

DECEMBER 2020: THE TOP 18 LABOR AND EMPLOYMENT LAW STORIES

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

1. **[Employers Have Questions As COVID-19 Vaccines Begin To Be Administered](#)** – The biggest workplace law story of December centered on the fact that American workers have begun to be inoculated with the COVID-19 vaccine. Fisher Phillips has been on top of the story from all angles, with information continually updated on our **[Vaccine Resource Center for Employers](#)** (which also contains templates, forms, FAQs, alerts, 50-state compliance charts, and more). Here are the vaccine-related stories employers need to know from the past month:

- **[Top 7 Things You Need To Know As EEOC Says Employers May Mandate COVID-19 Vaccines](#)** – Employers now have clarification that they will be able to mandate the COVID-19 vaccine among their workers in certain circumstances without running afoul of key federal anti-discrimination laws, according to updated guidance issued on December 17 by the Equal Employment

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Opportunity Commission. While there are numerous issues to consider before mandating that your employees get vaccinated, this guidance is the first official pronouncement on the subject from the employment law watchdog agency and provides an outline of various hurdles to overcome. Here are the top seven takeaways for employers from this critical development ([read more here](#)).

- **[Considerations For Healthcare Employers Preparing To Inoculate Employees](#)** – The CDC recently adopted a recommendation from an advisory committee that healthcare workers should be the first in line to get COVID-19 vaccine shots after they receive approval from the Food and Drug Administration (FDA). But healthcare workers include a wide range of different people. Hospitals, for example, employ far more workers than doctors and nurses. What about, for example, respiratory therapists, nursing assistants, lab personnel, food service workers, custodians and administrative staff? Should they also be among the first to receive the vaccine? If they do, will healthcare employers have enough of the vaccine to provide it to all these employees? And the process of administering the vaccine will be far more complex than simply that asking staff to line up and take a shot considering the extremely low-temperature storage requirements and the thawing and mixing process also involved. Prioritization and distribution logistics will be tremendously important. What do healthcare employers need to know about this critical development?
- **[5 Ways Employers Can Begin Preparing As The COVID-19 Vaccine Priority Order Is Revealed](#)** – The country breathed a collective sigh of relief when the first doses of the Pfizer-BioNtech COVID-19 vaccine were shipped out to all 50 states. Following shortly behind, the first doses of the Moderna vaccine were shipped out. Healthcare workers and long-term care residents were given priority to receive these first doses. But Americans will need to get into the queue for the later doses. With vaccine supplies limited, where will your employees fall in the line of priority? The answer to this question is not easily determined, as the recommendations from the experts continue to change. This article, however, will address the likely considerations and guidance that will be used in determining the priority for distribution of the vaccine, and



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provide five steps employers can take now to prepare for the next steps on the roll-out ([read more here](#)).

- **[What Employers Need to Know After FDA Grants Emergency Use Authorization For COVID-19 Vaccine](#)** – As most know by now, the Food and Drug Administration (FDA) granted emergency use authorization for Pfizer's COVID-19 vaccine in the U.S on Friday, December 11, and the first Americans began to receive the vaccine on December 14. The government is expecting an initial 2.9 million doses of the vaccine to be distributed in the coming weeks, and projections indicate that there may be enough vaccine to reach the vast majority of Americans who want to take it by early April 2021. Given the astronomical rise in the infection rate and the death rate topping 300,000, employer interest in the vaccines is extremely high. Thus, employers are asking whether they can, or should, require employees to take the vaccine. What do you need to know about this game-changing development? ([read more here](#))
- **[Should Gig Workers Get COVID-19 Vaccine Priority?](#)** – Delivery and rideshare drivers who work in the gig economy should get priority access to the COVID-19 vaccine, according to Uber CEO Dara Khosrowshahi. In a December 10 letter sent to governors in all 50 states, Khosrowshahi notes just how reliant Americans have become on gig workers during the pandemic, earning them a spot near the front of the line. What do you need to know about this development? ([read more here](#))
- **[New York Lawmaker Wants To Require COVID-19 Vaccine: What Employers Need To Know](#)** – The news that a Manhattan-based state lawmaker wants to require most New York residents to receive the COVID-19 vaccine brought renewed interest to an issue that has crept into the consciousness of just about every employer across the country: whether employers can – and should – mandate that their employees receive the vaccine. It is a thorny issue that requires an examination of company culture, industry-specific guidelines, geographic location, and a variety of other factors, not to mention a consideration of disability-related and possible religious accommodations. What do New York employers need to know about this current development and the bigger question about mandatory vaccines? ([read more here](#))



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2. What Employers Need To Know About Latest Federal COVID-19 Stimulus Package – Federal lawmakers agreed to a second round of stimulus legislation on December 21, sending a nearly 6,000-page bill to President Trump for his signature that he provided a week later. The proposal allocates \$900 billion in economic relief to businesses and workers across the country. Of the many provisions tucked within the mammoth bill are several key provisions of interest to employers. Specifically, the proposal continues the popular small business loan program, provides new options for unemployed workers, extends tax credits for continued paid sick leave, and offers a variety of other tax- and benefit-related provisions. It does not, however, create a liability shield for COVID-19 litigation. What do you need to know about the critical workplace-related portions of Stimulus 2.0? Here are summaries of the most significant employment-related provisions and recommendations for actions you should consider as a result of each ([read more here](#)).

3. Guidance For Employers As CDC Reduces Coronavirus Quarantine Period To 7 To 10 Days – The Centers for Disease Control and Prevention issued new guidance stating that coronavirus quarantines may be shortened to seven or 10 days under certain circumstances, down from the 14 days currently recommended. The December 2 change will permit businesses to return employees who have been exposed to COVID-19 back to work on a reduced timeframe. What do employers need to know about this encouraging development? ([read more here](#))

4. Court Overturns President Trump's Ban On Federal Contractor Diversity Training – A federal judge issued a preliminary injunction to stop government enforcement of a controversial presidential executive order that severely curtailed the ability of federal contractors to offer diversity training on subjects such as systemic racism and unconscious bias. The December 22 ruling does not impact all provisions of E.O. 13950, just the specific portions in Sections 4 and 5 that created new requirements for federal contractors (new contract clause provisions and trainings) and federal grants (grant program certification regarding use of funds). The ruling frees federal contractors to once again offer typical workplace training sessions without fear of government reprisal for the time being, and given that the days of the Trump administration are quickly waning, it



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appears that employers will be free to provide such training for the foreseeable future ([read more here](#)).

5. [Labor Department Loosens Tip Pool Rules For Hospitality Employers](#) – The U.S. Department of Labor issued a long-awaited final rule right before Christmas addressing the issue of tipped employees. The final rule, released on December 22 but not effective until February 20, 2021, provides guidance for both employers who utilize a tip credit and also for how employers who pay at or above minimum wage may handle tip pools without running afoul of federal wage and hour law. A big question remains, though: how will the incoming Biden administration handle this issue? Employers in the hospitality sector will want to pay attention to this latest development – and stand by for potential further developments – as we head into 2021 ([read more here](#)).

6. [Telemedicine Visits Count Towards FMLA Time Under New Labor Department Guidance](#) – The U.S. Department of Labor confirmed that employees who seek medical treatment via telemedicine visits could qualify for leave under the Family and Medical Leave Act (FMLA) into the new year – and perhaps beyond. While there may have previously been confusion or uncertainty about whether remote visits to a healthcare provider should be considered as valid “treatment” that would render an employee eligible for protected time off under federal law, the agency’s December 29 guidance offers the first definitive word from federal authorities in the wake of the COVID-19 pandemic that this temporary policy will be extended for the foreseeable future. The agency also released an update on how employers can satisfy federal posting requirements via electronic communication methods. What do employers need to know about these latest developments? ([read more here](#))

7. [What Employers Need To Know About California’s New Regional Stay Home Order](#) – California Governor Gavin Newsom announced a Regional Stay Home Order on December 3 that could soon have a dramatic impact on businesses in the state. Unlike previous orders, the Regional Stay Home Order focuses on shutting down regions, not counties, based on hospital capacity in each area. The order takes effect at 1pm on December 5, 2020 for any specific region when ICU capacity for hospitals in that region drops below 15%. What do employers need to know about this latest development? ([read more here](#))

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8. California Governor Loosens Cal/OSHA COVID-19

Quarantine Rules – Governor Gavin Newsom issued an Executive Order on December 14 that potentially reduces the quarantine exclusion period for COVID-19 exposed employees in California under a recently approved Emergency Temporary Standard (ETS) issued by Cal/OSHA. The action is consistent with recent quarantine guidelines issued by the CDC and reduces the amount of time employers are required to exclude COVID-19 exposures from the worksite under the new Cal/OSHA regulation. What do California employers need to know about this development? ([read more here](#))

9. What New York Employers Need To Know About Sick

Leave: FAQs About The State's Impending New Law – With January 1, 2021 quickly approaching, it's crunch time for New York employers to prepare to comply with the new statewide sick leave law. New York employers have been grappling with questions surrounding the New York Paid Sick Leave law (NYPSL) since the legislation was enacted in April. So far, guidance from the state has been limited, and comes in the form of a new New York State sick leave website and proposed regulations released on December 2. While the guidance leaves many important questions unanswered, we have rounded up employers' frequently asked questions about the NYPSL to help you prepare for implementation ([read more here](#)).

10. Federal Judge Blocks New H-1B Pay Rules

– In a major blow to the Trump administration, a federal court struck down two immigration rules that would limit the ability of skilled foreign workers to obtain H-1B visas. In a December 1 ruling, the U.S. District Court for the Northern District of California set aside interim final rules from the Department of Homeland Security and the Department of Labor that aimed to limit foreign workers' employment and raise the minimum salaries that employers would need to pay them in order to qualify for the popular visa program. The court found that both rules violated the Administration Procedure Act's comment and notice period, finding that defendants "failed to show there was good cause to dispense with the rational and thoughtful discourse that is provided by the APA's notice and comment requirements." What do employers need to know about this development? ([read more here](#))

11. NLRB Issues Two More COVID-19 Advice Memos On

Remote Bargaining And Hazard Pay – The NLRB recently

issued a pair of advice memos governing the obligation of parties to engage in remote collective bargaining and to negotiate over the concept of hazard pay in the context of the COVID-19 pandemic. These memos offer a glimpse into how the agency may address similar issues moving forward, and are thus valuable sources of information for employers. While the letters were both issued in mid-November, they were not released to the public until December 14. What can employers learn from these advice memos? ([read more here](#))

12. Pittsburgh Expands COVID-19 Paid Sick Time As Pennsylvania Issues New Shut-Down Orders –

Pennsylvania employers – especially those with operations in Pittsburgh –experienced another one of those whiplash weeks in early December. On December 9, Mayor Bill Peduto signed Pittsburgh’s Temporary COVID-19 Emergency Paid Sick Leave Ordinance, which immediately gave certain workers in the city up to an additional 80 hours of paid sick time. Then, on December 10, Governor Wolf and Secretary of Health Dr. Rachel Levine announced new orders that, starting December 12, prohibit certain in-person operations and reduce capacity until January 4. So what do Pittsburgh employers – and all other businesses throughout Pennsylvania – need to know? Here are the key highlights to consider ([read more here](#)).

13. NYC Votes To Further Prohibit Consideration Of Criminal History In Employment Settings –

Further restrictions on New York City employers’ ability to take adverse action against applicants or employees based on their criminal history are on the horizon. The New York City Council just passed a bill which will significantly expand the scope of the New York City Fair Chance Act (FCA). If enacted, the bill would impose restrictions on an employer’s ability to take any adverse action against an applicant or current employee based on pending criminal charges or arrests — currently not covered by the FCA — and will also extend the FCA to cover current employees convicted of a crime while employed. After passing the council on December 10, the legislation now goes to Mayor DeBlasio, who signed the FCA into law in 2015. Mayor DeBlasio has 30 days to sign, veto, or take no action on the legislation. Given his prior support for legislation in this area and other workers’ rights laws, the mayor is not expected to veto the bill. Accordingly, NYC employers should be prepared for changes to the Fair Chance Act ([read more here](#)).

14. Colorado Employers Receive A Holiday "Gift" In The Form Of More Paid Sick Leave For 2021 – Right before the Christmas holiday, the Colorado Department of Labor and Employment (CDLE) released new guidance requiring that all employers supply up to an additional 80 hours of Public Health Emergency Paid Sick Leave to all employees beginning on January 1, 2021 under the Healthy Families and Workplaces Act (HFWA). What do Colorado employers need to know about this unexpected gift delivered on December 23? ([read more here](#))

15. Federal Court Rules That Instacart Workers Cannot Escape Arbitration Despite FAA Argument – A federal district court in Illinois ruled that a proposed class of gig economy delivery drivers and paid shoppers must individually arbitrate their claims that they were misclassified as independent contractors, rejecting an attempt to escape arbitration that has been successful in other parts of the country. This December 21 decision means that Instacart will be able to litigate claims over minimum wages, overtime compensation, and other benefits in its preferred forum – and is another piece in an increasingly fractured national puzzle over a critical issue, which could lead to Supreme Court intervention in 2021. Why is this decision important and how might it work in your favor? ([read more here](#))

16. New UK Travel Ban And Job Retention Scheme Extension – Due to the rapid spread of a new strain of coronavirus in the UK, several countries have barred travelers from Britain. Germany, France, Italy, Canada, Israel, the Netherlands, and Belgium announced on December 20 that they would suspend air travel from the UK ([read more here](#)).

17. Tennessee Governor And Shelby County (TN) Health Department Issue New Orders Amid "Dire" COVID-19 Spread – Following the CDC's designation of Tennessee as the worst state in the country for new COVID-19 cases by population, Governor Lee issued Executive Order 70 urging all employers to implement remote work arrangements. The Executive Order is effective and enforceable as of December 20 and will remain in effect until January 19, 2021. Additionally, the Shelby County Health Department issued Health Order and Directive No. 16, which becomes effective on December 26, strongly urging all residents to shelter at home, directing employers to ask non-essential employees to stay home and implement telecommuting practices, and

mandating closure of non-essential businesses. The Health Order and Directive will continue through January 22, 2021. What do area employers need to know about these latest developments? ([read more here](#))

[18. Federal Appeals Court Solidifies Straightforward View Of H-1B Specialty Occupation Definition](#) – A federal appeals court confirmed an uncomplicated interpretation of the “specialty occupation” definition for H-1B visas, clearing the way for a wide variety of industries to seek these highly sought-after visas. At the same time, the 9th Circuit Court of Appeals’ December 16 ruling offers employers an additional asset in their toolbox when it comes to challenging denied H-1B applications. What do you need to know about this decision and how might it work in your favor? ([read more here](#))

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

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.