



CYPEN & CYPEN
NEWSLETTER
for
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Never Forget September 11, 2001

and

Always Remember May 2, 2011

1. OVERTIME FINAL RULE, AND STATE LOCAL GOVERNMENTS:

The Fair Labor Standards Act has long applied to state and local governments. FLSA and the Department of Labor regulations, however, contain some unique provisions applicable only to public sector workers, notably the permitted use of compensatory time off,

under certain conditions. These provisions will help state and local governments adapt to the overtime final rule. The Department's final overtime rule updates the salary level required for the executive, administrative and professional ("white collar") exemption to ensure that the FLSA's intended overtime protections are fully implemented, and it provides greater clarity for white collar workers and their employers, including for state and local governments. The rule also will lead to better work life balance for many workers, and it can benefit employers by increasing productivity and reducing turnover. The final rule updates the salary threshold under which most white collar workers are entitled to overtime to equal the 40th percentile of weekly earnings of full time salaried workers in the lowest wage Census region, currently the South. The final rule raises the salary threshold from \$455 a week (\$23,660 for a full year worker) to \$913 a week (\$47,476 for a full year worker) effective December 1, 2016. Neither the FLSA nor the Department's regulations provide a blanket exemption from overtime requirements for state and local governments, nor for public sector workers. However, the FLSA contains several provisions unique to state and local governments, including compensatory time.

- **Comp time:** Pursuant to an agreement with employees or their representatives, state or local government agencies may arrange for their employees to earn comp time instead of cash payment for overtime hours. Any comp time arrangement must be established pursuant to the applicable provisions of a

collective bargaining agreement, memorandum of understanding, any other agreement between the public agency and representatives of overtime-protected employees, or an agreement or understanding arrived at between the employer and employee before the performance of the work. This agreement may be evidenced by a notice to the employee that compensatory time off will be given in lieu of overtime pay (for example, providing the employee a copy of the personnel regulations). The comp time must be provided at a rate of one-and-one-half hours for each overtime hour worked. For example, for most state government employees, if they work 44 hours in a single workweek (4 hours of overtime), they would be entitled to 6 hours (1.5 times 4 hours) of compensatory time off. When used, the comp time is paid at the regular rate of pay. Most state and local government employees may accrue up to 240 hours of comp time. Law enforcement, fire protection and emergency response personnel, as well as employees engaged in seasonal activities (such as employees processing state tax returns), may accrue up to 480 hours of comp time. An employee must be permitted to use comp time on the date requested unless doing so would “unduly disrupt” the operations of the agency.

- **Fire and police small-agency exemption:** The FLSA also provides an exemption from overtime protection for fire protection or law enforcement employees, if they are employed by an agency that employs fewer than five fire protection or law

enforcement employees, respectively.

The Department does not dictate what option employers should use to comply with the revised regulations. In fact, many options are available to employers for complying with the new salary threshold.

We strongly urge readers to read the entire advisory at

<https://www.dol.gov/sites/default/files/overtime-government.pdf>.

2. SOCIAL SECURITY'S BENEFITS FOR CHILDREN: Social Security is with you through life's journey -- from birth, to death and even beyond, by helping to care for surviving dependents. Every year, about 4.4 million children receive monthly benefits because one or both of their parents are disabled, retired or deceased. When a parent becomes disabled or dies, Social Security benefits help to stabilize the family's financial situation in an otherwise turbulent time. Earlier this year, National Birth Defects Prevention Month in January and National Developmental Disabilities Awareness Month in March both raised awareness about medical conditions in children. Many families with children who have birth defects or developmental disabilities need medical and financial help. This is where Social Security's commitment to helping children and families is most evident. Social Security pays benefits through disability insurance and Supplemental Security Income (SSI) programs. SSA's disability program provides vital income for disabled children, including people disabled since childhood. To qualify for children's benefits under our disability program, the applicant must be the child of a parent entitled to

benefits and meet Social Security's strict definition of disability. A person is disabled under the Social Security Act if he or she cannot work due to a severe medical condition that has lasted, or is expected to last, at least one year or result in death. The SSI program provides payments to blind or disabled children who live in households with low income and limited resources if they meet our strict definition of disability.

3. MIAMI RANKED WORST MARKET FOR RECENT COLLEGE

GRADS: Millennials are moving to Miami in large numbers, according to a report in *Miami Herald*. The cities were compared based on three criteria: the share of job openings suitable for recent college grads; the share of rental units considered affordable (less than 30% of monthly income) compared with the median income of graduates ages 22 to 30; and the share of the total population in that age range that has a college degree. Miami was at the bottom of the list, just behind Los Angeles, Sacramento and Orange County, California and Portland, Oregon. Cities on the west coast generally scored lower than cities on the east coast. The only non-western metro -- Miami -- had the lowest score due to few graduate jobs, only moderate affordability and few recent college grads. Topping the list as the best job markets for recent grads are Pittsburgh; Indianapolis; Kansas City, Missouri; Minneapolis-St. Paul and Columbus, Ohio, in that order. Still, put in context, the cities included in the report have strong job markets overall, including jobs for all levels and incomes. The lesson here for recent grads is that although it may be tempting to seek out

places with the highest wages, doing so may not necessarily lead to a better quality of life, because those areas also have high rents and a lower share of entry-level jobs. In Miami, only 43.4% of rental listings are considered affordable for recent college graduates. The average rent in Miami is \$2,000 a month, and the average college grad's income is about \$24,000. About 3% of the local population is composed of 22- to 30-year-olds with a college degree. By comparison, in top-ranked Pittsburgh, 91.8% of homes are affordable for millennials with college degrees and 5.3% of the population is young and college-educated.

4. ANOTHER FEDERAL APPEALS COURT SUPPORTS PLAN

PARTICIPANTS' RIGHT TO SEEK REFORMATION: The appellate panel affirmed in part and reversed in part the district court's summary judgment in favor of defendants in a class action under the Employee Retirement Income Security Act. Plaintiffs alleged that their new employer, which purchased their former employer, told them that they would receive past service credit, under the new employer's retirement plan, for the time they worked with the former employer. The panel affirmed the district court's summary judgment on a claim for benefits under 29 U.S.C. §1132(a)(1)(B). The panel held that the district court applied the correct abuse of discretion standard of review, and the plaintiffs were not entitled to past service credit under the plain terms of the retirement plan. However, the panel reversed the district court's summary judgment on plaintiffs' claim for equitable relief under §1132(a)(3). Aligning itself with the Eighth Circuit, the

panel held that the plaintiffs were not barred from bringing simultaneous claims under §1132(a)(1)(B) and §1132(a)(3). Courts have interpreted the law to mean that equitable relief under §1132(a)(3) is not available if §1132(a)(1)(B) provides an adequate remedy. But under *CIGNA Corp. v. Amara*, ([See C & C Newsletter for July 21, 2011, Item 5](#)), §1132(a)(3) authorizes equitable relief in the form of plan reformation, even if plaintiffs also claim relief under §1132(a)(1)(B). The panel concluded that in light of *Amara*, prior Ninth Circuit case law to the contrary was no longer binding. The panel remanded for determinations of fact and equitable relief in the form of reformation and surcharge. The panel affirmed the district court's summary judgment on a claim that the new employer breached its fiduciary duty to disclose information about past service retirement credit in its summary plan description. The panel held that the plaintiffs did not prove harm or detrimental reliance. On defendants' cross appeal, the panel held that class certification was proper. *Moyle v. Liberty Mutual Retirement Benefit Plan*, Case Nos. 13-56330 and 13-56412 (U.S. 9th Cir. May 20, 2016).

5. POLICIES AND PERSPECTIVES ON VIDEO AND AUDIO

COVERAGE OF APPELLATE COURT PROCEEDINGS: U.S.

Governmental Accounting Office has released a new report about the U.S. Supreme Court and its posting of the audio recordings of oral arguments on its website at the end of each argument week. But, the Court does not provide video coverage of these arguments. In addition, starting in 2000, the Court began granting requests for

access to audio recordings of oral arguments on the same day arguments are heard in selected cases. As of October 4, 2015, the Court had received media requests for access to same-day audio recordings in 58 cases and had granted them in 26 cases. Other selected appellate courts have varying policies on video and audio coverage of oral arguments. For example:

- Two of the 13 U.S. courts of appeals allow media video coverage of oral arguments. Also, 9 of these 13 courts generally post audio recordings of arguments on their websites the same day arguments are heard.
- The highest appellate courts in 49 states have written policies that allow media video and audio coverage of oral arguments and almost all of these courts have video or audio of oral arguments available online.
- The highest appellate courts in Australia, Canada and the United Kingdom have policies that provide video coverage of oral arguments by the court itself.

Stakeholders in selected courts stated that the benefits of video or audio coverage of oral arguments in their courts include educating the public on the judicial system, among others, but also expressed concerns with regard to how the media might use such coverage. For example: fourteen of the 16 judges and seven of the nine attorneys GAO interviewed in the selected appellate courts cited public education on the judiciary as a benefit or potential benefit of video or audio coverage of arguments. One judge noted that video coverage is

useful for providing a window into how the courts think about the issues in a case. Five judges and eight attorneys stated that coverage might potentially result in portions of the arguments being distorted by the media. However, four judges and four attorneys said that the court providing coverage itself might help mitigate these concerns. For example, one attorney stated that this allows the court to control and release the coverage as it sees fit. With regard to the U.S. Supreme Court allowing video coverage of oral arguments, the four attorneys GAO interviewed who have argued before the Court also cited similar educational benefits and concerns regarding the media potentially distorting coverage. Further, three of the four attorneys and the Court's Public Information Officer raised concerns that coverage may potentially affect court participants' behavior. The PIO stated that individual Justices have commented that televising proceedings could adversely affect the dynamics of the oral arguments, among other concerns, and have expressed caution about introducing changes that could create misconceptions about the Court.

6. SPRING 2016 STATISTICS OF INCOME BULLETIN NOW

AVAILABLE: The Internal Revenue Service has announced that the spring 2016 issue of the Statistics of Income Bulletin is available, featuring preliminary data about individual income tax returns filed for Tax Year 2014. The Statistics of Income Division produces the online Bulletin quarterly, providing the most recent data available from various tax and information returns filed by U.S. taxpayers. The spring 2016 issue includes articles on the following topics:

- Individual Income Tax Returns, Preliminary Data, 2014: For Tax Year 2014, taxpayers filed 148.7 million U.S. individual income tax returns, an increase of 0.6% from the prior year. Several notable items showed significant increases in 2014. Adjusted gross income rose to \$9.7 trillion, an increase of 6.1% compared to the prior year. Taxable income also increased appreciably by 8% to \$6.9 trillion in 2014, as did total income tax, which rose by 10% to \$1.4 trillion.
- Municipal Bonds, 2012-2013: Municipal bond issuances in 2012 and 2013 totaled \$918.4 billion. Almost all of those issuances (99.6%) were tax-exempt bonds. Governmental bonds financed almost \$729.6 billion in public projects such as schools, transportation infrastructure, and utilities in 2012 and 2013, while private activity bonds accounted for the remaining \$185.3 billion of all tax-exempt bonds over the same period.

IR-2016-80 (May 26, 2016).

7. ILLINOIS LEGISLATURE OVERRIDES VETO TO PERMIT CHICAGO TO MAKE INSUFFICIENT PENSION CONTRIBUTIONS:

The following piece is from the *Chicago Tribune*: State lawmakers dealt a surprise loss to Governor Bruce Rauner when a handful of Republicans joined with Democrats to override his veto of a bill to provide Chicago with financial relief in paying for police and fire pensions. Meeting on the eve of the Legislature's scheduled

adjournment, the move came almost exactly one year after the bill originally passed and only a few days after Rauner vetoed it, prompting a weekend of heated words between the Republican governor and Democratic mayor who once were vacation friends. The override avoids another immediate City Hall property-tax hike following last year's record increase. The vote also injected a major element of drama into the ongoing battle between Rauner and Democrats, who control the General Assembly, one that has left Illinois without a formal state government spending plan for nearly a year. But there was no sign that the Republicans who backed the override were bolting from Rauner's larger agenda. And as lawmakers faced a midnight deadline for the end of the session, no resolution to the impasse appeared imminent. Instead, rhetoric continued to fly from Rauner's Republican allies aimed at veteran Democratic House Speaker Michael Madigan. An override of the Chicago pension veto had been expected in the Senate, where Democrats hold a 39-20 majority over Republicans. The measure got 39 votes, three more than the minimum. Republican Sam McCann of Downstate Plainview, who beat back a March primary election challenge funded by Rauner allies, joined Democrats in the override. An override in the House had been questionable, if not doubtful. Democrats have 71 members, the minimum required to overturn a veto, and the bill got just 65 votes when it was approved. But three Republicans joined with the House Democratic majority -- Representatives David Harris of Arlington Heights, David McSweeney of Barrington Hills and Michael McAuliffe of Chicago. McAuliffe's Northwest Side district is home to many police

officers and firefighters. It was the first time that the Democrat-controlled General Assembly has succeeded in overturning a major Rauner veto without first reaching a deal with the governor. The bill was long sought by Emanuel and provides short-term relief to the city by reducing in the short term how much taxpayers contribute to the retirement funds by hundreds of millions of dollars a year through the creation of a new payment schedule. But it also comes at a price, adding billions of dollars in long-term costs while the city's pension debt continues to grow. "I particularly want to thank the Democrats and Republicans in the General Assembly for putting politics aside and doing the right thing for Chicago taxpayers, and for our first responders," Emanuel said in a statement. "We in the city agreed to step up and finally do our part to responsibly fund these pensions, and I want to thank Springfield for doing their part as well." Rauner, who has been critical of Emanuel's governance of the city, in particular for failing to take on the Chicago Teachers Union, issued a statement deriding the override vote. "Clearly, those who supported this measure have not recognized what happens when governments fail to promptly fund pension obligations," he said. "Instead of kicking the can down the road, local and state governments should instead focus on reforms that will grow our economy, create jobs and enable us live up to the promises we've made to police and firefighters." In vetoing the bill, Rauner called the measure "irresponsible" and warned "the cost to Chicago taxpayers" in the long run is "truly staggering." That led Emanuel to spend much of the holiday weekend protesting the move and ripping Rauner, saying the governor had "told every

Chicago taxpayer to take a hike" and questioning the governor's trustworthiness. Without the changes in the pension funding schedule, Emanuel said, Chicago taxpayers faced a property tax hike of as much as \$300 million. Democratic Representative Barbara Flynn Currie of Chicago, Madigan's top deputy, called Rauner's veto "an outrage." Democrats argued that delaying the pension payment schedule was not ideal, but was necessary to try to prop up the city's finances. "I very respectfully disagreed with (Rauner)," said Harris, who voted "present" on the bill last year. "I understand his logic in terms of saying that it is kicking the can down the road, and it does stretch out the payments, absolutely. But at the same time, I believe the mayor has taken some really significant actions to try to address the problem." Harris said he notified House Republican leadership of his plans to override Rauner but emphasized his action was "totally separate and distinct" from the governor's agenda, focused on pro-business changes and altering collective bargaining and workers' compensation rules. McSweeney said he voted for the override to prevent a tax hike in Chicago. "I looked at it and I am not voting for a property tax increase. I never have, never will," he said. But opponents sought to play the regionalism card in arguing Chicago was seeking a special deal. "The truth is, Chicago is basically, they're coming here again with their hand out," said Rep. Jeanne Ives, R-Wheaton. "They are expecting the General Assembly to make a difficult decision for them, but they have the ability to clean up their own mess ... they just do not want to." Following the vote, Madigan and Senate President John Cullerton walked one floor down from the

legislative chambers to Rauner's second-floor Statehouse office for a previously scheduled meeting on the end of session. Asked afterward about Rauner's response to the override, Madigan said the governor "had nothing to say" about it. "And," the speaker added, "I was raised not to cause embarrassment for people, so I did not raise it." As for chances on a comprehensive budget agreement by the end of the session, Madigan said he already has planned on scheduling House sessions "every Wednesday through June starting next week." It was Madigan and his House Democrats who sent the Senate a budget bill that provides hundreds of millions of dollars to schools but is at least \$7 billion short of what the state expects to bring in. If it gets to his desk, Rauner has vowed to veto the bill in its entirety. Many rank-and-file Senate Democrats dislike Madigan's plan, but Cullerton indicated it likely was the one his chamber will vote on. "The budget bill, I should point out, was passed out of the House first but was negotiated by the speaker and myself together. And, especially, the education part of the budget, which increased the education funding by \$760 million, that was totally signed off on by myself and we are working that issue in our caucus," Cullerton said. Rauner has sought to build pressure on Madigan to agree to some of his wish list by organizing bipartisan groups of rank-and-file lawmakers to negotiate key agenda items. Madigan said his members will continue to take part in those groups, though he said they are unwilling to "sacrifice the interests of the middle class." Madigan held briefings to update House Democrats on the status of those working groups. But in a symbol of the deep partisan divide, the Rauner-controlled Illinois Republican Party issued

a news release that likened the briefings as brainwashing "re-education meetings." Republicans also sought to score points when GOP Sen. Matt Murphy of Palatine tried to enter the Democratic meetings and later asked Madigan's members to "not fall victim to the speaker's ongoing personal vendetta against the governor." "This seems to me like his attempt to derail (his members) and run out the clock," Murphy said of Madigan.

8. BEST BUSINESS OPPORTUNITIES FOR RETIREES: *About Money* lists the best business opportunities for retirees. If you have been bored since leaving the work force -- or you just need a little more income – check out these business opportunities for retirees like you:

- Senior Chauffeur. By 2040 seniors are expected to comprise a quarter of the population in the U.S. and Canada, as the bulk of the baby boom generation enters their senior years. Many seniors and people with special needs are not willing or able to drive themselves and require delivery/unpacking of groceries, transportation to and from medical appointments, or assistance with basic household chores. If you have an outgoing personality and enjoy driving this could be an ideal business opportunity for you.
- Travel Tour Guide. If you love to travel why not get paid for it? Becoming a tour guide and introducing people to the wonders of travel can be very rewarding. All your expenses are paid for and

compensation comes in the form of wages and tips.

- Child Care/Babysitting. Child care services will not bring you great riches but can provide a nice retirement income supplement as well as being personally rewarding. A background in primary education or child care and training in first aid/CPR would be beneficial. References and a criminal record check are definite requirements.
- Hauling. There's always a demand for hauling services for trash, garden waste, or other discarded household or business items, and if you are strong, healthy and enjoy driving, hauling could be a great retirement business opportunity for you. Already having a truck or a van would greatly reduce start-up costs, but if not, there are normally plenty of suitable used vehicles available at a fair price.
- Painting/Interior Decorating. Unless you are in robust physical health, retiring from your regular job at age 50 plus and getting into construction trades like carpentry, plumbing, or roofing is probably not an option. However, if you have always had a desire to work in the building industry, how about something less physically strenuous? If you have an eye for color, good attention to detail and a knack for swinging a brush why not consider painting or interior decorating as a retirement business and share your creative skills with the world?
- Translation Services. Translation is the art of converting written text from one language into another. It is used in a huge range of industries from advertising to the medical, legal, and software

fields.

- **Arts and Crafts.** If you have artistic skills and enjoy painting, sewing, ceramics, woodworking, or another form of artwork or craft why not turn it into a business? As an example, a retired man in my town creates beautiful turned wooden bowls and dishes which he sells at local craft fairs, farmer's markets, and the village mall at various times of the year. Another acquaintance does antique restoration from his home workshop.
- **Tutoring.** If you have teaching experience and a desire to help students be more successful why not become a tutor? After retiring from teaching public school for a number of years, an associate of mine recently started her own tutoring business, which now employs several contract tutors.
- **Language Lessons.** If you are retired, proficient in a second language, and enjoy teaching why not put these skills to use? Many countries in the world mandate the study of a second language, normally beginning in primary school, and in today's ultra-competitive job market being proficient in more than one language can be the key to being hired. Language lessons are also very useful for travelers.
- **Pet Services.** Do you have spare time on your hands and love animals? If you live in an animal-crazy place like I do where many pet owners also like to travel there is always a demand for reliable, trustworthy pet sitters and dog walkers. Many pet owners prefer not to kennel their animals when they travel and are willing to pay for the privilege of having someone visit their

house to look after their pets while they are away.

- Security Services. Trained security personnel always seem to be in high demand, whether it is serving at public functions, attending home or business premises to monitor or investigate intrusions, or organizing police or fire department personnel in cases of emergency.
- Volunteering. Chances are local non-profit and charitable organizations in your town or city are clamoring for volunteer assistance in a wide variety of services and activities. In addition to being personally rewarding, volunteering can also give you valuable experience towards starting your own for-profit business or gaining paid employment in a new field.

None of these ideas is likely to make you a great deal of money and to start any business you need entrepreneurial spirit, motivation, preparation and due diligence. After choosing an idea do some market research and write a business plan; these steps will help you to determine if your chosen idea is feasible. Make sure you discuss it with your better half -- getting your spouse on side with your proposed business venture might be difficult if he/she had other plans for your retirement! What is particularly attractive about these opportunities for retirees is that all of them are inexpensive to start and can be operated as part-time, home-based businesses. Running your own small business can help keep you motivated, happy, and healthy for years to come, as well as supplement your retirement income.

9. FPPTA 32ND ANNUAL CONFERENCE: The Florida Public Pension Trustees Association's 32nd Annual Conference will take place on June 26 through June 29, 2016 at the Hyatt Regency Orlando on International Drive, Orlando. A link on FPPTA's web site, www.fppta.org, will take you to the Hyatt Regency Orlando website to make your room reservations. You may access information and updates about the Conference at FPPTA's website. All police officer, firefighter and general employee plan participants, board of trustee members, plan sponsors and anyone interested in the administration and operation of the Chapters 112, 175 and 185 pension plans should take advantage of this unique, insightful and informative program.

10. GOLDEN OLDIE HITS RENAMED: Some of the pop stars of yesteryear are revising their hits with new lyrics to accommodate aging Baby Boomers. They include: Johnny Nash -- I Can't See Clearly Now.

11. AGING GRACEFULLY: I do not like making plans for the day because then the word "premeditated" gets thrown around in the courtroom.

12. TODAY IN HISTORY: In 1936, General Anastasio Somoza takes over as director of Nicaragua.

13. KEEP THOSE CARDS AND LETTERS COMING: Several readers regularly supply us with suggestions or tips for newsletter

items. Please feel free to send us or point us to matters you think would be of interest to our readers. Subject to editorial discretion, we may print them. Rest assured that we will not publish any names as referring sources.

14. PLEASE SHARE OUR NEWSLETTER: Our newsletter readership is not limited to the number of people who choose to enter a free subscription. Many pension board administrators provide hard copies in their meeting agenda. Other administrators forward the newsletter electronically to trustees. In any event, please tell those you feel may be interested that they can subscribe to their own free copy of the newsletter at <http://www.cypen.com/subscribe.htm>.

15. REMEMBER, YOU CAN NEVER OUTLIVE YOUR DEFINED RETIREMENT BENEFIT.