



## "But The Employees AGREED To It!"

Insights

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Our recent "Famous Last Words" [post](#) cautioned that having an employee enter into an agreement that is contrary to the federal Fair Labor Standards Act's requirements does *not* trump those requirements. Coincidentally, the U.S. Labor Department now reports that yet-another employer has learned the hard way that "We're all consenting adults here" is not a fundamental FLSA principle.

### **Unlawful Agreements Are, Well, *Unlawful***

A Michigan business operating franchised restaurants has been hit with an assessment of nearly \$52,000 in back-wages and liquidated damages growing out of its having paid only straight-time hourly rates for FLSA overtime hours. A USDOL press release says that employees working at eight locations owned by Farha Group #4 had signed letters in which they agreed to receive straight-time pay for all hours worked, including those over 40 in a workweek.

A U.S. Wage and Hour Division official aptly summed things up this way: "An employer cannot avoid its overtime obligations by asking workers to sign agreements to be paid straight time rates for all hours worked. Employees cannot agree to waive their rights under the law." This is certainly accurate, and it is also the case with respect to *every other* FLSA requirement.

The employer reportedly also failed to add-together employees' hours worked at different restaurants during a workweek to see whether the totals exceeded 40. Presumably, this was an outgrowth of management's erroneous belief that it did not matter whether the employees had worked any FLSA overtime. In any event, as we have [said](#) previously, FLSA overtime requirements are not limited to by-the-location measurement; *all* of an employee's hours worked for the employer at *every* location must be combined to determine whether the employee has worked more than 40 hours in a single workweek.

### **Expensive Misconceptions**

The exposure in this particular investigation averaged about \$1,000 per employee. The figures can rise exponentially in tandem with increases in the number of affected employees, overtime hours worked, regular rates of pay, and so on. Moreover, the FLSA authorizes other potential liabilities and costs of both monetary and non-monetary kinds.

Wise employers will ensure that none of their pay practices is based upon an incorrect understanding of either the FLSA or the analogous laws of another jurisdiction. What might seem like common sense is not necessary lawful.

