



HUMAN RESOURCES UPDATE

APRIL 2012

MORE ON NLRB POSTING DEADLINE

The National Labor Relations Board's (NLRB) new posting requirement was challenged in South Carolina and in the federal district court in Washington, D.C. The U.S. District Court for the District of Columbia issued its final ruling a few weeks ago, stating that essentially all private businesses (there are a few exceptions, based upon annual revenue) *are* required to post the new notice. However, some of the sanctions against employers were voided. The sanction providing that an employer's failure to post the notice extends or "tolls" the NLRA's six-month statute of limitations for filing an unfair labor practice charge, as well as the sanction defining any failure to post the notice as a *per se* unfair labor practice, were invalidated. The court's reasoning was that these sanctions were an impermissible expansion of the NLRA's scope.

Then, on Friday, April 13th, the U.S. District Court for South Carolina invalidated the posting rule in its entirety, with a 31-page opinion. Unless the ruling is enjoined or stayed in the next two weeks, it appears the posting rule is blocked.

Are you confused yet? You're not alone. The D.C. Circuit court can approve the first ruling or decline to approve it, which is what is expected. This leaves the U.S. District Court for South Carolina ruling standing. Then the NLRB will most likely try to save face by postponing the posting requirement a few months, again, while pursuing a stay of the ruling.

As the employer, you need to:

- Be ready to comply on April 30, 2012 by posting the Notice
- Print out the Notice – available on the NLRB's website at <http://www.nlr.gov/poster>
- Stay tuned to what the final ruling is

We will certainly keep you abreast of the news, as soon as we hear it. Please follow our blog at <http://www.blog.hopkinshr.com/>.

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5500 FILINGS ARE
DUE SOON FOR
MANY PLANS

DOL OVERTIME ENFORCEMENT

You've probably heard that the Department of Labor (DOL) has been increasing audits, thus enforcement, of all the various laws they oversee. The one that effects the most employers out there is the Fair Labor Standards Act (FLSA) which dictates who receives overtime, when, and how.

The DOL has increased the number of investigators nationwide in the past few years (in the DFW area alone there are now 30 investigators instead of 12). We cannot emphasize enough the importance of properly classifying your employees and then properly calculating and paying the earned overtime.

As the economy tumbled, the number of fair wage cases investigated by the DOL has boomed. The 1,193 cases investigated by the Dallas office in 2011 almost doubled the workload of 642 cases in 2008. Nationally, the DOL investigated a record number of wage and hour cases, most of which are for unpaid overtime.

It's not just the federal agency, either. More workers are suing their current or former employers for back wages, too. In U.S. federal courts in Texas, the number of cases filed for unpaid overtime went from 291 in 2007 to 617 in 2011, according to an analysis by Androvett Legal Media & Marketing and the law firm of Lee and Braziel.

The single biggest issue these investigators are finding, related to the FLSA, is improperly classified employees. This means that employers are declaring certain employees "exempt" from paying overtime and when they do not qualify in the DOL's eyes.

It is imperative that each discreet position be analyzed. Do not look at job title, but the actual tasks, duties, and requirements of the position. Recent high-dollar cases have involved loan officers, field managers who actually had no managerial responsibilities, and IT employees. All of these positions were classified by their employer as exempt, when in actuality they were not. All these positions needed to be paid by the hour and time and half for hours worked over 40 in a work week. (Check your state's laws to insure that overtime pay is not required on a more stringent basis, i.e. California requires overtime for every hour over 8 worked in a given day.)

Other frequent FLSA violations include not paying for required training or meetings or simply not paying the time and half at all.

Now is the perfect time to conduct a self-audit of your positions and reclassify any to non-exempt. This includes the good faith effort of making those reclassified employees whole by calculating and paying the overtime owed going back at least two years.

TEXTUAL HARASSMENT

Textual harassment is on the rise, according to The National Law Journal. Although the U.S. Equal Employment Opportunity Commission (EEOC) says it has no statistics tracking the prevalence of textual harassment, it advises employers to treat it as it would any form of harassment—through clear anti-harassment policies and swift action.

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