HIGHLIGHTS CHECKLIST

EMPLOYMENT COORDINATOR
Release #11; November 2026

Here are the highlights of this issue of your *Employment Coordinator*. Review this Checklist as a convenient summary of recent developments in the law. Consult the *Employment Coordinator* at the topic, chapter, and section indicated for details.

BENEFITS

Periodic Paper Benefit Statements

The DOL proposed new rules for retirement plans to provide workers with periodic paper benefit statements, implementing a mandate in the SECURE 2.0 Act of 2022 that modifies long-standing electronic disclosure standards for retirement plans.

91 FR 9213-01, 2026 WL 509814 (F.R.) .....

Ben § 36:19

COMPENSATION

Employer Properly Included Shift Differentials In Regular Rate

The Seventh Circuit held an employer properly included shift differentials, weekend differentials, and increased pay for additional hours worked or extra shifts picked up under employer's "Extra Pay" program.

Lutz v. Froedtert Health Inc., 184 F.4th 561 (7th Cir. 2026) .....

Comp § 20:60

EMPLOYMENT PRACTICES

Citizen Living Abroad at Time of Discrimination Cannot Claim Protection of Title IX

The Sixth Circuit has ruled that the phrase "person in the United States," as used in Title IX, refers to a person physically located within the United States territory. Accordingly, a United States citizen living abroad at the time of an alleged discrimination cannot claim the protection of Title IX.

Charlton-Perkins v. University of Cincinnati, 185 F.4th 626 (6th Cir. 2026) ...

Emp P § 1:50

Seventh Circuit Finds Employer Explanation Legitimate And Not Pretextual

Where an employer consistently states a particular requirement for a position, but then adds other reasons for its decision, a court may not find pretext. The Seventh Circuit found that where an employer continually stated that they required large-scale management experience for a particular position, but later gave the plaintiff specific

reasons why he was not hired, the employer's explanation was not "shifting" or "inconsistent.

Highbaugh v. Exelead, Inc., 186 F.4th 1020 (7th Cir. 2026) .....

Emp P § 107:99

LABOR RELATIONS ——

NLRB Lacked Statutory Authority To Impose The Successor Bar

On remand from the U.S. Supreme Court, the D.C. Circuit held that the NLRB's "successor bar," which compels an employer who acquires a business to recognize and bargain with an incumbent union for up to one year even if the union lacks majority support, contravenes the NLRA by suspending two statutory protections, namely employees' right to choose whether and how to collectively bargain, as well as their right to be represented by a union that has majority support. The NLRB has no authority to favor incumbent unions at the expense of the statutory protections for employees, since the NLRA confers rights only on employees, not on unions.

Hospital Menonita De Guayama, Inc. v. National Labor Relations Board, 183 F.4th 745 (D.C. Cir. 2026) .....

Labor § § 18:141, 18:144, 18:148, 33:11, 52:45

An Undated Agreement Could Not Serve As A Contract Bar

The Regional Director erred in dismissing a decertification petition when the collective bargaining agreement lacked an effective date capable of being determined from the document's face. The union's membership had ratified a tentative agreement with placeholders for the effective date and expiration date left blank, and an employee filed a decertification petition a few days later. There was no evidence that the union and the employer conformed their agreement, such as by inserting the missing dates and initialing the insertion, before the employee filed her decertification petition.

SSSM Health Saint Louis University Hospital, 375 N.L.R.B. No. 26, 2026 WL 2283615 (2026) .....

Labor § 18:168

WORKPLACE SAFETY ——

OSHA Exceeded Statutory Authority

The Fifth Circuit has held that OSHA exceeded its statutory authority in promulgating a regulation requiring employers to record employee-reported work-related "mental illnesses." The court found that the OSH Act provision authorizing OSHA to require employers to maintain accurate records of work-related deaths, injuries, and illnesses did not authorize OSHA to mandate recording of work-related "mental illnesses."

Exxon Mobil Corporation v. Occupational Safety and Health Review Commission, 183 F.4th 378 (5th Cir. 2026) .....

Work S § 5:4