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Insight

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Insight

Wage & Hour Done Right

Presented by
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Agenda

The Fair Labor Standards Act

- Who and What it Regulates
- Employee Classifications
- The Basics

Non-Exempt Danger Zones

Q & A

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The FLSA

- Fair Labor Standards Act
- Enacted in 1938 during the Great Depression
- Regulates minimum wage, overtime, recordkeeping requirements, and child labor

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What the FLSA Regulates

- Unless exempt, employees must be paid at least the federal minimum wage
- Unless exempt, employees must be paid time and a half for all hours worked over 40 in a workweek
- Employers must display the “Employee Rights Under the Fair Labor Standards Act” poster
- Employers must keep detailed pay records for non-exempt employees
- Child labor is limited to protect children’s health and educational opportunities

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What the FLSA Does Not Regulate

- Vacation, holiday, severance, or sick pay
- Meal or rest periods
- Premium pay for weekend or holiday work
- Fringe benefits
- Termination
- Payment of final wages

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Are You Covered by the FLSA?

Almost everyone is covered by the FLSA. There are two kind of coverage – if either apply, the FLSA must be followed.

- **Enterprise Coverage:** Any *business* that has an annual dollar volume of sales or business done of at least \$500,000 and certain industries. If the business is covered, all employees are covered.
- **Individual Coverage:** An *employee* is covered by the FLSA if they are engaged in interstate commerce, even if the business doesn't have enterprise coverage.

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Employee Classification





Question 1: Do I have an employee at all?

These relationships each have specific criteria and classifying workers in one of these ways carries risks.

- **Independent Contractors:** IRS and DOL tests
- **Unpaid Interns:** Primary Beneficiary Test
- **Volunteers:** Generally prohibited at for-profit organizations

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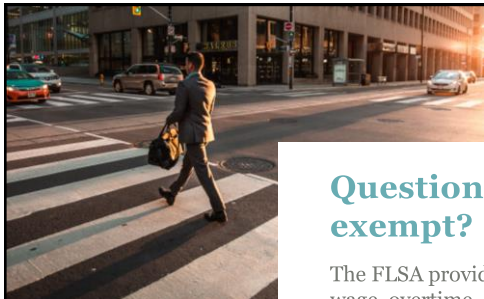
Independent Contractors

- IRS Control Test
- DOL Economic Realities Test
- Both are multi-part balancing, or factors tests – no single criteria will be determinative
- Both focus heavily on who has the most control over the work, who bears the cost of overhead, and whether the worker can realistically do work for other employers at the same time

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Unpaid Interns: Primary Beneficiary Tests



- The intern and employer clearly understand there is no expectation of compensation.
- The internship provides training similar to that given in an educational environment.
- The internship is tied to the intern's formal education program.
- The internship accommodates the intern's academic commitments.
- The internship's duration is limited to the period in which the intern is learning.
- The intern's work complements, rather than displaces, the work of paid employees.
- The intern and the employer understand there is no entitlement to a paid job at the conclusion of the internship.



Question 2: Is the employee exempt?

The FLSA provides exemptions from minimum wage, overtime, or both for specific kinds of employees.

- **Job titles don't matter:** Employees must pass certain duties tests
- **Method of payment doesn't matter:** Being paid a salary does not make an employee exempt



Analyze Your Exempt Roles: *White Collar Exemptions*

- Executive
- Administrative
- Professional (Learned and Creative)
- Outside Sales
- Computer
- Highly Compensated

Others: fishermen, casual babysitters, auto sales, home wreath-makers, agricultural workers...

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The Basics

Minimum Wage, Overtime, Recordkeeping, Posting

Minimum Wage

Always pay the highest applicable minimum wage!

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Overtime

- Hours over 40 hours in a **workweek** are paid at 1.5x regular rate of pay
- **Workweek:** the 168-hour period (7 days) during which you track employee time to see if they do more than 40 hours of work, e.g., Sunday at 12:00am through Saturday at midnight
- **Payroll periods are irrelevant!**

Hours	S	M	T	W	T	F	S	Total
Week 1	0	8	8	10	10	8	6	50
Week 2	0	5	5	8	6	6	0	30

Total Payroll Period Hours: 80 (70 Straight-time hours, 10 overtime)

- Check state law for daily overtime, or other special overtime regulations

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Recordkeeping
(Keep for 3 years from date of creation)

- Personal information from W-4
- Hour and day workweek begins
- Total hours worked each workday and each workweek
- Date of payment and pay period covered
- Total wages each pay period, broken down by day, week, straight time and overtime
- Regular hourly pay rate for any week when overtime is worked
- Deductions from or additions to wages



FLSA Poster

- Employers subject to the FLSA must conspicuously post a notice explaining the key points of the FLSA and indicating the current federal minimum wage
- The Department of Labor offers the posting in multiple formats
- If your state has their own minimum wage they probably have a required poster as well

Wage and Hour Danger Zones

Calculating the “Regular Rate”

If an employee earns more than one rate of pay in the same workweek their “regular rate of pay” must be computed before overtime is calculated (and often overtime will need to be adjusted retroactively).

Overtime rates are affected by the following: commissions, piece-rate pay, on-call pay, non-discretionary bonuses, shift differential

Calculating the “Regular Rate”



Example: Anna earns **\$10/hour** for inside sales work and **\$15/hour** for bookkeeping work. This week, she worked 24 hours in inside sales and 20 hours as a bookkeeper. She also received \$50 in commissions attributable to this workweek. Her pay is calculated as follows:

- **Step 1 – Regular Rate:**
$$[(\$10/\text{hour})(24 \text{ hours}) + (\$15/\text{hour})(20 \text{ hours}) + \$50]/44 \text{ hours} = \mathbf{\$13.41}$$
- **Step 2 – Overtime:**
$$\$13.41/\text{hour} \times 1.5 \text{ overtime premium} = \mathbf{\$20.11/\text{hour}}$$
- **Step 3 – Calculate Weekly Pay:**
$$(\$13.41)(40 \text{ hours}) + (\$20.11)(4 \text{ hours}) = \mathbf{\$616.82}$$



Late or Incomplete Timesheets



- Be detailed about how time should be tracked and recorded
- Provide training and set expectations
- Pay wages on regularly scheduled pay days – you cannot withhold pay
- Discipline and document as needed



Unauthorized Work

- All hours worked must be paid, whether you wanted the work done or not
- If the work was overtime, it must be paid at time and a half
- Discipline and document as needed


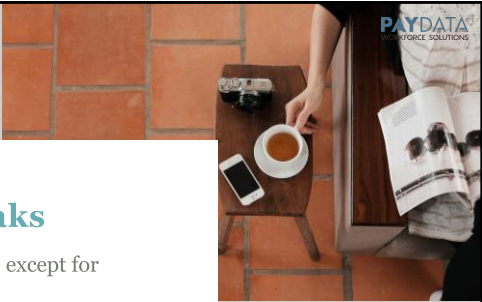
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Off-the-Clock Work and Personal Electronic Devices

- Again, all time work must be paid
- Time worked away from the office should be tracked
- Beware the lure of smartphones
- Have clear policies



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Meal and Rest Breaks

- The FLSA does not require them, except for lactating mothers
- Breaks under 20 minutes should be paid
- States have a lot to say on this topic

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Travel Time Issues

Extended Commutes

- Travel during the work day should be paid
- Out-of-the-ordinary commuting time should be paid, e.g. if an employee's usual commute is 30 minutes and you ask them to leave early to visit a client 90 minutes away, pay the difference
- If traveling as a passenger *and* it's outside of normal work hours, employees don't need to be paid



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Travel Time Issues *Away for a Weekend*

- Time spent in transit or doing work during their normal work hours (regardless of day) should be paid
- Time after normal work hours should be paid if you've asked them to do work, or something work-related, like entertain clients
- If they can use their time however they like, you don't need to pay for it

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Waiting Time


If the employee is “engaged to wait,” pay

- Examples: Receptionist reading a book between customers, a fireman cooking between alarms.

If the employee is “waiting to engage,” you don't have to pay

- The employee must be completely relieved from duty and told in advance that they may leave the job and will not have to start work again until a specified time.

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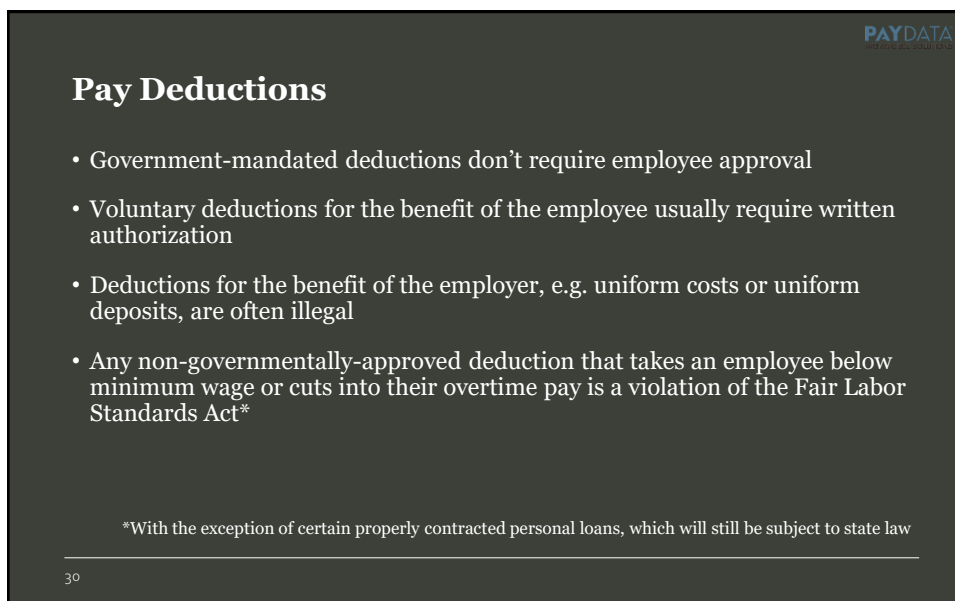


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On-Call Time

- Is the employee required to stay on the premises or very nearby? If yes, pay
- If no, evaluate whether the employee can effectively engage in personal activities. How close must they be? How often are they interrupted?
- All time spent responding to calls must be paid

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Pay Deductions

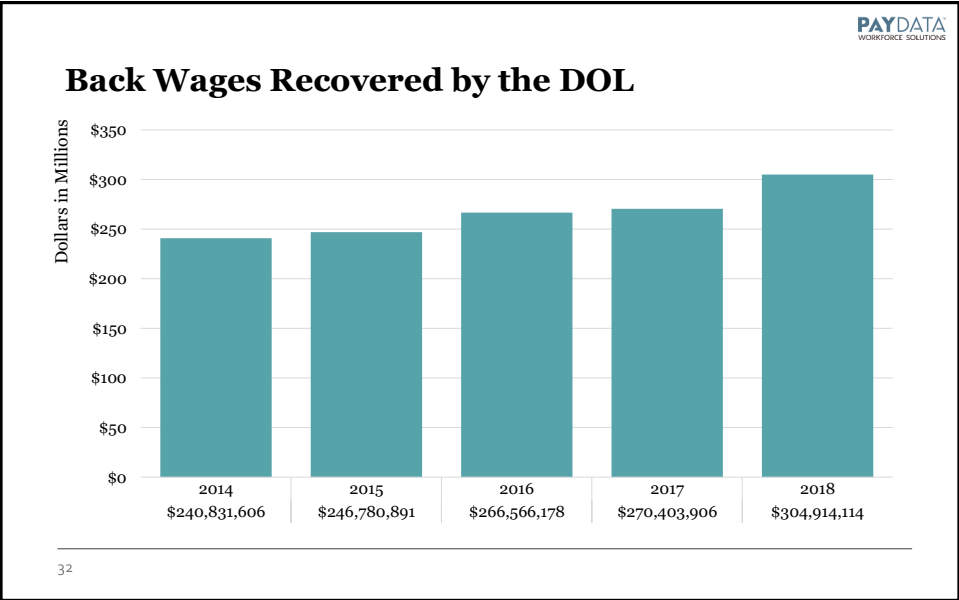
- Government-mandated deductions don't require employee approval
- Voluntary deductions for the benefit of the employee usually require written authorization
- Deductions for the benefit of the employer, e.g. uniform costs or uniform deposits, are often illegal
- Any non-governmentally-approved deduction that takes an employee below minimum wage or cuts into their overtime pay is a violation of the Fair Labor Standards Act*

*With the exception of certain properly contracted personal loans, which will still be subject to state law

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Why it Matters



Employee was paid a flat rate of **\$800 per week** to cook for an entertainment group on tour for 10 weeks, working approximately **17 hours per day**.

Damages	
Minimum wage back wages	\$210
Minimum wage federal penalty	\$210
Minimum wage state penalty	\$1,740
Overtime back wages	\$8,591
Overtime federal penalty	\$8,591
Overtime state penalty	\$1,740
Late payment state penalty	\$1,740
Attorneys Fees	\$5,000
Filing Fees	\$500
Total	over \$28,000





Kara Govro





JD, SPHR | Laws Manager

Kara practiced employment and bankruptcy law for five years before joining us, and was a Human Resources Generalist at an architecture and engineering firm for several years prior to that. As an attorney she worked on many wage and hour and discrimination claims in both state and federal court. She holds a Bachelor of Arts degree from Oregon State University and earned her law degree from Lewis and Clark Law School.

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