



The Regulatory Pipeline



**Human Resources Updates for
Health Care Facilities**



ATTORNEYS
AT LAW

Lippes
Mathias
Wexler Friedman LLP



Joint Employment



- *Browning- Ferris Industries, Inc.*
- NLRB Proposed Rule (September 13, 2018)
 - “substantial, direct and immediate control over the essential terms and conditions of employment and has done so in a manner that is not limited and routine”
- DOL Proposed Rule (April 1, 2019)
 - Authority to hire or fire
 - Supervision and control over work schedule or conditions of employment
 - Determines rate and method of payment
 - Maintains employment records





Exemption Requirements



- DOL proposed regulations March 12, 2019
 - Minimum = \$35,308 per year or \$679 per week
 - Certain nondiscretionary bonuses and incentive payments may be included (10% limit)
 - Highly compensated employees = \$147,414
- Current salary test:
 - Minimum = \$23,660 per year or \$455 per week
 - Highly compensated employees = \$100,000



Overtime “Regular Rate”



- DOL proposed regulations March 29, 2019
 - Unused paid leave, bona fide meal periods, reimbursements, benefit plans and certain ancillary benefits (fitness or gym access, wellness programs)
 - Discretionary bonuses
 - Benefit plan contributions



Predictive Scheduling/Call-In Pay



- DOL proposed revised regulations December 12, 2018
- Abandoned!



Recent Cases



- December 14, 2018 - ACA still constitutional, despite Texas ruling
- November 21, 2018 – Pennsylvania finds duty to protect employee info
- March 21 & 22, 2019 – Employee free speech tested in New York
- March 26, 2019 – Home Health 13-hour rule upheld in New York





New Legal Requirements



- Sexual Harassment Policy & Training
- Advanced Home Health Aide Training
- 2019-2020 Budget

Amy Habib Rittling

Partner

716.853.5100 ext. 1276

ahabibrittling@lippes.com

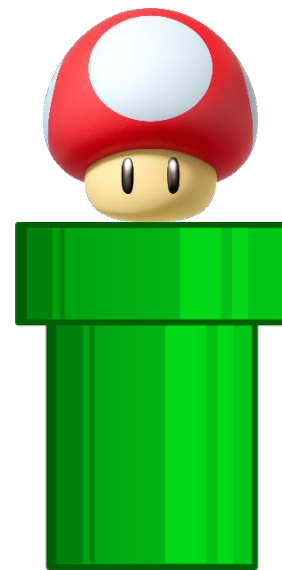
Lauren A. Suttell

Senior Associate

716.853.5100 ext. 1333

lsuttell@lippes.com

Questions?



**Lippes
Mathias**
Wexler Friedman LLP

HIPAA, HIPAA, HIPAA

What's Happening?

- Employees are the weakest link
- HIPAA issues caused by:
 - Snooping
 - Failure to terminate access
 - Playing the grapevine
 - Failure to report others' violations
 - Social media
- Remedial measures
 - Training
 - Suspension
 - Termination
 - Reporting to licensing board & criminal authorities
 - Loss of license

What to Do

- Compliance, IT and HR cooperation
 - Training & education
 - Policies & procedures
 - Investigations
 - Remedial measures
- Investigate, Mitigate, Enforce



Noncompete Checkup

What's Happening

- Where?
 - Employment Agreements
 - Professional Services Agreements
 - Management Agreements
 - Purchase Agreements
- HIPAA interplay
- NY AG scrutiny & proposed legislation
- Recent cases:
 - Long Island Minimally Invasive Surgery, P.C. v. St. John's Episcopal Hospital
 - Delphi Hospitalist Services LLC v. Patrick

What to Do

- Conduct a Noncompete Checkup
- Employees should not interfere with patient choice
- Employees training on responses to patient inquiries about new employment
- Double up noncompete with a confidentiality agreement or policy
- Document specialized training provided to the employee
- Consider including forfeiture of post-employment benefits (severance, etc.) for breaches of noncompetes
- Consider including provision requiring employee to pay attorneys fees incurred in enforcing the noncompete

