Nonprofit Human Resources Fair Labor Standards Act (FLSA)

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AGENDA

- Introductions
- History
- Wage & Hour basics
- New OT rules
- Considerations and options
- Next steps
- Wrap Up

THE FORAKER GROUP

Core Purpose: Strengthen nonprofits

4 lines of business to serve Alaska nonprofits and tribes:

- 1. Educational Opportunities (online and in-person)
- 2. Organizational Development (consulting, facilitation)
- 3. Shared Services (back-room services)
- 4. State Association (advocacy, research, statewide initiatives)

INTRODUCTIONS AND EXPECTATIONS

- Tell us your name
- What do you want to learn today?

TRAINING OBJECTIVES

Upon completion of this session you should:

- Understand the new overtime rulings
- Understand what steps need to be taken for employers to be in compliance with regulations
- Understand options
- Have additional references for support

WHY DO I CARE? WHY DOES IT MATTER?

It's the law

&

There are penalties for noncompliance

WHAT IS THE FAIR LABOR STANDARDS ACT (FLSA)?

It is the broadest piece of labor legislation in the U.S.

- Minimum wage
- Exempt vs. non-exempt guidelines
- Overtime rate of pay
- Employee vs. contractor guidelines (IRS test)
- Established a workweek
- Child labor provisions
- Record retention

WE DO THINGS A BIT DIFFERENTLY

Different

Different

Different

Different

FEDERAL

- Min Wage: 7/24/09 = 7.25/hr
- Overtime: 1 ½ times the regular rate of pay for all hours over 40 hours in a work week
- Covers employers with one or more employees
- Current minimum threshold for exempt classification = \$455/wk (\$23,660/yr)

ALASKA

- Min Wage: 1/1/16 = 9.75/hr
- Overtime: 1 ½ times the regular rate of pay for hours worked over 8 per day or 40 straight-time hours per week
- Employers with 4 or more employees are covered and required to pay overtime wages
 - Salary threshold for exempt classification is twice minimum wage = \$780/wk (\$40,560/yr)

Effective 12/1/2016, the minimum threshold will increase to \$913/wk (\$47,476/year) which will be greater than Alaska's current threshold. As a result, the new state minimum will increase to match the federal threshold.

A LITTLE HISTORY

- In 2004, FLSA had its first significant updates in nearly half a century:
 - Increased minimum exempt threshold (\$250/wk to \$455/wk)
 - "White collar" rules and executive exemption
 - Listed permissible deductions
 - Created a 'safe harbor' for improper deductions
- June 2015: the DOL proposed changes increasing the minimum threshold to be paid to exempt employees
- May 2016: Final rulings were announce with the effective date of 12/1/16

CHANGES TO FLSA: NOW VS. THEN

TODAY

- Minimum threshold for exempt status is \$23,660 per year (\$455 per week)
- High compensated employee (HCE) threshold is \$100,000 per year

No impact to duties test

EFFECTIVE DECEMBER 1, 2016

- New minimum threshold is \$47,476 per year (\$913 per week)
 - 10% nondiscretionary bonus
- New HCE threshold is \$134,004 per year
- Automatic increases to minimum threshold (40th percentile of weekly earnings) every 3 years
- Distinguishes between enterprise and individual coverage:
 - Enterprise: annual business or sales of \$500k
 - Individual: engages in interstate commerce

EXEMPT VS. NON-EXEMPT EMPLOYEES WHAT'S THE DIFFERENCE?

EXEMPT

- 3 factor test to determine exempt status:
 - minimum pay threshold
 - paid on a salary basis
 - duties test
- Not entitled to overtime

NON-EXEMPT

- Do not meet any one of the Fair Labor Standards Act exemption tests
- Paid on an hourly basis
- Entitled to earn overtime

NOW WHAT? FLSA AGENCY REVIEW

- Plan now!
- Bring job descriptions current
- Assess which exempt employees are on the bubble of the new minimum threshold
- Designate each position as exempt or non-exempt
- Renegotiate contracts
- Consider your options
- Communicate any changes to employees

OPTIONS, PROS, CONS & CONSIDERATIONS

Options

Increase Salaries for those below or near the new threshold

Change from exempt to non-exempt at current wage & convert annual rate to hourly equivalent (options within an option)

Change from exempt to non-exempt at reduced wage to compensate for OT

Upside

You may become very popular with staff

Adjust headcount to reduce OT

Pay on a salary basis

OT eligible is to the benefit of the employee

Limit Overtime

Limits impact to budget by paying straight time to an increased workforce

Employee sentiment of being a 'salaried' employee

Your budget may thank you

Pitfalls

- Misinterpreted as a merit increase
- Appearance of favoritism
- Wage compression

How big of an impact will this have on your budget? It may be difficult to recruit a qualified workforce for parttime work

Failing to track and pay OT hours worked

- Impact to staff morale
- Unanticipated OT

Consider this...

AK minimum wage is reviewed every year; the increase given to meet federal changes may not meet state threshold in the near future

Federal and state grants may need to be renegotiated

Look at your benefit eligibility thresholds

You must have a mechanism to account for and pay any OT hours worked The hourly rate will be less, but the employee's compensation stays the same because of OT

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WHAT ARE YOU NEXT STEPS?

WAGE & HOUR RESOURCES

- Alaska Wage and Hour website: <u>labor.alaska.gov/lss/whhome.htm</u>
- Alaska Wage and Hour FAQs for employees: www.labor.alaska.gov/lss/forms/employee_faq.pdf
- Employment Practices & Working Conditions, Wage & Hour Administration Pamphlet 100, Statutes, Regulations & Adopted CFRs 4/07 can be found at: www.labor.state.ak.us/lss/forms/pam100.pdf.
- For more information on the differences between the federal and state rules, visit www.wagehourdefence.org for state summaries.
- Workbook created by <u>501 Commons</u>---contains questionnaires, a budget impact worksheet and a link to an overtime calculator at: https://www.501commons.org/resources/tools-and-best-practices/human-resources/overtime-rules.
- Overtime Rules and the Impact on Nonprofits from the National Council of Nonprofits at: www.councilofnonprofits.org/trends-policy-issues/overtime-regulations-and-the-impact-nonprofits
- <u>U.S. Department of Labor</u> website on overtime pay, as well as a <u>video</u> explaining the rules at: <u>www.youtube.com/watch?v=UFJaDm720FU</u>

QUESTIONS-WRAP-UP

Thank YOU

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