Unpaid Wages
Case Walk-Through

Table of Contents

I. YOUR LAW FIRM – JOHN BALES ATTORNEYS

Your John Bales Attorneys team consists of Employment Law Attorneys, client managers, law clerks, investigators, and other support staff. Our Employment Law Attorneys have many years of combined experience in representing people like you. John Bales Attorneys is "AV" rated, the highest rating given by the lawyer rating service of Martindale Hubbell. The use of advanced technology, such as case management software, document imaging, and an in-house law library with computer-based legal research resources, further enhances our ability to pursue your claim. Our case management software allows your entire team to manage your case.

Employment Law Attorneys that practice on the pretrial team will prepare your case during that time period. If litigation is necessary, trial attorneys will handle that phase. In some instances, we may have other law firms participate in your representation. This will not increase the amount of the attorneys' fees or costs. Of course, we will advise you if this should occur. We believe this innovative team concept helps us to more efficiently pursue your claim. Please understand that as your case progresses, your team of Employment Law Attorneys and client managers may change to improve service to you and assist in the effective resolution of your case. We will keep you advised of any such changes in your team.

Please consider going to our website, www.johnbales.com, or the booklet titled "Information About John Bales Attorneys", which was included in your initial representation package to obtain additional information about us.

II. COMMUNICATING WITH YOUR JOHN BALES ATTORNEYS TEAM

As you know, communications between you and us as your law firm are important and are protected by the Attorney/Client Privilege. These communications can be by telephone (home, mobile, and work), in person meetings, email (personal only), and/or mail to the address provided above, which will be used by us to provide documents to you. Accordingly, please immediately advise us in writing of any change to telephone numbers (home, mobile, and work), email addresses (personal only), and/or your mailing address. Unless you notify us otherwise in writing, we will be using the above address for all communications with you as is appropriate.

Please keep in mind that the Attorney/Client Privilege only applies to communications between you and members of the firm, and you should not discuss your case with anyone or provide them with any of the documents from our firm because such communications may then become discoverable. Additionally, you should not be receiving any communications from our office at your work email, only your personal email. There have been court decisions holding that emails sent to an office email address is not protected by the Attorney/Client Privilege.

A. YOUR CONTACT INFORMATION

Being able to communicate with you about your case at any time is very important. If you have not already done so, please provide us with the following contact information so that we may use it to contact you throughout the course of your case:

- Home Address
- Home Phone Number
- Cell Phone Number
- Personal Email Address (Please do not provide us with a work or school email address because any communications sent to a work or school email address are likely not protected by attorney-client privilege)

B. YOUR EMERGENCY CONTACT INFORMATION

Please also provide us with the following information for any emergency contact(s) that we may contact if we are unable to reach you using the above methods:

- Emergency Contact(s) Name
- Emergency Contact(s) relationship to you
- Emergency Contact(s) Home Address
- Emergency Contact(s) Home Phone Number
- Emergency Contact(s) Cell Phone Number
- Emergency Contact(s) Personal Email Address

Although you are providing us with contact information for your emergency contact(s), we will not discuss your case with them unless you give us permission to do so. Generally, we will contact an emergency contact if we are unable to reach you. Of course, if you would like for us to discuss the case with your emergency contact(s), you can contact me and we can discuss the risks and benefits of such including, but not limited to, the lack of attorney-client privilege for any discussions for which the emergency contact is involved.

If any of the contact information changes for you or any of your emergency contact(s), please let us know immediately. If you will be out of town for an extended period of time, we request that you inform us of this as well.

C. CONTACTING YOUR JOHN BALES ATTORNEYS

You will have a "point of contact" attorney. You will also have other attorneys and team members that you can speak to when your point of contact attorney is not available. Although your attorney may not always be immediately available to answer your questions directly, you may be able to obtain an answer to most of your questions from another member of your team. Additionally, you can always ask to speak to the Staff Administrator, who is also dedicated to serving you.

For your convenience, we offer local telephone numbers for our clients to call our office at any time. To find the local telephone number in your area, ask a member of your team or go to our website, www.johnbales.com and click on "Contact Us".

D. EMPLOYER'S LIABILITY AND YOUR DAMAGES FOR VIOLATIONS OF THE FMLA

For you to prevail and obtain a recovery, you must establish that your employer is liable by presenting facts including employer's business records and/or your testimony that shows Employer violated the FMLA or other applicable law. You must then establish the amount of damages that owed to you the same way.

E. INVESTIGATING AND EVALUATING YOUR CASE

1. PRE-SUIT PERIOD

The first step in your case is to investigate and evaluate your claim. As discussed in the Agreement, it commonly takes at least three (3) months from the date we receive the Agreement signed by you to complete the initial investigation and evaluation (the "Pre-Suit Period"). The most important part of the Pre-Suit Period is the documents, records, and other information obtained from you. For this reason, your help in preparing your case is critical. Without your help, your case cannot be as well prepared.

The length of the Pre-Suit Period may affect your potential recovery of wages, benefits, and other

compensation owed to you because of the statute of limitations. The FMLA essentially imposes a two (2) year statute of limitations. Specifically, the FLMA states that an action must be commenced within two (2) years after the date the cause of action accrued and the action will be forever barred if not commenced within two (2) years. The FMLA further states that an action arising out of a willful violation may be brought within three (3) years after the cause of action accrued. Establishing a willful violation under the law is difficult, so in most cases, compensation can only be recovered for only two (2) years prior to the lawsuit being filed.

Any delay in returning the representation package documents provided by us or providing us with the necessary information and documents to file the action will delay pursuing your FMLA claim and can reduce your potential recovery. By signing the Agreement, you confirmed your understanding of the above, and authorization and instructions to us to engage in a Pre-Suit Period.

While the Pre-Suit Period may limit your recovery, providing us with the necessary information to pursue your claim can help expedite your claim as well. During the Pre-Suit Period, we will work with you to gather information, records, documentation, and witnesses relating to you claim, including your timecards and paystubs. We will use this information to negotiate with employer and work to resolve your claim as quickly and efficiently as possible.

2. DOCUMENTS AND RECORDS

Documents and records relating to your employment are important evidence in your case for unpaid wages and/or overtime. If you have not already done so, you should immediately provide us with a copy of any and all documents concerning your case that are in your possession, custody, or control. The following are some of the documents that we request you provide to us:

- All time sheets;
- All paystubs;
- All payroll records and documents;
- All employee manuals, handbooks, policies, procedures, guidelines, and similar documents relating to the FMLA, or other applicable law;
- All training materials including training manuals and videos;
- All tax records and documents;
- All other employment records and documents.

Please assist us in our effort to help the environment by "going green" and not using paper. We request that you provide this information electronically by either (1) sending us an electronic disc with all documents and records in PDF format and all videos in mp2 format, or (2) e-mailing us copies of this information to Team-EmploymentLaw@JohnBales.com. If you need for us to send you a disc, we would be happy to do so.

In any event, please only provide us with a copy of any document in your possession. Do not provide us with any original documents. You should keep all of your original documents in your possession in a safe place. Any document you send us will be considered a copy and destroyed at the end of your case, unless you provide us with written confirmation that an original document was provided to us.

3. WITNESSES

An important way to help establish your claim is to obtain statements from eye witnesses who are willing to describe their first-hand knowledge of your employment with employer. Accordingly, we request that you provide us with the names and contact information for co-workers, friends, family

members, and former clients/customers that are aware of your employment with Employer and are willing to testify about the facts in your case.

4. CRIMES COMMITTED

You should immediately inform us of any crimes you have been accused of within the past twenty (20) years regardless of whether or not you pled guilty or were convicted for the crime. It is common for employer to have a background check done on employees and to ask the employee if they have a criminal record. Unfortunately, a criminal record for crimes for which your punishment has ended in the past ten (10) years could be damaging to your case. Your credibility may be attacked by the employer based on your criminal record or other bad acts. This may cause a jury to find in favor of the employer or substantially reduce any judgment entered by a jury.

5. FAMILY AND MEDICAL LEAVE ACT WORKSHEET

If we have not already done so, we will contact you soon to schedule an introductory telephone conference so that you can speak with your team and we can learn more about the facts of your case. Of course, if you would prefer, you may instead schedule an office conference at our St. Petersburg Client Center so that you may meet with your team in person.

During your introductory telephone conference, we will prepare the Family and Medical Leave Act Worksheet ("Worksheet") that requests basic information relating to your case including the following: (1) your job duties, (2) your rate and manner of pay, and (3) names and contact information for potential witnesses. After our introductory telephone conference, we will send you the Worksheet for your review. At that time, you must review and verify the information and inform us of whether all information specified in the Worksheet is complete and accurate. If any information is missing or inaccurate, you must make the correction/addition to the Worksheet. We will prepare your case based on your responses in the Worksheet.

6. REPRESENTATION LETTER

Based on the Agreement being fully executed and your authorization to do so, we will send correspondence to employer that informs them that we represent you in this matter. We will also request employer provide us certain records related to your employment and insurance information. Sometimes employer will request we provide it with a demand at this point, which includes an offer to settle your case against employer. If they request a demand, we will prepare the necessary documents for your review and approval. The demand is discussed in more detail below in the section titled Settlement Negotiations.

7. TOLLING AGREEMENT

We may attempt to enter into a tolling agreement with employer in certain cases. A tolling agreement is basically a contract between you and employer in which employer agrees, among other things, to waive it rights to contend that (1) your claim for non-payment of wages, benefits, or other compensation for violations under the FMLA and other applicable law are barred with respect to any time period relating to the statute of limitations that is covered by the tolling agreement and (2) any administrative agency or court does not have jurisdiction to entertain such claims under the FMWA and other applicable law. Hence, a tolling agreement provides that if you file a lawsuit before the expiration of the agreed upon

time, employer will consider the effective date of the tolling agreement as the date of filing the lawsuit.

F. SETTLEMENT NEGOTIATIONS

1. DEMAND FROM YOU TO EMPLOYER

In most cases, settlement negotiations start when you send a letter to employer demanding that it resolve your claim against it for a certain amount. Based on your authorization and instructions, we will advise employer that you are interested in settling and prepare your demand to employer based on the representations and information you provide to us. We will also prepare the Family and Medical Leave Act Spreadsheet ("Spreadsheet"), which will be used to calculate the amount of your initial settlement offer. Once the demand letter and Spreadsheet are prepared, we will provide you with a copy of them for your review and approval.

An employer in almost all cases will challenge the facts in the demand letter and Spreadsheet and make an investigation to find documents and witnesses that will dispute them. Please make sure we are aware of all information and witnesses whether or not good for your claim.

Your demand will include your initial offer to resolve your case and represents the potential recovery you may receive if a jury at trial ultimately awards that amount. You should not view the amount of the initial offer as the amount you will recover in your case because it usually is not. Instead, it is a negotiation tool meant to assist in our efforts to maximize your recovery by giving you the "room" to negotiate with employer. The reasonable settlement amount for your case will likely be less because, as in all cases, there are pros and cons, including the following:

2. BASED ON FACTS MOST FAVORABLE TO YOU

Your initial offer will most likely be based on the facts, records, and documents you provided to date that most favor you. It generally does not take into account any negative facts, records, and documents that employer may present throughout your case, including at trial. Employer will likely provide facts, records, and documents favorable to it and either refuse to pay any amount or at least provide an amount substantially less.

3. IGNORES THE RISK OF LITIGATION

Your preliminary demand does not take into account any of the risks you take on by continuing with litigation in your case. These risks significantly decrease the value of your claim because of the possibility that you may not recover at all at trial. Some of these risks are discussed in the section titled Considering Settlement Offers Made in Your Case. Please read through that section carefully every time you consider (a) making a settlement offer or (b) accepting/rejecting an offer made by employer.

4. INCLUDES AMOUNT FOR LIQUIDATED DAMAGES

Your initial offer demand will include a claim for liquidated damages. Liquidated damages may be claimed under federal law in an amount equal to any lost wages, benefits, or other compensation only if employer cannot establish that (1) the action or omission was in good faith, and (2) the employer had objectively reasonable grounds to believe that their act or omission did not violate the FMLA. In our experience, employers usually try to establish both of these things so that the court will not award liquidated damages. If they are successful in establishing such, the amount of your recovery that we

initially estimate will be significantly decreased.

5. LIKELY BASED ON A THREE (3) YEAR STATUTE OF LIMITATIONS

Your initial offer is likely based on a three (3) year statute of limitations. However, a three year statute of limitations can only be applied if an employer engaged in willful violation of the FMLA. Otherwise, it is a two (2) year statute of limitations. A willful violation is a high standard to achieve and seldom is accomplished. Accordingly, employer will most likely claim that at most the two (2) year statute of limitations applies and may prevail on this issue because they do not believe they engaged in a willful violation.

Accordingly, you most likely may only recover lost wages, benefits, or other compensation; and liquidated damages for a period of two (2) years prior to the date a lawsuit is filed with the court. However, your initial offer may be based on a period of three (3) years prior to the date the lawsuit was filed with the court. If employer establishes that a two (2) year statute of limitations is appropriate, the amount you may potentially recover at trial will decreased.

6. CONSIDERING SETTLEMENT COUNTER-OFFERS FROM EMPLOYER

There are many issues for you to consider when deciding on the amount of your settlement demand amount or whether to accept or reject an offer from employer. Some of these issues are listed below. Of course, if you wish to discuss these in more detail or other issues, please do not hesitate to call us.

G. RESOLUTION OF CLAIM

Settlement resolves your claims without trial. By continuing on with litigation and trial, it may be a year or two (2) before the case is resolved. For example, even if we prevail at trial, the employer can appeal that judgment. By settling, we should be able to conclude the matter so that you may receive your portion of the settlement money in a fairly short period of time after a settlement is reached.

1. RELEASE

You will likely be required to sign a release that includes a release of the employer from further responsibility and liability for at least your claims against them for violating the FLSA, FMWA, and other applicable law by failing to pay minimum wage and/or overtime compensation. Employer may also insist that you release them for all other claims including past and present injuries, damages, and losses sustained by you relating to employer. Essentially, if a settlement is reached and you sign a release, you will most likely not be able to bring any additional claims against employer.

2. WITHHOLDINGS AND OTHER DEDUCTIONS BY EMPLOYER

An employer generally deducts withholdings and other deductions from the settlement check(s) for unpaid wages and overtime and/or liquidated damages. These amounts represent the payment of federal income and social security taxes, child support, wage garnishment, and other withholdings and/or deductions employer may be required by law, court order, and/or contract to withhold and/or deduct. The amount of any withholdings and/or deductions by an employer are often unknown during settlement negotiations and usually result in your recovery being less than the amount agreed to in settlement or awarded by the court/arbitrator(s) for unpaid wages and overtime and liquidated damages.

Employer determines the amount of withholdings and other deductions and John Bales Attorneys does not participate in this process. Accordingly, John Bales Attorneys does not make any representations as to what such amounts will be or the amount of your recovery after withholdings and other deductions are subtracted by an employer. If you desire tax or financial advice or information, we recommend that you retain a separate attorney, accountant, or tax advisor practicing in these areas.

3. LIKELIHOOD OF RECEIVING SETTLEMENT FUNDS

You are more likely to actually receive compensation by settling. Sometimes employers are not solvent by the time a judgment is entered. Additionally, in the event that we do obtain a judgment against employer, we may not be able to collect any funds from employer based on the judgment. Accordingly, you should pay particular attention to employer's ability to pay a judgment because they may not have sufficient money and/or assets. Also, if we proceed into the discovery process, employer will likely incur significant legal expenses to pay their attorney. This could potentially exhaust the money and/or assets they currently have and affect your ability to recover from employer.

Even if employer does have sufficient money and/or assets, they may decide to abandon or voluntarily dissolve the corporation in an attempt to avoid liability for any demand or judgment. They may try to abandon or voluntarily dissolve the corporation but still continue to do similar business activities. While an attempt may be made to find assets, we do not handle this type of law and you will need to find a separate attorney that does. Accordingly, if the corporation is abandoned or dissolved, you may not ultimately receive any recovery.

4. RISKS OF DISCOVERY

If the case is not settled, the parties will most likely take extensive discovery that will include deposing you, past, and current employees of employer. During this time, employer may learn facts that weaken your claim. These facts may be used against you at trial to reduce or eliminate the amount of hours you claim you are owed. This will also add to the attorneys' fees and costs and will require the litigation to become more complicated.

5. CRIMINAL RECORD

Unfortunately, a criminal record for crimes that occurred in the past ten (10) years could be damaging to your case. Your credibility may be attacked by employer based on your criminal record or other bad acts. If they succeed in attacking your credibility, the jury may believe employer's assertions. This may cause the jury to find in favor of the employer or substantially reduce any judgment entered by the jury.

H. LITIGATION

If we are unable to reach a settlement agreement with employer during the Pre-Suit Period, we will likely begin the litigation process, which is usually a lengthy process and is without guarantee of recovery. The following outlines the typical litigation process. Of course, every case has its own unique facts, but this will give you a basic understanding of the process.

1. COMPLAINT

A complaint will be drafted and filed with the Clerk of Court. We will then attempt to have the

complaint served upon employer, which can take thirty (30) days or more depending upon the speed of the process serving company hired for the purpose of service. Once served, employer will have twenty (20) days to respond to the complaint by filing an answer.

2. DISCOVERY

After the answer is filed and, if applicable, the case is removed to federal court, we will begin the discovery process that includes employer requiring you to respond to (1) written interrogatories (questions), (2) requests to produce certain documents and records, and (3) requests to admit to certain facts. Employer may also depose you (ask you questions, which you will be required to answer under oath) and other parties related to your claim as part of the discovery process. During this process, employer may learn facts that weaken your claim or call into question your credibility based on any negative past conduct and witness testimony. Employer may be able use this against you at trial to cause the jury to find in favor of employer or substantially reduce any judgment entered by the jury. The following discusses some of the discovery tools that may be used in your case.

3. INTERROGATORIES

Interrogatories are questions that you are required to provide your sworn responses to that can be used against you at trial, including attacking your credibility. If interrogatories are served on you, you should carefully read the questions and write down all the information you have in response, including dates, witnesses, addresses, facts, and similar information that responds to each interrogatory. It is important that you answer each interrogatory that is given to you unless the response calls for information that is irrelevant or protect by privilege. We will help you determine what responses request irrelevant and privileged information so that we may make the proper objections to them.

4. REQUESTS FOR PRODUCTION

Requests for Production request you to provide certain documents to employer. If requests for production are served on you, you should respond to each request unless it asks for irrelevant or privileged documents. We will help you determine what responses request irrelevant and privileged information so that we may make the proper objections to them.

5. REQUESTS FOR ADMISSIONS

Requests for Admissions request you to admit certain facts as true in your case. You must respond to each request made by admitting the facts as true or denying the fact as true. Any fact that you admit as true is deemed not to be in dispute in your case and we are unable to argue that that fact is not true at trial. If requests for admission are served on you, you should respond to each request unless it asks for irrelevant or privileged information. We will help you determine what requests ask for irrelevant and privileged information so that we may make the proper objections to them. Any request that you fail to provide an answer to will be deemed admitted.

6. DEPOSITIONS

A deposition is your oral testimony taken under oath by a court reporter in response to questions by other Employment Law Attorneys, and in some cases, by an Employment Law Attorney representing you. The testimony is transcribed after the deposition is concluded and is available for use by either side

for summary judgment or trial. A judge or jury is not present during the deposition; only the lawyers, the witness, the court reporter, and a representative of each party usually attend. In all likelihood, the proceedings will be held in one of the attorneys' offices or in a court reporter's office.

If a deposition is scheduled in your case, we will provide to you the Deposition Preparation Booklet to use in preparation of the deposition. The booklet discusses many topics relating to deposition including (a) the purpose of a deposition, (b) what to wear, and (c) suggestions relating to your testimony. If your deposition is within two (2) weeks and you have not yet received the Deposition Preparation Booklet, please notify us in writing immediately so that we may provide it to you.

7. MEDIATION

Mediation is a confidential, informal conference where the parties to a dispute meet with a neutral, impartial person called a mediator, in an effort to reach a mutually acceptable agreement. A judge or jury is not present during mediation; only the lawyers, the parties, and the mediator. The mediator controls the mediation, but does not have authority to make a binding decision or force the parties to accept a settlement with which they are not satisfied. The mediator helps the parties voluntarily reach a settlement of the dispute. The mediator is not to be biased in favor of either party, but may bring up positive and negative issues in an attempt to have all parties understand the entire case.

If mediation is scheduled in your case, we will provide to you the Mediation Preparation Booklet that provides information to assist in preparing for mediation. The booklet discusses many topics relating to mediation including the purpose of mediation and what to wear. If your mediation is within two (2) weeks and you have not yet received the Mediation Preparation Booklet, please notify us in writing immediately so that we may provide it to you.

8. TRIAL

The purpose of a jury trial is to review facts of your claim, including your lost wages. If trial is scheduled in your case, we will provide to you the Trial Preparation Booklet to help you prepare for trial. The booklet discusses many topics relating to trial including the stages of the trial and what to expect. If your trial is within four (4) weeks and you have not yet received the Trial Preparation Booklet, please immediately notify us in writing so that we may provide it to you.

9. APPEAL

Please be advised that even if we prevail at trial, employer can appeal the judgment or sometimes may not be solvent by the time a judgment is entered. Therefore, even if we obtain a judgment we may not be able to collect any funds from employer based on the judgment. Accordingly, you need to pay particular attention to employer's ability to pay a judgment because they may not have sufficient money and/or assets. Also, if we proceed into the appeal process, employer will likely incur significant legal expenses to pay their attorney. This could potentially exhaust the money and/or assets they currently have and impact the recovery available to you from employer. . Even if employer does have sufficient money and/or assets, they may decide to abandon or voluntarily dissolve the corporation in an attempt to avoid liability for any size judgment.

I. YOUR DAMAGES

There are basically two components to your case: (1) your FMLA Claim, and (2) your Liquidated Damages

Claim. There may also be a claim for Retaliation under certain circumstances. Each component is addressed below:

1. FMLA CLAIM

An employee may be covered for leave under the FMLA if they meet specific criteria. These criteria include (a) being a covered employee under the FMLA, (b) being employed by a covered employer under the FMLA; and (c) have taken leave for specific family and/or medical reason under the FMLA. To be a "covered employee" under the FMLA, you must have been employed by a covered employer and work at a worksite within 75 miles of which that employer employs 50 people; have worked at least 12 months (which do not have to be consecutive) for the employer, and have worked at least 1,250 hours during the 12 months immediately before the date FMLA leave began. A "covered employer" under the FMLA includes private employers, and certain public employers, who engage in commerce, or in any industry affecting commerce, and who has 50 or more employees each working day during at least 20 calendar weeks in the current or preceding calendar year.

Under the FMLA, a covered employee is entitled to take job-protected, unpaid leave for specified family and medical reasons. Eligible employees are entitled to:

- **12 workweeks of leave in any 12-month period for:**
  - Birth and care of the employee's child, within one year of birth;
  - Placement with the employee of a child for adoption or foster care, within one year of the placement,
  - Care of an immediate family member (spouse, child, parent) who has a serious health condition;
  - For the employee's own serious health condition that makes the employee unable to perform the essential functions of his or her job, and
  - Any qualifying exigency arising out of the fact that the employee's spouse, son , daughter, or parent is on active duty or has been notified of an impending call to order to active duty in the U.S. National Guard or Reserves in support of a contingency operation.
- **26 workweeks of leave** during a single 12-month period to care for a covered servicemember with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the servicemember.

Additionally, if an employee was receiving group health benefits when leave began, an employer must maintain them at the same level and in the same manner during period of FMLA leave as if the employee had continued to work.

An employee may take FMLA leave intermittently or on a reduced leave schedule when medically necessary. Taking intermittent leave for certain reasons such as birth of a child is subject to the employer's approval. Employer approval is not necessary in certain circumstances as medically necessary.

When the need for leave is foreseeable, an employee must notify the employer at least 30 days in advance, or as far in advance as is reasonable. When the leave is not foreseeable, the employee must provide notice as soon as practicable under the circumstances. An employer may require supporting documentation from an employee's care provider and request periodic reports of the employee's intent to return to work.

Upon returning to work from FMLA leave, an employee is entitled to be restored to the same or an equivalent job with equivalent pay, benefits, and other terms and conditions of employment. [1]

We will assist you in calculating the amount of any recovery owed to you under the FMLA based on the information and documentation you provide to us. As discussed and authorized by you, once we have calculated and you have approved the amount of recovery an employer owes you, we will generally use this amount to make the initial demand to employer to resolve your claim. As discussed, this amount is the potential recovery a jury may award at trial if you are successful and the jury rejects all of the defenses from employer. You should not view this initial amount as the amount you will recover in your case because it usually is not. Instead, it is a negotiation tool to assist in our efforts to maximize your recovery by giving you the "room" to negotiate with employer. The reasonable settlement amount for your case will likely be less especially after we are advised of the employer's defenses. We have several negotiation tools that may help you maximize your recovery, which we will evaluate with you based on the facts of your case. The section below titled Settlement Negotiations discusses this further.

2. LIQUIDATED DAMAGES CLAIM

The FMLA also provides for the potential recovery of liquidated damages in addition to actual damages. Liquidated damages are calculated as an amount equal to wages, salary, employment benefits or other compensation denied or lost due to an employer's violation of the FMLA plus interest on these amounts. An employee is entitled to liquidated damages under the FMLA unless the employer can demonstrate (a) the action or omission was in good faith; and (b) the employer had objectively reasonable grounds to believe that their act or omission did not violate the FMLA. In our experience, employers usually try to establish both of these so that the court will not award liquidated damages. If they are successful in establishing such, the amount of your recovery will be significantly decreased.

3. RETALIATION CLAIM

Additionally, you have been advised that that you may also have a claim for recovery of damages from employer if they retaliate against you for engaging in your rights under the law. You can engage in your rights by, among other things, doing the following:

- Making internal workplace complaints relating to an FMLA claim or employer's failure to properly pay wages and overtime;
- Contacting or filing a complaint with government agencies relating to an FMLA claim or employer's failure to properly pay wages and overtime;
- Filing a lawsuit against employer relating to FMLA or employer's failure to properly pay wages and overtime, and
- Testifying against employer relating to an FMLA claim or employer's failure to properly pay wages and overtime.

Essentially, employer retaliates when they punish you for engaging in a legally protected activity. Examples of employer retaliating against an employee for making a claim may include, but are not limited to, improper firing, demotion, discipline, salary reduction, job or shift reassignment, and other negative employment actions. The circumstances of the situation must be evaluated to determine if there is retaliation.

A question often asked by employees that are still employed by an employer that has failed to comply with the FMLA is whether employer will fire employee or take some other type of negative action if employee makes a claim. Of course, the actions that employer will or will not take cannot be determined. Employer may fire an employee or take other negative employment actions against an employee even if it is against the law. In this situation, a negative employment action may provide an employee with a claim against the employer for retaliation but may not prevent the negative employment

action.

Please note we do not represent you in claims against employer for retaliation, or any other claims or lawsuits except claims for violations of the FMLA, unless the Authority to Represent and Contingency Fee Agreement specifically states otherwise. If you think your employer retaliated against you, you should immediately advise us of such in writing so that we can determine if we can assist you with such a claim in addition to your unpaid wages and/or overtime claim.

III. ATTORNEYS' FEES AND COSTS INCURRED IN PURSUING EMPLOYER FOR LIABILITY AND YOUR DAMAGES FOR VIOLATIONS OF THE FMLA

Once you prevail in establishing employer's liability and your damages, the FMLA provides for a "fee shift," which means that Employer must pay a reasonable amount of the attorneys' fees and costs incurred by us in pursuing your case. Throughout your case, we will address Employer's liability and your damages for interference or retaliation in violation of the FMLA.

The Authority to Represent and Contingency Fee Agreement ("Agreement") that you signed prior to the start of our representation determines the amount of attorneys' fees and costs in your case. The Agreement states, in part, the following:

The CLIENT understands and agrees that the attorneys' fee and costs amount will be negotiated with the at fault party separately from and without regard to the amounts of the unpaid/lost wages or other damages, if any, that the CLIENT is seeking. The CLIENT further understands and agrees that any check made payable to the FIRM for attorneys' fees and costs may, at the sole discretion of the FIRM, be deposited directly into the FIRM's operating account.

If a party is required by contract, statute, rule, or otherwise, or a party agreed in settlement, to pay fees for legal services, the CLIENT agrees that the FIRM's fees shall be based on either the applicable percentages of the total amount recovered as set forth above in this Contract, the total amount of fees awarded by the Court or arbitrator, or the total amount of fees a party agreed in settlement to pay, whichever is greater.

These provisions are included in the Agreement because the FMLA, and similar laws include what is commonly called "an attorneys' fee shift provision." This means that employers may be required to pay an employee's reasonable attorneys' fees and costs when the employee prevails in the case. We believe this provision is included in these laws because, in most cases, without this fee shift an employee would not be able to retain an attorney that would accept the case on a contingency fee basis or could not afford to pay an attorney at standard hourly billing rates. In such an event, an employee like you could not obtain an Employment Law Attorney to represent them and would have little recourse against an employer who violated these laws.

Unfortunately, employers in most cases will vigorously defend against paying you any amount for failing to pay unpaid wages and/or overtime. This will require our firm to expend a substantial amount of attorneys' time and incur significant costs on your behalf to pursue your claim. Consequently, in most cases, the amount recovered from Employer for payment of attorneys' fees and costs is more than the amount recovered for violations of the FMLA.

IV. IMPORTANT REMINDERS

A. CORRESPONDENCE

At various times throughout your case, you may receive correspondence or other documents from us. Please review these items carefully and comply with any request as soon as it is received. The faster we receive all necessary information, records, and documentation, the sooner we can present your case.

B. SOCIAL MEDIA

PLEASE REMEMBER: It is very important that you do not discuss any part of your case with anyone except a member of our firm. This includes not discussing the case on Facebook, Google+, LinkedIn, YouTube, Twitter, MySpace, Instagram, any blog, any chat room, or any other similar social media website/application. Information and pictures posted on these websites may be discovered by the opposing party in your case and used against you. Marking these pages as private may not protect you from the information and pictures being used against you. Please advise us of any Facebook or other social media account you may have. Further, we strongly encourage you to archive your Facebook or any other social media account and stop using it during the entire time your case is pending. However, you should not destroy or delete your social media website/application or destroy any information or pictures that are currently on it. Any such destruction may be considered spoliation of evidence, which may cause the court to enter sanctions against you. You can consider reopening your website/application after your case is completed.

C. KEEPING US INFORMED

Please immediately inform us of any new developments or changes that may affect your claim. We need to know of anything that you think helps or hurts your case so that we can consider it when evaluating your claim. All information and documentation is important in your and our effort to be successful in your case.

V. YOUR JOHN BALES ATTORNEYS TEAM

Although your attorney team may not be able to always be immediately available to answer your questions directly, your client managers should be able to obtain an answer to most of your questions.

If you have an emergency, please consider obtaining the attorney's cell phone. Additionally, you may consider calling the Firm Administrator, who is also dedicated to serving you.

For your convenience, we offer local telephone numbers for our clients to call our office at any time. Please do not hesitate to ask us for one in your area. Be sure to program this number into your phone(s) for your convenience.

As you know, communications between you and us as your law firm are important and are protected by the Attorney/Client Privilege. These communications can be by telephone (home, mobile, and work), in person meetings, email (personal only), and/or mail to the address provided above, which will be used by us to provide documents to you. Accordingly, please immediately advise us in writing of any change to telephone numbers (home, mobile, and work), email addresses (personal only), and/or your mailing address. Unless you notify us otherwise in writing, we will be using the above address for all communications with you as is appropriate.

Please keep in mind that the Attorney/Client Privilege only applies to communications between you and members of the firm, and you should not discuss your case with anyone or provide them with any of the documents from our firm because such communications may then become discoverable. Additionally, you should not be receiving any communications from our office at your work email, only your personal email. There have been court decisions holding that emails sent to an office email address is not protected by the

Attorney/Client Privilege.

Please understand that as your case progresses, your team of attorneys and client managers may change to improve service to you and assist in the effective resolution of your case. We will keep you advised of any such changes in your team.

VI. REFERENCE MATERIALS

For more information, we encourage you to visit our website at www.JohnBales.com. Our website includes a biography of our firm and each of our lawyers, and includes various other resources that you may find helpful.

VII. JOHN BALES ATTORNEYS ACCIDENT & INJURY TOOLKIT APP

Additionally, we have developed for your use the John Bales Attorneys Accident & Injury Toolkit app that is available on iPhones and Android phones. You can download the iPhone app in the "App Store" and the Android app in "Google Play." The app includes a quick reference to our phone number and 911; a map locator of the nearest hospital to your current location; an accident tips checklist, a check list for capturing information about an accident; a case consulting section; an expense log; and a place to store a photo of your insurance card.

Of course, we encourage you to advise others of this app and hope that it will be helpful in the unfortunate circumstances when someone is hurt in an accident.

VIII. MAKE SURE ALL OF YOUR QUESTIONS ARE ANSWERED

Again, please allow me to emphasize that we want all of your questions to be answered. Accordingly, we encourage you to always contact us if you want to discuss any aspect of your claim.

[1] Source: Health Benefits, Retirement Standards, and Workers' Compensation: Family and Medical Leave, United States Department of Labor, available at http://www.dol.gov/compliance/guide/fmila.htm#who.