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Strategies for
Managing Your Most
Valuable Resource

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Beware of Compensation Traps

Exempt and Nonexempt Classification Ramifications

In the late 1930s, Congress passed the Fair Labor Standards Act (FLSA) establishing a standard 40-hour workweek and a minimum wage. The act also created overtime pay provisions. For positions that qualify as exempt, companies don't have to pay overtime — at time-and-one-half of an employee's base wage — for time worked in excess of 40 hours per week. Depending on the particular exemption, employees may be either exempt from all FLSA coverage or exempt from only the law's minimum-wage or overtime requirements. A position must satisfy several tests to qualify for exemption. Generally speaking, employees can't spend more than 20% of their time on nonexempt duties.

The exempt versus nonexempt issue creates several problems. Typically, companies provide or deny employees benefits based on their exempt or nonexempt status. This can create a false sense of stature associated with the exempt status, upsetting some employees. Employers, on the other hand, risk FLSA scrutiny if they misclassify employees as exempt. Let's take a closer look at the FLSA's requirements and penalties.

White-Collar Exemptions

The FLSA provides an exemption from both overtime and minimum-wage requirements for "white-collar" employees. These include executive, administrative, professional, outside sales and computer-related exemptions. Each type requires employers to pass specific tests. Three of the white-collar exemption tests for overtime have long and short tests to identify whether a position qualifies for an exemption. Short tests involve the position satisfying a "primary duty" test and meeting minimum earnings requirements to be classified as exempt. Contact a qualified advisor to get the complete testing criteria. Let's take a closer look at the main exemptions:

Executive. This applies to those who have authority to direct the work of others, regularly use discre-

tionary powers and may directly affect other employees' employment statuses.

Administrative. This is one of the broadest, most common exemptions under the FLSA — and the most easily misunderstood or abused. It applies to employees who perform office work, provide executive assistance and complete other general administrative functions.

Professional. This exemption isn't restricted only to the traditional law, medicine and teaching professions. It includes those professions that have a recognized status and require individuals to obtain professional knowledge through prolonged study.

Outside sales. Employees who fall under this classification must perform their duties away from the company's premises on a regular basis.

Computer-related occupations. This exemption applies to skilled professionals who perform work that requires theoretical and practical application of highly specialized knowledge.

Minimum-Wage And Overtime Rules

Because courts have interpreted the FLSA exemptions narrowly, a com-



pany must clearly meet the exemption requirements under the FLSA's minimum-wage and overtime rules. The exemption depends on the employee's job duties, time spent on such duties as well as salary received.

An employee is not exempt simply because he or she has a job title that matches one of the exempt categories. What matters is the *actual* work performed by the employee. As a matter of fact, the FLSA assumes all jobs are nonexempt unless documentation supports exemption.

Make sure your company follows these requirements, or you could face unwanted FLSA scrutiny. For instance, while job titles don't determine exemptions, having consistent job descriptions and titles — meaning all jobs with the same title in the company are either exempt or nonexempt — can help. Remember, you can pay an employee a salary, but if the person's job doesn't qualify for an exemption, you must still comply with the FLSA's minimum-wage and overtime provisions.

Exemption Dos and Don'ts

Several employment practices and policies can put your company in danger of losing an exemption for a position. These include:

- Salary deductions for part-day absences. (Employers must be careful to note that they can't make salary deductions for absences of less than one day without defeating the salary basis test and causing substantial

overtime liability for otherwise exempt staff.)

- Salary deductions for cash register shortages. (Employers can't make salary deductions for cash register shortages.)
- Salary deductions for absences caused by jury duty, attendance as a witness or temporary military leave.
- Suspensions without pay for disciplinary infractions.
- Suspensions without pay for temporary budget-related business requirements.

On the other hand, your company can employ several salary deductions without endangering exemptions. You can make deductions for instance, for infractions of extremely significant safety rules. Or you can do so if an employee is absent from work for a day or more for personal reasons other than sickness or accident. You can deduct if an employee is absent for a day or more because of sickness or disability; but you must connect the deduction with a bona fide plan, policy or practice providing compensation for loss occasioned by sickness or disability.

Compliance Audits

It's not easy to determine if employees are actually "doing" what the job description calls for. Precise job descriptions that summarize the most important features of each job — including the nature of the work, responsibilities, reporting structure and job

specifications — make up an FLSA compliance audit's backbone. The next step is thoroughly (and regularly) reviewing the status of all exempt positions.

That entails implementing an action plan to ensure that your company conducts a thorough FLSA compliance audit. Start by having employees exhaustively review their job descriptions with their supervisors to determine the percentage of time spent on each duty. This will include listing any responsibility left off the description.

Of course, gathering information from company supervisors and employees and reviewing job descriptions doesn't always ensure accurate employee classification. So review recent court cases, talk with your lawyers and possibly even the Department of Labor (DOL). Generally, when you're unsure whether a position is exempt or not, it is better to err on the nonexempt side.



Company Liabilities

FLSA has a back-pay statute of limitations for employee misclassification. The limitation is three years for a willful violation and two years for a nonwillful violation. But addressing the issue ahead of time — whether through an internal or external investigation — can help your company avoid penalty situations, which can include liquidated damages, attorneys' fees, court costs and interest.

In fact, the FLSA provides a “window of correction” — a period in which an employer can correct impermissible deductions without

losing the white-collar exemption. For example, if your company reduced an employee's pay inadvertently but reimbursed the employee for such deductions and promised to comply in the future, the company may not suffer consequences.

Small Mistakes Can Cost Big Bucks

Not knowing an employee's FLSA status can be costly. The FLSA allows any employee or employees to initiate a lawsuit to recover unpaid minimum wages and unpaid overtime, and provides other relief.

Once an employee claims he or she is nonexempt, the burden falls on the employer to prove the exemption. The DOL estimates that almost half of all U.S. companies — big and small — have misclassification errors.

Your company can prevent such expensive mistakes. The easiest, most obvious measure is making sure job descriptions match the actual jobs. Using exemptions conservatively and avoiding unorthodox pay practices can also help. For further assistance, please call us. And to test your FLSA savvy, see the insert for “Compensation 101.” ●

Back to the Basics

Performance Review Strategies

Whether you are a business owner, office manager or team leader, evaluating employees' performance comprises an essential part of your job. A formal review system requires supervisors to view employees fairly and objectively and reward them only on the basis of job performance. But most importantly, such systems help companies make the best use of their most vital assets — people.

Performance appraisal, as it is often called, identifies employees for promotion, training and corrective counseling. You can also use an appraisal to document performance problems that may lead to fair and

legal terminations. Keeping an objective eye on employees' work quality calls for a keen balance. Supervisors should base their performance review comments on job-related factors without discriminating in any prohibited ways. Let's take a look at the best ways to handle the delicate job of employee evaluations.

Setting Performance Goals

Employees (including supervisors) must know what is expected of them, as well as the standards the company uses to evaluate their work. Performance goals represent a measurement standard and a pathway to career development

and personal growth. When a supervisor and an employee come to a consensus on specific goals, they've laid the foundation for the employee's performance evaluation. Reviews based on attaining specified goals or standards are more objective and more likely to be accepted, while also eliminating any appearance of bias or discrimination.

Performance goals translate job duties and responsibilities into work targets for the review period. Each major responsibility should have a goal. Make sure your performance goals are well-written and agreed to by the employee and supervisor.

Those goals should also be:

- Measurable, such as number of calls made and error-free forms,
- Observable,
- Doable — challenging but attainable,
- Flexible enough to deal with catastrophic, unusual, or unplanned situations, and
- Prioritized.

After each employee's performance goals are established, set up an action plan. It will outline how the employee will attain each goal. This doesn't mean it's necessary to include all details — just a general statement about how the employee will achieve the goal.

Measuring Job Performance

After establishing performance goals, determine how you will measure them. Herein lies a trap. Often, supervisors or others conducting performance reviews have no proper accounts of employees' job duties. To obtain a proper performance measure, an accurate yardstick (such as what the employee does, how often and why) is required.

Therefore, remember that certain parts of performance require special consideration. For instance, will you consider *how* the employee completed assignments or just that he or she met a goal? And what about employees who have more control over behaviors than results?

2 Tips for Better Records

To successfully measure your employees' performance, you need to keep thorough, accurate records throughout the review period. Here are two tips:

1. **Observe behaviors and track results throughout the year.** Keep accurate records for reference in a "supervisor file." Rather than noting "bad attitude," record specifics — such as late or sloppy reports, customer complaints, failure to attend key meetings, or tardiness.
2. **Avoid subjective feedback by focusing on what you can observe and measure.** Supervisors should not let gossip cloud their reviews. When it comes to recording performance, stick to what you've observed, not the latest scuttlebutt.

For example, a receptionist may be able to control a client's first impression of your company, but not how the client will be served.

Rating Job Performance

While no definitive rule exists for how to rate employee performance, common sense should prevail. That means if you use a numbered rating scale, define each level explicitly. For instance, would scoring a "4" under "Dependability" mean Jane Doe needs improvement? Are your scores grouped, as in "1–5 = Excellent"? If so, within that level do you differentiate how a "2" differs from a "5"? The point is, make it clear which rating jeopardizes an employee's job.

Scales using descriptive terms only, like "Exceeds Expectations" or "Needs Improvement," can leave employees wondering what criteria the company used. Adding comments, thus, makes ratings more meaningful to the employee. For instance, even if Jane Doe scores a "Meets Expectations" rating, adding a comment will provide her with insight into how she might achieve a higher rating next time.

Some smaller companies opt to keep less-structured ratings. A supervisor may record, for example, each employee's successes or failures throughout the year, including strengths and areas to improve. This form of performance review is especially useful if a company wants to focus on an employee's personal development, or when he or she prepares a self-evaluation.

Generic Won't Work

Performance reviews let employees know how well they're performing and how they can improve. They also clearly define job expectations and the company's performance standards. It's a good idea to review your performance review system periodically to make sure it's meeting your company's and employees' needs.

If you don't have a performance review system or need assistance updating your present one, seek input from human resource professionals or labor counsel. Remember: One system does not fit all companies. ●

From the COO's Chair

Strategies for Winning in a Downturn

When the economy contracts and “business as usual” is disrupted, we become very tentative, and the temptation is to withdraw. Hunkering down is no way to win a battle. Now is the time to gain ground on the competition and reposition your organization for the upturn. During 25 years of consulting with companies in many industries to improve business performance, we have observed that when management retreats under duress, they often intensify their problems. Boldness and well planned action are a winning combination when the going gets tough. Following are essential strategies we recommend to win in tough economic times:

1.) Start with Peter Drucker's Three Principles for Leadership:

- a.) **Focus on the Mission** — re-verify that all activities, funding, and processes are focused on the mission and within the boundaries of the mission.
- b.) **Redefine Significant Results** — make process simplification and waste reduction part of the significant results.
- c.) **Continue Rigorous Assessment** — objectively measure all areas for alignment with the mission and contribution to business goals.

2.) Evaluate Business Development/Sales Strategies: New business development and sales strategies may not be adequate to counter the receding economic tide. Now is the time to re-evaluate your company's competitive position and truly envision the future. Step back and consider new growth markets, examine competitive vulnerabilities and re-energize your sales team. Are there market segments that can be explored and exploited, successful but more poorly positioned competitors to be acquired, new products or services to explore? Are there short term revenues to be gained or

longer term opportunities that need nurturing in preparation for the upturn? Shaping business development strategies and building new capabilities can help neutralize the impact of a declining market and better position the company for a variety of new scenarios.

3.) Increase Revenue with Internal Savings. Track down persistent, high dollar waste producing redundancy, returns, quality defects, late deliveries, etc. Take time to identify and eliminate root causes of poor delegation, wasted action, rework, redundancy, quality defects, and poorly timed deliveries. According to Juran Institute research, most companies lose an average of 20% of total revenues from waste or poor performance. Eliminating internal waste drives dollars straight to the bottom line, unlike increased sales which only delivers a portion to the bottom line. In other words, while \$7M in increased sales potentially adds \$1M in net profits, \$7M in internal savings equals \$7M in profit! Home Depot is a recent example of the dramatic impact of internal savings. Through their internal savings program named “Home Depot Lite,” they reported a 22% increase in 2001 3rd quarter net profit even though sales dropped 7%! The dramatic bottom line impact was achieved through internal cost saving techniques aimed at improving processes, individual performance and technology.

4.) Optimize Human Capital: “Sharpen the Saw!”

- a.) **Innovate, Innovate, Innovate** — Collectively and persistently use the innovation process to produce cost savings ideas. Solicit ideas particularly from contributors who do the job on which you are focusing. Invite your suppliers and customers to innovation sessions. Remember, best idea wins!
- b.) **Develop, Develop, Develop** — Catch up on technical and soft-skills training. Don't miss opportunities to

build employee competencies. Pay particular attention to your cross training and coaching efforts.

- c.) **Maintain, Maintain, Maintain** — Review all of your equipment preventive maintenance needs; for example, in manufacturing settings leverage “deep maintenance” such as motor rebuilds as training sessions. Build your employee skills while you take care of the equipment.
- d.) **Retain, retain, retain** — This 90's mantra remains in vogue for ongoing success in the new century, even through economic slowdowns. Use creative redeployment, job sharing, contract and gain sharing techniques coupled with developmental strategies to retain talent for the upturn. A key ingredient is a detailed and well communicated plan for keeping and developing your talent.

5.) Focus on Your Teams: Each of the above strategies proactively engages your team to increase morale. Pursue team-oriented sessions resulting in reduced conflict and more focused efforts. Employ Deming's “Drive Out Fear” and “Break Down Barriers” Techniques to keep the lines of communication open. Employees are empowered through teams and vision to implement business development and internal savings strategies; resistance to change is minimized through high levels of commitment. Finally, remember that stronger team accountability yields maximum results.

If you feel besieged, now is the time to take the offensive. There are dollars to be saved and made by strategically repositioning your organization for short-term survival and long-term growth. Don't mistake a downturn as a time for defeat or retreat — it's a time for battles to be won!

By Sheryl Dawson
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Compensation 101

Employee Classification Quizzes for Employers

One of the most confusing compensation areas for employers is the exempt versus nonexempt issue. The Fair Labor Standards Act (FLSA) provides employers strict compensation guidelines, which, if followed improperly, can cost your company significant time and money.

To help you better understand this complex issue, we've put together a short quiz. Take a moment to see how well you'd do if faced with these situations.

Stylish Stilts Inc.

Mary's marketing coordinator position at Stylish Stilts Inc. has been re-evaluated and changed from exempt to nonexempt. Mary's upset over what she perceives as a loss of status and has written a letter to the president of the company. In it she states she will "give up" her right to overtime because she wants to remain exempt. Can the president comply with her request?

No. The government doesn't give employees the right to sign off their exempt or nonexempt status — no matter how the employer or employee feels. If, later on, Mary filed a claim with the Wage and Hour Division and it determined that (a) Mary was a nonexempt employee, and (b) She had worked, but had not been paid for,

overtime, Stylish Stilts would have to pay back overtime wages for two to three years. That's in addition to attorneys' fees and possible punitive damages for knowingly violating the FLSA.

Tyler's Tick-Tock Clocks

Tyler has worked his administrative assistant, Sophia, 10 to 15 hours per week overtime for the first nine months of the year. Because of a recent sales downturn, his budget no longer has any overtime dollars for the rest of the year. Can Tyler, as owner of Tyler's Tick-Tock Clocks, change Sophia's position from nonexempt to exempt and give her a 4% salary increase — even though her duties haven't changed?

No. A business owner can't reclassify a position just because overtime money is no longer available. The job has stayed the same, and Sophia's position doesn't qualify for an exemption. Of course, Sophia might feel as though she is "losing" money and may therefore file a wage and hour claim.

Bob's Blueprints

The engineering department at Bob's Blueprints is tired of determining each position's exempt status. Someone suggests paying everyone at the company the nec-

essary salary to make all employees exempt. Is this possible?

No. Under the FLSA legislation, salary alone is not an adequate reason to classify an employee's position as exempt or nonexempt. Each position must meet all the requirements of exemption testing.



Gadgets Galore

The vice president of marketing wants to exempt the inside sales representative positions. Her justification is that they conduct business with existing and future clients using telephones, faxes and the Internet, which gives them greater control of their jobs. Which exemption can the company use?

None. At times, companies erroneously misclassify inside sales positions. While legislation has been introduced to consider adding an exemption for inside sales positions, they don't qualify for an exemption at present. ●

See other side for more strategies for managing your most valuable resources ...

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ORGANIZATIONAL IMPACT SURVEY

(Check all that apply)

- Your business plan involves major change initiatives.
- Operational performance isn't meeting or exceeding targets.
- Turnover is creating problems.
- Succession planning is a concern.
- Your Benefits plan structure is not optimized to minimize the impact of rising benefit costs.
- Operating costs are too high.

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