

Legislate[®]

Key Legislative Developments Affecting Your Human Resources US

Volume 9 | Issue 14 | April 20, 2018

Changes on Horizon as New NLRB Chairman Sworn In; Other Appointees on Hold

On Monday, the National Labor Relations Board returned to full strength as management-side attorney John Ring was sworn in as chairman. Chairman Ring’s appointment ends the 2-2 Republican-Democrat split that had been in place since December 2017. The new Republican-majority board likely will look for opportunities to revisit some of the more union-friendly decisions of the Obama board. Meanwhile, the Senate confirmed Patrick Pizzella as the DOL’s new head of operations last week, as several other political appointees to fill leadership positions at the DOL and EEOC await confirmation.

In this issue: [NLRB’s New Composition](#) | [DOL’s New Head of Operations](#) | [Political Appointees on Hold](#) | [EEOC](#) | [OSHA](#) | [DOL](#) | [Looking Ahead](#)

NLRB’s New Composition

Management-side attorney, John F. Ring, was [sworn in](#) as chairman of the National Labor Relations Board (NLRB) on April 16, reestablishing a 3 to 2 Republican majority for the first time since former Chairman Phillip Miscimarra’s term expired on December 16, 2017. Ring replaces board member [Marvin Kaplan](#) as chairman. Kaplan will continue as a board member for a term that expires in 2020. As his chief counsel, Chairman Ring has named Peter Carlton, who previously served as Chairman Miscimarra’s chief counsel.



The new Republican-majority board likely will look for opportunities to change a number of the Obama board’s interpretations of the labor laws that it may view as overreaching. In his confirmation [hearing](#), for example, Chairman Ring signaled interest in revisiting the issue of joint employment, testifying that it’s “very important for the integrity of the Board to have some finality and clarity on the joint employment issue as soon as possible.” The newly reconstituted board may also decide to consider issues relating to employee use of company email systems and protections for employee conduct, both of which NLRB General Counsel Peter Robb previously asked the board to review.

DOL's New Head of Operations

By a 50 to 48 party-line [vote](#) on April 12, the Senate narrowly confirmed Patrick Pizzella as deputy secretary of the DOL. Nominated for the post last summer, Pizzella previously served as the acting head as well as a member of the Federal Labor Relations Authority. He also served at the DOL as assistant secretary of labor for administration and management in the administration of George W. Bush.

Other Political Appointees on Hold

Among the nominees currently awaiting Senate confirmation are those to fill vacancies on the EEOC, to head OSHA, and for other key positions at the DOL. Under Senate rules, President Trump had to renominate pending nominees who did not get a Senate confirmation vote before last year's session ended, restarting the confirmation process. However, Senate Democrats agreed to waive the restart requirement for the EEOC nominees.

EEOC

Last year, Janet Dhillon (R) and Daniel Gade (R) were nominated to fill the two remaining seats on the EEOC, with Janet Dhillon named as chair of the agency. Approved by the Senate HELP Committee last October, they await a confirmation vote. In addition, Commissioner Chai Feldblum (D), whose term expires on July 1, is waiting to be reconfirmed for a new term. While those nominations are pending, Victoria A. Lipnic (R) will continue serving as acting chair, along with Commissioners Feldblum and Charlotte A. Burrows (D) — both Obama appointees.

Last week, the Senate HELP Committee held a [hearing](#) on the nomination of Sharon Fast Gustafson to be the EEOC's general counsel. Notably, she represented the plaintiff in the *Young v. UPS* case on accommodating pregnant workers (see our *FYI Alert* from [March 26, 2015](#)). During the committee hearing, Gustafson touched on a number of hot-button issues, including LGBTQ rights, sexual harassment and wellness programs. The views Gustafson expressed on the importance of dispute resolution without litigation were significant not only because she would direct the EEOC's litigation program if confirmed, but also because Janet Dhillon expressed similar sentiments in a [hearing](#) before the same committee last September. The committee is currently [scheduled](#) to vote on Gustafson's nomination on April 24.

OSHA

Scott Mungo's nomination as assistant secretary of labor, Occupational Safety and Health Administration, continues to be delayed even though OSHA has been without a leader since the beginning of the Trump administration. Although his nomination to head the agency was reported out of the Senate HELP Committee last year, the Senate failed to vote on it, requiring President Trump to resubmit his nomination in January.

DOL

Among the Trump nominees for key DOL positions still awaiting confirmation are William Beach to be commissioner of the U.S. Bureau of Labor Statistics and Cheryl Stanton to head the Wage and Hour Division. While both nominees were cleared by the Senate HELP Committee last year, the full Senate did not vote on their confirmation before year-end, requiring President Trump to renominate them this year.

Looking Ahead

While key positions at the DOL and EEOC remain vacant for now, the NLRB is back at full strength. With a Republican majority in place, the board is poised to revisit some of the more controversial and union-friendly rulings

and policies over the past decade, and is expected to begin looking for opportunities to roll back decisions of the Obama-era board that expansively interpreted the National Labor Relations Act.

Authors

Nancy Vary, JD

Julia Zuckerman, JD

Produced by the Knowledge Resource Center of Conduent Human Resource Services

The Knowledge Resource Center is responsible for national multi-practice compliance consulting, analysis and publications, government relations, research, surveys, training, and knowledge management. For more information, please contact your account executive or email fyi@conduent.com.

You are welcome to distribute *Legislate*® publications in their entireties. To manage your subscriptions, or to sign up to receive our mailings, visit our [Subscription Center](#).

This publication is for information only and does not constitute legal advice; consult with legal, tax and other advisors before applying this information to your specific situation.