

# WAGE & HOUR UPDATE

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SUMMIT LAW GROUP

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ENERGY PASSION COMMITMENT SHIRTSLEEVES

“Twilight zone of uncertainty”

“Anachronistic, even irrational”

“Confusing, complex, outdated”

“A law only Bruce Schroeder could love”

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# Minimum Wage Update

- FLSA
  - Senate and House have passed bills increasing to \$5.85 within 60 days of enactment, \$6.55 within one year and \$7.25 within another year
- Washington
  - \$7.93 in 2007 with CPI escalator thereafter

# Volunteer Problem Areas

- Mixing volunteer status and employee status is risky
- How much volunteer compensation is allowed as a “nominal fee”

# White Collar Exemption Overview

- Is employee paid on a salaried basis?
- Does employee have sufficient duties to qualify as an executive, administrative employee or professional?

# Summary of FLSA New Regulations

- Eliminates “short” and “long” tests
- Minimum salary increased to \$455 per week
- Executive duty test adds focus on authority to hire or fire or that suggestions on hiring, firing, advancement, promotion given particular weight
- Streamlined test for those paid more than \$100,000 per year

# Summary of FLSA New Regulations

*(continued)*

- Final regs dropped change to “position of responsibility” for administrative exemption
- Final regs toughen exempt status for “first responders”
- Professional exemption allows experience to substitute for degree in learned professions exemption
- Disciplinary suspensions allowed in full day increments not full week
- Relaxed window of correction

# White Collar Exemption Developments

- Handling part-time exempt personnel
  - Prorating salary
  - Extra compensation for working in excess of normal schedule
- Insurance adjusters may be administrative exempt
- First responder regulations
- Computer professional exemption

# Washington Minimum Wage Act Developments

- Interstate truck driver exemption
  - Includes hours working in-state as well as out-of-state
- Outside sales exemption

# Regular Rate of Pay Problems

- Failure to include add-ons to base pay (*e.g.*, longevity, education incentives)
  - Only required if employees work more than FLSA threshold
  - Deceptive contract language
- Failure to consider performance incentives
- Treatment of sick leave and vacation cashouts

# “Hours Worked” Problems

- Donning and doffing clothing
- Travel time
- Time in employer-mandated counseling

# Time Spent Changing Clothes

- Generally considered non-work time
- If clothing is integral to work performed, then time is compensable
- Cutting edge issues
  - Donning and doffing of police uniforms
  - What is “de minimis” time
  - Can gear be donned at home

# Travel Time Maze

- Commute time not hours of work
  - Available for readjusted work station
  - “Continuous work day” rule implications
- Travel during work hours
  - Between job sites: compensable
  - From remote job site to base: compensable
  - Out of town travel: everything compensable except travel from home to airport, bus depot or train station
- Travel outside regular working hours
  - If employee is driving: compensable
  - If passenger in auto, bus, plane or train: noncompensable unless doing work
- Travel on non-work day:
  - If during regular work hours: compensable
  - If outside regular work hours: noncompensable unless employee is driving

# Commute Time Issues

- Standard commute is non-compensable
- When can travel direct to different work site be treated as commute time?
- Cutting edge issue: employees performing “integral and indispensable” activities at home before commute (*e.g.*, checking email?)

# Medical Treatment as Compensable Time

- If employee treated for on-the-job injury during normal work day, time is compensable
- Cutting edge: if employee is receiving medical treatment directed by employer as a condition of employment, may be compensable

# Work Period Problems

- For most employee, work week composed of 7 consecutive 24 hour periods
- Failure to designate 7(k) period
- Choosing wrong 7(k) period
- Status of dual-function firefighter/paramedics
- 1040 plans

# Choosing the Appropriate 7(k) Period: Police 4 12's

<u>m</u>	<u>t</u>	<u>w</u>	<u>th</u>	<u>fr</u>	<u>sa</u>	<u>su</u>
12	12	12	12	X	X	X
X	12	12	12	12	X	X
X	X	12	12	12	12	X
X	X	X	12	12	12	12
X	X	X	X	12	12	12
12	X	X	X	X	12	12
12	12	X	X	X	X	12
12	12	12	X	X	X	X

# Choosing the Appropriate 7(k) Period: Traditional Fire 24-Hour Schedule

<u>m</u>	<u>t</u>	<u>w</u>	<u>th</u>	<u>fr</u>	<u>sa</u>	<u>su</u>
24	X	X	24	X	X	24
X	X	24	X	X	24	X
X	24	X	X	24	X	X
24	X	X	24	X	X	24
X	X	24	X	X	24	X
X	24	X	X	24	X	X
24	X	X	24	X	X	24
X	X	24	X	X	24	X

# Meal and Break Period

- Default rules
  - 10 minutes per 4 hours of work
  - 30 minute unpaid meal period
  - Intermittent break option
- Public sector optional flexibility

# When Must Overtime Be Paid?

- Unnecessary delay in payment may violate FLSA
- Washington State late payment issues
  - L & I establishes maximum pay period is monthly
  - 7 day payroll lag provided
  - Significant concern for pay periods shorter than monthly and how payroll lag applies
  - Thurston County and City of Kent cases
  - New L & I regs