

## CBIA Wage and Hour Conference

### Hours Worked: Defining, Counting & Recording

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## Agenda

- Statistics and recent claims
- Understand your obligations to keep records
- Understand Connecticut and federal law regarding hours worked
- Explore various examples of compensable and non-compensable time
- Tips for addressing thorny issues
- Avoid liability for your Company



## Wage & Hour Claims

- Wage and hour law violation rate of **81%** in US DOL initiated investigations in FY 2016
- FLSA complaints increased by **417%** from 1997 - 2017
- Wage and hour complaints outnumber all other employment class actions...**COMBINED**
- DOL Wage and Hour Division collected a record **\$308 million** on behalf of employees in FY 2018



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## Potential Exposure is Significant

- Payment of back wages for 2 or 3 years
  - For current and former employees
- Liquidated damages equal to the amount of back wages due
- DOL penalties and interest
- Employee's attorneys fees
- Criminal liability

Exposure especially significant if have many workers in disputed job classification

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## Record Keeping

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- Employer obligation to maintain true and accurate records on all non-exempt employees



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## Record Keeping

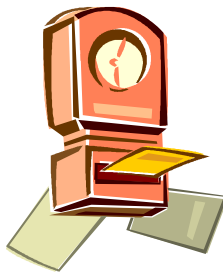
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- Connecticut Law
  - Keep true and accurate records of hours worked and wages paid
  - Records must be kept for three years
  - Records must be kept at place of employment (unless permission granted otherwise by CT DOL)
- FLSA
  - Keep all basic time and earning cards or sheets
  - Records must be kept for two years
  - Records must be kept at place or places of employment or a centralized recordkeeping office

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## Permissible Time Keeping Systems

- Time cards
- Time sheets
- Punch clock
- Electronic time keeping systems



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## What are “Hours Worked”?

- Federal law defines “employ” to include “to suffer or permit to work”
- Connecticut law defines “hours worked” to include “all time during which an employee is required by the employer to be on the employer’s premises or to be on duty, or to be at the prescribed work place, and all time during which an employee is employed or permitted to work, whether or not required to do so, provided time allowed for meals shall be excluded unless the employee is required or permitted to work”

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## Failure to Pay a Few Minutes a Day Can Lead to Millions in Back Pay

- Wells Fargo pays **\$27.5 million** to settle lawsuit brought by mortgage consultants and bankers alleging they were not given meal breaks (2018)
- J.B. Hunt Transport, Inc. pays **\$15 million** to settle lawsuit brought by drivers alleging they were not given meal breaks, rest periods and proper wage statements (2018)
- American Commercial Security pays **\$110 million** to settle lawsuit brought by security guards alleging they were required to remain on-call during rest breaks (2017)
- U.S. Security Associates pays **\$21 million** to settle lawsuit brought by security guards alleging they were, among other things, denied meal breaks (2017)



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## Examples of Time That May be Compensable

- Travel time
- Training, lecture and meetings
- On-call time
- Preliminary and postliminary activity
- Off-the-clock work
- Volunteering or interning
- Sleep time (in certain circumstances)
- Reporting time
- Working during meal break

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## Travel Time

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- Ordinary travel between work and home is not time worked, unless it is combined with a task assigned for the employer's benefit.
- If employee is required to report to work at place other than usual place of employment, travel time may be compensable.
- Travel to emergency job after work day may be compensable.

## Travel Time

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- Travel on special one day assignments that exceed standard travel time may be work time
- Travel as part of typical workday is work time
- Travel away from home overnight is work time if it cuts across employee's normal working hours
- Work performed while traveling must be counted toward work time

## Training Time

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- Attendance at training programs, lectures and meetings is counted as working time, unless four criteria are met:
  - The training is outside of normal work hours;
  - The training is truly voluntary;
  - The training is not work related; and
  - No other work is concurrently performed



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## On-Call Time

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- Whether “the time is spent predominantly for the benefit of the employer or employee”
- **“Engaged to wait or waiting to be engaged”**
- How much control the employer has over the employee

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## Meal Break

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- Bona fide meal periods will not count as hours worked **so long as employee is completely relieved from duty** for the purpose of eating a regular meal



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## Meal Break

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- Conn. Gen. Stat. § 31-51i
- 30 minutes unpaid after 7½ hours
- Can substitute paid breaks
- Written agreements with different schedules permissible



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## Meal Break Exemptions

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- Public safety issues
- Duties of a position done by only one employee
- Employer has less than 5 employees on a shift
- Continuous nature of the employer's operations requiring employees' availability for urgent or unusual conditions
- Fines for violations

## Preliminary and Postliminary Activities

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- Analysis: Is the activity an “integral and indispensable” part of the employee’s principal activities?
- Key Question: To what extent does the activity “benefit” the employer?
  - Does the employer require the activity (e.g., use of protective gear)?
  - Is the activity necessary for employer to perform principal activities?
- Generally not compensable if the activities take place prior to or after the “principal activities” of the work day have stopped

## Preliminary and Postliminary Activities



- Examples of compensable activities:
  - Cleaning and oiling machinery
  - Donning and doffing protective gear
  - Booting computer and logging on
  - Loading a truck at employer's premises prior to leaving for a job site
  - Inspecting or fueling vehicles used for job duties

## Off-the-Clock



- What is it?
  - Work voluntarily performed where employer knew or should have known
- Common examples:
  - Employee begins work before clocking in
  - Employee continues work after clocking out
  - Employee works through lunch
  - Employee logs on to system or uses mobile device to check e-mail or voice messages after hours
  - Manager does not permit employee to record worked time

## Preventing “Off-the-Clock” Claims

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- Prohibit off-the-clock work
- Consider who gets device or remote access
  - Define process for tracking time for remote workers
- Pay for all hours worked and pay proper rate
- Encourage employees to report internally
- Investigate all complaints
- Require employees to sign off on time records and acknowledge responsibility to report all time
- Take appropriate disciplinary action against managers who require off-the-clock work

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## Volunteers?

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- Can we have volunteers?
- How about summer interns for “free”?



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## Unpaid Interns

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- Provide training similar to an educational environment
- Internship benefits the intern
- Employer derives no immediate advantage from the activities of the intern, and its operations may actually be impeded
- Does not displace regular employees, works under close supervision of existing staff
- Intern is not entitled to a job
- Intern understands that s/he not entitled to wages

## Reporting Time

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- CT DOL “Minimum Daily Earnings” Wage Orders
- Mercantile Trade
  - Minimum of 4 hours (or 2x minimum wage if regularly scheduled to work less than 4 hours)
- Restaurant/Hotel
  - Minimum of 2 hours (unless shift cancelled day before)
  - Minimum of 1.5x minimum wage on seventh consecutive work day

## Sleep Time

### Less than 24 hour shift

- Sleep time generally compensable

### 24 or more hour shift

- Parties may agree to exclude (up to 8 hours), provided:
  - Employer provides adequate sleeping facilities
  - Employee sleeps at least 5 hours during shift
  - Excluded sleep time is uninterrupted



## EEO-1 Pay Data

### Who must file?

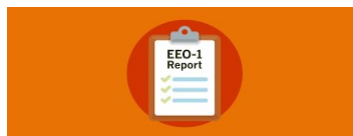
- Private employers with 100 or more employees
- Private employers with fewer than 100 employees if owned by company with more than 100 employees
- Federal contractors with 50 or more employees unless exempt

### What must be reported?

- How much was paid to employees of different sexes, races and ethnicities

### By when?

- September 30, 2019



**Thank you!**



**Questions**

