November 2017: The Top 14 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 the law always seems to evolve at a rapid pace, there have been an unprecedented number of changes each month in 2017. November was no different, with so many significant developments taking place during the month that we were forced to expand our monthly summary beyond the typical "Top 10" list. In order to make sure that you stay on top of the latest changes, here is a quick review of the Top 14 stories from last month that all employers need to know about:

1. **Growing Sexual Harassment Concerns Demand Immediate Employer Action** – For several months now, it seems that each new day has brought about a fresh round of reporting on yet another high-profile sexual harassment accusation. The victimized women and men now feel empowered to publicly share their stories, leading to a cascading effect that is not likely to subside anytime soon, and we are all reexamining our current and past workplace conditions with a newfound clarity. Equally as troubling as the actual allegations of misconduct is the fact that these reports have pulled back the curtain to reveal organizational cultures that have often permitted the systemic and pervasive harassment to continue for years on end. The time is now to examine your organizational culture to ensure that you are not only providing a workplace free of harassment, but also a workplace culture that does not embolden your employees from carrying out unprofessional and hurtful behavior. The good news is that this is a fairly straightforward process, and we have boiled it down to a five-step plan that you can implement immediately (read more here).
2. **EEOC Earns First-Ever Title VII Court Win In LGBT Discrimination Case** – The federal watchdog agency that oversees federal antidiscrimination law just scored a milestone victory when a judge awarded $55,500 to a telemarketer who alleged to have been forced off the job because of sexual orientation discrimination. The November 16 decision brings to an end one of the first cases brought by the Equal Employment Opportunity Commission (EEOC) on the theory that Title VII – the federal law prohibiting job discrimination based on "sex" and other protected classes – also prohibits LGBT bias. It also marks the first time that a lawsuit brought by the EEOC on this theory has led to a successful judgment, and should serve as an eye-opener for employers across the country (read more here).
3. **Brace for Impact: IRS Says ACA Employer Mandate Penalties Coming** – The IRS quietly revised its FAQ on employer shared responsibility provisions under the Affordable Care Act (ACA) on November 22, adding a bombshell statement that it plans to inform employers of their "potential liability for an employer shared responsibility payment, if any, in late 2017." The announcement

liability for an employer shared responsibility payment, if any, in late 2017." The announcement should put employers on high alert at the close of the year and requires immediate attention (read more here).

4. **Proposed Joint Employment Law Clears Important Hurdle, Passes House** -- By a vote of 242 to 181, the House of Representatives passed the "Save Local Business Act" on November 7, a bill that would significantly narrow the definition of "joint employment" and limit employers' wage and labor problems. HR 3441 will now move to the Senate, and if it passes a vote there and receives the signature of the president, it will significantly reduce the risk of unwarranted legal claims based on a claim of joint employment (read more here).
5. **Federal Paid Leave Proposal Introduced In Congress** -- If a proposal introduced in the U.S. House of Representatives on November 2 were to pass Congress and be signed into law by President Trump, the country's employers would find themselves facing the first-ever federal paid leave act: the "Workflex In The 21st Century Act." There's good news, however: employers would choose whether to opt in to the paid leave program, and if they do, they would receive a safe harbor ostensibly absolving them from complying with state and local paid leave laws (read more here).
6. **EEOC's Online Filing Tool For The Public Is Now Fully Operational** – The latest tool that can be used against employers is now fully operational. The Equal Employment Opportunity Commission's (EEOC's) online filing portal, or Public Portal, which was tested in five cities over the past six months, was just rolled out across the entire country. As of November 1, individuals are now able to initiate discrimination charges against employers using the EEOC's digital platform. What do employers need to know about this 21st-century development? (read more here)
7. **AG's Conflicting Marijuana Policy Comments Leave Some Dazed And Confused** – If you have been following recent comments by Attorney General Jeff Sessions in an attempt to predict marijuana policy under the Trump Administration, you might be left scratching your head. In recent comments before Congress on November 14, Sessions seemed to provide a clear indication that the federal government would not soon change course to ramp up enforcement of federal anti-marijuana law. Then, during a November 29 press conference, Sessions seemed to suggest that his Justice Department might soon take a tougher enforcement stance on recreational marijuana – something of particular interest to the growing list of states that have legalized recreational marijuana. All of this might leave you feeling dazed and confused, and it might not have anything to do with something you may or may not have smoked. What, if anything, should employers make of these recent comments? (read more here)
8. **Anarchy In The UK: What Does Milestone Misclassification Ruling Mean For American Gig Economy Companies?** – While misclassification battles over the status of gig economy workers rage here in the United States, we are by no means the only country grappling with these thorny 21st-century legal issues. On November 10, in fact, an appeals tribunal in the United Kingdom ruled against Uber by agreeing two drivers who brought a claim against the ride-sharing giant should be classified as employees and not independent contractors, therefore entitling them to minimum wage payment and statutory holiday pay. This watershed decision could spell serious

trouble not only for Uber but for many other gig companies operating in the UK. The question that American businesses need to be asking now is: "will this decision impact us in any way?" (read more here)

9. **OSHA Extends Compliance Date For Electronically Submitting Injury And Illness Reports** – OSHA posted a press release on November 22 announcing two week reprieve for employers – from December 1 to December 15, 2017 – to electronically submit their mandatory injury and illness reports through the 300A form system (read more here).
10. **Unanimous Supreme Court Scolds Lower Court Over Appellate Deadline Rule** – In a unanimous decision, the U.S. Supreme Court ruled on November 8 that a federal procedural rule that allows a district court to extend an appeal deadline by no more than 30 days is a non-jurisdictional, mandatory claims processing rule. While this is a generally inconsequential decision when it comes to workplace law, it is a decision about which every litigant and participant in the judicial system should be aware, as it could impact litigation options and strategy. While the decision in *Hamer v. Neighborhood Housing Services of Chicago, et al* might potentially lead to a slight uptick in extension requests from pro se plaintiffs and overall delays in commencing appeals, it may also have a marginal impact on appellate litigation (read more here).
11. **Rules Proposed For NYC's Fair Workweek Law** -- New York City's Department of Consumer Affairs (DCA), the agency tasked with enforcing the city's new "Fair Workweek Law," issued proposed rules to implement the legislation and provide guidance to covered employers and workers. Given that the law took effect on November 26, 2017, you should familiarize yourself with the relevant statutes and examine the regulations so that you are in a position to be in full compliance (read more here).
12. **New York State to Address Employee Scheduling** – New York City's Fair Workweek Law took effect on November 26, thereby limiting the scheduling options and reducing the flexibility of retail and fast food employers. Not to be outdone, New York State is about to add additional restrictions regarding on-call practices statewide. On November 10, Governor Cuomo proposed statewide regulations targeting "on-call" scheduling. The regulations seek to curb employers' ability to require an employee to be available to work only if needed, and to either contact the employer or wait to be contacted by the employer about whether to report to work – even if just shortly before the shift is scheduled to start (read more here).
13. **Bad Break: Oregon Employer Pays Quarter-Million Dollar Wage & Hour Fine** – The Oregon state agency charged with enforcing the state's wage and hour laws announced the largest civil penalty against an employer in its long history on November 2 – nearly $277,000. According to the Oregon Bureau of Labor and Industries, Portland's Legacy Emanuel Medical Center will be forced to pay over a quarter-million dollars to resolve allegations that many of the organization's workers were not receiving mandatory meal periods and paid breaks in accordance with state law. What can other Oregon employers learn from this situation to avoid a similar fate? (read more here)

14. **Illinois Salary Ban Fails, But This May Not Be The Last We See Of It** – An Illinois proposal that would have prevented employers from requiring applicants to disclose their prior wages or salary during the hiring process unexpectedly failed during the Illinois General Assembly veto session on November 9. This comes as a surprise, as earlier this year, the proposed amendments and expansion to the Illinois Equal Pay Act passed through the House and the Senate with strong majorities. Don't get fooled into thinking we've seen the last of it, however, as signs point to a renewed attempt to pass similar legislation in the near future (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.

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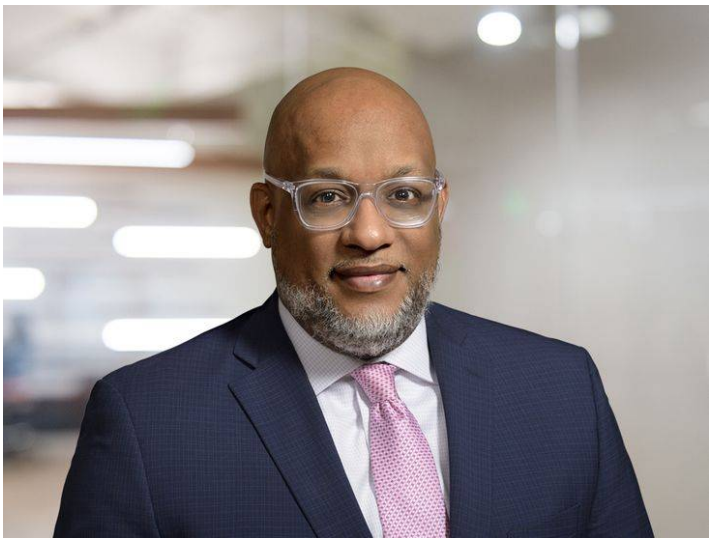

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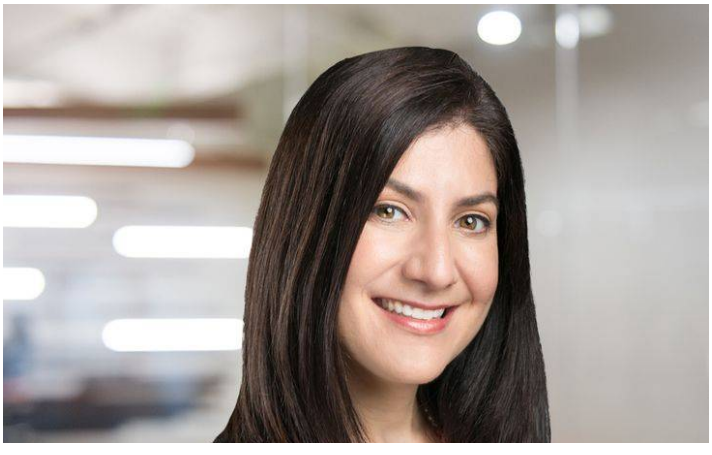

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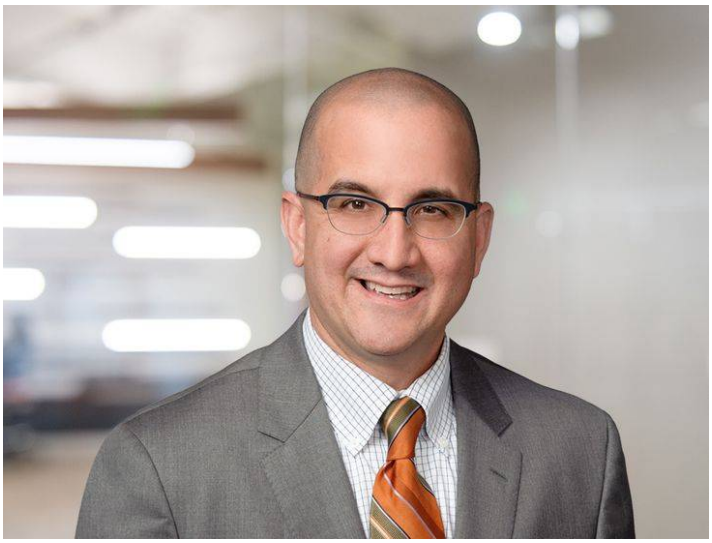

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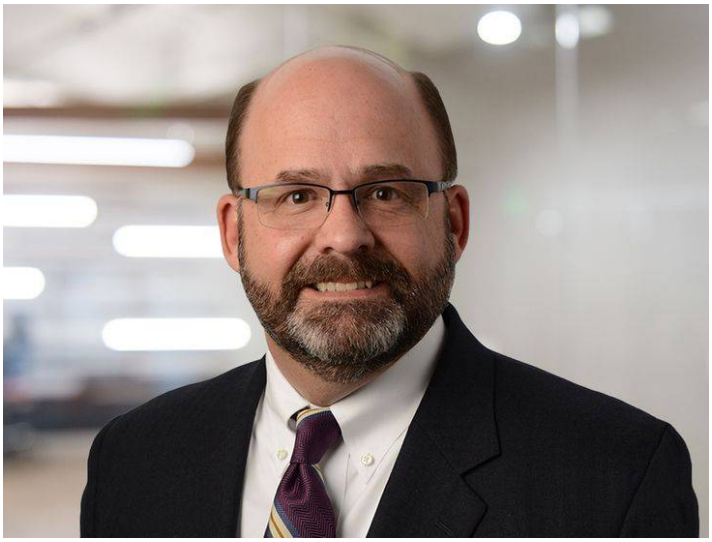

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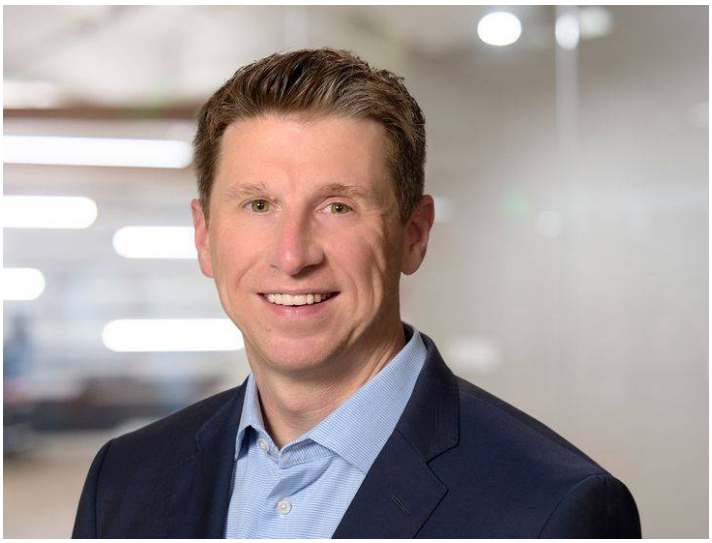

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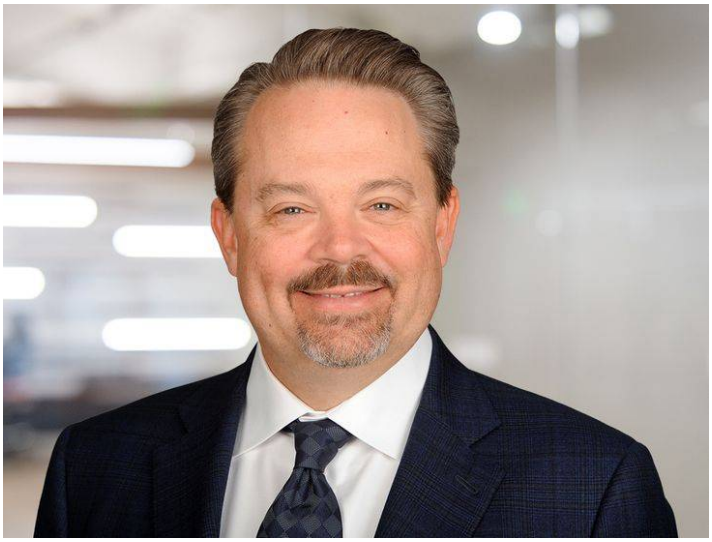

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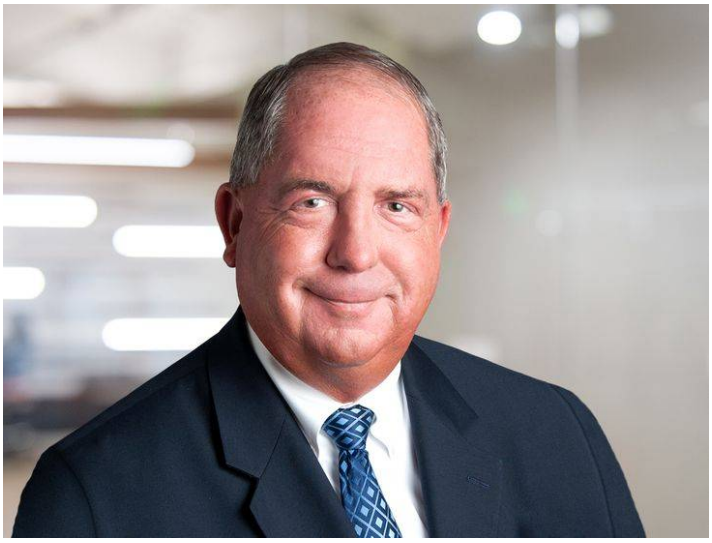

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