

U.S. Department of Labor Office of the Solicitor



November 2016

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TAB 1: AGENCY ORGANIZATIONAL OVERVIEW

Organizational Structure

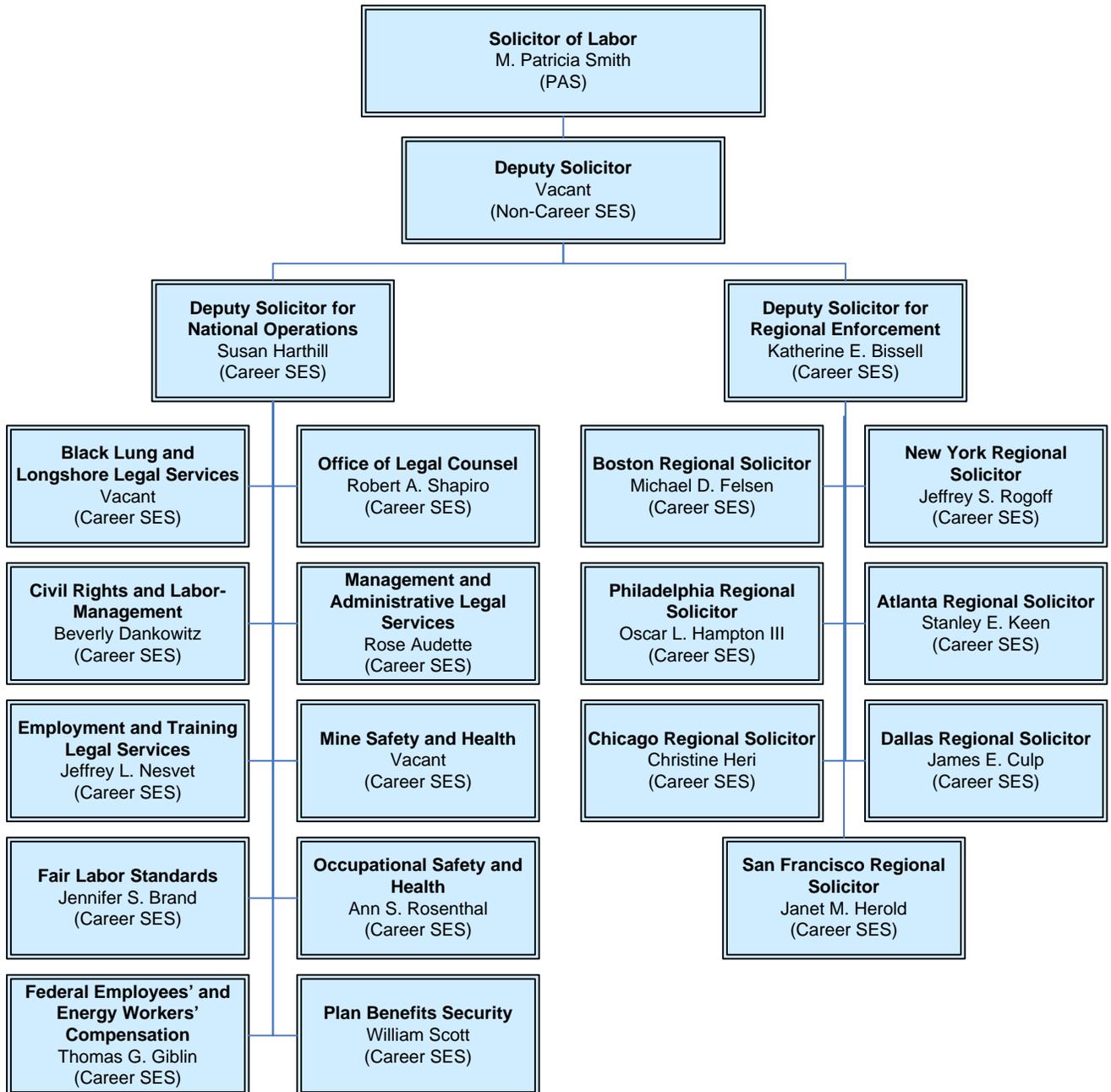
The Office of the Solicitor (SOL) meets the legal service demands of the entire Department of Labor to help achieve the Department’s mission. The Solicitor’s Office has all the traditional functions of an agency general counsel (e.g. providing advice about appropriations, employment law matters, ethics, procurement, regulations, and legislation), but unlike other agencies who litigation is entirely handled by the Department of Justice, the Department of Labor has some independent litigation authority under the laws DOL enforces. A list of important ongoing litigation handled by SOL can be found earlier 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 730, including around 540 lawyers, is organized into 10 national divisions and seven regional offices with seven sub-regional offices. Staff are 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, legislation, and litigation, and, in some instances, handle district court and appellate litigation. The regional offices focus on district court-level litigation and administrative proceedings, while also counseling the agencies’ regional operations. Work is allocated among national divisions’ by agency client and subject matter. It is allocated among the regional offices’ by geography.

TAB 1: Agency Organizational Overview

Organizational Chart



Divisions

Black Lung and Longshore Legal Services Division (BLLLS)

BLLLS provides a full range of legal services to the Office of Workers' Compensation Program's (OWCP) Divisions of Coal Mine Workers' Compensation and Longshore and Harbor Workers' Compensation. These agencies administer the Black Lung Benefits Act, the Longshore and Harbor Workers' Compensation Act, and the Longshore Act's extensions: the Defense Base Act, the Outer Continental Shelf Lands Act, and the Nonappropriated Fund Instrumentalities Act. The Division's primary activities are to: represent the Director, OWCP, in litigation under the Black Lung Benefits and Longshore Acts before the Benefits Review Board and the federal courts of appeals; advise the Director, OWCP, on all legal matters involving the Black Lung Benefits and Longshore Acts, including statutory and regulatory construction, administrative law questions, and case-specific issues; disseminate information and provide advice to SOL's regional offices, who are chiefly responsible for administrative hearing and trial work under these statutes; enforce final compensation orders entered against coal companies and their insurers under the Black Lung Benefits Act; represent the Director, OWCP, in bankruptcy proceedings; draft regulations, preamble text, and related documents for OWCP; and draft legislation and provide technical assistance to Hill staff upon request.

The Associate Solicitor, who is assisted by the Deputy Associate, heads the Division and oversees all legal work. Six counsels supervise specific categories of legal work (e.g., appellate litigation or regulatory work) or particular statutory areas (e.g., Longshore Act or enforcement). The Division currently employs 19 lawyers and eight 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 (OSAM) – as well as several other programs described below.

The Division 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. The Division 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 Department of Justice with its representation of the OFCCP in federal court. The Division 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 enforcement initiatives.

The Division 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). The Division 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; the provisions of Section 701 of the Civil Service Reform Act of 1978; Section 1017 of the Foreign Service Act of

TAB 1: Agency Organizational Overview

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.

The Division provides legal services to CRC on matters arising under the nondiscrimination provisions 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), as well as internal equal employment opportunity cases and related matters.

Additionally, the Division provides legal services to the Office of Apprenticeship regarding matters arising under 29 CFR Part 30, Equal Employment Opportunity in Apprenticeship and Training; the Office of Disability Employment Policy; the Center for Faith-Based and Neighborhood Partnerships; the Women's Bureau; and to the Veterans' Employment and Training Service.

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

The Associate Solicitor, who is assisted by the Deputy Associate, heads the Division and oversees all legal work. The Division has a counsel for Civil Rights and Appellate Litigation, Interpretation and Advice, Litigation and Regional Coordination, respectively, and two counsels for Labor-Management Programs. The Division 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).

The Division assists ETA in implementing a number of statutes providing employment and training services, including WIOA, enacted in 2014, which modernized a number of federal job-training programs and provides job seekers and employers access to the employment, training, and information services designed to keep them competitive in the 21st century economy. The Division provides ETA with legal services 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, employment, labor market information, and income maintenance services for adults and youth, primarily through state and local workforce development systems. Specific ETA programs for which the Division is responsible for providing legal services include the approximately \$8 billion of WIOA grants that ETA gives out each year to fund employment and training programs, the Job Corps, the federal-state unemployment compensation program, the Trade Adjustment Assistance program for workers who have been displaced due to international trade, the Disaster Unemployment Assistance program, issuance of temporary and permanent labor certifications required by the Immigration and Nationality Act before foreign workers may enter the United States for employment, and the registered apprenticeship program.

TAB 1: Agency Organizational Overview

The Division 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. The Division also assists VETS in carrying out its responsibilities regarding enforcement of federal executive branch veterans' preference laws.

The Division 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. The Division assists ILAB in developing protections for workers' rights in trade agreements and monitoring compliance with those agreements. The Division 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.

The Division is managed by the Associate Solicitor, the Deputy Associate Solicitor and five counsels. In addition to these seven lawyers, the Division employs 19 staff attorneys assigned to the five counsel areas: Employment and Training, Immigration Programs, International Affairs and Uniformed Services Employment and Reemployment Rights Act (USERRA), Job Corps and Apprenticeship, and Unemployment Programs. The Division also has one support staff position – a management and program analyst, who provides administrative support to the Division.

Fair Labor Standards Division (FLS)

FLS counsels the Wage and Hour Division and, with respect to whistleblower programs, the Occupational Safety and Health Administration (OSHA). The Division is responsible for providing legal services in connection with the administration and enforcement of a broad range of federal labor standards laws providing 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 (FLSA); the 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; the leave entitlement and job protections under the Family and Medical Leave Act; the prevailing wage and fringe benefits for workers on federal contracts under the Service Contract Act and Davis-Bacon and Related Acts; the non-displacement, minimum wage, and paid sick leave provisions for workers on certain federal contracts under Presidential Executive Orders 13459 (youth programs), 13658 (minimum wage) and 13706 (paid sick leave); various worker protections afforded to temporary foreign workers, including workers with H visas and those with T and U visa certifications to certain victims of crimes and trafficking; the whistleblower protections of seventeen laws involving environmental and nuclear safety, transportation, consumer and investor protection, and health insurance; worker garnishment protections; and employee polygraph protection.

The Division is responsible for some appellate litigation, as well as assistance in the preparation of regulations, interpretations, and opinions pertaining to these statutes, and otherwise advising the Solicitor, the Wage and Hour Division and the Directorate of Whistleblower Protection Programs in OSHA on these matters. The Division's appellate litigation includes appeals before the

TAB 1: Agency Organizational Overview

Department's Administrative Review Board or in federal courts stemming from agency enforcement actions as well as amicus briefs in private cases concerning important labor standards and whistleblower protection issues. The Division provides legal advice on a wide variety of matters related to labor standards and whistleblower protection, including proposed legislation, agency policies, enforcement initiatives, internal guidance to investigators, and public materials for employees and employers to assist them in understanding their rights and responsibilities under the laws within the Division's responsibility.

The Associate Solicitor, who is assisted by the Deputy Associate, heads the Division and oversees all legal work. Six counsels supervise Appellate Litigation, Contract Labor Standards, Child Labor and Special FLSA Projects, Legal Advice, Trial Litigation, and Whistleblower Programs respectively. The Division currently employs 25 lawyers and five 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. The Division 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). The Division provides litigation support to the Department of Justice in cases arising under the above-referenced statutes and benefit programs.

The Division 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. The Associate Solicitor, who is assisted by the Deputy Associate, heads the Division and oversees all legal work. The Division currently employs 17 lawyers and 25 administrative and support staff.

Office of Legal Counsel (OLC)

OLC is responsible for support of legislative and legal advice matters that affect all agencies of the Department. The Office has four primary areas of responsibility: legislation, ethics, the Honors Attorney Program, and administrative law.

The Office provides legal support to the Secretary and other senior agency officials in preparing and evaluating legislation affecting the Department. Specifically, attorneys in the Office: coordinate the departmental review of legislative materials that may impact the agencies' programs and activities, prepare or review DOL views letters or narrative comments on pending legislation, draft or assist in the preparation of testimony to be presented by departmental officials before congressional committees, and draft or assist in the preparation of legislation pertaining to departmental programs and presidential initiatives. In undertaking these assignments, attorneys from the Office work closely with program officials, attorneys from other SOL divisions, the Department's Office of Congressional and Intergovernmental Affairs, and the Office of Management and Budget.

The Office is also responsible for managing the Department's ethics program. In this role, it provides a range of both programmatic and legal services. It provides advice and interpretations on the full range of laws and regulations that govern federal employee ethical conduct as well as employee participation in political activities. It also provides training to the entire Department on these laws and regulations; administers financial disclosure requirements that apply to many employees; and plays a critical role in the confirmation process for presidentially-appointed/senate-confirmed (PAS) appointees, coordinating with the Office of Government Ethics and White House Counsel.

The Honors Attorney Program is a two-year program for exemplary recent law school graduates interested in handling a broad range of labor and employment law issues in a major government agency. Honors Attorneys are given a wide range of work, exposing them to the Department's myriad areas of responsibility; and are given an opportunity to develop their basic legal skills through training, carefully-selected individual assignments, and details within SOL. Upon completion of the program, Honors Attorneys are placed in a national division office or a regional office.

Finally, the Office provides advice to DOL agencies and SOL divisions on general issues of administrative law and procedure. This includes advice on the Administrative Procedure Act, the Regulatory Flexibility Act, the Paperwork Reduction Act, and a number of Executive Orders relating to the rulemaking and administrative adjudicative processes in the Department.

The Associate Solicitor heads the Division and oversees all legal work. He is assisted by the Ethics Counsel and the Counsel for Legislative Affairs. The Division currently employs 23 lawyers and three 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 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

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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 maintaining videoconferencing and telecommunications systems, 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.

MALS is led by the Associate Solicitor and two Deputy Associate Solicitors. MALS staff includes lawyers and paralegals in five counsel areas: Counsel for Appropriations Law; Counsel for Employment Law; Counsel for FOIA and Information Law; Counsel for FOIA Appeals, Paperwork Reduction Act, and Federal Records Act; and Counsel for Procurement Law. MALS 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). The Division currently employs 25 lawyers and 29 administrative and support staff.

Mine Safety and Health Division (MSH)

MSH provides legal services to the Assistant Secretary for Mine Safety and Health and the Mine Safety and Health Administration (MSHA) in connection with the development and enforcement of mandatory safety and health standards applicable to mining, as well as legal advice covering issues of administrative law and interpretation of the Federal Mine Safety and Health Act of 1977, as amended by the Mine Improvement and New Emergency Response Act of 2006 (MINER Act) (collectively, Mine Act), and the standards and regulations promulgated pursuant to the Mine Act. The Division represents the Secretary of Labor in certain administrative hearings, civil trials and appellate litigation arising under the Act

Appellate attorneys handle all appeals before the Federal Mine Safety and Health Review Commission (FMSHRC), and represent the Department in cases in the federal courts of appeals arising under the Mine Act. Working closely with MSHA, trial attorneys litigate some cases. They coordinate with, and provide substantive litigation policy guidance to, attorneys in the SOL's regional offices involved in litigation of cases before FMSHRC Administrative Law Judges. They provide on-site legal advice during major accident investigations and participate in the development and review of all agency accident reports. Trial attorneys provide training and legal oversight to MSHA's Conference and Litigation Representatives, who are lay representatives who handle certain cases before the FMSHRC. Attorneys in the Standards and Legal Advice Section provide legal advice on the development of standards and regulations as well as jurisdictional and policy issues under the Mine Act. They draft and review policy and compliance assistance documents. In addition, they represent MSHA in public hearings, and draft and review testimony for and responses to questions from Congress. They provide legal advice concerning appropriations law, FOIA disclosure, procurement, ethics, administrative law, legislation, and information collection requirements.

The Associate Solicitor, who is assisted by the Deputy Associate, heads the Division and oversees all legal work. The Division has two Trial Litigation Counsels, an Appellate Litigation Counsel

and a Counsel for Standards and Legal Advice. The Division currently employs 24 lawyers and three support staff.

Occupational Safety and Health Division (OSH)

OSH is responsible for the legal work arising out of the Department's administration and enforcement of the Occupational Safety and Health Act of 1970 (OSH Act), as amended, and the anti-retaliation provisions of the Surface Transportation Assistance Act of 1982, and the Seaman's Protection Act. The Division's primary function is providing legal advice and litigation services to OSHA.

One of the Division's functions is to work with OSHA to promulgate mandatory health and safety standards. These rulemakings involve complex procedural steps (e.g., Small Business Regulatory Enforcement Fairness Act panels, peer review requirements, and ALJ hearings) that do not affect other Department agencies and because OSHA standards face intense scrutiny from OMB and Congress. The Division also supports other OSHA rulemakings, such as those related to recordkeeping requirements and whistleblower complaint procedures.

The Division conducts appellate litigation before both the Occupational Safety and Health Review Commission, an independent federal agency that adjudicates challenges to OSHA enforcement actions, and federal district courts and courts of appeals. This litigation includes review of OSHA citations, search warrant and subpoena enforcement, challenges to OSHA standards, review of whistleblower decisions by either the Administrative Review Board or federal district courts, depending on the statute, and working with the Department of Justice on district court litigation, including challenges to procedural and recordkeeping regulations and occasional defensive litigation.

The Division also provides legal services on a broad range of matters, including whistleblower and recordkeeping issues, and overseeing regulations related to those areas. It works closely with OSHA on enforcement initiatives. It coordinates with the SOL regional offices on OSHA litigation matters, serving as a resource and sometimes participating in their litigation. The Division provides legal services in connection with OSHA state plans, guidance products; training programs, FOIA responses, and voluntary programs and compliance assistance efforts. It represents the Department vis-à-vis other federal agencies, the legislative branch, states, private sector groups, and members of the public on OSHA-related matters. The Department works closely with the Office of Congressional and Intergovernmental Affairs (OCIA) on legislative issues related to OSHA, and helps OPA assure that press and other public statements are accurate and do not create legal issues.

The Division is managed by an Associate Solicitor and Deputy Associate Solicitor, as well as six counsels. The Division has two Appellate Litigation Counsels, two Standards Counsels (who advise on rulemaking), and two General Legal Advice Counsels. The Division currently employs 30 lawyers and five support staff.

Plan Benefits Security Division (PBSD)

PBSD conducts litigation and provides legal advice to enforce and interpret the Employee Retirement Income Security Act of 1974 (ERISA), the law that protects the interests of private-sector employees and retirees in their pension, health care, and other employee benefit plans, largely by imposing stringent fiduciary duties on those who control those plans and plan assets.

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Since 1974, Congress has enacted major amendments to ERISA, including the Affordable Care Act of 2010 (ACA), which have steadily increased the Division's responsibilities. PBSD also has responsibilities under the Federal Employee Retirement Security Act (FERSA), which protects the retirement benefits of employees of the federal government. The Division's client agency is the Employee Benefits Security Administration (EBSA), which investigates ERISA violations and refers cases to SOL for enforcement and promulgates ERISA regulations and sub-regulatory and interpretive guidance.

SOL has independent authority to conduct litigation on behalf of the Secretary of Labor to enforce ERISA in federal courts. The Division provides pre-referral legal assistance in EBSA investigations. PBSD also conducts litigation before ALJs to collect civil monetary penalties imposed on plan administrators that fail to comply with ERISA's annual reporting and auditing requirements.

PBSD also represents the Secretary in appeals in DOL ERISA enforcement cases, participates frequently as *amicus curiae* in the courts of appeals and provides legal support to the U.S. Solicitor General in cases involving ERISA before the Supreme Court.

The Division provides legal advice to EBSA at every stage of the rule-making process and in the formulation and issuance of sub-regulatory and interpretive guidance. The Division prepares legal opinions and guidance for EBSA and SOL on a wide variety of ERISA issues and related aspects of many other laws, including tax, securities, banking, and insurance laws. PBSD attorneys also provide legal advice and direction to EBSA in investigating and building cases in new enforcement areas, particularly in connection with EBSA's Major Case Initiative and Health Plan Enforcement Project. Further, PBSD provides advice on matters arising from the Secretary's position as Chair of the PBGC Board of Directors. PBSD attorneys also provide training to SOL attorneys and EBSA investigators on ERISA and related topics.

Under the leadership of the Associate Solicitor and his Deputy, there are four counsels supervising Fiduciary Litigation, General Litigation, Litigation, and Regulations, respectively. The Division is comprised of 30 attorneys and eight support staff.

Regional Offices

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 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 Region also has a separate office in Nashville, which focuses solely on work related to the MSHA Litigation Backlog Project (MLBP).

The Region is headed by the Regional Solicitor in Atlanta, with assistance from the Deputy Regional Solicitor. The Nashville office is managed by an Associate Regional Solicitor. The bulk of the litigation work is directly supervised by seven counsels: Wage Hour; OSHA; Civil Rights; ERISA; MSHA and Workers Compensation; MSHA in Nashville; and the MLBP Projects

TAB 1: Agency Organizational Overview

Manager. There are 26 attorneys in Atlanta, 14 attorneys in Nashville, and 10 attorneys in the MLBP. They are supported by a staff of 17.

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.

The Region recommends and prosecutes litigation in administrative law courts and federal district and bankruptcy courts throughout New England, provides legal and strategic advice and assistance to DOL worker protection agencies in support of their enforcement priorities, works cooperatively with state and local governments to achieve common worker protection goals, and assists U.S. Attorney's offices in the prosecution of criminal cases arising from DOL agency civil investigations.

The Region is headed by the Regional Solicitor with assistance from the Deputy Regional solicitor. Four counsels supervise OSHA, ERISA, Wage and Hour Programs and Civil Rights respectively. The Region employs 26 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 Region has two branch offices located in Kansas City and Cleveland.

The Region recommends and prosecutes litigation at the federal district court and administrative trial levels, prepares legal interpretations and opinions, and provides assistance to the U.S. Attorney's offices in the prosecution of criminal case arising from DOL agency civil investigations.

The Region is headed by the Regional Solicitor with assistance from the Deputy Regional Solicitor. The Cleveland and Kansas City offices are each managed by an Associate Regional Solicitor. Five counsels in Chicago supervise OSHA, MSHA, Wage and Hour, ERISA and Civil Rights matters respectively. Cleveland has a Wage and Hour/Civil Rights Counsel and an OSHA Counsel, while Kansas City has a Wage and Hour Counsel and an OSHA/MSHA Counsel. The 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, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming. The Region has a branch office in Denver, which includes a separate group that focuses solely on work related to the MLBP.

The Region recommends and prosecutes litigation at the administrative proceeding and federal district court levels, prepares legal interpretations and opinions, provides advice and assistance to DOL agencies, and assists the U.S. Attorney's offices in the prosecution of criminal cases arising

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out of DOL agency civil investigations. The attorneys employed by the Region may be called upon to handle cases arising out of any of the DOL's program areas.

The Region is headed by the Regional Solicitor with assistance from the Deputy Regional Solicitor. There are five counsels in Dallas, supervising Civil Rights, ERISA, MSHA, OSHA, and Wage and Hour respectively. Denver has a Safety and Health Counsel and a Wage and Hour Counsel. The Dallas office has 26 attorneys and seven support staff. The Denver office consists of 13 attorneys and four support staff. Ten attorneys and one support staff member work on the MLBP.

New York

The New York Regional Office litigates cases pursuant to the laws administered by DOL in New Jersey, New York, Puerto Rico, and the U.S. Virgin Islands. The Region also provides legal advice to DOL agencies in these states and territories.

The Region recommends and prosecutes litigation at the administrative proceeding and federal district court levels, prepares legal interpretations and opinions, provides advice and assistance to DOL agencies, and assists the U.S. Attorney's offices in the prosecution of criminal cases arising out of DOL agency civil investigations. The attorneys employed by the Region may be called upon to handle cases arising out of any of the DOL's program areas.

The Region is headed by the Regional Solicitor with assistance from the Deputy Regional Solicitor. Its work is divided among four counsels: Counsel for Wage and Hour; Counsel for ERISA, Civil Rights Counsel (who focuses on OFCCP and internal labor relations issues), and Counsel for OSHA. The Region has 35 lawyers and seven 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 Delaware, Maryland, Pennsylvania, Virginia, West Virginia and Washington, D.C. The Region has a branch office in Arlington, Virginia, and includes a separate group that focuses solely on work related to the MLBP.

Our attorneys litigate cases before the federal district courts in the states within our enforcement jurisdiction and administrative tribunals such as the Occupational Safety and Health Review Commission, the FMSHRC, and the Department's Office of Administrative Law Judges. The Region partners closely with the Department's enforcement agencies, such as OSAH, the Wage and Hour Division, MSHA, the OFCCP, and EBSA, as they conduct investigations of violations of the above-referenced statutes. Our attorneys also provide advice and assistance to these and other Departmental agencies in matters arising under more than 150 federal statutes and other laws.

The Region is headed by the Regional Solicitor in Philadelphia, with assistance from the Deputy Regional Solicitor. The Arlington office is managed by an Associate Regional Solicitor. The bulk of the litigation work is directly supervised by five counsels – one each for Wage Hour, OSHA, Civil Rights, ERISA, and MSHA/Black Lung – and the MLBP Projects Manager. The Region has 38 attorneys and 12 support staff in its two offices, as well as nine attorneys and two support staff dedicated to the MLBP.

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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 Region has branch offices in Los Angeles and Seattle.

The Region recommends and prosecutes litigation in federal district court and in administrative proceedings, supports and assists various DOL agencies with development of strategic enforcement cases, and prepares legal interpretations and opinions. The Region's attorneys may be called upon to handle cases arising out of any of the DOL's program areas..

The Region is headed by the Regional Solicitor in San Francisco, with assistance from the Deputy Regional Solicitor. The Los Angeles and Seattle offices are each managed by an Associate Regional Solicitor. There are four counsels in San Francisco supervising Civil Rights and ERISA, Labor Relations and Ethics, ERISA, and MSHA and OSHA respectively. Los Angeles has a Wage and Hour Counsel, and Seattle has a Whistleblower Counsel and an MSHA and OSHA counsel. The Region employs 38 attorneys and nine legal support staff.

TAB 1: Agency Organizational Overview

Workforce At-A-Glance

**DEPARTMENT OF LABOR EMPLOYMENT *
AS OF 11/1/2016 - SOL**

AGENCY			
Subagency	National Office	Regional Office	Total
SOL	360	363	723
Total	360	363	723
RACE & GENDER			
Ethnicity	F	M	Total
American Indian	1	1	2
Asian	30	9	39
Black	126	29	155
Hispanic	20	18	38
Two or more Races	6	2	8
White	258	223	481
Total	441	282	723

BARGAINING UNIT	
Local 12	193
NCFL	60
Non-BU	470
SUPERVISORY**	
Non Supervisor	580
Supervisor	143
WORK SCHEDULE	
F-Full Time	715
P-Part Time	8
REGIONS	
1 Boston	32
2 New York	42
3 Philadelphia	42
4 Atlanta	69
5 Chicago	50
6 Dallas	32
7 Kansas City	20
8 Denver	27
9 San Francisco	37
10 Seattle	12
Natl Ofc	360
Total	723

GRADE DISTRIBUTION	
00	19
04	1
05	2
06	2
07	16
08	44
09	16
11	49
12	46
13	27
14	199
15	302
Total	723
DISABLED STATUS	
No Disability	661
Non-targeted	52
Targeted	10
APPOINTMENT TENURE	
Indefinite	51
Permanent	670
Temporary	2
RETIREMENT ELIGIBILITY	
Early Out	95
Eligible	132
Not Eligible	496

METRO D.C. AREA EMPLOYEES BY BUILDING		
BALLSTONCTRT WRTHREE		5
FRANCES PERKINS BLDG		315
MSHA ARLINGTON-CRYSTAL GATEWAY		1
TWIN TOWERS		39
Total		360
Includes regional employees working in the D.C. area		
GRADE 13 & ABOVE		
Ethnicity	F	M
American Indian	1	1
Asian	23	8
Black	40	14
Hispanic	15	14
Two or more Races	4	2
White	221	205

* Permanent and Temporary Employees
** Supervisor count includes manager levels 2 and 4

Organizational Changes During the Past Eight Years

Loss of Regional Solicitor Position in 2011

Prior to 2012 the SOL regional structure consisted of eight regional offices headed by a senior executive service (SES) regional solicitor. The regional offices were located in Boston, New York, Philadelphia (with a branch office located in Arlington), Atlanta (with a branch office located in Nashville), Chicago (with a branch office located in Cleveland), Kansas City (with a branch office located in Denver), Dallas, and San Francisco (with branch offices located in Los Angeles and Seattle). In the fall of 2011, the Regional Solicitor in Kansas City retired. SOL was not given permission to fill the SES position in Kansas City and therefore, SOL was forced to restructure the Regional Offices to account for the loss of an SES position. The Kansas City Office became a branch office of the Chicago Regional Office and the Denver Office became a branch office of Dallas. This structure has remained in place to the present.

MSHA Litigation Backlog Project (MLBP)

Beginning in 2007 MSHA, SOL and the FMSHRC were faced with a rapidly growing number of pending contested cases. In 2010, the number of pending contested cases had sky-rocketed and there was growing concern about the effect on health and safety in the mines. In a 2010 supplemental appropriation, Congress provided funds to the Department and the FMSHRC to reduce the backlog of contested cases. SOL, working with MSHA, developed the MLBP. The MLBP was designed as a temporary project and included the use of specialized litigation teams (with initially 89 term and temporary SOL employees (74 attorneys) who were hired in 2010-2011) to staff the MLBP and provide legal advice, conduct litigation and participate in global settlements to resolve some cases. These SOL employees worked hand-in-hand with MSHA technical advisors who provided expert mining knowledge concerning issues raised in the cases, and case settlement authority for MSHA to resolve the “targeted backlog.” Temporary MLBP offices were set up in Philadelphia, Arlington, Atlanta, Nashville, and Denver. In 2012, Congress allowed the use of appropriated funds to continue the needed work. In 2013, due to sequestration budget cuts and a decrease in the “targeted backlog” and the pending contested cases, two of the five SOL MLBP offices were closed and the number of term and temporary SOL full time employees associated with the project was cut to 44. SOL currently has 39 full time employees devoted to the MLBP.

Under a work load agreement that was signed in 2008, contested cases under the Mine Safety and Health Act are allocated generally between SOL and MSHA. SOL handles the most complex and difficult cases and those with novel legal issues, while MSHA, through its Conference and Litigation Representative (CLR) program attempts to resolve the more routine contested citations and penalties. The “targeted backlog” handled by the MLBP staff consisted primarily of the cases assigned to MSHA and CLRs. As the MLBP staff resolved the cases in the targeted backlog, an agreement was reached between SOL and MSHA to transfer additional CLR cases to the MLBP. Since 2012, approximately 2000 to 3000 cases a year have been transferred from MSHA to the MLBP to handle. As of July 31, 2016 there were 2086 pending contested cases assigned to SOL. The number of pending contested citations has dropped from a high of 88,757 at the end of 2010 to 14,848 as of July 31, 2016.

Key Agency Stakeholders

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.

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 Practicing 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.

TAB 3: INITIATIVES

Policy and Regulatory Issues

The following text describes key SOL initiatives implemented during this administration that cut across the various program areas or clients.

“Early and Often”

Over the past seven years, SOL has emphasized proactive investigative assistance to its client agencies. The goal is for SOL to become involved with the enforcement activities of its clients at the earliest stages of their investigations and remain so throughout the life of the matter.

Early involvement is necessary to ensure that investigations are planned and conducted in a manner consistent with Department-wide enforcement goals, and – crucially – that evidence is collected to allow for subsequent litigation should it arise. As workplaces change in the 21st century, legal theories supporting enforcement must evolve correspondingly, which in turn requires new types of evidence. SOL thus has an important role to play in pre-litigation investigations.

Both Regional Solicitors and Associate Solicitors meet with their client agencies on a regular basis to discuss the clients’ significant investigations and strategic priorities. Coordination extends to specific investigations, as SOL attorneys may collaborate on investigative plans, attend and participate in witness interviews, draft evidence-sharing agreements with enforcement partners, prepare warrant applications, handle issues related to expert witnesses, and conduct negotiations and settlement discussions.

Enterprise-wide Enforcement

Traditionally most of the Department’s worker protection agencies have used the “one-workplace-at-a-time” model of enforcement, which limits remedies to the specific workplace inspected. This approach can be inefficient because relief for other similar, or even identical, violations by the same employer at additional worksites requires separate inspections and potentially separate administrative or legal proceedings. Thus, where violations or hazardous conditions at one worksite arise from an enterprise-wide policy or practice – or *absence* of a policy or practice – enterprise-wide enforcement may save resources and achieve better compliance.

Enhanced Compliance Agreements

As part of both the “early and often” initiative and in keeping with the enterprise-wide enforcement theme, SOL has worked with client agencies to negotiate enhanced compliance agreements in appropriate cases. Enhanced compliance agreements contain relief that is beyond the scope of the alleged violation as a way to effect wider compliance in the company, an industry or geographic location

Criminal Referrals and Coordination with Law Enforcement

A number laws enforced civilly by DOL also include criminal provisions, and SOL has traditionally referred cases to the Department of Justice for criminal prosecution in instances of severe misconduct – usually involving fatalities related to willful violations of the OHS Act or Mine Act. Over the past seven years, however, SOL has sought to step-up criminal enforcement of worker

protection laws by making more frequent referrals to the Department of Justice and expanding the types of cases referred

SOL attorneys, working with their client agencies, are encouraged to consider criminal referrals not only when an employee dies or is seriously injured as a result of the violation of DOL-enforced law, but also in cases where an employer's conduct is by itself egregious – for example in instances of repeated violations or the coercion of workers – as well as those cases where an employer deliberately obstructs DOL's investigation

In 2015, the DOL and the Department of Justice entered into a new memorandum of understanding (MOU) to facilitate referrals involving workplace safety issues. The MOU establishes points of contact in both departments for coordinating with respect to criminal violations of the OSH Act, Mine Act, and MSPA, and formalizes a process for referrals. It also provides for joint departmental training, as well as information and data sharing about ongoing cases. Under the MOU the responsibilities for criminal referrals under these DOL statutes is now the responsibility of the Department of Justice Environmental Crimes Section.

“Retaliation”

The Department is charged with administering and enforcing numerous whistleblower provisions, related to both otherwise DOL-administered and non-DOL-administered statutes. These protections, sometimes also known as “anti-retaliation” or “anti-discrimination” provisions, are core pieces of their respective statutory schemes because they allow employees to report violations of law and cooperate with government investigations without fear of retaliation by their employers. For these reasons, SOL, along with the client agencies have aggressively pursued retaliation claims under the OSH Act and the FLSA during this administration. For example, the Department secured a consent judgment for nearly \$1 million in back wages and liquidated, consequential, and punitive damages against a Boston-area animal-hide wholesaler and its owner, in part, for firing 10 workers who cooperated with Wage and Hour Division investigators. In another recent case, DOL obtained a consent judgement totaling more than \$121 thousand for employees of a New York baby-apparel manufacturer, who faced retaliation for cooperating with an investigation into other FLSA violations.

“Misclassification of Employees as Independent Contractors”

Over the past several years, SOL has engaged in an initiative to combat employers' increasing willingness to misclassify their employees as “independent contractors” in an effort avoid overtime, minimum wage, unemployment insurance, workers compensation, and other obligations. SOL has stepped-up enforcement, established positive judicial precedent, and secured back wages for numerous misclassified employees, including nurses, janitors, security guards, printers, construction workers, and even restaurant line cooks and dishwashers. With new and more complicated work arrangements – often involving contracting and sub-contracting – becoming more prevalent, and because of the large role courts play in determining misclassification, SOL expects that it will need to maintain focus on misclassification for the foreseeable future.

Amicus Program

SOL has an active amicus program. Its divisions often identify amicus opportunities independent of their clients, and SOL is sometimes asked directly by the courts for the Department's views on an issue *sub judice*. An amicus brief is filed, usually with a federal court of appeals or the U.S.

Supreme Court, to provide the Department's views on a particular priority legal issue. Divisions build amicus work into their operating plans. Nearly all amicus briefs are submitted in conjunction and consultation with the Solicitor General's Office at the U.S. Department of Justice

Management

SOL devotes significant time and resources to maintaining a satisfied and engaged workforce. Based on employee feedback, including the results of the annual Employee Viewpoint Surveys (EVS), the results of this effort have been positive. In response to the FY2016 EVS, SOL employees reported increased satisfaction with their jobs, pay, and organization for the fourth consecutive year. Over 78% of employees responded that they would recommend SOL as a good place to work. This appears to be a message SOL employees want to send as their response rate to the EVS has consistently outstripped that of Federal Government overall, and even that of the Department of Labor.

SOL is not resting on its laurels, however. For FY2017, it will continue to prioritize management-employee communication through additional "town hall" meetings, regional conferences, and division and regional staff meetings. SOL also continues to emphasize training, holding supervisor training conferences and administering an "Attorney Leadership Development Program" for staff. Finally, SOL continues to strive to create positive incentives for its employees. Four awards – three for attorneys and one for support staff – are given annually to employees in recognition for outstanding work, and SOL continues its program of annual attorney promotions to GS 15 paygrade.

TAB 4: BUDGET
BUDGET AUTHORITY AND FTE SUMMARY

(Dollars in millions)

	FY 2013 Enacted	FY 2014 Enacted	FY 2015 Enacted	FY 2016 Enacted	FY 2017 Request
Budget Authority	\$129.9	\$132.7	\$133.8	\$132.8	\$148.8
FTE	693	664	646	649	705

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 2016, SOL was appropriated \$125.0 million from this fund, \$7.5 million from the BLDTF, and \$0.3 million from the UTF. The head table and subsequent graphs reflect SOL’s direct funding and their reflected FTE.
- In addition to its direct funding, SOL provides legal services to client agencies through reimbursable agreements. In FY 2016, SOL had a reimbursable authority of \$14.2 million. This authority was supported by agreements with the Office of Workers’ Compensation Programs and the Wage and Hour Division.

Budget and FTE Trends

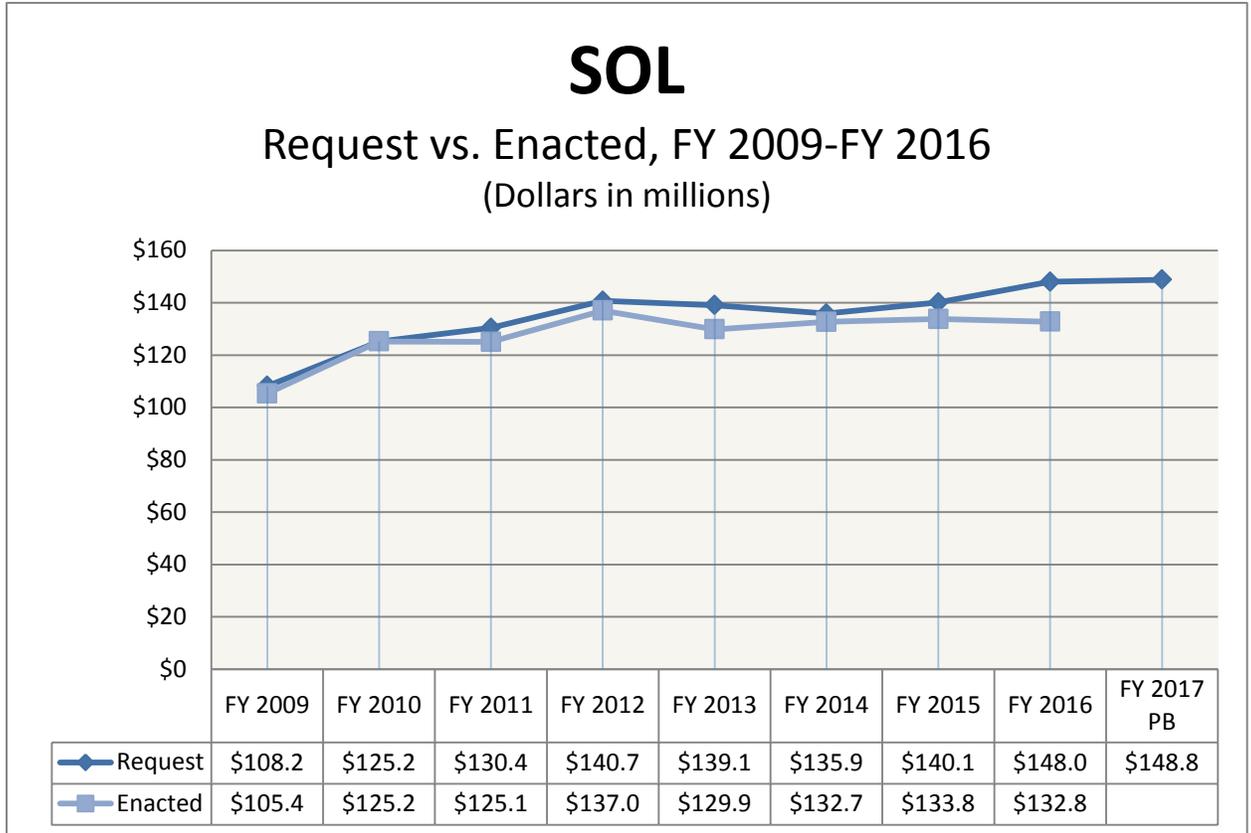
- SOL’s direct budget authority has risen from \$105.4 million in FY 2009 to \$132.8 million in FY 2016. The largest increase in enacted budget authority came in FY 2010, when their budget authority rose by \$19.9 million. In the report language in FY 2010, the House committee stated the increase was intended to provide resources for SOL to hire at least 60 new personnel and increase resolution of pending litigation and regulatory issues, and the Committee expressed its expectation that this funding would be annualized in future appropriations to ensure SOL “has adequate legal staff to support the Department’s reinvigorated enforcement agenda.”
- SOL’s general fund appropriation increased by \$10.0 million in FY 2012. The report language specified that the increase was included to support legal services related to the FMSHRC. This work was previously supported by a supplemental appropriation to SOL and MSHA.
- The increased budget authority has enabled the agency to support 649 authorized FTE in FY 2016 in comparison to an authorized level of 597 in FY 2009.
- Over the FY 2009-FY 2016 time period, however, the agencies to which SOL provides legal services also had budget increases. The general fund budget authority for worker protection agencies increased by 16 percent, increasing the amount of legal services those client agencies required.
- In addition to their full year appropriations, SOL received two major supplemental appropriations between FY 2009 and FY 2016. In FY 2009, SOL received a total of \$3.3 million, which supported 22 FTE, from the American Recovery and Reinvestment Act (ARRA) supplemental appropriation to provide legal services related to ARRA implantation.

TAB 4: Budget

- In FY 2010, SOL received \$10.9 million as a supplemental appropriation for legal services related to the Department of Labor's caseload before the FMSHRC. MSHA received an additional \$7.5 million to support these efforts as well.

Upcoming Issues

- (b) (5)



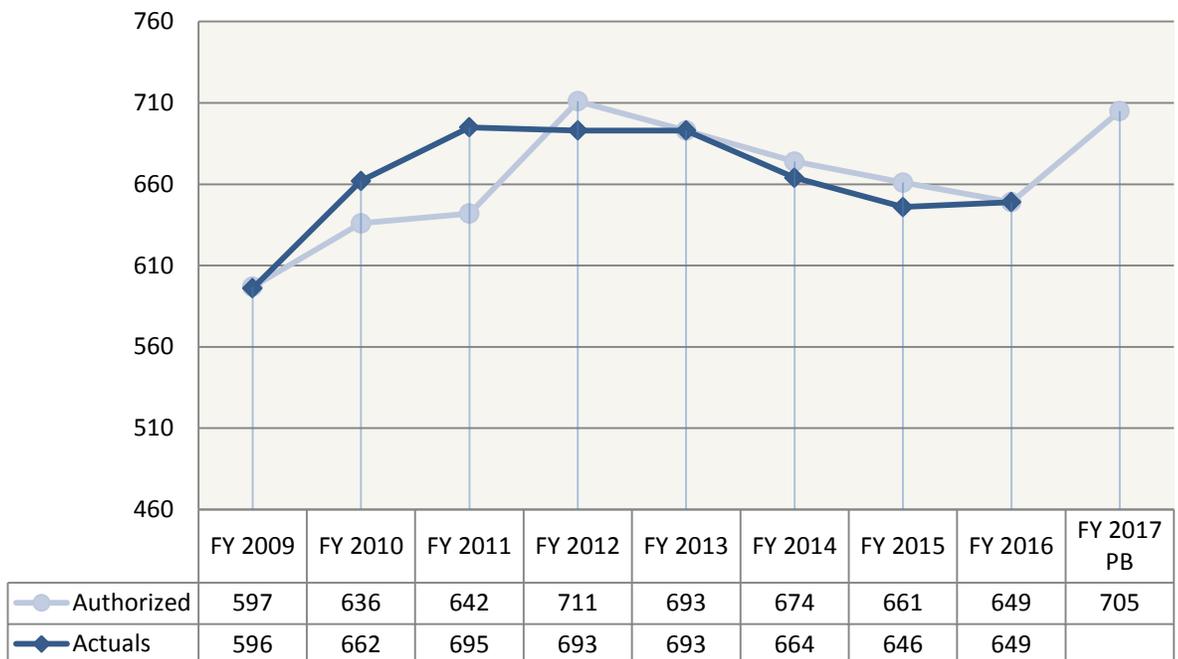
SOL

FY 2009 Inflation Adjusted BA vs. FY 2009-FY 2016 Enacted BA
(Dollars in millions)



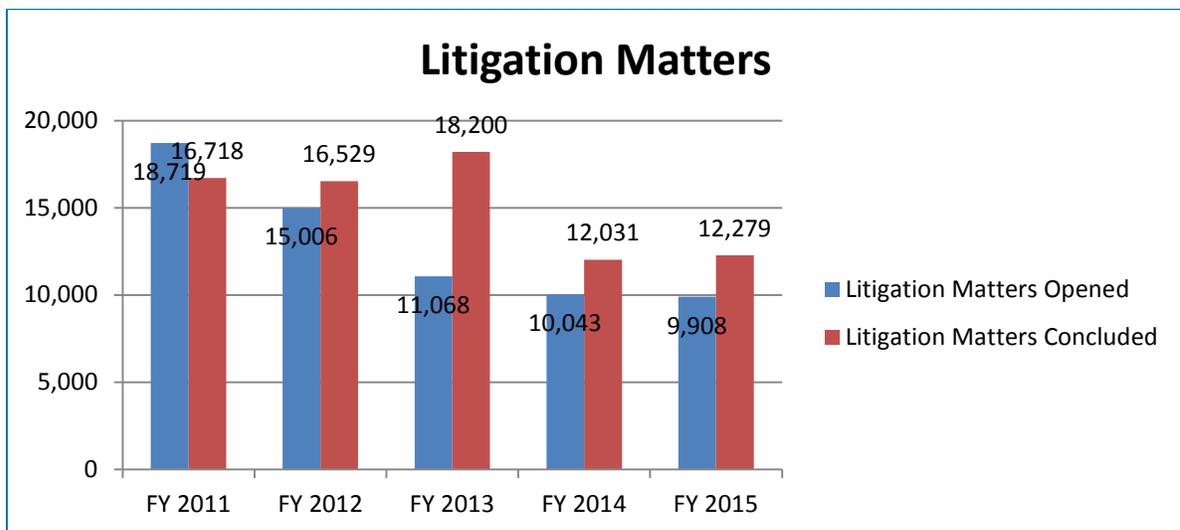
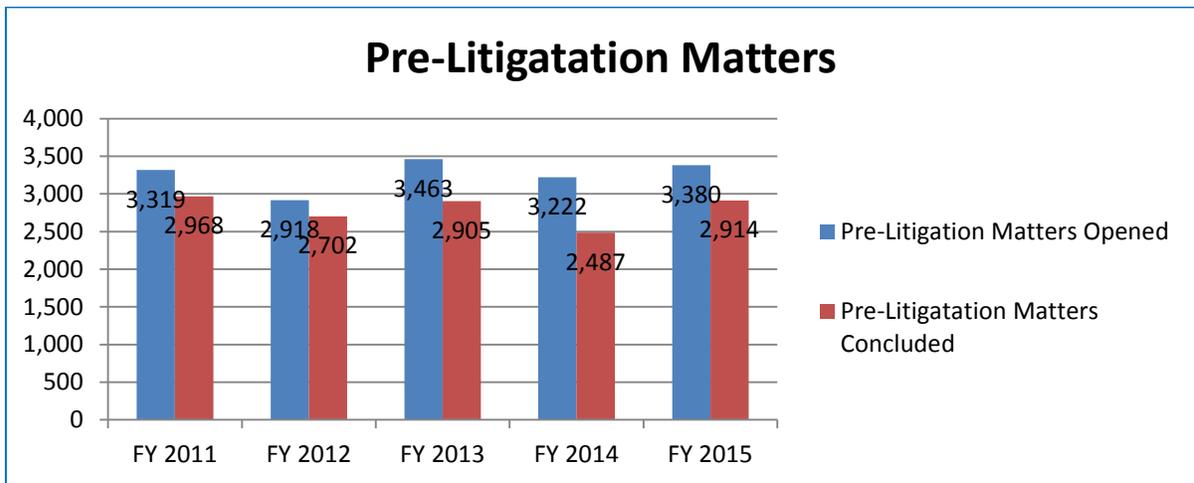
SOL

Authorized FTE vs. Actuals, FY 2009-2017

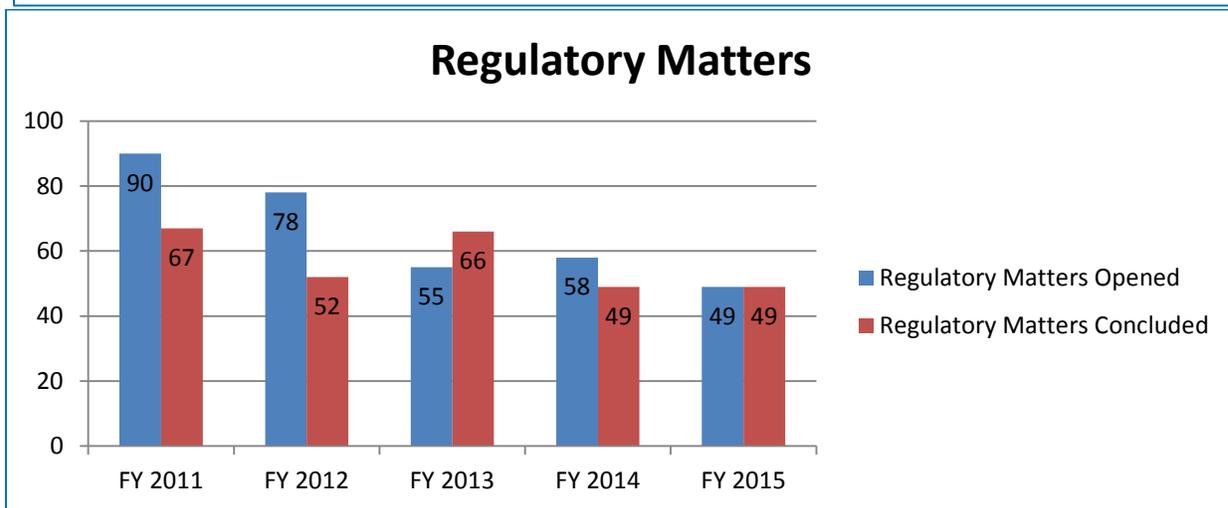
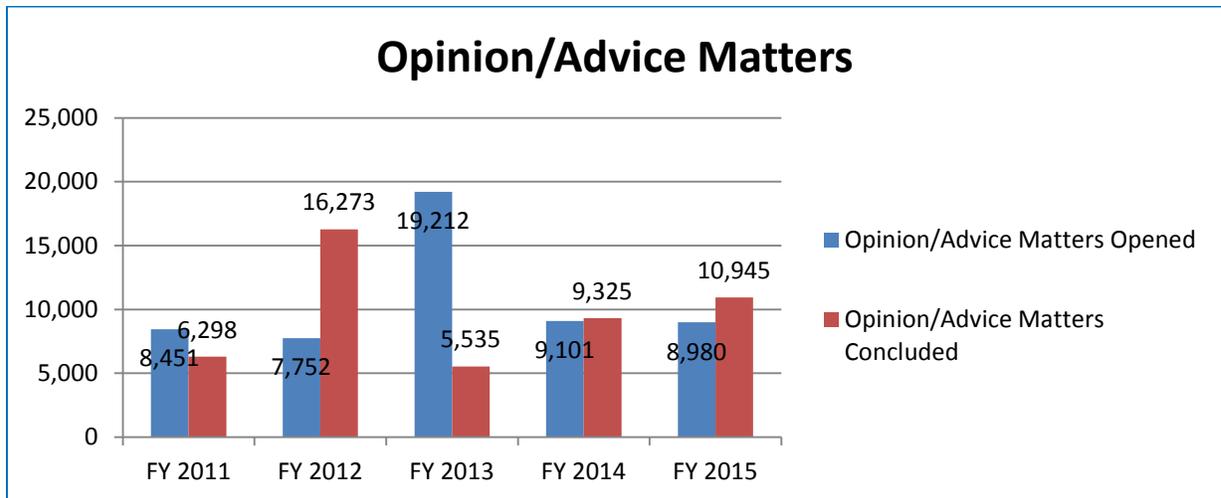


TAB 5: AGENCY PERFORMANCE

SOL provides legal support to all agencies in the department. SOL does not have measures with targets but does track 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.



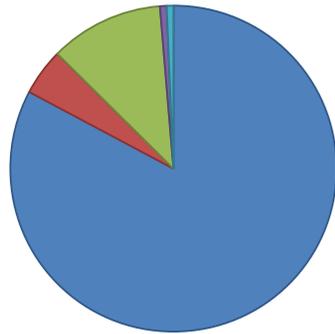
TAB 5: Agency Performance



Note: The FY2013 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 FY16 comes to a close, nearly all the USPS matters that came in in FY2013 are closed.

Milestones, established largely around client agency priorities, are the focus of SOL's performance management system. SOL collaborates with agencies to determine priorities and establish milestones.

FY 2015 Milestone Status



- Completed (125)
- Delayed due to regulatory agenda or legislation (7)
- Delayed due to client or external action (17)
- In progress/did not meet deadline (1)
- Canceled (1)

TAB 6: SIGNIFICANT CASES

This document is organized by Department of Labor agency, and 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.) will be 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 Perez or Department of Labor is in the case name, then that likely means that the Department is a party to the lawsuit. If Perez 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 of Labor position on the matter.

Employee Benefit Security Administration

ERISA

Case Name: McCullough v. United Healthcare

Venue: Second Circuit

Issue: Whether ERISA preempts state law claims by service providers alleging promissory estoppel by out-of-network providers based on an insurer's misrepresentation about its coverage of a patient and participant in an ERISA plan.

Case Name: Osberg v. Foot Locker

Venue: Second Circuit

Issue: (1) Whether the district court correctly concluded that plaintiffs' claims for fiduciary breach violations were timely under ERISA's "fraud or concealment" provision; (2) Whether the participants were required to show that they detrimentally relied on Foot Locker's misrepresentations in order to establish that Foot Locker breached its fiduciary duties and to obtain class-wide relief in the form of reformation; (3) Whether the district court correctly found that the plaintiffs established that Foot Locker's misstatements caused them to have a mistaken understanding of how their benefits would accrue after the cash balance plan conversion.

Case Name: Solnin v. Sun Life

Venue: Second Circuit

Issues: (1) Whether a claim for benefits under ERISA that has been remanded by a court to the claims administrator generally should be treated as an initial claim or an appeal of a denied claim under the ERISA claims regulations; (2) Whether the deadlines set forth in the ERISA claims regulations, 29 C.F.R. § 2560.503-1, apply when a court reverses a denial of benefits and sends the claim back to the administrator to reconsider a denied claim; (3) Whether the deadlines begin to run from the date the applicable order is filed.

Case Name: Fletcher v. Convergex

Venue: Second Circuit

Issue: Whether the district court improperly dismissed, for lack of constitutional standing, plaintiff's suit on behalf of himself and his retirement plan asserting that defendant-fiduciaries violated ERISA by dealing with his retirement plan's assets in their own interests in order to earn hidden fees.

Case Name: Trujillo v. Landmark Media

Venue: Fourth Circuit

Issue: Whether a plan participant who makes a complaint during an internal audit of a plan is protected by ERISA section 510 from retaliation.

Case Name: Hitchcock v. Cumberland University

Venue: Sixth Circuit

Issue: Whether a plan participant must exhaust administrative remedies for a claim against plan sponsor and fiduciary for violating ERISA's anti-cutback provision.

Case Name: Thole v. U.S. Bank

Venue: Eighth Circuit

Issue: Whether a plan participant in a defined-benefits pension plan has Article III standing to sue fiduciaries for a fiduciary breach that caused the plan to be underfunded.

Case Name: Allen v. GreatBanc

Venue: Seventh Circuit

Issue: (1) Whether, under the pleading standards for cases concerning plan investments in publicly-traded stock set out by the Supreme Court in *Fifth Third Bancorp v. Dudenhoeffer*, 134 S. Ct. 2459 (2014), the participants were required to plead the existence of "special circumstances" that would have alerted their trustee, GreatBanc, to the fact that the price paid by the Personal-Touch Home Care, Inc. Employee Stock Ownership Plan for privately-held employer stock exceeded the stock's fair market value; (2) Whether, to survive a motion to dismiss on their prohibited-transaction claim under ERISA section 406(a), 29 U.S.C. § 1106(a), plaintiffs were required not only to allege a transaction proscribed by section 406(a), but also to allege facts showing that the transaction was not exempt under the "adequate consideration" exemption in ERISA section 408(e), 29 U.S.C. § 1108(e).

Case Name: In re Lorna Clause

Venue: Eighth Circuit

Issue: Whether ERISA invalidates a welfare plan's forum-selection clause that deprives the petitioner-participant of the venue choices afforded by ERISA's venue provision, and instead requires her to bring suit at a considerable distance from her home.

Case Name: John J. Koresko v. Perez

Venue: Third Circuit

Issue: Whether the court erred in finding Appellant in contempt of court his failure of comply with earlier order mandating cooperation with court-appointed independent fiduciary and transfer of millions of dollars of plan assets and control of plan assets to independent fiduciary.

Case Name: Tatum v. RJ Reynolds

Venue: Fourth Circuit

Issue: Whether the correct test for determining loss causation once a plan participant has shown that a fiduciary breached its duties of prudence by failing to investigate the merits of a plan investment is whether the breaching fiduciary showed that a prudent fiduciary would have made the same decision after investigating the matter.

Case Name: Perez v. First Bankers Trust Services, Inc.

Venue: U.S. District Court for the Southern District of New York

Issue: Whether MagnaCare, First Bankers, as trustee of the Maran, Inc. ESOP, caused the ESOP to buy Maran stock from the company's principals for more than adequate consideration, specifically, by overpaying by approximately \$40 million. The Secretary alleges that First Bankers caused the overpayment by failing prudently to investigate the value of Maran prior to the transaction, and in so doing violated its fiduciary duties and caused a prohibited transaction.

Case Name: Perez v. MagnaCare Administrative Services, LLC, et al.

Venue: U.S. District Court for the Southern District of New York

Issue: Whether MagnaCare failed to disclose to its health plan clients its fees for certain services and whether it improperly adjudicated emergency room claims and claims for which third parties may be liable. MagnaCare provides ERISA-governed health plans with access to its network of health care providers, facilities, and ancillary medical service providers and also offers third-party administration services such as claims adjudication and processing. The Secretary alleges that MagnaCare violated ERISA by unilaterally setting and failing to disclose its network management fees and that it violated ERISA, the Affordable Care Act, and the Department's claims procedures regulation by failing to properly adjudicate claims.

Case Name: Perez v. Mueller

Venue: U.S. District Court for the Eastern District of Wisconsin

Issue: Whether fiduciaries of the Omni Resources, Inc. ESOP including the selling shareholders and the independent fiduciary Alpha Consulting, Inc. violated ERISA sections 404 and 406 by causing the Plan to pay more than adequate consideration for Omni stock. The ESOP purchased 100% of the outstanding shares and paid far more than fair market value for the stock. The Secretary alleges that the ESOP fiduciaries caused the overpayment by using a four month old valuation that failed to

consider updated financial information, current market conditions and the loss of a major company client.

Case Name: Secretary v. TPP Holdings, Inc.

Venue: U.S. District Court for the Northern District of Georgia, and if granted, Eleventh Circuit

Issue: Whether the six-year statute of limitations under ERISA is in fact a statute of repose that cannot be equitably tolled. (Almost simultaneously, the Southern District of Florida found a similar tolling agreement enforceable.)

Case Name: Perez v. John J. Koresko, et al.

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

Issue: The court's judgment, which has been upheld on appeal to the Third Circuit, confirmed Koresko's ERISA liability for improperly diverting and misusing plan assets in multiple employer death benefit arrangement. The two primary issues currently before the court are whether Koresko remains in contempt and should continue to be incarcerated, and the method that the independent fiduciary should use to distribute the existing plan assets.

Case Name: Perez v. BAT Masonry, et al.

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

Issue: Whether Defendants breached ERISA by permitting an ESOP that purchased employer stock to pay several million dollars more than the actual value of that stock, whether further breaches were committed when the selling shareholder continued drawing cash out of the company via the ESOP following the ESOP transaction, and whether a successor to the ESOP-owned company is also liable for some of these breaches.

Case Name: Perez v. Chimes District of Columbia, Inc., et al.

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

Issue: Whether defendants breached ERISA when a health plan paid millions of dollars in excessive expenses, the third party administrator failed to adequately administer the plan and received undisclosed compensation from other service providers, and the third party administrator and another service provider paid kickbacks to the plan sponsor as an inducement to retain them.

Case Name: Perez v. Sentry Equipment Erectors, Inc., et al.

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

Issue: Whether defendants breached ERISA because: 1) the Sentry ESOP purchased 52% of the company's stock for over \$6,000,000 more than the fair market value of that stock; and 2) the 42% of Sentry stock already held in the ESOP was immediately devalued when the ESOP purchased that remaining 52% of the stock and no protection was given to the existing ESOP participants.

Case Name: Perez v. Cactus Feeders, Inc ESOP

Venue: United States District Court, Northern District of Texas

Issue: Whether the fiduciaries violated its fiduciary duties when it caused the ESOP to pay \$100 million for the remaining 70% of the company stock without requiring sufficient adjustments in that purchase price due to limitations in the sale regarding marketability, control, and dilution of the stock from warrants and options.

Case Name: Perez v. First Bankers Trust Services (SJP ESOP)

Venue: U.S. District Court for the District of New Jersey

Issue: Whether the defendant First Bankers' Trust Services allowed the SJP Employee Stock Ownership Plan to pay an excessive transaction price to the selling shareholder of the sponsoring company.

Case Name: Perez v. First Bankers Trust Services (Rembar ESOP)

Venue: U.S. District Court for the Southern District of New York

Issue: Whether the defendant First Bankers' Trust Services allowed the Rembar Employee Stock Ownership Plan to pay an excessive transaction price to the selling shareholder of the sponsoring company.

Case Name: Perez v. Ginsberg et al. (Laser and Skin Surgery Center of NY ESOP)

Venue: U.S. District Court for the Southern District of New York

Issue: Whether the defendant fiduciaries and selling shareholder allowed the subject Employee Stock Ownership Plan to pay an excessive transaction price to the selling shareholder of the sponsoring company.

Case Name: Perez v. Doyle, et al. (PITWU)

Venue: U.S. District Court for the District of New Jersey

Issue: The case has been remanded so that the District Court can make additional findings regarding the date on which Defendant Cynthia Holloway should have been on notice regarding the breaches of her co-fiduciaries operating a multi-employer welfare arrangement (MEWA) servicing many employee welfare benefit plans.

Case Name: Department of Labor v. White Mountain Apache Tribe Retirement Plan

Venue: DOL Office of Administrative Law Judges

Issue: Whether a benefit plan sponsored by an Indian Tribal Government was a governmental plan not covered by ERISA and, hence, not subject to ERISA's annual auditing and reporting requirements and penalties for failure to comply with those requirements, and whether Executive Order 13175 and the Tribal Consultation Policy create any enforceable right, substantive or procedural, in favor of the defendant plan when the Tribal Consultation Policy specifically states that "enforcement policy, planning, investigations, cases and proceedings are not appropriate subjects for consultation."

Mine Safety and Health Administration

Mine Safety and Health Act

Case Name: Small Mine Development v. Secretary of Labor, et al.

Venue: D.C. Circuit

Issue: Whether the Commission was correct in holding that an MSHA safety standard requiring operators of underground metal/nonmetal mines to provide miners with a method of refuge if only one escapeway exists applies when the operator is only engaged in exploration or development. This issue presents an interpretive question of first impression.

Case Name: Maxxim Rebuild Co. v. Secretary of Labor, et al.

Venue: 6th Circuit

Issue: Whether the Commission was correct in finding that MSHA has jurisdiction over a shop that performs rebuild and fabrication work on mining equipment used at various mines.

Case Name: Hopkins County Coal, LLC v. Secretary of Labor, et al.

Venue: 6th Circuit

Issue: Whether the Commission was correct in finding that the mine operator violated Section 103(h) of the Mine Act by refusing to provide MSHA with the personnel files of employees who were disciplined for purportedly engaging in certain misconduct. MSHA requested the information as part of its investigation of a complaint alleging that a miner was discharged for engaging in protected safety activity, and requested the information for the purpose of determining whether that miner was treated differently than other miners who purportedly engaged in similar misconduct.

Case Name: Secretary of Labor v. FMSHRC (American Coal Co.)

Venue: D.C. Circuit

Issue: Whether the ALJ erred in refusing to approve a settlement agreement submitted by MSHA and settling 32 citations on the basis of an across-the-board penalty reduction of 30 percent. The issue implicates a fundamental statutory question of the legal standard by which the Commission should review settlement agreements entered into by MSHA. In the Commission's view, the standard of review is broad; in MSHA's view, the standard of review is narrow. The United Mine Workers has asked to participate as an intervenor.

Case Name: Pocahontas Coal Co., LLC

Venue: Federal Mine Safety and Health Review Commission

Issue: Whether the ALJ was correct in upholding the POV notice MSHA issued to the operator. This case involves a challenge by a mine operator to an application of the Pattern of Violations ("POV") Rule promulgated by MSHA in 2013. The operator argues (1) that MSHA failed to establish a nexus between the two POV categories identified in the notice and accidents and injuries at the mine; (2) that MSHA acted impermissibly by applying the POV screening criteria as a binding norm; (3) that MSHA applied the POV sanction in an arbitrary and capricious manner; and (4) that MSHA acted impermissibly by applying the POV sanction retroactively.

Case Name: Secretary v. Austin Powder Company

Venue: Administrative Law Judge, Federal Mine Safety and Health Review Commission

Issue: The ALJ’s interlocutory order of March 10, 2016 sustained MSHA’s determination that Austin Powder and its regional subsidiaries constitute a “unitary operator,” so that Austin Powder can be cited as a single entity for Mine Act violations and penalties. The ALJ has since ordered the parties to mediation before a Commission settlement official to discuss the merits of the citations and penalties. Once the parties agree on the citations and penalties, we anticipate the judge will issue a final order. We expect Austin Powder to appeal the “unitary operator” finding to the Commission.

Case Name: Secretary v. Doe Run Company

Venue: Administrative Law Judge, Federal Mine Safety and Health Review Commission

Issue: 1) Whether the mine provided secondary escapeways in each of five lead-zinc ore mines from the lowest level of each mine; 2) whether MSHA’s 2007 vacatur of a similar violation at these mines precludes MSHA from now enforcing the secondary escapeway standard at these mines.

Case Name: Secretary v. B & S Industrial Contractors

Venue: Federal Mine Safety and Health Review Commission Administrative Law Judge

Issue: Whether special remedies such as emotional distress and punitive damages are available in whistleblower cases under section 105(c) of the MSH Act.

Case Name: Secretary v. N.J. Wilbanks

Venue: Federal Mine Safety and Health Review Commission Administrative Law Judge

Issue: Whether MSHA has jurisdiction over a subcontractor working at a site that was part of an existing mine, even though there was no mining activity at the time of the inspection.

Case Name: Secretary v. Cemex

Venue: Federal Mine Safety and Health Review Commission Administrative Law Judge

Issue: Whether the mine operator flagrantly failed to conduct a workplace examination of elevator cars and landings after a miner plunged to his death down an elevator shaft.

Case Name: Secretary v. Armstrong Coal

Venue: Federal Mine Safety and Health Review Commission Administrative Law Judge

Issue: Whether a mine operator—which has routinely been found to discriminate against miners and miners’ representatives—interfered with the rights of two miners’ representatives when they were excluded from a portion of a closing conference following a mine inspection.

Case Name: Secretary and Knisell v. Cumberland Coal Resources

Venue: Federal Mine Safety and Health Review Commission Administrative Law Judge

Issue: Whether an Accident Intervention Program which imposes various levels of intervention, including counseling and discipline, for reported “avoidable” accidents interferes with miners’ right to report accidents and therefore constitutes interference with protected rights under Section 105(c) of the Mine Act.

Case Name: Secretary and Hayes v. Marion County Coal/Murray Energy Corporation

Venue: Federal Mine Safety and Health Review Commission Administrative Law Judge
Issue: Whether a meeting in which a mine foreman told assembled miners that the mine could shut down if miners continued to notify MSHA of violations and told them to notify the operator of such violations before contacting MSHA, interferes with miners' rights to report safety concerns to MSHA and therefore constitutes interference with protected rights under Section 105(c) of the Mine Act. One month prior to this meeting, a Federal Mine Safety and Health Review Commission Administrative Law Judge issued a Decision and Order holding that similar "awareness" meetings conducted at this mine, among other Murray Energy-owned mines, constituted illegal interference and ordered Respondents to cease and desist.

Case Name: Secretary v. Consolidation Coal Company, WEVA 2015-632

Venue: Federal Mine Safety and Health Review Commission Administrative Law Judge

Issue: Whether extensive accumulations of coal fines and float coal dust along a conveyor belt, with broken rollers, rollers turning in coal fines, and misaligned belt rubbing bottom roller cradles, meet the Act's requirements for a Flagrant violation.

Case Name: Doe Run Company

Venue: Federal Mine Safety and Health Review Commission Administrative Law Judge

Issue: Whether the operator violated §57.11050(a) when it failed to provide two escapeways from "the lowest levels" in the mine. MSHA found 24 separate violates of this provision in the mine. At the judge's instructions, the operator filed a summary judgment brief addressing the issue of whether the withdrawal of similar citations issued in 2007 was a settlement agreement which allowed the operator to use DPOs in lieu of driving a secondary escapeway. On June 10, 2016, the ALJ denied the Motion For Summary Judgment citing issues of material fact that required a hearing.

Case Name: Secretary v. North American Quarry and Construction Services, LLC

Venue: Federal Mine Safety and Health Review Commission Administrative Law Judge

Issue: Whether North American Quarry & Construction, Inc. failed to train a deceased miner to safely use an electric crawler drill and engaged in aggravated conduct when it assigned him to work alone on the drill.

Case Name: Secretary v. Gibraltar Rock Belle Mead, Inc.

Venue: Federal Mine Safety and Health Review Commission Administrative Law Judge

Issue: Whether Gibraltar Rock Belle Mead, Inc. failed to examine and correct dangerous ground conditions at its mine thereby exposing a contract employee to serious injuries when approximately 15 tons of rock fell from a highwall and entered the cab of his front end loader.

Case Name: Secretary v. Silver Valley Drilling & Blasting, Inc.

Venue: Federal Mine Safety and Health Review Commission Administrative Law Judge

Issue: Whether Silver Valley Drilling & Blasting, Inc. failed to examine and correct dangerous ground conditions at Gibraltar Rock Belle Mead, Inc. before assigning its employee to work there, thereby exposing him to serious injuries when

approximately 15 tons of rock fell from a highwall and entered the cab of his front end loader.

MSHA 105(c) - Retaliation

Case Name: Secretary o/b/o Pappas v. CalPortland Co. & Riverside Cement
Venue: Federal Mine Safety and Health Review Commission Administrative Law Judge
Status: Set for trial to begin December 6, 2016
Issue: Whether CalPortland refused to hire a miner in retaliation for the miner filing a discrimination complaint against a previous employer.

Occupational Safety and Health Administration

Rule and Guidance Challenges

Case Name: Agricultural Retailers Association v. OSHA
Venue: D.C. Circuit
Issue: Whether the memo constitutes a “modification” to that standard and would therefore have been require to pass through notice and comment rulemaking prior to promulgation.

Case Name: Challenges to Silica Rulemaking
Venue: D.C. Circuit
Issue: Eight petitions for review have been filed challenging OSHA’s Final Rule on Occupational Exposure to Respirable Crystalline Silica, which was published on March 25, 2016. The rule reduced the amount of silica dust, which increases the risk of developing serious and often deadly silica-related diseases, which workers can be exposed to on the job.

Occupational Safety and Health Act

Case Name: Mar-Jac Poultry
Venue: U.S. District Court for the Northern District of Georgia
Issue: Whether OSHA’s attempt to expand an unprogrammed inspection to include additional hazards set out in a Regional Emphasis Program (REP) for poultry processors violates the Fourth Amendment.

Case Name: U.S. v. DNRB/Fast Track Erectors
Venue: U.S. District Court Western District of Missouri
Issue: Whether the employer violated Section 666(e) of the Act when it committed a willful violation of the Acts fall protection provisions which lead to the death of an employee who fell in excess of 30 feet while doing steel erection without fall protection.

Case Name: PrimeFlight Aviation
Venue: Occupational Safety and Health Review Commission

TAB 6: Significant Cases

Issue: Whether the bloodborne pathogen standard applies to workers who clean airplanes at Newark and LaGuardia Airports and have sustained needlesticks while cleaning passenger seating areas.

Case Name: FJC Security

Venue: Occupational Safety and Health Review Commission

Issue: Whether a workplace violence citation under the general duty clause can be sustained against a security guard company operating under contract restrictions imposed by the Federal Protective Service to protect a federal building.

Case Name: Environmental Remediation Services, Inc. (ERSI)

Venue: Occupational Safety and Health Review Commission

Issue: Whether a general duty clause violation can be affirmed where workers are exposed to lead at levels below the permissible exposure limit (PEL) and workers are showing serious adverse health effects.

Case Name: Lloyd Industries

Venue: Occupational Safety and Health Review Commission Administrative Law Judge

Issue: Willful/egregious machine guarding and noise monitoring violations; \$816,000 in proposed penalties.

Case Name: AndVenture

Venue: Occupational Safety and Health Review Commission Administrative Law Judge

Issue: Willful general duty clause violation for workplace violence regarding at-home caregivers; one caregiver was raped by a client's father.

Case Name: PhotogenX

Venue: Occupational Safety and Health Review Commission Administrative Law Judge

Issue: Willful citation items for unsafe storage of flammable liquids; \$285,300 in proposed penalties.

Case Name: Secretary v. Sunfield

Venue: Occupational Safety and Health Review Commission Administrative Law Judge

Issue: Whether the company committed multiple egregious willful violations at its motor vehicle metal parts stamping operation, and if so, whether approximately \$3.4 million in penalties arising out of these violations should be sustained.

Case Name: Secretary v. Aldridge Electric, Inc.

Venue: Occupational Safety and Health Review Commission Administrative Law Judge

Issue: Whether an electrical contractor on a construction project committed a willful violation of section 5(a)(1) of the Act by failing to acclimatize employees for heat, resulting in the death of a 36 year old employee of Aldridge due to heat stroke on his first day on the job.

Case Name: Secretary v. Case Farms

Venue: Occupational Safety and Health Review Commission Administrative Law Judge

Issue: Whether this poultry processing company committed multiple willful, repeat and serious violations at its Ohio plants, and if so, whether approximately \$2 million in penalties arising out of these violations should be sustained.

Case Name: Secretary v. Integrated Life Choices, Inc.

Venue: Occupational Safety and Health Review Commission Administrative Law Judge

Issue: Whether the operator of a personal and professional services company committed a serious violation of section 5(a)(1) of the Act when it failed to ensure that its employees were adequately protected from workplace violence arising from working with individuals with developmental and intellectual disabilities.

Case Name: E I Dupont DE Nemours & Co Inc.

Venue: Occupational Safety and Health Review Commission Administrative Law Judge

Issue: Whether DuPont willfully failed to maintain its process safety management program. One case addresses a quadruple fatality as a result of chemical leak. The second case was the result of an inspection under the Chemical NEP.

Case Name: Cotton Construction

Venue: Occupational Safety and Health Review Commission Administrative Law Judge

Issue: Whether Cotton Construction willfully failed to provide fall protection to its employees which resulted in the serious injury of one worker.

Case Name: Challenge to OSHA's Sallman Letter (National Federation of Independent Business v. Dougherty et al)

Venue: U.S. District Court for the Northern District of Texas

Issue: Whether the Sallman Letter, a February 2013 letter OSHA issued regarding when workers at a non-union worksite can authorize a person affiliated with a union to act as their representative during an OSHA inspection, is invalid because it allegedly "substantially lowers the standard" set forth in 29 C.F.R. §§ 1903.3 for when a non-employee can accompany an OSHA compliance officer on an inspection of a worksite.

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

Case Name: Metro-North Commuter R.R. v. DOL

Venue: Second Circuit

Issue: Whether the Federal Railroad Safety Act's provision prohibiting railroad carriers from denying, delaying, or interfering with the medical treatment of employees who are injured during the course of employment applies beyond the period immediately following an injury. Whether the ARB correctly ruled that a mistaken evidentiary ruling by the ALJ was harmless error, and whether the ALJ's award of punitive damages against Metro-North was appropriate.

Case Name: Smith v. DOL

Venue: Fourth Circuit

Issue: Whether the ARB reasonably concluded that substantial evidence supports the ALJ's finding that Smith's employer (Intervenor Duke Energy Carolinas and Atlantic

Group) showed by clear and convincing evidence that they would have taken the same action if they had discovered Smith's failure to promptly elevate to management a falsified firewatch log entry by means other than his protected reports.

Case Name: Blackorby v. BNSF Ry. Co.

Venue: Eighth Circuit

Issue: Whether plaintiff-appellee (Blackorby) presented sufficient evidence at trial to (1) establish that his claimed protected activity was a "contributing factor" under Federal Railroad Safety Act thus supporting the district court's denial of BNSF motion for judgment as a matter of law; and (2) that he suffered recoverable emotional-distress damages thus supporting the district court's denial of BNSF's motion for judgment as a matter of law; and (3) whether the district court committed reversible error warranting a new trial where (A) the court instructed the jury that Blackorby did not have to prove that BNSF intentionally discriminated against him, and (B) the court instructed the jury to award an amount to compensate Blackorby for any damages it found Blackorby sustained as a direct result of BNSF's decision to discipline Blackorby.

Case Name: Mercier v. U.S. Department of Labor

Venue: Eighth Circuit

Issue: Whether the DOL ARB correctly affirmed the ALJ's conclusion that Mercier failed to meet his burden to show by a preponderance of evidence that his protected activity contributed to Union Pacific's decision to discharge him in violations of FRSA.

Case Name: Nelson v. SOL

Venue: Ninth Circuit

Issue: Whether substantial evidence in the record supports the DOL ARB order holding that Petitioner Nelson did not engage in protected activity under Energy Reorganization Act, and, even if he did, he failed to show that the conduct he alleged was protected constituted a contributing factor in the alleged adverse action.

Case Name: Cypress Semiconductor v. ARB

Venue: Tenth Circuit

Issue: Whether employee was retaliated against in violation of the Sarbanes-Oxley Act and relief and attorney fees were appropriately awarded.

Case Name: Abdur-Rahman v. U.S. Department of Labor

Venue: Eleventh Circuit

Issue: Whether the DOL ARB's decision awarding attorneys fees to the complainants and against the county/employer under the Federal Water Pollution Control Act, should have been enhanced and should not have affirmed the ALJ's taking notice of law firm economic surveys.

Case Name: DeKalb County v. U.S. Department of Labor

Venue: Eleventh Circuit

Issue: Whether the DOL ARB erred in this Federal Water Pollution Control Act case by reviewing the ALJ's fact findings de novo, rather than for substantial evidence, and that complainants did not engage in protected activity as a matter of law because they did not allege any violation of environmental law but rather complained to their supervisor about matters which related to their job duties.

Case Name: Secretary v. AT&T, Southwestern Bell

Venue: U.S. District Court Western District of Missouri

Issue: Whether AT&T violated 11(c) of the OSH Act by instituting a policy which appears to penalize employees during performance appraisals for reporting workplace injuries.

Case Name: Perez v. Lloyd Industries, Inc. and William P. Lloyd

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

Issue: This discrimination Complaint alleges that two employees were terminated in retaliation for initiating an OSHA enforcement inspection and cooperating with OSHA.

Office of the Assistant Secretary for Administration and Management

Freedom of Information Act

Case Name: Landmark Legal Foundation v. DOL

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

Issue: Whether a FOIA request for records "evinced" the use of personal email by certain DOL officials to conduct agency business requires a search of the personal email accounts of the identified officials.

Office of Federal Contract Compliance Programs

Executive Order 11246 (Discrimination by Federal Contractors)

Case Name: OFCCP v Pilgrim's Pride (Marshville, NC plant)

Venue: DOL Office of the Administrative Law Judges and U.S. Bankruptcy Court

Issue: Whether Pilgrim's Pride violated Executive Order 11246 when it hired laborers and operators in a way that disfavored Black applicants and favored Hispanic applicants in its Marshville, NC, plant. Before the bankruptcy court is the issue of whether and to what extent is OFCCP precluded from proceeding against Pilgrim's Pride by an earlier Chapter 11 bankruptcy.

Case Name: OFCCP v. WMS Solutions, Inc.

Venue: DOL Office of Administrative Law Judges

Issue: This is the first systemic discrimination case filed against a federal construction contractor. The Administrative Complaint alleges hiring discrimination against black, Asian and American Indian/Alaskan Native applicants; compensation discrimination against female, black and white laborers; and harassment against Hispanic employees.

Case Name: OFCCP v. Enterprise RAC Company of Baltimore, LLC
Venue: DOL Office of Administrative Law Judges
Issue: The Administrative Complaint alleges hiring discrimination against black applicants for the Management Trainee position.

Case Name: OFCCP v. Potomac Abatement, Inc.
Venue: DOL Office of Administrative Law Judges
Issue: The Administrative Complaint alleges compensation discrimination against Hispanic laborers and Field Technicians, hiring discrimination against black laborers and Field Technicians, and harassment of Hispanic employees.

Case Name: JBS Swift & Company E.A. Miller, Inc. (Hyrum, Utah)
Venue: DOL Office of Administrative Law Judges
Issue: Whether Swift discriminated against female applicants for entry-level laborer jobs from August 5, 2005, through September 30, 2006. The complaint also alleges that Swift discriminated against white, black, and Native American applicants for entry-level laborer jobs from February 1, 2008, through June 30, 2009. We have obtained additional records for later periods during discovery and the discrimination periods may be extended forward.

Case Name: Pilgrim's Pride Corporation (Mt. Pleasant, Texas)
Venue: DOL Office of Administrative Law Judges
Issue: Whether Pilgrim's systematically discriminated against qualified black and white applicants for semi-skilled manual labor positions, and discriminated against white and female applicants for unskilled labor positions from July 20, 2005, through July 20, 2007.

Case Name: JBS Swift & Co
Venue: DOL Office of Administrative Law Judges
Issue: Whether Swift discriminated against American Indian, black, Hispanic, and white applicants, in favor of Asian applicants, for General Production jobs from at least September 26, 2007, through at least June 30, 2010.

Case Name: OFCCP v. B&H Foto and Electronics Corp.
Venue: DOL Office of Administrative Law Judges
Issues: Employer discriminated against blacks, Asians and women in hiring and against Hispanic workers in compensation and promotions, and perpetuated a hostile work environment for its Hispanic workers.

Case Name: OFCCP v. Palantir Technologies
Venue: DOL Office of Administrative Law Judges
Issue: The Administrative Complaint alleges hiring discrimination against Asian applicants in three job categories. Specifically, the Administrative Complaint alleges that Palantir's heavy reliance on internal referrals and its other selection procedures favored White applicants.

Office of Workers' Compensation Programs

Black Lung Benefits Act

Case Name: Helen Mining Co. v. Elliott
Venue: Third Circuit
Issue: Whether the Department's 2013 regulations implementing Section 411(c)(4) of the Black Lung Benefits Act, which provides a rebuttable presumption that certain totally disabled miners with more than 15 years of employment are entitled to federal black lung benefits, are a permissible interpretation of the statute.

Defense Base Act

Case Name: Chugach Management Services v. Jetnil
Venue: Ninth Circuit
Issue: Whether the Defense Base Act's zone of special danger doctrine, which provides compensation for overseas U.S. workers who are injured while engaging in foreseeable activities, also applies to foreign nationals.

Wage-Hour Division

Fair Labor Standards Act

Case Name: Saleem v. Corp. Transp. Group.
Venue: Second Circuit
Issue: Whether the district court erred in ruling that drivers of "black cars" were not entitled to the protections of the FLSA because they were independent contractors.

Case Name: Perez v. American Future Sys. d/b/a Progressive Bus. Pub.
Venue: Third Circuit
Issue: Whether rest breaks of twenty minutes or less must be compensated as hours worked, as set out in Wage and Hour regulations, 29 C.F.R. 785.18, and whether this regulation should be applied as a bright-line rule.

Case Name: Salinas v. Commercial Interiors, Inc.
Venue: Fourth Circuit
Issue: Whether the district court's erred in ruling on summary judgment that the plaintiffs were not jointly employed under the FLSA by the contractor (Commercial Interiors, Inc.) that engaged the subcontractor.

Case Name: Navarro v. Encino Motorcars, LLC
Venue: Ninth Circuit
Issue: The Supreme Court remanded the case on June 20, 2016 to the Ninth Circuit for a determination in the first instance of whether automobile dealership service advisors are exempt from the overtime provisions of the FLSA under section 13(b)(10)(a) of the Act that exempts "any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles, trucks, or farm implements, if he is employed by a

nonmanufacturing establishment primarily engaged in the business of selling such vehicles or implements to ultimate purchasers.” The Supreme Court refused to accord controlling Chevron deference to the Department's final rule of 2011 indicating that service advisors were not exempt.

Case Name: Williams v. Am. Blue Ribbon Holdings

Venue: Ninth Circuit

Issue: Whether the district court erred by dismissing complaints filed by employees who alleged that their employers credited tips received from customers toward the FLSA minimum wages due for all of the employees’ hours worked even though the employees sometimes performed tasks unrelated to their tipped occupation and spent more than 20 percent of their work time performing tasks that were related to their tipped occupation but did not produce tips, where the court relied on case law from outside the tip credit context rather than the Secretary’s longstanding regulation and interpretation of that regulation requiring that employers directly pay the full minimum wage for such non-tipped time.

Case Name: Perez v. Zhao “Jenny” Zeng Hong and Perez v. Huang “Jackie” Jie

Venue: Ninth Circuit

Issue: Whether the district court improperly withdrew proposed jury instructions regarding the determination of liability and apportionment of damages for each individual defendant, and should have distinguished the liability of each defendant on the special verdict form such that one individual was not an employer under the FLSA and should not have been held jointly and severally liable; whether the district court improperly instructed the jury on the elements of retaliation; and whether the court erred by permitting the jury, rather than the court, to decide whether the Defendants’ had a good faith defense to avoid assessment of liquidated damages

Case Name: Perez v. El Tequila, LLC

Venue: Tenth Circuit

Issue: Whether the district court correctly ruled at summary judgment that Defendants – a restaurant and its owner -- had failed to create a disputed issue of fact as to the Secretary's back-wage calculations; whether the district court appropriately granted summary judgment to the Secretary on conceded legal issues and deemed undenied factual allegations to be admitted; whether the district court acted within its discretion by finding that Defendants had not demonstrated excusable neglect when filing an untimely answer; and whether the district court appropriately granted the Secretary's post-trial motion for judgment as a matter of law that Defendants' violations were willful where Defendants admitted to falsifying records, lying to a federal investigator, and instructing their employees to lie.

Case Name: Romero v. Top-Tier Colo.

Venue: Tenth Circuit

Issue: Whether the district court erred by dismissing claims under the FLSA filed by an employee who alleged that her employer credited tips received from customers toward the minimum wages due for all of her hours worked even though she sometimes performed tasks unrelated to her tipped occupation and spent more than

20 percent of her work time performing tasks that were related to her tipped occupation but did not produce tips, where the court relied on case law from outside of the tip credit context rather than the Secretary's longstanding regulation and interpretation of that regulation requiring that employers directly pay the full minimum wage for such non-tipped time.

Case Name: Freixa v. Prestige Cruise Services, LLC

Venue: Eleventh Circuit

Issues: Whether the district court erred in concluding that an employee was paid a regular rate in excess of one and one-half times the statutory minimum wage as required for the overtime pay exemption at section 7(i) of the FLSA to apply when it divided the employee's total pay including commissions by his total hours worked during his entire employment to find his average hourly rate instead of allocating his commissions to particular workweeks as provided by regulation, and determining on a workweek-by-workweek basis whether section 7(i)'s minimum pay requirement was met.

Case Name: Perez v. Bland Farms

Venue: U.S. District Court for the Southern District of Georgia

Issue: Whether the workers in a Vidalia onion packing shed—which processes onions from multiple farms under contract to a single grower—are entitled to the agricultural exemption to overtime pay under the FLSA.

Case Name: Perez v. Off Duty Police Services, Inc.

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

Issue: Whether security guards and traffic control officers—many of them off-duty police officers—are employees or independent contractors under the FLSA.

Case Name: Perez v. Work Services, Inc.

Venue: U.S. District Court for the District of South Carolina

Issue: Whether a turkey processing plant paid workers with mental disabilities minimum wage and overtime. (This case involves collaboration with EEOC, and is an offshoot of the *Henry's Turkey* case which resulted in the largest recovery in EEOC history.)

Case Name: Perez v. Holland Acquisitions

Venue: United States District Court for the Western District of Pennsylvania

Issue: Employer misclassified workers as independent contractors performing title searches for the oil and gas fracking industry in Pennsylvania, Ohio and West Virginia. Back wages and liquidated damages estimated to be in excess of \$1M for more than 400 employees.

Case Name: Perez v. Las Margaritas

Venue: United States District Court for the Eastern District of Pennsylvania

Issue: Employer willfully violated the FLSA by requiring restaurant servers to participate in an invalid tip pool and failing to pay them minimum wage and overtime

premiums. Back wages and liquidated damages estimated to be in excess of \$1M for the employees.

Case Name: Perez v. Olympic Linen

Venue: United States District Court for the Eastern District of Pennsylvania

Issue: Employer willfully violated the FLSA by failing to pay commercial laundry workers minimum wage and overtime premiums. Back wages and liquidated damages estimated to be in excess of \$1.2M for fifty employees.

Case Name: Secretary of Labor v. El Rodeo-Electric Inc., et al.

Venue: U.S. District Court for the Western District of Virginia-Roanoke Division

Issue: Whether the employer, who operates five Mexican restaurants, willfully violated the Fair Labor Standards Act for failing to pay its servers a minimum cash wage of at least \$2.13 an hour, and instead only compensated employees with their tips. Further, whether other employees were paid salaries that were insufficient to meet the statutory minimum wage and overtime pay requirements. The back wages owed are calculated to be \$2,524,585.47. Wage and Hour has demanded the full amount of back wages and an equal amount in liquidated damages, for a total of \$5,049,170.87

Case Name: Secretary of Labor v. TEAM Environmental LLC

Venue: U.S. District Court for the Southern District of West Virginia

Issue: Whether the employer violated the Fair Labor Standards Act for failing to pay 267 non-exempt employees the required overtime rate for hours worked over forty in a workweek. Most of these employees were inspectors who provided services to gas companies to inspect the work of third party contractors. The employees were paid on a day rate and only paid overtime when the employer's contract with its client expressly provided for overtime pay. The back wages owed are calculated to be \$2,134,505.74. Wage and Hour has demanded the full amount of back wages and an equal amount of liquidated damages, for a total of \$4,269,011.48.

Case Name: Secretary v. Cathedral Buffet, Rev. Angley

Venue: U.S. District Court Northern District of Ohio

Issue: Whether Cathedral Buffet, a for-profit corporation owned by a televangelist that operates a restaurant, violated the minimum wage and overtime provisions of the FLSA when it allowed "volunteers" to work at the restaurant and, if so, are these workers entitled to approximately \$400,000 in backwages and liquidated damages.

Case Name: Secretary v. Confidential Services, Beverlle Sokol and Katrina Zidel

Venue: U.S. District Court Southern District of Ohio

Issue: Whether Confidential Services, a vehicle repossession company, violated the minimum wage and overtime provisions of the FLSA when it failed to pay employees for work over 40 hours and treated "helpers" as independent contractors; and, if so, are these workers entitled to approximately \$1.5 million in back wages and equal sum in liquidated damages.

Case Name: Perez v. Jani-King of Oklahoma

Venue: United States District Court for the Western District of Oklahoma
Issue: Whether Jani-King of Oklahoma should be enjoined from violating the FLSA recordkeeping provisions by not treating the persons who purchase and work as franchisees of Jani-King of Oklahoma as employees of Jani-King of Oklahoma rather than independent contractors under the Fair Labor Standards Act.

Case Name: Perez v. Paragon and Brian Jessop (contempt)
Perez 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 Paragon, Brian Jessop, the FLDS, and Dale Barlow utilized hundreds of children in violation of several child labor provisions in conducting a 2012 pecan harvest and whether those violations also constituted contempt of the 2007 permanent injunction against the use of unlawful child labor.

Case Name: Perez v. Commonwealth of Puerto Rico

Venue: U.S. District Court for the District of Puerto Rico

Issue: Whether Puerto Rico failed to pay police officers and K-9 handlers for all overtime hours worked and overtime when due.

Case Name: Perez v. Ace Restaurant Group, 15-cv-07149 (JHR-AMD)

Venue: U.S. District Court for the District of New Jersey

Issue: Overtime violations and whether the Department of Labor can seek full minimum wage and withheld tips as remedy for violations of the tip credit provisions, 203(m).

Case Name: Perez v. TLC Sober Living Homes

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

Issue: Whether persons who manage sober living group homes for a for-profit enterprise are employees or volunteers entitled to the FLSA minimum wage and overtime provisions.

Case Name: Perez v. Nuzon Corporation

Venue: U.S. District Court Central District of California, Southern Division

Issue: Whether operator of multiple residential care homes for the elderly/disabled falsified time records and violated FLSA's minimum wage and overtime provisions.

Case Name: Perez v. Austin Electric

Venue: U.S. District Court District of Arizona

Issue: Whether electrical contractor who paid on piece rate basis failed to maintain an accurate record of hours worked and failed to pay minimum wage and overtime to workers.

Case Name: Perez v. West Coast Drywall

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

TAB 6: Significant Cases

Issue: Whether drywall contractor failed to pay minimum wage and overtime to over 1100 workers during statutory period, instructed employees to falsify time records and failed to maintain accurate record of hours worked.

Case Name: Perez v. Westside Drywall

Venue: U.S. District Court District of Oregon

Issue: Whether firm failed to pay minimum wage and overtime to construction workers.

Case Name: Perez v. Kazu Construction

Venue: U.S. District Court District of Hawaii

Issue: Whether construction company that required employees who worked 60-70 hours per week to “bank” overtime hours, without keeping records of the extra hours worked, and where employees did not use the allegedly banked hours, violated FLSA and owes backwages of at least \$500,000.

Case Name: Perez v. Cash 2 U/Angel’s Recycling

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

Issue: Whether employees of company that recycles cans and bottles violated FLSA’s minimum wage, overtime and recordkeeping provisions when employees were paid a day rate of \$50 or \$60, and were not paid overtime when they worked over 40 hours in a workweek.

Case Name: Perez v. Valley Garlic

Venue: U.S. District Court Eastern District of California

Issue: Whether grower and farm labor contractor who supplied labor to grower violated MSPA’s transportation safety provisions and failed to pay wages required under the FLSA.

Case Name: Perez v. Alternative Senior Care, Inc.

Venue: U.S. District Court, Southern District of California

Issue: Whether care home provider with eight facilities created multiple corporate entities that functioned as co-employers to obfuscate its employer status and misclassified its workers as independent contractors, violated the FLSA’s wage and recordkeeping provisions

Case Name: Perez v. TBG

Venue: U.S. District Court, District of Arizona

Issue: Whether co-employers, including two staffing agencies and a professional employer organization failed to pay “lumpers” who unloaded groceries at an Albertson’s warehouse overtime rates.

Case Name: Perez v. Wellfleet Communications

Venue: U.S. District Court, District of Nevada

Issue: Whether marketing company that misclassified its telemarketers as independent contractors at its call center and paid them only commissions, violated the when it

failed to pay minimum wage, even sometimes no wages and overtime to over 1500 workers

Case Name: Magers v. Seneca Re-Ad Indus., Inc.

Venue: DOL Administrative Review Board

Issue: Three workers with disabilities received a favorable ALJ decision in their challenge of the sub-minimum wages they were paid by their employer under section 14(c) of the FLSA, which provides that workers whose disabilities impair their earning or productive capacity for the work being performed may be paid at sub-minimum wage rates "to the extent necessary to prevent curtailment of opportunities for employment" for such workers. A DOL ALJ rejected the employer's contention that the employees' disabilities impaired their productivity and rejected the methods used by the employer to set the subminimum wage rates because of insufficient evidence showing a nexus between the workers' disabilities and their inability to perform the work at rates measured for non-disabled workers. The case presents questions of first impression regarding the appropriate statute of limitations, the burden of proof as to coverage, and availability of liquidated damages and attorneys' fees in a 14(c) proceeding.

Case Name: Secretary v. Five Oaks Achievement Center, LLC d/b/a Five Oaks Achievement Center; Whispering Hills Achievement Center, LLC d/b/a Whispering Hills Achievement Center; and North Fork Educational Center, LLC d/b/a North Fork Educational Center

Venue: United States District Court for the Southern District of Texas, Houston Division

Issue: Whether Defendants failed to pay overtime wages to its direct care workers by unlawfully claiming an 8-hour sleep time exemption when Defendants failed to provide adequate sleep facilities and at least 5 hours of uninterrupted sleep.

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

Case Name: PWCA & NAPWC v. Sec'y

Venue: DOL Administrative Review Board

Issue: Whether the Administrator acted in a manner consistent with the Davis-Bacon Act and its implementing regulations and reasonably exercised his discretion when he determined that contractors must annualize contributions to supplemental unemployment benefit plans.

Case Name: Velocity Steel, Inc. v. Administrator

Venue: DOL Administrative Review Board

Issue: Whether the Administrator reasonably exercised his discretion when he denied Velocity Steel Inc.'s four conformance requests because the proposed wage rates did not bear a reasonable relationship to the wage rates listed in the applicable wage determinations

Case Name: MLB Transp., Inc. v. Administrator

Venue: DOL Administrative Review Board

Issue: Whether workers on U.S. Department of Veterans Affairs contracts covered by the Service Contract Act transporting veterans to non-emergency medical appointments were properly classified as shuttle bus drivers rather than taxi drivers and whether the shuttle bus driver wage rates are correct.

Family and Medical Leave Act

Case Name: Woods v. Start Treatment & Recovery Centers

Venue: Second Circuit

Issues: Whether the district court erred in not giving a mixed-motive jury instruction for Egan’s claim of retaliation for exercising his FMLA rights; and whether the district court erred in requiring that Egan have direct evidence of the Delaware River Port Authority’s retaliatory motive in order to use a mixed-motive framework under the FMLA

Case Name: Egan v. Delaware River Port Auth.

Venue: Third Circuit

Issues: Whether the district court erred in not giving a mixed-motive jury instruction for Egan’s claim of retaliation for exercising his FMLA rights; and whether the district court erred in requiring that Egan have direct evidence of the Delaware River Port Authority’s retaliatory motive in order to use a mixed-motive framework under the FMLA.

Case Name: Jones v. Allstate Insurance Co.

Venue: Eleventh Circuit

Issues: Whether the district court erred in not giving a mixed-motive jury instruction for Egan’s claim of retaliation for exercising his FMLA rights; and whether the district court erred in requiring that Egan have direct evidence of the Delaware River Port Authority’s retaliatory motive in order to use a mixed-motive framework under the FMLA

Migrant and Seasonal Agricultural Worker Protection Act

Case Name: Alpha Services. v. Perez

Venue: Ninth Circuit

Issue: Administrative Procedure Act (APA) challenge, on appeal from a favorable U.S. District Court opinion, to an Administrative Review Board decision affirming the Wage-Hour Division’s action under the Migrant and Seasonal Agricultural Worker Protection Act against Alpha Services, a forestry company, for transporting its workers in pick-up trucks modified to carry passengers.

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

Case Name: Aleutian Capital Partners v. Perez

Venue: U.S. District Court for the Southern District of N.Y.

Issue: Whether (1) upon receiving a complaint, the Wage and Hour Division is authorized to investigate the employer's violations of the rights of a non-complaining H-1B worker without following the "credible information-reliable source" investigation procedures outlined in the INA and the DOL regulations; (2) bonuses contingent on revenue can be used to satisfy an employer's monthly payment obligations to its H-1B employees; and (3) Whether WHD's investigation of an H-1B employee not named in the complaint occurred outside the statute of limitations period.

Case Name: Overdevest Nurseries, LP.

Venue: DOL Administrative Review Board

Issue: Whether the ALJ correctly concluded that Overdevest's non-H-2A workers performing work within the scope of the job order and the same work as the H-2A workers were corresponding workers under the H-2A program and therefore due the H-2A wage rate.

Case Name: Administrator v. ME Global, Inc.

Venue: DOL Administrative Review Board

Issues: Whether ALJ correctly ruled that because ME Global failed to effect a bona fide termination of its H-1B-sponsored employee and owed back wages for the rest of the period of his LCA until he voluntarily left the country 2.5 years later.

Case Name: Administrator, WHD v. Fernandez Farms

Venue: DOL Administrative Review Board

Issues: Whether the ALJ erred in concluding that the successors in interest to Mr. Fernandez and Fernandez Farms, i.e., family members who started their own companies during the course of the proceedings, lacked sufficient notice and opportunity for hearing to be debarred in the same proceedings.

Case Name: Seasonal Ag Services

Venue: DOL Office of Administrative Law Judges

Issue: On remand for ALJ to determine whether Seasonal Ag Services (SAS) and Ludy Moreno Services were joint employers, which would obligate SAS to pay the required wage rate to "corresponding" non-H-2A workers who performed agricultural work included in the job order. The ALJ held that SAS did not jointly employ the non-H-2A workers, based on his determination that there was no evidence of collusion. The Board held that the ALJ's decision was in error and that the appropriate test for joint employment under the H-2A program is set forth in the H-2A regulations and is based on the common law of agency, and that any evidence of collusion is irrelevant to a determination of joint employment.