

# Coaches, Contracts and Clashes:

An introduction to the Fair Labor Standards Act

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The logo consists of the letters 'WG' in a bold, black, serif font, centered within a bright yellow circle.

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# Introduction

- ❑ The Fair Labor Standards Act (“FLSA”) establishes
  - ❑ minimum wage
  - ❑ overtime pay
  - ❑ recordkeeping
  - ❑ youth employment standards
- ❑ affecting employees in the private sector and in Federal, State, and local governments.

# FLSA Does Not:

- ❑ There are employment practices which FLSA does not regulate, including:
  - ❑ Vacation, holiday, or sick pay;
  - ❑ Meal or rest periods, holidays off, or vacations;
  - ❑ Premium pay for weekend or holiday work;
  - ❑ Pay raises or fringe benefits; or
  - ❑ A discharge notice, reasons for discharge, or immediate payment of final wages to terminated employees.

# Wage Standards

- ❑ Covered, non-exempt workers are entitled to a minimum wage of not less than \$7.25 per hour effective July 24, 2009.
- ❑ **Minimum wage:** Covered, non-exempt employees must be paid at least the federal minimum wage, in cash or the equivalent, free and clear, for all hours worked.
  - ❑ New Mexico minimum wage: \$12.00 per hour.
- ❑ Wages required by the FLSA are due on the regular payday for the pay period covered.

# Overtime Pay

- ❑ The goal of overtime requirements is to protect employees.
- ❑ The FLSA requires that when most workers work more than 40 hours in a workweek (any fixed and regularly recurring period of 168 hours – seven consecutive 24-hour periods), they get overtime pay.
- ❑ Overtime pay at a rate not less than one and one-half times the regular rate of pay is required after 40 hours of work in a workweek.
- ❑ COMP TIME: Paid time off by employees in lieu of overtime
  - ❑ Needs to be done via written agreement and in advance
    - ❑ Collective Bargaining Agreement
    - ❑ Can be banked and used within a “reasonable time”

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# Coverage and Exempt Employees

# Who is Covered?

- ❑ In order for the FLSA to apply, there must be an employment relationship between an “employer” and an “employee.”



# Independent Contractor vs. Employee

- ❑ Employees receive the protections of the FLSA. Independent contractors are in business for themselves and therefore are not covered by the FLSA.
- ❑ Whether a worker is an employee or an independent contractor under the FLSA is determined by looking at the **economic realities** of the worker's relationship with the employer.
  - ❑ If the economic realities show that the worker is economically dependent on the employer for work, then the worker is an employee.
  - ❑ If the economic realities show that the worker is in business for themselves, then the worker is an independent contractor.



# Who is Exempt? Step 1 - Salary

## General Requirements:

- ❑ **Salary Basis Test:** The employee must be paid on a salary basis that is not subject to reduction based on the quality or quantity of work, rather than, for example, on an hourly basis;
- ❑ **Salary Level Test:** The employee must receive a salary at a rate not less than \$684 per week/ \$35,568 per year; and
  - ❑ Salary minimums are recalculated and updated every three years.
  - ❑ July 1, 2024: \$844/\$43,888; January 1, 2025: \$1,128/\$58,656
- ❑ \* The **Salary Basis** and **Salary Level** Tests do not apply to Teachers

# What about Stipends?

- ❑ Can stipends be considered as part of the annual salary to meet the threshold?
  - ❑ Yes. Any additional pay for employees, such as advanced degree stipends or extra-duty stipends for work performed can be included in the total annual salary.
  - ❑ Reimbursement stipends for travel and cell phone should not be included.

# Who is Exempt? Step 2 - Duties

- ❑ **Duties Test:** The employee's primary duty must involve the kind of work associated with the exempt status sought:
  - ❑ Executive (managers, 2 subordinates, makes decisions to hire and fire)
  - ❑ Administrative (non-manual work with discretion)
  - ❑ Professional work (learned in science or creative fields)
  - ❑ Computer: Computer Systems Analyst, Computer Programmer, Software Engineer

Salary Test + Duties Test = Exempt Employee



# Exemption: Executive Duties

## ❑ Executive Duties:

- ❑ Primary duty is management of enterprise or customarily recognized department or subdivision.
- ❑ Customarily and regularly directs work of two or more employees.
- ❑ Authority to hire, or fire employees; or, recommendations as to hiring, firing, advancement, promotion, change of status, given particular weight.

# Exemption: Administrative Duties

## ❑ **Administrative Duties:**

- ❑ Office or non-manual work directly related to the management or general business operations of the employer or the employer's customers.
- ❑ Exercise of discretion and independent judgment in matters of significance:
  - ❑ Includes activities such as analysis, making determinations, setting prices, assessing risk, committing company resources, negotiating, and similar tasks.

# Exemption: Administrative Duties (cont.)

## ❑ **Management or General Business Operations:**

- ❑ Tax, Finance, Budgeting, Accounting.
- ❑ Auditing, Legal and Regulatory Compliance.
- ❑ Quality Control, Insurance, Safety and Health.
- ❑ Purchasing, Procurement.
- ❑ Advertising, Marketing, Research.
- ❑ Human Resources, Labor Relations, Benefits.
- ❑ Computer Network, Internet, Database Administration.

# Exemption: Professional Duties

## ❑ **Professional Duties:**

- ❑ Learned Professional: Performance of work requiring advanced knowledge in field of science or learning customarily acquired by a prolonged course of specialized instruction.
- ❑ Creative Professional: Performance of work requiring invention, imagination, originality, or talent in recognized artistic or creative field.

## ❑ **Field of Science or Learning:**

- ❑ Occupations with recognized professional status, as distinguished from mechanical arts or skilled trades.

# Exemption: Computer Related Occupations

- ❑ Must be employed as a computer systems analyst, computer programmer, software engineer or similarly skilled worker in the computer field performing the duties described below:
  - ❑ Application of systems analysis techniques and procedures, including consultation with users about hardware, software, or system function specifications;
  - ❑ Design, development, documentation, analysis, creation, testing, or modification of computer systems or programs related to user or system design specifications; or
  - ❑ Design, documentation, testing creation, or modification of machine operating systems; or
  - ❑ Combination of above duties requiring equal skill level.



# Exemption: Highly Compensated Employee

- ❑ Total annual compensation of at least:
  - ❑ \$107,432 per year, including at least \$684 per week on a salary or fee basis.

AND

- ❑ Regularly perform executive, administrative or professional duties
- ❑ HCE will never apply to blue-collar workers.

# Teachers

- ❑ An employee is exempt from minimum wage and overtime protections if their “primary duty is teaching, tutoring, instructing, or lecturing to impart knowledge”, and if they are performing that duty as an employee of an educational establishment. 29 C.F.R. § 541.303(a).
- ❑ Educational establishments include elementary school systems, secondary school systems, institutions of higher education, and other educational institutions.
- ❑ If a bona fide teacher meets these requirements, the salary level and salary basis tests do not apply.

# Teachers (cont.)

- ❑ A teacher does not become nonexempt merely because they spend a considerable amount of time in extracurricular activities (such as coaching athletic teams or supervising student clubs).
- ❑ The teacher is exempt from minimum wage and overtime protections provided the teacher's primary duty is teaching.
  - ❑ Primary duty means more than 50% of the time is spent in teaching
- ❑ Educational Assistants?
  - ❑ Non-Exempt
  - ❑ Salary + Duties = Exempt
    - ❑ Hourly rate usually below threshold and duties are to assist the teacher not to teach

# NM School Contracts

- ❑ Exempt Employees
  - ❑ Certified Contacts (Teachers)
  - ❑ Administrator Contract (Principals, Directors)
- ❑ Non-Exempt Employees - no contract required under the law
  - ❑ Classified Employees
  - ❑ Hourly Employees

# Coaching and Extra-Curricular Stipends

- ❑ 2004 US Department of Labor opinion letter: FLSA-2004-20NA
  - ❑ Q: Can non-exempt school employees volunteer as coaches?
  - ❑ Ans: Yes, when they are not otherwise employed by the same public agency to perform the same services as those for which they propose to volunteer.
  - ❑ Q: Would the School be required to pay Educational Assistants overtime for their coaching time if they volunteer as a coach but work 40 hours as an EA in the classroom?
  - ❑ Ans: Depends. Are the Coaching duties the same or similar to those performed as an EA? If the same, overtime. If not, genuine volunteer.

# Coaching and Extra-Curricular Stipends (cont.)

- ❑ 2018 US Department of Labor Opinion Letter, FLSA 2018-6:
  - ❑ Q: Can school use volunteers as coaches?
  - ❑ Ans: Yes
  - ❑ Important note: “Coaches whose primary duties are not related to teaching – for example, performing general clerical or administrative tasks for the school unrelated to teaching, including the recruitment of students to play sports, or performing manual labor- do not qualify for the teaching exemption.”
  - ❑ “Assuming that the coaches are not also employed by the school in a different, nonexempt capacity, we believe they qualify for the exemption as teachers under FLSA.”

# Coaching and Extra-Curricular Stipends (cont.)

- ❑ Standard advice has been: Hourly employee = overtime including any time spent on extracurricular activities.
- ❑ Bona Fide Volunteer - Nominal Fee (Stipend)
  - ❑ Cannot volunteer for the same type of services (i.e. custodian cannot volunteer to clean up after the game)
  - ❑ Volunteers can be paid expenses, reasonable benefits, a nominal fee, or any combination, without losing their status as a volunteer.
  - ❑ Nominal fee cannot be a substitute for compensation and must not be tied to productivity.

# What is a Nominal Fee?

- ❑ FLSA2005-51
- ❑ Payment of nominal fees to non-exempt employees
  1. Performs hours of service for a public agency for civic, charitable or humanitarian reasons, without promise, expectation or receipt of compensation for services rendered. Although a volunteer can receive no compensation, a volunteer can be paid expenses, reasonable benefits or a nominal fee to perform such services;
  2. Offers services freely and without pressure or coercion, direct or implied, from an employer; and
  3. Is not otherwise employed by the same public agency to perform the same type of services as those for which the individual proposes to volunteer.



# What is a Nominal Fee? (cont.)

- ❑ FLSA2005-51
- ❑ Nominal = Incidental or insubstantial fee.
- ❑ 20% of what the District would normally pay someone to do that job.
- ❑ Cannot be tied to a win/loss record

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# Other Requirements Under the FLSA

# Recordkeeping

- ❑ The FLSA requires employers to keep records on wages, hours, and other items, as specified in DOL recordkeeping regulations.
- ❑ Most of the information is of the kind generally maintained by employers in ordinary business practice and in compliance with other laws and regulations.
- ❑ The records do not have to be kept in any particular form and time clocks need not be used.

# Recordkeeping (cont.)

- ❑ With respect to an employee subject to the minimum wage provisions or both the minimum wage and overtime pay provisions, the following records must be kept:
  - ❑ Personal information, including employee's name, home address, occupation, sex, and birth date if under 19 years of age;
  - ❑ Hour and day when workweek begins;
  - ❑ Total hours worked each workday and each workweek;
  - ❑ Total daily or weekly straight-time earnings;
  - ❑ Regular hourly pay rate for any week when overtime is worked;
  - ❑ Total overtime pay for the workweek;
  - ❑ Deductions from or additions to wages;
  - ❑ Total wages paid each pay period; and
  - ❑ Date of payment and pay period covered.

# Youth Employment Standards

- ❑ The FLSA child labor provisions are designed to protect the educational opportunities of minors and prohibit their employment in jobs and under conditions detrimental to their health or well-being.
  - ❑ Restrictions on hours of work for minors under 16.
  - ❑ Hazardous occupations.
- ❑ Career and Technical Education (CTE) must comply with FLSA.

# Nursing Employees

- ❑ Under the FLSA and the PUMP Act, most nursing employees have the right to reasonable break time and a private place to pump breast milk for their nursing child.
- ❑ This right is available each time the employee needs to pump for one year after their nursing child's birth.
- ❑ An employer may not deny a covered employee a needed break to pump.
- ❑ Employers must provide a reasonable amount of break time to pump milk as frequently as needed by the nursing employee. The frequency and duration of breaks needed to pump will likely vary depending on factors related to the nursing employee and the child.
- ❑ Employees are entitled to a place to pump, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public.

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# Enforcement

# Enforcement Through Investigation

- ❑ Wage and Hour Division (“WHD”) enforcement of the FLSA is carried out by investigators stationed across the country.
- ❑ As WHD authorized representatives, they conduct investigations and gather data on wages, hours, and other employment conditions in order to determine compliance with the law regardless of workers’ immigration status.
- ❑ Where violations are found, they will recommend changes in employment practices in employment practices to bring an employer into compliance.



# Enforcement Through Legal Remedies

- ❑ The FLSA allows the Department of Labor or an employee to recover back wages and an equal amount in liquidated damages where minimum wage and overtime violations exist. Generally, a 2-year statute of limitations applies to the recovery of back wages and liquidated damages. A 3-year statute of limitations applies in cases involving willful violations.
- ❑ Remedies may be recovered through administrative procedures, litigation, and/or criminal prosecution.

# Retaliation is Prohibited

- ❑ Employees who have filed complaints or provided information cannot be discriminated against or discharged on account of such activity.
- ❑ If adverse action is taken against an employee for engaging in protected activity, the affected employee or the Secretary of Labor may file suit for relief, including reinstatement to his/her job, payment of lost wages, and damages.

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