

*This is your new*

# Employment Law Yearbook 2016

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*Employment Law Yearbook 2016* provides a review of developments in the law from the past year, including case decisions, legislative changes, government agency actions, and other events of interest to employers, providing practical steps employers can take to minimize their risk and to comply with the law. Here's a full chapter-by-chapter listing of the topics covered in this year's edition:

Chapter 1	Wage-and-Hour Issues
Chapter 2	OFCCP Developments
Chapter 3	Gender and Sexual Orientation Discrimination and Sexual Harassment
Chapter 4	Race, Religion, and National Origin Discrimination
Chapter 5	Age Discrimination
Chapter 6	EEO Class Actions
Chapter 7	Americans with Disabilities Act
Chapter 8	Employee Privacy Law
Chapter 9	Guarding Trade Secrets
Chapter 10	Whistleblowing and Other Retaliation Claims
Chapter 11	Employee Blogging and Social Media
Chapter 12	Family, Medical, and Military Leave: Recent Developments Under the FMLA and USERRA
Chapter 13	Arbitration

A **Table of Cases** and **Index** are also included to assist in your research.

As employers continue to witness significant changes affecting the workplace and employees, which, combined with other factors, contribute to continued high levels of complaints and litigation, it remains imperative for employers and employment law practitioners to understand the legal implications of a wide range of workplace actions. These developments include the following:

*(continued on reverse)*

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- **Wage-and-hour litigation** continued to rise in 2015, and employers continue to grapple with the challenges that arise from **hiring interns**, properly classifying a diversified workforce, **alternative work arrangement requests**, and potential off-the-clock work issues, among others. A recently issued notice of proposed rulemaking indicates the DOL’s intention to significantly increase the salary threshold for the “white collar exemptions regulations.” Additionally, the Wage and Hour Division issued a broad interpretation related to the **misclassification of independent contractors**, signaling continued agency skepticism. The Second Circuit’s rulings in *Glatt v. Fox Searchlight Pictures, Inc.* and *Wang v. The Hearst Corp.* **rejected the traditional six-factor “economic realities test,”** and several state court decisions in California continued to change the litigation landscape. And, in *Integrity Staffing Solutions, Inc. v. Busk*, one of the most watched cases of the last few years, the U.S. Supreme Court held that **security screenings were “noncompensable postliminary activities”** under the FLSA.
- **OFCCP developments** include a proposed rule to replace OFCCP’s current **“Sex Discrimination Guidelines”** prohibiting sex discrimination in federal contracting, which clarifies existing law and rescinds outdated guidance, and which marks the first substantive update of the guidelines since 1970; executive orders related to **paid sick leave** and minimum wage for government contractors; recent settlements involving **steering and testing, stereotyping, and pay disparity.**
- Chapter 3’s coverage of **gender and sexual orientation discrimination and sexual harassment** includes discussion of recent cases involving, among other things, **gender identity**; what constitutes a “tangible employment action”; the “severe or pervasive” requirement in **hostile environment cases**; the *Ellerth/Faragher* affirmative defense; the effect of the statute of limitations on evidence of alleged acts; and **attorney fees** for a prevailing defendant where plaintiff’s suit was frivolous, unreasonable, or without foundation.
- Numerous recent cases reported in chapter 4 address important topics related to **discrimination based on: race** (*e.g.*, whether a negative performance evaluation constitutes an adverse employment action; whether employer’s affirmative action plan unnecessarily trammes the interests of white employees; whether demotion resulting in lower wages was within the scope of the Lilly Ledbetter Fair Pay Act); **religion** (application of the First Amendment’s **ministerial exception** to a non-church employer facing discrimination claims based on state law; where providing an accommodation would otherwise violate a federal law); and **national origin** (insufficiency of evidence to show employer’s actions were pretext for discrimination; failure of a disparate-impact claim where employer provided job-related, nondiscriminatory business justification for its actions).
- **Age discrimination** cases from 2015 reported in chapter 5 address topics including: whether an age gap of two years is sufficient to support a prima facie case of discrimination; the applicability of the **but-for standard articulated by the Supreme Court in Gross** at the prima facie stage; whether a disparate-impact claim under the ADEA can be brought by job applicants).

- With the number of Title VII enforcement suits filed by the EEOC in fiscal year 2015 down from previous years, chapter 6 coverage keeps you up to date with the latest developments in **equal employment opportunity**, including a \$14.5 million settlement with Patterson-UTI Drilling in a race/national origin case; and two 2015 circuit court cases dealing with **commonality** based on *Wal-Mart* as an element of class certification.
- Among recent developments related to **guarding trade secrets** are: the Mobility and Opportunity for Vulnerable Employees Act (S. 1504), a bill that would amend the FLSA to **prohibit the use of non-compete agreements for low-wage employees**; the Defend Trade Secrets Act of 2015 (S. 1890, H.R. 3326), a trade secrets bill introduced and referred to both the Senate and the House Judiciary Committees in July 2015; and a Second Circuit decision that adopts the Ninth and Fourth Circuits' **narrow view of the Computer Fraud and Abuse Act** (reversing the criminal conviction of a former police officer who had accessed an NYPD database for personal use).
- The OWB reported a modest increase since 2014 in the number of whistleblower tips and complaints received under the SEC's Dodd-Frank Whistleblower program, and issued eight whistleblower awards in 2015. Chapter 10's discussion of **whistleblowing and other retaliation claims** includes coverage of nearly two dozen circuit court decisions from 2015.
- Chapter 12's review of federal leave statutes and regulations also highlights recent federal decisions regarding **family, medical, and military leave**, including nearly two dozen circuit court decisions from 2015.

Practising Law Institute is proud to publish *Employment Law Yearbook 2016*. If you have any comments or questions, please contact us (see **QUESTIONS ABOUT THIS BOOK?** on the page following the title page).

