

Section 2: Federal and State Wage-Hour Laws



The Big Concepts!

- FLSA
- Exempt vs. Nonexempt
- Minimum Wage (including tip credits)
- Overtime (including concept of Workweek)
- Regular Rate of Pay
- Comp Time
- Child Labor
- Enforcement

FLSA-Fair Labor Standards Act of 1938



What it does: WORKER

- Wage Minimum
- Overtime
- Recordkeeping
- Kids
- Equal pay Requirements

2.1, page 2-3

FLSA Fair Labor Standards Act of 1938

What it does not do: NO POOH NO:

- PAID off time or break rules
- how OFTEN paid
- OVER 16 years old HOURS limits



2.1, pg 2-3

Enforcement

- Administered and enforced by the Wage and Hour Division of the U.S. Department of Labor's Employment Standards Administration
- Equal Pay Provisions are enforced by the EEOC (Equal Employment Opportunity Commission)

2.1, pg 2-4

Federal/State Relationship

- There are very few references to state law in the exam.
- Areas unregulated by the FLSA are most likely regulated by all states to some degree
- The law more favorable to the employee will apply
- Several states exempt employers and employees from state law if they are covered by the FLSA

2.2, pg 2-4

Employer and Employee Coverage

Two types of coverage!

1. Enterprise Coverage
1. Individual Employees Coverage

2.3, pg 2-4, 2-5

Exempt and Non-Exempt Employees

- “Exempt” and “Non-Exempt” refers to status under the FLSA
- Exempt – do not have to be paid minimum wage or overtime payments and Employer does not have to keep certain records
- Non-Exempt - must be paid at least the minimum wage for all hours worked and an overtime premium on hours worked over 40 in one workweek.

2.4, pg 2-5

Exempt and Non-Exempt

- Non Exempt - In general, earn less than \$455* and entitled to Overtime Pay
- Exempt - Earn more than that and duties test determines
 - White Collar Exemptions
 1. Administrative Employees
 2. Executive Employees
 3. Professional Employees
 4. Computer Employees


*Know how to calculate the equivalents:
bi-weekly, semi-monthly, monthly

2.4-1, pg 2-6 to 2-8

Duties Tests

- Administrative
- 1. Primary duty performance of office or nonmanual work
- 2. Exercise of discretion and judgement
- ❖ Separate exemption for Academic Administrative: Primary duty performing administrative functions related to academic instruction or training in an educational establishment

- Executive
- 1. Primary duty management of the Enterprise.
- 2. Direct the work of 2 or more other employees
- 3. The authority to hire or fire



2.4-1, pgs 2-8 to 2-14

Duties Test

- Professional Employee
- Primary duty must be the performance of work:
- 1. requiring advanced knowledge in a field of science or learning acquired by a prolonged course of specialized intellectual instruction, or
- 2. requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor

Examples of employees who are never exempt:

- Police Officers
- Detectives
- Park Rangers
- Rescue Workers
- Paramedics

2.4-1, pgs 2-15 to 2-20

Duties Tests

- Computer-related professional
- Primary duty must consist of one or more of the following:
- 1. The application of systems analysis techniques and procedures
- 2. The design, development, documentation, analysis, creation, testing or modification of computer systems or programs

- 3. The creation, design, documentation, testing or modification of computer programs related to machine operating systems
- 4. A combination of any of the above requiring the same level of skills

2-4.1, pgs 2-21 to 2-24

Duties Tests

- Outside Sales Employees

Primary duty must be:

1. Making sales of tangible or intangible items such as goods, insurance, stocks, bond or real estate; OR
2. Obtaining orders or contracts for service or the use of facilities; and
3. Must customarily and regularly work away from the employer's place of business

- Work under different exemptions – primary duties that span two or more exemptions – employee is exempt

NO SALARY TEST!

2-4.1, pgs 2-22 to 2-24

Other Rules and exceptions

- Highly Compensated Employees

- Earn at least \$100,000 annually
- Customarily and regularly perform one or more of the exempt duties of the white collar exemption categories
- Must have a salary of at least \$455 week.

- White collar exempt employees must be paid on a salary or fee basis –

General rule: they must be paid their guaranteed salary in any workweek in which they do any work.

2-4.1, pages 2-26 to 2-32

When can we deduct from exempt employee's pay?

- For absences of one or more FULL days for personal reasons other than sickness or disability – no partial day absences may be deducted
- For sickness or disability if the employee is receiving pay under a sick or disability pay plan, or state disability law or worker's compensation law or if the employee has not yet qualified for the employers plan or after they have exhausted available leave under the plan
- Cannot deduct for Jury duty, witness, military leave for partial weeks, but can offset any earnings from those activities
- For penalties imposed in good faith for violations of safety rules of major significance

2-4.1, pages 2-27

When can we deduct from exempt employee's pay?

- For one or more full day's suspension imposed in good faith for violations of workplace conduct written policy. Policy must apply to all employees; no partial days
- If the employee is hired mid-week or leaves employment mid-week – for that week only!
- Deductions from employee paid leave allotments may be made in partial day amounts, as long as the employee still receives full pay.
- FMLA provides an exception: partial days may be deducting from pay if time off is part of qualified FMLA leave.
- Extra pay is okay – commissions, extra pay for hours worked beyond the normal workweek, shift differential, etc.

2-4.1, pages 2-26 to 2-27

Retail and Service Industry Exemption

- **Employees in retail or service industries** are exempt from the overtime pay requirements of the FLSA if they meet certain requirements.
- **Service Charges in Hotels and Restaurants**
Waiters and waitresses may qualify for the overtime exemption.

2.4-2 pgs 2-33, 2-34

Public Sector and Other Exempt Employees

- **Public Sector**
FLSA generally applies to employees of governments, agencies and political subdivisions.
Exempt if:
 - Publicly elected officials
 - Elected official's staff if they are supervised by him/her.
 - Elected official's appointee's serving in policymaking position
 - Elected official's immediate advisors on constitutional or legal powers of the office
 - Persons employed by a state or local legislative branch
- **Other Exempt Employees**
Review the Miscellaneous FLSA exemptions table in book

2.4-3 & 4, pgs 2-34 to 2-36

Minimum Wage

- Minimum Wage \$7.25
- Opportunity Wage - \$4.25 under 20
- Most Federal Contractors min wage is now \$10.20
- Mixed Covered and Not Covered Work
- Work week

2.5, pg 2-36, 2-37

Minimum Wage

- **Wages other than cash** – may bring the cash wages under minimum but only if conditions are met
- **Taxes are part of wages**
- **Uniforms**
- **Training wages**

2.5, pg 2-37, 2-38

Tips and Tip Credit

- **Tipped employees** allowed to be paid only \$2.13 per hour as long as the employee's tips are sufficient to bring the total pay up to minimum wage.
- **"Tip Credit"** is the difference between Minimum Wage and hourly wage paid.
- **"Tipped Employees"** work in an occupation where they regularly receive at least \$30/month in tips.

2.5-1, pgs 2-38 to 2-41

Tips and Tip Credit

- The minimum hourly wage to pay for tipped federal contractors is \$6.80 and will increase by 95 cents until it reaches 70% of the minimum wage for other covered workers

2.5-1, pg 2-40

Equal Pay for Equal Work

- What is meant by “**Equal Work**”?
- **Exempt Earnings**
- Enforced by **EEOC** (Equal Employment Opportunity Commission).
- Employers cannot reduce the wages of any employee to comply with the law.

2.5-2, pg 2-41

Overtime Pay Requirements

- General rule – all covered EEs must be paid at least 1 1/2 times their “**regular rate of pay**” for all **hours physically worked** over 40 in a **workweek**.
- “Overtime Premium” is 1/2 their regular rate of pay for all OT hours worked.

46 hours, \$8.00 regular rate of pay
 $46 \times \$8.00 = \368
 $46 - 40 = 6$ hours OT
 $(0.5 \times \$8/\text{hr}) = \4 (1/2 rate) $\times 6$ hours = \$24 (overtime premium)
 Total earnings due $\$368 + \$24 = \$392$

2.6, pgs 2-42, 2-43

The Workweek

- Employer must establish a workweek. A workweek is the longest period for which an overtime determination may be made.



2.6-1, pg 2-43 to 2-44

The Workweek

- **Exemption for Hospitals and Nursing homes**
 - May use a 14 day period rather than the workweek for determining compensation
 - Conditions must be met

2.6-1, pgs 2-43, 2-44

The Workweek

- **Formula for changing the workweek –**
 - Add overlapping days to old week
 - Calculate both weeks
 - Add overlapping days to new week
 - Calculate both weeks
 - Pay the greater amount



2.6-1, pg 2-44

Hours Worked



- OT applies only to hours physically worked
- No Maximum hours – but check state laws

2.6-2, pg 2-45

Regular Rate of Pay (RRP)

• Include

1. Shift Differentials
2. Nondiscretionary bonuses
3. Payments other than cash
4. Retroactive pay
5. On Call Pay
6. Supplemental disability payments
7. Sick leave buyback payments

2.6-3, pg 2-45 to 2-47

Regular Rate of Pay (RRP)

• DON'T include:

1. Gifts
2. PTO & Reimbursed Expenses
3. Discretionary bonuses
4. Volunteer work counted toward group bonus
5. ERs Benefit plan contributions
6. Stock Options
7. OT compensation
8. Premium Pay- extra days
9. Premium Pay- extra hours under CBA (union contract)

2.6-3, pg 2-47 to 2-50

Regular Rate of Pay (RRP)

- **Special Problems**

- **Different Rates of Pay**

- **Salaried Non-exempt EEs**

Annual Salary ÷ covered hours (hours expected to work) = RRP

40 hrs/wk = 2080

35 hrs/wk = 1820

- **Workweeks < 40 hours**

Pay RRP for all hours, OT premium over 40

If not greater than 40 – at least minimum wage for all hours; safer to have an agreement in place

2.6-4, pg 2-50, 2-51

Regular Rate of Pay (RRP)

- **Piecework**

- Method 1**

All regular earnings ÷ all hours worked = RRP

RRP x 0.5 = OT Prem Rate

OT hours X OT Prem Rate = OT Premium pay

Regular earnings + OT Premium pay = Total Compensation

- Method 2**

IF agreed in advance, may be paid 1 1/2 times piecework rate for items made during OT hours

\$2.50/piece for items made during first 40 hours

\$3.75/piece for items made during OT hours

2.6-4, pg 2-52

Regular Rate of Pay (RRP)

- **Tipped Employees**

- **Fluctuating Workweek**

- **Belo-type constant wage plans**

- **OT prepayment plan**

- **Daylight Saving Time issues**

2.6-4, pg 2-51 to 2-54

"Comp Time" for OT

- **Generally – NO!**
Can schedule employees to equalize costs, but OT premium must be paid over 40 hrs/week
- **Public sector – YES!**
1 ½ hours off for each OT hour worked
Agreed beforehand
Reasonable period of time to take
Payment at Termination
Maximum accrual 240 hours (160 OT hrs worked)
Exceptions

2.6-5, pg 2-56 to 2-58

Compensable Time Issues

- **Unauthorized OT**
- **Meals and Rest Periods**
- **Travel Time**
 - From home to work
 - As part of the job
 - In a company vehicle
 - Away from home

2.7, pg 2-59 to 2-62

Compensable Time Issues

- **On-Call Time**
 - Sleeping Time
 - Living on Employer's premises
- **Waiting Time**
 - Engaged to be waiting
 - Waiting to be engaged
- **Meetings and Training sessions**
Paid time unless:

1. Outside working hours	2. Voluntary
3. Not related to EE's job	4. No productive work for ER

2.7-4, 5 & 6 pg 2-63 to 2-66

Compensable Time Issues

• Preliminary/Postliminary Activities

- Portal to Portal Act 1947 – not compensable work time unless essential to the EE's principal work activity
- Donning and Doffing
- Cleaning up
- De minimis time
- Time clock differences
- Rounding



• Medical Attention

2-7-7, 8 pg 2-67 to 2-69

Child Labor

• There are laws against Child labor!

- Minors under 18 – no hazards
- Minors 14 and 15 – limited – know hours and limitations
- Minors under 14 – only for a parent
- Exceptions
 - Agriculture – working for parents
 - Actors or performers
 - News carriers
 - Homeworkers making Christmas wreaths
 - Professional sports attendants
 - Special driving rules for teens
- Age Certificates



2-8, pg 2-69, 2-70

Enforcement and Penalties

- Wage and Hour conducts investigations
- Illegal to discriminate against or discharge complaining employee(s)
- Violation found
 - attempt at settlement or “conciliation” is made
 - If no agreement reached, compliance officer notifies ER of back wages owed
 - If not paid, EEs or the Division can bring suit
 - Once Division files suit, EEs cannot

2-9, pg 2-70, 2-71

Enforcement and Penalties

- Backpay and Damages
- No such thing as “Ignorance of the law”
- Records are KEY!
- Arbitration agreements
- Statute of limitations
- Civil and Criminal penalties
 - Repeatedly/Willfully violate Min. Wage/OT: \$1000 for each violation
 - Child labor violations: up to \$10,000 each; \$50,000 if death or serious injury of minor
 - Willfully violate FLSA: up to \$10,000 and officers imprisoned up to 6 mos. for multiple offenses

2.9, pg 2-71, 2-72

Public Contracts Laws

- Walsh-Healey Public Contracts Act
- Davis-Bacon Act
- Contract Work Hours and Safety Standards Act
- Service Contract Act
- Copeland Anti-Kickback Act

2.10, pg 2-72, 2-73
