



2022 LABOR AND EMPLOYMENT LEGAL UPDATE

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**McDermott
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ROAD MAP

- Legislative Updates and Trends
- Mandatory Vaccination In The Workplace
- Legal Updates In Labor & Employment For 2022
- Recent Case Law Developments That Will Impact The Criminal Background Check Process
- Pendulum Swings in Labor Law
- New York Updates
- And More



TRENDS

- Increasing employer responsibilities to employees
- Increasing settlement agreement and arbitration protections for employees
- Increasing meal, break, and wage protections
- Increasing protections in the hiring process
- Increasing workplace activism
- Focus on DE&I
- Fluid mosaic of COVID-19 vaccination laws
- Collective bargaining renewed focus on uncharted territories/sectors

PREPARING FOR THE FUTURE – 2022

- #Alwaysbetter
- Update your handbooks and policies
- Review/update template separation and arbitration agreements
- Review your vendor agreements
- Review hiring practices
- Proactively plan and react swiftly to employee COVID-19 issues (i.e., vaccination exemptions)
- Educate and prepare HR leadership
- Carefully review proposed changes in wages, hours and working conditions for union workforces

MANDATORY VACCINATION IN THE WORKPLACE



AUDIENCE POLLING QUESTION

Does your company have a COVID-19 vaccination program?

- ☐ Yes, a mandatory program
- ☐ Yes, a voluntary program
- ☐ Yes, a mandatory program for in person work and meetings
- ☐ No, we do not have a program at this time

CURRENT CHALLENGES TO THE CMS INTERIM FINAL RULE AND OSHA ETS

- DOL/OSHA ETS (vax-or-text mandate)
 - Enforcement is currently stayed across the country
 - OSHA has suspended the implementation and enforcement of the ETS pending future developments in the litigation
- CMS Interim Final Rule (vaccine mandate)
 - Enforcement is currently stayed across the country
- Federal Contractor (vaccine mandate)
 - Enforcement is stayed nationwide



WHAT SHOULD EMPLOYERS DO IN THE MEANTIME?

- Stays will likely be appealed and decided on an expedited basis by the US Supreme Court
- If the stays are lifted, the requirements are immediately enforceable, so employers should be ready for that result
- If a stay is currently in place on an employer's applicable mandate, whether the employer chooses to proceed with a new vaccine (or testing) policy at this time is up to the employer, subject to applicable state and local laws



BREAKING THE VACCINE MANDATES DOWN

- The Biden administration vaccine mandates
 - OSHA – for large employers
 - CMS
 - Federal Contractors
- Interactive process – Managing disability and religious exemption requests
- Accommodations and terminations

COVID-19 VACCINE & TESTING MANDATES

OSHA ETS

- **Who?** Employers of 100+ employees
- **What?**
 - Vax-or-test requirement
 - Weekly testing and masks for unvaccinated employees
 - PTO for vaccination and side-effects
- **When?**
 - December 6, 2021 – policy/PTO/tracking/masks
 - January 4, 2022 – vax/test

CMS Interim Final Rule

- **Who?** 15 provider/supplier types of CMS-regulated facilities and their staff/workers at such facilities
- **What?** Vaccine mandate, subject to exemptions under federal law (religious or medical contraindications)
- **When?**
 - December 6, 2021 – first dose
 - January 4, 2022 – second dose (or exemption)

Federal Contractor Mandate

- **Who?** Federal contractors with COVID-19 safety clause in contracts (required for contracts for services >SAT; encouraged for others)
- **What?**
 - Vaccine mandate, subject to exemptions under federal law (religious or medical contraindications)
 - Masking/social distancing
 - Designated safety coordinator
- **When?** January 4, 2022 / contract start date, if after

PATH OUT OF THE PANDEMIC: PRESIDENT BIDEN'S COVID-19 ACTION PLAN

- Three components to the vaccine mandate:
 - I. **DOL/OSHA Emergency Temporary Standard:** applies to employers with 100+ employees
 - II. **CMS Interim Final Rule:** applies to most CMS-regulated facilities and workers within those facilities
 - III. **Federal Contractors:** applies to most large federal contractors providing services under contracts entered into, extended, or renewed on or after October 15, 2021
- The OSHA ETS will apply to the largest number of employers
- Paid time off for getting vaccinated
- Expands free testing sites
- Makes at-home testing more affordable

I. DOL/OSHA ETS

- Applies to employers with 100+ employees
- Not a true mandate – will require employers to ensure workforce is either fully vaccinated or is tested at least weekly before reporting to worksite
- Don't forget Title VII and the ADA – ETS subject to legally protected exceptions
- Will provide paid time off to be vaccinated or for adverse side effects
- Will need to show proof of compliance
- OSHA fine for noncompliance – up to \$14,000 per violation

I. DOL/OSHA ETS

- Employees who work completely remotely or who work only outdoors
 - Count towards the 100+ employee threshold
 - Exempt from vax-or-test requirements
- Who pays for testing?
 - Not required to provide, or pay for tests if employees choose not to be vaccinated
 - Required to pay for tests if employees are unable to be vaccinated due to legally protected reasons
- What are the requirements for proof?
 - Copy of vax card, immunization record, medical records, or employee's written certification
- Will employers opt for a more strict policy to avoid testing?
- Litigation – and how this plays out with competing state laws

II. CMS INTERIM FINAL RULE

- Applies to most CMS-regulated facilities (Medicare/Medicaid reimbursement)
- Broad coverage of “workers” – employees, contractors, vendors, volunteers
- True mandate – will require vaccination, subject to legally protected exemptions (religion, disability)
- Proof of vaccination
- No testing option, short of exemption
- Deadline:
 - Dec. 6, 2021 – first dose
 - Jan 4, 2022 – second dose (or exemption)

III. FEDERAL CONTRACTORS

- Most large federal contracts awarded, extended, renewed beginning October 15, 2021 (hard deadline by January 4, 2022) will include clause requiring federal contractors to comply with Safer Federal Workforce Task Force Guidance
- Guidance currently requires:
 - COVID-19 vaccination of workforce, subject to legally required exemption
 - Masking and physical distancing
 - Workplace safety coordinator
- Applies broadly to workforce working on federal contracts as well as workers working in same location as federal contractor workers, and also to workers performing indirect work to support federal contract (e.g., legal, HR)
- Contractors must include same compliance clause in subcontractor agreements

THE INTERACTIVE PROCESS

- Interactive process is a case-by-case process, but employer should treat similarly situated employees similarly
- Depending on position and employee, potential accommodations may include:
 - Remote work (temporary or permanent)
 - Regular COVID-19 testing
 - Masking
 - Reassignment to another role that the individual is qualified for and can perform without vaccination
 - Temporary exclusion from work (leave of absence)
- Direct threat analysis
- Accommodations – reasonable vs. undue hardship

EMPLOYEE TERMINATIONS

- ☐ Inability to state a protected reason for inability to comply with policy
- ☐ Failure to provide sufficient support to support protected reason
- ☐ No reasonable accommodation is possible
 - Temporary vs. permanent

THE INTERACTIVE PROCESS

The interactive process required for considering vaccination exemption requests is the same interactive process that applies for all employee and applicant disability and religious accommodation requests

MANAGING ADA EXEMPTION REQUESTS

- Provide the disability/medical exemption request form
- Employee can be required to submit:
 - Functional / physical limitation (in this case, inability to receive a COVID-19 vaccination)
 - Duration of the limitation
 - Potential alternatives/accommodations
 - Supporting note or completed form from appropriate health care practitioner to support this request

Note: In California, not permitted to ask for the individual's diagnosis/condition

Note: In NYC, Employers must consider alternative accommodations

THE INTERACTIVE PROCESS

MANAGING RELIGIOUS EXEMPTION REQUESTS

- Provide the religious exemption request form
- Employee can be required to submit information that helps the employer to understand:
 - The religion/religious belief system that the employee says is preventing them from becoming vaccinated, and how
 - Information to establish the sincerity of the belief, observance, or practice
- Unlike with disability/medical exemption requests, employees cannot be required to submit a supporting note from their religious leader (e.g., priest, rabbi), but the employee may submit one if desired:
 - Employee need not attend a religious service
 - Employee need not believe or interpret the religious tenets the same as others who practice their same religion
 - Employee need only establish that they have a belief, practice, or observance that is religious in nature and sincerely held, which prevents them from getting vaccinated

THE INTERACTIVE PROCESS

Once the employee has established a protected disability/religious status causing inability to comply with vaccination policy, employer and employee should engage in a good faith interactive process to determine if a reasonable accommodation can be made.

Can employee be accommodated? Factors to consider include:

- ☐ The employee's job position and essential functions of the position
- ☐ Whether the role can be performed exclusively remotely (including the employee's personal demonstration of an ability, or inability, to perform their role remotely)
- ☐ Whether the accommodation request is permanent or temporary (and the duration, if temporary)
- ☐ Whether the considered/proposed accommodation will pose an undue hardship on the company (note that this is a high standard for a large organization to meet)
- ☐ Whether the considered/proposed accommodation sufficiently reduces the risk/direct threat of an unvaccinated employee in the workplace, to the employee and to others

EEOC GUIDANCE

- An employer can require all employees physically entering the workplace to be fully vaccinated, subject to Title VII and the ADA
- EEOC Expands COVID-19 Guidance to Cover Retaliation
- *EEOC v. ISS Facility Services, Inc.*, No. 1:21-CV-3708-SCJ-RDC (N.D. Ga. 2021) – EEOC’s first pandemic-related disability accommodation lawsuit

NEW YORK CITY VACCINE MANDATE

- Mayor Bill de Blasio announced a vaccine mandate on 12/6 for all private employers in NYC *regardless of size*
- Effective December 27
- First of its kind in the nation
- Pre-emptive strike to combat new Omicron variant
- Not applicable to remote workers
- No “vax-or-test” alternative
 - valid medical/religious exemptions acceptable

BEST PRACTICES

- ✓ Written vaccination policy with clear deadlines
- ✓ Provide employees with sufficient notice of policy to comply and get comfortable with vaccination
- ✓ Begin interactive process early; provide forms to employees for use
- ✓ Training for HR and legal teams
- ✓ Coordinated approach to employee interactions, assessment of accommodation requests
- ✓ Consistency in enforcing your safety policy
- ✓ Don't forget potential state and local requirements

2022 LEGISLATIVE UPDATES

- ❖ California
- ❖ New York
- ❖ Federal



CALIFORNIA STATEWIDE MINIMUM WAGE

Effective January 1, 2022, statewide minimum wage increases to:

- \$15.00 per hour for employers with 26 employees or more (\$62,400 for salaried)
- \$14.00 per hour for employers with 25 employees or less (58,240 for salaried)
- 52 localities in California have unique local minimum wage requirements – implementation dates vary
- Actions:
 - Ensure compliance with state/local minimum wage
 - Ensure that any employees classified as salaried exempt employees are paid at least the minimum salary required under state law

NEW YORK MINIMUM WAGE

Currently: NYC \$15.00

From December 31, 2021 to December 31, 2022

- Long Island & Westchester: \$15.00
- Rest of NY state: \$13.20

WAGE & HOUR LAWS

- AB 1003 – Criminal Liability for Intentional Unpaid Wages
- SB 646 – PAGA Exemption for Unionized Janitorial Employers
- SB 62 – Bans Piece Rate Pay for Garment Workers



WAGE & HOUR LAWS

- AB 701 – Regulation of Production Quotas in Warehouse Distribution Centers
- SB 362 – Restricts Quotas Used By Chain Community Pharmacy Companies
- SB 639 – Below-Minimum Wages Permits for People With Disabilities To Be Phased Out



WAGE & HOUR LAWS

- SB 572 – Labor Commissioner Real Property Lien for Wage Claims
- SB 727 – Direct Contractors' Liability Expanded to Include Damages and Penalties
- SB 338 – Port Drayage Companies Joint Liability for Wage Violations



WORKER CLASSIFICATION

- AB 1506 – AB 5 Exemption for Newspaper Distributors and Carriers Extended
- AB 1561 – AB 5 Exemption for Licensed Manicurists and Construction Trucking Subcontractors Extended
- AB 1023 – Public Works Contractor Penalty For Failure to Furnish Payroll Records



WORKPLACE SAFETY & COMPLIANCE

- SB 606 – Cal/OSHA's Enforcement Power Expanded
- AB 654: COVID-19 Exposure Notice Requirement (effective Oct. 5, 2021)
- SB 657 – Employers Permitted to Distribute Physically Posted Notices Via E-mail
- SB 93 – Rehire Rights for Certain Hospitality and Airport Employees



WORKPLACE SAFETY & COMPLIANCE

- SB 807 – DFEH Record Retention to Four Years
- SB 321 – Household Domestic Services Advisory Committee
- AB 73 – Expands Worker Protections From Wildfire Smoke



LEAVES AND ACCOMMODATIONS: AB 1033 – “PARENT-IN-LAWS” ADDED TO CA FAMILY RIGHTS ACT (CFRA)

- **Effect:** Adds “Parents-in-laws” to list of family members that an employee can take leave under CFRA
- Department of Fair Employment and Housing (DFEH) required to create a small employer family leave mediation pilot program
- DFEH must notify an employee in writing of the requirement for mediation prior to filing a civil action

DIVERSITY & EQUALITY REQUIREMENTS

- AB 628 – Breaking Barriers to Employment Initiative
- AB 1407 – Required Implicit Bias Training for New Nurses
- AB 5426 – Diversity, Inclusion and Elimination of Bias Training for Medical Professionals



SETTLEMENT AND SEVERANCE AGREEMENTS

- SB 331 – Restricts Use of Non-Disclosure Provisions in Workplace Harassment or Discrimination Settlement Agreements
- HR 4445 – Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act (Advanced by U.S. House Committee on Nov. 17, 2021)



NEW YORK STATE DIVISION OF HUMAN RIGHTS DISCONTINUES PRIVATE SETTLEMENTS

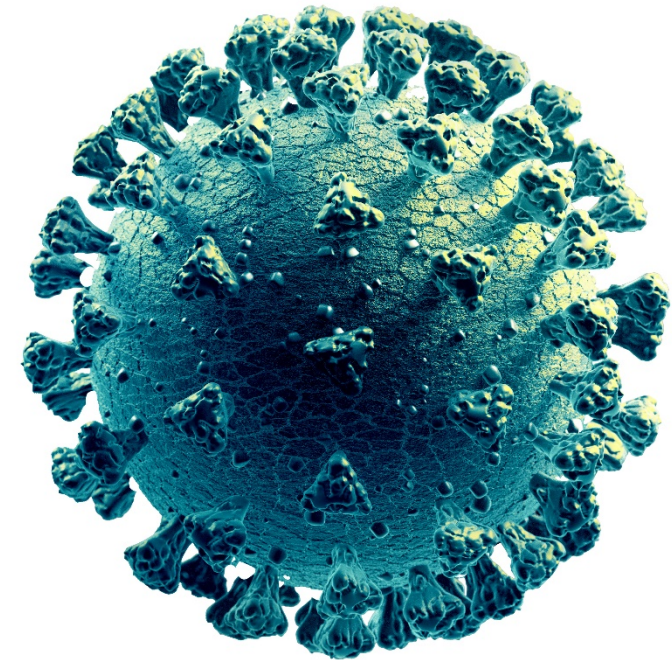
- **Effective:** October 12, 2021
- If complainant seeks to discontinue an action prior to a hearing:
 - Writing required to state why discontinuance is sought
 - Discontinuance of complaint will not be granted for private settlements
- Parties permitted to:
 - Settle publicly through an Order after stipulation that includes the terms of settlement, or
 - Proceed through the Division's public hearing process

NEW YORK EXPANDS EMPLOYEE WHISTLEBLOWER PROTECTIONS UNDER NEW YORK LAW SECTION 740

- **Effective:** January 26, 2022
- “Employees” protected: Current employees, former employees, and independent contractors
- Whistleblowing protections for an employee’s reasonable belief that:
 - (i) a violation of law, rule, or regulation has occurred, or
 - (ii) there is a substantial and specific danger to the public health or safety
- Prohibited retaliatory action includes reporting the citizenship status of an employee or their family members

NEW YORK HEALTH AND ESSENTIAL RIGHTS (HERO) ACT

- On Sept. 6, 2021, NY Gov. Kathy Hochul designated COVID-19 as a “highly contagious communicable disease that presents a serious risk of harm to the public health.”
- Requires employers to adopt an airborne infectious disease exposure prevention plan



NEW YORK HEALTH AND ESSENTIAL RIGHTS (HERO) ACT

- Key exposure prevention plan requirements:
 - Daily health screenings
 - Protocols for testing, isolation and quarantine
 - Provide appropriate face coverings when physical distancing cannot be maintained
 - Adequate handwashing facilities or hand sanitizing facilities/supplies
 - Implement plan for cleaning and disinfecting shared tools and workspaces
 - Provide and require that employees use PPE
- Penalties:
 - \$50.00 per day of non-compliance
 - Up to \$10,000 for failure to abide by an adopted plan

CASE LAW DEVELOPMENTS

- ❖ California
- ❖ New York
- ❖ Federal



ACCOMMODATIONS

Cummings v. Premier Rehab Keller PLLC, No. 20-219: Whether emotional distress damages are available in discrimination claims under Section 504 of the Rehabilitation Act and the Americans with Disabilities Act

Doe v. CVS Pharmacy, Inc., 982 F.3d 1204 (9th Cir. 2020): Plaintiffs adequately alleged the structure of CVS' program is discriminatory under ACA because it prevents them from receiving the same level of care that non-HIV/AIDS patients regularly obtain

DISCRIMINATION

Dep't of Fair Emp. & Hous. v. M&N Fin. Corp., 69 Cal. App. 5th 434, 284 Cal. Rptr. 3d 477 (2021), reh'g denied (Oct. 22, 2021), review filed (Nov. 8, 2021): Employees who are coerced by their employer to violate Civil Code sections 51 and 51.5 are "aggrieved" within the meaning of section 12965 (a) and have standing to sue their employer pursuant to section 12940 (i).

WHISTLEBLOWER PROTECTIONS

People v. Kolla's Inc., 2021 WL 1851487 (Cal.App. 4 Dist., 2021), *review granted* (Sept. 1, 2021): Whether Labor Code Section 1102.5(b), which protects an employee from retaliation for disclosing unlawful activity, applies when the information is already known to the person or agency to whom the disclosure is made.

ARBITRATION

Morgan v. Sundance, Inc., No. 21-328: Can an employer can wait eight months after being sued to send the plaintiff's claims to arbitration, or has it waived that option even if the plaintiff has suffered no harm from the delay?

Badgerow v. Walters, No. 20-1143: Whether federal courts have subject matter jurisdiction to confirm or vacate an award under § 9 and § 10 of the Federal Arbitration Act, as opposed to § 4, when the only basis for jurisdiction is that the underlying dispute involved a federal question.

Chamber of Com. of United States v. Bonta, 13 F.4th 766 (9th Cir. 2021): Upheld AB 51, finding that FAA does not preempt laws prohibiting employers from requiring employees to waive in arbitration agreement any right, forum, or procedure as a condition of employment.

Lawson v. Grubhub, Inc., 13 F.4th 908 (9th Cir. 2021): Affirmed denial of class certification on the ground that the vast majority of putative class members—except Lawson and one other—were bound by arbitration agreements with class action waivers.

EMPLOYEE/INDEPENDENT CONTRACTOR CLASSIFICATION

Vazquez v. JanPro Franchising International, Inc., 478 P.3d 1207 (Cal. 2021): the California Supreme Court held that the ABC test applied retroactively to claims rooted in wage orders.

WAGE/HOUR AND PAGA—MEAL/REST PERIODS

International Brotherhood of Teamsters v. Federal Motor Carrier Safety Administration, Case No. 18-73488 (Jan. 15, 2021): Affirmed validity of the US Department of Transportation's (DOT) FMCSA declaration that drivers subject to its hours of service rules preempt California meal and rest break laws.

Bernstein v. Virgin America, Inc., 3 F.4th 1127 (9th Cir. 2021): Employers are not subject to heightened penalties for subsequent violations under the Labor Code until they have been notified of the violation by the Labor Commissioner or a court.

Naranjo v. Spectrum Security Services, Inc. 40 Cal. App. 5th 444 (2019), as modified on denial of reh'g (Oct. 10, 2019): Does a violation of Labor Code section 226.7, which requires payment of premium wages for meal and rest period violations, give rise to claims under Labor Code sections 203 and 226 when the employer does not include the premium wages in the employee's wage statements but does include the wages earned for meal breaks?

WAGE/HOUR AND PAGA—MEAL/REST PERIODS

Donohue v. AMN Servs., LLC, 11 Cal. 5th 58 (2021)

- Employers cannot round time punches—that is, adjusting the hours that an employee has actually worked to the nearest preset time increment in the meal period context
- Time records showing noncompliant meal periods raise a rebuttable presumption of meal period violations

Salazar v. See's Candy Shops, Incorporated, 64 Cal.App.5th 85 (2021):

Affirmed denial of class certification based on the lack of commonality because the employer's records showed it (1) had a policy to provide second meal periods, and (2) at least some class members were offered a second meal period.

WAGE STATEMENTS

Magadia v. Wal-Mart Assocs., Inc., 999 F.3d 668 (9th Cir. 2021): Walmart was not required to list the applicable rate or hours of the bonus overtime adjustment on the wage statements.

AUDIENCE POLLING QUESTION

If your company pays meal or rest break penalties to employees who are prevented from taking CA mandatory meal or rest breaks due to the press of business, does your company pay the penalty (1-hour of pay) at the employee's base rate of pay or the employee's regular rate of pay?

- ☐ We pay the penalty at the employee's base rate of pay
- ☐ We pay the penalty at the employee's regular rate of pay (which incorporates other forms of compensation earned by the employee in the same pay period – e.g., shift differentials or non-discretionary bonuses)
- ☐ We do not pay employees meal or rest break penalties

REGULAR RATE

Ferra v. Loews Hollywood Hotel, LLC, 11 Cal. 5th 858 (2021): California employers must pay meal and rest break premiums/penalties at the employee's higher "regular rate" of pay rather than the employee's base hourly rate of pay; **RETROACTIVE**.

PAGA – OTHER LABOR CODE PROVISIONS

Kim v. Reins Int'l California, Inc., 9 Cal. 5th 73 (2020): Held that employees who settle their individual Labor Code claims do not lose standing to pursue a claim for civil penalties under PAGA based on the same alleged violations.

Johnson v. Maxim Healthcare Servs., Inc., 66 Cal. App. 5th 924, reh'g denied (Aug. 9, 2021), review denied (Nov. 10, 2021): An employee whose individual claim is time-barred has standing to pursue a representative claim under PAGA.

Uribe v. Crown Bldg. Maint. Co., 70 Cal. App. 5th 986 (2021), as modified on denial of reh'g (Oct. 26, 2021): The Court of Appeal held an intervenor had standing to challenge trial court's approval of a PAGA settlement between the employer and a different employee where the settlement purported to dispose of intervenor's PAGA claims.

BACKGROUND CHECKS



BACKGROUND CHECKS – CASE LAW DEVELOPMENTS (CALIFORNIA AND FEDERAL)

Ramos v. Walmart, Inc., NO. 2:21-CV-13827 (July 19, 2021): Class action alleges Walmart unlawfully discriminates against applicants with criminal backgrounds

Luna v. Hansen & Adkins Auto Transp., Inc., 956 F.3d 1151 (9th Cir. 2020):

- An employer does not violate the FRCA
 - (i) by providing a job applicant the disclosure simultaneously with other employment documents
 - (ii) by failing to place the FRCA authorization in a standalone document

Grant v. T-Mobile USA Inc. (No. 2:21-cv-02268), U.S. District Court for the Central District of California: T-Mobile accused of improperly conducting background checks and seeking credit reports on employees and applicants

All of US or None – Riverside Chapter v. Hamrick, 64 Cal. App. 5th 751 (2021), reh'g denied (June 17, 2021), review denied (Sept. 1, 2021): Prohibits use of date of birth and driver's license number to search California court dockets

BACKGROUND CHECKS – ADMINISTRATIVE UPDATES

- Artificial Intelligence and Algorithmic Fairness Initiative
 - Initiative to ensure that AI used in hiring and other employment decisions comply with federal anti-discrimination laws
 - EEOC will address workplace bias regardless of the form it takes
 - EEOC plans to:
 - Identify promising practices
 - Issue technical assistance to provide guidance on algorithmic fairness and the use of AI in employment decisions

BACKGROUND CHECKS – LEGISLATION

- California Fair Chance Act (Ban-the-Box)
 - FCA prohibits employers with five or more employees from asking job candidates about their conviction history
 - FCA violations that should not be present in job advertisements:
 - No felons
 - Must have clean record
 - Any other blanket statement indicating an employer will not consider anyone with a criminal history
 - Immediate action: Review job applications, background check forms, and onboarding documents

BACKGROUND CHECKS – LEGISLATION

- New York City Fair Chance Act (FCA) Ban-the-Box Law
 - Extended protection to current employees and independent contractors
 - Employer can only run criminal background check offer has been made
 - Employer must engage in Fair Chance Process if withdrawing offer based on criminal history



TRADITIONAL LABOR DEVELOPMENTS



LEGISLATIVE UPDATES

- The Protecting the Right to Organize (PRO) Act
 - The PRO Act would take away private ballots in union elections, allow unions to picket and boycott a company's clients and contractors, and fire workers who choose not to join a union
- Build Back Better Act
 - Goes into effect on January 22, 2022 (if signed into law)

NLRB GENERAL COUNSEL

- GC 21-05, Aug. 19, 2021: More aggressive stance toward implementing injunctive relief
- GC 21-06, Sept. 8, 2021: Willingness to explore a new make-whole remedy
- *Birner Kansas, LLC*, 14-CA-262563: Unfair labor practice found where employer removed employee from third-party app that was needed to complete basic job functions

ADMINISTRATIVE DECISIONS BY THE NLRB:

- *Thryv, Inc.* 371 NLRB No. 37 (2021): Invited briefs on whether Board should modify its traditional make-whole remedy.
- *Mgmt. & Training Corp. Respondent & Iue-Cwa, the Indus. Div. of the Commc'ns Workers of Am., Afl-Cio Charging Party*, No. 01-CA-267261, 2021 WL 3471598 (Aug. 2, 2021): Employer right to return to a pre-pandemic status quo.
- *Caesars Entertainment d/b/a Rio All-Suites Hotel*, NLRB No. 143 (Dec. 16, 2019): No statutory right for employees to use employer's email for Section 7 activity.
- *Care Park of River Oaks Association II*, 13-CA-274570, Sept. 2, 2021: Employee's mistaken complaint to another employee was protected concerted activity.
- OM 22-03, Nov. 10, 2021: Employer required to bargain before implementing discretionary aspect of ETS.

TRENDS IN THE “TRADITIONAL” LABOR SPACE

Companies

E.g.,

- Alphabet
- Kickstarter
- Medium
- Lanetix
- Glitch
- New York Times Tech Staff
- Change.org

Groups

E.g.,

- CODE-CWA
- Tech Workers Coalition
- OPEIU
- Digital Media United
- NewsGuild

INCREASE IN WORKPLACE ACTIVISM GENERALLY

- Pandemic accelerated a power shift to employees
- Employees expect their employers to fit their values and beliefs
- Workplace activism



<https://www.shrm.org/resourcesandtools/hr-topics/employee-relations/pages/when-employees-become-activists.aspx>

THANK YOU QUESTIONS?



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