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34th WORKFORCE MANAGEMENT BRIEFING

High Stakes and High Priorities

Attention Retail Employers: Legal Risks in Aisle 9

Thursday, October 15, 2015
New York Hilton Midtown
New York, NY

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Movement for Increased Worker Rights for Retail Employees

The Movement for Increased Worker Rights for Retail Employees

Who are the
players
in this
movement?



The Movement for Increased Worker Rights for Retail Employees

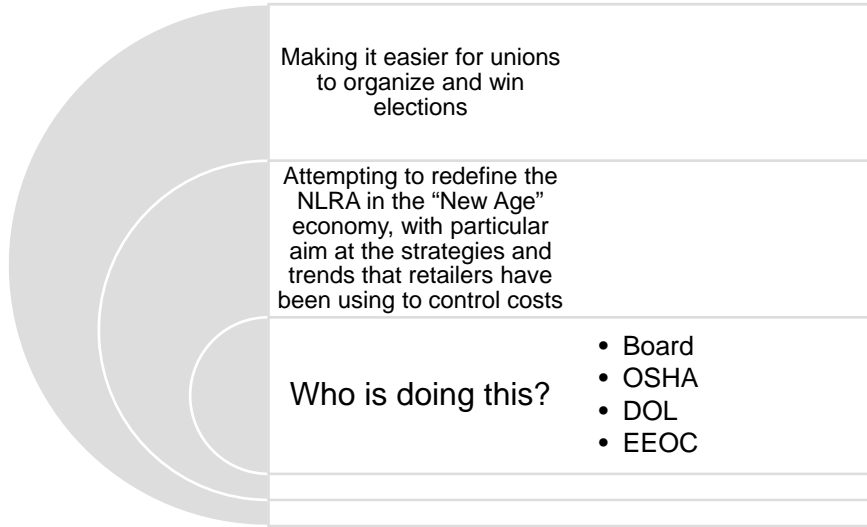
What is the
movement
seeking?



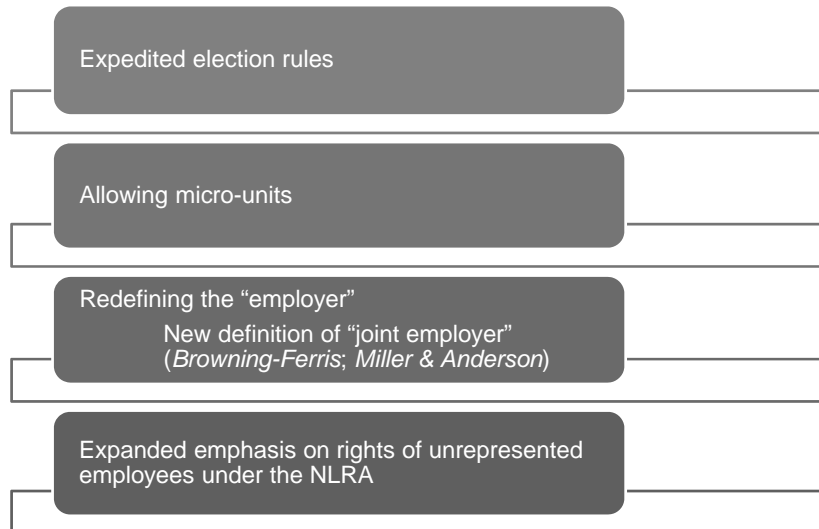
- Ban the Box
- Addressing Income Inequality

How Is the Government (and, in particular, the NLRB) Changing the Playing Field?

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The Board's Definition of "Labor Organization"

- Worker centers
- Other advocacy groups

What's New?

- *DR Horton*
- Social media
- Collective action
- Handbooks
- Dress codes/appearance standards

What Has the Obama Administration Recommended, and How Is That Going to Impact Retailers?

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FLSA

- Changes in the highly compensated employee exemption will affect lower- to mid-level manager classification
- Salary basis changes might have less effect in NY, but more elsewhere
- Remote e-mail work vs. working on site
- Using personal devices to do work

OSHA

Sick leave
proposal (and
existing
Executive
Order for
government
contractors)

What Has the Obama Administration Recommended, and How Is That Going to Impact Retailers?

Shift Scheduling

San Francisco: Obligation for an employer to offer additional hours to existing part-timers before hiring more part-timers

Schedules That Work Act

Other states (including NY) and cities have introduced, but nothing yet enacted

New York Attorney General Schneiderman is focused on this issue

Affordable Care Act-related concerns

Credit and Criminal Background Checks

Credit and Criminal Background Checks

Almost no retail employees (in stores)
can be credit checked

Criminal background check—a timing
issue

Employment application: better to
eliminate the question?

Pregnancy and Religious Accommodation Issues

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Religion

Abercrombie

Pregnancy

Pregnancy
accommodation
notices

Some laws require
employees to be
disabled by
pregnancy to be
covered; some
require reasonable
accommodation
based solely on
pregnancy

Notice requirements

What Retailers Need to Do Now

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1. Maintain regular and ongoing assessments of risk of union activity (and establish an approach in case of such activity)
2. Train your supervisory team to:
 - identify organizing activity early, and
 - have an established action plan when such activity occurs
3. If a supervisor identifies organizing, he/she must know:
 - not only to say something, but also
 - to whom to say it
4. Review relationships with vendors, suppliers, and temps to assess where joint-employer exposure might exist, and assess how to manage/reduce risk
5. Revise employment applications and onboarding procedures with respect to:
 - whether to conduct credit checks, and
 - the point at which background checks are performed
6. Ensure pregnancy accommodation and other notices and postings are timely provided/posted