

Recent Trends & Developments in Employment, Labor & Benefits Law

Employment Matters Monthly

FEBRUARY 2015

A Note from the Editors

Through our [Employment Matters blog](#), attorneys from Mintz Levin's [Employment, Labor & Benefits Practice](#) aim to share noteworthy information in matters relating to employers' complex human resource and employment law issues and timely insights on legal developments. Here, we share blog posts and other content from January 2015. If you have any questions, please contact us or one of our team's attorneys.

You can [subscribe](#) to our *Employment Matters* blog [here](#).



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January 2015 Blog Posts

[Seattle Seahawks Headed for a Second Straight Super Bowl Victory? Yes, According to Unemployment Statistics; No, According to Lion...and Other Notes for Employers in Advance of the Big Game](#)

January 30, 2015

Written by [Michael Arnold](#)

Predicting the Super Bowl victor [used to be easy](#). You just looked at the city with the lower unemployment rate and who Elijah that lovable orangutan picked and you called it a day. Elijah had picked seven straight Super Bowls and 21 out of the last 26 winning cities had a lower unemployment rate. But we have a problem this year.

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[Employers: Don't Forget About the Possibility of Associational Discrimination Liability](#)

January 29, 2015

Written by [Michael Arnold](#)

A case out of a New York State appeals court should remind employers that they may liable for discrimination where they take an adverse action against an employee based on the employee's association with someone in a



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Massachusetts Expands Its Leave Law to Cover Fathers

January 29, 2015

Written by [Robert Sheridan](#)

This past September, we [discussed](#) the practical and legal implication of changing attitudes towards parental leave for fathers. Following up on this theme, Massachusetts recently passed a law, the [Massachusetts Parental Leave Act](#) (the "Parental Leave Act"), which will replace the current Massachusetts Maternity Leave Act (the "Maternity Leave Act"). The Parental Leave Act becomes effective on April 7, 2015 and, significantly, the new law expands parental leave benefits to covered *male* employees. This post will briefly analyze the Parental Leave Act and the new obligations it places upon Massachusetts employers.

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DOL Looks to Update/Modernize Sex Discrimination Guidelines for Federal Contractors and Subcontractors

January 29, 2015

Written by [Jonathan Cain](#)

Yesterday, the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) published a [notice of proposed rulemaking](#) that would rescind the Labor Department's sex discrimination guidelines for federal contractors and subcontractors and replace them with new rules. According to the OFCCP, the current guidelines, which it published in 1970, do not reflect current interpretations of federal law prohibiting sex discrimination and meet the realities of the modern workplace.

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Don't Sleep on this New Jersey Employers: State Supreme Court Adopts More Stringent Test to Claim Independent Contractor Status

January 27, 2015

Written by [David Katz](#)

Recently, in [Hargrove v. Sleepy's, LLC](#), the New Jersey Court issued a unanimous decision raising the bar for New Jersey employers seeking to classify individuals as independent contractors under New Jersey's Wage Payment Law (governing time and mode of wage payments) and New Jersey's Wage and Hour Law (governing minimum wage and overtime). The court adopted the so-called "ABC" test; a test derived from New Jersey's Unemployment Compensation Act and arguably the most stringent test for employers to uphold independent contractor classifications.

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Winter Storm Juno Expected to Bring Lots of Snow, but Also Potential Wage and Hour Issues

January 26, 2015

Written by [Michael Arnold](#)

So it's going to snow a lot today and tomorrow. A lot. A potential blizzard. Some say this could be one of the biggest snowstorms ever to hit the East Coast. More than a foot of snow is expected in Manhattan, up to two feet out on Long Island and maybe more than two feet in and around Boston. This means closed schools, downed power lines, impassable streets and even travel bans, which also means that employers will have to decide whether to close their doors early this evening and whether to open up their doors tomorrow (and/or Wednesday). As we've written about before, in making those decisions, employers must account for their obligations to comply with Federal, state and local wage and hour laws.

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California Sunshine Warms the Market: A Twist on Customer Non-Solicitation Provisions in the Golden State

January 23, 2015

Written by [Jen Rubin](#)

Those of you reading our Employee Mobility blog posts are familiar with California's unique approach to non-compete agreements: they are, except in a few limited circumstances, unenforceable in the Golden State. And that unenforceability extends to post-employment non-solicitation provisions restricting individuals from soliciting business from former customers – a “warm market” to those in the know in the sales community.

But a recent decision highlights an exception to this (infamous) California ban on post-employment solicitation.

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DC's New Wage Theft Law Imposes Additional Notice, Posting, and Recordkeeping Requirements on Employers

January 23, 2015

Written by [David Barmak](#) and [Frank Hupfl](#)

Last October, we [reported](#) on D.C.'s soon-to-be-enacted [D.C. Wage Theft Prevention Amendment Act](#). This Act, which amends several existing D.C. wage and hour laws, includes new notice requirements and retaliation protections, increases employer liability for wage and hour violations and introduces a new administrative hearing process – all changes that employers with D.C.-based employees need to be aware of.

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The Companionship Exemption Remains: DC District Court's Most Recent Decision in Home Care Association of America v. Weil Marks Second Victory for Home Care Employers; DOL Appeals

January 23, 2015

Written by [Frank Hupfl](#)

On January 14, 2015, Judge Richard J. Leon of the D.C. Federal District Court issued another favorable opinion for home care employers by vacating a Department of Labor regulation that would have narrowed the definition of “companionship services.” The decision comes on the heels of another decision by Judge Leon last month in which he vacated another proposed regulation that would have prevented third-party home agencies from applying the companionship exemption to its employees.

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Bully for You: Ready or Not, California's Anti-Bullying Training Requirement Starts Now

January 15, 2015

Written by [Jen Rubin](#)

Welcome to 2015 and the start of California's Anti-Bullying Training Requirements. Employers of 50 or more in California must now add an “anti-bullying” training requirement to their training curriculum, which is required to be delivered every two years to supervisory personnel regarding harassment, discrimination and retaliation in the workplace.

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ConAgra Foods Defeats Challenge to Its Executive Exemption Classification in FLSA Class Action

January 15, 2015

Written by [George Patterson](#)

A federal judge in Arkansas granted summary judgment for ConAgra Foods in a collective action brought by a group of departmental Team Leaders who alleged ConAgra misclassified them as exempt and denied them

overtime pay in violation of the Fair Labor Standards Act. In [Garrison v. ConAgra Foods](#), the court determined that the Team Leaders' job duties satisfied the four-part test for the FLSA's "executive exemption," including the requirement that the employer gave their recommendations regarding the advancement and demotion of subordinate employees "particular weight."

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Beyond US Citizens and Lawful Permanent Residents: Are Other Classes of Individuals Legally Authorized to Work Protected from Employment Discrimination?

January 14, 2015

Written by [Angel Feng](#)

In a novel case, a New York federal court judge recently denied an employer's motion to dismiss a Section 1981 alienage discrimination class action lawsuit. The lawsuit alleges that Northwestern Mutual Life Insurance Company violated that Act by implementing a policy of hiring only U.S. citizens and lawful permanent residents.

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Distant Cousins, Not Twins: Some Key Differences between the Massachusetts and Federal Health Care Reform Laws

January 7, 2015

Written by [Patricia Moran](#)

On January 1, 2015, the Affordable Care Act's (ACA) employer shared responsibility mandate took effect. Up until July 1, 2013, most employers doing business in Massachusetts were required to comply with an employer mandate commonly known as the Fair Share law. In very general terms, both laws require employers to provide health care coverage to employees or face the prospect of a monetary penalty. But beyond that, the two rules have more differences than commonalities, not unlike cousins who, while sharing some common ancestors, bear little resemblance to each other in appearance and behavior.

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Another Check on the EEOC Background Check Challenge

January 5, 2015

Written by [Jessica Catlow](#)

We have [written before](#) about the EEOC's increased focus on the potential disparate impact of employers' use of background checks in screening applicants for employment, and of a recent federal appeals court decision that put up a significant road block in the EEOC's efforts to prove disparate impact caused by credit checks as a screening tool. While not the basis of the court's decision, the court did note that the EEOC ran the very same type of credit checks on its employees. Unfortunately for the EEOC, it is also facing additional road blocks *because* of its own policies: defendant employers are accusing the EEOC of throwing stones in

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Relevant Posts from Other Mintz Levin Blogs

[For the New Year – A New Mintz Matrix of State Data Breach Notification Laws](#)

January 9, 2015

Our sister blog – [Privacy & Security Matters](#) – has released its [annual update](#) to the [Mintz Matrix of State Data Breach Notification Laws](#), which highlights some significant changes in important states – such as California and Florida. We hope you'll find it useful.

Media Mentions

2015 Health Care Reform Compliance Checklist for Employers

January 23, 2015

[Patty Moran](#) authored an article recently published in *Bloomberg BNA* about the Affordable Care Act's employer shared responsibility rules that took effect this month. According to this mandate, employers of a certain size must either offer coverage to full-time employees or risk paying a penalty. The article offers a checklist of issues employers should consult to ensure compliance with this rule.

[Read the full article here ...](#)

A Board Member's "Go Bag" for the Unexpected CEO Termination

January 15, 2015

[Jen Rubin](#) and [Rich Kelly](#) co-authored an article recently published in *Corporate Board Member* magazine in which they outline principles and proven techniques to help board members navigate a fast-moving CEO termination. The article emphasizes preparedness for this type of transition and cites steps such as understanding the board's role, managing legal relationships, informing the board and following proper corporate procedures.

[Read the full article here ...](#)

Does a Settlement of Remaining Penn State Sanctions Issues Help the NCAA?

January 14, 2015

[Tyrone Thomas](#), was quoted in *The Patriot News* article entitled [Does a Settlement of Remaining Penn State Sanctions Issues Help the NCAA](#), in which he comments on the NCAA's enforcement processes as they relate to the child abuse sex scandal at Penn State. The article focuses on potential implications if the NCAA restores Penn State's vacated Joe Paterno-era football wins.

[Read the full article here ...](#)

What We're Reading

Week of January 26, 2015

[Stop Using Employee Of The Month Awards For Recognition](#)

TinyHR Employee Engagement & Company Culture Blog (Jan. 4, 2015)

Week of January 19, 2015

[Massachusetts Parental Leave Act](#)

Week of January 12, 2015

[Greengrass v. International Monetary Sys. Ltd.](#)

No. 13-2901 (7th Cir. Jan. 12, 2015) (J., Williams)

Week of January 5, 2015

[Lytton Rancheria of California](#)

361 NLRB No. 148 (Dec. 23, 2014) (addressing whether various provisions of employee handbook violated the NLRA)

Employment Quote(s) of the Week

Week of January 26, 2015

"By the authority vested in me as President by the Constitution and the laws of the United States of America, and to further build on these important goals and the work currently underway by the Office of Personnel Management (OPM) and other agencies to review existing personnel policies, I hereby direct as follows: ... Agencies shall ensure that, to the extent permitted by law, their policies offer 240 hours of advanced sick leave, at the request of an employee and in appropriate circumstances, in connection with the birth or adoption of a child or for other sick leave eligible uses."

[Memorandum For The Heads Of Executive Departments And Agencies](#), White House Office of the Press Secretary (Jan. 15, 2015).

Week of January 19, 2015

"Millions of American families each day struggle financially to care for their loved ones who are either too elderly or infirm to care for themselves. Congress is now, and has been, keenly aware of that struggle for many decades. Indeed, as the baby-boomer generation gets older, that struggle will be shared by an ever-increasing number of families. The exemption Congress has provided third-party employers and individual families with respect to minimum and overtime wages has been, and is, a central component of Congress's effort to insure that as many of those families as possible will be able to survive that struggle. While the Department of Labor's concern about the wages of home care providers is understandable, Congress is the appropriate forum in which to debate and weigh the competing financial interests in this very complex issue affecting so many families. Redefining a 40-year old exemption out of existence may be satisfyingly efficient to the Department of Labor, but it strikes at the heart of the balance of power our Founding Fathers intended to rest in the hands of those who must face the electorate on a regular basis."

Judge Leon vacating another portion of the DOL's proposed revision to the companionship exemption regulations in [Home Care Association of America v. Weil](#), 14 Civ. 967(RJL) (Jan. 14, 2015).

Week of January 12, 2015

"An old maxim warns: Be careful what you wish for; you might receive it. In the Sixth Circuit, however, employees need not be careful what they ask for because, if their request is granted and they encounter buyer's regret, they can sue."

Supreme Court Justice Alito dissenting from a denial of certiorari in [Kalamazoo County Road Commission v. Deleon](#), No. 13-1516 (Jan. 12, 2015).

Week of January 5, 2015

"Here, Congress has directed the Department of Labor to define statutory terms, and then include 'any employee' who provides services according to those definitions within the scope of the exemptions. The focus is on the type of the services provided, not who pays the check. As such, Congress has clearly spoken on this issue, and the Department's new, conflicting rule therefore cannot survive."

[Home Care Association of America v. Weil](#), 14 civ. 967(RJL) (D. D.C. Dec. 22, 2014) (vacating the DOL's revised regulation that would have essentially eliminated the companion and live-in domestic service worker exemptions).

Contributors

Learn more about *Employment Matters* blog and its contributors [here](#).



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