Fair Labor Standards Act (FLSA)
Legal Compliance Refresher

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UHRS
- Benefits
- Classification & Salary
- Employee Relations
- Employment
- HR Systems
- Organizational Development
- Personnel Policies
- Worker’s Compensation

University Compensation Services & FLSA
- Train Managers & Supervisors
- Review & Update University Policies
- Classify Positions as Exempt or Non-exempt
- Research & Resolve Potential Violations
Fair Labor Standards Act (FLSA) & Legal Compliance

- FLSA
- Wage & Hours Laws
- IU Policies & Procedures
- IU Employees
Fair Labor Standards Act (FLSA) & Supervisors

- If You Directly Supervise Employees
- If You Manage Supervisors
- If You are Responsible for Developing Position Descriptions
- If You are Responsible for Approving Timesheets
- If You are Responsible for Payroll
FLSA Violations at IU

May 2000, DOL provided IU with notice:

“If at any time in the future your firm (IU) is found to have violated the monetary provision of FLSA, it will be subject to such penalties.”

Hours worked were reconstructed and paid

- Back wages up to 2 years

Future violations could include (funded by RC)

- Back wages up to 3 years, legal fees and court costs.
- Criminal penalties for willful violation can result in prosecution & $10,000 fine.
- Civil penalties of up to $1,100 for each violation.
Overview of Federal Law

- Establishes Minimum Wage
- Overtime Pay
- Record Keeping
- Required Posters
- Child Labor Requirements

U.S. Department of Labor (DOL), Wage & Hour Office

- Administers act and investigates complaints
  - Burden of proof is on employer
- www.dol.gov – regulations, file complaints, etc.
FLSA Exemption Tests
(From minimum wage and overtime)

Salary Requirements
- Salaried
  - Paid for job not hours worked
  - Predetermined compensation/pay period not subject to deductions due to quality or quantity
- Highly Compensated - $100,000 or more
- $455/week (or $27.63/hour – computer employees)

Duties Tests
- Executive
- Administrative or Academic Instruction
- Professional – Learned & Creative
- Outside Sales
- Computer
FLSA Exemption – Primary Duty

Applies to position based on responsibilities

- Principal or most important duties
- Actual duties versus described duties

Considerations include, but are not limited to:

- Discretion and independent judgment in significant matters
- Amount of time spent performing exempt work
- Relative freedom from direct supervision

Positions assigned more than 50% of exempt work generally satisfy the primary duty requirement
Exempt vs. Non-exempt Positions

**Exempt Positions**

- Salary based compensation
- Does not track hours worked
- Does not earn overtime
- Limitations on deductions from daily/weekly pay

**Non-Exempt Positions**

- Hourly based compensation
- Must track all hours worked
- Eligible for overtime
Non-exempt IU Employees

- Professional Staff – PAO
  - Primary duties do not satisfy FLSA duties test

- Professional Staff – PAU
  - FLSA salary requirement not met

- Support and Clerical Staff

- Service Staff

- General Supervisors – GS

- Hourly Employees and Student Hourly Employees
Recording Keeping

- **Non-exempt Employees**
  - ✓ Complete timesheets daily/weekly
  - ✓ Record hours worked, compensatory time & time-off

- **Managers**
  - ✓ Approve overtime in advance
  - ✓ Verify hours worked and time-off
  - ✓ Approve timesheet bi-weekly

- **Department**
  - ✓ Retain records
Compensable Time

All time from the start of the first principal activity of the day until the end of the last principal activity of the day.

- Principal activities = the “activities an employee is employed to perform”
  - Includes activities that are integral and indispensable to performing the principle activities.

Suffer or Permit to Work

- Work is being performed in order to “permit” its performance.
- Employer requires or allows employees to work.

Time spent preparing and finishing up

- Putting on safety gear, cleaning equipment.
- Filing reports, letters, documents.

Waiting time

- Employee is unable to use the time effectively for his or her own purposes; and
- Time is controlled by the employer.
Overtime Pay

Paid overtime for **hours worked** over 40 in the work week including:

- Unauthorized hours when work was performed.
- Employee cannot waive or volunteer to work extra hours with no pay.

Calculating Overtime Rate

- Hours worked > 40 in a work week.
  - IU work week begins and ends at midnight on Saturday.
- Paid at 1.5 times “regular rate” or equivalent compensatory time (comp time).
- Payroll system automatically calculates overtime based on a weighted average of all pay rates if an employee has multiple jobs at IU.
Compensatory Time

Compensatory time off (comp time) is paid time off the job that is earned and accrued by an employee instead of immediate cash payment for working overtime hours.

- Limited to Public Agencies.
- At a rate of not less than one and one-half hours for each overtime hour worked.
- Supervisors should allow use of accumulated comp time whenever it is mutually agreeable.

Supervisor must communicate to an employee how overtime will be compensated.
- The communication must take place prior to any overtime hours worked.

Maximum accumulation per IU policy
- Support and Service Staff – 80 hours
- Professional (PAO) – 160 hours
Multiple Jobs at IU

IU is one employer

Employees must be paid for all hours worked.
  - Must receive a bona-fide rate for each job.

Overtime pay for total hours worked over 40 in a work week.
  - Weighted average of all pay rates.

Valid Multiple Job Combinations Chart
  - Hourly, Service and Support Staff
  - Non-exempt Professional Staff (PAO & PAU)
  - Exempt Professional Staff (PAE)
    - Hours worked in hourly position should not exceed 10 – 15 hours per work week.

Multiple job chart:  http://sos.uhrs.indiana.edu/ValidJobCombinations.pdf
Meal and Rest Periods

FLSA does not require meal and rest periods, but does provide regulations if an employer provides meal and rest periods.

Meal Periods

- Meal Periods are not hours worked when the employee is relieved of duties for the purpose of eating a meal.

Rest Periods

- Rest Periods of short duration (5 to 20 minutes) are counted as hours worked.

IU Policy

- Paid rest period – 15 minutes per half day worked for Support & Service Staff.
- Unpaid meal period – 1 hour per full day worked.

*Departments may establish a different schedule*
Travel Time

Home to Work (Normal Commute)
- Before and after regular workday not compensable.

Home to Work on a Special One Day Assignment
- Traveling to and from another city or job location in excess of normal commute is work time.

Overnight Travel – Paid Work Time
- Union Covered Staff
  - All travel time except breaks for meals and time at destination when free to come and go.
- PAO, PAU and Non Union Covered Staff
  - Time driving in excess of normal commute.
  - Time performing work while traveling.
  - Travel time during normal work hours.
  - Travel time on a day off during regularly scheduled work hours.

Exceptions: time traveling as a passenger, breaks for meals and time at destination when free to come and go.
Training, Volunteers & Unpaid Internships

Training Time

- Conference, meeting or seminar
  - Attendance is during normal work hours.
  - Attendance is required by the University.
  - Event is directly job-related.
  - University work is performed.

- Meal breaks, sleeping and voluntary social events are not work time.

Volunteer Time

- Services must be totally unrelated to employee’s position.
- Services must be offered freely without pressure or coercion.
- There should be no promise or expectation of compensation for volunteer services.

Unpaid Internships

- Similar to training which would be given in an educational environment
- For the benefit of the intern
- Does not displace regular employees, but works under close supervision of existing staff
- The department that provides the training derives no immediate advantage from the activities of the intern; and on occasions its operations may actually be impeded
- The intern is not necessarily entitled to a job at the conclusion of the internship
- The department and the intern understand that the intern is not entitled to wages for the time spent in the internship
Examples

1. Charlie is a non-exempt employee. Due to an upcoming project deadline he decides to work on items related to the project over the weekend. His Supervisor did not request or approve Charlie’s weekend work.
   
   **Would the time spent over the weekend be considered compensable?**

2. Samantha works 40 hour per week. Last pay period, Samantha worked 43 hours in Week 1 and 39 hours in Week 2 (82 hours in the pay period and an average of 41 hours per week).
   
   **Is Samantha eligible for overtime? If yes, how many hours?**

3. An employee in a Support Staff position was hired to teach a class outside of normal working hours. The employee signed a contract that promised payment of a flat dollar amount for teaching the course.
   
   **What are the potential issues?**

4. Adam has two Hourly jobs. He is employed with two different departments. He updates web pages for one department at $10/hour and works as a cashier for the other at $8/hour.
   
   **If Adam works 25 hours updating web pages and then puts in an additional 18 hours in the same work week as a cashier, is he entitled to over-time?**
   
   **Which department is liable to pay the over-time?**
5. Randy’s work schedule is from 8:00 AM - 4:30 PM with a 30 minute unpaid lunch break. However, he worked through his lunch every day this week without his supervisor’s authorization. Randy’s supervisor is upset.

Which of the following are options for Randy’s supervisor?

- Alter Randy’s time records to deduct 30 minutes of time each day.
- Disapprove over-time pay and have Randy take off 2.5 hours next week.
- Pay the over-time and make sure Randy doesn’t work during lunch in the future by following correct disciplinary steps.

6. Erin, employed in a PAO position, typically sits at her desk during her lunch break and often answers work related emails and phone calls.

Should Erin be compensated for her lunch break?

7. Julie, an Office Services Assistant, performs a variety of administrative duties for her department. One weekend she offers to help with a fundraiser sponsored by the department.

If she performs the same or similar type of work, such as developing & copying flyers for the event, should she be paid?

If she performs work outside of her normal duties, such as parking cars, should she be paid?
Summary – Common FLSA Violations

Employees in non-exempt positions not recording and receiving pay for all hours worked
  ▪ Supervisors are responsible for approving time records and ensuring employees are paid for all time worked.

Non-exempt positions misclassified as exempt
  ▪ Position descriptions and classifications need to be current.

Employees working side-by-side doing the same work but their positions are classified differently
  ▪ Position descriptions need to be updated if duties change and classifications reviewed.

Employees in non-exempt positions paid a flat dollar amount for work in another IU job.
  ▪ All work by employees in primary non-exempt positions must be paid hourly.
  ▪ Total hours worked over 40 are eligible for overtime pay.
Additional Resources

- HR Representatives/Campus HR Office

- Online Resources
  - University HR Services [http://hr.iu.edu](http://hr.iu.edu)
  - University HR Services – Compliance Resources [http://www.hr.iu.edu/policies/compliance.htm](http://www.hr.iu.edu/policies/compliance.htm)
  - Office of Financial Management Services – Payroll [http://www.fms.indiana.edu/payroll](http://www.fms.indiana.edu/payroll)
  - U.S. DOL – Wage and Hour Division [www.dol.gov/whd](http://www.dol.gov/whd)