Working Hours and the FLSA: Hot Topics for Departmental Business Staff

CSBA Spring Workshop

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Today’s Presentation

• FLSA Basics
• Exempt vs. Nonexempt
  – Salary Basis
  – Job Duties
• Working Hours Hot Topics
  – Exempt employees and working hours
  – Nonexempt employees and working hours
  – Breaks
  – Dual Employment
  – On-call
  – Volunteers (interns and otherwise)
Why do you need to know this information?

- There are many misconceptions about what is required by law due to the practices of different employers and varying state laws on these issues.
- So many transactions happen at the department level, it is important for you to recognize when something doesn’t seem quite right.
- In case of a Department of Labor (DOL) audit, the A&M department may be the first unit contacted by the investigator.
- Working time issues can get complex, so it is important to know when to seek guidance.
Fair Labor Standards Act (FLSA) Basics

- Record Keeping Requirements
- Minimum Wage
- Overtime Exemptions
- Overtime and Hours of Work
- Child Labor Restrictions
Exempt vs. Nonexempt

**Exempt** employees are:
- Paid on a salary basis
- Not eligible for overtime

**Nonexempt** employees are:
- Paid on an hourly basis
- Eligible for overtime pay or compensatory time off for hours worked over 40 in a work week
Exempt vs. Nonexempt

• An exempt employee is not subject to the overtime or minimum wage provisions of the law.

• Exemption status is determined by HR based on the following:
  – Salary Basis Test (guaranteed salary)
  – Job duties and responsibilities
Exempt vs. Nonexempt: Salary Basis

• Minimum salary for exemption:
  – $455 per week, $1,971.66 per month, or $23,660 per year

• Salary must be a pre-determined amount:
  – Pay cannot vary based on quantity or quality of work performed---except for certain situations specified in the law which allow for deductions from an exempt employee’s regular salary.

• HR monitors salary minimums on a monthly basis to assure that all exempt employees have pay levels at the required minimum
Exempt vs. Nonexempt: Job Duties

- HR reviews job duties on position description to determine exemption category
- Exemption category is assigned by title code, although there are exceptions in which a specific position may have a different exemption status or category
- Exempt or nonexempt status is shown on HR website in title lists
- HR wants hiring supervisors and department HR Liaisons to have some knowledge of exempt vs. nonexempt in order to recognize when a position may need HR review
Exempt vs. Nonexempt: Job Duties

Categories of Exempt Positions:

• Executive
• Administrative
• Professional
  – Learned
  – Creative
• Computer
• Highly-compensated
Special Categories

- Graduate Assistant positions at Texas A&M
  - Graduate Research Assistants (GARs) are considered “non-covered” based on 1994 opinion letter and are paid *monthly*
  - Graduate Teaching Assistants (GATs) are *exempt* as teachers, do not have to meet the minimum salary and are paid *monthly*
  - Graduate Assistants Non-Teaching (GANTs) are *nonexempt* and are paid *hourly*

- Graduate Hall Directors (Dormitory) are considered “non-covered”, have a reasonable agreement in place that documents their working hours expectations and are paid *monthly*
Exempt (Monthly Paid) Employees and Working Hours

• Working hours expectations for exempt employees:
  – State law and System regulation require 40 hours of work for full-time budgeted employees
  – System regulation includes flexibility for exempt employees to work an established flexible schedule resulting in 80 work hours over a two-week period
  – Departments and divisions must consider the needs of the department’s operations/services when addressing and approving flexible work arrangements
  – Exempt employees do not earn overtime pay or federal compensatory time for hours worked over 40 in a workweek
  – Deductions are allowed in specific circumstances, including deductions due to an established leave plan under the public accountability provision
Nonexempt (Hourly Paid) Employees and Working Hours

- Working hours expectations for nonexempt employees:
  - State law and System regulation require 40 hours of work for full-time budgeted employees
  - Nonexempt employees account for hours worked and other paid or unpaid leave in 15 minute increments through timekeeping systems
  - Employees cannot waive overtime rights:
    • If the supervisor has reasonable knowledge that the work was performed, it must be counted as working time
    • An employee cannot volunteer to do his or her own job
  - Variations exist on campus in terms of overtime worked and paid, compensatory time given in lieu of overtime, flexibility of work schedules, allowed breaks, etc.
Breaks (Other than Meal Breaks)

• Breaks are:
  – Not required under federal law
  – Not required under State of Texas law
• If given, “rest periods” of 5 to 20 minutes must be counted as work time
• These brief rest periods are considered beneficial to both the employee and the employer
• Variations exist on campus: there is not a campus-wide rule, procedure or practice regarding breaks
• Departments can implement their own break policies as long as the federal law is followed
Meal Breaks

• Meal breaks must meet three conditions to be unpaid:
  – At least 30 minutes
  – Relieved of all duties
  – Free to leave the duty post

• If employees take meal breaks at their desks, be careful that the time is not being spent primarily for the employer’s benefit (such as answering the phone, responding to work-related email or other duties).
Dual Employment

- Occurs when the same person is working in two nonexempt A&M positions (budgeted, wage)
- Hours must be combined for overtime unless second job is both:
  - Occasional & sporadic, and
  - In a substantially different capacity
- Awareness of employee’s secondary job is critical to compliance efforts
- Departments must agree on how overtime hours will be paid
- See SAP online:
  - http://rules-saps.tamu.edu/PDFs/31.01.99.M0.02.pdf
- SAP and dual employment form being reviewed for potential revision
On-Call

- FLSA has guidelines to be applied on case-by-case basis
- Factors to be considered:
  - Geographical restrictions
  - Required response time
  - Frequency of calls during shift
  - Use of a pager/cell phone
  - Extent personal activities are pursued during shift
  - Provisions of employment agreement
  - Degree to which employees can trade on-call duties
On-Call (continued)

• Varied practices across campus
  – Some have a guarantee of 1 or 3 hours paid per on-call shift
  – Most have some guaranteed work amount per call-back, such as 1 hour or more
  – Any work exceeding the guaranteed amount is counted as work to the nearest quarter hour

• Departmental on-call policies must be reviewed by HR
Volunteers (Interns and Other)

- Employees cannot volunteer to do their own jobs
- Non-student volunteers must be for civic, humanitarian or charitable reasons
- Student volunteer interns must be getting course credit for the internship
- Volunteer waivers are online at:
  - Student: http://www.tamus.edu/offices/hr/forms/205.pdf
  - Other: http://www.tamus.edu/offices/hr/forms/206.pdf
Final Thoughts

• When in doubt – review online resources or call HR (and/or Payroll) to get additional guidance

• It is better to proactively identify and correct a potential FLSA compliance issue then hope that a DOL audit doesn’t happen

• Do your part, as appropriate for your position, to help supervisors in your department understand the applicable laws and rules
For More Information

• FLSA FAQs are now on Aggie Answers at http://texasamucfo.custhelp.com


• More about compensatory time can be found at http://employees.tamu.edu/employees/howdy/notices.aspx#Compensatory

• “Time off Issues” online training courses available on HR Connect at https://sso.tamu.edu/ (see instructions at http://employees.tamu.edu/docs/benefits/leave/579TimeOff.pdf)
Questions?

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Thank you!