



Boulder Area Human Resource Association

BAHRA Legal Minute May 2021

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Surprise, Fully Vaxxed, No Mask

- » On May 13, 2021, CDC announced that persons fully vaccinated against COVID-19 no longer need to wear a face covering or practice physically distancing *in any setting*.
 - » Created confusion: CDC does not govern work; OSHA has not yet ruled; **employers should proceed with caution**; localities/businesses may have own rules or sensitivities
 - » Beware: two classes of employees? Those not fully vaccinated, or whose vaccination status is uncertain, may be required to continue to wear face masks and maintain social distancing
 - » Determining proof of vaccination, particularly from customers, clients and vendors, may present logistical difficulties

Federal Paid Family Leave? Maybe

- » In his first address to Congress, President Biden proposed the “American Families Plan.”
 - » 12 weeks of **paid** FMLA leave, safe leave and 3 days’ paid bereavement leave each year
 - » Funded through income tax, capital gains and dividend tax increases on the wealthy -- paying employees 2/3 average weekly wage (80% for lowest wage workers) up to \$4,000/month.
- » Program would be phased in over 10 years. No bill drafted yet. Expect significant opposition.
- » Keep in mind. CO paid FMLA commences 2024. Nine states – CA, CT, HA, MA, NJ, NY, OR, RI, WA – have paid leave programs

\$15.00 Minimum Wage for Fed Contractors

- » On April 27, 2021, President Joe Biden signed an executive order requiring federal contractors and subcontractors to pay a \$15.00 minimum wage by January 30, 2022.
- » The new EO applies to:
 - » procurement contracts for services or construction;
 - » contracts for services covered by the Service Contract Act;
 - » contracts for concessions; and
 - » contracts “entered into with the Federal government in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public”

HR Crystal Ball: What can we expect next?

- » EEOC expects to issue vaccine incentive guidance “soon”
- » OSHA expects to issue an Emergency Temporary Standard with COVID-specific safety rules “soon.” OSHA and its state agency counterparts have received > 60,000 COVID-related safety complaints; Trump Administration refused to issue virus-specific regulations
- » Department of Education will “review all existing regulations, orders, guidance documents, policies, and any other similar agency actions,” regarding Title IX, including campus assault regulations which became effective August 14, 2020



Some interesting cases for employers

- » Website accessibility and the ADA. 11th Circuit ruled that a company's website is not a "place of public accommodation" and its inaccessible website – lacked an auxiliary aid that would enable the website to be read aloud by screen-reader technology for the visually impaired -- is not necessarily equal to the denial of goods or services in violation of Title III of the ADA. *Gil v. Winn-Dixie Stores, Inc.* (11th Cir. April 7, 2021).
- » Threats on social media. 3rd Circuit upheld dismissal of race discrimination claims by a bank employee fired for commenting on social media account about a person who drove through a crowd of demonstrators protesting the shooting of an African-American male by police officers, "[t]otal BS. He should have taken a bus to plow thru." Social media account identified her employer. *Ellis v. Bank of New York Mellon Corp.* (3rd Cir. March 4, 2021).

Finally, HR Headlines

- » “A third of Basecamp’s workers resign after a ban on talking politics.” *The New York Times*, April 30, 2021.
 - » In April 2021, Chicago tech company Basecamp banned employees from discussing politics or partaking in social “activism” on company time; and dropped “committees, obsequious peer-performance reviews, and wellness and other paternalistic benefits,” including the company’s newly-formed DEI council
 - » One week later, at least 19 of 57 Basecamp employees publicly announced their resignation from the company accepting three to six-month severance packages with more departures expected
- » Cryptocurrency company Coinbase did something similar in September 2020

Thanks!

Questions?

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