

PAYCHECKS & PLAINTIFFS

Becky S. Knutson
Davis Brown Law Firm



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STATUTORY BACKGROUND

- Fair Labor Standards Act – federal law
- Iowa Code Chapter 91D – Iowa law – consistent with federal law
- Iowa SF 269 – passed 2-25-15 – increases to \$8/hr on 7-1-15, \$8.75/hr on 7-1-16



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MINIMUM WAGE/MAXIMUM HOURS

- \$7.25 per hour for hours up to 40 in one work week
- “time and one-half” or 1.5 times regular rate for hours worked over 40 – may increase with labor agreements, contracts, policies, special arrangements like 8/80 for healthcare jobs



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RECORDS TO MAKE AND KEEP

- No particular format required
- Must show rate, hours worked, pay and deductions
- Advance notice for special arrangements and deductions
- DOL will look for the records that you keep



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RECORDKEEPING PROBLEMS

- Incomplete records
- Inaccurate records
- Employees keeping own records
- Lack of advance notice or documentation for pay arrangements and docking
- DOL investigations – they may make own calculations



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NON-WORK TIME

- Time may be paid under policies, labor agreements
- Some time not calculated for overtime – PTO, holiday – but is paid time
- Work at home and “volunteer” time may be compensable if work is done



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WORK TIME PROBLEMS

- “suffered or permitted to work” – if employee is working, pay is due
- Work from home
- “Volunteer work”
- Off the clock work
- Breaks



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“REGULAR RATE” CALCULATION

- What is not added?
 - Reimbursements and expenses
 - Gifts if de minimus
- What is added?
- Multiple jobs for same employer – overtime applies after a total of 40 hours



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EXEMPTIONS

- **Salary** required - \$455 per week minimum – except first and last week if days not worked
- **Overtime** not required – but may be paid
- **Docking** limited



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EXEMPTIONS - EXECUTIVE

- Primary Duty
- Management
- Department or Subdivision
- Customarily and Regularly
- Supervising Two or More Employees
- Factors of Particular Weight in consideration



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EXEMPTIONS - ADMINISTRATIVE

- Primary Duty
- Directly related to Management or General Business Operations
- Employer's customers
- Discretion and Independent Judgment
- Matters of Significance



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EXEMPTIONS - ADMINISTRATIVE

- Educational Establishments and Administrative Functions
- Highly Compensated employees
- Title not controlling
- Matters of Significance



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EXEMPTIONS - PROFESSIONAL

- Work requires advanced knowledge
- Science or learning
- Prolonged course of specialized intellectual instruction
- Creative, Teachers, Law, Medicine



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PROBLEMS WITH EXEMPTIONS

- Improper pay docking
- Actual duties do not qualify
- Impact of loss of exemption



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HEALTH CARE EMPLOYEES

- Doctors, technologists with degrees, RNs, PAs qualify as exempt if doing exempt duties
- Technicians, LPNs usually do not qualify
- 8/80 pay plan – may use for health care – must notify employees in advance



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CLASSIFICATION PROBLEMS

- Job titles and descriptions are not controlling
- Changes in duties may require reclassification
- Salary payment is not controlling for exemptions



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CLASSIFICATION PROBLEMS

Pay docking

- personal reasons, other than sickness or disability
- bona fide plan, policy or practice of providing wage replacement benefits
- offset jury fees, witness fees, or military pay
- penalty for violating safety rules of "major significance"
- disciplinary suspension of full days for violations of workplace conduct rules, such as rules prohibiting sexual harassment or workplace violence
- first and last weeks of employment
- unpaid leave under the Family and Medical Leave Act.



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CLASSIFICATION PROBLEMS

Pay docking

- Deductions for non-working time when work is not made available by the employer
- Deductions for absences from the workplace caused by the employer
- Deductions for absences from work of less than a whole day



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ENFORCEMENT

- Iowa Code Chapter 91A – Wage payment collection law - individual cause of action
- Iowa and U.S. Departments of Labor – agency investigation and enforcement



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ENFORCEMENT

What will the DOL enforce concerning wage/hour issues?

1. Recordkeeping issues
2. Pay for all hours worked
3. Overtime
4. Child labor laws – workers under 18
5. Other



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ENFORCEMENT

DOL initial contact may be by letter, call or appearance and request for record inspection

Employer may insist upon an administrative subpoena before allowing inspection on-site

Employer may voluntarily allow inspection or produce records



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ENFORCEMENT

On-site inspection – there is an opening conference, request for records and inspection and request for copying

Employer may have counsel and should have a designated person present – Human Resources or similar person

DOL may request employer to fill out forms or tables – no requirement to do so



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ENFORCEMENT

DOL representative may request to interview employees – on or off site

Employer representatives are not permitted to be present

Be careful about contacts with employees – no improper influence or retaliation for reporting or providing information to investigator



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ENFORCEMENT

DOL may assess a civil money penalty of up to \$1,100 per violation

Penalties may be waived in settlements

Penalties are not likely to be waived for repeat offenders – even if the violations are different



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ENFORCEMENT

Misclassification as exempt:

- An individual who willfully violates the FLSA may be subject to a fine of not more than \$10,000 and imprisonment for not more than 6 months. 29 U.S.C. § 216(a).



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ENFORCEMENT

If an employer fails to pay overtime, the unpaid overtime will be payable for 2 years if the violation is not willful and 3 years if the violation is willful, plus interest and fines. Liquidated damages in an equal amount may be payable. Attorney fees for a prevailing party against the employer, plus the costs of litigation may be imposed.



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ENFORCEMENT

Private Actions:

- Employees may file in state or federal court
- Claims include 91A, Code of Iowa and FLSA
- Actions may be single employees or class actions
- Damages may include unpaid wages, interest, liquidated damages, costs and attorney fees



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Thank you

Becky S. Knutson
Davis Brown Law Firm



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