

*The Legislative Update*  
Jeff Devine, Legislative Chair  
January 18, 2017

As we enter into a new year, here are some 2017 Resolutions of both Employers and Employees. The **Top 10 Employer Resolutions for 2017**, mentioned in a Law360 article this month.....

**1. Continue to Prepare for Overtime Exemption Changes**

While a Texas court delayed the implementation of the new overtime regulations related to the “white collar exemptions,” that delay is only until further order of the court. Employers will be well-advised to be attentive to further developments in 2017.

**2. Prepare for the New EEO-1 Report**

On Sept. 29, 2016, the U.S. Equal Employment Opportunity Commission announced approval of its revised EEO-1 report, which will now gather pay information from private employers and federal contractors and subcontractors with 100 or more employees in an effort to close the gender pay gap. The new report is due on March 31, 2018, and each March 31 thereafter, to correspond with employers’ tax reporting requirements.

**3. Don’t Get Scratched by the Cat’s Paw**

The “cat’s paw” theory, endorsed by the U.S. Supreme Court in the 2011 case of *Staub v. Proctor Hospital* and named after an Aesop’s fable, is an employment law theory that proposes that the employer can be held liable if a decision maker acts in accordance with an ill-motivated supervisor’s decision to take an adverse action against another employee. Employers should note that retaliation claims were included in 44.5 percent of all EEOC charges in 2015, up from 42 percent in 2014, and are the most frequently alleged basis of discrimination in charges made to the EEOC in the last decade.

**4. Review Workplace Drug Use Policies and Procedures**

Recent elections resulted in three more states (California, Massachusetts and Nevada; Maine will likely join this group before the end of January) legalizing the recreational use of marijuana and four more states (Arkansas, Florida, Montana and North Dakota) permitting marijuana use for medical reasons.

**5. Ensure Compliance with the New Disability Claim Procedures under ERISA**

The DOL’s Employee Benefits Security Administration released its final rule relating to disability benefits claims under Section 503. The final rule included some changes from the proposed rule, notably, a requirement that notices of adverse benefit determinations must include a description of any applicable time limit for filing a lawsuit.

The final rule becomes effective on Jan. 18, 2017, and applies to claims for disability benefits under Employee Retirement Income Security Act plans made on or after Jan. 1, 2018. Employers should ensure that plan documents, summary plan descriptions (SPD) and benefits policies comply with the new procedural requirements.

**6. Review and Update Policies and Practices Related to Equal Pay**

Equal pay initiatives in 2016 — ranging from the White House pay pledge, to state equal pay amendments, to corporate collectives aimed at increasing the number of women in C-suite positions and shrinking pay disparities based on other traits — mean employers need to be aware of the changing landscape in 2017.

## **7. Ensure All Employees Are Properly Classified**

You spent the summer and fall knee-deep in your company's organizational chart, job descriptions, pay rates, budgets and a myriad of other financial documents, ensuring compliance with the new wage and hour thresholds for overtime exemptions (that didn't happen), but you're not finished yet. The EEOC's strategic enforcement plan for fiscal years 2017 to 2021 promised increased focus on complex employment relationships, specifically temporary workers, staffing agencies and independent contractor relationships.

## **8. Review Your Non-compete Agreements**

Employers should carefully craft non-compete agreements to protect their legitimate business interests and be aware of the trend away from requiring low-wage employees to enter into non-competes. Employers with employees in more than one jurisdiction should be aware of new laws addressing the enforceability of these agreements.

## **9. Review Policies Related to Whistleblower Investigations**

OSHA not only ensures workplace health and safety conditions but has also been delegated the responsibility of investigating whistleblower claims made under more than 20 federal statutes. In January 2016, OSHA released its updated "Whistleblower Investigation Manual," which guides the agency in its determination as to whether whistleblower retaliation claims should be pursued. The manual reduced the investigation stage evidentiary standard from a preponderance of the evidence to reasonable cause.

## **10. Pay Attention to Increasing Minimum Wages**

Finally, don't forget to check the minimum wage rates in the states where your company has employees. Effective Dec. 31, 2016, and Jan. 1, 2017, rates increased in 15 states.

And from an article in BenefitsPro.com the **Top 10 Employee Resolutions for 2017** are.....

1. **Save more Money** (49%)
2. **Half Day Fridays/Flex Hours** (40%)
3. **Be Less Stressed** – Think Wellness Programs! (38%)
4. **Get a Raise or Promotion** (30%)
5. **Eat Healthier** – Think Wellness Again!! (28%)
6. **Learning something New** – Courses, Training, Seminars (26%)
7. **Onsite Fitness Center** – Wellness Again!! (27%)
8. **Being able to wear Jeans** (23%)
9. **Daily Catered Lunches** (22%) Yeah Right!
10. **Find a New Job** (21%, 35% of those 18-34 years old)