

**U.S. Department of Labor
Office of the Solicitor of Labor**



November 2020

TABLE OF CONTENTS

TAB 1: AGENCY ORGANIZATIONAL OVERVIEW	1
TAB 2: STATE OF PLAY	14
TAB 3: CALENDAR.....	40
TAB 4: BUDGET	41
TAB 5: AGENCY PERFORMANCE	45

TAB 1: AGENCY ORGANIZATIONAL OVERVIEW

Mission

The Office of the Solicitor's [mission](#)¹ is to meet the legal service demands of the entire Department of Labor. As the Secretary of Labor and other Department officials seek to accomplish the Department's overall mission and to further specific priorities, the Office of the Solicitor (SOL) provides legal advice regarding how to achieve those goals.

Organizational Structure

The Office of the Solicitor (SOL) was established by the Organic Act of March 4, 1913, with the creation of the Department of Labor as an entity distinct and separate from the Department of Commerce and Labor. The Act provided, however, that the Department of Justice assign the Solicitor of Labor. On June 10, 1933, President Franklin D. Roosevelt issued Executive Order 6166 which transferred the Solicitor from the Department of Justice to the Department of Labor. From 1933 to 1940, the Solicitor and staff were housed within the immediate Office of the Secretary of Labor. By administrative order on June 6, 1940, Secretary of Labor Frances Perkins transferred all Department attorneys and legal personnel to the supervision of the Solicitor of Labor, creating the Office of the Solicitor.

The Office of the Solicitor (SOL) meets the legal service demands of the entire Department of Labor (Department or DOL) to help achieve the Department's mission. SOL has all the traditional functions of an agency general counsel (e.g., providing advice about appropriations, employment law matters, ethics, procurement, regulations, and legislation), but unlike other federal agencies whose litigation is entirely handled by the U.S. Department of Justice, DOL has independent litigation authority under many of the laws DOL enforces. A list of important ongoing litigation handled by SOL can be found elsewhere in this book.

SOL works closely with the DOL agencies (who are SOL's clients) to develop and implement specific policies, programs, and strategies; provide the agencies legal advice and representation before a variety of courts and administrative tribunals; help advance DOL initiatives and priorities by working with the agencies to address legal issues and concerns, draft or review proposed legislation and regulations and other guidance; and advance or defend litigation crucial to the mission of Department agencies.

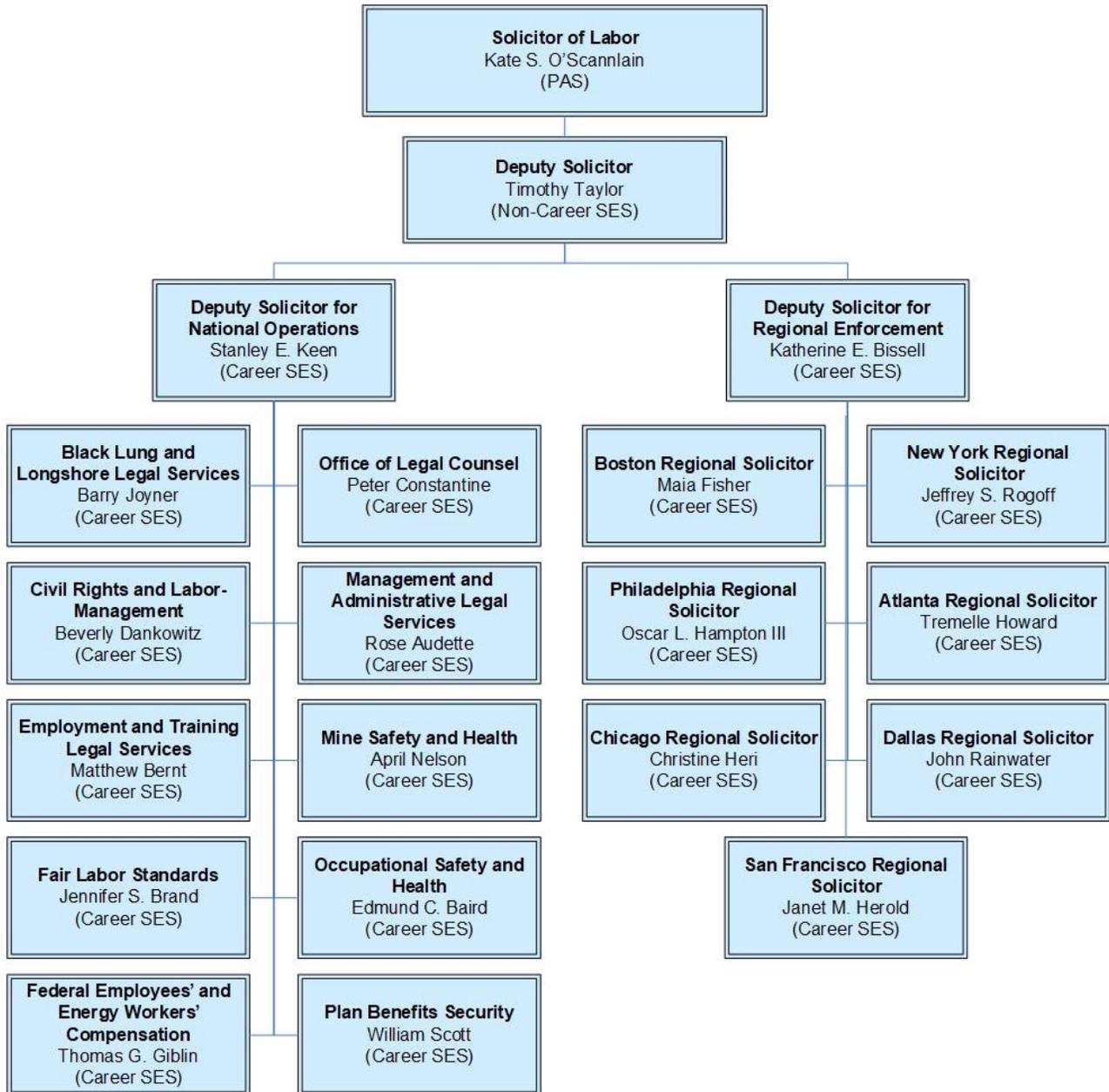
SOL's staff of approximately 650, including around 485 lawyers, is organized into 10 national divisions and 7 regional offices with 7 sub-regional or branch offices. Staff is divided nearly equally between the national divisions and regional offices. The national divisions counsel the Department and its agencies on a variety of matters, including those related to appropriations, employment law, ethics, procurement, intergovernmental affairs, advice on regulations and sub-regulatory guidance and program administration, legislation, and litigation, and, in some instances, handle district court and appellate litigation. The regional offices focus on district court-level litigation and administrative trial-level proceedings, while also counseling the

¹ <https://www.dol.gov/agencies/sol/about>

TAB 1: Agency Organizational Overview

agencies’ regional operations. SOL allocates work in the national office by client and subject matter; it allocates work in the regions by geographical area.

Organizational Chart



Divisions

Black Lung and Longshore Legal Services Division (BLLLS)

The Division of Black Lung and Longshore Legal Services (BLLLS) provides legal services in connection with federal statutes that afford benefits to certain workers who are injured or die as a result of their employment, and to the survivors of those workers. These statutes, which are administered by the Office of Workers' Compensation Programs (OWCP), are:

- The Black Lung Benefits Act; and
- The Longshore and Harbor Workers' Compensation Act, as well as its extensions, including the Defense Base Act and Outer Continental Shelf Lands Act.

The Division advises OWCP on its legal obligations in administering the statutes, and aids in preparing regulations that implement the statutes. In addition, Division attorneys represent OWCP in appellate litigation before the Benefits Review Board and the U.S. Courts of Appeals. Division attorneys regularly participate in appeals to defend the agency's interests and present the agency's interpretations of the statutes and their implementing regulations.

The Associate Solicitor, assisted by the Deputy Associate, heads the Division and oversees all legal work. BLLLS has six Counsels: Administrative Litigation and Legal Advice, Regulations and Legislation, Appellate Litigation and Enforcement, Appellate Litigation, Longshore, and Enforcement and Administrative. BLLLS currently employs 17 lawyers and 6 support staff.

Civil Rights and Labor Management Division (CRLM)

CRLM provides legal services to three major programs: the Office of Federal Contract Compliance Programs (OFCCP); the Office of Labor-Management Standards (OLMS); and the Civil Rights Center (CRC) – which is part of the Office for the Assistant Secretary for Administration and Management (OASAM) – as well as several other programs described below.

CRLM provides legal services to the OFCCP in enforcement efforts involving federal contractors and subcontractors arising under Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended. CRLM represents the Secretary in administrative hearings and appeals arising under the OFCCP's programs, provides legal services to the Regional Offices in their OFCCP enforcement work, and assists the U.S. Department of Justice with its representation of the OFCCP in defensive cases in federal court. CRLM also provides a wide range of other legal services to the OFCCP, including working closely with the agency to develop and draft regulations and sub-regulatory guidance, and providing legal advice about development and implementation of agency initiatives.

CRLM provides a broad range of legal services, including advice, litigation, and rulemaking to OLMS concerning the administration and enforcement of the Labor Management Reporting and Disclosure Act of 1959 (LMRDA). CRLM works with the U.S. Department of Justice to represent the Secretary in federal court in cases challenging private sector union officer elections

TAB 1: Agency Organizational Overview

conducted in violation of the LMRDA, and represents the Secretary in administrative enforcement of the parallel election requirements of the Civil Service Reform Act of 1978. CRLM also provides legal services to OLMS concerning the provisions of section 1209 of the Postal Reorganization Act of 1970, which directly apply the provisions of the LMRDA to labor organizations composed of postal employees; Section 1017 of the Foreign Service Act of 1980; Section 220(a)(1) of the Congressional Accountability Act of 1995; and 49 U.S.C. § 5333(b), which concerns the certification of mass transit employee protection agreements.

CRLM provides legal services to CRC on matters arising under the nondiscrimination provisions of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments Act of 1972, Sections 504 and 508 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 188 of the Workforce Innovation and Opportunity Act (WIOA). The division also represents CRC in internal equal employment opportunity cases and related matters.

Additionally, CRLM provides legal services to the Office of Apprenticeship regarding matters arising under 29 CFR Part 30, Equal Employment Opportunity in Apprenticeship and Training; to the Office of Job Corps as to its nondiscrimination obligations; the Office of Disability Employment Policy; the Center for Faith and Opportunity Initiatives; the Women's Bureau; and to the Veterans' Employment and Training Service regarding the Vets 4212 Form.

CRLM also maintains liaison with the Equal Employment Opportunity Commission and the U.S. Department of Justice, and participates in matters of common concern. In addition, CRLM provides advice to the Department, and assists in preparing regulations, legislative proposals, positions in *amicus* cases, and testimony in civil rights and labor-management matters.

The Associate Solicitor, assisted by the Deputy Associate, heads CRLM and oversees all legal work. CRLM has five Counsels: Civil Rights and Appellate Litigation, Interpretations and Advice, Labor-Management Policy, Civil Rights and Labor-Management Enforcement, and Special Programs. CRLM currently employs 20 lawyers and five support staff.

Employment and Training Legal Services Division (ETLS)

ETLS provides legal advice, rulemaking, and litigation services to the Employment and Training Administration (ETA), the Bureau of International Labor Affairs (ILAB) and the Veterans' Employment and Training Service (VETS).

ETLS assists ETA in implementing a number of statutes providing employment and training services, including WIOA and the Wagner Peyser Act. ETLS provides ETA with legal advice concerning a wide variety of employment and training programs that contribute to the more efficient functioning of the country's labor market by providing high quality job training, education, employment, and labor market information for adults and youth. ETLS provides legal services to ETA include regarding the approximately \$8 billion state and local workforce system funded through formula grants to states, the Job Corps program, and the dislocated worker grant programs. It also provides legal support for a variety of national discretionary grant programs, including the YouthBuild program, the Migrant and Seasonal Farmworker program, and the

Indian and Native American Program, and the registered and industry-recognized apprenticeship programs. ETLS also provides legal advice to a variety of ETA programs designed to provide income maintenance services, including the federal-state unemployment compensation program, the Disaster Unemployment Assistance program, and the Trade Adjustment Assistance program for workers whose employment has been adversely affected due to international trade. Finally, ETLS advises ETA's Office of Foreign Labor Certification (OFLC) in the development of regulations guidance, and on matters of program administration related to the employment-based immigrant and non-immigrant programs, including the PERM, H-1B, H-2A, and H-2B programs, and represents OFLC in administrative litigation before the Department's OALJ.

ETLS provides legal services to VETS, an agency that supports employment and training programs for veterans and separating service members, including the Jobs for Veterans State Grants and the Homeless Veterans' Reintegration and Transition Assistance Programs. It also assists VETS in carrying out its responsibilities under the Uniformed Services Employment and Reemployment Rights Act, which protects service members' civilian jobs while they perform military service and prohibits employment discrimination based on past, present, or intended service. ETLS also assists VETS in carrying out its responsibilities regarding enforcement of federal executive branch veterans' preference laws.

ETLS provides legal services to ILAB to assist it in carrying out the international activities of the Department, including responsibilities concerning the International Labor Organization and other international organizations. ETLS assists ILAB in developing protections for workers' rights in trade agreements and monitoring compliance with those agreements, including the United States-Mexico-Canada Agreement. ETLS assists ILAB with its mission to help promote core international labor standards (such as the prevention of the worst forms of child labor) across the world by reviewing technical assistance projects and reports addressing these issues, including ILAB's annual Findings on the Worst Forms of Child Labor.

The Associate Solicitor, assisted by the Deputy Associate, heads the Division and oversees all legal work. The Division has five Counsels: Employment and Training, Immigration Programs, International Affairs and Uniformed Services Employment and Reemployment Rights Act (USERRA), Job Corps and Apprenticeship, and Unemployment Programs. ETLS currently employs 23 lawyers and 1 support staff.

Fair Labor Standards Division (FLS)

The Solicitor's Fair Labor Standards Division is responsible for providing legal services in connection with the U.S. Department of Labor's administration and enforcement of a broad range of Federal labor standards laws providing basic protections for the Nation's workforce. These include:

- the minimum wage, overtime pay, child labor, and break time for nursing mothers provisions of the Fair Labor Standards Act;
- wage and working condition protections for farm workers under the Migrant and Seasonal Agricultural Workers Protection Act (MSPA);
- enforcement of OSHA field sanitation and temporary labor camp standards;

TAB 1: Agency Organizational Overview

- leave entitlement and job protections under the Family and Medical Leave Act;
- prevailing wages for workers on federal contracts under the Service Contract Act and Davis-Bacon and Related Acts;
- worker garnishment protections;
- various worker protections afforded to temporary foreign workers, including workers with H visas;
- numerous laws protecting whistleblowers; and
- various other laws providing basic labor protections to workers.

The Associate Solicitor, assisted by the Deputy Associate, heads FLS and oversees all legal work. FLS has six Counsels: Appellate Litigation, Contract Labor Standards, Child Labor and Special FLSA Projects, Legal Advice, Trial Litigation, and Whistleblower Programs respectively. FLS currently employs 25 lawyers and 5 support staff.

Federal Employees' and Energy Workers' Compensation Division (FEEWC)

FEEWC provides a variety of legal services to the OWCP with respect to several benefit programs it administers – the Energy Employees Occupational Illness Compensation Program Act (EEOICPA), the Federal Employees' Compensation Act (FECA), and the War Hazards Compensation Act (WHCA) – as well as administering the subrogation provisions of FECA on behalf of OWCP for all employees covered by the FECA. FEEWC also provides legal services to the entire Department concerning the Federal Tort Claims Act (FTCA) and the Military Personnel and Civilian Employees Claims Act (MPCECA). FEEWC provides litigation support to the Department of Justice in cases arising under the above-referenced statutes and benefit programs.

The Associate Solicitor, assisted by the Deputy Associate, heads FEEWC and oversees all legal work. FEEWC consists of three permanent units: the Claims and Compensation Unit, managed by the Counsel for Claims, which provides all legal services to OWCP relating to FECA and WHCA as well as to the Department regarding the FTCA and MPCECA; the Energy Unit, managed by the Counsel for Energy Employees Compensation, which provides all legal services to OWCP relating to EEOICPA; and the FECA Subrogation Unit, managed by the Counsel for FECA Subrogation, which administers the subrogation provisions of FECA on behalf of OWCP. FEEWC currently employs 17 lawyers and 25 administrative and support staff.

Office of Legal Counsel (OLC)

The Office of Legal Counsel (OLC) is responsible for providing a wide range of legal services to all agencies of the Department. The Office has four major areas of responsibility.

- First, the Office plays a major role in the Department's legislative activities by analyzing legislation impacting the Department, helping prepare testimony presented by Departmental at congressional committee hearings, and drafting proposed legislation.
- Second, the Office manages the Department's ethics program by providing advice and training and by administering the financial disclosure requirements.

TAB 1: Agency Organizational Overview

- Third, OLC provides legal advice on a number of areas relating to government organization and operations, most notably administrative law and procedure.
- The fourth area within OLC is the Honors Attorney Program, which provides challenging professional opportunities for outstanding law school graduates. Honors Program attorneys work in the Solicitor's Office either at the Department's headquarters in Washington, D.C., or in one of seven Regional Offices, gaining exposure to a broad range of substantive legal work in one of the government's preeminent legal offices.

The Associate Solicitor heads OLC and oversees all legal work. OLC has three Counsels: Ethics, Honors Program, and Legislative Affairs. OLC currently employs 25 lawyers and 3 support staff.

Management and Administrative Legal Services (MALS)

MALS is a combined legal and administrative office. It is responsible for providing legal services to the Department as a whole on a wide range of general law matters typically handled by federal “general counsel” offices, and also serves as SOL’s primary administrative office.

On the legal side, MALS provides advice and litigation representation to the Department on diverse general law areas, including federal procurement and contracting, internal employment law and labor relations, the Freedom of Information Act (FOIA) and Privacy Act, and matters involving third party subpoenas. MALS attorneys represent the Department in litigation and administrative hearings in all of these areas, and assist the U.S. Department of Justice in related federal court litigation. MALS also advises the Department on matters pertaining to appropriations law; delegations of authority, memoranda of understanding; intellectual property; information law; and a number of governmental administrative mandates, including the Federal Advisory Committee Act (FACA), the Federal Records Act, the Paperwork Reduction Act, the e-Government Act, and obligations relating to e-discovery and litigation support. In addition, the Division provides a full range of legal services to the following DOL agencies: OASAM; the Office of the Chief Financial Officer (OCFO); the Bureau of Labor Statistics (BLS); the Office of the Assistant Secretary for Policy (OASP); the Office of Public Affairs (OPA); and the EEOICPA Ombudsman.

On the administrative side, MALS is responsible for the management and administrative services that SOL provides to its component divisions, and for liaison with the Department’s central business offices. Among other things, MALS handles SOL’s internal systems for financial management and budgeting, human resources and labor relations, information technology, and litigation support. MALS also provides general administrative and technical support for SOL, such as by overseeing space utilization, and providing services pertaining to records management and technology purchase and maintenance. Additionally, the Office of Information Services within MALS serves as the Department’s FOIA administrative office, which includes responsibility for guidance and training to the decentralized FOIA offices throughout the Department and reporting on the Department’s overall FOIA performance.

The Associate Solicitor, assisted by two Deputy Associates, heads the Division and oversees all legal and administrative work. MALS has five legal Counsels: Appropriations Law; Employment

TAB 1: Agency Organizational Overview

Law; FOIA and Information Law; FOIA Appeals, Paperwork Reduction Act, and Federal Records Act; and Procurement Law. It also includes five administrative units: the SOL Human Resources Office, the SOL Financial Management Office, the SOL Legal Technology Unit, the SOL Litigation Support Unit, and the Office of Information Services (for DOL FOIA services). MALS generally has about 55 staff, equally divided between lawyers and administrative and support staff.

Mine Safety and Health Division (MSH)

The Solicitor's Division of Mine Safety and Health advises the United States Department of Labor's Assistant Secretary for Mine Safety and Health and the Mine Safety and Health Administration (MSHA) in connection with the development and enforcement of safety and health standards under the Federal Mine Safety and Health Act of 1977, as amended by the Mine Improvement and New Emergency Response Act of 2006 (Mine Act). The purpose of the Mine Act is to protect the safety and health of the Nation's miners. The Mine Act requires the Secretary of Labor or his or her representative to conduct periodic, unannounced safety and health inspections of the Nation's mines. The Mine Act also provides significant rights to miners to participate in ensuring safe and healthful mines. The Secretary has authority to compel immediate compliance with the Act and safety and health standards through the use of citations, orders, civil penalties, and other sanctions. Attorneys in the Division work in three practice areas: (1) standards and legal advice, (2) trial litigation, and (3) appellate litigation.

The Associate Solicitor, assisted by the Deputy Associate, heads MSH and oversees all legal work. MSH has three Counsels: Trial Litigation, Appellate Litigation, Standards and Legal Advice. MSH currently employs 19 lawyers and 3 support staff.

Occupational Safety and Health Division (OSH)

The Solicitor's Occupational Safety and Health Division (OSH) provides legal support to the Occupational Safety and Health Administration, the agency that ensures safe and healthy working conditions for workers. OSH provides legal services related to several worker-protection statutes:

- The Occupational Safety and Health Act of 1970
- Whistleblower protection provisions of the Surface Transportation Assistance Act and the Seaman's Protection Act

The OSH Division is responsible for appellate litigation in the U.S. Circuit Courts of Appeals and the Occupational Safety and Health Review Commission, and assists OSHA in developing standards, guidance, and interpretations. Division attorneys also work with OSHA to draft and review new regulations and supporting documentation. The OSH Division provides assistance to the SOL Regional Offices, particularly on high-profile, novel, and complex enforcement matters.

The Associate Solicitor, assisted by the Deputy Associate, heads OSH and oversees all legal work. OSH has seven Counsels: two for Appellate Litigation, two for Standards, two for General Legal Advice, and one for Special Litigation. OSH currently employs 28 lawyers and 4 support staff.

Plan Benefits Security Division (PBSD)

The Plan Benefits Security Division (PBS) protects the rights of America's workers and retirees to their pension, health and other employment-related benefits under the Employee Retirement Income Security Act of 1974 (ERISA) through federal district court enforcement litigation, appellate and amicus curiae litigation, and advice and opinions with respect to statutory changes, ERISA regulations, sub-regulatory guidance, and interpretations of ERISA issued by the Secretary of Labor. Under ERISA, the Secretary is responsible to protect the participants and beneficiaries of over 650,000 retirement plans and approximately 2.3 million health and welfare plans and their interests in the over \$8.7 trillion in assets held by those plans. In carrying out its mission, the Division's enforcement efforts, appellate and amicus practice, and regulatory and advice work cover the full range of ERISA issues.

The Associate Solicitor, assisted by the Deputy Associate, heads PBSD and oversees all legal work. PBSD has five Counsels: one for Appellate Litigation and Special Litigation, three for Litigation, and one for Regulations. PBSD is comprised of 30 attorneys and 7 support staff.

Regional Offices

The Regional Offices recommend and prosecute litigation in administrative law courts and federal district and bankruptcy courts throughout United States; provide legal and strategic advice and assistance to DOL worker protection agencies in support of their enforcement priorities; work cooperatively with state and local governments to achieve common worker protection goals; and assist U.S. Attorney's offices in the prosecution of criminal cases arising from DOL agency civil investigations. For the most part, staff attorneys in the Regional Offices may handle any of the DOL programs in their region.

Atlanta

The Atlanta Regional Office is responsible for civil trial litigation and legal advice and support for DOL for matters arising in Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee. The Atlanta Region has a branch office in Nashville, which focuses primarily on litigation in Tennessee and Kentucky, though the two offices increasingly share and partner work throughout the region.

The Regional Solicitor, assisted by the Deputy Regional Solicitor, heads the Atlanta Region and oversees all legal work. An Associate Regional Solicitor manages the Nashville Office. The Atlanta Region has seven Counsels: Wage Hour, OSHA, Civil Rights, ERISA, and two MSHA Counsels, one in each city. There are 26 attorneys in Atlanta and 14 attorneys in Nashville, with 17 support staff.

Boston

The Boston Regional Office is responsible for civil trial litigation and legal advice and support for the DOL for matters arising in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

TAB 1: Agency Organizational Overview

The Regional Solicitor, assisted by the Deputy Regional Solicitor, heads the Boston Region and oversees all legal work. The Boston Region has four Counsels: OSHA, ERISA, Wage Hour Programs and Civil Rights. The Boston Region employs 27 attorneys and five support staff.

Chicago

The Chicago Regional Office is responsible for civil trial litigation and legal advice and support for DOL for matters arising in Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, Ohio, and Wisconsin. It also handles ERISA matters arising from Kentucky. The Chicago Region has two branch offices located in Kansas City and Cleveland.

The Regional Solicitor, assisted by the Deputy Regional Solicitor, heads the Chicago Region and oversees all legal work. Associate Regional Solicitors manage the offices in Cleveland and Kansas City. Chicago has five Counsels: OSHA, MSHA, Wage Hour, ERISA and Civil Rights. Cleveland has two Counsels: Wage Hour/Civil Rights and OSHA. Kansas City also has two Counsels: Wage Hour and OSHA/MSHA. The Chicago Region employs a total of 69 employees – 35 in Chicago, 19 in the Kansas City, and 15 in Cleveland – 57 are lawyers and 12 are support staff.

Dallas

The Dallas Regional Office is responsible for most civil trial litigation and legal advice and support for DOL for matters arising in Arkansas, Colorado, Louisiana, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming. The Dallas Region has a branch office in Denver.

The Regional Solicitor, assisted by the Deputy Regional Solicitor, heads the Dallas Region and oversees all legal work. An Associate Regional Solicitor manages the Denver Office. Dallas has five Counsels: Civil Rights, ERISA, MSHA, OSHA, and Wage Hour. Denver has two Counsels: Safety and Health and Wage Hour. The Dallas office has 23 attorneys and 5 support staff. The Denver office consists of 16 attorneys and 4 support staff.

New York

The New York Regional Office is responsible for most civil trial litigation and legal advice and support for DOL in New Jersey, New York, Puerto Rico, and the U.S. Virgin Islands.

The Regional Solicitor, assisted by the Deputy Regional Solicitor, heads the New York Region and oversees all legal work. New York has four Counsels: Wage Hour, ERISA, Civil Rights (who focuses on OFCCP, Whistleblower, and internal labor relations issues), and OSHA. The New York Region has 33 lawyers and 7 support staff.

Philadelphia

The Philadelphia Regional Office is responsible for most civil trial litigation and legal advice and support for DOL for matters arising in Pennsylvania, Maryland, Delaware, Virginia, West

TAB 1: Agency Organizational Overview

Virginia, and Washington, D.C. The Philadelphia Region has a branch office is in Arlington, Virginia.

The Regional Solicitor, assisted by the Deputy Regional Solicitor, heads the Philadelphia Region and oversees all legal work. An Associate Regional Solicitor manages the Arlington Office. Philadelphia has five Counsels: Wage Hour, Civil Rights, MSHA/BLBA, ERISA and OSHA. Arlington has two Counsels: Wage Hour and MSHA. The Philadelphia Region has 32 attorneys and 8 support staff in its 2 offices.

San Francisco

The San Francisco Regional Office is responsible for civil trial litigation and legal advice and support for DOL for matters arising in Alaska, American Samoa, Arizona, California, Commonwealth of the Northern Mariana Islands, Guam, Hawaii, Nevada, Idaho, Oregon, and Washington. The San Francisco Region has branch offices in Los Angeles and Seattle.

The Regional Solicitor, assisted by the Deputy Regional Solicitor, heads the San Francisco Region and oversees all legal work. Associate Regional Solicitor manages the Los Angeles and Seattle Offices. San Francisco has four Counsels: Civil Rights, Labor Relations and Ethics, ERISA, and Wage Hour, with the Deputy supervising OSHA matters across the region. Los Angeles has a Wage and Hour Counsel, with the Associate Regional Solicitor supervising MSHA throughout the region. The Associate Regional Solicitor in Seattle supervises whistleblower matters across the region. The San Francisco Region typically bears a complement of 40 to 50 staff, with approximately 2-3 support staff per office.

TAB 1: Agency Organizational Overview

Workforce At-A-Glance

**DEPARTMENT OF LABOR EMPLOYMENT *
AS OF 11/1/2020 - SOL**

AGENCY			
Subagency	National Office	Regional Office	Total
SOL	302	341	643
Total	302	341	643
RACE & GENDER			
Ethnicity	F	M	Total
American Indian	2	1	3
Asian	28	6	34
Black	117	23	140
Hispanic	24	15	39
Two or more Races	9	3	12
White	234	181	415
Total	414	229	643

BARGAINING UNIT	
Local 12	193
NCFLL	47
Non-BU	403
SUPERVISORY**	
Non Supervisor	504
Supervisor	139
WORK SCHEDULE	
F-Full Time	638
P-Part Time	5
REGIONS	
Atlanta	46
Boston	36
Chiago	68
Dallas	50
New York	39
Philadelphia	59
San Francisco	43
Natl Ofc	302
Total	643

GRADE DISTRIBUTION	
00	20
04	1
06	1
07	6
08	32
09	10
11	52
12	48
13	28
14	154
15	291
Total	643
DISABLED STATUS	
No Disability	557
Non-targeted	69
Targeted	17
APPOINTMENT TENURE	
Indefinite	11
Permanent	631
Temporary	1
RETIREMENT ELIGIBILITY	
Early Out	89
Eligible	119
Not Eligible	435

METRO D.C. AREA EMPLOYEES BY BUILDING		
FRANCES PERKINS BLDG		302
MSHA ARLINGTON-CRYSTAL GATEWAY		33
Total		335
Includes regional employees working in the D.C. area		
GRADE 13 & ABOVE		
Ethnicity	F	M
American Indian	1	1
Asian	24	6
Black	43	11
Hispanic	17	13
Two or more Races	6	3
White	199	170

* Permanent and Temporary Employees

** Supervisor count includes manager levels 2 and 4

Organizational Changes During the Past Four Years

SOL has not experienced any major organizational changes in the past four years.

Key Leaders

Political Leadership

- **Kate O’Scaannlain**, Solicitor of Labor
- **Timothy Taylor**, Deputy Solicitor

Front Office Senior Executives

- **Stanley E. Keen**, Deputy Solicitor for National Operations
- **Katherine E. Bissell**, Deputy Solicitor for Regional Enforcement

National Office Senior Executives

- **Rose Audette**, Associate Solicitor for MALS
- **Peter Constantine**, Associate Solicitor for OLC
- **Barry Joyner**, Associate Solicitor for BLLLS
- **Beverly Dankowitz**, Associate Solicitor for CRLM
- **Matthew Bernt**, Associate Solicitor for ETLs
- **Jennifer S. Brand**, Associate Solicitor for FLS
- **Thomas G. Giblin**, Associate Solicitor for FEEWC
- **April Nelson**, Associate Solicitor for MSH
- **Edmund C. Baird**, Associate Solicitor for OSH
- **William Scott**, Associate Solicitor for PBSO

Regional Office Senior Executives

- **Maia Fisher**, Regional Solicitor in Boston
- **Jeffrey S. Rogoff**, Regional Solicitor in New York
- **Oscar L. Hampton III**, Regional Solicitor in Philadelphia
- **Tremelle Howard**, Regional Solicitor in Atlanta
- **Christine Heri**, Regional Solicitor in Chicago
- **John Rainwater**, Regional Solicitor in Dallas
- **Janet Herold**, Regional Solicitor in San Francisco

TAB 2: STATE OF PLAY

Policy and Regulatory Issues

SOL works with the DOL client agencies to advance their mission and priorities. In other words, SOL provides legal services to advance the policies and priorities of the Department. The SOL Operating Plan lays out the significant policy, regulatory, and litigation initiatives for the year and provides agency by agency milestones to be accomplished.

This briefing book does not attempt to summarize all the policy and regulatory issues of the Department, though of course SOL advises on almost all of these issues. Summaries of those policy and regulatory issues can be found in the briefing books of our clients. Below, however, are two initiatives which are “owned” by SOL.

FOIAXpress

In December 2018, the Deputy Secretary launched a FOIA Modernization Initiative to evaluate the overall effectiveness of the Department's FOIA program which, among other things, evaluated the need to leverage technology to help the Department and its free standing, decentralized agency components modernize the task of processing FOIA requests. After extensive research and product demonstrations, Departmental leadership decided to invest in FOIAXpress, a FOIA tracking solution that has the capacity to automate the lifecycle of a FOIA request from submission to the final delivery of documents. The system includes request and correspondence management, electronic receipt and posting capabilities, document review and redaction, an electronic records repository, and reliable annual and *ad hoc* FOIA reporting. Not only will FOIAXpress manage initial FOIA requests but it also has an added capability that will provide access to FOIA case files documenting administrative actions on FOIA matters to assist our legal staff who adjudicate FOIA appeals and defend the agency in FOIA litigation. As of October 1, 2020, the Department has fully launched FOIAXpress for 681 licensed users, representing each DOL agency component with the exception of the Office of Inspector General. On a parallel track, staff within the Office of the Solicitor and OASASAM OCIO are working with the designated contractors to migrate data from the legacy data systems. Once data migration work is completed, FOIAXpress will become the single source for FOIA data and FOIA case management.

DOL Ethics Program

DOL's ethics program is administered by the SOL the Solicitor serves as the Designated Agency Ethics Official (DAEO). The Associate Solicitor for Legal Counsel, a career SES, serves as the Alternate DAEO and manages the day-to-day operations of DOL's ethics program with the assistance of a team of career ethics attorneys. SOL's regulatory mandated responsibilities in this area include: Providing advice and counseling to prospective and current employees regarding government ethics laws and regulations; conducting ethics training; taking appropriate action to resolve conflicts of interest and the appearance of conflicts of interest; and administering the financial disclosure reporting system.

Management

SOL's most important resource is its people. As such, the management of SOL is an important priority. SOL Leadership, including the SOL Front Office, Associate Solicitors, Deputy Associate Solicitors, Regional Solicitors, Deputy Regional Solicitors, and Associate Regional Solicitors participate in a weekly Leadership Meeting. Resource management and strategic management advice also is provided to the Solicitor and Deputy Solicitors through the Strategic Management Advisory Committee and the Budget Advisory Committee, both of which consist of two Associate Solicitors and two Regional Solicitors. Each week SOL compiles a significant activities report, which is circulated across SOL.

SOL continues to promote staff engagement and development. The SOL Training Committee, the membership of which includes managers and employees, develops an annual training program for SOL wide training. Trainings during FY 2019 and FY 2020 included program/counsel conferences, NITA trial and deposition trainings, writing training, paralegal training and regional conferences. Over the past years, SOL has developed the concept of SOL University to encourage virtual trainings utilizing peer to peer training on current litigation or management topics. SOL also maintains a very successful mentoring program and an internal leadership development program.

Finally, SOL continues to strive to create positive incentives for its employees. Five SOL awards – three for attorneys, one for support staff, and one for managers – are given annually to employees in recognition for outstanding work, and SOL continues its program of annual attorney promotions to GS-15 paygrade.

Significant Litigation

October 2020 Note: The following case list includes significant cases in FY2020 and is representative of cases currently in litigation. Some of the listed cases are pending while others were resolved in FY 2020. SOL prepares updated weekly reports of significant cases for the Solicitor and Office of the Secretary, which contain non-public information and will be provided to incoming officials as appropriate.

This document is organized by Department of Labor (DOL) agency, then statute/program/sub-program, and then in the following order:

- Supreme Court
- U.S. Courts of Appeal in order by Circuit Number (non-number circuits (e.g., D.C.) are listed first)
- U.S. District Courts
- Administrative Bodies
 - Administrative Review Board
 - DOL Office of Administrative Law Judges
 - OSH/Federal Mine Safety and Health Review Commission
 - OSH/Federal Mine Safety and Health Review Commission Administrative Law Judge

- Other

In a Supreme Court, U.S. Court of Appeals, or district court case, if Scalia or Department of Labor is in the case name, then that likely means that the Department is a party to the lawsuit. If Scalia or Department of Labor is not in the name, then likely we are participating as amicus (“friend of the court”) and have submitted (either on our own or because the Court asked us to) a brief explaining the Department’s position on the matter.

Employee Benefit Security Administration

Case Name: Rutledge v. Pharmaceutical Care Management Ass’n.

Venue: Supreme Court

Issue: Whether ERISA preempts a state’s regulation of the rates at which pharmacy benefits managers reimburse pharmacies.

Case Name: New York v. U.S. Department of Labor

Venue: D.C. Circuit

Issue: Whether a DOL rulemaking concerning group health plans offered through an association of employers (referred to as Association Health Plans or “AHPs”) violates the Administrative Procedure Act by deviating from ERISA’s definition of “employer” and prior DOL guidance. Eleven states and the District of Columbia sued DOL, contending that the AHP rule impermissibly relaxes the standards by which employers can form ERISA-covered AHPs (which generally are large group health plans), thereby permitting employers to evade the requirements that the Affordable Care Act imposes on small-group plans. The United States District Court for the District of Columbia struck down the rule in March 2019.

Case Name: Ovist v. Unum

Venue: First Circuit

Issue: Whether an ERISA plan has the burden of proving that a limitation on benefits applies after the participant has made a prima facie case of coverage.

Case Name: Scalia v. Evolve Bank & Trust

Venue: Fourth Circuit

Issue: Whether defendants Evolve Bank & Trust, as trustee of the Sentry Equipment Erectors, Inc. Employee Stock Ownership Plan, and Adam Vinoskey, Sentry’s founder and CEO, breached their fiduciary duties in connection with the ESOP’s purchase of Sentry stock from Vinoskey in 2010. After a bench trial, the district found that defendants breached their fiduciary duties, and that as a result, the ESOP overpaid for the stock by approximately \$6.5 million, for which defendants are liable.

Case Name: Howard Jarvis Taxpayers Ass’n. v. The California Secure Choice Retirement Savings Program

Venue: Ninth Circuit
Issue: Whether California's Secure Choice Act, which requires certain employers to facilitate the enrollment of their employees in an individual retirement account program (known as CalSavers) if the employer does not offer another qualifying retirement plan, is preempted by ERISA section 514(a), 29 U.S.C. § 1144(a), because it makes reference to and has a connection with ERISA-covered plans.

Case Name: White Mountain Apache Tribe v. Scalia
Venue: U.S. District Court for the District of Columbia
Issue: Whether the Secretary wrongfully assessed \$140,000 in administrative penalties against WMAT under ERISA section 502(c)(2) after the Tribe failed to submit Independent Qualified Public Accountant reports with its annual report to the Department for the Tribe's ERISA-covered retirement plan, as required by ERISA and the regulations. WMAT asks the Court to set aside the Department's actions as arbitrary and capricious, refund the penalties assessed by the Department, and provide other declaratory and injunctive relief.

Case Name: Scalia v. Reliance Trust Company
Venue: U.S. District Court for the District of Arizona
Issue: Whether fiduciaries of the RVR ESOP violated ERISA sections 404 and 406 by causing the Plan to pay more than adequate consideration for RVR stock. The Secretary alleges that the ESOP fiduciaries caused an overpayment by using a truncated investigation into the company value and failing to properly consider relevant valuation factors such as lack of company control by the ESOP and the dilutive effect of warrants and stock appreciation rights.

Case Name: Data Marketing Partnership, LP v. Scalia
Venue: U.S. District Court for the Northern District of Texas
Issue: Whether plaintiff's benefit arrangement is a single employer ERISA-covered health plan and not a Multiple Employer Welfare Arrangement as defined by ERISA.

Case Name: Scalia v. DST Systems, Inc. and Ruane, Cunniff & Goldfarb, Inc.
Venue: U.S. District Court for the Southern District of New York
Issue: Whether the fiduciaries, including the investment manager, of the DST 401(k) profit sharing plan failed to properly diversify plan assets by investing heavily in a single pharmaceutical company, after which the stock value dropped significantly causing plan losses.

Case Name: Scalia v. Kavalec
Venue: U.S. District Court for the Northern District of Ohio
Issue: Whether fiduciaries of the Fleet Owners Insurance Fund improperly paid themselves more than \$1.5 million in compensation over a six-year period, approving unreasonable and excessive travel expenses, allowing a former union officer to participate in the plan at no cost, and failing to comply with the Affordable Care Act and Health Insurance Portability and Accountability Act.

Case Name: Scalia v. Reliance Trust
Venue: U.S. District Court for the Northern District of Minnesota
Issue: Whether fiduciaries of the Kurt Manufacturing Company, including the board of directors and the independent fiduciary Reliance Trust, improperly caused the Plan to pay more than adequate consideration for Kurt stock.

Case: Scalia v. TPP Holdings, Inc., et al.
Venue: U.S. District Court for the Northern District of Georgia (on remand)
Issue: Whether the fiduciaries of the TPP Holdings, Inc. Employee Stock Ownership Plan, Robert Preston and the company, improperly caused the Plan to pay for more than adequate consideration for the company's stock, because the owner both misled the valuation company about the level of control the ESOP would have and pushed one sale of stock before the valuation was complete.

Case: Secretary v. Advance Benefit Management Systems USA, Inc. et al.
Venue: U.S. District Court for the Northern District of Georgia
Issue: Whether defendants, third-party administrators to multiple health care plans, commingled, misappropriated, mismanaged, and diverted for their own use plan funds that were intended to be used for payment of uninsured claims, leaving more than \$7,000,000 in unpaid claims.

Employment and Training Administration

Immigration Programs

Case Name: Panda, et al. v. Secretary of Labor, Secretary of Homeland Security, Secretary of State
Venue: D.C. Circuit (on appeal to consider denial of preliminary injunction)
Issue: Whether Presidential Proclamation 10052 (suspending the entry of certain immigrant and nonimmigrants into the United States on the basis that they present a risk to the U.S. labor market following the COVID-19 outbreak), and DHS's and DoS's application thereof, is ultra vires and unlawful action under the INA and APA as well as violative of the Equal Protection and Due Process clauses of the U.S. Constitution.

Case Name: Outdoor Amusement Business Assn., et al. v. DOL, ETA, WHD, DHS, USCIS
Venue: Fourth Circuit
Issue: Whether the district court correctly granted summary judgment for the Government in a challenge to DOL's role in the H-2B temporary non-agricultural employment program, including among other things whether the complaint is time-barred, whether plaintiffs followed the proper procedures for a certification from DOL and DHS, and whether the agencies properly issued joint rules.

Case Name: Padilla Construction Co., et al. v. Secretary of Labor, ASET, OFLC Administrator, Secretary of Homeland Security, DHS, USCIS Director

Venue: U.S. District Court for the Central District of California
Issue: Whether DOL’s adoption and modification of application-processing/assignment procedures for the H-2B temporary non-agricultural employment program through policy announcements is unlawful rulemaking in violation of the APA and whether USCIS’s lottery selection process violates the Immigration and Nationality Act.

Case Name: Chamber of Commerce, et al. v. Secretary of Labor, DOL, Secretary of Homeland Security, DHS

Venue: U.S. District Court for the Northern District of California
Issue: Whether DOL’s decision to issue an Interim Final Rule, with an immediate effective date, amending regulations governing the prevailing wages for employment opportunities that U.S. employers seek to fill with foreign workers on a permanent or temporary basis through certain employment-based immigrant visas or through H-1B, H-1B1, or E-3 nonimmigrant visas for “specialty occupations” violated the APA requirement for notice-and-comment. The plaintiffs also challenge DHS’s decision to issue an interim final rule, with an effective date of December 7, 2020, which amends the definition and standards for a “specialty occupation,” among other changes to the H-1B program. (See also ITServe and Purdue University cases below.)

Case Name: Calixto, et al. v. Secretary of Labor, DOL

Venue: U.S. District Court for the District of Columbia

Issue: Whether DOL’s alleged failure to give effect to the revised prevailing wage determination methodology for the H-2B temporary non-agricultural employment program set forth in the 2013 Interim Final Rule, as embodied by supplemental prevailing wage determinations (SPWDs), is arbitrary and capricious under the APA. On March 26, 2020, the plaintiffs sought leave to amend their complaint after DOL issued a notice, on March 13, 2020, withdrawing its December 17, 2014, Notice of Intent to Issue a Declaratory Order (Notice of Intent). The Notice of Intent had proposed to overrule the Board of Alien Labor Certification Appeals’ decision in *Island Holdings*, 2013-PWD-00002 (BALCA Dec. 3, 2013) (en banc), through an adjudicatory proceeding that would result in a declaratory order issued under 5 U.S.C. 554(e).

Case Name: Garcia, et al. v. Secretary of Labor, DOL

Venue: U.S. District Court for the District of Columbia

Issue: Whether DOL’s policy and practice of permitting states to provide “no finding” results for annual prevailing wage surveys under the H-2A temporary agricultural employment program violates the APA and whether DOL should be enjoined from certifying applications in the absence of an established prevailing wage, which the Plaintiffs allege should be based on the Occupational Employment Survey (OES).

Case Name: Hispanic Affairs Project, et al. v Secretary of Labor, DOL, Assistant Secretary for ETA (ASET), Secretary of Homeland Security, DHS

TAB 2: State of Play

Venue: U.S. District Court for the District of Columbia (on remand)
Issue: Whether DOL’s regulation that allows 364-day temporary labor certifications and DHS’s alleged policy of approving visa petitions on behalf of the same beneficiary in three consecutive years violated the APA. (The district court closed the case for administrative purposes, but plaintiffs can move to reopen the litigation if DOL has not made substantial progress on required rulemaking by May 2021.)

Case Name: Purdue University, et al. v. Secretary of Labor, DOL
Venue: U.S. District Court for the District of Columbia
Issue: Whether DOL’s decision to issue an Interim Final Rule, with an immediate effective date, amending regulations governing the prevailing wages for employment opportunities that U.S. employers seek to fill with foreign workers on a permanent or temporary basis through certain employment-based immigrant visas or through H-1B, H-1B1, or E-3 nonimmigrant visas for “specialty occupations” violated the APA requirement for notice-and-comment. (See also Chamber of Commerce case, above, and ITServe case, below.)

Case Name: ITServe Alliance, et al. v. Secretary of Labor, ASET
Venue: U.S. District Court for the District of New Jersey
Issue: Whether DOL’s decision to issue the Interim Final Rule, with an immediate effective date, amending regulations governing the prevailing wages for employment opportunities that U.S. employers seek to fill with foreign workers on a permanent or temporary basis through certain employment-based immigrant visas or through H-1B, H-1B1, or E-3 nonimmigrant visas for “specialty occupations” violated the APA requirement for notice-and-comment. (See also Chamber of Commerce and Purdue University cases above.)

Case Name: Kolla, et al. v. Secretary of Labor, Secretary of Homeland Security, Secretary of State
Venue: U.S. District Court for the Middle District of North Carolina
Issue: Whether Presidential Proclamation 10052 (suspending the entry of certain immigrant and nonimmigrants into the United States on the basis that they present a risk to the U.S. labor market following the COVID-19 outbreak), and DHS’s and DoS’s application thereof, is ultra vires and unlawful action under the INA and APA as well as violative of the Equal Protection and Due Process clauses of the U.S. Constitution.

Case Name: PeopleTech Group, Inc. v. Secretary of Labor, DOL, Secretary of Homeland Security, USCIS, USCIS Director
Venue: U.S. District Court for the Western District of Washington
Issue: Whether DHS’s purported invalidation of a permanent labor certification pursuant to DOL’s regulation at 20 C.F.R. § 656.30(d) is ultra vires and whether a rule invalidating approved labor certifications based on the failure to disclose a family relationship violates notice-and-comment rulemaking and was impermissibly applied to the plaintiff’s application retroactively.

Mine Safety and Health Administration

Rule and Guidance Challenges

Case Name: National Mining Association, et al. v. Secretary of Labor, MSHA
Venue: Eleventh Circuit
Issue: Whether the rulemaking record, including data concerning avoidable mining accidents and MSHA’s economic assumptions, supports MSHA’s 2017 metal/nonmetal mine workplace examinations rule.

Case Name: National Mining Association, et al. v. Secretary of Labor, MSHA and Murray Energy, et al. v. Secretary of Labor, MSHA
Venue: U.S. District Court for the Southern District of Ohio
Issue: Whether MSHA’s 2013 Pattern of Violations rule violated due process in allowing POV notices to be based on non-final citations and orders and in failing to subject POV screening criteria and corrective action plan criteria to notice-and-comment rulemaking, and whether it ignored costly implications of the rule.

Mine Safety and Health Act

Case Name: Secretary of Labor, MSHA v. Knight Hawk Coal, LLC
Venue: D.C. Circuit
Issue: Whether MSHA abused its discretion in revoking an underground coal mine’s ventilation plan after discovering unventilated areas in the mine.

Case Name: Secretary of Labor, MSHA v. M-Class Mining
Venue: D.C. Circuit
Issue: Whether MSHA abused its discretion in issuing a Mine Act 103(k) accident control order that evacuated underground coal miners and briefly stopped production, based on a miner’s hospitalization with carbon monoxide poisoning.

Case Name: U.S. v. Donald L. Blankenship (criminal)
Venue: Fourth Circuit
Issue: Whether the District Court properly dismissed Mr. Blankenship’s Motion to Vacate Conviction, which argued that the United States withheld potentially exculpatory evidence before his criminal trial following a 2010 mine explosion.

Case Name: U.S. v. Charley Barber, et al. (criminal)
Venue: U.S. District Court for the Western District of Kentucky
Issue: Whether nine agents of Armstrong Coal Company conspired to submit fraudulent dust samples to MSHA from two underground coal mines.

Case Name: Secretary of Labor, MSHA v. Northshore Mining Company
Venue: Federal Mine Safety and Health Review Commission
Issue: In establishing that an elevated walkway collapse that an engineering report had presaged a year earlier was a “reckless flagrant” Mine Act violation, whether the

Secretary must prove a degree of negligence that exceeds that of “reckless disregard.”

Occupational Safety and Health Administration

Rule and Guidance Challenges

Case Name: National Chimney Sweep Guild v. OSHA

Venue: Seventh Circuit

Issue: Whether the requirements of OSHA’s walking-working surfaces rule (fall protection) for general industry are feasible for chimney sweeps. This case has been stayed pending settlement discussions for several years.

Case Name: Consolidated challenges to three Beryllium final rules

Venue: Eighth Circuit

Issue: Whether three final rules establishing and revising health standards for occupational exposure to beryllium in the construction and shipyards sectors are supported by substantial evidence in the rulemaking record.

Case Name: National Association of Homebuilders et al. v. Perez

Venue: U.S. District Court for the Western District of Oklahoma

Issue: Whether the anti-retaliation provisions of the Improve Tracking of Workplace Injuries and Illnesses Final Rule are arbitrary and capricious and exceed OSHA’s authority under the OSH Act, and whether the rulemaking was procedurally flawed; and whether the anti-retaliation provisions violate the First and Fifth Amendments.

Case Name: Public Citizen Health Research Group et al. v. Acosta; New Jersey et al. v. Acosta

Venue: U.S. District Court for the District of Columbia

Issue: Whether the rescission of a requirement for employers to submit certain recordkeeping data electronically under the Improve Tracking of Workplace Injuries and Illnesses Final Rule was arbitrary, capricious, an abuse of discretion, or otherwise contrary to law.

Occupational Safety and Health Act

Case Name: Scalia v. Red Lake Nation Fisheries, Inc.

Venue: Eighth Circuit

Issue: Whether the Occupational Safety and Health Act of 1970 applies to a tribal commercial enterprise.

Case Name: Acosta v. Wynnewood Refining Co.

Venue: Tenth Circuit

Issue: Whether the PSM standard applied to a boiler that exploded at a refinery; and whether Wynnewood was the successor to a previous company to which OSHA had issued similar citations, for the purpose of issuing repeat citations.

Case Name: Jane Does I, II, III, et al. v. Eugene Scalia

Venue: U.S. District Court for the Middle District of Pennsylvania

Issue: Whether the Secretary arbitrarily and capriciously failed to seek an injunction to protect employees at a meatpacking facility from an imminent danger (COVID-19).

Case Name: Secretary v. U.S. Postal Service

Venue: Occupational Safety and Health Review Commission

Issue: Whether the Secretary proved a general duty clause violation against the Postal Service for exposing employees to the hazard of excessive heat while delivering mail.

Case Name: Secretary v. UHS of Westwood Pembroke, Inc.

Venue: Occupational Safety and Health Review Commission

Issue: Whether the Secretary established one or more feasible methods of abating the hazard of patient-on-staff workplace violence at Pembroke Hospital; whether UHS-Pembroke and its parent corporation should be deemed a “single employer” under the OSH Act; and whether the violation is properly characterized as a repeat violation.

Case Name: Secretary v. Aluminum Shapes

Venue: Occupational Safety and Health Review Commission ALJ

Issue: Whether the employer should be held liable for egregious (per-instance) willful violations of OSHA’s lockout/tagout standard, and willful, repeat, and serious violations of other requirements, totaling more than \$2 million in proposed penalties.

Case Name: Secretary v. BB Frame LLC dba Frame Q LLC

Venue: Occupational Safety and Health Review Commission ALJ

Issue: Whether the owner of a construction company that changed corporate entities to evade prior OSHA penalties should be held individually liable for nearly \$2 million in proposed penalties for willful, repeat, and serious violations at multiple construction sites.

Case Name: Secretary v. Great Lakes Tank & Vessel

Venue: Occupational Safety and Health Review Commission ALJ

Issue: Whether the employer should be liable for egregious willful violations of OSHA’s confined space and fall protection requirements and a willful violation of OSHA’s training requirements, all of which are related to a double fatality and carry a total proposed penalty of \$1,565,271.

TAB 2: State of Play

Case Name: Secretary v. Choice Products
Venue: Occupational Safety and Health Review Commission ALJ
Issue: Whether the employer should be liable for egregious willful violations of OSHA’s lockout/tagout standards and training requirements, all of which carry a total proposed penalty of \$782,526.

Case Name: Secretary v. First Marine LLC
Venue: Occupational Safety and Health Review Commission ALJ
Issue: Whether the employer should be liable for violations in relation to a Kentucky tugboat explosion in January 2018, killing three workers and injuring six, while employees were cutting and welding in an atmosphere containing flammable gas, with a total proposed penalty of \$795,254.

Case Names: Scalia v. JBS/Swift (Greeley, Colorado)
Scalia v. Smithfield Pork Processing (Sioux Falls, South Dakota)
Venue: Occupational Safety and Health Review Commission ALJ
Issue: Whether the employers are liable under the OSH Act’s general duty clause for failing to protect their employees by using feasible means of abatement that would have materially reduced exposure to the hazards associated with COVID-19.

Case Name: Scalia v. Chesapeake Energy Corp.
Venue: Occupational Safety and Health Review Commission ALJ
Issue: Whether the employer willfully failed to remove unapproved electrical equipment located next to the wellhead, which resulted in a fire and explosion that killed three employees, and whether the employer’s contracted site supervisor, commonly referred to as a “company man,” was an employee.

Case Name: Scalia v. Heaslip Engineering, LLC
Venue: Occupational Safety and Health Review Commission ALJ
Issue: Whether the employer, when multiple fatalities and injuries occurred as the Hard Rock Hotel in New Orleans collapsed in October 2019, willfully violated Section 5(a)(1) of the OSH Act by exposing employees to hazards of falling materials and building collapse because structural steel connections were inadequately designed, reviewed, or approved, which affected the structural integrity of connections.

Case Name: Secretary of Labor v. Dollar Tree, Inc.
Venue: Occupational Safety and Health Review Commission ALJ
Issue: Whether the employer, at five stores in Idaho, should be held liable for repeat violations of OSHA’s standards on exit routes needing to be free of obstructions, maintaining sufficient working space around electrical equipment, safely stacking inventory to prevent collapse, and other serious citations, totaling more than \$1 million in proposed penalties.

Case Name: Secretary v. Dollar Tree, Inc.
Venue: Occupational Safety and Health Review Commission ALJ
Issue: Whether six discount variety stores committed willful and repeated violations of OSHA standards ensuring access to exit routes and electrical panels and if so, whether approximately \$1.8 million in proposed penalties should be sustained.

Case Name: Secretary of Labor v. United States Postal Service (Woodland Hills Station)
Venue: Occupational Safety and Health Review Commission ALJ
Issue: Whether the USPS violated OSHA's general duty clause when it exposed a letter carrier to extreme heat while on the job, resulting in her death. The case has been stayed by the ALJ pending the Commission's decision in five similar cases against the USPS that are currently on appeal.

Case Name: Secretary of Labor v. U.S. Postal Service (Silverado Station)
Venue: Occupational Safety and Health Review Commission ALJ
Issue: Whether the USPS violated OSHA's general duty clause when it exposed several letter carriers to extreme heat while on the job, resulting in their heat-related illnesses. (Stayed pending appeal of other cases to the Review Commission.)

Case Name: Secretary v. UHS of Fuller, Inc./UHS of Delaware, Inc.
Secretary v. Arbour Hospital, Inc./UHS of Delaware, Inc.
Venue: Occupational Safety and Health Review Commission ALJs
Issue: Whether these behavior health hospitals and their management company committed serious violations of section 5(a)(1) of the Act when they failed to ensure that their employees were adequately protected from workplace violence arising from patient aggression.

Case Name: Secretary v. Shawn Purvis, dba Purvis Home Improvement, Inc.
Venue: Occupational Safety and Health Review Commission ALJ
Issue: Whether this individual operating as a roofing contractor committed egregious willful fall protection violations at multiple worksites and, if so, whether approximately \$2 million in proposed penalties should be sustained.

Case Name: Secretary v. Otis Elevator Company
Venue: Occupational Safety and Health Review Commission ALJ
Issue: Whether this elevator company committed willful and serious violations of OSHA lockout/tagout and confined space standards.

Whistleblower Statutes including Section 11(c) of the OSH Act

Case Name: Thorstenson v. DOL
Venue: Ninth Circuit
Whether the ARB correctly concluded in this Federal Railroad Safety Act whistleblower case that the employee's protected injury report was not a contributing factor to the railroad's decision to fire him and, in any event, the

railroad employer met its affirmative defense to show by clear and convincing evidence that it would have taken the same action absent the protected activity.

Case Name: Yowell v. ARB
Venue: Fifth Circuit
Issue: Whether the ARB correctly concluded in this Federal Railroad Safety Act whistleblower case that the employee failed to show, based solely on this chain of events, that his late injury report was a contributing factor to his discharge and, alternatively, whether the ARB properly concluded that the railroad employer met its burden to prove by clear and convincing evidence that it would have fired the employee even in the absence of his protected injury report.

Case Name: Peck v. DOL
Venue: Fourth Circuit
Issue: Whether the ARB properly held that the Energy Reorganization Act whistleblower provision does not waive the Nuclear Regulatory Commission's ("NRC") sovereign immunity for purposes of a whistleblower claim against the NRC.

Case Name: Thibodeau v. Walmart Stores, Inc.
Venue: Administrative Review Board
Issue: Whether the ALJ properly found that the employee had not engaged in protected activity under the Sarbanes-Oxley Act whistleblower provision because he could not reasonably believe that the misconduct he alleged violated the SEC rule requiring publicly-traded companies to establish, maintain, and attest to internal control over financial reporting.

Case Name: Denny v. MBDA, Inc.
Venue: Administrative Review Board
Issue: Whether summary judgment for the employer is warranted on the grounds that MBDA, Inc. is not a contractor covered by the Sarbanes-Oxley Act whistleblower provision or alternatively, because the employee failed to establish a genuine issue of material fact regarding whether he had engaged in SOX-protected activity.

Case Name: Jackson v. Bouchard Transportation Company, Inc. et al.
Venue: DOL Office of Administrative Law Judges
Issue: This discrimination complaint alleges that an employee was terminated in retaliation for engaging in protected activity under the Seaman's Protection Act, including cooperating with investigators and reporting safety concerns to the U.S. Coast Guard.

Office of Federal Contract Compliance Programs

Executive Order 11246 (Discrimination by Federal Contractors)

Case Name: Oracle America Inc. v. OFCCP
Venue: U.S. District Court for the District of Columbia
Issue: Whether the administrative enforcement scheme that the Department has implemented to effectuate E.O. 11246 is authorized by Congress..

Case Name: OFCCP v. Oracle
Venue: DOL Administrative Review Board
Issue: Whether Oracle engaged in systemic intentional compensation discrimination, discriminatory steering or job assignment, and disparate impact discrimination in setting starting pay based on prior salary, against female employees in the Product Development, Information Technology and Support job functions, and against Asian and African-American employees in the Product Development job function. The ALJ issued a Recommended Decision and Order on September 22, 2020, finding no discrimination.

Case Name: OFCCP v. Enterprise RAC Co.
Venue: DOL Administrative Review Board
Issue: Whether Enterprise discriminated against African Americans in hiring for management trainee positions.

Case Name: OFCCP v. WMS
Venue: DOL Administrative Review Board
Issue: Whether WMS discriminated against White, Black, Asian, and American Indian/Alaskan Native laborer applicants in favor of Hispanic laborer applicants; discriminated against female laborers based on their gender and Black/White laborers based on their race/national origin when assigning hours and compensation rates; and failed to ensure and maintain a working environment free from harassment, intimidation, and coercion at construction sites where WMS employees worked.

Case Name: OFCCP v. Convergys
Venue: DOL Office of Administrative Law Judges
Issue: Whether OFCCP selected multiple Convergys establishments for review in compliance with Fourth Amendment requirements.

Case Name: OFCCP v. JP Morgan Co.
Venue: DOL Office of Administrative Law Judges
Issue: Whether JP Morgan discriminated in compensation against female employees in certain positions.

Office of Labor-Management Standards

Labor-Management Reporting and Disclosure Act

Case Name: Scalia v. International Longshore and Warehouse Union
Venue: U.S. District Court for the Northern District of California
Issue: Whether the international union violated the LMRDA in its 2018 election of officers by failing to provide adequate safeguards to insure a fair election or a reasonable opportunity to vote with respect to the members voting in Panama.

Federal Transit Act (Section 13(c))

Case Name: Amalgamated Transit Union (ATU) v. Department of Labor (DOL)
Venue: U.S. District Court for the Eastern District of California
Issue: Whether DOL was arbitrary and capricious, in violation of the Administrative Procedure Act, when it issued labor certifications to California transit operators despite the State's Public Employees' Pension Reform Act (PEPRA), which made changes to the collective bargaining rights of transit employees protected by Section 13(c).

Office of Workers' Compensation Programs

Black Lung Benefits Act

Case Name: Appointments Clause Litigation (multiple cases)
Venue: Fourth Circuit, Sixth Circuit, Ninth Circuit, Benefits Review Board, Office of Administrative Law Judges
Issue: Whether the coal companies forfeited their Appointments Clause challenges to the ALJ's authority to render decisions by failing to raise them before the ALJ; and whether the removal protection afforded by 5 U.S.C. 7521 rendered ALJs' appointments unconstitutional.

Case Name: Affordable Care Act Litigation (multiple cases)
Venue: Benefits Review Board, Office of Administrative Law Judges
Issue: Whether two important Black Lung Benefits Act amendments contained in the ACA (ACA § 1556; 30 U.S.C. §§ 921(c)(4), 932(l)) should either not be applied in claims or that the claims should be held in abeyance pending other federal court litigation over the validity of the ACA.

Case Name: Peabody Energy Corporation/Arch Resources, Inc. Litigation
Venue: Benefits Review Board, Office of Administrative Law Judges, and Office of Workers' Compensation Programs district offices
Issue: Whether Peabody Energy and Arch Resources are liable for black lung benefits in cases in which miners last worked for coal companies when they were owned and self-insured by Peabody Energy or Arch, before they were sold to Patriot Coal.

Energy Employees Occupational Illness Compensation Program Act

Case Name: Act for Health v. DOL
Venue: U.S. District Court for the District of Colorado
Issue: Plaintiff seeks to enjoin the 2019 Final Rule updating the 2007 regulations implementing the Energy Employees Occupational Illness Compensation Program Act by challenging five particular regulatory changes made by the Final Rule on the ground that they are arbitrary or capricious under the APA.

Wage-Hour Division

Fair Labor Standards Act

Case Name: Employer Solutions Staffing Group, LLC v. Scalia
Venue: Supreme Court
Issue: Employer Solutions Staffing Group filed a petition for certiorari seeking review of a Ninth Circuit decision that was favorable to the Department, specifically regarding whether the Ninth Circuit's standard for willfulness conflicts with Supreme Court precedent, whether liability under the FLSA requires knowledge of the violation by a manager or supervisor, and whether the FLSA allows for indemnification or contribution among joint employers.

Case Name: New York, et al. v. Scalia
Venue: Second Circuit [appeal expected to be filed by 11/9/20; decision was from SDNY]
Issue: Whether, under the Administrative Procedure Act, the Joint Employer Final Rule is contrary to the FLSA and is arbitrary and capricious, and as a threshold matter, whether the plaintiffs have standing to challenge the final rule.

Case Name: Department of Labor v. Five Star Automatic Fire Protection
Venue: Fifth Circuit
Issue: Whether the district court correctly concluded that Five Star violated the FLSA's overtime and recordkeeping requirements and determined the amount of back wages attributable to unpaid, off-the-clock overtime work, given that the Secretary offered sufficient representative testimony and evidence to justly and reasonably infer the amount of uncompensated work using the framework provided in *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680 (1946), and Five Star failed to negate the inferences drawn from this evidence or to prove the precise amount that the affected employees worked.

Case Name: Scalia v. Timberline South
Venue: Sixth Circuit
Issue: Whether the district court properly granted summary judgment regarding the amount of back wages due for unpaid overtime work in accordance with the framework set forth in *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680

(1946), where Timberline South failed to document any commute time or bona fide meal break time in its payroll records of hours worked, where the Secretary relied on Timberline’s own payroll records to establish as a just and reasonable inference the amount of uncompensated overtime hours worked and back pay due, and where Timberline failed to establish a genuine issue of material fact by coming forward with either “evidence of the precise amount” of non-compensable commuting time and/or bona fide meal breaks which were allegedly taken or other evidence to negate the reasonableness of the Secretary’s estimates of the amount of uncompensated overtime work for each of Timberline’s 50 employees who performed uncompensated overtime work.

Case Name: Scalia v. Arizona Logistics, Inc.
Venue: Ninth Circuit
Issue: Whether the district court correctly concluded that, based on Supreme Court precedent, the Secretary of Labor may not be compelled to arbitrate an enforcement action authorized under the FLSA that was brought on behalf of workers who entered into individual private arbitration agreements.

Case Name: Scalia v. Wellfleet Communications, LLC
Venue: Ninth Circuit
Issue: The defendant-appellant’s opening brief in this case is due January 26, 2021, but the issues likely to be appealed are whether the district court correctly concluded that the employer’s call center workers were employees under the FLSA, that their violations were willful and thus a three-year statute of limitations should apply, and that liquidated damages were properly awarded.

Case Name: Scalia v. East Penn Manufacturing Co.
Venue: U.S. District Court for the Eastern District of Pennsylvania
Issue: Whether the employer, a large battery manufacturer, is liable for more than \$150 million in back wages and liquidated damages, failed to pay workers for all time spent on pre-shift activities, including changing into a required uniform and other PPE, and for all time spent on post-shift activities, including changing out of work clothes and showering.

Case Name: Scalia v. Comprehensive Healthcare Management Services, LLC., et al.
Venue: U.S. District Court for the Western District of Pennsylvania
Issue: Whether the employer, which operates a network of nursing and rehabilitation long-term care facilities, is liable for almost \$30 million in back wages and liquidated damages, for violating the FLSA in a variety of ways: failing to pay some employees any compensation for overtime hours worked, failing to pay all employees for any hours worked outside their pre-determined schedules, failing to pay for interrupted lunch breaks, failing to pay the correct overtime rates by failing to include “shift differentials” and bonuses in the “regular rate” when calculating overtime payments, failing to combine hours worked at multiple facilities for overtime purposes, and simply paying straight time for overtime.

Case Name: Perez v. Holland Acquisitions
Venue: United States District Court for the Western District of Pennsylvania
Issue: Whether the employer is liable for more than \$40 million in back wages and liquidated damages by misclassifying workers as independent contractors performing title searches for the oil and gas fracking industry in Pennsylvania, Ohio, and West Virginia, resulting in overtime violations.

Case Name: Secretary v. ProCorp, LLC
Venue: U.S. District Court, Eastern District of Michigan, Detroit Division
Issue: Whether staffing company is liable for back wages and liquidated damages of more than \$2 million by misclassifying more than 360 drivers as independent contractors, resulting in overtime violations.

Case Name: KDE Equine LLC and Steve Asmussin
Venue: U.S. District Court, Western District of Kentucky
Issue: After the court, in a bifurcated litigation, found defendants, a horse training company and its owner with staffs at several major racetracks, violated overtime and recordkeeping provisions of the FLSA, the issue of the amount of back wages and liquidated damages remains.

Case Name: Scalia v. Sarene Services, Inc. d/b/a Serene Home Nursing Agency
Venue: U.S. District Court for the Eastern District of New York
Issue: Whether defendant, a home care agency, failed to pay its home health aides for all hours worked in violation of minimum wage and overtime requirements, and failed to keep accurate records of aides' actual work hours.

Case Name: Scalia v. Jani-King of Oklahoma, Inc.
Venue: United States District Court for the Western District of Oklahoma
Issue: Whether defendant, a janitorial services franchisor, should be enjoined from violating the FLSA record-keeping provisions because it misclassifies its employees as independent contractors.

Case Name: Scalia v. Paragon Contractors Corp. and Brian Jessop (contempt)
Scalia v. Fundamentalist Church of Jesus Christ of Latter-Day Saint (FLDS), Lyle Jeffs and Dale Barlow (injunctive relief and back wages)
Administrator v. Paragon, Brian Jessop, and Dale Barlow (civil money penalties)
Venue: United States District Court, District of Utah (contempt and injunction)
DOL Office of Administrative Law Judges
Issue: Whether, following the District Court's order affirmed by the 10th Circuit, that Paragon and Jessop are in contempt of an injunction and liable for back wages under child labor provisions of the FLSA for using children to harvest pecans.

Case Name: Scalia v. Diligent Delivery Systems
Venue: U.S. District Court of Arizona

Issue: Whether defendants are liable for \$30 million in back wages by failing to pay minimum wage and overtime for delivery drivers who were classified as independent contractors and used their own vehicles to make deliveries.

Case Name: Scalia v. Valley Wide Plastering

Venue: U.S. District Court of Arizona

Issue: Whether defendant, a drywall and plastering company, and its owners are liable for about \$9 million in back wages for failing to pay overtime.

Case Name: Scalia v. KP Poultry

Venue: U.S. District Court for the Central District of California

Issue: Whether defendants and their respective owners, whose workers were paid a piece rate in poultry processing, violated the FLSA for failure to pay minimum wage and overtime; and whether defendants have spoliated video evidence, coerced witnesses, and attempted to induce witnesses to lie during depositions.

Case Name: Scalia v. Unforgettable Coatings, Inc. and Corey Summerhays

Venue: U.S District Court of Nevada

Issue: Whether employer and its owner failed to pay overtime to commercial and residential painters by using a pay practice that involved discretionary bonuses instead of overtime; and whether defendants retaliated by firing several employees who cooperated in the government's investigation or complained about their pay.

Prevailing Wages - Davis-Bacon and Related Acts/Service Contract Act

Case Name: Nevada Chapter of the Associated General Contractors of America, Inc., et al. v. WHD

Venue: DOL Administrative Review Board

Issue: Whether the Administrator complied with the Davis-Bacon Act when she established certain prevailing wage rates for highway construction in Nevada based on statewide data that WHD collected through its own survey process rather than on county-specific wage data collected by the state of Nevada under its own prevailing wage law.

Case Name: Whiting-Turner/Walsh Joint Venture v. WHD

Venue: DOL Administrative Review Board

Issue: Whether certain asbestos abatement work fell within the skilled laborer rather than the general laborer classification on a Davis-Bacon Act wage determination, even though WHD did not conduct a local area practice survey to determine which classification predominantly performed the work in question; and whether the ALJ's decision should be vacated under the Appointments Clause.

Case Name: District Council of Iron Workers of California v. WHD

Venue: DOL Administrative Review Board

Issue: Whether the Administrator complied with the Davis-Bacon Act by reasonably exercising her discretion when she declined to include a general classification of “Ironworker” on certain residential construction wage determinations on the ground that the wage survey reflected three distinct ironworker classifications: structural, reinforcing, and ornamental ironworkers.

Family and Medical Leave Act

Case Name: Zicarelli v. Dart

Venue: Seventh Circuit

Issue: Whether an employee pursuing a claim of interference with FMLA rights must present evidence that the employer “denied” FMLA benefits to which the employee was entitled, or merely “interfered with” those benefits.

Case Name: Scalia v. State of Alaska, Department of Transportation and Public Facilities

Venue: Ninth Circuit

Issue: Whether the district court correctly concluded that FMLA prohibits an employer from counting weeks that an employee is not scheduled to work as FMLA leave.

Enforcement of Immigration and Nationality Act/Temporary Foreign Workers, H-2A (Agricultural), H-2B (Nonagricultural), and H-1B (Technical), and U and T Visa Certification Program

Case Name: Scalia v. Overdevest Nurseries

Venue: D.C. Circuit

Issue: Whether DOL’s 2010 H-2A “corresponding employment” rule is entitled to *Chevron* deference; and whether DOL properly concluded that the employer violated the H-2A program’s requirements by having its domestic production workers engaged in corresponding employment with its H-2A order pullers, without paying the domestic production workers the requisite Adverse Effect Wage Rate.

Case Name: USA v. Bedi and Datalink Computer Systems

Venue: Second Circuit

Issue: Whether, in a case brought by the Department under the Federal Debt Collection Procedures Act (FDCPA) to recover a \$340,987.43 back wage award in an H-1B administrative enforcement matter, the award was subject to the FDCPA because it was a “debt owing to the United States” and whether the equitable principle of *in pari delicto* prevents the Department from recovering back wages on H-1B employee’s behalf even though she and the employer participated in a criminal conspiracy to defraud a customer during her employment.

TAB 2: State of Play

- Case Name:** Outdoor Amusements Business Association v. DHS and DOL
Venue: Fourth Circuit
Issue: Whether the Department has the authority to issue H-2B labor certifications and to issue rules related to H-2B certifications and the enforcement of the H-2B program.
- Case Name:** New Orleans Workers' Center for Racial Justice v. U.S. Dep't of Labor
Venue: D.C. District Court
Issue: Whether, under the Administrative Procedure Act, WHD's July 1, 2019, Field Assistance Bulletin ("FAB") regarding certification of U- and T-visas was a legislative rulemaking that required notice and comment; and whether the new protocols in the FAB are arbitrary and capricious.
- Case Name:** Southern Illinois University School of Medicine v. Dep't of Labor
Venue: Central District of Illinois
Issue: Whether the medical school is permitted to pay a physician an "actual wage" that is less than other physicians because she was less productive in her clinical work than they were; and whether other physicians were not comparable to the H-1B doctor because her subspecialty, bariatric surgery, differed from theirs.
- Case Name:** Administrator v. Azzano Farms & WAFLA
Venue: DOL Administrative Review Board
Issue: Whether an agricultural association that files a master application as a joint employer with its members is a joint employer responsible for compliance with all terms and conditions of H-2A employment and subject to the assessment of civil money penalties as a matter of law, regardless of whether the association is a joint employer under the common law of agency.
- Case Name:** Administrator v. CTO/CFH Partnership d/b/a Cider Hill Farm
Venue: DOL Administrative Review Board
Issue: Whether the Department's H-2A corresponding employment requirements apply only to U.S. workers.
- Case Name:** Administrator v. Frank's Nursery
Venue: DOL Administrative Review Board
Issue: Whether an employer's imposition of a mandatory drug testing policy that it did not disclose in its job order was a violation of the Department's regulations implementing the H-2A program, which require potential H-2A employers to affirmatively identify all material conditions of employment in the job order.
- Case Name:** Administrator v. Graham and Rollins, Inc.
Venue: DOL Administrative Review Board
Issue: Whether enforcement actions seeking recovery of H-2B back wages are governed by the civil money penalty statute of limitations set forth in 28 U.S.C. 2462.

Case Name: Manoharan v. HCL America, Inc.
Venue: DOL Administrative Review Board
Issue: Whether an H-1B complainant may serve as the prosecuting party at an ALJ hearing to argue that the Administrator’s award of back wages to him was too low, or whether the only party permitted to be a prosecuting party at such a hearing is the Administrator.

Case Name: Administrator v. Broadgate, Inc. and Administrator v. Spate Business Solutions
Venue: DOL Administrative Review Board
Issue: Whether WHD District Directors have authority to issue determination letters on behalf of the Administrator in H-1B enforcement matters.

Case Name: Administrator v. Ten West Cattle, Inc.
Venue: Office of Administrative Law Judges
Issue: Whether J-1 visa holders may be engaged in corresponding employment under H-2A.

Case Name: Administrator v. Dune Resorts LLC d/b/a Dune Resorts
Venue: Office of Administrative Law Judges
Issue: Whether a hotel management company substantially violated the H-2B regulations by, inter alia, failing to recruit U.S. Workers when instead of hiring back its longstanding seasonal U.S. workforce it chose to replace them with H-2B workers, resulting in the assessment of make-whole relief to 40 former U.S. workers, civil money penalties, and debarment.

Case Name: In the Matter of Advanced Welding Solutions LLC (AWS)
Venue: Office of Administrative Law Judges
Issue: Whether AWS violated the H-2B provisions of the Immigration and Nationality Act when it failed to hire qualified U.S. workers, misrepresented its temporary need for foreign workers, and failed to post notice of workers’ rights.

Office of Assistant Secretary for Administrative and Management & FOIA Litigation

FOIA & Information Law

Case Name: Center for Investigative Reporting and Will Evans v. DOL
Synopsis, Inc. v. DOL
Venue: U.S. Court of Appeals for the Ninth Circuit
Issue: Two related appeals by a federal contractor, concerning the District Court for the Northern District of California’s holding that OFCCP form EEO-1, Type 2 consolidated reports submitted by certain federal contractors are not exempt from disclosure under FOIA exemption 4 as confidential commercial information. The first case concerns whether the contractor can intervene, post ruling, to appeal the District Court’s holding. The second appeal challenges the District Court’s dismissal of the submitter’s APA “reverse FOIA” action seeking to enjoin DOL

from complying with the District Court’s order to release its EEO-1, Type 2 report.

Case Name: Democracy Forward Foundation v. DOL
Venue: U.S. District Court for the District of Columbia
Issue: FOIA lawsuit seeking records of communications related to the DOL’s administrative enforcement action against Oracle, Inc. as well as communications related to a 2018 Directive, 2019 Memo, and the 2019 decision in the Analogic case, a closed OFCCP enforcement matter.

Case Name: Washington Blade, et al. v. DOL
Venue: U.S. District Court for the District of Columbia
Issue: FOIA action seeking emails from certain OFCCP officials, which include the words “religion” or “religious.”

Case Name: Democracy Forward v. DOL
Venue: U.S. District Court for the District of Columbia
Issue: FOIA action seeks records concerning DOL’s program for certification of cooperating witnesses applying for U or T visas.

Case Name: American Oversight v. DOL & DOJ
Venue: U.S. District Court for the District of Columbia
Issue: FOIA lawsuit seeking records from DOL and DOJ concerning communications with and about casino business owner Steve Wynn regarding the Wage Hour Division’s tip pooling rule.

Case Name: State of NY v. DOL
Venue: U.S. District Court for the Southern District of New York
Issue: FOIA lawsuit seeking records concerning the implementation of the Wage Hour Division’s Payroll Audit Independent Determination (PAID) program.

Case Name: Public Citizen v. DOL (Meatpacking COVID-19)
Venue: U.S. District Court for the District of Columbia
Issue: FOIA lawsuit seeking records concerning COVID-19 safety and health issues in meat and poultry processing facilities. Specifically, the request seeks communications between DOL and specific facilities and industry groups, communications between DOL and USDA, records concerning an enforcement policy memorandum issued by SOL and OSHA, and records concerning the applicability of state law to meat, poultry, and pork processing facilities in connection with COVID-19.

Case Name: Public Citizen, Inc. v. DOL (OSHA 300A Data)
Center for Investigative Reporting & Jennifer Golan v. DOL (OSHA 300A Data)
Center for Investigative Reporting & Will Evans v. DOL (Amazon OSHA 300A Data)
Venue: U.S. District Court for the District of Columbia

TAB 2: State of Play

Issue: U.S. District Court for the Northern District of California
Three related FOIA lawsuits seeking company injury and illness data maintained on OSHA 300A forms and submitted to OSHA. All three courts ruled that the information was not protected by Exemption 4 of the FOIA, which protects confidential commercial information.

Case Name: Citizens United, et al. v. DOL
Venue: U.S. District Court for the District of Columbia
Issue: FOIA lawsuit seeking e-mails of former Secretary of Labor Thomas Perez.

Case Name: American Oversight v. Commerce et al.
Venue: U.S. District Court for the District of Columbia
Issue: FOIA action filed against 14 federal agencies seeking calendar entries maintained by certain named political appointees. DOL has completed production and is seeking dismissal from the case.

Case Name: American Oversight v. DOL et al.
Venue: U.S. District Court for the District of Columbia
Issue: FOIA action filed against four federal agencies seeking communications between White House officials and specific DOL officials.

Case Name: Farm Labor Organizing Committee v. DOL
Venue: U.S. District Court for the District of Columbia
Issue: FOIA lawsuit seeking the identities of tobacco companies who bought tobacco from farms that had been found to be in violation of the FLSA or MSPA.

Case Name: Candling v. DOL
Venue: U.S. District Court for the Northern District of Ohio
Issue: FOIA lawsuit challenging records associated with WHD's FLSA training material are exempt pursuant to FOIA Exemption (b)(7)(E).

Case Name: Public Citizen, Inc. v. DOL (Supplemental Prevailing Wage Determinations)
Venue: U.S. District Court for the District of Columbia
Issue: FOIA lawsuit seeking records concerning external communications by DOL employees and officials concerning supplemental prevailing H-1B wage determinations issued by DOL's National Prevailing Wage Center in 2013.

Employment Law

Case Name: Braswell v. United States
Venue: U.S. Court of Federal Claims
Issue: Whether from January 27, 2020, through the present, and ongoing, class members (including at least one DOL employee) have performed work with or in close proximity to objects, surfaces, and/or individuals infected with COVID-19, and are entitled to hazardous duty pay (HDP) and/or environmental differential pay (EDP) for exposure in violation of 5 U.S.C. §5545(d) and 5 U.S.C. §5343(c)(4).

Class members also claim the overtime provisions of the Fair Labor Standards Act, 29 U.S.C. § 207, were violated as HDP/EDP should have been included in the calculation of any overtime rates.

Case Name: Martin v. United States
Venue: U.S. Court of Federal Claims
Issue: Whether federal employees, including DOL employees, who worked during the October 2013 government shutdown are entitled to liquidated damages under the Fair Labor Standards Act because of their delayed pay. The court has found that FLSA violations occurred and that the federal government is liable for liquidated damages, the remaining issue is the amount of liquidated damages due.

Case Name: Dallas Prater v. Scalia
Venue: U.S. District Court for the Southern District of West Virginia
Issue: Whether MSHA discriminated against the plaintiff based on his having cerebral palsy when it terminated him during his probationary period in December 2013 for poor performance. Plaintiff seeks back pay (estimated at \$360,000), non-pecuniary damages, and reinstatement. The jury trial is scheduled to begin on 11/17/2020, with the final settlement conference to take place on 11/13/2020.

Procurement Law

Case Name: 4K Global-ACC Joint Venture LLC v. Department of Labor
Venue: Civilian Board of Contract Appeals
Issue: Whether the Employment and Training Administration and the Office of the Assistant Secretary for Administration and Management erred under federal procurement law in December 2019 by terminating for default the plaintiff's 2017 \$60 million contract to construct an Atlanta Job Corps Center. The plaintiff is also appealing denial of subsequently-filed contract claims for additional millions of dollars.

Key Agency Stakeholders

Department of Justice and U.S. Attorneys

Unlike many departments, SOL has primary litigation authority in many of its programs. DOJ and the U.S. Attorneys, however, handle certain matters such as defensive litigation and criminal cases.

Office of the Solicitor General (SG) – Department of Justice

The SG must approve most amicus briefs filed by DOL in the federal courts of appeals. The SG usually files briefs himself or herself in the Supreme Court with varying amounts of DOL assistance. In cases where SOL has independent litigating authority, the SG must approve the decision to appeal an adverse district court decision and the decision to file for rehearing *en banc* in the federal courts of appeal. The SG makes the decision whether to file a petition for certiorari with the U.S. Supreme Court on behalf of DOL, and handles all litigation before that Court with support from SOL.

Continuing legal education (CLE) providers

CLE providers ask SOL officials to speak at events about the state of play at DOL. Such providers include The American Bar Association, including the Labor and Employment Section (and the Occupational Safety and Health Law Committee); the National Employment Lawyers Association and its state affiliates, which represents plaintiff's employment lawyers; the AFL-CIO Lawyers Coordinating Committee; the Practising Law Institute; and the labor and employment bar – attorneys representing employees, management, unions and others, who, sometimes represented by the CLE groups mentioned above, request the Department's participation as *amicus curiae* in litigation.

Office of Management and Budget (OMB)

SOL's Office of Legal Counsel serves as the liaison with the Office of Management and Budget (OMB) in the inter-agency review of legislative matters under OMB Circular A-19.

Office of Government Ethics (OGE)

OGE oversees the executive branch ethics program. SOL's Office of Legal Counsel ensures that the Department's ethics program complies with OGE regulatory requirements, including coordinating with OGE on clearing Presidentially-appointed/Senate-confirmed nominees for the confirmation process.

TAB 3: CALENDAR

Event	Date
FOIA data is posted for the Third Quarter	July 30, 2020
Draft annual FOIA Report due to DOJ and OMB for clearance	November 16, 2020
Chief FOIA Officer Report is submitted to OIP for review and clearance	January 11, 2021
FOIA data is posted for First Quarter	January 29, 2021
Readable version of annual FOIA report must be posted on FOIA website	March 1, 2021
Chief FOIA Officer Report is posted online	March 15, 2021
FOIA data is posted for Second Quarter	April 30, 2021
Annual public financial disclosure documents (Form 278) must be filed with OLC	May 15, 2021
SOL must submit annual safety and health report	May 21, 2021
SOL must certify all annual public disclosure reports	July 17, 2021
FOIA data is posted for the Fourth Quarter	October 29, 2021

TAB 4: BUDGET

BUDGET AUTHORITY AND FTE SUMMARY

	FY 2017 Enacted	FY 2018 Enacted	FY 2019 Enacted	FY 2020 Enacted	FY 2021 Request
Budget Authority²	\$133.8	\$133.0	\$132.9	\$131.7	\$138.8
FTE³	624	597	599	576	600

At-A-Glance

- SOL is funded through three direct sources: the Departmental Management general fund, the Black Lung Disability Trust Fund (BLDTF) and the Unemployment Trust Fund (UTF). The general fund is the largest funding. In FY 2020, SOL was appropriated \$123.7 million from this fund, \$7.6 million from the BLDTF (after sequestration), and \$0.3 million from the UTF, for a total of \$131.7 million.
- The head table and subsequent graphs only include reflect SOL’s direct funding and FTE.
- In addition to its direct funding, SOL provides legal services to client agencies through reimbursable authority agreements with the Office of Workers’ Compensation Programs and the Wage and Hour Division.
- SOL’s appropriated funding has basically been flat or decreased from FY 2012 to the present. After a substantial decrease in appropriated funding from FY 2012 to FY 2013, SOL has received basically flat funding of approximately \$130 million to \$133 million each year since FY 2013. Because operational costs, and particularly personnel costs have increased each year, and since 75% of SOL’s costs are for personnel, this flat or diminished funding has meant that SOL’s ability to have staff to provide legal services has diminished.

Budget and FTE Trends

- SOL’s direct budget authority has dropped from \$137.8 million in FY 2012 to \$131.7 million in FY 2020.
- SOL’s total FTE levels have dropped significantly since FY 2012. The agency reached a peak of 693 FTE in FY 2013 and will end FY 2020 with 576 FTE.
- In FY 2012, the agency received a program increase of \$10.0 million. The report language specified that the increase was included to support legal services related to a backlog of MSHA cases at the FMSHRC.
- Over the FY 2012-FY 2020 time period, most agencies to which SOL provides legal services also had budget increases, increasing the amount of legal services those client agencies required.
- To address SOL’s funding needs, the Department reprogrammed funds in FY 2017, FY 2018, and FY 2020.
- In FY 2020, SOL received a reprogramming in the amount of \$2.2 million to address the higher workload due to the implementation of USMCA and to provide increased legal

² Enacted funding does not include transfers or reprogrammings.

³ Actual FTE for appropriated funds only. FY 2020 reflects estimated FTE use. FY 2021 reflect President’s Request.

services to meet operating costs in FY 2020. SOL also received permission to receive reimbursements of up to \$8 million from the INA Fraud Funds to meet the workload for legal services relevant to that fund.

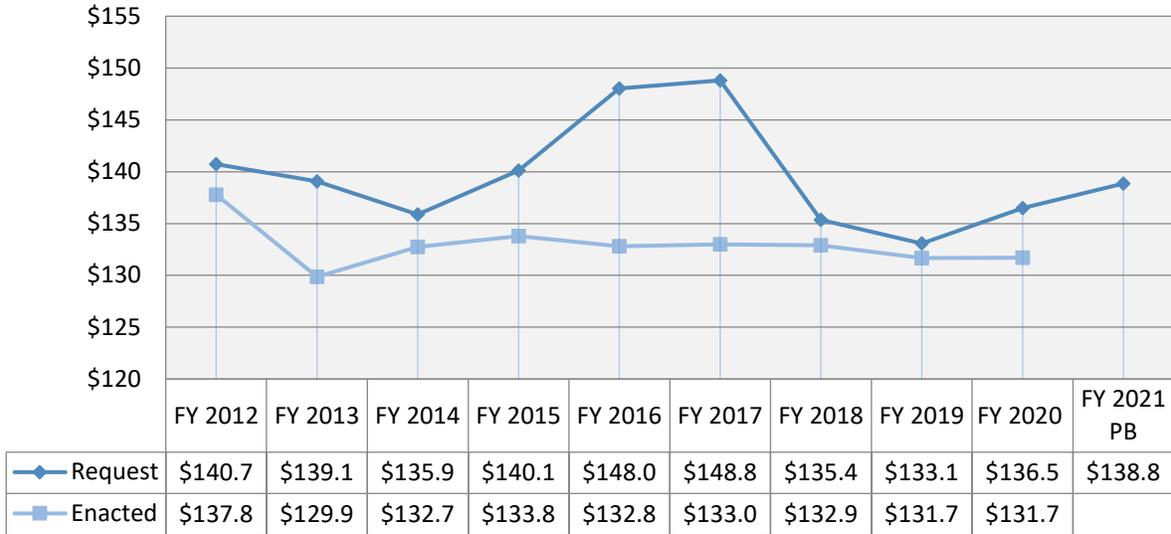
- In FY 2020, SOL also received \$1.0 million in COVID-19 supplemental funding, which is available through FY 2022. The additional funding will be used for legal services related to the new requirements in the laws as a result of COVID. Since March 2020, SOL has been performing COVID-19 legal services at significantly higher levels than the amount of this supplemental funding.

Upcoming Issues

- There is significant uncertainty around fees related to immigration. Any reductions in these fees will have a significant negative impact on SOL's operations.
- Based on initial House markup, it appears that SOL may receive a flat appropriations for FY 2021 at approximately \$131.7M, which is approximately level with FY 2017. With increased costs for personnel for pay and benefits in recent years, SOL will have significant issues operating at this level.

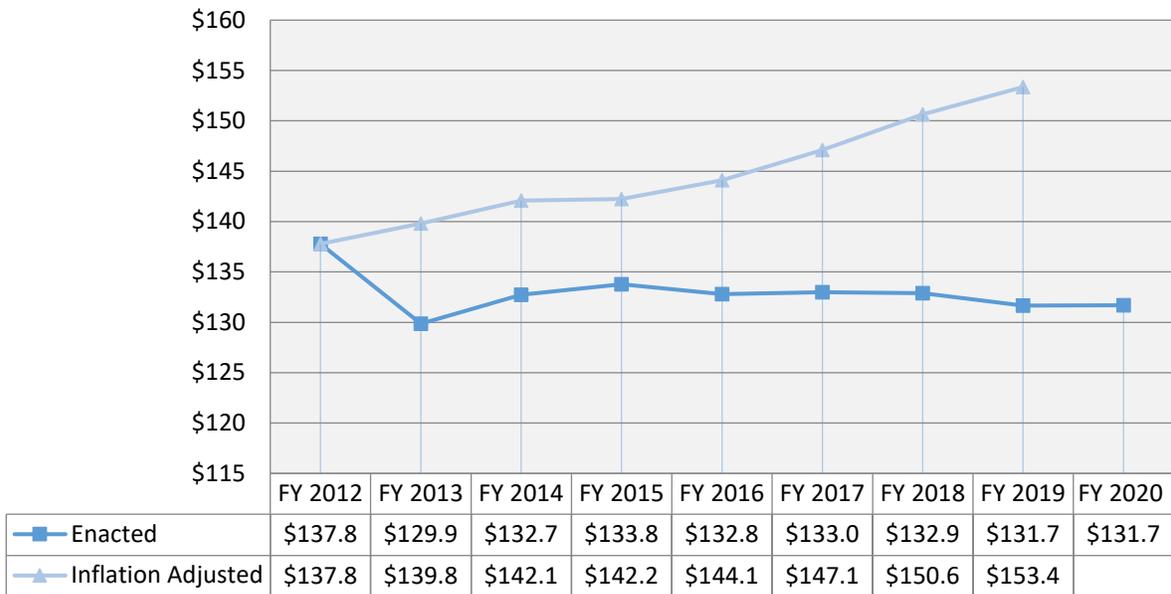
SOL

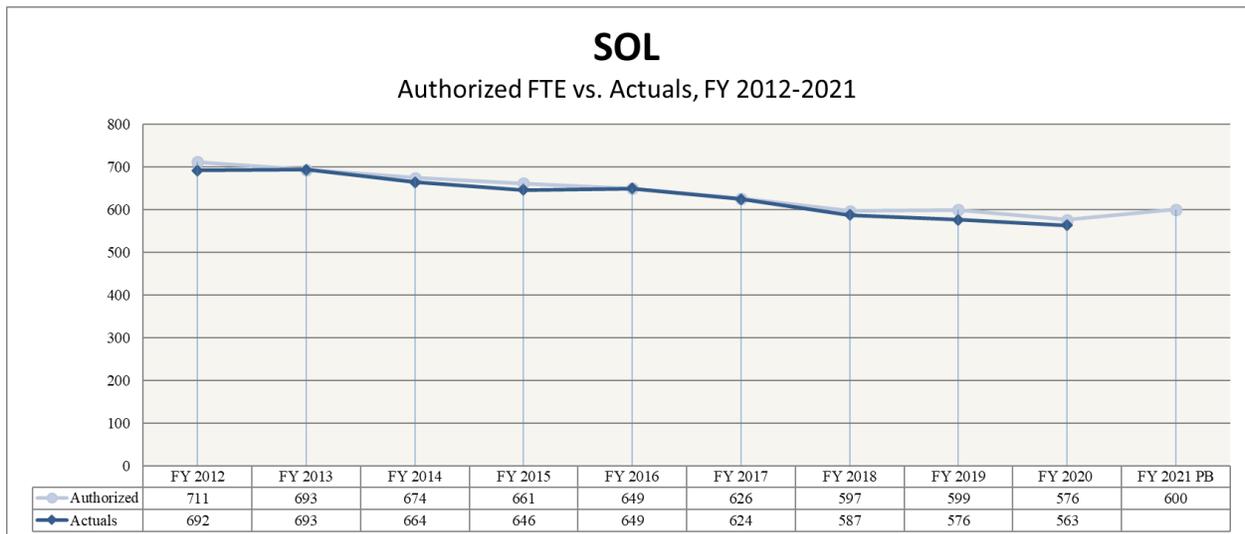
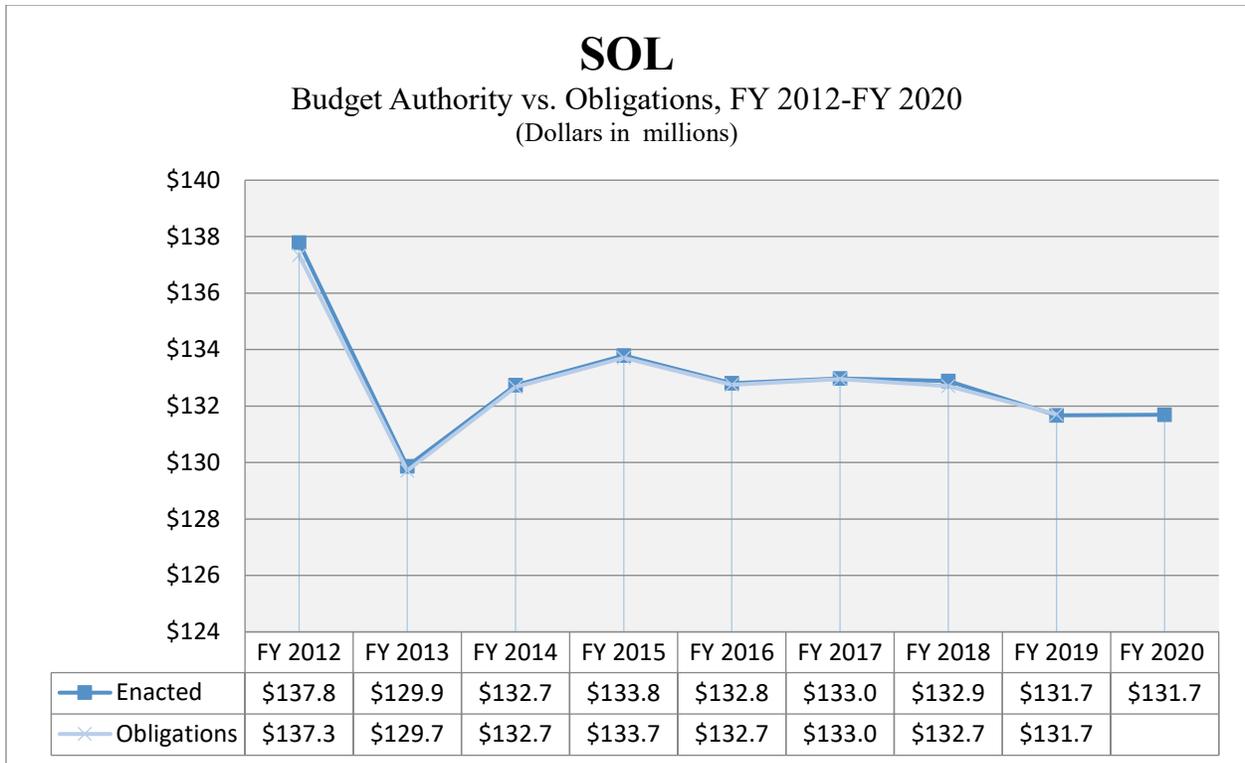
Request vs. Enacted, FY 2012-FY 2021 Request
(Dollars in millions)



SOL

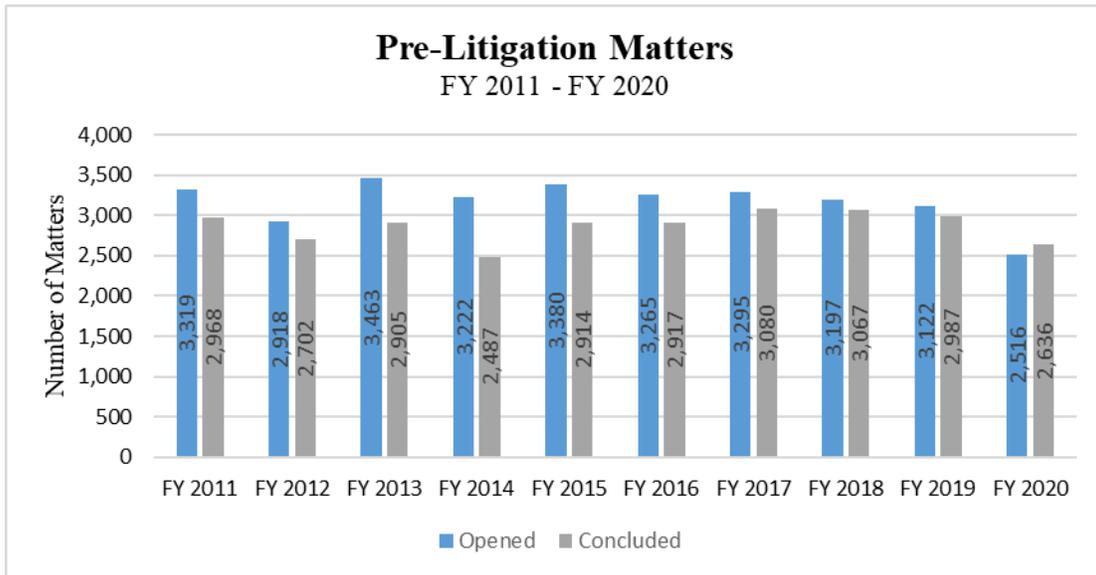
Inflation Adjusted BA vs. Enacted BA FY 2012-2020
(Dollars in millions)



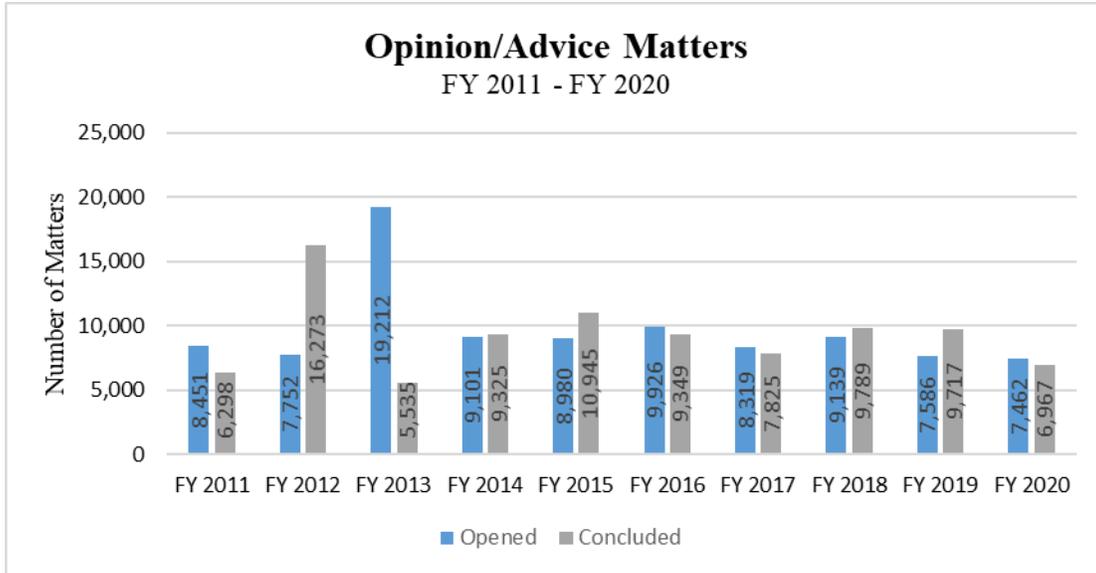


TAB 5: AGENCY PERFORMANCE

SOL provides legal support to all agencies in the department. SOL uses a variety of measures that track workload, including pre-litigation matters, litigation matters, opinion/advice matters and regulatory matters. Matters are anything for which SOL has a demonstrated responsibility for providing legal services and which is referred from any source for possible action. SOL is an agency which provides legal services to its clients – other DOL agencies – and as such, SOL does the work it is given. The trend towards more pre-litigation matters and fewer litigation matters may be the result of the Solicitor’s emphasis on proactive assistance by SOL in all phases of an enforcement investigation, also known as “early and often” intervention.



TAB 5: Agency Performance



Note: The FY 2013 spike in Opinion/Advice Matters is due to a mass transfer of workers' compensation cases from the U.S. Postal Service. You can see an uptick in concluded matters in the subsequent years and as FY 2016 comes to a close, nearly all the USPS matters that came in in FY 2013 are closed.

