Fair Labor Standards Act (FLSA)

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The Fair Labor Standards Act (FLSA) is the federal law that sets standards for child labor, minimum wage and overtime pay, and equal pay (added under the 1963 Equal Pay Act) for men and women performing the same jobs.

By requiring overtime, the FLSA created a monetary penalty for employers who did not spread their existing work among a greater number of employees.

By setting standards for children/minors to work, it ensured that when young people work, the work is safe and does not jeopardize their health, well-being or educational opportunities.
Major components of FLSA

- Establishes minimum wage.
- Distinguishes between covered (non-exempt) and excluded (exempt) employees.
- Establishes overtime threshold (40 hrs.).
- Specifies record-keeping requirements.
Coverage under the FLSA
Exemptions

The most common FLSA MW and OT exemption -- often called the “541” or “white collar” exemption -- applies to certain:

- Executives
- Administrative (Staff) Employees
- Professionals
- Outside Sales People
- Computer Professionals
Overview of the Part 541 Regulations

Wage and Hour Division
Employment Standards Administration
U.S. Department of Labor
“White Collar” Exemptions

- Section 13(a)(1) of the FLSA provides an exemption from both minimum wage and overtime pay for employees who are employed in a bona fide:
  - Executive;
  - Administrative;
  - Professional; or
  - Outside Sales capacity.

- Certain computer employees may be exempt professionals under Section 13(a)(1) or exempt under Section 13(a)(17) of the FLSA.
Scope of the Exemptions

- § 541.3(a): the exemptions do not apply to manual laborers or other “blue collar” workers
- § 541.3(b): the exemptions do not apply to police officers, fire fighters, security guards, and similar public safety employees
- § 541.4: nothing in the final rule relieves employers from their obligations under union contracts
Three Tests for Exemption

➢ Salary Level Test
  ➢ A minimum amount of earnings

➢ Salary Basis Test
  ➢ A predetermined salary which is not subject to deductions because of the quality or quantity of work

➢ Duties Tests
  ➢ Performing managerial or professional job duties as set forth in the regulations
Salary Level Test
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- **Minimum Salary Level:** $455 per week

- **Highly Compensated Level**
  - Total annual compensation of at least $100,000
  - Perform office or non-manual work
  - Customarily and regularly perform any one or more of the exempt duties identified in the standard tests for the executive, administrative or professional exemptions
Salary Basis Test
Salary Basis Test

Employee is considered paid on a salary basis if...

- Regularly receives a predetermined amount of compensation each pay period
- The compensation cannot be reduced because of variations in the quality or quantity of the work performed
- Must be paid the full salary for any week in which the employee performs any work
- Need not be paid for any workweek when no work is performed
Salary Basis Test Exceptions

- Absence from work for one or more full days for personal reasons, other than sickness or disability.
- Deductions allowed for unpaid disciplinary suspensions of one or more full days imposed in good faith for violations of written workplace conduct rules.
- An actual practice of making improper deductions will result in the loss of the exemption only for:
  - Employees in the same job classifications
  - Working for the same manager who made the improper deductions
Duties Test

- Executive Duties
- Administrative Duties
- Professional Duties
Executive Duties

- Primary duty is management of the enterprise or of a customarily recognized department or subdivision;
- Customarily and regularly directs the work of two or more other employees; and
- Authority to hire or fire other employees or whose suggestions and recommendations as to hiring, firing, advancement, or other change of status of other employees are given particular weight.
Executive Duties

- The term “particular weight” is defined by a set of factors to consider, including:
  - Whether it is part of the employee’s job duties to make such suggestions and recommendations
  - The frequency with which such suggestions and recommendations are made or requested
  - The frequency with which the employee’s suggestions and recommendations are relied on by others.
- Concurrent performance of exempt and nonexempt work does not automatically disqualify an employee from exemption.
Administrative Duties

➢ Whose primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer’s customers; and

➢ Whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.
Administrative Duties

Primary Duty Office/Non-Manual Work

- Generally employees with an administrative exemption do back office work. Their duties must be directly related to assisting with the running or servicing of the business, as distinguished, say, from working on a manufacturing production line or selling a product in a retail or service establishment. For example:
  - Safety and Risk Management Personnel
  - Personnel Manager, Human Resources Management, Employee Benefits
  - Computer Network, Internet/Database Administrators
Administrative Duties

Discretion and Independent Judgment as to Significant Matters

➢ Takes action independently after comparing possible courses of conduct.

— Example: A Admissions Advisor reviews a students academic record and makes a decision whether to extend admission.

➢ Freedom from immediate supervision is important, but the person does not have to have the final word.

➢ Independent judgment must be more than applying established techniques or adhering to specific standards or pre-set procedures.
Professional Duties

- **Learned Professional**
  - Primary duty of the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction.

- **Creative Professional**
  - Primary duty of the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.
Professional Duties

- Defines “work requiring advanced knowledge” as “work which is predominantly intellectually in character and which includes work requiring the consistent exercise of discretion and judgment”

- Clarifies that licensed practical nurses and paralegals are not exempt learned professionals

- Provides that, teachers, accountants, chefs and certified athletic trainers are exempt learned professionals
Computer Related Occupations

Primary duty is:

- The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications
- The design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
- The design, documentation, testing, creation, or modification of computer programs related to machine operating systems
Managing Employees

The NON-EXEMPT WORKER
It is the duty of management to exercise its control to see that work is not performed if it has not been authorized to be performed.
Covered, non-exempt employees must be paid for all hours worked in a workweek.

“Hours Worked,” generally include all the time an employee is:

- Required to be on duty
- Required to be on the employer’s premises, or any other prescribed place of work
- Allowed (suffered or permitted) to work
Examples of FLSA Hours Worked

Attendance at meetings, lectures, training programs and similar activities are all paid time unless all of the following criteria are met:

- Attendance is outside the employee’s regular working hours
- Attendance is voluntary
- Activity is not related to the employee’s job
- No productive work is done during the activity
Examples of FLSA Hours Worked

- Preparing work prior to the start of the shift
- Clean up work after the end of a shift
- Rest periods of 20 minutes or less
- The entire meal period, if the employee is not completely relieved from all duties and responsibilities
- Transporting or delivering materials or equipment to a job site prior to the start of the workday
Examples of FLSA Hours Worked

- Returning materials or equipment after the end of the workday

- Transporting employees to worksites, office, or to their homes, either before or after the paid workday, at management’s request or directive

- Travel from job site to job site during the workday
Examples of FLSA Hours Worked

“On-Call”

- Whether on-call or waiting time is to be treated as working time depends on whether “the time is spent predominantly for the employer's benefit or for the employee's.”

- An employee who is required to remain on call on the employer's premises is working while "on call" and the time is compensable.

- An employee who is required to remain on call at home, or who is allowed to leave a message where he/she can be reached, is not working (in most cases) while on call and the time is not compensable.

- Additional constraints on the employee's freedom could require this time to be compensated.
Common Errors to Avoid

- Failure to pay for pre or post shift work activities
- Limiting employees to reporting 40 hours (or limited overtime) and directing them to “get the job done” and ignoring the time it takes to accomplish the task
- Considering any employee who is paid a salary as an exempt employee who is not eligible for overtime pay without qualifying the employee for a specific job-related FLSA exemption
- Failure to include all types of pay received in calculating an employee’s regular rate for OT
- Making automatic pay deductions for meal breaks without making sure that an employee has actually taken the unpaid break time
Common Errors to Avoid

- Not totaling work done in separate employer establishments when calculating OT due
- Making illegal deductions from wages -- shortages, damage, tools, uniforms, etc. -- that cut into the required MW or OT
- Deducting rest breaks from work hours
Common Errors to Avoid

- Employee works during meal break and is not paid
- Employee takes work home and the hours are not recorded or paid
- Not paying for compensable travel time
- Not paying for employee meetings
The FLSA Does Not Require

- Vacation, holiday, severance or sick pay
- Meal or rest periods, holidays off, or vacations off
- Premium pay for weekend or holiday work
- A discharge notice, reason for discharge, or immediate payment of final wages to terminated employees
- Any limit on the number of hours in a day or days in a week an employee at least 16 years old may be required or scheduled to work
- Pay raises or fringe benefits
For More Information

 Other resources on the Part 541 exemptions are available at www.dol.gov\fairpay
 Regulations
 Preamble
 Fact Sheets
 Field Operations Handbook
 Frequently Asked Questions
 To ask a specific question or register a comment:
    Email: fairpay@dol.gov
    Telephone, toll-free: 1-866-4US-WAGE
ADDITIONAL INFORMATION

➢ Visit the WHD homepage at: www.wagehour.dol.gov

➢ Call the WHD toll-free information and helpline at 1-866-487-9243

➢ Use the DOL interactive advisor system - ELAWS (Employment Laws Assistance for Workers and Small Businesses at: www.dol.gov/elaws

➢ Des Moines District Office: (515) 284-4625