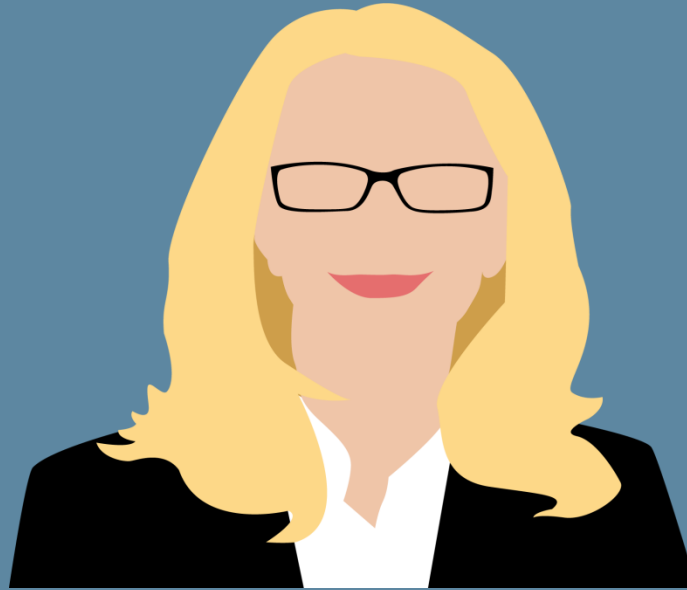


Legal Lunch with Laura



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Future Lunch Dates

Tuesday, May 21, 2013

(Benefits of a Workplace Mediation Program)

*Webinars are held on the third Tuesday of every other month from 12:00 – 1:00 p.m.

Should I Pay My Employee for That?

Navigating the Fair Labor
Standards Act

Presentation by
Russell B. Berger, Esq.
Laura L. Rubenstein, Esq.

Meet Russell B. Berger, Esq.

Russell Berger was named as a 2012 and 2013 Rising Star by Super Lawyers.

Russell's practice focuses on labor and employment disputes including:

- minimum wage and overtime litigation arising out of the Fair Labor Standards Act (FLSA) and state law;
- Family Medical Leave Act (FMLA);
- the Age Discrimination in Employment Act (ADEA);
- the American with Disabilities Act (ADA);
- wrongful termination;
- employment contract and general contract claims;
- claims of discrimination and harassment arising under Title VII and state anti-discrimination laws and
- other business and professional tort claims;

Education

J.D. (magna cum laude), University of Maryland, 2007

B.A. (with honors), Johns Hopkins University, 2004

Ravens Playoff Beard



Objectives for Today's Webinar

- Brief overview of the FLSA.
- Appropriate exemptions under the FLSA.
- Should I pay my employee for that?
- Should independent contractors be employees?
- Wage Class Action Claims are on the rise, are you a target?

Disclaimer: This webinar is provided for informational purposes only and is not deemed legal advice. Participation in this webinar does not create an attorney-client relationship with Attorneys Berger or Rubenstein or Offit Kurman. The opinions expressed throughout this webinar are the opinions of Attorneys Berger and Rubenstein and may not necessarily reflect the opinions of Offit Kurman.

Overview of the FLSA

- The FLSA establishes minimum wage, overtime pay, recordkeeping requirements, and youth employment standards affecting employees in the private sector and in Federal, State, and local governments.

Overview of the FLSA

- Federal minimum wage is \$7.25 per hour effective July 24, 2009.
- Other states have higher minimum wage laws (CA is \$8.00, D.C. is \$8.25, WA \$9.19; government contractors may have base wage dictated per the contract).
- Overtime pay is required after 40 hours of work in a workweek at the rate of 1.5 times the employees regular rate of pay.

The FLSA provides only basic protections

No vacation, holiday, severance, sick pay

No meal or rest periods

No premium pay for weekend or holiday
work

No pay raises or fringe benefits

No discharge notice

Exempt Categories Under the FLSA

- **Professional**
 - Doctors, Lawyers, Accountants, and Nurses
- **Administrative**
 - Help run the business
 - Make sure not involved with “production”
- **Outside Sales**
 - Primary duty must be Sales
- **Executive**
 - Primary duty must be Management
 - Must be truly making decisions regarding hiring and firing, setting employees’ schedules
- **Computer Professional**
- **Salary Basis Test**
 - Paid at least \$455 per week without reductions. Does not apply to outside sales exemption.
- **Highly Compensated Employees**
 - \$100,000 or above

Wage & Hour - Misclassification

- Misclassification can prove *very* costly.
- A frequent mistake occurs when employers misclassify employees as exempt because it is easier to pay a salary than deal with overtime and recordkeeping, etc.

2010 Nursing Mother Law (Slide 1 of 2)

- Employers must provide reasonable break time for an employee to express breast milk for her nursing child for 1 year after the child's birth each time such employee has need to express the milk.
- Employers must provide “a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.”

Nursing Mother Law (Slide 2 of 2)

- Employers with fewer than 50 employees are not subject to the FLSA break time requirement if compliance with the provision would impose an undue hardship.
- Employers are not required to compensate nursing mothers for breaks taken for the purpose of expressing milk.
- However, where employers already provide compensated breaks, an employee who uses that break time to express milk must be compensated in the same way that other employees are compensated for break time.

State law will govern certain pay practices

- Employer must set regular paydays.
- Mandatory meetings and trainings are compensable.
- Direct deposit of wages is voluntary.
- Employer is responsible for recordkeeping for 3 years (name, address, race, gender, occupation, rate of pay, amount, hours worked).

Should I pay my employees for that?

QUESTION 1:

Should I pay an employee for answering emails after work hours?

- ☐ Yes
- ☐ No
- ☐ I'm not sure

Should I pay my employees for that?

ANSWER 1:

Should I pay an employee for answering emails after work hours?

- The answer depends on whether the employee is exempt or non-exempt from overtime. If non-exempt, make sure the employee is recording her time.

Should I pay my employees for that?

QUESTION 2:

Should I pay my employee for travel to an out-of-town training workshop?

- ☐ Yes
- ☐ No
- ☐ I'm not sure

Should I pay my employees for that?

ANSWER 2:

Should I pay my employee for travel to an out-of-town training workshop?

- The answer depends on whether the employee is exempt or non-exempt from overtime. If non-exempt, make sure the employee is recording her time.

Should I pay my employees for that?

QUESTION 3:

Should I reduce the pay of an employee who clocks in early to read the paper?

- ☐ Yes
- ☐ No
- ☐ I'm not sure

Should I pay my employees for that?

ANSWER 3:

Should I reduce the pay of an employee who clocks in early to read the paper?

- Warn the employee against clocking in early and explain any adjustment of hours, but only if you have credible witnesses to the behavior (burden is on employer)
- Adjust the clocks to prevent employees from clocking in until 10 minutes before the start time.

Should I pay my employees for that?

QUESTION 4:

Should I pay a departing employee her accrued vacation, sick and personal leave?

- ☐ Yes
- ☐ No
- ☐ I'm not sure

Should I pay my employees for that?

ANSWER 4:

Should I pay a departing employee her accrued vacation, sick and personal leave?

- In Maryland, your written policy governs.
- In most states, sick leave is not included as a benefit the employee takes upon termination.

What exactly is an independent contractor vs. an employee?

- Is a signed agreement enough?
- Why does the government care?
- Factors to consider:
 - Who has right to control and direct the individual?
 - Who furnishes tools, materials and a place of work?
 - Does the person offer services to the public?
 - Are they in business for themselves?
 - Is the business of the individual different than the company's business?

Wage & Hour – FLSA Collective Actions

- Definition- Collective actions are the same as class actions, except that the potential class members are presented with the choice to “opt in” instead of “opt out” of the lawsuit.
- Why are Collective Actions (and Class Actions) on the rise?
 - Ease of filing
 - Huge potential reward (applicability to others in the workplace)
 - Little risk to plaintiff (disgruntled employee - big rewards to plaintiff and plaintiff’s counsel)
- Cases in point

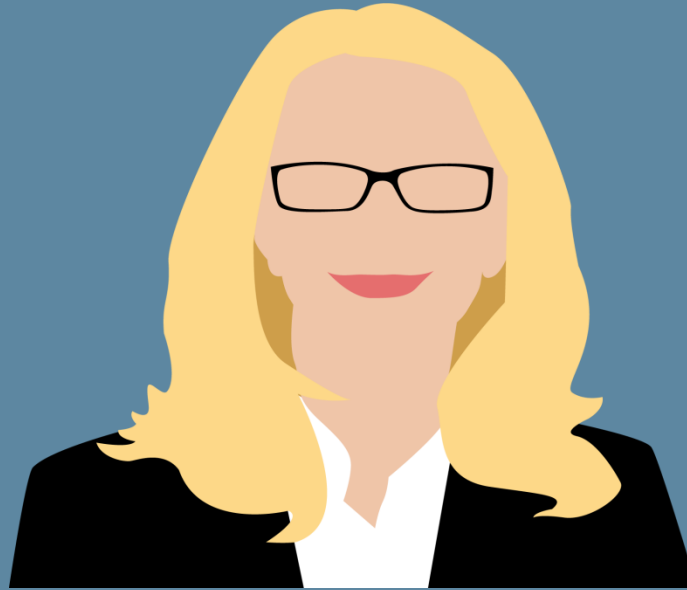
How can we help?

- Offit Kurman keeps likes to keep its clients out of trouble.
- We would be happy to come to your office and do an employment audit, which includes analysis of your pay practices and worker classification.

Questions?



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