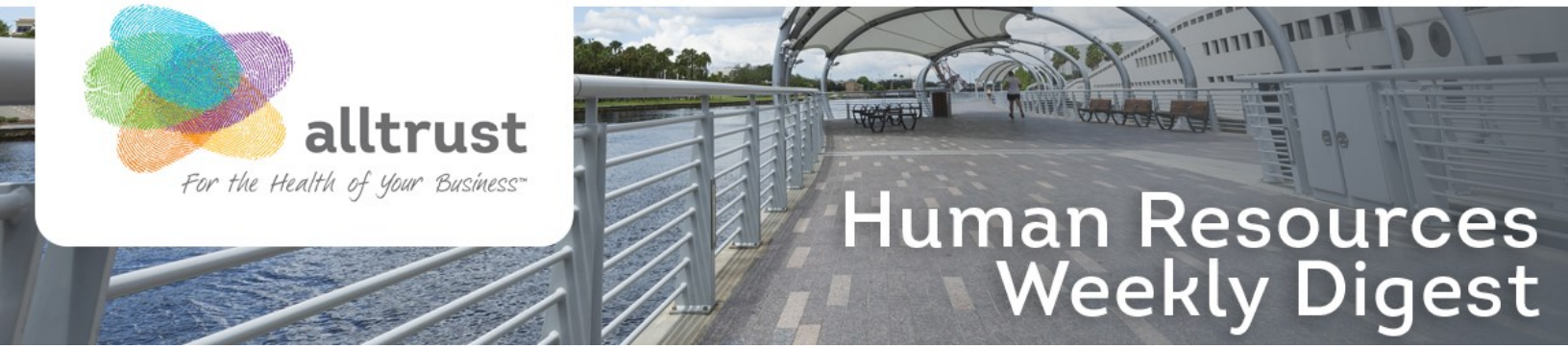
March 10, 2020



NLRB Issues Joint Employer Final Rule

"Right on the heels of the Department of Labor (DOL) issuing a new joint employer liability test under the Fair Labor Standards Act, the National Labor Relations Board (NLRB) has issued its own employer-friendly final rule for determining joint employer liability under the National Labor Relations Act (NLRA). The NLRB's final rule is scheduled to become effective ***April 27, 2020***. A determination of joint employer status under the NLRA can have serious consequences, including being required to participate in collective bargaining over the terms and conditions of employment for employees of another employer, or being liable for an unfair labor practice that the employer did not commit. The new NLRB standard should alleviate some of those concerns." **Full Article**

Akerman

Be Clear About What Accommodations Are Being Provided

"In *Kassa v. Synovus Financial Corp.*, a network support analyst with bipolar and intermittent explosive disorders requested to be excused from certain customer service calls and to continue being allowed to take short breaks that would enable him to control his anger. The U.S. Court of Appeals for the Eleventh Circuit found that answering customer service calls was an essential function of the analyst's job, and therefore his requested exemption was not reasonable. As to the short breaks, however, the employee testified that his prior supervisor had permitted him to take such breaks, with positive results, but that all such accommodations stopped when he was assigned to the new supervisor. Although the new supervisor testified that he allowed employees to take breaks when they became frustrated, the Eleventh Circuit found that the analyst's testimony should be given credit at this stage of the case, and refused to dismiss this denial of accommodation claim." **Full Article**

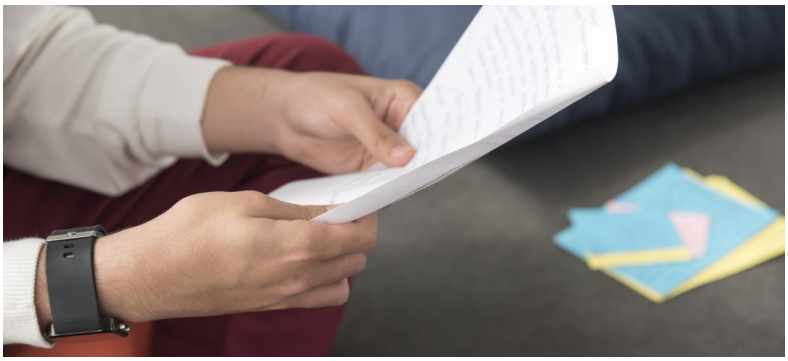
Shawe Rosenthal

In This Digest

Recent Incomplete COBRA Notice Leads to Lawsuits Against Three Employers

"When an employee leaves a business, they have an opportunity to extend their insurance coverage by taking advantage of the Consolidated Omnibus Budget Reconciliation Act (COBRA). At the time of their departure, employers are required to give notice, a fairly standard process, that the departing employee is eligible for COBRA coverage, what it would cost, and how to sign up for this coverage. Recently in Florida, however, three class action lawsuits have been filed which allege that the employer's COBRA notice did not comply with regulations." **Full Article**

Hall Benefits Law



No Pretext Where Employer Had "Honest Belief" in Employee's Misconduct

"In *Robinson v. Town of Marshfield*, a fire chief retired following an investigation in which it was concluded that he had violated conflict-of-interest laws. The fire chief argued that the town's concerns about his conflicts of interest were a pretext for age discrimination, because there was evidence that he had complied with the laws. The First Circuit, however, held that the issue was not whether a jury could have found that he complied with the laws, but whether the employer honestly believed that he had violated those laws. Thus, this case offers employer's reassurance that taking adverse actions based on an honest belief that the employee engaged in misconduct, as demonstrated by reasonable actions to verify such misconduct, will not violate anti-discrimination laws." **Full Article**

Shawe Rosenthal

Coronavirus Update: Employer Response, Contract Performance, and Public Company Disclosure Guidance

"COVID-19, a disease caused by the novel coronavirus, has now spread to at least 70 countries, including the United States. Our thoughts are first and foremost with the families of those directly impacted. In addition to the human cost, the virus has impacted transportation, manufacturing, supply chains and public markets, and may dramatically impact the global economy. These disruptions raise significant legal issues, and we are advising companies on a wide range of matters as they evaluate risks and develop plans to address these impacts." **Full Article**

Fenwick & West

U.S. Employers Weigh EEOC Guidance in Responding to Coronavirus

"As the coronavirus disease 2019 (COVID-19) continues to spread, U.S. employers considering taking preventative measures to reduce transmission should bear in mind employment laws that may restrict certain precautions, including the Americans with Disabilities Act ("ADA"). Basic precautionary measures like promoting washing hands, encouraging employees to stay home when they are sick, and other good hygiene practices recommended by the Centers for Disease Control and Prevention ("CDC") are unlikely to raise concerns under the ADA. Indeed, recent guidance from the Equal Employment Opportunity Commission ("EEOC") makes clear that the CDC's guidelines and suggestions for employers regarding COVID-19 do not violate the ADA." **Full Article**

Bryan Cave

STATE & INTERNATIONAL COMPLIANCE

OREGON

Oregon Employers Must Ensure Full 30-Minute Meal Breaks Are Taken

"On November 14, 2019, the Oregon Court of Appeals in Maza v. Waterford Operations, LLC, 300 Ore. App. 471 (Or. Ct. App. 2019), held that employers must not only make meal breaks available to hourly employees, they must also monitor and ensure employees take meal breaks. An employer cannot simply rely on a handbook provision that hourly employees are authorized to take an unpaid 30-minute meal period. This appellate decision could have important consequences for Oregon employers who employ individuals that work between six and eight hours per day. These employers should review their policies and procedures to avoid potentially substantial liability." **Full Article**

K&L Gates

NEW JERSEY

New Jersey Employers with Twenty or More Employees Must Offer a Pre-Tax Transportation Fringe Benefit

"New Jersey enacted Senate Bill No. 1567 (the "Senate Bill"), which requires every employer in New Jersey that employs at least 20 persons, excluding employees covered by a collective bargaining agreement, to offer a pre-tax transportation fringe benefit to all of its employees in New Jersey, effective as of March 1, 2020. A pre-tax transportation fringe benefit allows an employee to set aside wages on a pre-tax basis to purchase eligible transportation services, such as transit passes and commuter highway vehicle travel, as consistent with Section 132(f)(1) of the Internal Revenue Code. An employer that is found to be in violation of this requirement is liable for a civil penalty ranging from $100 to $250 for the first violation. An employer has 90 days to correct the violation before such penalty is imposed. After 90 days, a $250 penalty will be imposed for each additional 30-day period during which an employer fails to offer this fringe benefit." **Full Article**

Haynes & Boone

CALIFORNIA

Judge Explains Her Decision to Block California's Ban on Mandatory Arbitration

"California employers breathed a bit easier once a federal judge pressed the indefinite pause button on the newly enacted law aimed at preventing employers from utilizing mandatory arbitration agreements. Now, a few weeks later, U.S. District Court Judge Kimberly J. Mueller issued an order fully explaining her reasons for granting the preliminary injunction that blocked AB 51. The 36-page order, issued on February 7, said that that the law not only would have placed arbitration agreements on unequal footing with other contracts, but it would have interfered with the stated objectives of the Federal Arbitration Act (FAA)." **Full Article**

Fisher Phillips

VIRGINIA

Virginia Becomes the Fourth State to Ban Discrimination on the Basis of Hairstyles

"On March 3, 2020, Virginia Governor Ralph Northam signed into law HB 1514, which amends the Virginia Human Rights Act to prohibit discrimination on the basis of hairstyles. Specifically, the bill amends the definition of discrimination "because of race" or "on the basis of race" to include discrimination "because of or on the basis of traits historically associated with race, including hair texture, hair type, and protective hairstyles such as braids, locks and twists." **Full Article**

Proskauer

PENNSYLVANIA

Pittsburgh Paid Sick Days Act Going Into Effect Amidst Uncertainty

"On March 15, 2020, the long-awaited Paid Sick Days Act of the City of Pittsburgh (the Act) will go into effect. Originally enacted by the city in 2015, it took a 2019 decision of the state Supreme Court to re-define the authority of a home-rule municipality to create regulations binding private employers before the Act was allowed to go forward. Guidelines were then drafted, and an effective date set. However, with uncertainty regarding the details of the Act and its enforcement remaining, the city has announced that it will not enforce the penalty provisions of the Act for at least one year." **Full Article**