

Wage and Hour Law: Real Problems / Real Solutions

Sheila Gladstone
Employers' Lawyer
(512) 322-5863

sgladstone@lglawfirm.com

Fair Labor Standards Act

- Minimum Wage for Hours *Actually Worked*
- Overtime Pay
- Record Keeping
- Child Labor Limits
- Suits can be DOL or private
 - Class actions common
 - Liquidated damages
 - Willfulness penalties



White Collar Exemptions From Minimum Wage and Overtime

- Administrative
- Executive
- Professional
- Look at “Primary Duties” – not titles
- Must be paid on salaried basis
- Total compensation > \$35,568/year



Disciplinary Docking and Salary Basis

- ▶ An manager at the City really messes up – he submits an embarrassing report to the Council full of errors.
- ▶ You could fire him, but you would rather suspend for a week. The following week is 4-days because of holiday, so you suspend for that week plus the next Monday. Any problems?
- ▶ What if he downloaded outside software in violation of your policy?
- ▶ What if the City had a 3-day furlough?

Duties test challenges



- ▶ “Working foreman” executive exemption
- ▶ Law enforcement 20% rule, regardless of rank
- ▶ Administrative exemption and HR
 - Manager versus clerk
- ▶ Professional Exemption
 - Accountants vs. Bookkeepers
 - Engineers vs. Engineer Techs
 - Architects vs. CAD operators

Calculating Overtime for Non-exempt Employees

- Time and a half
- 40+ in 7 days (civilian)
- Define work period in writing
- Can make up time in same 7 day work period, but not pay period

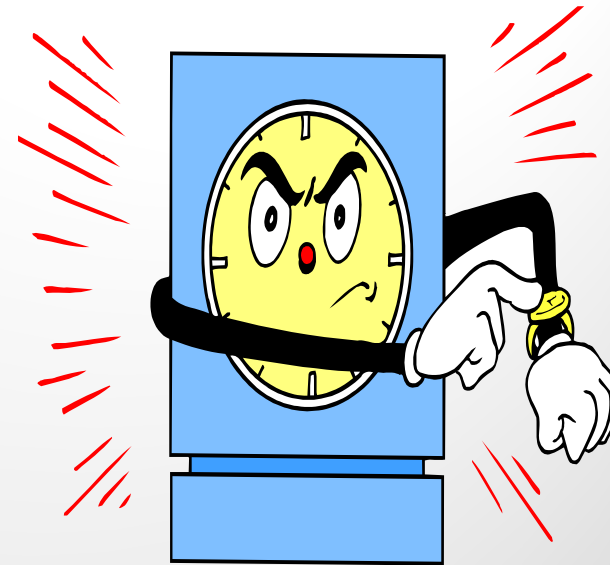
“7(k)” exemption to 7-day workweek

- ▶ Up to 28-day work period for public employees engaged in law enforcement or firefighting duties before OT due
- ▶ Ratio:
 - Fire -212/28
 - Law Enforcement -171/28



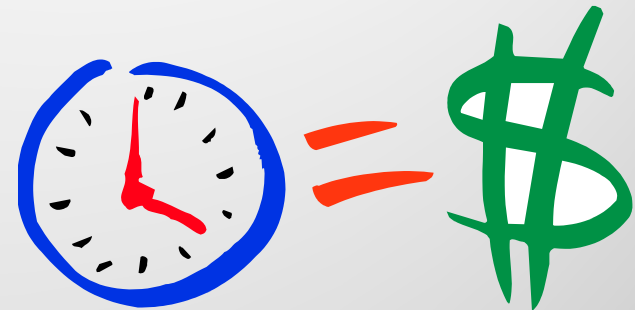
Recording Work Time

- Law requires accurate time records
- Consider remote work tracking challenges
 - Reasonable diligence
- DOL audits looking at log-in and email times
- Watch out for dedicated employees



Compensatory Time

- Public sector only
- Time and one-half
- 240/480-hour accrual limit
- Unconditional “cash out” at term.
- Freedom to use, but not to save



Secret Work at Home

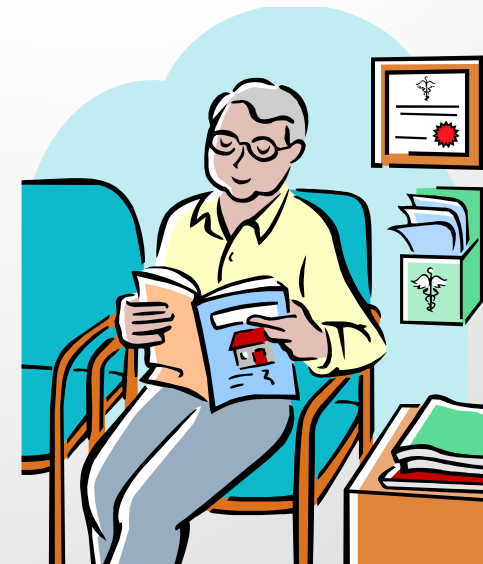
- ▶ A clerk receives an assignment at 8 a.m. to complete a stack of forms by the end of the day. She is distracted all day with the details of her upcoming wedding, and, at 4:45, realizes there is no way she can complete the work, and does not want to get in trouble.
- ▶ She sneaks the forms home, and gets the completed stack to her boss by 8 the next morning. She then ‘fesses up about what happened, and laughs it off. Now that the boss knows about the night work, must it be counted toward overtime?
- ▶ What if the assignment came in at 4:00 p.m.?

“Suffer or Permit to Work”

- Knew or should have known that employee was working
 - *Not* just working overtime
 - Responsible for unlikely work output:
 - Watch out for unrealistic assignments

Waiting and On-Call Time

- Voluntarily showing up early
- On time but no work
- Told to come early or stay late
- Mid-day waiting
 - Completely relieved?
 - Free to leave site?
 - Long enough time?
- On call – usually not compensable until called



Staying Sober

- ▶ Emergency on call duty rotates weekly among your ten drivers. Although they don't get called very often, they can't drink or go out of town while they are available for call. There's quite a bit of grumbling going on about not getting paid for this time. How should you handle?

Come Back, Come Back!

- ▶ An utility worker ends his shift and drives the two hours to go home. Upon arrival, he gets a call that the storm has created an emergency and he needs to come back. Is any of the drive time compensable?
- ▶ Another employee works a double shift, and goes home for dinner in between shifts. Any compensable drive time?

Travel Time – same day




- Ordinary Home-to-Work
- Job-Site to Job-Site
- Emergency Call-Back
- One-Day Special Assignments (can deduct normal commute time)

Travel Time - Overnight

- Compensable when during normal working hours, even on non-working days
- Outside working hours - if any required "work" performed:
 - Driving
 - Assisting
 - Paperwork
 - Studying
- Employee doesn't want to fly?
 - No time or expenses for extra time



The Good Samaritan

- ▶ The City sponsors a yearly charitable event and many employees volunteer to help at it.
 - ▶ In fact, your own payroll clerk is volunteering her own time to cut the checks for the vendors and contractors being used to staff the event.
 - ▶ Another payroll clerk will be handing out water bottles during the event on Sunday.
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Volunteers

- No Pressure
- Not Otherwise Employed To Do Same Type of Services
- Civic/Charitable Purpose
- May not “waive” or volunteer to work overtime

Thank you and good luck!!

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