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**A Compliance Check Newsletter**

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## **U.S. Labor Department Sues Rife Industrial Marine to Recover Nearly Two Million Dollars in Overtime Back Wages**

The U.S. Department of Labor has sued Rife Industrial Marine for alleged violations of the overtime and recordkeeping provisions of the federal Fair Labor Standards Act (FLSA), after an investigation by the department's Wage and Hour Division found that welders working offshore had been improperly classified as independent contractors.

Back wages are expected to total almost \$2 million. The complaint was filed in the U.S. District Court for the Eastern District of Texas, Beaumont Division against Rife Industrial Marine Inc. and Rodney Rife, president of the company.

The Wage and Hour Division's investigation found that the company considered welders who were working offshore to be independent contractors when in fact there was an employment relationship, making these workers eligible for overtime compensation. Additionally, the company failed to properly pay overtime to its regular employees or to maintain accurate records of employees' wages and hours of work.

The FLSA requires that covered employees be paid at one and one-half times their regular rate of pay for hours worked more than 40 per week. The law also requires that accurate records of employees' wages, hours and other conditions of employment be maintained. For purposes of the FLSA, there are a number of factors for determining whether an individual is an independent contractor or an employee. In this case, the Wage and Hour Division found that company's workers did not meet the legal factors for independent contractor status.

## **Employees with Attention Deficit-Hyperactivity Disorder**

### **What is AD/HD?**

Attention deficit-hyperactivity disorder (AD/HD) is a neurobiological disorder that affects three to five percent of American children and adults. AD/HD is usually diagnosed in childhood, and the condition can continue into the adult years. Many individuals with AD/HD are undiagnosed until adulthood.

The common characteristics of AD/HD are impulsivity, inattention, and/or over-activity. Although individuals may have both inattention and hyperactivity symptoms, many individuals predominantly display one symptom more than another.

### **Is AD/HD a disability under the ADA?**

The ADA does not contain a list of medical conditions that constitute disabilities. Instead, the ADA has a general definition of disability that each person must meet. Therefore, some people with learning disabilities will have a disability under the ADA and some will not.

A person has a disability if he/she has a physical or mental impairment that substantially limits one or more major life activities, a record of such impairment, or is regarded as having such impairment. Major life activities include walking, seeing, speaking, hearing, breathing, learning, performing manual tasks, caring for

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oneself, and working. These are examples only. Other activities such as sitting, standing, lifting, or reading are also major life activities.

Most courts have agreed with the activities listed by the EEOC. For example, in *Brown v. Cox Medical Center*, the court noted that the "ability to perform cognitive functions" is a major life activity. In *Gagliardo v. Connaught Laboratories, Inc.*, the court held that "concentrating and remembering (more generally, cognitive function)" are major life activities.

### **Accommodating Employees with AD/HD**

People with AD/HD may develop some of the limitations discussed below, but seldom develop all of them. Also, the degree of limitation will vary among individuals. Be aware that not all people with learning disabilities will need accommodations to perform their jobs and many others may only need a few accommodations.

#### **Questions to Consider:**

1. What limitations is the employee with AD/HD experiencing?
2. How do these limitations affect the employee and the employee's job performance?
3. What specific job tasks are problematic as a result of these limitations?
4. What accommodations are available to reduce or eliminate these problems? Are all possible resources being used to determine possible accommodations?
5. Has the employee with AD/HD been consulted regarding possible accommodations?
6. Once accommodations are in place, would it be useful to meet with the employee with AD/HD to evaluate the effectiveness of the accommodations and to determine whether additional accommodations are needed?
7. Do supervisory personnel and employees need training regarding AD/HD?

#### **Areas of Difficulty:**

**Time Management:** Individuals with AD/HD may experience difficulty managing time, which can affect their ability to mark time as it passes incrementally by minutes and hours. It can also affect their ability to gauge the proper amount of time to set aside for certain tasks. It may be difficult to prepare for, or to remember, work activities that occur later in the week, month, or year.

**Memory:** Individuals with AD/HD may experience memory deficits, which can affect their ability to complete tasks, remember job duties, or recall daily actions or activities.

**Concentration:** Individuals with AD/HD may experience decreased concentration, which can be attributed to auditory distractions (that can be heard) and/or visual distractions (that can be seen). People with AD/HD report distractions such as office traffic and employee chatter, opening and closing of elevator doors, and common office noises such as fax tones and photocopying.

**Organization and Prioritization:** Individuals with AD/HD may have difficulty getting or staying organized, or have difficulty prioritizing tasks at work.

**Social Skills:** Individuals with AD/HD may have limitations in adaptive skills, such as communicating with others, or exhibiting appropriate social skills. This might manifest itself as interrupting others when working or talking, demonstrating poor listening skills, not making eye contact when communicating, or inability to correctly read body language or understand innuendo.

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**Hyperactivity/Impulsivity:** Individuals with AD/HD Hyperactivity-Impulsive type may exhibit over-activity or impulsive behavior. This could be disruptive to the work environment or could inhibit efficient and effective work performance.

**Multi-tasking:** Individuals with AD/HD may experience difficulty performing many tasks at one time. This difficulty could occur regardless of the similarity of tasks or the frequency of performing the tasks.

**Paperwork:** Individuals with AD/HD may experience difficulty completing paperwork efficiently and effectively. This is due in part to workplace distractions and difficulty with time management, disorganization, or prioritization.

Employees who experience these problems and ask for help may be requesting an accommodation under the ADA. Supervisors and managers should be properly trained and responsive to requests from employees. For additional information, go to [www.jan.wvu.edu](http://www.jan.wvu.edu).