

Wage and Hour Trends





presented by

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Introduction

- **Current State of the Economy**
- **U.S. Department of Labor**
 - Budget Request
 - Misclassification Initiative
 - Directed Investigations
 - Policy and Enforcement Initiatives



DOL: “Plan/Prevent/Protect”

■ New DOL Regulations:

- Plan; Prevent; Protect
- Broadened Enforcement
- Penalties for Employers
- Government contractors



DOL: “Plan/Prevent/Protect”

- **Examples of “Plan”:**
 - Independent Contractors
 - Overtime Exemption



We Can Help!

- Increased public awareness
- Partnering with worker advocates, community organizations and
- Public Service Announcements
 - www.dol.gov/wecanhelp



Bridge to Justice

- What happens if the Wage and Hour Division decides not to pursue an employee complaint?
 - Attorney referrals
 - Investigation file information



DOL App

Allows employees to track hours of work



DOL Issues First “Administrator Interpretation”

- Death of the Opinion Letter
- Exemption Status of Mortgage Loan Officers
- Production/Administration Dichotomy



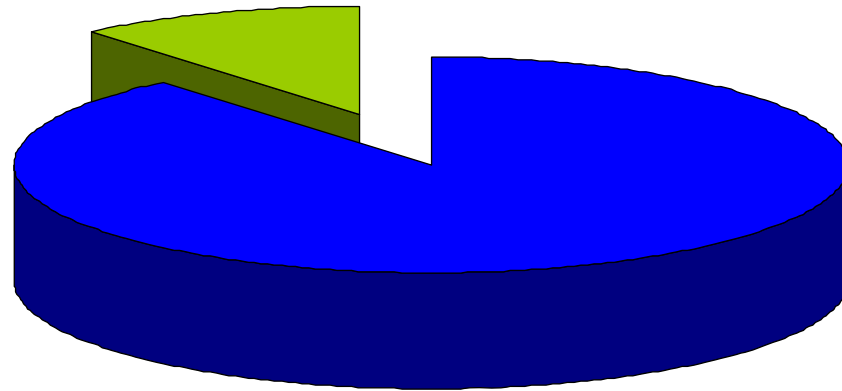
New DOL Regulations

- Tip Credit Changes
- Fluctuating Workweek and Bonus payments
- Other “Technical” Changes



Class/Collective Actions: The Flood Continues

Filings by Case Type
Q1 2011



Non-Exempt Workers: Frequently Litigated Issues

1. Auto Deductions for Meal Periods
2. Rounding
3. Remote Work
4. Off-The-Clock Work
5. Regular Rate Issues



1. Auto Deductions for Meal Periods



- **General Rule**
- **Issues**
- **Exceptions**

2. Rounding

- **General Rule**
- **Application and Issues**
- **Exceptions**



3. Remote Work



- Working from home.
- Working off-site – *e.g.* drivers.
- Logging into computer systems remotely.
- Access to company e-mail on Blackberry or home computer.

4. Off-The-Clock Work

- **Employees perform work while not on-the-clock**
 - Before or after shifts or during meal periods.
- **Pre- and Post-Shift Activities**
 - Donning & Doffing
 - Computer Logging
 - Bank drops



5. Failure to Properly Calculate the “Regular Rate”

- **Bonus and Commission**
- **Shift Differential**
- **Retroactive Pay Increase**



Exempt Employees: Exemption Status Under Attack

- **Overtime exemptions**

- Executive
- Administrative
- Professional
- Outside sales

- **Most recently challenged**

- First level managers
- Accounting positions
- IT personnel

Independent Contractors

- Freedom of Control
- Service outside the usual course of business
- Independent Trade, Occupation, Profession, or Business
- New Penalty Provisions



State Laws - Generally

- FLSA does not preempt
- Often more restrictive than FLSA
- Cover different issues
- Motivations
- Caution!
 - Don't assume that all state laws are the same
 - Malpractice claims increasing



Oregon

- Ninth Circuit versus BOLI
- BOLI Enforcement
- HB 2039



Washington



- Potential Personal Liability of Corporate Officers for Double Unpaid Wages
- Economic Realities Test Now Determines who is an Employee under the WMWA
- "Loser Pays" Attorneys' Fees Provision in Arbitration Agreement Not Enforceable in Overtime Case

California



- **Meal Period**
- **Seating**
- **Paycheck Stubs**
- **Off-the-Clock**
 - Definition of “work time”
- **Misclassification**
 - Definition of “exempt employee”

Questions and Answers



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Thank
You!



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