In justifying his decision, Beshear noted the absence of legislation ran counter to overwhelming social support for

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medical marijuana from Kentucky residents and medical providers. Moreover, the Team Kentucky Medical Cannabis Advisory Committee provided the governor with extensive medical and scientific data supporting the legalization of medical marijuana as well as public feedback. Thus, the governor signed Executive Order 2022-798 on November 15 to "provide relief to Kentuckians and allow those suffering from chronic pain and other medical conditions to use medical cannabis." What do you need to know about the order and how will it impact the workplace? Here are six answers to top questions from employers.

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.

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