FLSA Supervisor Training

November 2010
Presented by WSU Human Resources
Why Are We Here?

• Several issues with Fair Labor Standards Act (FLSA) identified
• FLSA Review Team formed in January
  – Chartered to review WSU policies and procedures to ensure consistency with FLSA
  – Included members from PSAC and CSAC
• Issues confirmed after reviewing experience at another Utah university
FLSA Review Team
Formed in January

Back Row: Pam Berg, Holly Hirst, Stephanie Hollist, Cherrie Nelson, Tanya Scott, Bryce Barker, Ron Jensen, Stephen Guzzetti
Front Row: Lisa Allen, Ben Read
Not Pictured: Claire Hughes, Jean Fruth, Lynell Gardner
Agenda

- The FLSA
- What the FLSA requires
- What the FLSA does NOT require
- Coverage
- Minimum Wage
- Overtime pay and Comp time

- Youth employment
- Record Keeping
- Required Breaks
- Nursing Mothers
- Common Errors to Avoid
- Penalties
- Enforcement
The FLSA

- Created by the United States government in 1938
  - For more details, click here
- Abolished child labor
- Established a minimum wage
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
Coverage

(Who is Covered?)
Almost Every Employee in the United States is Covered

• More than 130 million workers in more than 7 million workplaces are “covered” by FLSA

• Examples of employees who may not be covered
  – Employees working for small construction companies
  – Employees working for small independently owned retail or service businesses
Minimum Wage
The Basics

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

• The minimum wage is $7.25 per hour effective July 24, 2009

• Cash or equivalent – free and clear
Which WSU Employees are Not Exempt From FLSA?

- WSU classified employees are **non-exempt** and must receive minimum wage and overtime pay
- **Hourly/work study** employees are also considered non-exempt
Which Employees are Exempt From FLSA?

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

1. **Salary Level** (at least $455 per week)

2. **Salary Basis** (paid a salary – not hourly)

3. **Job Duties** (must perform certain executive, administrative, professional, outside sales, or computer professional job duties set forth in the regulation)

For more information, see [FLSA](https://www.dol.gov/whd/regs/compliance/flsa/flsa.htm)
Basics Reviewed

• Covered, **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 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 Waiting Time Considered Hours Worked?

- Counted as hours worked when
  - Employee is unable to use the time effectively for his or her own purposes; and
  - Time is controlled by the employer
- Not counted as hours worked when
  - Employee is completely relieved from duty; and
  - Time is long enough to enable the employee to use it effectively for his or her own purposes
Is On-Call Time Considered Hours Worked?

- On-call time is hours worked when
  - Employee has to stay on the employer’s premises
  - Employee has to stay so close to the employer’s premises that the employee cannot use that time effectively for his or her own purposes
- On-call time is not hours worked when
  - Employee is required to carry a cell phone
  - Employee is required to leave word at home or with the employer where he or she can be reached
<table>
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<th>Is Meal Time Considered Hours Worked?</th>
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<td>What’s wrong with this picture?</td>
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Is Meal Time Considered Hours Worked?

If you were the supervisor in this video clip, what would you do?

A. Go back 2 years and pay Jamie overtime for any hours worked in excess of 40 hours in a week.

B. Discipline Jamie for working through her lunch period.
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 employees who work through meal period must be compensated
  - Back pay may be required
- 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 an 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**
  - Attendance is outside regular working hours
  - Attendance is voluntary
  - The course, lecture, or meeting is not job related
  - The employee does not perform any productive work during attendance
Dave is an electrician at WSU, and the President of the WSU Classified Staff Advisory Council (CSAC). His work hours are typically Monday-Friday from 7:00 am to 3:30 pm with a ½ hour lunch. Dave lives in Kaysville and it takes him 30 minutes each way to commute to and from WSU. Yesterday, he went to a day-long U-HESA (Utah-Higher Education Staff Association) meeting held at UVU in Provo. Attendees were provided an hour for lunch “on their own.” Dave left his apartment at 7 am and returned home at 6 pm. How many hours did Dave work?

A. 10 hours
B. 9 hours
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 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.
Is Working at Home Considered Time Worked?

• 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
In addition to being involved in CSAC, Dave is a big fan of WSU Athletics. Last Spring, Dave volunteered to help out at the home games for Weber’s Women’s Softball Team as the back-up scorekeeper. The Game Manager was glad that Dave was there because the new scoreboard often wouldn’t light up and even turned off in the middle of several games. Does Dave have to be compensated for this “volunteer” work?

A. Yes
B. No
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
Parking Services recently lost their “Appeals Officer” – an impartial employee who rules on citation appeals. The Manager of Parking Services asked Dave if he wanted to be the new Appeals Officer and Dave eagerly agreed. The Appeals Officer is available Tuesday and Thursday from 3:30 – 5:00 pm. Since Parking Services is a different department than Facilities Management, Dave doesn’t need to be paid overtime.

A. True
B. False
When Must Overtime Pay be Provided?

- 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 position, must be paid overtime when combined hours are over 40.

- Non-exempt employees are not authorized to work overtime w/o prior approval of supervisor.
  - 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
At WSU, it has been common practice for supervisors to make mutually agreeable arrangements with 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 × 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
Federal youth employment rules set both hours and occupational standards for youth
What are the Rules for Youth Employment at WSU?

- Under no exception may a person employed be under the age of 16
- No individual under the age of 18 may be employed in a hazardous job involving the use of machinery or vehicles
- Every effort should be made to avoid the placement of student employees in hazardous situations
  - Supervisor oversight of working conditions and practices is required for maximum safety
Record Keeping
FLSA Requires Employers to Keep Records of Hours Worked

- 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
Non-Exempt Employees Must Use University’s Record Keeping System

- Non-exempt classified employees should use system to record number of hours worked each day
- Non-exempt classified 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 employees’ hours worked each week
- Next-level supervisor must approve payout of overtime hours
Required Breaks for Nursing Mothers
Health Care Reform Added New Requirement to FLSA

- Employers must provide nursing mothers with reasonable break time, up to 1 year after birth, so mother may express milk
- Employers must provide private area (not restroom) for nursing mother to express milk
Health Care Reform Added New Requirement to FLSA (cont.)

- Mothers expected to perform normal job duties
  - Will not receive additional pay for break times
- Mothers may make request for breaks and space to express milk through immediate supervisor
- Mothers encouraged to discuss needs with supervisor well in advance, so that suitable private area may be identified
Common Errors to Avoid
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 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

- 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.
Employee Has Private Rights

- An employee may file a private suit for
  - Back pay
  - Equal amount as liquidated damages
  - Attorney’s fees and court costs
Penalties for Willful Violation

- Employers who willfully violate Act may be prosecuted criminally/fined up to $11,000.
- Employers who violate youth employment provisions are subject to civil money penalty of up to $11,000 for each employee who was subject of a violation.
- 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.