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The Greater New York Floor Coverers Association News

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The Affordable Care Act: What It Means to You

ACA Employer Mandates

- 2015: Employers employing 100 or more full-time equivalent employees (FTEs) must provide "Minimum Essential Coverage" that is "Affordable."
- 2016: Employers employing 50 or more full-time equivalent employees (FTEs) must provide "Minimum Essential Coverage" that is "Affordable." A full-time employee works an average of at least 30 hours per week
- Seasonal workers are excluded unless they work more than 120 days
- Part-time employees are counted as full time equivalent employees for purposes of determining whether an employer is a "large employer." Part-time employees are not counted for purposes of calculating the penalty

Penalties

- If a large employer does not offer minimum essential coverage to its full-time employees (and their dependents), the employer will be subject to a monthly penalty if any full time employee receives subsidized coverage through the exchange.
- The monthly penalty is equal to $ 2,000 divided by 12, multiplied by the number of full-time employees employed during the applicable month, not counting the first 30 full-time employees (80 for 2015)
- If a large employer offers its full-time employees (and their dependents) coverage that is deemed "unaffordable" (exceeds 9.5% of the employees household income) or does not provide "minimum value" and one or more full-time employees receives subsidized coverage through the exchange, they will be subject to a penalty The monthly penalty is $ 3,000 divided by 12, for each full-time employee receiving subsidized coverage through the exchange for the month.

US Department Of Labor (DOL) Audits

The US Department of Labor has a goal of auditing all US businesses for ACA compliance within the next 5 years. The DOL reports that an estimated 95% of employers are non-compliant. A DOL Investigation will commence with receipt of a letter from the DOL requesting review. Should you wish to view a sample of such letter please do not hesitate to contact The Ziskin Law Firm.

Also in this Issue:

MINIMUM WAGE INCREASE

On December 31, 2014, the statewide hourly minimum wage for non-exempt (i.e., hourly) employees will rise from $8.00 to $8.75 (and then to $9.00 on December 31, 2015). Just as significantly, the minimum weekly salary for certain exempt employees – executives and administrators – will also increase on December 31: from $600.00 to $656.25 (and then to $675.00 on December 31, 2015).

Wages for tipped employees in the hospitality industry are also impacted. For food service workers, the tip credit will increase from $3.00 to $3.75 per hour (and to $4.00 on December 31, 2015). This means that the "tipped minimum wage" for such workers will remain at $5.00 per hour, provided that tips plus wages equal or exceed the applicable minimum wage (i.e., $8.75 per hour as of December 31, 2014). But the minimum overtime rate for these workers will increase to $9.375 per hour. For non-food service workers (other than those at resort hotels), the tip credit will rise from $2.35 to $3.10 per hour, although the tipped minimum wage for such workers will stay steady at $5.65 per hour.

Certain meal and lodging credits, as well as uniform maintenance pay for employers that do not maintain required uniforms, are also scheduled to increase.

Finally, the minimum wage spike also means a spike in the "spread of hours" pay rate owed to employees when they work (1) more than 10 hours in a given day, or (2) on a split shift, where the number of hours between the start and end of their workday exceeds 10.

Employers should monitor the New York Department of Labor's website for an updated minimum wage poster that must be displayed in the workplace.

Seventh Circuit Enforces Unsigned Bargaining Notes

Oct. 16 — An employer that for two years abided by the terms of an unsigned document prepared by a local union official must resume making the benefit fund contributions required by that document, the U.S. Court of Appeals for the Seventh Circuit concluded Oct. 15 (Russ v. S. Water Mkt., Inc., 201 LRRM 3189, 7th Cir., No. 13-3613, 10/15/14).

The Seventh Circuit found that the unsigned document, notes prepared by International Brotherhood of Teamsters Local 703's president that were never reduced to a formal contract, constituted a binding agreement between the parties. Because the employer abided by the terms of the document without protest for more than a year, it couldn't now challenge those terms on the grounds that it never agreed to them, the court reasoned.

According to the court, South Water Market Inc. and Local 703 negotiated a new collective-bargaining agreement in 2007. When South Water's bargaining representative failed to write up the agreed terms in a formal document, the union president sent the company his notes from the bargaining process in April 2008. South Water abided by the terms of the president's notes until August 2009, when the retirement of one of its higher-wage employees caused the company to stop making certain pension and welfare contributions specified in the notes.

The pension and welfare funds sought delinquent contributions from South Water, but the U.S. District Court for the Northern District of Illinois ruled in favor of South Water, finding that the company never signed the president's notes and didn't otherwise convey assent.

On appeal, the Seventh Circuit disagreed with the district court's conclusions. In particular, the Seventh Circuit found that the union president's April 2008 notes constituted the binding agreement between the parties, because no other written agreement was in place to govern the parties' relationship. The Seventh Circuit also emphasized that South Water abided by the terms of the document for more than a year, adding that "it is hard to see why an employer would do that if it thought the document merely a union's proposal."

If South Water wanted to "accept some clauses and reject others, it should have said so in April 2008," the Seventh Circuit said, reversing the district court's decision and remanding the case for a calculation of benefits due.

Governor Cuomo Shocks Industry by Setting Highest MWBE State Contracting Goal in Nation

Governor Andrew M. Cuomo announced that his Administration is dramatically increasing its goal for minority-and-women-owned enterprises (MWBE) state contracting utilization to 30 percent – as new data showed that New York State has far exceeded the original 20 percent goal that he set in his first State of the State address. That 30 percent goal represents the highest such target in the nation for any state government.

Governor Cuomo made the announcement at the start of New York State's Fourth Annual MWBE Forum in Albany – where he unveiled new data on record MWBE utilization in state contracting of 25 percent in FY2013-14 – which represents a total of nearly $2 billion in contracts. That figure is up dramatically from the 10 percent MWBE state contract utilization rate in FY2010-11 when Governor Cuomo took office.

In 2011, Governor Cuomo established, by executive order, a statewide MWBE Team to explore ways to eliminate barriers and expand the participation of MWBEs in State contracting.

NLRB Decides Decade-Old Case Against CNN

Resolving unfair labor practice charges filed in 2004, the NLRB 2-1 decided Sept. 15 that CNN America Inc. violated federal labor law by terminating a subcontractor, failing to bargain with the unions that represented employees and discriminating against employees in hiring decisions in order to avoid becoming a successor employer under the National Labor Relations Act (CNN America, Inc., 361 NLRB No. 47, 200 LRRM 1829, 9/15/14).

The board ordered CNN to offer employment to more than 100 former employees of Team Video Services LLC who lost their jobs when CNN terminated its relationship with the subcontractor and to compensate more than 200 employees whom it hired but paid at lower wage rates than they had earned under a union contract.

The Board found that CNN and TVS were joint employers, and they concluded that "CNN's explanations for its conduct were pretextual." A day after the NLRB issued its decision, CNN filed a petition for review of the board action in the U.S. Court of Appeals for the District of Columbia Circuit.

Independent Contractors Status: FedEx Home Delivery

On September 30, 2014, The National Labor Relations Board found that FedEx, engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.FedEx Home Delivery, Cases 34-CA-012735 and 34-RC-002205, September 30, 2014, 361 NLRB No. 55

The issue examined by the Board is whether drivers who operate out of FedEx Home Delivery's Hartford, Connecticut terminal are considered employees covered under Section 2(3) of the National Labor Relations Act or, instead, are independent contractors, excluded from coverage.

Following the Union's victory in an election, it was certified as the drivers' collective bargaining representative. FedEx Home Delivery then refused to recognize and bargain with the Union arguing its drivers were independent contractors.

The Board found that FedEx failed to meet its burden to establish that the drivers at issue are independent contractors. The Board found:

- that FedEx exercises control over the drivers' work;
- that the drivers are not engaged in a distinct business;
- that the work of the drivers is done under FedEx's direction;
- that the drivers are not required to have special skills;
- that drivers have a permanent working relationship with FedEx;
- that FedEx establishes, regulates, and controls the rate of drivers' compensation and financial assistance to them;
- that the work of the drivers is part of the regular business of FedEx;
- that FedEx is in the same business as the drivers; and
- that the evidence tends to show that the drivers do not render services to FedEx as part of their own, independent businesses.

The Board concluded that FedEx Home Delivery's Hartford drivers are statutory employees and not independent contractors.

FCC and OSHA announce group to prevent fatalities in telecommunications industry

On Oct. 14, the Department of Labor and the Federal Communications Commission joined leaders in the telecommunications industry, including major carrier AT&T, to discuss new and continuing efforts to prevent worker fatalities on cell towers.

"The fatality rate in this industry is extraordinarily high - tower workers are more than 10 times as likely to be killed on the job than construction workers," said Assistant Secretary of Labor for Occupational Safety and Health Dr. David Michaels. "But these deaths are preventable."

U.S. Secretary of Labor Thomas E. Perez and FCC Chairman Thomas E. Wheeler also announced a new working group that will collaborate in the development and implementation of recommended safety practices for the growing telecommunications industry.

"The cellphones in our pockets can't come at the cost of a worker's life," said Secretary Perez. "We know we can't solve this problem alone though, and that's why I am so glad to be joined in partnership on this issue with the FCC and major carriers like AT&T. It's a perfect example of federal agencies and industry breaking down barriers and identifying common goals to save workers' lives."

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