

# CFMGMA

## *HR and Employment Law: Year in Review & What's New for 2016*



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*Presented by: Rachel Gebaide & Tim Haughee*

*Employment Law Blog: [www.theemployerlawyers.com](http://www.theemployerlawyers.com)*

# U.S. SUPREME COURT: NEW TEST FOR ACCOMMODATING WORK RESTRICTIONS BASED ON PREGNANCY



# Young vs. UPS

Plaintiff: Peggy Young



Defendant: UPS



# Young vs. UPS

## Facts:

- Young was a pickup and delivery driver
- Became pregnant in 2006
- Doctor restrictions:
  - No lifting more than 20 pounds during first 20 weeks
  - No lifting more than 10 pounds for remaining weeks
- But, UPS required drivers to lift parcels weighing up to 70 pounds
- Young wanted light duty accommodation. At the time, UPS accommodated:
  - (1) Drivers who were injured on the job
  - (2) Drivers who lost their DOT certifications
  - (3) Drivers who suffered from a disability under the ADA
- UPS refused accommodation and placed her on leave w/o pay, and eventually lost her health insurance coverage
- Sued UPS in federal court for violation of Pregnancy Discrimination Act

# Young vs. UPS

## The Applicable Law:

### **Pregnancy Discrimination Act:**

- Prohibits discrimination on the basis of pregnancy, childbirth, and related medical conditions
- Also requires that employers treat pregnant women “the same for all employment-related purposes . . . as other persons not so affected but similar in their ability or inability to work.”



# Young vs. UPS

## Issue:

Does the Pregnancy Discrimination Act (PDA) require employers to offer workplace accommodations to pregnant employees to the same extent the employer offers accommodations to non-pregnant employees?

# Young vs. UPS

## Court's Opinion:

### Three-Part Burden-Shifting Analysis:

**First**, a pregnant worker must show – on an initial basis – that her employer unlawfully discriminated against her on the basis of her pregnancy by demonstrating:

- (1) that she is a pregnant worker,
- (2) that she sought an accommodation from her employer as it relates to her pregnancy,
- (3) that the employer did not accommodate her, and
- (4) that the employer accommodated others “similar in their ability or inability to work.

# Young vs. UPS

## Court's Opinion:

### Three-Part Burden-Shifting Analysis:

**Second**, it is then up to the employer to justify its refusal to accommodate the pregnant worker based on one or more “legitimate, nondiscriminatory” reasons.

\*\*\*The reason, however, normally cannot consist simply of a claim that it is more expensive or less convenient to add pregnant women to the category of those employees whom the employer accommodates.

# Young vs. UPS

## Court's Opinion:

### Three-Part Burden-Shifting Analysis:

**Third**, if the employer can justify its decision, the pregnant worker has an opportunity to show that the employer's reasoning was in fact "pretextual."

- In doing so, the pregnant worker may provide evidence that:
  - (i) the employer's policies impose a significant burden on pregnant workers, and
  - (ii) the employer's "legitimate, nondiscriminatory" reasons are not sufficiently strong to justify the burden but instead give rise to an inference of pregnancy discrimination.
- The evidence can include facts showing that the employer accommodates a large percentage of non-pregnant workers while failing to accommodate a large percentage of pregnant workers.

# Young vs. UPS

## Impact of Opinion:

- On the one hand, the Court's decision in Young provides some additional guidance for employers to use in making accommodation decisions with respect to its pregnant workers.
- On the other hand, because the Court's framework does not provide employers with a clear rule, employers should exercise caution when making accommodation decisions that affect pregnant employees.

# Young vs. UPS

## What Should Your Practice Do?:

- Ensure that light duty policies that apply to some categories of employees, such as those with on-the-job injuries, apply also to pregnant women.
- Take a good look at other workplace policies to ensure compliance with both the Pregnancy Discrimination Act and the Americans with Disabilities Act, including accommodation, leave, scheduling, and attendance policies.
- Ensure the Practice has a lactation policy for breastfeeding mothers.
  - FLSA already requires employers to provide unpaid break time for mothers to express breast milk during baby's first year
  - Employers must provide a private space other than a bathroom
  - Employers may be excused if compliance would pose undue hardship
- Train supervisors about how to recognize and respond to pregnant employees' need for accommodations.

# National Labor Relations Board

Coming soon to a non-union workplace near you!



# National Labor Relations Act

The NLRA guarantees the right of employees:

- To **organize and bargain collectively** with their employers, and
- To engage in other **protected concerted activity**.

Employees covered\* by the NLRA are protected from certain types of employer and union misconduct.

Who is covered? Almost everyone.

Who is not covered?

- public-sector employees
- agricultural and domestic workers
- independent contractors
- workers employed by a parent or spouse
- employees of air and rail carriers covered by the Railway Labor Act, and
- supervisors (although supervisors that have been discriminated against for refusing to violate the NLRA may be covered)

# National Labor Relations Act

## National Labor Relations Board enforces the NLRA

- **“Employee Rights Under the NLRA”** Poster Requirement
- Federal Court: NLRB exceeded its rulemaking authority when it issued the poster regulation.
- Regulation not repealed by NLRB -- but not on appeal either.

*The National Labor Relations Board (NLRB) has decided not to seek Supreme Court review of two U.S. Court of Appeals decisions invalidating the NLRB’s Notice Posting Rule, which would have required most private sector employers to post a notice of employee rights in the workplace.*

*The NLRB remains committed to ensuring that workers, businesses and labor organizations are informed of their rights and obligations under the National Labor Relations Act. Therefore, the NLRB will continue its national outreach program to educate the American public about the statute.*

- NLRB and many workplaces keep the poster up.
- Often included on “all in one” posters.

# National Labor Relations Act

## Section 7 Rights

- Organize a union to negotiate with your employer concerning your wages, hours, and other terms and conditions of employment.
- Form, join or assist a union.
- Bargain collectively through representatives of employees' own choosing for a contract with your employer setting your wages, benefits, hours, and other working conditions.
- **Discuss your terms and conditions of employment** or union organizing **with your co-workers** or a union.
- **Take action with one or more co-workers to improve your working conditions by, among other means, raising work-related complaints directly with your employer or with a government agency, and seeking help from a union.**
- Strike and picket, depending on the purpose or means of the strike or the picketing.
- Choose not to do any of these activities, including joining or remaining a member of a union.

# National Labor Relations Act

## Policies and Practices Under NLRB Scrutiny

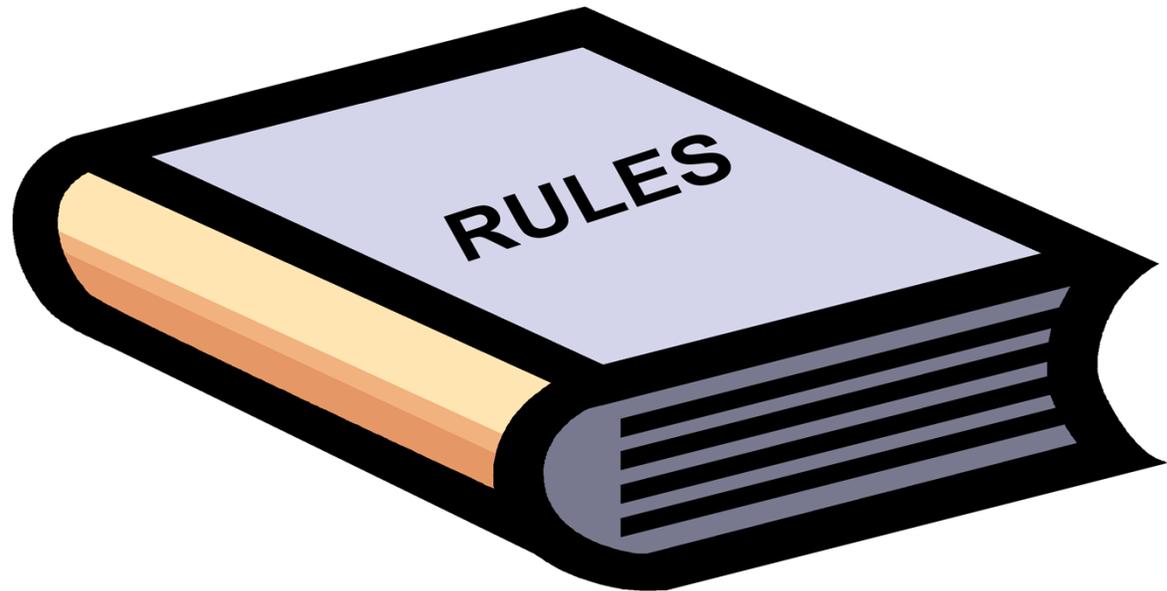
Employee Handbook Acknowledgments

Statements of “At Will” Employment

Non-Disparagement Policies

Social Media Policies

Confidentiality Policies



# National Labor Relations Act

## Employee Handbook Acknowledgements

### Statements of “At Will” Employment

Nothing contained in this Handbook is intended to nor does it create a contract of employment for any specific duration. I understand and agree that my employment can be terminated with or without cause and with or without notice at any time at the option of either me or the practice. I understand that no employee of ABC Medical Group has the authority to enter into any agreement for employment for any specified period of time or to make any agreement contrary to the foregoing **and that any such agreement for employment for any specific duration must be in writing and signed by me and the President of ABC Medical Group.**

Language in bold is considered an unfair labor practice: interference with Section 7 right to bargain collectively, among other rights.

# National Labor Relations Act



## Social Media Policies and Non-Disparagement Policies

NLRB is scrutinizing employment policies for rules that “would reasonably tend to chill employees in the exercise of their Section 7 rights.”

Example 1:

Use technology appropriately

\* \* \* \* \*

If you enjoy blogging or using online social networking sites such as Facebook and YouTube, (otherwise known as Consumer Generated Media, or CGM) please note that there are guidelines to follow if you plan to mention [Employer] or your employment with [Employer] in these online vehicles. . .

- **Don't release confidential guest, team member or company information . . . .**

Language in bold is considered an unfair labor practice: interference with Section 7 right to engage in protected concerted activity.

# National Labor Relations Act

## Social Media Policies and Non-Disparagement Policies

Example 2:

- Adopt a friendly tone when engaging online. Don't pick fights. Social media is about conversations.
- When engaging with others online, adopt a warm and friendly tone that will encourage others to respond to your postings and join your conversation.
- Remember to communicate in a professional tone. . . . This includes not only the obvious (no ethnic slurs, personal insults, obscenity, etc.) but also proper consideration of privacy and topics that may be considered objectionable or inflammatory—such as politics and religion.
- Don't make any comments about [Employer's] customers, suppliers or competitors that might be considered defamatory.

Interference with Section 7 rights!

# National Labor Relations Act

## **Social Media Policies and Non-Disparagement Policies**

Example 3:

Non-disparagement. The Practice has internal procedures for complaints and disputes to be addressed and resolved. You agree that you will not (nor will you cause or cooperate with others to) publicly criticize, ridicule, disparage or defame the Practice or its services, policies, physicians, administrators, or employees, with or through any written or oral statement or image (including, but not limited to, any statements made via websites, blogs, postings to the internet, or emails and whether or not they are made anonymously or through the use of a pseudonym). You agree to provide full cooperation and assistance in assisting the Practice to investigate such statements if the Practice reasonably believes that you are the source of the statements. The foregoing does not apply to statutorily privileged statements made to governmental or law enforcement agencies.

Interference with Section 7 rights!

# National Labor Relations Act

## Social Media Policies and Non-Disparagement Policies

What can we require of our employees?

- Be clear that you are speaking for yourself and not the practice.
- Be honest and accurate.
- Use good judgment and exercise personal responsibility.
- Take your responsibility as stewards of personal information to heart.
- As a company, [Employer] trusts—and expects—you to exercise personal responsibility whenever you participate in social media or other online activities.
- Remember that there can be consequences to your actions in the social media world—both internally, if your comments violate [Employer] policies, and with outside individuals and/or entities.
- If you're about to publish, respond or engage in something that makes you even the slightest bit uncomfortable, don't do it.

# National Labor Relations Act



## Confidentiality Policies

Policy:

- Employee agrees that she/he will not disclose Confidential Information to any third party.
- Employee agrees that, during employment with Employer and at any time thereafter:
  - You will comply with all security precautions and measures of Employer that are intended to maintain the confidentiality of its Confidential Information.
  - You agree that you will not make copies, summaries, or extracts of Confidential Information for personal use, nor will you remove any Confidential Information from Employer's place of business unless authorized by Employer.
  - You agree that you will not disclose any Confidential Information concerning Employer or its affiliates which could adversely affect the practice's image, reputation or value.
  - You also agree not to hinder or sabotage Employer in any way, including on Social Media.

# National Labor Relations Act



## Confidentiality Policies

Problem #1: Definition of Confidential Information included “All information regarding Employer’s employees and its related human resources information, including all manuals.”

Problem #2: Prohibited disclosure of Confidential Information concerning Employer which could adversely affect the practice’s image, reputation or value.

Problem #3: Prohibition on hindering or sabotaging Employer in any way, including on Social Media.

NLRB: Overbroad confidentiality policy interferes with Section 7 right to engage in protected concerted activity with respect to, among other matters, wages and other terms and conditions of employment. Policy tends to chill protected speech and activity.

# National Labor Relations Act



## Confidentiality Policies

### Policy on Communicating Confidential Information

You also need to protect confidential information when you communicate it. Here are some examples of rules that you need to follow:

- Make sure someone needs to know. You should never share confidential information with another team member unless they have a need to know the information to do their job. If you need to share confidential information with someone outside the company, confirm there is proper authorization to do so. If you are unsure, talk to your supervisor.
- Develop a healthy suspicion. Don't let anyone trick you into disclosing confidential information. Be suspicious if asked to ignore identification procedures.
- Watch what you say. Don't have conversations regarding confidential information in the Breakroom or in any other open area. Never discuss confidential information at home or in public areas.

Unauthorized access to confidential information: If you believe there may have been unauthorized access to confidential information or that confidential information may have been misused, it is your responsibility to report that information. . . .

# National Labor Relations Act



## Confidentiality Policies

Policy on Communicating Confidential Information (cont'd)

We're serious about the appropriate use, storage and communication of confidential information.

A violation of [Employer] policies regarding confidential information will result in corrective action, up to and including termination. You also may be subject to legal action, including criminal prosecution. The company also reserves the right to take any other action it believes is appropriate.

\* A lot of interference with Section 7 rights to engage in protected concerted activity.

# National Labor Relations Act



## Confidentiality Policies

### Policy on Communicating Confidential Information (cont'd)

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\* A lot of interference with Section 7 rights to engage in protected concerted activity.

# National Labor Relations Act

## Social Media Activities Protected Under NLRA

- Employees complaining to each other via Facebook (using profanity) about employer's tax withholding practices.
- A commission-paid employee posting pictures and commentary on Facebook criticizing the "cheap" manner in which employer conducted a sales event.
- An employee posting negative comments on Facebook about a supervisor ("scumbag") who was investigating a customer complaint against the employee.
- Multiple employees posting comments on Facebook criticizing the work performance of their coworkers and discussing staffing level problems.

# National Labor Relations Act

## Social Media Activities Not Protected under NLRA:

- Employee complained on senator's Facebook page that employer paid low wages and lacked sufficient equipment.
- Post not discussed with coworkers
- Employee did not try to raise the issue with management/did not expect senator to resolve the problem
- None of coworkers had met or organized any group action regarding the subject of the employee's comments.
- Complaining by yourself about your employer to a third party that is not a union has never been protected activity.

# National Labor Relations Act

## Social Media Activities Not Protected under NLRA:

- Reporter/employee complained via Twitter regarding editors, made negative comments about homicides (part of job); and criticized local TV station.
- Twitter posts did not relate to terms/conditions of employment
- Reporter did not seek to involve coworkers

# National Labor Relations Act

## **200 East 81<sup>st</sup> Restaurant Corp. d/b/a Beyoglu and Marjan Arsovski** **(July 2015)**

- Employee filed FLSA lawsuit “on behalf of himself and other similarly situated employees.”
- No other plaintiff was named.
- Employment terminated.
- Employee filed a charge with the NLRB alleging an unfair labor practice.
- NLRB had long held that the filing of a lawsuit by a group of employee is protected activity.
- In *Beyoglu*, the NLRB held that “a single employee who files a lawsuit ostensibly on behalf of himself and other employees is engaged in protected concerted activity.” (emphasis added)

# National Labor Relations Act

## Joint Employer Liability

### Browning-Ferris (2015)

- NLRB determined Browning-Ferris should be considered a "joint employer" with its staffing agency.
- As a result, the company can be pulled into collective bargaining negotiations with those employees and held liable for any labor violations committed against them.

### McDonald's (2015)

- NLRB allowing complaint against McDonalds USA and franchisee as joint employers based on McDonald's control over the labor relations policies of its franchisees.

# WAGE & HOUR MATTERS: IS YOUR PRACTICE COMPLIANT?



# How We Got Here: The FLSA

## The Fair Labor Standards Act (FLSA) of 1938



# How We Got Here: The FLSA

- The Fair Labor Standards Act of 1938
  - Introduced the 40-hour workweek
  - Established a national minimum wage
  - Guaranteed overtime pay
  - Prohibited most child labor
- Applies to nearly all employers

# To Pay or Not to Pay:

## FLSA Compliance

### FLSA Exemptions:

- Some employees are exempt from OT pay and minimum wage provisions of the FLSA.
- Exemptions narrowly construed against employer.

### Default:

Everyone is non-exempt and eligible for OT.

The burden is on the employer to prove exempt status.

PAY PERIOD ENDING

**No.**

NAME						NUMBER OF EXEMPTIONS	
R.T. HOURS	RATE	AMOUNT	F.I.C.A.				
			FED. WITH. TAX		TOTAL EARNINGS		
O.T. HOURS	RATE	AMOUNT	STATE WITH. TAX		TOTAL DEDUCTIONS		
HOURS		AMOUNT	STATE DIS.		BALANCE DUE		
			STATE U.C.				
			CITY WITH. TAX				
			OTHER				
Day						Hours	
1							
2							
3							
4							
5							
6							
7							
	IN	OUT	IN	OUT	IN	OUT	
TOTAL HOURS SHOWN IS CORRECT.						Weekly Total	
ATR 85111							
P/N: 09-1130-000							
Acroprint Time Recorder Co., Raleigh, NC							

# To Pay or Not to Pay:

## FLSA Compliance

### Common Exemptions (based on “primary duties”):

- Executive
- Administrative
- Professional
- Computer-Related

### Salary basis:

- \$455/week (**this number may change in 2016!**)
- \$27.63/hour option ONLY for computer professionals
- Does not apply to doctors, lawyers, teachers, or outside sales employees



# To Pay or Not to Pay:

## FLSA Compliance

### Executive

#### Primary Duties Test:

- The employee's primary duty must be **managing the enterprise**, or managing a customarily recognized department or subdivision of the Practice;
- The employee must **customarily and regularly** direct the work of at least **two or more other full-time employees** or their equivalent;
- 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; and
- The employee must be paid **\$455/week on a salary basis**.

# To Pay or Not to Pay:

## FLSA Compliance

### Administrative

#### Primary Duties Test:

- 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 Practice or the Practice's customers;
- The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance; and
- The employee must be paid \$455/week on a salary (or fee) basis.

# To Pay or Not to Pay:

## FLSA Compliance

### Professional

#### Primary Duties Test:

- 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**;
- The advanced knowledge must be **customarily acquired by a prolonged course of specialized intellectual instruction**; and
- The employee must be paid **\$455/week on a salary (or fee) basis**.

# To Pay or Not to Pay:

## FLSA Compliance

### Professional

#### Professional Exemption (Medical Field)

Yes:

- **Physicians** (salary basis not required)

Department of Labor: “The term ‘physicians’ includes doctors including general practitioners and specialists, osteopathic physicians ..., podiatrists, dentists ..., and optometrists ...”

# To Pay or Not to Pay:

## FLSA Compliance

### Professional

- Other (salary basis required)
  - Physicians Assistants -- Must have successfully completed four academic years of pre-professional and professional study, including graduation from a physician assistant program accredited by the Accreditation Review Commission on Education for the Physician Assistant, and be certified by the National Commission on Certification of Physician Assistants.
  - Registered Nurse -- Must be registered by the appropriate State examining board.
  - Registered or Certified Medical Technologists -- Must have successfully completed three academic years of pre-professional study in an accredited college or university plus a fourth year of professional course work in a school of medical technology approved by the Council of Medical Education of the American Medical Association.
  - Dental Hygienists -- Must have successfully completed four academic years of pre-professional and professional study in an accredited college or university approved by the Commission on Accreditation of Dental and Dental Auxiliary Educational Programs of the American Dental Association.

# To Pay or Not to Pay:

## FLSA Compliance

### Professional

#### Professional Exemption (Medical Field)

No:

#### **Licensed Practical Nurses**

No (if paid on other than a salary\* basis):

Physicians Assistants

Registered Nurses

Registered or Certified Medical Technologists

Dental Hygienist

#### **BUT:**

An employee who does not meet the professional exemption because they do not satisfy the educational requirements might still qualify for the executive or administrative exemptions based on their other duties if paid on a salary basis.

\*May also be paid on a fee basis if the fee satisfies and is in compliance with the *U.S. Department of Labor's regulations*.

# To Pay or Not to Pay:

## FLSA Compliance

### Computer-Related Occupations

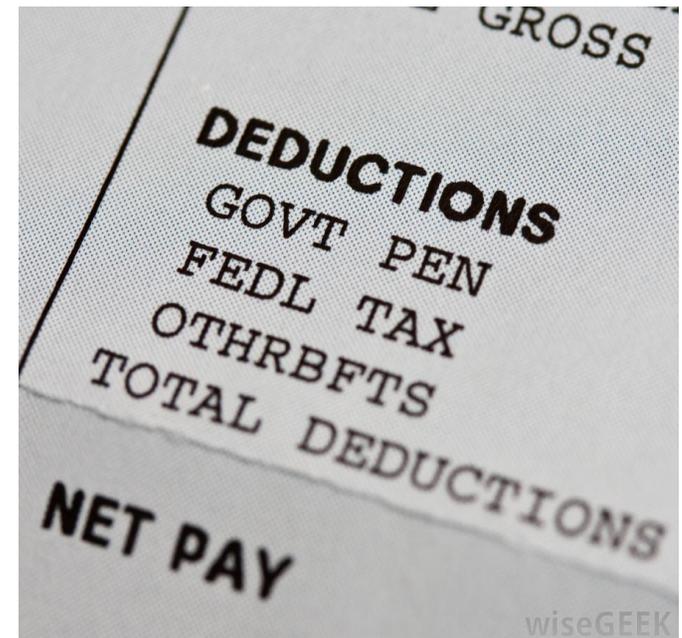
#### Primary Duties Test:

- 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.

The employee must be paid \$455/week on a salary (or fee) basis **OR**, if compensated hourly, not less than \$27.63/hr.

# Losing the Exemption: Common Mistakes

1. Improper Deductions from Salary
2. Improper Method of Pay



# Non-Exempt Employees

## Minimum Wage

Non-exempt employees must be paid at least minimum wage for all hours worked:

- Federal: **\$7.25**
- Florida: **\$8.05**
  - Will never decrease
  - Increases effective January 1<sup>st</sup> each year based on CPI
  - Increase typically announced mid-October of prior year

# Non-Exempt Employees

## Maximum Hour: Overtime

Non-exempt employees must be paid 1.5 times their “regular rate of pay” for all hours worked in excess of 40 in a given work week.



What is my work week?

- Seven-day period of employer's choosing.
- May be changed for bona fide reason not related to avoiding payment of overtime.
- Practice pointer: the work week is not the pay period unless the employer utilizes a weekly (7-day) pay period.

# Non-Exempt Employees

## Maximum Hour: Regular Rate of Pay

Does overtime mean *1.5 times the hourly rate*? Not always!

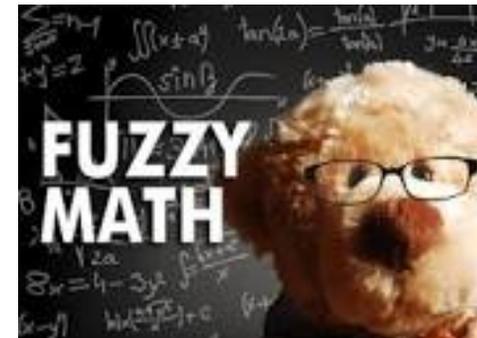
*Regular rate of pay* includes “all remuneration for employment paid to, or on behalf of, the employee” except for statutory exclusions.

Regular rate of pay includes:

- Hourly Rate
- Commissions
- Bonuses tied to the work/productivity

Regular rate of pay does not include:

- Reimbursements for business expenses
- Discretionary bonuses
- Gifts
- Payments in the nature of gifts on special occasions
- Employer contributions to certain welfare plans



# Non-Exempt Employees

## Special Rules for Paying Overtime

“8 and 80” rule for hospitals and certain healthcare facilities:

- Agreement or understanding to use a 14-day pay period for computing overtime must be reached between the employer and employee before the work is performed.
- Employees must be paid overtime at a rate not less than one and one-half times their regular rate for each day in which they work more than 8 hours. Overtime pay for hours worked over 8 in a day must be paid even if the employee works less than 80 total hours during the 14-day pay period.
- Employees must be paid overtime at a rate not less than one and one-half times their regular rate for all hours worked in excess of 80 during the 14-day pay period.



# Non-Exempt Employees

## Overtime: Watch Out for Joint Employer Liability

Employee A works 28 hours per week for Practice X and 28 hours per week for Practice Y. Is Employee A entitled to overtime because she works 56 hours/week?

- No, if Practice X and Practice Y are unrelated.
- Yes, if Practice X and Practice Y are related *and* the totality of factual circumstances demonstrates that they should each be jointly liability for the payment of 16 hours of overtime to Employee A.

Three criteria to determine if a joint employment relationship exists:

1. The Practices share the services of the employee; or
2. One Practice acts directly or indirectly in the interest of the other Practice in relation to the employee; or
3. The Practices share control of the employee because one Practice controls, or is controlled by, the other Practice, or all of the employee's employer/Practices are controlled by another company.

# To Pay or Not to Pay: FLSA Compliance

## Break Time



# To Pay or Not to Pay:

## FLSA Compliance

### Breaks:

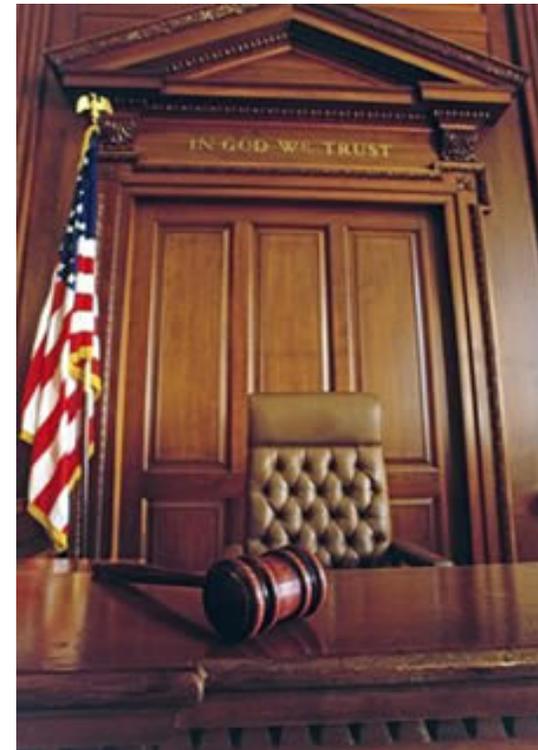
- Rest breaks (under 20 minutes) are compensable.
- Unpaid meal breaks must be 30 minutes or longer, and employee must be completely relieved of their duties.
- What about breaks over 20 and less than 30 minutes?
- Regulating purpose of breaks (smoke break, walk break, snack break, etc.)
  - Clear written policy
  - Consequences of violation
  - Consistent enforcement
  - Not FLSA issue if break is paid, but could be FLSA issue if break is unpaid and less than 30 (or 20!) minutes.

# Misclassification & Miscalculation

## Why Compliance is Key

### Enforcement and Litigation

- FLSA enforced by (1) Department of Labor & (2) Private Lawsuits:
- DOL Investigations
- Private Lawsuits
  - Any state or federal court
  - No jurisdictional minimum claim amount
  - No exhaustion of administrative remedies
  - Collective Actions Authorized
  - As of 2008, 20% of all Middle District cases = FLSA
- Incentives to Sue
  - Liquidated (double) damages
  - Attorneys' Fees



# Misclassification & Miscalculation

## Why Compliance is Key

### Burdens of Proof

- Burden to Prove Violation of FLSA = employee
  - But, Practice must keep records of hours worked and amounts paid
  - If Practice fails to keep records, then employee can use best good faith estimate
  - Burden then shifts to Practice to rebut the estimates
  - If unable to rebut (because of lack of records), then courts may use the employee's estimate
- Burden to establish entitlement to exemption from overtime = Practice

# Proposed FLSA Regulations

## \*\*\*Change is Coming\*\*\*

### Overtime Exemption

- Current salary basis: \$455/week (\$23,660 annually)
- Proposed salary basis: \$970/week (\$50,440 annually)
- Increases in salary basis at regular intervals thereafter

### Public comment closed

- Final rule expected to be issued in 2016.
- Effective 60-120 days after rule is issued.



# Proposed FLSA Regulations

## Planning Ahead:

- Identify exempt employees who fall below the new threshold.
- Evaluate increasing salary to new minimum and consider any “trickle up” effect.
- Evaluate reclassification to non-exempt status.
  - Tracking hours and paying overtime
  - Evaluate fixed salary or other pay basis, if applicable.
  - Silver lining: Tighten reigns on PTO abuse

## Challenges:

- Restricts flexibility
- Hurts career advancement opportunities
- Negatively impacts employee morale of reclassified workers
- Spurs lawsuits
- Increases overall costs to the practice

# WHAT'S ON YOUR MIND?

## QUESTIONS?

# Thank You!

**Employment Law Blog:** [www.theemployerlawyers.com](http://www.theemployerlawyers.com)