

Summary of Overtime & other Wage Rights under the new Administration

Presented by:

Jay Forester

TYLA Rep from Dallas, District 5,
Place 4

LEE & BRAZIEL, LLP

www.OvertimeLawyer.com

Fair Labor Standards Act (FLSA)

Overview

- Primary source of wage and hour regulation
- Establishes a minimum wage and a 40-hour overtime standard for covered employees
- As a general rule, federal wage and hour laws do not preempt state laws.

Fair Labor Standards Act (FLSA)





- “We've got to make sure that this economy works for everybody who's willing to work, everybody who's willing to do their fair share. . . . This is an issue of basic fairness. If you work longer and you work harder, you should get paid for it.” – President Obama, National Public Radio, in a speech in Wisconsin on the new regs in 2015

SALARY FOR OVERTIME PROTECTIONS

CHANGE WILL AFFECT

4.2 MILLION



Judge Amos Mazzant (E.D. Tex.)

A wooden gavel resting on a wooden block, symbolizing a court ruling.

Federal Judge Temporarily
Blocks New FLSA White Collar
Exemption Overtime Rule

Fair Labor Standards Act (FLSA)

Pop Quiz – True or False

- 1) Salaried employees do not have to be paid overtime.

Fair Labor Standards Act (FLSA)

Pop Quiz – True or False

- 2) Employees do not get overtime if they are paid commission.

Fair Labor Standards Act (FLSA)

Pop Quiz – True or False

- 3) If overtime is not approved in advance, employers do not have to pay for it.

Fair Labor Standards Act (FLSA)

Pop Quiz – True or False

- 4) Independent Contractors do not have to be paid overtime.

Overtime Exemptions

It Takes TWO things to be exempt:

- Must get a salary (or fee).
- Must do the right DUTIES



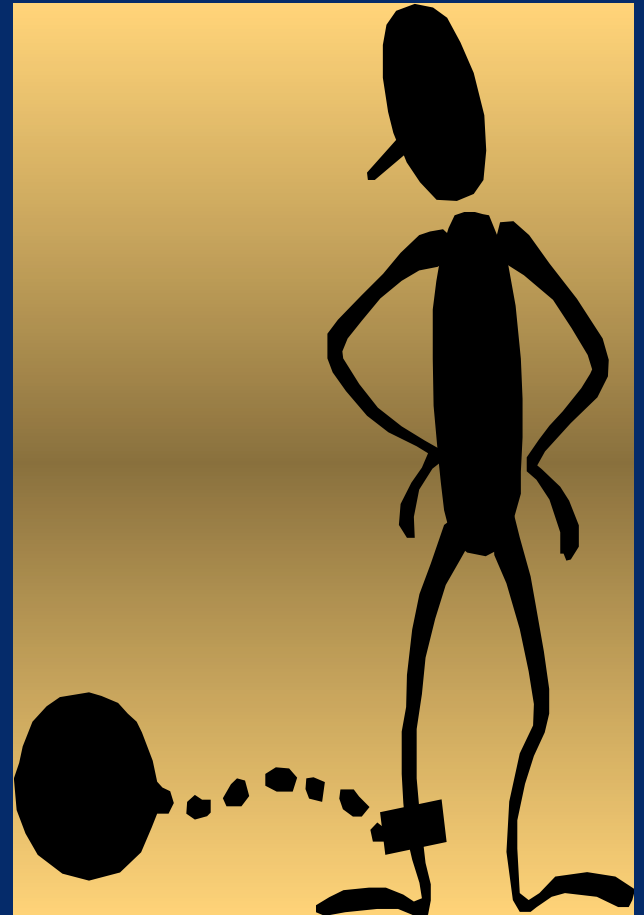
Salary Level Test Remains Unchanged

| Date enacted | Long test | | | Short test (all) |
|---------------|-----------|----------------|--------------|------------------|
| | Executive | Administrative | Professional | |
| 1938 | \$30 | \$30 | | |
| 1940 | 30 | 50 | \$50 | |
| 1949 | 55 | 75 | 75 | \$100 |
| 1958 | 80 | 95 | 95 | 125 |
| 1963 | 100 | 100 | 115 | 150 |
| 1970 | 125 | 125 | 140 | 200 |
| 1975 | 155 | 155 | 170 | 250 |
| Standard Test | | | | |
| 2004 | \$455 | | | |

Exemptions

Is the Employment Relationship At Issue Exempt?

- Executive
- Administrative
- Professional
 - Includes Computer Professionals
- Outside Sales
- Commissioned Employees



Exemptions

Executive Employees

- Primary duty consists of management of the company or a department
- Customarily and regularly directs the work of two or more employees
- Has the authority to hire or fire, or recommendation to hire/fire or is given particular weight
- Paid on a “salary basis”



Exemptions

Administrative Employees



- Primary duty consists of office or non-manual work
- Directly related to management policies or general business operations of employer
- Requires exercise of discretion and independent judgment
- With respect to matters of significance
- Paid on a salary or fee basis

Exemptions

Learned Professionals

- Primary duty is work requiring advanced knowledge
- In a field of science or learning
- Knowledge customarily acquired by prolonged course of specialized intellectual instruction
- Cannot be obtained at the high school level
- Can be gathered through a combination of work experience and intellectual instruction
- Paid on a salary or fee basis



Common Mistakes

Most Common Mistakes

- Misclassifying workers as "exempt" from overtime.
- Misclassifying workers as "independent contractors."
- Making employees work off the clock.
 - Denying an employee overtime because it wasn't "approved" in advance.
 - Failing to count all hours an employee works.
- Paying an employee "straight time" rates for overtime work.



FLSA Filing Statistics

| Year | No. of TX Filings | National |
|------|---------------------|----------|
| 2004 | 280 | 3606 |
| 2005 | 328 | 4022 |
| 2006 | 262 | 6672 |
| 2007 | 291 | 5023 |
| 2008 | 352 | 5210 |
| 2009 | 526/465 (61 DG) | 6121 |
| 2010 | 645/523 (122 DG) | 6786 |
| 2011 | 686/617 (71 24 Hr.) | 6790 |
| 2012 | 632/610 (20 24 Hr.) | 7687 |
| 2013 | 1128 | 7904 |
| 2014 | 934 | 8086 |

Upcoming Issues

- Class Arbitration Waivers @ SCOTUS
- Fights in States
 - PAGA
 - Higher Minimum Wage
 - Daily OT
 - Opt-out Classes



Questions and Answers



“Hopefully this wasn’ t terrible”

-Jay