



Weekly Digest

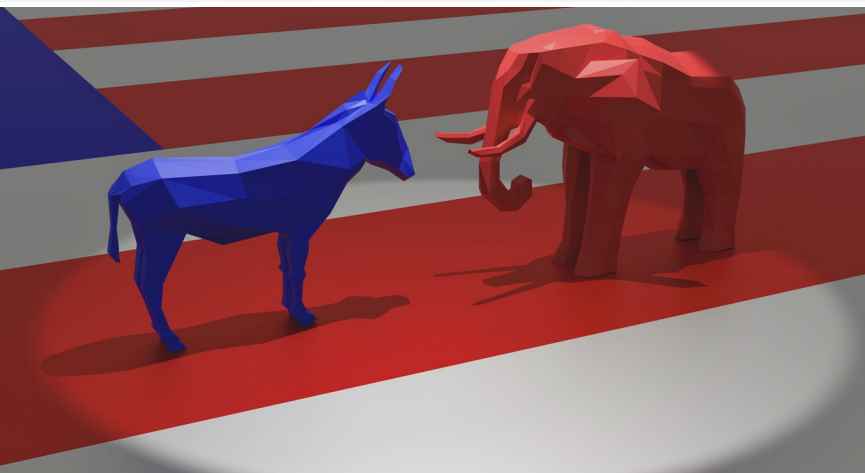
• *March 9, 2021* •

Human Resources

Pros and Cons of Limiting Political Activity in the Workplace

“While the 2020 general election is now behind us, politics are still on a lot of people's minds. For some employees, their passion for politics are not put on hold when they arrive at work. Here, we explore what employers can and cannot do when it comes to regulating employee political activity.” [Full Article](#)

Davis Wright Tremaine LLP



DOL Issues COVID-19-Related Guidance Regarding Whether Overtime Payments Based on Expected Hours Worked are Credited for Overtime

“In Opinion Letter FLSA2020-20, the Department of Labor’s Wage and Hour Division (WHD) provided guidance on paying overtime to live-in caregivers who work shifts of more than 24 hours based on an expected number of hours worked, and whether these overtime payments can be excluded from the regular rate and credited for overtime.” [Full Article](#)

Hall Benefits Law

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State & International Compliance Updates

Please, Please, Please Use Common Sense When Responding to an Employee's Request for a Reasonable Accommodation

"This case is a good example of just how expensive it can be when we don't. The Plaintiff in this case, Mr. Burnette, worked in a call center for Ocean Properties. The call center was located in the clubhouse of a golf club. (Sounds a little sketchy right off the bat.) The public entrance to the club house, which Mr. Burnett had to use, had two heavy, wooden doors that pulled outward and then automatically closed. The area leading to the doors had a slight, downward slope away from the doors. Mr. Burnette was a paraplegic who used a wheelchair, and he had a very difficult time opening the doors by himself without rolling down the slope. In fact, after complaining several times and asking Ocean Properties to install push-button automatic doors, Mr. Burnette injured his wrist while trying to get through the doors by himself." [Full Article](#)

Breazeale, Sachse, & Wilson, LLP

A Showing of Damages Is Necessary In Order to Recover Under the FMLA

"An employee can only recover for a violation of the Family and Medical Leave Act if they actually suffered harm, according to the U.S. Court of Appeals for the Seventh Circuit. In Hickey v. Protective Life Corp., an account executive was told that, after his return from extended FMLA leave, he would be reassigned to a territory closer to his home, that he would no longer service certain accounts, that he would need to build up his book of business, and that his commissions would be guaranteed for six months. He was terminated shortly after his return to work for reasons unrelated to his FMLA leave. He then sued, alleging that he was not reinstated to his former or an equivalent position as required by the FMLA." [Full Article](#)

Shawe Rosenthal



The Pandemic Slowed 2020 Federal ADA Title III Filings But 2021 May Be a Record Breaker

"What do we think will happen in 2021? As we predicted in early January, 2021 is shaping up to be a very busy year. In January 2021, 1,108 cases were filed – the most ever in a single month. To provide some perspective, in 2013, there were 2,722 filings for the entire year. If the filings continue at their current rate, 2021 will be another record-breaking year for ADA Title III filings in federal court." [Full Article](#)

Seyfarth Shaw

IRS Clarifies PPP Loans, Retention Credit Wage Reporting Rules

"On March 1, the Internal Revenue Service (IRS) issued Notice 2021-20, which provides updated guidance on the Employee Retention Tax Credit (ERTC) as it applies before Jan. 1, 2021. The ERTC was first enacted on March 27, 2020, pursuant to Sec. 2301 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). It provided eligible employers with a refundable tax credit up to \$5,000 per employee, for qualified wages paid from March 13, 2020, through Dec. 31, 2020. The provision was extended and expanded by Secs. 206 and 207 of the Consolidated Appropriations Act of 2021 (CAA), which was signed into law Dec. 27, 2020." [Full Article](#)

Brownstein Hyatt Farber Schreck

STATE & INTERNATIONAL COMPLIANCE

ILLINOIS



Illinois Legislature Seeks to Limit Use of Restrictive Covenants

“Two bills were recently introduced in the Illinois legislature that seek to limit or preclude the use of restrictive covenants for Illinois employers. First, on February 19, 2021, the Illinois House of Representatives introduced House Bill 3066, which seeks to eliminate the use of non-competition and non-solicitation restrictive covenants against Illinois employees unless certain salary thresholds and notice requirements are met. Second, on February 22, 2021, the Illinois House of Representatives introduced House Bill 3449 (accessible [here](#)), which also seeks to amend the Illinois Freedom to Work Act.” [Full Article](#) *Proskauer*

NEW JERSEY



Legalized Recreational Cannabis and the New Jersey Workplace - What Employers Need to Know

“New Jersey Governor Phil Murphy signed legislation on February 22 enabling the constitutional amendment to legalize adult recreational use of cannabis and a companion decriminalization bill. Each law has significant employment implications, including a requirement in the enabling legislation that employers procure a “Workplace Impairment Recognition Expert” to conduct physical evaluations to determine marijuana use and impairment in the workplace.” [Full Article](#)

Morgan Lewis

MISSOURI



Missouri Employer Had Just Cause To Terminate Union Employee Who Tested Positive For Marijuana, Despite Lack of Workplace Impairment

“A Missouri-based manufacturer of animal pharmaceuticals had just cause to terminate a 37-year employee who tested positive for marijuana despite the union’s argument that the employee’s personal use of CBD oil and marijuana did not cause impairment at work. Virbac Corporation and International Brotherhood of Electrical Workers, Local 1, (January 10, 2020) (Horn, Arb.)” [Full Article](#)

Jackson Lewis

CALIFORNIA



California Supreme Court: Employee Time Punches Are Presumptive Evidence of Meal Period Compliance

“California’s Supreme Court issued an opinion today that will likely further increase employers’ risk of class action lawsuits arising out of meal periods. California law has many traps for unwary employers. This most recent decision is a reminder for employers of both the need to remain vigilant in this area and to expect continued expensive class litigation.” [Full Article](#)

Baker Hostetler

NEW YORK



New York Workers’ Compensation Board Announces New C-8.1 and C-8.4 Forms

“On occasion, the New York Workers’ Compensation Board issues general policy statements to provide updates on procedure and legal updates. As part of the CMS-1500 requirements, the Board recently addressed the soon-to-be-effective updates to the C-8.1 and C-8.4 forms—pending their elimination when OnBoard goes live.” [Full Article](#)

Goldberg Segalla