

THE
NATIONAL LAW REVIEW

Employment Law This Week: NLRB Considers Case-Processing Changes, New EEOC Sexual Harassment Guidance, DOJ Memos on False Claims Act Litigation [VIDEO]

Tuesday, February 13, 2018

The logo for Epstein Becker Green, featuring the firm's name in a blue, sans-serif font, stacked vertically and enclosed in a white rectangular box with a thin yellow border.

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We invite you to view *Employment Law This Week* - a weekly rundown of the latest news in the field, brought to you by Epstein Becker Green. We look at the latest trends, important court decisions, and new developments that could impact your work.

This week's episode includes:

- NLRB Considers Changes to Case Processing
- New EEOC Sexual Harassment Guidance
- Memos Suggest DOJ Is Taking a New Approach to FCA Litigation
- Tip of the Week

Tune in each week for developments that may affect your business.

This week's stories include ...

(1) NLRB Considers Changes to Case Processing

Peter Robb, General Counsel of the National Labor Relations Board (NLRB), is considering changes to the way that the NLRB processes cases. This comes in addition to proposed changes to the organizational structure that we reported on last week. According to Robb, changes are necessary to adjust to declining budgets and reduced caseloads and imbalances in staffing at the NLRB's offices. Critics question whether these changes are driven by other considerations. Robb expects decisions to be made by late summer.

(2) New EEOC Sexual Harassment Guidance

When will the U.S. Equal Employment Opportunity Commission (EEOC) respond to #MeToo? Acting EEOC Chair Victoria Lipnic says, "Soon." The EEOC has announced plans to release new sexual harassment guidance. Speaking at a New York University School of Law symposium called "Avoiding the Next Harvey Weinstein," Lipnic said that much of the current guidance dates back to the 1990s. In November, the EEOC announced revisions to the draft guidance in response to #MeToo. Lipnic said that those revisions have now been sent to the Office of Management and Budget for approval, which she expects to receive in the next month. Kate Rhodes, with Epstein Becker Green, has more in our continuing coverage of #MeToo @ Work:

"The content of the new sex harassment guidance can likely be informed by a 2016 task force report issued by the EEOC following 18 months of study on the issue of harassment in the workplace more generally. It issued a few best practices that I anticipate seeing in this new guidance, which includes more individualized training on anti-harassment and discrimination procedures in the workplace. It also mentioned increased training for front-line managers and also bystanders, people [who] witness harassment or receive complaints about harassment but aren't the subject of the complaint or the complainant themselves."

(3) Memos Suggest DOJ Is Taking a New Approach to FCA Litigation

The Department of Justice (DOJ) is taking another look at False Claims Act (FCA) litigation. Two internal DOJ memos suggest that the government may be reconsidering its approach to FCA cases. The first memo provides guidance on when DOJ attorneys should consider affirmatively seeking dismissal of whistleblower claims in cases, rather than simply declining to intervene. The second memo asserts that DOJ attorneys may not use agency guidance as the basis for proving an FCA violation. George Breen, from Epstein Becker Green, has more on what employers should take away from these memos:

“So, I don't think that memos in and of themselves change the risk for board members or executives. I think that risk continues to exist. The reality is, however, that both memos provide tools for those individuals and their counsel. And they ought to actively use those tools when they're faced with litigations and investigations. Unfortunately, the risk remains. Since 2015, there has been an increased focus by the Department of Justice on holding individuals accountable. Those risks are real. But what I think the memos provide are additional tools for their counsel to say, this is not the right case to bring.”

(4) Tip of the Week

Paula Wernecke, Senior Legal Counsel for Adidas Group, shares some advice on best practices for managing a combined human and artificial intelligence (or “AI”) workforce:

“It's all about digital. Combining the two workforces, the human workforce and the artificial intelligence workforce, needs to get on the track of, for example, within Adidas, our people strategy and the ‘three C's.’ The three C's about creativity, collaboration, and confidence. Therefore, creativity needs to be focusing on, ‘What do we, from a human workforce perspective, need to change at our mindset and getting the artificial intelligence within our day-to-day business?’ So, if you are getting to the next step, collaboration, your employee needs to be ready and upskilled, working with these new artificial intelligence systems. Last, but not least, getting back to the Adidas people strategy, we have the confidence. You, as the employee, always need to be confident. You are the one who has the idea. The idea is not laying with the ... artificial intelligence, not now. But right now, you are the one who gives power to this new digital strategy.”

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