



# The Top 17 Workplace Law Stories from February 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 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. **Will Justice Ketanji Brown Jackson Treat Employers Well? The Magic 8-Ball Says: "Signs Point to Yes"**

When President Biden announced on February 25 that Judge Ketanji Brown Jackson would be nominated to replace the retiring Justice Stephen Breyer on the Supreme Court, history was made. Not only could she be the first Black woman ever to sit on the SCOTUS bench, her likely ascension to the seat will mark the first time in U.S. history that white men don't make up a majority of Supreme Court justices. While she may not ideologically alter the current Court dynamics – she'll be a like-for-like replacement of a Justice selected by a Democratic administration to retain a 6-3 split – employers are still curious about what they might be getting with Justice Jackson. To answer the question of how she'll treat workplace law cases, we once again turn to the Magic 8-Ball. We first used the Magic 8-Ball in 2006, examining the future of the Court when Justice Samuel Alito was appointed; we did the same for Justice Sotomayor in 2009, Justice Kagan in 2010, Justice Gorsuch in 2017, and Justice Kavanaugh in 2018 (we gave the device a rest in 2020 for Justice Barrett). We now ask the same question of the Magic 8-Ball that we asked of previous appointees: if confirmed, will Justice Jackson be kind to employers? The perhaps-surprising answer: "Signs Point to Yes."

## 2. **What Businesses and Employers Should Do as CDC Loosens COVID-19 Mask Guidelines**

As most states lift their mask mandates, the Centers for Disease Control and Prevention (CDC) announced on February 25 that the agency has adopted new metrics for determining whether to recommend face coverings – a shift that will result in most Americans no longer being advised to wear masks in indoor public settings. By moving away from looking solely at the number of COVID-19 cases in a given area but instead taking into account local hospitalizations and hospital capacity, the updated metrics will create room for businesses and employers to

revisit their own approaches to masking policies. What should you know about these changes before making a decision for your organization?

3. **Shields Up: 10 Proactive Steps Employers Can Take to Prevent Russian Cybersecurity Attacks**

been heightening in the Russia-Ukraine crisis given the Russian military invasion that began on February 23 – and while this conflict seems to be thousands of miles away, its effects on your business could ripple closer than you may think. Federal cybersecurity officials have issued warnings to American businesses that you should have your “shields up,” as Russian cyberattacks against U.S. interests are all but certain to be launched in the coming days. What are the 10 steps you can take today to prevent these malicious attacks on your business, and what should you do if you fall victim?

4. **Changes to Employment Arbitration Agreements Under the “Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act”: FAQs**

As we predicted, Congress passed the “Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act” on February 10, with strong bipartisan support, thus amending the Federal Arbitration Act (FAA) to prohibit employers from unilaterally enforcing arbitration agreements for disputes involving sexual harassment or sexual assault. President Biden has already voiced his support for the bill and is expected to sign it into law. This means all employees subject to arbitration agreements will have the right to unilaterally choose to bring covered claims in arbitration or in court. The Act also allows an employee to bring these sexual harassment or sexual assault claims individually or on behalf of a class. We set out the key components of the Act in our prior insight. Below we cover some anticipated FAQs as employers work through the new law’s practical effect.

5. **The California Legislature Is Back in Town – Employers Should Monitor These 10 Bills**

The last two years have been an interesting respite for California employers. The COVID-19 pandemic impacted the legislature – just like other businesses – which resulted in abbreviated legislative schedules, fewer bills overall, and employment measures that were focused primarily on pandemic-related issues. Will 2022 be different and see a return-to-normal when it comes to employment legislation in California? While that remains to be seen, the legislature is back in town and February 18 was the deadline to introduce new measures. Based on bill introductions, there are some significant workplace law proposals that extend well beyond COVID-19 issues. California employers should closely monitor these 10 bills.

6. **Worker Fired During COVID-19 Isolation Can Proceed with Disability Lawsuit, Says Federal Court**

A federal court just ruled that a nurse fired while isolating with a case of COVID-19 can proceed with her disability discrimination lawsuit against her former employer, further developing a body of law permitting COVID sufferers to bring ADA claims against their employers. The case at

issue is still in its infancy, and the Alabama healthcare facility facing the charge has barely had a chance to present its defense. But what can employers learn from the February 22 decision?

7. **California's 2022 COVID-19 Supplemental Paid Sick Leave – What Employers Need to Know**

Responding to pressure from labor amidst the Omicron variant, California Governor Newsom signed Senate Bill (SB) 114 on February 9. The law is effective immediately and retroactive to January 1, 2022. An employer's obligation to provide new 2022 California supplemental paid sick leave does not begin until February 19, 2022 (10 days after the bill was signed). While the new legislation is similar to California's prior SPSL (SB 95), which expired September 30, 2021, there are some notable differences this time around. What do California employers need to know about this new supplemental paid sick leave requirement, and how should you prepare?

8. **Boston Ends Indoor COVID-19 Vaccine Mandate**

Boston Mayor Michelle Wu recently lifted the city's proof-of-COVID-19 vaccine mandate for indoor businesses, effective immediately. The city's February 18 announcement was based on public health data, citing a recent drop in COVID-19 cases and hospitalization rates and improved hospital capacity. The mandate's end means Boston businesses are no longer required to verify the vaccination status of people — patrons, employees, contractors, and all other individuals — before they enter indoor spaces.

9. **Illinois Supreme Court Makes Clear that Workers' Compensation Law Does Not Preempt States' Biometric Information Privacy Act**

The Illinois Supreme Court issued a long-awaited decision on February 3 making clear that state workers' compensation law does not preempt employment-based claims arising under the Biometric Information Privacy Act (BIPA). The decision in *McDonald v. Symphony Bronzeville Park*, which has been pending before the Illinois Supreme Court for over a year, means that employers do not have a powerful weapon at their disposal when it comes to defending the ever-increasing number of privacy claims we are seeing throughout the state. What do you need to know about this decision and what should you do as a result?

10. **Philadelphia Police Vaccine Mandate Latest to be Upheld Despite Legal Challenge**

A three-member arbitration panel upheld the City of Philadelphia's vaccination mandate for police officers, a major win for the City of Philadelphia in its persistent efforts to combat the spread of COVID-19. As a result of the February 1 ruling, all Philadelphia police officers must have at least one dose of the vaccine by February 11 or submit a request for a medical or religious exemption by then. "The safe and effective COVID-19 vaccines remain the best way to protect Philadelphians and save lives in the ongoing struggle to fight this pandemic," said Mayor Jim Kenney, who said he believes public servants, "bear a responsibility to mitigate the harm that would result from inadvertent transmission of COVID-19 to our colleagues and the public and to set an example for other organizations and companies." This is just the latest example of a

workplace vaccine being upheld by a court or arbitration panel, further demonstrating that employers have wide latitude to enforce mandates among their workforce.

11. **White House's Labor Task Force Takes Aim at Gig Economy in New Report**

The White House's labor task force released a highly anticipated report on February 4 as the next step in its long-term plan to "encourage worker organizing and collective bargaining" – and one section of the report takes square aim at the gig economy. The report asks the U.S. Department of Labor (DOL) to do what it can to prevent workers from being "misclassified" as independent contractors, part of what Reuters calls "a long-running battle for the Labor Department with companies that rely on so-called gig economy workers." Although the "gig economy" is not specifically mentioned in the report, no doubt that this industry will be impacted by any direct action items that may result from this report.

12. **Mask Mandate Lifted Across the Golden State: What Businesses Need to Know**

California lifted its statewide mask mandate for vaccinated individuals in most indoor public spaces on February 15. This update signals the expiration of the January 5 California Department of Public Health (CDPH) Order. Given this expiration, employers will revert back to the Cal/OSHA Emergency Temporary Standard (ETS) General Rule. What does this abrupt but welcome development mean for the state's workplaces?

13. **Leveling the Playing Field: Lessons Employers Can Learn from U.S. Women's Soccer \$24 Million Settlement of Equal Pay Dispute**

In what is being portrayed as a significant victory for women in sports, the United States women's national soccer team (USWNT) announced a \$24 million-dollar settlement of a class action equal pay action against the U.S. Soccer Federation (USSF). The February 22 settlement comes almost three years after the Morgan v. United States Soccer Federation gender discrimination claim was filed in March 2019. The lawsuit and settlement provide important lessons for all employers when it comes to pay equity and the increasing press for parity in women's sports.

14. **Top 5 Data Security and Privacy Trends Revealed by Feds – and 5 Proactive Steps Employers Can Take Today**

The United States Cybersecurity & Infrastructure Security Agency (CISA) recently issued a Joint Advisory providing an overview of 2021 ransomware trends, noting several key developments that employers should take note of. The February 9 Advisory was prepared jointly with cybersecurity authorities from the United Kingdom and Australia, which emphasizes the global threat of ransomware. This Insight reviews the top five trends contained in the Advisory, and provides the top five proactive steps employers can take to reduce your risk.

15. **Federal Immigration Officials Expediting Processing Times for Key Green Card Documents**

Employers have reason to be thankful as federal immigration officials have taken steps in recent days to improve processing times for Employment Authorization Documents (EADs) for green card applicants. Fisher Phillips learned of the streamlined action from our liaison at the U.S. Citizenship and Immigration Services (USCIS) in late February, which is described as a deliberate effort to become more efficient in clearing the EAD application backlog. What do employers need to know about this welcome development?

16. **Super Bowl Ads Mean Crypto is Now Mainstream: Is Your Business Ready?**

One of the main talking points after this year's Super Bowl was the number of commercials involving cryptocurrency, referred to by many within the crypto community as the "Crypto Bowl." There were commercials from crypto exchanges Coinbase, FTX, Crypto.com, and eToro – while Canadian viewers also saw an ad for Bitbuy – as well as crypto references in commercials from TurboTax and Bud Light. Some would say that crypto was the real winner of the Super Bowl, as Coinbase vaulted to second place in the App Store and FTX gained over 200 million Twitter followers over the weekend. Given these staggering numbers, you can be sure your employees and business partners are among those who will want to continue the conversation. The question then becomes: when those conversations reach your desk, will you know how to handle them? Here's a quick overview about what your business should be doing now that cryptocurrency has officially reached the mainstream.

17. **Puff, Puff, PASSED: 6 Things Mississippi Employers Need to Know as State Passes Medical Cannabis Act**

Mississippi just became the 37th state to legalize medical marijuana when Governor Tate Reeves (somewhat begrudgingly) signed a bill into law on February 2 to decriminalize the use of marijuana/cannabis for medical purposes. The Mississippi Medical Cannabis Act (MMCA) – which went into effect immediately upon signing – allows for the use of marijuana as a medically authorized treatment for over two dozen "debilitating medical" conditions, most of which would be considered a disability under federal law. While the MMCA is 445 pages, we've reviewed the whole law so you don't have to – and picked out the six most important things Mississippi employers need to know about this latest workplace development.

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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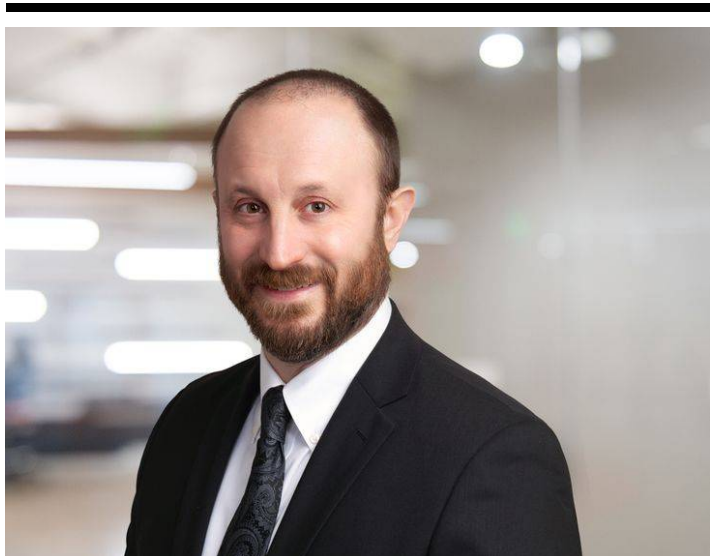


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