

## CUT AND PASTE POST MARCH, 2017

### Key 2016 U S Supreme Court Employment Law Decisions

Status	Case Name Link to Summary and/or Decision	Issue
Decided June 20, 2016	<a href="#">Encino Motorcars, LLC v. Navarro, et al</a>	<b>HELD:</b> FLSA exemption, Section 213(b)(10)(A) must be construed without placing controlling weight on the Department of Labor regulation that interpreted service advisors not covered by the exemption.
Decided May 23, 2016	<a href="#">Green v. Brennan</a>	<b>HELD:</b> A constructive discharge claim accrues--and the limitations period begins to run--when the employee gives notice of his resignation.
Decided May 19, 2016	<a href="#">CRST Van Expedited, Inc. v. EEOC</a>	<b>HELD:</b> A favorable ruling on the merits is not a necessary predicate to find that a defendant is a prevailing party; under Title VII's fee shifting statute, defendants who prevail, on the merits or not, can recover whenever the plaintiff's claim is frivolous, unreasonable, or groundless.
Decided April 26, 2016	<a href="#">Heffernan v. City of Paterson, New Jersey et al</a>	<b>HELD:</b> When a public employer demotes an employee out of a desire to prevent the employee from engaging in protected political activity, the employee is entitled to challenge that unlawful action under the First Amendment and Section 1983.
Decided March 22, 2016	<a href="#">Tyson Foods, Inc. v. Bouaphakeo et al</a>	<b>HELD:</b> Employees expert's report was a permissible means of establishing hours worked donning and doffing, in a FLSA class action, by showing that each class member could have relied on that sample to establish liability had each brought an individual action.
Decided March 1, 2016	<a href="#">Gobeille v. Liberty Mutual Insurance Co</a>	<b>HELD:</b> ERISA pre-empted state's statute that required health insurers to report payments relating to health care claims and other information relating to health care services to a state agency for compilation in an all-inclusive health care database.

### New Pick for Head of U.S. Department of Labor














On 2/15/17, facing criticism from both sides of the aisle, fast-food executive Andrew Pudzer withdrew his nomination to head the Labor Department. The next day, President Trump announced his intent to nominate Alexander Acosta for the position. Acosta clerked for Justice Samuel Alito when Alito was a judge on the 3<sup>rd</sup> Circuit U.S. Court of Appeals. He also served on the National Labor Relations Board (NLRB) under President George W. Bush from 2002 to 2003, then left the NLRB to become an assistant attorney general for the Justice Department's Civil Rights division between 2003 and 2005. He then served as U.S. Attorney for the Southern District of Florida from 2005 to 2009, and currently holds the position of dean of the Florida International University College of Law.

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## Montana Legislative Update

The Legislature is on its transmittal break. General bills (which most of HR bills are) must have passed 3<sup>rd</sup> reading and been transmitted to the other house, or they are most likely dead. The following is a list of HR-related bills that are currently active. Bills in [blue](#) are new since or weren't listed on the February *Cut N Paste*.

Bill Draft #	Requestor	Status	Status Date	Short Title
<a href="#">HB 88</a> 	Moffie Funk (D) HD 82	Signed by Governor/ Became Law	2/17/2017	Revise incumbent worker training program requirements
<a href="#">HB 132</a> 	Nate McConnell (D) HD 89	Signed by Governor/ Became Law	2/13/2017	Revise unemployment insurance laws (modifies appeals process)
<a href="#">HB 175</a> 	Jim Hamilton (D) HD 61	Transmitted to Senate. Hearing -- (S) Taxation – Nontabled	2/21/2017	Revise laws related to medical savings accounts
<a href="#">HB 239</a> 	Bill Harris (R) HD 37	(H) - In First House Committee – Nontabled	1/25/2017	Provide income tax benefits to employers and students for higher education costs
<a href="#">HB 308</a> 	Casey Schreiner (D) HD 26	(H) - In First House Committee – Nontabled	2/07/2017	Provide for apprenticeship tax credit with increased amount for veterans
<a href="#">HB 364</a> 	Denley M Loge (R) HD 14	(H) Transmitted to Senate	2/23/2017	Revise service animal laws
<a href="#">HB 389</a> 	Kirk Wagoner (R) HD 75	(H) Transmitted to Senate	2/27/2017	Generally revise tele-medicine laws for physicians
<a href="#">HB 449</a> 	Wylie Galt (R) HD 30	(H) Transmitted to Senate	2/27/2017	Revise the definition of wages in workers' compensation insurance.
<a href="#">HB 496</a> 	Vince Ricci (R) HD 55	(H) Transmitted to Senate	2/27/2017	Exempt seasonal outdoor recreation providers' employees from certain labor laws
<a href="#">SB 72</a> 	Pat Connell (R) SD 43	(S) Transmitted to House. Hearing -- (H) Business and Labor	3/08/2017 8:30 AM, Rm 172	Create presumptive illness for public firefighters (addresses lung disease.)
<a href="#">SB 116</a> 	Mark Blasdel (R) SD 4	(S) Transmitted to House. Hearing -- (H) Business and Labor	3/07/2017 8:30 AM, Rm 172	Disallowing workers' compensation benefits for certain false statements
<a href="#">SB 129</a> 	Mary Caferro (D) SD 41	(S) Transmitted to House. Committee Report--Bill Concurred - - (H) Human Services	2/21/2017	Require insurance coverage of tele dentistry
<a href="#">SB 325</a> 	Brian Hoven (R) SD 13	(S) Transmitted to House. (H) Business & Labor.	2/24/2017	Give safe harbors for employers hiring certain criminals

It's always interesting to see which bills died before transmittal. These included:

<a href="#">LC1562</a>	JP Pomnichowski (D) SD 33	(C) Draft On Hold	12/06/2016	Revise discrimination laws
<a href="#">LC0970</a> 	Adam Hertz (R) HD 96	C) Draft Ready for Delivery	12/22/2016	Income tax credit apprenticeship program for employers of veterans
<a href="#">HB 169</a> 	Mary Ann Dunwell (D) HD 84	(H) Failed a Blast Motion on the Floor	2/27/2017	Raise minimum wage in Montana
<a href="#">HB 329</a> 	Theresa Manzella (R) HD 85	(H) 2nd Reading Not Passed	02/17/2017	Revise contract amounts at which prevailing wages are paid
<a href="#">HB 398</a> 	Daniel Zolnikov (R) HD 45	(H) Missed Deadline for General Bill Transmittal	3/1/2017	Generally revise juvenile criminal records laws
<a href="#">HB 417</a> 	Kelly McCarthy (D) HD 49	Failed a Blast motion on the floor	2/20/2017	Generally revise laws related to non-discrimination (e.g., sexual orientation, gender identity)
<a href="#">SB 148</a> 	Sue Malek (D) SD 46	Tabled in Committee -- (S) Business, Labor, and Economic Affairs	02/15/2017	Establish the Montana Pay Equity Act
<a href="#">SB 326</a> 	Brian Hoven (R) SD 13	Tabled in (S) Business, Labor, and Econ. Affairs	02/23/2017	Revise worker laws to ban certain criminal history in job applications.