

# WAGE AND HOUR LAWSUIT

## POTENTIAL POLICE EMPLOYEE CLAIMS AGAINST CITY AND COUNTY OF HONOLULU

1. **Overtime Rate Issues.** Employees receive a variety of forms of "salary add-ons" that must be included in the overtime rate. Such additional compensation includes the standard of conduct differential, shift differential, several types of hazardous duty pay, working out of classification pay, FTO pay, and some additional premium pays. After reviewing the complete pay stubs from one employee, and communicating with hundreds of others, it appears that, with the exception of shift differential, none of these additional pays have been included in the regular rate of pay. Once we obtain the computerized payroll records from the City, we will be able to determine whether this additional compensation has been included in the overtime rate.

In addition, though we have spent dozens of hours attempting to recreate the City's methodology in computing overtime pay, we are unable to determine the basic formulas used by the City. Our inability to recreate the City's methodology lead us to suspect that, without regard to the inclusion of the "salary add-ons" referred to in the previous paragraph, the City's regular rate calculations may be in error.

2. **Compensatory Time Off Issues.** Many of the employees joining the lawsuit appear to have been the recipients of compensatory time off practices that violate the FLSA. Such practices have included the following:

- The improper *denial* of compensatory time off. Under the FLSA, an employer is not free to deny a compensatory time off request simply because it would be required to fill in for the employee with another employee on an overtime basis. Almost 100 employees joining the lawsuit have reported that their compensatory time off requests have been inappropriately denied.
- The receipt of compensatory time off at the *straight time rate*. Under the FLSA, compensatory time off must be accrued at the time and one-half rate. Forty-five employees joining the lawsuit have reported that they have accrued compensatory time off on a straight-time rather than a time and one-half basis.

- The *forfeiture* of compensatory time off. Under the FLSA, compensatory time off may not be forfeited. Nine employees joining the lawsuit report they have forfeited compensatory time off.
- The *accrual* of an inappropriate amount of compensatory time off. Under the FLSA, police officers can have no more than 480 hours of compensatory time off on the books at any one time. Five employees joining the lawsuit report they have accrued more than 480 hours of compensatory time off.

**3. Off-Duty Court Appearances.** Officers who attend court on their days off receive a minimum of three hours of straight-time compensation. Some officers have reported that this minimum payment is received even if the court appearance is between 2 and 3 hours long. The actual hours worked should be compensated at the overtime rate. If we have received correct information, those officers who worked more than 2 and less than 3 hours in a court appearance would have a claim in this area. Though our initial questionnaire did not specifically question employees about this issue, the responses we have received lead us to believe that this claim would be held by hundreds of employees.

**4. Recruits.** Several recruits have apparently been required to work outside of normal shift hours, either writing reports or completing mandatory training assignments. Such time should be compensated under the FLSA. This claim would be held by all employees in recruit status during the period covered by the statute of limitations.

**5. Training.** Some employees who have served as instructors in training have reported for work early and stayed late to assist students and prepare lesson plans. All such time should be compensable under the FLSA. Though our initial questionnaire did not specifically question employees about this issue, the responses we have received lead us to believe that this claim would be held by the majority of employees serving in instructor status during the period covered by the statute of limitations.

**6. Travel Time.** At least some employees who have attended training classes on the mainland have been denied compensation for travel time and, in fact, have had their compensatory time off banks reduced to account for the travel time. Under virtually all circumstances, travel to the mainland should be considered to be hours worked and compensable under the FLSA. Though our initial questionnaire did not specifically question employees about this issue, the responses we have received lead us to believe that this claim would be held by a significant number of the employees attending training on the mainland during the period covered by the statute of limitations.

7. **Motorcycle Cleaning.** Motorcycle officers have been required to clean their motorcycles on an uncompensated basis during their off-duty hours. Such time should be counted as "hours worked" under the FLSA. This claim would appear to be held by all employees serving as motorcycle officers during the period covered by the statute of limitations.

8. **Mandatory Physical and Psychological Examinations.** Some employees have been required to attend fitness-for-duty or follow-up physical or psychological examinations without compensation. In addition, some employees have indicated that they are required to participate in a mandatory annual physical examination on their off-duty time. Such time should be counted as "hours worked" under the FLSA. Though our initial questionnaire did not specifically question employees about this issue, the responses we have received lead us to believe that this claim would be held by a significant number of the employees required by the Department to undergo mandatory physical or psychological evaluations during the period covered by the statute of limitations.

9. **Sergeants' Pre-Shift Activities.** Several sergeants have indicated that sergeants are compensated at the flat rate of 1.5 hours for pre-shift preparation activities, including preparing for roll call. All such time should be counted as "hours worked" under the FLSA, even if the pre-shift work requires more than 1.5 hours. We are uncertain at this time how many sergeants joining the lawsuit have this claim.

10. **Certified Bomb Technicians.** Certified bomb technicians are required to be on standby status on a 24/7 basis without the payment of any compensation. Depending upon the restrictions on the technicians' off-duty time, the time spent on standby may be compensable under the FLSA. If such a claim is valid, it would be held by all certified bomb technicians joining the lawsuit.

11. **Narcotics Officers.** At least some narcotics officers have been required to work uncompensated overtime when budgeted overtime funds have been exhausted. Such a practice would be a clear violation of the FLSA. From the questionnaires we have received, our initial judgment is that the majority of Narcotics Officers joining the lawsuit have this claim.

12. **Extradition Assignments.** Some employees have indicated that they have served on extraditions where all or part of their travel time was not compensated. Under most circumstances, such travel time should be compensable under the FLSA. Though our initial questionnaire did not specifically question employees about this issue, the responses we have received lead us to believe that this claim

would be held by employees performing extraditions during the period covered by the statute of limitations.

13. **Riot Squad.** Employees on the Riot Squad are apparently required to be on standby status, and receive 2 hours of compensation for each 8 hours of standby time. Depending upon the restrictions on the off-duty time of Riot Squad members, the time spent on standby may be compensable under the FLSA. This claim would be held by all employees joining the lawsuit who were members of the Riot Squad during the period covered by the statute of limitations.

14. **SSD.** Employees assigned to SSD are apparently placed on standby status one a 24/7 basis without the payment of any compensation. Once again, depending upon the restrictions on the off duty time of the affected members, the time spent on standby may be compensable under the FLSA. This claim would be held by all employees joining the lawsuit who were members of the SSD during the period covered by the statute of limitations.

15. **Other Claims.** In addition to these claims, we are investigating four other possible claims: (1) The possibility that the commute time should be compensated for officers voluntarily participating in the Honolulu Police Department's now-concluded program where commuting officers made traffic stops; (2) The possibility that the vehicle allowance should be included in the overtime rate; (3) The court standby practice, where officers are placed on standby status on their days off to accommodate court appearances; and (4) Whether canine handlers are being appropriately compensated under the FLSA for off-duty dog care activities.