

EMPLOYMENT LAW

A L E R T

NEWS FOR THE CLIENTS AND FRIENDS OF BASS, BERRY & SIMS PLC

Department of Labor Announces Increase in Wage and Hour Staff for Enforcement

November 23, 2009

Last Thursday, Secretary of Labor Hilda Solis announced that her department was increasing by 250 its staff of wage and hour investigators. The purpose? To respond more quickly to complaints and to engage in targeted enforcement. This announcement likely means that more employers will be found out of compliance with the wage and hour laws.

Employers are aware that the litigation landscape has been littered with more and more wage and hour lawsuits. Employers, most often unwittingly, find themselves out of compliance with the requirements of the law. The law, known as the "Fair Labor Standards Act," spells out such things as complex overtime exemptions, detailed rules for proper calculation of the overtime rate and for "hours worked," and other similar requirements. Being out of compliance can mean significant exposure, especially if the employer is hit with a private "collective action." There, an employee who claims to be similarly situated to many other co-workers, files a lawsuit hoping to have others join the lawsuit. In addition, the law provides a prevailing employee with the right to recover attorneys' fees and costs.

Employers should be even more mindful of their compliance status. An audit of payroll practices, and careful evaluation of the steps necessary to remain in compliance, are crucial in this effort. Audits conducted by legal counsel provide attorney-client privilege protection for the audit and evaluation and may provide an employer with a good faith defense should any problems later arise.

This concern will grow rather than subside in the near future. The Department of Labor plans a national public awareness campaign titled "We Can Help" next year. This campaign will alert workers about their rights and provide guidance on how to seek assistance.

Please call one of our labor attorneys listed below if we can be of assistance in this effort.

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