

# **“OH, NO! IT’S WAGE AND HOUR!” UNDERSTANDING THE FAIR LABOR STANDARDS ACT OF 1938**

by

**Scott Warrick, JD, MLHR, CEQC, SHRM-SCP**

*Scott Warrick Human Resource Consulting & Employment Law Services*

(614) 738-8317 ♣ [scott@scottwarrick.com](mailto:scott@scottwarrick.com)

[WWW.SCOTTWARRICK.COM](http://WWW.SCOTTWARRICK.COM)

Link Up With Scott On [LinkedIn](#)

In this course, you get:

- All 20 video sessions to watch individually
- The entire 4 hour video program
- A 74 page handout
- A Certificate of Completion
- Evaluation Form

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

### **I. PURPOSE**

### **II. INDEPENDENT CONTRACTORS**

**A. Employees v. Independent Contractors**

**B. IRS Twenty Factor Test**

### **III. EMPLOYEE V. VOLUNTEER: THE DOL PROVIDES GUIDANCE**

## **SESSION 2: WHAT DOES FLSA COVER? 11 MINUTES**

### **IV. WHAT DOES FLSA COVER?**

**A. CHILD LABOR**

**B. MINIMUM WAGE**

**C. OVERTIME PAY**

**SESSION 3: THE PAYMENT OF WAGES = 43 MINUTES**

**V. 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**

**VI. 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 = 12 MINUTES**

**VII. 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**

**VIII. 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**

**IX. 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 EXEMPTION = 6 MINUTES**

**X. 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**

**XI. BONA FIDE CREATIVE 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 = 7 MINUTES**

**XII. 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**

**XIII. 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**

**XIV. COMPUTER EMPLOYEE EXEMPTION**

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

**SESSION 14: TEACHERS, PRACTICE OF LAW OR MEDICINE, FIRST RESPONDERS AND COLLECTIVE BARGAINING AGREEMENTS = 2 MINUTES**

**XV. TEACHERS**

**XVI. PRACTICE OF LAW OR MEDICINE**

**XVII. POLICE, FIRE FIGHTERS, PARAMEDICS & OTHER FIRST RESPONDERS**

**XVIII. COLLECTIVE BARGAINING AGREEMENTS**

**SESSION 15: RETAIL OR SERVICE ESTABLISHMENT EXEMPTION = 7 MINUTES**

**XIX. RETAIL OR SERVICE ESTABLISHMENT EXEMPTION**

**SESSION 16: COMMISSION ONLY = 6 MINUTES**

**XX. COMMISSION ONLY**

**SESSION 17: THE SALARY TEST = 26 MINUTES**

**XXI. 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 18: FIXED SALARY FOR A FLUCTUATING WORK WEEK = 4 MINUTES**

**XXII. FIXED SALARY FOR FLUCTUATING WORK WEEK**

**SESSION 19: JOINT EMPLOYERS = 11 MINUTES**

**XXIII. JOINT EMPLOYERS**

**SESSION 20: DAMAGES AND LIABILITY = 15 MINUTES**

**XXIV. DAMAGES UNDER THE FLSA**

**A. Willful v. Nonwillful Violations**

**B. Liquidated Damages**

**C. Other Remedies**

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

**TOTAL RUNNING TIME: 4 HOURS**

# ***“OH, NO! IT’S WAGE AND HOUR!”***

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

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?**
- **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?**
- **What damages are allowed under the FLSA?**
- **Can I DEDUCT money owed to me from my employees’ wages without a signed agreement?**
- **How long do lunches 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?**

Come learn everything you needed to know about the FLSA.

### **Learning Objectives**

**In this session you will learn ...**

- How the FLSA works,
- How to manage Wage and Hour Issues legally, and
- When the FLSA applies and when it does not.



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Scott Warrick, JD, MLHR, CEQC, SHRM-SCP ([www.scottwarrick.com](http://www.scottwarrick.com)) is a two-time best-selling author, a national professional speaker, a practicing Employment Law Attorney and a Human Resource Professional with 40 years of hands-on experience. Scott uses his unique background to help organizations get where they want to go, which includes coaching and training managers and employees in his own unique, practical and entertaining style.

**Scott Trains Managers & Employees ON-SITE in over 50 topics**, all of which can be customized **FOR YOU!** Scott travels the country presenting seminars on such topics as Employment Law, Conflict Resolution, Leadership and Tolerance, to mention a few.

***LET SCOTT DESIGN A PROGRAM FOR YOU!***

Scott combines the areas of law and human resources to help organizations in “Solving Employee Problems **BEFORE** They Start.” Scott’s goal is **NOT** to win lawsuits. Instead, Scott’s goal is to **PREVENT THEM** while improving **EMPLOYEE MORALE**.

Scott’s first book, **Solve Employee Problems Before They Start: Resolving Conflict in the Real World**, is a #1 Best Seller for Business and Conflict Resolution on Amazon. It was also named by EGLOBALIS as one of the best global Customer and Employee books for 2020-2021. Scott’s most recent book, **Living The Five Skills of Tolerance: A User’s Manual For Today’s World**, is also a #1 Best Seller in 13 categories on Amazon, including Business Leadership, Minority Studies, Organizational Change, Management, Religious Intolerance, Race Relations and Workplace Culture, to mention a few.

Scott’s **MASTER HR TOOL KIT SUBSCRIPTION** is a favorite for anyone wanting to learn Employment Law and run an HR Department.

Scott has been named one of Business First’s 20 People To Know In HR, CEO Magazine’s 2008 Human Resources “Superstar,” a Nationally Certified Emotional Quotient Counsellor (CEQC) and a SHRM National Diversity Conference Presenter in 2003, 2006, 2007, 2008, 2010 and 2012. Scott has also received the Human Resource Association of Central Ohio’s Linda Kerns Award for Outstanding Creativity in the Field of HR Management and the Ohio State Human Resource Council’s David Prize for Creativity in HR Management.

Scott’s academic background and awards include Capital University College of Law (Class Valedictorian (1st out of 233) and Summa Cum Laude), Master of Labor & Human Resources and B.A. in Organizational Communication from The Ohio State University.

For more information on Scott, just go to [www.scottwarrick.com](http://www.scottwarrick.com).

