

The logo for Fisher Phillips, featuring the company name in white text on a red, folded paper-like shape.

**Fisher
Phillips**



FP's Workplace Law Forecast 2024

Your workplace law recap for 2023
and predictions for 2024 to help you
prepare for the coming year.

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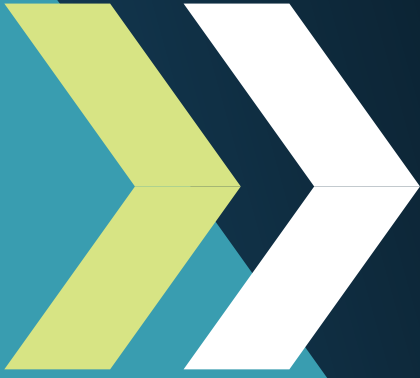


TABLE OF CONTENTS



When I reflect on the relationship that our firm has with our clients, I'm most proud of the fact that you can always count on us. That often means defending complex litigation, steering you through regulatory threats, navigating a thorny workplace situation, helping you win a difficult negotiation, or preserving a level playing field with competitors. But it also means keeping you up to speed on the flurry of legal developments that occur each year and helping you chart a path for the year ahead.

So of all of the hundreds of thought leadership pieces that our talented attorneys publish each year, **this one is my favorite.**

In the pages that follow, you are going to see the full range of knowledge that our attorneys have when detailing the most significant events that happened in the world of workplace law over the past year. And with each summary, you'll get a plan of action on how you should respond and keep up with the changes.

But perhaps more importantly, **you're going to get predictions** on what you can expect in 2024. Our attorneys work hard to anticipate what's around the corner, and here you'll get our best predictions all in one place.

We're also providing **an "AI Focus" section** for each area, highlighting the many ways we see artificial intelligence changing the way we work in the coming year – and beyond. It's easy to join the crowd by simply saying AI is going to change everything. It is much more challenging to break that general prediction down into specific areas of impact you should be watching – but our attorneys have done that for you here.

We hope you enjoy thumbing through this report and that it helps you set the stage for a successful 2024. Our attorneys will continue to be forward-thinking in an effort to be a helpful resource as you navigate the coming year.

John Polson

Managing Partner
Fisher Phillips



Artificial Intelligence

2023 Recap



Congressman Provides Roadmap For Employers

While the [Senate kicked around ideas for regulating AI](#) during a September forum, attendees at FP's AI Conference in Washington, D.C., were treated to [an exclusive roadmap for AI compliance](#) by Representative Ted Lieu.



Employers React to Generative AI Wave

2023 was defined as the year where [ChatGPT](#) and other GenAI tools took center stage. And employers were tasked with adapting to this transformative tech almost overnight. We provided [a list of ways that HR should be using AI](#) as well as [the 10 most important things that need to be included in any workplace AI policy](#) – not to mention [a complimentary sample policy](#) for employers. We also crafted the definitive overview on what employers need to consider before [using AI notetakers in their organizations](#).



AI Regulation is Starting to Appear

The nation's first law requiring employers to conduct an independent bias audit when using AI tools to hire and promote workers [took effect in NYC this July](#), starting what appears to be an inevitable cascade of new rules and requirements for employers across the country. The next shoe dropped in October when [the president's executive order](#) set into motion the next wave of activity from federal agencies. And while the EEOC might not issue new AI-related rules anytime soon, [the federal agency provided a warning in May](#) that AI actions will be closely scrutinized for possible employment discrimination violations.



Hollywood Strikes Reinforced Importance of Introducing AI Carefully

AI emerged as a key issue in the [strikes waged by screenwriters and actors](#) against television and movie production companies, called an "existential threat" to creative professionals. But these labor disputes serve as a learning lesson for [successfully incorporating AI into your business models with minimal disruption](#) – and in a mutually beneficial manner for both you and your workforce.



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➤ What Will 2024 Bring?



Integration Will Lead to New Challenges

GenAI tools will not only become more powerful, but will become so seamlessly integrated into existing software platforms that they cannot be treated as just a neat optional add-on (let alone ignored). Employers will need to pay much closer attention to their software vendors' announcements of new AI features and supporting documentation. Explainability will be a household word, and we're going to see a lot of growth in "AI management" roles. Resistance is futile.



Regulation is Inevitable

Federal agencies will continue to issue AI-targeted guidance relying on existing frameworks and as required by the recent executive order, but expect to see something new on the books by the end of the year. The question is which agency will get there first. Grand-sweeping legislation from Congress is unlikely in an election year, but we should at least start seeing some proposals of substance. Watch the state legislatures.



Save The Date

AI Strategies @ Work Conference

Washington, D.C.
June 19-20, 2024

Stay tuned for more information about programming and registration – and for a sneak peek at our popular AI Laboratory!

Litigation and Trials

2023 Recap



Blockbuster SCOTUS Rulings Impact Employment Practices

The Supreme Court continued to shape the workplace law landscape in 2023 by ruling on an array of issues involving [religious accommodations](#), [arbitration](#), [union strike misconduct](#), [overtime pay](#), and [more](#). Additionally, the Court's [affirmative action decision](#) will surely raise workplace-related questions regarding [DEI best practices](#) and compliance with anti-discrimination laws, making it essential for employers to stay updated.



EEOC Settles Its First-Ever AI Bias Lawsuit

As employers adapted to new technology in 2023, federal regulators made clear that existing rules still apply to evolving technology. The EEOC – which is charged with enforcing federal anti-bias laws – [recorded its first-ever settlement in a case involving AI discrimination in the workplace](#). And this settlement certainly won't be the last. The agency has also [launched a broader initiative](#) to ensure AI workplace tools comply with anti-discrimination laws.



Federal Appeals Court Expands Scope of Anti-Bias Law

The 5th Circuit Court of Appeals – which oversees cases arising out of Texas, Louisiana, and Mississippi – opened the door for plaintiffs to file more discrimination charges and lawsuits. The court ruled that employees are not limited to bringing Title VII claims only when subjected to “ultimate employment decisions” like terminations or applicant rejections. [The decision serves as a good reminder to ensure your anti-bias policies and practices are current and effectively administered.](#)



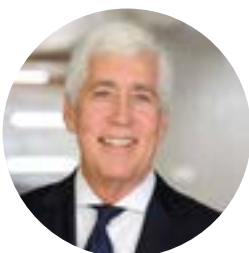
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➤ What Will 2024 Bring?



“Nuclear” Jury Verdicts to Increase

Employers have increasingly been on the receiving end of massive verdicts from so-called runaway juries in recent years, and this trend will continue in 2024. [A groundbreaking study](#) from the U.S. Chamber of Commerce revealed that the jump in eight-figure jury verdicts over the past decade had far outpaced inflation, and this trend reached its peak this past year for workplace trials. Employers need to take compliance more seriously than ever given the risk of massive emotional distress and punitive damage awards.



SCOTUS Watch

The Supreme Court's 2023-2024 term is well underway, and [we're watching several cases](#) that will likely impact the workplace, including these four issues:

- ADA Accommodation “Tester” Case: The Supreme Court [agreed to weigh in](#) on whether a private citizen can serve as a legal “tester” that goes from business to business looking for – and suing for – alleged violations of the ADA, even if they have no intent of patronizing the business.
- Lateral Job Transfer in Gender Bias Case: A female police sergeant brought a sex discrimination suit claiming she was transferred to a lateral position in a different district because new leadership wanted to hire a man for her current role. [But can a lateral job transfer with no change in pay or benefits be discriminatory?](#)
- Limits on Federal Agencies' Regulatory Power: A longstanding rule known as “Chevron deference” gives the federal agency that administers and enforces laws the power to interpret ambiguities and fill in the gaps – as long as the interpretation is reasonable. SCOTUS has been asked to strike down this deference, which would have profound implications on administrative agencies, including DOL and NLRB.
- Proving Whistleblower Retaliation: SCOTUS also accepted a case this term that may clarify the standard for whistleblowers to prove retaliation under the Sarbanes-Oxley Act.

➤ AI Focus

AI Will Continue to Reshape Litigation

[Fisher Phillips was the first firm to deploy Casetext's CoCounsel](#) – the AI legal assistant that performs the tasks most valuable to legal professionals in a single, easy-to-use interface – and it has only scratched the surface on what such technology will soon offer. Beyond legal research, document review and drafting, and summarizing large amounts of data, this tech will continue to revolutionize the way litigators perform in and out of the courtroom. But it is also expected to fuel a boom in the number of new case filings against employers as plaintiffs' counsel – and pro se plaintiffs – will find it easier and more efficient to competently litigate cases.



Labor Relations

2023 Recap



Controversial New Joint Employer Rule Creates Challenges

The NLRB [released its final joint employer rule](#) in October which, effective February 26, makes it easier for workers to be considered employees of more than one entity for labor relations purposes – a move that will result in more opportunities for unions to organize not only the workforce but also those workers formerly understood to be independent contractors.



Workplace Policies Take a Hit

The NLRB's August decision in Stericycle, Inc. dramatically affected employers across the country by [changing the law again on employee handbooks](#). The ruling will lead many employers to once again modify their handbooks to ensure compliance with the latest NLRB mandates. While some employers already review their handbooks on a yearly basis, it may now be important to do so more frequently.



Representation Process Overhauled to Boost Union Organizing

The NLRB [drastically changed how employers should respond to union recognition demands](#) by imposing a bargaining order if the employer fails to file its own petition to preserve a secret ballot election. Further, potential misconduct during the critical period between demand and election that previously resulted in a re-run election may now result in a bargaining order regardless of the election results. The agency's new "quickie election" rules, effective December 26, will cause employers to wrestle with these issues within a substantially compressed critical period.



Employers Grapple with a Flurry of Additional Activity

A [flurry of additional NLRB activity](#) is part of an ongoing effort by the current Labor Board to make it easier on unions and their ability to organize employees. But you should note that many of these concerns can be mitigated through a proactive and positive employee relations program that underscores the importance of policy audits and supervisory training.



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➤ What Will 2024 Bring?



Legal Battle Over Joint Employer Rule

Employer advocacy organizations have already initiated legal action in an attempt to derail or block the joint employer rule, and we can expect similar efforts going forward. In the past several years, this strategy has effectively been used to stop finalized regulations related to all manner of workplace-related (and other) issues from taking effect as scheduled. However, you cannot count on this procedural mechanism to be successful given the uncertainties of litigation.



Limits on Agency Power

The Supreme Court is likely to [strike down \(or at least water down\) the so-called “Chevron deference”](#) this term, which will have profound implications on administrative agencies – including the NLRB – as well as employers dealing with these agencies. Numerous regulations could face legal challenges and be held invalid because the agencies would lose their interpretation power even if the statutes they administer and enforce appear ambiguous.



Expansion of Remedies

We predict the NLRB will overturn its Ex-Cell-O Corp. decision, which prohibited the Board from issuing any additional remedies besides make-whole relief (such as compensatory damages) for unfair labor practices concerning failure to bargain, and that it will take the opportunity to uphold the General Counsel’s memo restricting mandatory captive audience meetings.

➤ AI Focus

Predictive Analytics Will Aid Employers’ Efforts

AI can enable employers to better predict and prepare for union organizing campaigns by analyzing employee sentiment and communication patterns, helping them to proactively address workplace concerns. Employers can also use AI to analyze factors leading to strikes and predict their potential duration and impact, aiding in contingency planning and in making informed decisions about concessions or negotiations.

Data Security and Workplace Privacy

2023 Recap



California's CCPA Remains Biggest Hurdle for Businesses

Businesses caught a big break in 2023 when it came to the nation's broadest data privacy law – the California Consumer Privacy Act (CCPA) – but many compliance challenges remained. Regulations that were due to take effect on July 1 [were delayed until March 2024](#) thanks to a June court order recognizing the strain that businesses would have faced. But does that mean you should ease up on your compliance efforts? Not at all – and we've provided you [six key questions to consider](#) as you gear up for March. This is especially important given the state AG's [July announcement of an investigative sweep](#) of whether and how large employers have complied with data privacy and consumer protection requirements as they relate to employees and job applicants.



New Law Will Let Californians Hit “Delete” on Their Data

California lawmakers [passed a new law in September](#) designed to streamline the ability of consumers to request data brokers to delete their personal information in one simple step. Signed into effect by Governor Newsom in October, the Delete Act will give consumers access to a central place where they can submit a single request for deletion of their data by all roughly 500 registered data brokers by 2026.



String of States Beefed Up Data Privacy Laws

But just because you aren't covered by California's laws doesn't mean you escaped new consumer privacy obligations in 2023. A string of states passed new laws this past year that will add to your compliance challenges in 2024 and beyond, including [Delaware](#), [Connecticut](#), [Florida](#), [Iowa](#), [Montana](#), [Oregon](#), [Tennessee](#), [Texas](#), and [Washington](#).



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➤ What Will 2024 Bring?



More Consumer Privacy Laws

To date, 13 states have passed consumer privacy laws, and we expect more to follow suit in 2024. We expect that these new states will follow the post-CCPA trend of excluding employment-related data from protection under these new laws, unlike California, where such data is subject to the CCPA/CPRA requirements.



No Federal Law Preempting State Consumer Privacy Laws

Despite bipartisan efforts in recent years to pass a federal consumer privacy law, the prospects for passage of any law in the near future are dim. The primary hurdles to passage of a federal law relate to disagreements over preemption of state laws and whether consumers should have private right of action for violations of a federal law. The parties are unlikely to reach agreement in 2024 in a divided Congress that has shown little appetite for cooperation.



Remote Worker Oversight Will Remain a Challenge

As employers continue to seek out avenues to more closely monitor remote workers, state legislatures will look to laws like [New York's 2022 electronic monitoring law](#) as a model for requiring advance notice and consent.



Cybersecurity Once Again Takes Center Stage

Ransomware and other cyberattacks will continue to plague businesses small and large in 2024, with vendors – including payroll vendors, a particular concern for employers – becoming a favorite target because of the vast amount of PII often in their possession. Federal regulators will look to increase reporting obligations to ensure that businesses are sharing information relating to these attacks. This will allow government officials to not only to investigate cybersecurity practices for potential violations of legal obligations, but also to gather data that can be sued collectively to help provide guidance to avert future attacks.

➤ AI Focus

AI Privacy Issues Take Center Stage

The vast amount of personal data available to AI systems poses a challenge in terms of protecting the privacy of personal information and preventing potential identity theft. [Deepfakes](#) and the relative ease of social engineering could make phishing, ransomware, and other cyberattacks more potent. Cyberbullying through AI is already occurring, and employers may find themselves challenged to determine the scope of their potential obligations when disputes arise among employees. Employers may also find it difficult to distinguish legitimate threats and violations of company policy from those that are fabricated through the use of AI. You may need to revisit existing privacy policies to take into account unique challenges posed by AI.

International Law

2023 Recap



Opportunities Abound in Mexico

Mexico has been transformed into one of the best places for outsourcing and expansion by U.S. businesses. [This insight summarizes the major changes](#) that have continued into 2023 and how businesses can capitalize on the labor reforms. [And as our September Flash Survey revealed](#), most employers are not yet aware of the opportunities awaiting them there.



E.U. and U.S. Agree to Groundbreaking Data Privacy Deal

The European Commission paved the path for companies to transfer data freely across the Atlantic in July, ending several years of confusion and delay. The Data Privacy Framework now serves as a long-awaited facilitator for an easy flow of data between the U.S. and Europe. [Our Insight provides a three-step action plan.](#)



Foreign Corrupt Practices Risks Higher Than Ever

With the push to operate across borders, many employers might not know the nuances of the Foreign Corrupt Practices Act (FCPA), a federal law that criminalizes sometimes-common business behaviors. [We reviewed the five best practices](#) to minimize your chances of violating the law.



Labor Reforms Swept the Globe

2023 was a banner year for labor reforms around the world. We summarized key events in [Australia](#), [Qatar](#), [Saudi Arabia](#), and [Japan](#).



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➤ What Will 2024 Bring?



Increased Use of PEOs and Employers of Record

To keep up with the business needs to hire an ever more global workforce, more companies will turn to professional employer organizations (PEOs) and employers of record (EORs) in foreign countries where they have a relatively small workforce.



Data Privacy to Be Key Focus

Countries that recently enacted new regulations on data privacy law, such as [Brazil](#) and [China](#), are poised to step up their enforcement actions in 2024. They may be joined by other countries whose data privacy commissioner's offices have been idle for a while, such as Mexico.



Enhanced Independent Contractor Scrutiny

More countries will take a closer look at the large number of independent contractors in their countries working for foreign employers to capture lost tax revenue and better regulate the labor market.

➤ AI Focus

International Operations Benefit from Smart Automation

Artificial intelligence will likely be used to replace many virtual assistants and call coordinators currently hired in international jurisdictions. We'll increasingly see a rise in companies outsourcing highly skilled jobs in their place – computer programmers, designers, data analysts, engineers, developers, and the like.

Employee Defection and Trade Secrets

2023 Recap



Bombshell: Federal Government Proposes Non-Compete Ban

The year started with a bang back in January when the Federal Trade Commission proposed a rule that would ban most non-compete agreements across the country. [We summarized the proposal here](#) and followed up with [detailed FAQs](#). Employers were left to play a painful waiting game for the rest of the year as [the news emerged that the rule was not scheduled to be finalized until April 2024](#). We provide a [seven-step guide for employers](#) to follow as we continue to wait.



Labor Board Counsel Says Non-Competes Violate Federal Labor Law

The hits kept coming in May when [NLRB General Counsel Jennifer Abruzzo announced that many non-competes violate federal labor law](#) – regardless of whether you have a unionized workforce. She urged NLRB regional directors to find that many employer-mandated non-compete agreements infringe on employees' rights under Section 7 of the National Labor Relations Act (NLRA), continuing the federal government's assault on these restrictive covenants.



States Pass New Restrictive Covenant Laws

Typically, most restrictive covenant action takes place at the state level. And just because the feds took some dramatic action in 2023 doesn't mean things remained quiet in states this past year. [Minnesota banned non-competes](#) in May, California further clamped down on their use with [a pair of new laws](#) finalized this fall, and [New York stands on the brink](#) of banning non-competes. Meanwhile, [Colorado made it more difficult to use nondisclosure agreements in June](#), and a court decision from [Georgia means that employers might find it more difficult to enforce non-solicitation provisions](#).



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➤ What Will 2024 Bring?



Look for Customer-Based Restrictions

More states will continue the trend of limiting broad non-compete agreements with their employees. Customer-based restrictions will probably fare better than territorial-based restrictions. Businesses should aim to refocus their efforts on the types of restrictions likely to be upheld by courts in this era of tight scrutiny.



Lower Wage Earners to Receive Greater Protections

More states will look to minimum-income requirements for which employees can have restrictive covenants imposed on them. This is consistent with President Biden's view of non-competes – and we may even see the FTC follow that path when it comes to finalizing its non-compete rule. The real question will be what kinds of restraints will be viewed as non-competes.

➤ AI Focus

Automated Monitoring and Detection

AI will enhance employers' capabilities to monitor and detect potential breaches of non-compete agreements and trade secret violations to a new level in 2024. Advanced algorithms can analyze patterns in employee behavior, communications, and data access, alerting you to unusual activities that may indicate a risk of defection or information leakage.

Predictive Analytics for Employee Retention

AI tools will increasingly be used to predict employee defection before it occurs. By analyzing factors such as job satisfaction, performance metrics, and personal circumstances, AI can provide employers with insights on which employees are at risk of leaving – and possibly violating non-compete clauses. This allows for proactive measures to retain talent or safeguard sensitive information.

PEO and Staffing

2023 Recap



PEOs and Staffing Heard “Will You Delete My Data?” in 2023

One challenge many PEOs and staffing agencies faced in 2023 came from a deceptively critical request: “Will you delete my data?” As more people are armed with information about their data privacy rights, and lawmakers and regulators continue to create additional obligations for businesses, this became a crucial challenge to manage this past year – especially since PEOs and staffing agencies face unique challenges given the amount and types of data they maintain. [We provided some steps to consider when preparing and responding to such a question.](#)



Pay Transparency Rules Created Unique Challenges

Pay transparency remained one of the hottest trends impacting the workforce in 2023, and staffing companies and PEOs needed to keep up with new laws and evolving expectations to stay compliant and competitive this past year. This created significant technology challenges for the industry. Pay transparency affects all aspects of workplace relationships – including hiring, recruitment, and retention efforts; supervision and leadership; and compensation and benefits. [We gave you three questions to set you on the right path.](#)



Employee Benefits and Payroll Tax Served as a Value Proposition

Employee benefits are a major part of the value proposition offered by most PEOs and staffing companies. In addition to unlocking access to Fortune-100-style benefits for the employees of small- and medium-sized businesses, PEOs and staffing companies continue to shoulder the extensive compliance burdens of employees benefits, which increase each year with new legislation, such as SECURE 2.0. However, the silver lining of SECURE 2.0 will be the ability of PEOs and staffing companies to enhance the features of their 401(k) plans in ways that will help to attract and retain clients and talent. Payroll tax services are also a key part of the value proposition for PEOs and staffing companies. With the continued payroll tax complexity driven by remote work and payroll tax credits like the ERTC, PEOs and staffing companies will continue to drive business with payroll tax solutions.



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➤ What Will 2024 Bring?



New Federal Standards Will Impact Joint Employment

The NLRB released its [final joint employer rule](#) that makes it easier for workers to be considered employees of more than one entity for labor relations purposes in October – a move that will result in increased union organizing and collective bargaining efforts across the country in 2024 and beyond. The controversial rule establishes joint employment not only when one company has the right to exert control over terms and conditions of another company's employees, but also when evidence exists of reserved, unexercised, or indirect control over any working conditions. This includes not only obvious situations like hiring and firing but also such other conditions as wages, benefits, scheduling, supervising, directing, and disciplining. While it isn't slated to take effect until late February and could very well be derailed by litigation or even Congressional action, your organization should review [our 10-step plan](#) to respond to this rule as soon as possible. As with many legal developments, the new joint employer rule may warrant customer contract and policy modifications.



Other Key Trends Will Shape Industry

Three significant trends sweeping through the landscape will require PEOs and staffing agencies to stay nimble in the coming year:

- An increasing number of states are enacting data privacy legislation, of particular interest to PEOs and staffing due to the enormous amount of sensitive data in their possession.
- The [federal government is cracking down on restrictions on competition](#) – and not to be outdone, [states like California](#) are also ramping up the pressure.
- Companies are increasingly [looking south of the border to Mexico](#) for solutions to staffing challenges given the key labor reforms taking place there.

➤ AI Focus

Workforce Management

Imagine if a robot could handle the routine and repetitive parts of your job – including the ones that are necessary to ensure compliance with a multitude of employment laws? That day is now here. AI can streamline payroll processing and benefits administration – including automated benefits enrollment, payroll calculations, and tax filings – making these processes more efficient and less prone to errors.

Performance Management

PEOs and staffing agencies can now use AI to analyze employee performance and provide insights to their clients, identifying areas for employee development, optimal team compositions, and improved overall productivity. At the same time, it can help create personalized employee engagement and retention strategies by analyzing employee feedback and behavior patterns, suggesting tailored engagement to enhance job satisfaction and reduce turnover.

AI Compliance and Security Challenges

The benefits of AI come at a cost. There are massive compliance and security issues for PEOs and staffing companies utilizing AI in their processes, and customer use of AI may create risk that flows upstream to you. Bias issues are rampant with AI use in HR, and regulation is on its way at both the state and federal level. [EEOC Commissioner Keith Sonderling recently offered suggestions for employers at FP's AI Conference on ways to combat AI bias](#). Data security is also a major concern, as AI complicates your data privacy compliance by creating new types of data and new entry points for hackers to steal your data. [AI notetakers are just one example of a new type of threat to be wary of](#).

Mergers and Acquisitions

2023 Recap



Common Deal Points in 2023

While deal pace has not recovered to the volume of 2021, this past year saw an increase in active engagement regarding labor and employment issues in small-to-midsized deals. The recurring themes we saw in those deals included:

- Evidence of the continued rising importance of Social & Governance issues in diligence
- The harmonization of S&G policies and practices that impact employees, including training, remote work policies, DEI, and pay transparency
- In both Representations and Warranties Insurance (RWI) and Escrow deals, a heightened concern about not only active wage and hour litigations but also potential weakness in the pay practices of targets
- An increasing interest in practical, “real world” experiences with administrative bodies and investigative agencies, labor unions, plaintiffs’ lawyers, and insurers
- Exponential growth in multi-jurisdictional analyses, especially resulting from changes in remote work policies
- Willingness of acquirers to explore acquisitions including unionized workforces, and a desire to understand how such acquisitions impact the business and workforce
- A growing interest in how to position the resulting workforce to deliver results immediately post-closing

AI Focus

AI-Driven Due Diligence

Artificial intelligence can be instrumental in conducting thorough and efficient due diligence during deals, particularly in evaluating employee contracts, benefits, compliance with labor laws, and potential liabilities.

Predictive Analysis of Integration Success

AI can predict the success of post-merger integration, especially concerning workforce integration. Systems can analyze cultural compatibility, employee sentiment, and potential friction points, providing insights for smoother transitions.

Automated Assessment of Redundancies and Synergies

AI tools can assist in identifying potential redundancies and synergies in the workforce during a deal. This will help decision-makers in planning workforce integrations or reassignments more effectively.



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Operating in Mexico

2023 Recap



Fisher Phillips Expands into Mexico

In response to Mexico's growing influence in the global economy, [Fisher Phillips announced the launch of its first international offices in Mexico in July](#). The expansion – an anchor location in Mexico City and satellite offices in Guadalajara and the state of Queretaro – is a reflection of the firm's commitment to expanding its footprint to better serve its clients with interests in the region.



Sweeping Labor Reforms Lead U.S. Employers to Spread Their Wings in Mexico

Mexico has gone through such sweeping labor reforms in the past few years that it now ranks as one of the best places for outsourcing and expansion. Some employers were still dissuaded from cross-border operations in 2023 due to old misconceptions or outdated notions about what it's like to do business down there, especially as an employer. It's time to rethink everything. [We've summarized what's changed and outlined the reasons Mexico is now a more attractive place to operate.](#)



Most Employers Still Not Aware of Opportunities Awaiting Them

A large majority of American employers are still unaware of the opportunities they could seize by doing business in Mexico, but those that have opened up shop south of the border report positive gains in several key areas. That's according to the results of our FP Flash Survey which gathered information from employers this Fall. [Click here to glean information from the results of our survey and what opportunities might lie in store for your organization if you consider expanding into Mexico.](#)

What Will 2024 Bring?

Proposed Legislative Action

The Mexican Congress will discuss, during 2024, several initiatives related to employee rights, including the following:

- Increase on the Christmas Bonus payment
- Remote work, including works related to Digital Platforms
- Increase on the Seniority Premium payment
- Equal salary and transparency on salaries during the recruitment process
- Employers' obligation to hire a minimum quota of adults over the age of 60

It is important to mention that these are only proposed initiatives presented before the Congress that will need to work their way through the legislative process to determine if they will be executed.



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Healthcare

What Will 2024 Bring?



Labor Organizing To Continue

A key trend that carried throughout 2023 will continue into the new year – union organizing at healthcare organizations across the country. Labor unions made gains in the industry in the past year and workers will no doubt continue to build on this success in 2024. Employers will want to remain proactive when it comes to workforce relations to minimize disruptions.



No Relief on Horizon for Staffing Shortages

Healthcare facilities of all types continued to experience staffing shortages in 2023. We have not seen the type of rebound we would have expected (and hoped for) coming out of the pandemic, especially when it comes to physicians, nurses, and educators. Unfortunately, [consulting firms predict](#) we'll see further declines leading to hundreds of thousands of unfilled jobs by the end of 2024. Alternative staffing models will ease some of the pain for those employers willing to adjust their practices.



Wage and Hour Carveouts Could Roll Through Industry

A new California law passed on October [will raise the minimum wage for nearly all healthcare employees in the state](#) – hourly and salaried – and also including independent contractors. We expect to see other states follow California's lead and pass similar measures, buoyed by the support of labor unions and worker advocates.

AI Focus

Workforce Optimization

AI tools can bring healthcare employers a new level of staffing efficiency by predicting patient inflow and adjusting scheduling as necessary to comply with local laws and minimize worker burnout. AI systems can also create advanced training programs and simulations to enhance workers' skills and clinical preparedness.



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Hospitality

2023 Recap



Balancing Innovation and Compliance

Employers in the hospitality industry have been through it all in recent years – from the devastation of the pandemic to ongoing labor shortages to an impending recession. These challenges and dramatic changes continued to shape policies in 2023 as businesses came up with creative ways to recruit, retain, and reward employees. Here's a look at [the top seven wage and hour mistakes hospitality employers make and how can you avoid them as you](#) continue to fine-tune your policies and practices in 2024.



New Tip Credit Rule is Here to Stay ... For Now

A federal court refused to block the DOL's infamous 80/20 rule in July, which applies to employers that take the tip credit toward their minimum wage obligation under federal wage and hour law. [Here's a brief background on the rule and a 10-step action plan to ensure your wage and hour practices are up to date.](#)



New Obligations for Restaurants and Hotels in the Golden State

California has long required food handlers in restaurants to obtain certification – and until now, training and testing has been the employee's responsibility. [A new law Governor Newsom approved](#) in October, however, shifts this burden entirely to employers by requiring them to pay their workers for all costs associated with obtaining a food handler card. Additionally, at the local level in Irvine, hotel employers [had to implement additional requirements beginning in May](#) under the city's new Hotel Worker Protection Ordinance – which includes stringent workload limitations for room attendants.

AI Focus

Hospitality in Perfect Position to Benefit From AI

All industries have their early adopters, and hospitality is no exception. AI is being used to guide customer experiences, improve efficiency and profitability, and predict what guests are going to want next. In the year ahead, hotels, resorts, restaurants, cocktail bars, spas, cruise lines, and others in the industry will continue to leverage or experiment with AI, which will require a careful balancing act while showing care for your guests. [Here are some of the challenges hospitality employers should consider before deploying an AI solution.](#)



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Pay Equity



2023 Recap



Pay Transparency Creates Patchwork of Rules

Pay transparency is one of the hottest trends impacting the workforce today, and it affects all aspects of workplace relationships – including hiring, recruitment, and retention efforts; supervision and leadership; and compensation and benefits. A patchwork of new state laws makes multistate compliance complicated, particularly since the details of each law vary. Colorado was the first state to enact a pay transparency law in 2021 and other jurisdictions followed suit. 2023 brought expanded pay equity rules to workplaces in Rhode Island, and [New York State's salary disclosure law took effect in September](#). [Hawaii](#) and [Illinois](#) also enacted pay transparency laws this year, which will take effect in 2024 and 2025, respectively. [These developments highlight the importance of staying up to date with state and local trends.](#)



Will Massachusetts Be Next?

The Massachusetts Legislature has recently considered several bills to address pay transparency and pay data reporting in the state. These bills were ultimately combined, and similar versions have passed by both the Massachusetts House and Senate. Although the details were still being worked out at the time of this publication, the near-unanimous support in each chamber means a finalized version is poised to be sent to the Governor. [So, employers should start preparing now for new obligations.](#)



California Makes Key Changes to Pay Data Reporting Guidelines

California employers with at least 100 employees are likely familiar with the pay data reporting requirements that were enacted in 2020. Recent amendments, however, made some significant changes for 2023 – and covered employers should be familiar with updated FAQs on pay data reporting that were issued earlier this year by the California Civil Rights Department (CRD). [Here are the four main pay data reporting changes you should review.](#)



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➤ What Will 2024 Bring?



Expect EEO-1 Reporting Changes

Annual EEO-1 reporting is required for nearly all employers with 100 or more employees and for many federal contractors or subcontractors with at least 50 employees.

- We anticipate that the EEOC will soon revise the gender reporting categories to give employees an opportunity to voluntarily self-identify as non-binary or a similar category other than male or female.
- In addition, the EEOC may revise race/ethnicity reporting to include a category specifically for employees with origins in Middle Eastern countries who have historically been reported as “White.”
- We also continue to hear rumors that the EEOC may resurrect the pay data reporting requirement, which is similar to California's requirement, and was briefly implemented and discontinued at the federal level.



Expect More States to Push Pay Transparency and Pay Reporting

States will continue to enact pay transparency requirements in 2024, putting pressure on multistate employers to develop uniform pay disclosures for job postings and advertisements. In addition to Massachusetts, be on the lookout for pay transparency legislation in New Jersey and other states known for robust pay equity and anti-discrimination laws. Meanwhile, other states may soon follow the lead of California and mandate pay reporting. New York, New Jersey, Massachusetts, Illinois, and Washington are the most likely to jump on the bandwagon.

➤ AI Focus

Get Ready for Even Greater Enforcement Efforts

As employers explore innovative ways to use Generative AI in the workplace, the EEOC has warned that an improper application of AI could violate federal anti-discrimination laws. In 2024, employers facing discrimination charges may see more requests to provide specific details about any AI or software used to set initial compensation, monitor compensation for existing employees, or ensure that compensation is equitable following a promotion.

Workplace Safety

2023 Recap



OSHA Turned Up the Heat in 2023

Right out of the gate, federal workplace safety officials signaled to employers that 2023 was going to be a challenging year. Not only did [OSHA announce new enforcement guidance](#) in January to “stop employers from repeatedly exposing workers to life-threatening hazards or fail to comply with certain workplace safety and health requirements,” the agency also boosted [maximum penalty amounts for safety violations that same month](#).



End of the COVID State of Emergency

It might seem like forever ago, but the COVID-19 national and public health emergencies officially ended in May when two dual emergency declarations expired. You should make sure you have [followed our step-by-step plan](#) to make sure your workplace has properly adapted to the current environment.



Inter-Agency Cooperation Means Heightened Scrutiny

Federal labor and workplace safety officials entered into a partnership to bolster whistleblower protections, which means employers should prepare for increased safety and health enforcement efforts. Specifically, [the National Labor Relations Board \(NLRB\) and OSHA announced in October](#) that they will enhance information sharing and cross-agency consultations, training, outreach, and education to promote safe and healthy workplaces and protect workers who speak out about unsafe working conditions.



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➤ What Will 2024 Bring?



New Electronic Recordkeeping Rule to Take Effect

As of January 1, the new electronic recordkeeping rule will take effect – and will change the game for employers across the country. Not only will more employers be considered to be operating in “high-hazard” industries, but the rule will create new obligations for many other employers. [Here are our six key points and a three-step action plan to follow.](#)



Get Ready for Union Walkthroughs

OSHA issued a proposed rule in August that will give a designated union representative the right to accompany an OSHA inspector during a facility walkaround – regardless of whether the representative is your employee or the facility is a union shop. We expect this rule to take effect by the middle of 2024. [Here's what you need to know about this proposed and the seven key steps you can take to prepare.](#)



California Employers Need to Develop Workplace Violence Prevention Program

California lawmakers passed a new law this past legislative session that will impose significant obligations on almost all non-healthcare employers in the state by July 1. The centerpiece: each employer will need to create and implement a written Workplace Violence Prevention Plan, train employees and supervisors on workplace violence matters, create and maintain a violent incident log, and keep records of all training and violent workplace incidents that occur. [Here are the top five steps you should take to comply.](#)



Expect Criminal Referrals

OSHA has been increasingly aggressive in referring workplace safety matters to the federal Department of Justice or local state criminal prosecutors. This arises most often when a supervisor provides damning testimony about workplace safety concerns to OSHA and the agency provides a copy of the statement or recording of the interview to a prosecutor. Knowing how to defend against such prosecutions will be a crucial skill for employers in 2024 given the current regulatory climate.

➤ AI Focus

Workplace Safety to Get Boost from Artificial Intelligence

AI will not only continue to revolutionize risk assessment by analyzing data from equipment sensors, environmental conditions, and historical accident reports to identify potential hazards before they result in accidents, 2024 will see an increase in AI-enabled monitoring systems to provide real-time surveillance of workplace conditions. Modern systems can detect anomalies such as gas leaks, structural weaknesses, or unsafe worker behaviors, and immediately alert relevant personnel to take corrective action.

Wage and Hour

2023 Recap



USDOL Proposes Significant Hike to Exempt Salary Threshold

Employers need to review their pay practices and plan for potential changes in light of [the Labor Department's August proposal to raise the salary threshold for exempt employees](#), which could make more of your employees eligible for overtime premiums. The USDOL intends to raise the exempt salary threshold from \$684 per week to at least \$1,059, meaning employees would need to earn \$55,068 or more per year to be exempt from OT pay.



Highly Paid Employees Could Be Entitled to Overtime Pay

High-earning workers making more than \$200,000 a year might be eligible for overtime pay [thanks to a Supreme Court ruling from February](#). The Justices said an oil rig worker was eligible for overtime pay because he was not paid on a "salary basis." The decision is a wake-up call for all employers to review their OT exemptions to ensure they are compliant with applicable federal and state requirements.



Focus on State Wage Payment Laws

State and local wage payment laws continued to challenge employers as they endeavored to comply. Many states have minimum wage requirements that are significantly higher than the federal mandate. Some states also have very particular rules on notice, pay statements, and frequency, which have led to an abundance of litigation, including double and triple damages.



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➤ What Will 2024 Bring?



Get Ready for the New Overtime Rule

Although it's just a proposal at this point, we expect the USDOL to prioritize the revised federal overtime rule and move swiftly to finalize the new exempt salary threshold. We anticipate that business groups or states opposing the proposal will file litigation in business-friendly jurisdictions like Texas or Florida in an attempt to sidetrack or derail the rule completely. But you can't count on this happening, so [you'll need to prepare as if it the proposal will take effect.](#)



Expect More Agency Partnerships

The USDOL will continue to partner with other agencies (NLRB and EEOC) in investigations and data sharing. And their counterparts in states with robust wage and hour laws will continue to aggressively enforce these laws.



Focus on Child Labor Laws

Federal and state enforcement of child labor laws will continue. The USDOL reported a 70% increase in the number of children illegally employed by companies in recent years. Businesses that relied on minors in response to worker shortages that were unaware of or failed to adhere to the strict restrictions on child labor will continue to face hefty penalties. And recently proposed bills in Congress would significantly increase the civil and criminal penalties.



Monitor for FLSA Joint Employer Updates

During the Trump administration, the USDOL issued a joint employer rule that briefly created a more business-friendly standard making it harder for employees to prove joint employment for the purpose of wage and hour litigation. The current USDOL formally rescinded the rule but has yet to announce any plans to propose a new rule. We'll be monitoring this area for potential changes in the coming year, as things could move fast once they're initiated.

➤ AI Focus

Predictive Analysis Will Change the Game

AI tools are capable of predicting periods of high overtime and labor demand, allowing employers to manage staffing levels proactively.

Automation Saves the Day

AI-driven scheduling tools – taking into account employee preferences, business needs, and applicable laws – can optimize workforce management. AI systems can also track working hours, calculate overtime, and process payroll with precision, reducing human error and ensuring legal compliance. And AI can also assist in accurately classifying employees as exempt or non-exempt under federal and state law, reducing the risk of misclassification.

Education

2023 Recap



SCOTUS Severely Limited Affirmative Action Admissions in Education

In a pair of blockbuster decisions released in June, the Supreme Court restricted higher educational institutions from using race or ethnicity as part of their admissions process, curbing the practice of using affirmative action principles during admissions for schools across the country. The decision has forced admissions teams to [rethink and rework a decades-old approach](#) that had become interwoven into the day-to-day practices of many colleges and universities – not to mention K-12 schools.



DEI Guidance Issued for Colleges and Universities

Colleges and universities can still take steps to foster diverse and inclusive campuses – even after the Supreme Court's decision limiting race-conscious admissions in education. In fact, the [Department of Education \(DOE\) issued a "Dear Colleague" letter and Q&As in August](#) to help colleges and universities understand the SCOTUS ruling as they continue to pursue racially diverse campuses "that include students with a range of viewpoints, talents, backgrounds, and experience."



Private and Independent Schools Prepared for Uptick in Lawsuits

Seeing the barrage of lawsuits following the SCOTUS decision on race-conscious admissions in higher education left many in K-12 independent and private school leaders scratching their heads. While there aren't any silver bullets or magic potions to ensure these schools won't get sued – in fact, few bright lines exist – [there are key actions schools can take to help mitigate the risk.](#)



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➤ What Will 2024 Bring?



Highly Anticipated Changes to Title IX Expected Soon

The DOE is expected to soon issue two major amendments to Title IX regulations. One rule will address gender identity in athletics and the other is expected to substantially alter the investigation and grievance process for complaints of sex-based discrimination and harassment. Although the release date for these amendments has been delayed several times, they are now expected in May or June 2024 and [educational institutions should prepare for compliance.](#)



SCOTUS May Decide to Weigh In on Transgender Bathroom Policies

Federal appeals courts are currently divided on whether schools can require students to use only the bathroom that corresponds to their biological sex or a gender-neutral bathroom. For example, while [the 11th U.S. Circuit Court of Appeals upheld a public school's transgender bathroom ban](#), other circuits have found that similar policies at public schools violated transgender students' rights. The circuit split could pave the way for SCOTUS to ultimately weigh in on this hot-button issue.

➤ AI Focus

ChatGPT Will Continue to Present Opportunities and Challenges for Schools

Generative AI tools, such as ChatGPT, have the potential to revolutionize education – both by providing opportunities and presenting new challenges to overcome. On the positive side, they can provide innovative ways for schools to personalize learning, improve student engagement, and streamline administrative tasks. On the flipside, you may be concerned about students using this technology as a shortcut in violation of your policies and protocols. [Thus, schools should consider addressing how to deal with GenAI tools as they continue to evolve.](#)

Watch for More Federal AI Guidance

The DOE has already created some [AI resources](#), and [President Biden's October executive order on artificial intelligence](#) directed the DOE to develop an AI toolkit to help schools implement related policies. Additionally, the department has said it is in the process of creating policies “focused on the effective, safe, and fair use of AI-enabled educational technology.”



Immigration

2023 Recap



DHS Modernized Employment Verification Process

Federal immigration officials made critical changes over the summer to modernize the I-9 employment verification process, not only announcing a new I-9 Form but providing a remote verification alternative for qualified employers that use E-Verify. All employers were required to start using the new form by November 1 – making now a good time to [establish best practices that comply with the revised process.](#)



Immigration Officials Proposed Sweeping Changes to H-1B Visa Process

Federal immigration authorities proposed long-awaited revisions to the H-1B visa process in October, which are intended to modernize that nonimmigrant category and tighten the annual lottery system that has long frustrated employers and employees alike. You can [review the proposed changes here](#) and start preparing as we wait for the regulations to be finalized and implemented in the coming months.



Premium Processing Expanded to Additional Petitions

Companies sponsoring certain foreign national workers may now be able to take advantage of an additional way to receive premium processing of petitions to support their immigration goals. In June, USCIS announced it would [expand its premium processing services](#) to cover applicants seeking a change or extension of status using Form I-539. If you are going to file a I-539 application requesting a change of status to F-1, F-2, M-1, M-2, J-1, or J-2, and would like to upgrade it to premium processing, you can now do so.



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➤ What Will 2024 Bring?



E-Verify NextGen Will Streamline the I-9 Process

USCIS is expected to release a new product, E-Verify NextGen, which the agency says will modernize the I-9 and employment verification process for employers and employees alike. Among other features, employees will be able to enter their own information through a portal – with the goal of reducing data entry errors – and notifications will be streamlined.



Revised H-1B Visa Process Will Be Quickly Finalized

The proposed new H-1B rules have not yet been implemented. Given the nature of the proposed changes, however – and especially since they generally align with the priorities of both USCIS and employers – we do expect [a version of these provisions](#) to go into effect relatively soon after the notice-and-comment period concludes in December.



Return of Stateside H-1B and L-1 Visa Renewals

After an almost 20-year absence, federal officials appear closer than ever to bringing back the stateside issuance of nonimmigrant visas, which would allow H-1B and L-1 workers the option of renewing their visas without leaving the U.S. The pilot program that would put this change into effect officially went to the White House for review on October 17, marking one of the final steps before implementation. If soon finalized as expected, it would not only provide a welcome relief to many foreign nationals but also make a key strategic difference to employers. [Here are some of the practical implications and what employers should do as we wait.](#)

➤ AI Focus

Immigration Reform to Fuel AI Revolution

One of the more ambitious aims of [President Biden's October executive order on artificial intelligence](#) is to transform the immigration system to invite foreign national workers with technical expertise to the U.S. and incentivize them to remain in the country to study and work. This would be accomplished by updating the system for issuing visas for high-tech workers.

Meanwhile, the order also requires the USDOL to gather information from private employers about where they could use expertise from foreign national workers so that immigration officials can properly adjust their methodology.

Manufacturing

2023 Recap



Manufacturing Sector Gets Boost from AI Executive Order

Recognizing that high-tech manufacturers will play a key role in developing the components that will power the artificial intelligence revolution, [President Biden's October executive order on AI](#) provides a boost to the semiconductor manufacturing industry. The Commerce Department will be required to ensure that small businesses receive their fair share of the government subsidies to be paid out under the CHIPS and Science Act so that chip manufacturing is not consolidated among just a few large companies. These smaller companies will also be in line to receive mentoring through formal government programs, access to workforce development programs, funding for physical expansion where necessary, and a direct line to vast amounts of datasets to help them remain competitive.



Severance Agreements in the Spotlight

A February NLRB decision invalidated confidentiality and non-disparagement provisions in severance agreements – and will have far-reaching effects on employers that utilize them during layoffs or other involuntary terminations. But because manufacturing employers are enjoying robust economic times – with an industry unemployment rate of 3.2% as of September – you may not be focused on the language in your standard severance agreements. Since layoffs and other forms of involuntary terminations are an inevitable and cyclical part of the industry, however, [it is important for manufacturers to pay heed to this significant decision and the Board's clarifying Memorandum](#) to ensure that future severance agreements withstand scrutiny should they face legal challenge.



Manufacturers Looked Abroad for Talent

Speaking of low unemployment rates, the manufacturing industry continued to face a significant skilled labor shortage in 2023. With the industry in constant need of skilled workers, manufacturers have begun to rely on foreign workers to fill critical roles now more than ever. Of course, navigating the complex immigration process can be challenging, but a well-planned, long-term immigration strategy can help your company access this critical workforce. [We outlined the top five options manufacturing companies have when hiring foreign nationals to fill key roles.](#)



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➤ What Will 2024 Bring?



Union Walkthrough Rule Will Impact Manufacturers

Workplace safety officials issued a proposed rule in 2023 that will give a designated union representative the right to accompany an OSHA inspector during a facility walkaround – regardless of whether the representative is your employee or the facility is a union shop. We expect this rule to take effect by the middle of 2024, and we expect this rule to have a significant impact on the manufacturing community. [Here's what you need to know about this proposed and the seven key steps you can take to prepare.](#)



Manufacturers Will Look South for Opportunities

Recent years have seen a transformation when it comes to U.S. employers operating in Mexico thanks to sweeping labor reforms ([read more here](#)). A standout beneficiary of the reforms has been the automotive manufacturing sector – but manufacturers of all types will increasingly look south of the border in 2024 to reap the benefits. [Our recent survey of manufacturing employers](#) will help guide you about best practices in the new year and beyond.

➤ AI Focus

Workforce and Supply Chain Optimization

AI is increasingly being used to optimize workforce allocation and scheduling. By analyzing production schedules, employee skills, and availability, AI programs can ensure efficient staffing while complying with relevant workplace laws. AI can also play a crucial role in optimizing supply chains, predicting demand, and managing inventory.

Enhanced Safety Monitoring and Predictive Maintenance

AI-powered surveillance and monitoring systems are being used by manufacturers to enhance workplace safety. Systems can detect potential hazards, monitor compliance with safety protocols, and alert management to safety risks in real-time. By analyzing data directly from sensors and machines and predicting when equipment failures might occur, it can also reduce downtime on the floor.

Employee Benefits and Tax

2023 Recap



High Earners Can Still “Catch Up” For Now

In welcome news to employers, recordkeepers, and payroll providers, the IRS announced in August that it is giving more time to comply with mandatory Roth catch-up contributions under the SECURE Act 2.0. Employees who are at least 50 years old are currently able to make pre-tax “catch-up contributions” to their employer-sponsored retirement plans, including 401(k) plans – but that’s slated to change for some participants. Certain higher earners will soon be required to make such contributions to an after-tax Roth account. This provision was to take effect on January 1, 2024, but the IRS announced a two-year transition period to give employers a pass until the beginning of 2026. [Here's what you need to know about the pending change's impact on your organization's retirement savings plan.](#)



Employees Feel the Pinch as Student Loan Payments Resume

Federal student loan payments resumed in October after being on pause since 2020 when the COVID-19 pandemic began. Since SCOTUS struck down the Biden Administration's \$10,000 student loan forgiveness program in June – saying that the U.S. Education Secretary didn't have the authority to forgive this debt – it may be time for employers to start talking about [how to alleviate some of this financial pressure on employees](#) (if you haven't already).



Some Pandemic-Related Benefits Remain

While the COVID-19 public health emergency [officially ended earlier this year](#), you should note that some benefits stemming from the pandemic are ongoing. The Coronavirus Aid, Relief, and Economic Security (CARES) Act was originally signed into law in March 2020. Soon after, the Consolidated Appropriations Act, 2021 (CAA 2021) was signed into law that December and remains in effect to this day, continuing many of the financial programs and incentives in the CARES Act, including [the tax-free benefit for employer-provided student loan payments](#).



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➤ What Will 2024 Bring?



Fine-Tuning Long-Term Remote Work Policies

In 2023, employers had to grapple with the employee benefits and payroll tax aspects of remote work while they figured out how to move forward post-pandemic. As many remote and hybrid policies become permanent, you will need a solid plan and robust policies in 2024 to manage payroll tax obligations and deliver top tier benefits across multiple locations.



401(k) Plan Changes and Opportunities Driven by SECURE 2.0

Beyond Roth catch-up contributions for higher earners, employers will gear up for other mandatory changes, such as an increased age for Required Minimum Distributions and eligibility for long-term part-time employees. However, employers will also explore new opportunities created by SECURE 2.0, such as emergency savings accounts, expanded withdrawal events, and matching contributions for student loan payments.

➤ AI Focus

Enhanced Benefits Administration

AI can streamline benefits administration from enrollment to management. Smart systems can personalize benefit options based on employee preferences and life changes – not to mention making individualized recommendations based on predictive analytics – ensuring optimal coverage and satisfaction to the workforce.

Health Plan Analysis

Employers can use AI to analyze health plan usage and costs, identifying areas where changes can lead to cost savings or improved health outcomes for employees. This includes predictive analysis for health risks and customized wellness programs.

Enhanced Employee Communication and Engagement

AI-fueled chatbots and virtual assistants can provide employees with immediate, personalized answers to their benefits-related questions, improving engagement while also freeing up your personnel to focus their time on more strategic work.

Affirmative Action and Federal Contract Compliance

2023 Recap



Federal Contractor Affirmative Action Obligations Remain

"Affirmative action" in employment, particularly as it relates to federal contractors, is not directly impacted by the June SCOTUS decision on "race-conscious" admissions for academic institutions. Employers who are federal contractors should not discontinue efforts to comply with federal affirmative action obligations. [However, there are a few considerations to keep in mind – especially in the areas of effective outreach and remedying potential problem areas.](#)



Feds Ratchet Up Pressure with New Audit and Conciliation Procedures

An OFCCP rule that took effect in September adjusts the way it audits federal contractors and conciliates disputes over alleged discriminatory practices. [The final rule](#) removes much of the clarity and transparency that contractors have enjoyed the past several years when it comes to pre-enforcement notices and conciliation procedures, generally making things more complicated for the employer community.



New OFCCP Scheduling Letter Created Additional Burdens

The OFCCP also announced in August that it [updated its Supply and Service Scheduling Letter and Itemized Listing](#) – also known as its scheduling letter – in ways that federal contractors will find burdensome and time-consuming. The changes result in an expansion of coverage in both breadth and scope of compliance evaluations conducted by OFCCP, and it applies to supply and service compliance evaluations scheduled on or after August 24.



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➤ What Will 2024 Bring?



Prepare for New Race/Ethnicity Categories

The contractor community has long raised concerns on the limiting and nature of the race and ethnicity categories currently used for EEO-1 filings and Affirmative Action Plan (AAP) documents. Both the EEOC and OFCCP have indicated they are currently reviewing the issue, and we may soon see new categories or new clarifications in current categories.



Continued Refinement of Electronic Portals Expected

For the last two years contractors have had to certify their compliance with the applicable affirmative action regulations via an online portal. For instance, contractors recently had to add the start date of their affirmative action plans, and we anticipate that contractors will soon have to provide additional information in the portal. We also saw a new EEO-1 form and portal in 2023, and the contractor community should expect further refinements to both in 2024.



Watch for New OFCCP Regulations

With the uptick in remote work in recent years, the OFCCP has recognized that AAP structures based on establishment or physical location are becoming unworkable for many contractors. We expect the agency to release regulations aimed at refining the structure of affirmative action programs to accommodate changes in the way companies work.

➤ AI Focus

More Disclosures

In addition to the EEOC, the OFCCP is focused on ensuring employers do not violate workplace anti-discrimination laws when using AI in their selection processes. Contractors must have an awareness of their use of AI and “how” the AI works. In the new Scheduling Letter for OFCCP audits, for example, contractors have to disclose how they utilize AI in their selection proceedings. In line with the [AI Executive Order issued in October](#), we can expect to see contractors held to heightened standards when it comes to the gradual unveiling of workplace AI regulation.



Construction

➤ 2023 Recap



Heightened Emphasis on Workplace Safety

Federal workplace safety officials recently announced they are seeking to revise the national Personal Protective Equipment (PPE) standard for the construction industry to explicitly state that PPE must fit each affected employee properly – a proposed change that would require many construction employers to ramp up their workplace safety efforts. OSHA's proposed revision to the standard announced in July would align the PPE standard for construction with that of general industry and maritime standards, which already explicitly mandate that PPE properly fit workers. [Read more about this proposal and the steps you should take to prepare.](#)



EEOC Turns Sights on Construction Industry

Construction employers need be mindful of the federal government's renewed focus on combatting discrimination and harassment in the industry. A 2023 report from the Equal Employment Opportunity Commission (EEOC) identified key issues and the steps it plans to take to address noncompliance with federal anti-bias laws. While the laws are not new, the agency's recent focus on enforcement means you should review [our overview of the EEOC's findings](#) and the six steps you should consider to prevent discrimination and harassment in the workplace.



Federal Contractors Faced 3 Separate Challenges in 2023

It was a rough year to be a federal contractor in the construction industry this past year, as three separate federal agencies turned up the heat on your business. First, as discussed above, the EEOC's report had a special focus on contractors – [and we provided five steps you should take to respond to the heightened requirements.](#) Second, the Office of Federal Contract Compliance Programs (OFCCP) released its Corporate Scheduling Announcement List (CSAL) specifically for construction contractors in June, providing notice to those construction contractors and subcontractors that were selected for an audit ([and we offered a seven-step plan for employers](#)). Third, the Department of Labor released new Davis-Bacon Act regulations in August that significantly altered the methodology for setting prevailing wage rates for contractors and subcontractors working on federally funded construction projects. [The new rules also significantly enhance the DOL's enforcement capabilities under the Act](#), giving the agency more tools to punish employers it believes are violating the Act or its related regulations.



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➤ What Will 2024 Bring?



Department of Labor Will Bring the Heat

2024 will see expanded enforcement actions by the Department of Labor, as federal officials focus much of their attention on the construction industry. Resources continue to pour into infrastructure projects thanks to federal and state funding initiatives, leading enforcement agencies and regulators to scrutinize employers to ensure their wage and hour policies, compensation practices and federal contracts are in compliance with all applicable laws.



Labor Activity Will Remain High

We'll also see an increased emphasis on grassroots labor organizing activities by the various trade unions, including the Carpenters and Laborers unions. This means you can expect to experience an increased use of strikes as part of the negotiation process and use of state laws – like wage theft statutes – to pressure construction employers into signing union agreements.

➤ AI Focus

Automation Will Smooth the Way

AI will increasingly be used to monitor and ensure compliance with workplace laws in 2024 and beyond. By analyzing project safety data, and time and payroll records, AI systems can evaluate working conditions and detect potential violations – such as excessive working hours, unsafe working conditions, or underpayment of wages – and alert employers. The same holds true for optimizing workforce allocation. By analyzing project needs, worker skills, and availability, AI can help construction employers ensure appropriate working hours and overtime, compliant meal and rest periods, all while maximizing productivity.

Predictive Analysis for Contracting and Subcontracting

AI can aid construction employers when analyzing risks associated with contracting and subcontracting – particularly when it comes to ensuring compliance with labor and employment laws. AI systems can predict potential trouble spots with subcontractors, such as their history of labor violations, wage and hour complaints, and safety issues, helping employers make informed decisions about who they choose to work with.

Automotive Dealership

2023 Recap



Labor Relations Took Center Stage

Outside of Hollywood, the labor movement made the most headlines across the country this past year in the automotive industry. Auto manufacturers became the focal point of the labor movement with the UAW strike, and this trickled down to the dealership level. Many dealers reported parts shortages and delays in their ability to perform repairs – which could require flexibility when it comes to staffing at all levels.



Handbooks Might Require a Rewrite

As noted in our section on Labor Relations, new NLRB standards established this past summer regulating [employment policies](#) and [severance agreements](#) – even in non-union settings – required many dealerships to revisit handbooks and other standard employment forms.



New Privacy Requirements Threaten to Overwhelm Industry

Dealerships across the country have been inundated with new consumer and employment privacy requirements. In addition to the FTC Safeguards Rule and in the wake of the California Consumer Privacy Act, eight other states have enacted their own consumer privacy laws. Things won't be easing up anytime soon, as similar legislation is being considered by more than a dozen additional state legislatures.



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➤ What Will 2024 Bring?



Vulnerable to Unionization Efforts

Dealerships will need to be mindful of employee concerns regarding pay, staffing, and scheduling flexibility given relaxed recognition and quickie election rules that will leave dealerships susceptible to union campaigns like never before.



Data Privacy Will Remain a Critical Field

Given the trends we've seen in the data privacy field, it should come as no surprise that data privacy compliance will remain a point of emphasis for dealerships in the new year. Your industry regularly handles reams of sensitive customer and employee information, putting you in the crosshairs for potential mishaps and heightened scrutiny.

➤ AI Focus

Revolution in Labor and Employment

Artificial intelligence will help workplace law compliance and human resources functions reach a new level in the next year and beyond in auto dealerships. It can help automate HR processes and ensure legal compliance by monitoring working hours, managing leave requests, and ensuring fair labor practices. It can enable a more sophisticated employee performance analysis, tracking sales performance, customer interactions, and other key metrics to provide insights into employee effectiveness, training needs, and potential promotions or reassignments. And of course it can efficiently screen candidates, analyzing their fit for various roles and reducing biases in hiring decisions.

Predictive Labor Demand Forecasting

Focusing even more deeply on one other area, AI can help dealerships predict staffing needs based on foot and web traffic, sales trends, and other factors. This can help your business in planning work schedules, hiring temporary staff during peak periods, and ensuring compliance with workplace laws related to working hours and overtime.

Sports

➤ What Will 2024 Bring?



Student-Athlete Model Under Attack

NLRB General Counsel Jennifer Abruzzo took another big step in the continuing saga surrounding college sports by [filing a complaint in May](#) seeking to have student-athletes classified as employees under the National Labor Relations Act – which would clear the way for them to consider forming a union. If successful, this action could fundamentally alter the nature of college sports.



NIL Changed the Landscape

Various states took initiative to [amend their name, image, and likeness \(NIL\) laws](#) to create competitive advantages and match what other states were doing to ensure local universities could recruit the best student-athletes. Additionally, third-party collectives have demonstrated that they are here to stay and are working together to advocate on behalf of student-athletes. Universities should [understand and forge relationships with collectives](#) to support their student-athletes and remain on the forefront of this field. Looking ahead to 2024, universities, conferences, and the NCAA are hoping for federal legislation to create uniform NIL requirements across the country – but any such comprehensive solution seems unlikely in an election year.

➤ AI Focus

Player Performance Will Be Boosted

AI can do wonders for optimizing player performance – not only can wearable tech integrated with AI provide real-time data on fitness, injury risks, and optimal training regimens, but it can also predict the likelihood of injuries by analyzing players' health data, training intensity, and game statistics.

Front Office Benefits

AI tools can help teams manage contracts and salary caps more effectively by analyzing player performance, market trends, and financial regulations. Programs can assist in making strategic decisions regarding player signings and salary allocations. It can also enhance fan experiences by providing personalized content, such as tailored game highlights, player statistics, and predictive game analyses.



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