**ANNOTATIONS AND COMMENTS**

The Fair Labor Standards Act (“FLSA”) is found at 29 U.S.C. § 201 et seq. Pattern Instruction 4.14 is intended to be used in cases where the plaintiff alleges that the defendant employer failed to pay the minimum wage or overtime pay required by the FLSA. Pattern Instruction 4.14 contains bracketed instructions for each type of FLSA claim.

**I. Elements and Defenses**

 **1. “Employee”**

Pattern Instruction 4.14 instructs that the plaintiff must have been an employee of the defendant. For cases in which this issue is disputed, the instruction and verdict form should be adapted accordingly. For pattern instructions concerning issues of joint employers or independent contractors, please see Pattern Instructions 4.24 and 4.25, *infra*.

The employee must also be “engaged in commerce” within the meaning of the FLSA or “employed by an enterprise engaged in commerce.”

 **“Employer”**

Pattern Instruction 4.14 may be used when a plaintiff claims the existence of more than one employer, an individual as well as a company. The FLSA defines an “employer” as “any person acting directly or indirectly in the interest of an employer in relation to an employee . . . .” 29 U.S.C. § 203(d). “[T]he FLSA contemplates at least some individual liability, and it is consistent with Congress’s intent to impose liability upon those who ‘control[] a corporation’s financial affairs and can cause the corporation to compensate (or not to compensate) employees in accordance with the FLSA.’” *Lamonica v. Safe Hurricane Shutters, Inc.*, 711 F.3d 1299, 1313 (11th Cir. 2013) (second alteration in original) (quoting *Baystate Alt. Staffing, Inc. v. Herman*, 163 F.3d 668, 678 (1st Cir. 1998)).

In *Patel v. Wargo,* 803 F.2d 632 (11th Cir. 1986), the Eleventh Circuit acknowledged “‘[t]he overwhelming weight of authority is that a corporate officer with operational control of a corporation’s covered enterprise is an employer along with the corporation, jointly and severally liable under the FLSA for unpaid wages.’” *Id.* at 637–38 (alteration added; quoting *Donovan v. Agnew,* 712 F.2d 1509, 1511 (1st Cir. 1983)). The Eleventh Circuit later clarified that corporate supervisors other than officers may be personally liable under the FLSA if they are involved in the company’s day-to-day functions or have some direct responsibility for the supervision of the employee. *See Lamonica*, 711 F.3d at 1310, 1313-15 (finding two non-officer supervisors with substantial ownership interests in the corporate employer who exercised control over the company’s day-to-day functions were individually liable under the FLSA (citing *Alvarez Perez v. Sanford-Orlando Kennel Club, Inc.*, 515 F.3d 1150, 1160 (11th Cir. 2008))).

For cases in which individual liability is at issue, the instruction and verdict form should be adapted accordingly. For pattern instructions concerning issues of joint employers, please see Pattern Instruction 4.25, *infra*.

 **Amount of Work Performed: Inaccurate or Inadequate Employer Records**

When an employer’s records are “inaccurate or inadequate and the employee cannot offer convincing substitutes,” then an employee has carried his burden of proving that he has performed work for which he was not properly compensated. *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 687 (1946), *superseded by statute on other grounds as stated in Carter v. Panama Canal Co.*, 463 F.2d 1289, 1293–94 (D.C. Cir. 1972). “The burden then shifts to the employer to come forward with evidence of the precise amount of work performed or with evidence to negative the reasonableness of the inference to be drawn from the employee’s evidence.” *Id*. at 687–88.

 **Regular Rate of Pay**

When an employee is compensated solely on a weekly salary basis, the regular hourly rate of pay, on which time and a half must be paid, is computed by dividing the salary by the number of hours the salary is intended to compensate. *Rodriguez v. Farm Stores Grocery, Inc.*, 518 F.3d 1259, 1268 (11th Cir. 2008). For overtime claims involving an employee who is paid a constant weekly salary for fluctuating hours, it may be necessary to modify the instruction so that the jury is instructed on the “fluctuating workweek method” for calculating damages. *See generally Lamonica*, 711 F.3d at 1310­­–12; *see also* 29 C.F.R. § 778.114 (explaining how to use the fluctuating workweek method).

 **Exemptions**

Pattern Instruction 4.14 leaves it to the court to fashion an instruction regarding the elements of a claimed exemption. The most common exemptions from the overtime pay requirement exist for employees in a “bona fide executive, administrative, or professional capacity” as defined by regulations of the Secretary. 29 U.S.C. § 213(a)(1). The elements of the exemptions may be found at 29 C.F.R. § 541.1 *et seq*.

In a suit under the FLSA, the employer carries the burden of proving an overtime pay exemption. *Hogan v. Allstate Ins. Co.*, 361 F.3d 621, 625 (11th Cir. 2004) (per curiam).

 **Remedies**

 **Public Employees**

Pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq*., a public employee working overtime has the choice to be reimbursed either in the form of wages or compensatory time. 29 U.S.C. § 207(a)(o). A public employer may only substitute compensatory compensation for overtime pay pursuant to a collective bargaining agreement or agreement between the employer and employee if there is no applicable collective bargaining agreement. 29 U.S.C. § 207(o)(2)(A); *Chesser v. Sparks*, 248 F.3d 1117, 1120 n.1 (11th Cir. 2001).

 **Liquidated Damages, Good Faith and Willful Violations**

The FLSA provides for liquidated damages and states that such damages shall be paid unless the “employer shows to the satisfaction of the court that the act or omission giving rise to such action was in good faith and that he had reasonable grounds for believing that his act or omission was not a violation of the Fair Labor Standards Act,” in which case “the court may, in its sound discretion, award no liquidated damages or award any amount thereof not to exceed the amount specified in section 216” of the FLSA. 29 U.S.C. § 260. Under the plain language of the statute, this is a question for the court to determine not the jury. Thus, the court and the jury answer what is essentially the same question for two different purposes. The willfulness or good faith question is answered first by the jury to determine the period of limitations and then, if there is a verdict for the employee, again by the judge to determine whether to award liquidated damages. *Morgan v. Family Dollar Stores, Inc.,* 551 F.3d 1233, 1282 (11th Cir. 2008).

When the jury finds an employer has violated the FLSA and assesses compensatory damages, the district court generally must add an award of liquidated damages in an equal amount. 29 U.S.C. § 216(b) (“Any employer who violates the provisions of… section 207 of this title shall be liable to the employee or employees affected in the amount of… their unpaid overtime compensation… and in an additional equal amount as liquidated damages.”); *Alvarez Perez*, 515 F.3d at 1163. However, the district court has discretion to reduce or deny liquidated damages “if the employer shows to the satisfaction of the court that the act or omission giving rise to such action was in good faith and that he had reasonable grounds for believing that his act or omission was not a violation of the [FLSA].” *Morgan*, 551 F.3d at 1282 (alteration in original) (internal quotation marks omitted); *see also* 29 U.S.C. § 260. A district court must find that an employer acted in good faith in violating the FLSA before it may award less than the full amount of liquidated damages. *Joiner v. City of Macon*, 814 F.2d 1537, 1539 (11th Cir. 1987). If the jury finds that the employer acted willfully, however, then the court cannot find that the employer acted in good faith, and the court must award liquidated damages. A jury’s finding that the employer acted willfully precludes the court from finding that the employer acted in good faith when it decides the liquidated damages question. *Alvarez Perez*, 515 F.3d at 1166.

The statute of limitations for a claim seeking unpaid overtime wages under the FLSA is generally two years. “But if the claim is one ‘arising out of a willful violation,’ the statute of limitations is extended to three years.” *Morgan*, 551 F.3d at 1280 (quoting 29 U.S.C. § 255(a)).

To prove willfulness and therefore obtain the benefit of the three-year statute of limitations, an employee must establish that the employer “knew, or showed reckless disregard for, the fact that its conduct was forbidden by the FLSA.” *Id.* at 1283.