

Employment Law Update: What You Need to Know

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Overview

- ❖ Federal Agency Update
- ❖ Pay Equity
- ❖ Paid Family Leave
- ❖ Arbitration Agreements and Class Waivers
- ❖ Non-Disclosure Agreements and #MeToo

Federal Agency Update

NLRB

NATIONAL LABOR RELATIONS BOARD

- Many Obama-era opinions overruled
- Now has 3-2 Republican majority

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Federal Agency Update

EEOC

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

- Less review and faster dismissals with no investigation or position statements
- Effect is unknown; may result in more litigation
- New Sexual Harassment Guidelines anticipated this year

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Federal Agency Update

DOL DEPARTMENT OF LABOR

- **New personnel impact on policy:**
 - **Alex Acosta – Secretary of Labor**
 - **Cheryl Stanton – Wage & Hour Division Administrator**

Fair Labor Standards Act

- ❖ **Overtime Regulation Update: DOL abated appeal of the Texas federal district court decision invalidating new FLSA regulations.**
 - **Obama-era proposal is dead**
 - **Proposed new rule anticipated in Q4 2018**
 - **Speculation: new threshold will be between \$30k – 35k**

Pay Equity – Hot off the presses...

Aileen Rizo v. Jim Yovino (9th Cir. April 2018):

- ❖ Prior salary cannot justify pay differences.
- ❖ Split with other courts
- ❖ **IMPACT: Consider a pay equity audit.**

Paid Family Leave



- ❖ Numerous Proposals
- ❖ Protection for employers from state/local laws if employer complies with new federal standard

Major question: **Who pays for it?**

Arbitration Agreements and Class Action Waivers

- ❖ ***NLRB v. Murphy Oil***: U.S. Supreme Court to resolve dispute over of class action waivers in arbitration agreements
 - **Genesis**: controversial NLRB opinion in *D.R. Horton*
- ❖ Oral arguments heard October 2, 2017

Non-Disclosure Agreements and #MeToo

- ❖ **NON-DISCLOSURE = NON-DEDUCTIBILITY**
Amendment to the Internal Revenue Code: *no deduction* shall be allowed for any settlement or payment *related to sexual harassment* or sexual abuse *if* such settlement or payment is *subject to a nondisclosure agreement*, or *attorneys' fees* related to such a settlement or payment.

Non-Disclosure Agreements and #MeToo

❖ ANTICIPATE STATE LAWS PROHIBITING NONDISCLOSURE AGREEMENTS.

- State Senator Jose Menendez (D-San Antonio) will propose legislation prohibiting “nondisclosure or confidentiality agreements that keep employees from reporting harassment, abuse, assault, or other crimes.”

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NDCC HR Conference

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