



## Fair Labor Standards Act (FLSA)

**\$100,000 of coverage available for violations of the Fair Labor Standards Act (FLSA) on our Employment Practices Liability (EPL) products in most states.**

### What is FLSA?

- ▶ A federal law that establishes minimum wage, overtime pay, record keeping and child labor standards; employees are broken into two separate classifications
  - Exempt employees are those who are exempt from certain wage and hour laws, i.e., overtime pay; usually applies to executive, administrative, professional, highly compensated, outside sales and certain computer employees
  - Non-exempt employees receive hourly wages; they are subject to wage and hour laws, i.e., overtime pay; usually applies to non-professional employees
  - The FLSA generally requires that individuals be paid at least 1.5 times their hourly pay rate for hours that they work over 40 hours per week. However, there are several career fields exempt from overtime pay law, meaning employers do not have to compensate them extra for hours worked over 40.

### Who is at risk?

Although large companies such as Wal-Mart, Dell and Smith Barney have recently been involved in highly publicized multi-million dollar FLSA lawsuits, it is not just these companies that must protect themselves from FLSA legislation. If your company either achieves sales revenue greater than \$500,000 or is a hospital, institution for the sick, a school, or a public agency, your company is most likely subject to FLSA regulations.

### What do the claims look like?

1. A small **concrete company** paid a \$12,900 settlement and \$20,000 in attorney fees for paying non-exempt workers a lump sum amount for overtime rather than time and a half for hours worked over 40.
2. Four **janitors** who were not paid for overtime won \$103,736 for overtime pay and liquidated damages.
3. A **retail clothing store** manager was misclassified as exempt as he spent more than half of his time engaged in non-exempt, non-managerial activities. The plaintiff awarded \$38,000 in back overtime pay and \$62,000 in attorney's fees.
4. A small **computer distributor** paid \$19,800 to an employee in overtime wages and \$4,280 in fees for misclassification of help desk staff.
5. A **small medical equipment manufacturer** was forced to pay \$24,288 for back wages due to intentional misclassification of an employee as exempt. They also incurred \$19,000 in attorney fees.

### The most common FLSA offenses for small businesses include:

1. Not paying overtime for time worked over 40 hours in a week
2. Misclassifying managers and assistant managers as exempt
3. Paying lump sum amounts for overtime hours worked vs. paying 1.5 times the normal hourly rate
4. Not paying for overtime since it had not been pre-approved
5. Allowing employees to "waive" their rights under the FLSA

### Does your EPL insurance cover FLSA claims?