
PAY NOW OR ... PAY A LOT MORE FOR IT LATER

WAGE AND HOUR ISSUES IN THE WORKPLACE



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PILLAR+AUGHT

Introduction/Overview

- Summary of Federal and State wage and hour laws.
- Scared straight statistics.
- Common wage and hour issues where Banks go wrong.
- Pay equity.
- Best practices going forward.



Wage and Hour Laws

- Wage and hours laws generally govern:
 - Minimum wages.
 - Maximum hours.
 - Overtime compensation.
 - Child labor.
 - Equal pay.
 - Payroll requirements.
 - Recordkeeping.



Wage and Hour Laws

- Fair Labor Standards Act (FLSA):
 - Administered/enforced by the Wage and Hour Division of the US Department of Labor.
 - Authorizes private “collective actions” by Plaintiff’s counsel.
- State and Local Laws:
 - Administered/enforced by local departments of labor (PA Department of Labor).
 - Often provide greater employee rights or protections (such as higher minimum wage, premium pay, meal and break periods, etc.).
 - May authorize private “class actions” by Plaintiff’s counsel (PA does).



Welcome to the Future...

The screenshot shows the U.S. Department of Labor website with a navigation bar and a search box. The main content area is titled "DOL Mobile Applications" and features six app cards. The "DOL-Timesheet" app card is highlighted with a red circle. To the right of the app cards is a large image of a monkey puppet.

U.S. DEPARTMENT OF LABOR FAQ | CONTACT US Search

TOPICS ▾ AGENCIES ▾ FORMS ABOUT US ▾ NEWS ▾

Home > DOL Mobile Applications

DOL Mobile Applications



BLS Local Data
Find the latest available data from the U.S. Bureau of Labor Statistics (BLS) on unemployment rates and employment by industry and occupation for states, metro areas, and counties.



CareerInfo
Find data and information for hundreds of detailed occupations in the Occupational Outlook Handbook with the CareerInfo app.



OSHA- NIOSH Heat Safety Tool
The Heat Safety Tool app features real-time heat index and hourly forecasts specific to your location, as well as occupational safety and health recommendations.



Índice de Calor para Trabajadores al Aire Libre
Descubra el índice de calor local y las precauciones que debe tomar para mantenerse seguro.



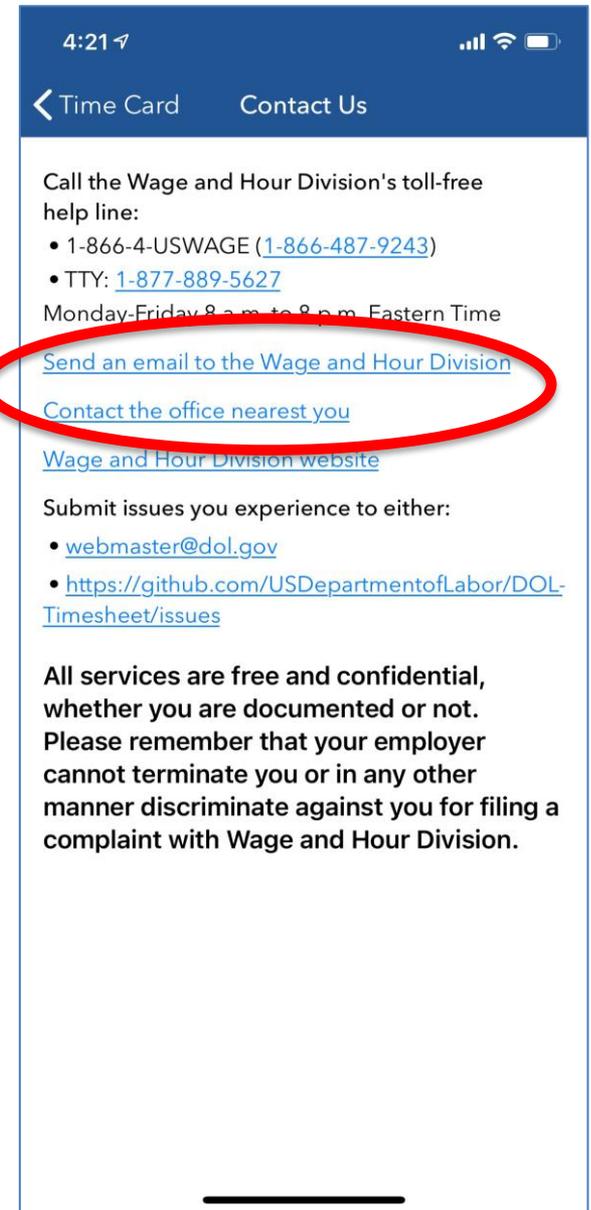
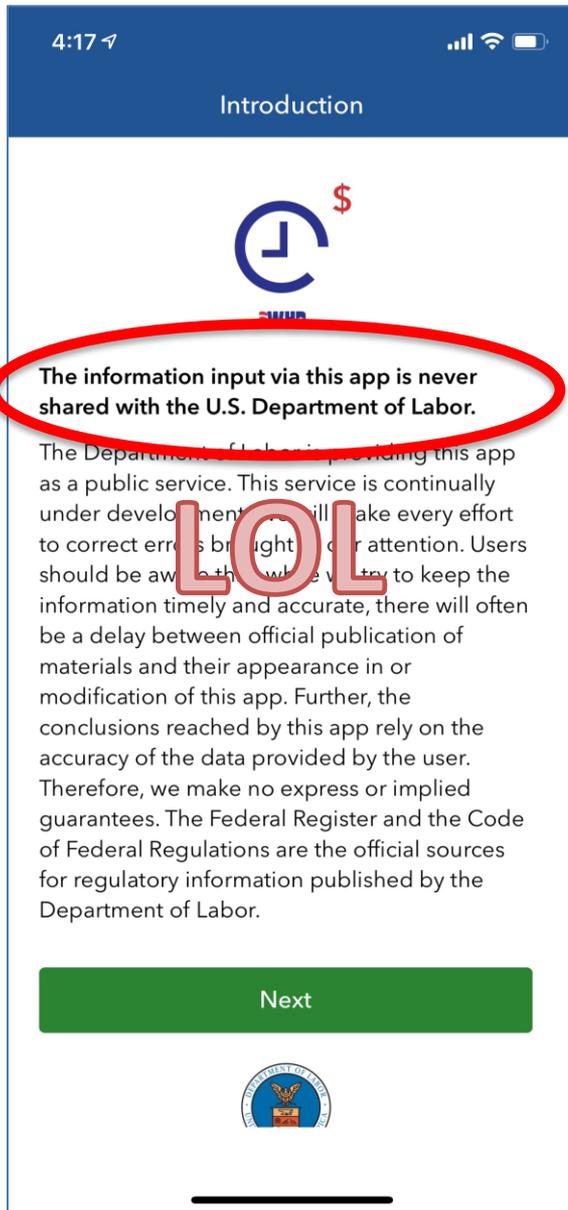
DOL-Timesheet
Use the Timesheet app to track the hours you worked, and calculate your pay.



CareerOneStop
The CareerOneStop app helps you find a job, explore training options, plan your career, and more.



Welcome to the Future...

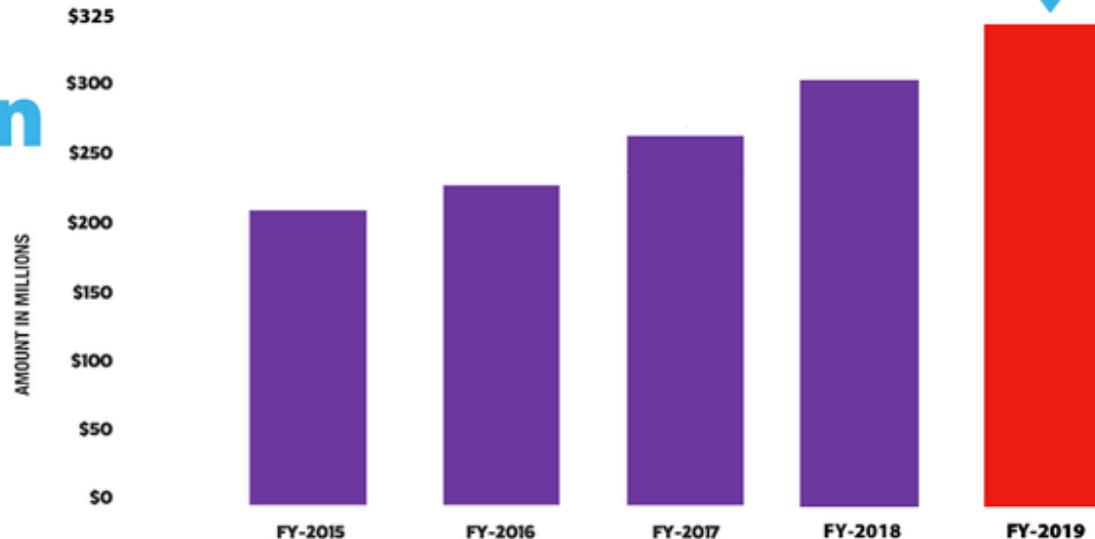


Scared Straight Statistics US Department of Labor

RECORD BACK WAGES COLLECTED

**WHD Recovered a
RECORD
\$322 Million**

**in wages owed
to workers in
FY2019**



Scared Straight Statistics

US Department of Labor



Scared Straight Statistics

Private Actions

- **6,535 FLSA** cases filed in Federal courts in 2020.
- **6,207** FLSA cases already filed in Federal courts in 2021.
- Top Settlements in 2019:
 - \$100 million (failure to provide meal and rest breaks).
 - \$100 million (misclassified as independent contractors).
 - \$98.8 million (training program violations).



Scared Straight Statistics

Private Actions

Wells Fargo, Employees Get OK For \$35M Deal In OT Fight

Law360 (July 10, 2019, 6:58 PM EDT) -- A New Jersey federal court on Tuesday gave an initial green light to a \$35 million deal aimed at resolving a dispute between Wells Fargo & Co. and over 38,000 bank employees who say the financial behemoth failed to come through

BofA Unit To Pay \$36M To Settle Appraiser OT Row

Law360, Los Angeles (August 25, 2015, 7:12 PM EDT) -- Bank of America Corp. 's appraisal subsidiary, Landsafe Appraisal Services Inc. , will pay \$36 million to settle a class action accusing it of misclassifying residential real estate appraisers as exempt from overtime, according to a Monday filing in California federal court. Seeking preliminary approval of the



Scared Straight Statistics

Why So Expensive?

- Class/Collective actions (Numerous plaintiffs).
- Backpay (2, maybe 3, years).
- Liquidated damages (2x back pay).
- Attorneys' fees (Think seven figures).
- Operational pains (Depositions and documents).
- Reputational pains (#socialmediawhat?!).



Follow the Money...

Employers:



Employees:



**Plaintiffs
Lawyers:**



Where Banks Go Wrong: Exempt vs. Non-Exempt Status

- Every employee must be paid minimum wage and overtime compensation unless exempt under both federal and state regulations.
- Generally, to be exempt, an employee's job duties and compensation must satisfy both:
 - The salary basis test.
 - \$35,568 annually (\$684 per week)
 - The duties test.
 - Administrative (more to follow below)
 - Executive
 - Professional



Where Banks Go Wrong: Exempt vs. Non-Exempt Status

- “She is the Manager of Operations.”
- “He is paid a salary.”
- “These are professionals.”
- “Everyone else does it.”
- “She makes \$150,000.”
- “He doesn’t want to punch a clock.”



Where Banks Go Wrong: Administrative Exemption

- For the Administrative Exemption to apply, the employee's primary duties must:
 - Be the performance of **office or nonmanual work directly related to the management of general business operations** of the employer or the employer's customers (i.e. tax, finance, marketing, etc.); and
 - Include the **exercise of independent judgment and discretion** regarding **matters of significance**.



Where Banks Go Wrong: Administrative Exemption

- The Watch-Out Positions:
 - Mortgage Loan Originators.
 - Real Estate Evaluators and Appraisal Review Officers.

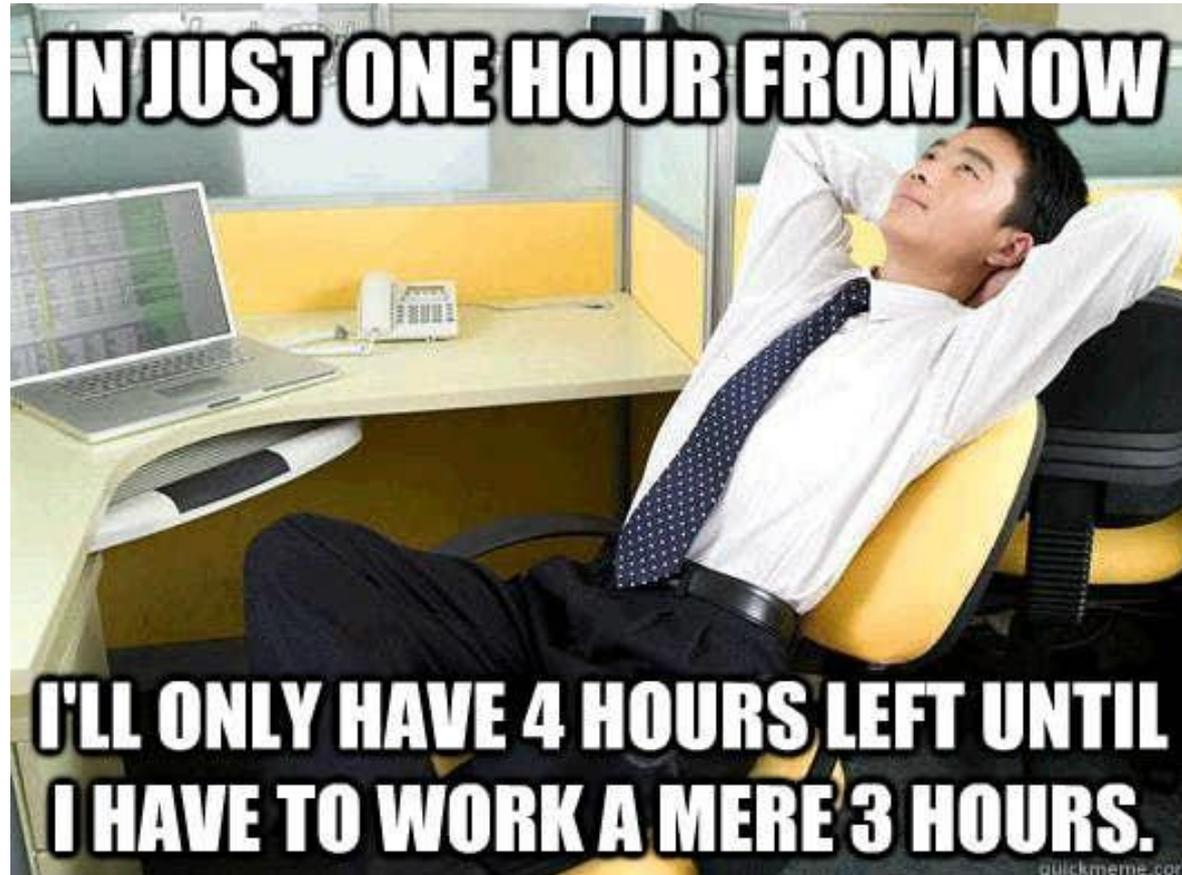


Where Banks Go Wrong: Working Off the Clock

- Non-exempt employees must be paid for all **time worked** which means any time “suffered or permitted” by the employer.
- Common issues where Banks go wrong:
 - Working during breaks.
 - Trainings.
 - Tracking (or not tracking hours worked).
 - 40 hours... every week.
 - Working from home.
 - Rogue supervisors.



And we do mean “suffer”...



Where Banks Go Wrong: Overtime

- It's this simple in PA: All hours worked over 40 in a workweek must be paid at time-and-a-half.
- Common issues where Banks go wrong:
 - No permission = no pay.
 - Failing to appropriately track overtime.
 - 40 hours over 1 week = 80 hours over 2 workweeks.
 - Compensatory time.
 - Again, rogue supervisors.



Where Banks Go Wrong: Paychecks and Deductions

- Wages earned in a pay period must be made within a certain period of time.
 - Whenever an employee leaves the employer, voluntarily or involuntarily, compensation earned is due by the next regular pay day.
- Only deductions made for the convenience of the employee are permissible.
- Allowable deductions for Exempt and Non-Exempt employees are different.



Where Banks Go Wrong: Paychecks and Deductions

- Withholding pay following separation.
- Impermissible deductions (in PA):
 - Overpayments.
 - Weather issues.
 - Repayments for theft and/or damages.
- Bringing pay down below minimum wage.



Pay Equity

Bank of America, Merrill in \$39 million gender bias settlement

BRIEF

JPMorgan to conduct pay analysis, pay \$9.8M to settle DOL claim that it underpaid women

First Metropolitan Financial Services to Pay \$100,000 to Settle EEOC Pay Discrimination Lawsuit



Pay Equity

- Area of priority for EEOC's Strategic Enforcement Plan since 2012.
- Equal pay for equal work.
- Not gender only –covers all protected classes.
- Salary history bans.



But What IS the Gender Wage Gap?

"...AND THIS IS the FIRST 77¢ I'VE EVER EARNED."



WOMEN
Like men,
only cheaper.



Best Practices

- Perform internal wage and hour audits and review/update job descriptions.
- Train employees **and** supervisors on wage and hour policies and procedures.
- Follow good recordkeeping practices –at least 3 years.
- Remember state laws –not just federal.
- Review/update wage and hour policies –include the safe harbor language.
- Watch your email.



Questions?

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