

The Past, The Present, & The Future: Updates on Various Recurring Topics

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Agenda

- Fair Labor Standards Act (tip credits)
- Fair Credit Reporting Act
- Joint employment
- Independent contractor standards
- Tax deductions for settlement payments
- Public sector unions
- Minimum wage increases
- Marijuana
- Workers' Compensation

FLSA Amendment during 2018

- **New FLSA Amendment: employers and supervisor can never share in the tip pool**
 - Old rule allowed employers (including managers and supervisors) to share in the tip pool so long as the employer did not also claim the tip credit
 - Now an absolute bar regardless of the tip credit
 - Employers who do claim the credit, can pool tips with non-tipped employees (just not managers)

Update: Background Checks

- Effective September 21, 2018:
 - All employers must update background check forms to advise applicants and employees of the ability to obtain a “national security freeze”
- What do I do?
 - Replace your Summary of Consumer Rights form with the new CFPB model form
 - Make hiring managers aware of this change

Joint Employment

- NLRB is proposing a rule to reverse NLRB's 2015 *Browning-Ferris Industries* decision
 - NLRB allowed “*indirect control*” over another employer’s workers to trigger joint employer status
 - NLRB proposes to return to standard of “*substantial direct and immediate control*”

Independent Contractors: New Standards?

- What?
 - Potential amendments to regulations that govern independent contractors
- Why?
 - Changing workforce / “gig economy”

No Deduction for Sexual Harassment Settlements

- Tax Cuts and Jobs Act amended Section 162(q) of the Code:
 - No deduction for “(1) any settlement or payment related to sexual harassment or sexual abuse if such settlement or payment is subject to a nondisclosure agreement, or (2) attorney’s fees related to such a settlement or payment.”
- Non-disclosures are often the primary benefit for employers to settle

Janus v. AFSCME: What Next?

- SCOTUS decision, May 2018:
 - State laws that require public employees to pay union dues as a condition of employment violate employees' constitutional right to free speech
 - Employees must affirmatively consent to pay dues
- Janus decision aligns public employees with national Right-to-Work trend in private sector

Minimum Wage & New Legislation

- Maine
 - Minimum wage: \$11.00 per hour effective January 1, 2019; \$12.00 per hour in 2020
 - Proposed paid sick leave
- Massachusetts:
 - Increase to \$15.00 per hour over 5 years; elimination of premium pay
 - Amended leave laws for veterans on Memorial or Veterans Day
 - Pay equity law & issues

Marijuana in Maine

- Federal/State Interactions
- Medicinal v. Recreational
- Workers' Compensation
- What do we know about other states?
- Drug Testing
- Maine DOL Publication

What Should I Do?

- Have a policy in place
 - If you have a policy, review your policy
- Educate yourself
 - Substance abuse & signs/symptoms
- Drug testing

Maine Workers' Compensation: Appellate Division Year in Review

- **31 decisions issued in 2018**
- Compared to:
 - 46 in 2017
 - 49 in 2016
 - 32 in 2015
 - 36 in 2014
 - 19 in 2013, the first year of the “New” AD
- Only two workers' compensation cases were decided by the Law Court in 2018
 - *Urrutia v. Interstate Brands, Int'l*, 2018 ME 24
 - *Bourgoin v. Twin Rivers Paper Co., LLC*, 2018 ME 77

Interesting Statistics

- Of the 31 decisions:
 - 18 Employer appeals & 13 Employee appeals
 - ALJ Elwin was appealed the most (9 times)
 - All but 1 of ALJ Elwin's were Employee appeals
 - ALJ Goodnough, Jerome, Knopf & Stovall were appealed the least (1 time)
 - Original decision upheld in 21 cases
 - Affirmed at least in part in 3 more cases
- Common themes

Workers' Comp Updates/Trends

- Maine
 - New WCB Rules
 - New Executive Director
 - Proposed Legislation
- National