SHAWE ROSENTHAL LLP

E-UPDATE

December 30, 2021

RECENT DEVELOPMENTS

Where All the Federal Vaccine and Other COVID Mandates Stand Now

The Biden Administration has issued a number of COVID-related mandates applicable to employers, including: (1) OSHA's vax-or-test Emergency Temporary Standard (ETS) for larger employers; (2) OSHA's ETS for healthcare employers; (3) Executive Order 14042 requiring vaccination of federal contractor employees; and (4) the CMS vaccination mandate for employees of Medicare- and Medicaid-certified health care providers. All of these mandates were immediately challenged, and the status of these mandates is all over the place. As of the end of December, here's where things stand:

OSHA's Vax-or-Test ETS: In effect. The federal Occupational Safety and Health Administration's ETS requires employers with 100+ employees (1) to mandate vaccinations or weekly testing/face coverings for their workforce and (2) to provide paid time to get vaccinated and recover from any adverse effects. There are a number of technical requirements with which employers must comply, as discussed in our November 4, 2021 E-lert. Immediately following the issuance of the ETS in November, the U.S. Court of Appeals for the Fifth Circuit issued a nationwide stay of the ETS. As we reported in our December 18, 2021 E-lert, the stay was lifted by the Sixth Circuit on December 17, meaning that the ETS is back in effect. OSHA then issued a statement that the original deadlines have been extended from December 6, 2021 to January 10, 2022 for all requirements but testing, which now has a deadline of February 9, 2022 (instead of January 4). However, a number of parties immediately requested the U.S. Supreme Court to reinstate the stay. The Supreme Court has set a hearing for January 7, 2022 – which means that the ETS continues to be in effect unless and until the Supreme Court issues a stay. If it decides to do so, that will occur after the hearing. In the meantime, covered employers should take steps to come into compliance with the ETS.

OSHA's Healthcare ETS: Withdrawn. As we detailed in our June 15, 2021 E-lert, the ETS for healthcare employers imposed significant responsibilities and obligations on those employers in the context of the COVID pandemic. An ETS normally lasts for six months, at the end of which OSHA will take one of three actions: issue a regular standard, extend the ETS, or allow it to lapse. The six-month period ended on December 21, 2021, and on December 27, 2021, OSHA announced that it had withdrawn the Healthcare ETS. OSHA is working toward a permanent standard, and strongly urges healthcare employers to continue to comply with the requirements of the Healthcare ETS, stating that such compliance would be considered evidence of compliance with the general duty clause and other general standards.

Federal Contractor Vaccination Mandate: Not in effect. President Biden issued an Executive Order requiring agencies to include a clause in certain new, extended or renewed contracts, and encouraging such clauses in other contracts, compelling contractors and subcontractors to comply

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with guidance from the Safer Federal Workforce Task Force. Such guidance currently mandates vaccinations for almost all contractor employees. Agencies immediately began incorporating the clause into both new and existing contracts. Again, lawsuits were filed, and a federal court in Georgia issued a preliminary injunction, blocking the mandate nationwide. The U.S. Court of Appeals for the Eleventh Circuit has rejected the Biden administration's request to lift the preliminary injunction. The matter is not yet before the Supreme Court, although it is likely headed there. At this time, the Task Force has stated that it will take no action to enforce the clause in the fifty states, D.C. and various U.S. territories.

Note that contractor employees who are onsite at federal facilities must comply with federal agency COVID-related safety protocols, which may require vaccination.

CMS's Final Rule Requiring Vaccination: Partially in effect. The Center for Medicare and Medicaid Services issued an interim final rule requiring Medicaid and Medicare-certified healthcare providers to mandate vaccination against COVID-19 for all applicable staff. Again, multiple lawsuits were filed, and various courts have granted injunctions covering certain states. A nationwide injunction in one case was subsequently limited to the plaintiff states by a federal appellate court. Thus, the final rule is blocked in half the states, but effective in the rest. The Biden administration has asked the Supreme Court to stay the preliminary injunctions, which would allow the rule to take effect everywhere. The Supreme Court has set January 7 as the hearing date on the request to lift the stays, the same date set for the OSHA vax-or-test ETS hearing. On December 28, 2021, CMS announced that it would delay compliance dates in the states in which the rule remains effective; employees must receive their first dose of a vaccine by January 27, 2022, and must complete their vaccination series by February 28, 2022.

More Vax-or-Test ETS Guidance from OSHA on Over-the-Counter Tests

Now that the stay on the vax-or-test ETS has been lifted, the Occupational Safety and Health Administration has plunged back into its implementation activities, including updating the FAQs. Of particular interest, OSHA has added a number of questions addressing the use of over-the-counter (OTC) tests.

The ETS allows for the use of COVID tests that have been cleared, approved or authorized by the Food and Drug Administration, which would include certain OTC tests. However, the ETS also provides that such tests may not be self-administered and self-read unless observed by the employer or an authorized telehealth proctor. The ETS further requires employers to maintain a record of each test result, but it was not clear how this could be accomplished for OTC tests.

The new FAQs provide the following clarifications:

- Certain OTC tests may be digitally read and produce a date and time stamped result (e.g. results are available through an app, QR code, or RFID). Such tests are not considered to be "self-read" and thus may be used without requiring employer/proctor observation.
- Although some test kits include two tests that are supposed to be used serially several days apart, per FDA authorization, OSHA will consider the result from a single test to meet the requirements of the ETS.
- The employee cannot submit a photo of their self-administered and self-read OTC test result, as that is not a substitute for employer/proctor observation.

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- Employers may observe more than one OTC test at the same time – but no more than they can actually validate with confidence. Proctors may do so only if permitted by the FDA's authorization.
- Employer/proctor observation must be done in real time. Videos of the test reviewed after the fact are not acceptable.
- Employer observation may be done through a live streaming video conference program, like Zoom, Microsoft Teams, or Skype.
- Documentation of an observed OTC test may be done through a written statement (e.g., a notation indicating the date and time observed, the observer, and the results), a photograph of the test result, or a video of the test result, if documented and recorded by the employer-observer at the time the test is conducted or observed.

CDC Provides Guidance to Employers on Marijuana Use by Employee Drivers

The National Institute of Occupational Safety and Health (NIOSH), a division of the Centers for Disease Control and Prevention (CDC), recently issued guidance to employers on marijuana and workplace motor vehicle safety programs. Noting the increase in state laws legalizing medical and recreational use of marijuana, as well as the impact on a driver's cognitive abilities, NIOSH offers the following "best practices" for employers:

- Develop a comprehensive marijuana policy that accounts for applicable state laws.
- If a zero-tolerance policy for marijuana is not possible, the policy should still prohibit the use or being under the influence of marijuana while at work.
- Partner with a knowledgeable attorney to review the policy and provide feedback.
- If drug testing is part of the policy, outline specifics to include: when testing will occur, the threshold for impairment, consequences of a positive test, and the use of a trained medical professional to interpret test results.
- In addition, NIOSH encourages employers to inform employees that cannabidiol product labeling is not regulated and is frequently inaccurate, meaning that the use of CBD products could result in a positive test for marijuana use.
- Provide access to support for employees with drug problems, either through in-house programs or referrals to local resources.
- Educate drivers on: the effects of marijuana and other drugs on safe driving and cognitive abilities; the company's marijuana policy (tailored for applicable state laws); and similar impairments that can result from fatigue, medications, and certain medical conditions.
- Train managers and supervisors on their responsibilities under the policy, as well as how to recognize and document signs of impairment.
- Monitor the relevant state marijuana laws and any improved methods for determining impairment. Update policies as needed.

TAKE NOTE

OFCCP Will Require Annual AAP Verification by Federal Contractors. The Office of Federal Contract Compliance Programs has announced the creation of an online contractor portal through which service and supply (but not construction) contractors and subcontractors: (1) are required to annually certify whether they have developed and maintained an affirmative action program for each

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establishment and/or functional unit; and (2) must submit their AAPs during compliance evaluations by the OFCCP. Portal registration opens on February 1, 2022, and contractors/subcontractors should submit the required certification between March 31 and June 30, 2022.

We note that, while the OFCCP maintains that it has the authority to establish the certification and submission requirements, some legal commentators question that authority. Nonetheless, the Government Services Administration ("GSA") does have the authority to require contractors to certify compliance with the AAP requirements at the time of their bid. In addition, OFCCP has asserted that those who do not certify or who state that they have not developed the required AAP may be more likely to be selected for a compliance evaluation, and may even be debarred. Employers will need to choose whether to comply with the OFCCP's requirements, or not on the grounds that such requirements are not enforceable. What they must not do, however, is falsely certify that they are in compliance if they are not. That is a criminal and civil offense subject to serious penalties.

NLRB Signals the Likely Return of the Micro-Unit. The National Labor Relations Board is inviting briefs in a case where a union seeks to represent a small pocket of employees within an employer's larger, functionally integrated operation. The Biden Board is expected to overturn the 2017 decision in *PCC Structurals* and return to the Obama-era standard under *Specialty Healthcare* requiring an employer to establish that additional employees it seeks to add to the union's preferred petitioned-for unit have an "overwhelming community of interest" with the petitioned-for unit.

In practice, this elevated burden is virtually impossible to meet. Consequently, unions will organize smaller groups of employees who support the union with little concern that the employer may be able to add to the voting unit other employees who share something less than the overwhelming community of interest with the union's preferred bargaining unit.

Retaliation May Occur Even If the Employee Is Unaware of It. In a warning to employers, the U.S. Court of Appeals for the Eleventh Circuit found that an employer's actions could constitute illegal retaliation for an employee's discrimination complaint, even if she did not know of it.

In *Smith v. City of Pelham*, an employee filed a discrimination complaint against her supervisor. Less than a week later, he ordered a forensic search of her work computer. The search revealed nude pictures of the employee and others (which were apparently downloaded by accident when she connected her phone to her computer for work reasons), as well as evidence that she was using the computer to work a second job. She was then terminated for violation of the City's computer use policies. She sued, alleging, among other things, retaliation for her discrimination complaint. The trial court dismissed her claims, finding that there was no retaliation since the employee did not know of the search.

As the Eleventh Circuit noted, Title VII prohibits an employer from retaliating against an employee for opposing an unlawful employment practice, such as by filing a discrimination complaint. Retaliation includes any adverse action that might dissuade an employee from making or supporting a discrimination complaint. And, according to the Eleventh Circuit:

> To hold that an action cannot be adverse if the employee is unaware of that action is without legal support. And that logic does not make sense when applied in other scenarios. For example, what if an accused supervisor, who is aware of an

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> internal complaint of discrimination against him, blackballed the complaining employee so that she was then excluded from certain workplace privileges, like a promotion, a bonus, a favorable transfer, etc.? Is it fair to then say that no retaliation occurred because the employee was unaware that the supervisor was tarnishing her reputation on the sly?

The court further noted that there seemed to be no real basis for the search, and that the supervisor had no explanation for why he failed to follow the progressive disciplinary process. The fact that the search resulted in the discovery of the employee's misconduct did not excuse the retaliatory nature of the search in the first place.

This case provides a good reminder to employers – and more specifically, managers and supervisors – to be careful when dealing with employees who have, rightly or wrongly, asserted good faith claims of discrimination or harassment. Any actions that are taken that may result in discipline or even termination should be based on legitimate reasons and consistent with how other employees are/have been treated. And the fact that an employee may not know of the action does not prevent it from being retaliatory.

Federal Contractors Must Ban the Box. The Fair Chance to Compete for Jobs Act of 2019 (which was part of the National Defense Authorization Act) took effect on December 20, 2021 and requires agencies to include a clause in federal contracts that prohibits contractors from requesting, either verbally or in writing, the criminal history of an applicant for work under a federal contract until after a conditional offer of employment has been made. (The "box" refers to the box on many employment applications, which must be checked if the applicant has a criminal record).

There are exceptions where a criminal background check prior to the offer is required by law, the position is related to law enforcement or national security duties, or the position has access to classified information. Regulations implementing this already-effective requirement are to be issued in January 2022.

Notably, federal contractors, like other employers, may also be governed by the steadily increasing number of state or local ban-the-box laws.

Do Not Replace an Employee Based on Performance with One Rated as Worse. That was the rather obvious lesson learned by an employer in a recent sex discrimination case. But there are more subtle lessons here regarding an employer's ability to establish performance expectations and documentation.

In *Sempowich v. Tactile Systems Technology, Inc.*, an award-winning female sales manager with strong annual evaluations was reassigned to another position with fewer opportunities and management responsibilities, only weeks after she was given yet another sales award, a discretionary equity grant, and a salary increase. The asserted reason for her transfer was her failure to meet the company's performance goals over the course of several years. But she was replaced by a male who consistently received lower annual performance ratings. She sued for sex discrimination. The trial court dismissed her lawsuit, but the Fourth Circuit reversed the ruling, finding that there was, in fact, evidence to support her claims of sex discrimination.

While an employer is free to set its performance expectations and to determine whether an employee is meeting them, in this case the Fourth Circuit questioned whether the stated expectations were

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legitimate and genuine. It noted that if an employer truly believes an employee is performing poorly on critical metrics, it is unlikely that it would rate her highly, or give her awards, a discretionary equity grant and a salary increase. And while the employer argued that these were for her prior performance (and inconsistently argued that her performance issues existed for several years), the court observed that some of these rewards occurred only weeks before she was reassigned, and that there was no indication of poor performance in any evaluation. The Fourth Circuit also found that "a jury might well conclude it unlikely that an employer who reassigned an employee solely because it believed that she performed poorly would replace her with an employee whose performance it *consistently rated as worse*." (Emphasis in original).

It is important for employers to recognize that, while they can certainly set legitimate performance standards, they need to ensure that their actions and the documentation accurately reflect whether the employee is meeting such standards. And certainly, if removing an employee from a position because of poor performance, the replacement's performance should not be reflected in documentation as being worse.

Retaliation Claim May Arise From Mistaken Belief About Discrimination. A recent case offers employers a good reminder of the fact that a valid retaliation claim may exist even if the underlying discrimination claim has no merit.

In *Reznik v. inContact, Inc.*, the employee received internal complaints from two other workers, who were native Filipinos working in the company's office in the Philippines, that they had been subjected to racial slurs by a U.S.-based company manager. The employee reported these complaints to her supervisor and to Human Resources. She was terminated shortly thereafter, because she "was not a good fit."

The employee then sued for retaliation under Title VII. The legal standard for such a claim in most federal courts requires a plaintiff to show both a subjective, good faith belief and an objectively reasonable belief that they opposed conduct unlawful under Title VII. The trial court threw out the employee's suit on the grounds that she did not have an objectively reasonable belief that she opposed unlawful conduct, as Title VII does not protect aliens working for a U.S. company in a foreign country.

On appeal, the U.S. Court of Appeals for the Tenth Circuit, however, found the employee's belief that she was opposing unlawful conduct to be objectively reasonable. The Tenth Circuit stated that expert knowledge of Title VII was not required; rather it would consider what "a reasonable employee would understand about the law and believe in same or similar circumstances." It also noted that Title VII protects employees from retaliation, whether or not there was an underlying violation of the law. In this case, it was reasonable for an employee to know that discrimination based on race or national origin is unlawful, but not to know the statutory exceptions (such as for aliens working in a foreign country).

In summary, many times employees who think that discrimination or harassment has occurred may not ultimately be correct. But if they experience adverse action based on their (perhaps meritless but good-faith) complaint, they may have a valid retaliation claim under federal and/or state anti-discrimination laws.

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A Notice of Termination Is an Adverse Action, Even If the Employee Is Retained. The U.S. Court of Appeals for the Third Circuit joined its sister Circuits in finding that an employee has experienced an adverse employment action when they receive a notice of termination, even if they ultimately maintain their employment with the employer.

In *Fowler v. AT&T, Inc.*, the employee was placed on "surplus" status (company-speak for position elimination) as part of a workforce reduction. Those on surplus status may elect either immediate termination with a severance or a sixty day period in which to look for other jobs within the company. The employee elected the second and was offered another position within the company. She was subsequently selected for surplus again. This time she was not given another job offer, and her employment was terminated. She sued under both the Americans with Disabilities Act (as she was disabled) and the Age Discrimination in Employment Act (age 60).

In order to assert a discrimination claim under federal antidiscrimination laws, including the ADA and ADEA, a plaintiff must show, among other things, that they were subjected to an adverse employment action. In this case, the trial court dismissed the employee's claim as to the first surplus selection, on the grounds that she did not suffer any adverse action since she remained employed.

The Third Circuit disagreed. It noted that the employee's selection for surplus altered the terms and conditions of her employment, as her employment became conditional upon receipt of the notice. Thus, the Third Circuit held that "a notice of termination … is an adverse employment action even if an employee is given a window of time—small or large—before her actual discharge. Such a notice is adverse without regard to whether the employee is permitted to apply for other positions within the company, or even if she ultimately succeeds in finding another position." In so holding, the Third Circuit joined the other Circuits to have considered the issue (D.C., Second and Tenth).

Thus, employers should be aware that employees who are selected for layoff, even if they end up continuing to work for the company, may still assert a discrimination claim based on their selection for layoff.

A Supervisor's Knowledge of a Safety Violation Can Be Attributed to the Employer. Even where the employer has directed the supervisor to avoid the violation in question, as the U.S. Court of Appeals for the Fifth Circuit found.

In *Angel Brothers Enterprises, Ltd. v. Walsh*, the company's safety manager told the supervisor that the crew needed to use a trench box to prevent cave-ins. The next day, however, the supervisor permitted an employee to enter the excavation without a trench box, since the employee would only be in there for a short time and it would take more time to install the trench box. An OSHA inspector happened to be on site and the company was cited for the safety violation.

Under the Occupational Safety and Health Act, to establish a safety violation, it must be shown that the employer had actual or constructive knowledge of the unsafe conditions with reasonable due diligence, among other things. As the Fifth Circuit noted, because a corporation may only act through its agents, "it is usually liable for acts of its supervisors in the performance of their assigned duties."

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There is an exception to this principle where the supervisor's own conduct is the OSHA violation. The Fifth Circuit found that the exception did not apply here, however, as the violation was the crew member's working in the unsafe trench. Although the supervisor allowed the violation to happen, the Fifth Circuit stated that "authorizing another's violation is not the same as committing the violation oneself." Moreover, the Fifth Circuit found the company's argument "that a supervisor's knowledge cannot be imputed to the employer when the supervisor authorizes, or takes some other active role in, a subordinate's safety violation" to be unsupported by the law, caselaw, or agency principles.

NEWS AND EVENTS

Honor – We are delighted to announce that all twelve of our partners were recognized by *Super Lawyers*© 2022, an exceptional accomplishment: Bruce S. Harrison, Eric Hemmendinger, Darryl G. McCallum, J. Michael McGuire, Fiona W. Ong, Stephen D. Shawe, Gary L. Simpler, Mark J. Swerdlin, Teresa D. Teare, Parker E. Thoeni, Elizabeth Torphy-Donzella and Lindsey A. White. In addition, three associates were named to the 2022 Maryland Rising Stars list: Courtney B. Amelung, Paul D. Burgin, and Veronica Yu Welsh.

Super Lawyers is a national rating service of outstanding lawyers from more than 70 practice areas who have attained a high degree of peer recognition and professional achievement. The patented selection process includes independent research, peer nominations, and peer evaluations. The *Super Lawyers* list recognizes no more than 5 percent of attorneys in each state, while the *Rising Stars* list recognizes no more than 2.5 percent of attorneys in each state. To be eligible for inclusion in *Rising Stars*, an attorney must be either 40 years old or younger, or in practice for 10 years or less.

Honor - Shawe Rosenthal has once again been recognized by *U.S. News and World Report* and *Best Lawyers in America*© in the 2022 "Best Law Firm" rankings. We were honored with a top Tier 1 ranking in the Baltimore Metropolitan Area in the areas of Employment Law – Management, Labor Law – Management, and Litigation – Labor and Employment Law. As we previously announced, all twelve of our partners also received individual recognition by *Best Lawyers in America*© for 2022*:* Bruce S. Harrison, Eric Hemmendinger, Darryl G. McCallum, J. Michael McGuire, Fiona W. Ong, Stephen D. Shawe, Gary L. Simpler, Mark J. Swerdlin, Teresa D. Teare, Parker E. Thoeni, Elizabeth Torphy-Donzella and Lindsey A. White. Of particular note, we have the most listed lawyers in the Baltimore region and in the State of Maryland in the areas of Employment Law – Management and Litigation – Labor and Employment Law.

Welcome to New Associate – We are pleased to announce that Preston (Pete) Heck recently joined our firm as an associate. Pete is experienced in general civil litigation, including commercial and business litigation, as well as insurance coverage matters in Maryland. Pete also served as a judicial law clerk for the Honorable J. Michael Wachs of the Circuit Court for Anne Arundel County, Maryland. Pete graduated *cum laude* from the University of Baltimore School of Law, where he served as the Publications Editor on the University of Baltimore Law Review and competed on the J. Braxton Craven Memorial Moot Court Team.

Podcast – Fiona W. Ong was a guest speaker for the Employment Law Alliance's podcast series, Episode 333: US Emergency Temporary Standard: 6th Circuit Lifts the Stay. The podcast can be accessed on the ELA website or on your favorite podcast streaming service.

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Victory - Parker E. Thoeni and Preston (Pete) Heck successfully obtained a temporary restraining order and preliminary injunction against a former employee who left a company after only several months of employment to work for a direct competitor, in violation of his non-competition agreement.

Victory - Veronica Yu Welsh obtained a defense verdict on behalf of a non-profit organization in the District Court of Baltimore County. Judgment was entered in favor of Veronica's client as to all counts, including two separate negligence claims.

Victory - Gary L. Simpler and Lindsey A. White were successful in obtaining protective orders on behalf of three employees of a client who were being harassed and stalked by a former disgruntled employee.

TOP TIP: New Minimum Wage Rates for 2022 in the Mid-Atlantic and for Federal Contractors and Subcontractors

Although the federal minimum wage remains $7.25, with a tipped wage rate of $2.13, most states in the mid-Atlantic region have implemented higher minimum wage rates. (The tipped wage rate for tipped employees, together with any tip credit, must meet the minimum wage. Employers are responsible for making up any shortfall.) The minimum wage rate in several states, as well as that for certain federal contractors and subcontractors, increases on January 1, 2022, as noted below.

Maryland's minimum wage is subject to an annual increase, with the next increase coming on January 1, 2022 – from $11.75 to $12.50 per hour for employers with 15+ employees, and $12.20 for those with 14 or fewer employees. The tipped wage rate remains at $3.63 per hour. Employers must also display the current minimum wage poster, which is available here.

Also, **New Jersey** is increasing its rate for most employers to $13.00 per hour (from $12.00). Seasonal, and small (fewer than 6 employees) employers in New Jersey are subject to a reduced rate of $11.90 per hour (up from $11.10), while agricultural employers have a new rate of $10.90 (up from $10.44). New Jersey's tipped wage rate is increased to $5.13 (from $4.13). The required poster is available here.

In **Delaware**, the rate increases from $9.25 to $10.50 per hour. The tipped wage rate remains at $2.23, just slightly higher than the federal rate. The required poster is available here.

Virginia's minimum wage rate is increasing from $9.50 to $11.00 per hour. The tipped wage remains at the federal rate. Unlike the other states discussed here, Virginia does not have a poster requirement, but an optional poster is available here.

In addition, the minimum wage rate for certain **federal contractors or subcontractors** depends on whether they have existing or new covered contracts. The covered (sub)contracts are one of the following: construction contracts covered by the Davis-Bacon Act; service contracts covered by the Service Contract Act; concession contracts (*e.g.*, contracts to operate souvenir shops in national parks or restaurants in federal buildings); and contracts in connection with federal property or land under which services are offered to federal employees, their dependents, or the general public. There is a required poster, available here.

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- For existing contracts, the required wage rate increases to $11.25 per hour (from $10.95) for workers performing work on or in connection with covered contracts, with a tipped rate of $7.90 per hour (from $7.65). The required poster (which has yet to be updated) will be available here.
- For new, renewed, or extended contracts that are entered into on or after January 30, 2022, the wage rate is $15 per hour.

This is also a good time to remind employers of the applicable wage rates in other states and local jurisdictions throughout the Mid-Atlantic region, some of which have minimum wage rates above the federal rate:

- **Montgomery County, Maryland**: $15.00 per hour for employers with more than 50 employees, $14.00 for mid-sized and certain other employers, and $13.50 for small employers. The next scheduled increase takes place on July 1, 2022, to $14.50 for mid-sized and certain other employers, and $14.00 for small employers, with additional increases beyond $15.00 for large employers tied to the Consumer Price Index. Our November 30, 2017 E-Update provides more detail on this law. The required poster is available here.
- **District of Columbia**: $15.20 per hour, with a tipped wage rate of $5.05 per hour. The required poster is available here.
- **West Virginia**: $8.75 per hour, with a tipped wage rate of $2.62 per hour. The required poster is available here.
- **Pennsylvania**: Applies the federal rate.

Employers should ensure that they are complying with the applicable minimum wage rates, and also updating any required posters as necessary.

RECENT BLOG POSTS

Please take a moment to enjoy our recent blog posts at laboremploymentreport.com:

- OSHA's Vax-or-Test Emergency Temporary Standard for Larger Employers Is Back In Business – For Now by Fiona W. Ong, December 18, 2021
- When Is COVID-19 a Disability? The EEOC Speaks by Fiona W. Ong, December 14, 2021
- Extraordinary Workplace Misconduct: Bah, Humbug! by Fiona W. Ong and Elizabeth Torphy-Donzella, December 8, 2021 (Selected as a "noteworthy" blog post by Wolter Kluwer's *Labor & Employment Law Daily*)
- Court Enjoins CMS's Vaccine Mandate for Medicare and Medicaid-Certified Providers by Chad M. Horton, December 1, 2021

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