

NOVEMBER 2016: THE 7 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 seven biggest stories from last month that all employers need to know about:

1. OVERTIME RULE BLOCKED BY TEXAS JUDGE ON EVE OF EFFECTIVE DATE

In a dramatic last-minute development on November 22, a federal judge in Texas blocked the U.S. Department of Labor's (USDOL's) overtime rule from taking effect on December 1, handing an eleventh-hour victory to employers across the country. Agreeing with arguments posed by concerned states and business groups, the judge issued a preliminary injunction preventing the rules from being implemented on a nationwide basis. Employers returned from their Thanksgiving holiday weekend grappling with thorny questions following the surprising and momentous court decision (read more [here](#) and [here](#)).

2. TRUMP ELECTED PRESIDENT; WHAT CAN EMPLOYERS EXPECT NOW?

Just as surprising – if not more so – was the election of Donald Trump on November 8. Employers have spent much of the last several weeks figuring out what to expect from the president-elect once he assumes office. A group of Fisher Phillips lawyers developed a list of the top 10 workplace law developments to expect from the Trump presidency, touching on immigration, labor relations, wage

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and hour law, pay equity, data security, and a variety of other subjects (read more [here](#)).

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3. COURT ALLOWS OSHA'S REPORTING RULE TO PROCEED AS SCHEDULED

On November 28, a Texas federal court judge issued a ruling that cleared the way for the whistleblower provisions of the new Occupational Safety and Health Administration (OSHA) Recordkeeping Rule to take effect as scheduled. While the ruling permits OSHA's whistleblower requirements to take effect on December 1, 2016, the court's decision does not determine whether OSHA's controversial interpretations of this rule will ultimately be upheld in the long run, or whether the Trump administration will follow these interpretations.

Employers everywhere must make thoughtful decisions on their automatic post-accident drug testing policies, any rules they have in place that require an "immediate" reporting of workplace injuries or illnesses, and their incentive programs based on worker injury data (read more [here](#)).

4. EMPLOYERS CLAIM CRUCIAL VICTORY IN PERSUADER BATTLE

On November 16, a federal court judge delivered what could be the final nail in the coffin for the USDOL's controversial persuader rule, which sought to force attorneys and their clients to report in open records the details of their confidential attorney-client relationships, and which would have complicated employers' efforts to seek legal counsel in opposing and dealing with unions. District Court Judge Sam R. Cummings, sitting in the Northern District of Texas, granted a permanent injunction that will block the rule from going into effect on a nationwide basis. It seems likely that employers may have seen the last of the persuader rule for the foreseeable future (read more [here](#)).

5. GOVERNMENT PUBLISHES NEW I-9 FORM

The U.S. Citizenship and Immigration Services (USCIS) released the new I-9 form on November 14; although you may accept the prior version of the I-9 for the next few weeks, you will be required to use the new form starting January 21, 2017. The new form provides clearer instructions for employees and employers, and for those who will complete the form electronically, it provides "smart fields"

which will limit errors by those entering data into the form. After January 21, 2017, all previous versions of the Form I-9 will be invalid for new hires, re-hires, or for re-verification (read more [here](#)).

6. RECREATIONAL AND MEDICAL MARIJUANA APPROVED IN SEVERAL STATES

Election Day saw the spread of legalized marijuana continue across the country, with voters passing measures in several states permitting use of the drug under controlled circumstances. Employers should anticipate and prepare for the situation when one of their applicants or employees tests positive for cannabis and claims that its legal status in your state, or the existence of a medical marijuana license, should exempt them from your zero-tolerance policies. Employers in [California](#), [Nevada](#), [Florida](#), and [Arkansas](#) should be up to speed on the new laws in each of their states.

7. NEW REGULATIONS CLARIFY WHICH EMPLOYERS ARE EXEMPT FROM YEARLY H-1B QUOTA

On November 18, the Department of Homeland Security (DHS) issued its long-awaited rule seeking to improve certain aspects of the employment-based immigration system. The new rule, which becomes effective on January 17, 2017, clarifies several agency policies and procedures that affect U.S. employers who sponsor high-skilled nonimmigrant workers. The rule is intended to increase consistency among agency adjudicators and provide greater stability and job flexibility for certain foreign workers (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.