



**Fit Body Boot Camp**  
**What's the Worst That Could Happen?**  
**Lessons To Avoid a Costly Wage and Hour Lawsuit**

Presented by:  
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## EMPLOYMENT LAW ATTORNEY

- Hiring, firing, and everything in between
- Onboarding documents and forms
- Employee handbooks/policies
- Day to day advice
- Litigation defense
  - Discrimination, Retaliation, Harassment
  - Employee compensation (wage and hour)

# Wage and Hour Laws?



# WAGE/HOUR LAWS

## Wage Claim Forums

- State Labor Commissioner
- Federal Department of Labor
- Attorney Letter Demanding Records or Threatening Lawsuit
- Demand for Arbitration
- Civil Court
  - Individual Lawsuit
  - Class Action Lawsuit

# WAGE/HOUR LAWS

## Typical Claims

- I was misclassified as exempt
- I was misclassified as an independent contractor
- I was not paid for all hours worked
- I was not paid overtime



# WAGE/HOUR LAWS

## Typical Claims

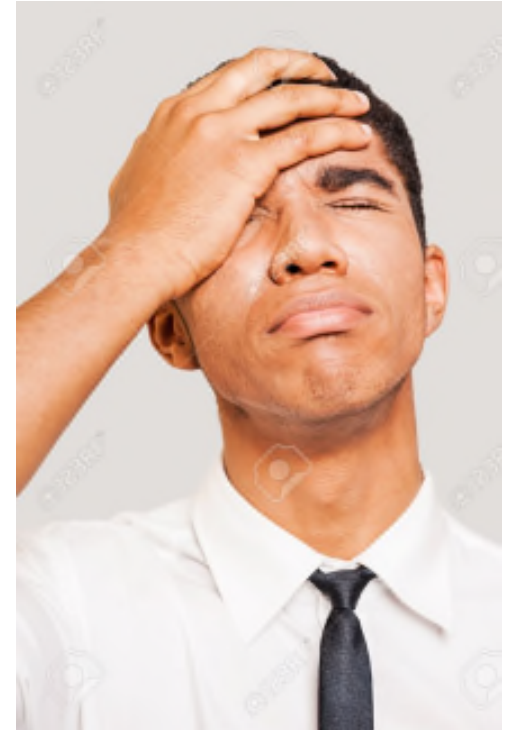
- I was not provided meal periods
- I could not take rest periods
- I was not reimbursed for business expenses or business travel



# WAGE/HOUR LAWS

## The Citation

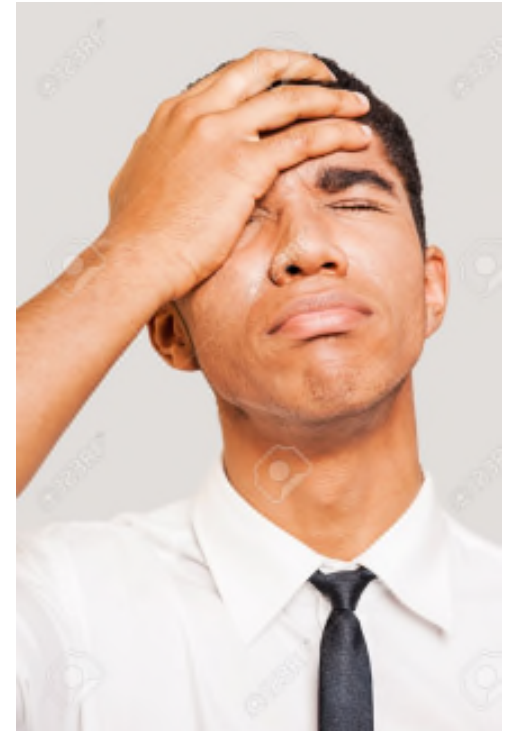
- California boot camp company, Camp Transformation Center, was cited by the California Labor Commissioner
- Failure to properly classify and pay their trainers, trainer assistants, facility managers, and receptionists.



# WAGE/HOUR LAWS

## Fitness Industry Wake Up Call

**\$8.3 million**





# WAGE/HOUR LAWS

## What's the Big Deal?

- Hours Worked Problem
- Overtime Not Paid
- Meal and Rest Breaks Not Provided
- Split Shifts

## WAGE/HOUR LAWS

### The Citation

- Liquidated Damages – **\$1.39 million**
- Unpaid Minimum Wages - **\$1.18 million**
- Waiting Time Penalties – **\$522k**
- Unpaid Overtime - **\$422k**
- Meal/Rest Period Premiums – **\$392k**
- Pay-Stub Penalties – **\$191k**
- Split Shift Premiums - **\$5,882**

# WAGE/HOUR LAWS



## Prevent This Disaster

- (1) Classify employees properly
- (2) Keep accurate time records

# WAGE/HOUR LAWS



## Prevent This Disaster

**(1) Classify employees properly**

(2) Keep accurate time records

# INDEPENDENT CONTRACTOR OR NOT?

## MUST BE ABLE TO PROVE INDEPENDENT CONTRACTOR STATUS

- 1) “Right to Control” test governs
- 2) If misclassified:
  - A. Unpaid Overtime
  - B. Unpaid Minimum Wages
  - C. Unpaid Meal/Rest Periods
  - D. Unpaid Taxes
  - E. Workers compensation penalties

## EXEMPT OR NOT?

### **MUST PAY OVERTIME UNLESS EXEMPT**

#### 1) Salary Basis test

- Federal - \$455 per week / \$23,660 per year
- California – 2x minimum wage (\$10.50) / \$43,680 per year (under 25 employees only)

#### 2) Duties test

- Federal – “Primary duty” is to perform exempt tasks
- California – At least 50% of time is spent on exempt task

# WAGE/HOUR LAWS



## Prevent This Disaster

- (1) Classify employees properly
- (2) Keep accurate time records**

# TIME RECORDS

## Focus on hours worked!

- Timekeeping obligation falls on the employer



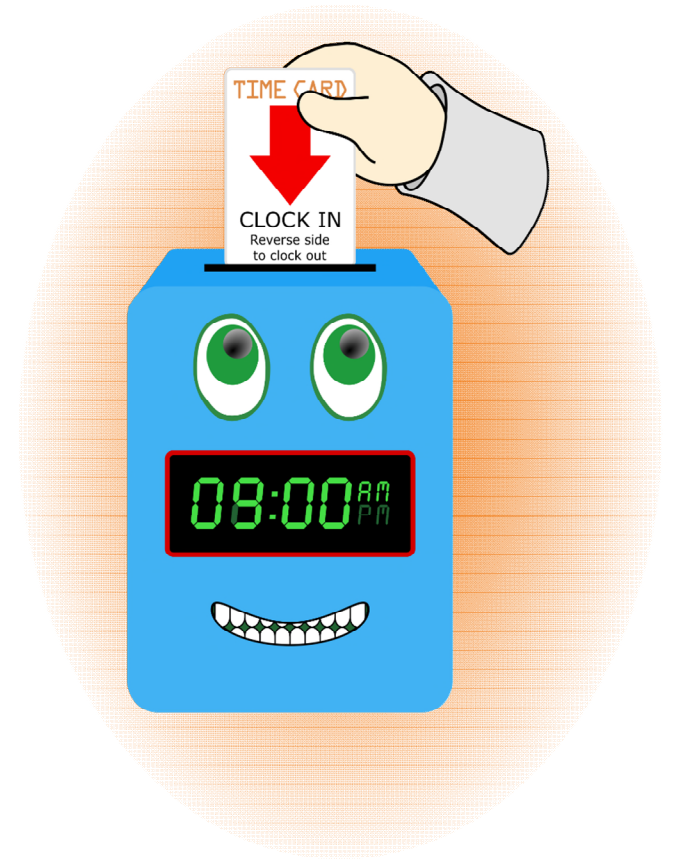
# TIME RECORDS

- FLSA does not require any particular type of system (time cards, time clocks, etc.)
- But must keep **accurate records** of:
  - Total hours worked each day/workweek
  - Total straight time/overtime hours

# TIME RECORDS

## Best Practice

- Keep written record of hours worked
- Install an automated time keeping system
  - Time clock or computer log-in
- Ensure system is calculating hours worked & overtime appropriately



# TIME RECORDS

## Best Practice

- Require signed acknowledgment of time records each pay period
  - “My time punches and hours worked are correct”
  - “I was not harassed, discriminated or retaliated against”
  - “I was not injured this pay period”

# TIME RECORDS

## Best Practice

- Review employee time cards consistently
- Immediately address any discrepancies/issues
- Expressly prohibit “off the clock work”



# TIME RECORDS

## Biggest mistakes?

- Not paying prep time
- Not paying for mandatory meetings
- Not paying for travel time between locations
- Rounding time inappropriately
- Auto-deducting or shaving time

# TIME RECORDS

## Biggest mistakes?

- Not scheduling meal periods
- Not scheduling rest periods
- Not recognizing split shifts

## FINAL THOUGHTS

- Don't fall for "conventional wisdom"
  - "Everyone else pays this way."
  - "Salaried people don't have to be paid overtime."
  - "This is how our trainer wants us to pay her."
  - "We're too small for anyone to sue us."



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**Thank You!**

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