



## Public Health Professionals Gateway

# Public Health Law News

September 2023



Public Health Law Program

National Center for State, Tribal, Local, and Territorial Public Health Infrastructure and Workforce  
Centers for Disease Control and Prevention

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## Announcements

### Applications Open | Public Health Law Fellowship

CDC's Public Health Law Program and ChangeLab Solutions are accepting applications for the Public Health Law Fellowship. Selected fellows will be matched with host sites at state, tribal, local, or territorial health departments; supporting organizations; or CDC. The host sites offer fellows on-the-job training to prepare them for careers in public health law or policy. The fellowship aims to strengthen the workforce by increasing diversity within the field and preparing the next generation of professionals to respond to critical public health law issues. It is designed for current

graduate students or law students, as well as recent graduates of these programs (within the past four years), interested in careers in public health law or policy. Applications are due by **October 2** to be considered for the spring 2024 cohort. [Learn more and apply.](#)

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### Applications Open | Center for Preparedness and Response's Board of Scientific Counselors

CDC is seeking nominations for membership on the Center for Preparedness and Response's Board of Scientific Counselors. The board consists of 11 experts in fields associated with business, crisis leadership, emergency response and management, informatics, laboratory science, medicine, mental and behavioral health, public health law, public health practice, risk communication, and social science. The deadline for submission is **October 31**. [Learn more and apply](#) [↗](#).

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### Registration Open | APHA 2023

APHA 2023 will be held **November 12–15** in **Atlanta**, with a digital meeting **November 9–15**. Attendees will learn from leading experts, build leadership skills and knowledge, and connect with peers from around the globe. Late registration runs through **November 11**. [Learn more and register](#) [↗](#).

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### Registration Open | Open Forum Next Generation (NxGen)

Join the National Network of Public Health Institutes **September 27–29** in **Indianapolis** for the return of the Open Forum: Next Generation. The forum will focus on new ideas, networking, and conversations relevant to performance management and quality improvement. Registration ends **September 27**. [Learn more and register](#) [↗](#).

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## Tribal Announcements

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### Resource | Model Tribal Data Sharing Agreement

In response to a growing need for tribal, federal, state, and local governments to share data in responding to public health emergencies, the American Indian Health Commission (AIHC) has released a Model Tribal Data Sharing Agreement (DSA). The Model DSA was developed in collaboration with tribal staff, public health leadership, public health policy experts, epidemiologists, and attorneys. The Model DSA is located on the [AIHC Public Health Emergency Resources](#) [↗](#) page, under the heading Tribal Public Health Data. View the resource as a [Google doc](#) [↗](#) or as a [PDF \[533 KB\]](#) [↗](#).

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### Resource | Public Health Data Exchange Legal Overview

The AIHC has posted a legal overview for public health data exchange among tribal, federal, state, and local jurisdictions. This overview addresses frequently asked questions about public health data exchange with tribal jurisdictions and provides resources such as recommended practices for drafting tribal data sharing agreements. [View the resource](#) [↗](#) [\[PDF – 300 KB\]](#) [↗](#).

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## Job Announcements

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### Public Health Advisor | Centers for Disease Control and Prevention


The Centers for Disease Control and Prevention is seeking candidates for a program deputy director/special advisor. The deputy director will lead the development and formulation of new programs and initiatives that are in accord with CDC public health program goals, objectives, and policies. They will manage and analyze in-country needs and opportunities against CDC program strategic objectives and advise on how best to deliver in-country public health services that reflect international standards and host country policies and regulations for such programs. This application closes on **October 31**. [Learn more and apply](#) [↗](#).

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### Policy Analyst | NMAC

NMAC (formerly known as the National Minority AIDS Council) is looking for a policy analyst to strengthen the organization's capacity in enacting policy changes on issues that will have the greatest positive impact on the lives of people living with HIV. This position will work closely with the Federal AIDS Policy Partnership and other coalitions to support NMAC's collective efforts in policy and funding. [Learn more and apply.](#) [↗](#)

### Resource | Pathways to a Racially Just Food System

ChangeLab Solutions recently released a blog post that identifies strategies, challenges, and opportunities for food justice policy change. The post speaks to the role of food systems in offering nourishment, strengthening community, and providing sustainable income for individuals working throughout the food chain. [Read the post](#) .

### Top Story

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#### **Montana:** [Montana youth climate ruling could set precedent for future climate litigation](#)

NPR (08/23/2023) Nathan Rott and Seyma Bayram

#### Story Highlights

In a historic climate lawsuit, a US court has ruled that state agencies have violated a constitutional right by allowing fossil fuel development without considering the future impacts to the state and the world's climate. The lawsuit was brought by 16 young plaintiffs who argued that Montana's constitution guarantees current and future state residents "the right to a clean and healthful environment." Although rooted in the state's constitution, legal experts believe that the ruling could impact future climate litigation outside of Montana.

In 2011, Montana's legislature passed laws—which were updated in 2023—to prevent state agencies from considering climate impacts when permitting fossil fuel energy projects. Represented by nonprofit law firm Our Children's Trust, the plaintiffs argued that Montana was violating their constitutional right by aggressively pursuing the development of fossil fuels without considering future climate implications. The state contended that, in comparison to other sources, their contributions to global warming were negligible. District Judge Kathy Seeley rejected the state's argument that their actions had inconsequential impact and later found the prohibition on assessing climate impacts unconstitutional.

The lead plaintiff, 22-year-old Rikki Held, said the ruling confirms decades-long climate science and sets precedent for cases outside the state. Michael Gerrard, director of Columbia Law School's Sabin Center for Climate Change Law, highlighted the court's agreement with the plaintiffs that fossil fuel combustion is the main cause of climate change, and climate change has numerous negative health and environmental impacts.

More than 70 pages of the 103-page ruling list science-based climate findings that could be cited in future trials. Climate litigants working with Our Children's Trust have pending cases in Utah, Virginia, and soon Florida, in addition to *Navahine F. v. Hawaii Department of Transportation*, which is set for trial in summer 2024. The Montana ruling demonstrates the role of courts to address constitutional rights related to clean and healthy environments.



[Editor's note: Learn more about [climate effects on health](#).]

### Briefly Noted

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#### **Arkansas:** [AG asks federal appeals court to reconsider decision against state's transgender health care bank](#)

Arkansas Democrat-Gazette (09/08/2023) Dale Ellis

[Editor's note: Learn more about [gender-affirming care](#)  .]


#### **California:** [Lawmakers approve Newsom's plan to transform California's mental health system](#)

LA Times (09/11/2023) Taryn Luna

[Editor's note: Learn more about [homelessness as a public health law issue](#).]

#### **Florida:** [No plans to halt Medicaid unwinding in Hurricane Idalia-affected counties](#)

Florida Politics (08/31/2023) Christine Jordan Sexton

[Editor's note: Learn more about [Medicaid unwinding](#) .]

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**Hawaii:** [Maui wildfire recovery: Private property debris removal detailed, cultural monitors to be present](#) 

Maui Now (09/10/2023)

[Editor's note: Learn more about how to [stay safe after a wildfire](#).]

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**New Mexico:** [New Mexico governor declares gun violence a public health emergency](#) 

The Los Alamos Daily Post (09/07/2023) Carol A. Clark

[Editor's note: Learn more about [firearm violence prevention](#).]

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**North Carolina:** [Rising concerns: Loss of wetlands could increase inland flooding risks](#) 

North Carolina Health News (08/30/2023) Will Atwater

[Editor's note: Learn more about [preparing for a flood](#).]

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**Oklahoma:** ['It's extremely hot': How Oklahoma high school athletics are dealing with heat wave](#) 

The Oklahoman (08/24/2023) Jacob Unruh

[Editor's note: Learn more about [extreme heat strategies for athletes](#).]

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**Puerto Rico:** [Puerto Rico's public schools clamor for air conditioning to get relief from record-breaking heat](#) 

The Independent (09/08/2023) Dnica Coto

[Editor's note: Learn more about the [warning signs and symptoms of heat-related illnesses](#).]

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## Global Public Health Law News

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**Mexico:** [Mexico decriminalizes abortion, extending Latin American trend of widening access to procedure](#) 

Associated Press (09/06/2023) Fabiola Sánchez and Megan Janetsky

[Editor's note: Learn more about [abortion data, law, and policy in the United States](#)  .]

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**United Kingdom:** [Major national strategy to reduce number of tragic suicides](#) 

GOV.UK (09/11/2023) Department of Health and Social Care, Maria Caulfield MP, and the Rt Hon Steve Barclay MP

[Editor's note: Learn more about [suicide prevention strategies](#).]

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## Court Filings & Opinions


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### Federal:

The United States District Court, Northern District of New York, granted defendant Edgewell Personal Care Company, Edgewell Personal Care Brands LLC, and Edgewell Personal Care LLC's ("Edgewell") motion to dismiss under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), and entered judgment for Edgewell.

Plaintiff Nancy Leboeuf, along with others part of the lawsuit ("Plaintiffs"), initiated a putative class action lawsuit against Edgewell, claiming that Edgewell's statement that "their product 'Kills 99.99% of Germs' is false and misleading because the active ingredient, Benzakonium Chloride is purportedly 'ineffective at killing certain gram-negative bacteria, bacteria spores, fungi, and many viruses.'" Plaintiffs' claims include fraud, unjust enrichment, and violation of New York General Business Law. Edgewell argued that Plaintiffs failed to allege an injury in fact, that was concrete and not a hypothetical harm and lack standing, and that Plaintiffs' claims are preempted under the Food and Drug Cosmetic Act, thus moving for dismissal. In considering standing, the court granted in part and denied in part Edgewell's motion to dismiss for lack of standing, finding that the economic injury in paying a premium for this brand of product over comparable products due to the claim is sufficient. However, on the issue of injunctive relief, which requires demonstration of future injury, the court found that Plaintiffs do not have standing, because the intent to purchase the product in the future if not mislabeled is an unsettled argument within the Circuit and the court found the argument insufficient.

The court found the issues of federal law preemption and primary jurisdiction inapplicable, thus denying these aspects of Edgewell's motion to dismiss. The remaining issues of New York General Business Law violations, fraud, and unjust enrichment were all dismissed by the court as well, where the court found insufficient basis for the claims. Thus, the court granted Edgewell's motion to dismiss and entered judgment in favor of Edgewell.

[Nancy Leboeuf, Individually and on Behalf of All Others Similarly Situated v. Edgewell Personal Care Company; Edgewell Personal Care Brands, LLC; Edgewell Personal Care, LLC](#) 

United States District Court, N.D. New York

No. 1:22-cv-642 (MAD/CFH)

Decided August 23, 2023

Opinion by District Judge Mae E. D'Agostino

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### **Maryland:**

The Supreme Court of Maryland affirmed the judgment of the Appellate Court, finding that Plaintiff Bridget Romeka's employment termination was not protected under the Maryland Health Care Worker Whistleblower Protection Act.

Plaintiff Bridget Romeka ("Romeka") brought suit following her termination from Respondent RadAmerica II, LLA ("RadAmerica"), claiming a violation of the Maryland Health Care Worker Whistleblower Protection Act ("HCWWPA"). HCWWPA "protects employees in healthcare settings against adverse employment consequences from raising health and safety concerns in the workplace." Romeka worked as a radiation therapist for RadAmerica beginning in 2001, and in 2003 she was promoted to chief radiation therapist. In May 2018, Romeka was terminated following investigation of two incidents. The first involved the falsification of medical records, where a patient received treatment without signed consent forms in their record, and after discovery, Romeka falsely marked "Yes" on the consent form without consulting anyone. The second incident involved a complaint that Romeka was bullying radiation therapists on her team and was generally disrespectful to other staff members. One year later, Romeka filed suit against RadAmerica, alleging unlawful termination under HCWWPA, claiming that she was terminated for a disclosure she made regarding a patient safety concern just before her termination that was protected under this Act.

Romeka argued that under HCWWPA, a plaintiff only must prove that "the adverse personnel action was motivated by the plaintiff's conduct." RadAmerica, in contrast, argued that the act requires a but-for causation standard. The court agreed with RadAmerica that but-for causation is required under the Act. The court also held that "a plaintiff may avail herself of the burden-shifting framework" in proving but-for causation, and that Romeka failed to dispute with genuine fact that her termination was unrelated to her protected disclosure. Thus, the court held that RadAmerica was entitled to judgment as a matter of law, affirming the Appellate Court of Maryland.

[Bridget Romeka v. RadAmerica II, LLC, et al.](#) 

Supreme Court of Maryland

No. 16, September Term, 2022.

Decided August 30, 2023

Opinion by Justice Steven B. Gould

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## COVID-19 Court Filings & Opinions

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### **Delaware:**

Over three and a half years ago, on January 7, 2020, public health officials in China identified a novel coronavirus which was causing an outbreak of atypical pneumonia in the city of Wuhan. Shortly thereafter, this virus was identified as the SARS CoV-2 virus. "COVID-19" was the official name given for the outbreak of this coronavirus. On March 11, 2020, the World Health Organization declared that the spread of COVID-19 was a pandemic. In March 2020, the COVID-19 virus began rapidly spreading across the US.

This case centers around several restrictions (the "Challenged Restrictions" or "Restrictions") that the Governor of Delaware, John C. Carney, Jr. (the "Governor"), put in place between March through May 2020 to mitigate the spread of COVID-19. The two Plaintiffs, who are church pastors, originally filed their complaint in the Court of Chancery and transferred the complaint to this Court after it was dismissed for lack of subject matter jurisdiction. Plaintiffs claim the Challenged Restrictions violated their rights pursuant to the First Amendment to the United States Constitution and Article I, Section 1 of the Delaware Constitution. Plaintiffs also claim the Restrictions violated their right to equal protection pursuant to the Fourteenth Amendment to the US Constitution. The court dismissed the Plaintiff's claims, finding they did not have standing at the time claims were filed.

## [In re Covid-Related Restrictions on Religious Services](#)

Superior Court of Delaware

C.A. No. N23C-01-123 MAA

Decided August 28, 2023

Opinion by Judge Meghan A. Adams

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### **New York:**

Appeal from a decision of the Unemployment Insurance Appeal Board, filed July 21, 2022, which ruled that claimant was disqualified from receiving unemployment insurance benefits because he voluntarily left his employment without good cause.

Claimant, a security guard for the employer, a major medical center, was advised by the employer in early September 2021 that, in order to maintain his employment, he was required to be vaccinated against COVID-19. After claimant's request for an exemption based upon his religious beliefs was denied, he was put on unpaid leave, and, when he failed to provide proof of vaccination by the required deadline, his employment was terminated on October 30, 2021. The Department of Labor issued an initial determination finding, among other things, that claimant was disqualified from receiving unemployment insurance benefits because he had voluntarily separated from his employment without good cause. After a hearing, an Administrative Law Judge affirmed the denial of benefits. The Unemployment Insurance Appeal Board affirmed, prompting claimant's appeal.

## [In the Matter of the Claim of Bryant Parks, Appellant. Commissioner of Labor, Respondent.](#)

Appellate Division of the Supreme Court of New York, Third Department

No. 525989


Decided August 31, 2023

Opinion by Justice Elizabeth A. Garry

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## Quote of the Month

"For us to have this come to trial and have this science-based evidence in the court record and having decision-makers listen to us is just really amazing," [Rikki Held] said. "This case can set a precedent for other legal cases outside of Montana's borders."

[Editor's note: This quote is from the above article, [Montana youth climate ruling could set precedent for future climate litigation](#) , Nathan Rott and Seyma Bayram, NPR (08/23/2023).]

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## About *Public Health Law News*

CDC's Public Health Law Program (PHLP) works to improve the health of the public by performing research, creating tools, and providing training to help practitioners understand and make law and policy decisions. Every month, PHLP publishes the *Public Health Law News* with announcements, legal tools, court opinions, job openings & more.

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