

FLSA Challenge Part I

Are You Violating the Fair Labor Standards Act? You probably are and don't know it! Be brave; take the "FLSA Challenge!"

The Fair Labor Standards Act of 1938 (FLSA) establishes federal standards for overtime pay, the minimum wage, child labor, and related recordkeeping requirements. The Act is complex, antiquated, and difficult to apply in today's workplace. Consequently, employer violations of the FLSA are common and many organizations violate the law without knowing it. Failure to comply with the FLSA can be very costly, as it may affect a large number of your employees and penalties may extend over a lengthy time period.

The FLSA can be challenging for even experienced HR professionals to apply. Most managers have little, if any, understanding of the Act. The following materials are intended as a review of some key FLSA issues and to identify some of the pitfalls, quicksand, and traps along the way.

CAUTION: All questions are based on federal law and are applicable to private sector employers. Remember also that some states have imposed additional requirements beyond those required federally. Additionally, there are many exceptions to the FLSA. Contact the Department of Labor, Wage and Hour Division or your attorney for answers to specific questions.

FLSA True & False Challenge

- _____ 1. An employee can legally waive his/her rights to overtime and can agree to work extra hours without overtime pay.
- _____ 2. An employer can average an employee's hours over a 2-week pay period to determine if overtime needs to be paid. (Example: Fred works 50 hours this week and 30 hours the next. Since he averages only 40 hours over the pay period, the company need not pay overtime.)
- _____ 3. Employees can be given "comp time" instead of paying them overtime.
- _____ 4. Employees paid on a salary basis do not need to be paid overtime.
- _____ 5. The FLSA requires employers to give their employees lunch and rest breaks.
- _____ 6. The law requires employers to pay for all rest and lunch breaks given to employees.
- _____ 7. Overtime must be given to hourly employees who work Sundays and holidays.
- _____ 8. A conscientious, hard-working employee who is scheduled to begin work at 9:00 daily but who consistently starts work 10-15 minutes early every day (without being asked to) does not need to be paid for the extra hours, especially since you've told her not to work early.
- _____ 9. Exempt employees' salaries can be docked if they arrive late or leave early.
- _____ 10. The FLSA is enforced by the IRS.
- _____ 11. Inside sales personnel qualify as exempt.

- _____ 12. Exempt employees should be treated differently than nonexempt.
- _____ 13. If you interrupt an employee's lunch break and ask them to do something, he must be paid for the entire lunch period.
- _____ 14. Employees must be paid sick leave and vacation leave.
- _____ 15. "Workweeks" (for overtime purposes) may begin on any day of the week.
- _____ 16. Employees may not be paid a "lump sum" for overtime in lieu of "hour for hour" overtime payments.
- _____ 17. Employers may deduct money or damages owed to the company from an employee's paycheck.
- _____ 18. Employers can prohibit employees from discussing compensation issues.
- _____ 19. Nonexempt employees may be paid on a salary basis.
- _____ 20. If I close my eyes and click my heels three times, this FLSA stuff will go away.

Answers to FLSA True-False Challenge

- 1. **False.** The employer and employee may not waive overtime requirements through agreements. Additionally, an agreement that states only eight hours a day or only forty hours a week will be counted as working time fails the test of FLSA compliance.
- 2. **False.** In general, the DOL requires that overtime be figured on the basis of a single workweek. Covered employees must receive overtime pay for hours worked in excess of forty in a workweek. There are some very limited and complex exceptions to this rule.
- 3. **False.** The FMLA prohibits private employers from giving non-exempt employees compensatory time instead of giving them overtime. Compensatory time exists in the private sector only within a workweek. For example, an employee whose workweek extends from Sunday to Sunday and has worked 40 hours by the end of Thursday could be told to take Friday off and no overtime obligation would be created. Public sector employers may provide compensatory time to their employees under certain circumstances.
- 4. **False.** Classifying an employee as "salaried" or paying someone on a salary basis is not determinative. An employer must also satisfy an FLSA job duties test. Salaried employees may not meet the FLSA tests for exempt status and it may be necessary to pay them overtime. "Salaried" is not equivalent to exempt.
- 5. **False.** The FLSA does not require meal or rest periods. However, many states do impose such requirements.

6. **False.** If breaks are provided, the FLSA requires that those of “short duration” (five to twenty minutes) must be paid and are considered “hours worked.” However, meal breaks are not considered to be work time if the employee is completely relieved from duty for generally at least thirty minutes. The employee does not have to be permitted to leave the workplace as long as the meal break is duty free.
7. **False.** The FLSA does not require payment of overtime or any other additional compensation for working on Sundays or holidays. Of course the basic overtime rules still apply.
8. **False.** An organization that allows employees to work must pay for this time and include it as “hours worked” for overtime purposes. Examples of this include an employee who begins work early, stays late, takes work home, or works through the lunch break. While the employee must be paid for unauthorized work, she may be subjected to disciplinary action.
9. **False.** Generally, employers jeopardize an employee’s exempt status by making pay deductions for absences of less than a day. The employer is considered to be treating the employee as an hourly (non-exempt) employee. An important exception exists for employees taking FMLA leave.
10. **False.** The FLSA is enforced by the Department of Labor’s Wage & Hour Division.
11. **False.** Generally, they don’t qualify as exempt unless they meet the requirements of another exemption. (e.g., Executive, Administrative, etc.) An exemption does exist for Outside Salespersons under some circumstances.
12. **True.** To maintain the exempt status and avoid having to pay overtime, exempt employees must be treated differently in several respects.
13. **True.** An employee must be completely relieved from duty to meet the requirements of an unpaid, duty-free lunch. He must be relieved from performing required tasks to qualify. An interruption of any significant time (two to three minutes) could mean the meal break would have to be paid.

There are risks in allowing an employee to eat at his workstation because it may be unclear whether the lunch is duty free. Supervisors should ensure that their employees take their lunch periods to avoid potential overtime implications.

14. **False.** The FLSA does not require that employers provide vacation, sick leave, or holiday pay. However, if such leave is provided, there may be state legal requirements as to how they are administered (e.g., payment for accrued leave at termination).
15. **True.** Generally, an employee’s workweek must be a regular and fixed time over seven consecutive twenty-four hour periods. It may begin on any day and at any hour of the day. Different workweeks may be established for different groups of employees. Once a workweek is defined, it remains fixed regardless of the schedule of hours worked by an employee.

16. **True.** Lump sums paid for overtime work without regard to the number of hours worked does not qualify as an overtime premium even if the amount of money paid is equal to or greater than the sum owed on a per hour basis.
17. **True.** True in very specific and limited circumstances. The FLSA provides few restrictions regarding such deductions other than they cannot reduce an employee's salary below minimum wage, affect overtime pay, and the employer does not directly or indirectly benefit or profit from the transaction.

However, many states do regulate and severely restrict such deductions. Most states limit deductions to those required by law, court order, or those authorized in writing by the employee.

18. **False.** Although many employers prefer that compensation rates and issues remain private, forbidding such discussion by employees may violate the law. Some states specifically forbid employers from prohibiting employees from discussing compensation or requiring them to sign agreements to that effect. Additionally, banning wage discussions is prohibited by the National Labor Relations Act (NLRA) as it is seen as interfering with the right to engage in organizational and concerted activity.
19. **True.** Non-exempt employees may be paid on an hourly, salary, piece-rate, or commission basis. However, all of these types of payments must be converted to an hourly rate to perform overtime calculations.
20. **False.** Sorry, but you're not Dorothy and this isn't Kansas. Unfortunately clicking your heels won't work! So buckle up, it's going to be a bumpy ride.