FLSA Recordkeeping and Trending Issues

V.G. Young Institute for County Commissioners Courts
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FLSA RECORDKEEPING REQUIREMENTS
(...and other considerations)

Records Required to be Maintained for Non-Exempt Employees

- Full name and social security number
- Address, including zip code
- Date of birth if younger than 19
- Sex and occupation
- Time of day and day of week when employee’s workweek begins
- Regular hourly rate of pay
- Hours worked each work day and total hours worked each workweek
- Total daily or weekly straight – time earnings
- Total overtime earnings for the workweek
- All additions to or deductions from the employee’s wages
- Total wages paid each pay period
- Date of payment and the pay period covered by the payment
Records Required to be Maintained for Exempt Employees

• Full name and social security number
• Address, including zip code
• Date of birth if younger than 19
• Sex and occupation
• Time of day and day of week when employee’s workweek begins
• Total wages paid each pay period
• Date of payment and the pay period covered by the payment
• The basis on which wages are paid

Authorized Deductions from the Pay of Exempt Employees

• For absence from work for one or more full days for personal reasons other than sickness or disability
• For absence from work for one or more full days for sickness or disability if deductions are made in accordance with a bona fide plan, policy or practice of providing compensation for loss of salary occasioned by such sickness or disability
• Offset amounts received by an exempt employee in a particular week for jury or witness fees or military pay against the employee’s salary for that week
• Penalties imposed in good faith for infractions of safety rules of major significance
• For unpaid disciplinary suspensions of one or more full days imposed in good faith for infractions of workplace conduct rules
• Full salary need not be paid for weeks in which the exempt employee takes unpaid FMLA leave

If an employer has a clearly communicated policy that prohibits improper deductions from salaries of exempt employees and includes a complaint mechanism, a requirement that employees be reimbursed for improper deductions, and a statement of the employer’s good faith commitment to comply in the future, the exemption will not be lost on account of an improper deduction from the pay of an exempt employee unless there is a willful violation by continuing to make improper deductions after receiving a complaint.
FLSA Safe Harbor Policy

Improper deductions from the pay of an exempt employee is prohibited. If an exempt employee believes that an improper deduction from his/her salary has been made, a complaint should be made to the ____. The ____ will investigate the complaint. Upon a finding by the ____ that an improper deduction was made, the exempt employee will be reimbursed in the amount of the improper deduction and the County will make good faith effort not to make future improper deductions.

Political Subdivisions: Special Ability to Reduce Pay of Exempt Employees

- The political subdivision must have an established pay system (by statute, ordinance or regulation, or by a policy or practice established pursuant to principles of public accountability) that allows employees to accrue personal leave and sick leave and requires an employee's pay to be reduced or for the employee to be placed on unpaid leave for absences for personal reasons or for illness or injury.
- If the pay system is in place, an exempt employee's pay may be reduced for absences of less than a full work day if:
  - Permission for use of paid vacation or sick leave has not been sought or has been sought but was denied; or
  - Accrued leave has been exhausted; or
  - The employee chooses to use leave without pay

Timesheets for Exempt Employees?

An employer may require exempt employees to keep time records so long as the records are not used by the employer as a basis for the exempt employee's pay and if maintenance of the records does not result in improper deductions from pay.

The time records could be used to prove the number of hours worked in a job classification dispute, to implement a sick or vacation leave policy, or to discipline an employee for failure to comply with a personnel policy.
Maintaining FLSA Records

• FLSA requires:
  o Payroll records – 3 years
  o Basic employment and earnings records – 2 years
  o Wage rate tables – 2 years
  o Records of additions to or deductions from wages paid – 2 years

Other federal, state or local records maintenance requirements, to the extent they are more stringent than FLSA requirements, should be followed.

Recordkeeping Best Practices

• Require employees to record all hours worked

• Have employee sign daily time sheets or make all electronic time entries personally

• Have supervisor review and sign as accurate all time sheets
When classifying employees for FLSA purposes, remember:

- This is not an exact science. Reasonable minds can differ about whether a position is or is not an exempt position.
- A job title does not determine whether a position is exempt or non-exempt.
- The exemption rules are to be strictly construed.
- An error in designating a position as exempt when it is not creates liability for the employer.
- People can have a lot of responsibility and perform at a very high level without their positions being exempt.
- Support positions are typically non-exempt.
- Technical expertise and proficiency is not a basis for exempt status even if the subject matter is complex.

With respect to each regulation that provides the basis for an exempt position, each element of the regulation is vital, and most terms used have a regulation that defines them. Be familiar with the definitions of each element of the exemption.

How Can You Protect Your Organization?

- Conduct an audit. Each position should be analyzed in light of the Department of Labor regulations. The audit may be conducted internally by a human resources manager or externally by counsel or a consultant.
- If errors are detected, properly classify the position and attempt to calculate any overtime owed because of the misclassification. Going back two years, pay an employee any unpaid overtime. The employee should be provided with a letter explaining the error and how it has been corrected, an exhibit showing how the overtime was calculated, and a check for the overtime. The employee should sign an acknowledgement of receipt of the money.
- Educate or provide the opportunity for education on FLSA issues for staff responsible for classifying positions so that errors are minimized.
Proposed Amendments to FLSA Regulations on Exempt Employees

Fair Labor Standards Act Regulation

- Proposed rules to update salary and compensation levels for exempt positions were published on July 6, 2015.
- The comment period for the proposed rules concluded on September 4, 2015.

<table>
<thead>
<tr>
<th>EXEMPTION</th>
<th>CURRENT RULES</th>
<th>PROPOSED CHANGES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Executive</td>
<td>On a salary basis at a rate of not less than $455/week*</td>
<td>On a salary basis at a rate of not less than $921/week*</td>
</tr>
<tr>
<td>Administrative</td>
<td>On a salary or fee basis at a rate of not less than $455/week*</td>
<td>On a salary or fee basis at a rate of not less than $921/week*</td>
</tr>
<tr>
<td>Academic Administrative</td>
<td>1) On a salary or fee basis at a rate of not less than $455/week*</td>
<td>1) On a salary or fee basis at a rate of not less than $921/week*</td>
</tr>
<tr>
<td>Professional</td>
<td>On a salary or fee basis at a rate of not less than $455/week*</td>
<td>On a salary or fee basis at a rate of not less than $921/week*</td>
</tr>
<tr>
<td>Computer Systems Analyst, Computer Programmer, Software Engineer, or Similarly Skilled Worker</td>
<td>On a salary or fee basis at a rate of not less than $455/week*</td>
<td>On a salary or fee basis at a rate of not less than $921/week*</td>
</tr>
<tr>
<td>Computer Employees</td>
<td>Hourly basis at a rate of not less than $27/hour</td>
<td>No change</td>
</tr>
<tr>
<td>Highly Compensated Employees</td>
<td>Full annual compensation of at least $100,000, which must include at least $455/week paid on a salary or fee basis</td>
<td>Full annual compensation of at least $122,148, which must include at least $921/week paid on a salary or fee basis</td>
</tr>
</tbody>
</table>

*Exclusive of board, lodging, or other facilities
No Changes to the Duties Test portion of the various exemption have been proposed. The Department of Labor invited comments on what changes, if any, should be made to the Duties Tests. The Department of Labor invited additional comments on duties-related aspects of the various exemptions.

When FLSA rule amendments are adopted:

- Conduct a review of all exempt positions in light of new compensation levels; and
- If required, reclassify positions to reflect new compensation requirements or raise compensation to maintain exempt status.

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