

Employment Auditor's Notepad

INDIVIDUAL LIABILITY FOR WAGE AND HOUR VIOLATIONS EVEN AFTER CORPORATE BANKRUPTCY

The Ninth Circuit recently held that individual officers and managers may be held liable for violations of the Federal Fair Labor Standards Act even after corporate bankruptcy. *Boucher v. Shaw*, No. 05-15454 (9th Cir., July 27, 2009). Three employees sued the Castaways Hotel, Casino, and Bowling Center for federal wage and hour violations. The Company went into bankruptcy prior to discharging the employees, but failed to pay the employees all wages earned immediately upon termination. The FLSA defines "employer" as "any person acting directly or indirectly in the interest of an employer in relation to an employee." The court refused to dismiss the plaintiff's claims against the individual managers, holding managers could fall within the FLSA definition depending upon their "control and custody." The Company's pending bankruptcy had no impact on the case because the company was not sued, only the individual managers.

Protect your personal assets and management-level employees by ensuring wage and hour compliance in areas such as:

- Overtime compensation;
- Meal and rest breaks;
- Independent contractor classification;
- Exempt employee classification;
- Vacation pay; and
- Termination pay.

Fleming PC regularly conducts employment compliance audits for companies of all sizes. Is your company in compliance? Contact us...

Video Surveillance in the Workplace

HERNANDEZ V. HILLSIDES: THE CALIFORNIA SUPREME COURT PERMITS REASONABLE VIDEO SURVEILLANCE IN THE WORKPLACE EVEN WITHOUT NOTICE

Defendant Hillside's Children Center, Inc. ("Hillside's") operates a nonprofit residential facility for abused children. Hillside's discovered that after hours, its administrative computers were being used to access internet pornography. Such use conflicted with Hillside's purpose of providing a wholesome environment for abused children. In order to determine who was accessing internet pornography (Hillside's suspected a staff member), without providing notice to its employees, Hillside's placed a hidden video surveillance camera in a semi-private office, directed at a particular computer workstation. The hidden camera was only operated after business hours and after the time the employees who regularly use those computers were scheduled to leave company premises. The hidden camera was never intended to, nor did it ever, capture images of the regular employee-occupants of the office. Nonetheless, when the regular employee-occupants discovered the hidden cameras, they filed suit against Hillside's for invasion of privacy.

The California Supreme Court held that under those circumstances, Hillside's did not violate the privacy rights of its employees. There are two types of privacy violations recognized by California courts: common law violations and Constitutional violations. A common law violation occurs when there is (1) an intentional intrusion into a place, conversation, or matter in which the plaintiff has a reasonable expectation of privacy; and (2) the intrusion occurred in a manner highly offensive to a reasonable person. A Constitutional violation occurs when there is (1) a legally protected privacy interest; (2) a reasonable expectation of privacy; (3) an intrusion so serious in nature, scope, and actual/potential impact that it constitutes an egregious breach of social norms. A defense to a Constitutional violation is when there are one or more competing interests that, on balance, weigh toward permitting the intrusion.

The California Supreme Court held that because (1) Hillside's was reasonably concerned about preventing its staff members who have contact with abused children from viewing pornographic materials on company property, (2) Hillside's took steps to avoid, and in fact avoided, recording activities of its employees during business hours, (3) limited the number of people with access to the hidden camera, and (4) operated the camera only three times over a period of 21 days before removing it, the privacy invasion was reasonable and did not constitute a highly offensive or egregious breach.

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