HR Brief

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DID YOU KNOW?

The Equal Employment Opportunity Commission (EEOC) has proposed a new rule that would require employers with more than 100 employees to provide employee pay data to the federal government, including employee ethnicity, race and gender information, by job category. The purpose of the proposed rule is to help enforce equal pay laws.

If implemented as proposed, covered employers will have to report the required data beginning in 2017 on a revised Employer Information (EEO-1) Report (see this sample of a revised EEO-1).

The EEOC is accepting comments on the proposed rule until April 1, 2016.

DOL Standards for Joint Employment

On Jan. 20, 2016, the DOL issued guidance on joint employment and liability under the Fair Labor Standards Act (FLSA) with Administrator's Interpretation No. 2016-1.

In a joint employment relationship, one employee is considered to be working for more than one employer at the same time. Under the FLSA, joint employers are "jointly and severally liable" for wage violations. This means that an employer that is part of a joint employment relationship can be held liable for the wage violations of a secondary or intermediary employer.

In its Administrator's Interpretation (AI), the DOL examines "horizontal joint employment" and "vertical joint employment" relationships as situations where joint employment is likely to exist, as well as the standards for making this determination.

Horizontal joint employment exists when the employee has employment relationships with two or more employers and the employers are sufficiently associated or related with respect to the employee, such that they jointly employ the employee. The DOL provides the example of a waitress who works for two separate restaurants that are operated by the same entity. Here, the question is whether the two restaurants are sufficiently associated with respect to the waitress, such that they jointly employ the waitress.

Vertical joint employment exists when the employee has an employment relationship with one employer (typically a staffing agency, subcontractor or other intermediary employer) and the economic realities show that the employee is economically dependent on, and therefore employed by, another entity involved in the work. This other employer, who typically contracts with the intermediary employer to receive the benefit of the employee's labor, would be the potential joint employer. Where there is potential vertical joint employment, the analysis focuses on the economic realities of the working relationship between the employee and the potential joint employer.

The AI outlines separate factors to be considered when determining whether a potential horizontal or vertical joint employment relationship exists. These factors are not entirely consistent with the way the courts have historically made joint employment determinations.

Employers should review the AI and determine if any potential joint employment relationships exist. Where a joint employment relationship exists, consider conducting due diligence to ensure employers in the relationship are in compliance with wage and hour requirements under the FLSA.

Political Discussions in the Workplace

The 2016 presidential race is underway, and opinions and emotions can be strong on both sides. You may want to think about addressing political discussions in the workplace. Do you know what to do if conversations get out of hand?

At private companies, employees do not have unrestricted rights to "free speech" under the First Amendment; an employer can control political speech in the workplace. Therefore, if political speech becomes disruptive to the workplace and interferes with productivity, the employer can discipline the employees involved. However, it is extremely important that you enforce standards consistently and remain neutral.

Employers must remember that certain speech and affiliation is considered protected. The National Labor Relations Board (NLRB) has stated that non-disruptive political advocacy related to employment issues during non-work time and in non-work areas is protected. Employers may, however, enforce neutrally applied restrictions on political advocacy during work time or in work areas.

The above are just a few things employers should be aware of when thinking about addressing political speech in the workplace. You should also check for state laws that govern political activity.

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