



Rollin' On . . .



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Weights, Teamsters, Wage Penalties, and Appeals

To Weigh or not to Weigh, or be Weighed.

Oregon law enforcement is eliminating weight tolerances, based upon an opinion from the Oregon Attorney General. Some of your drivers have been pulled over and, alas, found to be overweight. The officer at times allowed your driver to proceed if the load was somewhat over the limit. But as of February 1 that practice is changing, and the driver will be required to off load a portion to get the load within the limits. Pulling off a few pieces of lumber is one thing. How will that work for items the driver cannot handle?

Hoffa Hurray

The inevitable occurred, Jimmy Hoffa was re-elected president of the Teamsters, defeating Portland's own Tom Leedham who fought the good fight. That was the easy part for Hoffa. Now he gets to negotiate freight contracts as they come up, with UPS leading the way. It will be interesting to see how tough the Teamsters are at the bargaining table as more and more carriers are closing their doors, while industry consolidation continues with mergers and acquisitions.

Meanwhile, the struggle goes on with Overnite, and the Feds are exercising their oversight of the union, now in the 12th year. In regard to Hoffa's assertion that it's time for the feds to back off, it would help a little bit if the Teamsters could clean up their act. The problem is that the Teamsters top brass still have trouble walking a straight line. It takes the incentive away from the Feds to stop watching.

The Obligatory Disclaimer

This newsletter is for informational purposes, does not provide legal advice and does not create an attorney-client relationship.

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Vacation and overtime misdeeds:

Two violations, two penalties

An employee quit her employment, those things happen all the time. The employer did not pay her for three days accrued vacation pay. Also, the employee claimed that during her employment, the employer did not pay overtime, and instead paid "straight time". The employer conceded this misdeed.

The fight was over statutory penalties. Each violation resulted in such penalties. The employer argued that there could only be one penalty. The trial court agreed, ruling that otherwise the employee would obtain a double recovery if permitted to collect two statutory penalties. After all, the unpaid overtime amounted to \$1111, with an \$1800 penalty, and the vacation pay was \$180 which would also result in an \$1800 penalty, for a total penalty of \$3600 which is not bad money since the employee is home eating donuts during this time.

On appeal, the court reversed, holding that there were two separate violations of two separate statutes, meaning the employee gets two separate penalties, which means she gets to order a whole other batch of donuts. OUCH says the employer.

But the real pain is yet to come. Although not stated in the opinion, the employee is probably entitled to her attorney fees on appeal, which means the employer pays two attorneys instead of one. Now, there's real pain.

Moral of the story: Make sure the employee is paid immediately upon

termination what is owed to the employee, unless the employer likes to pay for multiple attorneys, in which case just give me a call and I'll squeeze that employer into my appointment schedule.

Speaking of appeals . . .

I read the "advance sheets" which is actually a softbound book of appellate decisions, which eventually find their way into the hardbound books which are placed on shelves where they collect dust until a scurrying attorney on the eve of trial frantically goes digging for that one case that will save the day or at least the client or perhaps the attorney her/himself, you know, one of those things. I also receive decisions on-line which is good since it forces me read them then instead of accumulating books on my desk.

Anyway, it never ceases to amaze me how much of the appellate work on the state level is devoted to ballot initiatives and criminal appeals and domestic relations (divorce cases) and worker's comp. The US Supreme Court caseload also involves many cases that have no impact on day to day business. The Supremes instead are safeguarding the constitution and taking other action and frequently do so on split decisions, which is somewhat disconcerting (witness the unprecedented 5-4 vote to terminate the Florida election last year, an unheard of action, and who says they aren't political?).

Meanwhile, back in reality land, the business community continues to act the best it can with whatever laws and cases that come its way.

Switch to email. Email me your email address and fax #.

That's all for now. Until later, keep the cargo rollin'!

Short Bio

Admitted to the state bars of Oregon, Alaska, Florida and Massachusetts. Practicing law for over 20 years and emphasizing transportation law, business law and related litigation.