



Eugene Scalia Has Spent His Career Fighting Against DOL's Mission To Protect Workers' Safety, Wages, Retirements, And Rights

The U.S. Department Of Labor's (DOL's) Primary Functions Include Protecting Workers And Their Incomes.

The U.S. Department Of Labor's (DOL's) Four Main Functions Are "Worker Protection, Income Support, Workforce Development And Training, And Labor Statistics And Research." "The DOL entities that carry out the agency's wide-ranging activities fall primarily into four main functional areas: worker protection, income support, workforce development and training, and labor statistics and research." [["Major Functions of the U.S. Department of Labor,"](#) Congressional Research Service, 09/07/18]

The DOL Is Charged With Enforcing Laws That Protect Workers' Wages, Safety, And Right To Medical And Family Leave. "Worker Protection: DOL administers federal laws that establish standards related to wages (e.g., minimum wage levels, overtime pay), certain types of leave, and occupational safety affecting large shares of the private and public sector workforce. DOL also administers targeted protections, applicable to workers in certain occupations (e.g., miners, agricultural workers)." [["Major Functions of the U.S. Department of Labor,"](#) Congressional Research Service, 09/07/18]

The DOL Is Also Charged With Protecting Workers' Retirements. "Income Support: DOL oversees the administration of programs providing income support to individuals during periods of unemployment and administers programs providing income support to individuals suffering work-related injuries. These programs cover much of the workforce. Additionally, DOL provides oversight of, and in some cases pays benefits for participants in, insured private defined-benefit pension plans." [["Major Functions of the U.S. Department of Labor,"](#) Congressional Research Service, 09/07/18]

- **DOL Enforces The Employee Retirement Income Security Act (ERISA).** "Through the Employee Benefits Security Administration, DOL ensures compliance with ERISA—which includes recovering losses to employee benefit plans resulting from violations of ERISA—and audits the federal Thrift Savings Plan (TSP). Relatedly, the Pension Benefit Guaranty Corporation (PBGC), which is a federal corporation established under ERISA, pays benefits to participants in private-sector defined-benefit pensions whose companies or plans are unable to pay benefits." [["Major Functions of the U.S. Department of Labor,"](#) Congressional Research Service, 09/07/18]

Minimum Wage

If Confirmed, Eugene Scalia Would Be Responsible For Enforcing The Minimum Wage, Yet He Has Vehemently Opposed Past Efforts To Raise The Minimum Wage For Federal Workers.

The DOL's Wage And Hour Division Is Responsible For Enforcing Minimum Wage Law.

The DOL's Wage And Hour Division Enforces "The Primary Federal Law That Sets Minimum Wage Rates." "The Fair Labor Standards Act of 1938 (FLSA; P.L. 75- 718) is the primary federal law that sets minimum wage rates and overtime pay requirements for about 130 million workers (more than 80% of wage and salary earners)." [["Major Functions of the U.S. Department of Labor,"](#) Congressional Research Service, 09/07/18]

In 2014, Eugene Scalia Opposed President Obama's Efforts To Raise The Minimum Wage For Federal Workers, Questioning His Knowledge About "Basic Economics" And Arguing He Was "Misusing" His Authority.

In February 2014, Eugene Scalia Co-Authored A *Washington Post* Piece Criticizing President Obama's Efforts To Raise The Minimum Wage For Federal Workers, Arguing That "Obama's Judgment About Basic Economics Is Worse Than Carter's" And That Obama Was "Misusing" His Authority. "Obama asks us to conclude that the government spends less when it requires workers to be paid *more*. The point is not simply that in this instance, at least, Obama's judgment about basic economics is worse than Carter's. It is also that presidents have been misusing their procurement authority by making increasingly implausible claims on matters they know little about so they can further ends unrelated to saving taxpayer dollars." [Eugene Scalia and Rachel Mondl, "[Obama's minimum-wage increase is on shaky legal ground,](#)" *The Washington Post*, 02/20/14]

- **Eugene Scalia Wrote "The Legal Basis For The President's Order Is Shaky."** "In setting a \$10.10 minimum wage last week for workers on federal contracts, President Obama acted on his State of the Union vow to use executive powers to bypass Congress 'wherever and whenever' he deems it necessary. But the legal basis for the president's order is shaky and, if challenged in court, could diminish the presidential powers that Obama seeks to expand." [Eugene Scalia and Rachel Mondl, "[Obama's minimum-wage increase is on shaky legal ground,](#)" *The Washington Post*, 02/20/14]

Scalia Argued, "The Real Reason For The Wage Order, Of Course, Is The President's Belief That Workers Deserve A Higher Wage." Scalia believes Obama's "explanation is not credible. No purchaser insists that its suppliers pay workers more in order to lower the cost of goods. To the extent that businesses can deliver better service at lower cost by raising wages, they'll do so themselves in response to market incentives, and their increased efficiency would result in a lower overall bid price. The real reason for the wage order, of course, is the president's belief that workers deserve a higher wage. In using the procurement power as a

pretext, he's following a practice of his predecessors that the courts have indulged for too long." [Eugene Scalia and Rachel Mondl, "[Obama's minimum-wage increase is on shaky legal ground](#)," The Washington Post, 02/20/14]

Overtime

As Labor Secretary, Eugene Scalia Would Be Responsible For Enforcing Overtime Law, Yet He Defended Ford Motor Company From A Lawsuit Alleging It Denied Women Equal Access To Overtime Shifts And Represented Avnet, Inc. Against Employees Who Said They Were Denied Overtime Wages.

The DOL's Wage And Hour Division Is Responsible For Enforcing Overtime Laws.

The DOL's Wage And Hour Division Enforces "The Primary Federal Law That Sets [...] Overtime Pay Requirements." "The Fair Labor Standards Act of 1938 (FLSA; P.L. 75- 718) is the primary federal law that sets minimum wage rates and overtime pay requirements for about 130 million workers (more than 80% of wage and salary earners)." ["[Major Functions of the U.S. Department of Labor](#)," Congressional Research Service, 09/07/18]

Eugene Scalia Was Ford Motor Company's Lawyer As It Fought To Dismiss Claims From Female Employees Who Said They Were Denied Opportunities For Overtime Shifts On The Basis Of Their Gender.

Eugene Scalia Was "Counsel for Defendant Ford Motor Company" In Van Et Al V. Ford Motor Company. [[Memorandum Of Law In Support Of Defendant's Motion To Deny Class Certification](#), Van et al v. Ford Motor Company, Case No. 1:14-cv-08708]

In The Case, Ford Motor Company Was Sued On 123 Counts For Sexual Harassment And Hostile Work Environment, Gender/Sex Discrimination, Race Discrimination, Retaliation, National Origin Discrimination, Failure To Accommodate Under The Americans With Disabilities Act, Battery, Assault, And Intentional Infliction Of Emotional Distress.

"Plaintiffs filed a 123-Count First Amended Complaint on behalf of themselves and all similarly situated persons, alleging sexual harassment and hostile work environment, gender/sex discrimination, race discrimination, retaliation, national origin discrimination, failure to accommodate under the Americans with Disabilities Act, battery, assault, and intentional infliction of emotional distress. Defendant, Ford Motor Company ("Ford"), moves for partial dismissal of the First Amended Complaint and to strike the class allegations [33]."

[[Memorandum Opinion and Order](#), Van et al v. Ford Motor Company, Case No. 1:14-cv-08708]

The Workers Claimed That “Ford Maintain[ed] A Pattern And Practice Of Inferior Treatment Of Female Employees,” Including Unequal Access To Overtime Shifts. “The complaint alleges that male employees and supervisors routinely make discriminatory and harassing remarks and gestures based on race and gender towards female Ford employees and the company takes no action. Plaintiffs allege that Ford maintains a pattern and practice of inferior treatment of female employees with respect to the terms and conditions of employment, including job assignments, harassment, training, promotions, and overtime assignments. This pattern and practice of harassment and discrimination created a hostile work environment that has continued at the Chicago plants since the 1980s.” [[Memorandum Opinion and Order](#), Van et al v. Ford Motor Company, Case No. 1:14-cv-08708]

Eugene Scalia Defended Avnet, Inc. Against A Class Action Lawsuit From Workers Who Claimed The Company Denied Them Overtime Wages.

Eugene Scalia Represented Avnet, Inc. In A 2010 Class Action Lawsuit In The U.S. District Court Of Arizona. “This is a class action lawsuit filed by Michelle Colson, on behalf of herself and all others similarly situated, under the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201, et seq., and two state wage laws—Ariz. Rev. Stat. § 23-350, et seq., and Or.Rev.Stat. § 653.015, et seq.” [[Colson V. Avnet, Inc.](#),” Leagle, 01/27/10]

Avnet Employees Argued That The Company Denied Them Overtime Compensation By Misclassifying Them As “Administrative” Workers. “Plaintiff alleges that she and all other SMRs—as well as those “who perform ... substantially the same duties as SMR [Sales and Marketing Representative] employees”—were misclassified as exempt “administrative” employees under the FLSA. Due to this alleged mischaracterization, Plaintiff contends that she and other Avnet employees were improperly denied overtime wages for their work in excess of 40 hours per week.” [[Colson V. Avnet, Inc.](#),” Leagle, 01/27/10]

Avnet, Inc. Is An “Industrial Distributor Of Electronic Components” With 40 Offices And More Than 470 Sales Representatives As Of 2010. “Defendant Avnet, Inc. is a Phoenix, Arizona-based industrial distributor of electronic components, computer and storage products and embedded subsystems. Avnet currently has more than 40 offices nationwide, and more than 470 Sales and Marketing Representatives (“SMRs”) dispersed across those various offices.” [[Colson V. Avnet, Inc.](#),” Leagle, 01/27/10]

Family And Medical Leave

If Confirmed, Eugene Scalia Would Be Responsible For Upholding The Family And Medical Leave Act (FMLA), Yet He Has Repeatedly Defended Corporations Against Lawsuits From Workers Who Claimed They Were Fired For Taking Leave.

The DOL's Wage And Hour Division Is Responsible For Enforcing The Family And Medical Leave Act (FMLA).

The DOL's Wage And Hour Division Enforces The Law That "Guarantees Qualifying Employees Unpaid, Job-Protected Leave For Certain Family And Medical Reasons." "The Wage and Hour Division enforces various federal labor standards, including those authorized by...The Family and Medical Leave Act (FMLA; P.L. 103-3) guarantees qualifying employees unpaid, job-protected leave for certain family and medical reasons. Generally, private employers with at least 50 workers and public agencies are covered by the FMLA." [[Major Functions of the U.S. Department of Labor](#)," Congressional Research Service, 09/07/18]

In 2017, Eugene Scalia Represented Ford Motor Company Against A Worker Who Said She Was Fired In Retaliation For Taking Several Weeks Of Medical Leave.

Eugene Scalia Represented Ford Motor Company In A 2017 Case In The Seventh Circuit U.S. Court of Appeals. [[King v. Ford Motor Co.](#)," Leagle, 03/27/17]

The Plaintiff-Appellant Argued That "Ford Retaliated Against Her" For Taking Leave And "Missing Several Weeks Of Work For Medical Reasons." "LaWanda King worked for many years as an assembler in Ford Motor Company's vehicle assembly plants. After transferring to its Chicago plant in 2010, though, she claims that she was sexually harassed by a supervisor, after which she began getting reassigned to less desirable tasks, missing out on overtime, and receiving unwarranted discipline. Ultimately, she was fired in 2013 after missing several weeks of work for medical reasons that Ford claims she didn't properly document. In this suit, King asserts claims for sexual harassment and FMLA interference, and also asserts that Ford retaliated against her for her complaints of sexual harassment and her taking of FMLA leave." [[King v. Ford Motor Co.](#)," Leagle, 03/27/17]

The Appellate Court Affirmed The Lower Court's Ruling Against The Employee. "Due to a series of procedural missteps and substantive short-comings, all of her claims fell at summary judgment. King appeals, and we affirm." [[King v. Ford Motor Co.](#)," Leagle, 03/27/17]

In 2010, Eugene Scalia Represented MCI World Com Inc. Against An Former Employee Who Alleged He Was Fired "In Part Because He Took FMLA Leave."

Eugene Scalia Represented MCI World Com Inc. In A 2010 Ninth Circuit U.S. Court Of Appeals Case. [[Buckman v. MCI World Com Inc.](#)," CaseText, 03/23/10]

The Plaintiff-Appellant In The Case Argued That "MCI Wrongfully Terminated Him In Violation Of The Family Medical Leave Act ('FMLA')." The plaintiff-appellant "appeals the district court's grant of summary judgment in favor of MCI on his claims that MCI wrongfully terminated him in violation of the Family Medical Leave Act ('FMLA') and the Americans with Disabilities Act ('ADA')." [[Buckman v. MCI World Com Inc.](#)," CaseText, 03/23/10]

The Plaintiff-Appellant Argued “MCI Terminated Him In Part Because He Took FMLA Leave.” “Under the FMLA, employees may take up to twelve weeks of time off for medical reasons, 29 U.S.C. § 2612(a), and it is unlawful for an employer to ‘interfere with, restrain, or deny the exercise of or the attempt to exercise’ this right to take approved leave, *id.* § 2615(a)(1). Buckman argues that MCI terminated him in part because he took FMLA leave.” [[“Buckman v. MCI World Com Inc.”](#), CaseText, 03/23/10]

One Management-Side Lawyer Even Said She Expected Scalia To Weaken FMLA Obligations For Employers If He Is Confirmed.

A Management-Side Law Firm Expects Eugene Scalia, If Confirmed, “To Propose New Family And Medical Leave Act (FMLA) Regulations That Might Reduce The Administrative Burdens On Employers.”

As Secretary Of Labor, Eugene Scalia “Might Drive The Agency To Propose New Family And Medical Leave Act (FMLA) Regulations That Might Reduce The Administrative Burdens On Employers.” “As a management-side employment lawyer who has spent a career representing businesses and associations seeking to strike down or limit regulations considered to be overreaching, Scalia might drive the agency to propose new Family and Medical Leave Act (FMLA) regulations that might reduce the administrative burdens on employers while still protecting employees' rights to take leave. That's according to Christine Howard, one of the partners on the firm's Management Committee who regularly advises and defends employers on FMLA matters.” [Cheryl Behymer et. al, [“United States: Scalia To Take Labor Department Reins: What Does It Mean For Employers?”](#), Fisher Phillips, 07/22/19]

A Management-Side Partner At A Law Firm “Expects Scalia's Experience In Defending FMLA Claims And Related Leave Laws To Place Him Ahead Of The Curve Understanding The Administrative Burdens Imposed By The FMLA Regulations.” Christine Howard, Partner At Fisher Phillips, “says she expects Scalia's experience in defending FMLA claims and related leave laws to place him ahead of the curve understanding the administrative burdens imposed by the FMLA regulations. Given his know-how in narrowing the reach of expansive regulations, Howard says, the USDOL might take a hard look at the more onerous FMLA regulatory requirements that exceed what he believes the law permits his agency to impose.” [Cheryl Behymer et. al, [“United States: Scalia To Take Labor Department Reins: What Does It Mean For Employers?”](#), Fisher Phillips, 07/22/19]

Workplace Safety

Eugene Scalia Would Be Responsible For Enforcing Workplace Safety, Yet He Has Argued That The Government Doesn't Have “The Sole-Or Even Primary-Role In Furthering Occupational

Safety And Health” And Has Called A Federal Safety Inspection Program “Coercion.”

The DOL’s Occupational Health And Safety Administration (OSHA) Is Responsible For Protecting Workers From Unsafe Work Environments.

DOL’s Occupational Safety And Health Administration (OSHA) Enforces Workplace Safety And Health Standards. “The Occupational Safety and Health Administration primarily administers and enforces the Occupational Safety and Health Act (OSH Act; P.L. 91-596), which provides health and safety standards for workplaces and authorizes DOL to provide assistance and sanctions to enforce compliance.” [[Major Functions of the U.S. Department of Labor](#),” Congressional Research Service, 09/07/18]

Eugene Scalia Wrote That The Government Does Not Have “The Sole-Or Even Primary-Role In Furthering Occupational Safety And Health Or Compliance With The Employment Laws [...]”

While A Partner At Gibson Dunn, Eugene Scalia Wrote A Law Review Article On “Inspection And Enforcement Strategies In Labor And Employment Law,” With A Focus On The Occupational Safety And Health Administration (OSHA). “The subject of this Essay is inspection and enforcement strategies in labor and employment law, with particular focus on the Occupational Safety and Health Administration (OSHA). I approach the subject from two somewhat different perspectives, having been a private practitioner representing clients being investigated and prosecuted by OSHA, and having also served as Solicitor of Labor, with OSHA as one of my clients and with responsibility myself for prosecuting OSHA cases.” [Eugene Scalia, “[Inspection and Enforcement Strategies at the U.S. Department of Labor](#),” *University of Pennsylvania Journal of Labor & Employment Law*, Spring 2005]

- **Eugene Scalia Was A Partner At Gibson, Dunn & Crutcher LLP At The Time.** “Eugene Scalia is a partner in the Washington, D.C. office of Gibson, Dunn & Crutcher LLP. He is co-chair of the firm's Labor and Employment Practice Group and a member of the firm's Appellate and Constitutional Law Practice Group.” [Eugene Scalia, “[Inspection and Enforcement Strategies at the U.S. Department of Labor](#),” *University of Pennsylvania Journal of Labor & Employment Law*, Spring 2005]

Eugene Scalia Wrote, “The Government Does Not Have The Sole-Or Even Primary-Role In Furthering Occupational Safety And Health Or Compliance With The Employment Laws,” Arguing That It Is Primarily Left To Employers And Employees. ““The government does not have the sole-or even primary-role in furthering occupational safety and health or compliance with the employment laws generally. Others with those responsibilities include employers and employees, individually and collectively through their labor unions.” [Eugene Scalia, “[Inspection and Enforcement Strategies at the U.S. Department of Labor](#),” *University of Pennsylvania Journal of Labor & Employment Law*, Spring 2005]

Eugene Scalia Argued That In Lieu Of Government Oversight, “Unions Are Among The Most Effective Advocates For Workplace Safety.” “Unions are among the most effective advocates for workplace safety. In unionized workplaces on a daily basis, unions play an important role in identifying and addressing occupational hazards. When necessary-and at times when not necessary-unions contact OSHA to complain and trigger inspections. So, the question arises, as the government sets its inspection and enforcement priorities, what consideration should be given the fact of union representation at a worksite?” [Eugene Scalia, [“Inspection and Enforcement Strategies at the U.S. Department of Labor,”](#) *University of Pennsylvania Journal of Labor & Employment Law*, Spring 2005]

Eugene Scalia Earned His Reputation As A “Union Antagonist” In His Fight Against A Rule To Protect Workers From Repetitive Stress Injuries, Arguing It Was A Union Scheme To “Force” Companies To Give Workers More Breaks And Hire More Dues-Paying Members.

Eugene Scalia Gained A Reputation As A “Union Antagonist” In “His Campaign Against The Ergonomics Rule, A Clinton-Era Regulation That Sought To Protect Workers From Repetitive Stress Injuries. “But it was through his campaign against the ergonomics rule that Mr. Scalia earned his reputation as a free-market conservative and union antagonist. He frequently dismissed the link between repetitive motion and physical ailments suffered by workers, writing in a Cato Institute publication that disorders such as carpal tunnel syndrome are ‘purportedly’ caused by typing and asserting that ‘ergonomists cannot establish in any given case whether an ailment was caused by work or by genetic factors or other activities, such as sports.’” [Maggie Haberman, Noam Scheiber, and Michael Crowley, [“Trump to Nominate Eugene Scalia for Labor Secretary Job,”](#) *The New York Times*, 07/18/19]

- **The Ergonomics Rule Was “A Clinton Administration Regulation That Would Have Protected Workers From Repetitive Stress Injuries.”** ““Much of the fear about Mr. Scalia’s nomination was based on his opposition to a Clinton administration regulation that would have protected workers from repetitive stress injuries, which became known as the ergonomics rule. Mr. Scalia had weighed in frequently against the rule, deriding the rationale for it as ‘unreliable science.’” [Maggie Haberman, Noam Scheiber, and Michael Crowley, [“Trump to Nominate Eugene Scalia for Labor Secretary Job,”](#) *The New York Times*, 07/18/19]

Eugene Scalia Complained In A Wall Street Journal Opinion Piece That The Rule Was “Evidence Of Crass Political Calculation By Labor Unions,” Arguing That It Would “Force” Companies To “Hire More Workers (Read: Dues-Paying Members)” And To Give Them More Breaks And Slow Productivity. “He saw in the rule evidence of crass political calculation by labor unions, writing in a Wall Street Journal opinion article ‘that ergonomic regulation will force companies to give more rest periods, slow the pace of work and then hire more workers (read: dues-paying members) to maintain current levels of production.’” [Maggie Haberman, Noam Scheiber, and Michael Crowley, [“Trump to Nominate Eugene Scalia for Labor Secretary Job,”](#) *The New York Times*, 07/18/19]

Scalia Was ““Very, Very Aggressive”” In Rebutting The New York Attorney General’s Testimony That An Ergonomics Rule “Would Not Be A Burden On The State's Workers' Compensation Program.”

Scalia Was ““Very, Very Aggressive”” In Wanting To Talk To Then-New York Attorney General Eliot Spitzer About The Science Of Ergonomics After Spitzer Testified That An Ergonomics Rule “Would Not Be A Burden On The State's Workers' Compensation Program.” “Scalia's foes also pointed to his criticism of a Clinton-era regulation known as the ergonomics rule, which would have protected workers from repetitive-stress injuries. Scalia doubted the science behind ergonomics, saying that "ergonomics is quackery" and based on 'unreliable science.' Patricia Smith, senior counsel for the National Employment Law Project and a former solicitor of labor in the Obama administration, recalled working for New York state during informal public hearings held by the Occupational Safety and Health Administration into the ergonomics rule. Her boss, then-New York Attorney General Eliot Spitzer, testified at the hearings that the rule would not be a burden on the state's workers' compensation program -- and would not amount to an admission of liability under New York law. But Scalia, who Smith said was representing the U.S. Chamber of Commerce at the hearings, 'was very, very aggressive in wanting to talk to (Spitzer) about the science,' Smith said.” [Jeff Stein and Rachel Siegel, [“Eugene Scalia has defended Wall Street, Walmart and SeaWorld. Now he’s Trump’s pick for labor secretary.”](#), *The Washington Post*, 07/19/2019]

Eugene Scalia Represented Eight Business Trade Groups In A Lawsuit “Challenging OSHA's Flagship Cooperative Compliance Program,” Which Determined Particularly Dangerous Work Sites And Established Protocols To Increase Safety.

Eugene Scalia Represented 8 Business Trade Groups In A Lawsuit “Challenging OSHA's Flagship Cooperative Compliance Program.” “A lawsuit challenging OSHA's flagship Cooperative Compliance Program is evidence that strategy isn't working. Eight business trade groups, including the U.S. Chamber of the Commerce and the National Association of Manufacturers, have joined the suit. [...] All eight trade groups are represented by attorneys Fellner, William J. Kilberg and Eugene Scalia of Gibson, Dunn. [David Rubenstein, “Lawsuit Puts OSHA's Trophy Partnership Program on Hold,” *Corporate Legal Times*, October 1998]

The Cooperative Compliance Program, Or CCP, Determined Work Sites That Were Particularly Dangerous And Then “Establish[ed] An OSHA-Designed Safety And Health Program That Would Include Worker Participation In An Ongoing Effort To Identify And Correct Health And Safety Problems.” “The CCP, launched late in 1997, targeted thousands of what OSHA determined to be among the most dangerous work sites in the country. [...] To cooperate meant to establish an OSHA-designed safety and health program that would include worker participation in an ongoing effort to identify and correct health and safety problems.” [David Rubenstein, “Lawsuit Puts OSHA's Trophy Partnership Program on Hold,” *Corporate Legal Times*, October 1998]

- **“OSHA Claims That Many Companies -- And Their Workers' Compensation Insurance Carriers -- Are Pleased With The Program.”** [David Rubenstein, “Lawsuit

Puts OSHA's Trophy Partnership Program on Hold," *Corporate Legal Times*, October 1998]

The Trade Groups' Lawsuit Alleged The CCP Was "Unconstitutional Because It Mandate[d] An Unreasonable Search, And Illegal Because It Passe[d] Off A Substantive Rule Or Standard As A Procedure." "The lawsuit alleges the CCP is unconstitutional because it mandates an unreasonable search, and illegal because it passes off a substantive rule or standard as a procedure. Standards are subject to extensive political jockeying through a required period of notice and comment. The OSHA instruction under which the CCP was promulgated was considered by OSHA as a procedural directive and thus had no such requirement." [David Rubenstein, "Lawsuit Puts OSHA's Trophy Partnership Program on Hold," *Corporate Legal Times*, October 1998]

Eugene Scalia Has Argued That "OSHA's [Occupational Safety And Health Administration's] Inspection Authority Was Openly Used As A Form Of Coercion" And "An Imposition Of Government Power" Under A 1998 Program In Which OSHA Tried To Increase Accountability For Workplaces With High Rates Of Worker Injury.

Eugene Scalia Wrote, "OSHA's Inspection Authority Was Openly Used As A Form Of Coercion" Under A 1998 Program In Which The Agency Told Employers They Could Either Adhere To Additional Safety Requirements Or Face Increased Inspections. "The most notable example of this approach is a 1998 OSHA program called the 'Cooperative Compliance Program.' Under the program, employers with high reported injury rates were told they had been selected for onerous comprehensive 'wall-to-wall' inspections. But, they were advised, we will greatly reduce the likelihood of inspection-and any inspections that do occur will be relatively benign-if you agree to do a series of things currently not required by federal law. Under this program, which was invalidated by the D.C. Circuit, OSHA's inspection authority was openly used as a form of coercion to prompt employers to do things that, at the time, OSHA did not have the authority to require." [Eugene Scalia, "[Inspection and Enforcement Strategies at the U.S. Department of Labor](#)," *University of Pennsylvania Journal of Labor & Employment Law*, Spring 2005]

Eugene Scalia Called OSHA Inspections "An Imposition Of Government Power That Causes A Company To Change Its Practices Even Though The Law Does Not Require That It Do So." "Another (perhaps related) view is that inspection itself is a form of enforcement, in the sense that it is an imposition of government power that causes a company to change its practices even though the law does not require that it do so." [Eugene Scalia, "[Inspection and Enforcement Strategies at the U.S. Department of Labor](#)," *University of Pennsylvania Journal of Labor & Employment Law*, Spring 2005]

Eugene Scalia Argued That During Unannounced OSHA Inspections, The Government "Comes Uninvited To Private Property." "The third view of the purpose of inspections-which is my view, the most common view, and the view that coincides with the Fourth Amendment-is that they are for investigative and enforcement purposes only. OSHA has separate consultation and compliance assistance programs to show employers how to improve workplace safety. But

when it comes uninvited to private property, the government has a right of access only when it has probable cause to believe that a violation of a law enforceable by that agency has occurred.” [Eugene Scalia, “[Inspection and Enforcement Strategies at the U.S. Department of Labor](#),” *University of Pennsylvania Journal of Labor & Employment Law*, Spring 2005]

Despite These Arguments, Eugene Scalia Admitted That In OSHA Inspections, “Probable Cause Is Defined Somewhat Loosely.” “In administrative inspection schemes, probable cause is defined somewhat loosely-but the justification for government entry remains the search for a prosecutable violation of the law.” [Eugene Scalia, “[Inspection and Enforcement Strategies at the U.S. Department of Labor](#),” *University of Pennsylvania Journal of Labor & Employment Law*, Spring 2005]

Eugene Scalia Invoked An Anti-Government Quote From Ronald Reagan—“The Nine Most Terrifying Words In The English Language Are: I’m From The Government, And I’m Here To Help.”—When Discussing OSHA Inspections.

Eugene Scalia Said That OSHA Inspections Were Based On A Philosophy Of “We’re The Government And We’re Here To Help.” “For instance, OSHA inspections may be viewed as a sort of house-call for troubled employers: federally funded corporate consulting intended less to effect compliance with the law and more to help employers find ways to address hazards regardless of whether those hazards violate federal law. Call this approach, ‘We’re the government and we’re here to help.’ Under this view, it does not matter whether violations are found on an OSHA inspection, as long as there has been a chance for the government to reach out and touch an employer.” [Eugene Scalia, “[Inspection and Enforcement Strategies at the U.S. Department of Labor](#),” *University of Pennsylvania Journal of Labor & Employment Law*, Spring 2005]

Ronald Reagan Once Said, “The Nine Most Terrifying Words In The English Language Are: I’m From The Government, And I’m Here To Help.” [“[August 12, 1986 Reagan Quotes and Speeches](#),” Ronald Reagan Presidential Foundation & Institute, accessed 07/24/19]

Retirement Security

As Labor Secretary, Eugene Scalia Would Be Responsible For Protecting Workers’ Retirement Funds From Employer Misuse, Yet He Has Fought Against Pensioners’ Lawsuits And Against Obama-Era Regulations To Ensure That Retirement Advisors Work In Their Clients’ Best Interests.

The DOL's Employee Benefits Security Administration Protects Workers' Retirement Investments From Being Mishandled And Enforces The Employee Retirement Income Security Act (ERISA).

DOL's Employee Benefits Security Administration Ensures That Workers Are Compensated If Their Employer Or Benefits Manager Mishandles Their Retirement Investments In Violation Of ERISA. “Through the Employee Benefits Security Administration, DOL ensures compliance with ERISA—which includes recovering losses to employee benefit plans resulting from violations of ERISA—and audits the federal Thrift Savings Plan (TSP). Relatedly, the Pension Benefit Guaranty Corporation (PBGC), which is a federal corporation established under ERISA, pays benefits to participants in private-sector defined-benefit pensions whose companies or plans are unable to pay benefits.” [[Major Functions of the U.S. Department of Labor](#),” Congressional Research Service, 09/07/18]

Eugene Scalia Represented The University Of Southern California As It Fought Against Employees Who Alleged “Retirement Plan Mismanagement.”

Eugene Scalia Represented The University Of Southern California In An Appeal To The U.S. Supreme Court. Eugene Scalia represented the University of Southern California and The University Of Southern California's Retirement Plan Oversight Committee In A 2016 Case In The Central District Court U.S. District Court. [“University of Southern California, et al., Petitioners v. Allen L. Munro, et al.,” U.S. Supreme Court, 11/29/18]

The University Of Southern California Tried To Block Class Action Lawsuits From Employees Who Alleged “Retirement Plan Mismanagement”—The Appeal Was Denied In February 2019. “The University of Southern California failed to convince the U.S. Supreme Court to hear a case asking whether employers can use arbitration agreements to block class actions alleging retirement plan mismanagement. The Ninth Circuit in 2018 said an arbitration agreement signed by USC employee Allen Munro didn't prevent him from filing a class action challenging aspects of the school's retirement plan.” [Jacklyn Willie, “[USC Retirement Plan Row Won't Get Supreme Court Review](#),” *Bloomberg Law*, 02/19/19]

In 2017, Eugene Scalia Represented Ford Motor Company And Its Retirement Plan In A U.S. Supreme Court Appeal Claiming That The Company “Violated Its Fiduciary Duties” Under ERISA “By Failing To Make A Benefits Payment.”

In 2017, Eugene Scalia Represented Ford Motor Company And Its General Retirement Plan In An Appeal To The U.S. Supreme Court. Eugene Scalia represented Ford Motor Company and the Ford Motor Company General Retirement Plan in an appeal to the U.S. Supreme Court. [[Brief in Opposition Jennifer Strang v. Ford Motor Company General Retirement Plan et. al.](#)], United States Supreme Court , 12/11/17]

The Plaintiff Argued That Ford And Its Retirement Plan “Violated Its Fiduciary Duties By Failing To Make A Benefits Payment.” “Whether a plaintiff may pursue a claim under Section 502(a)(3) of ERISA based on the theory that the plan administrator violated its fiduciary duties by failing to make a benefits payment.” [[Brief in Opposition Jennifer Strang v. Ford Motor Company General Retirement Plan et. al.](#), United States Supreme Court , 12/11/17]

- The U.S. Supreme Court denied the petition on June 25, 2018. [[Jennifer Strang, Petitioner v. Ford Motor Company General Retirement Plan, et al.](#), Case No. 17-528, 05/19/17]

In 2016, Eugene Scalia Represented Ford Motor Company And Its Retirement Plan In A U.S. Supreme Court Appeal Claiming The Company Shortchanged An Employee’s Retirement Benefits.

In 2016, Eugene Scalia Represented Ford Motor Company And Its Retirement Plan In An Appeal To The U.S. Supreme Court. Eugene Scalia represented Ford Motor Company and the Ford Motor Company General Retirement Plan in an appeal to the U.S. Supreme Court. [[“Donati V. Ford Motor Co., Gen. Ret. Comm.”](#), *Leagle*, 01/27/16]

The Plaintiff Sued Ford After It Altered The Amount Of Retirement Benefits It Promised To One Of Its Workers. “When Ford offered to cash out Lydia Donati's retirement benefits for a lump sum, she accepted the opportunity. A few months later, Ford told Donati that it had miscalculated the size of her lump sum. Donati died shortly thereafter, and her daughter sued the Retirement Committee on behalf of her estate for the money Ford originally promised.” [[“Donati V. Ford Motor Co., Gen. Ret. Comm.”](#), *Leagle*, 01/27/16]

Scalia Tried To Use ERISA To Protect Wal-Mart From A Maryland Law Requiring It To Spend Money On Workers’ Healthcare.

In His Defense Of The Retail Industry Leaders’ Association’s (RILA) Lawsuit Against The Fair Share Health Care Fund Act, Scalia Stated The Employee Retirement Income Security Act (ERISA) Pre-Empted The Maryland Law Which “Require[d] Wal-Mart To Boost Spending On Employee Health Benefits.” “The Retail Industry Leaders' Association filed suit on Feb. 8 to strike down the Fair Share Health Care Fund Act, which would require Wal-Mart to boost spending on employee health benefits. The RILA, which counts Wal-Mart as a member, says the federal Employee Retirement Income Security Act (ERISA) forbids the Maryland law. Many legal experts agree, but this suit will be the first major test case for Fair Share-type laws. [...] The Maryland law is invalid on several grounds, said Eugene Scalia, who's representing RILA in the case. For one thing, the former Labor Department solicitor argued, it violates equal protection laws because it was written to affect only Wal-Mart. The main thrust of his argument is that it can't be squared with ERISA. That federal law was meant to create uniform national standards for businesses offering health plans. States simply cannot enact laws that create different standards, Scalia said.” [Sean Higgins, “Maryland's Anti-Wal-Mart Law To Face Major Court Challenge; Federal act may trump state law; Wal-Mart to expand medical plans,” *Investor’s Business Daily*, 02/24/2006]

Scalia Stated That Businesses Were Concerned With The “Expensive And Time-Consuming” Compliance Requirements Of State Or Municipal Legislation That “Requires Employers To Spend A Certain Amount Of Money On Health Care Coverage Or Pay A Fee To Help Fund Coverage For Uninsured City Residents.” “An appeals court order allowing San Francisco to implement a law that requires employers to spend a certain amount of money on health care coverage or pay a fee to help fund coverage for uninsured city residents could pave the way for a U.S. Supreme Court decision on whether ‘play or pay’ statutes pass muster. [...] One of the biggest concerns that large, multistate employers have about such mandates is how they affect them administratively. Tracking the requirements and filing compliance reports is expensive and time-consuming, said Eugene Scalia, a partner with Gibson, Dunn & Crutcher L.L.P. in Washington.” [Jerry Geisel, “San Francisco wins OK for ‘play or pay’ law; 9th Circuit panel permits enforcement until ruling issued,” *Business Insurance*, 01/14/2008]

Eugene Scalia Has Called The Obama Administration’s Fiduciary Rule To Protect Retirement Savers From Conflicted Advisers A “Regulatory Godzilla” And An “Extraordinary Example Of Disregard” Of The Constitution.

In 2016, The Obama Administration Department Of Labor Proposed A Rule That Legally Required Financial Advisors To Give Advice Only “in the saver’s best interest” or the advisor risked “a lawsuit or other legal action.” “Financial advisers who help Americans save for retirement — through individual retirement accounts and workplace 401(k) plans — must put clients’ interests first, under a [new] rule released by the White House... That means that when asked for advice on how to invest a worker’s nest egg, the financial professionals will no longer be able to merely pick a “suitable” mutual fund, set of stocks or annuity in order to earn a big commission, fee or other extra compensation. The advice will have to be in the saver’s best interest. When making a recommendation, what’s good for the consumer will matter more than the adviser’s commissions — unless the adviser wants to risk a lawsuit or other legal action.” [Stephen Koff, “[Financial advisers told to put client first Retirement funds](#),” *The Cleveland Plain Dealer*, 04/07/16]

In May 2017, Eugene Scalia Called The Fiduciary Rule A “Regulatory Godzilla” That Was An “Extraordinary Example Of Disregard For Limitations By Congress And The Constitution.” “Labor Secretary Alexander Acosta announced last week that he would let the controversial ‘fiduciary’ rule take effect June 9. [...] To a lawyer, though, what’s most striking about the rule is that it’s a regulatory Godzilla—an extraordinary example of disregard for limitations imposed by Congress and the Constitution.” [Eugene Scalia, “[Godzilla \(the Fiduciary Rule\) Ate the Rule of Law](#),” *The Wall Street Journal*, 05/31/17]

Scalia Claimed That Defending The Fiduciary Rule Could Lead To An “Assault On The Rule Of Law.”

Scalia Claimed The “Labor And Justice Departments Must Give Careful Thought” To Defending The Fiduciary Rule Because “They Could Inadvertently Be Advancing A Sweeping Assault On The Rule Of Law.” “One of the biggest challenges for any new administration is contending with its predecessor’s priorities and beginning to advance its own.

This requires resolve and the dedication to principle that Mr. Acosta rightly extolled. In the weeks ahead, the Labor and Justice departments must give careful thought to how, in defending the fiduciary rule, they could inadvertently be advancing a sweeping assault on the rule of law.” [Eugene Scalia, “[Godzilla \(the Fiduciary Rule\) Ate the Rule of Law](#),” *The Wall Street Journal*, 05/31/17]

Scalia Used ERISA As An Argument Against The Obama Administration’s Fiduciary Rule.

In Attacking A Labor Department Fiduciary Rule On Behalf Of The Life Insurer Primerica Inc., Scalia Stated The Labor Department’s Efforts Conflicted With ERISA. “Life insurer Primerica Inc., meanwhile, hired [Eugene] Scalia himself to make the case that the Department of Labor is exceeding its authority in developing the rule. ‘[T]he Department’s perceptions of broker-dealers and investment performance do not empower it to radically rewrite its long-standing definition of ‘fiduciary investment advice’ in a manner that conflicts with [the Employee Retirement Income Security Act]’s plain statutory language, its common law roots, and the framework established by Congress,’ he wrote. ‘Nor do the Department’s policy views authorize it to deploy its exemptive authority to construct a whole new regulatory and enforcement regime for IRAs and broker-dealers.’” [Adam Cancryn, “Retirement industry readies final blitz against DOL’s fiduciary rule,” *SNL Financial Extra*, 03/24/2016]

Disability Discrimination

If Confirmed, Eugene Scalia Would Be Responsible For Holding Federal Contractors Accountable For Discriminating Due To A Disability, Yet He Defended UPS From A 2009 Class Action Lawsuit Alleging The Company Did Just That.

The DOL’s Office Of Federal Contract Compliance Programs Ensures That Federal Contractors Do Not Discriminate Against Workers In Violation Of The Rehabilitation Act, Americans With Disabilities Act (ADA), And Other Regulations.

DOL’s Office Of Federal Contract Compliance Programs Holds Federal Contractors Accountable For Nondiscrimination Laws And Regulations Under The Rehabilitation Act Of 1973 And Other Regulations. “The Office of Federal Contract Compliance Programs enforces federal contractors’ compliance with nondiscrimination requirements under three federal authorities: Executive Order 11246, Section 503 of the Rehabilitation Act of 1973 (P.L. 93-112), and the Vietnam Era Veterans’ Readjustment Assistance Act of 1974 (P.L. 93-508).” [[Major Functions of the U.S. Department of Labor](#),” Congressional Research Service, 09/07/18]

- **The Rehabilitation Act “Prohibits Discrimination On The Basis Of Disability In Programs Conducted By Federal Agencies.”** “The Rehabilitation Act prohibits

discrimination on the basis of disability in programs conducted by Federal agencies, in programs receiving Federal financial assistance, in Federal employment, and in the employment practices of Federal contractors.” [[“A Guide to Disability Rights Laws,”](#) U.S. Department of Justice, July 2009]

Eugene Scalia Represented UPS In A 2009 Class Action Lawsuit Alleging The Company Violated Anti-Discrimination Laws, Including The Rehabilitation Act And ADA.

Eugene Scalia Represented UPS In A 2009 Case In The Third Circuit U.S. Court Of Appeals. “Mark A. Perry, Esquire, (Argued), Eugene Scalia, Esquire, Gibson Dunn & Crutcher, Washington, D.C., Rachel S. Brass, Esquire, Gibson Dunn & Crutcher, San Francisco, CA, Perry A. Napolitano, Esquire, Reed Smith, Pittsburgh, PA, for Appellant.” [[“Hohider v. United Parcel Service, Inc., 574 F.3d 169 \(3rd Cir. 2009\),”](#) *Court Listener*, 07/23/09]

The Plaintiffs Brought A Class Action Against UPS Alleging Discrimination In Violation Of The Rehabilitation Act And The Americans With Disabilities Act. “Named plaintiffs Mark Hohider, Robert DiPaolo, and Preston Eugene Branum (‘plaintiffs’) are employees of package-delivery company United Parcel Service, Inc. (‘UPS’). They brought this civil action against UPS on behalf of themselves and all others similarly situated, alleging UPS has adopted and implemented companywide employment policies that are unlawfully discriminatory under the ADA. On March 10, 2004, plaintiffs Hohider and DiPaolo filed suit under the ADA and the Rehabilitation Act,^[1] and on June 29, 2004, they moved for class certification.” [[“Hohider v. United Parcel Service, Inc., 574 F.3d 169 \(3rd Cir. 2009\),”](#) *Court Listener*, 07/23/09]