



ASWD Legal News

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Hourly Employees and Wages: Overcoming Overtime Fears

In the United States, the standard work week is 40 hours; but when the deadline for that big project is looming or a client needs special attention, your employees will likely end up working overtime. As an employer, overtime should not terrify you. After all, you want to pay your employees for the work they have performed. But, you also do not want to pay an employee overtime wages when you expected their salary to include overtime work. Many people may not associate salaried employees with overtime pay, but impending changes in federal wage law will make overtime pay for salaried employees much more common.

Overtime applies to more than just hourly workers; salaried workers can also be subject to overtime pay
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Hourly Employees and Wages: Overcoming Overtime Fears

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when they do not meet certain exemption criteria. “White Collar” employees are potentially exempt from overtime pay when: (1) the employee is paid a predetermined and fixed salary that cannot be reduced for performance or hours worked; (2) the salary paid meets the minimum amount; and (3) the employee’s job primarily involves executive, administrative, or professional duties. If an employee does not meet all of these criteria, you may be required to pay overtime.

The current minimum salary to qualify for the exemption is \$23,660 a year. But a proposed rule will likely push the exemption threshold in 2016 to more than \$50,000. Over five million salaried employees are expected to become eligible for overtime compensation as a result of this rule change. The rule will also likely peg the threshold to a certain percentile of the population, meaning it will change regularly. The proposed rule change should dictate a review of salaried employees’ exemption status.

Overtime regulations are more comprehensive than you may realize – overtime pay could apply even if an employee has contracted to work more than 40 hours a week on salary. A non-exempt employee who has contracted to work 50 hours a week is entitled to ten hours of overtime pay a week, which cannot be waived. Not paying for this overtime work could then open your business to a claim for unpaid wages.



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Businesses need to stay up to date to avoid potential wage lawsuits, especially with the rising number of wage-related suits being brought under federal wage laws. In 2014, over eight thousand lawsuits were filed under the Fair Labor Standards Act. Businesses can protect themselves by regularly reviewing their wage policies and staying up to date with the evolving law. It is important that you know how the future changes will impact your current and future employees’ exemption status. If you know exactly how much overtime will cost you after the changes, you can plan accordingly.

Future wage disputes can be avoided if employee contracts and promotions are created after consulting with legal experts to determine your employees’ exemption status. When bringing on new hires, make sure that you are aware of upcoming changes to regulations that might affect the exemption status of your new employees later on. How much are you willing to pay given the number of hours you expect your employees to work? Have you factored in other regular salary items and bonuses when figuring their overtime rate? These are all important questions you need to answer ahead of time. After all, when you are in the 11th hour of the big project, you do not have time to worry about your employee’s 45th hour.

Firm News & Highlights



ELIZABETH M. REEDER

> ASWD will once again partner with UpTech as it embarks with its fourth accelerator class this year. Attorney **Elizabeth M. Reeder** will serve as legal mentor to participant Fanvester. ASWD is committed to regional entrepreneurship and is proud to have served as a legal mentor for each UpTech class since its inception.

> Attorney **Elizabeth M. Reeder** was recently selected as a member of the 2016 class for Leadership Northern Kentucky. She is honored to be among the many local leaders who have served before her.



> ASWD has proudly represented clients in Kentucky, Ohio and Indiana for over **100 years**.

As we continue to respond to our client's needs and stay in tune with how business are evolving, you will find our new look refreshing here in print and online. Our firm's website has a new presence with better accessibility and functionality at www.aswdlaw.com.



JEFFREY C. MANDO



EDWARD L. METZGER III

> Score another huge victory for ASWD's Local Government Practice Group. ASWD attorneys **Jeffrey C. Mando** and **Edward L. Metzger** have obtained summary judgment for a local health inspector in a case of the unfortunate death of a young girl. To read the court's opinion in full, please visit www.aswdlaw.com and click on the news section.



DENNIS R. WILLIAMS



GLENN E. ALGIE

> ASWD partners **Dennis R. Williams** and **Glenn E. Algie** recently recovered a seven figure recovery for their client arising out of a tragic truck accident which resulted in the death of a senior citizen. The facts reflected serious inattentiveness by the truck driver, failure of the trucking company to maintain required records and provide training for drivers.



BRYCE C. RHOADES

> ASWD is pleased to announce that **Bryce C. Rhoades** has joined the firm as an associate attorney. He will practice in the firm's Government Law Practice Group.

"Bryce brings a wealth of knowledge to our premier Government Law Group," says Managing Partner, ScottGuenther. "His experience as Assistant City Solicitor for the City of Covington brings with it a breadth of real-world experience that will enable us to do an even better job serving our government clients. Our Government Law Practice Group is rapidly expanding and Bryce is a perfect fit."



CLAIRE E. PARSONS

> **Claire E. Parsons** was presented with Legacy's Next Generation Leader Award in the Business, Financial, and Legal Services Category. The Next Generation Leader Awards are designed to salute the region's top young professionals under the age of 40 for significant accomplishments in their chosen professional field, demonstrated leadership, as well as their contributions to the community.



Tis' the Season... Year-End Business Planning

As the year draws to a close, there should be more on your mind than holiday parties and gift giving. Year-end review of your estate planning and business activities can provide tax savings and peace of mind as you head into the new year.

Business owners should be mindful of any changes in ownership structure throughout the year. Were additional partners brought on board? If so, then you should document that change and consider entering into an operating agreement or shareholder agreement to spell out the respective rights and obligations of the owners. Businesses that have elected to be taxed as an s-corporation must be especially careful in documenting ownership changes. Did an owner exit the business? Such exit should be timely documented for the tax year during which it took place. Even if no changes in ownership structure occurred, it is wise for business partners to conduct an annual meeting in compliance with applicable law in the jurisdiction of formation.

Businesses evolve and change over the years, and owners should conduct reviews to determine if any inactive businesses need to be dissolved or merged into an active business. Dissolution or merger will simplify administration and eliminate extraneous reporting requirements for entities that are no longer in operation.

Of course, businesses aren't the only group that should be mindful of year-end planning. Individuals should review their estate and gifting plans every few years to ensure their plans accurately reflect



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their wishes. If you intend to make gifts, remember the \$14,000 annual exclusion is a "use or lose it" provision. The exclusion resets each year but cannot then be applied to the prior year. You should also review your finances to determine if more sophisticated estate planning is needed. If you estimate your estate to be in excess of the applicable exclusion amount of \$5,430,000 for individuals, you should consider more careful planning.

'Businesses evolve and change over the years, and owners should conduct reviews to determine if any inactive businesses need to be dissolved...'

As the saying goes, an ounce of prevention is worth a pound of cure. Careful year-end planning provides many benefits such as tax savings and risk reduction. If you wish to review your personal or business plans, please contact our business and estate attorneys today.



Hostile Work Environment Protection - What Owners Need to Know

I recently represented a city in a case in which an employee was accusing a coworker of creating a sexually hostile work environment. Fortunately, we prevailed at trial but it brought to light the responsibilities an employer has for ensuring workers maintain a proper work environment. Most employers are aware and train their supervisors to avoid behavior that constitutes harassment or could create a hostile work environment. Indeed, many hostile work environment claims arise from the authority a supervisor can exercise over their subordinates.



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Courts have held that an employer “knew or should have known” about harassment if (1) the employee provided the employer with enough information to raise a probability of harassment in the mind of a reasonable employer; or (2) if the harassment was so pervasive and open that a reasonable employer would have had to be aware of it.

It is not enough that an employer simply respond to complaints of harassment. Employers and supervisors should be vigilant in identifying and addressing potentially harassing behavior even if a complaint has not been filed. Proper oversight and documentation of such events can be crucial to the successful defense of a hostile work environment claim.

‘It is not enough that an employer simply respond responds to complaints of harassment.’

However, under both federal and state law, employees can bring a claim against an employer for a hostile work environment based upon the actions of a coworker that has no supervisory authority over them. In these situations, the employer is liable if they knew or should of known about the harassing behavior and failed to take appropriate action.

To ensure that your company is fully protected in this area, don’t hesitate to call my office and schedule a meeting. Our job is to ensure that your policies protect you long before a problem arises.

Attorney Profile



CLAIRE E. PARSONS is not your typical emerging attorney. She is an undeniable force and has a reputation for using her keen legal sense to protect her clients' legal interests, while staying committed to bringing a spotlight on females in litigation. As a litigator, Claire has an impressive resume having obtained precedent-setting decisions through written and oral advocacy in the United States Court of Appeals for the Sixth Circuit and the Kentucky Court of Appeals. She has successfully handled all aspects of state and federal civil rights and tort litigation for county, municipal, and school entities and elected officials in both Kentucky and Ohio. Simply put, she is one of the main reasons ASWD is the sought after law firm for government litigation matters.

Aside from litigation, Claire, has become a leader in Special Education law. She, as part of the ASWD Government Practice Group, which is led by Partner, Mary Ann Stewart, has worked to define an area that until now was underrepresented in our region. Several years ago, Claire and her team recognized the lack of specialization with regards to protecting school districts from litigation for noncompliance in accordance with ADA and special education laws. As such, they started at the ground level researching, developing and implementing legal strategies that now put their clients among the top in our region for

servicing special education students. Currently, Claire and the ASWD school law attorneys represent two Kentucky school districts, serving as general counsel and managing all special education litigation. "Supporting districts in developing legally sound district-wide plans that both help their special education students reach their fullest potential while protecting them from litigation, is extremely important work," says Parsons. "I am extremely proud of the work that our firm has done to advance the knowledge-base for special education law."

ASWD attorneys have a reputation for working harder than anyone else in the industry. Claire is no exception. Aside from litigation and her civil rights representation, she is also a co-founder of the Northern Kentucky Bar Association's Lean In Circle based on Sheryl Sandberg's book *Lean In: Women, Work, and the Will to Lead*. The group was founded to create a platform where successful female attorneys can find support for the balance issues that arise with focusing on career and life goals equally. "The percentage of female litigators is far below that of males," says Claire. "We bring an important dimension to trial litigation for jurors. However, the time and stress demands for litigation attorneys are very high. This element leads talented female attorneys to choose less demanding areas of law to practice when starting families and such. The Lean In Circle was started to help combat female attorneys from steering away from challenging areas like litigation because they feel like they must choose. Simply put, it is a platform of experience and support for highly motivated women in the industry." Along with the Lean in Circle, Claire is a major contributor to Makerspace, a place where students in Boone County can go to innovate, play and create. In addition, she is an active member of the Northern Kentucky Chamber's Womans' Initiative, was awarded the Next Generation Leadership Award, while serving in The Leadership Class of 2015, as well as a Welcome House Board member. If your organization is searching for a talented litigator, leader and community advocate, don't hesitate to learn more about Claire Parsons' legal practice at www.aswdlaw.com.