PERKINSCOIE

COUNSEL TO GREAT COMPANIES

Updates in Labor & Employment Law

Winter 2015

Thursday, December 10, 2015—Bellevue, WA

Friday, December 11, 2015—Seattle, WA

Presented by:

Chelsea Petersen, Partner

Emily Bushaw, Associate

Agenda

- **Federal Law Updates**
  - EEOC Updates Pregnancy Discrimination Guidance
  - DOL's Proposed Changes to "Overtime Exempt" Rules Expected in 2016
  - DOL Defines "Employee" Broadly under FLSA
- **State and Local Law Updates**
  - Seattle's Wage Theft Ordinance Imposes Civil Penalties and Notice Requirements
  - City of Tacoma Mandates Paid Leave

Agenda (contd.)

- **Supreme Court Cases**
  - *Obergefell v. Hodges*
  - *Green v. Donahoe* (upcoming)
- **Ninth Circuit Decisions**
- **Washington Court Decisions**
- **NLRB Updates**

EEOC Updates 2014 Pregnancy Discrimination Guidance

U.S. Equal Employment Opportunity Commission

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Home > Laws, Regulations & Guidance > Guidance

B. Evaluating PDA-Covered Employment Decisions

Pregnancy discrimination may take the form of disparate treatment (preg
childbirth, or a related medical condition, and either the policy or practice

1. Disparate Treatment

The PDA defines discrimination because of sex t
medical condition was all or part of the motivatio
surrounding facts and circumstances.

The PDA further provides that discrimination on t
discriminate on the basis of pregnancy may none

As with any other charge, investigators faced wit
unlawfully discriminatory. All evidence should be

Evidence indicating disparate treatment based o

C. Equal Access to Benefits

An employer is required under Title VII to treat an employee temporarily unable to perform
alternative assignments, or fringe benefits such as disability leave and leave without pay.[9]

1. Light Duty

a. Disparate Treatment

i. Evidence of Pregnancy-Related Animus

If there is direct evidence that pregnancy-related animus motivated an employer's decision

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DOL's Proposed Changes to "Overtime Exempt" Rules Expected in 2016

UNITED STATES DEPARTMENT OF LABOR

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Wage and Hour Division SHARE Was this page helpful?

DOL Home > WHD > Overtime Pay > Notice of Proposed Rulemaking: Overtime

Wage and Hour Division (WHD)

Notice of Proposed Rulemaking: Overtime

Today the Department of Labor has announced a proposed rule that would extend overtime protections to nearly 5 million white collar workers within the first year of its implementation. Failure to update the overtime regulations has left an exception to overtime eligibility originally meant for highly-compensated executive, administrative, and professional employees now applying to workers earning as little as $23,660 a year. For example, a convenience store manager, fast food assistant manager, or some office workers may be expected to work 50 or 60 hours a week or more, making less than the poverty level for a family of four, and not receive a dime of overtime pay. Today's proposed regulation is a critical first step toward ensuring that hard-working Americans are compensated fairly and have a chance to get ahead.

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DOL Defines “Employee” Broadly under FLSA

U.S. Department of Labor
Wage and Hour Division
Washington, D.C. 20210

Administrator’s Interpretation No. 2015-1

July 15, 2015

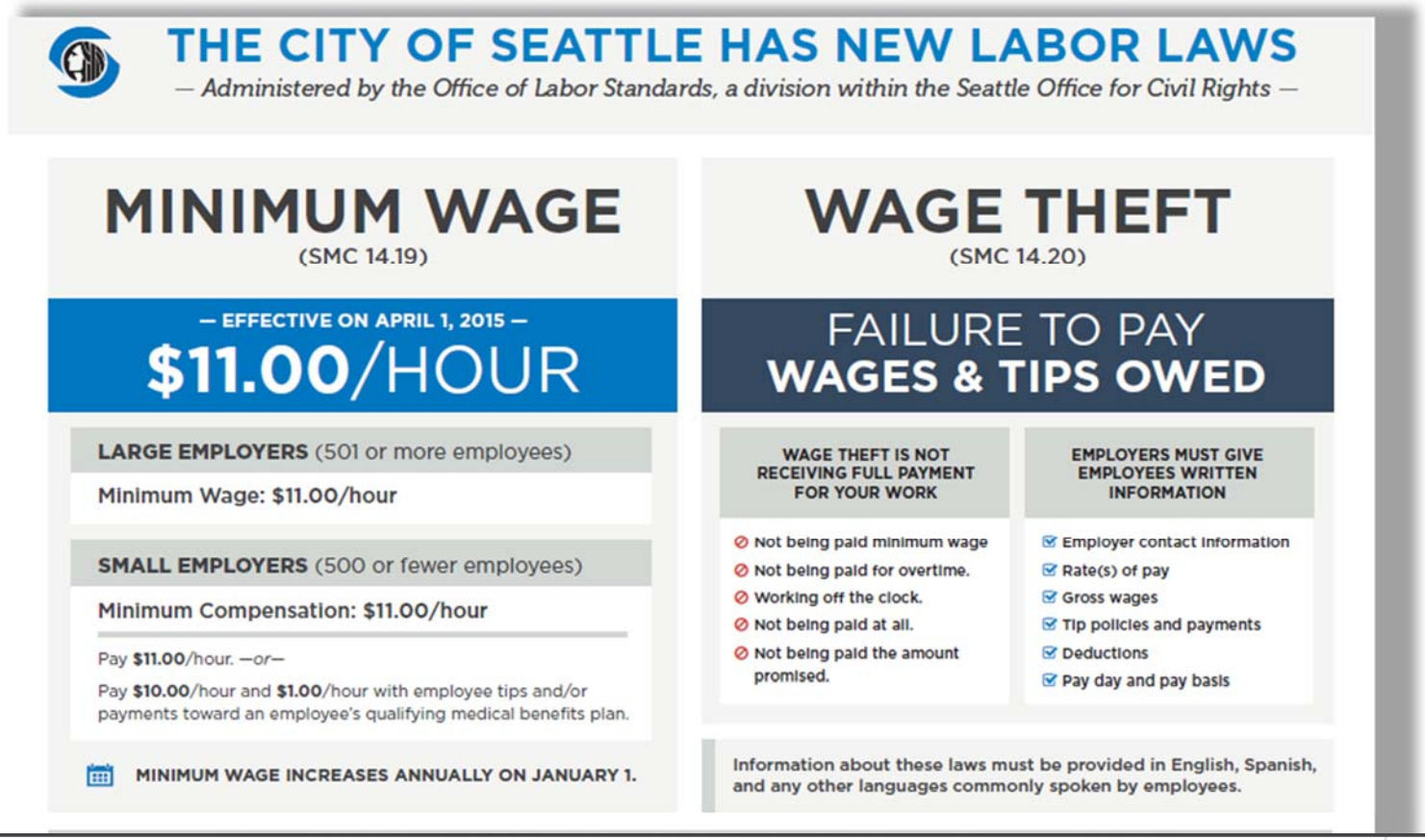
Issued by ADMINISTRATOR DAVID WEIL

SUBJECT: The Application of the Fair Labor Standards Act’s “Suffer or Permit” Standard in the Identification of Employees Who Are Misclassified as Independent Contractors.

Misclassification of employees as independent contractors is found in an increasing number of workplaces in the United States, in part reflecting larger restructuring of business organizations. When employers improperly classify employees as independent contractors, the employees may not receive important workplace protections such as the minimum wage, overtime compensation, unemployment insurance, and workers’ compensation. Misclassification also results in lower tax revenues for government and an uneven playing field for employers who properly classify their workers. Although independent contracting relationships can be advantageous for workers and businesses, some employees may be intentionally misclassified as a means to cut costs and avoid compliance with labor laws.

The Department of Labor’s Wage and Hour Division (WHD) continues to receive numerous complaints from workers alleging misclassification, and the Department continues to bring successful enforcement actions against employers who misclassify workers. In addition, many states have acknowledged this problematic trend and have responded with legislation and misclassification task forces. Understanding that combating misclassification requires a multi-pronged approach, WHD has entered into memoranda of understanding with many of these states, as well as the Internal Revenue Service.[1] In conjunction with these efforts, the Administrator believes that additional guidance regarding the application of the standards for determining who is an employee under the Fair Labor Standards Act (FLSA or “the Act”) may be helpful to the regulated community in classifying workers and ultimately in curtailing misclassification.

Seattle's Wage Theft Ordinance Imposes Civil Penalties and Notice Requirements



THE CITY OF SEATTLE HAS NEW LABOR LAWS

— Administered by the Office of Labor Standards, a division within the Seattle Office for Civil Rights —

MINIMUM WAGE
(SMC 14.19)

— EFFECTIVE ON APRIL 1, 2015 —

$11.00/HOUR

LARGE EMPLOYERS (501 or more employees)

Minimum Wage: $11.00/hour

SMALL EMPLOYERS (500 or fewer employees)

Minimum Compensation: $11.00/hour

Pay **$11.00**/hour. *—or—*

Pay **$10.00**/hour and **$1.00**/hour with employee tips and/or payments toward an employee's qualifying medical benefits plan.

MINIMUM WAGE INCREASES ANNUALLY ON JANUARY 1.

WAGE THEFT
(SMC 14.20)

FAILURE TO PAY
WAGES & TIPS OWED

WAGE THEFT IS NOT RECEIVING FULL PAYMENT FOR YOUR WORK

- Not being paid minimum wage
- Not being paid for overtime.
- Working off the clock.
- Not being paid at all.
- Not being paid the amount promised.

EMPLOYERS MUST GIVE EMPLOYEES WRITTEN INFORMATION

- Employer contact information
- Rate(s) of pay
- Gross wages
- Tip policies and payments
- Deductions
- Pay day and pay basis

Information about these laws must be provided in English, Spanish, and any other languages commonly spoken by employees.

14.20.040 - Notice and posting

A. Employers shall comply with the notice requirements of this Section 14.20.040 by providing written information to employees in English, Spanish, and any other language commonly spoken by employees at the particular workplace. Employers may choose a reasonable method for providing this information to employees, including, but not limited to a letter, paystub for the notice required by subsection C of this Section 14.20.040, or an employee-accessible online system.

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City of Tacoma Mandates Paid Leave

Req. #14-1284 Amended 12-16-14, 1-27-15

ORDINANCE NO. 28275

BY REQUEST OF MAYOR STRICKLAND AND COUNCIL MEMBERS CAMPBELL, MELLO, AND WALKER

AN ORDINANCE relating to employment in Tacoma; amending the Tacoma Municipal Code by adding thereto a new Title 18, entitled "Minimum Employment Standards," to establish minimum employment standards for businesses located in the City of Tacoma.

WHEREAS a large number of workers in the City will, at some time during the year, need temporary time off from work to take care of their own or their family members' health needs or their own or their family members' safety or other needs resulting from domestic violence, sexual assault, or stalking, and

WHEREAS many workers do not have access to any paid leave for sick or safe days; Now, Therefore,

BE IT ORDAINED BY THE CITY OF TACOMA:

That the Tacoma Municipal Code is hereby amended by the addition thereto of a new Title 18, entitled "Minimum Employment Standards," to establish minimum employment standards for businesses located in the City of Tacoma, as set forth in the attached Exhibit "A."

Passed _____

_____
Mayor

Attest:

_____
City Clerk

Approved as to form:

_____
City Attorney

-1-

Ord14-1284amendFINAL.doc-EAP/bn

CHAPTER 18.10
PAID LEAVE

Sections:

PERKINSCOIE

Supreme Court:
Obergefell v. Hodges

PERKINSCOIE

Supreme Court:
Green v. Donahoe (upcoming)

No. 14-___

IN THE

Supreme Court of the United States

MARVIN GREEN,

Petitioner,

v.

PATRICK R. DONAHOE, Post
United States Posta

On Petition for a Writ
to the United States Co
for the Tenth C

PETITION FOR A WRIT

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QUESTION PRESENTED

Under federal employment discrimination law, does the filing period for a constructive discharge claim begin to run when an employee resigns, as five circuits have held, or at the time of an employer's last allegedly discriminatory act giving rise to the resignation, as three other circuits have held?

SUPREME COURT OF THE UNITED STATES

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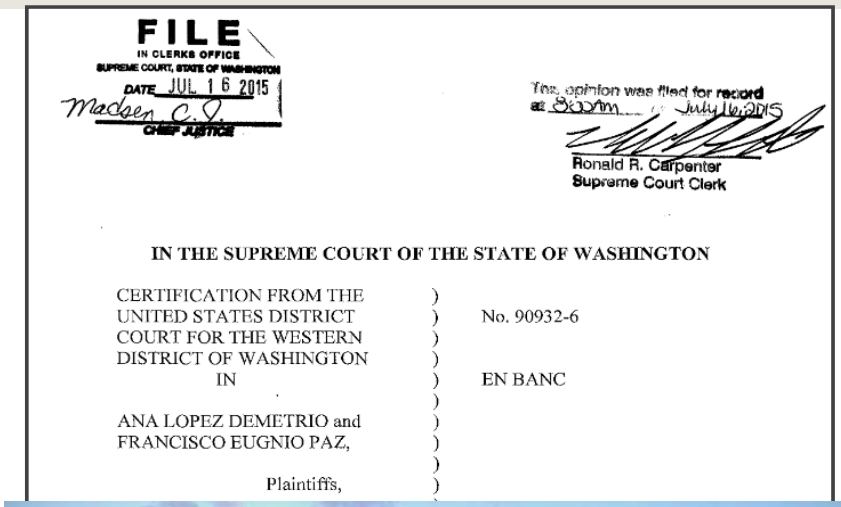
Ninth Circuit:
Ten-year age difference is tipping point under ADEA

PERKINSCOIE

Washington Supreme Court and L&I:
How to pay piece rate workers for rest breaks

WASHINGTON COURTS



FILE
IN CLERKS OFFICE
SUPREME COURT, STATE OF WASHINGTON
DATE JUL 16 2015
CHIEF JUSTICE

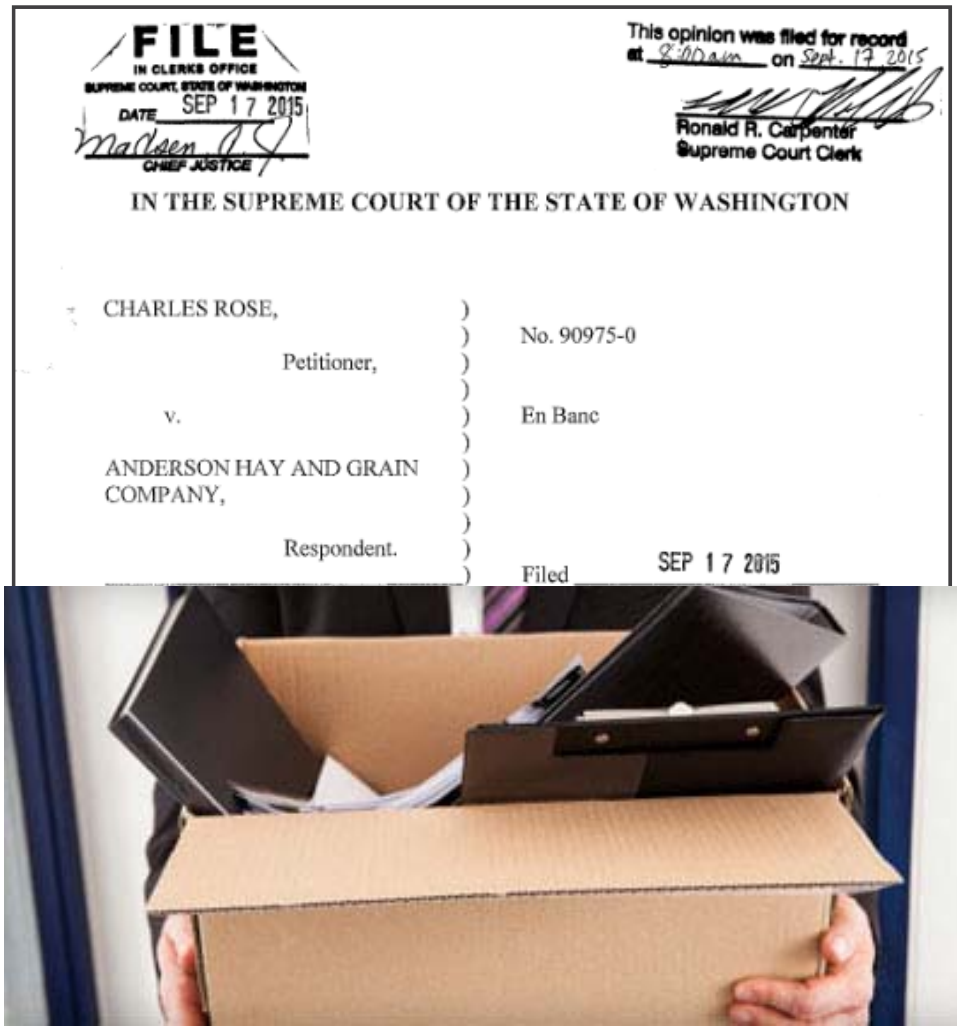
This opinion was filed for record
at 8:00 AM July 16, 2015
Ronald R. Carpenter
Supreme Court Clerk

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

CERTIFICATION FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON IN	)	No. 90932-6
	)	EN BANC
ANA LOPEZ DEMETRIO and FRANCISCO EUGNIO PAZ,	)	
Plaintiffs,	)	

PERKINSCOIE

Washington Supreme Court:
Plaintiffs can bring a wrongful discharge claim even if they have a statutory remedy



FILE
IN CLERKS OFFICE
SUPREME COURT, STATE OF WASHINGTON
DATE SEP 17 2015
CHIEF JUSTICE

This opinion was filed for record at 8:00 am on Sept. 17 2015
Ronald R. Carpenter
Supreme Court Clerk

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

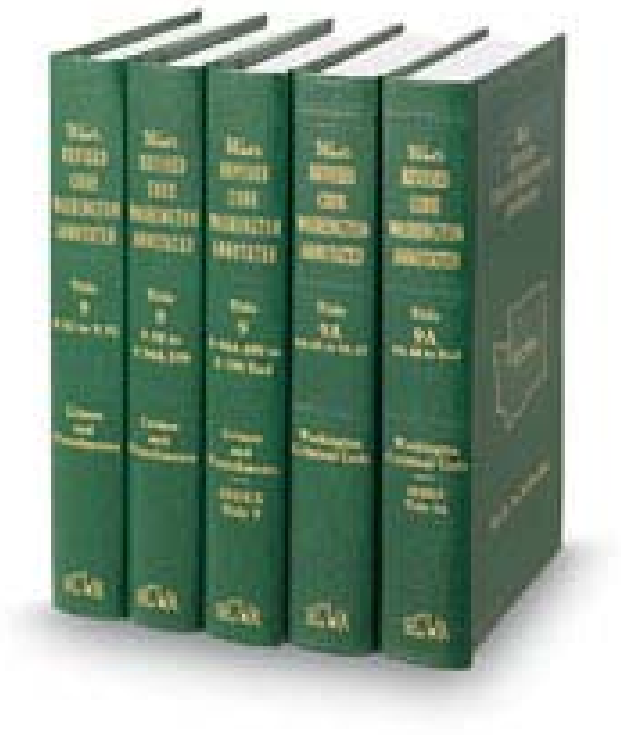
CHARLES ROSE,
Petitioner,
v.
ANDERSON HAY AND GRAIN COMPANY,
Respondent.

No. 90975-0

En Banc

Filed SEP 17 2015

WASHINGTON COURTS



PERKINSCOIE

Washington Court of Appeals, Div. 1: Enforceability of non-competes

WASHINGTON COURTS

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DR. ROBERT EMERICK, M.D.,

Appellant/Cross Respondent,

v.

CARDIAC STUDY CENTER, INC., P.S., a Washington corporation,

Respondent/Cross Appellant.

No. 72834-2-I

DIVISION ONE

PUBLISHED OPINION

FILED: August 24, 2015

COURT OF APPEALS DIV I STATE OF WASHINGTON 2015 AUG 24 AM 10:

APPELWICK, J. — Emerick's employment agreement with CSC included

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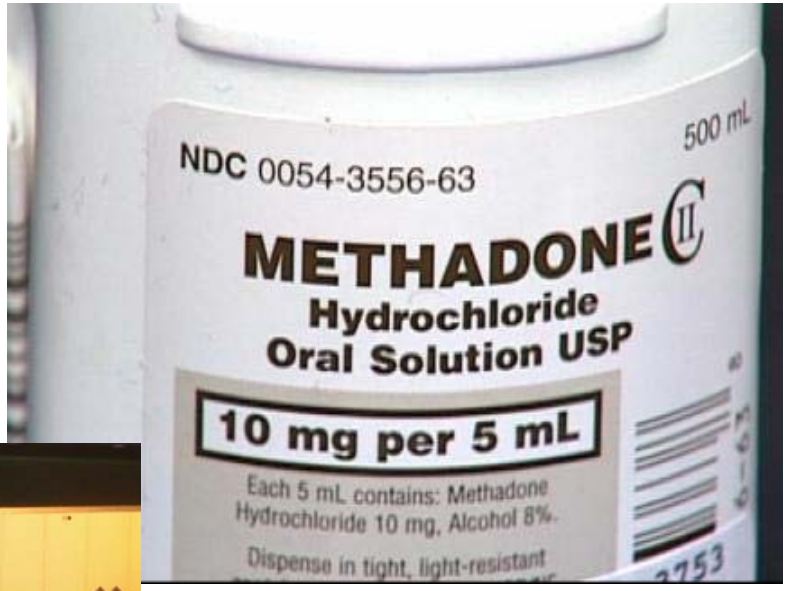
Washington Court of Appeals, Div. 2:
Employer discriminated by revoking job offer



NLRB Expands Definition of "Joint Employer"

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Browning-Ferris Industries of California, Inc., d/b/a BFI Newby Island Recyclery, *and* FPR-II, LLC, d/b/a Leadpoint Business Services, *and* Sanitary Truck Drivers and Helpers Local 350, International Brotherhood of Teamsters, Petitioner. Case 32–RC–109684

August 27, 2015

DECISION ON REVIEW AND DIRECTION

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA, HIROZAWA, JOHNSON, AND MCFERRAN

In this case, we consider whether the Board should adhere to its current standard for assessing joint-employer status under the National Labor Relations Act or whether that standard should be revised to better effectuate the purposes of the Act, in the current economic landscape.

The issue in this case is whether BFI Newby Island Recyclery (BFI), and Leadpoint Business Services (Leadpoint) are joint employers of the sorters, screen cleaners, and housekeepers whom the Union petitioned to represent. The Regional Director issued a Decision and Direction of Election finding that Leadpoint is the sole employer of the petitioned-for employees.[1] The Union filed a timely request for review of that decision, contending that (a) the Regional Director ignored significant evidence and reached the incorrect conclusion under current Board precedent; and (b) in the alternative, the Board should reconsider its standard for evaluating joint-employer relationships.

In granting the Union's request for review, we invited the parties and interested amici to file briefs addressing the following questions:

1. Under the Board's current joint-employer standard, as articulated in *TLI, Inc.*, 271 NLRB 798 (1984), enfd.

NATIONAL LABOR RELATIONS BOARD

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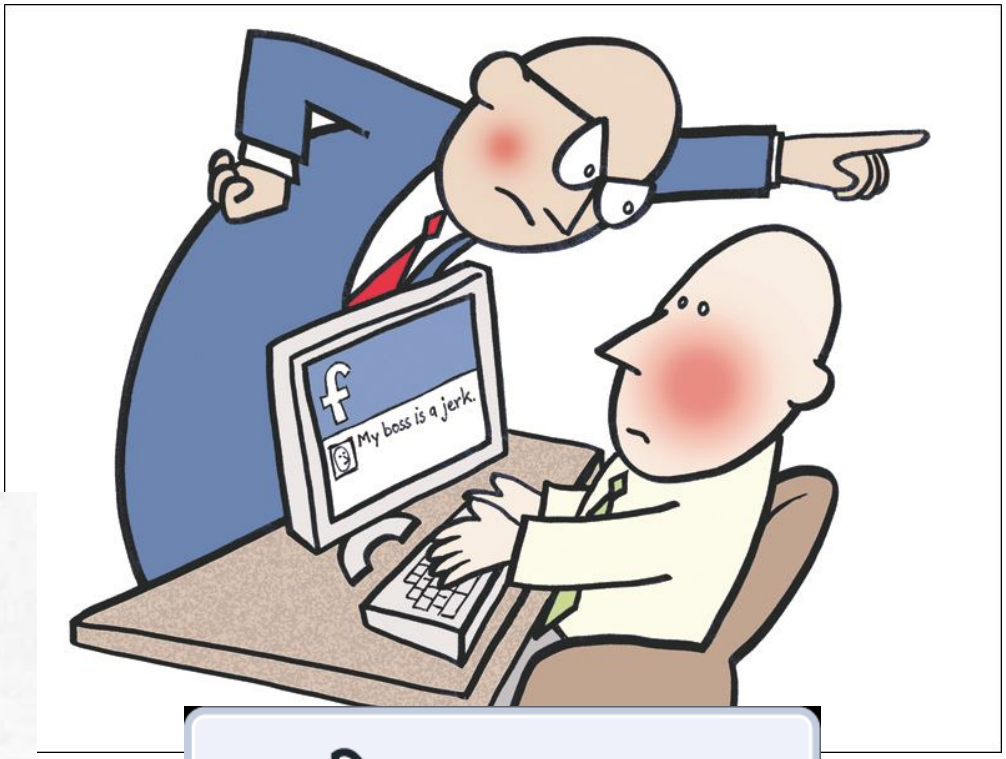
Second Circuit:
Employee's Facebook activity is protected



Questions?

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