



Overtime vs. Comp Time:

Complying with Federal &
State Regulations Without
Breaking the Bank



Panelists:

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The FLSA

- Fair Labor Standards Act (FLSA) was passed by Congress in 1938
- FLSA covers all employers, regardless of the size of their organization



Key Regulations of FLSA

- ✔ Sets the minimum wage and overtime pay
 - Current minimum wage: \$5.15 (09/01/97)
 - OT = 1.5 x hourly rate for all hours worked over 40 hours in a workweek
- ✔ Provides for equal pay
- ✔ Establishes “Exempt” and “Non-Exempt” employee classifications

Key Regulations of FLSA

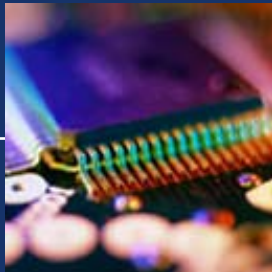
- ☞ Mandates certain record keeping
- ☞ Restricts employment of those 14-18 years old
 - Can pay training wage of \$4.25/hour to employees under age 20 during their first 90 days
 - Employees must be at least 16 years old to work in most non-farm jobs

State Labor Laws vs FLSA



- ✔ Know your state's labor laws
- ✔ State law supersedes FLSA when it provides more protection or greater benefits to employees
- ✔ Check your state's website for more info

FLSA Exemptions Under the DOL's New "White Collar" Regulations (Effective August 23, 2004)



Presented By:
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Categories of Exempt Employees

1. **Executive Employees**
2. **Administrative Employees**
3. **Professional Employees**
4. **Computer Employees**
5. **Highly Compensated Employees**
6. **Outside Sales Employees**

Executive Employee Test

1. Is the employee paid a salary of at least \$455/week, excluding board, lodging, or other facilities?

If No: the employee does not satisfy the minimum salary requirement and does not meet the Executive Employee Test.

If Yes: then go to #2.

2. Does the employee's primary duty involve managing the enterprise or a customarily recognized department or subdivision of the enterprise?

If No: the employee does not satisfy the Executive Employee Test.

If Yes: then proceed to #3.

Executive Employee Test

3. Does the employee customarily and regularly direct the work of two or more full-time employees or their equivalent?

If No: the employee does not satisfy the Executive Employee Test.

If Yes: then proceed to #4.

4. Does the employee have the authority to hire or fire other employees?

If No: is particular weight given to his recommendations about changing the status of other employees?

If No: the employee does not satisfy the Executive Employee Test.

If Yes: the employee satisfies the Executive Employee Test.

If Yes: then the employee satisfies the Executive Employee Test.

Administrative Employee Test

1. Is the employee paid a salary of at least \$455/week, excluding board, lodging, or other facilities?

If No: the employee does not satisfy the minimum salary requirement and does not meet the Administrative Employee Test.

If Yes: then go to #2.

2. Does the employee's primary duty involve performing office or non-manual work that is directly related to the management or business operations of the company or its customers?

If No: the employee does not satisfy the Administrative Employee Test.

If Yes: then proceed #3.

Administrative Employee Test

3. Does the employee's primary duty require him to exercise discretion and independent judgment in regard to significant business matters?

If No: the employee does not satisfy the Administrative Employee Test.

If Yes: the employee satisfies the Administrative Employee Test.

“Learned” Professional Employee Test

1. Is the employee paid a salary of at least \$455/week, excluding board, lodging, or other facilities?

If No: the employee does not satisfy the minimum salary requirement and does not meet the *Learned Professional Employee Test*.

If Yes: then go to #2.

2. Does the employee perform work that requires advanced knowledge (e.g., beyond high school) and is the work predominately intellectual in character such that the employee consistently exercise discretion and independent judgment in carrying out such duties?

If No: the employee does not satisfy the *Learned Professional Employee Test*.

If Yes: then proceed to #3.

“Learned” Professional Employee Test

3. Is the advanced knowledge, and the occupation, in a field of science or learning (e.g., professions of law, medicine, theology, accounting, engineering, architecture, or teaching but not in a field of mechanical arts or skilled trades)?

If No: the employee does not satisfy the *Learned Professional Employee Test*.

If Yes: then proceed to #4.

4. Was the advanced knowledge acquired by a prolonged course of specialized intellectual instruction (e.g., does the employee possess the appropriate academic degree, or does the employee have substantially the same knowledge level and perform substantially the same work as the degreed employees but possess his advanced knowledge only through a combination of work experience and intellectual instruction)?

If No: the employee does not satisfy the *Learned Professional Employee Test*.

If Yes: then he satisfies the *Learned Professional Employee Test*.

Computer Employee Test

1. Is the employee paid a salary of at least \$455/week, excluding board, lodging or other facilities; OR, an hourly rate not less than \$27.63 an hour?

If No: the employee does not satisfy the minimum salary requirement and does not meet the Computer Employee Test.

If Yes: then go to #2.

2. Is the employee a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer field?

If No: the employee does not satisfy the Computer Employee Test.

If Yes: then proceed to #3.

Computer Employee Test

3. Does the employee's primary duty involve systems analysis techniques and procedures (e.g., consulting with users to determine hardware, software or system functional specifications)?

If No: the employee may not satisfy the Computer Employee Test. Proceed to #4 to see if it is applicable.

If Yes: then he satisfies the Computer Test.

4. Does the employee's primary duty consist of 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?

If No: the employee may not satisfy the Computer Employee Test. Proceed to #5 to see if it is applicable.

If Yes: then the employee satisfies the Computer Test.

Computer Employee Test

5. Does the employee's primary duty consist of the design, documentation, testing, creation or modification of computer programs related to machine operating systems.

If No: the employee may not satisfy the Computer Employee Test.

However, if the employee's primary duties consist of a combination of any of the above, the performance of which requires the same level of skills, then the employee satisfies the Computer Employee Test.

If Yes: the employee satisfies the Computer Employee Test.

Highly Compensated Employee Test

1. Is the employee guaranteed \$100,000 in total annual compensation, excluding board, lodging, or other facilities but including other compensation such as commissions and nondiscretionary bonuses?

If No: the employee does not satisfy the Highly Compensated Employee Test.

If Yes: then proceed to #2.

2. Does the employee's primary duty involve performing office or non-manual work?

If No: the employee does not satisfy the Highly Compensated Employee Test.

If Yes: then proceed to #3.

Highly Compensated Employee Test

3. Does the employee customarily and regularly perform any one or more of the exempt duties or responsibilities of an executive, administrative, or professional employee as detailed in the respective tests for each?

If No: the employee does not satisfy the Highly Compensated Employee Test.

If Yes: the employee satisfies the Highly Compensated Employee Test.

Outside Sales Employee Test

1. Do the employee's primary duties involve making sales or obtaining orders/contracts for services or use of facilities?

If No: the employee does not satisfy the Outside Sales Employee Test.

If Yes: proceed to #2.

2. Are the employee's primary duties customarily and regularly performed away from the employer's place of business?

If No: the employee does not satisfy the Outside Sales Employee Test.

If Yes: the employee satisfies the Outside Sales Employee Test.

Other Notable Changes

- More permissible deductions from exempt employee salary for workplace misconduct and the related “safe harbor” provision;
- Recognition that concurrent exempt/nonexempt duties do not necessarily defeat the primary duty test (retail impact);
- No “short” and “long” tests for exemptions;
- No exemption for “blue collar” workers; and
- No exemption for “first responders” such as police officers, firefighters, paramedics, etc.

To Comp or Not to Comp

- ☛ Compensatory time can only be used by governmental employers (1.5 x rate)
- ☛ Private and public sector employers may adjust the schedule within the workweek
- ☛ May use alternative workweek(s)
- ☛ Managers should give prior approval for changes in work schedules

You Didn't Hire Volunteers



- FLSA mandates that employers pay employees for all work they request or “suffer” from their employees
- Hourly employees are always on the clock

Cost of Bad Decisions

- AZ Department of Corrections
- Compass Bank, Birmingham, Alabama
- DOL opinion letter uses $1/26^{\text{th}}$ of annual salary as the allowable margin for error



Scenario 1

- Allan maintains the database of the membership and enters all CLE registrations. He's excited about traveling to the convention, at which he'll handle on-site registrations and perhaps run one of the VCRs. The convention runs from noon on Thursday to midnight on Saturday. What is the financial obligation for the Bar?

Scenario 2

- Bruce supervises the membership services department with a staff of four. He was a solid performer until recently. He has arrived at work at various times and is out of the office for extended periods during the day. Rumors abound, including one about him being at the racetrack. The ED has decided that disciplinary action is appropriate. What are the options?

Scenario 3

- Tom loves his job! He's a paralegal who assists in the Pro Bono Program by placing cases and building FAQs on the website. He secures information from potential clients during the day and often stays in his office during lunch and after hours. He may be working on his own web pages or conducting research into other programs. His supervisor has told him to not work more than 40 hours per week. He loves this and doesn't want to give it up. How far should the supervisor go?

Scenario 4

- Larry is the middle person in a three staff bar. He gets the great assignments of setting up and breaking down for all day seminars and staying late for evening committee meetings. Can his work hours be flexed so as to avoid overtime liability?



Questions?