LITTLER WORKPLACE POLICY INSTITUTE

INSIDER REPORT

Current Events Monthly Newsletter | January 2017

INSIDER BRIEFING

On January 3, 2017, the 115th Congress officially commenced. Donald Trump will be sworn into office as the 45th President of the United States on January 20. The last days and weeks of the Obama administration have been marked by a flurry of activity to enshrine as much of its agenda as possible before the new administration takes over. Meanwhile, the incoming Republican-controlled Congress and administration are poised to try to roll back as quickly as possible much of President Obama's legislative and regulatory legacy.

Nominations for key cabinet-level positions charged with advancing the agenda of President-elect Trump and reversing much of his predecessor's policies have been announced. On December 9, 2016, President-elect Trump formally named restaurant and business leader Andy Puzder as his choice to be the next Secretary of Labor. Puzder, the CEO of CKE Restaurants, is a long-time advocate for job creation. His nomination was met with enthusiasm by members of the business community seeking a change in course from current DOL policies considered administratively burdensome, hampering job creation, and out of sync with the 21st century workforce.

Hoping to quickly confirm Puzder as the new Secretary of Labor, the Senate Health, Education, Labor and Pensions Committee has scheduled a confirmation hearing for January 17 with full Senate confirmation planned as soon as possible upon Trump's inauguration. Yet, Senate Democrats and labor advocates have indicated that the confirmation process may not be as quick as hoped for and that Puzder may face some criticism along the way.

Although Democrats retain a voice in the confirmation process of Puzder and other nominees, their ability to delay approval is limited. ⏩

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INSIDER BRIEFING (continued)

Changes to the Senate filibuster rules initiated by former Democratic Leader Harry Reid several years ago paved the way for confirmation by a simple majority vote of nominations to the Executive Branch and to the Judiciary (other than to the Supreme Court). With 52 seats in the Senate, Republicans can approve these nominations without the support of any Democrats if necessary. Though the confirmation of a number of Trump's nominees may fall along party lines and require Senate floor time to approve, their appointments are nonetheless generally expected. The announcement of other nominations to key positions at the DOL to head the Department's sub-agencies, including the Wage and Hour Division (WHD) and Occupational Safety and Health Administration (OSHA), could come fairly soon.

While the halting of some Obama-era policies may happen rather quickly, others may have to wait for a new rulemaking or administrative process to set forth what the new course will be.

As the Senate begins the 115th Congress with plans to shepherd nominations through the chamber as quickly as possible, the House will begin its legislative calendar by considering bills aimed at blocking the current administration's so-called "midnight regulations" – those issued in the waning days of the outgoing administration. During the first week of the new Congress, the House passed the Midnight Rules Relief Act of 2017 (H.R. 21), sponsored by Rep. Darrell Issa (R-CA), and the Regulations from the Executive in Need of Scrutiny (REINS) Act of 2017 (H.R. 26), sponsored by Rep. Doug Collins (R-GA).

The Midnight Rules Relief Act is similar to legislation the House passed on November 17, 2016. The bill would amend the Congressional Review Act (CRA) to allow joint resolutions disapproving *en bloc* regulations submitted to Congress for review within 60 legislative days of the end of a presidential term. Under current law, Congress can only use the CRA to disapprove one regulation at a time.

The other bill considered, the REINS Act, would require all new major regulations with an economic impact of $100 million or more to be subject to an up-or-down vote by both the House and Senate and the President's signature before they could take effect. A similar bill, H.R. 427, passed the House on July 28, 2015. It is unclear what, if any, action on these bills is planned in the Senate, where the legislation faces a 60-vote threshold to pass.

In the last full month of the current administration, the DOL issued a number of midnight regulations, some more controversial than others. On December 12, 2016, OSHA issued a final rule amending its recordkeeping regulations to clarify that the duty to make and maintain accurate records of work-related injuries and illnesses is an ongoing obligation. The final rule provides that the duty to record an injury or illness continues for as long as the employer must keep records of the recordable injury or illness; the duty does not expire just because the employer failed to create the necessary records when first required to do so. The amendments in the final rule were adopted in response to the U.S. Court of Appeals for the District of Columbia Circuit's decision holding that the OSH Act does not permit OSHA to impose a continuing recordkeeping obligation on employers.

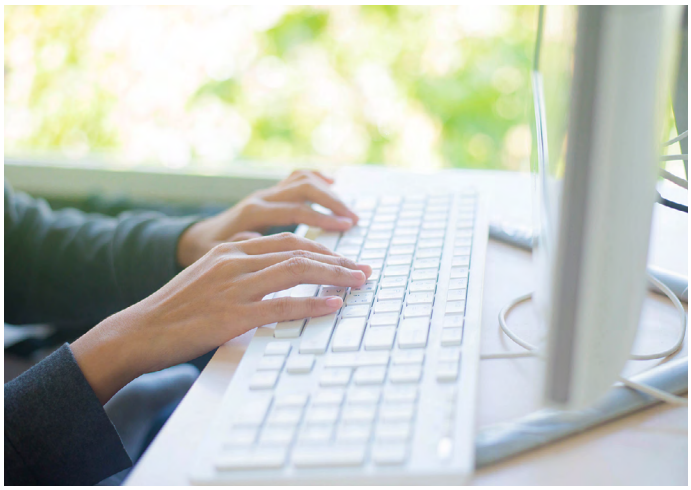
One judge filed a concurring opinion disagreeing with this reading of the statute, but finding that the text of OSHA's recordkeeping regulations did not impose continuing recordkeeping duties. OSHA states that it "disagrees with the majority's reading of the law, but agrees that its recordkeeping regulations were not clear with respect to the continuing nature of employers' recordkeeping obligations." The final rule is "designed to clarify the regulations in advance of possible future federal court litigation that could further develop the law on the statutory issues addressed in the D.C. Circuit's decision."

In a less-controversial action, on December 14, 2016, OSHA issued a final rule implementing the whistleblowing procedures for Section 31307 of the Moving Ahead for Progress in the 21st Century Act (MAP-21). The DOL also issued a final rule updating the EEO portions of the National Apprenticeship Act of 1937.

On December 20, 2016, the DOL's Employee Benefits Security Administration (EBSA) issued a final rule amending a final regulation that describes how states may design and operate payroll deduction savings programs for private-sector employees, including programs that use automatic enrollment, without causing the states or private-sector employers to have established employee pension benefit plans under the Employee Retirement Income Security Act of 1974 (ERISA). The amendment expands the final regulation beyond states to cover qualified state political subdivisions and their programs that otherwise comply with the regulation. This final rule affects individuals and employers subject to such programs.

A day earlier, the EBSA published a final rule revising the claims procedure for plans providing disability benefits. Meanwhile, EBSA's controversial final fiduciary rule survived another court challenge when the D.C. Circuit denied the National Association for Fixed Annuities' emergency motion to delay the rule. Other challenges to the rule are still pending. Yet, opponents of the fiduciary rule are no doubt looking to the incoming DOL to reverse the rule touted as a cornerstone of the current DOL's "middle class economics" agenda.

Not all last-minute action from the current administration comes from regulations. Reflecting its continuing focus on worker misclassification, the DOL has created a "user-friendly" webpage where workers, employers and government agencies



can find information and resources: www.dol.gov/misclassification. The webpage includes links to the DOL's previously-issued and controversial directions on the topic, such as the July 2015 Administrator's Interpretation on the application of the Fair Labor Standards Act's "suffer or permit" standard for identifying employees who are misclassified as independent contractors. This webpage and its referenced guidance are very unlikely to remain under the incoming DOL. Rescission of such guidance may be among the first acts of the new DOL. However, crafting the guidance that comes in its place may take longer to develop, and certainly not until key policy positions within the DOL are filled.

As employers look ahead to workplace policy developments under the Trump administration and the 115th Congress, they should recognize that while a change in course to the past eight years of workplace policy will no doubt come, it will not happen overnight.

ON THE MOVE

In the final days of 2016, state and local governments pushed bills and ordinances affecting the minimum wage, paid leave, pay equity, hiring, and work scheduling, among other employment topics. Enacting local measures to effect workplace change is only expected to increase in the coming year. As a counterbalance to the patchwork of employment laws emerging at the local level, preemption statutes will likely gain prominence in the coming months to stem this trend. Such bills aim to prevent municipalities from requiring private sector employers to provide employees with a level of benefits not set by state or federal statute.

While only a handful of state legislatures were active in December, most will re-convene by the end of January 2017. Therefore, the key measures discussed below are just a prelude to things to come.

Minimum Wage

Although California's state-wide minimum wage is set to hit $15.00 per hour by 2023, San Jose workers will get there sooner. As expected, the city adopted a new minimum wage ordinance, raising the city's minimum floor to $15.00 per hour by July 1, 2019. By July 1, 2017, the rate will rise from $10.50 to $12.00 per hour; by July 1, 2018, the minimum hourly rate will increase to $13.50. Meanwhile, on January 1, 2017, the City of Richmond, California's minimum wage increased to $12.30 per hour.

New York employers must contend new increases to the minimum salary levels for overtime-exempt employees. In late December, the New York State Department of Labor issued revised wage orders, implementing the new minimum salary levels that vary by employer size and location.

Meanwhile, Ohio's governor signed into law a bill to block Cleveland's upcoming special election to consider a $15 per-hour minimum wage. Senate Bill 331 preempts cities and municipalities from imposing a minimum wage rate higher than the state requirement. The current minimum wage in Ohio is $8.10 per hour. Cleveland had scheduled a special election for May 2017 to raise its minimum wage. Supporters of a higher minimum wage were unable to make the filing deadline to put the issue to voters on November 8, 2016, thereby necessitating the special election in 2017. Notably, the new law also prevents localities from enacting work scheduling and fringe benefit laws that extend beyond what is mandated by state or federal law.

Other efforts to challenge local minimum wages are underway. On December 15, 2016, the Arizona Chamber of Commerce and other groups sued to block the new voter-approved measure that increases the state's minimum wage and allows covered employees to earn paid time off. The lawsuit alleges that Proposition 206, titled "The Fair Wages and Healthy Families Act," is unconstitutional for failing to include a revenue source for the minimum wage rate's implementation and paid sick leave regulations and enforcement. The lawsuit also alleges that the initiative inappropriately combines two separate and unrelated provisions (minimum wage and paid sick leave). However, less than a week later, on December 21, 2016, the judge overseeing this case denied the plaintiffs' motion for a preliminary injunction. Therefore, Arizona's minimum wage

increased as scheduled on January 1, 2017, but the decision on the lawsuit's merits could ultimately reverse course.

In other local wage news, the City Council of Bangor, Maine, voted to postpone from January 1, 2017 to July 1, 2017 the city's scheduled minimum wage increase from $7.50 to $8.25 per hour. The implementation delay is to allow businesses to consider the new planned state-wide increase to $12.00 an hour by 2020. The state-wide wage increase was instituted via ballot initiative (Question 4). The first scheduled increase, to $9.00 per hour ($5.00 for tipped workers), will occur on January 7, 2017. Additionally, Portland, Maine passed an emergency measure to address how tipped employees must be paid in light of state-level changes. Specifically, Portland increased the minimum cash wage that tipped employees must receive from $3.75 to $5.00 per hour, and decreased the maximum tip credit employers can apply toward meeting their minimum wage obligations from $6.93 to $5.68 per hour.

The state-wide increase is expected to come under fire in Maine's upper chamber, however. Maine's Republican Senate President Michael Thibodeau has already announced that he will introduce a measure to amend Question 4 to reinstate the sub-minimum wage for tipped workers.

Paid Leave

Efforts to require some form of paid leave persist at the local level. The District of Columbia City Council approved an expansive paid leave proposal. The bill would provide eight weeks of parental leave when a new child joins the household though birth, adoption, foster care, or assumed legal guardianship. The measure would also provide six weeks of leave for employees to care for a sick relative, and two weeks of self-care leave. This leave would be funded through a 0.62% payroll tax to provide up to a maximum $1,000 weekly benefit. The Universal Paid Leave Act next heads to DC Mayor Muriel Bowser for approval. If the measure advances, it will still be subject to congressional review.

In nearby Maryland, Governor Larry Hogan announced his intent to introduce legislation that would require businesses with 50 or more employees to provide up to 40 hours of paid leave to their employees per year. Maryland's regular legislative session begins on January 11, 2017.

In contrast, a circuit judge in Linn County, Oregon, ruled that nine counties in the state can opt out of Oregon's paid leave requirements, finding that the Oregon Sick Leave Law constitutes an unfunded mandate on employers. Enacted in 2015, the paid sick leave law requires employers with at least 10 employees to provide 40 hours of paid sick time every year. Oregon's Department of Justice could appeal this ruling.

Hiring & Scheduling

On Election Day, voters in San Jose, California approved Measure E — the "Opportunity To Work" ordinance. This law requires employers, regardless

of industry, to offer part-time workers additional hours before hiring more employees. One month later, lawmakers at the state level introduced AB 5, which would extend this requirement state-wide. Specifically, AB 5 would require employers with 10 or more employees to offer additional hours of work to an existing nonexempt employee before hiring an additional employee or subcontractor, among other requirements. ▸▸

ON THE MOVE (continued)

Across the country, the New York City Council is considering a more comprehensive package of scheduling measures. Notably, Initiative No. 1387-2016 would ban the practice of "on-call scheduling" for retail employees. This bill would prohibit employers from providing a retail employee with less than 20 hours of work during any 14-day period. Another measure under consideration, Initiative No. 1399-2016, would give employees the right to request modifications of their work schedules. Such modifications could include schedule changes, the ability to work at a different location, and changes in the number of hours worked. The bill would require employers to engage in an interactive process with the employee making the request to consider it. This good-faith response must be initiative within 14 days of the request.

The bill would also give employees the right to receive certain changes to work arrangements if a childcare or personal health emergency occurs, or if an employee or a family member has been the victim of a sexual offense or stalking.

Pay Equity

Following on the heels of Massachusetts, Philadelphia is poised to adopt an ordinance that would prohibit employers from asking job

applicants about their salary history. Billed as a pay equity measure, Ordinance No. 16084001 cleared the City Council on December 8, and is headed to the mayor's desk.

A New Jersey House Committee has cleared a bill that would achieve the same end. AB 3480 would prevent employers from screening a job applicants based on their wage or salary history.

In other equal pay news, a bill (AB 46) introduced in California would amend the California Fair Pay Act to prohibit employers from paying employees at wage rates less than the rates paid to employees of another race or ethnicity for substantially similar work.

Ban-the-Box

Limiting an employer's ability to inquire about a job applicant's criminal history until after a condition offer of employment is made is now the law in Los Angeles. Besides removing questions about criminal history on the employment application, this ban-the-box law also directs employers to conduct an eight-factor individualized assessment of an applicant's arrest or conviction history before making an adverse job decision. While the Equal Employment Opportunity Commission (EEOC) recommends that employers take this step, the Los Angeles ban-the-box law requires it.

This ban-the-box trend is expected to continue in 2017. This is likely why a Texas state legislator has suggested a preemption law that would preclude localities from adopting ban-the-box laws. Whether the Lone Star State will enact such a preemption law this year remains to be seen.

Contingent Workers

The New Jersey Assembly Labor Committee approved Bill No. 4315, which aims to regulate temporary help service firms as employment agencies, and expand civil rights protections for certain job applicants who use employment agencies. Specifically, the bill would include "temporary help service firms" within the definition of employment agencies. Doing so would extend the registration, regulations, and bonding requirements that currently apply to employment agencies to temporary help service firms. The measure includes certain posting requirements for employment agencies and temporary help service firms.

The bill would make it unlawful:

> for an employment agency, to refuse to refer a job seeker for employment or to discriminate against a job seeker in compensation or in terms, conditions or privileges of employment to which the job seeker is referred because of the race, creed, color, national origin, ancestry, age, marital status, civil union status, domestic partnership status, affectional or sexual orientation, genetic information, pregnancy, sex, gender identity or expression, disability or atypical hereditary cellular or blood trait of any individual, or because of the liability for service in the Armed Forces of the United States or the nationality of any individual, or because of the refusal to submit to a genetic test or make available the results of a genetic test to an employer.

What's Next?

State legislatures will spring into action by the end of this month. While most new measures are typically signed into law in the second quarter of the year, expect the bulk of new bills to be introduced in the next couple of months. We will continue to monitor legislative trends throughout 2017.

IN FOCUS

The loss of middle-class jobs in the rust-belt states seemed to be an important factor in the 2016 election, as President-elect Donald Trump's message of keeping those jobs in America resonated with enough voters to seemingly tip the scales in his favor. Now, the President-elect prepares to take office and his administration will be charged with implementing the campaign's platform. In this context, training and retraining workers for skills in demand in the 21st century economy is sure to take on added importance. For those American workers who seem to have been left behind by the technologically-driven global economy, acquiring the skills that businesses need today and in the workforce of tomorrow will be critical. Thus, job training promises to be a focus of the incoming administration and the Department of Labor's policy initiatives.

The nation's job-training system has gone through a number of transformations over the past few decades. The 1998 Workforce Investment Act (WIA) replaced the Job Training Partnership Act (JTPA) as the primary source of federal funding for workforce development programs in the United States. At the heart of the WIA legislation was the creation of a system of "one-stop" career centers to provide access to training and employment services for workers, with a focus on dislocated workers and low-income adults and youth. In response to calls for more accountability and concerns that WIA's one-stop system was not demand-driven enough, Congress passed, and the President signed into law, the Workforce Innovation and Opportunity Act (WIOA) on July 22, 2014. Among other things, WIOA eliminated 15 existing federal workforce programs and streamlined others, and allowed businesses to provide greater input at the local level regarding the types of skills needed in today's economy. The bipartisan legislation that passed Congress overwhelmingly was designed to:

- Align workforce development programs with economic development and education initiatives.
- Enable businesses to identify in-demand skills and connect workers with the opportunities to build those skills.
- Require core workforce programs to develop a single, comprehensive state plan to streamline the process and reduce reporting requirements.
- Ensure individuals with disabilities have the skills necessary to be successful in businesses that provide competitive, integrated employment. ▸▸

IN FOCUS (continued)

The WIOA's focus on "in-demand" industries and occupations was intended to help close the skills gap that has left numerous jobs unfilled. Provisions of the law allow employers to provide significant input about the skills and training needed to better match up job seekers with opportunities.

The task of implementing the WIOA was left to the DOL's Employment and Training Administration. Lawmakers expressed frustration that the DOL was tardy in issuing regulations to implement the law. On June 30, 2016, the DOL and the Department of Education issued final WIOA rules. Upon release of the final rules, Secretary of Labor Thomas Perez said:

> Together with our partners and stakeholders, we're carrying out the vision of revitalizing and transforming the public workforce system to reflect the realities of the 21st century economy. Today, we have a stronger foundation to connect Americans of all walks of life to in-demand careers and ensure that businesses have access to the skilled talent that will help grow their business and the U.S. economy.

The final regulations include a joint rule, issued by the Departments of Labor and Education, in collaboration with the Departments of Health and Human Services, Agriculture and Housing and Urban Development. The rule implements jointly administered state planning, performance accountability and one-stop delivery system requirements. The final regulations also include a DOL rule implementing activities under Titles I (WIOA Adult, Dislocated Worker, Youth, Job Corps and WIOA National Programs) and III (which amends the Wagner-Peyser Act), and three Department of Education rules implementing the requirements of Titles II (the Adult Education and Family Literacy Act) and IV (which amends the Rehabilitation Act of 1973).

Another key component of the country's workforce development and job skills system is the Carl D. Perkins Career and Technical Education Act. Enacted in 1984, this law has provided federal support to state and local career and technical education programs.

These programs offer students the opportunity to gain the knowledge, skills, and experience necessary to compete for jobs in a broad range of fields, such as health care and technology. In a statement issued by Rep. Virginia Foxx, because federal law related to career and technical education has not been updated in more than a decade, "it no longer reflects the realities and challenges facing students and workers."

On September 13, 2016, the House passed H.R. 5587, the Strengthening Career and Technical Education for the 21st Century Act. Introduced by Reps. Glenn "GT" Thompson (R-PA) and Katherine Clark (D-MA), the legislation reauthorizes and reforms the Carl D. Perkins Career and Technical Education Act to help more Americans enter the workforce with the skills they need to compete for high-skilled, in-demand jobs.

According to a House Committee on Education and the Workforce fact sheet, the bipartisan House-passed bill:

- Empowers state and local community leaders by simplifying the application process for receiving federal funds and providing more flexibility to use federal resources to respond to changing education and economic needs.

- Improves alignment with in-demand jobs by supporting innovative learning opportunities, building better community partnerships, and encouraging stronger engagement with employers.
- Increases transparency and accountability by streamlining performance measures to ensure CTE programs deliver results and empowering parents, students, and stakeholders with a voice in setting performance goals and evaluating the effectiveness of local programs.
- Ensures a limited federal role by reining in the Secretary of Education's authority, limiting federal intervention, and preventing political favoritism.

A Senate version of the legislation, the Workforce Advance Act (S. 3271), was introduced by Sen. Michael Bennett (D-CO) on July 14, 2016.

Consideration of the bill by the Senate Health, Education, Labor and Pensions Committee was postponed, meaning that the 115th Congress will face unfinished business on reauthorization of the career and technical education improvements law.

American workers are facing a loss of jobs that were prevalent in a previous era. At the same time, employers are facing a growing gap in skills that the new economy demands. The need for effective and demand-driven job training for the workers of today and tomorrow will become even more important. Workforce development has been a rare area of bipartisan agreement in Washington. Whether the bipartisan cooperation to address this problem will continue remains to be seen. The incoming Secretary of Labor and the future head of the agency's Employment and Training Administration will play key roles in this effort. They will have an opportunity to evaluate the current administration's actions to implement the WIOA and to forge new policy with Congress. The direction that the administration and Congress take to build upon and improve job-training and education programs will be critical to American workers and businesses alike.

GLOBAL REPORT

The following is a roundup of international labor and employment news:

Europe

European Union — Big Data

The Joint Committee of the European Supervisory Authorities (ESAs) is asking for public input through the formal consultation process on the potential benefits and risks of Big Data for consumers and financial firms. The ESAs also seek comment on whether existing EU legislation on data protection, competition and consumer protection adequately cover the use of Big Data and its technologies. Feedback on the ESAs' *Joint Committee Discussion Paper on the Use of Big Data by Financial Institutions* are due by March 17, 2017, and can be filed here.

European Union — Collaborative Economy

On December 7, 2016, the European Committee of the Regions (CoR) adopted an opinion on the European Commission's draft guidelines on the collaborative economy and online platforms. First released for consideration in June, *A European Agenda for the collaborative economy* sets forth guidance aimed at supporting consumers, businesses and public authorities "to engage confidently in the collaborative economy." In its December 7 opinion, the CoR determined that despite the guidance's complexity, "early action to prevent fragmentation in the first place would still be far less difficult than ex-post harmonisation of 28 national frameworks and countless local and regional regulations." The guidelines point out that while "the absence of regulatory measures can create uncertainty that may inhibit investments and development of the sector," "excessive regulatory measures" can hinder innovation in this emerging workforce sector. The CoR did, however, call for additional clarity. In a statement, the author of the CoR's opinion noted:

> Agreeing on common rules is a precondition for us to seize the potential of this new ⏩

GLOBAL REPORT (continued)

> economy. Local economies and communities need the EU to provide clarity and trust without massive increases of red tape and legal requirements...We need a clear classification of service providers, a clarification of the social and employment responsibilities of online platforms as well as of the users' rights, together with common thresholds for market access. We also need to give, at European level, rules for start-ups that ensure both fair competition and competiveness on the global market.

The opinion supports the creation of a "forum of collaborative economy cities" to share experiences and practices.

European Union — Data Security

The EU's top data protection regulatory body, the Article 29 Working Party, released a set of frequently asked questions on the EU's General Data Protection Regulation (GDPR), which governs cross-border data processing activity. The Working Party also published a set of guidelines for identifying a controller or processor's lead supervisory authority. According to the guidelines, a lead supervisory authority is someone with "the primary responsibility for dealing with a cross-border data processing activity." Identifying this individual becomes relevant "where a controller or processor is carrying out the cross-border processing of personal data." Both documents flesh out certain concepts and definitions of the GDPR, such as what activities constitute cross-border processing of personal data, and provide examples.

France — Supply Chains

French lawmakers are considering a bill that would create new due diligence obligations for large French companies regarding the labor practices of their subsidiaries and supply chain members. Under the terms of this measure, covered entities would need to create and implement a "vigilance plan" to identify and prevent "serious violations of human rights and fundamental freedoms and the health and safety of people and the environment." Other European nations are expected to propose similar legislation to codify non-binding international norms (i.e., "soft law"), such as the United Nations' Guiding Principles on Business and Human Rights, into enforceable "hard law" obligations.

United Kingdom — Gender Pay Equity

Efforts to promote pay equity and transparency in the United States, while increasing in popularity, are still modest. Many employers in the United Kingdom, however, will soon be subject to large-scale pay equity regulations. Starting in April 2018, employers in England, Wales and Scotland with at least 250 employees must publish on their website their overall mean and median gender pay differentials, and annually submit to the Government evidence of compliance with this obligation. Employers will also be required to calculate and report gender disparities related to bonuses. In December, the UK Government published the long-awaited revised Equality Act 2010 (Gender Pay Gap Information) Regulations 2017, which take effect on April 6, 2017. The regulations define rates of pay and working hours, and describe how to calculate pay differences.

North America

Canada — Marijuana

In the United States, employers are subject to a patchwork of state laws regarding the legalization of marijuana for both medicinal and recreational purposes. Federal legislation on the topic is unlikely in the near future. In Canada, however, the Government is taking the initial steps toward a nationwide legalization laws. The Government of Canada recently published *A Framework for the Legalization and Regulation of Cannabis in Canada: The Final Report of the Task Force on Cannabis Legalization and Regulation.* The purpose of the report is to discuss various issues regarding the regulation of cannabis, and to "provide advice on the design of a new legislative and regulatory framework for legal access to cannabis, consistent

with the Government's commitment to 'legalize, regulate, and restrict access.'" Only a small portion of the 106-page report addresses workplace concerns. The report notes:

> At present there is no Canadian law permitting or regulating mandatory drug testing of employees. Court decisions, including those by the Supreme Court of Canada, provide some guidance and suggest that random drug and alcohol testing is not permitted except in certain circumstances. In addition, federal and provincial human rights commissions have policies explaining how drug and alcohol testing must not discriminate, including against those with disabilities and perceived disabilities. They suggest that drug testing in workplaces can only be used if it is to satisfy bona fide occupational requirements. Some private-sector companies have put drug testing policies in place, and the federal government has implemented testing programs for federal prisoners and military personnel. Cannabis impairment in the workplace is not a new issue, but questions were raised about whether the legalization of cannabis might increase use and how that would affect workplace policies.

The report recommends that in creating any federal legalization law, the Government should consider the implications of marijuana use for occupational health and safety policies, and work with local governing bodies, employers and labor representatives "to facilitate the development of workplace impairment policies."

Mexico — Minimum Wage

Mexico's National Minimum Wages Commission has approved two new increases to the minimum wage. The first increase of $4.00 Mexican pesos per day has been designated as an "independent recuperation amount" to compensate for the government's failure to adjust the minimum wage during 2016, due to various economic events worldwide. A second increase of 3.9% represents the rate that is typically approved for annual wage increases. Accordingly, these two bumps will increase the daily minimum wage from $73.04 to $80.04 pesos (approximately $3.90 USD), as of January 1, 2017.

QUOTE of the MONTH

> "I am impressed with his understanding of how excessive regulation can destroy jobs and make it harder for family incomes to rise. As an experienced and respected Tennessee business leader, Mr. Puzder will be a good partner in creating an environment to help grow jobs for American workers. The Senate labor committee will promptly consider his nomination in the next Congress."
>
> – Senate HELP Committee Chairman Lamar Alexander (R-TN) on Andy Puzder's nomination as Labor Secretary

South America

Venezuela — Unjust Dismissal

The Venezuelan Ministry of Labor has published Resolution N° 10.002, which guarantees a special protection against dismissal for workers who are members of a Productive Workers' Council. President Nicolás Maduro directed companies to create such councils to encourage worker participation in productivity management. The Resolution prohibits dismissing, transferring, or degrading the working conditions of workers who are members of the CPT, unless the employer's charge of "just cause" is first authorized by the Labor Inspector Office. The special protection lasts one year from the date the worker becomes a council representative.

OUTLOOK CALENDAR

JANUARY 2017

Final OSHA Rule Governing Tracking of Workplace Injuries and Illnesses Takes Effect

Sunday, January 1, 2017

OSHA has issued a final rule to revise its Recording and Reporting Occupational Injuries and Illnesses regulation. The final rule requires employers in certain industries to electronically submit to OSHA injury and illness data. The final rule also amends OSHA's recordkeeping regulation to update requirements on how employers inform employees to report work-related injuries and illnesses to their employer, and amends existing recordkeeping regulation to clarify the rights of employees and their representatives to access the injury and illness records. The reporting requirements take effect on January 1, 2017. read more

EEOC Final Wellness Rule under GINA Becomes Applicable

Sunday, January 1, 2017

The Equal Employment Opportunity Commission (EEOC) has issued a final rule amending regulations implementing Title II of the Genetic Information Nondiscrimination Act of 2008 as they relate to employer-sponsored wellness programs. This rule addresses the extent to which an employer may offer an inducement to an employee for the employee's spouse to provide information about the spouse's manifestation of disease or disorder as part of a health risk assessment (HRA) administered in connection with an employer-sponsored wellness program. While the rule's effective date is July 18, 2016, it becomes applicable on January 1, 2017. read more

EEOC Final Wellness Rule under ADA Becomes Applicable

Sunday, January 1, 2017

The Equal Employment Opportunity Commission (EEOC) has issued a final rule amending regulations and interpretive guidance implementing Title I of the Americans with Disabilities Act (ADA) to provide guidance on the extent to which employers may use incentives to encourage employees to participate in wellness programs that ask them to respond to disability-related inquiries and/or undergo medical examinations. This rule applies to all wellness programs that include disability-related inquiries and/or medical examinations whether they are offered only to employees enrolled in an employer-sponsored group health plan, offered to all employees regardless of whether they are enrolled in such a plan, or offered as a benefit of employment by employers that do not sponsor a group health plan or group health insurance. While the rule's effective date is July 18, 2016, it becomes applicable on January 1, 2017. read more

New Minimum Wage Rate Increase for Federal Contractors Takes Effect

Sunday, January 1, 2017

The minimum wage rate that must be paid to federal contractors under Executive Order 13658 will increase on January 1, 2017. The minimum wage rate that generally must be paid to workers performing work on or in connection with covered contracts will increase to $10.20 per hour. The required minimum cash wage that generally must be paid to tipped employees performing work on or in connection with covered contracts will increase to $6.80 per hour. read more

OUTLOOK CALENDAR (continued)

JANUARY 2017 (continued)

Final Rule Providing Paid Sick Leave Benefits for Federal Contractor Employees Becomes Applicable

Sunday, January 1, 2017

The DOL's Wage and Hour Division issued a final rule to implement Executive Order 13706, *Establishing Paid Sick Leave for Federal Contractor*s, signed by President Barack Obama on September 7, 2015. Executive Order 13706 (E.O.) requires certain federal contractors to provide their employees with up to 7 days (56 hours) of paid sick leave annually, including paid leave allowing for family care. The final rule defines terms, describes the categories of contracts and employees the E.O. covers and excludes from coverage, sets forth requirements and restrictions governing the accrual and use of paid sick leave, and prohibits interference with or discrimination for the exercise of rights under the E.O. While the rule takes effect on November 29, 2016, compliance will begin January 1, 2017. read more

Paycheck Transparency Provisions of Fair Pay and Safe Workplaces Executive Order Take Effect

Sunday, January 1, 2017

Although a federal court enjoined the implementation of several key provisions of the Fair Pay and Safe Workplaces Executive Order and its regulations, the portion of the so-called "blacklisting" rule that requires federal contractors to include information regarding overtime pay and exempt status with each paycheck and to provide certain notices to independent contractors, have not been enjoined and are still scheduled to take effect for solicitations or contract amendments made on or after January 1, 2017. read more

Rule Governing Excepted Benefits, Lifetime and Annual Limits, and Short-Term, Limited-Duration Insurance Becomes Applicable

Sunday, January 1, 2017

The IRS, HHS, and EBSA have issued final regulations regarding the definition of short-term, limited-duration insurance for purposes of the exclusion from the definition of individual health insurance coverage, and standards for travel insurance and supplemental health insurance coverage to be considered excepted benefits. These final regulations apply to group health plans and health insurance issuers beginning on the first day of the first plan year (or, in the individual market, the first day of the first policy year) beginning on or after January 1, 2017. read more

FAR Council's Interim Final Rule Amending the Federal Acquisition Regulations Governing Paid Sick and Safe Time for Federal Contractors Takes Effect

Sunday, January 1, 2017

The U.S. Department of Defense, General Services Administration, and National Aeronautics and Space Administration have issued an interim final rule amending the Federal Acquisition Regulation (FAR) to implement the Executive Order, *Establishing Paid Sick Leave for Federal Contractors*, and a final rule issued by the Department of Labor. The amendments take effect on January 1, 2017, although the agencies are accepting comments on the interim final rule through February 14, 2017. read more

Extended Comment Period Ends for OSHA's Standards Improvement Project-Phase IV

Wednesday, January 4, 2017

Pursuant to Executive Order 13563, *Improving Regulations and Regulatory Review*, the Occupational Safety and Health Administration (OSHA) is proposing to revise or remove regulations deemed outdated, duplicative, unnecessary, and inconsistent. To that end, under OSHA's Standards Improvement Project-Phase IV (SIP-IV), the agency is considering changes to certain construction standards. The commend period was initially scheduled to conclude on December 5, 2016, but this deadline was extended until January 4, 2017. read more

OUTLOOK CALENDAR (continued)

JANUARY 2017 (continued)

DOT Rule Creating Commercial Driver's License Drug and Alcohol Clearinghouse Takes Effect

Wednesday, January 4, 2017

The Department of Transportation has issued a final rule creating a new "Commercial Driver's License Drug and Alcohol Clearinghouse." The Clearinghouse will provide a central database identifying violations of DOT's drug and alcohol testing program by drivers who operate vehicles that require a commercial driver's license (CDL), and information about whether such a driver has successfully completed the DOT-mandated return-to-duty rehabilitation processes. It should be noted, however, that while the final DOT rule will take effect on January 4, 2017, employers will not be obliged to comply with its mandates until over three years later, on January 6, 2020. read more

Meeting of the Advisory Committee on Veterans' Employment, Training and Employer Outreach

Thursday, January 12, 2017

The DOL's Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO) will hold a public meeting to discuss the DOL core programs and services that assist veterans seeking employment and raise employer awareness as to the advantages of hiring veterans. read more

Briefs Due Over Questions Presented in NLRB Case *Temple University Hospital, Inc.*

Thursday, January 12, 2017

The National Labor Relations Board is accepting briefs from interested parties on two topics stemming from *Temple University Hospital, Inc.* (04-RC-162716). The Board is seeking input on whether it should exercise its discretion to decline jurisdiction over the employer in this case and whether the Board should extend comity to the unit of the employer's professional and technical employees certified by the Pennsylvania Labor Relations Board. read more

Final OSHA Rule Governing Walking-Working Surfaces and Personal Protective Equipment Takes Effect

Tuesday, January 17, 2017

The Occupational Safety and Health Administration issued a final rule revising and updating its general industry standards on walking-working surfaces. The final rule includes revised and new provisions addressing fixed ladders; rope descent systems; fall protection systems and criteria, including personal fall protection systems; and training on fall hazards and fall protection systems. In addition, the final rule adds requirements on the design, performance, and use of personal fall protection systems. read more

Final DHS RuleRegarding the Retention of EB-1, EB-2, and EB-3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers

Tuesday, January 17, 2017

The Department of Homeland Security (DHS) has issued a final rule amending its regulations related to certain employment-based immigrant and nonimmigrant visa programs. The rule improves the process for U.S. employers seeking to sponsor and retain immigrant and nonimmigrant workers; provides greater stability and job flexibility for those workers; and increases transparency and consistency in the application of DHS policy related to affected classifications. read more

OUTLOOK CALENDAR (continued)

JANUARY 2017 (continued)

Final ACA Rule on Benefit and Payment Parameters for 2018 and Amendments to Enrollment Periods and the Consumer Operated and Oriented Plan Program Takes Effect

Tuesday, January 17, 2017

The U.S. Department of Health and Human Services has issue a final rule establishing the payment parameters and provisions related to the risk adjustment program, cost-sharing parameters and cost-sharing reductions, and user fees for federally-facilitated Exchanges and state-based Exchanges on the federal platform. The rule also provides guidance relating to standardized options; qualified health plans; consumer assistance tools; network adequacy; the Small Business Health Options Programs; stand-alone dental plans; fair health insurance premiums; guaranteed availability and guaranteed renewability; the medical loss ratio program; eligibility and enrollment; appeals; consumer-operated and oriented plans; special enrollment periods; and other related topics. read more

Final EBSA Rule Revising Claims Procedure for Plans Providing Disability Benefits Takes Effect

Wednesday, January 18, 2017

The DOL's Employee Benefits Security Administration (EBSA) has issued a final rule revising the claims procedure regulations under the Employee Retirement Income Security Act of 1974 (ERISA) for employee benefit plans providing disability benefits. The final rule adopts certain procedural protections and safeguards for disability benefit claims that are currently applicable to claims for group health benefits pursuant to the Affordable Care Act. Although the rule becomes effective on January 18, 2017, its applicability date is not until January 1, 2018. read more

Final OSHA Rule Clarifying an Employer's Continuing Obligation to Make and Maintain an Accurate Record of Each Recordable Injury and Illness Takes Effect

Wednesday, January 18, 2017

OSHA has issued a final rule amending its recordkeeping regulations to clarify that an employer's duty to make and maintain accurate records of work-related injuries and illnesses is an ongoing obligation. The amendments were issued in response to a decision of the U.S. Court of Appeals for the District of Columbia Circuit, in which a majority held that the OSH Act does not permit OSHA to impose a continuing recordkeeping obligation on employers. read more

Final DOL Rule Revising Equal Employment Opportunity in Apprentice Programs Takes Effect

Wednesday, January 18, 2017

The DOL has issued a final rule to update the equal opportunity requirements of the National Apprenticeship Act of 1937. The existing regulations prohibit discrimination in registered apprenticeship on the basis of race, color, religion, national origin, and sex, and require that sponsors of registered apprenticeship programs take affirmative action to provide equal opportunity in such programs. The new final rule updates equal opportunity standards in part 30 to include age (40 or older), genetic information, sexual orientation, and disability among the list of protected bases upon which a sponsor must not discriminate; improves and clarifies the affirmative action provisions for sponsors by detailing with specificity the actions a sponsor must take to satisfy its affirmative action obligations, including affirmative action for individuals with disabilities. read more

OUTLOOK CALENDAR (continued)

JANUARY 2017 (continued)

Final EBSA Rule on Savings Arrangements Established by Qualified State Political Subdivisions for Nongovernmental Employees Takes Effect

Thursday, January 19, 2017

The DOL's Employee Benefits Security Administration has issued a final rule amending a final regulation that describes how states may design and operate payroll deduction savings programs for private-sector employees, including programs that use automatic enrollment, without causing the states or private-sector employers to have established employee pension benefit plans under the Employee Retirement Income Security Act of 1974 (ERISA). The amendments made by the new final rule expand the original rule's coverage beyond states to cover qualified state political subdivisions and their programs that otherwise comply with the regulation. This final rule affects individuals and employers subject to such programs. read more

FEBRUARY 2017

Comments Due on FAR Council's Interim Final Rule on Contractor Paid Sick and Safe Leave

Tuesday, February 14, 2017

The U.S. Department of Defense, General Services Administration, and National Aeronautics and Space Administration have issued an interim final rule amending the Federal Acquisition Regulation (FAR) to implement the Executive Order, *Establishing Paid Sick Leave for Federal Contractors*, and a final rule issued by the Department of Labor. The amendments take effect on January 1, 2017, although comments are due on or before February 14, 2017. read more

Comments Due on IRS Proposed Rule on Minimum Present Value Requirements for Defined Benefit Plan Distributions

Thursday, February 23, 2017

The IRS has issued a proposed rule that provides guidance relating to the minimum present value requirements applicable to certain defined benefit pension plans. These proposed regulations would provide guidance on changes made by the Pension Protection Act of 2006 and would provide other modifications. According to the IRS, this proposal will impact participants, beneficiaries, sponsors, and administrators of defined benefit pension plans. read more

MARCH 2017

Extension of Due Date for Furnishing ACA Statements

Thursday, March 2, 2017

The IRS has issued Notice 2016-70, which extends the due date for certain 2016 information-reporting requirements for insurers, self-insuring employers, and certain other providers of minimum essential coverage under section 6055 of the Internal Revenue Code (Code) and for applicable large employers under section 6056 of the Code. Specifically, this notice extends the due date for furnishing to individuals the 2016 Form 1095-B, Health Coverage, and the 2016 Form 1095-C, Employer-Provided Health Insurance Offer and Coverage, from January 31, 2017, to March 2, 2017. This notice also extends good-faith transition relief from section 6721 and 6722 penalties to the 2016 information-reporting requirements under sections 6055 and 6056. read more

OUTLOOK CALENDAR (continued)

MARCH 2017 (continued)

IRS Public Hearing on Updates to Minimum Present Value Requirements for Defined Benefit Plan Distributions

Tuesday, March 7, 2017

The IRS will hold a public meeting to discuss proposed changes to the minimum present value requirements applicable to certain defined benefit pension plans. The IRS published a proposed rule setting forth these changes on November 25, 2016, for a comment period ending on February 23, 2017. read more

APRIL 2017

Comments Due for OSHA Request for Information on Prevention of Workplace Violence in Healthcare and Social Assistance

Thursday, April 6, 2017

The Occupational Safety and Health Administration is considering whether a standard is needed to protect healthcare and social assistance employees from workplace violence and is interested in obtaining information about the extent and nature of workplace violence in the industry and the nature and effectiveness of interventions and controls used to prevent such violence. To that end, OSHA has issued a request for information (RFI) seeking input on issues that might be considered in developing a standard, including scope and the types of controls that might be required. read more

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