



# Overtime & Fair Labor Standards Act

# What is FLSA?

- Federal law passed in 1938
- Enforced by Department of Labor
- Public employers became covered in 1986
- Revised April 20, 2004
- Covers
  - *Overtime*
  - Minimum Wage
  - Child Labor
  - Equal Pay
  - Recordkeeping



# Purpose of FLSA

---

- Establishes minimum wage & overtime standards
- Distinguishes between covered (non-exempt) and excluded (exempt) employees
- Establishes overtime threshold (40 hr.)
- Specifies record-keeping requirements



# Critical Terms

---

- Hours worked
- Work week
- Regular rate



# “Hours Worked”

---

- Principal job activity
- “Suffer” or permit to work
- Rest periods less than 20 minutes in duration (except lunch)



# “Work Week”

---

- 168 consecutive hours during a 7-day period
- GMU standard work week:
  - 12:00 am Sun thru 11:59 pm Sat



# “Regular Rate”

---

- Includes all forms of remuneration (e.g. shift differential, on-call pay, lump sum payments, 2<sup>nd</sup> job salary)
- Converted to an HOURLY rate
- Is particular to each work week



# Types of Positions

---

- **Exempt** – not covered by FLSA
- **Non-Exempt** – covered under FLSA for time-and-one-half overtime





# Exempt Positions

---

- Meet Salary Basis, Highly Compensated, Executive, Administrative, Professional, or Computer Professional test for exemption
- Applies to each position individually based on duties and responsibilities, not to a class, Role, working title or category of position



# Exempt Positions

- **Classified** in pay bands 4 and above if exemption tests are met (as well as **Faculty**)
- No overtime payments required.
- In extremely **rare** situations, may provide:
  - Compensatory time or straight-time pay for **hours worked** > 40 hours in a **work week**
  - Should be for short duration of time under special circumstances (vacancy, special project, etc.)



# Exempt Positions

---

- Exempt employees paid for job, not hours worked
- Must meet salary basis test
- Salary must be more than \$455 per week



# Exemption Test Determination Factors

- HR performs tests to determine “white collar” exemption by category
  - Executive
  - Administrative
  - Professional
  - Computer Professional
  - Highly Compensated



# Exemption Test Determination Factors

- Based on primary duties, not title
  - most important duties that account for 50% of time spent working
- Regularly exercises discretion and independent judgment
- Paid on a salaried basis for the job, not the number of hours worked



# Executive Test Criteria

- Must be compensated on a salary basis of not less than \$455 per week
- Primarily manages a department or subdivision; *and*
- Directs the work of two or more full-time employees
- Has the ability to hire, fire & discipline or recommendation changes in status



# Examples of Executive Exempt Jobs

---

- Payroll Manager
- HR Manager
- Accounting Manager
- Building & Grounds Director
- Business Operations Manager



# Administrative Test Criteria

---

- Must be compensated at least \$455 per week
- Primary duty must be office or non-manual work; ***and***
- Directly related to management policies or general business operations; ***and***
- Customarily and regularly requires the exercise of discretion and independent judgment





# Examples of Administrative Exempt Jobs

---

Usually in functional areas  
such as:

- HR Generalist
- Internal Auditor
- Budget Analyst
- Grants Specialist



# Professional Test Criteria

---

- May be learned or creative professional
- **Learned professional:**
  - requires advanced knowledge in a field of science or learning
- Predominantly intellectual
- Acquired by a prolonged course of specialized instruction



# Professional Test Criteria

---

- **Creative Professional:**

- Primary duty must be the performance of work requiring invention, imagination, originality, or talent

- Performs work in a recognized field of artistic or creative endeavor
-

# Examples of Professional Exempt Jobs

## **Learned Exemptions:**

- Physician (M.D., D.D.S.)
- Certified Nurse Practitioner
- Architect
- Lawyer
- Teachers & Professors
- Clinical Social Worker

## **Creative Exemptions:**

- Musicians and composers
- Actors and painters
- Writers



# Computer Professional Test Criteria

---

- Employed as a computer systems analyst, programmer or software engineer or similar skilled worker
- Primary duties consist of:
  - Applications of systems analysis techniques or
  - Design, development, documentation, analysis, creation, testing, or modification of computer systems or programs
  - Design, documentation, testing, creation, or modification of computer programs related to machine operating systems



# Highly Compensated Employees

---

- Must perform non-manual work and
- Paid more than \$100,000 per year and
- Perform at least one of the duties of an executive, administrative or professional employee

# Non-Exempt Employees

---

- Job duties *do not* meet the Executive, Administrative, Professional or Computer Professional or Highly Compensated test criteria



# Non-Exempt Positions

- **Classified** in Pay Bands 1 - 3 and **includes all hourly positions**
- **Must** receive 1 1/2 times their *regular rate* for all *hours worked* in excess of 40 in a *work week*
- If leave was taken during week, non-exempt employee receives *regular rate* (straight time, 1 hour = 1 hour's pay) for *hours worked* in excess of scheduled hours up to 40 during a *work week*





# Examples of Non-Exempt Jobs

---

- Office Services Assistant/Office Services Specialist/Executive Secretary
- Carpenter/Electrician/HVAC Tech
- Police Dispatcher/Police Officer
- Enrollment Services Asst/Specialist
- Fiscal Technician



# Non-Exempt Employees

---

## 3 potential types of overtime compensation

- Straight Time Overtime
- Time-and-one-half Overtime
- Overtime Leave



# Non-Exempt Employees

---

## Straight Time Overtime

- Employee has physically worked less than 40 hr in the work week
- Paid at 1 times the employee's hourly rate of pay



# Non-Exempt Employees

---

## Time-and-one-half Overtime

- Based on WORKED time (not leave time)
- Employee has WORKED over 40 hours in a work week
- Paid at 1-1/2 times the employee's regular rate of pay for each hour worked beyond 40



# Non-Exempt Employees

---

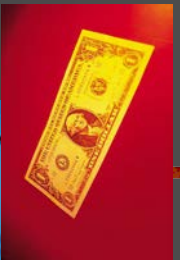
## Overtime Leave

- Based on WORKED time (not leave time)
- Employee has WORKED over 40 hours in a work week
- Granted at 1-1/2 times Leave for each one hour worked beyond 40.



# Examples of Compensable Time

- Performing principal duties
- Performing principal duties or closely related duties outside of work hours
- Travel time between job sites (PW, Arlington and Fairfax Campuses)
- Employer required training
- Breaks (<20 minutes)
- Pre- and postliminary activities (checking job locations, fueling cars, picking up mail at P.O., putting away tools at the end of the day)



# Examples of Compensable Time

- Preparatory work related to principal duties
- “Waiting” or “standing by” for work
- “Unauthorized” work performed (with or without Supervisor’s knowledge)
- Employee arrives early to work & begins working
- Meal time if an employee is not “free” from work duties



# Examples of Compensable Time

## UNAUTHORIZED WORK

- Work not requested but “suffered or permitted” is counted as time worked
- Standard is whether the employer knows or has reason to believe the work is being performed





# Second Jobs

<b>FIRST JOB (FT CLASSIFIED)</b>	<b>SECOND JOB (HOURLY)</b>	<b>OVERTIME PAYMENT?</b>
EXEMPT	EXEMPT	NO
EXEMPT	NON-EXEMPT	NO
NON-EXEMPT	EXEMPT	YES
NON-EXEMPT	NON-EXEMPT	YES

- If all jobs are hourly (not classified) all hours over 40 per week = overtime
- If 1<sup>st</sup> job is part-time classified, Departments must consult with HR Generalist

# FLSA Violations

- U.S. Department of Labor enforces FLSA
- Burden of proof is on the employer
- Employees can sue their employers for the recovery of back wages & liquidated damages for up to 3 years if violation is found to be willful
- Employer cannot retaliate against employee for “whistle blowing”



# Potential DOL Penalties

- Unpaid wages (2 - 3 years of back wages)
- Fines (\$10,000)
- Imprisonment (6 months)
- Liquidated damages (2x)
- Attorney's fees and costs
- Individual liability



# FLSA and DOL

---

- Fastest growing area of class litigation is wage and hour claims
- FLSA violations resulted in back wages of \$212 mil in 2003 and \$170 mil in 2002
- A 21% increase in one year
- DOL assessed **\$10 mil** in civil penalties!