

The logo consists of a red, trapezoidal shape with a white border, containing the text "Fisher Phillips" in white, bold, sans-serif font.

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Phillips**

The title is in a large, bold, light blue sans-serif font. To the left of the text is a small icon of a grid of squares, with the top-left square highlighted in yellow.

 **FP's Workplace  
Law Forecast 2023**

Legal predictions to help you  
prepare for the coming year in  
workplace law

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**I**t's never easy to make accurate predictions about what we might expect to see in the workplace in the coming year. After all:

- At the start of 2020, no one could have predicted COVID-19.
- None of us had heard the phrase “the Great Resignation” in January 2021.
- And a year ago at this time, “quiet quitting” wasn't on anyone's radar.

Despite the ever-present uncertainty, we asked our firm's thought leaders to develop their best predictions for 2022 during the first half of this past year, which you might remember from our FP Forecast series that ran starting in January. And as you can see on the next pages, they did a pretty good job anticipating what the year would bring. The report you're about to read includes a recap of the predictions they made about 2022 along with a report card on how they fared, and I think you'll agree that our forecast was accurate and helpful for employers.

**And now we're at it again. We asked these same attorneys to take it a step further and look at what 2023 would hold for employers across many of our practice areas and industries.**

As you flip through the pages, you'll see some common themes. The economic uncertainty we're experiencing won't be going away anytime soon, for example, and it will have ripple effects across your workplace. And the indelible mark that the pandemic left on the workplace is still present, too, and will continue to have some unexpected consequences.

We hope you enjoy thumbing through this report and it helps you set the stage for a successful 2023. Our attorneys will continue to be forward-thinking in an effort to be a helpful resource as you navigate the coming year and beyond.

**John Polson**

Chairman & Managing Partner  
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# 2022



## 2022 RECAP Workplace Safety

### What We Got Right

#### **Pandemic Has Essentially Become Endemic**

Don't take it from us – the president himself said “the pandemic is over” in a televised September interview. While his remarks may have been off-the-cuff, the sentiment is essentially true for the daily lives of most Americans. As we predicted back in January, the pandemic is for all intents and purposes over from a cultural, social, and workplace standpoint (outside of California, of course, where state and local regulations remain in place).

#### **OSHA Flexed its Muscles**

We predicted that OSHA would flex its newly carved muscles and accelerate the pace of its work in 2022 – and we're sorry to say we were right. OSHA has been more aggressive than ever this year. It hit 400% of budgeted inspections for heat stress this summer, for example, and has issued more subpoenas and made more criminal referrals than we have seen in the last decade or so.

#### **Corporate Boards Prioritizing Safety**

We got this one right, too. As part of corporate ESG (environmental, social, and governance) efforts, we've seen more businesses emphasizing safety through robust written programs and employee training. We've even seen some large companies put safety professionals on their corporate boards, not just safety councils – which is a dramatic shift from just a few years ago.

### The Jury is Still Out

#### **Feds to Address Infectious Diseases**

We knew OSHA would be taking a long-range approach to regulate future pandemics and infectious diseases through the administrative rulemaking process, but we didn't anticipate it would take so long. The agency is still working on a permanent infectious disease standard, likely to apply to healthcare settings, and we expect it to be unveiled by early 2023.



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# 2023 PREDICTIONS

## Workplace Safety

# 2023

Our forecast for what we can expect out of OSHA in 2023 can be summed up in one word: “aggressive.”



### Expect to be Inspected

The federal agency took things to the next level in 2022, and we expect even bigger things from them in the upcoming year. Late this year, it decided to cast a wider net to include even more workplaces in its enhanced inspection program known as the “Severe Violator Enforcement Program” or SVEP – bad news for employers that don’t prioritize workplace safety.



### Increased Penalties

What else to expect in 2023? We expect the agency to announce an initiative to require all state-run OSHA plans to increase their penalties to the same level as federal OSHA. This will come as quite a surprise to employers in states that have grown used to a local discount – and will lead to intense litigation and sparring over the size of penalties when workplace accidents occur.





# 2022



## 2022 RECAP Wage and Hour

### What We Got Right

#### Feds Turned Up the Heat

Just as we expected, wage and hour litigation continued at a high pace in 2022. We saw an uptick in civil money penalties against employers, and most investigations resulted in liquidated damages. This comes as no surprise after the DOL's commitment earlier this year to hire more investigators. Consider auditing your pay practices now to ensure compliance.

#### Business Arrangements Needed to be Reshuffled

Independent contractor misclassification was a hot issue at the state level in 2022. For example, New Jersey officials cracked down on misclassification of ride-share drivers under state law, and courts in Massachusetts grappled with whether app-based drivers are independent contractors or employees under the state's stringent rules.

#### Hiring Minors to Address Workforce Shortages Came Back to Bite Unsuspecting Employers

We knew this would happen. Many employers expanded their hiring pools by lowering minimum ages in recent years – and they found themselves at the mercy of federal and state regulatory agencies and class action lawsuits in 2022. Some businesses faced multimillion dollar settlements for alleged child labor violations, highlighting the importance of training your managers and holding them accountable.

### The Jury is Still Out

#### Will Remote Work Lead to More Litigation?

We expected to see more wage and hour litigation in 2022 from remote workers claiming they were not paid for all hours worked or properly reimbursed for reasonable business expenses. Fortunately, employers appeared to be proactive about reimbursing employees for business expenses. Notably, however, claims about hours worked could still be coming, given that the statute of limitations is up to three years under federal law and even longer under some state laws.



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# 2023 PREDICTIONS

## Wage and Hour

# 2023



### Same Trends Will Continue

We expect many trends from 2022 to roll over to 2023. For instance, we anticipate that the DOL will keep ramping up its enforcement efforts and hiring more staff. Additionally, employers should expect more litigation from remote employees and scrutiny of wage and hour practices involving minors.



### Spotlight on Independent Contractor Status

We also foresee an uptick in independent contractor audits and litigation. Notably, the DOL recently proposed a new independent contractor rule that will make it harder for businesses to classify workers as independent contractors in 2023.



### Overtime Regulations Will Be Revisited

After the midterm elections, the DOL will likely take up the “overtime” regulations and try to increase the salary threshold for exempt employees from the current rate of \$684 a week to somewhere around \$900-\$1,000 a week. The DOL did not reveal its proposal as expected in April 2022 – perhaps due to concerns about inflation and how the change would impact small and mid-size businesses – but we expect this to be back on the table by early 2023.

# 2022



## 2022 RECAP PEO and Staffing

### What We Got Right

#### The Tax Collector Came

We started to see the natural result of workers dispersing across the country – and the globe – since the start of the pandemic: government taxing authorities seeking their share of the pie. Domestic and international governments that had previously been too distracted by the pandemic turned their attention in 2022 to generating additional revenue, and are finding a readymade source via noncompliant employers not keeping up with the tax implications of the remote work revolution. Those organizations that focused on local and international compliance in 2020 and 2021 had a smoother 2022 than others.

#### Every Day Was Cyber Monday

Ransomware and other cyberattacks continued to be one of the greatest threats to all employers in 2022 – but especially to staffing companies. The large body of private information residing in your payroll systems means you needed to stay vigilant to guard against breaches that have led to significant liability in the industry. This trend was only exacerbated by ongoing international conflicts that have stoked the cyber-flames to new heights across the world.

### The Jury is Still Out

#### Hiring Regrets Leading to Increased Litigation

Many employers have hired candidates in the past few years who never would have been retained in a normal environment – those lacking skills and experience or with spotty employment histories. We predicted that 2022 would see an increase in employee terminations through performance management or downsizing as the economic ship began to right itself. But a choppy and uncertain recovery led to fewer RIFs than expected, which has mostly stemmed the tide of lawsuits – except in California, which has seen a marked uptick in litigation and excessive settlement demands.



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# 2023 PREDICTIONS PEO and Staffing

# 2023

Contingent work will continue to explode in growth in 2023.



## Expansion is Coming

Both businesses and workers will push for expansion in 2023. Two factors will ensure we see the momentum continue in the coming year: the talent pool of workers will continue to gravitate towards contingent work arrangements in a bid to escape traditional employment models, and businesses will continue to embrace the flexibility afforded to them by retaining diverse categories of workers – including overseas freelancers.



## Systems Support Expansion

Meanwhile, technology innovations and the commensurate expansion of service providers in the contingent work arena will continue to enable businesses to join the revolution. 2023 will see more businesses than ever utilize a combination of internal employees, temporary workers, platform workers, and evolving forms of employment such as Employer of Record (EOR).



20  
22



## 2022 RECAP Cryptocurrency and Blockchain



### What We Got Right

#### Do You Pay in Bitcoin?

The past year saw an increased interest from employers and payroll providers in assessing how to pay employees and independent contractors in cryptocurrency, just as we predicted. We also saw more applicants inquiring whether employers could pay them, to some degree, in crypto, especially in tech (old and new), fashion, art, and other creator industries.

#### Do You Accept Bitcoin?

Also in 2022, we saw a substantive uptick in this inquiry, as we naturally expected. Companies across a variety of industries began accepting payments from vendors and customers in cryptocurrency, including some of the largest tech and hospitality businesses in the world.

#### NFT's Emerged

Over the past year, many publicly traded and well-known companies reoriented themselves to direct attention and resources to NFTs as predicted back in January. We saw the creation of NFT-related products in all sorts of industries to bring attention to products, services, and intellectual property – not to mention an explosion in the number of job descriptions seeking digital currency and blockchain talent.



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# 2023 PREDICTIONS Cryptocurrency and Blockchain

# 20 23

Are we in a bear market? More like a “build” market.



## Interest Continues

There's no doubt that 2022 was a challenging year for cryptocurrency when it comes to volatility. But what else would you expect from a tech revolution that prides itself on rollercoaster rides – both staggering plunges and steep climbs? The volatility we saw in 2022 will not scare away investors and adopters of this technology in 2023.



## Research for the Masses

There will be more work and development done in 2023 to develop legitimate use cases for cryptocurrency and blockchain technology than ever before. This behind-the-scenes work will continue to push crypto adoption forward for the foreseeable future. The largest companies in the world – not to mention the largest governments in the world – are spending significant time and resources trying to figure out how to make crypto and blockchain work for the masses. If your organization has not spent time on these questions, 2023 will be your time to do so.



## NFT for Companies

We'll also see more companies get into the business of utilizing NFTs in 2023 – including the development of use cases beyond mere collectibles and PFPs (profile pictures).

# 2022



## 2022 RECAP Labor Relations

### What We Got Right

#### Labor Board to Push Hard

We nailed it. In March we predicted that labor wouldn't succeed pushing its agenda in Congress and would push hard for meaningful change at the agency level. And we also foresaw that the expanded remedies available for those alleging NLRA violations would cause a disincentive to settle disputes, leading to an increase of litigation at the agency level. This is exactly what came to pass and will continue to develop in 2023.

### The Jury is Still Out

#### Virtual Meetings

We predicted that the NLRB would be asked to decide whether parties could force their way into remote attendance of grievance meetings, collective bargaining sessions, and arbitrations. It hasn't happened yet, but we're sticking to our guns. We expect the Board to rule on this soon and, based on what we're seeing lately, conclude that the method of meeting (in-person vs. virtual) is a mandatory subject of bargaining.

#### Explosion of In-Person Organizing Efforts

We expected to see the return to post-COVID normalcy combined with a series of friendly rulings from the Board expanding union rights to access employer property lead to an explosion of in-person organizing efforts. It hasn't quite happened – yet. We still expect the Board to reverse some recent Trump-era restrictive rulings on property and email access – leading to boom times for in-person organizing – but it will take some more time.



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# 2023 PREDICTIONS Labor Relations

# 2023

You can expect the NLRB to issue a cavalcade of union-friendly decisions on these topics in late 2022 and 2023.



## Big Shift Coming

The recent introduction of a proposed labor-friendly joint employer rule and an NLRB ruling requiring continuity of dues checkoff after contract expiration is just the beginning. The Board's General Counsel is preparing to implement some major policy shifts by reexamining:

- workplace rules governing uniforms to make it easier for employees to wear union buttons and insignia;
- non-disparagement and confidentiality rules during internal investigation; and
- an employer's use of permanent replacements during an economic strike.



## Exploding ULPs

As the economy cools, unfair labor practice charges (ULPs) over alleged discriminatory layoffs will mount. Moreover, claims of anti-union animus in the layoff selection process will be ever-present. Employers will need to be more careful about who you select for layoffs knowing your decisions are likely to be challenged.



## Captive Audience Meetings

The NLRB will conclude that mandatory company meetings to discuss the pros and cons of joining a union are illegal.



## Voluntary Recognition

The NLRB will resurrect the Joy Silk doctrine and install it as the law of land. Employers will soon need to possess good faith doubt as to a union's majority status before denying a request for voluntary recognition. This will effectively grant card check requirements in place of the secret ballot election system relied upon for more than 80 years.



## Expanding Reach

The NLRB's efforts to expand its jurisdiction over public universities, cannabis agricultural businesses, and gig economy workers will be eventually litigated in the courts. The Supreme Court will ultimately need to decide the jurisdictional issues – but that may not come until 2024.





# 2022 RECAP Legal Innovation and Knowledge Management

# 2022

## What We Saw in 2022

### Artificial Intelligence is Here, and It's Incredible

So much of the practice of law comes down to the ability to easily and quickly find things – whether an on-point judicial opinion, a key case exhibit, or critical deposition testimony. But traditionally, legal search has relied upon on keywords, often a clunky, inexact science because humans will say the same thing in hundreds of different ways. Not so anymore.

In 2022, Fisher Phillips became one of only three law firms to collaborate with Casetext to develop and deploy AllSearch, a tool which relies upon a breakthrough in artificial intelligence called a transformer-based neural net, and which is trained on massive amounts of case law and legal prose. As a result, AllSearch can now mirror the way a lawyer brain would separate concepts from keywords, meaning our attorneys no longer need to run traditional keyword searches. They can use the tool to run conceptual searches across sets of documents, and find just what they are looking for – even if the results contain none of their search terms. Our attorneys have already used AllSearch at trial (to quickly find exhibits and relevant portions of deposition transcripts), while conducting legal research (to quickly find caselaw), and when drafting legal briefs.

### APIs now Power Data Analytics Initiatives

Data remains the new oil, especially for law firms and law departments looking to get an edge in strategic decision-making. Over the past year, an unprecedented amount of external legal data (court docket information, case filing information, government agency activities, case resolution information, and more) has been made directly available to law firms via “APIs” – application programming interfaces – software that offers a direct pipeline of data from one computer to another.

These APIs allow firms to develop and launch real-time analytics reports and trackers on numerous legal topics, which automatically update themselves whenever the source data is updated. In 2022, we used this technology to launch the nation's first OSHA Inspections Tracker, an API-powered data analytics dashboard which has helped thousands of employers determine the likelihood of their business being visited by OSHA inspectors based on location, industry, and company size. This followed on the heels of our award-winning COVID-19 Litigation Tracker, launched in 2019.



# 2023 PREDICTIONS

## Legal Innovation and Knowledge Management

# 20 23



### Coming Soon: Fusion-In-Decoders

Fusion-In-Decoders (FID) will be one of the next big things to come in legal A.I. This technology combines neural net searching of case law and case evidence (like AllSearch) with neural net synthesis. It allows you to ask the tool a legal or factual question and for the tool to give you a fact- or caselaw-based answer, along with supporting evidence.

Questions like: “When did Jane Smith start work?”; “What are the elements of a defamation claim under California law?”; and “Who testified at deposition about being surprised about the RIF?” all would be great use cases for FID technology. It has the potential to make our attorneys even more efficient. Fisher Phillips started working on an early-stage Fusion-In-Decoder prototype with Casetext in mid-2022, and early results are very promising. Look for our attorneys to take flight with this exciting new tech in 2023.



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2022



# 2022 RECAP Data Security and Workplace Privacy

## What We Got Right

### Patchwork of Consumer Privacy Laws Frustrated Employers

This year, just as we predicted, Connecticut and Utah passed their own consumer privacy laws, joining California, Virginia, and Colorado in creating broad new protections around personal information. Although these laws have some overlap, they are not identical – leaving multistate employers with compliance challenges.

### Regulators Turned Up the Heat to Force Cybersecurity Diligence

Nailed it. In response to an uptick in cyberattacks, federal regulators stepped up their efforts in 2022 to ensure that businesses secured their systems. Officials also continued to keep a close eye on compliance with existing laws, and there was a flurry of federal activity including new reporting obligations for certain businesses under the Cyber Incident Reporting for Critical Infrastructure Act. At the state level, California officials reached their first settlement under the CCPA and continued to send businesses notices of noncompliance.

## The Jury is Still Out

### Employee Monitoring Became More Necessary – And More Difficult

Remote work is here to stay, and in 2022, employers continued to review policies and procedures to ensure sensitive information was not compromised through WFH arrangements. While New York's employee monitoring law took effect earlier this year, no notable new employee monitoring laws passed in 2022. We expect to see more activity in this area in 2023, however.

### Biometric Restrictions Haven't Spread Past Illinois ... Yet

Employers' use of biometric identifiers has increased in recent years – used for timekeeping, security, authentication of identity, and other purposes. For years, Illinois has stood alone as the one state with a sweeping biometric privacy statute that includes a private right of action. Although several states introduced biometric privacy bills in 2022, none have passed yet.



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# 2023 PREDICTIONS

## Data Security and Workplace Privacy

# 2023



### Trend Will Continue to Pass Biometric Privacy Laws

We expect to see more efforts at the state level to pass biometric privacy statutes, and potentially additional legislation relating solely to facial recognition technology. However, the scope and momentum behind the bills will likely depend upon the outcome of the upcoming elections.



### Push for Federal Consumer Privacy Legislation

We expect to see more momentum to pass the American Data Privacy and Protection Act – likely after the midterm elections – which may cause some states to halt their efforts to pass new state-specific consumer privacy bills as they wait to see if a federal mandate takes hold. In the meantime, more localized and specific privacy regulations will proliferate, including those related to biometric data, employee monitoring, and AI technology.



### More Efforts to Enhance Cybersecurity Rules

Regulators will continue to look at options for enhancing cybersecurity requirements and cyber-threat reporting guidelines to stem the tide of cyberattacks that have continued to devastate businesses, educators, healthcare systems, and local and federal government agencies over the last few years.



20  
22



# 2022 RECAP Employee Defection and Trade Secrets

## What We Got Right

### The Array of Rigorous Non-Compete Laws Expanded

We were on the mark with this prediction. After 2021 saw nearly two dozen states considering new non-compete legislation, we expected 2022 to be another hot year for new laws – and we were right. New restrictive covenant laws popped up in Colorado, D.C., and Illinois (for financial service businesses), and another is under consideration in New Jersey. The focus in 2022 was to reduce the use of non-compete restrictions with lower-wage workers, to introduce notice requirements for those to be asked to sign non-competes, and to include penalty provisions that deter employers from violating the statutes.

### Feds Turned Up the Heat on Non-Competes

We also predicted that businesses should be ready for scrutiny from the federal government in 2022 – and we were right. Following President Biden's executive order urging the FTC to exercise power to curtail the unfair use of non-competes, the agency issued a flurry of Civil Investigative Demands this past year, sending a clear signal that it is taking a harder stance on their use. From now on, you need to be extra careful that you can justify the categories of employees subject to such restrictions, as well as the scope of the covenants.

### Remote Worker Defections Demanded a Proactive Approach

We are not surprised that we got this one correct, either. As expected, we have not returned to the pre-COVID world of in-person work being the norm, which means that the risk of trade secrets bleeding outside of company walls remained a threat throughout 2022 – with no real end in sight.



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# 2023 PREDICTIONS

## Employee Defection and Trade Secrets

# 2023

What can you expect in 2023 when it comes to affirmative action plans and federal contract compliance?



### WFH Revolution Will Require Business Adaptation

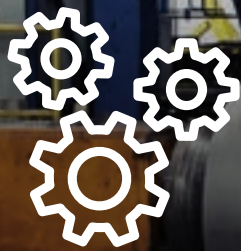
In 2023, it will be more important than ever for businesses seeking to prove a theft of trade secrets or confidential information to demonstrate the steps they took to treat their information as secret. As remote and hybrid work is here to stay, companies must put in place proper exit interview procedures for recovering company data and devices when remote employees leave. You should also strongly consider not allowing remote workers to use personal devices to perform their job because getting these remote workers to permit you to retrieve company data off personal devices is significantly more difficult than just demanding the return of company devices containing your confidential information.



### Expect More of the Same

Beyond that, the trends we already mentioned will continue in 2023. We'll see additional states consider new laws restricting the use of non-compete restrictions – especially those that trend blue (which have seen the majority of the anti-enforcement statutes). As we expect Republicans to take back one or more houses of Congress, a federal restrictive covenant statute will not take shape – pushing the Biden White House to use the administrative state to accomplish its policy aims in this area. As part of that, the FTC will continue to focus on what it deems to be the overuse of non-compete restrictions, especially on an industry-specific basis.

# 2022



## 2022 RECAP Manufacturing Industry

### What We Got Right

#### **Astute Workforce Communication Proved Essential**

In 2022, we observed organized labor adopting a more grassroots approach, which meant that employers saw enhanced levels of value with improved communications and focusing on other non-monetary issues with their workforces. As we predicted, many manufacturers would not adapt to this development. Given the increasing levels of public approval for labor unions and some extremely high-profile organizing campaigns, unions prevailed in 639 representations in the first half of 2022 alone – a number not seen in nearly 20 years. But it presented an opportunity for manufacturing employers to stand out by simply being proactive and leveraging the full range of modern modes of communication when promoting a positive workplace environment.

### The Jury is Still Out

#### **Employment Practices Will Need to be Reimagined Due to Automation**

We have not seen a prevailing trend in this area in 2022. While some manufacturers have indeed taken significant steps – at significant expense – to automate major components of their facilities, many others have decided against making these kinds of capital investments for the time being. You can blame the historic spike in inflation and general concerns about the health of the economy. It remains to be seen which tack will be more prevalent in 2023.

#### **Environmental, Social and Governance (ESG) Will be Front and Center**

For the same reasons, companies put non-mandatory ESG efforts on hold in 2022 as they prepared for a possible recession. According to a recent survey of over 1300 chief executives of large companies published in early October, about half of CEOs are pausing or reconsidering their planned ESG efforts over the next six months. It remains to be seen if this is only a short-term retraction or the beginning of a larger trend.



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# 2023 PREDICTIONS Manufacturing Industry

# 20 23



## Stalled Recovery Will Lead to Sacrifices

In 2023, manufacturing employers are likely to be challenged by the same economic headwinds that are impacting the country as a whole. Last year began with optimism around the opportunities associated with accessible capital for strategic operational investment, a buoyant job market, and a receding pandemic. It gave way to concern that employers must begin to adopt a more protectionary approach given inflationary pressure and rising interest rates. We anticipate this story to continue in 2023. We'll see an uptick in manufacturing employers pursuing RIFs and suspending certain priorities that are only realistic in more stable economic times. On the short-term chopping block, expect to see the more expendable aspects of ESG initiatives and capital-intensive moves to modernize operations, such as automating facilities. We expect these priorities to return as economic conditions improve, but we do not foresee this happening in 2023.



## Unionization Efforts Will Grow

We expect unionization efforts to experience continued growth in 2023. Indeed, from October 2021 through June 2022, representation petitions grew by 58% compared to the same period just one year before. These efforts prevailed at a rate not seen in more than two decades. Fueled in part by a general perspective of enhanced negotiating leverage on the part of employees, we expect this trend to continue in manufacturing, despite the anticipated economic downturn and uncertain midterm election results.

# 2022



## 2022 RECAP Employee Leaves and Accommodations

### What We Got Right

#### **Mental Health Challenges Dominated the Conversation**

As we expected, employees still struggled with anxiety, depression, and other mental health challenges stemming from the pandemic in 2022. Significantly, the EEOC reported that claims involving anxiety disorders represented the largest increase of all disability claims in the previous year. Many companies responded by offering remote work – or other changes to the workplace – as reasonable accommodations based on mental health. We recommend training your managers to recognize when an employee expresses that they have a work problem related to a mental health issue that needs an accommodation or triggers the interactive process.

#### **Job Descriptions Took on Renewed Importance Due to WFH Demands**

We got this one right, too. Employers that wanted to bring employees back to the office still struggled to do so in 2022 and continued to receive requests from employees to work remotely as an accommodation for their mental or physical disabilities. So, what if the job requires an employee to report to the physical worksite? Job descriptions are an essential first line defense to show that physical presence in the workplace is an essential function of the job. If employees worked remotely over the past few years of the pandemic, you should consider the elements of the job that were lost or diminished by at-home work and revise your job descriptions accordingly.

#### **Patchwork of Paid Leave Laws Continued to Frustrate Compliance Efforts**

No surprises here. Congress predictably did not come close to passing a federal paid leave law, but states were active in this space. For example, Delaware, Maryland, and Oregon passed paid family leave laws. Additionally, California extended its COVID-19 Supplemental Paid Sick Leave through the end of 2022 and enhanced its paid family leave benefit.



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# 2023 PREDICTIONS Employee Leaves and Accommodations

# 2023



## More Activity at the State Level

We don't expect any changes to federal leave laws in 2023. Instead, all the action will be at the state and local level. Notably, paid family leave laws passed the legislature in New Hampshire and Vermont in 2022, only to be vetoed by the governors. We can expect those legislatures to try again in 2023. Furthermore, now that California expanded its CFRA leave entitlement to a "designated person" of the employee, we expect more states with progressive leave laws to follow suit and expand their leave entitlements.



## Employers Will Take the Lead

As the paid leave conversation continues in 2023, we also predict that more companies will offer longer periods of paid family leave as a benefit in an attempt to stay competitive in the marketplace.



2022



# 2022 RECAP Employee Benefits and Tax

## What We Got Right

### 401(k) Plan Excessive Fee Litigation Skyrocketed

We know employers were hoping that 2022 would be the year that the Supreme Court stemmed the tide of largely copycat 401(k) excessive fee cases. But SCOTUS dashed these hopes in January with its decision in *Hughes v. Northwestern University*, which thus far appears to have made it easier for these cases to survive court scrutiny at the outset of the case. Just as we predicted, the steady stream of this type of litigation continued in 2022 — not just against large plans and employers but also against smaller ones.

### Health Plan Compliance Obligations Reached a Tipping Point

Many employers have historically relied on insurance carriers and brokers for most of their health plan compliance needs — but the volume and complexity of these needs has been steadily growing and reached a tipping point in 2022. Here's a perfect example: Many employers have been implementing healthcare travel reimbursement programs in response to the Supreme Court's *Dobbs* decision which gave states the ability to pass stricter abortion laws. These programs raise a significant number of health plan and related compliance issues for which there are very few clear answers and generally require the assistance of experienced employee benefits counsel.

### Employers Explored Creative Ways to Compensate Executive Talent

We hit the nail on the head. We continued to see a steady stream of employers adopting new compensation plans or revising existing plans to combat the struggle to attract and retain key talent. Privately held employers struggled to compete with the equity compensation opportunities available from publicly traded employers, and many considered longer-term incentive and deferred compensation plans to create the opportunities demanded by executives and the retention incentives demanded by boards and shareholders. Many privately held employers also got creative with phantom equity, deferred compensation, and other longer-term incentive arrangements.



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# 2023 PREDICTIONS Employee Benefits and Tax

# 20 23



## Anticipate More Lawsuits Challenging Retirement Plan Fees

Don't expect the litigation trend regarding retirement plan fees to end anytime soon. Regardless of the size of your plan, now is the time to review your practices for selecting and monitoring plan service providers and investments.



## Review Your Remote Work Programs

For 2023, we expect there to be a significant focus on the employee benefits and payroll tax aspects of remote workers. As the new reality of distributed workforces becomes more permanent, you will need to focus on how to best deliver top tier benefits across multiple locations. You will also need a solid plan to manage potential new payroll tax obligations in new jurisdictions.

# 2022



## 2022 RECAP Education

### What We Got Right

#### **Culture Wars Continued to Rage**

We saw an unfortunate and dispiriting continuation of the culture wars rage in the educational community throughout 2022. The debate centered around three main areas: limitations on the discussion of sexual and gender identity issues, whether to allow transgender girls to play in girls' sports, and education on race discrimination and implicit bias. Private schools were swept into the debate as parents made demands for more disclosure and restrictions in 2022.

#### **Gender Identity Accommodation Requests Skyrocketed**

Meanwhile, schools saw an exponential increase in gender identity accommodation requests – for both students and employees. Many were made on behalf of very young students, which presented confidentiality challenges – not to mention the need to properly frame boundaries around appropriate discussion of sexual topics at school.

#### **Religious Rights Pushed as Never Before**

We also saw more activity with religious schools wanting to strengthen and understand their rights to uphold their tenets in both employee and student relationships and behavior standards. We also saw more cases where religious schools asserted their rights by claiming the ministerial exception permits them to terminate teachers and other functional ministers who fail to comply with important religious guidelines established by the school.



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# 2023 PREDICTIONS Education

# 2023

Expect a turbulent ride for schools in 2023.



## Gender Identity Will Remain Front and Center

We will see continued focus on student gender identity issues, especially regarding the issue of parental involvement in gender identity issues and the parent's asserted right to make decisions. We will also likely see some claims given that a school's obligations to accommodate gender identity may be required when local, state, or federal law requires it, even if the parent disagrees.



## Unwitting Title IX Liability Issue Will Simmer

When two federal district courts recently ruled that a school's non-profit status equates to the receipt of federal financial assistance – rendering them on the hook for Title IX compliance – they set the stage for a battle in 2023. Expect to see higher level appeals courts weigh in on the issue in the coming year – and for the Supreme Court to eventually get involved in 2024.



## Pay Equity Will Come into Focus

We will see more focus on pay equity in schools, with the amount of publicity and attention on the topic leading to employees filing claims for backpay. This should lead schools to conduct their own pay equity audits with the help of legal counsel.



## Drug Crisis Will Hit Home

In an effort to be proactive in combatting student drug abuse, we will see more K-12 schools stock Naloxone on campus in recognition of the increased use of dangerous drugs.



## Child Abuse Will Not Be Tolerated

We will see more aggressive actions by law enforcement against school employees for failure to report child abuse issues, including those involving child-on-child sexual abuse.

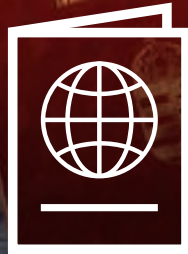


## Violent Threats Will Demand Attention

We will continue to see an increase in situations where students make threats of violence. You will need to come up with a proactive game plan to determine when to call the police, how to deal with the community response, whether to expel or allow the student to withdraw, addressing reference requests, and similar issues.



2022



# 2022 RECAP Immigration

## What We Got Right

### Relaxation of I-9 Rules

Nailed it. Federal immigration officials recently extended relaxed I-9 rules that permit eligible employers to conduct remote document review for new hires that work remotely, just as we predicted. Those rules were set to expire on October 30 but were recently extended through July 2023. Moreover, the Department of Homeland Security (DHS) is looking to make these relaxed rules permanent.

### The New Face of Immigration

Back in May, we predicted that we'd continue to see subtle changes in the types of employers relying on an immigrant workforce. We were right. Today's economic environment has led many employers – not just those in tech – to seek H-1B visas. Professional services organizations have been ramping up their immigration efforts throughout 2022, as have healthcare, hospitality, manufacturing, financial services, education, construction, trucking, and retail warehousing businesses.

### But Will the Brakes Be Applied?

In July, the DOL issued new prevailing wage surveys – which are necessary for many types of immigration filings. As we predicted, they reflected the inflationary pressures that most Americans have been feeling for much of 2022, which could start diminishing the demand for immigrant labor. Notably, however, the current economic downturn has not been typical because many organizations are still seeking skilled job candidates and are struggling to fill open roles. So, the shortage of available workers has balanced calls for more scrutiny on immigration filings.

## The Jury is Still Out

### Midterm Elections Will Shake Things Up

We still expect Republicans to win back at least one house of Congress in November, which will upend many current initiatives – immigration included. If Republicans gain a majority in both chambers of Congress, immigration legislation will likely be shelved until there is a new administration. We expect to see elected officials caught in a debate between those justifying increasing immigration visa numbers, policies, and process improvements and those operating with a backdrop of potential anti-immigrant sentiment.



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# 2023 PREDICTIONS

## Immigration

# 2023

Economic changes, inflation, and other factors will all impact the future of immigration. Here's what you can expect in 2023.



### Halted Immigration Initiatives

You can expect the Biden administration to walk a fine line between the needs of industry and overall public opinion, particularly since Republicans will win back the House or Senate (or both). For now, the administration's immigration initiatives appear to be halted while government officials address inflation, economics, worker shortages, and southern border control – which leaves many employers without solutions when navigating an often-confusing immigration system.



### Jobs Go Abroad

While immigration might help with supplementing the workforce, an uptick in demand for workers coupled with inflation at a 40-year high will result in companies looking abroad to find talent and keep costs down. Many companies adopted new technology during the COVID-19 pandemic and moved to remote and hybrid work arrangements – which will make it easier to look for overseas solutions. Additionally, the current strength of the U.S. dollar may increase employers' interest in exporting jobs.



### Continued Relaxation of I-9

The recent extension of relaxed I-9 rules allowing employers to remotely review employment documents aligns with DHS efforts to kick start the rulemaking process for a permanent protocol. We see the latest extension as more proof that DHS is dedicated to creating a permanent remote document examination rule.



### Employers Focus on Compliance

Compliance will become even more important in 2023 as the DHS, DOL, Department of Justice and various other government agencies will be pressured to keep immigration abuse in check. Creating a culture of compliance and reviewing your company's immigration practices will be essential in the year ahead.

2022



# 2022 RECAP FCRA and Employee Background Screening

## What We Got Right

### Tensions Grew as Employers Adjusted Background Screening Standards

As employers scrambled to fill jobs during the Great Resignation, it's no surprise that many either entirely removed background check requirements from their hiring process or reduced their standards. Throughout 2022, employers have continued to seek advice on how to find a balance between softening their background screening standards and managing safer workplaces – which has forced them to carefully review which criminal history screening criteria are truly job-related.

### Plaintiffs' Lawyers Got Creative When Exploiting Background Check Quirks

We're sorry to say we got this one right, too:

- Plaintiffs' lawyers have developed strategies to escape Article III standing requirements, which typically require workers to show they sustained actual damages before they can get to court. These strategies help plaintiffs' lawyers avoid litigation in federal court and force employers and consumer reporting agencies to litigate in state courts where similar requirements do not exist. Moreover, state courts are often less sympathetic to employers and may be overburdened with criminal dockets.
- Additionally, as we predicted, plaintiffs' lawyers continued to push the envelope on new theories challenging third-party background check authorizations. Given the complex web of staffing and employment relationships that mark the modern era – as well as how they overlap with background screening requirements – there is no universal solution. Plaintiffs' attorneys have continued to target staffing agencies, PEOs, consumer reporting agency, and the employers or entities where individuals work. That's why it's essential to review your third-party relationships and ensure you are all on the same page when it comes to background check compliance.



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# 2023 PREDICTIONS FCRA and Employee Background Screening

# 2023



## Decline in Hiring will Shape Trends

We expect some trends from 2023 to continue, but the hiring frenzy of 2022 will subside. Employers will become increasingly more selective when assessing candidates. When it comes to disputes over background screening procedures, we expect plaintiffs' lawyers to continue pushing novel theories as the low-hanging fruit dries up. Rather than abandoning FCRA claims – and the potential for lucrative attorneys' fees awards – they will likely focus on other components of FCRA disclosure, attack the validity of FCRA authorizations, and challenge the electronic display of otherwise compliant disclosures.



## Focus on Independent Contractors

As more companies retain independent contractors and temporary workers, we'll see more background checks for such workers and related questions about non-employees who enter worksites. We also anticipate the line between employee and independent contractor (as it relates to FCRA compliance) to become a focal point.



## Moving at a Snail's Pace

Finally, we anticipate more challenges for completing timely background checks. Consumer reporting agencies will no longer have key data in some jurisdictions, since some courts are removing previously available identifiers that are used to match individuals to their criminal records. Additionally, as states continue to focus on privacy laws, it may be harder for employers to obtain background checks in some jurisdictions.

20  
22



# 2022 RECAP Healthcare Industry

## What We Got Right

### Staffing Shortages Forced Healthcare Employers to Adapt

It didn't take Nostradamus to predict that 2022 was going to be extremely challenging for healthcare employers because of the staffing crunch – but we'll take credit for getting this one right anyway. While the Great Resignation wasn't unique to healthcare, your industry was the hardest hit because of the direct impact of the pandemic.



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# 2023 PREDICTIONS Healthcare Industry

# 20 23

The staffing challenges won't let up anytime soon – so what can your organization do about it in 2023?



## Staffing Challenges Continue



Be as responsive as possible to your workers' needs without sacrificing quality standards.



This begins with offering fair and adequate pay compared to those in your community.



Provide flexible and creative mental health resources, scheduling practices, and leave policies that are more effective and accommodating than those that existed before the pandemic. At a minimum, make sure your managers effectively schedule your staff to ensure they are not put in difficult positions.



Avoid questionable, gimmicky, or prohibited practices that some third parties may approach you with as a way to lure workers (such as so-called “independent contractor” relationships) as they are often fraught with legal and financial risks.



At the same time, you may do well to offer online scheduling and other apps that can facilitate staffing – especially for hard-to-fill night and weekend shifts (though be mindful of potential reimbursement requirements under state law as well as the possible wage and hour implications associated with the use of such apps).



Remain alert for technological and systemic opportunities to extend the effectiveness of employees. Telemedicine serves as an example, but you can also simply examine whether a registered nurse is indeed required to perform a particular function when a vocational nurse might be able to do it just as effectively without sacrificing quality or raising licensure issues.





# 2022 RECAP Corporate Compliance and Governance

# 2022

## What We Got Right

### Employers Faced a Wave of Criminal Antitrust Indictments

Just as we predicted, the DOJ looked to make a splash in 2022 by announcing criminal indictments against employers – and just got its first win. In addition to employers, individual company officials have been named as defendants to capture attention. You should also note that the Securities and Exchange Commission (SEC) and the FTC joined forces in 2022 with the DOL and the NLRB to target anti-competitive actions and focus on no-poach and wage fixing agreements.

### Increased Attention on Reporting ESG Employment Data

This came to fruition as well. Government regulators and private stakeholders put more pressure on organizations to ramp up their Environmental, Social, and Governance (ESG) reporting. Employers are increasingly expected to perform equity audits, provide information on executive compensation packages, develop DEI programs, and report the results to shareholders and the public.

## Mixed Bag

### Remote Whistleblowing Didn't Necessarily Skyrocket

The increased use of remote and hybrid workplaces caused some workers to feel less connected to their employer and coworkers. We predicted this would result in a surge of whistleblower complaints. Although such claims have generally remained steady, high-profile cases against big companies have brought significant publicity to whistleblowers in all industries, and large settlements have also garnered recent media attention.

### New Suppliers and Vendors Will Raise Employment Risks

Employers may feel pressured to use new suppliers to meet customer demands as supply chains continue to be stretched thin – but potential compliance issues at these suppliers can create reputational and operational challenges for your company even if you have no direct responsibility for these issues. Although we didn't see a major uptick in employers suffering reputational risk from suppliers with labor and employment violations, you should continue to be mindful of these risks and how they might impact your business.



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# 2023 PREDICTIONS Corporate Compliance and Governance

# 20 23



## Wage Practices Under Scrutiny

We'd recommend you carefully review your wage practices to ensure compliance with antitrust laws. Federal officials will continue targeting no-poach and wage fixing agreements in 2023.



## Climate and Greenhouse Gas in the Spotlight

The SEC recently proposed a rule that would require public companies to disclose information about climate risks and greenhouse gas emissions. If the agency moves forward as planned, the rule will take effect in 2023 for certain large companies – so the time to prepare is now.



## Human Capital Management Reporting Next on Docket

After the SEC finalizes work on the previously discussed rule, we expect the agency to publish a similar rule related to human capital management reporting. You will want to do advance work in this area so you're not caught off guard and behind the eight ball.

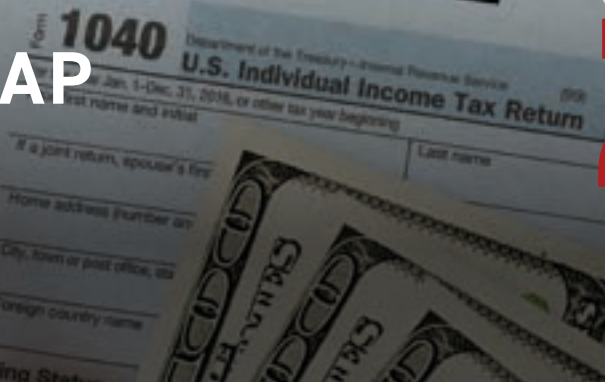
# 2022



## 2022 RECAP

# Pay Equity

# PAYROLL



## What We Got Right

### Pay Data Transparency Was All the Rage at the State Level...

Nailed it. In 2022 we saw a flurry of pay equity action at the state level. Pay transparency was one of the hottest – and most challenging – issues employers faced in 2022 now that several states and localities followed Colorado’s lead and enacted laws requiring employers to publicly post pay ranges. In particular, multi-state employers grappled with compliance issues stemming from a patchwork of laws.

### ...And Litigation Followed

As we predicted, 2022 brought an uptick in compensation disparity litigation, both on an individual and class action basis. Pay equity litigation grew in two ways this past year. First, many recently filed discrimination suits in states with robust pay equity laws included separate pay equity claims. Second, more employees filed standalone pay equity suits, a trend spawned in part by high-profile litigation and settlements.

## The Jury is Still Out

### Will Feds Push for Pay Data Reporting?

We expected the Biden administration to push to reinstitute the federal EEO-1 “Component 2” reports that require employers to collect and turn over pay data and hours worked information to the government. While there are lots of rumors about a revived EEO-1 Component 2 requirement, nothing concrete developed – yet.

### Do You Need to Update Gender Markers?

Earlier this year, the EEOC announced that it was adding a “non-binary” category to its forms. We still expect more states – and perhaps federal agencies – to add either a “non-binary” gender category or provide multiple gender choices other than male/female to standard forms. In fact, the OFCCP is considering how to include a non-binary category and has made it clear that contractors can report multiple gender choices.



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# 2023 PREDICTIONS

## Pay Equity

# 2023

### What pay equity trends can you expect in 2023?



#### Feds Will Remain on Sidelines

Pay equity legislation and agency mandates will continue to challenge employers in the coming year. However, even though we expect federal lawmakers to have heated discussions about enhanced pay equity protections, we think sweeping federal pay equity legislation is unlikely due to the political climate in D.C. and other priorities.



#### Keep Your Eyes on the States

As a result, much of the action in this area will occur through state law initiatives – especially with respect to pay transparency. States with progressive equal pay laws – such as California, Colorado, Illinois, New Jersey, and New York – will see increased pay equity litigation, which will be fueled in part by requirements to post pay ranges.



# 2022



## 2022 RECAP Gig Economy

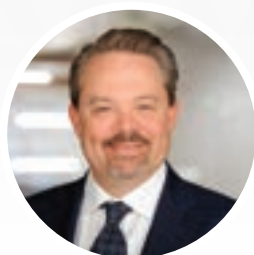
### What We Got Right

#### IC Rules Have Begun to Hamstring Businesses

As we're about to turn our calendars from 2022 to 2023, business need to start preparing for two new federal standards that will determine whether a worker is an independent contractor or an employee – just as we predicted. We foresaw the Department of Labor issuing a proposal that would tighten the rules and make it more difficult for you to deploy gig labor when it comes to wage and hour compliance, and that just happened a few weeks ago. And we also still expect the National Labor Relations Board to do the same when it comes to potential union organizing efforts.

#### Inflation and Recession Fears Led to Further Gig Work

Companies deploying gig labor lived the old adage that “from crisis comes opportunity” in 2022. As inflationary pressures mounted throughout the year, and some industries ended up feeling a recession-like sting, an increasing number of workers streamed to gig economy opportunities. A record-number of workers took on a side hustle or full-time gig work in 2022, either to supplement their income or as a way to bridge the time between other traditional employment opportunities.



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# 2023 PREDICTIONS

## Gig Economy

# 2023



### States will Attract and Protect

An increasing number of states and local jurisdictions will follow the example of Washington State, which enacted a law in 2022 that guarantees minimum per-trip pay rates, paid sick leave, and other benefits for rideshare drivers in exchange for a guarantee that the workers are classified as independent contractors. Rather than fight costly and bruising battles in court, an increasing number of government officials will reach out to gig companies to develop a win-win outcome for workers and businesses in a Washington-style compromise.



### Antitrust Concerns Land Home

As if gig companies didn't have enough to worry about, they will have a new concern in 2023: the Federal Trade Commission. The agency recently announced that it will put gig economy businesses in its crosshairs by cracking down on worker misclassification and other alleged anticompetitive conduct. The new policy statement announced that the agency would use the full portfolio of laws it enforces to prevent "unfair, deceptive, anticompetitive and otherwise unlawful practices" affecting gig workers. Specifically, the FTC said it will take on businesses that misrepresent workers' potential earnings, wrongfully use artificial intelligence to evaluate worker productivity, and engage in wage-fixing with other gig companies, commonly seen as classic antitrust behavior.

# 2022



## 2022 RECAP Vaccine Taskforce

### What We Got Right

#### A Farewell to Mandatory Vaccinations

Nailed it. Just as we predicted, mandatory COVID-19 vaccinations have become less prevalent across the board as the pandemic transitions to endemic status and more therapeutic drugs become available. Healthcare entities regulated by the Centers for Medicare and Medicaid Services (CMS) still must require their employees to be vaccinated – subject to medical and religious exemptions – but it remains to be seen how long these mandates will remain in place.

#### Vaccine Passports Are No Longer a Topic of Controversy

Earlier this year, we correctly predicted that so-called vaccine passports would be less controversial as the urgent pressures of the COVID-19 emergency subsided. Any initial issues regarding whether all employees had equal access to the vaccines have been mostly resolved, and in fact, there has been very little additional discussion on this topic.

#### Battles Continued in the States

In the absence of an overarching federal law requiring or prohibiting vaccinations, we predicted that some states and localities would continue to consider measures either to require vaccinations in certain circumstances – or to prohibit mandatory vaccinations in all but very limited circumstances. We got this right, too. As mentioned above, however, vaccination mandates have lessened across the board and all but disappeared in many areas of the country.

### We Missed the Mark

#### No Big Focus on Incentives

When it comes to COVID-19, it's impossible to get everything right. Although there was a time when we saw an explosion of vaccine incentives in the workplace, their use is no longer as prevalent now that the crisis is waning and employees who want to get vaccinated have already done so.



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# 2023 PREDICTIONS

## Vaccine Taskforce

# 2023

### What does the future hold for workplace policies on COVID-19 vaccinations?



#### It's COVID Season

The formerly urgent nature of the pandemic seems to be evolving to a level that puts COVID-19 essentially on par with the seasonal flu. In 2023 and beyond, COVID-19 vaccinations will be more akin to seasonal flu shots in terms of how strongly they are encouraged by employers and in what circumstances they may be required in the workplace. While employers in healthcare settings may continue to require vaccinations and actively follow protocols to curb the spread of COVID-19, we predict that very few private workplaces will continue to take such measures now that boosters and therapeutics are widely available.



2022

2022 RECAP

# Affirmative Action and Federal Contractor Compliance



## What We Got Right

### Affirmative Action Plan Vigilance Took on Heightened Importance

We got this right. In 2022, federal contractors and subcontractors no longer had the luxury of taking a relaxed approach to maintaining their affirmative action plans. For the first time, they had to certify compliance through the OFCCP's online portal. Many contractors found themselves under the gun to timely complete plans this past year.

### Infrastructure Work = Federal Contract Work

We correctly predicted that many employers that have not previously chosen to enter federal contracts would find themselves subject to the myriad requirements of affirmative action compliance for the first time thanks to opportunities borne of the infrastructure legislation. In response to the expected uptick, the OFCCP created an electronic portal for contractors to provide required notices – now the agency's preferred method.

### Feds Scrutinized Contractors' Hiring Practices that Utilize AI

Just as we expected, the EEOC and OFCCP cautioned employers in 2022 to be careful about over-reliance on artificial intelligence (AI) and algorithms in making employment decisions for fear of unintentional discriminatory outcomes. Federal contractors that use AI in their recruiting processes should ensure they are complying with their recordkeeping obligations and periodically auditing their AI use.

## The Jury is Still Out

### EEO-1 Reports Will Be Innocuous No More

We expected EEO-1 pay data reports to be revived in 2022, especially because OFCCP Director Jenny Yang has been the EEOC's strongest proponent to resurrect the Component 2 requirement that would force employers to turn over pay data and hours worked reports. The agency has signaled that a major shift may be on the horizon, however, so stay tuned in 2023.



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# 2023 PREDICTIONS Affirmative Action and Federal Contractor Compliance

# 2023

What can you expect in 2023 when it comes to affirmative action plans and federal contract compliance?



## More Robust Investigation and Enforcement

The OFCCP received funding to hire more investigators and is working to develop its internal procedures. Importantly, the agency is building more internal infrastructure and has said it will use responses in the certification portal to inform its “neutral” audit scheduling.



## Increased Focus on Pay and Audit Obligations

The OFCCP released two directives in 2022 regarding compensation and audit processes, signaling that the agency will no longer provide routine extensions for audit submissions and will expect federal contractors to provide evidence of compliance with their obligation to periodically review their pay practices. Contractors and subcontractors that have not been reviewing their compensation should start now.



## EEO-1 Data May Cause Companies to Reflect

Interestingly, the OFCCP received a FOIA request from an investigative reporter this fall which has caused companies to evaluate how the release of their EEO-1 data – which they may have previously considered innocuous – could reflect their company’s overall strategies and performance, including in the area of diversity, equity, and inclusion (DEI). Employers should stay tuned as this issue develops.

2022



# Financial Services Industry

## What We Got Right

### You Experienced Bumpy Roads as Employees Returned to Work

We predicted that many financial services employees returning to the workplace after two years of working remotely would experience challenges – requiring employers to act nimbly. And we definitely saw many instances of employees returning in 2022 finding it difficult to adjust to their old surroundings. This especially played out when it came to requests for accommodation due to mental health reasons and employees just quitting rather than giving up their WFH status.



## 2023 Economic Slowdown Will Lead to Layoffs

The financial services industry is certainly not immune from the economic tumult that has swept the nation in the past year, and 2023 will see the full impact of this trend. We expect to see a series of layoffs and RIFs as the economy continues to sputter and we face a possible recession.



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20  
22



# Sports Industry

## What We Got Right

### Professional Sports Teams Needed to Bone Up on Crypto, Blockchain, and NFTs

As we predicted, 2022 was a banner year for sports and crypto/blockchain technology. Over the past year, both the NBA and the UFC launched crypto initiatives designed to enhance the fan experience, while the WWE launched its own NFT marketplace. Meanwhile, a crypto enthusiast formed a Decentralized Autonomous Organization to try and buy a professional sports franchise. From an individual perspective, stars like Serena Williams, Tom Brady, Steph Curry, Arron Rodgers, Lamelo Ball, Spencer Dinwiddie, and Sue Bird have continued to go deeper into crypto and blockchain technology. This is just the tip of the iceberg as we expect an even stronger marriage between crypto and sports in 2023.

### College Athletics Will Face Renewed Strain Over Athlete v. Employee Debate

This prediction was also accurate. As 2022 wraps up, there are at least three pending cases before the NLRB on this issue. Separately, student-athletes are also pushing employment status under wage and hour law, and we expect a ruling on this issue in a pending federal appeal. The next 12 months should come with major developments on both fronts, in addition to anything the NCAA and its member institutions decide to do voluntarily.



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