

# FYI<sup>®</sup> Roundup

For Your Information<sup>®</sup>

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## Labor and Employment Developments 2016 – A Mid-Year Recap

This *FYI Roundup* recaps workplace issues that were front and center during the first half of 2016. Employees in New York and San Francisco saw new leave entitlements. New York City changed its sick time rules and extended new employment protections to caregivers. Federal contractors prepared for paid sick leave. Restrictions on background screening ramped up in Philadelphia. Employers learned of upcoming changes in overtime regulations, EEO-1 reporting requirements, and DOL and EEOC penalties. Two states adopted a \$15 minimum wage, as the DOL took a broader view on who is an employer. A federal court blocked the new “persuader” rule from taking effect. The IRS addressed identity theft protection and transit benefits. The Supreme Court issued important decisions on FLSA overtime claims and public union fees.

**In this issue:** [Budding Leave Laws](#) | [Cities Expand Employment Protections](#) | [New Overtime Challenges](#) | [Continued Wage and Hour Focus](#) | [DOL, EEOC Ratchet Up Employer Penalties](#) | [Equal Pay Data Reporting](#) | [A Failure to Persuade](#) | [Supreme Court Weighs In](#) | [IRS Addresses Identity Theft and Transit Benefits](#)

### Budding Leave Laws

#### New York Adopts Paid Family Leave

On April 4, New York enacted the nation’s most comprehensive paid family leave law, providing covered employees with up to 12 weeks of paid leave annually. Paid family leave benefits will be phased in over three years, starting in 2018. Wholly funded by employee contributions, benefits will be paid through the state’s existing temporary disability insurance program. (See our [April 26, 2016](#) *For Your Information.*)

#### San Francisco Adopts Fully Paid Parental Leave

On April 21, San Francisco became the first city in the nation to mandate fully paid parental leave for baby bonding, requiring employers to supplement compensation new parents receive under California’s Paid Family Leave program starting in 2017. (See our [May 9, 2016](#) *For Your Information.*)



## NYC Prescribes Changes for Sick Time Rules

New York City's Earned Sick Time Act requires private-sector employers to provide a minimum amount of job-protected sick time to full- and part-time employees who work in the city. Amendments to the Earned Sick Time Rules took effect on March 4, altering the regulatory landscape in a number of significant ways. (See our *For Your Information* from [March 18, 2016](#).)



## DOL Proposes Paid Sick Leave Rules for Federal Contractors

On February 25, the DOL published proposed regulations on establishing paid sick leave for federal contractors. The proposal would implement the president's executive order requiring certain government contractors to provide covered employees with up to seven days of paid sick leave annually. (See our *For Your Information* from [March 17, 2016](#).)

## Cities Expand Employment Protections

### NYC Extends Employment Protections to Caregivers

On January 5, 2016, NYC Mayor Bill de Blasio signed into law a bill prohibiting employment discrimination based on an individual's actual or perceived status as a caregiver, effective May 4, 2016. (See our [January 22, 2016](#) *For Your Information*.)

### Philadelphia Expands Ban-the-Box Restrictions as NYC Considers Changes

Both Philadelphia and New York City have so-called "ban-the-box" or "fair chance" laws that curb the use of criminal history and background checks for employment purposes. Amendments to Philadelphia's law took effect March 14, placing new constraints on employers' hiring and screening practices as New York weighed additional restrictions on background screening under its law. (See our [April 8, 2016](#) *For Your Information*.)

## New Overtime Challenges on Tap

### DOL Unveils Final Overtime Rule — At Last

In June 2015, the DOL proposed the expansion of overtime eligibility to millions of workers by more than doubling the minimum salary threshold for the so-called "white-collar" exemptions. On March 14, the DOL submitted a final rule to the Office of Management and Budget for regulatory review. (See our [March 16, 2016](#) *FYI Alert*.) On May 18, the DOL unveiled the final overtime rule that will have nationwide implications for millions of employees and employers alike. (See our [May 18, 2016](#) *FYI Alert*.)

### Higher Education to Face Overtime Challenges

The DOL's long-awaited overtime rule has profound implications for most employers — including higher education institutions. Whether operated for profit or not for profit, colleges and universities will face many of the same overtime pay requirements and compliance challenges as most other employers, but special rules will apply to some of their employees. (See our [June 30, 2016](#) *For Your Information*.)

## Continued Wage and Hour Focus

### CA and NY Adopt \$15 Minimum Wage

On April 4, California became the first state to enact a minimum wage of \$15 per hour, to be phased in by 2022. In a budget deal signed into law that same day, New York also raised its minimum wage to \$15 per hour, but with regional variations on both the timing and amount of staged increases. (See our [April 27, 2016](#) *For Your Information*.)

### DOL Takes “As Broad As Possible” View of Joint Employment Under FLSA

On January 20, the DOL issued guidance on when businesses should be classified as joint employers for purposes of the Fair Labor Standards Act (FLSA). The Administrator’s Interpretation, which takes a broad view of who is an employer, has profound implications for businesses that share employees or rely on subcontracting, outsourcing and staffing agencies. (See our [February 11, 2016](#) *For Your Information*.)

## DOL, EEOC Ratchet Up Employer Penalties

### DOL Hikes FLSA and Other Employer Penalties

The DOL announced a significant increase in the civil monetary penalties for violating federal minimum wage, overtime, posting and safety requirements, effective August 1. The increases will apply to penalties assessed after that date for FLSA, FMLA, and OSHA violations that occurred after November 2, 2015. (See our [July 14, 2016](#) *For Your Information*.)



### EEOC Boosts Penalties for Posting Violations

The EEOC announced that the current monetary penalties for notice-posting violations under Title VII, the ADA, and GINA would more than double on July 5. (See our [June 20, 2016](#) *For Your Information*.)

## Coming Soon: Equal Pay Data Reporting

### EEOC Proposes Pay Data Reporting by Employers

On February 1, the EEOC proposed expanding data reporting requirements for the Employer Information Report EEO-1 that employers file annually with the agency. Starting with the 2017 filing, the proposal would significantly expand reporting requirements for employers with 100 or more employees by adding employee pay and hours worked data to the employment information and workforce profiles they must already submit. (See our *For Your Information* from [February 26, 2016](#).)

### EEOC Revises Equal Pay Data Reporting Proposal

On July 14, the EEOC revised its proposal to move the due date of the first expanded EEO-1 filing to March 2018, revise the workforce snapshot period, and change the reporting period for the pay data and hours worked to the entire calendar year. (See our [July 19, 2016](#) *For Your Information*.)

## A Failure to Persuade

### Court Blocks DOL Persuader Rule from Taking Effect

A Texas District Court preliminarily enjoined the DOL from implementing and enforcing its new “persuader” rule on July 1. Under that rule, employers as well as their labor relations advisors would have been required to publicly

disclose agreements and arrangements that have long been exempt from reporting under the Labor-Management Reporting and Disclosure Act. (See our [June 29, 2016 FYI Alert](#).)

## Supreme Court Weighs In



### High Court OKs Law of Averages for FLSA Claims

Where the employer failed to keep adequate time records, pork processing plant workers relied on employee testimony, videotapes and an industrial relations expert's study to support class claims to recover overtime pay. On March 22, the Supreme Court upheld a \$5.8 million judgment for the workers, ruling that they could rely on a representative or statistical sample to establish classwide liability under the FLSA. (See our [April 1, 2016 For Your Information](#).)

### High Court Tie Leaves Public Union Fees in Place

A deadlocked Supreme Court left standing an earlier ruling by the 9<sup>th</sup> Circuit allowing public-sector unions to require nonunion employees to pay "agency" or "fair share" union fees as long as they do not include portions for political activities. Although the ruling set no precedent, it left intact the ability of public employee unions to collect fees from nonmembers in California. (See our [March 30, 2016 FYI Alert](#).)

## IRS Addresses Identity Theft and Transit Benefits

### IRS Expands Tax Relief for Identity Protection Services

In August 2015, the IRS announced that the value of credit monitoring and other identity protection services provided to data breach victims by the organization that experienced the breach (including employers and their service providers) is neither taxable nor reportable on information returns such as Forms W-2 or 1099-MISC. On December 30, the IRS announced it would extend the same tax treatment to services provided to employees or other individuals where there has been no data breach. (See our [January 13, 2016 For Your Information](#).)

### IRS Guidance on Retroactive Increase to 2015 Transit Benefits

In January, the IRS issued guidance on the retroactive increase of the 2015 monthly limit on excludable transit benefits from \$130 to \$250. The guidance addressed employer questions on the retroactive increase, established a special administrative procedure to alleviate reporting burdens for certain employers, and instructed employers on Form W-2 adjustments. (See our [January 12, 2016 FYI Alert](#).)



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