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ATTORNEYS AT LAW

FLSA

Wage & Hour Provisions

FLSA

(WAGE & HOUR PROVISIONS)

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This booklet should not be construed as legal advice or legal opinion on any specific facts or circumstances. You are urged to consult competent counsel concerning your particular situation and any specific legal questions you may have. Employers are specifically encouraged to consult an attorney to determine whether they are subject to state requirements that extend beyond the scope of this booklet.

The Fair Labor Standards Act (FLSA) is more commonly known as the wage-hour law. Its best-known requirements seem simple: with some exceptions, employers must pay employees at least the minimum wage for all their "hours worked"; must pay them 1.5 times their regular hourly rate for all time worked over 40 hours in a workweek (unless they are exempt); and must keep accurate records of their daily and weekly hours worked. The devil is in the details.

The FLSA's many rules, exemptions, quirks, and provisions for particular kinds of employees or industries make it one of the most complex of all federal laws and one of the most difficult to comply with. Indeed, this 1938 law is in many ways a creature of a different time and can be impractical as applied to the circumstances of today's workforce. Nevertheless, the FLSA remains the law, and it is applied very strictly.

Broadly stated, employees are covered if they work for an "enterprise" which has 1) employees who handle, sell or otherwise work on goods or materials that have been moved in or produced for interstate commerce; and 2) an annual business dollar volume of at least $500,000. Hospitals, residential-care institutions, and certain schools and educational institutions generally are covered without regard to a dollar-volume threshold.

Alternatively, employees can be covered individually if they themselves engage in interstate commerce or in the production of goods for interstate commerce, or to meet the needs of interstate commerce.

This booklet does not cover FLSA provisions relating to employees of state and local governments, or the special obligations which might apply when an employer has a federal contract or subcontract. A complete discussion of the FLSA's provisions even with respect to private employers in general is not possible in a limited space, so this booklet addresses only the FLSA's highlights and some of its more common issues. It should be viewed only as a general guide.

Keep in mind that the FLSA does not preempt state or local wage-hour provisions imposing more stringent requirements than the FLSA's. When the FLSA and a state or local law apply to the same situation, you must follow whichever standard favors the employee more.

We have published two booklets dealing with FLSA, in our continuing series. This one covers the basics of the law, dealing mainly with defining "hours worked," with the proper payment of the minimum wage and overtime, and child labor. The other booklet deals with some of the principal exemptions as well as enforcement, recordkeeping requirements and compliance.

THE EMPLOYMENT RELATIONSHIP

The FLSA applies only to employment relationships. Thus, a threshold question is whether such a relationship exists. The Act does not offer much help in deciding this question, saying only, for example, that to "employ" someone is to "suffer or permit" the person to work.

The courts and the U.S. Department of Labor apply the concept of employment very broadly under the FLSA and usually tend to find that an employment relationship exists. The fact that an employer calls someone an independent contractor or a "temporary" or "leased" employee, or that an individual is not considered an employee for tax purposes or under other laws, or is paid a certain way, does not determine employment status under the FLSA. There is substantial risk in erroneously treating someone as not being an employee.

A. Employment vs. Independent Contractor Status

Businesses sometimes assume that they need not follow the FLSA with respect to people they call "independent contractors"; that might well not be so. Instead, whether someone is *really* an "independent contractor" depends on such factors as:

- whether the business controls the way the work is performed;
- whether the person has any opportunity for profit or loss in a business sense;
- whether the person has any significant investment in equipment or materials;
- whether initiative, judgment, or open-market competition is required for the success of the claimed independent enterprise;

- whether the relationship is for a specific or short time, versus an indefinite or long period; and
- whether the service rendered is an integral part of the business receiving the service.

B. Employment vs. Volunteer Status

People who volunteer their time for humanitarian, charitable, religious, or civic purposes might not be FLSA employees. However, among other things, the relationship must be truly voluntary and without contemplation of pay. Employees generally cannot volunteer to their employer to perform work similar to what they do in their regular jobs. The U.S. Labor Department and the courts typically scrutinize employee "volunteerism" where the employees' day-to-day employer is somehow involved in the arrangement.

C. Employment vs. Trainee Or Student Status

The U.S. Supreme Court has said that people who voluntarily work for their own advantage on the premises of another in order to learn a skill or trade, and who do so without any expectation of compensation for the work, are not necessarily FLSA "employees." Thus, it is at least possible that people functioning as "students" or "interns" or holding some other, similar status will not be deemed to be employees.

Several criteria are considered in deciding this question, but generally the nonemployee status of a trainee or student is likely to be challenged if 1) the person is doing work similar to that which the business would receive from an employee; 2) on balance, the relationship is more for the business's benefit than the learner's; or 3) the person is being paid. For example, most new hires have to learn how to do their jobs, but this does not mean that they can be handled as nonemployees during that time.

Overall, *never* treat trainees or students as nonemployees without carefully analyzing their status in advance.

HOURS WORKED

The FLSA never actually defines the phrase "hours worked"; the closest it comes is describing the term "employ" to include "to suffer or permit to work" The U.S. Supreme Court has filled this gap to some extent with a two-point test for determining what qualifies as work:

- whether the activity is controlled or required by the employer; and
- whether the activity is pursued necessarily and primarily for the benefit of the employer's business.

The Labor Department and the courts have construed "hours worked" to include all time which an employer knows or has reason to know an employee spends in activities which are "work" under the Supreme Court's definition. At a minimum, this includes all the time you require an employee to be on your premises, on duty, or at a prescribed workplace.

However, you must also accurately record and pay for work that you simply "permit," even if you do not require or request the work. For example, usually an employer will have to pay for time an employee continues working beyond the end of his or her shift; the U.S. Labor Department's view is that an employer should either pay for this sort of work or prevent the work from being done.

Other activities which conventional wisdom might say are not worktime can nevertheless be compensable, depending on the situation. As an illustration, rest periods are not required by the FLSA, but those of short duration (say, 10 to 20 minutes) usually count as hours worked.

On the other hand, time employees spend in meal periods generally is not counted as worktime (and so need not be paid) if the employees are relieved from duty and are not interrupted. If the employees arguably are not relieved from duty, or if their meal period is interrupted by work, difficult questions can arise as to whether and to what extent the time should be counted and paid for.

The FLSA does not require employers to count absences from work for holidays, vacations, or illnesses as hours worked.

It is impossible to cover here all of the many different situations which present difficult hours-worked questions. Some of the more-common issues follow:

A. Waiting Time, On-Call Time, And Sleeping Time

1. Waiting Time

An employee's time spent waiting for something to happen or for something to do can be compensable worktime. One must look at all the facts to decide whether an employee is "engaged to wait" (which is compensable) or is "waiting to be engaged" (which is not).

For example, unpredictable periods of inactivity while an employee is "on duty," such as standing by for another assignment during a shift, are usually regarded as being "engaged to wait." On the other hand, casual "pick-up" workers who show up on their own at a job site in the hope of being hired for the day are usually "waiting to be engaged" and need not be paid for this time.

2. On-Call Time

Questions sometimes arise as to how to categorize time an employee spends in on-call status. Naturally, all work an employee does while on-call must be treated as compensable.

Whether an employer has to record and pay for time the employee spends waiting but not working while on-call depends upon how restricted the employee is in using the time for his or her own purposes. An employee who is not required to remain on your premises and who can use the "idle" on-call time predominantly for his or her own benefit (even if required to carry a beeper) generally need not be compensated for that time.

3. Sleeping Time

An employee can be "working" throughout a period of time even though he or she spends some of the time sleeping or engaging in nonwork activities. An employee required to be on duty for *less than 24 hours* is working even if permitted to rest or sleep when not busy.

If an employee is on duty for *24 hours or more,* the time he or she spends in a regularly scheduled sleeping period may be deducted from his or her hours worked under cer-

tain circumstances. There are detailed rules which must be consulted in deciding whether and to what extent one may deduct sleep time.

B. Commuting And Travel Time

Travel-time problems can be among the most-complex of all hours-worked issues. Whether and to what extent travel must be counted as hours worked frequently can be evaluated only in the context of specific facts and circumstances.

Normal commuting to and from work generally is not compensable worktime (although different rules might apply if an employee commutes in the employer's vehicle). However, travel between a "normal" workplace, such as an office, and another place of assignment, usually is counted as hours worked, as is travel between one assignment and another during a workday.

Travel between home and the place of assignment on a one-day trip to another city by an employee who normally has a fixed place of work is hours worked. If the employee leaves from the normal place of work rather than from home, the travel between home and the normal place of work need not be counted as hours worked. If the travel is by public transportation, the time spent traveling between home and the departure point, such as an airport, may be deducted.

Overnight out-of-town travel by public transportation must be counted as hours worked to the extent that it occurs during normal working hours, even if the traveling is done on weekends and holidays. Overnight out-of-town travel as a passenger outside normal working hours does not have to be counted as hours worked, if the employee is not otherwise working while traveling. If the employee is required to drive a vehicle in connection with this travel, *all* of the travel time must be considered hours worked (except for bona fide meal periods).

If the employee is allowed to use public transportation for the trip but instead uses an automobile for personal reasons, the employer may count as hours worked either 1) the time spent driving to the destination; or 2) the time that would have been considered hours worked if the

employee had used public transportation.

C. Attending Meetings, Training, Or Similar Sessions

Attending meetings, training programs, and similar activities is not compensable work if *each* of four conditions is met:

- the attendance must be outside of the employee's regular working hours;
- the attendance must be voluntary;
- the meeting, training, or other such activity cannot be directly related to the employee's current job; and
- the employee must not perform any productive work during the attendance.

Attendance is not considered voluntary if the employer requires it either expressly or by implication. Attendance is directly related to an employee's job if it is intended to make the employee better at his or her regular job, as distinguished, for example, from training that a person undertakes in order to be eligible to be considered for a promotion. There are certain exceptions to these general training-time principles, and they must be considered on a case-by-case basis.

THE MINIMUM WAGE

Currently the minimum wage is $5.85 per hour. The minimum wage rises to $6.55 on July 24, 2008 and again on July 24, 2009 (to $7.25). The rate of a nonexempt employee paid solely on an hourly basis must of course be at least the minimum wage. When nonexempt employees are paid in other ways, such as on a salary, commission, or piece-rate basis, their pay must generate an hourly rate of at least the minimum wage when divided by their hours worked in the workweek.

For nonexempt employees, there are only a few situations when an employer does not have to pay at least the full minimum wage:

A. Tipped Employees

Special minimum-wage rules are available with respect to "tipped" employees. Tipped employees are those who are engaged in occupations in which they customarily and regularly receive more than $30 a month in tips. The tips these employees actually receive may be counted as FLSA wages up to a point, but at present the employer must still pay them at least $2.13 an hour in addition to tips.

An employer wanting to use the tip credit must tell the affected employees in advance about the tip-credit rules and must tell each tipped employee that a tip credit will be taken, including the amount of the credit (a maximum of $3.75 per hour at the current $5.85 minimum wage). On July 24, 2007 the maximum tip credit will increase to $4.42. It rises again on July 24, 2009 to $5.12 per hour.

The total of an employee's tips plus his or her cash wage of at least $2.13 an hour must come to at least the minimum wage; if it does not, the employer must also pay the difference.

Employees must be allowed to keep all their tips, except that they can be required to contribute no more than a "customary and reasonable" amount to a pool participated in only by other employees who also customarily and regularly receive tips. The burden of proving that an employee received enough tips to cover the credit taken falls on the employer.

You may not take a tip credit for the hours an employee spends doing any non-tipped work; may not take a larger tip credit for overtime hours than in nonovertime ones; and may not withhold uniform costs, shortages, "walk-outs," and the like from an employee's tips.

B. Board, Lodging, And Other Facilities

The law permits employers to credit toward wages the lesser of "reasonable cost" or "fair value" of board, lodging, and other facilities provided to employees, so long as certain conditions are satisfied. Briefly, the things furnished must be primarily for the employee's benefit; they must be "customarily provided" to employees of the class or group involved; and the employee's acceptance of them must be voluntary and uncoerced. In addition, you must establish the reasonable cost or fair value according to

good accounting practices, and you must prepare and preserve documents supporting the amounts arrived at.

OVERTIME PAY

Overtime pay must be figured at 1.5 times the employee's "regular rate" of pay for all time worked over 40 hours in a workweek ("overtime hours"). This seemingly-simple concept can, in practice, become quite complex.

A. The Workweek

In most cases, the basis for determining overtime is an employee's workweek. A "workweek" is a fixed and regularly-recurring interval of seven, consecutive, 24-hour periods. The workweek does not have to coincide with a calendar week and can begin on any day and at any time of day. Different workweeks can be established for each employee or group of employees.

Generally, you may not average an employee's hours over two or more workweeks to see whether any overtime pay is due. For instance, a nonexempt employee who has workweeks of 45 hours and 35 hours in a bi-weekly pay period is due 5 hours of overtime pay for the first week, even though the hours worked average 40 each week.

B. The Regular Rate

The regular rate used to calculate overtime must be an hourly rate regardless of how the employee's pay is otherwise computed. It is generally determined by dividing an employee's total compensation (except for certain exclusions summarized below) for any workweek by the total number of hours he or she worked in that workweek which the compensation was intended to cover. If an employee is paid *solely* at one hourly rate of pay, then that is the individual's "regular rate."

Remember, the FLSA does not require a nonexempt employee to be paid at an hourly rate. You may pay your employee a salary, commissions, piece-rates, day-rates or a number of other ways. But regardless of how the employee is paid, the FLSA *does* require that those earnings be converted to a regular hourly rate in order to figure overtime pay.

1. Salaried Employees

Figuring overtime for salaried, nonexempt employees depends upon how many hours the salary is intended to cover. As an illustration, if the salary covers 40 hours, then the regular rate is determined by dividing 40 into the weekly salary and then paying 1.5 times that rate for all overtime hours.

If the salary is intended to cover *all* hours worked during the period, whether few or many, then one divides it by the hours worked in the workweek and then pays one-half of that rate times the overtime hours. This is known as the "fluctuating workweek" method, and it must be both clearly established and carefully preserved in certain ways. For instance, an employer's ability to make attendance-related deductions is significantly restricted under the fluctuating workweek system.

There are many other variations on these themes. As an illustration, some employers pay a salary to cover less than 40 hours (such as a day-rate, or a 37.5-hour week, for example) while others intend for the salary to provide straight-time pay for some overtime hours up to a certain number. It is possible to maintain salary plans like these, but how overtime is calculated in those situations must be evaluated on a case-by-case basis.

One thing employers generally cannot do is pay nonexempt employees a fixed salary which *in itself* covers both straight-time *and* overtime pay. The FLSA provides for a strictly-limited exception to this rule, known informally as a "Belo" contract, but you should never attempt to rely upon that exception without first carefully studying its limitations and requirements to see whether those conditions can be met under your particular circumstances.

2. Piece Rate

A nonexempt employee must be paid overtime even if he or she is paid solely on a piece-rate basis. The regular rate of such an employee usually is calculated by adding together the piece-rate earnings for the workweek and then dividing by the number of hours worked in the week which are covered by the piece-rate earnings. The employee's overtime pay is then figured by multiplying one-half of that rate times the overtime hours worked.

The FLSA authorizes another way to compute overtime for piece-rate employees. This special rule calls for paying 1.5 times the usual piece rate for all pieces or units produced during overtime hours. Certain conditions must be met in order to take advantage of this method, including an advance agreement or understanding with the employee making it clear that this alternative will be used.

3. Bonuses And Incentive Payments

Many employers fail to realize that *all* of a nonexempt employee's pay must be included when computing the regular rate, unless the FLSA expressly permits the pay to be excluded. For instance, most bonuses must be figured into an employee's regular rate, including, among many others:

- additional sums paid for meeting production, efficiency, or sales targets;
- a "shift differential" paid to induce employees to work an undesirable shift;
- cost-of-living bonuses;
- good-attendance payments; or
- distributions from a "gainsharing" pool.

If the bonus covers a single weekly period, it is simply added to the employee's other weekly earnings for purposes of calculating the regular rate.

EXAMPLE: Tom works for ABC Corp. at $10 an hour. One week he works 50 hours and also earns a $100 bonus for meeting a production quota. Under the FLSA, Tom's "regular rate" is actually $12 per hour [(50 hrs. x $10) + ($100) ÷ 50 hrs.] If ABC pays overtime at 1.5 times Tom's $10 rate, too little overtime has been paid. Instead, the FLSA requires ABC to pay a higher half-time premium, here ($12.00 ÷ 2) = $6.00, for Tom's ten overtime hours.

Things are more complex if the bonus was earned for work over a period longer than one workweek. In that situation, once the amount of the bonus is known, the payment must first be apportioned back over the period during which it was earned. If the employer can identify particular bonus earnings to particular workweeks, then the allocation should be done that way.

On the other hand, if it is reasonable to assume that the employee earned an equal amount of the bonus each workweek ending in the period covered by the bonus, an equal amount is allocated to each such workweek. Alternatively, if it is more reasonable to assume that an equal amount was earned in each hour worked in the bonus period, then an equal amount is allocated to each such hour.

Whatever the allocation method is, the employer then computes and pays overtime on the bonus for each workweek for which the bonus was paid.

4. Commissions

As with bonuses, when a nonexempt employee receives weekly commission payments, these payments are added to all that person's other earnings for the workweek. The total is then divided by the hours worked in that workweek to get the employee's regular rate. The employee then receives overtime pay equal to one-half that rate times his or her overtime hours.

Sometimes, commissions are paid to cover a period longer than a workweek. In that case, once the commissions are figured, they must be allocated back over the workweeks in which they were earned. Each week's commission amount is then divided by the hours worked in that week, and the employee is due one-half of the resulting rate times the overtime hours worked in each corresponding week.

As with bonuses, if it is not possible to allocate the commissions back to the workweeks in the commission period in proportion to the amount of the commissions earned in each such week, then they must be allocated in some other appropriate and reasonable way so that overtime can be figured. For instance, it might be reasonable under the circumstances to allocate an equal amount of the commissions to each workweek in the commission period, or it might be more appropriate to allocate an equal amount to each hour in the commission period.

5. Meals And Lodging

An employer must include in the regular rate the lesser of reasonable cost or fair value of meals, lodging, or similar

facilities provided primarily for the employee's benefit and convenience. For example, if an employer furnishes lodging to an employee, the employer might be required to take the reasonable cost or fair value of the lodging into account for overtime purposes. On the other hand, it is sometimes possible to exclude these sums from the regular rate. Whether it is necessary to include these amounts in particular situations, and how one should approach the calculations if it is, should be assessed on a case-by-case basis.

6. Exclusions From The Regular Rate

The FLSA specifically allows certain types of compensation to be excluded from overtime calculations, such as:

- some kinds of gifts and similar payments;
- payments made for occasional periods when no work is performed (such as vacations, holidays, or leave), payments made to reimburse certain expenses, and other, similar payments not made as compensation for hours of employment;
- certain payments made under qualifying profit-sharing plans or trusts or thrift or savings plans;
- contributions to a trustee or third person under a qualifying plan providing old-age, retirement, life, accident, or health insurance or similar benefits;
- certain stock option plans after August 16, 2000.

a. Discretionary Bonuses

A bonus is not included in the regular rate if the decisions about whether there will be a bonus *and* what the amount will be rest within the employer's sole discretion *and* are made at or near the time of payment. Year-end Christmas gifts are one example.

The bonus cannot be paid under any contract, agreement, or promise that causes the employee to expect such a payment. If the employer promises in advance to pay a bonus, it abandons its discretion with regard to it, and the bonus must be included in the regular rate. Employers should not rely on this exclusion unless and until they have studied the issue carefully and are *sure* that it applies.

b. Premium Payments

Certain sorts of "premium payments" may be excluded from the regular-rate computation. The idea is that employers should not have to figure overtime on payments which are themselves in the nature of overtime.

For one thing, you may exclude the premium amount an employee receives for working over eight hours in a day or over 40 hours in a week, or for work exceeding the employee's normal or regular working hours, when calculating the regular rate.

You may also exclude extra compensation resulting from the payment of a premium rate of *at least 1.5 times* the normal nonovertime rate for work performed on Saturdays, Sundays, holidays, or regular days of rest, or on the sixth and seventh days of the workweek.

In addition, you may exclude extra compensation resulting from the payment of a premium rate of *at least 1.5 times* the nonovertime rate established in an agreement or contract calling for the payment of that premium rate for hours worked outside of the basic, normal, or regular workday (not over 8 hours) or workweek (not over 40 hours).

The FLSA also permits an employer to take a credit for the above premiums against any overtime compensation otherwise due for hours worked over 40 in a workweek.

COMPENSATORY TIME

Notwithstanding widespread misconceptions to the contrary, private sector employers cannot compensate nonexempt employees for working overtime in a workweek by giving them time off in another week instead of overtime pay.

However, it *is* legal to control or rearrange an employee's hours *within* a workweek to prevent overtime from being worked. As an illustration, an employee who works 40 hours during the first four days of her five-day schedule can be told to take the fifth day off so as to avoid having her work any overtime hours that workweek.

WAGE DEDUCTIONS AND OUT-OF-POCKET PAYMENTS

In many instances, the cost of tools; equipment; apparel; lost, damaged, or unreturned equipment; shortages; bad checks, and many other such costs may be deducted from employee wages or otherwise imposed on the employee, but *not* to the extent that the cost cuts into the required minimum wage or overtime wages due that employee.

For example, generally an employee who is required by his or her employer or by the nature of the job to purchase tools or equipment cannot be required or permitted to bear the costs of the purchase to the extent that it directly or indirectly reduces his or her wages to below either the required minimum wage for straight-time hours or any overtime pay due for the week in which the expense is incurred. This is also true even where a prospective employee must pay for such items on an out-of-pocket basis in order to become employed.

Similarly, if you require an employee to wear a uniform, you may not deduct for the cost of or deposit on the uniform to the extent that this reduces the employee's pay for a workweek to below the minimum wage or required overtime compensation. However, the definition of a "uniform" does not include items of a general street-clothing nature if the employer specifies them only in general terms and allows variations in the details.

The cost of cleaning and maintaining required uniforms generally may not be imposed upon an employee to the extent that the employee's wages are thereby directly or indirectly reduced to below the required minimum wage or overtime wages due.

However, where uniforms 1) are made of wash-and-wear materials; 2) may be routinely washed and dried with other personal garments; and 3) need not be ironed, dry-cleaned, washed daily, commercially laundered, or otherwise specially handled, then uniform maintenance costs need not be reimbursed under the FLSA. Where special treatment is required, such as in order to meet an employer's appearance standards, then a reimbursement must be made if the cost would otherwise cut into the minimum wage or overtime.

An employer may permit and collect for purely personal

purchases by employees on a cash basis, even if some amount of employer add-on is included, so long as the transactions are entered into voluntarily by the employee and are at arm's-length, and so long as collections for the transaction are not made from the employee's wages. However, where collection for an employee's purchase is made either directly or indirectly through payroll deduction, a violation will occur to the extent that any employer profit or other add-on cuts into the required minimum wage or overtime wages due the employee. These same principles usually apply to loans or cash advances made to an employee.

Note that, where an employee is subject to the Act's overtime requirements, in determining the excess wages available for offset where a limitation applies, *no part* of the overtime wages paid for weekly hours worked over 40 may be considered. If you plan to make permissible deductions or offsets in overtime workweeks, you should say so in a policy statement explaining, among other things, that those deductions or offsets will be made in both overtime and nonovertime workweeks.

Also, deducting work-related costs can destroy a salary based exemption. This is more fully discussed in a related booklet in this series, FLSA (Recordkeeping and Exemptions).

Finally, the courts and the U.S. Labor Department do not recognize or permit employee agreements which supposedly waive the FLSA's limitations in these areas. In other words, you may not require or permit employees to pay or have deducted more than the FLSA allows, even if an employee agrees to it.

Note: Many states and other jurisdictions strictly limit or prohibit wage deductions in ways that the FLSA does not. Be sure you have checked relevant state and local laws before making any final decisions about wage deductions.

CHILD LABOR

The FLSA's child-labor limitations regulate the employment of individuals under 18 years of age.

There is an age-18 limit for numerous jobs falling within seventeen "Hazardous Occupations Orders" issued by the U.S. Secretary of Labor. Among other kinds, these activities include operating power-driven meat slicers; work relating to power-driven hoisting devices; work involving power-driven woodworking machines, saws, or metal-working equipment; and operating scrap-paper balers and paper-box compactors. As another example, persons under 17 may not drive vehicles on public roads, and 17-year-olds may do so only under restricted circumstances.

Fourteen- and 15-year-olds may work in limited occupations, mostly in retail, food service, and gasoline service operations, such as restricted work in offices or in sales, clerical, cleaning, or delivery occupations. Even then, they may work only within strict hours and times-of-day limitations:

- they cannot work during school hours;
- they can work no more than three hours on a school day and eight hours on a non-school day;
- they can work no more than 18 hours in a calendar week when school is in session and no more than 40 hours in a calendar week when school is not in session; and
- they cannot work before 7 a.m. or after 7 p.m., except that they can work until 9 p.m. from June 1 until Labor Day.

Persons under the age of 14 generally cannot be employed.

Some child-labor exemptions or exceptions exist, such as with respect to certain kinds of agricultural employment, work involving the delivery of newspapers to the consumer, work in conjunction with certain government-sponsored programs, or when a minor is employed by a parent or someone standing in the place of a parent. However, these exemptions are very strictly construed, and you should not rely upon them without carefully ensuring that the relevant exception applies to the particular situation at hand.

CONCLUSION

This overview provides a concise and accurate summary, but only of the highlights of this complex law. Many wage-payment questions are highly fact specific, and there is no substitute for discussing difficult situations with competent counsel.

In our companion booklet, we deal with the recordkeeping and enforcement provisions of the FLSA, as well as the critically important issue of exemptions – those situations in which because of an employee's job duties and/or method of pay, you need not meet one or more of the FLSA's minimum wage, overtime, or timekeeping requirements.

For further information about these contents, contact any office of Fisher and Phillips, LLP or visit our website at www.laborlawyers.com

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