



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

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## Final Revised FLSA Regulations Released

The United States Department of Labor recently released the final version of the new Fair Labor Standards Act regulations regarding overtime compensation. The new regulations go into effect December 1, 2016, so employers have about 6 months to get in compliance.

The regulations affect the white collar exemptions (administrative, executive, professional and creative), as well as the highly compensated employees exemption. The changes in the regulations affect the salary thresholds for these exemptions. In order for an employee to be exempt from the overtime compensation requirements under one of the white collar exemptions, that employee now must meet the unchanged duties test and earn a minimum weekly salary of \$913/week (\$47,476 per year). That is an increase over the current \$455/week requirement. The new regulations also call for an automatic increase in the salary threshold every three years so that the salary level remains equal to the 40th percentile in the lowest-wage census region.

Finally, the salary threshold level for the highly compensated employee exemption was increased from \$100,000/year to \$134,004/year.



### Want More Info?

Visit our firm website at [www.SimonPaschal.com](http://www.SimonPaschal.com) and click the "Resources" tab to find past issues of the quarterly newsletter as well as our blogs on various issues. You can also find info on our YouTube channel at [www.youtube.com/SimonPaschalPLLC](http://www.youtube.com/SimonPaschalPLLC).

You can also listen to our weekly radio show, *The Jury Is Out*, each Wednesday at 10am on [www.KVGIRadio.com](http://www.KVGIRadio.com) or by downloading the KVGI Radio app on Apple or Android devices.

## Don't Forget About City-Based Nondiscrimination Ordinances

Most employers are aware of federal nondiscrimination protections under Title VII of the Civil Rights Act and Texas nondiscrimination protections under Chapter 21 of the Texas Labor Code. It is important for employers, however, to not forget about city-based nondiscrimination ordinances. While these most often mirror the federal and state protections, several cities have added additional protections for sexual orientation and gender identity, areas not currently protected under federal and state employment nondiscrimination laws.

Here is a quick summary of the major cities in Texas that prohibit sexual orientation and/or gender identity discrimination in the employment context:

- Fort Worth, Dallas, Plano and Austin prohibit private employers, as well as others, from discriminating against individuals based on their sexual orientation or gender identity (Houston previously prohibited such discrimination but voters recently overturned the law);
- El Paso's City Charter protects city employees from discrimination based on sexual orientation or gender identity but there is no city ordinance;
- The City of Brownsville protects city employees from discrimination based on sexual orientation or gender identity;
- Arlington's employee handbook prohibits city employees from discriminating against individuals based on sexual orientation;
- Waco and Mesquite both have LGBT nondiscrimination provisions in their city employee handbooks.

While employers face fines for violations of these city ordinances, employees cannot sue employers based on violations.

## JOB APPLICATION

Have you ever been convicted of a criminal offense?

## Ban the BOX

### Austin Passes Ban the Box Law

Effective April 4, 2016, Austin became the first city in Texas to "ban the box" with respect to private employers. The law applies to employers that employ at least 15 individuals whose primary work location is in Austin. Under the law, an employer may not:

- Publish or cause to be published information about a job that states or implies that an individual's criminal history automatically disqualifies the individual from consideration;
- Solicit information about or consider an individual's criminal history unless the employer has first made a conditional employment offer;
- Refuse to consider employing an individual who submits an application for a job because they did not provide criminal history information before receiving a conditional offer;
- Take adverse action against an individual because he or she reported a violation of the ban the box law by an employer, or participated in an administrative proceeding under the law.

An employer can still consider and take action based on an applicant's criminal history but the employer may not take adverse action against an individual because of their criminal history unless the employer has determined that their criminal history bears a direct relation to the duties and responsibilities of the job and makes them unsuitable for the job. If this determination is made, the employer must inform the individual in writing that the adverse action was based on their criminal history.



Another great Simon | Paschal client

## Client Spotlight

Thai Green Village is an authentic, made from scratch Thai food restaurant located at 7151 Preston Road, Suite 201 in Frisco, Texas. They use fresh ingredients and diverse spice levels and flavors to make excellent Thai food. They are open 7 days a week for lunch and dinner and they deliver as well. The environment is casual and inviting and you cannot find better Thai food anywhere in Frisco! We are proud to have Thai Green Village as a client and we appreciate the faith they put in us on a daily basis. Check out more about this great restaurant at [www.thaigreenvillage.com](http://www.thaigreenvillage.com).

Legislation is pending in France that would affect work e-mails after hours and on the weekends. Inside a French labor reform bill is an amendment that would suggest that companies of 50 or more employees adopt formal written policies specifying hours when employees are not supposed to send or receive work-related e-mails. The law would not be a requirement for the employers but they would instead be expected to voluntarily comply. The amendment is in response to recent French studies showing work burnout at high levels and the impact of technology on employee's work and personal lives. The overall law has not been well received so it is yet to be seen if the law actually will pass. We're not sure anything like this would ever see the inside of the U.S. Congress but it certainly would help employers in monitoring non-exempt employees' use of technology for work when off the clock!



## **Mothers, Fathers and Parental Issues/Policies in the Workplace**

Parental leave and parental issues have become a very hot topic in the workplace. Employers already know about the 12 weeks of unpaid FMLA "parental" leave afforded employees if they meet certain conditions and work for employers that employ at least 50 employees within a 75-mile radius (i.e. for the birth or adoption of a child or in some pregnancy situations).

Recently, however, the accounting and consulting firm, EY, debuted a new parental leave policy that provides up to 16 weeks of fully paid leave for *all* parents (male and female) having a child through birth, adoption, surrogacy, foster care or legal guardianship. Under the new policy, EY also will provide up to \$25,000 per opposite-sex or same-sex couple for fertility, surrogacy, adoption and egg-freezing services. EY may have broken ground but we expect many other firms to begin following suit with these types of leave policies.

In addition to leave, other laws affect parents in the workplace. While most commentators discussed the Affordable Care Act in terms of employee health care, the Act also amended the Fair Labor Standards Act by adding a requirement that employers provide reasonable break time for nursing mothers to express breast milk for a nursing child for one year after the child's birth. The breaks must be provided as frequently as needed by the nursing mother and are not required to be paid breaks. The break requirements apply to non-exempt employees. Employers with fewer than 50 employees (regardless of work site) are not subject to the break requirement if compliance would impose an undue hardship. Employers must also provide a place, other than a bathroom, that is shielded from view and free from intrusion by coworkers and the public, which may be used by an employee to express breast milk.

Four female Frontier Airlines pilots recently filed Charges of Discrimination with the Equal Employment Opportunity Commission alleging (1) Frontier did not provide them temporary work assignments during the final stages of their pregnancies, instead requiring them to take unpaid leave, and (2) upon returning from maternity leave, Frontier did not provide them proper accommodations to pump breast milk. Frontier denies the allegations and claims that the unique circumstances involved with airline pilots played a part. For example, Frontier claims it provided a breast milk pumping room at its hub in Denver. The pilots, however, claim that the location was not always convenient to their gates and not every airport had such a room. This will be an interesting case to monitor and we will provide you any updates.

## Simon | Paschal PLLC Happenings

Please join us in welcoming our new summer intern, Sara Arciniega. Sara will be a Junior at The University of Texas in the fall and she is a pre-law student. Sara is interested in pursuing a career in law and we are happy to have her aboard and let her learn the ropes. The next time you're in our office, be sure to give Sara a big welcome!

It is hard to believe but on July 1, 2016, Simon | Paschal PLLC will celebrate three years of existence and operation! To celebrate, we're hosting a three-year anniversary party at our office on Tuesday, July 12th from 5:00 p.m. to 7:00 p.m. (or whenever you feel like leaving)! Be sure to mark your calendars and join us for some food, some drinks and a great time! We hope to see you all there and we look forward to celebrating with you.

*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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