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Cardozo Arts & Entertainment Law Journal

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Recommended Citation

Vernace, Matt, "Loots of Their Labor: Analyzing Wage & Hour Challenges in Gaming's "Crunch Culture"" (2020). *AEJ Blog*. 252.

<https://larc.cardozo.yu.edu/aelj-blog/252>

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Loots of Their Labor: Analyzing Wage & Hour Challenges in Gaming’s “Crunch Culture”

BY [MATT VERNACE](#) / ON NOVEMBER 2, 2020



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Several industries rely on high volumes of creative input from their labor forces; the legal,¹ accounting,² medical,³ and financial⁴ fields are infamous for time demands placed on employees. Tech professionals also confront similar high-volume work periods, typically before a big product release.⁵ Yet an underexplored industry featuring this demanding work culture lies within interactive entertainment space: video game development.⁶ While most of the listed industries offer long-term benefits like equity, job security, or financial stability, game development studios often do not have the same carrots-and-sticks available to sweeten the pot for overworked employees.

While different industries may quibble over the exact definition of “crunch,” all definitions describe the expected, and sometimes formalized, overworking of professionals for sustained periods as an all-consuming “culture, an atmosphere, a state of

mind.”⁷ Crunch can also transform a social-cultural management issue into a bona fide legal problem for game studios as unsafe and unsustainable labor practices become normalized.⁸ Despite the recent media attention crunch culture has received,⁹ the gradual overworking of game engineers has been documented since the early 2000s.¹⁰ Prior accusations against prominent game dev Electronic Arts culminated in a \$14.9 million payout to settle unpaid overtime claims from frustrated employees.¹¹

Yet over a decade later, crunch still seems to accompany increasingly complex game releases, even when game dev studios assure the public the extra hours are merely voluntary.¹² Notably, in anticipation of 2020’s biggest release, Cyberpunk 2077’s CD Projekt Red faces immense backlash from both employees and the media, highlighting empty promises of well-managed crunch meant to appease workers.¹³ The company’s continued assurances to investors that the extra work was “not that bad”¹⁴ and apology to employees’ spouses for their loved ones’ absence from the home front during crunch¹⁵ has done little to quell internal frustration with the studio. And in true crunch fashion, increasing workloads still resulted in a predictable outcome: another pushed-back deadline requiring additional crunch.¹⁶

Although crunch has become an accepted downside of working at a prestigious AAA game development company, firms employing crunch may have to reckon with difficult labor law questions if the practice persists.

All Work and No Play? Statutory Safeguards for Game Dev Workers

Due to the expected, intense work schedules leading up to game releases, studio workers may not believe themselves to have any legal protection to prevent such overwork. However, many low-level workers in the game development space are shielded from uncompensated crunch by a robust piece of federal legislation in the Fair Labor Standards Act (hereinafter “FLSA”).¹⁷ The FLSA offers safeguards for certain employees, including minimum wage and overtime at one-and-a-half times the worker’s hourly rate, provided that the employee does not make over the \$35,568 annual salary.¹⁸ In tech-focused industries, companies tend to hire engineers as independent contractors, circumventing some of these protections afforded to full-time employees.¹⁹ The video game industry’s “contractor-heavy model” is no secret, with game giants like Psyonix Inc. (Rocket League) and Activision Blizzard (Call of Duty) largely reliant on outsourcing work to contractors.²⁰

Interestingly, the FLSA carves out several exceptions for certain computer-professionals, allowing exemption for employees that (1) earn as salary or a contracting fee more than \$684 per week or \$27.63 an hour; and (2) whose primary job duties qualify as software/hardware systems analysis, computer design, software development, or testing and documenting computer systems or programs.²¹ This provision’s impact on the gaming industry is clear: many, if not a vast majority of, engineers, programmers, and QA testers working for a game studio were already exempt from the FLSA’s paid overtime requirements. As far as the games

industry is concerned, this computer-professional exemption protects employers, despite the DOL's purported intention.²² Thus, while this exemption may still protect underpaid graphic designers and game artists employees, programming-focused employees decrying mandatory crunch have little recourse.

Another challenge in analyzing the legality of crunch is the availability of accurate wage data for creative engineers employed by game development studios. In prominent occupational databases, video game designers and related programming positions show unhelpfully wide ranges, depending on the geographic location and experience level required for the job. While appearing to show median wage level that easily exceeds the FLSA's nonexempt classification, DOL's paltry wage data does not align with the actual industry wages.²³ For instance, DOL's O*NET OnLine database notes that the median salary for video game designers in 2019 was \$88,550 and an hourly rate of \$42.57, whereas a survey of game developers provided a more realistic range between \$50,000-75,000.²⁴ This discrepancy between wage surveys and actual compensation for game studio workers makes it difficult to calculate industry-average wages, and thus, makes it difficult to determine whether FLSA protections are triggered.

Another factor that may compound game studios' ability to proffer FLSA-exempt wages is DOL's and DHS's recent updates to foreign wage requirements. Like other high-tech fields, interactive entertainment firms employing foreign talent are required to pay non-domestic employees the same wage as American workers with the same job duties and experience.²⁵ Such a requirement intends to prevent displacement of U.S. workers by cheaper, foreign workers.²⁶ Even if such regulations are overturned through litigation,²⁷ employers will still be forced to bear the costs of securing work visas for such employees, or risk hiring less-qualified domestic workers. In either case, businesses eat the increased operational costs, further incentivizing misclassification of workers to avoid triggering FLSA's overtime requirements.

Another Player Has Joined Your Party – Game Dev Workers Banding Together

As more state legislatures trend toward strengthening the employee classification system,²⁸ the interactive entertainment industry is poised for change. The effect of such legislation could be felt in game development hotspots like Los Angeles and Seattle, transferring lower-wage freelancers to the official payroll. However, mere reclassification of independent contractors as employees will not by itself alleviate crunch-created workplace issues.

For employees seeking enforcement of the protections afforded by the FLSA, several court cases set the precedent for joining labor-related grievances. In 2012, a California federal district court granted the plaintiff-employees' motion for a collective FLSA action against their game developer employer.²⁹ There, the court reasoned that so long as the collective

employees consent to the action and are similarly situated as the representative plaintiffs, game designers can party up to regain missing wages and overtime bonuses.³⁰ Similarly, former employees brought suit against Telltale Games, Inc. for implementing mandatory crunch, and after the game's shipping to market, firing those employees without severance.³¹ While the facts of *Helton* differ substantially³² from the instant crunch craze, allowing similarly situated video game workers to aggregate FLSA claims, including misclassification as independent contractors, is a promising sign for those working mandatory and sustained overtime. Likewise, the Telltale lawsuit foreshadows the breaking point for game dev employees that are forced to crunch without adequate compensation.

Based on recent case law and DOL wage adjustments, game studio employees have some flexibility in dealing with crunch culture. As noted, a game dev's insistence on a non-compulsory crunch may itself be sufficient to dispel accusations of labor law violations. Similarly, the wages of potential complainants may in fact be too high to trigger statutory safeguards under the 2019 DOL rule changes for computer professionals. Calls for unionization amongst game developers, creative designers, and related professionals have fallen short of expectations.³³ And promises of equity in the companies has failed as adequate compensation for the grueling hours worked.³⁴

Therefore, employees are left without any substantial defenses against crunch, with the hope for change resting in the hands of game dev management. Some companies, like Grand Theft Auto's Rockstar Games, have implemented new internal procedures and feedback loops to avoid crunch.³⁵ Promising top-down workflow adjustments, in conjunction with consumer pressure that avoids exploiting the fruit of overworked labor forces,³⁶ will hopefully address at least some of the concerns caused by crunch.

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