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NLRB Narrows Interpretation of Protected Concerted Activity

In a 3-1 decision, the National Labor Relations Board (NLRB) recently narrowed the interpretation of protected concerted activity under the National Labor Relations Act (NLRA) as it relates to employee complaints (Alstate Maintenance LLC). The Board reversed a 2011 decision that had expanded employee protections, and clarified that even if an employee's complaint references coworkers, it is not necessarily protected and may be a valid basis for discipline or discharge. The Board also held that an individual complaint is not protected simply because it is made to a manager and in the presence of other employees. The Board explained that "to be concerted activity, an individual employee's statement to a supervisor or manager must either bring a truly group complaint regarding a workplace issue to management's attention, or the totality of the circumstances must support a reasonable inference that in making the statement, the employee was seeking to initiate, induce or prepare for group action." The Board affirmed the Administrative Law Judge's ruling that the employee had not engaged in concerted activity and, even if he had, he did not make the complaint for the purpose of mutual aid or protection of a group of employees. The Board concluded that using the plural pronoun "we" does not necessarily make a complaint protected activity.

OSHA Issues Final Rule Protecting Worker Privacy

The Occupational Safety and Health Administration (OSHA) has issued a final rule that eliminates the requirement for firms with 250 or more employees to electronically submit information from OSHA Form 300 and OSHA Form 301 to the agency each year. They continue to be required to electronically submit information from OSHA Form 300A (Summary of Work-Related Injuries and Illnesses). By eliminating the collection of potentially sensitive information, including descriptions of workers' injuries and body parts affected, OSHA avoids the risk that such information might be publicly disclosed under the Freedom of Information Act (FOIA). The final rule does not alter the requirement to maintain OSHA Forms 300 and 301 on-site, and OSHA will continue to obtain these forms as needed through inspections and enforcement actions. The regulations also require covered employers to electronically submit their Employer Identification Number with their information from Form 300A. Collection of calendar year 2018 information from the OSHA Form 300A began on January 2, 2019. The deadline for electronic submissions is March 2, 2019.

NLRB Reverses Position on Independent Contractors

The Occupational Safety and Health Administration (OSHA) has issued a final rule that eliminates the requirement for firms with 250 or more employees to electronically submit information from OSHA Form 300 and OSHA Form 301 to the agency each year. They continue to be required to electronically submit information from OSHA Form 300A (Summary of Work-Related Injuries and Illnesses). By eliminating the collection of potentially sensitive information, including descriptions of workers' injuries and body parts affected, OSHA avoids the risk that such information might be publicly disclosed under the Freedom of Information Act (FOIA). The final rule does not alter the requirement to maintain OSHA Forms 300 and 301 on-site, and OSHA will continue to obtain these forms as needed through inspections and enforcement actions. The regulations also require covered employers to electronically submit their Employer Identification Number with their information from Form 300A. Collection of calendar year 2018 information from the OSHA Form 300A began on January 2, 2019. The deadline for electronic submissions is March 2, 2019.
The National Labor Relations Board (NLRB) has returned to its pre-2014 position on independent contractor status, reinstating its reliance on the common law test. In its SuperShuttle DFW, Inc., decision, the Board held that franchisees are not statutory employees under the National Labor Relations Act (NLRA), rather they are independent contractors excluded from the Act's coverage. The Board found that by leasing or owning their work vans, exercising control over their method of compensation, and virtually setting their daily work schedules and working conditions, franchisees had a significant entrepreneurial opportunity for economic gain. These factors, chief among them, the potential for entrepreneurial gain, guided the Board's finding that the franchisees are not employees under the Act. The decision affirms prior rulings in the case.

2018 EEO-1 Survey Opening Delayed Until Early March

As a result of a lapse in appropriations due to the temporary federal government shutdown, the opening date for completion of the EEO-1 survey has been pushed back to early March 2019. The deadline to submit EEO-1 data has been extended to May 31, 2019. The EEOC requires all private employers with 100 or more employees to file an EEO-1 report. Details and instructions for 2018 EEO-1 filers, including the exact date of the survey opening, will be forthcoming. Filers should refer to the EEO-1 website for updates on the new schedule.

Employment Cost Index in Private Industry Jumps 3 Percent in 2018

The Employment Cost Index (ECI) is the measure of the change in the cost of labor, absent the influence of employment shifts among occupations and industries. For all private industry workers, total compensation costs increased 3.0 percent in 2018 compared to an increase of 2.6 percent 2017. Wages and salaries alone increased 3.1 percent in 2018 and 2.8 percent in 2017. The cost of benefits rose 2.6 percent in 2018 and 2.3 percent in 2017. The table below shows the percentage increases in total compensation and in wages and salaries alone for private industry workers in hospitals, and in nursing and residential care facilities.

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<tr>
<th>Industry</th>
<th>Total Comp.</th>
<th>Total Comp.</th>
<th>Wages &amp; Salaries 2017</th>
<th>Wages &amp; Salaries 2018</th>
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