

Autumn 2023: Favorite FPLG Posts

01.10.24 | Linda J. Rosenthal, JD



Ah Where were we?

Closing out [Summer of 2023: FPLG Blog Favorites](#) (January 8, 2024), we mentioned that we'd pick up this end-of-year retrospective with the clear reader favorite of all of our 2023 posts.

Ballpark Hotdogs & Scandal

[Some Charity Fraud With Your Hot Dog, Sir?](#) (September 1, 2023); [Charity Fraud & Ballpark Hotdogs: An Update](#) (September 14, 2023)

As August drew to a close, it was clear that the San Diego Padres were not enjoying a season as successful as 2022. But fans continued flocking to the downtown stadium, savoring the full experience including overpriced hot dogs and beer.

Then the nonprofit *Voice of San Diego* broke the news: [Nonprofits Get a Cut of Petco Park Food Proceeds, But One of the Biggest Nonprofits at the Stadium Doesn't Exist](#) (August 28, 2023). VOSD reporters revealed how imposters, stealing the identity of a defunct nonprofit, easily managed to hoodwink stadium and front-office officials. A special program – popular in major-league ballparks around the nation – offers a few local nonprofits the lucrative opportunity to run concession stands in return for 10% of the revenue. The fraudsters obtained the rights to operate a majority of the Petco Park slots.

Over succeeding days, the investigative team published new stories about the broadening scandal and the multiple layers of wrongdoing or negligence. There was little or no investigation of applicants for these coveted opportunities. There was minimal ongoing oversight. The program (and the fraudsters' participation) was not limited to Petco Park but extended as well to the new San Diego State Aztecs stadium and other local event venues. Most workers, described as “volunteers,” were teens paid in cash under the table for less than minimum wage. And, even after all of the publicity,

the scammers brazenly applied for additional permits.

In later updates, Will Huntsberry, *Voice of San Diego* lead reporter on the story, broke more news. See [The Supposed Volunteers Keeping Major San Diego Venues Staffed Are Often Paid Under the Table and Below Minimum Wage](#) (November 8, 2023). “What started as a win-win for professional sports teams and charities has now morphed into a system where some supposed volunteer groups are providing a cheap, off-the-books labor source to third-party concession companies.”

See also: [The FBI and DA’s Office Are Investigating the Stadium Scandals](#) (December 5, 2023). “The District Attorney’s Workplace Justice Unit has confirmed it is looking into the matter ... ” That D.A. team “prosecutes unfair business practices, wage and hour violations, payroll tax evasion, wage theft and labor trafficking cases.” The FBI is interested as well, “according to sources familiar with the investigation” that began “after VOSD exposed ... the phantom nonprofit” in its late August series.

As we pointed out in our September posts, the critical role of the nonprofit *Voice of San Diego* cannot be overstated. The team uncovered the scandal and reported it so thoroughly that, in less than a week’s time, Padres and stadium-management officials vowed to institute changes. Meanwhile, San Diego’s major newspaper, in the process of being offloaded by one billionaire to other billionaire investors, slept through it all.

New Overtime Rules

The October favorites selection is a 2-part series on the proposed federal overtime regulations. This is a change on the horizon that will affect the bottom line of all U.S. employers including nonprofits.

[New Overtime Rules May Affect Nonprofits](#) (October 2, 2023); [More on the Proposed Overtime Regulations](#) (October 5, 2023)

“On the table right now in Washington, D.C.,” we wrote in the October 2nd post, “is an administrative action that could dramatically affect American employers across the board (both for-profit and nonprofit) and their workers. It proposes a significant upward adjustment in the salary cut-off below which workers must be paid overtime.”

This long-overdue adjustment is not a surprise; it’s “been in the works for quite a while.” There will be a substantial increase in the number of workers who will qualify for overtime pay. It’s not “if”; it’s a matter of when and by how much.

According to a high-level federal labor official, “[f]or too long, many low-paid salaried workers have been denied overtime pay, even though they often work long hours and perform much of the same work as their hourly counterparts. This proposed rule would ensure that more workers receive extra pay when they work long hours.”

The 60-day public-comment period opened on September 7, 2023. The National Council of Nonprofits “pleaded” with the nonprofit community to respond to the opportunity to “make their voices heard” because the “questions over the appropriateness of the proposed changes to designated percentiles ... will be the subjects of economic and political debates for many months to come.” And “unless charitable employers and employees weigh in by providing data, examples, and

other information“ the debate on this key issue “will not include an analysis of how nonprofit wages and salaries compare to the sets of data currently under consideration.”

In our October 5th post, we added [much more detail](#) about the nuts-and-bolts of the proposed changes and valuable resource links. NCN, we explained, [has not taken “a specific position](#) pro or con on the regulatory change, particularly since “the effect of the proposed overtime regulations, if implemented, would vary widely among nonprofit organizations.”

Nevertheless, the National Council of Nonprofits emphasized: “The only assured point here is that the impact on the sector will be defined by academics, bureaucrats, and others based on [assumptions and data from other sectors](#) – unless individual nonprofits take the time to review the regulations and offer comments to the Department of Labor prior to the due date of November 7, 2023.”

NCN also offered an “intriguing and important list of “[questions that can help shape an organization’s analysis](#)” for either eventuality; that is, if the draft regulations are implemented as written or if the Department of Labor is ‘open to further revisions.’”

Now that the public-comment period has ended, we wait and watch for any new developments from the federal government.

There have been over 26,000 public comments submitted. As expected, business groups were particularly vocal in their opposition. See [Punching In: Biden’s DOL Overtime Proposal Draws Business Gripes](#) (November 13, 2023) Rebecca Rainey & Bruce Rolfsen, [news.bloomberglaw.com](#).

Conclusion

A few weeks ago, in mid-December 2023, the Department of Labor announced that it expects to [roll out the final regulations by April 2024](#).

That means they are still carefully mulling over the options.

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