

## TOP WORKPLACE LAW STORIES YOU MAY HAVE MISSED FROM APRIL 2023

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

### [Employers Beware: "There is No AI Exemption to the Laws on the Books"... 4 Steps to Consider When Using AI in the Workplace](#)

Given the myriad ways artificial intelligence is now being used to streamline business processes, it's no surprise that federal agencies are scrutinizing potential employment-related biases that can arise from using AI and algorithms in the workplace. Indeed, the Equal Employment Opportunity Commission (EEOC) Chair, Charlotte Burrows, recently called AI advancements a "new civil rights frontier." On April 25, she joined the leaders of several other agencies to announce their joint position on the use of AI, as well as their commitment to education and enforcement efforts. The agency leaders made clear that while we may see new laws and regulations addressing AI use, existing civil rights laws already govern how these new technologies are used. "There is no AI exemption to the laws on the books," noted Lina Khan, Chair of the Federal Trade Commission (FTC). So, what does this mean for employers? The time is ripe for you to review your policies and practices and consider performing an AI audit to flag and address potential biases in your systems. Here are four important steps you should consider taking when using AI in the workplace.

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## **SCOTUS Delivers a Win for Businesses Challenging Federal Agency Actions: 4 Key Takeaways for Employers**

The Supreme Court recently handed a victory to employers by giving them more tools to challenge federal agencies during administrative proceedings. Employers likely know how daunting it can seem to challenge federal officials – whether you’re facing an action from the Department of Labor, NLRB, OSHA, EEOC, or some other regulatory body. As we predicted back in January, SCOTUS opened up some avenues for employers to contest administrative proceedings in court without having to wait for the administrative process to play out. The ruling didn’t go as far as some of the more conservative Justices would have liked — and we were surprised to see the unanimous opinion penned by liberal Justice Elena Kagan — but the April 14 decision provides some good news that you can add to your litigation arsenal. What do you need to know about the decision and its impact on employers?

## **Montana and Tennessee Join National Trend to Pass Broad Consumer Privacy Legislation: Top 8 Questions for Businesses**

In April, Montana and Tennessee became the eighth and ninth states to pass comprehensive consumer privacy legislation. The bills were approved by the respective legislatures and are expected to soon be signed by governors of both states. If signed into law, they will require you to take a number of compliance steps, including updating your website privacy policy, reviewing how data is collected and shared through cookies and pixels on your website, implementing a process for consumers in these states to exercise their new rights, updating your contracts with vendors, and conducting a data protection assessment. While the Montana and Tennessee bills are similar in substance, there are some key ways they differ. But one thing is certain: Businesses must adapt to new consumer privacy rights and keep up with this trend that is sweeping the nation. California, Connecticut, Colorado, Indiana, Iowa, Utah, and Virginia have already enacted similar laws — and over a dozen other states are currently considering similar bills. Up next may be Hawaii, Oklahoma, and yes, even Texas! For now, here are the answers to your top eight questions about the latest bills in Montana and Tennessee.

## **Congress Mulls Bill to Raise Exempt Salary Threshold as DOL Finalizes New Overtime Rule Proposal: What Do**



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## **Employers Need to Know?**

Lawmakers recently introduced a bill that would immediately raise the exempt salary threshold for so-called “white-collar” workers to \$45,000 a year. The proposed legislation would then apply a series of annual hikes through 2026 followed by automatic increases based on estimated Bureau of Labor Statistics data — which could exceed \$80,000 by 2027. The news comes as employers prepare for a long-awaited proposal from the U.S. Department of Labor (DOL) that would also raise the salary threshold – but the details of that proposal have not yet been made public. What are the chances of either proposal being approved? Given the polarized political climate in Congress, we don’t expect lawmakers to pass the Restoring Overtime Pay Act. We do, however, expect the DOL to issue its proposed rule as soon as this month, according to its current regulatory agenda, and move swiftly to finalize the rule. What do you need to know about the pending proposals and how might they impact your workforce?

## **Washington to Pass Benchmark Privacy Protections for Consumer Health Data: The 10 Most Important Questions for Businesses**

Washington State lawmakers just passed the most consequential privacy legislation in the country since the California Consumer Privacy Act (CCPA) was adopted in 2018, which will soon require businesses to take significant action in order to stay in compliance. The Washington Senate voted to approve the My Health My Data Act on April 5 after the House passed a similar bill in March. Once the two bills are reconciled, Governor Inslee is likely to sign it into effect, expanding the privacy rights for medical information – and expanding employer obligations – well beyond the federal HIPAA law. Here are the answers to the 10 biggest questions Washington businesses are likely to have – including what you need to do to comply.

## **Attention Federal Contractors: Revision of Disability Self-ID Form Required ... 4 Steps to Take Ahead of the Effective Date**

If you are a federal contractor, you will soon need to update your disability self-ID form and incorporate a new form into your applicant and employee systems and processes. The Office of Federal Contract Compliance Programs (OFCCP) announced on April 25 that the Voluntary Self-Identification



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of Disability Form (CC-305) has been revised. Federal contractors will need to comply by July 25 — but you don't need to wait until then to implement the new form. Here's what you need to know about the revisions and four steps you can take to prepare.

### **[Weakened Warehouse Worker Protection Act Still Packs Punch For Certain New York Employers: 5 Key Changes to Know](#)**

With the June 19 effective date on the horizon, employers subject to New York's Warehouse Worker Protection Act should begin preparations to comply with the law's requirements sooner rather than later. Signed into law at the end of 2022, the WWPAA was watered down — and much to the relief of employers, delayed — by the state legislature earlier this year. The revised version, while diluted by amendments, still marks a sea change for employers of warehouse workers. Here's a summary of the law and the five key changes affected employers need to know about.

### **[Professional Athletes' Mental Health Issues Serve as Wakeup Call: 3 Key Pillars for Employers to Address Mental Wellbeing](#)**

A Major League Baseball pitcher. A professional golfer scheduled to tee off at The Masters. A first-team all-NBA basketball player, not to mention a league veteran. Four elite professional athletes made headlines recently, each opening up to the world about the mental health struggles they have dealt with both on and off their fields of competition. Colorado Rockies player Daniel Bard returned to the game on April 19 after being on the injured list due to anxiety, Aaron Wise withdrew from The Masters Tournament at the end of March to focus on his mental health, Memphis Grizzlies All-Star Ja Morant took several weeks away from basketball to seek counseling to better help deal with stress (in the wake of a high-profile suspension), and Chicago Bulls veteran Andre Drummond took a one-game absence to focus on his mental health. The national discussion surrounding these high-profile incidents is a stark reminder that employee mental health needs to be addressed by employers. This Insight provides a three-step plan you can implement to start this process at your workplace.

### **[The Workplace is Evolving in 2023 ... Are You Staying Up to Speed?](#)**



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Employers need to rethink the way they've been operating – because the workplace has been evolving at a rapid pace. In order to stay competitive in the marketplace and offer your employees the kind of environment where they can thrive, you need to spend some time looking at things in a different way. This Insight will provide you some ideas to consider as you look to stay in compliance – and on the cutting edge.

#### **4 Trends for Cannabis Industry Employers to Track in 2023**

The cannabis industry is growing at a rapid pace given the proliferation of states legalizing medical and recreational use. Indeed, most states already have a comprehensive medical cannabis program, and many are rolling out retail sales plans for recreational adult use. The industry is expected to continue expanding in 2023 as more states ease restrictions. This means employers will continue to face unique challenges and opportunities, particularly as some jurisdictions shine a spotlight on employment protections for workers in the industry. Whether you're a cultivator, processor, dispensary, retailer, or otherwise involved in the cannabis industry, here are four key trends you should track in 2023.

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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