PA Supreme Court Clarifies Fluctuating Workweek Method To Calculate Overtime Pay

In Chevalier v. General Nutrition Centers, Inc., the Pennsylvania Supreme Court held that the Pennsylvania Minimum Wage Act (PMWA) does not allow the fluctuating workweek method to be used to calculate overtime compensation for salaried employees working fluctuating hours.

Under the fluctuating workweek method, the regular rate of pay for nonexempt salaried employees is determined by dividing the total weekly salary by the number of hours actually worked that week.

The employer accounts for any overtime by multiplying the number of hours in excess of forty by 0.5 times the regular rate. However, unlike the Fair Labor Standards Act (FLSA), which permits employers to use the fluctuating workweek method to compensate employees working fluctuating hours, the PMWA and related regulations do not address the method for calculating overtime for employees working fluctuating hours.

As a result, employers were without any guidelines. The court ruled in this case that where the plaintiff and employer disagreed on how to calculate the overtime rate, the employer claiming it could use 0.5 times the regular rate and the plaintiff claiming it should use 1.5 times the regular rate, the PMWA requires payment of 1.5 times the employee’s regular rate as determined by the fluctuating workweek method for each overtime hour, not 0.5 times that rate.

Union Membership Drops
Slightly in 2019

According to data reported by the US Department of Labor’s Bureau of Labor Statistics, union membership in the US declined slightly in 2019 to 14.6 million or 10.3 percent of employed workers, from 14.7 million or 10.5 percent of employed in 2018.

In Pennsylvania, union membership in 2019 stood at 676,000 or 12 percent of employed workers, compared to 701,000 or 12.6 percent of workers in 2018.

Among healthcare and social assistance workers, union membership in 2019 was 1.3 million or 6.8 percent of employed workers compared to 1.2 million or 6.7 percent of employed in 2018.

NLRB Issues Amended Joint Employer Rule

In January, the US Department of Labor issued a final rule which revised and updated its regulations interpreting joint employer status under the Fair Labor Standards Act. That rule is effective March 16, 2020 (see February 2020 HR Newsletter).

The National Labor Relations Board (NLRB) has issued its final rule governing joint-employer status under the National Labor Relations Act. The final rule restores the joint-employer standard the NLRB applied prior to its 2015 decision in Browning-Ferris.

To be a joint employer under the revised rule, a business must possess and exercise substantial direct and immediate control over one or more essential terms and conditions of employment of another employer’s employees.

The NLRB’s joint-employer standard is important because it determines whether a business is an employer of employees directly employed by another employer altogether.

If two entities are joint employers, both must bargain with the union that represents the jointly employed employees, both are potentially liable for unfair labor practices committed by the other, and both are subject to union picketing or other economic pressure if there is a labor dispute. The final rule is effective April 27, 2020.
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