

2008 INTERNATIONAL SUMMIT ON AG AND FOOD TRANSPORTATION

Legal Issues Confronting Commercial Ag and Food Transportation – Change You Can ~~Believe In~~ Count On

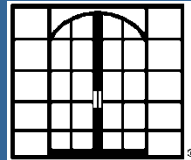
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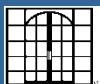
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The Line Up of Potential Labor and Employment Legislation

- RESPECT ACT
- PATRIOT EMPLOYERS ACT
- LEDBETTER FAIR PAY ACT
- CIVIL RIGHTS ACT OF 2008
- EMPLOYEE NON-DISCRIMINATION ACT (“ENDA”)
- INDEPENDENT CONTRACTOR PROPER CLASSIFICATION ACT OF 2007
- EMPLOYEE MISCLASSIFICATION PREVENTION ACT
- EMPLOYEE FREE CHOICE ACT (“EFCA”)



RESPECT ACT

- Eliminates NLRA's supervisory exclusion from unionization and collective bargaining for front-line working supervisors



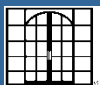
PATRIOT EMPLOYERS ACT

- Uses Internal Revenue Code to coerce employer “neutrality” in union organizing



LEDBETTER FAIR PAY ACT

- Legislatively overrules *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007), protecting employers from lawsuits over race or gender pay discrimination if claims are based on employer decisions made over 180 days ago. New time limit for filing a pay discrimination claim will begin to run each time an employee receives a paycheck



CIVIL RIGHTS ACT OF 2008

- Removes existing statutory damages cap, originally established as part of the Civil Rights Act of 1990, on discrimination claims leaving employers exposed to unlimited compensatory and punitive damages



EMPLOYMENT NON-DISCRIMINATION ACT (“ENDA”)

- Sexual orientation and gender identity and expression become protected classes just like race, sex, age, national origin, religion, and disability



INDEPENDENT CONTRACTOR PROPER CLASSIFICATION ACT OF 2007

- Allows the IRS to prospectively reclassify workers as employees
- Eliminates the freeze on IRS regulations on employee vs. independent contractor status
- Eliminates the “industry practice” basis for safe harbor protection under IRC Section 530
- Establishes procedure for individuals to petition for determination of status with an award of attorney fees and expenses to a successful petitioner

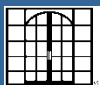


- Prohibits retaliation against any such petitioner
- Requires taxpayers to notify their independent contractors of their federal tax obligations, the labor and employment protections inapplicable to independent contractors, and their right to seek a status determination and requires such information on FLSA posters
- Encourages information-sharing between various state and federal agencies and targeted labor department investigation of industries “in which misclassification is present



EMPLOYEE MISCLASSIFICATION PREVENTION ACT

- Employee misclassification becomes a *per se* violation of the FLSA
- Employers must keep records of non-employees “with whom the employer, in the course of the trade or business in which the employer is engaged, has engaged for the performance of labor or services”



- **All employees and non-employees covered above must be given a written notice containing the following:**
 - **Their status classification**
 - **Direction to a new “Employee Rights Website” to be established by the U.S. Dept. of Labor**
 - **The local DOL address and telephone number**
 - **A specifically prescribed statement dealing with the implications of status classification, which must be given to covered individuals six months after enactment and to any new individuals or any whose employment classification changes**



The Notice reads as follows:

- “Your rights to wage, hour, and other labor protections depend upon your proper classification as an employee or non-employee. If you have any questions or concerns about how you have been classified or suspect that you may have been misclassified, contact the U.S. Department of Labor.” S.3468 Section 2(a)(4), *amending* 29 U.S.C. Section 211(c).



- **Certain damages and penalties are increased, with a new civil penalty not to exceed \$10,000 for each violation of the notice requirements**
- **State unemployment compensation laws must include provisions for auditing employers paying unreported compensation and establishing administrative penalties for misclassifying employees**
- **At least 25% of FLSA audits focused on “employers in industries with frequent incidence of misclassifying employees as non-employees”**



THE EMPLOYEE FREE CHOICE ACT ("EFCA")

- Changes to union organizing
- Changes to collective bargaining
- Changes to penalties



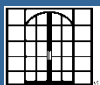
EFCA – Changes to union organizing

- Current law: Employers have right to refuse to recognize a union unless it wins a secret ballot election conducted by the NLRB
- Allows a union to organize by presenting employer with authorization cards signed by a majority of employees
- Effectively eliminates secret-ballot elections
- Does not apply to decertification of a union



EFCA – Changes to collective bargaining

- Current Law: Parties under duty to bargain in good faith, but not under duty to agree to any provision or to make concession
- Bargaining must start within 10 days after written request
- Mediation with FMCS if no agreement reached within 90 days of date bargaining commences
- If mediation unsuccessful after 30 days, mandatory interest arbitration conducted by FMCS arbitration panel
- FMCS arbitration panel will impose first agreement for a two-year period



EFCA – Changes to penalties for violations until CBA agreed to

- Current law: limited to reinstatement, backpay, and posting notice to employees
- Mandatory application for injunctions against employer for discharges or interference with Section 7 rights
- Trebled backpay for discriminitees
- Civil penalties of up to \$20,000 per ULP violation



EFCA – The best defense is a good offense

- **Make unions unnecessary**
 - Assess union vulnerability to union organizing
 - Review principles to maintain non-union status
- **Train supervisors**
- **Establish effective communication program**
- **Educate employees**
 - Company's position on unions
 - Company's business strategies, opportunities, challenges, and performance
 - The evils of union authorization cards
- **Review company policies**
- **Establish internal grievance system**

