



CUT AND PASTE POST JANUARY, 2020

U.S. Supreme Court Decisions Due in 2020

[R.G. & G.R. Harris Funeral Homes Inc. v. Equal Employment Opportunity Commission](#)

The Court's decision in this case will decide whether Title VII of the Civil Rights Act of 1964 prohibits discrimination against transgender employees based on (1) their status as transgender or (2) sex stereotyping under *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989)

Oral arguments were heard on October 8, 2019.

[Altitude Express, Inc., et al. v. Melissa Zarda, as Executor of the Estate of Donald Zarda, et al. and Gerald Lynn Bostock, Petitioner v. Clayton County, Georgia](#)

The answer to these consolidated cases will determine if the prohibition against employment discrimination in Title VII of the Civil Rights Act "because of . . . sex" includes discrimination based on an individual's sexual orientation.

Oral arguments for these 2 cases were also heard on October 8, 2019.

[Noris Babb, Petitioner v. Robert Wilkie, Secretary of Veterans Affairs](#)

In this case, the Court will decide whether the federal-sector provision of the Age Discrimination in Employment Act of 1967, which provides that personnel actions affecting agency employees aged 40 years or older shall be made free from any "discrimination based on age" (29 U. S. C. §633a (a)) requires a plaintiff to prove that age was a but-for cause of the challenged personnel action.

This case is scheduled for argument on January 15, 2020.

2020 Federal Legislative Outlook

According to [Govtrack.us](#), there are currently 10,168 bills and resolutions before the United States Congress but, of those, "only about 7% will become law". Here are a few bills that would have HR implications and which, according to SKOPOS Labs, have the highest (although, admittedly not very high) possibility of being enacted.

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[H.R. 2474: Protecting the Right to Organize Act of 2019](#)

To amend the National Labor Relations Act, the Labor Management Relations Act, 1947, and the Labor-Management Reporting and Disclosure Act of 1959, and for other purposes.

Sponsor: Rep. Robert "Bobby" Scott, D-Virginia

Prognosis: 34% chance of being enacted

[S. 3071: Family Medical Leave Modernization Act](#)

A bill to amend the Family and Medical Leave Act of 1993 and title 5, United States Code, to permit leave to care for a domestic partner, parent-in-law, or adult child, or another related individual, who has a serious health condition, and to allow employees to take, as additional leave, parental involvement and family wellness leave to participate in or attend their children's and grandchildren's educational and extracurricular activities or meet family care needs.

Sponsor: Richard Durbin, D-Illinois

Prognosis: 30% chance of being enacted

[H.R. 1309: Workplace Violence Prevention for Health Care and Social Service Workers Act](#)

To direct the Secretary of Labor to issue an occupational safety and health standard that requires covered employers within the health care and social service industries to develop and implement a comprehensive workplace violence prevention plan, and for other purposes.

Sponsor: Joe Courtney, D-Connecticut

Prognosis: 30% chance of being enacted

[S. 2614: Workforce Mobility Act of 2019](#)

A bill to prohibit certain non-compete agreements, and for other purposes.

Sponsor: Todd Young, R-Indiana.

Prognosis: 15% chance of being enacted

New! U.S. DOT Testing Clearinghouse

In case you missed it...

The federal Department of Transportation has created a Clearinghouse for CDL drug and alcohol testing violations. Data is to be entered into the Clearinghouse by employers, Medical Review Officers, and others. Employer and employee participation in this Clearinghouse is mandatory. In a nutshell, here's how the Clearinghouse rule works:

From now until 2023 - CDL employers will be required to:

1. Make sure their employee's violations are reported to the Clearinghouse; and
2. Conduct annual inquiries on all of their employees through the Clearinghouse.

In addition, for new employees (including current employees who are transferred from one CDL safety-sensitive position to another), employers will have to:

1. Continue to obtain employee consent and send drug/alcohol testing history inquiries to the past 3 years' employers;
2. Check the Clearinghouse for violations; and

3. Ask the employee/applicant if s/he has tested positive, or refused to test, on any pre-employment drug or alcohol test administered by an employer to which s/he applied for, but did not obtain, safety-sensitive transportation work covered by DOT agency drug and alcohol testing rules during the past two years.

Beginning in 2023, the clearinghouse database will be 'populated', so DOT employers can stop sending the past employer inquiries. It's not immediately clear whether employers can stop asking applicants about refused or failed pre-employment tests. I'll do some checking and follow up in a later *Cut n Paste Post*.

For those who have commercial drivers, here are some links to Clearinghouse information:

- [Clearinghouse Final Rule](#)
- [US DOT Resources for Drivers](#)
- [US DOT Resources for Employers](#)
- [Office of Drug and Alcohol Policy and Compliance \(ODAPC\) website](#)

IRS Releases New Forms and Instructions

The final redesigned [2020 Form W-4](#) was released by the Internal Revenue Service (IRS) on December 5th. Two of the biggest changes to the form are:

- The elimination of allowances, which have been replaced by dollar values to calculate withholding
- The addition of boxes to indicate if workers hold multiple jobs or are in two-earner households

Beginning in 2020, new hires and current employees wishing to make changes to their withholding will need to use the new form. Existing employees who do not wish to make any changes to their withholding do *not* need to fill out a new Form W-4.

On December 20th, the IRS also released [Publication 15-T](#), *Federal Income Tax Withholding Methods for use in 2020*.

The IRS also finalized the forms and instructions that employers will use for 2019 reporting under the *Affordable Care Act (ACA)*:

Applicable large employers (ALEs) will use the following:

- [2019 Form 1094-C](#) (transmittal to IRS).
- [2019 Form 1095-C](#) (statement to individual)
- [2019 Instructions for Forms 1094-C and 1095-C](#) (instructions).

Employers that self-fund a minimum essential coverage (MEC) plan will use the following:

- [2019 Form 1094-B](#) (transmittal to IRS).
- [2019 Form 1095-B](#) (statement to individual)
- [2019 Instructions for Forms 1094-B and 1095-B](#) (instructions).

