



# **Labor Highlights from the “Spring” Unified Agenda of Regulatory and Deregulatory Actions and appropriations bills**

## **Appropriations**

### ***Commerce, Justice, Science, and Related Agencies Appropriations Act for FY2018***

On July 13, 2017, the House Appropriations Committee passed H.R. 3267, the Commerce, Justice, Science, and Related Agencies Appropriations Act, 2018 by a vote of 31-21. The bill would fund the Equal Employment Opportunity Commission at \$363.8 million for fiscal year 2018. During mark-up, the Committee approved an amendment by Rep. Andy Harris (R-MD) that would prohibit funding for the Equal Employment Opportunity Commission’s revised EEO-1 Form from taking effect.

The Report accompanying the bill also has language directing the agency to pursue conciliation instead of litigation:

*“Conciliation.—The Committee is concerned with the EEOC’s pursuit of litigation absent good faith conciliation efforts. The Committee directs the EEOC to engage in such efforts before undertaking litigation.”*

### ***Departments of Labor, HHS, and Education, and Related Agencies Appropriations Act for FY 2018***

On July 20, 2017, the Appropriations Committee marked up and approved the Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2018 by a party-line vote of 28-22. The Labor Department would be funded at \$10.8 billion, a \$1.3 billion reduction. Specific agencies would be funded at the following levels:

- \$217.5 million for the Wage and Hour Division, decrease from \$227.5 million (decrease of \$10 million)
- \$94.5 million for OFCCP, decrease from \$105 million (decrease of \$10.5 million)
- \$531.437 million for OSHA, decrease from \$552 million (decrease of \$20.56 million)

The bill contains the following funding limitations with respect to Labor Department activities:

- Blocks the “Definition of ‘Fiduciary- Conflict of Interest’” regulation’;
- Prohibits the use of funds to be “obligated or expended for the procurement of goods mined, produced, manufactured, or harvested or services rendered, in whole or in part, by forced or indentured child labor in industries and host countries already identified by the United States Department of Labor prior to enactment of this Act.”

The bill would also fund the National Labor Relations Board at \$249 million, which represents a decrease in funding of \$25 million (the Board is currently funded at \$274 million).

The legislation contains the following funding limitations with respect to the NLRB:

- Prohibits the use of “any new administrative directive or regulation” with respect to electronic voting in representation elections conducted by the Board;
- Prohibits the NLRB from asserting jurisdiction over Native American employers;
- Bars the Board from using funds to “issue, enforce, or litigate any administrative directive, regulation, representation issue, or unfair labor practice proceeding, or any other administrative complaint, charge, claim, or proceeding based on the standard for determining whether entities are ‘joint employers’ set forth by the National Labor Relations Board in *Browning-Ferris Industries of California, Inc.*, 362 NLRB No. 186 (August 27, 2015).”

During mark-up, the Committee approved by voice vote an amendment from Rep. Andy Harris (R-MD) that would prevent the NLRB from enforcing the *Specialty Healthcare* decision. The Harris *Specialty Healthcare* amendment was based on a Chamber request and used language suggested by the Chamber.

## **Regulatory Agenda**

### ***Labor***

On July 20, 2017, the administration released the 2017 Update to the [semi-annual regulatory agenda](#). The following items, about which the U.S. Chamber has either opposed or expressed concern, were listed as withdrawn:

- OSHA’s injury and illness prevention program (I2P2)
- OSHA’s combustible dust standard
- OSHA’s RFI of obsolete permissible exposure limits
- Wage and Hour Division’s “Right to Know” Under the Fair Labor Standards Act
- Wage and Hour Division’s RFI regarding non-exempt employees using electronic devices
- OFCCP’s Data Collection Efforts

- OFCCP’s Construction Contractor’s Affirmative Action requirements

During the transition to the Trump administration, the U.S. Chamber submitted [policy recommendations](#) for various key issues. The following items in the 2017 update closely track the Chamber’s recommendations:

- DOL proposed rule to rescind “persuader” regulation – On June 12, 2017, the Department of Labor promulgated a proposed rule to rescind the “persuader” regulation. On November 16, 2016, the U.S. District Court for the Northern District of Texas blocked the regulation from taking effect by instituting a permanent injunction. The U.S. Chamber will be filing comments supporting the rescission (comment period closes August 11, 2017).
- Request for information updating overtime regulations – In testimony before the Senate HELP Committee during his confirmation hearing, Labor Secretary Acosta indicated that he would be amenable to an increase in the overtime salary threshold but to a lesser amount than \$47,476, which is the final salary threshold set by the Obama administration’s DOL. The rule is currently blocked by a preliminary injunction issued by a federal judge as a result of the lawsuit brought by the Chamber and other business groups. A request for information (RFI) to gather information regarding questions of policy and application related to the final rule will be issued very soon.
- Delay of OSHA’s injury and illness rule with anti-retaliation provision – On June 28, 2017, OSHA promulgated a proposed rule to delay the compliance date from July 1, 2017 until December 1, 2017, and to further review and consider the rule. The U.S. Chamber has been active in challenging this rule from taking effect. The 2017 update indicates that the agency plans to issue a separate proposal to revise or remove other provisions in the final rule in October, 2017. The Chamber filed comments welcoming the delay but urging OSHA make it an indefinite stay pending the outcome of the comprehensive rulemaking.

The 2017 regulatory update has these new regulatory initiatives:

- Tip Regulations under the Fair Labor Standards Act – The Wage and Hour Division plans to propose to rescind the current restrictions on tip pooling by employers that pay tipped employees the full minimum wage directly. Proposed rule expected August, 2017.
- Labor Organization Annual Financial Reports: Coverage of Intermediate Bodies – The Office of Labor-Management and Standards (OLMS) proposes to return to its 2003 interpretation that intermediate bodies that are subordinate to a national or international labor organization that includes a labor organization are covered by the Labor-Management Reporting and Disclosure Act. Proposed rule anticipated March, 2018.

- Trust Annual Reports – The OLMS plans to re-establish a T-1 form to capture financial information pertinent to trusts in which a labor organization is interested (Section 3(l) trusts). Proposed rule anticipated March, 2018.

### ***DOJ—Civil Rights***

The regulatory update also indicated that the Department of Justice Civil Rights Division has cancelled a rulemaking on how websites should be made accessible under the ADA's Title III public accessibility requirements.