

EMPLOYMENT LAW BRIEFING

November 17, 2005

Minimum Wage Increases: On January 1, 2006, the inflation-indexed minimum wage rates in the Pacific Northwest will rise. At \$7.63 per hour, the rate for Washington State will be the highest minimum wage in the nation. The rate for Oregon will rise nearly 3.5% to \$7.50 per hour. For purposes of comparison, the minimum wage rates for Alaska and California are \$7.15 and \$6.75 respectively. The federal minimum wage remains \$5.15 per hour.

Job Coaches in the Workplace: Job coaches help disabled employees learn their duties and address workplace issues. At the outset of employment, a job coach will typically be on site extensively. As the employee becomes familiar with work expectations, job coaching is generally limited to periodic check-ins and intervention when problems arise. It is well established that employers are not required to provide job coaches as a reasonable accommodation. Increasingly, however, nonprofit agencies are making job coaches available at no cost. Since utilization of a no-cost job coach is unlikely to constitute an "undue hardship," more employers must adjust their management approaches to include these relationships. Caution is warranted, as illustrated by the recent settlement of an Equal Employment Opportunity Commission ("EEOC") lawsuit against The Home Depot. The case involved a developmentally disabled employee, using a job coach, who was summarily discharged after a two day absence. The EEOC suit claimed the Company's failure to contact the job coach, before terminating the employee, was improper. Before bringing a job coach into the workplace, employers should develop and implement a clear policy addressing such relationships.

Compensable Time: In a decision handed down this month, the U.S. Supreme Court clarified the scope of the portal-to-portal provisions of the Fair Labor Standards Act of 1938 ("FLSA"). The Portal-to-Portal Act of 1947 limited compensable work time under the FLSA by excluding time spent walking on the employer's premises to and from the actual place where the "principal activity" is performed *and* activities that are "preliminary or postliminary" to that principal activity. Certain activities, such as putting on and taking off specialized protective gear, are considered an "integral and indispensable part of the principal activities" and are compensable under the FLSA. In *IBT, Inc. v. Alvarez*, the Court was asked if time spent by employees, walking to and from a locker room where specialized protective equipment is donned and doffed, was properly excluded from compensable time. The Court held that such walking time is compensable. The Court reasoned that since the workday began with the donning of the protective gear and ended with its removal, the walking time in question was equivalent to walking from place to place along an assembly line. Liability for wage claims can be substantial. We recommend periodic internal audits for compliance with wage and hour laws.

Workplace Drug Test Failures Rising: Employers are facing a growing number of positive drug screens for applicants and employees. Although the reasons for the increase are not clear, this trend underscores the need for comprehensive, up-to-date drug and alcohol policies and procedures in the workplace.

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