

CUT AND PASTE POST AUGUST, 2022

It's Almost Here!



On August 18th, GVHRA will welcome Dr. Alexander Alonso, SHRM Chief Knowledge Officer, to the Gallatin Valley. Dr. Alonso's presentation is entitled *Workplace Origami: Making Sense of The Forces Resetting the Workplace*.

Go to the [GVHRA website](#), for more information, and to register for this great workshop!

U.S. Department of Labor and Long COVID

Some people who are infected by COVID-19 go on to have new or lingering symptoms—a condition known as long COVID. In an effort to support workers with long COVID and their employers, the U.S. Department of Labor (DOL) along with the U.S. Centers for Disease Control and Prevention and the U.S. Surgeon General are using the DOL's *E-Policy* online dialogue tool to gather insight and collect shared experiences on:

- Challenges workers with long COVID face in the workplace;
- Ways employers can support their workers with long COVID;
- Effective practices to inform both workers and employers about long COVID;
- Organizations to engage in developing solutions for those affected by long COVID; and
- Methods to address obstacles faced by workers with long COVID when trying to obtain needed disability benefits.

The deadline for comments was posted as August 1, 2022. However, as of today (August 2, 2022), the site is still accepting comments. *E-Policy* participants are able to provide their own feedback, and comment and vote on other participants' ideas. It's likely the DOL will provide guidance or regulations based on the information shared by these participants.

To view the long COVID online dialogue, go to <https://longcovidatwork.ideascale.com/a/index>. To learn more about the *E-Policy* online dialogue tool, go to <https://epolicyworks.ideascale.com/>

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Gig Worker Bill Introduced

On July 20, 2022, a bipartisan group of House members introduced the [Worker Flexibility and Choice Act](#) (H.R. 8442). The bill attempts to address the independent contractor-or-employee “sticky wicket” by creating a third employment category. Under this new category, workers would enter into a “worker flexibility agreement” which would include some workplace protections (e.g., Family and Medical Leave Act coverage and protection from workplace harassment and discrimination) but would also allow employees to accept or reject offers for work opportunities from multiple entities. The bill was referred to the House Committee on Education and Labor, and to the Committee on Ways and Means, for further action.

Professional Pointer: This bill may be a win/win for employers and employees in what is quickly becoming a “Gig Economy”, or it could create compliance chaos! GVHRA is reviewing this bill and will keep you updated.

U.S. Supreme Court Limits EPA’s Authority to Regulate Carbon Emissions

On June 30, 2022, by applying the ‘major questions doctrine’ the U.S. Supreme Court held that the Obama-era Clean Power Plan (which the Court found would have capped carbon dioxide emissions “at a level that would [have forced] energy generation facilities to shift to renewables”) exceeded the statutory authority provided to the Environmental Protection Agency under the Clean Air Act.

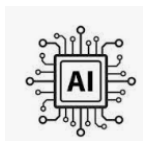
So, why does an HR person care about this ruling?

According to Justice Kaglan’s dissent to the majority opinion, this decision “appears to create a new form of statutory interpretation that is far less deferential to agency expertise when major questions are at issue.” Here’s an example of how this may affect human resource management:

Minimum salaries for white collar (“exempt”) workers are not addressed in the Fair Labor Standards Act (FLSA), but are set in the FLSA’s implementing regulations. Because of this, in the past, some have argued that the Department of Labor has no right to set minimum pay rates for exempt workers. The recent ruling could spur an amendment to the FLSA allowing the DOL to regulate these salaries, or could result in the withdrawal of any regulation the DOL believes would fail the “major questions doctrine” test, such as the establishment of these minimum salaries. A lack of regulatory guidance generally results in a wide interpretation of laws which, in turn, results in increasing legal challenges.

GVHRA is watching and will keep you updated!

EEOC Issues Guidance on AI in Employment



In March, the Equal Employment Opportunity Commission issued guidance on complying with the Americans with Disabilities Act (ADA) when using artificial intelligence (AI) for employment decision-making. Basically, the guidance includes familiar principles of ADA law: (1) provide reasonable accommodations for an applicant/employee with a disability; (2) don’t use testing tools that intentionally or unintentionally screen out disabled individuals; and (3) don’t seek out information about an individual’s disability status or physical or mental impairments.

Professional Pointer: If your company uses any form of AI in its employment decision making, you probably need to check out the Guidance, which is available [here](#).