Employment Flash

Skadden

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New Department of Labor Directive Regarding Contractor Compensation Practices

On August 24, 2018, the U.S. Department of Labor (DOL) Office of Federal Contract Compliance Programs (OFCCP) released a new directive outlining standard procedures for reviewing federal contractor compensation practices during a compliance evaluation (Dir. 2018-05). The new directive replaces the Obama-era directive that allowed OFCCP compliance officers broad leeway in analyzing contractor compensation data and instead directs compliance officers to rely on contractors' job and pay groupings if reasonable and verifiable. The stated purpose of the new directive is to support the DOL's efforts to eliminate pay discrimination through proactive compliance by federal contractors. It also is intended to provide more clarity and transparency and, thus, should help contractors prepare for OFCCP evaluations.

Under the Obama-era directive, the OFCCP conducted its own pay analyses groupings, or "PAGs," apart from the contractors' initial submission, and PAGs were formed on a case-by-case basis. Under the new directive, PAGs will be based on contractors' compensation hierarchies and job structures when such information is reasonable and verifiable. The OFCCP has detailed principles that will guide its statistical methodology and modeling and a procedure that increases meaningful communication with contractors throughout the audit. Among other things, the OFCCP will request that a contractor submit compensation data and then will notify the contractor in writing of any preliminary compensation disparities it intends to investigate further. Additionally, the OFCCP will attach to any Pre-Determination Notice (PDN) for preliminary discrimination findings the individual-level data necessary for the contractor to replicate the PAGs and regression results. The PDN provides the contractor with a formal opportunity to offer a nondiscriminatory explanation for the OFCCP's preliminary findings prior to a finding

of a violation. Also, the OFCCP will include representatives from its Branch of Expert Services (professional labor economists or statisticians) in the conciliation process to facilitate resolutions. The new directive applies to all OFCCP reviews scheduled on or after August 24, 2018, and to open reviews to the extent they do not conflict with OFCCP guidance or procedures existing prior to the effective date. The new directive clarifies that it is not intended to affect any pending litigation that stemmed from prior guidance.

Recent NLRB Developments

On August 27, 2018, Mark Gaston Pearce ended his second term on the National Labor Relations Board (NLRB or Board). Pearce was one of the two Democrats on the five-seat Board. President Trump has since renominated Pearce for a third term.

On the same day that Pearce's term expired, he participated in a handful of NLRB decisions. In *The Ruprecht Co. & Unite Here Local* 1, 366 NLRB No. 179 (Aug. 27, 2018), the NLRB found that an employer violated the National Labor Relations Act (NLRA) when it decided to enroll in E-Verify — a web-based system maintained by the U.S. Department of Homeland Security that allows employers to confirm the eligibility of employees to work in the U.S. — without first bargaining about the issue with the union that represented some of its employees. In *Consol. Commc'ns Holdings, Inc. d/b/a Consol. Commc'ns of Texas Co. & Commc'ns Workers of Am., Afl-Cio, Local 6218*, 366 NLRB No. 172 (Aug. 27, 2018), a split NLRB panel, with Pearce siding with the majority, found that an employer violated the NLRA when it gave a written warning to a customer service representative employee, who also was a union area representative, for exercising a "stand and stretch" demonstration during working hours to show support for the ongoing bargaining between the union and her employer. The panel found that the NLRA protected employees' rights to assist labor organizations and participate in concerted activity as part of collective bargaining. The panel further reasoned that the employee's action did not amount to a "slowdown" because the demonstration lasted only one or two minutes and the employees never disconnected from their respective telephone headsets. In *E.I. Du Pont De Nemours & Co. & Ampthill Rayon Workers, Inc., Local 992, Int'l Bhd. of Du Pont Workers*, 366 NLRB No. 178 (Aug. 27, 2018), the same NLRB panel, again with Pearce in the majority, found that a union was entitled to certain disciplinary and safety violation information regarding five supervisors to allow the union to decide if it should arbitrate the dismissal of an employee. The employee had fallen asleep multiple times during a voluntary, second-consecutive eight-hour shift and caused errors in the procedure he was supposed to perform. The majority reasoned that the union had a reasonable basis supported by objective evidence that the discipline and safety information of the supervisors was relevant to determine if the employee was treated the same for safety violations that led to his firing as the supervisors were treated for their own violations.

NLRB Draft Rule Regarding Joint Employment

On September 14, 2018, the NLRB released a draft rule that would limit joint employer status to entities that possess and actually exercise substantial, direct and immediate control over employees' essential terms and conditions of employment in a manner that is not limited and routine. *The Standard for Determining Joint-Employer Status*, 83 Fed. Reg. 46681 (proposed Sept. 14, 2018). This draft rule would overturn a 2015 rule established by the NLRB in *Browning-Ferris*, which found that an entity could be a joint employer if it has even "indirect" control over another company's employees. The draft rule is open for public comment until November 13, 2018.

Growing Trend of Securities Class Actions Based on Sexual Misconduct Allegations

On August 27, 2018, a shareholder filed a purported securities class action lawsuit (the CBS Action) in the Southern District of New York against CBS Corporation (CBS), former CEO Leslie Moonvees and COO Joseph R. Ianniello, arising out of recently reported allegations of sexual misconduct. *Samit v. CBS Corporation*, No. 18-7796 (S.D.N.Y. Aug. 27, 2018). This shareholder action is just one example of what is becoming a trend for investors to file claims directly against a public corporation when allegations of sexual misconduct of that corporation's executives come to light. In the CBS Action, the shareholder alleges that in CBS' public filings with the U.S. Securities and Exchange Commission since at least February 2014, CBS stated that it maintained a Business Conduct Statement that set forth CBS' "standards of ethical conduct that are expected of all directors and employees of the Company" and a "zero tolerance policy for sexual harassment." Based on these filings, the shareholder alleges that CBS made false and misleading statements, failed to disclose the widespread workplace sexual misconduct at CBS and failed to adequately enforce its own policies, which resulted in a stock price reduction of more than 6 percent.

Similar actions have been filed against National Beverage Corp. and Papa John's International, Inc., and certain of their respective executives. On July 17, 2018, a shareholder filed a purported securities class action lawsuit in the Southern District of Florida against National Beverage Corp., CEO Nick A. Caporella and EVP of Finance George R. Bracken alleging, among other claims, that the company made false or misleading statements in its public filings that caused stock prices to fall at least 8 percent after media outlets reported that Caporella had

allegedly inappropriately touched company pilots while traveling on the company's plane. *Luczak v. National Beverage Corp.*, No. 18-61631 (S.D. Fla. July 17, 2018). Similarly, on August 30, 2018, after news sources revealed that the founder and former CEO and Chairman of Papa John's International, Inc., John H. Schantter, as well as other executives, were accused of engaging in a pattern of workplace sexual misconduct, a purported securities class action was filed in the Southern District of New York. *Danker v. Papa John's International, Inc.*, No. 18-7927 (S.D.N.Y. Aug. 30, 2018).

New York State Model Sexual Harassment Prevention Policy, Training and FAQs

The New York State Department of Labor (NYS DOL), in consultation with the New York Division of Human Rights, recently released draft model sexual harassment prevention training materials, a draft model sexual harassment policy, a draft model complaint form and related draft FAQs. The public had the opportunity to submit comments to the draft materials through September 12, 2018. The NYS DOL is expected to issue final models as soon as October 9, 2018. Employers must adopt the model sexual harassment policy or establish a policy that meets or exceeds certain minimum standards and provide annual sexual harassment prevention training by October 9, 2018.

The proposed model sexual harassment training includes a training script that addresses, among other issues, the definition of sexual harassment, sex stereotyping, retaliation, complaint procedures, investigation and corrective action procedures, and sexual harassment case studies. The training materials also state that an employer's training "must be interactive" and include as many of the following features as possible: be web-based, with questions asked of employees; accommodate employee questions; include a live trainer available to answer questions; and require employee feedback. Employers that do not use the model training must implement a training that meets or exceeds certain minimum standards. Specifically, the training must include (1) interactive components; (2) an explanation of sexual harassment; (3) examples of prohibited conduct; (4) information about the federal and state statutory provisions concerning sexual harassment and available remedies; (5) information about employees' rights of redress and available forums for adjudicating complaints; and (6) information addressing the conduct and responsibilities of supervisors. Employers must administer training annually and in the language spoken by their employees. Additionally, employers must ensure that all employees have received sexual harassment prevention training by January 1, 2019. All employees, including part-time, temporary and transient employees, must receive the training. New employees must complete the training within 30 calendar days of their respective start dates.

In addition, the NYS DOL has provided a model sexual harassment policy that includes, among other things, a definition of sexual harassment, examples of sexual harassment, a definition of retaliation, reporting procedures, a description of supervisory responsibilities, complaint and investigation procedures, and a list of legal protections and external remedies. Employer policies must be provided in writing in the language spoken by employees. All employers must also include a complaint form for reporting sexual harassment, a draft of which the NYS DOL has released. Employers that do not use the model policy must implement a written policy that includes: (1) a statement prohibiting sexual harassment; (2) examples of prohibited conduct; (3) information about the federal and state statutory provisions concerning sexual harassment and available remedies, and a statement that there may be applicable local laws; (4) a complaint form; (5) investigation and complaint procedures that ensure due process for all parties; (6) a statement informing employees of their rights of redress and all available forums for adjudicating sexual harassment complaints administratively and judicially; (7) a statement clearly stating that sexual harassment is considered a form of employee misconduct and that sanctions will be enforced against individuals engaging in sexual harassment and against supervisory and managerial personnel who knowingly allow such behavior to continue; and (8) a statement clearly stating that retaliation against individuals who complain of sexual harassment or who testify or assist in any investigation or proceeding involving sexual harassment is unlawful.

NYC Employers Must Engage in Cooperative Dialogue When Accommodating Employees

Beginning on October 15, 2018, New York City employers with four or more employees must engage in a detailed "cooperative dialogue" with any person requesting an accommodation in connection with the person's religion, disability, pregnancy, childbirth or related medical condition, or status as a victim of domestic violence. The new obligation stems from a January amendment to the New York City Human Rights Law (NYCHRL). According to the NYCHRL, "cooperative dialogue" means that the covered employer and the requesting person must engage in a good faith written or oral dialogue concerning the requesting person's accommodation needs; potential accommodations that may address the accommodation needs, including alternatives to a requested accommodation; and the difficulties that such potential accommodations may pose for the covered entity. Unlike the Americans with Disabilities Act's requirement that employers engage in an "interactive process" to accommodate disability-related requests, the new NYCHRL amendment applies beyond disability-related accommodations and obligates covered employers to provide a requesting person with a final written decision identifying any accommodation that

was granted or denied as a result of the "cooperative dialogue." A covered employer's failure to engage in such "cooperative dialogue" constitutes an unlawful discriminatory practice under the NYCHRL.

New York City Enacts Temporary Schedule Change Law

Effective July 18, 2018, New York City's Temporary Schedule Change Law requires employers to accommodate requests for temporary changes to work schedules due to certain "personal events" on up to two occasions each calendar year. This law covers all employees who work at least 80 hours per calendar year in New York City and who have been employed by their respective employers for at least 120 days, regardless of their immigration status. Certain employees covered by collective bargaining agreements or working in government or the motion picture, television and live entertainment industries are excluded from the scope of the statute. "Personal events" for which eligible employees may request a temporary change in schedule include: (i) caring for a child under the age of 18 or a family or household member with a disability, (ii) attending a legal proceeding or hearing for public benefits to which the employee or his or her family member is a party, and (iii) any other reason for which an employee may use leave under New York City's Paid Safe and Sick Leave Law. Among other requirements, employers must post a notice of employees' rights under the Temporary Schedule Change Law where it can be easily seen in each workplace in New York City. The notice must be in English and any other language that is the primary language of at least five percent of the workers in the workplace, if the translation is available on the NYC government webpage on this topic.

Ninth Circuit Decertifies Class of Uber Drivers in Worker Misclassification Suit

On September 25, 2018, the U.S. Court of Appeals for the Ninth Circuit reversed class certification in *O'Connor v. Uber Technologies Inc.*, the lead worker misclassification case in a group of consolidated cases against the ride-share company Uber. The decision comes after years of litigation over Uber's classification of drivers as independent contractors rather than employees. The *O'Connor* court unanimously held that Uber's arbitration agreements with its drivers were enforceable based on the Ninth Circuit's decision in *Mohamed v. Uber Technologies, Inc.*, 848 F.3d 1201, 1206 (9th Cir. 2016) and the U.S. Supreme Court's recent decision in *Epic Systems Corp v. Lewis*, 138 S. Ct. 1612 (2018). In *Mohamed*, the Ninth Circuit held that the relevant provisions of the arbitration agreement in that case directed the threshold question of arbitrability to the arbitrator, and thus the arbitration agreements were not contracts of adhesion nor unconscionable. Also, the *Mohamed* court held that the arbitration agreements provided drivers with a meaningful opportunity to opt out of arbitration. With respect to the *Epic Systems* decision, the *O'Connor* court rejected the argument that the arbitration agreements were unenforceable because they contained class action waivers that allegedly violated the National Labor Relations Act of 1935. In *Epic Systems*, the U.S. Supreme Court held that class action waivers are enforceable and may be included by employers in arbitration agreements. The *O'Connor* court's reversal of class certification means that if the drivers in that case plan to pursue their worker misclassification claims, they will have to do so individually through arbitration.

California Supreme Court Holds That De Minimis Doctrine Does Not Apply to State Wage Claim

The California Supreme Court ruled this past July that the de minimis doctrine does not apply to state wage and hour claims where an employer requires an employee to regularly work "off the clock," even if the employee's off-the-clock work is generally 10 minutes or less per shift and difficult to record. *Troester v. Starbucks Corp.*, 5 Cal.5th 829 (2018). Historically, the de minimis doctrine has provided limited leeway for employers to disregard otherwise compensable work time when such time is insignificant and difficult to record. The California Division of Labor Standards Enforcement (DLSE) — the state agency tasked with issuing guidance on and enforcing various state employment laws, including wage and hour laws — had adopted the FLSA's de minimis rule almost verbatim. The California Supreme Court noted, however, that the DLSE's interpretation was not binding and that the California legislature has not evidenced an intent to incorporate the de minimis rule into the state's wage orders. Importantly, the court left open the question of whether other circumstances where the compensable time is so "minute or irregular" — rather than predictable and routine as was the case here — justifies application of the de minimis doctrine.

California's Fair Employment and Housing Act Expands Immigration Protections

The California Fair Employment and Housing Council proposed amendments to its regulations related to discrimination on the basis of national origin. The new regulations went into effect on July 1, 2018. Among other things, the new regulations expand the definition of national origin, restrict the use of English-only rules, prohibit discrimination based on an applicant or employee's accent and English proficiency (unless, for example, a business necessity exists), and prohibit harassment and retaliation on the basis of national origin. In addition, the new regulations include several notable immigration-related provisions. For example, the regulations clarify that the California Fair Employment and Housing act (FEHA) and its regulations apply to undocumented

applicants and employees to the same extent that they apply to any other applicant or employee, and state that immigration status is irrelevant during the liability phase of any proceeding brought to enforce FEHA. Moreover, the new regulations prohibit discovery or other inquiry into an individual's immigration status unless it is shown "clear and convincing evidence that such inquiry is necessary to comply with federal immigration law." Thus, FEHA prohibits discovery or inquiry into an individual's immigration status that is merely permissible under, but not necessary to comply with, federal immigration law. The new regulations prohibit specified immigration-related retaliation.

Massachusetts Noncompete Reform

As of August 10, 2018, Massachusetts became the latest state to enact legislation regulating non-compete agreements. The Massachusetts Noncompetition Agreement Act (Act) goes into effect on October 1, 2018. The Act requires, among other things, that "garden leave" be paid for the duration of the noncompete, defines "garden leave" as 50 percent of the employee's highest annualized salary over the two years preceding the employee's termination of employment, and permits the provision of "other mutually-agreed upon consideration" in lieu of garden leave, though the Act does not define "other mutually-agreed upon consideration." In addition, the Act provides that continued employment is insufficient consideration to support noncompetes entered into after an employee commences employment. The Act requires that the noncompete be supported by "fair and reasonable consideration," but it does not define the amount or form of consideration sufficient to make a noncompete agreement entered into after the commencement of the employment relationship enforceable. Also, the Act provides that noncompetes are unenforceable with respect to certain workers, including non-exempt employees, student interns, employees 18 years old or younger, and employees who have been laid off or whose employment has been terminated without cause, but the Act does not define "cause." If "cause" is interpreted narrowly, certain former employees may be released from their post-employment noncompete obligations. Employers cannot necessarily avoid the Act's requirements through a choice of law provision specifying the law of another state. The Act states that "[n]o choice of law provision that would have the effect of avoiding the requirements of this [Act] will be enforceable if the employee is, and has been for at least 30 days immediately preceding his or her cessation of employment, a resident of or employed in Massachusetts at the time of his or her termination of employment." Notably, however, the Act does not apply to noncompete agreements entered into in connection with cessation of employment, provided that the employee is given seven days to rescind acceptance of the agreement.

Delaware's New Sexual Harassment Prohibition

On August 29, 2018, Delaware's governor John Carney signed into law an amendment to the Delaware Discrimination in Employment Act (DDEA) that expands the types of workers covered by the DDEA and makes sexual harassment an unlawful employment practice. The new law becomes effective January 1, 2019, and covers employers with at least four employees located in the state at the time of the alleged violation. Covered "employees" include state employees, unpaid interns, applicants, joint employees, apprentices and individuals who work for employment agencies. Like similar laws recently enacted in other states, the new Delaware law includes a mandatory sexual harassment training requirement. This requirement applies to employers with 50 or more employees in the state, and the training must be provided to workers and supervisors every two years. The new law requires employers to distribute an information sheet about sexual harassment that the Delaware Department of Labor is charged with creating. An affirmative defense is available to employers who can prove that they exercised reasonable care to prevent and correct any harassment promptly and that the employee unreasonably failed to take advantage of any preventative or corrective opportunities provided by the employer. The new law places responsibility on employers when employers knew or should have known of the sexual harassment of an employee and failed to take appropriate corrective measures.

New Jersey's New Paid Sick Leave Law

On October 29, 2018, the New Jersey Paid Sick Leave Act (PSLA) will go into effect and will require all New Jersey employers to provide up to 40 hours of paid sick leave per year to covered employees at their normal rate of pay. The PSLA allows employees to accrue one hour of sick leave time per 30 hours worked, with a cap of 40 hours per year. The PSLA applies to any business entity, irrespective of size, that employs employees in New Jersey. In addition, the PSLA defines "employee" broadly as employees working in the state "for compensation," with only a few exceptions, such as public employees who already have sick leave benefits. Also, the PSLA does not have an hours-worked requirement, but new employees who become employed after October 29, 2018, cannot use paid sick leave until the 120th day after employment begins. Moreover, employees can use paid sick leave for more reasons than other New Jersey leave laws, including public health emergencies and attendance at meetings regarding care for the employee's child. Under the PSLA, employers have discretion regarding the increments in which employees may use accrued sick leave. Employers are required to designate any period of 12 consecutive months as a "benefit year" but can then choose to use an "accrual" or "annual" method, each of which are detailed

in the PSLA. Employers can choose whether to offer to pay employees for their unused accrued sick leave in the final month of the benefit year. In addition, employers that have existing paid time off policies may utilize those policies to satisfy the PSLA as long as employees can use the time off as required by the PSLA. Employers must post a notification of employees' rights under the PSLA and provide employees with a written copy of the notice. Furthermore, employers must retain records documenting hours worked by employees and paid sick leave taken for a period of five years and, upon demand, allow the New Jersey Department of Labor to access to those records. Notably, the PSLA contains an anti-retaliation provision that includes a rebuttable presumption that an employer's actions are unlawful if it takes adverse action against an employee within 90 days of the employee engaging in activity protected under the PSLA. Aggrieved employees may pursue civil action against the employer and recover compensatory and liquidated damages.

Illinois Expands Protections for Nursing Mothers in the Workplace

On August 21, 2018, Illinois Gov. Bruce Rauner amended the Nursing Mothers in the Workplace Act (NMWA), 820 ILCS 260, which now requires employers to provide a reasonable, paid break for nursing mothers to express milk as needed during the first year after her child's birth. For purposes of the NMWA, an employer is any entity that has more than five employees, exclusive of the employer's immediate family. The NMWA's amendments expand protections in the workplace for employees who are nursing children. Most significantly, the amendments prohibit a reduction of an employee's compensation for time used expressing milk or nursing a child, thus the breaks must be paid at the employee's full rate of pay. In addition, the amendments remove the requirement that the break time "must" run concurrently with any break time already provided, and replaces the NMWA's prior language with "may," which allows the employee to take breaks for expressing milk outside of legally mandated meal and rest breaks. Also, the amendments change the NMWA's prior language that an employer is not required to provide a break if doing so would unduly disrupt the employer's operations. The amendments require employers to provide a reasonable break for nursing mothers unless doing so would create an undue hardship as defined by the Illinois Human Rights Act, Section 2-102(J). An undue hardship is defined as an action that is prohibitively expensive or disruptive when considered in light of the following factors: (i) nature and cost of the accommodation; (ii) overall financial resources of the facility, number of persons employed, effect on expenses and resources, or impact on the operation of the facility; (iii) overall financial resources of the employer and overall size of the business of the employer; and (iv) the type of operations of the employer. The employer has the burden of proving an undue hardship. The NMWA continues to require employers to make reasonable efforts to provide a room close to the work area, other than a toilet stall, where an employee can express milk in private. The NMWA is effective immediately.

International Spotlight

Gender Pay Gap Reporting in the UK

The requirements of the U.K. Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 (Regulations) were reported in the June 2018 edition of the *Employment Flash*.

The Regulations, which came into effect on April 6, 2017, introduced mandatory gender pay gap reporting by large private and voluntary sector employers as a means to identify the difference between the average pay of men and women in the U.K., with a goal of narrowing that gap. The Regulations required affected employers to publish their first gender pay gap reports by April 4, 2018. On August 2, 2018, the House of Commons' Business, Energy and Industrial Strategy Committee (the Committee), which is comprised of a panel of U.K. members of Parliament, published its analysis of the Regulations and their initial impact. In particular, the Committee reviewed the adequacy and effectiveness of the Regulations and the measures that businesses need to take to reduce and eventually eliminate the gender pay gap. Below is a summary of the Committee's main findings:

- The overall median gender pay gap is 18.4 percent across the U.K. economy as a whole. More dramatic gaps exist in certain industry sectors, including gender pay gaps of over 40 percent in some sectors. Overall, 78 percent of organizations reported gender gaps that favor men.
- Many employers found the Regulations to be unclear and the calculation of gender pay gap statistics to be difficult and inconsistent, primarily because the Regulations do not fully explain how to address different remuneration structures. In addition, some employers were confused about who should be included in the workforce and whether to report at a group or employing-entity level.
- There were substantial inconsistencies in the presentation of reports. Some employers published only the bare figures required by the Regulations and lacked context or explanation. Others included action plans to address gender pay gaps.
- There is no requirement in the Regulations to provide separate figures for full-time and part-time work pay gaps, which would

have facilitated the comparison of women's average part-time hourly pay rates to men's full-time hourly pay rates. The Committee criticized this deficiency, particularly given that the prevalence of women in part-time roles (which tend to be lower paid) is well established as a key cause of the gender pay gap. Relatedly, the Regulations require that bonuses be calculated based on amounts paid per worker, rather than on a full-time equivalent basis. For example, a bonus of £10,000 for two workers, one part-time worker and one full-time worker, would be recorded as producing no pay gap.

- The Regulations lack a clear enforcement mechanism.

The Committee has made a number of recommendations in response to its findings:

- The Regulations should be extended from employers with 250 or more employees to those with 50 or more employees. Only half of the U.K. workforce is covered by the current Regulations.
- Equity partners in limited liability partnerships should be included going forward. The U.K.'s largest legal and professional services firms did not include equity partners, who are their highest earners, in their gender pay reports.
- Clearer enforcement mechanisms should be included in the Regulations, including fines for employers who do not publish their reports on time.
- The Regulations should clarify how the figures should be calculated and presented.
- Some accompanying narrative to the figures should be mandatory, including an action plan describing how an employer is addressing and will address gender pay gaps, as well as objectives and targets. Subsequent reporting should be benchmarked against this action plan and the previous targets.
- Gender pay gap statistics should be published for both full-time and part-time work.
- Bonus calculations should be reported on a pro rata basis, and the figures should be reported with clear guidance about the method of calculation that was employed.
- Company boards should introduce "Key Performance Indicators" for reducing and eliminating pay gaps, and Remuneration/Compensation Committees should explain how their commitment to reducing the pay gap is reflected in their pay decisions.

The U.K. government has not yet responded to the Committee's findings, but it is likely that either this year or next year, further amendments to the Regulations will be proposed to address the initial problems that some employers faced when interpreting and implementing them.

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