

# RECENT DEVELOPMENTS AND A LOOK AHEAD UNDER THE NATIONAL LABOR RELATIONS ACT

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## The NLRB: End of the *Pearce* Era During Trump's First 100 Days?

- Sort of.
- The New Chairman, as of April 24, 2017, is Philip Miscimarra.



- Self-Described “Loneliest Man In Washington.”





Philip A. Miscimarra  
Chairman



Mark Gaston Pearce



Lauren McFerran



Vacant



Vacant

## November 4, 2017

- Significance: Term of NLRB General Counsel Richard Griffin Expires.



- What this means for labor law and for employers?
- Rumor Mill about possible nominees.

## **BFI In The D.C. Circuit**

- *Browning-Ferris Industries of California v. NLRB*, Nos. 16-1028 and 16-1064 (D.C. Circuit Court of Appeal)
- Argued: March 9, 2017
- Panel: Judges Patricia Millet, Robert Wilkins, and Raymond Randolph

## **Joint Employer Test**

- *Browning-Ferris Industries*, 362 NLRB No. 186
  - New, more inclusive standard
  - *First*, is there common-law employment relationship?
  - *Second*, does putative employer possess sufficient control over employees' essential terms and conditions of employment for meaningful bargaining?
  - No longer necessary to *exercise* authority; just *possess*
  - Indirect control over employees may now be sufficient to show joint employer status

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"Recent Developments and A Look Ahead Under the National Labor Relations Act"