

Wage and Benefits Issues

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Fair Labor Standards Act

- Known as the “FLSA”
- Codified at 29 U.S.C. § 201, *et seq.*
- Governs minimum wage and overtime
- New rules take effect December 1, 2016



FLSA: The Basics

- Sets federal minimum wage
(currently \$7.25/hour) – no Alabama minimum wage
- Nonexempt employees must be paid a premium for each hour worked over 40 in a 7-day workweek
- Regulates child labor
- Guarantees equal pay regardless of gender
- Imposes recordkeeping requirements

What is overtime?



What is overtime?

- Overtime is the amount of hours exceeding 40 in a work week
- Under the FLSA, nonexempt employees are entitled to 1.5 (time and a half) of their regular hourly pay
- Example: Oprah makes \$10/hour so her overtime rate is \$15/hour.

Exemptions

- Why are exempt employees important?
 - Maintain consistent personnel costs
 - Lower hourly rates



Salary Exemption Test

1. Must be paid on a salary basis
2. Perform exempt duties



Salary

- Salary = employee regularly receives a predetermined amount each pay period
- Employee is entitled to entire salary regardless of hours worked (with exceptions)
- Cannot be paid by the hour



Must receive full salary unless:

- Employee is absent from work one or more full days for personal reasons
- Employee is absent from work one or more full days for sickness or disability if deduction is made in accordance with plan, policy, or practice
- Employer imposes good-faith penalties for safety infractions or misconduct
- FMLA leave
- Employee is absent for the entire work week

Recording Time

- Should exempt employees record their hours?
 - No requirement under FLSA
 - BUT time records may be beneficial if an employee is reclassified
 - Can also use time records to assess productivity and need for additional employees

Cannot deduct for:

- Jury duty
- Attendance as a witness in court
- Temporary military leave
- Absences caused by employer

Types of exemptions

- Executive
- Administrative
- Learned professional
- Creative professional
- Computer employee
- Outside sales



Executive Exemption

- **Management** – must have a primary duty of managing the organization or a customarily recognized department or subdivision.
- **Supervision** – must customarily and regularly direct the work of two or more employees.
- **Authority** – must have the authority to hire or fire employees.

Examples

- Plant manager
- Shop foreperson
- Assistant manager with sufficient hiring authority
- Executive chef



Administrative Exemption

- **Duties** – must have a primary duty that includes the performance of office or nonmanual work directly related to the organization’s management or business operations.
- **Discretion** – must exercise discretion and independent judgment with respect to matters of importance.

Examples

- Insurance claims adjusters
- Financial advisors
- Team leaders
- Executive and administrative assistants
- Human resources managers

Examples of Nonexempt Employees

- Inspectors
- Test proctors/graders
- Personnel clerks
- Bookkeepers
- Paralegals
- Probation officers
- Payroll clerk



Learned Professional Exemption

- **Knowledge** – work requires knowledge of an advanced type.
- **Field of science or learning**
- **Course of study** – knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.
- **Discretion and independent judgment**

Field of Science or Learning

- Law
- Medicine
- Theology
- Accounting
- Physical, chemical, or biological sciences
- Actuarial computation
- Engineering
- Architecture
- Teaching
- Pharmacy

Examples

- Doctors
- Registered nurses (RNs), but not LPNs or nurse aides
- Paramedics
- Teachers
- Accountants, but not clerks
- Pilots



Creative Professional Exemption

- Does the employee's primary duty require invention, imagination, originality, or talent in a recognized field of creative or artistic endeavor?



Examples

- Graphic designers
- Filmmakers
- Artists



Computer Exemption

- Primary duty must consist of:
 - Application of systems analysis techniques and procedures;
 - Design, development, documentation, analysis, creation, testing, or modification of computer systems or programs;
 - Design, documentation, creation, testing, or modification of computer programs related to machine operating systems; or
 - Combination of the above.

Outside Sales Exemption

- Primary duty is making sales or obtaining orders or contracts for services or use of facilities.
- Employee is customarily and regularly engaged away from the employer's place of business.
- ❖ May be compensated by commission only without a salary

New FLSA Rules

- No changes to the duties test
- Increase minimum salary from \$455/week (\$23,660/year) to \$913/week (\$47,476/year)
- Increase total annual compensation for highly compensated employees from \$100,000 to \$134,004
- Nondiscretionary bonuses and incentives may make up 10% of minimum salary level
- Automatic salary increases every 3 years

What are “hours worked”?

- Employees must be paid for all hours spent performing the principal duties assigned by their employer.
- But what about pre- or post-shift activities?



Compensable Preliminary and Postliminary Time

- Activities compensated by contract, custom, or practice
- Job-related activities required as part of an employee's work



Examples

- Remaining until audit or inspection is complete
- Changing clothes at work, if required by the nature of job duties
- Cleaning and maintaining police vehicles
- Driving employer-owned vehicles between secure parking locations and work sites
- Fire drills
- Rest periods of 20 minutes or less

When is this time NOT compensable?

- Not an integral part of the employee's principal job duties



Examples

- Absences
- Voluntary athletic contest
- Changing clothes at home
- Voluntary charitable work outside working hours
- Meals periods lasting longer than 30 minutes
- General commuting
- Waiting to don protective gear before shift

Deductions

- Board, lodging, or other facilities:
 - May be made in non-overtime weeks even if they reduce wages to below minimum wage
 - Deductions during overtime weeks may not exceed the amount charged in non-overtime weeks
 - Deductions may not exceed reasonable cost of facilities without any profit allowances.
- Other deductions (tools, uniforms, etc.):
 - May not reduce wages below minimum wage

Deductions

- May deduct employee's share of Social Security, state unemployment insurance, and federal, state, or local taxes
- Cannot deduct taxes that the law requires the employer to pay



Training and Meeting Time

- Generally, employees must get paid for attending training, meetings, or similar activities UNLESS:
 1. Outside regular working hours;
 2. Attendance is voluntary;
 3. Not directly related to the employee's job; and
 4. Employee does not perform productive work while attending the training or meeting.

Internships

- Training for **current employees** is different than **trainees or interns**
- Interns or potential new hires may be exempt if they meet a six-part test



Leave Policies

- FLSA does not require employers to provide vacation time
- Qualified employees may be entitled to sick leave under the Family Medical Leave Act (FMLA)
- In certain situations, Alabama law requires employers to pay employees for unused vacation time.
- Employers must create proactive policies to avoid paying for unused vacation time.



Part-time Employees

- FLSA does not require employees to pay premium overtime rates until an employee exceeds 40 hours in a workweek
- If salary covers ALL hours worked, then employee is not entitled to additional money for working extra hours
- If salary only covers part-time hours, then employee is entitled to straight time up until 40 hours

Part-time Employees

- Hourly rate may not be less than minimum wage for part-time workers
- If paid salary, calculate hourly rate using 40-hour workweek



Internship Test

1. Training is similar to vocational school.
2. Training is for the benefit of the intern.
3. Interns do not displace regular employees.
4. Employer receives no immediate advantage from the activities of the intern.
5. Interns are not necessarily entitled to a job after training program.
6. Mutual understanding is that no wages will be paid to intern.

Benefits

- COBRA (Consolidate Omnibus Reconciliation Act)
- Flex spending accounts
- ERISA (Employee Retirement Income Security Act)



COBRA

- Employers must provide notice under COBRA to former employees (discharged or otherwise).
- Federal law requires that most group health plans give employees and their families the opportunity to continue their health coverage through COBRA after a qualifying event.
- **Qualifying event** – voluntary or involuntary termination of employment for reasons other than gross misconduct OR reduction in hours of employment.

Flex Spending

- A pre-tax benefit account that employees may use to pay for eligible medical, dental, and vision care expenses that are not covered by insurance



ERISA

- Federal law that sets minimum standards for most voluntarily established pension and health plans.
- Employers must provide participants with plan information including plan features and funding.
- Provides fiduciary responsibilities for managers of plan assets.
- Plans must establish grievance and appeals process.
- Allows participants to sue for benefits and breaches of fiduciary duties.

Questions?

