

Can You Really Shut Down Your Company a Week After Your Workers Unionize?

American labor laws normally protect workers from retaliation for unionizing, but billionaire CEO Joe Ricketts seems to have used a dramatic exception when he closed his news websites after some workers voted to unionize: A business may always close its operations entirely.

[Francie Diep](#), a reporter for the [Pacific Standard](#), writes that all of the publications' offices – including those in San Francisco, Los Angeles, Chicago and Washington, which had not voted to unionize – are now closed.

“If lawyers decide to pursue a case charging that Ricketts acted illegally, they’ll have to prove that some part of the business is still operating – say, if Ricketts were tied to another media company somehow – or that, after the shutdown, Ricketts opened up a similar business elsewhere,” Diep writes.

[Read the Pacific Standard article.](#)

Billionsaire CEO Shuts Down Publications After Vote to Unionize

The CEO of a group of digital local news sites shut down the publications a week after reporters and editors in the combined newsroom of DNAinfo and Gothamist voted to join a union, reports [The New York Times](#).

Joe Ricketts, the billionsaire founder of TD Ameritrade, owned the sites.

“For DNAinfo and Gothamist, the staff’s vote to join the Writers Guild of America East was just part of the decision to close the company, write [Andy Newman](#) and [John Leland](#).

“The decision by the editorial team to unionize is simply another competitive obstacle making it harder for the business to be financially successful,” said a spokeswoman for DNAinfo.

[Read the NYT article.](#)

NFL Players May Have an Ally in Their Protests: Labor Law

The New York Times [reports](#) that, as National Football League

team owners consider President Trump's call to fire players who refuse to stand for the national anthem, they have stumbled into one of the most consequential debates in today's workplace: How far can workers go in banding together to address problems related to their employment?

Reporter [Noam Scheiber](#) writes that, since Trump's call for firing players, their demonstrations now could constitute labor activity that's federally protected, explains Matthew Bodie, a law professor at St. Louis University who is a former attorney for the labor board.

"If they're standing up for other players' rights to kneel in the context of their job and keep their job, it seems to me to be protected concerted activity," Bodie said.

[Read the NYT article.](#)

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Trump's Impact Felt in Supreme Court Labor Rights Cases

When the Supreme Court opens its 2017 term on the first Monday in October, its very first cases will serve as a stark reminder of why elections matter, predicts [USA Today](#).

Reporter [Richard Wolf](#) writes that the upcoming term stands "a

real chance of being a one-two punch against workers' rights," says Claire Prestel, associate general counsel for the Service Employees International Union.

Wolf points out how things have changed:

When the court was asked to hear three cases on labor arbitration agreements last September, Barack Obama was president, Hillary Clinton was heavily favored to succeed him, and federal appeals court Judge Merrick Garland was in line to replace the late Antonin Scalia. Garland had a strong record of defending workers' rights.

[Read the USA Today article.](#)

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Littler Adds Renowned Global Employment Lawyer

Employment and labor law firm [Littler](#) has added Donald C. Dowling Jr. as a shareholder in the New York office. Previously a partner with K&L Gates and prior to that a partner with White & Case, Dowling joins Littler with extensive experience counseling U.S.-based multinational companies on cross-border employment issues.

"As we continue to expand our global platform, adding lawyers like Don with deep experience counseling multinational employers on regulatory and compliance issues is an important

part of our growth strategy,” said Tom Bender and Jeremy Roth, co-managing directors of Littler, in a joint statement.

Peter Susser, chair of Littler’s International Employment Law Practice Group added: “Don is among the world’s leading lawyers advising U.S.-based companies on outbound international labor and employment laws. He will provide valuable counsel to our clients as they navigate an increasingly complex legal and regulatory landscape with regard to operating across borders.”

In a release, the firm said Dowling provides counsel on global employment law matters, including codes of conduct and HR policies that guide operations in multiple jurisdictions, international compensation and benefits issues, whistleblower hotlines, and cross-border internal investigations and HR compliance audits. He regularly advises clients on employment matters that arise with international restructurings, reductions in force, mergers, acquisitions, and outsourcing. Additionally, Dowling helps clients properly engage independent contractors overseas, manage expatriate programs, and develop employment agreements and employee handbooks, the firm said.

“I have been counseling U.S.- and foreign-based companies with global operations for many years and have long respected Littler’s reputation and capabilities in the global arena,” Dowling said. “Littler’s growth in recent years, particularly in Europe and Latin America, is impressive and I am excited to join forces with the firm’s top-notch international lawyers, who are among the best in the industry.”

Earlier in his career, Dowling served as in-house international employment counsel for a Fortune 500 company in Paris and as an employment law consultant for a global consulting firm. He has delivered hundreds of presentations on international employment law issues in English and Spanish in countries around the world, and regularly publishes articles

and teaches courses on a variety of global employment law topics.

Stephan Swinkels, a shareholder who helps lead the development and integration of the firm's international practice, added: "Don has a well-earned reputation globally as a knowledgeable and talented practitioner. His practice nicely complements our approach to serving the wide-ranging needs of the global employer community and we are excited to welcome him to the firm."

Dowling is on the Advisory Board for New York University School of Law's Center for Labor & Employment Law. He was formerly chair of the cross-border HR group, XBHR, and has chaired international employment law committees associated with several bar associations, including the International Bar Association, the American Bar Association, the New York State Bar Association, the Chicago Bar Association and the Cincinnati Bar Association. Dowling is regularly recognized as a leader in labor and employment law by such organizations as Chambers USA, Legal 500, and Who's Who Legal.

Dowling received his J.D. from the University of Florida Levin College of Law and his A.B. from the University of Chicago.

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Ex-Fiat Chrysler Executive Charged in Union Official Payoff

A former Fiat Chrysler executive has been charged with looting a training center for blue-collar workers by giving \$1.2 million through a variety of ways to a UAW leader, his wife and other senior union officials, according to an [Associated Press](#) report.

The ex-executive is Al Iacobelli, who was indicted in an alleged conspiracy involving the late United Auto Workers vice president General Holiefield and Holiefield's widow, Monica Morgan.

"The indictment describes a multiyear scheme to reward Holiefield and Morgan with first-class travel, designer clothing and jewelry. A \$262,000 mortgage on their home in suburban Detroit was paid off, according to the grand jury," write Ed White and Tom Krisher. "Iacobelli treated himself to more than \$350,000 for a Ferrari, the government alleged."

[Read the AP article.](#)

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Labor & Employment PAGA Attorney Joins Blank Rome in Los Angeles

[Blank Rome LLP](#) announces that Laura Reathaford has joined the firm as a partner in the Labor and Employment group in the Los Angeles office. She joins from Venable LLP.

In a news release, the firm said Reathaford focuses her practice on management-side employment litigation, with special emphasis on representative actions under the Private Attorney General Act (PAGA) and other wage and hour collective and class actions. PAGA allows aggrieved employees to file lawsuits to recover civil penalties on behalf of themselves, other employees, and the State of California for Labor Code violations. The act represents a significant threat to California employers and is in a constant state of change, requiring the most experienced, creative defense counsel.

“We are very excited to welcome Laura to the Firm,” said Alan J. Hoffman, Blank Rome’s Chairman and Managing Partner. “Laura is well known to our labor and employment team for her leadership in the defense of wage and hour claims, especially claims brought under PAGA. She brings considerable strength to this essential labor and employment capability in California, and adds equally considerable strength more broadly across the spectrum of defense-side labor and employment law for our clients across the country.”

The release continues:

Reathaford is a distinguished litigator across the full range of employment disputes, including claims for wrongful termination, sexual harassment, unpaid wages, discrimination, and union grievances. She is also an experienced trial attorney having achieved favorable

judgments in numerous PAGA actions, as well as FLSA actions and in single plaintiff retaliation matters. In addition to high-stakes litigation, Reathaford counsels clients on termination issues, employee handbooks, leave and disability rules, and California and federal wage and hour laws. She represents the management of public and private businesses in the manufacturing and grocery industries, as well as in banking, healthcare, and telecommunications, both in California and nationwide.

“Still a relatively new law, PAGA is constantly evolving and our clients in California need the most experienced counsel to respond creatively and effectively to a rapidly increasing number of claims,” said Scott F. Cooper, Partner and Co-Chair of the Firm’s Labor and Employment practice. “Just recently, the California Supreme Court approved class-action like discovery of employee contact information in representative PAGA cases. Laura has been ahead of the curve on PAGA since the beginning. And as we field a growing number of calls from clients regarding PAGA, they will quickly see the benefits of having Laura join our team.”

“The labor and employment group at Blank Rome offers clients an exceptional depth and breadth of talent that I am excited to join and help grow,” said Reathaford. “I also look forward to once again collaborating with Partner Howard M. Knee, with whom I have worked before, as well as contributing high-level client service and legal practice to the Firm as it continues to expand both locally and nationally.”

“Laura will be a tremendous resource to the Firm’s ongoing commitment to diversity and inclusion, particularly with regards to our Women’s Forum,” adds Brooke T. Iley, Partner and Co-Chair of the Firm’s Labor and Employment practice. “Her previous role and experience in leading women’s diversity initiatives at Venable will be instrumental in advancing not only Blank Rome’s affinity groups, but also

our firm's efforts in diversifying the legal profession at large. I am excited for the new insights that she will bring to the table, which will greatly benefit both our clients and Firm."

Reathaford earned her J.D. from Dalhousie University in Halifax, Nova Scotia, and B.Comm. from the University of Alberta.

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Michael Best Adds Labor & Employment Lawyer in Milwaukee

Michael Best announced it has added Bethany C. McCurdy to its Milwaukee office as senior counsel in the firm's Labor & Employment Practice Group. McCurdy will concentrate her practice on management side employment law.

"As an experienced employment counselor and litigator, Bethany will be a powerful addition to our team," said Amy Schmidt Jones, Chair of Michael Best's Labor & Employment Relations Practice Group. "I'm confident that her aptitude for advising clients through various aspects of the employment relationship will continue to accelerate our presence here in the Midwest."

Prior to joining Michael Best, McCurdy was a member of Petrie + Pettit where she defended employers through a wide breadth of employment related disputes and litigation matters including disability, family and medical leave, wage and hour, discrimination and workplace harassment.

“We’re thrilled that Bethany will be joining us here in Milwaukee,” said Danielle Bergner, Michael Best’s Managing Partner of the Milwaukee office. “Her dedication and determination to resolve client matters, particularly so in the manufacturing sector, will be a huge advantage to those she represents.”

“The decision to join Michael Best presents a wonderful opportunity for me,” said McCurdy. “The firm continues to expand and find new and interesting ways to better advise their clients and I’m certain that my colleagues and I will continue to enrich the L&E group.”

McCurdy received her J.D. from Marquette University Law School and her Bachelor’s Degree in Journalism and Sociology from the University of Wisconsin-Madison.

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Indiana Senate Chief of Staff, Legal Counsel Rejoins

Barnes & Thornburg

Jeffrey L. Papa, former chief of staff and chief legal counsel for the Indiana Senate, has rejoined [Barnes & Thornburg LLP](#) as a partner in the firm's Labor & Employment Law Department.

Papa, who was an attorney at the firm from 2001 to 2007, will focus his practice on immigration matters.

"We are excited to welcome back Jeff to the firm to assist our business clients with their immigration issues," said Brian L. Burdick, managing partner of Barnes & Thornburg's Indianapolis office. "Jeff's experience and understanding of immigration laws will greatly benefit businesses that continue to deal with the changing immigration environment as they seek to attract and retain talent to meet their objectives."

During his previous stint at Barnes & Thornburg, Papa counseled clients on a number of issues, including nonimmigrant status and visa issues, as well as permanent residency matters. His work also included government relations.

In addition to his work in the Indiana Senate, Papa previously served as mayor of the Town of Zionsville and as Zionsville Town Council President.

Papa is active in several different initiatives, including co-founder and strategic advisor of Zionsville's co-working space, zWorks. Additionally, he serves on the U. S. Global Leadership Coalition Indiana Advisory Committee.

He also is deeply involved in the community. He founded the Youth Enhancement and Training Initiative (YETI), a local nonprofit organization that raises operating funds for a Nepali orphanage.

Papa earned his J.D. and a master's degree from the Indiana

University Robert H. McKinney School of Law. He earned a doctorate in education administration and leadership from Indiana State University and a graduate certificate in higher education and student affairs from Indiana University. He also holds a master's degree in business economics from Ball State University and a bachelor's degree in economics from Rose-Hulman Institute of Technology.

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Akerman Labor & Employment Partners in New York, Denver, Miami, and DC

Akerman LLP has expanded its Labor & Employment Practice Group with partners Angela Hart-Edwards in Washington, D.C., Colin Barnacle in Denver, Denise Gavica Perez in Miami and Rory McEvoy in New York. They work with employers in the healthcare, hospitality and restaurant sectors, among others, the firm said in a release.

“Angela, Colin, Denise and Rory are exceptional lawyers who bolster Akerman’s national strengths in employment litigation and compliance,” said Eric Gordon, chair of Akerman’s Labor & Employment Practice Group. “Employers today are faced with a new set of uncertainties brought on by significant shifts in U.S. employment and immigration policies. The expansion of our team in New York, Denver, Miami and Washington, D.C., advances

our ability to problem-solve on the ground with our clients while serving their interests nationally.”

The release continues:

Angela Hart-Edwards

Hart-Edwards is a former Trial Attorney for the U.S. Equal Employment Opportunity Commission (EEOC) and the Department of Justice Civil Rights Division. She also served as an Assistant U.S. Attorney for the U.S. Attorney’s Office for the District of Columbia. She focuses her practice in the areas of employment and civil rights law, government investigations and corporate compliance, and federal sector EEO employment law. With more than 20 years of experience as a trial lawyer, Hart-Edwards represents corporations and their executives in labor and employment related litigation, class/collective actions, agency proceedings, arbitrations and mediations and investigations. She also provides EEO services and defensive federal sector employment litigation services to agencies.

Hart-Edwards regularly advises management on litigation avoidance, negotiates and prepares employment and related agreements, provides human resource and EEO regulatory compliance counseling and training, and serves as corporate diversity counselor. Her clients represent a diverse range of industries including manufacturing, logistics, utilities, higher education institutions, technology, nonprofit, government, healthcare, staffing, retail, and hospitality. She also serves as General Counsel to the Commissioners of the Maryland Commission on Civil Rights and as an advisor to The Council for Federal EEO and Civil Rights Executives.

Colin Barnacle

Barnacle focuses his practice on labor and employment litigation, compliance counseling, corporate governance counseling and investigations, and non-compete and trade secret enforcement. He regularly advises and defends clients in response to the EEOC and the Office of Federal Contract

Compliance Programs (OFCCP), including systemic discrimination investigations and related class actions. He has represented employers in all aspects of employment law before state and federal agencies and courts, including wage and hour collective/class actions under the Fair Labor Standards Act (FLSA), Title VII discrimination and sexual harassment, as well as actions under the Americans with Disabilities Act (ADA), Family and Medical Leave Act (FMLA), and state workers compensation laws. He is also experienced in Older Workers Benefit Protection Act (OWBPA) compliance, Worker Adjustment and Retraining Notification Act (WARN) compliance during mass layoffs, and employee-related issues surrounding corporate transactions. Barnacle represents food companies throughout the supply chain, including growers/shippers, manufacturers, distributors, retailers and food service businesses.

Barnacle brings years of in-house legal experience having served as Division General Counsel for Americas Fresh Foods, The WhiteWave Foods Company (NYSE: WWAV), a leading consumer packaged food and beverage company, and as Assistant General Counsel for The Gates Corporation, a global diversified manufacturer of industrial and automotive products.

Denise Gavica Perez

Gavica Perez focuses her practice on corporate immigration matters, with a strong emphasis in the healthcare sector. She routinely counsels hospitals seeking to obtain non-immigrant and immigrant visas for employees including physicians, nurses, residents, pharmacists, fellows, medical technologists, as well as staffing agencies tasked with recruiting healthcare professionals. She also has 18 years of practice representing companies within the financial services, technology, sports and entertainment, hospitality, higher-education, construction and engineering sectors.

Gavica Perez regularly provides legal counsel to entrepreneurs and high-net-worth individuals regarding investment-based immigration, including the EB-5 Immigrant Investor Program,

and she advises clients on the full range of immigrant visas, labor certifications, and U.S. citizenship matters. She has experience managing the immigration compliance programs for multinational corporations and institutions engaged in a wide range of activities and industries, including financial services, technology, sports and entertainment, higher-education, construction and engineering. She also has represented companies in connection with Department of Homeland Security (DHS), Form I-9 (Employment Eligibility Verification) audits, and Department of Labor/Wage and Hour Division immigration-related investigations.

Rory McEvoy

McEvoy focuses his practice on labor and employment matters, including litigation in federal and state courts and agencies. He routinely handles matters involving collective bargaining, arbitrations, unfair labor practices and union representation proceedings before the National Labor Relations Board (NLRB). He also represents clients in all aspects of the employment relationship, including non-compete litigation, breach of employment contracts, wage and hour matters and defamation.

McEvoy represents many of New York's large hospitals and healthcare systems. He also represents clients in other sectors, including financial services, philanthropic religious organizations, technology and educational institutions, among others.

Akerman has welcomed 17 lawyers to its Labor & Employment Practice Group in less than 15 months, expanding nationally with additions in Chicago, Denver, Los Angeles, Miami, New York, Orlando and Washington, D.C. Other notable arrivals include Immigration Planning & Compliance Practice Chair Maria Casablanca in Miami; employment litigators Bran Noonan and Sarir Silver in New York, Lillian Chaves Moon in Orlando and Rachel Schumacher in Los Angeles.

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After N.F.L. Concussion Settlement, Feeding Frenzy of Lawyers and Lender

Some former NFL players are receiving pitches for legal help in receiving checks from the league's legal sports history aimed at retirees who sued for lying about the dangers of concussions suffered by the players.

[Ken Belson](#) of [The New York Times](#) writes, "Some players may get very little, but others with severe neurological diseases may receive as much as \$5 million. Now lawyers, lenders and would-be advisers are circling, pitching their services and trying to get a cut of the money."

Some of the ex-players with severe neurological disorders are cognitively impaired and may not understand the terms used by the lawyers who make the pitches.

[Read the NYT article.](#)

Why This Group is Trying to Stop Amazon From Buying Whole Foods

Marc Perrone, president of the United Food and Commercial Workers International Union, sees Amazon the way some Rust Belt workers see global trade – as a threat to American jobs, reports [The Washington Post](#).

Perrone was planning to file a complaint to the Federal Trade Commission, arguing that letting Amazon buy Whole Foods would trigger a wave of store closures and eventually quash customer choice, writes the *Post*'s [Danielle Paquette](#).

“The United Food and Commercial Workers International Union has roughly 1.3 million members across North America, working for retailers at a typical wage of about \$18 an hour, including benefits,” according to Paquette. “Members are employed at stores such as Kroger, Safeway and Albertsons. Whole Foods, for contrast, isn’t unionized.”

[Read the Post report.](#)

Little Add Shareholder Renea Saade in Anchorage

Employment and labor law firm [Little](#) has added [Renea I. Saade](#) as a shareholder in the Anchorage office. Saade was previously a partner in the labor and employment group at Stoel Rives LLP.

“Renea has an impressive background counseling employers in Alaska as well as throughout the Pacific Northwest, and is a great addition to our Anchorage office,” said Doug Parker, office managing shareholder in Anchorage and Portland. “She serves as a trusted adviser to her clients and her depth of experience, especially in the energy, construction and government contracting industries, will be a significant benefit to the firm.”

In a news release, the firm said:

Saade counsels employers on a wide range of issues that arise in the workplace, including accommodation and leave requests, wage and hour compliance, enforcement and defense of non-competition and non-solicitation agreements, workplace investigations, discipline and terminations. She regularly advises employers on developing, updating and enforcing employee contracts and policies and has particular experience advising government contractors on the complex requirements and unique risks they face in managing their workforces. Saade often serves as an independent workplace investigator and trainer on various employment law issues, including the prevention of discrimination and harassment in the workplace. She also represents employers before governmental agencies and local courts.

“Little’s capabilities and experience in the labor and employment space are exceptional and I’ve long had a high

regard for Doug Parker and the firm's work in Alaska and the Northwest," Saade said. "I look forward to drawing on Littler's unparalleled platform and resources to continue to support the labor and employment law needs of companies operating in this region."

Outside of her legal practice, Saade serves as board president of YWCA Alaska and is a member of several community and legal organizations, including the Kohanic Broadcasting Board of Directors, the Anchorage Association of Women Lawyers Board of Directors, Mother Attorneys Mentoring Association of Seattle, the Washington Defense Trial Lawyers and DRI. She is a regular speaker and author on employment law developments, and is an active member, presenter and trainer for the Alaska Chapter of the Society for Human Resource Management. Saade also provides pro bono counsel to several public broadcasting and social service non-profit organizations.

Saade has been named one of "America's Leading Lawyers for Business" in Alaska by Chambers USA each year since 2014. She received her J.D. from Northeastern University School of Law and her B.A. from the University of Washington.

**ERISA Litigation Partner
Michael Graham Joins Michael**

Best Chicago Office

[Michael Best](#) announces that [Michael T. Graham](#) has joined its Chicago office as a partner in the firm's Labor & Employment Relations Group, where Graham will chair the firm's growing ERISA Litigation Practice. This addition comes on the heels of several recent lateral hires in the Chicago office, including Mircea Tipescu and Peter Huh.

"We fully expect Michael to hit the ground running as he will be in great demand," said Amy Schmidt Jones, Chair of the Labor & Employment Relations Practice Group. "With profound changes taking place in the employment sector, the two decades of experience Michael brings with him will help strengthen our practice and provide extraordinary counsel to our clients."

Graham joins Michael Best from McDermott Will & Emery, and brings nearly 20 years of experience in Employee Retirement Income Security Act (ERISA) Litigation and employee benefits controversy matters on behalf of Fortune 500 employers, employee stock ownership plan (ESOP) trustees, plan administrators, and plan sponsors. He focuses his practice on employee benefits matters, including counseling plan administrators, fiduciaries and employers on proper statutory and regulatory compliance as well as administrative benefit claims and appeals procedures. He also counsels clients on preventive measures to avoid litigation and assists in developing defense plans in the event that litigation arises, the firm said in a news release.

"We're thrilled that Michael has joined our Chicago office," said Kerryann Haase Minton, Michael Best's Chicago Office Managing Partner. "We're always searching for talented and sophisticated attorneys and the experience Michael brings in employment benefits litigation will be a great addition to our team."

Graham frequently litigates fiduciary breaches, ESOP issues, and medical and pension benefit denial claims in front of federal and state courts, and in front of the U.S. Department of Labor. He also dedicates a part of his practice to counseling plan administrators, fiduciaries and sponsors on Pension Benefit Guaranty Corporation (PBGC) requirements and liabilities.

“There is a significant amount of ambiguity currently in the employment sector,” said Graham. “With a number of regulations and requirements set to come down, I expect employers to be very active in the near term and I believe Michael Best has positioned itself well to address their client’s needs in the employee benefits, ERISA litigation and labor and employment areas.”

Graham received his J.D., magna cum laude, from Valparaiso University School of Law, and his A.B. from the University of Illinois at Urbana-Champaign.

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

Local Laws



The [Littler](#) 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 Littler 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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House Republicans Just Voted to Change Overtime Rules for Workers



Image by [NY Photographic](#)

The U.S. House of Representatives voted to pass a bill that Republicans have promoted since the Newt Gingrich era, one that would allow private-sector employees to exchange overtime pay for “compensatory time” off, electing to accrue extra hours off rather than extra pay in their wallets, [The Washington Post](#) reports. The bill passed 229 to 197, largely along party lines.

“Under the proposed changes, eligible employees – if their employer decides to offer the option – would be able to voluntarily choose to receive comp time they can bank and use at a future date in lieu of immediate overtime pay in their paychecks,” reporter [Jena McGregor](#) explains. “If they change their minds and want the pay after all, employees would have the option of ‘cashing out,’ with the employer required to pay the overtime within 30 days.

Some opponents of the legislation say they worry that employers will feel pressured to choose comp time.

[Read the Washington Post article.](#)

Restrictive Covenants Can Swing Both Ways: A 3-Step Plan To Avoiding Legal Risks When Onboarding New Employees



Employers have been using restrictive covenant agreements – contracts that contain non-compete, customer non-solicitation, employee non-solicitation, or non-disclosure of confidential information – with increasing frequency in recent times, writes [Michael Elkon](#) with [Fisher Phillips](#).

“Increased media attention on the practice of forcing lower-level employees to sign non-compete covenants, combined with the widely publicized report on non-compete restrictions issued by the Obama White House in its waning days, has led to an increase in the number of reported cases. Further, several states are passing new laws or considering changes to existing laws on the subject,” he explains.

He describes three basic steps a company can take to reduce the chances of a lawsuit from a competitor, or at least put the company in a favorable position if litigation is threatened.

These include “Ask questions on the front end,” “Structure the job on the front end to ensure compliance,” and “Emphasize the importance of purging all former employer materials.”

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Ruling Against Acting NLRB GC Offers Opportunity for Employers



Employers who want to challenge their unfair labor practice complaints may want to delay their cases from being heard, if possible, until after November, recommends a labor lawyer, in light of a recent U.S. Supreme Court ruling that limits powers of acting presidential appointees.

[Allen Smith](#), writing for the [Society for Human Resource Management](#), explains implications of the ruling, which found that the acting National Labor Relations Board general counsel did not have the authority to continue in that role once the president nominated him to be confirmed by the Senate to be general counsel.

That means that companies that have objected to the authority of Acting GC Lafe Solomon after he was nominated can challenge

any unfair labor practice charge issued against them following his nomination January 2011, according to Phil Wilson, president and general counsel with the Labor Relations Institute in Broken Arrow, Okla.

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8th Circuit: No Contracting Out of WARN Act Obligations Where Sale of Business is 'Going Concern'

The 8th U.S. Circuit Court of Appeals issued an opinion reminding employers that they cannot contract out of the Worker Adjustment and Retraining Notification Act (WARN) obligations requiring employers to provide 60 days' written notice to employees of a plant closing or mass layoff, according to a post on the website of [Winston & Strawn LLP](#).

In *Day v. Celadon Trucking Services, Inc.*, the circuit court held that the purchaser of a business, Celadon Trucking Services Inc., was responsible under the WARN Act for providing notice of a mass layoff to more than 400 employees, even though Celadon never hired or fired those employees, the sales agreement characterized the transaction as a sale of assets, and stated that the seller, Continental Express Inc., was solely responsible for providing the WARN notices.

[Steve Sheinfeld](#) and [Jeffrey Salomon](#) wrote the article.

[Read the article.](#)

Houston Janitorial Service Wins \$7.8 Million from Union Over Disparagement

A Harris County jury has delivered a \$5.3 million verdict against the Service Employees International Union (SEIU) for wrongly disparaging Professional Janitorial Service of Houston when the company refused to recognize the union without a secret ballot by its employees. The judge added \$2.5 million in prejudgement interest for a total of \$7.8 million owed to the company.

According to a [post on the website](#) of [Zavitsanos, Anaipakos, Alavi & Mensing P.C.](#), the law firm representing Professional Janitorial Service:

The case was filed 10 years ago by Professional Janitorial based on claims that SEIU issued an onslaught of false statements to try to harm the company for refusing to give in to the union's demands. In the four-week trial, jurors heard evidence that SEIU officials systematically lied about the janitorial service to its customers and caused the company to lose millions of dollars in business. The evidence showed union members rejoiced and took credit for causing the janitorial business to lose some of its

customers.

Attorneys [Nathan Campbell](#), [Adam Milasincic](#) and firm co-founder [John Zavitsanos](#) of Ahmad, Zavitsanos, Anaipakos, Alavi & Mensing P.C., or AZA, represented Professional Janitorial. Mr. Zavitsanos told the jury that SEIU is “an evil, evil organization that used an intimidating campaign of extortion to try to run the janitorial service out of business.”

[See a video on AZA's website.](#)