



Boulder Area Human Resource Association

BAHRA Legal Minute June 2021

Chuck Passaglia
Employment Law Solutions, Inc.
www.defendwork.com

Colorado Legislative Session Ended

- » **SB21-176, Protecting Opportunities And Workers' Rights (POWR) Act – sweeping changes to state anti-discrimination law – postponed indefinitely**
- » SB21-080, protecting businesses from liability for any damages resulting from COVID-related loss or injury postponed indefinitely
- » HB21-1065, adding terms "gender expression" and "gender identity" to state anti-discrimination law signed into law
- » SB21-039, eliminating subminimum wage employment, passed, sent to Governor for signature

Key Takeaways from Vaccine Guidance

- » On May 28, 2021, the EEOC updated its vaccine guidance
 - » EEO laws do not prevent employers from requiring employees who are “physically present in the workplace” to be vaccinated, subject to duty to reasonably accommodate employees not vaccinated due to a disability or a sincerely held religious belief, practice, or observance; pregnant persons; and vaccinated persons who are still immunocompromised
 - » Can require, but must maintain confidentiality of, vaccine proof
 - » **Incentives** for vaccines "administered by the employer or its agent" must not be "so substantial as to be coercive"; can offer incentives to show proof; does not address incentives to employees who can't vaccinate for medical or religious-based reasons.

OSHA Updated Guidance

- » On June 10, 2021, OSHA updated its January 29, 2021 guidance
 - » Most employers "no longer need to take steps to protect their workers from COVID-19 exposure in any workplace, or well-defined portions of a workplace, where all employees are fully vaccinated."
 - » Vaccination is the key in a multi-layered approach to protect workers.
 - » Grant paid time off for employees to get vaccinated.
 - » Provide unvaccinated and otherwise at-risk workers with face coverings or surgical masks, unless their work requires other PPE.

Misuse of Work Computers

- » On June 3, 2021, in *Van Buren v. United States*, a 6-3 majority of the U.S. Supreme Court adopted a **restrictive view** of the Computer Fraud and Abuse Act (CFAA) use against employees
 - » Employers invoke CFAA against employees who misuse a work computer, e.g., e-mail confidential information to a competitor.
 - » Supreme Court held that the CFAA “covers those who obtain information from particular areas in the computer—such as files, folders, or databases—**to which their computer access does not extend**. It does not cover those who . . . have improper motives for obtaining information that is otherwise available to them.” Can’t bring CFAA claim against employees with unlimited access, but only those who exceed authorized access.

Two words: Pet insurance

- » New HR talent lure? Growth of pet insurance as a benefit option for employees
- » We love our pets; pets support our mental health; pet adoptions soared during pandemic; Americans spent \$30 billion on vet care in 2020
- » Future force considerations: Millennials have passed Baby Boomers as the largest adult generation and as pet owners; **3 in 4 Millennials own a pet.** Generation Z the same.



Finally, HR Headlines

“Work looks nothing like it did two years ago. Slack’s new emojis prove it.” *Fast Company*, June 3, 2021.

- » Looks like work has changed. Slack released 12 new emojis – including a “**me time**” face mask, **bunny slippers**, to-go coffee cup, and a melting time clock – to reflect the hybrid nature of work in the post-pandemic world.



Thanks!

Questions?

You can contact me at:

- » cpassaglia@defendwork.com
- » @hrdevil
- » 303.915.6334

