

## FEBRUARY 2016: FIVE BIGGEST LABOR AND EMPLOYMENT LAW STORIES

Insights  
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The world of labor and employment law is always rapidly evolving. In order to make sure that you stay on top of the latest developments, here is a quick review of the five biggest stories from last month that all employers need to know about.

### 1. Justice Antonin Scalia's Death Leads To Employer Uncertainty

The February 13 death of Supreme Court Justice Antonin Scalia threw employers into a world of uncertainty, and will lead to an unusual amount of turmoil at the Supreme Court for the foreseeable future. The precarious 5-4 advantage that conservative causes enjoyed for several decades evaporated overnight, which could spell trouble for employers. Several high-profile and significant labor and employment decisions await the Court's determination this term, including the union agency-shop fees case, *Friedrichs v. California Teachers Association* (read more [here](#)).

### 2. Court Allows Workers To Sue Employer For Limiting Hours To Avoid ACA

In a first-of-its-kind decision, a federal court upheld the right of employees to sue their employer for allegedly cutting employee hours to less than 30 hours per week to avoid offering health insurance under the Affordable Care Act (ACA). The February 9 decision permitted a group of workers to proceed with a claim against their employer for allegedly "right-sizing" its workforce for the purpose of avoiding healthcare costs in violation of ERISA. The litigation is still in the very early stages, but this could be a significant first step that sparks a new wave of class action litigation against employers (read more [here](#)).

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### **3. Zika Virus Spreads Into The United States, Causing Employer Concern**

On February 1, the World Health Organization declared Zika a global public health emergency. This is only the fourth time that the agency has declared the spread of a disease to be a “public health emergency of international concern,” following the H1N1 pandemic (2009), the spread of Polio (2014), and the Ebola outbreak (2014). February also saw the spread of the virus in several U.S. locations, leading to a number of questions from employers about their rights and responsibilities with respect to workers who might be exposed to the virus. Fisher Phillips produced a comprehensive series of FAQs addressing all of these concerns (read more [here](#)).

### **4. Tip-Pooling Plans Dealt A Setback By Federal Appeals Court**

The 9th Circuit Court of Appeals surprised many by seemingly changing its mind and issuing a ruling that would effectively prohibit employers from running tip-pooling programs at their businesses. The February 23 decision upholds a controversial new regulation promulgated by the U.S. Department of Labor which holds that workers who are entitled to keep all of their tips even if they are already being paid a minimum wage salary by their employer. This decision was particularly startling in that many employers believe it runs counter to another 9th Circuit ruling on a similar matter handed down in 2010. The ruling is on ice for the time being while another appellate review is requested, but hospitality employers in the 9th Circuit and elsewhere should be prepared to scrap tip-pooling plans if the final decision falls against them (read more [here](#)).

### **5. Fisher Phillips Offers Comments On EEOC’s Proposed Retaliation Guidance**

On February 24, Fisher Phillips submitted comments to the Equal Employment Opportunity Commission regarding the agency’s proposed Enforcement Guidance on Retaliation. The comments reflect an effort by the firm to ensure that a balanced approach to retaliation claims be taken by the agency and any courts that choose to follow its direction, emphasizing the rights of employers just as much as their responsibilities under the law. Retaliation claims are the most frequently alleged type of violation raised with the EEOC, with a 119% increase over the past 18 years, and the firm believes the proposed EEOC Guidance could assist in

reducing the number of frivolous claims filed if it clearly articulates the proper legal standards (read more [here](#)).

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

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*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.*