



USDOL's "Naughty or Nice?" App

Insights

7.26.13

The U.S. Labor Department has signaled for some time now that it considers shame and ostracism to be enforcement tools. USDOL's Wage and Hour Division has taken another step in this direction by seeking entries in a contest to develop a smartphone application providing "consumers with information . . . about which businesses have treated their workers fairly and lawfully . . ."

The stated aim is to integrate enforcement data and violations histories with social-media applications such as Yelp, Google+, Google Maps, City Search, and other such websites in order to, as a senior official put it, "allow consumers to see if an establishment that they want to frequent has been in compliance with federal labor laws." The Division says it hopes that the app will also be "a useful tool for job seekers and for companies that are deciding which firms they may want to do business with."

And The Effects Will Be . . .?

Only time will tell whether this "useful tool" will become a vehicle for the dissemination of erroneous, inaccurate, or otherwise mistaken information, such as where it results in misattribution or misidentification, or in mischaracterized or misleading disclosures. This brings to mind the post-exoneration question asked by former U.S. Labor Secretary Ray Donovan years ago: "Which office do I go to [to] get my reputation back?"

The solicitation also leaves many other matters unclear. As just one example, there is no indication whether the app will characterize as "violations" situations in which the Division and management settled a matter on a non-admissions basis, that is, in an agreement in which the employer does not concede that there was any violation in the first place.

Not Limited To Federal Law

And although USDOL's press-release speaks in terms of "federal labor laws", the actual underlying statement of "minimum requirements" reveals the possibility that the app "could provide users with access to other data sets [such as state licensing agencies, state health boards, [and] environmental data][.]" None of these areas falls within USDOL's enforcement authority or has any apparent connection either to its mission or to matters for which it has been appropriated funds.

One may also reasonably question whether the app's providing access to at least some such information will violate a state or local law or will otherwise constitute an improper disclosure. Moreover, concerns about the accuracy and reliability of such information (over which USDOL has no

control) cannot be dismissed. The solicitation does not reveal whether or through whom USDOL will evaluate these things, whether the matters will instead be left to the app developer to decide, or whether the questions will be ignored altogether.

The winning app is to be announced on November 4, 2013.