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LEGAL AND LEGISLATIVE UPDATE

The following is provided as a complimentary service to the firm's clients. It is designed to assist the reader in keeping informed of selected developments in employment law. It is not intended to be nor is it a treatment of all new developments in the field of labor and employment law. Applicability to a particular situation depends upon an investigation of the specific facts and more exhaustive study of the applicable laws than can be provided in this format. This summary is not intended to be a substitute for legal advice.

Legislative Action

Florida's Domestic Violence Leave Law

Effective July 1, 2007, Florida employers employing 50 or more workers are required to permit employees to request and take leave in connection with domestic violence under certain circumstances. Employees must be employed for three (3) or more months to be eligible to take up to three (3) working days of leave in any 12-month period if the employee, family, or household member is the victim of domestic violence. The leave may be with or without pay at the discretion of the employer and all vacation, personal and sick leave must first be exhausted. Employees must provide advance notice to the employer except in cases of imminent danger. Employers must keep all information relating to the employee's leave confidential and cannot retaliate against the employee for exercising any rights under the law.

Federal Minimum Wage Increase Effective July 24, 2007

The Federal minimum wage increased to \$5.85 per hour on July 24, 2007. This is the first of three increases to occur annually ending with a \$7.25 per hour Federal minimum wage by July 24, 2009. The Federal minimum wage does not apply to workers employed in states where the state minimum wage is higher as it is in Florida. Tipped employees must continue to be paid at least \$2.13 per hour if their employer claims a tip credit. If their combined tip credit and actual tips do not equal minimum wage, the employer must make up the difference. Attached is the new Fair Labor Standards Act poster which must be posted regardless of whether the state minimum wage is higher.

Harassment

HR Manager's Indifference to Complaints Results in Punitive Damages

A jury awarded \$75,000 in punitive damages to a female employee who was sexually harassed by her male coworkers. Male coworkers subjected the employee to vulgar comments about her sexual activities implying that she was promiscuous, called her derogatory terms, played tricks on her, and threw large metal objects at her. The employee reported this conduct to her supervisors but they failed to address her complaints. The Court found especially egregious the human resources manager's response to her complaints. The HR manager immediately took the side of the harasser and failed to conduct an investigation. Instead, he wrote the harasser up for horseplay and laughed when the harasser made a sexually offensive comment about the employee. Finally, he responded to her complaints by stating that she worked in a mill-type of environment and if she didn't like it, she could go to work elsewhere. *Parker v. General Extrusions Inc.*, 2007 U.S. App. LEXIS 15176 (6th Cir. 6/26/07)

Firm Agrees to \$145,000 Settlement

A real estate developer agreed to settle a sexual harassment and retaliation lawsuit filed by the Equal Employment Opportunity Commission on behalf of five women. The women alleged that they were subjected to inappropriate sexual comments and conduct, name calling, and intimidating treatment because of their gender. They further alleged that three of the women were fired in retaliation for opposing the alleged harassment. The company admitted no wrongdoing but agreed to settle to avoid protracted litigation. *EEOC v. Gardner Management Group*, No. 05-1148-C, consent decree (W.D. Okla. 6/21/07)

Firefighters Prevailed in Sexual Harassment Suit

Four female firefighters alleged that fire department command personnel harassed them, including making unwanted sexual advances, touching, kissing, hugging, intimidation, comments about their bodies, and offering them money and gifts in exchange for sex. In addition, various acts of retaliation were alleged, including delays in reinstatement following a disability leave, heightened scrutiny, preventing plaintiffs from taking courses to be able to advance in rank, and physically frightening them. A jury awarded the women \$758,000 in compensatory and punitive damages. *Alexander v. Jackson*, No. 3:04-cv-14 (S.D. Miss. 5/30/07)

Wage Discrimination

Park Managers' Duties not Equal

A municipal park manager believed she was discriminated against in violation of the Equal Pay Act because a male manager received a higher pay. The court found that the differences in the responsibilities and size of the facilities justified the pay differential based on factors other than sex. In addition, the court found that the difference between the skill, effort and responsibilities involved in the two positions prevented the plaintiff from establishing a prima facie case under Title VII. *Sims-Fingers v. Indianapolis*, 2007 U.S. App. LEXIS 15253 (7th Cir. 6/27/07)

What Constitutes "Integral and Indispensable" to Work Under FLSA Still Being Clarified

Employees and employers continue to struggle with when employees must be paid for activities preliminary to working. In two cases, courts found that preliminary activity was not compensable under the Fair Labor Standards Act.

Nuclear power plant employees were not entitled to compensation for donning and doffing a helmet, safety glasses, and steel-toed boots because they were indispensable for the employees to work but not integral to the performance of their work. That is, the procedures were not essential to completion of the employees' assigned tasks. The court said that the donning and doffing of generic protective gear is not essential to completion of the employees work, and it was not rendered integral because the gear was required by the employer or government regulations. *Gorman v. Consolidated Edison Corp.*, 2007 U.S. App. LEXIS 12450 (2nd Cir. 5/30/07)

In *Bonilla v. Baker Concrete Construction*, 487 F.3d 1340 (11th Cir. 5/30/07), employees alleged that the time spent riding on buses to and from the worksite and passing through security at the airport was compensable time. The Eleventh Circuit Court of Appeals disagreed. It said that the time spent riding the buses to and from the worksite fell within the Portal to Portal Act's exemption for time spent traveling to and from the actual place of performance of the principal activities of the job. Further, the employees performed no work while waiting for or riding the bus. The time spent going through airport security was non-compensable preliminary activity as it did not benefit the employer.

Religious Discrimination

Employee Refused to Sing Happy Birthday

A restaurant employee refused to sing happy birthday to customers claiming such activity was prohibited by her religion. She alleged

that the employer refused to excuse her from participating in the celebrations. The employer claimed the worker never voiced her objections during training and the issue only arose because other servers complained to management that they had to leave their stations to cover for her. Still, the employer agreed to settle the lawsuit brought by the EEOC and pay the worker \$38,750 under the condition that it be made clear that they denied any wrongdoing. *EEOC v. Razzoo's*, 3:06-CV-1781-L *consent decree* (N.D. Tex. 6/18/07)

Discrimination

Damages Under Civil Rights Act of 1991

The Civil Rights Act of 1991 marked the beginning of compensatory and punitive damages awards to plaintiffs in discrimination cases. A jury awarded damages in an age and sex discrimination and retaliation case and the court awarded the damages based on the employer's size at the time of the violation. The employer argued that its workforce had been reduced to less than 200 workers at the time of the award and the court should limit the damages to the \$100,000 cap. The court, however, ruled that because the employer had between 201 and 500 employees during the year the violation occurred, the employer was subject to the \$200,000 damage cap. The court reasoned that the damage caps must be construed together with Title VII's definition of "employer," which the court said unquestionably references the year of the alleged violation. *Depaoli v. Vacation Sales Associates, LLC*, 2007 U.S. App. LEXIS 13722 (4th Cir. 6/12/07)

EMPLOYEE RIGHTS UNDER THE FAIR LABOR STANDARDS ACT

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

FEDERAL MINIMUM WAGE

\$5.85 PER HOUR

BEGINNING JULY 24, 2007

\$6.55 PER HOUR

BEGINNING JULY 24, 2008

\$7.25 PER HOUR

BEGINNING JULY 24, 2009

OVERTIME PAY

At least $1\frac{1}{2}$ times your regular rate of pay for all hours worked over 40 in a workweek.

YOUTH EMPLOYMENT

An employee must be at least **16** years old to work in most non-farm jobs and at least **18** to work in non-farm jobs declared hazardous by the Secretary of Labor.

Youths **14** and **15** years old may work outside school hours in various non-manufacturing, non-mining, non-hazardous jobs under the following conditions:

No more than

- **3** hours on a school day or **18** hours in a school week;
- **8** hours on a non-school day or **40** hours in a non-school week.

Also, work may not begin before **7 a.m.** or end after **7 p.m.**, except from June 1 through Labor Day, when evening hours are extended to **9 p.m.** Different rules apply in agricultural employment. For more information, visit the YouthRules! Web site at www.youthrules.gov.

TIP CREDIT

Employers of "tipped employees" must pay a cash wage of at least \$2.13 per hour if they claim a tip credit against their minimum wage obligation. If an employee's tips combined with the employer's cash wage of at least \$2.13 per hour do not equal the minimum hourly wage, the employer must make up the difference. Certain other conditions must also be met.

ENFORCEMENT

The Department of Labor may recover back wages either administratively or through court action, for the employees that have been underpaid in violation of the law. Violations may result in civil or criminal action.

Civil money penalties of up to \$11,000 per violation may be assessed against employers who violate the youth employment provisions of the law and up to \$1,100 per violation against employers who willfully or repeatedly violate the minimum wage or overtime pay provisions. This law prohibits discriminating against or discharging workers who file a complaint or participate in any proceedings under the Act.

ADDITIONAL INFORMATION

- Certain occupations and establishments are exempt from the minimum wage and/or overtime pay provisions.
- Special provisions apply to workers in American Samoa and the Commonwealth of the Northern Mariana Islands.
- Some state laws provide greater employee protections; employers must comply with both.
- The law requires employers to display this poster where employees can readily see it.
- Employees under 20 years of age may be paid \$4.25 per hour during their first 90 consecutive calendar days of employment with an employer.
- Certain full-time students, student learners, apprentices, and workers with disabilities may be paid less than the minimum wage under special certificates issued by the Department of Labor.



For additional information:

1-866-4-USWAGE

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