



# The Post-Election Wage-Hour Landscape

Insights

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Now that the election is behind us, employers should consider what they might anticipate in the field of wage-hour law, which is already one of the largest sources of employment-law claims. While the nature and number of the possible developments are practically unlimited, some of the foreseeable ones include these:

◇ The push to increase the minimum wage under the federal Fair Labor Standards Act, which was at fever-pitch before going dormant as the election season approached, will now re-emerge. There will be similar efforts under many analogous state and local laws and ordinances.

This will probably include proposals to increase the FLSA's cash-wage requirement for tipped employees for whom employers take that law's tip-credit. The public-relations approach will be that this increases "the minimum wage for tipped workers", despite the fact that the FLSA minimum wage for tipped employees is already the same as it is for everyone else.

◇ Analogous moves might well seek to increase the salary amount required for some of the FLSA's exemptions from minimum-wage and overtime, as well as to impose paid-leave requirements. Recall the March bill introduced by Iowa Senator Tom Harkin which proposed both, including requiring most employers of at least 15 employees to accrue an hour of paid "sick time" for every 30 hours an employee works, up to at least 56 hours each calendar year.

Another possible measure might involve an attempt to raise the FLSA overtime-pay multiple from its current 1.5 times the regular rate to 2.0 times that rate. This might be joined with reducing the threshold number of hours for FLSA overtime from 40 hours in a workweek to, say, 35 hours. Similar FLSA amendments were proposed in the late 70s and early 80s, during another period of high unemployment and persistent economic stagnation. A further impetus this time around might be the already-burgeoning rates of part-time employment, taken in conjunction with what could be a further trend toward part-time work driven by looming Affordable Care Act requirements.

◇ Aggressive government enforcement at federal and state levels is likely to expand. There will be an even-more-intensified focus upon whether workers treated as independent contractors should instead be viewed as employees. Employers should expect further national or regional enforcement initiatives undertaken with respect to entire industries. These initiatives will include (among others) those directed at what the U.S. Labor Department has called "low wage" sectors, such as hospitality

businesses and food retailing, retailing in general, some healthcare segments, landscaping, some construction segments, temporary-help agencies, daycare/homecare, agriculture, janitorial services, garment manufacturing, and guard services.

◇ Following a noisy notice-and-comment period that ended in March, proposals that would essentially spell the end of the FLSA exemptions for companions and live-in domestic-service workers suddenly dropped from view as the election season commenced. These provisions will probably be released in their final form in the not-too-distant future.

Another distinct possibility is the revival of the so-called "**Right to Know**" regulations, which USDOL said would require "notification of workers' status as employees or some other status such as independent contractors, and whether that worker is entitled to the protections of the FLSA." USDOL further said that the proposal would "also explore requiring employers to provide a wage statement each pay period to their employees," apparently so as to convey to employees "how their pay is computed." The reach of these provisions would likely be even broader than USDOL has so far disclosed.

◇ The "wage theft" movement toward increasingly-draconian penalties and punishments will move forward with renewed energy, especially at the state and local levels. For proponents of these measures, wage-law violations are unrelated to the multi-jurisdiction, patchwork nature of differing, obscure, sometimes-conflicting, ambiguous and ill-defined, rapidly-changing requirements that are proliferating across the nation. No, as this publication illustrates, in their eyes employers are instead "dishonest", unscrupulous scofflaws who are "stealing" money from workers. Employers who remain disengaged on this front and who acquiesce in these pejorative campaigns do so at their peril.

### **The Bottom Line**

It has never been more important for employers to remain vigilant, informed, and assertive about all of these matters. It is also **essential** that each employer ensure **right now** that it is in compliance with all applicable wage-hour requirements.