



The Primerus Labor & Employment Practice Group Presents:

**Wage & Hour Litigation  
Are You Ready For The Increase?**

THE WEBINAR WILL BEGIN SHORTLY

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# **FAIR LABOR STANDARDS ACT**

## **The Nature of the Beast**

**The Private Cause of Action**



# **FLSA – THE NATURE OF THE BEAST**

**Why should you be concerned about  
FLSA claims?**



# FLSA – THE NATURE OF THE BEAST

- THE INCREASE IN CLAIMS
  - By rough estimate of court filings, we have seen a 100% increase in private causes of actions filed between 2000 and 2010.
- THE PERCENTAGE CONTINUES TO INCREASE YEARLY



# FLSA - THE NATURE OF THE BEAST

- WHY?
  - Absent strong time recording and reporting policies and practices, employers face a very difficult time proving an employee did not work overtime.
  - FLSA claims are easier to win and more lucrative for employee attorneys.



# FLSA - THE NATURE OF THE BEAST

- WHY?
  - Relief is a Simple Mathematical Calculation of Damages
    - Maximum Liability
      - 156 workweeks (3 yrs.) max. liability period
      - x unpaid time in excess of 40 hrs/workweek
      - x 1.5 overtime rate
      - x 2 (liquidated damages)
      - + attorneys fees



# FLSA - THE NATURE OF THE BEAST

- WHY?
  - The AUTOMATIC award of an attorneys' fee and expenses to employee's counsel if ANY recovery is achieved
    - In most cases, the attorneys' fee award exceeds the overtime liability
    - FLSA claims are replacing discrimination claims



# FLSA – THE PARTIES

- Private FLSA actions can be brought by
  - A current employee
  - Any former employee employed who has worked within the 3 year period immediately prior to the date the suit was brought



# FLSA – THE PARTIES

- “Any Employer:
  - Most commonly, FLSA claims are private claims asserted by a former employee against the direct employer.



# FLSA – THE PARTIES

- “Employer”
  - Any entity or person who sets or controls the compensation received by employees
    - Parent company
    - Subsidiary
    - Affiliated company
    - Management employee



# FLSA - THE COMMON CLAIMS

- We are seeing several payroll practices under attack. The two most prevalent are:
  - Automatic meal period deductions
  - On-Call policies



# **FLSA - THE MEAL BREAK DEDUCTION**

- This remainder of this presentation will focus on the

## **THE AUTOMATIC MEAL PERIOD DEDUCTION**



# FLSA – THE MEAL BREAK DEDUCTION

- The legal obligation to pay overtime compensation is based on “time actually worked” in excess of 40 in a workweek (not a payroll period)
- “Time actually worked” is the time an employee expends efforts for the benefit of the employer.
  - “Time actually worked” **is not** scheduled work hours or hours recorded on a time clock.



# FLSA – THE MEAL BREAK DEDUCTION

- Many employers automatically deduct 30 minutes from the calculation of “time actually worked” to account for required meal breaks.



# FLSA – THE MEAL BREAK DEDUCTION

- This practice creates overtime issues in situations in which an employee:
  - works 8 hour shifts more than 5 days a week
  - works extended or additional shifts
- Having to add 30 minutes of time for each meal period deducted can easily create “time actually worked” well in excess of 40 hours.



# FLSA – THE MEAL BREAK DEDUCTION

- For a work break to be properly excluded from “time actually worked” calculations the meal period must provide an employee with an UNINTERRUPTED 25 to 30 minutes with full relief from job duties.
- Two separate 15 minute or 20 minute break won’t do it. These are “rest periods” and must be counted as “time actually worked.”



# FLSA – THE MEAL BREAK DEDUCTION

- “The essential consideration in determining whether a meal period is a bona fide meal period or a compensable rest period is whether the employees are in fact **RELIEVED FROM WORK** for the purpose of eating a regularly scheduled meal.”

*Kohlheim v. Glynn County, Ga.*, 915 F.2d 1473 (11<sup>th</sup> Cir. 1990) (emphasis added).



# FLSA – THE MEAL BREAK DEDUCTION

- “The employee is **NOT RELIEVED** if he is required to perform **ANY DUTIES**, whether active or inactive, while eating.”

*Kohlheim v. Glynn County, Ga.*, 915 F.2d 1473 (11<sup>th</sup> Cir. 1990) (emphasis added).



# FLSA – THE MEAL BREAK DEDUCTION

- “Any duties” is not as stringent as it sounds:
  - A 30 minute break is still “bona fide” even if:
    - An employee does not have to actually eat during a 30 minute “meal” break
    - An employee can be required to stay on the premises
    - An employee can be subject to call within a specified time period or distance



# FLSA – THE MEAL BREAK DEDUCTION

- Generally speaking, a break is not “bona fide” if:
  - The employee must remain at his or her workstation to monitor production equipment, computers or communication equipment.
  - The meal break is frequently interrupted for work-related matters, including inquiries by supervisors or co-workers.



# FLSA – THE MEAL BREAK DEDUCTION

- It is important to remember that the FLSA does not require an employer to pay for an interrupted meal break.
- The FLSA only requires an employer to count a missed or interrupted meal period as “time actually worked.”
- Overtime obligations kick in only when missed or interrupted meal breaks result in time actually worked in excess of 40 hours in a workweek.



# **FLSA – THE MEAL BREAK DEDUCTION**

**So, if you have an automatic meal period deduction  
how can you prevent FLSA actions from being filed?**

**YOU CANNOT**



# **FLSA – THE MEAL BREAK DEDUCTION**

**You can implement “best practices” to assist in establishing defenses to FLSA overtime claims before a claim is filed.**



# **BEST PRACTICES**

## **FLSA – THE MEAL BREAK DEDUCTION**



# FLSA – THE MEAL BREAK DEDUCTION

- Adopt a FLSA-compliant meal period policy:
  - “The meal period will be excluded from overtime calculations only when the employee is completely relieved of job duties. If an employee is required to remain at his or her workstation or who is required to sporadically perform job duties during the 30-minute meal period, the time will be included in overtime calculations.”

# FLSA – THE MEAL BREAK DEDUCTION

- To the extent department operations and customer service allow, require supervisors to pre-schedule meal periods for each employee / shift at the start of the work week or before shift start each day.

# FLSA – THE MEAL BREAK DEDUCTION

- If space allows, create a break area with sufficient space for a number of employees to enjoy their break and eat a meal.
  - Refrigerator
  - Microwave
  - Sink
  - Coffee / soft drinks



# FLSA – THE MEAL BREAK DEDUCTION

- Prohibit employees from **remaining** at their workstations during 30 minute break periods.



# FLSA – THE MEAL BREAK DEDUCTION

- If you are going to apply an automatic meal break deduction, the **ABSOLUTE** “best practice” is to ...
  - **adopt a policy requiring employee’s to report missed or interrupted meal periods immediately ON A WRITTEN FORM:**
    - “Employees are required to complete and sign a Time Exception form on the day the employee is unable to take a full, uninterrupted 30-minute meal period because of job duties. On each payday the employee must review a payroll detail and either certify their pay is correct or request corrections be made.”



# FLSA – THE MEAL BREAK DEDUCTION

- Train your employees:
  - Train **EACH** new non-exempt employee during orientation
  - Train all non-exempt employees **EACH** year
  - Have employees sign a training acknowledgement form **EACH** year



# **FLSA – THE MEAL BREAK DEDUCTION**

- **AUTOMATICALLY** override meal period deductions for employees unable to take full 30-minute, uninterrupted meal periods away from their workstations when supervisors are aware that an employee did not take uninterrupted 30-minute meal period.



# **FLSA – THE MEAL BREAK DEDUCTION**

- **DO NOT refuse to correct a missed or interrupted meal period reported by an employee.**
- **Suspected falsification of a missed or interrupted meal period is a disciplinary matter, not a payroll matter.**



# **FLSA – THE MEAL BREAK DEDUCTION**

**Since you can't prevent a claim,  
at least prepare for a claim.**



# **HOW CLAIMS ARISE**



# DEPARTMENT OF LABOR

## WAGE AND HOUR DIVISION (WHD)

- The DOL Wage and Hour Division (WHD) is responsible for enforcing federal labor laws on topics, including the minimum wage, overtime pay, recordkeeping, child labor and special employment, family and medical leave, migrant workers, lie detector tests, worker protections in certain temporary worker programs, and the prevailing wages for government service and construction contracts.

\* U. S. Department of Labor Employment Standards Administration  
PowerPoint Prepared by  
the Wage and Hour Division



# FAIR LABOR STANDARDS ACT

## MAJOR PROVISIONS

- Coverage
- Minimum Wage
- Overtime Pay
- Youth Employment
- Recordkeeping

\* U. S. Department of Labor Employment Standards Administration  
PowerPoint Prepared by the Wage and Hour Division



# FAIR LABOR STANDARDS ACT

Two types of coverage

- Enterprise coverage: If an enterprise is covered, all employees of the enterprise are entitled to FLSA protections.
  - A covered enterprise is an employer with at least two employees and at least \$500,000 a year in business
- Individual coverage: Even if the enterprise is not covered, individual employees may be covered and entitled to FLSA protections
  - Not covered: employees of small construction companies, employees of independently owned retail and service businesses

\* U. S. Department of Labor Employment Standards Administration  
PowerPoint Prepared by the Wage and Hour Division



# ERRORS TO AVOID

- Assuming that all employees paid a salary are not due overtime
- Improperly applying an exemption
- Failing to pay for all hours an employee is “suffered or permitted” to work
- Limiting the number of hours employees are allowed to record
- Failing to include all pay required to be included in calculating the regular rate for overtime



\* U. S. Department of Labor Employment Standards Administration  
PowerPoint Prepared by the Wage and Hour Division

# ERRORS TO AVOID

- Failing to add all hours worked in separate establishments for the same employer when calculating overtime due
- Making improper deductions from wages that cut into the required minimum wage or overtime. Examples: shortages, drive-offs, damage, tools, and uniforms
- Treating an employee as an independent contractor
- Confusing Federal law and State law



\* U. S. Department of Labor Employment Standards Administration PowerPoint  
Prepared by the Wage and Hour Division

# FLSA - ENFORCEMENT

- FLSA enforcement is carried out by Wage and Hour staff throughout the U.S
- Where violations are found, Wage and Hour advises employers of the steps needed to correct violations, secures agreement to comply in the future and supervises voluntary payment of back wages as applicable
- A 2-year statute of limitations generally applies to the recovery of back pay. In the case of a willful violation, a 3-year statute of limitations may apply

\* U. S. Department of Labor Employment Standards Administration PowerPoint  
Prepared by the Wage and Hour Division



# FLSA - ENFORCEMENT

In the event there is not a voluntary agreement to comply and/or pay back wages, the Wage and Hour Division may:

- Bring suit to obtain an injunction to restrain the employer from violating the FLSA, including the withholding of proper minimum wage and overtime
- Bring suit for back wages and an equal amount as liquidated damages

\* U. S. Department of Labor Employment Standards Administration PowerPoint  
Prepared by the Wage and Hour Division



# FLSA – EMPLOYEE PRIVATE RIGHTS

- An employee may file a private suit for back pay and an equal amount as liquidated damages, plus attorney's fees and court costs

\* U. S. Department of Labor Employment Standards Administration  
PowerPoint Prepared by the Wage and Hour Division



# FEDERAL LAW VS. STATE LAWS

- Some state laws provide greater protection. Employers must comply with both.



# **WORKERS ON CALL**

Engaged to be waiting?  
Or, waiting to be engaged?



# WAITING TIME

- **Waiting Time:** Whether waiting time is hours worked under the Act depends upon the particular circumstances. Generally, the facts may show that the employee was engaged to wait (which is work time) or that the employee was waiting to be engaged (which is not work time).
- Examples : a secretary who reads a book while waiting for dictation or a fireman who plays checkers while waiting for an alarm is working during such periods of inactivity. These employees have been "engaged to wait."



\* U.S. Department of Labor Wage and Hour Division Fact Sheet #22

# WAITING TIME

Counted as hours worked when

- Employee is unable to use the time effectively for his or her own purposes; and
- Time is controlled by the employer

Not counted as hours worked when

- Employee is completely relieved from duty; and
- Time is long enough to enable the employee to use it effectively for his or her own purposes

\* U. S. Department of Labor Employment Standards Administration  
PowerPoint Prepared by the Wage and Hour Division



# ON-CALL TIME

- **On-Call Time:** An employee who is required to remain on call on the employer's premises is working while "on call." An employee who is required to remain on call at home, or who is allowed to leave a message where he/she can be reached, is not working (in most cases) while on call. Additional constraints on the employee's freedom could require this time to be compensated.

\* U.S. Department of Labor Wage and Hour Division Fact Sheet #22



# ON-CALL TIME

On-call time is hours worked when

- Employee has to stay on the employer's premises
- Employee has to stay so close to the employer's premises that the employee cannot use that time effectively for his or her own purposes

On-call time is not hours worked when

- Employee is required to carry a pager
- Employee is required to leave word at home or with the employer where he or she can be reached

\* U. S. Department of Labor Employment Standards Administration  
PowerPoint Prepared by the Wage and Hour Division



# NEW JERSEY STATE LAWS

- Section 12:56-5.6 of the New Jersey Administrative Code, regarding on-call time, provides:
  - (a) When employees are not required to remain on the employer's premises and are free to engage in their own pursuits, subject only to the understanding that they leave word at their home or with the employer where they may be reached, the hours shall not be considered hours worked. When an employee does go out on an on-call assignment, only the time actually spent in making the call shall be counted as hours worked.
  - (b) If calls are so frequent or the "on-call" conditions so restrictive that the employees are not really free to use the intervening periods effectively for their own benefit, they may be considered as "engaged to wait" rather than "waiting to be engaged". In that event, the waiting time shall be counted as hours worked.



# NEW JERSEY STATE LAWS

- N.J.A.C. 12:56-5.7 provides

"On-call" employees may be required by their employer to remain at their homes to receive telephone calls from customers when the company office is closed.

- If "on-call" employees have long periods of uninterrupted leisure during which they can engage in the normal activities of living, any reasonable agreement of the parties for determining the number of hours worked shall be accepted.
- The agreement shall take into account not only the actual time spent in answering the calls but also some allowance for the restriction on the employee's freedom to engage in personal activities resulting from the duty of answering the telephone.



# Engaged to Wait vs. Waiting to be Engaged

*Karanjawala v. Associated Humane Societies, Inc.*,  
2010 WL 4025911 (N.J. Super. 2010).

## FOUR POINT TEST:

- (1) whether an employee may carry a beeper or leave home;
- (2) the frequency of calls and the nature of the employer's demand;
- (3) the employee's ability to maintain a flexible on-call schedule and switch on-call shifts; and
- (4) whether the employee actually engaged in personal activities during on-call time.



# Engaged to Wait vs. Waiting to be Engaged

*Karanjawala v. Associated Humane Societies, Inc.*,  
2010 WL 4025911 (N.J. Super. 2010).

- Court held that Plaintiff, who was employed by zoo and also lived there, was required to remain on-site except for infrequent short trips to run errands, Plaintiff was “engaged to be waiting”, and so entitled to overtime pay.
- However, during the third evening shift, and after moving from the facility, where Plaintiff had long periods of uninterrupted leisure, they were not deemed to be “engaged to be waiting” and thus not entitled to overtime pay.



# **WAGE & HOUR'S RECORD CRITICIZED**

- On March 25, 2009, U.S. Secretary of Labor responded to a scathing GAO investigation of her agency by announcing a stepped up enforcement program in industries employing low wage workers:
  - Construction
  - Janitorial Work
  - Hotel/Motel Services
  - Food Services
  - Home Health Care



# ENHANCED ENFORCEMENT TOOLS

- Hired 250 new investigators – increased work force by 1/3
- We Have an App for That – Smart Phone App to allow Employees to track hours worked (English and Spanish Versions)
- Downloadable and Printable Time Sheets in English and Spanish for those without Smart Phones
- “We Can Help” – National PSA Campaign

[Jimmy Smits PSA](#)



# Tipped Employees

- “A sum presented by a customer as a gift or gratuity in recognition of some service performed for him.” 29 C.F.R. § 531.52
- A tipped employee is an employee who customarily and regularly receive at least \$30 per month in tips
- Waiters, busboys, waitresses, bellhops, bartenders definitely qualify. Maitre’ D’s, and hosts may qualify depending upon level of customer interaction.
- Dishwashers, cooks and chefs do not qualify



# Tipped Employees

- Minimum Wage

Federal Minimum Wage: \$7.25

Current Ohio: \$7.70 per hour

- Tipped Employees paid at a “sub-minimum wage



# Sub-Minimum Wage for Tipped Employees

- Tipped Employees
  - Federal – \$2.13 minimum “cash wages” with tip credit of \$5.12/hour
  - \$3.85 “sub-minimum wage” or “tip credit” of \$3.85 in Ohio



# Tipped Employees

- Overtime Calculations:  
 $1.5 \times \text{minimum wage} - \text{tip credit} = \text{OT Rate}$

Federal

$$\$7.25 \times 1.5 = \$10.88 - \$5.12 = \mathbf{\$5.76}$$

Ohio

$$\$7.70 \times 1.5 = \$11.55 - \$3.85 = \mathbf{\$7.70}$$





# 2012 MINIMUM WAGE

OHIO DEPARTMENT OF COMMERCE  
DIVISION OF INDUSTRIAL COMPLIANCE & LABORJOHN R. KASICH  
GovernorDAVID GOODMAN  
Director[www.com.ohio.gov](http://www.com.ohio.gov)

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## NON-TIPPED EMPLOYEES

### A Minimum Wage of

**\$7.70** per hour

"Non-Tipped Employees" includes any employee who does not engage in an occupation in which he/she customarily and regularly receives more than thirty dollars (\$30.00) per month in tips from patrons or others.

"Employers" who gross under \$283,000.00 shall pay their employees no less than the current Federal Minimum wage rate.

"Employees" under the age of 16 shall be paid no less than the current federal minimum wage rate.

"Current Federal Minimum Wage" is \$7.25 per hour.

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## TIPPED EMPLOYEES

### A Minimum Wage of

**\$3.85** per hour **PLUS TIPS**

"Tipped Employees" includes any employee who engages in an occupation in which he/she customarily and regularly receives more than thirty dollars (\$30.00) per month in tips from patrons or others. The tips are proven if indicated by the employee's declaration for the purposes of the federal insurance contribution act. Including when tips are added to the employee's wage, his/her hourly pay cannot be less than the regular minimum wage of \$7.70 prescribed by law.

Below is a partial summary of the requirements and exemptions for minimum and overtime wages. Persons should refer to Ohio Revised Code Chapter 4111 and the federal Fair Labor Standards Act of 1938, as amended, for specific requirements applicable to them. For further information about minimum wage issues, please contact: The Ohio Department of Commerce, Division of Industrial Compliance & Labor, 6606 Tussing Road, Reynoldsburg, Ohio 43068. Phone: (614) 644-2239. TTY/TDD: 1-800-750-0750.

#### OVERTIME

1. An employer shall pay an employee for overtime at a wage rate of one and one-half times the employee's wage rate for hours in excess of forty hours in one work week, except for employers grossing less than \$150,000 per year.
2. Hospitals and Nursing Homes are permitted time and one-half in excess of eighty hours in a two week period and also in excess of eight hours a day.

#### PERMANENT RECORDS TO BE KEPT BY THE EMPLOYER

1. Each employer shall keep permanent records for at least three years, available for copying and inspection by the Director of the Ohio Department of Commerce, showing the following information concerning each employee:
  - A. Name
  - B. Address
  - C. Occupation
  - D. Rate of Pay
  - E. Amount paid each pay period
  - F. Hours worked each day and each work week
2. The records may be opened for inspection or copying at any reasonable time and no employer shall hinder or delay the Director of the Ohio Department of Commerce in the performance of these duties.

#### HANDICAPPED RATE

To prevent the curtailment of opportunities for employment and avoid undue hardship to individuals whose earning capacity is affected or impaired by physical or mental deficiencies or injuries, a sub-minimum wage may be paid, as provided in the rules and regulations set forth by the Director of the Ohio Department of Commerce.

#### INDIVIDUALS EXEMPT FROM MINIMUM WAGE

1. Any individual employed by the United States;
2. Any individual employed as a baby-sitter in the employer's home, or a live-in companion to a sick, convalescing, or elderly person whose principal duties do not include housekeeping;
3. Any individual employed as an outside salesman compensated by commissions or in a bona fide executive, administrative, or professional capacity, or computer professionals;
4. Any individual who volunteers to perform services for a public agency which is a State, a political subdivision of a State, or an interstate government agency, if
  - (i) the individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered; and
  - (ii) such services are not the same type of services which the individual is employed to perform for such public agency;
5. Any individual who works or provides personal services of a charitable nature in a hospital or health institution for which compensation is not sought or contemplated;
6. Any individual in the employ of a camp or recreational area for children under eighteen years of age and owned and operated by a non-profit organization or group of organizations;
7. Employees of a solely family owned and operated business who are family members of an owner.

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**POST IN A CONSPICUOUS PLACE**

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# Tipped Employees

- Service Charges added by Employer do not count as tips (i.e., 17% for parties of 8 or more)
- Tips received must get employee to minimum wage or employer pays balance
- Employer must provide written notice to tipped employee that employer is taking advantage of tip credit (applies on individual basis)



# Tipped Employees

To be effective under recent changes to the regulations, the written notice must satisfy 5 elements:

1. The direct cash wage that the restaurant is paying its tipped employees, which can be more than, but cannot be less than, \$2.13 per hour (\$3.85 in Ohio)
2. The additional amount that the restaurant is taking against the tips received, which cannot exceed \$5.12, i.e., the difference between \$2.13 per hour and the current Federal minimum wage of \$7.25 (a total of \$3.85 in Ohio);
3. The tip credit cannot exceed the actual value of tips received;
4. All tips belong to the employees, subject to a valid tip-pooling arrangement among employees who customarily and regularly receive tips; and
5. The tip credit is not applicable unless the notice has been provided to the tipped employees.



# Tipped Employees

## Valid Tip Pooling Arrangement:

1. Include only proper tipped employees (if includes ineligible employees, pooling arrangement invalid)
2. Cannot require an unreasonable amount of tips to be pooled (15% or less)
3. If 15% or less pooled, arrangement need not be voluntary
4. Those sharing in pool must still receive tips that get them to at least the minimum cash wage (federal) or sub minimum wage (state), as applicable



# Fluctuating Workweek Issues

Overtime is typically calculated at 1.5 times an employee's regular rate of pay. There are 3 *private sector* exceptions to this rule:

1. Guaranteed compensation that includes overtime (a “Belo” or § 7(f) plan);
2. Overtime based on regular rate for work actually performed in overtime; and
3. Overtime based on rate established by agreement or understanding.



# Fluctuating Workweek Issues

## *Fixed Salary Agreement:*

Non-exempt employee paid a fixed amount for all hours worked in a workweek. Employee paid an additional 50% of resulting regular rate for all overtime hours worked.

**Ex.** Employee paid \$500 per week and worked 50 hours. Regular rate = \$10/hour. Overtime earnings \$5/hour for 10 hours. Total compensation \$550.



# Fluctuating Workweek Issues

Overtime based on rate applicable to work performed in overtime.

**Ex.** Employee works on line for 40 hours per week at \$15 per hour and cleans offices on weekend for 5 hours at \$10 per hour (Workweek = Monday-Sunday).

*Normally:*

Regular rate = \$14.44/hr (\$650/45 hours); OT Premium = \$7.22

Total Earnings = \$685.90

*With Agreement*

*OT Premium is 50% of regular rate for work performed in OT or \$5/hr;*

*Total Earnings = \$675*



# Fluctuating Workweek Issues

*Belo Plan* (*Walling v. A. H. Belo Corp.*, 316 U.S. 624 (1942); 29 CFR § 778.404)

1. Bona fide individual or collective bargaining agreement;
2. Duties necessitate irregular hours of work;
3. Contract specifies a regular rate not less than minimum wage;
4. Contract specifies an overtime rate at 1.5 times that rate for all overtime hours worked; and
5. Contract provides a weekly guarantee of pay for not more than 60 hours.

**Ex.** Employee works between 54 and 60 hours per week at a regular rate of \$10/hour. “Belo Salary” = \$700 per week (40 hours at \$10; 20 hours at \$15).

**Practice Pointer – All of these agreements should be in writing as regulations require written memorandum of oral understandings.**



# Dealing with Litigation Initiated by the Secretary of Labor

Secretary of Labor has three litigation options:

1. Civil Action under §16 (c) of the Act to recover back wages and liquidated damages for violations of the minimum wage and overtime pay requirements of the Act;
2. Civil Action under §17 of the Act to obtain injunctive relief to restrain employer from violating any provision of the Act (may be aimed at preventing future violations of the Act or requiring restitution); and
3. Criminal Prosecution by the Department of Justice for willful violations of the Act.



# Dealing with Litigation Initiated by the Secretary of Labor

## Remedies Available:

1. Back wages for 2 years (3 if willful);
2. Liquidated damages for willful violations (equal to back wages);
3. Injunctions to remedy past violations and prevent future violations;
4. Civil money penalties; and
5. Criminal penalties and/or jail time (2<sup>nd</sup> offense)

## **Note:**

No attorneys fees in Secretary of Labor Cases



# Dealing with Litigation Initiated by the Secretary of Labor

Litigation threatened by the Secretary typically results from not resolving the matter at the administrative level with Wage & Hour

- Tolling Agreement is typically requested due to “backlog” of cases. Provides additional opportunity to negotiate resolution
- Allows for legal arguments and realities of litigation to assist in settlement with Government





# Questions?

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