



## Publications

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SEARCHING

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**11.13.2018** [Missouri's Medical Marijuana Amendment Creates New Issues for Missouri Employers](#)

By Paul D. Satterwhite

On November 6, 2018, Missouri's voters approved a medical marijuana ballot initiative, [Amendment 2](#), while rejecting two competing medical marijuana initiatives on the ballot. This constitutional amendment empowers doctors to authorize patients to buy medical marijuana for the treatment of a variety of conditions. It likewise provides that dispensaries may sell marijuana for medicinal purposes. Amendment 2 does not cover recreational use of marijuana, which is currently allowed in nine states. Missouri is the 31<sup>st</sup> state to legalize medical marijuana. While Amendment 2 authorizes use of marijuana for medicinal purposes, this is not a "free pass" for employees. Amendment 2 does not allow employees to use marijuana while working, on the employer's premises, or to work while impaired by marijuana use that occurred prior to the employee's work shift. With that said, the passage of Amendment 2 will likely create multiple issues of varying complexity for Missouri's employers for years to come, including:

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**11.13.2018** [IRS \(Finally\) Answers Questions re: 2019 Hardship Distributions](#)

By Robert A. Browning

On November 9, 2018, the IRS issued proposed amendments to the regulations under Code Section 401(k) that describe the circumstances under which participants may take an in-service distribution of elective deferrals (and contributions subject to similar withdrawal restrictions, such as QMACs, QNECs and safe-harbor contributions) on account of financial hardship. The proposed amendments to the regulations reflect several statutory changes to 401(k) plans since the Pension Protection Act of 2006, including the recent changes (that are scheduled to apply to hardship distributions in plan years beginning after December 31, 2018) under the Bipartisan Budget Act ("BBA") of 2018. Most importantly, the amendments answer several questions that plan sponsors and plan administrators have had with respect to both the BBA and the Tax Cuts and Jobs Act ("TCJA") of 2017, and provide some much-needed transition relief for hardship distributions made in 2019.

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**11.07.2018** [Mount Lemmon Fire Dist. v. Guido: The ADEA Applies To All State and Local Government Employers](#)

By Melissa Posner Jarrett

On November 6, 2018, the United States Supreme Court unanimously held (8-0) that the Age Discrimination in Employment Act ("ADEA") extends to all small state and local government employers, not only public entities with twenty or more employees.

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**11.07.2018** [Missouri Legalizes Medical Marijuana – Implications for Banks](#)

By Rod Nichols, Mathew Petersen

On November 6, 2018, Missourians voted to amend the Missouri constitution to allow the use of marijuana for medical purposes. Amendment 2 allows the use of marijuana for ten medical conditions and imposes a four percent tax on the retail sale of marijuana, with the funds to be used for the health care needs of military veterans. Missouri joins over 30 other states in legalizing marijuana in some form. Despite Missouri's and other states' laws, the manufacture, distribution, and dispensing of marijuana remains illegal at the federal level under the Controlled Substances Act. Banks and other financial institutions must navigate this conflict between state and federal law with limited guidance from regulators.

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**11.06.2018** [Notice – Colorado Changes to Data Privacy Laws](#)

By Paul J. Hanley

Three major changes to Colorado data privacy laws became effective September 1, 2018. These affect virtually all business collecting personally identifying information (PII)<sup>[1]</sup> from Colorado residents:

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**11.05.2018** [OSHA Announces Site-Specific Targeting Program to Focus Inspection Priorities at Establishments with High Injury and Illness Rates](#)

By Paul Jacobson, Helen Holden

Beginning October 16, 2018, employers with high injury and illness rates can expect more frequent OSHA inspections in connection with the resurrection of the agency's Site-Specific Targeting (SST) Program. OSHA will use the SST Program to prioritize employer facilities and establishments for health and safety inspections in the coming year.

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## 11.01.2018 [2019 Inflation Adjustments](#)

By Beth Miller

Following announcements by both the Internal Revenue Service and the Social Security Administration, we know most of the dollar amounts that employers will need to administer their benefit plans for 2019. The key dollar amounts for retirement plans and individual retirement accounts ("IRAs") are shown on the [front side](#) of our 2019 limits card.

The [reverse side](#) of the card shows a number of dollar amounts that employers will need to know in order to administer health flexible spending accounts ("FSAs"), health savings accounts ("HSAs"), and high-deductible health plans ("HDHPs"), as well as health plans that are not grandfathered under the Affordable Care Act.

A laminated version of the 2019 limits card is available upon request. To obtain one or more copies, please contact any member of our Employee Benefits Group. You also can contact the Spencer Fane Marketing Department at 816-474-8100 or [marketing@spencerfane.com](mailto:marketing@spencerfane.com).

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## 10.24.2018 [Updated Tools for Your HIPAA Toolkit: Medical Record Fees](#)

By Donn Herring

A Missouri federal court granted a motion to dismiss this week in a case against a provider and medical record processing company. In the case, a patient alleged that a "search and retrieval" fee imposed in response to a patient's request for access to medical records violated the Missouri Merchandizing Practices Act. In dismissing the claim, the court only addressed Missouri law as the allegations did not involve alleged violations of HIPAA. The outcome in this Missouri case is similar to the outcome in an unrelated Tennessee case against the same medical records company that was dismissed earlier this summer. The Tennessee case alleged multiple violations of Tennessee law relating to the fees imposed for access to medical records, using HIPAA as the standard for medical records fees. In dismissing the case, the Tennessee court found that neither HIPAA nor Tennessee law provide a private cause of action for excessive medical record fees. The Tennessee case is pending appeal.

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## 10.22.2018 [Corporate Entity Formation Is Not Dispositive on "Employee" Status Under the FLSA](#)

By Brian Peterson

The Tenth Circuit Court of Appeals recently provided an important reminder to employers about the pitfalls that can occur when attempting to determine whether workers are employees or independent contractors. The court held that individual workers who personally perform janitorial cleaning services could be found to be employees under the Fair Labor Standards Act ("FLSA"), even if those workers have formed corporate entities and entered into franchise agreements with a franchisor. See *Acosta v. Jani-King of Okla., Inc.*, Case No. 17-6179, 2018 WL 4762748 (10th Cir. Oct. 3, 2018). The holding in *Jani-King* emphasizes the principle that forms and labels are not the deciding factor in determining whether a worker is considered an "employee" for FLSA purposes. Under current law, administrative agencies and/or the courts will make a determination as to "employee" status under the FLSA by examining the totality of the circumstances in light of the factors stated in the "economic realities test."

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## 10.17.2018 [Updated Tools for Your HIPAA Toolkit: Security Risk Assessment](#)

By Stacy Harper

In the wake of the record setting \$16 Million dollar settlement and [resolution agreement](#) with Anthem, Inc, the Office for Civil Rights (OCR) and Office of the National Coordinator for Health Information Technology (ONC) released a new version of their Security Risk Assessment tool. The new tool and recent settlement agreement renew the emphasis of OCR on the performance of HIPAA Security Risk Assessments by covered entities and their business associates.

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