

**LIEBERT CASSIDY WHITMORE**

A PROFESSIONAL LAW CORPORATION

# **California Society of Municipal Finance Officers**

# **Common FLSA Mistakes**

**PRESENTED BY:  
PETER BROWN**

**FEBRUARY 24, 2006**

**©2006 LIEBERT CASSIDY WHITMORE**

6033 W. Century Blvd., Suite 500, Los Angeles, CA 90045 (310) 981-2000 Fax: (310) 337-0837

575 E. Locust Ave., Fresno CA 93720 (559) 256-7800 Fax: (559) 449-4535

153 Townsend St., Suite 520, San Francisco, CA 94107 (415) 512-3000 Fax: (415) 856-0306

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



# Common FLSA Mistakes

California Society of Municipal Finance Officers

presented by Peter Brown

February 24, 2006

## Common FLSA Mistakes

Presented by:  
**Peter Brown**

---

---

---


---

---

---

---

---



### Regular Rate of Pay

---

- ◆ Why is this such a hot issue?
- ◆ Why are so many agencies doing this wrong?
- ◆ What is included?
- ◆ What is excluded?

---

---

---


---

---

---

---

---



### Use of Compensatory Time Off

---

- ◆ What is the law?
- ◆ Why we should have a policy?

---

---

---

---

---

---

---

---

## LIEBERT CASSIDY WHITMORE

6033 W. Century Blvd., Suite 500, Los Angeles, CA 90045 TEL: (310) 981-2000 FAX: (310) 337-0837  
575 E. Locust Ave., Fresno, CA 93720 TEL: (559) 256-7800 FAX: (559) 449-4535  
153 Townsend Street, Suite 520, San Francisco, CA 94107 TEL: (415) 512-3000 FAX: (415) 856-0306  
[www.lcwlegal.com](http://www.lcwlegal.com)

# Common FLSA Mistakes

California Society of Municipal Finance Officers

presented by Peter Brown

February 24, 2006



## Work Schedules

- ◆ Why is this still being messed up?

5/40      3/12.5

4/10      3/13.33

9/80

3/12

---

---

---

---

---

---

---

---



## Exempt or Non Exempt?

- ◆ What do we do with these new regulations?
- ◆ What is the practical impact?

---

---

---

---

---

---

---

---



## Section 7(K) Exemption

- ◆ Have you set this up properly?
- ◆ Do you have employees on these work schedules who do not qualify?

---

---

---

---

---

---

---

---

### LIEBERT CASSIDY WHITMORE

6033 W. Century Blvd., Suite 500, Los Angeles, CA 90045 TEL: (310) 981-2000 FAX: (310) 337-0837  
575 E. Locust Ave., Fresno, CA 93720 TEL: (559) 256-7800 FAX: (559) 449-4535  
153 Townsend Street, Suite 520, San Francisco, CA 94107 TEL: (415) 512-3000 FAX: (415) 856-0306  
[www.lcwlegal.com](http://www.lcwlegal.com)

# Common FLSA Mistakes

California Society of Municipal Finance Officers

presented by Peter Brown

February 24, 2006



## Recording Time for Payroll

- ◆ What do you do?
- ◆ *De Minimis* Rule

---

---

---

---

---

---

---

---



## Timely Payment of Overtime

- ◆ So many agencies still struggle with this. Why?
- ◆ What do you need to do?

---

---

---

---

---

---

---

---



## Travel Time

- ◆ What? Your kidding, right?
- ◆ “I’ve never seen a travel time policy”.
- ◆ Familiar words I have heard.
- ◆ What’s the law?

---

---

---

---

---

---

---

---

### LIEBERT CASSIDY WHITMORE

6033 W. Century Blvd., Suite 500, Los Angeles, CA 90045 TEL: (310) 981-2000 FAX: (310) 337-0837  
575 E. Locust Ave., Fresno, CA 93720 TEL: (559) 256-7800 FAX: (559) 449-4535  
153 Townsend Street, Suite 520, San Francisco, CA 94107 TEL: (415) 512-3000 FAX: (415) 856-0306  
[www.lcwlegal.com](http://www.lcwlegal.com)

# Common FLSA Mistakes

California Society of Municipal Finance Officers

presented by Peter Brown

February 24, 2006



## On-Call = Stand-by

- ◆ Call Back is different.
- ◆ How are your employees restricted?
- ◆ Do you have to make any changes to operations?

---

---

---

---

---

---

---

---



## Independent Contractors

- ◆ “We know we have some people who don’t qualify.”
- ◆ You’re not going to tell on us are you?” Please!
- ◆ You know who you are.

---

---

---

---

---

---

---

---

### LIEBERT CASSIDY WHITMORE

6033 W. Century Blvd., Suite 500, Los Angeles, CA 90045 TEL: (310) 981-2000 FAX: (310) 337-0837  
575 E. Locust Ave., Fresno, CA 93720 TEL: (559) 256-7800 FAX: (559) 449-4535  
153 Townsend Street, Suite 520, San Francisco, CA 94107 TEL: (415) 512-3000 FAX: (415) 856-0306  
[www.lcwlegal.com](http://www.lcwlegal.com)

# TABLE OF CONTENTS

---

TEN COMMON FLSA MISTAKES .....	1
1. WHAT DOES THE REGULAR RATE OF PAY INCLUDE? .....	1
2. WHEN MUST AGENCIES PERMIT THE USE OF FLSA COMPENSATORY TIME (CTO)? .....	2
3. WORK SCHEDULES.....	3
4. DEALING WITH EXEMPT STATUS.....	4
5. SECTION 7K EXEMPTION – .....	5
6. HOW DO YOU RECORD TIME FOR PAYROLL? .....	6
7. WHEN SHOULD THE AGENCY PAY FOR OVERTIME?.....	7
8. TRAVEL TIME .....	7
9. ANYONE ON CALL? .....	8
10. INDEPENDENT CONTRACTORS .....	9
Endnotes .....	11





# TEN COMMON FLSA MISTAKES

---

## 1. WHAT DOES THE REGULAR RATE OF PAY INCLUDE?

Public agency employers must compensate employees for overtime at a rate of one and a half of their “regular rate” of pay.<sup>1</sup>

- The “regular rate” includes “all remuneration for employment paid to, or on behalf of, the employee.”<sup>2</sup>
- The regular rate of pay “must be discerned from what actually happens under the governing employment contract.”<sup>3</sup> In *O’Brien v. Town of Agawam*, the First Circuit Court of Appeals held that the city must **include** shift-differential pay (e.g., premium pay for working nightshift), longevity pay, and career- incentive pay in the police officers’ regular rate of pay under the FLSA.
- Regular rate also **includes**: retroactive pay adjustments, controlled and uncontrolled stand-by time payments, hazard or dirty work pay, bilingual pay, special assignment pay, shooting pay, free meals provided to employees, and payments for employees’ personal expenses.
- **EXCLUSIONS** from the regular rate of pay:
  1. gifts on special occasions (not dependent on hours worked);
  2. payments made for “no work” periods due to vacation, holiday, illness, or lack of work;
  3. payments made for traveling expenses;
  4. discretionary bonuses;
  5. payments made pursuant to a bona fide profit-sharing plan;
  6. contributions irrevocably made to a trustee for retirement, life, accident, health insurance or similar benefits;
  7. overtime payments for working more than regular work hours;
  8. extra compensation for working on Saturdays, Sundays, holidays, or regular days of rest;
  9. extra compensation paid pursuant to a collective bargaining agreement for work outside the hours established in good faith by the agreement as the basic, normal, or regular workday; and
  10. any value or income derived from grants or rights provided by the employer pursuant to a stock option or a bona fide employee stock purchase program.<sup>4</sup>
- Bonuses for the nonuse of sick leave may be excluded from the “regular rate” of pay.<sup>5</sup> In *Featsent v. City of Youngstown*, the Sixth Circuit Court of

Appeals found that payments for the nonuse of sick leave were unrelated to the police officers' compensation for services and hours of service. The Court also found that awards for nonuse of sick leave are similar to payments made when no work is performed due to illness which may be excluded from the regular rate.<sup>6</sup>

- The employer bears the burden of proving that an exception to the regular rate of pay applies.
- In a *non-reported* case, *Acton v. City of Columbia, MO*,<sup>7</sup> the District Court held that the city's sick leave buy back payments should be included in the firefighters' regular rate of pay for calculating overtime payments.

## 2. WHEN MUST AGENCIES PERMIT THE USE OF FLSA COMPENSATORY TIME (CTO)?

- FLSA CTO is “banked” or unused compensatory time that has accrued for working FLSA overtime.<sup>8</sup>
- An employer must grant an employee's request to use FLSA CTO “within a reasonable amount of time” after receipt of the request, *unless* the employer can show that granting the request would “unduly disrupt” its operations.<sup>9</sup>
  - Whether a period of time is reasonable depends on the agency's customary work practices, including the normal work schedule, anticipated peak workloads, emergency requirements for staff to provide services, and availability of qualified substitutes.<sup>10</sup>
  - If a labor agreement defines reasonable time period, such agreement governs the issue.<sup>11</sup> In addition, labor agreements may establish fixed time periods, e.g., 60 days, during which employees must use their CTO.<sup>12</sup>
  - An employee does not have an absolute right to use FLSA CTO on a specific date as long as other dates are available within the “reasonable time period.”<sup>13</sup>
  - Unduly disrupt means an unreasonable burden on the agency's ability to provide services of acceptable quality and quantity for the public during the time requested without the employee's services.<sup>14</sup>
  - That an employer must pay overtime to a replacement employee so that another employee may use FLSA CTO would not, in and of itself, result in an unduly disruptive situation.<sup>15</sup>

- Where the number of employees taking FLSA CTO or other leave exceeds the minimum staffing requirements, that may constitute an unduly disruptive circumstance.<sup>16</sup>
- Public agency employers may lawfully force employees to use accrued FLSA CTO. The forced use is equivalent to cashing out the employees' CTO.<sup>17</sup>

### 3. WORK SCHEDULES

#### Types of Work Schedules

- 5/40 means five 8-hour shifts per 7 day work week.
- 4/10 means four 10-hour shifts per 7 day work week.
- 3/12 means six 12-hour shifts and one 8-hour shift per 14 day pay period broken down into two 40-hour per week FLSA work weeks.
- 9/80 means eight 9-hour shifts, one 8-hour shift and one day off per 14 day pay period broken down into two 40-hour per week FLSA work weeks.

#### Section 7(b) Work Periods:

- (A) employees may work no more than 1040 hours in a 26-week period<sup>18</sup> or
- (B) employees may work no more than 2240 hours in a 52 week period.<sup>19</sup>

#### Section 7(k) Work Periods:

- ***Police and Fire Departments*** may establish work periods which are between 7 and 28 consecutive days.<sup>20</sup> If an agency adopts a 7-day work period, it need not pay overtime compensation until its employees have worked over 53 hours in one week.<sup>21</sup> If it adopts a 14-day work period, it need not pay overtime until the employees have worked over 105 hours in the two-week period. If the agency adopts a 28-day work period, it need not pay overtime until the employees have worked over 212 hours in that four-week period.
- 3/12.5 means twelve 12.5-hour shifts and one 10-hour shift per 28-day work period broken.
- 3/13.33 means twelve 13.33 hour shifts per 28-day work period, usually three shifts per week.

#### Mistake in Setting Up 9/80 and 3/12 Schedules

If a public agency designates an employee's work week to start at 12:01 a.m. on Monday and ends midnight Sunday, the employee working the 9/80 schedule would incur 4 hours overtime. How? The employee works four days (36 hours) in Week #1. Then he/she works five days (44 hours) in Week #2 - - -> 4 hours overtime.

To avoid incurring overtime, the agency should designate the employee's work week to begin in the middle of his/her 8-hour day, e.g., Wednesday at 12:00 p.m., and designating his/her day off the following week.

The above also applies for 3/12 schedules.

## **4. DEALING WITH EXEMPT STATUS**

### First Responder Rule

Under the First Responder Rule, exemptions do not apply to employees whose primary duties, regardless of rank or pay level, include fire prevention; rescuing fire, crime, or accident victims; pursuing, restraining, or apprehending suspects; conducting investigations or surveillance; interviewing, interrogating, or fingerprinting suspects; and detaining or supervising suspected criminals.<sup>22</sup>

To determine whether the First Responder Rule applies, ask:

- Is management of the agency the primary duty of the position?
- Does the position have discretion regarding when to answer calls?
- Does the position perform significant manual work?

Generally, a suppression battalion chief who responds only to fire calls is exempt from the FLSA. That is because his/her primary duty is management rather than responding to calls and thus, he/she does not qualify under the First Responder Rule. Further, generally suppression battalion chiefs do not respond to the majority of medical aide calls and have the discretion not to respond to fire calls.

### Executive Exemption:

A job position that customarily and regularly directs the work of the equivalent of two or more full-time employees, and performs primarily management duties (e.g., training and evaluating employees, directing/assigning work duties, handling grievances, disciplining employees, planning work operations and determining the manner in which the work is performed) would qualify for the executive exemption.

### Professional Exemption:

An employee who performs work that requires knowledge of an advanced type in a field of science and whose work is typically learned through the receipt of an advanced degree would qualify for the professional exemption.

Administrative Exemption:

An employee qualifies for the administrative exemption when he/she primarily performs non-manual work, and exercises independent judgment and discretion in performing job duties that are directly related to the management of the agency or its general business operations.

## **5. SECTION 7K EXEMPTION –**

To Qualify for 7(k) Exemption:

- The employee must be employed in fire protection or law enforcement activities
- The employer must be a public agency
- The public agency employer must affirmative elect to apply the 7(k) exemption

Who Qualifies?

- All employees engaged in Fire Protection Activities<sup>23</sup>
- Emergency Response Personnel - Single Function Paramedics<sup>24</sup>
- Forest Fire Fighters<sup>25</sup>
- All employees engaged in Law Enforcement Activities<sup>26</sup>
- Welfare Fraud Investigators and Probation Officers<sup>27</sup>
- Security Personnel in Correctional Institutions<sup>28</sup>
- Fish and Game Wardens<sup>29</sup>
- Criminal Investigative Agents assigned to District Attorney Officer
- An Attorney General or Solicitor General
- Public Agencies' Rescue and Ambulance Personnel<sup>30</sup>

Who Does Not Qualify?

- Dispatchers
- Alarm operators
- Employees who repair apparatus and equipment
- Maintenance workers

- Clerks<sup>31</sup>
- Building Inspectors<sup>32</sup>
- Animal Control Personnel
- Civilian Traffic Controllers and Parking Checkers
- Tax Compliance Officers
- Building Guards

## 6. HOW DO YOU RECORD TIME FOR PAYROLL?

### Required Information on Non-Exempt Employees:

- Name; home address
- Date of birth if employee is under 19
- Sex and occupation
- Time of day and day of week that the employee's FLSA work week begins
- Regular hourly rate of pay when overtime is worked and the amount of overtime compensation that is due
- Hours worked each work day and each work week
- Total daily or weekly straight-time earnings or wages
- Total overtime excess compensation for the work week
- Total wages paid each pay period
- Date of payment and the pay period covered by the payment<sup>33</sup>

### Method of Keeping Records

The FLSA Regulations do not mandate that employers use any specific record keeping method.

### Paid Time v. Working Time

The FLSA requires that employers pay employees for hours actually worked. It does not require employers to record "paid time" such as vacation leave, sick leave, etc.

### *De Minimis* Rule

- Employers may disregard insubstantial or insignificant time beyond regular work hours that is worked by employees.<sup>34</sup>
- Factors to apply *de minimis* rule

- Practical and administrative difficulty exists in recording the additional work time
  - The size of the claim in the aggregate
  - Whether the employee performed the work on a regular basis.<sup>35</sup>
- Working 15 minutes<sup>36</sup> and fractions above ¼ hour is *not de minimis*.
  - Working 14 minutes is *not de minimis*.<sup>37</sup>
  - Working 10 minutes is *not de minimis*.<sup>38</sup>

## 7. WHEN SHOULD THE AGENCY PAY FOR OVERTIME?

### Timely Payment

- Payments must be made on the regular pay day for the work period during which the employees worked overtime.<sup>39</sup>
- EXCEPTION: Where the correct amount of overtime compensation cannot be determined until after the regular pay day, an employer may make the payment as soon as it is reasonably practicable, but it must be made by the next regular payday.<sup>40</sup> Notwithstanding, the employer may be liable for liquidated damages when it makes late overtime payments.<sup>41</sup>
- Employees may not bargain away their statutory right to be timely compensated for working overtime.<sup>42</sup>
- Public agencies employers may not wait to make overtime payments until after the employees provide their payroll information. Employers must make overtime payments as soon as possible after they become aware that overtime work was performed.<sup>43</sup>

## 8. TRAVEL TIME

### Driving

- Time spent traveling to and from the worksite, even varying worksites, is *not* compensable unless a labor agreement provides otherwise.<sup>44</sup>
- Time spent in the voluntary use of the public agency employer's vehicle to travel from the employee's home to the first work site at the beginning of the workday and to return home at the end of the workday is *not* compensable.<sup>45</sup>
- Time spent traveling between worksites during regular work hours is compensable.

- If an employee travels during regular work hours from the principal worksite to a different location and then returns to the principal worksite, all of the travel time is compensable.<sup>46</sup> However, if the employee returns home (rather than to the principal worksite), the time spent traveling from the last worksite to home is not compensable.

#### Overnight Travel - Passengers on Public Transportation

- Time spent outside regular work hours as a passenger on public transportation does not constitute work time.<sup>47</sup>
- When an employee chooses to drive his/her private car instead of using public transportation offered by the employer, the employer may count as hours worked the *lesser* of either 1) the time spent driving the private car or 2) the time it would have taken to travel using public transportation during regular work hours.<sup>48</sup>

## **9. ANYONE ON CALL?**

- How often do you call the employee back?
- Does the agency place any other restrictions placed on employee?

An employee who was “engaged to wait” must be compensated, whereas an employee who “waited to be engaged” need not be compensated.<sup>49</sup> In other words, an employer that sufficiently restricts an employee from using his/her on-call time for his/her personal purposes must count such on-call time as hours worked. To make this determination, the Ninth Circuit Court of Appeals<sup>50</sup> considers the following non-exhaustive list of factors:

- 1) Does the employer require the employee to live on its premises?
  - An employee who must remain on the public agency employer’s premises while on-call is working while being on-call.<sup>51</sup>
- 2) Does the employer impose excessive geographic restrictions on the employee’s movement?
  - Requirement that employees remain within 35-50 mile radius to monitor radio transmission did not permit them to use on-call time for their own purpose.<sup>52</sup> Thus, their on-call time counted as work.
- 3) Is the frequency of calls unduly restrictive?
  - Firefighters that were on-call and answered an average of four to five calls per 24-hour period were working while being on-call.<sup>53</sup>



4) Is there an unduly restrictive time limit for making a response?

- On-call biomedical repair technician that was reached via beeper, answered four to five calls per week and required to arrive at the hospital within 20-30 minutes was not working during his on-call time.<sup>54</sup>

5) Can the employee easily trade his/her on-call responsibilities?

- On-call time for employees was not compensable where they were required to remain at home to hear emergency alarms, could trade on-call responsibilities,<sup>55</sup> the alarms were infrequent and they could perform their usual activities at home, e.g., eating, sleeping, etc.

6) Did the employee engage in personal activities during the on-call time?

- Employees that spent their on-call time at friends' houses, church, restaurants, pool halls, and local gymnasium were able to engage in personal activities.<sup>56</sup> They were not working while on-call.

## 10. INDEPENDENT CONTRACTORS

- Are they really “independent?”
- How much control does the agency have over them?

The U.S. Department of Labor (DOL) has established a “totality of circumstances” test to determine whether an individual is an independent contractor. The DOL considers the following factors:

1. the extent to which the services rendered are an integral part of the principal's business;
2. the permanency of the relationship;
3. the amount of individual investment in facilities and equipment;
4. the opportunities for profit or loss;
5. the degree of independent business organization and operation;
6. the nature and degree of control by the principal; and

7. the degree of independent initiative, judgment, or foresight exercised by the one who performs the services.<sup>57</sup>

## ENDNOTES

---

- 1 29 U.S.C. § 207(a).
- 2 29 U.S.C. § 207(e).
- 3 *O'Brien v. Town of Agawam*, 350 F.3d 279 (1st Cir. 2003).
- 4 29 U.S. C. § 207(e)(1) to (e)(8).
- 5 *Featsent v. City of Youngstown*, 70 F.3d 900 905 (6th Cir. 1995).
- 6 *Id.* at 905 citing 29 U.S.C. § 207(e)(2).
- 7 *Acton v. City of Columbia, MO*, 2004 WL 2152297 (W.D. Mo. 2004).
- 8 Code Fed. Regs., title 29, § 553.28.
- 9 29 U.S.C. § 207(o)(5)(B).
- 10 Code Fed. Regs., title 29, § 553.25(c)(1).
- 11 Code Fed. Regs., title 29, § 553.25(c)(2).
- 12 *Mortensen v. County of Sacramento*, 368 F.3d 1082, 1090-1091 (9th Cir. 2004) [Court held that 1 year for county to grant CTO request was reasonable]; *Aiken v. City of Memphis*, 190 F.3d 753, 756-757 (6th Cir. 1999) [30 days to use CTO].
- 13 *Id.*
- 14 Code Fed. Regs., title 29, § 553.25(d).
- 15 DOL Opinion Letter, August 19, 1994; *Beck v. City of Cleveland*, 390 F.3d 912, 919 (6th Cir. 2004).
- 16 *Houston Police Officers' Union v. City of Houston, Texas*, 330 F.3d 298, 306-307 (5th Cir. 2003).
- 17 *Christensen v. Harris County*, 529 U.S. 576, 585-586, 120 S.Ct. 1655 (2000).
- 18 29 U.S.C. § 207(b)(1).
- 19 29 U.S.C. § 207(b)(2).
- 20 20 29 U.S.C. § 207(k).
- 21 Code Fed. Regs., title 29, § 553.201(a).
- 22 Code Fed. Regs., title 29, § 541.3(b)(1).
- 23 Code Fed. Regs., title 29, § 553.210(a).
- 24 Code Fed. Regs., title 29, § 553.203(y).
- 25 Code Fed. Regs., title 29, § 553.210(b).
- 26 Code Fed. Regs., title 29, § 553.211(a).
- 27 DOL Opinion Letter, March 20, 1986.
- 28 Code Fed. Regs., title 29, § 553.211(f).
- 29 Code Fed. Regs., title 29, § 553.211(c).
- 30 Code Fed. Regs., title 29, § 553.215(a).
- 31 Code Fed. Regs., title 29, §§ 553.210(c), 553.211(g).
- 32 Code Fed. Regs., title 29, § 553.211(e).
- 33 Code Fed. Regs., title 29, § 516.2.
- 34 Code Fed. Regs., title 29, § 785.47.
- 35 *Lindow v. United States*, 738 F.2d 1057, 1062-1063 (9th Cir 1984).
- 36 *Kosakow v. New Rochelle Radiology Assocs.*, 274 F.3d 706, 719 (2d Cir.2001).
- 37 *Metzler v. IBP, Inc.*, 127 F.3d 959, 963 (10th Cir.1997).

- 
- 38 *Reich v. IBP, Inc.*, 38 F.3d 1123, 1126 (10th Cir.1994); *Reich v. Monfort, Inc.*, 144 F.3d 1329, 1333-1334 (10th Cir.1998).
- 39 Code of Fed. Regs., title 29, § 778.106; See, *White v. Davis*, 30 Cal.4th 528, 576-577 (2003) [During budget impasse, the State of California satisfies the FLSA by paying nonexempt state employees (who do not work overtime) at minimum wage rate for straight-time hours worked by those employees during the pay period.].
- 40 *Id.*
- 41 *Biggs v. Wilson*, 1 F.3d 1537, 1544 (9th Cir.1993).
- 42 *Brooks v. Village of Ridgefield Park*, 185 F.3d 130, 136-137 (3rd Cir. 1999).
- 43 DOL Administrative Letter Ruling, March 5, 2001.
- 44 Code Fed. Regs., title 29, § 785.34; *Kavanagh v. Grand Union Co., Inc.*, 192 F.3d 269, 272-273 (2nd Cir.1999) [normal travel from home to work was not worktime for purposes of overtime compensation].
- 45 DOL Opinion Letters, April 3, 1995 and November 20, 1995.
- 46 Code Fed. Regs., title 29, § 785.38.
- 47 *Imada v. City of Hercules*, 138 F.3d 1294, 1296-1297 (9th Cir. 1998).
- 48 Code of Fed. Regs., title 29, §§ 785.39, 785.40.
- 49 *Owens v. Local No. 169, Ass'n of Western Pulp and Paper Workers*, 971 F.2d 347, 350-351 (9th Cir. 1992).
- 50 *Service Employees International Union, Local 102 (SEIU)*, 60 F.3d 1346, 1354-1355 (9th Cir. 1995); *Brigham v. Eugene Water & Elec. Bd.*, 357 F.3d 931, 936-937 (9th Cir.2004).
- 51 Code Fed. Regs., title 29, § 785.17.
- 52 *Cross v. Arkansas Forestry Comm'n*, 938 F.2d 912m, 916-917 (8th Cir. 1991).
- 53 *Renfro v. City of Emporia, Kan.*, 948 F.2d 1529, 1538 (10th Cir. 1991).
- 54 *Bright v. Houston Northwest Medical Center Survivor, Inc.*, 934 F.2d 671, 677 (5th Cir.1991), cert. denied, 502 U.S. 1036 (1992).
- 55 *Brock v. El Paso Natural Gas Co.*, 826 F.2d 369, 373 (5th Cir.1987).
- 56 *Norton v. Worthen Van Serv., Inc.*, 839 F.2d 653, 655-56 (10th Cir.1988).
- 57 DOL Opinion Letter, June 5, 1995.