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LEGISLATIVE AND ADMINISTRATIVE ACTIONS

Independent Contractors – Modern Worker Empowerment Act (MWEA) (House Bill 1319). The US House of Representatives is considering an Act that would change the standards for determining Independent Contractor versus Employee status. The MWEA would make it easier to classify people as Independent Contractors, not subject to employment laws or benefits, and easier for the worker to "assume the inherent risks and opportunities of entrepreneurship." This is one of several efforts to void the 2024 Department of Labor rules which imposed more limiting standards on classifying workers as Independent Contractors. The new administration is considering repealing that Rule and either going back to the prior standards adopted under the first Trump administration or perhaps voiding the standards all together and leaving the issue to be determined on a case-by-case basis. This is one of the multiple federal employment issues currently in flux. Regardless of what occurs at the federal level, all states also have their own regulations and standards regarding classifying workers as Independent Contractors. Those are often more stringent than the federal rules. Employers will still have to follow state laws no matter what occurs with federal standards. [For more detailed information on standards and requirements, request the article *Independent Contractors – Standards and Liabilities* by Boardman Clark.]

TRENDS

The Childcare Crisis is Growing and More Employers are Feeling the Impact. More employers are having trouble finding people to fill positions. Some businesses have curtailed hours, limited days open for business, or have even closed due to a lack of staff, and it is getting worse. Affordable childcare is

essential for many people to be able to work. It is **vanishing**. This is having a dramatic impact on the ability of workers to obtain and maintain employment, especially for women. The Federal Department of Health and Human Services has halted Childcare Block Grants. Additional federal funding for childcare programs has been curtailed or reduced under DOGE cost cutting. So, government subsidies which enabled over 220,000 childcare programs to exist and provide lower-cost care for working parents are now gone and many childcare programs are closing. Unsubsidized childcare costs average $11,000 per year. A federal minimum wage job pays a total of $15,080 (before withholding) per year. Even at substantially more than minimum wages, people cannot afford to work and pay for childcare. There are now growing "childcare deserts" where only the affluent, who earn high wages can find childcare, and there are waiting lists for those. The result is a growing negative impact on employers; a downward trend in the ability to find needed employees. A number of states are trying to increase funding to cover some of the federal cuts and alleviate the crisis. Other states are seeming to embrace the federal directives and implement their own budget cuts for childcare programs. Many employers have been slow to wake up to this situation, even while bemoaning the problem of finding people to fill positions. The Society for Human Resource Management (SHRM) and its chapters around the nation are urging mobilization to bring attention and state legislative action to what is now a full-blown crisis for workers and employers.

LITIGATION

Theme of the Month – Criminal Liability

Both business owners and employees pay a price for an employer's wrongdoing. The owners or top managers may end up in prison. Employees lose jobs when a small company folds, or may themselves also be prosecuted, or have to pay fines and penalties for their involvement.

Tax Evasion Sends Restaurant Owner to Prison – Fraud Instruction in Employee Orientation. A restaurant owner paid employees "on-the-book" wages and "off-the-book" wages. On-the-book wages were reported for state and federal tax purposes with a W-2. Off-the-book wages were simply paid with no deductions, no FICA, and no reporting. During Orientation, new employees were informed of this practice and assured they would receive pay for all hours worked. They were told this system gave them the benefit of getting more take-home pay without any pesky deductions. With a staff of over 40 employees, the restaurant also was able to keep a lot more money for itself. The other effect was that honest employees now had a significant amount of unreported income to have to figure out how to

account for at tax time. Honest employees eventually reported the restaurant to the IRS, which prosecuted the owner for tax fraud. This resulted in a nearly two-year prison sentence, plus fines and penalties. *United States v. Lucidonio* (3rd Cir., 2025) Co-conspirators, the employees who went along with the pay plan without reporting it are also still on the hook. Some, especially managers, may also be prosecuted as co-conspirators in the tax fraud. It will be difficult to claim innocence when one receives explicit instructions on tax evasion during the New Employee Orientation. "It seemed like a good deal at the time." Employees who eagerly accept under-the-table wages often later pay a greater price when it is discovered. Even if not prosecuted, they are assessed multi-thousand dollar back taxes, penalties, and astronomical interest – which are not dischargeable in bankruptcy. It can be a years' long penalty for a few extra bucks.

Saddest Case of the Month

Murder of Former Employee. *United States v. Zhang, et al.* (2nd Cir., 2025) Non-competition/No-solicitation Agreements often become contentious but have rarely been enforced to this degree since the Middle Ages. Two owners of a New York City realty development company were convicted of the murder of a key employee who resigned, set up his own competing company, and recruited several of his former co-workers to leave and join him. The owners recruited a hitman to stop this unfair competition and solicitation. The former employee was ambushed as he left a social event. The owners and the assailant were prosecuted under 18 US Code Sec. 1958(a)-Murder for Hire and received life sentences. On appeal, the Circuit Court affirmed the convictions, citing the defendants' disregarding life in favor of greed and profits. In addition to the destruction of the lives of the victim and defendants, this action also resulted in the broader demise of both companies and lost jobs for their employees. [In the Middle Ages there could be capital punishment for revealing Trade Guild secrets. Venice, Italy confined its skilled glassmakers to the isolated island of Morano and sent assassins after any who managed to leave.]

Discrimination

Sex

Disney Will Pay $43 Million to Settle Equal Pay Case. In *Rasmussen, et al. v. The Walt Disney Company* (Los Angeles Superior Court 2025), the court has approved a $43 million settlement to a class of 9,000 female Disney employees who alleged the company engaged in a pattern of paying women less than men for the same jobs. In addition to the payments, Disney agrees to third-party monitoring for

equal pay compliance and to engage in a systematic pay-equity analysis and program for benchmarking jobs.

Disability & Damages

Plaintiff Did Not Want a Two for One Price Deal - Two Awards but No Double Recovery. A construction worker for a demolition company suffered a hip injury. He returned to work with work restrictions, but his foreman got frustrated about accommodating the restrictions, ordered him to resume regular work, then engaged in a profanity-based tirade and fired the worker when he griped to co-workers and refused to do work outside the restrictions. The fired worker filed two complaints. One with the National Labor Relations Board (NLRB); the other for disability discrimination under the ADA and state law. The NLRB ruled that the company violated the worker's rights for **concerted activity** when it fired him for griping to his co-workers about conditions of employment, including the foreman's ignoring work restrictions. It awarded the worker $85,500. Then, a federal court jury awarded $95,500, finding the hip injury was a disability, and the company refused to abide by reasonable accommodations. However, the trial judge then reduced the amount to $10,000 by subtracting the prior NLRB award. The company appealed the verdict. The employee appealed against the amount reduction, claiming he should receive both awards in full. The appellate court upheld the jury verdict against the company and ruled that the reduction was also valid. Both the NLRB and disability awards were compensation for the same discharge and covered the same economic damages. Thus, the plaintiff could not double dip. In a reversal of the standard metaphor, the plaintiff hit one bird with two stones, but still only got one bird. *Moore v. Industrial Demolition, LLC* (D.MA 2025) Though this case is about limitations of damage awards to an employee, it is also a good reminder for employers that one employment decision can generate two or more cases. Sometimes, a discharged employee can sue under several employment laws. In this case, though the damage award was limited, the company still had the double expense of defending two cases.

Religion

Manager Pulled Hijab Off Teenage Worker. A restaurant manager did not think a head covering was proper work attire and kept pressuring a part-time teenage employee to remove her hijab. She explained that it was an important article of her Muslim faith. The manager continued insisting the head covering should be removed and finally grabbed it and pulled it off. The teenager then resigned and filed an EEOC complaint. The company settled the claim for $20,000 in backpay and agreed to employee training on religious discrimination and monitoring. *EEOC v. Chipotle Services* (D. Kansas, 2025) Employers have the right to set appearance

standards. However, these are subject to the legal rights of the employee, cannot be discriminatory, and must allow for reasonable accommodation of disabilities and religious purposes. [For more information, request the article *Dress Codes* by Boardman Clark.]

OTHER RECENT ARTICLES

These additional, recent articles can be found at BoardmanClark.com:

When Government Agents Visit by Jennifer Johnson

FMLA May Limit Enforcement of Absence Policies by Sandra G. Cohen, Brian P. Goodman, Storm B. Larson, and Douglas E. Witte

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