



THE LAST 60 DAYS OF ACTION IN EMPLOYMENT LAW
Part V of VI – Pay Equity, Wage and Hour, and Minimum Wage

February 5, 2020

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Federal

On January 24, 2020, the U.S. Court of Appeals for the Seventh Circuit created a new framework for district courts to follow in Fair Labor Standards Act collective actions when a defendant opposes the issuance of notice because the proposed recipients have allegedly entered into mutual arbitration agreements, waiving their right to join the action. Specifically, in Bigger v. Facebook, the court required that, on remand, the district court allow the parties to submit additional evidence on the existence of valid arbitration agreements between Facebook and the proposed recipients of the collective action notice. If Facebook proves that certain proposed recipients entered valid arbitration agreements waiving their right to join the action, or if Bigger does not contest that those employees entered such agreements, the court may not authorize notice to those employees. See Bigger v. Facebook, Inc., No. 1:17-cv-07753, 2020 U.S. App. LEXIS 2273 (7th Cir. Jan. 24, 2020).

On January 16, 2020, the U.S. Department of Labor issued a final rule, effective March 16, 2020, limiting the scope of joint employer liability for wage and hour matters through the use of a four-factor balancing

test. Specifically, where an employee works one set of hours for an employer that simultaneously benefits another individual or entity, the final rule has replaced the previously applicable “not completely disassociated” standard for determining joint employer status, and provides that the other entity is a joint employer only if that entity is acting directly or indirectly in the interest of the employer in relation to the employee. The four factors include whether the other individual or entity (1) hires or fires the employee; (2) supervises and controls the employee’s work schedules or conditions of employment to a substantial degree; (3) determines the employee’s rate and method of payment; and (4) maintains the employee’s employment records.

Additional factors may be relevant for determining joint employer status in this scenario, but only if they indicate whether the potential joint employer is exercising significant control over the terms and conditions of the employee’s work. See <https://www.dol.gov/agencies/whd/flsa/2020-joint-employment/faq>

Effective January 1, 2020, the U.S. Department of Labor issued its final overtime rule, raising the standard salary level for exempt executive, administrative,

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and professional employees to \$684 per week (\$35,568 per year) and raising the total compensation for the highly compensated employee exemption to \$107,432. See <https://www.dol.gov/agencies/whd/overtime/2019>

On December 12, 2019, the U.S. Department of Labor issued a final rule, effective January 15, 2020, to clarify the benefits that may be excluded from an employee's regular rate of pay for purposes of calculating overtime under the Fair Labor Standards Act. Specifically, employers may exclude the following from an employee's regular rate of pay: (1) the cost of providing certain parking benefits, wellness programs, onsite specialist treatment, gym access and fitness classes, employee discounts on retail goods and services, certain tuition benefits, and adoption assistance; (2) payments for unused paid leave, including paid sick leave or paid time off; (3) payments of certain penalties required under state and local scheduling laws; (4) reimbursed expenses, including cellphone plans, credentialing exam fees, organization membership dues, and travel, even if not incurred "solely" for the employer's benefit; (5) certain sign-on bonuses and certain longevity bonuses; (6) the cost of office coffee and snacks to employees as gifts; (7) discretionary bonuses; and (8) contributions to benefit plans for accident, unemployment, legal services, or other events that could cause future financial hardship or expense.

See <https://www.dol.gov/agencies/whd/overtime/2019-regular-rate>

On December 6, 2019, the U.S. Court of Appeals for the Second Circuit held that neither judicial nor Department of Labor

review for fairness is required before the clerk of the court may enter judgment on offers of judgment under Federal Rule of Civil Procedure 68(a) when settling Fair Labor Standards Act claims. See Mei Xing Yu v. Hasaki Rest., Inc., 944 F.3d 395 (2d Cir. 2019).

California

Effective January 1, 2020, California's Department of Industrial Relations adjusted the overtime exemption rate for computer software employees from \$45.41 to \$46.55; the minimum monthly salary exemption from \$7,883.62 to \$8,080.71; and the minimum annual salary exemption from \$94,603.25 to \$96,968.33 to reflect the 2.5% increase in the California Consumer Price Index for Urban Wage Earners and Clerical Workers.

On December 31, 2019, a California federal district court granted a temporary restraining order, and, on January 16, 2020, a preliminary injunction, preventing enforcement of Assembly Bill 5's ABC test (for determining when a worker is an employee, rather than an independent contractor) to any motor carrier in California, as it is likely preempted by the Federal Aviation Administration Authorization Act. The decision has been appealed to the U.S. Court of Appeals for the Ninth Circuit. See Cal. Trucking Ass'n v. Becerra, No. 3:18-cv-02458-BEN-BLM (S.D.Cal.).

Illinois

Effective January 1, 2020, Illinois amended its Wage Payment and Collection Act to state that gratuities to employees are the property of the employees, and failure to pay gratuities owed to an employee more than

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13 days after the end of the pay period in which such gratuities were earned constitutes a violation of the Act. See 820 Ill. Comp. Stat. 115/4.1.

Minnesota

The City of Minneapolis enacted an anti-wage theft ordinance that became effective January 1, 2020, that includes stricter notice requirements and different penalties than the State's anti-wage theft law. Additionally, the Minneapolis ordinance extends anti-retaliation protections to employees who exercise their rights regarding wage theft. See Minneapolis Ordinance No. 2019-031.

New Jersey

On January 20, 2020, New Jersey enacted a legislative package that is designed to penalize employers for classifying employees as independent contractors. The six new laws require postings in the workplace regarding misclassification, impose higher penalties for misclassification, increase enforcement mechanisms against employers for misclassification, and provide for joint liability for taxes in the event of a misclassification. The posting requirements are effective April 1, 2020; most of the other changes are effective immediately. See 2018 NJ A.B. 5838; 2018 NJ A.B. 5839; 2018 NJ A.B. 5840; 2018 NJ A.B. 5843; 2018 NJ S.B. 4226; and 2018 NJ S.B. 4228.

Effective January 1, 2020, New Jersey prohibits employers from screening applicants based on their salary histories or requiring applicants' salary histories to satisfy any minimum or maximum criteria. See 2018 Bill Text NJ A.B. 1094.

New York

Effective January 6, 2020, New York law prohibits an employer from asking about an applicant's salary history, including compensation and benefits. The law also prohibits an employer from relying on an applicant's salary history to determine whether to interview or offer employment at all or in determining what salary to offer. An employer may ask an applicant for salary expectations instead of asking about salary history. See <https://www.ny.gov/salary-history-ban/salary-history-ban-what-you-need-know> for the New York State Department of Labor's guidance on the new law.

Washington

On December 11, 2019, the Washington State Department of Labor and Industries announced revisions to Washington's overtime rules. The revisions increase the salary threshold and update the job duties tests that are used to determine whether an employee is entitled to overtime. In general, to be exempt from overtime, an employee must perform certain job duties and must be paid a fixed salary that meets a salary threshold. Beginning on July 1, 2020, Washington's minimum salary threshold will increase to \$675 per week, or \$35,100 per year, currently 1.25 times Washington's minimum wage. It will increase incrementally until January 2028. With respect to job duties, Washington's revised rules more closely align with the federal job duties tests to determine whether a worker is performing executive, administrative, professional, computer professional, or outside salesperson duties that would allow an employer to classify them as exempt from overtime. NOTE that the U.S. Department of Labor's new overtime rules

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also take effect January 1, 2020. The new DOL rules increase the federal minimum salary threshold to \$684 a week (\$35,568 a year). When state and federal thresholds conflict, employers must meet the salary

threshold that is the most favorable to employees. Thus, Washington employers must comply with the new federal overtime rule until Washington's own salary threshold exceeds the federal threshold.

More than 20 states (and many cities/counties) raised their minimum wage, effective January 1, 2020. At the state level, the smallest increase was in Florida (10 cents), and the largest increases were in New Mexico and Washington (\$1.50 each). Washington, DC and 17 cities now have minimum wages that are more than double the federal minimum wage, with the highest minimum wage in Seattle, Washington (\$16.39 for large employers). Below is a summary of the changes.

State	City	Minimum Wage Increase Effective January 1, 2020
Alaska		From \$9.89 to \$10.19 per hour
Arizona		From \$11.00 to \$12.00 per hour
	Flagstaff, AZ	From \$12.00 to \$13.00 per hour From \$9.00 to \$10.00 per hour for employees in positions that regularly or customarily receive \$30.00 or more in tips per month
Arkansas		From \$9.25 to \$10.00 per hour
California		From \$12.00 to \$13.00 per hour for employers with 26 or more employees From \$11.00 to \$12.00 per hour for employers with 25 or fewer employees
	Belmont, CA	From \$13.50 to \$15.00 per hour
	Cupertino, CA	From \$15.00 to \$15.35 per hour
	Daly City, CA	From \$12.00 to \$13.75 per hour
	El Cerrito, CA	From \$15.00 to \$15.37 per hour
	Los Altos, CA	From \$15.00 to \$15.40 per hour

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	Menlo Park, CA	From \$12.00 (26+ employees) and \$11.00 (<26 employees) to \$15.00 per hour
	Mountain View, CA	From \$15.65 to \$16.05 per hour
	Novato, CA	From \$12.00 to \$13.00 per hour for employers with 26 or more employees From \$11.00 to \$12.00 per hour for employers with 25 or fewer employees
	Oakland, CA	From \$13.80 to \$14.14 per hour
	Palo Alto, CA	From \$15.00 to \$15.40 per hour
	Petaluma, CA	From \$12.00 to \$15.00 per hour for employers with 26 or more employees From \$11.00 to \$14.00 per hour for employers with 25 or fewer employees
	Redwood City, CA	From \$13.50 to \$15.00 per hour + Consumer Price Index
	San Diego, CA	From \$12.00 to \$13.00 per hour
	San Jose, CA	From \$15.00 to \$15.25 per hour
	San Leandro, CA	From \$14.00 to \$15.00 per hour
	San Mateo, CA	From \$15.00 to \$15.38 per hour
	Santa Clara, CA	From \$15.00 to \$15.40 per hour
	Sonoma, CA	From \$12.00 to \$13.50 per hour for large businesses (26 or more employees) From \$11.00 to \$12.50 per hour for small businesses (25 or fewer employees)
	South San Francisco, CA	From \$11.00 or \$12.00 (depending on employer size) to \$15.00 per hour
	Sunnyvale, CA	From \$15.65 to \$16.05 per hour

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Colorado		From \$11.10 to \$12.00 per hour From \$8.08 to \$8.98 per hour for tipped employees
	Denver, CO	From \$11.10 to \$12.85 per hour (if the employee works more than four hours per week and does not receive tips) From \$8.98 to \$9.83 per hour for tipped employees
Washington, D.C.		From \$14.00 to \$15.00 per hour
Florida		From \$8.46 to \$8.56 per hour From \$5.44 to \$5.54 per hour for tipped employees
Illinois		From \$8.25 to \$9.25 per hour From \$4.95 to \$5.55 per hour for tipped employees
Maine		From \$11.00 to \$12.00 per hour From \$5.50 to \$6.00 for tipped employees
Maryland		From \$10.10 to \$11.00 per hour
Massachusetts		From \$12.00 to \$12.75 per hour From \$4.35 to \$4.95 per hour for tipped employees who make more than \$20 per month in tips (employees must receive at least the \$12.75 minimum wage when wages and tips are combined)
Michigan		From \$9.45 to \$9.65 per hour
Minnesota		From \$9.86 to \$10.00 per hour for large employers (annual gross revenues of \$500,000 or more) From \$8.04 to \$8.15 per hour for small employers (annual gross revenues of less than \$500,000)

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	St. Paul, MN	To \$12.50 per hour for employers with more than 10,000 employees ¹
Missouri		From \$8.60 to \$9.45 per hour
Montana		From \$8.50 to \$8.65 per hour
Nevada		From \$8.25 to \$9.00 per hour
New Jersey		From \$10.00 to \$11.00 per hour
New Mexico		From \$7.50 to \$9.00 per hour From \$2.13 to \$2.35 per hour for tipped employees
	Albuquerque, NM	From \$9.20 to \$9.35 per hour From \$8.20 to \$8.35 per hour if the employer provides healthcare and/or childcare benefits to the employee during any pay period and the employer pays an amount for these benefits equal to or in excess of an annualized cost of \$2,500 From \$5.50 to \$5.60 for tipped employees
	Bernalillo County, NM	From \$9.05 to \$9.20 per hour
	Las Cruces, NM	From \$10.10 to \$10.25 per hour From \$4.04 to \$4.10 per hour for tipped employees
New York		From \$11.10 to \$11.80
	New York City	From \$13.50 to \$15.00 (for employers with 10 or fewer employees)
	Long Island County	From \$12.00 to \$13.00 per hour
	Westchester County	From \$12.00 to \$13.00 per hour

¹ We were unable to locate a reliable resource regarding St. Paul's minimum wage prior to the 2020 increase.

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Ohio		From \$8.55 to \$8.70 per hour From \$4.30 to \$4.35 per hour for tipped employees
South Dakota		From \$9.10 to \$9.30 per hour From \$4.55 to \$4.65 per hour for tipped employee
Vermont		From \$10.78 to \$10.96 per hour
Washington		From \$12.00 to \$13.50 per hour
	Seattle	From \$16.00 to \$16.39 per hour for large employers (501 or more employees) From \$15.00 to \$15.75 per hour for small employers (500 or fewer employees) who do not pay \$2.25 per hour toward medical benefits and/or whose employees do not earn \$2.25 per hour in tips From \$12.00 to \$13.50 per hour for small employers who pay at least \$2.25 per hour toward medical benefits or whose employees earn \$2.25 per hour in tips
	SeaTac	From \$16.09 to \$16.34 for the hospitality and transportation industries

To discuss any of these changes, contact Patricia Tsipras at 610.408.2029 or ptsipras@rubinfortunato.com

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