FLSA Exemption Changes – Policy and Practice Updates and the Golden Rule

There are many issues surrounding classifying employees under the new proposed FLSA exempt rule changes. But aside from figuring out how to reclassify employees while protecting your bottom line, you’ll also want to consider a number of policies and procedures that apply to non-exempt employees, and whether they should be updated or added to your employee handbook or other operating manual. The following is an article from our HR Support Center staff.

Let’s take a look at a few of these key policies, keeping in mind the Golden Rule of wage and hour: non-exempt employees must be paid for all time they are “suffered or permitted” to work. This doesn’t just mean time in the office, but all time, whether approved by the employer or not.

The biggest issue we foresee when it comes to dealing with timekeeping, and ultimately wage liability, is changing the habits of formerly exempt employees so that they aren’t “running the clock” after hours. Many employees, particularly those who may have been exempt for years, will be used to responding to work email, finishing up projects, taking client calls, or doing other work tasks during non-work hours. And while we don’t expect these employees to intentionally cook up wage and hour claims as soon as they are reclassified, we do want to be sure that your policies are clear about 1) your expectations with respect to off-the-clock work and 2) your commitment to recording all time worked by non-exempt employees. With that in mind, let’s look at a few specific policies that you’ll want to implement if you don’t have them already, and that you’ll want to reemphasize with newly non-exempt employees if you do.

Southland Data Processing has many resources at your disposal to help digest the FLSA changes.

Webinar Friday May 20th 11:00am FLSA Overtime Changes: What every business needs to know REGISTER HERE: [https://attendee.gotowebinar.com/rt/616729640706418946](https://attendee.gotowebinar.com/rt/616729640706418946)

HR Support Center
Or contact any of our client advocates, 866-946-2032.

**Timekeeping:** If you don’t have some kind of timekeeping policy in writing, now is definitely the time to create one. The policy here can be modified to suit whatever system you use, whether paper time sheets, a punch clock, or an app. It can also be modified to specify how long before or after a scheduled shift employees must clock in or out. Here’s an example:

“All non-exempt employees are required to use the time clock system to record their hours worked. Should an employee miss an entry into the timekeeping system, the employee will notify their manager as soon possible for correction. Employees may not ask another employee to clock in or out for them.

Employees should clock in no sooner than five minutes before their scheduled shift and clock out no later than five minutes after their scheduled shift. Additionally, employees are required to clock in and out for their designated lunch periods, which are unpaid time when employees are relieved of all duties. The length of an employee’s lunch period should be approved by their manager. Waiver of the lunch period requires prior approval of the employee’s manager.

Non-exempt employees are not permitted to work overtime or unscheduled time without prior authorization from their manager. This includes clocking in early, clocking out late, and working through the scheduled lunch period.

Accurate time reporting is a federal and state wage and hour requirement, and employees are required to comply. Failing to enter time into the timekeeping system in an accurate and timely manner is unacceptable job performance.”

**Off-the-Clock Work:** Make sure employees know that they generally should not be working off-the-clock, but if they are (hopefully with permission) that time should be recorded. Consider a policy like the following:

“Non-exempt employees must accurately record all time worked, regardless of when and where the work is performed. Off-the-clock work (engaging in work assignments or duties that are not reported as time worked) is prohibited. No member of management may request, require, or authorize non-exempt employees to perform work without compensation. This includes checking email on personal devices after work hours.”

**Bring Your Own Device (Use of Personal Devices):** We recommend a policy that addresses use of employees’ personal devices such as phones, tablets, and laptops. You can customize something like this:
Non-exempt employees are not authorized to use their personal devices for work purposes unless they receive authorization in advance from management. This includes but is not limited to reading, sending, or responding to work related e-mails, sending text messages, and answering or initiating phone calls.

**Meal Periods and Break Periods:** Many states require meal and/or break periods for non-exempt employees. Check your state requirements on the HR Support Center and make sure you’re offering and enforcing these rest periods. Sometimes these breaks can be waived by the employee if they choose to do so and if they sign a written waiver, but check your state laws before offering this option, as it may not be allowed. If an audit revealed that employees were skipping lunch and you had no evidence that it was their choice, you could find yourself in hot water with the Department of Labor. In most cases, it’s advisable to make employees take their legally protected breaks, even if they’d rather work through them. In addition to being a best practice on the compliance front, an abundance of research has shown that employees are more productive on the whole when provided with breaks during the workday.

**Overtime:** Now would be the time to ensure that you’re familiar with your state and local overtime laws. Although most employers will only be subject to the federal requirement to pay time and a half for hours worked over 40 in a week, Alaska, California, Colorado, Florida, and Nevada all have daily overtime, and Massachusetts and Rhode Island require some employers to pay a premium for work on Sundays. Whatever your state requires, make sure your managers are aware of the rules and that you’re prepared to comply.

There may be more policies specific to your business or industry that require attention in light of the upcoming changes, but these should provide a good starting point. How to communicate, or re-communicate, these policies is up to you. A handbook update might be in order if it has been awhile (don’t forget to have employees acknowledge the new version), or a company-wide meeting or email may suffice; in fact, all three wouldn’t be a terrible idea. Keep in mind that once you have these policies in place, you’ll need to enforce them fairly and consistently, even if that means stopping a formerly exempt employee from doing things they want to do that are also useful to you, like checking and responding to their work email over the weekend. Likewise, repeated violations of these policies should result in corrective action. This may present a challenge for both employees and employers at first, but ultimately everyone will adjust to the new rules and hopefully find some new efficiencies along the way.

For more information about updating policies, communicating changes, and generally dealing with the non-financial impacts of this change, check out our new FLSA Implementation Guide, which can be found in the HR Support Center under the Guides section.

Thanks,

Michael

https://www.dol.gov/whd/overtime/nprm2015/factsheet.htm