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**ALLEGHENY COUNTY LABOR COUNCIL
REPORT OF LEGAL COUNSEL
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Remedying Wage and Hour Violations

In addition to utilizing the grievance procedure under the collective bargaining agreement, union members in both the public and private sector can also take legal action in state or federal court to address wage and hour violations. Under the Fair Labor Standards Act (“FLSA”), an employer is generally required to pay employees time and one half the “regular rate of pay” for each hour worked in excess of forty in one week and a minimum wage of \$7.25 per hour. As the FLSA’s requirements are complicated, employers often calculate the regular rate of pay incorrectly. All compensation paid by the employer must be used to calculate the regular rate of pay with only a few exceptions, such as discretionary bonuses, gifts on special occasions, contributions to welfare plans, and payments for profit-sharing or retirement plans. However, it should be noted that there are certain jobs that are exempt from overtime pay (e.g., executive, administrative, and professional) and others that are exempt from the minimum wage (e.g., tipped waitresses and waiters).

If an employer fails to pay the overtime or the minimum wage as required by the FLSA, an individual employee is permitted to take legal action against the employer on behalf of himself/herself and other “similarly situated” employees. Any employer who has violated the FLSA’s minimum wage or overtime requirements is liable for backpay in the amount of the unpaid wages going back a period of two years. However, an employer that is found to have willfully violated the FLSA is liable for double backpay going back a period of three years. Furthermore, employees are entitled to a mandatory award of reasonable attorneys’ fees and costs if their FLSA action against the employer is successful.

While the FLSA does not allow employees to recover regular wages, wage supplements, or fringe benefits, such wages can be recovered pursuant to state law. Under Pennsylvania’s Wage Payment and Collection Law (“WPCL”), individual employees and labor unions may file a lawsuit against an employer based upon the failure to pay the minimum wage, overtime, regular wages, wage supplements, and fringe benefits. Any employer who has violated the WPCL by failing to pay such wages is liable for backpay in the amount of the unpaid wages going back a period of three years. If unpaid wages exceed five percent (5%) of the gross wages payable on any two paydays, the employee is entitled to receive liquidated damages equal to



twenty-five percent (25%) of the wages owed or \$500, whichever is greater. If the employee or the union is successful in the lawsuit, the court is required to award all reasonable attorneys' fees and costs incurred.

It is important to note that the FLSA and WPCL serve as a floor, and not a ceiling, for workers' rights. An employer can contractually agree to provide more generous overtime than is required by the FLSA and WPCL. For instance, a contract may provide for overtime pay when an employee works more than eight hours in one day rather than the FLSA's requirement for overtime pay when an employee works more than forty hours in one week. However, employees cannot contractually waive their legal right to overtime under the FLSA or the WPCL through the collective bargaining process. This means that an employer cannot defend against a violation of the FLSA or WPCL by arguing that the collective bargaining agreement provides for a different method of calculating overtime that results in less compensation. As such, if you discover that your collective bargaining agreement provides for less generous overtime compensation than is required by the FLSA or WPCL, you have the ability to take legal action against your employer despite the language in your contract.

Respectfully submitted,

A handwritten signature in blue ink that reads "Steven E. Winslow". The signature is written in a cursive, flowing style.

STEVEN E. WINSLOW, ESQUIRE