



Wage & Hour 101

Presented by
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Webinar 101

- Please participate in our poll questions
- You will be sent the slides and recording about 24 hours after the webinar
- Please use “Q & A” to ask questions

Poll Questions

Agenda

- The Fair Labor Standards Act
- Employee Classifications
- Basic Requirements
- Non-Exempt Danger Zones
- Q&A



The FLSA

- Fair Labor Standards Act
- Enacted in 1938 during the Great Depression
- Creates a floor for wages, and a ceiling for hours

What the FLSA Regulates

- Minimum wage
- When overtime must be paid and the overtime rate
- What kind of payroll records must be maintained
- Child labor
- Who can be exempt from minimum wage and overtime

What the FLSA Does Not Regulate

- Vacation or sick leave
- Premium pay for weekend or holiday work
- Fringe benefits
- Termination
- Severance
- Payment of final wages

Are You Covered by the FLSA?

Almost everyone is covered by the FLSA. There are two kind of coverage – if either apply, the FLSA must be followed.

- **Enterprise Coverage:** Any *business* that has an annual dollar volume of sales or business done of at least \$500,000 and certain industries. If the business is covered, all employees are covered.
- **Individual Coverage:** An *employee* is covered by the FLSA if they are engaged in interstate commerce, even if the business doesn't have enterprise coverage.

Employee Classification



Question 1: Do I have an employee, or something else?

These relationships each have specific criteria and classifying workers in one of these ways carries risks.

- **Independent Contractors:** IRS and DOL tests
- **Unpaid Interns:** Primary Beneficiary Test
- **Volunteers:** Generally prohibited at for-profit organizations

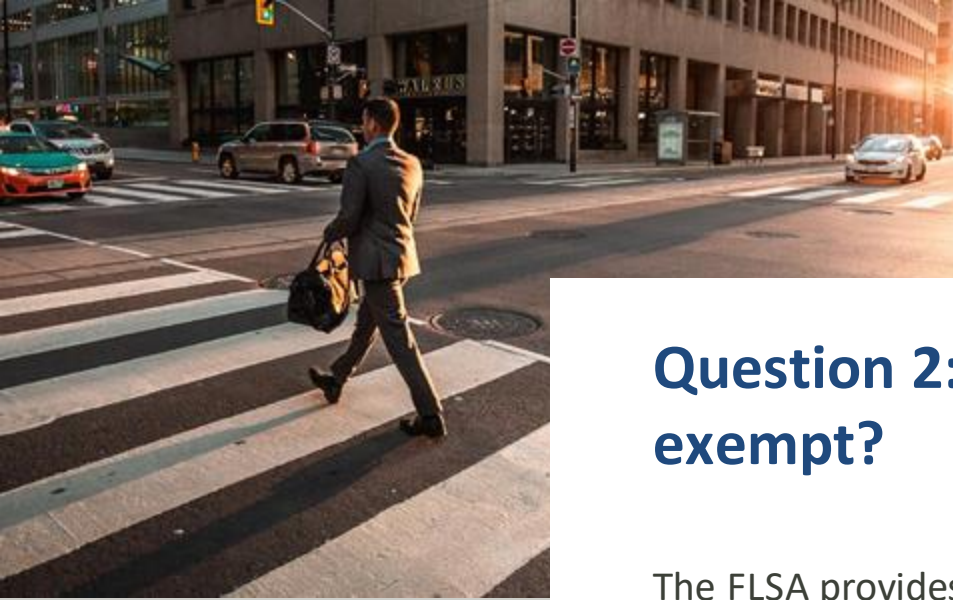
Independent Contractors

- IRS Control Test
- DOL Economic Realities Test
- Both are multi-part balancing, or factors tests – no single criteria will be determinative
- Both focus on who has the most control over the work and who bears the risk of profit or loss



Unpaid Interns: Primary Beneficiary Test

- There is no expectation of compensation
- Provides training similar to that given in an educational environment
- Tied to the intern's formal education program
- Accommodates the intern's academic commitments
- Duration is limited to the period in which the intern is learning
- The intern's work complements, rather than displaces, the work of paid employees
- The intern and the employer understand there is no entitlement to a paid job after the internship



Question 2: Is the employee exempt?

The FLSA provides exemptions from minimum wage, overtime, or both for specific kinds of employees.

- **Job titles don't matter:** Employees must pass certain duties tests
- **Method of payment doesn't matter:** Being paid a salary does not make an employee exempt



Analyze Your Exempt Roles: *White Collar Exemptions (EAP)*

- Executive
- Administrative
- Professional (Learned and Creative)
- Outside Sales
- Computer
- Highly Compensated

The Basics

Minimum Wage, Overtime, Recordkeeping, Posting



Minimum Wage

Federal: \$7.25 per hour or \$2.13 with tip credit

State: 29 states and District of Columbia have a higher than federal minimum wage

City: Many with significantly higher rates

Always pay the highest applicable minimum wage!

Overtime

- Hours over 40 hours in a *workweek* are paid at 1.5x regular rate of pay
- Workweek: the 168-hour period (7 days) during which you track employee time to see if they do more than 40 hours of work, e.g., Sunday at 12:00am through Saturday at midnight
- **Payroll periods or cycles are irrelevant!**

Hours	S	M	T	W	T	F	S	Total
Week 1	0	8	8	10	10	8	6	50
Week 2	0	5	5	8	6	6	0	30

Total payroll period hours: 80

Pay: 70 straight time, 10 overtime

Recordkeeping

Store for three years from the date of creation of the record

- Personal information from W-4
- Hour and day workweek begins
- Total hours worked each workday and each workweek
- Date of payment and pay period covered
- Total wages each pay period, broken down by day, week, straight time and overtime
- Regular hourly pay rate for any week when overtime is worked
- Deductions from or additions to wages

EMPLOYEE RIGHTS UNDER THE FAIR LABOR STANDARDS ACT

FEDERAL MINIMUM WAGE

\$7.25 PER HOUR

BEGINNING JULY 24, 2009

The law requires employers to display this poster where employees can readily see it.

OVERTIME PAY At least 1½ times the regular rate of pay for all hours worked over 40 in a workweek.

CHILD LABOR An employee must be at least 16 years old to work in most non-farm jobs and at least 18 to work in non-farm jobs declared hazardous by the Secretary of Labor. Youths 14 and 15 years old may work outside school hours in various non-manufacturing, non-mining, non-hazardous jobs with certain work hour restrictions. Different rules apply in agricultural employment.

TIP CREDIT Employers of "tipped employees" who meet certain conditions may claim a partial wage credit based on tips received by their employees. Employers must pay tipped employees a cash wage of at least \$2.12 per hour if they claim a tip credit against their minimum wage obligation. If an employer's tip combined with the employer's cash wage of at least \$2.12 per hour do not equal the minimum hourly wage, the employer must make up the difference.

NURSING MOTHERS The FLSA requires employers to provide reasonable break time for a nursing mother employee who is subject to the FLSA's overtime requirements in order for the employee to express breast milk for her nursing child for one year after the child's birth each time such employee has a need to express breast milk. Employers are also required to provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by the employee to express breast milk.

ENFORCEMENT The Department has authority to recover back wages and an equal amount in liquidated damages in instances of minimum wage, overtime, and other violations. The Department may litigate and/or recommend criminal prosecution. Employees may be assessed civil money penalties for each willful or repeated violation of the minimum wage or overtime pay provisions of the law. Civil money penalties may also be assessed for violations of the FLSA's child labor provisions. Heightened civil money penalties may be assessed for each child labor violation that results in the death or serious injury of any minor employee, and such assessments may be doubled when the violations are determined to be willful or repeated. The law also prohibits retaliating against or discharging workers who file a complaint or participate in any proceeding under the FLSA.

ADDITIONAL INFORMATION

- Certain occupations and establishments are exempt from the minimum wage, and/or overtime pay provisions.
- Special provisions apply to workers in American Samoa, the Commonwealth of the Northern Mariana Islands, and the Commonwealth of Puerto Rico.
- Some state laws provide greater employee protections; employers must comply with both.
- Some employers incorrectly classify workers as "independent contractors" when they are actually employees under the FLSA. It is important to know the difference between the two because employees (unless exempt) are entitled to the FLSA's minimum wage and overtime pay provisions and correctly classified independent contractors are not.
- Certain full-time students, student learners, apprentices, and workers with disabilities may be paid less than the minimum wage under special certificates issued by the Department of Labor.



WHD WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

1-800-457-9543
TTY: 1-817-886-0027
www.dol.gov/eplra



5010-108-01-01

Mandatory Poster

- Employers subject to the FLSA must conspicuously post a notice explaining the key points of the FLSA and indicating the current federal minimum wage
- The Department of Labor offers the posting in multiple formats
- If your state has their own minimum wage, they no doubt have a required poster as well

Poll Questions

Wage and Hour Danger Zones

Calculating the “Regular Rate”

If an employee earns more than one rate of pay in the same workweek their “regular rate of pay” should be computed before their overtime rate is calculated (and often overtime will need to be adjusted retroactively).

Overtime rates are affected by:

- Commissions
- Piece-rate pay
- On-call pay
- Non-discretionary bonuses
- Shift differentials

Calculating the “Regular Rate”

Example: Anna earns **\$10/hour** for inside sales work and **\$15/hour** for bookkeeping work. This week, she worked 24 hours in inside sales and 20 hours as a bookkeeper. She also received \$50 in commissions attributable to this workweek. Her pay is calculated as follows:

- **Step 1 – Regular Rate:**

$$[(\$10/\text{hour})(24 \text{ hours}) + (\$15/\text{hour})(20 \text{ hours}) + \$50]/44 \text{ hours} = \mathbf{\$13.41}$$

- **Step 2 – Overtime:**

$$\$13.41/\text{hour} \times 1.5 \text{ overtime premium} = \mathbf{\$20.11/\text{hour}}$$

- **Step 3 – Calculate Weekly Pay:**

$$(\$13.41)(40 \text{ hours}) + (\$20.11)(4 \text{ hours}) = \mathbf{\$616.82}$$



Late or Incomplete Timesheets

- You cannot withhold pay!
- Take your best guess as to hours worked and pay on regularly scheduled payday
- Discipline and document
- Be detailed about how time should be tracked and recorded
- Provide training and set expectations



Unauthorized Work

- All hours worked must be paid, whether you wanted the work done or not
- If the work was overtime, it must be paid at time and a half
- Discipline and document as needed

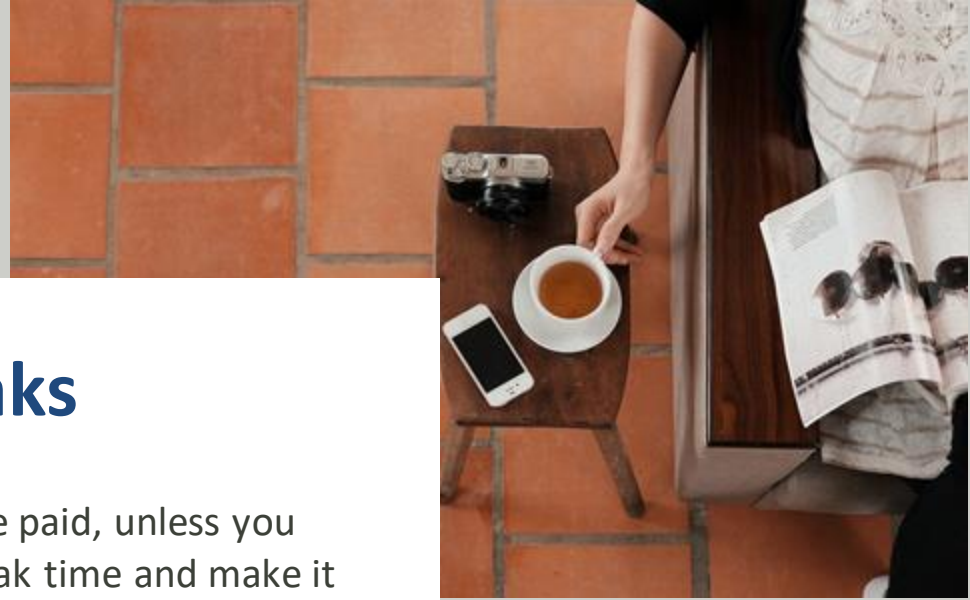


Off-the-Clock Work and Personal Electronic Devices

- Again, all time work must be paid
- Time worked away from the office should be tracked
- Beware the lure of smartphones
- Have clear policies

Meal and Rest Breaks

- Breaks under 20 minutes should be paid, unless you offer a specific amount of paid break time and make it unambiguous that only that amount of time will be paid and that exceeding that rest period will lead to discipline
- Reasonable break time for lactation must be allowed, but can be unpaid subject to the above requirements





Travel Time Issues

Extended Commutes

- Travel during the workday should be paid
- Out-of-the-ordinary commuting time should be paid, e.g. if an employee's usual commute is 30 minutes and you ask them to leave early to visit a client 90 minutes away, pay the difference



Travel Time Issues

Overnight Travel

- Time spent in transit or doing work during their normal work hours, regardless of day, should be paid, e.g., 8-5 Saturday
- Time after normal work hours should be paid if you've asked them to do work, or something work-related, like entertain clients
- If they are not in transit *or* working, and can use their time however they like, you don't need to pay for it

Waiting Time

If the employee is “engaged to wait,” pay

- Something could happen at any moment and they need to be there for it (receptionist, firefighter)

If the employee is “waiting to engage,” you don’t have to pay

- The employee must be completely relieved from duty and told they can leave the job and will not have to start work again until a specified time (delivery driver with an overnight stop)

A photograph showing a person's hands at a wooden table. One hand is on a laptop keyboard, and the other is holding a smartphone. In the background, there are salt and pepper shakers and a notebook on the table, with a window and curtains visible behind them.

On-Call Time

- Is the employee required to stay on the premises or very nearby? If yes, pay.
- If no, evaluate whether the employee can effectively engage in personal activities. How close must they be? How often are they interrupted?
- All time spent responding to calls must be paid.

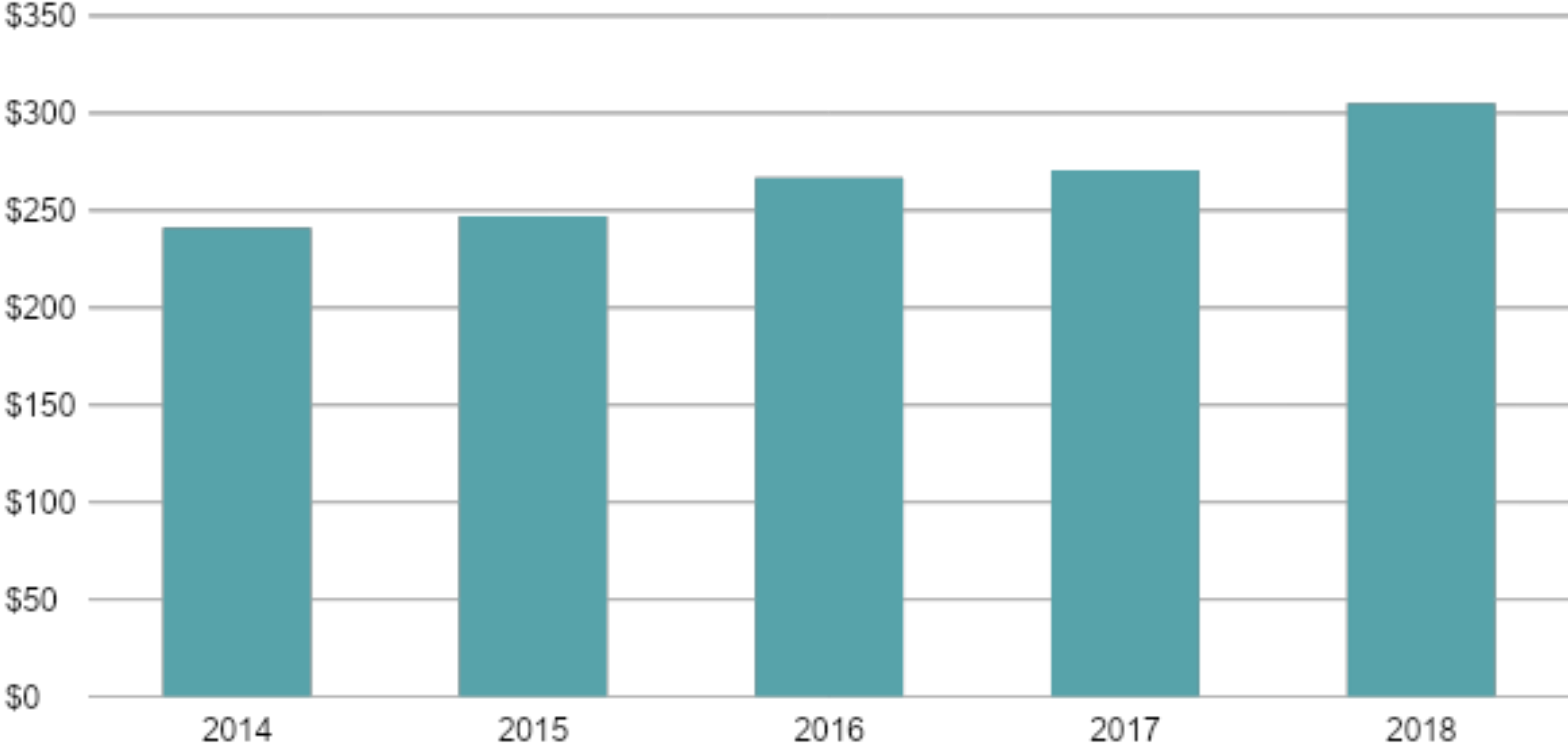
Pay Deductions

- Government-mandated deductions don't require employee approval
- Voluntary deductions for the benefit of the employee usually require written authorization
- Deductions for the benefit of the employer, like uniform costs, are often illegal
- Any non-governmentally-approved deduction that takes an employee below minimum wage or cuts into their overtime pay is a violation of the Fair Labor Standards Act*

*With the exception of certain properly contracted personal loans, which will still be subject to state law

Why it Matters

Back Wages Recovered by the DOL



Stacking Non-Exempt Wage and Hour Violations

Employee was paid a flat rate of **\$800 per week** to cook for an entertainment group on tour for 10 weeks, working approximately **17 hours per day**.

Damages	
Minimum wage back wages	\$210
Minimum wage federal penalty	\$210
Minimum wage state penalty	\$1,740
Overtime back wages	\$8,591
Overtime federal penalty	\$8,591
Overtime state penalty	\$1,740
Late payment state penalty	\$1,740
Attorney Fees	\$5,000
Filing Fees	\$500
Total	over \$28,000

An aerial photograph of a winding river at sunset. The sky is a vibrant mix of orange, red, and purple, with wispy clouds. The river flows through a dark landscape, reflecting the warm colors of the sky. A blue rectangular box is overlaid on the left side of the image, containing the text "Q & A" in white.

Q & A