

# Fair Labor Standards Act

January 2020

# Overview

- What is the Fair Labor Standards Act (FLSA)
- Exemptions from the FLSA
- Changes to the FLSA
- Impact to Creighton
- Impact to Employees
- What should you do
- Contact Information

# The Fair Labor Standards Act

- Federal Law Established in 1938
- **Protect employees**
  - Establishes minimum wage
  - Overtime pay eligibility and Rate
  - Recordkeeping
  - Child labor standards
- Covers full-time and part-time employees
- Employees cannot give up their rights

# The Fair Labor Standards Act cont..

- FLSA requires hourly employees be paid:
  - At least the federal minimum wage for all hours worked (currently \$9.00/hour in state of Nebraska)
  - Overtime premium (at time and one-half the regular rate of pay) for all hours worked over 40 hours in a workweek
- FLSA provides an exemption from both minimum wage and overtime premium pay for executive, administrative, and professional employees (often referred to as ‘white collar’ exemption).
  - Salary basis test
  - Duties test

# What's Changing

- Salary Basis test: increase from \$913/ week (\$47,476/year) to \$684/week (\$35,568/year).
- Effective date of change is January 1, 2020

# Misconceptions and Myths

- Employees who are paid on a salary basis are exempt from overtime
  - Exemption decisions are based on the job duties and responsibilities, not on being paid hourly or by salary.
- If an employee's job title is that of manager, supervisor, or administrator, he or she is exempt from overtime
  - Title is not determinative. The job duties, not the title, determine the exemption
- Employees who are college educated and perform white collar office work are exempt
  - Job duties, not education or clothing, are the determinates of the exemption

# Misconceptions and Myths

- Employees who have advanced degrees are exempt
  - Job duties, not education or experience are the determinates of the exemption
- If employees prefer to be paid a salary and do not want to record their time, it is OK to treat them as exempt
  - Employees can't give up their rights under the Fair Labor Standards Act and employers must maintain their obligations under the Act, including tracking hours worked and paying overtime
- If employees who have been classified as exempt don't work overtime, it doesn't matter if they are misclassified
  - Perhaps their amount of pay won't be affected, but the employer is still violating provisions of the FLSA. For example, the recordkeeping requirements of the FLSA must be adhered to, and there are other tricky situations relating to meal periods, breaks, time off, and leave that may cause potential challenges

# Impact to Creighton

- Because the salary basis test is being lowered there is no impact to existing employees
- New positions will be assessed based on the new standard
- Manager can request a re-evaluation for an existing employee

# Potential Impact to 12-month Employees

- Change from exempt to non-exempt
  - Seen as a demotion
  - Eligible for overtime
  - Required to track hours worked (myHR time card)
  - Unpaid 30 minute lunch period
  - Two Paid 15-minute breaks
  - Biweekly pay basis (26 times a year)
  - Vacation and sick accrual amounts won't change, but frequency of accrual changes from monthly to biweekly
  - Benefit premiums paid 24 times a year vs. 12

# What should you do

- Be familiar with the FLSA and the intent of the law
- Review employee job descriptions in anticipation to changes in the duties test
- Partner with HR to create awareness within your department
- Partner with HR to prepare for discussions with impacted employees

# Contact Information

## Primary contacts:

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