

LEGAL & LEGISLATIVE UPDATES

September 2015

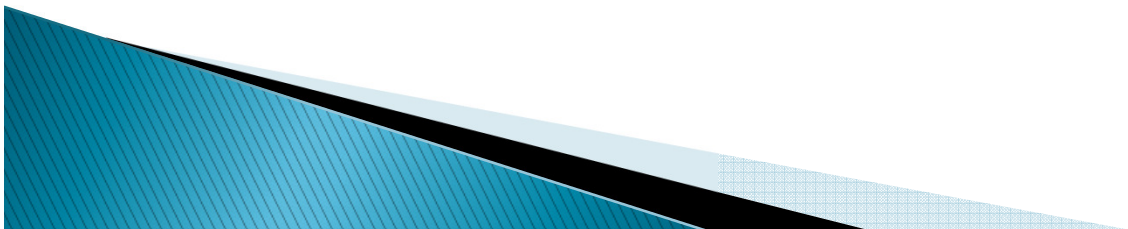
By:

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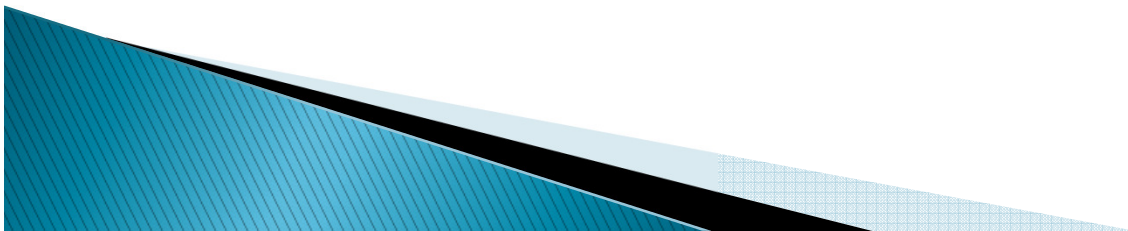
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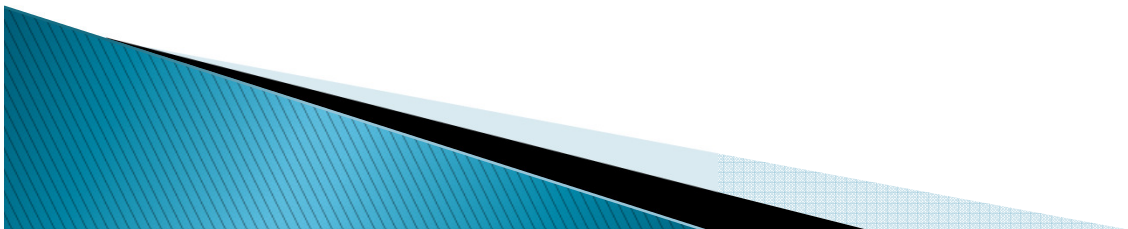
NLRB: Electronic Signatures

- ▶ Support showing of interest
- ▶ Must contain
 - Name
 - Email or other contact information
 - Telephone number
 - The language to which the signer has agreed
 - Date submitted
 - Name of the employee's employer



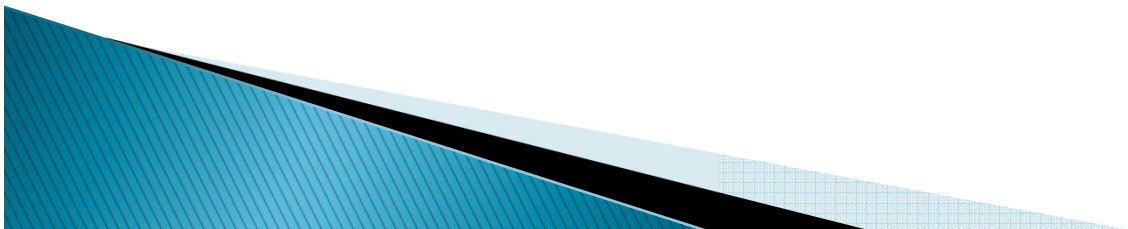
NLRB: Electronic Signatures

- ▶ Declaration by party submitting it:
 - ▶ Identifying:
 - ▶ the technology used
 - ▶ the controls to ensure genuineness
 - ▶ Verifying
 - ▶ the employee signed it
 - ▶ the information transmitted is the same seen by the employee who signed it



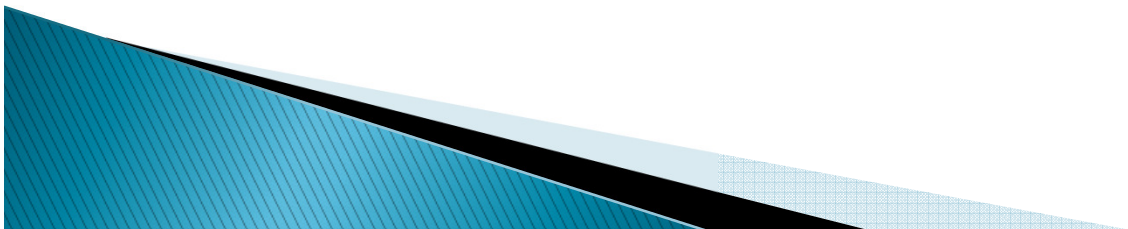
NLRB: Joint Employer Standard

- ▶ *Browning-Ferris Industries of California, Inc., v. Sanitary Truck Drivers and helpers Local 350 (IBT)*
- ▶ PRIOR standard:
 - exercise of direct and immediate control
- ▶ Company entered into a temp services agreement for performance of services at its facilities
 - Temp services retained right to hire, discipline
 - Agreement disclaimed joint employer status



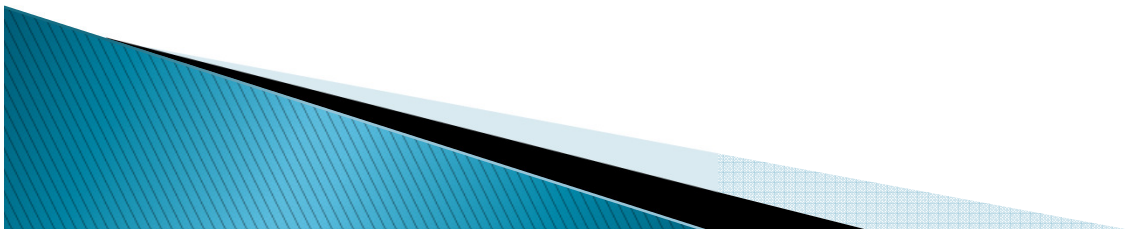
NLRB: Joint Employer Standard

- ▶ Contract provided Company
 - ▶ the right to discontinue use of any personal for any reason
 - veto power over wage rates paid temps
- ▶ Investigation:
 - Temp service employees had been disciplined at request of the Company
- ▶ Company determined shift lengths and break intervals of temps.



NLRB: Joint Employer Standard

- ▶ Present standard:
 - Common law
 - Share or codetermine essential terms and conditions of employment
 - Does not require exercise of that right
- ▶ Company had the right and exercised it both directly and indirectly
- ▶ Impact:
 - Temp services
 - Franchisor–franchisee relationships



NJ Supreme Court

- ▶ *Lippman v. Ethicon*, CEPA case
 - “Watchdog” workers: monitoring/compliance duties
 - Duties included providing his medical opinion about product safety (pharmaceuticals).
 - He objected to the proposed or continued sale and distribution of certain medical products
- ▶ *State v. Saavedra*
 - Employee stole confidential documents (incl. student records) to support discrimination claim.
- ▶ *Quinlan v. Curtis-Wright*
 - *Not always or automatically lawful!*
 - Criminal indictment upheld



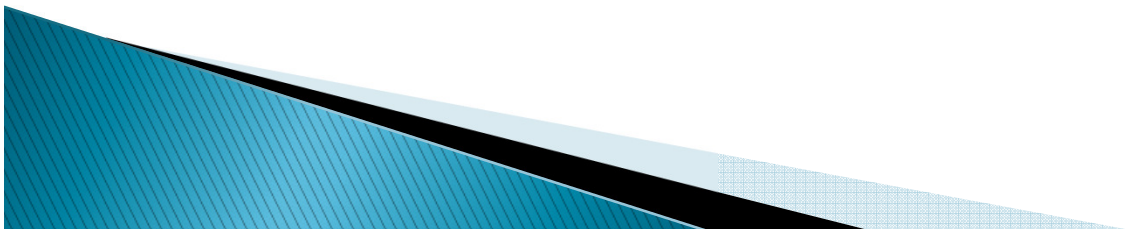
U.S. Dept. of Labor: July 2015

- ▶ Changes to overtime exemptions
 - Last updated 11 years ago (2004)
- ▶ Overtime requirements: 1.5x, over 40 hours in a workweek
- ▶ Exemptions to overtime requirements:
 - Executive, administrative, professional, outside sales (“EAPS”)
 - Highly Compensated Employees (HCEs)
- ▶ Potentially two significant changes for EAPS:
 - 1. Minimum salary threshold;
 - 2. Change the “primary duty” test.



EAPS: Minimum Salary Threshold

- ▶ Present: \$455 /week (approx. \$23,660 /year)
- ▶ Proposed: \$970 /week (approx. \$50,440 /year)
- ▶ Automatic annual updates:
 - Maintain the salary level at the 40th percentile of weekly wages of all full-time salaried workers; OR
 - Base it upon changes in the CPI



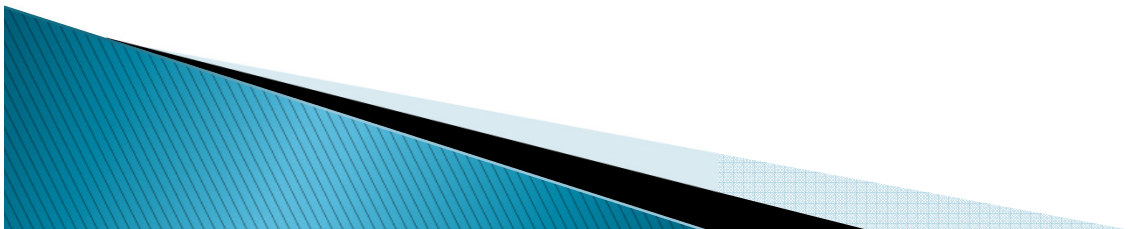
EAPS: Primary Duties Test

- ▶ DOL requested public comment on:
 - what, if any, changes should be made to the duties tests;
 - whether employees be required to spend a minimum amount of time performing work that is their primary duty in order to qualify for exemption;
 - whether the Department should adopt California's law (requiring that 50 percent of an employee's time be spent exclusively on work that is the employee's primary duty) as a model; and,
 - whether the concurrent duties regulation for executive employees remains appropriate.



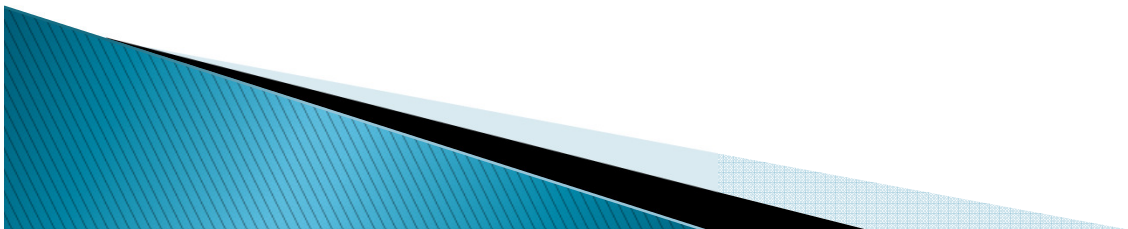
HCEs

- ▶ Present:
 - Must earn \$100,000 annually
 - Must be paid at least threshold weekly amount of \$455
 - Difference between the two can be satisfied via commissions, non-discretionary bonuses/compensation
- ▶ Proposed changes:
 - increase annual salary requirement to \$122,148;
 - eliminate use of bonuses to meet salary requirement;
 - Alternatively; require monthly payments of non-discretionary payments OR limit reliance to 10%.



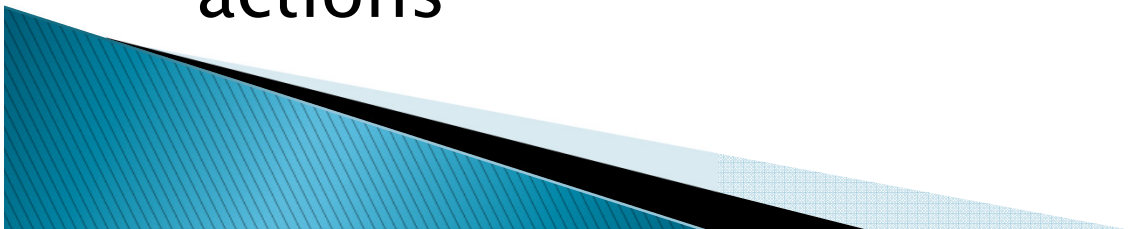
Next Steps . . .

- ▶ Public comment period closed;
- ▶ DOL takes into account public comment and adopts final rules;
- ▶ Months to years before publication and final adoption
 - 2003/2004 changes = 13 months
- ▶ Consider the implications
 - Report, consider, contemplate
 - More to come!!



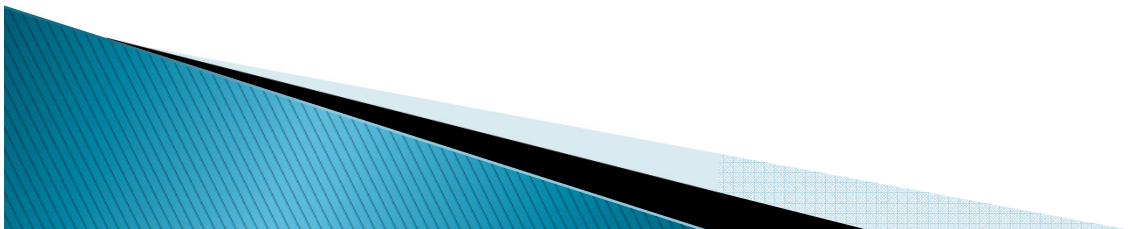
U.S. Dept. of Labor: July 2015 Independent Contractors

- ▶ Most individuals are employees
- ▶ Economic realities test:
 - Is the work an integral part of the business?
 - The worker's opportunity for profit or loss;
 - What are the investments of the employer and the worker?
 - Does it require special skills and initiative?
 - How permanent is the relationship?
 - What is the degree of control?
- ▶ Opens up employee claims and liability for actions



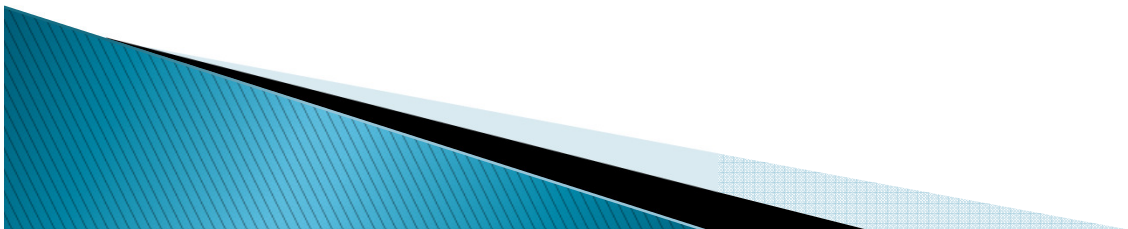
Other Notable Items

- ▶ New FMLA forms valid through May 2018.
 - U.S.–D.O.L. Website
- ▶ EEO–1 Deadline Extended: October 30, 2015.
- ▶ VETS–4212 (previously VETS–100): September 30, 2015.
- ▶ NJ–DCR poster updated (again), available as of 8/2015



Mirza v. Insurance Administrators of America, Inc. (3rd Cir.)

- ▶ There's no ERISA imposed deadline or SOL for review of benefit denials
- ▶ Deadlines are plan-imposed
 - Must be reasonable
 - If none, most analogous State law
- ▶ Decision: Plan administrators must inform claimants of plan-imposed deadlines for judicial review in notices denying benefits.



THANK YOU!

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