

Logan County Chamber of Commerce
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Tackling Troublesome Wage and Hour Risks

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Current Wage and Hour Issues

- Continuing Minimum Wage Debate and State and City Initiatives
- Collective Action/Litigation Frenzy
- Major White Collar Exemptions Changes in the Very Near Future

The Great Minimum Wage Debate



Minimum Wage

- Current Federal minimum wage = \$7.25
- 2014 Ohio minimum wage = \$7.95
- 2015 Ohio minimum wage = \$8.10
- January 1, 2015 minimum wage for employees of government contractors = \$10.10
- That is a 38% wage increase
- Minimum wage proposals
- Implications on business?

State and Local Minimum and “Living” Wage Laws

- Seattle 2014 minimum wage = \$15.00!
(Voters approved a 63% increase effective January 1, 2014)
- San Francisco 2014 minimum wage = \$10.74
- Washington 2014 minimum wage = \$9.32
- Oregon 2014 minimum wage = \$9.10
- If more than one minimum wage law applies, employees receive the highest rate
- Many laws or state constitutional amendments (like Ohio) are adjusted annually based upon cost of living index
- Los Angeles \$15.37 minimum wage for hotels > 150 rooms and exemption for workers covered by CBAs

Minimum Wage Increases on the Horizon



Misclassification

Highest Employment Risk For Business

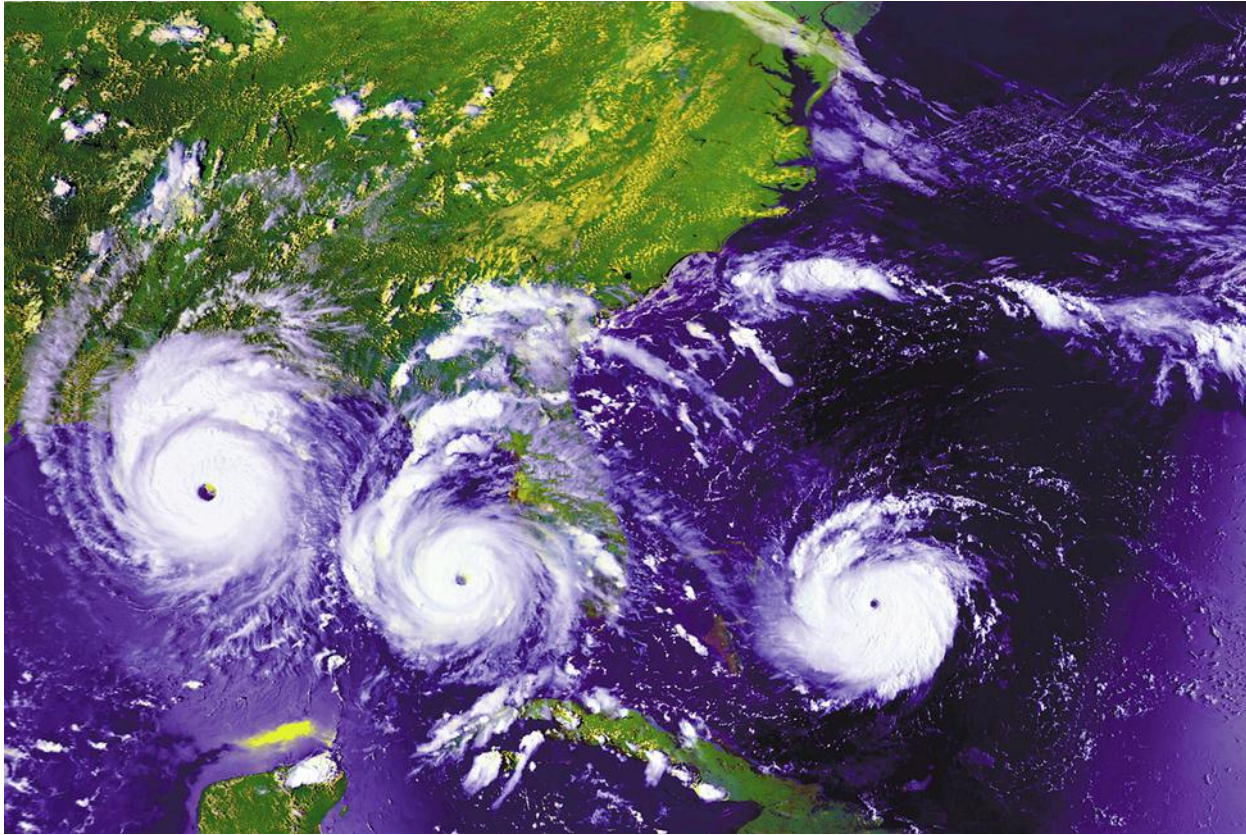


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The Perfect Storm



Risk Issues

- Employers want more ICs for flexibility and avoiding government mandates and related costs (ACA, unemployment, workers' comp)
- DOL believes 30-40% of ICs are misclassified
- Unions pushing for enforcement
- Unprecedented information sharing between government agencies
- Huge potential damages

Recent Misclassification Cases

- August 27, 2014 (6th Cir.)
 - FedEx delivery drivers are **not** independent contractors
 - They are integral to the business
 - Required to wear uniforms, drive certain vehicles
 - Assigned routes and delivery deadlines and established rate of pay
- January 31, 2014 (Cal.)
 - **\$5 million** verdict plus **\$6 million** in attorneys fees
 - Newspaper carriers in San Diego
- 2013 S.D. Ohio
 - \$1.5 million damage award
 - Owner jointly liable

DOL Positions

- “Employ” = “suffer or permit” to work
- Are individuals “economically dependent on employer” or “in business for themselves?”
- 6th Cir. Says “the FLSA is designed to defeat rather than implement contractual arrangements”
- DOL does not care about IC agreements
- Employees cannot waive rights under the FLSA
- Employers cannot use “interns” to evade obligations

Minimizing This Risk

1. Is the Company in a targeted industry? (Construction, Home Health Care, Trucking, Janitorial, Restaurant, Agriculture ... Exotic Dancers)
2. Know the factors.
 - Were the services rendered an integral part of the employer's principal business?
 - Is the relationship temporary or ongoing?
 - How much investment does the alleged contractor have invested in facilities and equipment?
 - Who controls the work?

Minimizing This Risk (cont.)

- Does the alleged contractor have an opportunity for profit or loss?
 - How much judgment, initiative was required by alleged contractor?
 - Is the alleged contractor's business organization and operation independent?
3. Watch out for new state and federal legislation regarding misclassification.
 4. Self-audit.
 5. Specific (not boilerplate) independent contractor agreements.

Wage and Hour Collective Actions

- “Bridge to Justice”
- App Contest!



432% increase in lawsuits in the past 20 years!

Recent Cases

- \$6 million LinkedIn settlement (inside sales not exempt)
- \$3.75 million paid by Time Warner (call center)
- \$3 million paid by Starbucks (barista breaks)



Very Recent Cases

- Hertz sued on April 27, 2015 for \$4 million (meal and rest periods)
- Walmart \$188 million verdict on appeal to U.S. Supreme Court (rest periods)
- Space X sued April 21, 2015 (meal and rest periods)



SEE A TREND HERE?

Minimizing Wage and Hour Exemption Risks

1. Revise job descriptions to conform with reality.
2. Employee input into job descriptions.
3. Conduct self-audit.
4. Obtain independent opinion if unsure.
5. Stay informed of court decisions involving exemptions and hours worked.
6. Consider early offer of settlement.

The “Pay Inequity” Agenda

- “Presidential Directive” to change the law regarding exemptions



White Collar Exemption Predictions

- Salary basis threshold is going up
 - \$455 (\$23,660) per week → ?
- Duties test changes
 - Executive exemption (supervisors) will be narrowed (back to a percentage or quantitative test?)
- Contemplate options
- **Watch for changes soon!**

Protected Concerted Activities and Wages

- Employees shall have the right to ... [blah, blah, blah] **and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection,** ...[blah, blah, blah].
- Can employers require employees to keep wage information confidential?

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Thank you!

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