

CUT AND PASTE POST MAY, 2017

Neil Gorsuch Confirmed as U.S. Supreme Court Justice

On April 7, 2017, the U.S. Senate confirmed Neil Gorsuch for Supreme Court Justice. Gorsuch fills the vacancy created when former Supreme Court Justice Antonin Scalia passed away on February 13, 2016. Gorsuch was most recently a Judge at the Tenth Circuit Court of Appeals.

Gorsuch has a reputation of being one who strictly adheres to the text of the U.S. Constitution and the law, and for taking conservative views in his decisions. Gorsuch's appointment could mean a higher number of favorable rulings for employers. For example, while on the Tenth Circuit Court of Appeals, Justice Gorsuch did not always apply the *Chevron* doctrine, which allows Courts to give strong deference to a federal agency's interpretation of a statute. For HR purposes, this could mean the Supreme Court will give less deference to the National Labor Relations Board or the Department of Labor's opinion on labor and employment issues.

Current cases before the Court include evaluating whether Title VII discrimination protections extend to sexual orientation and whether unions can require members to pay dues. A case regarding union dues previously resulted in a tied decision, and a victory for public-sector unions, after Justice Scalia's death last year.

Gorsuch's confirmation brings the Court back to nine justices, preventing tie votes on decisions, which means languishing legal questions may finally get some resolution.

Philip Miscimarra Appointed to NLRB Chair

On April 24, 2017, President Trump appointed Philip Miscimarra to be the Chair of the National Labor Relations Board (NLRB). The NLRB is an independent federal agency that protects the rights of private sector employees to join together, with or without a union, to improve their wages and working conditions.

Chairman Miscimarra has served on the NLRB since 2013 and was designated as "acting chairman" by President Trump earlier this year. Before serving on the NLRB, Chairman Miscimarra was a Senior Fellow in the Wharton Center for Human Resources at the Wharton School of the University of Pennsylvania, and practiced labor and employment law in the private sector.

Since Chairman Miscimarra has served almost 4 years on the NLRB, his position on many issues that come before the NLRB is already known. For example, he frequently dissented from majority opinions issued by the previous NLRB. Some areas where there may be reversals of previous Board decisions include but are not limited to employee handbooks and policies, joint employment, and management rights provisions.

Because of 5-year term limits, President Trump will likely make two more appointments to the 5-member Board.

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Alexander Acosta Confirmed as U.S. DOL Secretary

On April 27, 2017, the Senate confirmed Alexander Acosta as the Secretary of the Department of Labor (DOL). Trump nominated Acosta after his initial nominee, Andrew Pusder, withdrew his nomination for the position after facing public backlash.

As noted in the March, 2017 *Cut N Paste*, Secretary Acosta previously served as a member of the National Labor Relations Board (NLRB), Assistant Attorney General for the United States Department of Justice, and as United States Attorney for the Southern District of Florida. He has also worked in private legal practice and taught at George Mason University School of Law. Immediately prior to becoming Secretary of Labor he served as Dean of the Florida International University College of Law.

While it is unclear what position Secretary Acosta and the DOL will take on some issues, one of the first things to watch for will be what action the DOL takes on the pending litigation involving the proposed White Collar Rule. The DOL recently requested an extension of time to respond to a Texas Judge's injunction which stopped the Rule from taking effect. If Secretary Acosta decides the DOL will not pursue the case, the injunction will stand, and the white collar salary increase will not take effect.

Under Acosta's lead, employees and employers should be ready to respond to changes in existing DOL policies, regulations, and guidance documents.

IRS Updates Affordable Care Act Guidance

On April 6, 2017, the Internal Revenue Service (IRS) updated its fact sheet on the Affordable Care Act tax provisions. The fact sheet covers the following topics:

- Basic information about an employer's shared responsibility payment for failure to offer minimum essential coverage and failure to offer affordable minimum essential coverage that provides minimum value.
- Meaning of offer of coverage.
- Assessment and collection of the employer shared responsibility payment.
- Non-deductibility of employer shared responsibility payment and more applicable information.































The U.S. Treasury provides further guidance in its 2014 Final Regulations Implementing Information Reporting for Employers and Insurers under the Affordable Care Act (ACA) fact sheet.

Read the [IRS Fact Sheet](#) and [Department of Treasury Fact Sheet](#)









Montana Legislative Wrap Up

The Legislature adjourned "Sine Die" on Friday April 28th. The next page provides a summary of the HR-related bills that made it through the Session and will become law, or are awaiting the Governor's signature. The bills in **red font** were not included in previous *Cut N Paste* legislative updates.

Fun fact: **Sine die**: without any future date being designated (as for resumption): indefinitely

Bill Draft #	Requestor	Status	Status Date	Short Title
HB 63  	Jim Hamilton (D) HD 61	Chapter Number Assigned	02/17/2017	Require withholding annual returns, W2s, and 1099s to be filed earlier
HB 73  	Ryan Lynch (D) HD 76	Chapter Number Assigned	4/20/2017	Regulate certain air ambulance memberships as insurance
HB 88  	Moffie Funk (D) HD 82	Chapter Number Assigned	2/17/2017	Revise incumbent worker training program requirements
HB 132  	Nate McConnell (D) HD 89	Chapter Number Assigned	2/13/2017	Revise unemployment insurance laws (modifies appeals process)
HB 142  	Laurie Bishop (D) HD 60	(H) Transmitted to Governor	4/28/2017	Revise insurance law to give mental health coverage parity with physical health
HB 168  	Zach Brown (D) HD 63	Chapter Number Assigned	4/13/2017	Provide for expungement of criminal records for misdemeanors
HB 175  	Jim Hamilton (D) HD 61	Chapter Number Assigned	4/4/2017	Revise laws related to medical savings accounts
HB 308  	Casey Schreiner (D) HD 26	Returned from Enrolling	4/28/2017	Provide for apprenticeship tax credit with increased amount for veterans
HB 449  	Wylie Galt (R) HD 30	Returned from Enrolling	4/20/2017	Revise the definition of wages in workers' compensation insurance.
SB 44  	Gordon Vance (R) SD 34	Chapter Number Assigned	4/25/2017	Provide process to hold patients harmless from balance billing by air ambulance
SB 116  	Mark Blasdel (R) SD 4	(H) Signed by Speaker	4/27/2017	Disallowing workers' compensation benefits for certain false statements
SB 129  	Mary Caferro (D) SD 41	Chapter Number Assigned	3/23/2017	Require insurance coverage of tele dentistry
SB 325  	Brian Hoven (R) SD 13	(H) Signed by Speaker	4/27/2017	Give safe harbors for employers hiring certain criminals
SB 345  	Cary Smith (R) SD 27	(H) Signed by Speaker	4/27/2017	Provide for high deductible health insurance thru reimbursements and tax credits.
SB 362  	Edward Buttrey (R) SD 11	Returned from Enrolling	4/24/2017	Requiring transparency in health care pricing

These bills have been tabled, indefinitely postponed or vetoed since the April *Cut N Paste* and are (probably) dead. (It takes a $\frac{2}{3}$'s vote from both houses to override a Governor's veto.)

HB 364  	Denley M Loge (R) HD 14	Tabled in (S) Public Health/Welfare/ Safety Committee	4/4/2017	Revise service animal laws
HB 389  	Kirk Wagoner (R) HD 75	(S) 2 nd Reading Indefinitely Postponed	4/6/2017	Generally revise tele-medicine laws for physicians
HB 496  	Vince Ricci (R) HD 55	Vetoed By Governor	4/20/2017	Exempt seasonal outdoor recreation providers' employees from certain labor laws
HB 655  	George G Kipp (D) HD 15	Tabled In (H) Appropriations Committee	4/4/2017	Revising employment laws for affirmative action, hiring incentives for Indians