



Quarterly Washington Update  
With CUPA-HR's Government  
Relations Team

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April 11, 2019

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# Webinar

## Our Government Relations Team



Josh Ulman

*Chief Government Relations Officer*

CUPA-HR



Christi Layman

*Government Relations Manager*

CUPA-HR



Basil Thomson

*Government Relations Specialist*

CUPA-HR

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# Agenda



- Trump Regulatory Actions
- Democratic Legislative Actions

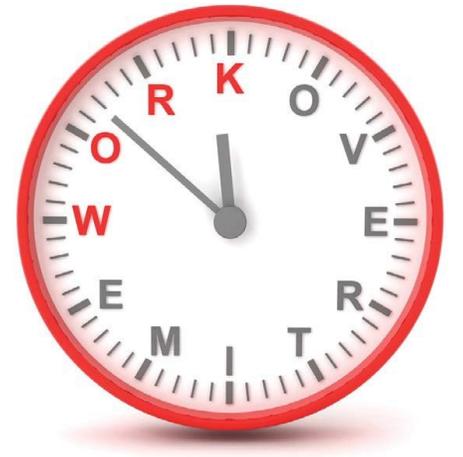
# Trump Regulatory Actions

- Department of Labor (DOL)
- National Labor Relations Board (NLRB)
- Department of Education (ED)
- Department of Homeland Security (DHS)



# DOL – Fair Labor Standards Act (FLSA) Overtime Proposed Rule

- On March 22, DOL proposed changes to the FLSA “White Collar” overtime pay exemptions:
  - Raises the salary threshold to **\$35,308 annually (\$679/week)** from the current \$23,660 annually (\$455/week) by reverting to the methodology used in the 2004 rule that focused on the 20th percentile of full time wage earners in the lowest income region of the country
  - **Does not include** automatic inflation adjustments, as the Obama-era rule did, but seeks comments on regular updates to the salary threshold every four years through notice and comment rulemaking
  - Does not make any changes to the duties tests
- CUPA-HR’s Response
  - Supportive of DOL’s decision to update the salary threshold by applying the methodology used and its decision not to make any changes to the duties test
  - Would like to see DOL prorate the salary threshold for part-time employees and allow room and board to count towards the threshold
  - Would like DOL to update the threshold via notice and comment every 5-7 years
- Comment period closes on May 21, 2019



# Poll Question

*Are you in a state that mandates a higher threshold than DOL's proposal?*

*a) YES*

*b) NO*

# DOL – Fair Labor Standards Act (FLSA)

## Regular Rate Proposed Rule

- On March 28, DOL proposed changes to the “regular rate” requirements under section 7(e) of the FLSA:
  - Clarifies the types of compensation and benefits that employers must include in the overtime calculation
  - Proposes to confirm that the following types of employer-provided benefits may be excluded from the regular rate of pay:
    - Wellness benefits, including gym memberships, fitness classes and on-site specialist treatment
    - Discounts on retail goods and services
    - Payouts to employees of unused vacation and sick leave
    - Accident, unemployment and legal services benefits
    - Tuition reimbursement and repayment of student loans
- CUPA-HR’s Response
  - Would like to see DOL allow room and board be excluded
- Comment period closes on May 28, 2019

# DOL – Fair Labor Standards Act (FLSA)

## Joint Employer Proposed Rule

- On April 1, DOL proposed changes to the definition of “joint employment” under Title 29 of the FLSA:
  - Revises and clarifies the responsibilities of employers to employees in multi-employer relationships
  - Proposes a four-factor test for determining joint employment looking at whether the potential joint employer actually exercises the power to:
    - hire or fire the employee
    - supervise and control the employee’s work schedules or conditions of employment
    - determine the employee’s rate and method of payment
    - maintain the employee’s employment records
  - Would replace the January 2016 Administrator’s Interpretation on joint employment, during the Obama administration, which did not go through the notice-and-comment rulemaking process and was withdrawn in June 2017
- CUPA-HR will be filing comments
- Comment period closes on June 10, 2019.

# Poll Question

*How many private institutions are participating in the webinar?*

- a) I am at PRIVATE institution*
- b) I am at a PUBLIC institution*

# NLRB – Joint Employer Proposed Rule

- On September 14, 2018, the NLRB issued a proposed rule on the joint employer standard
- The joint employer standard under the National Labor Relations Act (NLRA) is used to determine when two or more entities are jointly responsible for bargaining with any union representing the employees and liable for any violations of the NLRA that either entity commits against those employees
- Prior to the Board's 2015 *Browning Ferris Industries (BFI)* decision, two business were only considered joint employers with respect to a group of employees when they exercise direct and immediate control over the essential terms and conditions of employment
- In *BFI*, the Board expanded joint employment liability to include situations where two or more entities share indirect or even just potential, unexercised control over terms and conditions of employment
- This proposed rule would reinstate the original direct and immediate control standard
- On January 29, CUPA-HR joined comments led by the Coalition for a Democratic Workplace
- A final rule is expected later this year

# Poll Question

*Are you responsible for Title IX compliance at your institution?*

*a) YES*

*b) NO*

# ED – Title IX Proposed Rule

- On November 29, 2018, ED issued a proposed rule aimed at changing how colleges and universities must handle allegations of sexual assault and harassment under Title IX of the Education Amendments of 1972
- Title IX prohibits discrimination on the basis of sex in education programs and activities that receive federal financial assistance
- Process to change Title IX requirements began in September 2017, when ED rescinded guidance issued in 2011 by the Obama ED
- On January 30, CUPA-HR filed solo comments and joined higher ed community comments
- Andy testified at an EEOC roundtable in March and raised this issue
- A final rule isn't expected until the summer, at the earliest

# Poll Question

*How many institutions have spouses of H-1B visas holders working with an H-4 visa?*

- a) We do have employees with H-1B visas that have a spouse working under an H-4 visa.*
- b) We do not have H-4's.*

# DHS – Upcoming Rescission of H-4 Visa

- DHS plans to issue a proposed rule to rescind the H-4 employment authorization documents (EAD) program
- H-4 visa was established to allow H temporary workers and their families to live together in the U.S.
- H-4 employment authorization document (EAD) program—which has been in place since March 2015—allows spouses of H-1B recipients who are in the process of obtaining employment-based lawful permanent resident (LPR) status to apply for employment authorization
- Proposal was sent to the White House for final review on February 20
- Expect the proposed rule to be issued in the next month



# Democratic Legislative Actions



# Paycheck Fairness Act – H.R. 7

- Introduced by Rep. Rosa DeLauro (D-CT), the bill would significantly amend the Equal Pay Act by making it easier to penalize companies for perceived gender-based pay disparities while also imposing unlimited compensatory and punitive damages
- Would ban inquiries into job candidates' wage history, limit defenses against claims of unequal pay, allow employees to inquire about and discuss wages without retaliation, enhance penalties for Equal Pay Act violations, and direct pay data collection and analyses
- House Education and Labor Committee held a February 13 hearing on the bill and a February 26 markup
- On March 26, it passed the House by a vote of 242 to 187
- Not expected to be voted on in the Senate
- CUPA-HR submitted a letter highlighting concerns with the bill

## *Republican Alternative:*

### **WAGE EQUALITY ACT – H.R. 1935**

- Introduced March 27 by Rep. Elise Stefanik (R-NY)
- 55 Republican co-sponsors
- Would establish a “self-audit” system in order to incentivize businesses to proactively rectify discovered pay disparities

# Raise the Wage Act – H.R. 582

- Introduced by House Education and Labor Committee Chairman Bobby Scott (D-VA), the bill would raise the minimum wage to \$15 per hour over a 6-year period.
- After 6 years, the minimum wage would automatically increase every year by a percentage determined by BLS
- On February 7, the House Education and Labor Committee held a hearing on the bill
- On March 6, the committee approved the bill along party lines
- CUPA-HR has raised concerns with the disproportionate impact \$15 an hour would have on institutions in the south and with the automatic updates

## *Centrist Democrat Alternative:*

### **Paying Hourly Americans Stronger Earnings (PHASE)-in \$15 Wage Act - H.R. 2080**

- Introduced April 4 by Rep. Terri Sewell (D-AL)
- 13 co-sponsors
- Would set wage floor based on cost of living, regional economic conditions
- Updated every three years

# Equality Act – H.R. 5

- Introduced on March 13 by Representative Cicilline (D-RI) in the House.
- Would amend existing civil rights law to explicitly include sexual orientation and gender identity as protected characteristics. The legislation also amends the Civil Rights Act of 1964 to prohibit discrimination in public spaces and services and federally-funded programs on the basis of sex.
- Bill has 240 cosponsors (239 were original) including 3 Republicans as well as the support of 161 corporate sponsors
- CUPA-HR signed a trade association letter supporting the provisions in the bill that provide employment non-discrimination protections based on sexual orientation and gender identity
- Several House committees held hearings on the bill in the last week
- A priority for Democratic leadership, however, its' prospects in the Senate are unclear

# Quarterly Washington Update Webinar Series for 2019

\*Join us for upcoming 30-minute updates with our CUPA-HR Government Relations Team!

- July 25
- October 10





# Thank You!

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