



Overtime, Outsourcing, and Freelance Employees: What Your Business Needs to Know

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Understanding the New Overtime Regulations



We are your human resource.

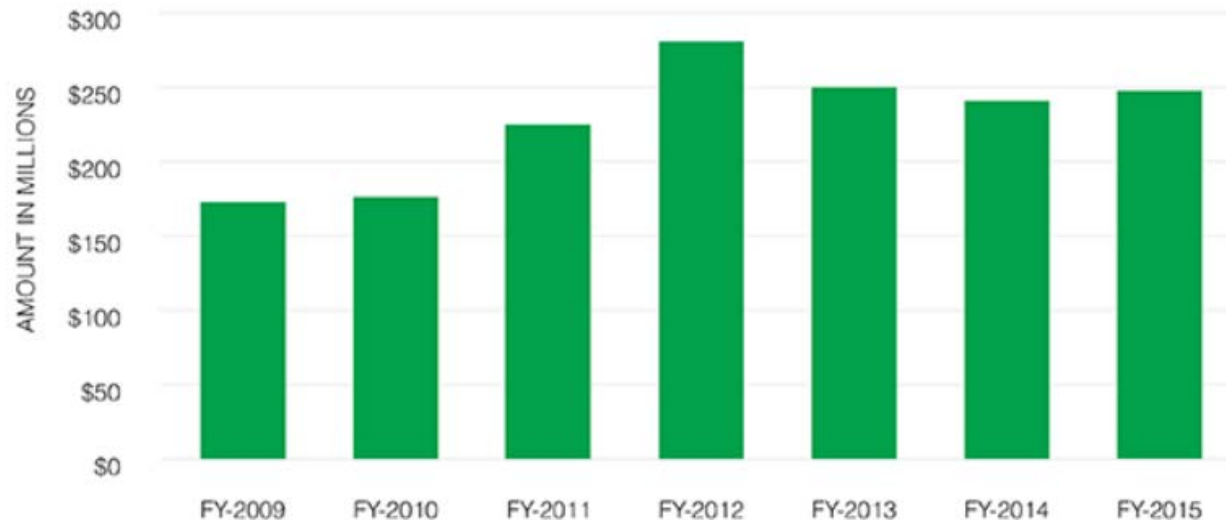


About SESCO

- Founded in 1945
- Represent clients in all 50 states
- Available through monthly service agreements -- no billing per hour

Putting Wages Into the Hardworking Hands of Those Who Have Earned Them...

Back Wages Collected



In fiscal year 2015, WHD found over \$246 million in back wages for more than 270,000 workers - another year of meaningful progress toward our goal of ensuring a fair day's pay for a fair day's work.

Strategic Enforcement Resource Prioritization



We found wage violations in 79% of these agency-initiated investigations in fiscal year 2015, up from 65% in fiscal year 2009. We are looking in the right industries, and within these industries we are looking in the right places.

WHD Enforcement Statistics

	FY 2015
Back Wages	\$246,780,891
Employees Receiving Back Wages	240,340
Complaints Registered	21,902
Enforcement Hours	1,154,373
Average Days to Resolve Complaint	125
Concluded Cases	27,914

Trends in FLSA Litigation/Action

- FLSA lawsuits
 - Four (4) year liability
 - Attorney fees
- FLSA violations/liability/fines #1 in 2015
- Education by Wage-Hour (billboards/commercials/print/etc.)
- Online information
- Attorney marketing

FLSA Basics

- **Non-Exempt** employees must:
 - receive minimum wage (\$7.25) (Federal)
 - maintain an accurate time record
 - receive overtime at time and one-half hours worked in excess of 40 hours per week
- Unless exempt

White-Collar Exemptions

- Executive Exemption
- Administrative Exemption
- Learned Professional Exemption
- Creative Professional Exemption
- Computer Exemption
- Outside Sales Exemption
- Highly-Compensated Employees

White-Collar Exemptions

- **Executive Exemption**
 - Management - 51% of work time
 - Manager - 2 or more employees
 - Hire/Fire
 - Performance Reviews
 - Discipline

White-Collar Exemptions

- **Administrative Exemption**
 - Independent Discretion and Judgment – 51% of work time

White-Collar Exemptions

- **Learned Professional Exemption**
 - 4 Year Professional Degree
 - Doctors, Lawyers, Teachers

White-Collar Exemptions

- **Computer Exemption**
 - Programmers/Analysts
 - Not Help Desks, Network Administrators, Webmasters

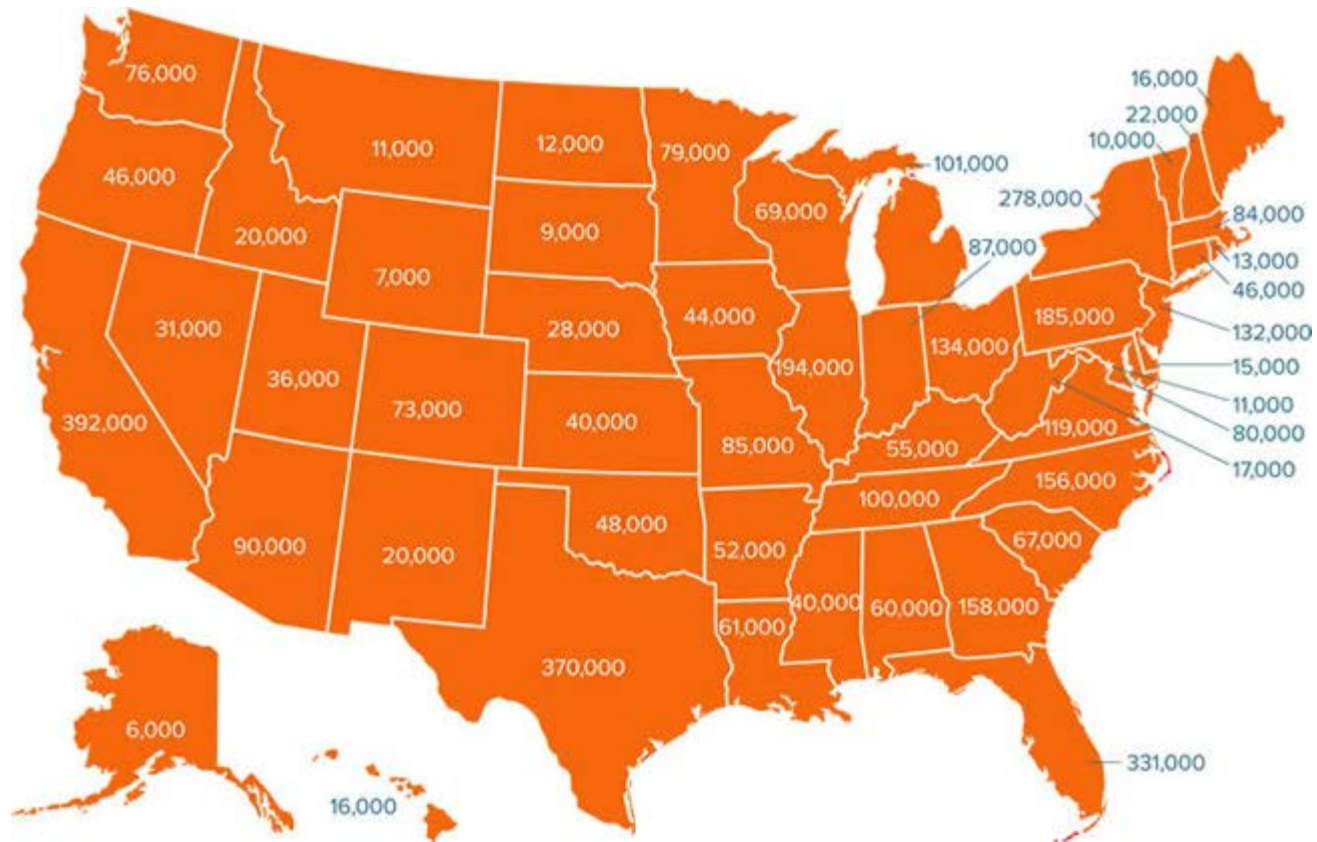
White-Collar Exemptions

- **Outside Sales Exemption**
 - Engaged in Sales
 - “Outside” 51% of work cycle
 - No guaranteed salary

White-Collar Exemptions

- **Highly-Compensated Employees**
 - Guaranteed \$134,004 or more annually – December 1, 2016 (currently \$100,000)
 - Independent Discretion/Judgment

Overtime updates will extend protections to 4.2 million workers across the country.



Proposed Salary Requirements

White Collar Exemption	Current Annual Guaranteed Salary	Annual Guaranteed Salary December 1, 2016
Executive	\$23,660 (\$455)	\$47,476 (\$913)
Administrative	\$23,660 (\$455)	\$47,476 (\$913)
Computer	\$23,660 (\$455)	\$47,476 (\$913)
Professional	\$23,660 (\$455)	\$47,476 (\$913)
Outside Sales	No salary requirements	

Commissions Can Be Applied to the Salary Requirement

- Maximum of 10% of salary – maximum \$4,747.60 annually
- Non-discretionary bonus
- Settle-up on a quarterly basis

SESCO Staff Recommendations

- Review your current salary-exempt positions and simply identify those who make less than \$47,476.
- Request/require these positions to maintain an accurate record of time.
- Determine whether or not these incumbents who make less than \$47,476 work in excess of 40 per week.

SESCO Staff Recommendations

- If overtime is worked, determine if hours of work can be reduced to 40.
- If the position is required to work over 40 on a regular basis, then you will need to determine whether or not you wish to increase the salary in one fell swoop to the minimum requirement, \$47,476.
- If this increase is not practical, you will need to determine whether or not you wish to implement a nonexempt pay plan.

Options

- Do nothing – roll the dice
- Increase salary to \$47,476
- Hourly rate with overtime
- Fluctuating Workweek Method of Payment

Fluctuating Workweek Method of Payment

- Guaranteed salary for all hours worked
- Half-time paid for hours worked in excess of 40 hours per week
- Example:

Weekly salary		\$600.00
Total hours worked	÷	45
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Regular Rate		\$13.33
Half-time rate		\$6.67 (\$13.33 x .5 hours overtime)
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Overtime due		\$33.35

Note: Payroll providers are not normally aware of or compliant to the Fluctuating Workweek Method of Payment.

Fluctuating Workweek Method of Payment

- Department of Labor Coefficient Table can be used to compute the additional half-time in one quick calculation
- Employer/employee must have a Letter of Understanding acknowledged by the employee that they understand the pay plan

Myth

- **Paying someone on a salaried basis does not mean they are exempt**
- Exemption status is only determined by actual job duties/requirements **and** guaranteed salary

Allowed Deductions from Guaranteed Salary - Exempt

- One (1) day or more for personal reasons
- One (1) day or more after exhausting PTO/
time off
- Offset jury/military pay
- Penalties for safety infractions

Allowed Deductions from Guaranteed Salary - Exempt

- One (1) day or more for disciplinary leaves
- Unpaid FMLA (full, partial, by hour based on policy)
- Beginning/ending weeks



Common FLSA Violations/Traps

Trap #1

- **Misclassifying Non-Exempt Employees As Exempt**
- **Examples**
 - “Managers” performing non-exempt work as a primary duty
 - Administrative employees non-exempt:
 - Office managers
 - Accountants
 - Marketing personnel
 - IT technicians

Trap #2

- **Employees cannot waive their rights**

Trap #3

- **What are “Hours” Worked?**
 - Break time
 - Travel time
 - Meetings
 - Training

Trap #3

- Working lunches
- Pre-work
- Home work
- Unauthorized overtime

Trap #4

- **Not Calculating the Regular Rate Properly**
 - Not including all “work” time as defined
 - Non-discretionary bonuses
 - Averaging workweeks
 - Comp time

Trap #5

- **Improper Pay Deductions – Below Minimum Wage**
 - Loans – call them advancements
 - Equipment breakage
 - Not returning equipment/materials/uniforms

Trap #6

- **Misclassification of Independent Contractors**
 - Improper classification
 - Tax liability
 - Workers' comp liability
 - Overtime liability
 - DOL actively pursuing misclassifications

SESCO's Staff Recommendations for Compliance

- Issue policy on clocking time by other employees
- Policy for mispunches/edits
- Manager sign handwritten time entries
- Edit time records before paying

SESCO's Staff Recommendations for Compliance

- Implement rounding policies
- Conduct annual compliance audits of exemption status and pay plans
- Policy for lunches, after hours work, overtime



Thank you!

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