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# WAGE AND OVERTIME QUARTERLY

Published by Winebrake & Santillo, LLC  
"Fighting For Fair Wages"

Winebrake & Santillo, LLC  
Twining Office Center, Suite 211  
715 Twining Road  
Dresher, PA 19025

**ABOUT WINEBRAKE & SANTILLO, LLC**

Workers deserve to get paid for **all time spent working**, and most workers are entitled to valuable **overtime pay** when they work over 40 hours in a workweek. Yet, every year, millions of American workers are cheated out of their full pay because they do not understand their rights under the Nation's complex wage and overtime laws.

Wage and overtime violations hurt working families. When a company violates the law, it should be held accountable. **No one is above the law.**

**Winebrake & Santillo, LLC** believes workers pursuing their wage and overtime rights are entitled to the same high quality legal representation enjoyed by big corporations. We also understand that workers have a right to be treated with the same level of professionalism, courtesy, and respect accorded to corporate CEOs.

**Winebrake & Santillo, LLC** goes to Court to fight for workers who have been deprived of full regular pay and overtime pay in violation of the federal Fair Labor Standards Act ("FLSA") and similar state laws. Our attorneys have negotiated settlements in federal wage and overtime lawsuits worth many millions of dollars to American workers and their families.

**Winebrake & Santillo, LLC** for a **free consultation** if you believe the wage and overtime rights of you or one of your clients may have been violated. Your clients never pay a fee unless they recover, and **we always pay a fair referral fee.**

# WAGE AND OVERTIME QUARTERLY

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Fall 2014

## THE PRESIDENT *FINALLY* TAKES STEPS TO UPDATE THE FLSA'S "WHITE COLLAR" EXEMPTION REGULATIONS

The federal Fair Labor Standards Act ("FLSA") generally requires that employees receive overtime premium pay calculated at 150% of their regular pay rate. However, the FLSA exempts from this requirement employees who perform "executive," "administrative," or "professional" work. These exemptions are known as the "white collar" exemptions.

The New Deal Congress that enacted the FLSA intended that the white collar exemptions would be very narrow and would only cover high-level employees who were personally involved in actually running the business. One way of keeping the exemption from covering too many low and mid-level employees was to set a strict salary threshold that must be satisfied in order for an employee to even be considered an overtime-exempt executive, administrator, or professional. As the federal Department of Labor observed in 1940, the "most effective check on the validity of the claim for exemption is the payment of a salary commensurate with the importance supposedly accorded the duties in question."

In 1975, federal regulations generally provided that an employee could not be covered by the white collar exemptions unless her salary exceeded \$250 per week. As the Economic Policy Institute recently observed, had this \$250/week requirement merely kept pace with inflation, it would equal \$970 per week – or \$50,440 per year – in 2012 dollars.

Unfortunately, the white collar exemptions' salary requirement has not kept pace with inflation. Today, the salary threshold stands at a mere \$455 per week. That's just \$23,660 per year.

It seems absurd that an individual making only \$23,660 per year could be the type of "executive," "administrative," or "professional" employee excluded from the Nation's overtime laws. After all, the median household income in the United States currently exceeds \$51,000.

Over the years, our firm has represented purportedly exempt "executives," "administrators," and "professionals" who earn so little that their families qualify for food stamps, free school lunches, and other government benefits. It really is troubling

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### IN MEMORIAM GEORGE BARRETT: CHAMPION OF JUSTICE

George Barrett recently passed away in Nashville, TN. He was 86. For over 50 years, George represented "the little guy" in civil rights and worker's rights cases. He was a mentor and hero to many younger lawyers, especially our friends at the Nashville firm of Barrett Johnston Martin & Garrison. These lawyers surely will carry George's torch for many years to come.

George was affectionately known as "The Citizen," and his long list

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### WINEBRAKE & SANTILLO, LLC

www.winebrakelaw.com

Home Office:

Twining Office Center, Suite 211

715 Twining Road, Dresher, PA 19025

Phone: (215) 884-2491

Fax: (215) 884-2492

Email: pwinebrake@winebrakelaw.com



WINEBRAKE & SANTILLO OBTAINS  
IMPORTANT VICTORY ON BEHALF OF  
PENNSYLVANIA RETAIL WORKERS WHO  
ARE PAID “HALF-TIME” FOR OVERTIME  
WORK

On July 10, 2014, the United States District Court for the Eastern District of Pennsylvania issued an important decision in *Verderame v. RadioShack Corporation*, 2:13-cv-2539-MSG, a case brought by our firm and our friends at the Minneapolis, MN firm of Nichols Kaster PLLP.

The store managers in *Verderame* were paid overtime under the federal “fluctuating workweek method” in which overtime-eligible employees are paid a salary plus overtime compensation equal to “one-half” the employee’s regular hourly rate. In certain circumstances, this method of overtime compensation is permissible under the federal overtime law.

The *Verderame* lawsuit alleged that RadioShack’s use of the fluctuating workweek method violated Pennsylvania’s overtime law, which often is found to be more worker-friendly than federal law. RadioShack sought dismissal of the lawsuit, alleging that the fluctuating workweek method is permissible under Pennsylvania law.

United States District Judge Mitchell S. Goldberg’s 12-page opinion rejected RadioShack’s argument. The Judge concluded that, while the fluctuating workweek method of compensation “may be lawful under the baseline federal regulation, the same cannot be said as it applies to the more employee-friendly Pennsylvania regulation.” Thus, the Court held that “RadioShack violated the [Pennsylvania Minimum Wage Act] by not compensating Plaintiff for overtime at ‘1 ½ times’ the basic rate as set forth in their compensation plan” and granted the plaintiff’s motion for summary judgment.”

To date, our firm has recovered millions of dollars for Pennsylvania employees paid under the fluctuating workweek method of overtime compensation. Most of these employees hold “manager,” “assistant manager,” and “co-manager” positions at retail chains.

If any of your Pennsylvania clients have worked in retail and been paid overtime under the half-time method, we would be very happy to speak with them.

THE PRESIDENT FINALLY  
TAKES STEPS TO UPDATE  
THE FLSA’S “WHITE  
COLLAR” EXEMPTION  
REGULATIONS *Continued from Page 1*

that taxpayers are directly subsidizing the under-compensation of purported company executives, administrators, and professionals.

Earlier this year, President Obama issued a memorandum instructing the Department of Labor (“DOL”) to update the regulations pertaining to the white collar exemptions. Why it took the Administration over five years to take this simple step is baffling. Regardless, the DOL now must go through the formal “rulemaking” process, which will take at least another year. Then, after the new rules are issued, Big Business surely will file lawsuits asserting that any new regulations exceed the DOL rulemaking authority. That may cause even more delay.

IN MEMORIAM  
GEORGE BARRETT:  
CHAMPION OF JUSTICE

*Continued from Page 1*

of accomplishments would fill this Newsletter many times over. Simply put, George was one of this country’s great civil rights and worker’s rights lawyers. His cases helped desegregate the South and brought basic workplace justice to countless employees. In the 1950’s and 60’s, he represented African Americans and unions without regard to public backlash. Even death threats did not deter “The Citizen” from his important work.

George practiced law right up until the end. He worked at the office on Saturday – as he always did – and was hospitalized the next day. That is fitting for a tireless Champion of Justice.

CONGRESSIONAL INACTION DOES NOT PREVENT STATE AND  
LOCAL GOVERNMENTS FROM INCREASING THE MINIMUM WAGE

Congress does not seem too motivated to pass a minimum wage increase anytime soon. This inaction defies public opinion. According to a recent Gallup Poll, over 76% of Americans favor increasing the federal minimum wage from \$7.25/hour to \$9.00/hour. (Of course, public opinion does not matter too much, since so many Congressmen reside in gerrymandered cocoons that make it almost impossible for them to lose a general election race.).

But all is not lost. When it comes to the minimum wage, the federal Fair Labor Standards Act (“FLSA”) is **not** the only game in town. That’s because many states – and even some cities – have their own minimum wage laws. Nothing prevents state and local legislators from increasing the minimum wage under these laws. Put differently – for all you lawyers out there – the FLSA’s minimum wage provisions do not “preempt” state and local laws.

A quick survey of the news reveals that several states are taking important steps to increase the minimum wage. For example, in the first half of 2014, four states – Connecticut, Hawaii, Maryland, and Vermont – increased their minimum wage to over \$10.00/hour. The State of Washington, meanwhile, just increased its minimum wage to \$9.47/hour.

Several cities have taken even more aggressive steps. In June, for example, the Seattle City Council voted to raise the city’s minimum wage to \$15.00, while the San Diego City Council recently voted to gradually increase its city’s minimum wage to \$11.50/hour over the next few years. And New York City Mayor Bill de Blasio just signed an Executive Order that will establish a \$13.13/hour minimum wage for an estimated 18,000 workers. These are just a few examples of how local progressives are giving America’s workers a fighting chance.

Many of the Trial Lawyers who read this Newsletter “rub elbows” with state and local officials. If you are such a creature of politics, here’s a question you might ask your friends: “What are you doing to increase the minimum wage?”

QUARTERLY QUOTE

“Just as the commandment ‘Thou shalt not kill’ sets a clear limit in order to safeguard the value of human life, today we also have to say ‘thou shalt not’ to an economy of exclusion and inequality. Such an economy kills. How can it be that it is not a news item when an elderly homeless person dies of exposure, but it is news when the stock market loses two points?”

*(Pope Francis, November 23, 2013)*

ATTENTION  
Pennsylvanians:  
  
Don’t forget  
to vote on  
November 4th!