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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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