



On The Clock

An Overview of FLSA & Overtime Pay

Executive Summary

The Fair Labor Standards Act (FLSA) establishes many labor-related regulations including calculating overtime pay, maintaining accurate records and qualifying employees as exempt from FLSA provisions. However, these types of specifications, if misunderstood, can open employers to inadvertent errors and potentially costly lawsuits. Three typical FLSA claims involve overtime inaccuracies, including classifying non-exempt workers as exempt, failing to track all job-related work hours and incorrectly calculating overtime pay rates. Businesses looking to protect themselves from these mistakes use a reliable timekeeping system to manage employee classification, encourage tracking of all work hours and precisely calculate overtime rates.



FLSA & Overtime

The Fair Labor Standards Act (FLSA) contains provisions for minimum wage, overtime pay, recordkeeping, and youth employment standards for workers employed in the private sector or by federal, state, and local governments.ⁱ The U.S. Department of Labor estimates that 130 million Americans are covered under FLSA.ⁱⁱ

FLSA's Overtime Provisions

Specifically, employers are required to pay overtime once a non-exempt, FLSA-covered employee works over 40 hours during a specified workweek. FLSA defines a workweek as a fixed and reoccurring period of 168 hours (seven consecutive 24-hour periods). The workweek does not need to coincide with the calendar (that is, start on a Sunday and end on a Saturday), and different workweeks can be established for different groups of workers.ⁱⁱⁱ

Overtime Pay

FLSA does not limit the total number of hours an employee (over the age of 16) may work in a single workweek. However, when a non-exempt employee's time exceeds 40 hours, the employer must pay a "premium" hourly rate of one-and-a-half times a worker's regular pay rate and must be equivalent to (or exceed) minimum wage. (As of July 24, 2009, minimum wage is currently \$7.25 per hour^{iv} with the exception of youths under age 20 and tipped employees.)^v

Who Is Covered?

The FLSA provides for two types of coverage: **enterprise** and **individual**.

Enterprise coverage is extended to employees who work for FLSA-covered businesses or organizations. Businesses or organizations qualify for FLSA coverage if they either (1) have at least two employees and an annual dollar volume of sales or business totaling at least \$500,000, or (2) operate as schools or preschools, hospitals or businesses providing medical or nursing care to residents, or government agencies.^{vi}

Individual coverage is provided to employees whose responsibilities include engaging in business transactions between states (known as "interstate commerce") and domestic service workers (e.g., cooks, housekeepers and full-time childcare providers).^{vii}

Who Is Exempt?

The FLSA has an extensive list of exempt workers, that is, workers that do not fall under FLSA provisions. These are organized into three categories: (1) workers exempt from overtime pay and minimum wage requirements, (2) employees exempt from overtime pay only, and (3) employees partially exempt from overtime pay.^{viii} Exemptions can range from amusement park employees, railroad workers and executives to movie theater employees, farmworkers and news editors of



non-metropolitan broadcasting stations.^{ix} Because FLSA exemptions are so specifically defined, an organization unsure of their employees' classifications should contact their local Wage and Hour Division (WHD) office.^x

Recordkeeping Rules

The FLSA also dictates specific records an employer must keep current and on file for all covered, nonexempt workers including workweek, hours and earnings. To learn more about FLSA's recordkeeping mandates, see Attendance on Demand's white paper, *Trustworthy Timekeeping: How to Select a Litigation-Resistant Timekeeping System* at www.attendanceondemand.com.

Overtime Lawsuits

Under a section titled "Employee Rights," the FLSA states employees should contact the WHD to file a complaint if they feel employers have infringed on their FLSA rights. More and more, employees are doing just that. FLSA-related claims are on the rise, thanks to increased WHD staffing^{xi} and a new partnership between the WHD and the American Bar Association that refers complainants to private litigators.^{xii}

This means employers face a bigger risk of fielding FLSA-related law suits and class action claims, especially when dealing with overtime. Three examples of typical overtime claims include:

1. Employers who mistakenly assume workers are exempt from FLSA provisions.
2. Employers who fail to track off-the-clock hours for job-related duties.
3. Employers who incorrectly calculate overtime pay rates.^{xiii}

All of these scenarios can lead a worker to file a complaint, potentially saddling the employer with expensive lawsuits.

Combating Overtime Claims with Timekeeping

So, how can employers address overtime issues before they become a problem? By employing a customized, accurate timekeeping system.

Today, many companies take advantage of timekeeping systems to manage employee hours, pay, and leave benefits. A reliable timekeeping system also helps organizations manage employee classification, encourage tracking of all work hours and precisely calculate overtime rates automatically.

Managing Employee Classification

The simplest way to ensure employees are correctly classified as exempt or non-exempt is to maintain regularly updated employment records. A timekeeping system captures



this information in a centralized, easily accessible database and allow for regular updates so managers can stay on top of classification changes.

Encouraging Work Hour Tracking

The easier and more convenient the timekeeping system is, the more likely an employee correctly reports their hours--especially overtime. Ideally, the time system provides employees with “self-service” so they can directly input their hours and note changes in their schedule through an individualized dashboard. Location-independent systems (such as cloud-hosted systems) make it easier for traveling employees to report time regardless of where they are. 24/7 access means employees can submit job-related time around the clock instead of waiting until the system is available.

Advances in time clock technology also facilitate more accurate time reporting. For instance, HTTP-enabled time clocks communicate securely over the Internet, recording work times and transactions directly to the system server with no additional software required. Biometric time clocks identify employees using their unique hand or finger template, eliminating “buddy punching” that can result in overtime fraud. Additionally, time clocks with messaging functionality allow managers to communicate information to employees through the clock itself.

Automate Overtime Calculations

Overtime calculations can be complex, giving an employer plenty of opportunities for inadvertent errors. Because rates may vary by department, team or work group, using a timekeeping system with customized pay rule setup ensures accurate records and payroll.

Blended rates are the biggest challenge to accurate overtime. If an employee works two different jobs with two different pay rates, a blended rate that combines the two in a “weighted average rate” must be used as the basis for overtime pay. (Specifically, according to the FLSA, a weighted average rate must be calculated by totaling the earnings from all rates of pay and dividing them by the total number of hours worked at all jobs.)^{xiv} In cases like this, customized pay rules help organizations confidently avoid inaccuracies that lead to litigation.



Error-Free Overtime

The FLSA delineates a number of overtime regulations, including calculating overtime rates and determining an employee’s FLSA qualification and exemption status. However, the responsibility for following these rules falls squarely on the employer. Because overtime continues to be one of the most error-prone provisions of the FLSA, inaccuracies, inconsistencies and incorrect assumptions can land any employer in court. Relying on a timekeeping system to manage employee exemption status, track all worked hours and automate overtime calculations keeps workers’ costly FLSA claims at bay.

Footnotes/Bibliography

- ⁱ U.S. Department of Labor: Wage and Hour Division. “Overtime Pay.” Accessed May 22, 2011. <http://www.dol.gov/whd/overtime_pay.htm>
- ⁱⁱ U.S. Department of Labor. “Employment Law Guide - Minimum Wage and Overtime Pay.” September 2009. <<http://www.dol.gov/compliance/guide/minwage.htm>>
- ⁱⁱⁱ U.S. Department of Labor: Wage and Hour Division. “Fact Sheet #23: Overtime Pay Requirements of the FLSA.” July 2008. <<http://www.dol.gov/whd/regs/compliance/whdfs23.pdf>>
- ^{iv} Ibid.
- ^v For more information on these exceptions, see “Fact Sheet #32: Youth Minimum Wage” and “Fact Sheet 15: Tipped Employees Under the FLSA” at www.dol.gov.
- ^{vi} U.S. Department of Labor: Wage and Hour Division. “Fact Sheet #14: Coverage Under the Fair Labor Standards Act (FLSA).” July 2009. <<http://www.dol.gov/whd/regs/compliance/whdfs14.htm>>
- ^{vii} Ibid.
- ^{viii} U.S. Department of Labor. “Employment Law Guide - Minimum Wage and Overtime Pay.” September 2009. <<http://www.dol.gov/compliance/guide/minwage.htm>>
- ^{ix} Ibid.
- ^x For a directory of local Wage and Hour Division offices, visit <http://www.dol.gov/whd/america2.htm>.
- ^{xi} U.S. Department of Labor. 2011 Department of Labor Budget in Brief, p. 44. February 2010.
- ^{xii} U.S. Department of Labor. “Bridge to Justice: Wage and Hour Connects Workers to New ABA-Approved Attorney Referral System.” Accessed 20 Apr 2010. <<http://www.dol.gov/whd/resources/ABAReferralPolicy.>>
- ^{xiii} Chamberlain, Kaufman and Jones. “FLSA Overtime.” Accessed May 13, 2011. <<http://www.flsa.com/overtime.html>>
- ^{xiv} U.S. Department of Labor: Wage and Hour Division. “Fact Sheet #23: Overtime Pay Requirements of the FLSA.” July 2008. <<http://www.dol.gov/whd/regs/compliance/whdfs23.pdf>>

About Attendance on Demand, Inc.

Attendance on Demand employee time and attendance service supports the labor management needs of thousands of companies over a quarter of a million employees across North America. Launched in 2006, Attendance on Demand is a rapidly deployed, cloud-based solution that minimizes a company’s risk and technology investment while providing advanced features for securely managing labor data — calculating pay rules, scheduling employees, budgeting labor, and automating record keeping for labor law compliance. With standard uptime over the industry average of 99.995% and above average customer retention rates, Attendance on Demand removes the worry of maintaining expensive infrastructure. An extensive North American distribution network helps organizations use Attendance on Demand to reduce labor expenses and improve decision making.

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