

FLSA  
*Fair Labor Standards Act*  
*Recordkeeping and*  
*Pay Calculations*

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TEXAS ASSOCIATION *of* COUNTIES  
RISK MANAGEMENT POOL

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# Fair Labor Standards Act (FLSA)

- Requires proper wage payment, including minimum wage and overtime
- Requires employees to properly complete timesheets



# Fair Labor Standards Act

## The FLSA does six things:

**Sets minimum wage**

**Establishes overtime pay requirements**

**Sets recordkeeping requirements**

**Sets equal pay for equal work**

**Restricts child labor – restrictions for 14-15 and 16-17 year olds**

**Provides nursing mothers breaks**



# Fair Labor Standards Act

## **The FLSA does not require:**

- Vacation, holiday, sick or severance pay
- Meal or rest periods (except nursing mothers)
- Premium pay for weekends or holidays
- No daily overtime is required
- Pay raises or fringe benefits
- Discharge notices or immediate discharge pay
- Limits to number of hours worked (except for under the age of 16)



# Hours Worked

**Employees must be paid at least minimum wage (\$7.25 hr) for all hours worked**

- ✓ Includes all time spent in the service of employer
- ✓ On call time may or may not be time worked – Freedom Test - 29 C.F.R. 553.221
- ✓ Having a county vehicle and county radio is not working
- ✓ Being at home with the understanding you may be called out again is not working



# Hours Worked

**For law enforcement: Pre-duty or Post-Duty activities that are an integral part of the employees principal activity:**

Reports, washing car, taking care of police dog [29 C.F.R. 553.221](#)

Training, lectures, meetings [29 C.F.R. 553.226](#)



Attendance outside of normal work hours which is required for your certification is not compensable hours

Meals and rest periods (20 min.) [29 C.F.R. 553.223](#)



# Employee Classifications

Non-Exempt

- Subject to overtime provisions of the FLSA

Exempt

- Overtime provisions of the FLSA do not apply



**Elected officials are not defined as employees under the Act**



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## FLSA – Partial Exemptions

Some partial exemptions for law enforcement include:

- Small Department
- 207(k) Exemption



# What About Time Keeping?

Employers may use any timekeeping method they choose, but it **MUST** be accurate and complete for each non-exempt employee.

Records must be kept at the place of employment or central records office and open for DOL inspection.

Records must be kept for at least 3 years.

**Recording Keeping  
Requirements  
29 C.F.R. 516**



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# Best Advice for Recordkeeping

## To be compliant with DOL

- Keep a complete and accurate record of all hours worked – **Actual Start and Stop Times**
- Pay all overtime hours at
  - 1 1/2 times employee's regular rate; or
  - 1 1/2 comp time rate



# FLSA - Overtime

Overtime includes all hours actually worked over 40 in the workweek (exceptions under law enforcement)

- **Daily overtime is not required**
- **Dual employment counts time from both jobs**
- **Workweeks cannot be averaged**
- **Paid leave is not counted as hours worked**



# FLSA – Regular Rate

DOL Definition: Non-exempt employees must be paid overtime pay at no less than one and one-half times the employee's **regular rate** of pay for hours worked in excess of 40 in a workweek.

*\* Counties may use Comp time, however, when employee leaves Comp time must be paid at Regular Rate.*



# FLSA – Regular Rate

DOL Definition: includes remuneration (or pay) for employment, and certain payments made in the form of goods or facilities customarily furnished by the employer. The regular rate does not include certain payments excluded by the FLSA.

**THE REGULAR RATE ON WHICH OVERTIME PAY IS CALCULATED.**



## FLSA – Regular Rate

It's the employees hourly rate plus the required inclusions.



# FLSA – Regular Rate

- Examples of inclusions in the Regular Rate:
- On-call pay
- Longevity pay
- Contest prizes
- Paid lunch – not associated with travel





# FLSA – Regular Rate

Examples of inclusions in the Regular Rate:

- Salary
- Shift Differentials
- Hazardous duty pay
- Sick leave buy back



# FLSA – Regular Rate

Examples of exclusions from the Regular Rate:

- Absences such as vacation, illness bereavement, jury leave
- Payments for unused vacation leave



# FLSA – Regular Rate

Examples of exclusions from the Regular Rate:

- Holiday pay (must be equivalent to regular earnings)
- Premium Pay (where time is already compensated at 1.5)



# FLSA – Regular Rate

Examples of exclusions from the Regular Rate:

- Idle time beyond employer control – weather conditions
- Meal expenses
- Call-back premiums



# FLSA – Regular Rate

Examples of exclusions from the Regular Rate:

- Travel expenses
- Reasonable uniform allowances
- Payments for use of comp time
- Mileage reimbursement



# FLSA – Regular Rate

Regular rates and overtime pay must be calculated prior to making any deductions from pay.

Examples:

Retirement

Deferred Compensation



# Calculating the Regular Rate

Overtime pay must be calculated at the “**Regular Rate**” – not the hourly rate.

**Regular Rate** – The hourly rate PLUS other forms of compensation received by the employee.



# Compensation Policies and Practices

- ❖ County Policies must be clear on how employees are paid.
- ❖ Practice should never be different than policy
- ❖ FLSA Safe Harbor Policy is important protection
- ❖ Policies must address all exemption's. Exempt employees, 207(k) exemption





# Potential Liability Areas

- ❖ Not understanding your own software
- ❖ Failure to correctly calculate hourly rate and regular rate
- ❖ Averaging work weeks for non-207(k) employees
- ❖ Not clearly explaining to all employees how they are paid



# QUESTIONS?



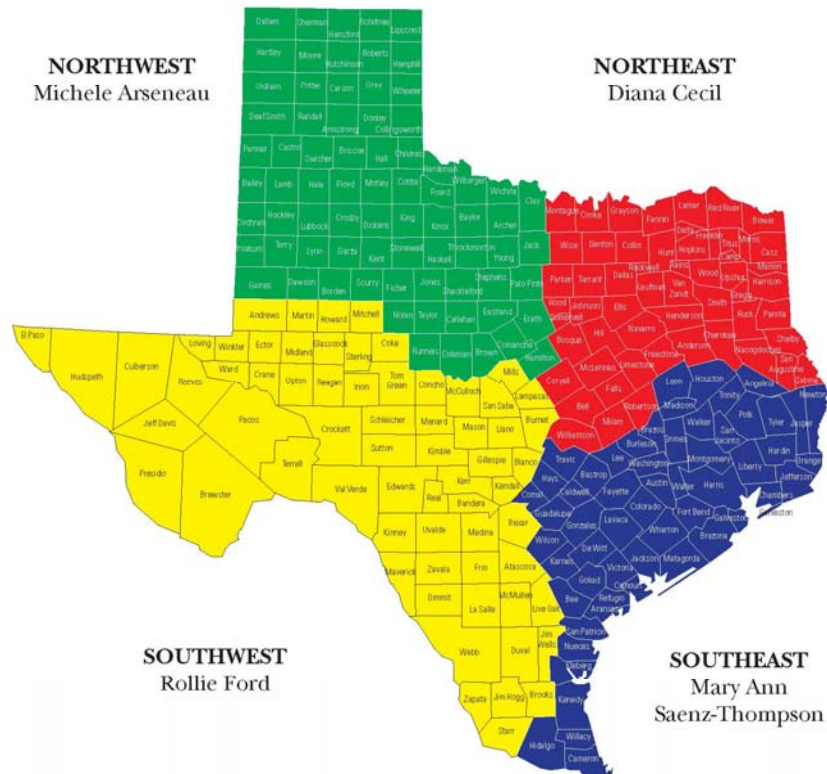
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