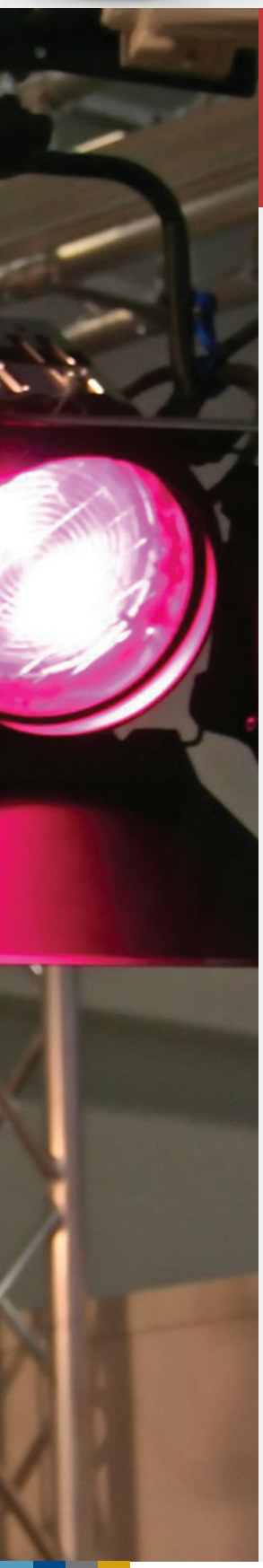
Don't Let the Bright Lights Blind You

YOUR OBLIGATIONS UNDER THE FLSA



It's exciting to watch a new industry being built. What famous director or movie star is coming to town? Will Michigan be the next Hollywood? Are the state's film tax credits spurring long term economic development?

With the enthusiasm surrounding the growing entertainment industry, investors and companies entering this new market may unwittingly expose themselves to unnecessary legal risks by failing to heed the Fair Labor Standards Act (FLSA).

All employers in Michigan are covered by the FLSA or its state law counterpart, the Michigan Minimum Wage Law (MMWL), which mandates that employees receive no less than the current minimum wage and not less than one and one-half times their regular rates of pay for all hours worked in excess of 40 in a workweek. These acts exempt executive, administrative, and professional employees from the minimum wage and overtime requirements, provided they satisfy certain tests regarding job duties and responsibilities and are compensated on a salary basis. In general, in order to be considered "salaried," employees must receive their full salary for any workweek in which they perform any work irrespective of the number of days or hours worked.

Don't fall prey to the common misunderstanding that employers do not need to worry about FLSA compliance if the employees are paid on a salary basis even if the employees do not perform exempt duties.

THREE COMMON MISTAKES THAT MIGHT ENTER YOUR MOVIE SET

"I have independent contractors not employees."
New companies often seek to avoid wage and hour issues by calling workers "independent contractors" because independent contractors are not covered under the FLSA. But, calling someone an independent contractor is insufficient to establish that no employment relationship exists. When determining whether an individual is an employee or an independent contractor, courts consider:

- Employer's degree of control
- Investment by the individual
- Opportunities for profit and loss
- Permanency of the relationship
- Skill needed for the position
- Whether the position is integral to the company

"Those are student interns, not employees."
Colleges and universities looking to attract and retain students are making every effort to secure opportunities for students to gain experience working on a movie set. While these relationships can be beneficial for both the student and the company, certain conditions must be met to avoid creating an employment relationship.

The U.S. Department of Labor's Wage and Hour Division weighs the following factors when deciding if a student is an intern or an employee:

- Training is similar to that given in a vocational or academic educational instruction.
- Training is for the benefit of the student.
- Students do not displace regular employees and work under their direction.
- The employer does not receive an immediate benefit.
- Students are not entitled to a job at the end of the training.
- The employer and students understand that students are not entitled to wages for time spent training.

"If they break the equipment, they buy it."
Employers often require employees to reimburse the company for any damage employees cause to the employer's equipment. The Michigan Wages and Fringe Benefit Act (MWFBA), however, forbids any deductions from an employee's wages without the full, free, and written consent of the employee. Under the Act, a deduction made for the benefit of the employer—such as reimbursement for damage to employer's property—requires a separate written authorization for each payment subject to deduction, and the cumulative amount of the deductions may not reduce the gross wages paid to less than the minimum wage. When in doubt, obtain employees' authorizations before making a deduction from wages.

If the bright lights are calling and you want to be part of the entertainment industry, make sure you know the ins and outs of Michigan's labor and employment laws. Call us if you'd like some help.

Labor + Employment
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