



MONEY, MONEY, MONEY:

Federal and State Wage and Hour Compliance

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THE TOP 10

- A review of the ten most frequent wage and hour inquiries made in the last year



TOP 10



1. SALARY BASIS



- Salary must be at least \$455.00 per week
- Predetermined amount per pay period
- No reduction in pay due to variations in quantity or quality of work
- Full salary must be paid for any week in which any work is performed

Salary Basis cont'd.

- No deductions for jury duty
- Whole day deductions for personal reasons
- Whole day deductions for sickness and disability if pursuant to a bona fide plan
- Partial day deductions pursuant to a bona fide plan (including PTO plans)

Salary Basis cont'd.

- Deductions as penalties imposed in good faith for infractions of safety rules of major significance (smoking in an explosive plant)
- **Deductions for unpaid whole day disciplinary suspensions based on violations of written workplace conduct rules**
- Safe Harbor Policies

2. The “White Collar” Exemptions



- Executive
- Administrative
- Professional

“Executive” Employees



- Primary duty is the management of commonly recognized subdivision
- Regularly directs work of 2 or more employees
- Authority to hire/fire or whose recommendations are given “particular weight”
- Does not apply to “working supervisors”

“Administrative” Employees



- Primary duty is office or nonmanual work directly related to employer's policies
- Regularly exercises independent judgment and discretion as to matters of significance
- Does not include ordinary clerical/support employees (i.e., secretaries, clerks)

“Professional” Employees



- Primary duty is work requiring: (i) knowledge of an advanced type in the field of science or learning customarily acquired through prolonged study; or (ii) requires invention, imagination, originality or talent in a recognized artistic or creative endeavor

Other FLSA Exemptions

- Outside salespersons
- Commissioned retail salespersons
- Seasonal recreational employees
- Employees subject to Motor Carrier Act
- Agricultural employees
- Taxicab drivers

3. Nevada's Modified Overtime Laws



- Assembly Bill 44 broadened the scope of NRS 608.018, which now applies to employees who are paid *at or above* 1.5 times the minimum wage and work more than 40 hours in any work week
- Previously, such employees were only covered by the FLSA
- The list of employees excluded from Nevada's overtime provisions is not as broad as the list under federal law

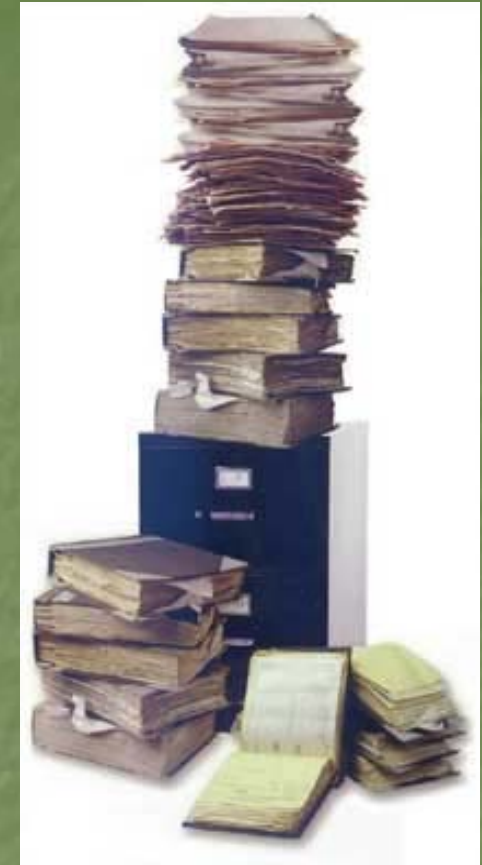
4. Payment for All Hours Worked



- The “suffer or permit to work” standard
- Improper to not pay employees for work performed, **even if unauthorized**
- Discipline employee for unauthorized work pursuant to a written policy, not by failing to pay the employee
- Rounding of time under 29 C.F.R. § 785.48(b)

5. Recordkeeping

- It is the EMPLOYER'S obligation to accurately maintain time and earnings records
- The next best evidence used by DOL is the employees' best recollections!



6. Payroll Deductions



- Governed by NRS 608.110
- Impacted by Coast Hotels v. Nevada State Labor Commission
- New Labor Commissioner regulation at NAC 608.160
 - No blanket authorizations
 - Employee must voluntarily authorize

7. Commissions



- NAC 608.120
 - Payable pursuant to agreement
 - Agreement should be in writing
 - If agreement is not in writing, Labor Commissioner will decide for you based on "the course of dealing"

Commissions cont'd.



- Payments for all hours worked
- Employee must receive at least minimum wage for each hour worked and overtime
- Minimum wage guarantees (without corresponding reduction in future workweeks)
- Can distribute commission over the workweeks it was earned and recalculate overtime on a weekly basis

8. Decreases in Compensation



- Governed by NRS 608.100
 - Unlawful to implement a decrease the wage, salary or compensation of an employee unless at least 7 days written notice is provided to the employee
 - Collective bargaining agreement can provide for a different standard

9. Compensable Time

- Preparatory and concluding activities
 - Issues before the Supreme Court
- Ballaris v. Wacker Siltronic Corp., (9th Cir. 2004)
 - Employers *not* entitled to credit paid meal periods as an offset against any unpaid compensable overtime



10. Bonuses



- Discretion/Nondiscretionary
 - Nondiscretionary bonuses must be included in the regular rate computation for overtime payments
 - Designed to encourage increased efforts or reward for past services?
 - Paid pursuant to contract, agreement or promise causing employees to expect it regularly?
 - Based on production, attendance, length of service, number of overtime hours worked?
 - Discretion of employer

Thank You !

