



Human Resources

Committee

Salt Lake City, UT

July 2011



# Current News Update



**Lets Talk About  
Overtime  
“Exempt” Status  
for  
Estimators...**



# Remember this slide?

## Compare with a Dealership Mechanical Service Writer

The current Federal Regulations say:

“Employees variously described as service manager, service writer, service advisor, or service salesman who are not themselves primarily engaged in the work of a salesman ... are not exempt under section 13(b)(10).”

29 C.F.R. Sec. 779.372(c)(4)



# Remember this slide?

## Compare with a Dealership Mechanical Service Writer

**However**, four different federal courts have held that they are exempt and as a result, the U.S DOL now says:

“... [the Wage and Hour Division] will no longer deny the [overtime] exemption for such employees.”

**F.O.H. 24L04(k)**



# News Flash!!!!

*U.S. Dept. of Labor recently announced that they will not consider service advisors (and presumably estimators) exempt from overtime under the salesperson exemption.*

- Don't Panic! This *probably* is not a big deal for your shop...
- Make sure you are using the **commission exemption** – This is a different exemption under federal law (FLSA).

## RULE:

1. More than ½ of earnings from commissions.
2. At least 1.5 times minimum wage for every hour actually worked (are you keeping accurate time records?)
3. Primarily involved in sales – Pay Plan Updates?



# Back to Basics!!!

## Pros and Cons of Fighting Unemployment Claims



Back to Basics!!!

Hiring 101





# Hiring Step 1

## DEFINE HIRING CRITERIA

*Who are you looking for?*



# Hiring Step 2

*EVERYONE*

*Completes  
an Application!*



# Hiring Step 3

**SCREEN CAREFULLY**

*Weed out the problems at  
the Application Stage!*



# Rules for accepting Applications

- The “15-Second Screening”
  - ◆ Is it **complete**?
    - ◆ No blanks
    - ◆ All questions answered
  - ◆ Is it **signed**?



# READ the Application

- The “20-Minute Screening”
  - ◆ Do they have the qualifications for the job?
  - ◆ Look for “trouble signs” on the application.



# Hiring Step 4

*So...you like them on  
paper...*

**Interview Aggressively!**



# Interview

“Dos” and “Don’ts”:

**DO follow the**

**Interview Guidelines**

- ◆ **DO** interview with a Purpose!
- ◆ **DO NOT** ask about “protected” classifications
- ◆ **DO** ask who, what, when, and where questions
- ◆ **DO NOT** write on the Application
- ◆ **DO** use 80/20 rule
- ◆ **DO NOT** hire “on the spot”
- ◆ **DO** look for signs of drug or alcohol abuse



# Hiring Step 5

*OK...*

*they sold you...*

*What do others have to say  
about them?*

*Check those references!!!*





# Types of Background Checks

- Drug testing
- Credit checks
- Criminal background checks
- DMV checks

You MUST wait for the results before the employee can go to work!!!



## But all that takes a lot of time...!

- Do you have the time to replace a “bad hire”?
- How much time do you spend dealing with problem employees?
- “Bad hires” are MUCH more likely to sue you – do you have the time (and \$\$\$) to deal with a lawsuit?



**Thank You!**  
**Human Resources Committee**

**Cory King – Chair**

[cking@employerlawyers.com](mailto:cking@employerlawyers.com)

**Mario Malacara – Vice-Chair**

[Mario.Malacara@ServiceKing.com](mailto:Mario.Malacara@ServiceKing.com)