

This is your new

Employment Law Yearbook 2017

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Employment Law Yearbook 2017 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.

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:

- **Wage-and-hour litigation** continued to rise in 2016, but its development appears to be in flux for 2017. Initially, the U.S. Supreme Court applied Rule 23 principles in arriving at its decision in *Tyson Foods, Inc. v. Bouaphakeo*, although the impact of the decision in determining **whether and when a Rule 23 analysis is appropriate** in the context of an FLSA collective action remains unclear. *See* §§ 1:1, 1:3.1[B]. Although the DOL was set to implement its **overtime regulations** on December 1, 2016, a federal district court in Texas issued a nationwide preliminary injunction to prevent them from taking effect. The fate of these rules depends on the Fifth Circuit's decision on appeal and policies President Trump encourages the DOL to adopt. *See* §§ 1:1, 1:2.2[A][1], [A][1][a]–[A][1][c]. **California's Fair Pay Act** took effect, generally requiring equal pay for substantially similar work and requiring employers to articulate a greater justification for pay disparities based on gender. *See* §§ 1:1, 1:2.15[B], and *new* §§ 1:2.17–1:2.18. *See also* § 1:34 for significant recent amendments to the California Labor Code Private Attorney General Act (PAGA).
- **OFCCP developments** include details of the first substantive update of **OFCCP's final rule on sex discrimination** since 1970. The significant rewrites address various legal developments regarding **gender identity and sex stereotyping** and discrimination related to family care, pregnancy, healthcare, and compensation. *See new* § 2:42[A][3]. Additionally, in 2016, the FAR Council published final rules and guidance implementing President Obama executive orders addressing federal agency evaluation of covered contractors' disclosures (*see* § 2:4.2[B][1]) and paid sick leave (*see* § 2:4.2[B][2]).

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- Chapter 3 has been updated with summaries of numerous recent cases addressing **gender and sexual orientation discrimination and sexual harassment**. New coverage also details the recent HHS final rule implementing section 1557 of the Affordable Care Act, **prohibiting the denial of healthcare or coverage based on gender identity and sex stereotyping**. *See new* § 3:2.4.
- In addition to coverage of recent cases addressing race, religion, and national origin discrimination, chapter 4 updates include the latest on **EEOC guidance on national origin discrimination** published in November 2016—the first update in fourteen years. *See* § 4:3 for details, including **“promising practices”** employers are advised to adopt to promote equality in the workplace.
- **Recent developments in EEOC class actions** include a **proposed revision** to the Employer Information Report, a form used to collect data from employers with 100 or more employees; a **reevaluation of the EEOC’s strategic enforcement plan**, including a focus on discrimination against those who are Muslim or Sikh, persons of Arab, Middle Eastern, or South Asian descent, and a broader focus on pay discrimination based on race, ethnicity, and disability in addition to its prior focus on the gender wage gap (*see* § 6:2), and **proposed amendments to Rule 23** (*see* §§ 6:3.2[B], 6:3.4[A]).
- Chapter 7, **Americans with Disabilities Act**, has been updated with details on a 2016 EEOC final rule that serves as guidance for how employers should **implement voluntary wellness programs** to be ADA-compliant. *See new* § 7:9.2.
- **Employee Privacy Law** updates bring you the latest on state statutes dealing with **GPS monitoring in the employment context** and the limited case law in the area (*see* § 8:3.4[C]) and a **new OSHA rule** intended to strengthen the agency’s capacity to address discrimination against employees for reporting workplace accidents and injuries (*see new* § 8:4.2[B][1][c]).
- Updates to chapter 9, **Guarding Trade Secrets**, includes extensive coverage of the **Defend Trade Secrets Act of 2016**, signed by President Obama after lengthy bipartisan efforts to bring trade secrets under federal law (*see new* §§ 9:2.1, 9:2.1[A]–[C], 9:4.2[A][2]), and details of newly signed California legislation dealing with employers’ ability to use **choice-of-law and forum-selection provisions** (*see* § 9:3.5[A][2]).
- **Whistleblowing and other retaliation claims** updates include coverage of comprehensive 2016 **EEOC guidance on retaliation** (*see* §§ 10:2, 10:2.2[A][1], 10:2.2[B][1][b]), as well as a lengthy **new discussion** of the issues that arise when the party asserting a claim for retaliation against his or her employer is an attorney (*see new* § 10:2.2[B][5][a]–[c]).
- Updates to chapter 11, **Employee Blogging and Social Media**, offer details of a **new federal government policy** involving review of social media posts made by federal employees and contractors applying for security clearance, and FTC guidance on helping companies determine if they are FCRA-covered entities (*see* § 11:4.5[A]), as well as new discussions of six recent district courts and NLRB decisions involving social media.
- The authors have **expanded and updated** chapter 13’s examination of the continuing impact of the Supreme Court’s 2011 ruling in *AT&T Mobility LLC v. Concepcion* in California (*see* § 13:2.2[B]) and the unsettled issue of the **validity of employee class waivers** in the wake of *D.R. Horton* (*see* § 13:2.2[D]).

Practising Law Institute is proud to publish *Employment Law Yearbook 2017*. If you have any comments or questions, please contact us (*see* **QUESTIONS ABOUT THIS BOOK?** on the page following the title page).