**Centricity Solutions**

**Quarter 2 2023**

**Newsletter**


# SCOTUS Overturns Title VII Precedent, Lowering Bar for Religious Accommodations

Employers may not demonstrate that a proposed accommodation of an employee's sincerely held religious belief or practice constitutes an undue hardship under Title VII of the Civil Rights Act solely because doing so would pose "more than a de minimis cost," the U.S. Supreme Court held in a Thursday decision overturning more than 40 years of legal precedent.

Justice Samuel Alito authored the unanimous opinion in Groff v. DeJoy, a case involving a former U.S. Postal Service employee who was denied his request not to work on Sundays in order to observe the Sabbath. Relying on SCOTUS' precedent set in the 1977 decision Trans World Airlines, Inc. v. Hardison, the 3rd U.S. Circuit Court of Appeals ruled in favor of USPS, holding that the employee's requested accommodation would have imposed upon his co- workers disrupted the workplace and workflow and diminished employee morale. But the high court reversed, with Alito writing that this reading of Hardison's more-than-a-de-minimis language is "a mistake," and that, instead, the court understands that "undue hardship" is shown in the religious discrimination context "when a burden is substantial in the overall context of an employer's business."

"Hardison cannot be reduced to that one phrase," Alito said of the 1977 ruling's more-than-de-minimis-cost language. "In describing an employer's 'undue hardship' defense, Hardison referred repeatedly to 'substantial' burdens, and that formulation better explains the decision." Courts, Alito added, must determine whether an accommodation would pose an undue hardship by taking into account the practical impact of the accommodation in light of an employer's nature, size and operating cost.

The high court also refused to take further steps advocated by the employee and the federal government. The former asked SCOTUS to borrow the Americans with Disabilities Act's "significant difficulty or expense" definition of undue hardship, while the latter asked the court to approve of the U.S. Equal Employment Opportunity Commission's Title VII guidance for religious accommodations.

Religious groups — some of whom filed amicus briefs earlier this year in support of the employee in Groff — praised Thursday's decision. "Today's Supreme Court ruling is an important victory for all people of faith, including American Muslims," Nihad Awad, executive director of the Council on American-Islamic Relations, said in a statement. "For too long, American Muslims have been denied the right to perform daily prayers at work, wear hijab or kufi or attend prayers on Fridays. Today marks a new era." "Both of these suggestions go too far," Alito said. "We have no reservations in saying that a good deal of the EEOC's guidance in this area is sensible and will, in all likelihood, be unaffected by our clarifying decision today. [...] But it would not be prudent to ratify in toto a body of EEOC interpretation that has not had the benefit of the clarification we adopt today."

The decision in Groff presents a higher bar for employers to meet in order to deny an accommodation request for religious reasons, says Tracey Diamond, partner at Troutman Pepper. The court made several other clarifications, she added, including that employers must reasonably accommodate an employee's religious practice, "not merely say yes or no to a particular possible accommodation."

Golden, R. (June 2023) SCOTUS overturns Title VII precedent. Retrieved from here.
Next Page—Bloink, R. and Byrnes, W. (March 2023) DOL Issues Guidance. Retrieved from here.
Next Page—Conrad, N. and Carr, J. (June 2023) The Pregnant Workers Fairness Act Goes into Effect on June 27. Retrieved from here.
Next Page—(June 2023) Mineral Law Alerts. Retrieved from here.

## Rippling Integrated Benefit Spotlight: *Nectar*

Lack of recognition is one of the top reported reasons for employee turnover. Employees want to be recognized for hard work from their leaders and peers.

Nectar provides companies with a way to build and create great culture through recognition and rewards. Employees can build camaraderie and relationships by giving each other shoutouts in Nectar.

Users can redeem rewards from a vast catalog of rewards, including gift cards, amazon products, company swag, and custom rewards.

This app Is now live in Rippling and there is no additional fee for connectivity beyond your Nectar subscription. Please contact your Centricity HR partner if you would like more information.

# DOL Issues Guidance on FMLA and FLSA for Teleworkers

The U.S. Department of Labor's (DOL) Wage and Hour Division (WHD) recently released informal guidance to address some issues arising under the Family and Medical Leave Act (FMLA) and the Fair Labor Standards Act (FLSA) that commonly challenge employers.

**FMLA Eligibility: Counting Remote Employees**

One of the criteria for FMLA eligibility is that an employee must work at a worksite where 50 or more employees are employed within 75 miles of that worksite. Prior to COVID-19, remote work was less prevalent. As a result, whether a worksite met the eligibility criteria was often answered by merely confirming a physical headcount at the worksite—but how or whether to include remote employees has raised questions for employers. For FMLA eligibility purposes, an employee's personal residence is not a worksite. Instead, the employee's worksite is the office to which he or she reports and from which assignments are made. FAB No. 2023-1 serves as a helpful reminder to employers regarding this regulation. When considering eligibility for remote workers, the DOL guidance points out that "the determination of the worksite for an employee who teleworks is fact specific and will be based on factors, such as where the employee reports to work or the location where the employee's assignments are made."

**FLSA: Serious Health Conditions and Reduced Schedules**

The DOL indicated in Opinion Letter FMLA2023-1-A that the ability to work a reduced schedule is fact-specific and often involves an interplay between the FMLA, the Americans with Disabilities Act Amendments Act (ADAAA), and where applicable, state law, along with a consideration of applicable leave policies. There is case law explaining an employer's obligations to respond to a request for indefinite ADAAA leave. The opinion letter provides helpful guidance about the intersection between ADAAA and FMLA obligations, and it reminds employers that they should consider their legal obligations under both the FMLA and ADAAA when considering requests to work a reduced schedule. FMLA2023-1-A further explains that employers may not reject a request for reduced-schedule leave under the FMLA by arguing that such a request is better addressed under the ADAAA. Likewise, the guidance points out that employers should not forget their FMLA obligations when addressing an ADAAA request for reasonable accommodation. According to the opinion letter, "Nothing in the ADA modifies or limits the protections of the FMLA; nor does the FMLA modify or limit the protections of the ADA."

**Counting Hours Worked for Annual Leave Under FMLA**

The FMLA entitles eligible employees to a total of 12 workweeks of FMLA leave per year, for certain qualified reasons. For employees taking 12 workweeks consecutively, this is easily calculated. For employees taking their 12 workweeks on an intermittent basis or a reduced schedule, FMLA2023-1-A serves as a helpful reminder to employers regarding calculation of the total leave entitlement. The FMLA regulations state that an employer "may convert these fractions to their hourly equivalent so long as the conversion equitably reflects the employee's total normally scheduled hours." For employees regularly scheduled to work in excess of 40 hours per week, the opinion letter reminds employers that employees who are regularly scheduled to work more than 40 hours per week are entitled to more than 480 hours of FMLA leave per each 12-month period. While this was previously addressed in 2002 in Opinion Letter FMLA2002-1, this is an important reminder.

## Law Alert

The Pregnant Workers Fairness Act (PWFA) took effect on June 27 requiring fair accommodations for pregnant Americans, bridging the gap left between the Pregnancy Discrimination Act and the Americans with Disabilities Act, which only offered some protections. The Pregnant Workers Fairness Act ("PWFA" or "Act") requires "covered employers" to provide "reasonable accommodations" to a worker's known limitations related to pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an "undue hardship." The Act applies only to accommodations, and does not replace federal, state, or local laws that provide greater protections to workers affected by pregnancy, childbirth, or related medical conditions.

# California Enacts Military Leave Pay Protection for Large Employers

Effective February 19, 2023, San Francisco's Private Sector Military Leave Pay Protection Act (MLPPA) requires employers (with San Francisco employees and 100 or more employees worldwide) to provide supplemental pay to their employees (who work in San Francisco and are members of the U.S. Armed Forces, National Guard, or other U.S. uniformed service) while on leave for military duty for up to 30 days in a calendar year. This supplemental pay Requirement that means employers must pay covered employees the difference between their gross military pay and the amount of gross pay they would've received if they worked their regular work schedule. The purpose of the MLPPA is to ensure employees won't suffer financial hardship during their military duty, but they shouldn't be receiving more than they would have normally been paid. Employers must notify their employees about the MLPPA and its entitlements. The act also includes information about how to calculate the pay, paydays, employee notice, recordkeeping requirements, antiretaliation provisions, and more.

Next Page—SHRM.ORG (June 2023). CROWN Act: Prohibiting Hairstyle Discrimination | National CROWN Day (Jul 3). Retrieved from here.
Next Page—Checkr (June 2023) Pending Legislation Could Impact California Background Checks


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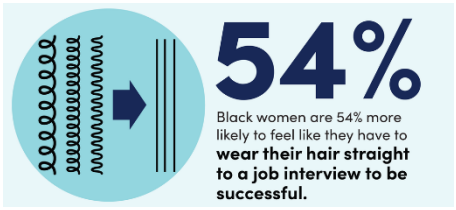
# National CROWN Day is July 3 in Recognition of the CROWN Act: Prohibiting Hairstyle Discrimination

The CROWN Act was created in 2019 by Dove and the CROWN Coalition, in partnership with then State Senator Holly J. Mitchell of California, to ensure protection against discrimination based on race-based hairstyles by extending statutory protection to hair texture and protective styles such as braids, locs, twists, and knots in the workplace and public schools.

While progress has been made, race-based hair discrimination remains a systemic problem in the workplace – from hiring practices to daily workplace interactions – disproportionately impacting Black women's employment opportunities and professional advancement. To bring awareness to this issue, Dove and LinkedIn co-commissioned the 2023 CROWN Workplace Research Study, detailing the systemic social and economic impact of hair bias and discrimination against Black women in the workplace in 2023, further proving the urgent need for change. The Workplace Research Study revealed that:




- Black women's hair is 2.5x more likely to be perceived as unprofessional.
- Approximately 2/3 of Black women (66%) change their hair for a job interview. Among them, 41% changed their hair from curly to straight.
- Black women are 54% more likely (or over 1.5x more likely) to feel like they have to wear their hair straight to a job interview to be successful.
- Black women with coily/textured hair are 2x as likely to experience microaggressions in the workplace than Black women with straighter hair.
- Over 20% of Black women 25-34 have been sent home from work because of their hair.
- Nearly half (44%) of Black women under age 34 feel pressured to have a headshot with straight hair.
- 25% of Black women believe they have been denied a job interview because of their hair, which is even higher for women under 34 (1/3).

Together, Dove and LinkedIn have made a suite of free LinkedIn Learning Courses that support a more equitable work environment and educate hiring managers and workplace professionals. You can access the courses, here.

# Pending Legislation Could Impact California Background Checks

In September 2022, the California Governor signed California Senate Bill 731, the largest automated expungement law in the United States. This law is incredibly comprehensive and covers the majority of crimes within the state. The bill is presently slated for a July 1, 2023 implementation but may be delayed to July 1, 2024, due to a request in the May Revision of the Governor's budget.

How might this bill affect your background checks?

Automated expungement, or "clean slate" legislation — such as CA SB 731 — continues to surface in state legislatures across the United States. Once this type of legislation takes effect, county courts in participating states may significantly reduce their background check processing capacity in order to clear expungement backlogs. This means that background checks run within the state of California may temporarily experience severe delays.

Our preferred background check vendor, Checkr, is prepared to take the following steps to unblock your reports:

Automatic maximum available data processing: In the event that courts are processing with constrained or limited data, such as limited look back period availability, Checkr may implement automatic processing with the maximum data available to background check providers by the courts. This approach is designed to help to improve throughput for customers waiting for report data due to constrained data availability and court backlogs.

Skip county criminal searches in inaccessible jurisdictions: In the event of severe court disruptions, Checkr may enable a package-level product solution that would automatically skip criminal searches in inaccessible California counties. Once enabled, this feature delivers completed, albeit less comprehensive, background checks for customers with an urgent need to hire, and also allows you to order partial or full follow-up reports to be completed when inaccessible counties reopen.

Checkr and Centricity will continue to monitor and provide updates on this ongoing situation.

# I-9 Flexibility Ending on July 31

Immigration and Customs Enforcement (ICE) has announced that the temporary COVID-19 accommodations for Form I-9, Employment Eligibility Verification, will expire on July 31, 2023. Employers that have been relying on the temporary policy to perform remote I-9 inspections will have up to thirty days to comply with physical Form I-9 document inspection requirements after the COVID-19 flexibilities end. This means that by August 30, 2023, employers will be required to conduct physical inspections of original documents and update Form I-9 for employees whose documents were inspected remotely during the temporary COVID-19 flexibility policy, unless a physical inspection is triggered earlier under the policy. Connect with your HR partner for more information.

# Pronouns at Work: A Guide to Getting it Right—and What to Do When You Get It Wrong

Making all employees feel welcome should be a top priority for HR. Studies show that those who feel a sense of belonging at work can be more engaged, productive and simply do better work.

One easy way to become more inclusive is to promote the use of inclusive pronouns and emphasize their importance. But it's not as simple as putting your preferred pronouns in your email signature and calling it a day. Impactful initiatives need to go far beyond the surface. Your people not only need to understand how to use pronouns correctly, but why it's important to do so.

**Pronouns: The basics**

Simply put, they're "words that a person uses to describe themselves or would like others to use to describe them," according to the Employers Network for Equality and Inclusion. Those in the LGBTQIA+ community may change their pronouns to reflect their gender identity, especially those in the non-binary and trans communities. Using different pronouns is becoming more common, with one in four Americans reporting that they know someone who use gender-neutral pronouns.


**Using inclusive language in the workplace**

Respecting pronouns at work and using inclusive language can lead to happier, more engaged workers. Even if you don't have an employee who has disclosed their gender identity or pronouns, that doesn't mean that the practice of inclusive language and allyship should be put on the backburner. Some may hesitate to share their pronouns or gender identity due to fear of discrimination; in fact, resumes including "they/them" pronouns are more likely to be overlooked, according to a recent report from Business.com, so it's important to practice using inclusive language all the time, not just around those who are LGBTQIA+.

For example:

- Use "team" or "folks" when addressing a group of people instead of "ladies and gentlemen" or other gendered language.
- Swap "maternity leave" or "paternity leave" with "parental leave"
- Say "partner" or "spouse" instead of gendered language like husband or wife.

**5 Best Practices for Inclusivity**

**Address your biases.** Before you can get everyone else on board, you need to self-reflect. "If you truly want to be transformative, you have to do something about your own feelings, your internalized homophobia and everything else," says Kat Kibben, CEO and founder of Three Ears Media. "And then figure out the plan from a very human place of, 'If this were my child, how would I want them to be treated?'"


**Don't be a bystander.** Stand up and speak up for LGBTQIA+ colleagues, even if they're not in the room. "Bystander intervention is effective when the person being harmed is present, and arguably, even more effective when the person being harmed is not present," says Freeman. "It shows a certain level of commitment and standardization for our inclusion efforts and values."

**Communicate openly**. If an employee misgenders a colleague, use the opportunity to start an open conversation and get to the root of the problem. However, Kibben suggests keeping the conversation curious and open-minded, not accusatory. Consider asking something like, "What did you mean by that? They've told you their pronouns, and you're using this pronoun. Why?" to start a dialogue.

**Prioritize continuous learning.** Education shouldn't be one-and-done – and shouldn't be prioritized exclusively during Pride Month. "[One-and-done pronoun education] is entertainment. It's not education. It's education for that group. And then 50% of your staff turns over, and it doesn't matter anymore," says Kibben. Instead, consider annual training or multiple learning opportunities.

**Train hiring managers.** An inclusive recruiting experience, such as a hiring manager who shares their pronouns at the start of the conversation, can start new LGBTQIA+ hires off on the right foot and reduces the fear associated with disclosing their gender identity or pronouns. "We need to retrain on how we introduce ourselves to others up to and including your external vendors so that we start from a place of showing instead of telling people that you're inclusive," says Kibben.

Roller, A. (June 2023) Pronouns at Work. Retrieved from https://www.hrmorning.com/articles/pronouns-at-work/

## IRS Announces HSA/HDHP Limits for 2024

| | 2023 | 2024 |
|---|---|---|
| **HDHP Minimum Deductible** | | |
| **Individual** | $1,500 | $1,600 |
| **Family** | $3,000 | $3,200 |
| **HDHP Maximum Out-of-Pocket** | | |
| **Individual** | $7,500 | $8,050 |
| **Family** | $15,000 | $16,100 |
| **HSA Contribution Limit** | | |
| **Individual** | $3,850 | $4,150 |
| **Family** | $7,750 | $8,300 |
| **HSA 55+ Contribution** | | |
| **Individual** | $1,000 | $1,000 |
| **Family** | $1,000 | $1,000 |