Case in Point

This month we focus on one specific risk you should be careful to avoid overlooking: the Fair Labor Standards Act (FLSA). FLSA is a compliance risk that seems to have grown in importance over the past year as this quote from the August 2011 issue of Mainstreet Business Journal illustrates:

"According to statistics from the office that administers the federal courts; more lawsuits asserting claims under the Fair Labor Standards Act (FLSA) were filed in 2010 than ever before. The number of such claims filed during the relevant time period in 2010 was almost 25% higher than for the previous year and was 278% higher than ten years ago."

FLSA was originally passed in 1938 and has been amended numerous times over the years since. For universities, the most important aspects of FLSA include the requirements to pay minimum wage and the requirements involving overtime for nonexempt employees. Most universities face their greatest FLSA risk in three areas:

1. not paying nonexempt employees for working lunches
2. not paying nonexempt employees for work done "off-the-clock"
3. Inappropriately classifying nonexempt employees as exempt

Department heads and supervisors can reduce their risks in these first two areas by ensuring nonexempt employees keep accurate records. In other words, before signing a timesheet or approving a payroll, provide actual supervision and monitoring, making sure that what is being reported is what has actually happened. While a subordinate may sign-off on a payroll, your responsibility cannot be delegated away. The argument that "well ... it all balances out over time" or "our employees just love our institution and don't mind working extra without pay" are not valid under the FLSA. Employees cannot waive their rights under FLSA, so even if an employee wanted to waive overtime they cannot do this under the law. Lawsuits have occurred in which an employee initially appeared willing to forego overtime but later became disgruntled. In these cases the organization is liable for not paying overtime as required.

Also important to note is when FLSA auditors review a complaint, oftentimes an assumption is made that if one person was paid incorrectly, then others were as well. The FLSA review may then expand into a review of many other employees and how they were paid and it becomes contingent upon the university to prove it paid employees correctly. Fair or not, this is the current regulatory environment and failing to take this law seriously can have major repercussions for any organization. Penalties can include not only back pay but also fines which can be very substantial.

Like most of the risks we present here, the best course is to be proactive and prevent problems from occurring in your area. Ensure you and your managers are aware of FLSA regulations and if you have a question, contact the Office of Human Resources for their help before you run into FLSA complaints or litigation.

Notes:
1. For institutions other than Auburn University, you should consult with your HR Office as to how FLSA applies at your institution as classifications can vary among institutions.
2. Special thanks to Chuck Gerards of AU's Human Resources for his input on FLSA regulations.

M. Kevin Robinson, CIA, CFE, CCEP
Executive Director, Internal Auditing

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HRD September Snipettes

Registration is ongoing for all classes: Sign up and get a seat. We have added new desktop courses in Intermediate Access 2010 and Introduction to Word 2010. With the switch to Outlook from Groupwise, we are offering Outlook training weekly; check the schedule for classes. These are the Work-Life/Personal Growth classes in September: Annual Tax Return Preparation, September 16 (1 to 4:30); Stress Management, September 21 (8-12); and Bones for Life: Preventing Osteoporosis, September 27 (9:30-11:30).

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Overtime for Non-Exempt Employees

The standard workweek for non-exempt employees (members of the University Staff employee group) is 40 hours. During peak workloads or emergencies, it may be necessary that employees work overtime (over 40 hours in a week). In such cases, non-exempt employees will receive either compensatory time off from work or overtime pay (at the discretion of the department management). Non-exempt employees earn one and one-half (1.5) hours of compensatory time for each hour of authorized overtime work, or are paid at one and one-half times their standard pay rate for overtime hours. Overtime is calculated for the period of each workweek, not on a daily basis. Only time actually worked, plus holiday time, counts toward overtime; leave time taken does not count toward the 40-hour period for overtime purposes. Any overtime work must be approved by the supervisor prior to the work being performed.

Exempt employees (members of the Administrative and Professional employee group) are not eligible for overtime pay.

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Hurricane Preparedness
Hurricane Irene's recent impact on the east coast demonstrates how vital hurricane awareness and preparation are during any potential storm. Knowing your vulnerability and what actions you should take will help you greatly reduce the effects of a hurricane disaster. For some tips on preparing for a hurricane, click to this special edition of the American Behavioral Newsletter.

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**Supervisor's Toolkit: Drug Testing**

*I have an employee who I believe may be coming to work in an impaired state (drugs). How can I arrange to have this employee tested?*

Auburn University's new drug testing policy is addressed in this month's new addition to our "Supervisor's Toolkit. For more information, click to tooltopx.htm.

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**Posters to be Displayed in all Campus Buildings**

With recent revisions to various employment law posters being required by a myriad of new legislation, it is more critical than ever that the University stay on top of these changes. One of the most recent new posting requirements regarding the Genetic Information Nondiscrimination Act (GINA) has prompted discussions with our legal counsel regarding Auburn’s obligations to ensure that all employees are made aware of their rights under the law.

To that end, the recommendation has been that ALL required employment posters need to be displayed in at least one place in each building or complex on campus, as well as all locations off campus in which Auburn University employees are working. This is a change from our previous stance that posting these notices in the major Human Resources offices was sufficient to cover our obligations.

Below is a listing of the posters which are required to be posted at each location:

- **Alabama Child Labor Certifications**
- Alabama Child Labor Law poster
- Equal Employment Opportunity poster
- E-Verify Poster (English)
- E-Verify Poster (Spanish)
- **Note: Both versions must be posted**
- FMLA Poster (English)
- Minimum Wage Poster (b & w and color available, can post either one)
- Notice to Report Injuries
- Right-to-Work Poster (English)
- Right-to-Work Poster (Spanish)
- **Note: Both versions must be posted**
- Veterans' Rights Poster

There is no need to purchase any of these posters from external vendors. Each of these posters can be found on the Human Resources Forms web site at: [http://www.auburn.edu/administration/human_resources/forms/index.html](http://www.auburn.edu/administration/human_resources/forms/index.html)

Human Resources constantly monitors the changing legal notification landscape, and will ensure that the most recent versions of these forms are available on their web site.

Further instruction will be forthcoming regarding this new directive for posting these notifications. If you have any questions, please contact Angela Erlandson or Mike Hill in HR.
Nominations sought for Spirit of Excellence Award

The Department of Human Resources is seeking nominations for the Spirit of Excellence Award. Each month the award is given to an employee from each of the following employment groups: Service and Maintenance, Secretarial and Clerical, Technical and Paraprofessional, and Administrative and Professional. To nominate an employee, a form must be completed and sent to the Spirit of Excellence Award, Department of Human Resources, 332 Foy Hall. To print a form, go to this link. For more information, contact Sonya Dixon at 844-7612 or dixonsa@auburn.edu.

Spirit of Excellence Winners

Each month AU presents Spirit of Excellence awards to four employees for outstanding service.

| Recipients for May 2011 are: | 
| --- | --- | --- |
| Category | Name | Unit |
| Office/Admin | Jean Joiner | English |
| Administrative/Professional | Joe Lewis | Maintenance and Operations |
| Service Maintenance | Ellen McPherson | Building Services |
| Technical/Paraprofessional | Johnny Clark | Project Construction |

Do you know a fellow AU employee whose performance is consistently beyond what is expected? One who exemplifies professionalism and routinely puts forth extra effort? One whose contribution to the department's or university's mission is significant? If so, that person would be a perfect nominee for AU's monthly Spirit of Excellence award. You can link to the nomination form at http://www.auburn.edu/administration/human_resources/forms/spirit.pdf.

Moving? Want to Continue Your Career in Higher Ed?

The Department of Human Resources routinely receives position announcements from other colleges and universities. These are maintained in notebooks in the lobby of our department in 332 James E. Foy Hall. Please feel free to come by to review these during our lobby hours of 7:45 a.m. to 4:45 p.m, Monday through Friday.

Your Newsletter Subscription

Subscribers to the HR Newsletter receive a brief email alert message, and a pointer to this newsletter on the web, whenever the newsletter is updated. You can read the newsletter without subscribing, of course -- just visit http://www.auburn.edu/administration/human_resources/hrnews.htm.

Enter your email address and click on the Send button to subscribe to the HR Newsletter.

Your Email Address: [Send] [Clear]

Or send an email to majoromo@auburn.edu. The text of the message should read "subscribe hrnews" (without quotes).

To cancel your subscription to the newsletter, send a similar email to majoromo@auburn.edu with the message "unsubscribe hrnews". Or email hillmic@auburn.edu.

The Office of Human Resources is open Monday through Friday, 7:45 am to 4:45 pm Central Time (except holidays)
Human Resources | 332 James E. Foy Hall | Auburn University, AL 36849-5126 USA | 334.844.4145
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