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After the Merger: D-Bart Industries

Scenario D: Compensable Time Under the
FLSA and Preventing Off-the-Clock Work

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Case Abstract

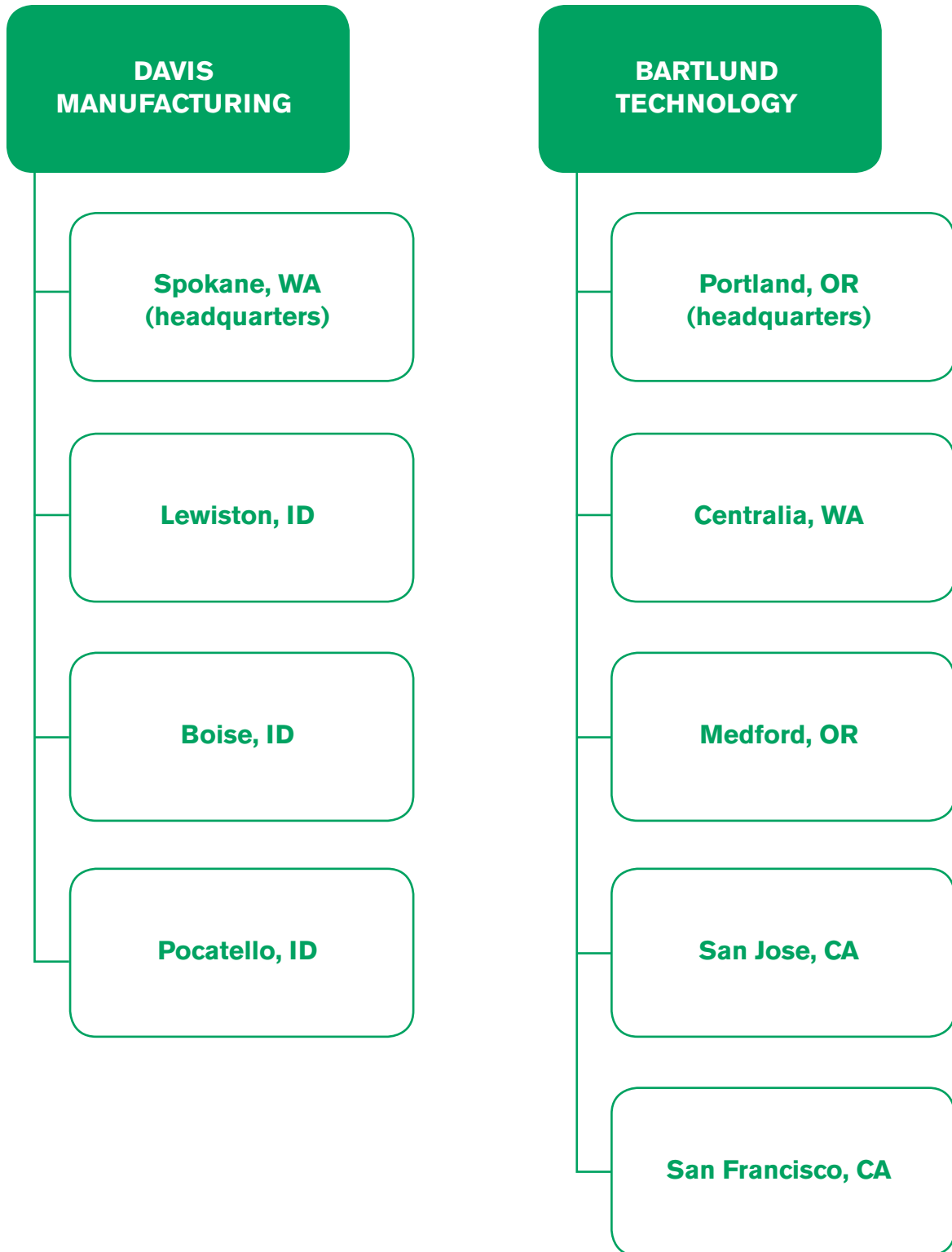
This case involves a fictitious company, D-Bart Industries, formed by the merger of Davis Manufacturing and Bartlund Technologies, two former rivals in the fabrication of precision parts used in medical equipment and airline manufacturing. It is appropriate for undergraduate or graduate students majoring in human resource or business management. Six scenarios comprise the entire case study; however, this document contains only Scenario D: Compensable Time Under the FLSA and Preventing Off-the-Clock Work. The major themes covered in each scenario are:

- Scenario A: Risk management and employee privacy.
- Scenario B: Union decertification, unfair labor practices and maintaining a union-free organization.
- Scenario C: Family medical leave, employee rights, temporary labor and increasing employee productivity.
- Scenario D: Compensable time under the FLSA and preventing off-the-clock work.
- Scenario E: Differentiating between an unpaid intern and an employee.
- Scenario F: Downsizing and performance appraisal.

Teaching note:

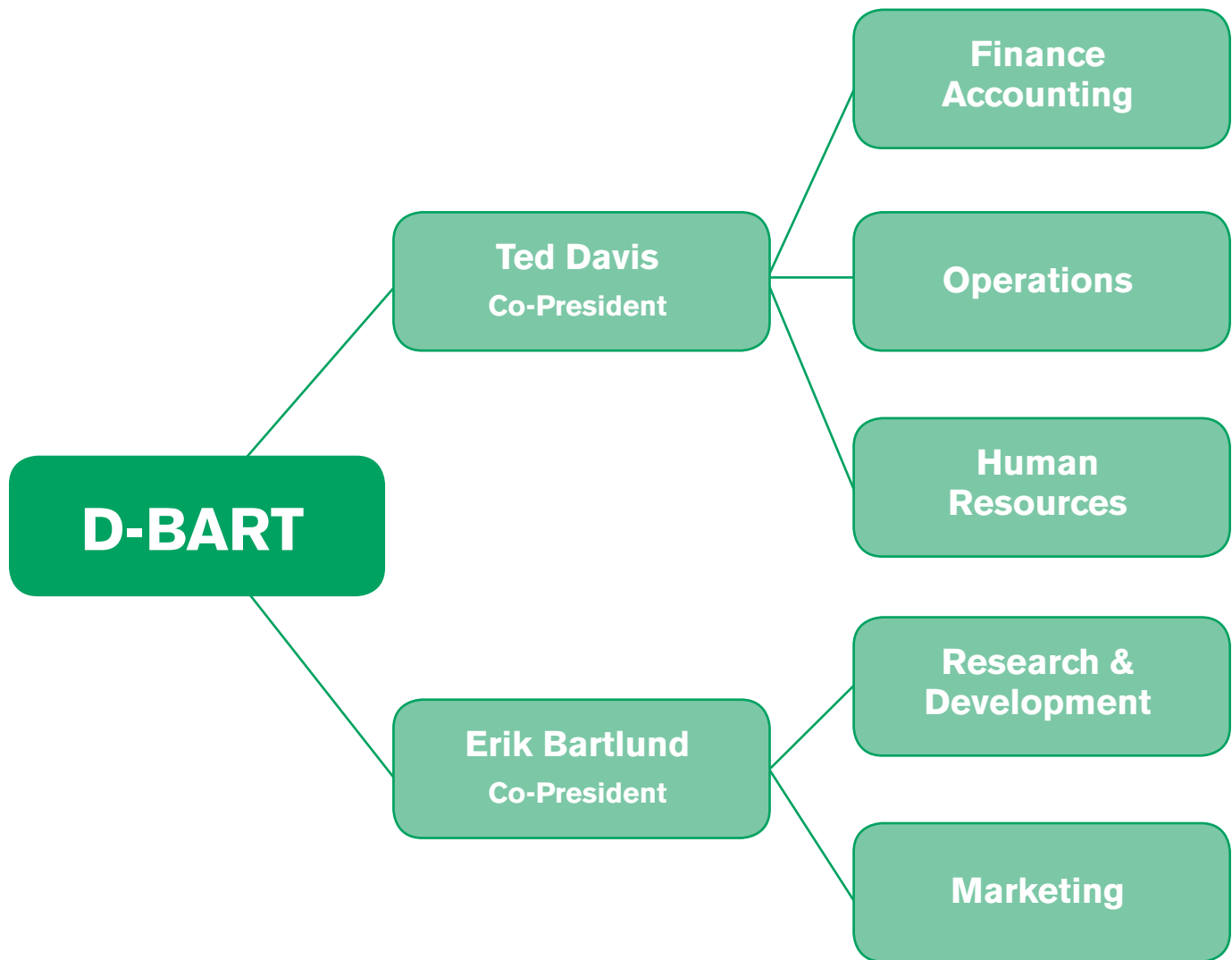
In order to create a student workbook, please make one copy of pages 2 through 7 for each student.

The Organization Before the Merger



After the Merger: D-Bart Industries

The New Organizational Structure and Management Staff



Director of Human Resources Wendy Wright
Lewiston, ID Kendal James, Division Manager
Boise, ID Lois Franklin, Division Manager
Pocatello, ID Rick Stephens, Division Manager

Centralia, WA Mary Haggerty, Division Manager
Medford, OR Ray Houser, Division Manager
San Jose, CA Karen Howell, Division Manager
San Francisco, CA Brad Smith, Division Manager

After the Merger: D-Bart Industries

THE ORGANIZATION

This case involves the recent merger of Davis Manufacturing and Bartlund Technology. Before the merger, the organizations were fierce competitors in the manufacturing of precision parts used in building medical equipment and airplanes. When the economy slowed in 2008 and 2009, it became apparent that the two organizations would have a stronger market presence if they joined forces. The merger was approved in late 2009, and on March 1, 2010, the two former rivals became D-Bart Industries.

This was a true merger of equals, not an acquisition of a smaller company by a larger company, and although Davis and Bartlund had very different corporate cultures, the new leadership team embraced a philosophy of collaboration. There was no power structure being imposed by one company over the other and no assumption that one set of employees had priority over the others. New structures were forming to play on the strengths of each organization. As things changed, nothing was guaranteed and employees were nervous about what was to come.

Because the original organizations were led by very different personalities, it would take some time before a comfort level was established. Bartlund's founder, Erik Bartlund, was an idea man with seemingly boundless energy. He claimed to sleep little, and in the early years of the company, he kept a notepad on his nightstand so he could jot down ideas as they bubbled forth in insomniac sprees of creativity. His notebook was now an electronic tablet, but his ideas were no less frequent, if sometimes a little bizarre. He was always more interested in product design and innovation than in the nuts and bolts of running his company.

As one would expect, Bartlund Technology developed into a creative workplace where risk taking and working outside the box was the norm. Employees had authority to make decisions and the autonomy to structure their work. The dress was casual, and there were lunch-hour games of competitive volleyball in the grass next to the parking lot. Employees brought their dogs to work, and a water bowl and dog biscuit jar were standard in the break room along with coffee and pastry. That was fine with Erik. As long as employees got the job done, produced a quality product, and Bartlund was considered the most innovative in the industry, he was satisfied.

Although Davis had a very different corporate culture from Bartlund, it, too, was highly respected in the industry for its quality products. The CEO, Ted Davis, was a retired Marine who took over the company when his father, the founder, retired. Davis ran a tight ship. True to his military background, he believed in having a procedure and policy in place for every eventuality. He had a top-down management style and liked to maintain personal control over decision-making, a characteristic some employees found oppressive.

It was understood by all that nothing happened at the organization that Davis didn't know about and personally approve.

When Davis production and shipping employees voted to unionize in 2003, Ted was not particularly happy, but he did little to oppose the process, saying that it was their right to do so. This accepting attitude has served Davis well; union/management relations have always been excellent, with a level of respect and cooperation not always found in union environments. The union contracts from Davis were honored by D-Bart with the intent that employees previously represented by unions would continue to be represented by their bargaining units. Bartlund employees have never been unionized.

Both organizations were located in the West. Bartlund had five facilities: Portland and Medford, Ore.; San Jose and San Francisco, Calif.; and Centralia, Wash., Bartlund's headquarters in Portland was the company's newest facility. Davis had its headquarters in Spokane, Wash., and three facilities in Idaho: Lewiston, Boise and Pocatello.

Although there had been no official announcement from D-Bart, it was expected that the merger would necessitate scaling back some facilities, with employees transferred to other locations or laid off. At the same time, other facilities could add new employees. It was rumored that the Centralia and Pocatello facilities would be shuttered and put up for sale. Employees at the Centralia and Pocatello plants were understandably nervous.

Davis and Bartlund worked cooperatively to select a new management team for D-Bart. Davis and Bartlund were appointed co-presidents, with Davis assigned to the day-to-day operations and Bartlund managing the products. Davis had recently relocated to the Portland headquarters, where he was responsible for operations and production, finance and HR. Bartlund managed research and development, product innovation and marketing. He remained in the San Francisco office. Wendy Wright, director of human resources for Davis, was appointed the new HR director for D-Bart, and she also relocated to the Portland headquarters. Although many positions were still vacant, it was expected that the rest of the employees would be a mix of workers from both companies, with no clear power structure that favored one group over the other.

Scenario D: Just Helping Out: Compensable Time for Nonexempt Employees

Location: D-Bart Industries, formerly Bartlund Technology, Centralia, Wash.

Players: Mary Haggerty, division manager
Kevin Trent, office manager
Sam Bernard, nonexempt employee
Alice Mitchell, Harvey Fuller and Tom Butler, nonexempt employees

The facility in Centralia, Wash., was the last purchase made by Bartlund Technology before merging with Davis Manufacturing. The building had been the headquarters of a small Northwest timber company, but when the housing bubble burst and the demand for lumber plummeted, the company folded and the property came on the market for a good price. The bargain purchase price helped Bartlund offset the necessary investment to remodel it. Because it brought new industry and jobs into the community, the county welcomed Bartlund with tax breaks and incentives that made it a worthwhile expansion. A few long-term Bartlund employees, mostly managers from San Jose and San Francisco, transferred to Centralia, but most of the employees were new hires from the area.

Everyone thought things had been going well, but since the merger, there has been anxiety among the employees. Some of the managers who transferred to Centralia now say they wish they had stayed in California. Rumor has it that the Centralia location is too remote from other D-Bart facilities and may be closed. There have already been some layoffs, and morale is sinking.

Mary Haggerty has been the division manager since the facility opened. She was one of the managers who transferred from California. Employees liked Haggerty, who had always been easy-going and approachable, but lately her manner was brisk and abrupt. Everybody knew the pressure was on to increase productivity. The rumor mill had it that Mary was willing to do whatever it took to make Centralia look good and stay open. Although it had not been said directly, employees understood that if the plant stayed open at all, those whose jobs would be saved were those willing to go the extra mile. The layoffs had brought total workforce numbers down about 10 percent and everyone was picking up the slack.

Sam Bernard carpooled to work every day with Kevin Trent, the office manager. Bernard used to enjoy visiting with Trent for the 20-minute drive, but lately Bernard would just check his e-mails and schedule appointments from his cell phone while Trent drove. A few days ago, Trent jokingly asked him if he thought he was going to get overtime for those early morning e-mails. "No, Kevin," Bernard said, "I'm just trying to get a head start. The workload just keeps stacking up for hourly guys like me."

"Good for you," Trent replied "It's important to look good if downsizing comes our way."

Bernard was not the only one trying to look good. Because of the bus schedule, Harvey Fuller and Alice Mitchell both got to work about half an hour early. They used to grab coffee and read the newspaper in the break room until start time, but now they would

hang up their coats and get started. Trent sent an e-mail reminding staff that there was no authorized overtime for hourly employees, but it hadn't changed anyone's behavior. Those who weren't getting to work early were beginning to grumble about other people trying to look good by working off the clock, but most employees claimed they would rather do a little extra than have no job at all.

Recently Tom Butler, another hourly employee, was overheard talking to Bernard in the break room. "I hear you're even working on the ride to work," said Butler.

"Yeah, I guess a little extra doesn't hurt any of us," Bernard replied.

"I don't know," said Butler. "It seems to work on both ends of the day. Kevin asked me a couple of weeks ago if I would drop off some sample materials to a customer on my way home. He knew I drove right by, so I couldn't very well say no. But now he's asked me twice this week to do it again, and I'm starting to feel like the company errand boy. Does it ever end?"

"Well, at least it makes us look good," said Bernard.

Later that day, an all-staff e-mail came from Mary Haggerty. A staff meeting was scheduled for Thursday afternoon at the close of the workday. Attendance was mandatory. Two staff members were overheard speculating about the meeting. "I wonder why we're having it at the end of the day. Usually our meetings are in the morning."

"Well, they don't have to buy donuts at 5:00 in the afternoon, but I think it's more than that," said the other. "I suspect they don't want to lose any production time. I hope it's not bad news."

On Thursday afternoon, chairs were closely lined up as everyone crowded into the room to hear what Haggerty had to say. It really wasn't bad news at all. She was rather upbeat and had a plan to make Centralia the best facility at D-Bart. Her plan started with additional training to ensure that Centralia employees were far above the training standards expected across the organization.

To meet safety requirements, Bartlund, and now D-Bart, had always required a minimum number of employees to be CPR-certified. Haggerty said minimum was no longer enough. To be the best D-Bart facility, Haggerty believed that all employees should be CPR-certified. To achieve 100 percent compliance and make it convenient for employees, Haggerty had arranged for the local community college to offer CPR training during evening hours at the facility. Employees could take the classes offered on-site, or if they had scheduling conflicts, they could register for other classes offered in the community. In the past, Bartlund Tech had encouraged employee development, but few had taken advantage of the opportunity. This was different. Haggerty emphasized that employees could choose where and when to attend classes, but they would all be required to certify within six months.

Questions

1. Identify the compensation issues involved at D-Bart in Centralia.
2. Nonexempt employees are engaging in a variety of activities off the clock. Discuss which are compensable and which are not.
3. How should the company proceed to prevent illegal off-the-clock activities?

Debriefing for Scenario D

JUST HELPING OUT: COMPENSABLE TIME FOR NONEXEMPT EMPLOYEES

1. Identify the compensation issues involved at D-Bart in Centralia.

- Work is being done off the clock by nonexempt employees.
- Supervisors know this and are allowing work to be done off the clock.
- An organizational culture had emerged that pressures nonexempt employees to work extra noncompensable hours to look good or save their jobs.
- The division manager had stated that overtime would not be authorized, but had made no attempt to stop employees from working off the clock.
- Meetings and training have been scheduled during non-work hours.

2. Nonexempt employees are engaging in a variety of activities off the clock.

Discuss which are compensable and which are not.

A number of nonexempt employees at D-Bart are working off the clock in violation of the FLSA. For nonexempt employees, all work done for the benefit of the employer is considered compensable time, and it is the employer's responsibility to ensure that work time is properly compensated. Off-the-clock work claims can arise from misperceptions regarding what constitutes compensable work time and from supervisor misconduct related to employees working off the clock. Even when noncompensated time is unintentional, employers are still at risk for fines from the Department of Labor and for litigation from improperly paid employees (U.S. Department of Labor, 2008).

Compensable time includes all work done before and after regular working hours, such as answering e-mails while carpooling or making deliveries on the way home. A mandatory staff meeting held after hours is compensable time. Training time is compensable when training is conducted during regularly scheduled working hours.

The evening-hours CPR training conducted by the community college at the D-Bart facility is not compensable time. D-Bart has required all employees to become CPR-certified, but the on-site class is being offered as a convenience to employees, and attendance is not mandatory. Employees may enroll in any CPR class that is convenient for them. Therefore, the training time for the evening CPR class is not compensable.

3. How should the company proceed to prevent illegal off-the-clock activities?

Employers cannot avoid liability for off-the-clock work simply by stating that overtime is not authorized. When work occurs, authorized or not, it must be compensated. Employers are especially at risk when supervisors know off-the-clock work is being done and there

is no effort to stop the practice. U.S. Department of Labor regulations make it clear that it is management's responsibility to see that work is not performed if the management does not want it to be performed. Management cannot accept the benefits of work that is performed without compensating employees for their work.

Recommended steps to prevent illegal off-the-clock activities:

1. Adopt a well-publicized policy.
2. Train managers and employees.
3. Include policy and practices in new-manager and new-employee orientation.
4. Require employees to review and certify their time entries.
5. Require managers to review and certify the accuracy of time entries.
6. Review all automated system assumptions and clock rules.
7. Adopt a reporting procedure.
8. Periodically audit a sample of payroll records and calculations.
9. Keep notes explaining time report changes.
10. Provide periodic reminders (Schreter, 2004).

References and Additional Reading

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