

SMALL BUSINESSES FACE NEW THREAT AS LABOR RELATED LITIGATION INCREASES

Adding to the myriad obstacles faced by today's small business community, many entrepreneurs are now confronted with troubling uncertainty in connection with potential new legal quandaries. Besides navigating litigation relating to customers and vendors, business owners have witnessed a dramatic increase in less traditional lawsuits. In particular, many believe the recent trend in labor related litigation will only continue and escalate in 2011 as employees gain increased awareness of their rights under federal and state wage laws. Evidencing the rising trend of the past several years, 2010 saw a marked increase in the number of lawsuits filed under the federal Fair Labor Standards Act ("FLSA") and New York Labor Law (collectively, the "Labor Law"). In fact, according to the number of Labor Law related cases filed in federal district courts nationwide increased from 5,210 in 2008 to 6,118 in 2009. Between January 1 and September 30 of 2010, there were 5,304 Labor Law related cases filed in federal district courts. That number reflects a more than Thirteen Percent (13%) increase in Labor Law case filings over the same period in 2009.

Adding to the confusion, every industry is regulated and governed according to varying provisions of the Labor Law. Indeed, the proper wage requirements for different employees in the same business can, and do, vary greatly depending on the specific services provided by the particular employee. Thus it is necessary for employers to keep apprised of all labor rules and regulations which may specifically apply to their business and employees. This is particularly true for the restaurant and hospitality industry.

New York, the restaurant capital of the world, has especially been flooded with labor related litigation. However, recent case law shows that there are several key steps employers can take to help avoid these lawsuits. Specifically, employers are advised to: (1) pay their employees in accordance with the applicable minimum hourly wage and overtime requirements; (2) keep adequate records of its employees, their hours worked and compensation paid in accordance with the specific requirements of the Labor Laws; and (3) provide adequate notice to its employees of the employer's payment procedures and methods as well as the applicable provisions of the Labor Laws. It is important to note that employers must not only comply with the substantive regulatory requirements regarding the wages, but also with all applicable notice and recordkeeping rules.

We have successfully counseled and represented numerous employers engaged in a wide range of industries in connection with Labor Law claims and employment practices. In particular, we have extensive experience assisting clients in managing claims brought under the FLSA. If you have any questions about the matters covered in this Client Alert, or wish to schedule a private consultation, please call Terrence A. Oved, Esq. of Oved & Oved LLP by telephone at 212.226.2376 or contact by email at terry@ovedlaw.com.

OVED & OVED LLP
101 AVENUE OF THE AMERICAS
15TH FLOOR
NEW YORK, NY 10013
TEL: 212.226.2376
FAX: 212.226.7555

www.ovedlaw.com

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