

# HOT TOPICS IN EMPLOYMENT LAW

~~THE CHALLENGES THAT SHOULD KEEP HR  
PROFESSIONALS UP AT NIGHT~~  
EMPOWERING HR MANAGERS TO  
EXERCISE *AUTHENTIC* LEADERSHIP IN 2017

NEXT CHALLENGE. NEXT LEVEL.

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# The Times They Are A-Changin'...

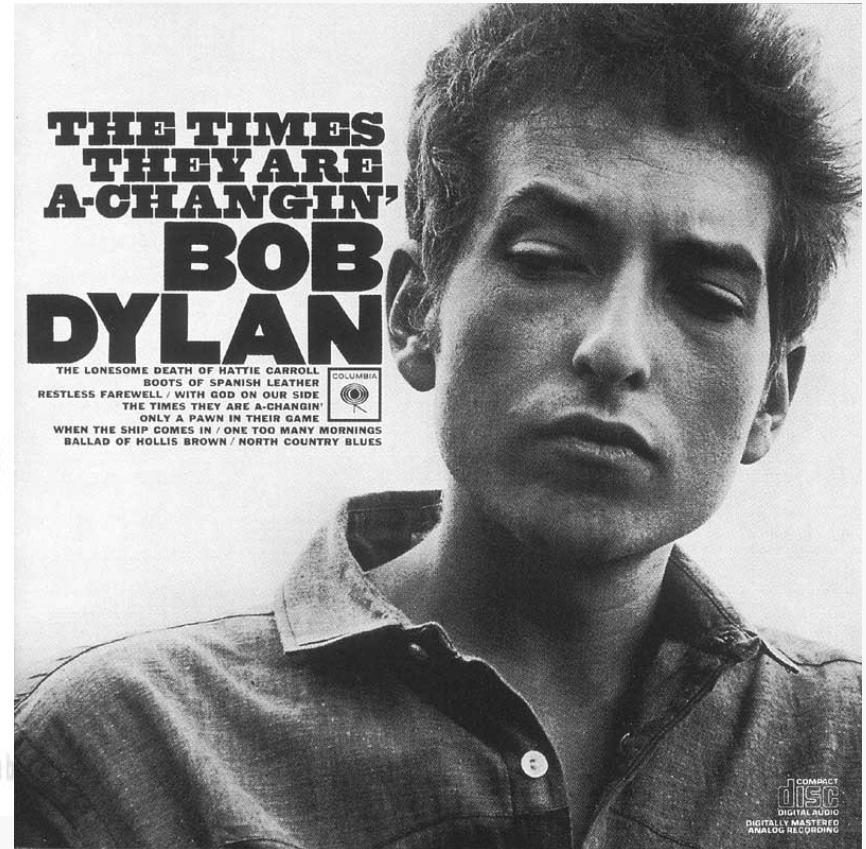
LYRICS TO LIVE BY:

№ 236

**“YOU BETTER START SWIMMIN’  
OR YOU’LL SINK LIKE A STONE FOR  
THE TIMES THEY ARE A-CHANGIN’.”**

BOB DYLAN, THE TIMES THEY ARE A-CHANGIN’

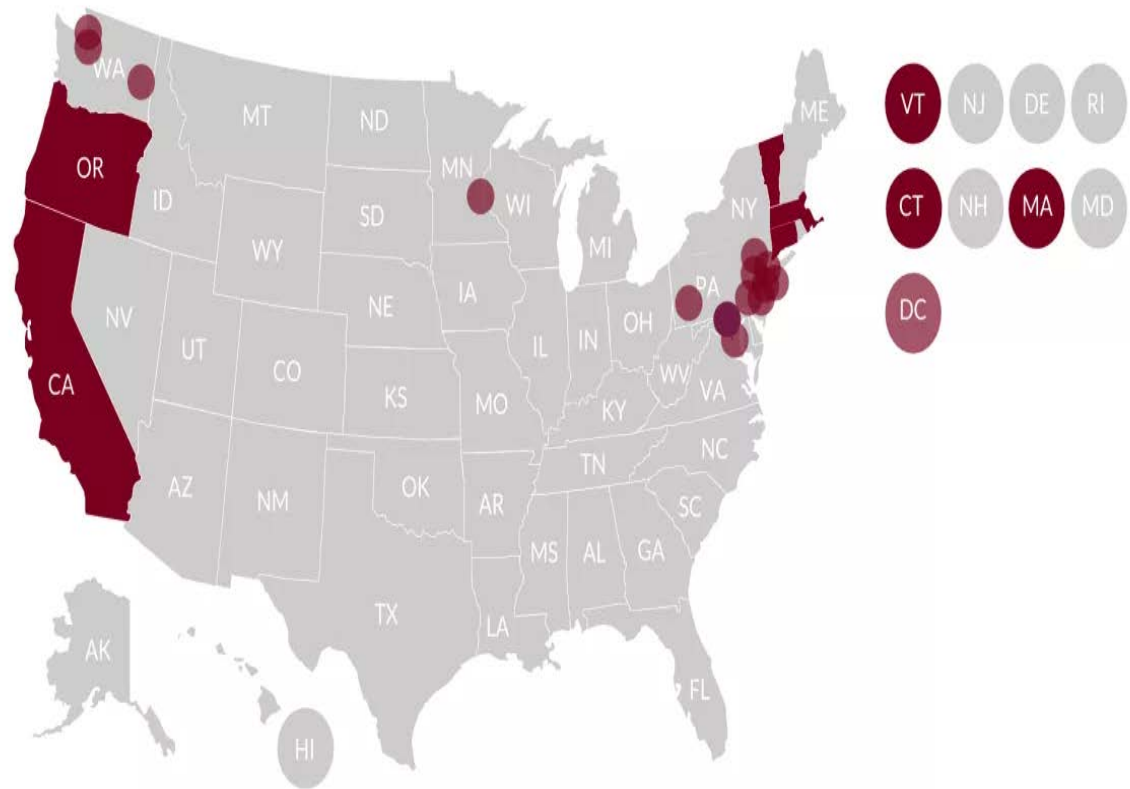
lyrics2live



# 10. California Sneezes...other states catch a cold

- ▶ **Mandatory Sick Leave** - states & municipalities
- ▶ OFCCCP proposed rule - effective 1/17
- ▶ Federal Legislation - **Healthy Family Act**

Paid Sick Leave Legislation Passed



## 9. Pokémon Comes & Goes: the quick obsolescence of Technology & HR

- ▶ Ownership of Social Media
- ▶ Management of Social Media
- ▶ BYOD v. COPE
- ▶ Electronically Stored Data



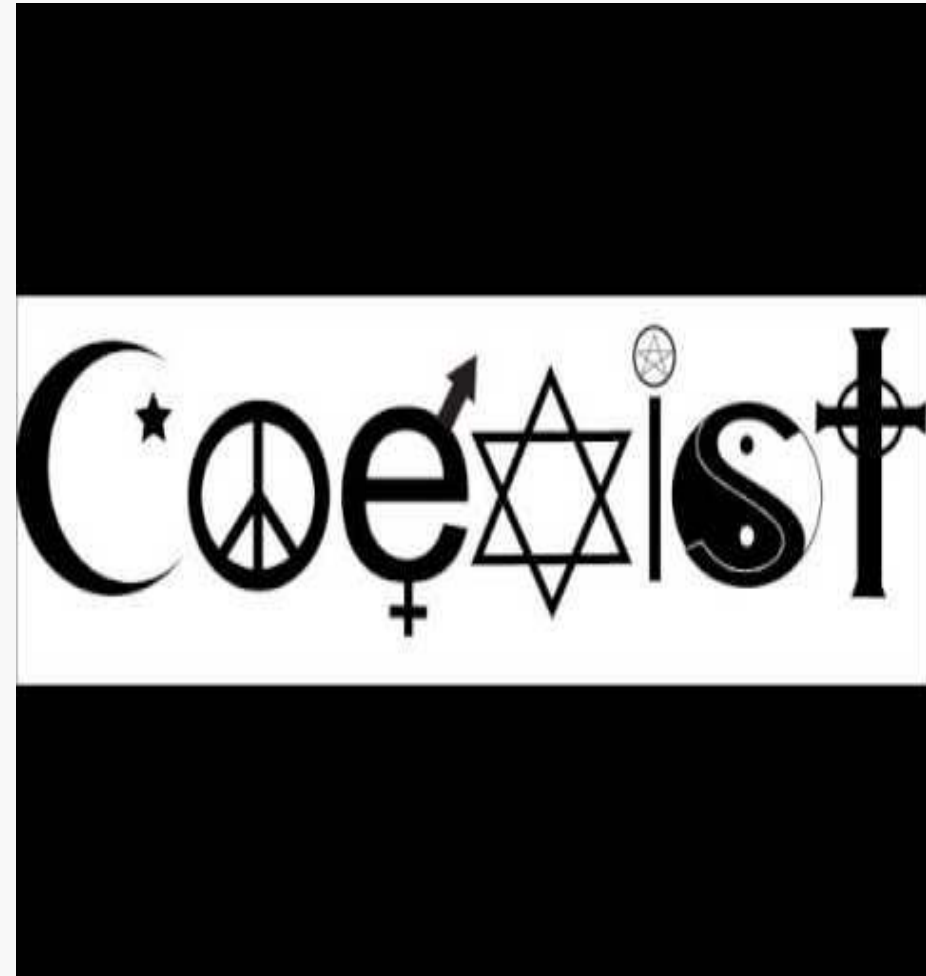
## 8. When Bruce becomes Caitlyn....

- ▶ EEOC: sex discrimination can include **gender identity** and **sexual orientation**
- ▶ OSHA/bathrooms
- ▶ State & local laws



# 7. ... you may need a word of prayer

- ▶ Tension between **religious freedom** v. other rights
- ▶ Religious **discrimination** cases on rise
- ▶ **Accommodation** Issues more thorny
- ▶ EEOC heightened awareness and **scrutiny**



## 6. Who is My Employer?

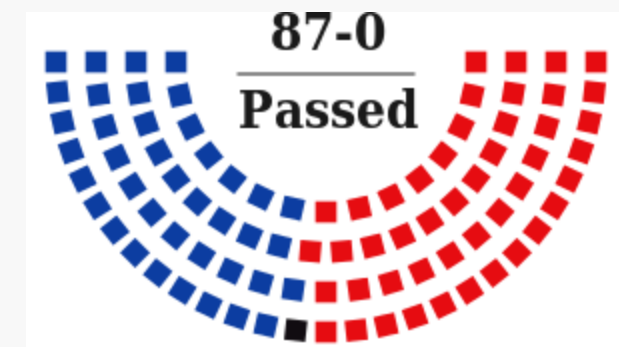
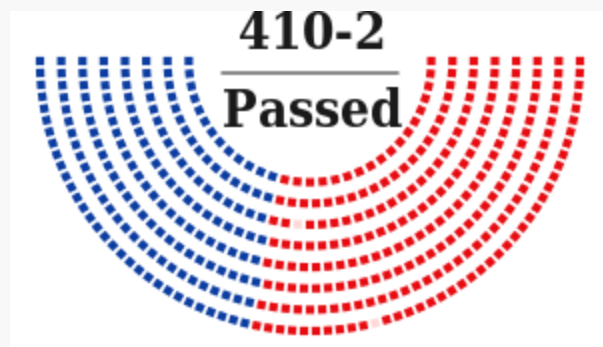
### Joint Employment & Misclassification Issues

- ▶ DOL, OSHA, NLRB all expanded universe of joint employment
- ▶ Franchisors, subcontractors, staffing companies all potential joint employers
- ▶ Independent contractors
- ▶ Economic reality test
- ▶ Review contracts!



## 5. One Sigh of Relief: Feds Help Protect Trade Secrets

- ▶ **Defend Trade Secrets Act of 2016**
- ▶ Cumulative to state law claims
- ▶ Powerful remedies for employers
- ▶ Some protections for employee whistleblowers (“notice of immunity”)





## 4. Let me be me (but keep my privacy): Finding themes in EEOC Initiatives

- ▶ **Criminal background** checks
- ▶ Accommodating ADA leave
- ▶ Prohibition on **stereotyping**
- ▶ **Genetic** information
- ▶ **Systematic** investigations & litigation




### 3. “Almost thou persuadeth me”: NLRB vigorously pursues missions work

- ▶ Persuader Rule
- ▶ Handbooks & Policies
- ▶ “*Weingarten* rights”
- ▶ Social Media cases
- ▶ Independent Contractors = ULP?
- ▶ Mandatory arbitration



## 2. Equal Work = Equal Pay

- ▶ EEOC Action on Pay Data Collection
- ▶ EEOC enforcement priority
- ▶ Paycheck Fairness Act
- ▶ Media & political spotlight
- ▶ Internal pay analysis



#FairPay

**MADWOMEN**

“Today, women make up about half our workforce. But they still make 77 cents for every dollar a man earns. That is wrong, and in 2014, it’s an embarrassment. A woman deserves equal pay for equal work. She deserves to have a baby without sacrificing her job. A mother deserves a day off to care for a sick child or sick parent without running into hardship – and you know what, a father does, too. It’s time to do away with workplace policies that belong in a ‘Mad Men’ episode.”

– President Barack Obama  
*State of the Union Speech January 28, 2014*

# 1. PSST....I don't know if you have heard, but there are some new DOL OT rules ....

- ▶ Salary threshold changes: \$23K – 47K
- ▶ Effective: 12/1/16
- ▶ Prepare, audit, message, adjust
- ▶ Increased Litigation & Exposure



# QUESTIONS?



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