LABOR, IMMIGRATION & EMPLOYEE BENEFITS DIVISION
U.S. CHAMBER OF COMMERCE

Labor Issues Legislative Update

114th Congress, Second Session

The U.S. Chamber of Commerce Labor, Immigration and Employee Benefits Division is monitoring the following labor legislative issues. Issues are not presented in any specific order.

Union and Organizing Issues

National Right to Work Act

On January 28, 2015, Rep. Steve King (R-IA) introduced H.R. 612, the "National Right-to-Work Act." The bill would amend the National Labor Relations Act and the Railway Labor Act to repeal the provisions in these Acts that permit employers, pursuant to a collective bargaining agreement that contains a union security agreement, to require employees to join a union as a condition of employment, and require the payment of union dues or fees as a condition of employment.

On February 5, 2015, Sen. Rand Paul (R-KY) introduced the companion bill in the Senate, S. 391.

Salting

On April 13, 2015, Rep. Steve King (R-IA) introduced H.R. 1746, the "Truth in Employment Act of 2015." The bill would amend the National Labor Relations Act (NLRA) so an employer is not required "to employ any person who seeks or has sought employment with the employer in furtherance of other employment or agency status." This bill would prevent the practice of "salting," where union employees apply for jobs with a specific intent to organize or cause disruption in the workplace. The bill would overturn a Supreme Court decision that found this to be protected activity.

Tribal Labor Sovereignty Act of 2015

On January 22, 2015, Rep. Todd Rokita (R-IN) introduced H.R. 511, the "Tribal Labor Sovereignty Act of 2015." The legislation would amend the National Labor Relations Act to provide that any enterprise or institution owned and operated by an Indian tribe and located on its lands is not considered an employer (thus excluding such enterprises or institutions from coverage by the Act).

On January 22, 2015, Sen. Jerry Moran (R-KS) introduced the companion bill in the Senate, S. 248.

On January 27, 2015, the Chamber sent a letter to Sen. Moran (R-KS), applauding introduction of the bill.

On April 29, 2015, the U.S. Senate Committee on Indian Affairs held a legislative hearing where witnesses discussed the bill's merits.

Prior to the vote before the U.S. Senate Committee on Indian Affairs, the coalition sent a letter, supporting the legislation. On June 10, 2015, the Senate Committee on Indian Affairs passed the legislation by voice vote.

On June 16, 2015, the House Education and Workforce Subcommittee on Health, Labor, Education, and Pensions, held a legislative hearing on H.R. 511. Prior to the hearing, the Coalition which the Chamber is organizing, sent a letter supporting the legislation. On July 21, 2015, prior to the Committee vote, the Chamber sent a letter, expressing support for the legislation.

On July 22, 2015, the House Education and Workforce Committee marked up the bill. Rep. Rokita (R-IN) offered an amendment in the nature of a substitute for his original bill in order to clarify that the bill would preclude NLRB jurisdiction over Indian tribes themselves, as well as tribal-operated businesses. The committee approved the amendment on a voice vote, and then considered a motion by Rep. Virginia Foxx (R-N.C.) to report the bill favorably to the full House. Rep. Foxx's motion was approved by voice vote.

On November 17, 2015, prior the vote on the House floor, the U.S. Chamber sent a Key Vote letter, supporting the legislation. On November 17, 2015, the House passed the legislation by a vote of 249-177.

Representation Fairness Restoration Act

On March 19, 2015, Sen. Johnny Isakson (R-GA) introduced S. 801, the "Representation Fairness Restoration Act." The legislation addresses the Board's decision in *Specialty Healthcare* by amending Section 9(b) to remove the reference to the "employer unit, craft unit, plant unit, or subdivision," and would insert an eight-factor test to determine whether employees share a sufficient community of interest to be grouped in a single unit.

To Amend the National Labor Relations Act and the Railway Labor Act to Prohibit the Preemption of State Stalking Laws

On March 18, 2015, Rep. Earl "Buddy" Carter (R-GA) introduced H.R. 1431. The bill would amend the National Labor Relations Act and the Railway Labor to add a new section that states:

"Nothing in this Act shall be construed to preempt a law of any State, Territory, or the District of Columbia that prohibits, criminalizes, or creates a civil cause of action for stalking, cyberstalking, or harassment."

To Amend the National Labor Relations Act and the Railway Labor Act to Prohibit the National Labor Relations Act and the Railway Labor Act to Prohibit the Preemption of State Identity Theft Laws

On March 18, 2015, Rep. Earl "Buddy" Carter (R-GA) introduced H.R. 1432. The bill would amend the National Labor Relations Act and the Railway Labor to add a new section that states:

"Nothing in this Act shall be construed to preempt a law of any State, Territory, or the District of Columbia that prohibits, criminalizes, or creates a civil cause of action for identity theft or the release of an individual's personally identifiable information."

Workforce Democracy and Fairness Act

On April 14, 2015, Rep. John Kline (R-MN) introduced H.R. 1768, the "Workforce Democracy and Fairness Act." The legislation addresses the Board's decision in *Specialty Healthcare,* and the proposed regulation on changes to representation proceedings.

To revise the standard announced in *Specialty Healthcare,* the bill would amend Section 9(b) of the National Labor Relations Act, by articulating the traditional eight-factor test used by the Board. Furthermore, the bill provides that the question of whether additional employees should be included in a proposed voting unit would be determined by whether those employees "share a sufficient community of interest" with the proposed unit. The bill would limit the application of an "overwhelming community of interest standard" to cases involving "proposed accretions to an existing unit."

The bill would modify the proposed regulations made to representation proceedings by limiting the NLRB's discretion in representation case proceedings. Under the terms of the legislation, the Board would be required to allow a minimum of 14 days before a pre-election hearing on representation case issues could be held. The NLRB would also prohibit the agency from conducting an election proceeding less than 35 days after the filing of a petition.

On April 14, 2015, Sen. Lamar Alexander (R-TN) introduced a similar bill in the Senate, S. 933.

Workplace Democracy Act

On October 6, 2015, Rep. Mark Pocan (D-WI) and Sen. Bernie Sanders (I-VT) introduced H.R. 3690 and S. 2142, the "Workplace Democracy Act." The bill would permit the National Labor Relations Board to certify a majority of eligible workers if they sign valid authorization cards. Under the terms of the legislation, businesses would be required to begin negotiations within 10 days after receiving a request from a union and if both parties do not reach an agreement with 90 days, compel binding arbitration. These bills are the successors to the Employee Free Choice Act.

On December 10, 2015, Sen. Bernie Sanders (I-VT) introduced S. 2398, the "Clean Energy Just Transition Act," which includes as a provision, the "Workplace Democracy Act."

Employee Privacy Protection Act

On April 14, 2015, Rep. Phil Roe (R-TN) introduced H.R. 1767, the "Employee Privacy Protection Act." The legislation addresses the Board's proposed regulation on changes to representation proceedings. The bill would apply to all of the representation case categories in which the National Labor Relations Board conducts secret ballot elections.

The bill would amend Section 9(c)(1) of the National Labor Relations Act to provide that "Not earlier than 7 days after a final determination by the Board of the appropriate bargaining unit, the Board shall acquire from the employer a list of all employees eligible to vote in the election to be made available to all parties, which shall include the names of the employees, and one additional form of personal contact information of the employee (such as telephone number, email address or mailing address) chosen by the employee in writing."

National Labor Relations Board Reform Act

On January 28, 2015, Sen. Lamar Alexander (R-TN) introduced S. 288, the "National Labor Relations Board Reform Act." The legislation would reform the National Labor Relations Board by changing the confirmation process so that appointments could only be made "after consultation with the leader of the Senate representing the party opposing the party of the President, by and with the advice and consent of the Senate;" enlarging the Board to six members; dividing the Board seats between the two major political parties; and phasing in a new appointment and confirmation procedure for NLRB members. Under the terms of the legislation, a four-member majority would be required for a quorum and to make an NLRB determination in representation cases and unfair labor practice proceedings.

Under the terms of the bill, any person "subject to" an unfair labor practice complaint that is "issued or authorized" by the General Counsel may obtain immediate judicial review of the complaint by filing within 30 days a petition in a federal district court. The petition would be permitted to be filed in a judicial district where the person resides or transacts business, in the district where the unfair labor practice in question allegedly occurred, or in the U.S. District Court for the District of Columbia. Upon the filing of such a petition, the bill states that "[t]he court may prohibit any further proceedings relating to such complaint if the court determines that the General Counsel does not have substantial evidence that such person has violated this Act."

In any case where an unfair labor practice complaint was issued, under the terms of the legislation, any party may obtain from the General Counsel "any advice memorandum prepared by an attorney of the Division of Advice of the Office of the General Counsel, any internal memorandum of the Office of the General Counsel, or any other inter-agency or intra-agency memorandum or letter described in section 552(b)(5) of title 5, United States Code, related to the complaint."

The bill would provide that if the Board had not issued any "final order" within one year after a decision by an administrative law judge or a regional director, any party to the case would be able to "move to discharge the case." Upon the filing of such a motion, the Administrative Law Judge or regional director decision would become a final agency action. In the event the Board failed to take action in a year and a final agency action took effect under the "discharge"

procedure, the bill provides that any party would be permitted to obtain judicial review of the final agency action in a federal appeals court "de novo."

Under the proposal, if the Board fails within two years of the legislation's enactment to issue final orders in 90 percent of the cases pending at the time the bill is enacted, the agency's authorized appropriations for the next two fiscal years would be limited to 80 percent of the authorizations for the prior two fiscal years. In the event the Board failed within four years to issue final orders in 90 percent of cases pending two years after the date of enactment, authorizations would be capped "for each succeeding fiscal year" at "the amount so appropriated for the fiscal year that is 4 years after the date of such enactment."

On November 16, 2015, Rep. Joe Wilson (R-SC) introduced the companion bill in the House, H.R. 4022.

Joint Resolution Disapproving NLRB Regulation

On February 9, 2015, Sen. Lamar Alexander (R-TN) and Rep. John Kline (R-MN) introduced S. J. Res. 8 and H.J. Res. 29, respectively. These identical resolutions state that under the Congressional Review Act, "Congress disapproves" of the NLRB case representation procedure regulation, and "such rule shall have no force or effect."

On February 10, 2015, the Chamber sent a letter to the Senate and House, supporting the resolution. On March 3, 2015, the Chamber sent a Key Vote letter to the Senate, prior to the vote. On March 18, 2015, the Chamber sent a Key Vote letter to the House, prior to the vote.

On March 4, 2015, the Senate passed the underlying resolution by a vote of 53-46. On March 19, 2015, the House passed the resolution by a vote of 232-186. On March 31, 2015, President Obama vetoed the bill. On May 5, 2015, the Senate voted 96-3 to table the motion to override the president's veto of S. J. Res. 8.

To Prohibit Any Appropriations of Funds for the National Labor Relations Board

On May 15, 2015, Rep. Matt Salmon (R-AZ) introduced H.R. 2384. The bill would prohibit any funds to be appropriated for the National Labor Relations Board.

PORTS Act

On June 4, 2015, Sen. Cory Gardner (R-CO) introduced S. 1519, the "Protecting Orderly and Responsible Transit of Shipments Act of 2015" or the "PORTS Act." The legislation would amend a portion of the National Labor Relations Act related to presidential interventions in disputes under the Taft-Hartley Act to allow not just the president, but a governor to appoint a board of inquiry to report on the facts of the dispute with the governor first having to ask the president to appoint that board.

The bill also would allow a governor to direct the state attorney general to seek an injunction after such a fact-finding. The legislation would add slowdowns to the list of occurrences that could trigger such actions, previously reserved for only threatened or actual strikes or lockouts.

Preventing Labor Union Slowdowns Act of 2015

On June 4, 2015, Sen. James Risch (R-ID) introduced S. 1630, the "Preventing Labor Union Slowdowns Act of 2015" or the "PLUS Act of 2015." The legislation would amend a portion of the National Labor Relations Act to make intentional slowdowns by maritime unions an unfair labor practice. Under the terms of the legislation, maritime unions engaged in unfair labor practices would be subject to federal court injunctions as well as damage claims to injured parties.

Employee Rights Act

On July 27, 2015, Rep. Tom Price (R-GA) and Sen. Orrin Hatch (R-UT) introduced H.R. 3222 and S. 1874, respectively, the "Employee Rights Act."

The legislation would amend the National Labor Relations Act to mandate a secret ballot election for all union-held elections; redefine the term "majority" to "mean the majority of all the employees in the unit, and not the majority of employees voting in the election"; and require recertification of a union via secret ballot election "whenever any certified or voluntarily recognized bargaining unit existing on or after the date of enactment experiences turnover, expansion, or alteration by merger of unit represented employees exceeding 50 percent of the bargaining unit" between the 120th day and 110th day prior to the collective bargaining agreement's expiration or prior to the conclusion of three years, whichever comes earlier or if there is no negotiated collective bargaining agreement, within 30 days. The legislation would make the union liable for "wages lost and union dues or fees collected unlawfully, if any, and an additional amount as liquated damages" if the union unlawfully interferes with the filing of a decertification petition.

The bill also reverses the NLRB's proposed rulemaking on representation procedures by among things, mandating that the Board would stipulate that an election for the union is not to be held until a hearing is conducted, and outstanding issues are resolved by the Regional Director or the Board. Furthermore, election results would not be final until the Board has ruled on "each pre-election issue" after conducting a hearing.

The legislation also amends the Labor-Management Reporting and Disclosure Act of 1959 to prevent a union from ordering a strike unless the union first obtains the majority vote of "every employee in a bargaining unit represented by a labor organization, regardless of membership status" via a secret ballot election; authorizes an employee to opt-in for the purposes of allowing their union dues fees, assessments, or other contributions to be "used or contributed for any purpose not directly germane to the labor organization's collective bargaining or contract administration;" and strengthens the prohibition against extortion and the use of force or violence thereof for achieving objections relating to union representation, compensation, or conditions of employment by imposing a penalty of no more than $100,000 or imprisonment for 10 years, or both.

Protecting Local Business Opportunity Act

On September 9, 2015, Rep. John Kline (R-MN) and Sen. Lamar Alexander (R-TN) introduced H.R. 3459 and S. 2015, respectively, the "Protecting Local Business Opportunity

Act." The bill would amend the National Labor Relations Act to the joint employer test previously in place prior to the decision in *Browning Ferris,* which required the employer to have "actual, direct and immediate control." On September 29, 2015, the U.S. House of Representative's Education and Workforce Committee held a legislative hearing where witnesses discussed the bill's merits. On October 6, 2015, the U.S. Senate HELP Committee held a legislative hearing on the bill. On October 28, 2015, the U.S. House of Representative's Education and Workforce Committee passed a substitute bill by a vote of 21-15.

On March 16, 2016, Sen. Lamar Alexander (R-TN) re-introduced the bill as S. 2686.

Workplace Action for a Growing Economy (WAGE) Act

On September 16, 2015, Rep. Bobby Scott (D-VA) and Sen. Patty Murray (D-WA) introduced H.R. 3514 and S. 2042, respectively, the "Workplace Action for a Growing Economy Act" or the "WAGE Act." The legislation would amend the National Labor Relations Act to provide for treble damages in addition to backpay when the Board has determined that an "employer has discriminated against an employee" for engaging in protected concerted activity, and provide employees with a private right of action to pursue damages in federal court. Furthermore, the bill would mandate that NLRB officials seek preliminary injunctions from federal district courts under Section 10(l) of the NLRA when an employer is accused of unfair labor practices and a board official has a reasonable suspicion that such practices have occurred.

In addition, the bill would allow for civil penalties of up to $50,000 for employers that commit unfair labor practices under the NLRA, as well as fines of $10,000 per day for employers that fail to comply with National Labor Relations Board orders. The legislation would hold officers and directors personally liable for such violations and jointly and several liable "involving 1 or more employees supplied by another employer to perform labor within the employer's usual course of business."

In addition, businesses would be required to post a notice to employees informing them of their rights under the NLRA and provides for penalties for failure to post.

Protecting American Jobs Act

On September 28, 2015, Sen. Mike Lee (R-UT) introduced S. 2084, the "Protecting American Jobs Act." The bill would eliminate NLRB adjudication of unfair labor practices, and permit an "aggrieved party" to file a lawsuit in federal court.

Employee Empowerment Act

On October 27, 2015, Rep. Keith Ellison (D-MN) introduced H.R. 3837, the "Employee Empowerment Act." The bill would amend Section 10 of the National Labor Relations Act to permit workers to file a private suit alleging an "unfair labor practice" under Section 8(a)(3) of the law in federal court, no later than 180 days after the date of the violation, in addition to filing a charge with the board. Workers would be able to seek front pay and punitive damages, in addition to the back pay and reinstatement remedies available under current law. In addition, the legislation permits allowing the "prevailing party a reasonable attorney's fee (including expert witness fees) as part of the costs."

Ensuring Continued Operations and No Other Major Incidents, Closures or Slowdowns Act

On November 5, 2015, Rep. Dan Newhouse (R-WA) introduced H.R. 3932, the "Ensuring Continued Operations and No Other Major Incidents, Closures, or Slowdowns Act" or the "ECONOMICS Act."

The bill would designate than "no later than 60 days," the Secretary of Transportation classify the "West Coast, East Coast, Gulf Coast, and Great Lakes," into four "metric identification programs."

Under the terms of the legislation, if "the U.S. Census Bureau reports that the monthly Import or Export Vessel Value decreased by 20 percent or more in any one month from the previous month in any one of the four metric identification regions; a slow-down, or a threatened or an actual strike or lock-out takes place at four or more port facilities in any one of the four metric regions," and/or a "slow-down or a threatened or an actual strike or lock-out occurs in which the total number of employees actively striking, locked-out, or slowing down at the affected port facilities in any one of the four metric identification regions, is 6,000 or greater," the president would be required to "appoint a board of inquiry no later than 10 days after any of the above events occurred, and issue a report."

The bill would also require the Director of the Bureau Transportation to collect data on "the average number of lifts per hour of containers by crane, the average cargo container dwell time, the average truck time at ports; and the average rail time at ports" and no later than 2 years after the date of enactment, "transmit a report to Congress."

Employee Free Choice Act of 2016

On April 20, 2016, Rep. Alan Grayson (D-FL) introduced H.R. 5000, The "Employee Free Choice Act of 2016." The Act would require union recognition if a majority of employees in a bargaining unit sign authorization cards (without an NLRB supervised secret ballot election). In addition, and equally problematic, the bill forces first contract negotiations into binding arbitration (by a federally appointed arbitration panel) if the parties fail to reach an agreement within 120 days. Lastly, the bill would increase penalties on employers only.

Union Workplace Issues

Project Labor Agreements

On January 7, 2015, Sen. David Vitter (R-LA) introduced S. 71, the "Government Neutrality in Contracting Act." The legislation seeks to preserve open competition and federal government neutrality toward the labor relations of federal government contractors on federally and federally funded construction projects. On March 26, 2015, Rep. Mick Mulvaney (R-SC) introduced the companion bill in the House, H.R. 1671.

On January 12, 2016, the House Committee on Oversight and Government Reform approved by voice vote, H.R. 1671.

Freedom From Union Violence Act of 2015

On January 7, 2015, Sen. David Vitter (R-LA) introduced S. 62, the "Freedom From Union Violence Act of 2015." The legislation would impose a fine of up to $100,000, a prison sentence of up to 20 years, or both, on any person that commits or attempts to commit an act of violence or extortion against another person during a labor dispute.

Rewarding Achievement and Incentivizing Successful Employees Act

On February 12, 2015, Sen. Marco Rubio (R-FL) introduced S. 507, the "Rewarding Achievement and Incentivizing Successful Employees Act/the RAISE Act." The legislation would amend the National Labor Relations Act to allow an employer to pay its employees greater wages, pay, or other compensation than provided for in the applicable collective bargaining agreement without violating the NLRA.

On February 13, 2015, Rep. Todd Rokita (R-IN) introduced the companion bill in the House, H.R. 1003.

Employee Benefits Protection Act of 2015

On April 16, 2015, Rep. Louise Slaughter (D-NY) introduced H.R. 1856, the "Employee Benefits Protection Act of 2015." Among other things, the bill would make it an "unfair labor practice" for any "labor organization and any employer" to enter into a contract or any agreement (express or implied) that modifies the terms of another previous agreement that would "result in a reduction or termination of retiree health insurance benefits provided to an employee or dependent" under the prior arrangement, if the "modification of the previous agreement" has occurred after the date on which the employee has retired.

Patriot Employer Tax Credit Act

On June 2, 2015, Rep. Janice Schakowsky (D-IL) and Sen. Richard Durbin (D-IL) introduced H.R. 2619 and S. 1486, respectively, the "Patriot Employer Tax Credit Act." The legislation would provide employers with 50 or more employees a tax preference equivalent to 10 percent of the first $15,000 of wages earned by each employee to companies that meet the following criteria: maintain headquarters in the U.S. if the company has ever been headquartered in America, has not inverted to avoid U.S. taxes, maintain or increase the number of workers in the U.S. compared to the number of workers overseas, and does not decrease the number of workers through the use of contractors; pay at least 90% of U.S. workers an hourly wage equal to 156% of poverty for a family of three (about $15/hour or $30,000/year); offer Affordable Care Act-compliant health insurance to employees; provide 90% of non-highly compensated U.S. employees a defined benefit plan or a defined contribution plan with an employer contribution or match equal to at least 5% of worker compensation; pay the difference between regular salary and military compensation for all National Guard and Reserve employees called for active duty and have a plan in place to recruit veterans; and have a plan in place to recruit employees with disabilities.

Flight Duty Requirements

On June 18, 2015, Sen. Barbara Boxer (D-CA) introduced S. 1612, the "Safe Skies Act of 2015." The legislation would require the Secretary of Transportation to no later than 30 days after the date enactment to "modify" the "final rule" to "apply the Federal Aviation Administration's proposed rule regarding flight duty time requirements to "all-cargo operations conducted by air carriers in the same manner as those requirements apply to flightcrew members in passenger operations conducted by air carriers."

Safe Harbor for Reporting Violent Behavior Act of 2016

On February 11, 2016, Rep. Bob Goodlatte (R-VA) introduced H.R. 4532, the "Safe Harbor for Reporting Violent Behavior Act of 2016." The legislation would provide "immunity from civil liability under Federal, State, and local law" for businesses that voluntarily disclose "violent" or "threatened violent behavior" by an "employee" or "former employee" to a 'potential employer" which is made in "good faith" and based on "objectively reasonable suspicion." According to the terms of the legislation, "violent behavior, or threatened violent behavior" means "battery, assault, threats of violence, physical fighting, physical intimidation, and other violent conduct, or a threat of such conduct that a reasonable person would consider to pose a threat of physical injury to any person."

The safe harbor would not apply if the "employer" made such report based on "false" information or "with reckless disregard for the truth." A potential employer who "observes or receives a report" from a prior employer would also be "immune" from "civil liability under Federal, State, and local law" if such employer "takes reasonable action in good faith to respond to such activity." An employer who is "immune from civil liability" would be eligible to "recover from the plaintiff all reasonable costs and attorney fees."

Civil Rights and Discrimination Issues

Preserving Employee Wellness Programs Act

On March 2, 2015, Rep. John Kline (R-MN) and Sen. Lamar Alexander (R-TN) introduced H.R. 1189 and S. 620, respectively, the "Preserving Employee Wellness Programs Act." The bill would clarify that the language in the Affordable Care Act, which codifies the regulations pertaining to workplace wellness programs that permit employers to offer a reward or penalty of up to 30 percent of premiums or 50 percent for tobacco use would be deemed in compliance with the American with Disabilities Act, as amended, and the Genetic Information Nondiscrimination Act of 2008. On March 19, 2015, the U.S. Chamber sent a letter to the sponsors of the legislation applauding introduction of the bill. On March 24, 2015, the House Education and Workforce Subcommittee on Workforce Protections held a legislative hearing on the bill's merits.

To amend the Age Discrimination in Employment Act of 1967 to Treat Employment As A Field Emergency Medical Service Practitioner in the Same Manner as Employment as a Firefighter

On March 18, 2015, Rep. Scott DesJarlais (R-TN) introduced H.R. 1440. The legislation would amend Section 4(j) (1) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623 (J)(1) by striking "firefighter or as a" and inserting "firefighter, field emergency medical service practitioner, or." The bill defines the term, "emergency medical service practitioner" as "an employee, the duties of whose position are primarily to perform work directly connected with the responsibility of administration of specialized pre-hospital emergency care for victims of acute illnesses or injury, including an employee engaged in this activity who is transferred to a supervisory or administrative position."

Drug Free Commercial Driver Act of 2015

On March 19, 2015, Rep. Rick Crawford (R-AR) and Sen, John Boozman (R-AR) introduced H.R. 1467 and S. 806, respectively, the "Drug Free Commercial Driver Act of 2015." Among other things, the bill would amend Section 31306 of title 49, United States Code, to require the Department of Transportation to issue regulations that would permit motor carrier operators to "conduct preemployment testing of commercial motor vehicle operators for the use of alcohol" and to "use hair testing as an acceptable alternative to urinanalysis." On May 20, 2015, the U.S. Senate Committee on Commerce, Science, and Transportation reported out an amendment in the nature of a substitute favorably.

On July 15, 2015, the Senate Committee on Commerce, Science and Transportation marked up S. 1732, the "Comprehensive Transportation and Consumer Protection Act of 2015." During mark-up, the Committee adopted the "Drug Free Commercial Driver Act of 2015" as an amendment to S. 1732. On July 22, 2015, the Senate voted 62-36 to proceed to debate on H.R. 22, the substitute for the highway bill, which includes the "Drug Free Commercial Driver Act of 2015" as a provision. On July 30, 2015, the Senate passed the legislation by a vote of 65-34.

On October 20, 2015, Rep. Bill Shuster (R-PA) introduced H.R. 3763, the "Surface and Transportation Reauthorization and Reform Act of 2015." Among other things, the legislation includes the "Drug Free Commercial Driver Act of 2015" as a provision. On November 5, 2015, the House passed the legislation by a vote of 363-64.

On December 3, 2015, the House agreed to the conference report, the "Fixing America's Surface Transportation Act (FAST Act)" by a vote of 359-65. On December 3, 2015, the Senate passed the conference report by a vote of 83-16. On December 4, 2015, President Obama signed the bill into law.

Comparable Worth and Equal Pay

On March 24, 2015, Sen. Barbara Mikulski introduced a measure that mirrors the "Paycheck Fairness Act" that would in addition to protecting workers from retaliation for sharing information about their wages also would require employers to prove a "business necessity" for any pay disparities among workers performing the same job and allow employees to seek

punitive damages as an amendment to the Senate budget resolution, S. Con. Res. 11. The measure was defeated by a vote of 45-54.

On March 25, 2015, Sen. Barbara Mikulski (D-MD) and Rep. Rosa DeLauro (D-CT) introduced S. 862 and H.R. 1619, respectively, the "Paycheck Fairness Act." The Act would significantly limit defenses to Equal Pay Act claims; permit unlimited punitive and compensatory damages for strict liability violations of the law; and would make it easier to bring class action suits by using an opt-out method. The bill provides that employers asserting that a pay differential between male and female employees is "based on factors other than sex" must prove those factors are "job-related" and "consistent with business necessity."

On April 14, 2015, Del. Eleanor Holmes Norton (Del.-DC) introduced H.R. 1787, the "Fair Pay Act of 2015." This bill would require employers to provide equal pay for unequal jobs that involve comparable skill, effort, responsibility, and working conditions.

On January 7, 2015, Sen. Dean Heller (R-NV) introduced S. 83, the "End Pay Discrimination Through Information Act." The legislation would, among other things, amend Section 15 of the Fair Labor Standards Act to permit employees to discuss salary information with their co-workers. On March 24, 2015, Sen. Deb Fischer (R-NE) introduced a similar measure to the Senate budget resolution, S. Con. Res. 11, which passed by a vote of 56-43.

On March 26, 2015, Sen. Deb Fischer (R-NE) introduced S. 875, the "Workplace Advancement Act." The legislation would prohibit an employer from discriminating "between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which the employer pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to a seniority system; a merit system; a system which measures earnings by quantity or quality of production; or a differential based on any other factor other than sex" and provide notice of such rights in a "conspicuous place upon its premises." Under the terms of the legislation, Section 15 (a) of the Fair Labor Standards Act would be amended to permit employees to discuss salary information with their co-workers. On October 22, 2015, Sen. Fischer reintroduced the bill as S. 2200.

On September 22, 2015, Sen. Kelly Ayotte (R-NH) introduced S. 2070, "The Gender Advancement in Pay/GAP Act." The legislation would amend Section 6(d) of the Fair Labor Standard Act of 1938 by inserting a "differential based on expertise," "a shift differential", or "a business-related factor other than sex, including but not limited to education, training, or experience" as additional criteria for prohibiting wage discrimination. In addition, the legislation would prohibit retaliation against employees who discuss their salary information or job applicants who opt not to disclose salary history, and create civil penalties for businesses who willfully engage in gender-based discrimination. The legislation also directs the fees for the civil penalties to be directed to conduct a study on how to address the pay gap nationwide. The bill would also provide protections for claimants who choose to file their equal pay claim with the Equal Employment Opportunity Commission. On April 11, 2016, Sen. Kelly Ayotte (R-NH) reintroduced the bill as S. 2773.

Union Integrity Act

On March 19, 2015, Rep, Matt Salmon (R-AZ) introduced H.R. 1513, the "Union Integrity Act." Among other things, the bill would amend the Labor-Management Reporting and Disclosure Act of 1959 to prescribe whistleblower protections that prohibit a labor organization from discriminating against any of its employees who has: provided information to the labor organization, the Department of Labor, or any other state, local, or federal government authority or law enforcement agency regarding any violation of the Act or any Department or National Labor Relations Board (NLRB) order; testified in any Department or NLRB administrative or enforcement proceeding; filed or instituted any such proceeding; or refused to perform an assigned task that the employee reasonably believed to be in violation of any law, order, or prohibition enforced by the Department or the NLRB.

American with Disabilities (ADA) Title III Notification

On January 9, 2015, Rep. Ken Calvert (R-CA) introduced H.R. 241, the "ACCESS (ADA Compliance for Customer Entry to Stores and Services) Act of 2015," which amends Title III of the ADA to require, as a precondition to commencing a civil action with respect to a place of public accommodation or a commercial facility, that an opportunity be provided to correct alleged violations.

On October 20, 2015, Rep. Ted Poe (R-TX) introduced H.R. 3765, the "ADA Education and Reform Act of 2015." Among other things, the bill would amend Title III of the ADA to require a notice and cure period for a "failure to remove an architectural barrier to access into an existing public accommodation."

On February 12, 2016, Rep. David Jolly (R-FL) introduced H.R. 4552, the "Gas Pump Access Act of 2016." The legislation would require all gas stations to place stickers with the station's phone number for the purpose that if disabled drivers need assistance, they can call that number. Gas stations or convenience store offering self-service who employ two or more attendants on duty would be liable for making one attendant available for assistance. The bill would not require stations with only one employee on duty to comply.

On March 7, 2016, Rep. Jerry McNerney (D-CA) introduced H.R. 4719, the "COMPLI Act," which would require a potential plaintiff or aggrieved individual to provide written notice to the owner of the business, by certified mail, which identifies the specific ADA violation and the date and time the individual experienced the barrier. Under the terms of the legislation, the business owner would have 90 days from the date of notification that a barrier exists to correct the barrier, before any lawsuit or demand letter can be issued. A business owner would be eligible to qualify for an additional 30 day extension if he or she attempts in "good faith" to remedy an access barrier but is unsuccessful within the original 90 day compliance period. Good faith would be determined if the business owner has: secured the appropriate construction permits and hired contractors to complete construction; or has begun construction and has worked to minimize delays in completion. In addition, the business owner would also be required to notify its customers of the ADA violation while it is in the process of correcting the barrier. Businesses would be required to provide this notification to customers within 15 days after receipt of an ADA violation notice.

The COMPLI Act defines a "high-frequency litigant" as an individual who has brought 10 or more civil actions alleging ADA violations within the previous 12-month period. The bill would aim to limit a high-frequency litigant's ability to repeatedly file lawsuits in bad faith and encourages business owners to invest in updating their properties to meet the accessibility standards of the ADA.

The legislation also would prohibit damages from being awarded to plaintiffs who were not denied reasonable access or reasonable use to a facility because of an ADA violation.

Lastly, the bill would require the Department of Justice to submit a report to Congress two years after the bill is enacted, which would: determine how many people were categorized as a "high frequency litigant" during the two year period in each state; provide analysis on whether the bill's provisions had an effect on the number of ADA accessibility lawsuits filed; provide analysis on whether the bill's provisions have negatively impacted an individual's ability to bring a legitimate, good-faith accessibility claim; and recommend whether an attorney's fee cap should be introduced in the future to reduce ADA abuse.

Social Networking

On May 12, 2015, Rep. Ed Perlmutter (D-CO) introduced H.R. 2277, the "Password Protection Act of 2015." The Act would among other things, prohibit current or future potential employers from requiring a username, password, or other access to online content. Employers would not be permitted to demand such access to discipline, discriminate, or deny employment to individuals, nor punish them from refusing to volunteer the information.

Bankruptcy Protection

On January 6, 2015, Rep. John Conyers (D-MI) introduced H.R. 97, "The Protecting Employees and Retirees in Business Bankruptcies Act of 2015." The bill would double the maximum value of wage claims for each worker to $20,000; allow a second claim of up to $20,000 for benefits earned; eliminate the requirement that employees must earn wage and benefit claims within 180 days of the bankruptcy filing; create a new priority claim for the loss of value of workers' pensions; establishes that a claim may be made for "any back pay or damages" related to wages and benefits awarded via a court proceeding or a proceeding of the National Labor Relations Board, including WARN Act damages; and creates a new priority administrative expense for workers' collective severance pay. The legislation would also restrict the situations in which collective bargaining agreements can be rejected and tighten the criteria by which collective bargaining agreements can be amended. On April 30, 2015, Sen. Richard Durbin (R-IL) introduced the companion bill in the Senate, S. 1156.

EEOC Transparency and Accountability Act

On January 27, 2015, Rep. Tim Walberg (R-MI) introduced H.R. 550, the "EEOC Transparency and Accountability Act." The legislation would require the EEOC to post on its website and its annual report an array of information to promote transparency. Among other things, the proposed legislation would require the EEOC to post on its website and in its annual report information to promote transparency, including any case in which EEOC was required to pay fees or costs, or where a sanction was imposed against it by a court; the total number of

charges filed by an EEOC member or as a result of a directed investigation; and each systemic discrimination lawsuit brought by the EEOC.

The bill also would require the EEOC to conduct conciliation endeavors in good faith and these endeavors would be subject to judicial review.

Furthermore, the bill would require the EEOC's Inspector General (IG) to notify Congress within 14 days when a court has ordered sanctions against EEOC. The IG would also be required to conduct a thorough investigation of why the agency brought the case, and submit a report to Congress within 90 days of the court's decision explaining why sanctions were imposed. In addition, the bill would require the EEOC to submit a report to Congress within 60 days of the court's decision detailing steps EEOC is taking to reduce instances in which it is subject to court-ordered sanctions and the EEOC would have to post this report to its website within 30 days of submitting to Congress. On March 24, 2015, the House Education and Workforce Subcommittee on Workforce Protections held a legislative hearing on the bill's merits.

Litigation Oversight Act of 2015

On January 27, 2015, Rep. Tim Walberg (R-MI) introduced H.R. 549, the "Litigation Oversight Act of 2015." The bill would amend Section 705 of the Civil Rights Act to require the EEOC to "approve or disapprove by majority vote whether the Commission shall commence or intervene in litigation involving multiple plaintiffs, or an allegation of systemic discrimination or a pattern or practice of discrimination." Under the terms of the bill, this power would not be permitted to be delegated. 30 days after the Commission "commences or intervenes in litigation pursuant to approval," the Commission would post the following information to the public website: "The court in which the case was brought; the name and case number of the case; the nature of the allegation; the causes of action brought; and each Commissioner's vote on commencing or intervening in the litigation." On March 24, 2015, the House Education and Workforce Subcommittee on Workforce Protections held a legislative hearing on the bill's merits.

Certainty in Enforcement Act of 2015

On January 27, 2015, Rep. Tim Walberg (R-MI) introduced H.R. 548, the "Certainty in Enforcement Act of 2015." The legislation would amend Section 703 of the Civil Rights Act of 1964 to make it an "unlawful unemployment practice for an employer, labor organization, or employment agency, or for a joint labor management committee controlling apprenticeships or other training or retaining opportunities as to be deemed to job related and consistent with business necessity... and such use shall not be the basis of liability under any theory of disparate impact." On March 24, 2015, the House Education and Workforce Subcommittee on Workforce Protections held a legislative hearing on the bill's merits.

EEOC Reform Act

On March 16, 2016, Sen. Lamar Alexander (R-TN) introduced S. 2693, the "EEOC Reform Act."

The legislation would require the EEOC to calculate the cost of the revised EE0-1 Paperwork Reduction Act revision proposal published in the *Federal Register* on February 1, 2016, on the federal government, prior to imposing the revised standards on the private sector.

Under the bill, EEOC would be required to: collect federal employee pay data information from each federal Department or Agency corresponding to the same pay data EEOC proposes to collect regarding private employees; verify, comply, and ensure the security and confidentiality of the federal employee data; and publish that federal employee data in the aggregate.

Based on the data collected, EEOC would determine the number of EEOC employees, employee hours, and cost necessary to accomplish those tasks; and the number of EEOC employees and hours *diverted from* addressing pending charges to these tasks and publish that information.

Using this information, the agency would be required to calculate the number of EEOC employees, hours, and cost necessary to collect and protect pay data of private employees; determine the number of EEOC employees and hours diverted from addressing pending charges to these tasks for private employees and publish that information; and report such information to Congress. Under the terms of the legislation, the EEOC would be required to collect, publish, and report this information on an annual basis.

In addition, EEOC would be required to develop software for "archiving, safely storing, maintaining, retrieving and processing" the required information. EEOC would then be required to develop a "Comprehensive Plan", using the software, for how the data would be used for enforcement purposes.

The bill would require that once the EEOC submits the first annual report to Congress and finishes the "Comprehensive Plan," the agency would then be able to seek approval from the Office of Management and Budget to collect the proposed pay data from private businesses.

Furthermore, the legislation imposes a condition that the EEOC is required to reduce its inventory of pending charges to "not more than 3,660," prior to "implementing the proposed report revision."

The bill would also amend Section 705 of the Civil Rights Act to require the EEOC to "approve or disapprove by majority vote whether the Commission shall commence or intervene in litigation involving multiple plaintiffs, or an allegation of systemic discrimination or a pattern or practice of discrimination." Under the terms of the bill, this power would not be permitted to be delegated. 30 days after the Commission "commences or intervenes in litigation pursuant to approval," the Commission would post the following information to the public website: "The court in which the case was brought; the name and case number of the case; the nature of the allegation; the causes of action brought; and each Commissioner's vote on commencing or intervening in the litigation."

The legislation would require the EEOC to post on its website and its annual report an array of information to promote transparency. Among other things, the proposed legislation would require the EEOC to post on its website and in its annual report information to promote

transparency, including any case in which EEOC was required to pay fees or costs, or where a sanction was imposed against it by a court; the total number of charges filed by an EEOC member or as a result of a directed investigation; and each systemic discrimination lawsuit brought by the EEOC.

The bill also would require the EEOC to conduct conciliation endeavors in good faith and these endeavors would be subject to judicial review.

Furthermore, the bill would require the EEOC's Inspector General (IG) to notify Congress within 14 days when a court has ordered sanctions against EEOC. The IG would also be required to conduct a thorough investigation of why the agency brought the case, and submit a report to Congress within 90 days of the court's decision explaining why sanctions were imposed. In addition, the bill would require the EEOC to submit a report to Congress within 60 days of the court's decision detailing steps EEOC is taking to reduce instances in which it is subject to court-ordered sanctions and the EEOC would have to post this report to its website within 30 days of submitting to Congress.

On April 12, 2016, the Chamber sent a letter to Sen. Alexander (R-TN), supporting the legislation.

Intern Protection Act

On April 27, 2015, Rep. Ed Perlmutter (D-CO) introduced H.R. 2034, the "Intern Protection Act." The Act would among other things, make it unlawful for employers to discriminate, harass, retaliate, or otherwise engage in unlawful employment practices against unpaid interns and applicants for internships.

On July 28, 2015, Rep. Elijah Cummings (D-MD) introduced a similar bill, H.R. 3232, the "Unpaid Intern Protection Act of 2015."

Pregnant Workers Fairness Act

On June 4, 2015, Rep. Jerrold Nadler (D-NY) and Sen. Bob Casey Jr. (D-PA) introduced H.R. 2654 and S. 1512, respectively, the "Pregnant Workers Fairness Act." The legislation would make it an unlawful activity for an employer not to make "reasonable accommodations" to known workplace limitations related to pregnancy, childbirth, or related medical conditions unless doing so would impose an undue hardship on the business.

The legislation would forbid employers from denying employment opportunities to a job applicant or employee, if the denial is based on the need of the employer to make "reasonable accommodations" to known limitations related to the pregnancy, childbirth, or related medical conditions of the applicant or employee.

In addition, the bill would make it illegal to require a pregnant job applicant or employee to "accept an accommodation that such applicant or employee chooses not to accept." The legislation would forbid employers from requiring a pregnant employee to take leave if another reasonable accommodation could be provided to the employee.

An employer who is found to violate this requirement would be subject to enforcement under Title VII of the Civil Rights Act.

Pregnancy Discrimination Amendment Act

On June 17, 2015, Rep. Tim Walberg (R-MI) and Sen. Lisa Murkowski (R-AK) introduced H.R. 2800 and S. 1590, respectively, the "Pregnancy Discrimination Amendment Act." The legislation would amend Section 701(k) of the Civil Rights Act of 1964 by striking, "as other persons not so affected but similar in their ability" in the first sentence and inserting, "as any other applicants for employment with, or employees employed by, the same employer, in work that is performed under similar working conditions, who are not so affected but similar in their temporary ability."

The bill would also insert after the first sentence the following: "This subsection shall not permit any labor organization, or agent of such labor organization, representing employees of an employer having employees subject to any provision of this title, directly or through any collective bargaining agreement (agreed to by the labor organization, or agent of such labor organization, and such employer), to cause or attempt to cause such employer to commit an unlawful employment practice against an employee in violation of this subsection."

Discrimination Based on Sexual Orientation

On July 23, 2015, Rep. David Cicilline (D-RI) introduced H.R. 3185 and Sen. Jeff Merkley (D-OR) introduced the companion bill, S. 1858, respectively, the "Equality Act."

The legislation would among other things, amend Title VII of the Civil Rights Act of 1964 to make it unlawful for most employers to fire or otherwise discriminate against an individual in employment due to sexual orientation or gender identity.

Equal Employment For All Act of 2015

On August 5, 2015, Sen. Elizabeth Warren (D-MA) introduced S. 1981, the "Equal Employment for All Act of 2015." The legislation would amend the Fair Credit Reporting Act to prohibit the use of consumer credit checks against prospective and current employees, with a few exceptions, as a factor in making adverse employment decisions.

The bill would prohibit the use of consumer credit checks by employers as part of the hiring or firing process, unless the job involves national security or "when otherwise required by law." The bill also would also apply this prohibition if the consumer "consents or authorizes" the use of a consumer report for employment purposes.

On September 16, 2015, Rep. Steve Cohen (D-TN) introduced a similar bill, H.R. 3524.

Fair Chance Act of 2015

On September 10, 2015, Rep. Elijah Cummings (D-MD) and Sen. Cory Booker (D-NJ) introduced respectively, H.R. 3470 and S. 2021, the "Fair Chance to Compete for Jobs Act of 2015." The legislation would among other things, prohibit federal agencies and government

contractors from asking about a job applicant's criminal history until after making a conditional job offer. On October 7, 2015, the U.S. Senate Homeland Security and Governmental Affairs Committee approved the bill by voice vote.

Civil Justice Tax Fairness Act of 2015

On September 17, 2015, Representative John Lewis (D-GA) and Sen. Susan Collins (R-ME) introduced H.R. 3550 and S. 2059, respectively, the "Civil Justice Tax Fairness Act of 2015." The bill would eliminate the taxation of noneconomic damages; and permit income averaging for back pay received in a lump sum for those who have suffered unlawful discrimination in the workplace or other violations of their employment rights.

Jobs!Jobs!Jobs! Act

On September 17, 2015, Rep. Frederica Wilson (D-FL) introduced H.R. 3555, the "Jobs! Jobs! Jobs! Act." Among other things, the bill includes a section entitled, the "Fair Employment Opportunity Act of 2015." The bill would bar an employer or employment agency from posting job notices which states that unemployed workers are not eligible for the position in nature, or discriminate against an individual who is currently unemployed during the hiring process.

Mixed Motive Claims under ADEA and Other Non Discrimination Laws

On October 8, 2015, Sens. Bob Casey (D-PA) and Mark Kirk (R-IL) introduced S. 2180, the "Protecting Older Workers Against Discrimination Act." The bill would amend the Age Discrimination in Employment Act (ADEA), the Americans with Disabilities Act, the Rehabilitation Act of 1973, and certain provisions of Title VII to permit mixed motive claims in a manner consistent with the 1991 amendments to Title VII. The central intent of the bill is to reverse the Supreme Court's decision in *University of Texas Southwestern Medical Center v. Nassar (U.S. 2013)* and *Gross v. FBL Financial*, 129 S. Ct. 2343 (2009), in which the Supreme Court held that mixed motive claims were not cognizable under the ADEA or Title VII.

POWER Act

On November 16, 2015, Rep. Judy Chu (D-CA) and Sen. Dan Sullivan (R-AK) introduced H.R. 4008 and S. 2280, respectively, the Protect Our Workers from Exploitation and Retaliation Act (POWER Act). This bill would expand the application of the "U" visa to minor civil violations and, in most cases, remove DHS discretion to override the recommendation of either the DOL or the NLRB. The legislation would allow people in deportation hearings to bring minimal workforce claims, even in bad faith, and receive a "U" visa, avoiding deportation.

Joint Resolution Disapproving Persuader Regulation

On April 15, 2015, Rep. Bradley Bryne (R-AL) introduced H.J. Res. 87. This resolution state that under the Congressional Review Act, "Congress disapproves" of the persuader advice regulation, and "such rule shall have no force or effect." On April 26, 2016, the Chamber sent a letter, supporting the resolution.

USERRA

Putting Our Veterans Back to Work Act of 2015

On January 14, 2015, Rep. Steve Cohen (D-TN) introduced H.R. 366, the "Putting Our Veterans Back to Work Act of 2015." Among other things, the legislation would allow a veteran on whose behalf a complaint of a violation of employment or reemployment rights under the Uniformed Services Employment and Reemployment Rights Act (USERRA) is made by the Attorney General to intervene in such action, and to obtain appropriate relief. The legislation would require the Attorney General within 60 days after receiving a referral of an unsuccessful attempt to resolve a complaint relating to a state or private employer, to notify the person on whose behalf the complaint is submitted of either the decision to commence such an action or of when such decision is expected to be made. The bill would also require, in the latter case, that such decision to be made within an additional 30 days. In addition, the legislation would require the Attorney General to commence such an action when there is reasonable cause to believe that a state or private employer is engaged in a pattern or practice of resistance to the full enjoyment of such rights and benefits, and that the pattern or practice denies the full exercise of such rights and benefits.

The Act also would authorize the suspension, termination, or debarment of federal contractors for repeated failures or refusals to comply with USERRA protections.

Military Family Leave Act

On April 16, 2015, Rep. Matt Cartwright (D-PA) introduced H. R. 1845, the "Military Family Leave Act of 2015." The legislation would amend Title 38 of the United States Code to permit an eligible employee to take up to two workweeks of leave during a 12-month period for a "family member", defined as a "spouse, a son or daughter, or parent of an employee" if the family member is "in the uniformed services", "receives notification of an impending call or order to active duty in support of a contingency operation", or is "deployed in connection with a contingency operation." Under the terms of the legislation, an employer may require that a request for leave be entitled to certification, such as a "copy of the notification, call, or order."

Veterans

Veterans and Servicemembers Employment Rights and Housing Act of 2015

On January 22, 2015, Rep. Derek Kilmer (D-WA) introduced H.R. 501, the "Veterans and Servicemembers Employment Rights and Housing Act of 2015." The legislation would among other things, give the Equal Employment Opportunity the authority to process claims brought by veterans and service members who have alleged to have faced discrimination in hiring and employment practices based on their status of military service or veteran status as a protected class.

Family and Medical Leave Act (FMLA) and Other Leave Mandates

Expansion

On May 12, 2015, Sen. Jon Tester (D-MT) introduced S. 1302, the "Sarah Grace-Farley-Kluger Act." The legislation would amend the FMLA to permit parents grieving the death of their child to receive up to 12 weeks of FMLA job-protected leave. On May 12, 2015, Rep. Steve Israel (D-NY) introduced a similar bill in the House, H.R. 2260.

Healthy Families Act

On February 12, 2015, Rep. Rosa DeLauro (D-CT) and Sen. Patty Murray (D-WA) introduced H.R. 932 and S. 497, respectively, the "Healthy Families Act." The bill would require employers with 15 or more employees to provide one hour of paid sick leave for every 30 hours worked, to a maximum of 56 hours (seven days) per year to care for themselves and their family's medical needs.

The legislation specifies that workers begin accruing sick leave on their first day of employment, and that they become eligible to use the accrued time after 60 days of employment. Employers with existing sick-leave policies that are equivalent to the requirements of the bill would not be required to permit an employee to earn additional paid sick time.

The leave could be used for an employee's sickness or sickness of a child, parent, family member or any "other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship." Under the terms of the legislation, employers would be allowed to require workers to provide certification by a health care provider of an employee's illness if they are taking more than three consecutive days of leave.

In addition, the bill creates a right for victims of domestic violence to access this leave by specifying that leave may be used for "an absence resulting from domestic violence, sexual abuse, or stalking," whether to obtain medical care, obtain "services from a victim services organization" or "to participate in related legal proceedings.

On March 26, 2015, the Senate adopted an amendment to the budget resolution by a vote of 61-39 that expresses the Sense of the Senate to support "measures to allow Americans to earn paid sick time to address their own health needs and the health needs of their families, and to promote equal employment opportunities."

Working Families Flexibility Act of 2015

On January 22, 2015, Rep. Martha Roby (R-AL) and Sen. Mike Lee (R-UT) introduced H.R. 465 and S. 233, respectively, the "Working Families Flexibility Act of 2015," which would amend the FLSA to permit private employers to provide employees the choice of overtime wage paid out in the next paycheck as under current law, or overtime wages paid out in conjunction with paid time off taken later. This comp time option has been available to public sector employees since 1985. An employee may withdraw from a compensatory time off agreement with the employer at any time (except if the employee is part of a collective bargaining unit). However, if the employer wishes to withdraw from the program, a 30-day notice period would

be required. Under the terms of the legislation, the program would expire five years after the date of enactment.

Family Friendly and Workplace Flexibility Act of 2015

On March 19, 2015, Sen. Kelly Ayotte (R-NH) introduced S. 803, the "Family Friendly and Workplace Flexibility Act of 2015," which would amend the FLSA to permit private employers to provide employees the choice of overtime wages paid out in the next paycheck as under current law, or flexible credit hours that may be used by the employee to reduce working hours in subsequent pay periods. This comp time option has been available to public sector employees since 1985. An employee may withdraw from a compensatory time off agreement or flexible credit hours with the employer at any time (except if the employee is part of a collective bargaining unit). However, if the employer wishes to withdraw from the program, a 30-day notice period would be required. Under the terms of the legislation, both of these programs would expire five years after the date of enactment.

Flexibility for Working Families Act

On March 18, 2015, Rep. Carolyn Maloney (D-NY) introduced H.R. 1450 and Sen. Bob Casey Jr. (D-PA) introduced S. 777, respectively, the "Flexibility for Working Families Act." The legislation would provide that whenever an employee requests a change in working conditions and the employer denies that request, the employee may pursue a series of meetings, inquiries led by federal government, administrative law hearings, and ultimately, federal court challenges. At each of these stages, the employee would be entitled to be accompanied by a representative, such as a lawyer, or union representative. The bill would apply to employers with 15 or more employees.

Family and Medical Insurance Leave (FAMILY) Act

On March 18, 2015, Rep. Rosa DeLauro (D-CT) and Sen. Kirsten Gillibrand (D-NY) introduced H.R. 1439 and S. 786, respectively, the "Family and Medical Insurance Leave Act." The legislation would permit workers to take paid time off to care for themselves or a family member with a serious health condition for 60 days.

The bill would establish the "Federal Family and Medical Leave Insurance Trust Fund." According to the terms of the legislation, both the employer and employee would be taxed at 0.2 percent of wages received in any calendar year. Self-employed individuals would be taxed at 0.4 percent of income.

The legislation would establish a new Office of Paid Family and Medical Leave within the Social Security Administration to administer the benefits. The initial payment benefits would be capped at a minimum of $580 and a maximum of $4,000. After the first calendar year, the benefits would be indexed to the "national average wage index."

In order to qualify for the paid leave benefits, an individual would have to file an application; plan to engage or be engaged in caregiving activities 90 days before the date on which an application is filed or within 30 days after the date; be "insured for disability insurance

benefits;" and have received earned income from employment during 12 months prior to the filing of an application.

Employers that discriminate or discharge an individual "because the individual has applied for, indicated an intent to apply for, or received family and medical leave insurance benefits" would be liable for monetary damages, interest, liquated damages (except if the court finds the employer acted in good faith) and equitable relief, such as "employment, reinstatement, and promotion."

Domestic Violence

On October 27, 2015, Rep. Lucille Roybal-Allard (D-CA) and Sen. Patty Murray (D-WA) introduced H.R. 3841, and S. 2208, respectively, the "Security and Financial Empowerment Act." The Act would guarantee an employee's time off from work under the FMLA or other available leave to obtain legal assistance and to attend court proceedings related to domestic violence. The bill would also provide assurance that an employee who is forced to leave a job due to abuse would be eligible for unemployment compensation, and would prohibit employers and insurance providers from basing decisions on an individual's history as a victim of abuse.

Paid Vacation

On June 11, 2015, Sen. Bernie Sanders (I-VT) introduced S. 1564, the "Guaranteed Paid Vacation Act." The legislation would mandate that all companies with at least 15 employees provide at least ten days of paid vacation each year after one year of employment. The law would apply to any worker who has been employed for at least one year and has at least 1,250 hours of service.

Time Off to Vote Act

On June 25, 2015, Rep. Matt Cartwight (D-PA) introduced H.R. 2887, the "Time Off to Vote Act." The legislation would mandate an employer to give an employee 2 hours of paid leave on the day of any Federal election in order to vote and prohibit an employer from interfering with this right. If an employer violated the Act, the business "may" be subject up to a "civil penalty not to exceed $10,000."

Schedules That Work Act

On July 15, 2015, Rep. Rosa DeLauro (D-CT) and Sen. Elizabeth Warren (D-MA) introduced H.R. 3071 and S. 1772, respectively, the "Schedules That Work Act." The bill would apply to employers with 15 or more employees. The legislation would provide that an employee has the right to request that his or her employer change the terms and conditions of employment relating to the numbers of hours or times the employee is required to work or be on call; the location; the amount of notification he or she receives of work schedule assignments in order to minimize fluctuations in the number of hours the employee is schedule to work on a daily, weekly, or monthly basis.

The bill would require the employer, if the request is made, to engage in a timely, good faith interactive process with the employee that includes a discussion of potential schedule changes that would meet his or her needs and outlines the process for either granting or denying a change. Under the terms of the legislation, the employer is required to grant a request, unless there is a "bona fide business reason" for denying it, if the request is made because of the employee's serious health condition, his or her responsibilities as a caregiver, or enrollment in a career-related educational or training program, or if a part-time employee requests such a change for a reason related to a second job. If an employee requests a change in the terms and conditions of employment for other reasons, the employer "may deny the request for any reason that is not unlawful." If the employer denies the request, the employer would be required to provide the employee with the reason for the denial, including whether the reason was for a "bona fide business reason."

Among other things, the bill specifies employer requirements for paying reporting time and splitting shift pay and for giving advance notice of work schedules to retail, food service, or cleaning employees, except for those in executive, administrative, or professional capacities. The bill provides that retail, food service, or cleaning employees would be compensated for at least four hours of work if those employees are sent home early from their shifts. Furthermore, the bill would provide remedies for any violations of the prohibitions outlined in the bill by setting forth administrative enforcement procedures and civil remedies.

Strong Families Act

On December 3, 2015, Sen. Deb Fischer (R-NE) introduced S. 2354, the "Strong Families Act." Among other things, the legislation would give businesses a tax credit for 25 percent of the wages of workers on paid family and medical leave, up to a $3,000 cap on total benefits for each employee. To be eligible for the tax break, employers would have to provide at least two weeks of paid leave for qualifying full-time employees, defined as those employed by the employer for 1 year or more.

Davis-Bacon Act

Expansion

On July 9, 2015, Sen. Patty Murray (R-AZ) introduced S. 1748, the "Transportation Infrastructure Grants and Economic Reinvestment Act." The bill would require among other things, that "eligible projects" be paid Davis-Bacon prevailing wages.

On July 29, 2015, Rep. Rosa DeLauro (D-CA) introduced H.R. 3337, the "National Infrastructure Development Bank Act of 2015." The legislation would create a wholly owned Government corporation, known as the National Infrastructure Bank. The bill would "require all laborers and mechanics employed by contractors and subcontractors directly by or assisted in whole or in part by and through the Bank" to be paid Davis-Bacon prevailing wages.

Reform

On February 12, 2015, Rep. Paul Gosar (R-AZ) introduced H.R. 924, the "Responsibility in Federal Contracting Act." The bill would require that Davis-Bacon wages be determined by the Bureau of Labor Statistics using "surveys carried out by the Bureau of Labor Statistics that use proper random statistical sampling techniques."

On September 10, 2015, Rep. Jeff Duncan (R-SC) introduced H.R. 3472, the "Adjusting Davis-Bacon for Inflation Act." The bill would adjust the minimum threshold for coverage from the current rate of $2,000 to government contracts $50,000 or greater.

Repeal

On March 19, 2015, Rep. Virginia Foxx (R-NC) introduced H.R. 1483, the "Highway Trust Fund Reform Act of 2015." The legislation proposes to repeal Davis-Bacon Act wage requirements applicable to laborers and mechanics employed on Federal-aid highway and public transportation construction projects. The bill would take effect 31 days after enactment. The bill would not affect existing contracts, or contracts that were made pursuant to invitation for bids that were outstanding on the effective date.

On February 13, 2015, Rep. Steve King (R-IA) introduced H.R. 987, the "Davis-Bacon Repeal Act." The legislation proposes to repeal Davis-Bacon Act wage requirements and "any reference in any law" to Davis-Bacon prevailing wage rate requirements. The bill would take effect 30 days after enactment. The bill would not affect existing contracts, or contracts that were made pursuant to invitation for bids that were outstanding on the effective date. On July 16, 2015, Sen. Mike Lee (R-UT) introduced the companion bill in the Senate, S. 1785.

On April 30, 2015, Rep. Steve King (R-IA) introduced an amendment to the fiscal year 2016 military construction appropriations bill (H.R. 2029) that would have eliminated prevailing wage requirements for projects funded by the bill, which failed by a vote of 186-235.

On November 4, 2015, Rep. Steve King (R-IA) introduced an amendment (H. Amdt. 787 to H. Amdt. 734) to H.R. 3763, the "Surface Transportation Reauthorization and Reform Act of 2015," that would eliminate the Davis-Bacon Act requirements from federal transportation projects, which failed by a vote of 188-238.

To amend, title 49, United States Code, with respect to employee protective arrangements…

On March 26, 2015, Rep. Mark Meadows (R-NC) introduced H.R. 1711, the "Federal Transit Modernization Act of 2015." The bill would amend title 49, United States Code (labor standards) to strike the prevailing wage requirement and employee protective arrangements for transportation projects.

Anti-Arbitration

Investor Choice Act of 2015

On February 26, 2015, Rep. Keith Ellison (D-MN) introduced H.R. 1098, the "Investor Choice Act of 2015." The bill would amend the Securities Exchange Act of 1934 and the Investment Advisers Act of 2013 to ban mandatory pre-dispute arbitration agreements by broker-dealers and investment advisers.

Arbitration Fairness Act of 2015

On April 29, 2015, Rep. Henry C. "Hank" Johnson (D-GA) and Sen. Al Franken (D-MN) introduced H.R. 2087 and S. 1133, respectively, the "Arbitration Fairness Act of 2015." The bill would reverse the Supreme Court decision in *Circuit City Stores Inc v. Adams* and reaffirmed in *AT &T Mobility LLC v. Concepcion*, which upheld employer policies requiring pre-dispute binding arbitration agreements as a condition of employment. The bill would amend the Federal Arbitration Act to make pre-dispute arbitration agreements for employment, consumer, franchise, or civil rights disputes unenforceable.

Servicemember Civil Relief Act (SCRA) Rights Protection Act of 2015

On November 19, 2015, Sen. Jack Reed (D-RI) introduced S. 2331, the "SCRA Rights Protection Act of 2015." The legislation would require the consent of all parties in a contract to use the arbitration system, and permits servicemembers to bring class actions suits if their rights have been violated under the terms of the Act.

On December 2, 2015, Rep. Walter Jones (R-NC) introduced the companion bill in the House, H.R. 4161.

Restoring Statutory Rights and Interests of the States Act of 2016

On February 4, 2016, Sen. Patrick Leahy (D-VT) introduced S. 2506, the "Restoring Statutory Rights and Interests of the States Act of 2016." The bill would reverse the Supreme Court decision in *Circuit City Stores Inc v. Adams* and reaffirmed in *AT &T Mobility LLC v. Concepcion*, which upheld employer policies requiring pre-dispute binding arbitration agreements as a condition of employment.

The bill would make the FAA inapplicable to forced arbitration of claims brought by individuals or small businesses "arising from the alleged violation of a Federal or State statute, the Constitution of the United States, or a constitution of a State;" provide that the grounds "at law or in equity for the revocation of any contract" that allow an arbitration agreement to be declared invalid include "a Federal or State statute, or the finding of a Federal or State court, that prohibits the agreement to arbitrate on grounds that the agreement is unconscionable, invalid because there was no meeting of the minds, or otherwise unenforceable as a matter of contract law or public policy;" and require the determination of whether the FAA applies to an arbitration agreement to be made by a court.

On April 12, 2016, Rep. Henry C. "Hank" Johnson introduced the companion bill in the House, H.R. 4899.

Justice for Telecommunications Consumers Act

On April 28, 2016, Sen. Richard Blumenthal (D-CT) introduced S. 2897, the "Justice for Telecommunications Consumers Act." The legislation would amend the Federal Arbitration Act to make pre-dispute arbitration agreements for telecommunications services invalid and unenforceable.

Fair Labor Standards Act (FLSA) Issues

Original Living American Wage Act

On January 6, 2016, Rep. Al Green (D-TX) introduced H.R. 122, the "Original Living American Wage Act of 2015." The legislation would amend the Fair Labor Standards Act to provide for the calculation of the minimum wage by the Secretary of Labor, "no later than June 1, 2015, and once every four years thereafter" based on "an amount that is 15 percent higher than the Federal Poverty threshold for a family of two, with one child under the age of 18, and living in the 48 contiguous States, as published by the Bureau of the Census for the year in which the wage rate is being so determined."

Transitioning to Integrated and Meaningful Employment Act

On January 7, 2015, Rep. Gregg Harper (R-MS) introduced H.R.188, the "Transitioning to Integrated and Meaningful Employment" or the "TIME Act." The bill would amend Section 14(c) of the Fair Labor Standards Act, which permits employers to pay special wage certificates to disabled employees, by phasing out the program over a three-year period and prohibiting the Secretary of Labor from issuing special wage certificates to those not currently holding a certificate.

On August 5, 2015, Sen. Kelly Ayotte (R-NH) introduced the companion bill in the Senate, S. 2001.

Sense of the Senate Calling for Support in an Increase in the Minimum Wage

On March 26, 2015, the Senate rejected an amendment to the budget calling for a "substantial increase in the minimum wage" by a vote of 48-52.

Employee Bonus Protection Act

On April 23, 2015, Rep. Ken Calvert (D-CA) introduced H.R. 1981, the "Employee Bonus Protection Act." The bill would amend the Fair Labor Standards Act to provide that an employee's regular pay rate, for the purposes of calculating overtime, will not be affected by additional payments to reward an employee or group of employees for meeting or exceeding productivity, quality, efficiency, or sales goals under a gain sharing, incentive bonus, commission or performance contingent bonus plan.

Raise the Wage Act

On April 30, 2015, Sen. Patty Murray (D-WA) and Rep. Bobby Scott (D-VA) introduced S. 1150 and H.R. 2150, respectively, the "Raise the Wage Act." The legislation would amend the Fair Labor Standards Act (FLSA) to increase the minimum wage by $0.75 percent to $8 an hour the first year, then by $1 a year for the next four years until the federal minimum wage reaches $12 in 2020. Under the bill, the following year after the minimum wage increases to $12, the minimum wage would then be indexed to the median wage.

With respect to tipped employees, the legislation amends the FLSA to gradually phase out the tip credit.

Future Logging Careers Act

On March 3, 2015, Rep. Raul Labrador (R-IA) introduced H.R. 1215, the "Future Logging Careers Act." The bill would amend Section 3 of the Fair Labor Standards Act to permit employees who are 16 and 17 years old to work in family logging operations under supervision of a parent or those standing in place of the parent. On March 10, 2015, Sen. James Risch (R-ID) introduced the companion bill, S. 694.

On July 29, 2015, Rep. Bruce Poliquin (R-ME) introduced a similar bill, H.R. 3283.

To Amend the Fair Labor Standards Act of 1938 to Prohibit Work by Children in Tobacco-Related Agriculture as Particularly Hazardous Opressive Child Labor

On April 16, 2015, Rep. David Cicilline (D-RI) and Sen. Richard Durbin (D-IL) introduced H.R. 1848 and S. 974, respectively. The bill would amend Section 3(l) of the Fair Labor Standards Act of 1938 to prohibit children under the age of 18 from engaging in tobacco-related agriculture by deeming such employment as oppressive child labor.

Outdoor Recreation Enhancement Act

On May 1, 2015, Rep. Chris Steward (R-UT) introduced H.R. 2215, the "Outdoor Recreation Enhancement Act." The legislation would amend Section 13(a)(3) of the Fair Labor Standards Act of 1938 by adding: ‘‘, provided that, for the purposes of this paragraph, an employee of an entity engaged in providing services or facilities directly related to outfitting and guiding or similar outdoor recreation activities, or rental of outdoor recreational equipment (including services, facilities, or equipment relating to rafting, boating, zip lines, campgrounds, horseback riding, bicycling, hiking, guest ranches, summer camps, hunting, and fishing), or a private entity engaged in providing services and facilities directly related to skiing, shall be considered an employee employed by an establishment which is a recreational establishment.’’

The bill also would provide for a notification requirement "if any contract, permit, license, or other agreement is entered into" between the Federal government and a designated employer prior to enactment of the Act.

Mobility and Opportunity for Vulnerable Employees Act

On June 4, 2015, Sen. Chris Murphy (D-CT) introduced S. 1504, the "Mobility and Opportunity for Vulnerable Employees Act" or the "MOVE Act." The legislation would prohibit the use of noncompetition agreements for employees making less than $15 an hour, $31,200 per year, or the minimum wage in the employee's local area. For those workers whom are not prohibited from signing a noncompetition agreement, an employer would be required to notify such employees, prior to employment and "at the beginning of the process for hiring." Under the terms of the legislation, an employer found to have violated either of these requirements would be liable for the imposition of civil penalties.

On June 24, 2015, Rep. Joseph Crowley (D-NY) introduced a similar bill in the House, H.R. 2873, the "Limiting the Ability to Demand Detrimental Employment Restrictions Act" or "LADDER Act."

Children's Act for Responsible Employment of 2015

On June 12, 2015, Rep. Lucille Roybal-Allard (D-CA) introduced H.R. 2764, the "Children's Act for Responsible Employment of 2015" or the "CARE Act of 2015." The legislation would amend the Fair Labor Standards Act of 1938 to increase the civil penalties for violations of child labor to no less than $500 and no more than $15,000 for a violation of child labor laws, and impose new penalty requirements of no less than $15,000 and no more than $50,000 for each violation that "causes the serious injury, serious illness, or death of any employee under the age of 18 years" and doubles the violation for when the violation is "repeated or willful." The bill would also impose an additional criminal penalty of up to five years or a fine, or both if any person repeatedly or willfully violates child labor laws, and these violations result in or contribute to death or "serious injury or illness."

The bill would also outlaw children under the age of 18 from working in any occupation inconsistent with the worker protection standards for workers exposed to pesticides in part 170 of title 40, Code of Federal Regulations. The legislation would prescribe that the Secretary may issue the final rules to implement the provisions, and would take effect no later than 30 days after the date on which the final rules are published in the *Federal Register*.

Fair Access for Moms Act

On June 18, 2015, Rep. Grace Meng (D-NY) introduced H.R. 2836, the "Fair Access for Moms Act." The bill would amend the FLSA to lower the current threshold of 50 to 15 for the purpose of providing mothers reasonable break time to express breast milk during the workday after the birth of a child, including making reasonable efforts to provide a place, other than a bathroom, that is shielded from view from intrusion by co-workers and the public, and which may be used by an employee to express breast milk.

Pay Workers a Living Wage Act

On July 22, 2015, Rep. Keith Ellison (I-VT) and Sen. Bernie Sanders introduced H.R. 3164 and S. 1832, the "Pay Workers a Living Wage Act." The Act would amend the Fair Labor Standards Act to phase in a $15 minimum wage by 2020 beginning with $9 on January 1,

2016 or if later, on the first day of the third month after the date of enactment, $10.50 in 2017, $12.00 in 2018, $13.50 in 2019, and $15 in 2020. After 2020, the legislation would index the minimum wage to the median hourly wage. The bill would also gradually eliminate the tipped minimum wage.

Supporting Working Moms Act of 2015

On November 19, 2015, Rep. Carolyn Maloney (D-NY) and Sen. Jeff Merkley (D-OR) introduced H.R. 4113 and S. 2321, the "Supporting Working Moms Act of 2015." The bill would amend the FLSA to require employers to provide those individuals classified as non-exempt employees with reasonable break time to express breast milk during the workday after the birth of a child, including making reasonable efforts to provide a place, other than a bathroom, that is shielded from view from intrusion by co-workers and the public, and which may be used by an employee to express breast milk.

Driver Fatigue Prevention Act

On November 19, 2015, Sen. Charles Schumer (D-NY) introduced S. 2322, the "Driver Fatigue Prevention Act." The legislation would provide that over-the-road bus drivers are covered under the maximum hour requirements of the Fair Labor Standards Act.

Notification of Your Eldercare Rights Act

On December 3, 2015, Rep. Matt Cartwright (D-PA) introduced H.R. 4170, the "Notification of Your Eldercare Rights Act." The legislation would require "any provider" of domestic care services to give to their clients, a two-page disclosure form, which indicates in plain language whether or not the worker being provided is considered to be an "independent contractor" or an "employee" for purposes of the Fair Labor Standards Act of 1938. The form would disclose the "rights and legal liabilities of the customer with respect to any employee or independent contractor, including rights of action; the presence or lack of vicarious liability of the provider of domestic care services with respect to an employee or independent contractor; and any liability the customer might have with respect to keeping their property free from unreasonable risk of harm."

The two-page disclosure form would be drafted by the Secretary of Labor, in consultation with the Secretary of Health and Human Service. Under the terms of the legislation, any provider of domestic care services that fails to provide the disclosure to a "prospective customer" would be subject to a fine of up to $1,100 per violation and any person who "knowingly" fails to provide this information or has been previously assessed a civil penalty, would be subject up to a fine of a maximum of $5,000 per violation.

Freedom for Workers to Seek Opportunity Act

On December 15, 2015, Rep. Derek Kilmer (D-WA) introduced H.R. 4254, the "Freedom for Workers to Seek Opportunity Act." The legislation would prohibit the use of noncompetition agreements for employees at a grocery store. According to the terms of the legislation, "grocery store" is defined as "an establishment that sells food for home preparation and consumption and offers for sale, on a continuous basis, a variety of foods in each of the following categories of

staple foods, including perishable foods in at least two of the categories: meat, poultry, or fish, breads and cereals; vegetables and fruits; and dairy products." The bill also spells out employee retention of seniority and benefits following a merger. Under the terms of the legislation, an employer found to have violated this requirement would be liable for the imposition of civil penalties.

Pay Stub Disclosure Act

On January 13, 2016, Rep. Bobby Scott (D-VA) introduced H. R. 4376, the "Pay Stub Act." The bill would among other things, amend Section 11 of the Fair Labor Standards Act of 1938 (29 U.S.C. 211) to require "each employer to provide an initial disclosure to each employee who is not subject to the exemptions set forth in section 13," a pay stub disclosure that describes "the rate or rates of pay, and whether the employee is paid by the hour, shift, day, week, or job, or by salary, piece rate, commission, or other form of compensation;" "the name of employer and any other name used by the employer to conduct business;" and "the physical address and telephone number of the employer's main office or principal place of business, and a mailing address if such mailing address is different from the address of the main office or principal place of business." In addition, the legislation would amend Section 16 of the Fair Labor Standards Act of 1938 to authorize civil penalties against an employer who has "violated" the notice requirement.

On March 3, 2016, Sen. Al Franken (D-MN) introduced the companion bill in the Senate, S. 2630.

Fair Wage Act

On February 9, 2016, Rep. Donald Norcross (D-NJ) introduced H.R. 4508, the "Fair Wage Act." The bill would increase the minimum wage to $8, beginning 30 days after enactment or January 1, 2017, whichever date is earlier, until it reaches $15.00 after 7 years, and then indexes the wage to inflation thereafter. Under the terms of the legislation, the Secretary of Labor would be required to publish in the *Federal Register* and the website of the Department of Labor, a notice announcing the requested wage rate. The bill also would provide for a tax credit for businesses if the employer pays more than the minimum wage.

Wage Theft Prevention and Wage Recovery Act

On March 16, 2016, Rep. Rosa DeLauro (D-NY) and Sen. Patty Murray (D-WA) introduced H. R. 4763 and S. 2697, respectively, the "Wage Theft Prevention and Wage Recovery Act." Among other things, the legislation would:

- require businesses to pay out full compensation for recovery purposes;
- require employers to provide to all employees, initial disclosures of the terms of their employment and regular pay stubs and establish civil fines of $50 for the first time to $100 for each subsequent violation on employers who fail to provide term disclosures and regular pay stubs to all employees;

- require employers to pay their employees' final paycheck within 14 days of separation or by the payday for the pay period, or else the employer would be required to pay the employee their daily wage each day past the due date for up to 30 days;
- create a civil penalty of $2,000 for employers who violate minimum and overtime wage laws
- increase the existing civil penalty for willful or repeat violations to $10,000;
- increase damages to triple the owed wages amount, plus interest assessed on the original owed wages for those employees that are retaliated against for filing a complaint or cooperating with a Department of Labor investigation,
- increase damages for wage theft to quadruple the owed wages amount, plus interest assessed on the original owed wages;
- create a civil penalty of $1,000 for the first violation and $5,000 for subsequent violations for violations of recordkeeping,
- provide workers with the right to inspect a copy of an employer's record,
- create a presumption that the employer engaged in wage theft if an employer violates the recordkeeping provision; this presumption can be rebutted with "clear and convincing evidence" standard
- increase the time that employees have to bring a claim for owed wages from two years to four years (and from three years to five years) for willful violations) from the date of the violation, and tolls the statute of limitation during any DOL investigation, and
- change the standard from an "opt-in" to an "opt-out" for class action lawsuits .

The bill would also direct the U.S. Department of Labor (DOL) to refer to the U.S. Department of Justice for criminal prosecution if employers actively engaged in wage theft practices, tried to falsify records, or retaliated against an employee for speaking up or cooperating in DOL investigations.

Protecting Workplace Advancement and Opportunity Act

On March 17, 2016, Tim Walberg (R-MI) and Sen. Tim Scott (R-SC) introduced H.R. 4773 and S. 2707, the "Protecting Workplace Advancement and Opportunity Act." The bill forbids the proposed overtime regulation published in the *Federal Register* on July 6, 2015, "to have any force or effect," and would apply the same restriction on a final rule, if issued prior to the enactment of the Act.

The bill spells out the criteria for issuing a "substantially similar rule," including specific actions by the Secretary of Labor to conduct an analysis, including "an initial regulatory flexibility analysis" and economic analyses required by Executive Order 12866 which "accurately identifies the number of affected small entities;" "addresses regional, State, county (if applicable), metropolitan, and non-metropolitan salary and cost-of-living differences," provides an analysis which include the "percentile of full-time salaried workers affected," broken up by "State; industry subsector; small organizations; small government jurisdiction, including further disaggregation by school district; nonprofit organizations, Medicare or Medicaid dependent health care providers; and small businesses;" an analysis of "management and human resource costs for all employers, including costs associated with changing human resource systems, reclassifying employees, and extra hours spent scheduling employees; "impact

on lower-wage industries, including by geographic area;" and "all non-financial costs, including impact on employment, workplace flexibility; employee benefit structure for exempt and nonexempt workers, career advancement opportunities, new business formation, business termination, and loss of market share to foreign competition;" and includes a "description of any significant alternative."

The legislation also would require the Secretary of Labor to "publish not less than one small entity compliance guide under Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996" to assist "small entities in complying with the substantially similar rule; provide notice in the *Unified Agenda*; provide notice and comment of "not less than 120 days," and "ensure that any effective date for a final rule" be no less than one year after the date of publication in the *Federal Register*.

The bill would make clear that automatic increases are not allowed under current law, and prohibit changes to the duties tests where proposed regulatory text was not made available for public review and comment.

On March 30, 2016, the Chamber wrote a letter to the bill's sponsors, expressing support for the legislation.

Occupational Safety and Health Administration (OSHA) and Mine Safety and Health Administration (MSHA) Issues

OSHA/MSHA Reform

Protecting America's Workers Act

On April 28, 2015, Sen. Al Franken (D-MN) introduced S. 1112, "The Protecting America's Workers Act." The bill would extend OSHA protections to federal, state and local government employees and others not currently covered, increase both civil and criminal penalties and adjust those amounts for inflation, expand whistleblower protections, create a right for employees and workplace accident victims to be heard during an investigation, direct DOL to revise regulations for site-controlling employers to keep a site log for all recordable injuries and illnesses among all employees on the worksite, and remove the requirement for a workplace death before criminal penalties can attach.

The legislation also would in criminal cases, replace the legal intent standard of "willful" with "knowing" (commonly used in environmental laws), thus expanding the possibility of criminal penalties; define an employer as an "officer or director," meaning that criminal penalties could be brought against a wider range of individuals/officers of a business; provide for the abatement of hazardous conditions during the contest period for serious violations; afford expanded rights of family members of injured workers to participate in settlement negotiations; and create a formal mechanism for OSHA to oversee state-based plans and compel remedies.

On April 29, 2015, Rep. Joe Courtney (D-CT) introduced the companion bill in the House, H.R. 2090.

Robert C. Byrd Mine Safety Protection Act of 2015

On April 22, 2015, Rep. Bobby Scott (D-VA) introduced H.R. 1926, the "Robert C. Byrd Mine Safety Protection Act of 2015." The legislation would reform the Mine Safety and Health Administration (MSHA).

The bill would make substantial changes to the operations of MSHA such as enabling MSHA to seek a court order to close an unsafe mine, authorizing it to subpoena documents and testimony, and requiring additional training for miners in unsafe mines. Both criminal and civil penalties would be increased, and the criteria for imposing patterns of violations sanctions would be revamped.

The legislation would increase whistleblower protection for miners, provide that miners do not lose pay if a mine is closed for safety purposes, and require that incoming miners be informed of a mine's hazards during a pre-shift review. The bill would also require independent investigations by NIOSH of the most serious accidents, and increased rock dust standards to prevent coal dust explosions. The bill would also allow immediate family members of victims of every mine disaster to name a representative to participate in government investigations of such disasters.

The bill would also authorize a safety training grant to cover mine rescue training under conditions that simulate a mine accident.

On April 30, 2015, Sen. Robert Casey Jr. (D-PA) introduced the companion bill in the Senate, S. 1145.

OSHA Issues

Record-Keeping

On January 6, 2015, Rep. Gene Green (D-TX) introduced H.R. 128, the "Worksite Reporting Act," "to direct the Secretary of Labor to revise regulations concerning the recording and reporting of occupational injuries and illnesses under the Occupational Safety and Health Act of 1970." The bill would "require site-controlling employers to keep a site log for all recordable injuries and illnesses occurring among all employees on the particular site, whether such employees are employed directly by the site-controlling employer or are employed by contractors or temporary help or employee leasing services."

Grace Period on OSHA Penalties

On April 22, 2015, Rep. Vicky Hartzler (R-MO) introduced H.R. 1932. The legislation would permit businesses to abate certain OSHA violations prior to being subject to a fine as long as the violation is determined not to be "willful, repeated, or serious."

Voluntary Protection Program Act

On May 21, 2015, Rep. Todd Rokita (R-IN) introduced H.R. 2500, the "Voluntary Protection Program Act."

The bill would replace the cooperative agreements and voluntary protection programs currently carried out by OSHA, with a new cooperative agreement and voluntary protection program, as authorized in the legislation. The bill would require the Secretary of Labor to enter into cooperative agreements with employers to encourage the establishment of comprehensive safety and health management systems that include "requirements for systematic assessment of hazards"; "comprehensive hazard prevention, mitigation; and control programs"; "active and meaningful management and employee participation in the voluntary protection program"; and "employee safety and health training."

The Secretary of Labor would also establish and carry out a voluntary protection program to encourage excellence and recognize the achievement of excellence in both the technical and managerial protection of employees from occupational hazards. The voluntary protection program would include the following requirements: an employer would have to submit an application to the Secretary of Labor; representatives of the Secretary of Labor would possess the authority to conduct onsite visits; employers who participate in the program would share information about safety and health programs to employees; and such employers would be subject to periodic reevaluations.

The bill also authorizes the Assistant Secretary of Labor to "develop a documentation policy regarding information on follow-up actions taken by OSHA's regional offices in response to the fatalities and serious injuries at worksites participating in the voluntary protection program"; "establish internal controls that ensure consistent compliance by the regional offices with the voluntary protection program policies of OSHA for conducting onsite reviews and monitoring injury and illness rates, to ensure that only qualified worksites participate in the program"; and "establish a system for monitoring the performance of the voluntary protection program by developing specific performance goals and measures for the program." An employer site, which has been approved by the Secretary of Labor and elects to participate in the voluntary protection program, would be exempt from inspections or investigations and certain paperwork requirements to be determined, except the employer would still be subject to inspections, investigations and certain paperwork requirements arising from employee complaints, fatalities, catastrophes, or significant toxic releases.

On April 28, 2016, Sen. Michael Enzi (R-WY) introduced a similar bill in the Senate, S. 2881.

Bipartisan Budget Act of 2015

On October 27, 2015, Rep. Patrick Meehan (R-PA) introduced the House Amendment to the Senate Amendment to H.R. 1314, the "Bipartisan Budget Act of 2015." Included in the Bipartisan Budget Act of 2015 is a provision that would permit OSHA to increase civil penalties based on inflation rates and to have a one-time "catch-up" adjustment. On October 28, 2015, the House passed the bill by a vote of 266-167. On October 29, 2015, the Senate passed the bill by a vote of 64-35. On November 2, 2015, President Obama signed the bill into law.

Ergonomics

On December 16, 2015, Rep. John Conyers Jr. (D-MI) and Sen. Al Franken (D-MN) introduced H.R. 4266 and S. 2408, respectively, the "Nurse and Health Care Worker Protection Act of 2015," which directs the Secretary of Labor to issue a new ergonomics regulation as it relates to nurses and health care workers and medical lifting and in particular, mandating the use of mechanical lifts for patients, "to the greatest degree feasible." Where the use of mechanical technology and devices is not feasible, the bill would mandate the "use of alternative controls and measures to minimize the risk of injury to nurses and health care workers resulting from the manual handling of patients." In addition, the bill would allow an employee to refuse an assignment if they believe that the employer has not complied with the standards required in the bill.

Authorizations

U.S. House of Representatives

National Defense Authorization Act for FY 2017

On April 27, 2016, during mark-up of H.R. 4909, the "National Defense Authorization Act for Fiscal Year 2017," the Commitee adopted an amendment offered by Rep. John Kline (R-MN) that would block the "Fair Pay and Safe Workplaces" Executive Order from applying to Department of Defense contracting options.

Appropriations

U.S. House of Representatives

Article I Consolidated Appropriations Amendments, 2016

On January 12, 2016, Rep. Ken Buck (R-CO) introduced H.R. 4371, the "Article I Consolidated Appropriations Amendments, 2016."

The bill directs to "at the end of title I of Division H of the Consolidated Appropriations Act, 2016, to insert the following new section contains the following funding limitations with respect to Labor Department activities:

- Prohibits the use of funds to promulgate the "Definition of 'fiduciary- Conflict of Interest'" regulation';
- Directs the Occupational Safety and Health Administration to use new Centers for Disease Control and Prevention research on silica exposure and conduct a study on the effects of silica regulation on small businesses and
- Bars OSHA from "administering, enforcing or otherwise implementing" OSHA's interpretation permitting union representatives to accompany an OSHA inspector at non-union workplaces and any similar type of interpretation.

U.S. Senate

Commerce, Justice, Science, and Related Agencies Appropriations Act for FY2017

On April 21, 2016, the Senate Appropriations Committee on Commerce, Justice, Science, and Related Agencies passed S. 2837, the "Departments of Commerce, Justice, Science, and Related Agencies Appropriations Act, 2017." The bill would fund the Equal Employment Opportunity Commission at $364.5 milllion for fiscal year 2017. Prior the mark-up, on April 19, 2016, the Chamber sent a letter, supporting the prohibition of funding against the EEO1 data compensation proposal.

The Report accompanying the bill has the following language to direct the agency's actions:

"Public Comment on EEOC Guidance.--The Committee is concerned that as the EEOC conducts its business in protecting against employment discrimination, its guidance proposals can be adopted without the opportunity of public input prior to implementation and enforcement. Therefore, if requested by at least two Commissioners, the EEOC shall make any new guidance available for public comment in the Federal Register for not less than 30 days prior to taking any potential action on proposed guidance."

Independent Contractor Classification

The Independent Contractor Tax Fairness and Simplification Act of 2015

On May 20, 2015, Rep. Erik Paulsen (R-MN) introduced H.R. 2483, the "Independent Contractor Tax Fairness and Simplification Act of 2015." The bill would eliminate prospectively the "safe harbor" that has been relied upon since 1978 by many businesses that may have misclassified employees as independent contractors which allow a business that has treated a worker as a IC to qualify for a form of retroactive safe harbor for purposes of *past* employment tax liability if the business has had a reasonable basis for not treating the worker as an employee *and* has consistently reported the earnings of the worker and others similarly situated on a 1099 basis.

The bill would codify a new form of "safe harbor" if the worker meets all four of the following factors: incurs significant financial responsibility for providing and maintaining equipment and facilities; incurs unreimbursed expenses or risks income fluctuations because remuneration is "directly related to sales or other output rather than solely to the number of hours actually worked or expenses incurred"; is compensated on such factors as percentage of revenue or scheduled rates and not solely on the basis of hours or time expended; and "substantially controls the means and manner of performing the services" in conformity with regulatory requirements, or "the specifications of the service recipient or payor and any additional requirements" in the parties' written IC agreement.

Payroll Fraud Prevention Act of 2015

On July 29, 2015, Rep. Frederica Wilson (D-FL) and Sen. Bob Casey Jr. (D-PA) introduced H.R. 3427, and S. 1896, "the Payroll Fraud Prevention Act of 2015."

The "Payroll Fraud Prevention Act" would expand current FLSA recordkeeping requirements to all workers, including non-employees. Under the terms of the legislation, employers that misclassify employees would be subject to a civil penalty, not to exceed $1,100 per each employee or other individual who was the subject of such a violation. Repeating violators would be subject to a higher civil monetary payment amount of up to $5,000.

The bill requires employers to give the following notice to employees and non-employees: "Your rights to wage, hour, and other labor protections depend upon your proper classification as an employee or non-employee. If you have any questions or concerns about how you have been classified or suspect that you may have been misclassified, contact the U.S. Department of Labor."

The bill requires that the Secretary of Labor, within 180 days of enactment, to establish a single webpage on the Labor Department's website that "summarizes in plain language the rights of employees and non-employees under the Fair Labor Standards Act."

The bill further requires states to investigate and audit employers who may be misclassifying employees, in order for those states to continue to receive federal unemployment insurance grants.

Lastly, the bill also requires DOL and the IRS to coordinate its efforts in investigating employee misclassification efforts.

Fair Playing Field Act of 2015

On November 5, 2015, Sen. Sherrod Brown introduced S. 2252, the "Fair Playing Field Act of 2015." Under this legislation, the moratorium of Internal Revenue Service guidance addressing worker classification would end, and the Treasury Department would be required to issue prospective guidance clarifying the employment status of individuals for federal employment tax purposes. The legislation would modify the law to eliminate the ability of firms to qualify for reduced penalties for failure to deduct and withhold income taxes and the employee's share of payroll taxes if they cannot show there was a reasonable basis for misclassifying the worker. Anyone that entered into a contract with independent contractors on a regular and ongoing basis also would be required to provide a written statement to each independent contractor of the federal tax obligations of independent contractors, the labor and employment law protections that do not apply to independent contractors, and the right of the independent contractor to seek a status determination from the IRS. The Treasury Department would be required to issue an annual report on worker misclassification.

Contracting Preferences

American Jobs Matter Act of 2015

On January 6, 2015, Sen. Chris Murphy (D-CT) introduced S. 26, the "American Jobs Matter Act of 2015." The legislation would amend title 10, United States Code, to provide that in issuing a solicitation for competitive proposal, an executive agency shall state in the solicitation that the offeror may submit information known as a "job impact statement" with the application, describing the effects on employment within the United States of the contract, if it is awarded to the offeror.

The "job impacts" statement may include the following information: "the number of jobs expected to be created in the United States, or the number of jobs retained that otherwise would be lost"; the "number of jobs created or retained in the United States by the subcontractors expected to be used by the offeror"; and a "guarantee from the offeror that jobs created or retained in the United States will not be moved outside of the United States after the award of the contract." According to the bill, the contracting officer may consider the information in the jobs impact statement in the evaluation of the offer. The bill also states that "in any contract awarded to an offeror that submitted a jobs impact statement with its offer in response to the solicitation for proposals for the contract, the executive agency shall track the number of jobs created or retained during the performance of the contract. If the number of jobs that the agency estimates will be created significantly exceeds the number of jobs created or retained, then the agency may consider this as a factor that affects a contractor's past performance in the award of future contracts."

On January 22, 2015, Rep. Elizabeth Etsy (D-CT) introduced the companion bill in the House, H.R. 479.

Level Playing Field in Trade Agreements Act of 2015

On March 12, 2015, Sen. Jeff Merkley (R-WA) introduced S. 735, the "Level Playing Field In Trade Agreements Act of 2015." The bill would among other things, require that any trade agreement eligible for expedited consideration would include requirements that "producers of merchandise exported to the United States from that country pay adequate wages." Under the terms of the legislation, "adequate wages" are defined as "compensation for a regular work week that is sufficient to the meet basic needs of the employee and any dependents of the employee, including providing reasonable discretionary income ; and includes at a minimum, the payment of the higher of the minimum wage or the appropriate prevailing wage;" "compliance with all legal requirements relating to wages (including freedom of association relating to the bargaining relating to wages and such related matters)" and "the provision of such benefits as required by law or contract."

Fighting for American Jobs Act of 2015

On June 4, 2015, Rep. Peter Visclosky (D-IL) introduced H.R. 2682, the "Fighting for American Jobs Act of 2015." The legislation would impose a new recordkeeping requirement that would require employers receiving "contracts, grants, loans or loan guarantees" by a federal agency to report on the "number of individuals employed by the business enterprise in the United

States; the number of individuals employed by the business enterprise outside the United States; and a description of the wages and benefits being provided to the employees of the business enterprise in the United States." Beginning one year after the date of enactment, the employer would also have to provide a written certification that includes "the percentage of the workforce of the business enterprise employed in the United States that has been laid off or induced to resign, and the percentage of the total workforce of the business enterprise that has been laid off or induced to resign." If the percentage of the total workforce in the United States that has been laid off or induced to resign is greater than the rest of the workforce, the employer would be blacklisted from receiving "any further assistance from the department or agency" and from "any other Federal department or agency."

United States Call Center Worker and Consumer Protection Act of 2016

On February 24, 2016, Rep. Gene Green (D-TX) and on February 25, 2016, Sen. Robert Casey Jr. (D-PA) introduced H.R. 4604 and S.2593, respectively, the "United States Call Center Worker and Consumer Protection Act of 2016." Among other things, the legislation would require the Department of Labor to keep a list, which would be made publically available of all employers that relocated entirely or a significant portion of their call center or customer service work abroad. Under the terms of the legislation, these companies would be ineligible for Federal grants or guaranteed loans, and any preference would be awarded to U.S. employers that do not appear on the list for awarding civilian or defense-related contracts. Employers that relocate a call center would remain on the list for up to 5 years after each instance of relocation.

Corporate Crime Database Act

On January 6, 2015, Rep. John Conyers (D-MI) introduced H.R. 102, the "Corporate Crime Database Act." The bill would among other things, provide the Attorney General authority to "acquire data, for each calendar year, regarding all administrative, civil, and criminal judicial proceedings initiated or concluded by the Federal Government and State governments against any corporation or corporate official acting in an official capacity involving a felony or misdemeanor charge or any civil charge where potential fines may be $1,000 or more. Under the terms of the Act, information would be made available on a public website "regarding improper conduct by all corporations with revenues, as determined under rules prescribed by the Attorney General, of over $1 million in annum."

Workers' Compensation

Medicare Secondary Payer and Workers' Compensation Settlement Agreements Act of 2015

On June 4, 2015, Rep. David Reichert (R-WA) and Sen. Robert Portman (R-OH) introduced H.R. 2649 and S. 1514, respectively, the "Medicare Secondary Payer and Workers' Compensation Settlement Agreements Act of 2015." The bill would improve the administrative process for Medicare secondary payer claims by reducing the threshold provisions below which workers compensation settlement agreements would be exempt; adding a cap on the "safe harbor" provision, and extending the number of days within which the Department of Health and Human Services would be required to provide notice of Medicare conditional payments.