

# Weekly Digest

• November 16, 2021 •

Human Resources

## NLRB, DOL, and EEOC Announce Joint Initiative to Combat Worker Retaliation

"The National Labor Relations Board (NLRB), along with the U.S. Department of Labor (DOL) and the Equal Employment Opportunity Commission (EEOC), announced the creation of an interagency initiative to raise awareness of worker retaliation issues. Building upon their pre-existing interagency relationships, the NLRB, DOL, and EEOC seek to further protect workers from unlawful retaliatory conduct." [Full Article](#)

*Proskauer Rose*



## CMS Mandates New Standards for COVID-19 Vaccine

"On November 5, the Centers for Medicare and Medicaid Services (CMS) published an Interim Final Rule (IFR), amending its conditions of participation, conditions of coverage, and requirements for participation. These new requirements will apply, directly or indirectly, to most Medicare and Medicaid certified providers and suppliers, including, but not limited to, hospitals, ambulatory surgical centers, hospices, long-term care facilities, home health agencies, rehabilitation facilities, and others (together, the "Facilities"). Although 10 states have already filed a lawsuit against the COVID-19 mandates, Facilities should begin planning for implementation." [Full Article](#)

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## Infrastructure Bill Will Terminate Employee Retention Credit Retroactively

“Section 80604 of the bipartisan Infrastructure Investment and Jobs Act (H.R. 3684) amends Section 3134 of the Internal Revenue Code to terminate the employee retention credit for employers subject to closure for COVID-19 effective October 1, 2021. The legislation, which passed the House on November 5 (after passing the Senate on August 10), was presented to President Biden for signature on November 8. It is anticipated that the President will sign the bill soon. Once enacted, employers may not claim the credit with respect to wages paid after September 30, 2021.” [Full Article](#)

**Covington & Burling**



## Must State and Local Governments Follow OSHA's Vaccine and Testing Mandate?

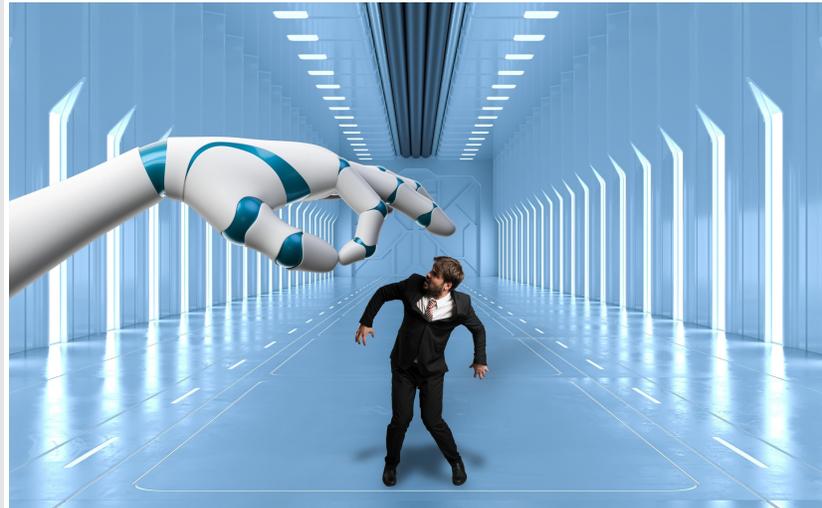
“On November 4, the Occupational Safety and Health Administration (OSHA) released an Emergency Temporary Standard (ETS) requiring, among other things, that employers with 100 or more employees mandate that all employees be vaccinated against COVID-19 or undergo weekly testing. Given the magnitude of this mandate, state and local governments may understandably be wondering whether the ETS requires them to enforce vaccine and testing mandates for their employees. While OSHA does not, generally, have jurisdiction over public sector entities, the answer may depend on whether the employer is in a Federal OSHA jurisdiction state or a state with its own OSHA-approved State Plan (“State Plan” states).” [Full Article](#)

**Frost Brown Todd**

## Important Updates on Federal Contractor Vaccine Mandate- Deadline Extended and Flexibility Added

“The Safer Federal Workforce Task Force issued updated Guidance on November 10th, confirming that the date a covered employee must be fully vaccinated is January 18, 2022. Federal contractors have been given additional breathing room to address recalcitrant covered employees who are resisting the vaccination mandate.” [Full Article](#)

**McCarter & English**



## Avoiding Bias in Hiring When Using AI To Recruit

“Accelerated by the COVID-19 pandemic, the innovation of Artificial Intelligence (AI) in hiring practices for remote and in-person workers is not without risk of disparate impact discrimination that has sparked the interest of the EEOC and may incur legal challenge in the courts.” [Full Article](#)

**Nelson Mullins**

# STATE & INTERNATIONAL COMPLIANCE

## NEW YORK



### New York Paid Family Leave Law Amended To Allow Leave to Care for Siblings

“New York Governor Kathy Hochul signed into law an amendment to the New York Paid Family Leave Law (NYPFL), which will allow employees to take leave to care for siblings with a serious health condition. Effective January 1, 2023, the amendment will expand to include an employee’s biological, adopted, step, and half-sibling(s).” [Full Article](#)

*Proskauer Rose*

## ILLINOIS



### Illinois Governor Gives Employers Greater Authority to Impose COVID-19 Requirements as a Condition of Employment

“On November 8, 2021, Gov. J.B. Pritzker signed Senate Bill 1169, which amends the Illinois Health Care Right of Conscience Act to clarify that the Act was not intended to apply to COVID-19 requirements. The amendment therefore gives employers greater authority to impose COVID-19 requirements as a condition of employment.” [Full Article](#)

*Little Mendelson*

## ALABAMA



### Alabama Employers Must Now Provide Vaccine Exemption Forms with Passage of SB9

“On November 5, 2021, Alabama Governor Kay Ivey signed into law a bill (**SB9**) that permits Alabama employees to claim an exemption from COVID-19 vaccination requirements for medical reasons or because of sincerely held religious beliefs if they make the request to their employer using a standard exemption form provided by the bill.” [Full Article](#)

*Phelps Dunbar*

## NEW JERSEY



### New Jersey State Contractors Required to Mandate Vaccination or Weekly COVID-19 Testing

“Under a newly signed executive order in New Jersey, all state contractors and subcontractors entering agreements with the state must include a clause that requires all covered workers to either provide adequate proof to the contractor that they are fully vaccinated or submit to at least weekly COVID-19 testing.” [Full Article](#)

*Morgan Lewis*

## CALIFORNIA



### California Employers: Your Online Job Advertisements Could Get Your Business in Hot Water

“On October 20, 2021, the Department of Fair Employment and Housing (DFEH) announced a new effort to enforce the Fair Chance Act (FCA) by using online search tools to capture statements in job advertisements that violate it, sending more than 500 notices to employers in violation in just one day. The DFEH indicated that it is documenting these violations and has provided an online toolkit as a resource for employers.” [Full Article](#)

*McDermott Will & Emery*