

## **PREFACE**

This is the second edition of the treatise detailing on a state-by-state basis the wage and hour laws in the 50 states, the District of Columbia, and Puerto Rico. Similar to federal law under the Fair Labor Standards Act (FLSA), during the past seven years, since the first edition of this book was published, there has been an explosion of litigation enforcing state wage and hour laws. This has been particularly evident in states that provide for Rule 23 opt-out class actions in overtime cases such as California, Illinois, and New York. However, even in states with limited or no overtime protections whatsoever, workers have successfully sued to recover unpaid wages under common law theories such as violation of contract and unjust enrichment. As a result, this edition includes a new section in each chapter covering common law causes of action and the defenses and remedies available in these cases.

What new trends the future will bring is difficult to predict. The consensus among wage and hour practitioners, however, seems to be that future trends in wage and hour law will emanate from the states and not under the FLSA. This is because the states provide protections not only from the failure to pay the minimum wage and overtime but also for the failure to pay workers in a timely fashion or at all and provide procedural avenues that are more beneficial to protecting greater numbers of workers than the employer-friendly opt-in mechanism under 29 U.S.C. §216(b). The breadth of state laws is greater because all employers are generally covered by applicable state laws.

## **ORGANIZATION AND CONTENT**

This treatise is modeled on the popular ABA/BNA treatise *The Fair Labor Standards Act*, and it provides a thorough and

complete analysis of the individual wage and hour laws, wage payment laws, and common law wage actions that are used throughout the nation. It covers all 50 states as well as Puerto Rico and the District of Columbia. This book addresses the following wage and hour issues arising under state law:

- Minimum wage and overtime laws;
- Timing, place, and manner of payments to employees;
- Mandatory payments in addition to overtime such as shift differentials and reimbursement for tools and uniforms;
- Prohibitions on hours worked and mandatory leave, such as required rest and meal breaks;
- Child labor;
- Recordkeeping/posting requirements;
- Occupations with special rules such as public safety;
- Common law theories to recover unpaid wages, defenses, and remedies;
- Enforcement and remedies of workers' statutory protections, including injunctions, and private and state enforcement actions; and
- Special litigation issues, such as the availability of Rule 23 class actions, double or treble damages, and attorneys' fees and costs.

The uniform outline for the chapters is set forth after this Preface, and each chapter begins with a detailed table of contents that allows readers to quickly go to the specific topic they wish to research.

The book lays out, in the same outline format for each state, the answers to questions that may arise regarding wage and hour law for each state. For example, if a practitioner wants to know whether Texas or Georgia has a state law permitting employers to deduct from an employee's paycheck cash shortages at a cash register, he or she can simply turn to the section pertaining to deductions in each state and read a short paragraph explaining the statutory, regulatory, and case law authorities pertaining to this issue.

What is different about this book as compared with other books purporting to provide nationwide, state-by-state analyses of wage and hour law is that the book does not simply compare state statutes. Instead, the author-practitioners from the various states have provided an analysis based on state agency practices and regulations, and in-depth analyses of court decisions interpreting the laws in those states. As a result, practitioners will have at their fingertips a thorough analysis of the subject matter they are researching.

As in years past, an annual supplement will be produced. We are considering adding state Davis-Bacon laws and wrongful discharge theories and creating a chart to address which states provide for class actions. If readers become aware of an area that they believe would fit in well with the book, please let us know so that we can explore adding the idea to the book.

Beyond the scope of this book are ordinances and regulations governing wages and hours that are issued by cities, towns, and counties. For example, some local governments have passed “living wage” laws that provide for a higher minimum wage than exists under state or federal law. Such laws are not covered here.

### **PERIOD COVERED BY THIS VOLUME**

This second edition is current through December 31, 2010. A yearly supplement will be issued to cover new state wage and hour laws, regulations, and court decisions. Readers who are interested in assisting with the supplement should contact me.

### **CONTRIBUTORS**

I want to thank for their diligent efforts all of the chapter authors, and the senior editors in particular. This edition was particularly challenging for senior editors because of the addition of new chapter outline subjects that had to be updated for the entire period along with the integration of the new law and supplements with the first edition so as to create the second edition. For their considerable efforts, I thank David Borgen,

Jeremy Glenn, Robyn Klinger, Tim Long, Dennis McClelland, and Chuck Yezbak. I also want to thank both Brian Malsberger and Tim Darby of BNA Books, Brian for his editing assistance and Tim for his incredible help in ensuring that this second edition was completed. Finally, I want to thank our law clerk from last summer, Brenna Willott, for all of her excellent research and writing to help ensure the accuracy of the information, and to complete certain states for which it is difficult to find authors, such as North Dakota and South Dakota.

GREGORY K. MCGILLIVARY  
*Editor-in-Chief*

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## OUTLINE OF TOPICS

The analysis of wage and hour law in each jurisdiction follows the general structure outlined below. The detailed discussion of the law in each chapter varies at the lower levels of topic heads, however, because of variations in each jurisdiction's law. Each chapter begins with a detailed table of contents to assist readers in getting an overview of the structure of the chapter and to help them quickly locate the exact section they wish to turn to.

The following topics are *not* covered in this treatise: Equal Pay Act laws, prevailing wage laws, and garnishment.

## I. OVERVIEW OF STATE LAW AND REGULATION

II. OPERATIONS AND FUNCTIONS OF STATE  
ADMINISTRATIVE AGENCY

- A. Overview
- B. Investigatory Function
- C. Exhaustion Requirements
- D. Administrative Wage Orders
- E. Adjudication

## III. MINIMUM WAGE AND OVERTIME LAWS

- A. Coverage
  - 1. Definition of Employee
  - 2. Definition of Employer
  - 3. Independent Contractor
- B. Minimum Wage
  - 1. Minimum Wage Rate
  - 2. Credits/Offsets Against the Minimum Wage
    - a. Tip Credit
    - b. Meals and Lodging
  - 3. Payments for Uniforms and Tools
- C. Overtime Pay
  - 1. Payment Based on Workweek or Workday
  - 2. Calculation of the Rate at Which Overtime is Paid
    - a. Hourly Employees
    - b. Salaried Employees
    - c. Employees Paid on Commission
    - d. Employees Paid at Two or More Rates
- D. Exemptions
  - 1. General Overview of Exemptions

- a. FLSA Exemptions Adopted
- b. Primary Duty Test
- c. Salary Basis Test
- 2. Administrative Exemption
- 3. Professional Exemption
- 4. Executive Exemption
- 5. Computer Professional Exemption Test
- 6. Agricultural Exemption
- 7. Motor Carrier Exemption
- 8. Outside Sales Exemption
- 9. Other Exemptions
- E. Calculation of Hours Worked
  - 1. On-Call Time
  - 2. Meal Periods/Rest Periods
  - 3. Preliminary/Postliminary Work
  - 4. Travel Time
  - 5. Other Work Time Issues

#### IV. TIMING, PLACE AND MANNER OF PAYMENTS

- A. Designated Paydays
- B. Payments to Hourly and Salaried Employees
- C. Payments Employees Paid on Commission
- D. Payments to Deceased Employees
- E. Payments to Separated Employees
  - 1. Timing of Final Payment
  - 2. Final Compensation and Expense Reimbursement
- F. Prohibitions Against Deductions or Refunds to the Employer

#### V. PAYMENTS AND LEAVE IN ADDITION TO MINIMUM WAGE AND OVERTIME

- A. Working on Holidays and Sundays
- B. Reimbursement for Uniforms or Tools
- C. Mandatory Paid Leave
- D. Other Mandatory Payments

#### VI. PROHIBITIONS ON HOURS WORKED

#### VII. OCCUPATIONS WITH SPECIAL RULES

- A. Homework
- B. Public Sector Employment
- C. Other Occupations

VIII. CHILD LABOR

- A. Coverage
- B. Children Under 14 Years of Age
- C. Children Under 16 years of Age
- D. Children Under 18 years of Age
- E. Work Permits

IX. RECORDKEEPING, POSTING AND NOTICE REQUIREMENTS

- A. Recordkeeping
- B. Posting and Notice Requirements

X. ENFORCEMENT AND REMEDIES

- A. Administrative Enforcement
- B. Private Enforcement
- C. Criminal and Civil Penalties
- D. Injunctions
- E. Other Enforcement and Remedies Issues

XI. COMMON LAW CAUSES OF ACTION

- A. Types of Actions
- B. Defenses
- C. Damages and Remedies

XII. RETALIATION

XIII. SPECIAL LITIGATION ISSUES

- A. Statutes of Limitations
- B. State Law Class and Collective Actions
- C. Double, Treble or Other Additional Damages
- D. Attorneys' Fees
- E. Other Defenses
- F. Other Special Issues

