

“OH, NO! IT’S WAGE AND HOUR!”

**UNDERSTANDING THE
FAIR LABOR STANDARDS ACT OF 1938**

by

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18 SESSION CLASS SCHEDULE

67 page handout

**SESSION 1: EMPLOYEES, INDEPENDENT CONTRACTORS & VOLUNTEERS
= 20 MINUTES**

I. INDEPENDENT CONTRACTORS

- A. Employees v. Independent Contractors**
- B. IRS Twenty Factor Test**

II. EMPLOYEE V. VOLUNTEER: THE DOL PROVIDES GUIDANCE

SESSION 2: WHAT DOES FLSA COVER? 11 MINUTES

III. WHAT DOES FLSA COVER?

- A. CHILD LABOR**
- B. MINIMUM WAGE**
- C. OVERTIME PAY**

SESSION 3: THE PAYMENT OF WAGES = 43 MINUTES

IV. THE PAYMENT OF WAGES

- A. Paying Different Rates of Pay For Different Jobs**
- B. Making Wage Reductions**
 - 1. Agreements for wage reduction**
 - 2. Reducing employee wages without an agreement**
- C. Tipped Employees**
- D. Non-Cash Wages**
- E. Time Cards**
- F. Rounding, or Averaging, Employee Work Time**
- G. Breaks**
- H. Call-In or Call-Back Time**
- I. On Call Time**
- J. Sleeping Time**
- K. Testing and Examinations**
- L. Waiting Time**

SESSION 4: TRAINING TIME - 7 MINUTES

- M. Training Time**

SESSION 5: TRAVEL TIME = 16 MINUTES

- N. Travel Time**

SESSION 6: OVERTIME PAY = 10 MINUTES

V. OVERTIME PAY

- A. Definition of Overtime**
- B. Workweek Defined**
- C. Compensatory Time**
- D. Private Sector Compensatory Time**
- E. Unauthorized Overtime**
- F. Payments Made To Employees Which Need *Not* Be Included In Overtime Calculations**

SESSION 7: EXEMPT V. NONEXEMPT = 8 MINUTES

VI. EXEMPTIONS

- A. Exempt v. Nonexempt Employees**
- B. Standard Of Review, Burden Of Proof and Rule Of Construction For Determining Exempt Status**

SESSION 8: EXECUTIVE EXEMPTION = 11 MINUTES

VII. EXECUTIVE EXEMPTION

- A. Bona Fide Executive Employee's Minimum Salary and Standard Duties Test**
- B. Primary Duty**
- C. Management**
- D. Department or Subdivision**
- E. Customarily and Regularly**
- F. Two or More**
- G. "Actual Authority To Hire and Fire" and "Particular Weight"**
- H. Bona Fide Administrative Employee's Minimum Salary and Standard Duties Test**

- I. Primary Duty**
- J. Directly Related to Management or General Business Operations**
- K. Employer's Customers**
- L. Discretion and Independent Judgment**
- M. Significant Matters**
- N. Educational Establishments and Administrative Functions**

SESSION 9: ADMINISTRATIVE EXEMPTION = 11 MINUTES

VIII. ADMINISTRATIVE EXEMPTION

- A. Bona Fide Administrative Employee's Minimum Salary and Standard Duties Test**
- B. Primary Duty**
- C. Directly Related to Management or General Business Operations**
- D. Employer's Customers**
- E. Discretion and Independent Judgment**
- F. Significant Matters**
- G. Educational Establishments and Administrative Functions**

SESSION 10: PROFESSIONAL EXEMPTIONS = 6 MINUTES

IX. BONA FIDE LEARNED PROFESSIONAL EMPLOYEE'S MINIMUM SALARY AND STANDARD DUTIES EXEMPTION TEST

- A. Learned Professional Exemption**
- B. Primary Duty**
- C. Work Requiring Advanced Knowledge**
- D. Field of Science or Learning**
- E. Customarily Acquired by a Prolonged Course of Specialized Intellectual Instruction**

X. BONA FIDE CREATIVE PROFESSIONAL EMPLOYEE'S MINIMUM SALARY AND STANDARD DUTIES EXEMPTION TEST

- A. Creative Professional Exemption**
- B. Invention, Imagination, Originality or Talent**
- C. Recognized Field of Artistic or Creative Endeavor**

SESSION 11: HIGHLY-COMPENSATED EXEMPTION = 3 MINUTES

XI. HIGHLY-COMPENSATED WORKERS

- A. Highly Compensated Test**
- B. Total Annual Compensation**
- C. Make-up Payments and Prorating**
- D. Customarily and Regularly**

SESSION 12: OUTSIDE SALES EXEMPTION = 3 MINUTES

XII. OUTSIDE SALES EXEMPTION

- A. Outside Sales Test**
- B. Primary Duty**
- C. Making Sales**
- D. Obtaining Orders or Contracts for Services or for the Use of Facilities**
- E. Customarily and Regularly**
- F. Away from Employer's Place of Business**
- G. Promotion Work**
- H. Drivers Who Sell**

SESSION 13: COMPUTER PROFESSIONALS = 3 MINUTES

XIII. COMPUTER EMPLOYEE EXEMPTION

- A. Computer Employee Exemption Test**
- B. Primary Duty**

SESSION 14: OTHER EXEMPTIONS = 2 MINUTES

XIV. TEACHERS

XV. PRACTICE OF LAW OR MEDICINE

XVI. OTHER EXEMPTIONS

SESSION 15: THE SALARY TEST = 26 MINUTES

XVII. SALARY BASIS REQUIREMENT

- A. Salary vs. Hourly and Exempt v. Nonexempt**
- B. Salary Test In General**
- C. “Safe Harbor” For Damages Under The Salary Test**
- D. Circumstances In Which The Employer May Make Deductions From Pay**
- E. Effect of Improper Deductions from Salary**
- F. Fee Basis**
- G. One Day Suspensions For Exempt Employees**
- H. Public Sector Employees’ Exemption To The Salary Test**
- I. Family and Medical Leave Act (“FMLA”) and the Salary Test**
- J. Outside Sales, Teachers, Lawyers and Physicians**

SESSION 16: FIXED SALARY FOR A FLUCTUATING WORK WEEK = 7 MINUTES

- A. Fixed Salary For Fluctuating Work week**

SESSION 17: DAMAGES AND LIABILITY = 15 MINUTES

XVIII. DAMAGES UNDER THE FLSA

- A. Willful v. Nonwillful Violations**
- B. Liquidated Damages**
- C. Other Remedies**

XIX. U.S. SUPREME COURT: ORAL COMPLAINTS UNDER THE FLSA COUNT

SESSION 18: DOL RELEASES FLSA JOINT EMPLOYER FACT SHEET = 13 MINUTES

XX. DOL RELEASES FLSA JOINT EMPLOYER FACT SHEET

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The Fair Labor Standards Act is as confusing as Employment Law gets.

- What do the **REGULATIONS** say about who is **EXEMPT** and **NON-EXEMPT** from overtime pay ... and what does that **MEAN**?
- What are the **DUTIES TESTS** for the **EXECUTIVE, ADMINISTRATIVE** and **PROFESSIONAL EXEMPTIONS**?
- Who is exempt under the **OUTSIDE SALES** exemption?
- Who is an **EMPLOYEE** and who is an **INDEPENDENT CONTRACTOR**?
- How is **OVERTIME CALCULATED** and paid?
- What is **“ROUNDING”** ... and how do I use it for “clocking in and clocking out”?
- How must your **TIME CARDS** be filled out?
- When can you put nonexempt employees on a **FLUCTUATING WORK WEEK** Pay Agreement?
- Can I **DEDUCT** money owed to me from my employees’ wages without a signed agreement?
- How long do **LUNCHESES** have to be in order for them to be unpaid?
- Do I have to give my employees **BREAKS**?
- When are breaks **UNPAID**?
- When do I have to pay for **TRAVEL TIME**?
- When do I have to pay for time spent **TRAINING** my employees?
- What is a **BLENDED HOURLY RATE** and how does it work?

- What is **COMPENSATORY TIME** ... and when can you use it?
- What is the **SALARY TEST** and how does it work today?
- What **DAMAGES** are allowed under the FLSA?

... and **MUCH, MUCH** more ...

Learn everything you needed to know about the FLSA.

Scott will show you how to how to use this information **IMMEDIATELY** with his own “rubber hits the road” approach as a 30 year human resource professional and employment attorney.

Notice: Legal Advice Disclaimer

The purpose of these materials is not to act as legal advice but is intended to provide human resource professionals and their managers with a general overview of some of the more important employment and labor laws affecting their departments. The facts of each instance vary to the point that such a brief overview could not possibly be used in place of the advice of legal counsel.

Also, every situation tends to be factually different depending on the circumstances involved, which requires a specific application of the law.

Additionally, employment and labor laws are in a constant state of change by way of either court decisions or the legislature.

Therefore, whenever such issues arise, the advice of an attorney should be sought.



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Business First's 20 People To Know In HR

CEO Magazine's 2008 Human Resources "Superstar"

Nationally Certified Emotional Intelligence Instructor

2012, 2008, 2007, 2006 and 2003 SHRM National Diversity Conference Presenter

Scott Warrick combines the areas of law and human resources to assist organizations in **"Solving Employee Problems BEFORE They Happen."** Scott uses his unique background of **LAW** and **HUMAN RESOURCES** to help organizations get where they want to go, which includes coaching and training managers and employees in his own unique, practical, entertaining and humorous style.

[Scott Trains Managers and Employees ON-SITE in over 50 topics](#)

Scott's book,

**["The Human Resource Professional's
Complete Guide To Federal Employment And Labor Law,"](#)**

is a favorite among HR professionals and students.

Scott's academic background and awards include:

Capital University College of Law (Class Valedictorian (1st out of 233))

Master of Labor & Human Resources and B.A. in Organizational Communication:
The Ohio State University

The Human Resource Association of Central Ohio's Linda Kerns Award for Outstanding Creativity in the Field of Human Resource Management and the Ohio State Human Resource Council's David Prize for Creativity in Human Resource Management

For more information on Scott, just go to **www.scottwarrick.com**