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# Wage and Hour Laws

Top Ten Employer Myths and  
Misconceptions

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# Tug Hill Commission Local Government Conference

- True or false -- everything I ever needed to know I learned at the Local Government Conference?
- True or false -- Corcoran has access to a secret “top ten” list of employer wage and hour law myths?
- True or false -- Federal and state wage and hour laws are complex and confounding at times?
- Let’s slay some dragons!!



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- Employer Myth # 1 – The New York State minimum wage law applies to municipal employers.
- Take a look at Section 651 of the New York State Labor Law. Excludes employees of any federal, state or municipal government or political subdivision thereof.



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- Employer Myth # 2 – If we pay someone a fixed annual salary, he/she is automatically ineligible for overtime pay.
- Satisfaction of salary level test, salary basis test, and duties test are all required for overtime pay exemption.



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- Employer Myth # 3 – Municipal employees must be paid for accrued but unused leave time, such as vacation time, upon separation from employment.
- Can be carved out by policy, regulation, local law, or collective bargaining agreement.



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- Employer Myth # 4 – We don't have to pay overtime unless someone works more than 80 hours in our two-week pay period.



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# Health Care Facility Special Rule

- Under Section 7(j) of the FLSA, hospitals and residential care establishments may use a fixed work period of 14 consecutive days in lieu of the 40 hour workweek for the purpose of computing overtime. Need prior agreement or understanding with affected employees before work is performed. This eight and eighty (8 and 80) exception allows employers to pay time and one-half the regular rate for all hours worked over eight in any workday and eighty hours in the fourteen-day period. See Regulations 29 CFR 778.601.



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- Employer Myth # 5 – If we pay longevity pay in a lump sum once a year, we do not have to include it in figuring out the employee's overtime rate of pay.
- “Regular rate” pay definition.



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- Employer Myth # 6 – We can give compensatory time off (comp time) in lieu of overtime pay on an hour for hour basis.



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# This Conference is Fun!

- Employer Myth # 7 – Employees can be told to not discuss their wages and pay levels with other employees.
- The concept of protected concerted activity and the “Sunshine” laws.



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# The Tug Hill Commission Rocks!

- Employer Myth # 8 – The new FLSA regulations concerning the overtime pay salary thresholds do not apply to municipal employees.
- Beginning December 1, 2016, the FLSA salary threshold for overtime payment exemption was going to move from \$455 per week (\$23,660 per year) to \$913 per week (\$47,476) for most employees in both the private and public sectors. But hold the brakes!!



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- Employer Myth # 9 – We can go ahead and make a deduction from an employee's pay to recover a debt he or she owes the municipality.
  - Unpaid parking fees
  - Mistaken overpayment of wages
  - Damage caused by the employee to employer owned vehicles, tools, etc.
  - Employer provided uniform expenses



# Tug Hill Commission

- Employer Myth # 10 – An employee who is “on call” must be paid for on-call time at a rate of not less than the federal minimum hourly wage.



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# Bonus Myths and Misconceptions?

- An employee must be paid for all time spent in out-of-town travel directed or authorized by the municipality.



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# Bonus Myths and Misconceptions

- Time worked on Saturdays, Sundays and major holidays must be paid at a premium rate of not less than 1-1/2 times the employee's regular hourly rate of pay.



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# Bonus Myths and Misconceptions

- Payments to a disabled firefighter or police officer under Section 207-a or Section 207-c of the New York State General Municipal Law are subject to state and federal income tax and FICA withholdings



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# Bonus Myths and Misconceptions

- A municipal employer does not have to pay employees for “show up” or “line up” time.



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# Bonus Myths and Misconceptions

- Leave time taken under the federal Family and Medical Leave Act (FMLA) must be paid leave.
- The New York State Paid Family Leave Law is automatically applicable to public employers.



# One for the Road

- The pay of an elected official can be docked if he/she is absent and has run out of sick leave, vacation leave, and personal leave.



# Disclaimer

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