

EXEMPT OR NON-EXEMPT?



ARKANSAS
SCHOOL BOARDS
ASSOCIATION



MANY SUPERVISORS MUST BE PAID OVERTIME: WHAT ABOUT YOURS?

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Review of FLSA Basics



Fair Labor Standards Act (FLSA) – federal law governing wage and hour issues

Arkansas Minimum Wage Act (AMWA) – State Law

- Exempt vs. Non-Exempt
- Start with presumption that all employees are non-exempt (non-exempt = comp time/overtime pay for all hours worked over 40 in a work week)

Review of FLSA Basics



- To be exempt:
 - Must be paid required salary
 - Must be paid on a salary basis AND
 - Must meet the duties tests
- White Collar Exemptions (No Manual Labor)
 - Executive
 - Administrative
 - Professional - Learned professionals, creative professionals, Teachers in a school system
 - Computer Employees
 - Outside Sales Employees

Primary Duty



- “Primary duty” means the principal, main, major or most important duty that the employee performs.
- Based on all the facts in a particular case.
- Factors to consider when determining the primary duty of an employee:
 - Relative importance of the exempt duties as compared with other types of duties.
 - Amount of time spent performing exempt work (more than 50% will typically satisfy the primary duty requirement).
 - Employee's relative freedom from direct supervision.
 - Relationship between the employee's salary and the wages paid to other employees for the kind of nonexempt work performed by the employee.

Executive Employees



- **Salary:**
 - \$684 per week or equivalent
- **Duties:**
 - Primary duty is the management of the enterprise or a recognized department or subdivision.
 - Customarily and regularly directs the work of two or more other employees.
 - Has authority to hire or fire other employees (or recommendations as to hiring, firing, promotion or other change of status of other employees are given particular weight).

Administrative Employees



- Salary:
 - \$684 per week or equivalent

- Duties:
 - Primary duty of performing office or non-manual work directly related to the management or general business operations of the employer or the employer's customers.
 - Primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

Directly Related to Management or General Business Operations



- Examples include work in functional areas such as:
 - Tax
 - Finance
 - Accounting
 - Budgeting
 - Auditing
 - Insurance
 - Quality control
 - Purchasing
 - Procurement
 - Advertising
 - Marketing
 - Research
 - Employee Benefits
 - Labor Relations
 - Public Relations
 - Government Relations
 - Computer Network
 - Internet & Database administration
 - Legal & Regulatory Compliance
 - Safety & Health
 - Personnel Management
 - Human Resources

The Learned Professional Exemption



- Most must be paid on salary of at least \$684/week or equivalent
- Primary duty test has 3 elements:
 - The employee must perform work requiring advanced knowledge;
 - The advanced knowledge must be in a field of science or learning; and
 - The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

Creative Professional Employees



- Salary:
 - \$684 per week or equivalent
- Duties:
 - Primary duty of performing work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.
- Examples:
 - Actors, Conductors, soloists
 - Musicians, Composers, novelists

Teachers



- The term “employee employed in a bona fide professional capacity” also includes:
 - Employee with a primary duty of teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge AND
 - Who is employed and engaged as a teacher in an educational establishment
- NOTE: Salary requirements do not apply

Computer Employees Exemption



- Salary:
 - \$684 per week or \$27.63 an hour or equivalent

- Duties:
 - Primary duty of:
 - ✦ (A) application of systems analysis techniques and procedures, including consulting with users to determine hardware, software or system functional applications; or

Computer Employees



- Duties (cont.)

- ✦ (B) design, development, documentation, analysis, creation testing, or modification of computer systems or programs including prototypes based on and related to user or system design specifications; or
- ✦ (C) design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
- ✦ (D) a combination of duties described in (A), (B), and (C), the performance of which requires the same level of skills.

Review of FLSA Basics



- The Salary Basis Test
 - Exempt employees must be paid on a salary basis.
 - Effective 2020, salary must be equal to at least \$35,568 per year (\$684 week).
 - Cannot be paid hourly wages!
 - An employee is paid on a salary basis if he regularly receives each pay period a predetermined amount constituting all or part of the employee's compensation.
 - The amount is not subject to change, regardless of the quality or quantity of work performed in a given week. (NOTE: There are limited exceptions to no docking rule.)

Review of FLSA Basics



- When can an employer dock the salary of an exempt employee and not violate the salary basis test?
 - When an exempt employee is absent from work for a FULL DAY for personal reasons, other than sickness or disability;
 - For absences of a FULL DAY or more occasioned by sickness or disability (including work-related accidents);
 - When an exempt employee violates safety rules of major significance;
 - When an exempt employee is in good faith suspended for a full day or more for infractions of workplace conduct rules;

Review of FLSA Basics



- When can an employer dock the salary of an exempt employee and not violate the salary basis test?
 - For initial and terminal weeks of employment; and
 - When an exempt employee takes unpaid leave under the FMLA.

Review of FLSA Basics

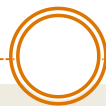


- Public Agency Employers and the Salary Basis Test:
 - An exempt employee may have his pay reduced or may be placed on unpaid leave for absences due to personal reasons of less than one full day when leave is not used by the employee because:
 - ✦ permission to use leave has not been sought or permission has been sought and denied;
 - ✦ the employee's accrued leave has been exhausted; or
 - ✦ the employee chooses to use leave without pay;
 - Provided that the employee is paid according to a system set by statute/ordinate/regulation/policy/practice based on principles of public accountability, under which the employee accrues personal and sick leave and which requires the employee's pay to be reduced for such absences.

Problem Areas



- Some employees that have tried to participate in collective actions against schools claiming FLSA violations:
 - Head custodian
 - Secretaries
 - Cafeteria managers
 - Parent Support Officers
 - Assistant teachers who also drove buses 25+ hours a week



Thank You!

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