

2017 DMEC FMLA/ADA EMPLOYER COMPLIANCE CONFERENCE

So Now What?

The Post-Election Future of Absence Management



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THE POST-ELECTION FUTURE OF ABSENCE MANAGEMENT

SPEAKER



KEVIN CURRY, REEDGROUP

Kevin Curry brings more than 15 years of experience in integrated absence management and consulting to ReedGroup. As Practice Leader, he is responsible for setting and facilitating ReedGroup's absence and disability business, with focus on technology, content and services.

Before joining ReedGroup, he was a well-known and highly respected senior absence management consultant in Mercer's Total Health Management practice, where he helped numerous employers achieve cost reduction and productivity improvements in FMLA, disability and broader employee absence management activities.

Kevin is a member of the DMEC Executive Advisory Board and the IBI Board of Directors.

THE POST-ELECTION FUTURE OF ABSENCE MANAGEMENT

OPENING COMMENTS

- The 2016 election resulted in a newly elected Republican President with no change in power for the House of Representatives and the Senate.
- Nearly 2,000 appointed positions in the administration of President Trump still remain vacant, leaving many agencies with large staffing gaps waiting to be filled. *(CNN, Feb. 2017)*
- President Trump signed an order January 30, 2017, aimed at cutting regulations on businesses, saying that agencies should eliminate at least two regulations for each new one. *(Washington Post, Jan. 2017)*
- President Trump's agenda includes reversing key Obama policies, repealing and replacing the ACA, cutting taxes, immigration reform, infrastructure, etc. *(New York Times, March 2017)*



THE POST-ELECTION FUTURE OF ABSENCE MANAGEMENT

Session Overview

- Will we see more change under the current administration vs. previous administration?
- Could Congress pass Paid Family Leave and expansion of FMLA?
- What will the future of health care policy be?
- What can we expect from the DOL and EEOC?
- Will future shifts in the Supreme Court impact the industry long-term?
- What are the states up to these days?

PREVIOUS FEDERAL ADMINISTRATION

A PERIOD OF CHANGE



- Pushed the Patient Protection and Affordable Care Act (aka Obamacare) to overhaul the nation's health insurance system through Congress in 2010.
- Paid Sick Leave for federal contractors — Executive Order 13706.
- New rules under Section 503 of the Rehabilitation Act that mandate that all federal contractors must take affirmative action to recruit, hire, promote and retain individuals with disabilities.
- President Obama signed the Workforce Innovation and Opportunity Act (WIOA) into law, placing significant new responsibilities on several Cabinet-level agencies that have the responsibility for increasing the employment of individuals with disabilities.

PREVIOUS FEDERAL ADMINISTRATION

A PERIOD OF CHANGE

- Recognizing that Americans with disabilities have an employment rate far lower than that of Americans without disabilities, and that they are underrepresented in the federal workforce, President Obama issued Executive Order 13548 to establish the federal government as a model employer of individuals with disabilities.
- Under President Obama's leadership, the U.S. signed the United Nations Convention on the Rights of Persons with Disabilities, adding America to the then-list of 141 countries signing the first new human rights treaty of the 21st century.
- Signed the Don't Ask, Don't Tell Repeal Act of 2010 and became the first sitting U.S. president to publicly support same-sex marriage.
- As soon as the Supreme Court invalidated the Defense of Marriage Act, he moved to extend federal benefits to same-sex couples.
- Campaigned to legalize same-sex marriage — prevailed in the Supreme Court.

NEW FEDERAL ADMINISTRATION

LEAVE LAWS

LEAVE LAWS: *WHAT CAN EMPLOYERS EXPECT?*

The Senate

The House of
Representatives



114th CONGRESS

LEAVE LEGISLATION

2016 proposed legislation

| BILL | LEAVE TYPE | DATE INTRODUCED | OUTCOME |
|---|--|-----------------|---|
| Docket I235-AA13, Proposed Rule to Implement to Executive Order 13706 Paid Sick Leave for Workers on Federal Contracts | Sick & Safe | 2/25/2016 | Final Rule Adopted, Implements Executive Order 13706 (Passed) |
| 2015 US H 5165 Medical Leave for Disabled Veterans Act | Family & Medical | 5/3/2016 | Failed - Adjourned. (Dead) |
| 2015 US S 3042 Justice for Service Members Act of 2016 | Military | 6/9/2016 | Failed - Adjourned. (Dead) |
| 2015 US H 5496 To Extend Protections under the Family and Medical Leave Act of 1993 to Part-Time Workers | Family & Medical | 6/16/2016 | Failed - Adjourned. (Dead) |
| 2015 US HR 5518 Family and Medical Leave Enhancement Act of 2016 | Family & Medical, School Activities, Small Necessities | 6/16/2016 | Failed - Adjourned. (Dead) |
| 2015 US HR 5519 Family and Medical Leave Inclusion Act | Family & Medical | 6/16/2016 | Failed - Adjourned. (Dead) |
| 2015 US HR 5535 Family Leave for Parental Involvement in Education Act | School Activities | 6/20/2016 | Failed - Adjourned. (Dead) |
| 2015 US H 5701 Grandparent-Grandchild Medical Leave Act | Family & Medical | 7/8/2016 | Failed - Adjourned. (Dead) |

115TH CONGRESS

LEAVE LEGISLATION

Congress has proposed five new bills in the first three months of 2017.

| BILL | LEAVE TYPE | DATE INTRODUCED | OUTCOME |
|---|------------------|-----------------|--|
| 2017 US H 947 Paid Family and Medical Leave Benefits | Family & Medical | 2/7/2017 | Status: To HOUSE Committee on WAYS AND MEANS. (pending) |
| 2017 US S 337 Paid Family and Medical Leave Benefits | Family & Medical | 2/7/2017 | Status: To SENATE Committee on FINANCE. (pending) |
| 2017 US S 337 Living Organ Donors Discrimination Protection Note: this clarifies that recovery from surgery related to organ donation is a serious health condition | Family & Medical | 3/1/2017 | Status: To HOUSE Committee on ENERGY AND COMMERCE, OVERSIGHT AND GOVERNMENT REFORM, HOUSE ADMINISTRATION, EDUCATION AND THE WORKFORCE, FINANCIAL SERVICES. |
| 2017 US S 528 Sarah Grace-Farley-Kluger Act, Parental Bereavement Act of 2017, Leave Provision Because of Death | Family & Medical | 3/6/2017 | Status: To SENATE Committee on HEALTH, EDUCATION, LABOR AND PENSIONS. |
| 2017 US H 1560 Sarah Grace-Farley-Kluger Act, Parental Bereavement Act of 2017, Leave for Death of Son or Daughter | Family & Medical | 3/16/2017 | To HOUSE Committee on EDUCATION AND THE WORKFORCE, OVERSIGHT AND GOVERNMENT REFORM, HOUSE ADMINISTRATION. |

115th CONGRESS

PAID FAMILY LEAVE

WILL FEDERAL PAID FAMILY LEAVE PASS?



NEW FEDERAL ADMINISTRATION

PAID FAMILY LEAVE

- During the campaign Trump called for six weeks of paid maternity leave to mothers who do not already receive leave from their employer.
- President Trump gave his support for a federal paid leave program during his first speech before a joint session of Congress. It's unclear as to the specific eligibility or coverage.
- Paid Family Leave bills were introduced in the House and Senate on February 7, 2017. Both bills call for 12 weeks of paid leave (paid FMLA). Similar bills were introduced in 2015 and didn't pass.
- Possibility of advancing – Unlikely.

NEW FEDERAL ADMINISTRATION

HEALTHCARE

WILL CONGRESS REPEAL AND REPLACE THE ACA?



115th CONGRESS

HEALTHCARE

- Republicans have voted to repeal and replace the ACA 55+ times in the last seven years.
- The American Health Care Act of 2017 (H.R. 1628), was released by House Republicans on March 6, 2017, and the bill was pulled on March 24, 2017.
- President Trump indicated that he was moving on to tax reform and infrastructure initiatives.
- On March 28, 2017, House Republican leaders and the White House have restarted negotiations on legislation to repeal the Affordable Care Act.
- Details of future bills are unclear but employers should consider impact of potentially removing the individual mandate and the impact on absence administration.

TRUMP ADMINISTRATION

DEPARTMENT OF LABOR

WHAT CHANGES COULD WE SEE FROM THE DOL?



TRUMP ADMINISTRATION

DEPARTMENT OF LABOR

ALEX ACOSTA



TRUMP ADMINISTRATION

EEOC

WHAT CAN WE EXPECT FROM THE EEOC?



TRUMP ADMINISTRATION

EEOC

- In October, prior to Trump's electoral victory, the EEOC laid out its vision for the next four years in its strategic enforcement plan (SEP), which outlined the agency's priorities for 2017-2021.
- President Trump appointed Victoria Lipnic, a commissioner at the U.S. Equal Employment Opportunity Commission since 2010, to serve as the agency's acting chair.
- Lipnic initially joined the commission in March 2010 when she received a recess appointment from President Barack Obama. She was subsequently nominated for a second term and confirmed by the Senate in late 2015. Her term is set to expire in July 2020.
- During her tenure, Lipnic was one of two commissioners who voted against the EEOC's July 2015 decision that said sexual orientation discrimination is gender discrimination prohibited by Title VII. Lipnic also voted against the pregnancy discrimination guidance the EEOC issued in July 2014.

TRUMP ADMINISTRATION

HOW WILL POSSIBLE FUTURE SHIFTS IN THE SUPREME COURT IMPACT INDUSTRY?



TRUMP ADMINISTRATION

SUPREME COURT

- Neil Gorsuch served as an American federal appellate judge on the United States Court of Appeals for the Tenth Circuit.
- On February 1, 2017, President Donald Trump nominated Gorsuch to be an Associate Justice of the U.S. Supreme Court, to fill the seat left vacant after the death of Justice Antonin Scalia 11 months earlier.
- Gorsuch confirmed on April 7, 2017.

“Though Trump promotes his nominee as drawn from the mold of Antonin Scalia, the conservative jurist Gorsuch was tapped to replace, he represents a stark departure from a central feature of Scalia’s jurisprudence. He has an affinity for natural law.” *(The Economist, March 2017)*

TRUMP ADMINISTRATION

SUPREME COURT

Selection of Gorsuch's cases:

- ERISA: According to the AP, Gorsuch sided with employers in 21 out of the 23 ERISA cases he heard.
- *Hobby Lobby v. Sebelius*: Gorsuch, as part of the full panel of the court, wrote a concurring opinion in favor of Hobby Lobby's argument that the birth control benefit violated the Religious Freedom Restoration Act.
- *TransAm Trucking v. Administrative Review Board*: Gorsuch dissented in a 2016 decision regarding truck driver Alphonse Maddin, who was fired for disobeying a boss' order to stay with his cargo after the brakes on his trailer froze.
- *Strickland v. UPS*: United Parcel Service worker Carole Strickland accused UPS of sex discrimination and of retaliating against her for taking two weeks of leave under the Family and Medical Leave Act to deal with stress.
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TRUMP ADMINISTRATION

SUPREME COURT

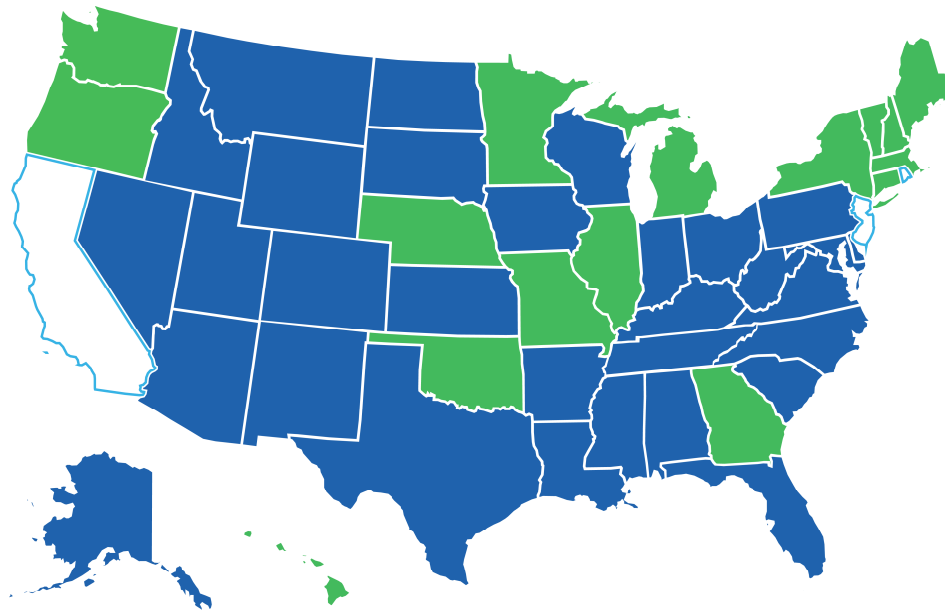
Selection of Gorsuch's cases:

- *Hwang v. Kansas State*. Ex-Kansas State professor Grace Hwang sued the school after it wouldn't extend her six months' sick leave for cancer treatment, then wouldn't rehire her. She sued the university for discrimination based on disability.
- *Hollingshead v. Blue Cross*. Gorsuch agreed with a 2007 majority opinion in a case of an Oklahoma woman who sued her employer's insurance company for refusing to pay for her second organ transplant. Blue Cross paid for Donna Hollingshead's first transplant. But when that initial liver failed and she required a second to live, the insurance company refused to compensate her.

STATES

PAID FAMILY LEAVE

WHAT STATES WILL PASS PAID FAMILY LEAVE?



STATES

PAID FAMILY LEAVE

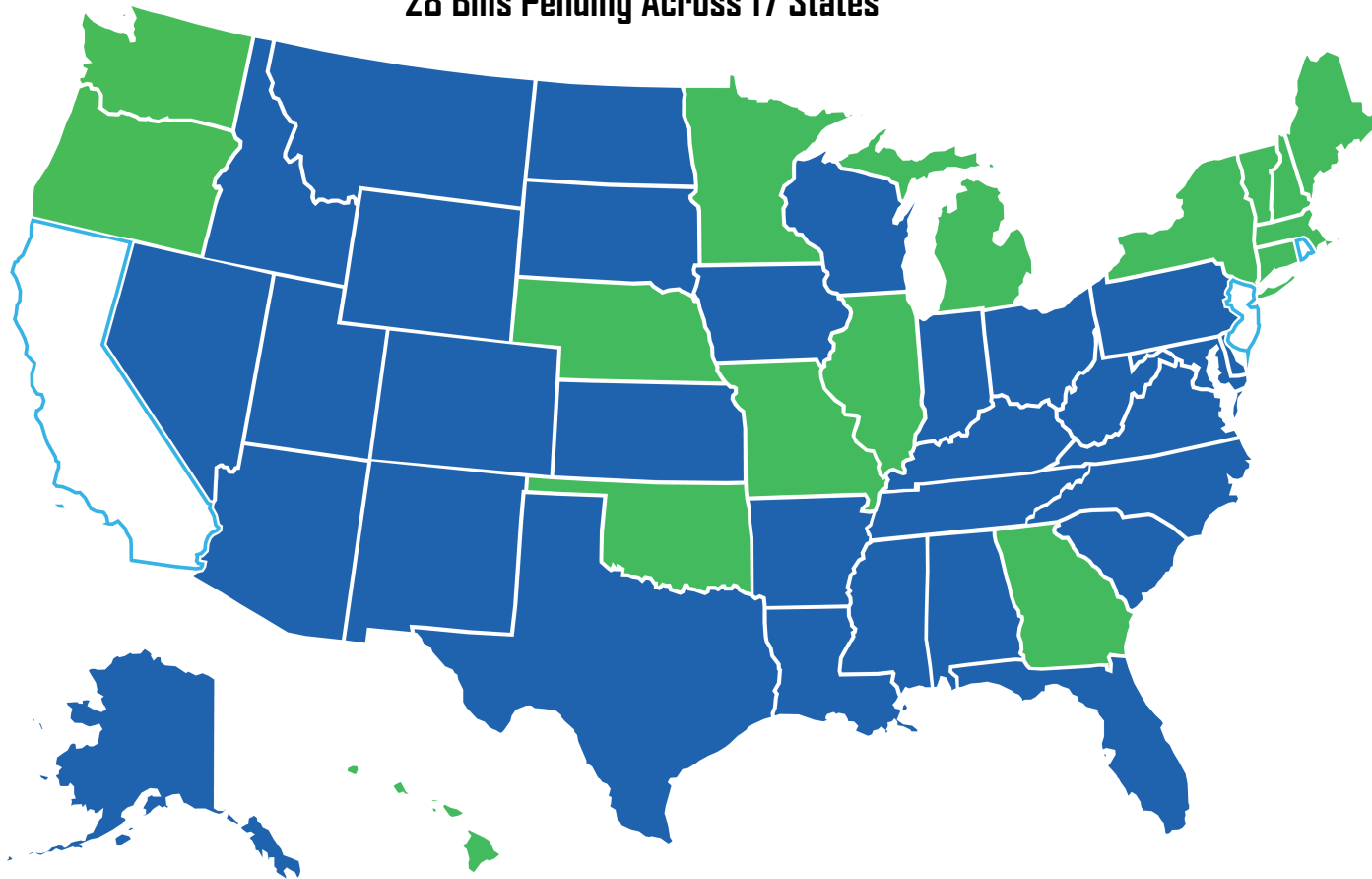
Implementation and funding of PFL benefits has been challenging.

- Washington State originally passed paid family leave in 2007
 - Law passed in 2007
 - Attempts to delay PFL in 2011 & 2013
 - Attempts to repeal in 2013
 - New bills introduced in 2017 to expand scope of PFL
 - State has been unable to execute and fund the benefit
 - In the last month, the legislature is considering requiring employers to offer the paid benefit
- State of Maryland
 - Maryland Healthy Working Families Act
- New York State PFL
 - Previously proposed in 2011 - 2015
 - Passed on April 13, 2016
 - Leave provisions effective January 1, 2018
 - Regulations have not been finalized
 - Public comment period is open till June
 - Delays will present significant challenges for the state fund, insurers, TPAs and Employers to be successful
- Washington, D.C.
 - D.C. Universal Paid Leave Amendment Act

STATES

PAID FAMILY LEAVE

28 Bills Pending Across 17 States



STATES

MEDICAL AND RECREATIONAL MARIJUANA

WILL THE FEDERAL GOVERNMENT OVERRIDE STATES' RIGHTS?



STATES

MEDICAL AND RECREATIONAL MARIJUANA

On February 23, 2017, White House press secretary Sean Spicer gave the clearest answer yet to this question:

The president understands the pain and suffering that many people go through, who are facing especially terminal diseases, and the comfort that some of these drugs, including medical marijuana, can bring to them. And that's one that Congress, through a rider in [2014], put an appropriations bill saying that the Department of Justice wouldn't be funded to go after those folks.

CLOSING COMMENTS

“The Only Thing That Is Constant Is Change” (...in absence management)

- Heraclitus

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Questions?

