Labor Legal Beat

Federal Agencies Applying NLRB 'Joint Employer' Rule

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The National Labor Relations Board's decision that an organization can be a "joint employer" with its on-site contractors has been adopted by other federal agencies in their enforcement activities.

In a union recognition case, the NLRB defined situations in which a company or other organization is co-responsible with its on-site contractors for the contractor's labor actions (*Dining Insights,* Fall 2015).

OSHA and the U.S. Dept. of Labor now have adopted the NLRB's standard.

"Joint employment exists, " says a DOL statement issued January 20, "where the employee has an employment relationship with a . . . subcontractor . . . or other intermediary employer and the economic realities show that he or she is economically dependent on, and thus employed by, another entity . . . who typically contracts with the intermediary employer to receive the benefit of the employee's labor."

Rule Changes Are Far Off

Since the company, college or other institution undeniably "receive[s] the benefit" of its food service or other on-site contractor's employees' work, it seems to be nearly impossible to not be held liable for the contractor's labor law violations – and probably other legal entanglements.

Bills now in Congress, if passed, may reverse or limit the impact of the NLRB ruling and other agencies' interpretations and there probably will be legal challenges. But until Congress or the courts do something, probably a year or more from now, these are the rules.

Monitor Your Contractors

Your best option for now is to closely monitor your contractor's employment actions and interfere to protect your own interests when necessary. Whether you get involved or not, the NLRB, DOL and OSHA may well cite your organization as jointly liable anyway.

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DOL Rule Raising Minimum Salary May Become Effective in May '16

The Dept of Labor's planned rule that would raise the minimum salary standard for employees considered exempt from overtime rules may become effective as early as May 16, *Bloomberg BNA reports.* If the rule isn't passed by that date, the new Congress, if still Republican controlled, could invalidate it.

The rule would raise the minimum salary of exempt employees possibly as high as $50,000 from the current $23,660. The increase would affect positions like dining service assistant manager, office manager and the like who typically earn in the range of $25,000 to $45,000.

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Employer Retaliation Is Leading EEOC Discrimination Charge Filed

"It's apparently a lot easier to prove a retaliation charge than a workplace bias or harassment claim," says reporter Tim Gould, writing in the e-mail newsletter *hrmorning.com.*

Retaliation is defined by the Equal Employment Opportunity Commission as "to fire, demote, harass, or otherwise retaliate against people . . . because they filed a charge of discrimination [or] they complained to their employer . . . about discrimination on the job, or . . . participated in an employment discrimination proceeding."

Of 89,385 charges EEOC received in the federal fiscal year ended last September, 39,797 (44.5%) were for retaliation. Runners-up were discrimination by race, 34.7%; disability, 30.2%, and sex, 29.5%.

We're not attorneys, but Clarion can help reduce your risk of becoming involved in your vendors' legal problems. For information, contact Tom Mac Dermott, 603/642-8011 or e-mail us at ***info@clariongp.com***