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Wage & Hour Compliance Under the FLSA

Presented by
Gary W. Francis

Overview


- The Department of Labor and its coverage.
- Minimum Wage (Federal and State updates)
- Overtime and exemptions
- Update to Wage and Hour laws



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The Department of Labor

- Agency created to enforce the Fair Labor Standards Act
- Fair Labor Standards Act enforced by the DOL's Wage and Hour Division
- Enterprise Coverage v. Individual Coverage
- Everyone is covered!



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Hours Worked

- FLSA covers employees who are suffered or permitted to work.
 - Common issues regarding “hours worked:”
 - Waiting/On-call time
 - Meal and break periods
 - Training time
 - Travel time
 - Overtime



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Minimum Wage

- The Fair Labor Standards Act governs the minimum wage
- Federal v State of Michigan – who controls?
- Current federal minimum wage – \$7.25
- Current Michigan minimum wage – \$8.15

Continued



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Minimum Wage

- Changes in Michigan minimum wage.
 - Effective Sept. 1, 2014
- Push by White House to increase federal minimum wage under the FLSA
- Protests across the country for increase in minimum wage to as high as \$15 per hour



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Minimum Wage

Tipped Employees

- Who is considered a tipped employee?
- What is a tip credit?

Continued



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Minimum Wage

Effective Date	Minimum Hourly Wage Rate	Tipped Employee Hourly Wage Rate
Prior to 9/1/14	\$7.40	\$2.65
9/1/14	\$8.15	\$3.10
1/1/16	\$8.50	\$3.23
1/1/17	\$8.90	\$3.38
1/1/18	\$9.25	\$3.52



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Overtime

- FLSA states that an employer must pay a non-exempt employee one and a half times his or her regular rate of pay for any hours worked over 40 hours in a workweek.
- Employer need not pay overtime to employees are who are "exempt" from FLSA overtime requirements.

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Overtime

- Key terms to know when examining overtime?
 - Work week
 - Hours worked
 - Regular rate
 - White collar exemption
 - Salary v salaried/exempt



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Overtime – Exemptions

- FLSA includes white collar exemptions to overtime requirements of the statute.
 - Executive
 - Administrative
 - Professional
 - Outside sales
 - Computer employees



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Overtime – Exemption Analysis

- Does position meet required salary level?
 - \$455 per week
- Does position receive pay on a salary basis?
 - Receives pre-determined amount regardless of quantity or quality of work
- Does position maintain job duties which would be considered exempt?



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**Overtime –
Executive Exemption**

- \$455 per week
- Primary duty is management of recognized department or subdivision
- Customarily regularly directs the work of two or more other employees
- Authority to hire or fire other employees or recommendations regarding employment decisions.



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**Overtime –
Administrative Exemption**

- \$455 per week
- Primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer’s customers
- Includes the exercise of discretion and independent judgment on matters of significance



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**Overtime –
Professional Exemption**

- \$455 per week
- Primary duty is the performance of work requiring advanced knowledge in a field of science or learning generally acquired in prolonged course of study.
- Primary duty is in the performance of work requiring invention, imagination, originality, or talent in field of recognized artistic or creative endeavor.



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Overtime – Computer Employee Exemption

- \$455 per week
- Primary duties include:
 - Application of systems analysis techniques and procedures
 - Design, development, documentation, analysis, creation, testing or modification of computer systems or programs
 - Design, document, create, test or modify programs related to machine operating systems.



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Overtime – Outside Sales Exemption

- Primary duty is making sales or obtaining orders or contracts for services paid by customers.
- Customarily and regularly engaged away from employer's place of business
- No compensation analysis
- Exception for retail sales commission employees



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Deductions

- Deductions for board, lodging and facilities
- Bona fide or permitted deductions, for example:
 - Agreed to in advance/Not meant to undermine exemption
 - One or more full days for personal reasons other than sickness or disability
 - One or more days due to sickness or disability if made under bona fide plan, policy or practice.



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Improper Deductions

- Improper deductions may lead to the loss of the exemption in varying levels:
 - Employee during period of improper deduction
 - Employees in same classification
 - Working under same supervision

***Impact of Michigan Payment of Wages and Fringe Benefits Act.**



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Executive Order

- March 13, 2014, President Obama issued executive order to DOL to update overtime regulations for FLSA
 - Greatly expanding groups receiving overtime
 - Targets by White House
 - White collar exemptions
 - Raised \$455 salary requirement
 - Established minimum percentage of time for “primary duty” of employee to be exempt.



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FLSA Case Notes

- *Bacon v Eaton Corp.* – Court of Appeals reversed dismissal on issue of whether supervisors had enough influence over employee change of status. (Executive)
- *Integrity Solutions v Busk* – Supreme Court held that time spent during security screening at end of shift was not “hours worked”

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FLSA Case Notes

- *White v Baptist Memorial* – Court of Appeals held employee work during automatically deducted meal periods was not entitled to overtime due to employees’ failure to comply with policy.
- *Ruffin v Motor City Casino* – Court of Appeals held security employees not entitled to overtime for monitoring two-way radios during meal periods.

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FLSA Case Notes

- *Sandifer v U.S. Steel* – Supreme Court held that employees not entitled to compensation for time spent “donning and doffing” protective gear at the beginning and end of their shifts.



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Questions?



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