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# Healthcare Hour and Schedules Webinar

May 11, 2023

**Seyfarth Shaw LLP**

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# Speakers

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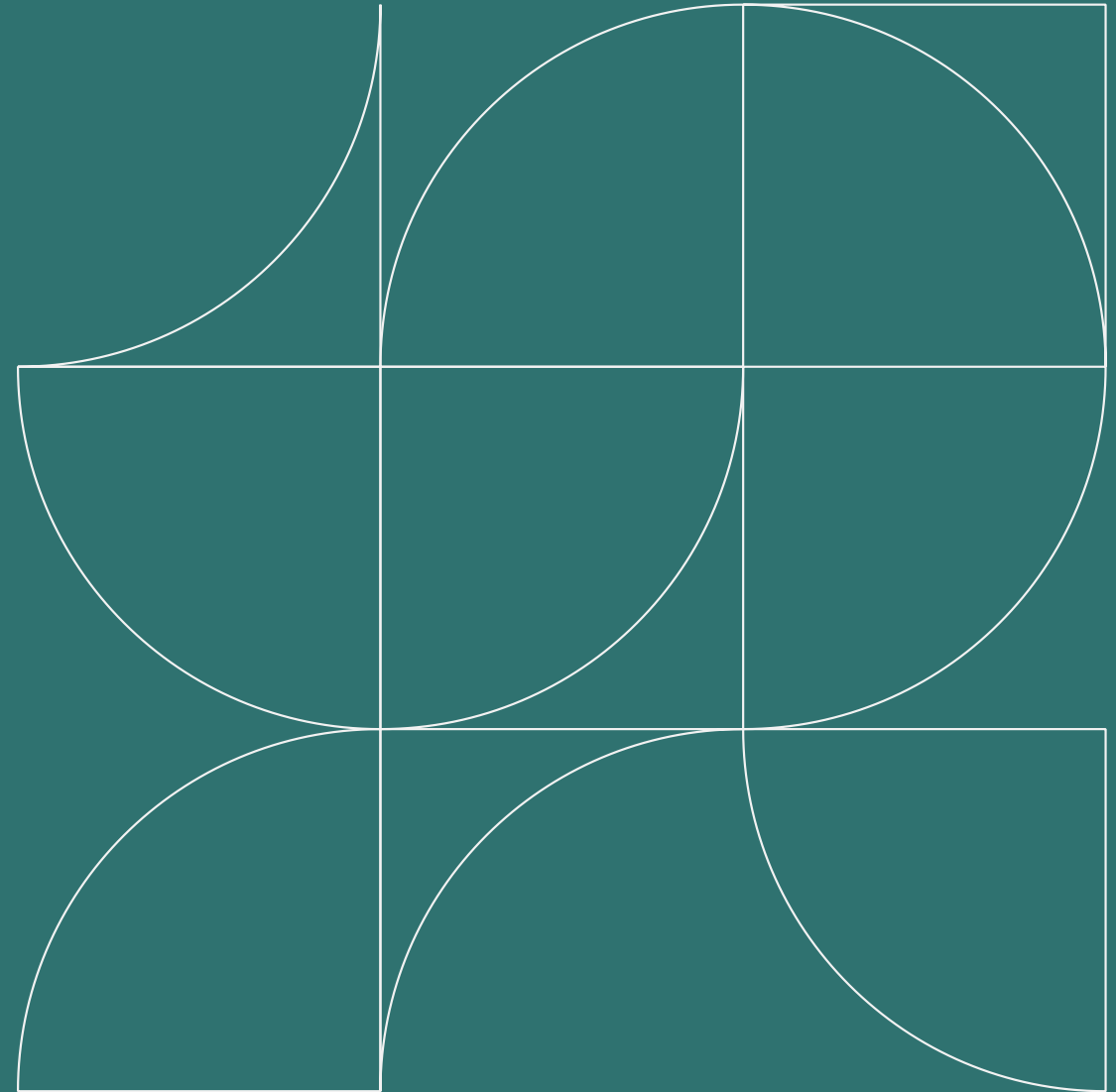
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# Agenda

- 1. Brief Recap of Session I**
- 2. Workdays & Workweeks**
- 3. Alternative Workweek Schedules (“AWS”)**
- 4. On-call / Standby Time Issues**
- 5. Compensable Time / Hours Worked**



# Part I - Recap

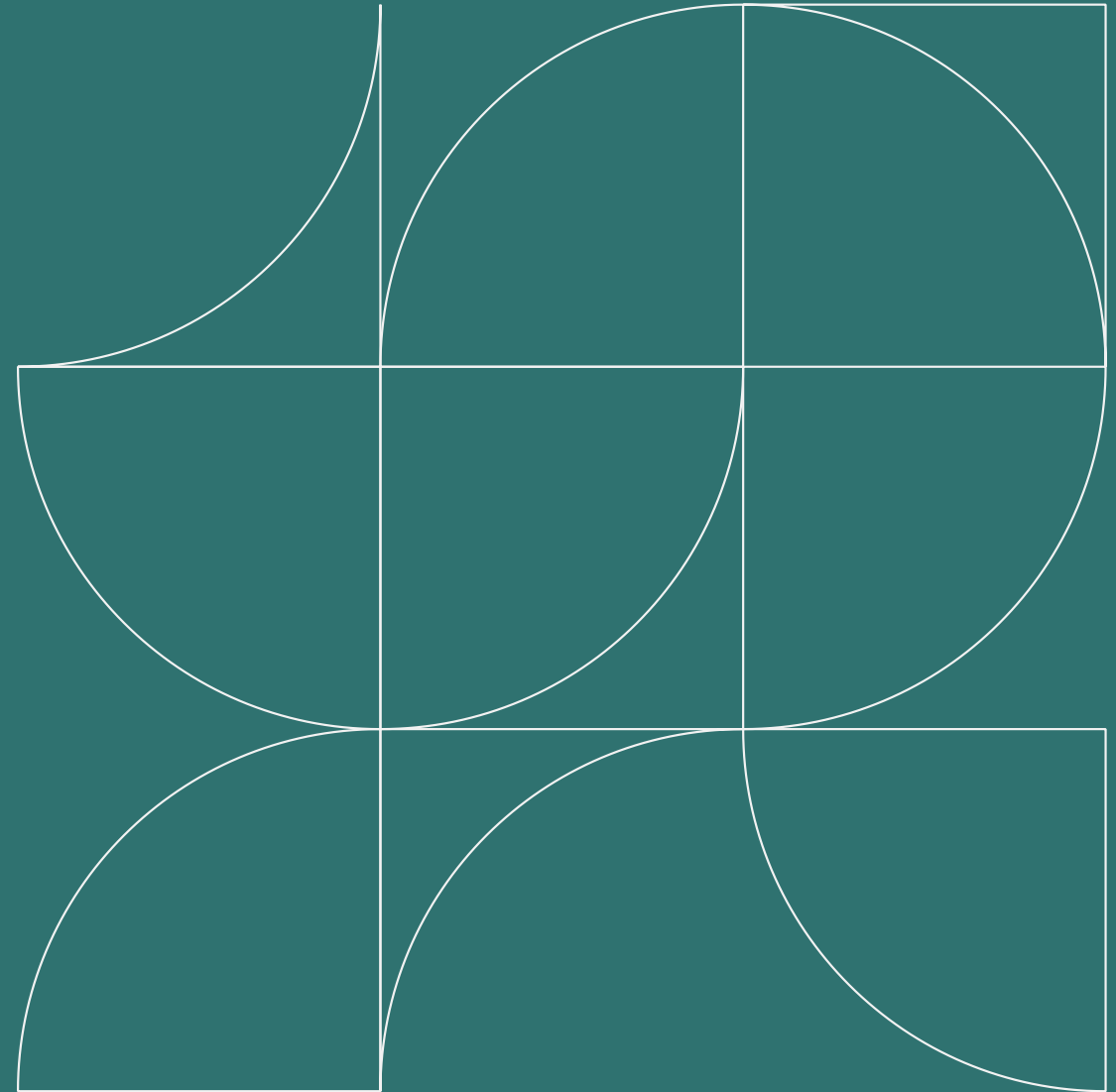


## Brief Recap of Session I

# Focus on Classification and Healthcare Differences

1. Exempt Status
  - Non-Exempt vs. Exempt
  - Two-part test - salary and duties
2. Joint Employment
  - If you are in CA – there is a high risk that you will be held to be a joint employer
3. Union Represented Employees
  - Variety of exemptions for Union Employees under Section 514 of the Labor Code
  - Ensure CBA satisfies all requirements of Section 514

# Workdays & Workweeks Issues



## Workdays & Workweeks

### Why is this important to the healthcare industry?

1. Workdays and workweeks are used to determine overtime
2. 24-hour workplaces, such as many healthcare providers, are confronted with unique challenges
3. Healthcare providers have some scheduling options not available to other employers



# Workdays & Workweeks (cont.)

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## Configuring Workweeks

- **Employee specific (based on employee schedule)**
- **Overtime based on workday and workweek**

## KEY ISSUES

- **Employees and groups of employees can have different workdays and workweeks**
- **May be changed “only if the change is intended to be permanent and the change is not designed to evade overtime obligations”**
- **Ensure that overtime is being calculated based on the employees’ workday / workweek and not based on something else, such as the day in which a shift starts**

# The Boards - Question 1

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*An LVN's "workday" begins at 12 a.m. On Tuesday he works a shift from 10 p.m. to 8:30 a.m. on Wednesday. The employee clocks back in for another shift on Wednesday at 7:00 p.m. and works until 3:30 a.m. on Thursday.*

*What compensation is the LVN due?*

# The Boards - Question 1 (cont.)



## By Workday (as per CA law):

- **Tuesday:** 10 pm to 11:59 pm = 2 total hrs
- **Wednesday:** 12 am to 8:30 am & 7 pm to 11:59 pm = 13 total hrs;  
4 OT; 1 Double Time
- **Thursday:** 12 am to 3 am = 3 total hrs

## By Shift:

- **Shift 1:** Tues at 10 pm to Wed at 8:30 am = 10 total hrs; 2 OT
- **Shift 2:** Wed at 7 pm to Thurs at 3:30 am = 8 total hrs

\*Assuming unpaid 30 min meal breaks

# Workdays & Workweeks (cont.)

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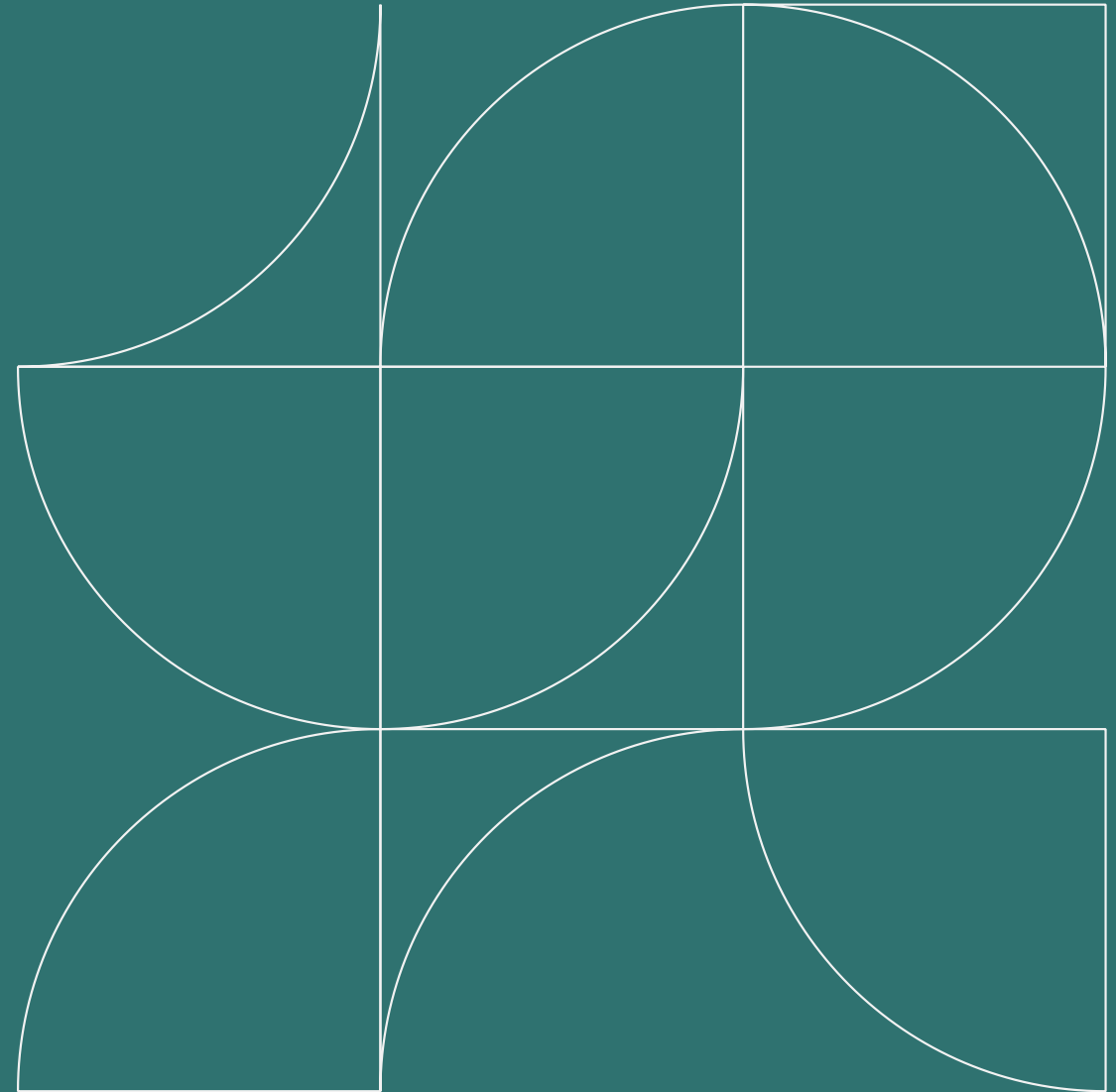
## Back-to-Back Workweek

- **Eligibility standards**
- **Overtime based on 8 and 80**
- **Agreement or understanding required**

## **WAGE ORDER 5-2001 § 3(D) – HOSPITAL 14-DAY WORKWEEK**

- **Applicable to hospital-based employees**
- **Stretches weekly overtime over a 14-day period**
- **Must still pay daily overtime**
- **Must agree to the 14-day workweek in advance, preferably in writing**

# Alternative Workweek Schedules



# Alternative Workweek Schedule

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## What is an AWS?

- **Any regularly scheduled workweek requiring an employee to work more than eight hours in a 24-hour period without overtime pay**
- **Common in the healthcare industry**

## How to Implement an AWS

- 1. Determine Which AWS Applies**
- 2. Identify Employee Group**
- 3. Determine Workweek Days and Hours**
- 4. Propose Schedule to Employees**
- 5. Pre-Election Meetings**
- 6. Hold Secret Ballot Elections**
- 7. Notify Affected Employees/File Requested Notices**
- 8. Implement AWS**
- 9. Respond to Repeal By Employees**
- 10. Maintain Records**

## Challenges: Alternative Workweek Schedules

- **Maintaining a Lawful AWS**
  - “Regularly scheduled” requirement
  - Floating between AWS units
  - AWS does not follow the employee to a new unit
  - Short shifts

# The Boards - Question 2

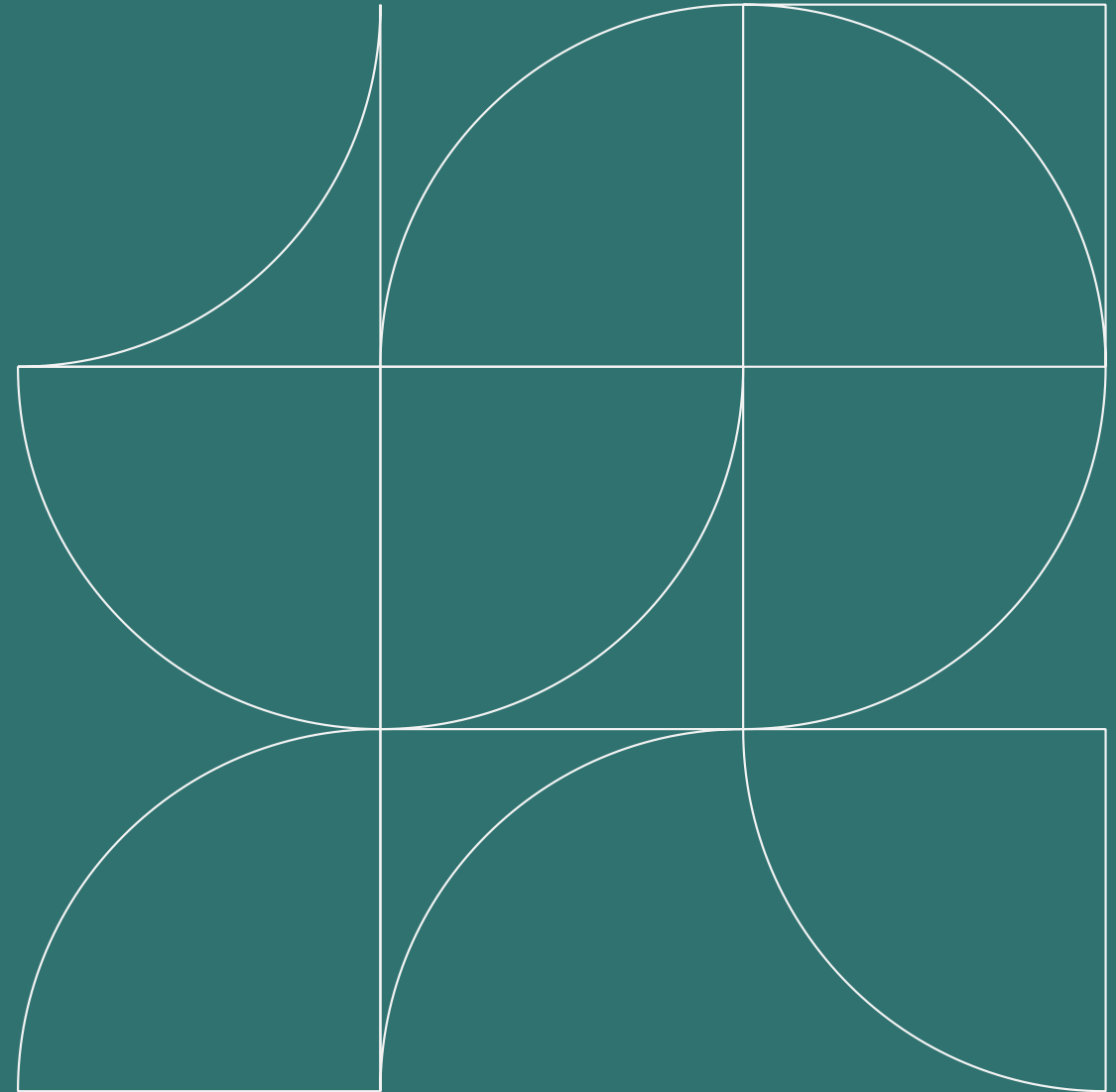


*Hospital Client had RNs go through the voting process for an AWS. When the AWS passes voting, the LVNs tell HR they also wanted to work an AWS. Since the LVNs verbally (and voluntarily) agreed to work the AWS, can the company allow the LVNs to work the same AWS as the RNs?*

- A. Yes! Go for it!
- B. No, that's illegal
- C. Yes, but only if they get the LVNs to sign a statement



# On Call Issues



# On Call Issues

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## WHY IS THIS IMPORTANT?

- **Healthcare workplaces often require day-to-day staffing adjustments to respond to medical emergencies, fluctuating patient volumes, and unforeseen staffing issues**
- **Particularly given the relatively high wages earned by healthcare staff, incorrectly calculating standby, on-call, and reporting time pay can result in extremely expensive litigation**

## KEY ISSUES

- **Uncontrolled or controlled standby**
- **Reporting time pay**

# On Call Issues (cont.)

## KEY ISSUE

**Uncontrolled or controlled standby**

## FACTORS TO CONSIDER

“the degree to which the employee is free to engage in personal activities”

- **Geographic restrictions**
- **Frequency of calls**
- **Required response times**
- **Use of a pager / cellphone**
- **Ability to swap on-call shifts**
- **Extent able to do personal activities**

**CONTROLLED STANDBY = COMPENSABLE  
TIME & HOURS COUNT TOWARDS OT**

**UNCONTROLLED STANDBY = IF  
COMPENSABLE, PAY FACTORS INTO REGULAR  
RATE, BUT HOURS DO NOT, NOR DO HOURS  
COUNT TOWARDS OT**

# On Call Issues (cont.)

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## KEY ISSUE

Reporting time pay

## REPORTING TIME PAY:

Where an employee reports to work and is not provided with at least half of the scheduled shift, the employee must be paid one-half of the scheduled shift (with a minimum of two and maximum of four hours)

Must be paid at the regular rate

# The Boards - Question 3

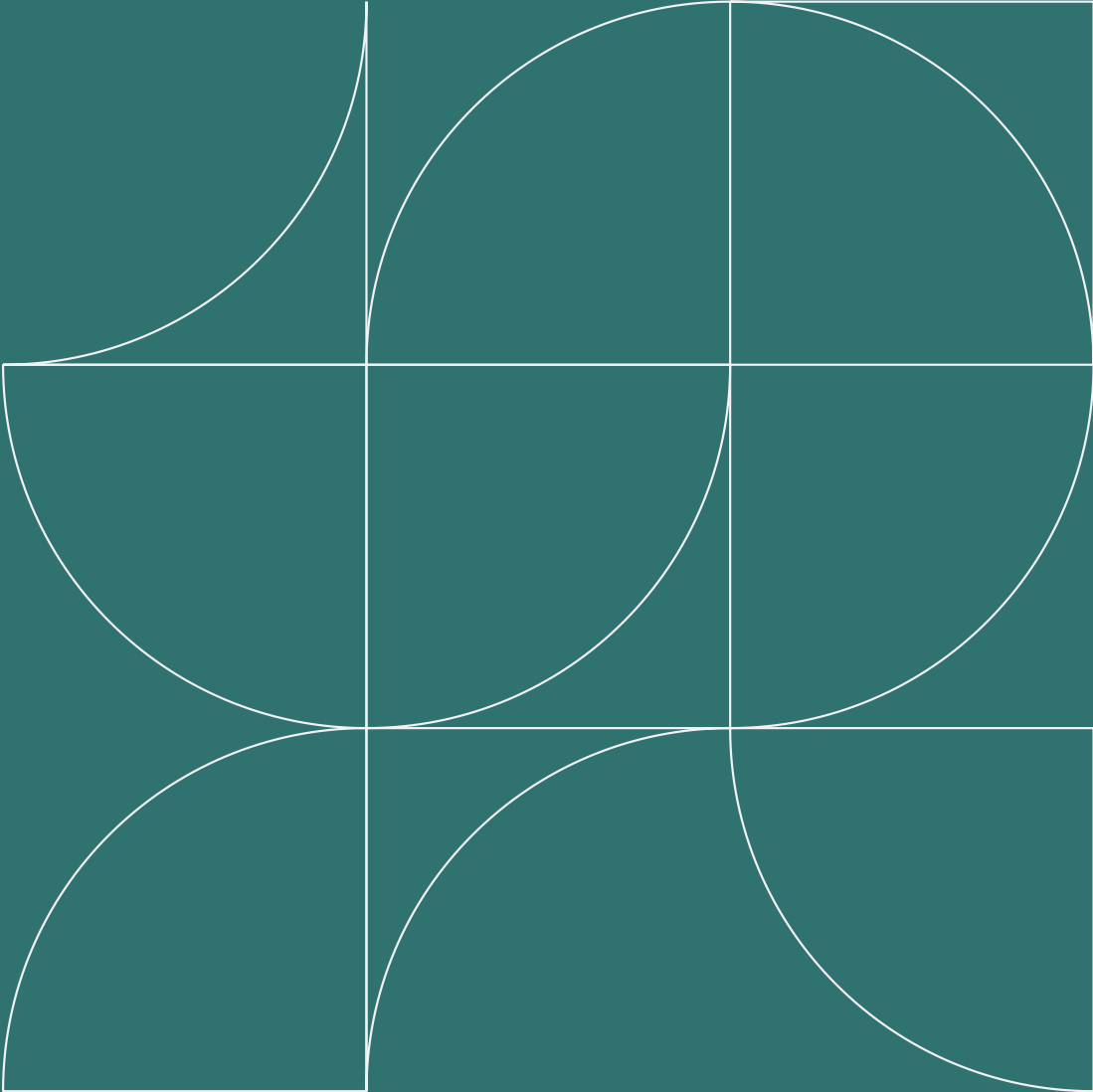
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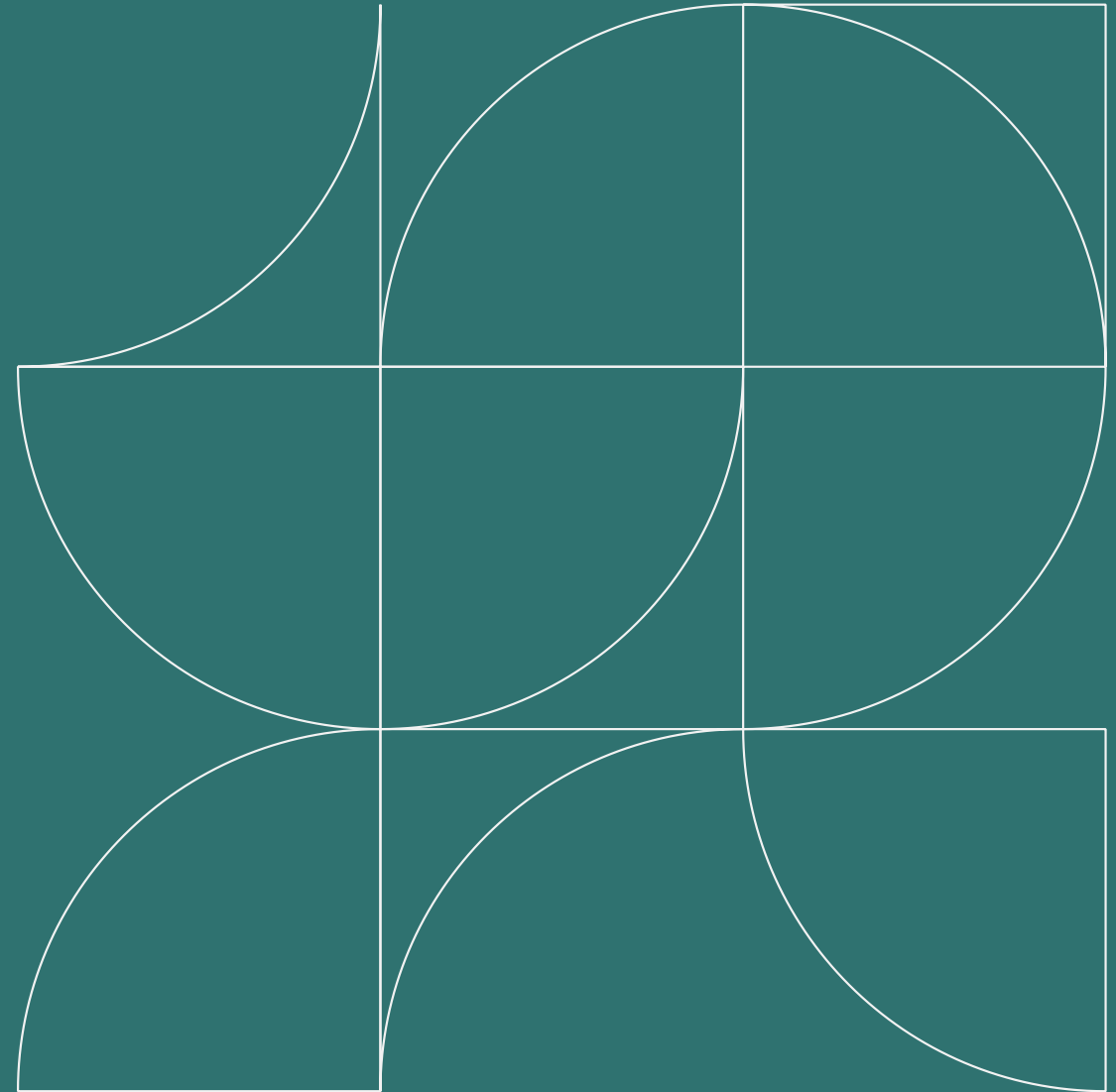
*An RN comes to work for his 8-hour shift at City General but is sent home after 2 hours due to low patient volume. Per policy, he remains on uncontrolled standby for the duration of his shift, gets called in around hour 6 of the shift, and works for 3 more hours.*

*What compensation is the RN due?*

**CLE**



# Compensable Time / Hours Worked



## Compensable Time / Hours Worked

- In California, all time is compensable. No *de minimus* rule
- The California Supreme Court's 2018 decision *Troester v. Starbucks* still holds true.....
- Employers cannot require employees to routinely work — even for just minutes — off-the-clock without compensation
- Common Examples:
  - Security Screenings
  - Bag Checks
  - Temperature Screenings
  - Health Screenings



# The Boards - Question 4



*Peter's diamond store has their employees clock out at the front of the store, and after they clock out for the day, the employees immediately go through a security check, including a pat down.*

*Does the company need to pay the employees for the time spent going through a security check?*

- A. Yes
- B. No
- C. Only if the Employees Complain
- D. Sometimes

## Compensable Time / Hours Worked

### Best Practices

- Legally compliant timekeeping policy
- Strategically placed clock-in stations
- Attestations

**thank  
you**

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