

MAY 2017: THE TOP 10 LABOR AND EMPLOYMENT LAW STORIES

Insights
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It's hard to keep up with all the recent changes to labor and employment law. While it always seems to evolve at a rapid pace, the last few months have seen an unprecedented number of changes. May 2017 was no different, with a flurry of significant developments taking place during the month. In order to make sure that you stay on top of the latest changes, here is a quick review of the Top 10 stories from last month that all employers need to know about:

1. OSHA ANNOUNCES DELAY TO ELECTRONIC RECORDKEEPING RULE

Employers will be relieved, at least temporarily, of the requirement to file injury information through an electronic recordkeeping system that was scheduled to take effect this July 1. The Occupational Safety and Health Administration (OSHA), which had issued a rule requiring the posting of such information for most employers in May 2016, announced on May 17 that the filing deadline will be postponed for an undetermined period of time ([read more here](#)).

2. 6TH CIRCUIT LATEST TO STRIKE DOWN MANDATORY CLASS WAIVERS

Employers returning from the Memorial Day weekend were on the receiving end of bad news as they learned that the 6th Circuit Court of Appeals became the third federal appeals court to strike down mandatory class action waivers. Just last year, the Courts of Appeal for the 7th and 9th Circuits became the first to join with the National Labor Relations Board (NLRB) in ruling that class waivers violate the National Labor Relations Act (NLRA). In a decision issued

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May 26, the 6th Circuit – which hears federal cases arising from Ohio, Kentucky, Tennessee, and Michigan – jumped on the bandwagon and agreed that mandatory class waivers interfere with workers’ rights to engage in protected concerted activity (*NLRB v. Alternative Entertainment, Inc.*). The saving grace for employers in Ohio, Kentucky, Tennessee, and Michigan is that the U.S. Supreme Court has already agreed to rule on this issue once and for all during the October 2017 term. Employers can hope that this prohibition is a short-lived one, but may have to adjust policies and practices for the immediate future (read more [here](#)).

3. TRUMP’S BUDGET PROPOSAL WOULD OVERHAUL FEDERAL CONTRACTOR AGENCY, MANDATE E-VERIFY FOR ALL EMPLOYERS, AND CREATE NATION’S FIRST PAID PARENTAL LEAVE PROGRAM

When President Trump’s proposed budget for FY 2018 was released on May 23, there were plenty of proposals that would impact the world of workplace law. Three of the biggest suggested changes:

- ***Federal Contractor Agency To Be Radically Overhauled Under Trump Budget Proposal*** – The proposed federal budget would have a dramatic impact on the Department of Labor’s Office of Federal Contract Compliance Programs (OFCCP), the watchdog agency overseeing the federal government’s affirmative action programs. Not only does the budget proposal call for the OFCCP to be subsumed into the Equal Employment Opportunity Commission (EEOC) by the end of FY 2018 (September 30, 2018), but it would significantly slash the agency’s budget and employee allotment leading up to that consolidation (read more [here](#)).
- ***Mandatory E-Verify And Boosted Enforcement Among Immigration Requests In Trump Budget*** – Although President Trump’s proposed budget for FY 2018 contains no real surprises when it comes to the immigration provisions, adoption of the measures proposed would continue the dramatic transformation set out by the new administration. The budget supports President Trump’s promises to increase immigration enforcement, build a physical wall on the nation’s southern border, limit refugees, and reform the immigration system. Further, the budget requests the funds to implement the items contained in the president’s immigration executive orders



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signed in January, including the adoption of mandatory E-Verify for all employers and the creation of a merit-based admissions system (read more [here](#)).

- ***Paid Parental Leave One Step Closer To Reality*** – If the president has his way, employees will be eligible to receive up to six weeks of paid parental leave by the year 2020. However, employers will not be on the hook to provide the compensation for this program. Instead, the administration proposes that paid parental leave would be “fully offset” by a package of reforms to the state unemployment insurance system. While specific legislation still needs to be developed and approved by Congress to install this program, this marks the first time that such a leave proposal has been advanced in a presidential budget (read more [here](#)).

4. FEDERAL APPEALS COURT REJECTS TRUMP’S SECOND TRAVEL BAN

In a 10-3 decision, the 4th Circuit Court of Appeals upheld the nationwide injunction that had blocked President Trump’s second executive order banning certain travel into the country from taking effect on May 25. The court held that the text of the second executive order, also known as EO-2, “speaks with vague words of national security, but in context drips with religious intolerance, animus, and discrimination.” Although another appeal is still pending before the 9th Circuit Court of Appeals, and a ruling from that court could come at any time, yesterday’s ruling means that the travel ban will remain blocked regardless of how that court rules. While U.S. Attorney General Jeff Sessions immediately stated that the administration will seek review by the Supreme Court, the 4th Circuit’s decision means that things remain status quo for employers and their employees seeking entry into the U.S. (read more [here](#)).

5. FEDERAL LEGISLATION SEEKS TO ADVANCE PORTABLE BENEFITS FOR GIG WORKERS

Rumors swirled for several months of imminent federal legislation that would introduce the concept of portable benefits for gig economy workers. On May 25, the concept took a big leap forward with the introduction of the “Portable Benefits for Independent Workers Pilot Program Act” by Senator Mark Warner (D-Virginia). The legislation would provide for \$20 million in grant funding to assist states,



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localities, and nonprofit organizations to experiment with portable benefits models for gig economy workers. A companion measure was introduced in the House of Representatives by Rep. Suzan DelBene (D-WA). The legislation appears largely to be based on a Benefits Innovation Fund proposal advocated for by the Aspen Institute's Future of Work Initiative (read more [here](#)).

6. CALIFORNIA SUPREME COURT'S "DAY OF REST" RULING PUTS EMPLOYERS AT EASE

In an unanimous decision, the California Supreme Court held on May 8 that California's law requiring one day of rest in seven looks only at the employer's defined workweek when determining the applicable period of time to be analyzed for compliance and liability purposes, and does not specifically require employers to provide one day of rest after six preceding calendar days of work. This decision is a big relief for those employers who schedule employees week-by-week without necessarily considering when the employees worked the previous week, outlining a clear and direct way that employers can comply with the state's Labor Code (*Mendoza v. Nordstrom*).

The decision provides further good news for employers by concluding that their sole obligation is to apprise their workforces of their entitlement to a day of rest and that they can thereafter let the employees decide on their own if they choose to schedule themselves to work a seventh day. By defining what it means for an employer to "cause" its employees to work more than six days in seven in an employer-friendly manner, the state's highest court has created a system that will provide maximum scheduling flexibility for both employers and their workers.

However, the decision does narrow an exception some employers may have relied upon that seemingly provided an escape from liability if an employee worked less than six hours during at least one of the days examined. That exception now only applies if the employee works less than six hours in each of the weeks under the microscope (read more [here](#)).

7. NYC SCHEDULING LAWS WILL CONSTRAIN EMPLOYERS' SCHEDULING AND FLEXIBILITY



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New York City Mayor Bill de Blasio signed a suite of legislation dubbed the “Fair Workweek” bills into effect on May 30, which will limit the scheduling practices and flexibility of certain employers operating in the city. These laws are aimed at giving retail and fast food employees more notice and predictability in their schedules, while compensating them with extra pay for last-minute schedule changes. They are scheduled to effect November 26, 2017 (read more [here](#)).

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8. BILLS INTRODUCED TO INCREASE NATIONAL MINIMUM WAGE

Legislation was introduced in the U.S. Senate (S. 1242) and in the U.S. House of Representatives (H.R. 15) on May 25 that would immediately increase the federal Fair Labor Standards Act’s minimum wage from today’s \$7.25 an hour to \$9.25 an hour, and then to \$15 an hour in seven annual steps. If passed, increases (but never decreases) in the rate would thereafter be pegged to the median hourly wage of all employees as determined by the U.S. Bureau of Labor Statistics (read more [here](#)).

9. HOUSE TAKES FIRST STEP TOWARDS ACA REPEAL

The House of Representatives took the first affirmative step towards repeal and replacement of the Affordable Care Act (ACA) on May 4. After a failed attempt to pass legislation earlier this year, the House gathered the needed votes to pass the American Health Care Act (AHCA) by a narrow 217-213 margin. However, given that this is only the first preliminary step in a longer process, and given that the AHCA would probably be substantially revised before final implementation, employers should take no immediate actions in response to this development (read more [here](#)).

10. GEORGIA’S NEW SICK LEAVE LAW APPEARS TO BE MORE BARK THAN BITE

Many workers in Georgia who receive sick leave from their employers will soon be entitled to use such leave to care for family members, thanks to a new law signed into effect by Governor Nathan Deal on May 8. The new law does not require Georgia employers to provide sick leave, rather it allows employees to use already earned sick leave for the care of immediate family members. Accordingly, it is not

expected to add significant burdens to employers in the state (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.