

SEPTEMBER 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. The law always seems to evolve at a rapid pace, and September 2017 was no different. 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. SCOTUS Appears Ready To Deal Devastating Blow To Public Unions

In a move that must have labor unions across the country trembling with fear, the Supreme Court announced on September 28 that it will once again take up the issue of whether public sector agency shop fee arrangements are prohibited by the First Amendment (*Janus v. American Federation of State, County, and Municipal Employees, Council 31*). If the Court rules as expected and strikes down these common arrangements, it would be a big blow to the influence that labor has across the country (read more [here](#)).

2. What Does DACA Rescission Mean For Employers?

Attorney General Jeff Sessions announced on September 5 that the Department of Homeland Security will immediately "wind down" the Deferred Action for Childhood Arrivals (DACA) program. This action will affect almost 800,000 young people in the United States by ending their temporary protection under deferred action and their ability to hold proper work authorization. This announcement has received widespread attention in the news media, but what does it mean for the nation's employers? Read more [here](#).

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3. **President Trump Revises Travel Ban A Third Time**

President Trump signed a new and revised “travel ban” in September, soon after the expiration of his second temporary travel ban. This latest executive order, signed on September 24, more directly targets individuals from a new list of seven countries and will create a new travel ban beginning October 18. What do employers need to know about Travel Ban 3.0? Read more [here](#).

4. **Hurricane Irma Slams Florida, Leaving Employers With Many Questions In Its Wake**

In early September, Hurricane Irma battered Florida and Georgia. The catastrophic impact of the hurricane led to many questions from employers, on topics such as military and family leave, unemployment claims, workplace safety, employee benefits and charitable giving, wage and hour compliance, labor relations, workers’ compensation coverage, immigration, and plant closing laws. Fisher Phillips updated its comprehensive series of FAQs to aid employers through this natural disaster; it can be accessed [here](#).

5. **Workers File Equal Pay Class Action Lawsuit Against Google**

Google, Inc. is the latest high-profile employer in an onslaught of class actions by female employees alleging systemic discrimination in pay against women. Coupled with the Office of Federal Contract Compliance Program’s (OFCCP) investigation into Google’s pay practices and the recent media firestorm over a memo by a disgruntled male (now former) employee, this September 14 class action lawsuit has brought Google’s compensation practices into the spotlight (read more [here](#)).

6. **Trial Against Gig Economy Classification System Wraps Up**

The evidentiary phase of the Grubhub misclassification trial took place in September; now the gig economy world waits with bated breath for a final ruling. For those unfamiliar with the situation, this could be the first time the common classification system in the gig economy is on trial. A former delivery driver, Raef Lawson, alleges he was actually an employee and should be compensated for unreimbursed expenses, while the company adamantly argues that he was correctly classified as an independent contractor. Although less than \$600 in damages is on the line, the very nature of the gig classification system could be at stake, as a negative



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ruling could open the floodgates for untold numbers of gig workers across the country to claim they are actually employees (read more [here](#)).

7. Fisher Phillips Offers Comments To Labor Department On Exemption Rules

Fisher Phillips filed a series of extensive remarks on September 25 in response to the U.S. Department of Labor's (USDOL's) Request for Information seeking additional public comment regarding the 2016 compensation revisions to the agency's regulations defining the federal Fair Labor Standards Act's (FLSA's) so-called "white collar" exemptions. The RFI contained eleven broad questions and numerous subparts, many of which touched upon matters we raised in our 2015 Comments concerning the revisions proposed at that time, which preceded the promulgation of the controversial "overtime rule." To read a summary of our comments, click [here](#).

8. Judge OK's \$8.75 Million Postmates Misclassification Settlement

A federal judge in California gave his blessing to an \$8.75 million settlement in the ongoing litigation by delivery drivers against the food courier service, Postmates. In the class action suit, which was filed in March 2015, delivery drivers claimed that they were misclassified as independent contractors and were paid less than minimum wage. They contended that by labeling them independent contractors instead of employees, Postmates violated California labor statutes, the FLSA, and the California Private Attorneys General Act (PAGA). The plaintiffs asked the court to grant them nationwide class status, which ratcheted up the stakes significantly. Rather than wage war in the courtroom, the two sides agreed to work out a deal (read more [here](#)).

9. Education Secretary Rescinds Obama-Era Campus Sexual Assault Guidance

In a long-anticipated move, the United States Department of Education Office for Civil Rights withdrew the Obama Administration's 2011 Dear Colleague Letter on Sexual Violence on September 22, as well as its Questions and Answers on Title IX and Sexual Violence. It also issued a replacement "Q&A on Campus Sexual Misconduct," which will provide institutions with guidance on an interim basis pending formal regulations to be issued by the



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Department. You can read our firm's definitive FAQ on the impact of this development [here](#).

10. USDOL Drops Appeal In Overtime Rule Case

As expected, the USDOL dropped the 5th Circuit Court of Appeals case that had originally been filed by the agency during the Obama presidency. Once the lower district court [struck down the rule itself in late August](#), it seemed only a matter of time before the federal agency, now heading by Secretary Alexander Acosta, would drop the pending challenge that had sought to overturn the preliminary injunction which had first blocked the rule. The agency requested the appeal be dismissed on September 5, and the court granted its wish on September 7 (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.