“Quickie” or “Ambush” Elections – April 14, 2015

- Significantly reduces time between petition filing and election (2-3 weeks shorter time frame)
  - **Impact:** less time for company to mount a counter-campaign

- Requires employers to give all employee contact info: phone, address, and email (previously only had to provide address)
  - **Impact:** easier for unions to contact employees and obtain support through informal means (in the past, this has been done largely through in-person card checks).
Federal Law – NLRB

* Quickie elections cont’d...
  * Reduces election issues that can be raised pre-hearing
    * Impact: “after the fact” challenges.
  * Combined with “micro units,” quickie elections give unions new organizing tool.
  * Early results are mixed – more petitions but not necessarily more elections or more union victories.
Federal Law - NLRB

* Joint Employer
  * *Browning-Ferris* decision: NLRB loosens standards for finding that two companies can be “joint employer” of an employee for liability purposes.
    * Impacts: parent / subsidiary; contractor / sub-contractor; franchisor / franchisee

* Union solicitation on work email
  * *Purple Communications* decision: NLRB holds that employees must be allowed to use work email for union solicitation during non-work time.
June 2015: proposed regulations amending FLSA overtime exemptions

- Significant increase (double) salary basis for "white collar" - executive, administrative, and professional - exemptions
- Proposed rule did not alter duties test but final rule could
- Comment period ended in September; final rule expected out July 2016.
Federal Law - DOL

- Misclassification (ongoing initiative)
  - Independent contractor v. employee
  - August 2014: Alabama signed cooperation pact with US DOL to crack down on misclassification in state.
Federal Rules of Civil Procedure

- Impact on employment law cases
  - Potential to narrow discovery
  - Potential to make discovery more cost effective
  - Uniform standards for discovery sanctions
  - Specific objections; specific timeframe for production
Supreme Court Review (Decided past term)

* Young v. UPS
  * Pregnancy accommodations
* Mach Mining v. EEOC
  * Narrow court review of EEOC conciliation efforts
* EEOC v. Abercrombie
  * Employer deemed to have knowledge regarding need for accommodation without explicit request
* Integrity Staffing Solutions v. Busk
  * No overtime pay for after-work security check
Supreme Court (To be heard this term)

Title VII case: Green v. Brennan (f/k/a Donahoe) (10th Cir. 2014)

Question presented: Under federal employment discrimination law, does the filing period for a constructive discharge claim begin to run when an employee resigns, as five circuits have held, or at the time of an employer's last allegedly discriminatory act giving rise to the resignation, as three other circuits have held?
* Arbitration cases:
  
  * **MHN Gov't Servs., Inc. v. Zaborowski** (9th Cir. 2014)
    Question presented: Whether California's arbitration-only severability rule is preempted by the Federal Arbitration Act.
  
    Question presented: Whether subscribers can pursue class claims in a California court despite an arbitration agreement barring class claims, and whether the Federal Arbitration Act preempts California case law that class action waivers in arbitration agreements are invalid.
Supreme Court
(To be heard this term)

* FLSA case:
  * **Tyson Foods, Inc. v. Bouaphakeo** (8th Cir. 2014)
  * Questions presented: (1) Whether differences among individual class members may be ignored and a class action certified under Federal Rule of Civil Procedure 23(b)(3), or a collective action certified under the Fair Labor Standards Act, where liability and damages will be determined with statistical techniques that presume all class members are identical to the average observed in a sample; (2) Whether a class action may be certified or maintained under Rule 23(b)(3), or a collective action certified or maintained under the FLSA, when the class contains hundreds of members who were not injured and have no legal right to any damages.
Unpaid internship standard adopted

- Schumann v. Collier Anesthesia, P.A.
  - Ditches US DOL six-factor test
  - Adopts 2nd Circuit seven factor test
- Bottom lines:
  - Court looks at who is benefiting most by the arrangement and how much actually tied to education
  - Most internships should be paid because of closer scrutiny
11th Circuit

- Applicants can assert disparate impact claim under ADEA
  - Villarreal v. R.J. Reynolds Tobacco Co.
    - Court found that applicants could challenge pre-employment practice under ADEA using disparate impact theory.
    - Case of first impression for 11th Circuit.
State Law Trends

* Paid sick leave
* Marijuana
* Gender identity
* Ban the box / criminal background reform
* Gender equity in pay
* Significant minimum wage increases
* Pregnancy protections
* Work scheduling / notice protections
* Guns
* More local employment laws
On the horizon...

* Federal initiatives (regulatory or legislative)
  * Wage equity issues - minimum wage, overtime exemption changes, gender equity, etc. – DOL, Congress
  * Independent contractors – DOL, OSHA, NLRB
  * Joint employer – DOL, OSHA, NLRB
  * Gender identity / sexual orientation – EEOC, Congress?
  * Paid sick / parental leave – Congress?
  * ACA related legislation
Questions?