Ten Healthcare Laws All Physicians Should Know

SCAFP Summer Break Away – 2023

Kelly M. Jolley, Esq.

Kelly Jolley

KJOLLEY@JOLLEYLAWGROUP.COM

803.830.6500 Columbia

843.681.6500 Hilton Head

Objectives

Discuss	Review	Provide
Discuss ten laws physicians should know to protect themselves and their patients	Review success tips for meeting compliance standards	Provide an overview of best practices and corporate governance matters

OVERVIEW

- HCQIA
- CHIP
- ANTI-KICKBACK ACT
- PSQIA
- EMTALA
- STARK LAW
- GINA
- HITECH ACT
- FALSE CLAIMS ACT
- FLSA

HCQIA

Health Care Quality and Improvement Act of 1986

What is HCQIA?

The Health Care Quality Improvement Act of 1986

HCQIA provides immunities for hospitals and others in the peer review process that subject health care professionals to “Professional Review Actions.”

Why was HCQIA Created?

Prior to the passage of the HCQIA, physicians were moving from state to state without disclosure of prior incompetent performances, and physicians were subject to the threat of monetary damages when participating in professional peer review.

Why was HCQIA Created?

HCQIA was adopted out of concern that medical professionals who were sufficiently fearful of the threat of litigation would simply not do meaningful peer review, thus leaving patients at the mercy of people who should have been corrected or removed from their positions.

What does HCQIA require?

There are Four General standards to establish immunity under HCQIA:

- It had a reasonable belief that its action furthered quality health care.
- It made a reasonable effort to obtain the facts.
- The physician being reviewed received adequate notice and hearing (i.e., due process) procedures.
- The organization had a reasonable belief that its actions were warranted.

How does HCQIA relate to you?

- In addition to providing protection during peer reviews, HCQIA created a national practitioner data bank that is used to track inept, incompetent, or unprofessional physicians.

- HCQIA also created procedural rules for due process, privilege restrictions, and reporting and disbursement of information.

Important Note on HCQIA

It is important to remember the HCQIA provides only conditional immunity and ultimately depends on compliance with HCQIA requirements.

CHIP

The Children's Health Insurance Program

What is CHIP?

The Children's Health Insurance Program

CHIP was created as part of the Balanced Budget Act of 1997 and is a partnership between federal and state governments that offers affordable health coverage for children in families that earn too much money to qualify for Medicaid.

Why was CHIP Created?

In 1997, 10 million children were without health insurance.

Since the enactment of CHIP, the number of children without health insurance decreased to 3.8 million in 2016, primarily due to CHIP and community outreach.

What does CHIP cover?

While coverage differs from state to state, all provide comprehensive coverage for the following:

- Routine check-ups
- Immunizations
- Doctor visits
- Prescriptions
- Dental and vision care
- Inpatient and outpatient hospital care
- Laboratory and X-ray services

What does CHIP require?

Each state has its own program with its own rule regarding who qualifies for the program, so it is important to check with your state.

However, anyone can apply through Health Insurance Marketplace®, and if someone within the family qualifies for CHIP, then they will be contacted by the CHIP in their specific state.

How does CHIP relate to you?

- According to a 2018 statistic, over 9.6 Million Children are enrolled in CHIP, so as a physician, you may come into contact with families utilizing CHIP or who may be eligible for the program.

- It is important to check the program in your state for more information on specific rules and coverage pertaining to your state.

The Anti-Kickback Act

What is the Anti-Kickback Act?

The Anti-Kickback Act prohibits the knowing and willful payment of "remuneration" to induce or reward patient referrals or the generation of business involving any item or service payable by the Federal health care programs

Why was the Anti-Kickback Act created?

In 1972, Congress passed the Anti-Kickback Statute to ensure Medicare and Medicaid patients received sound medical advice and that referrals of patients to other health care providers were based on the best interests of the patients and not the potential benefit to the referrer.

What issues arise out of Kickback Schemes?

Although a number of issues can result from kickback schemes, here are a few notable ones:

- Over-utilization
- Increased program costs
- Corruption of medical decision-making
- Patient steering
- Unfair competition

What are the consequences of the Anti-Kickback Act?

If a physician is caught receiving kickbacks, then they could be:

- fined,
- excluded from Federal Heath Care Programs,
- or jailed.

Important Note on the Anti-Kickback Act

Its important to note that A physician can be guilty of violating the AKS even if the physician actually rendered the service and the service was medically necessary.

How does the Anti-kickback Act relate to you?

Physicians are popular targets for kickback schemes for several reasons:

- Physicians can refer patients to other physicians or certain health care providers
- Physicians can prescribe certain medications,
- Physicians can determine what services a patient receives.

How does the Anti-kickback Act relate to you?

However, there are times when kickbacks are a part of legitimate business activities, and in those cases, the Department of Health and Human Services has created a series of safe harbors.

So, if a physician's conduct falls under one of the safe harbors codified in 42 C.F.R. 1001.952 et seq., then the physician will not be prosecuted.

PSQIA

The Patient Safety and Quality Improvement Act of 2005

What is PSQIA?

The Patient Safety and Quality Improvement Act of 2005

This Act creates a voluntary reporting system designed to improve the data available to assess and resolve patient safety and healthcare quality issues.

Why was PSQIA created?

PSQIA was created in response to a report conducted by the Institute of Medicine which showed thousands of deaths each year stemmed from preventable medical errors.

In addition to the moral obligation to do something, medical errors are costly, thus it was recognized that something needed to be done.

How does PSQIA work?

This program is voluntary and provides a way for any health care provider to share sensitive information pertaining to patient safety with Patient Safety Organizations.

How does PSQIA work?

Under PSQIA, many health care providers who share information can be protected from liability under the Patient Safety Work Product rule.

- This includes information collected and created during the reporting and analysis of patient safety events.

How does PSQIA relate to you?

By creating a safe reporting system, more health care providers will be willing to participate. Greater reporting and analysis of patient safety events will yield increased data and a better understanding of patient safety events.

Important Note on PSQIA

It is important to note that HHS can impose civil money penalties for violations of patient safety and confidentiality.

The maximum civil money penalty that may be imposed for violation of the confidentiality provisions is $11,000.

EMTALA

The Emergency Medical Treatment and Labor Act

What is EMTALA?

Emergency Medical Treatment and Labor Act

EMTALA guarantees emergency health care by requiring healthcare providers to deliver medical services regardless of the patient's ability to pay.

Why was EMTALA created?

EMTALA was enacted by Congress in 1986 as part of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985. Prior to this, health care providers were not required to render service if the patient was uninsured or was unable to pay.

Why was EMTALA created?

It was designed to prevent hospitals from transferring uninsured or Medicaid patients to public hospitals without, at a minimum, providing a medical screening examination to ensure they were stable for transfer.

EMTALA was enacted in 1986 but has since remained an unfunded mandate.

What does the EMTALA require?

The law requires caregivers to stabilize the patient and provide treatment until a point that the patient remains stable, such as with injury or during child birth.

If the care provider is unable or unwilling to provide such service, the provider must transfer the patient to a capable facility.

How does EMTALA relate to you?

The EMTALA made two main provisions for physicians in the statute:

- A penalty on a physician who fails to respond to an emergency situation when he is assigned as the on-call physician.

- A physician who signs a certification in support of an appropriate transfer is liable if he knew or should have known that the certification was false.

Stark Law

Physician Self-Referral Law

What is the Stark Law?

Physician Self-Referral Law, also known as the Stark law prohibits physicians from referring patients to receive "designated health services" payable by Medicare or Medicaid from entities with which the physician has a financial relationship.

Why was the Stark Law Created?

Stark Law was originally introduced by U.S. Representative Pete Stark of California in the late 1980s. It was enacted in 1989 to prevent financial incentives from improperly influencing medical decision-making, which can lead to excessive and unnecessary tests and services.

What does the Stark Law Require?

There are three main provisions of the Stark Law:

1.) It prohibits healthcare providers from referring Medicare patients for certain health services to a business in which the physician has a financial or familial interest.

2.) It prohibits the billing of Medicare or other insurance providers for health services when an improper physician referral was made.

3.) It establishes several exceptions

What are Designated Health Services?

- Clinical laboratory services
- Physical therapy, occupational therapy, and outpatient speech-language pathology services
- Radiology and certain other imaging services
- Radiation therapy services and supplies
- DME and supplies
- parenteral and enteral nutrients, equipment, and supplies
- Prosthetics, orthotics, and prosthetic devices
- Outpatient prescription drugs
- Inpatient and outpatient hospital services.

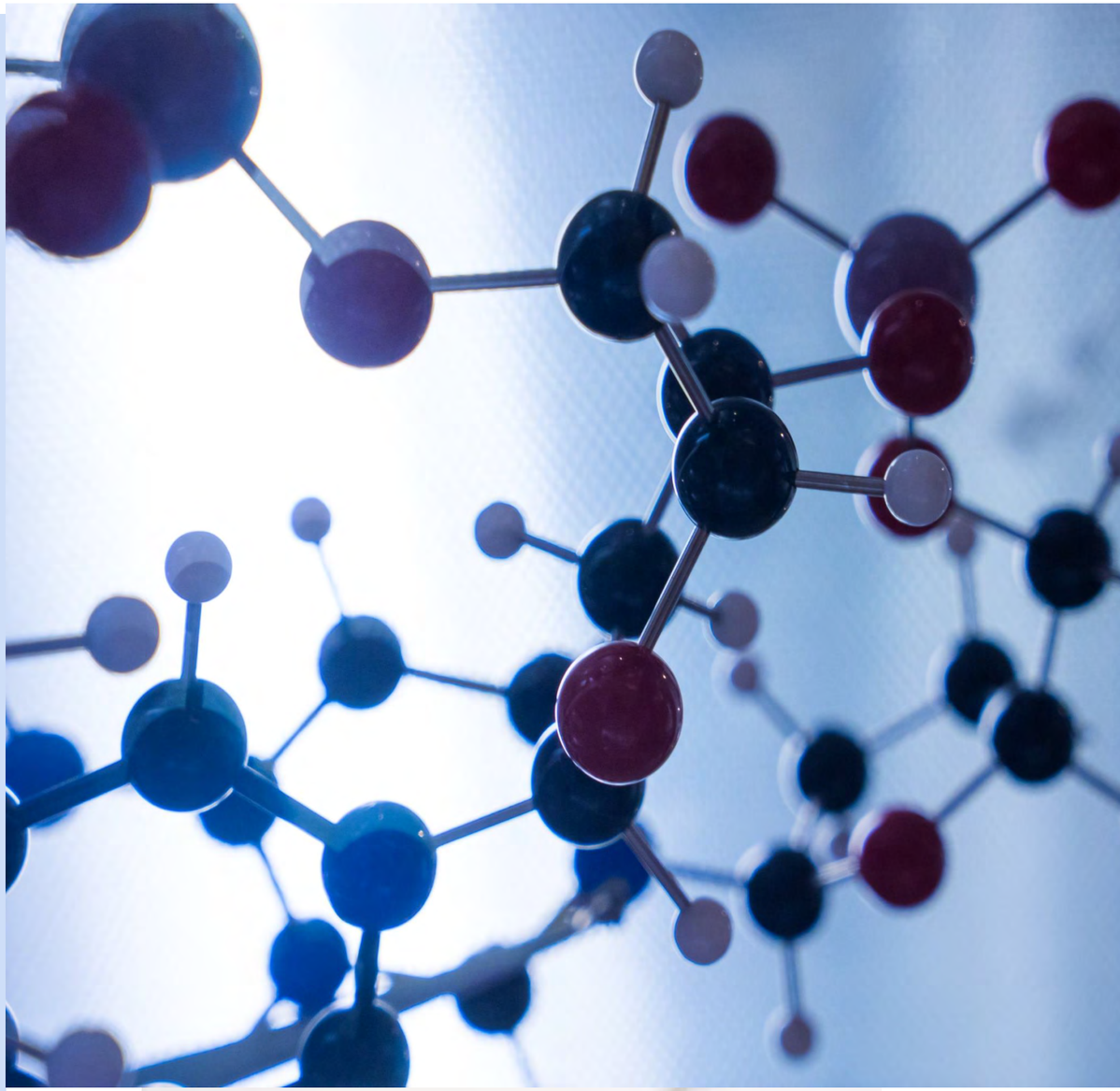
How does the Stark Law relate to you?

The Stark law is a strict liability statute, which means proof of specific intent to violate the law is not required. To avoid violating the Stark Law, consider the following:

- Create a database of all healthcare employment contracts
- Keep a log of all possible conflicts of interest
- Document all payments between parties

GINA

Genetic Information Nondiscrimination Act of 2008



What is GINA?

The Genetic Information Nondiscrimination Act of 2008 protects Americans from discrimination based on their genetic information in both health insurance and employment.

Why was GINA created?

GINA was signed into law on May 21, 2008, to protect individuals against discrimination based on their genetic information.

There are two Titles in GINA:

- Title I prohibits discrimination based on genetic information in health coverage.
- Title II prohibits discrimination based on genetic information in employment.

What is Genetic Information According to the Law?

Genetic information includes family medical history, manifest disease in family members, and information regarding individuals' and family members' genetic tests.

What does Title I of GINA require?

Health insurers may not use genetic information to determine if someone is eligible for insurance or to make coverage, underwriting, or premium-setting decisions.

Title II of GINA's health insurance protections do not cover long-term care insurance, life insurance, or disability insurance

What does Title II of GINA require?

Title II is implemented by the Equal Employment Opportunity Commission (EEOC) and prevents employers from using genetic information in employment decisions.

- This includes hiring, firing, promotions, pay, and job assignments.

Employers cannot require or request genetic information or genetic tests as a condition of employment.

How does GINA relate to you?

While GINA does not apply to employers with fewer than 15 employees, it does provide a privacy safeguard for individuals regarding personal and family genetic information.

With new advances in science, technology, and data management, GINA plays a vital role in establishing a baseline of protection for all Americans against discrimination.

The HITECH Act

Health Information Technology for Economic and Clinical Health

What is the HITECH Act?

The HITECH Act was created to promote and grow the adoption of health information technology, specifically, the use of electronic health records (EHRs) by healthcare suppliers.

Why was the HITECH Act Created?

Prior to the introduction of the HITECH Act in 2008, only 10% of hospitals had adopted EHRs.

The HITECH Act introduced incentives to encourage hospitals and other healthcare providers to make the change.

By 2017, 86% of office-based physicians had implemented an EHR, and 96% of non-federal acute care hospitals has added certified health IT.

What does the HITECH Act Require?

There are five goals of the HITECH Act

- Improve quality, safety, and efficiency
- Engage patients in their care
- Increase coordination of care
- Improve the health status of the population
- Ensure privacy and security of patient information; increased penalties under HIPAA for violations & limited allowable charges for patient records

What does the HITECH Act Require?

The HITECH Act contains four subtitles:

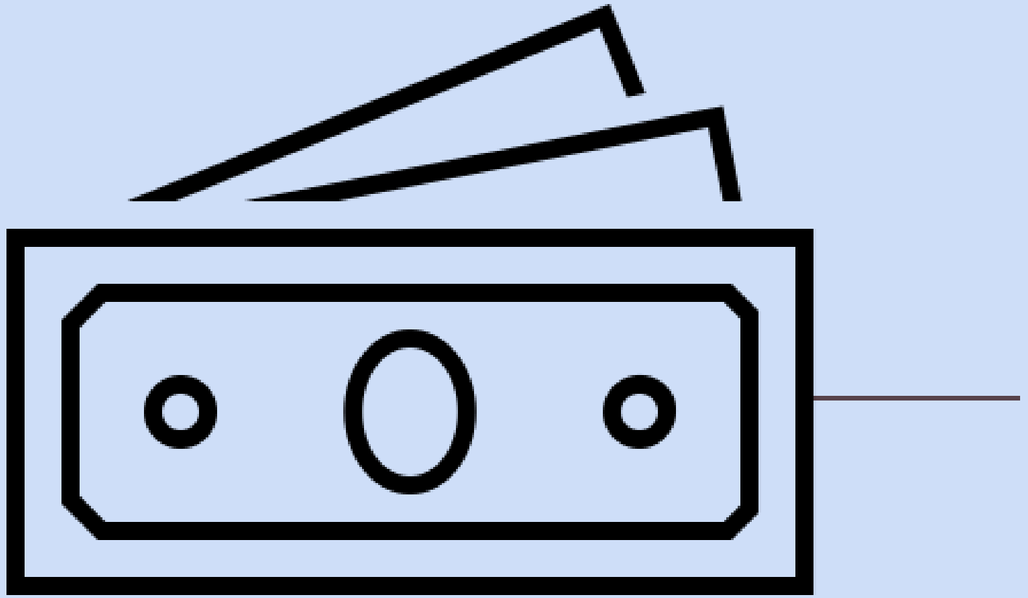
- Subtitle A – Promotion of Health Information Technology
- Subtitle B – Testing of Health Information Technology
- Subtitle C – Grants and Loans Funding
- Subtitle D – Privacy

How does the HITECH Act relate to you?

The purpose of the HITECH Act is to promote the adoption and meaningful use of health information technology among healthcare providers.

Incentivizing healthcare groups to adopt technology in their practices not only helps to further progress healthcare but also to improve efficiency and care coordination.

The False Claims Act



What is the False Claim Act?

The False Claim Act is a federal law that makes it a crime for any person or organization to knowingly make a false record or file a false claim regarding any federal health care program

Why was the False Claims Act Created?

The False Claims Act was passed during the Civil War in response to fraud perpetrated by contractors taking advantage of the United States Military. Today it has evolved into protection for the government against overcharging of services.

What does the False Claims Act Require?

It is illegal to submit claims for payment to Medicare or Medicaid that you know or should know are false or fraudulent.

Examples that may violate the False Claims Act if done knowingly include:

- Billing for services not rendered
- Knowingly submitting inaccurate claims for services
- Taking or giving a kickback for a referral
- Up-coding for medical procedures
- Performing or ordering unnecessary procedures

How does the False Claims Act Relate to You?

How can Physicians avoid violations?

- Physicians should understand the rules that relate to the services and goods being billed

- Physicians should immediately notify their supervisor or the Compliance Office to which they may be required to remedy the issue by making changes to prevent the problem from continuing and from happening again.

FLSA

The Fair Labor Standards Act

What is the FLSA?

The Fair Labor Standards Act is a federal law that creates the right to a minimum wage, overtime eligibility, and recordkeeping for full-time and part-time employees at the state and federal levels and for those working in the private sector.

Why was FLSA Created?

The FLSA was created in 1938 in response to the Industrial Revolution and the Great Depression. The purpose of the FLSA was to protect workers from abuse and to stop child labor.

What does the FLSA Require?

Wages

- Covered, non-exempt employees must be paid at least minimum wage for all hours worked.
  - Effective July 24, 2009, the minimum wage is $7.25

Overtime

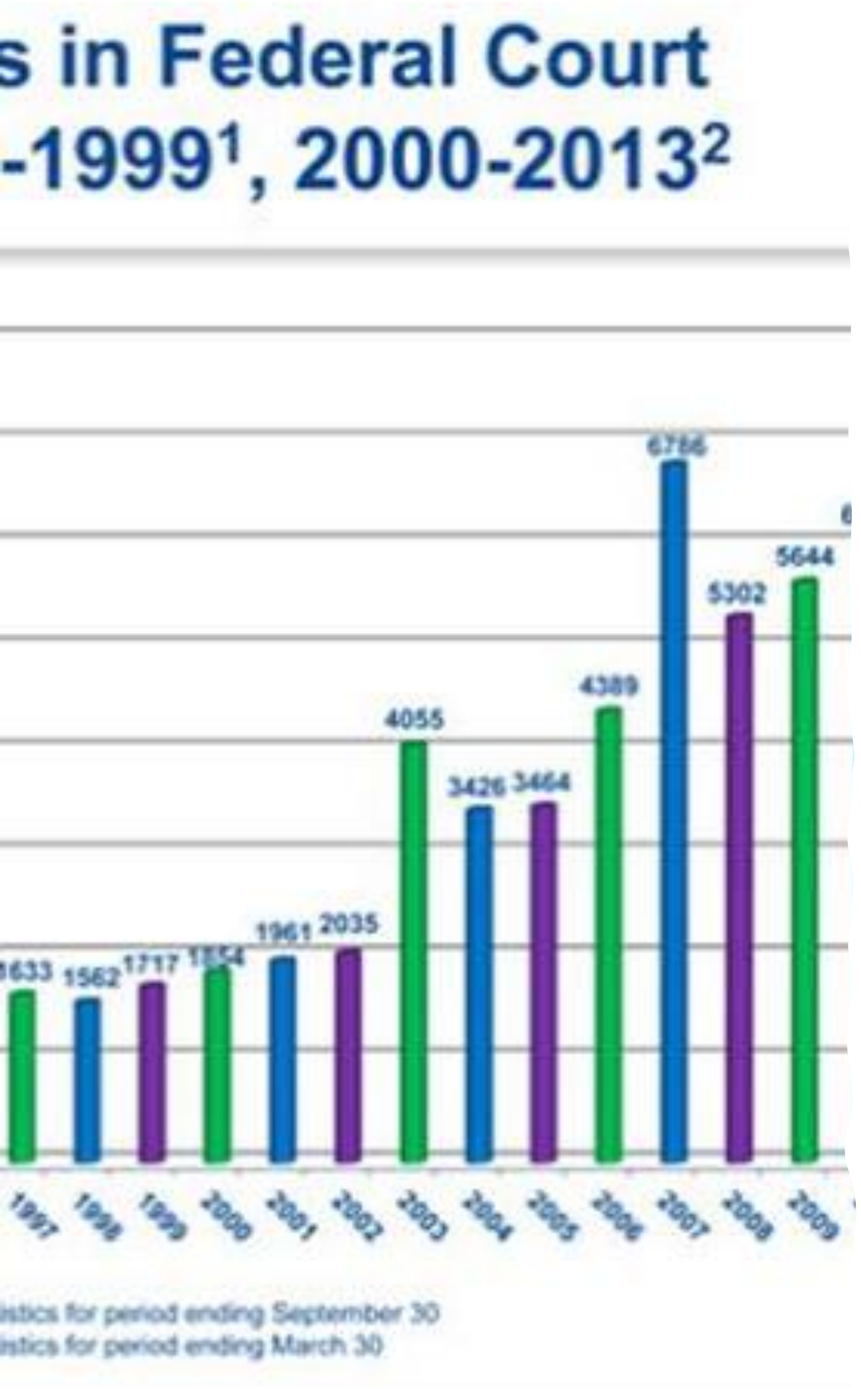
- Employees covered by the Act must receive overtime for hours worked over 40 in a workweek
  - Rate must be no less than half of their regular rate of pay

Recordkeeping

- Records must be kept by an employer for at least three years

How does FLSA Relate to You?

Understanding the laws affecting employee wages and hours is critical to any successful business operation.



Wage and Hour

Wage and hour law is regulated by both the federal Fair Labor Standards Act (FLSA) and a variety of divergent state laws.

- Overtime, Rest Periods, Meal Periods and Payment of Commissions
- Plaintiffs brought 7,764 suits between April 1, 2012, and March 31, 2013, about a 10 percent jump since 2012. Up for a 5th straight year.

Wage and Hour

Top three groups of employees most likely to bring a wage claim:

- Salaried employees who believe they are owed overtime pay;
- Hourly workers who contend they weren't paid for all hours worked;
- Restaurant workers who claim they are owed additional pay under the FLSA's "tip credit" provision.

FLSA "White Collar" Exemption: Executive Duties

- Primary duty is management of enterprise or customarily recognized department or subdivision
- Customarily and regularly directs work of two or more employees
- Authority to hire, or fire employees; or, recommendations as to hiring, firing, advancement, promotion, change of status, given particular weight

FLSA "White Collar" Exemption: Exempt Medical Professions

Doctors, Registered Nurses

Registered or Certified Medical Technologists

- 3 years pre-professional study in accredited college or university plus 1 year professional study in accredited school of medical technology

Dental Hygienists

- 4 years pre-professional and professional study in accredited college or university

Certified Physician Assistants

- 4 years pre-professional and professional study, and graduation from accredited physician assistant program

Non-Exempt Professions

Licensed Practical Nurses

Paralegals, legal assistants

Engineering Technicians

Accounting clerks, bookkeepers typically performing routine work

Cooks performing predominantly routine mental, manual, mechanical, or physical work

Common Overtime Violations

- **“White Collar” Exemptions:** Misapplication of exemption, or improper assumption that all salaried employees are exempt
- **Deductions:** Improper deductions in OT weeks
- **Misclassification:** Improper treatment of employee as independent contractor
- **Hours worked:** Failure to record, pay for all hours worked
- **State Law:** Confusion between state and federal law

Review

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Kelly M. Jolley

John M. Jolley

Ariail B. Kirk

Hillary G. Meyer

Roman A. Dodd

Rebekah Thompson

Jolley Law Group, LLC

www.jolleylawgroup.com

Columbia – (803)830-6500

Hilton Head Island & Bluffton – (843)681-6500