



COUNSEL TO GREAT COMPANIES

Updates in Labor & Employment Law

Fall 2014 Breakfast Seminar

Wednesday, November 5, 2014—Seattle, WA
Thursday, November 6, 2014—Bellevue, WA

Presented by:

Jeff Hollingsworth, Partner

Ben Stafford, Counsel

Perkins Coie LLP

Agenda

- Affordable Care Act Updates
- EEOC Guidance on Pregnancy Discrimination
- Seattle Minimum Wage Update
- California Updates
- Supreme Court Decisions
 - Decided
 - Upcoming
- Ninth Circuit Decisions
 - Statistical Sampling in Class Actions
 - Employee Waivers of Class Action Rights
 - Summary Judgment on ADA Claims (W.D. Wash.)
- Independent Contractor Issues

Affordable Care Act Updates: Employer Shared Responsibility

Play-or-Pay

- 2015: Employers with 100 or more full-time employees must provide coverage to 70%
- 2016
 - Employers with 50-99 full-time employees must provide coverage to 95%
 - Employers with 100 or more full-time employees must provide coverage to 95%

Affordable Care Act Updates: Employer Reporting Requirements

DRAFT AS OF October 15, 2014 DO NOT FILE

Form 1094-C
Department of the Treasury
Internal Revenue Service

Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns

► Information about Form 1094-C and its separate instructions is at www.irs.gov/11094c.

20115
OMB No. 1545-2251
2014

Part I Applicable Large Employer Member (ALE Member)

1 Name of ALE Member (Employer)

2 Employer identification number (EIN)

3 Street address (including room or suite no.)

4 City or town

7 Name of person to contact

9 Name of Designated Government

11 Street address (including room or suite no.)

12 City or town

15 Name of person to contact

17 Reserved

18 Total number of Forms 1094-C

Part II ALE Member Information

19 Is this the authoritative transmittal?

20 Total number of Forms 1094-C

21 Is ALE Member a member of a self-insured plan?
If "No," do not complete this section.

22 Certifications of Eligibility

DRAFT AS OF October 15, 2014 DO NOT FILE

Form 1095-C
Department of the Treasury
Internal Revenue Service

Employer-Provided Health Insurance Offer and Coverage

► Information about Form 1095-C and its separate instructions is at www.irs.gov/11095c.

600115
OMB No. 1545-2251
2014

Part I Employee

1 Name of employee

2 Social security number (SSN)

3 Street address (including apartment no.)

4 City or town

5 State or province

14 Offer of Coverage (enter required code)

15 Employee Share of Lowest Cost Monthly Premium, for Self-Only Minimum Value Coverage

16 Applicable Section 4980H Safe Harbor (enter code, if applicable)

Part II Employee Offer and Coverage

	All 12 Months	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
15 Employee Share of Lowest Cost Monthly Premium, for Self-Only Minimum Value Coverage	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$

Applicable Large Employer Member (Employer)

7 Name of employer

8 Employer identification number (EIN)

9 Street address (including room or suite no.)

10 Contact telephone number

11 City or town

12 State or province

13 Country and ZIP or foreign postal code

Part III Covered Individuals

If Employer provided self-insured coverage, check the box and enter the information for each covered individual.

(a) Name of covered individual(s)	(b) SSN	(c) DOB (if SSN is not available)	(d) Covered all 12 months	(e) Months of Coverage											
				Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
17			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
18			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
19			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
20			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Supreme Court: *Burwell v. Hobby Lobby*



Affordable Care Act Updates: The Future of Premium Tax Credits

The screenshot shows the HealthCare.gov website interface. At the top, the logo "HealthCare.gov" is on the left, and navigation links for "Individuals & Families", "Small Businesses", "Log in", and "Español" are on the right. Below this is a secondary navigation bar with "Get Coverage", "Keep or Change Your Plan", and "Get Answers" on the left, and a search bar with "SEARCH" on the right. The main content area features a banner with the text "Get ready for 2015 coverage" and "Starting November 15, you can enroll in an affordable health plan that works for you". A prominent red dollar sign and question mark are overlaid on the banner. A green button labeled "GET READY NOW" is visible. Below the banner, a blue bar contains a user icon, the text "HAVE A 2014 PLAN? GET READY TO KEEP OR CHANGE IT FOR 2015", and another green button labeled "LEARN MORE".

EEOC Guidance on Pregnancy Discrimination



- Pregnancy Discrimination Act
- Americans with Disabilities Act

Upcoming Supreme Court Decision: *Young v. UPS*



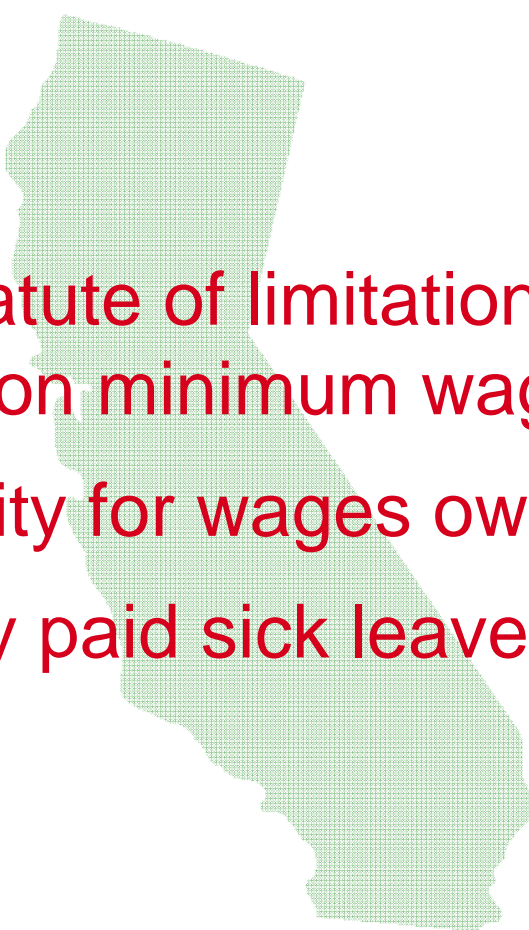
Seattle Minimum Wage Update

MAYOR ED MURRAY
SCHEDULE OF WAGE INCREASES UNDER IIAC PROPOSAL

PROPOSED SEATTLE MINIMUM WAGE
(2.40% CPI ESTIMATED ONCE 15 PER HOUR IS REACHED)

WASHINGTON STATE MINIMUM WAGE: 2.40% CPI ESTIMATED		EMPLOYERS > 500 EMPLOYEES		EMPLOYERS ≤ 500 EMPLOYEES	
		MINIMUM WAGE (SCHEDULE A)	MINIMUM WAGE W/ HEALTH CARE (SCHEDULE B)	GUARANTEED MINIMUM COMPENSATION (SCHEDULE C)	MINIMUM WAGE (SCHEDULE D)
YEAR	STATE WAGE	-	-	-	-
2015	\$9.54	11.00	11.00	11.00	10.00
2016	\$9.77	13.00	12.50	12.00	10.50
2017	\$10.01	15.00	13.50	13.00	11.00
2018	\$10.25	15.36	15.00	14.00	11.50
2019	\$10.49	15.73	15.73	15.00	12.00
2020	\$10.75	16.11	16.11	15.75	13.50
2021	\$11.00	16.49	16.49	16.49	15.00
2022	\$11.26	16.89	16.89	16.89	15.75
2023	\$11.53	17.29	17.29	17.29	16.50
2024	\$11.80	17.70	17.70	17.70	17.25
2025	\$12.08	18.13	18.13	18.13	18.13
—	—				
2034	14.97				
2035	15.33				

California Updates

- 
- Longer statute of limitations for liquidated damages on minimum wage violations
 - Joint liability for wages owed to contractors
 - Mandatory paid sick leave

Supreme Court: *NLRB v. Noel Canning*

(Slip Opinion)

OCTOBER TERM, 2013

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Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

NATIONAL LABOR RELATIONS BOARD *v.* NOEL
CANNING ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA CIRCUIT

No. 12–1281. Argued January 13, 2014—Decided June 26, 2014

Respondent Noel Canning, a Pepsi-Cola distributor, asked the D. C. Circuit to set aside an order of the National Labor Relations Board, claiming that the Board lacked a quorum because three of the five Board members had been invalidly appointed. The nominations of the three members in question were pending in the Senate when it passed a December 17, 2011, resolution providing for a series of “*pro forma* session[s],” with “no business . . . transacted,” every Tuesday and Friday through January 20, 2012. S. J., 112th Cong., 1st Sess., 923. Invoking the Recess Appointments Clause—which gives the President the power “to fill up all Vacancies that may happen during the Recess of the Senate,” Art. II, §2, cl. 3—the President appointed the three members in question between the January 3 and January 6 *pro forma* sessions. Noel Canning argued primarily that the appointments were invalid because the 3-day adjournment between those two sessions was not long enough to trigger the Recess Appointments Clause. The D. C. Circuit agreed that the appointments fell outside the scope of the Clause, but on different grounds. It held that the phrase “the recess,” as used in the Clause, does not include intra-session recesses, and that the phrase “vacancies that may happen during the recess” applies only to vacancies that first come into existence during a recess.



Supreme Court: *NLRB v. Noel Canning*

- *Albertson's, LLC & Yvonne Martinez & United Food & Commercial Workers Union, Local 1564*, 359 NLRB No. 147 (July 2, 2013)
 - Solicitation of grievances
- *American Baptist Homes of the West*, 359 NLRB No. 46 (Dec. 15, 2012)
 - Union information requests
- *Banner Health Sys.*, 358 NLRB No. 93 (July 30, 2012)
 - Confidentiality of investigations

Supreme Court: *Harris v. Quinn*



The First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Supreme Court: *Sandifer v. U.S. Steel Corp.*



Upcoming Supreme Court Decision: *Integrity Staffing Solutions Inc. v. Busk*

Is time spent in security screenings
compensable?



Ninth Circuit: Statistical Sampling in Class Actions

Liability – Maybe Yes

Damages – Maybe Not

Ninth Circuit: Employee Waivers of Class Action Rights

X *Employee*

Western District of Washington: Summary Judgment on ADA Claims

August 2009

Sun	Mon	Tue	Wed	Thu	Fri	Sat	
						1	
	→					→	8
2	3	4	5	6	7	8	
	→					→	15
9	10	11	12	13	14	15	
	→					X	22
16	17	18	19	20	21	22	
	→					→	29
23	24	25	26	27	28	29	
	→					→	36
30	31						
	→					→	

September 2009

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		1	2	3	4	5	
	→					→	12
6	7	8	9	10	11	12	
	→					→	19
13	14	15	16	17	18	19	
	X	→				→	26
20	21	22	23	24	25	26	
	→					→	33
27	28	29	30				
	→					→	

February 2010

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	→			?		
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28						

Ninth Circuit: Employees or Independent Contractors?

Consider: Who has the right to control the manner in which the work is performed?



California Court of Appeal: Employees or Independent Contractors?



OFFICIAL NOTICE

INDUSTRIAL WELFARE COMMISSION

ORDER NO. 9-2001

REGULATING

WAGES, HOURS AND WORKING CONDITIONS IN THE

TRANSPORTATION INDUSTRY

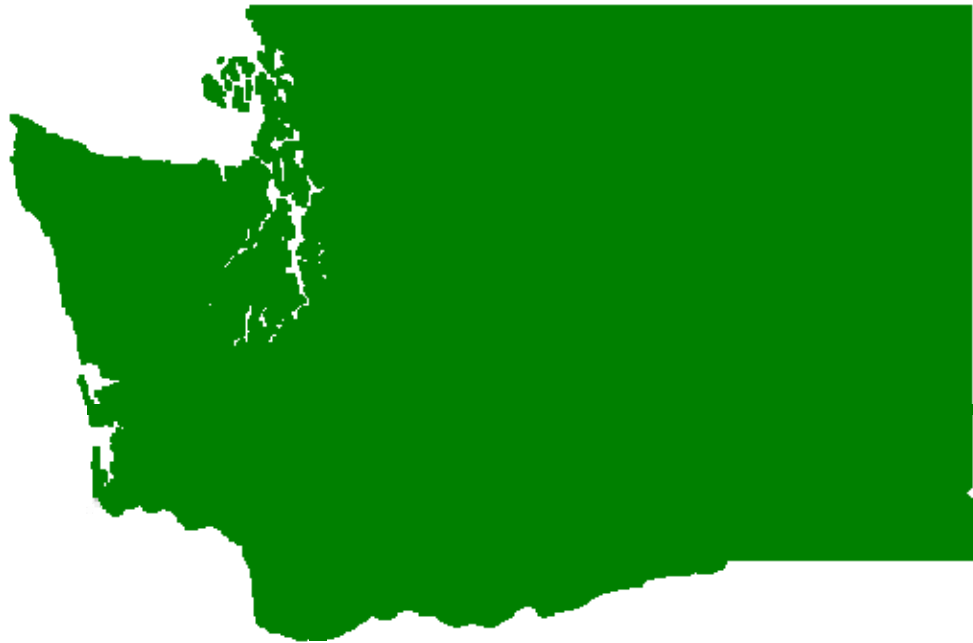
Effective July 1, 2002 as amended

Sections 4(A) and 10(C) amended and republished by the Department of Industrial Relations, effective July 1, 2014, pursuant to AB 10, Chapter 351, Statutes of 2013 and AB 1835, Chapter 230, Statutes of 2006

This Order Must Be Posted Where Employees Can Read It Easily

Washington Court of Appeals, Div. 1: Employer Liable for Independent Contractor

The Washington Law Against Discrimination protects independent contractors from retaliation.



Questions?

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