

JacksonLewis

What to Expect in 2021: The vaccine, reopening and new workplace challenges

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Felice B. Ekelman, Esq.

Felice.Ekelman@jacksonlewis.com

Adam S. Gross, Esq.

Adam.Gross@jacksonlewis.com

Jackson Lewis P.C. · New York City

About Jackson Lewis P.C.

As legal professionals **focused on the workplace**, we have a unique vantage point into the human condition.

It is our **privilege** to do work that affects real people.

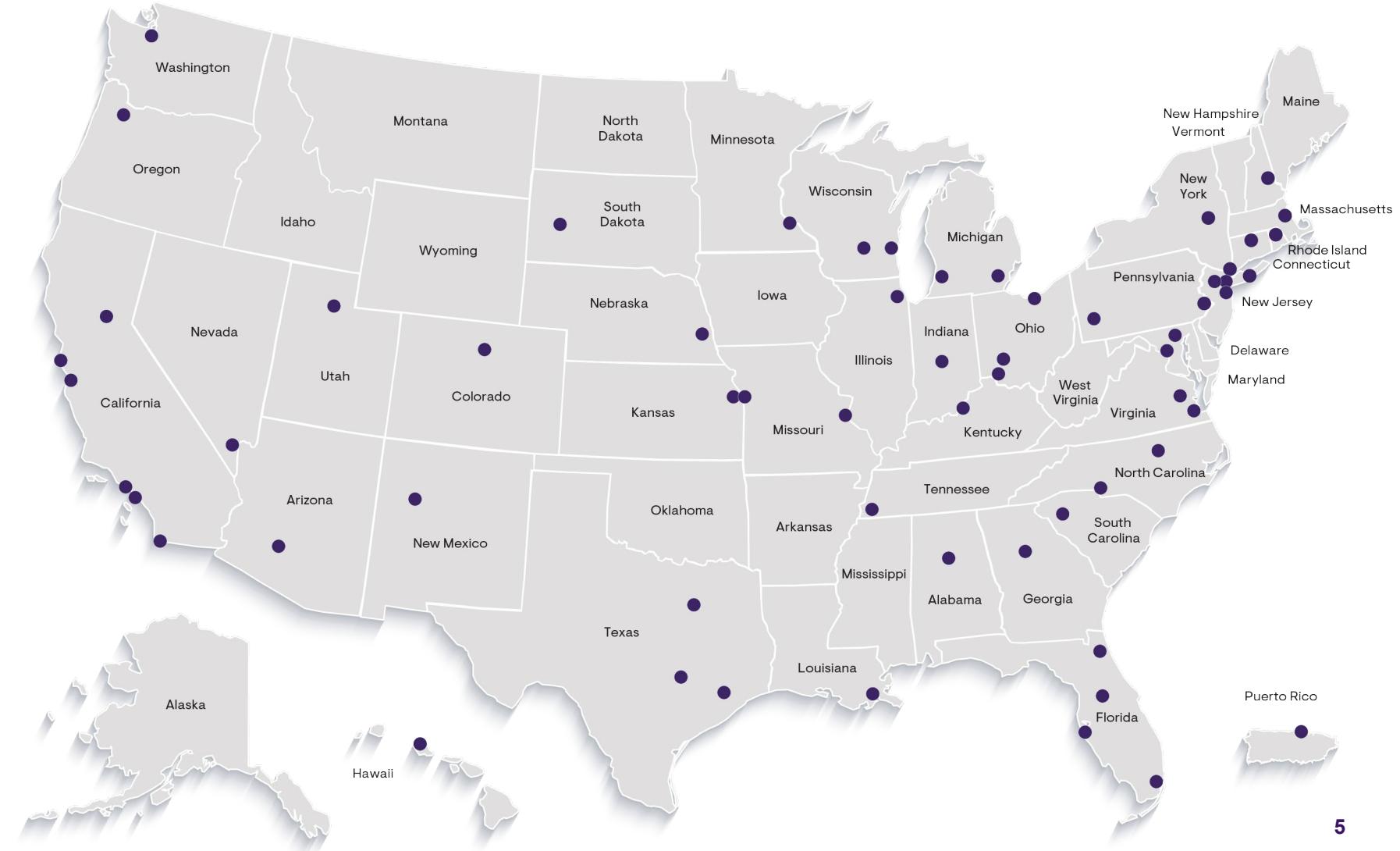
Firm Overview

- We represent management exclusively in every aspect of employment, benefits, labor, and immigration law and related litigation.
- As leaders in educating employers about the laws of equal opportunity, Jackson Lewis understands the importance of having a workforce that reflects the various communities it serves.
- With 61 locations and more than 950 attorneys, we offer local knowledge backed by the support of a national firm.
- We are founding members of L&E Global, a global alliance of premier employer's counsel firms.

Strategically Located to Serve Employers' Needs

61
Locations Nationwide

950+
Attorneys





Practices

- Class Actions and Complex Litigation
- Collegiate and Professional Sports
- Corporate Diversity Counseling
- Corporate Governance and Internal Investigations
- Disability, Leave and Health Management
- Employee Benefits
- General Employment Litigation
- Health Law and Transactions
- Immigration
- International Employment Issues
- Labor and Preventive Practices
- Non-Competes and Protection Against Unfair Competition
- Privacy, Data and Cybersecurity
- Wage and Hour
- White Collar and Government Enforcement
- Workplace Safety and Health
- Workplace Training

COVID-19 Leave and Accommodation Requirements

- FFCRA expired on December 31st
- NYS Quarantine Law has no current expiration date
 - Employers with 100 or more employees must provide two weeks of paid leave during quarantine
 - Employers with 11-99 employees must provide 5 paid days of leave during quarantine and then unpaid time during the duration of the quarantine
 - Employers with 10 or fewer employees (and 2019 net income under \$1M) must provide unpaid leave during the quarantine
- NYS Quarantine leave is applied prior to use of paid sick leave or other PTO
- Are employees entitled to an additional replenishment of quarantine leave in the new year if they already used time in 2020?
- Leave entitlements may extend beyond statutory available leave

Statewide Paid Safe/Sick Leave Is Fully Active

- As of January 1, 2021, employees across New York State (although similar requirements already existed in NYC and Westchester) are permitted to start using accrued safe/sick leave (employers started accruing time Sept. 30th)
 - Employers must harmonize existing policies with the new state requirements
 - Payroll records **must** include the amount of sick leave accrued and used by each employee on a weekly basis
 - Accrual cap is based on number of employees
 - Employers with 100 or more employees must provide up to 56 hours paid sick leave per year
 - Employers with 5-99 employees must provide up to 40 hours paid sick leave per year

The COVID-19 Vaccine – What We Know

- Initial EEOC guidance issued in December suggests that employers can require employees to obtain the vaccine once it is available, but:
 - Employers still obligated to provide reasonable accommodations for disability and sincerely held religious beliefs
 - Medical questions beyond asking for proof of vaccination likely impermissible
 - Consistency across all employees is crucial
 - Employers should carefully consider the impact requiring the vaccination could have on their business
- EEOC/NYS could issue additional guidance in coming weeks and months

Evolving CDC and NYS Guidelines

- Important to regularly check updated CDC and NYS guidance regarding required safety protocols and procedures
 - These standards and guidelines change regularly
- Be mindful that the CDC and NYS standards sometimes differ
 - e.g. close contact's ability to test out of 10 day quarantine requirement (permitted after 7 days under CDC standard but not permitted in NY)
- Lax adherence to CDC/NYS safety protocols can have substantial consequences
 - e.g. could lead to increased number of employees impacted by positive case, requiring closure of restaurant during quarantine

Rehiring Employees

- Risk associated with passing over former employees when making rehiring decisions
 - Potentially heightened risks if employees were “furloughed”
 - Importance of objective rationale/criteria if passing over former employees
 - Consistency in approach is paramount

Wage and Hour Changes for 2021

- Minimum wage increases across the state, effective 12/31/20 (with the exception of NYC)
 - This causes reciprocal changes to spread of hours and call-in pay
- Change to the tip credit amounts across the state, effective 12/31/20 (with the exception of NYC)
- Employers **must** issue new, accurate wage notice forms for employees whose pay has changed
 - Failure to issue new forms can result in monetary penalties, including, for tipped employees, forfeiture of the ability to take the tip credit

Wage and Hour – What has NOT Changed

- You may have read about national elimination of the 80/20 rule and the DOL's position that back of house employees may participate in a tip pool (assuming no tip credit is taken for any employee)
- These national changes **DO NOT apply in New York**, which has its own state rules, codifying the 80/20 requirement and prohibiting sharing of tips with any employee who does not perform, or assist in performing, personal service to patrons that is “a principal and regular part of their duties and is not merely occasional or incidental”
 - 80/20 is still the law in New York
 - Tips cannot be shared with back of house employees in New York

New NYC Employment Laws/Requirements On Horizon

- Expansion of Fair Chance Act
 - If enacted, which is expected, would place more stringent restrictions and requirements on NYC employers conducting background checks after making conditional offers of employment
- Expansion of Fair Workweek Law
 - **Applies only to NYC fast food employees who work at Fast Food Establishments**
 - a Fast Food Establishment is a business that is part of a chain, primarily serves food and beverages, offers limited service, and is one of 30 or more such establishments nationally. Customers order food or drinks and pay before they sit down to eat or take their food to go, or they place an order for delivery off-site.



Questions?

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Thank you.