



Wage-Hour News Notes

Insights

1.28.14

Recent headline items touch upon matters of continuing concern:

- One of the foremost promoters of an increase in the FLSA minimum wage has been the U.S. Labor Department, especially Labor Secretary Tom Perez. Mr. Perez's January 23, 2014 blog post concluded with the exhortation, "It's time Congress acted to #raisethewage," which refers to a social site maintained by USDOL.

Even apart from the broader policy implications of a federal agency's ceaselessly advocating one side of a pending legislative matter as to which there is considerable public disagreement, it is not readily apparent how USDOL's activism squares with the recent federal appropriations law. Division H, Title V, Section 503(a) of Public Law No. 113-76 says in relevant part:

No part of any appropriation contained in this Act shall be used . . . for publicity or propaganda purposes, for the preparation, distribution, or use of any . . . publication [or] electronic communication *designed to support or defeat the enactment of legislation before the Congress . . .*, except in presentation to the Congress . . . itself . . .

[Emphasis added]. In light of both frenetic pre-passage wrangling and the complexity of the final legislation, perhaps USDOL is unaware of this limitation.

- The Employment Policies Institute has highlighted what it calls "Maximum Hypocrisy on the Minimum Wage" among 96% of the Senate and House sponsors of bills to raise the federal Fair Labor Standards Act's current rate. According to EPI, this is the proportion of increase-supporting legislators who do not pay their interns. One of them is Iowa Senator Tom Harkin, principal sponsor of the Senate measure, who has been among the most-visible proponents of the bills and who has castigated those of a different view in harsh terms.

This newest flap brings to mind our earlier post on public pressure designed to goad the White House into paying interns. President Obama is of course another staunch proponent of a minimum-wage hike.

But a larger point is that the steady drumbeat of interns-related publicity probably signals trouble ahead for at least some organizations venturing into these arrangements. And it is worth recalling

that some current lawsuits include claims, not only by *unpaid* interns, but also by interns who allege that, despite receiving "stipends" and the like, they were unlawfully *underpaid*.

- In this same connection, a former unpaid intern who has sued MTV and Viacom under the FLSA and New York law is now seeking permission to send notices to potential plaintiffs who might opt-in to the FLSA claims. Organizations considering internship programs will find the intern's supporting factual allegations ([link to brief below](#)) to make for enlightening reading.
- A member of the Oakland Raiders' cheering squad, "The Raiderettes", has filed a class-action lawsuit under California law ([link to complaint below](#)) claiming that the team's compensation practices were unlawful in a variety of ways. Comments attributed to her counsel suggest that they believe millions of dollars to be at stake. It might well be just a matter of time before allegations of unlawful pay practices are raised under the FLSA in analogous scenarios, whether in California or in other jurisdictions.

Whether anything illegal actually occurred remains to be determined. Even so, one lesson an employer should draw from this is that, when it comes to wage-law matters, management cannot take comfort simply in what employees might initially want to do or what they agree to in a contract.

[Ojeda v. MTV Notice Memorandum.pdf \(458.32 kb\)](#)

[Lacy T. v. Oakland Raiders.pdf \(3.46 mb\)](#)