

## WEB EXCLUSIVE: FEBRUARY 2019: THE TOP 15 LABOR AND EMPLOYMENT LAW STORIES

Publication  
Mar 1, 2019

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 15 stories from last month that all employers need to know about:

1. **[Supreme Court Strikes Down Significant Pay Equity Case](#)** – The Supreme Court took the unusual step of vacating a 2018 federal appeals court decision because one of the judges counted in the majority was deceased by the time the decision was published, reversing a landmark pay equity ruling that concluded employers could not justify wage differentials between men and women by relying on prior salary. Although the justices did not examine the merits of the 9th Circuit's *Yovino v. Rizo* ruling in the February 25 unsigned five-page opinion, their decision plunges employers back into a state of uncertainty regarding a controversial pay equity practice ([read more here](#)).
2. **[Illinois Enacts Minimum Wage Hike To \\$15](#)** – Illinois is set to drastically change its minimum wage in the near future, reaching \$15 per hour over the course of the next six

### Related People



**Christopher Alvarez**

Partner

916.210.0403



**Cheryl L. Behymer**

Senior Counsel

803.255.0000

years. Following passage by the legislature on February 14, newly elected Governor J.B. Pritzker quickly signed the amendments to the Illinois Minimum Wage Law into law. You should be prepared for the gradual increases (and other changes) to start taking effect on January 1, 2020 ([read more here](#)).

3. **[California Legislature to Address \*Dynamex\* and a Host of New Employment Proposals](#)**

– February 22 was the last day to introduce new legislative proposals for the 2019 California legislative year. A whopping 2,576 bills were introduced before the deadline, making for an extremely busy legislative year ahead. Although new ideas can be added later through the “gut and amend” process, we now have a fairly clear sense of the labor and employment issues the California legislature will be confronting in 2019. Based on the bills introduced by the deadline, legislative proposals can be classified into four main areas: (1) bills dealing with employee/independent contractor status and the aftermath of the California Supreme Court’s decision in the *Dynamex* case; (2) reintroductions of bills that were previously vetoed by Governor Brown (or were otherwise unsuccessful) but are being given a new shot with California’s new governor, Gavin Newsom; (3) a host of bills dealing with the popular topic of paid family leave and/or paid sick leave; and (4) everything else, including significant new areas of proposed regulation ([read more here](#)).

4. **[New Jersey Expands Family And SAFE Leave Protections And Benefits](#)**

– New Jersey’s governor approved a significant expansion of the state’s leave laws, permitting employees job-protected leave for a variety of new reasons while expanding available state-provided, income-replacement benefits. The February 19 action by Governor Phil Murphy expands existing job-protected leave under the Family Leave and SAFE Acts, and available benefits under Family Leave Insurance ([read more here](#)).

5. **[California Court Ushers In Sweeping Changes For Scheduling Policies](#)**

– A California Court of Appeal announced a sweeping change in California’s reporting time pay rules which now prohibits a common scheduling practice used by employers throughout the state (*Ward v. Tilly’s, Inc.*). The February 5 decision means that California employers who require employees to call in two hours before a shift to determine whether or not they are



**Ted Boehm**

Partner

[404.240.4286](#)



**Kathleen McLeod Caminiti**

Partner and Co-Chair, Wage and Hour Practice Group

[908.516.1062](#)



**Melissa Camire**

Partner

[212.899.9965](#)

needed, and report to work if called in, are now obligated to pay that employee, at a minimum, for two hours of work even if the employee is informed that there is no need to come in to work that day. Unfortunately, the case left many questions unanswered and, as a result, you should be careful to craft scheduling policies that avoid the same pitfalls seen in that case ([read more here](#)).

6. **Kentucky Legislature Seeks To Reestablish Employment Arbitration**

– A Kentucky legislative leader took the first step to try to resurrect the ability of employers to require employment disputes to be resolved by arbitration. On February 14, Kentucky Senate President Robert Stivers introduced legislation ([Senate Bill 7](#)) to make clear that employers and employees may agree to arbitrate claims related to the employment ([read more here](#)).

7. **Florida Supreme Court Strikes Down Miami Beach Minimum Wage**

– The Florida Supreme Court blocked a Miami Beach law that would have raised the minimum wage in the city. The February 5 decision ends a lengthy legal battle over whether cities could set their own minimum wages that do not correspond with what has been set by the Florida Constitution. Miami Beach passed an ordinance in 2016 that would have raised the minimum wage in the city to \$13.31 by January 1, 2021. The current minimum wage in Florida is \$8.46 per hour. Represented by attorneys from Fisher Phillips, the Florida Retail Association, the Florida Chamber of Commerce, and the Florida Restaurant and Lodging Association fought the ordinance. The business groups argued that state law prevents municipalities from raising their own minimum wage, which could create a confusing mix of minimum wage rates across the state ([read more here](#)).

8. **Federal Court Reinforces Limited Geographic Scope Of NYC's Anti-Discrimination Laws**

– A New York federal court recently reinforced the limited geographic scope of the New York City Human Rights Law, a city law which provides broader anti-discrimination and anti-retaliation protections to employees than the New York State Human Rights Law and federal anti-discrimination laws. Courts have long held that New York City Human Rights Law (NYCHRL) claims are limited to those claims where the alleged discriminatory conduct had a “discriminatory impact” *within* New York City. The Eastern District of New York federal court reaffirmed this principle in response to a plaintiff who attempted to stretch the jurisdictional



**Charles S. Caulkins**

Partner

954.847.4700



**Benjamin M. Ebbink**

Partner

916.210.0400



**Jeffrey A. Fritz**

Partner

617.532.9325

bounds of the NYCHRL to encompass a claim where the alleged discriminatory conduct occurred far from the five boroughs of New York City (*Amaya v. Ballyshear LLC*) ([read more here](#)).

9. **[EEO-1 Reports Delayed Until May 31](#)** – Employers received a bit of good news on February 1 as the federal government announced the deadline for submitting their EEO-1 reports has been extended until May 31. Although originally due in just a few short weeks—on March 31—the Equal Employment Opportunity Commission (EEOC) announced the extension in a brief news release, providing a measure of breathing room for employers across the country ([read more here](#)).
10. **[USDOL Moves Forward With Eliminating 20 Percent Rule](#)** – The U.S. Department of Labor struck another nail into the coffin of the infamous “20 Percent Rule,” the agency’s prior enforcement position which purported to limit an employer’s ability to take the federal Fair Labor Standards Act tip credit. Under this rule, the USDOL would not permit an employer to take the tip credit if the tipped employee spent more than 20 percent of their work time performing “related duties,” meaning duties that are not directly customer-facing or tip-producing, but that are related to the tipped occupation (i.e. a server making coffee or cleaning tables). Previously, in November 2018, USDOL had announced via an [Opinion Letter](#) that it was abandoning the 20 Percent Rule and that it would issue a revised Field Operations Handbook in the near future. With its February 15 action, the USDOL has now made good on its promise as the revised FOH no longer contains the 20 percent limitation on the performance of “related duties” ([read more here](#)).
11. **[Congressional Committee Votes In Favor Of Pay Equity Law](#)** – The House Committee on Education and Labor voted in favor of the Paycheck Fairness Act (H.R. 7, S.270) on February 26, which, if ultimately enacted, would amend federal wage and hour law “to provide more effective remedies to victims of discrimination in the payment of wages on the basis of sex, and for other reasons.” The Paycheck Fairness Act, or PFA, notes that the Equal Pay Act (EPA) “has not worked as Congress originally intended,” and concludes that “improvements and modifications to the law are necessary to ensure that the Act provides effective protection to those subject to pay discrimination on the basis of sex” ([read more here](#)).



**Rosemary S. Gousman**

Partner

[908.516.1060](tel:908.516.1060)



**Marty Heller**

Partner

[404.231.1400](tel:404.231.1400)

---

## Service Focus

[Counseling and Advice](#)

[Employee Leaves and Accommodations](#)

[Employment Discrimination and Harassment](#)

[Government Contracting, Compliance, and Reporting](#)

[Immigration](#)

[Litigation and Trials](#)

[Pay Equity and Transparency](#)

[Wage and Hour](#)

12. **[Government Unveils Details For 2019 H-1B Lottery](#)** – The federal government published its final rule amending the regulations that will govern petitions filed under the H-1B work visa lottery. Although the final rule is effective April 1, 2019, the Department of Homeland Security (DHS) has announced it will suspend the electronic registration requirement for employers for this year’s H-1B cap. This will allow U.S. Citizenship and Immigration Services (USCIS) sufficient time to complete the necessary user testing and ensure the system and process are fully functional before they are implemented. If you are unsure how to respond to the announced changes, read on to find our five-step plan to success ([read more here](#)).
13. **[What Does The White House’s AI Initiative Mean For The AV Industry?](#)** – When President Trump signed an executive order on February 11 to boost the role of artificial intelligence in the United States, the AV industry took yet another incremental—but not necessarily insignificant—step forward. While nowhere in the 10-page American AI Initiative are autonomous vehicles mentioned, nor even the word transportation included, those in the industry took notice. What does the executive order mean for the AV industry? ([read more here](#))
14. **[Federal Appeals Court Expands Joint Employer Liability Theory For Agricultural Employers](#)** – A federal appeals court announced a sweeping change for agricultural employers that will make it easier for workers to bring discrimination claims against them under a joint employment theory. In the February 6 *EEOC v. Global Horizons, Inc.* decision, the 9th Circuit Court of Appeals held that employers who use labor contractors to recruit H-2A workers can be liable under Title VII as a joint employer for non-workplace matters—such as claims for housing, meals, and transportation—even if such matters are contractually delegated to a labor contractor. This runs counter to typical employment relationships where the employer generally has no control over non-workplace matters; employees are usually expected to find their own housing, provide for their own meals, and arrange their own transportation. Because these items were not considered part of the terms and conditions of employment, employees could not successfully bring claims against employers—or joint employers—for alleged discriminatory treatment with respect to them.

Given the recent ruling in *Global Horizons, Inc.*, however, if you are one of the many employers in the agricultural industry who utilize labor contractors, you should be aware of the potential issues discussed and take affirmative steps should similar issues arise ([read more here](#)).

15. [Boston Symphony Orchestra Flutist Settles Equal Pay Lawsuit](#) – The first lawsuit filed under the [Massachusetts Equal Pay Act \(MEPA\)](#)—a claim [against the Boston Symphony Orchestra \(BSO\)](#)—was settled on February 15 pursuant to the terms of [a confidential agreement between the parties](#). A full summary of the case can [be found here](#). In sum: the BSO's top flutist brought a lawsuit in Suffolk Superior Court in early July 2018 accusing the organization of paying her substantially less than her closest male counterpart in the orchestra. This case gained a tremendous amount of publicity in Massachusetts and beyond as it highlighted pay gaps in the classical music world. The case was also being closely watched by employers and attorneys on both sides of the debate who hoped to get more clarity on the meaning of the phrase "comparable work" beyond what the Attorney General's Office provided in its guidance concerning MEPA. Unfortunately, no clarity will come from this case since the parties filed a stipulation of dismissal in Suffolk Superior Court on February 15. While details of the settlement remain confidential, the parties made a joint statement indicating that the female flutist will continue to work for the BSO in her current role ([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.*