**4.14 Fair Labor Standards Act – 29 U.S.C. §§ 201 et seq.**

In this case, [name of plaintiff] claims that [his/her employer(s)] [name(s) of defendant(s)] did not pay [name of plaintiff] the [minimum wage/overtime pay] required by the federal Fair Labor Standards Act, also known as the FLSA.

To succeed on [his/her] claim against [name(s) of [individual manager/supervisor] [and/or] [company] defendant(s)], [name of plaintiff] must prove each of the following facts by a preponderance of the evidence:

First: [Name of plaintiff] was an employee of [name(s) of defendant(s)] and was [engaged in commerce or in the production of goods for commerce] [employed by an enterprise engaged in commerce or in the production of goods for commerce]; and

Second: [Name(s) of defendant(s)] failed to pay [name of plaintiff] the [minimum wage/overtime pay] required by law.

[In the verdict form that I will explain in a moment, you will be asked to answer questions about these factual issues.]

For the first element, [name of plaintiff] must prove by a preponderance of the evidence that [he/she] was an employee [engaged in commerce or in the production of goods for commerce/employed by an enterprise engaged in commerce or in the production of goods for commerce].

The term “commerce” has a very broad meaning and includes any trade, transportation, transmission, or communication between any place within a state and any place outside that state. [Name of plaintiff] was engaged in the “production of goods” if [he/she] was employed in producing, manufacturing, mining, handling, or transporting goods, or in any other manner worked on goods or any closely related process or occupation directly essential to the production of goods. [An “enterprise engaged in commerce or the production of goods for commerce” means a business that has employees engaged in commerce or the production of commercial goods for commerce and has annual gross sales of at least $500,000.]

[Minimum wage claim: The minimum wage required by the FLSA during the period involved in this case was $ [minimum wage] per hour. [To determine whether the employer(s) [has/have] paid the minimum wage, [it/they] [is/are] entitled to a credit for the reasonable costs of furnishing certain non-cash items to [name of plaintiff] [unless those costs are excluded from [name of plaintiff]’s wages under the terms of a union contract that applies to [name of plaintiff]], such as meals and lodging for the employee’s benefit, and the employee voluntarily accepts them.]

[Overtime claim: The FLSA requires [an] employer(s) to pay an employee at least one-and-one-half times the employee’s “regular rate” for time worked over 40 hours in a workweek. Put another way, if an employee works more than 40 hours in one workweek, the employer(s) must pay the employee the overtime rate of 1.5 times the regular rate for all time worked after the first 40 hours. This is commonly known as time-and-a-half pay for overtime work. A “workweek” is a regularly occurring period of seven days or 168 hours—seven consecutive 24-hour periods. Each workweek stands alone. Even if [name of plaintiff] worked more than 40 hours in one workweek and less than 40 hours in another, the law does not allow averaging the hours over two or more workweeks. For example, if an employee works 30 hours one week and 50 hours the next, [he/she] must receive overtime compensation for any overtime hours worked beyond the applicable maximum in the second week, even though the average number of hours worked in the two weeks is 40. The phrases “hours worked” and “time worked” include all time spent on activities controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer and the employer’s business. Such time constitutes “time worked” or “hours worked” if the employer knew or should have known of the overtime work.]

[The employee’s regular rate for one week is the basis for calculating any overtime pay due to the employee. The “regular rate” for a week is determined by dividing the total wages paid for the week by [40/the total number of hours [name of plaintiff]’s weekly salary was intended to compensate]. To calculate how much overtime pay was owed to [name of plaintiff] for a certain week, subtract 40 from the total number of hours [he/she] worked and multiply the difference by the overtime rate. [Name(s) of defendant(s)] failed to pay [name of plaintiff] the required pay if [he/she/it/they] paid [him/her] less than that amount.]

[Exemption: In this case, [name(s) of defendant(s)] claim[s] that [he/she/it/they] [is/are] exempt from the FLSA’s overtime provisions. To establish that [he/she/it/they] [is/are] exempt, [name(s) of defendant(s)] must prove each of the following facts by a preponderance of the evidence: [List essential elements of the claimed exemption].

If you find that [name(s) of defendant(s)] [is/are] exempt, you will not decide the issue of [name of plaintiff]’s damages. But if you find that [name(s) of defendant(s)] [is/are] not exempt, you must decide the issue of [name of plaintiff]’s damages.]

The amount of damages is the difference between the amount [name of plaintiff] should have been paid and the amount [he/she] was actually paid. [Name of plaintiff] is entitled to recover lost wages from the date of your verdict back to no more than two years before [he/she] filed this lawsuit [date of complaint] unless you find that the employer(s) either knew or showed reckless disregard for whether the FLSA prohibited [its/their] conduct. If you find that the employer(s) knew or showed reckless disregard for whether the FLSA prohibited [its/their] conduct, then [name of plaintiff] is entitled to recover lost wages from date of your verdict back to no more than three years before [he/she] filed this lawsuit.

[Inadequate Records: The law requires [an] employer(s) to keep records of how many hours [his/her/its/their] employees work and the amount they are paid. In this case, [name of plaintiff] claims that [name(s) of defendant(s)] failed to keep and maintain adequate records of [his/her] hours and pay. [Name of plaintiff] also claims that [name(s) of defendant(s)]’s failure to keep and maintain adequate records has made it difficult for [name of plaintiff] to prove the exact amount of [his/her] claim.

If you find that [name(s) of defendant(s)] failed to keep adequate time and pay records for [name of plaintiff] and that [name of plaintiff] performed work for which [he/she] should have been paid, [name of plaintiff] may recover a reasonable estimation of the amount of [his/her] damages. But to recover this amount, [name of plaintiff] must prove by a preponderance of the evidence a reasonable estimation of the amount and extent of the work for which [he/she] seeks pay.]

[Individual Liability: An individual can also be liable for a plaintiff’s damages under the FLSA if the individual played a substantial role in causing the FLSA violation. To determine whether the individual is liable, you must consider all the relevant circumstances rather than any one technical factor. [Name of plaintiff] must prove that [name(s) of individual defendant(s)] had operational control over [name(s) of company defendant(s)/the enterprise that is covered by the FLSA]. In other words, [name(s) of individual defendant(s)] must have controlled significant aspects of [name(s) of company defendant(s)]’s day-to-day functions, including employee compensation, or had direct responsibility for the supervision of [name of plaintiff].]

**Special Interrogatories To The Jury**

**Do you find from a preponderance of the evidence:**

 That [name of plaintiff] was an employee of [name of defendant] and was [engaged in commerce or in the production of goods for commerce/employed by an enterprise engaged in commerce or in the production of commercial goods]?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

If your answer is “No,” this ends your deliberations, and your foreperson should sign and date the last page of this verdict form. If your answer is “Yes,” go to the next question.

 That [name of defendant] failed to pay [name of plaintiff] the [minimum wage/overtime pay] required by law?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

If your answer is “No,” this ends your deliberations, and your foreperson should sign and date the last page of this verdict form. If your answer is “Yes,” go to the next question.

[ That [name of plaintiff] was exempt from the Fair Labor Standards Act as an [describe pertinent exemption, e.g., “administrative,” “executive”] employee?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

If your answer is “Yes,” this ends your deliberations, and your foreperson should sign and date the last page of this verdict form. If your answer is “No,” go to the next question.]

[ That [name of defendant] knew or showed reckless disregard for whether the FLSA prohibited its conduct?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_]

 That [name of plaintiff] should be awarded damages?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

If your answer is “Yes,”

in what amount? $\_\_\_\_\_\_\_\_\_\_\_\_\_

So Say We All.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Foreperson’s Signature

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_