

UNIVERSITY OF TEXAS SCHOOL OF LAW

**FEDERAL EMPLOYMENT LAW
DEVELOPMENTS IN 2017-2018**

**25TH ANNUAL
LABOR AND EMPLOYMENT LAW CONFERENCE**

**May 10-11, 2018
Austin, Texas**

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I.

INTRODUCTION

Looking back on President Trump's first full year in office definitely indicates a trend towards business/employer friendly regulations, laws and executive orders and provides the beginning of Republic-controlled agencies. While labor/employment initiatives took a back seat to key campaign initiatives, such as immigration, healthcare and tax reform; we nevertheless have begun to see signs that the business restricting regulations and Executive Orders from eight years of a Democratic administration are being "rolled back."

While Justice Gorsuch, was confirmed in the Supreme Court, at present at least 152 judicial seats remain unfilled with 55 nominees for such seats pending Senate approval. Several agency appointments also remain open. The EEOC still lacks two commissioners. President Trump has proposed Janet Dhillon as EEOC Chair and Daniel M. Gade as Commissioner and both are still awaiting confirmation. On April 11, the Senate voted to fill the final NLRB seat confirming John Ring of Morgan Lewis & Bockius to bring the Board to a full five-member complement, clearing the way for the Trump administration to implement business-friendly changes at the Board. At the Department of Labor, Cheryl Stanton awaits confirmation as the Wage and Hour Administrator.

In past years, this presentation has focused on the lack of action and gridlock in Washington D.C. In many ways, despite Republican control of the House, Senate and the White House, that is still where we find ourselves.

II.

2017-2018: AGENCIES, LAWS, REGULATIONS AND EXECUTIVE ORDERS

As noted, labor and employment initiatives under the Trump Administration have progressed. While some remain "on the drawing board"—there have been significant changes as to others. The presumed list of labor and employment initiatives includes:

- Raising the federal minimum wage. (Federal minimum wage for government contracts increased to \$10.35 an hour on January 1, 2018. The overall federal minimum wage remains at \$7.25 an hour);
- Promotion of National parental leave program to provide six weeks of paid family leave for new and adoptive parents;
- Closing the gender pay gap;
- Boost of prevailing wage for H-1B workers;
- Adopting a National E-verify system;
- "Blacklisting," is dead for now with final rules published rescinding regulations and Safe Workplaces Executive Orders, as part of bidding process for federal contractors;

- 2015 NLRB Joint Employer Standard was overturned, and the Board’s prior “reasonable standard” reaffirmed, then due to a possible conflict for Board member Emanuel, the Board’s ruling was vacated, restoring, for now, the 2015 Browning Ferris standard;
- Overturning the NLRB “Quickie” Union Election Rules (information period extended to April 18 – 1460 comments received thus far);
- Eliminating or Modifying the DOL “White Collar” Overtime Rules—rules are still on indefinite hold;
- Stopping NLRB activism on Arbitration Agreements and Class Waivers—this issue is still pending in Supreme Court;
- Eliminating the DOL Persuader Rule—Nationwide injunction in place—final rule rescinding expected April 2018;
- Repealing and Replacing the Affordable Care Act—Individual mandate effectively eliminated with Trump tax reform bill;
- Merger of EEOC and OFCCP. Dead as of September 2017.

A. AGENCY LEADERSHIP:

While appointments for Agency positions are lagging, progress has been made by appointment (and confirmation of) the following:

Department of Labor:

- Secretary of Labor, Alex Acosta – confirmed;

National Labor Relations Board:

- Chairman of NLRB Member Philip A. Miscimarra named Chair;
- New Board Members approved: Bill Emanuel, Marvin Kaplan and John Ring;
- NLRB as of April 11, 2018 has full five-member Board;
- NLRB General Counsel, Peter Robb, sworn in November 2017.

Equal Employment Opportunity Commission:

- Republican EEOC Commissioner Victoria Lipnic serves as acting Chair;
- Janet Dhillon nominated by President Trump as Chair, not yet approved;
- Daniel M. Gade nominated for Commissioner, still waiting approval,

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[2018 Labor and Employment Law eConference](#)

First appeared as part of the conference materials for the
25th Annual Labor and Employment Law Conference session
"Federal Employment Law Developments in 2017-2018"