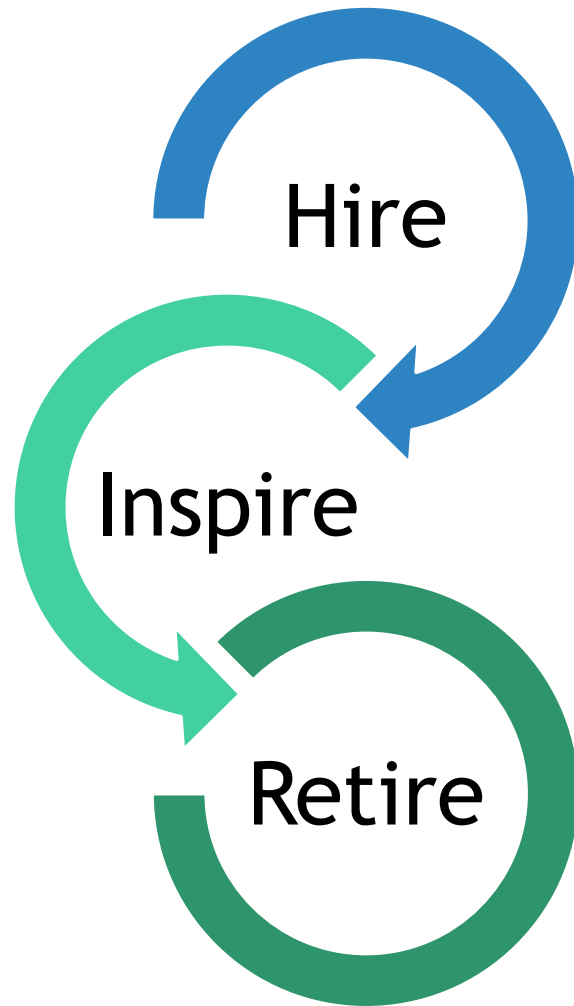


The Best “Get Out of Jail Free” Tool against
new Overtime Regs
2015 Clubpay
Alfred Roush Esq. SPHR
CERTIPAY HR Services

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Employee Lifecycle



What I need to know about FLSA and Wage/Hour to be in business

- ▶ Currently \$455/ Week for Overtime Exemption
 - ▶ \$23,660/Yr
- ▶ Change to \$921/week for
 - ▶ \$47,892 Annual salary
- ▶ PROPOSED CHANGES ARE COMING...WHEN?

Are you prepared?

1. Do you have an recently updated Handbook with overtime policy? (reviewed in last 6 months)
2. Updated and displayed Posters for 2015 state and federal law changes?
3. Do you have Independent Contractors that perform similar or same job as employees?
4. Do you have a policy for calculating overtime if you pay employees by the job instead of hourly?
5. Do you have an updated job descriptions for every employee?
6. Does it include blended job descriptions for certain employees doing more than one job?
7. Do you have policy for clocking in/out for all hourly employees and contractors?
8. Do you have an automated way to calculate, edit, submit, and communicate employee time from the field?

What I need to know about FLSA and Wage/Hour to be in business

- ▶ FLSA (Fair Labor Standards Act) vs. State Laws
 - ▶ OVERTIME
 - ▶ Exemptions
 - ▶ Who or what is an Exemption?
 - ▶ Executive
 - ▶ Administrative
 - ▶ Professional
 - ▶ Outside Sales
 - ▶ Computer Professional
 - ▶ Highly Compensated Employee

What I need to know about FLSA and Wage/Hour to be in business

▶ Executive Exemptions

1. **Primary duty is management** of enterprise department or subdivision
2. Customarily and regularly **directs the work of two or more employees**
3. Must have **power to hire and fire**, or **recommendations must be given “particular weight”**

The employee must also be paid on a salary basis of **at least \$455 per week**. >

To determine primary duty, look at amount of time spent, job description, hiring criteria, how paid

What I need to know about FLSA and Wage/Hour to be in business

- ▶ Administrative
- ▶ 1. Primary duty is performance of **office or non-manual work directly related to management** or general business operations of employer
- ▶ 2. Must exercise **discretion and independent judgment** with respect to matters of significance
 - ▶ paid on a salary or fee basis of at **least \$455 per week**
 - ▶ Specific exempt job titles:
 - ▶ team **project leader** (lead major projects);
 - ▶ **administrative assistant** (if delegated authority re: matters of significance)
 - ▶ ; **human resource managers** (must make or interpret employment policies)
 - ▶ ; **purchasing agents** (w/ authority to bind company on significant purchases)

What I need to know about FLSA and Wage/Hour to be in business

▶ Professional Exemptions

Examples: **doctors, lawyers, nurses, engineers, scientists** »

College or advanced degrees are standard, but a combination of work experience and training will suffice in some cases »

Accountants usually meet this exemption, but accounting clerks and bookkeepers do not »

Graphic artists may qualify, but must exercise a high level of invention, imagination, originality and talent

What I need to know about FLSA and Wage/Hour to be in business

- ▶ Outside Sales Exemptions

1. Primary duty is **making sales** (formerly 80%)

2. Must customarily and regularly be engaged **away from the employer's place of business**

- ▶ Inside duties such as writing sales reports, updating catalogues, planning itineraries and **attending sales conferences** are considered part of making sales

- ▶ Inside salespeople not eligible: no telephone, mail or internet sales

What I need to know about FLSA and Wage/Hour to be in business

► Highly Compensated Employee Exemptions

1. An employee with a **total annual compensation of at least \$100,000 is deemed exempt** if the employee customarily and regularly performs any one or more of the exempt duties or responsibilities of an executive, administrative or professional employee
2. Total annual compensation” must include at least \$455 per week paid on a salary or fee basis. Total annual compensation may also **include commissions, nondiscretionary bonuses and other nondiscretionary compensation** earned during a 52-week period
3. If the employee’s total annual compensation does not meet the required amount, the **employer may, during the last pay period or a one month period after the end of the year, make a payment sufficient to achieve the required level**

What I need to know about FLSA and Wage/Hour to be in business

▶ Non-Exempt Employees

1. Non-exempt employees must be paid at least the federal minimum wage for all hours worked
2. The **federal minimum wage** for covered nonexempt employees is \$7.25 per hour effective July 24, 2009. The **federal minimum wage** provisions are contained in the Fair Labor Standards Act (FLSA). Many states also have **minimum wage** laws.

What I need to know about FLSA and Wage/Hour to be in business

▶ Overtime vs. Piece-rate

1. **Overtime must be paid** 1½ times an employee's regular rate of pay for all hours worked in excess of 40 hours in a work week
2. Regular rate of pay must be determined for nonexempt employees paid on a **piece-rate, salary, or commission basis by dividing their earnings by the number of hours** actually worked.

Non-discretionary bonuses (i.e., performance incentives) are to be included in an employee's regular rate of pay to determine overtime payment obligations

What I need to know about FLSA and Wage/Hour to be in business

▶ Bonuses

1. Bonuses are considered to be **discretionary** if:
2. The fact that the **payment is to be made** and the **amount** are determined at the **sole discretion of the employer**; and
3. bonuses are not paid under **a prior contract, agreement, announcement, or promise** that would cause the payments to be considered “regular”

Permissible Deductions from Exempt employee salary

- ▶ Permissible deductions from an exempt employee's salary, which will **not** violate the "salary basis" requirement:
- ▶ **Absent** from work for one or more full days for personal reasons, **other than sickness or disability**
- ▶ **(Short Term Disability Plans in place) Absences** of one or more full days occasioned by sickness or disability (including work-related accidents) **if the deduction is made in accordance with a bona fide plan, policy or practice** of providing compensation for loss of salary occasioned by such sickness or disability. Deductions for such full-day absences also may be made before the employee has qualified under the plan, policy or practice, and after the employee has exhausted the leave allowance
- ▶ Unpaid **disciplinary suspensions** of one or more full days **imposed in good faith** for infractions of workplace conduct rules, or for infractions of safety rules of major significance
- ▶ **FMLA**

NOT Permissible Deductions from Exempt employee salary,

- ▶ An employer **cannot** make deductions from pay for **jury duty, attendance as a witness or temporary military leave,**
- ▶ Can **offset** any amounts received by an employee for jury fees, witness fees, or military pay for a particular week against the salary due for that particular week

Hot Topics

1. Overtime Comp
 2. Severance agreements
 3. Handbooks
 4. Non-Compete Agreement
 5. Confidentiality Agreement
 6. Independent Contractor
1. EEOC-Discrimination
 2. Sexual Harassment
 3. Terminations
 4. Hiring
 5. Performance Reviews
 6. Writeup/Discipline
 7. Drug Testing Use

Where Do you Stand ?

1. Do you have an updated job descriptions for every employee?
2. Does it include blended job descriptions for certain employees doing more than one job?
3. Do you have policy for clocking in/out for all hourly employees and contractors?
4. Do you have an automated way to calculate, edit, submit, and communicate employee time from the field?

What should I do now?

- Get an assessment and find out if you comply with the federal, state, & industry regulations.
- Defend against potential claims- limit exposure proactively
- Draft better HR related documents- Handbooks, Policies, Performance Reviews, Non-Compete Agreements, Confidentiality Agreements.
- Investigate claims Sexual Harassment, OSHA, DOL, IRS, that could lead to FLSA violation
- Consult with management on “Best Practices” for hiring the right employees