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**LABOR AND EMPLOYMENT
LAW SEMINAR**



KAMER ZUCKER & ABBOTT

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FAIR LABOR STANDARDS ACT AND NEVADA WAGE AND HOUR LAWS

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I. WHAT IS THE FAIR LABOR STANDARDS ACT (FLSA)?

- ' Compilation of the rules governing the payment of minimum wages and overtime, as well as recordkeeping and child labor standards.
- ' Administered by the Wage and Hour Division of the Department of Labor's Employment Standards Administration.

II. WHO IS COVERED BY THE FLSA?

A. Employers. The FLSA applies to businesses that:

- ' Have employees who are engaged in interstate commerce, producing goods for interstate commerce, or handling, selling or working on goods or materials that have been moved in or produced for interstate commerce; and
- ' Have an annual business dollar volume of at least \$500,000 (the "Enterprise Coverage Test").
- ' The following are covered by the FLSA regardless of the dollar volume of their business: hospitals, institutions primarily engaged in the care of the sick, aged, mentally ill or disabled who reside on the premises; schools for children who are mentally or physically disabled or gifted; preschools, elementary and secondary schools and institutions of higher education; and federal, state and local government agencies.
- ' Any business that was covered by FLSA on March 31, 1990, and that ceased to be covered because of the increase in the annual dollar volume test to \$500,000, as required under the 1989 amendments to FLSA, continues to be subject to the overtime pay, child labor and recordkeeping requirements of the FLSA.

B. Employees.

- ' A true employment relationship must exist between employee and employer.
- ' Employees of companies that do not meet the Enterprise Coverage Test may be individually covered in each workweek in which they are individually engaged in interstate commerce, the production of goods for interstate commerce, or an activity that is closely related and directly essential to the production of goods for commerce.

- ' Domestic service workers, such as day workers, housekeepers, chauffeurs, cooks, or full-time babysitters, are also covered if they receive at least \$1,000 in cash wages from one employer in a calendar year, or if they work a total of more than 8 hours a week for one or more employers.

C. Exempt Employees.

1. Employees Exempt from Overtime and Minimum Wage Provisions of the FLSA:

- ' Executive, administrative and professional employees (including teachers and academic administrative personnel in elementary and secondary schools, outside sales employees, and certain skilled computer professionals);
- ' Employees of certain seasonal amusement or recreational establishments;
- ' Employees of certain small newspapers and switchboard operators of small telephone companies;
- ' Seaman employed on foreign vessels;
- ' Employees engaged in fishing operations;
- ' Employees engaged in newspaper delivery;
- ' Farm workers employed on small farms;
- ' Casual babysitters and persons employed as companions to the elderly or infirm.

2. Employees Exempt from Only Overtime Provisions of the FLSA:

- ' Certain commissioned employees of retail or service establishments;
- ' Auto, truck, trailer, farm implement, boat or aircraft salesworkers, or parts-clerks and mechanics servicing autos, trucks, or farm implements, who are employed by non-manufacturing establishments primarily engaged in selling these items to ultimate purchasers;
- ' Railroad and air carrier employees, taxi drivers, certain employees of motor carriers, seamen on American vessels, and local delivery employees paid on approved trip rate plans;
- ' Announcers, news editors and chief engineers of certain non-metropolitan broadcasting stations;

These materials are educational in nature and represent an overview of the state of the law at the time they were written. They are intended to provide you and your company with a basic working knowledge of the subjects presented. Before your company makes any significant employment or labor law decisions, it is important that you determine whether there have been any changes in the law and whether those decisions call for more detailed exploration and consideration.

- ' Domestic service workers who reside in their employer's residence;
- ' Employees of motion picture theaters;
- ' Farmworkers.

3. **Employees Who Are Partially Exempt from the FLSA's Overtime Requirements:**

- ' Employees engaged in certain agricultural operations and of certain bulk petroleum distributors;
- ' Employees of hospitals and residential care establishments which have agreements with the employees to work a 14-day work period in lieu of a 7-day workweek (the employees are paid overtime premium pay within the requirements of the FLSA for all hours worked over 8 in a day or 80 in the 14-day work period, whichever is the greater number of overtime hours);
- ' Employees who lack a high school diploma or have not completed the eighth grade may be required by their employer to spend up to 10 hours in a workweek engaged in remedial reading or training in other basic skills that are not job-specific, as long as they are paid their normal wages for the hours spent in such training.

4. **Salary Test for All Exemptions.**

- ' Employees must regularly receive each pay period a predetermined amount constituting all or part of their compensation which is not subject to reduction because of variations in the quality or quantity of the work performed.
- ' Accordingly, deductions cannot be taken from an exempt employee's salary except in the following circumstances:
 - ' Absence of one or more full days for personal reasons other than sickness or accident;
 - ' Absence due to disability or sickness for one or more full days in excess of number of sick days permitted by the employer's plan, policy or practice regarding attendance; or
 - ' Where employer makes deductions from salary for unpaid leave taken pursuant to the FMLA.

III. **DETERMINING COMPENSABLE HOURS WORKED.**

- ' Time spent for the benefit of the employer, with the employer's knowledge, and that is considered a "principal activity" of the employee is considered to be hours worked and is compensable.

- ' Principal activities are duties, tasks, or actions that are an integral part of the employee's job.
- ' Time spent by an employee performing work not requested but permitted, through knowledge and acquiescence of the employer, is compensable.

IV. **THE MINIMUM WAGE.**

- ' As of September 1, 1997, employers must pay covered employees a minimum wage of not less than \$5.15 an hour.

A. ***Tipped employees.***

- ' Under Nevada law, an employer may not apply tips or gratuities as credit toward the payment of the statutory minimum hourly wage.
- ' Employer may not take all or part of any tips.
- ' Tipped employees must retain all of their tips, except to the extent that they participate in a valid tip pooling or sharing arrangement among themselves.

B. ***Youth Minimum Wage.***

- ' Children between 18-20 years old may be paid a minimum wage of no less than \$4.25 an hour during their first 90 consecutive calendar days of employment.
- ' Under Nevada law, the minimum wage for all children under 18 years old is \$4.38 per hour without regard to the number of days worked.

C. ***Subminimum Wage Provisions.*** The following individuals may be entitled to be paid wages at rates below the statutory minimum if an employer obtains a special certificate from the Secretary of Labor:

- ' Student learners (vocational education students);
- ' Full-time students in retail or service establishments, agriculture, or institutions of higher education; or
- ' Individuals whose earning or productive capacity is impaired by a physical or mental disability, including those related to age or injury, for the work performed.

V. **OVERTIME PAY.**

- ' Covered employees must be paid no less than one and one-half times their regular rate of pay for: (1) all hours worked in excess of 40 in a workweek; or (2) all hours worked in excess of 8 in any work day if earning less than \$7.73 an hour.
- ' Additionally, in Nevada, employees must be paid no less than one and one-half times their regular rate of pay for all hours worked in excess of 8 in any work day *if* earning less than \$7.73 an hour.

- ' Employer must use a single workweek and cannot average hours over two (2) or more weeks.
- ' Employer determines the days upon which the workweek begins and ends, but it must be fixed.

VI. PAYDAYS, BREAKS, MEALS AND UNIFORMS.

- ' Under Nevada law wages must be paid at least semi-monthly;
- ' Employer shall establish and maintain regular paydays and shall post a notice setting forth those paydays in a conspicuous place;
- ' Under Nevada law, an employee who works a continuous period of eight (8) hours must have a meal period of at least one-half hour;
- ' Under Nevada law, employees shall be permitted a 10-minute rest period for every four (4) hours worked. Rest periods are hours worked and should not be deducted from wages;
- ' Employer must furnish to employees, without cost, all uniforms and accessories required. If such uniform or accessory cannot be easily laundered by employees, employer shall clean without cost to employees.

VII. FINAL PAYCHECKS.

A. *Discharged employee.*

- ' Immediate payment of all compensation earned and unpaid.
- ' Immediate = no more than 72 hours.

B. *Resignation.*

- ' Compensation earned and unpaid should be paid no later than the earlier of either the regular payday or seven (7) days after resignation.

VIII. DEDUCTIONS.

- ' Deductions that reduce the employee's cash wages below the minimum level are not permitted.
- ' Deductions made from wages such as cash or merchandise shortages, employer-required uniforms, and tools of the trade, are not legal to the extent that they reduce the wages of employees below the minimum rate required by the FLSA or reduce the amount of overtime pay due under the FLSA.
- ' **Under current interpretation of Nevada law by the Labor Commissioner, an employer cannot deduct any amount from wages that does not benefit the employee.** Thus, disciplinary deductions or deductions due to loss of funds or merchandise are not permitted.
- ' "Kickbacks" from the employee to the employer or a third person are prohibited.

IX. RECORD KEEPING REQUIREMENTS.

- ' Employers are required to keep records on gross wages or salary, deductions, net cash wage or salary, total hours employed in pay period by date, and date of payment.
- ' The FLSA does not specify the form in which an employer's records should be kept but an employer should be ready to convert data into a form that can be viewed and inspected within 72 hours.
- ' Records must be kept at the place(s) of employment or an established central record keeping office and must be safe and accessible.
- ' Kamer & Zucker recommends that employers use a time clock in order to more efficiently track employees' hours worked, although the use of time clocks is not required by law.
- ' Rounding: The FLSA permits employers to "round off" a worker's arrival and departure times to the nearest five minutes, one-tenth or quarter of an hour. However, employers must ensure that rounding does not result in employees going unpaid or underpaid for time worked. Rule of thumb: 1-7 minutes on clock, round down; 8-15 minutes on clock, round up.
- ' With respect to employees subject to the minimum wage provisions or both the minimum wage and overtime pay provisions, the following records **MUST** be kept:
 - ' Personal information, including employees' full names, home addresses (including zip codes), occupations, genders, and birth dates if under 19 years of age;
 - ' Hour and day when workweek begins;
 - ' Total hours worked each workday and each workweek;
 - ' Total daily or weekly straight-time earnings;
 - ' Regular hourly pay rate for any week when overtime is worked;
 - ' Total overtime pay for the workweek;
 - ' Deductions from or additions to wages;
 - ' Total wages paid each pay period;
 - ' Date of payment and pay period covered.
- ' Department of Labor regulations require employers to keep records on the date of birth of employees under age 19, their daily starting and quitting times, daily and weekly hours worked, and their occupation.
- ' Employers may protect themselves from unintentional violation of the child labor provisions by keeping on file an employment or age certificate for each youth employed to show that the youth is the minimum age

for the job (can usually use certificates issued under state law).

- ' Employers must keep in their possession for at least three (3) years the following items:
 - ' Payroll records and data required and discussed above;
 - ' Certificates, agreements, plans, and notices; and
 - ' Sales and purchase records.
- ' Employers must keep in their possession for at least two (2) years the following items:
 - ' Basic employment and earnings records, including time cards containing daily stop and start time and amounts of work accomplished;
 - ' Wage rate table;
 - ' Order, shipping and billing records; and
 - ' Records of additions to or deductions from wages paid.

X. CHILD LABOR.

- ' Under the FLSA, minors = children under age 18.
- ' Under Nevada law, minors under the age of 18 must obtain a work permit.
- ' Under the FLSA, children 18 years or older may perform any job for unlimited hours.
- ' Under the FLSA, a child must be at least 16 years old to be employed in a nonagricultural occupation.
- ' Under Nevada law, no minor can be employed or exhibited in any area of a casino or where the sale of alcoholic beverages is the primary commercial activity.
- ' The FLSA also sets forth 17 types of occupations deemed too dangerous for children under the age of 18 to perform.
- ' Children ages 14 and 15 may work outside school hours in various nonmanufacturing, nonmining, nonhazardous jobs under the following conditions:

- ' No more than 3 hours on a school day, 18 hours in a school week, 8 hours on a nonschool day, or 40 hours in a nonschool week; and

- ' They may not begin work before 7 a.m., nor end work after 7 p.m., except from June 1 through Labor Day, when evening hours are extended to 9 p.m.

- ' Under the FLSA children ages 14 and 15 who are enrolled in an approved Work Experience and Career Exploration Program (WECEP) may be employed for up to 23 hours in school weeks and 3 hours on school days (including during school hours).

- ' Under Nevada law, it is unlawful to employ a child under 14 years of age during school hours.

- ' Under Nevada law, written permission by a judge is required to employ a child less than 14 years of age.

- ' Under the FLSA, the following are occupations in which children may be engaged AT ANY AGE:

- ' Delivery newspapers;

- ' Performing in radio, television, movies, or theatrical productions;

- ' Work for parents in solely-owned nonfarm businesses (except mining, manufacturing, or any other occupation declared hazardous by the Secretary of Labor).

XI. DISCRIMINATION AND PENALTIES.

- ' An employer who discriminates or retaliates against an employee for filing a complaint or for participating in a legal proceeding under the Act violate the FLSA.

- ' Wage and Hour Division investigators may require compliance, back wages, and fines.

- ' For willful violations, an employer may be prosecuted criminally and fined and/or imprisoned.

- ' Secretary of Labor may also bring suit against an employer for injunctive relief and/or back pay and liquidated damages.