

## FEBRUARY 2017: THE 12 BIGGEST LABOR AND EMPLOYMENT LAW STORIES

Insights  
Mar 1, 2017

The world of labor and employment law is always evolving at a rapid pace, leading us to summarize a few of the most significant cases from the previous month. February 2017 was another month that saw dramatic developments, leading us to once again expand our summary even beyond a typical “top 10” list. In order to make sure that you stay on top of the latest developments, here is a quick review of the 12 biggest stories from last month that all employers need to know about:

### 1. President Trump’s Travel Ban Rejected By Two Federal Courts

In late January, President Trump signed a [controversial executive order](#) creating an immediate freeze on all entry for individuals from Syria, Iran, Libya, Somalia, Yemen, Iraq, and Sudan, affecting both immigrant and non-immigrant visa holders. Employers were forced to adjust their business practices with respect to their foreign-born workers. However, on February 3, a federal judge in Washington state granted a nationwide temporary restraining order blocking the executive order and returning the immigration process back to the status quo ([read more here](#)). On February 9, the 9th Circuit Court of Appeals upheld the injunction ([read more here](#)). The president has indicated that he will issue a revised travel ban to address the court’s concerns, which could be issued as early as March 1.

### 2. Labor Secretary Nominee Drops Out, Another One Takes His Place

After initial nominee Andrew Puzder withdrew his

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candidacy for Secretary of Labor on February 15, President Trump moved quickly to name a replacement. The very next day, he announced that Alexander Acosta would be his pick for the top spot at the U.S. Department of Labor (USDOL). Our firm's thought leaders have summarized their thoughts on how Secretary Acosta will impact wage and hour law, workplace safety, labor relations, federal contractors, pay equity, immigration, and related matters, [which can be found here](#).

### 3. Overtime Appeal Delayed Once More

Late last year, the U.S. Department of Labor (USDOL) filed an appeal to the 5th Circuit Court of Appeals seeking to overturn the preliminary injunction that prevented the salary-related changes in the federal Fair Labor Standards Act's (FLSA's) "white collar" overtime exemptions from taking effect. But when the Trump administration took control over the USDOL on January 20, many expected a different and more employer-friendly approach with regard to the appeal. Sure enough, the federal government has asked the court for another delay in the appeals process to allow the incoming administration (including soon-to-be Secretary Acosta) to review the matter and develop a strategy. [The court has granted the USDOL's request](#), and the next round of briefing is now due on May 1.

### 4. Missouri Becomes 28th Right-To-Work State

On February 6, Missouri Governor Eric Greitens signed into law a bill that made Missouri a right-to-work state. The law will take effect August 28, 2017. Employers in the state should familiarize themselves with this significant new development, as it could have an impact on your workplace ([read more here](#)).

### 5. Federal Government Steps Aside From Transgender Bathroom Battle

On February 10, the Justice Department withdrew the pending legal challenge that had sought to reverse the federal court decision blocking the implementation of the Obama administration's transgender bathroom policy for public schools. By announcing it would drop the government's appeal (which was launched by the Obama Department of Justice), the Trump administration signaled that it would take a more conservative approach

to the issue ([read more here](#)).

Sure enough, the other shoe dropped on February 22 when the Trump administration revoked the Obama-era federal guidelines that had instructed public schools to permit transgender students to use bathrooms that match their gender identity. The Department of Justice and the Department of Education issued a new Dear Colleague letter not only reversing course from the Obama administration's position, but also establishing that transgender bathroom policies are determinations to be made by states and local school districts without federal guidance ([read more here](#)).

## **6. SCOTUS Service Dog Decision Could Spell Bad News For Schools**

In a unanimous decision, the U.S. Supreme Court ruled on February 23 that a disabled child's parents were not legally required to jump through certain additional hoops and exhaust administrative remedies in a service animal dispute before suing a school for damages under federal antidiscrimination law. The *Fry v. Napoleon Community Schools* decision should be concerning for schools and school districts, as it will likely lead to an increase in lawsuits ([read more here](#)).

## **7. "Day Without Immigrants" Walkout Impacts Workplaces Across Country**

Employee walkouts and protests took place across the country on February 16 and 17, as immigrants and others disappointed by the Trump administration's position with respect to immigration staged a "Day Without Immigrants" protest. The activity, organized on social media by various worker advocacy organizations, ostensibly aimed to demonstrate to the president (and others) the daily effect that immigrants have on the nation.

As part of the protest, many employees skipped work or walked out in the middle of their shifts on those days, impacting employers and calling for a delicate approach to avoid unfair labor practice charges ([read more here](#)).

## **8. Workplace Law Regs On White House Chopping Block**

On February 24, President Trump signed an executive

order requiring every federal agency to establish a “Regulatory Reform Task Force” to eliminate what he considers to be unnecessary and burdensome regulations hampering the American economy. Coming on the heels of a meeting with the Business Roundtable, a conservative collection of management executives formed to promote pro-business public policy, it appears that a number of workplace regulations could be on the chopping block ([read more here](#)).

#### **9. Workplace Hugs May Get You Sued In The 9th Circuit**

Perhaps it's not surprising that a circuit that for years has held that staring can constitute sexual harassment would find that excessive hugging may be illegal, too. The 9th Circuit (which covers California, Washington, Oregon, Nevada, Arizona, and other western states) held in the February 23 *Zetwick v. County of Yolo* decision that it is for a jury to decide whether a male county sheriff's hugging of a female correctional officer amounted to unlawful harassment ([read more here](#)).

#### **10. Florida Court Rules Uber Drivers Are Not Employees**

In a somewhat surprising but positive development for gig companies, a Florida state appellate court ruled on February 1 that Uber drivers are independent contractors, not employees, and therefore not entitled to unemployment compensation benefits when their working relationship with the car ride service terminates. This case is a victory for all employers in the new sharing economy ([read more here](#)).

#### **11. Supreme Court Delays Class Waiver Decision Until Next Term**

When the U.S. Supreme Court [announced in January](#) it would settle a dispute about whether employers can use mandatory class action waivers with their workers, most expected a final decision by June 2017. Employers were prepared to spend the next several months with their fingers crossed hoping the decision would fall in their favor, seeking clarity to a topic that has become increasingly muddled over the past year.

On February 8, however, the Supreme Court announced that the issue would be scheduled for oral argument in the 2017-2018 term, meaning that a decision

will not be reached until late this year or early 2018. The good news for employers is that the Court should be fully stocked with a full complement of nine justices by then, including at least five who could be expected to be receptive to employers' position on the matter. Hopefully, for employers, good things will come to those who wait ([read more here](#)).

## 12. Super Bowl Commercial Highlights Pay Equity

Many watched the February 5 Super Bowl for the game, others for the commercials, and perhaps even more for both. In years past, it would not have been uncommon for people to spend the Monday after the Super Bowl at the water cooler talking about the commercials with Clydesdales, puppies, talking frogs, or celebrities. But this year, and perhaps more so than any other year in recent memory, there were numerous ads that carried or otherwise promoted political and social messages. Undoubtedly one of the most notable examples was Audi's commercial promoting pay equity in the workplace – likely the first-ever Super Bowl commercial directly addressing a workplace law issue ([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.*