



COUNSEL TO GREAT COMPANIES

Wage and Hour, Final Paycheck, Leave and Accommodation Issues

June 25, 2015 - Bellevue, Washington

Presented by:

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2015 Labor & Employment Law Workshop

The Boss

A sweeping saga following the life of a young
and ambitious fish thrower

June 25, 2015 – Bellevue, WA

SCENE ONE

Outside Sales Exemption

- Does Amber meet the outside sales exemption?



Outside Sales Exemption (Cont.)

- FLSA:
 - Primary duty; and
 - Away
- Washington State Law:
 - Make outside sales;
 - Guaranteed salary;
 - Employee controls hours; and
 - 20% rule

Outside Sales Exemption (Cont.)

Does Amber meet the outside sales exemption?

- Away?
- More than  of her duties are non-sales duties; and
- She has  over her hours worked.

Salary Basis



Can Amber be paid on a salary basis?

YES

But it's complicated...

- Minimum wage
- Overtime
- Mutual agreement on hours

Social Media Policy

What's Wrong with Ray's Social Media Policy?

- Violation of NLRA to use policies that “reasonably tend to chill employees in the exercise of their Section 7 rights.”
 - Explicit restrictions on Section 7 activities; and
 - Policies that could be reasonably construed as prohibiting Section 7 activities

Social Media Policy (Cont.)

“Sharing salary information”

- Preventing Amber from discussing her salary is an explicit restriction on her Section 7 rights.

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Social Media Policy (Cont.)

- “Negative comments”



- About Ray and the other employees
- About the “fish stand”

Social Media Policy (Cont.)

- The remedy?
 - Strike explicit provisions
 - Modify policy



SCENE TWO

A few months later . . .

MEET

PUBLIC
MARKET



FARMERS MARKET

WILLIAM & HILLFORD VIEWPOINT
PARKING

SOUND VIEW Cafe

NO STOPS

RESTROOM

WATER & VIEWPOINT

Minimum Wage & Overtime

- **Is Amber earning minimum wage?**
 - WAC 296-128-550: “The regular rate . . . may not be less than the established minimum wage rate.”
 - Washington min. wage = \$9.47/hour
 - Amber is paid a salary of \$28,000 and is working 60 hours/week.
 - $\$28,000 / 52 \text{ weeks per year} = \$538.46 \text{ per week} / 60 \text{ hours} = \8.97 per hour.

Minimum Wage & Overtime (Cont.)

Should Amber be receiving overtime payments?

- OT calculation for non-exempt salaried employees = Weekly Pay/total number of hours worked in the week.



Minimum Wage & Overtime (Cont.)

- Examples:
 - Amber earns \$538.46 per week/60 hours per week = \$8.97/hour x 1.5 = \$13.45 OT.
 - If Amber works 45 hours in the week her OT rate is: \$17.94 (\$538.46/45 hours = \$11.96 x 1.5 = \$17.94)
- No Agreement over # hours of work per week = means all hours over 40 are paid at the OT rate



Rest Breaks & Meals



How many rest breaks and meal periods is Amber entitled to take?

- Rest breaks = paid 10 min. break for each 4 hours worked, taken no later than end of third hour; no waiver.
- Meal period = unpaid 30 min. meal period for every 5 hours worked, taken between hour 2-5; waiver allowed.
- Missed breaks and meals = **unpaid OT.**

SCENE THREE

PUBLIC
MARKET
CENTER



Disability

- **Does Oscar have a disability?**
 - Disability: the presence of any sensory, mental, or physical condition that:
 - Is medically cognizable or diagnosable; or
 - Exists as a record or history; or
 - Is perceived to exist.
 - Sleep Disorder and/or Alcoholism = both are “medically diagnosable” disabilities under Washington law.
 - But, is Oscar “perceived” as disabled?

Disability (Cont.)

- **Must the fish stand allow Oscar to come in late to work?**
 - Employer Notice? The duty to reasonably accommodate arises when the employer becomes aware of the employee's disability.
 - What's "Reasonable"? The employee is not entitled to any accommodation she demands.
 - Accommodation must be medically necessary and not pose an undue hardship on employer.

Disability (Cont.)



- **Are Amber's comments discriminatory?**
 - The WLAD permits a disability-based hostile work environment claim if employee can show:
 - (1) she was disabled;
 - (2) that the harassment was unwelcome;
 - (3) that it was because of the disability;
 - (4) that it affected the terms or conditions of employment; and
 - (5) that it was imputable to the employer.

Seattle Sick Leave

- Is Oscar entitled to take sick leave to visit his doctor?



- **SICK TIME:** used for personal or family member's illness or preventative care.
- **SAFE TIME:** used by survivors of domestic violence, sexual assault or stalking. Closure of workplace or child's school or place of care by public official to limit exposure to infectious agent, biological toxin or hazardous material.

Seattle Sick Leave (Cont.)

- **Who is covered?**
 - Full-time, part-time, temporary, and occasional-basis employees who work, telecommute or stop in Seattle as a purpose of their work.
- **Accrual?**
 - Depends on employee size
 - Based on hours worked in Seattle including overtime for non-exempt employees.



SCENE FOUR

#MyBossIsUglierThanADeadFish

#WeAllDeserveOT

#FishThrowersUnite

#MyBossIsAnAhole**

#ThrowersSchoolTogether

#MyCoworkerIsAlwaysLate

#WeNeedAUnion

#IWantToGutMyBossLikeAFish

A few months later . . .



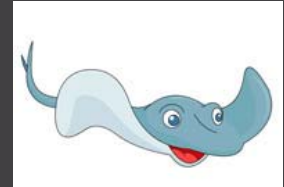
- **What Should Ray do?**
 - Issue final paychecks: final wages are due to the employee on the next regularly schedule payday regardless of reason for termination
 - Evaluate Exposure:
 - Guppy: NLRA violation
 - Oscar: Disability discrimination/failure to accommodate/hostile work environment
 - Amber: handbook claim & wages claims (consider paying in full for unpaid minimum wage and OT)

starring



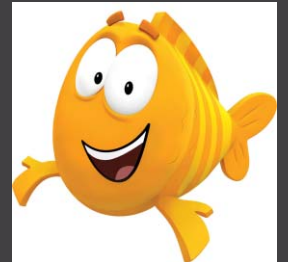
In order of appearance

Tobias Piering as Ray



Amy Kunkel-Patterson as Amber Jack

Catharine DeJulio as Guppy



Aurora Janke as Oscar

With a special guest appearance by
William (Ben) Stafford
as Kevin the Lawyer



FIN

