

**Hunton Employment  
& Labor Perspectives Blog**

Hunton & Williams LLP  
July 2015

## HUNTON EMPLOYMENT & LABOR PERSPECTIVES™

HELP / ANALYSIS & DEVELOPMENT IN EMPLOYMENT & LABOR ISSUES

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- [NLRB Invites Briefs Regarding The Inclusion Of Temporary Employees In Bargaining Units](#)
- [Second Circuit Rejects the DOL's Rigid Intern Test and Adopts a Balancing Test](#)
- [DOL Issues Proposed Rule Drastically Expanding Overtime Protections](#)

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### Lessons We Learned In Winning A Union Election Under the NLRB's New Rules

July 28, 2015

On April 14, the National Labor Relations Board changed its rules for processing union elections. The new rules stack the deck against employers by decreasing the time between the filing of a petition and the election, which means that an employer now has less time to educate its employees about the potential impacts of unionization. The new rules also add procedural requirements that employers must address, which can distract the employer from the more important task of running its campaign. Given the significant changes, many have questioned whether it is possible to win an election under the new rules.

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### California Paid Sick Leave Law Clarified by Amendment Effective Immediately

July 21, 2015

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On July 13, 2015, California Governor Jerry Brown signed AB 304 amending the Healthy Workplaces, Healthy Families Act of 2014 clarifying certain terms of the law, effective immediately upon his signature. The amendments overall make the law easier to implement and have answered many questions employers have had while preparing to meet the requirements of the original law's effective date of July 1, 2015. The following is a summary of the key changes to the law.

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## NLRB Invites Briefs Regarding The Inclusion Of Temporary Employees In Bargaining Units

July 17, 2015

On July 6, 2015, the National Labor Relations Board [invited](#) interested parties and amici to submit briefs in *Miller & Anderson, Inc.*, 05-RC-079249, in connection with the Board's reexamination of whether temporary employees provided to a company by staffing agencies may be included in the same bargaining unit as the company's direct employees. Briefs are due by September 4, 2015.

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## Second Circuit Rejects the DOL's Rigid Intern Test and Adopts a Balancing Test

July 14, 2015

In a closely watched case, *Glatt v. Fox Searchlight Pictures, Inc.* (decided July 2, 2015), the Second Circuit rejected the Department of Labor's ("DOL") intern test under the Fair Labor Standards Act ("FLSA"), and adopted a balancing test that focuses on whether the employee or the employer is the primary beneficiary of the relationship ("primary beneficiary test"). This is important because interns are not considered employees, and thus, are exempt from the minimum wage and overtime provisions of the FLSA.

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## DOL Issues Proposed Rule Drastically Expanding Overtime Protections

July 1, 2015

Yesterday, the Department of Labor ("DOL") issued a proposed rule that is expected to significantly increase the number of employees who are eligible for overtime. The proposed rule increases the minimum salary threshold for exempt workers from the current level of \$23,660 to \$50,440. The rule applies to the FLSA's executive, administrative, professional, and computer employees exemptions, but not the outside sales exemption which does not have a salary basis requirement.

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