

# Changes in Employment Law: Piecing Together a Strategy



BY ANNEMARIE TERZANO GREENAN, ESQ.  
WILENTZ, GOLDMAN & SPITZER, P.A.

**T**HIS YEAR, THERE ARE SOME IMPORTANT changes in labor and employment law that will potentially expand employer liability. Here are just a few to consider as you evaluate your HR policies in 2012.

**New Jersey Wage and Hour Law Overtime Exemptions.** Many employers mistakenly believe that as long as an employee is salaried, he or she is exempt from overtime compensation under the law. This is simply not the case. Rather, to be exempt, an individual must be “employed in a bona fide executive, administrative, professional or outside sales capacity.” In September 2011, the New Jersey Department of Labor revised the definitions of these exemptions to correspond with those of the federal Fair Labor Standards Act. The most significant change in the overtime exemptions is the removal of the exemption from overtime for inside salespersons. Prior to September 2011, the New Jersey Administrative Code provided that an exempt administrative employee included an individual whose “primary duty consist[ed] of sales activity and who receive[d] at least 50 percent of his or her total compensation from commissions and a total compensation of not less than \$400 per week.” This provision is no longer included in the rules. As a result, an inside salesperson in New Jersey is no longer exempt from overtime compensation as an employee employed in a bona fide administrative capacity. If an employer is liable to an employee for unpaid overtime compensation under the New Jersey Wage and Hour Law, it could also be liable for the employee’s reasonable attorneys’ fees and costs of the action.

**The NLRB Notice Rule.** The National Labor Relations Board (NLRB) has enacted a new rule requiring most private sector employers to display a poster to notify employees of their rights under the National Labor Relations Act. Pursuant to the new rule, the notice should advise employees of the right to organize and bargain collectively; the right to act together to improve wages and working conditions; the right to strike and picket; and the right to refrain from engaging in any of these activities. The notice should also give examples of

New Jersey employers are encouraged to have counsel review the new overtime exemption provisions, which may affect their industry.

unlawful employer and/or union conduct and instruct employees on how to contact the NLRB. The text of the required notice is set forth in Appendix to Subpart A of 29 C.F.R. Part 104. The posting requirements are very specific. The notice must be at least 11 inches by 17 inches in size and must be posted in conspicuous places where it can be readily seen by employees, including all places where notices to employees concerning personnel rules or policies are customarily posted. In addition, if an employer normally communicates with its employees regarding personnel rules or policies on an intranet or Internet Web site, the employer must also post the notice to the Web site. Failure to post the notice would be considered an unfair labor practice by the NLRB within Section 8(a)(1) of the National Labor Relations Act. Moreover, failure to post the notice may also toll the six-month statute of limitations for filing other unfair labor practice charges and may be considered evidence of an employer’s unlawful motive in other unfair labor practice cases. Significantly, this rule applies to both unionized and non-unionized employers. Accordingly, all employers should ensure that they post the notice in accordance with 29 C.F.R. Part 104.

**Prohibited Employment Advertisements.** The New Jersey legislature has adopted a new statute that prohibits businesses from knowingly or purposefully publishing, in print or on the Internet, advertisements for any job openings that are biased against the unemployed. Pursuant to this statute, employment ads may not state that current employment is a requirement for the job or that the company will not consider or review an application for employment submitted by an unemployed individual. Although the law does not create a private cause of action for violations, violations may subject an employer to a civil penalty of up to \$1,000 for the first offense, \$5,000 for the second and \$10,000 for each subsequent offense. ■

*Annemarie T. Greenan, Esq., is an associate with the Woodbridge-based law firm of Wilentz, Goldman & Spitzer, P.A., where she focuses her practice on labor and employment law.*