

July is the New January:

A Post-Pandemic Look at Emerging Labor and Employment Law Trends





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Answering Your Questions

1. Q & A Box on your screen
(questions are confidential –
visible to presenters only)
2. Or, Ask at Session's End



Introducing the Navigator Suite

ComplianceHR SmartScreen



COVID-19 Screening

Efficiently screens your employees and tracks results as they return to work, while helping you ensure privacy and 50-state compliance.

+ Manage Employees

🔍 Track Results

COVID-19 Resource Center



COVID-19 Resource Center

Quickly delivers answers to the most pressing employment-related COVID-19 topics such as health and safety, leaves of absence and more.

🔍 Use FAQ Rapid Reference

🔍 View Resource Documents

PolicySmart



Be Confident. Stay Compliant.

PolicySmart's simple templates and checklists make it easy to create and maintain your policies. Ensure you never miss an update with our intuitive news and notifications about regulatory changes.

🔍 View Policy Documents

🔍 View Policy News

⚙️ Configure Jurisdictions

Navigator IC



Independent Contractor Assessment

Delivers an actionable risk assessment, a report on how to lower the risk of misclassification, and a summary of applicable laws

+ Create New Evaluation

🔍 View Evaluations

▶ IC Agreement

Navigator OT



Exempt Status Assessment

Provides a risk assessment of each applicable exemption, suggestions on how to lower the risk of misclassification, and a summary of the federal and state exemption standards

+ Create New Review

🔍 View Reviews

🔍 View Evaluations

Navigator Leave



Leave Compliance

Generates state and federal compliant forms, and quickly delivers federal and state-specific leave requirements (and paid sick leave or "PSL") through Rapid Reference tools.

+ Create New Form

🔍 View Forms

▶ Use PSL Rapid Reference

▶ Use Rapid Reference

Navigator Pay Practices



Wage and Hour Compliance

Delivers comprehensive reports on a federal and state-by-state basis for the most common wage and hour issues

▶ Find Minimum Wage

▶ Use Rapid Reference

Navigator Onboarding



Onboarding Document Production

Produces state and federal compliant employment applications, offer letters, and employee non-disclosure documents

+ Create New Document



- Comprehensive library of customizable federal and state specific model policies
- Innovative compliance timeline of important legal changes soon to take effect
- Access to jurisdiction-specific checklists
- Monthly automated emails with a summary and analysis of relevant legal documents

Effective Date Timeline

Jurisdiction	Effective Date
California	09/01/2020
Colorado	09/01/2020
	01/01/2021

Filter Timeline

Effective Within

- One Month: 2
- Six Months: 4
- One Year: 4

Filter News

Select Jurisdiction: - Select All -

Requires Policy Update: - Select All -

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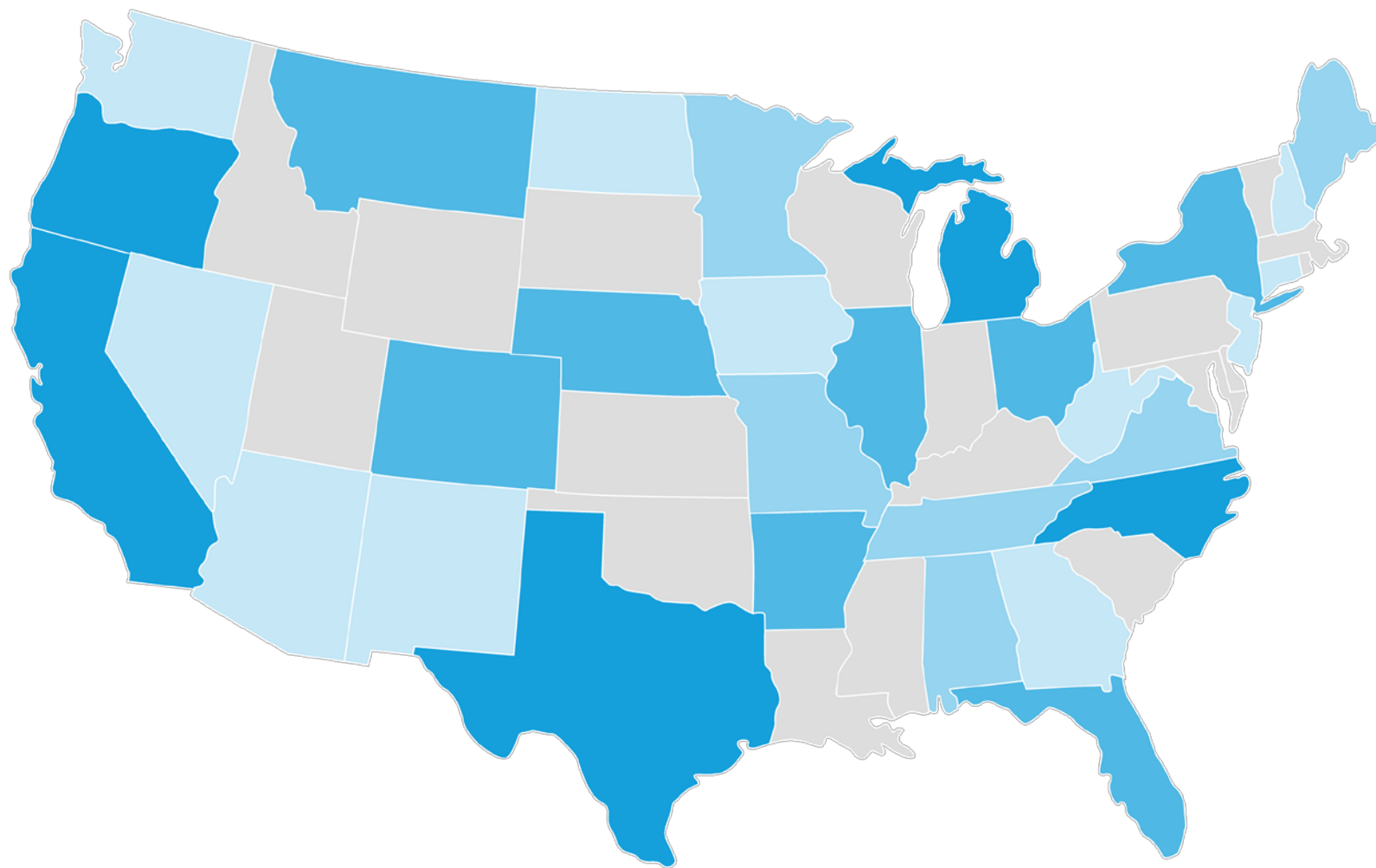
This application provides you with the tools of documents:

- A National Template
- State Supplements
- Policy Checklists
- State Guides

The **National Template** includes a number of traditional policies (e.g., EEO, Harassment, FMLA, Meal Breaks, Standards of Conduct), along with optional sample policies you can customize and provide to employees if they are relevant for your workforce and operations (e.g., Workplace Bullying, Holidays, Personal Appearance and Grooming).

There is a **State Supplement** to that National Template for every state and the District of Columbia. In the State Supplements you will find policies that carefully track state and locality-specific distinctions from those general, national policies. In the state materials, you will find addenda that identify the protected categories under state EEO laws, state-specific meal break, predictive scheduling, lactation accommodation and leaves of absence policies. We also provide policies tracking sick leave, lactation accommodation and predictive scheduling requirements for major municipalities, which are localities with 100,000 or more residents.

The State Supplement policies are drafted to comprehensively track statutory requirements, while also identifying places for customization. Throughout the templates, you will see comments intended for the policy drafter. These comments may explain why specific language appears, signal updates made within the last year or provide context or background information to help you customize the policy.

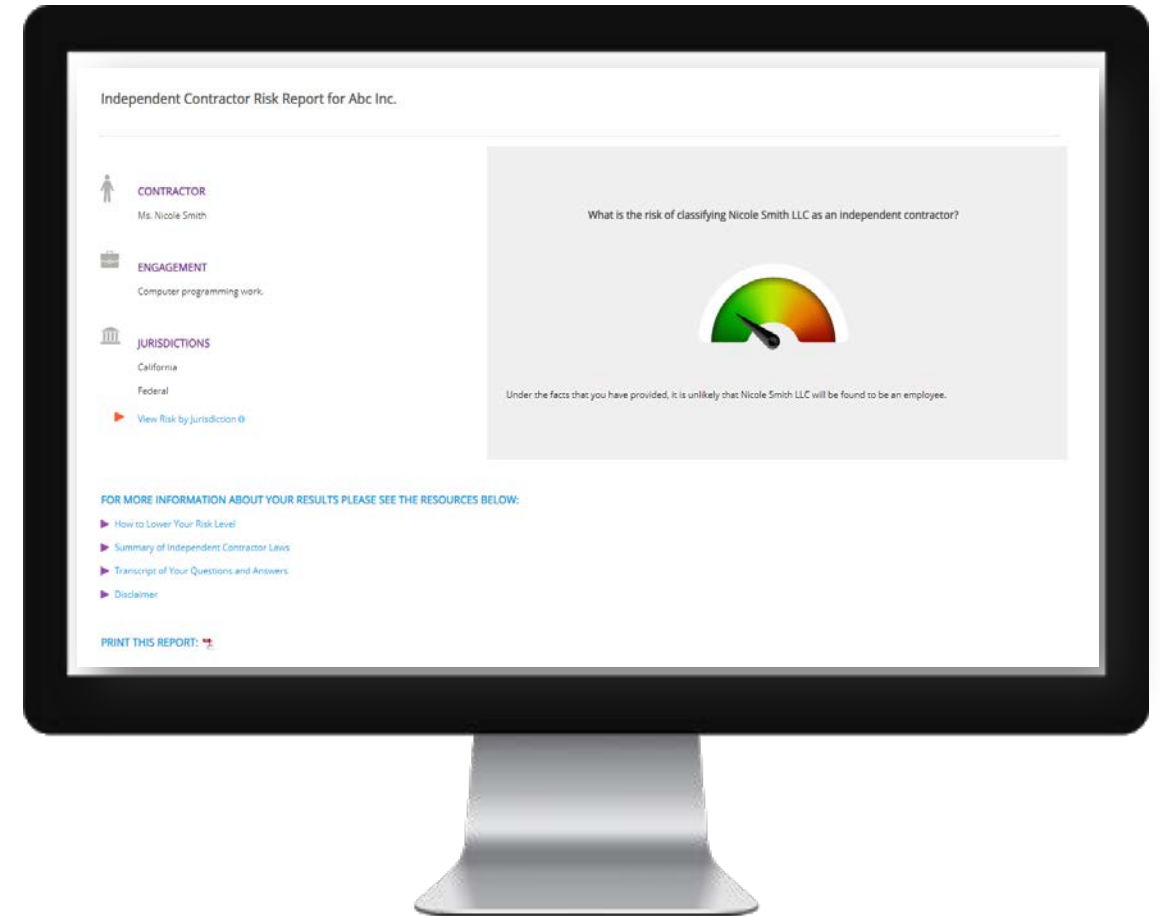


- States by volume of policy changes in 2020



Navigator Independent Contractor

- Determines employee or independent contractor status
- Draws from a proprietary engine of **1,900 reported court decisions** and DOL opinion letters
- Analyzes individual fact patterns under all applicable federal and state regulations
- Delivers an actionable risk assessment, a report on how to lower the risk of misclassification, a summary of applicable laws, and a transcript of questionnaire answers



Try the Navigator Suite Free for 14 Days

The screenshot displays the Compliance HR Navigator Suite interface. At the top left, the title "Compliance HR" is shown. Below it, a sidebar lists three speakers: Lori Brown (Strategic Advisor - Compliance HR, Shareholder - Littler), Bruce Sachet (Shareholder - Littler), and Sarah Martin (Associate - Littler). The main content area, titled "Slides", features a presentation slide with the text "July is the New January: A Post-Pandemic Look at Emerging Labor and Employment Law Trends" and the Littler and Compliance HR logos. To the left of the slides is a "Q&A (Content & Technical)" section with a text input field labeled "Enter your question" and a "Submit" button. To the right is a "Resources" section listing "Feedback Form", "State-By-State CLE Guide", and "Presentation Materials". At the bottom, a navigation bar contains icons for a download, CLE, Q&A, help, and other functions. A large red arrow points to the download icon in the navigation bar. The text "POWERED BY ON24" is visible in the bottom right corner of the interface.



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2. Link to recorded audio presentation
3. Your Free Trial!





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Why are we here?

Bruce Sarchet



Because July is the new January!

Bruce Sarchet

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The Regulation of the Workplace

- States and cities are passing new employment laws at a dizzying pace.
- There are now 31 different minimum wage laws in the San Francisco Bay Area.
- COVID has sped up the pace!
- Laws don't just become effective in January any more, any time of the year will do.
- But, the second most popular date seems to be July 1.

Disclaimers!

- This is not a comprehensive webinar on all labor and employment laws.
- We are only going to highlight those which became effective on or about July 1, 2021.
- And, as always, this webinar does not substitute for the advice of counsel.



Agenda

1. COVID-19
2. Nondiscrimination
3. Contingent Workforce
4. Marijuana Use & Drug Testing
5. Protected Leave
6. The Curious & Quirky
7. Questions and Answers

Post-Pandemic? Not so fast...

Interim Public Health Recommendations for Fully Vaccinated People

Updated July 28, 2021 Languages ▾ Print

Summary of Recent Changes

Updates as of July 27, 2021

- Updated information for fully vaccinated people given new evidence on the B.1.617.2 (Delta) variant currently circulating in the United States.
- Added a recommendation for fully vaccinated people to wear a mask in public indoor settings in areas of [substantial or high transmission](#).
- Added information that fully vaccinated people might choose to wear a mask regardless of the level of transmission, particularly if they are immunocompromised or at [increased risk for severe disease](#) from COVID-19, or if they have someone in their household who is immunocompromised, at increased risk of severe disease or not fully vaccinated.
- Added a recommendation for fully vaccinated people who have a known exposure to someone with suspected or confirmed COVID-19 to be tested 3-5 days after exposure, and to wear a mask in public indoor settings for 14 days or until they receive a negative test result.
- CDC recommends universal indoor masking for all teachers, staff, students, and visitors to schools, regardless of vaccination status.

CDC: May 13, 2021

CDC Centers for Disease Control and Prevention
CDC 24/7: Saving Lives, Protecting People™

Search COVID-19

COVID-19

Home Your Health **Vaccines** Cases & Data Work & School Healthcare Workers Health Depts Science More

Vaccines

- Getting Your Vaccine +
- Types of Vaccines Available +
- Possible Side Effects
- After You're Fully Vaccinated -**
 - Guidance for Fully Vaccinated People**
 - Safety & Monitoring +
 - Effectiveness +
 - About COVID-19 Vaccines +
 - Communication Resources +

Interim Public Health Recommendations for Fully Vaccinated People

Updated May 13, 2021 Languages Print

Summary of Recent Changes

Updates as of May 13, 2021

- Update that fully vaccinated people no longer need to wear a mask or physically distance in any setting except where required by federal, state, local, tribal, or territorial laws, rules, and regulations, including local business and workplace guidance
- Update that fully vaccinated people can refrain from testing following a known exposure unless they are residents or employees of a correctional or detention facility or a homeless shelter

CDC: July 27, 2021



Centers for Disease Control and Prevention
CDC 24/7: Saving Lives, Protecting People™

Search COVID-19



COVID-19

To reduce their risk of becoming infected with the Delta variant and potentially spreading it to others, CDC recommends that fully vaccinated people:

- Wear a mask in public indoor settings if they are in an area of substantial or high transmission.

Possible Side Effects

After You're Fully Vaccinated —

Guidance for Fully Vaccinated People

Safety & Monitoring +

Effectiveness +

Myths & Facts

Frequently Asked Questions

About COVID-19 Vaccines +

Summary of Recent Changes

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CDC: July 30, 2021

COR

POLITICO

CDC releases data behind latest mask guidelines

The hotly anticipated study helped convince the agency to revise its guidance on mask-wearing earlier this week.

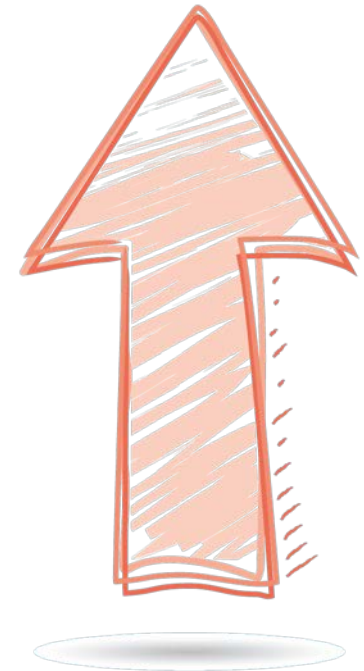
By ERIN BANCO and ADAM CANCRYN
07/30/2021 01:04 PM EDT
Updated: 07/30/2021 01:41 PM EDT

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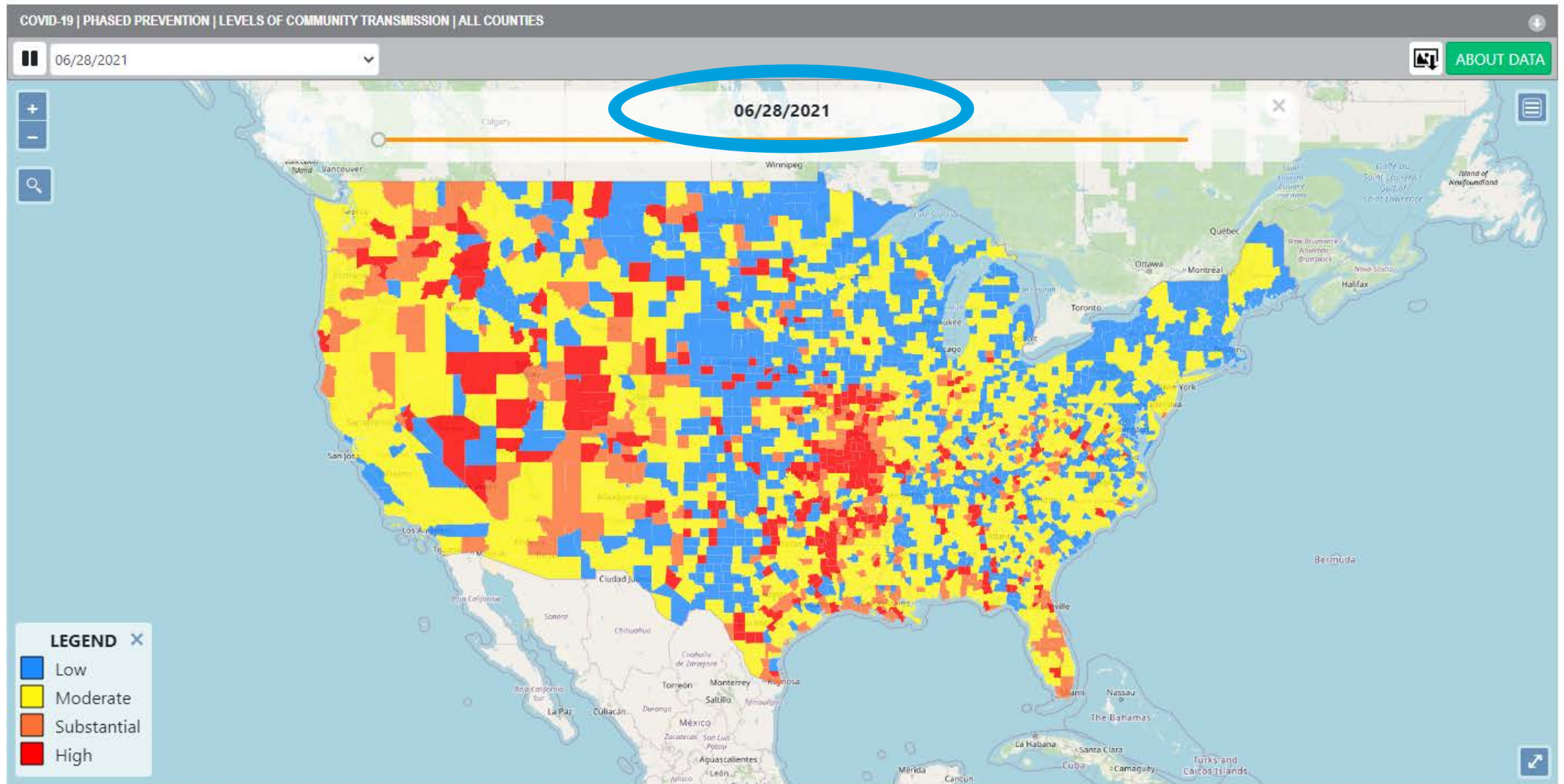
The Centers for Disease Control and Prevention has collected data that suggest fully vaccinated Americans who contract the Delta variant can spread Covid-19 as easily as unvaccinated people infected with the variant.

“Substantial or High Transmission”

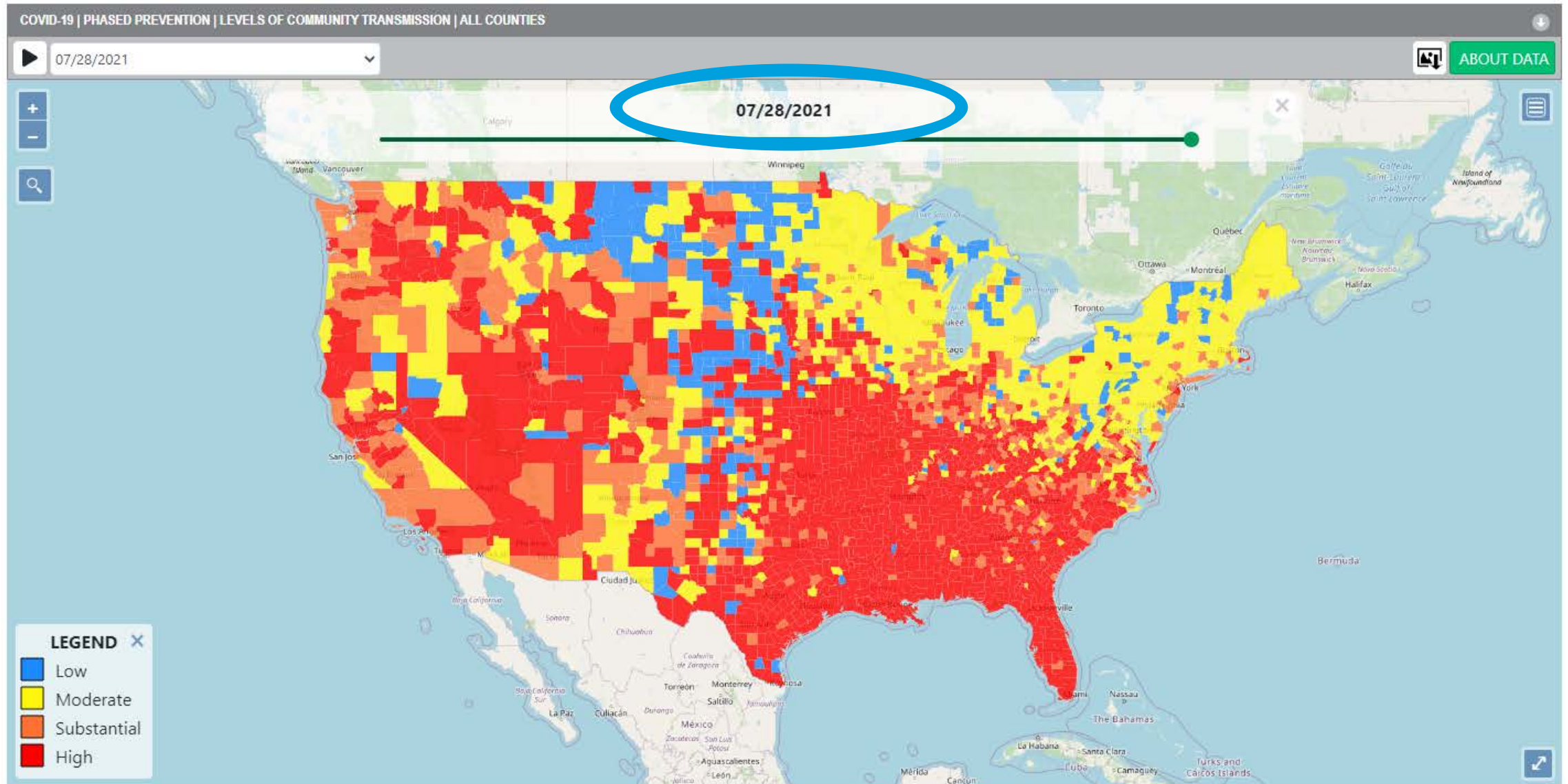
- **Substantial:** 50 to 99.99 cases per 100,000 persons over the preceding 7-day period.
- **High:** 100 or more cases per 100,000 persons over the preceding 7-day period.
- CDC has created a county-level map!
- Updated at 8 pm EST every day.



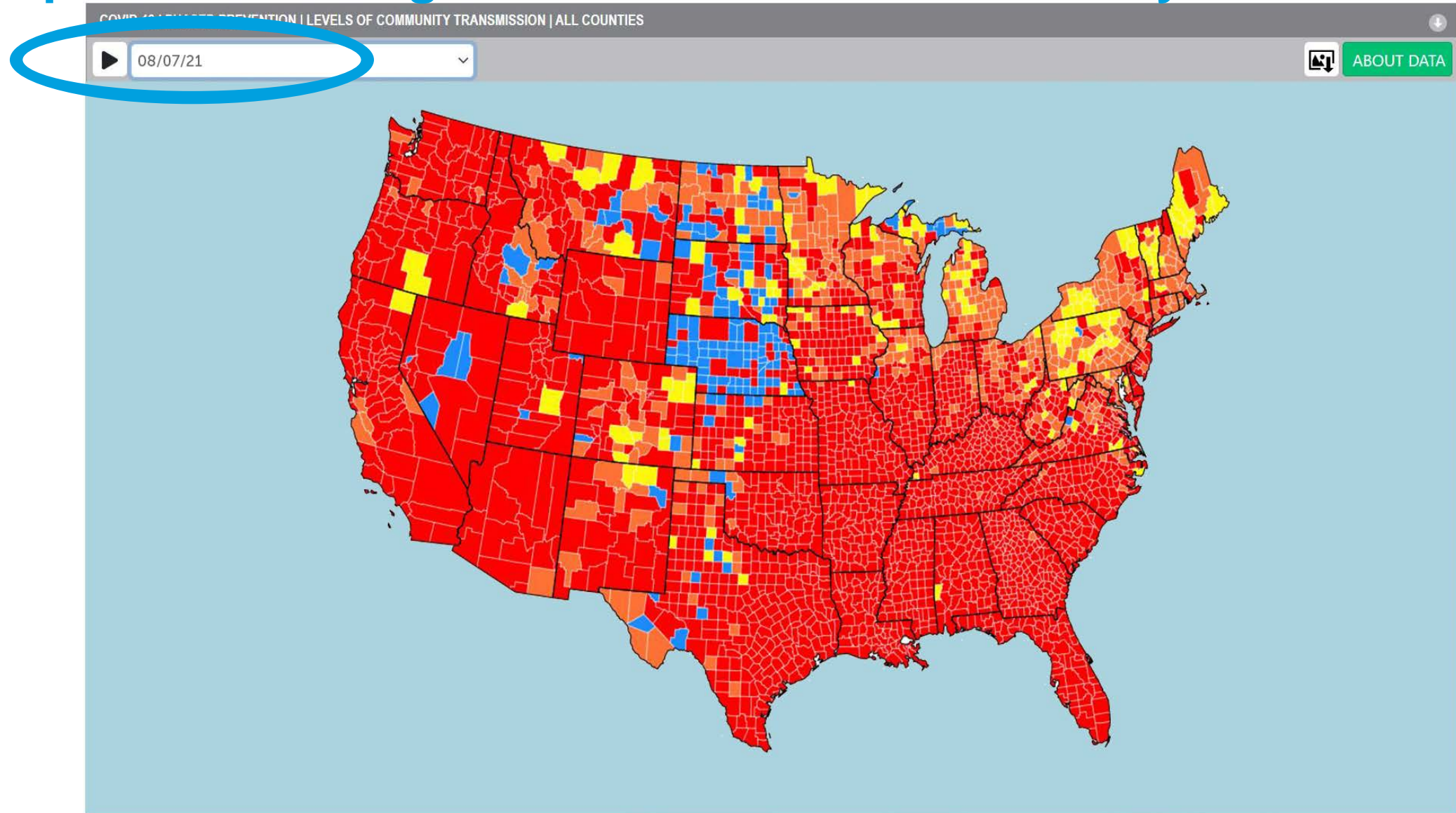
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<https://covid.cdc.gov/covid-data-tracker/#county-view>



<https://covid.cdc.gov/covid-data-tracker/#county-view>



Facing Your Face Mask Duties – Statewide Orders

- California
- Colorado
- Connecticut
- Delaware
- District of Columbia
- Hawaii
- Kentucky
- Louisiana
- Maryland
- Massachusetts
- Nevada
- New Jersey
- New Mexico
- New York (New York City has its own obligations)
- North Carolina
- Puerto Rico
- Washington
- **Don't forget...localities!**

COVID-19 and Return-to-Work

Sarah Martin



The New...



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- Business Liability Shields
- Vaccine Passport Prohibitions

Liability Shield Laws

- Arizona, HB 2770 (codified at A.R.S. 44-7951)
 - Effective: August 27, 2021
- South Dakota, HB 1046 (codified at SDCL § 21-68-1, *et seq.*)
 - Effective: July 1, 2021

States with Vaccine Passport Bans

- Arkansas, SB 615 (codified at Ark. Code Ann. § 20-7-142)
 - Effective: July 30, 2021
- Florida, SB 2006 (codified at Fla. Stat. § 381.00316)
 - Effective: July 1, 2021

... And the (Now) Familiar

- COVID-19 Leave
- Hazard Pay
- Reasonable Accommodations
- Worker's Compensation Implications



Other COVID-19 Laws

- COVID-19 Leave
 - Washington, DC, B24-0140, effective June 24, 2021
- Hazard Pay
 - Santa Barbara, CA, Ord. 5999, effective June 11, 2021
 - Burbank, CA, Ord. 21-3956, effective June 18, 2021
- Reasonable Accommodations
 - San Jose, CA, Ord. 30568, effective June 24, 2021
- Worker's Compensation Implications
 - Minnesota, HB 2253, effective October 1, 2021
 - Virginia, HB 1985, effective July 1, 2021

In Focus: State Unemployment Insurance Programs

- In 2020, the Families First Coronavirus Response Act and the CARES Act offered additional federal funding for state unemployment insurance programs, including to provide benefits for workers not ordinarily eligible.
- In 2021, states are continuing to modify unemployment insurance programs to address:
 - COVID-19 Impact on Unemployment Experience Count
 - Partial Unemployment
 - Voluntary Unemployment
 - Military Relocation
 - Electronic Filing

State UI Modifications

- Connecticut, HB 5377
 - Effective: October 1, 2021
- Mississippi, SB 2124 (codified as amended in scattered sections of MS Code Title 71 Chapter 5)
 - Effective: July 1, 2021
- Nebraska, LB 260
 - Effective: August 31, 2021
- North Dakota, HB 1278 (codified at N.D.C.C. §§ 52-04-07, 52-06-02)
 - Effective: August 1, 2021
- Oklahoma, SB 794
 - Effective: November 1, 2021

Looking Past COVID-19

Bruce Sarchet



Changes to Nondiscrimination Statutes

- Procedural Changes
 - Expanding statute of limitations
 - Hastened time-frame for employer action
- Public Accommodation

Changes to Nondiscrimination Statutes

- Indiana, HB 1309 (codified at I.C. § 22-9-12)
 - Effective: July 1, 2021
- Maryland, HB 290
 - Effective: October 1, 2021
- Nevada, AB 280
 - Effective: October 1, 2021
- Tennessee, HB 1182 (codified at T.C.A. § 68-120-1)
 - Effective: July 1, 2021
- Texas, SB 45
 - Effective: September 1, 2021

New or Expanded Nondiscrimination Statutes

- Localities adopting non-discrimination statutes
- States and localities expanding protected bases
 - Pregnancy/Childbirth-related medical conditions
 - Gender Expression/Gender Identity
 - Traits Typically Associated with Race
 - Disability
 - Military Status

New or Expanded Nondiscrimination Statutes

- Arizona, HB 2045
 - Effective: August 27, 2021
- Colorado, HB 1108
 - Effective: September 14, 2021
- Nebraska
 - LB 451, Effective August 31, 2021
 - LB 540, Effective September 10, 2021
- New Mexico, SB 80 (codified at NMSA 1978 §§ 22-5-4.3, 22-8B-4, 28-1-2)
 - Effective: July 1, 2021
- Virginia
 - HB 1848 (codified at Va. Code Ann. §§ 2.2-3902, 2.2-3905, 51.5-41, 2.2-3905.1), effective July 1, 2021
 - HB 2161 (codified as amended in scattered sections of Va. Code Ann. Titles 2.2, 15.2, 22.1, 36.96, and 55.1), effective July 1, 2021
- **Don't forget...localities!** (Durham, NC; Greensboro, NC; Glendale, AZ; Mesa, AZ; others??)

Contingent Workforce

Sarah Martin



What *IS* or *IS NOT* Probative of Independent Contractor Status?

Probative:

- Specific Industries
 - Arkansas
 - West Virginia
 - Iowa

Not Probative:

- Worker Qualifications
- Employer Practices

Independent Contractor Status Laws

- Arkansas, SB 547 (codified at A.C.A. §§ 11-4-203(3), 11-9-102(9))
 - Effective: July 30, 2021
- Iowa, SB 2296 (codified at Iowa Code Ann. §85.61)
 - Effective: July 1, 2021
- Montana, SB 367
 - Effective: October 1, 2021
- Virginia, HB 2134 (codified at Va. Code Ann. §§ 40.1-28.7:7, 60.2-212, and 65.2-301.2)
 - Effective: July 1, 2021
- West Virginia, HB 2009 (codified at W. Va. Code Ann. §§ 3-8-12, 21-1A-4, and 21-5-1)
 - Effective June 17, 2021

Staffing Agency Requirements

- Workplace safety and training obligations for temporary workers in construction or manufacturing industries placed on staffing agency (Washington state) (HB 1206, codified at 49.17 RCW, effective July 24, 2021)

Clarifying Tests for Independent Contractors

- Alabama Act 2021-226
 - Harmonizes tests for AL Department of Labor and AL Department of Revenue
 - IRS traditional “20-factor” common law test. See IRS Rev. Rul. 87-41, 1987-1 C.B. 296.
 - Multiple standards still apply under federal law
- West Virginia “Employment Law Workers Classification Act”
 - Establishes independent contractor safe harbor
 - If safe harbor is not met, IRS test applies

Marijuana and Drug Testing

Bruce Sarchet



Marijuana Use in the Workplace

- New Medical Marijuana Programs
- Prohibitions on Adverse Employment Actions for Lawful Use of Marijuana
- Permissible Action against Marijuana Use in the Workplace

Drug Testing

- Medical Marijuana
- Impact on Worker's Compensation Eligibility

Marijuana, Drug Testing Laws

- Mississippi, HB 119 (codified at MS Code § 41-29-136)
 - Effective July 1, 2021
- Montana, HB 655 (codified at MCA §§ 39-51-2303, 39-71-407, 50-46-303)
 - Effective: July 1, 2021
- New Mexico, HB 2 (codified at NMSA 1978, Chapter 137)
 - Effective: June 29, 2021
- Oklahoma, SB 862
 - Effective: November 1, 2021
- South Dakota
 - Constitutional Amendment A, effective July 1, 2021
 - Initiated Measure 26, effective July 1, 2021
- Virginia, HB 1862 (codified at Va. Code Ann. § 40.1-27.4)
 - Effective: July 1, 2021

Protected Leave

Sarah Martin



States are Requiring New Types of Protected Leave

- Military
- Adoption
- Organ Donation
- Emergency Services
- Bereavement

LOA Laws

- **North Dakota, HB 1398 (codified at N.D.C.C. § 34-01)**
 - Effective: August 1, 2021
- Iowa, HB 200 (codified at Iowa Code § 29A.1-3)
 - Effective: July 1, 2021
- Kentucky, HB 210 (codified at KRS § 337.015)
 - Effective: June 30, 2021
- Maine, LD 137
 - Effective: September 15, 2021
- Maryland, SB 473
 - Effective: October 1, 2021
- Oregon, HB 2231
 - Effective: September 25, 2021
- Pennsylvania, P.L. 39, No. 11
 - Effective: June 27, 2021
- Vermont, HB 149 (codified as amended in scattered sections of 20 V.S.A.)
 - Effective: July 1, 2021

The Curious and Quirky

Bruce Sachet & Sarah Martin






In Focus: Ban on At-Will Employment in NYC Fast Food

- NYC Int. Nos. 1396-2019 and 1415-2019
 - Applies to fast food establishments with at least 30 locations nationwide
 - Prohibits employee termination or reduction in hours without just cause or a bona fide economic reason
 - Employer has burden of proof
 - Any layoffs must be conducted in reverse order of seniority. Other factors may not be considered.

In Focus: Prohibitions on Microchipping Employees

- Indiana becomes 11th state to prohibit the practice
 - Indiana House Bill 1156
 - Employers may not mandate microchipping of employees
 - Employees protected from retaliation for refusal
- Why microchip?

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In-Depth Discussion

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July is the New January: A Post-Pandemic Look at Emerging Labor and Employment Law Trends

By [Bruce J. Sarchet](#) and [Sarah M. Martin](#) on June 9, 2021 [PRINT](#)


The pandemic seems not to have slowed down state and local lawmakers. Indeed, over 100 new labor and employment laws and ordinances are scheduled to take effect between July 1, 2021 and November 1, 2021. Notably, while some of these laws address COVID-19 and topics concerning return-to-work, most mark a renewed attention to other hot-topic labor and employment issues. Not surprisingly, a number of states and localities have adopted their own nondiscrimination statutes or expanded the same to recognize new protected classifications. Other popular topics include independent contractors and worker classification, marijuana use and drug testing in the workplace, and repairs to state unemployment insurance systems.

Some states have more changes on the horizon than others. Like last year, Virginia has been the most active of the states—the Commonwealth will see 11 new labor and employment laws go into effect on July 1, 2021. These include major changes such as a new state overtime law and auto-enroll payroll deduction retirement savings program.


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Thank you!



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