UT LAW CLE THE UNIVERSITY OF TEXAS SCHOOL OF LAW

PRESENTED AT

THE UNIVERSITY OF TEXAS SCHOOL OF LAW

26TH ANNUAL
LABOR AND EMPLOYMENT LAW CONFERENCE

May 9-10, 2019
Austin, Texas

Federal Employment Law Update 2018-2019

Danielle K. Herring

Author Contact Information:
Danielle K. Herring
Littler Mendelson, P.C.
1301 McKinney Street, Suite 1900
Houston, Texas 77010
dherring@littler.com
(713) 652-4735

I.
INTRODUCTION

It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness, it was the epoch of belief, it was the epoch of incredulity, it was the season of Light, it was the season of Darkness, it was the spring of hope, it was the winter of despair, we had everything before us, we had nothing before us. . . .

-Charles Dickens,
A Tale of Two Cities

Dickens' words ring true in the current time. Emotions run high and divisions are deep within all three branches of the federal government. As the Trump administration continues forward with pursuing its agenda, we see the potential for monumental decisions from the Supreme Court, and continued battles between a Republican-controlled Senate and Democrat-controlled House of Representatives, perhaps creating a rare combination of circumstances that could significantly change the current framework of employment laws.

II.
2018-2019: AGENCIES, LAWS, REGULATIONS AND EXEUTIVE ORDERS

A. AGENCY LEADERSHIP

This year, progress has been made within federal agencies by appointment and/or confirmation of the following:

Department of Labor:

- Secretary of Labor, Alex Acosta – confirmed;
- Deputy Secretary, Patrick Pizzella – confirmed;
- Solicitor, Kate S. O'Scannlain – confirmed;
- Chief Financial Officer, James Edwin Williams – confirmed;
- Assistant Secretary for Employee Benefits Security, Preston Rutledge – confirmed;
- Assistant Secretary for Mine Safety and Health, David Zatezalo – confirmed;
- Administrator, Wage and Hour Division, Cheryl Marie Stanton – confirmed;
- Commissioner, Bureau of Labor Statistics, William Beach – confirmed;

- Assistant Secretary for Employment and Training, John P. Pallasch – nominated;
- Assistant Secretary for Occupational Safety and Health, Scott A. Mugno – nominated;
- Assistant Secretary for Veterans Employment and Training, John Lowry, III – nominated;
- OSHA new director identified: Ondray T. Harris.

National Labor Relations Board:

- John F. Ring named NLRB Chairman as of April 12, 2018;
- Past NLRB Chairman, Philip A. Miscimarra, did not seek a second term on the Board after his term expired in December 2018;
- As of April 22, 2019, the NLRB Board has four Members: Ring (R), William Emmanuel (R), Marvin Kaplan (R), and Lauren McFerran (D);
- The NLRB has a 3-1 Republican majority, with one Democrat seat left vacant by the departure of former NLRB Member Mark Pearce who announced he would not seek a third term in February 2019;
- Fred B. Jacob appointed Solicitor as of December 10, 2018.

Equal Employment Opportunity Commission:

- Republican EEOC Commissioner Victoria Lipnic serves as acting Chair;
- Janet Dhillon nominated by President Trump as Chair, still not yet approved;
- Daniel M. Gade (Republican) withdrew his nomination in December 2018;
- Democrat Chai Feldblum's term as Commissioner expired in January 2019;
- Sharon Gustafson, nominated for EEOC General Counsel, also still awaits confirmation;
- Due to the Commission's three vacancies, the EEOC presently lacks a quorum, which prevents the Commission from undertaking important activities like rulemaking and filing some lawsuits.

Also available as part of the eCourse
Federal Employment Law Updates, including the ADA, NLRA, Wage & Hour, and Contractors

First appeared as part of the conference materials for the
26th Annual Labor and Employment Law Conference session
"Federal Employment Law Update"