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New York Tip Law Update: Subminimum Wage for Tipped Employees Will Increase to $7.50 per Hour on December 31, 2015

March 2, 2015

By Jeffrey H. Ruzal

On February 24, 2015, New York State Acting Commissioner of Labor Mario J. Musolino issued an order ("Order") increasing the subminimum cash wage for all tipped workers in the hospitality industry from the current $5.00 hourly rate to $7.50 per hour. This 50 percent increase will take effect on December 31, 2015. It is important to note that on December 31, 2015, the New York State minimum wage will also increase from the current $8.75 hourly rate to $9.00 per hour.

Employers are currently permitted to take an allowance, also known as a "tip credit," in an amount up to $3.75 against tipped employees' hourly wages. For example, if a restaurant employer pays its tipped employees $8.75 per hour, the employer can take a maximum $3.75 tip credit against the employees' hourly wage and must then pay a $5.00 subminimum cash wage. Effective December 31, 2015, however, employers will be left with a maximum tip credit of only $1.50, and they must then pay a $7.50 subminimum cash wage.

Notably, the Order also calls for a review of whether to eliminate the system of tip wages and credits in the future. While this drastic proposal will not result in an immediate repeal of tip wages and credits, it is likely that the Commissioner and Wage Board will soon consider the feasibility of enacting this proposal.

Computing Overtime

Employers should also remember that when computing overtime on a tipped employee's pay, they must multiply the full hourly wage by one and one-half and then subtract the tip credit. For example, assume that a tipped employee earns a regular hourly rate of $9.00. The employer takes a $1.50 per hour tip credit and pays the tipped employee $7.50 per hour as a subminimum cash wage. To compute overtime, the employer must multiply the full $9.00 hourly wage by 1.5, which equals $13.50. The employer should then subtract the $1.50 tip credit from $13.50 to arrive at $12.00, which is the amount that the employer will be required to pay its tipped employees for each hour worked over 40 per week.

What Employers Should Do Now

- Speak with your payroll personnel or contact your payroll service provider to ensure that all changes to the tip credit calculations and paystub detail will be updated by December 31, 2015.

- Ensure that you remain in compliance with the New York Labor Law and Wage Theft Prevention Act requirements that employees must be provided with notice of the tip credit both upon hire and on the paystub detail that is distributed with each paycheck.

- Consider ways to modify your budget or operating costs to accommodate the impending subminimum cash wage increase.

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District of Columbia Wage Theft Prevention Act Takes Effect February 26, 2015; Recent Amendments Modify Notice, Timekeeping, Payment, and Other Provisions

February 24, 2015

By Brian W. Steinbach

As we previously reported (see the *Act Now* Advisory titled "New District of Columbia Law Greatly Expands Remedies for Wage Law Violations and Places New Notice Requirements on Employers"), the "Wage Theft Prevention Amendment Act of 2014" ("Act") (D.C. Act 20-426) was enacted on September 19, 2014. The Act generally broadens the coverage and expands the notice requirements, means of enforcement, retaliation protections, and available remedies under several D.C. wage laws.

In particular, the laws affected by the Act are the Wage Payment and Collection Law ("WPCL"), D.C. Code § 32-1301, *et seq.*; the Living Wage Act ("LWA"), D.C. Code § 2-220.01, *et seq.*; the Minimum Wage Revision Act ("MWRA"), D.C. Code § 32-100, *et seq.*; and the Accrued Sick and Safe Leave Act ("ASSLA"), D.C. Code § 32-131.01, *et seq.*

Following a delay in submission for congressional review, the Act is now set to take effect on February 26, 2015. In the meantime, the D.C. Council has passed emergency amendments (and identical temporary amendments) that modify several provisions in the original Act, most of which are designed to ease somewhat the burden of compliance with the many new requirements described in our previous Advisory.

The Changes Made by the Emergency Amendments

First, in the "Wage Theft Prevention Correction and Clarification Emergency Amendment Act of 2014" (D.C. Act 20-544, effective Dec. 29, 2014), the Council made changes to the original Act by:

- repealing a provision applying the Act to all violations occurring after October 1, 2014 (this means that there will be no retroactive liability and employers will only be liable for violations that occur after the Act takes effect);
- adding a direction that the mayor must make copies or summaries of the MWRA publicly available within 60 days after the Act takes effect, and an express

provision that an employer will not be liable for failure to post this notice if the mayor has failed to provide it;

- retaining language making contractors and subcontractors, and employers and temporary staffing firms, both jointly and severally liable for violations of the WPCL, LWA, MWRA, and ASSLA, while adding language grandfathering pre-existing contractual arrangements providing otherwise; however, the amendment does not change language generally requiring subcontractors to indemnify their general contractors for anything that a general contractor has to pay due to a subcontractor's violation, and also retains language requiring temporary staffing firms to indemnify the employer unless otherwise agreed to by the parties;

- deleting language that allowed unions to bring civil actions on behalf of members;

- adding express authority for the mayor to issue rules to implement the provisions of the WPCL; and

- replacing what previously were minimum misdemeanor financial penalties for both negligent and willful violation of the WPCL and LWA with new maximums per affected employee: (i) for negligent violations, up to $2,500 for the first offense and up to $5,000 thereafter, and (ii) for willful violations, up to $5,000 for the first offense and up to $10,000 thereafter, in addition to existing penalties of imprisonment of up to 30 and 90 days, respectively.

Second, the "Wage Theft Prevention Clarification Emergency Amendment Act of 2015" (DC Bill B21-0053, passed on February 3, 2015, and effective upon the mayor's signature (which is expected by February 26, 2015)) will:

- eliminate exempt executive, professional, administrative, outside sales, and home newspaper delivery employees from the new requirement to keep records of the precise time worked (but retains this requirement for certain other overtime exempt employees as well as all non-exempt employees);

- expressly allow exempt executive, professional, and administrative employees to be paid only once a month, rather than the minimum of at least twice per month applicable to all other employees; and

- require the mayor's office to provide within 60 days sample templates of the notices that the Act states must be provided to all new employees at hire (or, for temporary staffing firms, on assignment) and, within 90 days after the Act takes effect, to all existing employees; additionally:

    - updated versions of the notice still must be provided whenever the information changes, e.g., if there is a change in pay rate;

    - an employer now only has to provide a notice in a language other than English if (i) the mayor's office makes available a template in that language and (ii) the employer knows the second language is the

employee's primary language or the employee requests the notice in a different language; and

- an employer is still required to retain copies of the provided notice signed and dated by both the employer and the employee acknowledging receipt.

Although all these changes were initially made through emergency legislation that expires after 90 days, they are also the subject of identical temporary legislation signed, or expected to be signed, by the mayor that would become effective following a 30-day congressional review period ending before the emergency legislation expires. The temporary legislation will expire after 225 days, but the same provisions are expected to be incorporated in permanent legislation before that occurs. Of course, there is a good chance that the permanent legislation will include other changes.

What Employers Should Do Now

To the extent that they have not already done so, as advised in our prior Advisory, employers should do the following:

- Review all pay procedures to make sure that they are in compliance with all District of Columbia wage payment requirements, such as the recently increased minimum wage requirements, tip credit provisions, Living Wage rates for government contractors, and sick leave under the ASSLA, including timely payment of all amounts due and swift resolution of any disputes. Also, make sure that exempt employees are timely and properly paid at least once per month.

- If necessary, revise recordkeeping to record the precise time worked each day, not simply the hours worked, for all but fully exempt employees.

- If applicable, cease paying new hires at the lower federal minimum wage.

- Prepare for compliance with the new notice requirements for both new and existing employees. In particular, employers should do the following:

    - Monitor the District of Columbia's Department of Employment Services wage and hour compliance website (http://does.dc.gov/service/wage-and-hour-compliance) for the English and foreign language templates for the notice that D.C. employers will need to provide to all new employees once the Act become effective and to all existing employees within 90 days thereafter, as well as for the new notice summarizing the MWRA, both of which are supposed to be available within 60 days.

    - Be prepared to provide their own forms of English notice to new hires for immediate use and, if there is still no official template within 90 days, for delivery to current employees. This preparation is necessary because there is uncertainty as to whether the notice requirement takes effect immediately as to new hires and within 90 days as to current employees even if Mayor Muriel Bowser has not yet provided a template, and there is

no safe harbor if she fails to do so. As noted, employers need provide a notice in other languages only once the mayor provides templates.

- Particularly in light of the 90-day presumption of retaliation, make sure that all managers and supervisors do not take any form of retaliation against employees complaining of any possible violation of the wage laws.

In addition, both regular employers and temporary staffing firms should review the indemnification provisions in their contracts with each other.

* * *

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Joint-Employer Status: New NLRB Standards Reset the Stage and Redefine the Players

September 14, 2015

By Allen B. Roberts and Steven M. Swirsky

For those liberals and conservatives who do not think of themselves as "joint employers" of their doctors, lawyers, pet groomers, personal trainers, disc jockeys, and baristas, the National Labor Relations Board ("NLRB" or "Board") has set a new definition that would offer some surprises—were they not spared by the technicality that most individuals do not satisfy National Labor Relations Act ("NLRA" or "Act") jurisdictional standards of doing business in interstate commerce. However, unlike individuals, most business organizations today pass a very low bar for satisfying NLRB jurisdictional requirements.

In a time when U.S. private sector unionization has shriveled to 6.6 percent (down to approximately one-fifth of its high point in 1954), being drawn into joint-employer status and related obligations to bargain with a union may have seemed farfetched to businesses and other organizations. But under initiatives of a majority of Board members and a General Counsel appointed by President Obama, the NLRB has undertaken a stunning assertion of authority to impose joint-employer status, which is especially relevant in the current "gig" economy and millennial society. The NLRB's position portends that other agencies may emulate it and private practitioners may seize on a newfound opportunity to draw in a broad range of organizations that under long-standing precedents would not be found to be joint employers of their contractors, vendors, staffing and leasing agencies, or franchisees.

Why Joint Employment Matters

In ordinary circumstances, it would seem rational for an organization to set its own course and determine activities to which it will devote executive, management, and cash resources, contracting to others the responsibility for services or components that are not a business or strategic priority. By its recently issued three-to-two majority decision in *Browning-Ferris Industries*, 362 NLRB No. 186 (August 27, 2015), the NLRB announced how differently it sees things, and it showed how deeply it is committed to disrupting established delineations of employer-employee relations.

Underlying the NLRB's decision is "the steady increase in procurement of employees through staffing and subcontracting arrangements, or contingent employment."

Depending upon the industry, businesses will be affected in such varied mainstream or support activities as temporary and contingent staffing, information technology, communications, help desk, mail room, facility and equipment maintenance, dining and catering services, security, janitorial, cleaning, and third-party administrators of benefit plans—in other words, virtually anything that conceivably could be done within the business, if it were not outsourced.

How the NLRB Describes Its New Joint-Employer Standard

The NLRB's starting point is a deceptively modest introduction of its objective:

> Our aim today is to put the Board's joint-employer standard on a clearer and stronger analytical foundation, and, within the limits set out by the Act, to best serve the Federal policy of "encouraging the practice and procedure of collective bargaining."

But the NLRB's standard accelerates with a set of basic inquiries that it will examine to determine joint-employment status:

- Do two or more statutory employers share or codetermine matters governing the essential terms and conditions of employment?

- Does the putative joint employer possess sufficient control over employees' essential terms and conditions of employment to permit meaningful collective bargaining?

- How is control manifested in a particular employment relationship?

- Is there direct, indirect, or potential control over working conditions?

- Is the authority to control terms and conditions of employment reserved?

The Board's inquiries are likely to result in a determination of joint-employer status so long as a party is found to possess at least an indirect ability to control employment terms and conditions, even if that authority has not been exercised.

Criteria the NLRB Will Not Consider

Possibly more revealing of what *Browning-Ferris* portends are criteria that the NLRB now explicitly rejects and will not consider relevant to a joint-employer inquiry.

The NLRB will no longer require that a party alleged to be a joint employer possessing the authority to control employees' terms and conditions of employment actually exercise that authority. Now, reserved authority to control terms and conditions of employment will be an essential consideration—even if the authority is not exercised.

Also, the NLRB has abandoned any requirement that an employer's control must be exercised "directly and immediately." Rather, now it will suffice that control is exercised through an "intermediary."

The NLRB also stated the following:

> [W]e reject any suggestion that such status should be found *only* where meaningful collective bargaining over employees' terms and conditions could not occur *without* the participation of the putative joint employer. Where two entities "share or codetermine those matters governing the essential terms and conditions of employment," they are *both* joint employers—regardless of whether collective bargaining with one entity alone might still be regarded as meaningful, notwithstanding that certain terms and conditions controlled only by the *other* entity would be excluded from bargaining.

Therefore, it does not matter to the NLRB whether the actual and direct employer could fulfill all responsibilities to bargaining unit employees and a union representing them without participation by a contracting employer, or another third party, drawn in as a joint employer.

No Immediate Administrative or Judicial Review of *Browning-Ferris*

Because *Browning-Ferris* was decided in the context of a representation case proceeding, where a union petitioned for an election in a unit of leased or temporary workers, there is no further administrative or judicial review immediately available to the company, the union, or the NLRB in the pending case. Challenges to the Board's new standards and opposition to findings of joint-employer status will have to be tested administratively in unfair labor practice cases alleging a putative joint employer's unlawful refusal to bargain or other alleged unfair labor practice activity (something underway for McDonald's and certain of its franchisees), prosecuted by the NLRB's General Counsel, litigated before an NLRB administrative law judge, and considered on review by the NLRB or its designated three-member panel.

But no NLRB decision is self-enforcing. As typical of matters in which the NLRB has taken bold steps to refashion established legal principles or expand its interpretive reach, review by a U.S. circuit court of appeals is predictable—if justified by the principle and value of the matter and within the resources of an organization subject to an adverse ruling.

Next Considerations for Business Decisions

Taking account of the mutually advantageous prevalence of business reliance on others to perform certain services, the *Browning-Ferris* majority purported to ground its holding in "the current economic landscape" of "contingent employment relationships." The holding seems to presume that the landscape is not a result of legitimate business decisions, consciously elected to define the activities that an organization will undertake to perform on its own, while identifying other activities for contracting or some other means of delegation or assignment to third parties. By way of example, a science,

technology, or media business may be formed for the purpose of creating content or ideas, but the enterprise may not want to be encumbered with details of either production or distribution of its "product," outsourcing those activities to others—and their workforces.

To be sure, the NLRB suggests a possible roadmap for avoiding joint-employer status, but the essential question for every organization potentially affected by *Browning-Ferris* and the NLRB decisions likely to follow in its wake is whether it is prudent and in the best interests of the business to relinquish the actual and potential control that could be determinative of joint-employer status. The answer for each organization and situation will vary, possibly with different results that depend on various factors, among them:

- criticality of activity,
- relation of activity to core business,
- comparative expertise,
- quality,
- efficiency,
- resources,
- manpower,
- confidentiality,
- time sensitivity,
- cost, and
- upside or downside risks.

Adding to the factors militating in favor of, or against, outsourcing, *Browning-Ferris* presents a new challenge to organizations that want to focus their business, executive, management, and economic resources on the aspects of the business that they know best and where they see the best opportunity. Now, some organizations may consider exposure of job classifications to unionization as a factor in determining which activities will be outsourced, as well as the manner in which outsourcing will occur.

Practical and Legal Consequences of *Browning-Ferris*

With respect to activities that may be performed remotely and offsite, *Browning-Ferris* may boomerang with a consequence neither intended nor foreseen by the NLRB majority: it could drive jobs offshore, where contractors and their employees are outside the jurisdiction of the NLRB—and its new joint-employer standards. In essence, the

NLRB implicitly may encourage outsourcing to countries outside the United States, where it has no jurisdiction over employers or employees.

Additionally, the NLRB may need to reconsider other precedents that do not fit neatly within the reach of *Browning-Ferris*. Already, the NLRB has indicated that it considers a pending case, *Miller & Anderson, Inc.*, 05-RC-079249, to be a vehicle for deciding whether to "disallow[] inclusion of solely employed employees and jointly employed employees in the same unit absent consent of the employers, and if not, whether the Board should return to the holding of *M.B. Sturgis, Inc.*, 331 NLRB 1298 (2000), which permits the inclusion of both solely and jointly employed employees in the same unit without the consent of the employers."

A further complication inheres in the limitations that will exist by virtue of the NLRB's recognition that "a joint employer will be required to bargain only with respect to those terms and conditions over which it possesses sufficient control for bargaining to be meaningful." Sorting out the particular areas of joint employer, as distinct from direct employer, responsibility in the potpourri of wages, hours, terms, and conditions of employment that are mandatory subjects of collective bargaining could be daunting in each unique relationship.

Potential Extensions of *Browning-Ferris* to Other Laws

Looking beyond the NLRA, organizations must anticipate a host of administrative and compliance actions, piggybacking *Browning-Ferris*, and other fallout from the NLRB's majority opinion. If a business is deemed a joint employer for NLRA purposes, other federal, state, and local administrative agencies, together with the plaintiffs' bar, may be at the ready to test whether other statutes have sufficient elasticity to mimic the NLRA and impose similar joint-employer exposure by means of administrative charges and complaints, judicial action, or arbitration proceedings. Topics of potential joint-employer reach could relate to direct or joint responsibility for wage and hour compliance, equal employment opportunity, occupational safety and health, immigration, medical and pension plan participation, payroll withholdings and deductions, workers' compensation, unemployment insurance, and the misclassification of independent contractors and others.

The Occupational Safety and Health Administration ("OSHA") presents one immediate area of applicability, and the NLRB's *Browning-Ferris* decision is likely to influence OSHA's approach to inspections and citations involving temporary or contract employees. When OSHA's temporary employee initiative was announced in 2013, the Assistant Secretary of Labor for Occupational Safety and Health, Dr. David Michaels, declared that "[t]emporary staffing agencies and host employers share control over the employee, and are therefore jointly responsible for temp employee's safety and health. It is essential that both employers comply with all relevant OSHA requirements."

Although inspections under the temporary employee initiative sometimes result in citations being issued to both the host employer and the staffing agency, more often than not, only the host employer is cited because it is perceived as having a greater ability to control or prevent the temporary employee's exposure to a hazard. Should OSHA adopt the reasoning of *Browning-Ferris*, this trend will surely change, significantly

increasing staffing agencies' exposure to OSHA citations even when the staffing agency had no control over the workplace or awareness of the hazard. Additionally, under the agency's multi-employer worksite citation policy, OSHA may cite an employer for hazards that other employers' employees were exposed to when OSHA finds that the employer controlled the hazard, created the hazard, or was responsible for correcting the hazard. Applying the reasoning of *Browning-Ferris* to this policy could considerably expand the number of employers cited, treating multiple contractors as controlling employers, regardless of whether they had any real control over the hazards at the worksite.

What Employers Should Do Now

As learned from reception of the NLRB's zealous assault on mandatory arbitration and waivers of class and collective actions under a line of cases beginning with *D.R. Horton* in 2012, reviewing courts are not necessarily hospitable to the NLRB's novel extensions of coverage or intrusions into matters of settled legislation. Nevertheless, by its *Browning-Ferris* decision, the NLRB presents diverse and consequential issues for all businesses having existing relationships with contractors and other service providers or contemplating forming or expanding such relationships.

It is prudent to be mindful that existing facts, showing no actual exercise of control by one organization over employee relations of another, may not be sufficient to avoid a determination of joint-employer status. Instead, an NLRB determination may turn on control that *potentially* could be exercised in an arm's length business relationship that was understood to be quite ordinary—until *Browning-Ferris*.

Organizations should anticipate a role in newly filed proceedings alleging joint-employer status, even as they contemplate reforming or redefining terms by which they engage contractors and other providers of services supportive of their business. While many organizations will escape being targeted by the NLRB or a union seeking representation or pursuing an unfair labor practice charge—or other agency compliance or enforcement actions and private party litigations—it is clear that *Browning-Ferris* must become a factor in auditing existing relationships, contemplating new ones, and conducting due diligence for the acquisition or sale of a business.

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California Employers, Beware: It's Time to Rewrite Your Sick Leave and PTO Policies

April 16, 2015

By Matthew A. Goodin

By now, most employers have heard about California's new paid sick leave law, AB 1522, technically known as the Healthy Workplace, Healthy Families Act, which will be codified at Labor Code sections 245 to 249 and 2810.5. Many employers with existing sick leave and/or paid time off ("PTO") policies reflexively believe that their policies already comply with AB 1522, but this may not be the case. While the basic requirements of AB 1522 are clear enough, there are a number of provisions that some employers may have overlooked. The practical effect of this new law is that ***almost every employer in California will have to rewrite its current sick leave and/or PTO policies.*** AB 1522 may be the most significant new California employment legislation since the California Legislature made duty-free meal periods a statutory obligation (with attendant penalties) in 1999.

This Advisory will highlight various points in the new law that will likely require employers to revise their current sick leave and PTO policies and practices.

The Basics

AB 1522 requires all employers with at least one employee in California to allow their employees to accrue sick leave at a rate of at least one hour for every 30 hours worked. Thus, part-time and temporary employees are covered. While the new law took effect on January 1, 2015, employees do not start accruing sick leave under the law until July 1, 2015. Employees are entitled to paid sick leave if they work at least 30 days in one year from their date of hire and can begin using accrued sick leave beginning on the 90th day of employment. It is presumed that, under the new law, an employee must work at least 30 days in each successive year of employment to continue accruing sick leave, but AB 1522 is not clear on this point.

There are different caps for the use and accrual of sick leave. AB 1522 allows, but does not require, employers to cap the *accrual* of sick leave at 48 hours or six days of total time. The new law also allows, but does not require, employees to cap the *use* of sick leave to 24 hours or three days in each year of employment.

Employees may use sick leave for the diagnosis, care or preventative care, or treatment of an existing health condition of the employee or the employee's "family member," which includes a parent, parent-in-law, child, spouse, registered domestic partner, sibling, grandchild, or grandparent. Employees may also use sick leave for a variety of reasons, such as for being a victim of domestic violence, sexual assault, or stalking.

And, of course, no new California employment law would be complete without anti-retaliation provisions and the imposition of significant penalties on employers for violations. AB 1522 prohibits employers from denying an employee's right to use accrued sick leave. Also, the new law bars employers from discharging, threatening to discharge, demoting, suspending, or in any manner discriminating against employees for using accrued sick leave, attempting to exercise the right to use accrued sick leave, filing a complaint with the Labor Commissioner, or cooperating in any investigation or prosecution of an alleged violation. In addition, there are monetary penalties associated with failing to comply with virtually any provision of the law.

The new law is clear that employers with existing PTO policies that provide for the accrual and use of time off that is at least equivalent to the requirements of AB 1522 do not need to provide additional paid sick leave. That is precisely why many employers may mistakenly assume that they do not need to make any changes to their existing policies.

Provisions That May Require Revisions to Current Policies

Determining who is entitled to sick leave. Many employers will need to revise their current policies to broaden the scope of employees who are entitled to accrue and use sick leave under the new law. Employer policies commonly provide paid sick leave only to full-time employees or employees who work a certain minimum number of hours per week. AB 1522 requires employers to offer sick leave to any employee who works more than 30 days in a year in California. While not explicit, presumably this does not mean 30 full-time days but would include any work performed over any 30 days in one year from the commencement of employment—after all, one of the explicit policies behind AB 1522 is to provide paid sick leave to "nearly every worker in California." Thus, under the new law, virtually all part-time, temporary, per-diem, and even many seasonal employees are covered. (There are limited exceptions for employees subject to collective bargaining agreements that provide for paid sick leave and contain certain other specified provisions, providers of publicly funded in-home support services, and employees employed by an air carrier as a flight deck or cabin crew member who receive PTO at least equivalent to that required by AB 1522.)

The new law also requires employers to provide paid sick leave to employees who are exempt from overtime. Most employers do not provide paid sick leave to exempt employees but instead offer limited, or in some cases unlimited, PTO that may be used for any purpose. Because of the tracking and recordkeeping requirements of the new

law, as discussed below, employers will need to track the accrual and use of paid sick leave and/or PTO for exempt employees as well.

Tracking accrual of paid sick leave. The manner in which employees accrue sick leave under AB 1522 will likely create a need for employers to revise their current policies.

Employers may cap total accrual at 48 hours or six days and may cap employees' use of sick leave at 24 hours or three days per year. Although benefits begin accruing at the date of hire, according to the DLSE, employers may track annual allotments by calendar year, anniversary year, or other 12-month period. The annual usage cap provision raises unanswered questions about how to treat the first partial year of employment, whether employers are using a calendar year or some other method. For example, it is unclear whether employers that prefer to use a calendar year for tracking purposes will need to permit the use of a full 24 hours or three days, if accrued, during the first year of employment, assuming the employee works a partial year. A conservative approach will be to provide up to the full amount for use (if accrued) and to restart the employee's tracking year on January 1. Equally complicated is using July 1 as the start of the annual tracking year, particularly for employees hired after July 1, 2015, who will begin accruing sick leave on their dates of hire. To the extent that the employer already provides paid leave benefits by one of these tracking systems, the easiest solution may be to use the same annual tracking method for paid sick leave (e.g., calendar year or anniversary date), adjusting for mid-year hires if a calendar-year tracking method is used. Employers should ensure that their policies make clear which tracking year has been adopted.

Other issues may arise for employers because employees accrue sick leave based on the number of hours worked, whereas most employers provide for sick leave or PTO accrual based on the number of days, weeks, or months worked. Under the new law, employees must accrue no less than one hour for every 30 hours worked. This makes it difficult for employers to continue to provide accrual of sick leave based on the number of days worked, unless their employees accrue sick leave in an amount per day that will always exceed the accrual rates required by AB 1522. Because of the hourly accrual rate, employers also must pay careful attention to accrual when employees work overtime, as it is clear that overtime hours count for accrual purposes under the new law.

AB 1522 provides that tracking the accrual and carryover of paid sick leave is not required if employers provide the full 24 hours or three days of sick leave at the beginning of each year, and this would eliminate most, if not all, of the accrual problems described above. There appears to be no significant downside for an employer to elect to front-load paid sick leave in this manner.

Tracking the use of paid sick leave. Most employers provide a certain number of paid sick days per calendar year, rather than providing sick leave that accrues by the hour. Yet, AB 1522 is very clear that not only do employees accrue sick leave by the hour, but

employers must allow employees to use sick leave in increments as little as two hours at a time. A "Frequently Asked Questions" ("FAQ") webpage, published by the Division of Labor Standards Enforcement ("DLSE"), gives an example of a part-time employee who works six hours per day. If such an employee has accrued 24 hours of paid sick leave and takes three paid sick days, the employer cannot refuse to allow the employee to take an additional six hours of paid sick leave. Thus, where the law refers to "days," it is only generally referring to an eight-hour workday, but this is not a limitation that allows employers to prohibit part-time employees from using their total 24 hours of accrued leave per year. Thus, employers that provide sick leave by reference to days as opposed to hours or that require employees to use accrued sick leave in full-day increments will have to revise their policies and tracking methods to comply with the new law. In addition, while it is not entirely clear, the DLSE's FAQ webpage suggests that, where the law refers to 24 hours or three days (or 48 hours or six days), employers should apply whichever is the greater of the two. For example, if an employee works four 10-hour shifts, and his or her employer maintains a 24-hour/three-day usage cap, the employee should be permitted to take three 10-hour days of sick leave.

Additional tracking difficulties will likely arise from the 90-day "probationary period" in AB 1522, particularly during the first few months after July 1, 2015. While employees begin accruing sick leave on July 1, 2015, or their date of hire if hired after July 1, 2015, they are not entitled to *use* accrued sick leave until they have worked for at least 90 days. For example, any employees hired 90 days or more prior to July 1, 2015, would be entitled to begin using their accrued sick leave on July 1, 2015. For employees hired less than 90 days prior to July 1, 2015, however, tracking accrual and use becomes more complicated. Such employees do not begin accruing sick leave until July 1, 2015, and they would all begin to accrue sick leave at the same rate after that date, assuming they worked the same number of hours per week. But these employees would be entitled to *use* their accrued sick leave beginning on different dates, because each employee is entitled to use accrued sick leave after working for 90 days.

Doctors' notes/notice requirements. Many employers require an employee to provide a doctor's note either before or after he or she takes a sick day in order for the employee to be paid for the time off. While the new law is silent as to whether employers can require doctors' notes, the "Facts and Resources" bulletin published by the Department of Industrial Relations ("DIR") states that employees may file a claim with the Labor Commissioner against an employer that denies sick leave "due to a failure to provide details." The text of the new law states that employees may make an "oral or written request" for sick leave. Further, if the need for sick leave is foreseeable, employees must provide "reasonable advance notification," although what is "reasonable" is not specified. If the need is not foreseeable, employees can provide notice "as soon as practicable," presumably meaning soon after the leave has begun. These factors strongly suggest that employers will not be allowed to condition the use of accrued sick leave under the new law on the provision of a doctor's note or other medical justification. It appears that employers must simply accept an employee's word that the sick leave is for a purpose permitted by the law.

It may seem incongruous that AB 1522 limits what employees may use accrued sick leave for but, at the same time, denies employers a way to verify that an employee's use of sick leave is for a permitted purpose. Yet, that is the way the new law is currently drafted, and employers will have to wait for amendments by the Legislature or additional clarification from the DLSE.

Interaction with California's Kin Care Law and the California Family Rights Act ("CFRA"). Under California's Kin Care Law, any employer that provides sick leave benefits (either paid or unpaid) to employees must allow employees to use up to one-half of that leave to care for child, parent, spouse, registered domestic partner, or child of the employee's registered domestic partner who is ill. California employers have likely already modified their sick leave policies to make provisions for such kin care leave. AB 1522, however, allows employees to use *all* accrued leave to care for a "family member," and the definition of "family member" adds grandparents, grandchildren, and siblings to the family members described in the Kin Care Law. Thus, AB 1522 *entirely displaces the Kin Care Law*, at least as to the required amount of sick leave that employees may use and accrue under the Kin Care Law.

Because AB 1522 allows employees to use accrued sick leave to care for a broader range of family members than does the Kin Care Law, employers should be aware that whether an employee's use of sick leave counts toward the amount that the employee is entitled to use under the Kin Care Law will depend on the family member for whom care is given. To the extent that employers allow employees to accrue paid sick leave beyond that required by AB 1522, it seems defensible that these employers may allow employees to use only half of that additional sick leave to care for the family members specified in the Kin Care Law, rather than the broader list of family members in AB 1522.

The CFRA allows employees to take leaves of absence for their own "serious health condition" or that of a parent, spouse, child, or registered domestic partner. But the CFRA imposes requirements on such leave that are not required by the new paid sick leave law. For example, to determine whether the requested leave is for a proper purpose under the CFRA, employers are allowed to require a medical certification from employees indicating the date on which the serious health condition began, the probable duration of the condition, and a statement that the employee is unable to perform the essential functions of his or her job. As discussed above, however, it appears that employers cannot require such information from employees who request paid sick leave. The CFRA allows an employee to use accrued paid sick leave for the employee's own serious health condition so that he or she can be paid for at least a portion of a CFRA leave. Employers and employees may mutually agree to use sick leave for other leaves allowed under the CFRA.

If an employee wishes to use paid sick leave accrued under AB 1522 to be paid for at least some of a leave taken under the CFRA, it is unclear whether the employer can require the medical certification permitted by the CFRA. Until further clarity is provided on this point, it would be advisable for employers not to request such documentation if

an employee only wishes to use paid sick leave accrued under AB 1522. But employers should be permitted to request such documentation for any sick leave accrued beyond the minimum required by AB 1522.

Paystub requirements. Under the new law, an employee's paystub (or another document provided to the employee on the employer's designated payday) must set forth the amount of accrued sick leave that the employee has available. Unless employers want to issue a separate document to each employee at every pay period, this requirement will likely compel many employers to change their paystubs. Employers that use a third-party vendor for their payroll should not assume that their vendor will make the appropriate changes. For example, some paystubs may reflect the amount of sick leave that an employee has used both in the current pay period and the year to date but does not reflect the amount *accrued,* as required by AB 1522. Accordingly, employers should contact their payroll vendors to ensure that their vendor will timely implement the changes required by the new law.

Discipline for excessive absenteeism. Many employers discipline an employee for excessive absenteeism, including for excessive use of sick days, even if they allow the employee to otherwise accrue and use sick leave. Some employers have policies that allow for the discipline of employees who do not notify management in advance that they will be absent—the so-called "no-call, no-show" rules. Other employers may require employees to find a replacement to cover their scheduled shifts as a condition to allowing them to use sick leave. Such policies will need to be revisited in light of AB 1522.

Requiring employees to find a replacement worker is expressly forbidden by AB 1522. In addition, the new law clearly states that employers may not discharge, threaten to discharge, demote, suspend, "or in any manner discriminate against" an employee for using accrued sick leave. As previously mentioned, the DIR's "Facts and Resources" bulletin states that employees may file a complaint if they are denied sick leave "due to a failure to provide details." This suggests that employers should not consider an employee's use of sick leave accrued under AB 1522 when disciplining employees for excessive absenteeism or failing to report an unforeseeable absence within a specific period of time. Employers that issue discipline based on a specified number of absences over a specified period of time should only consider absences for reasons other than paid sick leave under AB 1522.

Interaction with local sick leave laws. Several cities have enacted their own sick leave legislation. AB 1522 provides that, if the employer is subject to a local sick leave law, it must comply with the law that is more generous to the employee. Employers subject to local sick leave laws will have to compare the local law with the requirements of AB 1522 in order to ensure that they are applying the most generous provision in each law. For example, in 2007, San Francisco implemented the San Francisco Paid Sick Leave Ordinance, under which the accrual caps are more generous than under AB 1522, but the range of family members for whom an employee may use sick leave to care for is more limited than under AB 1522.

Written policies and recordkeeping. Some employers may allow employees to take sick leave without a detailed written policy. AB 1522 requires all employers to post a notice containing certain specified information about the new sick leave law (a paid sick leave poster meeting these requirements is available on the DLSE's website). In addition, the new law requires employers to provide all employees hired after January 1, 2015, with a specific Notice to Employees (which is also available to download from the DLSE's website).

For employees hired prior to January 1, 2015, an employer must provide them with written notice of any changes to its sick leave policies within seven days of the actual change. Effectively, therefore, the latest that an employer may provide such notice would be July 8, 2015, seven days after the operative accrual date in AB 1522. Employers with existing policies that meet all the requirements of AB 1522 still must provide written notice to employees outlining the specific requirements of the new paid sick leave law, even if the policy is in writing. The DLSE's FAQ webpage encourages employers to ensure that employees are made fully aware of the terms and conditions of their sick leave policies, including how any existing policy differs from the requirements of AB 1522. For this reason, it makes sense for employers to put their sick leave policies in writing.

AB 1522 also imposes additional recordkeeping requirements on employers. For instance, employers must maintain for three years all records documenting hours worked, paid sick days accrued, and paid sick days used. And such records must be made available to employees, upon request.

Special issues regarding seasonal employees. Unless required by another law, most employers likely have not provided paid sick leave to seasonal employees. However, seasonal employees are clearly covered by AB 1522, which will pose special tracking problems. Under the new law, if an employee separates from an employer for any reason and is rehired within one year, all previously accrued and unused sick leave must be restored to the employee. But this reinstatement obligation does not apply if the employer allows the employee to "cash out" his or her sick leave at the time of separation. In addition, time worked during the first period of employment counts toward the 90-day probationary period. Thus, if an employee works for 60 days, and then returns to the same employer within one year, the employee would be eligible to begin using accrued sick leave after working 30 days.

What Employers Should Do Now

- Review your current sick leave or PTO policies with the above issues in mind.

- Review any absenteeism policies to ensure that employees are not disciplined for taking paid sick leave under AB 1522.

- Review and, if needed, modify paystubs to make sure that they will reflect both the accrual and the use of paid sick leave or PTO as of July 1, 2015, or talk to your payroll vendor to ensure that the paystubs will be modified correctly.

- Post a paid sick leave poster prior to July 1, 2015.

- Before subjecting an employee to discipline or other adverse employment action (or even threatening to do so), determine whether the employee has engaged in protected conduct under AB 1522 within the preceding 30 days (i.e., filed a claim with the Labor Commissioner, cooperated in an investigation or prosecution, or opposed any policy or practice prohibited by the new law). If any such protected conduct has taken place, consider waiting until at least the 31st day after such protected conduct before taking the adverse action. This will avoid creating a presumption of retaliation.

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INSIGHT AND COMMENTARY ON WAGE AND HOUR LAW DEVELOPMENTS AFFECTING EMPLOYERS

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Posted on September 16th, 2015 by Evan J. Spelfogel

Eleventh Circuit Joins Second Circuit in Rejecting DOL Position on Unpaid Interns

On September 11, 2015 the U.S. Court of Appeals for the Eleventh Circuit announced that it joined the Second Circuit in rejecting the U.S. Department of Labor's ("DOL") rigid six part test for determining whether unpaid interns were employees and should have been paid minimum wages and overtime for their services. Schumann and Abraham et al v Collier Anesthesia, P.A., Wolford College, LLC, Thomas Cook and Lynda Waterhouse, No. 14-13169, 2015 BL 294459 (11th Cir. Sept. 11, 2015), citing to Glatt v. Fox Searchlight Pictures, Inc., Nos. 13-4478-cv, 13-4481-cv (2d Cir. July 2, 2015)

As did the Second Circuit, the Eleventh Circuit found the factors considered by the DOL in its "guidance" on interns and trainees and the DOL's interpretation of the U.S. Supreme Court's 1947 holding in Walling v. Portland Terminal Co., 330 U.S. 148 (1947) to be "useful" but refused to defer to that guidance. Noting that the DOL has no special expertise in interpreting court decisions, the Eleventh Circuit instead followed the Second Circuit in holding that seven non-exclusive factors should be considered to determine whether the intern or the putative employer was the primary beneficiary of the services being rendered:

1. The extent to which the intern and the employer clearly understand that there is no expectation of compensation. Any promise of compensation, express or implied, suggests that the intern is an employee—and vice versa.
2. The extent to which the internship provides training that would be similar to that which would be given in an educational environment, including clinical and other hands-on training provided by educational institutions.
3. The extent to which the internship is tied to the intern's formal education program by integrated coursework or the receipt of academic credit.
4. The extent to which the internship accommodates the intern's academic commitments by corresponding to the academic calendar.
5. The extent to which the internship's duration is limited to the period in which the internship provides the intern with beneficial learning.
6. The extent to which the intern's work complements, rather than displaces, the work of paid employees while providing significant educational benefits to the intern.
7. The extent to which the intern and the employer understand that the internship is conducted without entitlement to a paid job at the conclusion of the internship.

The Eleventh Circuit expressly stated that in applying these factors to determine whether the intern or the putative employer was the primary beneficiary of the interns' services, no one factor is determinative and every factor need not point in the same direction. Further, courts may consider other relevant evidence beyond the specified factors in appropriate cases.

Because the District Court had applied the old DOL six factor test in determining that the interns here were not employees, the Court of Appeals vacated and remanded the case back to the District Court to apply the

correct test. In doing so, the Appeals Court went to great lengths to discuss each of the seven factors as applied to the facts at hand and to describe the road map that the District Court should follow, while carefully stating: "we do not take a position at this time regarding whether the students in this case were "employees" for purposes of the FLSA."

Tags: Evan J. Spelfogel, FLSA, wage and hour

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Posted on July 10th, 2015 by Evan J. Spelfogel

New Second Circuit Opinion Provides Guidance for Employers with Unpaid Interns

On July 2, 2015, the U.S. Court of Appeals for the Second Circuit reversed a federal district court decision that held that unpaid interns should have been classified and paid as employees under both the federal Fair Labor Standards Act ("FLSA") and the New York State Labor Law. *Glatt v. Fox Searchlight Pictures, Inc.,* Nos. 13-4478-cv, 13-4481-cv (2d Cir. July 2, 2015). The Second Circuit's decision provides valuable guidance to employers with unpaid interns.

In the case, the Second Circuit noted the U.S. Department of Labor's ("DOL's") 1967 and 2010 informal guidance on "trainees" and "interns" respectively, and specifically the DOL's six-part test regarding the "intern" exception to the definition of "employee" under the FLSA. The Second Circuit found the factors considered by the DOL to be useful, but expressly declined to defer to the DOL's guidance requiring that ALL six parts be met to find non-employee status. Further, the Second Circuit stated that, unlike court deferral to an agency's interpretation of its own statute or regulation, the DOL here was interpreting the Supreme Court's decision in *Walling v. Portland Terminal Co.*, 330 U.S. 148 (1947) and had no special expertise in interpreting court decisions.

As to the merits of the intern issue, the Second Circuit said that the DOL and the courts should weigh all the factors addressed in *Portland Terminal* and additional factors and consider the totality of the circumstances. Most importantly, the Second Circuit said, the district courts should focus on whether the company or the intern was the "primary beneficiary" of the relationship. In this regard, the Second Circuit suggested that the following seven non-exclusive factors be considered:

1. The extent to which the intern and the employer clearly understand that there is no expectation of compensation. Any promise of compensation, express or implied, suggests that the intern is an employee—and vice versa.
2. The extent to which the internship provides training that would be similar to that which would be given in an educational environment, including clinical and other hands-on training provided by educational institutions.
3. The extent to which the internship is tied to the intern's formal education program by integrated coursework or the receipt of academic credit.
4. The extent to which the internship accommodates the intern's academic commitments by corresponding to the academic calendar.
5. The extent to which the internship's duration is limited to the period in which the internship provides the intern with beneficial learning.
6. The extent to which the intern's work complements, rather than displaces, the work of paid employees while providing significant educational benefits to the intern.
7. The extent to which the intern and the employer understand that the internship is conducted without entitlement to a paid job at the conclusion of the internship.

The Second Circuit expressly stated that in applying these factors, no one factor is determinative and every factor need not point in the same direction. Further, courts may consider other relevant evidence beyond the specified factors in appropriate cases.

The decision provides valuable guidance to employers with unpaid interns. In light of Fox Searchlight, employers everywhere – but particularly those in New York, Connecticut and Vermont (within the jurisdiction of the Second Circuit)– should carefully review their internship programs. Among other things, they should carefully tailor such programs to insure that they are designed and implemented so that the interns are the "primary beneficiaries" of their internships.

For additional information, please read Epstein Becker Green's recent advisory.

Tags: internships, unpaid interns
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Posted on July 16th, 2015 by Michael D. Thompson

The Department Of Labor Addresses Independent Contractor Misclassification And Concludes That "Most Workers Are Employees"

The Administrator of the Wage Hour Division of U.S. Department of Labor has issued an Administrator's Interpretation of the FLSA's definition of "employ." And the conclusion is one that not only could have a significant impact on the way companies do business, but lead to numerous class and collective actions alleging that workers have been misclassified as independent contractors.

Addressing the misclassification of employees as independent contractors, the Administrator's Interpretation notes that the FLSA's defines the term "employ" as "to suffer or permit to work." Based on that definition, the DOL concludes that "most workers are employees."

The Interpretation cites to the six-factor "economic realities" test the DOL applies as indicia of employment, but emphasizes certain aspects of that test. Notably, the Administrator states that the goal of the "economic realities" test is to determine whether a worker is "economically dependent" on the alleged employer, or is really in business for himself or herself.

1. Is the Work an Integral Part of the Employer's Business?

The Administrator's Interpretation emphasizes that a workers' duties are likely to be an "integral part" of an employer's business if they relate to the employer's core products or services.

For example, the Interpretation cited to the Seventh Circuit's decision in *Secretary of Labor v. Lauritzen*, a self-described "federal pickle case" in which the issue was "whether the migrant workers who harvest the pickle crop of defendant … are employees … or are instead independent contractors…."

Summarizing the point, the Administrator's Interpretation quoted the Seventh Circuit's statement in that case stating that it "does not take much of a record to demonstrate that picking the pickles is a necessary and integral part of the pickle business. . . ."

2. Does the Worker's Managerial Skill Affect the Worker's Opportunity for Profit or Loss?

The Administrator's Interpretation emphasizes that the opportunity for profit or loss reflects independent contractor status only when it is dependent on managerial skill.

By contrast, the Administrator opines that the fact that a worker that can increase his or her earnings by working longer hours is not evidence that the worker is an independent contractor

3. How Does the Worker's Relative Investment Compare to the Employer's Investment?

Previously, the DOL had stated that the relative investment of a worker "compared favorably" if the investment was substantial and could be used for the purpose of sustaining a business beyond the particular job or project the worker was performing.

While these factors are mentioned in the new guidance, the Administrator's Interpretation appears to place greater emphasis on a comparison of the investments of the worker and the potential employer. The Administrator opines that even if a worker has made an investment, that investment has to be significant when compared to the investment of the purported employer.

4. Does the Work Performed Require Special Skill and Initiative?

The Administrator's Interpretation asserts that it is a worker's business skills as an independent business person, not his or her technical skills, that support independent contractor status.

The Administrator states that only skilled workers who operate as independent businesses, as opposed to being economically dependent on a potential employer, are independent contractors.

5. Is the Relationship between the Worker and the Employer Permanent or Indefinite?

The DOL's prior Fact Sheet on independent contractor status stated that the absence of a permanent relationship may not suggest independent contractor status when arising from "industry-specific factors" or the fact that the potential employer "routinely uses staffing agencies."

The Administrator's Interpretation adds to this opinion by opining that the finite nature of an independent contractor relationship should be the result of the worker's "own business initiative."

Thus, an employer who imposes limits on the duration of its independent contractor relationships should consider whether that policy will continue to have the desired results.

6. What is the Nature and Degree of the Employer's Control?

The Administrator's interpretation emphasizes that an independent contractor must control "meaningful aspects" of the work demonstrating that the worker is conducting his or her own business. However, the Interpretation does not specifically explain what aspects of a job are "meaningful."

The Administrator does make clear that flexible work arrangements are common forms of employment. Therefore, the Interpretation concludes the fact that an individual works from home or controls the hours of work is not particularly indicative of independent contractor status.

While the Administrator's Interpretation does not have the force of law (or regulation), it will be applied by the DOL and may be given deference by courts. Accordingly, employers should evaluate the extent to which they are relying on criteria addressed by the Administrator (such as flexible work arrangements and relationships of finite duration) as justification for classifying workers as independent contractors.

Tags: Independent Contractors, Michael D. Thompson, U.S. Department of Labor, Wage and Hour Division, Wage and Hour Laws
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Posted on July 1st, 2015 by Michael Kun and Jeffrey H. Ruzal

Proposed DOL Rule To Make More White Collar Employees Eligible For Overtime Pay

More than a year after its efforts were first announced, the U.S. Department of Labor ("DOL") has finally announced its proposed new rule pertaining to overtime. And that rule, if implemented, will result in a great many "white collar" employees previously treated as exempt becoming eligible for overtime pay for work performed beyond 40 hours in a workweek – or receiving salary increases in order that their exempt status will continue.

In 2014, President Obama directed the DOL to enhance the "white collar" exemptions to the Fair Labor Standards Act ("FLSA"), which currently exempt from overtime some employees who earn $455 per week, or $23,660 per year. The DOL's proposed rule would more than double the salary threshold for an executive, administrative or professional exemption to apply, increasing it to $970 per week, or $50,440 per year. In addition, the highly compensated employee exemption would increase from $100,000 to $122,148. Not unimportantly, pursuant to the proposed rule, These salary figures would automatically adjust for annual inflation.

Somewhat surprisingly, the proposed rule does not propose any enhancements to the duties requirements for an employee to qualify for any of the "white collar" exemptions. The proposed rule does, however, invite comments regarding the amount of time employees should be engaged in executive, administrative, or professional work to qualify for the exemption. Under the current federal regulations, exempt work must constitute the employee's "primary duty." That is a qualitative analysis, not a quantitative one. By inviting comments on consideration of California's requirement that exempt duties be performed more than 50 percent of the time – a quantitative analysis – the DOL has suggested the possibility of another significant change to "white collar" exemptions. As California employers know all too well, employees frequently file suit alleging they spend less than 50 percent of their time in exempt activities, challenging their employers to prove otherwise.

The proposed rule likely will be published shortly in the Federal Register. Upon publication, the proposed rule will be open to a 60-day comment period. The DOL will review the comments, respond where appropriate and issue its final regulations. The regulations will not be subject to Congressional approval. It is important to note that when the "white collar" exemptions were last revised in 2004, the DOL received over 100,000 comments and spent nearly a full year responding to those comments before finalizing the regulations.

Tags: FLSA, Jeffrey H. Ruzal, Michael S. Kun, overtime, President Obama, White Collar Exemptions
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Updated 50-State Wage and Hour App for Employers

Epstein Becker Green's updated version of its free, first-of-its-kind app, Wage & Hour Guide for Employers, now includes all 50 states – and more! The app puts federal and state wage and hour laws at the fingertips of employers. Plus, the updated app supports iPhone, iPad, Android, and Blackberry devices and has new capabilities.

Key features of the update include:

- New summaries of wage and hour laws and regulations covering all 50 states – plus federal law, the District of Columbia, and Puerto Rico)
- Available without charge for **iPhone**, **iPad**, **Android**, and **BlackBerry** devices
- Direct feeds of EBG's **Wage & Hour Defense Blog** and **@ebglaw on Twitter**
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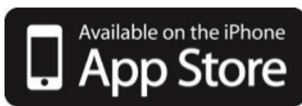
With wage and hour litigation and agency investigations at an all-time high, EBG's app offers an invaluable resource for employers, in-house counsel, and human resources personnel.

The multitude of wage and hour claims that employees have filed under the Fair Labor Standards Act and its state law counterparts has made compliance with the intricate wage and hour laws more important than ever. Employers in all industries—including financial services, health care, hospitality, retail, and technology, media, and telecommunications—are susceptible to claims under these statutes.



Rather than search through a variety of resources to locate applicable wage and hour laws, users can follow this easy-to-navigate app to find the answers to many of their questions, including citations to statutes, regulations, and guidelines. To provide the best experience possible, the app enables users to download the guide at any time, with or without a connection.

Epstein Becker Green's **Wage & Hour Guide for Employers** has been prepared by some of the most respected counselors, litigators, and authors in the field to help employers achieve their business objectives, comply with federal and state wage and hour laws, and avoid govern¬ment investigations and class action litigation.

To learn more and install the app, search for "Wage Hour" in the App Store on iTunes and the Google Play store.

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