

# Human Resources WEEKLY DIGEST

May 7, 2019

## Can Employers Stop Testing for Marijuana?

Over the past year, we have had a number of employers ask about removing marijuana from the panel of illegal substances screened for applicants and/or employees. Some of these companies cite the low unemployment rate, stating that disqualifying persons for positive marijuana tests has severely reduced their pool of otherwise qualified applicants. Others indicate the increasing social acceptance of casual marijuana use, and believe that this has little effect on a person's ability to perform their job functions. [Full Article](#)

*Parker Poe*



## #No Filter: Terminating an Employee for Social Media Posts

Prior to the advent of social media and especially the #MeToo movement, employers were generally comfortable drawing a bright line between what employees did on their own time and workplace misconduct. Those bygone times, however, have been replaced by a modern era wherein employers are forced to apply employment laws created before the personal computer to their workforce in an increasingly virtual world. The below sampling of cases and employer decisions illustrate how nuanced and difficult deciding to terminate an employee for a social media post can be. [Full Article](#)

*Cozen O'Connor*

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## SCOTUS Holds Ambiguous Agreement Not Enough for Classwide Arbitration

In a 5-4 decision, the Supreme Court of the United States recently held that under the Federal Arbitration Act (FAA), an ambiguous agreement cannot provide the necessary contractual basis for concluding that the parties agreed to submit to class arbitration. Accordingly, the contrary ruling of the Ninth Circuit was reversed and the matter was remanded to the trial court for further proceedings. [Full Article](#)

*Maurice Wutscher*

## Drafting Mistakes Sink an Arbitration Agreement

Clients are contacting our Firm to draft arbitration agreements for their employees. Some clients are finding sample agreements on the Internet. This is dangerous, because companies must use the correct language in the arbitration agreements to prevent a court from allowing the case to proceed in court rather than before an arbitrator. [Full Article](#)

*Masuda Funai*



## Supreme Court Likely To Resolve LGBTQ Title VII Coverage

The United States Supreme Court has indicated that it will finally settle the circuit-splitting issue of whether gay and transgender status falls under the protection of Title VII. The court signaled this when it agreed recently to hear three cases that have been appealed to the high court. The three cases are: *Altitude Express v. Zarda*; *Bostock v. Clayton County, Georgia*; and *R.G. & G.R. Harris Funeral Homes Inc. v. EEOC*. [Full Article](#)

*Troutman Sanders*



## IRS Clarifies Business Meal and Entertainment Deductions Following TCJA

The Tax Cuts and Jobs Act of 2017 (TCJA) eliminated the deduction for entertainment purchased as a business expense but left intact the deduction for business meals. Because entertainment and meals are often closely intertwined when purchased in a business context, taxpayers may have difficulty distinguishing deductible meal expenses from nondeductible entertainment expenses. The Internal Revenue Service (IRS) intends to propose regulations outlining the differences between deductible meal expenses and nondeductible entertainment expenses. However, until those regulations are issued, taxpayers must rely on IRS Notice 2018-76. [Full Article](#)

*Ogletree Deakins*

## STATE & INTERNATIONAL COMPLIANCE

### CALIFORNIA



#### What Should Employers do About the CCPA?

Despite its name, the California Consumer Privacy Act, which goes into effect Jan. 1, 2020, potentially could impose substantial compliance burdens on and create significant class-action exposure for every employer that employs California residents and has more than \$25 million in annual gross revenues. [Full Article](#)

*Littler Mendelson*

### MASSACHUSETTS



#### Massachusetts DFML Releases Private Plan Exemption Application And Guidance

As previously announced, yesterday, the Massachusetts Department of Family and Medical Leave (DFML) made available the online application for private plan exemptions under the Paid Family and Medical Leave ("PFML") Law. [Full Article](#)

*Seyfarth Shaw*

### NEW YORK



#### Legal Alert: The evolving landscape of non-compete agreements

Employers commonly use non-compete agreements to protect the use of their trade secrets and other confidential business information from employers who leave to join competitors. New York State appears poised to join a number of states in prohibiting such agreements in certain contexts. [Full Article](#)

*Eversheds Sutherland*

### ARKANSAS



#### What New Employment Laws Were Enacted in Arkansas?

The 2019 session was a busy one for the Arkansas General Assembly, as the state enacted at least nine labor and employment-related measures in its recently concluded legislative session. These laws range from codifying the definition for independent contractor to banning microchipping... [Full Article](#)

*Littler Mendelson*