

## WEB EXCLUSIVE - MAY 2018: THE TOP 14 LABOR AND EMPLOYMENT LAW STORIES

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It's hard to keep up with all the recent changes to labor and employment law. While the law always seems to evolve at a rapid pace, there have been an unprecedented number of changes for the past few years—and this past month was no exception.

In fact, there were so many significant developments taking place during the past month that we were once again forced to expand our monthly summary well beyond the typical "Top 10" list. In order to make sure that you stay on top of the latest changes, here is a quick review of the Top 14 stories from last month that all employers need to know about:

1. **[Epic Win: Supreme Court Saves Employment Arbitration As We Know It](#)** – To the relief of employers across the country, the Supreme Court ruled in a 5-to-4 decision that class action waivers in employment arbitration agreements do not violate the National Labor Relations Act (NLRA) and are, in fact, enforceable under the Federal Arbitration Act (FAA). The May 21 decision in the three consolidated cases—*Epic Systems Corporation v. Lewis*; *Ernst & Young, LLP v. Morris*; and *NLRB v. Murphy Oil USA, Inc.*—maintains what had long been the status quo and halts the National Labor Relations Board's (NLRB's) crusade to invalidate mandatory class waivers. What do employers need to know about today's monumental decision, and what adjustments can you make to capitalize on the Court's ruling? ([read more here](#))

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2. **Federal Appeals Court Makes It Easier For Workers To Advance Class Claims** – The 9th Circuit Court of Appeals has lowered the bar when it comes to the type of evidence plaintiffs need to present in order to have their claims certified as a class action. The federal appeals court panel ruled that courts are permitted to certify class actions based on evidence that is not even admissible at trial. The May 3 ruling will make it easier for class claimants to advance their claims against employers, and should spur employers and their defense counsel to adjust their litigation strategy accordingly. Here are three things you need to know about the *Sali v. Corona Regional Medical Center* decision ([read more here](#)).



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3. **State Plans Must Abide: Fed-OSHA Fixes Alleged "Error" and Mandates Electronic Reporting of Injuries and Illnesses in All State-Plan States** – Technically this occurred on the last day of April, but we're counting it for May. The Occupational Safety and Health Administration (Fed-OSHA) reversed course and issued a [press release](#) announcing that employers in all state-plan states must implement Fed-OSHA's new electronic recordkeeping and reporting rule. In 2016, Fed-OSHA adopted a new [rule](#) (effective January 1, 2017) requiring certain employers to electronically submit injury and illness information directly to OSHA. But state-plan states had been free to adopt or not adopt his rule as they chose. Effective April 30, however, Fed-OSHA changed course. In its press release, Fed-OSHA argues that its initial guidance to states with state plans that they were free not to adopt the electronic reporting requirements was an "error" ([read more here](#)).



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4. **GDPR Is Here: Not Yet Compliant? What Employers Need to Consider** – After much anticipation, the General Data Protection Regulation (GDPR) finally went into effect on May 25. For employers, that means some enhanced employee rights, and the risk of significant penalties for non-compliance. This includes potential maximum fines of up to 4 percent of global annual revenue or 20 million euros, whichever is greater ([read more here](#)).



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5. **New Jersey Passes New Paid Sick Leave Law: What Employers Need to Know** – New Jersey has become the tenth state to enact a statewide mandatory paid sick leave law. The New Jersey Paid Sick Leave Act was signed into law by Governor Phil Murphy on May 2 and will go into effect on October 29, 2018. Once effective, it

will require New Jersey employers of all sizes to provide up to 40 hours of paid sick leave per year to covered employees. Just about every employer with workers in New Jersey will feel the impact of this new law in one way or another. Consequently, you should start preparing now to ensure your policies and practices are compliant with the Act. Here's an overview on what New Jersey employers need to know ([read more here](#)).

6. **[NYC Adopts Sweeping New Sexual Harassment Laws](#)** – On the heels of the #MeToo and #TimesUp movements, Mayor Bill de Blasio signed a slate of legislation on May 9 aimed at preventing sexual harassment in the workplace. Entitled the “Stop Sexual Harassment in NYC Act,” the package of 11 separate bills is the first major legislative initiative undertaken by new City Council Speaker Corey Johnson. The bills confirm that New York City is looking to be a leader as jurisdictions everywhere grapple with combatting sexual harassment in the workplace. The Stop Sexual Harassment Act—parts of which went into effect immediately—will significantly expand the obligations of New York City employers to prevent sexual harassment. What do you need to know to comply with these laws? ([read more here](#)).
7. **[Department Of Labor Delays New OT Rule Until January 2019, Among Other Actions](#)** – The latest regulatory agenda shows four wage-hour items on the U.S. Labor Department’s (USDOL) plate. In addition to revisiting the federal Fair Labor Standards Act’s (FLSA) white-collar exemptions and tips-related regulations (as we discussed [last year](#) and [last month](#), respectively), USDOL intends to publish *proposed* rules later this year on child labor restrictions and the regular rate. Perhaps the most-awaited news—when the agency would unveil its new proposal regarding the “overtime” rule—was once again delayed, as the USDOL announced we can expect a revised rule in January 2019 ([read more here](#)).
8. **[Court Rules Philadelphia Employers Can Ask for Salary History, But Can’t Use It to Set Pay](#)** – The salary history ban trend that has been sweeping the nation for past few years hit a speedbump in Philadelphia. In January 2017, Philadelphia became the first city in the nation to adopt legislation prohibiting employers from inquiring about the salary histories of applicants. However, the ordinance came under heavy fire by Chamber of Commerce for Greater Philadelphia and some of the city’s large



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employers, which challenged the legality of the ordinance in a lawsuit. It was originally to take effect in May 2017 but the city agreed to delay implementation pending the outcome of the lawsuit. Several weeks ago, the United States District Court for the Eastern District of Pennsylvania [ruled](#) that restricting employers from asking candidates to reveal their past salaries violates the First Amendment's free speech clause. However, the court also ruled that the city could prohibit employers from using salary to set pay. As a result, Philadelphia employers can ask about history but can't do much, if anything, with that information once they have it in hand ([read more here](#)).

9. [Employee's Individual Gripe Not Protected Under The NLRA](#) – A recent decision by a National Labor Relations Board Administrative Law Judge has re-affirmed that "personal gripes" made by employees are unprotected by federal labor law. This decision comes from the NLRB's regional office in Baltimore, but is in line with the Board's recent commitment to clarify this issue for employers across the country (*Bud's Woodfire Oven d/b/a Ava's Pizzeria*) ([read more here](#)).

10. **Misclassification Battle Rages On In Wake Of Blockbuster *Dynamex* Decision** – The California Supreme Court rocked the gig economy to its core with [an April 30 decision](#) that adopted a rigid new test for determining whether a worker is correctly classified as an independent contractor. The ripple effects of that decision were felt all through the month of May. On May 4, the attorneys for the worker who came out on the losing end of the [Grubhub misclassification trial](#) asked [the appeals court to return the case to the lower court](#) for a new hearing, as the plaintiff wants the court to take a fresh look at the case with this new standard in mind. On May 14, the attorneys for Grubub [responded and opposed](#) such a maneuver. Meanwhile, on May 8, workers for both Lyft and Postmates [filed claims in a San Francisco state court](#) alleging they were improperly classified as contractors, not wanting to waste any time in taking advantage of the new misclassification standard established for California businesses.

11. [Labor Board Might Soon Issue New Rule To Solve Joint Employment Dilemma](#) – In a rare procedural move that caught many by surprise, the National Labor Relations Board announced on May 9 that it will soon start the

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rulemaking process to clarify the current joint employment standard. Perhaps frustrated by uncertainty resulting from the recent reversal of a Board decision on the topic and the seemingly stalled litigation sitting at the D.C. Circuit, Chairman John Ring said that he hopes NLRB rulemaking would bring resolution to this matter “as soon as possible” ([read more here](#)).

12. **[Federal Court Rules In Favor Of Transgender Teen In Bathroom Case](#)** – A federal court in Virginia ruled in favor of a transgender teenager who wanted to use the boys’ bathroom at his former school, finding that the local school district violated his constitutional rights when it prescribed which bathroom he should use. On May 22, the U.S. District Court for the Eastern District of Virginia sided with a growing number of courts when it concluded that sex discrimination can encompass a claim for discrimination on the basis of one’s gender identity—in this case, under Title IX and the United States Constitution ([read more here](#)).
13. **[Steal Trade Secrets, Get Cut: BladeRoom Jury Bleeds Emerson Electric to the Tune of \\$30 Million](#)** – A California federal jury just decided that Emerson Electric Company owes prefabricated module manufacturer BladeRoom Group Limited \$30 million in damages for stealing trade secrets to build a massive new data center. On May 10, the jury came back with a verdict where it determined that Emerson misappropriated trade secrets and owes BladeRoom \$20 million for unjust enrichment and \$10 million for lost profits. Although the award is far less than the \$365 million that BladeRoom was seeking, Emerson’s counsel has still stated that the company intends to appeal ([read more here](#)).
14. **[Federal Appeals Court Revives Antitrust Challenge to Seattle’s Gig Worker Union Organizing Ordinance](#)** – If you’ve been following the legal fight over Seattle’s 2015 proposal to permit ride-sharing drivers who work for companies such as Uber and Lyft to organize and form the country’s first gig economy unions, you might feel like you have been watching a tennis match. At first a court [granted a preliminary injunction to block the ordinance](#) from taking effect in April 2017, but a few months later the court [dismissed a legal challenge](#) and [cleared the way](#) for the ordinance to eventually take effect. But on May 11, before the law could become official, the 9th Circuit Court of Appeals [revived a](#)

[challenge](#) filed by the U.S. Chamber of Commerce to the ordinance on antitrust grounds, sending the case back down to the lower court for further action. This decision is a positive development for gig economy businesses who would rather not have a union representing the independent contractors that perform work for their platforms ([read more here](#)).

If you have any questions about these developments or how they may affect your business, please contact your Fisher Phillips attorney.

*This Legal Alert provides an overview of specific legal developments. It is not intended to be, and should not be construed as, legal advice for any particular fact situation*