

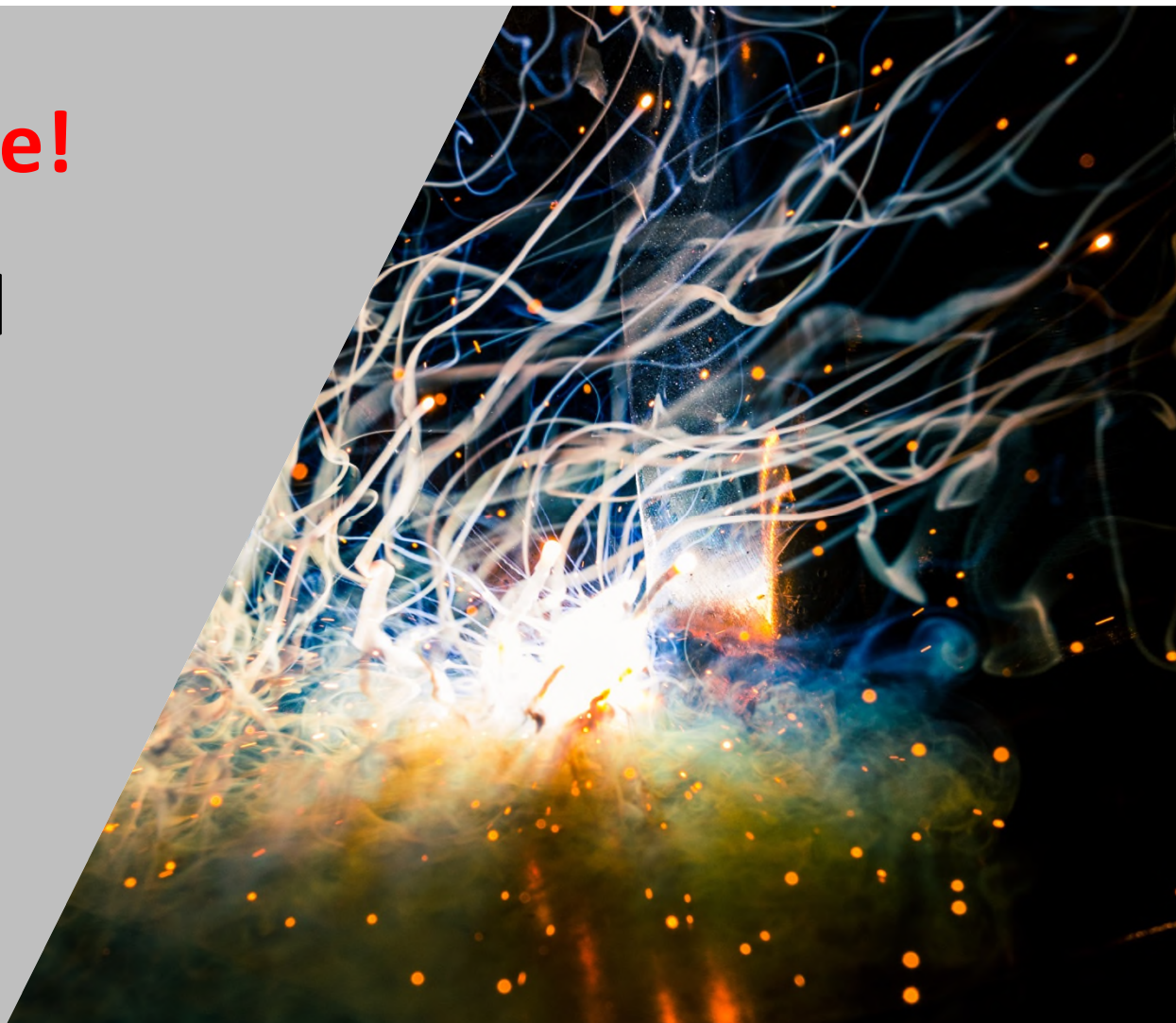
Three Alarm Fire!

Rapid Fire Legal Update



WARD AND SMITH, P.A.
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Construction-Related Employment Law Issues

Do you know what piece-rate compensation is?

Yes

No

Piece
what?



What is Piece-Rate Compensation?

In a piece-rate compensation scheme, employees receive payment based on the number of units, or pieces, they complete, rather than on the number of hours they work.

Example: Window installer is paid set fee per window installed.

Yes, this is entirely permissible... but wait, there's a catch (there's always a catch, isn't there?).

The Pitfalls of Piece-Rate Compensation

Don't forget the Fair Labor Standards Act still applies, including:

- Minimum wage,
- Overtime compensation, and
- Record-keeping obligations.





How to Properly Use Piece-Rate Compensation to Satisfy Minimum Wage

- **Good** Result: Bob, our piece-rate employee, receives \$10.00 for each window installed.
 - In one workweek, he installed 38 windows, and earned \$380.
 - It took him 40 hours to install these 38 windows.
 - Based on the number of hours worked (40) and the total compensation Bob received (\$380), we know that Bob's effective hourly rate for the week was \$9.50 (above minimum wage – success!).



How to Properly Use Piece-Rate Compensation to Satisfy Minimum Wage (cont.)

- **Bad** Result:
 - Assume Bob still worked 40 hours during the workweek, but only managed to install 28 windows, not 38.
 - His piece-rate compensation for the week is \$280, which results in an effective hourly rate of \$7.00 (below minimum wage – not good).
 - Making the Bad Result Good: The employer must pay Bob an additional \$10.00 for the workweek, which will bring Bob's effective hourly rate to \$7.25 per hour.

How to Properly Use Piece-Rate Compensation to Satisfy Overtime Compensation

First: Calculate Effective Hourly Rate or "Straight Time" Pay

- Example: Sally worked 45 hours, installed 45 windows, and received \$450. Her effective hourly rate of pay is \$10 per hour (\$450 divided by 45 hours worked).



How to Properly Use Piece-Rate Compensation to Satisfy Overtime Compensation (cont.)

Second: Determine the additional overtime compensation

- Example: Sally has already been paid \$10 per hour for each of the 45 hours she worked. She now needs to receive an additional half of the effective hourly rate (i.e., \$5.00) for each of her 5 hours of overtime. Therefore, Sally's overtime compensation is \$25.00 (\$5.00 x 5 hours).
- Total Compensation for the week: \$450 + \$25 = \$475.



Keys to Proper Piece-Rate Compensation

- Accurate Record-keeping
- Monitoring Minimum Wage
- Ensuring Overtime Compensation Calculations





Top 5 Things to Avoid to Minimize Contract Risk

What is the number one thing to do to minimize contract risk?

- Managing the lien process
- Proper documentation throughout the job
- Having solid contracts
- Call your attorney early and often
- All of the above



Best Practices for Dealing with Government Investigations

Have you ever done work on any state or federal project?

Yes

No



Considerations before agents arrive:

- Designate two or three people who are responsible for speaking with government investigators, and make sure the reception staff or worksite crew knows who they are and how to get a hold of them.
- Ensure that the people responsible for responding to the agents have contact information for the company's lawyer, and know to call the lawyer immediately.
- The agents may be there to seize documents and records. To the extent that data or files are stored in multiple places, ensure that the responsible people understand this organization. That will help facilitate a production that is as quick and easy as possible, and reduces the risk of unnecessarily overproducing documents and information.
- Review the company's document retention and deletion policies, and make sure these policies are clear and that they are followed.

The **AGENTS'** Rights

- If agents arrive at your office without a search warrant or a subpoena, they do not have a right to be in your office. If you choose, you can politely direct them to your attorney or to come back when an attorney is present.
- If the agents come to deliver a subpoena, they have a right to serve the subpoena on the agent for service or the individual named in the subpoena. That person is not obligated to speak further with the agents.
- If the agents have a search warrant to execute, you have a right to see and review the warrant. The agents have the right to conduct a search in accordance with the scope of the warrant. You are also entitled to an inventory of all the items that are seized during the search.
- While you cannot obstruct the execution of the search warrant, you are not obligated to assist the agents either. In order to expedite the search, you may want to point out the location of files, computers, or individuals' offices.

YOUR Rights

- You have the right to not speak with the agents.
- You can choose to speak with the agents. Understand, however, that this is a highly risky undertaking.
 - You might have incomplete information about what other people have done or reported doing to the government.
 - Additionally, federal law and regulations are complex, and it is not always obvious when conduct is in violation of these laws and regulations.
 - Moreover, even if there is no underlying wrongdoing, making misrepresentations to agents is itself a criminal offense.
- If the agents are executing a search warrant, you have the right to leave the premises while they are doing this work. This allows you to avoid communications as well as allegations that you impeded the evidence collection.

The **EMPLOYEES'** Rights

- Your employees have a right to not speak with the agents.
- Unless the search warrant is directed to the individual employee, he or she is not obligated to produce personal, non-business documents or tangible things.
- If employees wish to speak with the agents voluntarily, you cannot prevent them from doing so. However, you are not required to give them a break from performing their normal duties to facilitate speaking with the agents. In most cases, the best approach is to send the employees home for the day.
- Employees have a right to retain counsel to advise them about the investigation. Depending on the circumstances, you might want to pay for them to hire competent and experienced attorneys. Those lawyers likely will need to be different from any lawyers retained to represent the company.

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