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**WAGE & HOUR RAGING SOUR:  
COMMON FICTIONS & FACTS ABOUT THE FLSA**

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## **WAGE AND HOUR RAGING SOUR: COMMON FICTIONS AND FACTS ABOUT THE FLSA**

There are common myths about the Fair Labor Standards Act (“FLSA”). This article explores and discusses the more common myths.

### **1. FICTION**

*“The FLSA doesn't apply to my small business—I have less than 15 employees.”*

#### **a. Fact**

While many employment laws have threshold limits regarding the number of employees an employer must have before the law applies, the FLSA does not. Even if a company only has one employee, the FLSA may apply.

#### **b. Why**

The FLSA casts a wide net. In general, its provisions apply to all employers and cover all employees who are not specifically exempt and who are either:

- (1) who engage in interstate commerce,
- (2) produce goods for interstate commerce, or
- (3) handle, sell, or work on goods or materials that have been moved in or produced for interstate commerce.

For most companies, the test is \$500,000 or more in annual dollar volume of business (*i.e.*, the Act does not cover enterprises with less than this amount of business). 29 U.S.C. § 203(s)(1). The FLSA also covers the following industries regardless of their dollar volume of business:

- (1) hospitals; institutions primarily engaged in the care of the sick, aged, mentally ill, or disabled who reside on the premises;
- (2) schools for children who are mentally, or physically disabled or gifted;
- (3) preschools, elementary, and secondary schools, and institutions of higher education; and federal, state, and local government agencies. 29 U.S.C. § 203(r)(2)(a).

### **2. FICTION**

*“If I pay all my employees on salary then I can avoid having to pay them overtime.”*

#### **a. Fact**

This is perhaps the biggest misconception of employers. The *way* employees are paid—whether on a salary or hourly basis *alone*—has nothing to do with whether they are exempt or non-exempt for purposes of the FLSA. How an employer classifies an employee for overtime purposes under the FLSA is based on the employee's: (1) weekly or annual salary; and (2) job duties, functions, and responsibilities.

#### **b. Why**

The categories of exempt employees are: (1) executive; (2) administrative; (3) professional; (4) professional; (5) computer professional; and (6) outside sales. The Department of Labor (DOL) Wage and Hour administration website provides fact sheets guiding employers in the requirements of these

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