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Subject: The Biggest Employment Cases Of 2016

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## PUBLIC POLICY

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Monday, December 19, 2016

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### TOP NEWS

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#### Analysis

#### [The Biggest Employment Cases Of 2016](#)

This year saw a historic decision allowing private college students to unionize, the president of Fox News toppled by a sexual harassment suit, the seeming demise of the Department of Labor's overtime rule update, and more. Here attorneys discuss the biggest employment law cases of 2016

#### Analysis

#### [The Biggest Immigration Cases Of 2016](#)

There was no shortage of immigration litigation this year, with the U.S. Supreme Court deadlocking in the case over Obama's executive actions, the U.S. Securities and Exchange Commission bringing a major suit over alleged EB-5 visa fraud, and courts hearing challenges to work authorization rules for immigrants. Here, Law360 looks back at some of the biggest immigration cases from 2016.

#### [EPA Reaches Deal With States On Cross-State Pollution](#)

Eight northeastern states that petitioned the U.S. Environmental Protection Agency to crack down on interstate ozone pollution from upwind states will receive an answer to their petition before President Barack Obama leaves office, according to a notice published Friday, resolving a lawsuit by six of those states claiming the agency blew its deadline in responding to their petition.

#### [IRS Limits Gain Recognition For Certain Stock Distributions](#)

The Internal Revenue Service on Friday adopted regulations it had initially proposed in 2004 to limit the recognition of gain in stock distributions involving a predecessor corporation, with significant modifications to the definition of the predecessor in response to comments from the public.

#### [Obama Backs DNC Hack Response, Teasing Future Action](#)

President Barack Obama on Friday defended his administration's response to a pre-election hack of the Democratic National Committee that has been publicly attributed to Russia, repeatedly asserting that the U.S. government handled the incident appropriately and suggesting that further retaliation is still to come.

#### [DOL Floats Anti-Bias Rule For Apprenticeships](#)

The U.S. Department of Labor on Friday issued a new rule updating equal

### LAW FIRMS

Baker Botts  
Barnes & Thornburg  
Beck Redden  
Bracewell  
Bryan Cave  
Chadbourne & Parke  
Covington & Burling  
Cozen O'Connor  
Crowell & Moring  
Curtin & Heefner  
DLA Piper  
Davis Graham  
Debevoise & Plimpton  
Dinsmore & Shohl  
Earthjustice  
Edelson PC  
Epstein Becker Green  
Eversheds LLP  
Faegre Baker  
Foley & Lardner  
Foley Hoag  
Gardere Wynne Sewell  
Gibson Dunn  
Greenberg Traurig  
Haynes and Boone  
Hickey & Evans  
Hogan Lovells  
Jenner & Block  
Jones Day  
Kirkland & Ellis  
Latham & Watkins  
McGuireWoods  
McKool Smith  
Miller Mayer

employment opportunity protections in apprenticeships to include greater protections for individuals over 40 as well as for disability, genetic information and sexual orientation.

## BANKING & SECURITIES

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### NJ Pol Blasts Trump's SEC Chair Pick Over GWB Scandal

A New Jersey legislative leader has urged four U.S. senators to block President-elect Donald Trump's anticipated nomination of a Gibson Dunn partner for chair of the U.S. Securities and Exchange Commission, saying she took part in a sham investigation that cleared New Jersey Gov. Chris Christie of wrongdoing in the George Washington Bridge lane-closing scandal.

### 4th Circ. Tosses Another SEC Admin Court Challenge

The Fourth Circuit on Friday became the fifth appellate court to find challenges to the constitutionality of the U.S. Securities and Exchange Commission's administrative court must first be brought before the tribunal itself, sending a Maryland financial adviser to face a suit that has already resulted in more than \$4 million in penalties.

### Sens. Knock CFTC For Not Finishing Position Limit Rule

Three U.S. senators this week criticized the Commodities Futures Trading Commission for failing to pass a final rule limiting speculative positions on derivatives last week despite three years of work on the proposed rule.

## ENERGY & ENVIRONMENTAL

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### New ND Gov. Backs Dakota Access Pipeline On First Day

North Dakota's new Republican governor spoke out in support of the Dakota Access pipeline on his first day in office Thursday, calling on President Barack Obama's administration to grant an easement needed to finish the project and saying the federal government should reimburse the state \$17 million in costs caused by "unjustified political delays."

### EPA Defends Lower Renewable Fuel Requirements At DC Circ.

The U.S. Environmental Protection Agency on Thursday urged the D.C. Circuit to reject challenges to the latest volume obligations the agency set for the Renewable Fuel Standard program, saying it was within its authority to lower the amounts of some fuels.

### EPA Takes Coal Jobs Ruling Fight To 4th Circ.

The U.S. Environmental Protection Agency said Friday it would appeal to the Fourth Circuit a West Virginia federal judge's ruling that the agency has to better study the effects its environmental regulations have on jobs.

### Don't Put BLM Flaring Rule On Hold, Feds Tell Judge

The federal government urged a Wyoming federal court Thursday to reject a bid by states and industry groups to block implementation of a new Bureau of Land Management rule aimed at limiting the release of methane from drilling operations on federal and Native American lands.

### County, Rail Group Allowed To Weigh In On Pa. Well Denial

A Pennsylvania federal judge on Thursday allowed two outside motions, including one from a local development board, to intervene in a challenge to

Morgan Lewis

Morrison & Foerster

Morvillo LLP

Nelson Mullins

Norton Rose Fulbright

O'Melveny & Myers

Paul Weiss

Proskauer Rose

Quinn Emanuel

Reed Smith

Sanford Heisler

Skadden

Snell & Wilmer

Squire Patton Boggs

Steptoe & Johnson LLP

Sutherland Asbill

Vedder Price

Western Environmental Law  
Center

WilmerHale

## COMPANIES

3M Company

AT&T Inc.

American Bar Association

American Civil Liberties Union

American Enterprise Institute

American Hospital Association

American Petroleum Institute

American Soybean Association

Arizona Chamber of Commerce

CACI International Inc.

CTIA

Center for Biological Diversity

Comcast Corporation

Competitive Carriers Associatio

Consilio LLC

Delaware Riverkeeper Network

Environmental Defense Fund

Federation Internationale de

Football Association

Ford Motor Company

General Motors

Gilead Sciences Inc.

Google Inc.

Idenix Pharmaceuticals, Inc.

Immigrant Legal Resource Cen

the Delaware River Basin Commission's fracking moratorium and refusal to approve an exploratory natural gas well.

## HEALTH & LIFE SCIENCES

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### HHS Decries 'Impossible' Order On Medicare Appeals Backlog

The U.S. Department of Health and Human Services on Thursday protested a D.C. federal judge's order requiring it to eradicate its backlog of Medicare billing appeals by 2021, saying that to do so would be "impossible" without improperly paying claims, regardless of their merit.

### Texas Fetal Disposal Rule Change Halted Until January

New Texas rules requiring fetal tissue to be buried or cremated instead of disposed like other medical waste can't take effect until January under a temporary restraining order entered Thursday by a Texas federal judge.

## TRANSPORTATION & INFRASTRUCTURE

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### Uber, Calif. DMV On Collision Course Over Self-Driving Cars

The California Attorney General on Friday warned Uber it will take legal action unless the ride-hailing company obtains a permit from state regulators for self-driving cars it's testing on roadways in the Bay Area, the latest salvo in a deepening impasse between the tech giant and state officials.

## EMPLOYMENT

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### Arizona Chamber Challenges Minimum Wage Hike

The Arizona Chamber of Commerce is leading a charge to stop a newly approved minimum wage hike and paid sick leave ballot initiative from taking effect, filing a lawsuit in state court Thursday that says the proposal's lack of a state revenue generator and inclusion of multiple subjects violate the state's constitution.

### New OSHA Rule Revives 5-Year Injury Recording Period

The Department of Labor's Occupational Safety and Health Administration issued a final rule Friday requiring that companies note and keep records of workplace injuries for five years after they happen, attempting an end-run around a 2012 D.C. Circuit decision that shot down its prior continuing obligation rule.

### DC Circ. Won't Block DOL Fiduciary Rule For Trade Group

The D.C. Circuit on Thursday shut down the latest effort by the National Association for Fixed Annuities to block the U.S. Department of Labor's rule expanding the definition of a fiduciary for retirement account investment advisers, saying the insurance-industry trade group fell short of a high bar for injunctive relief.

## PRIVACY & CONSUMER PROTECTION

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### EU Regulators Offer Guidance On Data Protection Regulation

Europe's privacy regulators on Friday lent clarity to how they plan to enforce the bloc's looming general data protection regulation by issuing guidance that pushes companies to appoint data protection officers and develop tools that will allow consumers to easily transfer their data to another service provider.

Intellectual Ventures

Lyft Inc.

McDonald's Corporation

Murray Energy Corp.

NBCUniversal Inc.

Natural Resources Defense Council

New York Times Co.

New York University

Pfizer Inc.

Public Company Accounting Oversight Board

Publicis Groupe

Sasol Limited

Sierra Club

Symantec Corporation

T-Mobile USA Inc.

The DIRECTV Group, Inc.

Time Warner Cable

Time Warner Inc.

Trend Micro Inc.

Twitter Inc.

U.S. Chamber of Commerce

Uber Technologies Inc.

Valero Energy Corp.

Verizon Communications

Volvo Car Corp.

Yahoo! Inc.

## GOVERNMENT AGENCIES

Army Corps of Engineers

Bureau of Indian Affairs

Bureau of Labor Statistics

Bureau of Land Management

California Transportation Agency

Central Intelligence Agency

Commodity Futures Trading Commission

Delaware River Basin Commission

Employment and Training Administration

Energy Information Administration

Equal Employment Opportunity Commission

European Commission

Executive Office for Immigration Review

## Michigan Med Mal Compensation Bill Heads To Governor

The Michigan Senate recently approved a bill that would close a loophole allowing medical malpractice plaintiffs to sue for compensation for the charged amount of medical expenses rather than what is actually paid out by insurance companies.

## Trans Girl Can Keep Using Women's Bathroom, 6th Circ. Says

The Sixth Circuit on Thursday ruled that an Ohio school district must continue to let an 11-year-old transgender girl use the restroom that matches her gender identity while the school district appeals a trial court's ruling that required it to treat the student "as the girl she is."

## GOVERNMENT CONTRACTS

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### DOD Challenges Include Terrorism, Strategic Force, Money

The U.S. Department of Defense faces a wide range of management and performance challenges from combating terrorism to confronting territorial aggression from the likes of China and Russia, along with bolstering the full breadth of military capabilities while improving government contracting, the Pentagon's internal watchdog said Friday.

### NASA Issues Contractor Reporting Rule For \$10M Of Property

NASA on Friday finalized a rule that will require contractors working with \$10 million or more of the agency's property to submit monthly reports, as part of an effort to help assess the efficiency and effectiveness of asset management.

### GAO Dings Navy's Inadequate Cost Scrutiny On \$176M Project

The Government Accountability Office was not satisfied with how the U.S. Navy evaluated costs in awarding a \$176 million ship IT project, according to a bid protest decision made public Friday pressing the military branch to redo its analysis and make a new award if necessary.

## INTERNATIONAL TRADE

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### EU Dumping Duties On Indonesian Chem Additives OK: WTO

A World Trade Organization panel on Friday sided with the European Union in its dispute with Indonesia over anti-dumping measures imposed on imports of chemical additives, saying the EU acted correctly when imposing the duties.

## IMMIGRATION

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### DOJ Unleashes Rule On Unfair Immigration Job Practices

The U.S. Department of Justice brought its implementation of the unfair immigration-related employment practice provisions of the Immigration and Nationality Act up-to-date in a final rule published Friday, tweaking an August draft to address stakeholder worries the rule would sweep in neutral decisions.

### Justices Want More Info In Immigrant Detention Case

The U.S. Supreme Court Thursday requested supplemental briefs from parties in an immigration detention case centered on questions of whether detained immigrants attempting entry to the U.S. are entitled to bond hearings after lengthy periods in custody.

## NATIVE AMERICAN

Executive Office of the President

Federal Acquisition Regulatory Council

Federal Bureau of Investigation

Federal Communications Commission

Federal Trade Commission

Financial Crimes Enforcement Network

Government Accountability Office

Internal Revenue Service

National Aeronautics and Space Administration

National Highway Traffic Safety Administration

National Labor Relations Board

National Security Agency

New York State Department of Financial Services

Occupational Safety and Health Administration

Office of the Director of National Intelligence

Port Authority of New York & New Jersey

Securities and Exchange Commission

Southern Ute Indian Tribe

Standing Rock Sioux Tribe

Texas Health and Human Services Commission

U.S. Army

U.S. Attorney's Office

U.S. Department of Defense

U.S. Department of Education

U.S. Department of Health and Human Services

U.S. Department of Homeland Security

U.S. Department of Justice

U.S. Department of Labor

U.S. Department of the Interior

U.S. Environmental Protection Agency

U.S. Navy

U.S. Office Of Special Counsel

U.S. Supreme Court

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## BIA Removed Whistleblower Who Irked Colo. Tribe, Says OSC

The Bureau of Indian Affairs retaliated against and removed a whistleblowing employee after he angered Colorado's Southern Ute Indian Tribe by pointing out that some of its oil and gas lease agreements flouted both the agency's regulations and environmental statutes, the U.S. Office of Special Counsel said Thursday following an investigation.

## TELECOMMUNICATIONS

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### Media Groups Want FCC Rules Challenge Moved To 3rd Circ.

Two media policy groups intervening in a challenge to a Federal Communications Commission order imposing restrictive broadcast ownership rules on Friday urged the D.C. Circuit to bless the transfer of the appeal to the Third Circuit, citing the latter court's experience in hearing similar challenges to the agency's ownership rules.

### FCC Told To Rethink Cybersecurity Reporting Requirement

The Federal Communications Commission received petitions from several telecom trade groups, along with T-Mobile, taking up issues with the agency's efforts to open up spectrum for 5G wireless technology, with a common criticism among the filings targeting planned cybersecurity reporting requirements.

## EXPERT ANALYSIS

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### The Truth About The Russians And The Election

Last week, media outlets flooded the airwaves with dark tales of online Russian operatives who prevented Hillary Clinton from becoming U.S. president. However, the conclusory allegation of a Russian-orchestrated and targeted cyberstrike seems more akin to propaganda than truth, and is not only disquieting, but also irresponsible, says John Reed Stark, president of John Reed Stark Consulting LLC and former chief of the U.S. Securities and Exchange Commission's Office of Internet Enforcement.

### What The FCC Will Look Like In 2017

Given that the Republican Party will soon hold three of five commissioner seats at the Federal Communications Commission, its agenda will likely hold sway for at least the next four years. The FCC may shift its attitude toward issues such as spectrum management and major mergers, says Stephanie Roy of Steptoe & Johnson LLP.

### CPP Rollback May Impact SO2 Emissions Trading Markets

If the U.S. Environmental Protection Agency's Clean Power Plan is jettisoned or substantially scaled back by the D.C. Circuit or the next administration, then the resulting short-term regulatory uncertainty and the potential tapering of recent declines in sulfur dioxide emissions may affect sulfur dioxide emissions allowance prices, says David Fotouhi of Gibson Dunn & Crutcher LLP.

### The Panama Papers: The Story So Far, And What Comes Next

The offshore banking industry attracted global attention earlier this year with the publication of 11.5 million leaked documents detailing decades of information about over 200,000 bank accounts and shell companies. Jeremy Maltby and Grant Damon-Feng of O'Melveny & Myers LLP examine



government responses to the Panama Papers and offer tips for companies to minimize their risk of exposure to unlawful shell company activity and its consequences.

## Are Courts In The Discovery Driver's Seat?

I recently asked a panel of four federal court judges whether they expect courts to start taking a more active role in e-discovery. They answered with a resounding yes. However, their responses left me wondering whether courts are actually taking a more active role in discovery since the Federal Rules of Civil Procedure amendments took effect in December 2015, says Cristin Traylor of McGuireWoods LLP.

## LEGAL INDUSTRY

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### BigLaw Fails To Bend To GC Billing Needs, Survey Says

Corporate legal departments in 2016 had little faith in law firms to be change agents and drivers of innovation in a climate where departments are increasingly seeking cost-effective alternative fee arrangements, according to results of a survey recently published by Blickstein Group.

### More Work To Move In-House As Cos. Continue To Cut Costs

As corporate legal departments continue to strive for efficiency and cost cutting, the traditional work of outside counsel is becoming increasingly expendable, and with ever-improving legal technology, more and more legal work is expected to be brought back in-house, according to a new report.

### Chadbourne Pay Row Counterclaims Are Revenge, Attys Say

Chadbourne & Parke LLP engaged in "naked acts of retribution" when it countersued lawyers who have alleged the firm short-changed female partners and locked them out of leadership, according to a Friday filing from the attorneys.

### Eversheds, Sutherlands Ink Trans-Atlantic Deal

Sealing a relatively rare transatlantic law firm merger, partners of Atlanta-based Sutherland Asbill & Brennan LLP and the U.K.'s Eversheds LLP have voted to combine to create a new firm — 2,300-attorney global giant Eversheds Sutherland, the firms announced Friday.

### GC Cheat Sheet: The Hottest Corporate News Of The Week

The White House rolls out a multiagency IP enforcement scheme, the EEOC lays out the rights of workers with mental health conditions and BigLaw is a big target for data thieves. Those stories top the corporate legal news you may have missed last week.

### In Case You Missed It: Hottest Firms and Stories On Law360

For those who missed out, here's a look back at the law firms, stories and expert analyses that generated the most buzz on Law360 last week.

### My Strangest Day In Court: The 1995 Oklahoma City Bombing

When Timothy McVeigh detonated a rental truck full of fertilizer and fuel oil in front of the Alfred P. Murrah Federal Building on April 19, 1995, the explosion blew the windows out of our courtroom and the jurors jumped from their seats and dashed from the building. Plainly, there would be a mistrial, recalls Randy Gordon of Gardere Wynne Sewell LLP.

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