

We have wage claims, yes we do

NFL cheerleaders' lawsuits serve as reminders for employers to track nonexempt workers' hours

Earlier this year, a former "Raiderette" – the official name of an Oakland Raiders cheerleader – filed a lawsuit against the NFL team, alleging wage and hour violations. Several other cheerleading squads followed their lead. Several "Bengals," the cheerleaders for the Cincinnati Bengals, filed a similar suit; so did the "Buffalo Jills" – the cheerleaders for, you guessed it, the Buffalo Bills. The New York Jets' "Flight Crew" is the most recent squad to join the pyramid.

Sordid details in the complaints reveal a somewhat shocking but perhaps not completely surprising culture among cheerleading in the NFL. One team of cheerleaders was forbidden from wearing panties under their practice or game attire or from having "slouching breasts;" another team was given etiquette lessons from how to wash "intimate areas" to how much to tip restaurant waiters. At least one team was also subject to the "jiggle test," wherein the cheerleaders would do jumping jacks and their coaches and supervisors would scrutinize certain areas of their bodies.

While the rules regarding many of these issues apparently varied from team to team, one thing appears to be consistent: The cheerleaders were paid little, if anything, for the majority of work they



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performed. Much of the time spent practicing routines (estimated in one instance to be at least eight hours per week) and appearing at the multitude of mandatory functions (one squad was allegedly required to appear at somewhere between 25 and 35 unpaid community and charity events throughout the season) was unpaid, and fines for various violations of team rules (such as bringing the wrong colored pom-poms to practice or failing physique requirements) resulted in potentially unlawful deductions. In fact, at least one plaintiff alleges she made slightly more than \$100 for an entire season of cheering (which, by the cheerleaders' estimations would equate to a wage of mere pennies per hour).

Now, not every employer has guidelines dictating what its employees' hair and fingernails must look like or how many bikini appearances the employees must make (and I am not encouraging you to do so here); however, these cheerleading

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lawsuits can serve as a reminder to all employers – not just professional sports franchises – of the importance of tracking all hours that nonexempt employees work, and compensating them. "Hours worked" entails the time during which an employee is on duty or at a prescribed workplace under the employer's control. Employees must be paid for all hours they are "suffered" or permitted to work.

Oftentimes, it is pretty clear when an employee is performing work; however, sometimes it's not. Employers often slip up on preliminary or subsequent activities – tasks that employees are sometimes forced to complete before clocking in or after clocking out. For example, courts have held that the donning or doffing of certain protective gear is compensable time and must be paid by the employer. Similarly, the preparation of a workstation, such as equipment maintenance (sharpening knives, restocking kitchen supplies, caring for police dogs, etc.) or startup of a computer are also hours worked and should be paid accordingly, even if such activities are performed before the employee officially clocks in or after the employee clocks out.

In the case of at least one of the cheerleading suits, changing into a uniform may be compensable because cheerleaders were forbidden from riding in a car in their uniform – thereby

necessitating early arrival to games.

Additionally, time that cheerleaders spent practicing could be compensable. Time that employees spend attending employer-sponsored or employer-required training is generally compensable.

There is one exception to training being classified as hours worked: When 1, attendance at the training is outside of the employee's regular work hours; 2, the attendance is voluntary (i.e., not subject to penalties for failure to attend); 3, the training is not directly related to the employee's job; and 4, the employee does not perform productive work during the training session, the employee does not have to be paid for the time spent in the training.

Moreover, travel time may be compensable; not ordinary commute time, but travel to special events, such as the NFL Draft, may be "hours worked." In general, travel time is compensable when it is part of the work day, such as driving from the office to an off-site meeting.

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