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Mark I. Schickman, Editor
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Health Insurance

October marks the beginning of the sign-up period for insurance coverage under the Affordable Care Act, so it's as good a time as ever to make sure your benefits policies are up to date. At www.HRHero.com, you can find the following tools:

- HR Sample Policy—Health and Welfare Benefits, www.HRHero.com/lc/policies/514.html
- HR Sample Policy—Eligibility for Benefits, www.HRHero.com/lc/policies/513.html

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WAGE AND HOUR LAW

DOL brushes back San Francisco Giants

by Michael Futterman and Jaime Touchstone

San Francisco's Major League Baseball team recently agreed to pay \$545,000 in back wages and liquidated damages in connection with a U.S. Department of Labor (DOL) investigation initiated on behalf of the team's clubhouse and administrative workers. After a yearlong probe, the department determined that the Giants failed to pay minimum wage or overtime pay to certain employees in violation of federal wage and hour laws.

Feds investigate ball club's pay practices

The San Francisco Giants won two out of the last three World Series with the help of standout baseball players, most of whom command annual salaries in the millions of dollars. The club's payroll practices for its off-the-field employees aren't so generous. In fact, the DOL's Wage and Hour Division (WHD) uncovered numerous wage and hour violations.

Specifically, the Giants entered into contracts with clubhouse employees to pay them a \$55 daily flat rate in exchange for 5.5 hours of work. In reality, the employees worked an average of 12 to 15 hours per day and thus were paid at an hourly rate well below the federal minimum wage.

Investigators also found that the club had misclassified a number of

employees as exempt from overtime pay, including major and minor league clubhouse managers and affiliate video operators. The Giants also failed to pay and/or incorrectly calculated overtime for certain administrative staff who participated in its employee bonus program. Lastly, the Giants failed to maintain adequate payroll records.

The Giants cooperated fully with the investigation. The team pointed out that the DOL's officials didn't account for other sources of employee income, including tips and dues. It also stressed that it had changed its clubhouse compensation system before the department's inquiry.

Nevertheless, the Giants agreed to settle the DOL's claims and pay a quarter of a million dollars in back wages and an equal amount in liquidated damages to 74 affected employees. As part of the settlement, the Giants' owners promised that the club's pay practices would comply with federal wage and hour laws.

Minimum wage violations

The DOL administers and enforces the federal Fair Labor Standards Act (FLSA), which requires that covered employees be paid at least the federal minimum wage of \$7.25 per hour. The FLSA applies to federal, state, and local government employers and private

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employers grossing at least \$500,000 annually and/or employing workers engaged in interstate commerce or in the production of goods for commerce or employers that regularly use the mail or telephone for interstate communications.

When an employee is subject to federal, state, and local minimum wage laws, she is entitled to the benefit of the highest minimum wage. California's minimum wage is currently \$8 per hour. San Francisco's minimum wage is \$10.55 per hour and applies to any person who performs at least two hours of work per week within the geographic boundaries of the city.

In the case of the Giants, because the clubhouse employees were working 12- to 15-hour days, the \$55-per-day flat rate often equated to approximately \$4.25 per hour, which was well below applicable minimum wage rates.

Overtime law violations

An employer that requires or permits an employee to work overtime must pay her premium pay. Federal law requires that employees receive at least one and one-half times their regular rate of pay for all hours worked in excess of 40 in a workweek. Extra pay for working weekends or nights is a matter of agreement between the employer and the employee, unless overtime hours are worked on such days.

California overtime law is more generous toward employees. It requires payment of overtime for any hours worked in excess of 40 in one week or eight in one day and requires the payment of double time in certain situations.

The FLSA provides an exemption from both minimum wage and overtime pay for certain executive, administrative, professional, outside sales, and computer employees. To qualify for one of those exemptions, employees generally must meet tests regarding their job duties and be paid on a salary basis of no less than \$455 per week. Job titles don't determine exempt status.

In the Giants case, DOL investigators determined that the job duties of the clubhouse managers and video operators didn't fall within the requirements necessary to qualify as exempt from overtime. Thus, the club should have been paying them premium pay.

Furthermore, the DOL concluded that even when the Giants were paying overtime, they often miscalculated the employees' "regular" rate of pay in accordance with federal law, which requires that employers take into account bonuses earned by employees. In this case, when calculating the "regular" rate of pay for certain administrative employees, the Giants didn't take into account their participation in its bonus program.

Giants agree to pay up

Employers that violate federal wage and hour laws may be required to pay employees back pay and liquidated damages. The latter are intended to act as a deterrent against illegal labor practices and to encourage employers to comply with wage and hour laws.

In this case, the DOL assessed the Giants in excess of half a million dollars in back pay and liquidated damages. The department likely factored into its decision the team's failure to maintain adequate records of its employees' wages, hours, and other conditions of employment. Intending

this significant monetary award to serve as a warning to other ball clubs, the DOL noted in its press release that it would continue to work with Major League Baseball to ensure other teams are aware of and comply with federal wage and hour requirements.

Bottom line

This was hardly a come-from-behind victory for the Giants. Clubhouse employees don't slug home runs, turn double plays, or whiff .300 hitters. But they are entitled to at least the minimum wage and overtime when earned, whether or not the Giants make a pennant run.

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