Fair Labor Standards Act of 1938 (FLSA)
Are You in Compliance?

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FLSA – Fair Labor Standards Act of 1938
Obama’s White House

- Increased enforcement
- Renewed focus on labor and employment laws
- Enhanced staff at the EEOC
The Ledbetter Fair Pay Restoration Act

- Signed into law by President Obama in 2009
- Amends Civil Rights Act extending 180-day statute of limitations to reset with each discriminatory paycheck
DOL: We Can Help

U.S. Department of Labor, Wage and Hour Division

www.wagehour.dol.gov
1-866-487-9243

We Can Help
Fair Labor Standards Act of 1938
Are You in Compliance?
Today’s Objectives are:

- FLSA Basics
- Compensable Hours
- General Cautions & Pitfalls
- Penalties & Sanctions
- Employer Responsibilities
- 2010 PPACA Addition to FLSA
- Employer Actions
Coverage

More than 130 Million workers in more than 7 million workplaces are protected (or “covered”) by the Fair Labor Standards Act (FLSA), which is enforced by the Wage and Hour Division of the U.S. Department of Labor.
Major Provisions

- Coverage
- Minimum Wage
- Overtime Pay
- Youth Employment
- Record Keeping
Minimum Wage

- Federal Minimum Wage for non-exempt employees is:
  - $7.25 as of 7/24/09
- Federal Contract Workers
  Minimum Wage for covered workers is:
  - $10.10 as of 02/12/2014
Other States Minimum Wage

- State Minimum Wage for non-exempt employees is:
  - Missouri - $7.65
  - Illinois - $8.25
FLSA Exemptions

- Exempt or Non-Exempt? That is the question...
Job Title alone is insufficient

- “The exempt or nonexempt status of any particular employee must be determined on the basis of whether the employee's salary and duties meet the requirements of the regulations.”
Steps to Classification

A position must pass a variety of tests:

- **Salary Level Test**
  - $455 per week ($23,660 /year)

- **Duties Test**
  - What are the primary duties?
  - What level of autonomy and independence?
  - What is the actual work being done?
Exemptions

Although there are many exemptions, there are six categories that are the most common:

- Executive Employees
- Administrative Employees
- Learned Professional
- Creative Professional
- Computer Employees
- Outside Sales Employees
Exemptions

- Executive Employees
  - Customarily and regularly directs the work flow of two or more employees
  - Typically have authority to hire or terminate
Exemptions

- Administrative Employees
  - Must hold “position of authority” with the employer
  - Primary duty includes the exercise of discretion and independent judgment with respect to matters of significance
Exemptions

- **Learned Employees**
  - Requires knowledge of advanced type in field of science or learning acquired by course of specialized intellectual instruction.
Exemptions

- Creative Employees
  - Performing work requiring invention, imagination, originality, or talent in a recognized field of artistic endeavor
**Exemptions**

- **Computer Employees**

  Primary duties of application of systems analysis techniques and procedures, including consulting with users to determine hardware, software, or system applications. They also design, develop, document, create, test, and modify computer systems.

- **Compensation**
  - $455 per week ($23,660 /year) or
  - $27.63 per hour
Exemptions

- **Outside Sales Employees**
  - Must be *customarily and regularly engaged* away from the employer’s place or places of business.
Compensable Hours
Overtime

Covered, non-exempt, employees must receive one and one-half times the regular rate of pay for all hours worked over forty in a workweek.

- Each workweek stands alone
- Regular Rate
Overtime

- Required overtime
- Unauthorized overtime
Waiting Time

Engaged to wait or waiting to be engaged?

- “Engaged to wait” time is compensable because it is controlled by the employer.

- “Waiting to be engaged” time is not compensable if the employee can use the time for his or her own purpose.
On-Call Time

- If required to remain “on-call” on the employer’s premises, time is compensable.

- If an employee is required to remain on call at home, or let the company know how to reach them, this is generally not considered “working” while on-call.
Rest & Meal Periods

- Bona fide meal periods are not work time.
- If the employee is not fully relieved of all work while he/she is clocked out or on a lunch break, the time is considered compensable.
Break Time Requirements for Nursing Mothers

- Part of The Patient Protection and Affordable Care Act ("PPACA")
- Signed into law March 23, 2010
- Amended to provide breaks for nursing mothers
- Exempt employees are not covered
Meetings, Lectures & Training

Generally compensable unless 4 criteria are met by DOL:

I. attendance is outside of the employee’s regular working hours
II. the employee’s attendance is completely voluntary
III. the course, lecture, or meeting is not directly related to the employee’s job
IV. the employee does not perform any productive work during such attendance
Travel Time

- Normal commuting (home to work) is not work time
- Work-related travel time is counted as work time
- Fact Sheet #22 – Hours Worked Under the Fair Labor Standards Act (FLSA)
  - Link to the website Fact Sheet: http://www.dol.gov/whd/regs/compliance/whdfs22.pdf
“Compensatory” Time

- Compensatory time is not available to private sector employees
- Be cautious if/when using compensatory time off
General Cautions & Common Pitfalls
Non-Exempt Employees On the Phone

- On the phone = On the clock
Deducting from an Exempt Employee’s Salary

- Improper deductions could lead to loss of exemption
- Some deductions can be made under certain circumstances
- Isolated, inadvertent deductions can be remedied under the safe-harbor provision
Impermissible Deductions from Exempt Pay

- A deduction of a day's pay because the employer was closed due to inclement weather;
- A deduction of three days pay because the exempt employee was absent for jury duty;
- A deduction for a two-day absence due to a minor illness when the employer does not have a bona fide sick leave plan, policy or practice of providing wage replacement benefits; and
- A deduction for a partial day absence to attend a parent-school conference.
Permissible Deductions from Exempt Pay

- Full day absences due to illness or disability (Partial-day under FMLA)
- Full day absences for personal reasons (Ex: Wedding)
- Offsets against “bank” (jury duty, military pay)
- Full day increments for suspensions for safety violations
- First and last weeks of employment
Safe Harbor Provision

If an employer has:

- Clearly communicated policy prohibiting improper deductions and including complaint mechanism,
- Reimburses employees for any improper deductions,
-AND
- Makes a good faith commitment to comply in the future.
Sample Safe Harbor Language

It is our policy and practice to accurately compensate employees and to do so in compliance with all applicable state and federal laws. To ensure that you are paid properly for all time worked and that no improper deductions are made, you must record correctly all work time and review your paychecks promptly to identify and to report all errors.

We make every effort to ensure our employees are paid correctly. Occasionally, however, inadvertent mistakes can happen. When mistakes do happen and are called to our attention, we promptly will make any correction that is necessary. Please review your pay stub when you receive it to make sure it is correct and immediately bring any concerns to the attention of the Human Resources Department.
Forgetting to Keep a “Paper Trail”

- Rely on time cards or time sheets to record hours for non-exempt employees
- If you have no electronic verification process, make sure to have recorded sign-offs
- Ensure that your verification process is solid
Outdated Job Descriptions

Understaffed? Wearing many hats?

- Not all salaried employees are exempt
- Audit your company’s job descriptions to ensure they reflect accurate information
Hourly/Salaried Pay Status

- Pay Methods:
  - Hourly vs. Salary

- Classifications:
  - Exempt vs. Non-Exempt
Misclassifying Employees

Determining Contractor (1099) vs. Employee
- Degree of Financial Influence
- Behavioral Control
- Type of Relationship

Federal Concerns
- IRS Tax Withholding
- Social Security and Medicare withholding and match
- DOL overtime entitlement and unemployment
FLSA Penalties & Sanctions

- Fines
  - Back pay up to 2 years
  - Back pay up to 3 years with willful violation
- Liquidated (double) damages
- Attorneys’ fees
- Interest
- Increased audits and investigations
Employer Actions
Posting Requirements

- Poster is available for free through the Wage & Hour Website
- Poster should be placed in a conspicuous place for employee access
Recording Work Time

- Tracking Hours
- Regular Starting/Stopping Times
Recordkeeping Requirements

- Employee’s full name
- Social Security Number
- Address, including zip code
- Birthday (if younger than 19)
- Sex
- Occupation
- Time and day of week when employee’s workweek begins
- Hours worked each day
- Total hours worked each workweek

- Basis on which employee’s wages are paid
- Regular hourly pay rate
- Total daily or weekly straight-time earning, and total overtime earnings for the workweek
- All additions to or deductions from employee’s wages
- Total wages paid each pay period
- Date of payment and the pay period covered by the payment
How Long Should Records Be Retained

- **3 YEARS**
  - Payroll Records
  - Collective Bargaining Agreements
  - Sales and Purchase Records

- **2 YEARS**
  - Time cards and piece work tickets
  - Wage rate tables
  - Work and time schedules
  - Additions to or deductions from wages
Pending legislation for the white collar exemption increase

- The minimum salary threshold level for a white-collar exemption is currently $455 per week or $23,660 per year.
- Potential increase to the salary threshold could be to a salary level of $970 per week or $50,440 per year.
The recommendations and opinions provided herein are based on general Human Resources management fundamentals, practices and principles and are not legal opinions or guaranteed outcomes. We strongly recommend as part of a team approach to management, that clients consult with legal counsel of their choice to address legal concerns related to human resource issues.