

## PAYROLL AND RECORD RETENTION



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 @btruhe

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## Counting Hours

- Required by the FLSA
- Required by PPACA
- Required by LB 560



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## LB 560

- Enforcement Authority added to the Wage Payment Collection Act
- Paycheck disclosures required

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## LB 560

On each regular payday, the employer shall deliver or make available to each employee, by mail or electronically, or shall provide at the employee's normal place of employment during employment hours for all shifts a wage statement showing, at a minimum, the identity of the employer, the hours for which the employee was paid, the wages earned by the employee, and deductions made for the employee. However, the employer need not provide information on hours worked for employees who are exempt from overtime under the federal Fair Labor Standards Act of 1938, under 29 C.F.R. part 541, unless the employer has established a policy or practice of paying to or on behalf of exempt employees overtime, or bonus or a payment based on hours worked, whereupon the employer shall send or otherwise provide a statement to the exempt employees showing the hours the employee worked or the payments made to the employee by the employer, as applicable.

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## FLSA Records



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## FLSA Records

(a) *Items required.* Every employer shall maintain and preserve payroll or other records containing the following information and data with respect to each [non-exempt] employee:

- (1) Name in full
- (2) Home address, including zip code
- (3) Date of birth, if under 19
- (4) Sex and occupation in which employed (sex may be indicated by use of the prefixes Mr., Mrs., Miss., or Ms.)
- (5) Time of day and day of week on which the employee's workweek begins
- (6)(i) Regular hourly rate of pay for any workweek in which overtime compensation is due under section 7(a) of the Act...

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## FLSA Records

- (7) **Hours worked each workday and total hours worked each workweek** (for purposes of this section, a "workday" is any fixed period of 24 consecutive hours and a "workweek" is any fixed and regularly recurring period of 7 consecutive workdays)
- (8) Total daily or weekly straight-time earnings or wages due
- (9) Total premium pay for overtime hours
- (10) Total additions to or deductions from wages paid each pay period
- (11) Total wages paid each pay period
- (12) Date of payment and the pay period covered by payment

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## Time Clocks

Time clocks are **not required** under the FLSA. In those cases where time clocks are used, if your employee voluntarily comes in before his or her regular starting time or remains after quitting time, he or she does not have to be paid for such periods provided, of course, that your employee **does not do any work** during this time. **Early or late punching is not hours worked when no work is done.**

Likewise, minor differences between the clock records and actual hours worked cannot ordinarily be avoided since all employees can not clock in or out at precisely the same time. **Major discrepancies should be discouraged, however, since doubt is raised as to the accuracy of the record of hours actually worked.**

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## FLSA: “Suffer or Permit”

“Suffer or permit to work means that if an employer requires or allows employees to work, the time spent is generally hours worked.”

“Thus, time spent doing work not requested by the employer, but still allowed, is generally hours worked, since the employer knows or has reason to believe that the employees are continuing to work and the employer is benefiting from the work being done.”

- **Must count any hour for which you “suffer or permit” work**
  - **Diligent Custodian**

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## Salary Fallacy

- **Paying an employee a salary *does not* make the employee exempt**
  - “Rewarding” veteran employees
  - Coaching and extra duties
  - Bus driving paid by route

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## PPACA “Hours of Service”

### Hour of service

In general. The term hour of service means **each hour for which an employee is paid, or entitled to payment, for the performance of duties for the employer**; and each hour for which an employee is paid, or entitled to payment by the employer for a period of time during which no duties are performed due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence.

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## Tracking “Hours of Service”

### ▪ One Option for Hourly Staff

#### • TRACK HOURS

### ▪ Three Options for Non-hourly Staff

- Track hours
- Daily equivalent (8) if one hour of service
- Weekly equivalent (40) if one hour of service

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## Dual Rate Employees

### ▪ Two Options for Hours/Pay

- Blended Hourly Rate
- Overtime Accrual Rate (in writing...)



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## “Coaching Para”

- Para for 28 hours per week at \$15/hr.
- Assistant volleyball coach: 5% of \$30,000 base



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## “Coaching Para”

- Para for 28 hours per week at \$15/hr.
  - Works/paid for 35 of 38 school weeks
  - 980 hours
  - \$420 per week
- Assistant volleyball coach
  - 12 weeks
  - 5% of \$30,000 base
  - \$1,500

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## “Coaching Para” Hours

- Para: 28 hours per week for 35 wks.
  - 980 hours
- Assistant volleyball coach
  - \$1500 / 12 weeks = \$125/wk.
  - \$125 / \$7.25 = 17.24 hours/wk.
  - 206 total hours as volleyball coach

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## “Coaching Para” ACA

- $980 + 206 = \underline{1,186 \text{ hours for year}}$
- $1,186 / 38 = \underline{31.21 \text{ hours per week}}$
- ACA: counts as “full-time”



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## “Coaching Para” FLSA

- Para: 28 hours at \$420 per week
- Coach: 17.24 hours at \$125 per week
- Total Pay: \$545 : Total Hours: 45.24
- Blended Rate
  - $\$545 \text{ per week} / 45.24 = \$12.05/\text{hr}$
  - $\$12.05 \times .5 = \$6.025 \times 5.24 =$
  - \$31.57 underpaid/wk.

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## Common Pitfalls

- Bus drivers paid by the route
  - Hourly equivalencies
- Cooks paid by the week
- Nurses, Speech Language Path’s
- Do-it-all Assistants
- Ticket takers, concession workers
- “Volunteers”

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## Questions?

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