

JULY 2016: FIVE BIGGEST LABOR AND EMPLOYMENT LAW STORIES

Insights
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The world of labor and employment law is always evolving at a rapid pace. 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. EEOC Fails To Address Employer Concerns About Impending Equal Pay Data Rule

The Equal Employment Opportunity Commission (EEOC) announced revisions to its planned pay data rule on July 13, but unfortunately the revisions did not address the majority of concerns employers had about the original controversial version. While the updated rule makes minor concessions to employers and provides much-needed clarity on two issues, the revisions did not sufficiently address the undue burdens that employers will face in completing required reports, and all but ignore concerns about confidentiality and the underlying utility of the rule.

Although the revised rule will still need to go through another public comment process, there appears to be sufficient momentum at the agency to push the rule forward as revised. Therefore, employers can expect to be subject to a heightened pay transparency standard for their 2017 compensation practices, with an initial reporting deadline of March 31, 2018 (read more [here](#)).

2. NLRB Reinstates Liberal Standard For Unionizing Temp Workers, Boosting Organized Labor

In a 3-1 decision, the National Labor Relations Board (NLRB) resurrected a union-friendly standard on July 11 making it easier for unions to combine jointly employed temporary

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workers with an employer's existing workforce to form a union. For over a decade, employers had enjoyed a standard which permitted them to block such a combined pairing by refusing to provide consent. Now, however, that standard has been scrapped (*Miller & Anderson, Inc.*).

As reported in [our August 2015 Alert](#), the NLRB's issuance of a new standard for determining if two businesses are "joint employers" for collective bargaining purposes was just the first step in an effort to provide unions an advantage in trying to organize temporary employees (*Browning-Ferris of California, Inc.*). With this decision in *Miller & Anderson*, the other shoe has dropped (read more [here](#)).

3. Feds Ratchet Up Employer Penalties, Effective August 1

While this development was technically announced on the last day of June, it occurred right before the long holiday weekend, so we're counting for July. On June 30, the U.S. Department of Labor (USDOL) announced a series of civil penalty increases that will impact the nation's employers in the very near future. The agency announced that the vast majority of penalties associated with wage and hour, safety, and benefits compliance matters will soon increase, as will certain penalties associated with immigration matters.

The USDOL reminded employers that penalties exist in order to "encourage greater compliance" with federal law, but pointed out that they are less effective if they haven't been raised for decades to keep pace with inflation. The new civil penalty amounts will be applicable only to penalties assessed after August 1, 2016, but will apply to violations that occurred after November 2, 2015 (read more [here](#)).

4. Court Rules That Sexual Orientation Discrimination Not Covered Under Title VII

A federal court of appeals announced on July 28 that it had no choice but to deny an LGBT plaintiff's request to proceed with a sexual orientation discrimination claim against her former employer because it concluded that such claims could not be brought under Title VII. However, the court went out of its way to note the many ways in which employers could still face cognizable claims from LGBT employees, and indicated that "perhaps the writing is on the wall" for Title VII to soon include a prohibition on sexual orientation discrimination.

While this case counts as a "win" for the employer, it should stand as a warning for all employers to recognize that the

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legal landscape is rapidly changing (read more [here](#)).

5. EEOC Announces Religious Discrimination Initiatives

On July 22, the EEOC announced its intention to target younger workers to see if they feel victimized by religious discrimination. To that end, the agency created a [one-page information sheet](#) intended to educate younger workers about their rights under federal law when it comes to religious discrimination, harassment, and accommodations.

At the same time, the agency announced that it will soon begin requesting more detail from those who file religious discrimination claims in order to gather more statistical data. Each time a worker files a claim, the EEOC will ask the charging party to indicate what religion they practice. The agency said it hopes the information gathered will assist it in better recognizing and responding to trends in charge data (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.