



October 2004 Volume 4, Issue 10

WIMBERLY LAWSON SEALE WRIGHT & DAVES, PLLC

ATTORNEYS & COUNSELORS AT LAW

THE EAGLE'S VIEW

OVERTIME RULES HAVE CLOCKED IN

About our Firm

Wimberly Lawson Seale Wright & Daves, PLLC is a full service labor, employment and immigration law firm representing management exclusively. The firm has offices in Knoxville, Morristown, Cookeville and Nashville, Tennessee and maintains its affiliation with the firms of Wimberly, Lawson, Steckel, Nelson & Schneider, P.C., Atlanta, Georgia; Wimberly Lawson Daniels & Brandon, Greenville, South Carolina; Wimberly, Lawson, Suarez & Russell, Tampa, Florida; and Holifield & Associates, P.C., Knoxville, TN.

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The new government overtime rules for so-called "white collar" exemptions from overtime took effect August 23, 2004 and changed the criteria under which employees must be paid overtime. Although some speakers at the Democratic Convention argued that the new rules took away overtime, on balance the new rules are pro-worker because they bring additional low income workers under the overtime requirements. Under the new rules, the salary requirement has been raised from \$155 to \$455 a week, about twice the minimum wage, so that anyone who earns less than \$23,660 a year is not entitled to the white-collar overtime exemption. Another provision of the new rule is that a white-collar worker who earns a salary more than \$100,000 is never entitled to overtime.

The vast majority of issues under the new regulations affect those who earn between \$24,000 and \$100,000 a year. The new rules call for greater scrutiny of many administrative, executive and professional jobs and salaries. Employers will have to do a current analysis of their jobs to determine whether they can be exempted from the overtime requirements. These job requirements, in addition to salaried status, can

be summarized as follows. Workers in executive jobs aren't entitled to overtime if they're primarily managers, they oversee two or more full-time workers and they have the power to hire or



fire or recommend such actions.

Administrative workers are exempt if their chief duties are directly related to the administration of an operation and they have discretionary decision-making power as to important issues.

Workers who are professionals are exempt if their job requires advanced knowledge acquired by prolonged instruction, or their job requires invention, imagination, originality or talent in a recognized field or artistic creative endeavor.

Computer employees are exempt if their main duties involve the application of systems, analysis, techniques and procedures or the design, development and documentation of computer systems or programs (or a combination of the duties).

Outside sales workers are exempt if their primary

job is selling, or getting orders for services, and they regularly work away from their employer's place of business.

According to a recent survey by Hewitt Associates, the most significant issues in complying with the new rules involve characterizing current jobs and interpreting the new rules. Twenty six percent of companies said their biggest challenge is that existing job documentation is old, incorrect or inconsistent. Jobs presenting the greatest classification problems, according to the survey are I.T. (57%) and shift/production supervisors (42%). Hewitt's study also revealed that most companies have not yet determined the financial costs of the new rules. Other survey highlights were that nearly 1/3 (32%) of companies say they currently pay overtime to exempt employees.

The Labor Department itself has suggested some interesting options, including how employers can avoid paying more money to those newly eligible low-income workers. "Most employers affected by the proposed rule would be expected to choose the most cost-effective compensation adjustment method," the department said. For some companies, the financial impact could be "near zero," it said. Employers' options include:

- Adhering to a 40-hour

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workweek.

- Raising workers' salaries to a new \$22,100 annual threshold, making them ineligible for overtime pay.

If employers raise a worker's salary, "it means they're getting a raise - that's not a way around overtime," said Labor

Department Spokesman Ed Frank. The current threshold is \$8,060 per year.

- Making a "payroll adjustment" that results in "virtually no, or only a minimal increase in labor costs," the department said. Workers' annual pay would be converted to an

hourly rate and cut, with overtime added in to equal the former salary.

Wimberly Lawson Seale Wright & Daves is ready, willing and able to help you come into compliance in a cost-efficient manner. Please contact this office for additional information.

KNOW YOUR ATTORNEY



JEFFREY G. JONES

Jeff is a Member in the Cookeville, Tennessee office of Wimberly Lawson Seale Wright & Daves, PLLC. His practice includes an emphasis on commercial transactions, governmental law and creditors' rights, as well as insurance defense. Mr. Jones received his Bachelor of Science degree in History, graduating magna cum laude in 1984 from Tennessee Technological University. Mr. Jones received his law degree from the University of Tennessee in 1987. Mr. Jones is a member of the Putnam County Bar Association, Tennessee and American Bar Associations. In addition to being a member of the Upper Cumberland Trial Lawyers Association, Mr. Jones was a District Representative for the Tennessee Young Lawyers Division of the Tennessee Bar Association. Mr. Jones is currently the County Attorney for Putnam County, Tennessee.

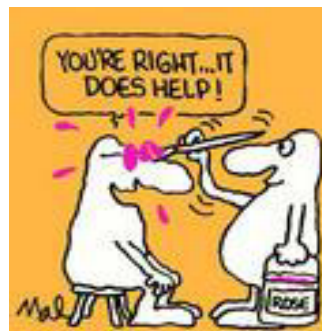
EMPLOYERS' DIVERSITY EFFORTS FAILING

According to a report by the National Urban League, fewer than one third of American workers believe their employers have effective diversity programs. Sixty five percent of those surveyed agreed that diversity improves creativity and innovation in the workplace and 80% said they were comfortable working in diverse teams. But when asked if their company had an effective diversity program, only 32% had a favorable response, while 26% had a negative view of their company's efforts. The rest were neutral. Results

differed only slightly by race.

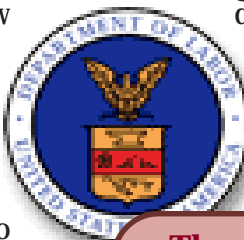
Among whites, 29% thought favorably of their company's efforts, while another 29% rated them negatively. Among Blacks, Hispanics, Asian Americans and Native Americans,

34% from each group were positive about company initiatives. Those with the most favorable opinions of diversity programs included executives - 47% of them thought their companies were effective, and employees at companies with more than 5,000 workers - 43% thought favorably of the initiatives. The report noted that the disparity in outlook between executives and rank-and-file workers is "an important reminder that executives tend to view their companies through different, perhaps rose-colored glasses."



NEW TARGETING PLAN FOR GOVERNMENT CONTRACTOR COMPLIANCE ANNOUNCED

The U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) is instituting a new selection process for targeting contractors for compliance reviews, and those selected for review now will be given a chance to address potential shortcomings before the audit, Director Charles James announced at an August 10 meeting. According to James, the previous model for selecting contractors was not very effective at



finding contractors that engaged in systemic discrimination. Therefore, the agency recently developed a new statistical targeting model to be called the Federal Contract Selection Sys-

tem. The new model compares differences in each establishment's workforce profile to census data on local labor markets and the workforce profile of establishments in the same industry. In contrast, the previously used system looked at "movement" in the contractor's workforce, from one reporting year to the next. The new model

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discrimination, James said. Beginning last spring, the OFCCP began applying the new target model to a list of employers to investigate. The agency

selected a list of 3,560 "worst offenders" for possible compliance reviews and recently sent out "scheduling letters" to the first 663 of that group, James explained.

The new system also is addressing problems related to multiple compliance reviews facing large contractors. The OFCCP "to the extent possible" will attempt to limit to 25

the number of reviews among corporate affiliated establishments so that several reviews are not being conducted at the same time for any corporation with multiple establishments. For the first time the OFCCP will be sending letters to federal contractors before a formal scheduling letter is mailed, informing them of an upcoming compliance

review. The advance notice will give contractors the opportunity to address the potential shortcomings in their EEO operations. An agency draft of the letter, states: "OFCCP will give serious consideration to any remedial action voluntarily undertaken by that particular establishment prior to the conduct of an OFCCP review... where compliance

deficiencies have been identified through self-audits conducted by any of your establishments. Such remedial action may mitigate any relief sought by OFCCP, to the extent the remedial action corrects the problems at issue."

OFCCP Director James concluded by emphasizing that the agency will be concentrating on systemic cases.

LABOR DAY REVIEW OF UNION PLANS

During the summer the most successful president of an international union, Andrew Stern, reviewed organized labor's analysis of the current situation, and plans for the future. Stern is president of the ultra-successful Service Employees International Union, which has newly organized more than one million members in the eight years that Stern has been president. He is also one of five union presidents that have formed the New Unity Partnership (NUP) which is calling for massive changes in the AFL-CIO. Other members of NUP include Bruce Raynor, president of UNITE; John Wilhelm, president of the Hotel Employees and Restaurant Employees Union; Terrence O'Sullivan of the Laborers Union, and Sandra Feldman of the Teachers Union. Some say the formation of NUP is a rebuke to AFL-CIO president John Sweeney, an indication that the five union chiefs are concerned that Sweeney hasn't made enough progress. The goal of NUP is to reinvigorate the AFL-CIO and refocused its agenda on organizing and politics.

Much of Stern's comments on the current situation sounded like an employer's anti-union speech. He stated that the percentage of the union-represented workforce has fallen from 32% in 1956 to 13% today. In the private sector, union membership is less than 9% and those workers have lost bargaining power needed to win higher wages and benefits. Also, the changing economy is fueling job growth in key industries such as retail, services, and healthcare but only small sections of those industries are unionized. Concerns that the current structure of the AFL-CIO

traditionally organized in one or two industries now are organizing in multiple industries and eventually there will be about a half dozen generalized unions with no industry focus and no strength to bargain for workers, according to Stern. Also, there are numerous unions that are competing with each other for workers in particular industries. Stern also said that the 55 smallest unions in the AFL-CIO have an average membership of only 50,000 members each and do not have the resources or the strength to effectively organize and bargain for the workers they represent. Stern said he will continue to work to make

One new plan announced by the SEIU is purpleocean.org, described by Stern as an internet-based virtual union. At Stern's invitation, Sen. John Kerry logged on and became the first member. Those who sign up for purpleocean will be asked to pay a \$1 per month membership fee and the organization will help build a grass roots network. On the web site will be a cyber forum in which workers and their allies can exchange ideas on such issues as outsourcing, offshore and political campaigns.

The AFL-CIO has also created Work in America, an organization similar to purpleocean. Work in America is a directly affiliated new national union that will allow workers who do not belong to unions to join together to have their voices heard on legislative and political issues. AFL-CIO President John Sweeney has said that Work in America is on track to have one million members by the end of the year.

One organizing technique likely to be increasingly used is that of card check agreements

President of the ultra-successful Service Employees International Union Andrew Stern's comments on the current situation sounded like an employer's anti-union speech.

SEIU Stronger Together

leads to situations where one union can negotiate lower pay and benefits than another union that represents workers in the same industry because there is no coordination between unions. Unions that

dramatic changes in the AFL-CIO, and that if that fails to work, he and other like-minded union leaders will "build something new" that gives workers a fighting chance to unite in strength and win.

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with employers, in which unions gain representation without going through the traditional election process. Under the terms of voluntary recognition or card-check agreements, employers agree to recognize a union if the union presents evidence that more than half of the employer's workforce has signed union cards, often after securing an employer's agreement for a so-called neutrality agreement not to campaign against the union.

Employers participate in card check agreements for a number of reasons. In some cases they may recognize that union

other cases, employers trade support for card-check agreements for concessions on other, critical issues. In some

panies who want to do business with the local government to enter into such agreements.

Some of the "hot button" issues stressed by unions today include an outsourcing of U.S. jobs, privatization of Medicare, executive pay, globalization, and trade and pension security.



support is strong among their workers and accept the agreement to avoid a labor dispute. In

locations, local governments encourage com-

Upcoming Seminars and Events

Our firm regularly sponsors and co-sponsors conferences focusing on current and important employment issues. Please check the conference page on our website for a comprehensive list of these seminars.



Come Join us on **Saturday, October 30** (immediately after our Knoxville Conference on October 28 and 29) in beautiful downtown Townsend, Tennessee as we co-sponsor The Townsend 10K & 1 Mile Walk/Fun Run To Benefit **The Second Harvest Food Bank**. Registration at www.wlswd.com.

Wimberly & Lawson

25th Annual Labor Relations and Employment Law Update



Approved for 9.75 hours credit

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October 28 and 29, 2004

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UPPER CUMBERLAND CHAPTER OF SOCIETY FOR HUMAN RESOURCE MANAGEMENT
WEST KNOXVILLE HUMAN RESOURCE ASSOCIATION**

AGENDA

FIRST DAY (FULL DAY)

8:00a.m. - 9:00a.m. Registration and Continental Breakfast

GENERAL SESSION

Overview of Year's Changes in Labor and Employment Law
Overhaul of Wage & Hour Regulations
Significant Developments Over the Year in EEO Law
Changes at OSHA and What They Mean to You



**Approved for
9.75 hours credit**

CONCURRENT SESSIONS - (60 MINUTES)

Strategies in Implementing Changes in Wage & Hour Requirements
Strategy in Reducing, Settling & Winning Workers' Comp Claims
Pro & Cons of Specific Written Work Rules, Policies, and Discipline Thereunder
Special Issues with Temporary, Part-Time, Seasonal and Contract Employees

LUNCH WITH THE LAWYERS

GENERAL SESSION

Guest Speaker
Changes in OFCCP (AAP) Enforcement
Point & Counterpoint - Pros & Cons of Alternative Dispute Resolution Agreements
Diversity - What is it? How can I Implement It?

CONCURRENT SESSIONS - (60 MINUTES)

Writing, Updating and Implementing Affirmative Action Plans and Diversity Program
How to Draft an Alternative Dispute Resolution Agreement
Workplace Violence Prevention and Cure
Tennessee Workers' Compensation Reform Act Summary

GENERAL SESSION

Cutting Edge Issues in Harassment Investigations and Litigation
Update on Social Security No-Match Letters and Immigration Compliance
Tips on HIPAA Compliance
Handling Employees Who Misuse Absenteeism and Leave Policies

RECEPTION - 5:00p.m. - 7:00p.m.

Plan to join us for scrumptious hors d'oeuvres!!

SECOND DAY (1/2 DAY)

Continental Breakfast

GENERAL SESSION

Go-To Checklist in Handling FMLA Issues
Status of Unions - Where Have the Organizers Gone?
How to Avoid Becoming a Target for a Discrimination Class Action
New Workplace Issues - Cell Phones with Cameras, Tape Recorders, Undercover Agents, Unusual Security Devices & Measures
What Types of Supervisor Training are Mandated by Law

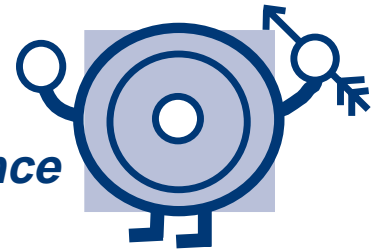
CONCURRENT SESSIONS - (45-60 MINUTES)

Management of Electronic Messages & Record Keeping
Romance in the Workplace, Fraternalizing, "Love Contacts," & the Like
Ways to Counter the Plaintiff's Fairness Argument in Litigation
How to Avoid Becoming a Wage & Hour Case Target

GENERAL SESSION

Handling a Worker on Workers' Comp. Under Benefit & Leave Policies
Issues Regarding Withholdings from Paychecks
Theft of Employer Information as a Growing Issue
Strategies in Handling Unemployment Matters in Sensitive Cases
Strategies in the Healthcare Market for Benefits

REGISTRATION



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25th Annual Labor & Employment Law Conference

Knoxville --- **October 28 & 29, 2004**

OR

Nashville --- **November 18 & 19, 2004**

COST: Early Bird (registration AND payment rec'd by October 8, 2004):

\$250 per person (includes 400+ page hardcover handbook, breakfasts, lunch & reception)

\$215 for each additional person from the same company

Cost for registration after October 8, 2004:

\$280 per person (includes 400+ page hardcover handbook and reception)

\$245 for each additional person from the same company



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Four ways to register:

1. **Website:** www.wlswd.com
2. **Fax to:** 865-546-1001 or 865-546-1002
3. **Email to:** bhopper@wlswd.com
4. **Mail to:** **Brenda Hopper**

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Please register the following people to attend Wimberly & Lawson's Labor & Employment Law Conference in:

Knoxville, October 28 and 29

OR

Nashville, November 18 and 19

Please PRINT the names of the conference attendees.

Company: _____

Address, City, State, Zip: _____

P.O. Box, City, State, Zip: _____

Telephone No. (_____) _____

Fax No. (_____) _____ E-mail: _____

Enclosed is my check in the amount of \$ _____ for _____ attendees (Sorry - we do not accept credit cards)

MAKE CHECK PAYABLE TO WIMBERLY LAWSON SEALE WRIGHT & DAVES

I believe the following person(s) might be interested in attending or receiving information about this Conference.

Person(s) to contact: _____

Company Name/Address: _____

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