

# Weekly Digest

• June 28, 2023 •



## Human Resources

### Whose Text is it, Anyway? Maybe Yours!

"Must an employer preserve business-related text messages between employees using their personal cell phones? Can a judge punish an employer for failing to do so?" [Full Article](#)

*Constangy, Brooks,  
Smith & Prophete LLP*



### If At First You Don't Succeed: NLRB Readopts Highly Controversial "Independent Contractor" Standard

"Last week, the National Labor Relations Board (NLRB or "Board") decided in *The Atlanta Opera, Inc.*, 372 NLRB No. 95 (2023) to make it easier to classify workers as "employees," who are covered by the National Labor Relations Act (NLRA), as opposed to "independent contractors," who are not. The standard set forth by the Board mirrors the one the NLRB drew up a few years ago, which was subject to court criticism and short-lived." [Full Article](#)

*Hunton Andrews Kurth*

## In This Digest

### PAGE 1

#### Whose Text is it, Anyway? Maybe Yours!

*By, Constangy, Brooks,  
Smith & Prophete, LLP*

#### If At First You Don't Succeed: NLRB Readopts Highly Controversial "Independent Contractor" Standard

*By, Hunton Andrews Kurth*

### PAGE 2

#### How Long Does the IRS Have to Challenge an ERC Refund?

*By, Meadows, Collier, Reed,  
Cousins, Crouch & Ungerman, LLP*

#### Retailers Must Ensure Compliance with Federal, State Child Labor Regulations

*By, Jackson Lewis P.C.*

#### When Tunes Turn Toxic: Ninth Circuit Decision Recognizes the Impact of Offensive Music in the Workplace

*By, Phelps Dunbar LLP*

#### Ready, Set, Go — It's Time for the PWFA

*By, Bradley Arant  
Boult Cummings LLP*

### PAGE 3

#### State Compliance Updates

## How Long Does the IRS Have to Challenge an ERC Refund?

“For employers who have either filed for or have received payment for Employee Retention Credit (ERC) claims, the significant surge in IRS examinations of ERC claims is similar to the shark in the movie Jaws. You know he is out there, but you don’t know where he will bite and when.” [Full Article](#)

*Meadows, Collier, Reed, Cousins, Crouch & Ungerman, LLP*



## Retailers Must Ensure Compliance with Federal, State Child Labor Regulations

“The end of the school year and the beginning of summer will bring a surge of school-age workers into the workplace as government scrutiny over employment of young workers is increasing. The Department of Labor (DOL) and Department of Health and Human Services (HHS) have a Memorandum of Agreement to combat unlawful child labor practices.” [Full Article](#)

*Jackson Lewis P.C.*

## When Tunes Turn Toxic: Ninth Circuit Recognizes the Impact of Offensive Music in the Workplace

“In recent years, listening to music while working has become routine and prevalent in many workplaces, with supporters of this trend claiming it improves morale, increases productivity, promotes team bonding and reduces stress. With the advent of on-demand music streaming on mobile devices, employees now have increased access to an unlimited range of music genres, allowing them to play any song they prefer at the press of a button.” [Full Article](#)

*Phelps Dunbar LLP*



## Ready, Set, Go — It’s Time for the PWFA

“It’s time for the Pregnant Workers Fairness Act (PWFA). We’ve been warning you that the PWFA is coming and in less than a week, on June 27, the PWFA goes into effect. We’re still waiting on the EEOC’s proposed regulations but that should not stop you from complying, because on June 27 employees may begin filing EEOC charges for events occurring on or after that day.” [Full Article](#)

*Bradley Arant Boult Cummings LLP*

# STATE COMPLIANCE UPDATES

## ILLINOIS



### Employers Beware: Slew of New Illinois Employment Laws Passed and Poised to Take Effect

"For this entire 2023-2024 Illinois legislative term, we have been closely watching dozens of proposed employment bills make their way through the Illinois Legislature. In the weeks of May 8 and 15, 2023, seven of these bills passed both houses and await Governor J.B. Pritzker's signature, which we have no doubt will occur." [Full Article](#)

*Ford Harrison*

## NEW YORK



### New York Inching Toward Ban of Employee Non-Compete Agreements

"The New York State Assembly has joined the State Senate in passing legislation to prohibit non-compete clauses in employment contracts. The bill now heads to the Governor and, if signed into law, would void any agreement containing a prohibited non-compete restraint and subject employers to potential litigation and liquidated damages." [Full Article](#)

*Seyfarth Shaw LLP*

## NEW JERSEY



### Expansive NJ WARN Act Amendments on Mass Layoffs — Here to Stay

"Employers should be aware that significant changes to the Millville Dallas Airmotive Plant Job Loss Notification Act ('NJ WARN') took effect on April 10, 2023. The amendments broaden the definition of a mass layoff, create a mandatory severance pay requirement for employers, and increase notice requirements and related penalties." [Full Article](#)

*Montgomery McCracken Walker & Rhoads LLP*

## NEW YORK



### Size Matters: NYC's New Height and Weight Legislation Reshapes Workplace Protections

"On May 26, 2023, Mayor Eric Adams signed into law a bill that expands New York City's anti-discrimination laws, adding height and weight as protected characteristics under the New York City Human Rights Law." [Full Article](#)

*Venable LLP*

## MINNESOTA



### Minnesota Governor Signs Ban on Non-Compete Agreements, Statewide Paid Sick Leave, and Nursing Mothers Accommodations into Law

"The labor funding and economic development law significantly changes various Minnesota employment-related laws, including a ban on non-compete agreements entered into on or after July 1, 2023, mandatory paid sick leave, pregnancy and nursing mothers accommodations, and worker safety protections." [Full Article](#)

*Koley Jessen*