·         The Biden administration announced on May 1st that the COVID-19 vaccine mandates for federal employees, federal contractors and some healthcare workers will end on May 11th, the same day the public health emergency ends.

·         May is Mental Health Awareness Month.  Mental health issues are unquestionably a big problem in the workplace—rates of depression, anxiety, stress and burnout have all soared in recent years—but adding to that problem is another one: People are having trouble getting professional help to address mental health concerns.  
  
Almost 1 in 3 Americans who need mental health care report they are unable to receive it, according to the latest data from Mental Health America.

·         The new “Pregnant Workers Fairness Act,” which Congress enacted in December 2022, embedded within the Appropriations bill. This law formally takes effect on June 27, 2023, and the Equal Employment Opportunity Commission (EEOC) has announced that it will begin accepting violation complaints beginning that day.

·         The Virginia General Assembly’s 2023 session produced some new laws relating to employment issues which take effect July 1.

1.      **Social Security numbers -**Employers are now prohibited from using an employee's Social Security number, "or any number derivative thereof," as an employee's identification number. This includes prohibiting employers from using those numbers on any identification card or badge, access card or badge, or similar card or badge issued to employees.  Although the law does not define what "derivative thereof" means, it likely includes portions of an employee's Social Security number, such as the last four digits. Employers that knowingly violate this law are subject to a civil penalty of up to $100 per violation.

2.      **Nondisclosure, confidentiality and non-disparagement agreements -**Employers now are prohibited from requiring an employee or prospective employee from executing or renewing a "nondisclosure or confidentiality agreement, including any provision relating to non-disparagement, that has the purpose or effect of concealing the details relating to a claim of sexual harassment … as a condition of employment." Any such provision is considered void and unenforceable.  Virginia Code § 40.1-28.01 already prohibited nondisclosure and confidentiality agreements relating to claims of sexual *assault*. This new amendment to that Code section now also prohibits non-disparagement provisions relating to claims of sexual assault and expands these prohibited agreements from claims of sexual assault to claims of sexual *harassment*. This new Virginia law does not apply to severance agreements or other post-termination agreements, but it likely applies to blanket confidentiality and non-disparagement agreements that employees may be required to enter into at the onset of employment or as employers update their policies. To the extent any of these provisions are in any of an employer's pre-employment agreements, they should be revised to carveout claims of sexual harassment.

3.      **Sub-minimum wage workers -**Virginia Code § 40.1-28.9 has historically allowed employers with a special certificate issued under 29 U.S.C. § 214(c) of the Fair Labor Standards Act of 1938 to employ individuals with disabilities at a sub-minimum wage.  A new law now removes this exception to the Virginia Minimum Wage Act. Effective July 1, no employer in Virginia may pay sub-minimum wages unless they had a 14(c) exemption prior to that date. Employers that had a 14(c) exemption prior to July 1, 2023, have until July 1, 2030, when the exemptions end, to increase the pay rates of disabled workers to at least the minimum wage in Virginia.

4.      **Organ donation leave -**Another new law grants legally protected leave for organ and bone marrow donation.  Virginia employers with 50 or more employees are required to provide eligible employees with up to 60 business days per 12-month period of unpaid organ donation leave and up to 30 business days per 12-month period of bone marrow donation leave. Employees are eligible if they have worked for the employer for at least a 12-month period and 1,250 hours during the preceding 12 months.  Although the leave is unpaid, the law contains other requirements and restrictions. Organ donation leave will not impact an employee's ability to take leave under the federal Family and Medical Leave Act (FMLA) leave within the same year. Also, organ donation leave cannot run concurrently with FMLA leave.