FEDERAL Employment Law Insider

An update on new federal law and regulation affecting your workplace

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Fortney & Scott, LLC

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IMMIGRATION

Double the trouble: When one investigation leads to another

by Jacob M. Monty
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Unlike the 7-Eleven sting in January, which had its genesis in a previous U.S. Immigration and Customs Enforcement (ICE) investigation, an April 5, 2018 raid on a Tennessee meat-processing plant, one of the largest ICE raids since the Bush era, began with a tax evasion inquiry. A massive undercover operation by the IRS not only revealed the employer's failure to pay taxes on employees' wages (which were paid in cash) but also its practice of hiring individuals who lacked work authorization.

While many employers pay employees in cash to evade taxes, others intentionally misclassify workers as independent contractors to avoid paying overtime. The erroneous belief among some employers is that labeling someone a contractor or paying him in cash is enough to avoid the applicable legal obligations, but that's a misperception. Should the company's practices be investigated and wrongdoing uncovered, it will not only owe taxes to the IRS but back wages to its employees as well. And we're not talking about simply owing employees minimum wage for their labor—the most damaging part of a back-pay award may be the time and half due in overtime. Multiply the claim for unpaid wages by a hundred employees, and an employer is easily looking at a figure topping six digits or more.

However, back taxes and wages should be the least of employers' worries these days. Because of the Trump administration's push to strictly enforce the immigration laws, workplace raids are more real than ever. In light of the administration's goal of increasing ICE's workplace investigations by four to five times this year, employers all over the country should take the opportunity to ensure they are in compliance with immigration law.

After implementing an immigration compliance policy, an employer should ensure it has an established protocol for dealing with ICE raids and investigations. It's important to designate a company representative to act as the on-site point of contact for the ICE agent during a raid or investigation. The representative should be prepared to review subpoenas, warrants, and other court documents, or simply contact legal counsel and request that an attorney come to the workplace. Additionally, the employer should establish a method for notifying family members if an individual is detained or arrested and prompt them to seek the assistance of an experienced immigration attorney.

Many times, employers are so focused on implementing a protocol for an ICE raid, they forget to do the simplest of things, like conduct an internal audit of their immigration practices, including documentation (i.e., I-9 forms). An audit can help an employer identify potential areas of liability and proactively resolve any issues.

What's Inside

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Remember, once an employee is offered a job, the employer is responsible for verifying her employment eligibility. Should the employee inform the employer that she isn't authorized to work or fail to present documentation in support of her work authorization, she must be terminated immediately.

If the rise in the number of ICE investigations being conducted doesn't have employers worried, the return of workplace raids should prompt them into action. But paying employees in cash or hiring them as independent contractors doesn't fix the problem. Such practices could indicate that an employer suspected or knew individual workers lacked work authorization, and combined with low wages and long hours, that evidence could lead to criminal prosecution for human trafficking and harboring illegal aliens.

It's easy to see that failing to follow the rules in one area of the law can lead to liability in other areas. If an employer fears it might be at risk of legal exposure, it should immediately contact an experienced attorney. Ignoring the problem is never the answer.

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INSIDE THE DOL

DOL potpourri: tip pooling, PAID program, overtime, and opinion letters

by David Fortney and H. Juanita M. Beecher
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Controversy continues to swirl around the U.S. Department of Labor's (DOL) tip-pooling regulation. On March 21, 2018, it was reported that DOL leadership, including Labor Secretary Alexander Acosta, had convinced Mick Mulvaney, director of the Office of Management and Budget (OMB), to override Office of Information and Regulatory Affairs (OIRA) Administrator Neomi Rao's attempt to block the tip-pooling regulation and require the DOL to reinsert estimates on what tipped employees might lose in tips to their bosses under the regulation. The proposed rule would replace an Obama administration rule that prohibited tips from being shared with "back-of-the-house" employees. The new proposal would allow back-of-the-house employees (e.g., cooks and dishwashers) to share in tip pools if front-of-the-house employees (e.g., servers) are paid the full federal minimum wage of $7.25 per hour.

In response to the controversy, Congress added a provision to the omnibus budget bill signed into law on March 23 that amended the Fair Labor Standards Act (FLSA) to prohibit employers, including managers and supervisors, from participating in tip-pooling arrangements. The DOL then issued a Field Assistance Bulletin on April 6 stating that when tip pooling is permissible, managers and supervisors are barred from taking tips, and it will use the FLSA duties test for enforcement purposes. The DOL has subsequently stated that it expects to propose regulations implementing the new law in the "near future."

The addition of the tip-pooling provision to the budget bill has temporarily cooled the controversy over how the tip-pooling rule was handled. However, it's still unclear what will happen with the proposed regulation that was at the center of the controversy.

WHD announces PAID program

On March 4, the DOL's Wage and Hour Division (WHD) announced a new pilot program, the Payroll Audit Independent Determination (PAID) program, intended to expedite the resolution of inadvertent violations of the FLSA's overtime and minimum wage provisions. The WHD plans to implement the pilot program nationwide for approximately six months, after which it will evaluate the program and consider future options.

The stated purpose of the PAID program is to ensure that more employees will receive any back wages they are owed faster than they would through litigation. Employees will receive 100 percent of a back-pay award without having to pay any litigation expenses, attorneys' fees, or other costs that may be applicable in private actions. Under the program, the WHD will oversee the resolution of potential violations by assessing the amount of wages owed and supervising the payment to employees. The WHD won't impose penalties or liquidated damages on settlements when employers choose to participate in the PAID program and proactively work with the agency to resolve their potential compensation errors.

The program isn't available to employers currently in litigation or under investigation by the WHD for the practices at issue. Employers likewise cannot use the pilot program to repeatedly resolve the same potential violations. Settlements will be limited in scope to the violations at issue. The program requires participating employers to review the WHD's compliance assistance materials, carefully audit their pay practices, and agree to correct their pay practices going forward.

Although employers have responded positively to the PAID program, many questions remain. For example, what will happen to employees' state-law claims if

their FLSA claims are resolved? Will employees agree to participate? And how will the WHD handle an FLSA lawsuit filed by employees after their employer has approached the agency about resolving the issue through the pilot program? In addition, attorneys general in 10 states and the District of Columbia have raised questions about the impact of the PAID program on state wage laws and their concerns that employers will use the program to force employees to waive their state-law rights.

Obama overtime regulations still being litigated

The litigation over the Obama administration's overtime regulations continues. Although a federal district court in Texas had issued a nationwide injunction in November 2016, a collective action seeking enforcement of the regulations was filed against Chipotle in federal district court in New Jersey. The plaintiffs claimed the national injunction merely barred the DOL from enforcing the Obama overtime regulations. In August 2017 Chipotle asked Judge Amos L. Mazzant III of the U.S. District Court for the Eastern District of Texas to hold the plaintiffs' attorneys in contempt for violating his national injunction. While Judge Mazzant considered the contempt order, the federal district court in New Jersey stayed (delayed) the Chipotle lawsuit.

On March 19, Judge Mazzant held lawyers from Outten & Golden and Cohen Milstein Sellers & Toll and their clients in contempt for improperly pursuing an FLSA collective action under the invalidated rule. He ordered them to withdraw the allegations against Chipotle within seven days and awarded Chipotle fees and expenses for the contempt order. He subsequently agreed to stay the order while it's appealed to the U.S. 5th Circuit Court of Appeals. Judge Kevin McNulty of the U.S. District Court for the District of New Jersey continued his stay on the collective action while the contempt order is reviewed.

Meanwhile, the DOL has appealed Judge Mazzant's opinion that it lacked the statutory authority to issue the revised overtime rules to the 5th Circuit. When Senator Patty Murray (D-Washington) pressed him for a timeline on the Trump administration's proposed revisions to the overtime rules at a Senate hearing on April 13, Secretary Acosta told her that the DOL is "working diligently" and he hopes it will not take "years" to come up with regulations as it has under past administrations.

First opinion letters issued

The DOL has issued its first opinion letters since it announced it would resume the practice. The documents were published on the WHD's website on April 12. Opinion letters from the WHD are highly valued because they can serve as a defense to litigation for employers.

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GENDER DISCRIMINATION

Court finds past pay not a 'legitimate factor' for setting compensation

by Consuela A. Pinto
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The 9th Circuit recently held in *Rizo v. Yovino* that an employee's past pay is not a "legitimate factor other than sex" as defined in the Equal Pay Act (EPA) and relying on salary history alone or in combination with other factors perpetuates past compensation discrimination.

Aileen Rizo was hired as a math consultant by the Fresno County Office of Education. The county had a simple formula for determining an employee's starting pay—it added five percent to the new hire's previous salary. No other factors were taken into account. Rizo filed an EPA complaint against the county after learning that male math consultants hired after her were paid more than she was.

The EPA, unlike Title VII of the Civil Rights Act of 1964, doesn't require employees to prove that their employer intentionally discriminated against them. An employee filing suit under the EPA simply needs to show that male and female employees were paid differently for substantially equal work. However, not all pay differences constitute discrimination under the EPA. Pay differences based on (1) a seniority system; (2) a merit system; (3) a system that measures earnings by quantity or quality of production; or (4) any factor other than sex are legitimate defenses to an EPA claim. Rizo's case turned on the fourth defense, also known as the "catchall exception."

The specific question presented in the case was whether past pay, alone or coupled with other factors, is a legitimate nondiscriminatory justification for differences in pay between male and female employees who perform substantially equal work. The 9th Circuit held that past pay, regardless of whether it is the only factor or is considered in concert with other factors, isn't a legitimate factor other than sex. Considering the language of the catchall exception compared to the other exceptions and the legislative history of the EPA, the court held that a legitimate factor other than sex must be job-related, and salary history isn't job-related. According to the court, an employee's past salary isn't reflective of her work experience, ability, performance, or any other

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FEDERAL CONTRACTOR CORNER

Director Harris lays out his vision for OFCCP

by H. Juanita M. Beecher
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On Wednesday, March 21, 2018, Director Ondray Harris spoke to an employer group about his vision for the Office of Federal Contract Compliance Programs (OFCCP). Harris reported that he had spent the past 90 days learning about the agency, holding three meetings with agency stakeholders to understand their concerns. Out of that intelligence gathering, he has developed an outline of his vision for the agency that includes the following goals:

- Helping contractors come into and remain in compliance;
- Being more transparent;
- Conducting audits faster and more efficiently;
- Collaborating more with contractors;
- Developing incentives to encourage large contractors to mentor newer and smaller contractors;
- Developing recognition programs to highlight contractors' best practices;
- Developing an apprenticeship program to close the skills gap and increase diversity, especially in critical tech jobs; and
- Conducting training programs for both contractors and OFCCP compliance officers to improve compliance assistance.

A major focus for Harris is developing voluntary apprenticeship programs to close the skills gap between available American workers and what he described as six million unfilled jobs. The agency is considering a pilot program that would incentivize contractors to provide apprenticeships as part of the required outreach under Executive Order 11246. The director's senior adviser, Craig Leen, is focused on improving the hiring, training, and promotion of individuals with disabilities under Section 503 of the Rehabilitation Act and is developing an award to celebrate contractors whose practices most successfully comply with Section 503's goals.

Harris is also committed to reducing the backlog of old audits. He and Leen are working to increase transparency during audits so contractors can better understand and respond to the agency's findings in a timely fashion.

New leadership explains how OFCCP chooses contractors for audit

The OFCCP director's first step in bringing more openness and transparency to the agency was the requirement, reported in last month's "Federal Contractor Corner," that Pre-Determination Notices (PDNs) be issued in every compliance evaluation in which individual or systemic discrimination is alleged so that contractors are aware of the issues uncovered by the agency. Moreover, each PDN will be reviewed by the national office to help with consistency. This directive is in response to complaints that the OFCCP was issuing Notices of Violations (NOVs) without providing any notice or explanation to contractors.

The next step in Harris' move toward more transparency came on April 19 when the OFCCP published on its website the methodology for selecting contractors for audit it is using in 2018. The published methodology provides that before selecting establishments for audit, the agency will remove from the pool contractors that have been reviewed in the last five years, have fewer than 70 employees, and have contracts worth less than $50,000. The OFCCP will then divide the pool among the various district offices, order the establishments by employee count, apply a set of specific criteria, randomly order the establishment list, and upload the list into the case management system. Finally, the methodology will cap the scheduling list at 1,000 establishments.

In response, concerns have been raised that the new methodology doesn't place enough focus on establishments that actually have government contracts. In addition, the fact that establishments with functional affirmative action plans (FAAPs) are now included in the selection process may discourage contractors from entering into FAAP agreements.

Is OFCCP about to revoke Directive 307?

It has been reported that the OFCCP is about to revoke its controversial compensation guidelines, known to federal contractors as Directive 307. According to recent reports, the agency will instruct investigators to analyze pay rates among groups of employees based on the job categories set by the employer.

Revocation of Directive 307 is high on the wish list of every contractor because it allows the OFCCP

to review compensation in an overly broad and arbitrary manner rather than on the basis of compliance with Title VII. The new standard will apparently apply only to new audits, so it will not affect the U.S. Department of Labor's (DOL) litigation against Google and Oracle.

OFCCP lowers VEVRAA benchmark to 6.4%

On Friday, March 30, the OFCCP announced that it is lowering the hiring benchmark under the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) to 6.4% effective March 31, 2018. The VEVRAA hiring benchmark from March 31, 2017, to March 30, 2018, was 6.7%.

OFCCP conducts second contractor survey

On March 28, the OFCCP announced in an e-mail that it planned to issue a second contractor survey on or about April 9. The survey was not sent to all contractors but focused on contractors that completed a compliance evaluation between October 1, 2012, and September 30, 2017. Contractors selected to complete the survey received a notice titled "OFCCP Compliance Evaluation Experience Survey."

The OFCCP is using SurveyMonkey to ensure anonymity. The agency stated that it will not select a contractor for audit based on its participation in the survey. Here's the complete announcement:

> In a continued effort to provide compliance assistance, OFCCP will be sending out a survey to gather more information about how we can continue improving communication, transparency, and timeliness during our compliance evaluations.
>
> If you're a contractor that completed a compliance evaluation between October 1, 2012[,] and September 30, 2017, watch your inbox over the next two weeks for a survey from OFCCP.
>
> The survey, deployed electronically via SurveyMonkey, will collect information on contractors' experiences during compliance evaluations to identify areas where OFCCP can strengthen its outreach, education, training, and processes. On the survey form, you will have the opportunity to provide concrete suggestions for improving your interaction with OFCCP. Your input on this survey helps OFCCP make the process more effective and identify possible areas of compliance assistance that might be strengthened during future compliance evaluations.
>
> We know that some of you may have concerns about anonymity. To address these concerns, OFCCP selected the option in SurveyMonkey that makes survey responses anonymous. Moreover, SurveyMonkey is not collecting or sharing data with OFCCP that would personally identify survey respondents, including their IP address. **We will never schedule a contractor for a compliance evaluation based on participation in this survey. Additionally, because the survey is anonymous, your participation will have no impact on any compliance evaluation that is already [under way].** You will remain anonymous to us, and we will only use the information you submit to determine what we are doing well and where we may need to improve.

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legitimate criteria. Further, the reliance on past pay to determine starting pay perpetuates the gender-based wage disparities prohibited by the EPA.

Because the county considered only past pay when determining a new hire's starting salary, the court could have limited its ruling to the narrow question of whether past pay alone is a legitimate factor other than sex under the EPA. Its decision to consider the broader question of whether past pay is ever a legitimate factor other than sex puts the 9th Circuit at odds with the 2nd, 6th, 10th, and 11th Circuits, which have all held that employers may rely on pay history along with other legitimate factors to determine starting pay.

The takeaways for employers include:

(1) When determining a new hire's starting pay, don't consider her past pay, regardless of whether you take other factors into account.

(2) Rely only on factors that are job-related.

(3) There's likely more to come on prior pay as a legitimate factor.

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INSIDE THE NLRB

NLRB: sinking in place

by Burton J. Fishman
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If it wasn't for broader, more serious organizational and ethical breaches swirling around a variety of Trump appointees and agencies, the disarray at the National Labor Relations Board (NLRB) might attract some attention. The situation at the NLRB is an all-but-perfect example of a "Washington dilemma," made up of equal parts of political posturing, self-interest, and a serious ethical quandary. It's also a situation that has profound ramifications for employers and employees.

The NLRB was designed by Congress to reflect the policies and positions of the president. In that sense, it represents one of the most straightforward ways in which a new president can see his policies effected. Its direct impact on employment practices has made the Board one of the most politicized agencies in our government. In this highly politicized moment in a highly divided government, the tugs and pulls on the NLRB are at the point of dismembering the institution.

It all started quietly enough. Two new Republican members were appointed to fill vacancies at the NLRB, creating a Republican majority on the Board. As is often the case under a Republican administration, the new members are experienced attorneys who have devoted much of their careers to representing employers and employer associations. In every respect, the new members are "management" counterparts to the "labor" representatives appointed by Democratic presidents, whose careers have been devoted to representing unions and other employee organizations.

One of the new NLRB members is William Emanuel, a partner in a large law firm that represents management. His appointment coincided with the hearing of a new case, *Hy-Brand Industrial Contractors, Ltd.*, in which the Board overturned *Browning-Ferris Industries of California, Inc.*, a highly controversial 2015 decision. In *Browning-Ferris,* the NLRB held that a business that exerts indirect control over another business's workers can be considered their "joint employer" in union election cases and unfair labor practice proceedings. That ruling created confusion about the bargaining obligations and business relationships of employers everywhere, especially among franchisers and franchisees, and contractors and subcontractors.

In addition to reinstating the decades-old standard for determining who is considered "in charge" of a workforce, *Hy-Brand* created jurisdictional turmoil in the courts. The Board's *Browning-Ferris* decision had been appealed and argued. Was that appeal still pending, or was the case moot? And while those legal matters were spinning, the ethical shoe dropped. Under pressure from union advocates and some members of Congress, the NLRB's inspector general (IG) issued a report (itself controversial) in which it found that Emanuel should have recused himself from the *Hy-Brand* case because his law firm represented one of the affected parties. With Emanuel absent, the Board then ruled to rescind the *Hy-Brand* decision.

The wisdom and propriety of that rescission has been questioned ever since. The appeals court hearing *Browning-Ferris* has all but thrown up its hands and told the NLRB to settle the issue before it will deal with the

WAGE AND HOUR LAW

Supreme Court rejects narrow interpretation of FLSA exemptions

by Sean D. Lee
Fortney & Scott, LLC

On April 2, 2018, the U.S. Supreme Court ruled in *Encino Motorcars, LLC v. Navarro* that automobile service advisers—the people who greet you at the dealership, listen to your needs, and sell you services for your car—are exempt from the overtime requirements of the Fair Labor Standards Act (FLSA).

The FLSA contains an exemption for "any salesman . . . primarily engaged in selling or servicing automobiles" at a covered dealership. The question before the Supreme Court was straightforward: whether service advisers fall within the exemption and therefore aren't entitled to overtime when they work more than 40 hours in a week. The 9th Circuit ruled that the service advisers at Encino didn't satisfy the exemption, basing its decision in part on the rationale that FLSA exemptions should be "construed narrowly." The Supreme Court disagreed with the 9th Circuit and reversed its ruling.

In a 5-4 decision, the Court explained that "a service advis[er] is obviously a 'salesman'" in the ordinary sense of the word. More significant, however, the Court directly rejected the 9th Circuit's rationale that FLSA exemptions must be construed narrowly. Even though a number of courts have adopted that position, the high court found it baseless and determined that strict construction isn't "a useful guidepost for interpreting the FLSA." Instead, the proper standard—and now the law of the land—is a "fair (rather than a 'narrow') interpretation" of an FLSA exemption's plain language. Thus, *Encino* has far greater implications for employers beyond the auto industry.

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appeal. The NLRB's General Counsel has challenged the legal sufficiency of the rescission. Hy-Brand recently filed a motion alleging the Board violated its own procedures when it vacated the decision. More important, Hy-Brand challenged the IG's authority to interpret the Trump administration's ethics rules and alleged its report was legally insufficient in every respect. Perhaps most significant, the criteria for recusal have been thrown into chaos.

Since the NLRB's inception, Board members have been selected from jobs in which they represented management or labor. Emmanuel insists that he had no role in his firm's representation of *Hy-Brand* and notes that his role in a firm of more than 1,000 lawyers was limited to a tiny percentage of matters. But the simple fact that he was a partner in that "management" law firm was the basis for his recusal. If that's the case, it's hard to know if there's a bright line anywhere. Indeed, the newest Republican Board member, John Ring, has already been challenged by union representatives because he, too, was a partner in a large management law firm that represents employers.

If "issue recusal" is now the standard at the NLRB, it's just as likely that Democratic members will be banned from participation in certain cases, too. After all, they've represented unions, and even worked for unions, before coming to the Board. Indeed, if the "Emanuel standard" is the new ethical criterion for recusal, it may not be possible to have a functioning NLRB.

In these turbulent times, when ethical issues have been politicized and "weaponized," it's difficult to see how NLRB members can withdraw to the prior "specific matter" recusal standard. Only the necessity of having an NLRB that can perform its statutory functions may force a resolution.

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INSIDE THE EEOC

OIRA considering review of independent agencies' regulations

by H. Juanita M. Beecher
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Office of Information and Regulatory Affairs (OIRA) Administrator Neomi Rao announced at the Federalist Society's Sixth Annual Executive Branch Review Conference that the Trump administration is considering reviewing rules issued by independent regulatory agencies, including the Equal Employment Opportunity Commission (EEOC).

According to Rao, OIRA is "advancing the administration's regulatory reform priorities by pursuing structural changes that strengthen centralized review, democratic accountability, and the role of cost-benefit analysis." Now that OIRA has jurisdiction over the Treasury regulations, Rao believes those "broader principles could also be extended to the traditionally understood independent agencies." She went on to say that the U.S. Supreme Court has repeatedly emphasized that the regulatory agencies are within the executive branch and "OIRA review can promote a more constitutional and coherent regulatory policy." The heads of many independent agencies have opposed review of their regulations by the Executive Office of the President.

EEOC announces extension for filing EEO-1 reports

The EEOC announced on its website that it is extending the filing date for the EEO-1 report from March 31, 2018, to June 1, 2018.

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POLITICAL APPOINTMENTS

Nomination and confirmation update

by Sean D. Lee
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April brought a flurry of activity in filling top roles at the nation's labor and employment agencies:

- On April 10, Sharon Fast Gustafson testified before the Senate's Health, Education, Labor and Pensions (HELP) Committee for consideration as the general counsel of the Equal Employment Opportunity Commission (EEOC). The HELP Committee was scheduled to vote later in the month on whether to advance Gustafson for full Senate consideration, but that vote has been delayed.
- On April 11, John Ring was confirmed by the Senate to join the five-member National Labor Relations Board (NLRB). Ring will take over as chair of the NLRB, replacing Trump pick and fellow Republican Marvin Kaplan, who led the agency for less than five months. Kaplan remains on the Board.
- Also on April 11, President Donald Trump announced his intention to nominate John Pallasch to be assistant secretary of labor for employment and training.
- On April 12, Patrick Pizzella received long-awaited confirmation from the Senate to become the deputy secretary of labor, the number-two position at

the U.S. Department of Labor (DOL). Pizzella was tapped for the position in the summer of 2017, but his confirmation was hampered by his ties to notorious lobbyist Jack Abramoff.

A number of other key labor and employment nominees await confirmation, including Cheryl Stanton as administrator of the DOL's Wage and Hour Division (WHD), Scott Mugno as head of the Occupational Safety and Health Administration (OSHA), and William Beach as commissioner of the U.S. Bureau of Labor Statistics (BLS).

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EMPLOYMENT LAW

Employers struggle to comply with background check requirements

by H. Juanita M. Beecher
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In the past few months, a number of large employers have paid millions to settle claims involving their background check processes.

On April 5, 2018, Target announced that it would pay $3.75 million to settle allegations that it denied jobs to applicants because of their criminal history. A class of job applicants who were rejected by Target alleged that the company's background check process violated Title VII because the company refused to hire applicants who had been convicted of certain misdemeanors or felonies involving "violence, theft, or controlled substances" in the seven years before they applied for a job, and the company "imports the racial and ethnic disparities that exist in the criminal justice system into the employment process."

Target will offer jobs to 41,000 class members before hiring other applicants and will waive its initial screening interview for supervisory positions. Class members who aren't hired will be paid a portion of a $1.2 million cash pool. Target will also hire two industrial and organizational psychology experts to review and revise how it factors applicants' criminal history into job decisions. The plaintiffs' attorneys will ask for as much as $1.9 million in legal fees and costs.

Amazon, Frito-Lay, and Petco all settled similar claims that they violated the "standalone disclosure" requirement of the Fair Credit Reporting Act (FCRA). Amazon was accused of failing to provide standalone disclosures in its online application process, in violation of the FCRA. The company and the plaintiffs had until April 30 to lay out the settlement's details.

Frito-Lay agreed on April 13 to pay $2.4 million to end a proposed class action in which a former employee alleged it violated the FCRA by including in its disclosure form extraneous agreements and certifications instead of presenting it as a standalone document. On April 20, Petco agreed to pay $1.2 million to settle a proposed class action in which it was accused of hiding the authorization that allowed it to run credit checks on applicants.

These cases all represent a warning to employers to ensure that their background check processes and authorizations comply with Title VII and the FCRA.

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