

## CUT AND PASTE POST FEBRUARY, 2017

### HR and the New Administration

In a webcast on 1/30/2017, Lisa Horn and Nancy Hammer of SHRM Government Affairs provided an outlook for the first year of the Trump administration. The webcast took an in depth look at:

- The balance in power in Washington;
- The Presidential transition process;
- The impact of Executive Orders, including the Executive Orders freezing any new regulations and the “2 for one rule” requiring 2 regulations to be overturned for every one that is newly adopted;
- The priorities of the Trump administration that could impact HR management, including the most vulnerable Obama HR-related Executive Orders, Regulations and Guidance documents; and
- Administrative and Congressional priorities on key HR issues in 2017, including the Affordable Care Act, immigration reform (including this weekend’s Executive Order which put the status of the visas of people from 7 nations in question), paid leave, and tax treatment of employer sponsored benefits.

If history teaches us anything, the Republicans will have two years to affect the change they want, as they could lose seats, and possibly their majorities, in the House and Senate in the midyear elections.

This was an interesting webcast and well worth taking an hour out of your life to listen to. SHRM members may access the webinar at <https://www.shrm.org/LearningAndCareer/learning/webcasts/Pages/0117hammerhorn.aspx>

### Presidential Appointments

- **Supreme Court** –Tonight, President Trump announced that he has chosen Judge Neil Gorsuch to fill the Supreme Court vacancy. Gorsuch, a conservative leaning judge, currently sits on the 10<sup>th</sup> Circuit Court of Appeals in Denver. Gorsuch’s record on employment issues is somewhat limited, although he sided with the plaintiffs in the *Hobby Lobby* case that challenged ACA requirement that health benefit plans include contraceptive coverage. In general, given the current makeup of the Court, it’s unlikely that a new conservative Justice will put Affirmative Action in peril. However, public sector unions may not fare so well, as a legal challenge that ended in deadlock in March 2016 (*Friedrichs vs. California Teachers Association*) could soon reach the Court again and, with Gorsuch on the Court, the challengers are likely to gain a fifth vote.
- **Department of Labor** – Trump has nominated Andrew Puzder, the head of the Carl's Jr. and Hardee's fast food restaurants, and a vocal critic of the minimum wage, as Secretary of the DOL. Puzder’s confirmation hearing was rescheduled until 2/7/16 to allow additional investigation, such as potential FLSA violations occurring in businesses under his control.
- **Equal Employment Opportunity Commission** -Trump has named Victoria Lipnic as acting chair of the EEOC. Originally appointed to the Commission in 2010 by President Obama, Lipnic's current term expires in June 2020. Lipnic was also the Assistant Secretary of Labor for Employment Standards at the DOL from 2002-2009.
- **National Labor Relations Board** – The President appointed Phillip Miscimarra as acting chair of NLRB. Miscimarra is currently the only Republican board member. There are 2 more vacancies on the Board, which Trump will also fill. With a Republican majority, the new Board will likely reverse many of the

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previous Board decisions, such as the definition of a joint employer, restrictions on employer handbooks, and class action waivers.

## Overtime Rule Updates

**DOJ response to overtime injunction litigation delayed 30 days** - On January 26, the 5th U.S. Circuit Court of Appeals granted the U.S. Department of Justice's (DOJ's) motion for a 30-day extension to file its reply brief in the White Collar salary rule litigation. This will allow the new Administration time to consider whether and how to pursue the issue.

**Judge's Injunction may not apply to increase in HCE Salary Threshold** - The white collar salary rule increased the minimum salary for the highly compensated employee from \$100,000 to \$134,004. While the November 22, 2016 preliminary injunction broadly stated that was blocking the overtime rule, it also listed the provisions of the overtime rule being barred. This list did not include the HCE exemption provision found in Section 541.601 of the rule.

The problem here is that, if a business claims that an employee is exempt because s/he makes more than \$100,000, an employee's attorney may cite the language from the November 22 injunction to claim that an HCE exemption does not apply because the HCE exemption's minimum annual salary level is now \$134,004.

*Professional Pointer:* None of the attorneys interviewed by SHRM recommended increasing the salaries of HCE employees. However, if you rely on the HCE exemption, you need to monitor this. We will keep you updated!

## Montana Legislative Update

Here is the status of HR-related bills or bill requests. Bills in [blue](#) are new since the January Cut N Paste.

Bill Draft or LC Number	Requestor	Status	Status Date	Short Title
<a href="#">LC1152</a>	Kelly McCarthy (D) HD 49	(C) Draft Ready for Delivery	1/26/2017	Generally revise laws related to non-discrimination (e.g., sexual orientation, gender identity)
<a href="#">LC1562</a>	JP Pomnichowski (D) SD 33	(C) Draft On Hold	12/06/2016	Revise discrimination laws
<a href="#">LC0970</a>  	Adam Hertz (R) HD 96	C) Draft Ready for Delivery	12/22/2016	Income tax credit apprenticeship program for employers of veterans
<a href="#">LC1119</a>  	Mary Ann Dunwell (D) HD 84	Tabled in Committee – (H) Business and Labor	1/29/2017	Raise minimum wage in Montana
<a href="#">LC1468</a>  	Denley M Loge (R) HD 14	C) Draft Delivered to Requester	1/30/2017	Revise service animal laws
<a href="#">HB 88</a>  	Moffie Funk (D) HD 82	(S) 2nd Reading Concurred	01/30/2017	Revise incumbent worker training program requirements
<a href="#">HB 132</a>  	Nate McConnell (D) HD 89	(H) Second Reading Concurred	1/30/17	Revise unemployment insurance laws (modifies appeals process)
<a href="#">HB 239</a>  	Bill Harris (R) HD 37	H) Hearing -- (H) Taxation	1/25/2017	Provide income tax benefits to employers and students for higher education costs
<a href="#">HB 308</a>  	Casey Schreiner (D) HD 26	(H) Referred to Committee -- (H) Taxation	01/25/2017	Provide for apprenticeship tax credit with increased amount for veterans
<a href="#">HB 329</a>  	Theresa Manzella (R) HD 85	H) Referred to Committee -- (H) Business and Labor	01/30/2017	Revise contract amounts at which prevailing wages are paid
<a href="#">SB 72</a>  	Pat Connell (R) SD 43	(S) 2nd Reading Concurred as amended	1/30/2017	Create presumptive illness for public firefighters (addresses lung disease.)
<a href="#">SB 148</a>  	Sue Malek (D) SD 46	(S) Hearing -- (S) Business, Labor, and Economic Affairs	02/07/2017; 8:00 AM, Rm 422	Establish the Montana Pay Equity Act