2021 and Onward

Annual Employment Law Briefing

Cass Ferrannini
cferrannini@downeybrand.com
916.520.5387

Alex LaFountain
alafountain@downeybrand.com
916.520.5245

Liz Stallard
estallard@downeybrand.com
916.520.5238

Agenda

- COVID-19 2021: reporting requirements, paid leave, workers' compensation and vaccination issues
- Expanded leave obligations, including protections under the California Family Rights Act (CFRA)
- Discrimination, Equity and Inclusion
- California Consumer Privacy Act reprieve
- Wage and Hour Update

The Latest on COVID-19

- SB 1159: Covid Reporting / Workers' Compensation Presumption
- AB 685: Covid Reporting to Employees
- FFCRA Update
- Vaccination Issues

SB 1159: Workers' Comp / Presumption

- **Effective September 17, 2020 through January 1, 2023**
  - Defines "injury" to include illness or death from COVID-19
  - Creates presumption of compensability
  - Requires reporting to claims administrator
- **Applies to employees of:**
  - Employers with 5 or more employees
  - First Responders and Healthcare Employers
    - Certain firefighters, peace officers, fire and rescue coordinators,
    - health facility workers who provide direct patient care or are custodial workers at a health facility,
    - registered nurses, medical technicians, providers of in-home supportive services, and employees who provide direct patient care for a home health agency

SB 1159: Workers' Comp / Presumption

- **Presumed that employee testing positive for COVID-19, contracted the virus at work if:**
  - Positive test is within 14 days of performing work* at the employee's ***place of employment*** at the employer's direction; and
  - Positive test occurred during an ***outbreak*** at the employee's specific place of employment

- **"Date of Injury" is last day worked at place of employment prior to test**

* only applies to work occurring after July 6, 2020

SB 1159: Definitions

- **"Specific Place of Employment:"** The building, store, facility, or agricultural field where an employee performs work at the employer's direction.
  - Excludes the employee's home or residence, unless the employee provides home health care services to another individual at their home or residence
- **"Outbreak" is:**
  - Employs less than 100 employees: 4 positive tests at a specific place of employment
  - Employs 100+ employees: 4% of the number of employees who reported to the specific place of employment during the 14-day period test positive

OR

  - Health Department/ CalOSHA orders closure of a specific place of employment due to a risk of infection with COVID-19

SB 1159: Disputing the Presumption

- **Employer may dispute presumption with evidence of:**
  - Workplace measures to reduce transmission of COVID-19 or
  - Non-occupational risks could have caused the employee's COVID-19 infection
- **Employer has 45 days from the date of the claim to gather and submit evidence to deny the claim**
- **If unable to dispute presumption:**
  - Employee is entitled to full hospital, surgical, medical treatment, disability indemnity, and death benefits.
  - Employee with paid sick leave benefits for COVID-19 must first exhaust them before any workers' compensation temporary disability or similar benefits are payable

SB 1159: Reporting

- Must report to Claims Administrator if employer *knows or should know* of positive test
- Reporting must occur within *3 business days.*
- Purpose: Claims Admin will use the information to determine if Outbreak has occurred.
- Failure to report, false or misleading report may result in up to $10,000 in civil penalties imposed by the Labor Commissioner

What to Report to Claims Adjuster

- **Report must include:**
  - An employee has tested positive;
  - The date the employee tested positive;
  - Specific addresses of the employee's place of employment during the 14-day period preceding the positive test; and
  - The highest number of employees who reported to work in the 45-day period preceding the last day the employee worked

AB 685

COVID-19 Reporting Requirements to Employees/ Unions/ Staffing Agencies

AB 685: Notice Requirements

- Effective until January 1, 2023
- If employer receives
  - ***Notice of potential exposure*** to COVID-19 or
  - If employee has COVID-19,
- Employer must provide written notice ***within one day*** to:
  - All employees who were at the same worksite as the ***Qualifying Individual*** within the ***infectious period*** (10 days) AND who may have been exposed to COVID-19 and
  - The employer(s) of subcontracted employees
  - The union(s) that represents the employees

AB 685: Definitions

- **“Qualifying Individual” means an individual who:**
  - has a laboratory-confirmed case of COVID-19,
  - has a positive COVID-19 diagnosis from a licensed health care provider,
  - has been ordered to isolate by a public health official due to COVID-19, or
  - has died due to COVID-19.

AB 685: Definitions Cont'd

- **Notice of Potential Exposure means:**
  - An employee notifies the employer that the employee is a Qualifying Individual;
  - Employer's testing protocol reveals the employee is a Qualifying Individual; or
  - Subcontracted employer notifies the employer that a Qualifying Individual was on a worksite;
  - A public health official or licensed medical provider notifies the employer that an employee was exposed to a Qualifying Individual (any person who has a confirmed case of COVID-19, a positive COVID-19 diagnosis from a licensed health care provider, a COVID-19 related order to isolate, or died from COVID-19);

AB 685: Notice Requirements

- **Written notice must given in the same manner in which the employer normally communicates employment-related information**
  - Must be in both English and the language understood by a majority of the employees
  - Must not disclose the identity of the Qualifying Individual
  - Maintain records of the written notice for at least 3 years
- **Notice Must Include:**
  - Employer's disinfection and safety plan (See CDC guidelines)
  - Information about COVID-19-related benefits (workers' compensation, COVID-19-related leave, company sick leave, state-mandated leave, supplemental leave, negotiated leave provisions) and
  - Anti-retaliation and anti-discrimination protections.

AB 685: Notice Requirements - Outbreaks

- **The employer must report a COVID-19 Outbreak to the local public health agency within 48 hours of learning there has been an Outbreak**
- **The notice must contain:**
  - names, number, occupation, and worksite of the employees who are the Qualifying Individuals
  - The employer's business address; and
  - NAICS code of the worksite
- **"Outbreak: three or more laboratory-confirmed cases of COVID-19 among employees who live in different households within a two-week period**

AB 685: Cal/OSHA

- CAL/OSHA is authorized to act when it believes a place of employment, operation, or process exposes workers to the risk of infection of COVID-19 so as to constitute an "**imminent hazard**."
  - If Cal/OSHA determines a worksite or operation is an "imminent hazard," it may prohibit or prevent entry or access to a worksite, prohibit performance of an operation at a worksite; or require posting of an imminent hazard at the worksite
- Cal/OSHA may issue citations for **serious violations** without giving 15 days' notice.
- A "serious violation" is a realistic possibility that death or serious physical harm could result from the actual hazard created by the violation, including the existence of one or more unsafe or unhealthful practices, means, operations, or processes that the employer has adopted or are in use.

DB

Family First Coronavirus Relief Act (FFCRA) Status

FFCRA Update as of January 1, 2021

- The original FFCRA, which promulgated two types of emergency paid leave for employees who work for an employer with 500 of less employees, **expired on December 31, 2020**
- On December 27, 2020, President Trump signed the COVID-19 Relief Bill – the Consolidated Appropriations Act, 2021 – which provides that as of January 1, 2021, employers are no longer required to provide FFCRA paid leave benefits
- **Employers may voluntarily continue to provide FFCRA paid leave benefits** in exchange for the federal tax credit
  - Those employers who do provide leave in line with FFCRA terms can continue to get a federal tax credit for leave **through March 31, 2021**
  - Employees may carry out unused paid sick time to 2021 IF their employer plans to take advantage of the tax credit extension
  - Employees are not entitled to additional leave in excess of the FFCRA's statutory limits
  - Employers will not receive any tax credits for any amount of leave provided in excess of FFCRA's statutory limits or for employees who would not qualify

May Employers Require Employees to get a COVID-19 Vaccination?

EEOC Guidelines – December 16, 2020

- CA law not clear
- Federal EEOC guidelines suggest that employers can mandate employees receive the COVID-19 vaccine
- Even however, there are certain exemptions by which an employee may be prevented from or refuse to get an employer-mandated vaccine:
  - Exemptions:
    - Disability
    - Sincerely-held religious belief, practice, or observance

Exemption 1 - Disability

- An employee may refuse or be prevented from receiving the vaccine due to a disability
- The employer may require the employee to provide documentation from the worker's medical provider to confirm the employee's specific limitation or disability and the need for an accommodation
- Employers should ensure that their managers and supervisors know how to recognize an accommodation request from an employee with a disability and know to whom the request should be referred

Americans with Disabilities Act ("ADA")

- Under the ADA, an employer may have a workplace policy that includes a requirement that employees not pose a **direct threat** to the health or safety of individuals in the workplace
- To determine whether an individual poses a direct threat, employers should consider several factors, including:
  - The likelihood that potential harm will occur;
  - The imminence of the potential harm;
  - The nature and severity of the potential harm; and
  - The duration of the risk
- Additional factors set forth by the EEOC include:
  - The severity of the pandemic in a certain area, the employee's own health, the employee's job duties, and the likelihood that an individual will be exposed to the virus at the workplace

Reasonable Accommodation – Disability

- If the unvaccinated individual poses a **direct threat**, the employer must engage in the interactive process to determine whether a reasonable accommodation may be made available to the employee to reduce or eliminate the risk the unvaccinated employee poses
  - This may include allowing the employee to work remotely, allowing the employee to work separate from the other employees, wearing a mask, etc.
- If there is no reasonable accommodation, the direct threat cannot be reduced, or the reasonable accommodation would cause undue burden to the employer, employer may physically exclude the individual from the workplace

Exemption 2 – Sincerely Held Religious Belief, Practice, or Observance

- An employee may refuse to get vaccinated due to sincerely held **religious belief, practice, or observance**
- Both Tittle VII and California law (FEHA) prohibit employers from discriminating against employees because of their religion or religious creed
- Generally, employers should assume that an employee's request for reasonable accommodation is sincerely held
- If the employer has an objective basis for questioning either the religious belief or the sincerity of the belief, the employer is justified in asking for additional supporting information
  - Example: A California case held that veganism is not a sincerely held religious belief, practice, or observance. Instead, it is a personal philosophy and way of life. A religious creed requires more.

Reasonable Accommodation – Religious Belief

- If employee refuses vaccination due to sincerely held religious belief, engage in the interactive process and determine whether there is a reasonable accommodation available that does not cause undue hardship
- If no reasonable accommodation, the employer may physically exclude the employee from the workplace

Confidential Medical Information

- EEOC: Employers may require proof of a COVID-19 vaccination.
- Subsequent questions i.e. why the individual did not receive a vaccination may elicit information about a disability and be subject to the ADA standard that such questions be "job-related and consistent with business necessity."
- EEOC recommends employers who require employees to show proof of vaccination to inform employees not to provide any additional medication information as part of this proof
- If the employer is self-administering the vaccine, the employer should be aware that any pre-screening vaccination questions may illicit information about an employee's disability
  - The employer must ensure that these disability-related questions are "job-related and consistent with business necessity." This means the employer must have a reasonable belief that an employee who does not answer the questions, and therefore does not receive a vaccination, will pose a direct threat to the health and safety of the employee or others
  - This requirement does NOT apply when the vaccination is voluntary or it is administered by a third-party i.e. a pharmacy or the employee's healthcare provider

Leave Updates - Effective Jan 1, 2021

- SB 1383 – California Family Rights Act
- AB 2992 – Crime Victims Leave
- AB 2017 – Sick Leave Designation

SB 1383: CFRA Expansion

- Major new obligation for small employers
- Before: Applied to employers with 50+ employees
- Now: Applies to employers with 5+ employees

SB 1383: CFRA Expansion

- Expands who may be cared for during leave
- Before: child under 18, parent, spouse, or domestic partner
- Now: also applies to child over 18, grandparent, grandchild, or sibling

AB 2992: Crime Victims Leave

- Expands eligibility under prior law
- Before: victims of domestic violence, sexual assault, or stalking
- Now: also applies to victims of crimes “that caused physical injury or that caused mental injury and a threat of physical injury”

AB 2992: Crime Victims Leave

- New eligibility for an individual whose immediate family member is deceased as the direct result of a crime

- The term “crime” is defined broadly – doesn’t matter if anyone is arrested or convicted

AB 2017: “Kin Care” Sick Leave Use

- Passed to prevent designation errors

- Clarifies only employees may designate whether their accrued sick leave is being used for “kin care”

Discrimination, Equity and Inclusion, Privacy Issues

SB 973: Pay Data Reporting -Large Employers

- Employers of 100+ employees must report pay and hours-worked data by job category, sex, race, and ethnicity to DFEH.
- Purpose: to reduce pay discrimination based upon sex, race, or ethnicity by encouraging compliance with equal-pay laws through requiring pay data to be reported to DFEH.
- Modeled off of an EEOC reporting requirement (EEO-1).
- First reporting deadline: March 31, 2021. Annually thereafter.
- Reporting year will be the previous calendar year. First deadline covers 1/1/20 – 12/31/20.
- “Individually identifiable” information of employees kept confidential.
- DFEH has yet to setup its online reporting portal, but “anticipates rolling out a secure online reporting system in advance of the 2021 filing deadline.” As of today’s date, it is not online.

SB 973: Reporting Requirements for Large Employers

- **Reporting must include:**
  - **Number of employees by race, ethnicity, and sex in each of the following ten job categories**: Executive or senior level officials and managers; First or mid-level officials and managers; Professionals; Technicians; Sales workers; Administrative support workers; Craft workers; Operatives; Laborers and helpers; and Service workers during a “Snapshot Period” (one pay-period between Oct. 1 and Dec. 31).
  - **Number of employees by race, ethnicity, and sex in job categories above whose annual earnings fall within each of the pay bands** used by the U.S. Bureau of Labor Statistics in the Occupational Employment Statistics survey during the Reporting Year.
  - **Total hours worked by each employee** counted in each pay band during the Reporting Year.
  - **Reporting Year, the dates of the Snapshot Period selected by the employer, the report type** (establishment report or consolidated report), and the total number of reports being submitted.

SB 973: Reporting Requirements for Large Employers

- **Reporting must include:**
  - **Employer Identifying Information** including employer's name, address, HQ address (if different), EIN, North American Industry Classification System (NAICS) code, D&B number, number of employees inside and outside of California, number of establishments inside and outside of California, status as California state contractor. If applicable, the name and address of the employer's parent company or parent companies.
  - Special "multi-establishment" requirements
    - For establishment reports, the establishment's name, address, number of employees, and major activity.
    - For consolidated reports of establishments, names and addresses of the establishments covered by the report.
  - **Clarifying comments** from employer on any data.
  - **Certification** that report made in compliance with Gov. Code § 12999.
  - **Contact information** of person who may be contacted regarding report.

SB 973: Reporting Requirements for Large Employers

- **BLS Pay Bands**
  - $19,239 and under
  - $19,240 – $24,439
  - $24,440 – $30,679
  - $30,680 – $38,999
  - $39,000 – $49,919
  - $49,920 – $62,919
  - $62,920 – $80,079
  - $80,080 – $101,919
  - $101,920 – $128,959
  - $128,960 – $163,799
  - $163,800 – $207,999
  - $208,000 and over

SB 973: Reporting Requirements for Large Employers

- **Teleworkers**
  - Employees teleworking from out-of-state residence for establishments located within California are California employees and must be counted as such.
  - Two options for employers with employees teleworking from in-state residence for establishments located outside California: Count only California-residing employees, or all employees working for the establishment, regardless of their location. Employer may choose either option.
- **Reporting on characteristics**
  - **Race/Ethnicity**: DFEH recommends following EEOC's instructions for race and ethnicity identification available in the EEO-1 Instruction Booklet.
  - **Sex:** DFEH advises to report sex according to three categories: female, male, and nonbinary, with employee self-identification as the preferred method. In contrast to EEO-1, DFEH anticipates that its sample form and instructions will require employers to report non-binary employees in same manner as male and female employees.
- **EEO-1 Report may submitted *only* if compliant with Gov. Code § 12999**

SB 973: Reporting Requirements for Large Employers

- DFEH's guidance on SB 973 is a work in progress.
- More guidance is expected prior to March 31, 2021 on issues relating to Pay, Hours Worked, Multi-Establishment Employers, Acquisitions and Mergers and Spinoffs.

Equal Pay: Yovino v. Rizo (9th Cir. 2020)

- The Ninth Circuit held that under the Equal Pay Act, employers may not use an employee's prior salary to justify a pay gap between men and women for the same work. (Consistent with CA law)
- Equal Pay Act allows for disparity in pay based on "any other factor other than sex." Ninth Circuit ruled that this catch-all only applies to if the factor is "job related," and provided the following examples: "(i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex."
- Pay disparity based on a prior salary is not job-related, because it could perpetuate pay discrimination by locking in lower wages earned at a prior job due to discrimination.
- Tip: Any pay disparity between men and women for the same work should only be based on objective criteria like the four examples provided above.

Sexual Orientation: Bostock v. Clayton County

- The United States Supreme Court held that Title VII of the Civil Rights Act of 1964 protects employees against discrimination because of their sexual orientation or gender identity.
- The plaintiff was fired after he expressed interest in a gay softball league at work. The lower courts followed past precedent holding that Title VII did not cover employment discrimination based on sexual orientation.
- The Supreme Court, in an opinion by Justice Gorsuch, reversed, and held that the plain language of the statute barred discrimination "because of sex." Discrimination based on sexual orientation or gender identity was necessarily implicated by the statute because it shows the employer accepting certain conduct in employees of one sex (i.e., opposite sex attraction), but not of another.
- Possible exception of religious freedom, but those cases have yet to be litigated and scope of possible exceptions is currently undefined.

AB 979: Boardroom Diversity

- Publicly held corporations headquartered in California must diversify their boards of directors with directors from "underrepresented communities" by December 31, 2021.
- Similar impact to SB 826, which mandated gender diversity on boards.
- Applies to *all publicly held domestic or foreign corporations* with a "principal executive office located in California," according to the corporation's SEC 10-K
- "Director from an underrepresented community": individual who self-identifies as Black, African American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian, or Alaska Native, or who self-identifies as gay, lesbian, bisexual, or transgender.
- Required number of directors increases over time:
  - **12/31/2021**: All boards must have at least one director from an underrepresented community.
  - **12/31/2022**
    - Boards with 5-8 members: 2 directors from underrepresented communities
    - Boards with 9+ members: 3 directors from underrepresented communities

Consumer Privacy Act (CCPA) - Proposition 24

- Proposition 24: Extends the exemption for employee personal information from most requirements of California's Consumer Privacy Act to 1/1/2023.
- Exemption allows employers to collect and use the following data of applicants, employees, and independent contractors:
  - Data collected in the course of their actions within their role in the business, used solely within the person's role in the business.
  - Emergency contact information.
  - Information necessary to administer benefits
- Prior or contemporaneous notice required before using data.

Wage & Hour Issues

Wage & Hour Issues

- 2021 Minimum Wage Increases
- Rest Periods: AB 1512 & AB 2479
- Independent Contractors: AB 2257 & Prop 22
- California Supreme Court Updates: *Ward & Oman*

Minimum Wage Increases

- January 2021 → $13/14 per hour
- January 2022 → $14/15 per hour

- Dollar split rates indicate whether the employer employs 25 or less or 26 or more employees.
- ***Don't forget to check local ordinances for different minimums!***

Industry Specific Rest Period Rules

Policy rationale: There are certain jobs where it can be difficult, or unsafe, to completely relieve an employee of all duties during rest break.

AB 1512: Security Guards

- Employers may require certain unionized private security officers “to remain on the premises during rest periods and to remain on call, and carry and monitor a communication device, during rest periods.”

AB 1512: Security Guards

- **AB 1512 applies if:**
  - The employer and employee are both registered under California's Private Security Services Act.
  - The employee is covered by a valid collective bargaining agreement.
  - The valid collective bargaining agreement expressly provides for:
    - The wages, hours of work, and working conditions of employees;
    - Rest periods for those employees;
    - Final and binding arbitration of disputes concerning application of its rest period provisions;
    - Premium wage rates for all overtime hours worked; and
    - A regular hourly rate of pay of not less than one dollar more than the state minimum wage rate.

AB 1512: Security Guards

- But remember: interruptions of rest period & pay requirements.

- This creates an exception to the *Augustus v. ABM* (2016) case, which ruled that certain on call rest periods did not comply with California law.

AB 2479: Petroleum Workers

- Extends exemption regarding the rest period requirements for specified employees who hold a safety-sensitive position at a petroleum facility and are required to respond to emergencies until January 1, 2026.
- But remember: interruptions of rest period & pay requirements.

Independent Contractors, What's New?

AB 2257

- Attempts to clarify AB 5, which codified the *Dynamex* decision.
- AB 5 - Hiring entity must prove contractor is:
  - (A) free from control and direction by the hiring entity both under the contract and in the performance of the work;
  - (B) that the work being performed is outside of the usual course of the hiring entity's business; and
  - (C) that the person is customarily engaged in performing work of the same nature as an independently established trade, occupation or business.

AB 5 Refresher

- AB 5 codified *Dynamex*, but also limited its reach by identifying certain exemptions.
- The older *Borello* test continues to apply to exempted workers: focuses principally on whether a company has the “right to control” workers.

What does AB 2257 do?

- AB 2257 clarifies the business-to-business, referral agency, and professional services exemptions to the ABC test, and exempts additional occupations and business relationships.
- In all, there are now 109 categories of workers exempted from the ABC test in California under AB 2257.
- Employers should carefully evaluate the applicability of the new provisions to their businesses and business relationships. Although the ABC test may not apply as broadly as it originally did under AB 5, remember: the *Borello* test is still controlling if the ABC test does not apply.

Prop 22: “App-Based Drivers as Contractors and Labor Policies Initiative”

- **What does it do?**
  - Classifies drivers for app-based transportation (Uber, Lyft) and delivery companies (Postmates, Doordash, Instacart) as independent contractors, not employees.
  - Also enacted labor and wage policies specific to app-based drivers and delivery companies and implemented certain protocols for those companies (e.g., health care stipend, criminal background checks for drivers, development of anti-discrimination and sexual harassment policies).

California Supreme Court

- ***Application of California Wage and Hour Laws to Non-resident Employees Working in the State***
  - *Ward v. United Airlines*
  - *Oman v. Delta*

Ward v. United Airlines (2020)

Summary of facts:

- *Ward* began as three separate class actions filed by pilot Charles Ward and flight attendants Felicia Vidrio and Paul Bradley.
- Each of these California residents challenged United's wage statements under California Labor Code section 226, which requires employers to provide certain information on employee pay stubs (including, among other things, the employer's address).
- Plaintiffs asserted that the wage statements did not include United's street address, the hours worked during the pay period, and the applicable hourly rates.

Ward Question 1

- *Whether Wage Order 9's exemption for employees under a collective bargaining agreement (CBA) barred plaintiffs' wage statement claims?*
- Answer: No.

Ward Question 2

- *Does section 226 apply to wage statements provided by an out-of-state employer to an employee who resides in California, receives pay in California, and pays California income tax on his or her wages, but who does not work principally in California or any other state?*
- Answer: Maybe.
- “Principal Place of Work Test”

***Oman v. Delta* (2020)**

Summary of facts:

- Four nonresident Delta flight attendants filed a Class/ PAGA action challenging Delta's compensation structure.
- The compensation structure used the highest paying of four potential formulas to compensate flight attendants by flight "rotation," rather than by the hour.
- The flight attendants also alleged Delta failed to pay them within the required semi-monthly time frames under Labor Code section 204 and to provide compliant wage statements pursuant to Labor Code section 226.

Oman Question 1

- *Do sections 204 and 226 apply to wage payments and wage statements provided by an out-of-state employer to an employee who, in the relevant pay period, works in California only episodically and for less than a day at a time?*
- Answer: Maybe.

Oman Question 2

- *Does California minimum wage law apply to all work performed in California for an out-of-state employer by an employee who works in California only episodically and for less than a day at a time?*
- Answer: Because the Court's answer to Question 3 (see next slide) obviated any need to answer this question, the Court declined to "settle the reach of the state's minimum wage laws."

Oman Question 3

- *Does California's case law against averaging wages apply to a pay formula that generally awards credit for all hours on duty, but which, in certain situations resulting in higher pay, does not award specific credit for each hour on duty?*
- Answer: No.
- "Wage Borrowing Rule"

What Employers Should Know

- *Ward* and *Oman* are dense and cover a lot of ground.
- Here are the key takeaways →

Takeaway No. 1

- The wage statement exemption contained in Wage Order 9 for employees subject to certain collective bargaining agreements does not extend to Labor Code 226's wage statement requirements. (*Ward*)

Takeaway No. 2

- Labor Code Sections 204 and 226 apply to employees only if California is the principal place of their work, meaning the employee either works primarily in this state during the pay period, or does not work primarily in any state but has his or her base of operations in California. (*Ward & Oman*)

Takeaway No. 3

- When non-exempt employees are paid through a non-traditional compensation structure rather than by the hour, employers should ensure that:
  - (1) employees are paid at least minimum wage for all hours worked;
  - (2) employees are compensated as required by any applicable collective bargaining agreements or employment contracts; and
  - (3) the compensation structure does not practice “wage borrowing” or “wage averaging” by taking compensation due for one set of hours and spreading or averaging it over other hours to satisfy the minimum wage. (*Oman*)

Thank You!

Cass Ferrannini
cferrannini@downeybrand.com
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