



### A Brief History of the FLSA

 The FLSA was enacted in 1938
 It was created for a depression-era economy with a far-different work environment



 The last major revisions were in 1966
 Any efforts to "modernize" the FLSA have become politically contentious

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### **FLSA Basics**

- Minimum Wage
- Premium Pay For Overtime Work
- Recordkeeping, Including Accurate Time Records
- Limitations On The Employment Of Minors Under 18

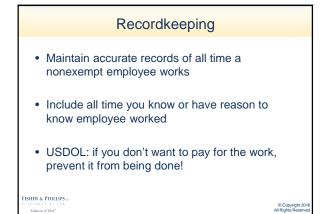
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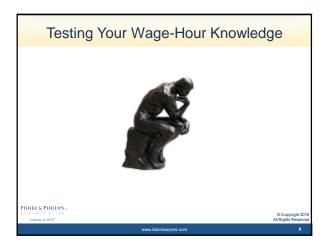
### Minimum Wage

- Federal minimum wage is currently \$7.25 per hour
  - Check additional state law requirements
  - More increases could be on the way
- Most deductions cannot cut into the minimum wage
  - Examples: tools, equipment, supplies, mileage, uniforms, shortages

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# Overtime • Non-exempt employees must receive 1.5 times the "regular" rate for over 40 hours • "Regular" rate is all pay divided by all hours the wages were paid to compensate • Includes items such as bonuses, commissions, incentive pay and other types of extra pay • Most deductions or payments cannot cut into overtime





# Hours Worked

Dali likes to start work every morning at 8 a.m., but has a hard time reading his clocks. Dali therefore instructs his staff to report to work at 7:45 a.m., so that he can be sure they are all there and ready to work at 8 a.m. Does the FLSA require the 15-minute difference to be treated as "hours worked"?

(a) No, because employers can round away up to 15 minutes

- (b) Yes, if staff actually starts work during those 15 minutes
- (c) No, because the 15 minutes is "de minimis"
- (d) Yes, even if staff does not actually do any work during those 15 minutes.

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## Hours Worked Nonexempt employees at the Factory are tired of punching in and out for their 30-minute lunch. Supervisor Warhol says that they don't have to,

Supervisor Warhol says that they don't have to, as long as they are OK with the Factory deducting a half-hour from their worktime every workday. The employees say this is fine with them. Is this a wage-hour problem?

- (a) Yes
- (b) Probably yes
- (c) No
- (d) Probably no

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TOMATO SOUP

### Hours Worked

Chris is an assistant to a performance artist. Once a month, Chris is on-call for eight hours a day for each day in a sevenday period in the event that his artist is inspired to create. Chris has to carry a cell phone and must be able to call-in within 30 minutes after being texted. He cannot drink alcoholic beverages while he is on-call, and he cannot leave the Midtown area. On average, Chris receives two texts in a seven-day on-call period and spends a total of two hours on the phone or on a computer dealing with the matters that prompted the texts. Is it likely that the idle time Chris spends on-call will be deemed to be FLSA "hours worked"?

(a) Yes (b) No (c) It depends

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### Hours Worked

Medici Inc. has a policy in its handbook saying that nonexempt employees are not permitted to do any overtime work without advance, wirtten approval. Medici Inc. is careful to apply this policy consistently so as not to discriminate against anyone. If a nonexempt employee performs work in violation of this policy, the work is recorded, but it is not treated as "hours worked" for purposes of meeting the FLSA's minimum-wage or overtime requirements.



- (a) This is proper under some circumstances
- (b) This is always proper where there is a clear, written policy
- (c) This is never proper

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# Wage Deductions

A Salaried Exempt Manager at the Louvre is cleaning the Venus de Milo when he accidentally knocks the statue over, breaking both of her arms. The Director of the Louvre is furious, and has the Manager sign an agreement whereby he'll pay for the damage done through regular payroll deductions. Are the deductions permissible?

- (a) Yes, because the Manager caused the damage
- Yes, because the Manager signed a written agreement to pay for the damage through payroll deductions
   Probably not

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### Overtime

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Every February 1, The Fisher Phillips Art Gallery pays a bonus to eligible nonexempt employees for the prior year if its performance exceeded certain standards. The standards are based on the Gallery's overall sales. Employees must be employed at year's end to qualify for a full or partial payment. The bonus is set at 2.5% of each employee's base pay for the prior year. The Gallery tells each new employee about the bonus, but it says that management reserves the right to withhold payment if an employee has violated a major company policy. Does the Gallery have to figure FLSA overtime on the bonus payments if the employee worked overtime during the prior year?

### (a) Yes

- (b) No, the bonus is discretionary
- (c) No, the bonus covers an entire year, rather than just a pay period
- (d) No, the bonus is tied to company performance, not individual performance.

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### USDOL's Independent Contractor Guidance

- The misclassification of workers as independent contractors results in less tax revenue to the federal government
- Under the FLSA, where a worker is "economically dependent" upon the company, the worker is most likely not an independent contractor
- USDOL: "In sum, most workers are employees under the FLSA's broad definitions."

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### **USDOL's Proposed Overtime Regulations**

- USDOL has proposed an increase in the salary basis of \$455 per week (or \$23,660 annualized) for "white collar" exempt employees
   Proposed salary level would be 40% of earnings for full-time salaried

  - nproyees Proposed salary level would be 40% of earnings for full-time salaried workers USDOL has proposed \$921 per week (\$47,982 annualized) But USDOL "projects" this to be \$970 per week (\$50,440 annualized) by the time the regulations are finalized Annual (and automatic) "updates" in salary level to maintain 40% threshold .
- USDOL has proposed an increase in the total-annual-compensation threshold of \$100,000 for "highly compensated" employees Proposed salary level would be 90% of "earnings" for full-time "salaried" •

  - This is projected to be a threshold of \$122,148 in 2016 Annual (and automatic) "updates" in level to maintain 90% threshold

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# **USDOL's Proposed Overtime Regulations**

- USDOL is considering whether "nondiscretionary bonuses and some incentive payments" may credit toward the salary level in some way
- USDOL is considering revisions to the "duties" ٠ tests
  - A 50% requirement for performing exempt work? Additional examples illustrating how the exemptions apply to particular occupations •
- · USDOL intends to issue final regulations by July 2016.

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