

EMPLOYMENT LAW BRIEFING

AUTUMN 2012

Minimum Wage Increases: On January 1, 2013, the inflation-indexed minimum wage rates for Washington and Oregon will be adjusted. Washington's rate, which remains the highest in the nation, is increasing by 15 cents to **\$9.19** per hour. The minimum hourly wage for Oregon is also increasing by 15 cents, to **\$8.95**. The federal minimum of \$7.25 per hour, set in July of 2009, is not scheduled to change.

Labor Law Overview: Nearly all private sector Employers, with or without labor unions, are governed by the National Labor Relations Act. Under Section 7 of the Act, employees are entitled to join or assist unions and to "engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." These rights extend to a broad range of activities and communications related to wages, hours of work, benefits and working conditions. Generally, it is an **unfair labor practice** for Employers to limit employees' exercise of such rights - regardless of whether or not employees are represented by a union.

Posting Requirement Delay Continues: The on-again, off-again National Labor Relations Board ("NLRB") deadline for most Employers to post notices of employees' Section 7 rights (see *above*) remains off, pending resolution of legal issues following a decision by the Appeals Court for the DC Circuit, last spring. The Court upheld NLRB authority to impose the new posting requirement, but rejected efforts to extend the statute of limitations for other unfair labor practices while posting requirements are unmet and to treat failure-to-post as an automatic unfair labor practice. There is not yet a new deadline for Employers to post the NLRB notice.

Handbook Traps: Most Employers are aware that policies restricting solicitation in non-working areas, during non-working time, or rules prohibiting discussion of wage rates with co-workers, violate employees' Section 7 rights. Rules restricting the content of postings on social network sites have become problematic for the same reasons. Advice Memoranda, published last month, suggests handbook language, stating that "at-will" status cannot be changed, may improperly waive employees' right to act "in concert" to modify terms of employment.

Workplace Investigations: Witnesses interviewed during Employer investigations of compliance with workplace standards are typically directed not to discuss the interview or subject matter until the investigation is completed. The prohibition is designed to limit gossip and protect the integrity of the investigation. In August, the NLRB has held that a "blanket approach" of prohibiting discussion during investigations is an unfair labor practice, because a generalized concern with an investigation's integrity is not sufficient to outweigh employees' Section 7 rights. Employers may be able to prohibit discussion during an investigation on a case-by-case basis, if the specific need for such an approach is verified and documented.

Best Practice Tip: Employees on "administrative leave," pending the conclusion of a review or investigation, should be paid and be provided a written outline of expectations during the leave.

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