



City of Wilmington Fair Labor Standards Act (FLSA) Audit

Overview of the FLSA

- ▶ Passed in 1938, enforced by the U.S. Department of Labor
- ▶ Establishes minimum wage
- ▶ Sets rules for overtime pay
- ▶ Addresses child labor standards
- ▶ Defines recordkeeping requirements

Key Provisions

- ▶ Minimum Wage – Federal baseline, \$684/week or \$35,668 annually
- ▶ Overtime Pay – Time and one-half for hours > 40 in a workweek (unless exempt)
- ▶ Recordkeeping – Employers must track hours and wages
- ▶ Child Labor – Restrictions on youth employment

Exempt vs. Non-Exempt

- ▶ Non-Exempt: Covered by overtime and minimum wage protections
- ▶ Must be paid at least 1.5× regular rate for overtime
- ▶ Exempt: Not entitled to overtime under FLSA
- ▶ Must meet salary basis, salary level, and duties tests

The Three Tests for Exemption

- ▶ Salary Basis Test – Paid fixed salary not subject to reduction
- ▶ Salary Level Test – \$684/week, \$35,568 Annually
- ▶ Duties Test – Role must be executive, administrative, professional, outside sales, or computer-related

Exemption Categories

- ▶ **Executive** – Supervises 2+ employees, primary duty is management
- ▶ **Administrative** – Office/non-manual work tied to management; discretion/judgment
- ▶ **Professional** – Advanced knowledge (science, learning, creative)
- ▶ **Computer Employee** – Systems analysis, programming, software engineering
- ▶ **Outside Sales** – Makes sales away from the employer's place of business

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- ▶ Audit performed by PRJ Consulting
- ▶ Review of 86 positions
 - ▶ 60 in ASFCME Local 1102
 - ▶ 3 in Executive & Managerial
 - ▶ 21 in Non-Union
 - ▶ 2 program unknown
 - ▶ Not listed on the job description
- ▶ Conducted Salary Level Test and Duties Test for each position

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► **Current Exemptions**

- 69 positions were classified as Non-Exempt
- 17 positions were classified as Exempt or Unknown

► **Proposed Changes**

- All 69 Non-Exempt positions should remain Non-Exempt
- 1 position whose classification was unknown should be Non-Exempt
- Of the 16 positions that were classified as Exempt:
 - 8 should remain Exempt
 - 8 should be changed to Non-Exempt

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► **Positions changed from Exempt to Non-Exempt**

- Assistant Sanitation Supervisor, 1102
- Delinquent Accounts Agent, 1102
- Earned Income Tax Agent, 1102
- Arts Program Administrator, E&M
- Constituent Services Officer, E&M
- Legal Assistant I, Non-Union
- Legal Assistant II, Non-Union
- Nuisance Property Administrator, Non-Union

Department of Labor

Back Wages Statute

- ▶ Generally, a two-year statute of limitations applies to the recovery of back pay. In the case of willful violations, a three-year statute of limitations applies.
- ▶ Back wages for employees who received straight-time overtime
 - ▶ Time period - June 12, 2023 (date of report) through September 5, 2025
 - ▶ Calculation - Total amount of straight-time overtime x .5
 - ▶ Total amount: \$21,986.55
 - ▶ Payments made to impacted employees on September 19, 2025



Questions

Thank you!

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