Employment Flash

Skadden

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OSHA ETS Mandatory COVID-19 Vaccination-or-Testing Rule

On November 5, 2021, the Occupational Safety and Health Administration (OSHA) issued an emergency temporary standard (ETS) generally requiring employers with 100 or more employees to develop, implement and enforce mandatory policies requiring employees to be fully vaccinated against COVID-19 or undergo weekly COVID-19 testing and wear a face covering in the workplace. The following day, the U.S. Court of Appeals for the Fifth Circuit granted a motion to stay implementation and enforcement of the ETS until further court order, and challenges to the ETS in other circuits quickly followed. Pursuant to the "multicircuit lottery" process, a blind lottery determined that all cases challenging the ETS were to be consolidated and transferred to the U.S. Court of Appeals for the Sixth Circuit. After more than a month of limbo over the future of the ETS, on December 17, 2021, a split Sixth Circuit panel dissolved the Fifth Circuit's stay and reinstated the mandatory vaccination-or-testing rule. However, the fate of the ETS will ultimately be decided by the U.S. Supreme Court. As of December 20, 2021, multiple parties had filed emergency motions and appeals with the Court seeking to block enforcement of the ETS, and on Friday, January 7, 2022, the Court heard oral arguments on the ETS. Based on those oral arguments, during which a majority of justices seemed skeptical of OSHA's legal authority to implement the ETS, it seems possible that the Court may enjoin the ETS. Those oral arguments suggest the Court is more likely to reject challenges to the separate Centers for Medicare & Medicaid Services rule requiring full COVID-19 vaccination for health care workers participating in Medicare and Medicaid (the CMS Rule). However, unless and until the Court enjoins the ETS, it remains in effect and employers should make good faith compliance efforts.

The ETS generally applies to employers with 100 or more employees who are not already covered by Executive Order 14042 (the rule requiring full COVID-19 vaccination for employees of covered federal contractors and subcontractors) or the CMS Rule. Employers covered by the ETS would have been required to establish a mandatory written vaccination policy (or, alternatively, a vaccination-or-testing policy) that meets the requirements of the ETS by December 5, 2021, and January 4, 2022, would have

been the ETS deadline for covered employers to ensure that their employees are fully vaccinated against COVID-19 (unless an employee qualifies for a permissible exemption under the ETS, such as a reasonable accommodation due to a disability or sincerely held religious belief) or produce a negative test at least weekly. December 5, 2021, would have been the deadline for employers to comply with other requirements of the ETS, including (i) determining the vaccination status of each employee and obtaining proof of vaccination, (ii) complying with ETS record-keeping requirements, (iii) enforcing face covering mandates for unvaccinated employees, (iv) enforcing rules about employee notices of positive COVID-19 test results and removal of COVID-19-positive employees from the workplace, (v) providing employees with specified information required by the ETS and (vi) providing employees with paid time off for COVID-19 vaccinations and side effects of such vaccinations.

However, in light of the uncertainty and time lag resulting from the Fifth Circuit's stay, and to provide employers with sufficient time to come into compliance, OSHA announced that it will not issue citations for noncompliance with any requirements of the ETS before January 10, 2022, and will not issue citations for noncompliance with the ETS testing requirements before February 9, 2022, so long as an employer is exercising reasonable, good faith efforts to come into compliance with the ETS. As noted above, litigation over the ETS is ongoing, but in the meantime, OSHA has the authority to enforce the ETS. Covered employers should prepare to comply with the ETS pending the Court's ruling on the matter. For further information, see our January 3, 2022, client alert "Status of Recent Federal and NYC WorkplaceVaccination and Testing Mandates."

Title VII and Religious Objections to COVID-19 Vaccine Mandates

On October 25, 2021, the U.S. Equal Employment Opportunity Commission (EEOC) issued updated technical assistance addressing how Title VII of the Civil Rights Act of 1964 (Title VII) applies when employees or applicants request religious exemptions from employer mandated COVID-19 vaccination requirements. The EEOC advised that under Title VII, an employer must provide an exemption from its COVID-19 vaccination requirement if the requirement conflicts with an employee's or applicant's sincerely held religious beliefs, practices or observances.

Title VII prohibits employment discrimination based on religion. Under the updated technical guidance, employees and applicants must inform their employer if their sincerely held religious beliefs, practices or observances conflict with the employer's COVID-19 vaccine requirement. Employers must accommodate employees and applicants who are seeking a religious accommodation, even if the religious beliefs are nontraditional or unknown to the employer. However, employers may decline requests for COVID-19 vaccine exceptions based on social, political or economic views and personal preferences. Employers should assume that religious accommodation requests are based on sincerely held religious beliefs, but employers may seek additional information if they have "an objective basis for questioning either the religious nature or sincerity of a particular belief." Employers that demonstrate an "undue hardship" are not required to provide an employee or applicant with a religious accommodation. An undue hardship requires more than a "de minimis," or minimal, cost or impact on the employer's operations. Undue hardship takes into account both direct monetary costs and the burden of the conduct on the employer's business. The new guidance states that undue hardship could include the risk of spreading COVID-19 to other employees or the public.

Employers should still consider other federal, state and local laws when implementing policies regarding the COVID-19 pandemic. The EEOC will continue to update its COVID-19 technical guidance as new developments occur.

New York City Implements COVID-19 Vaccine Mandate for Private-Sector Employers

On December 6, 2021, the former mayor of New York, Bill de Blasio, announced during a press conference that all private employers in New York City, regardless of size, must require all employees to get vaccinated against COVID-19. His sweeping announcement follows a continuous rise in COVID-19 cases, and the omicron variant's rapid spread throughout the world and the United States. This mandate makes New York City the first city in the country to implement a COVID-19 vaccination mandate for private sector employers.

New York City issued more detailed guidelines on December 15, 2021, regarding how officials should enforce the vaccine mandate. In-person workers will need to provide employers with proof that they have received at least one dose of the COVID-19 vaccine by December 27, 2021, and must thereafter provide proof of a second dose within the following 45 days. Employees will not be permitted to evade the requirement by instead opting for regular COVID-19 testing. Further, as of December 27, 2021, businesses cannot allow unvaccinated employees to enter the workplace.

According to a spokesperson for Mayor de Blasio, the new vaccine requirement will apply to approximately 184,000 businesses that were not previously covered by vaccine mandates. City officials further noted that while the mandate does not yet require proof of a booster dose, the option may arise in the near future if the pandemic situation warrants expanded track-

ing. The vaccination mandate will almost certainly encounter legal challenges, although no challenges have yet been filed. Significantly, employees may still ask for medical exemptions or religious accommodations. Although Mayor de Blasio made the announcement, the current New York City mayor, Eric Adams — who assumed office on January 1, 2022, will be responsible for enforcing the policy.

New York Introduces Phone and Email Monitoring Statute

In New York, a new state statute signed on November 8, 2021, and effective May 7, 2022, will require private employers to provide employees with written notice upon hiring if the employers intend to monitor employees' company phones, email or internet use. The notice must be in writing, either in hard copy or electronic format, and acknowledged by employees. Employers must also post a notice in a "conspicuous place which is readily available for viewing by [their] employees." In the notice, employers must advise employees that "any and all telephone conversations or transmissions, electronic mail or transmissions, or internet access or usage by an employee by any electronic device or system, including but not limited to the use of a computer, telephone, wire, radio or electromagnetic, photoelectronic or photo-optical systems may be subject to monitoring at any and all times and by any lawful means." According to sponsors of the new statute, the purpose of the legislation is to allow employers to retain the right to monitor phone and computer usage while increasing transparency in their organizations.

The new law does not apply to processes that (i) are designed to manage the type of volume of incoming or outgoing electronic mail, telephone voice mail or internet usage; (ii) are not targeted to monitor or intercept the electronic mail, telephone voice mail or internet usage of a particular individual; and (iii) are performed solely for the purpose of computer system maintenance and/or protection. The state attorney general, rather than the New York Department of Labor (DOL), will enforce the law. An employer that violates the law will be subject to a civil penalty of up to $500 for the first offense, up to $1,000 for the second offense and up to $3,000 for the third and each subsequent offense. The law does not provide for a private right of action.

New York Substantially Expands Whistleblower Protections

New York Gov. Kathy Hochul signed legislation on October 28, 2021, substantially expanding whistleblower protections under New York Labor Law §740 for employees in New York. Effective January 26, 2022, the expanded law extends the definition of an employee, lowers the standard for whistleblower reporting, expands what is protected activity and prohibited retaliatory conduct and provides additional remedies to whistleblowers. Specifically, the new law protects former employees and independent contractors in addition to current employees and amends the law so that employees are protected if they "reasonably believe" that an employer's activity violates the law or poses a substantial and specific danger to public health or safety, where there previously had to be an actual violation of the law for the whistleblower to be protected. The amended law also expands protected activity by requiring employees to make only a "good faith effort" to notify their employer of a potential violation and providing for circumstances under which employer notification is not necessary. The new law broadens the definition of "retaliatory actions" to include certain adverse employment actions and provides for additional remedies such as front pay, punitive damages and a right to jury trial.

New York Expands 'Deductions' Law To Allow Claims for Withholding of Wages

On August 19, 2021, the No Wage Theft Loophole Act became effective in New York. The act eliminated an employer-friendly "loophole" created by New York courts and streamlined the process for employees to bring claims against their employers for alleged unpaid wages. Section 193 of the New York Labor Law provides for an employer to make permitted deductions from an employee's wages and Section 198 provides a private right of action for unlawful deductions. Historically, New York courts have limited these provisions' applicability to specific, partial deductions from wages, and have not allowed claims for wholesale withholding of wages. The new law states that this loophole was used "to the detriment of employees everywhere" and, as amended, the law now provides that "there is no exception to liability under this section for the unauthorized failure to pay wages, benefits or wage supplements."

Employers in New York should document in writing all compensation arrangements, including commission agreements, bonus agreements or discretionary compensation, at the outset of employment to avoid any ambiguity about what compensation may be owed to employees. Employers should also ensure that no changes to compensation terms will be effective without a written agreement signed by the employer.

New York DOL's Guidance on What the Legalization of Cannabis Means for Employers

On March 31, 2021, the state of New York signed into law the Marijuana Regulation and Taxation Act (MRTA), legalizing the recreational use of cannabis for adults over the age of 21. The MRTA also amended Labor Law Section 201-D to clarify that

marijuana is a legal consumable product if used in accordance with New York state law. This means that employers cannot discriminate against employees based on their use of cannabis if it is used outside of the workplace, outside of work hours and without the use of the employer's equipment and property.

On October 8, 2021, the New York DOL published "Frequently Asked Questions" (FAQs) in order to provide guidance on questions about the legalization of adult use of marijuana, and specifically its effect in the workplace. The FAQs clarify the occasions where an employer may take employment action or prohibit employee conduct, which includes the following: (i) where an employer is or was required to take such action by state or federal statute, regulation, ordinance or other governmental mandate; (ii) where the employer would otherwise be in violation of federal law; (iii) where the employer would otherwise lose a federal contract or funding; (iv) where the employee manifests specific articulable symptoms of cannabis impairment that decrease the employee's performance of the employee's tasks or duties (while working); or, (v) where the employee manifests specific articulable symptoms of cannabis impairment (while working) that interfere with the employer's obligation to provide a safe and healthy workplace as required by workplace safety laws.

The DOL's FAQs do not contain a standard definition of "articulable symptoms of impairment," as there is no dispositive or comprehensive list of symptoms of impairment. Instead, articulable symptoms of impairment are characterized as "objectively observable indications" that the employee's performance of duties are "decreased or lessened." As an example, the FAQs cite how the operation of heavy machinery in an unsafe, reckless manner may be considered an articulable symptom of impairment. However, the smell of cannabis, on its own, is not evidence of articulable symptoms of impairment.

The FAQs note that Section 201-D does not apply to nonemployees, and thus does not cover independent contractors. The FAQs also state that the New York DOL does not consider an employee's private residence being used for remote work a "worksite" within the meaning of Section 201-D, but that an employer may take action if an employee is exhibiting the aforementioned articulable symptoms of impairment during work hours.

California's SB 331 Expands Prohibitions Against Nondisclosure Restrictions

On October 7, 2021, California Gov. Gavin Newsom signed Senate Bill 331 (SB 331) into law, thereby building on legislation enacted in September 2018 to curb restrictions on the disclosure of factual information concerning specified acts (*e.g.*, sexual assault, sexual harassment, workplace harassment, discrimination based on sex) related to a claim filed in a civil action or a complaint filed in an administrative action. SB 331 expands the existing prohibition against such nondisclosure restrictions by removing references to "sex" from the relevant statute (thus extending the statute's coverage to acts of workplace harassment and discrimination based on other protected characteristics (*e.g.*, race)) and applying the prohibition to separation agreements containing nondisclosure restrictions. SB 331 also requires agreements containing nondisparagement or confidentiality provisions that restrict an employee's ability to disclose information related to conditions in the workplace to include specific carve-out language permitting the employee to discuss or disclose "information about unlawful acts in the workplace, such as harassment or discrimination or any other conduct that [the employee has] reason to believe is unlawful."

Separately, SB 331 imposes certain notification and certification period requirements in agreements "related to an employee's separation from employment," except those negotiated to resolve an underlying claim filed by an employee in court, before an administrative agency or in an alternative dispute resolution forum, or pursued through an employer's internal complaint process (*e.g.*, pursuant to a collective bargaining agreement). Specifically, an employer must notify an employee of his or her right to consult an attorney regarding the agreement and provide the employee with a reasonable time period of not less than five business days in which to do so. Notably, however, SB 331 does not preclude nondisclosure provisions prohibiting disclosure of the amount paid in a severance agreement or trade secrets, proprietary information or confidential information that does not involve unlawful acts in the workplace.

SB 331 went into effect as of January 1, 2022.

California Court Upholds Enforceability of Employer-Mandated Arbitration Agreements

On September 15, 2021, the U.S. Court of Appeals for the Ninth Circuit partially upheld a 2019 California law, known as Assembly Bill 51 (AB51). AB51 bars employers from requiring employees to sign agreements to arbitrate claims under the California Labor Code or the California Fair Employment and Housing Act as a condition of employment, and also prohibits employers from taking adverse action against any employee who refuses to sign such an agreement. AB51 creates civil and criminal penalties for any employer that violates these prohibitions; however, any arbitration agreement an employee signs, despite an employer having violated AB51, is nevertheless enforceable.

Prior to AB51's effective date, the Eastern District of California enjoined its enforcement, finding it was preempted by the Federal Arbitration Act (FAA). In a 2-1 decision, the Ninth

Circuit reversed in part the lower court's decision, noting that AB51 does not conflict with the FAA and therefore is permissible. Notwithstanding that reversal, the Ninth Circuit affirmed the district court's enjoining of the penalties provisions to the extent they apply to executed agreements. Therefore, while employers may be exposed to civil and criminal liability under AB 51 if they require an unwilling employee to sign a mandatory arbitration agreement, the same potential liability does not exist if employees sign the agreement voluntarily. The Ninth Circuit's decision arguably creates a circuit split with similar cases decided by the U.S. Court of Appeals for the First and Fourth Circuits in 1989 and 1990. This split, combined with the increased attention the Supreme Court has granted to FAA cases in recent years, likely sets the stage not only for an appeal of the decision but a higher-than-usual probability that the Court will take up this matter. Because of the issues raised, employers will want to follow future developments in this litigation.

Connecticut Law Expands Disclosure Requirements for Wage Range Factors

As of October 1, 2021, Connecticut law requires employers in Connecticut who use the services of one or more employees for pay (whether located in or outside of Connecticut) to disclose to both applicants for a position and employees occupying a position the "wage range" that they anticipate relying on to determine the wages for the position. Notably, the term "wage range" may include (i) the applicable pay scale, (ii) the previously determined range of wages for the position, (iii) the actual range of wages for current employees holding comparable positions or (iv) the amount budgeted by the employer for the position.

Covered employers must provide an applicant with "wage range" information upon the earlier of (i) the applicant's request or (ii) prior to or at the time the employer makes the applicant an offer of compensation. Similarly, "wage range" information must be provided to an employee at (a) hiring, (b) a change in the employee's position with the employer or (c) the employee's first request for a "wage range." Failure to do so under these circumstances may result in liability for compensatory damages, attorney's fees and costs, punitive damages and such legal and equitable relief as a court may deem just and proper, which an aggrieved applicant or employee may pursue within two years of the date of the alleged violation in addition to filing a complaint with the Connecticut Labor Commissioner.

New Jersey Amends Workers' Compensation Law

On September 24, 2021, New Jersey Gov. Phil Murphy signed into law a immediately effective bill that amended the New Jersey Workers' Compensation Law. The amendment requires employers with 50 or more employees to provide a hiring preference to any existing employee who has reached maximum medical improvement from a work-related injury and who is unable to return to the position the employee held prior to sustaining the injury. Specifically, the amendment requires the employer to provide any such employee with a "hiring preference" — which the law does not define — for any existing, unfilled position for which the employee can perform the essential duties. The amendment does not require the employer to create a new position for any such employee or to remove any individual from an existing filled position to open a position. Notably, the amendment specifically provides that it shall have no impact on an individual's right to a reasonable accommodation under the New Jersey Law Against Discrimination due to a disability. The amendment does not provide remedies for noncompliance or set forth any procedures for enforcement.

New Jersey Enacts Cannabis Rules

On February 22, 2021, New Jersey Gov. Phil Murphy signed into law the Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (CREAMMA), which legalized the use of recreational marijuana for adults 21 and older. CREAMMA also contains several employment-related provisions, which became operative when the New Jersey Cannabis Regulatory Commission issued its first set of rules and regulations on August 19, 2021.

Specifically, CREAMMA provides that an employer may not take any adverse action against an employee because of the employee's use or nonuse of cannabis items or solely due to a positive drug test that detects use of marijuana. CREAMMA also provides that an employer may not consider an individual's past offenses related to the use of cannabis when making decisions about the individual's employment. Despite these anti-discrimination provisions, employers may still maintain a drug-free workplace and may require an employee to undergo drug testing under certain circumstances, including upon reasonable suspicion of an employee's use of marijuana or after a work-related accident. Noncompliance with any provision in CREAMMA may subject an employer to civil penalties up to $1,000 for the first violation, $5,000 for the second violation and $10,000 for each subsequent violation. CREAMMA does not provide employees with a private right of action.

Notably, CREAMMA specifies that an employer must use a Workplace Impairment Recognition Expert to conduct a physical evaluation of an employee taking a drug test for the presence of marijuana. CREAMMA directs the New Jersey Cannabis Regulatory Commission to issue standards with respect to the certification needed to administer such physical evaluation. The commission's first set of rules and regulations, "Personal Use Cannabis Rules," did not do so. Instead, the rules simply state

that "until such time that the Commission, in consultation with the Police Training Commission … develops standards for a Workplace Impairment Recognition Expert certification, no physical evaluation of an employee being drug tested in accordance with [CREAMMA] shall be required."

International Spotlight

France

French Government Drafts Law To Strengthen Protection for Whistleblowers

A draft law intended to improve whistleblower protection would, if promulgated, transpose into French law the provisions of European Union Directive 2019/1937 of October 23, 2019, regarding the protection of persons who report violations of European Union (EU) law, thereby amending the provisions of the "Sapin 2" law in force since 2016. The draft law broadens the scope of beneficiaries of the whistleblower protective status, simplifies whistleblowing procedures and improves the protection afforded to whistleblowers, particularly employees.

Firstly, the proposed law expands the scope of situations to which whistleblowing protection applies by removing the condition of seriousness currently required for reporting of threats or harm to the general interest and of violations of international commitments, laws and regulations. The draft includes reporting of violations of EU law, as well as attempts to conceal those violations, on the list of protected activity. In addition, under the current law, the whistleblower must have personal knowledge of the facts that are the subject of the alert; the draft law proposes to limit this condition to cases where the information was not obtained in the course of professional activities.

The proposed bill further extends whistleblower protection to (i) facilitators assisting the whistleblower in reporting and disclosing information about unlawful acts; (ii) individuals in contact with a whistleblower who are at risk of retaliation in the context of their professional activities, in particular from an employer or client; and (iii) legal entities controlled by the whistleblower, for which the whistleblower works or with which he or she has a link in a professional context.

Procedurally, the proposed law offers greater flexibility in allowing the whistleblower to freely choose between reporting the harm or violations internally to the employer's direct or indirect superior, or externally through a judicial authority, an administrative authority or the professional bodies. Under Sapin 2, the use of an external procedure has been conditioned upon a failed internal procedure. Persons who may use an internal reporting procedure for information obtained in the course of professional activities include:

- employees, former employees and job applicants;
- shareholders, partners and all holders of voting rights in general meetings;
- members of the staff and of the administrative, management or supervisory body of the company; and
- the company's contractors, subcontractors and suppliers.

The draft law also offers increased protection of personal data and the identity of the whistleblower. Currently, information that could identify the whistleblower can only be disclosed with his or her consent, except to the judicial authority. The proposed law introduces the right to be informed of such disclosure to the judicial authority, unless such information would jeopardize the judicial proceedings concerned.

Finally, the draft law introduces more severe sanctions in response to retaliation against whistleblowers, as well as additional prohibited measures, including the infliction of harm, such as damage to reputation or financial loss, and early termination or cancellation of a contract for goods or services. Such retaliation is null and void. In the event of an appeal, the burden of proof would remain on the employer, who must prove that its decision is justified by objective elements unrelated to the whistleblowing report.

Germany

Germany Reimplements COVID Regulations for Employers and Employees

Due to the significantly increased incidence of COVID infections arising in Germany in December 2021, the German government has again implemented stricter rules for employers and employees applying at the workplace:

- Employers must offer COVID self-tests to their employees twice a week.
- Employers must offer home office arrangements to employees who test positive for the virus, and such employees are required to agree to work from home, provided no serious grounds prevent an employee from doing so.
- Employees may only access the workplace (*i.e.*, the offices or the plant) if they comply with the "3G model," which means they need to be (i) vaccinated (*geimpft*), (ii) recovered from COVID (*genesen*) or (iii) can provide a negative COVID test (*getestet*). Employers are obliged to control such requirements and may, with the consent of the employee, register vaccination and recovering status.

If an employee does not comply with these requirements and home office arrangements are not possible (*e.g.*, in manufactur-

ing), the employer can suspend the employee from work with immediate effect and without pay. Further sanctions against noncompliant employees remain possible, including dismissal.

German Officials Announce Plans for New Three-Party Coalition

The new German government consisting of the Social Democratic Party, the Green Party and the Free Democratic Party signed a coalition agreement on December 6, 2021, and the Federal Parliament elected the new chancellor, Olaf Scholz, on December 8, 2021. According to the coalition agreement, the new administration will implement the following new regulations regarding labor and employment:

- The minimum wage will increase from the current €9.67 to €12, in one step.
- Employees will have a principle right to work from a mobile or home office. The employer may object to a respective request only in the case of reasonable business considerations.

UK

UK Government Consultation on Flexible Working Regime Suggests Making Flexible Working the Default

In light of extensive changes to working practices in response to the COVID-19 pandemic and commitments in the U.K. government's 2019 election manifesto that sought to make flexible working the default model for employees in the U.K., the Department for Business, Energy and Industrial Strategy published a consultation paper in autumn 2021 seeking views from the public on proposals to reform flexible working regulations.

Currently, employees in the U.K. have the right to request flexible working arrangements (for example, working remotely or part-time) once they have 26 weeks of continuous service.

The key proposals and considerations include:

- making the right to request flexible working patterns an entitlement from the first day of employment (a "day one entitlement"), rather than requiring 26 weeks of continuous service. This could include job applicants and employees still in their probationary period and will encourage employers to consider flexible working issues early in the recruitment process;
- considering whether the eight business reasons employers can currently give for refusing an employee's flexible working request (which include the burden of additional costs, ability to meet customer demand, inability to reorganize work among existing staff or recruit additional staff and detrimental impact on quality of work or performance) all remain valid or whether additional or different reasons should be included to address changes to the workplace brought about by the pandemic;
- requiring employers to suggest alternative arrangements to employees if employers are unable to grant a flexible working request and an alternative is possible, rather than the current requirement to accept or reject the request;
- potentially allowing employees to make more than one flexible working request a year, for example, where an employee's personal circumstances have changed within any twelve-month period;
- potentially reducing the current three-month period during which an employer has to provide a response to an employee's flexible request; and
- ways to encourage more employees to use their ability to request a temporary flexible working arrangement.

Importantly, despite the title of the consultation, the proposals do not change the current fundamental position that the employee's right is only a right to request flexible working conditions, rather than a default right to work flexibly. In addition, the U.K. government does not currently plan to introduce a statutory requirement for employers to state in job postings whether flexible working will be possible.

While employers are expected to handle employees' requests reasonably, for example, by following the ACAS Code of Practice, employers are not subject to a reasonableness test when deciding whether to grant or refuse a flexible working request. There is no current proposal to change this, although introducing a requirement that employers suggest an alternative would likely encourage further discussion about what constitutes reasonable assessments.

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