



# Human Resources Committee

April 9, 2015

Atlanta, GA

**“What the *[bleep]* is up with this Caliber Case in California?!?!?!”**

**“Can my shop be hit for the same thing?!”**

# “What the *[bleep]* is up with this Caliber Case in California?!?!?!”

## ➤ Unpaid Wage Claims

➤ Minimum Wages for **non-productive time**  
(*Gonzales v. DTLA Motors*)

➤ Minimum Wages for **paid rest periods**  
(*Bluford v. Safeway*)

➤ Unpaid Overtime on bonus/incentive wages  
(CA Wage Order #9)

➤ Unpaid “Tool Rule” Minimum Wages  
(Tech supplies own basic tools? Must be paid at least 2x minimum wage)

# “What the *[bleep]* is up with this Caliber Case in California?!?!?!”

## ➤ Penalties

- Missed rest period “premiums”
- Inaccurate Wage Statements (pay stubs)
- “waiting time penalties”
- Other statutory penalties - \$50/\$100, \$100/\$200

## ➤ Attorney’s Fees & Costs

How far back? 4 years!!

Just the plaintiff? Nope! This is a *class action* on behalf of every “similarly situated” employee!

**“Can my shop be hit for the same thing?!”**

Are you in California?

**ABSOLUTELY**

Are you in some other jurisdiction?

**Nope, BUT stay tuned...**

12/12/2014

Escondido Auto Park Auto Technicians

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## ★ Escondido Auto Park Auto Technicians



YOU EARNED IT, NOW MAKE THE DEALER PAY.  
WE TURN FLAG PAY INTO PAYCHECKS!

Were you a flat rate auto tech at Escondido Auto Park in the last four years? Under California law, you must be paid for each and every hour worked.

The dealer may claim you were paid for every hour worked, but we know why they're usually wrong – wait time, underpaid warranty and recall work, diagnostic work that doesn't pay at all. While there's no guarantees, time and time again, we've gotten Tens of Thousands of Dollars for underpaid auto technicians.

And we make the dealer pay ALL the costs and attorneys fees, with NO costs to you.

You wouldn't take a Toyota to a Ford dealer or a transmission job to a muffler shop. At Nunes Law Group, we're "brand loyal" to auto technicians. To find out how much you may be owed, call me and leave your number or email me at [Glenn@nuneslawgroup.com](mailto:Glenn@nuneslawgroup.com).

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# Here's why!

(Welcome to California)

**“So what can I do  
to protect myself?!”**

**#1 First Line of  
Protection no matter  
what your jurisdiction?**

**ARBITRATION!!!**

# "Why Arbitration?"

## *AT&T Mobility LLC v. Concepcion*

- Arb. Agreements signed by every employee – no exceptions!!!!
- Allows you to resolve a case with a private arbitrator instead of an unpredictable jury
- **PROPERLY DRAFTED ARBITRATION AGREEMENTS KILL CLASS ACTION LAWSUITS!!!**
- **Californians – Beware PAGA!!!**

# "So what can I do to protect myself?!"

## Get into compliance!

Every pay period ask yourself:

- Does an Overtime Exemption Apply?
- Am I compliant with minimum wage?
- Do I have the records to prove it?
  - Time Records?
  - Written/Signed pay plans?
  - Documented the calcs? Or did you assume?

# FLSA 7(i) Commissioned Employee Exemption

- Retail Establishment
- More than ½ income from “commissions” (“flat rate” counts)
- Make at least *1½ times Minimum Wage* for all hours worked!

# "So what can I do to protect myself?!"

## Californians.....

- Written/Signed pay plans?
- Am I compliant with minimum wage?
  - *DTLA Motors* compliant?
  - *Bluford* compliant?
- Am I compliant with overtime laws?
  - OT on ALL compensation?
  - Using correct formula to calculate?

# Remember I told you **Non-Californians** to stay tuned...?

## Overtime Exemptions and Estimators/Writers

- Multiple FLSA exemption options
  - 7(i) – Commissioned Sales
  - 13(b)(10) – “Salesmen, Partsman & Mechanics”
  - Heightened “hit factor” because of new case (*Navarro* - a CA case, of course)

# So let's recap!

- Caliber Case is CALIFORNIA ISSUES only...
- No more traditional flat rate!
- BUT other jurisdictions have their own issues!
- Minimum Wage Compliance? Check it EVERY pay period.
- Overtime Exemption? Check it EVERY pay period. (Californian's do not have exemption!)
- Do I have proper written, signed pay plans?
- Do I have ALL employees signed off on appropriate arbitration agreements?
- Do I have accurate time records?

Thank You!  
Human Resources  
Committee

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