



RAINEY • KIZER
REVIERE & BELL PLC

Jackson Offices

105 S. Highland Avenue
Jackson, TN 38301
and

209 E. Main Street
Jackson, TN 38301
P 731.423.2414

Memphis Office

Morgan Keegan Tower
50 N. Front Street, Ste. 610
Memphis, TN 38103
P 901.333.8101

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EMPLOYMENT LAW BRIEF

Spring 2010

Where's Wanda? Exempt Employees and Attendance Issues

"Where is Wanda?" Carl wondered for the third time in two weeks. Regularly scheduled office hours were 8-5 but Wanda seldom arrived before 9:00 and then just to leave again at 11:30 to take a two hour lunch. Carl understood that she was salaried and was sometimes required to work longer hours with no extra pay, but he at least needed her to be consistent with her work hours. He also needed her to be present to field calls from her clients during the times that they were available. He had tried talking to her about it but had gotten nowhere. All she did was remind him of all of the projects that she had successfully completed, the fact that she had gotten no overtime for those 60 hour workweeks she put in right before Christmas and chided him about treating her like an hourly employee. What was he to do.....

Many employees and even a few employers believe that exempt employees can come to work and leave work when they please. The prevalent, misguided theory is that because exempt employees are not paid overtime and may be required to work over forty (40) hours in a week, they are automatically given the flexibility to structure their hours as they like.

Although the pay of exempt employees cannot be docked for time missed that is less than one full day, attendance hours can be established and exempt employees can be monitored and disciplined. Following are some tips:

- Establish a firm policy regarding punctuality and attendance. Exempt managers should be held to the same standards as other exempt employees. Lead by example.
- Management should monitor and document abuse of the punctuality policy. Standards can be established to gauge when employees have reached an unacceptable level of tardiness.
- Week long suspensions without pay are available as a disciplinary measure. Applicable policies may provide that exempt employees may be suspended without pay in full-week blocks.
- The FLSA does not require employers to provide paid vacation or leave time. Therefore, the Department of Labor has consistently held in opinion letters that an employer may reduce an employee's paid leave time by any amount of time the employee has missed, be it an hour or a week.

Take steps so that you don't become another Carl. A frustrated manager wondering, "Where's Wanda?"