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CALIFORNIA SOCIETY OF MUNICIPAL FINANCE OFFICERS (CSMFO) ANNUAL CONFERENCE

The Leadership Role of Finance and FLSA Compliance

1/9/2019

PRESENTED BY:

Brian P. Walter & Lori Sassoon

"THE LEADERSHIP ROLE OF FINANCE AND FLSA COMPLIANCE"

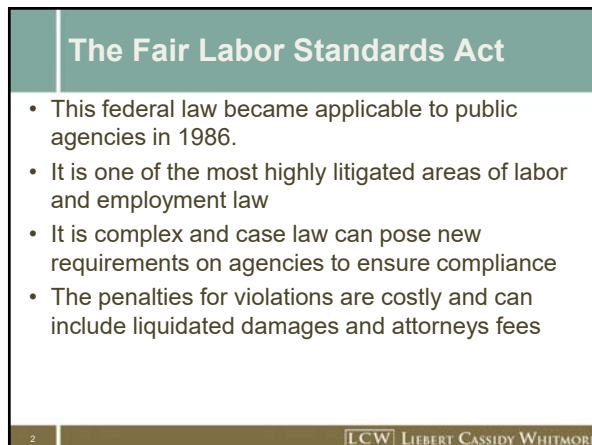
The Leadership Role of Finance Professionals & FLSA Compliance

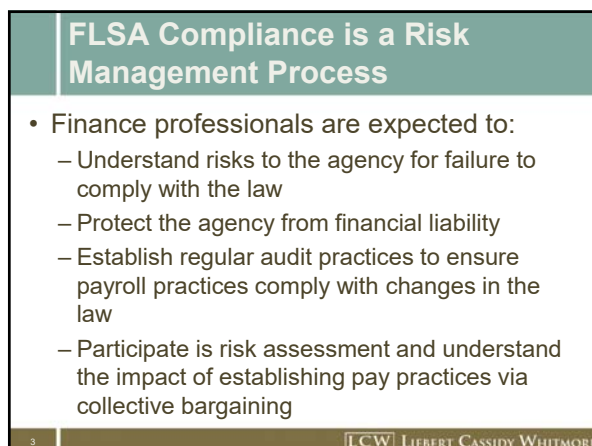
California Society of Municipal Finance Officers (CSMFO) 2019 Annual Conference

January 9, 2019

Presented by: Brian Walter and Lori Sassoon







The Leadership Role of Finance Professionals & FLSA Compliance

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Observations of the Challenges with FLSA Compliance

- There is a lack of knowledge on elements of FLSA compliance
- Agencies lack adequate staffing to conduct compliance reviews
- Payroll systems often aren't programmed to calculate overtime correctly
- Competing priorities and the "current crisis" pushes this to the back of the list

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Keys to Leadership Success

1. Educate - Provide training and/or education resources to staff
2. Engage – discuss existing practices and review procedures with operating department leaders
3. Evaluate – conduct regular assessments of compliance with FLSA provisions
4. Effectuate changes to ensure compliance

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The Framework of Pay, Positions & Timekeeping

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Compensation & Types of Pay

- Must pay at the minimum wage
- Review all types of pay and determine if pay is included in the FLSA regular rate of Pay
- Be clear about percentage based pay
 - Example: Bilingual pay is 5%

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Payments Included in the Regular Rate of Pay

- Shift differentials
- Retroactive pay increases
- Educational and other incentive pay
- Controlled standby pay
- Payments for uncontrolled standby pay
- Awards for performance on the job
- Merit bonuses / bonuses in CBA
- Hazard pay
- Shooting pay
- Bilingual pay
- Longevity pay
- Special assignment pay
- Acting pay
- Cash-in-Lieu of health benefits



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Payments Excluded from Regular Rate of Pay

- Exclude the following compensation:
 - Gifts that are not dependent on hours worked
 - Payments for vacation, holiday, illness, or other payments for time not worked
 - Reasonable expenses
 - Suggestion system awards
 - Discretionary bonuses
 - Overtime payments
 - Where the employee accrues Compensatory Time Off (CTO) rather than being paid (however, CTO must be paid off at the Regular Rate of Pay)

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Timekeeping & Recordkeeping

- Recordkeeping
 - “make, keep and preserve such records of the persons employed by [the employer] and of the wages, hours and other conditions and practices of employment”
- What types of records should you keep?
 - Timecards
 - Payroll records
 - Overtime authorization forms
 - Leave requests/approval forms

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Policies & MOU Provisions

Partnership with Labor Relations/HR

- Leadership is a joint responsibility
- Engage in discussion well in advance of labor negotiation meetings
- Participate in regular meetings with HR/Labor Relations staff to ensure consistency in interpretation and application of pay provisions
- Identify the authority that permits compensation and benefit provisions

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Policies & MOU Provisions

- Overtime eligibility
 - FLSA = Hours Worked
- Exemption Analysis
- Travel & training time policies
- Other MOU Provisions: Standby, meal and rest periods, shift trades

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Overtime

MOU/Contract Overtime & FLSA Overtime

- MOU/Contract Overtime
 - Above what is required by law
 - Can determine what to include in the rate
 - Will help offset FLSA liability on a work period basis
- Regular Rate of Pay
 - Paid pursuant to the FLSA
 - Use caution when including in labor agreements as it obligates you to future changes in the law

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Key Issues with the Regular Rate of Pay

- Calculate on a work period basis (not a pay period)
 - 7 days for non-safety employees
 - 207(k) designated work periods for sworn safety (as applicable, 7-28 days)
- Rate of Pay
 - MOU/Contract Overtime vs. FLSA Regular Rate of Pay
 - Incorporate additional pay based on work week or work period equivalent
- Common Errors
 - Omitting certain required pays
 - Incorrect calculation methods

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Options For Cash in Lieu



- Negotiate reductions in amount to lessen the Regular Rate Impact
- Negotiate reductions while simultaneously agreeing to increases to deferred compensation outside the cafeteria plan
 - Or include in Retiree Health Savings Accounts
 - Could have impacts on Section 125 Plans
- Negotiate to ensure that MOU overtime is not paid at the regular rate
 - Or that Cash in Lieu is not included in MOU OT calculation

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Compensatory Time Off (CTO)

- Requires an agreement between the agency and employees
- Accrues at time and a half
- Enforce FLSA CTO Maximums
- FLSA CTO vs. MOU CTO
 - Track separately if possible
- Employers ability to control use of FLSA CTO is limited - Ensure a compliant request for use and approval process in departments

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Other Key FLSA Compliance Areas

Independent Contractors

- Have economic independence and are in business for themselves
- Most important factor is who has the right to control the way work is performed
- An agreement alone is not indicative of independent contractor status

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Payroll Systems & the FLSA

Ensure With Vendor That System Can:

- Accurately record hours worked each day and on a workweek / work period basis
- Manage work periods with varying start/end dates (and of varying lengths for law enforcement/fire)
- Measure FLSA overtime on workweek or work period basis
- Correctly calculating overtime using MOU & FLSA methods (if different)

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FLSA Litigation

- Statute of limitations: Up to 3 years
- Willful Violations
- Liquidated damages
- Prevailing plaintiffs are also entitled to attorney's fees and court costs
- Settling Claims
 - Require court or DOL approval
 - Individuals vs. groups
- Good Faith Defense
 - Honest intention to comply & had a reasonable belief that actions did comply

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The FLSA Compliance Action Plan:

If we wait to do it perfectly,
we miss out on making progress.

Create a Multi-Year Action Plan

- Conduct an initial assessment to determine high risk areas
- Communicate with leaders in the organization and develop agency-wide commitment to ensure compliance
- Prioritize compliance efforts to reduce high risk and to mitigate other lower risk areas
- Create a multi-year action plan that you can reasonably accomplish

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