



# The View from Washington

What does year two of the Trump  
Administration mean for you?

March 20, 2018

# Agenda

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- 01** Introduction
- 02** Capitol Hill Gridlock
- 03** Immigration
- 04** Department of Labor
- 05** EEOC & OFCCP
- 08** Conclusion

# Speakers

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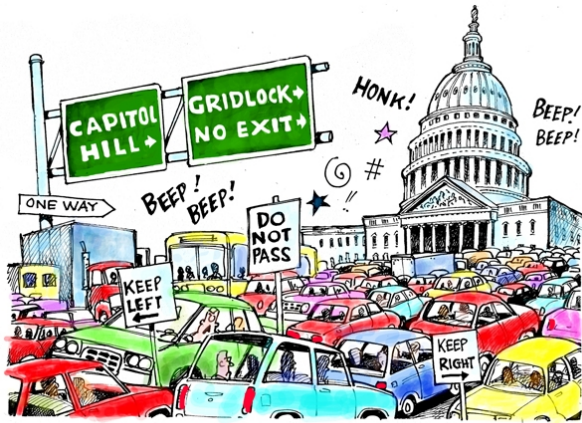
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# What's Happening (or Not Happening) in Congress?

# Partisan Gridlock and Other Priorities



Only two pieces of labor & employment legislation have passed a chamber (both House):

- ***Working Families Flexibility Act of 2017***: would provide ability to use comp time for non-governmental employers
- ***Save Local Business Act***: amends NLRA/FLSA definitions of joint employment

Why?

- Other Priorities
- Senate
- White House

# Legislative Areas of Interest



- NLRB
- “Transparency”
- State Issues to Federal Level
- Independent Contractors / Interns / Joint Employment
- Leave Issues
- Wage & Hour

# Where Might We See Activity?



- Minimum Wage
- Paid Sick Leave
- Sexual Harassment / Pay Equity



# Immigration Compliance



# Capitol Hill: Comprehensive Immigration Legislation

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- Comprehensive Immigration Legislation – White House Framework
  - DACA Fix
  - Border Security
  - Chain Migration
  - Diversity Visa Lottery
- Active Issues outside the White House Framework
  - Temporary Protected Status
  - Mandatory E-Verify
- Current Posture of Legislation



# Capitol Hill: Employment-Based Visa Issues

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- Non-Immigrant Visas

- H-1B Legislation

- [I-Squared Act](#) – Hatch/Flake with Rubio, Coons, Klobuchar and Blumenthal. Increased the H-1B cap from 65,000 to 115,000 with an escalator provision up to 195,000 depending on a given fiscal year's filing patterns. Bill would uncap the number of workers under the advanced degree exemption and create a series of exemptions to the employment-based green card cap
    - Protect and Grow American Jobs Act – Issa, raises salary floor for H-1B dependent employers to be exempt from non-displacement and recruitment provisions
    - Miscellaneous H-1B bills almost constantly

- Immigrant Visas

- RAISE Act – Cotton-Perdue: Merit-based Immigration Framework
  - EB-5 – Immigrant Investor Program

# Executive Branch: DHS, U.S. Citizenship and Immigration Services

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- H-1B Program
  - Computer Programmer Memorandum – One-Year Later
    - Request for Evidence Increases
  - Contracts and Itineraries Program Memorandum
  - H-4 Regulation – Possible rescission of rule giving H-1B spouses
  - Strengthening the H-1B Nonimmigrant Visa Classification Program:
    - definition of specialty occupation to increase focus on obtaining the best and the brightest foreign nationals via the H-1B program
    - revise the definition of employment and employer-employee relationship to better protect U.S. workers and wages.
    - additional requirements designed to ensure employers pay appropriate wages to H-1B visa holders.
- Power of Attorney Signature Program Memorandum
- EB-5 Regulation

# Executive Branch: DHS, Immigration and Customs Enforcement

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- Growth of Worksite Enforcement
  - Acting Director Homan in October: “4 to 5 times” more worksite enforcement
  - I-9 Notices of Inspection
- Sanctuary Cities
  - Increased Enforcement in California
  - California Assembly Bill
- Deportation capabilities expanding





# The Department of Labor

# DOL Political Staffing



Many top positions still vacant:

- Deputy Secretary
- Assistant Secretary for OSHA
- Assistant Secretary for ETA
- Assistant Secretary for Policy
- Wage & Hour Administrator

# Wage & Hour Division



- Increased focus on compliance assistance
  - Opinion Letters
  - Supervised Settlements
- Regulatory Activity:
  - Tip Pooling
  - Salary Level for White Collar Exemptions
- May have responsibilities in apprenticeship and immigration developments

# OSHA



- OSHA—increased funding for compliance assistance and Voluntary Protection Program (VPP)
- Regulatory Activity:
  - Workplace Injury / Illness Tracking
  - Beryllium Exposure
  - Removal of Duplicative Standards
  - Deregulatory Initiatives



# Employee Benefits Security Administration



- Increased funds to:
  - target most egregious and persistent violators
  - issue advisory opinions and field assistance bulletins addressing relevant interpretive issues
  - provide innovative outreach and education
  - conduct a well-integrated research program
- Regulatory Activity:
  - Association Health Plans
  - Fiduciary Rule
  - Religious/Moral Exemptions Under ACA



# EEOC and OFCCP

# Equal Employment Opportunity Commission



- Currently three commissioners:
  - Acting Chair Lipnic (R)
  - Commissioner Feldblum (D)
  - Commissioner Burrows (D)
- Nominees:
  - Janet Dhillon (R) (to be designated chair)
  - Col. Daniel Gade (R)
  - Intent to Nominate Commissioner Chai Feldblum
  - Intent to nominate Sharon Fast Gustafson as General Counsel
- Acting General Counsel
  - James Lee

# EEOC Performance - Strategic Plan 2018-2022

Strategic Objective I	Strategic Objective II
Combat and prevent employment discrimination through the strategic application of EEOC's law enforcement authorities	Prevent employment discrimination and promote inclusive workplaces through education and outreach

## Focus:

1. Barriers to Recruitment & Hiring
2. Vulnerable Workers
3. Emerging Issues- Qualification Standards Pregnancy under ADA, LGBTQ- ([Zarda](#)), New Class of workers, IC, Temp, Staffing
4. Equal Pay, Compensation

# EEOC

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- Budget Standstill
- Personnel Standstill
- Enforcement- FY 17- 184 cases. FY 16- 86 Cases
- Budget to continue current enforcement level
- Issues:
  1. Pay Disclosure - Revised EEO-1
  2. Harassment Guidelines
  3. Wellness
  4. Conciliation, Mediation, Emphasis on resolution of charges



# Office of Federal Contract Compliance Programs

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- Director Ondray Harris
- Senior Advisor Craig Leen
- “Careers”
  - Thomas Dowd, Deputy Director
  - Marika Litras, Director of Enforcement
  - Deborah Carr, Regulation & Policy



# OFCCP (cont.)

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- Proposed Budget
  - Significant cut- 12.5% to \$89 million
  - Staff cut by 75, 525 down to 450
- Policies
  - Increase Cooperation- Lessen Technical Violations
  - Use of Pre-Conciliation Settlements
  - Focus on hiring- Interface with Department initiatives on non-traditional Apprenticeship, Job Creation
- 2018 – Enforcement / Audit Similar to past
  - Focus on compensation data
  - No change with Regional Directors, staff



**Thank You**