



Wage & Hour Currents: Steering Clear of the Most Common FLSA Pitfalls

Presenting Company/Sponsor Name:

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AGENDA

1. **Welcome Aboard:** Opening Remarks & Orientation
 2. **Misclassification Mayday:** Exempt vs. Non-Exempt Errors
 3. **Off-the-Clock Icebergs:** Hidden Hazards Below the Surface
 4. **Choppy Waters:** Travel Time and On-Call Pay
 5. **Rounding Rules Gone Adrift:** When Practices Violate the Compass
 6. **Course Corrections:** Real-World FLSA Case Studies & Lessons from the High Seas
 7. **Docking Safely:** Compliance Checklist and Best Practices for In-House Counsel
 8. **Final Port of Call:** Q&A and Closing Remarks
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WELCOME ABOARD – OPENING REMARKS AND ORIENTATION

OVERVIEW OF THE FLSA

- **Enacted:** 1938
- **Administered by:** Department of Labor (DOL)
- **Covers:**
 - Minimum wage
 - Overtime pay
 - Recordkeeping
 - Child labor
- **Non-compliance consequences:**
 - Back pay
 - Liquidated damages
 - Attorney's fees
 - Civil penalties



MISCLASSIFICATION MAYDAY EXEMPT vs. NON-EXEMPT

EXEMPT vs. NON-EXEMPT

- **Exempt Employees:**
 - Not entitled to overtime
 - Must meet **salary basis, salary level, and duties tests**


- **Common Exemptions:**
 - Executive
 - Administrative
 - Professional
 - Outside Sales
 - Computer Employee

- **Red Flags:**
 - Paying salary ≠ exempt status
 - Title ≠ duties
 - Misapplying IT or sales exemptions

Quick FLSA Refresher

- » The employee must meet:
 1. The Salary Basis Test (*);
 2. The Salary Level Test; and
 3. The Duties Test.
- » The fact that employees are paid a salary does **not** automatically make them exempt.
- » Resource: Chapter 22 of DOL Filed Operations Handbook:
<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/FOH.Ch22.pdf>


Executive

- 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.
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Administrative

- 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.

Professional

- 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;
 - The advanced knowledge must be in a field of science or learning; and
 - The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.
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Creative Professional


- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$684 per week;
- 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.




Outside Sales

- » Regularly works away from the office
- » Makes sales and/or secures contracts


Computer Employee

- The employee must be compensated **either** on a [salary](#) or fee basis (as defined in the regulations) at a rate not less than \$684 per week **or**, if compensated on an hourly basis, at a rate not less than \$27.63 an hour;
 - The employee must be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the duties described below.
 - The employee's primary duty must consist 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 the aforementioned duties, the performance of which requires the same level of skills.
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Highly Compensated Employee

- 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.
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Independent Contractor

- » On May 1, 2025, DOL withdrew the 2024 “totality of the circumstances” test
 - » 2008 “economic reality” test reinstated
 - » Determines whether worker is economically dependent on the business or legitimately in business for themselves
 - » The test determines:
 - » Degree of control exercised by employer
 - » Worker’s opportunity for profit or loss
 - » Worker’s investment in equipment and materials
 - » Degree of skill and initiative required to perform the job
 - » Permanence of working relationship
 - » Whether service rendered is integral part of employer’s business
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Misclassification Examples

- **Example 1:** “Manager” spends 90% of time stocking shelves — misclassified as exempt
 - **Example 2:** IT Help Desk employee paid salary but lacks independent judgment — misclassified
 - **Example 3:** Salaried administrative assistant — doesn’t meet duties test
 - **Example 4:** Independent contractor treated like employee
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***OFF-THE-CLOCK
ICEBERGS-
HIDDEN HAZARDS BELOW THE SURFACE***

Off-the-Clock Work Hazards

- **Definition:** Any work not recorded or paid

- **Common Scenarios:**
 - Pre- or post-shift tasks
 - Checking emails after hours
 - Working during meal breaks
 - Failing to track remote work

- **Legal Risk:** Failure to pay overtime




CHOPPY WATERS – TRAVEL TIME AND ON-CALL PAY

Travel Time & On-Call Pay

➤ Travel Time:

- **Commuting:** Not compensable
- **Same-day travel (job site to job site):** Compensable
- **Overnight travel:** Compensable during normal work hours, even if non-working

➤ On-Call Time:

- **Compensable if:**
 - Employee is restricted
 - Cannot use time effectively for personal use
 - **Non-compensable if:**
 - Employee can use time freely and just respond to call
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ROUNDING RULES GONE ADRIFT – WHEN PRACTICES VIOLATE THE COMPASS

Time Clock Rounding Errors

➤ **DOL Guidance:**

- Acceptable if rounding is neutral (*e.g.*, 7-minute rule)
- Cannot always benefit employer

➤ **Common Issues:**

- Systematic underpayment
- Rounding in combination with off-the-clock work


➤ **Risk:**

- FLSA violations, class actions



***COURSE CORRECTIONS-
REAL-WORLD FLSA CASE STUDIES & LESSONS
FROM THE HIGH SEAS***

Real-World FLSA Mistakes

- **Bank of America (2020):** \$11M+ for off-the-clock work
 - **Multinational Retailer (2019):** \$65M+ for missed meal breaks (CA-based, but FLSA overlaps)
 - **Multinational Shipping Company (2016):** Misclassified drivers as independent contractors
 - **Healthcare Systems:** Failing to pay for mandatory trainings
 - **Tech Companies:** Unpaid after-hours support time
 - **Many Companies:** Failing to include bonuses when calculating overtime pay
 - **Other Companies:** Failing to maintain records
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***DOCKING SAFELY –
COMPLIANCE CHECKLIST & BEST PRACTICES
OF IN-HOUSE COUNSEL***


COMPLIANCE CHECKLIST

- ✓ Review job descriptions vs. actual duties
- ✓ Conduct regular classification audits
- ✓ Implement clear off-the-clock policies
- ✓ Accurately track hours for remote and hybrid workers
- ✓ Audit rounding practices for neutrality
- ✓ Train managers on wage and hour compliance
- ✓ Review travel and on-call practices regularly
- ✓ Keep records for 3 years (as required by FLSA)

BEST PRACTICES FOR IN-HOUSE COUNSEL

- **Annual FLSA audits** – Especially classification & rounding
- **Policy review & updates** – Especially for remote/hybrid environments
- **Train supervisors** – First line of defense against violations
- **Create whistleblower-safe complaint channels**
- **Monitor regulatory updates from DOL**
- **Consult with outside counsel for gray areas**

KEY TAKEAWAYS

- Misclassification remains the top risk
 - Off-the-clock and rounding violations are low-hanging liability
 - Remote work increases FLSA exposure
 - Travel & on-call pay still frequently misunderstood
 - Regular audits and proactive compliance save millions
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FINAL PORT OF CALL- QUESTIONS & ANSWERS

THANK YOU

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