

Weekly Digest

• February 6, 2024 •

Human Resources

DOL Independent Contractor Final Rule: Implications for Employers and the Transportation Industry

"On January 10, the U.S. Department of Labor (DOL) issued its long-anticipated final rule formally revising its guidelines for classifying workers as employees or independent contractors under the federal Fair Labor Standards Act (FLSA). The final rule, which takes effect on March 11, comes nearly a year and a half after the DOL originally proposed to revise its independent contractor classification guidelines in October 2022." [Full Article](#)

Thompson Hine LLP



Ten Reasons Employers Should Pay More Attention to USERRA

"This year, the Uniformed Services Employment and Reemployment Rights Act (USERRA) turns 30 years old. Although this law, prohibiting employers from discriminating and retaliating against employees or applicants because of their military status or obligations, has been on the books for three decades, one would be mistaken to think USERRA has mellowed with the years."

[Full Article](#)

Littler Mendelson P.C.

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Retaliation. The Second Guy Always Gets Caught.

"Mike Daniels is a 300-pound mound of sound who played defensive tackle in the National Football League. After receiving more than a few personal foul penalties during his 10-year career, he explained that "the second guy always gets caught, that's why you have to initiate instead of retaliating." Although I do not endorse engaging in conduct intended to provoke a retaliatory response (unless, of course, the provocateur is on my team and succeeds in getting an opposing player penalized), experience has taught me that Mr. Daniels is right - the retaliator typically gets caught." [Full Article](#)

Constangy, Brooks, Smith & Prophete LLP



Big Money: OSHA and EPA Civil Penalties Increase Again for 2024

"We have blogged previously about the annual adjustments to the maximum civil penalty dollar amounts for OSHA and EPA violations. The agencies have now finalized the 2023 inflation adjustments, which increase the penalties." [Full Article](#)

Seyfarth Shaw LLP

Federal Court Allows Transgender Woman's Sex Discrimination Claim Under ACA to Proceed, Dismisses ADA, ERISA, and Other Claims

"Jane Doe, a transgender woman with gender dysphoria, sued Independence Blue Cross (IBX) after it denied coverage for facial feminization surgeries (FFS) as cosmetic and not medically necessary. Doe filed sex and disability discrimination claims under the Affordable Care Act (ACA), Section 504 of the Rehabilitation Act (Section 504), the Americans with Disabilities Act (ADA), as well as claims under the Employee Retirement Income Security Act (ERISA) and a Pennsylvania state insurance bad faith law." [Full Article](#)

Hall Benefits Law LLC



Very Helpful Guidance on the ADA from the Fourth Circuit!

"The U.S. Court of Appeals for the 4th Circuit issued an opinion that provided much useful guidance on an employer's obligations under the Americans with Disabilities Act, including reasonable accommodations, discrimination, and retaliation." [Full Article](#)

Shawe Rosenthal LLP

STATE COMPLIANCE UPDATES

ILLINOIS

A Legislative Snowstorm: Key 2024 Updates for Illinois Employers Include A Number of New Leave Obligations and More



"New paid leave obligations for Illinois (and Chicago and Cook County) employers are a significant change, and additional developments expand employer liability in some circumstances where individuals are victims of gender-related violence." [Full Article](#)

Baker & McKenzie LLP

NEW YORK

New York State Employers Must Provide Updated Record of Employment to Separating Employees (and Beyond)



"New York State employers are reminded that, under an expansion of the law that took effect in late 2023, they are required to provide all separating employees with an **updated Record of Employment (Form IA 12.3)** for purposes of state Unemployment Insurance benefits." [Full Article](#)

Proskauer Rose LLP

VIRGINIA

Virginia Increases Earning Threshold for Prohibition on Non-Competes for "Low Wage Employees"



"Since July 1, 2020, Virginia has prohibited employers from entering into, enforcing or threatening to enforce non-compete agreements with "low wage employees." The definition of "low wage employee" periodically changes because it is dependent upon the Commonwealth's average weekly wage." [Full Article](#)

McGuire Woods LLP

CALIFORNIA

California's Law Barring Mandatory Arbitration Agreements Permanently Enjoined



"A federal district court has entered a permanent injunction barring the State of California from enforcing Assembly Bill (AB) 51, California's law that purports to preclude employers from requiring arbitration agreements as a condition of employment, as it is preempted by the Federal Arbitration Act (FAA). *Chamber of Commerce of the USA et al. v. Becerra et al.*, No. 2:19-cv-02456 (E.D. Cal. Jan. 1, 2024)." [Full Article](#)

Jackson Lewis P.C.

MONTANA

Montana Attorney General Confirms Certain Earned Wage Access Products Are Not Loans



"Montana Attorney General (AG) Austin Knudsen issued an opinion clarifying that certain EWA products are not loans under either the Montana Consumer Loan Act or the Montana Deferred Deposit Loan Act. Accordingly, a provider of an EWA product satisfying the factors listed in the opinion is not required to obtain a license from the Montana Division of Banking and Financial Institutions to provide the EWA product in Montana." [Full Article](#)

Greenberg Traurig LLP