

THE JOURNAL RECORD

Gavel to Gavel: Employers should heed FLSA rules



Diana Tate Vermeire

The Fair Labor Standards Act can be broken down into three basic components: classification of employees, establishing the workweek and calculation of overtime. Understanding the overarching concepts for these areas is important for employers to remain compliant with the law's requirements.

Classifying employees under FLSA is a fact-intensive determination that must be made on a case-by-case basis. A proper classification must be based on the functions/duties an employee actually performs in the day-to-day job as opposed to what her job description says her duties are.

When determining if an employee is exempt or non-exempt from FLSA protection, there are six primary exemptions that employers may consider: executive, administrative, professional, computer-related occupations, outside sales and highly compensated employee. Each of these exemptions carries specific criteria as specified by the statute.

Because employees are entitled to overtime pay for work performed in excess of 40 hours per workweek, defining a workweek is essential for the proper calculation of overtime. By law, a workweek is defined as 168 hours over seven consecutive 24-hour periods.

While a workweek does not have to coincide to a calendar week, it must remain fixed. Further, a business can establish a companywide workweek that covers the entire company and all employees or it can fix separate workweeks for groups of employees. Also, there is no limit to the number of work hours an employer can require in any week.

When considering calculations for overtime, it's important to note that under the law overtime begins only after 40 hours, even if a company's workweek consists of fewer hours. Voluntary work and interrupted meal times count for the purposes of determining whether overtime pay is due, but vacation time, sick time or paid time off do not, unless dictated by an employer's policy.

Overtime pay is not required simply because an employee worked on a weekend, holiday or regular time off. It should be noted that a policy requiring employer approval for overtime work does not prevent an employee from being entitled to overtime pay.

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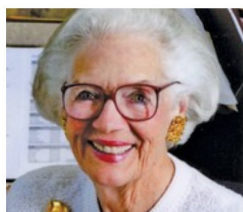
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