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## BLOGS

Archives; Wage & Hour

# You May Live For The Applause But I Work For Overtime

A settlement in the lawsuit against Lady Gaga by her former personal assistant, Jennifer Olsen, was announced this week, a month before the case was scheduled for trial. Ms. Olsen sued the pop star claiming that she was not exempt from wage and hour laws and entitled to additional compensation for her overtime work. How much overtime? Ms. Olsen claims she was at Lady Gaga's beck and call 24/7. Her suit alleged that she was often required to sleep in Lady Gaga's bed so that she could immediately respond to any assignments given throughout the night.

The settlement may be good news to Lady Gaga fans worried about the stress and distraction on their idol, but it is disappointing news to many employment lawyers and human resources professionals. A trial would have involved several interesting issues, including some legal ones. For one thing, it is not clear whether the personal assistant was a nonexempt employee under wage and hour laws. Depending upon the duties assigned to Ms. Olsen, it is possible that she could have been an administrative employee under the Fair Labor Standards Act. Last year, the Fourth Circuit Court of Appeals affirmed dismissal of a claim for overtime by a CEO's executive assistant in Altemus v. Federal Realty Investment Trust. The employee was deemed to be exempt even though a large percentage of his time was spent doing seemingly non-exempt work like arranging the CEO's travel and monitoring the CEO's email communications.

Another interesting issue would have been the amount of overtime Ms. Olsen would receive if she was deemed to be nonexempt. It is hard to believe that she would be entitled to pay for every minute of her employment, but employers who misclassify employees face a real risk of employees over-exaggerating their work time. Because it is the employer's obligation to keep accurate records of non-exempt employees' work hours, in cases where the employer fails to do so courts will place the burden of proof on the employer to establish that the employee's estimate of work hours is inaccurate.

Finally, the trial would have included interesting issues of which on-call periods were compensable. Even if Ms. Olsen was required to be available for work, much of that time may not have been compensable if she was able to still have free time to herself. She alleges, however, that while on tours she was not even given her own hotel room so that she would be immediately available to provide assistance if and when needed. If those allegations were accurate, it is very possible that all of the time she spent waiting to provide assistance should have been treated as time on the clock.