

Key Employment and Other Issues in the Upcoming Election – (Including a brief SC Update)

2020 ACC-SC Winter Meeting

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Ogletree Deakins

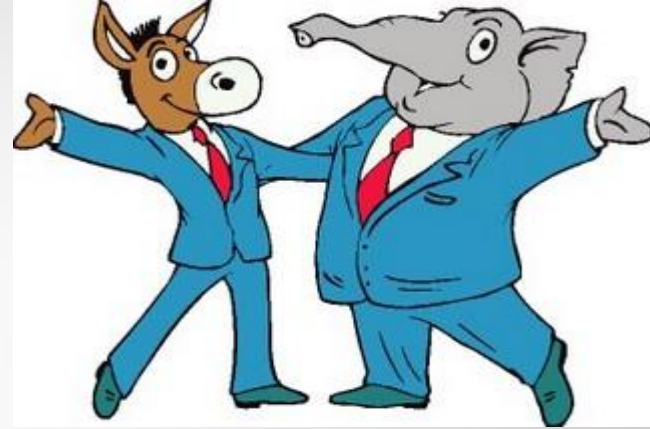
Employers & Lawyers. Working Together

How'd We Get Here?



Year End HR-related Legislation

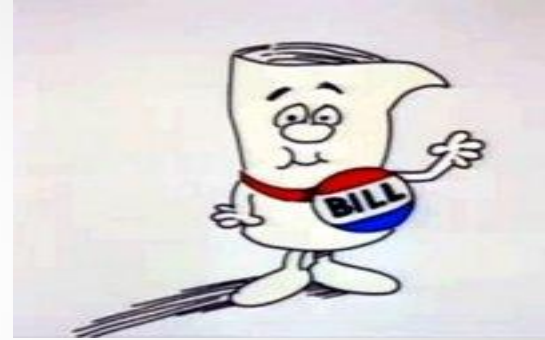
- ACA taxes repealed
- SECURE Act
- Ban the Box (for federal contractors)
- USMCA (2020)



This is actual federal legislation, people!

Passed the House of Representatives...

- USMCA
- Labor Reform (PRO Act)
- Minimum wage
- Pay equity
- LGBTQ discrimination (Equality Act)
- Retaliation/ADA/Age discrimination (1/15/20)
- Anti-Arbitration (FAIR Act)
- Multiemployer pensions
- Workplace violence



U.S. Senate



Federal Judges Confirmed Since 2017

(as of February 4, 2020)

2	Supreme Court Justices
50	U.S. Courts of Appeals judges
133	U.S. District Court judges
<u>+ 2</u>	<u>U.S. Court of Int'l Trade judges</u>

187 Article III Judges

2019 Regulatory Activity



Department of Labor – Secretary Eugene Scalia

- Yes, that Scalia
- Solicitor of Labor (GWB DOL)
- Successfully challenged/defended against:
 - EEOC
 - NLRB
 - OSHA (DOL)
 - EBSA (DOL)
 - SEC



Department of Labor: WHD Yin and Yang

Deregulatory Emphasis, Yet Multiple Rulemakings:

- Joint employer (effective 3/16/20)
- Overtime (effective 1/1/20)
- Regular rate (effective 1/15/20)

Department of Labor: WHD Yin and Yang

- Enforcement bias
 - \$322.5M in back wages recovered in FY 2019 – record results
 - Compares with \$266.6M in FY 2016
 - 3,700 educational outreach events - compliance assistance record
- Sub-Regulatory activities
 - Payroll Audit Independent Determination (PAID)
 - Essential criteria and requirements for participation
 - State law considerations
 - Opinion Letters

National Labor Relations Board

- Election Rules
- Employer property rights
- Independent Contractor
- Dues checkoff
- Workplace investigations
- Email



Equal Employment Opportunity Commission

- New Chair (Janet Dhillon)
- New General Counsel (Sharon Fast Gustafson)
- EEO-1 wage and hour reporting



South Carolina Update

- Motor Fuel Income Tax Credit
- *Garrison v. Target*



South Carolina Update

- Bills To Look Out For:
 - Election of Judges
 - Vaping Laws
 - Jury Selection
 - Joint and Several Liability



What's Ahead for 2020?



2020 Election Issues

- Impeachment fallout?
- Trade
- Infrastructure
- Healthcare
- Education
- Immigration
- Environment



Healthcare

- Potential bipartisanship on:
 - Prescription drug prices
 - Surprise medical billing



Trade

- Empowering Congress re: tariffs
- Oversight and Implementation (China deal, USMCA)
- Post-Brexit: focus on European Union and the United Kingdom

Labor/Employment Issues 2020

- Immigration
- Arbitration/NDAs/Noncompetes
- Joint employer
- “Future of Work” (AI; independent contractor)
- Paid leave
- EEO-1
- Retirement (multiemployer pensions)
- Supreme Court – DACA, LGBTQ

House of Representatives 2020 (Labor/Employment)

- Pregnancy discrimination
- Workplace safety
- Future of Work



Senate 2020

- Judges
- Judges
- Judges



Department of Labor 2020

- Fluctuating workweek
- Tips and 80/20
- OFCCP
 - Discrimination procedures proposal
 - TRICARE (waiting for final rule)
- FMLA intermittent leave?

NLRB 2020

- 3-0 Board
- Joint employer
- More election regs?
- Offensive conduct standard?
- Access rule?



EEOC 2020

- What happens with EEO-1?
- Joint employer?
- Pay report?

Agency Rule List - Fall 2019

Equal Employment Opportunity Commission

Agency	Agenda Stage of Rulemaking	Title	RIN
EEOC	Prerule Stage	Amendments to the Regulations at 29 CFR Part 1602 to Provide for a Pay Survey	3046-AB15
EEOC	Proposed Rule Stage	Federal Sector Equal Employment Opportunity Process	3046-AB00
EEOC	Proposed Rule Stage	Enforcement of Nondiscrimination on the Basis of Disability in EEOC Programs/Activities and Accessibility of Electronic and Information Technology	3046-AB08
EEOC	Proposed Rule Stage	Procedures for Previously Exempt State and Local Government Employee Complaints of Employment Discrimination Under Section 304 of the Government Employee Rights Act of 1991	3046-AB09
EEOC	Proposed Rule Stage	Amendments to Regulations Under the Americans With Disabilities Act	3046-AB10
EEOC	Proposed Rule Stage	Amendments to Regulations Under the Genetic Information Nondiscrimination Act of 2008	3046-AB11
EEOC	Proposed Rule Stage	Joint Employer Status Under the Federal Equal Employment Opportunity Statutes	3046-AB16
EEOC	Final Rule Stage	Revision of Federal Sector Regulation on Time Limits for Filing a Civil Action	3046-AA97
EEOC	Final Rule Stage	Procedural Regulations Under Title VII, ADA, and GINA and Procedures--Age Discrimination in Employment Act	3046-AB07
EEOC	Final Rule Stage	2020 Adjustment of the Penalty for Violation of Notice Posting Requirement	3046-AB17

2020 Predictions

- Little L&E activity from Congress
- Some regulatory activity (three joint employer rules?)
- Continued developments at the state and local level

