

South Carolina Association of
Municipal Power Systems

Employment Law Update

August 10, 2015
Linda Pearce Edwards



FLSA

- Why important
 - Costly
 - Backwages
 - Liquidated damages (double)
 - Attorneys' fees
 - No insurance coverage



Changes

- Exempt Employees
 - Duties Test
 - Salary Test - it is going to increase; unsure of the final figure



• What to do?

- Identify all employees currently classified as exempt who are making less than \$50,000.

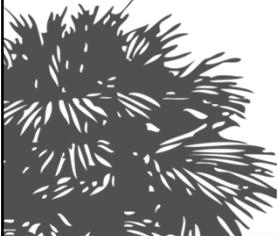


• Salary vs. hourly rate

- Salary. Non-exempt employees can be paid a salary for all hours up to 40 in one work week. Pay overtime after 40 (1½ times the hourly rate)
- Hourly rate. Divide current weekly salary by scheduled hours or by 40. Hourly rate for all hours up to 40. Time and one-half for hours over 40.

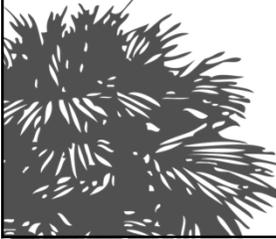


• Scheduling

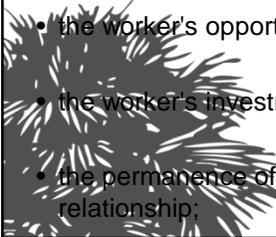


Independent Contractors

- Wishing does not make it so.



- the degree of control exerted by the alleged employer over the worker;
- the worker's opportunity for profit or loss;
- the worker's investment in the business;
- the permanence of the working relationship;



- the degree of skill required to perform the work; and
- whether the worker's service is an integral part of the employer's business



The ultimate inquiry under the FLSA is whether the worker is economically dependent on the employer or truly in business for him or herself. If the worker is economically dependent on the employer, then the worker is an employee. If the worker is in business for him or herself (i.e., economically independent from the employer), then the worker is an independent contractor.

ADA/ADAA/FMLA/Worker's Comp

- Biggest issue – Interactive Process
 - Must engage with employee.
 - Prepare record of meeting

Can the employee perform the essential functions of his job?

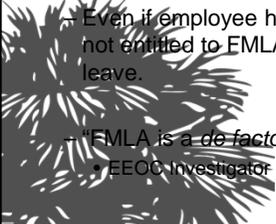
- Job description is best evidence but can supplement. Make sure job descriptions are up to date



- What is a reasonable accommodation?
 - The idea of accommodation is to enable an employee to perform the essential functions.
 - Do not have to eliminate an essential function.
 - May be entitled to reassignment or leave



- Not required to eliminate an essential function as an accommodation.
 - *But*
- Attendance is almost always an essential job function.
 - But is telecommuting an option?



- Additional leave can be an accommodation.
 - Even if employee has exhausted FMLA or is not entitled to FMLA, may have to provide leave.
 - "FMLA is a *de facto* leave of absence policy."
 - EEOC Investigator

[Redacted]

- “Disability vs. Temporary condition”
 - EEOC takes the position that at the moment an employee cannot perform the essential functions of his job, he may be disabled and entitled to accommodation.



[Redacted]