

## NATIONAL EMPLOYMENT LAW INSTITUTE

### Thirty-Third Annual Employment Law Briefing

## **COMPLEX WAGE AND HOUR ISSUES**

February 25, 2014

John C. Fox\* Jay J. Wang\*\* Alexa L. Morgan\*\*\*

\* John C. Fox, Esq. is the President, a founder and a Senior Partner of Fox, Wang & Morgan P.C., headquartered in San Jose, California in the heart of the Silicon Valley. Mr. Fox is an across-the-board employment lawyer who leads large and complex litigation matters in state and federal courts, in cases involving trade secrets, wage-hour and discrimination class actions, employee misclassification, wrongful termination, corporate investigations, OFCCP audits and the use of statistics in employment matters. He also provides business and strategic advice for a wide range of companies nationwide relating to their employment practices and helps build employment systems in a way designed to minimize legal risk. Mr. Fox was previously Executive Assistant to the Director of OFCCP, where he was in charge of all policy and enforcement matters.

**\*\* Jay J. Wang, Esq.**, is a founder of Fox, Wang & Morgan P.C. Mr. Wang is a graduate of the Georgetown University Law Center. Mr. Wang's practice focuses on employment counseling and litigation, including civil claims involving wrongful termination, harassment, wage-hour issues, and trade secret misappropriation. Mr. Wang is a lecturer on employment law matters for various organizations, including the National Employment Law Institute, the Santa Clara County Bar Association, and the California Employer Advisory Council. Mr. Wang previously served on the Santa Clara County Bar Association's Board of Trustees, and previously served as Chairman of the Santa Clara County Bar Association's Labor & Employment Executive Committee, as well as Chairman of the Santa Clara County Bar Association's Professionalism Committee.

\*\*\* Alexa L. Morgan, Esq. is a founder and Partner of Fox, Wang & Morgan P.C. Her practice focuses on employment litigation that includes civil claims involving wage and hour issues, wrongful termination, harassment, discrimination, and OFCCP audits. She also counsels clients on a broad variety of human resources issues. Ms. Morgan is also active in the pro bono community, having successfully represented clients in employment, guardianship, unlawful detainer, and education-related matters. Prior to founding Fox, Wang & Morgan, Ms. Morgan was an Associate at Manatt, Phelps & Phillips, LLP and at Gibson, Dunn & Crutcher LLP.

# © 2014 Fox, Wang & Morgan P.C.

#### THIS OUTLINE IS MEANT TO ASSIST IN A GENERAL UNDERSTANDING OF CURRENT WAGE AND HOUR LAWS. IT IS NOT TO BE REGARDED AS LEGAL ADVICE. COMPANIES OR INDIVIDUALS WITH PARTICULAR QUESTIONS SHOULD SEEK ADVICE OF COUNSEL.

# **TABLE OF CONTENTS**

# Page

I.	INTRODUCTION		
II.	WHAT IS WORK?		
	A.	Reporting Time	
	B.	Call-Back Time	
	C.	On-Call Time	
	D.	Compensatory Time	
	2.	Public Sector Employers7	
	E.	Charitable Time (Volunteers)	
	F.	Donning and Doffing Time	
	G.	De Minimis Time 11	
	H.	OSHA Inspection Time	
	I.	Training Time	
	J.	Internships	
	K.	Commute and Travel Time	
III.	THE OLD "STANDBYS" 17		
	A.	Overtime Exemptions 17	
	B.	Regular Rate of Pay 54	
IV.	WAC	WAGE-HOUR CLASS LITIGATION POST-DUKES	
	A.	What <i>Dukes</i> Meant for Wage-Hour Class Actions	
	B.	FLSA Collective Actions	
	C.	Class Action Waivers in Arbitration Agreements	
V.	DOL'S INCREASED ENFORCEMENT OF "HOT GOODS" PROVISION		

To request the full publication of this material, please email your request to <u>admin@foxwangmorgan.com</u>