

CUT AND PASTE POST OCTOBER, 2016

EEOC Issues New Guidance on Retaliation and Related Issues

Since 1998, the U.S. Supreme Court has issued seven decisions addressing retaliation under EEOC-enforced laws and, recently, the number of EEO filings which include claims of retaliation have exploded. (In FY15, charges of retaliation accounted for 44.5 percent of all charges received by the EEOC.) In response, on August 25, 2016, the U.S. Equal Employment Opportunity Commission (EEOC) issued its *Enforcement Guidance on Retaliation and Related Issues*, replacing its 1998 Compliance Manual section on retaliation.

In addition to addressing retaliation, the Guidance addresses the “Interference” provision under the Americans with Disabilities Act (ADA), which prohibits coercion, threats, or other acts that interfere with the exercise of ADA rights.

The EEOC issued two user-friendly resource documents to accompany the new guidance: a question-and-answer (Q&A) publication that summarizes the guidance document, and a short Small Business Fact Sheet that condenses the major points in the guidance in non-legal language.

Read the [Enforcement Guidance](#) -- view the [Small Business Fact Sheet](#) -- read the [Q&As](#)

New I-9 Coming

On August 25, 2016, the federal Office of Management and Budget completed its review of a proposed revision to the I-9 form. The U.S. Citizenship and Immigration Services has until November 22, 2016 to update and publish a revised form. Employers may continue using the current version of Form I-9 (revision date of 03/08/2013 N) until January 21, 2017. After January 21, 2017, all previous versions of Form I-9 will be invalid.

Related Rulemaking

The Department of Justice has [proposed new regulations](#) implementing a section of the Immigration and Nationality Act addressing unfair immigration-related employment practices. The proposed revisions simplify and define statutory terms, update and clarify the procedures for filing and processing discrimination charges, ensure effective investigations of unfair immigration-related employment practices, and reflect developments in nondiscrimination.

Comments were due on or before September 14, 2016.

Inside this Issue:

- *EEOC Guidance on Retaliation & Related Issues*
- *New I-9*
- *OSHA Guidance on Whistleblowing Settlements*
- *Update on New Overtime Regulations*
- *Minimum Wage Developments*

What to Do: We will keep you updated on the form and the new regulations. In the meantime, employers should review their current policies and procedures and the proposed regulations to identify any potential technical needs or issues, or any discriminatory practices that may be occurring during their employment eligibility verification process.

OSHA Issues New Guidance on Settlement Approval in Whistleblower Cases

On September 9, 2016, the Occupational Safety and Health Administration (OSHA) issued new guidelines for approving settlements between employers and employees in whistleblower cases. These Guidelines will ensure that settlements do not contain terms that could be interpreted to restrict future whistleblowing.

View the [Guidelines](#)

Update on New Overtime Regulations

On September 28, the House of Representatives passed H.R. 6094, the Regulatory Relief for Small Businesses, Schools and Nonprofits Act which would postpone from December 1, 2016, until June 1, 2017, the implementation of the increased income thresholds for FLSA-exempt employees. Senator James Lankford, R-Okla., introduced the Bill in the Senate on the afternoon of the 28th. It has been placed on Senate Legislative Calendar.

Remember that any Bill passing the House and Senate will likely be vetoed. Lacking a veto override, the Rule will take effect, as scheduled, on December 1st.



We'll keep you posted.

Minimum Wage Developments

Minimum Wage for Federal Contractors Increases

On September 20, 2016, the U.S. Department of Labor's Wage and Hour Division (WHD) released a final rule implementing Executive Order 13658, *Establishing a Minimum Wage Rate for Contractors*. The Order raised the minimum wage paid by contractors to workers performing work on covered federal contracts to \$10.10 per hour beginning January 1, 2015; and annually thereafter by an amount to be determined by the Secretary of Labor. The current minimum wage for federal contractors is \$10.15 per hour.

Effective January 1, 2017, the minimum wage for covered federal contractors will **increase to \$10.20 per hour** for hourly workers. For tipped employees, the minimum wage for federal contractors will **increase to \$6.80 per hour**.

What to do: This minimum wage requirement only applies to certain federal contractors. To determine whether you are (or aren't) one of them, read the [Final Rule](#)

Montana's 2017 Minimum Wage Increase

On January 1, 2017, Montana's minimum wage increases **from \$8.05 to \$8.15 per hour**. This is pursuant to Montana Code Annotated §39-3-409, which requires an annual minimum wage adjustment based on changes in inflation, as measured by the Consumer Price Index (CPI). The new wage was calculated based on a 1.10% increase in the CPI from August, 2015 to August, 2016.

Montana's minimum wage was last raised on January 1, 2015.