

The Fair Labor Standards Act

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History

- United States Congress enacted the Fair Labor Standards Act in 1938 to:
 - Mandate a nationwide minimum income
 - Implement overtime provisions
 - Represented a broad economic and social policy to maximize employment by imposing a sanction on excessive hours
 - Imposed overtime as a deterrent to excessive hours so as to spread jobs among a greater number of workers



FLSA Creates Individual Rights

- Act gives *minimum* protections to individual workers
 - Ensures that individuals “receive a fair day’s pay for a fair day’s work”
 - Protects workers from “the evil of overwork as well as underpay”
- FLSA rights are guarantees that cannot be waived by individuals or through collective bargaining
- Additional rights can be established by collective bargaining
 - Can be paid higher than statutory minimum wage
 - Can receive overtime sooner or in greater amounts than FLSA requires



FLSA Requires Pay for Hours Worked

- Includes all time that an employee is “suffered or permitted” to work (29 C.F.R. section 785.11 to 785.13)
- Includes any work the employee performs
 - Work which the employer is aware (actual knowledge)
 - Work which the employer has reason to believe is being performed (constructive knowledge)
 - But not worked employee is told not to perform



Volunteer Work

- An employee can volunteer to perform work for their employer if offered freely without direct or implied coercion or pressure
- Volunteer services cannot involve:
 - The same type of duties or activities that the employee regularly performs for the employer
- If the services volunteered are closely related to the actual duties performed by or responsibilities assigned to the employee, then compensation is required under the FLSA



Briefings and Roll Calls

- An employee's preparatory and concluding activities outside the normal work day are generally not compensable
 - Unless the activities are integral and indispensable to the employee's principle activities
 - Roll calls and briefings before shifts are usually considered compensable where they cover new policies and procedures, events that occurred on recent shifts, job assignments and similar matters



Meal Period Compensation

- Considered to be “hours worked” for which compensation is required if:
 - The employee cannot use the time for his or her own benefit and is subject to burdensome interruptions
- Not required that the employee be able to leave the premises if the employee is otherwise completely relieved from duty



Travel Time Compensation

- Depends on the type of travel involved
- Commute time is not compensable, even if driving a take-home car provided/required by the employer
- If sent out of town for one day or less, the travel time in excess of the normal commute must be paid
- When an employee travels and stays overnight:
 - Travel time during normal work hours (even if on non-work days) is compensable work time
 - If the travel is outside the regular work hours as a passenger on an airplane, train, bus, boat or car, it is not compensable



Overtime Requirements

- Time and one half the “regular rate” for hours worked beyond the statutory maximum
 - Hours worked does not include absences for sickness, vacation, holiday or other similar reasons
- Default statutory maximum is 40-hours in a seven day work period
- Law enforcement 7(k) exemption
 - Allows selection of a larger work period with a higher number of hours before overtime is earned
 - Maximum: 28-day work period with a total of 171 hours
 - Generally unavailable for non-sworn b/c of specific criteria



Calculating the Regular Rate

- Must reflect all payments regularly received every pay period
- Generally includes
 - Shift differentials
 - Payments based on achieving POST certificates
 - Educational incentives
 - Longevity premiums
 - Hazardous duty pay
 - Specialty assignment pay
 - May includes holiday in lieu pay



Compensatory Time Off

- Is only available where agreement is reached between the employee and the labor organization to provide for comp time in lieu of cash payments for overtime
- Maximum accumulation
 - 480 hours for public safety
 - 240 hours for all other public employees
- Under the FLSA, a Department *must grant* reasonable advance requests for unscheduled compensatory time off within a reasonable period of accrual, unless to do so would “unduly disrupt” the employer’s operation.



Comp Time: The Old Rule

- The employee had the right to use accrued compensatory time *as the employee saw fit* subject only to the limited right of the employer to deny an unduly disruptive request
 - Known as the “Heaton” rule
- The mere fact that an employer would have to replace the employee requesting compensatory time off with another employee hired on an overtime basis was not an “undue disruption” permitting denial of CTO request
- ***Recent court decisions have restricted the ability of employees to control when they take compensatory time off***



Comp Time: The New Rule

- *Houston Police Officers Association* case:
 - It is reasonable to deny a CTO request based on predetermined limits on the number of individuals that can be off on any given day (a.k.a. the “Red Book”)
- *Mortensen v. County of Sacramento*:
 - Obligation is simply to grant CTO within a reasonable period after the request, not necessarily on a particular day requested
 - Employer cannot be forced to pay another employee overtime just so the employee can use CTO on a specific day chosen
 - Reliance on leave book policy/practice



Forced Comp Time Off

- *Christiansen v. Harris County* (2000) 529 U.S. 576
 - Employers can force employees to use accrued compensatory time off in order to reduce accumulated leave banks
 - Employer can choose the specific dates that the employee must use forced compensatory time off



The End

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