



**YOU HAD ME  
AT OVERTIME:**

**Paying Nonexempt  
Employees Correctly**

# Session Leader

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About 6600 students

About 1000 contracted employees

12 schools, Preschool Center, ATC, Alternative School



Exempt vs. Nonexempt

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graph TD; A[Exempt vs. Nonexempt] --> B[Time Worked]; B --> C[Overtime]; C --> D[Independent Contractors]; D --> E[Objectives]
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Time Worked

Overtime

Independent Contractors


Objectives

## Which employees are subject to overtime and other regulations of the Fair Labor Standards Act?

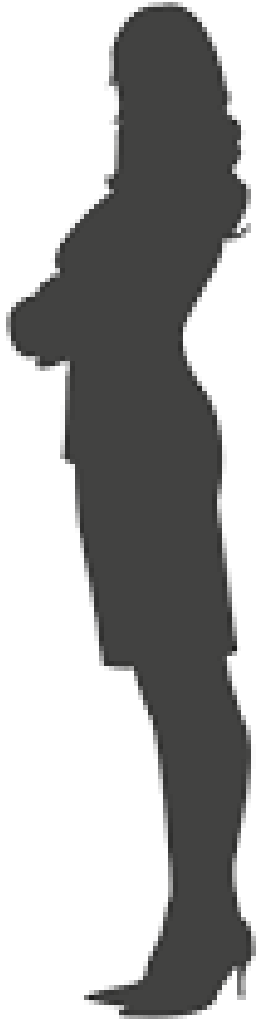
- Exempt or nonexempt, that is the question
- Three tests:
  - Salary level – if more than \$684/week, exempt
  - Salary basis – if a guaranteed minimum amount will be paid in any work week when they perform any amount of work, exempt; no deductions for varying quantity or quality of work performed
  - Duties – if perform exempt job duties, exempt
- **Must meet all three tests to be exempt**

# Salary Level

ON HOLD

Earnings Threshold	Minimum Salary Amount Before July 1, 2024	Minimum Salary Amount Beginning July 1, 2024	Minimum Salary Amount Beginning January 1, 2025
<a href="#">Standard Salary Level</a> 	\$684 per week (equivalent to a \$35,568 annual salary)	\$844 per week (equivalent to a \$43,888 annual salary)	\$1,128 per week (equivalent to a \$58,656 annual salary)

- On April 26, 2024, the U.S. Department of Labor (Department) published a final rule to update and revise the regulations
- On November 15, 2024, the U.S. District Court for the Eastern District of Texas vacated the Department's 2024 final rule
- Stay tuned!



# Exempt Job Duties

Executive Exemption

Administrative Exemption

Professional Exemption

Certain computer professionals

Outside sales & highly compensated

Consider actual job duties – titles are irrelevant,  
classified vs. certified is irrelevant

# 1. Executive Exemption

Regularly supervise two or more other employees, **and also**

Management is the primary duty of the position, **and also**

Has some genuine input into the job status of others employees (hiring, firing, assignments, etc.)

# 1. Executive Exemption

## **Management duties include:**

- Interviewing, selecting, training staff
- Handling employee complaints, disciplining staff
- Determining work techniques
- Apportioning work among staff
- Planning work
- Determining equipment to be used, or materials needed
- Planning budgets
- Monitoring work for legal or regulatory compliance
- Providing for safety in the workplace



## 2. Administrative Exemption

- Primary duty must be the performance of office or nonmanual work directly related to the management or business operations of the entity
- Includes the exercise of discretion and independent judgment with respect to matters of significance
- Examples of areas that may fit this exemption
  - Human resources
  - Accounting

## 2. Administrative Exemption

### **Discretion and independent judgment**

- The employee has the authority to formulate, affect, interpret, or implement management policies or practices
- The employee performs work that affects business operations to a significant degree
- The employee has authority to commit the employer in matters with significant financial impact

### 3. Professional Exemption

“Learned professional” – see next slide for a list

Primary duty is work requiring advanced knowledge, predominately intellectual in nature, and involving the exercise of discretion and judgment

The advanced knowledge must be in a field of science or learning

Occupations with recognized professional status, as distinguished from mechanical arts or skilled trades

### 3. Professional Exemption



Some “learned professions” are specifically exempt:

- Lawyers
- Doctors
- Dentists
- **Teachers**
- Architects
- Clergy
- **Registered nurses** (but not LPNs)
- Accountants (but not bookkeepers)



## 3. Professional Exemption

### Creative Professional:

- Invention, imagination, originality, or talent
- Exemption depends on the extent exercised by the employee
- Actors, musicians, certain painters, writers

# Overtime

## Non-Exempt Professions

*Common errors: misapplication of exemptions*

Licensed Practical Nurses

Paralegals, legal assistants

Engineering Technicians

Accounting clerks, bookkeepers typically performing routine work

Cooks performing predominantly routine mental, manual, mechanical, or physical work

Overtime

## 4. Computer Professionals

### Exempt computer-related job duties

Computer systems analyst, programmer, software engineer, or other similarly skilled worker performing:

- Systems analysis to determine hardware, software, or system specs
- Design, documentation, analysis, creation, modification of systems or programs

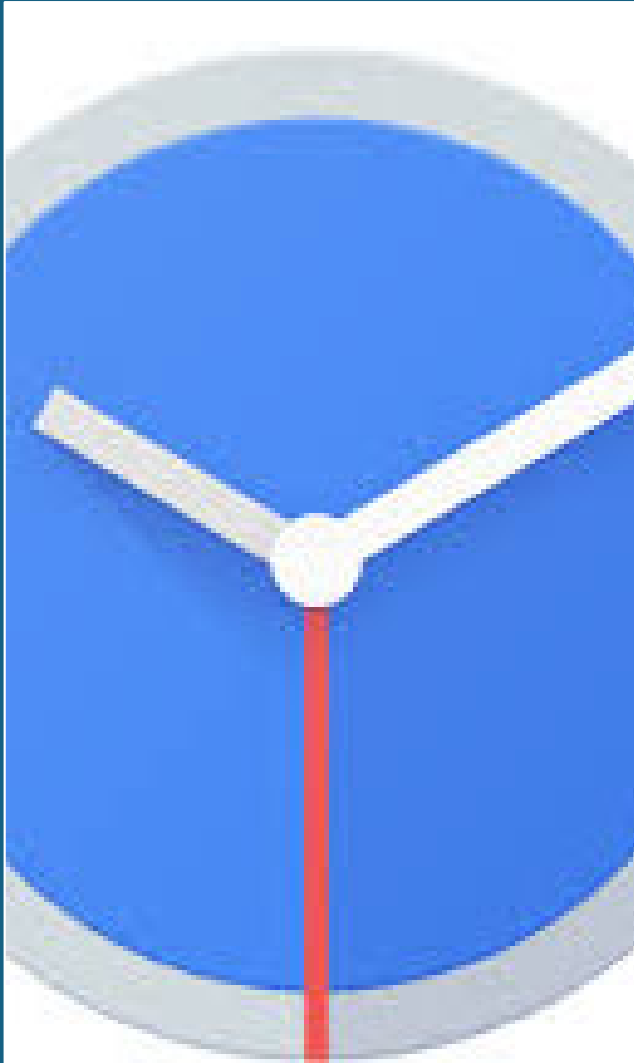


**What if the employee has multiple jobs or sets of job duties?**

The primary job dictates whether they are exempt or nonexempt

Ex: Teacher who works extra hours as a custodian  
= exempt for all work





# Compensable Time

We must pay for actual time worked

Timesheets must reflect actual time worked

Beware of “8:00-4:00” every day on the time sheet

Taking work home, answering emails, phone calls, etc. all counts as time worked

Nonexempt employees cannot volunteer their time

They can volunteer for a *different* job

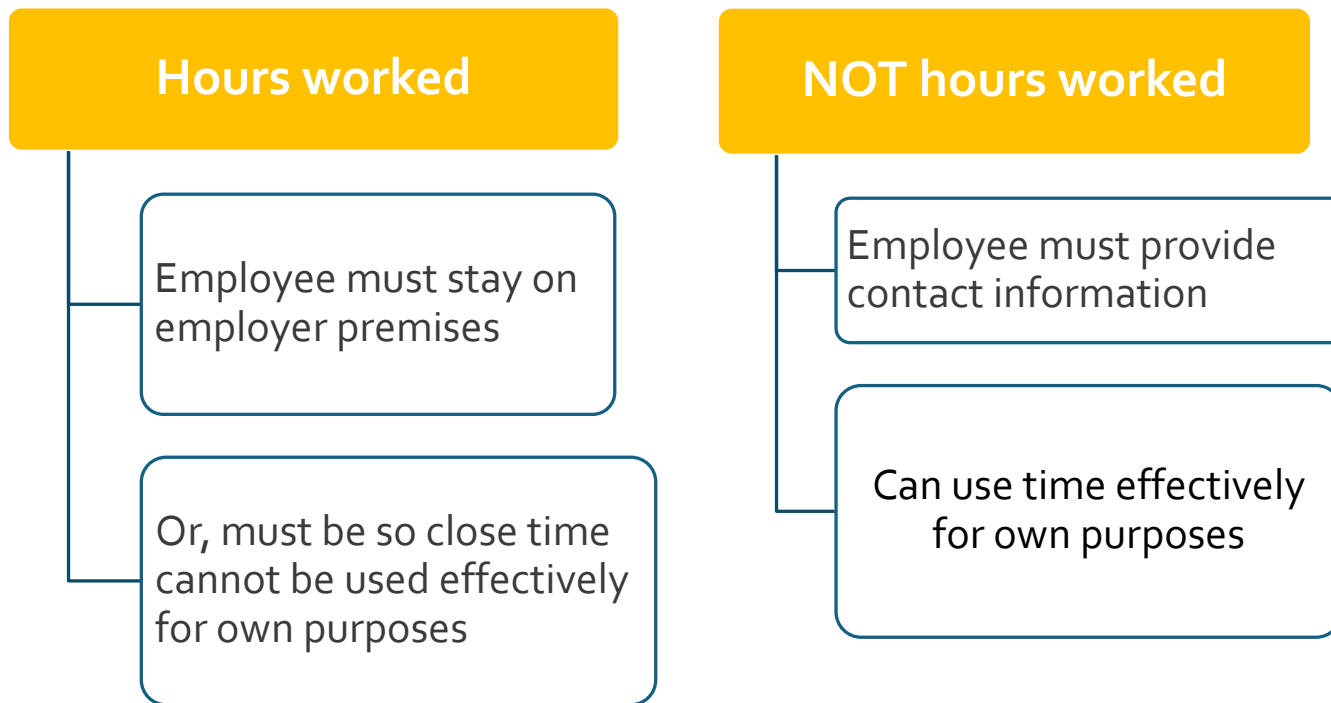
Any time worked without permission still must be paid to the employee

Address the issue through the evaluation process

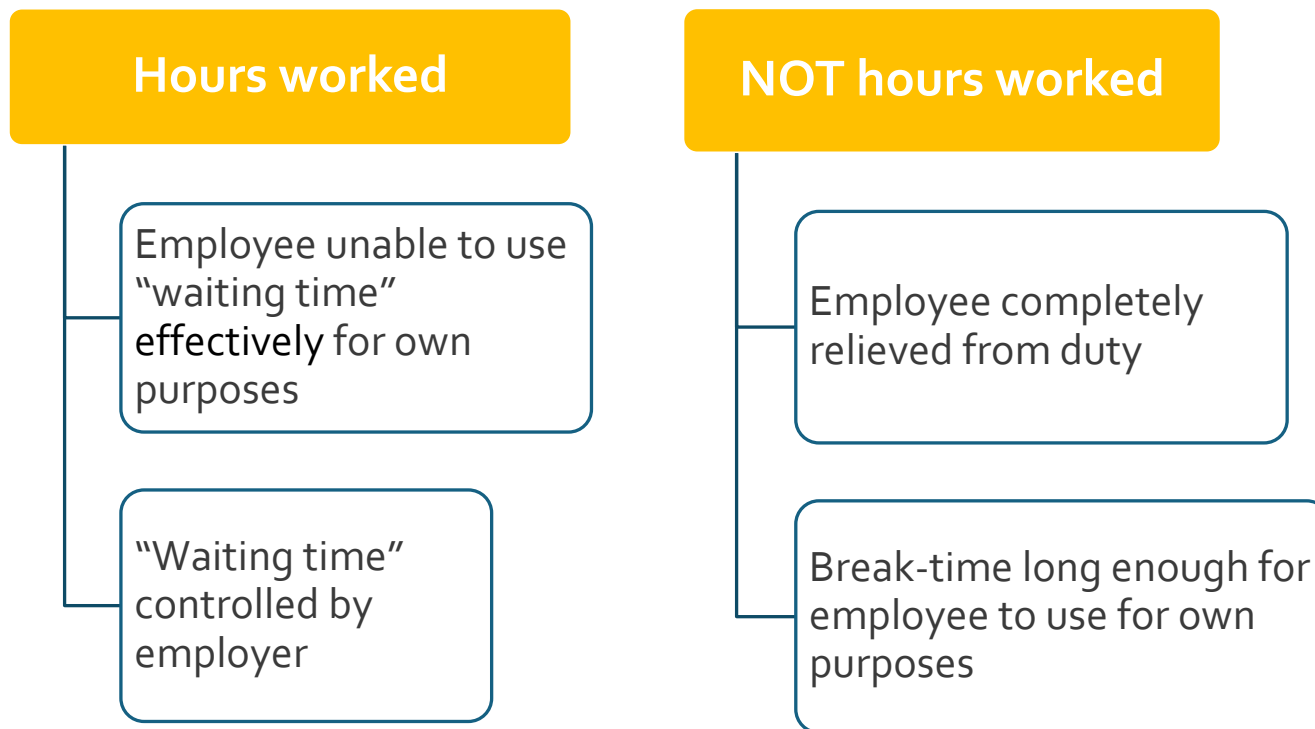
## Other situations that are considered time worked:

- “On call” time - if required to be on-site or so close that the time can’t be used effectively
- Waiting time
  - Is the employee engaged to wait or waiting to be engaged? Engaged to wait = time worked
- Meal periods – if required to perform any duties while eating (active or inactive)
- Travel time – usually is time worked but check the rules if overnight travel

## On-Call Time



## Waiting Time



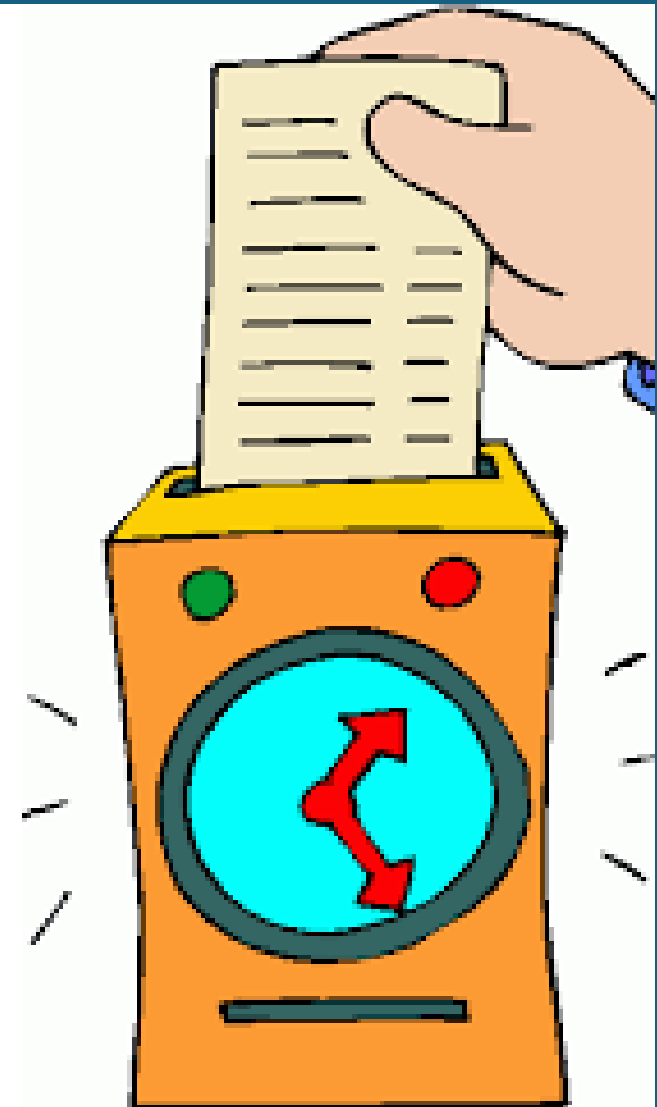


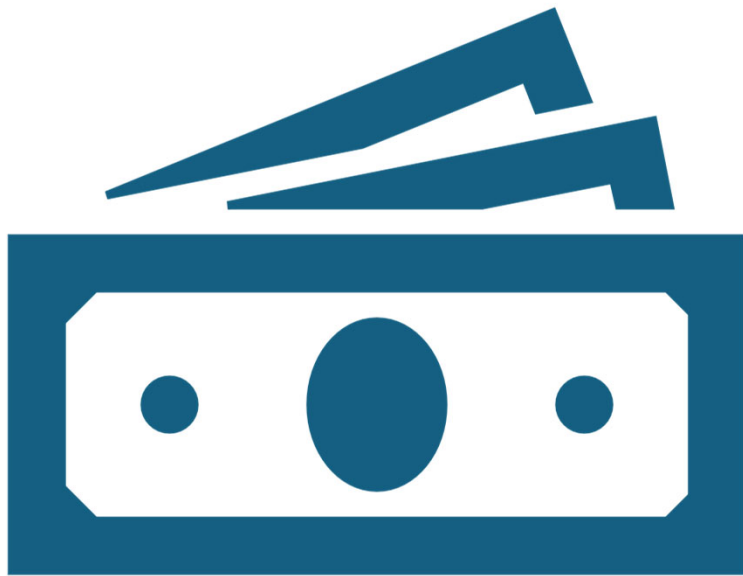
## Rest and Meal Periods

- Short rest breaks (20 min or less) are compensable
- Bona fide meal periods (typically 30 minutes or more) need not be paid as hours worked
- Worker must be completely relieved of duty for meal period not to be compensable time.

# Overtime

- Applicable only to nonexempt employees
- Time **worked** in excess of **40 hours** in a **work week** must be paid as time and a half (overtime)
- Holiday, sick day, personal day are not included in time worked
- It must be paid even if the OT is not approved in accordance with board policy
- If the work week includes multiple rates of pay:
  - Weighted average method
  - Specific rates method





# No Tax on Overtime

- One Big Beautiful Bill Act (OBBBA)
- Effective for 2025-2028, overtime compensation exceeding the regular rate of pay is deductible
- Ex: the “half” portion of “time and a half”
- Employers must report qualifying overtime paid during the year

# Independent Contractor or Employee?

Worker classification depends on facts and circumstances of each situation

- Behavioral – do we control or have the ability to control what the worker does and for how long?
- Financial – are the business aspects controlled by us or the worker?
- Type of relationship – are benefits given, is it a continuing relationship?

It is determined by job, not by person



A grayscale background image showing several business professionals in a meeting. One person is holding a tablet, and another is holding a coffee cup. The image is slightly blurred, focusing attention on the text overlay.

# Factors that indicate **EMPLOYEE**

- Training is provided by the district
- A continuing relationship
- The work is integrated into the district's business operations
- The district sets the work hours
- District requires substantially full time work
- District requires regular reports
- Payment by the week or month
- Payment of travel or other business expenses
- The district furnishes equipment, materials

# Factors that indicate **INDEPENDENT CONTRACTOR**

- Service is offered to the general public
- They work for more than one entity at a time
- They can hire their own assistants
- They incur liability if services are prematurely terminated
- They can realize a profit or loss on the work

# Independent Contractor or Employee?

Almost everyone we pay is considered to be an employee per IRS regulations and we are required to pay them through payroll

When in doubt, EMPLOYEE

# What about student workers?

## **16 and 17 year olds**

Unlimited hours; may work in any occupation other than those declared hazardous by Secretary of Labor

## **14 and 15 year olds**

May work outside school hours and for limited periods of time; only non-manufacturing, non-hazardous jobs, and specific conditions apply

## **Children under 14**

With limited exceptions, no employment permitted in covered, non-agricultural occupations



# Recordkeeping Requirements

- personal information, including employee's name, home address, occupation, sex, and birth date if under 19 years of age;
- hour and day when workweek begins;
- total hours worked each workday and each workweek;
- total daily or weekly straight-time earnings;
- regular hourly pay rate for any week when overtime is worked;
- total overtime pay for the workweek;
- deductions from or additions to wages;
- total wages paid each pay period; and
- date of payment and pay period covered



# Risk Areas for Timesheets

- Employee has the same in/out times or the same number of hours every day
- Timesheet not filled out by the employee
- Timesheet not signed by the employee
- Timesheet that does not record actual times worked, but only contracted hours
- Automatic lunch period deduction

# Limits of the FLSA

## FLSA does *NOT* require

Vacation, holiday,  
severance, sick pay

Meal or rest periods,  
holidays off, vacations

Premium pay for  
weekend or holiday  
work

Discharge notice,  
reason for discharge

Limit on number of  
hours or days  
employees  
16 years or older may  
work

Pay raises, fringe  
benefits

# Words of Caution

FLSA applies only to nonexempt staff

It's ok to pay more than FLSA requires, but it's never ok to pay less

Burden of proof is on the employer

All hours worked count toward the 40, even if not approved





# QUESTIONS AND DISCUSSION