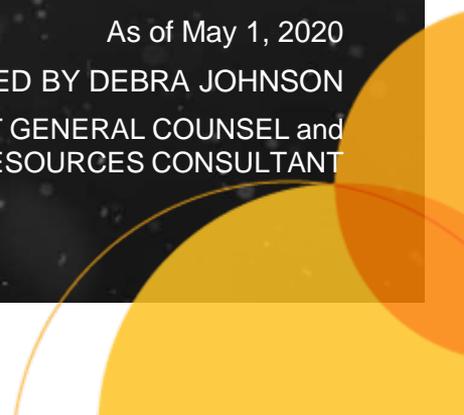
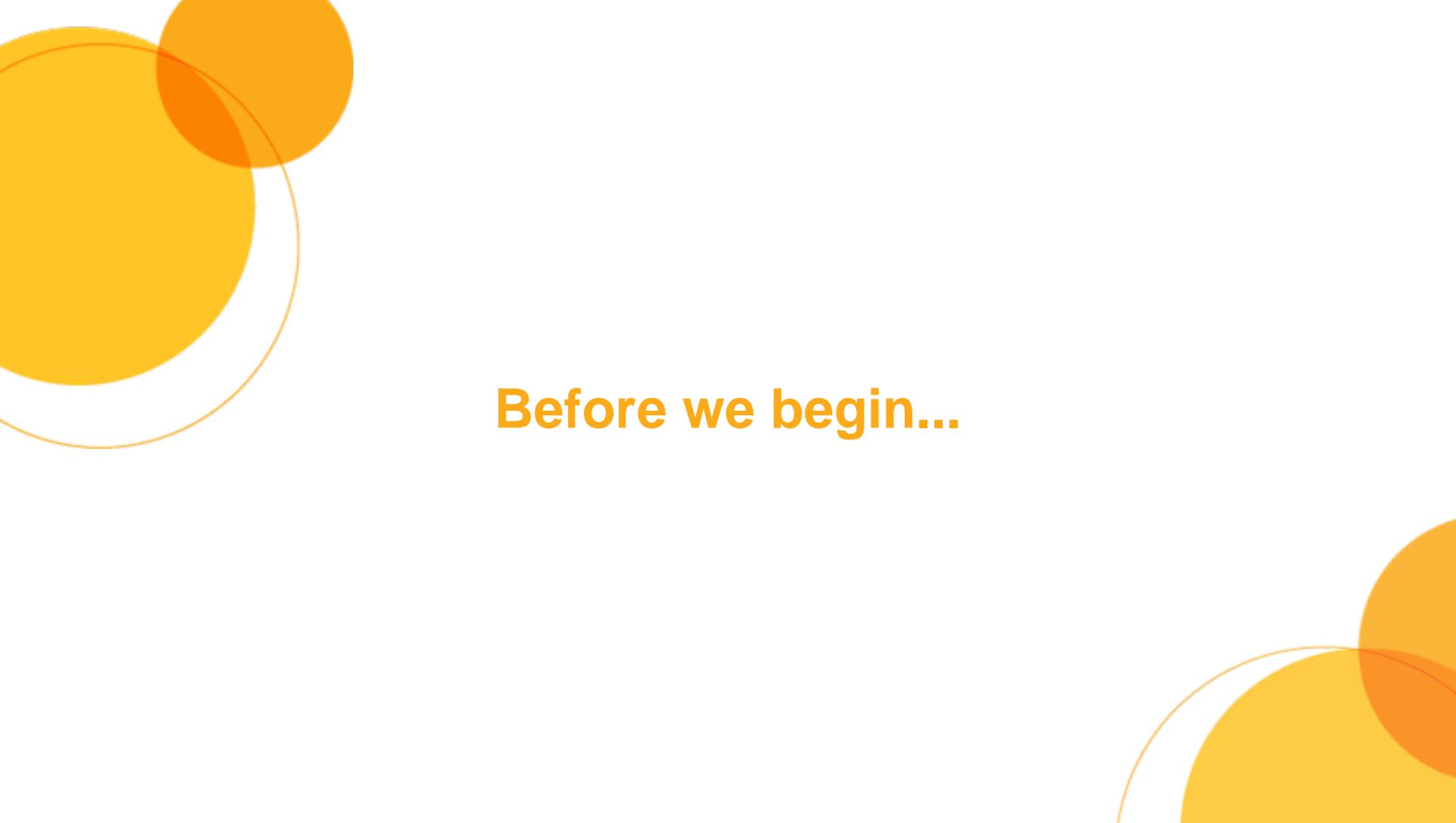




ROADMAP TO REOPENING: WAGE & HOUR COMPLIANCE and JOB DESCRIPTIONS

As of May 1, 2020
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The image features a white background with decorative orange circles in the corners. In the top-left corner, there is a large solid orange circle partially overlapping a smaller solid orange circle above it, and a thin orange outline circle that encompasses the large solid circle. In the bottom-right corner, there is a large solid orange circle partially overlapping a smaller solid orange circle above it, and a thin orange outline circle that encompasses the large solid circle.

Before we begin...

THIS SEMINAR IS NOT LEGAL ADVICE

Although the seminar may contain discussions of legal rights and responsibilities, the seminar itself does not constitute legal advice. This seminar is intended as an informational guide only; therefore, no statement should be considered as legal advice and no action should be taken by your organization in reliance on any statements.

The COVID-19 situation is changing daily and this presentation is based on current recommendations.



AGENDA

- Employee Classification
- Job Descriptions
- Salary Reductions
- Time Tracking & PTO Policies
- Employees Returning to Work

FAIR LABOR STANDARDS ACT (FLSA)

- Establishes **minimum wage** and **overtime** pay requirements
- Regulates other areas like **labor** and **record-keeping**
- Overseen by the **Department of Labor**
- The DOL has released answers to **frequently asked questions** about COVID-19 at <https://www.dol.gov/agencies/whd/flsa/pandemic>

STATE-SPECIFIC WAGE AND HOUR ISSUES

- Some states also have their own wage and hour laws, which are often **more protective** than the FLSA, e.g., mandatory meal periods, notice requirements, etc.
- Conceptually, the FLSA sets the floor for protection, not the ceiling.
- Where state and federal law overlap, the **more protective law** controls.
- For example, the FLSA does not require meal breaks or rest periods. However, a state may require a meal break for an employee who works for certain number of hours.

EMPLOYEE CLASSIFICATION

Exempt vs. Non-Exempt

- Must consider **salary basis** and **duties** of position.
- **Remember:** Being paid a salary **does not** automatically mean you are exempt, but being paid hourly does automatically make you non-exempt.

Independent Contractor vs. Employee

- Must weigh factors enumerated by the **IRS** and the **DOL**.
- Some states like California have more strict factors to consider when determining whether a worker is an independent contractor or an employee.

EXEMPTION CRITERIA

Salary

- Must consider **salary basis** and duties of position (\$684/week or \$35,568/year).
- Some states have a higher salary requirement for exempt employees.
- For the highly compensated employee salary exemption, the minimum is salary requirement is \$107,432 or more which includes at least \$684.00 per week.
- **Remember:** Being paid a salary **does not** automatically mean you are exempt, but being paid hourly does automatically make you non-exempt.

Job Duties

- Must consider salary basis and **duties** of position.

Reevaluating Job Duties

- Remember to reevaluate the job duties of an employee if the employee's role or responsibilities have **changed**.

COMMON EXEMPTIONS

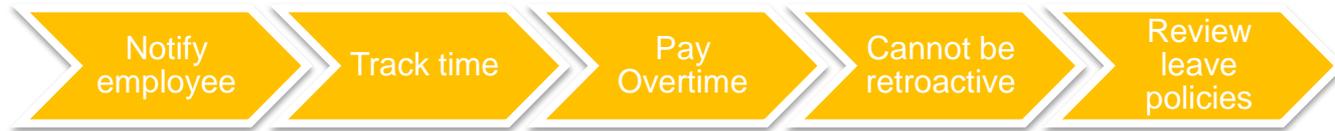
Executive
Exemption

Administrative
Exemption

Professional
Exemption

Outside Sales
Exemption

HOW TO TRANSITION AN EMPLOYEE FROM EXEMPT TO NON-EXEMPT



- **Note:** If you are changing an employee from non-exempt to exempt, the employee **must meet the salary and job duties requirements** and there are limits on docking the pay of an exempt, salaried employee.
- It is important to discuss this with your HR Consultant in advance of any changes as the penalties for improper exempt status can be very high.

REDUCING SALARY

CONSIDERATIONS BEFORE REDUCING EMPLOYEE SALARY

- Notify employees **in advance**
 - Some states may require notice **in writing**
 - Wage agreement does not change at-will relationships
 - Include **at-will** disclaimer
- The change **cannot be retroactive**
- For employees with contracts, review contract provisions
- May qualify the employee for unemployment benefits
- Develop **neutral, non-discriminatory criteria** for employee pay reductions

JOB DESCRIPTIONS

As you rehire employees, it's important to ensure that you have a **clear job description**, especially when determining how to classify an employee.

Tips for Writing Clear Job Descriptions:

- ✓ Evaluate the role
- ✓ Draft the description
- ✓ Include **all essential functions**
- ✓ Remember to include all other duties as assigned
- ✓ Create an approval process
- ✓ Reference the checklist

JOB DESCRIPTION CHECKLIST

Reference the *Job Description Checklist* for full details. Be sure to include the *essential functions* of the role.

- **Job Title**
- **Job Summary**
- **Role Objectives**
- **Role Responsibilities**
 - **Essential Functions** – Essential functions are the basic job duties that an employee must be able to perform, with or without reasonable accommodation.
 - **Other Functions**
- **Necessary Experience**
- **Physical Requirements**
- **Disclaimer** – Consider adding a job disclaimer such as *“Nothing in this job description restricts the manager’s right to assign or reassign duties and responsibilities of this job at any time,”* or simply, *“This job description is subject to change at any time.”*

PAY EQUITY

THE EQUAL PAY ACT

The **Equal Pay Act** requires that men and women in the same workplace be given equal pay for equal work. The jobs need not be identical, but they must be substantially equal. Job content (not job titles) determines whether the jobs are substantially equal.

- **Do not** ask about “previous salary.”
- **Do not** undercut pay for applicants with lower salary requirements. Just because someone will accept less money does not mean they should be offered a salary that is unreasonably low for the position.
- Differentiations in pay should be based on **non-discriminatory factors** like a merit system, production, factors others than sex.
- Protected leaves should not count against employees for seniority-based decisions.

TRACKING HOURS

TIMEKEEPING FOR NON-EXEMPT EMPLOYEES

Non-Exempt Employees

- Timekeeping system must capture all hours worked!
- Be sure that hourly employees who are still working remotely are tracking their time.
- No unapproved overtime. All hours over 40 must be paid at the overtime rate.

Potential Red Flags

- Automatic deductions
- Off the clock-work
- Rules for paid/unpaid breaks
- Travel time
- Working from home

SPECIAL ISSUES WITH TRACKING HOURS

REMOTE WORK, COVID-19, AND CHILDCARE ISSUES

Non-Exempt Employees

- Be sure that hourly employees working from home are taking their permitted lunch and other breaks (lactation, etc.)
- PTO policies can still apply
- Flexibility of work schedule under the FFCRA
- Tracking time for FFCRA sick and family leave

Exempt Employees

- Can be required to work set hours
- Must still be paid their full salary if they work during the week
- PTO policies can still apply
- Flexibility of work schedule under the FFCRA
- Tracking time for FFCRA sick and family leave

MINIMUM WAGE, OVERTIME, AND MORE!

- **Minimum Wage:** All employees must be paid at least the prevailing minimum wage for all hours worked.
- **Overtime:** All non-exempt employees must be paid at least time-and-a-half for all hours worked more than 40 in a week.
- Must be calculated on a **weekly** basis.
- Overtime rate must include **additional payments** for things like commissions, non-discretionary bonuses, piecework, etc.
- **Remote Employees** are still subject to overtime rules.
- **Do not transition laid off employees to contractors** unless they meet the requirements.
- **No “volunteer” employees!**

TIME SPENT CHECKING EMPLOYEES

When implementing procedures for checking an employee's **temperature** or performing other **allowable inspections** consider whether employees should be **compensated** for that time.

In general, employees should be compensated for time spent being checked for signs of COVID-19.

Under the *de minimis* doctrine, in some states very small amounts of time may be exempted. Consult your Human Resources Consultants for guidance. Also be sure that employees are properly compensated for show up time, waiting time, and all hours worked.

PAID TIME OFF (PTO) POLICY CHANGES

- PTO payout upon **termination**
- Employee **status** changes
- Time accrual and rehiring
- Paid and Unpaid **Leaves**

FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA) LEAVE ISSUES

- **Emergency Paid Sick Leave Act (EPSLA)** - Any Employee, regardless of how long they have worked for the Employer
- **Emergency Family Medical Leave Extension Act (EFMLEA)** - Employees who have worked for the Employer for at least 30 days
- Small Business Exemption
- **FFCRA** and **CARES Act** compliance

REFUSING TO RETURN TO WORK

Do you have to pay or retain employees who refuse to return to work?

- **Non-Exempt** – Paid for Time Worked
- **Exempt** – Full salary in any week in which they perform work

Other Considerations

- Sick Time, Paid Leave, and PTO
- ADA Accommodations and Protected Leaves

Additional Road to Reopening Webinars

- Road to Reopening: General Overview
- Road to Reopening: Equal Employment and ADA Considerations
- Road to Reopening: Workers' Comp and OSHA Updates, and Safety Considerations
- Access COVID-19 information and resources at <https://www.engagepeo.com/covid-19-information-clients>



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