



Navigating you through the various legal employment and business issues that your Company encounters as you journey to business success!

Navigational Beacon

A Simon | Paschal PLLC Publication.

Q1 2015

Anti-Obamacare Workweek Bill

GOP Congress Takes First Swipe at Obamacare With Measure to Change Workweek Requirements

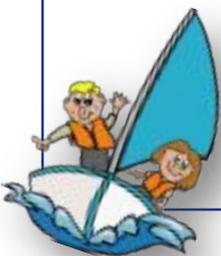
On Wednesday, January 7, 2015, Indiana Republican U.S. Representative Todd Young and Illinois Democratic U.S. Representative Daniel Lipinski introduced the "Save American Workers Act" (House Resolution 30). H.R. 30 would amend the Internal Revenue Code to redefine the term "full-time employee" as an employee who is employed on average at least 40 hours per work week. Under the Affordable Care Act (or "Obamacare"), employers with 50 or more full-time employees are required to provide health care coverage to their employees or pay a penalty. The Affordable Care Act defines a full-time employee as one that works at least 30 hours per work week. On Thursday, January 8, 2015, the U.S. House of Representatives approved the bill. The Senate will now take up consideration of the matter in an effort to present a bill to President Obama for signature.

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Breakfast:

Join us on Tuesday, March 10, 2015 at 8:00 a.m. for our Quarterly Breakfast at our office (13601 Preston Rd., Ste. W870, Dallas 75240). We will provide breakfast and a chance to network followed by a short presentation on a relevant topic to your business. RSVP to info@simonpaschal.com.



Court Vacates DOL Rule Regarding In-Home Healthcare Workers Provided by Third Parties

A new rule by the Department of Labor was set to go into effect on January 1, 2015, which would have removed third-party provided home health aides and personal care aides from the domestic employees exemption to the minimum wage and overtime laws. This would have been a significant change since these workers had been considered exempt from minimum wage and overtime laws for more than 40 years.

However, on December 22, 2014, the U.S. District Court for the District of Columbia (the Court responsible for such DOL rules and regulations) struck down the rule.

The Court reasoned that based on the length of time during which these workers were considered exempt (and, thus, a complete lack of congressional support to withdraw the exemption), as well as a 2007 U.S. Supreme court decision affirming the inclusion of such workers in the exemption, the DOL rule could not stand.

The Court issued its decision as part of a larger lawsuit brought against the DOL by the Home Care Association of America, the International Franchise Association, and the National Association for Home Care & Hospice. The lawsuit will continue, as these parties seek to fully restore the companionship exemption. Another hearing before the Court is scheduled for Friday, January 9, 2015 to determine whether or not to issue a preliminary injunction against enforcement of the DOL's revised definition of "companionship services."



Religious Accommodations

The U.S. Court of Appeals for the Fifth Circuit recently ruled that a woman was entitled to a trial on her claim that her employer discriminated against her by failing to accommodate her religious beliefs when the employer refused her request for time off to attend a church groundbreaking ceremony. The lower District Court previously had ruled against the woman on the grounds that attendance at a groundbreaking ceremony was not a religious belief or practice that should be protected by law.

The appeals court reversed on the grounds that courts traditionally are reluctant to judge the sincerity of an individual's religious beliefs when it comes to religious discrimination claims.

One judge in the three judge panel dissented and stated that while not an issue of sincerity, the court should look at whether or not an individual's alleged religious belief is in fact religious and not just social or personal preference.

So for the time being, employers should tread lightly when it comes to religious-based accommodation requests. We expect this case to garner further appeals, though, so the last word has not been said.



Another great Simon | Paschal client

Client Spotlight

VIVA Pediatrics is a Pediatric home health services agency with a specialty in private duty nursing, skilled nursing visits and therapy for infants and children (ages birth through 20 years of age). VIVA Pediatrics is nurse owned and operated and is a family owned business based in Dallas, Texas, with offices throughout the DFW Metroplex and Austin. We are proud to have VIVA Pediatrics as a client and we appreciate the faith they put in us on a daily basis. Check out more about this great company at www.vivapeds.com.



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(cont'd from Page 1) Although President Obama has indicated he intends to veto any such bill, the Republican-controlled Senate intends to move forward and believes it can obtain the necessary 60 votes (which would require at least 6 Democrat votes) to approve the bill by the end of January. The Senate's version of the bill is called the "Forty Hours is Fulltime Act." It is unclear if the Senate has the necessary votes to overcome any potential veto by the President. The bill affects how many employers are covered by the employer mandate. That mandate went into effect January 1, 2015 for companies with 100 or more employees and goes into effect in 2016 for companies with 50 or more employees. Proponents of the bill argue 40 hours per work week is the traditional number of hours to constitute full-time employment. You can expect many more challenges to Obamacare in the coming two years but this is the first strike. We'll keep you updated as new developments occur.

Supreme Court Decides FLSA Case

On December 9th, the U.S. Supreme Court issued a unanimous decision in *Integrity Staffing Solutions v. Busk*. The case dealt with workers assigned to an Amazon fulfillment warehouse. The workers in question were required to go through a security screening process at the end of the work day to cut down on employee theft. The process took an average of 25 minutes and the workers were not paid for the time. At issue before the Supreme Court was whether or not the time was compensable time for which the workers must be paid.

The Court decided it was not. The Court held that the required security screenings were not "integral and indispensable to the principal activities [the employees were] employed to perform..." The Court held that to be integral and indispensable, the activity in question must be "an intrinsic element of [the employees' activities] and one with which the employee[s] cannot dispense if [they] are to perform [their] principal activities."

The Court held the screenings weren't principal activities because the employer didn't employ workers to pass through security screenings but rather to fulfill orders. The Court further held the screenings were not integral and indispensable to principal activities because the screenings could have been eliminated without affecting the employees' jobs.

Despite the decision, you should always do a detailed and fact-specific review and inquiry into your employees' jobs before deciding what is and is not compensable time.

Something to Think About With the Flu Epidemic

We recently attended a seminar where a doctor spoke about the flu epidemic and he stated reports indicate that if employers gave a sick employee just one PTO day to stay home and recuperate (even if he or she is out of PTO days), it reduces overall employee absenteeism by an average of 20% because that employee is not spreading the flu. If employers gave that same sick employee two PTO days, it reduces overall employee absenteeism by an average of 40%!

A little something to think about! A little bit of extra PTO can go a long way in increasing productivity and benefiting your business! Stay healthy everyone!



Simon | Paschal PLLC Happenings

2014 was a great year for us here at Simon | Paschal PLLC! On July 1st, we celebrated our 1-Year Anniversary. In September, we spoke at the DallasHR Legal Exchange Conference. In October, we spoke at the HRSouthwest Conference in Fort Worth. In December, Dustin was elected to a fifth term on the Dallas Association of Young Lawyers Board of Directors and selected to serve on the DallasHR Board of Directors, while Paul was elected as the Vice President of the Dallas Association of Young Lawyers. We are looking forward to great things in 2015 as Dustin enters his 10th year of practice and Paul enters his 8th year!

The small print: The contents of this newsletter are not intended to provide specific legal advice and you should not take any action based on the content of this newsletter without seeking legal counsel. If you have specific questions, please contact a lawyer, preferably us!



Simon | Paschal PLLC

13601 Preston Road, Suite W870

Dallas, Texas 75240

972.893.9340 Main

972.893.9350 Fax

info@simonpaschal.com

www.simonpaschal.com

