

2017 EMPLOYMENT LAW OUTLOOK UNDER THE TRUMP ADMINISTRATION

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HBT

OVERVIEW

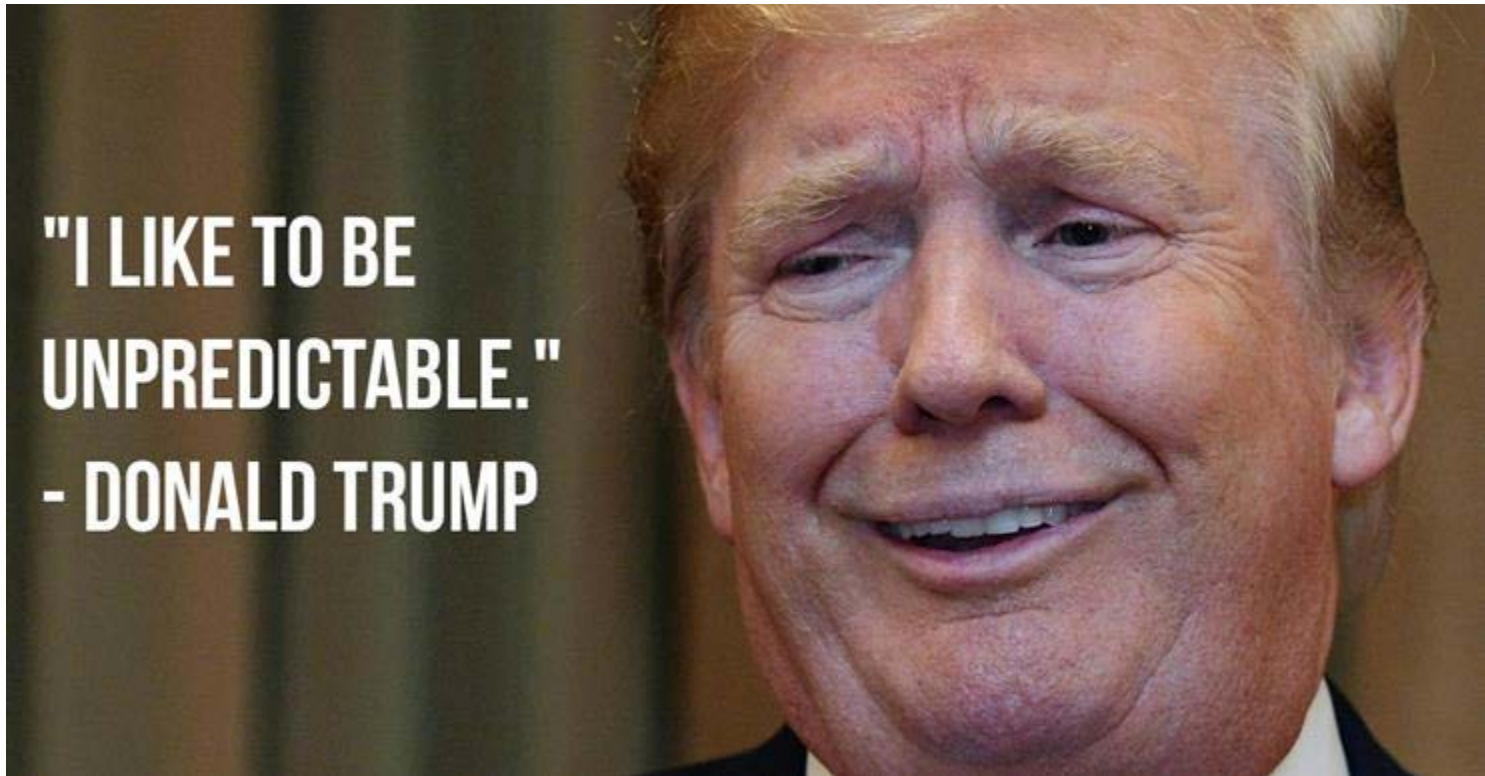


- Employment law under the Obama Administration
- Trump philosophy and campaign promises
- Trump's tools to re-shape employment laws
- Predicted changes under the Trump Administration

DISCLAIMER



**"I LIKE TO BE
UNPREDICTABLE."
- DONALD TRUMP**



EMPLOYMENT LAW UNDER OBAMA ADMINISTRATION



- Lilly Ledbetter Fair Pay Act of 2009
- Obamacare employer mandate
- Increase in agency regulations and enforcement actions:
 - EEOC
 - OSHA
 - Wage and Hour
 - NLRB



100-DAY ACTION PLAN



- “On day one, he is going to sign a series of executive orders to repeal a lot of the regulations and actions that have been taken by this administration over the last eight years that have hampered both economic growth and job creation.”

-- Sean Spicer, Trump's White House Press Secretary

TRUMP PHILOSOPHY



“I will be the greatest jobs president that God ever created. I'll bring back our jobs from China, from Mexico, from Japan, from so many places. I'll bring back our jobs and I'll bring back our money.”

— Donald Trump



Credit: AP/Anthony Behar/Sipa

f  / FoxBusiness



TRUMP PHILOSOPHY



I am going to
eliminate every
unnecessary
job-killing regulation.
They're choking our
businesses to death.

Donald Trump

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FEBRUARY 24, 2017 EXECUTIVE ORDER



- Presidential Executive Order on Enforcing the Regulatory Reform Agenda
- “Within 60 days of the date of this order, the head of each agency...shall designate an agency official as its Regulatory Reform Officer (RRO)”
- “[E]ach Regulatory Reform Task Force shall attempt to identify regulations that ... eliminate jobs, or inhibit job creation”


TRUMP TOOLBOX



- Executive Orders
- Cabinet Nominations
 - Labor Secretary Puzder (withdrew)
 - Alexander Acosta
 - Confirmation hearing March 22nd
- Agency Appointments
 - EEOC, Wage and Hour, OSHA
- Judicial Appointments (Gorsuch hearing now)
- Republican Senate/House




AFFORDABLE CARE ACT



‘On day one of the Trump Administration, we will ask Congress to immediately deliver a full repeal of Obamacare.’

– *Healthcare Reform page, donaldjtrump.com*



REPEAL AND REPLACE OBAMACARE?



- Trump promises a replacement plan that will provide "insurance for everybody" with "much lower deductibles"

PROPOSED AMERICAN HEALTH CARE ACT (AHCA)



- AHCA Goes to House floor March 23rd
- Still evolving, and unlikely to pass Senate in current form
- Eliminates Individual Mandate
- Employer Mandate for employers with 50+ employees
 - Technically still exists
 - AHCA eliminates employer penalties, rendering employer mandate toothless
 - Administrative reporting requirements remain

DOL OVERTIME REGULATIONS



- New DOL regulations increase minimum salary for white collar exemptions from \$23,660 per year to \$47,476 per year
- Enjoined by federal court just days before December 1, 2016 effective date
- On appeal to the 5th Circuit
- On hold pending Secretary of Labor confirmation
- Options:
 - DOL drops appeal (but AFL-CIO seeking to intervene)
 - Restart regulatory process
 - Small business exemption
 - Reduce threshold or roll-back increases

FEDERAL MINIMUM WAGE



- **Trump:** “The minimum wage has to go up. People are — at least \$10, but it has to go up. But I think that states — federal — I think that states should really call the shot.” – July 2016
- **Trump Campaign Official:** “On the minimum wage, Mr. Trump has voiced support for raising it to \$10 at the federal level, but believes states should set the minimum wage as appropriate for their state.” – July 2016

FMLA



- Trump Campaign Promise: “Provide 6 weeks of paid leave to new mothers before returning to work.” – Donaldjtrump.com
- First speech to Congress: “My administration wants to work with members in both parties to make childcare accessible and affordable, to help ensure new parents have paid family leave...”



- Under the Obama Administration, the EEOC has emphasized:
 - Pay equality
 - LGBT protection
 - Aggressive litigation and enforcement on cutting-edge issues

EEOC



- Trump to appoint new EEOC General Counsel
- Trump to appoint EEOC commissioners as terms expire
 - Gradual move to a more conservative EEOC
- Proposed EEO-1 reporting process would require employers with 100+ employees to provide employee pay data starting in 2018
 - Likely to be revised or rescinded

LGBT PROTECTIONS



- Two developments during Obama Administration
 - 1) Push to amend Title VII to expressly include LGBT protections
 - 2) EEOC litigation aimed at establishing that Title VII already protects LGBT individuals

LGBT PROTECTION



- Trump Support of LGBT has been mixed:
 - Trump spoke of LGBT protection in Republican National Convention
 - Trump will not repeal OFFCP Executive Order 13672 prohibiting LGBT discrimination by federal contractors
 - Sean Spicer: “President Trump continues to be respectful and supportive of LGBTQ rights, just as he was throughout the election.”
 - Rescinded Obama’s Transgender Bathroom Guidelines For Schools
 - “This is an issue best solved at the state and local level”
- Federal amendment to Title VII unlikely to happen soon
- States will continue to lead in LGBT legislation
- Courts will decide the extent to which current Title VII extends to LGBT status
 - March 2017 11th Circuit decision: Title VII does not prohibit LGBT discrimination

EMPLOYMENT IMMIGRATION



- Likely push for mandatory E-Verify nationwide
- Increased I-9 audits
- Decrease in H1-B Visas (temporary visa for high-skilled foreign workers)
 - “The H-1B program is neither high-skilled nor immigration: these are temporary foreign workers, imported from abroad, for the explicit purpose of substituting for American workers at lower pay...I will end forever the use of the H-1B as a cheap labor program, and institute an absolute requirement to hire American workers first for every visa and immigration program. No exceptions.”

QUESTIONS?

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