

WAGE AND HOUR LAWS: Are You in Compliance?



September 25, 2014

Katie D. Triska is a shareholder in the firm's Labor and Employment Practice. She routinely advises employers on a wide range of employment issues, including successful hiring, employee performance management and termination strategies; development and implementation of anti-harassment and other personnel policies; evaluating reasonable accommodation obligations under the Americans with Disabilities Act (ADA) and state disability laws; and achieving compliance with the Fair Labor Standards Act and state wage and hour laws.



Robert S. Driscoll is an attorney in the firm's Labor and Employment Practice. Rob's practice encompasses a variety of employment topics, including defending employers against claims of unlawful discrimination and/or retaliation, handling disputes over restrictive covenants, drafting non-compete agreements and representing clients in appeals. Rob also counsels employers on wage issues, including guiding employers through government wage investigations, and has defended employers against both class-action and individual wage claims.

©2014. All Rights Reserved
Reinhart Boerner Van Deuren s.c.

AGENDA

- 7:45am CT Registration, Networking and Continental Breakfast for in-person attendees; Webinar attendees may begin to log on
- 8:00am CT Presentation
- 8:50am CT Questions and Answers



Asking Questions

Throughout the webinar, type your questions using the "QUESTIONS" section in the webinar panel. We will answer as many questions as possible during our Q & A session at the end of the webinar.

©2014. All Rights Reserved
Reinhart Boerner Van Deuren s.c.



Webinar Housekeeping


Viewing the Slides
Today's slide presentation will advance automatically in synch with the live presentation.

Handouts
If you would like a hard copy of the slide presentation, a printable version was e-mailed to you yesterday.

Adjusting Your Volume
Volume can be adjusted using the volume control on your computer or phone.

Asking Questions
Throughout the webinar, type your questions using the "QUESTIONS" section in the webinar panel. We will answer as many questions as possible during our Q & A session at the end of the webinar.

Information
This webinar provides general information about legal issues. It should not be construed as legal advice or a legal opinion. Attendees should seek legal counsel concerning specific factual situations confronting them.


 Boerner Van Deuren s.c. Attorneys at Law

3



WAGE AND HOUR LAWS: ARE YOU IN COMPLIANCE?

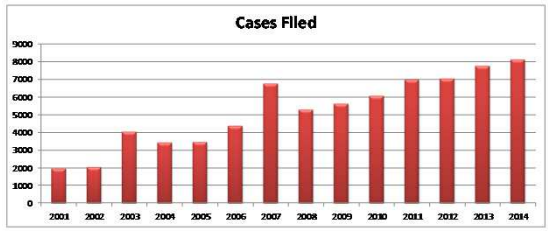
Katie D. Triska
414-298-8153
ktriska@reinhartlaw.com

Robert S. Driscoll
414-298-8272
rdriscoll@reinhartlaw.com

Reinhart Boerner Van Deuren s.c.
 1000 North Water Street, Suite 1700, Milwaukee, WI 53202
www.reinhartlaw.com

Partnering for your Success


FLSA Suits in Federal Court



Cases Filed

Year	Cases Filed
2001	2000
2002	2000
2003	4000
2004	3500
2005	3500
2006	4500
2007	6500
2008	5500
2009	5500
2010	6000
2011	6500
2012	6500
2013	7000
2014	7500

Source: Federal Judicial Caseload Statistics


 Boerner Van Deuren s.c. Attorneys at Law

5

FLSA Suits are on the Rise

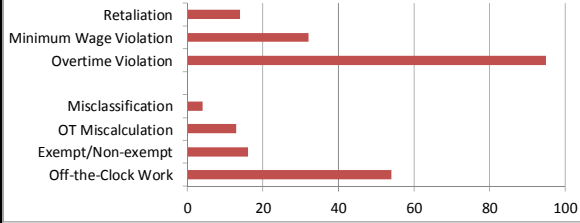
- FLSA suits in federal courts have increased **514%** since 1991.
- In 1991, FLSA suits made up less than 1% of all federal cases filed.
 - Today, they make up **3%**.
- "[W]age and hour claims currently outpace all other types of workplace litigation." – U.S. Chamber Institute for Legal Reform, Oct. 2013.

6

©2014 All Rights Reserved
Reinhart Boerner Van Deuren s.c.

Reinhart
Boerner Van Deuren s.c. Attorneys at Law

FLSA Lawsuit by Issue (2012)



Source: GAO-14-69, Dec. 2013

7

©2014 All Rights Reserved
Reinhart Boerner Van Deuren s.c.

Reinhart
Boerner Van Deuren s.c. Attorneys at Law

FLSA Suits by Initiation Type (2012)



Source: GAO-14-69, Dec. 2013

8

©2014 All Rights Reserved
Reinhart Boerner Van Deuren s.c.

Reinhart
Boerner Van Deuren s.c. Attorneys at Law

Department of Labor Investigations


- In FY2013, the Department of Labor (DOL) recovered a record **\$280 million** on behalf of 260,000 workers.
- DOL is increasing its own enforcement efforts, even if they have not received a complaint.
 - 40% increase** in investigators since 2008.
 - Finds FLSA violations in **71% of investigations**.



Recordkeeping

FLSA : Recordkeeping for Non-exempt Employees

1. Full name	7. Hours worked each day/week
2. Home address	8. Daily/weekly straight-time earnings
3. Date of birth (if under 19)	9. Premium pay for overtime
4. Sex & occupation	10. Additions/deductions
5. Time/day the "workweek" begins	11. Total wages each pay period
6. Regular hourly rate of pay	12. Date of payment & pay period covered




Recordkeeping (cont.)

FLSA: Recordkeeping for Exempt Employees


1. Full name	5. Time/day the "workweek" begins
2. Home address	6. Total wages each pay period
3. Date of birth (if under 19)	7. Date of payment & pay period covered
4. Sex & occupation	

- Basis on which wages are paid to permit calculation of total remuneration.
- May be shown as dollar amount per month, per week, etc.
 - Includes fringe benefits



Preservation Requirements

- Three years
 - Payroll records
 - Employment contracts and CBAs
 - Sales and purchase records
- Two years
 - Time cards and wage-rate tables
 - Order, shipping and billing records
 - Additions/deductions
- Must be kept at the place of employment or at a central recordkeeping office
 - Must be made available within 72 hours of a request from the DOL




Wisconsin Recordkeeping

Wisconsin: Recordkeeping for Non-exempt Employees*

1. Name & address	5. Total hours worked by day/week
2. Date of birth	6. Rate of pay & wages for each pay period
3. Date started/left employment	7. Amount/reason for deductions
4. Time of start/finish for meal periods	8. Output (if not paid on basis of time)


- Must be kept for three years
- Kept at place of employment or at a central office
- Made available for inspection upon request

* Effective April 16, 2014 Wisconsin employers do not have to record hours worked for exempt employees



Rounding


- Both state and federal law allow employers to round employee working time. Typically, rounding is done to the nearest 5 minutes, tenth of an hour, or 15 minutes.
 - But rounding cannot always be in the employer's favor.
 - Rounding must be done so that it could theoretically even out over time.
- Example: An employee's start time is 9 a.m. If she punches in at 8:57 a.m., the employer rounds up to 9:00. If she punches in at 9:02 a.m., the employer rounds down to 9 a.m.



Rounding (cont.)

- An employee works 9 a.m. to 5 p.m. with a paid lunch break. The employer's policy is to round to the nearest quarter hour. In one week, the employee punches out at 5:10 p.m. each day.
- Is the employee entitled to overtime compensation for that week?
- What if the employee punched out at 5:05 p.m. each day?

15



©2014 All Rights Reserved
Reinhart Boerner Van Deuren s.c.

Rounding (cont.)

Caution!

- Do not round meal breaks.
- Rounding should be applied, up or down, to each start and stop time.
 - Other methods may work, but have not necessarily been approved.
- If an employee is disciplined for punching in too early or punching out too late, an employer **may** violate the rounding regulations.


16


©2014 All Rights Reserved
Reinhart Boerner Van Deuren s.c.

Exemptions

- Common exemptions
- Salary basis and deductions


17


©2014 All Rights Reserved
Reinhart Boerner Van Deuren s.c.

Exemptions (cont.)

- When evaluating the exempt status of Wisconsin-based employees, must consider federal and Wisconsin wage and hour laws


18


©2014 All Rights Reserved
Reinhart Boerner Van Deuren s.c.

Executive Exemption

- Federal
 - Compensated on a salary basis at a rate of not less than \$455 per week
 - Primary duty must be management of the enterprise in which the employee is employed, or of a customarily recognized department or subdivision thereof
 - Customarily and regularly directs the work of two or more other employees
 - Authority to hire or fire employees, or the employee's suggestions and recommendations as to hiring, firing, advancement, promotion or any other change in status must be given particular weight


19


©2014 All Rights Reserved
Reinhart Boerner Van Deuren s.c.

Executive Exemption (cont.)

- Wisconsin
 - Compensated on a salary basis at a rate of not less than \$700 per month
 - Spends 50% or more of his/her time managing an enterprise, department or subdivision
 - Customarily and regularly directs the work of at least two employees
 - Has the authority to hire and fire, or whose suggestions as to the change in status of employees will be given particular weight
 - Customarily and regularly exercises discretionary powers
 - Does not devote more than 20% (40% in retail or service establishments) of work time to activities which are not directly and closely related to exempt work

20


©2014 All Rights Reserved
Reinhart Boerner Van Deuren s.c.

Administrative Exemption

- Federal
 - Compensated on a salary basis at a rate of not less than \$455 per week
 - Primary duty must be the performance of office or nonmanual work **directly related to the management or general business operations** of either the employer or the employer's customers
 - Primary duty must also include the **exercise of discretion and independent judgment** with respect to matters of significance

21

©2014 All Rights Reserved
Reinhart Boerner Van Deuren s.c.
Reinhart
Boerner Van Deuren s.c., Attorneys at Law

Administrative Exemption (cont.)

- Wisconsin
 - Compensation on a salary basis at a rate of not less than \$700 per month
 - Spends 50% or more of his/her time performing office or nonmanual work relating to management policies or general business operations of the employer or the employer's customers
 - Customarily and regularly exercises discretion and independent judgment
 - Must not devote more than 20% (40% in retail or service establishments) of work time to nonexempt work

22

©2014 All Rights Reserved
Reinhart Boerner Van Deuren s.c.
Reinhart
Boerner Van Deuren s.c., Attorneys at Law

Administrative Exemption (cont.)

- Engages in at least one of the following:
 - Regularly and directly assists a proprietor or an employee employed in a bona fide executive or administrative capacity
 - Performs, under only general supervision, work along specialized or technical lines requiring special training, experience or knowledge
 - Executes special assignments and tasks under only general supervision

23

©2014 All Rights Reserved
Reinhart Boerner Van Deuren s.c.
Reinhart
Boerner Van Deuren s.c., Attorneys at Law

Administrative Exemption (cont.)

- Functional areas that generally are directly related to management or general business operations:
 - tax
 - finance
 - accounting
 - budgeting
 - auditing
 - insurance
 - quality control
 - purchasing
 - procurement
 - advertising
 - marketing
 - research
 - safety and health
 - personnel management
 - human resources
 - employee benefits
 - labor relations
 - public relations/government relations
 - computer network, internet and database administration
 - legal and regulatory compliance

24 ©2014 All Rights Reserved Reinhart Boerner Van Deuren s.c.

Administrative Exemption (cont.)

- "Discretion and independent judgment"
 - authority to formulate, affect, interpret, or implement management policies or operating practices
 - carries out major assignments in conducting the operations of the business
 - performs work that affects business operations to a substantial degree, even if the employee's assignments are related to operation of a particular segment of the business
 - authority to commit the employer in matters that have significant financial impact

25 ©2014 All Rights Reserved Reinhart Boerner Van Deuren s.c.

Administrative Exemption (cont.)


- "Discretion and independent judgment"
 - authority to waive or deviate from established policies and procedures without prior approval
 - authority to negotiate and bind the company on significant matters
 - provides consultation or expert advice to management
 - involved in planning long- or short-term business objectives
 - investigates and resolves matters of significance on behalf of management
 - represents the company in handling complaints, arbitrating disputes or resolving grievances

26 ©2014 All Rights Reserved Reinhart Boerner Van Deuren s.c.

Outside Sales Exemption

- Federal
 - The employee's primary duty is (1) making sales or (2) obtaining orders or contracts for services, or for the use of facilities, for which the client will make a payment
 - Employee is regularly and customarily working away from the employer's place of business
 - Does not need to be paid on a salary basis


27


©2014 All Rights Reserved
Reinhart Boerner Van Deuren s.c.

Outside Sales Exemption (cont.)

- Wisconsin
 - The employee makes sales away from employer's place of business
 - The employee must spend at least 80% of work time away from the employer's place of business
 - No salary requirement

28


©2014 All Rights Reserved
Reinhart Boerner Van Deuren s.c.

Commission Sales Exemption

- Commission Sales Exemption. To qualify for the commission sales overtime exemption under the FLSA and Wisconsin law, an employee must meet all of the following requirements:
 - The employee must work for a "retail or service establishment"
 - The employee's regular rate of pay must be at least one and one-half times the minimum wage rate for all hours worked
 - At least half of the employee's compensation is paid from commission


29


©2014 All Rights Reserved
Reinhart Boerner Van Deuren s.c.

Salary Basis

- Exempt employees must satisfy the "salary basis" test
 - Exceptions: Business owners, "fee basis"
- Employers may not:
 - Pay exempt employees by the hour
 - Reduce wages based on quality or quantity of work
 - Reduce wages based on number of days or hours worked each week


30 ©2014 All Rights Reserved
Reinhart Boerner Van Deuren s.c.



Salary Basis (cont.)

- But...deductions are permissible if:
 - Employee is absent for personal reasons, other than sickness or disability (one or more full days)
 - Employee is absent due to sickness or disability *and* the deduction is taken in accordance with a bona fide plan, policy or practice providing wage replacement benefits (one or more full days)
 - The employer imposes a penalty for violations of safety rules of major significance (one or more full days)
 - Absence is for FMLA leave (partial or full day)
 - Hours are not worked in the initial and final weeks of employment
 - **CAUTION!** No deductions for workplace conduct rule violations!


31 ©2014 All Rights Reserved
Reinhart Boerner Van Deuren s.c.



Salary Basis (cont.)

- Severe weather
- Slowdown in facility
- Jury duty and military leave
- Can we change an exempt employee's schedule from five days to four days?
- Requiring use of PTO in lieu of deductions
- Managing late arrivals/early departures of exempt employees
- Can we require them to not work for an entire week?

32 ©2014 All Rights Reserved
Reinhart Boerner Van Deuren s.c.



Salary Basis (cont.)

- Can we provide an exempt employee with extra pay? On an hourly basis? On a commission basis?
- Can we require them to work extra hours?
- Can we require a set schedule?
- Can we deny time off requests?
- Can we require them to track hours?
- Can we deduct for salary advances?

33 Reinhart
Boerner Van Deuren s.c., Attorneys at Law

Salary Basis (cont.)

- Safe Harbor Provision
 - Written safe harbor policy *required* if employer wants to seek safe harbor protections following an improper deduction
 - Prohibits improper pay deductions
 - Includes complaint mechanism
 - Reimburses employees for improper deductions
 - Employer commits to complying in the future
 - DOL provides a sample policy

34 Reinhart
Boerner Van Deuren s.c., Attorneys at Law

Examples: Executive Exemption

(Assume employees satisfy salary requirements)

- Example # 1: Truck driver supervisor
 - Employee's primary duty is to dispatch trucks
 - Supervises truck drivers and has authority to hire/fire

35 Reinhart
Boerner Van Deuren s.c., Attorneys at Law

Examples:
Executive Exemption (cont.)
(Assume employees satisfy salary requirements)

- Example #2: Plant mechanics manager
 - Determines schedules and work assignments
 - Monitors plant equipment
 - Hires, fires and disciplines 15 plant workers
 - Participates in budget and strategy meetings

36 ©2014 All Rights Reserved
Reinhart Boerner Van Deuren s.c. **Reinhart**
Boerner Van Deuren s.c. Attorneys at Law

Examples:
Executive Exemption (cont.)
(Assume employees satisfy salary requirements)

- Example #3: Logistics manager
 - Analyzes and recommends transportation modes
 - Analyzes performance
 - Creates procedures for logistics activities
 - Records logistics data
 - Maintains customer service logs and safety records

37 ©2014 All Rights Reserved
Reinhart Boerner Van Deuren s.c. **Reinhart**
Boerner Van Deuren s.c. Attorneys at Law


Examples:
Administrative Exemption
(Assume employees satisfy salary requirements)

- Example #1: Associate accountant
 - Examines, analyzes and interprets accounting records
 - Provides advice on financial matters at monthly meetings
 - Develops system to record costs
 - Makes recommendations on cost reduction strategies

38 ©2014 All Rights Reserved
Reinhart Boerner Van Deuren s.c. **Reinhart**
Boerner Van Deuren s.c. Attorneys at Law

Examples:
Administrative Exemption (cont.)
(Assume employees satisfy salary requirements)

- **Example #2: Human resources assistant**
 - Compiles and maintains personnel records (e.g., absences, FMLA use, etc.)
 - Records and updates data for employees (e.g., address, change in compensation, date of termination, etc.)
 - Files employment records (e.g., annual reviews, etc.)
 - Searches employee files and furnishes information to authorized persons


Boerner Van Deuren s.c. Attorneys at Law

©2014 All Rights Reserved
Reinhart Boerner Van Deuren s.c.

Examples:
Administrative Exemption (cont.)
(Assume employees satisfy salary requirements)


- **Example #3: Quality control specialist**
 - Responsible for lab cleanliness and safety standards
 - Performs tests to confirm product quality
 - Participates in assessments and audits
 - Identifies and resolves equipment problems


Boerner Van Deuren s.c. Attorneys at Law

©2014 All Rights Reserved
Reinhart Boerner Van Deuren s.c.

Changes Coming?

- President Obama is seeking to narrow white-collar exemptions
- Increase in salary threshold
- Modify "duties tests"
- More employees will be entitled to overtime pay


Boerner Van Deuren s.c. Attorneys at Law

©2014 All Rights Reserved
Reinhart Boerner Van Deuren s.c.

Working Time

- Non-exempt employees must be paid for all "hours worked."
 - Includes all time that an employee is "suffered or permitted to work" for the benefit of the employer.
 - If the employer knows, or has reason to know, that an employee is performing work, the employee must be compensated.
- Technology has made it much easier for employees to perform work outside of normal business hours.
 - Employers may be held liable for working time if employees are checking e-mail or doing other work activities at home.

42 ©2014 All Rights Reserved
Reinhart Boerner Van Deuren s.c.
Reinhart
Boerner Van Deuren s.c., Attorneys at Law

Working Time (cont.)

- Preliminary and postliminary activities
 - Federal law excludes from "working time" activities performed before or after the principal work activities.
- Some activities may be compensable even if they are performed before the employee's work day begins.
 - Example: Insurance appraisers who, before work, checked e-mail, responded to messages, mapped their route and loaded equipment were due compensation because the job required it.
 - Example: Employee whose principal job was to stock shelves and price items was **not** due compensation for time spent checking e-mail before his shift.

43 ©2014 All Rights Reserved
Reinhart Boerner Van Deuren s.c.
Reinhart
Boerner Van Deuren s.c., Attorneys at Law

Donning & Doffing

- Principal activities include "all activities which are an integral and indispensable part of the principal activities."
 - "Integral and indispensable" means:
 - Tasks necessary to the principal work; and
 - Tasks that primarily benefit the employer.
- Time spent changing clothes is compensable if employees are required by law, rules of the employer, or the nature of the work to change at the workplace.
 - This includes "travel time" between the locker room and work station.
- **Exception:** The FLSA specifically excludes time spent "changing clothes or washing at the beginning or end of each workday" from working time if done pursuant to a collective bargaining agreement.
 - Wisconsin does **not** have a similar exception.

44 ©2014 All Rights Reserved
Reinhart Boerner Van Deuren s.c.
Reinhart
Boerner Van Deuren s.c., Attorneys at Law

Donning & Doffing (cont.)

- Policies to consider:
 - Clearly state what kinds of gear are mandatory and what kinds are for the employee's convenience.
 - If possible, give employees the option of donning the gear at home.
 - If it is necessary that employees don and doff at the workplace, ensure time spent doing so is properly recorded and compensated.

45 Reinhart
Boerner Van Deuren s.c. Attorneys at Law

On-Call Time

- An employee who is "on-call" must be compensated if the time is "predominantly for the employer's benefit."
- What does this mean in practice?
 - How much freedom does the employee have while "on-call"?
 - Can the employee use the time effectively for his own purposes?

46 Reinhart
Boerner Van Deuren s.c. Attorneys at Law

On-Call Time (cont.)

- Factors to consider:
 - Severity of geographical restrictions on movement.
 - Frequency of calls received.
 - Response time required.
 - Trading of shifts with other employees.
 - Could employees practically engage in personal activities?

47 Reinhart
Boerner Van Deuren s.c. Attorneys at Law

Travel Time

- Federal law excludes time "walking, riding, or traveling to and from the actual place of performance of the principal activity" from working time.
 - In other words, traveling to/from work is generally not compensable.
 - This is true even if the employee's principal job site changes.
- But there are exceptions:
 - An employee is required to drive to a meeting place before proceeding to her normal worksite.
 - Compensable time begins upon her arrival at the meeting place.

48 ©2014 All Rights Reserved
Reinhart Boerner Van Deuren s.c.
Reinhart
Boerner Van Deuren s.c., Attorneys at Law

Travel Time (cont.)

- Travel during the work day
 - Typically compensable.
 - Example: Driving between worksites once the workday has begun.
- One-day, out-of-town assignments
 - If an employee at a certain location is given a one-day assignment out of town, the travel to the new location is compensable.
 - But the employee's normal commute would be deductible.

49 ©2014 All Rights Reserved
Reinhart Boerner Van Deuren s.c.
Reinhart
Boerner Van Deuren s.c., Attorneys at Law

Travel Time (cont.)

- Overnight travel
 - Travel during the normal workday is compensable even if performed on non-workdays (Saturday/Sunday).
 - Travel outside the normal workday is **not** compensable.
 - But if the employee works while travelling, the time is compensable.
 - **Caution!** In Wisconsin, the time is likely compensable.
 - "Travel time away from the home community for business purposes that occurs for the benefit of the employer is considered hours worked."
- Travel outside of normal work hours may be compensable if the employee is not a passenger.
 - "As an enforcement policy the [DOL] will not consider as worktime that time spent in travel away from home outside of regular working hours as a **passenger** on an airplane, train, boat, bus, or automobile."

50 ©2014 All Rights Reserved
Reinhart Boerner Van Deuren s.c.
Reinhart
Boerner Van Deuren s.c., Attorneys at Law

Travel Time (cont.)

Case Study

Chu, a legal secretary at a Milwaukee law firm, has a demanding boss. She sends Chu to Seattle to locate the "freshest" Starbucks coffee beans he can find. He leaves his apartment for the airport at 7:30 a.m., an hour before his normal shift would have started. While in Seattle, he locates the beans and has a crate of them shipped back to his boss in Milwaukee. Chu arrives home at 5:30 p.m. the same day, 30 minutes after his workday would normally have ended.

- Is Chu's travel time compensable?

51

©2014 All Rights Reserved
Reinhart Boerner Van Deuren s.c.

Reinhart
Boerner Van Deuren s.c. Attorneys at Law

Travel Time (cont.)

- Yes, the travel time is compensable.
 - One day, special assignment.
- Chu **would** also be entitled to compensation for his work tracking down those beans.
- Food for thought: The employer could deduct Chu's normal commute time, however, plus any *bona fide* meal periods.

52

©2014 All Rights Reserved
Reinhart Boerner Van Deuren s.c.

Reinhart
Boerner Van Deuren s.c. Attorneys at Law

Meal & Break Periods

	Wisconsin	Federal
Breaks Required?	No.	No.
Meal Periods Required?	No.	No.
Length to be considered non-compensable.	At least 30 minutes.	At least 30 minutes.
What restrictions are allowed or not allowed?	<ul style="list-style-type: none">• Must be allowed to leave the premises.• Must be free from all work.	<ul style="list-style-type: none">• Must be free to leave duty post.• Must be completely relieved of all duties.• May require employees to remain on-site.

Note: Some courts have upheld the legality of automatic deductions for meal periods. But employers should have clear policies and procedures in place for employees to report days on which they performed work during lunch so that they can be compensated.

53

©2014 All Rights Reserved
Reinhart Boerner Van Deuren s.c.

Reinhart
Boerner Van Deuren s.c. Attorneys at Law

Meal & Break Periods (cont.)

Case Study

Cari works as a legal secretary in a large Milwaukee law firm and is provided a 30-minute lunch period. But her cruel boss requires her to stay at her desk while she eats so she can answer phone calls that he would otherwise miss because of his own two-hour lunches. During one particularly slow week the phone never rings during Cari's lunch, and her meal is otherwise not interrupted.

- Must Cari be compensated for her lunches that week?

54

©2014 All Rights Reserved
Reinhart Boerner Van Deuren s.c.

Reinhart
Boerner Van Deuren s.c. Attorneys at Law

Meal & Break Periods (cont.)

- Yes! Cari is entitled to compensation **even though the phone never rang.**
- Federal law
 - Was not relieved of all duties
 - Was not free to leave her duty post
- Wisconsin law
 - Was not allowed to leave the premises
 - Was not free from all work
- Note: Even if Cari's cruel boss allowed her to use a headset so she could leave her desk, the time is still compensable in Wisconsin because she was not free to leave the premises (and because under either law, she was not actually relieved of her duties).

55

©2014 All Rights Reserved
Reinhart Boerner Van Deuren s.c.

Reinhart
Boerner Van Deuren s.c. Attorneys at Law

Nursing Mother Breaks

- Federal law requires employers to provide unpaid breaks to non-exempt nursing mothers for up to **one year** after the child's birth.
 - Breaks are required each time the mother needs to express breast milk.
 - Employers **must** provide a private location (shielded from view and free from intrusions) that is not a bathroom.
 - "Reasonable" length of time for each break.
- **Caution!** Wisconsin law does **not** provide for unpaid break times of less than 30 minutes.
 - Employers in Wisconsin must provide the break time under federal law and must compensate the employee under Wisconsin law if the break is less than 30 minutes long.

56

©2014 All Rights Reserved
Reinhart Boerner Van Deuren s.c.

Reinhart
Boerner Van Deuren s.c. Attorneys at Law

Training & Meetings

- Rule: Employees must be compensated for time spent attending training programs and meetings.
- Exception:
 - Attendance is outside regular working hours;
 - Attendance is completely voluntary;
 - The program is not directly related to the employee's job; and
 - The employee does not perform productive work during the program.

57 ©2014 All Rights Reserved
Reinhart Boerner Van Deuren s.c.
Reinhart
Boerner Van Deuren s.c., Attorneys at Law

Training & Meetings (cont.)

- What does it mean to be "voluntary"?
 - If continued employment, or conditions of employment, are dependent on attendance, then the program is compensable.
- What does it mean to be directly related to the job?
 - "Designed to make the employee handle his job more effectively."
 - Exceptions:
 - Training for a new position/preparation for a promotion.
 - Benefits extending beyond their job duties.

58 ©2014 All Rights Reserved
Reinhart Boerner Van Deuren s.c.
Reinhart
Boerner Van Deuren s.c., Attorneys at Law

Training & Meetings (cont.)

The "Overachiever" Exception

- Danny is a graphic artist who specializes in editing digital photographs for a family portrait studio in the mall. He uses computer software to eliminate red eye, wrinkles, and other blemishes from the pictures of his employer's customers.
- On his own, Danny decides to take a course at the local community college related to specialized techniques for airbrushing digital photographs. The course is taught at night, after Danny's workday ends.
- Even though the program is "directly related" to Danny's job, the time is not compensable.
 - "If an employee on his own initiative attends an independent school, college or independent trade school after hours, the time is not hours worked for his employer even if the courses are related to his job."


59 ©2014 All Rights Reserved
Reinhart Boerner Van Deuren s.c.
Reinhart
Boerner Van Deuren s.c., Attorneys at Law

Best Practices for Working Time

- Policies/training on recording obligations
 - Ensure employees, including supervisors, know that working outside the office, including on electronic devices, is compensable.
 - Management must be aware that greater electronic access leads to greater risks of work being performed "off the clock."
 - Policies must direct employees to report all time worked, including time worked during what would otherwise be a meal break.
 - Every employee, especially those with off-site access to e-mail and other electronic systems, should receive and acknowledge receipt of the employer's wage and hour policies.
 - Prohibit employees on leave (ADA, FMLA, etc.) from working and remind coworkers not to give assignments to employees on leave.

60 ©2014 All Rights Reserved
Reinhart Boerner Van Deuren s.c.
Reinhart
Boerner Van Deuren s.c., Attorneys at Law

Questions?



Asking Questions

Type your questions using the "QUESTIONS" section on the webinar panel.

We will answer as many questions as possible during our Q & A session at the end of the webinar.

61 ©2014 All Rights Reserved
Reinhart Boerner Van Deuren s.c.
Reinhart
Boerner Van Deuren s.c., Attorneys at Law

THANK YOU!

Thank you for attending our presentation.
If you have questions, please contact your Reinhart attorney or either presenter.

Please join us for the
**second session in the WAGE and HOUR LAWS Series on
Thursday, October 30, 2014
7:45am – 9:00am
where we will discuss:**

- Common pitfalls when calculating overtime
- Frequently asked questions regarding direct deposit, interns, vacation pay, deductions from wages and payment of final wages
- How to handle wage investigations and navigate class actions

62 ©2014 All Rights Reserved
Reinhart Boerner Van Deuren s.c.
Reinhart
Boerner Van Deuren s.c., Attorneys at Law
