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CONSTITUTIONAL RIGHTS

11th Circuit issues opinion on public employees' free speech rights

by Robert J. Sniffen and Jeff Slanker
Sniffen & Spellman, P.A.

Past articles in this newsletter have highlighted unique issues that face public employers in the state of Florida, including governmental entities on the local, state, and federal level. While all employers in Florida should be cognizant of violations of the employment discrimination and whistleblower statutes and the risk of retaliation claims stemming from employee complaints about discrimination, public employers must also ensure that they do not take any action to infringe upon the constitutional rights of their citizen-employees. In the public sector, claims that certain adverse employment actions were motivated by employees' protected free speech are particularly prevalent. The U.S. 11th Circuit Court of Appeals (whose rulings apply to all Florida employers) recently refined the law in this area and provided guidance on when a public employee's speech is entitled to First Amendment protection.

Facts of the case

Richard Moss had worked for the city of Pembroke Pines as a firefighter for some time before he was promoted to the assistant fire chief position in 2006. As assistant chief, he reported to the fire chief and was involved in all aspects of running the fire department. He also served on the city's pension board. His objective in that role was to ensure that the pension plan was administered properly.

Moss' position was eliminated in June 2010, and he was terminated. He claimed that his termination violated his First Amendment free speech rights and, more specifically, that it was in retaliation for his comments about the city's conduct during union negotiations, including his contention that it was negotiating collective bargaining agreements (CBAs) with unions in bad faith.

Moss filed suit under Section 1983 of the U.S. Code, alleging his termination violated the First Amendment to the U.S. Constitution. Section 1983 provides the statutory vehicle for public employees to hold their employer liable for infringing on their constitutional rights.

After a trial, the district court held that the city was entitled to judgment in its favor because Moss failed to show he engaged in protected speech. The court also held that the city's interest in restricting his speech outweighed his First Amendment rights. Moss appealed. The 11th Circuit upheld the district court's decision and, in so doing, further refined the applicable law for analyzing First Amendment retaliation claims in the employment context.

11th Circuit's opinion

It's obvious that an individual who claims he was discharged in violation of

AGENCY ACTION

OSHA announces new rule on retaliation complaints. The Occupational Safety and Health Administration (OSHA) on March 6, 2015, published a final rule confirming procedures for handling whistleblower retaliation complaints filed under Section 806 of the Sarbanes-Oxley Act of 2002 (SOX). SOX protects employees who report fraudulent activities and violations of Securities and Exchange Commission (SEC) rules that can harm investors in publicly traded companies. SOX prohibits publicly traded companies, nationally recognized statistical ratings organizations, and other covered persons from retaliating against employees who provide information about conduct they reasonably believe violates federal mail, wire, bank, or securities fraud statutes, SEC rules, or any provision of federal law relating to fraud against shareholders.

Agencies sign agreement on Title VII. The Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Justice's (DOJ) Civil Rights Division in March signed a new memorandum of understanding aimed at furthering the goals of Title VII of the Civil Rights Act of 1964 in prohibiting employment discrimination in the state and local government sector. The agreement includes provisions for the coordination of the investigation of discrimination charges on the basis of any characteristic protected by Title VII. The agreement also includes provisions for sharing information as appropriate and to the extent allowable under law.

Study predicts reduction in pension guarantees for failed multiemployer plans. A Pension Benefit Guaranty Corporation (PBGC) study finds that more than half of the people in terminated multiemployer plans that run out of money in the near future will face a reduction in benefits under current PBGC guarantees. This compares to 20 percent of workers and retirees who saw reduced benefits under plans that have already run out of money and are relying on PBGC financial assistance.

EEOC issues new law digest. The EEOC's latest edition of its federal-sector *Digest of Equal Employment Opportunity Law* is now available online at www.eeoc.gov/federal/digest/xxv-3.cfm. The quarterly publication, prepared by the EEOC's Office of Federal Operations, features a variety of recent commission decisions and federal court cases of interest. Additionally, it contains an article titled "The Law of Harassment: Assisting Agencies in Developing Effective Anti-Harassment Policies." The digest contains summaries of noteworthy decisions issued by the EEOC and features cases involving attorneys' fees, class complaints, compensatory damages, dismissals, findings on the merits, remedies, sanctions, settlement agreements, stating a claim, and timeliness. ✤

his right to free speech must show that his discharge was motivated by his speech, but First Amendment retaliation cases in the public employment context often hinge on whether the employee's speech was actually protected by the First Amendment. The law provides that an employee's speech is protected if it implicates a matter of public concern and is made as a citizen, not as an employee of the government. In other words, some speech is afforded protection as a citizen's commentary on the government, while other speech is squarely within the discretion of the government to regulate as an employer (e.g., speech that's part of the employee's job duties).

The court highlighted the U.S. Supreme Court's decision in *Garcetti v. Ceballos*, a 2006 case that addressed when a public employee's speech is protected because it was made as a citizen rather than as an employee. To establish a free speech claim, the public employee must show that the speech involved a matter of public concern. Guiding that determination is whether the speech owes its existence to the employee's job duties and responsibilities.

The 11th Circuit analyzed Moss' job duties, which involved every aspect of running the fire department, including supervising employees, planning the budget, and hiring and training firefighters. The court noted that he had additional duties related to labor management through his position on the pension board. Moss contended that his speech was motivated by his concern for the city's ability to provide services, but the court pointed out that the remarks in question were all made in furtherance of his job. Although his speech involved matters that touched on a public concern, it also pertained to the administration of the fire department and relations between management and employees.

The city's interest in restricting his speech outweighed his First Amendment rights.

The court found that the city's interest in regulating Moss' speech outweighed his First Amendment rights. In analyzing this issue, courts balance the employee's free speech rights against the employer's interest in regulating employee speech to promote the efficiency of the public services it performs through its employees. A court will look at the manner, time, and place of the speech and its context, analyzing its impact on workplace relationships and operations. Another concern unique to this case was the need for order, loyalty, and harmony in a quasi-military organization such as a fire or police department.

The district court ruled that Moss' speech regarding the CBA negotiations wasn't entitled to protection and his free speech rights were outweighed by the city's interest in workplace harmony. The appellate court affirmed the lower court's ruling on those grounds, noting that the CBA negotiations were divisive and volatile. In fact, the fire chief had instructed Moss not to speak out about any issues related to the negotiations, but he did so anyway. The reasonable anticipation that there would be adverse consequences from his speech was sufficient to outweigh his right to engage in the speech. *Moss v. City of Pembroke Pines*, Docket No. 14-11240 (11th Circuit, 2015).

Employer takeaway

Because public entities are "state actors," they must refrain from infringing on the constitutional rights of their employees, who are obviously still citizens even though they work for the government. Private employers don't necessarily have such concerns. Although public employees don't check their constitutional rights at the door, a public employer isn't constrained from taking adverse actions against an employee for activities that might appear protected as long as any adverse actions are based on legitimate reasons. The 11th Circuit's opinion in this case provides public employers with some guidance for managing their workforce.

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ASK ANDY

Title VII protection for transgender employees

by Andy Rodman
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.

Q *I know that Title VII of the Civil Rights Act of 1964 prohibits "sex" discrimination, but I recently read that it also prohibits discrimination against transgender employees. Is that correct? If so, when did that change occur?*

A Title VII has prohibited sex discrimination since its enactment in 1964. While the term "sex" has always been interpreted to include "gender" (male or female), the Equal Employment Opportunity Commission (EEOC) has long argued for a more expansive definition that includes gender-based assumptions and stereotypes about the way men and women look and dress. Title VII does not expressly prohibit discrimination against transgender employees, but many federal courts have adopted the EEOC's more expansive definition of the term "sex."

In September 2014, the EEOC sued a Florida employer, Lakeland Eye Clinic, alleging it violated Title VII's prohibition against sex discrimination when it terminated a transgender employee who was transitioning from male to female because she didn't conform to its gender-based expectations or stereotypes.

When she began working for Lakeland in July 2010, the employee allegedly identified herself as male, dressed in male clothing, and used the name "Michael." In February 2011, she allegedly began to wear makeup and female clothing. According to court papers, "co-workers snickered, rolled their eyes and withdrew from social interactions with her" because of her changing appearance. After the employee told management that she was transitioning from male to female, her patient referrals allegedly stopped, and she was told in June 2011 that her position was being eliminated.

Lakeland settled the lawsuit in April, reportedly agreeing to pay the employee $150,000, adopt and implement a gender and transgender discrimination policy, and require managers and employees to undergo training. *EEOC v. Lakeland Eye Clinic,* U.S.D.C. M.D. Fla., Case No. 8:14-cv-2421.

The lawsuit against Lakeland follows the EEOC's 2012 ruling in *Macy v. Bureau of Alcohol, Tobacco, Firearms and Explosives*, in which the agency determined that Title VII's prohibition against sex discrimination extends to discrimination based on transgender status, gender identity, or an employee's transition between genders. The EEOC filed the *Lakeland* lawsuit as part of its Strategic Enforcement Plan for fiscal years 2012-16, which places priority enforcement on protection for LGBT employees under Title VII's prohibitions against sex discrimination. According to Malcolm Medley, director of the EEOC's Miami District Office, "An employee should not be denied employment opportunities because he or she does not conform to the preferred or expected gender norms or roles of the employer or co-workers."

As an upshot of this litigation, employers should recognize that discrimination against LGBT employees may constitute unlawful sex discrimination under Title VII. Some state and local laws also expressly deem "gender identity and expression" a separate protected classification and prohibit discrimination based on that status.

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Your identity will not be disclosed in any response. This column isn't intended to provide legal advice. Answers to personnel-related inquiries are highly fact-dependent and often vary state by state, so you should consult with employment law counsel before making personnel decisions. ✤

WORKPLACE TRENDS

Growth in temporary jobs predicted. The number of people employed in temporary jobs stands at nearly three million, and that number is expected to continue to rise in 2015 and beyond, according to an analysis from CareerBuilder released in March. Temporary employment is expected to grow 3% (75,384 jobs) from 2014 to 2015 and 13% (354,877 jobs) from 2014 to 2019. "Temporary employment will continue on an upward trajectory as companies look for ways to quickly adapt to market dynamics," said Eric Gilpin, president of CareerBuilder's staffing and recruiting and healthcare divisions. "Two in five U.S. employers expect to hire temporary or contract workers this year, which opens new doors for workers who want to build relationships with different organizations and explore career options."

Driven by women, job tenure lengthening. American workers are continuing to stay a bit longer in their jobs, according to data from the Employee Benefit Research Institute (EBRI). The overall median tenure of workers—the midpoint of wage and salary workers' length of employment in their current jobs—was slightly higher in 2014, at 5.5 years, compared to five years in 1983. As earlier EBRI analysis has found, this is due to women staying on the job longer, while job tenure for men is shrinking. Specifically, the median tenure for male wage and salary workers was lower in 2014 at 5.5 years, compared to 5.9 years in 1983. By contrast, the median tenure for female wage and salary workers increased from 4.2 years in 1983 to 5.4 years in 2014.

Compensation report shows concern for getting, keeping top talent. A new report from compensation software firm PayScale, Inc., shows companies are highly concerned about attracting and retaining top-performing employees. The 2015 Compensation Best Practices Report, released in February, used data from more than 5,000 survey respondents representing executives, line-of-business managers, and HR practitioners. The report found that in 2014, 85% of companies gave pay raises and 89% said raises are in the plans for 2015. The report also found that the number one reason people leave medium and large organizations is "seeking higher pay." Retention woes remain high, with nearly 60% of respondents citing it as a top concern.

Talent shortage called top concern. The new Glassdoor Recruiting Outlook Survey reported in February shows that a talent shortage is the number one hiring challenge for the 515 hiring decision makers surveyed. The survey shows that 48% of the participating hiring decision makers say they don't see enough qualified candidates for open positions, and 26% see the situation getting harder in the next 12 months as the U.S. economy picks up. ✤

LABOR LAW

Changes in NLRB election rules now in effect in Florida

Changes to National Labor Relations Board (NLRB) election rules became effective on April 14, 2015. Here's what Florida employers can expect.

Union organizing in general

A union that attempts to organize employees must have the support of more than 50% of the employees in the group it seeks to organize. To prove it has the necessary support, the union may present the employer with signed authorization cards, which state that an employee wants the union to be his exclusive representative. If the employer examines the cards and verifies that they were signed by more than 50% of the bargaining unit employees, the union will be certified without an election. However, if the employer declines to examine the cards, the union will file a petition for an election with the NLRB.

To get an election, a union needs authorization cards signed by 30% of the employees in an appropriate bargaining group, but it must receive more than 50% of the votes in the election to become the certified representative. Chances are, a union won't present you with authorization cards or file for an election unless it believes it has more than 50% of the employees signed up. As a result, if you want to remain union-free, you shouldn't examine authorization cards but should make the union win a secret-ballot election.

A new case with an impact on union organizing, *Purple Communications*, 361 NLRB No. 126, was issued on December 11, 2014. In that case, the NLRB ruled that employees who have been given access to an employer's e-mail system for other purposes must be allowed to use the system during their nonworking time for communications related to union organizing and other protected concerted activities. To prevent such e-mail use, the employer must be able to show there are special

circumstances justifying a particular restriction and demonstrate the connection between the interest it asserts and the restriction.

Changes in election rules

The current NLRB election rules require an employer to provide the union a list of its employees containing their home addresses within seven days of the election agreement's signing. An election agreement is the agreement between the union and the employer setting the time and place of the election and specifying the group of employees that will be eligible to vote. The new rules require that additional information, including telephone numbers and personal e-mail addresses of all employees who are eligible to vote, be disclosed within two days of the signing of an election agreement.

If no election agreement is reached, a pre-election hearing will be conducted. Under current practice, there is no set time for a pre-election hearing to be conducted. Under the new rules, a pre-election hearing will be set within eight days of the date the hearing notice is mailed. The new rules also require any postelection hearing to be set within 14 days after a party files legal objections to the election result.

Undoubtedly, the changes will make it easier for unions to win elections.

Also, there's a new requirement that an employer must file a position statement raising any legal issues involving the appropriateness of the group the union seeks to organize. Any issues not raised in the position statement will be waived. The position statement must provide a list of voters, along with their classifications, shifts, and locations.

Another change in procedure related to pre-election hearings is that the parties won't be permitted to submit legal briefs on their position without special permission from the hearing officer. The new rules also prohibit litigating questions about the eligibility of particular individuals or groups of potential voters prior to the election (e.g., whether particular employees are excluded as supervisors). The proposed rules permit election petitions to be filed electronically and allow authorization cards with electronic signatures.

Bottom line

The NLRB has changed the election process and now mandates that employees be permitted to use their employer's e-mail system to communicate about union organizing, except in limited circumstances. Undoubtedly, the changes will make it easier for unions to win elections. Employers should consider taking a proactive approach to union avoidance in light of these developments ✤

PREGNANCY

Supreme Court carves middle ground in high-profile pregnancy discrimination case

When Peggy Young, a delivery driver for UPS, became pregnant in 2006, her doctor placed her on lifting restrictions. She requested an accommodation to work light duty, but UPS denied her request because her need for accommodation didn't fall within the three classes of workers for which it consistently reserved light-duty work: those injured on the job, those with disabilities protected under the Americans with Disabilities Act (ADA), and those who had lost their federal driving certifications. Because UPS required drivers to be able to lift at least 70 pounds, Young was placed on leave without pay and benefits.

Young sued for discrimination under the Pregnancy Discrimination Act (PDA), and the U.S. Supreme Court recently weighed in on the matter.

Discrimination charges under PDA

The PDA amends Title VII of the Civil Rights Act of 1964 by extending that law's sex discrimination prohibition to acts taken "because of or on the basis of pregnancy, childbirth, or related medical conditions." The second clause of the PDA notes that employers must treat pregnant women the same as other nonpregnant persons who are similarly affected in their ability or inability to work.

So when Young sued UPS, she argued that her employer failed to treat her the same as nonpregnant workers who were similarly affected in their ability or inability to work. Specifically, she argued that it accommodated other individuals with work restrictions similar to those created by her pregnancy but refused to similarly accommodate pregnant workers like herself.

In the lower courts, Young's case was dismissed because the judges didn't find that her pregnancy similarly situated her to workers who had been granted light duty. Rather, the lower courts held that UPS had complied with the PDA by treating pregnant and nonpregnant workers equally when granting or denying light-duty work. Young then appealed to the Supreme Court.

May other factors be considered?

When the PDA noted that employers must treat pregnant women the same as other nonpregnant persons who are similarly able or unable to work, what was unclear was whether employers could also consider *other* factors when offering accommodations and comparing workers. For example, could an employer offer accommodations to some workers but not others based on age, seniority, the type of work being performed, or

the indispensable nature of the employee's work, even if that policy resulted in pregnant workers being denied accommodations?

UPS argued that yes, other factors could be considered in granting or denying accommodations—as it had done—as long as those factors were pregnancy-blind. Yet Young's argument suggested that consideration of other factors was moot since once an accommodation had been provided to *any* other workers whose *inability to work* was similar to that of the pregnant worker, then that alone should be enough to also require accommodations for the pregnant worker.

In its 6-3 decision, the Supreme Court found middle ground between the two arguments.

Supreme Court: 'Well, you're both wrong'

The Court didn't accept Young's argument that once an employer provides one or two workers with an accommodation, it must then provide similar accommodations to all pregnant workers. Justice Stephen Breyer, who wrote the majority opinion, noted that pregnant workers aren't granted a preferential, unconditional "most-favored nation" status by the PDA and aren't automatically entitled to equivalent accommodations simply because *any* other worker has been granted light-duty work. The majority suggested that workers whose accommodations wouldn't necessarily create a requirement that pregnant workers also be provided equivalent treatment might include those with particularly hazardous jobs, key employees, older employees, or those who have been with the company for many years.

The Court didn't specifically find that Young was discriminated against or that UPS's policy was impermissible.

The Court also rejected the Equal Employment Opportunity Commission's (EEOC) similar interpretation that the PDA requires that accommodations be offered to pregnant workers. As a result, the EEOC is now reviewing and revising related enforcement guidance that was released, perhaps prematurely, last summer.

Meanwhile, the Court also rejected UPS's argument that the PDA's second clause simply clarifies that sex discrimination includes pregnancy discrimination and, therefore, that its policies were valid so long as they were pregnancy-neutral.

Court applies McDonnell Douglas test

Rather, the Court applied the *McDonnell Douglas* test, a framework based on a previous disparate treatment decision. First the employee must show that she belongs to the protected class. Then she must show that she requested an accommodation and that the employer denied the accommodation. Finally, the employee must prove that the employer *did* accommodate others who were similar in their ability or inability to work.

Once that has been established, the burden falls to the employer to demonstrate legitimate nondiscriminatory reasons for denying the accommodation. The Supreme Court added that those reasons must generally rise above simple inconvenience or added expense.

If the employer can demonstrate legitimate nondiscriminatory reasons for denying the accommodation, then the final burden—establishing that the reasons are pretextual—shifts back to the employee. The employee would then point to evidence that the employer's policy imposed a "significant burden" on pregnant workers and that its reasons weren't "sufficiently strong" to justify that burden.

With this test in mind, Justice Breyer found that the lower courts had incorrectly dismissed Young's case because there was "a genuine dispute" on the fourth prong of the test—specifically, "whether UPS provided more favorable treatment to at least some employees whose situation cannot reasonably be distinguished from Young's." As a result, Young will be permitted to argue her case before the lower court. UPS will then have to demonstrate that the reason she wasn't accommodated was based on a legitimate nondiscriminatory reason other than cost or inconvenience.

In the dissent, Justice Antonin Scalia heavily criticized the majority's adoption of these "significant burden" and "sufficiently strong" justification requirements, which aren't otherwise found in the PDA. Scalia sided completely with UPS's reading of the statute and pointed out that it doesn't prohibit denying pregnant women accommodations when the policy that does so is an evenhanded, unbiased one.

Bottom line

It's important to note that the Court didn't specifically find that Young was discriminated against or that UPS's policy was impermissible—that decision will be left to the lower court. Still, the Court's decision does make it more likely that pregnant workers' discrimination claims under the PDA will succeed. Therefore, you must ensure that policies for reasonable accommodation and light-duty work are applied fairly and that if pregnant workers aren't afforded similar accommodations to other workers, there must be a legitimate distinction—beyond cost or convenience—between the workers who are afforded accommodations and the pregnant workers who aren't.

It's also important to note that Young's case represents an employee who wasn't covered by the 2008

expansion of the ADA. Though pregnancy itself isn't a qualified disability under the Act, recall that the ADA Amendments Act (ADAAA) extended the scope and definition of qualified disability enough that women with pregnancy-related conditions such as preeclampsia and gestational diabetes may now merit protection and accommodation under the ADA.

Finally, note that while this case was pending, several states and localities have taken the guesswork out of these situations by passing laws that *do* require employers to accommodate pregnant workers. ✤

IMMIGRATION

It's 2015—what's new on the immigration reform front?

Immigration reform—it's a conversation that has ebbed, flowed, and then stagnated for years. Now that yet another year has passed without a comprehensive reform solution on the books, it's a good time for a recap on what is happening.

Immigration accountability executive actions

Late last year, President Barack Obama unveiled his immigration accountability executive actions, a controversial plan intended to provide some measure of immigration action unless and until a more permanent, bipartisan solution comes about.

The most high-profile element of the plan has been the temporary deferral of deportation efforts for certain undocumented immigrants. Essentially, the president's plan realigns Department of Homeland Security (DHS) and U.S. Department of Justice (DOJ) enforcement strategies so that deportation efforts and agency resources will be directed toward undocumented immigrants with criminal records and those who have recently entered the United States.

Deferred Action for Parental Accountability

Meanwhile, deportation will be deprioritized—in the form of temporary deferral—for undocumented immigrants who have been in the United States for more than five years and have children in the country who are themselves U.S. citizens or lawful permanent residents. This program is known as Deferred Action for Parental Accountability (DAPA).

To qualify for DAPA, undocumented immigrants would have to "become accountable" by:

- Registering with DHS and paying a $465 application fee;
- Passing a criminal and national security background check and submitting biometric data; and
- Paying their share of taxes going forward. Payment of any back taxes owed has also been discussed, but this requirement isn't actually included in the executive action.

The temporary deferral would also supply registrants with valid work permits allowing them to "come out of the shadows" and legitimately and legally work in the United States (while also contributing their share of employment-based taxes). Registrants would not, however, be eligible for health benefits under the Affordable Care Act (ACA).

The deferral status would last for three years and, presumably, would be renewable (if the plan is still in place after that time). The deferred action wouldn't represent a path to citizenship or legal status. An estimated 3.3 million undocumented immigrants would be eligible for DAPA, and U.S. Citizenship and Immigration Services (USCIS) is expected to begin accepting applications this spring.

Deferred Action for Childhood Arrivals eligibility expansion

The president's plan also expands eligibility for the existing Deferred Action for Childhood Arrivals (DACA) program.

This program, introduced in 2012, allows immigrants who were brought into the country as children to stay and work on a temporary basis. The president's new actions extend eligibility to persons who entered the United States as children before 2010, eliminate the maximum age requirement of 30 years, and expand the renewable DACA deferral period from two years to three years.

These changes are estimated to expand eligibility to an additional 300,000 to 700,000 persons. Note, however, that parents of these DACA-eligible immigrants would not be eligible for the deferred deportation status discussed previously. That plan is available only to parents of full-fledged U.S. citizens or lawful permanent residents.

Additional provisions for relief to legal immigrants

The executive actions also call for DHS to make regulatory changes and streamline the legal immigration process for certain individuals.

For example, DHS is finalizing rules that would simplify employment authorization for the *spouses* of certain H-1B visa holders. Similar regulatory changes will be researched and considered to allow highly skilled workers awaiting lawful permanent resident status to change jobs more easily.

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Changes will also be proposed to extend the use of the Optional Practical Training program for science, technology, engineering, and math (STEM) graduates of U.S. universities. Immigration options for foreign entrepreneurs will also be expanded to attract investment, revenue, and job creation to the United States. Finally, several government agencies will be required to research and recommend ways to streamline and modernize the visa application process to promote efficiency, reduce costs, and eliminate fraud.

Legal challenges to executive actions

As noted, the executive actions were intended to reignite a larger, bipartisan discussion for a permanent immigration reform solution—whether via a comprehensive package or several piecemeal bills. Well, the actions have certainly ignited something, though it has largely been opposition and controversy.

In December 2014, officials from 17 states filed a lawsuit opposing the executive actions and seeking to block them from taking effect. Additional states—now more than half in total—and cities have since joined the suit, which argues that the executive actions are an unconstitutional abuse of power and that the president lacks the authority to implement the changes. As a result of this suit, the planned implemenation of the programs has already been delayed by an injunction.

Meanwhile, more than a dozen states and numerous cities have filed a brief supporting the immigration plan and arguing that it will promote economic growth and better public safety across the country. The White House has also released projected economic benefits—both nationally and by state—that would result from the implementation of these programs.

The White House estimates that the availability of work permits and less stringent restrictions on high-skilled immigrants would increase wages and productivity and could boost the U.S. gross domestic product (GDP) by as much as $90 billion in the next decade. A state-by-state breakdown of the projected economic benefits is available on the White House website.

Stay tuned

As noted, the president's course of action is a controversial one that will be challenged in court, so implementation may be further delayed or suspended. As further details on the plan and its effect on employers emerge, we will provide additional updates and compliance guidance. ✤

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