



COUNSEL TO GREAT COMPANIES

Updates in Labor & Employment Law

June 9, 2016 – Employment Law Seminar

Bellevue, Washington

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Agenda

- **Federal Law Updates**
 - DOL Issues Final Overtime Exempt Rule
 - EEOC Implements New Procedures for Respondent Position Statements
 - DOL Issues Guidance on Joint Employers Under the FLSA and MSPA
 - EEOC Proposes New Compensation Reporting Requirements to Assess Gender Gap in Wages
 - EEOC Proposes New Guidance on Retaliation Claims
- **State and Local Law Updates**
 - Local Wage and Hour Updates

Agenda (contd.)

- **Supreme Court Cases**
 - *DIRECTV, Inc. v. Imburgia*
 - *Spokeo, Inc. v. Robins*
- **Ninth Circuit Decisions**
 - Ninth Circuit Affirms Use of Timecard Rounding
 - Ninth Circuit's Decision Changes How Washington Employers Should Handle Tips
- **NLRB Updates**
 - NLRB Finds Another Set of Employee Handbook Rules Unlawful

DOL Issues Final Overtime Exempt Rule



Key Provisions:

- Increase in the salary requirement from \$455 per week and \$23,660 annually to \$913 per week and \$47,476 annually
- Salary requirement will increase every three years
- Up to 10% of the salary amount can be satisfied by the payment of nondiscretionary bonus, incentives, and commissions



EEOC Implements New Procedures for Respondent Position Statements



Key Changes:

- Position statements and nonconfidential attachments will now, upon request, be released to the charging party, who will then have 20 days to respond.
- Employers should refer to but not identify confidential information in their position statement.
- Information employers do not want disclosed to a charging party should be in one of three separately labeled attachments—along with an explanation justifying the confidential nature of the information.



DOL Issues Guidance on Joint Employers Under the FLSA and MSPA



NOT
I AM YOUR BOSS!

- Joint employers are responsible, *both individually and jointly*, for complying with the FLSA and MSPA.
- Two likely scenarios for joint employment:
 - (1) **Horizontal joint employment:** Where the employee has two or more technically separate but related or associated employers; or
 - (2) **Vertical joint employment:** Where one employer provides labor to another employer and the workers are economically dependent on both employers.

EEOC Proposes New Compensation Reporting Requirements to Assess Gender Gap in Wages



The proposed change in the reporting requirements would require employers with 100 or more employees to report the earnings and hours worked for *all* of their employees, including executives, beginning September 30, 2017.

EEOC Proposes New Guidance on Retaliation Claims



Employer Best Practices

- Maintain a written, plain-language retaliation policy that has a complaint procedure;
- Review all policies to ensure they don't include language that might deter employees from reporting suspected discrimination or harassment;
- Train employees on the policy;
- Provide antiretaliation information and advice to everyone involved in an investigation of a discrimination complaint; and
- Initiate proactive follow-up after a complaint is made to ensure that any concerns about retaliation are addressed immediately.



U.S. Supreme Court Declines to Hear Challenge to Seattle's Minimum Wage Law



Tacoma's New Minimum Wage and Paid Leave Laws Now in Effect

NOTICE TO EMPLOYERS & EMPLOYEES



City of Tacoma Minimum Wage

Effective February 1, 2016, the minimum wage for work performed within the City of Tacoma is

\$10.35 per Hour

The Minimum Wage Ordinance (TMC 18.20) applies to all employees who have reached the age of 16 and work within the geographical boundaries of Tacoma for more than 80 hours in an employer-defined calendar year. Adverse action against employees who exercise their rights under this chapter is prohibited. Workers can file a complaint if they do not receive the minimum wage, do not receive notice of the minimum wage, or if they experience retaliation. More information available at www.cityoftacoma.org/MinimumWage or by calling (253) 591-5306.



Supreme Court: *DIRECTV v. Imburgia*



“California’s interpretation of the phrase ‘law of [the customer’s] state’ does not place arbitration contracts on equal footing with all other contracts” and therefore “does not give due regard to the federal policy favoring arbitration.”



Supreme Court: *Spokeo, Inc. v. Robins*



Bottom Line: The mere allegation of a statutory violation is not necessarily enough to create Article III standing.



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Opinion of the Court

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 13–1339

SPOKEO, INC., PETITIONER *v.* THOMAS ROBINS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

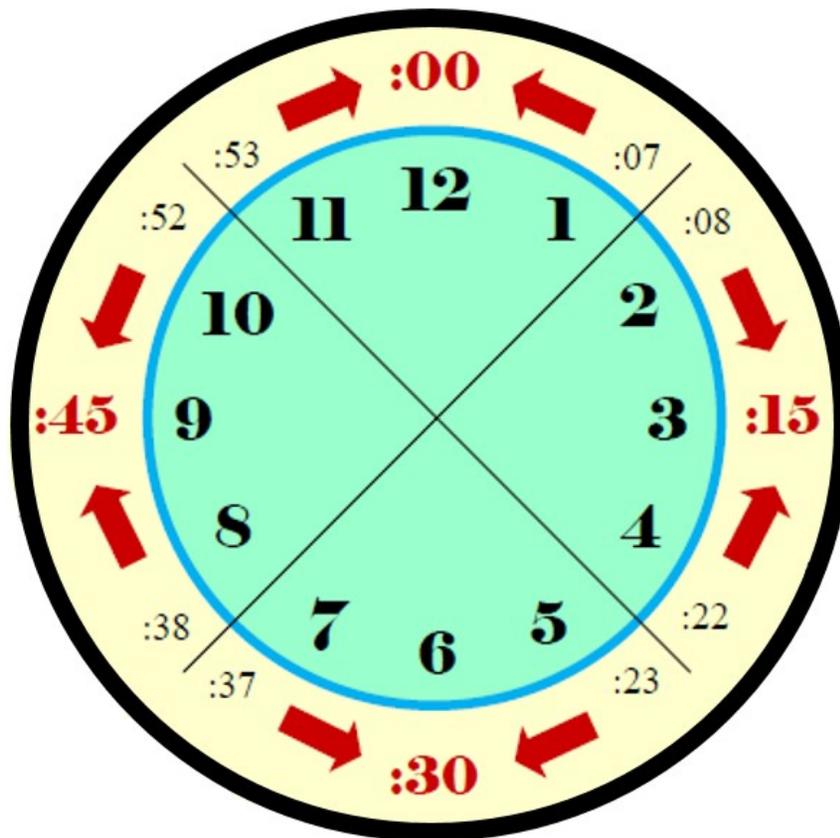
[May 16, 2016]

JUSTICE ALITO delivered the opinion of the Court.

This case presents the question whether respondent Robins has standing to maintain an action in federal court against petitioner Spokeo under the Fair Credit Reporting Act of 1970 (FCRA or Act), 84 Stat. 1127, as amended, 15 U. S. C. §1681 *et seq.*

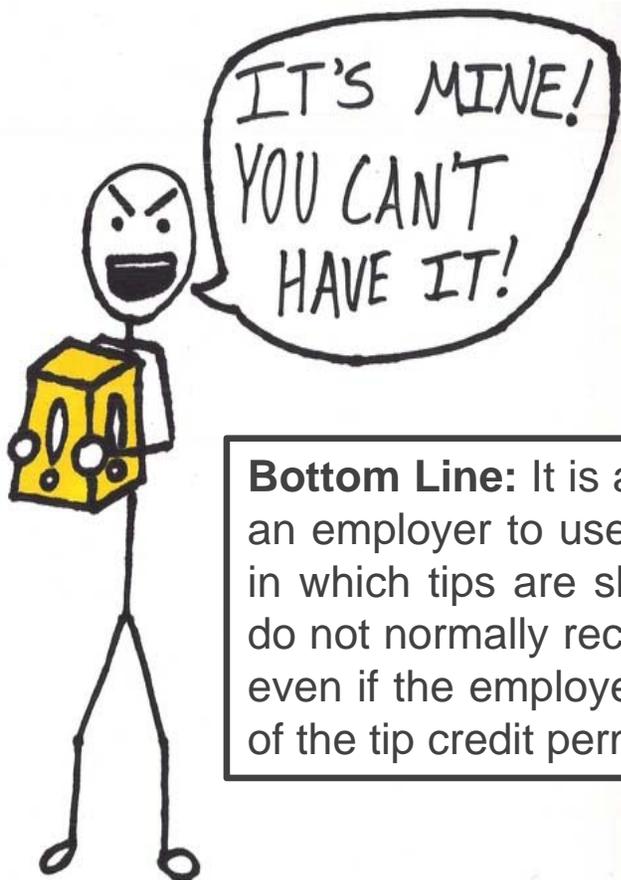
Spokeo operates a “people search engine.” If an individual visits Spokeo’s Web site and inputs a person’s name, a phone number, or an e-mail address, Spokeo conducts a computerized search in a wide variety of databases and provides information about the subject of the search. Spokeo performed such a search for information about Robins, and some of the information it gathered and then disseminated was incorrect. When Robins learned of these

Ninth Circuit Affirms Use of Timecard Rounding



Bottom Line: The company's timeclock system that rounded to the nearest quarter-hour did not deprive the plaintiff of wages because the practice was generally fair

Ninth Circuit's Decision Changes How Washington Employers Should Handle Tips



Bottom Line: It is a violation of federal law for an employer to use a tip-pooling arrangement in which tips are shared with employees who do not normally receive tips (e.g. supervisors), even if the employer does not take advantage of the tip credit permitted under the FLSA.



NLRB Finds Another Set of Employee Handbook Rules Unlawful



Rule Found Unlawful: “[T-Mobile] expects all employees to behave in a professional manner that promotes efficiency, productivity, and cooperation. Employees are expected to maintain a positive work environment by communicating in a manner that is conducive to effective working relationships with internal and external customers, clients, co-workers, and management.”

