

# NSDCCAPA 2016

CPP & FPC Study Group

Section 2

Federal and State Wage-Hour Laws

# Fair Labor Standards Act (FLSA)

## – Regulates

- Child Labor
- Recordkeeping
- Overtime Wages
- Minimum Wage
- Equal Pay

## – Does Not Regulate

- Paid time off and meals/breaks
- Pay date or final payment due dates
- Restrict hours of EE's over 16

## – Federal /State Relationships

Courts have ruled that wages are “unpaid” unless they are paid on regular payday which violates minimum wage and OT requirements

# Employer and Employee Coverage

- Two Types of coverage under FLSA
  - Enterprise Coverage – Covered if
    - At least 2 EE's work in jobs closely related and directly essential to interstate commerce or the production of goods for interstate commerce, and
    - Annual Gross sales of at least \$500KSome businesses are covered regardless of sales; hospitals, nursing homes, certain schools and public agencies
  - Individual EE coverage
    - EE is covered if he or she is engaged in interstate commerce or in the production of goods for interstate commerceMom and Pop business whom only employ immediate family members are exempt

# Exempt and Non Exempt Employees

- Exempt Employees
  - Do not have to be paid required minimum wage or overtime or complete timecards
- “White Collar Exemption”
  - Executive
  - Administrative
  - Professional
  - Computer Related Professional, and
  - Outside Sales
- Narrower exemption applies to retail and service establishments and, hotels and restaurants
- Non-exempt EE’s must be paid at least the minimum wage and overtime for hours over 40 in a workweek

# White Collar Exemption

- Tests for determining exempt status measures actual duties/responsibilities, not job title
  - Primary duties
  - Level of discretionary authority
  - Minimum salary requirements
- FLSA does not preempt state laws and collective bargaining agreements that require higher minimum wages or overtime pay



# White Collar Exemptions – General Rules

- Administrative
  - Primary Duty must be office or non-manual work directly related to the management or general business operation
  - Exercise of discretion and independent judgment regarding significant matters
  - Paid at least \$455 a week (\$23,660 a year) on a salary or fee basis not including board and lodging
- Executive
  - Primary duty must be management of the enterprise or a customarily recognized department or subdivision
  - Customarily and regularly direct the work of 2 or more other full time employees
  - Authority to hire or fire, or recommend the hiring, firing promotion or other staff changes
  - Paid a salary of at least \$455 a week (\$23,660 a year) not including board and lodging
- Professional
  - Primary duty must be performance of work requiring advanced knowledge in field of science or learning customarily acquired by prolonged intellectual instruction
  - Paid at least \$455 a week (\$23,660 a year) on a salary or fee basis, not including board and Lodging
- Computer Related Professionals
  - Highly skilled workers such as systems analysts, programmers, software engineers
  - Must meet primary duties test and earn at least \$455 a week. Exemption also applies to hourly paid computer professionals if they earn at least \$27.63 per hour. Does not apply to those engaged in mfg or repair of computer hardware and related equipment
- Outside Sales
  - Sales of goods and services
  - Obtaining orders or contracts for services or the use of facilities
  - Regularly work away from the ER's place of business
  - No Salary test

# Highly Compensated Employees

## Highly Compensated Employees

- Total annual compensation of at least \$100K
- Customarily and regularly performs one or more of the exempt duties of an administrative, executive or professional exempt employee
- Compensation must include at least \$455 a week, total may include commissions, bonuses etc.
- Catch up payment – if compensation has not reached \$100K – ER can make one final payment to bring it to \$100k

# Additional Information regarding White Collar Exemption

- Additionally Exempt EE s must:
  - Be paid on a salary or fee basis
  - Do not have to be paid in a workweek where they perform no work
  - No pay docking ( can pay PTO if available)
  - Planned Salary reductions OK
  - Can dock for:
    - Absence for personal reasons of full days
    - Absence for sickness or disability of full days under a bonafide plan
    - Jury or witness duty, temporary military leave
      - Can offset amounts received. Do not have to be paid if no work in the workweek is performed



## Additional White Collar Exemption – cont'd

- Major safety rule infractions and workplace conduct rule violations
- Initial and terminal weeks
- FMLA
  - Improper docking results in loss of exemption
  - Extra compensation OK
  - Can track time

# Minimum Wage and Equal Pay

- Current Federal Minimum Wage is \$7.25
- Lower opportunity wage for those under the age of 20, \$4.25 per hour for first 90 consecutive calendar days from hire
- Determination based on “workweek”
- Wages other than cash included in minimum wage calculation
- Equal Pay Act – Equal skill, effort and responsibility



# Overtime Pay Requirements

- Non-Exempt employees must be paid 1 ½ times regular rate of pay for hours worked over 40 hours in a “workweek”
  - Does not have to coincide with the calendar week or the pay period
  - ER may establish different “workweeks” for different facilities and groups of employees
  - “workweek” can be changed but change must be intended to be permanent and not to evade overtime pay
- The “workweek” is regularly recurring period of 168 hours; 7 consecutive 24- hour periods.
  - Must pay daily overtime for worked hours over 8 or 80 hours in the 14 day period
  - Must have agreement between EE and ER
- Hospitals and nursing homes may use a 14 day period rather than the “workweek” for determining overtime
- Hours worked – no maximum

# Regular Rate of Pay

- Overtime must be paid at 1 ½ times the regular rate of pay
- Included in Regular Rate of Pay (not all inclusive)
  - Shift differentials
  - Non-discretionary bonuses
  - Vendor Bonuses
  - Payments other than cash
  - Supplemental disability pay
  - On call pay
- Bonuses must be allocated to the period earned. If bonus is based on a percentage of earnings it will satisfy overtime requirements

# Regular Rate of Pay- cont'd

- Not included in Regular Rate of Pay (not all inclusive)
  - Discretionary bonuses
  - Gifts for special occasions
  - Paid Time off
  - Reimbursed expenses
  - Stock Options
  - Premium pay for extra days worked
- Employees working at more than one rate
  - “weighted average”
  - Or highest rate paid in the “workweek”

# Regular Rate of Pay – cont'd

## Regular Rate Calculation:

\$10 X 45 hours	\$450.00	
\$450 + \$150 bonus	\$600.00	
\$600 divided by 45 hrs	\$13.33	reg rate of pay

## Gross Pay Calculation:

Regular Pay	\$600.00	
Overtime Pay	\$33.33	5x6.665 13.33x.5
Total Gross	\$633.33	

# Weighted Average Formula

Total regular pay from all jobs divided by total hours worked =  
regular rate of pay

Hours	Rate		
10		\$7.00	\$70.00
4		\$10.00	\$40.00
20		\$8.00	\$160.00
6		\$8.50	<u>\$51.00</u>
			\$321.00
			\$321.00
		<u>Divided by</u>	<u>40</u>
Average Rate			\$8.03

# Other Requirements Under FLSA

- Unauthorized over time
- Travel Time
  - Travel from home to work
  - Travel as part of the job
  - Travel away from home
- On Call Time
- Waiting Time – “Waiting to be engaged” vs “Engaged to be Waiting”
  - Outside of regular working hours
  - Attendance is voluntary
  - Not directly related to EE s job
  - EE does not perform productive work for ER
- Time spent at meetings and training- not compensable if
- Preliminary and postliminary Activities
- Rounding Differences



# Child Labor

- No child under age 18 can work in a job declared to be hazardous by the Wage & Hour Division
  - Some minors ages 16 & 17 are exempt under certain student learner or apprentice programs
- Minors age 14 & 15 can work in limited number of non-hazardous jobs in retail, food services and gasoline stations
  - Cannot work during school hours and are limited to working 3 hours a day and 18 hours a week when school is in session (8 and 40 when not)
- Minors under age 14 generally prohibited unless working for parents, actors, news carriers and home workers making Christmas Wreaths
- Age Certificates

# Enforcement and Penalties

- Majority are triggered by EE complaints
- Back Pay and damages
- Statute of limitations – up to 2 years, 3 if willful
- Injunctions – court order obtained by Secretary of Labor which prohibits ER from committing further violations or requires ER to pay back pay. ER violation of such order can result in contempt of court and stiff fines and/or imprisonment
- Civil and Criminal Penalties – awarded in addition to damages
  - ER can be fined and/or it's officers jailed
  - Repeated or willful violations to minimum wage and overtime provisions can be fined up to \$1,100 per violation. Child Labor up to \$11,000 each violation and up to \$50,000 for each violation that caused death or serious injury to a child
  - Fines will depend on size of employer and seriousness of violation