

LEGISLATIVE UPDATE

September 2017

End of Summer Wrap-Up

While we were busy working on our tans or our gardens over summer, our courts and governmental agencies have been busy implementing or overturning policies we reported in the Spring. Below we've provided updates on some of the biggest happenings in the past few months to get you up to speed.

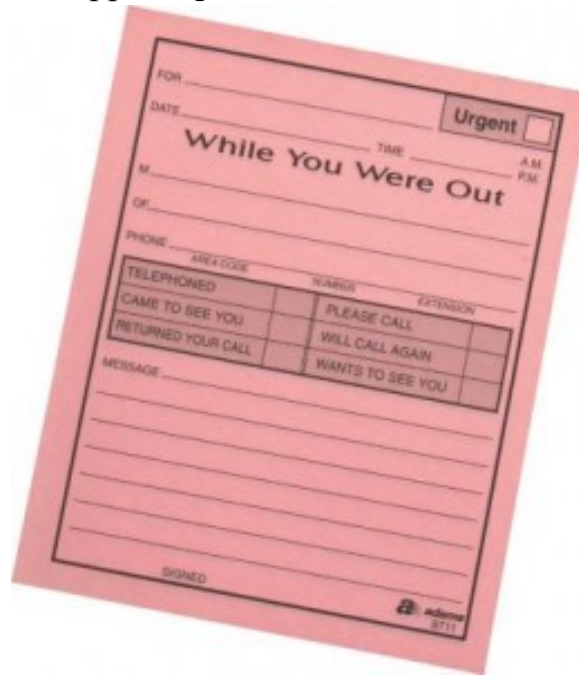
DOL Overtime Rules

Perhaps the biggest news is the Texas trial court overturning the Department of Labor's new rules on overtime exemption. The U.S. District Court judge ruled the EEOC's overtime rules, which were scheduled to be implemented Dec. 1, 2016, but were stayed by the Texas litigation, were invalid and exceeded the Department's authority. The ruling brings the Texas litigation to a close. It is unlikely the current administration will appeal the ruling to the Court of Appeals. The Court's ruling is available here: <http://www.txed.uscourts.gov/sites/default/files/notable/MemorandumOpinionandOrderDated8-31-2017.pdf>

Indefinite Delay of new EEO-1 Form

Last year the EEOC unveiled its new EEO-1 forms, which in addition to requesting information regarding sex and race of employees, separated by job classification, would also require data on wage and hour information from employers with 100 or more employees. However, just as the new form was to take effect, the White House's Office of Management and Budget (OMB) announced it was indefinitely suspending the form's effective date. The OMB stated the suspension was in accordance with the Paperwork Reduction Act, which requires agencies obtain approval from the OMB before requesting most types of information from the public.

Based on the OMB's memorandum, the OMB's review of the form at this time was self-initiated. The memorandum can be found here: <https://www.reginfo.gov/public/jsp/Utilities/ReviewandStayMemoforEEOC.pdf>



(cont. on reverse)

EEOC Pushes Pregnancy Issues

In August, the EEOC won summary judgment against Bob Evans on behalf of a pregnant server employed in a West Mifflin, PA restaurant. At approximately 7 months into the server's pregnancy, the restaurant's manager unilaterally decided to cut a her hours, removing her from all scheduled shifts and only allowing her to work on an on-call basis. The manager argued he needed reliability in staffing and did not believe the pregnant server could provide this during her third trimester.

The EEOC brought a lawsuit on behalf of the pregnant server, and successfully argued the manager's actions violated the Pregnancy Discrimination Act. The trial court found Bob Evans acted with discriminatory motives when it unilaterally removed the server from her shifts solely due to her pregnancy and without any information or indication that she was unable to perform her job duties. A copy of the court's decision is available here: <http://www.employmentandlaborinsider.com/wp-content/uploads/sites/328/2017/08/Blog.9.1.17.EEOC-v.-Bob-Evans.pdf>

Additionally, the EEOC has recently filed two other cases pursuing causes of action related to pregnancy — a case against Estee Lauder for disparities between the company's maternity and paternity leave; the other against a hospice facility in Wisconsin that refused to provide a pregnant employee with a requested accommodation. Both of those cases are in the very early litigation stage.

Inclement Weather Policies

The recent hurricane in Texas and the impending hurricane (hurricanes?) in Florida highlight the need to maintain a current, documented, and widely distributed policy covering a variety of inclement weather situations.

Some questions your policy should address or consider:

- Does or should your policy tie to an external actor or event to mandate closure (e.g., closing when local municipal schools are closed)?
- Who at your organization makes the call to close?
- How much time is reasonable to make a call before the start of a shift, or the start of business?
- How is the message communicated to employees, and are there any potential weaknesses in that communication chain?
- Will you make special accommodations for employees who cannot make it in to work due to inclement weather?
- Will you pay employees or allow them to use vacation time when your organization decides to close?

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