Overview

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What is the Fair Labor Standards Act (FLSA)

• Federal Law Established in 1938
• **Protect employees**
  – Establishes minimum wage
  – Overtime pay eligibility and Rate
  – Recordkeeping
  – Child labor standards
• Affects full-time and part-time
What is the Fair Labor Standards Act (FLSA)

- FLSA requires hourly employees be paid:
  - At least the federal minimum wage for all hours worked (currently $9.00/hour in state of Nebraska)
  - Overtime premium (at time and one-half the regular rate of pay) for all hours worked over 40 hours in a workweek

- FLSA provides an exemption from both minimum wage and overtime premium pay for executive, administrative, and professional employees (often referred to as ‘white collar’ exemption); the regulations governing the white collar exemptions were last revised in 2004
Exemptions from the FLSA

• Executive Employees (involved in management of business)
• Administrative Employees (requires a high level of discretion and judgment on matters of significance)
• Professional Employees (areas requiring prolonged intellectual study)
• Highly Skilled Computer Employees
• Highly Compensated Employees (HCE)
Exemptions from the FLSA

• 2 components of the White collar exemption
  – Salary Basis Test – must be paid on a salary basis and be paid at least $455/week, $23,660/annum
  – Duties Test – primary function of job must qualify as exempt
What’s Changing

• Salary Basis test:
  – Increase from $23,660 to $47,476 per year (around 101% increase).
  – Increase "Highly Compensated Employee" exemption from $100,000 to $133,004 per year.

• Salary basis will automatically update every 3 years and be tied to the 40th percentile of salaried employees in the south.

• New rule is effective December 1, 2016
Misconceptions and Myths

• Employees who are paid on a salary basis are exempt from overtime
  – Exemption decisions are based on the job duties and responsibilities, not on being paid hourly or by salary.

• If an employee’s job title is that of manager, supervisor, or administrator, he or she is exempt from overtime
  – Title is not determinative. The job duties, not the title, determine the exemption

• Employees who are college educated and perform white-collar office work are exempt
  – Job duties, not education or clothing, are the determinates of the exemption
Misconceptions and Myths

- Employees who have advanced degrees are exempt
  - Job duties, not education or experience are the determinates of the exemption

- If employees prefer to be paid a salary and do not want to record their time, it is OK to treat them as exempt
  - Employees can’t give up their rights under the Fair Labor Standards Act and employers must maintain their obligations under the Act, including tracking hours worked and paying overtime

- If employees who have been classified as exempt don’t work overtime, it doesn’t matter if they are misclassified
  - Perhaps their amount of pay won’t be affected, but the employer is still violating provisions of the FLSA. For example, the recordkeeping requirements of the FLSA must be adhered to, and there are other tricky situations relating to meal periods, breaks, time off, and leave that may cause potential challenges
Impact to Creighton

• 200 Creighton employees impacted based on salary basis test alone
• Change to our culture as some exempt employees transition to non-exempt status
• Rethink how tasks are accomplished
• Department budget impacted
  – Possible salary increases to maintain exemption
  – Paying overtime
Impact to Employees

- Change to non-exemption seen as a demotion
- Eligible for overtime
- Required to track hours worked (time sheet)
- Minimum of a 30-minute lunch period
- Two 15-minute paid breaks (if schedule allows)
- Biweekly pay basis (26 times a year)
- Vacation and sick accrual amounts won’t change, but frequency of accrual changes from monthly to biweekly
- Benefit premiums paid 24 times a year vs. 12
What should you do

• Be familiar with the FLSA and the intent of the law
• Review employee job descriptions in anticipation to changes in the duties test
• Partner with HR to create awareness within you department
• Partner with HR to prepare for discussions with impacted employees
Contact Information

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