

**FLSA :**

is not an acronym for

**Fairly Long Standing Agony**

The FAIR LABOR STANDARDS ACT

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# Objectives

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## ■ Three Sessions

- Session I
  - Overview of FLSA
  - Hours Worked
- Session II
  - Overtime Pay
  - Compensatory Time
  - Exempt vs. Non-Exempt
  - Exemptions not used at UMKC
- **Session III**
  - **Executive Exemption**
  - **Administrative Exemption**
  - **(Learned or Creative) Professional Exemption**
  - **Highly Compensated Employees Exemption**

# Session III - FLSA

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## Objectives for Session III

### Basic requirements for exemption from overtime under the FLSA:

1. Salary Basis
2. Executive
3. Administrative
4. (Learned or Creative) Professional
5. Highly Compensated

# Salary Basis

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- Employee regularly receives a predetermined amount of compensation each pay period on a weekly, or less frequent, basis.
- The predetermined amount cannot be reduced because of variations in quantity or quality of work.
- Exempt employees must receive the full salary for any week in which the employee performs any work, regardless of the number of days or hours worked, with a few defined exceptions.
- Exempt employees do not need to be paid for any workweek in which they perform no work.
- Exempt employees may be required to be present during hours of operation.

# Salary Basis

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## Permissible Deductions in Pay (for exempt employees)

- Absences from work for one or more full days for personal reasons other than sickness or disability;
- Absences of one or more full days due to sickness or disability if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for salary lost due to illness;
- Penalties imposed in good faith for infractions of safety rules of major significance;
- Unpaid disciplinary suspensions of one or more full days imposed in good faith for workplace conduct rule infractions;

# Salary Basis

## ■ Permissible Deductions in Pay (cont'd.)

- Weeks of unpaid leave under FMLA;
- Initial and terminal weeks (partial weeks) of employment.
- **Exception:** Public agencies having laws prohibiting pay for work not performed (MO has this) can *deduct and not lose their exemption if:*
  - Permission was not sought or was sought and denied;
  - Accrued leave has been exhausted, or
  - Employee chooses to use leave without pay.
- UM Policy HR-202 states “For exempt employees..., absences may result in pay reductions in one-half day increments if paid leave is exhausted.”

# Exemptions or Exceptions

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- There are exemptions and exceptions from the minimum wage and/or overtime standards of the FLSA for:
  - Executive Employees
  - **Administrative Employees\***
    - “Other” Positions
  - (Learned or Creative) Professional Employees
  - Outside Sales Employees
  - Computer Employees
  - Highly Paid Employees

*\*This is the category of exemptions that cause the most trouble for employers.*

# Exemptions: Executive

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## ■ Executive Exemption

### ■ Salary basis test

### ■ Salary level test

- Minimum \$455 per week (\$23,660 annually)
- Not pro-rated for part-time employees

### ■ Duties test (highlights)

- Primary duty must include:
  - Manage the enterprise or customarily recognized department;
  - Regularly and customarily direct the work of two or more full-time (40 hours, not .75 FTE, or benefit eligible) employees;
  - Authority to hire/fire, and recommendations to hire, fire, promote, or other change of status are given significant weight.

# Exemptions: Administrative

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## ■ Administrative Exemption

### ■ Salary basis test

### ■ Salary level test

- Not pro-rated for part time employees
- Minimum \$455 per week (\$23,660 annually)

### ■ Duties test (highlights)

- Primary duty includes performing work directly related to the management or general business operations of the employer (not department);
- *Duties require discretion and independent judgment with respect to matters of significance.*

# Exemptions: Administrative

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- ***Discretion and Independent Judgment*** includes:
  - Authority to formulate, affect, interpret, implement management policies or operating practices;
  - Work affects business operations to a substantial degree;
  - Authority to commit employer in matters that have significant financial impact;
  - Authority to waive or deviate from established policies and procedures without prior approval;
  - Authority to negotiate and bind the company on significant matters;
  - Is involved in planning long- and short-term business objectives;  
*and more*

# Exemptions: Administrative

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- ***Discretion and Independent Judgment*** does not include:
  - Applying well-established techniques, procedures or standards described in manuals or other sources;
  - Recording or tabulating data;
  - Clerical or secretarial work;
  - Mechanical, repetitive, recurrent or routine work.

# Exemptions: Other Positions

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- An employee who leads a team of other employees assigned to major projects;
- Executive assistant to a business owner or senior executive of a large business who has been delegated authority regarding matters of significance;
- Management consultants who study the operations of a business and propose changes in organization.

# Exemptions: Professional

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## ■ (Learned or Creative) Professional Exemption

### ■ Salary basis test

### ■ Salary level test

- Not pro-rated for part time employees
- Minimum \$455 per week (\$23,660 annually)

### ■ Duties test (highlights)

- Primary duty includes performing work requiring advanced knowledge in a field of science (law, medicine) that is customarily a prerequisite across a field of work
- Predominantly intellectual work that includes consistent exercise of discretion and judgment.
- Customarily acquired by prolonged course of specialized intellectual instruction.

# Exemptions: Highly Compensated Employees

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Employees performing office or non-manual work **AND** who are paid total annual compensation of \$100,000 or more are exempt if they:

- Customarily and regularly perform at least one of the duties of an exempt executive, administrative or learned or creative professional employee identified in the standard tests for exemption.

# Fine

*Questions?*

