USMCA? A-OK, Says Senate.

The United States–Mexico–Canada Agreement (USMCA) has been in the Limelight in recent weeks, and, on January 16, 2020, the U.S. Senate approved it. President Donald Trump is expected to sign the deal sometime next week. With Mexico and the United States having passed the USMCA, it is now up to Canada to ratify the agreement in order for it to enter into force.

DOL Drops Joint-Employer Rule.

The U.S. Department of Labor’s (DOL) Wage and Hour Division finalized its changes to its joint-employer regulation on January 16, 2020. More details on the four-part test established by the rule can be found here. Of course, this is another chapter in a saga that began in 2014, and it certainly won’t be the last. Indeed, in addition to expected joint-employer initiatives from the National Labor Relations Board and the Equal Employment Opportunity Commission, The Big Money is on a legal challenge being filed against the DOL’s regulation, so the policy debate won’t end anytime
Retaliation/ADEA/ADA Discrimination Bill Passes.

On January 15, 2020, the U.S. House of Representatives passed the Protecting Older Workers Against Discrimination Act. Despite its name, the various Subdivisions of the bill do more than just protect older workers from discrimination; they amend the retaliation provisions of Title VII of the Civil Rights Act of 1964, as well as the Age Discrimination in Employment Act of 1967 and the Americans with Disabilities Act of 1990, to allow for the establishment of an unlawful practice when a plaintiff can demonstrate that retaliation, age, or disability was a motivating factor in the practice, even though other factors may have influenced the practice. As such, the bill would reverse rulings from a 2013 U.S. Supreme Court case and a 2009 U.S. Supreme Court case holding that a plaintiff must establish that retaliation or age, respectively, was the “but for” cause of the alleged adverse employment action. Despite some bipartisan support in the House, the bill does not stand a Ghost of a Chance of passing in the Senate.

Pregnancy Accommodation Bill Advances.

The U.S. House Committee on Education and Labor approved the Pregnant Workers Fairness Act earlier this week. The bipartisan bill is intended to clarify protections for pregnant workers under federal discrimination laws, and would require employers to provide reasonable accommodations—such as more frequent restroom or water breaks—to those employees. The bill enjoys the support of the U.S. Chamber of Commerce.

A Fully Armed and Operational OSHRC.

Late last week, the Senate confirmed Cynthia L. Attwood and Amanda Wood Laihow as commissioners on the Occupational Safety and Health Review Commission (OSHRC). Eric E. Hobbs and Davis Jenkins have the scoop on what this means for the OSHRC and employers.

(Don’t) Forget Paris.

Speaking of congressional ratification of international treaties, January 14, 2020, marked the 236th anniversary of the ratification of the Treaty of Paris by the Confederation Congress in Annapolis, Maryland. The treaty was originally entered into by the United States and Great Britain in September 1783, but it wasn’t until ratification four months later that the United States bid A Farewell to Kings and was officially established not as some Fly by Night band of revolutionaries, but rather as “free, sovereign and independent States.” Despite years of maiming and killing each other, the parties to the treaty made amends quickly and politely promised “to forget all past misunderstandings and differences that have unhappily interrupted the good correspondence and friendship which they mutually wish to restore.” The terms of the treaty required that it be ratified and returned to Great Britain within six months, so in the days before electronic filing, the mid-January ratification left just enough time for the signed treaty to make the lengthy overseas journey by the March
1784 deadline.


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