

BASIC TRAINING FOR SUPERVISORS



WAGE & HOUR LAW



IT PAYS TO KNOW ABOUT WAGE AND HOUR LAW

We keep reading about employers forking over tons of money for violations of wage and hour law, and you don't want the next one to be you. Although supervisors don't need to learn the entire labyrinth of the Fair Labor Standards Act (FLSA), you need to know enough to spot problems on your watch. Working off the clock. Taking work home. Working through lunch. Putting on equipment before clocking in. An employee asking for comp time. Traveling (in town, out of town, on the weekend — it's a nightmare).

Managers who oversee exempt employees need to be familiar with even more issues that might arise. Exempt employees who don't work 40 hours — can you control their hours? Supervisors need to know enough to spot the red flags and alert your HR or payroll department.



As a supervisor, you need to do your part to make sure your employees are paid all the money that they've earned — not too much or too little.

In some situations, however, the law makes it hard to figure out how many hours an employee must be paid for. If you

underpay employees, they could complain to the state or federal Department of Labor, or they could sue your company. Many companies have been hit with class-action lawsuits, where hun-

Salaried vs. exempt

Some people say “salaried employees” when they talk about exempt employees, and they say “hourly workers” to refer to nonexempt employees. That’s accurate most of the time, but there are exceptions.

Some employers pay a weekly salary to nonexempt employees (plus time-and-a-half for every hour over 40). And some employers pay OT to exempt employees, although the law doesn’t require it.

Most of the time, though, salaried employees are exempt and hourly employees are nonexempt.

dreds or thousands of employees sue their employer, claiming millions of dollars in unpaid wages.

This booklet, *Basic Training for Supervisors: Wage & Hour Law*, will touch on issues that every supervisor needs to know about. Your employer bought you this book so you can go to law school and become a world-renowned expert in wage and hour law.

Just kidding. Your employer merely expects you to learn

enough to avoid obvious problems — like an hourly employee working during lunch — and to recognize other potential problems so you can alert your company’s HR or payroll departments. That’s a lot easier than law school.

WAGE AND HOUR LAW

The main wage and hour law is the federal Fair Labor Standards Act. Some of it you already know, like minimum wage and overtime pay. Other aspects of the FLSA are a bit deeper, but we'll try to explain it in plain English.



EXEMPT AND NONEXEMPT

The first thing you need to understand about the FLSA is the difference between *exempt* and *nonexempt* employees, because the law treats them very differently.

Nonexempt employees. Chances are that most or all of your employees are nonexempt. Nonexempt employees must be paid time-and-a-half when they go beyond 40 hours in a workweek. They usually are paid by the hour.

Exempt employees. They are usually paid a weekly salary, which typically stays the same no matter how many or how few hours they work that week. Exempt

employees are typically in management, high-level jobs, or specialties.

We'll discuss exempt and nonexempt employees in more detail later.

MINIMUM WAGE

You must pay the federal minimum wage to all employees — exempt and nonexempt alike. Potential problems can arise for employees whose pay varies because they're paid by commission or by piece rate. Trouble also can occur for an employee with a low weekly salary who works very long hours.

DISCRIMINATION

Under various discrimination laws, an employee's pay cannot be based on race, color, sex, pregnancy, religion, national origin, citizenship, disability, or age. This would prevent a bigoted boss from paying less to minorities, for example.

Equal Pay Act. In addition, the Equal Pay Act (EPA) requires equal pay for men and women who perform equal work. This gives employees more protection than other discrimination laws, because you could violate the EPA even if you didn't intend to discriminate. If one of your employees files an EPA lawsuit, the court will simply compare the pay between the men and women doing similar work. If one gender makes significantly more, and you don't have a good business reason for it, then your company loses the lawsuit.

The EPA doesn't apply to race or other protected characteristics.

RETALIATION

It's illegal to punish employees for complaining to a court or government agency that the company violated the FLSA. In most cases, the law also protects an employee who complains about pay to management.

STATE LAWS

Each state has its own set of wage and hour laws. Employees can file complaints with the state Department of Labor (DOL), which is more common than complaints to the federal DOL. The state DOL can prosecute offending employers, and employees can sue employers under state law.

Paycheck deductions. Some states prohibit you from deducting money from paychecks without employees' permission.

Minimum wage. Some states and cities have a minimum wage that's higher than the national one.

Terminated employees. A number of state laws specify how long you have to give employees their final paychecks after they quit or are fired. Your state's law may also control:

- ◆ Commissions owed to employees;
- ◆ Any debts they owe you;
- ◆ Payment for unused vacation time; and
- ◆ Leave time that they used but hadn't earned yet.

MANAGING NONEXEMPT EMPLOYEES

Supervisors need to know the basics of the FLSA. The law divides employees into two groups, *exempt* and *nonexempt*.

Most supervisors deal with nonexempt employees. The FLSA requires nonexempt employees to be paid overtime when they work more than 40 hours in a workweek. They must be paid at

Work off the clock?

No way!

The most blatant FLSA violation is a supervisor ordering employees to work off the clock. Don't do it. An employee has as long as three years to report your violation, and someone will, sooner or later.

least “time and a half” — one and a half times the employee’s regular rate of pay — for hours over 40 in a workweek. The overtime issues that tend to trip up supervisors relate to how and when to pay overtime to the *nonexempt* employees that report to you.

PAY NONEXEMPT EMPLOYEES FOR ALL HOURS WORKED

One of the biggest overtime issues supervisors need to master is how to calculate the number of hours an employee has worked in a given workweek. In other words, what activities qualify as work time?

In general, you have to pay employees for all the time they work, whether on company premises or at any other prescribed place of work. The federal Department of Labor will usually assume that an employee worked from the time when she clocked in until she clocked out. So if the workday is 8:00 a.m. to 5:00 p.m. and a nonexempt employee regularly clocks in,