

2022

BUSINESS IN 2021

WEEKLY WEBINAR SERIES

2020

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Introduction



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Updates Regarding the ARPA COBRA Tax Credit



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ARPA COBRA Subsidy

- Part of the American Rescue Plan Act of 2021 (“ARPA”)
 - Signed by President Biden on March 11, 2021
- Subsidy Overview
 - Subsidy Period: April 1, 2021 through September 30, 2021
 - Amount: Subsidy applies to 100% of monthly COBRA cost
 - Eligibility: Must be an assistance eligible individual (“AEI”)
 - Qualified beneficiary whose qualifying event is either involuntary termination of employment or reduction in hours
 - Eligible for COBRA during subsidy period
 - Must elect COBRA
 - Reimbursement: Tax credit against Medicare payroll taxes

Tax Credit

- 100% of the subsidy is reimbursed through a credit against quarterly Medicare hospital insurance payroll tax
 - 1.45% Medicare payroll tax
 - Reimbursement includes 2% administrative fee
- The credit is claimed by reporting the credit and the number of individuals receiving COBRA premium assistance on the designated lines of the quarterly federal employment tax return
 - Usually Form 941
 - Second Quarter Form 941 is due July 31, 2021
 - Third Quarter Form 941 is due November 1, 2021

IRS Guidance

- IRS Notice 2021-24
 - Provides guidance regarding:
 - in anticipation of receiving the credit, a premium payee reducing its deposits of federal employment taxes, including withheld taxes, that it otherwise would be required to deposit, up to the amount of the anticipated credit; and
 - requesting an advance of the amount of the anticipated credit that exceeds the federal employment tax deposits available for reduction by filing Form 7200, Advance Payment of Employer Credits Due to COVID-19.

IRS Guidance Ctd.

- IRS Notice 2021-31
 - Guidance regarding calculation of the premium assistance credit
 - Ex: The amount of the premium assistance credit that can be claimed depends on whether the employer subsidizes the COBRA premium costs for similarly situated covered employees who are not Assistance Eligible Individuals
 - Guidance regarding claiming the premium assistance credit, including
 - Who is eligible to claim the credit
 - When does the premium payee become entitled to the premium assistance credit
 - Ex: On June 17, 2021, the premium payee receives a COBRA election from a potential Assistance Eligible Individual who elects COBRA continuation coverage as of April 1, 2021. The premium payee is entitled to a credit as of June 17, 2021, for the premiums not paid by the Assistance Eligible Individual for the periods of coverage April 1, 2021, through April 30, 2021, May 1, 2021, through May 31, 2021, and June 1, 2021, through June 30, 2021

Returning to the Office – Grooming and Dress Code Issues



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Black women are 1.5 times more likely to be sent home from the workplace because of their hair.



Black women's hair is 3.4x likely to be perceived as unprofessional

- Statistics adapted from the Crown Coalition, *The Crown Research Study*.
- The phrase "Black people" includes those who identify as African, African American, Afro-Caribbean, Afro-Latin-x/a/o or otherwise having African or Black ancestry.

Legislative Developments - Federal

- March 2021, Congress reintroduced the **Creating a Respectful and Open World for Natural Hair Act (CROWN Act)**.
- The CROWN act proposes to prohibit discrimination based on an individual's style or texture of hair by including an individual's style of hair in the definition of racial discrimination.
 - This definition includes hair that is tightly coiled or tightly curled, locks, cornrows, twists, braids, Bantu knots, Afros and any other style of hair commonly associated with a race or national origin.



Legislative Developments – State and Local



State governments have passed their own versions of the CROWN Act.

These states include California, Colorado, Connecticut, Maryland, New York, New Jersey, Virginia, Washington and Delaware.

Similar bills are pending in several states and municipalities this year.

New York and New York City

- **New York**

- In 2019, HRL was amended to define "race" for certain specific purposes to include but not be limited to “ancestry, color, ethnic group identification and ethnic background, and to include traits historically associated with race, including but *not limited to hair texture and protective hairstyles*”; and defines “protective hairstyles” to include but not be limited to, braids, locks and twists.

[How is My Hair? A Brief Review Of Hairstyle Discrimination In The Workplace](#)

- **New York City**

- New York City Commission on Human Rights issued a [Legal Enforcement Guidance on Race Discrimination on the Basis of Hair](#), and specified that the law "protects the rights of New Yorkers to maintain natural hair or hairstyles that are closely associated with their racial, ethnic or cultural identities.

Related Policies

An employer can impose requirements around maintaining a work appropriate appearance, but they cannot enforce such policies in a discriminatory manner and/or target specific hair textures or hairstyles.

Grooming or appearance policies that generally target communities of color, religious minorities, or other protected communities could be considered discriminatory

What Does Hair Discrimination Look Like?



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- Refusing to hire applicants, or firing current employees, for wearing their hair the way it naturally grows or in a protective hairstyle
- Grooming policies that expressly prohibit hairstyles commonly associated with African Americans
- Forcing Black employees to obtain supervisory approval before changing hairstyles, but not imposing the same requirement on others
- Policies excluding Black employees with locks from customer-facing roles unless they change their hairstyles

What Does Hair Discrimination Look Like?



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- Asking a Jewish employee to cut their payot (sidelocks or sideburns in Hebrew) or shave their beard
- Denying a Sikh applicant employment because of his religiously-maintained uncut hair and turban
- Forcing a Black salesperson to shave his beard despite a medical condition that makes it painful to shave
- Telling a 60-year-old employee with gray hair to color their hair or lose their job
- Ordering a male server to cut his ponytail while not imposing a similar policy on female servers

Towards Compliance...

- Employers should carefully review their dress code and grooming policies to make sure they do not contain prohibitions that discriminate against a particular racial group.
- As best practice, pertinent policies should not contain outright prohibitions on specific hairstyles historically associated with race, such as dreadlocks, twists or braids.
- Employers should consider adding clarifying language to their current grooming policies, specifically in instances where employers require a “business-like” or “professional” appearance.
- As always, ensuring human resources professionals and supervisors are adequately informed of implicit bias in this area is vitally important.

Higher Education Student Vaccine Mandate Decision and Update



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Student Vaccine Mandates: District Court Judge Upholds Indiana University's Mandate

- First case to decide challenge to student COVID vaccine mandate
- Preliminary injunction request
- Will be appealed by students to the 7th Circuit Court of Appeals
- Klaassen v. Trustees of Indiana University (July 18, 2021)

Full 101-page decision available at

[https://storage.courtlistener.com/recap/gov.uscourts.innd.107499/
gov.uscourts.innd.107499.34.0.pdf](https://storage.courtlistener.com/recap/gov.uscourts.innd.107499/gov.uscourts.innd.107499.34.0.pdf)

Indiana University student vaccination requirement

- All students, faculty, and staff required to be vaccinated to be in-person on campus for Fall term 2021 (online option available)
- Religious exemptions and medical exemptions and deferrals granted
- Those with exemptions/deferrals subject to masking, increased testing and social distancing requirements, as well as quarantine if exposed to COVID and return home/quarantine if serious COVID outbreak
- If student not vaccinated or exempt, not permitted on campus, email and university accounts suspended/deactivated

Key factors in Indiana University decision

- Indiana state law requires public university students to be vaccinated for diphtheria, tetanus, measles, mumps, rubella, meningococcal disease
- University Trustees have power under Indiana state law to set standards for admission that are in the “best interests of the state and the state educational institution.” Ind. Code § 21-40-3-1(b)
- Trustees may govern “the conduct of the state educational institution’s students, faculty, and employees, wherever the conduct might occur, to prevent unlawful or objectionable acts that . . . violate the reasonable rules and standards of the [university] designed to protect the academic community from . . . a serious threat to person or property of the academic community.” Ind. Code § 21-39-2- 3(b)

Student Plaintiffs and their Claims

- Eight students brought the case challenging the vaccination mandate, represented by conservative attorney, James Bopp, Jr., working with America's Frontline Doctors (anti-vaccination group)
- Six of the eight already granted exemptions (religious or medical) but challenged masking and testing mandates as violating their rights to bodily integrity, religious freedom, and other grounds
- Challenged the Emergency Use Authorization
- Battle over the science and each side's experts

Persuasive Arguments: helpful on appeal and in future decisions?

- History of public health protections (1905 Supreme Court Jacobson case from 1905 upholding mandatory smallpox vaccinations)
- Close look at EUA, including its use during significant public health emergencies: Anthrax, H1N1 (swine flu), MERS, Ebola, and Zika as well as COVID-19
- All States and DC have laws requiring vaccinations of children before starting school, all require medical exemptions and nearly all require religious exemptions
- Included consideration of Delta variant and rising case numbers

Takeaways from Decision

- KEY POINT: this is only a District Court decision on a preliminary injunction motion that will be appealed and likely go to Supreme Court – NOT THE LAST WORD
- However, well-reasoned, thorough consideration on facts, law, science, and public health background – good on appeal?
- Universities as unique environments with students, faculty, and staff in very close contact
- Taking into account that students (primarily young people) are not the only ones harmed by refusing vaccinations

Takeaways for consideration of mandate adoption: Process

- University Restart Committee comprised of medical professionals developed recommendations on how to re-open campus fully in-person after extensive science-driven review
- Faculty and staff councils and graduate/professional student government endorsed recommendations
- Trustees adopted recommendations
- Institutional consideration, process, and buy-in
- Medical and scientific guidance

Takeaways from Decision: Implementation

- All medical exemption requests reviewed by medical team
- Religious exemptions granted upon request (also, consider committees including clergy?)
- Testing with minimally invasive saliva test rather than nasal swab
- Masking and testing as trivial inconveniences applied in religious-neutral way
- Vaccinated individuals may also choose to mask - not a “scarlet letter” for unvaccinated

Update from Albany



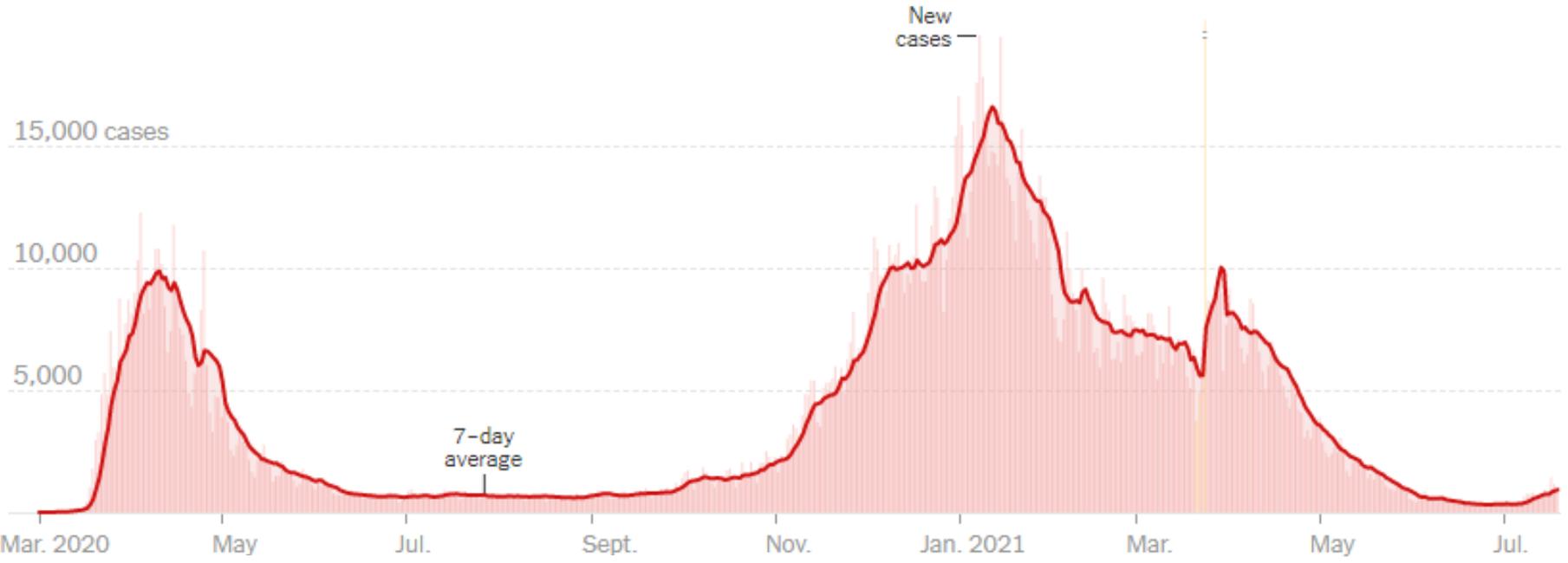
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New reported cases



AVG. ON JUL. 19

14-DAY CHANGE

Cases	922	+174%
Tests	55,840	-11%
Hospitalized	752	+3%
Deaths	6	+27%

Vaccination progress

- All New Yorkers:
 - 56% fully vaccinated
 - 62% one dose
- 18 and older:
 - 68% fully vaccinated
 - 74% one dose

For Immediate Release:

July 15, 2021

L.A. County Community Transmission of COVID-19 Increases from Moderate to Substantial; Reinstating Masking Indoors for Everyone - 1,537 New Confirmed Cases of COVID-19 in Los Angeles County and 3 Deaths

A small percentage of people fully vaccinated against COVID-19 will still develop COVID-19 illness



COVID-19 vaccines are [effective](#). However, a small percentage of people who are [fully vaccinated](#) will still get COVID-19 if they are exposed to the virus that causes it. These are called “**vaccine breakthrough cases**.” This means that while people who have been vaccinated are much less likely to get sick, it will still happen in some cases. It’s also possible that some fully vaccinated people might have infections, but not have symptoms (asymptomatic infections). Experts continue to study how common these cases are.

Large-scale clinical studies found that COVID-19 vaccination prevented most people from getting COVID-19. [Research](#) also provides growing evidence that mRNA COVID-19 vaccines (Pfizer-BioNTech, Moderna) offer similar protection in real-world conditions. While these vaccines are effective, no vaccine prevents illness 100% of the time. For any vaccine, there are breakthrough cases.

New NY Mask Mandate?

- Doubtful it would apply statewide.
- Yesterday, Mayor De Blasio: “Masks have value unquestionably, but masks are not going at the root of the problem, vaccination is, so we do not intend a mask mandate. We do intend to double down on vaccination.”

O, Canada

- Fully vaccinated Americans can travel to Canada beginning August 9; fully vaccinated travelers from other countries may begin to come on September 7.
 - Unvaccinated children under 12 traveling with fully vaccinated parents will not need to quarantine; however, they must complete tests on their first and eighth days in Canada.
- U.S. has yet to detail reopening plan; expected soon.

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New York Employment Law: The Essential Guide

Bar Association Members can buy the book from the bar [here](#).

Non-Bar Association Members can purchase through Amazon [here](#).