

# Why Wage and Hour Claims Will Remain at Record Highs

**James M. Reid, Esq.**

# Why Are Wage And Hour Claims At Record Highs?

1. \$15.00 per hour advocates
2. Gray area job titles/descriptions
3. Technology
4. Charges/Partial Reimbursements
5. Remedies

## Wage And Hour Law Primer

1. Federal Law: Fair Labor Standards Act of 1938 (“FLSA”).
2. Michigan Workforce Opportunity Wage Act, which repealed the Minimum Wage Act of 1964 (“MWOWA”). \$8.90/\$3.38 to \$9.25/\$3.52.
3. Michigan Law: Wages and Fringe Benefits Act (“MWFBA”).

# What Is An Employee's Regular Rate of Pay For Determining Overtime?

- Bonuses/Commissions if guaranteed
- Tip Credits if taken



# Exemptions From Minimum Wage and Overtime Regulations

- Executive-Management/Directs 2 employees
- Administrative-Discretion and independent judgment/Significant matters
- Professional-Lawyers, doctors, accountants, engineers, architects
- Outside Sales versus Inside Sales

# Learn What to Expect Under Trump Administration

- DOL rolled back 2015 and 2016 guidance that expanded joint employer and independent contractor misclassifications
- Overtime Rule will likely be withdrawn to propose a new version
- Chipotle litigation! Watch out!

# Million Dollar Lessons Learned From 2016-2017 Case Law

1. Misclassifying certain assistant store managers as exempt resulted in a \$13.5 million settlement.
2. Failing to pay for off-the-clock duties resulted in a \$9.5 million settlement.
3. Time spent waiting for managers to close/open stores or provide breaks resulting in class action lawsuit settlement of \$8.5 million for a retail store.
4. Failing to pay for time spent booting up and shutting down computers resulted in a \$6.2 million dollar settlement involving call center nurses.
5. Misclassifying independent contractors and failing to pay overtime resulted in a \$1.1 million dollar settlement in the manufacturing industry.

# Joint Employer Liability

- Vertical Joint Employment
- Horizontal Joint Employment





# Interns

- Understand the 6 factor test in Fact Sheet #71



# Compensable Time For Non-exempt Employees

- Suffer or permit to work
- Lunch breaks under 30 minutes
- Regular breaks under 20 minutes
- Time worked remotely
- On-call time if restrictions are imposed

## Damages

- Back pay
- Double the amount of back pay (the norm)
- Attorneys' fees
- Fines
- Emotional distress in a retaliation claim

## Settlements

- It is unlawful for employees to waive their right to receive overtime for all hours worked.
- Most settlement agreements will not be valid unless approved by a judge, investor and/or sophisticated attorneys.

## Training Employees And Management About Compliance And Enforcement

1. Job descriptions need to be updated to identify exemptions, if applicable.
2. If hourly employees are permitted to work remotely, procedures need to be put in place to track time.
3. Training needs to be done on at least an annual basis to minimize exposure.

## James Reid, IV, Esq.

- **Contact:**

(248) 351-7060

JReid@maddinhauser.com

