

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General



In the Matter of American University

SETTLEMENT AGREEMENT

The Attorney General for the District of Columbia, on behalf of the District of Columbia (“District”), and Respondent American University (“the University”) (together, the “Parties”), hereby enter into this Settlement Agreement, and agree as follows:

I. THE PARTIES

1. The Attorney General for the District of Columbia is the chief legal officer for the District of Columbia. The Attorney General has general charge and conduct of all legal business of the District and all suits initiated by and against the District and is responsible for upholding the public interest.

2. The University is a private federally chartered research university located in Washington, D.C. Its administrative offices are located at 4400 Massachusetts Ave NW, Washington, DC 20016.

II. COVERED CONDUCT

3. The District alleges that from October 1, 2020 through the present, certain non-exempt employees working at the WAMU 88.5 – American University Radio, Washington College of Law, School of International Service, School of Public Affairs, and Academic Support and Access Center performed work off the clock without compensation in violation of the

Minimum Wage Revision Act (“MWRA”), D.C. Code § 32-1001, *et seq.*, and the Wage Payment and Collection Law (“WPCL”), D.C. Code § 32-1301, *et seq.* (“Covered Conduct”).

4. The University denies the District’s allegations. Nothing contained in this Settlement Agreement is, or may be construed to be, an admission by the University of any violation of law, liability or wrongdoing.

III. DEFINITIONS

5. “**Authorized Claimant**” means a current or former American University employee who timely files a Claim Form and Waiver and Release form in accordance with the terms of this Agreement and is subsequently deemed to be eligible to receive a payment from the settlement fund.

6. “**Effective Date**” shall be the last date upon which any party executes the Settlement Agreement.

7. “**Eligible Employee**” is any current or former hourly, non-exempt employee who worked for WAMU 88.5 – American University Radio, Washington College of Law, School of International Service, School of Public Affairs, and Academic Support and Access Center from October 1, 2020 through the Effective Date.

8. An “**Eligible Workweek**” is any workweek on or after October 1, 2020 through the Effective Date.

9. “**Straight Time Hours**” are the first 40 hours worked in an Eligible Workweek and identified as “Straight Time Hours” in the Claim Form attached hereto as Appendix A.

10. “**Overtime Hours**” are any time worked in an Eligible Workweek after the first 40 hours and identified as “Overtime Hours” in the Claim Form attached hereto as Appendix A.

IV. INJUNCTIVE TERMS

11. The University agrees to continue to pay wages to all non-exempt employees at the employee's base rate of pay for the first 40 hours worked in a week.

12. The University agrees to continue to pay wages to all non-exempt employees at a rate of 1.5 times the employee's base rate of pay for all hours worked above 40 hours in a week.

13. The University agrees to continue to provide all non-exempt employees at the WAMU 88.5 – American University Radio, Washington College of Law, School of International Service, School of Public Affairs, and Academic Support and Access Center with training that explains that they are to report all hours worked during a workweek, explain that they are entitled to payment ~~at~~ for all hours worked, including 1.5 times their base rate of pay for each hour they work over 40 hours in a workweek, informs them of the University's non-retaliation policy, and explain that complaints may also be filed with OAG by emailing workers@dc.gov.

14. The University agrees to continue to provide all direct supervisors and managers of hourly employees at the WAMU 88.5 – American University Radio, Washington College of Law, School of International Service, School of Public Affairs, and Academic Support and Access Center with training regarding appropriate timekeeping practices, prohibitions on off-the-clock work, overtime, and the University's non-retaliation policy.

V. PAYMENT TERMS

15. **Payments to Eligible Employees.** The University will pay \$210,000 to an account with a third-party claims administrator within forty-five (45) days of the Effective Date. This amount will be distributed to Eligible Employees as set forth below:

a. *Claims Administrator.* Within thirty (30) days of the Effective Date, the University shall retain a third-party claims administrator (the "Administrator") to administer the

distribution of payments to Eligible Employees. The Administrator shall permit Eligible Employees to submit claims electronically. The University will pay for all expenses associated with the Administrator and claims procedure.

b. *Eligible Employee List.* Within thirty (30) days of the Effective Date or no later than five business (5) days after retaining the Administrator, whichever is later, the University will provide the Claims Administrator all necessary information (i.e., names, address, email, phone numbers, pay rate, etc.) regarding the Eligible Employees.

c. *Claims Notice.* Within fifteen (15) business days of receipt of the Eligible Employee List, the Administrator will provide notice to Eligible Employees using all available contact information, including first class mail, email, and text message. If these methods are unsuccessful, the Administrator will perform a skip trace and will reissue notice if an updated address is located. For purposes of calculating the Claims Period, the date of the email notices will be deemed the date notice was provided.

d. *Claims Procedure.* To file a claim, Eligible Employees must complete and submit (by mail or electronically) both the Claim Form and Waiver and Release Form attached here as Appendix A to self-certify the hours they worked for which they have not received compensation. To be eligible to recover, each Authorized Claimant will be required to sign a Waiver and Release Form, releasing the University from any and all claims, actions, disputes and demands, without limitation and including any known or unknown claims that could have asserted under the MWRA or WPCL for claims arising out of the Covered Conduct.

e. *Claims Period.* To be eligible for payment, all claims must be postmarked or received (by mail or electronically through the claims website) within 60 days of the date that the Claims Administrator provided notice of the Eligible Employee under paragraph 13.c.

f. *Claims Validation.* For claims of 50 uncompensated hours or fewer and involving 10 workweeks or fewer per calendar year, the University will use the Eligible Employee's self-certified hours claimed to determine the amount of payment to the employee. For claims of more than 50 uncompensated hours per calendar year or involving more than 10 workweeks per calendar year, the University may verify the number of qualifying workweeks and estimated hours by using payroll and timekeeping data and other relevant documentation ("Claims Validation"). Specifically, where payroll and timekeeping data demonstrate definitively that an Eligible Employee's claimed hours could not have been performed (*e.g.* where the claim includes workweeks before the employee began their employment with the University or after termination of the employee's employment), the University may reduce the number of hours to remove those which the Eligible Employee could not have performed. Otherwise, the self-certified hours will be used for determining all Claim Payment Amounts. For all claims undergoing Claims Validation, the Administrator shall transmit such claims to the University for review upon receipt and the University shall have ten (10) business days to provide a response to the claim to all Parties.

g. *Claim Payment Amounts.* Claim Payment Amounts, which include payment of Wages Owed and Liquidated Damages, will be determined according to the following steps, based on the Eligible Employee's self-certified or validated hours, pursuant to subparagraph (f) above.

i. *Wages Owed:* Add the sum of (i) multiplying any Straight Time Hours by the Eligible Employee's hourly pay rate at the time the work was performed to get the amount of Straight Time wages owed, and (ii) multiplying any Overtime Hours by 1.5 times of the Eligible Employee's hourly pay rate for the applicable time period to get the

amount of Overtime Hours wages owed.

ii. *Liquidated Damages: 25% of Wages Owed.*

h. *Overages.* If the aggregate total of all the Eligible Employees' Claim Payment Amounts exceeds \$210,000, the University will fund any overage up to \$250,000. Under no circumstances will the University be responsible for any payment above the \$250,000 settlement fund.

i. *Aggregate Claims Payment.* If the aggregate total of all Claim Payment Amounts exceeds \$250,000, each Eligible Employee entitled to a Claim Payment Amount will receive a pro-rata share of the total \$250,000 claim pool in proportion to the amount of Wages Owed as the final Claim Payment Amount.

j. *Payment to Other Authorized Claimants.* In the event that the total of all the Eligible Employees' Claim Payment Amounts does not exceed \$210,000 at the close of the Claims Period, the remaining funds from the \$210,000 may be used to compensate University employees outside of the Eligible Employees who file a claim with the Administrator for conduct that is substantial similar to the Covered Conduct occurring between October 1, 2020 and the Effective date. The Administrator will process such claims within 30 days of the close of the Claims Period in accordance with the terms of this agreement. At all times, Eligible Employees will be given priority with regard to recovering the full sum of all owed amounts from the settlement fund.

k. *Payment Timing.* The Administrator shall issue payments of all Claim Payment Amounts by check or electronic funds transfer within 60 days of the close of the Claims Period. Claimants shall have 60 days to deposit any Claim Payment Amounts issued by check, and any payments by check shall state prominently any deadline to deposit the payment.

1. *Tax Characterization.* Wages Owed shall be subject to required withholdings and deductions and shall be reported as wages on an IRS Form W-2. Liquidated Damages shall be reported as non-wage income on an IRS Form 1099.

m. *Reversion.* If the total of all Claim Payment Amounts is below the initial payment of \$210,000, any remaining funds from this payment will revert to the District. The Administrator shall make the reversion payment to the District under this paragraph within 180 days of the close of the Claims Period.

n. *Administrator Reporting.* The Administrator shall provide to the Parties regular updates concerning its issuing of notice to Eligible Employees, any skip tracing efforts it has undertaken, and any claims that have been filed with it. Once eligibility determinations have been made and/or payments have been issued, the Administrator shall provide the Parties with a report concerning those determinations and payments, including the basis on which any claim was denied or reduced. The Administrator will have a duty to comply with reasonable information requests from either the District or the University.

16. **Payment to the District.** The University shall pay \$50,000 to the District, as agreed-upon compensation to the District for its costs of investigation, within forty-five (45) days of the Effective Date.

17. All payments to the District shall be made by cashier's check made payable to "D.C. Treasurer" and delivered to Mina Kasama, Office of Attorney General for the District of Columbia, 400 6th Street NW, 10th Floor, Washington, DC 20001, unless another method of payment is specified by the District.

VI. RELEASE

18. The Parties have agreed to the terms of this Settlement Agreement to resolve the

District's allegations against the University concerning the Covered Conduct. In exchange for the performance of the University's obligations under this Settlement Agreement, and upon payment of all amounts due under this Agreement, the District hereby releases the University from any and all claims, known or unknown, that the Attorney General asserted or could have asserted under the MWRA or WPCL for claims arising out of the Covered Conduct up to the Effective Date.

VII. ADDITIONAL TERMS

19. This Settlement Agreement shall be considered effective and fully executed on the Effective Date. This Settlement Agreement may be executed in counterparts, and an electronic or .pdf signature shall be deemed to be, and shall have the same force and effect, as an original signature. Copies of signature pages transmitted electronically shall have the same effect as originals of those signature pages.

20. All funds paid to the District pursuant to this Agreement may be used for any lawful purpose, including, but not limited to: deposit to the District's litigation support fund; defrayal of the costs of the inquiry leading hereto; defrayal of the costs of administration or distribution; or for other uses permitted by District law, at the sole discretion of the Attorney General for the District of Columbia.

21. The University shall not knowingly permit third parties authorized by the University to act on its behalf to engage in practices that would be violative of this Settlement Agreement.

22. This Settlement Agreement represents the full and complete terms of the settlement entered into by the Parties. In any action undertaken by the Parties, neither prior versions of this Settlement Agreement nor prior versions of any of its terms may be introduced for any purpose whatsoever.

23. All notices sent pursuant to this Settlement Agreement shall be provided to the following address via first class and electronic mail, unless a different address is specified in writing by the party changing such address:

Graham Lake
Chief, Workers' Rights and Antifraud Section
Office of the Attorney General
400 6th St., NW, 10th Floor
Washington, D.C. 20001
Graham.Lake@dc.gov

Counsel for the District of Columbia

Elizabeth B. Bradley
Fortney & Scott LLC
1909 K St. NW, Ste. 330
Washington, D.C. 20006
ebradley@fortneyscott.com

Counsel for American University

24. Any failure by any party to this Settlement Agreement to insist upon the strict performance by any other party of any of the provisions of this Settlement Agreement shall not be deemed a waiver of any of the provisions of this Settlement Agreement, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Settlement Agreement.

25. If any clause, provision or section of this Settlement Agreement shall, for any reason, be held illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect any other clause, provision, or section of this Settlement Agreement and this Settlement Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable clause, section, or other provision had not been contained herein.


26. Nothing in this Settlement Agreement shall be construed as relieving the University

of the obligation to comply with all state and federal laws, regulations, or rules, nor shall any of the provisions of this Settlement Agreement be deemed to be permission to engage in any acts or practices prohibited by such laws, regulations, or rules.

27. The University shall provide a copy of this Settlement Agreement to each of its current and future principals, officers, directors, and managers having decision-making authority with respect to the subject matter of this Settlement Agreement.

28. The University shall not form a separate entity or corporation for the purpose of engaging in acts or practices in whole or in part that are prohibited in this Settlement Agreement.

BRIAN L. SCHWALB
Attorney General for the District of Columbia



Graham Lake
Chief, Workers' Rights and Antifraud Section
Office of the Attorney General
400 6th St., NW, 10th Floor
Washington, D.C. 20001

Date: 10/21/2024

Counsel for the District of Columbia



American University Signatory

Date: 10/18/2024

Appendix A

Settlement Claim Form

First Name

Last Name

Mailing Address: _____

Email Address: _____

Employees in the District of Columbia are required to be paid for their hours worked, including overtime premiums of 1.5x their regular rate of pay for hours worked above 40 in a workweek. Between January 1, 2020 and [the Effective Date], did you work any regular or overtime hours for which you did not receive compensation?

Yes

No

Please list all workweeks between January 1, 2020 and [the Effective Date] during which you did not receive regular or overtime pay for hours worked. For each workweek listed, please indicate the number of regular and overtime hours for which you were not paid.

For the purposes of this Claim Form, Straight Time Hours means the first 40 hours worked in a work week. Overtime Hours means hours worked in excess of 40 hours in a work week. For example, if you claim to have worked 42 hours in a work week but were only compensated for 35 hours, you would put 5 hours for Uncompensated Straight Time Hours and 2 hours for Uncompensated Overtime Hours.

Work Week:	Uncompensated Straight Time Hours	Uncompensated Overtime Hours

Waiver and Release

1. I am submitting this claim form and waiver and release in order to submit a claim for payment under the Settlement Agreement between the District of Columbia and American University dated [Effective Date].
2. In consideration for my eligibility for payment under the Settlement Agreement, I _____ (“Releasor”) hereby AGREE NOT TO SUE and RELEASE, WAIVE, and FOREVER DISCHARGE American University, its principals, agents, employees, or successors (hereinafter referred to as “Releasees”) from any and all liability, claims, demands, actions, or causes of action whatsoever arising out of any loss or damages sustained by me related to the performance of work off-the-clock without compensation between January 1, 2020 and [Effective Date.]
3. I agree that this Release is given with the express intention of terminating any right to sue related to the above, regardless of WHETHER ANY DAMAGES WERE CAUSED BY THE NEGLIGENCE OF RELEASEES, and with the intention of binding the Releasor’s spouse, heirs, executors, administrators, legal representatives, and assigns.
4. I hereby further agree that this Release shall be construed in accordance with the laws of the District of Columbia.
5. Any portion of this document deemed unlawful or unenforceable is severable and shall be stricken without any effect on the enforceability of the remaining provisions.

I ACKNOWLEDGE AND REPRESENT THAT I have read the foregoing General Waiver and Release, understand it and sign it voluntarily as my own free act and deed; no oral representations, statements, or inducements, apart from the foregoing written agreement, have been made; I am at least eighteen (18) years of age and fully competent; and I execute this Release for full, adequate and complete consideration fully intending to be bound by same.

Printed Name of Employee: _____

I have signed this General Waiver and Release From Liability on _____, 2024.

EMPLOYEE SIGNATURE:

To submit this General Waiver and Release, please mail or email the completed claim form to [Claims Administrator]