



Payroll 101 – Back to the Basics

Presented by:
Brenda JM Sabin, CBP, SPHR
Director of HR Compliance & Payroll Solutions
Hickok & Boardman HR Intelligence

Building a Smarter Workforce




Payroll 101



*Payroll is the reason
people come to work!*


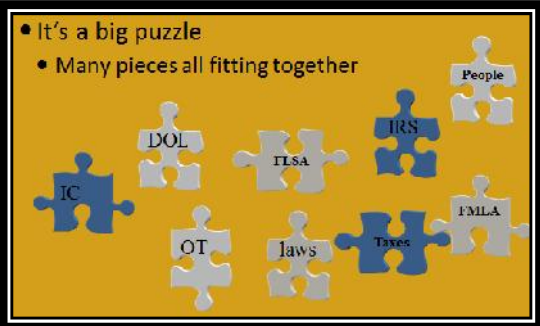
*HR is the reason
they stay!*

1



Payroll Management

- It's a big puzzle
- Many pieces all fitting together



Payroll Management

- Getting it to all fit together can be tough!

The puzzle pieces are arranged as follows: Taxes (left), IC (center), DOL (top), ILSA (top-right), IRS (right), OT (right), FMLA (right), laws (bottom), and People (bottom-right).

HG Michels & Boardman LLP

New People

- Independent Contractor or Employee?**
 - IRS has rules/laws on this
 - ABC Test
 - Twenty Factor Test
 - SS8 Form
 - Need to be able to justify your decision
 - W9 and 1099MISC
 - VT – SUI and WC

HG Michels & Boardman LLP




New Employees

- New Hire Reporting**
 - Multi State considerations
 - Time Frames differ by state
- W4s**
 - Invalid W4s – what are they?
 - Changing exemptions on W4 – rules?
 - Exempt from taxes (Feb 15th)
 - IRS Lock in Letters

HG Michels & Boardman LLP


New Employees

- **SSN**
 - For payroll purposes
 - For I9 purposes
 - <http://www.ssa.gov/employer/ssnv.htm>
- **I9s**
 - New form – exp date is
 - How long to keep?
 - <http://www.uscis.gov/i-9>


The FLSA

- **Governs:**
 - Minimum Wage
 - Tipped employees
 - Record keeping
 - What records do you need to keep?
 - Exempt vs Non exempt
 - Overtime
 - Child Labor Laws
 - Equal Pay




The FLSA

- **Does not govern/regulate:**
 - Vacation, holiday, severance or sick pay (State Laws)
 - Meal or rest periods (state laws)
 - Premium/shift pays
 - Pay raises or fringe benefits
 - Discharge notices or reasons for
- For today we are focusing on Exempt vs Non-exempt and Overtime




Exempt vs Non-Exempt

EXEMPT	NON-EXEMPT
<ul style="list-style-type: none">• Minimum Salary*<ul style="list-style-type: none">– Except for Outside Sales• Duties Test• Not covered by FLSA min wage and overtime laws	<ul style="list-style-type: none">• Paid hourly OR salary• Any hours over 40 have to be paid overtime• Protected by FLSA min wage and ot laws




Exempt must meet BOTH criteria!

- **Minimum Salary**
 - \$455 a week
 - No pro-rating
- **Duties Tests** – White Collar Exemption Tests
 - Executive Test
 - Professional Test
 - Creative
 - Computer
 - Administrative Test
 - Outside Sales




Non-Exempts

- Protected by **FLSA**
- Non exempt means they are eligible for Overtime compensation
- So how do you calculate overtime?




Overtime – Regular Rate of Pay – Not HOURLY rate of pay

- Employees covered by the [Fair Labor Standards Act \(FLSA\)](#) must receive overtime pay for hours worked in excess of 40 in a workweek of at least one and one-half times their **regular rate** of pay.
- **What is regular rate of pay?**
 - Regular Rate = All straight time earnings divided by actual hours worked.
- What is included in straight time earnings?




Regular Rate of pay includes:

- **Non-Discretionary**
 - Promise made to an individual employee for individual personal performance (e.g. attendance bonus, commissions, on-call pay, call back pay, insurance buy out, piece rates et)
- Does not include **Discretionary payments.**
 - No promise made
 - Could be based on other people's performance (teams, company etc)
 - Example: Yearly bonus, holiday pay, sick pay, etc



Example

- Employee is normally paid \$10 an hour. She works 50 hours this week. She is also paid a bonus (non discretionary) of \$100.
- How much do you pay her?
 - \$10 X 40 reg hours = \$400
 - \$15 X 10 hours = \$150
 - \$100 bonus \$100
 - Total pay \$650
- Is this right?



Calculating OT with other earnings:

Take the 50 hours worked X \$10 per hour = \$500
Add in the bonus of \$100 = \$600

Take the \$600 divide by hours worked to get new
REG rate of pay = **\$12.00**

So you pay:
\$10 X 50 reg hours = \$500 (straight time)
10 hours of OT at new reg rate
10 hrs X \$6.00 (1/2 time) \$ 60
The bonus \$100
Total **\$660**



OT

- OR...
- 40 hrs X \$12 (new reg rate) \$480.00
- 10 hrs X \$18 (new ot) \$180.00
- Total is \$660.00
- The bonus is included in the rates of pay



Weighted Average Overtime Calculations


20 hrs. @ \$8.50 = \$170.00
25 hrs. @ \$9.00 = \$225.00
45 \$395.00

Total straight time earnings /hrs worked
\$8.77 (RRP)
1/2 that for OT premium \$4.38
X OT hours (5) **\$21.90**
Total due: **\$416.90**




Compensatory Time "COMP"

- "Time in lieu of money"
- Non Exempt employees **only**
 - In place of Overtime
- Public Sector Employers **Only**
 - Local and State Gov't, schools
- No private sector employers can use comp time in place of money
- Employees cannot waive their rights to overtime




Hours Worked

- Why is this important?
 - Wage payments
 - OT Calculations
 - Garnishments
 - FLSA
 - ACA
- What is considered **Hours Worked**:
 - On call time
 - Time clock "rounding" rules
 - Meals under 30 min/Breaks under 20 min
 - **Unauthorized Overtime**
 - **Waiting Time**
 - **Sleeping time**
 - **Training/ Lectures/ Meetings**
 - **Travel time**



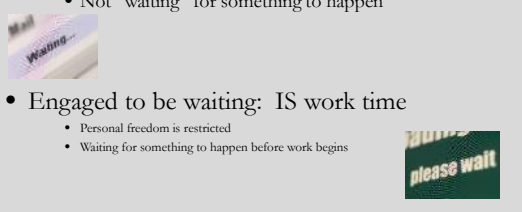

Let's break it down

- **Definition of "Employ"**
 - By statutory definition the term "employ" includes "*to suffer or permit to work.*"
 - The workweek ordinarily includes all time during which an employee is necessarily required to be on the employers premises – on duty – or at a prescribed work place.
- **Unauthorized Overtime**
 - Do you have to pay for this? YES
 - Employees "Suffered or Permitted" to work:
 - Work not requested but suffered or permitted to be performed is work time that must be paid for by the employer. For example, an employee may voluntarily continue to work at the end of the shift to finish an assigned task or to correct errors. The reason is immaterial. The hours are work time and are compensable.
 - Performance issue not a pay issue




Waiting Time


- **Waiting to be engaged:** IS NOT work time
 - Personal freedom not restricted
 - Not “waiting” for something to happen
- **Engaged to be waiting:** IS work time
 - Personal freedom is restricted
 - Waiting for something to happen before work begins

Sleeping Time






- **Sleeping Time and Certain Other Activities:** An employee who is required *to be on duty for less than 24 hours* is working even though he/she is permitted to sleep or engage in other personal activities when not busy.
- An employee required to be on duty for **24 hours or more may agree with the employer** to exclude from hours worked bona fide regularly scheduled sleeping periods of not more than 8 hours, provided adequate sleeping facilities are furnished by the employer and the employee can usually enjoy an uninterrupted night's sleep.
 - No reduction is permitted unless at least 5 hours of sleep is taken.



Trainings/Lectures/Meetings


- **Counted as Working Time UNLESS** all 4 criteria are met. (must meet all 4)
 - Attendance is outside the employee's regular working hours.
 - Attendance is voluntary.
 - The course, lecture or meeting is not directly related to the employee's job.
 - The Employee does not perform any productive work during such attendance.




Travel Time

- The principles which apply in determining whether time spent in travel is compensable time *depends upon the kind of travel involved.*
- Home to Work Travel:
 - An employee who travels from home before the regular workday and returns to his/her home at the end of the workday is engaged in ordinary home to work travel, which is not work time.
- Travel That is All in a Day's Work:
 - Time spent by an employee in travel as part of their principal activity, such as travel from job site to job site during the workday, is work time and must be counted as hours worked.




Travel Time Question 1

- Your employee is sent to Middlebury to work for the day. He normally drives 15 min to work here in Burlington, but Middlebury is an hours drive.
 - Do you have to pay him for his drive to Middlebury? Why or Why Not? What hours do you have to pay?
- Home to Work on a Special One Day Assignment in Another City:
 - An employee who regularly works at a fixed location in one city is given a special one day assignment in another city and returns home the same day.
 - The time spent in traveling to and returning from the other city is work time, **except** that the employer may deduct/not count that time the employee would normally spend commuting to the regular work site.



Travel Time Question 2

- Your employee is scheduled to be in Boston on Monday to work for three days. He wants to drive his car to Boston on Sunday (not one of his normal working days).
 - Do you have to pay him for this time he is driving on Sunday? Why or Why not? What hours do you have to pay?
- Travel Away from Home Community:
 - Travel that keeps an employee away from home overnight is travel away from home. Travel away from home is clearly work time when it cuts across the employee's workday. The time is not only hours worked on regular working days during normal working hours but also during corresponding hours on *nonworking days*. As an enforcement policy the Division will not consider as work time that time spent in travel away from home **outside** of regular working hours **as a passenger** on an airplane, train, boat, bus, or automobile.



And yet another “what if”

- An employee requests to drive his car to New York, a four-hour trip, instead of taking the train, which takes just two hours, for an overnight business trip. Under FLSA regulations, how many hours should the employer compensate the employee for travelling?
- 2 or 4?
- Either one is okay --- ? What?
- If an employee is *offered* public transportation but requests permission to drive his or her car instead, the employer may count as hours worked **either** the time spent driving the car **or** the time it would have had to count as hours worked if the employee had used the public transportation (29 CFR Sec. 785.40).
- If employee is required to drive – all hours count




The DOL

- Federal Dept of Labor – Information on Hours worked definitions:
 - <http://www.dol.gov/dol/topic/workhours/index.htm>
- FLSA Hours Worked Advisor:
 - <http://www.dol.gov/elaws/esa/flsa/hoursworked/default.asp>
- FLSA Overtime Information
 - <http://www.dol.gov/dol/topic/wages/overtimepay.htm>
- FLSA Overtime Advisor
 - <http://www.dol.gov/elaws/otcalculator.htm>



Thank You!



Brenda JM Sabin, CBP, SPHR
 802-488-8713
bsabin@hbhriq.com
www.hbhriq.com
