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An update on new federal law and regulation affecting your workplace

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FEDERAL CONTRACTORS

OFCCP takes a new direction (or does it?)

by H. Juanita M. Beecher
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On July 27, 2018, Ondray Harris resigned after eight months as director of the Office of Federal Contract Compliance Programs (OFCCP). During Harris' tenure, the agency's focus seemed to be primarily on how federal contractors could use apprenticeship programs to increase diversity. That frustrated contractors, who had hoped the Trump administration would reverse the agency's high-handed approach to audits generally and compensation specifically. Craig Leen, who was brought into the agency as a senior adviser and was recently promoted to deputy director, was named acting director. Marika Litras, acting deputy director, became his career deputy.

On August 1, Leen gave the opening address to the annual gathering of EEO and affirmative action professionals at the Industry Liaison Group's (ILG) National Conference in Anaheim, California. In his remarks, Leen outlined what contractors can expect from the agency moving forward, including shorter audits, more transparency and consistency, and a less adversarial approach to contractors. To reinforce that message, the OFCCP issued the long-awaited contractor "Bill of Rights" titled "What Federal Contractors Can Expect."

During his other sessions at the conference, Leen discussed implementing annual contractor certification on affirmative action plan (AAP) compliance and developing focused review compliance audits. However, he refused to say when (or if) the OFCCP would abandon its unpopular Directive 307, which outlines the agency's process for reviewing contractors' compensation practices, merely stating it was being reviewed.

Leen's ILG comments appear to indicate that the agency is using the recommendations in the Government Accountability Office's (GAO) 2016 report as a blueprint for moving the OFCCP forward. For example, in response to the GAO's suggestion that it revise the audit process to focus on the contractors that are most likely to be noncompliant with OFCCP regulations, Leen has recommended scheduling contractors that don't annually certify their compliance with their AAP requirements for audits because they're most likely to be noncompliant. The proposed annual contractor certification process would satisfy the GAO's recommendation that the agency develop a mechanism to monitor AAPs regularly.

Another recommendation Leen has focused on is the need for more and better training for contracting officers. The agency is in the process of hiring a consultant to help it develop new training for OFCCP staff, who currently receive very little training. In the Bill of Rights, which was developed as a result of contractors' frustration with the agency's hostile attitude during the

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Obama administration, the OFCCP is responding to another GAO recommendation that it provide better outreach and assistance to contractors so they know what is expected of them. The agency is working to develop a training program for contractors as part of its outreach.

Federal contractors came away from the ILG conference with a favorable impression of Leen and his proposals. Since the conference ended, the OFCCP has issued six new directives, the most important of which rescinded Directive 307. Some of the other directives propose focused audits, reinstate contractor recognition, and outline the affirmative action verification initiative, all of which were mentioned at the ILG. However, Leen also issued Directive 2018-03, which instructs the OFCCP to take religious liberty into account without providing any real guidance to contractors on what that means, especially with regard to LGBT rights.

One other issue of concern for contractors is the tendency of some OFCCP offices to leak confidential information about audits to the press. Leen appears to be addressing that issue in Directive 2018-07, which rescinded Directive 307. In a section titled "Confidentiality of Information," the directive states, "[The] OFCCP does not release data obtained during the course of a compliance evaluation until the investigation, and all subsequent proceedings, if any are complete."

Although contractors are hopeful the agency will become "kinder and gentler" as Leen seemed to suggest in Anaheim, the true test of his leadership will be whether his words become actions in audits.

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WORKPLACE ISSUES

Culture clash: Federal agencies offer different interpretations of same issue

by Burton J. Fishman
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Momentous decisions regarding workplace investigations and protections for LGBT employees are likely coming from different departments and agencies of the federal government. Currently, the National Labor Relations Board (NLRB) and the Equal Employment Opportunity Commission (EEOC) have opposing views on whether workplace investigations into sexual harassment can be confidential. And the U.S. Department of Justice (DOJ) and the EEOC have different positions on whether Title VII of the Civil Rights Act of 1964 protects LGBT employees. Those differences are unsustainable, but a resolution has yet to be found.

NLRB vs. EEOC

In June 2016, the EEOC issued a report from a task force on harassment in the workplace in which it strongly supported the position that harassment investigations should be as confidential as possible. The EEOC believes that confidential investigations will encourage victims to come forward, guard against retaliation, and protect witnesses as well as people accused of bad behavior.

The NLRB, on the other hand, held in its 2015 decision in *Banner Health* that prohibiting victims and witnesses from discussing an investigation impairs employees' statutory rights to speak freely to each other about job-related issues. Under *Banner Health,* an investigation can be confidential only if the employer can show it has a "legitimate and substantial business justification" that outweighs workers' rights to engage in concerted activity. That standard is very difficult to meet—and perhaps impossible prior to an investigation.

Neither position has gained broad support. Plaintiffs' lawyers, who ordinarily align themselves with the EEOC, are among the most vocal critics of the agency's position. They claim that confidentiality harms victims and the entire workforce by keeping everyone in the dark. Confidential investigations, they argue, keep the issue and the perpetrator in the shadows. By contrast, victims' rights advocates and employers claim the NLRB's position undermines the integrity of an investigation and exposes victims and witnesses to retaliation.

In response to those criticisms, the EEOC and the NLRB have begun talks in an attempt to reach a common position so they can provide clarity on the issue to employers and employees. While those talks proceed, the NLRB may end the conflict by rescinding or modifying its ruling in *Banner Health.* The Board has already moved to overturn a number of Obama-era decisions addressing workplace conduct, and General Counsel Peter Robb has indicated he wants to revisit the NLRB's approach to the confidentiality question. By either route, the prospects for a common position—supporting confidentiality—is likely in the near term.

EEOC vs. DOJ

A larger and more intractable conflict over whether Title VII protections extend to the LGBT community exists between the EEOC and the DOJ. Under the Trump administration, the DOJ has forthrightly maintained that Title VII's prohibition on discrimination based on sex does not include sexual orientation or gender identity. The EEOC, relying on its own regulations interpreting Title VII, insists that it does. The two agencies have even taken contrary positions in the same case before bewildered judges.

The anomaly of an executive agency taking a different legal position than the chief legal department of the executive branch is remarkable. It can occur only

because the EEOC is an independent entity, with independent commissioners with singular views serving fixed terms. And the dichotomy will persist until one of the agencies changes its view or the U.S. Supreme Court settles the issue.

The legal status of LGBT workers—in other words, the reach of Title VII protections—is one of the most significant issues facing employers and employees. It hasn't taken center stage yet, but the clash of cultures will soon be in the spotlight because cases are already in the pipeline. In fact, a case requiring the Supreme Court to rule on the substance of the EEOC's regulations and its regulatory authority will not only define Title VII, but it may very well be the case that trims or reverses the Court's *Chevron* ruling, which granted significant deference to regulatory agencies.

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FAMILY LEAVE

Could federal paid family leave become a reality in the United States?

by Sara Nasseri
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The topic of paid family leave is gaining more and more attention across the United States and among employers nationwide. With states and localities establishing varying paid sick time and family leave requirements, the issue of paid family leave has become a hot topic among federal lawmakers. Just a few months ago, senators from both sides of the aisle tried to determine what a bipartisan solution to the question of federal paid leave would look like.

Both Republicans and Democrats agree that paid family leave should be expanded to better support working parents. They also agree that paid family leave improves health outcomes for workers, helps families manage their responsibilities at work and home, and creates incentives for people to stay in the workplace, which supports productivity and economic growth. However, they have proposed bills containing vastly different responses to family leave, sick time, and flexible scheduling standards.

On the Republican side, several senators have proposed measures that would provide relief to businesses in bypassing local laws that require paid time off (PTO) for employees to care for newborn children. For example, the Workflex in the 21st Century Act, proposed by Representative Mimi Walters (R-California), would give businesses that have PTO programs some relief from the web of local and state paid sick leave laws while providing workers between 12 and 20 days of paid sick time depending on the size of the company. It would also require employers to give employees a number of different flexible scheduling options. The Economic Security for New Parents Act, proposed by Senator Marco Rubio (R-Florida), would give workers at least two months off at about two-thirds their regular salary to care for their children, but because it would be funded by Social Security, it would require employees to work longer before retiring.

Congressional Democrats have floated their own set of bills, including the Family and Medical Insurance Leave Act (FAMILY Act), proposed by Senator Kirsten Gillibrand (D-New York) and Representative Rosa DeLauro (D-Connecticut), which would give workers up to 12 weeks of family leave at as much as two-thirds of their salary. The plan would be funded by a payroll tax paid by businesses and their workers. Also under consideration is the Schedules That Work Act, sponsored by DeLauro and Senator Elizabeth Warren (D-Massachusetts), which would allow workers to request changes to the terms of their jobs and trigger an interactive process with their employer.

It will be interesting to see how these proposed bills play out and how much bipartisan support can be raised to move forward with a federal solution to the paid family leave issue. Given the growing chorus of voices asking federal lawmakers to adress the issue, it seems possible Congress may come up with some type of answer.

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POLITICAL APPOINTMENTS

Confirmation of some nominees for federal positions stalls out

by Sean D. Lee
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More than a year and a half into Donald Trump's presidency, a number of key positions in the nation's labor and employment agencies remain vacant.

Several nominees are awaiting final Senate confirmation to take on leading roles within the U.S. Department of Labor (DOL), including Cheryl Stanton at the Wage and Hour Division (WHD), Scott Mugno at the Occupational Safety and Health Administration (OSHA), and William Beach at the U.S. Bureau of Labor Statistics (BLS). All three nominations were announced in the fall of 2017 and reported favorably out of committee, but they have since languished in the Senate.

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FEDERAL CONTRACTOR CORNER

OFCCP issues directives on religious freedom and focused reviews

by H. Juanita M. Beecher
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On Friday, August 10, 2018, the Office of Federal Contract Compliance Programs (OFCCP) announced two new directives. Directive 2018-04, outlined by Acting Director Craig Leen at the recent Industry Liaison Group (ILG) National Conference, provides that the OFCCP will work toward "ensuring that a portion of future scheduling lists, starting with Fiscal Year 2019, include focused reviews as to each of the three authorities that OFCCP enforces"—specifically, Executive Order (EO) 11246, the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA), and Section 503 of the Rehabilitation Act. The directive states that the focused reviews would have an on-site review component as well as a review of compensation and hiring data for Section 503, VEVRAA, and EO 11246. The review of compensation data under Section 503 and VEVRAA is new and raises some interesting questions about the validity of those analyses. Directive 2018-04 does not specifically outline what contractors can expect during a focused review but rather directs OFCCP staff "to develop a standard protocol for conducting focused reviews."

Directive 2018-03 instructs OFCCP investigators to take religious freedom into account when providing compliance assistance, processing complaints, and enforcing the requirements of EO 11246. The directive specifically cites the recent U.S. Supreme Court decision in *Masterpiece Cakeshop* and two EOs signed by President Donald Trump directing the government to provide faith-based organizations an equal shot at "grants, contracts, programs and other federal funding opportunities." Although the directive does not alter the 2014 amendment that added sexual orientation and gender identity to EO 11246, Leen stated in a footnote to the directive that it "supersedes any previous guidance that does not reflect these legal developments."

How the two new directives will be enforced is yet to be determined.

Harris leaves, Leen opens ILG conference

Just a few days after being named acting director of the OFCCP when Ondray Harris left the role on July 27, Leen opened the ILG National Conference in Anaheim, California, outlining the agency's four areas of focus: transparency, certainty, efficiency, and recognition. In an effort to promote more transparency, the agency released its contractor "Bill of Rights," discussed below. Leen also mentioned that the agency is considering issuing opinion letters to address contractor questions.

In a nod to certainty, Leen said the OFCCP is reviewing Directive 307, which outlines the agency's process for reviewing compensation practices, and assured contractors that they "will hear from us eventually." As to efficiency, he agreed with contractors that it takes an unacceptable amount of time for audits to close and noted that the agency is considering ways to complete desk audits in 45 days. Leen also said the OFCCP is looking at ways to bring back awards for "best in class" contractors to advance its goal of recognition.

Leen focuses on contractor compliance certification

At the final session of the 2018 ILG National Conference, Acting Director Leen and ILG Chair Paul McGovern discussed a range of topics that were raised during the conference.

Leen outlined the agency's proposal to require all contractors to verify that they have completed their affirmative action plans (AAPs). Although federal contractors currently certify to the General Services Administration (GSA) that they are in compliance with all of their obligations, the OFCCP hasn't focused its audits on contractors that are not in compliance. Leen stated at both the opening and closing sessions that he expects all contractors to be in compliance with their AAP obligations.

Paul noted that in response to a request from the agency, the ILG surveyed its membership and determined that a majority are in favor of a certification process. In 2016, the Governmental Accountability Office (GAO) recommended that the OFCCP require contractors to electronically submit their AAPs annually, but the agency is considering a simple certification process instead.

Leen concluded his closing remarks with an invitation to the contractor community to reach out to him with thoughts and suggestions on the agency's initiatives and enforcement practices. He offered his thanks to the ILG for being included in such a "tremendous" conference.

OFCCP issues federal contractor 'Bill of Rights'

On August 1, while Acting Director Leen was speaking at the ILG National Conference, the OFCCP posted its promised contractor "Bill of Rights" on its website. The document, titled "What Federal Contractors Can Expect," marks a significant change in the OFCCP's stance toward contractors, giving substance to past promises of more transparency and consistency and signaling what contractors hope will be an end to the agency's adversarial approach to compliance evaluations.

Here's what federal contractors can expect:

- Access to accurate compliance assistance material, including technical assistance guides, fact sheets, and brochures;
- A timely response to compliance assistance questions, typically within three or four days;
- Opportunities to provide meaningful feedback on the quality and quantity of the agency's compliance assistance and on their compliance audit experiences;
- Professional conduct by the OFCCP's compliance staff, including prompt, courteous, and accurate information during compliance evaluations and complaint investigations;
- Neutral scheduling of compliance evaluations;
- Reasonable opportunities to discuss compliance evaluation concerns with OFCCP compliance staff;
- Timely and efficient progress of compliance evaluations, including clear explanations of the compliance evaluation processes; and
- Confidentiality of contractor data to the maximum extent allowed by law.

The Bill of Rights had been described to contractors during town hall meetings held by then-Acting OFCCP Director Tom Dowd to indicate that the agency was being responsive to contractors' frustration with the agency's antagonistic posture under the Obama administration.

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President Trump's three picks for the Equal Employment Opportunity Commission (EEOC)—Janet Dhillon, Daniel Gade, and Chai Feldblum—are similarly stuck in limbo as they await final Senate approval. If confirmed, Feldblum, a Democrat and staunch advocate for LGBT rights, would serve a third five-year term on the EEOC after first being appointed by President Barack Obama in 2010. Both Dhillon and Gade would join fellow Republican Victoria Lipnic to reclaim a Republican majority on the five-member commission. Also trapped in confirmation purgatory is Trump's nominee for EEOC general counsel, Sharon Fast Gustafson.

Although Senate Majority Leader Mitch McConnell (R-Kentucky) canceled the Senate's August recess so lawmakers could focus on passing legislation and confirming nominees, no progress has been made toward greenlighting the individuals mentioned above. If they aren't confirmed before Congress adjourns at the end of the year, President Trump will have to renominate them at the start of 2019, which could lead to a demand by Democrats that the nominees undergo further confirmation hearings. More important, if Democrats reclaim a majority in the Senate following the November midterm election, they could derail the entire set of nominations.

There are other vacancies that don't require presidential nomination or Senate confirmation. The DOL's Administrative Review Board (ARB)—the five-member panel that functions like an appeals court for decisions by the agency's administrative law judges—is currently down to a single member, Leonard Howie, following the departure of Joanne Royce in July. At press time, DOL Secretary Alexander Acosta has not taken steps to name additional ARB members or replace Howie, who was appointed by Thomas Perez, the previous administration's secretary of labor.

Finally, following the departure of Ondray Harris from the DOL's Office of Federal Contract Compliance Programs (OFCCP) at the end of July, Craig Leen has assumed the role of acting OFCCP director—a step up from his previous role as senior adviser. It's believed that Leen will be officially named OFCCP director, bringing him full circle from the fall of 2017, when he was widely reported to be the incoming OFCCP director but was ultimately edged out by Harris.

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IMMIGRATION

Trump administration increasing pressure on employers to 'hire American'

by Sara Nasseri
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During the 2016 presidential race, Donald Trump focused on immigration reform as a major campaign issue. As president, Trump further promised to step up border security and enforce U.S. immigration laws, including worksite enforcement. In fact, on April 18, 2017, President Trump issued his "Buy American, Hire American" Executive Order, directing the attorney general and the secretaries of the U.S. Department of State, the U.S. Department of Labor (DOL), and the U.S. Department of Homeland Security (DHS) to "propose new rules and issue new guidance . . . to protect the interests of [U.S.] workers in the administration of our immigration system, including through the prevention of fraud and abuse," and "suggest reforms to help [e]nsure that H-1B visas are awarded to the most skilled or highest-paid petition beneficiaries." Since then, the Trump administration has kept up with the president's promises, and efforts have been made to crack down on immigrant workers and employers in general.

The biggest focus to date has been on employment of U.S. workers. In July, the DOL and the U.S. Department of Justice (DOJ) joined forces in an effort to get tough on employers that allegedly prefer to hire foreign workers over qualified American workers. A statement released on July 31 indicates that the DOJ's Civil Rights Division and the DOL have "expanded their collaboration to better protect U.S. workers from discrimination by employers that prefer to hire temporary visa workers over qualified U.S. workers. This new partnership . . . establishes protocols for the agencies to share information, refer matters between them, and train each other's employees, with the goal of better protecting U.S. workers." The statement also references the Protecting U.S. Workers Initiative, which was launched by the Civil Rights Division in 2017 and is aimed at targeting, investigating, and taking enforcement measures against companies that discriminate against American workers in favor of foreign visa workers. Under the initiative, the DOJ has opened dozens of investigations, filed lawsuits, and reached settlement agreements with a handful of employers.

The partnership between the DOJ and the DOL highlights the recent increase in overall immigration enforcement actions. In 2017, the DOJ entered into similar agreements with the State Department and U.S. Citizenship and Immigration Services (USCIS) to combat visa fraud and abuse. Additionally, U.S. Immigration and Customs Enforcement (ICE) has issued an increased number of I-9 audit notices to businesses throughout the United States this year. These partnerships are further proof that immigration enforcement is a top priority for the Trump administration.

Moreover, the Trump administration is expected to issue a proposal that would make it harder for legal immigrants to become citizens or get green cards if they have ever used a range of popular public welfare programs, including Obamacare. Although details of such a plan are still being finalized, it is yet another sign of the administration's strict and extreme immigration policy. There have also been reports that temporary visa applicants have been asked questions further evincing the administration's new focus on protecting U.S. workers, such as "Why can't an American do this job?"

In light of these actions by what many have labeled an "enforcement-minded" administration, it is imperative that employers keep an eye out for possible new immigration proposals and legislation and closely monitor any developments. Given the president's emphasis on immigration and focus on bringing jobs back to Americans, there is no doubt that employers need to be on alert and wary of new rules and changes to avoid any problems down the line.

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INSIDE OSHA

Industry comments needed on OSHA's proposed changes to e-recordkeeping rule

by Eric Conn
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After years of advocacy and opposition to its controversial Obama-era rule intended to "Improve Tracking of Workplace Injuries and Illnesses" (aka the e-recordkeeping rule) and its transition to the deregulatory platform of the Trump administration, the Occupational Safety and Health Administration (OSHA) has finally taken a step to pare down the e-recordkeeping rule. Specifically, OSHA issued a notice of proposed rulemaking to amend the e-recordkeeping rule by eliminating the requirement that establishments with 250 or more employees submit data on recorded injuries and illnesses from their 300 logs and 301 incident reports through OSHA's Web-based industry tracking application (ITA).

While the proposed change will undoubtedly be welcomed by employers, it doesn't address most of the fundamental concerns they have repeatedly raised about the controversial rule.

The proposal leaves intact the requirement that hundreds of thousands of establishments of all sizes submit 300A annual summary data to OSHA, which still plans to publish the data with links to employers' names. Perhaps even more controversial, the proposed rule doesn't address OSHA's "antiretaliation" provisions, including policies that limit postinjury drug testing and discipline, safety incentive programs, and executive compensation and bonuses.

Tortured history, difficulty implementing e-recordkeeping rule

On May 11, 2016, OSHA published its final rule on injury and illness electronic record-keeping requirements. The rule fundamentally changed the agency's long-standing injury and illness record-keeping program by requiring injury data to be proactively shared with OSHA, which intended to publicize the data in an online database for all the world to see.

Specifically, the 2016 e-recordkeeping rule required:

- All establishments with 250 or more employees in industries covered by the record-keeping regulation to annually submit their injury and illness data and information from their OSHA 300 logs, 301 incident reports, and 300A annual summaries;
- Establishments with between 20 and 249 employees in select "high hazard industries" to annually submit information from their 300A annual summaries only; and
- All submissions to be made electronically via a purportedly secure OSHA website portal.

Since its promulgation in May 2016, the rule's implementation has been mired in difficulty. The original data submission deadline of July 1, 2017, became a moving target and source of uncertainty about the future of the rule. OSHA extended the submission deadline three separate times within six months, ultimately settling on a December 31, 2017, deadline.

On top of all that, the agency had serious difficulty launching and operating the ITA. OSHA's initial rollout of the application was delayed, and almost immediately after it was rolled out, the U.S. Department of Homeland Security's (DHS) announcement of a data breach and the potential compromise of user information caused yet another setback, legitimizing employers' concerns about privacy.

Then there were the legal challenges. Shortly after the rule was promulgated, industry groups filed a legal challenge over its antiretaliation elements and sought a preliminary injunction to prohibit enforcement of that part of the rule. Industry opponents filed a second legal challenge over the rule's electronic data submission requirements. Both cases were stayed (delayed) indefinitely pending a Notice of Proposed Rulemaking (NPRM) from the Trump administration. However, with the recent issuance of the proposed rule, the expectation that the administration's revisions to the rule would negate the need for further litigation doesn't appear to be borne out.

July 2018 proposed rule

After a couple of years of informal changes, extended deadlines, and industry challenges, OSHA finally rolled out an NPRM to amend the e-recordkeeping rule. Specifically, the proposed rule seeks to revise the e-recordkeeping rule in two ways:

(1) Amend 29 C.F.R. § 1904.41 by removing the requirement for establishments with 250 or more employees to electronically submit information from OSHA Forms 300 and 301; and

(2) Require employers to submit their employer identification number (EIN) with the data.

OSHA's rationale for the proposal is based on protecting workers' privacy by eliminating the electronic collection of case-specific data containing employees' personally identifiable information and sensitive health information, a concern raised by employers during the comment period for the initial NPRM between November 2013 and February 2014.

OSHA's proposal to narrow the scope of the rule isn't surprising. The agency had telegraphed that intent in two regulatory agendas, numerous speeches by officials, postings on its website, and court filings in the legal challenges to the original rule and had already implemented some changes as interim measures without rulemaking earlier this year. However, the tiny scope of the proposed change seemingly ignores employers' other concerns about the rule, and the revisions fall far short of industry expectations. Given President Trump's commitment to deregulation and relieving employers of unnecessary burdens, the proposed change is a major disappointment.

What should employers do now?

Employers have the opportunity to submit comments on the proposed rule though September 28, 2018. OSHA is specifically seeking input on the proposal to cut out the Form 300 and 301 data submission requirement and the impact of that requirement on workers' privacy. And employers should provide that feedback, including presenting the risks posed by exposing workers' sensitive information to possible disclosure under the Free-dom of Information Act (FOIA), an issue OSHA is currently addressing in a legal challenge filed by consumer rights group Public Citizen. But with the rulemaking process being reopened, even if it's just cracked open for now, we strongly recommend that employers seize the opportunity to advocate for further revisions.

The employer community should engage with the agency through its trade groups and counsel.

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INSIDE THE EEOC

EEOC recovers millions in monetary settlements as nominations stall out

by H. Juanita M. Beecher
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Although President Donald Trump's nominees, including his pick for general counsel, remain unconfirmed by the Senate and Acting Chair Victoria Lipnic is the only Republican currently on the Equal Employment Opportunity Commission (EEOC), the agency has continued to recover millions of dollars in settlements.

Recent harassment settlements

On August 1, 2018, the EEOC announced that Alorica Inc. had agreed to pay $3.5 million to resolve claims of harassment against male and female employees by managers and coworkers. Alorica also agreed to significant injunctive relief in the form of a three-year consent decree, which requires it to hire a third-party monitor, create a position for an internal equal employment opportunity consultant and an internal compliance officer, and provide sexual harassment training for its employees, including civility and bystander intervention training. The company also agreed to revise its discrimination and retaliation policies and procedures as well as maintain records of any future sexual harassment and retaliation complaints, audits, and reporting.

The agency announced on July 30 that SLS Hotels (aka sbe) has agreed to pay $2.5 million to settle claims that black Haitian employees were fired because of their race, color, and national origin and replaced by a staffing agency workforce of mostly light-skinned Hispanics. The $2.5 million settlement will be awarded to 17 black Haitian dishwashers. The company also agreed to provide comprehensive training for HR officials, management personnel, and hourly employees at six sbe hotels in South Florida and to have an independent consent decree monitor attend all required training sessions and provide comprehensive reports to the EEOC. The company must also provide the EEOC comprehensive data on any terminations, layoffs, or involuntary separations that occur in the six sbe hotels in the Miami region over the three-year consent decree period.

Two southern Illinois International House of Pancakes (IHOP) franchises signed a consent decree with the EEOC on July 19 in which they agreed to pay $975,000 to settle claims of harassment. The agency found that numerous employees at the locally owned Glen Carbon and Alton IHOP restaurants were routinely sexually harassed by coworkers and managers, including being subjected to offensive sexual comments, groping, physical threats, and, in one instance, a management employee's attempt to force oral sex.

The settlement requires the restaurants to implement, distribute, and enforce tougher policies prohibiting sexual harassment and establish procedures for promptly investigating and addressing sexual harassment complaints. It also requires the franchise owners to be directly involved in preventing and correcting sexual harassment. The four-year decree further requires the restaurants to provide sexual harassment training for employees, create and maintain documents detailing sexual harassment complaints, and post antiharassment notices at their facilities. It also enables the EEOC to monitor the restaurants to determine whether there's a recurrence of harassment and, if so, that it is dealt with effectively.

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