

Wage & Hour Done Right

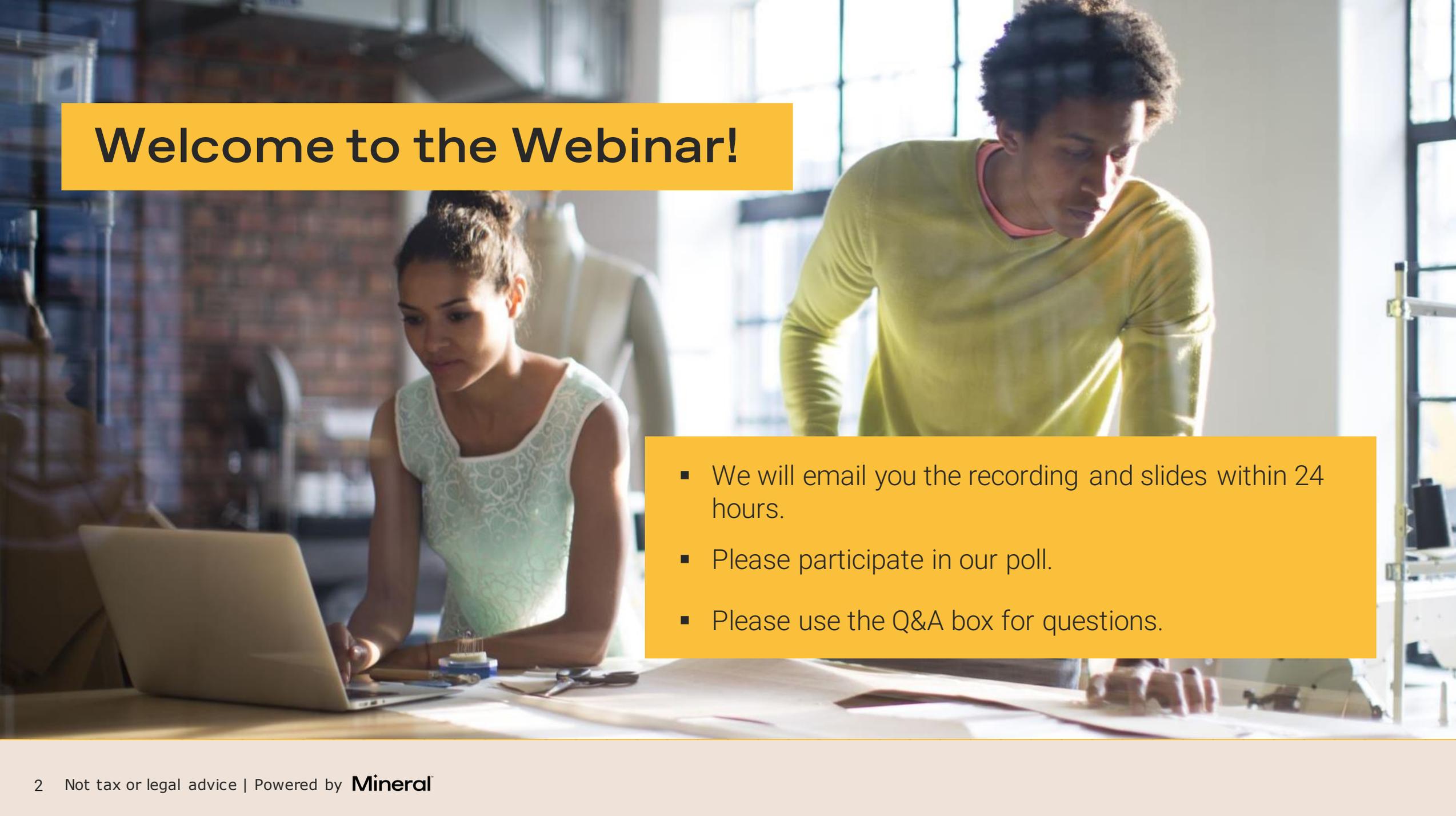
Presented by Kara G., JD, SPHR

March 17th, 2022

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Welcome to the Webinar!



- We will email you the recording and slides within 24 hours.
- Please participate in our poll.
- Please use the Q&A box for questions.

Agenda

- The Fair Labor Standards Act
- Employee Classifications
- Basic Requirements
- Non-Exempt Danger Zones

The Fair Labor Standards Act





The FLSA

- Fair Labor Standards Act
- Enacted in 1938 during the Great Depression
- Creates a floor for wages, and a ceiling for hours



What the FLSA Regulates

- Minimum wage
- Hours after which overtime must be paid and the overtime rate
- What kind of payroll records must be maintained
- Child labor
- Who may be exempt from minimum wage and overtime



What the FLSA Does Not Regulate

- Vacation or sick leave
- Premium pay for weekend or holiday work
- Fringe benefits
- Termination
- Severance
- Payment of final wages

Are You Covered by the FLSA?



Almost everyone is covered by the FLSA. There are two kind of coverage – if *either* apply, follow the FLSA.

- **Enterprise Coverage:** Any business that has an annual dollar volume of sales or business done of at least \$500,000 and certain industries. If the business is covered, all employees are covered.
- **Individual Coverage:** An employee is covered by the FLSA if they are engaged in interstate commerce, even if the business doesn't have enterprise coverage.

Employee Classification



Question 1: Do I have an employee at all?

These relationships each have specific criteria and classifying workers in one of these ways carries risks.

- **Independent Contractors:** IRS and DOL tests
- **Unpaid Interns:** Primary Beneficiary Test
- **Volunteers:** Generally prohibited at for-profit organizations

Independent Contractors

- IRS Control Test
- DOL Economic Realities Test
- Both are multi-part balancing, or factors tests – no single criteria will be determinative
- Both focus on who has the most control over the work and who bears the risk of profit or loss

Unpaid Interns: Primary Beneficiary Test

- There is no expectation of compensation
- Provides training similar to that given in an educational environment
- Tied to the intern's formal education program
- Accommodates the intern's academic commitments
- Duration is limited to the period in which the intern is learning
- The intern's work complements, rather than displaces, the work of paid employees
- The intern and the employer understand there is no entitlement to a paid job after the internship

Question 2: Is the employee exempt?

The FLSA provides exemptions from minimum wage, overtime, or both for specific kinds of employees.

- **Job titles don't matter:** Employees must pass certain duties tests
- **Method of payment doesn't matter:** Being paid a salary does not make an employee exempt





Analyze Your Exempt Roles: *White Collar Exemptions*

- Executive
- Administrative
- Professional (Learned and Creative)
- Outside Sales
- Computer
- Highly Compensated



Poll Question

How confident are you that your employee classifications are correct?

The Basics

Minimum Wage, Overtime, Recordkeeping, Posting





Minimum Wage

Federal: \$7.25 per hour or \$2.13 with tip credit

State: More than half of the states have a higher than federal wage

City: Many with significantly higher rates

Always pay the highest applicable minimum wage!



Overtime

- Hours over 40 hours in a *workweek* are paid at 1.5x regular rate of pay
- Workweek: the 168-hour period (7 days) during which you track employee time to see if they do more than 40 hours of work, e.g., Sunday at 12:00am through Saturday at midnight
- Payroll periods are irrelevant!

Hours	S	M	T	W	T	F	S	Total
Week 1	0	8	8	10	10	8	6	50
Week 2	0	5	5	8	6	6	0	30

Total payroll period hours: 80

Pay: 70 straight time, 10 overtime

Recordkeeping

Store for three years from the date of creation of the record

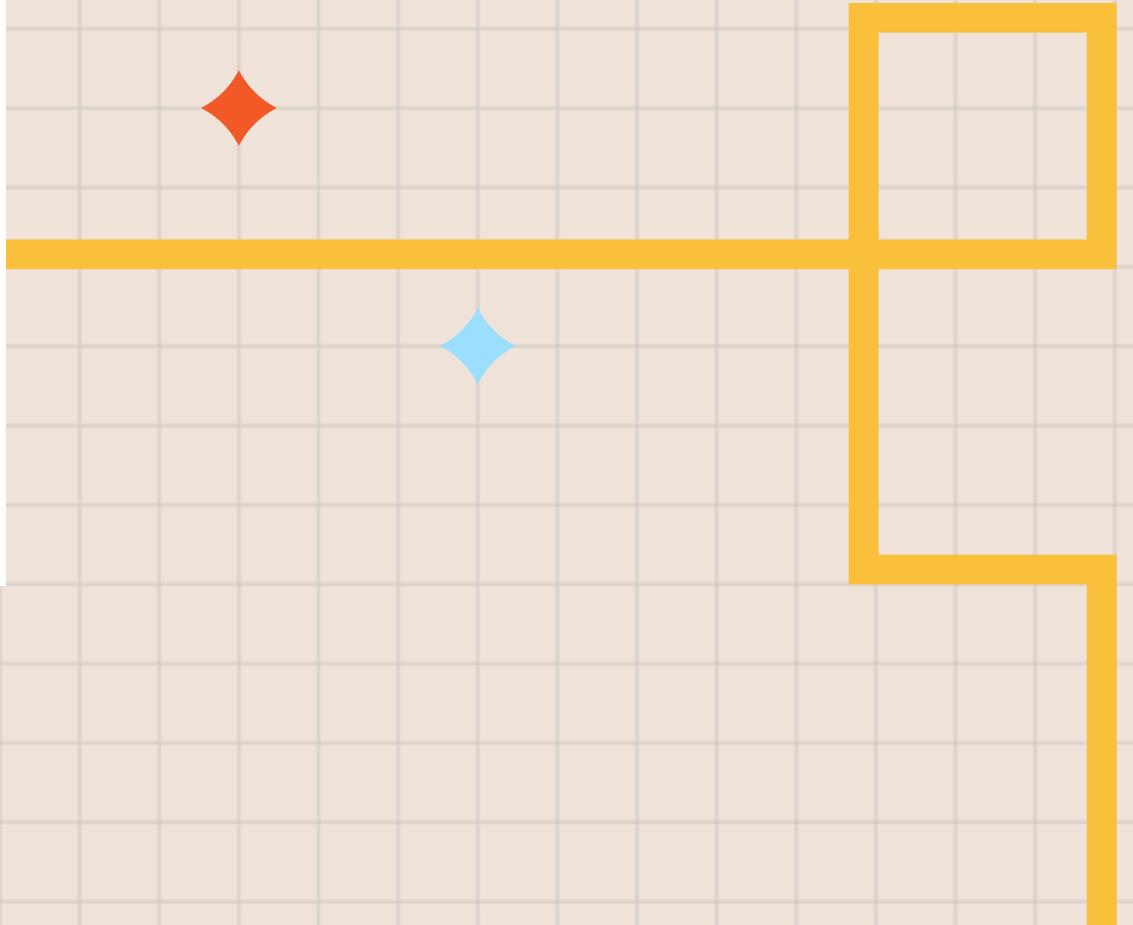
- Personal information from W-4
- Hour and day workweek begins
- Total hours worked each workday and each workweek
- Date of payment and pay period covered
- Total wages each pay period, broken down by day, week, straight time and overtime
- Regular hourly pay rate for any week when overtime is worked
- Deductions from or additions to wages

Mandatory Poster



- Employers subject to the FLSA must conspicuously post a notice explaining the key points of the FLSA and indicating the current federal minimum wage
- The Department of Labor offers the posting in multiple formats
- If your state has their own minimum wage, they no doubt have a required poster as well

Wage and Hour Danger Zones



Calculating the “Regular Rate”

If an employee earns more than one rate of pay in the same workweek their “regular rate of pay” should be computed before their overtime rate is calculated (and often overtime will need to be adjusted retroactively).

Overtime rates are affected by:

- Commissions
- Piece-rate pay
- On-call pay
- Non-discretionary bonuses
- Shift differentials



Calculating the “Regular Rate”

Example: Anna earns \$10/hour for inside sales work and \$15/hour for bookkeeping work. This week, she worked 24 hours in inside sales and 20 hours as a bookkeeper. She also received \$50 in commissions attributable to this workweek. Her pay is calculated as follows:

- **Step 1 – Regular Rate:**

$$[(\$10/\text{hour})(24 \text{ hours}) + (\$15/\text{hour})(20 \text{ hours}) + \$50]/44 \text{ hours} = \$13.41$$

- **Step 2 – Overtime:**

$$\$13.41/\text{hour} \times 1.5 \text{ overtime premium} = \$20.11/\text{hour}$$

- **Step 3 – Calculate Weekly Pay:**

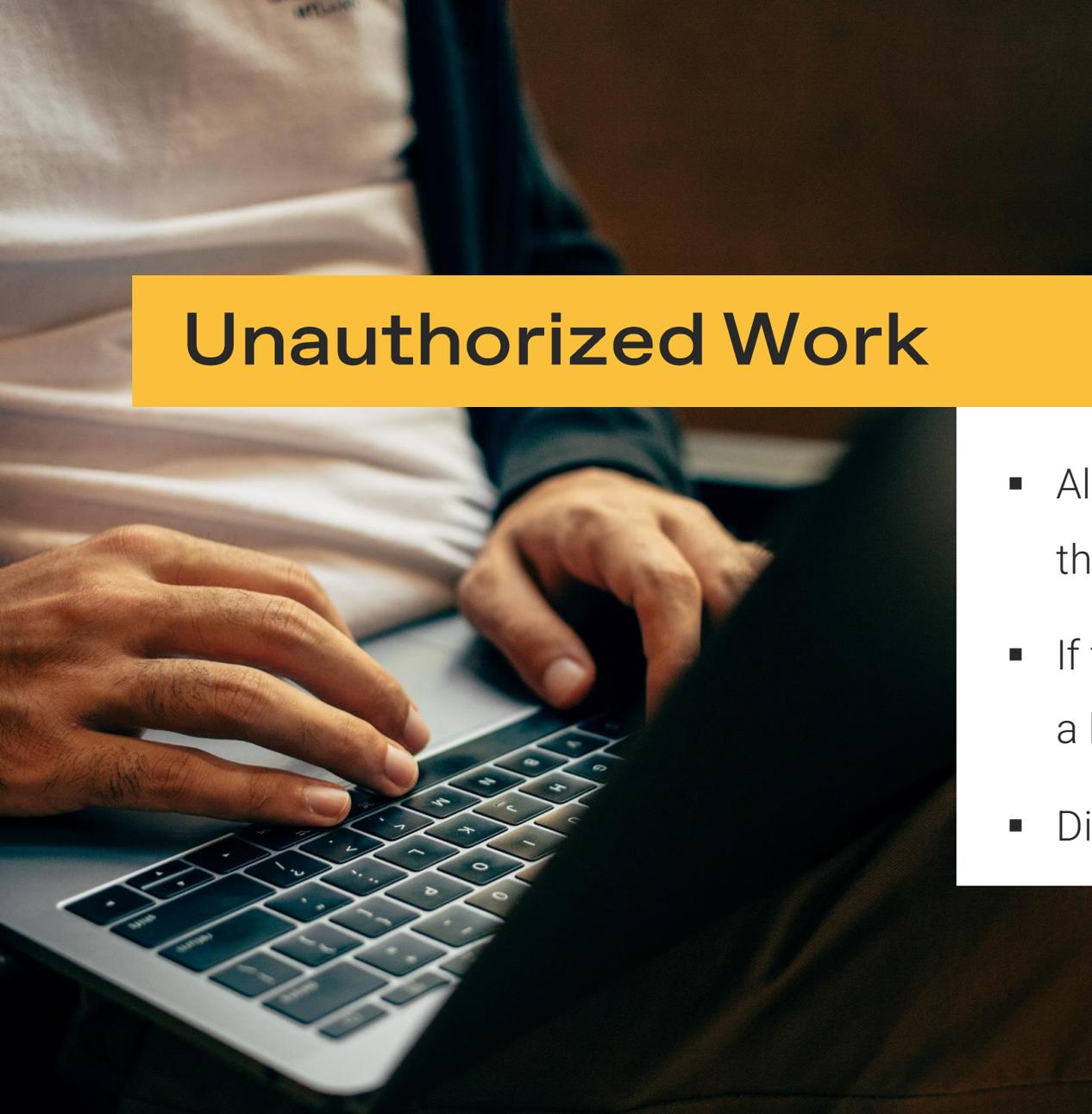
$$(\$13.41)(40 \text{ hours}) + (\$20.11)(4 \text{ hours}) = \$616.82$$



Late or Incomplete Timesheets

- You cannot withhold pay!
- Take your best guess as to hours worked and pay on regularly scheduled payday
- Discipline and document
- Be detailed about how time should be tracked and recorded
- Provide training and set expectations





Unauthorized Work

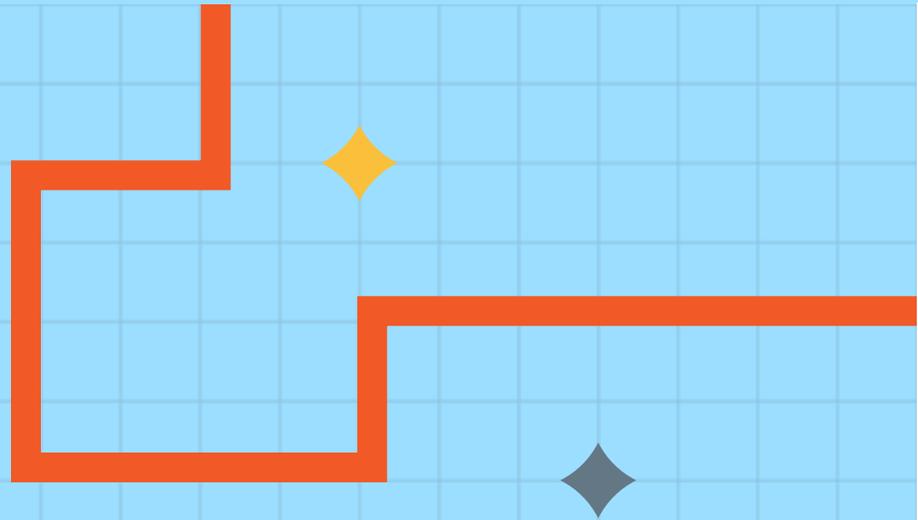
- All hours worked must be paid, whether you wanted the work done or not
- If the work was overtime, it must be paid at time and a half
- Discipline and document as needed

Off-the-Clock Work and Personal Electronic Devices

- Again, all time worked must be paid
- Time worked away from the office should be tracked
- Beware the lure of smartphones
- Have clear policies



Meal and Rest Breaks



- Breaks under 20 minutes should be paid, unless you offer a specific amount of paid break time and make it unambiguous that only that amount of time will be paid and that exceeding that rest period will lead to discipline
- Reasonable break time for lactation must be allowed, but can be unpaid subject to the above requirements



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Travel Time Issues

Extended Commutes

- Travel during the workday should be paid
- Out-of-the-ordinary commuting time should be paid, e.g., if an employee's usual commute is 30 minutes and you ask them to leave early to visit a client 90 minutes away, pay the difference

Travel Time Issues

Away for a Weekend

- Time spent in transit or doing work during their normal work hours, regardless of the day of the week, should be paid, e.g., 8 a.m. - 5 p.m. Saturday
- Time after normal work hours should be paid if you've asked them to do work, or something work-related, like entertain clients
- If they are not in transit or working, and can use their time however they like, you don't need to pay for it

Waiting Time

If the employee is “engaged to wait,” pay

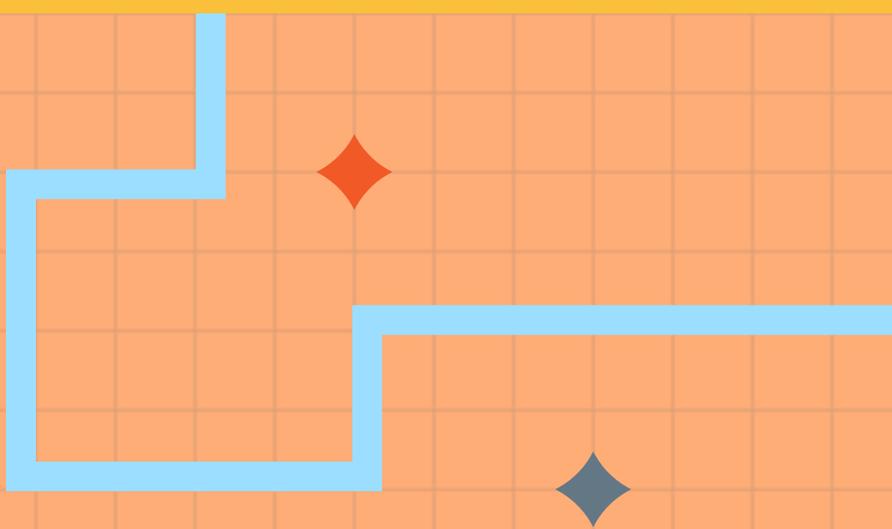
- Examples: Receptionist reading a book between customers, a fireman cooking between alarms.

If the employee is “waiting to engage,” you don’t have to pay

- The employee must be completely relieved from duty and told in advance that they may leave the job and will not have to start work again until a specified time.



On-Call Time



- Is the employee required to stay on the premises or very nearby? If yes, pay
- If no, evaluate whether the employee can effectively engage in personal activities. How close must they be? How often are they interrupted?
- All time spent responding to calls must be paid

Pay Deductions

- Government-mandated deductions don't require employee approval
- Voluntary deductions for the benefit of the employee usually require written authorization
- Deductions for the benefit of the employer, e.g., uniform costs, are often illegal
- Any non-governmentally-approved deduction that takes an employee below minimum wage or cuts into their overtime pay is a violation of the Fair Labor Standards Act*

*With the exception of certain properly contracted personal loans, which will still be subject to state law



Poll Question

Have you ever dealt with a wage and hour claim or threat of claim?

Why it Matters

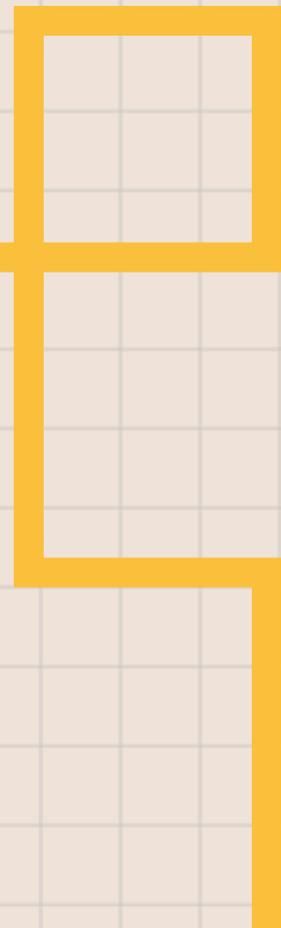


Stacking Non-Exempt Wage and Hour Violations

Employee was paid a flat rate of \$800 per week to cook for an entertainment group on tour for 10 weeks, working approximately 17 hours per day.

Damages	
Minimum wage back wages	\$210
Minimum wage federal penalty	\$210
Minimum wage state penalty	\$1,740
Overtime back wages	\$8,591
Overtime federal penalty	\$8,591
Overtime state penalty	\$1,740
Late payment state penalty	\$1,740
Attorney Fees	\$5,000
Filing Fees	\$500
Total	over \$28,000

Q+A



Thank you!

