

Fair Labor Standards Act: New Rules in Evolving Labor Markets

August 28, 2024

CPS HR  CONSULTING™



AGENDA

- FLSA new rule and its legal challenges
- Labor trends and business environment
- FLSA common violations
- Employers' actions and guidelines
- Individual duties test



Poll Questions 1 and 2

How confident are you in your organization's ability to correctly determine FLSA exemptions?

What resources do you rely on most when determining FLSA exemptions?

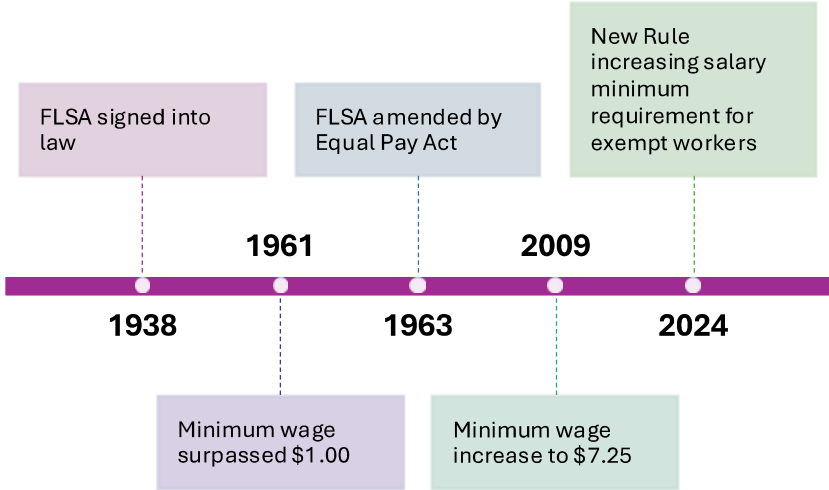
FLSA New Rule & its Legal Challenges

- ◆ The first phase of the New Rule went into effect July 1, 2024.
- ◆ Limited injunction issued by District Court only applies to State of Texas.
- ◆ The second phase goes into effect in January 2024.

Fair Labor Standards Act of 1938

- Passed by U.S. Congress into law in 1938
- Amendment of 1963 Equal Pay Act
- Covers
 - Minimum wage
 - Child labor
 - Overtime provisions
 - Hours worked
 - Recordkeeping

FLSA Historic Timeline



New FLSA Rule

DATE	STANDARD SALARY LEVEL	HIGHLY COMPENSATED EMPLOYEE TOTAL ANNUAL COMPENSATION THRESHOLD
Before July 1, 2024	\$684 per week (equivalent to \$35,568 per year)	\$107,432 per year, including at least \$684 per week paid on a salary or fee basis.
July 1, 2024	\$844 per week (equivalent to \$43,888 per year)	\$132,964 per year, including at least \$844 per week paid on a salary or fee basis.
January 1, 2025	\$1,128 per week (equivalent to \$58,656 per year)	\$151,164 per year, including at least \$1,128 per week paid on a salary or fee basis.
July 1, 2027, and every 3 years thereafter	To be determined by applying to available data the methodology used to set the salary level in effect at the time of the update.	To be determined by applying to available data the methodology used to set the salary level in effect at the time of the update.

- History of legal challenges
- Challenging 2024 ruling by Federal court in TX
- Recommended employment actions

Highly Compensated Employees



Significant increase from \$107,432 before 2024 to \$151,164 or more by January 1, 2025



Includes commissions and nondiscretionary compensation



Does not include credit for board or lodging, payments for medical or life insurance, or contributions to retirement plans or other fringe benefits



No matter how highly paid, manual nonmanagement blue-collar workers are not eligible for this exemption

Legal Challenge of the New Rule

Legal challenge was expected

Labor groups file lawsuit in the US District Court for the Eastern District of Texas

It was the same court that stopped the DOL 2016 rule

Per courts ruling, increased salary threshold “essentially makes an employee’s duties irrelevant...”

The District Court also concluded that the salary basis threshold could not be increased every three years without providing notice and an opportunity for public comment.

This time, however, the limited injunction only applies to State of Texas

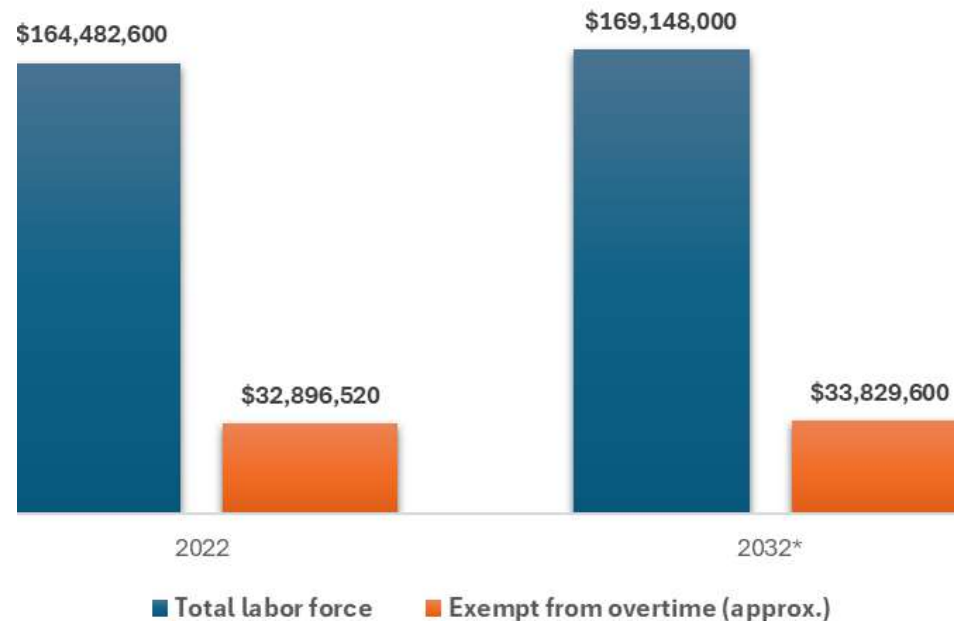
Labor Trends & Business Environment

Over 135 million workers in more than 7 million workplaces are protected or covered by the FLSA, which is enforced by the Wage and Hour Division of the U.S. Department of Labor

U.S. Labor Force

- The majority of workers are non-exempt from FLSA overtime provisions
- Misclassifying workers or inaccurate calculation of overtime must be avoided
- Reviews needed for job openings (average annual openings - 18,566,500)
- To stay in compliance
 1. Be aware of the rules
 2. Conduct thorough class review and duties test
 3. Educate management and staff
 4. Stand your grounds applying consistent and systematic approach

Total Labor Force & FLSA Exempt Workers, 2022-2032



SOURCE: DOL BLS

Characteristics of the Current Labor Force

Low unemployment

- Lowest in decades
- high demand for skilled labor
- pressure in certain industries

Shrinking blue collar sector

- Growth in blue-collar jobs inadequate
- technology shifts blue to white
- Inadequate vocational training

Inconsistent wage inflations

- Wage growth and pay compressions are predetermined by three factors:
 - legislation (in some States)
 - pressures from external markets
 - shrinking pool of blue-collar workers

Wave of Pay Equity

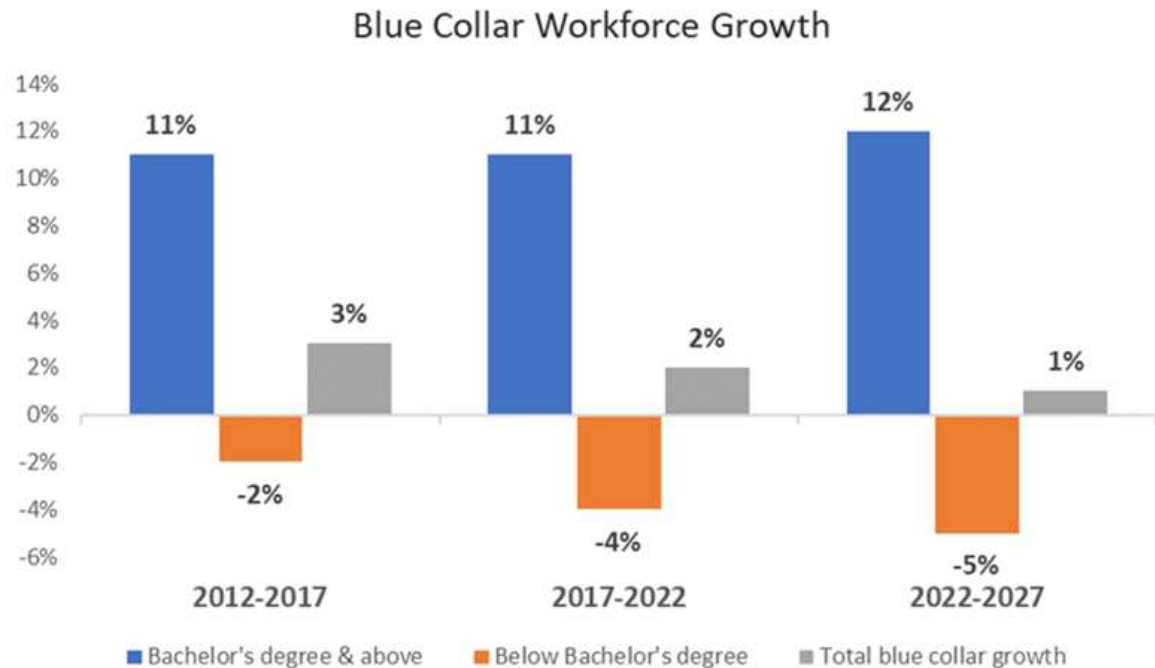
- Massive trend changing labor market adding:
 - Pay equity considerations
 - Regulating pay secrecy
 - Promoting pay transparency

Industrial Migration

- Labor moves from low paid industries to
 - Transportation & materials moving
 - Health & technology
 - From Midwest and East to West and South

Trend of Non-Exempt Blue-Collar Jobs

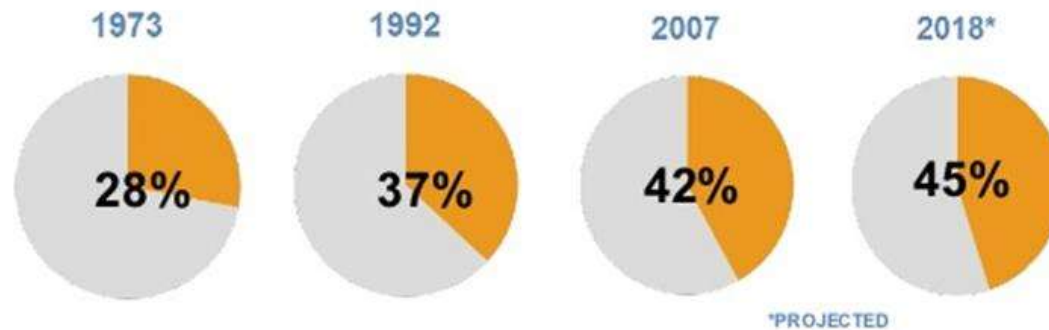
- More blue-collar non-exempt jobs require college degree
- Number of blue-collar jobs with below college requirement is shrinking
- Overall, the growth of blue-collar jobs is slowing down
- As jobs add value, compensation must be adjusted



SOURCE: McKinsey & Company

Changing Workforce Composition Affects Wages

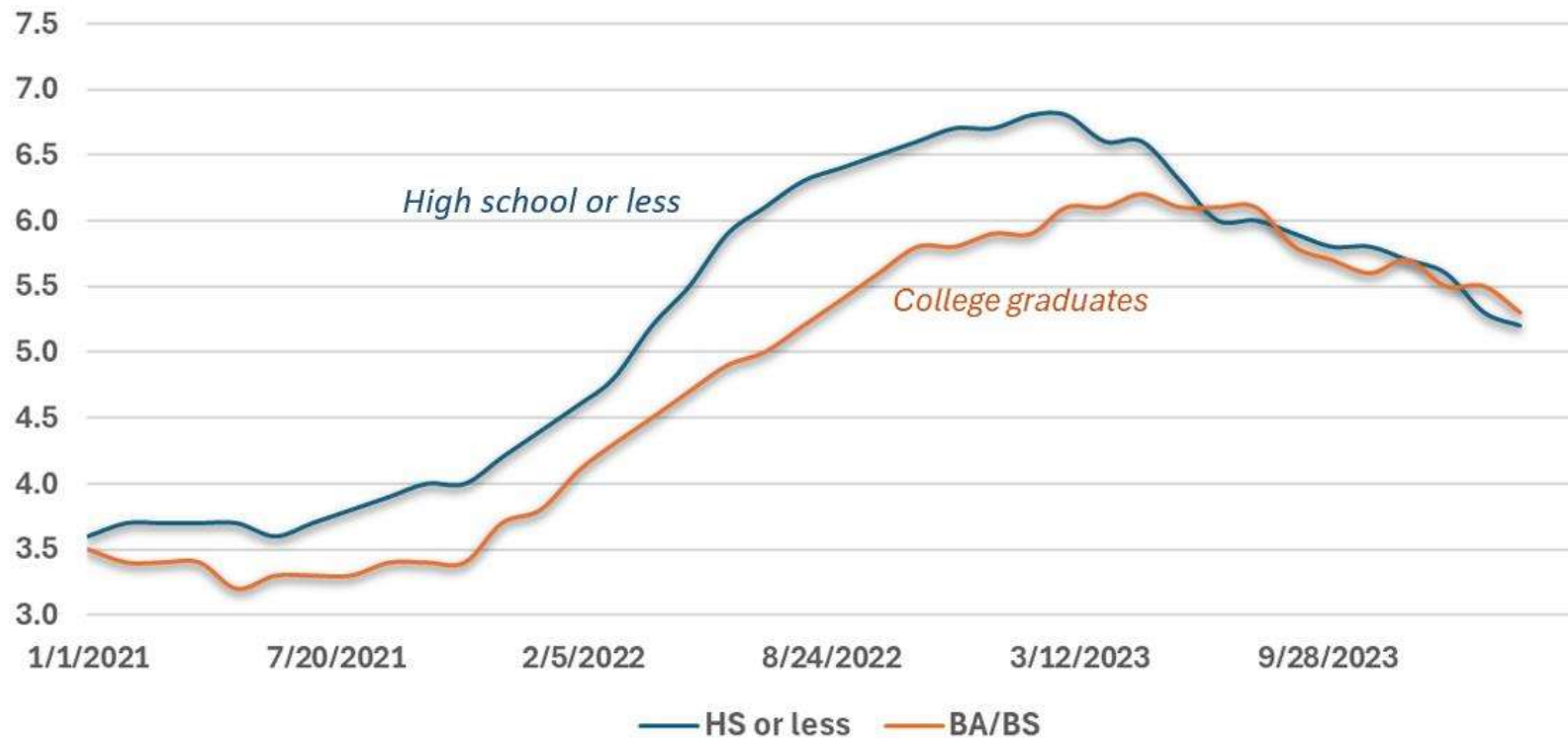
A Georgetown University study predicted the percentage of jobs needing a college degree. Some sources suggest that percentage is now higher.



Higher Increases for Blue-Collar Workers

(Source: BLS, BEA)

Wage Growth: High School or less vs. College Graduates, %



Blue-Collar White-Collar Dilemma

- **New DOL Rule to create 4M non-exempt jobs (DOL estimate)**
- **Some blue-collar jobs turn white collar: A thorough duties test is required**
- **Why blue goes white? Added complexity, independence, technological innovations**
- **How to mitigate shortage of blue-collar jobs? Training, retention efforts, accurate and fair pay administration**

Poll Questions 3 and 4

In your experience, what are the most frequent FLSA oversights?

Which of the following FLSA violations do you find is most often misunderstood?

FLSA Common Violations

From Starbucks to Google, violations of FLSA are being investigated by courts.

Common FLSA Violations

Misclassifications of jobs and workers

Pro-rating salaries for part-time workers

Inaccurate calculation of overtime rate

Improper treatment of employee as independent contractor

Failure to record and pay for all hours worked

Confusion between state and federal law in payroll or salary thresholds

Misclassifying Employees In Order To Avoid Paying Overtime

- Employers may try to avoid paying overtime by inflating titles
- Misrepresenting level of decision-making and authority
- Misjudging time spent on “supervisory” function
- Some supervisors spent most of their time performing hands-on work of their subordinates
- Some managers perform routine, repetitive tasks along with managing unit
- Only duties test (not title or assumptions) determine exemption

FLSA Cases (Misclassifying workers or calculating overtime rate inaccurately)

- Wayfair customer service representatives alleged inaccurate overtime calculation
- State Farms misclassified their insurance “phone” estimators
- Starbucks classified lead workers as managers
- SiriusXM customer service representative alleged overtime miscalculations
- Google excluded commission and stock unit payments in calculation of the overtime pay rate.

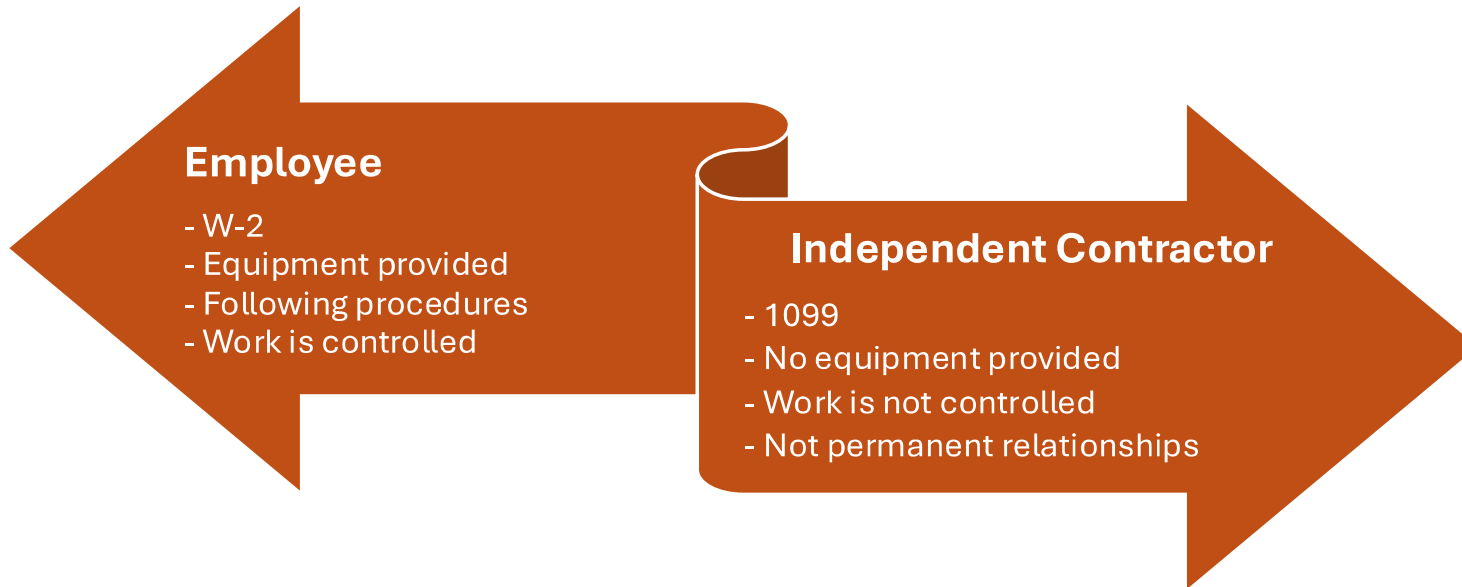


5hrs * \$10 * 1.5
= \$75

\$375 weekly total

Setting Clear Employment Relationship

- Properly classified “independent contractors” are not covered under the FLSA



Other FLSA Violations

- Not paying employees for mealtime or breaks
 - The law typically requires employers to pay their hourly employees for breaks that last less than twenty (20) minutes.
 - Employers can automatically dock their hourly employees for a 30 or 60-minute meal break each day, but only if the employee is completely relieved from duty for meal break time.
- Allowing employees to “waive” their right to overtime
 - Employee cannot waive their right to compensation for overtime hours worked.
 - The overtime requirement may not be waived by agreement between employer and employee.
- Refusing to pay overtime if not approved in advance
 - Employer can request pre-approval of overtime.
 - But FLSA does not distinguish between approved and non-approved overtime.
 - If overtime hours worked, employer must pay.

Employers Actions & Guidelines

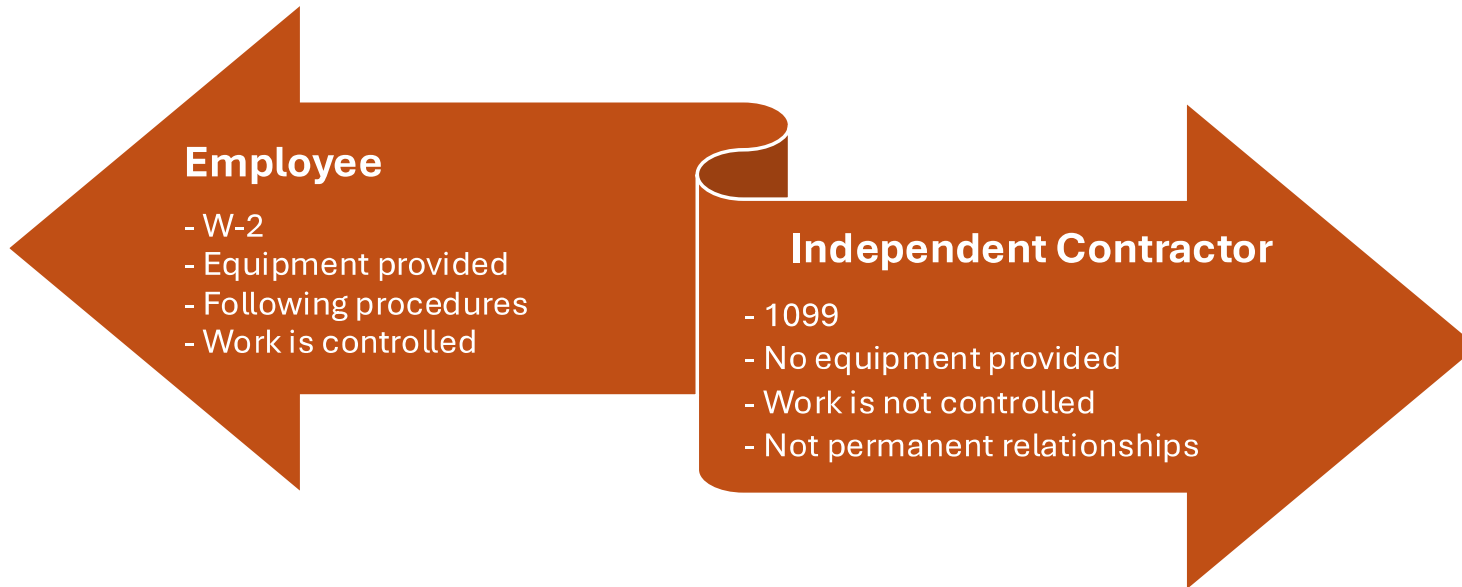
Principles and conceptual framework are presented to guide employers to stay compliance and optimize efficiency of their human resources.

Principles & Conceptual Framework

- When determining the exemption, use concepts of job enlargements & job enrichments:
 - Job enlargements add volume and variety to job, but don't add value
 - Job enrichments add depth and complexity, and may add value and consequently affect FLSA status
- Use job analysis and individual position review:
 - Job analysis will collect data on all aspects of job
 - Individual position review will investigate employee's actual work within a given position
- Challenge the status quo:
 - Error to misclassify position as non-exempt, may cause additional overtime expense, but...
 - Error to misclassify position as exempt, may cause legal problems
- Rule of Thumb: When in doubt – make it non-exempt!

Setting Clear Employment Relationship

- Properly classified “independent contractors” are not covered under the FLSA



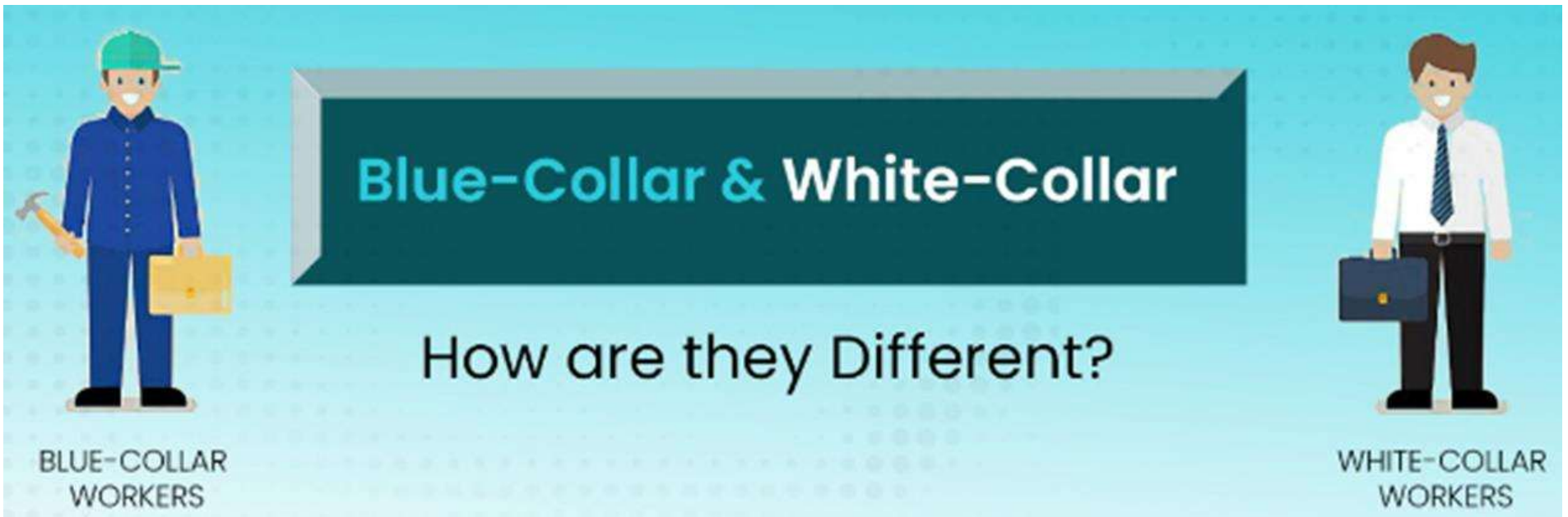
Overtime Provisions

- The most common FLSA overtime exemptions or “white-collar” exemption apply to certain:
- Executive Employees
- Administrative Employees
- Professional

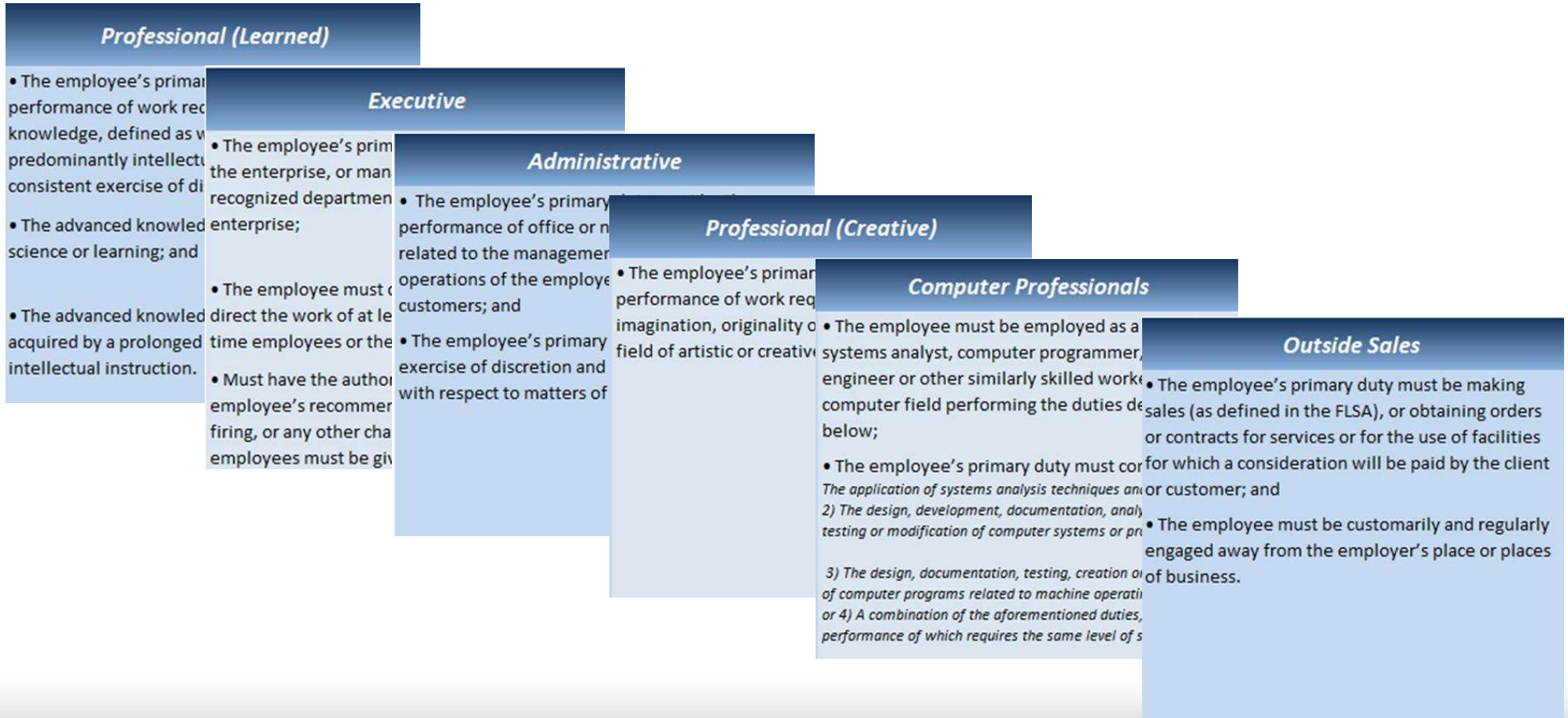


Determining FLSA Exemption

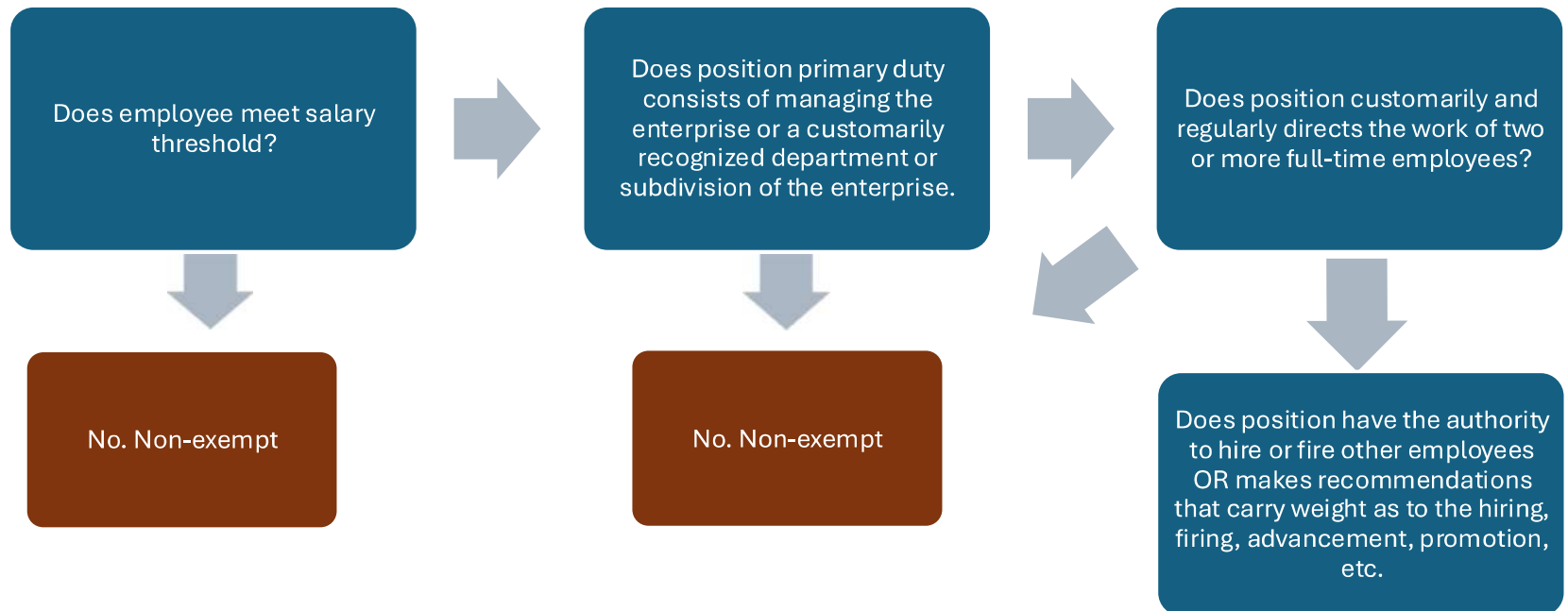
- Determine eligibility
- Salary basis requirements
- Duties test



Overtime Exemptions Test



Example of Duties Test



Name	Title	Dept	Hours	Salary	FLSA Status	Meet Salary Test	Cost to New Salary Minimum
Adam	Accountant, Senior	Finance	80	\$55,867	Exempt	No	\$2,789
Cathy	Permit Supervisor	Business Office	80	\$60,203	Exempt	Yes	
Trina	Emergency Coordinator	Public Safety	40	\$39,104	Exempt	No	\$19,552
Dale	Administrative Analyst	City Court	80	\$57,741	Exempt	No	\$915
Glory	Communications Liaison	Public Relations	80	\$88,205	Exempt	Yes	
Angel	Assistant Fleet Manager	Fleet	80	\$58,657	Exempt	Yes	
							\$23,256

Performing Salary Test for Exempt Staff

- Run a staff report on all exempt employees to identify employees below new salary minimum
- Do not pro-rate part-time employees; they must meet new salary minimum
- Decide whether to adjust to new minimum or reclassify to non-exempt status

Questions?