

Wage and Hour Training

Presented by

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Mission of Pro Bono Partnership of Atlanta:

To maximize the impact of pro bono engagement by connecting a network of attorneys with nonprofits in need of free business legal services.

Pro Bono Partnership of Atlanta Eligibility & Other Information

- In order to be a client of Pro Bono Partnership of Atlanta, an organization must:
 - ✓ Be a 501(c)(3) nonprofit.
 - ✓ Be located in or serve the greater Atlanta area.
 - ✓ Serve low-income or disadvantaged individuals.
 - ✓ Be unable to afford legal services.
- *Visit us on the web at www.pbpatl.org*
- We host free monthly webinars on legal topics for nonprofits
 - ✓ To view upcoming webinars or workshops, visit the [Workshops Page](#) on our website
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Legal Information:

- ✓ This webinar presents general guidelines for Georgia nonprofit organizations and should not be construed as legal advice. Always consult an attorney to address your particular situation.

Fair Labor Standards Act

- ✓ Establishes a national minimum hourly wage, which must be paid for all hours worked
- ✓ Requires the payment of overtime at a rate of 1 ½ time an employees “regular rate” for all hours worked over 40 in a workweek
- ✓ Requires employers to maintain accurate and complete time records
- ✓ Describes employers and employees who are “exempt” from minimum wage and/or overtime requirements

Fair Labor Standards Act

- Since it was passed in 1938, the FLSA has included exemptions from minimum wage and overtime requirements for:
 - ✓ Executives
 - ✓ Administrative employees
 - ✓ Professionals
 - ✓ Outside sales employees
- Regulations give more detail, but change from time to time

Reminder!

Three Tests for Exemptions

- Salary Level
- Salary Basis
- Duties



New Minimum Salary Level

- Effective December 1, 2016
- \$47,476 (\$913/week)
- Doubles current \$23,660 (\$455/week)



“Counting” Other Pay In Salary

- Up to 10% of salary requirement can be met with non-discretionary bonuses, incentive pay, or commissions, paid at least quarterly.
- But remaining 90+% must be paid on a “salary basis”



Automatic Increases

- Beginning 1/1/2020, the salary level will automatically increase every three years to the 40th percentile of weekly earnings for full-time salaried employees in the lowest wage Census region
- Announced at least 150 days before effective date

Duties

➤ Executive

- ✓ Primary duty – managing the enterprise or a customarily recognized department or subdivision
- ✓ Direct the work of two or more FTEs
- ✓ Authority to hire/fire, or change of status recommendations given particular weight

Duties

➤ Administrative

- ✓ Primary duty – office/non-manual work directly related to the management or general business operations of employer or its customers
- ✓ Primary duty involves exercise of discretion and independent judgment on matters of significance

Duties

➤ Professional

- ✓ Learned – primary duty is work requiring advanced knowledge in field of science or learning customarily acquired through prolonged course of specialized instruction
- ✓ Creative – primary duty is work requiring invention, imagination, originality or talent in recognized field of artistic or creative endeavor

Audit Current Exempt Employees

- Even if salary level is not an issue, you may have employees who do not meet the duties requirements for exemption under the current regulations
- Rare opportunity to correct classification issues with reduced risk of triggering litigation
- With other employees being reclassified because of the salary issue, reclassifications because of job duties may fly under the radar

Reclassification to Non-Exempt

- Continue to pay salary or convert to hourly rate?
 - ✓ Fluctuating workweek salary?
- How will reclassified employees track their hours?
- What steps can you take to control overtime hours?
(flextime, after-hours work)
- Redistribute workload? (Hire? Push work to part-time employees?)
- What new/revised policies do you need?

Managing the Change

- Hire additional employees
- Change work hours to focus on critical periods
- Volunteers
- Independent contractors or vendors

Review Policies and Processes

- Policies
 - ✓ Off-the-clock work
 - ✓ Meal and rest break
 - ✓ Travel time
 - ✓ Mobile device
- Processes
 - ✓ Timekeeping
 - ✓ Payroll changes
 - ✓ Controlling overtime hours



Communicate the Changes

- Need to communicate with Board or senior management, managers of reclassified employees and the employees themselves
 - ✓ Who will communicate the changes?
 - ✓ What will be communicated?
 - ✓ How will changes be communicated?
 - ✓ When will the changes be communicated
- If multiple employees, consider preparing your talking points, answers to questions, letter to reclassified employees

Agenda!

- ✓ Hours Worked
- ✓ Minimum Wage
- ✓ Overtime Pay
- ✓ Recording Work Time
- ✓ Other State Law Issues

Pay Basics

To pay employees correctly,
you must understand two
key concepts:

- ✓ What are “hours worked”?
- ✓ What is an employee’s
“regular rate”?



What is “Work”?

- ✓ Non-exempt employees must be paid for all hours worked
- ✓ But the FLSA, and state laws, do not define what is “work”



Continuous Work Day

- ✓ Employees must be paid for all hours within a workday, from the first principal activity to the last principal activity
- ✓ A “principal activity” includes any activity that is an integral and indispensable part of an employee's work
- ✓ In general, “work” includes all the time an employee must be on duty, on the employer’s premises, or at any other prescribed place of work

Work “Suffered or Permitted”

- All work “suffered or permitted” by the employer must be compensated, including:
- ✓ Work requested or required by the employer
 - ✓ Work not requested, but permitted
 - ✓ Work the employer knows or has reason to believe is being performed – *even if not expressly requested*



Key Concepts

- ✓ Work is broadly interpreted to the employee's benefit
- ✓ Employees must be paid from “whistle to whistle”
- ✓ Work includes any time the employee is required, requested, suffered or permitted to work
- ✓ It is the duty of management to see that work is not performed if it does not want it to be performed
- ✓ Management's responsibility to control employees and prevent employees from working



Is the Activity Work Time?

- ✓ Meals and Rest Periods
- ✓ Waiting Time
- ✓ On-Call Time
- ✓ Training and Meeting Time
- ✓ Travel Time
- ✓ Pre- and Post-Shift Activities
- ✓ Donning, Doffing & Cleaning Uniforms
- ✓ Charitable Volunteer Activities

Meal & Rest Breaks - FLSA

- ✓ The FLSA does not require employers to provide employees with meal or rest breaks
- ✓ However, under the FLSA, bona fide meal periods are not considered “work” if at least 30 minutes long, and the employee is completely relieved of duty
- ✓ A rest period of 20 minutes or less is considered compensable work time
- ✓ An employer may require an employee to remain at the worksite during a meal or rest break

Waiting & On-Call Time

Compensable (engaged to be waiting)

- ✓ Employee is unable to use the time effectively for his/her own purposes
- ✓ Employee has to stay on or close to the employer's premises while on-call

Not Compensable (waiting to be engaged)

- ✓ Employee is completely relieved from duty, and the time is long enough to enable him/her to use the time effectively for his / her own purposes
- ✓ Employee is required to carry a pager or leave a telephone number where s/he can be reached

Waiting Time

Employees who are “engaged to wait” are working

Employees “waiting to be engaged” are not working



On-Call Time

Whether time spent “on-call” is compensable work depends on:

- ✓ Frequency of calls
- ✓ Required response time
- ✓ Any other limitations on employee’s use of his or her time

On-call time is not work merely because the employee is required to carry a pager or cell phone

Training Time

Training time is compensable work hours unless all four of the following requirements are met:

- ✓ Attendance is outside regular working hours
- ✓ Attendance is voluntary
- ✓ The training is not job related
- ✓ The employee does not perform any productive work during the training

Meeting Time

Meeting time is work time if required by employer or work-related

Exception for resolving grievances



Travel Time

Compensable

- ✓ Travel between job sites during the work day
- ✓ Travel to another city for special one-day assignments, although normal commuting time can be excluded
- ✓ Overnight travel, if during the employee's normal work hours (on a work or non-work day)

Not Compensable

- ✓ Normal home-to-work commuting, unless employee begins work prior to commuting
- ✓ Overnight travel, if outside the employee's normal work hours (on a work or non-work day)

Some states laws require all travel time to be paid except the normal commute

Home-to-Work Site Travel in Company Vehicle

- Home-to-work site travel in a company vehicle is not work time where:
- ✓ Use of vehicle is voluntary
 - ✓ No expense is incurred by employee in use of vehicle
 - ✓ Vehicle is of a type ordinarily used for commuting
 - ✓ Work sites are within normal commute distance of employer's office

Pre- and Post-Shift Activities

- ✓ Necessary tasks before start and after end of regular work are work time
- ✓ Determined on a case-by-case basis
- ✓ Example of work time: booting up computer
- ✓ Not work time: waiting to punch in or out, traveling from parking lot to place where work is performed

Minimum Wage

- ✓ Covered, non-exempt employees must be paid not less than the minimum wage for all hours worked
- ✓ The federal minimum wage is currently \$7.25
- ✓ Employees must be paid the state minimum wage if higher than the federal minimum wage

Impact of Wage Deductions

Cost incurred in order to perform the work (and, thus, primarily for the benefit of the employer), cannot bring a non-exempt employee's pay below minimum wage

Examples:

- ✓ Employer required uniforms
- ✓ Tools of the trade
- ✓ Travel costs
- ✓ Visa costs
- ✓ If the employer requires employees to use a personal cell phone or computer for business

These and other wage deductions also are generally prohibited under state laws

All Remuneration

- ✓ Under the FLSA, all “remuneration” must be included in the regular rate
- ✓ In the employment context, remuneration means wages and other economic benefits that an employee receives for work performed
- ✓ **UNLESS:** The remuneration is explicitly excluded under Section 7(e) of the FLSA

Compensation Included

- ✓ Hourly wages or salary
- ✓ Commissions
- ✓ Non-discretionary bonuses
- ✓ Prizes and awards related to work
- ✓ Shift or job differentials
- ✓ Premium pay for hazardous work
- ✓ On-Call pay

Compensation Excluded

- ✓ Discretionary bonuses
- ✓ Gifts for Christmas or special occasions
- ✓ Payments for time not worked
 - Holiday or vacation pay
 - Sick pay
 - Reporting pay
- ✓ Employee benefits
 - Retirement and insurance benefits
 - Bona fide profit sharing plans
 - Stock options and stock purchase plans
- ✓ Business expense reimbursements
- ✓ Premium pay of at least 1 ½ times the hourly rate

Bonuses, Prizes & Awards

Included:

- ✓ If the amount of the payment is dependent on hours worked, production, or efficiency

Excluded:

- ✓ If discretionary both as to the fact and the amount of payment

Not discretionary if:

- ✓ Employees expect such payments regularly
- ✓ The employer announces the bonus in advance
- ✓ The employer uses a formula to determine the amount of the bonus

Independent Contractor or Employee?

- Classification depends on the facts of each case, application of the appropriate independent contractor tests.
- Down side of being wrong can be huge.

Factors

- The degree of control.
- The relative investment in facilities.
- The worker's opportunity for profit and loss.
- The permanency of the parties' relationship.
- The skill required.
- Whether the services provided are integral to the business.



For More Information:

If you would like more information about the services of Pro Bono Partnership of Atlanta, contact us at:

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