

# Weekly Digest

• December 2, 2021 •

Human Resources

## Given deadlines set by Sixth Circuit, ETS likely stayed until at least December 10, 2021

“Earlier this month, the Occupational Safety and Health Administration (“OSHA”) issued its “COVID-19 Vaccination and Testing; Emergency Temporary Standard” (the “ETS”) requiring employers of 100 or more employees to implement policies requiring employee vaccination or enhanced safety measures for unvaccinated employees (including wearing face coverings and weekly COVID-19 testing). ETS was subject to over 30 petitions for review in the federal circuit courts and was quickly stayed by the United States Court of Appeals for the Fifth Circuit.” [Full Article](#)

*Bracewell LLP*



## Build Back Better Act Threatens Class and Collective Action Waivers

“The U.S. House of Representatives on November 19, 2021, passed the Build Back Better Act (H.R. 5376), ambitious climate protection/social spending legislation that now awaits deliberation in the Senate. Tucked inside the massive bill are numerous provisions of interest to employers. For example, there is a provision that effectively may prohibit employers from adopting class and collective action waivers.” [Full Article](#)

*Jackson Lewis*

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## Employer Considerations for Monitoring a Remote Workforce

“Now that working from home has become the norm rather than the exception, employers have grappled with best practices for ensuring and monitoring employee productivity. The market for employee surveillance products includes keystroke counters, facial recognition software, audio and video recording technology, and GPS for location detection, and that market is booming. In fact, Hubstaff and Teramind—two competitors within the workforce monitoring software arena—reported that their sales have tripled since the onset of the pandemic.” [Full Article](#)

*Ice Miller LLP*



## DIVERSITY IN THE WORKS: Recognizing and Stopping Microaggressions in the Workplace

“‘Death by a thousand cuts.’ This is what microaggressions feel like to the impacted individual. Dr. Derald Wing Sue, a Columbia University professor and pioneer in the field of cross-cultural studies defines microaggressions as “brief and commonplace daily verbal, behavioral, and environmental indignities, whether intentional or unintentional, that communicate hostile, derogatory, or negative racial slights and insults to the target person or group.” [Full Article](#)

*Ford Harrison*

## DOL Announces Final Rule to Increase Minimum Wage for Federal Contractors

“On April 27, 2021, President Biden signed Executive Order 14026, ‘Increasing the Minimum Wage for Federal Contractors,’ which raises the hourly minimum wage paid for workers on certain federal contracts to \$15. In July, the Department of Labor (DOL) issued a proposed rule to implement the Executive Order. Today, the DOL announced a Final Rule implementing the increased minimum wage.” [Full Article](#)

*Phelps Dunbar*



## New EEOC Initiative on Use of AI in Hiring Decisions

“According to the EEOC’s press release, this new initiative will focus on ensuring that AI and algorithmic decision-making tools used in hiring and other employment-related decisions comply with federal civil rights laws, such as Title VII of the Civil Rights Act of 1964, as amended, which prohibits the use of neutral selection procedures that disproportionately screen out minority groups or women unless proven to be job related and consistent with business necessity.” [Full Article](#)

*Akin Gump Strauss Hauer & Feld LLP*

# STATE & INTERNATIONAL COMPLIANCE

## NEW YORK



### Can I Read My Employee's Emails? New York Law Will Require Advance Notice Effective May 2022

"From time to time, situations arise that prompt an employer to want to review an employee's emails and other electronic communications. Effective May 7, 2022, all New York employers, regardless of size, will need to provide written notice to new hires before engaging in 'electronic monitoring.'" [Full Article](#)

*Lowenstein Sandler*

## FLORIDA



### Florida Law Prohibits Vaccination Mandate Without Five Specific Individual Exemptions

"On November 18, 2021 Florida Governor Ron DeSantis signed legislation banning private employers, regardless of size, from mandating COVID-19 vaccinations unless several exemptions are offered to employees." [Full Article](#)

*Cozen O'Connor*

## TENNESSEE



### New Tennessee Law Prohibits Many Employers from Requiring Proof of COVID-19 Vaccination Status, Creates Exemption Process for Federal Contractors

"On November 12, Tennessee Gov. Bill Lee signed an omnibus COVID-19 bill into law and as a result, most Tennessee employers cannot mandate their employees and applicants show proof of COVID-19 vaccination status." [Full Article](#)

*Bradley Arant Boult Cummings LLP*

## WASHINGTON



### Class Action Lawsuit Filed Against Washington State's Long Term Care Act

"A class action lawsuit has been filed against Washington State's Long-Term Services and Supports Trust Act (the "Act") that requires each worker in Washington to contribute \$0.58 per \$100 (0.58%) of wages to a trust set aside to pay long-term care benefits for its residents." [Full Article](#)

*Seyfarth Shaw*

## CALIFORNIA



### Getting Ready for the Holidays and Pay

"Under California law, hours worked on holidays, Saturdays, and Sundays are treated like hours worked on any other day of the week. In other words, there is no requirement that employers pay an employee a special premium for work performed on a holiday, Saturday, or Sunday, other than the overtime premium required for work performed in excess of eight hours in a workday or 40 hours in a workweek." [Full Article](#)

*Jackson Lewis*