

HR 101 – Wage and Hour

Caleb P. Setlock
csetlock@barley.com
717-399-1567



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- This presentation contains general information. I am not rendering legal, business, financial or other professional advice or services. This presentation is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult counsel.
- Wage and Hour is a regulatory MINEFIELD



Roadmap for the next hour

- What businesses or employees do the Fair Labor Standards Act and Pennsylvania Minimum Wage Act apply to?
- What are the general laws for minimum wage and overtime? When do employers have managerial discretion to offer benefits or mandate schedules and pay rates?
- How should businesses calculate the “hours worked” and “regular rate” for non-exempt employees when time to pay overtime?
- What exemptions exist to the minimum wage and overtime requirements?
- What are the general laws for the employment of minors?

Who is subject to the FLSA?

- Two theories – enterprise coverage or individual coverage
- Enterprise coverage
 - Business with at least two employees; and
 - Has an annual gross volume of sales made, or business done, over \$500,000; or
 - A hospital; an institution primarily engaged in the care of the sick, the aged, or the mentally ill who reside on the premises; a school for mentally or physically disabled or gifted children; a preschool, an elementary or secondary school, or an institution of higher education (whether operated for profit or not for profit); or
 - is an activity of a public agency.

Who is subject to the FLSA?

- Individual coverage
 - Individual workers who are “engaged in commerce or in the production of goods for commerce”
 - Examples:
 - One who produces goods (such as a worker assembling components in a factory or a secretary typing letters in an office) that will be sent out of state;
 - One who regularly makes telephone calls to persons located in other states;
 - One who handles records of interstate transactions;
 - One who travels to other states on their jobs;
 - One who performs janitorial work in buildings where goods are produced for shipment outside the State.
 - Domestic service workers such as day workers, housekeepers, chauffeurs, cooks, or full-time babysitters are normally covered

Who is subject the PMWA?

- "Employee" includes any individual employed by an employer
- "Employer" includes any individual, partnership, association, corporation, business trust, or any person or group of persons acting, directly or indirectly, in the interest of an employer in relation to any employee

What do the FLSA and PMWA require?

- Minimum wage = \$7.25 per hour
 - Different rules for different states
 - Different rules for federal contractors
 - Different rules for tipped employees
- Overtime for all hours worked over **40 hours worked per workweek**
- Overtime is 1.5x times the employee's **regular rate of pay**
- Recordkeeping
- Posters
- Employer's flexibility
 - Set or alter an employee's standard schedule or maximum hours worked
 - Mandate or prohibit overtime
 - Discretion for Holiday pay, sick leave, vacation pay, severance pay
 - Meal Periods

What do the FLSA and PWPCCL require?

- Wages are due on the regular payday for the pay period covered
- Employers must notify each employee at the time of hiring of the following: (1) time and place of payment; (2) rate of pay; and (3) amount of any fringe benefits or wage supplements to be paid to the employee, a third party, or a fund for the benefit of the employee
- The waiting time between the end of a pay period and payday must not exceed: (1) the time specified in a written contract between employer and employee; or (2) the standard time-lapse customary in the trade; or (3) 15 days
- For separated employees, employers must pay them a final paycheck no later than the normal, next payday
- Deductions (i.e., uniform expenses, tuition reimbursement) are allowed if agreed to and it does not take the employee below minimum wage

How to calculate overtime?

- Overtime = 1.5x the **regular rate** of pay for each **hour worked** in a **workweek**



What is a “workweek” and “hours worked?”

- Workweek
 - A workweek is a fixed and regularly recurring period of 168 hours – 7 consecutive 24-hour periods
 - It may begin on any day of the week and at any hour of the day established by the employer
 - Each workweek stands alone; there can be no averaging of 2 or more workweeks
- Hours worked
 - Covered employees must be paid for all hours worked in a workweek
 - Technically, there is a difference under federal and state interpretative law (the de minimis exception)
 - Includes all time an employee must be on duty, on the employer’s premises, or at any other prescribed place of work
 - Includes any additional time the employee is permitted to work (i.e., remote)
 - Does not include paid or unpaid vacation, sick time, holidays, leave of absences, etc

What is an employee's "regular rate?"

- Generally, an employee's regular rate includes all payments made by the employer to, or on behalf of, the employee

- Exceptions to the regular rate:

- Gifts as a reward for service... so long as not measured by hours worked, production, or efficiency
- Payments made for occasional periods when no work is performed due to vacation, holiday, illness, or reasonable payments for traveling expenses, or other expenses, incurred by an employee in the furtherance of his employer's interests and properly reimbursable by the employer
- Discretionary recognition of service awards, contributions to a profit-sharing plan without regard to hours of work, productivity, or efficiency
- Contributions to life insurance, healthcare plans, retirement, etc
- Extra pay under a premium rate for certain hours worked because such hours are hours worked in excess of eight in a day, one's normal workday, or the workweek
- Extra pay under a premium rate for work on Saturdays, Sundays, holidays, or regular days of rest, where the premium rate is 1.5x the employee's regular rate
- Extra pay under a premium rate established by a contract and employee agreement (i.e., CBA), where the premium rate is 1.5x the employee's regular rate
- Value or income from a stock option, stock appreciation, or stock purchase program

Calculation examples

- **Hourly rate:**

- Example

- An employee paid \$8.00 an hour works 44 hours in a workweek. The employee is entitled to at least one and one-half times \$8.00, or \$12.00, for each hour over 40. Pay for the week would be \$320 for the first 40 hours, plus \$48.00 for the four hours of overtime - a total of \$368.00

- What if a bonus is given?

- Suppose the employee, who earns \$12 per hour, receives a \$46 production bonus. The regular hourly rate of pay is \$13 an hour (46 hours at \$12 yields \$552; the addition of the \$46 bonus makes a total of \$598; this total divided by 46 hours yields a regular rate of \$13). The employee is then entitled to be paid a total wage of \$637 for 46 hours (46 hours at \$13 plus 6 hours at \$6.50, or 40 hours at \$13 plus 6 hours at \$19.50)

Calculation examples

- **Piece rate:**

- Employees paid per output, unit, or deal
- The regular rate is obtained by dividing the total weekly earnings by the total number of hours worked in that week
- The employee is entitled to an additional 1.5x the regular rate for each hour over 40, plus the full piecework earnings
 - An employee paid on a piecework basis works 45 hours in a week and earns \$405. The regular rate of pay for that week is \$405 divided by 45, or \$9.00 an hour. In addition to the straight-time pay, the employee is also entitled to \$4.50 (half the regular rate) for each hour over 40 - an additional \$22.50 for the 5 overtime hours - for a total of \$427.50
 - An employee has worked 50 hours and has earned \$491 at piece rates for 46 hours of productive work and in addition has been compensated at \$8.00 an hour for 4 hours of waiting time, the total compensation, \$523.00, must be divided by the total hours of work, 50, to arrive at the regular hourly rate of pay - \$10.46. For the 10 hours of overtime the employee is entitled to additional compensation of \$52.30 (10 hours at \$5.23). For the week's work the employee is thus entitled to a total of \$575.30

Calculation examples

- **Day or job rate:**
 - If the employee is paid a flat sum for a day's work, or for doing a particular job, without regard to the number of hours worked in the day or at the job, and if he receives no other form of compensation for services, his regular rate is determined by totaling the sums received in the workweek and dividing by the total hours actually worked. Then, you add the extra 0.5x benefit for any hours over 40

Calculation examples

- **Weekly salary:**
 - If an employee is employed solely on a weekly salary basis, the regular hourly rate of pay is computed by dividing the salary by the number of hours which the salary is intended to compensate
 - If an employee is hired at a salary of \$350 and if it is understood that this salary is compensation for a regular workweek of 35 hours, the employee's regular rate of pay is \$350 divided by 35 hours, or \$10 an hour, and when the employee works overtime the employee is entitled to receive \$10 for each of the first 40 hours and \$15 (one and one-half times \$10) for each hour thereafter
 - If an employee is hired at a salary of \$375 for an estimated 40-hour week the regular rate is \$9.38 an hour

Exemptions

- Some employees are exempt from the overtime pay provisions or both the minimum wage and overtime pay provisions
- The most popular only apply to white collar employees
 - Generally, there is both a salary and duty test
- ***Make sure the exemptions apply under both federal and state law***

Executive exemption

- Employees can be exempt from both minimum wage and overtime requirements if:
 - Salary basis test
 - The employee must be compensated on a **salary basis** (as defined in the regulations) at a rate **not less than \$684* per week**
 - The Department of Labor just proposed a new regulation which would raise this to \$1,059 per week or higher based on then-present labor data if it becomes a final rule
 - Duty test
 - The employee's **primary duty** must be **managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;**
 - The employee must **customarily and regularly direct the work of at least two or more** other full-time employees or their equivalent; and
 - The employee must have the **authority to hire or fire other employees**, or the employee's **suggestions and recommendations as to the hiring, firing, advancement**, promotion or any other change of status of other employees must be **given particular weight**

Administrative exemption

- Employees can be exempt from both minimum wage and overtime requirements if:
 - Salary Basis Test
 - The employee must be compensated on a **salary basis** (as defined in the regulations) at a rate **not less than \$684* per week**
 - The Department of Labor just proposed a new regulation which would raise this to \$1,059 per week or higher based on then-present labor data if it becomes a final rule
 - Duty Test
 - The employee's primary duty must be the **performance of office or non-manual work directly related to the management** or general business operations of the employer or the employer's customers; and
 - The employee's primary duty **includes the exercise of discretion and independent judgment with respect to matters of significance**

Learned Professional exemption

- Employees can be exempt from both minimum wage and overtime requirements if:
 - Salary basis test
 - The employee must be compensated on a **salary basis** (as defined in the regulations) at a rate **not less than \$684* per week**
 - The Department of Labor just proposed a new regulation which would raise this to \$1,059 per week or higher based on then-present labor data if it becomes a final rule.
 - Duty test
 - The employee's primary duty must be the **performance of work requiring advanced knowledge**, defined as work which is **predominantly intellectual** in character **and** which includes work requiring the consistent **exercise of discretion and judgment**;
 - **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 exemption

- Employees can be exempt from both minimum wage and overtime requirements if:
 - Salary basis test
 - The employee must be compensated on a **salary basis** (as defined in the regulations) at a rate **not less than \$684* per week**
 - The Department of Labor just proposed a new regulation which would raise this to \$1,059 per week or higher based on then-present labor data if it becomes a final rule
 - Duty test
 - The employee's primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor

PA exemptions repealed

Executive, Administrative and Professional (EAP) exempt employee salary thresholds in Pennsylvania:

- 2020: \$684 per week (\$35,568 annually) (same as federal)
- ~~2021: \$780 per week (\$40,560 annually) Oct. 3, 2021~~
- ~~2022: \$875 per week (\$45,500 annually) Oct. 3, 2022~~

BUT WAIT:

Act 70 repealed the entire regulatory framework for defining the EAP exemptions under the Pennsylvania Minimum Wage Act

PA still recognizes EAP exemptions, but federal regulations and \$35,568 annual salary threshold currently in place – for now

Outside sales exemption

- Employees can be exempt from both minimum wage and overtime requirements if:
 - No salary test
 - Duty test
 - The employee's primary duty must be making sales, or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and
 - The employee must be customarily and regularly engaged away from the employer's place or places of business

Computer exemption – ONLY FLSA

- Employees can be exempt from both minimum wage and overtime requirements if:
 - Salary basis test
 - The employee must be compensated on a **salary basis** (as defined in the regulations) at a rate **not less than \$684* per week**
 - The Department of Labor just proposed a new regulation which would raise this to \$1,059 per week or higher based on then-present labor data if it becomes a final rule
 - Duty test
 - The employee must be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field
 - Primary duty just generally consists of:
 - The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
 - The 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;
 - The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
 - A combination of these duties, the performance of which requires the same level of skills

Highly compensated exemption – ONLY FLSA

- Highly compensated employees performing office or non-manual work and paid total annual compensation of \$107,432 or more (which must include at least \$684* per week paid on a salary or fee basis) are exempt from the FLSA if they customarily and regularly perform at least one of the duties of an exempt executive, administrative or professional employee identified in the standard tests for exemption
- The Department of Labor just proposed a new regulation which would raise this to \$143,988 per year or higher based on then-present labor data if it becomes a final rule

Child labor laws

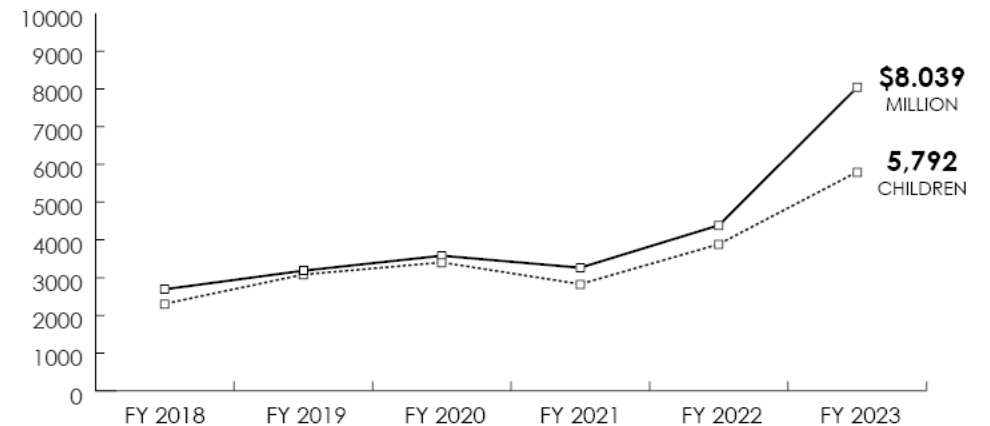
FY 2023 Child Labor Enforcement Data

In FY 2023, we concluded 955 investigations that found child labor violations, a 14% increase from the previous year. We found nearly 5,800 children employed in violation of the law, an 88% increase since 2019, and assessed more than \$8 million in penalties, an 83% increase from the previous year.



Child Labor Enforcement

—□— CIVIL MONEY PENALTIES ASSESSED - - □ - CHILDREN FOUND EMPLOYED IN VIOLATION



Source: U.S. Department of Labor's Wage and Hour Division

dol.gov/whd

General prohibitions on industries

- May not work where explosives are manufactured or stored
- May not drive any type of motor vehicle or work as an outside helper on public roads or highways (some exceptions for 17-year-olds)
- May not operate or assist in the operation of an elevator, crane, derrick, hoist, forklift or high-lift truck and may not perform any work which involves riding on a manlift, high-lift truck, or on a freight elevator
- May not operate meat processing machines, such as meat slicers, saws and meat choppers, wherever used (including restaurants, nursing homes, and delis)
- May not operate power-driven bakery machines such as vertical dough and batter mixers; dough rollers, rounders, dividers, and sheeters; and cookie or cracker machines
- May not be employed in roofing operations

14- and 15-year-olds

HOURS OF EMPLOYMENT—AGES 14 & 15*

HOURS OF EMPLOYMENT

During School Term: Maximum three hours on school days, eight hours on any other day, and 18 hours per school week (Monday—Friday), and only at a time that does not interfere with school attendance. Plus eight additional hours on Saturdays and Sundays.

Exception: Students 14 and older, whose employment is part of a recognized school work program, may be employed for hours, when combined with school hours, not exceeding eight in a day.

During School Vacations: Maximum eight hours/day, 40 hours/week.

WORK TIME

Employment prohibited after 7 p.m. and before 7 a.m.

Exceptions: During school vacations, minors may be employed until 9 p.m. Minors at least age 11 may be employed in newspaper delivery from 5 a.m. to 8 p.m., except during school vacation, then until 9 p.m. Members of volunteer fire companies may participate in training and firefighting activities until 10 p.m. with written parental consent.

16- and 17-year-olds

HOURS OF EMPLOYMENT—AGES 16 & 17* **

HOURS OF EMPLOYMENT

During School Term: Maximum eight hours a day and 28 hours per school week (Monday—Friday). Plus eight additional hours on Saturdays and Sundays.

During School Vacations: Maximum 48 hours/week; 10 hours/day; a minor may refuse any request to work greater than 44 hours/week.

WORK TIME

Employment prohibited before 6 a.m. and after 12 a.m.

Exceptions: During school vacations, minors may be employed until 1 a.m. Members of volunteer fire companies may continue serving in answer to a fire call until excused by chief.

* Minors employed as sports attendants are not subject to the Act's hours and work time restrictions.

**EXCEPT: A) Minors who have graduated from high school or who are exempt from compulsory attendance under the Public School Code are not subject to the Act's hours of employment or work time restrictions.

B) Special rules apply to young adults, 16 and 17 years of age, employed during a school vacation as a counselor by a summer resident camp operated by a religious or scout organization.

Consecutive workdays, breaks

MAXIMUM EMPLOYMENT: NOT MORE THAN six CONSECUTIVE DAYS (except newspaper delivery).

30 MINUTE MEAL PERIOD REQUIRED ON OR BEFORE five CONSECUTIVE HOURS OF WORK.

EMPLOYER NOTIFICATION: *Within five days of the minor's beginning of employment, an Employer's must submit written notification of the minor's normal duties and employment hours, the minor's age and the work permit number to the issuing officer who issued that work permit. Within five days of the minor's last day of employment, the minor shall submit written notification to the issuing officer that the minor is no longer employed.*

Summary

- Individual or enterprise coverage subjects one to the FLSA, but regardless, there is no threshold for coverage under PMWA
- Overtime is 1.5x the regular rate of all hours worked over 40 in a workweek
 - Hours worked means hours worked
 - Regular rate includes everything except statutory exclusions
- Exemptions may allow businesses to classify employees as exempt, and thus, exclude them from minimum wage and overtime payments
- Carefully craft the schedule and duties of a minor