

# The McKenzie Mailer

February, 2003

Volume 3, Number 2

## UPCOMING EVENTS

February 18  
Ponte Vedra  
Presbyterian Church  
Presentation on  
Job Hunting Skills

February 19  
University of North  
Florida  
Interviewing Strategies

March 27  
Harassment Update  
Small Business Resource  
Network

April 9 & 16  
Human Resources  
Management Certificate  
Program  
University of North  
Florida  
Division of Continuing  
Education

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## Sobering Statistics on Wage and Hour Litigation

In 2001, for the first time ever, class action lawsuits regarding wage and hour violations surpassed collective actions for discrimination. Even the personal injury attorneys are starting to get in on the action with television commercials asking if employees are required to work extra hours without overtime compensation.

In the past few years, many high profile organizations like Starbucks, Wal-Mart, Pacific Bell, The Tennessee Valley Authority and Bank of America agreed to multi-million dollar settlements under wage and hour litigation. Small companies are not immune. Employees of a Chinese buffet restaurant in Chicago recovered \$1.5 million in back pay as a result of being forced to work overtime hours without additional compensation.

The Fair Labor Standards Act (FLSA), the law that regulates minimum wage, overtime and Federal child labor laws, was enacted in 1938. Most of the provisions of the 1938 law remain essentially the same today. This law sets guidelines as to who qualifies as exempt from overtime compensation (salaried) and who does not qualify as exempt (hourly). There are four types of positions that qualify as exempt. Employees who work in executive, professional, administrative and outside sales positions may be exempt from overtime pay if their job duties and responsibilities qualify. As long as employees in these positions spend at least 80% (or 60% in a retail or service establishments) of their time using independent discretionary power and judgment, then they can be considered exempt from overtime compensation.

When the lawmakers passed the FLSA, they did not envision such things as computers that have now taken away much of the independent thinking of professional and administrative employees. For example, one judgment changed the status of some salaried engineers who were making over \$80,000 per year to hourly employees who now make about \$40 per hour and \$60 per hour for overtime. The Bush Administration has stated that the FLSA provisions are antiquated and will propose major changes to the law.

Do not count on changes anytime soon, though. Even though the proposed changes are due to come out for public comment next month, labor organizations are opposed to the proposed changes and there promises to be quite a debate on any changes to the law. In the meantime, here are a few things you can do to make sure that you are not on the wrong end of a large settlement.

- Make sure that your employees classified as exempt or salaried qualify for the exemption.
- Be sure you understand the rules regarding travel and training time.
- Ensure that employees do not work “off the clock”.
- Beware of employees taking lunch hours at their desks or in their work areas.
- Pay for all hours worked regardless of whether overtime is authorized.
- Make sure employees record all hours actually worked.
- Do not dock exempt employees for hours not worked within a workday.
- Be careful of unpaid disciplinary suspensions for exempt employees.
- Piecework does not exempt employees from overtime compensation.

The rule of thumb is **“When in doubt, make it non-exempt”**.