

Ogletree  
Deakins

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Client Service Is  
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# Latest Wage and Hour Developments

**Presented by:**

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# About Us – Ogletree Deakins

- National Labor and Employment Firm
- 60+ Offices
- 1,200+ attorneys
- Diverse range of clients – small to large organizations

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# Overview

- FLSA Overtime and Minimum Wage Requirements
- Opinion Letter 1: Joint Employment
- Opinion Letter 2: Learned Professionals Exemption
- Opinion Letter 3: Inclusion of Bonuses
- Opinion Letter 4: Preliminary Time Under CBA
- Opinion Letter 5: Retail or Service Establishment
- Independent Contractor Rule
- FAB 2025-3 – Liquidated Damages

# FLSA Overview

- **Must Pay:**
  - Overtime
  - Minimum Wage

The Fair Labor Standards Act  
was signed by President Franklin D. Roosevelt on June 25, 1938.

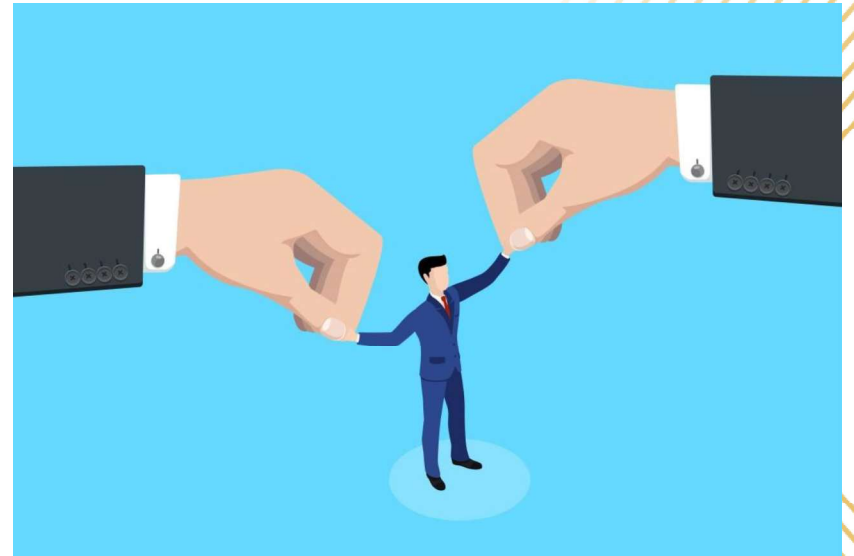


A message from the 1.6 million members of the American Federation of State, County and Municipal Employees, AFL-CIO



# Letter 1: Joint Employment

- Degree of common control
- Shared management
- Ownership
- Integration of operations between the entities



## Letter 2: Learned Professional Exemption

- If paid hourly, exemption does not apply.
- Employer may reclassify an exempt employee as nonexempt
- FLSA only prohibits misclassification of a nonexempt employee as an exempt one.



## Letter 3: Inclusion of Bonuses

- Non-discretionary bonus must be included in calculation of regular rate.
- To be discretionary, a bonus must not be awarded based on a “prior contract, agreement, or promises.”



## Letter 4: Preliminary Time Under CBA

- Partial overtime exemptions for CBA employees
- Preliminary time made compensable by CBA is part of time worked



## Letter 5: Retail or Service Establishment

- Federal minimum wage (\$7.25/hour) used to satisfy the minimum wage standard.



# Independent Contractors

- Economic Realities Test:
  - (1) Control over work
  - (2) Profit /loss depending on managerial skill
  - (3) Investment in materials/hiring additional workers
  - (4) Special skill
  - (5) Permanency/duration
  - (6) Integral part of business





# FAB 2025-3 – Liquidated Damages

- DOL to no longer supervise payment of liquidated damages.



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# Questions?

- Contact Information:

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