

Insights, News & Events

MURDER, INTRIGUE, AND THE FLSA: WHAT TIGER KING CAN TEACH YOU ABOUT WAGE AND HOUR COMPLIANCE

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As the COVID-19 pandemic swept over the world, an unlikely phenomenon swept the United States. While new terms like “social distancing” and “essential employees” suddenly became part of the common lexicon, a surprising phrase also emerged: “Tiger King.”

Released on Netflix on March 20, “Tiger King: Murder, Mayhem and Madness” is a true-crime documentary detailing the life of zookeeper, Joe Exotic. This seven-episode series took viewers on a wild ride through the surprisingly small world of big cat collectors and conservationists. Each episode presented a more outrageous addition to the story that spawned multiple jaw-dropping moments and some of the greatest memes of 2020. At the heart of Tiger King was the explosive and dangerous rivalry between Joe Exotic and his archnemesis, Carol Baskin. The level of vitriol and disdain shared between Carol and Joe made for great television and a jury trial.

Another jaw dropping moment from Tiger King, at least for those of us in the labor and employment law world, was the revelation that the individuals caring for these big cats were seemingly not compensated in line with the Fair Labor Standards Act (FLSA) – if they were compensated at all. Each of the compensation schemes featured warrant a closer inspection, as incorrect use of these methods of compensation could subject an employer to liability.

THE FLSA: MINIMUM WAGE AND OVERTIME REQUIREMENTS

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The FLSA requires that non-exempt employees are to be paid a minimum wage rate and “time-and-a-half” overtime pay when people work over forty hours a week. The FLSA’s minimum wage and overtime requirements are not without exception or exemption. However, failure to abide by the applicable statutes and regulations regarding the exceptions and exemptions could subject employers to significant financial liability.

THE INTERNS OF DOC ANTLE’S HAREM

Early in the series, viewers were introduced to Mahamayavi Bhagavan “Doc” Antle, a Myrtle Beach, South Carolina safari owner. The series interviewed several women who worked or previously worked for “Doc” Antle. These women told a story of an “apprenticeship” that often entailed working from 8:00 a.m. to midnight every day. Barbara Fisher, a former apprentice of Doc Antle who lived on the safari from 1999 to 2007, claimed to have only earned \$100 per week.

At this rate of pay, an individual earning the applicable federal minimum wage could only work somewhere between 13 and 19 (depending on the applicable minimum wage) hours per week before an FLSA violation would occur. Working from 8:00 a.m. to midnight, even five days a week, creates an 80-hour work week. So, how does “Doc” Antle avoid an FLSA violation? His apprenticeship program may provide the answer.

Apprenticeships programs are rare, though, so perhaps “Doc” Antle hoped to structure his program as an internship program. The FLSA requires “for profit” employers to pay employees for their work. However, in some circumstances, interns and student may not be considered “employees” under the law and thus not entitled to compensation for their work.

Courts have used the “primary beneficiary test” to determine whether an intern or student is an employee under the FLSA. The test analyzes seven factors to examine the economic reality of the intern-employer relationship to determine which party is the “primary beneficiary” of the relationship. If the employer is the primary beneficiary, the individual may be considered an employee. Likewise, if the participant is the primary beneficiary, the individual may be considered an unpaid intern.

The factors include:

- the extent to which the intern and the employer clearly understand that there is no expectation of compensation, as any promise of compensation, express or implied, suggests that the intern is an employee — and vice versa;
- the extent to which the internship provides training that would be similar to that which would be given in an educational environment, including the clinical and other hands-on training provided by educational institutions;
- the extent to which the internship is tied to the intern's formal education program by integrated coursework or the receipt of academic credit;
- the extent to which the internship accommodates the intern's academic commitments by corresponding to the academic calendar;
- the extent to which the internship's duration is limited to the period in which the internship provides the intern with beneficial learning;
- the extent to which the intern's work complements, rather than displaces, the work of paid employees while providing significant educational benefits to the intern; and
- the extent to which the intern and the employer understand that the internship is conducted without entitlement to a paid job at the conclusion of the internship.

While no factor is determinative, it is likely that "Doc" Antle's program was not a valid unpaid internship program. First, because the participants were paid some form of compensation, there is a suggestion that the participants were employees and not interns. Second, it does not appear that work was tied to the participants' formal education, and the schedule does not seem to have accommodated a particular academic calendar. Further, one participant recalled working almost eight years with "Doc" Antle, which does not seem to be a time period limited to the period in which the internship provides the intern with beneficial learning. The existence of the hands-on-training is one of the few factors in favor of the existence of an internship.

Employers considering utilizing interns or student workers in an unpaid capacity should carefully evaluate the factors weigh in favor of the participant being an intern. If the person is considered an employee, they are entitled to both minimum wage and overtime pay under the FLSA.

“I’LL NEVER FINANCIALLY RECOVER FROM THIS” – USING ROOM, BOARD, AND MEALS AS COMPENSATION

Joe Exotic’s employees do not fare much better. The series reveals that his employees are compensated at a rate of \$150.00 per week. The employees are also provided with a place to live along with some meat that came in, too.

The hours worked by the individuals as compared to their wages is problematic under the FLSA. However, Joe may have been considering the room and board as part of the employee’s wages. Section 3(m) of the FLSA permits employers to count as wages the “reasonable cost” of room and board, food, and other facilities provided to employees.

You must ensure that five requirements are met to take advantage of this credit:

- the lodging must be regularly provided by the employer or similar employers;
- the employee must voluntarily accept the lodging;
- the lodging must be furnished in compliance with applicable federal, state, or local laws;
- the lodging must primarily benefit the employee, rather than the employer; and
- the employer must maintain records of the costs incurred in the furnishing of the lodging.

The value of the credit towards wages may not exceed the “reasonable cost” or “fair value” of the facilities furnished, whichever is less. The “reasonable cost” cannot be more than the actual cost of the employer housing. After meeting the requirements, you must calculate the hourly rate including the 3(m) credit to ensure you are in compliance with the minimum wage and overtime provisions on a workweek basis.

In “Tiger King,” all of Joe’s employees appear to have the opportunity to live on the premises, and most take that option. It is clear that the lodging benefits the employee, as Joe is seen picking people up from a bus station who might otherwise not have a place to live. It is unclear whether Joe maintained records of the costs incurred in furnishing the lodging.

However, what is likely an issue here is whether the lodging was furnished in compliance with applicable federal, state, or local laws. The DOL will not allow a wage credit if the lodging provided does not have or has been denied a required occupancy permit or is not zoned for residential use. Additionally, courts have disallowed the wage credit when the lodging was substandard or not compliant with law. As viewers saw, the employees lived in trailers that appeared to be in disrepair and that were onsite at the zoo. It is questionable whether Joe’s lodging would allow him to take a credit for the employee’s wages.

If you are considering utilizing the wage credit under Section 3(m), you should consider whether you can satisfy the five requirements. You should also carefully review the guidance as to how to properly calculate the wage credit to ensure that the cash wage that you pay employees is sufficient to meet the threshold requirements of the FLSA.

IS THIS COOL CAT OR KITTEN A VOLUNTEER OR AN EMPLOYEE?

Carol Baskin unapologetically states that she “does not pay anybody to do animal care, because people will do that for free.” A segment in Episode 2 depicts a big day, with 76 of her volunteers wearing color-coded shirts denoting their hierarchy in her volunteer program. Volunteers mention tests, time limits in position, and applications to ascend to the next position, when describing their time and efforts. After five years, volunteers can “graduate” to “Master Keeper” status – a navy blue shirt.

Volunteers mention that they do not work regular hours (intimating that they work longer hours) and will work on holidays—including Christmas. The volunteers provide care to the animals and provide tours to the visitors of Big Cat Rescue. At first glance, these individuals seem to be employees of Carol Baskin. However, a closer look at the definition of “employee” and “volunteer” provides some insight here.

The FLSA defines the term “employ” is to “suffer or permit to work” for an employer. The regulations define a volunteer as an individual who performs hours of service for a public agency for civic, charitable, or humanitarian reasons, without promise, expectation, or receipt of compensation for services rendered, as a volunteer during such hours. Volunteers may not displace any genuine employees. Notably, an individual cannot volunteer services to a private, for-profit company. Volunteers do not need to be compensated in accordance with the FLSA.

Here, Big Cat Rescue has reportedly been registered as a 501(c)(3) nonprofit entity since 1995. Thus, it would appear, in Carol Baskin’s case, that having volunteers would be permissible.

If you are considering utilizing volunteer labor, you should review your organizational structure to determine if the use of volunteers is permitted. If you operate a private, for-profit entity, you will not be able to utilize volunteers and must comply with the applicable provisions of the FLSA.

DON’T STICK YOUR ARM IN THE CAGE

Tiger King is a story of conspiracy, murder, loss, intrigue, animal welfare, loyalty, friendship, business acumen – and even potential pitfalls of the FLSA. If you are considering compensation methods that do not provide employees with the applicable minimum wage in a traditional cash manner, you should carefully consider the wage and hour requirements taught by the Tiger King series to ensure you are not caught in the snare of an FLSA violation.

For more information, [contact the author](#).