Fair Labor Standards Act (FLSA) Overview

June 2016
Fair Labor Standards Act (FLSA)

- Originally enacted in 1938
- Contains provisions for:
  - Federal minimum wage
  - Overtime pay, compensatory time
  - Defining regular rate of pay which is used in the calculation of overtime pay
  - Child labor restrictions
  - **Determination of exempt classifications**
  - Determination of which activities constitute hours worked
  - Recordkeeping requirements
Exempt vs. Nonexempt

• **Exempt** employees are exempt from the overtime pay provisions of the law.

• **Nonexempt** employees are not exempt, and must be paid at one and one-half times their regular rate of pay for hours worked over 40 hours in a scheduled work week.
Exemption Tests

• General speaking, all three (3) tests must be met in order for an employee to be classified exempt from the overtime provisions of the FLSA.
  1. Salary Limits Test
  2. Salary Basis Test
  3. Duties Test
Exemption Requirements

1. Salary Limits (Current) Test
   - $455 per week ($23,660 annualized) for all exemptions except outside sales and “Teacher”
   - Note: There is no provision to prorate the salary requirement of $455 per week for part-time employees.

2. Salary Basis Test
   - Employee is paid on a salary basis, not an hourly basis

3. Duties Test
   - Executive
   - Administrative
   - Professional (Learned and Creative)
   - Computer
   - Outside Sales
Salary Limits Test – December 2016

• The Department of Labor (DOL) proposed that the salary limits test would change from the current $455 per week ($23,660 annualized) to $970 per week ($50,440 annualized) in 2016.

• The final rule announced a new salary limit of $913 per week ($47,476 annualized) effective December 1, 2016

• The DOL’s final rule on overtime eligibility was announced and published on May 17. The DOL reviewed approximately 270,000 comments submitted by individuals and organizations on this change.

• The other two (2) tests (Salary Basis and Duties Test) remain in effect.
Duties Test

• The following slides provide a summary of each of the Duties Tests
  – Executive
  – Administrative
  – Professional (Learned and Creative)
  – Computer
  – Outside Sales
Executive Exemption – Duties Test

• Primary duty of managing the enterprise or a recognized department or subdivision. Management duties include:
  – Interviewing, selecting, hiring, training, firing employees (or recommendations as to the hiring, firing, advancement, promotion or any other change of status must be given particular weight)
  – Setting & adjusting rates of pay and hours of work
  – Directing work
  – Handling employee complaints and grievances and disciplining employees when necessary
  – Planning the work; determining the techniques to be used
  – Proportioning the work among the employees
Administrative Exemption – Duties Test

• Primary duty must be the performance of office or nonmanual work directly related to management policies or general business operations of the employer or the employer’s customers.

• Exercises discretion and independent judgment with respect to matters of significance, such as work affecting the development of policies or responsibilities to execute or carry out policy.

• Administrative duties do not include routine or structured tasks such as bookkeeping, data tabulation, or clerical duties.
Professional Exemption (Creative) – Duties Test

• Primary duty of the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic endeavor

• These fields typically include music, writing, acting and graphic arts. Examples of professions that could meet the duties test:
  – Actors, Musicians, Composers, Conductors, Soloists
  – Painters
  – Cartoonists
  – Essayists, Novelists, Journalists
Professional Exemption (Learned) – Duties Test

- Primary duty of the performance of work requiring advance knowledge, defined as work that is predominantly intellectual in character and includes work requiring the consistent exercise of discretion and judgment.
- Advanced knowledge must be in a field of science or learning.
- Advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction (i.e., 4 year college degree).
- Professions which are covered by exemption include:
  - Law
  - Medicine
  - Nursing
  - Accounting
  - Actuarial computation
  - Engineering
  - Teaching
  - Various types of physical, chemical and biological sciences
Computer Exemption – Salary Basis Test Exception

• Employee receives:
  – A salary of at least $455 per week
  or
  – An hourly rate of not less than $27.63 per hour

• And must also meet the duties test (see next slide)
Computer Exemption – Duties Test

• Employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the following duties:

  – (A) application of systems analysis techniques and procedures, including consulting with users to determine hardware, software or system functional applications; OR

  – (B) 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) design, documentation, testing, creation or modification of computer programs related to machine operating systems; OR

  – (D) a combination of the duties described in (A), (B) and (C), the performance of which requires the same level of skills.
Outside Sales Exemption – Duties Test

- Primary duty of making sales or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer.

- Employee must be customarily and regularly engaged away from the employer’s place or places of business.
Blue Collar Workers

• Are not eligible for exemption to the overtime provisions of FLSA.

• Exemptions do not apply to manual laborers or other “blue collar” workers who perform work involving repetitive operations with their hands, physical skill and energy.

• Non-management employees in production, maintenance, construction and similar occupations such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, construction workers and laborers are entitled to minimum wage and overtime premium pay under the FLSA, and are not exempt no matter how highly paid they might be.
Time Suffered or Permitted

• Work not requested by the employer, but suffered or permitted by the employer, is work time.
• Management cannot accept the benefits of work completed without compensating employees for performing that work.
• Employees working overtime hours without management approval may be a performance issue.
• Employees cannot waive their rights under FLSA.
Recordkeeping Requirements for Nonexempt Employees

- Hours worked each workday and total hours worked each workweek must be recorded.
- UD Time is not the official record. UD departments must maintain records.
- FLSA requires that records be maintained for three (3) years.
- In the event of a claim, and in the absence of employer recordkeeping, the Department of Labor may use the employee’s records to determine back pay due.
Conclusion

• Compliance is key to our success

• This has been a summary of the FLSA exempt and nonexempt classifications and implications.

• For more information or for exempt/nonexempt classification questions and determinations, contact Compensation at x2171 or hr-class@udel.edu.
References

• Department of Labor, Wage and Hour Division website:  www.wagehour.dol.gov