It's What We Do.

Wage & Salary Administration

Human Resources Elements

Hire ❖ Develop ❖ Retain

Basic Wage and Salary Administration

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Compensation

HR's Role in Compensation

Compensation is a prominent specialty area within human resources. As the labor market shrinks and diversifies, and our economy "goes global," more and more companies are recognizing the advantages to having a certified compensation professional (CCP) on their staff.

HR generalists must also have an understanding of compensation issues, even in organizations utilizing CCPs. From the most practical viewpoint, generalists must be conversant with employees about compensation features of their jobs and the company. In the broadest sense, generalists know that a compensation plan can make or break a company; compensation directly impacts the organization's ability to attract, motivate and retain good employees.

Whether you are a specialist or a generalist, as an HR practitioner your involvement in compensation will reflect the first, second, and perhaps all three of HR's major compensation objectives:

1. Equitable administration and communication of the company's current plan
2. Protection of the company's interests from legal challenge
3. Analysis, design and evolution of compensation structures to meet the company's changing business demands and goals

In this introductory segment, the focus is on building your understanding of compensation from a broad viewpoint. Compensation is a highly technical topic with a vast amount of information to be absorbed.

What is compensation?

This depends on whose viewpoint you take. What do you think of when you see the word "compensation?"

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In simplest terms, compensation can be considered the equitable distribution of returns for work.

The employee viewpoint:

Generally, employees see compensation as a return for the services they have rendered or as a reward for satisfactory or meritorious work. To some, compensation reflects how much the company values their personal skills and abilities, or the return for the education and training they have acquired.

The pay individuals receive for the work they perform is usually the major source of personal income and hence a vital determinant of an individual's economic and social well-being. Compensation issues are not to be taken lightly, and are deeply interwoven with an employee's self-esteem.

The company viewpoint:

Compensation is a major business expense. Studies show that in many enterprises labor costs account for more than 50% of total costs. Among some industries, such as service and public employment, this figure is even higher.

Compensation can create a competitive advantage. Recent studies report that labor costs as a percentage of total costs vary even among individual firms within one industry. This leads to the conclusion that compensation practices can offer some businesses a competitive advantage in their industry or market.

In addition to viewing compensation as an expense, many managers also view it as a possible influence on employee work attitudes and behaviors. Compensation may affect an individual's decision to apply for a job, to work productively, to organize a union, to take the employer to court, or even to undertake more training for a new job within the company. This potential to influence employee work attitudes and behaviors is an important rationale for ensuring that compensation is managed fairly and equitably.

Elements of Compensation

When you think of compensation, you often think only of your paycheck. As you will see, compensation encompasses far more than cash.

Viewing total compensation as the organization's reward system, we find that it can be subdivided into two types of rewards: intrinsic and extrinsic.

- Intrinsic

  Intrinsic rewards are those that the individual develops within as a result of performing work and/or association with the company. Intrinsic rewards are critical to motivating employees whose basic needs are being satisfied through the extrinsic reward system. Examples of intrinsic rewards are a sense of accomplishment, pride in work completed, feeling of self-actualization.

- Extrinsic

  Extrinsic rewards are those that the company or an individual in association with the company provides to the employee. These can be further subdivided into financial and non-financial rewards.

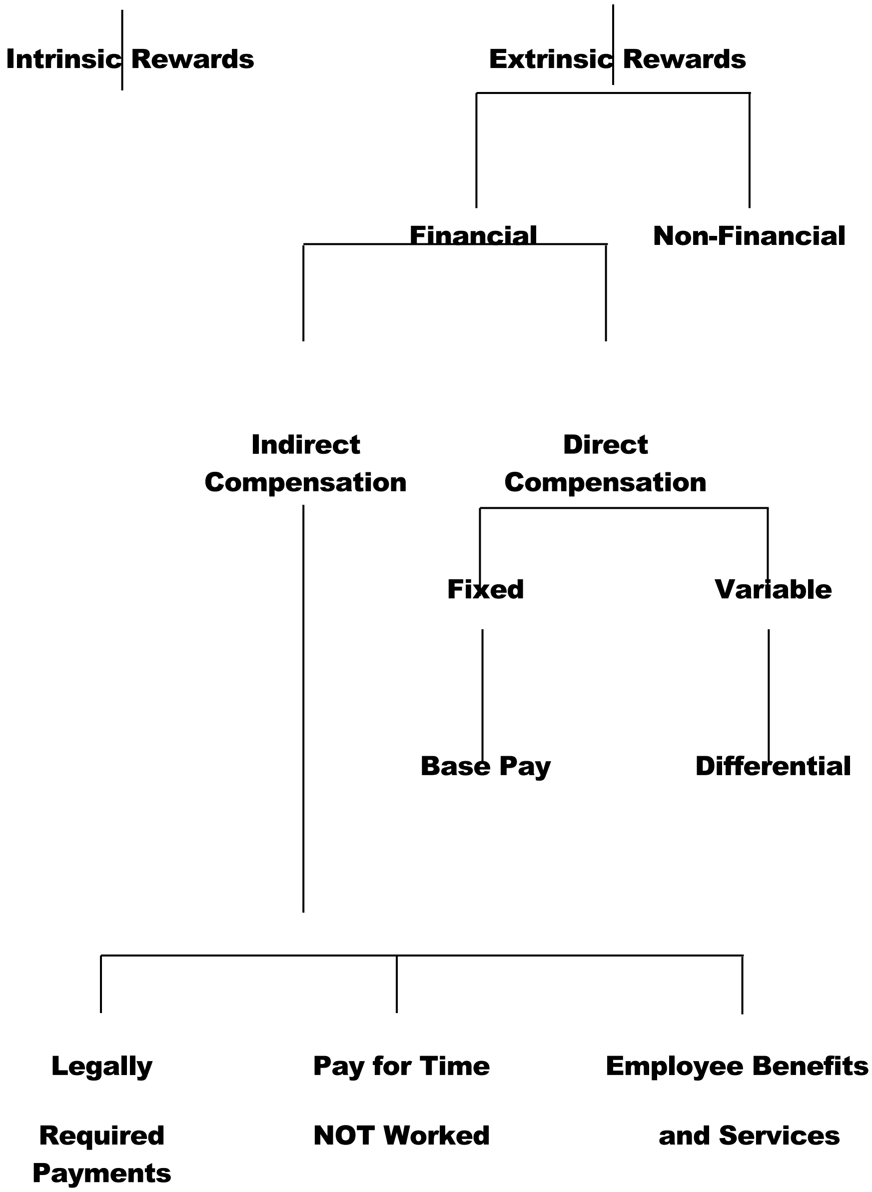
  Non-financial rewards are most frequently those that the supervisor provides to the employee. Examples include verbal praise in front of peers, recognition, special assignments, etc.

Financial aspects

Our focus will be on financial aspects of the company's compensation system. These are subdivided into indirect compensation and direct compensation. Indirect compensation is subdivided into legally required payments, pay for time not worked, and employee benefits and services. Direct compensation is further subdivided into fixed and variable. Fixed is then subdivided into base pay and differential. To make clearer the relationship between these compensation elements, study the chart that appears on the following page.

Components of Total Compensation

The Organizational Reward/Compensation System



Elements of direct financial compensation include:

- **Base wage**

  Basic cash compensation that an employer pays for the work performed. Base wage tends to reflect the value of the work itself and generally ignores differences in contribution attributable to individual employees. Some pay systems set base wage as a function of the skill or education an employee possesses. Periodic adjustments to base wage may be made on the basis of changes in the overall cost of living or inflation, changes in what other employers are paying for the same jobs, or changes in experience, performance and/or skill of the employee.

- **Merit pay**

  Merit pay rewards past work behaviors and accomplishments. It is often given as lump-sum payments or as increments to the base pay. Merit programs are commonly designed to pay different amounts (often at different times) depending on the level of performance. Few employees would see all of their compensation as a "reward." They are more likely to describe their regular compensation as a return received in exchange for labor and services given to an employer.

- **Incentives**

  Incentives also tie pay directly to performance. Incentives may be long or short term, and can be tied to the performance of an individual employee, a team of employees, a total business unit, or even some combination of individual, team and unit. Usually, very specific performance standards are used in short-term incentive programs.

- **Long-term incentives**

  These are intended to focus employee efforts on longer range (multi-year) results. Top managers or professionals are often offered long-term incentives (e.g. stock ownership, bonuses) to focus on long-term organization objectives such as return on investment, market share, return on net assets, and the like.

  Note: Incentives and merit pay are not the same. Both influence performance, but incentives do so by offering pay as an inducement. Merit on the other hand, is a reward that recognizes outstanding past performance. The distinction is a matter of timing. Incentive systems are offered prior to the actual performance. Merit pay, on the other hand, typically is not communicated beforehand.

Elements of indirect financial compensation include:

- Legally required payments (Social Security, workers compensation premiums, etc.)
- Pay for time not worked (vacations, holidays, sick time, jury duty, etc.)
- Employee benefits and services
  - Protection such as medical care, life insurance and pensions.
  - Services such as drug counseling, financial planning, child care support
  - Tuition reimbursement, product discounts

If we now look at compensation from the financial sense, we can define it more closely as follows:

> Compensation refers to all forms of financial returns and tangible services and benefits employees receive as part of an employment relationship.

Indirect compensation is comprised of:

- Legally required payments
- Pay for time not worked (PFTNW)
- Employee benefits and services

All three elements, to varying degrees, are impacted by law.

Direct compensation is comprised of:

- Fixed base pay and differentials
- Variable pay

These elements are also impacted by law.

Laws/Regulations Affecting Compensation Programs

Historical Perspective

Compensation programs have been significantly influenced by federal, state and local legislation and regulations over the last fifty years. For the HR practitioner to develop and manage compensation programs effectively, and to operate within the guidelines of such programs, an understanding of the provisions and limitations of applicable laws and regulations is necessary.

Prior to 1930, legislative action on compensation arrangements between employers and workers was looked upon with suspicion. Courts and labor unions were skeptical of such intervention. However, the length and severity of the Great Depression made economic security a higher priority, and government action came to be regarded as necessary.

The federal legislation that most significantly impacts the design of direct compensation programs is the Fair Labor Standards Act (FLSA) of 1938. Much of the terminology used by HR and compensation professionals is traceable to the provisions of this Act, and its influence is clearly evident today in the pay programs of employers covered by the Act.

Fair Labor Standards Act

Political Purpose:

Congress enacted one of the keystones of FDR's New Deal—the FLSA. For the first time, it was the law of the land to permit Congress to regulate the minimum standards for hours and wages of covered employees.

The legislative history reveals a congressional intent to lessen the historic high unemployment of the Depression years by shortening workweek hours and spreading available work among a greater number of workers. The principle was simple: a fair day's pay for a fair day's work.

Congress wanted to discourage, if not eliminate, substandard wages by establishing a minimum wage and a premium for overtime.

In its nearly six-decade existence, the FLSA has been amended numerous times by Congress, reflecting ever-expanding coverage of the workforce to the extent that it is estimated that 92% of full-time and part-time non-supervisory workers in the private sector are now covered by law. The Wage and Hour Division, an integral part of the Employment Standards Administration of the U.S. Department of Labor, is responsible for the administration of the FLSA.

Coverage:

The FLSA defines employee coverage by reference to three basic tests. Meeting any one is sufficient for coverage.

1. Any employee engaged in interstate or foreign commerce is covered.
2. Any employee producing goods for interstate commerce, including those non-production workers whose activities are closely related to or directly essential to production, (e.g. maintenance, custodial, clerical workers.)
3. Any employee of an "enterprise" engaged in commerce or in the production of goods.

Notice that tests 1 and 2 focus on activities of the individual employee. Test 3 indicates that all of the employees are covered as long as the employees are engaged in interstate commerce or the production of goods for interstate commerce.

It is this "enterprise" standard that specifically includes retail and service employees, employees of hospitals, schools, federal and state employees. There are various exceptions to the coverage rule. For example, a true, unincorporated family business that employs only family members (parent, spouse, child, or other member of the immediate family) is not a covered enterprise.

What the FLSA does not regulate:

The Act does not require:

- Vacation pay, holiday pay, severance pay, or sick pay
- Meal or rest periods, holidays off, or vacation time
- Premium pay for weekend or holiday work
- Pay raises or fringe benefits
- A discharge notice, reason for discharge, or immediate payment of final wages to terminated employees
- Any limit on the number of hours worked for persons 16 or older
- Overtime pay for hours worked over 8 in one day
- Pay stub & W-2's

What it does regulate:

The Fair Labor Standards Act establishes minimum wage, overtime pay, equal pay, record keeping, and child labor standards affecting more than 50 million full-time and part-time workers.

The high price of docking exempt paychecks

The term "white collar employee" is a recognized description of one of the large general classes of employees covered under the exemption to the minimum wage and overtime requirements found in the FLSA. To qualify for a "white-collar exemption," an employee must meet both duties and salary basis tests. Under the regulations, an employee is paid on a salary basis if he/she regularly receives each pay period a predetermined amount constituting all or part of his/her compensation, which is not subject to reduction because of variations in the quality or quantity of the work performed.

Companies that dock paychecks as little as partial day's pay when one exempt employee takes an afternoon off, risk an automatic conversion of their entire salaried exempt workforce into hourly workers who are eligible for back overtime pay, according to recent U.S. Labor Department interpretations of wage and hour regulations and a series of related court decisions. As a result, industry experts estimate that employers may now unknowingly owe exempt employees up to $60 billion in overtime back pay and fines.

In addition to being financially devastating, corporate officials say that the interpretation could threaten the existence of flexible-leave and family friendly workplace programs. Under the FLSA, executives, administrators, professionals, and certain computer specialists are exempted from overtime pay provisions. As one of various criteria for this exemption, a worker must be paid on a "salary basis."

The Department of Labor has interpreted that standard to mean that when a company docks a salaried exempt employee's pay for part of a working day, the employee is being treated as an hourly worker. This action could automatically convert all the company's employees into hourly workers eligible for back overtime pay.

The penalty for violating this salary-basis test is severe. Once the Labor Department determines that an employee is no longer exempt, the employer owes all of its exempt employees back pay for any overtime they may have worked during the past two year—three years if it's determined that the company knowingly violated the rules. Unless the employer can prove it acted in good faith, it also must pay double the amount of back overtime due to each of the formerly exempt employees.

Federal law states that, "[an] employee must receive his full salary for any week in which he performs any work without regard to the number of days or hours worked." (29 CFI Section 541.118(a)) While that rule may seem exhaustive, there are certain exceptions:

- When an employee is absent from work for one or more full days for personal reasons other than sickness or disability.
- For absences for one or more full days due to sickness or disability if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for salary lost due to illness;
- To offset amounts employees receive as jury or witness fees, or for temporary military duty pay;
- For penalties imposed in good faith for infractions of safety rules of major significance;
- For unpaid disciplinary suspensions of one or more full days imposed in good faith for workplace conduct rule infractions;
- In the employee’s initial or terminal week of employment if the employee does not work the full week, or
- For unpaid leave taken by the employee under the federal Family and Medical leave Act.

In addition, deductions may be made from the pay of an exempt employee of a public agency for absences due to a budget-required furlough and special rules apply when such employees take partial-day (or hourly) absences not covered by accrued leave.

Legislation has been introduced to restore the overtime exemption for white-collar workers who are charged with paid leave for partial day absences or have their pay reduced when their leave accounts are exhausted. The business community supports this legislation, while organized labor is lobbying against it. According to the AFL-CIO's John Zalusky, "The docking tests do not need to be changed. They are restrictive, they are meant to be restrictive, and they should be restrictive."

Keep in mind that there are important restrictions with regard to docking exempt employees. "Deductions may NOT be made for absences of an employee caused by

- A deduction of a day's pay because the employer was closed due to inclement weather;
- A deduction of three days pay because the exempt employee was absent for jury duty or as a witness;
- A deduction for a two-day absence due to a minor illness when the employer does not have abonafide sick leave plan, policy or practice of providing wage replacement benefits; and
- A deduction for a partial day absence to attend apparent-teacher conference.

Additionally, employers cannot impose disciplinary suspensions, except in cases of major safety violations as stated above, for less than a week without paying the employee.

Basic Wage Standards

Covered non-exempt workers are currently entitled to a minimum wage of not less than $7.50 per hour in Missouri and 1½ times the employee's regular rate for all hours worked over 40 per week.

What is working time?

The original FLSA contained no definition of "working time" for the purpose of computing the minimum wage. In 1944, the Supreme Court set down a rule to the effect that working hours include all time during which an employee is engaged in physical or mental effort controlled or required by his or her employer and pursued primarily for the benefit of the employer and the business.

In 1946, the High Court ruled that any time an employee spent in a facility after punching in, to get to the job and to get ready, was a part of the hours worked, but time which the employee spent merely waiting because s/he had arrived early was not compensable.

Portal-to-Portal Act

After these two decisions, many workers pressed to recover overtime pay to cover the time spent from the moment they arrived on the plant premises to the moment they left. Known as the "Portal to Portal" pay litigation, the intense controversy led to congressional enactment of the Portal-to-Portal Act in 1947. This law, in part, was designed to prevent legal actions by employees to recover pay for nonproductive time. The law established the guideposts to determine what constitutes the "workday." This Act confined the employer's obligation to pay wages to the employee's principal activity, unless there is a contract, custom, or practice requiring pay for these peripheral activities.

What's compensable?

As a general rule, all the time an employee is actually at work, or required to be on duty and can't use the time for his or her own purposes is compensable. Travel away from home is clearly work time when it cuts across the employee's workday. The employee is simply substituting travel for other duties.

- The table on the next page illustrates how the Department of Labor interpretations, court rulings, and legislative history have determined the status of some common workplace activities and whether they count as "hours worked." ***However, as with any generalization, there will be exceptions.*** When in doubt, it's your responsibility to inquire.

Official rulings on "hours worked"

Activity	Yes, paid	No, not compensable
Washing up after work		X
Changing clothes (generally)		X
Break (less than 20 minutes)	X	
Meal period *		X
Voluntary staff training		X
Voluntary meeting attendance		X
Voting time		X
Driving from one worksite to another during the workday	X	
Any time suffered or permitted to work	X	
Work performed at home	X	

* Any time the employee is required or *permitted* to perform any duties while eating or during a meal break will become compensable.

What is the workweek?

The workweek is generally seven consecutive, regular, recurring 24-hour periods of 168 hours. This is the unit of time used for determining compliance with the minimum wage.

The computation and recording of hours worked must be done on this workweek basis. The employee must be paid, *free and clear*, compensation equal to at least the minimum wage for each hour worked in the workweek. It may begin on any day of the week and any hour of the day established by the employer. As long as the average hourly earnings for non-overtime hours in each workweek equal the minimum wage, the requirement is considered satisfied for that week. Average hourly earnings above the minimum in one workweek may NOT be used to offset earnings below the minimum wage in another workweek.

Free and clear payment has a specific exception: deductions are permitted for the "reasonable cost" of board, lodging, or other facilities. Taxes and other legally required or employee-authorized deductions, of course, will also be taken from the pay.

Minimum Wage Compliance

Here are some typical wage computation issues which the HR practitioner may address:

- In the case of an employee hired on an hourly rate basis, it is required that the rate equals the statutory minimum.
- In the case of a commissioned employee (e.g. commissions are the sole basis of compensation), the employee's earnings must be at least equal to the minimum wage for each of the hours worked, exclusive of overtime.
- In the case of an employee who is paid an hourly rate for a portion of the workweek and a commission for the balance, earnings at the hourly rate that exceed the minimum may not be applied to make up differences in the commission earnings during the other part of the week.
- In the case of a piece rate worker, earnings must equal at least the legal hourly minimum over the course of the workweek.

Overtime Pay

Compared to the relatively straightforward rules governing minimum wage, the rules governing overtime pay are complicated and confusing. The overtime pay premium (1½ times the regular rate) applies to all hours worked above forty (40) in a workweek.

Each workweek is a separate unit for overtime purposes. Hours may not be averaged over two or more weeks. There is no absolute limit on the number of hours an employee may work in any workweek (except for minors). The FLSA does not require that an employee be paid overtime compensation for working more than 8 hours in a day, or for work on Saturday or Sunday, holidays, or on his/her regular days of rest.

Overtime compensation need not be paid out weekly. Instead, it must be paid on the regular pay date for the periods in which such workweeks end. If there is a problem in completing the overtime computations by the end of the pay period, the FLSA will be satisfied if the employer pays the excess overtime compensation as soon as possible. In no event, however, may payment be delayed beyond the next payday.

Determining the regular rate of pay for overtime computations

The U.S. Supreme Court has declared the “regular rate” of pay as the hourly rate actually paid the employee for the normal, non-overtime workweek. The "regular rate" is a rate per hour. Yet the FLSA does not require employers to compensate on an hourly basis. Accordingly, piece-rate, salaried non-exempt, and commission workers must have their compensation converted to an hourly rate.

Deductions made for such items as "board, lodging, or other facilities" furnished to employees, union dues, savings bonds, and charitable contributions do not affect the regular rate. The employee's regular rate is computed before the deductions are made.

Formula:

The **regular hourly rate of pay** is determined by dividing an employee's total remuneration (less statutory exclusions) in any workweek by the total number of hours worked. **Regular pay** includes all payment (including shift differential, longevity pay, call pay, commissions, etc.) for employment paid to, or on behalf of, the employee except the following:

- Sums paid as gifts, such as those made at holidays, or other amounts that are not measured by or dependent on hours worked or results.
- Payments made for occasional periods when no work is performed due to a vacation, holiday, illness, failure of employer to provide sufficient work, or other similar cause.
- Sums that are paid in recognition of services performed that are determined at the sole discretion of the employer such as discretionary bonuses.
- Sums that are paid pursuant to a bona-fide thrift or savings plan, such as 401(k).
- Sums that are paid in recognition of a special talent, such as for earning a certification.

The **overtime premium rate** is half of the regular rate. The **total overtime premium** is determined by multiplying the overtime premium rate times the hours worked in excess of 40.

Example: Hourly rate employee

Ted is an hourly rate employee paid $8.00 per hour. For overtime computation, Ted must be paid, in addition to his $8.00 per hour earnings for 46 hours, a sum determined by multiplying half of his hourly rate of $8.00 by the number of hours Ted worked over 40 in that week, which was 6.

Ted worked 46 hours this week. What would he be entitled to receive?

46 hours @ $8.00 plus
6 hours @ 1/2 of $8.00 (6 x $4.00) = $___________

Example: Hourly rate plus non-discretionary bonus

Fred is paid an hourly rate of $8.00 like Ted. However, he also received a bonus of $20.00 this week. He worked 46 hours. What is his pay? Hint: First, you must figure his "regular rate" of pay.

Fred's regular rate of pay will be $8.42 per hour:

46 hours @ $8.00 = $368.00 plus $20.00 = $388.00

$388.00 divided by 46 hours = $8.42 per hour.

46 hours @ $8.42 plus
6 hours @ 1/2 of $8.42 (6 x $4.21) = $___________

Overtime and Second Jobs

In an effort to save costs, especially in the area of benefits and training, many companies are allowing their employees to work part-time in a position that is different from the employee's regular job. The question then arises as to how to pay this employee for his/her week's work.

Example:

Job A pays $10 per hour and Job B pays $8 per hour. Freddy works at Job A 40 hours a week and at Job B 20 hours a week.

($8 x 20 hours = $160) + ($10 x 40 hours = **$400)** = $560 in total earnings.

Divide $560 by the total of 60 hours worked that week.

$560 ÷ 60 hours = $9.33

The $9.33 is the regular rate for this workweek.

Total compensation for the week would then be

$9.33 x 40 hours = $373.20.

The overtime rate would be

$9.33 x 1.5 = $14.00

20 hours of overtime @ $14.00 per hour = **$280.00**

Total for the week = (regular + OT) = **$680.00**.

Freddy's employer would be obligated to pay **$**110.00 more than just straight time for both positions, and would have to decide if this would be cost effective over the long run.

Remember, this calculation is necessary ONLY for overtime hours. Otherwise, hours would be paid at the regular rates of $10 per hour and $8 per hour.

Another method is to compute overtime compensation on the basis of the regular rate for the work being performed during the overtime hours. This method is permissible only by prior agreement with the employee and it is certainly advisable that the agreement be in writing. This method reduces overtime compensation costs where an employee's overtime hours are typically spent on the lower-paying of the two job functions.

NOTE: When an exempt employee takes on additional duties which are non-exempt in this new combined job, the employee must be evaluated to determine if the employee is now a non-exempt employee—spending more than 50% of their time doing non-exempt duties. The individual is considered to be one person (employee), regardless of the two sets of duties. If the employee has remained an exempt employee even with the non-exempt duties added, then by law they do not have to receive any increase in compensation. If it a long-term combining of duties, a new, higher guaranteed salary could be established. If this is for the short-term, the employer may choose to give the employee a bonus or no additional compensation.

Example: Piece rate paid

Piece rate is obtained by dividing the total weekly **earnings** for the week in which s/he worked over 40 hours by the total number of **hours** worked in the same week. The employee is entitled to an additional 1½ times this regular rate for each hour over 40, in addition to the full piecework earnings. NOTE: This method also applies when an employee is paid an hourly rate plus a commission.

Shelley is paid on a piecework basis. She worked 45 hours this week and earned $450.00. The regular rate of pay for that week is $450.00 divided by 45 hours, or $10.00 per hour.

Shelley is also entitled to $5.00 (half the $10.00 rate) for each of the 5 hours she worked over 40.

Another way to compensate pieceworkers for overtime, if agreed to before the work is performed, is to pay 1½ times the piece rate for each piece produced during the overtime hours. The piece rate must be the one actually paid during non-overtime hours and must be enough to yield at least the minimum wage per hour.

Example: Day rate and job rate paid

Sarah is paid a flat sum for a day's work or for doing a particular job, without regard to the number of hours worked in the day or at the job, and receives no other form of compensation. In cases like this, Sarah's regular rate is found by totaling all the sums received at such day rates (or job rates) in the workweek and then dividing by the total hours actually worked. Sarah is then entitled to extra half-time pay at this rate for all hours worked over 40 in the workweek.

Example: Non-exempt paid on salary basis

Jennifer is a receptionist employed solely on a salary basis of $350.00 per week. Her regular hourly rate of pay is computed by dividing the $350.00 salary by the number of hours that the salary is intended to compensate (generally 35 or 40).

Jennifer was hired to work a regular 35-hour week, so her regular rate of pay is $10.00 per hour. When overtime is worked, Jennifer is entitled to receive $10.00 for each of the first 40 hours worked and $15.00 (1½) for each hour thereafter.

Kirstin, her friend, was hired to work a 40-hour week on a salary basis of $400.00. Kirstin's regular rate of pay is $10.00 per hour.

Overtime Pay - Duties and Rights

The requirements that overtime must be paid after 40 hours a week may not be waived by agreement or "expectation" between the employer and the employees. Similarly, an agreement that only 8 hours a day or only 40 hours a week will be counted as working time will clearly fail.

An announcement by the company that no overtime work will be permitted, or that overtime work will not be paid for unless authorized in advance, will also fail. These types of policies or announcements in no way impair the employee's right to compensation for the overtime work.

Private employers are not authorized under FLSA to give comp time and must pay monetary overtime pay if the employee works over 40 hours in a workweek. The only way employers may avoid overtime pay is by requiring the employee to adjust working hours during the same workweek to no more than 40.

FLSA permits *public sector* employers to give employees compensatory (comp) time off in lieu of monetary overtime compensation. Comp time must be given at a rate of at least one-and-one-half hours for each hour of employment for which overtime compensation is required (Sec. 7(o) FLSA). Employees whose jobs involve public safety, emergency response, or seasonal activities may accrue 480 hours of compensatory time. Other employees may accrue no more than 240 hours of compensatory time. Beyond that, they must be paid money for overtime.

Unauthorized overtime needs to be managed. What happens when a non-exempt employee comes in early, works through lunch or stays beyond work hours without authorization from the employer? Sometimes the extra time does not appear on time cards and the employee may say, when asked, that the time is "volunteered" to catch up or get work done. Employers have no choice but to pay the employee for the extra time.

Remember, under the FLSA, even if the work is unauthorized or even prohibited, the employer must pay the employee if the employer accepts the work or knows or has reason to know that the work is being performed. To attempt to curb unauthorized work time or potential overtime abuse, the employer can instate a policy where extra time must be authorized by a supervisor beforehand and where the employer can take disciplinary action up to and including termination to prevent future occurrences.

Bonuses and Overtime

Many companies pay some type of a bonus to their employees at the end of the year or around the Christmas holidays. It is fairly common for companies to give a "Christmas" bonus because it is seen as positive employee relations and goodwill. Companies also give bonuses at that time of year because the bonus is tied to a year-long performance measure. Keep in mind that certain bonuses will need to be calculated into an employee's regular rate of pay, and this bonus will affect any hours of overtime that have been worked in the past. Here is what the Fair Labor Standards Act (Wage & Hour law) says about bonuses. Read this carefully because the rules are somewhat complex!

The Act requires inclusion in the "regular rate" of all remuneration for employment except seven specified types of payments. Among these excludable payments are discretionary bonuses, gifts and payments in the nature of gifts on special occasions, contributions by the employer to certain welfare plans and payments made by the employer pursuant to certain profit-sharing, thrift and savings plans.

In order for a bonus to qualify for exclusion as a discretionary bonus, the employer must retain discretion both as to the fact of payment and as to the amount until a time quite close to the end of the period for which the bonus is paid. The sum, if any, to be paid as a bonus is determined by the employer without prior promise or agreement. The employee has no contract right, express or implied, to any amount. If the employer promises in advance to pay a bonus, he has abandoned his discretion with regard to it. Thus, if an employer announces to his employees in January that he intends to pay them a bonus in June, he has thereby abandoned his discretion regarding the fact of payment by promising a bonus to his employees. Such a bonus would <u>not</u> be excluded from the regular rate.

The Act provides that the term "regular rate" shall not be deemed to include "sums paid as gifts; payments in the nature of gifts made at Christmas time or on another special occasions, as a reward for service, the amounts of which are not measured by or dependent on hours worked, production, or efficiency."

To qualify for this exclusion, the bonus must be actually a gift. If it is measured by hours worked, production, or efficiency, the payment is geared to wage and hours during the bonus period and is no longer to be considered as in the nature of a gift. If the payment is so substantial that it can be assumed that employees consider it a part of the wage for which they work, the bonus cannot be considered to be in the nature of a gift.

If the bonus is non-discretionary, meaning it is tied to a pre-determined formula or is announced in advance, then you will be obligated to recalculate any overtime that has been paid to your employees. The FLSA states that when the amount of the bonus is ascertained, it must be apportioned back over the workweeks of the period during which it may be said to have been earned. The employee must then receive an additional amount of compensation for each workweek that he worked overtime during the period equal to one-half of the hourly rate of pay allocable to the bonus for that week multiplied by the number of statutory overtime hours worked during the week.

As you can see, the payment of bonuses is a tricky issue as it relates to overtime. Many companies unknowingly violate the Fair Labor Standard Act when paying bonuses – don't be a victim!

Equal Pay

The equal pay standard requires that male and female workers receive equal pay for work requiring equal skill, effort, and responsibility and performed under similar working conditions. The coverage of the Equal Pay Act is the same as that of the minimum wage provisions of the FLSA.

Equal pay problems revealed in Department Of Labor audits

As a result of its focus on glass ceiling issues—the concept that it is difficult for females and minorities to rise above a certain level in companies—routine DOL audits are showing a number of equal pay problems. Some of the most common:

- **Paying new employees at higher rates.** If a newly hired male or non-minority employee is paid at a higher rate than lower-paid female or minority employees for performing the same work duties and responsibilities, an equal pay issue arises. The fact that the new hire is more highly educated or has more potential is irrelevant if the duties and responsibilities are the same. If, in fact, the new hire has greater duties and responsibilities, the employer could face the issue of discriminatory promotions—why current employees were not offered the opportunity.

- **Creating comparable worth.** Employers sometimes create comparable worth when they include jobs that are very different in nature within the same pay grade or range. If a DOL audit reveals that males and non-minorities tend to be paid at or near the maximum of the range while females and minorities are near the bottom, an employer will be asked to prove it is not discriminating.
- **Responding to raise requests**. If a male or non-minority employee successfully demands a salary increase while performing the same duties and responsibilities as female or minority employees who are left at a lower salary, and equal pay question arises. The "squeaky wheel" rationale does not hold up in such cases.

To avoid the situations listed above, review your company's wage and salary structure. If a salary range covers jobs in multiple categories or departments, verify that they are indeed comparable. More glass ceiling audits are planned by the EEOC and OFCCP. Be prepared in case your company becomes one of their subjects.

Child Labor

Congress wanted to keep the channels of commerce free from child labor, and it accomplished this with the child labor provision of the FLSA. The coverage of the child labor rules embraces businesses involved in producing, manufacturing, mining, handling, transportation, or in any other manner working on goods shipped in commerce.

The provisions include lists of hazardous occupations for both farm and non-farm jobs which have been declared by the Secretary of Labor as being too dangerous for minors to perform. Regulations governing youth employees in non-farm jobs appear in the chart on the next page.

Companies wanting to protect against unintentional violations of the child-labor requirements should obtain a certificate of age for each minor employed. This work permit is accepted as proof of age in most states and is available from state labor offices.

Fourteen is the minimum age for most non-farm work. However, at any age, youths may deliver newspapers, perform in radio, television, movie or theatrical productions, and work for parents in their solely owned non-farm business (except in manufacturing or hazardous jobs.)

Permissible Minor Work

* If enrolled in an approved Work Experience and Career Exploration Program, may be employed for up to 23 hours in school weeks and three hours on school days (including work during school hours)

Check your state's law for additional provisions.

FLSA Enforcement

In addition to all other provisions, employers are required to keep individual employee records on wages paid, hours worked, name, home address, occupation, sex, and birth date if under 19.Authorized representatives from the Wage and Hour Division of the DOL may investigate and gather data regarding wages, hours, and other conditions and practices of employment, and may enter your establishment to inspect the premises, review and transcribe records and interview employees.

Age	Job	Hours of Work
18 +	Any job, nonhazardous or not	Unlimited
16 - 17	Any nonhazardous job	Unlimited
14 - 15*	Outside of school hours and not in manufacturing, mining, and/or hazardous jobs	No more than 3 hours on schooldays No more than 18 hours in a week No more than 8 hours on a non-school day No more than 40 hours in non-school week No work before 7 am, no work after 7 pm starting the day after Labor Day through May 31; No work before 7 am, no work after 9 pm starting June 1 through Labor Day

A two-year statute of limitations applies to recovery of back wages except in the case of willful violations, for which there is a three-year statute of limitations. Willful violations also may be prosecuted criminally and the violator fined. A second conviction may result in imprisonment.

History of the Federal Minimum Wage Rates Under the Fair Labor Standards Act

Effective Date	1938 Act[1]	1961 Amendments[2]	1966 et. al. Non-farm	1966 et. al. Farm
Oct. 24, 1938	$ .25			
Oct. 24, 1939	$ .30			
Oct. 24, 1945	$ .40			
Jan. 25, 1950	$ .75			
March 1, 1956	$1.00			
Sept. 3, 1961	$1.15	$1.00		
Sept. 3, 1963	$1.25	$1.00		
Sept. 3, 1964	$1.25	$1.15		
Sept. 3, 1965	$1.25	$1.25		
Feb. 1, 1967	$1.40	$1.40	$1.00	$1.00
Feb. 1, 1968	$1.60	$1.60	$1.15	$1.15
Feb. 1, 1969	$1.60	$1.60	$1.30	$1.30
Feb. 1, 1970	$1.60	$1.60	$1.45	$1.30
Feb. 1, 1971	$1.60	$1.60	$1.60	$1.30
May 1, 1974	$2.00	$2.00	$1.90	$1.60
Jan. 1, 1975	$2.10	$2.10	$2.00	$1.80
Jan. 1, 1976	$2.30	$2.30	$2.20	$2.00
Jan. 1, 1977	$2.30	$2.30	$2.30	$2.20
Jan. 1, 1978	$2.65[3]			
Jan. 1, 1979	$2.90			
Jan. 1, 1980	$3.10			
Jan. 1, 1981	$3.35			
April 1, 1990	$3.80[4]	$3.35[5]		
April 1, 1991	$4.25	$3.35		
Oct. 1, 1996	$4.75			
Sept. 1, 1997	$5.15			
July 24, 2007	$5.85			
July 24, 2008	$6.55			
July 24, 2009	$7.25			
2011	$8.25			

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1 The 1938 Act applied to employees engaged in interstate commerce or in the production of goods for interstate commerce.

2 The 1961 amendments extended coverage primarily to employees in large retail and service trades as well as local transit systems, large construction firms, and gasoline service station employees.

3 The minimum wage applies to all covered, non-exempt workers except certified Section 14 workers.

4 Beginning April 1, 1990, employers may pay a training wage of at least 85% of the minimum wage (but not less than $3.35 an hour) for up to 90 days to employees under age 20, except for migrant or seasonal agricultural workers or H-2A workers. This provision expired March 31, 1993.

5 Grandfather clause – Employees who do not meet the tests for individual coverage and whose employers were covered by the FLSA on March 31, 1990, and fail to meet the increased ADV (annual dollar volume) test must continue to receive, among other things, at least $3.35 an hour.

Top Ten Wage Hour Violations… and How to Avoid Them

Some employers still failing to comply

Here are the 10 most common wage-hour violations and how to avoid them.

Violation 1

Paying office or other employees on a salaried basis without overtime when these employees are not in a job that allows them to be exempt from overtime requirements. To avoid: Understand that many employees who are paid a salary are still due overtime. Learn the proper basis for "White Collar Exemption" and become familiar with the "fluctuating work week" pay system for salaried employees.

Violation 2

Failing to include certain bonuses and incentive payment in determining the employee's true base "regular hourly rate" for calculating overtime. To avoid: Become familiar with the obligation to include "nondiscretionary" bonuses or incentives into the "regular hourly rate" when calculating overtime.

Violation 3

Improperly compensating employees for meal periods and other break periods. To avoid: Pay employees for all break or meal periods which do not involve over 30 minutes or more of consecutive time not interrupted with work.

Violation 4

Failing to maintain the required records and having inaccuracies or inconsistencies in records. To avoid: Have someone in your payroll office study the recordkeeping regulations.

Violation 5

Improperly compensating employees for "on-call" time. To avoid: Review regulations on “on call’ time.

Violation 6

Failing to pay employees properly for certain travel time. To avoid: Study the regulations on travel time, especially if you have employees who regularly travel away from their normal work site.

Violation 7

Administering a "comp time" program that does not meet the requirements of the law. To avoid: Know that you can not accumulate "comp time" past the immediate pay week, ever, unless you work for a state, county, or municipal government entity. Even when "comp time" is allowable, it must provide 1.5 hours of paid time off for each hour worked over 40.

Violation 8

Failing to pay employees for "voluntary" or unauthorized overtime. To avoid: Understand that, legally, there is no "voluntary" overtime and that overtime which is "unauthorized" is still payable if it is actually "permitted by the company."

Violation 9

Failing to pay employees for time spent in certain meetings, training sessions and other job-related educational sessions. To avoid: "Hours worked" for calculation of overtime must include all time spent on behalf of the company unless it is clear that it is not a part of required training which benefits the company, and any attendance is completely and actually voluntary.

Violation 10

Failing to pay employees for all time that is recorded. To avoid: Make a special notation on any time card which is not paid. While it is easily possible to correct time entry errors when they occur, these errors will generally be presumed to be correct after the fact.

More Laws Associated with Compensation

Portal to Portal Act of 1947:

Defines an employee's "principal activity." Activities that take place before the beginning or after the completion of the "principal activity" need not be compensated.

Walsh-Healy Public Contracts Act:

Determines wage rates for contracts to provide goods to the federal government.

Passed in 1936, this Act provided some general employment regulations for employers holding manufacturing or supply contracts with the federal government in excess of $10,000. The law established certain child labor and safety standards.

Davis Bacon Act:

Determines wage rates for federally financed or assisted construction.

The earliest recorded effort to enlarge federal economic control was the passage of this Act in 1931. The DOL is authorized to establish, by locality, wage payment schedules to be used by all bidders seeking construction contracts over $2,000 with the federal government. Employees must be paid the special federal "prevailing" wage and fringe benefits established by the Secretary of Labor.

National Foundation on Arts and Humanities Act:

Determines wage rates for professionals in a broad range of activities in the arts and humanities.

Service Contract Act:

Determines wage rates for contracts to provide services to the federal government.

Passed in 1965, it applies to federal contracts for services in excess of $2,500 and requires contractors to pay minimum wages and fringe benefits as established to be "prevailing" by the Secretary of Labor. It also includes certain safety standards.

Contract Work Hours Standards Act:

Sets overtime standards for federal contracts.

Copeland Anti-kickback Act:

Compels employees on any federally funded construction project to give up any compensation through kickbacks, etc.

Consumer Credit Protection Act (Wage Garnishment Law):

Limits amount of an individual's income that may be legally garnished and prohibits the firing of an employee whose pay is garnished for payment of a single debt.

Farm Labor Contractor Registration Act:

Protects migrant farm workers by imposing certain restrictions and requirements on their crew leaders.

Equal Pay Act:

Prohibits sex-based compensation discrimination.

As early as World War II, the National War Labor Board issued an order for salary adjustments to "equalize the wage or salary rates paid to females with rates paid to males for comparable quality and quantity of work on the same or similar operations."

A bill required "equal pay for comparable work" was introduced in Congress in 1945 and rejected, as were several similar bills that have been presented since then.

Enacted in 1963, the Act prohibits an employer from discriminating "between employees on the basis of sex by paying wages to employees...at a rate less than the rate at which he pays wages to employees of the opposite sex...for equal work on jobs that require equal skill, effort and responsibility, and are performed under similar working conditions..." (with four exceptions).

The Act was an amendment to the FLSA and was originally enforced by Wage and Hour. In 1979, the EEOC became the enforcing agency.

Plaintiffs who file lawsuits under the EPA must show that they are paid less than a person of the opposite sex for doing substantially equal work (in the same job family) which requires substantially equal skill, effort and responsibility and is performed under similar working conditions. Once this *prima facie* case has been established, the burden shifts to the employer to prove that the pay difference is based upon a seniority system, a merit system, a system that measures earnings by quantity or quality of production, or some other factor aside from sex.

The "bottom line" for HR pay program design and administration is that if, on the average, men and women are paid different rates when they perform work which is substantially the same, these differences must be shown to be attributable to one of the "allowable differences."

The effects of the Equal Pay Act have been far reaching and include the revision of employee benefit programs to eliminate sex-based differentials, greater emphasis on job-content oriented procedures for assignment of pay grades and ranges to specific jobs, and greater emphasis on written policies and procedures.

Age Discrimination in Employment Act:

Prohibits mandatory retirement (with some exceptions), limiting or classifying employees in any way related to their age (e.g. with maturity curves), reducing any employee's wage to comply with the Act, and indicating any preference based on age in notices of employment.

The bottom line for pay program design and administration as it relates to Title VII is that pay programs should produce pay rates that treat all classes of employees similarly, and any differences should be attributable to job-related, defensible causes (e.g. seniority, performance.)

Independent Contractors

FLSA issues

When the "enterprise" definition is relied upon to determine whether there is FLSA coverage, the FLSA specifically excludes the activities performed by an independent contractor. The determination of who is an "independent contractor" (IC) and who an "employee" (EE) has far reaching consequences, not only for FLSA purposes, but for determining liability for taxes. If the relationship is one of employer-employee, then the FLSA applies and the employer is responsible for paying FICA and FUTA taxes and collecting the employee's share of the FICA tax.

U.S. Supreme Court conclusion

There have been many legal challenges over the years by employers, and the Supreme Court has been asked on numerous occasions to resolve controversies arising out of the dilemma to define who is an IC and who is an EE.

The Supreme Court has been careful to point out that there is no rule or test that can determine whether an individual is an IC or an EE for the purposes of the FLSA. It is the totality of the activities that is the controlling factor. It's not safe, as a result, to hang your company's hat on any one of the following situations. However, it is important to consider all together. Among the circumstances that the Supreme Court has considered significant have been the following:

- **Instructions:** A worker who is required to comply with the company's instructions about when, where and how to work *is an employee*.
- **Training:** A worker who must perform services in a certain way, who is required to work with an experienced employee who is trained, consults training manuals and attends training meetings *is an employee*.
- **Integration:** Integration of a worker's work into the company's business operations indicates that the worker is subject to the company's direction and control and that s/he *is an employee*.
- **Services Rendered Personally:** When a worker performs services personally, and the company dictates both the methods that are used and the results that are produced, the worker *is an employee*.
- **Hiring, Supervising, Paying:** When a worker is hired, paid and supervised by the company for whom the services are performed, the worker *is an employee*. However, when a worker agrees to provide his/her own materials and labor, and is responsible only for the results produced, this person is **an independent contractor**.
- **Continuing Relationship:** A continuing relationship between a worker and the company for whom the services are performed indicates that there is *an employer-employee relationship*.
- **Set Hours of Work:** The establishment of set hours of work by the company indicates control, and the worker who is subject to those hours *is an employee*.

- **Full Time Required:** If a worker must devote substantially full time to the business of the company, and the company controls this amount of time, the worker *is an employee*. **An independent contractor**, on the other hand, is free to work when, where and how s/he chooses.
- **Doing Work on Employer's Premises:** If the work must be performed on the premises of the company, and cannot be done elsewhere, the person who does the work *is an employee*. However, **an independent contractor** is free to do the work wherever s/he chooses since s/he is responsible only for the results produced.
- **Order or Sequence Set**: If a worker must perform work in a sequence set by the company, must follow established routines and schedules and may not follow his/her own pattern, this indicates control and that the worker *is an employee*.
- **Oral or Written Report:** If a worker is required to submit regular reports to the company, this indicates control and that the worker *is an employee*.
- **Payment by Hour, Week, Month:** Payment by the hour, week or month usually indicates *an employer-employee relationship*. However, when payment is made on a commission basis or in a lump sum at completion of the project, this usually indicates **independent contractor status**.
- **Payment of Business and Traveling Expenses:** When a company pays a worker's business expenses and retains the right to control or regulate those expenses, the worker *is an employee*.
- **Furnishing Tools and Materials:** When a company supplies tools and equipment to a worker, this indicates that there is *an employer-employee relationship* between them.
- **Significant Investment**: If a worker invests in and maintains facilities that s/he uses to perform the work, the person is usually **an independent contractor**. When a worker does not invest in the facilities and depends on the company to provide them, there is *an employer-employee relationship* between them.
- **Realization of Profit or Loss:** A worker who realizes direct profit or loss as a result of his/her services is usually **an independent contractor**. When the worker cannot realize a profit or loss as a result of their work, s/he usually *is an employee*.
- **Working for More Than One Firm At A Time:** A worker who performs services for more than one person or company at the same time is usually **an independent contractor**.
- **Making Services Available To the General Public**: If a worker makes his/her services available to the general public on a regular and consistent basis, the person is **an independent contractor**.
- **Right To Discharge:** The right to discharge a worker, and to exercise control through the threat of discharge, indicates that there is *an employer-employee relationship*. **An independent contractor** generally cannot be fired so long as s/he produces the results described in the contractual agreement.
- **Right to Terminate:** If a worker has the right to end his/her relationship with the company whenever s/he chooses, and without incurring any liability, this fact indicates the presence of *an employer-employee relationship*.

Indirect Compensation (Benefits) Program

Indirect pay programs, commonly known as benefits, are forms of compensation other than direct wages that are paid for in whole, or in part, by an employer, even if a third party (such as the government or an insurance company) provides them. These programs are designed to reward continued membership in an organization and to promote loyalty. On a larger scope, they are part of the "social contract" between the government, employers, workers and their families. This contract can help workers protect themselves against possible financial disaster and help them plan for retirement.

Indirect pay programs also benefit employers. First, they help to retain good employees until their retirement. Employer-based pension programs can also promote voluntary early retirements, which pave the way for employment opportunities for younger men and women. And profit sharing and stock purchase programs can increase employees' commitment to the success of a company, which can then translate into improved productivity, work quality, and competitiveness.

As costs associated with providing employee benefits continue to rise, many employers are faced with a difficult problem - satisfying employee demands for benefits while keeping costs under control.

The per employee cost of providing benefits increased 621 percent from 1967 to 1990, according to figures compiled by the U.S. Chamber of Commerce, and they've continued to rise ever since. The largest cost increases have occurred in the areas of health care, up 1,430 percent from 1967 to 1990, and pension costs, up 581 percent during the same period.

Even though benefit costs are high, it is necessary for employers to expand their benefit programs to stay competitive. Because benefits have become a key factor in choosing a workplace, employers must offer competitive benefits packages to recruit and retain the most qualified employees. In addition, changes in workforce demographics have caused variations in traditional benefits packages to satisfy the needs of a diverse pool of employees.

There are five categories of benefit programs:

1. Legally required payments
2. Private security and welfare
3. Other indirect personnel costs
4. Other payments for time not worked
5. Special and extra compensation

The first category covers **legally required** programs such as workers compensation, Social Security, and unemployment insurance. The other four categories cover **voluntary** programs such as pension and insurance programs. Indirect pay programs offered by organizations consist of both the mandatory and voluntary benefits categories.

The material presented here is general information describing employee benefits programs. Because of differences in state laws and the ever-changing nature of our tax and legal system, the human resource professional should check with the organization's legal department whenever working with regulated programs.

Legally Required Programs

There are three main categories of benefits required by statutory law:

1. Workers Compensation
2. Social Security
3. Unemployment Compensation

Private Security and Welfare

Benefits in this category are generally nontaxable clusters of payments and services provided primarily by the employer. These payments are aimed at:

- Guarding the health of employees, their families, and their financial security
- Helping the employee become more efficient and effective on the job
- Increasing employee identification with the company.

The programs available in this category include:

- Pension plan premiums under insurance and annuity contracts (net)
- Payments to uninsured trusteed pension plans
- Pension payments under unfunded pension programs
- Life insurance premiums (net)
- Death benefits not covered by insurance
- Hospital, surgical, medical, and major medical insurance premiums (net)
- Hospital, surgical, medical, and major medical payments (self-insured)
- Life and health insurance combined
- Short-term disability, sickness, or accident insurance (company plan or insured plan)
- Salary or wage continuation or long-term disability (insured, self-administered, or trust)
- Dental insurance premiums
- Discounts on goods and services purchased from company by employees
- Employee meals furnished by company
- Miscellaneous payments (childcare, parking, physical and mental fitness programs, vision care, prescription drugs, etc.).

Welfare Benefit Plans

A "welfare benefit plan" is any plan, fund, or program established by an employer or employee organization that provides health insurance benefits, vacation benefits, severance pay, accident or disability benefits, or other types of benefits not related to retirement. Such plans are subject to ERISA.

An employer's informal, unwritten practice of providing such benefits falls within the scope of ERISA. For example, if an employer has an informal policy of providing severance pay to its employees upon involuntary termination, and it later denies severance pay to a particular employee who was involuntarily terminated, that employee could file an action against the employer under ERISA.

Qualified Plans: Retirement plans may be "qualified" or not qualified. A "qualified" plan is one that meets certain requirements under the Code and ERISA. Contributions made to a qualified employee benefit plan receive favorable tax treatment under the Code. This means that the employer is entitled to deduct its contributions <u>at the time they are made to the plan</u>, as opposed to the time that the participant receives his/her benefits. Likewise, participants are not taxed on their accrued benefits until they actually receive their distributions.

Commercial insurance plans: These are a major source of health insurance. The premiums are often calculated to cover the benefits that will be paid, administrative costs, sales commission, state premium taxes, risk charges, and profit. Periodically the insurer adjusts the premium to coincide with the group's claims experience.

Self-insurance or self-funded plans: These plans are established and administered by employers.

Health maintenance organizations (HMOs): These offer comprehensive benefits at a fixed fee. Routine medical services are provided at a specific site, and employees make prepayments in exchange for guaranteed health-care services on demand. HMOs emphasize preventive treatment and early diagnosis, reducing the need for hospitalization to about one-half the national average. The law requires that employers of more than 25 employees provide those workers with the option of joining a federally qualified HMO. If employees opt for HMO coverage, the employer must pay the HMO premium or an amount equal to the premium for previous health coverage, whichever is less.

Preferred provider organizations (PPOs): This form of health-care delivery has a direct contractual relationship between and among employers, health care providers, and third-party payers. An employee is able to pick selected doctors who agree to price discounts and strict utilization controls. The employer, in turn, influences employees to use the preferred provider through financial incentives. This arrangement increases patient flow for doctors, saves money for employers, and gives employees a wider choice of doctors than might be available under an HMO arrangement.

Curbing Costs

As one might expect, health-related insurance is the most costly of all insurance plans, and employers have begun taking steps to curb these costs through three general strategies:

1. Motivating employees to change their demand for health care through changes in either the design or the administration of health insurance policies. These control strategies include:
    - Deductibles (the first “x” dollars are paid by the employee)
    - Coinsurance rates (premium payments are shared by employer and employee)
    - Maximum benefits (a maximum pay out schedule is determined for specific health problems)
    - Coordination of benefits (duplicate payments are eliminated)
    - Auditing of hospital charges for accuracy
    - Pre-authorization for selected visits to health care facilities
    - Mandatory second opinion whenever surgery is recommended.
2. Changing the structure of the health care delivery systems and participating in business coalitions. The trend toward HMOs and PPOs falls in this category. And, even with more traditional delivery systems, there is more negotiation of rates with hospitals and other health care agents.
3. Promoting preventive health programs. Popular strategies here include:
    - No-smoking policies
    - Incentives for quitting smoking
    - Healthier food in cafeterias and vending machines
    - On-site physical fitness facilities
    - Early detection screening for potentially serious health problems

COBRA Continuation Rights

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) was enacted to ensure that employees and their dependents do not lose their health insurance when workers lose their jobs. COBRA requires group health insurance policies to permit group members to purchase extended coverage under the same employer group health plan for a specific period of time when they leave the group for any one of a number of reasons. COBRA's protections are temporary and are intended as a stopgap until insurance is obtained from another source, such as a new employer.

Coverage

COBRA applies only to employers of 20 or more. In some situations, insured employees have continuation rights under both state and federal law. In such cases, employees may choose the more favorable law. An employer may charge an individual electing COBRA coverage a premium not to exceed 102 percent of the employer's cost of coverage. A higher premium may be charged to disabled individuals eligible for extended coverage.

Qualifying Events

The length of time an insured must be allowed to continue coverage depends upon the qualifying event, i.e., and the reason the individual left the group. The following is a list of federal continuation rights for a variety of events.

"Continuees" can have multiple events that qualify them for continuation, but they are not entitled to coverage beyond 36 months from the date of the first qualifying event, or beyond the date they become covered by another group plan. All continuees are entitled to make their own separate elections (i.e., the departing employee may refuse coverage, the spouse may elect it). Spouses who become divorced or separated and dependents who "age out" have 60 days to notify the plan administrator of these events.

Reason for Losing Group Coverage	Length of Time Allowed to Continue Coverage
Termination of employment	18 months for the employee, spouse, and dependent children, unless termination was for gross misconduct, in which case there is no right of continuation. If any beneficiary was determined to be disabled within 60 days after termination, coverage is continued for 29 months for all beneficiaries.
Reduction of hours	18 months. If any beneficiary was determined to be disabled within 60 days after a reduction in hours, coverage is continued for 29 months for all qualified beneficiaries.
Divorce	Three years.
Death	The surviving spouse and dependents may continue coverage for three years.
Person losing dependent status because of age	Three years.
Medicare eligibility	An employee's spouse and dependents who lose coverage because the employee is entitled to Medicare may continue group coverage for 3 years.
Retirement	An employee who is retired from a company that goes into Chapter 11 bankruptcy proceedings can continue his or her coverage until death. When the employee dies, the spouse can continue coverage for 36 months.

Disabled Beneficiaries

Qualified beneficiaries who are determined to be disabled for Social Security purposes during the first 60 days following job termination are eligible to continue group health coverage for 29 months. This extension also applies to all other beneficiaries who lost coverage due to the same original qualifying event. The extension terminates on the first day of the month that is more than 30 days after the date of a final determination that the disabled, qualified beneficiary whose disability resulted in the extension is no longer determined to be so disabled.

Any of the qualified beneficiaries affected by the termination-of-employment qualifying event may provide notice to the plan administrator of the disability determination. The notice must be provided within 60 days after the date the determination is issued and before the end of the original 18-month maximum coverage period that applies to the termination-of-employment.

For months 1-18, disabled continuees may be charged 102 percent of the group rate; for months 19-29, employers may charge disabled beneficiaries up to 150 percent. If a disabled beneficiary is affected by a second qualifying event during months 19-29 entitling him or her to 36 months of COBRA coverage, the 150 percent premium rate may be charged through month 36.

Notification Requirements

- **Initial Notification.** An employer is required to provide a written notice to acquaint employees, spouses and dependents (if covered) with the COBRA law, their notification obligations and their possible rights to COBRA coverage in the future, when they first enter the health plan. This notice may be mailed via first class mail to the employee's home.
- **Qualifying Event Notification.** COBRA requires a covered employee (or the affected spouse) to notify the plan administrator when a qualifying event such as divorce or legal separation takes place. A covered employee or the affected dependent child is required to notify the plan administrator if the child loses dependent status under the employer's plan. This may be because of attaining a certain age or the child no longer being enrolled in school. The covered employee, spouse, or dependent has 60 days after the later of the date of the qualifying event, or the date on which the affected spouse or dependent child would lose coverage as a result of the qualifying event, to notify the administrator. If the change is not reported in time, the group health plan is not required to offer the qualified beneficiary the opportunity to elect COBRA coverage.

The plan administrator must notify qualified beneficiaries of their COBRA rights within 14 days after receiving notice that a qualifying event has occurred. (Multi-employer plans may have longer than 14 days if they specify a longer time period in the terms of the plan.) Notice is sent via first class mail to all qualified beneficiaries. While not specifically required, it is highly recommended that documentation be maintained to verify when the notice was mailed.

Portability of Health Insurance under HIPAA

The Health Insurance Portability and Accountability Act (HIPAA) was intended to free employees from the fear of losing health insurance coverage for a medical condition affecting themselves or a family member when changing jobs. HIPAA limits exclusions for pre-existing medical conditions by providing credit for prior medical conditions that is verified by the issuance of required certificates.

Coverage

HIPAA applies to any "group health plan" with two or more participants who are active employees on the first day of the plan year. A group health plan is defined as an employee welfare benefit plan that provides medical care to employees or their dependents either directly or through insurance, reimbursement, or otherwise.

Creditable Coverage

Employers are required to reduce a preexisting condition limitation placed on a new employee by the length of time the employee was covered under a previous health plan. In order for the previous health coverage to apply it must meet the following criteria.

- There must not be a break in coverage of 63 days.
- Must be coverage under an employer-sponsored health plan, health insurance coverage, Medicare, Medicaid, military-sponsored health care, or public plan.

Certificate of Creditable Coverage

The law requires employers to send a certificate of creditable coverage following any loss of coverage that reflects the most recent period of continuous coverage. HIPAA states that certificates of creditable coverage must be sent within a "reasonable" time period. When an employee becomes eligible for COBRA, the certification may be provided at the same time the COBRA notice is given. Certificates must also be provided upon request at the earliest time the plan or issuer (carrier) can reasonably accommodate the request.

Special Enrollment Periods

The law requires employers that sponsor group health plans to provide special enrollment periods for eligible employees and dependents who lose coverage under another health plan. Group health plans with dependent coverage must also offer a dependent special enrollment period for persons becoming a dependent through marriage, birth, or adoption or placement for adoption.

Cafeteria Plans

The terms "cafeteria plan," "flexible benefit plan" and "flex plan" are used to describe an approach to compensating employees where the employees are allowed to choose among a range of benefits and services.

In general, the term "cafeteria" is used to describe tax-qualified plans that provide employees a choice among two or more benefits consisting of cash and certain nontaxable benefits.

"Flexible benefits" is a generic term applied to any type of arrangement that offers employees a choice among benefits. However, despite this technical distinction, the terms increasingly are used interchangeably.

Flex plans vary widely in design from company to company. However, every employer setting up a cafeteria plan will have to examine certain basic issues, such as how benefit choices will be funded and what type of design will best suit the employees' needs and the employer's objectives.

Letting employees choose from various parts of benefit plans is increasing in popularity. More than half of employees allowed to do so make some selection (compared to 13% in 1988.) If a spouse works too, it's wasted money for both company and employee to have health insurance under two medical plans. Costs are often easier to control and a greater variety of coverage can be made available for the same cost if employees can pick and choose. Buying something you don't need is never a good idea.

Group Term Life Insurance

Group term life insurance coverage is one of the most common employee benefits offered by organizations. Typically, it is provided to employees through an employer-paid group insurance policy with coverage in the amount of the employee's salary or at a flat dollar amount.

Group life insurance policies:

- Protect against pre-retirement death for a specified period of time
- Do not usually have any cash surrender or investment value
- May include clauses for accidental death and dismemberment
- Are usually forfeited at the time of employment termination, but may be reduced at retirement
- Provide life insurance for an employee who becomes totally and permanently disabled
- May cover dependents
- May have employee pay taxes on the cost of insurance coverage in excess of $50,000.

Pay for Time Not Worked

One definition of other indirect personnel costs is pay for time not worked. Most of the items in this category are self-explanatory. Some are required and governed by law, others are not. How many do you provide?

___ Paid vacations

___ Travel time

___ Paid rest periods

___ Clothes-changing and clean-up time

___ Coffee or other breaks

___ Get-ready time

___ Lunch periods

___ Payments for or in lieu of vacations

___ Payments for holidays

___ Sick leave pay

___ Payment for time lost due to death in family

___ National Defense, State, or National Guard duty

___ Payments required under guaranteed week or work year

___ Premium pay for overtime hours

___ Jury, witness, and voting pay allowances

Are there other instances for which you pay for time not worked?

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PFTNW is the largest component of the benefit cost pie. This element costs employers the most, although health care costs are rivaling even these premium costs.

Where PFTNW is not regulated by the government, it is typically covered by a written company policy or union contract. It is critical that the PFTNW program be applied consistently to avoid charges of discrimination. To do less invites destruction of your employee relations plan.

Jury Duty Pay: What is your policy?

Many questions have arisen regarding the employer's obligation to provide jury duty pay. In general, there is no requirement that employers provide paid time off to hourly employees called to serve on a jury; however, for exempt level employees, there are instances where the Fair Labor Standards Act would not allow an employer to deduct from the exempt employee's salary for a jury duty absence.

Under FLSA regulations, exempt employees must be paid in full for any week in which any work was performed (with certain exceptions). For example: Employer ABC provides no jury duty pay to employees. An exempt employee is called to serve and sits on a one-day trial. That employee works the remainder of the week. Under FLSA regulations, the employee must be paid in full for the week. The result would be the same if the employee served two, three, or even four days of jury duty (assuming a five-day workweek). However, if the employee spent an entire week on jury duty, the employer could deduct a week's pay from his salary.

The employer who provides a set number of paid jury duty days is treated no different under the FLSA. Even if an exempt employee exhausted all jury pay, the same rule would apply.

Jury duty is treated differently than sick or personal days off, for which employers may, under certain circumstances, deduct full day increments. For example, an employer with a bona fide sick pay policy which provides a set number of paid sick days each year, could deduct a full day's pay once an exempt employee exceeded the number of paid days provided.

Now is a good time to review your company's pay practices with respect to jury duty. If changes need to be made, the beginning of a calendar year is a good time to unveil such changes.

Pension Plans and Insurance

An employer offers retirement income to employees for three reasons:

- It helps in recruitment of new employees.
- It helps retain good employees until their retirement.
- It encourages employees reaching retirement age to move out, creating necessary employment opportunities for younger men and women.

Retirement plans can be broken down into two categories: defined benefit plans and defined contribution plans.

Defined benefit

A defined benefit pension plan ("DB Plan") provides each participant with a fixed benefit upon retirement. Employer contributions are made to a general account. The formula to be used in calculating the amount of benefits is determined by the employer. The actual contributions made by the employer to the plan are determined on an actuarial basis, taking into consideration such factors as the benefits payable, mortality factors, and employee turnover. DB Plans are subject to ERISA's minimum funding requirements and must be covered by the Pension Benefit Guaranty Corporation ("PBGC") termination insurance.

Defined contribution

Defined contribution plans ("DC Plans") provide individual accounts for each participant. Employer contributions may be determined under a specified formula, such as a percentage of the employer's profits, or the annual contribution may be left to the discretion of the employer. The employer's contribution then must be allocated to individual employee accounts pursuant to a fixed formula. The individual's account balance will reflect not only the employer's contributions, but will also take into account any income, expenses, gains and losses, and any forfeitures of accounts of other participants. DC Plans are not covered by PBGC termination insurance and are exempt from ERISA's minimum funding requirements. Examples of DC Plans include profit-sharing plans, 401(k) plans, and stock bonus plans.

All pension plans have some common characteristics. They:

- defer payment to a former employee or surviving spouse for past services rendered.
- specify a normal retirement age at which benefits begin to accrue to the employee (usually age 65).
- employ a benefits formula to determine whether employees are required to contribute to the pension fund

Membership

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Talent Acquisition

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HR Consulting

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Background Checks

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Training

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Organizational Development

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