WAGE AND OVERTIME QUARTERLY

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THE OVERTIME RIGHTS OF PARATRANSIT DRIVERS AND OTHER REGIONAL TRANSPORTATION DRIVERS. ARE YOUR CLIENTS BEING CHEATED?

Our firm has successfully handled claims involving the overtime pay rights of drivers employed by bus companies that provide transportation to disabled and elderly passengers. These bus companies often operate under contracts with local governments or local public transit agencies, and they employ thousands of drivers throughout Pennsylvania and elsewhere.

Many of our friends in the workplace injury bar know how hard these drivers work and how often they get hurt while lifting and assisting passengers. ***But what about their overtime rights?***

For sure, many local bus companies pay their drivers the time-and-one-half overtime premium required under the Fair Labor Standards Act ("FLSA"), the Pennsylvania Minimum Wage Act ("PMWA"), and similar state laws. Unfortunately, less-generous bus companies ***deny their drivers overtime pay*** by asserting that the drivers are covered by the Motor Carrier Act Exemption ("MCA Exemption") to overtime coverage.

The FLSA and similar state overtime laws contain an MCA Exemption that applies to "employee[s] with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service." See, e.g., 29 U.S.C. § 213(b)(1); 43 P.S. § 333.105(b)(7). But the MCA Exemption is not as broad as some employers think. As the Department of Labor has explained, the MCA Exemption is strictly limited to employees who, among other things, "engage in activities of a character directly affecting the safety of operation of motor vehicles in the transportation on the public highways of passengers or property ***in interstate or foreign commerce*** within the meaning of the Motor Carrier Act." 29 C.F.R. § 782.2(a) (emphasis supplied); accord Dole v. Solid Waste Services, Inc., 733 F. Supp. 895, 929 (E.D. Pa. 1989). ***In other words, for the MCA Exemption to apply, the drivers must be engaged in interstate commerce.***

Therein lies the problem for many private bus companies throughout Pennsylvania and elsewhere. In providing transportation services to disabled and elderly clients, ***the drivers almost never cross state lines.*** This is especially true when the bus company's service area lies well within a state's boundaries. But it also tends to hold true for bus companies that operate close to state borders. Simply put, the day-to-day routines of most people - including most elderly and disabled people - rarely take them over state lines.

The case of Dauphin v. Chestnut Ridge Transportation, Inc., 544 F. Supp. 2d 266, 273 (S.D.N.Y. 2008), is instructive. There, the federal judge carefully reviewed the pertinent legal authority and concluded that, for the MCA Exemption to cover a driver, the bus company must prove that the driver's trips across state lines are "more than *de minimis*" or are "a 'natural, integral and . . . inseparable part' of" the driver's job. Id. at 275.

Here's the bottom line: If you represent drivers who ***currently or formerly*** worked for a local bus company, you should ask them three relevant questions: (1) Did they ever work over 40 hours per week? (2) On such occasions, did they receive time-and-one-half overtime pay? (3) If they did not receive overtime pay, did they regularly drive over state lines? If you client neither received overtime nor regularly drove over state lines, we would be delighted to provide the client with a free and confidential consultation.

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UNDERSTAND THE TRAVEL TIME RIGHTS OF LANDSCAPERS, LABORERS, AND CONTRACTORS

When you speak with your clients in the landscaping and construction industries, you should be on the lookout for the Company's failure to pay for travel between the company headquarters and the work location.

Many landscaping and contracting companies require the workers to report to headquarters at the beginning of the workday. There, the workers gather equipment and materials needed for the day's project, load the company vehicle, and travel to the worksite. Then, at the end of the day, the workers must return to headquarters, unload the vehicle, and perform other end-of-shift duties.

The illegality arises when the Company pays the workers only for the time spent on-site at the work location. Under such circumstances, workers are cheated out of many hours of compensable work. Indeed, we have represented clients who have been owed thousands of dollars for of unpaid travel time at the beginning and end of the workday.

The Department of Labor has enacted a regulation that specifically addresses travel during the workday. Here's what it says:

> Time spent by an employee in travel as part of his principal activity, such as travel from job site to job site during the workday, must be counted as hours worked. ***Where an employee is required to report at a meeting place to receive instructions or to perform other work there, or to pick up and to carry tools, the travel from the designated place to the work place is part of the day's work, and must be counted as hours worked regardless of contract, custom, or practice. If an employee normally finishes his work on the premises at 5 p.m. and is sent to another job which he finishes at 8 p.m. and is required to return to his employer's premises arriving at 9 p.m., all of the time is working time.*** However, if the employee goes home instead of returning to his employer's premises, the travel after 8 p.m. is home-to-work travel and is not hours worked.

29 C.F.R. § 785.38 (emphasis supplied).

In this economy, workers are increasingly required to drive to worksites located further and further away from company headquarters. These workers deserve to be paid for this work, which keeps them away from their families for many extra hours during the typical workweek.

If you suspect your landscaping or construction clients have been denied travel time, don't hesitate to refer them to our law firm for a free and confidential consultation.

DON'T FORGET ABOUT THE FEDERAL MINIMUM WAGE INCREASE

When you meet with your low-wage clients, please remember that the federal minimum wage increased from $6.55 to ***$7.25*** effective ***July 24, 2009***. Be on the lookout for companies who failed to give their workers the federally mandated wage increase on July 24.

QUARTERLY QUOTE

"It is right to struggle against an unjust economic system that does not uphold the priority of the human being over capital and land."

Pope John Paul II, Centesumus Annus (The Hundredth Year) #35, 1991.

THE WAGE AND OVERTIME LAWS APPLY TO FORMER EMPLOYEES

Clients and referring counsel often ask whether workers can bring a wage or overtime lawsuit against a ***former*** employer and, if so, how far back their damages can extend. Here's what you need to know:

Under the federal Fair Labor Standards Act ("FLSA") and every similar state law, employees can sue former employers for wage and overtime violations. In fact, well over 50% of our firm's clients no longer work for the defendant company.

The statute of limitations period for an FLSA claim is either two years or, in the event of a "willful violation," three years. See 29 U.S.C. § 255(a). However, under the Pennsylvania Minimum Wage Act ("PMWA"), which generally offers the same wage and overtime protections as the FLSA, the statute of limitations period ***always is three years***. Thus, in Pennsylvania, a worker who files suit on September 1, 2009 can recover damages going back to September 1, 2006.

Thatís why it's so important for your clients to commence their wage and overtime action as promptly as possible. This is true even if their worker's compensation claim is pending. In fact, resolution of the wage and overtime suit might even enhance your client's worker's compensation award by elevating her weekly earnings figure.

UNDERSTAND THE MEAL BREAK RIGHTS OF HOSPITAL WORKERS

Hospitals throughout the country are being held accountable for the widespread practice of making *automatic* meal break deductions from their employees' paychecks without regard to whether the employees actually receive the full meal break. Due to the nature of hospital work, employees often are called upon to perform job-related duties during their meal breaks. Some hospitals even require employees assigned to "critical" units to carry beepers during their breaks so that they can be interrupted as necessary.

Under the FLSA and similar state laws, employees must be paid when they perform work during meal breaks. The federal Department of Labor has issued a specific regulation covering this topic:

> The employee **must be completely relieved from duty** for the purposes of eating regular meals. Ordinarily 30 minutes or more is long enough for a bona fide meal period. A shorter period may be long enough under special conditions. The employee is not relieved if he is required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to eat at his desk or a factory worker who is required to be at his machine is working while eating.

29 C.F.R. § 885.19 (emphasis supplied).

Hospitals that allegedly fail to pay employees for time in which they are not "completely relieved from duty" can land in a heap of trouble. For example, Chief Judge Donetta Ambrose of the Western District of Pennsylvania recently issued an opinion conditionally certifying a class of Pittsburgh, Pennsylvania hospital workers who alleged that the hospital acted illegally in making an automatic 30-minute pay deduction even though they were not "completely relieved from duty" during the entire 30 minutes. See Kuznyetsov v. West Penn Allegheny Health System, Inc., 2009 U.S. Dist. LEXIS 47163 (W.D. Pa. June 1, 2009). In her opinion, Judge Ambrose emphasized that it is the employer's duty to affirmatively ensure that work is not performed during meal breaks. See id. at *14.

The damages in meal break cases can be significant, especially in view of a string of cases suggesting that employees required to work during even a *portion of* their unpaid meal break may be entitled to unpaid wages for the *entire* meal break. See, e.g., Burks v. Equity Group-Eufaula Division, LLC, 571 F. Supp. 2d 1235 (M.D. Ala. 2008).

If you represent hospital workers, make sure they are not working during their unpaid meal breaks. As always, our firm would be delighted to consult with you or your client to determine whether their wage and overtime rights have been violated.

ABOUT THE WINEBRAKE LAW FIRM

Workers deserve to get paid for ***all time spent working***, and most workers are entitled to valuable ***overtime pay*** when they work over 40 hours in a workweek. Yet, every year, millions of American workers are cheated out of their full pay because they do not understand their rights under the Nation's complex wage and hour laws.

Wage and overtime violations hurt working families. When a company violates the law, it should be held accountable. ***No one is above the law.***

The Winebrake Law Firm believes workers pursuing their wage and overtime rights are entitled to the same high quality legal representation enjoyed by big corporations. We also understand that workers have a right to be treated with the same level of professionalism, courtesy, and respect accorded to corporate CEOs.

The Winebrake Law Firm goes to Court to fight for workers who have been deprived of full regular pay and overtime pay in violation of the federal Fair Labor Standards Act ("FLSA") and similar state laws. Attorneys Pete Winebrake and Andy Santillo have negotiated settlements in federal wage and overtime lawsuits worth millions of dollars to American workers and their families.

The wage and overtime laws are complicated. Don't hesitate to contact ***The Winebrake Law Firm*** for a ***free consultation*** if you believe the wage and overtime rights of you or one of your clients may have been violated. Workers never pay a fee unless they recover.

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