

# How to Successfully Navigate FLSA Compliance

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# Before we get started...

- I am not an attorney
- This material is not legal advice
- This presentation is not a substitute for experienced legal counsel



# Overtime



# New Overtime Rule: Timeline

- March 2014: Presidential Memorandum
- July 2015: Notice of Proposed Rulemaking
- May 23, 2016: Final Rule Published with a December 1, 2016: Final Rule Effective Date
- November 22, 2016: United States District Court for the Eastern District of Texas issued a preliminary injunction

# New Overtime Rule: Appeal

- December 1, 2016: DOL filed notice of appeal
- December 8, 2016: U.S. Court of Appeals for the Fifth Circuit announced it will fast track the appeal



# New Overtime Rule

- What this means now:
  - The effective date of the rule has been delayed indefinitely
  - Employers may choose not to implement the changes they had planned
  - The new rule has not been thrown out or invalidated

# New Overtime Rule

- Considerations:
  - Will it hurt the bottom line to make the changes? If so, how much?
  - Will it be difficult to undo changes that have already been made?
  - How will employees feel about the decision?
  - Is the new pay structure better than what is in place now?
  - If the changes aren't implemented now, will it be possible to make them on short notice in the future?



# FLSA Compliance





# FLSA Compliance

- Conduct an FLSA compliance review on a periodic basis
  - Proactive - Catch errors before a governmental agency does (i.e. DOL, EEOC)
  - Potentially reduce the risk of fines, penalties and back wages

# FLSA Compliance

- An FLSA review is:
  - A means of assessing the level of compliance with DOL regulations
  - The key to a review is to remember it is a learning or discovery tool
  - There will always be room for improvement in every organization



# FLSA Compliance

- An FLSA review includes:
  - A review of job descriptions, including essential functions
  - A review of the Department of Labor requirements for exempt classification:
    - Salary level test
    - Salary basis test
    - Duties test



# FLSA Compliance

- Romero's Grocery/Don's Specialty Meats
  - \$571,000 in back wages, liquidated damages and penalties

# FLSA Compliance

- Life Time Fitness, Inc.
  - \$976,000 in back wages and liquidated damages

# FLSA Liability: Investigations

- WHD review prior 2 years
- 3 years if willful
- Possible criminal prosecution
- Litigation

# FLSA Liability: Penalties

- \$1,100 for each violation for repeated or willful violations of minimum wage and overtime requirements
- \$11,000 for each employee who is the subject of a child labor violation



# Common Errors

- Improperly applying an exemption
- Limiting the number of hours employees are allowed to record
- Making improper deductions from wages that cut into the required minimum wage or overtime





# Wage & Hour

# Non-Exempt Employees

- Must be paid at least \$7.25 for the first 40 hours worked in a week (check specific state/local law for higher minimum wage)
- Must receive overtime rate of at least time and one-half their regular rate of pay for all hours worked over 40 in a workweek (check specific state law for more stringent requirements)
- Cannot waive their rights to overtime

# Non-Exempt Employees

- Overtime Pay
  - Workweek is 7 consecutive 24 hour periods (168 hours)
  - Each workweek stands alone

# Non-Exempt Employees

- Compensation includes:
  - Wages
  - Commissions
  - Certain bonuses
  - Tips received by tip-eligible employees

# Non-Exempt Employees

- Deductions from pay are illegal if:
  - Deduction is primarily for the benefit or convenience of the employer
  - The deduction reduces the employee's earnings below the required minimum wage

# Non-Exempt Employees

- What is or is not work?
  - Suffered or permitted
  - Waiting time
  - On-call time
  - Meal and rest periods
  - Training time

# Non-Exempt Employees

- May be paid on an hourly basis, a salary basis or piece-rate basis as long as they receive at least minimum wage for all hours worked and the appropriate overtime
- Must have a timekeeping mechanism
- Private sector – NO COMP TIME!



# Exempt Employees

- White Collar Exemptions
  - Executive
  - Administrative
  - Professional
  - Some computer professionals
  - Outside sales
- Other exemptions
  - <https://webapps.dol.gov/elaws/whd/flsa/screen75.asp>



# Exempt Employees

- Executive Exemption
  - Salary basis
  - Primary duty is managing the enterprise/department/subdivision
  - Directs the work of 2+ employees
  - Authority to hire/fire



# Exempt Employees

- Administrative Exemption
  - Salary basis
  - Primary duty is office/non-manual work
  - Exercise of direction and independent judgement



# Exempt Employees

- Professional Exemption
  - Salary basis
  - Work requires advanced knowledge
  - Field of science or learning
  - Acquired by prolonged course of specialized intellectual instruction

# Exempt Employees

- Computer Employee Exemption
  - Salary or fee basis
    - Hourly basis: \$27.63/hour or more
  - Skilled in computer analysis, programming, engineering

# Exempt Employees

- Outside Sales Exemption
  - Primary duty is making sales, obtaining orders
  - Customarily and regularly away from place of business

# Exempt Employees

- Fewer rights under FLSA
- Receive full amount of base salary in work period (less any permissible deductions)
- May be required to punch a clock
- May be required to make up missed time
- May work unlimited number of hours



# Job Descriptions



# Job Descriptions

- What should a job description include?
  - Job title
  - Department
  - FLSA status (exempt, nonexempt)
  - Job type (regular, seasonal, temporary, etc.)
  - Job status (full time, part time)
  - Travel required
  - What position this position reports to
  - Work schedule





# Job Descriptions

- What should a job description include?
  - Position summary
  - Essential functions
  - Position qualifications
  - Skills, abilities (education, computer skills, experience, etc.)
  - Physical requirements (standing, sitting, lifting, speaking, bending, etc.)
  - Work environment
  - Signature lines



# Job Descriptions

- Job Descriptions
  - Determine the essential functions of the job
  - Are useful when dealing with unemployment claims
  - Are helpful when measuring performance
  - Should accurately describe the job



# Job Descriptions

- Recommendations
  - Review your job descriptions on a periodic basis
  - Update your job descriptions when essential functions for a position change
  - Contact your G&A Partners Client Advocate or your employment counsel for assistance

# Sources

- Sources
  - [www.dol.gov](http://www.dol.gov)
  - [www.prospera.com](http://www.prospera.com)
  - [www.twc.state.tx.us](http://www.twc.state.tx.us)
  - [www.littler.com](http://www.littler.com)
  - [www.jacksonlewis.com](http://www.jacksonlewis.com)
  - [www.ogletreedeakins.com](http://www.ogletreedeakins.com)



# Q&A

# #AskMDE



If we didn't get to your question during today's presentation, tweet us ([@GAPartners](#)) using [#AskMDE](#), and our experts will reply with an answer shortly!

Or, you can email your questions to [info@gnapartners.com](mailto:info@gnapartners.com).

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- This webinar has been pre-certified for 1 hour of general recertification credit toward PHR, SPHR and GPHR recertification through the HR Certification Institute.

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