



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

Navigational Beacon

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Are You About to Lose Your Exemption?

On June 30, 2015, the U.S. Department of Labor published its proposed changes to the executive, administrative, professional, computer, and outside sales exemptions under the Fair Labor Standards Act ("FLSA"). These are the most common exemptions employers use to avoid paying overtime to employees. The most dramatic change involves the increase of the minimum salary an employee must receive weekly in order to qualify for executive, administrative, and professional exemptions. Currently, the FLSA requires an employee receive \$455 per week, which translates to \$23,660 annually. Under the DOL's proposed changes, this salary threshold will increase to \$970 per week, which translates to \$50,440. This amount is also set to automatically increase based on inflation and growth over time.

These changes are set to take effect in 2016. However, employers should begin planning now for these changes. Employers should determine all the employees that these regulations could impact (i.e., what employees are currently classified as salaried exempt). Obviously the easy determination is (cont'd on Page 3)



Crazy State Laws:

In Alabama, it is a class B felony for a person to purchase, possess, or train a bear for the purpose of bear wrestling. Unlawful bear exploitation as the law is known, is punishable by a fine and confiscation of the bear. Safe to assume prosecutors do not run into this type of case very often!



How the Supreme Court's Recent Same-Sex Marriage Decision Impacts Employers

Unless you have been living with Tom Hanks on his island in Castaway, you are aware that the Supreme Court recently issued a decision that requires all states to recognize and allow same-sex marriage. The U.S. Supreme Court's decision in *Obergefell v. Hodges* not only clogged your Facebook feed but likely clogged your inbox with emails from your boss and employees asking what this decision means at the work place. Presently, the decision only impacts employee benefits. Same-sex married couples must be afforded the same benefits as heterosexual married couples. As such, employers must ensure that their benefits packages are updated to indicate married benefits are provided to all married couples regardless of sex. Employers may face some difficulty if their benefits provider has not yet updated forms and applications, but all the major benefits providers have likely updated their applications in preparation for this decision.

Another impact the *Obergefell* decision may have on employers is whether employers who used to offer domestic partner benefits will cease this practice. Again, the decision only applies to recognizing same-sex marriages; so, if a same-sex couple does not legalize their marriage an employer has no legal obligation to provide benefits to the employee's domestic partner. The same is obviously true for heterosexual domestic partners.

One important understanding of what the *Obergefell* decision does not do is it does not broaden the Title VII discrimination and harassment protected classes. Sexual orientation is still not a separate protected class, although this likely will change soon. However, employers may be smart to broaden their own internal definition of protected classes before Congress does so.



EEOC's Enforcement of the ADA on the Rise

Last quarter we wrote about the Americans with Disabilities Act celebrating its 25-year anniversary as a law. Like a good bottle of wine, apparently the ADA just gets better with age as the EEOC appears to be prosecuting more and more ADA violations. According to a June 11, 2015 press release, United Airlines agreed to pay over \$1 million to settle an ADA lawsuit the EEOC brought on behalf of former United Airlines workers. According to the press release, United Airlines had a policy that required its disabled workers to compete for vacant positions for which they were qualified and which they needed in order to keep working. The company's practice frequently prevented disabled workers from continuing employment with United Airlines.

More recently the EEOC issued a press release on July 7, 2015 that it has sued a Charlotte-based nursing center for ADA discrimination. The lawsuit contends that the nursing center terminated an employee because the employee suffered from a neurological disorder. The EEOC contends the nursing center failed to accommodate the employee by providing her medical leave. The EEOC is seeking back pay and compensatory damages, as well as punitive damages on behalf of the terminated employee.



Another great Simon | Paschal client

Client Spotlight

Staff One, LLC is a professional employer organization (also known as a PEO) located in Dallas, Texas. Staff One has been in business for over 25 years and has clients throughout the United States. Staff One has earned the EASC and Certification Institute accreditations, the highest-level accreditations in the PEO industry. We are proud to have Staff One 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.staffone.com.

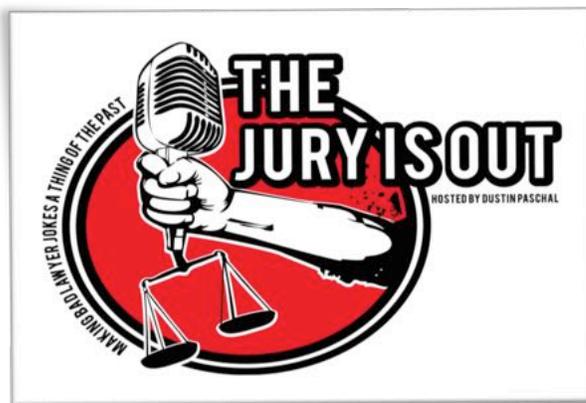


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(cont'd from Page 1) to examine whether the employees are currently receiving at least \$970 per week or not. If the employees are not receiving this amount, the employer will need to increase the salary in 2016 to meet the requirements or change the employees' classification to non-exempt.

Another useful tip for employers as they examine whether the new Regulations change their employees' exempt status, is to re-examine the employees' job duties and make sure that the duties still meet the exemption. Remember, the exempt duties are the duties the employee actually performs and not what the job description claims the employee does. So even if all the employees receive more than the \$970 per week in salary, the employees' job duties may have changed and no longer meet one of the exemptions.

Simon | Paschal is on the Radio!



On July 15, on KVGI Radio, Dustin Paschal started hosting The Jury is Out. Tune in each Wednesday at 10:00 a.m. where you'll hear entertaining legal humor (perhaps an oxymoron) and funny cases. Dustin will also interview people he works with and encounters who are making a difference with their businesses and in their communities. Dustin is not going to forget the law either. Each week, he'll make the law a little more accessible for businesses, entrepreneurs and individuals by answering YOUR legal questions about business and employment law and providing important legal updates that affect you. The jury is out...but Dustin is in.

KVGI radio is an online streaming radio station. Check us out at www.kvgiradio.com!

Historically businesses have struggled with the independent contractor versus employee analysis. Many times business owners say, "That worker only works part-time so he's just a contractor." Another classic is, "We're not sure if that worker is going to work out or if we can afford him yet so for the first 30 days he's a 1099 contractor and then we'll evaluate switching him to a W-2 employee." With the expansion of the Affordable Care Act and the changes to the FLSA, business owners continue to fall prey to the allure of avoiding these laws and the tax savings 1099 contractors can bring a business. However, the fines, penalties, and lawsuits a business can face if its analysis of the independent contractor versus employee test is wrong quickly swallow up these savings. Here are a couple tips to help you avoid this costly mistake:

1. A contract stating the worker is an independent contractor doesn't stop the TWC, DOL, and IRS from determining the worker is actually an employee and holding the business liable for unpaid employment taxes.
2. The analysis should focus on whether the worker operates as his own business:
 - a. Can he sub-contract the work out?
 - b. Can he make a profit or loss?
 - c. Can he refuse projects?
 - d. Can he work for multiple companies simultaneously?

Classifying a worker as an independent contractor always comes with a risk, but remembering these tips should help in your analysis.

Simon | Paschal PLLC Happenings

1 - 15 - 20 – 50: Why These Numbers Should Be Important to Your Business

Every business is subject to employment laws but not necessarily every employment law. The numbers 1, 15, 20 and 50 determine the employment laws applicable to your business and every business should be aware of its important numbers. Dustin and Paul will explain the thresholds and the basics of each law but will dive deeply in to the pitfalls and dangers your business faces and how to avoid those pitfalls and dangers and reduce your potential liability, thereby increasing your opportunities for growth. Learn how to avoid common legal problems and stay in compliance.

This is the second presentation in our Business Breakfast Series. Join us on Tuesday, August 25 at 8:15 a.m. at the Frisco Chamber of Commerce to hear more!

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!

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