FLSA Changes
Effective December 1, 2016

October 2016
Presented by WSU Human Resources
and WSU Payroll Office
Agenda

- The FLSA
- What the FLSA requires
- What the FLSA does NOT require
- Changes
- Exempt vs. Non Exempt
- Exemption Tests
- Consequences of Changes
- Overtime pay and Comp time
- Record Keeping
- Common Errors to Avoid
- Penalties
- Enforcement
The FLSA

- Created by the US government in 1938
  - For more details, click [here](#)
- Abolished child labor
- Established a minimum wage
  - $.40/hour

On May 24, 1937, President Roosevelt sent the bill to Congress with a message that America should be able to give "all our able-bodied working men and women a fair day's pay for a fair day's work."
What The FLSA Requires

- FLSA establishes **standards** affecting employees in private sector and in Federal, State, and local governments
  - Coverage
  - Minimum wage
  - Overtime pay
  - Recordkeeping
  - Youth employment

- FLSA enforcement is carried out by Wage and Hour staff, US Dept. of Labor
What the FLSA Does Not Require

- Vacation, holiday, severance, or sick pay
- **Meal or rest periods**, holidays off, or vacations
- **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
Changes
In 2014, President Obama directed the DOL to update/modernize the regulations governing the Fair Labor Standards Act (FLSA)

https://youtu.be/UFJaDm720FU
**What are the Changes?**

- Sets standard salary level for exemption at 40th percentile of earnings of US full-time salaried workers
  - $913 per week or
  - $47,476 annually for a full-year worker
- Establishes mechanism for automatically updating salary level every three years
- Final Rule makes no changes to the duties tests
Exempt vs. Non-Exempt
Which WSU Employees are Not Exempt From FLSA?

- WSU non-exempt (and admin non-exempt on December 1st) employees are not exempt and must receive minimum wage and overtime pay

- Hourly/work study employees are also not exempt
Which Employees are Exempt From FLSA?

- WSU faculty, adjunct faculty, executive and exempt staff are exempt from these provisions:
  - Overtime
  - Minimum wage guarantee
Exemption Tests
Three Tests for Exemption

1. Salary Level AND
2. Salary Basis AND
3. Job Duties For more information, see FLSA
1. Salary Level Test

- For most employees, minimum salary level required for exemption is $913 per week or $47,476/year

- Must be paid “free and clear”
2. “Salaried” Basis Test

- Employee must regularly receive predetermined amount of compensation each pay period
- Compensation cannot be reduced because of variations in quality or quantity of work performed
- Must be paid full salary for any week in which the employee performs any work
- Need not be paid for any workweek when no work is performed
Must perform certain executive, administrative, professional, outside sales, or computer professional job duties set forth in regulation

- Executive Duties
- Administrative Duties
- Professional Duties
- Computer Related Occupations
Common Exempt Professions

- Lawyers
- Teachers
- Accountants
- Pharmacists
- Engineers
- Actuaries
- Chefs
- Certified athletic trainers
- Licensed funeral directors or embalmers
Common Nonexempt Professions

- Licensed practical nurses
- Accounting clerks and bookkeepers who normally perform great deal of routine work
- Cooks who perform predominantly routine mental, manual, mechanical or physical work
- Paralegals and legal assistants
- Engineering technicians
Summary:
Three Tests for Exemption

1. Salary Level
   AND
2. Salary Basis
   AND
3. Job Duties
Consequences of Changes
Basically One Element Changed

- **Salary level test to change 12/1/16**
  - $913 per week or
  - $47,476 annually for a full-year worker
- No change to “salary” basis requirement
- No changes to job duties tests
Salary Level Change Consequences

• Positions that don’t meet minimum salary to be reclassified to Admin. Non-Exempt
  – “A salaried position fitting general description for exempt, but **will** be subject to FLSA overtime rules moving forward” – PPM 3-2
  – Vacation accrual to be grandfathered
  – Must record time worked (not required to clock in/out)
  – Must talk to department chair to check feasibility for teaching adjunct
New Classification: Academic Administrative

- Per FLSA, some staff members may continue to be exempt even though salary is below $47,476
  - Academic Admin. “perform administrative functions directly related to academic instruction or training”
  - Academic counselors and advisors are generally eligible for this exemption
  - Must be paid on salary basis at least equal to entrance salary for teachers at institution
Pay Scales to be Updated

- Will continue to be exempt and non-exempt pay scales (with adjustments)
  - Academic Admin. positions will be in exempt pay scale
- Admin. Non-Exempt pay scale will be added
FLSA Basics
FLSA Basics Reviewed

• Covered non-exempt and admin. non-exempt employees must be paid not less than the federal minimum wage for all “hours worked”

• What are “hours worked?”
Determining “Hours Worked” Can be Complicated

- Non-exempt and admin. non-exempt employees:
  - Must be compensated for all hours worked in a workweek
  - Must also be compensated for any additional time the employee is suffered/permitted to work
    - Work not requested (but suffered or permitted) is work time
  - Hours worked includes only those hours actually worked
    - Example: Employee records 45 hours, but 8 of those hours are due to holiday, so no overtime is paid
Is Meal Time Considered Hours Worked?

- Meal periods are **not** hours worked when employee is relieved of duties for purpose of eating meal.
- Non-exempt and admin. non-exempt employees who work through meal period must be compensated.
- Employees who work through lunch without supervisor approval may be subject to disciplinary action.
Are Rest Periods Considered Hours Worked?

• Rest periods of short duration (normally 5 to 20 minutes) are counted as hours worked and must be paid

• At WSU, rest periods of not more than 15 minutes will normally be provided during each half of 8-hour shift
  • Rest periods shall not be taken at beginning or end of work periods
  • Time not used for rest periods shall not be accumulated and used at later date
Is Training Time Considered Hours Worked?

- Time employees spend in lectures, seminars, classes, or training is considered hours worked and must be paid, **unless**
  1. Attendance is outside regular working hours AND
  2. Attendance is voluntary AND
  3. The course, lecture, or meeting is not job related AND
  4. The employee does not perform any productive work during attendance
Is Travel Time Considered Time Worked?

- Ordinary home to work travel is not work time.
- Travel between job sites during normal work day is work time.
- Travel that keeps non-exempt or admin. non-exempt employee away from home overnight is work time when employee actually performs work.
  - Time spent as passenger on any mode of transportation is not work time, unless employee actually performs work during that time.
  - Employee who is required to drive is compensated for all travel hours.

Confusing???
COMPENSATION FOR OVERNIGHT TRAVEL: Admission Recruiters

Question: Bob is a nonexempt employee whose normal work hours are from 8:00 a.m. to 5:00 p.m. Monday through Friday. Bob must travel to San Francisco to meet with potential students. He leaves on a 5:00 p.m. flight on Friday and prepares his notes while on the plane. He arrives in San Francisco that evening and continues his file review in his hotel room in order to feel prepared for his meetings. At 8:00 a.m. on Saturday, Bob meets with the prospective students. At 3:00 p.m. that afternoon he returns to Ogden. How is Bob compensated?

Friday 5 pm

Bob's flight left the Ogden Airport at 5:00 p.m. According to the FLSA, an employer is only responsible for paying an employee for travel time which is within his/her normal work hours. Bob's normal work hours are 8:00 a.m. to 5:00 p.m. Therefore, the employer is not required to pay Bob for travel time after 5:00 p.m.

While in flight, Bob prepared notes for his morning meeting. According to the FLSA, if an employee performs work related duties while traveling, the employer must compensate the person for this work time. Even though Bob prepared for his meeting outside of normal work hours, the employer is required to compensate him for hours worked.

After arriving in San Francisco, Bob rested in his hotel. Time spent at a hotel with freedom to use time for employee's own purposes is not compensable.

All overnight travel time is not necessarily compensable. Any non-business meal periods or times when an employee is permitted to sleep, such as in a hotel, would not be considered hours worked and therefore, are non-compensable.

Bob took a taxi at 7:30 a.m. to his 8:00 a.m. meeting. Since the travel time was outside of his normal work hours, he was not compensated for his time until he arrived at the meeting place.

However, when he left the meeting at 1:30 p.m., his travel time was within his normal work hours and he would be compensated for his travel time back to the airport.

According to the FLSA, since Bob's flight was scheduled during his normal work hours, even though he was flying on a day he would normally not work (Saturday), the employer is still required to pay him for his travel time until 3:00 p.m. Such time would count towards hours worked for the purpose of calculating overtime.
Is Working at Home Considered Time Worked?

- Non-exempt and admin. non-exempt employees must be compensated for all work-related activities
  - Examples: At work, at home, or via channels of communication like the internet, cell phone, or text messaging
- Employees who work at home or through diverse channels of communication without approval, may be subject to disciplinary action
Is Volunteering Considered Time Worked?

- Even though employees *volunteer* to work beyond normally scheduled hours, employer must compensate employees for those hours worked.

- Exception: Employee is considered to be volunteer if following conditions are met:
  - Services are performed for which no compensation is received beyond expenses or a nominal fee; AND
  - Services rendered are not same type services that employee is employed to perform for employer.

- Example: Custodial employee volunteering to take tickets at a fund raising event for WSU
Overtime Pay and Compensatory Time
When Must Overtime Pay be Provided?

- Non-exempt and admin. non-exempt employees must receive 1-1/2 times the regular rate of pay for all hours worked over 40 in a workweek.
  - If employee works in more than one non-exempt or admin. non-exempt position, must be paid overtime when **combined** hours are over 40.

- Non-exempt and admin. non-exempt employees are not authorized to work overtime w/o prior approval of supervisor.
  - Non-exempt and admin. non-exempt employees who work overtime without approval, must be compensated for time worked and may be subject to disciplinary action.
What is Compensatory Time?

- FLSA allows State Governments to use compensatory (comp) time in lieu of overtime pay
  - Comp time is practice of giving employees paid time off that can be used in future in lieu of paying overtime for hours worked in excess of 40
  - Comp time is accumulated at rate of 1-1/2 times overtime hours
Are Employees Required to Accept Comp Time Rather than Overtime?

At WSU, it has been common practice for supervisors to make mutually agreeable arrangements with non-exempt and admin. non-exempt employees regarding compensating with overtime or comp time.
Are There Limits to the Use of Comp Time?

- At WSU, Comp time is not an option when total comp time accumulated is at 90 hours (60 hours X 1.5)
  - More than 90 hours requires payment
- Supervisors must provide opportunities for employee to use comp time unless it will unduly disrupt department operations
Are There Limits to the Use of Comp Time? (cont.)

- Supervisors must allow use of comp time within reasonable time of request for use
- Supervisors may require use of comp time at any time
- At termination, and upon transfer to another department, payment for unused comp time is included in last pay check
What is a Workweek?

- Each workweek stands by itself
- Workweek is 7 consecutive 24 hour periods (168 hours)
- WSU workweek starts at 12:01 am on Saturday morning and ends Friday evening at midnight
Record Keeping
FLSA Requires Employers to Keep Records of Hours Worked

- Must Keep . . .
- Total hours worked each workday and each workweek
- Total daily or weekly straight-time earnings
- Regular hourly pay rate for any week when overtime is worked
- Total overtime pay for the workweek
Employees Must Use University’s Record Keeping System

- Non-exempt and admin. non-exempt employees should use system to record number of hours worked each day.
- Non-exempt and admin. non-exempt employees must use system to submit record of hours worked each week.
Supervisors Must Use University’s Record Keeping System

- Supervisors must use system to approve records of non-exempt and admin. non-exempt employees’ hours worked each week
- Next-level supervisor must approve payout of overtime hours
Common Errors to Avoid
1. Failing to pay for all hours employee is “suffered or permitted” to work
   - Lunch time, coming to work early, leaving late, course evaluations
2. Assuming all employees paid a salary are not due overtime
3. Limiting number of hours employees are allowed to record
   - Willful violation is NOT good
4. Failing to include all pay required to be included in calculating the regular rate for overtime
   - Bonus, award
5. Failing to add all hours worked in separate establishments for the same employer when calculating overtime due
   • Helping out another department
6. Not recognizing when overtime pay is required
   • Non-exempt or admin. non-exempt employee teaching adjunct
7. Improperly applying an exemption
   • Let HR do their job
8. Treating an employee as an independent contractor
Enforcement
FLSA Enforcement is Carried Out by Wage and Hour Staff from DOL

- When violations are found, Wage and Hour
  - Advises employers of steps needed to correct violations
  - Secures agreement to comply in the future
  - Supervises voluntary payment of back wages as applicable
- 2-year statute of limitations generally applies to recovery of back pay
  - In case of willful violation, 3-year statute of limitations may apply
In event there is not a voluntary agreement to comply and/or pay back wages, the Wage and Hour Division may
- Bring suit to obtain injunction to restrain the employer from violating the FLSA, including the withholding of proper minimum wage and overtime
- Bring suit for back wages and an equal amount as liquidated damages
Penalties for Willful Violation

- Employers who willfully violate Act may be prosecuted criminally/fined up to $11,000
- Employers who willfully or repeatedly violate the minimum wage or overtime pay requirements are subject to civil money penalty of up to $1,100 for each violation
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