EPSTEIN BECKER GREEN

A Quick Wage-Hour Tip on New York's New Rule on Contractors' Liability for Subcontractor Employee Wages

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Edward M. Yennock, Member of the Firm in the Employment, Labor & Workforce Management and Litigation practices, in the firm's New York office, authored an article in the *Employee Relations Law Journal,* titled "Time Is Money: A Quick Wage-Hour Tip on New York's New Rule on Contractors' Liability for Subcontractor Employee Wages."

Following is an excerpt (see below to download the full version in PDF format):

The doctrine "joint employer" liability has received significant attention in recent months. Under the Fair Labor Standards Act ("FLSA"), an employee may be deemed to have multiple employers – each of whom would be liable jointly for all aspects of FLSA compliance, including with regard to the payment of wages – in connection with his or her performance of the same work.

During the prior administration, the U.S. Department of Labor ("DOL") issued a rule intended to standardize the parameters of joint employer liability. Months later, however, a federal court invalidated a portion of the new rule, holding that it impermissibly narrowed the scope of the joint employer doctrine. And, in July 2021, the DOL announced its outright repeal of the rule – i.e., whether a business might face joint employer liability will again be governed by the multi-factor "economic reality" test subject to varying judicial interpretations.

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An important new development in New York law, however, essentially renders the concept of joint employment, and the standards that govern it, a moot point – at least in terms of wage liability in the construction industry.

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