



Top 100 Workplace Law Stories of 2017

Insights

12.01.17

Well, at least the first 19 days of 2017 were relatively calm. But starting with the inauguration of President Trump and continuing through the last days of the year, the state of labor and employment law was in a complete whirlwind. With all of this activity, you can be forgiven if you missed one or two (or a hundred) of the more important stories to impact the workplace. But never fear, because we compiled the top 100 all in one place, complete with links to all the details you need to keep your workplace in complete compliance.

1. [President Trump Takes Office](#) – No single event impacted employers more than the change of occupants in the White House on January 20. Workplace law will continue to undergo radical transformation under his administration in 2018 and beyond, especially after Trump’s pick for the Supreme Court, [Neil Gorsuch](#), took the bench in April.
2. [“Overtime Rule” Gets Killed For Good...Or Does It?](#) – The past year has seen the controversial rule, which would have changed pay practices for millions of Americans, struck down permanently by a federal court judge and repudiated by the new Labor Department (USDOL). But a pending appeal may preserve the Department’s right to set a new rule. Look for a new salary level to be set sometime in the new year.
3. [White House Blocks Revised EEO-1 Report](#) – In August, mere months before employers were slated to produce compensation data as part of their annual EEO-1 requirements, the Office of Management and Budget (OMB) shelved the rule. The OMB concluded the rule was unnecessary, burdensome, and raised privacy concerns. This is expected to embolden states and local governments to take up pay equity issues on their own, without federal assistance.
4. [Landmark Appeals Court Ruling Extends Title VII Protections To LGBT Employees](#) – After the [11th Circuit refused to take the lead](#) in this area with a ruling in March, the 7th Circuit became the first federal court of appeal to rule that sexual orientation claims are actionable under Title VII with its April 4 decision.
5. [New-Look NLRB Poised To Shake Up Labor Law Landscape](#) – It took some time, but by the end of the calendar year, the National Labor Relations Board (NLRB) included a majority of Republican appointees and a newly installed General Counsel. Employers can expect good things for the foreseeable future as the new Board is expected to reverse some of the many pro-union decisions of the past eight years.
6. [Supreme Court Agrees To Wade Into Class Waiver Conflict](#) – [In January](#), the Supreme Court (SCOTUS) agreed to settle a dispute about whether employers can use mandatory class action

(SCOTUS) agreed to settle a dispute about whether employers can use mandatory class action waivers with their workers. The case was argued in early October, and a decision is expected in early 2018.

7. Employers React To #MeToo Sexual Harassment Fallout – The sexual harassment scandal, which started in Hollywood and quickly spread to all corners of the country by November, caused all employers to rethink their approach to training and compliance.
8. The Gig Economy Goes On Trial – A federal court trial in California against Grubhub, where a former delivery driver claimed he was misclassified as an independent contractor, could very well be the first such claim for the gig economy to reach a judicial merits determination. Although the ultimate decision by the judge will not necessarily make or break the gig model as a whole, the ruling (expected any day now) will be an important milestone.
9. Federal Appeals Court Creates Troubling Joint Employment Standard – On January 25, a federal appeals court created a new and troubling standard for determining whether individuals should be considered “joint employees” of multiple entities. The new standard, which makes it far easier for employers to find themselves caught up as defendants in wage and hour claims, may very well be adopted by additional courts and leak into other areas of the country.
10. Joint Employment Game Changer? – The House passed a bill in November that would significantly narrow the definition of “joint employment” to eliminate existing workplace headaches when it comes to federal wage and hour law and traditional labor law. If passed by the House and signed by Trump, it would significantly reduce the risk of unexpected and unwarranted legal claims in any business model where a claim of joint employment is a possibility.
11. Acosta Confirmed As Secretary Of Labor – In April, Alexander Acosta was sworn into office as the head of the USDOL, one of the federal agencies with the widest and deepest impact on employers across the country.
12. Salary History Bans Sweep Nation – Several jurisdictions, including California, Oregon, New York City, Philadelphia, and San Francisco, passed laws in the past year prohibiting employers from asking for salary history during the hiring process. No doubt the reach of these laws will grow in 2018.
13. USDOL Withdraws Obama-Era Guidance On Misclassification, Joint Employment – In a welcome development for employers, Secretary Acosta announced on June 7 that the agency would immediately withdraw guidance published during the Obama administration that was hampering businesses affected by independent contractor misclassification and joint employment standards.
14. Trump’s Travel Ban Struck Down, Then Revised (Rinse and Repeat) – Three times in 2017, the White House released executive orders seeking to ban entry to the country for various groups of immigrants and refugees; each time, one (or more) courts struck down the order. Perhaps the SCOTUS will weigh in on the issue in 2018?
15. Blacklisting Rules Blocked By Trump’s Signature – The president signed a March resolution blocking the “Fair Pay and Safe Workplaces” executive order, permanently ending rules that

blocking the Fair Pay and Safe Workplaces executive order, permanently ending rules that would have required federal contractors to disclose violations of numerous workplace laws when bidding for work with the government.

16. SCOTUS Appears Ready To Deal Devastating Blow To Public Unions – In a move that must have labor unions across the country trembling with fear, the SCOTUS announced in September that it will once again take up the issue of whether public sector agency shop fee arrangements are prohibited under the First Amendment. If the Court rules as expected and strikes down these common arrangements, it will deliver a big blow to the influence that labor has across the country.
17. E-Word Facebook Firing Flipped By Federal Court – In a ruling that could leave employers fuming and possibly cursing, a federal appellate court ruled that an employee who used a public Facebook page to curse out not only his boss, but also his boss's mother and family, should not have been fired from his job. Instead, the 2nd Circuit Court of Appeals decided in April that the expletive-filled rant was considered protected concerted activity and therefore protected by federal law.
18. California Employers Face Significant New Requirements – The 2018 legislative session was tough for those doing business in California, as a whole host of new workplace requirements – including ban the box, a pay history ban, and a new parental leave act – were voted into law.
19. Massachusetts Employers See Medical Marijuana Defense Go Up In Smoke – A July decision from the state's highest court calls into question the validity of employers' zero-tolerance drug policies where medical marijuana is concerned. Unlike decisions of other state supreme courts across the country, this case permits an employee to go forward with a private right of action against their employer and requires an interactive process.
20. President's Budget Plan Requests \$15 Million To Support Mandatory E-Verify – In March, the OMB published the Trump administration's proposed FY 2018 budget plan, which includes a proposed \$15 million allocation to begin implementation of mandatory nationwide use of E-Verify.
21. Kentucky Becomes The 27th Right-To-Work State – Governor Matt Bevin signed a bill into law in January making it generally unlawful in his state to require a worker to be a union member, or to pay union dues, as a condition of initial or continued employment.
22. Missouri Becomes 28th Right-To-Work State – Not to be outdone, Governor Eric Greitens did the same for his state a month later.
23. Trump Retains LGBTQ Protections For Federal Contractor Employees – In January, the White House issued a statement announcing it would continue to enforce President Obama's 2014 executive order that protects rights of the LGBTQ community in the federal contractor workplace.
24. DACA Rescission Will Have Impact On Employers – Attorney General Jeff Sessions announced in September that the Department of Homeland Security will immediately "wind down" the Deferred Action for Childhood Arrivals (DACA) program, affecting almost 800,000 young people in the United States by ending their temporary protection under deferred action and their ability to hold proper work authorization.

25. [Federal Paid Leave Proposal Introduced In Congress](#) – If a proposal introduced in Congress in November becomes law, the country’s employers will find themselves facing the first-ever federal paid leave act. There’s good news, however: employers would choose whether to opt in to the program to receive a safe harbor ostensibly absolving them from complying with state and local paid leave laws.
26. [OSHA Delays Electronic Recordkeeping Rule Until December 15](#)
27. [Trump Takes Aim At The Affordable Care Act \(ACA\)](#)
28. [EEOC Online Public Filing Tool Is Now Fully Operational](#)
29. [Employers Grapple With “Day Without Immigrants” And “Day Without A Woman” Protests](#)
30. [Federal Court Provides Roadmap For Misclassification Success – Sort Of](#)
31. [Another Federal Appeals Court Rejects Workplace Recording Bans](#)
32. [Federal Government Steps Aside From Transgender Bathroom Battle](#)
33. [Federal Court Decision Approves New Class Of “Surf-By” Lawsuits](#)
34. [Uber Court Victory A Win For Sharing Economy Companies Everywhere](#)
35. [Tip-Pooling Restrictions Slated To Be Rescinded By Labor Department](#)
36. [Hurricane Harvey Slams Texas, Irma Slams Florida](#)
37. [Department Of Labor To Reinstate Opinion-Letter Process](#)
38. [Blockbuster SCOTUS Term Kicks Off](#)
39. [West Coast Auto Dealers Dealt Another Loss In Service Advisor Exemption Battle](#)
40. [“Mark Of The Beast” Workplace Concerns Lead To Half-Million Dollar Verdict](#)
41. [Workers File Equal Pay Class Action Lawsuit Against Google](#)
42. [Employers Must Use Yet Another New I-9 Form](#)
43. [California Supreme Court’s “Day Of Rest” Ruling Puts Employers At Ease](#)
44. [NYC Scheduling Laws Will Constrain Employers’ Scheduling And Flexibility](#)
45. [Could Congress Soon Swoop In To Aid The Gig Economy?](#)
46. [Supreme Court Blocks Plaintiffs From Taking Shortcuts In Class Action Cases](#)
47. [6th Circuit Latest To Strike Down Mandatory Class Waivers](#)
48. [Judge OKs \\$8.75 Million Postmates Misclassification Settlement](#)
49. [The Beginning Of The End For The NLRB’s War On Employer Rules?](#)
50. [Federal Legislation Seeks To Advance Portable Benefits For Gig Workers](#)
51. [Feds Say Title VII Doesn’t Cover Transgender Workers](#)
52. [O’Reilly’s Dismissal From Fox News Will Likely Lead To Uptick In Claims](#)

53. [Congress Votes To Kill OSHA's "Volks" Rule](#)
54. [The Affordable Care Act \(ACA\) Survives...Again](#)
55. [Seattle Court Decisions Mean We're One Step Closer To A Unionized Gig Economy](#)
56. [OSHA Withdraws Fairfax Memo, Dealing Loss For Big Labor](#)
57. [Workplace Hugs May Get You Sued In The 9th Circuit](#)
58. [Labor Board Finds Employer Guilty Of "Textual Harassment"](#)
59. [NLRB Fires Another Shot At The Gig Economy](#)
60. [Supreme Court Uses Labor Case To Further Stifle Presidential Power](#)
61. [Trump Targets Tech Teams \(And Others\) Through H-1B Crackdown](#)
62. [Court Says Uber Drivers Can Proceed With National Misclassification Class Action](#)
63. [FLSA Civil Penalties Increase – Again](#)
64. [Latest Misclassification Settlement Fails To Lyft Sharing Economy Companies](#)
65. [OSHA Announces Electronic Recordkeeping Reporting Portal To Open August 1](#)
66. [Auto Manufacturer Pays Over \\$20 Million To Settle Union Dispute](#)
67. [Court Tells EEOC To Reconsider Wellness Program Rules](#)
68. [Supreme Court Limits EEOC Subpoena Power](#)
69. [New Florida Law Ensures Contractor Status For Ride-Share Drivers](#)
70. [Federal Contractors Ordered To Provide Privacy Training](#)
71. [State Street Corp. To Pay \\$5 Million To Settle Unequal Pay Allegations](#)
72. [Labor Board Dunks On Employer's Contractor Classification Attempt](#)
73. [White House Narrows ACA Contraception Mandate](#)
74. [Win For Church-Affiliated Employers As SCOTUS Clarifies ERISA Exemption](#)
75. [Justice Department Announces New College Admissions Project](#)
76. [Employers Still Stuck With NLRB's Witness Statement Disclosure Standard](#)
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83. [Unanimous Supreme Court Scolds Lower Court Over Appellate Deadline Rule](#)

84. [Heightened Risk Of Identity Theft Enough For Standing In Data Breach Class Action](#)
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87. [Workplace Law Regs On White House Chopping Block](#)
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89. [Ashley Madison Data Breach Results In \\$11.2 Million Settlement](#)
90. [SCOTUS Service Dog Decision Could Spell Bad News For Schools](#)
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92. [Florida Court Rules Uber Drivers Are Not Employees](#)
93. [New York Uber Drivers Held To Be Employees](#)
94. [Bills Introduced To Increase National Minimum Wage](#)
95. [SCOTUS Rules Against Tribal Employee Immunity](#)
96. [Florida Lawmakers Provide Guidance For Medical Marijuana In The Workplace](#)
97. [New Philadelphia Law Can Shut Down Businesses That Violate Workplace Laws](#)
98. [Missouri Levels The Playing Field For Defending Baseless Discrimination Lawsuits](#)
99. [Bad Break: Oregon Employer Pays Quarter-Million Dollar Wage & Hour Fine](#)
100. [Court Confirms "Perceived Alcoholics" Can't Bring Workplace Claims In NYC](#)

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