**SHRM Employment Law**

Module 6: Compensation





Time:  2 minutes

Running time: 2 minutes

**Objective**: Introduce the topic of Compensation.

**Description**:  Introduction to the topic and why it is important.

**Instructional Method**: Lecture/ice breaker

**Script:**

No course on employment law would be complete without a chapter on the laws that govern compensation in the U.S. There is nothing random about how employees are compensated; Compensation is a complicated issue guided by federal, state, and local laws and is one of the costliest parts of doing business in any industry.

**Facilitator Notes:**

Add your name or any other information to this slide in the subtitle.

Graphical user interface, application

Description automatically generated

Time:  2 minutes

Running time: 4 minutes

**Objective**: Introduce the learning objectives.

**Description**: Show the objectives.  Answer any questions.

**Instructional Method**: Lecture

**Script**:

Here are the student objectives for this module:

* Define the key terms related compensation.
* Determine the appropriate laws to apply to given employment situations.
* Appropriately classify employees as exempt or nonexempt.
* Discuss various aspects of the Fair Labor Standard Act.
* Describe the concept of equal pay and its impact on the workplace.

**Facilitator Notes:**

Use the objectives topics to create evaluation for the review.

Graphical user interface, text, application

Description automatically generated

Time:  6 minutes

Running time: 10 minutes

**Objective**: Define key terms for Compensation.

**Description**: Identify and define key terms for Compensation.

**Instructional Method**: Game

**Script**:

Let’s play a game to define some key terms used in the compensation and benefits profession.

**Exercise**:  Key terms Game

**Note**: The winning group will have the most key terms listed correctly

7 Minutes

1. Put students into groups of 3 – 6
2. Have each group number a list from 1 – 11.
3. Read the definition of the term (note what number you read)
4. Have 1 student write the name (or number) of the term on their list.

3 minutes

1. Give students the answers.
2. The team with the most is the winner.

**Facilitator Notes:**

**Key Terms**

1. **Administrative employee exemption**- An employee who meets the exemption tests for the administrative exemption under the FLSA.
2. **Compensation**- the financial rewards provided to employees as a condition of their employment relationship, including base salaries, bonuses, commissions, benefits, and incentives.
3. **Executive employee exemption**- An employee who meets the exemption tests for the executive exemption under the FLSA.
4. **Exempt employee**- An employee who is [exempt](https://www.dol.gov/agencies/whd/fact-sheets/17a-overtime) from receiving overtime compensation under the Fair Labor Standards Act.
5. **Highly compensated employees**- An employee who meets the exemption tests for the highly compensated employee's exemption under the FLSA.
6. **Incentive system**- Additional compensation, rewards, bonuses, gifts, prizes, etc., that employers use to reach long and short-term strategic goals.
7. **Minimum wage**- The minimum wage that employers are permitted to pay employees under the Fair Labor Standards Act. State and local governments may also pass their own minimum wage act.
8. **Nonexempt employee**- An employee who is not exempt from receiving overtime compensation for hours worked in excess of 40 in a workweek under the Fair Labor Standards Act.
9. **Outside sales exemption**- An employee who meets the exemption tests for the outside sales exemption under the FLSA.
10. **Overtime**- Nonexempt employees who are covered by the FLSA are entitled to receive [overtime pay](https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs23.pdf) at a rate of one and one-half times an employee’s regular rate of pay if their hours worked exceed 40 in a workweek.
11. **Professional employee exemption**- An employee who meets the exemption tests for the professional exemption under the FLSA.

Diagram

Description automatically generated

Time:  5 minutes

Running time: 15 minutes

**Objective**: Define key terms for Compensation.

**Description**: Define key terms for forms of Direct Compensation.

**Instructional Method**: Lecture

**Script**:

Total Rewards or Total Compensation refers to the wholeness of the rewards system for an organization’s employees to include not only compensation, benefits, incentives, and bonuses, but also includes opportunities for professional development and advancement, work conditions, autonomy, and recognition. Every part of compensation law is designed to reward employees for performance in a way that is accessible and equitable for all.

Direct Compensation

Direct ***compensation*** is money paid in exchange for work performed. It comes in several forms:

*Base Compensation*

The taxable basic compensation an employee receives for the work they complete. Base pay rates can range from [***minimum wage***](https://www.dol.gov/agencies/whd/minimum-wage)up to as much as a given employer is willing to pay. It can be in the form of an hourly rate or a [salary](https://www.dol.gov/agencies/whd/fact-sheets/17g-overtime-salary). Keep in mind the minimum required in the [Fair Labor Standards Act](https://www.dol.gov/agencies/whd/flsa) for exempt employees of [$684 per week](https://www.dol.gov/agencies/whd/fact-sheets/17a-overtime). When evaluating internal compensation, it is appropriate to compare base pay rates first, to ensure that the base pay rates are equitably aligned within the pay structure and based on the value of the position. In the same manner, when comparing your organization’s base pay to that of a competitor you would also start with an assessment of base pay. It is inappropriate as well to pay a male employee a higher base pay rate than a female who performs the same work, but offer her a bigger bonus at the end of the year to ‘make up the difference’. The base pay of any individuals who perform substantially similar work should have a substantially similar base rate of pay that falls within a standardized pay range for that position.

*Commissions*

Taxable compensation earned as the result of employee performance- usually related to sales. One way to incentivize performance is to offer the opportunity to earn additional compensation based on sales. [Outside Sales Professionals](https://www.dol.gov/agencies/whd/fact-sheets/17f-overtime-outside-sales) frequently are able to earn more compensation than they could make if they received a regular salary, so they work on a purely commission basis (often called straight commission). Outside sales professionals are unique in that the [Fair Labor Standards Act](https://www.dol.gov/agencies/whd/flsa) does not require that these employees be paid either a minimum wage or overtime. Their performance dictates their compensation entirely. Keep in mind that in order for an employee to be classified as an Outside Sales Professional, they must meet all the tests in the FLSA; otherwise, they are not exempt from minimum wage and overtime rules.

*Overtime*

***Overtime*** is taxable compensation paid at least 1.5x the normal rate for hours worked over 40 in a workweek for nonexempt employees under the [Fair Labor Standards Act](https://www.dol.gov/agencies/whd/flsa). Recall our discussion in Module 2 of the difference between exempt and nonexempt employees and the rules for determining who qualifies for overtime pay. Employers can pay more than 1.5x the normal rate if they choose to do so for overtime. Sometimes, certain employers who run 24-hour shifts will offer additional overtime rates to incentivize employees to work hard-to-fill shifts such as weekends and holidays. Also, keep in mind that there is no limit to the number of hours an employee can work in a workweek, so long as they are at least 16 years old. Overtime is usually limited by employers because it is expensive, but in some instances, strategic use of overtime can encourage current employees to meet a deadline or complete a project more quickly and without the hiring of additional staff. It provides the employer with a cheaper way to get the work done (1.5x the rate is cheaper than hiring an additional employee) and provides the employee a chance to make some extra cash!

Graphical user interface

Description automatically generated

Time:  10 minutes

Running time: 25 minutes

**Objective**: Define incentives.

**Description**: Define key terms for Incentives.

**Instructional Method**: Lecture - Exercise - Discussion

**Script**:

Employee ***incentives*** are an additional type of reward that is used to motivate and engage employees. The sky is really the limit so far as employee incentives are concerned, and highly competitive employers know it. These types of incentives can range from a contest for the server who sells the most Grande Margaritas during a given shift winning $50, to luxury vacations, tuition reimbursement, use of the company limo for a week, etc. These types of rewards are used to motivate employees for both short and long-term organizational goals.

**Exercise**: Incentives (5 minutes)

1. Put students into 6 groups. (2 long, 2 short, 2 exit)
2. Have students give examples of their type of incentives.

**Discuss**: Discuss the answers based on the groups. (5 minutes)

**Facilitator Notes:**   
**Long-term Incentives**  
When discussing incentives, one must take a close look at the use of long-term incentives in meeting organizational goals. These are tied to organizational compensation strategy as much as decisions about leading or lagging the compensation market. When we think about long-term incentives, we are considering more than simply keeping employees happy, it’s about helping an organization reach its goals in terms of quantifiable performance metrics such as sales or retention. In order to accomplish these longer-term goals, organizations create incentive programs that won’t pay off immediately. Employees typically have to be vested in order to receive a payout on this type of reward, and it takes time to earn vestiture.

Frequently, long-term incentives are awarded in the form of stock, restricted stock, 401(k) contributions, and sometimes cash payouts.

[Example of a Long-Term Incentive Plan](https://learn.financestrategists.com/finance-terms/long-term-incentive-plans/) (Tamplin, Sept. 12, 2022)

Consider the case of Alphabet CEO Sundar Pichai. In 2020, he had a base salary of $2 million and[was awarded](https://www.sec.gov/ix?doc=/Archives/edgar/data/1652044/000165204419000043/sp8-k.htm) a $240 million stock package that vests over a period of three years. The stock package is a combination of performance stock and restricted stock. Pichai will receive a total of $90 million stock based on Alphabet stock’s performance relative to the S&P 500. He is also entitled to receive $150 million worth of restricted stock between 2020 and 2022, subject to his continued employment with the company during this period. $120 million worth of restricted stock will vest at the 1/12th of the total amount each March and July until the total amount is reached. The remaining $30 million will vest at the rate of 1/4th of the total amount each March and July until the total amount is reached.

The real question is, do long-term incentive plans work? The jury is still out on this question, as it really depends on a large number of factors, many of which are completely out of the control of either the executive or the organization itself. However, considering the popularity of awarding executives with huge bonus payouts, stock options, use of the company jet, housing, etc., it does seem that incentives are a fairly popular way of encouraging corporate success.

**Short-term Incentives**

While long-term incentives are generally geared toward executives, short-term incentives can be used for employees at any level, and they are used to meet short-term goals. A great example of this is Chili’s Grill and Bar. Years ago, this author was a restaurant manager for the organization. One of the events we participated in was called a “culture club walkthrough.” This event happened annually, and the winners (the management team of the winning restaurant) received a trip to Mexico, or another similar destination. This was a short-term incentive that was tied to both short- and long-term strategic plans. Each restaurant was graded by a group of independent inspectors on a variety of standards of which sales played a role, but also restaurant cleanliness and organization, employee performance, and more. This competition not only resulted in helping the organization meet longer-term strategic goals of being an industry leader, but did so by developing short-term goals for sales, employee retention, organization, cleanliness, etc. This plan incentivized the management team to develop further short-term incentives for employees to help meet the longer-term goal of winning the annual competition. That might have been upselling a particular menu item or eliminating overtime, but it also meant building a culture of pride in our particular restaurant. We weren’t just one of the best restaurants around as a part of the Chili’s organization, we could be the best Chili’s in the country, maybe even the world! We could be leaders in an organization that rewarded pride in our employer brand and in our personal local restaurant where we served our community.

Short-term incentives can come in so many forms, that the next logical conversation has to be that of what is ethical and what is not. How far can an organization go to incentivize employees? Are there legal limits in terms of compensation? Taxes? How could financial incentives be abused?

**Exit Incentives**  
Exit incentives are payments used to incentivize highly-compensated employees or employees who the organization would like to replace for various reasons to leave the organization. Sometimes, this is the result of having too many employees. Other times, it may be that the organization is restructuring and needs to entice some employees to retire early so the necessary changes can occur. These programs have a number of titles, but they are universally intended to provide a sufficient one-time payout that will compensate employees enough to want to make a change prior to having to make hard choices about layoffs and downsizing.

Graphical user interface

Description automatically generated with low confidence

Time:  5 minutes

Running time: 30 minutes

**Objective**: Discuss various aspects of the Fair Labor Standard Act relating to incentives.

**Description**: Discuss ethical issues with incentives.

**Instructional Method**: Lecture - Discussion

**Script**:

Ethical Issues and legal surrounding incentives are important. The Fair Labor Standards Act provides a guide concerning the legal issues surrounding incentive pay.

**Ask**: What is acceptable and not acceptable in at your work?

**Facilitator Notes:**

**FLSA**

There is essentially no legal limit on the amount of **nondiscretionary** bonuses, incentive payments, and commissions. However, an employer must consider the standard salary level for exempt employees. While an employee may meet the duties tests for executive, administrative, professional, and outside sales exemption, their compensation may not meet the salary test. “Employers may satisfy up to 10 percent of the standard salary requirement (68.40 per week) with nondiscretionary bonuses, incentive payments, and commissions,”- meaning that the employer must pay the other 90% in regular compensation (<https://www.dol.gov/agencies/whd/overtime/whdfs17u>). However, “employers may not use any portion of **discretionary** bonuses to satisfy any portion of the standard salary level” (<https://www.dol.gov/agencies/whd/overtime/whdfs17u>).

**Abuses**

If all incentives are given at the manager’s discretion, and are not properly designed, incentive programs can be rife with discrimination. Incentive programs should be based on measurable numeric standards whenever possible and all employees included should have the same access and opportunity to participate, including something as simple as an assigned sales territory that could potentially impact a particular employee’s opportunity to achieve an incentive goal.

Don’t design incentive programs with subjective measures such as “employee demonstrates a good attitude,” but rather with measures that indicate and support team, department, or organizational goals, such as “employee received 85% or better ranking from customer interactions in the incentive period.” To further incentivize the customer interactions rating, individual and team incentives can be provided for daily, weekly, monthly, and quarterly periods with smaller rewards that eventually add up to the opportunity to earn larger rewards.

**Vendor contributions**

Is it appropriate for vendors/suppliers to provide incentives to employees? As with many responses in the world of Human Resources, the answer is, ‘It depends.’ Organizations considered governmental or nonprofit, or those vendors who receive federal funding, have policies and rules concerning gifts from vendors. Those rules vary from state to state and are covered by the IRS.

However, private employers have more leeway in accepting gifts from vendors. These are usually subject to company policy, and those policies are typically designed to prohibit unintentional discrimination due to those gifts.

Additionally, gifts from vendors or suppliers are subject to taxation. A general rule of thumb is that insignificant gifts, such as cups, t-shirts, pens, etc., are acceptable and not taxable. Season tickets to the New England Patriots games are generally unacceptable and taxable.

Here’s a great source that will help you do more research on this topic: [Your guide to corporate gift-giving laws](https://sendoso.com/blog/your-guide-to-corporate-gift-giving-laws/) (Shenker, 2022).

**Employee Recognition Programs**

Employee recognition programs are frequently associated with rewards based on achievement. This can be years on the job, a good performance evaluation, or even a one-time recognition such as Employee of the Year. These programs sometimes come with a financial incentive such as a one-time cash payment (subject to taxes), a small gift (such as a plaque and a gift card for a dinner), or simply recognition of a job well done. This type of program can be as simple or complex as an employer wants to make it, providing incentives for everything from attendance to job performance.

Graphical user interface, application

Description automatically generated

Time: 56 minutes

Running time: 35 minutes

**Objective**: Discuss various aspects of the Fair Labor Standard Act.

**Description**: Discuss bonuses subject to the Fair Labor Standard Act.

**Instructional Method**: Lecture - Discussion

**Script**:

Taxable compensation paid to employees based on organization, team, or individual performance. This can be based on a one-time project or an ongoing bonus pay plan. Bonuses are also subject to the [Fair Labor Standards Act](https://www.dol.gov/agencies/whd/flsa), and they are two types: [Discretionary and Nondiscretionary](https://www.dol.gov/agencies/whd/fact-sheets/56c-bonuses)

**Ask**: What types of bonuses do you get at your company?

**Facilitator Notes:**

(we have copied the exact language of the law below).

**Discretionary bonuses** are excludable from the regular rate of pay.  A bonus is discretionary only if all the statutory requirements are met:

* The employer has the sole discretion, until at or near the end of the period that corresponds to the bonus, to determine whether to pay the bonus;
* The employer has the sole discretion, until at or near the end of the period that corresponds to the bonus, to determine the amount of the bonus; and
* The bonus payment is not made according to any prior contract, agreement, or promise causing an employee to expect such payments regularly.

Examples of some common bonuses that may be excludable discretionary bonuses if they meet the statutory requirements include:

* Bonuses for overcoming a challenging or stressful situation;
* Bonuses to employees who made unique or extraordinary efforts not awarded according to pre-established criteria;
* Employee-of-the-month bonuses;
* Severance bonuses; and
* Referral bonuses to employees not primarily engaged in recruiting activities (subject to additional criteria).

The label assigned to the bonus and the reason for the bonus do not conclusively determine whether the bonus is discretionary.  While a bonus may be labeled discretionary, if it does not comply with the provisions of the statute, then the bonus is not an excludable discretionary bonus.  The determination must be made on a case-by-case basis depending on the specific circumstances.

A discretionary bonus may not be credited towards overtime compensation due under the [FLSA](https://www.dol.gov/agencies/whd/flsa).

A **nondiscretionary bonus** is a bonus that fails to meet the statutory requirements of a discretionary bonus.  Nondiscretionary bonuses are included in the regular rate of pay, unless they qualify as excludable under another statutory provision (see below).

Examples of nondiscretionary bonuses that must be included in the regular rate include:

* Bonuses based on a predetermined formula, such as individual or group production bonuses;
* Bonuses for quality and accuracy of work;
* Bonuses announced to employees to induce them to work more efficiently;
* Attendance bonuses; and
* Safety bonuses (i.e., number of days without safety incidents).

Such bonuses are nondiscretionary because the employees know about and expect the bonus.  Understanding how an employee earns one may lead to an expectation to receive the bonus regularly.  The fact that the employer has the option not to pay the promised bonus does not make the bonus discretionary

*Merit Increases*

[Merit increases](https://www.dol.gov/general/topic/wages/meritpay) are a taxable increases in base pay as the result of an employee’s job performance. These can be based on a good performance evaluation, the achievement of a specific goal, or the outcome of a project. But they are adjustments to the base rate of pay. A merit increase should not cause the employee’s base rate to exceed the boundaries of the wage structure set for that position. The [FLSA](https://www.dol.gov/agencies/whd/flsa) doesn’t cover merit increases so these are entirely at the discretion of the employer.

*COLA Increases*

Cost of Living (COLA) increases are a taxable increase in the base wages, salaries, and benefits to counteract inflation. When an across the board COLA increase is provided, it should shift the entire pay structure by the percentage of the COLA increase. That way, a COLA increase won’t cause any one employee to be increased out of their designated pay range.

There is no set law or metric that all employers must use to determine COLA adjustments and they are optional. Some employers use the [Consumer Price Index (CPI)](https://www.bls.gov/cpi/) to determine COLA adjustments, while others use the [Social Security Administration recommendation](https://www.ssa.gov/oact/cola/latestCOLA.html). Additionally, some organizations are bound by union contracts to provide a standard COLA increase based on some pre-determined factor on a pre-determined basis.

*Shift Differentials*

Additional taxable wages paid to employees for working undesirable shifts or in undesirable locations. These wages are in addition to the base rate and are used to entice employees to work in hard-to-fill shifts.

*Longevity Pay*

Some organizations (such as municipal governments) pay an additional amount of taxable compensation based on the years the employee has invested in the organization. This can be any rate the employer chooses but is often a fairly modest sum at first. However, the longer an employee stays, the larger the pay becomes. Sometimes, this compensation is given as a part of a regular paycheck, other times, it is saved up and given to employees at the beginning of summer or during the holiday season.

*Tips*

[Tips](https://www.dol.gov/agencies/whd/flsa/tips) are additional taxable additional wages beyond base compensation that some employees receive as a reward for service directly from customers. Employers may legally pay employees who receive tips less than the federal or state minimum wage if the employee receives more than $30 per month in tips. So, while the federal minimum wage under the [FLSA](https://www.dol.gov/agencies/whd/flsa) is $7.25 per hour, employers are allowed to take a tip credit against the minimum wage, so they can reduce taxable hourly wage to $2.13 per hour. Individual state laws on this vary, but the DOL provides a handy [chart](https://www.dol.gov/agencies/whd/state/minimum-wage/tipped) to help employers ascertain the proper rate. Employers are liable for ensuring that tipped employees’ compensation doesn’t fall below minimum wage in a given workweek if they take the tip credit, which is one of the reasons many employers require tipped employees to report their tips following every shift.



Time:  2 minutes

Running time: 37 minutes

**Objective**: Define key terms for Compensation.

**Description**: Define indirect compensation and describe how it relates to benefits.

**Instructional Method**: Lecture

**Script**:

Indirect Compensation

Also known as fringe benefits, this type of compensation is typically nontaxable, and the employer pays the premiums (or a portion thereof) on behalf of the employee, rather than providing additional compensation in lieu of the benefits. These can be virtually unlimited in nature and can range from as small as providing free lunch in the cafeteria to the use of company cars and jets. Fringe benefits are one of the most attractive ways of attracting and retaining quality employees.

*Benefits*

Employers use benefits to attract and retain employees, and in some organizations, the benefit offerings are more influential than other types of compensation in terms of attracting and retaining employees. Some benefits are mandated by the government, others are optional. We will discuss benefit law more in Module Seven.

Graphical user interface, text, application

Description automatically generated

Time:  3 minutes

Running time: 40 minutes

**Objective**: Discuss various aspects of the Fair Labor Standard Act.

**Description**: Identify and define key terms for Diversity

**Instructional Method**: Game

**Script**:

**Fair Labor Standards Act**

**“**The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in Federal, State, and local governments” (DOL.gov).

**Facilitator Notes:**

Minimum Wage

The federal minimum wage is still $7.25/hr. States can establish their own minimum wage, as can local counties and cities. Whichever law benefits the employee the most will prevail. For example: The [federal minimum wage](https://www.dol.gov/agencies/whd/minimum-wage) is $7.25/hr, [Washington’s minimum wage](https://lni.wa.gov/workers-rights/_docs/FY22-084-2022MinimumWageAnnouncement.pdf) is $14.49/hr, and [Seattle’s minimum wage](https://www.seattle.gov/laborstandards/ordinances/minimum-wage) is $17.27/hr. Employees working in Seattle are entitled to a higher wage than those working elsewhere in the state.

Exempt vs. Nonexempt

The most fundamental compensation decision is that of overtime exemptions. Every position must be correctly identified as exempt or non-exempt. Educating employees on the difference between these two categories and using appropriate terms is important. Don’t allow managers and/or employees to use terms like “salaried” or ”hourly.” Use the terms the laws are written in to help eliminate confusion. According to the Department of Labor (DOL) website (<https://www.dol.gov/agencies/whd/overtime/2019/index>):

* “On September 24, 2019, the DOL issued the final rule on the earnings threshold necessary to exempt executive, administrative, and professional employee from minimum wage and overtime pay requirements.
* In the final rule, the Department is: raising the “standard salary level” from the currently enforced level of $455 per week to $684 per week (equivalent to $35,568 per year for a full-year worker); raising the total annual compensation requirement for “highly compensated employees” from the currently enforced level of $100,000 per year to $107,432 per year;
* Allowing employers to use nondiscretionary bonuses and incentive payments (including commissions) paid at least annually to satisfy up to 10% of the standard salary level, in recognition of evolving pay practices; and
* Revising the special salary levels for workers in U.S. territories and the motion picture industry.”



Time:  2 minutes

Running time: 42 minutes

**Objective**: Appropriately classify employees as exempt or nonexempt.

**Description**: Define types of employees

**Instructional Method**: Lecture

**Script**:

The most fundamental compensation decision is that of overtime exemptions. Every position must be correctly identified as exempt or non-exempt. Educating employees on the difference between these two categories and using appropriate terms is important.

**Facilitator Notes:**

Don’t allow managers and/or employees to use terms like “salaried” or ”hourly.” Use the terms the laws are written in to help eliminate confusion. According to the Department of Labor (DOL) website (<https://www.dol.gov/agencies/whd/overtime/2019/index>):

* “On September 24, 2019, the DOL issued the final rule on the earnings threshold necessary to exempt executive, administrative, and professional employee from minimum wage and overtime pay requirements.
* In the final rule, the Department is: raising the “standard salary level” from the currently enforced level of $455 per week to $684 per week (equivalent to $35,568 per year for a full-year worker); raising the total annual compensation requirement for “highly compensated employees” from the currently enforced level of $100,000 per year to $107,432 per year;
* Allowing employers to use nondiscretionary bonuses and incentive payments (including commissions) paid at least annually to satisfy up to 10% of the standard salary level, in recognition of evolving pay practices; and
* Revising the special salary levels for workers in U.S. territories and the motion picture industry.”

Chart, diagram, funnel chart

Description automatically generated

Time:  13 minutes

Running time: 55 minutes

**Objective**: Appropriately classify employees as exempt or nonexempt.

**Description**: Discuss the 6 categories of exempt employees.

**Instructional Method**: Lecture - Exercise

**Script**:

Exempt Employeesare not allowed to collect overtime for hours worked in excess of 40 in a workweek.

**Exercise:** Exempt employees (10 minutes)

1. Divide the class into the 6 categories of exempt employees
2. Have each group create a character in this group using the information from the DOL website
3. Have each group describe him/her/ them/they to the class.

**Facilitator Notes:**

There are six [categories of exemptions under the FLSA](https://www.dol.gov/agencies/whd/fact-sheets/17a-overtime) and the following information is taken directly from the DOL website:

**Executive Exemption**

To qualify for the ***executive employee exemption***, all of the following tests must be met:

* The employee must be compensated on a [salary basis](https://www.dol.gov/agencies/whd/fact-sheets/17g-overtime-salary) (as defined in the regulations) at a rate not less than $684[\*](https://www.dol.gov/agencies/whd/fact-sheets/17a-overtime) per week;
* The employee’s primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
* The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and
* The employee must have the authority to hire or fire other employees, or the employee’s suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

**Administrative Exemption**

To qualify for the ***administrative employee exemption***, all of the following tests must be met:

* The employee must be compensated on a [salary](https://www.dol.gov/agencies/whd/fact-sheets/17g-overtime-salary) or fee basis (as defined in the regulations) at a rate not less than $684[\*](https://www.dol.gov/agencies/whd/fact-sheets/17a-overtime) per week;
* The employee’s primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer’s customers; and
* The employee’s primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

**Professional Exemption**

To qualify for the learned ***professional employee exemption***, all of the following tests must be met:

* The employee must be compensated on a [salary](https://www.dol.gov/agencies/whd/fact-sheets/17g-overtime-salary) or fee basis (as defined in the regulations) at a rate not less than $684[\*](https://www.dol.gov/agencies/whd/fact-sheets/17a-overtime) per week;
* The employee’s primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment;
* The advanced knowledge must be in a field of science or learning; and
* The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

To qualify for the creative professional employee exemption, all of the following tests must be met:

* The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than $684[\*](https://www.dol.gov/agencies/whd/fact-sheets/17a-overtime) per week;
* The employee’s primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

**Computer Employee Exemption**

To qualify for the computer employee exemption, the following tests must be met:

* The employee must be compensated either on a [salary](https://www.dol.gov/agencies/whd/fact-sheets/17g-overtime-salary) or fee basis (as defined in the regulations) at a rate not less than $684[\*](https://www.dol.gov/agencies/whd/fact-sheets/17a-overtime) per week or, if compensated on an hourly basis, at a rate not less than $27.63 an hour;
* The employee must be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the duties described below.
* The employee’s primary duty must consist of:
  1. The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications.
  2. The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications.
  3. The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
  4. A combination of the aforementioned duties, the performance of which requires the same level of skills.

**Outside Sales Exemption**

To qualify for the ***outside sales*** employee exemption, all of the following tests must be met:

* The employee’s primary duty must be making sales (as defined in the FLSA), or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and
* The employee must be customarily and regularly engaged away from the employer’s place or places of business.

**Highly Compensated Employees**

***Highly compensated employees*** performing office or non-manual work and paid total annual compensation of $107,432 or more (which must include at least $684[\*](https://www.dol.gov/agencies/whd/fact-sheets/17a-overtime) per week paid on a salary or fee basis) are exempt from the FLSA if they customarily and regularly perform at least one of the duties of an exempt executive, administrative or professional employee identified in the standard tests for exemption.

Graphical user interface

Description automatically generated with medium confidence

Time:  5 minutes

Running time: 60 minutes

**Objective**: Appropriately classify employees as exempt or nonexempt.

**Description**: Discuss the 2 categories of nonexempt employees.

**Instructional Method**: Lecture

**Script**:

Nonexempt employees are not exempt from overtime provisions of the Fair Labor Standards Act and are entitled to overtime under the law for hours worked in excess of 40 in a workweek.

**Facilitator Notes:**

*Blue-collar Workers*  
The exemptions provided by FLSA Section 13(a)(1) apply only to “white-collar” employees who meet the salary and duties tests set forth in the Part 541 regulations. The exemptions do not apply to manual laborers or other “blue-collar” workers who perform work involving repetitive operations with their hands, physical skill and energy. FLSA-covered, non-management employees in production, maintenance, construction and similar occupations such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, construction workers and laborers are entitled to [minimum wage](https://www.dol.gov/agencies/whd/minimum-wage) and [overtime](https://www.dol.gov/agencies/whd/overtimepay) premium pay under the FLSA, and are not exempt under the Part 541 regulations no matter how highly paid they might be.

*Police, Fire Fighters, Paramedics & Other First Responders*  
The exemptions also do not apply to police officers, detectives, deputy sheriffs, state troopers, highway patrol officers, investigators, inspectors, correctional officers, parole or probation officers, park rangers, firefighters, paramedics, emergency medical technicians, ambulance personnel, rescue workers, hazardous materials workers and similar employees, regardless of rank or pay level, who perform work such as preventing, controlling or extinguishing fires of any type; rescuing fire, crime or accident victims; preventing or detecting crimes; conducting investigations or inspections for violations of law; performing surveillance; pursuing, restraining and apprehending suspects; detaining or supervising suspected and convicted criminals, including those on probation or parole; interviewing witnesses; interrogating and fingerprinting suspects; preparing investigative reports; or other similar work.



Time:  2 minutes

Running time: 62 minutes

**Objective**: Discuss various aspects of the Fair Labor Standard Act.

**Description**: Discuss other Laws & Collective Bargaining Agreements.

**Instructional Method**: Lecture

**Script**:     
The FLSA provides minimum standards that may be exceeded but cannot be waived or reduced.

**Facilitator Notes:**

Employers must comply, for example, with any Federal, State or municipal laws, regulations or ordinances establishing a higher minimum wage or lower maximum workweek than those established under the FLSA. Similarly, employers may, on their own initiative or under a collective bargaining agreement, provide a higher wage, shorter workweek, or higher overtime premium than provided under the FLSA. While collective bargaining agreements cannot waive or reduce FLSA protections, nothing in the FLSA or the Part 541 regulation relieves employers from their contractual obligations under such bargaining agreements.

*Overtime and hours of work*

**“**Overtime must be paid at a rate of at least one-and-one-half times the employee’s regular rate of pay for each hour worked in a workweek in excess of the maximum allowable in a given type of employment. Generally, the regular rate includes all payments made by the employer to or on behalf of the employee (except for certain statutor exclusions).” <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/Digital_Reference_Guide_FLSA.pdf>)

*Child Labor*

The FLSA [provides guidance concerning child labor](https://www.dol.gov/agencies/whd/child-labor) in terms of how many hours per week they can work, what types of jobs are allowable for them to be employed in, and how much they must be compensated for their work.

Two people holding laptops

Description automatically generated with low confidence

Time:  4 minutes

Running time: 66 minutes

**Objective**: Describe the concept of equal pay and its impact on the workplace.

**Description**: Ask the questions to promote discussion about equal pay and its impact on the workplace.

**Instructional Method**: Lecture - Discussion

**Script**:

**“**The Equal Pay Act (EPA) prohibits sex-based wage discrimination between men and women in the same establishment who perform jobs that require substantially equal skill, effort, and responsibility under similar working conditions” ([EEOC.gov](https://www.eeoc.gov/laws/guidance/equal-pay-act-1963-and-lilly-ledbetter-fair-pay-act-2009)).

**Ask**: Wages and bonuses must be in the same form for men and women. When have you seen an example of this? (in the news, at your work, etc.) What does equal pay mean to you?

**Facilitator Notes:**   
**Equal Wages** (EEOC.gov)

* Wages can include more than just hourly or annual pay. Wages includes bonuses, company cars, expense accounts, insurance etc.
* An employer cannot lower the wages of some employees to make wages equal.
* Wages must be in the same form. An employer cannot pay a higher hourly wage to a male employee and then attempt to equalized the difference by periodically paying a bonus to a female employee.
* The EPA speaks in terms of equal work, but the word "equal" does not require that the jobs be identical, only that they are substantially equal. In comparing two jobs for purposes of the EPA, consideration should be given to the actual job duties, not job titles or classifications.

**Skill**- “Measured by factors such as the experience, ability, education and training required to perform a job” (EEOC.gov).

**Effort**- “Amount of physical or mental exertion needed to perform job” (EEOC.gov).

**Responsibility**- “Usually defined as the degree of accountability required in performing a job. Factors to be considered in determining the level of responsibility in a job include:

* Extent to which employee works without supervision,
* Extent to which employee exercises supervisory functions, and
* Impact of employee's exercise of his or her job functions on the employer's business” (EEOC.gov).

**Working Conditions**- “Usually consist of two factors:

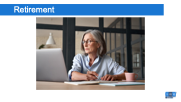
* Surroundings
* Hazards” (EEOC.gov).

**Lilly Ledbetter Fair Pay Act**

This law reverses an earlier Supreme Court decision that limited an employee’s rights to file a claim of discrimination within 180 days of its occurrence. According to the [EEOC website](https://www.eeoc.gov/statutes/notice-concerning-lilly-ledbetter-fair-pay-act-2009):

Under the Act, an individual subjected to compensation discrimination under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, or the Americans with Disabilities Act of 1990 may file a charge within 180 (or 300) days of any of the following:

* when a discriminatory compensation decision or other discriminatory practice affecting compensation is adopted.
* when the individual becomes subject to a discriminatory compensation decision or other discriminatory practice affecting compensation; or
* when the individual's compensation is affected by the application of a discriminatory compensation decision or other discriminatory practice, including each time the individual receives compensation that is based in whole or part on such compensation decision or other practice.



Time:  2 minutes

Running time: 68 minutes

**Objective**: Determine the appropriate laws to apply to given employment situations.

**Description**: Discuss the appropriate law that applies to retirement.

**Instructional Method**: Game

**Script**:

“The [Employee Retirement Income Security Act of 1974](https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/erisa) (ERISA) is a federal law that sets minimum standards for most voluntarily established retirement and health plans in private industry to provide protection for individuals in these plans.

ERISA requires plans to provide participants with plan information including important information about plan features and funding; sets minimum standards for participation, vesting, benefit accrual and funding; provides fiduciary responsibilities for those who manage and control plan assets; requires plans to establish a grievance and appeals process for participants to get benefits from their plans; gives participants the right to sue for benefits and breaches of fiduciary duty; and, if a defined benefit plan is terminated, guarantees payment of certain benefits through a federally chartered corporation, known as the [Pension Benefit Guaranty Corporation (PBGC)](https://www.pbgc.gov/)” (DOL.gov).

Text

Description automatically generated

Time: 12 minutes

Running time: 80 minutes

**Objective**: Determine the appropriate laws to apply to given employment situations.

**Description**: Students will review the material by answering the questions on the slide.

**Instructional Method**: Pair and share discussions, exercises, homework

**Script:** Let’s discuss different employment laws.

**Exercise**:

1. Pair students
2. Have students discuss and answer the questions on the slide.
3. Have students share their answers.

**Individual Exercise:**

1. Have each student write a one-page answer to question #2
2. Have students get into to groups of 3-5 and discuss their answers
3. Have students share with the entire class (optional)

**Facilitator Notes:**

**Discussion Prompts**

1. French law makes it illegal for companies to send emails to employees outside of regular work hours. This law, which provides individuals with the “right to disconnect,” applies to companies of 50 or more employees. Do you think the United States should consider passing a similar law, or do we already have laws that govern work hours, and we just need to enforce them? Why or why not?
2. Why do individual states need to pass equal pay laws when we already have federal laws that mandate equal pay for equal work? What evidence is there that we still have issues with pay equity in the U.S.?

**Case Law in the Spotlight:**

* *Walsh v. Getch Inc., Gregory B. Getchell. U.S. District Court District of Minnesota* [*Civil Action No.: 22-cv-1868*](https://www.dol.gov/sites/dolgov/files/OPA/newsreleases/2022/07/WHD221579GETCH.pdf)
* *In Re Wackenhut Wage and Hour Cases*, Calif. Super. Ct., No. JCCP 4545 (Oct. 21, 2019)
* *Van Dusen v. Swift Transportation Co.*, D. Ariz., No. 10-CV-899 (April 18, 2019)

**State Employment Law Focus**

* Review the [State Minimum Wage Laws](https://www.dol.gov/agencies/whd/minimum-wage/state) data on the DOL website. What justification can you provide to raise the federal minimum wage to something more in line with the states that have passed their own laws or keep it as it is?

**HR Skills Exercise**

* Prepare a memo explaining to both the Board of Directors and CEO the differences between exempt and non-exempt employees. Be sure to provide examples for non-HR employees and the CEO and Board of Directors. Specifically, you must determine and explain the exemption status for the following positions:

1. Machinist- “Set up and operate a variety of machine tools to produce precision parts and instruments out of metal. Includes precision instrument makers who fabricate, modify, or repair mechanical instruments. May also fabricate and modify parts to make or repair machine tools or maintain industrial machines, applying knowledge of mechanics, mathematics, metal properties, layout, and machining procedures” (<https://www.onetonline.org/link/summary/51-4041.00>).
2. Administrative Assistant- “Perform routine administrative functions such as drafting correspondence, scheduling appointments, organizing and maintaining paper and electronic files, or providing information to callers” (<https://www.onetonline.org/link/summary/43-6014.00>).
3. Entry-level Retail Management Trainee- “Directly supervise and coordinate activities of retail sales workers in an establishment or department. Duties may include management functions, such as purchasing, budgeting, accounting, and personnel work, in addition to supervisory duties” (<https://www.onetonline.org/link/summary/41-1011.00>).
4. Experienced Accountant- “Examine, analyze, and interpret accounting records to prepare financial statements, give advice, or audit and evaluate statements prepared by others. Install or advise on systems of recording costs or other financial and budgetary data” (<https://www.onetonline.org/link/summary/13-2011.00>).

Cite your sources in the correct [APA format](https://apastyle.apa.org/style-grammar-guidelines/citations).

**Relevant Laws:**

* Fair Labor Standards Act of 1938  (FLSA; Wage-Hour Bill; Wagner-Connery Wages and Hours Act) and amendments, including the 2020 overtime rule.
* Equal Pay Act of 1963
* Employee Retirement Income Security Act of 1974 (ERISA)
* Lilly Ledbetter Fair Pay Act of 2009 (Ledbetter v. Goodyear Tire & Rubber Co. (2007).

A picture containing text

Description automatically generated

Time:  10 minutes

Running time: 90 minutes

**Objective**: Review main points in this module.

**Description**:  Be sure that students have a fun way to remember the material.

**Instructional Method**: Game – Review

**Script**:

Let’s see how much we remember about this module.

**Facilitator Notes:**

Review Exercise:  Create a fun game to review the material.  Remember to use the objectives to measure learning:

* Define the key terms related compensation.
* Determine the appropriate laws to apply to given employment situations.
* Appropriately classify employees as exempt or nonexempt.
* Discuss various aspects of the Fair Labor Standard Act.
* Describe the concept of equal pay and its impact on the workplace.

* Have each student submit a question on a piece of paper, crumple it up and toss it in a bucket (clean wastebasket), Instructor will then read them and give points to each team with the correct answer.
* Any game show – Family Feud, Jeopardy, $10,000 pyramid, Password, Tic Tac Toe
* Extra credit quizzes

There are many ways to review material virtually or in person.  Students can use their phones or computers to navigate to various online review websites.

A few are:

* Kahoot
* Quizlet