



The Future Starts Now: Future of Work for New England Employers

Part 2 – Innovative Pay Practices

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Seyfarth Shaw LLP

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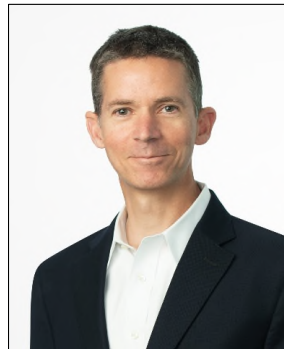
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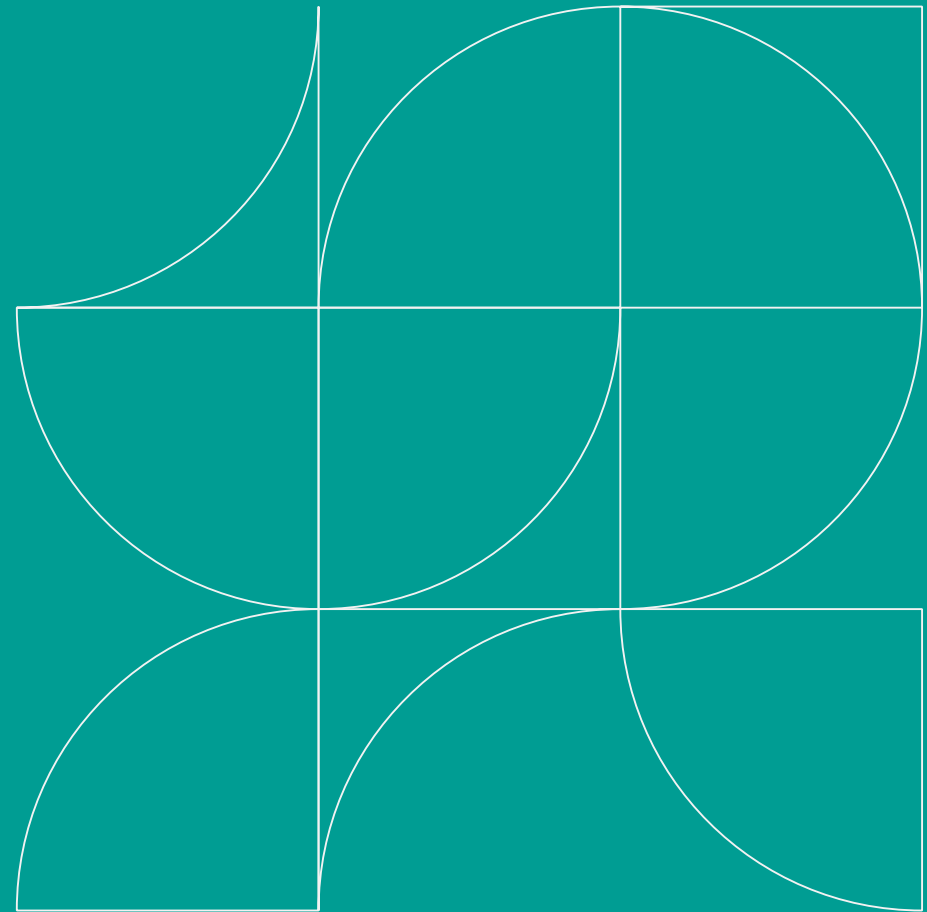


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Agenda

- 01** New Wage and Hour Challenges for Remote Non-Exempt Employees
- 02** Preventing Off-the-Clock Claims
- 03** Current Pay Practices and Risks of Late Payment of Wages
- 04** Early Days of Daily Pay Programs

New Wage and Hour Challenges for Remote Non-Exempt Employees



What is Off-the-Clock Work?

- Any failure to record time worked, whether intentional or unintentional
- E.g. untaken breaks, checking emails during off-hours, off-site work events



Off-the-Clock Work in Remote Environment

FLSA

- Must compensate “for all hours actually worked”
- BUT NOT required to count as hours worked “all time between the performance of the first and last principal activities of a workday.”

Actual v. Constructive Knowledge

- The “knew or should have known” test

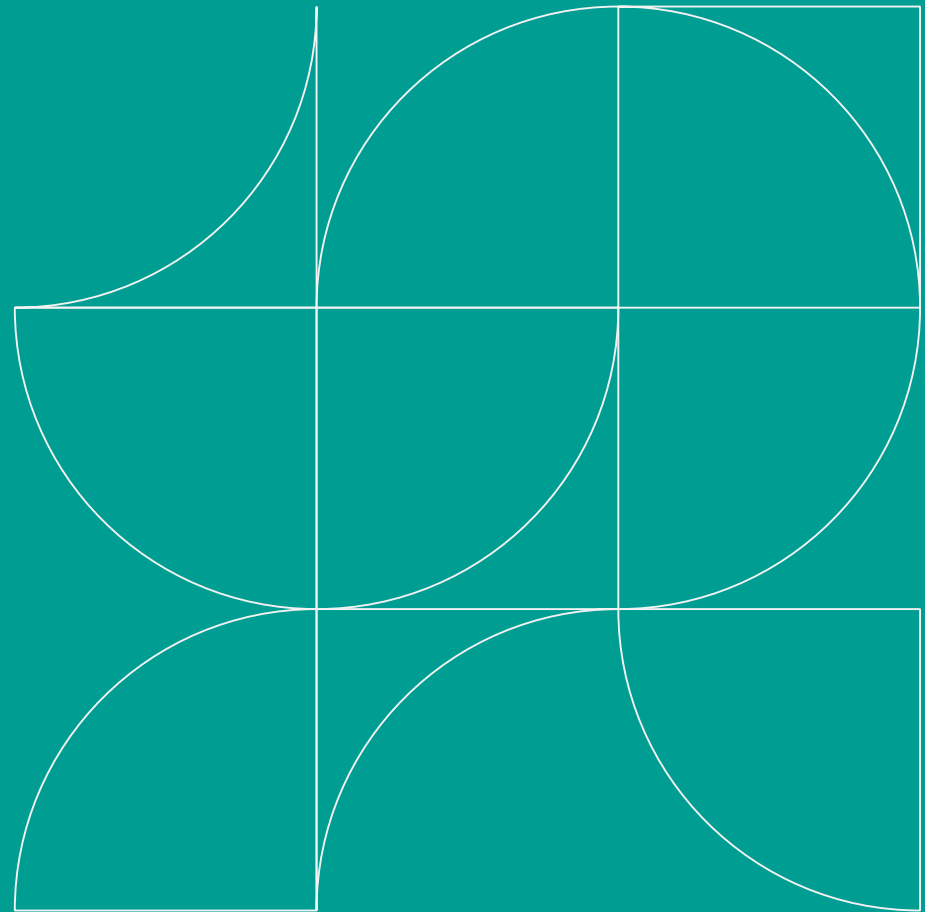
Jurisdiction

- Employer’s place of business v. Employee’s place of residence

Classification

- Exempt v. non-exempt work
- Outside sale exemption?

Preventing Off-the-Clock Claims



What to Do

- WFH policies are key!
- Training
- Time Verification
- Work Approval
- Monitoring – but privacy concern?
- Correct, pay, discipline

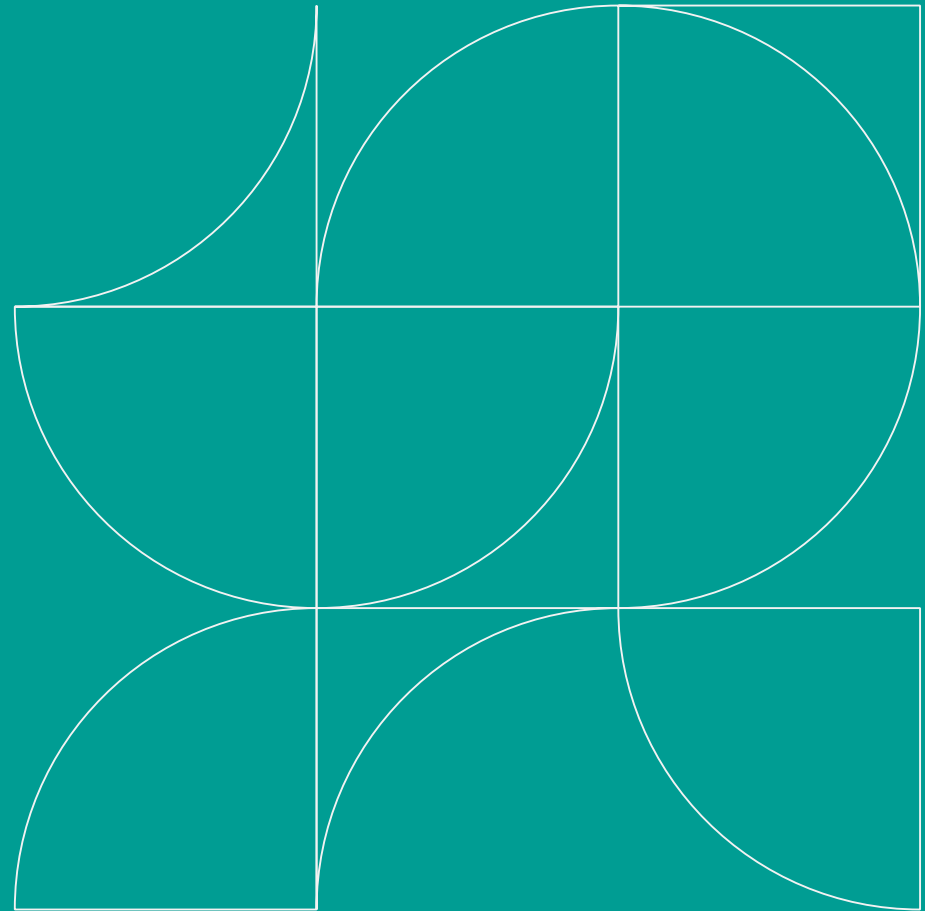


What Not to Do

- Prohibit or discourage employees from reporting hours worked
- Not pay!
- Communicate outside of work hours
- Waivers of rights to compensation



Current Pay Practices: Status Quo and Risks of Late Payment of Wages



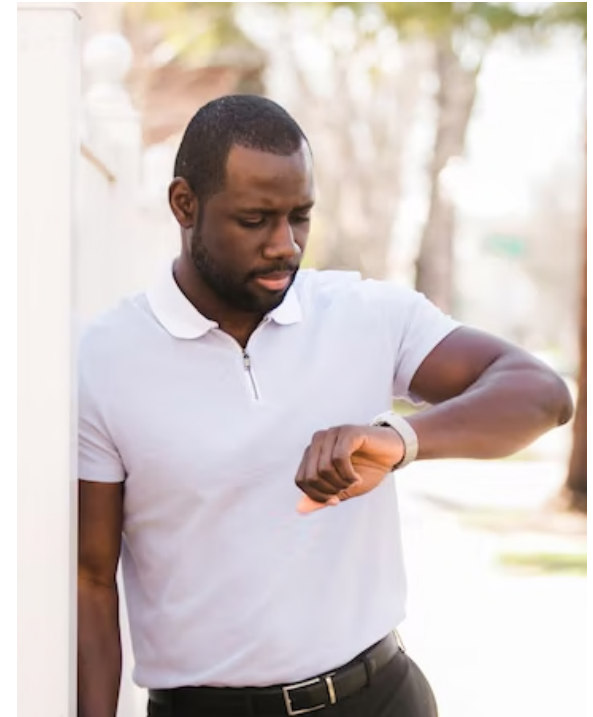
Current Common Pay Practices

- Weekly, biweekly, semi-monthly, or monthly
- Why?

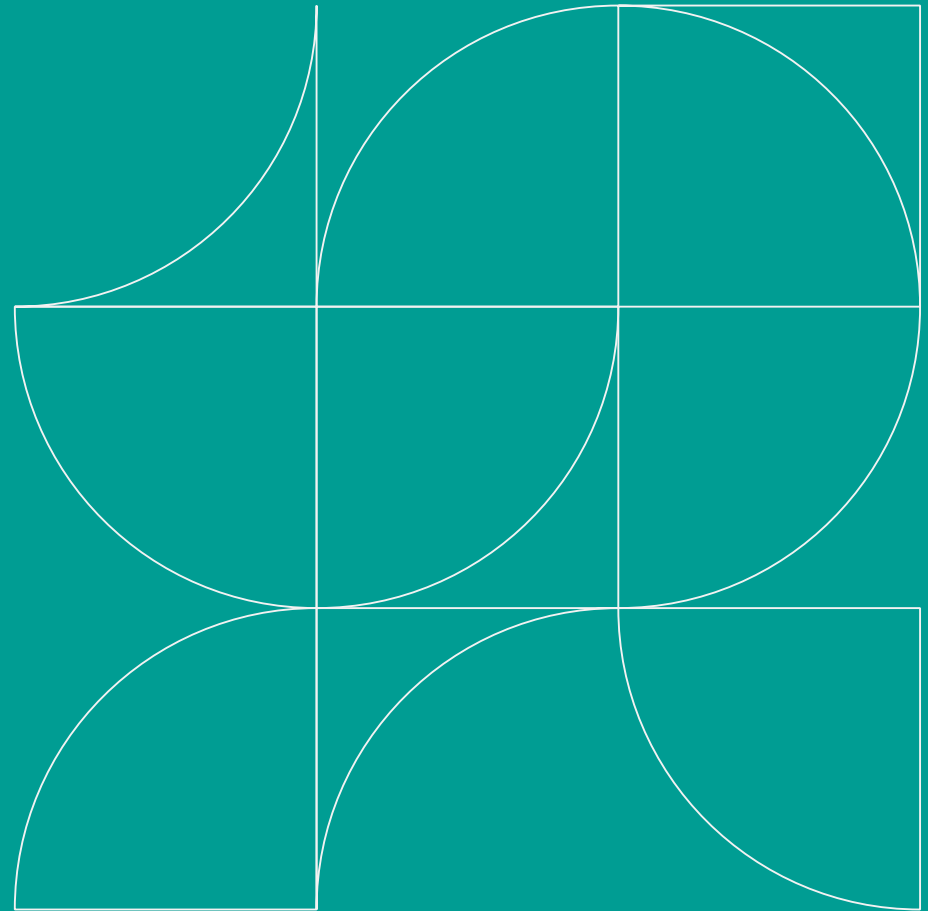


Risks of Late Payment of Wages

- What can possibly go wrong? – cash flow, technology, accounting
- HONEST mistakes can be costly! – Reuter v. City of Methuen, 489 Mass. 465 (Apr. 4, 2022)
 - Terminations
 - Voluntary resignations



Early Days of Daily Pay Programs



Daily Pay Programs

- In-house or third-party payroll
- Current daily payroll vendors: up to 50% of the pay at the end of each workday/shift



Why and How?

- Some employees value it
- Industries
 - Restaurant and Hospitality
 - Retailers
 - Trucking companies
 - Nursing homes



The Good, the Bad, and the Ugly

- Advantages
 - Avoid and/or minimize penalties for late payment of wages
 - Recruiting tools
 - Benefits to employees
- Disadvantages
 - Transaction costs
 - Cash flow
- Risk and compliance
 - Timely payroll
 - Wage Deduction
 - Tax compliance

Up next in our Future of Work Series

Part 3: Impacts of Technology on Overtime Exemptions

Wednesday, December 14, 2022

2:00 - 2:45 p.m. ET

Upcoming topics in the series:

- Monitoring Remote/Hybrid Employees' Performance and Productivity
- Hiring and Onboarding Remote Workers
- Pay Equity and Transparency
- Expense Reimbursement Issues with Hybrid/Remote Employees
- OSHA/Employee Safety Issues for WFH Employees
- Use of AI in Hiring & Employment and Related Risks

Thank You

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