



---

---

---

---

---

---

---

---



---

---

---

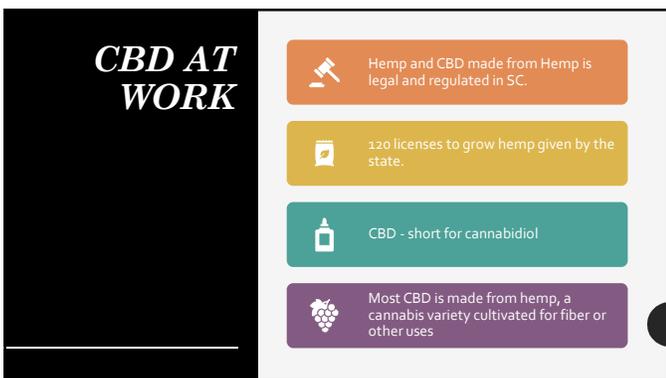
---

---

---

---

---



---

---

---

---

---

---

---

---

**CBD AT WORK**

 Famous cousin – THC –delta-9-tetrahydrocannabinol--

The active ingredient of marijuana that gets user psychologically "high."

 The U.S. Food and Drug Administration has approved one CBD-based medicine for treating seizures associated with two rare and severe forms of epilepsy, but says it cannot be added to food, drinks or dietary supplements.

 Sales of CBD have been driven in part by unproven claims that it can reduce pain, calm anxiety, increase focus and even prevent disease. But see Dr. Sanjay Gupta.

---

---

---

---

---

---

---

---

**CBD AT WORK**

 Hemp is cannabis that has less than 0.3 percent of THC. Basically, CBD is found in both hemp and marijuana, but hemp only contains CBD without the presence of THC, and therefore produces no psychedelic high.

 Many CBD labeled products are counterfeited.

 "People have started to see the market grow and there are some fly-by-night companies trying to make a quick buck," said Marielle Weintraub, president of the U.S. Hemp Authority, an industry group that certifies CBD cosmetics and dietary supplements. (September 16, 2019 -AP)

---

---

---

---

---

---

---

---

**CBD AT WORK - Testing**

SLED – "While most CBD products claim to have less than 0.3% THC, which is classified as hemp, the products remain unregulated making the reported THC levels unreliable."

Since not of the CBD products sold over the counter have been approved by the U.S. Food and Drug Administration (FDA), there can be inconsistencies associated with the manufacturing, cannabinoid concentrations, and recommend(ed) dosing/serving size. These inconsistencies could lead to Hemp based products (oils, vapes, infused edibles, etc.) being utilized that contain THC in concentrations that could possibly lead to a "positive" reasonable suspicion or random urine drug test."

---

---

---

---

---

---

---

---

### ***CBD AT WORK - Testing***

- "THC is an illicit drug and classified by the DEA as a Schedule I substance.... 'An employee found to use illicit drugs ...will be terminated from employment.'"

---

---

---

---

---

---

---

---

### ***Concealed Carry at Work***

-  Must have to CWP (Concealed Weapons Permit) to carry in legal places.
-  Some illegal places:
-  Offices or meeting places of governmental entities such as counties, cities, and school districts.
-  Police stations, Sheriff's departments, or other law enforcement facilities.

---

---

---

---

---

---

---

---

### ***Concealed Carry at Work***

-  Jails or detention centers
-  Courthouses/courtrooms
-  Polling places on election days
-  Businesses or other establishments that post "No Concealed Weapons Allowed" signs or that otherwise express that they do not want concealed weapons on their premises.

---

---

---

---

---

---

---

---

**Accommodating Women in Firefighting**

- 74 (76,000) of US firefighters were women in a 2017 study.
- 75% report lack of access to female-specific protective gear.
- One-third do not have full uniforms designed for one gender and insufficient.
- Restrooms, sleeping facilities in stations are often designed for one gender and insufficient.
- Lack of separate sleeping, bathroom and shower facilities has figured prominently in many sexual discrimination and harassment lawsuits.
- It is a factor a jury could consider when determining how sincere city officials are when claiming they do not discriminate against women.
- As more women and individuals who identify as gay, lesbian, bisexual, and transgender join the profession, living spaces should be designed with flexibility in mind.

---

---

---

---

---

---

---

---

---

---

**ADAAA considerations - Disabilities**

- Use "Interactive Process" for any question about ability to do the essential functions of the job.
- EEOC – first question – What was your interactive process?
- If not used EEOC will likely find "probable cause" discrimination.

---

---

---

---

---

---

---

---

---

---

**Overtime Update – Final FLSA Rule**

- Updates the earnings thresholds necessary to exempt executive, administrative and professional employees from the Fair Labor Standards Act's (FLSA) minimum wage and overtime pay requirements.
- Allows employers to count a portion of certain bonuses/commissions towards meeting the salary level.
- The new thresholds account for growth in employee earnings since the thresholds were last updated in 2004.

---

---

---

---

---

---

---

---

---

---

**Three Tests for Exemption**

-  Salary Basis
-  Salary Level
-  Job Duties

---

---

---

---

---

---

---

---

**New Overtime Rule – Duties Tests No Changes**

- The Final Rule did not make any changes to the Duties Tests

---

---

---

---

---

---

---

---

**“Executive, Administrative and Professional” Exemptions**

-  The most common FLSA minimum wage and overtime exemption – often called the “EAP” exemption – applies to certain:
-  Executive Employees
-  Administrative Employees
-  Professional Employee

---

---

---

---

---

---

---

---

## New Overtime Rule - Changes

-  Salary Level Increases
-  Special Salary Levels
-  Nondiscretionary Bonuses

---

---

---

---

---

---

---

---

## New Overtime Rule – Standard Salary Level

-  Raises the "standard salary level" from the currently enforced level of \$455 per week to \$684 per week (equivalent to \$35,568 per year for a full-year worker).
-  Raises the total annual compensation requirement for "highly compensated employees" from the currently enforced level of \$100,000 per year to \$107,432 per year.
-  Allows employers to use nondiscretionary bonuses and incentive payments (including commissions) paid at least annually to satisfy up to 10% of the standard salary level, in recognition of evolving pay practices.

---

---

---

---

---

---

---

---

## New Overtime Rule – Standard Salary Level

- Standard salary level
 

– Currently enforced	Effective 1/1/2020
– \$455 per week	\$684 per week
	<small>29 CFR 541.600</small>

---

---

---

---

---

---

---

---

**New Overtime Rule – Salary Increase - General**

- The \$684 per week may be paid in equivalent amounts for periods longer than one week:
  - Biweekly: \$1,368
  - Semimonthly: \$1,482
  - Monthly: \$2,964

---

---

---

---

---

---

---

---

**New Overtime Rule – Nondiscretionary Bonuses – evolving workplace practices**

- Public Sector in South Carolina – question as to whether discretionary bonuses are constitutional, but many do it.
- NONDISCRETIONARY bonuses, incentive payments (including commissions), are forms of compensation promised in advance to employees (e.g., retention bonuses, or meeting certain goals).
- May be used to satisfy up to 20% of the standard salary (approx. \$616 per week).
- If employee does not earn enough in 52-weeks, may pay "catch up" within one pay period after the end of the 52-week period.

---

---

---

---

---

---

---

---

**U.S. Department of Labor (DOL) - Proposes updating Fluctuating Workweek Overtime regulations**

- What is it?
- Non-exempt Employees whose work hours vary each week receive a fixed weekly salary.
- Divide all hours worked into the weekly salary to get the regular base rate (hourly) for each week. If they work more than 40 hours, they receive an additional 0.5 times their hourly rate each hour over 40. Changes would clarify that FWW may be used when an employee receives a commission or bonus.

---

---

---

---

---

---

---

---

<b>Weekly Salary for</b>	
40 hours:	\$420.00
Fixed Hours:	40
Hours Worked	
that workweek:	48
$\$420 \div 40 =$	$\$10.50$ RR
$\$10.50 \times 1.5 =$	$\$15.75$ OT Rate
$\$15.75 \times 8H =$	$\$126.00$ OT
$\$420 + \$126 =$	$\$546.00$ Total compensation due, including OT

## Overtime: Salary for Fixed Hours

---

---

---

---

---

---

---

---

<b>Weekly Salary-for all</b>	
hours worked:	\$420.00
<u>Week 1</u>	
Hours Worked:	49
$\$420 \div 49H =$	$\$8.57$ RR
<b>Additional Half-Time Rate:</b>	
$\$8.57 \times .5 =$	$\$4.29$
$\$4.29 \times 9H =$	$\$38.61$ OT
$\$420 + \$38.61 =$	$\$458.61$ Total compensation due for Week 1

## Overtime – Fixed Salary for Fluctuating Hours

---

---

---

---

---

---

---

---

<b>Weekly Salary-for all</b>	
hours worked :	\$420.00
<u>Week 2</u>	
Hours Worked:	41
$\$420 \div 41H =$	$\$10.24$ RR
<b>Additional Half-Time Rate:</b>	
$\$10.24 \times .5 =$	$\$5.12$
$\$5.12 \times 1H =$	$\$5.12$ OT
$\$420 + \$5.12 =$	$\$425.12$ Total compensation due for Week 2

## Overtime – Fixed Salary for Fluctuating Hours

---

---

---

---

---

---

---

---



*QUESTIONS*

---

---

---

---

---

---

---

---



**GIGNILLIAT SAVITZ & BETTIS LLP**  
SOUTH CAROLINA'S LABOR AND EMPLOYMENT LAW FIRM

---

---

---

---

---

---

---

---