

# ALAGOOD & CARTWRIGHT, P.C.

## WHERE DETAILS MATTER

ISSUE 3

JANUARY, 2014

### A & C welcomes Samuel B. Burke as a Shareholder

After several years as a partner at Wood, Thacker & Weatherly, P.C., Samuel B. Burke has joined Alagood & Cartwright, P.C., as a shareholder. In a relatively short period of time Sam Burke has established a reputation as one of the top litigators in the State of Texas. Clients have benefited from Sam's expertise in complex matters involving real estate, governmental litigation, probate, and serious personal injury. Sam also handles a wide variety of complex issues regarding Oil & Gas and has extensive experience in land use litigation, legal malpractice defense, and class action litigation.

Sam Burke received his board certification in Civil Trial Law from the Texas Board of Legal Specialization, and has been honored by his peers and legal publications throughout his legal career. Sam was named a "Texas Rising Star" in General Litigation as published by Thomson Reuters for Texas Monthly Magazine 2008 - 2013. In 2009, 2010, 2011, 2012, and 2013, Sam received the prestigious AV Preeminent rating (Top) by Martindale-Hubbell and was recognized as one of the Top 40 Trial Lawyers Under 40 in Texas by the National Trial Lawyers Organization.



### A&C: Out and About

Scott Alagood was Brian Cartwright's guest at the September, 2013 Lewisville Noon Rotary Club meeting. Scott spoke to the Noon Rotary Club on the topic of Eminent Domain. Scott explained to the group that the 16 major transportation projects currently in motion will require more than \$1 billion in public funds. In fact, the I-35 project will probably cost close to \$5 billion and last an estimated 10-15 years, not including the undetermined clean-up time. Past projects that have involved Eminent Domain and Condemnation Process have been Cowboys Stadium and the Texas Motor Speedway.



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It is for informational purposes  
only and no legal advice is  
intended.**



Brian introducing Scott at Rotary meeting

# OVERTIME CLAIMS AND THE FAIR LABOR STANDARDS ACT

by R. Scott Alagood and Brian T. Cartwright

Overhead. It's a challenge facing employers and employees. For many businesses, labor cost is the single greatest overhead expense. Unfortunately, many employers try cutting corners that they should not, in particular in the area of overtime wages. The Fair Labor Standards Act (or FLSA) is a federal labor law that requires employers to pay overtime compensation (at time-and-a-half) to employees who are not exempt under the Act for all hours worked over a prescribed threshold period (typically, 40 hours per week). Most employees are non-exempt, meaning that they are entitled to overtime pay. The most common exceptions to this rule involve some administrative, executive and professional employees, computer professionals, outside sales employees, and certain retail employees. Liability exists under the FLSA even for unintentional violations.

But what if a business only employs a few people? Is the business exempt from paying overtime? The answer is no. Unlike many other federal laws, the FLSA does not depend upon the number of persons employed. Instead, the FLSA covers businesses engaged in commerce or in the production of goods for commerce (i.e., handling, selling, or otherwise working, on goods or materials that have been moved in or produced for commerce). The FLSA's coverage is very broad, and the courts typically interpret it that way.

But what about salaried managers and individuals that

have really important sounding, executive job titles? Are they exempt? If the manager's/ executive's salary is less than \$100,000.00 annually, then the inquiry typically focuses on the nature of the job and how the employee performs it. For example, if the employee cannot hire or fire other employees, or does not regularly direct the work of at least 2 employees, overtime must usually be paid.

But what about salaried employees? Does overtime get factored into their pay? The answer is typically yes, in most instances overtime is still required.

Is it acceptable for an employer to get around overtime by allowing the employee to volunteer their time? No. The FLSA does not recognize "voluntary unpaid overtime" or "donated time" as legitimate exceptions to avoid paying overtime.

What about a signed, written agreement with the employee waiving any claim they might have to overtime? Is that acceptable? Under the FLSA, such agreements are null, void and completely unenforceable.

Is comp time an acceptable alternative to paying overtime? For a governmental employer, probably so. In the private sector, comp time is generally not permissible. It should be noted that a private employer may adjust an employee's schedule within the same week to ensure that their total hours worked do not exceed 40 hours. However, overtime hours may not be averaged out over a longer period of time except in exceedingly narrow cases of certain employees of residential care facilities. Otherwise, any

overtime worked within a workweek must be paid for that workweek.

Is overtime required to be paid to an independent contractor? If a worker is truly an independent contractor, then overtime may be avoided. The problem is that too often employers get cute, slap an independent contractor label on the worker, but then treat them as if they are employees. If workers are truly employees, regardless of the title they hold, and if they work more than 40 hours in a workweek, the employer must pay the worker overtime pay if they do not qualify for an overtime exemption. There is no way to contract around that.

There is no piece of paper and no amount of explanation that will overcome the finding of an employment relationship if the Department of Labor or the IRS, or a state employment security agency, determines that an employer/employee relationship exists. For this reason, employers must be very familiar with the various tests for determining whether a worker is an employee or an independent contractor. The controlling factor is whether the employer controls the details of how the person's services are performed.

At the end of the day, uncertainty under the FLSA can cause serious problems. Courts may award an affected employee damages, including unpaid base wages, overtime pay (at time-and-a-half), liquidated damages of an amount equal to all of the employee's unpaid wages and overtime pay, attorney's fees, and court costs. So for both employers and employees, care should be taken to make sure that the FLSA is followed and overtime is paid where required.

## ABOUT ME



**Name:** Kim Miller

**Position:** Legal Assistant to Brian Cartwright and Sam Burke

Born in St. Louis, Missouri Kim moved to Texas when she started high school. Kim has worked as a legal assistant for 10 years.

**Hobbies:** Enjoys camping, hiking, fishing with her family. Also enjoys a good book every now and then.

**Duties:** Kim's responsibility is to keep Brian and Sam organized with their busy schedules.

Come by and say hello Kim is looking forward to meeting you.

## SCOTT ALAGOOD SELECTED AS BEST CIVIL LAWYER FOR DENTON COUNTY



R. SCOTT ALAGOOD OF ALAGOOD & CARTWRIGHT, P.C. WAS RECENTLY NAMED AS THE BEST CIVIL LAWYER FOR DENTON COUNTY BY THE READERS OF GO PAGES MAGAZINE.



BRIAN ATTENDED THE ANNUAL LEWISVILLE NOON ROTARY BANQUET WHERE HE WAS INDUCTED INTO THE BOARD OF DIRECTORS AS SERGEANT AT ARMS AND RECEIVED A PLAQUE FOR COMPLETING AND RECEIVING HIS BLUE BADGE IN THE QUICKEST PERIOD OF TIME IN THE HISTORY OF THE CLUB.

## LEGAL TIP:

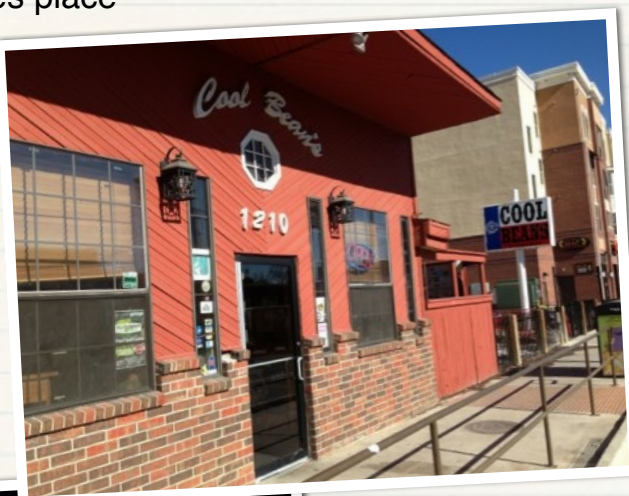
**There are very short deadlines which accrue from the date labor or materials are provided for filing a Mechanic's Lien Claim.**



## CLIENT SPOTLIGHT:

### RIPROCKS, COOL BEANS, & LUCKY LOUS

Rip rocks, Cool Beans, and Lucky Lou's offer daily drink specials, food, billiards, darts, patio seating, and a laid back atmosphere. These three establishments are located on Hickory Street near the Fry Street intersection next to UNT, and are long time supporters of the local community. Not only are they members of the Denton Chamber of Commerce and Keep Denton Beautiful, but the owners also helped launched the popular Mud Bug Boil which takes place annually in the spring and benefits local Denton charities such as UNT Athletics, Denton Rugby Club, Michaels Memories and the Denton Arts and Jazz Festival. When the holidays roll around, look no further than "Little D"! No need to take a road trip if you are looking for a good time... Rip rocks, Cool Beans, and Lucky Lou's host happening events including Oktoberfest, Halloween, St. Patty's Day, and Fat Tuesday! When you show your patronage to one of these establishments, you can enjoy the knowledge that YOU are supporting a business who "pays it forward."



Cool Beans:  
1210 West Hickory Street

Rip rocks:  
1211 West Hickory Street

Lucky Lou's:  
1207 West Hickory Street

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