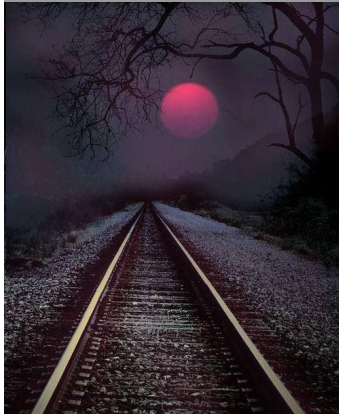




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Volume 6, Issue 10 October, 2015

**PROGRAM: Distracted Driving: Are You Covered?**

**WHEN:**

Tuesday, October 13th, 2015  
11:00 – 11:30 Registration  
11:30 – 12:00 Lunch & Announcements  
12:00 – 1:30 Speaker Panel

**WHERE:**

DelRay Ballroom  
817 R Street, Lincoln, NE  
**Parking** in a city garage will be validated!

**This is a special 1.5 hour program with no workshop. It has been pre-approved by HRCI and SHRM for general credits hours.**

**COST:**

**Program Registration Fee:** LHRMA members—\$15  
All Other Attendees—\$25  
College Student Chapter Members—FREE (You must register with Jenessa Keiser, College Relations Chair)

**MENU:** TBA

**DEADLINE:** Register/cancel your registration by **12:00 noon, Friday, Oct. 9<sup>th</sup>.**

**REMINDER:** There is a \$10 fee for late registrations and for no-shows. This \$10 fee is in addition to the regular registration fee. Please try your hardest to register on time, as late registrations and no-shows make it difficult on everyone involved.

**About Our Program:  
Distracted Driving: Are You Covered?**

Several research studies found that the risk of a crash is four times as likely when a person is using a cell phone – handheld or hands-free. Consider a situation in which an employer knew a behavior in some area of its operations exposed employees to a four times greater risk of injury – would it be reasonable for an employer to expect an employee to engage in that behavior?

With the intense publicity surrounding cell phone distracted driving in recent years, it would be difficult for employers and employees to argue that they're not aware of the dangers. Beyond the safety issues, employers are now being held to legal responsibility.

The National Safety Council estimates that at least 27% of crashes in 2013 involved drivers using cell phones, 1.2 million crashes involved drivers talking on cell phones, and over 341,000 crashes involved texting while driving.

*(Continued on page 2)*

*(Continued from page 1)*

A panel of experts will explain how you can implement cell phone policies and best practices designed to reduce risks and minimize liability. Join Beverly Reicks of the National Safety Council, Major Stanczyk with the Nebraska State patrol, Jennifer of Inspro Insurance, and Helen Hoffman, Risk Management Consultant or Jessica Greenwald, Account Executive from Inspro Insurance. The panel will share their first hand experiences and what employers can and should do to minimize their liability.



## President's Message

Melissa Price, LHRMA President

“Leaders aren’t born they are made. And they are made just like anything else, through hard work.”  
– Vince Lombardi

October is a fun month for our organization! Every October we take the time to honor the Past Presidents of LHRMA and all that they have contributed to the success of our organization. Over the years there have been 59 Presidents. Please take a moment to review the list of great leaders within this newsletter.

LHRMA started in 1953 as the Lincoln Personnel Management Association (LPMA). In 1962, the Lincoln Personnel Management Association was led by Joe Hartley and Don Fahleson. At that time the organization decided to affiliate with the national organization - Society of Human Resource Management (SHRM).

Today we have over 300 hundred members in the Lincoln area. We have a board consisting of 13 positions focused on continuing to grow the organization. We offer monthly education programming and networking events were we average about 100 members who attend. We are an active chapter of SHRM were in the last year were recognized with the Platinum SHAPE award for the organizations work in 2014. In addition, SHRM has recognized LHRMA as a SHRM Foundation Chapter Champion and a SHRM Learning System Champion Program with our study group focused on the new SHRM certifications.

LHRMA has evolved so much over the years and we are so thankful to those that led the organization through its continual growth. We appreciate the time, effort and hard work that you gave to LHRMA! Your dedication to the organization and the profession is so appreciated!

— Melissa Price



### Drawing Winner

Who Says There's No Such Thing  
as a Free Lunch?

Congratulations to **Ginna Claussen**  
with Union Bank & Trust Co.  
Ginna will receive free registration  
for the October program.

## We will Recognize our Past Presidents at the October Program

William Stenton 1953	Jerry L. Sellentin, 1972	Jane Goertzen, 1992
Walter F. Roberts 1954 (deceased)	Harvey Schwartz, 1973	Dennis Seaman, 1993
R. "Max" Peterson 1955	Ray Oepping, 1974	Nancy Conway, 1994
Victor Seymour 1956 (deceased)	Georgia Schmitt, 1975	Judy Backhaus, 1995
Richard M. Bourne 1957 (deceased)	James P. Spangler, 1976	Chris Matousek, 1996
R.D. Andersen, 1958	David L. Bornholdt, 1977	Peggy Storm, 1997
W."Tom" Tomkins, 1959	Linda G. Larsen, 1978	Rebecca Ferguson, 1998
Ann Scott, 19960	Dick Whitcomb, 1979	Mary Crook, 1999
Joe Hartley, 1961	Sally Schneider, 1980	Laurie Kortum, 2000
Don Fahleson, 1962 (deceased)	Reid E. Devoe, 1981 (deceased)	Trish Reimers, 2001
Dave Hendricks, 1963 (deceased)	Patricia A. Kant, 1982	Toni Beyer, 2002
Roy Loudon, 1963	Bob Hanrath, 1983	Ruth Jones, 2003
James E. Geist, 1964	Neal Westphal, 1984 (deceased)	Chris Ganz, 2004
Robert Murphy, 1965	Connie Soucie, 1985	Michele Spadt, 2005
John D. Beecham, 1966 (deceased)	Chriss Lloyd, 1986	Cindy Mefford, 2006
Earl R. Fell, 1967	Linda Shafer, 1987	Carmen Wiles, 2007
Walter J. Mitchell, 1968 (deceased)	Kent Mattson, 1988	Cathy Maddox, 2008 - 2009
William M. Cords, 1969 (deceased)	Lovie Magruder, 1989	Mark Pankoke, 2010 - 2011
Joseph R. Ruschetti, 1970	Doug McDaniel, 1990	Judy Ganoung, 2012 - 2013
Stuart A. Maseman, 1971 (deceased)	Cheryl Vavra, 1991	

Your LHRMA chapter has earned the 2015 SHRM Learning System Champion status!! Thank you to Amy Spellman, Certification Chair, and all of our volunteer instructors for making this happen!



An advertisement for Aureus Group. The top section has a purple background with the text "Gain MORE from your search" in white and green. Below this is a green background with the text "We're your regional staffing resource with a national reach, bringing expertise to each search since 1969." The Aureus Group logo is prominently displayed, along with the phone number 402.891.6900 and the website aureusgroup.com. At the bottom, a purple banner lists services: "Temp • Direct Hire • Match Hire® • Interim".

# Legal Update

## Proposed Changes to the White Collar Overtime Exemptions

Susan Sapp and Kara Ronnau

Cline Williams Wright Johnson & Oldfather, L.L.P.

Wage and hour litigation under the Fair Labor Standards Act (“FLSA”) is on the rise. According to PACER, a national index for U.S. district courts filings, FLSA cases in federal court have risen from less than 2,000 filings in 2001 to more than 8,000 filings in 2014. The FLSA has four primary areas of coverage: (1) minimum wages, (2) maximum hours, (3) equal pay, and (4) child labor.<sup>i</sup> The FLSA applies to all employees, except those specifically exempt.<sup>ii</sup> The DOL is responsible for enforcement of the FLSA.<sup>iii</sup> The DOL has delegated this responsibility to the Wage & Hour Division, which has authority to investigate any individual complaints and to conduct random audits.<sup>iv</sup> Recently U.S. Department of Labor (“DOL”) publications indicate that the DOL is working vigorously to reshape and enforce provisions of the FLSA.<sup>v</sup>

On June 30, 2015, the DOL issued a Notice of Proposed Rulemaking (“NPRM”) announcing the DOL’s intention to dramatically reduce the number of employees who qualify for exempt status under the Executive, Administrative, Administrative, Professional, Outside Sales and Computer Employees Exemptions (hereinafter referred to as the “White Collar” exemptions) under the FLSA.<sup>vi</sup>

According to the DOL, the share of full-time salaried workers under the overtime salary threshold has declined from 62% in 1975 to just 8% today.<sup>vii</sup> The rules that govern which workers are exempt from overtime pay have not been adjusted as the cost of living has increased. In fact, today, certain professionals and managers are exempt from overtime if they make more than \$23,660 a year and perform specific duties. This annual salary is less than the poverty line for a family of four which is \$24,008 in 2015.<sup>viii</sup> If the salary threshold is increased, many employees who are not currently eligible for overtime pay will become eligible.

White Collar salaried workers not subject to the salary threshold include teachers, academic administrative personnel, physicians, lawyers, judges, and outside sales workers.<sup>ix</sup> The NPRM does not propose to change these exceptions to the salary threshold.<sup>x</sup>

This article will first set forth the basics of exempt/non-exempt classification and calculation of the “Regular Rate.” Second, this article will outline the proposed changes to the White Collar exemptions. Finally, this article will discuss the potential impact on employers, steps employers can take to avoid misclassification as well as tips to help employers adjust to the new requirements, if the proposed changes are adopted.

### **I. Overview of White Collar Exemptions and Calculation of the Regular Rate.**

In order to qualify for a White Collar exemption under the FLSA, both the “Duties Test” and “Salary Test” as described herein, must be met.

Whether an employee satisfies the “Duties Test” for the professional, executive, administrative exemptions or outside sales exemption depends on the employee’s actual job functions, not their job title. In order to qualify for the **executive exemption**, the employee’s primary duty must be managing the enterprise or a customarily recognized department or subdivision; directing the work of two or more employees; and having authority to hire or fire (or make such recommendations which are given particular weight). The **administrative exemption**, requires that the employee perform approved work directly related to the employer’s management or general business operations and must exercise “discretion and independent judgment” with respect to matters of significance. To satisfy the requirements for the **professional exemption**, the employee must be a “learned professional” who has gained equivalent knowledge and skills through a combination of job experience, military training, attending a technical school, or attending community colleges. Finally, in order to qualify for the **outside sales exemption**, the employee must (1)

(Continued on page 5)

make sales or obtain orders or contracts for services or the use of facilities and (2) be customarily and regularly performing that primary duty away from the employer's place of business.<sup>xi</sup>

In addition to the "Duties Test" employees must also meet the "Salary Test" in order to qualify as exempt. Currently, employees who earn \$455 per week are exempt if they meet the duties test for the particular exemption. An employee will be considered to be paid "on a salary basis" within the meaning of the regulations if, under her employment arrangement, she regularly receives, each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or a part of her compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed.<sup>xii</sup>

Under the FLSA, non-exempt employees are entitled to time-and-a-half for all time worked over 40 hours each week. While, discretionary bonuses<sup>2</sup> are not included in the regular rate of pay, non-discretionary bonuses<sup>3</sup> must be included in determining the regular rate of pay if the employer agrees or makes a promise to pay it. One of the most common mistakes is failing to add nondiscretionary bonuses to the hourly rate when calculating overtime pay.<sup>xiii</sup>

The FLSA definition of "employ" is to "suffer or permit to work." To the extent an employer is aware, or should be aware, that the employee is working, the time must be compensated. Merely publishing a rule that employees may not work overtime is not sufficient to avoid liability for additional hours worked; an employer must take affirmative steps to ensure that unwanted "volunteer" work is not being performed. The increased use of cell phones, tablets, iPads, and other devices make it easier for employees to work irregular hours. Off-the-clock work should be considered an area of increasing concern for employers with hourly workers.<sup>xiv</sup>

## **II. DOL's Proposed Changes to White Collar Exemptions.**

The NPRM proposes to increase the salary basis for the White Collar exemptions at the 40th percentile of weekly earnings for full-time salaried workers.<sup>xv</sup> Using 2013 data, the proposed salary amount would increase from \$455 a week (or \$23,660 a year) to \$921 per week (\$47,892 a year).<sup>xvi</sup> If the DOL sets the standard salary level in the final rule at the 40th percentile of weekly earnings of full-time salaried workers, the DOL estimates that the level will be \$970 a week (\$50,440 a year) for 2016.<sup>xvii</sup> Currently, employees are exempt under the highly compensated employee exemption if the employee earns at least \$100,000.<sup>xviii</sup> The NPRM proposes to set the annual compensation threshold for highly compensated employees at the 90th percentile of earnings for full-time salaried workers which equates to \$122,148 annually.<sup>xix</sup>

In addition to the proposed salary increase, the NPRM proposes to also automatically update the salary level (including that for highly compensated employees) on an annual basis, either based on percentiles of earnings for full-time salaried workers or based on changes in inflation<sup>xx</sup>. Automatic salary increases are intended to prevent the salary and compensation levels from again becoming outdated and ineffective.<sup>xxi</sup>

The NPRM did not make any specific proposals to modify the standard duties tests; however, the NPRM did seek comment on whether the standard duties tests are working as intended to screen out employees who are not bona fide white collar exempt employees.<sup>xxii</sup>

The NPRM is seeking comment on whether to allow nondiscretionary bonuses, such as certain production or performance bonuses, to satisfy a portion of the standard salary text requirement. Such bonuses include for example, nondiscretionary incentive bonuses tied to productivity and profitability.<sup>xxiii</sup>

[Click here to read this paper in its entirety.](#)



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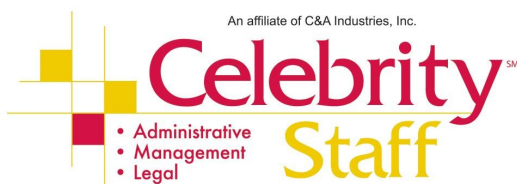
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## EAP Corner

### 7 Habits of Highly Effective Supervisors

Greg Brannan, Director of Business Development & Training Consultant  
Deer Oaks EAP Services

In the spirit of Stephen Covey's popular book, "The 7 Habits of Highly Effective People", below is a list of 7 of the key habits/management practices utilized successfully by supervisors and managers today:

- **Be a Positive Leader** – Employees look to their leaders for encouragement, especially during difficult circumstances. Effective supervisors maintain a positive mind-set and set a positive tone for their teams on a daily basis. They manage their own attitudes and emotions well, so that they can stay optimistic for the staff during challenging situations.
- **Get to Know Your Employees Well** – Effective supervisors make spending time with their employees more important than their own task list. They get to know their employees as individuals - their needs, interests, and strengths. Through this focus they learn what's important to each employee, and how to best support and motivate them.
- **Engage Your Team** – To maximize employee engagement it's important to solicit their input into department goals, project plans, etc. Employees will get more enthusiastic about the work when they have an opportunity for input. When assigning work, highly effective supervisors will determine the "what" (project, task, goals, etc.), but let the employees have input into the "how" (specific work plan, methods, etc.).
- **Practice Supportive Management Techniques** – To create an environment that improves employee motivation and initiative, it's important to utilize management approaches that are less directive and more supportive. For example, employees typically respond better to supervisors that use a collaborative coaching approach than they do to one who is highly directive and micro-managing.
- **Become an Effective Coach** – Supervisors who utilize a collaborative coaching approach create a respectful environment for their team that improves employee morale, motivation, and initiative. The key communication strategy utilized in a coaching approach is "often ask" for the employees input, instead of "always directing" them.
- **Interact Well with Your Staff** – Having a good relationship with their supervisor is one the most important aspects of job satisfaction for most employees. Highly effective supervisors are sensitive to the importance of their day-to-day interactions with their staff and are careful to be attentive (spend time), courteous (friendly & kind), and respectful (listen well) with their employees.
- **Skillfully Manage Difficult Situations** – Highly effective supervisors skillfully and tactfully handle difficult situations and issues with their employees. For example they listen respectfully to the employee (even if they disagree), and remain kind even when correcting performance or behavior.

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*For more information, contact Greg Brannan at (301) 829-0364 or [gbrannan@deeroaks.com](mailto:gbrannan@deeroaks.com).*



# Wellness

## Flu Season Impacting the Workplace

Lauren Merchant, WorkWell Wellness Coordinator  
WorkWell, Nebraska Safety Council

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With the changing of the seasons and the first day of fall already past, the best time of the year has arrived. Tailgates, layering clothes, the changing of the leaves, and being able to sleep with the window open are just a few reasons why everyone loves fall. Although fall and its cooler weather brings joy to many people, with fall also comes the dreaded flu season.

Experts say the flu season typically lasts from late fall to early spring, climaxing in the coldest times of the year and affecting 5-20% of the population every year (Cited from [www.flufacts.com](http://www.flufacts.com) September 11, 2015). Thousands of individuals are affected by the influenza virus each year. Last year's flu season (October 2014-May 2015) resulted in 17,911 confirmed hospitalizations associated with the influenza virus. The 2014-2015 flu seasons reported having the highest influenza-associated hospitalization rate in adults since data collection began in 2004. Of those hospitalizations, 141 influenza-associated pediatric deaths in the United States have occurred (Cited from [cdc.gov](http://cdc.gov) September 11, 2015). The estimated direct costs of influenza to the United States are \$4.6 billion dollars yearly. These costs come from hospitalizations, doctor office visits, medication and more. Not only are people's personal lives affected by this virus, the workplace is also greatly influenced.

Workplace productivity is diminished during the flu season; experts estimate \$7 billion in sick days and lost productivity annually. An approximated 111 million workdays are lost each year due to influenza-associated factors (Cited from [cdc.gov](http://cdc.gov) September 11, 2015). These alarmingly large numbers not only directly affect business productivity and income but it also affects health care costs each business provides for its employees. When employees are absent due to illness it causes disruption in workplace functions. PTO days are best used planned rather than for unexpected illness. The best way to decrease the number of dollars lost, is to take preventative measures.

One of the most effective ways to prevent the influenza virus is to receive a yearly vaccine. Businesses are able to host vaccinations at their worksite through an on-site health clinic or through contracts with pharmacies, vaccination vendors, or community health services. These vaccines can be provided at no to low cost to employers and employees. Since the 2004-2005 flu season the overall effectiveness of the vaccination has ranged from 10-60% effectiveness in preventing medical visits attributed to the seasonal flu virus (Cited from [cdc.gov](http://cdc.gov) September 11, 2015). If vaccinations at the workplace are not available promoting flu vaccination options in the community can be a great strategy to fight the flu at your workplace. Post flyers around the worksite advertising local providers of the vaccination or articles stressing the importance of the flu vaccination. Teach employees how to take preventative actions daily to help diminish the spreading of germs, such as reminders to wash their hands, stay at home if they have flu-like symptoms, and cover their mouths and noses using the superhero method when coughing and sneezing. It is best to educate employees how to take preventative measures rather than suffering the significant productivity loss due to infected employees later in the season.

Businesses are successful if their employees are healthy and engaged in their work. If employees are sick, engagement and productivity will suffer. The end of one year and the beginning of the next is not only an indicator of flu season in the United States but it is also the busiest time for many companies. Take action to prevent employees from being affected by the influenza virus and thus keep your business successful.



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Go to <http://lincolnhhr.org/blog/hr-job-openings/>

This is also an excellent resource for students who are seeking an HR position or for companies to advertise if they have summer internships available. Take advantage of this great resource—you can't beat the price!



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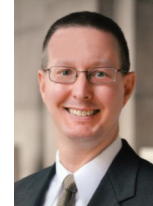
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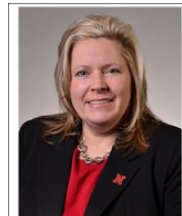
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