

New and Continuing Trends in Wage & Hour Law

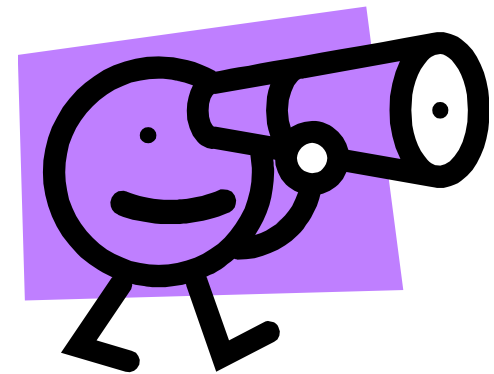
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Presented by:

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Trends in California Wage and Hour Claims

- Past year
 - Types of claims
 - Court developments
 - Political developments
- The coming year
 - Expected court developments
 - Expected litigation trends
 - Expected claims



Overview of Wage And Hour Hot Topics And Recent Trends

- Expense reimbursement
- Wage deductions
- Overtime exemptions
 - Duties test
 - Salary test
 - Vacation pay/PTO issues



Overview Continued

■ Hours worked

- Reporting time pay
- Off the clock issues

■ Independent contractors

- Increased government enforcement
- Recent case developments



Reimbursement of Employee Expenses

- California Labor Code 2802
 - Employer must indemnify employees for expenses or losses necessarily incurred in direct consequence of performance of duties

- Possible methods
 - Actual expense method
 - Mileage reimbursement method
 - Lump sum payment

- Stuart v. RadioShack Corp.

- Preventing liability



Deductions From Wages

- General rule regarding deductions
 - Allowed: payroll taxes, health/welfare benefits, wage garnishments, authorized deductions benefiting employees (e.g loans* or wage advances), certain business losses**
 - Disallowed: Balloon loan* payments, negligent shortages, breakages or business losses,** or wage overpayment deductions
- Schachter v. Citigroup, Inc.
- Preventing liability



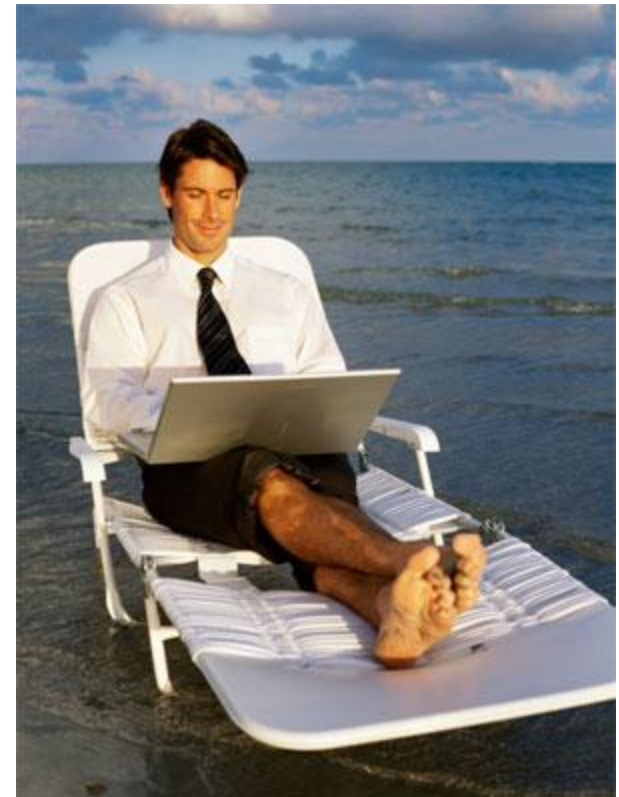
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"Nothing this week — between
your pay and your deductions,
you broke even."

Vacation And Exempt Employees

- The dilemma of partial day absences
 - Potential area for abuse
- DLSE policy prior to 2005
- Conley v. Pacific Gas & Electric
- DLSE opinion letter – November 2009
- Caveat: Written vacation policy



Jeopardizing Exempt Status Salary Basis

■ Charging Vacation/PTO Accounts

- Voluntary Full Day Absence For Personal Reasons
 - Yes!
- Employee's illness/disability
 - Vacation – No!
 - PTO – Yes
- Company Shut Down For Full Week
 - Yes if notice! How much?
- Voluntary Partial Day Absence
 - vacation policy



Overtime Exemption Issues

- Administrative Exemption
 - Work must relate to “general business operations”
 - Pelligrino v. Robert Half Int’l

- Professional Exemption
 - Non-licensed accounting personnel
 - Campbell v. PricewaterhouseCoopers, LLP



Overtime Exemption Issues Cont'd

■ Executive Exemption

- Must manage a “department” or “subdivision”
- Arenas v. El Torito Restaurants, Inc.
- Keller v. Tuesday Morning, Inc.

■ Outside sales

- In re Wells Fargo Home Mortgage Overtime Pay Litigation
- Jaimez v. Daiohs USA, Inc.



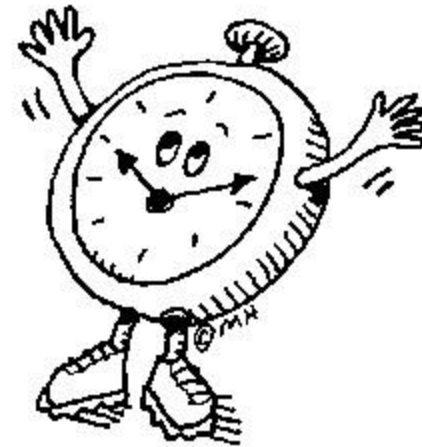
Common Exemption Misclassifications

- Computer Personnel
- Engineers/Designers
- Assistant Managers
- Accounting Employees
- Human Resources Personnel
- Sales Employees

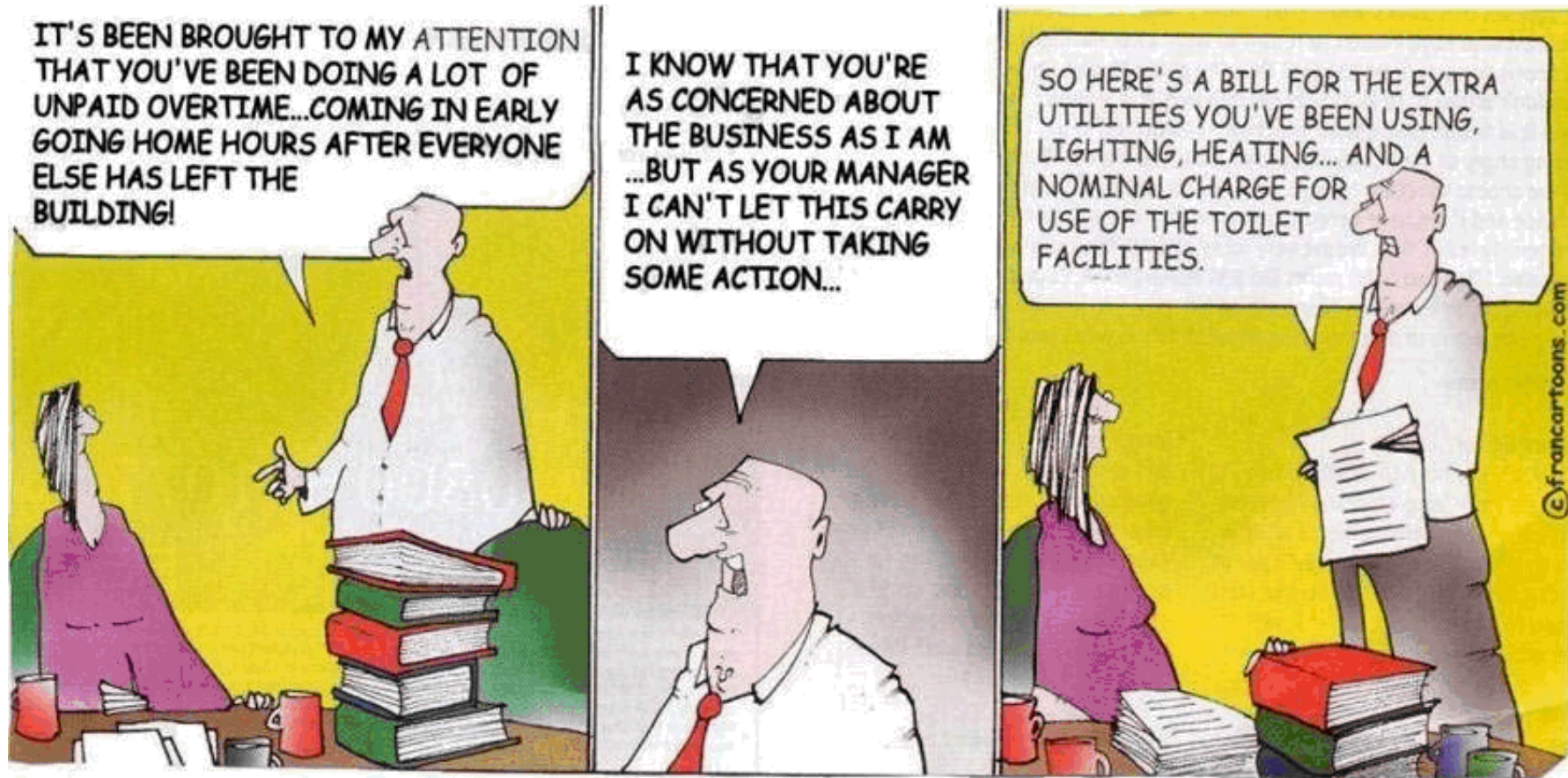


Hours Worked

- Suffered or permitted to work
- Preliminary and postliminary activities
 - Bamonte v. City of Mesa
- Off the clock time
- Reporting time
- Travel time
- Preventing liability

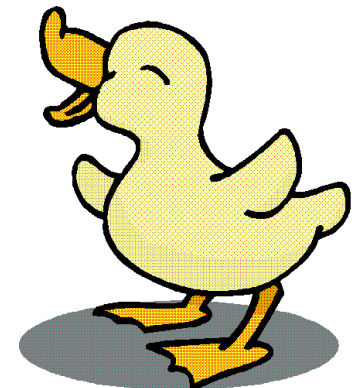


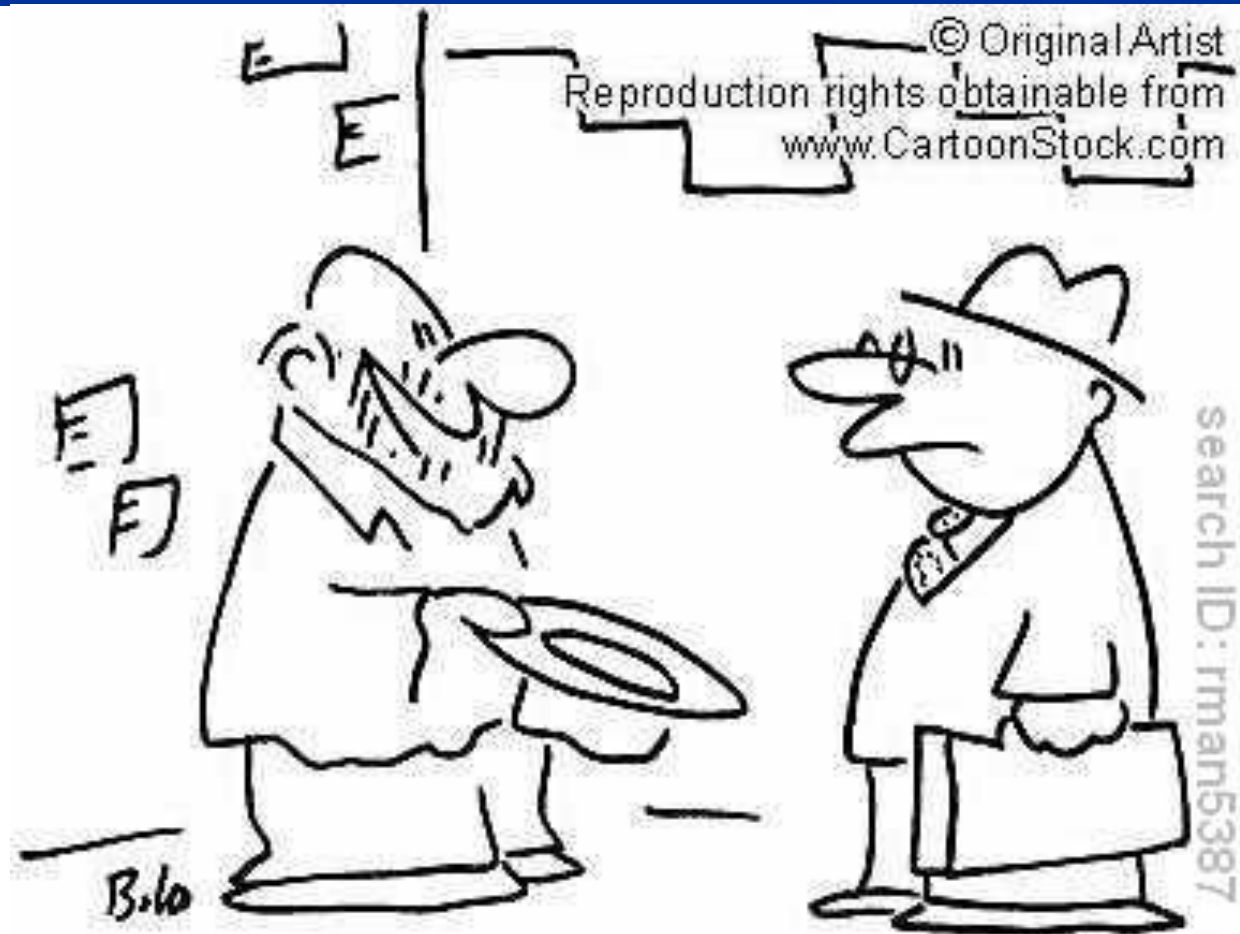
Overtime Hours Problem



Independent Contractors

- Liability caused by misclassification: (1) minimum wage; (2) overtime; (3) meal and rest periods; (4) benefits; (5) taxes; (6) workers' compensation etc....
- Key factors considered:
 - Degree of control exercised over the individual
 - Opportunity to make a profit or loss
 - Is the individual engaged in an occupation that is an integral part of the business
- Narayan v. EGL, Inc.
- Murray v. Principal Financial Group





"Thank you for the job offer, sir,
 but I'd hate to give up being
 an independent contractor."

Independent Contractors Continued

- Other considerations
 - Class actions
 - Enforcement agencies
 - Practical issues



Thank You!

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