

# Retail Industry Workplace Law Update – Spring 2023

By Mark S. Askanas & Laura A. Pierson-Scheinberg

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### The Year Ahead in Caffeinated Organizing

With a White House and National Labor Relations Board that are more pro-labor than most recent past administrations, a “labor renaissance” will be the overarching theme of 2023.

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### Labor Trends in Warehousing and Distribution Industry to Watch

The warehousing and distribution industry has one of the highest overall union membership rates in the United States.

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### New OSHA Enforcement Guidance Promises Steeper Penalties for Employers

The Occupational Safety and Health Administration has announced two enforcement guidance changes with the goal of deterring violations by substantially increasing the penalties certain employers may face for alleged violations.

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### U.S. Supreme Court Holds Employees Paid on a ‘Day Rate’ Basis Are Entitled to Overtime Pay

The U.S. Supreme Court has held that an employer’s day-rate pay structure did not satisfy the “salary basis” component of the “white collar” executive exemption under the Fair Labor Standards Act, even though the employee at issue earned more than \$200,000 per year and unquestionably met the salary-level and duties requirements of that exemption.

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### OSHA Fails to Prove Feasible, Effective Abatement for Excessive Heat Hazard, Commission Rules

The Occupational Safety and Health Administration successfully established the existence of an excessive heat hazard for which the agency cited the employer, the Occupational Safety and Health Review Commission has ruled, resolving a question open since 2019.

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### Labor Board Reinstates Standard Restricting Employee Severance Agreements

The National Labor Relations Board has returned to its pre-2020 standard

restricting certain confidentiality and non-disparagement clauses in departing employees' severance agreements.

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### What Retailers Should Know About California Scheduling Ordinances

The City of Los Angeles's Retail Fair Workweek Ordinance, which takes effect April 1, 2023, is not the only local ordinance in the Golden State that affects how retailers and other employers handle scheduling.

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### Federal Arbitration Act Preempts California Ban on Mandatory Arbitration Contracts, Ninth Circuit Holds

The U.S. Court of Appeals for the Ninth Circuit affirmed the district court's grant of a preliminary injunction barring enforcement of California's Assembly Bill 51 with respect to arbitration agreements governed by the Federal Arbitration Act.

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### Illinois Paid Leave for All Workers Act Signed

Governor J.B. Pritzker signed the Illinois Paid Leave for All Workers Act on March 13, 2023. The Act entitles covered employees to earn and use up to 40 hours of paid leave in each 12-month period of their employment and will go into effect on January 1, 2024.

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### New Jersey's Expanded Mini-WARN Law to Take Effect April 2023

After a two-year delay, the amendment to the New Jersey Millville-Dallas Airmotive Plant Job Loss Notification Act, the state's mini-WARN law, will take effect on April 10, 2023.

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### New Jersey Enacts 'Bill of Rights' for Temporary Workers

New Jersey Governor Phil Murphy has signed into law the "Temporary Workers' Bill of Rights," providing temporary workers significant rights regarding their employment through temporary help service firms.

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### New York State Amends Pay Transparency Law

New York Governor Kathy Hochul has signed an amendment to the New York State Pay Transparency Law that modifies the applicability of the law, lessens an employer's recordkeeping requirements, and clarifies what constitutes an "advertisement."

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### Seattle Enacts First-of-Its-Kind Law Protecting Individuals Against Discrimination Based on Caste

The Seattle City Council passed a first-of-its-kind ordinance prohibiting

discrimination based on caste in employment, housing, and public accommodation.

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Please contact a Jackson Lewis attorney if you have any questions about these developments.

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