



UNMASKING OVERTIME

And Other Wage & Hour Issues

Session Leader

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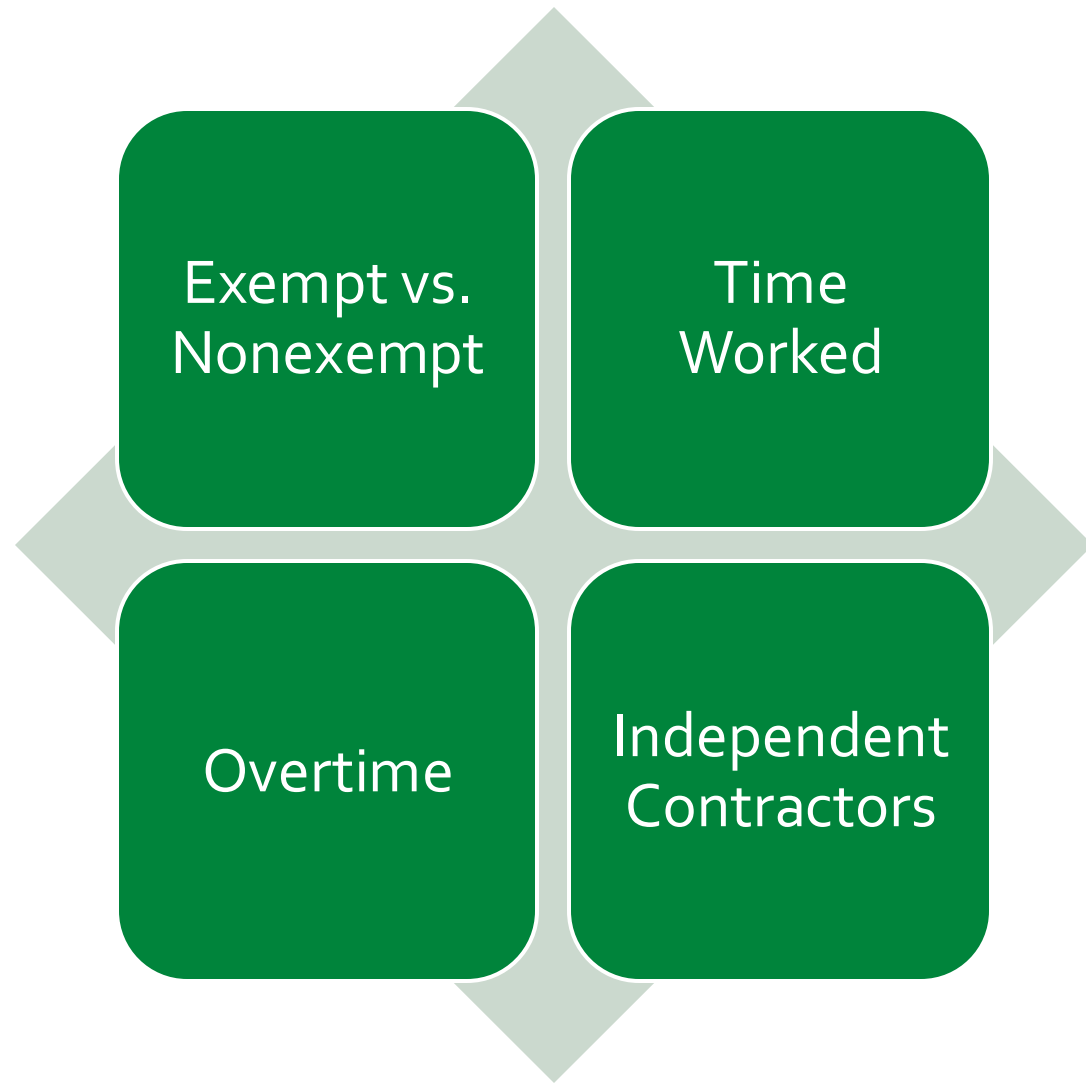
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About 7000 students

1000 contracted employees

12 schools






Objectives

Which employees are subject to overtime and other regulations of the Fair Labor Standards Act?

- Exempt or nonexempt, that is the question
- Three tests:
 - Salary level – if more than \$684/week, exempt
 - Salary basis – if a guaranteed minimum amount will be paid in any work week when they perform any amount of work, exempt; no deductions for varying quantity or quality of work performed
 - Duties – if perform exempt job duties, exempt
- **Must meet all three tests to be exempt**

Salary Level

ON HOLD

Earnings Threshold	Minimum Salary Amount Before July 1, 2024	Minimum Salary Amount Beginning July 1, 2024	Minimum Salary Amount Beginning January 1, 2025
Standard Salary Level 	\$684 per week (equivalent to a \$35,568 annual salary)	\$844 per week (equivalent to a \$43,888 annual salary)	\$1,128 per week (equivalent to a \$58,656 annual salary)

- On April 26, 2024, the U.S. Department of Labor (Department) published a final rule to update and revise the regulations
- On November 15, 2024, the U.S. District Court for the Eastern District of Texas vacated the Department's 2024 final rule
- Stay tuned!

Exempt Job Duties

1. Executive Exemption
 2. Administrative Exemption
 3. Professional Exemption
 4. Certain computer professionals
 5. Outside sales & highly compensated
- Consider actual job duties – titles are irrelevant, classified vs. certified is irrelevant



1. Executive Exemption

Regularly supervise two or more other employees, and also

Management is the primary duty of the position, and also

Has some genuine input into the job status of others employees (hiring, firing, assignments, etc.)

1. Executive Exemption

Management duties include:

- Interviewing, selecting, training staff
- Handling employee complaints, disciplining staff
- Determining work techniques
- Apportioning work among staff
- Planning work
- Determining equipment to be used, or materials needed
- Planning budgets
- Monitoring work for legal or regulatory compliance
- Providing for safety in the workplace

2. Administrative Exemption

- Primary duty must be the performance of office or nonmanual work directly related to the management or business operations of the entity
- Includes the exercise of discretion and independent judgment with respect to matters of significance
- Examples of areas that may fit this exemption
 - Human resources
 - Accounting

2. Administrative Exemption

Discretion and independent judgment

- The employee has the authority to formulate, affect, interpret, or implement management policies or practices
- The employee performs work that affects business operations to a significant degree
- The employee has authority to commit the employer in matters with significant financial impact

3. Professional Exemption

“Learned professional” – see next slide for a list

Primary duty is work requiring advanced knowledge, predominately intellectual in nature, and involving the exercise of discretion and judgment

The advanced knowledge must be in a field of science or learning

Occupations with recognized professional status, as distinguished from mechanical arts or skilled trades

3. Professional Exemption

Some “learned professions” are specifically exempt:

- Lawyers
- Doctors
- Dentists
- **Teachers**
- Architects
- Clergy
- **Registered nurses** (but not LPNs)
- Accountants (but not bookkeepers)

3. Professional Exemption



Creative Professional:

- Invention, imagination, originality, or talent
- Exemption depends on the extent exercised by the employee
- Actors, musicians, certain painters, writers

Non-Exempt Professions

Common errors: misapplication of exemptions

Licensed Practical Nurses



Paralegals, legal assistants

Engineering Technicians

Accounting clerks, bookkeepers typically performing routine work

Cooks performing predominantly routine mental, manual, mechanical, or physical work

4. Computer Professionals

Exempt computer-related job duties

Computer systems analyst, programmer, software engineer, or other similarly skilled worker performing:

- Systems analysis to determine hardware, software, or system specs
- Design, documentation, analysis, creation, modification of systems or programs

**What if the
employee has
multiple jobs or
sets of job duties?**

The primary job dictates whether they are exempt or nonexempt

Ex: Teacher who works extra hours as a custodian = exempt for all work

Exempt or Nonexempt?

- School bookkeeper
- Teacher who works 10 extra hours at the gate
- Transportation Director on classified pay scale like bus drivers
- Registered nurse
- School nurse with an LPN
- 60% custodian/40% cook
- 60% custodian/40% teacher at the tech school
- Computer network engineer
- Superintendent's administrative assistant

Compensable Time

- We must pay for actual time worked
 - Timesheets must reflect actual time worked
 - Beware of “8:00-4:00” every day on the time sheet
 - Taking work home, answering emails, phone calls, etc. all counts as time worked
- Nonexempt employees cannot volunteer their time
 - They can volunteer for a *different* job
- Any time worked without permission still must be paid to the employee
 - Address the issue through the evaluation process

Other situations that are considered time worked:

- “On call” time - if required to be on-site or so close that the time can't be used effectively
- Waiting time
 - Is the employee **engaged to wait** or **waiting to be engaged**? Engaged to wait = time worked
- Meal periods – if required to perform any duties while eating (active or inactive)
- Travel time – usually is time worked but check the rules if overnight travel

On-Call Time

Hours worked

Employee must stay on employer premises

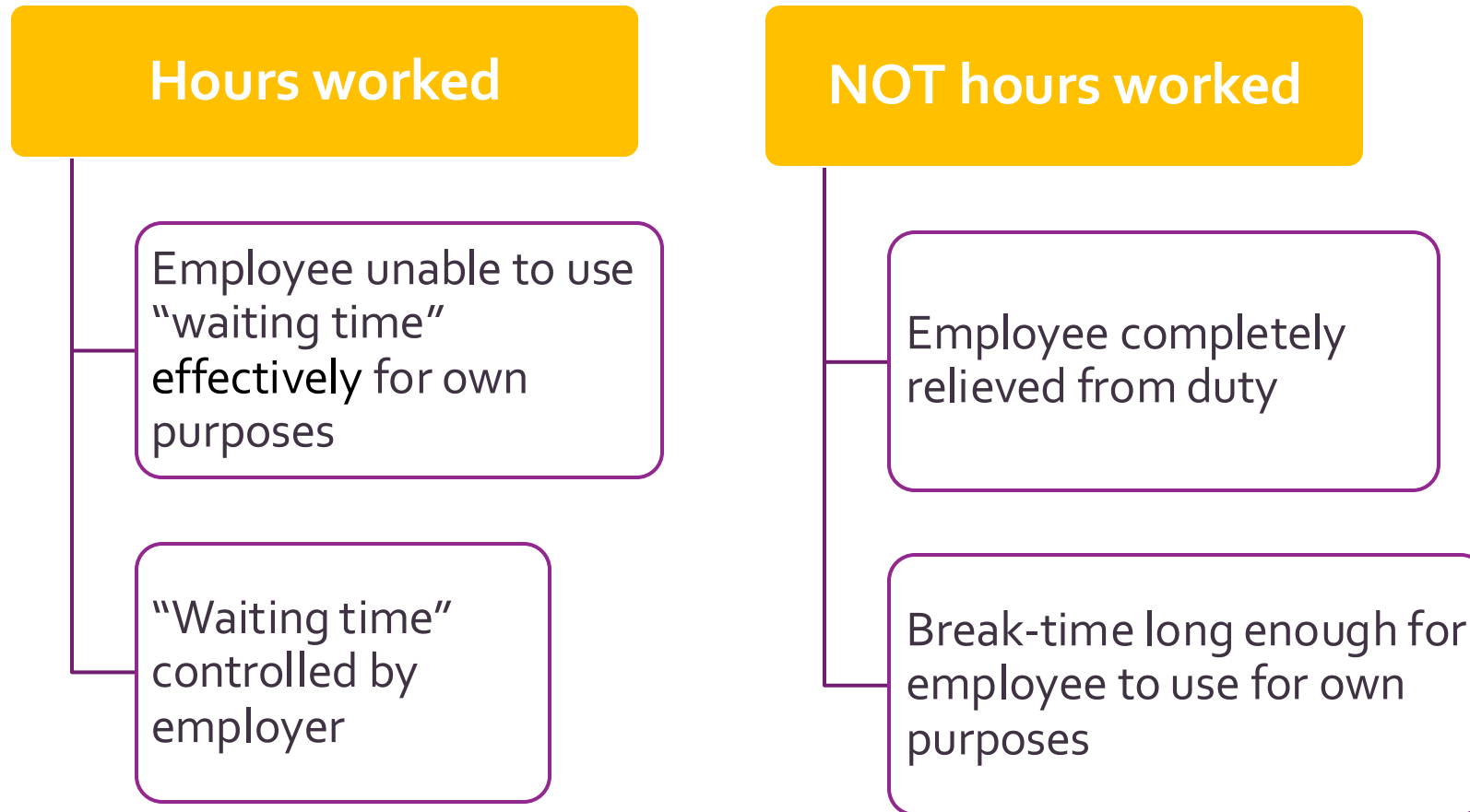
Or, must be so close time cannot be used effectively for own purposes

NOT hours worked

Employee must provide contact information

Can use time effectively for own purposes

Waiting Time





Rest and Meal Periods

- Short rest breaks (20 min or less) are compensable
 - Bona fide meal periods (typically 30 minutes or more) need not be paid as hours worked
 - Worker must be completely relieved of duty for meal period not to be compensable time.
-

Time Worked? Yes or No

- Bookkeeper coming in early to work even though the principal didn't approve it
- Bookkeeper calling subs at home before regular work hours
- Bookkeeper responding to emails while at the mall
- Teacher aide responsible for student supervision during her lunch break
- Teacher who works at his desk during his lunch break
- Bus driver at a football game waiting to take kids home

Time Worked? Yes or No

- School cook volunteering to cook for the awards banquet
- School cook volunteering to perform custodial duties for the awards banquet
- Maintenance worker who is on call but not required to be on-site or within 10 minutes of the building
- Snow day with no job duties for a teacher aide
- Hours worked by a secretary in secret, after being disciplined for working extra hours
- Travel for a custodian to get from home to work
- Travel for an LPN from one work site to another during the day

Overtime



- Applicable only to nonexempt employees
- Time **worked** in excess of **40 hours** in a **work week** must be paid as time and a half (overtime)
- Holiday, sick day, personal day are not included in time worked
- It must be paid even if the OT is not approved in accordance with board policy
- If the work week includes multiple rates of pay:
 - Weighted average method
 - Specific rates method

Independent Contractor or Employee?

Worker classification depends on facts and circumstances of each situation

- Behavioral – do we control or have the ability to control what the worker does and for how long?
- Financial – are the business aspects controlled by us or the worker?
- Type of relationship – are benefits given, is it a continuing relationship?

It is determined by job, not by person

Factors that indicate **EMPLOYEE**

- Training is provided by the district
- A continuing relationship
- The work is integrated into the district's business operations
- The district sets the work hours
- District requires substantially full time work
- District requires regular reports
- Payment by the week or month
- Payment of travel or other business expenses
- The district furnishes equipment, materials

Factors that indicate **INDEPENDENT CONTRACTOR**

- Service is offered to the general public
- They work for more than one entity at a time
- They can hire their own assistants
- They incur liability if services are prematurely terminated
- They can realize a profit or loss on the work



Independent Contractor or Employee?

- Almost everyone we pay is considered to be an employee per IRS regulations and we are required to pay them through payroll
- In Kentucky, game officials assigned by KY High School Athletics Assoc. are independent contractors
- When in doubt, EMPLOYEE

What about student workers?

16 and 17 year olds

Unlimited hours; may work in any occupation other than those declared hazardous by Secretary of Labor

14 and 15 year olds

May work outside school hours and for limited periods of time; only non-manufacturing, non-hazardous jobs, and specific conditions apply

Children under 14

With limited exceptions, no employment permitted in covered, non-agricultural occupations

Recordkeeping Requirements

- personal information, including employee's name, home address, occupation, sex, and birth date if under 19 years of age;
- hour and day when workweek begins;
- total hours worked each workday and each workweek;
- total daily or weekly straight-time earnings;
- regular hourly pay rate for any week when overtime is worked;
- total overtime pay for the workweek;
- deductions from or additions to wages;
- total wages paid each pay period; and
- date of payment and pay period covered

Limits of the FLSA

FLSA does *NOT* require

Vacation, holiday,
severance, sick pay

Meal or rest periods,
holidays off, vacations

Premium pay for
weekend or holiday
work

Discharge notice,
reason for discharge

Limit on number of
hours or days
employees
16 years or older may
work

Pay raises, fringe
benefits

Words of Caution

FLSA applies only to nonexempt staff

It's ok to pay more than FLSA requires, but it's never ok to pay less

Burden of proof is on the employer

All hours worked count toward the 40, even if not approved



QUESTIONS AND DISCUSSION