



## UNPAID WAGES AND OVERTIME FREQUENTLY ASKED QUESTIONS BOOKLET

[www.JohnBales.com](http://www.JohnBales.com)

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<b>Bushnell</b>	<b>(352) 793-7365</b>
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rated, the highest rating given by the lawyer rating service of Martindale Hubbell. The use of advanced technology, such as case management software, document imaging, and an in-house law library with computer-based legal research resources, further enhances our ability to pursue your claim. Our case management software allows your entire team to manage your case.

Attorneys that practice on the pretrial team will prepare your case during that time period. If litigation is necessary, trial attorneys will handle that phase. In some instances, we may have other law firms participate in your representation. This will not increase the amount of the attorneys' fees or costs. Of course, we will advise you if this should occur. We believe this innovative team concept helps us to more efficiently pursue your claim. Please understand that as your case progresses, your team of attorneys and client managers may change to improve service to you and assist in the effective resolution of your case. We will keep you advised of any such changes in your team.

Please consider going to our website, [www.johnbales.com](http://www.johnbales.com), or the booklet titled "*Information About John Bales Attorneys*", which was included in your initial representation package to obtain additional information about us.

## **II. COMMUNICATING WITH YOUR JOHN BALES ATTORNEYS TEAM**

As you know, communications between you and us as your law firm are important and are protected by the Attorney/Client Privilege. These communications can be by telephone (home, mobile, and work), in person meetings, email (personal only), and/or mail to the address provided above, which will be used by us to provide documents to you. Accordingly, please immediately advise us in writing of any change to telephone numbers (home, mobile, and work), email addresses (personal only), and/or your mailing address. Unless you notify us otherwise in writing, we will be using the above address for all communications with you as is appropriate.

Please keep in mind that the Attorney/Client Privilege only applies to communications between you and members of the firm, and you should not discuss your case with anyone or provide them with any of the documents from our firm because such communications may then become discoverable. Additionally, you should not be receiving any communications from our office at your work email, only your personal email. There have been court decisions holding that emails sent to an office email address is not protected by the Attorney/Client Privilege.

### **A. YOUR CONTACT INFORMATION**

Being able to communicate with you about your case at any time is very important. If you have not already done so, please provide us with the following contact information so that we may use it to contact you throughout the course of your case:

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1. Home Address
2. Home Phone Number
3. Cellular Telephone Number
4. Personal Email Address (Please do not provide us with a work or school email address because any communications sent to a work or school email address are likely not protected by attorney-client privilege)

## **B. YOUR EMERGENCY CONTACT INFORMATION**

Please also provide us with the following information for any emergency contact(s) that we may contact if we are unable to reach you using the above methods:

1. Emergency Contact(s) Name
2. Emergency Contact(s) relationship to you
3. Emergency Contact(s) Home Address
4. Emergency Contact(s) Home Phone Number
5. Emergency Contact(s) Cellular Telephone Number
6. Emergency Contact(s) Personal Email Address

Although you are providing us with contact information for your emergency contact(s), we will not discuss your case with them unless you give us permission to do so. Generally, we will only contact an emergency contact if we are unable to reach you. Of course, if you would like for us to discuss the case with your emergency contact(s), you can contact us and we can discuss the risks and benefits of such communication including, but not limited to, the lack of attorney-client privilege for any discussions for which the emergency contact is involved.

If any of the contact information changes for you or any of your emergency contact(s), please let us know immediately. If you will be out of town for an extended period of time, we request that you inform us of this as well.

## **C. CONTACTING YOUR JOHN BALES ATTORNEYS**

You will have a “point of contact” attorney. You will also have other attorneys and team members that you can speak to when your point of contact attorney is not available. Although your attorney may not always be immediately available to answer your questions directly, you may be able to obtain an answer to most of your questions from another member of your team. Additionally, you can always ask to speak to the Staff Administrator, who is also dedicated to serving you.

For your convenience, we offer local telephone numbers for our clients to call our office at any time. To find the local telephone number in your area, ask a member of your team or go to our website, [www.johnbales.com](http://www.johnbales.com) and click on “Contact Us”.

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### **III. OVERVIEW OF YOUR CASE**

There are basically three components to your case: (A) Unpaid Wages and/or Overtime Claim, (B) Liquidated Damages Claim, and (C) Attorney's Fees and Costs Claim. There can also be a claim for Retaliation under certain circumstances. Each is addressed below:

#### **A. UNPAID WAGES AND/OR OVERTIME CLAIM**

Unpaid wages and overtime may be recovered under applicable law by non-exempt employees. To recover these backs wages, in most cases you must prove, among other things, that you worked hours for which you were not paid at the applicable regular rate of pay or overtime rate of pay.

Generally, the applicable regular rate of pay is the hourly or salaried rate of pay an employee was paid or promised to be paid by the employer. In some cases, however, the amount an employee was paid divided by the number of hours you worked equals a rate less than the minimum wage rate. In this case, we will likely argue that the regular rate of pay should be the greater of the rate the employee was promised or the applicable minimum wage rate. An employer will likely argue that, although an employee was promised a rate of pay greater than the minimum wage rate, the applicable regular rate should be the applicable minimum wage rate because the employee was never paid at a greater rate.

Applicable law provides several methods to calculate the overtime rate. The correct method depends on a number of factors including, but not limited to, whether the employee is paid on an hourly or a salaried basis. Non-exempt employees paid on an hourly basis are likely entitled to one and one half times the greater of the employee's regular rate of pay or the applicable minimum rate for each hour worked over forty in a work week. Non-exempt employees paid on a salaried basis are likely entitled to one half times the greater of the employee's regular rate of pay or the applicable minimum rate for each hour worked over forty in a work week.

We will assist you in calculating the amount of unpaid wages and/or overtime you are owed based on the information and documentation you provide to us. This amount will represent the amount of your initial settlement offer to resolve your case and represents the potential recovery you may receive if a jury at trial ultimately awards that amount. You should not view the amount of the initial offer as the amount you will recover in your case because it usually is not. Instead, it is a negotiation tool meant to assist in our efforts to maximize your recovery by giving you the "room" to negotiate with Employer. The reasonable settlement amount for your case will likely be less. Some of the reasons for this are discussed below in the section titled Settlement Negotiations.

#### **B. LIQUIDATED DAMAGES CLAIM**

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Liquidated damages may be claimed by federal law in an amount equal to the unpaid wages only if Employer cannot establish that (1) its failure to pay minimum wage and/or overtime was in good faith and (2) it had reasonable grounds for believing its failure to pay minimum wage and/or overtime was not a violation of the FLSA. In our experience, employers usually try to establish both of these things so that the court will not award liquidated damages. If they are successful in establishing such, the amount of your recovery will be significantly decreased.

### **C. ATTORNEYS' FEES AND COSTS CLAIM**

Under applicable laws, you may make a claim to recover the attorneys' fees and costs incurred in pursuing recovery of your unpaid wages and/or overtime. We believe that the reason the law permits recovery of attorneys' fees is that, in most cases, an employee would not have the ability to pursue your type of claim without the recovery of attorneys' fees and costs because the expenses would be too great. Unfortunately, employers, in most cases, will vigorously defend against paying you any amount. This will require our firm to expend a substantial amount of attorney time and incur significant costs on your behalf. Consequently, in most cases, the amount recovered from the employer for payment of attorneys' fees and costs is more than the amount recovered for unpaid wages and/or overtime.

During negotiations, the amounts for payment of attorneys' fees and costs are made in addition to and without regard of the amount of your (1) unpaid wages and/or overtime and (2) liquidated damages. It is based on the amount of time and expenses we may incur in your case if it settles at the time the negotiations occur. The amount for attorneys' fees and costs will continue to increase if a settlement cannot be reached and we are required to further prosecute this case.

As you know, the Authority to Represent and Contingency Fee Agreement ("Agreement") that you signed entitled John Bales Attorneys to either (1) the applicable percentages of the total amount recovered as set forth in the Agreement, (2) the total amount of fees awarded by the Court or arbitrator, or (3) the total amount of fees a party agreed in settlement to pay, whichever is greater. Accordingly, the attorneys' fees and costs amount negotiated may not necessarily represent your complete obligation to John Bales Attorneys.

### **D. RETALIATION CLAIM**

Applicable law may also allow you to recover damages from Employer if they retaliate against you for engaging in your rights under the law. You can engage in your rights by, among other things, doing the following:

1. Making internal workplace complaints relating to Employers failure to properly pay wages and overtime,
2. Contacting or filing a complaint with government agencies relating

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3. to Employers failure to properly pay wages and overtime, Filing a lawsuit against Employer relating to Employers failure to properly pay wages and overtime, and
4. Testifying against Employer relating to Employers failure to properly pay wages and overtime.

Please note we do not represent you in claims against Employer for retaliation, or any other claims or lawsuits, except claims for unpaid wages and overtime, unless the Agreement specifically states otherwise. If you think you were retaliated against by Employer, you should immediately contact us so we can determine if we can assist you with such a claim.

#### **IV. INVESTIGATING AND EVALUATING YOUR CASE**

##### **A. PRESUIT PERIOD**

The first step in your case is to investigate and evaluate your claim. As discussed in the Agreement, it commonly takes at least three (3) months from the date we receive the Agreement signed by you (the “Pre-Suit Period”) to make the initial investigation. The most important part of this investigation and evaluation is the documents, records, and other information obtained from you. Without your help your case cannot be as well prepared.

The Pre-Suit Period may limit your potential recovery of unpaid wages and overtime because of the statute of limitations. The Fair Labor Standards Act (“FLSA”) essentially imposes a two (2) year statute of limitations. Specifically, the FLSA states that an action must be commenced within two (2) years after the cause of action accrued and the action will be forever barred if not commenced within two (2) years. The FLSA further states that an action arising out of a willful violation may be brought within three (3) years after the cause of action accrued. Establishing a willful violation under the law is difficult, so in most cases back wages for only two years after suit is filed can be recovered.

Based on the above, you most likely may only recover unpaid overtime or wages and liquidated damages for a period of two (2) years prior to the date a lawsuit against Employer is filed with the court. Any delay in returning the representation package documents we sent to you and providing us with necessary information and documents to file the action will delay pursuing your FLSA claim and may reduce your potential recovery, if you have a claim for two years of back wages. Notwithstanding such, you authorized and instructed us to engage in a Pre-Suit Period by signing the Agreement.

During the Pre-Suit Period, we will work with you to gather information, records, documentation, and witnesses relating to you claim, including your timecards and paystubs.

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## **B. DOCUMENTS AND RECORDS**

Important evidence in your case includes documents and records relating to your employment. If you have not already done so, you should immediately provide us a copy of any documents concerning your case that are in your possession, custody, or control relating to your case. This information is important in yours and our efforts to be successful in your case. Relevant information includes, but is not limited to:

1. All time sheets.
2. All paystubs.
3. All payroll records and documents.
4. Any and all employee manuals, handbooks, policies, procedures, guidelines, and similar documents relating to the FLSA, FMWA, or other applicable law.
5. Any and all personnel and training materials, including but not limited to, personnel and training manuals and videos.
6. All tax records and documents.
7. All other employment records and documents.
8. Any and all documents relating in any way to the FLSA, FMWA, or other applicable law.

Please assist us in our effort to help the environment by “going green” and not using paper. We request that you provide us an electronic disc with all documents and records in PDF format and all videos in mp2 format. If you need for us to send you a disc, we would be happy to do so.

In any event, please do not provide us with any original documents. You should keep all original documents in your possession in a safe place. We only want copies.

## **C. WITNESSES**

An important way to help establish your claim is to obtain statements from eye witnesses who are willing to describe first-hand knowledge of your employment with the Employer. Accordingly, we request that you provide us with the names and contact information for co-workers, friends, family members, and former clients/customers that are aware of your employment with the Employer.

## **D. CRIMES COMMITTED**

You should immediately inform us of any crimes you have been accused of within the past twenty (20) years, regardless of whether or not you pled guilty or were convicted for the crime. It is common for the Employer to have a background check done on plaintiffs and to ask the plaintiff if there is any criminal record. Unfortunately, a criminal record for crimes for which your punishment has ended in the past ten (10) years could be damaging to your case. Your credibility may be attacked by the

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Employer based on your criminal record or other bad acts. This may cause the jury to find in favor of the Employer or substantially reduce any judgment entered by the jury.

#### **E. UNPAID WAGES AND OVERTIME WORKSHEET**

If we have not already done so, we will contact you soon to schedule an introductory telephone conference so that you can speak with your team and we can learn more about the facts of your case. Of course, if you would prefer, you may instead schedule an office conference at our Tampa Client Center so that you may meet with your team in person.

During your introductory telephone conference, we will prepare the Unpaid Wage and Overtime Worksheet (“Worksheet”) that requests basic information relating to your case including the following: (a) your job duties, (b) your rate and manner of pay, and (c) names and contact information for potential witnesses. After our introductory telephone conference, we will send you the Worksheet for your review. At that time, you **must** verify and inform us of whether all information specified in Worksheet is complete and accurate. If any information is missing or inaccurate, you **must** make the correction/addition to the Worksheet. We will prepare your case based on your responses to it.

#### **F. REPRESENTATION LETTER**

We will send a correspondence to Employer that informs it we represent you in this matter and request it provide to us both (a) certain records and documents needed to evaluate your claim, including those similar to what we will ask you to provide us and (b) insurance information. Sometimes Employer will request we provide it with a demand at this point, which includes an offer to settle your case against it. If they request a demand, we will prepare the necessary documents for your review and approval. The demand is discussed in more detail below in the section titled Settlement Negotiations.

#### **G. TOLLING AGREEMENT**

We may attempt to enter into a tolling agreement with Employer. A tolling agreement is essentially a contract between you and Employer in which Employer agrees, among other things, to waive its rights to contend that (1) any of your claims for non-payment of wages and overtime under the FLSA, FMWA, and other applicable law are barred with respect to any time period that is covered by the tolling agreement and (2) any administrative agency or court is without jurisdiction to entertain such claims under the FLSA, FMWA, and other applicable law. In essence, a tolling agreement provides that if you file a lawsuit before the expiration of it, Employer will consider the effective date of the tolling agreement as the date of filing the lawsuit if you file a lawsuit before it expires.

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## **V. SETTLEMENT NEGOTIATIONS**

### **A. DEMAND FROM YOU TO EMPLOYER**

In most cases, settlement negotiations start when you send a demand letter to Employer demanding that it resolve your claims against it. If a demand letter is necessary in your case, we will prepare it for you based on the representations you make to us. Once prepared, we will provide you with a copy of it for your review and approval. We will not send it until you have approved the facts and amounts included in it.

We are confident Employer will challenge the facts in the demand letter and make an investigation to find documents and witnesses that will dispute them. Please make sure we are aware of all information and witnesses, whether good for your case or bad. By knowing all of the information, we will be prepared for any challenges made by Employer as a result of its investigation.

Your demand will include your preliminary offer to settle your case and will represent the potential recovery you might receive only if you prevail in a jury trial. You should not view the amount of your preliminary offer as the amount you will recover in your case, because it usually is not. Instead, it is a negotiation tool meant to assist in your efforts to maximize your recovery by giving you room to negotiate with Employer. The reasonable settlement amount of your case will likely be significantly less because of weakness in your case and issues relating to the calculation of the preliminary offer, including the following:

#### **1. BASED ON FACTS MOST FAVORABLE TO YOU**

The preliminary offer will be based on the facts, records, and documents most favorable to you. It does not take into account any negative facts, records, and documents that Employer may present throughout your case, including at trial. Employer will likely provide facts, records, and documents favorable to it that significantly decrease the value of case and weaken the amount of your preliminary offer.

#### **2. IGNORES THE RISK OF LITIGATION**

The preliminary offer does not take into account any of the risks you take on by continuing with litigation in your case. These risks significantly decrease the value of your claim because of the possibility you may recover nothing at trial. Some of these risks are discussed in the section titled Considering Settlement Offers Made in Your Case. Please read through that section carefully every time you decide to consider (a) making a settlement offer or (b) accepting/rejecting an offer made by Employer.

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### **3. INCLUDES AMOUNT FOR LIQUIDATED DAMAGES**

Your preliminary offer will include a claim for liquidated damages. Liquidated damages may be claimed by federal law in an amount equal to the unpaid wages only if Employer cannot establish that (1) its failure to pay minimum wage and/or overtime was in good faith and (2) it had reasonable grounds for believing its failure to pay minimum wage and/or overtime was not a violation of the FLSA. In our experience, employers usually try to establish both of these things so that the court will not award liquidated damages. If they are successful in establishing such, the amount of your recover will be significantly decreased.

### **4. LIKELY BASED ON A THREE (3) YEAR STATUTE OF LIMITATIONS**

Your preliminary offer will be based on a three (3) year statute of limitations. However, a three year statute of limitations can only be applied if an employer engaged in willful violation of the FLSA. Otherwise, it is a two (2) year statute of limitations. A willful violation is a high standard to achieve and seldom is accomplished. Accordingly, Employer will most likely claim that at most the two (2) year statute of limitations applies and may prevail on this issue because they do not believe they engaged in a willful violation.

Accordingly, you most likely may only recover unpaid overtime or wages and liquidated damages for a period of two (2) years prior to the date a lawsuit is filed with the court. However, your preliminary offer will be based on a period of three (3) years prior to the date the lawsuit is filed with the court. If Employer establishes that a two (2) year statute of limitations is appropriate, the amount you may recover at trial will be significantly decreased.

### **5. ATTORNEYS' FEES NEGOTIATED SEPARATELY**

Your demand letter will include a demand for payment of attorneys' fees and costs associated with your case. Under the FLSA, you may make a claim to recover the attorneys' fees and costs incurred in pursuing recovery of your unpaid wages and/or overtime. We believe that the reason the law permits recovery of attorneys' fees is that there would not be, in most cases, the ability to pursue your type of claim without the recovery of fees and costs because the expenses would be too great. Unfortunately, employers, in most cases, will vigorously defend against paying you any amount. This will require our firm to expend a substantial amount of attorney time and incur significant costs on your behalf. Consequently, in most cases, the amount recovered for payment of attorneys' fees and costs is more than the amount recovered for unpaid wages and/or overtime.

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Based on the above, the amount demanded for payment of attorneys' fees and costs is made in addition to and without regard of the amount of your preliminary offer. It is based on the amount of time and expenses we may incur in this case if it settles at the time your preliminary offer is made. The amount for attorneys' fees and costs will continue to increase if a settlement cannot be reached and we are required to further prosecute this case.

As you know, the Authority to Represent and Contingency Fee Agreement that you signed entitled John Bales Attorneys to either (1) the applicable percentages of the total amount recovered as set forth above in the Agreement, (2) the total amount of fees awarded by the Court or arbitrator, or (3) the total amount of fees a party agreed in settlement to pay, whichever is greater. Accordingly, the attorneys' fees and costs amount demanded may not necessarily represent your complete obligation to John Bales Attorneys.

In our experience from prior cases, Employer may respond with a counter-offer. Employer's counter-offer may be as little as nothing. Of course, we will discuss all offers we receive from Employer with you. We will not accept or reject any offers without your approval.

## **B. CONSIDERING SETTLEMENT COUNTER-OFFERS FROM EMPLOYER**

There are many issues for you to consider when deciding (a) to make a settlement offer or (b) whether to accept or reject an offer from the Employer. Some of them are listed below. Of course, if you wish to address others, please do not hesitate to call us.

1. Settlement resolves your claims without trial. By continuing on with litigation and trial, it may be a year or two before the case is resolved. For example, even if we prevail at trial, the Employer can appeal that judgment. By settling, we should be able to conclude the matter so that you may receive your portion of the settlement money in a fairly short period of time after a settlement is reached.
2. You will likely be required to sign a release that includes a release of the Employer from further responsibility and liability for at least your claims against them for violating the FLSA, FMWA, and other applicable law by failing to pay minimum wage and/or overtime compensation. The Employer may also insist that you release them for all other claims including past and present injuries, damages, and losses sustained by you relating to the Employer. Essentially, if a settlement is reached and you sign a release, you will most likely not be able to bring any further claims against Employer.

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3. You are more likely to actually receive the funds by settling. Sometimes employers are not solvent by the time a judgment is entered and even if we obtain a judgment, we may not be able to collect any funds from Employer based on the judgment. Accordingly, you need to pay particular attention to Employer's ability to pay a judgment because they may not have sufficient money and/or assets. Also, if we proceed into the discovery process, Employer will likely incur significant legal expenses to pay their attorney. This could potentially exhaust the money and/or assets they currently have and you may not recover from the Employer.
4. Even if Employer does have sufficient money and/or assets, they may decide to abandon or voluntarily dissolve the corporation in an attempt to avoid liability for any size demand or judgment. They may try to abandon or voluntarily dissolve the corporation but still continue to do similar business activities. While an attempt may be made to find assets, we do not handle this type of law and you will need to find a separate attorney that does. Accordingly, if the corporation is abandoned or dissolved, you may not receive any recovery.
5. If the case is not settled, the parties will most likely take extensive discovery that will include deposition of you, and past and current employees of Employer. During this time, Employer may learn facts that weaken your claim. These facts may be used against you at trial to reduce or eliminate the amount of hours you claim you are owed. This will also add to the attorneys' fees and costs and will require the litigation to become more complicated.
6. Unfortunately, a criminal record for crimes that occurred in the past 10 years could be damaging to your case. Your credibility may be attacked by the Employer based on your criminal record or other bad acts. If they succeed in attacking your credibility, the jury may believe the Employer's assertions that you falsified your time records and worked less overtime hours than you claim or that you did not work any overtime. This may cause the jury to find in favor of the Employer or substantially reduce any judgment entered by the jury.

## **VI. LITIGATION**

If we are unable to reach a settlement agreement with Employer during the Pre-Suit Period, we will likely begin the litigation process, which can sometime be a lengthy process without any guarantee you will ever recover. The following outlines the typical

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litigation process. Of course, your case may be different, but this will give you a basic understanding of the process.

## **A. COMPLAINT**

A complaint will be drafted and filed with the Clerk of Court. We will then attempt to have the complaint served upon Employer, which can take thirty (30) days or more depending upon the speed of the process serving company hired for the purpose of service. Once served, Employer will have twenty (20) days to respond to the complaint by filing an answer.

## **B. DISCOVERY**

After the answer is filed and, if applicable, the case is removed to federal court, we will begin the discovery process that includes Employer requiring you to (1) respond to (a) written interrogatories (questions), (b) requests to produce certain documents and records, and (c) requests to admit to certain facts and (2) give a deposition. During this process, Employer may learn facts that weaken your claim or call into question your credibility based on any negative past conduct and witness testimony. Employer may be able use this against you at trial to cause the jury to find in favor of Employer or substantially reduce any judgment entered by the jury. The following discusses some of the discovery tools that may be used in your case.

### **1. INTERROGATORIES**

Interrogatories are questions that you are required to provide your sworn responses to. They can be used against you at trial, including for the purpose of impeaching your credibility. If interrogatories are served on you, you should carefully read the questions and write down all the information you have, including dates, witnesses, addresses, facts, and similar information that responds to each interrogatory. It is important that you answer each interrogatory that is given to you unless the response calls for information that is irrelevant or protect by privilege. We will help you determine what responses request irrelevant or privileged information so that we make the proper objection to them.

### **2. REQUEST FOR PRODUCTION**

Request for Production requests you provide certain documents to Employer that may help of hurt your case. If request for production are served on you, you should respond to each request unless it asks for irrelevant or privileged documents. We will help you determine what responses request irrelevant or privileged information so that we make the proper objection to them.

### **3. REQUEST FOR ADMISSIONS**

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Request for Admissions request you admit certain facts as true in your case. As to each request made, you must respond by admitting the facts as true or denying the fact as true. Additionally, if you genuinely cannot answer the question, you may also respond that you lack the knowledge to admit or deny. Any fact that you admit as true is deemed not to be in dispute in your case and we are unable to argue that that fact is not true at trial. If request for admission are served on you, you should respond to each request unless it asks for irrelevant or privileged information. We will help you determine what responses request irrelevant or privileged information so that you make the proper objection to them. Any request that you fail to provide an answer to, will be deemed admitted.

#### **4. DEPOSITIONS**

A deposition is your oral testimony taken under oath by a court reporter in response to questions by other attorneys, and in some cases, by an attorney representing you. The testimony is transcribed after the deposition is concluded and is available for use by either side for summary judgment or trial. A judge or jury is not present during the deposition; only the lawyers, the witness, the court reporter, and a representative of each party usually attend. In all likelihood, the proceedings will be held in one of the attorneys' offices or in a court reporter's office.

If a deposition is scheduled in your case, we will provide to you the "*Deposition Preparation Booklet*" that many clients have found helpful to prepare them for their deposition. The booklet discusses many topics relating to deposition including the following: (a) purpose of a deposition, (b) what to wear, and (c) suggestions relating to your testimony. If your deposition is within several weeks and you have not yet received the "*Deposition Preparation Booklet*", please write to us immediately.

#### **C. MEDIATION**

Mediation is a confidential, informal conference where the parties to a dispute meet with a neutral, impartial person called a mediator, in an effort to reach a mutually acceptable agreement. A judge or jury is not present during mediation; only the lawyers, the parties, and the mediator. The mediator controls the mediation, but does not have authority to make a binding decision or force the parties to accept a settlement with which they are not satisfied. The mediator helps the parties voluntarily reach a settlement of the dispute. He or she is not to be biased in favor of either party, but may bring up positive and negative issues in an attempt to have all parties understand the entire case.

If mediation is scheduled in your case, we will provide to you the "*Mediation Preparation Booklet*" that many clients have found helpful to prepare them for their mediation. The booklet discusses many topics relating to

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mediation including the purpose of mediation and what to wear. If your mediation is within several weeks and you have not yet received the “*Mediation Preparation Booklet*”, please write to us immediately.

#### **D. TRIAL**

The purpose of a jury trial is to review facts of your claim, including your lost wages. If trial is scheduled in your case, we will provide to you the “*Trial Preparation Booklet*” that many clients have found helpful to prepare them for their trial. The booklet discusses many topics relating to trial including the purpose of trial and what to wear. If your trial is within several weeks and you have not yet received the “*Trial Preparation Booklet*”, please write to us immediately.

#### **E. APPEAL**

Please be advised that even if we prevail at trial, Employer can appeal the judgment or sometimes may not be solvent by the time a judgment is entered. Therefore, even if we obtain a judgment we may not be able to collect any funds from Employer based on the judgment. Accordingly, you need to pay particular attention to Employer’s ability to pay a judgment because they may not have sufficient money and/or assets. Also, if we proceed into the discovery process, Employer will likely incur significant legal expenses to pay their attorney. This could potentially exhaust the money and/or assets they currently have and you may not recover from Employer. Even if Employer does have sufficient money and/or assets, they may decide to abandon or voluntarily dissolve the corporation in an attempt to avoid liability for any size demand or judgment.

### **VII. YOUR DAMAGES**

There are basically two components to your case: (1) your Unpaid Wages and/or Overtime Claim and (2) your Liquidated Damages Claim. There may also be a claim for Retaliation under certain circumstances. Each component is addressed below:

#### **A. UNPAID WAGES AND/OR OVERTIME CLAIM**

Unpaid wages and overtime may be recovered under applicable law by non-exempt employees as defined by federal and state law. To recover unpaid wages and/or overtime, in most cases you must prove, among other things that you worked hours for which you were not paid at the applicable regular rate of pay or overtime rate of pay.

Generally, the applicable regular rate of pay is the hourly or salaried rate of pay an employee was paid or promised to be paid by the employer. In some cases, however, the amount an employee was paid divided by the number of hours worked

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equals a rate less than the minimum wage rate. In this case, we will likely argue that the regular rate of pay should be the greater of the rate the employee was promised or the applicable minimum wage rate. An employer will likely argue that, although an employee was promised a rate of pay greater than the minimum wage rate, the regular rate should be the applicable minimum wage rate.

Applicable law provides several methods to calculate the overtime rate. The correct method depends on a number of factors including, but not limited to, whether the employee is paid on an hourly or a salaried basis. Non-exempt employees paid on an hourly basis are likely entitled to one and one half times the greater of the employee's regular rate of pay or the applicable minimum rate for each hour worked over forty in a work week. Non-exempt employees paid on a salaried basis are also likely entitled to one half times the greater of the employee's regular rate of pay or the applicable minimum rate for each hour worked over forty in a work week.

We will assist you in calculating the amount of unpaid wages and/or overtime you are owed based on the information and documentation you provide to us. As discussed and authorized by you, once we have calculated and you have approved the amount of unpaid wages and/or overtime employer owes you, we will generally use this amount to make the initial demand to employer to resolve your claim. As discussed, this amount is the potential recovery a jury may award at trial if you are successful and the jury rejects all of the defenses from employer. You should not view this initial amount as the amount you will recover in your case because it usually is not. Instead, it is a negotiation tool to assist in our efforts to maximize your recovery by giving you the "room" to negotiate with employer. The reasonable settlement amount for your case will likely be less especially after we are advised of the employer's defenses. We have several negotiation tools that may help you maximize your recovery, which we will evaluate with you based on the facts of your case.

## **B. LIQUIDATED DAMAGES CLAIM**

In addition to unpaid wages and/or overtime, applicable law also provides for the potential recovery of liquidated damages in an amount equal to the unpaid wages only if your employer cannot establish the following: (1) employer's failure to pay minimum wage and/or overtime was in good faith and (2) employer had reasonable grounds for believing its failure to pay minimum wage and/or overtime was not a violation of the Fair Labor Standards Act ("FLSA") and/or Florida Minimum Wage Act ("FMWA"). In our experience, employers usually try to establish both of these so that the court will not award liquidated damages. If they are successful in establishing such, the amount of your recovery will be significantly decreased.

## **C. RETALIATION CLAIM**

Under the law, you may also have a claim for recovery of damages from employer if they retaliate against you for engaging in your rights under the law.

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You can engage in your rights by, among other things, doing the following:

1. Making internal workplace complaints relating to employers failure to properly pay wages and overtime;
2. Contacting or filing a complaint with government agencies relating to employers failure to properly pay wages and overtime;
3. Filing a lawsuit against employer relating to employers failure to properly pay wages and overtime, and
4. Testifying against employer relating to employers failure to properly pay wages and overtime.

Essentially, employer retaliates when they punish you for engaging in a legally protected activity. Examples of employer retaliating against an employee for making a claim may include, but are not limited to, improper firing, demotion, discipline, salary reduction, job or shift reassignment, and other negative employment actions. The circumstances of the situation must be evaluated to determine if there is retaliation.

A question often asked by employees that are still employed by an employer that has failed to pay wages and overtime is whether employer will fire employee or take some other type of negative action if employee makes a claim. Of course, the actions that employer will or will not take cannot be determined. Employer may fire or take other negative employment actions against an employee even if it is against the law. In this situation, a negative employment action may provide an employee with a claim against employer for retaliation but may not prevent the negative employment action.

Please note we do not represent you in claims against employer for retaliation, or any other claims or lawsuits except claims for unpaid wages and overtime, unless the Agreement specifically states otherwise. If you think your employer retaliated against you, you should immediately advise us of such in writing so that we can determine if we can assist you with such a claim in addition to your unpaid wages and/or overtime claim.

## **VIII. IMPORTANT REMINDERS**

### **A. CORRESPONDENCE**

At various times throughout your case, you may receive correspondence or other documents from us. Please review them carefully and comply with any request as soon as it is received. The faster we receive all necessary information, records, and documentation, the sooner we can present your case to the Social Security

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Administration.

## **B. SOCIAL MEDIA**

**PLEASE REMEMBER:** It is very important that you do not discuss any part of your case with anyone except a member of our firm. This includes not discussing the case on Facebook, Google+, LinkedIn, YouTube, Twitter, MySpace, Instagram, any blog, any chat room, or any other similar social media website/application. Information and pictures posted on these websites may be discovered by the opposing party in your case and used against you. Marking these pages as private may not protect you from the information and pictures being used against you. Please advise us of any Facebook or other social media account you may have. Further, we strongly encourage you to archive your Facebook or any other social media account and stop using it during the entire time your case is pending. However, you should not destroy or delete your social media website/application or destroy any information or pictures that are currently on it. Any such destruction may be considered spoliation of evidence, which may cause the court to enter sanctions against you. You can consider reopening your social media account(s)/application(s) after your case is completed.

## **C. KEEPING US INFORMED**

We ask that you immediately inform us of any new developments or changes that may affect your claim. Additionally, we request that you provide any documents concerning your claim, including those listed below. We need to know of anything that you think helps or hurts your case so that we can consider it when evaluating your claim. This information and documentation is important in your and our effort to be successful in your case.

## **D. EMPLOYER'S INVESTIGATOR MAY BE MONITORING YOU**

As discussed, the insurance company may have hired a private investigator to follow you and take video of your actions. We do not know if the insurance company will do this but we wanted you to be aware that they may. You should, at all times, be aware that your conduct will have an effect on the case. If the investigator obtains pictures or videos that can be interpreted as you doing tasks that you say you cannot do, this will be raised by the insurance company to support its position.

## **IX. YOUR JOHN BALES ATTORNEYS TEAM**

Although your attorney team may not be able to always be immediately available to answer your questions directly, your client managers should be able to obtain an answer to most of your questions.

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If you have an emergency, please consider obtaining the attorney's cell phone. Additionally, you may consider calling the Firm Administrator, who is also dedicated to serving you.

For your convenience, we offer local telephone numbers for our clients to call our office at any time. Please do not hesitate to ask us for one in your area. Be sure to program this number into your phone(s) for your convenience.

As you know, communications between you and us as your law firm are important and are protected by the Attorney/Client Privilege. These communications can be by telephone (home, mobile, and work), in person meetings, email (personal only), and/or mail to the address provided above, which will be used by us to provide documents to you. Accordingly, please immediately advise us in writing of any change to telephone numbers (home, mobile, and work), email addresses (personal only), and/or your mailing address. Unless you notify us otherwise in writing, we will be using the above address for all communications with you as is appropriate.

Please keep in mind that the Attorney/Client Privilege only applies to communications between you and members of the firm, and you should not discuss your case with anyone or provide them with any of the documents from our firm because such communications may then become discoverable. Additionally, you should not be receiving any communications from our office at your work email, only your personal email. There have been court decisions holding that emails sent to an office email address is not protected by the Attorney/Client Privilege.

Please understand that as your case progresses, your team of attorneys and client managers may change to improve service to you and assist in the effective resolution of your case. We will keep you advised of any such changes in your team.

## **X. YOUR REFERENCE MATERIALS**

For your convenience and information, we encourage you to go to our website at [www.JohnBales.com](http://www.JohnBales.com). As mentioned above, a biography of our firm and lawyers is enclosed for your consideration. The biography specifies many of the areas of law we practice and information about our attorneys. We have also attached to your folder a magnetized business card that you may place on your refrigerator for quick reference. The magnet has our toll free telephone number and website address. Please let us know if you would like additional magnets for family or friends.

## **XI. JOHN BALES ATTORNEYS ACCIDENT & INJURY TOOLKIT APP**

Additionally, we have developed for your use the John Bales Attorneys Accident & Injury Toolkit app that is available on iPhones and Android phones. You can download the iPhone app in the "App Store" and the Android app in "Google Play." The app includes a quick reference to our phone number and 911; a map locator of the nearest hospital to

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your current location; an accident tips checklist, a check list for capturing information about an accident; a case consulting section; an expense log, a flashlight on your phone; and a place to store a photo of your insurance card.

Of course, we encourage you to advise others of this app and hope that it will be helpful in the unfortunate circumstances when someone is hurt in an accident.

**XII. MAKE SURE ALL OF YOUR QUESTIONS ARE ANSWERED**

Again, please allow me to emphasize that we want all of your questions to be answered. Accordingly, we encourage you to always contact us if you want to discuss any aspect of your claim.

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