



How to Navigate Your Wage & Hour Questions

Presented by:

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Not tax or legal advice | Powered by **Mineral**





Welcome to the Webinar!

- We'll email the recording and slides within 24 hours.
- Please participate in our poll.
- Use the Q&A box for questions for the speakers.



Presenters

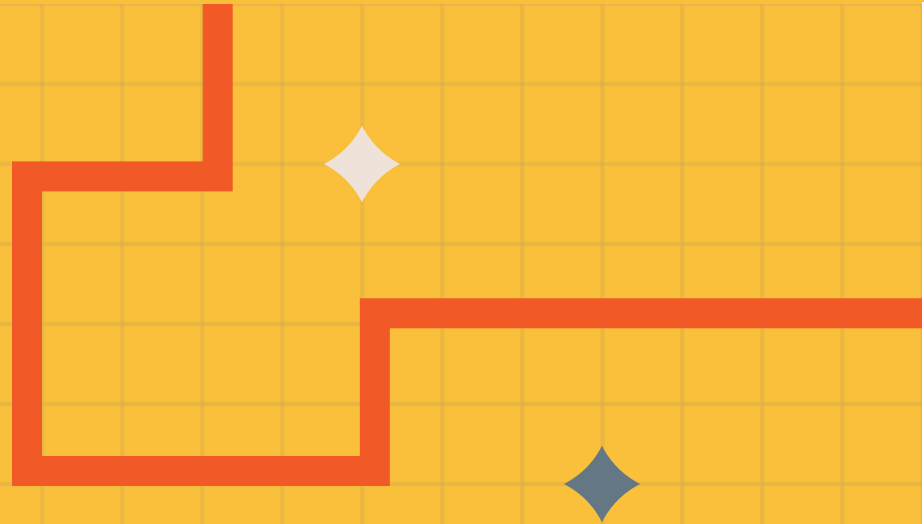


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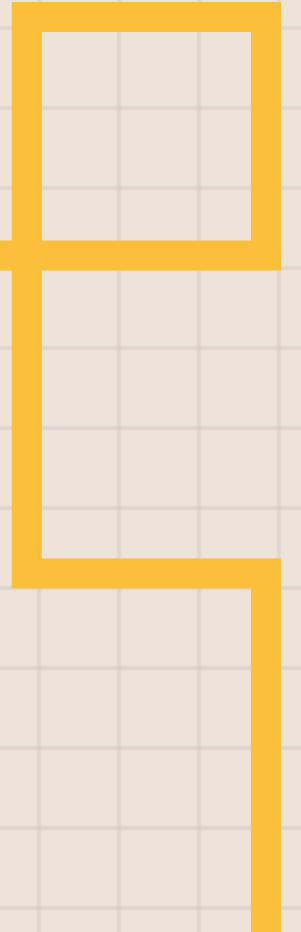
Kara Govro, JD, SPHR
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Agenda



- The Fair Labor Standards Act
- Employee Classifications
- Basic Requirements
- Non-Exempt Danger Zones

The Fair Labor Standards Act



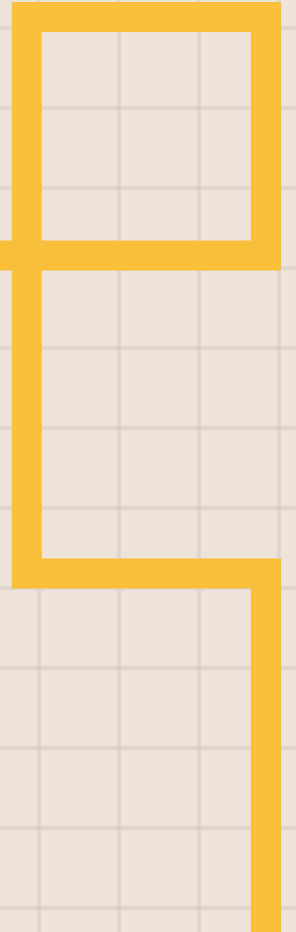
What the FLSA Regulates

- Minimum wage and which workers can be exempt
- Overtime and which workers can be exempt
- Payroll record requirements
- Child labor

See: <https://www.dol.gov/agencies/whd/fact-sheets/14-flsa-coverage>



Employee Classification



The White Collar or EAP Exemptions

These exemptions are for employees doing non-manual work. There is a three-part test for most employees to be properly classified this way.

1. Salary Level (minimum salary they must be paid)
2. Salary Basis (the way they must be paid)
3. Duties (each type of exemption has its own test)



White Collar Exemption: Salary Level

Executive, Administrative, Professional*, Salaried Computer	\$684 per week
Hourly Computer	\$27.63 per hour
Highly Compensated	\$107,432 per year (and at least \$684 per week)
Outside Sales	No minimum

**Bona fide teachers and practicing doctors and lawyers are exempt from the minimum salary requirement*

White Collar Exemption: Salary Basis

1. Paid a predetermined amount; and
2. On a weekly or less frequent basis; and
3. Amount must not be subject to reduction because of variations in the quality or quantity of the work performed





Executive Duties Test

1. Primary duty is the management of an enterprise in which the person is employed or a customarily recognized department or subdivision; and
2. Has authority to hire, fire, or promote other employees or effectively recommend similar actions; and
3. Customarily and regularly directs the work of two+ full-time employees (or equivalent)



Executive Business Owner Duties Test

1. Owns at least a bona fide 20% equity interest in the company; and
2. Actively engaged in its management





Administrative Duties Test

1. Primary duty is office or non-manual work directly related to the implementation of management policies or general business operations of the company or its customers, and
 2. Primary duty includes the exercise of discretion and independent judgement with respect to matters of significance
- 
- 



Learned Professional Duties Test

1. Primary duty is the performance of work requiring advanced knowledge, predominantly intellectual in character, and includes the consistent exercise of discretion and judgement; and
2. The advanced knowledge must be in a field of science or learning and such learning must be customarily acquired by a prolonged course of specialized intellectual instruction.

Note: Under the FLSA, teachers, doctors, and lawyers are exempt from the salary level and basis tests, but a number of states don't allow this deviation



Creative Professional Duties Test

- Primary duty is the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.
- If another creative professional would produce very similar results if assigned the same task, it is less likely the employee qualifies for the exemption.

Highly Compensated Duties Test

1. Primary duty is the performance of office or non-manual work; and
2. Customarily and regularly performs at least one duty of an exempt executive, administrative, or professional employee; and
3. Paid total annual compensation of at least \$107,432; at least \$684 per week (\$35,568 per year) must be paid on a salary basis



Computer Employee Duties Test

1. The application of systems analysis techniques to determine hardware, software or system specifications; or
 2. The design, development, analysis, testing or modification of computer systems or programs, based on and related to user or system design specifications; or
 3. The design, testing, creation or modification of computer programs related to operating systems
- *Note: Not for employees who build or repair computers!*





Outside Sales Duties Test

1. Primary duty is making sales or obtaining orders or contracts for services or for the use of facilities; and
 2. The employee is customarily and regularly engaged away from the employer's place or places of business
- *Note: Any site used by a salesperson as headquarters for sales or telephone solicitations is regarded as the employer's place of business*



Other Exemptions:

Retail Sales and Services Employees (FLSA 7(i) Overtime exemption):

1. Employee must be employed in retail or service establishment; and
2. Their regular rate of pay must exceed 1.5x the applicable minimum wage for every hour worked in a workweek in which overtime hours are worked (i.e., they must make 1.5x minimum wage for all hours if they work more than 40); and
3. More than half of their total earnings in a representative period (at least one month, no more than one year) must consist of commissions

Source: <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs20.pdf>

Other Miscellaneous Exemptions:

- Police, fire fighters, paramedics, and other first responders
- Agricultural employees
- Drivers, driver's helpers and mechanics if employed by a motor carrier
- Salespeople, parts people and mechanics employed by automobile dealerships ([FLSA Fact Sheet #11](#))
- Several more: live-in domestic employees, taxi drivers, some railroad employees, some airline employees, etc.

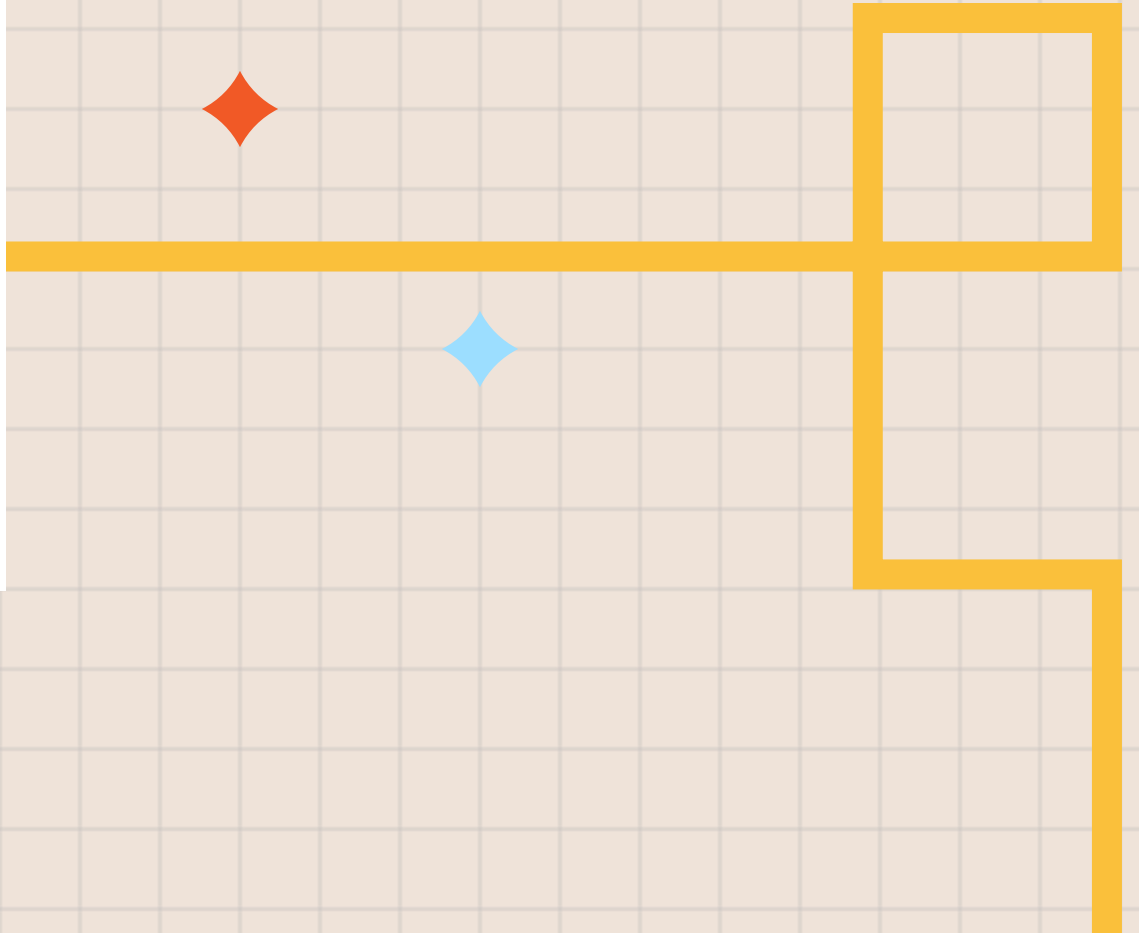
See: <https://webapps.dol.gov/elaws/whd/flsa/screen75.asp>

Poll Question



Approximately what percentage of your workforce is exempt?

Top Questions About Paying Non-Exempt Employees



How do we calculate overtime?

- Hours over 40 hours in a *workweek* are paid at 1.5x regular rate of pay
- Workweek: the 168-hour period (7 days) during which you track employee time to see if they do more than 40 hours of work, e.g., Sunday at 12:00am through Saturday at midnight
- Payroll periods are irrelevant!

Hours	S	M	T	W	T	F	S	Total
Week 1	0	8	8	10	10	8	6	50
Week 2	0	5	5	8	6	6	0	30

Total payroll period hours: 80

Pay: 70 straight time, 10 overtime

How do we calculate their “regular rate”?

If an employee earns more than one rate of pay in the same workweek their “regular rate of pay” should be computed before their overtime rate is calculated (and often overtime will need to be adjusted retroactively).

Overtime rates are affected by:

- Commissions
- Piece-rate pay
- On-call pay
- Non-discretionary bonuses
- Shift differentials



A "regular rate" example

Example: Anna earns \$10/hour for inside sales work and \$15/hour for bookkeeping work. This week, she worked 24 hours in inside sales and 20 hours as a bookkeeper. She also received \$50 in commissions attributable to this workweek. Her pay is calculated as follows:

- **Step 1 – Regular Rate:**

$$[(\$10/\text{hour})(24 \text{ hours}) + (\$15/\text{hour})(20 \text{ hours}) + \$50]/44 \text{ hours} = \$13.41$$

- **Step 2 – Overtime:**

$$\$13.41/\text{hour} \times 1.5 \text{ overtime premium} = \$20.11/\text{hour}$$

- **Step 3 – Calculate Weekly Pay:**


$$(\$13.41)(40 \text{ hours}) + (\$20.11)(4 \text{ hours}) = \$616.82$$



Can we withhold pay for late or incorrect timesheets?

- No!
- Take your best guess as to hours worked and pay on regularly scheduled payday
- Discipline and document
- Be detailed about how time should be tracked and recorded and provide training

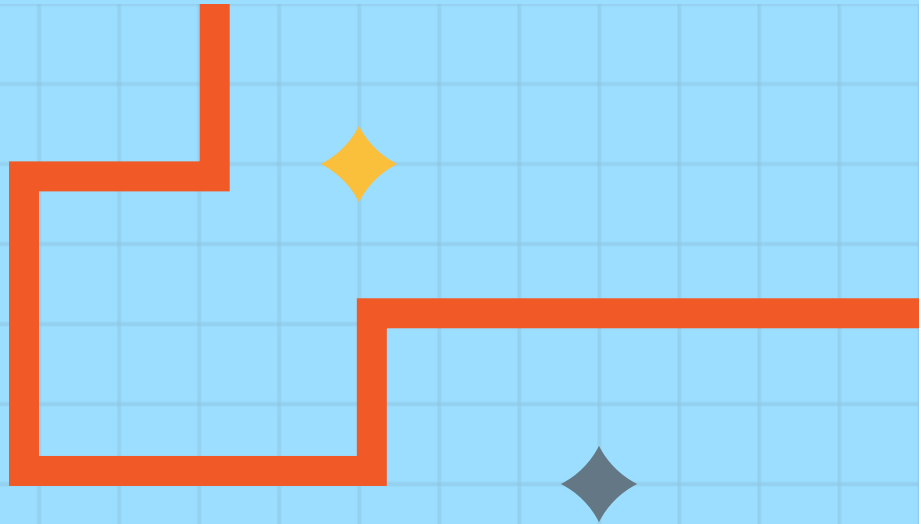





Can we refuse to pay for unauthorized or off-the-clock work?

- All hours worked must be paid, *whether you wanted the work done or not*
- If it was overtime, it must be paid at OT rate
- Have clear policies about tracking time during non-standard work hours
- If necessary, forbid use of work apps on personal devices
- Discipline and document as needed

Do we have to provide meal or rest breaks



- Federal law doesn't require any meal or rest breaks, however, if breaks *are* taken, and they're under 20 minutes, they should be paid.
- If you offer a specific amount of *paid* break time and clearly communicate that only that amount of time will be paid, you can choose not to pay for the extra minutes.
- Reasonable break time for lactation must be allowed but can be unpaid subject to the above requirements.

An exit sign with the word "exit" and two downward-pointing arrows is visible at the top of the frame. Below it, a light blue banner contains the title text. The background of the slide is a yellow grid pattern with two diamond-shaped icons, one blue and one red. The bottom of the slide features a blurred image of a train window showing people and a landscape.

When do we have to pay for travel time?

Extended commutes and workday travel:

- Non-commute travel during the workday is paid time, e.g., driving between client locations.
- Out-of-the-ordinary commuting time should be paid, e.g., if an employee's usual commute is 30 minutes and you ask them to leave home early to visit a client 90 minutes away, pay the difference.

When do we have to pay for travel time?

- Time spent *in transit* or doing work while traveling during normal work hours, *regardless of the day of the week*, is compensable. For example, when employee works 8 a.m. - 5 p.m. Monday through Friday, pay them for their travel time during those hours even if the travel occurs on a weekend or holiday.
- Time spent driving at the direction of the employer is paid time regardless of when the driving occurs.
- If they are not in transit *or* working, and can use their time however they like, you don't need to pay for it.

Poll Question

**How confident are you with travel
time pay rules?**

What about waiting time?

If the employee is “engaged to wait,” pay them.

- For example, a receptionist reading a book between customers, a firefighter cooking between alarms.

If the employee is “waiting to engage,” you don’t have to pay them for that time.

- For example, a delivery person with an overnight stop. The employee must be completely relieved from duty and told in advance that they may leave the job and will not have to start work again until a specified time.



When is on-call time paid?

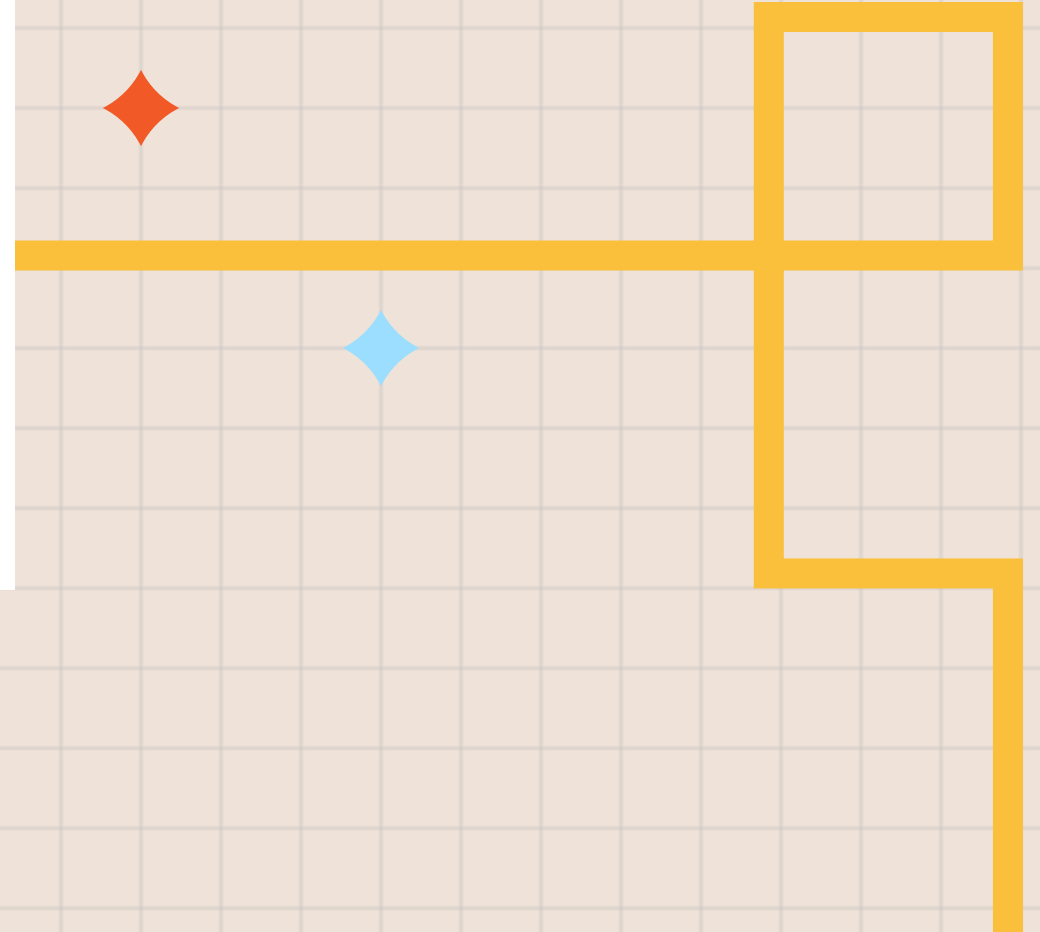
- If the employee required to stay on the premises or very nearby, pay them.
- If the employee can leave, evaluate whether they can effectively engage in personal activities. How close must they be? How often are they interrupted?
- All time spent responding to calls must be paid.

When can I deduct from an employee's wages?

- Government-mandated deductions don't require employee approval (payroll taxes, court issued wage orders)
- Voluntary deductions for the benefit of the employee usually require written authorization (health insurance, 401k contributions, 401k loans, other company-provided benefits that the employee pays towards); a voluntarily executed employee loan repayment
- Deductions for the benefit of the employer may not be taken if doing so would cause the employee's wages for that pay period to fall below the applicable minimum wage (uniform costs, tools, loss or damage, cash drawer shortage, customers not paying their bills, etc)

Source: <https://www.dol.gov/agencies/whd/fact-sheets/16-flsa-wage-deductions>

How Mineral Can Help





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Poll Question

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Q & A Session





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