

Wage and Hour Laws: Every Manager's Concern

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Chapter Objectives

- Review the origins of the Fair Labor Standards Act (FLSA) and develop an understanding of the rationale for its passage.
- Focus attention on the portions of the FLSA that are pertinent to the majority of working healthcare managers.
- Address the meanings of and the differences between the employee classifications "exempt" and "nonexempt" and how these impact the healthcare manager's role.
- Address "overtime" and the problems attendant to its determination, payment, and control.
- Enumerate the manager's responsibilities relative to wage and hour legislation.

The Beginning: The Fair Labor Standards Act

The Fair Labor Standards Act (FLSA), passed into law in 1938, is the basic federal wage and hour law. Since its passage, it has been the basis of essentially all legislation affecting wages and hours in the workplace, serving as a model for the wage and hour laws of many individual states. There is considerable variation among state laws; some states are heavily reliant on the federal law while certain other states have wage and hour laws of their own, some preceding the federal law and some addressing a few unique issues that the FLSA does not address. As is always

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the case when the same practices are addressed by both federal and state laws, the more stringent of the two is the one that applies in any given situation. However, the FLSA is relatively comprehensive and thus in a practical sense, it negates the need for extensive detail in state legislation. Because the FLSA is more comprehensive and far-reaching than the wage and hour laws of most states, it essentially serves as the country's basic wage-and-hour legislation.

The FLSA is administered by the Wage and Hour Division of the US Department of Labor (DOL). It has been amended several times since 1938, with one of the more prominent amendments being the Equal Pay Act of 1963.

At one time in the not-too-distant past, certain healthcare organizations, specifically providers such as hospitals, were exempt from the minimum wage and overtime requirements of the FLSA. Such organizations were not required to—and some at the time did not—pay minimum wage or pay for overtime. However, amendments to the FLSA passed in 1967 required that the law's minimum wage and overtime requirements must apply equally to healthcare organizations as to organizations in other industries.

Congressional Intent

In passing the FLSA, one of the apparent objectives of the US Congress was to reduce the high unemployment rate that typified the 1930s, the decade of the Great Depression. The FLSA did so by reducing the number of hours in a workweek to a uniform standard, thus attempting to spread available work over a greater number of workers. In addition to defining a so-called normal or standard workweek, the FLSA set minimum rates of pay, established rules for the payment of overtime, and regulated the employment of minors.

The FLSA is a lengthy and detailed body of legislation that addresses many aspects of employment. Only a few parts of this legislation are immediately pertinent to the majority of healthcare department managers. Foremost among these are the portions of the law addressing employee classification, hours of work, and the payment of overtime. A few parts of the FLSA, in particular the minimum wage and child labor requirements, affect other departments within the organization. For example, in securing job candidates, the human resources department will not refer for interview any job applicants who are not of legal age to do the kind of work involved or work the number of hours or shifts required (the threshold for employment in the majority of positions in the healthcare organization is age 18). The minimum wage provisions of the FLSA are also of concern to administration, human resources, and the finance department, since some such organizations still start their unskilled entry-level employees at minimum wage.

Therefore, this chapter will focus on those portions of relevance to most working department managers who essentially need to know about the differences between and the treatment of *exempt employees* and *nonexempt employees*; the payment of overtime; and, by logical extension of management's concern, the control of overtime.

Employee Classifications

Exempt Employees

Most managers have heard the terms “exempt employee” and “nonexempt employee” all of their working lives. These labels mean, of course, that one is either exempt or not exempt from the minimum wage and overtime requirements of the FLSA. The applicability of the minimum wage condition can essentially be ignored as far as exempt employees are concerned; the conditions defining exempt (outlined as follows) preclude payment of compensation below some specified level.

Exempt employees, often referred to as “salaried,” need not legally be paid overtime, but nonexempt employees, usually referred to as “hourly” employees, must by law receive overtime payment. These descriptions can get hazy under certain conditions. Although the law does not require overtime payment to them, some employees who otherwise qualify as exempt can be paid overtime at the convenience of the organization. For example, the majority of registered nurses working in staff positions receive overtime pay for hours worked in excess of the normal workweek even though they may be described as professionals under FLSA criteria. This is clearly a practical consideration, especially in light of chronic nursing shortages. How many nurses would readily work extended shifts or extra days without additional compensation?

Employees in any of the three following categories can legally be treated as exempt from the overtime requirements of the FLSA:

1. *Executives.* An executive employee must generally spend 50% or more of the time in direct management of an organization or organizational subunit such as a department. An executive employee must also direct the activities of two or more persons. The executive definition may also require that a person possess the authority to hire and fire or so recommend; possess discretionary powers rather than being assigned mostly routine work; and from workweek to workweek, spend no more than 40% of the time on non-managerial work.
2. *Administrative.* An administrative employee must spend 50% or more of the time on office or nonmanual work related in some way to policy, general business, patient care, or people in general, and must be required to exercise discretion and independent judgment when necessary. Other tests of the administrative classification may consist of assisting executive or other administrative personnel; handling special assignments with only general supervision; working in a position requiring special training, experience, or knowledge; and spending not more than 40% of the time on nonadministrative work.

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3. *Professional.* Professionals in healthcare institutions (e.g., chemists, registered nurses, physical therapists, pharmacists, physicians) are so classified by virtue of spending 50% or more of the time in work that requires advanced specialized knowledge or is original or creative in nature. The definition may also require that the professional be consistently required to exercise discretion and independent judgment, be employed at intellectual and varied work, and be engaged in nonprofessional activities not more than 20% of the time.

The FLSA specifies the minimum salary that executive, administrative, and professional personnel must be paid. The single exception applies to licensed medical practitioners, interns, and residents; they are subject to no minimum salary requirements.

Controversies centering on the applicability of a particular nonexempt definition are frequently decided on the basis of the percentage of time spent on various activities. The time test applies on a workweek to workweek basis.

Nonexempt Employees

All employees who do not fall under the executive, administrative, or professional category are considered nonexempt employees. They must be paid at least the prevailing legal minimum wage for each hour worked in a workweek, and they must be paid at a rate of 1.5 times their “regular rate” for all overtime hours (“regular rate,” addressed later in this chapter, is emphasized because it is not simply an employee’s base rate of pay; differences in identifying its components have caused legal difficulty for some organizations).

The organization is required to keep detailed records of hours worked and wages paid. There are a few well-defined exceptions to the payment of the legal minimum wage; special regulations allow the payment of lower rates to students, learners, and apprentices. Employment of such persons is also subject to additional requirements and restrictions.

Which Classification?

The preceding paragraphs set forth, in summary fashion, the conditions that must be satisfied for a particular position to be labeled exempt. Any position that meets the requirements of executive, administrative, or professional *may* be designated exempt, and all positions not qualifying under these requirements *must* be designated nonexempt.

Being nonexempt is advantageous to the employee because overtime must be paid for all hours in excess of 40 in a week. Being exempt is seen by some as advantageous to the employee because of the usually associated higher rate of pay and often the flexibility of hours. The exempt designation is seen as advantageous to the employer because of the stability of labor cost that it affords and the ability to get additional work accomplished beyond 40 hours in a week without additional payment.

It is essential to recognize the difference between the uses of *may* and *must* in the preceding paragraph. The law clearly states that any position that does not meet the exempt criteria must be considered nonexempt and be paid overtime. However, a position that meets the exempt criteria is not legally required to be treated as purely exempt. It is true that many such positions are classified and treated as clearly exempt (e.g., healthcare administrators, department heads, accountants, engineers). It is equally true that some positions that qualify as exempt are, as previously noted, treated as nonexempt in that they receive overtime pay. This practice, essentially giving some employees the best of both the exempt and nonexempt worlds, exists out of practicality.

There is some risk involved in incorrectly classifying employees as exempt when they should in fact be nonexempt. In some organizations, certain positions have been treated as exempt simply because they were compensated at or above the minimum exempt salary requirement. However, because a position may not involve a sufficient percentage of true administrative work it may, upon audit by the DOL (or by the equivalent state agency), be ruled nonexempt. If this occurs, the organization will be required to pay imputed overtime costs for positions that have been incorrectly classified. For a position to be treated as exempt, it must meet the requirement for work content as well as that for salary.

The Difference Is More Than Academic

It is to the department manager's advantage not only to understand the difference between exempt and nonexempt but also to understand the FLSA requirements of each and to ensure that the department's employees are properly classified. Knowledge of FLSA employee classifications is also valuable in the creation or revision of job descriptions.

In many organizations, one can find improperly classified employees, and in fact it has been observed on many occasions that the FLSA is the one law having to do with employment that is most frequently violated by employers. Some violations are innocent, resulting from confusion or misinterpretation. However, some violations of wage and hour law result from employers deliberately bending regulations to save money.

There is always the chance that an organization's decision to designate any particular position as exempt may be challenged by the aforementioned DOL. An audit or investigation by DOL can be initiated in either of two ways: the DOL may decide to do a routine audit of the practices of an organization selected at random, or DOL investigators may descend upon the organization because they have received an employee complaint. The DOL investigators will not reveal whether they are there for a routine audit or because of a complaint.

A given complaint may involve almost any aspect of wage payment, but many of the more common complaints involve eligibility for overtime payment as determined by an employee's status as exempt or nonexempt. DOL investigators apply

their judgment in comparing actual job duties with the FLSA definition criteria for executive, administrative, and professional employees. Consider the example presented by a particular practice that has caused many organizations to run afoul of the DOL: reclassifying higher-level secretaries (such as those in administration or in other senior secretarial positions) as salaried and thus exempt by raising their pay to an appropriate level (relative to the FLSA requirements) and giving them more responsible sounding titles. *Administrative assistant* is one such title often encountered. Doing so provides the flexibility of longer or varied hours when appropriate. Numerous organizations have made such changes in the apparent belief that the increased pay and title change were enough to justify the exempt designation. However, when the DOL applies the FLSA requirements to the jobs of such employees, these positions frequently do not measure up to the defining requirements of *administrative* personnel, especially as concerns the “exercise of discretion and judgment” and the percentage of time spent doing various kinds of work.

When such findings result from audit or investigation, the DOL will require that for each affected person, the hours worked in excess of 40 must be determined—often estimated, when specific records are not available—and that those hours must be compensated at an overtime rate. When the DOL concludes that the avoidance of overtime payment was not intentional, the organization will be ordered to pay imputed overtime retroactive for up to 2 years. If it is concluded that the organization was deliberately avoiding overtime costs, the payment of imputed overtime for 3 years past is required and there can be additional legal repercussions as well.

It is therefore in the best interests of the organization for the department manager to know the requirements of the FLSA and to provide critical input into the evaluation and classification of positions in the department.

Nonexempt employees are paid by the hour and are entitled to 1.5 times their “regular rate” for hours worked in excess of 40 in a week. Exempt—that is, salaried—employees are theoretically compensated for the week at the same level regardless of whether they work more or less than 40 hours. In practice, however, in most organizations’ exempt employees ordinarily average in excess of 40 hours a week. As might be cynically expressed by a salaried employee trying to explain the essential difference between nonexempt and exempt: Nonexempt employees get time-and-a-half; exempt employees just get time and again.

Equal Pay

A section of the FLSA prohibits discrimination among employees on the basis of gender when the employees are doing equal work on jobs requiring equal skill, effort, and responsibility, and are performed under similar working conditions. In correcting unlawful differences in rates of pay, the FLSA requires that the lower rate be increased; it is not permissible to decrease the higher rate. The act does make

provision, however, for unequal pay if the inequality is directly attributable to a bona fide seniority system, merit system, incentive compensation system, or any other plan calling for a differential in pay based on any factor other than sex.

Overtime Compensation

The Workweek

The FLSA defines the workweek as a fixed, recurring period of 168 hours; that is, 7 consecutive 24-hour periods. These 24-hour periods need not be calendar days, and the 7 periods together need not comprise a calendar week. For instance, workweeks beginning and ending at midnight on Friday or midnight on Sunday are not uncommon. The workweek may be changed, and many organizations have done so to facilitate payroll accounting, but it cannot be changed in midstream; that is, it cannot be changed such a way as to avoid payment of overtime that has technically already been earned.

Time and One Half

The FLSA requires payment of 1.5 times a worker's regular rate for all overtime hours. Overtime hours are defined as hours worked in excess of:

- 40 hours in a 7-day workweek, where the ordinary 7-day workweek is used; or
- 8 hours per day *or* 80 hours per 14-day period, when the use of the 14-day period has been approved and posted.

The organization may use either or both methods for certain employees but may use only one method at a time for any specific employee group. If the so-called “8-and-80” provision is used, overtime must be paid for all hours worked in excess of 8 in each day or in excess of 80 in the 14-day period, whichever results in the greater number of overtime hours.

In the example shown in Exhibit 1-1, the employee worked a total of just 80 hours. However, the employee is owed 3 hours of overtime, this being derived from the 4th day, when 10 hours were worked, and the 8th day when 9 hours were worked (even though on 1 day the employee worked only 5 hours).

Consider next the situation presented in Exhibit 1-2. In this case, the employee worked more than 8 hours on 1 or more days and more than 80 hours for the 14-day period. This example assumes that the employee worked 8 hours in each of 9 days and 10 hours on the 10th day and thus is due 2 hours of overtime. Note that the employee has worked 2 hours in excess of both the 8 hours per day and 80 hours per work period provisions. However, this does not mean that the employee is entitled to overtime for 4 hours (based on 2 hours in excess of 8 and 2 hours in excess of 80). The employee is owed just 2 hours of overtime pay. Hours cannot be double-

Exhibit 1-1**"8 and 80" Example 1**

<u>Day</u>	<u>Hours</u>
1	8
2	8
3	5
4	10
5	8
6	0
7	0
8	9
9	8
10	8
11	8
12	8
13	0
14	0
<hr/>	<hr/>
14 Days	80 Hours

Overtime owed: 3 hours (2 from day 4; 1 from day 8)

counted; rather, when the totals of daily overtime and over 80 differ, it is the higher that must apply.

The FLSA also specifies that only hours actually worked need to be counted toward determining overtime. That is, the organization is not required to include nonworked time such as vacation days, sick leave, holidays, and personal time as part of the 80 hours.

The "Regular Rate"

The so-named "regular rate" referred to in the FLSA includes the person's scheduled hourly rate plus on-call pay, call-in pay, and shift differential. Exhibit 1-3 presents an example of the effects of these additions on the rate.

Generally, hours spent at home on call are not counted as hours worked. This is generally the case because this treatment depends on the employee's freedom of movement while on call; often an argument can be made in favor of including on-call pay. In determining whether on-call time must be counted as hours worked, the government will generally look to determine whether the employee must remain on

Exhibit 1-2**“8 and 80” Example 2**

<u>Day</u>	<u>Hours</u>
1	8
2	8
3	8
4	8
5	8
6	0
7	0
8	8
9	8
10	8
11	8
12	10
13	0
14	0
<hr/>	<hr/>
14 Days	82 Hours

Overtime owed: 2 hours (from day 12)

the employer’s premises or be sufficiently close that the time cannot be used as the individual chooses. However, whether the hours on call are considered work time or not, *pay* received for such time is counted in determining the regular rate. Note also that when an employee who is on call is actually called in to perform work, the hours actually worked are counted in the total hours worked. If this is the case, the hours will be treated as working time for purposes of both minimum wage and overtime requirements.

Revised Overtime Eligibility Rules

In August 2004, the Bush administration introduced significant changes to the portions of the FLSA that address overtime, with the stated intent of helping an estimated 1.3 million low-wage workers while removing premium pay eligibility from certain higher paid employees.

Eligibility for overtime pay is one of the most frequently litigated workplace issues. The portions of the FLSA that address overtime pay and exemptions for professional,

Exhibit 1-3**“Regular Rate” Example**

Overtime period: 7 days, 40 hours

Employee worked 50 hours, including 4 hours of call-in time

Rates paid: Basic: \$14.00 per hour

Shift differential: \$1.00 per hour

Call in: \$65.00 (4 hours)

On call: \$40.00 (flat)

Calculation: \$14.00 × 46 hours = \$644.00

\$1.00 × 46 hours = 46.00

Call in = 65.00

On call = 40.00

Earning without overtime premium = \$795.00

\$795.00/50 hours = \$15.90 “regular rate”

One-half “regular rate” = \$7.95

Premium: \$7.95 × 10 hours = 79.50

Total earned: = \$802.95

administrative, and managerial employees affect tens of millions of workers, many of whom are paid hourly and are eligible for overtime pay. Some 25–30 million such workers held “managerial” or “administrative” jobs that fell into a broad gray area of the law and many of whom worked in excess of 40 hours per week at salaries that were low by contemporary standards. A long-standing attitude in business suggested a widespread belief that the person who worked in any supposed white-collar job need not be paid overtime.

The August 2004 changes, subsequently modified, specified that:

- Anyone earning less than \$455 per week (\$23,660 annually) is automatically qualified for overtime.
- Those earning more than \$100,000 annually are not eligible for overtime *if* they “customarily and regularly perform at least one of the duties of an exempt executive, administrative, or professional employee identified in the standard tests of exemption.” (As a result, there can be workers earning in excess of \$100,000 who are eligible for overtime pay as long as they do not meet the foregoing qualification.)
- Certain workers, including police, firefighters and other first responders, practical nurses, health therapists, and certain veterans do not lose their eligibility.

How Well Do You Know the Wage and Hour Laws?

Some Managers' Questions

A sampling of questions asked concerning wage payment reveals that the majority of department managers have more concerns about overtime payment than any other wage and hour practices. The following questions and responses reflect many department managers' concerns about overtime.

Q—I have several hourly employees who frequently get busy around the middle of the shift and work right through their scheduled lunch break. How should this time be recorded? Can it cause overtime pay?

The time has to be recorded as time worked, and it has to drive overtime pay assuming it causes a person's total hours for the workweek to exceed 40. There is, however, a contradiction inherent in this practice: In most instances, permitting an employee to work an entire shift without a meal break is itself a violation of wage and hour law.

Q—I have an hourly employee who I discovered has regularly been taking work home to complete it. Are we supposed to pay for the time spent doing so? Can this practice cause overtime pay?

To answer both questions: Yes. The solution, of course, is to prohibit the taking home of work by nonexempt employees. However, one common problem associated with this practice is presented by the employee who takes work home without your knowledge and later claims pay for its completion. Your response should be, first, to let employees know they are not to take work home (nonexempt employees, that is—exempt employees can take home all the work they wish to), and second, to discipline those who act contrary to your instructions.

Many employees will take unfinished tasks home simply for the sake of getting them done or keeping up with the workload and will never make an issue of doing so. The danger resides with the occasional employee who may do so secretly for a period of time and then claim payment. This suggests that the manager must always be aware of each employee's level of output. Under wage and hour law, work done at home remains extra work for compensation purposes even if the manager is unaware it is being done.

Q—Should it not be enough for all employees to know that the organization has published rules for addressing overtime: rules that all can read and understand and comply with?

The rules are usually in the personnel policy manual and in the organization's employee handbook, and it is common for one of the most publicized overtime rules to require that all overtime must be approved in advance. However, a published rule does not get the organization off the hook for voluntary or casual overtime that has not received advance approval. The department manager must monitor such practices.

Q—A particular nonexempt employee regularly continues to work for 15–20 minutes after quitting time. Another puts in an extra 30 minutes every week or so without permission. Do we have to pay overtime in these circumstances?

Overtime payment is required under the law even if the employee does so without permission and in spite of a policy calling for advance approval. The organization is obligated to pay for all hours worked whether or not they occur in brief increments like 15 or 20 minutes and whether or not they are approved in advance. However, the department manager can discipline employees who put in extra time contrary to a policy calling for advance approval. The manager must also be aware of an obligation accruing for so-called casual overtime by an employee's habit of consistently clocking in early or clocking out late. The organization will likely have a policy requiring hourly employees to clock in or out within a certain amount of time (commonly anywhere from 6–15 minutes) before official starting time or after scheduled quitting time.

Q—I would like to schedule an occasional meeting over the lunch period, and have the staff bring their lunches. A colleague favors a once-per-week breakfast meeting held 1 hour before starting time. Do we have to pay extra for these practices?

Yes. For nonexempt employees, this is considered work time even though they may be consuming a meal while they listen or participate. As long as work is involved, it is work time. As long as the meeting is mandatory and business is discussed, for nonexempt employees, it is paid time.

Q—In my department, it is most convenient to have some employees take lunch at their workstations for the sake of telephone coverage and such. Is this acceptable?

This practice can be troublesome on two counts. First, the time must be counted as work time and it can drive overtime. Second, wage and hour law specifies that most employees' meal periods must consist of at least 30 minutes *uninterrupted by work*. Consider it a rule that when an employee is eating and working in the same time period, the time is always considered work time.

Q—How about the use of compensatory time for hourly employees instead of overtime?

This is generally not permitted. However, it is allowable under certain specific circumstances if the time off occurs within the same workweek as the extra time worked, and if the time off is granted at 1.5 times the extra worked time (e.g., 4 extra worked hours are compensated by 6 hours off). But this sort of "time-off plan" must be formalized in a written policy and the affected employees must agree to it.

Q—Can the employer reduce an exempt employee's pay for partial days missed?

No. Salaried—that is, exempt—employees are paid by the week or some other lengthier period, not by the hour. They are essentially paid for doing the job, not for working specific amounts of time. If they are docked for partial days, they could then be considered nonexempt and subject to the overtime provisions of the FLSA. The employer cannot have it both ways; that is, not paying for overtime but docking for hours missed. The DOL would rule that employees treated in this manner are nonexempt. An exempt employee who misses a *full* day of work can be docked for

the day if all other applicable benefits (such as sick time, vacation, personal time, etc.) have been consumed.

Q—Is it generally acceptable for exempt employees to keep track of extra hours worked and thus accrue personal time or comp time to use later?

This is not acceptable under wage and hour law. Whether the exempt employee works 1 hour or 16 hours on any particular day, the pay for the day remains the same.

Q—For the sake of building a team and helping establish solid interpersonal relationships, I would like to hold an occasional breakfast or dinner gathering. Attendance would be voluntary and no business would be conducted. The sole purpose would be to get to know each other better. Is this allowable, or would we have to pay people for their time?

If attendance is truly voluntary and no business is conducted, you will have no obligation to pay for their time.

The Manager's Timekeeping Responsibilities

What the department manager will be required to do for timekeeping purposes may vary according to the particular organization's payroll system and the numbers of exempt and nonexempt employees in the department. In general, in monitoring employees' time and properly addressing payroll system requirements, the first-line manager will be expected to:

- Carefully review each time record for calculation errors or other discrepancies between hours worked and what has been recorded. (This record may involve a time sheet completed manually, a time card punched at a clock, or an electronic entry into an automated attendance system.)
- Properly note break times and meal periods as required by the payroll system and ensure that all time recorded is in the appropriate place (for the correct day or shift).
- Ensure that worked overtime has been properly approved, and address any employee time-recording practices that could result in so-called casual overtime.
- Ensure that employees do not place extraneous entries or notations on the time record. Time records should be for recording time worked only and should not be used for relaying messages or explaining entries.
- Periodically remind employees of appropriate time-recording practices. It would be helpful to make this a topic at an occasional department meeting.
- Let any affected employee know up-front (that is, before paychecks are issued) that he or she might not be paid for certain absences or under certain exceptional circumstances.
- Ensure that all time records for the department are completed, checked for accuracy, and submitted by the deadline called for by the payroll system.

Conscientious Control of Overtime Required

Monitoring Is Essential

In many departments, overtime is similar to absenteeism in one critical dimension: It tends to go out of control or at least increase if it seems as though no one is watching or no one cares. Although overtime is usually a component of the department's budget, it can nevertheless get out of control if not closely monitored.

Overtime Is Not Always the Answer

For some occasional needs, overtime, even recognizing payment at time-and-a-half, is more economical and more practical than adding staff. But if a particular need continues indefinitely, it is often worth considering the addition of staff or the addition of hours for certain part-time employees. Overtime should be considered a short-term solution; it should rarely be used to fill a well-known recurring need that can be more economically addressed with other staffing options. The situation to be avoided is one in which an employee receives steady overtime to a point at which the overtime payment becomes regarded as part of the person's regular income.

Causes of Overtime

The causes of overtime can be many and varied, but within the organization that is experiencing excessive overtime use, the causes often include most or all of the following:

- *Variations in workload.* The variations in workload most often prompting overtime are those due to unexpected changes in demand, unanticipated alterations of deadlines, and genuine emergency situations. Since variations of this nature are not predictable, overtime is often the only recourse.
- *Absenteeism.* There is often a demonstrable, direct relationship between employee absenteeism and the need for overtime. Absenteeism increases and the requests for overtime increase, especially in patient-care and other direct-service activities where the one-for-one replacement of absent staff is essential.
- *Toleration of substandard performance.* An attitude of passivity sometimes permeates management and workforce alike. All parties come to accept that work not accomplished on regular time will be done on overtime, and thus by default, a practice develops of rewarding substandard performance.
- *General acceptance of overtime as a normal practice rather than an exception.* If the prevailing attitude has always been that overtime is available to catch up, then overtime will always be depended upon to do so. There often appears to be some validity to the notion that work expands to consume the time available for its completion.

- *Lack of management accountability.* If the first-line manager does not have to answer to an immediate superior for the use of overtime without particular concern for its cost, overtime will come to be accepted as normal and thus will be less likely to be seen as a way of addressing handling true exceptions.
- *Rigid scheduling practices.* When the manager or scheduler is constrained so severely by scheduling practices so as to be unable to schedule without causing overtime in cyclic schedules, an implied guarantee of overtime has been extended to elements of the workforce. Built-in overtime, and indeed all forms of guaranteed overtime, undermine the basic purposes of overtime and again lead toward its acceptance as a normal practice.
- *Bargaining unit work rules.* Various labor contracts state that only certain classifications of employees can perform certain kinds of work. Often under such rules, the logical persons to meet unforeseen requirements, such as part-time employees who could have their hours temporarily increased, are prevented from being used most efficiently because the contract may state, for example, that overtime must be offered first to full-time employees by order of seniority.
- *Inappropriate or insufficient equipment and inefficient physical work area.* Physical conditions that increase worker fatigue or impede the efficient performance of work often make it necessary to catch up using overtime. When it comes to productivity, an employee can be only as efficient as the equipment and the work environment will allow.

Toward Effective Control of Overtime

There are several approaches available to the first-line manager for controlling overtime while minimizing the risk of running afoul of the FLSA. These include the following.

Regulating Demand

In some departments (there are a number of functions within a healthcare organization to which this cannot apply), it is possible to take actions that regulate the demand for the department's services. Means available for the regulating demand include working on a reservation or appointment basis, promoting low-demand periods, and using complementary scheduling when it may be possible to schedule certain kinds of users into certain time periods.

Improving Staffing Practices

Among the steps the manager can consider to improve the department's staffing practices and thus help reduce overtime are cross-training employees of equivalent skill and grade in each other's jobs; using float personnel as appropriate; utilizing per diem, casual, or optional staff; increasing the hours of certain part-time employees; and constantly reevaluating scheduling practices to assure that they recognize the reality of the department's staffing circumstances.

Analyze and Improve Work Methods

Ineffective work methods; inadequate operating procedures; ineffective, obsolete, or otherwise inappropriate equipment; and inefficient workplace layout all tend to depress productivity and thus increase the pressure for overtime. Look closely at the backlog of work and bottleneck situations that seem to necessitate periodic overtime.

Control Absenteeism

As suggested earlier, there is often a direct relationship between a department's level of absenteeism and the amount of overtime worked. To address absenteeism directly is to directly address the problem of excess overtime as well.

Manage Responsibly

Managing responsibly includes accepting accountability for the amount of overtime usage in the department. Such acceptance suggests a thorough, rational approach to the examination of each instance of possible overtime. When possible overtime need arises, before granting approval, check first to determine whether the work can be postponed, reassigned to persons who are already present, or accomplished by faster, more efficient means. If these solutions are unavailable, check for available part-time, float, or call-in help. Consider also available full-time staff who have been absent part of the week. Under the strict FLSA requirement to pay overtime for hours in excess of 40 (and in the absence of the occasionally encountered organizational policy for overtime payment for more than 8 hours in a day), employees who have been absent for part of a week are often willing to make up all or part of the balance of the workweek by working at their regular rates.

Only upon exhausting all of the foregoing possibilities without resolution should the manager authorize overtime, and only then according to organizational policies that are consistent with the overtime portions of the FLSA.

Overtime Authorization

First-line managers often experience problems with the authorization of overtime. Many organizations' systems call for approval in advance. However, because of emergency situations, advance authorization is not always possible, and employees who may be put in a position of having to judge for themselves should know the applicable rules.

To cite an illustration, a process reflected in one particular organization's overtime pay guidelines includes the following concerning authorization:

1. Scheduled (anticipated) overtime shall be approved in advance by the department manager.

2. *Unscheduled overtime shall be handled as follows:*

- *An employee who determines that it may be necessary to work beyond the assigned shift must make a good-faith effort to obtain the department manager's approval.*
- *Unscheduled overtime worked without advance authorization shall be reviewed for approval on a daily basis. The department manager shall initial the time record to indicate approval.*
- *Overtime payment shall not be permitted to result from employees' card-punching practices. Employees not engaged in overtime work shall punch in and out according to timekeeping practices.*

Constant Visibility

A significant part of the control of overtime consists of maintaining overtime in a position of prominence and paying attention to its importance. One way of keeping overtime visible in the department is to publicize, on a regular basis, the department's performance against budget in its use of overtime. If overtime is not a separately budgeted item (although in most organizations it is), then at budget preparation time, the manager should strongly suggest that overtime be made a budget subaccount in its own right and that actual overtime be reported back against budgeted overtime on the regular budget-reporting cycle.

Another method for keeping the overtime issue visible involves the use of an organization-wide overtime committee. The experience of one organization proved interesting, and since the approach was not particularly unique, similar results have likely been experienced elsewhere: An overtime committee was formed during a year in which overtime appears to have gone completely out of control. Consisting of a dozen or more people—administration, finance, human resources, and the heads of various departments—the committee wrestled with the causes of overtime and the overtime approval process, and watched overtime usage diminish until it was within budget limits. When the problem went away and the committee began to meet less often and eventually not at all, overtime again increased. However, each time the committee was reconstituted in response to rising overtime, overtime immediately began to track downward. Thus, visible attention paid to overtime is often sufficient to impress people with its importance so they become more careful.

If a department is properly staffed, it will likely experience some legitimate overtime needs from time to time. Overtime will always be subject to a certain amount of abuse or at least questionable use, and abuse and misuse are likely to increase if it is not made plain that overtime is subject to constant monitoring. Even if the problem is resolved periodically, it is likely to recur. The only long-run solution to the control of overtime is an appropriate level of constant attention and active monitoring and control by first-line management.

A Manager's Advantage

Although the largest part of wage and hour legislation is of greater concern to others in the organization, such as human resources and finance (specifically the payroll section), it is nevertheless to the department manager's advantage to understand how and why employees are classified as they are and how elements of their compensation, particularly overtime, are determined. Human resources and the payroll department may be the experts concerning some aspects of wage and hour law, but they cannot top the perspective of the department manager. The first-line manager is among the staff, on the floor where the work is done and where most of the action takes place. A knowledgeable department manager can help keep the organization out of trouble concerning employee classifications (exempt versus nonexempt), help minimize pay discrepancies with conscientious timekeeping, and help keep the budget in line through the active control of overtime.

Questions for Review and Discussion

1. Why are the employees working in some positions that clearly qualify as exempt positions nevertheless paid overtime?
2. Do you believe it is allowable to maintain two different definitions of the workweek in the same organization? Why or why not?
3. Why should the organization have an enforceable policy limiting the amount of time during which an employee must clock in and limiting the time during which the employee must clock out after the shift?
4. Identify the principal reasons prompting the initial passage of the Fair Labor Standards Act.
5. What are the essential differences between the executive and administrative exempt-employee classifications?
6. What are some of the ways in which employee classification information may be constructively applied?
7. What conditions would have to be met for an hourly employee titled secretary to be legitimately made exempt with the title of administrative assistant?
8. Under what conditions can you hold a before or after work gathering of your employees without being liable for overtime payment?
9. Is it lawful to allow your employee group to shorten their workday by working through a meal period if they all agree to the practice in writing? Why or why not?
10. Describe at least two sets of circumstances under which an employee's on-call hours must be counted as worked hours.