

Keeping Up To Date With The Fair Labor Standards Act And Florida Wage And Hour Laws

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Introduction

- 1. Review of FLSA changes**
- 2. Impact of FLSA changes**
- 3. Florida's Minimum Wage Act**
- 4. Other Florida wage/hour laws**

The DOL: Collecting More And Collecting Faster

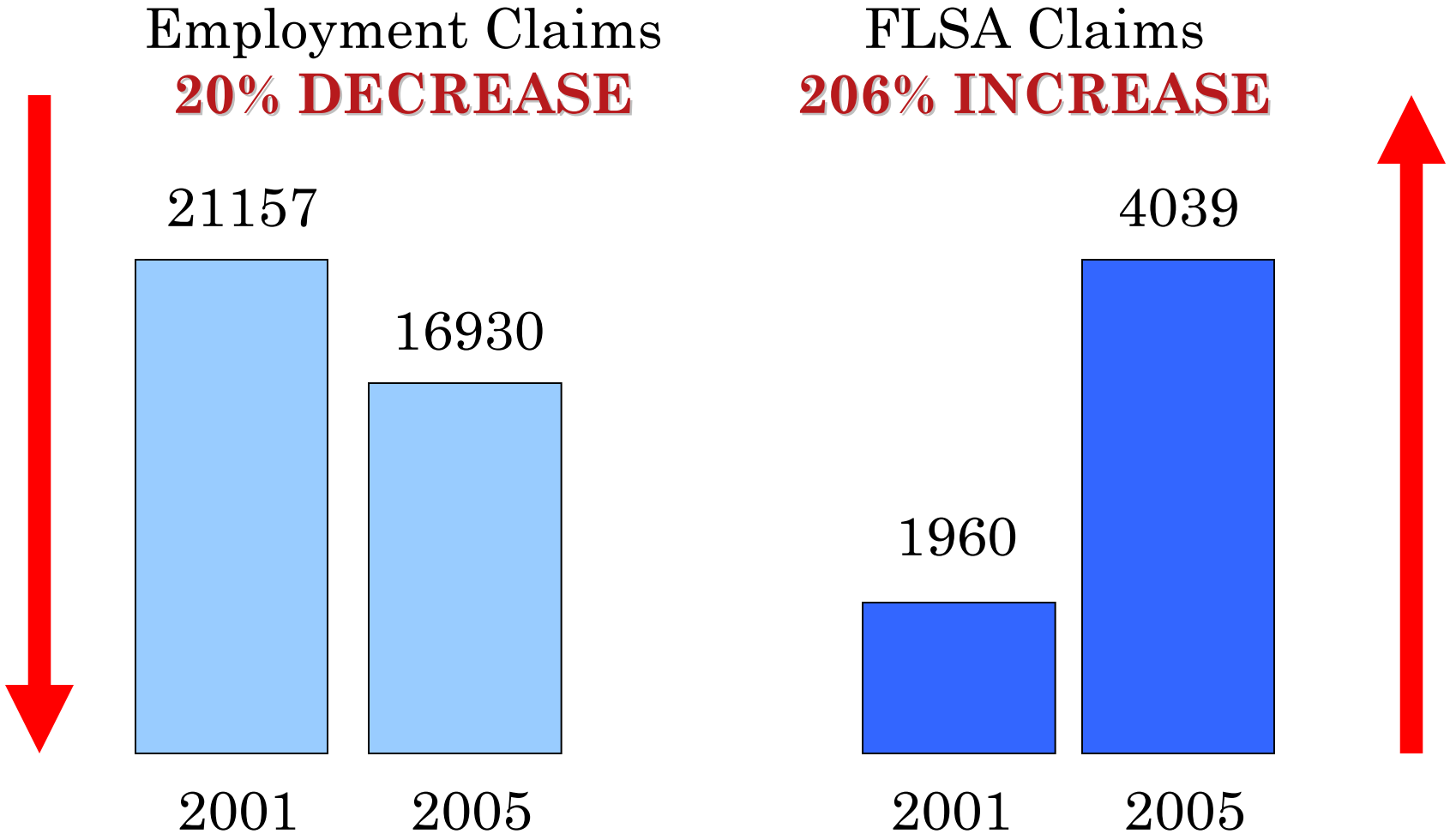
- **\$166 million collected for 241,000 workers**
 - **26% increase in collections since 2001**
 - **11% increase in workers since 2001**
- **85 days to conclude case**
 - **Down from 139 days in 2001**



The DOL: Spending More

- **DOL enforcement budget**
 - 2004 → \$160 million
 - 2005 → \$194 million
 - 2006 → \$198 million
- **Focus of the spending**
 - “Low-wage industries that employ vulnerable, often immigrant, workers, and those industries with a history of chronic violations”
- **Industries of focus**
 - Agriculture
 - Day Care
 - Restaurants
 - Garment Manufacturing
 - Guard Services
 - Health Care
 - Hotels and Motels
 - Janitorial Services
 - Temporary Help

The Rise Of The FLSA Action



What The Plaintiffs' Look For

1. Misclassify a nonexempt employee
2. Improperly “docking” wages
3. Not paying for all hours worked
4. Miscalculating overtime

**NOT LIMITED TO
MINIMUM WAGE EARNERS**

Review Of FLSA Changes

- **“Anyone who looks at this objectively will see this is a tremendous benefit to workers and is a big benefit to businesses even though they will have to pay more for overtime.”**
 - **Howard M. Radzely, Solicitor, Department of Labor**
- **“History will record that on August 23 in the year 2004, America’s workers suffered the single biggest pay cut ever.”**
 - **John J. Sweeney, President, AFL-CIO**

Salary Basis Test Simplified

- **Old short test**
 - \$250 per week
- **Old long test**
 - \$155 per week
- **New test**
 - \$455 per week
- **Alternative “fee basis” concept**
 - Administrative, professional, and computer employees only

Executive Exemption Narrowed

- **Old short test (\$250/week)**
 - Primary duty managing the enterprise, department, subdivision
 - Customarily, regularly directs work of 2+ employees
- **Old long test (\$155/week)**
 - Short test factors plus
 - Authority to hire/fire (or recommendations have weight)
 - Customarily, regularly exercises discretionary powers
 - No more than 20% of time to activities that are not directly, closely related to exempt work
- **New test (\$455/week)**
 - Primary duty managing the enterprise, department, or subdivision
 - Customarily, regularly directs work of 2+ employees
 - Authority to hire/fire (or recommendations have weight)

Administrative Exemption Simplified (Only Slightly)

- **Old short test (\$250/week)**
 - Primary duty performing office or non-manual work directly related to management policies or general business operations
 - Primary duty includes discretion and independent judgment
- **Old long test (\$155/week)**
 - First factor of short test above
 - Customarily, regularly exercises discretion and independent judgment
 - Regularly, directly assists owner, exempt executive or administrative employee, or performs specialized or technical work requiring special knowledge under only general supervision, or executes special assignments under only general supervision
 - No more than 20% of time to activities that are not directly, closely related to exempt work
- **New test (\$455/week)**
 - Primary duty performing office or non-manual work directly related to management policies or general business operations
 - Primary duty includes discretion and independent judgment with respect to matters of significance

Professional Exemption Expanded Slightly

- **Old short test (\$250/week)**
 - Primary duty performing work requiring knowledge of an advanced type acquired by prolonged course of specialized instruction, study
 - Consistently exercises discretion and judgment
- **Old long test (\$170/week)**
 - Short test factors plus
 - Performs work that is predominantly intellectual and varied and of character that the output or result cannot be standardized in relation to a given period of time
 - No more than 20% of time to activities that are not essential part of and necessarily incident to exempt work
- **New test (\$455/week)**
 - Primary duty performing work requiring knowledge of an advanced type acquired by prolonged course of specialized instruction
 - Definition of work requiring advanced knowledge includes the consistent exercise of discretion and judgment

Computer-related Exemption Consolidated And Created

- **Wage requirements**
 - \$455 per week salary or
 - \$27.64 per hour
- **Primary duty requirements**
 - Applying systems analysis techniques and procedures to determine hardware, software, or system functional specifications
 - Design development, documentation, analysis, creation, testing, or modification of computer systems or programs, based on and related to user or system design specifications
 - Design, documentation, testing, creation, or modification of computer programs related to machine operating systems
 - A combination of the above, the performance of which requires the same level of skills

Outside Sales Exemption Slightly Changed

- **Old test**

- **Make sales or obtain orders or contracts**
- **Duties customarily, regularly performed away from employer's place of business**
- **No more than 20% of time to activities that are not essential part of and necessarily incident to exempt work**

- **New test**

- **Make sales or obtain orders or contracts**
- **Duties customarily, regularly performed away from the employer's place of business**

“Highly Compensated” Exemption

- Earn at least \$100,000
 - \$23,660 must be earned on salary basis
 - Beware the payment caveat
- Perform office or non-manual work
- Have one identifiable executive, administrative, or professional function

Impact Of FLSA Changes

- **DOL investigated 165 employers**
 - **79 employers in violation**
 - 44 violations of new salary level
 - 30 violations of new salary basis test
 - 12 violations of miscategorizing as executive exempt
 - **Most violations found in hotel, motel, restaurant and nursing industries**
 - Commonly have employees holding low paying supervisor or manager positions

Florida Minimum Wage Act

- **Became effective May 2005**
 - **Set minimum wage set above federal rate**
 - **Set minimum wage to \$6.15 per hour**
- **Requires annual review**
 - **Review in September**
 - **Any adjustment announced in October**
 - **Any adjustment effective in January**
- **One adjustment already**
 - **Now \$6.40 per hour, \$3.38 for tipped employees**

Florida Minimum Wage Act

- **Employee claims**

- Created causes of action for employees to sue
- Also created causes of action for State to sue

- **Employer liability**

- Unpaid wages
- Liquidated damages
- Attorneys' fees and costs
- \$1,000 fine per violation

- **Types of claims**

- Minimum wage violation
- Retaliation
- Class actions
- 4-5 YEAR STATUTE OF LIMITATIONS

Other Florida Wage/Hour Laws

- **Section 448.01**

- **10 hours is legal day's work for manual laborers**

- **Section 448.05**

- **Second degree misdemeanor to not give seats to retail employees or where employees have to stand or walk during their active duties**

- **Section 450.021**

- **No one under 13 years of age may work EXCEPT**

- **By the entertainment industry**
 - **In connection with their own homes, farms, ranches**
 - **As pages in the Florida Legislature**

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