

HIGHLIGHTS**Puzder Hearing Forecast: Stormy With a Chance of Labor Policy**

By the time senators finish questioning Andrew Puzder on his fast-food company's racy ads, his undocumented housekeeper and allegations of domestic violence, they may not get to critical inquiries about a Trump Labor Department. **AA-1**

House Committee Weighs Rollback of Federal Labor Rules

A House subcommittee weighs the potential for legislation to undo some National Labor Relations Board actions under the Obama administration, including "ambush" union election rules and an expanded joint employer liability standard. **A-1**

Dress Code Liability? Sex Bias Not Always Clean-Cut

Would a workplace policy requiring female employees to wear dresses and makeup, or to otherwise "dress like a woman," be permissible under federal anti-discrimination laws? Well, as with nearly every legal question, it depends. **AA-2**

Employers Must Be 'Nimble' Navigating State Marijuana Laws

Employers will have to be nimble in dealing with ever-changing state marijuana laws, especially because change at the federal level is unlikely, attorneys tell Bloomberg BNA. **A-4**

Trump's Immigration Crackdown Triggers Anxiety Across U.S. Farms

Recent raids by U.S. immigration authorities targeting undocumented immigrants are creating a wave of distress through America's agricultural sector, an industry that's heavily dependent on foreign workers. **A-2**

American Air's Pilots Vote No-Confidence in CEO, Executives

The leaders of American Airlines' pilot union votes no-confidence in Chief Executive Officer Doug Parker, citing pay and scheduling problems, delays in implementing their full contract and a "toxic" company culture. **A-4**

'Rise Above It' Comment Fuels Wal-Mart Worker's Bias Claims

The first black female driver at a Wal-Mart distribution center in Sealy, Texas, was told by managers to "rise above it" when she complained about race and sex harassment, a federal lawsuit charges. **A-3**

CVS Theft Investigators Get OK for Overtime Class Action

CVS Pharmacy loss prevention investigators in New York get an initial court order letting them proceed with federal overtime class claims. **A-6**

Pay Transparency Push Intensifies, Despite Politics

Labor market conditions, not politics, are the main reason why more employ-

ALSO IN THE NEWS

LATEST CASES: Summaries of the latest labor and employment law rulings from the courts and the National Labor Relations Board, prepared by Bloomberg BNA legal editors. **BB-1**

EMPLOYMENT POLICIES: Workplaces that encourage innovation often are rewarded with increased employee productivity. **A-7**

REGULATIONS: Three bills that would change the agency rule-making process, including one that would curb the use of social media to communicate to the public about proposed rules, win House Oversight and Government Reform Committee approval. **A-8**

ERISA: ERISA doesn't prevent a Washington state court from garnishing the assets of a pension plan that charged high interest on its loans. **A-7**

SAFETY & HEALTH: A court case challenging OSHA's silica rule won't be delayed, a three-judge panel says, giving Trump administration officials less time to decide if they should defend the union-backed rule in court before companies must comply with the standard. **A-8**

BUSINESS OF LAW: In Workflows, Bloomberg BNA brings you the latest in the steady stream of news about practitioners of labor and employment law. **A-5**

FLSA

CVS Theft Investigators Get OK For Overtime Class Action

CVS Pharmacy Inc. loss prevention market investigators in New York secured an initial court order allowing them to proceed with federal overtime class claims (*Ansoralli v. CVS Pharmacy, Inc.*, 2017 BL 42814, E.D.N.Y., No. 16-1506, 2/13/17).

This is the only Fair Labor Standards Act case that has been filed in New York against CVS Pharmacy in at least the past three years, according to Bloomberg Law's Litigation Analytics. FLSA lawsuits made up about 11 percent of the company's federal court appearances in that time frame (about 39 out of 347). Most of the cases (23) were brought in Rhode Island.

Here, the investigators demonstrated that they are similar enough to other employees who could join an overtime collective action under the FLSA, Judge Ramon E. Reyes Jr. of the U.S. District Court for the Eastern District of New York ruled Feb. 13.

They alleged that a class of investigators under the supervision of two regional directors were required to perform "off the clock" work duties. Those tasks included answering phone calls, e-mails and text messages; attending meetings; communicating with law enforcement about shoplifting suspects; and performing surveillance on suspects. They claimed they weren't paid overtime wages for that work.

"CVS advanced a number of arguments in opposition to conditional certification, all in an effort to prevent hardworking employees from learning about unlawful pay practices," Michael Willemin, one of the attorneys representing the workers, told Bloomberg BNA Feb. 14. "The court's decision appropriately rejected these arguments and, as a result, we expect that more than 100 CVS employees will now be able to vindicate their rights under federal law," he said. Willemin is with Wigdor LLP in New York.

"CVS Health is committed to ensuring that its employees are compensated appropriately for the hours they work. We believe the allegations within the complaint have no merit and we plan to vigorously defend against them," company spokesman Mike De Angelis told Bloomberg BNA Feb. 14.

CVS Pharmacy reached a \$2.35 million settlement last March with 720 pharmacists in California who brought state overtime claims. It also agreed to pay \$900,000 in September 2015 to more than 4,000 employees who alleged they weren't paid for off-the-clock security screenings and work preparation.

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The opinion is available at http://www.bloomberglaw.com/public/document/Ansoralli_v_CVS_Pharmacy_Inc_No_16CV1506_CBA_RER_2017_BL_42814_ED.

Compensation

Pay Transparency Push Intensifies, Regardless of Politics

Labor market conditions, not politics, are the main reason why more employers these days feel compelled to provide pay transparency, consultants say.

A working definition of pay transparency comes from Tim Low, senior vice president of marketing at Seattle-based compensation data and software provider PayScale. "It's being transparent about data and the process" that determines how the employer sets employees' compensation, he told Bloomberg BNA Feb. 14.

"Millennial" employees have been leading the push for pay transparency since they began entering the workforce, Low said, and the internet has made pay information available to all. A tighter labor market is increasing the pressure on employers, he said.

In a November-December survey of 7,700 respondents, PayScale found employers ranging all over the spectrum in terms of transparency about compensation, with roughly half at what PayScale defines as the lowest level, simply telling employees "here's what you get paid."

Many aspire to do better, however, according to the survey. "While 31 percent of organizations overall currently identify on the mid-to-high end of the transparency spectrum," meaning that at the least they have a compensation plan and disclose some ranges, "54 percent of all organizations desire to reach that level of transparency in 2017," PayScale said.

That change may not be so easy for some employers to achieve this year. Low indicated that the survey showed "only 37 percent of respondents have a compensation strategy." That's a problem that could have wider ramifications, because "the choices that companies make or ignore making speak loudly to the market" about what the organization really values, he said.

Despite the difficulties, there are good reasons employers are feeling the pressure to be more open about pay. "It builds trust, the thing that makes employees want to contribute at a higher level," Low said. "Transparency, we think, is a really powerful tool to battle employee malaise."

Politics and Transparency. The political climate in Washington may be employer friendly, a situation that is unlikely to diminish the pressure on employers to open up about their pay practices; it may end up doing the opposite. "Since the election, we have not seen a significant increase in demands for pay transparency, although in the current political climate, where certain segments of society are feeling increasingly marginalized, those increased demands certainly could come," Shannon S. Pierce, of counsel with Reno, Nev.-based business law firm Fennemore Craig, PC, told Bloomberg BNA in a Feb. 14 e-mail.

"Employers continue to be in wait-and-see mode to determine what changes are going to come from the current administration," she said.

In the absence of that certainty, "companies are turning to the market for data" about pay, and the same is true of employees, Mykka Herner, modern compensa-