

[DOJ Threatens Immigration Rights Lawyers, Demands They Drop Their Clients](#)



A federal judge in Seattle has temporarily blocked a Justice Department order that called on a local immigrant-rights organization to stop some of its legal work. His ruling also applies to similar groups around the country, according to [The Seattle Times](#).

The nonprofit Northwest Immigrant Rights Project brought the lawsuit that resulted in the ruling by U.S. District Judge Richard Jones.

“In a letter last month, the Justice Department told the group it must ‘cease and desist’ providing certain legal assistance to immigrants unless it undertakes full representation of them in court,” writes reporter [Nina Shapiro](#).

The ruling also barred the Justice Department from sending similar orders to any other organizations around the nation.

[Read the Seattle Times article.](#)

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Congressman Targets Assistant General Counsel Over Political Activism

The assistant general counsel of a New Jersey-based bank company says she found herself in a touchy situation after a U.S. Congressman complained to her employer about her activism that targeted the lawmaker.

[WNYC describes](#) what happened:

The most powerful congressman in New Jersey, Rep. Rodney Frelinghuysen, wrote a fundraising letter in March to a board member of a local bank, warning him that a member of an activist group opposing the Republican worked at his bank.

The employee was questioned and criticized for her involvement in NJ 11th for Change, a group that formed after the election of Donald Trump and has been pressuring Frelinghuysen to meet with constituents in his district and oppose the Trump agenda.

“Needless to say, that did cause some issues at work that were difficult to overcome,” said Saily Avelenda of West Caldwell, New Jersey, who was a senior vice president and assistant general counsel at the bank before she resigned. She says the pressure she received over her political involvement was one of several reasons she decided to leave.

[Read the WNYC article.](#)

Little Survey Reveals Employers Caught in a Tangled Web of Federal, State and Local Laws



The [Little](#) law firm has released the results of its sixth annual survey, completed by 1,229 in-house counsel, human resources professionals and C-suite executives. [The Little Annual Employer Survey, 2017](#) reveals that the change occurring in Washington, D.C., and in local governments – combined with technological advances and shifts in how work is performed – is creating an unprecedented level of uncertainty in the workplace.

A release from the firm continues:

A Complex Patchwork of State and Local Laws, Deep Uncertainty at Federal Level

The vast majority of employers expect the Trump administration to prioritize reforming healthcare and employee benefits law (89 percent) and immigration policies (85 percent) in 2017. However, for most regulatory issues, the percentage of respondents who anticipate an impact on their workplace over the next year remains relatively unchanged from last year's survey. That includes the Affordable Care Act (85 percent in 2016 to 83 percent in 2017) and enforcement by the Equal Employment Opportunity Commission (78 percent to 76 percent), National Labor Relations Board (56 percent to 55 percent) and Department of Labor (82 percent to 81 percent). Immigration

reform was the exception as 63 percent said they expect an impact in 2017, up from 40 percent in 2016.

“With the profound changes in Washington, D.C., it may be initially surprising that respondents do not anticipate more of a near-term impact on their businesses,” said Michael Lotito, co-chair of Littler’s Workplace Policy Institute. “However, given the general climate of uncertainty and delays in appointments to government agencies, employers likely expect it to take time before they start to see how the president’s agenda is carried out and personally feel an impact in their workplaces.”

The host of new or amended labor and employment requirements at the state and local levels is creating compliance challenges for the majority of respondents (79 percent). In an effort to keep up, employers are updating their policies, handbooks and HR procedures (85 percent); providing additional employee training (54 percent); and conducting internal audits (50 percent).

“As states and municipalities continue to propose and enact a dizzying array of rules and regulations, it is no wonder employers are struggling with the increasingly fragmented landscape,” said Lotito. “With the Trump administration working to reduce federal regulations, employers can expect a growing patchwork of employment regulations as states and municipalities look to fill a perceived void at the federal level.”

Of the array of changes at the state and local levels, respondents have been most impacted by paid leave mandates (59 percent), background check restrictions (48 percent) and minimum wage increases (47 percent).

Uncertainty Surrounding Healthcare Reform

Even though survey responses were collected before Republicans withdrew the American Health Care Act in late March, more than

a quarter (27 percent) were already uncertain about the impact of repealing the ACA's employer mandate. And another 28 percent said they did not anticipate an impact at all.

"Employers face even more questions about the future of the ACA, as well as the extent to which the administrative process can and will be used to change aspects of the law, than when they responded to our survey," said Ilyse Schuman, co-chair of Littler's Workplace Policy Institute. "In this environment, employers can continue to expect a certain level of uncertainty surrounding employer-sponsored health coverage in the months ahead."

Only 4 percent of respondents anticipate dropping coverage for some full-time employees if they are relieved of the ACA's employer mandate, but 18 percent said they would allow more employees to work more than 30 hours a week.

"The responses indicate that employers are committed to providing health insurance for their full-time employees," said Steven Friedman, co-chair of Littler's Employee Benefits Practice. "However, they also suggest that a repeal of the mandate would give employers more flexibility to set work schedules based on the needs of their businesses, without fear of triggering a requirement to provide health insurance."

EEOC Expected to Prioritize Hiring Practices, LGBTQ Rights and Pay Equity

Hiring practices – including the consideration of criminal or credit histories in the hiring process and pre-employment testing or screening practices – was the area where most respondents (51 percent) expected an increase in EEOC workplace discrimination claims over the next year, closely followed by LGBTQ rights (46 percent) and equal pay (46 percent).

"The transitions in Washington, D.C., appear to have curtailed employers' expectations for EEOC enforcement activity around

LGBTQ rights and equal pay, which rose sharply in the 2016 survey, when 74 percent and 61 percent of respondents, respectively, expected increased enforcement around those issues,” said Barry Hartstein, co-chair of Littler’s EEO & Diversity Practice. “Nonetheless employers continue to expect substantial enforcement over the next year as pay equity and discrimination based on sexual orientation remain priorities not only for the EEOC, but for the courts, state and local governments, the plaintiffs’ bar and the general public.”

FMLA Leave Presents Headaches

Among the employee requests that are most difficult to accommodate, leaves of absences under the Family and Medical Leave Act emerged as the presenting the greatest challenges. The majority of respondents indicated difficulty with managing intermittent FMLA leave (65 percent) and leaves that extend beyond FMLA requirements (55 percent), followed by remote or work-from-home arrangements (37 percent) and modified or reduced schedules (36 percent).

“Nothing is more disruptive to the operation of a business than unpredictability. When employees are repeatedly and unexpectedly off work, employers have to scramble to cover their responsibilities and manage potential resentment from employees who are inevitably asked to do more,” said Hartstein. “The increasingly common practice of requesting flexible work arrangements is also creating a whole new layer of legal and practical challenges for employers.”

Data Privacy and Breach Prevention Top of Mind

As the volume of data breaches originating with employees continues to grow, 63 percent of respondents said their HR and IT departments are collaborating on information security policies. Just over half (51 percent) said they were providing additional training to employees, and a smaller percentage said they were utilizing cyber-incident response plans (29

percent) and updating employee contracts to cover confidentiality obligations (23 percent).

“It is encouraging to see HR collaborating with IT to reduce the risk of data breaches that originate with employees. Information security policies prepared only by IT often focus on technical safeguards, whereas involving HR in the process helps to address the human elements of information security,” said Philip Gordon, co-chair of Littler’s Privacy and Background Checks Practice. “However, our results suggest that employers can take additional steps to guard against and prepare for employee-initiated data breaches, including ensuring all employees are trained on policies and know how to recognize and then report a security incident.”

Among respondents from large-cap organizations, the majority (56 percent) said global data privacy was a key area of concern in doing business outside of the U.S. “This concern likely stems from the significant restrictions on sharing personal data of employees in Europe and in the many countries that impose stricter rules than the U.S.,” noted Philip Berkowitz, U.S. co-chair of Littler’s International Employment Law Practice.

The survey results were released at Littler’s 34th annual Executive Employer Conference held May 10-12, 2017, in Phoenix, Arizona, and attended by many of the employers who completed the survey.

[Click here for The Littler® Annual Employer Survey 2017 Report](#)

[Click here to view the survey infographic](#)

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Lawyer Says Texas Law Banning 'Sanctuary Cities' Has Serious Constitutional Problems

A new Texas “sanctuary cities” ban set to take effect Sept. 1 orders cities and counties not to stop law officers from asking about the immigration status of anyone they detain. It also would punish police chiefs, sheriffs and constables who fail to abide by the law or fail to comply with federal immigration detainer requests, according to a post on the website of [Androvett Legal Media & Marketing](#).

On Tuesday, the American Civil Liberties Union of Texas warned visitors that their constitutional rights could be violated when they're in the state. A federal lawsuit has already been filed in San Antonio. On the other side, Attorney General Ken Paxton has also filed suit, asking a federal judge preemptively to uphold the constitutionality of the law.

Dallas attorney [David Coale](#) of [Lynn Pinker Cox & Hurst](#), a trial and appellate lawyer, says the new law is vulnerable.

“States and cities can't be made to enforce federal law because of the 10th Amendment and federal preemption of immigration law. Period. Farmers Branch and Irving, Texas, went through similar issues several years ago with their local laws about immigration. A state law that tries to make cities enforce federal law is just as problematic.

“Procedurally, I expect the plaintiffs in the San Antonio case to seek some kind of temporary restraining order or

preliminary injunction to enjoin the law. On both sides, you have to separate the policy from the law. Both sides have points about the importance of immigration enforcement, on the one hand, and local control over local law enforcement, on the other. The legal question, though, is about the structure of our government, which is defined by the Constitution.”

U.S. Accuses UnitedHealth of Medicare Advantage Fraud

The U.S. Justice Department has accused UnitedHealth Group Inc. of obtaining inflated payments from the government based on inaccurate information about the health status of patients enrolled in its largest Medicare Advantage Plan, [Reuters is reporting](#).

The accusation against the company is the latest, following separate lawsuits in two separate whistleblower lawsuits against the country's largest health insurer.

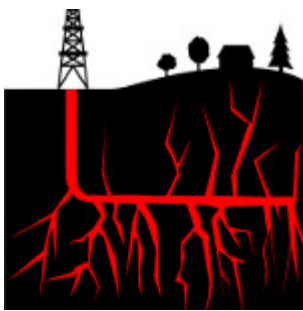
“Medicare Advantage, an alternative to the standard fee-for-service Medicare in which private insurers manage health benefits, is the fastest growing form of government healthcare, with enrollment of 18 million people last year,” writes reporter [Nate Raymond](#).

A UnitedHealth spokesman said the company rejects the claims and will contest them vigorously.

[Read the Reuters article.](#)

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[The Nation's First Legislative Fracking Ban Is on the Books](#)



In an episode of Kane Russell Coleman Logan's [energy law podcast](#), director [Tom Ciarlone](#) discusses the nation's first legislative fracking ban.

That action came in Maryland when the legislature passed a bill that prohibits petroleum fracking across the state, Ciarlone says. The Maryland governor signed the bill that supplants a two-year moratorium that was set to expire later this year.

The podcast also discusses a lower bar for class certification in royalty underpayment actions, as well as multiple decisions out of the Texas Supreme Court that could spawn a wave of widespread mineral title disputes.

[Listen to the podcast.](#)

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Trump's Losing Streak in Courts Is Traceable to Conservative Judges

The Trump administration's losing streak in courts around the nation has in large part been a product of precedents established by conservative judges in the Obama era, reports [*The New York Times*](#).

"Republican officials had great success under President Barack Obama in persuading judges to block or complicate his efforts to expand health care, shield immigrants from deportation and protect transgender students," writes reporter [Adam Liptak](#). "Now Democratic officials are using the principles established in those cases to frustrate President Trump's efforts to limit travel from predominantly Muslim countries and to punish so-called sanctuary cities."

Liptak quotes South Texas College of Law professor Josh Blackman with a warning for Democratic officials: "Whatever California can do to resist immigration law, Texas can do to resist environmental laws."

[Read the NYT article.](#)

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[EPA Announces Methane Rule Reconsideration, Adding to List of Obama-Era Rules Under Review](#)

On April 18, 2017, U.S. Environmental Protection Agency (EPA) Administrator Scott Pruitt announced that the EPA will convene a proceeding for reconsideration of certain elements of the 2016 rule establishing methane emissions standards for the oil and gas industry, reports Bracewell's [Energy Legal Blog](#).

Authors [Whit Swift](#) and [Brittany Pemberton](#) write that the Methane Rule applies to oil and gas facilities for which construction, modification, or reconstruction started after September 18, 2015.

"In particular, EPA will reconsider elements of the fugitive emissions monitoring and repair requirements of 40 C.F.R. § 60.5397a, including the inclusion of low-production wells, and the NSPS Subpart 0000a provisions relating to approvals for an alternative means of compliance," they explain.

[Read the article.](#)

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The SEC Doesn't Like Your Employment Agreements



For the past two years, there's been a new player in the world of employee whistleblower enforcement, writes [Evan Gibbs](#) for [Above the Law](#).

In 2015, the Securities and Exchange Commission issued its first administrative order finding that a company violated SEC rules based on language in an employment agreement.

"In the first and only case of 2017, the SEC fined another company \$340,000 because its standard severance agreement previously contained a provision in which employees waived recovery of incentive payments from the SEC," Gibbs writes. "The company received the six-figure fine despite having removed the offending provision on its own in March 2016 as part of the company's regular review process *prior* to being contacted by the SEC. third parties unless compelled to do so by law and after notice to the company."

[Read the article.](#)

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[Roy Moore's Suspension Upheld By Alabama Supreme Court; Decision Next Week on Senate Race](#)

The Alabama Supreme Court has upheld the decision that removed Roy Moore from his position as chief justice, [reports AL.com](#).

Moore was suspended over his administrative order against the issuance of marriage licenses to same-sex couples.

Reporter [Kent Faulk](#) writes that Moore can't appeal the ruling to the federal courts because there are no federal issues at stake.

"Moore also said he would reveal early next week for any plans he may have to run for the U.S. Senate seat now held by former Alabama Attorney General Luther Strange, who was appointed to replace Jeff Sessions who is now U.S. Attorney General," according to Faulk.

[Read the AL.com article.](#)

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[Trump's Trademark Continues Its March Across the Globe, Raising Eyebrows](#)

A review of 10 trademark databases shows that President Trump's enterprise has 157 trademark applications pending in 36 countries, reports [The New York Times](#).

This business enterprise poses legal and moral perils to the president, even though that business now is run by his two sons. A team of constitutional lawyers and ethics lawyers brought litigation arguing that the Constitution prohibits the president from accepting any economic benefit, including trademark approvals, from foreign governments, write [Sharon LaFraniere](#) and [Danny Hakim](#).

"The legal question is whether new foreign trademark registrations and other transactions between Mr. Trump's businesses and foreign governments violate the emoluments clause of the Constitution," according to the *Times*. "The clause prohibits federal officials from accepting 'any present, emolument, office or title of any kind whatever from any king, prince or foreign state.'"

[Read the NYT article](#)

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Ex-U.S. Attorney Links Firing to Trump Team's 'Helter-Skelter Incompetence'

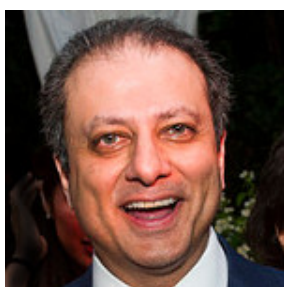


Image by [Financial Times](#)

In [an interview](#) with *The New York Times*, Preet Bharara, the former U.S. attorney in Manhattan, remains mystified by the circumstances of his firing by the Trump administration, saying he had never been told why President Trump changed his mind about wanting him to stay on.

He characterized his ouster as an example of the chaos that has defined some of the administration's decisions: "a direct example of the kind of uncertain helter-skelter incompetence, when it comes to personnel decisions and executive actions, that was in people's minds when this out-of-the-blue call for everyone's resignation letter came."

Bharara also disclosed that Trump, after having asked him to remain in his post, telephoned him three times, raising concern that such calls could run afoul of strict Justice Department protocols, write [Benjamin Weiser](#) and [William K. Rashbaum](#).

[Read the NYT article.](#)

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Removal of Energy ‘Burdens’ Could Have Huge Impacts



A provision of the “energy independence” executive order signed by President Trump is so broad in scope that legal experts say it could affect numerous government responsibilities far beyond those that deal directly with energy and climate change, according to a post by [Climate Central](#).

Under the order, federal agencies must review all of their actions that have the potential to “burden” both the development and use of domestic fossil fuels and nuclear energy in the U.S., writes [Bobby Magill](#).

“For example, it could affect the speed with which the government permits oil and gas drilling, how much information about energy development the government provides to the public, and other decisions federal employees make on a daily basis,” Magill explains. “It may also affect the willingness of the government to allow wind and solar development to go forward because more use of renewable energy could lead to less use of fossil fuels.”

[Read the article.](#)

Democratic Supreme Court Opposition Grows; Schumer Warns GOP



Image by
[Senate Democrats](#)

Senate Democratic opposition to Donald Trump's Supreme Court nominee swelled Friday as Democrats neared the numbers needed to block Judge Neil Gorsuch with a filibuster, [reports the Associated Press](#).

"Senate Minority Leader Chuck Schumer of New York warned Republicans against changing Senate rules to confirm Gorsuch anyway – a rules change that could prove momentous for the Senate and would allow all future Supreme Court nominees to get on the court regardless of opposition from the minority party," write Mary Clare Jalonick and Erica Werner.

Democrats worry that Senate Majority Leader Mitch McConnell

could respond to a Democratic filibuster by changing Senate rules to allow a simple majority to determine the nomination, rather than requiring a minimum of 60 votes.

[Read the AP article.](#)

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[Trump Appoints One of His Lawyers to Review Mergers](#)

President Trump has named Makan Delrahim, a former government antitrust enforcer and corporate lobbyist, to lead the Justice Department's review of mergers and acquisitions, [The New York Times reports](#).

Companies are hoping that the new Republican administration will be more permissive with mergers than the Obama administration was, writes [Cecilia Kang](#). Trump's predecessor blocked dozens of blockbuster deals over the past eight years, including AT&T's bid for T-Mobile in 2011 and Comcast's merger with Time Warner Cable in 2015.

"Mr. Delrahim, who serves as legal counsel to the president, will be quickly tested in his new position by AT&T's \$85 billion bid for Time Warner, which is set to be reviewed this year. Other mergers under review include Dow Chemical's bid for Dupont and Bayer's acquisition of Monsanto," Kang writes.

[Read the NYT article.](#)

[Blue State Attorneys General Leading the Resistance to Trump's Agenda](#)

With Democrats outnumbered in Congress, a coalition of blue state attorneys general has emerged as the strongest resistance to Donald Trump's conservative agenda, according to an article published by [Bloomberg Businessweek](#).

"Together they've notched back-to-back victories against Trump's two attempts to instill a travel ban against several Muslim-majority nations. They now hope to build on that success to form a united front against Trump's expected efforts to roll back financial and environmental regulation, plus the GOP's planned repeal of Obamacare," says the article, written by Erik Larson, Esmé E Deprez and Kartikay Mehrotra.

They quote Bob Shrum, a veteran Democratic strategist who teaches political science at the University of Southern California, who says that by notching wins against Trump, state AGs can help make up for Democrats being in the minority in Congress

[Read the Bloomberg Businessweek article.](#)

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[Leon Cooperman Ordered to Trial in Insider-Trading Case](#)

Omega Advisors Inc. founder Leon Cooperman must face a lawsuit brought by the U.S. Securities and Exchange Commission alleging the billionaire investor reaped more than \$4 million in illegal profits after conversations with a company insider, a judge ruled in rejecting his request to throw out the case, according to a [Bloomberg report](#).

A federal judge in Philadelphia ruled that the SEC had produced a “plausible claim for insider trading” and set a trial for November. The judge also dismissed claims that Cooperman failed to file required reports about his beneficial ownership of stocks of eight public companies.

Reporters [Chris Dolmetsch](#) and [Patricia Hurtado](#) write that the case will ultimately test the SEC’s novel theory that outsiders are liable for trading on inside tips even if they received the information before agreeing not to use it.

[Read the Bloomberg article.](#)

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Texas May Face Federal Supervision After Judges' Ruling on Congressional Districts



A Dallas attorney says Texas may have to ask for permission to change election laws after a panel of federal judges ruled the maps drawn for three congressional districts violate federal statutes, according to a post on the website of [Androvet Legal Media & Marketing](#).

The judges found the maps used for the congressional districts covering parts of South and West Texas intentionally discriminated against minority voters by either violating the U.S. Constitution or the Voting Rights Act.

Constitutional law attorney [David Coale](#) of [Lynn Pinker Cox & Hurst](#) says the decision means that Texas may face a rare remedy referred to as a “bail-in,” which could lead to requiring prior federal approval of any changes to district lines.

“The issue here is not so much what the court said about these districts, since none of them were actually used in an election. It’s whether Texas’ process for drawing districts was so flawed that the federal government has to take over.”

Texas can appeal the ruling before early May, but that will mean more uncertainty and added delay to an already complicated case, adds Coale.

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[The U.S. Tax Reform and the Energy Sector](#)

Reforms in the U.S. tax code proposed by President Donald Trump and Republican Congressional leaders could have significant implications for the energy industry in the U.S., and worldwide, according to [an article](#) published on the website of Hogan Lovells.

Authors of the article are Washington partners Jamie Wickett, John Stanton and Robert Glennon.

“Full expensing of capital expenditures and a reduction in the U.S. corporate tax rate from the current 35 percent to 20 percent or 15 percent will on balance significantly reduce the tax cost of doing business in the U.S.,” they write. “On the other hand, the loss of the deduction for net interest expense proposed in the Blueprint – will raise the cost of debt in the U.S.”

Also, “The ability for U.S.-based corporations to repatriate profits from foreign subsidiaries on a tax free basis (after paying a one-time tax on all accumulated earnings and profits of foreign subsidiaries) should significantly increase the incentive for these companies to repatriate cash and use it to make U.S. investments (or perhaps to pay down debt or pay dividends).”

[Read the article.](#)

Tillerson May Face Deposition About 'Wayne Tracker' Alias Emails



Image by
[William Munoz](#)

New York will seek to question top Exxon Mobil Corp. executives under oath as part of a probe into the accuracy of the company's statements about climate change after discovering an email alias used by former Chief Executive Officer Rex Tillerson, according to a [Bloomberg report](#).

"Tillerson, now U.S. Secretary of State, used the name Wayne Tracker for his secondary internal email account at Exxon, created for sending the most sensitive messages to and from company board members, including communications about the risks associated with climate change, New York Attorney General Eric Schneiderman said Monday," writes reporter [Erik Larson](#).

Carl Barnes, a former corporate general counsel who's a lawyer at Morse, Barnes-Brown & Pendleton PC, told Larson that someone in Exxon's general counsel's office knew or should have known about the alias account.

[Read the Bloomberg article.](#)

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