HRHero.com
A division of BLR®

FLORIDA

EMPLOYMENT LAW LETTER

Part of your Florida Employment Law Service

Tom Harper, Managing Editor • Law Offices of Tom Harper
Lisa Berg, Andrew Rodman, Co-Editors • Stearns Weaver Miller, P.A.
Robert J. Sniffen, Jeff Slanker, Co-Editors • Sniffen & Spellman, P.A.

Vol. 27, No. 10
December 2015

What's Inside

Free Speech
Public employees' internal complaint wasn't protected speech 2

Andy's In-Box
HR reps can be held personally liable for FLSA violations in some cases 3

Health Insurance
Certain employers face new ACA reporting requirements in 2016 5

Discrimination
EEOC moves forward with age discrimination suit against Florida employer ... 5

Wages
The DOL's final overtime regs are coming—here's what you need to do now 7

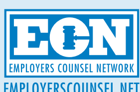
What's Online

Pregnancy
Coming to terms with PDA—challenge at Supreme Court
http://bit.ly/1KZN7cX

Wages
You may have to pay workers for log-in and log-off time
bit.ly/1KFyRGd

Hiring
Minors, background checks, drug tests, and consent issues
bit.ly/1XJR131

Find Attorneys
To find the ECN attorneys for all 50 states, visit
www.employerscounsel.net



SETTLEMENT AGREEMENTS

It's not over 'til it's over: a lesson in settling lawsuits

by Tom Harper
Law Offices of G. Thomas Harper, LLC

A TGI Friday's restaurant near Ft. Myers paid a customer $500 for a settlement agreement of all claims. However, the restaurant recently found itself defending against an age discrimination lawsuit filed by the customer. Read on to see how the customer took Friday's money and then sued it.

Facts

Edward Santana, 43, has 28 years of experience in the restaurant and food-service business. On January 20, 2015, he ate a meal with a beverage at a Friday's near Ft. Myers. The check was for $9.99 plus tax. Santana claimed he put down $15 beside the check and left without incident.

Santana went back to Friday's to eat on February 6, and the bartender and a manager accused him of leaving the restaurant on January 20 without paying for his meal and drink. They demanded payment, and Santana left.

On March 2, Santana applied for a server position at the same Friday's. He claimed he was turned down because of his age. He alleged that the restaurant's general manager told him that he was "too experienced" and that he did not "hire job applicants who are forty (40) years of age or older." Santana left the restaurant.

In early June, Santana filed an age discrimination charge based on Friday's refusal to hire him. The charge initiated a process in which he could sue the company for age discrimination.

Also in early June, Santana, representing himself, filed a lawsuit against Friday's in Lee County. He asserted three claims against the company: (1) negligent hiring, retention, supervision, and training; (2) defamation; and (3) intentional infliction of emotional distress. The claims were based on incidents he claimed happened at Friday's before he applied for a job in March.

Writing the lawsuit himself, Santana claimed that he had filed a similar lawsuit against Friday's in early May. He claimed that after the first lawsuit was filed, a manager told him that he was not welcome at Friday's because of the lawsuit and his threat to file a charge with the Equal Employment Opportunity Commission (EEOC).

After Friday's was served with Santana's second lawsuit, it called its lawyer and discussed settling the lawsuits and charges. Friday's lawyer contacted Santana and eventually sent him the following e-mail:

> Please be advised that I have been authorized to convey a one-time global confidential settlement offer in the amount of $500.00 (five hundred dollars)

Law Offices of Tom Harper, Stearns Weaver Miller, P.A., and Sniffen & Spellman, P.A., are members of the *Employers Counsel Network*

> to resolve any and all claims you may have against my client, TGI Friday's. In consideration for this global confidential settlement[,] you will be required to execute a general release in favor of my client and agree to refrain from attending any TGI Friday's location, anywhere in the world, indefinitely. This global confidential settlement offer expires at 5:00 p.m. today, August 10, 2015.

The next day, Santana responded by stating, "I accept the $500 offer." He took the $500 and dismissed his lawsuit against Friday's. But he was not through yet. On August 25, he filed another lawsuit in Ft. Myers federal court claiming that Friday's violated his rights under the federal Age Discrimination in Employment Act (ADEA).

ADEA claim survives

Friday's asked the court to dismiss Santana's ADEA lawsuit, claiming the $500 settlement resolved "all claims." He objected, alleging that he "never agreed to settle . . . his potential [ADEA] lawsuit . . . when [he] e-mailed [Friday's lawyer] on August 11 . . . and wrote 'I accept the [$500] offer.'" In support of his claim that the settlement did not include his ADEA lawsuit, he stated that Friday's lawyer asked him "whether your offer includes the potential discrimination suit as well." Santana never responded to the question. Additionally, he told the court that on August 14, he specified to Friday's lawyer that his acceptance of the $500 settlement offer did not include any potential ADEA lawsuit.

The federal court agreed with Santana because the settlement agreement did not comply with the terms of the Older Workers Benefit Protection Act of 1990 (OWBPA), a federal law that governs settlement agreements between employers and current or former employees over 40. The court explained that the agreement was negotiated during the pendency of Santana's lawsuit in county court in an attempt to settle the lawsuit and "all claims" he had against Friday's.

Friday's argued that Santana's ADEA claim fell within the "all claims" provision of the settlement agreement. Therefore, he should be barred from filing an ADEA lawsuit. However, the federal court ruled that the agreement did not comply with the OWBPA in at least four respects:

(1) It did not specifically refer to rights or claims arising under the ADEA.

(2) It did not advise Santana to consult with an attorney.

(3) It did not give Santana enough time to consider his options.

(4) It did not give Santana seven days following the execution of the agreement to revoke it.

Since the settlement agreement did not conform to the OWBPA, it did not bar Santana's ADEA lawsuit. His age discrimination claim will be allowed to proceed in Ft. Myers federal court. *Santana v. TGI Friday's, Inc.*, Case No. 2:15-cv-512-FtM-38CM (M.D. Fla., November 19, 2015).

Bottom line

In the retail and restaurant industries, it's easy to forget that a customer submitting an employment application can lead to a failure to hire claim. Severance agreements are popular in Florida. If you are not familiar with the requirements of the OWBPA, e-mail tom@employmentlawflorida.com or have your employment counsel review settlement agreements before they are signed.

Tom Harper is board-certified by the Florida Bar in labor and employment law. He also serves as an impartial arbitrator in employment disputes. ✤

CONSTITUTIONAL RIGHTS

11th Circuit explains when public employees' speech is protected by First Amendment

by Jeff Slanker and Rob Sniffen
Sniffen & Spellman, P.A.

Since the U.S. Supreme Court's decision in Lane v. Franks, 573 U.S. ___, 134 S.Ct. 2369, 189 L.Ed.2d 312 (2014), lower courts have been redefining what is considered public employee speech protected by the First Amendment to the U.S. Constitution. The U.S. 11th Circuit Court of Appeals (whose rulings apply to all Florida employers) recently issued a decision that clarifies what types of employee speech are protected and what types are not. The case provides guidance for public employers dealing with the intersection of their right to manage their workforce and employees' First Amendment rights.

Facts

Several individuals were employed as clinical psychologists by Georgia State University (GSU), which is part of the University System of Georgia. The employees worked in a counseling center and provided clinical services to GSU's student body, including mental health treatment and psychological assessments. The employees submitted a memo to their supervisors criticizing the counseling center's leadership and management. The memo contended that the center's leadership "created an unstable work environment" and that the center's director treated staff members of color less favorably than white staff members. GSU investigated the allegations and found they lacked merit.

Afterward, the employees were laid off in a reduction in force (RIF). The employees filed suit against the

continued on pg. 4

ANDY'S IN-BOX

Go directly to jail: individual liability for overtime violations

by Andy Rodman
Stearns Weaver Miller Weissler
Alhadeff & Sitterson, P.A.

While surfing the Internet last week, I came across an article that probably would scare most business owners, supervisors, and HR representatives—unless jail sounds like an attractive getaway.

The New York attorney general has sent a Papa John's franchisee to jail for 60 days for failing to pay employees overtime. To make matters worse, the franchisee attempted to cover up his illegal practices by falsifying payroll-related documents. In addition to serving jail time, he will pay more than $500,000 in back wages, damages, and penalties.

Jail time for wage payment violations? The possibility exists, and criminal penalties are not limited to business owners.

In October 2013, the U.S. Department of Labor (DOL) issued a press release announcing that the owner, plant manager, and office manager of a Texas-based company were convicted of felonies arising from Fair Labor Standards Act (FLSA) overtime and record-keeping violations. The individuals maintained false payroll records and willfully withheld payroll records from the DOL. The individuals reportedly were sentenced to "time served" plus probation.

Under the FLSA, the federal law that governs the payment of minimum wage and overtime, "any person" who willfully violates the Act "shall upon conviction be subject to a fine of not more than $10,000, or to imprisonment of not more than 6 months, or both." If it's any consolation, imprisonment does not kick in for a first offense; there must be a conviction for a previous offense.

As a practical matter, jail time is rarely imposed for wage payment violations, which is why the Papa John's case caught my attention. However, individuals are occasionally assessed civil penalties (e.g., payment of back wages) for wage payment violations. Indeed, many employees' attorneys name individuals in overtime lawsuits (in addition to a corporate entity) as a pressure tactic, perhaps hoping to extract an early settlement.

The legal theory underlying individual liability for FLSA violations rests in the statute's language. The definition of "employer" is fairly broad and includes "any person acting directly or indirectly in the interest of an employer in relation to an employee." That means a supervisor or an HR representative could be deemed an "employer" under the FLSA. Courts typically look at a number of factors to determine whether an individual is an employer under the FLSA, including:

(1) Whether the individual has the power to hire and fire the employee;

(2) Whether the individual supervises and controls the employee's work schedule or conditions of employment;

(3) Whether the individual determines the employee's rate of pay and method of payment;

(4) Whether the individual holds an ownership interest in the company and maintains control over day-to-day business functions; and

(5) Whether the individual maintains employment records.

No single factor is dispositive. It's an "all the circumstances" test.

While there is certainly the potential for civil and criminal penalties for individual owners, supervisors, and HR representatives, those risks can be reduced through education, training, and a companywide commitment to "do the right thing." Of course, if the DOL comes knocking, cooperation will often pay dividends. Although the DOL likely won't overlook obvious violations, cooperation may help limit the scope of the investigation and avoid some penalties.

Andy Rodman is a shareholder and director in the Miami office of Stearns Weaver Miller. If you have a question or issue that you would like him to address, e-mail arodman@stearnsweaver.com or call 305-789-3256. Your identity will not be disclosed in any response. This column isn't intended to provide legal advice. Answers to personnel-related inquiries are highly fact-dependent and often vary state by state, so you should consult with employment counsel before making personnel decisions. ✤

AGENCY ACTION

OFCCP releases reasonable accommodation pocket card. The U.S. Department of Labor's (DOL) Office of Federal Contract Compliance Programs (OFCCP) has released a pocket card aimed at helping applicants, employees, and other interested parties understand the process for requesting a reasonable accommodation. The card answers four common questions: (1) What is a reasonable accommodation? (2) How do I request a reasonable accommodation? (3) What do I need to tell my employer? (4) What happens after the request is made? The pocket card is part of the OFCCP's outreach and education efforts to inform applicants and employees of their rights under Section 503 of the Rehabilitation Act. It's available on the agency's website, www.dol.gov/ofccp.

NLRB accuses hospital chain of unfair labor practices. The National Labor Relations Board's (NLRB) Office of the General Counsel announced in October 2015 that it had issued a consolidated complaint against Community Health Systems, Inc. (CHS), the parent company of a nationwide chain of hospitals. The NLRB claims that CHS and seven wholly-owned subsidiary hospitals make up a single integrated employer that has violated the National Labor Relations Act (NLRA) by engaging in a series of unfair labor practices. A statement from the Board claims that CHS violated employee rights by, among other things, maintaining rules that infringe on employees' rights to discuss wages, hours, and working conditions with one another and to advocate for better treatment; making statements and taking actions against employees for participating in union activities; and failing to engage in good-faith collective bargaining with the unions that employees have selected as their exclusive collective bargaining representatives. The complaint involves 29 charges filed against CHS hospitals in California, Kentucky, Ohio, and West Virginia.

DOL awards $1.55 million to study paid leave implementation. The DOL's Women's Bureau announced in September that it had awarded $1.55 million in grants to research and analyze how paid leave programs can be developed and implemented across the country. In a statement, the DOL said that millions of working Americans have caregiving responsibilities for both young children and aging parents, but only 12 percent of private-sector workers have access to paid family leave through their employers. In announcing the grants, Labor Secretary Thomas E. Perez said the studies "will help further our understanding of the issue and design programs that work for our economy." The grants were awarded to state and local government agencies in California, Maryland, New Hampshire, New York, Rhode Island, Tennessee, Vermont, and Washington. ✤

continued from pg. 2

university system under 42 U.S.C. § 1983, which allows individuals to sue state actors for infringing upon their constitutional rights. The employees alleged that the university system infringed upon their First Amendment rights by terminating them in retaliation for submitting the memo. The district court dismissed the employees' lawsuit, and they appealed to the 11th Circuit.

11th Circuit's decision

The 11th Circuit affirmed the trial court's decision and upheld the dismissal of the lawsuit. The 11th Circuit considered whether the employees engaged in protected speech under the First Amendment or whether they spoke simply as employees of an employer that happens to be a public entity.

Public employers are considered state actors, meaning they cannot deprive citizens of their rights under the U.S. Constitution, including the First Amendment, which prohibits governmental entities or state actors from infringing upon individuals' right to express themselves. This is commonly referred to as freedom of speech. While some government contractors and other private-sector employers that perform government functions may qualify as state actors (and must refrain from infringing upon employees' constitutional rights), free-speech issues are typically the concern of public-sector employers. That is one of the key differences between public and private employers.

Like private businesses, public-sector employers have a right to manage and control their workers in order to achieve their goals. Nevertheless, public employees do not check their First Amendment right to speak as citizens on matters of public importance just by accepting public employment. The balancing act between those two factors often presents itself as a determination of whether employees are exercising their First Amendment right to speak as citizens on matters of public concern, which is protected and cannot provide the basis of or motivation for an adverse employment action.

In this case, the 11th Circuit found that the employees did not speak as citizens at all. Instead, they spoke in their roles as employees of a government agency or as a matter of personal, not public, interest. The court noted that although the memo made "vague and sweeping references" to matters of public concern, its main thrust was simply a personal gripe and an internal complaint regarding the management of the counseling center. Such speech is not speech made by a citizen on a matter of public interest. Thus, it was not entitled to protection under the First Amendment. *Alves v. Board of Regents of the University System of Georgia* (2015 BL355570), 11th Cir., No. 14-14149 (10/29/15).

Takeaway for employers

This case demonstrates the balancing act public-sector employers face in everyday situations. The balance between a public employee's right to free speech and the employer's right to manage its workforce is often in tension, and whether a public employee's speech is truly protected by the First Amendment

is often unclear. This decision provides clarity on the type of employee speech that is protected by the First Amendment.

Robert J. Sniffen is the founder and managing partner of the Tallahassee firm of Sniffen & Spellman, P.A. He can be reached at 850-205-1996 or rsniffen@sniffenlaw.com. Jeff Slanker is an attorney with Sniffen & Spellman, P.A., in Tallahassee. He can be reached at 850-205-1996 or jslanker@sniffenlaw.com. ✤

HEALTH INSURANCE

Time to prepare for large employer ACA tax reporting requirements

Few would claim their favorite season is "tax season," and this year, large employers have yet another reason to dread it: Mandatory filing requirements dictated by the Affordable Care Act (ACA) kick in for 2015.

If you are an applicable large employer (ALE), it's important to note that ***you*** *are responsible for filing Form 1094-C and Form 1095-C in early 2016—not your health insurance carrier or plan administrator.*

ALEs generally are employers with 50 or more full-time employees, including full-time-equivalent employees, in the previous year. Bear in mind that you are still subject to this IRS reporting requirement even if you fall into the 50 to 99 employee range that is protected from ACA penalties until 2016.

Final versions of IRS forms recently released

The IRS recently released the final versions of two key 2015 forms and the related instructions that employers and insurers will send to the IRS and individuals this winter to report healthcare coverage they offered or provided.

The IRS published these forms in 2014 and released draft forms and instructions for 2015 this past summer. The final forms and instructions for 2015 are largely unchanged from the previously released drafts, but you should never file draft versions of IRS forms—the IRS is not a fan of that.

Although the forms were available for voluntary use in tax year 2014, the upcoming tax season will be the first time that reporting is mandatory.

What ALEs must file

ALEs must file the following:

(1) One or more Forms 1094-C, *Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns.* In plain English, this form asks for overview information about you, the ALE offering health insurance coverage, and the number of employees who qualified for this coverage in 2015. Whether you file one or multiple 1094-Cs, one of them must be designated as the "Authoritative Transmittal."

(2) One Form 1095-C, *Employer-Provided Health Insurance Offer and Coverage Insurance,* for each employee who was a full-time employee for any month of calendar year 2015. You are generally required to provide a copy of Form 1095-C to each employee. This form drills down to requesting more specific details about employees covered by your health plan, including their names, Social Security numbers, dates of birth, and covered months (if they weren't eligible for all of 2015). You also need to provide details about the type and price of coverage as well as information relating to the safe-harbor method of counting employees, if applicable.

Deadlines are looming

Forms 1095-C are due to each of your employees by February 1, 2016. Forms 1095-C and 1094-C and attachments are due to the IRS by March 31, 2016, if filing electronically and by February 29, 2016 (Happy Leap Year!), if filed on paper.

If you are required to file 250 or more information returns, you must file electronically.

Tax time may still seem like a ways off, but these forms are detailed and demanding, to say the least, and penalties for noncompliance are steep. Start getting your ducks in a row now to avoid a highly stressful early 2016! ✤

AGE DISCRIMINATION

Florida federal court approves 'pattern or practice' age discrimination claim

by Tom Harper
Law Offices of G. Thomas Harper, LLC

In our March 2015 issue, we reported that the Equal Employment Opportunity Commission (EEOC) filed an age discrimination lawsuit against Orlando-based Darden Restaurants and its subsidiaries operating a chain of restaurants under the Seasons 52 name (see "EEOC charges Seasons 52 with age discrimination" on pg. 6 of that issue). The EEOC filed a class action lawsuit on behalf of two applicants who claimed they were not hired at the Coral Gables location because of their age. To support its claims, the EEOC alleged that Seasons 52 had a "pattern or practice" of not hiring an entire "class" of older applicants at locations nationwide.

The hiring team

As you may remember, the EEOC claimed that Seasons 52 "maintained a standard operating procedure of denying employment to applicants . . . 40 years of age and older . . . through [its] centralized hiring process." The EEOC claimed that hiring officials told unsuccessful applicants in the protected age group that Seasons 52 wanted a "youthful" image. In addition, applicants were told:

- "You are too experienced."
- "We are looking for people with less experience."
- "We are not looking for old white guys."
- "We are looking for 'fresh' employees."

Seasons 52 fights back

Instead of answering the lawsuit, Seasons 52 fought back by filing a motion to dismiss, claiming that the Age Discrimination in Employment Act (ADEA), the federal law that prohibits age discrimination, does not allow lawsuits based on pattern-or-practice evidence. Seasons 52 noted that Title VII of the Civil Rights Act of 1964, the federal law that makes discrimination based on sex, race, color, national origin, and religion unlawful, specifically mentions pattern-or-practice lawsuits by the government. However, the ADEA does not mention pattern-or-practice cases.

The EEOC's allegations were enough to meet the initial requirements of an age discrimination claim.

The EEOC used language from previous cases that it claimed showed that age discrimination pattern-or-practice lawsuits were permissible. Seasons 52 disagreed and asked the court to rule that the EEOC's lawsuit was not allowed by the express language in the ADEA. On November 9, U.S. District Judge Joan A. Lenard in Miami sided with the EEOC and denied Seasons 52's motion to dismiss.

Claim not stated in the law

The ADEA's language outlawing age discrimination reads:

> It shall be unlawful for an employer—
>
> . . . to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age.

In reaching her decision, Lenard explained that in the 11th Circuit, an employee or applicant can establish an initial claim of age discrimination in three ways:

(1) Presenting direct evidence of discriminatory intent (e.g., a decision maker's statement that age was a factor);

(2) Meeting the *McDonnell Douglas* burden-shifting test, which has been developed in other types of discrimination cases; or

(3) Demonstrating a statistical pattern of discrimination.

Thus, Lenard found that the ADEA does allow for pattern-or-practice age discrimination claims. In reaching her decision, she described how the EEOC could establish a pattern or practice by using data:

> The usefulness [of the data] depends on all of the surrounding facts and circumstances. Once [an initial] showing of a pattern or practice of discrimination has been made, a rebuttable presumption that each [applicant] was discriminated against attaches, and the burden then shifts to the [employer] to show by clear and convincing evidence that each employment decision was not made in furtherance of the discriminatory policy.

Lenard also ruled that the EEOC's allegations, if true, were enough to meet the initial requirements of an age discrimination claim. At this point in the lawsuit, she was required to assume that the EEOC's claims were true. Therefore, she refused to dismiss the claims based on insufficient evidence.

Seasons 52 argued that the restaurants were owned by separate companies and some of the companies should be dismissed from the lawsuit because of a lack of evidence. The judge refused to take that step at this stage, noting that the EEOC claimed that all the subsidiaries were effectively a "single employer" since they had common management, their operations were interrelated, there was central control over labor relations, and they had common ownership. At this stage, the EEOC establishing a claim was enough for the subsidiaries to remain in the case. However, the judge said she may look at this issue after the parties conduct discovery (the pretrial exchange of evidence) on where the claims occurred. *Equal Employment Opportunity Commission v. Darden Restaurants et al.*, Case No. 15-20561-CIV-LENARD/GOODMAN (S.D. Fla., November 9, 2015).

Takeaway

This issue has not yet been addressed by the 11th Circuit. As the suit progresses, it may be a basis for Seasons 52 to appeal. For the rest of us, the takeaway is to avoid the conduct the EEOC claims occurred in this case. Consider developing and using objective hiring criteria, and train interviewers and decision makers on the protected classes in Florida.

Tom Harper is board-certified by the Florida Bar in labor and employment law. He also serves as an impartial arbitrator in employment disputes. ✤

WAGE AND HOUR LAW

10 steps to prepare for final overtime regulations

The U.S. Department of Labor's (DOL) final overtime regulations are due in the summer, and employers are trying to figure out how the changes will affect their bottom lines. Here are 10 steps you can take now to prepare for the release of the final regulations.

1. Understand the proposed regulations

First, the proposed rule more than doubles the minimum salary threshold for the "white-collar" exemptions (also known as the executive, professional, and administrative exemptions). The current salary threshold is $455 per week, and under the proposed rules, the weekly threshold is expected to increase to $970 per week, or $50,440 per year, in 2016. The proposed rule also increases the minimum threshold for highly compensated employees (HCEs) from $100,000 per year to $122,148 per year.

Second, the DOL proposes to automatically update the minimum salary thresholds annually by either maintaining the levels at a fixed percentile of earnings or updating the amounts based on changes in the Consumer Price Index for All Urban Consumers (CPI-U).

2. Identify jobs that may need to be reclassified

You should identify employees who are currently classified as exempt but are paid below the expected 2016 salary threshold. Once these employees are identified, you can calculate the financial impact the proposed rule may have on your organization.

3. Analyze potential financial impact

For each employee, the financial impact will include the difference between the current annual salary and the proposed salary threshold. In addition, you will need to estimate the average number of hours each employee works each week. This will provide the information needed to calculate the cost to the company if the employees are reclassified as nonexempt and you must pay them on an hourly basis.

4. Educate senior management

Educate senior managers about the proposed rule. The analysis discussed above will provide the data they need to understand the significance of the changes. HR can then work with senior management to develop an action plan.

5. Develop options for compliance

The action plan may involve several strategies depending on the positions that will be affected by the changes in the overtime regulations. The following are some options:

- Increase some employees' salaries so they continue to be exempt under the new rules—these may be employees who regularly work well over 40 hours in a week.
- Adjust the hourly rates of employees being reclassified as nonexempt so the total cost when paying overtime will be comparable to the salary they were paid when they were exempt.
- Reduce fringe benefits to offset the increased salary and overtime costs.
- Limit overtime, and consider hiring part-time employees to cover any extra hours.

6. Address time, record-keeping systems

When the proposed overtime regulations become final, you likely will see an increase in the number of employees classified as nonexempt. This is a good time to review current time and record-keeping systems to make sure they can handle the additional load and to determine additional costs.

7. Explain FLSA requirements

When employees are reclassified as nonexempt, they are no longer paid on a salary basis. Managers and supervisors—especially those who manage employees who will be reclassified as nonexempt—must understand that employees may not work off the clock and that a record of all hours worked must be maintained.

8. Review, revise job descriptions

This is a good time to review existing job descriptions to make sure they accurately reflect the work

2016 FMLA Master Class for Florida Employers:

Overcome Compliance and Employee Leave Challenges

Miami: Thursday, January 14, 2016

http://store.HRhero.com/events/master-classes/fl-fmla-class

TRAINING CALENDAR

Call customer service at 800-274-6774 or visit us at the websites listed below.

WEBINARS & AUDIO SEMINARS

Visit http://store.HRHero.com/events/audio-conferences-webinars for upcoming seminars and registration

COMING IN 2016:

1-5 Federal Employment Law Outlook for 2016: HR's Essential Policy and Practice Update

1-6 LinkedIn for Recruiting: Go Beyond the Basics

1-6 2016 Payroll Tax Update: New Forms and Requirements Explained

1-7 DOL's Final Rule on Overtime Exemptions: Strategies for Getting in Compliance Ahead of Rule's Effective Date

1-12 Salary Survey Shape-Up for 2016

1-12 Recruiting Technology 101: What It Can Do and How to Use It

1-13 Incentive Pay Plan Essentials: Designing Plans that Work for You

1-15 Optimizing Your Performance Management System: Communication & Follow-Up Strategies for Best Results

1-19 I-9s for 2016: What HR Needs to Know about Recordkeeping: Completion, Retention & Reverification

1-21 Workplace Personality Tests: Legal and Practical Essentials for Hiring Safely

1-27 FMLA Abuse: How to Identify, Fight, and Prevent It in Your Organization

1-27 Workplace Violence—Successful Strategies Keeping Employees Safe and Avoiding Costly Litigation and Media Headaches

1-28 HR's Role in Driving Enterprise Growth and Achieving Optimal Business Results Strategically

2-4 H-1B Visas: Get Ready for the 2016 Filing Season & Master Your H-1B Obligations All Year Long ✤

employees are doing on the job. You may want to revise descriptions to focus on exempt duties first and to incorporate language from the exemptions.

9. Conduct self-audit

Consider reviewing jobs currently classified as exempt to confirm they are properly classified under the current rules. In doing so, you may identify positions that aren't affected by the proposed regulations but are still in need of review with counsel.

10. Consider contacting local counsel

If you are concerned that your organization may have wage and hour issues or may have classified some positions improperly, a local employment attorney experienced in wage and hour investigations can help. An attorney can provide details about your rights and responsibilities from the outset. And if an attorney assists you with an audit, the information may be protected by the attorney-client privilege. ✤

When employees are reclassified as nonexempt, they are no longer paid on a salary basis.

FLORIDA EMPLOYMENT LAW LETTER (ISSN 1041-3537) is published monthly for $447 per year plus sales tax by **BLR®—Business & Legal Resources,** 100 Winners Circle, Suite 300, P.O. Box 5094, Brentwood, TN 37024-5094. Copyright 2015 BLR®. Photocopying or reproducing in any form in whole or in part is a violation of federal copyright law and is strictly prohibited without the publisher's consent.

Editorial inquiries should be directed to G. Thomas Harper at The Law and Mediation Offices of G. Thomas Harper, LLC, 1912 Hamilton Street, Suite 205, Post Office Box 2757, Jacksonville, FL 32203-2757, 904-396-3000. Go to www.EmploymentLawFlorida.com for more information.

FLORIDA EMPLOYMENT LAW LETTER does not attempt to offer solutions to individual problems but rather to provide information about current developments in Florida employment law. Questions about individual problems should be addressed to the employment law attorney of your choice. The Florida Bar does designate attorneys as board certified in labor and employment law.

For questions concerning your subscription or Corporate Multi-User Accounts, contact your customer service representative at 800-274-6774 or custserv@blr.com.