



Anton J Moch

UNIQUE COMPENSATION ISSUES UNDER
FEDERAL WAGE & HOUR LAWS

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TECHNOLOGY

- When IS work compensable?



TECHNOLOGY (cont.)

Considerations

- Classification
- De Minimus doctrine
 - Administrative difficulty
 - Aggregate amount of time
 - Regularity of work
- Company policy



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TECHNOLOGY (cont.)

- Lawsuits regarding smartphone use


WINTHROP WEINSTINE

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TECHNOLOGY (cont.)

Practical Suggestions

- Define company objectives
 - Employee policy
 - Pay policy
 - Security issues
 - Prohibitions



TECHNOLOGY (cont.)

Practical Suggestions (cont.)

- Define allowable work
 - Policies
 - Recordkeeping requirements
 - Prior approval
 - Data Security
 - Liability
 - Classification



TECHNOLOGY (cont.)

Practical Suggestions (cont.)

- Put it in writing
- Conduct training



INTERN/VOLUNTEER

Interns

- Interns typically employees
- Non-compensable internship programs
 - Similar to training in an educational environment
 - For the benefit of the intern
 - No displacement of regular employees
 - No immediate advantage to employer
 - Not guaranteed a job
 - Not entitled to wages



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INTERN/VOLUNTEER

Interns (cont.)

- Recommendations
 - Written policies
 - Focused terminology
 - Signed statement



INTERN/VOLUNTEER

Volunteers

- Employers may accept volunteer work
 - “Bona fide volunteer”
 - May not be coerced employee



INTERN/VOLUNTEER

Volunteers (cont.)

- Two guidelines
 - May not be same work done for employer
 - Work performed for civic, charitable, or humanitarian purposes
- Examples



LECTURES, MEETINGS & TRAINING PROGRAMS

- Need not be counted as hours worked IF:
 - Outside working hours
 - Attendance voluntary
 - Not directly related to job
 - No productive work performed



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LECTURES, MEETINGS & TRAINING PROGRAMS

- Employer courses – not compensable IF:
 - Outside regular hours
 - Attendance voluntary
 - Corresponds to outside program



LECTURES, MEETINGS & TRAINING PROGRAMS

- Independent courses – not compensable IF:
 - At college or trade school
 - After hours
 - Employee's own initiative



PREMIUM PAY

- Overtime pay
- “Regular rate” = the total remuneration in any week divided by the total number of hours actually worked in that week

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PREMIUM PAY (cont.)

- May agree to set an employee's regular rate of pay
 - Must be in writing
 - Must explicitly agree to the regular rate of pay
 - Verbal agreement will not be honored

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PREMIUM PAY (cont.)

- Specific exceptions – not part of regular rate and credited towards overtime pay
 - Premium rate for hours in excess of regular working hours
 - Premium rate for work on Saturdays, Sundays or holidays
 - Premium rate pursuant to an applicable collective bargaining agreement



PREMIUM PAY (cont.)

- Narrowly applied
- Must strictly meet the standards
 - Extra compensation included in regular rate



RECENT DEVELOPMENTS

Independent Contractors

- Memorandum of Understanding – DOL, the IRS and 7 states
 - Includes Minnesota
- Proper classification of employees versus independent contractors



RECENT DEVELOPMENTS (cont.)

Voluntary Settlement Program

- Voluntarily reclassification
 - Requirements
 - Consistent treatment
 - No audit
 - Compliance with previous audit



RECENT DEVELOPMENTS (cont.)

Voluntary Settlement Program (cont.)

- Voluntarily reclassification (cont.)
 - Settlement
 - Workers are employees in future
 - Pay 10% of the employment tax liability
 - Six-year statute of limitations

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RECENT DEVELOPMENTS (cont.)

Voluntary Settlement Program (cont.)

- Voluntarily reclassification (cont.)
 - No interest or penalties on employment tax liability
 - No employment tax audit
 - Worker classification only



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RECENT DEVELOPMENTS (cont.)

Voluntary Settlement Program (cont.)

- Voluntarily reclassification (cont.)
 - NO amnesty for
 - Worker's compensation and unemployment insurance
 - Violations of unemployment, discrimination and immigration laws
 - Overtime requirements
 - Benefits



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RECENT DEVELOPMENTS (cont.)

Amendment to Recordkeeping Requirements

- On hold
 - New requirements announced in April, 2010
 - Proposed revisions would include:
 - Notification to employees on computation of paychecks
 - Classification analysis of non-covered employees
 - Modernized recordkeeping systems