



ATTORNEYS AT LAW

MINNESOTA COUNTY HUMAN RESOURCES MANAGEMENT ASSOCIATION (MCHRMA)

FLSA: A Deeper Dive Into The Duties Tests

Thursday, October 6, 2016

3:00 – 4:30 p.m.



ATTORNEYS AT LAW



Penelope J. Phillips

(612) 373-8428
pphillips@felhaber.com

PUBLIC EMPLOYEES CAN BE EXEMPT

- Public agencies have the right to classify certain employees as “exempt,” that is, not covered by the overtime pay provisions of the FLSA.

PUBLIC EMPLOYEES COVERED BY THE FLSA

- Coverage extends to “virtually all” public sector employees, and includes state and local government employees engaged in the operation of hospitals, nursing homes, schools, mass transit systems, and public preschools.



PRESUMPTION OF NON-EXEMPT

- Most public employees are presumed to be “non-exempt,” meaning they are covered by the FLSA and entitled to the current minimum wage and overtime pay.
- OT can be paid as compensatory time off or in the form of additional wages, both of which are calculated at a rate of not less than one and one-half times the regular rate of pay or hours worked.

PUBLIC EMPLOYEES EXCLUDED FROM FLSA

- Public officials whom voters have elected to office.
- Personal staff members, immediate advisors, and officials in policymaking positions whom the elected public officials have selected or appointed.

PUBLIC EMPLOYEES EXCLUDED FROM FLSA

- “Personal staff” generally includes only persons who are under the direct supervision of the selecting elected official and have regular contact with such official.
 - Typically does not include individuals who are directly supervised by someone other than the elected official even though they may have been selected by the official.

PUBLIC EMPLOYEES EXCLUDED FROM FLSA

- To qualify as personal staff members or officials in policymaking positions, the individuals in question must not be subject to the civil service laws of their employing agencies.
- Such personal staff members must be appointed by, and serve solely at the pleasure or discretion of, the elected official.

PUBLIC EMPLOYEES EXCLUDED FROM FLSA

- The exclusion for “immediate adviser” to elected officials is limited to staff who serve as advisers on constitutional or legal matters, and who are not subject to the civil service rules of their employing agency.

PUBLIC EMPLOYEES EXCLUDED FROM FLSA

- Employees of the legislative branches of state and local governments are also excluded from FLSA coverage.
 - To be excluded, employee must not be subject to the civil service laws of the employing state or local agency.

PUBLIC EMPLOYEES EXCLUDED FROM FLSA

- Individuals who perform volunteer services for units of state and local governments.
- Volunteers if:
 - Their services are offered freely and without pressure or coercion, direct or implied, from an employer.
- An individual will not be considered a volunteer if he or she is otherwise employed by the same public agency to perform the same type of services as those for which the individual proposes to volunteer.

BEING EXEMPT

- A public employee will qualify for exemption if he or she meets all of the pertinent tests relating to duties, responsibilities, and salary.

ADMINISTRATIVE EXEMPTION

- Primary duty of performing office or non-manual work directly related to the management or general business operations of the employer or the employer's customers.
- Primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

ADMINISTRATIVE EXEMPTION

- The employee must support management or the general business operations of the employer.
 - What is the nature of the business?
 - How does the employee directly support the business operations of the employer or the employer's customers?

ADMINISTRATIVE EXEMPTION

- The employee “must perform work directly related to assisting with the running or servicing of the business.”
 - Instead of working in production or selling the product of the business.

EXAMPLES OF WORK IN SUPPORT MANAGEMENT

- Tax
- Finance
- Accounting
- Marketing
- HR
- Government relations

INDEPENDENT JUDGMENT AND DISCRETION

- To be exempt administratively, the employee must exercise discretion and independent judgment with respect to matters of significance.
- “Matters of significance” refers to the level of importance or consequence of the work performed.

INDEPENDENT JUDGMENT AND DISCRETION

- This means to compare and evaluate different courses of action.
- To formulate, affect, interpret, or implement management policies or practices.
 - It is more than the use of “skill” in applying well-established rules.

ADMINISTRATIVELY EXEMPT EMPLOYEES INCLUDE:

- Insurance claims adjusters
- Major project team leaders
- Assistants to business owners or senior executives.
- Human resources managers (but not “screeners”)
- Purchasing agents
- Loss prevention managers

NOT EXEMPT

- Public inspectors or investigators of various types, including:
 - Fire prevention or safety, building or construction, health or sanitation, environmental or soils specialists, and similar employees.
- Examiners
- Graders
- Case managers
- Paralegals

***FERREL V. GWINNETT CTY BD. OF EDU., 481
F. SUPP. 2D 1338 (N.D. GA. 2007)***

- School police officers sued school system for overtime compensation under FLSA.



FERREL V. GWINNETT CTY BD. OF EDU., 481 F. SUPP. 2D 1338 (N.D. GA. 2007)

- Job Duties
 - Participated in school security surveys
 - Assisted with safety checklists
 - Answered questions regarding safety and crime prevention.
 - Taught classes to students on issues such as safety, drugs, and gangs.
 - Participated in staff orientation
 - Broke up fights
 - Made arrests

FERREL V. GWINNETT CTY BD. OF EDU., 481 F. SUPP. 2D 1338 (N.D. GA. 2007)

- **HELD:** School police officers were exempt because their primary duty was providing security for students and school employees. Court found that this duty was related to the management or general business operations of the school system and required the exercise of discretion and independent judgment.

FERREL V. GWINNETT CTY BD. OF EDU., 481 F. SUPP. 2D 1338 (N.D. GA. 2007)

- Officers spent a majority of their time performing non-manual work, including
 - Interacting with students, teachers and school administrators.
 - Answering school administrator questions related to safety and security issues.
 - Writing reports
 - Testifying at hearings or in court
 - Conducting investigations
 - Patrolling hallways

***MONROE FIREFIGHTERS ASSOC. V. CITY OF
MONROE, 600 F. SUPP. 2D 790 (W.D. LA.
2009)***

- Fire chiefs qualified for administrative exemption because their duties included assigning staff, ensuring the safety and security of the fire stations under their command, and training other firefighters.

EXECUTIVE EXEMPTION

- Primary duty of the management of the enterprise or of a recognized department or subdivision.
- Customarily and regularly directs the work of two or more other employees.
- Has authority to hire or fire other employees (or recommendations as to hiring, firing, promotion or other change of status of other employees are given particular weight).

“MANAGEMENT” INCLUDES

- Interview, select, train, set, and adjust pay
- Maintain records
- Direct work
- Evaluate
- Handle complaints
- Discipline

DEPARTMENT OR SUBDIVISION

- A specific unit with permanent status and function.

SUPERVISION

- “Two or more other employees” refers to full-time equivalents.

AUTHORITY TO HIRE OR FIRE OR WHOSE SUGGESTIONS AND RECOMMENDATIONS ARE GIVEN PARTICULAR WEIGHT

- Employers should consider the following in determining whether recommendations are given “particular weight”:
 - Whether it is part of the employee’s job duties to make recommendations;
 - How often recommendations are made or requested; and
 - How often recommendations are relied upon.

WORKING SUPERVISORS

- The regulations allow for a “working supervisor” if primary duty is the performance of exempt work.

ROONEY V. TOWN OF GROTON, 577 F.SUPP. 2D 513 (D. MASS. 2008)

- Police lieutenant sued town to recover overtime compensation.
- **Held:** Police lieutenant satisfied requirements for exemption from overtime pay requirements as an executive employee.

ROONEY V. TOWN OF GROTON, 577 F.SUPP. 2D 513 (D. MASS. 2008)

- Lieutenant
 - Supervised other officers
 - Oversaw and supervised issuance of search warrants.
 - Did internal affairs investigations
 - Acted as prosecutor
 - Played integral role in new hire and promotion decisions, even if his recommendations may not have always been followed.

MURPHY V. TOWN OF NATICK, 516 F. SUPP. 2D (D. MASS. 2007)

- Police department detectives sued town, its police department and chief of police for failing to pay them overtime.
- **Held:** Detectives did not qualify for executive exemption.

MURPHY V. TOWN OF NATICK, 516 F. SUPP. 2D (D. MASS. 2007)

- Detectives' job duties included:
 - Preventing or detecting crimes
 - Conducting investigations or inspections for violations of law.
 - Performing surveillance
 - Pursuing, restraining, and apprehending suspects.
 - Detaining suspected and convicted criminals
 - Interviewing witnesses
 - Preparing investigative reports

COMPUTER EXEMPTION

Primary duty of:

- A. Application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional applications; *or*
- B. 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; *or*
- C. Design, documentation, testing, creation or modification of computer programs related to machine operating systems; *or*
- D. A combination of duties described in (A), (B) and (C), the performance of which requires the same level of skill. Employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer field.

SALARY REQUIREMENTS

- Computer Exemption allows for employee to be paid on a salary or fee basis of at least \$455 per week salary (\$913 per week beginning December 1, 2016)

CURRY V. NATIVIDAD MED. CTR., No. 5:11-CV-04662, 2013 U.S. DIST. LEXIS 74761 (N.D. CAL. 2013)

- Employee worked for hospital owned by county as a Hospital Network and Systems Engineer in the Information Systems Department.
- Employee sued hospital and county for failure to pay overtime under FLSA.

***CURRY V. NATIVIDAD MED. CTR.*, No. 5:11-CV-04662, 2013 U.S. DIST. LEXIS 74761 (N.D. CAL. 2013)**

- **Held:** employee was exempt from overtime under the computer exemption.

CURRY V. NATIVIDAD MED. CTR., No. 5:11-CV-04662, 2013 U.S. DIST. LEXIS 74761 (N.D. CAL. 2013)

- Primary duties:
 - Hardware and software procurement
 - Network analysis
 - Testing, configuration, and modifications;
 - Support to helpdesk personnel
 - Provisioned and implemented servers and programs onto the employer's computer system.



LEARNED PROFESSIONAL EXEMPTION

- Primary duty of performing work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction, but which also may be acquired by alternative means such as equivalent combination of intellectual instruction and work experience.

ADVANCED DEGREE

- Not required
- Educational requirements can be met, in part, through a combination of work experience and intellectual instruction, but the occupation must generally require advanced knowledge and not comprise a majority of employees that have acquired their skill through experience rather than specialized intellectual instruction.

ADDITIONAL REQUIREMENTS

- Discretion and Independent Judgment
 - Beyond skill in applying techniques, procedures or application of specific standards.
- In field of science and learning

EXAMPLES

- Registered or certified medical technologists
- Registered nurses (but **not** licensed practical nurses)
- Dental hygienists
- Certified physician assistants
- Accountants (but **not** bookkeepers or accounting clerks)
- Chefs, such as executive chefs and sous chefs with four-year degrees
- Certified athletic trainers
- Licensed funeral directors and embalmers

NON-EXEMPT

- Senior Legal Analyst
- Driving Instructors
- Radiology Technologists
- Respiratory Specialist

VELA V. CITY OF HOUSTON, 276 F.3D 659 (5TH CIR. 2001)

- EMS and paramedic employees sued city, seeking overtime under FLSA.
- EMTs were required to complete 200 hours of classroom training, clinical experience, and a field internship.
- Paramedics were required to complete 880 hours of classroom training, clinical experience, and a field internship.

VELA V. CITY OF HOUSTON, 276 F.3D 659 (5TH CIR. 2001)

- **Held:** EMTs and paramedics were not exempt professionals because they were not required to have a college degree.

CREATIVE PROFESSIONAL EXEMPTION

- Primary duty of performing work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

OUTSIDE SALES EXEMPTION

- Primary duty of making sales; *or* of obtaining orders or contracts for services for the use of facilities for which a consideration will be paid by the client or customer.
- Customarily and regularly engaged away from the employer's place or places of business.

“WHITE COLLAR” EXEMPTIONS UNDER THE MFLSA

- Two tiers of exemptions:
 - “Tier I” earns \$250/week.
 - “Tier II” earns either \$170/week (professional employees) or \$155/week (execution and administrative employees).

“WHITE COLLAR” EXEMPTIONS UNDER THE MFLSA

- Tier 1:
 - **Professional employees** must “consistently” exercise discretion and judgment while performing work that:
 - Requires advanced knowledge in a field of science or learning,
 - Imparts knowledge (teacher), or
 - Requires creativity or talent (artist)

“WHITE COLLAR” EXEMPTIONS UNDER THE MFLSA

- Tier I:
 - **Administrative employees** must "regularly" exercise discretion or independent judgment and perform non-manual work "directly related to management policies or general business operations."
 - **Executive employees** must "manage" the business, or a recognized department or subdivision, which includes customarily directing the work of two or more employees.

“WHITE COLLAR” EXEMPTIONS UNDER THE MFLSA

- Tier II
 - Professional, administrative, and executive employees cannot spend more than 20% of time worked on non-essential tasks.
 - Tier II administrative employees must make "important decisions."
 - Tier II executive employees must have the authority to hire or fire or suggest changes in employees status.

EXEMPTION FROM MFLSA COVERAGE IN GENERAL

- Police officers
- Fire fighters
- Seasonal employees at carnival, circus, fair, or ski facility.
- Natural resource managers employed by state
- Employees under age 18 working for municipal recreation program.
- Employees subject to the Secretary of Transportation authority.
- County home-school employees

2016 FLSA WHITE COLLAR EXEMPTION RULE CHANGES

WHITE COLLAR EXEMPTIONS

- Three part test:
 - Salary level
 - Salary basis
 - Duties test

DUTIES TEST

- An employee who meets the salary level tests and the salary basis tests is exempt only if s/he also performs exempt job duties.
- Primary duty (principal, main, major or most important duty) of employee must fall under category of exempt duties.
- New Regulations make no change to duties test.

MINIMUM SALARY LEVEL

- The current exception is based on employees earning \$455/week (\$23,660 per year)
- Effective December 1, 2016, new weekly salary will be \$913.00/week (\$47,476 per year)

- Employees earning a weekly salary of less than \$913.00 per week will not be exempt.

- The new salary (and the old) is **not** prorated for part-time workers.

- Certain professions are exempt from the salary rules including:
 - Teachers
 - Lawyers
 - Physicians
 - Outside sales



- The effective date of Final Rule is **December 1, 2016**.
- December 1 is a Thursday. If the employer's workweek ends on or after Thursday, December 1, the employee must be paid at least the \$913 per week salary.
- For example, if an employer's workweek closes on Sunday, December 4, the employee must be paid at least \$913 for the workweek that includes December 1 (i.e., Monday, November 28 to Sunday, December 4).

- The salary will be “automatically” increased every three years, a change from the annual updating that had been under consideration.
- Salary level will be tied to: (1) the applicable 40th percentile (for white collar exempt employees); or (2) the applicable 90th percentile (for highly compensated employees).

PAYMENTS THAT COUNT TOWARD THE TOTAL

- Under the new regulations non-discretionary bonuses and incentive payments (including commissions) may be used to satisfy up to 10% of the standard salary test requirement.
- To be credited toward a portion of the standard salary level test, such payments must be paid on a quarterly or more frequent basis.

- Stated another way, an employer may pay 90% of the weekly salary and make up the rest with a non-discretionary bonus.



DEFINITION OF “NON-DISCRETIONARY BONUS”

- New rules do not provide definition of “non-discretionary bonus.”
- 29 CFR Section 778.211 states that a bonus is non-discretionary bonus if an employer either commits in advance to pay it or states in advance the amount or method of calculation of the bonus.
- A discretionary bonus requires the fact and the amount of the bonus to be within the employer’s discretion.

PAYMENTS THAT COUNT TOWARD THE TOTAL

- Example: instead of paying \$913 per week, the employer could pay an otherwise exempt employee \$821.70 per week with the option to earn a nondiscretionary bonus or other incentive payment over the course of the week, month, or quarter (i.e., 13 weeks).
- The remaining compensation --\$91.30 --per week can be made up in non-discretionary bonus.

$$\$913.00 \times 12 = 10,956.00$$

$$\$821.70 \times 12 = \$9,860.40$$

+

$$\$91.30 \times 12 = \$1,095.60$$

$$= \$10,956.00$$

PAYMENTS THAT COUNT TOWARD THE TOTAL

- Example: if an employee is paid \$821.70 per week and is eligible to receive a \$1,186.90 attendance bonus, the employee will retain his or her exempt status provided that the employee receives the \$1,186.90 on the next pay period following the 13th week (i.e., end of the quarter).

HIGHLY COMPENSATED EMPLOYEE

- The “highly compensated employee” threshold will increase from \$100,000 to \$134,004 annually.
- This exemption applies if an employee earns this amount and meets any one of the factors under the so-called “White Collar Exemptions” (executive, administrative or professional).

HIGHLY COMPENSATED EMPLOYEE

- HCE employees must receive 100% of the \$913 weekly threshold on a salary or fee basis, but non-discretionary bonuses and incentive payments (including commissions) may be used to satisfy the remainder of the \$134,004 total annual compensation requirement.
- A final catch-up payment may be made during the final pay-period or within one month of the end of the 52 week period.
- If employee does not work a full-year, the HCE salary may be prorated for the weeks worked.

TO RETAIN SALARY BASIS

- Regularly receives a predetermined amount of compensation each pay period (on a weekly or less frequent basis).
- The compensation cannot be reduced by improper wage deductions.
- Must be paid the full salary for any week in which the employee performs **any** work.
- Need not be paid for any workweek when no work is performed.

- General rule is that, if the employee is ready, willing, and able to work (even if he/she is not ready, willing, or able to work very well), then the truly salaried employee is entitled to be paid.



SALARY BASIS

Seven exceptions to the salary rule:

1. Absence from work for one or more full days for personal reasons, other than sickness or disability.
2. Absence from work for one or more full days due to sickness or disability if deductions made under a bona fide plan, policy, or practice of providing wage replacement benefits for these types of absences.
3. To offset any amounts received as payment for jury fees, witness fees, or military pay.
4. pursuant to the Family and Medical Leave Act.



SALARY BASIS

5. Unpaid disciplinary suspension of one or more full days imposed in good faith for violations of written workplace conduct rules.
6. Proportionate part of an employee's full salary may be paid for time actually worked in the first and last weeks of employment.
7. Unpaid leave taken pursuant to the Family and Medical Leave Act.

WHAT SHOULD YOU BE DOING?

1. Identify all exempt positions.
2. Consider whether you can increase salary to minimum or whether employees need to be converted to hourly non-exempt.
3. If converted to hourly, implement time-keeping procedures.

A WORD ABOUT INTERNAL AUDITS

- Scope of the audit
- Who conducts an audit?
- Protect Audit Results from Discovery
 - Attorney-Client Privilege
 - Work Product Privilege

PAYMENT OPTIONS

- Convert to an hourly payment plus the payment of overtime.
- FWW
- Salary including overtime

FURLOUGH RULES – PUBLIC EMPLOYEES

- This provision applies only when the absence is occasioned by the employee for illness or personal reasons. If the employee is ready, willing and able to work, deductions cannot be made for time when work is not available.

FURLOUGH RULES – PUBLIC EMPLOYEES

- A public employee will not be disqualified from exemption because they are paid under a pay system:
 - Where the employee accrues personal leave and sick leave and
 - Which requires the employee's pay to be reduced or the employee to be placed on unpaid leave for absences for personal reasons or because of illness or injury of less than one work-day when accrued leave is not used by an employee because:
 - Permission for its use has not been sought, or has been sought and denied;
 - Accrued leave has been exhausted; or
 - The employee chooses to use leave without pay

FURLOUGH RULES – PUBLIC EMPLOYEES

- Employee must otherwise meet the salary basis requirements.
- Eligible pay system must be established by statute, ordinance or regulation, or by a policy or practice established pursuant to principles of public accountability.

FURLOUGH RULES – PUBLIC EMPLOYEES

- Deductions from the pay of a public employee for absences due to a budget-required furlough shall not disqualify the employee from being paid on a salary basis except:
 - In the workweek in which the furlough occurs; and
 - For which the employee's pay is accordingly reduced.

- It is permissible for an employer to require an exempt employee to stay home without pay for an entire workweek.
- This is because an exempt employee need not be paid for any workweek in which they perform no work.

POLICIES REGARDING DISCIPLINE

- Disciplinary deduction is for workplace **conduct**, not attendance and/or performance.
- Review reasons for discipline (e.g., harassment and offensive behavior) – make sure that the right to discipline is clearly spelled out:



“Violations of this policy will result in disciplinary action up to and including suspension or termination.”

IMPROPER DEDUCTIONS

- Deduction for partial day to attend parent-teacher conferences.
- Deduction of day's pay for weather-related closure (employer choice v. employee choice)
- Deduction for three days' absence for jury duty.



PAYROLL PRACTICES THAT Do Not Violate the SALARY TEST

- Additional compensation:
 - Employer does not lose exemption by paying compensation above the \$455.00 per week, such as:
 - Commissions;
 - Bonuses;
 - Additional pay based on hours worked beyond normal workweek.
- Computing pay on hourly, daily, or shift basis is not inconsistent with exemptions.



PAYROLL PRACTICES THAT Do Not Violate the Salary Test

- Taking full or partial day deductions from exempt employees' accrued leave accounts.
- Requiring exempt employees to keep track of and record hours.
- Requiring exempt employees to keep a particular schedule.

EFFECT OF IMPROPER DEDUCTIONS

- Actual practice of making improper deductions may result in loss of exemption:
 - During time period in which improper deductions were made;
 - For employees in the same job classification working for the same manager(s) responsible for the improper deductions.
- Isolated, inadvertent deductions can be overcome if the employer reimburses.

THE SAFE HARBOR

- Exemption not lost if the employer:
 - Has a clearly-communicated policy prohibiting improper deductions that includes a complaint procedure;
 - Reimburses employees when/if improper deductions are made;
 - Makes a good-faith commitment to comply in the future.
- May still be lost if complaints ignored.

DEVELOP A POLICY REGARDING THE SALARY RULES TO COMPLY WITH SAFE HARBOR

- Salaried exempt employees are paid a weekly guaranteed salary for all hours worked. Salaried exempt employees are not eligible for overtime. The employer makes no deductions from the weekly guarantee that are not permitted by the FLSA.
- Optional – Explain when you do deduct.
- Optional – Outline requirements for PTO use.

FLSA PARTIAL OVERTIME PAY EXEMPTION FOR PUBLIC SAFETY EMPLOYEES

- Must be employed in fire protection or law enforcement activities (including security personnel in correctional institutions).
- May still be entitled to overtime, but such payment is on a “work period” basis, which may span 7-28 consecutive days.

FLSA PARTIAL OVERTIME PAY EXEMPTION FOR PUBLIC SAFETY EMPLOYEES

- Examples
 - Fire protection personnel would be due overtime pay under such a plan after 212 hours worked during a 28-day period.
 - Law enforcement personnel must receive overtime after 171 hours worked during a 28-day period.

FLSA HOSPITAL OR RESIDENTIAL CARE EXEMPTION

- A hospital or residential care establishment may, pursuant to a prior agreement or understanding with employees, adopt a fixed work period of fourteen consecutive days for the purpose of computing overtime pay in lieu of the regular seven-day workweek.
- Employees must receive not less than one and one-half times their regular rates of pay for all hours worked over 8 in any workday, and over 80 in the 14–day work period.

FEDERAL AND MINNESOTA MINIMUM WAGE

- **Employers subject to the FLSA** (annual receipts of at least \$500,000) - minimum wage is \$7.25 per hour.
- **Employers subject to the MFLSA**
 - Large Employers (annual receipts of at least \$500,000) – minimum wage is \$9.50.
 - Small employers (annual receipts of less than \$500,000) – minimum wage is \$7.75/hour.

WHO DOES NOT GET MINIMUM WAGE?

- Young people
- Tipped employees
- Student learners
- Full-time students
- Workers with disabilities

REQUIREMENTS TO PAY MORE THAN MINIMUM WAGE

- **Federal Prevailing Wage**
 - The Davis Bacon Act (40 U.S.C. § 3141 *et seq.*) requires payment of prevailing wages on federally funded or assisted construction projects.
 - “Prevailing wage” is the combination of the basic hourly rate and any fringe benefits listed in a Davis-Bacon wage determination.
- **Minnesota Prevailing Wage** (Minn. Stat. §§ 177.41-.44)
 - Requires employees working on state-funded construction projects or other projects covered by law be paid wage-rates comparable to wages paid for similar work in the area where the project is located.
 - The prevailing wage is the hourly rate, plus benefits, required by law to be paid.



REQUIREMENTS TO PAY MORE THAN MINIMUM WAGE

- Living Wage
 - Some cities, such as Minneapolis and St. Paul have adopted ordinances requiring employers to pay its employees who work on city contracts a “living wage.”
 - Living wage is defined as 130 percent of the federal poverty level for a family of four (\$14.91 for 2014) or 110 percent (\$12.61 for 2014) if the employer provides basic health insurance.

OVERTIME BASICS

- **FLSA:** Time and one-half for hours worked over 40 per week.
- **MFLSA:** Time and one-half for hours worked over 48 per week.
- **“8 and 80”:** exception for health care facilities.

COMP TIME

- Public employees only
- Employees must agree
- Must be provided at a rate not less than 1.5 hours for each hour over 40 per week.
- Maximum accrual:
 - 240 hours comp time (160 overtime hours worked);
 - Exception for public safety, emergency, or seasonal: 480 hours comp time (320 overtime hours worked);
 - Cash or time off to offset overtime after max. accrual.

OCCASIONAL OR SPORADIC EMPLOYMENT IN A DIFFERENT CAPACITY

- When public employees, solely at their option, work occasionally or sporadically on a part-time basis for the same public agency but in a different capacity from their regular employment, the hours worked in the different jobs shall not be combined for the purpose of determining overtime liability.
- **“Occasional or sporadic”**: infrequent, irregular, or occurring in scattered instances.



QUESTIONS?

Thank you.