

**K**AMER  
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ATTORNEYS AT LAW

**6<sup>th</sup> ANNUAL  
LABOR  
&  
EMPLOYMENT  
SEMINAR**

**K**amer Zucker & Abbott is pleased to announce its 6<sup>th</sup> Annual Labor and Employment Seminar. This year's program will provide important information on a wide variety of topics affecting employers, including some of the most recent legal developments at both the federal and state levels. Specifically, this year's presentation will focus on leave of absence issues, discipline and discharge, wage and hour, and workplace privacy.

In addition, we have brought back this year, by popular demand, our mock trial which has traditionally enjoyed overwhelming positive feedback from our attendees. This year's twist, however, is that we will be presenting a mock arbitration hearing, presided over by Arbitrator Gregory J. Kamer. The cast of characters for the arbitration will feature many of our support staff and attorneys, and it should be a very entertaining and informative presentation.

We anticipate a very successful program this year, and we hope that you can make arrangements to join us.



**Friday, October 17, 2003  
Caesars Palace  
8:00 a.m. to 3:30 p.m.**

# Wage and Hour Issues Every Employer Must Know



**Scott M. Abbott**



# The Statutory Framework

- The Fair Labor Standards Act (FLSA)
- Nevada Revised Statutes (Chapter 608)

# The FLSA: Coverage

- Must have employer-employee relationship
- “Suffer or permit to work” standard
- Economic reality test:
  - Employee vs. independent contractors

# Employee or Independent Contractor?

- Degree of control exercised
- Extent of investment
- Opportunity for profit and loss
- Permanence of relationship
- Specialized skills
- Integral part of operation

# The FLSA

- Two major areas governed:
  - Minimum Wage
  - Maximum Hours (overtime)

# The FLSA: Exemptions



- White-collar employee designation
  - Administrative
  - Executive
  - Professional

# White-Collar Exemptions

- Core requirements:
  - Must perform exempt work
  - Exempt work must be primary duty
  - Compensation in specified form and amount



# “Executive” Test:

- Management of enterprise
- Directs work of 2 or more employees
- Authority to hire/fire/promote (or recommend)
- Regular exercise of discretion

# “Administrative” Test:

- Office or nonmanual work
- Directly related to employer’s policies
- Regularly exercises independent judgment and discretion
- Does not include ordinary clerical/support employees (i.e., secretaries, clerks)

# “Professional” Test:

- Work requiring specialized/advanced knowledge
- Original and creative character of work
- Constant exercise of discretion and judgment
- Predominantly intellectual work

# Other FLSA Exemptions

- Outside salespersons
- Commission salespersons
- Seasonal recreational employees
- Employees subject to Motor Carrier Act
- Agricultural employees
- Taxicab drivers

# Compensable Work Time

- What constitutes working time?
  - Waiting/on- call time
  - Meal/rest periods
  - Preparatory and concluding activities
  - Involuntary attendance
  - Travel time

# Waiting/On-Call Time

- Is “waiting” for the benefit of the employer?
- Is it unpredictable?
- Can employees use the time effectively for their own purposes?
- Does employee need to remain on premises (or nearby)?

# Meals and Breaks

- How long in duration?
- Is employee completely relieved from duty?
- Restrictions/interruptions?



# Preparatory/Concluding Activities



**"Ready to work at 8 o'clock, Velez!  
Not just *here* at 8 o'clock! Ready to work!"**



# Preparatory/Concluding Activities

- For the benefit of the employer?
- Closely related to employee's principal activity?
- Indispensable to employee's work?



# Involuntary Attendance

- Is attendance mandated by employer?
- Does employee believe non attendance will have adverse consequences?
- Is subject matter directly related to employee's job?



# Travel Time

- Is it ordinary home-to-work commuting time?
- Is the travel “all in a day’s work?”
- What about emergency or call-back situations?



# Special Wage & Hour Issues

- Commissions

- Payments for hours worked
- Employee must receive at least minimum wage for each hour worked in a workweek
- Cannot offset deficits and surpluses

# Special Wage & Hour Issues

- Bonuses

- Discretion by employer is the key

- Is there some form of entitlement?

- Christmas/longevity bonuses

- Measured by hours worked?



# Special Wage & Hour Issues

- Volunteer work:
  - Only applicable to government work (not private sector)
  - Motivation of individual is key
  - If other than for civic, charitable or humanitarian reasons, time is compensable

# Special Wage & Hour Issues

- Child labor:
  - Generally, 16 years is minimum age
  - Ages 14 & 16 also permissible if no interference with school or child's safety
  - Exemptions: actors, newspaper carriers, agricultural work



# Recordkeeping

- What to keep:
  - Employee personal data (name, address, occupation)
  - Time records (time cards, timesheets)
  - Earnings records (how much paid, rate of pay, deductions from earnings)





# Recordkeeping

- How long to keep:
  - Statute of limitations under FLSA is usually 2 years, but can be up to 3 years
  - Recommended to keep wage and time records for 3 years from date of last entry

# Recordkeeping

- Penalties:

- Injunctive relief

- Criminal sanctions

- No civil money penalties for recordkeeping violations

- Practically speaking: absence of records makes it more difficult to defend wage claims

# WAGE AND HOUR LAW IN NEVADA

- Nevada Revised Statutes 608.005 to 608.330
- Minimum wage mirrors FLSA rate of \$5.15 per hour
- Overtime compensation may be required daily (over 8 hours, if employee earns less than \$7.73 as regular rate)



# **Nevada: Meals & Breaks**

## **NRS 608.019**

- Meal period of at least 30 minutes required for 8 hours of work
- Rest periods required in 10 minute intervals for every 4 hours of work
- Meal periods may be deducted from hours worked, but not breaks

# Payment of Wages Under Nevada Law

- Upon discharge: Immediately due, but have 3 days before penalties begin
- Upon voluntary resignation: On date ordinarily payable, but no later than 7 days

# Wage Deductions

- Uniforms and accessories  
(NRS 608.165)
  - Distinctive style, color or material
  - Must be furnished without cost to employee
  - No cost passed along to employee for cleaning if special process required



# Wage Deductions

- Unlawful to require employees to rebate or refund part of wages earned (NRS 608.100)
- Unlawful to take tips or apply tip credit toward minimum wage obligation (NRS 608.160)

# Wage Deductions

- NRS 608.110:
  - Deductions for the benefit of employee
  - Other deductions authorized by written order of employee



# Coast Hotels v. Nevada State Labor Commission

- Nevada Supreme Court decision
- 117 Nev. 835, 34 P.3d 546 (2001)
- Statutory interpretation of NRS 608.110

# Coast Hotels v. Nevada State Labor Commission

- Facts:

- Cage cashier had \$520.00 deducted for shortages in her drawer
- Upon hire, she signed policy allowing deductions for shortages
- Also signed acknowledgment for each shortage, authorizing deduction from pay

# Coast Hotels v. Nevada State Labor Commission

- “We conclude that the plain language of ...NRS 608.110(1) permits an employer to withhold amounts equivalent to cash shortages from an employee’s wages if the employee authorizes the withholding in writing.”

# Coast Hotels v. Nevada State Labor Commission

- “Requiring an employee to reimburse an employer for cash shortages attributable to the employee does not contravene any public policy”
- “An employer can require an at-will employee to reimburse the employer for losses caused by the employee and terminate an employee who refuses to agree to the reimbursement.”

# Coast Hotels v. Nevada State Labor Commission

- Practical impact:

- Wage deductions are permissible even if NOT for employee's own benefit
- Must have employee specifically authorize deduction in writing (no blanket authorizations)
- Disciplinary action for refusal to reimburse is OK

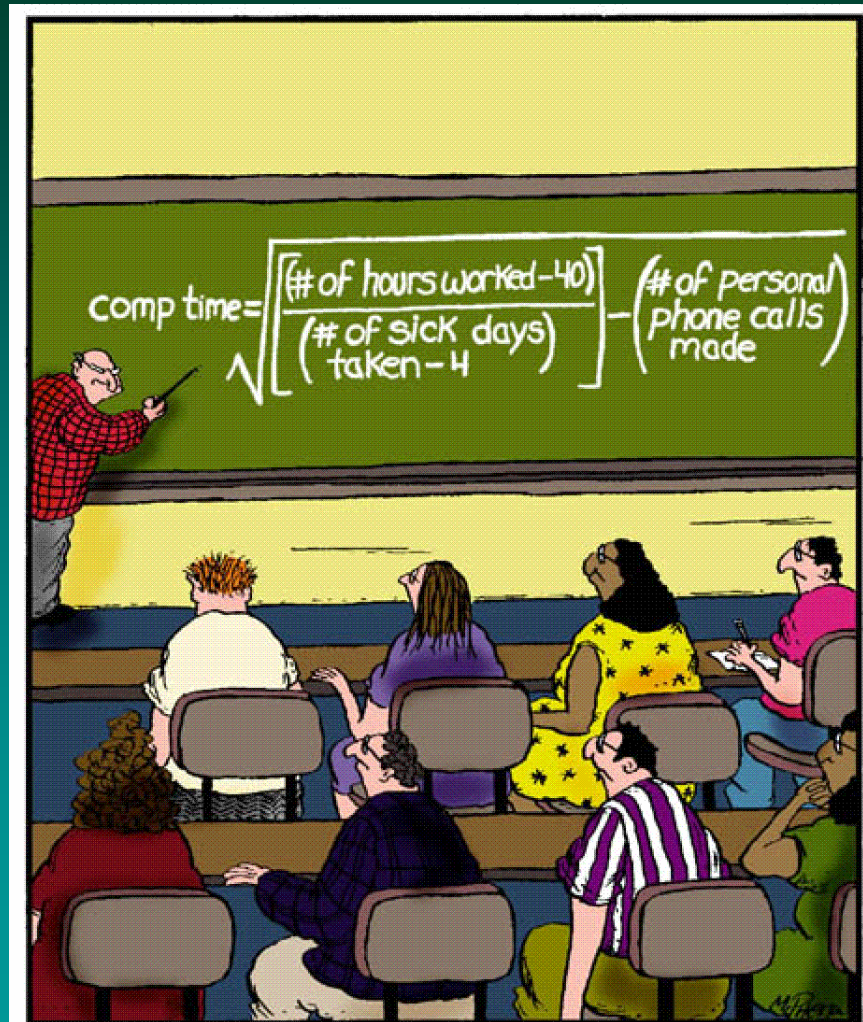
# Wage Deductions and Exempt Status

- Absences of 1 day or more for personal reasons
- Absences pursuant to the FMLA
- Disciplinary deductions:
  - Violation of major safety rules
  - Increments of suspensions without pay

# Developments to Watch

- Proposed overhaul of overtime exemption status:
  - Increase in amount of salary received
  - Elimination of discretion and independent judgment standard
  - Allow for full-day deductions for absences imposed by disciplinary action

# So...What have we learned?



Management unveils its new formula for determining comp time.



**Thank You for Your  
Attention**