

**FAIR LABOR STANDARDS ACT**  
UAH Management Training Seminar - April 18, 1996  
Michael I. Spearing

**I. Overview of the Statute**

- A. Minimum Wage Provisions
- B. Maximum Hour (Overtime) Provisions
- C. Other Provisions

**II. Protected and Non-Protected Workers**

- A. Employees - to suffer or permit to work
- B. Independent Contractors
  - 1. Degree of control executed by employer over worker
  - 2. Worker's opportunity for profit or loss
  - 3. Worker's investment in business
  - 4. Permanence of relationship
  - 5. Degree of skill required to perform the work
- C. Temporary Workers
  - 1. "Economic reality" test
  - 2. Joint employers

**III. Exempt Employees**

- A. Salary Test
  - 1. Predetermined amount
  - 2. "Not subject to reduction"
- B. Duty Test
  - 1. Executive - Management responsibilities, supervision of two or more FTE

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2. Administrative - Nonmanual work, exercise discretion and independent judgment
3. Professional - Knowledge in specialized field and works in that field; use of discretion and judgment

**IV. Overtime Pay**

A. General Rule - Compensation at 1-1/2 times regular rate for all hours worked in excess of 40 per work. No waivers allowed.

B. How to Count the Hours Worked

1. Waiting Time
2. On Call time
3. Rests and Meal Periods
4. Lectures, Meetings and Training Programs
5. Travel Time

C. Problem Situations

1. The "I can't wait to get to work" employee.
2. The "I'm too busy to eat" employee.
3. The "I'll just finish this at home" employee.

D. Overtime Rules and Comp Time/Flex Time

1. Options on Comp Time
2. The problem with Flex Time

E. Overtime Pay to Exempt Employees

F. How to Avoid Overtime Pay Liability

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**V. Enforcement of FLSA Requirements**

- A. Who is Liable?
  - 1. The business entity
  - 2. Managers of the business
- B. How Much is the Liability?
  - 1. Two or Three year limitation period
  - 2. Liquidated damages provision
  - 3. Attorney fees and court costs
- C. Department of Labor Investigation
  - 1. "Civil money penalties"
  - 2. Criminal sanctions

**VI. Trends in FLSA Law**

- A. More aggressive enforcement, particularly regarding employee classification
- B. "White collar" suits
- C. Congressional response