

BE PENNY WISE SO YOU AREN'T POUND FOOLISH

Top Five Wage and Hour Tips To Reduce Legal Liability

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TODAY'S SPEAKERS



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AGENDA

- Meal and Rest Breaks
 - Requirements
 - Recommended Practices
- Timecard Rounding
- Regular Rate for Overtime
- Improper Paycheck Deductions
- Off-the-Clock Work

The information in this presentation is for informational purposes only and is not intended to constitute legal advice or be a substitute for obtaining legal advice, and may or may not reflect the most current legal developments.



OREGON LATE WAGE PAYMENT PENALTY

8 hours of employee's regular wage for each day of late wage payment, up to 30 days

Example: 8 hours x \$15.05 (Oregon standard minimum wage as of July 1, 2025) x 30 days =
\$3,612.00

Penalty wages are available for failure to pay wages at termination OR for unpaid minimum wage or overtime.

Timing of Final Paycheck

- If the employee quits with less than 48 hours notice (not including weekends and holidays):
 - Paycheck and any wages owed are due within five business days or on the next regular payday, whichever is first
- If the employee quits with at least 48 hours notice:
 - Paycheck and any final wages owed are due on the last day of employment
 - If the last day is a weekend or holiday, the check is due on the next business day
- If the employee is fired or the employer and employee mutually agree to terminate the relationship:
 - Paycheck and any final wages are due at the end of the next business day

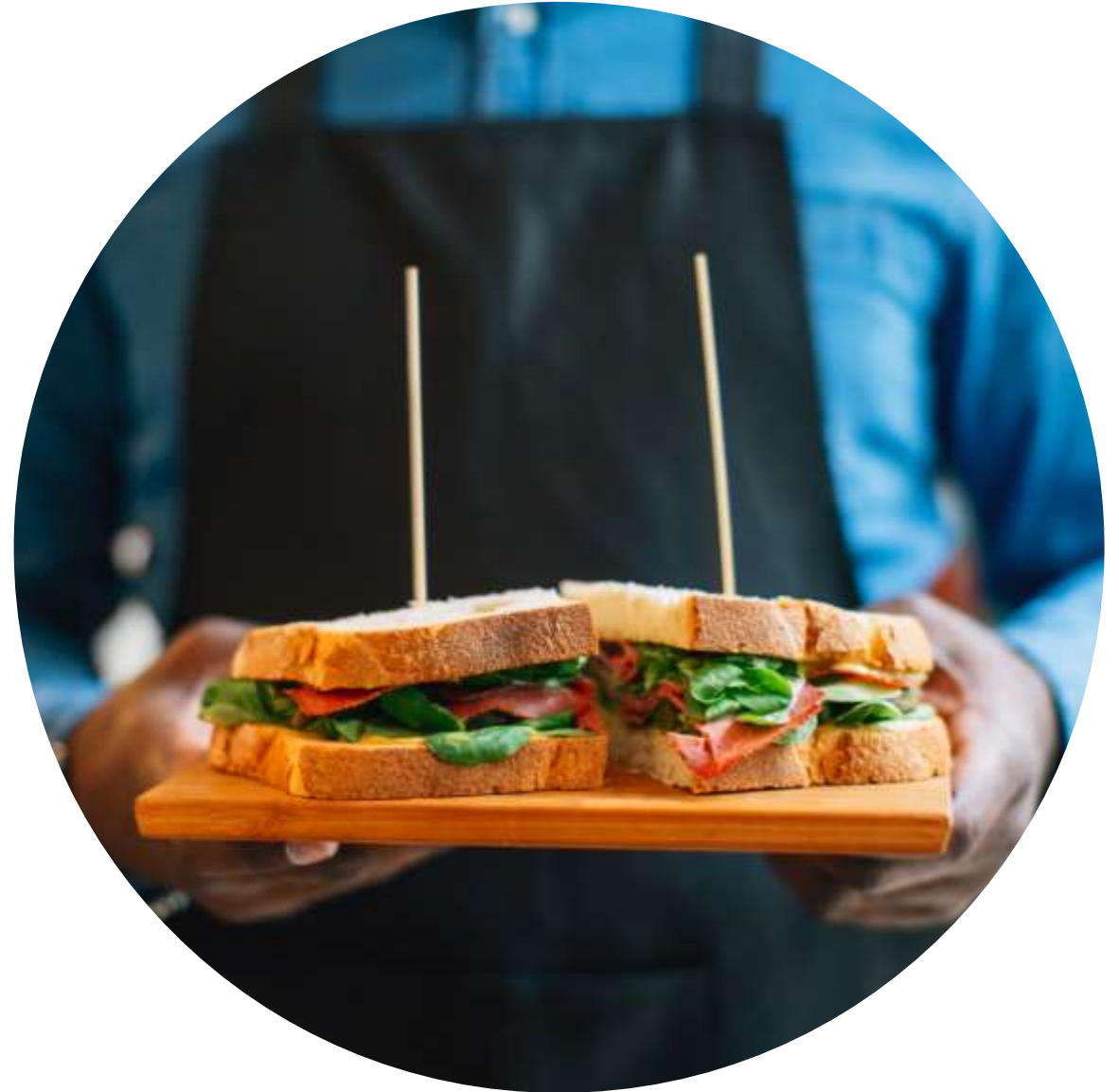
MEAL AND REST BREAKS



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MEAL BREAK REQUIREMENTS

- 30 minutes if working 6 hours or more
 - Shifts between 6 and 7 hours: must be after the 2nd hour worked and completed prior to the start of the 5th hour worked
 - Shifts more than 7 hours: must be after the 3rd hour worked and completed prior to the start of the 6th hour worked
- Another 30 minutes if working 14 hours or more and another if work 22 hours or more



MEAL BREAKS ARE MANDATORY

- Employees cannot choose to skip meal breaks
- Employers have affirmative duty to ensure employees take meal breaks
- If employees do not take a 30-minute meal period, the employer must pay for the entire 30-minute meal period

REST BREAK REQUIREMENTS

- Ten minutes every four-hour work period or “major portion thereof”
 - “Major portion thereof” = two to four hours
- Taken in the middle of the work period
- 15 minutes for minors
- No rest break required if employee works less than two hours
- Must be consecutive ten minutes
- Cannot waive rest breaks



MEAL AND REST BREAK SCHEDULE

Shift Length (in hours)	Number of 10-Minute Rest Breaks	Number of 30-Minute Meal Breaks
0 to 2	0	0
>2 to <6	1	0
6	1	1
>6.0 to 10.0	2	1
>10 to <14	3	1
14	3	2
>14 to 18	4	2
>18 to <22	5	2
22	5	3
>22 to 24	6	3

GENERAL RULES

- Must be uninterrupted and completely free of work duties
- Cannot be combined or taken at the beginning or end of the workday
- Can require team members to remain onsite for breaks, but cannot be on call or on duty
- Reminder: if meal period is shorter than 30 minutes, must pay for the entire 30-minute meal period regardless of why it was short



RECOMMENDED PRACTICES

- Establish policies requiring compliant meal and rest breaks
- Schedule meal and rest breaks
- Require employees to take meal and rest breaks away from their work area to avoid interruption
- Remind employees to take meal and rest breaks regularly
- Don't disincentivize meal and rest breaks
- Require employees to report if a meal or rest break is missed, short, interrupted, or taken late
- Facilitate reporting missed, short, and interrupted meal breaks and pay for same
- Hold employees accountable for taking meal and rest breaks
- Monitor time records and pay for short meal periods
- Timecard attestations
- Manager Training

CONSEQUENCES OF NONCOMPLIANT MEAL AND REST PERIODS



- Few defenses to meal period claims given meal periods are mandatory
- Time records can easily prove short meal periods without need to look to individual employees' choices
- Potential liability for uncompensated short meal periods and up to 30 days' wages in penalty wages
- BOLI can assess civil penalties for willful meal and rest period violations

TIMECARD ROUNDING



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COURTS INCREASINGLY DISAPPROVE ROUNDING

- Rounding permissible under federal law if it is neutral and does not cause failure to compensate for all time worked over a period of time
- Federal court in Oregon found rounding unlawful under Oregon law
- California appellate court found rounding unlawful and California Supreme Court is expected to rule on issue soon
- Expect more challenges to rounding practices and rounding claims

WHY IS ROUNDING A HOT BUTTON ISSUE?

- Rounding made more sense when time was recorded manually and there was a burden in calculating time worked with odd start and stop times
- Digital clocks and timekeeping systems reduce the need for rounding and any administrative burden
- Wage and hour laws often construed toward protecting employees



CONSEQUENCES OF ROUNDING

- Small amounts rounded away can add up
- Time and pay records can easily prove what time was worked and what was paid for
- Unpaid wages can lead to up to 30 days' wages in penalty wages
- Under the FLSA, liquidated damages in the amount of unpaid minimum wage and overtime are available



CALCULATING REGULAR RATE FOR OVERTIME



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CALCULATING REGULAR RATE

- Correctly determining an employee's “regular rate of pay” is critical because it is the basis upon which the employer must calculate employee's overtime pay.
- The regular rate includes all remuneration for employment paid to the employee subject to numerous exclusions and exceptions.
- If certain pay is excluded from the regular rate when it should be included, it leads to systemic unpaid overtime



REGULAR RATE OF PAY

- Include:
 - Nondiscretionary bonuses
 - Most bonuses paid according to a written plan given to employees are “nondiscretionary” under the FLSA
 - Commissions
 - Shift differentials
 - “Hazard” pay
 - Supplemental compensation
- Exclude:
 - Discretionary bonuses
 - Gifts
 - Value of benefits (paid time off, health insurance premiums)
 - Payment for vacation, holidays, sick leave



DISCRETIONARY VS. NONDISCRETIONARY BONUSES

- Discretionary bonus:
 - fact and amount of payment must be in the sole discretion of the employer
 - payment at or near the end of period covered by bonus
 - no promise or suggestion that payment is guaranteed.



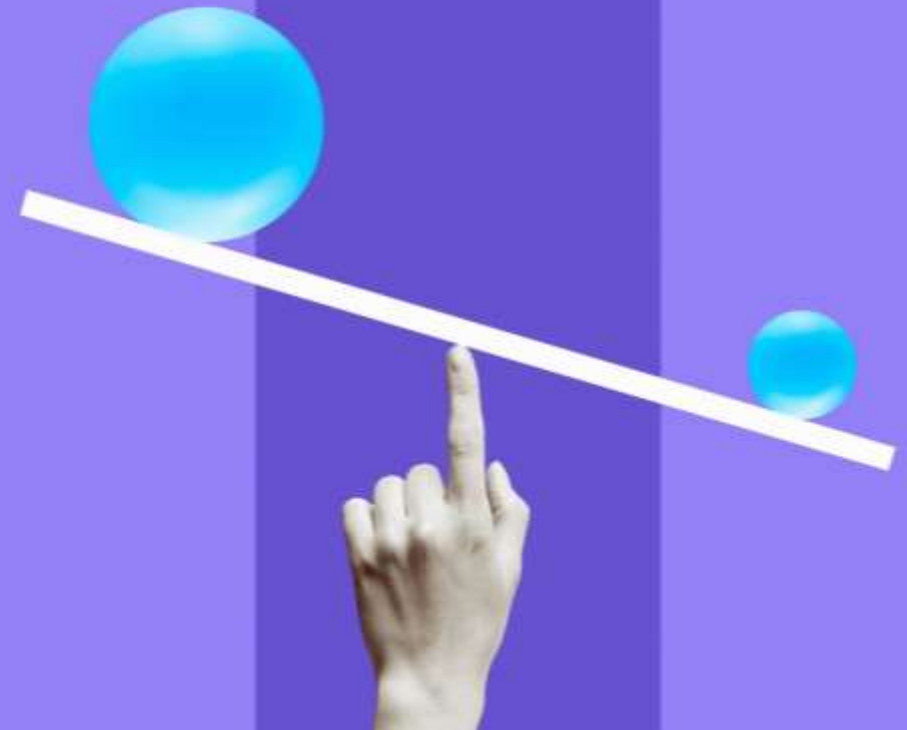
BONUSES AND LUMP SUM PAYMENTS

- Nondiscretionary bonuses earned over multiple pay periods require retroactive payment of overtime
- Exception: percentage bonuses include overtime so no separate retroactive payment is required



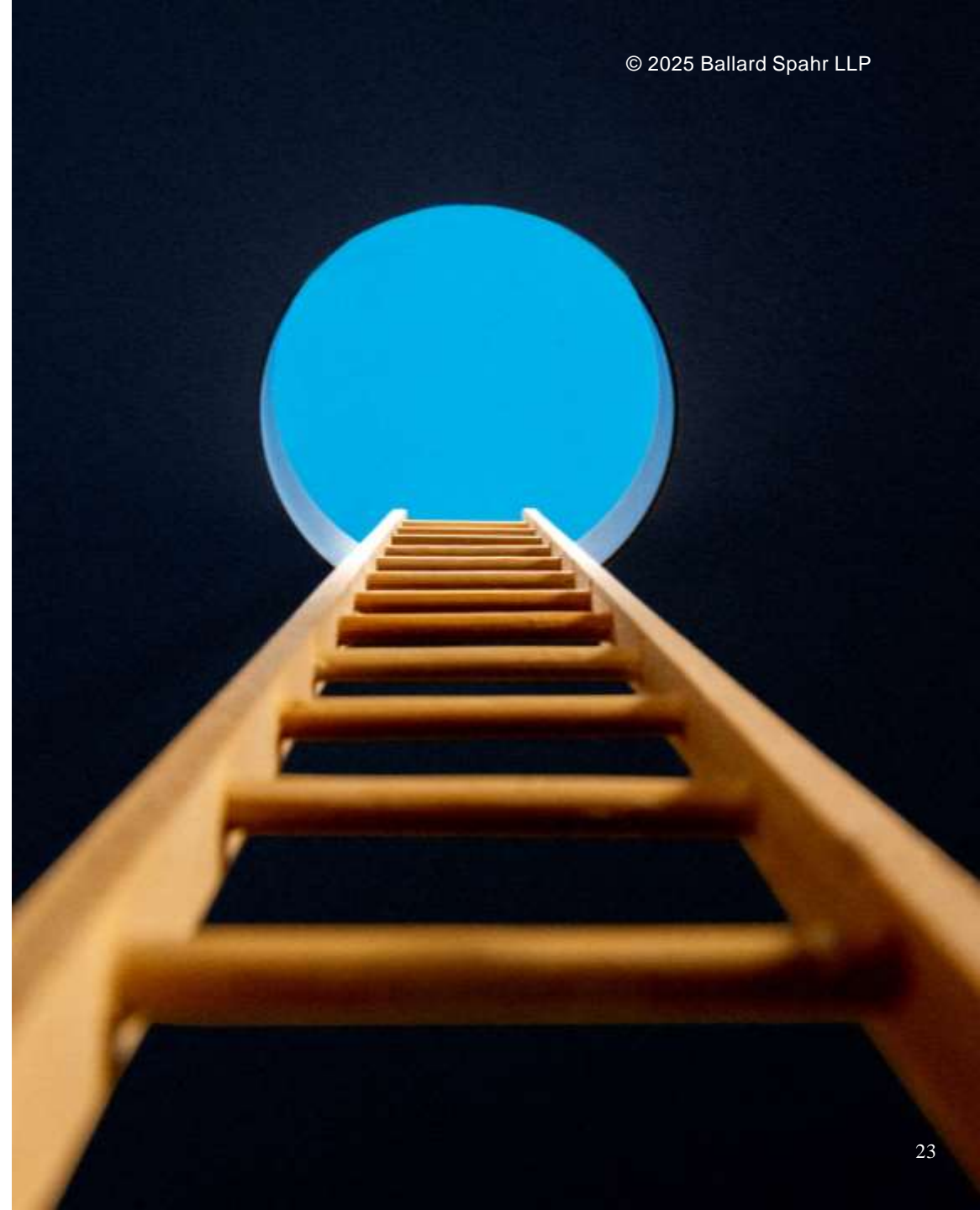
WORK AT MULTIPLE RATES

- General rule: use weighted average of rates
- Rate-in-effect method allowed only if:
 - The different rates are for different kinds of work
 - Employee agrees in advance to be paid overtime and 1.5 times the rate-in-effect for the work
- The methods yield different amounts so improperly using rate-in-effect can cause unpaid overtime



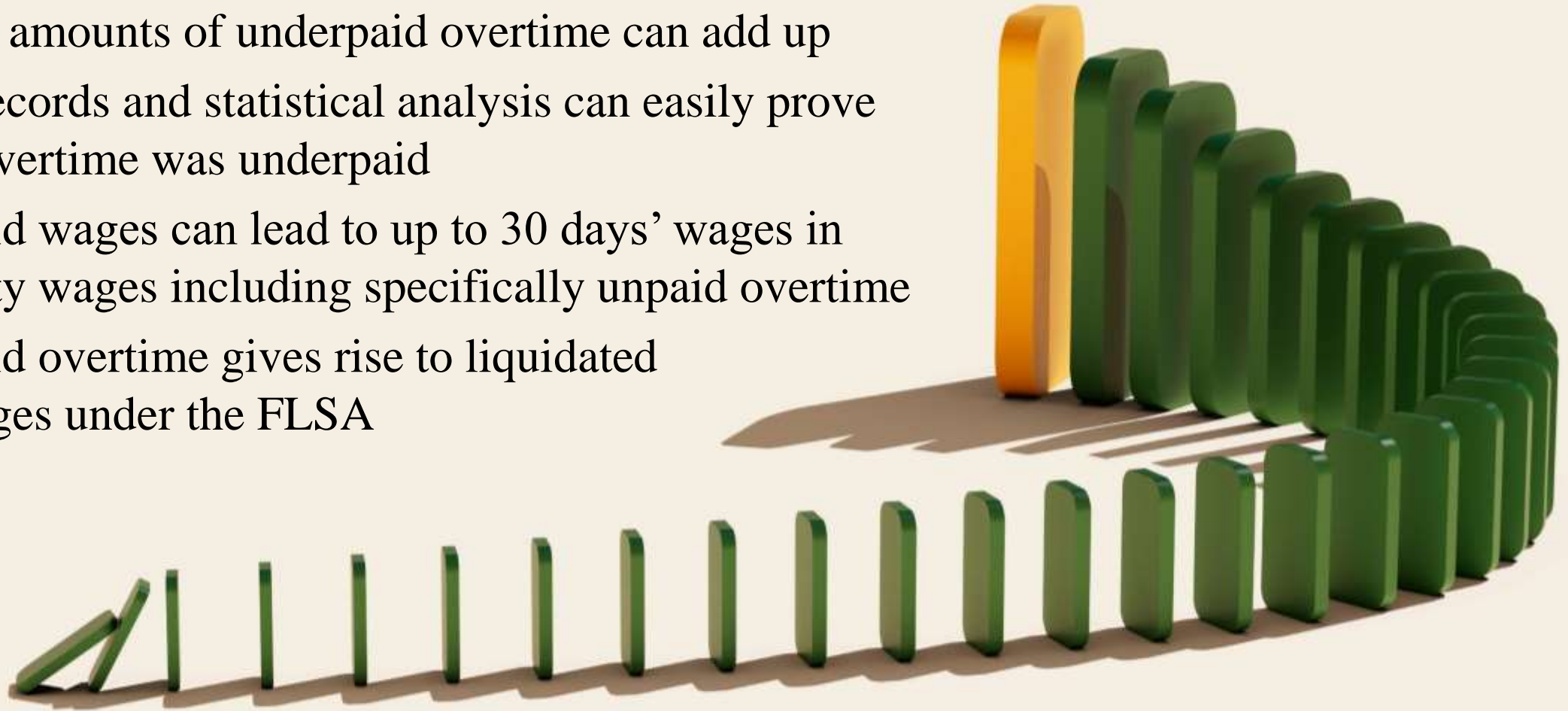
COMMON PITFALLS

- Paying overtime at rate-in-effect when requirements are not met
- Characterizing a bonus as discretionary when it is not
- Excluding compensation that must be included in regular rate
- Excluding hours as being overtime eligible
- Not paying retroactive overtime on a bonus earned over time



CONSEQUENCES OF MISCALCULATING REGULAR RATE

- Small amounts of underpaid overtime can add up
- Pay records and statistical analysis can easily prove that overtime was underpaid
- Unpaid wages can lead to up to 30 days' wages in penalty wages including specifically unpaid overtime
- Unpaid overtime gives rise to liquidated damages under the FLSA



IMPROPER PAYCHECK DEDUCTIONS



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BASES FOR DEDUCTIONS

- Employer is required to make deductions under the law
- Deductions are voluntarily authorized in writing by the employee, are for the employee's benefit and are recorded in the employer's books
- Employee voluntarily signed an authorization for a deduction provided that the ultimate recipient of the money withheld is not the employer and that the deduction is recorded in the employer's books
- Deductions authorized under a collective bargaining agreement
- Deductions for processing fees for garnishments
- Deductions from final wages authorized under written loan repayment agreement that employee voluntarily signed, was solely for the employee's benefit and not for any work purpose, the deduction does not exceed the limits on garnishments, and the deduction is recorded in the employer's books

MISTAKES TO AVOID

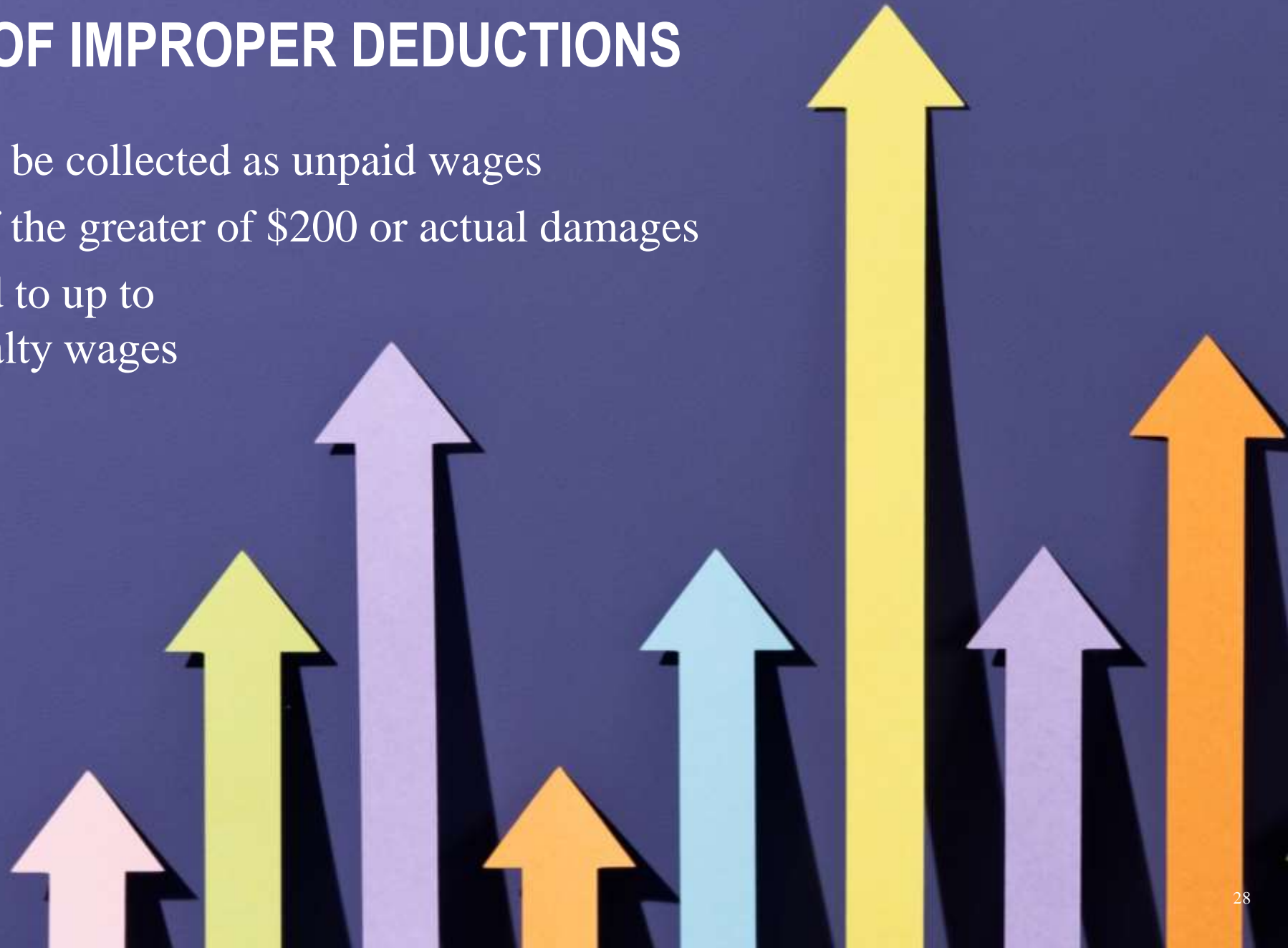
- No self-help
- Not obtaining (or retaining) written authorizations for deductions
- Making mistakes as to the amount deducted





CONSEQUENCES OF IMPROPER DEDUCTIONS

- Amounts deducted can be collected as unpaid wages
- Liquidated damages of the greater of \$200 or actual damages
- Unpaid wages can lead to up to 30 days' wages in penalty wages



OFF-THE-CLOCK WORK



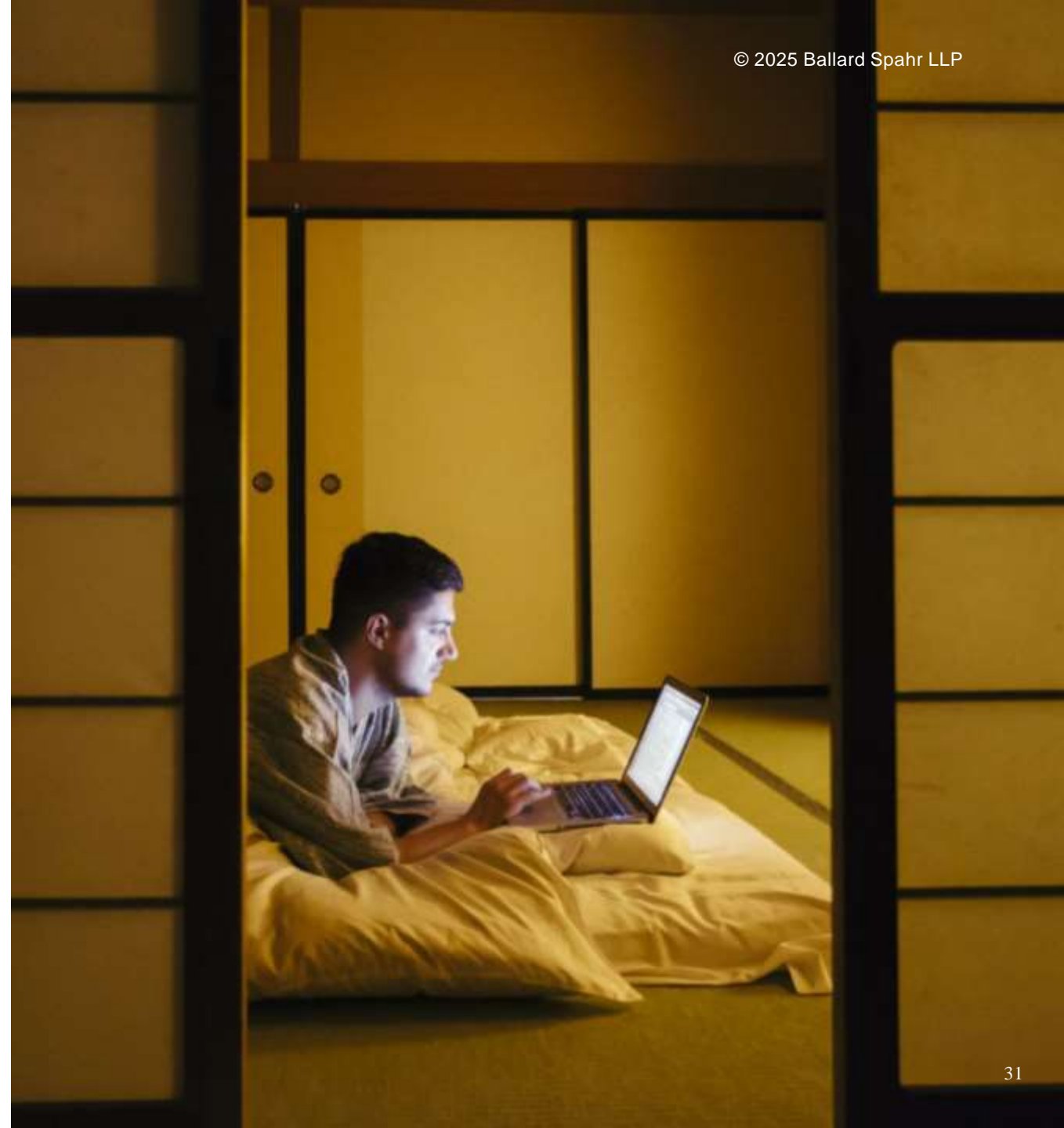
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EXAMPLES OF OFF-THE-CLOCK CLAIMS

- Pressured by work demands to work off-the clock
 - Clocking out for meal and working through it
 - Doing work before clocking in or after clocking out
- Tasks that are performed before clocking in or after clocking out
 - Computer boot up time
 - Disarming/arming alarms
 - Donning and doffing uniforms or protective equipment

CHALLENGES OF OFF-THE-CLOCK WORK

- Can take many forms
- By definition there is limited or indirect evidence of it
- Remote work can exacerbate the challenges of off-the-clock work



STRATEGIES TO ADDRESS OFF-THE-CLOCK WORK

- Policies prohibiting off-the-clock work and requiring all time be reported
- Timecard attestations
- Forms to report off-the-clock work
- Supervisor awareness and monitoring
- Assess risk areas and potential solutions



AN OUNCE OF PREVENTION IS WORTH A POUND OF CURE

- Small claims for short meal periods, unpaid time, miscalculated overtime, and improper deductions can quickly aggregate over time and across a workforce
- Penalties greatly increase liability and there are few defenses after the fact
- Taking efforts to ensure wages properly paid each pay period reduces risks