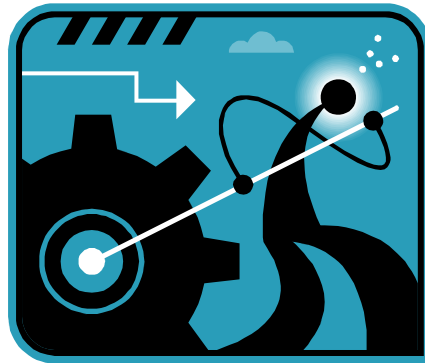


# THE FAIR LABOR STANDARDS ACT



# THE WORLD IN 1938

U.S. Unemployment, after declines, rose to 19 percent

Snow White and the Seven Dwarfs Movie Released

Gas was 10 cents a gallon

Bread was 7 cents a loaf

“War of the Worlds” radio program hysteria

World War II begins in Europe

# NO RETURN TO THE PAST!

FLSA enacted to prevent business abuses of the past. A reaction against lack of regulation of big business during the Calvin Coolidge and Herbert Hoover years.

# HERBERT HOOVER

## U.S. PRESIDENT (1929-1933)

- “It is just as important that business keep out of government as the government keeps out of business.”
- “Economic depression cannot be cured by legislative action or executive pronouncement. Economic wounds must be healed by the producers and consumers themselves.”

# CALVIN COOLEIDGE

## U.S. PRESIDENT (1923-1929)

- “Don’t expect to pull up the weak by pulling down the strong.”
- “The chief business of the American people is business.”

# GOALS OF THE FLSA in 1938

- Prevent business abuses of the past
- Raise standard of living of U.S. workers (minimum wage)
- Child labor laws (health protections and encourage them to stay in school)

# FLSA TODAY

Overtime pay

Equal pay

What is and is not compensable work time

Classification of employees

Age discrimination prohibitions

# NONEXEMPT OVERTIME

“Time and a half.” Hourly rate x 1.5 hours worked over 40 hours/week. Has to be paid in the upcoming pay period.



What if I work over 8 hours/day, but under 40 hours/week.

Can I get overtime per day worked?

NO !

Repealed in 1986.



(Optional exception for hospitals)

What if I work Saturdays and Sundays?

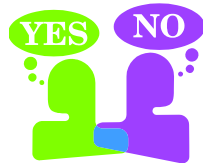
Can I get overtime pay?

**NO !!!**

**Unless working those days puts you over 40  
hours/week.**



What if I work on Christmas or July 4<sup>th</sup>?  
Overtime pay?



No! Unless it puts you over 40 hours/week.

There are NO legally required holidays  
under the FLSA

No legal limit of number of overtime hours earned.

Cannot be waived.



# What About a Policy That Prohibits Working Overtime?

No “right” to work overtime. Hours of work are determined by employer. A valid policy.

**BUT**

Still have to pay employee if he works overtime without authorization.

# Working Overtime Without Authorization

Must pay employee

Can discipline employee for failing to follow instructions or for insubordination.

# WHAT HAPPENS WHEN AN EMPLOYEE LEAVES?

Must be paid out any remaining overtime.

# NONEXEMPT OVERTIME REVIEW

Time and half paid for hours worked over 40  
in a week.

No legal limit on overtime hours worked.

Paid by next pay period.

# COMP TIME – NON EXEMPT

Comp time accrues at a time and a half rate.

Only available for public sector employees.

Example: Employee works 48 hours/week. Gets 12 hours of comp time to use at a later time (8 hours worked over 40 per week + four hours).

Employee does not legally have to use it by next pay period.

Unlike overtime, there ARE legal caps on comp time accumulations.



# COMP TIME ACCUMULATIONS

Public Safety

Emergency Response

Seasonal Workers

Cannot accumulate more than 320 hours  
overtime actually worked (480 hours total  
comp time)

# What is Seasonal?

No clear definition.

29 CFR 553.24(e)(1) “seasonal activity includes work during periods of significantly increased demand which are of a regular or recurring nature.”



State park workers – Not seasonal. Though attendance may increase in the summer, the parks are usually open year-round.

Road maintenance crews – Seasonal if the majority of their work is performed only during certain months.

# Other Employees

160 hours overtime actually worked

240 hours total comp time

# What if one reaches the cap?

- Employee can be forced to take leave
- Employer may elect to pay additional time as overtime pay.

# WHY THE CAP?

Explained in U.S. Supreme Court case  
Christensen vs. Harris County (May 2000)



# ISSUES IN THE CASE

- Can an employee be forced to accumulate comp time rather than take an overtime cash payout?
- Can an employer force an employee to use comp time?

YES !!!!!



# COURT'S EXPLANATION

How the FLSA comp time protects the employer:

Many public agencies are cash strapped and cannot afford cash payouts. This controls costs in allowing the employer to reduce hours so that the cap is not exceeded.

How the FLSA comp time protects the employee:

- a. The cap prevents an employer from avoiding overtime payment by letting huge amounts of comp time accumulate that an employee could not realistically use.



b. The FLSA also requires employers to grant use of comp time within a “reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the public agency.”

Whether overtime or comp time, legislative intent is that it be paid or used. Overtime was not designed to create savings accounts, but to pay compensation for time worked.

Like overtime, FLSA also requires that an employee be paid out remaining comp time once they leave employment.

Note that no federal law requires payout of remaining vacation, sick leave, or holiday accruals.

However, comp time is wages earned and must be paid.

Employers can establish their own caps below the 160 and 320 hours.

However, once their established caps are exceeded, the employee must be paid overtime.

Employers can also require employees to use comp time within a specified period.

If the employees do not, they can be forced to take comp time when the employer directs.

# COMP TIME SUMMARY

Accumulates at “Time and a half rate”

Cap on accumulation depending on one’s job

Employers can establish their own caps below the maximum allowed, but must pay overtime on amounts beyond it.

# COMP TIME SUMMMARY CONTINUED

Employee can be forced to take comp time

Employer should be liberal in granting comp time requests.



# EXEMPT EMPLOYEE COMP TIME

FLSA – No such thing!

However, 29 CFR 541.604(a):

“An employer may provide an exempt employee with additional compensation without losing the exemption or violating the salary basis requirement.”

# WHAT DOES THIS MEAN?

Most anything. Exempt employees can receive performance bonuses, perks, additional vacation, car allowances, etc.

# BUT WHAT ABOUT COMP TIME? OR EVEN OVERTIME?

While not required, exempt employees can receive comp time or overtime; and there is no law regarding how much, how little, payout on termination, or when or if used.



BUT, as with most things with the law, it isn't that simple.



# FLSA

“An employer shall lose the exemption if the facts demonstrate that the employer did not intend to pay employee on a salary basis.”

# WHAT PUTS EXEMPT EMPLOYEE STATUS AT RISK?

- A. Closely monitoring their hours. It's ok to do it for accountability purposes, but not for compensation purposes.
  
- B. Can offer comp time or overtime for “irregular or occasional overtime work.” However, routinely counting exempt employees' hours for additional compensation can jeopardize status.

# NOT MANY LAW CASES ON THIS WHY?

Employers want to steer clear of the issue.

Do not want to be a test case.

Employers generally do not favor comp time  
or overtime for exempt employees  
anyway.

# Drinkwitz v. Alliant Technologies

## 140 WN2d 291, 304 (2000)

Washington State Supreme Court case

No force of law outside Washington, but shows how a court can view it.

Ruling – Comp time by itself does not destroy exempt status, but monitoring hours worked in excess of 40 can.



# ON WHAT DO EMPLOYERS BASE EXEMPT COMP TIME?

Non-hourly factors.

Example: It is recognized that work to complete a project will require a lot of extra hours. If the project is timely completed, the employee receives additional pay. Pay is based on completion of project – not hours worked.

# “Irregular or Occasional Work”

Some employers specify what that is.

Example:

Emergency situations

Key contract situations with tight deadlines

Or

State of Tennessee’s guidelines: “Just say no to comp time.”

# EXEMPT COMP TIME REVIEW

- Can do it, but be careful
- Best to do it not based on hours worked
- If done on hours worked, only if on an occasional or intermittent basis
- No limit and does not have to be paid out on termination.

# WHAT IS “FLEXTIME?”

Somewhat vague and is intended that way.



Is a scheduling issue, not a compensation issue.

Employee may work a Saturday and request Monday off. Has no “right” to any day off.

Ok, as long as hours not closely tracked.

“Informal” process.



# CRITICISMS OF FLSA

Too complicated

Over 20 pages of exemptions

U.S. Department of Labor estimates 70% of employers are out of compliance.

# EXAMPLES OF DAMAGE AWARDS

Pacific Bell - \$35 million

United Parcel - \$18 million

Perdue Farms - \$10 million

Wal Mart - \$33 million

Over \$1 billion paid out annually by U.S. businesses in FLSA damage awards

# IS ARCHAIC

Based on production worker/manager workplace model.

Based on an era when employees had rigid hours; defined jobs; shiftwork; and fixed places of work.

Creates barriers between supervisors and employees. An “us vs. them” mentality.

# So, Remember

