

# FYI<sup>®</sup> Roundup

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## Labor and employment developments 2019 – a mid-year recap

This *FYI Roundup* recaps workplace issues that were front and center during the first half of 2019. Paid family leave benefits and protections for pregnant workers continued to expand. The first statewide commuter benefits mandate was adopted. The NLRB redefined independent contracting as both the NLRB and DOL took steps to redefine joint employment. The DOL pursued rulemaking to revise both the regular rate and overtime regulations under the Fair Labor Standards Act as state and local wage rates and exemption thresholds continued to rise. Courts weighed in on reporting time and equal pay issues, and reinstated expanded EEO-1 pay data collection.

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### Growing patchwork of paid family leave laws

Employers faced new obligations as Connecticut and Massachusetts mandated paid family and medical leave benefits and California and New Jersey expanded existing entitlements.

#### California to expand paid family leave benefits

On June 27, California Governor Gavin Newsom signed a bill into law expanding the maximum duration of paid family leave benefits available to employees under the state-run program from six to eight weeks in 2020. (See our [July 11, 2019 FYI](#).)

#### Connecticut to offer paid family and medical leave

On June 25, Connecticut enacted a law that will provide workers in the state with 12 weeks of paid family and medical leave annually beginning in 2022. Funded by an employee payroll tax, the measure also allows two additional weeks of benefits for workers incapacitated by pregnancy. (See our [July 2, 2019 FYI](#).)

### Massachusetts finalizes paid family and medical leave regulations

On June 18, the Massachusetts Department of Family and Medical Leave released final regulations for the commonwealth's Paid Family and Medical Leave Law that largely follow earlier draft versions. (See our *FYI* from [February 28, 2019](#).) In addition, they provide some clarifications. (See our *FYI Alert* from [June 21, 2019](#).)

### Massachusetts extends paid family and medical leave deadlines

On June 13, Massachusetts Governor Charlie Baker signed legislation delaying the start of contributions to the commonwealth's Paid Family and Medical Leave program from July 1 to October 1, 2019 and making other technical changes to the program. (See our [June 14, 2019 FYI Alert](#).) The Department of Family and Medical Leave subsequently announced a new contribution rate and extended employer deadlines to distribute required employee notices and to apply for a private plan exemption. (See our [June 17, 2019 FYI Alert](#).)

### New Jersey expands paid family leave

On February 19, Governor Phil Murphy signed into law a bill that expands coverage and increases benefits under New Jersey's Family Leave Act. Among other things, the new law will increase employee eligibility, raise the weekly benefit for individuals taking qualifying leave and double the maximum duration of benefits. (See our [February 26, 2019 FYI](#).)

### Localization of employment laws continues

The ongoing trend toward localizing employment laws placed new accommodation requirements on Pittsburgh employers.

### Pittsburgh expands employment protections for pregnant workers and their partners

A new Pittsburgh ordinance makes pregnancy a protected class under the city's antidiscrimination laws and extends protections to both pregnant workers and their partners against employment discrimination based on pregnancy, childbirth, or related medical conditions and events. (See our [June 4, 2019 FYI](#).)

### New commuter benefits on tap

While major cities such as San Francisco, New York and Washington, D.C. have required employers to provide programs that encourage employees to use public transit or carpool for some time, the first statewide mandate was enacted this year.

### New Jersey to require employers to offer pretax transit benefits

On March 1, New Jersey became the first state to enact a commuter benefits law requiring employers to offer pretax transit benefits. The law will become operative on March 1, 2020 or the date that

regulations to be issued by the Commissioner of Labor and Workforce Development become effective, whichever is earlier. (See our [April 18, 2019 FYI](#).)

## Joint employer standard in flux

Both the NLRB and DOL looked to redefine joint employment through rulemaking.

### Appeals court upholds Obama-era joint employer standard as NLRB rulemaking continues

In its 2015 *Browning-Ferris Industries of California* decision, a sharply divided NLRB held that entities having indirect or potential control over another company's employees may be deemed joint employers for collective bargaining, unfair labor practices, and other purposes, even if they never exercised control. Shortly after the NLRB proposed joint employer regulations grounded on direct and immediate control over another entity's workers, the U.S. Court of Appeals for the D.C. Circuit upheld the indirect control standard but not its application in *Browning-Ferris* and sent the case back to the NLRB for further proceedings consistent with its opinion. It remains to be seen what, if any, impact the court's ruling will have on the board's rulemaking, as uncertainty over the joint-employer standard continues. (See our [January 15, 2019 FYI](#).)

### DOL eyes narrower joint employer test

The DOL released its much-anticipated proposal to update and clarify its interpretation of joint employer status under the Fair Labor Standards Act (FLSA). The proposed rule would establish a four-factor test to determine whether an entity is a joint employer in common business scenarios. (See our [June 12, 2019 FYI](#).)

## DOL tackles wage rates

DOL rulemaking to revise both the regular rate and overtime regulations issued under the FLSA continued.

### DOL proposes changes to regular rate regulations

On March 29, the DOL's Wage and Hour Division proposed clarifications and updates to the rules for determining the regular rate of pay used to calculate overtime pay liability under the FLSA. The FLSA generally requires that nonexempt employees receive overtime pay for all hours worked over 40 in a workweek, calculated at one and one-half times the employee's regular rate of pay. The public comment period closed May 28. (See our [April 11, 2019 FYI](#).)

### DOL proposes \$35,308 overtime threshold

The DOL announced details of its long-awaited proposal to increase the salary thresholds for exemptions from federal minimum wage and overtime requirements. The proposed overtime rule would raise the minimum salary for the so-called white-collar exemptions and the annual

compensation level for the highly compensated employee exemption under the FLSA to \$35,308 and \$147,414, respectively. The DOL anticipates the changes would go into effect in January 2020 and affect an estimated 1.3 million workers. (See our [March 12, 2019 FYI Alert](#).)

## EEO-1 pay data collection reinstated

A federal judge lifted OMB's stay of the EEOC's expanded pay data collection.

### EEOC extends EEO-1 filing deadline for component 1 information

On February 1, the EEOC announced that the deadline for employers to submit the EEO-1 report with component 1 data will be extended until May 31, 2019. Citing the partial lapse in appropriations, the agency postponed the opening of the EEO-1 survey until early March 2019. (See our [FYI Alert](#) from [February 4, 2019](#).)

### EEO-1 component 2 pay data collection reinstated

On March 4, a federal judge vacated OMB's 2017 stay of the EEOC's revised EEO-1 form that would have required employers to provide employee pay and hours worked information by race, gender, and ethnicity (component 2 data) in addition to data already being collected (component 1 data). (See our [March 6, 2019 FYI Alert](#).) Subsequently, the EEOC informed the court that it could undertake and complete the required pay data collection by September 30, 2019, but only if it used an outside contractor. Component 2 data collection is now underway. (See our [April 5, 2019 FYI Alert](#).)

## California court clarifies reporting time pay

A state appellate court significantly broadened reporting time pay requirements.

### Dialing for dollars: California court rewrites reporting time pay rules

A California Court of Appeal recently ruled that requiring employees to call in to find out whether they had to report for work triggered the employer's reporting time pay obligation. The ruling, which substantially broadens the pay requirement under Wage Order 7, is expected to have a significant effect on California's retail and restaurant industries, among others that rely on call-in or on-call scheduling. (See our [March 11, 2019 FYI](#).)

## Supreme Court scraps equal pay ruling

The extent to which prior salary can be used in setting pay remained unsettled.

### Supreme Court vacates equal pay ruling

On February 25, the U.S. Supreme Court vacated a precedent-changing decision by the 9<sup>th</sup> Circuit Court of Appeals that prior salary history cannot be used alone — or in combination with other factors — to justify a gender pay gap under the federal Equal Pay Act. The Court ruled that the 9<sup>th</sup> Circuit

erred by counting as a member of the majority the vote of a judge who died before the decision was filed. Pending further proceedings, employers face continued uncertainty about the extent to which they may rely on prior salary in setting pay. (See our [March 6, 2019 FYI](#).)

## NLRB redefines who is an independent contractor

The NLRB broadened the definition of independent contractor for purposes of federal labor law.

### NLRB returns to prior independent contractor test

As the debate over worker classification continues, the NLRB recently decided to revert to the common-law independent contractor test it applied prior to 2014. In *SuperShuttle DFW, Inc.*, the board returned to its decades-old, multi-factor test under which no one factor is decisive in determining a service provider's status. This business-friendly decision effectively broadens the definition of independent contractor for federal labor law purposes. (See our [February 14, 2019 FYI](#).)

## Wage rates and exemption thresholds increase

State and local minimum wages continued to rise, and thresholds for overtime exemptions increased.

### New Jersey: 4<sup>th</sup> state to adopt \$15 minimum wage

On February 4, New Jersey Governor Phil Murphy signed a bill into law that will gradually increase the minimum wage for most employees in the state to \$15 an hour by 2024. Employers with at least six employees will have to adjust their payroll systems and pay practices by July 1 to accommodate the first of a series of rate increases. (See our [February 12, 2019 FYI](#).)

### New year, new salary thresholds for NY overtime exemptions and higher minimum wage rates

Effective December 31, 2018, New York state increased the salary thresholds for its administrative and executive exemptions from overtime pay, based on geographic location and employer size. Along with the higher thresholds, the state also increased minimum hourly wage rates for 2019. (See our [January 15, 2019 FYI](#).)

## DOL increases penalties

DOL raised civil penalties for violations of various laws it enforces.

### DOL adjusts penalties for FLSA, FMLA, and OSHA Act violations

Effective January 23, 2019, the DOL has increased the civil monetary penalties for violating federal minimum wage, overtime, posting, and safety requirements. The higher penalty amounts apply to

penalties assessed after that date for FLSA, FMLA, and OSHA violations that occurred after November 2, 2015. (See our [January 30, 2019 FYI](#).)

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