<http://www.natlawreview.com/article/disability-and-leave-law-under-president-trump-what-s-next#main-content>

National Law Review

Disability and Leave Law Under President Trump: What’s Next?

Thursday, January 26, 2017

Since Election Day, prognosticators and pundits have been speculating about how the Trump Administration’s actions will impact existing laws and regulations. Now that President Trump and his team have hit the ground running, what can we expect from the Department of Labor (including OFCCP [Office of Federal Contract Compliance Programs]), the EEOC and the President’s own executive actions in the areas of workplace disability and leave law? A brief guide appears below.

Department of Labor: The confirmation hearing for Trump’s Secretary of Labor nominee, Andrew Puzder, has been postponed from February 2 to February 7. If Puzder is confirmed, the DOL is expected to take more pro-business positions in both its litigation priorities and regulatory actions. Under Puzder’s leadership, the DOL may rescind existing regulations using the Administrative Procedure Act’s “notice and comment” procedures. Congress also has a variety of tools for invalidating unwanted Obama Administration regulations, including defunding their enforcement and invalidating recent regulations using the Congressional Review Act. Finally, the Obama Administration discontinued the DOL’s longstanding practice of issuing opinion letters interpreting the FLSA and FMLA; that practice may resume under Trump. More background on Puzder can be found in the article, Fast-Food Restaurant CEO Tapped to Head Labor Department: What to Expect.

OFCCP: During Republican administrations, the OFCCP tends to adopt more focused, targeted compliance efforts and audits, compared to more wide-ranging and aggressive enforcement efforts by Democratic OFCCPs. Under President Trump and Secretary-to-be Puzder, government contractors are likely to see an OFCCP refocused on more traditional priorities such as hiring and adverse impact; veterans; persons with disabilities; and recruitment of minorities and women.

EEOC: Shortly before the election, the EEOC issued an updated Strategic Enforcement Plan (SEP) for the fiscal years 2017-2021. This SEP reaffirmed and expanded the goals set forth the 2011-2016 SEP. ADA and Pregnancy Discrimination Act (PDA)-related priorities in both SEPs include the accessibility of online recruitment systems; ensuring pre-employment medical questionnaires are lawful; so-called “inflexible” leave policies; and accommodation of pregnant and disabled workers. It remains to be seen how much of the SEP will survive and guide upcoming EEOC actions and priorities. In addition, President Obama’s EEOC used litigation as an aggressive tool to advance EEOC goals. Employers can expect less vigorous enforcement and more compliance initiatives under a Republican-dominated EEOC. As a first step, on January 25, President Trump named the only Republican on the Commission, Victoria A. Lipnic, as Acting Chair (for more information, see the Jackson Lewis article President Appoints Victoria Lipnic EEOC Acting Chair). Changes to the composition of the Commission will not occur immediately, however, as the terms of the three Democratic Commissioners end in a staggered fashion between July 2017 and July 2019. Unless one of the Democratic Commissioners resigns, which is not expected, the EEOC will not have a Republican majority until July 1, 2017 at the earliest, which is the date that Commissioner Jenny Yang’s term ends.

Executive Orders: As a candidate, Trump said he would invalidate all of President Obama’s executive orders. EO’s of interest to employers include the Fair Pay and Safe Workplaces order and an order establishing seven days of paid sick leave for employees who work on or support government contracts. The Fair Pay and Safe Workplaces order and related regulations are expected to be on the chopping block soon. There has been no word yet on the paid sick leave order.

The Supreme Court: President Trump has announced that he will identify a nominee on February 2 to fill the seat vacated by the late Justice Scalia. Top contenders reportedly include Tenth Circuit Judge Neil Gorsuch, Third Circuit Judge Thomas Hardiman and Eleventh Circuit Judge William Pryor. Gorsuch authored Hwang v. Kansas State University, a 2014 decision in which the Tenth Circuit determined that a leave of absence of more than six months was not a reasonable accommodation and upheld the employer’s so-called “inflexible” leave policy. Hardiman wrote an unpublished opinion in 2008 in Lloyd v. Washington & Jefferson College, finding that an employee’s request to be present at the workplace only three days a week was not a reasonable accommodation because it would have excused him from performing essential job functions. In addition, three of the existing Justices are age 78 or older, so a lengthy Trump presidency could impact the Court for years to come.

Wild card: Reportedly influenced by his daughter Ivanka, President Trump has proposed six weeks of paid maternity leave for new mothers, to be structured similar to unemployment and funded with savings achieved through cracking down on unemployment fraud. Stay tuned for further developments in the first 100 days.

Jackson Lewis P.C. © 2017

.

/

/Printer-friendly

/Email this Article

/Download PDF

REPRINTS & PERMISSIONS

Related Articles

President Names Miscimarra as Acting Chair of the National Labor Relations Board

Right to Light? Maine’s New Marijuana Law Prohibits Employers from Discriminating Against Recreational Users

President Trump Appoints Philip A. Miscimarra Acting Chair of National Labor Relations Board – The Beginning of the End of the “Obama Board”

Advertisement

NAMWOLF Business Meeting, Ft. Lauderdale, FL, February 12-14, 2017

TRENDING LEGAL ANALYSIS

OSHA Reporting Rule Takes Effect

By

Dinsmore & Shohl LLP

CMS Plans To Reopen Cap Demands Forever

By

Sheppard, Mullin, Richter & Hampton LLP

FDA Issues Draft Guidance on Communications That Are Consistent with FDA-Required Labeling

By

McDermott Will & Emery

Say What You Need to Say: Supreme Court Clears Path for Implied Certification Theory of Liability Under False Claims Act

By

Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

Advertisement

About this Author

Teresa Burke Wright, Jackson Lewis, contracts litigation lawyer, administrative proceedings attorney

Teresa Burke Wright

Principal

Teresa Wright is a Principal in the Washington, D.C. Region office of Jackson Lewis P.C. She represents numerous employers in both litigation and administrative proceedings and advises clients with respect to state and federal employment laws.

Ms. Wright has handled jury trials and other litigation involving discrimination, harassment, the Americans with Disabilities Act, the Fair Labor Standards Act, the Family and Medical Leave Act and wrongful termination. She also counsels management regarding employment issues,...

WrightT@jacksonlewis.com

703-483-8310

www.jacksonlewis.com

Advertisement

Advertisement

National Law Review

Antitrust Law

Bankruptcy & Restructuring

Biotech, Food & Drug

Business of Law

Construction & Real Estate

Election

Environmental & Energy

Family, Estates & Trusts

Financial, Securities & Banking

Global

Health Care Law

Immigration

Insurance

Intellectual Property Law

Labor & Employment

Litigation

Media & FCC

Tax

Law Student Writing Competition

Sign Up For NLR Bulletins

Terms of Use

Privacy Policy

FAQs

You are responsible for reading, understanding and agreeing to the National Law Review's (NLR’s) and the National Law Forum LLC's Terms of Use and Privacy Policy before using the National Law Review website. The National Law Review is a free to use, no-log in database of legal and business articles. The content and links on www.NatLawReview.com are intended for general information purposes only. Any legal analysis, legislative updates or other content and links should not be construed as legal or professional advice or a substitute for such advice. No attorney-client or confidential relationship is formed by the transmission of information between you and the National Law Review website or any of the law firms, attorneys or other professionals or organizations who include content on the National Law Review website. If you require legal or professional advice, kindly contact an attorney or other suitable professional advisor.

Some states have laws and ethical rules regarding solicitation and advertisement practices by attorneys and/or other professionals. The National Law Review is not a law firm nor is www.NatLawReview.com intended to be a referral service for attorneys and/or other professionals. The NLR does not wish, nor does it intend, to solicit the business of anyone or to refer anyone to an attorney or other professional. NLR does not answer legal questions nor will we refer you to an attorney or other professional if you request such information from us.

Under certain state laws the following statements may be required on this website and we have included them in order to be in full compliance with these rules. The choice of a lawyer or other professional is an important decision and should not be based solely upon advertisements. Attorney Advertising Notice: Prior results do not guarantee a similar outcome. Statement in compliance with Texas Rules of Professional Conduct. Unless otherwise noted, attorneys are not certified by the Texas Board of Legal Specialization, nor can NLR attest to the accuracy of any notation of Legal Specialization or other Professional Credentials.

The National Law Review - National Law Forum LLC 4700 Gilbert Ave. Suite 47 #230 Western Springs, IL 60558 Telephone (708) 357-3317 If you would ike to contact us via email please click here.

Copyright ©2017 National Law Forum, LLC

HIDE

The National Law Review

We collaborate with the world's leading lawyers to deliver news tailored for you. Sign Up to receive our free e-Newsbulletins

Sign Up For Free

FB

twt

gp

link

home

rss

Cookies & PrivacyNo Thank