

An Overview of the Fair Labor Standards Act for DSS Directors

**DSS Directors Legal Conference
April 8, 2014**

**Diane M. Juffras
School of Government**

Must be paid on a salary-basis

Must satisfy one of three duties tests

- Executive employee
- Administrative employee
- Professional employee

Must earn a minimum weekly salary:
\$455/week or \$23,660/year

Exempt Employees

What is meant by “salaried”?

- Regularly receives a predetermined amount of compensation each pay period (on a weekly or less frequent basis)
- In other words, paid a fixed amount of money each week or paid a fixed amount on pay day

Salaried Employee

Salaried non exempt means OT must be paid either at time and half or at ½ time.

- **INCORRECT** thinking: Just because I pay a salary that means I do not owe any overtime if the employee works more than 40 hours.
- **CORRECT** thinking: If the salaried employee works in excess of 40 hours and is not exempt, I have to pay the overtime premium.

Salaried Nonexempt

- **Management as primary duty**
- **Supervision of two or more employees**
- **Hiring, firing *or* promotion authority or hiring, firing *or* promotion recommendations given particular weight.**

Executive Duties Test

- **The “principal, main, major or most important duty that the employee performs.”**
- **The “character of the employee’s job as a whole.”**
- **No minimum time requirement.**

Primary Duty

Remember

Look to Actual Duties of Particular Position

Job Title Not Determinative

- Employee must perform work requiring advanced knowledge
- The advanced knowledge must be in a field of science or learning
- The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

The Learned Professional

- Must perform work requiring advanced knowledge
 - Intellectual in character
 - Requires consistent exercise of discretion and independent judgment
- Advanced knowledge must be in a field of science or learning
- The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

The Learned Professional

1. Primary duty is the performance of *office or nonmanual work* directly related to management or the general business operations of the employer
2. Performance of such work includes the exercise of discretion and independent judgment on matters of significance

Administrative Exemption

- finance, accounting, auditing
- purchasing & procurement
- safety and health
- public relations, advertising, marketing
- computer network, database and internet administration
- tax
- personnel management, human resources, employee benefits
- insurance and quality control
- legal and regulatory compliance

Work Directly Related to Management or General Business Operations

- Formulates or implements management policies or operating practices;
- Recommends decisions that have a significant impact on general business operations or finances
- Involved in planning long- or short-term objectives for the organization;
- Resolves complaints or grievances;
- Represents employer in important negotiations;
- Has authority to commit employer in matters that have significant financial impact;
- Has authority to deviate from employer policies

Discretion and Independent Judgment on Matters of Significance

<ul style="list-style-type: none"> • freedom from direct supervision; • personnel responsibilities • trouble-shooting or problem-solving responsibilities 		<ul style="list-style-type: none"> • authority to set budgets; • degree of public contact • advertising and promotion work 	
<p>Discretion/Independent Judgment: Some Other Factors</p> <hr/>			

<p>“An employee must perform work directly related to assisting with the running or servicing of the business, as distinguished, for example, from working on a manufacturing production line or selling a product in a retail or service establishment.”</p>	
<p>The reason an organization exists</p>	<p>The mission work of a department or agency</p>
<p>Staff or Production Worker?</p> <hr/>	

<div style="border: 1px solid black; height: 80px; width: 100%;"></div>	
<p>COMPENSABLE TIME</p> <hr/>	

Employee's usual schedule is Mon. – Fri.
8:30 – 5 with a 1/2 hour unpaid lunch

Employee:

- takes 8 hours paid leave on Mon.
- works her usual schedule Tues. – Fri.
- works 8 hours on Sat. per supervisor's request

Does Employee get overtime for the Sat. hours?

Employee's usual schedule is Mon. – Fri.
8:30 – 5 with a 1/2 hour unpaid lunch.

Employer rule:
No O/T w/o prior authorization

Employee:

- comes in 1/2-hr. early each day that week
- leaves at scheduled time

Does Employee get overtime for extra hours?

Employee's usual schedule is Mon. – Fri.
8:30 – 5 with a 1/2 hour unpaid lunch.

Employee:

- comes in 1/2-hr. early each day that week
- leaves 1/2-hr. early each day that week

Does Employee get paid for the 1/2 hours worked before scheduled starting time?

• Employee works for DSS.
 • Her usual schedule is Mon. – Fri., 8:30 – 5 with a ½ hour unpaid lunch.
 • Employee takes second job in Parks and Rec.
 • Her usual schedule is M/W/F 6 – 9 pm.

Must she be paid O/T for her Parks and Rec. hours?

• Employee works for DSS.
 • Her usual schedule is Mon. – Fri., 8:30 – 5 with a ½ hour unpaid lunch.
 • Employee takes job through Public Works every year for clean-up during the County Fair.
 • Her hours are Tues. and Thurs., 6-10 pm and Sat. and Sun. from 12 – 10 pm.

Must she be paid O/T for her county fair hours?

Rate:

- 1 ½ hours for every hour over 40
- Employee agreement needed
- Statutory Limit: 240 hours
- Public Safety Limit: 480 hours
- May require employee to use comp time before using other paid leave
- Cash-out at termination

Comp Time

Seventy-five percent of the employees of Paradise County, NC, have comp time accumulations dangerously close to the statutory cap. The Town Council decides it must proactively reduce those totals and

1. directs that all employees with 8 or more hours of comp time be directed to stay home for one workday, and
2. decides that going forward, all nonexempt employees working over 40 hours be compensated with one-hour cash straight time and a half-hour of comp time.

Are these proposals lawful under the FLSA?



© Scott Adams, Inc./Dist. by UFS, Inc.

Nonexempt Employee works a regularly scheduled 37.5 hour week.

During busy periods, Employee works 40 - 45 hours in a week.

How is that additional time to be compensated?

What is it?

- Time spent off the employer’s premises, during which employee can pursue his/her own interests, but remains available to be called back into work on short notice if a need arises.

FLSA standard:

- Compensable when the time is spent predominantly for the employer’s benefit.

On-Call Time

“Engaged to wait”

vs.

“Waiting to be engaged”



On-Call time

- An employee who is required to remain on his/her employer’s premises or so close that he/she cannot use the time effectively for his/her own purposes is working while on call

➔ **Compensable Work Time**

“Engaged to Wait”

- Periods during which an employee is **completely relieved from duty** and which are long enough to enable him/her to use the time effectively for his/her own purposes are not considered hours worked

➔ **NOT compensable work time**

“Waiting to be engaged”

- Mileage limits – from workplace, on travel
- Beeper/cell phone/telephone/email
- Responding electronically
- Frequency of calls
- Employee’s ability to trade on-call shifts

How Do These Affect On Call?

- Must be at least 30 minutes.
- Employee must be completely relieved of duties.
- Employee does not have to be allowed to leave the premises.

Bona Fide Meal Periods

Paradise County DSS is sending four nonexempt employees to a SOG Workshop in Chapel Hill.

- Workshop runs from 8:30 – 3:30.
- Employees’ usual hours are 8:30 – 5:30.
- Trip to Chapel Hill takes two hours.

Travel Time

Two employees drive together, leaving at 6:30 am. One of the two does all of the driving.

- **Driver’s travel time is compensable.**
- **Passenger’s travel time is not.**
- Is their travel time on the return trip compensable?
 - **Yes, it is compensable for both because it occurs during regular work hours (3:30 – 5:30).**

Travel Time

- One employee drives to Chapel Hill on Sunday afternoon, leaving Buena Vista at 3 pm.
 - **Time is compensable because it occurs during regular working hours on a nonworking day.**
- The fourth employee takes the train to Chapel Hill on Sunday leaving at 3 pm.
 - **Time is compensable because it occurs during regular working hours on a nonworking day.**
- What if the employee takes a train leaving at 7 pm on Sunday?
 - **Travel time is not compensable.**

Travel Time

Paradise County DSS requires all new employees to complete an OSHA general work safety course as a pre-condition of employment. It does, however, allow new employees three months in which to complete the course.

The course is offered at the local community college in the evening.

If an employee does not complete the course within three months, s/he is fired.

Is Paradise County required to pay employees for this training time?

Training Time

Employees do not have to be compensated for training time if:

- attendance is outside the employee's regular working hours;
- attendance is voluntary;
- the course is not directly related to the employee's job; and
- the employee does not perform any productive work during time in attendance at the course.

Training Time

Deductions from Employee Pay

Employers may dock the pay of exempt employees for:

- Absences when there is no accrued sick or vacation leave or when employee has taken leave without approval (public sector only)
 - **May be taken in less than full-day increments**
- Unpaid FMLA leave
- Part-week initial and final weeks
- Penalties for infractions of safety rules of **major** significance
- Full-day disciplinary suspensions for workplace **misconduct**

When the employer has accidentally paid an employee more than it owes the employee, it may deduct the amount of overpayment from the employee's wages either in a lump sum or over time.

Deductions for the Overpayment of Wages

1. Advances of leave as advances of wages.
2. Inform employees that unearned but used sick and vacation leave will be deducted from last paycheck.
3. May be done even if reduces final paycheck hourly rate below federal minimum.
4. Hourly rate deducted must be rate employee was earning when leave advanced, not rate at end of employment.

Advances of Vacation and Sick Leave

Unlawful Deductions from the Wages of Both Exempt and Nonexempt Employees

Exempt Employees:
 To deduct the cost of lost or damaged property or missing funds from the wages of an exempt employee will destroy the exemption.

Nonexempt Employees:

1. Must make deduction for lost or destroyed property part of policy. Specify items and amounts.
2. Deduction cannot bring wages below the federal minimum wage.
3. Overtime wages cannot be reduced.

Destruction or Loss of Employer Property: Cash, Uniforms, Equipment

- Not addressed by FLSA statute or regs.
- Courts analogize with loan.
- Probably okay but courts require that rate never go below minimum wage in a week in which the deduction is made.

Deductions for the Cost of Training

1. A position is considered exempt for FLSA purposes when the employee is paid on a salaried basis.
True___ **False**_X_

2. An employer **can** require its exempt employees to turn in timesheets.
True_X_ **False**___

3. A public employer **can** require employees to use accumulated comp time before sick or vacation leave.
True_X_ **False**___

4. An employer may dock the pay of an exempt employee taking three hours of intermittent FMLA leave each week.
True_X_ **False**___

Answers to Self-Test

5. If a F/T public employee takes a second, part-time job in a different department, she does not have to be paid overtime for hours over 40.
True___ **False**_X_

6. Half-day disciplinary suspensions are permissible for exempt employees, but not for nonexempt employees.
True___ **False**_X_

7. If an exempt employee loses or destroys a department laptop, the replacement value may be deducted from the employee's next paycheck.
True___ **False**_X_

8. Supervisors may be held personally liable for FLSA violations. **True**_X_ **False**___

Answers to Self-Test
