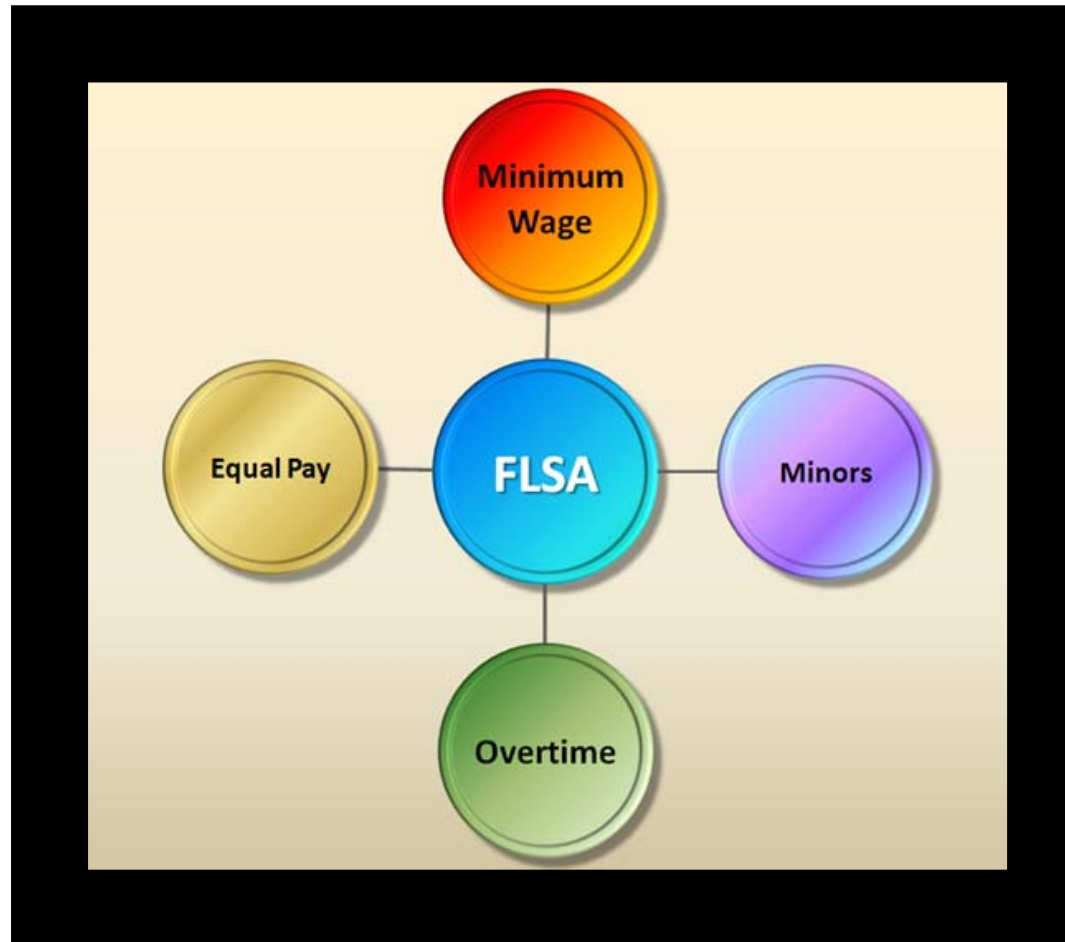


Greater Los Angeles Chapter of the APA

LAAPA CPP Study Group, Chapter Two



Federal Wage-Hour Law



Federal Wage-Hour Law

FLSA does not . . .

- Require paid vacations, sick days, jury duty leave, holidays
- Regulate how often or when employees must be paid
- Restrict hours employees over 16 years of age may work.

Federal/State relationships

Courts have ruled that wages are “unpaid” unless they are paid on regular payday which violates minimum wage and OT pay requirements

Employer and Employee Coverage

Enterprise coverage

- At least two employees engaged in interstate commerce
- Annual gross revenues of at least \$500,000

Some businesses are covered regardless of sales; hospitals, nursing homes, certain schools and public agencies



Employer and Employee Coverage

Individual employee coverage

- Employees covered by FLSA if they are engaged in interstate commerce.

Mom and Pop business that only employ immediate family members are exempt



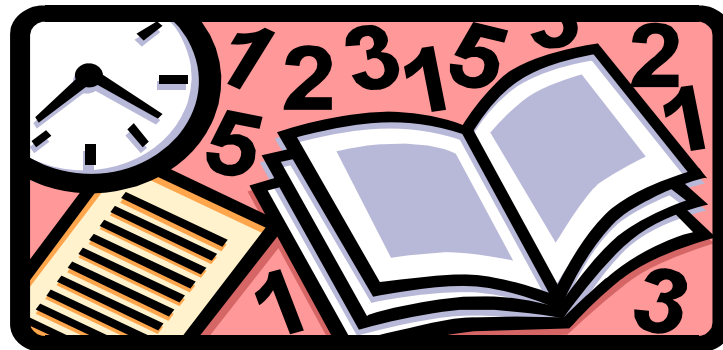
Exempt vs. Nonexempt

Exempt from:

- Overtime
- Minimum wage
- Some record keeping

Nonexempt

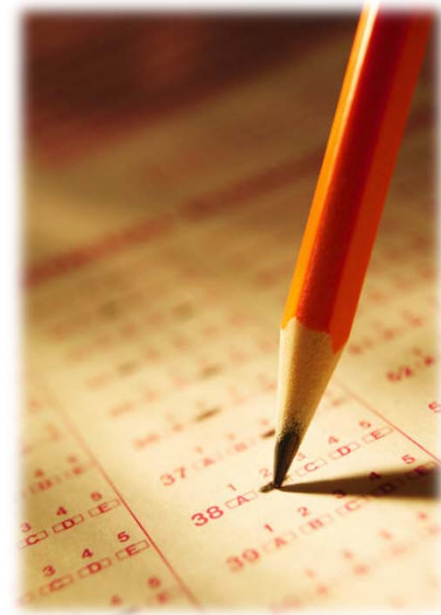
- Overtime for more than 40 in a workweek
- At least federal minimum wage



Exempt Employees

To determine exempt status:

- Level of discretionary authority
- Whether minimum salary requirement is met (except outside sales)



Administrative Employees



- Management or educational duties
- Discretion and independent judgment with respect to matters of significance
- Assist in business administration or perform specialized work
- Salary of at least \$455 per week

Administrative Employees

Examples



**Financial
services**

**Insurance
Claims
adjuster**

**Executive
assistant**

**Team
leader**

Administrative Employees

Examples

- **Retail Buyer**
- **Purchasing Agent**
- **HR Manager**
- **Inspectors and Grader**



Executive Employees



- Primary duties must be management
- Direct work of at least 2 other full-time employees
- Authority to hire and fire
- Paid a salary of at least \$455 per week

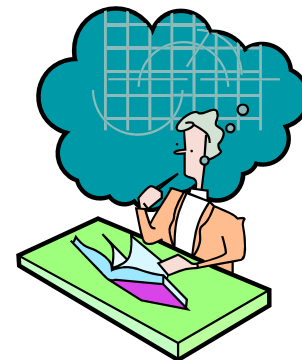
Managerial Duties

- Hiring and training employees
- Setting and adjusting pay and work hours
- Directing, planning and scheduling work, and determining work procedures

- Keeping production records and evaluating productivity
- Resolving employee complaints
- Deciding on tools and supplies
- Providing for employee safety

Professional Employees

- Advanced knowledge obtained by course of specialized instruction,
- Original work in a recognized field
- Salary of at least \$455 per week



Learned Professional Employees

Examples

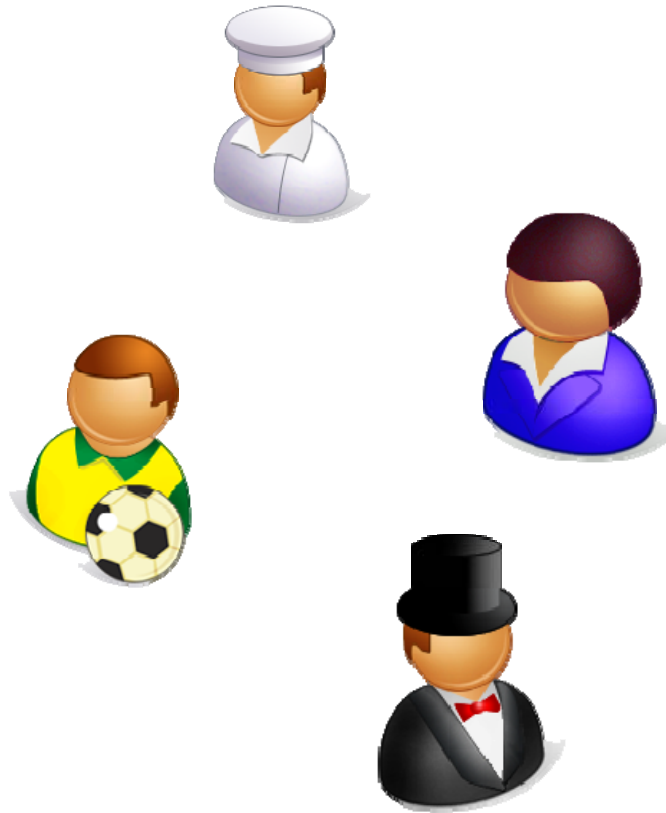
- Nurses
- Registered or certified medical technologists
- Dental hygienists
- Physician assistants
- Accountants



Learned Professional Employees

Examples

- Chefs
- Paralegals
- Athletic trainers
- Funeral directors or embalmers



Creative Professional Employees

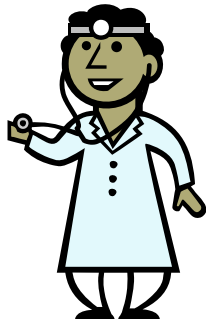
Examples

- Actors
- Painters
- Cartoonists
- Essayists
- Journalists
- Chefs



Creative Professional Employees

Examples



- Teachers
- Lawyers
- Physicians

Computer Professionals



Computer Related Professionals

- Highly skilled workers such as system analysts, programmers, software engineers...
- Must meet primary duties test and earn at least \$455 per week.
- Exemption also applies to hourly paid computer professionals if they earn at least \$27.63 per hour. If earning <\$27.63 non-exempt. Does not apply to those engaged in manufacturing or repair of computer hardware and related equipment. (page 2-7)
- The computer professional hourly amount is set by statute 29 USC 213(a)(17) so it is not changed by the new rule issued by the DOL
- May apply for administrative exemption

Outside Sales Employees



- Primary duty must be:
 - Selling, or
 - Obtaining orders
- Regular work away from employer's place of business
- No salary test

Highly Compensated Employees

- Total annual compensation of at least \$100K
- Customarily and regularly performs one or more of the exempt duties of an administrative, executive or professional exempt employee
- Compensation must include at least \$455 base a week, total may include commissions, bonuses etc.
- Catch-up payment –if compensation has not reach \$100K ER can make one final payment to bring it to \$100K

Salary Requirements Exempt Employees

Exempt EEs must:

- Be paid on a salary or fee basis
- Do not have to be paid in a “workweek” where they perform no work
- No pay docking (can pay PTO if available)
- Planned salary reductions ok

Can dock for:

- ✓ Absence for personal reasons of full days
- ✓ Absence for sickness or disability of full days under a bona fide plan
- ✓ Jury or witness duty, temporary military leave

Can offset amounts received. Do not have to be paid if no work in the workweek is performed

Salary Requirements Exempt Employees

Can dock for (cont.):

- ✓ Major safety rule infractions and workplace conduct rule violations
- ✓ Initial and terminal weeks
- ✓ FMLA

Additional Notes:

- Improper docking results in loss of exemption
- Motion Picture Production (\$695/week)
- Extra compensation allowed as long as the employee is guaranteed the base salary amount
- Can track time and require a specific schedule

Minimum Wage

Effective 7/24/09

\$7.25/hour



Minimum Wage & Equal Pay

- Lower opportunity wage for those under 20; \$4.25 per hour for first 90 consecutive calendar days from hire
- Determination based on “workweek”
- Equal Pay Act –equal skill, effort and responsibly
- Wages other than cash included in minimum wage calculation



Special Case

State Minimum Wage



Tips & Tip Credit

- Tipped EEs are those who regularly earn \$30 per month in tips
- Required to pay minimum \$2.13 (for states that follow federal or are silent on 'tipped employees')
- Included with tips must equal minimum wage otherwise ER must make up difference
- EE must be informed of the tip credit
- Tips must be kept by the EE
- Credit card tips must be given to EE by next Pay period, bank fees may be deducted
- No tip credit for hours spent doing non tipped work

Overtime Pay Requirements

- Non-exempt employees must be paid 1 ½ times “regular rate” of pay for **hours worked** over 40 in a “workweek”
- The “workweek” is a regularly recurring period of 168 hours; 7 consecutive 24-hour periods
- Does not have to coincide with the calendar week or the pay period
- ER may establish different “workweeks” for different facilities and groups of employees
 - *“Workweek” can be changed but change must be intended to be permanent and not to evade overtime pay*
- Hospitals and nursing homes may use a 14 day period rather than the “workweek” for determining overtime
 - Must pay daily overtime for worked hours over 8 or 80 hours in the 14 day period
 - Must have agreement between EE and ER
 - Hours worked – no maximum

Regular Rate of Pay

- Overtime must be paid at one and one half times the Regular Rate of Pay
- Included in Regular Rate of Pay (not all inclusive)
 - Shift differentials
 - Non-discretionary bonuses
 - Vendor bonuses
 - Payments other than cash
 - On call pay
- Bonuses must be allocated to the period it was earned. If bonus is based on a percentage of earnings it will satisfy overtime requirement

Regular Rate of Pay

Not included in Regular Rate of Pay (not all inclusive)

- Discretionary bonuses
- Gifts for special occasions
- Paid time off
- Reimbursed expenses
- Stock options
- Premium pay for extra days worked
- Employees working at more than one rate
- “Weighted average”
- Or highest rate paid in the “workweek”

Regular Rate of Pay

Calculating Regular Rate with OT and Bonus:

\$10 X 45 hours \$450.00

\$450.00 + \$150 production bonus = \$600.00

\$600 divided by 45 hours = **\$13.33 *Regular rate of pay***

Gross Pay Calc:

Regular pay \$600.00

OT Rate: \$13.33 X 0.5 = \$6.665

OT hours X OT rate: 5 X \$6.665

Premium pay \$33.33

Total Gross = **\$633.33**

Weighted Average Formula

Total regular pay from all jobs divided by total hours worked = weighted average rate

Date	Hours	Rate
Day 1	10	\$ 7.00
Day 2	4	\$ 10.00
Day 3	20	\$ 8.00
Day 4	6	\$ 8.50
	40	\$ 33.50
Total Combined Rates		\$ 33.50
Divided by Days		\$ 4.00
Average Per Day		\$ 8.38

Skewed



	Hours	Rate	Total
	10	\$ 7.00	\$ 70.00
	4	\$ 10.00	\$ 40.00
	20	\$ 8.00	\$ 160.00
	6	\$ 8.50	\$ 51.00
	40		\$ 321.00
Total Pay			\$ 321.00
Divided by Total Hours			40
Weighted Average Rate			\$ 8.03

Other Requirements Under FLSA

- Compensatory time off, exception within same Pay Period
- Unauthorized over time
- Travel Time
 - Travel from home to work
 - Travel as part of the job
 - Travel away from home
- On call time –controlled vs. uncontrolled
- Waiting time –“waiting to be engaged” vs. “engaged to be waiting”
- Time spent at meetings and training–not compensable if
 - Outside of regular working hours
 - Attendance is voluntary
 - Not directly related to EE’s job
 - EE does not perform productive work for ER
- Preliminary and post-preliminary Activities
- Rounding differences

Child Labor

- No child under age 18 can work in a job declared to be hazardous by the Wage and Hour Division
 - *Some minors ages 16 & 17 are exempt under certain student learner or apprentice programs*
- Minors age 14 & 15 can work in limited number of non-hazardous jobs in retail, food service and gasoline stations
 - *Cannot work during school hours and are limited to working 3 hours a day and 18 hours a week when school is in session (8 and 40 when not)*
- Minors under age 14 generally prohibited unless working for parents or as actors, news carriers and home workers making Christmas wreaths
- Age certificates

Enforcement & Penalties

- Majority are triggered by EE complaints
- Back pay and damages
- Statute of limitations –up to two years, three if willful
- Injunctions –court order obtained by Secretary of Labor which prohibits an ER from committing further violations or requires ER to pay back pay. ER violation of such order can result in contempt of court and stiff fines and/or imprisonment
- Civil and criminal penalties –awarded in addition to damages
 - ER can be fined and/or its officers jailed
 - Repeated or willful violations to minimum wage and overtime provisions can be fined up to \$1,100 per violation. Child labor up to \$11,000 each violation and up to \$50,000 for each violation that causes death or serious injury to child
 - Willful violation, 10k fine & imprisonment of officer for 6 months
 - Fines will depend on size of employer and seriousness of violation