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Wage & Hour 101:
And Community Action
Agencies

Presented by:
Lawrence S. McGoldrick

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FLSA Coverage
“Is It Raining On Your Employees?”

Types of FLSA Coverage (“Rain”)

- Individual Coverage
- covers individual employee “engaged in interstate commerce...”
- Enterprise Coverage
- covers all employees of a “covered enterprise”
(a) business enterprise test, OR
(b) public agency, preschool, elementary or secondary school, hospital, residential care facility, et al.

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DOL SPEAKS: ON COVERAGE

- Community Action Agencies
- Head Start Programs

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COURTS SPEAK: ON COVERAGE

- Bowrin v. Catholic Guardian Society
- Jacob v. New York Foundling Hospital

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Who Are Your Employees?"

NOT YOUR EMPLOYEES

- Independent Contractors
- Volunteers
- Student-Trainee (Intern)

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Duties Regarding Nonexempt Employees

REQUIRED RECORDS

- 1 – name (and employee # if used on records)
- 2 – home address (with zip code)
- 3 – date of birth (if under 19)
- 4 – sex and occupation
- 5 – time and day employee’s workweek begins
- 6 – regular rate / basis of pay / RR exclusions

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REQUIRED RECORDS (continued)

7 - hours worked each workday and workweek
 8 - total straight-time pay (excluding OT premium)
 9 - total premium pay for OT hours (excluding ST pay)
 10 - total additions and deductions from pay
 11 - total wages paid each pay period
 12 - date of payment and the period covered

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MINIMUM WAGE

- Currently \$7.25
- Some Exceptions, Like “Opportunity Wage”
- Watch Deductions That “Cut In”

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OVERTIME PAY

- Hours Worked Over 40 In A Workweek
- 1.5 Times The "Regular Rate" Of Pay (All Pay ÷ All Hours The Pay Covers)
- Must Include Things Like Bonuses, Commissions, Incentive Pay, And Other Kinds Of Extra Pay
- Watch Deductions That “Cut In”

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OVERTIME PAY

- Some Kinds Of Payments Can Be Excluded
- For Example: Pay For Unworked Holidays, True Gifts, Pay For Unworked Vacation Time, "Discretionary" Bonuses
- BE CAREFUL WITH THIS !

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OVERTIME PAY

- THE RULE ON "COMP" TIME:
 - THERE'S NO SUCH THING !!
 - Not For Private-Sector (Non-Governmental) Employers, At Least
 - Each Workweek Stands Alone; Can't Average Workweeks

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TIMEKEEPING AND "HOURS WORKED"

- Must Keep Accurate Records Of All Time A Nonexempt Employee Works Each Workday And Each Workweek
- Includes All Time Employer Knows Or Has Reason To Know About – Not Just Time The Employer Required Or Asked The Employee To Work

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TIMEKEEPING AND "HOURS WORKED"

- DOL's View: If You Don't Want To Pay For The Work, You Must Prevent It From Being Done
- "No Overtime" Policies
- Signing Timecards
 - Are These OK?

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"HOURS WORKED"

- Common Trouble Spots:
 - Meals
 - Breaks
 - On-Call Time
 - Meetings / Training
 - Early Work / Late Work
 - Work at Home
 - Travel Time

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Rules Regarding Exempt Employees

FLSA EXEMPTIONS

- “White-Collar” Exemptions
 - Executive Exemption
 - Administrative Exemption
 - Academic Administrative Exemption
 - Professional Exemption
 - Teacher Exemption
 - Computer Employee Exemption

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EXEMPTION BASICS

- Specific Criteria Apply, And It’s The Employer’s Burden To Prove They Are Met. If You Can’t, You Lose.
- Exemptions Relate To Individuals – Not To Job Titles, Job Descriptions, Pay Classifications, Job Groups, Etc.

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EXECUTIVE EXEMPTION

1. Paid On A “Salary Basis” At A Rate Of At Least \$455 A Week, and
2. “Primary Duty” Is Managing The Organization Or One Of Its Departments Or Subdivisions, and
3. Customarily And Regularly Supervises At Least Two Or More Other Full-Time Employees Or The Equivalent, and
4. Has The Authority To Hire Or Fire, Or Makes Suggestions And Recommendations (As To Hiring, Firing, Advancement, Promotion, Or Any Other Change Of Status) That Are Given Particular Weight.

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ADMINISTRATIVE EXEMPTION

1. Paid On A “Salary Basis” Or A “Fee Basis” At A Rate Of At Least \$455 A Week, and
2. “Primary Duty” Is Office Or Non-Manual Work Directly Related To The Management Policies Or General Business Operations Of The Employer Or The Employer’s Customers, and
3. This Work Includes The Exercise Of Discretion And Independent Judgment With Respect To Matters Of Significance.

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ACADEMIC ADMINISTRATIVE EXEMPTION

1. (A) Paid On A “Salary Basis” Or A “Fee Basis” At A Rate Of At Least \$455 A Week, Or
(B) Paid On A Salary Basis At Least Equal To The Entrance Salary For Teachers In The Educational Establishment, and
2. “Primary Duty” Is Performing Administrative Functions Directly Related To Academic Instruction Or Training In An Educational Establishment.

(Definition of elementary and secondary school depends on state law.)

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LEARNED PROFESSIONAL EXEMPTION

1. Paid on a “salary basis” or a “fee basis” at a rate of at least \$455 a week, and
2. “Primary Duty” is work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction, and
3. This work is predominantly intellectual and includes the consistent exercise of discretion and independent judgment.

(Note: Teachers, doctors, and lawyers have different tests and no minimum pay requirement).

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TEACHER EXEMPTION

1. Primary Duty Is Teaching, Tutoring, Instructing, Or Lecturing In The Activity Of Imparting Knowledge, and
2. Is Employed And Engaged In This Activity In An Educational Establishment.

(May include teachers of kindergarten or nursery school pupils.)

(Definition of elementary and secondary school depends on state law.)

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COMPUTER EMPLOYEE EXEMPTION

1. Paid on a "salary basis" or a "fee basis" at a rate of at least \$455 a week, OR on an hourly basis at a rate of not less than \$27.63 per hour, and
2. Works as computer systems analyst, computer programmer, software engineer, or other similarly skilled worker whose primary duty is:
(A) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications; OR
(B) 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; OR
(C) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; OR
(D) A combination of these duties, the performance of which requires the same level of skills.

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SALARY BASIS

- General Rules
 - Employee Must Regularly Receive Each Pay Period A Predetermined Amount Constituting All Or Part Of His Or Her Compensation, Which Amount Is Not Subject To Reduction Because Of Variations In The Quality Or Quantity Of Work Performed.
 - Employee Need Not Be Paid The Salary For Any Workweek In Which He Or She Performs No Work.

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PERMISSIBLE DEDUCTIONS FROM SALARY

- 1. For Full-Day Absences For Personal Reasons
- 2. For Full-Day Absences For Sickness, Disability, Or Accident If There Is A Bona Fide Sick-Pay Plan, Policy, Or Practice
- 3. To Impose A Penalty In Good Faith For Violating Safety Rules Of Major Significance
- 4. To Offset Amounts Received As Jury Fees, Witness Fees, Or Military Pay

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PERMISSIBLE DEDUCTIONS FROM SALARY

- 5. To Pay A For-Time-Worked Proportionate Part Of The Salary For The Initial Or Terminal Week Of Employment
- 6. To Provide Unpaid Leave Under The Federal Family And Medical Leave Act
- 7. For Unpaid Disciplinary Suspensions Of One Or More Full Days "Imposed In Good Faith For Infractions Of Workplace Conduct Rules", But Only Under "A Written Policy Applicable To All Employees"

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Child Labor Requirements

CHILD LABOR

- Age-18 Minimum For Occupations Declared "Hazardous" (Includes Regular Driving On Public Roads).
- Age-16 Minimum For General Occupations.
- 14- And 15-Year-Olds May Be Employed In Limited Occupations, With Strict Hours And Times-Of-Day Limitations.

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**WAGE-HOUR 201:
The Principles In Practice**

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WAGE-HOUR 201

- There has been an enormous wage-hour litigation boom
- You must know the fundamentals
- But it is also important to be able to apply them.

Session Focus: Working With The Principles

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WAGE-HOUR 201

I.
Nonexempt employees at CAP, Inc. are tired of punching in and out for their 30-minute lunch. Management says that they don't have to, as long as they are OK with CAP's deducting a half-hour from their worktime every workday. The employees say this is fine with them. Is this a wage-hour problem?

- (a) Yes
- (b) Probably yes
- (c) No
- (d) Probably no

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2.

Alicia takes a job with CAP, Inc. in their computer recycling program. She doesn't know how to repair computers, but CAP will teach her. She signs an agreement saying that (1) this training is worth at least \$1,500, and (2) if she leaves before she has worked at least two years, she has to repay a pro rata part of the training cost out of her final paycheck. Are there any wage-hour problems?

- (a) Yes
- (b) No
- (c) It depends

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WAGE-HOUR 201

3.

John is a nonexempt employee who works for Smalltown CAP. His normal work hours are from 9 a.m. to 5 p.m. His boss tells him to attend a two-day training session in Bigtown beginning on Monday morning. John leaves to fly to Bigtown on Sunday at 3 p.m., checks into his hotel at 8:00 p.m., has dinner on his own until 9:15 p.m., and then returns to his room, watches TV, and goes to bed at 10:30 p.m. How much of this is FLSA worktime?

- (a) The two-hour period between 3 p.m. and 5 p.m.
- (b) Everything from 3 p.m. until John goes to bed.
- (c) None of it
- (d) All of the time until he returns to Smalltown

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4.

Every February 1, CAP, Inc. pays a bonus to eligible nonexempt employees for the prior year if CAP's performance exceeded certain standards. The standards are based on CAP's overall statistics on goals achieved during the year. Employees must be employed at year's end to qualify for a full or partial payment. The bonus is set at 1% of each employee's base pay for the prior year. CAP tells each new employee about the bonus, but CAP says that management reserves the right to withhold an employee's payment if an employee has violated a major CAP policy. Does CAP have to figure FLSA overtime on the bonus payment if the employee worked overtime during the prior year?

- (a) Yes
- (b) No, the bonus is discretionary
- (c) No, the bonus covers an entire year, rather than just a pay period
- (d) No, the bonus is tied to CAP performance, not individual performance.

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5. Robin is the Accounting Manager at CAP, Inc. She is treated as an exempt "executive" employee, and she is paid a salary of \$600 per week. CAP, Inc. adopts a policy that all supervisory employees are required to keep time records and to work at least 50 hours a week, and that they must make the time up if they don't. They are subject to discipline or discharge if they fail to do so. A month later, Robin has a car problem one day on the way in and works only 46½ hours for the week. She refuses to make up the difference.

- Does the policy destroy the FLSA "salary basis" required for Robin's exempt status?
 - (a) Yes
 - (b) No
 - (c) Only if CAP actually fires Robin

- Can CAP dock Robin's salary for the 3½-hour shortfall?
 - (a) No
 - (b) Yes, under the "workplace misconduct" exception.

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6. Ivy is a clerical employee CAP, Inc. She is paid on a two-week pay period. During one pay period, she works one workweek of 50 hours and one of 30 hours. She asks her supervisor to let her save five of her ten overtime hours so she can take them off around the July 4th holiday. Her supervisor agrees. In light of that agreement, how much FLSA overtime does CAP have to pay Ivy on the payday for that pay period?

- (a) Five hours
- (b) None
- (c) Ten hours
- (d) It depends

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7. Edna's shift starts at 8 a.m., but her employer expects her to report at 7:45 a.m. Does the FLSA require the 15-minute difference to be treated as "hours worked"?

- (a) No, because employers can round away up to 15 minutes
- (b) Yes, if Edna actually does some work during those 15 minutes
- (c) No, because the 15 minutes is "de minimis"
- (d) Yes, even if Edna does not actually do any work during those 15 minutes

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8.

Once a month, Chris is on-call for eight hours a day for each day in a seven-day period. He has to wear a pager and must be able to call-in within 30 minutes after being paged. He cannot drink alcoholic beverages while he is on-call, and he cannot leave the metropolitan area. On average, Chris receives two pages in a seven-day on-call period and spends a total of two hours on the phone or on a computer dealing with the matters that prompted the pages. Is it likely that the idle time Chris spends on-call will be deemed to be FLSA "hours worked"?

- (a) Yes
- (b) No
- (c) It depends

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9.

CAP, Inc. has a policy in its handbook saying that nonexempt employees are not permitted to do any overtime work without advance, written approval. CAP is careful to apply this policy consistently so as not to discriminate against anyone. If a nonexempt employee performs work in violation of this policy, the work is recorded, but it is not treated as "hours worked" for purposes of meeting the FLSA's minimum-wage or overtime requirements.

- (a) This is proper under some circumstances
- (b) This is always proper where there is a clear, written policy
- (c) This is never proper.

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10.

CAP, Inc.'s Human Resources Director is reviewing the jobs treated as being overtime-exempt. There are dozens of people in these jobs, so he relies on an internal study of all the job descriptions relating to the positions. Some of the descriptions are several years old, but he figures they're close enough. Has CAP violated the FLSA if he decides to treat people holding these jobs as being exempt based upon their job descriptions?

- (a) Yes
- (b) No
- (c) Only if he makes the wrong decisions

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WAGE-HOUR 201

11.

IT SPECIALIST: JOB DESCRIPTION

Analyzes, troubleshoots, and resolves complex problems with business applications, networking, and hardware. Documents all work in problem-tracking software. Prioritizes tasks based on service-level-agreement criteria with limited supervision (50%).

Installs, configures, and tests upgraded and new business computers and applications based upon user-defined requirements. Assists users in identifying hardware/software needs and provides advice regarding current options, policies, and procedures. Creates and troubleshoots network accounts and other business-application user accounts as documented in the employee lifecycle process (25%).

Participates in the design, testing, and deployment of client configurations. This requires detailed knowledge of Microsoft operating systems and compatible business applications. Leverages application-packaging software technology for deployment of business applications to client systems (25%).

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IT SPECIALIST

Will the U.S. Wage and Hour Division say that this job qualifies for the FLSA "Computer Employee" exemption?

(a) No
(b) It depends.
(c) Yes

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12.

Janet is employed as an Administrative Assistant to the Executive Director of CAP, Inc. She is paid on a salary basis at the rate of \$455 per week. According to her position summary, her job is to troubleshoot administrative matters, to attend meetings of the Board and the Executive Committee, to assist with the annual budgeting process, to provide administrative support to CAP officers as needed, and to coordinate activities in which the Executive Director is involved. Is Janet an overtime-exempt "administrative" employee?

(a) It depends
(b) No
(c) Yes

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13.
How many current or former employees must be involved in filing a wage-hour "class" or "collective" action?
- (a) 15
 - (b) 20
 - (c) 50
 - (d) None of the above.

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WAGE-HOUR 201

14.
A jury has just awarded Alan \$10,000 in his FLSA lawsuit against CAP, Inc. What does he have to prove now in order to be awarded another \$10,000 in liquidated ("double") damages?
- (a) That CAP violated the FLSA willfully
 - (b) That CAP didn't rely upon any U.S. Labor Department interpretations
 - (c) Nothing.

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