



1

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2

What We'll Cover Today



Diana Murray
ASAP VP of Operations

1. HFWA Paid Sick Leave (PSL)
2. HFWA Public Health Emergency Leave (PHEL)
3. FFCRA & HFWA
4. Prop 118 – Paid Family Medical Leave Act
5. Equal Pay for Equal Work Act (EPA)
6. CO Wage-and-Hour Updates (COMPS #37)

The Fine Print

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BECHTEL SANTO & SEVERN

Michael Santo, Presenter

Cofounder & Partner, Bechtel Santo & Severn



Employment law attorney Michael Santo is cofounder and partner at Bechtel Santo & Severn in Grand Junction, Colorado. Since 1994, Michael has focused his practice on defending companies in employment litigation, including discrimination lawsuits; wrongful discharge; and wage and hour matters. Counseling companies on day-to-day employment issues is also an important part of Michael's practice. This includes advising employers on hiring, discipline, and termination decisions; on leave and disability issues; and on preparing and revising employee handbooks. By helping employers develop sound personnel policies, Michael assists many Colorado companies, large and small, in minimizing the risk of employment-related litigation.

Navigating and Understanding New Employment Laws

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6

Colorado Healthy Families & Workplaces Act (HFWA)

- In June / July 2020, the Colorado legislature passed the HFWA.
- This Act is similar to FFCRA. The primary difference is that it includes almost all employers in Colorado.

8

HFWA After 2020 NEW PAID SICK LEAVE (PSL)

- Starting **January 1, 2021**, employers with 16 or more employees (other employers start January 1, 2022) must provide employees with paid sick leave to be used for:
 - (i) employees' mental or physical illnesses, need for diagnosis or treatment, or preventative care;
 - (ii) an employee is caring for sick family members (defined as a person who is related by blood, marriage, civil union, or adoption; a child to whom the employee stands in loco parentis or a person who stood in loco parentis to the employee when the employee was a minor; or a person for whom the employee is responsible for providing or arranging health-or safety-related care) requiring diagnosis, treatment, or preventative care;

9

HFWA After 2020 NEW PAID SICK LEAVE (PSL)

- (iii) an employee is the victim of domestic violence, harassment, or sexual abuse or need to assist family members who are victims of such conduct, and seek medical attention or counseling relating to such abuse; or
- (iv) in instances where a public health official has ordered the closure of the employee's place of business or the employee's child's school or place of care due to a public health emergency and the employee must therefore provide care to the child.

10

What must employers provide for PSL?

- Beginning on the date of hire (or the applicable effective date of the Act, whichever is later), covered employees will accrue one hour of paid sick leave for every 30 hours **worked**, up to 48 hours, or six eight-hour workdays of accrued time.
- Employees can roll over unused paid sick time, though employers can limit use of leave to 48 hours in any given year.
- Employers alternatively may elect to front-load the full annual allotment of paid sick leave to an employee at the beginning of each year.

11

How are PSL hours accrued?

Interpretive Notice #6B

- **Non-exempt employees:** One hour of paid leave for every 30 hours **worked** up to 48 hours per year, is what employees must receive, starting their first day of work, unless an employer offers more. (C.R.S. 8-13.3-403.)
- **Exempt employees:** Overtime-exempt employees accrue leave as if they work 40 hours weekly, even if they work more – but non-exempt employees accrue paid leave equally for all hours worked, overtime or not.
- **Both non-exempt & exempt:** Employers can provide leave to employees as a lump sum.

12

HFWA – “A rose by any other name...”

- From a recent Interpretive Notice from the CDLE: HFWA does not require additional leave if an employer policy provides paid time off, often called a ‘PTO’ policy, for both HFWA and non-HFWA purposes (e.g., sick time and vacation) and states, in writing, that:
 - (A) its leave policy provides PTO --
 - (1) in at least an amount of hours and with pay sufficient to satisfy HFWA and applicable rules,
 - (2) for all the same purposes covered by HFWA and applicable rules, not a narrower set of purposes, and
 - (3) under all the same conditions as in HFWA and applicable rules, (e.g., accrual, use, payment, annual carryover of unused accrued leave, notice and documentation requirements, and anti-retaliation and anti-interference rights); and
 - (B) additional HFWA leave need not be provided if employees use all their PTO for non-HFWA reasons (e.g., vacation), except during a “public health emergency,” an employer must still provide supplemental leave.

13

What must employers provide for PSL?

- An employee may be required to use paid sick leave in hourly increments unless the employer specifically allows paid sick leave to be taken in smaller increments of time.
- If an employee uses paid sick leave for four or more consecutive workdays, the employer may require reasonable documentation that the paid sick leave is for a purpose that is authorized by the Act.

14

PSL Reasonable Documentation

- For leave for health-related needs: If the employee received services (including remotely) from a provider for the HFWA need, a document from the provider indicating a HFWA-qualifying purpose will suffice.
 - If they did not receive provider services, or cannot obtain a provider document in time or without added expense, they can provide their own writing that leave was for a HFWA need.
- (B) For leave for safety-related needs (domestic abuse, sexual assault, or criminal harassment): The same rules explained in (2)(A) above apply, except that also, if applicable, an employee can provide a legal document indicating a safety need for the leave (e.g., a restraining order or police report).

15

PSL Reasonable Documentation

- Employers may not require that documents have a signature, be notarized, or be in any particular format.
- Employers may not require an employee to disclose details about health or safety information.
- Any such information that employers receive must be treated as confidential medical records, kept in separate files from other personnel documents, and may not be disclosed to others unless the employee consents in writing in advance.

16

PSL Reasonable Documentation

- Documentation cannot be required to take leave, but can be required as soon as the employee can provide it after returning, or separating from employment if they do not return, whichever is sooner.
- If an employer reasonably deems an employee's documentation deficient, without imposing a requirement of providing more documentation than is permitted, the employer must:
 - notify the employee within seven days of either receiving the documentation or the employee's return to work (or separation, if the employee does not return), and
 - provide at least seven days to cure the deficiency after being notified.

17

Any Other Requirements?

Yes!!!

- An employer is not required to pay out unused, accrued paid sick leave upon termination, resignation, retirement, or other separation from employment.
 - Well, unless that's required under the Handbook policy.
- Employees can roll over unused paid sick time, though employers can limit use of leave to 48 hours in any given year. Employers alternatively may elect to front-load the full annual allotment of paid sick leave to an employee at the beginning of each year.

18

Any Other Requirements? Yes!!!

- If an employee separates from employment and is rehired by the same employer within six months after the separation, the employer shall reinstate any paid sick leave that the employee had accrued but not used during the employee's previous employment with the employer and that had not been converted to monetary compensation to the employee at the time of separation from employment.

19

Public Health Emergency Leave (PHEL) under HFWA

- The Act also contains provisions relating to public health emergencies, which will require employers to supplement employees' otherwise available paid sick leave such that employees may take up to an additional two weeks (i.e., up to 80 hours) of paid sick leave during a public health emergency.
- According to the CDLE's Info #6C: "Employers with fewer than 16 employees must still provide 80-hour COVID leave, despite not having to provide 48-hour general paid leave until 2022."

20

Are we currently under a declaration of a Public Health Emergency?

- At the beginning of the COVID-19 pandemic, the federal government declared a public health emergency.
- On Friday, Oct. 2, HHS Secretary Azar indicated the COVID-19 PHE will be extended beyond Oct. 23. The new end date is expected to be Jan. 21, 2021.
- But for purposes of HFWA's Public-Health Emergency Leave, any declaration prior to January 1, 2021, is irrelevant: "**On the day a public health emergency is declared**, employers are required to immediately provide each employee with additional hours of paid leave..." Wage Protection Rules (effective Jan. 1, 2021).
- On December 22, 2020, the CDLE announced that Colorado is under a public health emergency.

21

Public Health Emergency Leave (PHEL) under HFWA

- This declaration means that **all** employers shall supplement each employee's accrued Paid Sick Leave balance as necessary to ensure that an employee may have available to him/her the following amounts of Public Health Emergency Paid Leave for the purposes specified above:
 - For employees who normally work 40 or more hours in a week: 80 hours maximum available for use.
 - For employees who normally work less than 40 hours in a week: At least the amount of time an employee is scheduled to work in a 14-day period, maximum, or the amount of time the employee actually works on average in a 14-day period, maximum, whichever calculation is greater, available for use.

22

Public Health Emergency Leave (PHEL) under HFWA

- The law states that employers may count an employee's accrued but unused time under the Act's general paid sick leave provisions toward this supplemental public health emergency sick leave requirement.
- In the CDLE's Interpretive Notice and Formal Opinion, #6B, it identified that "...during a public health emergency (PHE), employers must immediately provide each employee additional paid leave -- supplementing whatever HFWA leave the employee accrued before the PHE with enough supplemental leave to assure the employee can take leave in the [amounts identified.]"

23

Public Health Emergency Leave (PHEL) under HFWA

- The supplemental leave will be available until four weeks after the official termination or suspension of the public health emergency and may be used by employees:
 - Self-isolating due to a positive diagnosis, experiencing symptoms, seeking medical treatment or preventative care with respect to the illness causing the public health emergency;
 - Suffering from a preexisting condition that would make the employee more susceptible to serious harm if infected with the illness causing the public health emergency;

24

Public Health Emergency Leave (PHEL) under HFWA

- Where public health officials or the employer have deemed it to be unsafe for the employee to come to work due the employee's exposure to, or displaying symptoms of, the illness causing the public health emergency; or
- If caring for a family member in the above circumstances, or if they must care for a child or other family member whose school or child-care facility is closed due to the public health emergency.
- Unlike the use of paid sick leave for the general reasons discussed above, an employer may not require an employee to provide documentation in order to take supplemental paid sick leave under the public health emergency provisions of the Act.

25

Family Member Definition

- "Family member" means:
 - A person related by blood, marriage, civil union, or adoption;
 - A child to whom the employee stands in loco parentis or a person who stood in loco parentis to the employee when the employee was a minor;
 - A person for whom the employee is responsible for providing or arranging health or safety related care.

26

Public Health Emergency Leave (PHEL) under HFWA

- Employees retain their accrued leave rights during a public health emergency.
- They also continue earning accrued leave at their regulation rate, up to 48 hours per year.
- And they may use supplemental leave for any of the qualifying reasons before using accrued leave, if the reason for leave would qualify as both.

27

Any Other Requirements? Yes!!!

- Unlike the use of paid sick leave for the general reasons discussed above, an employer may not require an employee to provide documentation in order to take supplemental paid sick leave under the public health emergency provisions of the Act.
- An employer may loan paid sick leave to an employee in advance of accrual of paid sick leave.

28

Any Other Requirements?

Yes!!!

- Employees must give notices “as soon as practicable,” but only when needing leave that is foreseeable such as for a scheduled appointment.
- An employer may develop a “reasonable procedures” on notice for “foreseeable” leave but shall not deny pay sick leave to the employee based on noncompliance with such a policy.

29

“Carry-Over” of Leave

- Any unused accrued leave, up to 48 hours per benefit year, carries forward for use in a later year – but an employer is not required to allow use of more than 48 hours in any one year.
- No paid leave is required if an entire business is completely closed.
- Employees may request, and employers must provide in writing or electronically, documents showing the then-current amount of paid leave the employee has (1) available for use and (2) already during that benefit year (both for sick leave and for public emergency leave). Employees may not request such information more than once per month, unless the need for leave arises.

30

HFWA Notice Requirement

- Notice Requirement:
 - Employer must (1) supply each employee with written notice, and (2) display a poster that CDLE has or will have available
 - The Division will create and make available both posters and notices that employers may use
 - <https://www.colorado.gov/pacific/sites/default/files/Poster%2C%20Paid%20Leave%20%26%20Whistleblower.pdf>
- Written notice must:
 - Specify the amount of paid sick leave to which employees are entitled and the terms of its use under Part 4
 - Notify employees that (1) employers cannot retaliate against an employee for requesting or using paid sick leave, and (2) an employee has the right to file a complaint or bring civil action if paid sick leave is denied or the employer retaliates.

31

Any Other Requirements? Yes!!!

- Written notice must:
 - Specify the amount of paid sick leave to which employees are entitled and the terms of its use under Part 4
 - Notify employees that (1) employers cannot retaliate against an employee for requesting or using paid sick leave, and (2) an employee has the right to file a complaint or bring civil action if paid sick leave is denied or the employer retaliates

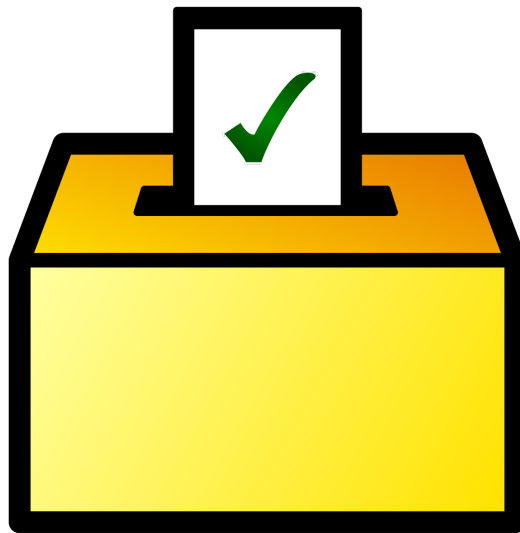
32

FFCRA Status

- **Paid Sick Time:** Employers are no longer required to provide FFCRA paid sick time. Those that do, are eligible for a tax credit for the paid sick time through March 31, 2021.
- **Paid Family Leave:** Employers are no longer required to provide FFCRA paid family and medical leave time. Those that do, are eligible for a tax credit for the paid sick time through March 31, 2021.

33

Colorado Proposition 118



34

Proposition 118

- Overview:
 - Colorado passed a new paid family medical leave act.
 - This requires **12 weeks** of paid family medical leave through a payroll tax.
 - An additional **four weeks** of leave are allowed for pregnancy or childbirth complications.
 - The first premiums will be paid beginning on January 1, 2023, and benefits will begin on January 1, 2024.
 - This act contains an anti-retaliation clause for employees that request this leave.

35

Proposition 118

- Funding:
 - The premiums in 2023 and 2024 are set to be 0.9% of the employee's wage (split between employee and employer). Businesses with less than 10 employees will be exempt from paying the premium.
 - Benefit will be 90% of the average weekly wage for the employee. The maximum benefit is capped at \$1,100 per week for 2024.
 - In 2025 and later, the maximum premium will be 1.2% of each employee's wages.

36

Proposition 118

- Funding:
 - The premiums generally will be split 50/50 between the employer and the employee.
 - Employers can choose to pay 100% of the premium.
 - How to go about making this election has not been determined.
 - Employers with fewer than 10 employees must pay 50% of the required premium, and it appears that this 50% can be made from an employee's wages.
 - There are taxable limits based on social security tax limits.

37

Proposition 118

- Qualifying reasons for paid leave under the new program include:
 - having a serious health condition;
 - caring for a family member with a serious health condition;
 - caring for a new child during the first year after the birth, adoption, or placement of that child;
 - a need arising from a family member's active duty service in the armed forces or notice of impending call to active duty service; and
 - when an individual or a family member is a victim of domestic violence, stalking, or sexual assault or abuse.

38

Colorado's Dial Framework

- While Executive Orders D 2020 044 and 091 appear to have expired, very similar reasonable accommodation requirements now appear in the November 17, 2020 First Amended Public Health Order 20-36, COVID-19 Dial.
- What are those requirements?
 - Employers must provide reasonable work requirements for individuals at risk of severe illness, such as telecommuting.
 - Employers are “strongly encouraged” to provide reasonable accommodations if they live with or care for an at-risk individual or if they are experiencing child care challenges.

39

2019-20 State Legislation



40

**Concerning the Creation of the “Equal Pay for
Equal Work Act” in Order to Implement Measures
to Prevent Pay Disparities
(Senate Bill 19-085)**

41

**Equal Pay Act
Senate Bill 19-085**

- Equal Pay Act contains the following:
 - “Employer” means the state or any political subdivision, commission, department institution, or school district thereof, and every other person employing a person in the state.
 - “Wage Rate” means all compensation received and benefits received by the employee.

42

Equal Pay Act Senate Bill 19-085

- Requirements: “An employer shall not discriminate between employees on the basis of sex ... by paying an employee of one sex a wage rate less than the rate paid to an employee of a different sex for substantially similar work, regardless of job title, based on composite of skill and effort...”

43

Equal Pay Act Senate Bill 19-085

- “By paying an employee of one sex a wage rate less than the rate paid to an employee of a different sex...
- For substantially similar work...,
- Regardless of job title...,
- Based on composite of skill and effort...;
- And responsibility.”

44

**Equal Pay Act
Senate Bill 19-085**

1. The wage differential is based on:
 - a) A seniority system
 - b) A merit system
 - c) A system that measures earnings by quantity or quality of production
 - d) Geographic location

45

**Equal Pay Act
Senate Bill 19-085**

- e) Education, training, or experience to the extent reasonably related to the work in question.
 - f) Travel, if the travel is a regular and necessary condition of work performed.

46

Equal Pay Act Senate Bill 19-085

2. That each factor is applied reasonably
3. That each factor, to the extent relied upon, accounts for the entire wage differential
4. That prior wage rate history was not relied on to justify disparity in current wage rate

47

Equal Pay Act Senate Bill 19-085

- So employers need to consider establishing:
 - A seniority system;
 - A merit system;
 - A system that measures earnings by quantity or quality of production;
 - Geographic distinctions;
 - Education, training, or experience if they are related to the work; or
 - Travel, if travel is a regular and necessary condition of the work performed.

48

Equal Pay Act Senate Bill 19-085

- Whatever basis/bases account(s) for a pay differentiation, it/they must be the reason for the entire difference in pay.

49

Equal Pay Act Senate Bill 19-085

- The bill also prohibits an employer from:
 - Seeking the wage rate history of a prospective employee;
 - Relying on a prior wage rate to determine a wage rate;
 - Discriminating or retaliating against a prospective employee for failing to disclose the employee's wage rate history;

50

Equal Pay Act Senate Bill 19-085

- Discharging, disciplining, discriminating against, coercing, intimidating, threatening, or interfering with an employee or other person because the employee or person inquired about, disclosed, compared, or otherwise discussed the employee's wage rate.
- Requiring an employee, as a condition of employment, to disclose the employee's wage rate.

51

Equal Pay Act Senate Bill 19-085

- Other requirements:
 - Employer shall make reasonable efforts to announce, post, or make known **all opportunities for promotion to all current employees on the same calendar day and prior to making the decision.**
 - Employer shall disclose **in each posting** the compensation rate (or range) and general description of all the benefits and other compensation to be offered to the **hired applicant.**

52

Equal Pay Act Senate Bill 19-085

- Other requirements:
 - Employer shall keep records of job descriptions and wage-rate history for each employee for the duration of employment plus two years in order to determine if there is a pattern of wage discrepancy.

53

Equal Pay Act Senate Bill 19-085

- Two year statute of limitations, but damages can go back three years.
- Damages: Lost pay plus liquidated damages unless employer demonstrates that the act or omission giving rise to the violation was in good faith and employer had reasonable grounds for believing employer did not violate the statute.
- Employee can also recover reasonable attorney fees.

54

Liquidated Damages

- If the **employer demonstrates (i.e., it is the employer's burden)** that the act or omission giving rise to the violation was in "good faith and the employer had reasonable grounds for believing that the employer did not violate the law," the Court shall not award liquidated damages.

55

Liquidated Damages

- "In determining whether the employer's violation was in good faith, the fact finder may consider evidence that within two years prior to the date of the commencement of the civil action, **the employer completed a thorough and comprehensive pay audit of its workforce**, with the specific goal of identifying and remedying unlawful pay disparities.

56

Complying with the EPA

- Employers may want to add a policy to their Handbooks with EPA language:

Employer will not unlawfully discriminate between employees on the basis of sex, including by paying an employee of one sex a wage rate less than the rate paid to an employee of a different sex for substantially similar work, except where the wage differential is based on a seniority system; a merit system; a system that measures earnings by quantity or quality of production; the geographic location where the work is performed; education, training, or experience to the extent that they are reasonably related to the work in question; or travel, if the travel is a regular and necessary condition of the work performed.

57

Complying with the EPA

- Accordingly, if you believe that your compensation does not comply with this requirement, please contact the Human Resources Department or the CEO. Further, Employer will not seek the wage rate history of a prospective employee or require disclosure of wage rate as a condition of employment; rely on a prior wage rate to determine a wage rate; discriminate or retaliate against a prospective employee for failing to disclose the employee's wage rate history; discharge or retaliate against an employee for actions by an employee in asserting the rights established by Colorado law against an employer; or discharge, discipline, discriminate against, or otherwise interfere with an employee for inquiring about, disclosing, or discussing the employee's wage rate. Finally, Employer also identifies that it will announce to all employees employment advancement opportunities and job openings and the pay range for the openings.

58

What is going on with Colorado's new wage rules?

59

Wage-and-Hour Background

Wage-and-Hour Laws That Cover Colorado Employers:

Fair Labor Standards Act: covers almost every employer.

Colorado Overtime & Minimum Pay Standards Order: covers almost every employer.

Colorado Wage Act: covers all employers in Colorado, except state public organizations.

60

COMPS Definitions

- **“Employee”** means any person performing labor or services for the benefit of an employer.
- Relevant factors in determining whether a person is an employee include the degree of control the employer may or does exercise over the person and the degree to which the person performs work that is the primary work of the employer

61

COMPS “Time Worked”

- **“Time worked”** means time during which an employee is performing labor or services for the benefit of an employer, including all time s/he is suffered or permitted to work, whether or not required to do so.
- Examples of time worked:
 - Requiring or permitting employees to be on the employer's premises, on duty, or at a prescribed workplace (but not merely permitting an employee completely relieved from duty to arrive or remain on-premises), over one minute,

62

COMPS “Time Worked”

- Putting on or removing required work clothes or gear (but not a uniform worn outside work as well),
- Receiving or sharing work-related information, security or safety screening,
- Remaining at the place of employment awaiting a decision on job assignment or when to begin work, or to perform clean-up or other duties "off the clock,"
- Clocking or checking in or out, or waiting for any of the preceding

63

“Time Worked”

- In a recent case, a court ruled that the time detention officers spent going through security screening before their shifts was “time worked,” and therefore compensable, because the security screening was “integral and indispensable” to employees’ duties.
 - The screenings were to prevent weapons and other contraband from entering facility, and keeping weapons and other contraband out of facility was tied to the officers’ work.
 - The employer could not have eliminated the screenings without impairing the employees’ ability to complete their work.

64

COMPS Definitions

- **Who is Not an “Employee”:**
 - An individual who is primarily free from control and direction in the performance of the service, both under his or her contract for the performance of service and in fact, and who is customarily engaged in an independent trade, occupation, profession, or business related to the service performed is not an “employee.”

65

Colorado Minimum Wage Order

- The previous Colorado Minimum Wage Order applied to employers in:
 - (1) Retail and Service;
 - (2) Food and Beverage;
 - (3) Commercial Support Services; and
 - (4) Health and Medical.

66

Colorado Minimum Wage Order

- The Order specifically excludes:
 - (1) the state or its agencies or entities, counties, cities and counties, municipal corporations, quasi-municipal corporations, school districts, and irrigation, reservoir, or drainage conservation companies or districts;
 - (2) the insurance industry;
 - (3) manufacturing industry;
 - (4) community centered boards; and
 - (5) construction industry.

67

COMPS Definitions

- **“Employer”** has the same meaning as in the Federal Fair Labor Standards Act, except that the provisions of the COMPS do not apply to:
 - State or its agencies or entities
 - Counties and cities
 - Municipal corporations
 - Quasi-municipal corporations
 - School districts
 - Irrigation, reservoir, or drainage conservation companies or districts

68

Exemptions Background

- To be exempt, the employer must meet two tests with respect to the employee:
 - Salary-Basis Test
 - Duty-Basis Test
- *Meeting one of the tests is insufficient.*

69

COMPS Salary Thresholds

<u>Date</u>	<u>Salary Requirement</u>
July 1, 2020	\$684.00 per week (\$35,568 per year)
January 1, 2021	\$778.85 per week (\$40,500 per year)
January 1, 2022	\$865.38 per week (\$45,000 per year)
January 1, 2023	\$961.54 per week (\$50,000 per year)
January 1, 2024	\$1,057.69 per week (\$55,000 per year)

Except the 2020 salary does not apply to the following two categories of employers, to whom the salary schedule applies only as of January 1, 2021 — (A) non-profit employers with annual total gross revenue of under \$50 million, and (B) for-profit employers with annual total gross revenue of under \$1 million..

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January 1, 2020	Federal law (FLSA): \$684.00 per week (\$35,568 per year)
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70

FLSA/COMPS
White-Collar Exemptions

- Administrative
- Executives & Supervisors
- Professional
- Outside Sales
- Other Exemptions
 - COMPS states that it shall be liberally construed, except the exemptions, which shall be narrowly construed.

71

FLSA/COMPS
White-Collar Exemptions

- Administrative
- Executives & Supervisors
- Professional
- Outside Sales
- Other Exemptions

72

Federal Administrative Exemption

- 1) The employee must make the federally-required weekly salary;
- 2) The employee must have the primary duty of performing office or nonmanual work that is directly related to the management or general business operations of the employer or its customers; and
- 3) The employee's primary duty must include the exercise of discretion and independent judgment on significant matters.

73

COMPS Administrative Exemption

1. Meets the then-current salary-basis test.
2. Directly serves an executive, and regularly performs duties important to the decision-making process of the executive.
3. The employee must regularly exercise independent judgment and discretion in matters of significance, with a primary duty that is nonmanual in nature and directly related to management policies or general business operations.

74

Federal Executive Exemption

- 1) The employee must make the required rate on a salary basis, exclusive of board or lodging;
- 2) The employee must have the primary duty of management of the enterprise in which he or she is employed, or manage a customarily recognized department;
- 3) The employee must customarily and regularly direct the work of at least two other employees or their equivalent; and
- 4) The employee must have the authority to hire or fire employees, or their recommendations about hiring, firing, advancement, promotion, etc. must be given particular weight.

75

COMPS Executive Exemption

1. Meets the then-current federal salary-basis test.
2. Supervises the work of at least two full-time employees.
3. Has the authority to hire and fire, or to effectively recommend such action.
4. The employee must spend a minimum of 50% of the workweek in duties directly related to supervision.

76

COMPS Executive Exemption

- Generally, “management” includes, but is not limited to, activities such as:
 - Interviewing, selecting, and training of employees;
 - Setting and adjusting rates of pay and hours of work;
 - Directing the work of employees;
 - Maintaining production or sales records for use in supervision or control; appraising employees’ productivity and efficiency for the purpose of recommending promotions or other changes in status;
 - Handling employee complaints and grievances; disciplining employees;

77

COMPS Executive Exemption

- Planning the work; determining the techniques to be used; apportioning the work among the employees;
- Determining the type of materials, supplies, machinery, equipment or tools to be used, or merchandise to be bought, stocked and sold;
- Controlling the flow and distribution of materials or merchandise and supplies;
- Providing for the safety and security of the employees or the property;
- Planning and controlling the budget; and
- Monitoring or implementing legal compliance measures.

78

Federal Professional Exemption

- 1) The employee must be compensated on a salary at a rate not less than the required weekly salary;

- 2) The employee's primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment;

79

Federal Professional Exemption

- 3) The advanced knowledge must be in a field of science or learning; and

- 4) The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

80

COMPS Professional Exemption

1. Meets the then-current salary-basis test.
2. Employed in a field or endeavor who has knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study.
3. A professional employee must be employed in the field in which s/he was trained.

81

Federal Outside Sales Exemption

- The employee's primary duty must be making sales (as defined in the FLSA), or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and
- The employee must be customarily and regularly engaged away from the employer's place or places of business.
- The salary requirements of the regulation do not apply to the outside sales exemption.

82

COMPS Outside Salesperson Exemption

1. This exemption covers an employee working primarily away from the employer's place of business or enterprise for the purpose of making sales or obtaining orders or contracts for any commodities, articles, goods, real estate, wares, merchandise, or services.
2. The employee must spend a minimum of 80% of the workweek in activities directly related to his or her own outside sales.
3. No reference in COMPS to any pay requirements for this exemption.

83

Other COMPS Exemptions

- **Owners or proprietors.** This exemption covers a full-time employee actively engaged in management of the employer who either:
 - (A) owns at least a bona fide 20% equity interest in the employer; or
 - (B) for a non-profit employer, is the highest-ranked and highest-paid employee, and is paid at least the salary threshold.

84

Other COMPS Exemptions

- **Interstate transportation workers and taxi cab drivers.**

This exemption covers:

- (A) an employee who is a driver, a driver's helper, or a loader or mechanic of a motor carrier, if the employee crosses state lines in the course of his or her work, and
- (B) taxi cab drivers employed by a taxi service provider licensed by a state or local government.

85

In-Residence Exemptions Under COMPS

- **Casual babysitters** employed in private residences directly by households, or directly by family members of the individual(s) receiving care from the babysitter.
- **Property managers** residing on-premises at the property they manage.
- **Student residence workers** working on premises where they reside for sororities, fraternities, college clubs, or dormitories.
- **Laundry workers** who (a) are inmates, patients, or residents of charitable institutions; and (b) perform laundry services; and (c) in institutions where they reside.

86

Other COMPS Exemptions

- **Bona fide volunteers and work-study students.** This exemption covers those who need not be compensated under the Federal Fair Labor Standards Act as either:
 - (A) enrolled students receiving credit for an unpaid work-study program or internship; or
 - (B) bona fide volunteers for non-profit organizations.
- **Agriculture Jobs.** Workers in jobs in agriculture are exempt from minimum wage, overtime and meal periods, if they are not covered by, or are exempt from, the minimum wage provisions of the Federal Fair Labor Standards Act. Agriculture workers also are entitled to modified rest periods.

87

Other COMPS Exemptions

- **Employees in highly technical computer-related occupations.** This exemption covers an employee who:
 - (A) is a skilled worker employed as a computer systems analyst, computer programmer, software engineer, or other similarly highly technical computer employee;
 - (B) who has knowledge of an advanced type, customarily acquired by a prolonged course of specialized formal or informal study; and
 - (C) spends a minimum of 50% of the workweek in any combination of the following duties:

88

Other COMPS Exemptions

- (1) the application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications,
- (2) the design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications, or
- (3) the design, documentation, testing, creation, or modification of computer programs related to machine operating systems.

89

Minimum Wage Requirements

- If an employee is covered by multiple minimum or overtime wage requirements, the requirement providing a higher wage, or otherwise setting a higher standard, shall apply.
- Reduced Minimum Wage for Certain People with Disabilities and Minors. The minimum wage may be reduced by 15% for (a) non-emancipated minors and (b) persons certified to be less efficient in performance of their job duties due to a physical disability.

90

COMPS Overtime

- Employees shall be paid time and one-half of the regular rate of pay for any work in excess of any of the following, except as provided below:
 - (A) 40 hours per workweek;
 - (B) 12 hours per workday; or
 - (C) 12 consecutive hours without regard to the start and end time of the workday.

91

COMPS Meal and Rest Periods

- **Meal Periods.** Employees shall be entitled to an uninterrupted and duty-free meal period of at least a 30-minute duration when the shift exceeds 5 consecutive hours.
- Such meal periods, to the extent practical, shall be at least one hour after the start, and one hour before the end, of the shift.
- Employees must be completely relieved of all duties and permitted to pursue personal activities for a period to qualify as non-work, uncompensated time.

92

COMPS Meal and Rest Periods

- When the nature of the business activity or other circumstances make an uninterrupted meal period impractical, the employee shall be permitted to consume an on-duty meal while performing duties.
- Employees shall be permitted to fully consume a meal of choice on the job and be fully compensated for the on-duty meal period without any loss of time or compensation.

93

COMPS Meal and Rest Periods

- Every employer shall authorize and permit a compensated 10-minute rest period for each 4 hours of work, or major fractions thereof, for all employees, as follows:

<u>Required</u>	<u>Work Hours</u>	<u>Rest Periods</u>
0	2 or fewer	
	Over 2, and up to 6	1
	Over 6, and up to 10	2
	Over 10, and up to 14	3
	Over 14, and up to 18	4
	Over 18, and up to 22	5
6	Over 22	

94

COMPS Meal and Rest Periods

- Rest periods shall be 10 minutes unless, on a given workday, or in a writing covering up to a one-year period that is signed by both parties, the employee and the employer agree, voluntarily and without coercion, to have two 5-minute breaks, as long as 5 minutes is sufficient, in the work setting, to allow the employee to go back and forth to a bathroom or other location where a bona fide break would be taken.

95

COMPS Meal and Rest Periods

- If the below conditions are met, rest periods need not be 10 minutes every 4 hours for any employees:
 - (i) governed by a collective bargaining agreement at any employer, or
 - (ii) during time they are providing Medicaid-funded residential in-home services for an employer receiving at least 75% of its annual total gross revenue from federal and/or state Medicaid funds for providing such services.

96

COMPS Meal and Rest Periods

- iii) rest periods that average, over the workday, at least 10 minutes per 4 hours worked; and
- iv) at least 5 minutes of rest in every 4 hours worked.
- Such an agreement does not change an employee's right to pay for rest periods under.
- Rest periods, to the extent practical, shall be in the middle of each 4-hour work period. It is not necessary that the employee leave the premises for a rest period.

97

COMPS Meal and Rest Periods

- According to COMPS, "when an employee is not authorized and permitted does not have a required 10-minute rest period, his or her shift is effectively extended by 10 minutes without compensation. Because a rest period requires 10 minutes of pay without work being performed, work during a rest period is additional work for which additional pay is not provided." Therefore, a failure by an employer to authorize and permit a 10-minute compensated rest period is a failure to pay 10 minutes of wages at the employee's agreed-upon or legally required (whichever is higher) rate of pay.
- The proposed version of COMPS stated, "when an employee does not have a required 10-minute rest period,..."

98

Rest-Period Exemptions

- If the below conditions are met, rest periods need not be 10 minutes every 4 hours for any employees (i) governed by a collective bargaining agreement at any employer, or (ii) during time they are providing Medicaid-funded residential in-home services for a service provider or agency an employer receiving at least 75% of its annual total gross revenue from federal and/or state Medicaid or other governmental funds for providing such services within Medicaid home- and community-based services waivers, and the services provided require continuous supervision of the service recipient, or providing a rest period would interfere with ensuring the service recipient's health, safety, and welfare. Employees in category (i) or (ii) must receive:
 - (1) rest periods that average, over the workday, at least 10 minutes per 4 hours worked; and
 - (2) at least 5 minutes of rest in every 4 hours worked.

99

Employer Record-Keeping and Posting Requirements

- **Posting and Distribution Requirements:**
 - **Posting.** Every employer subject to the COMPS Order must display a COMPS Order poster published by the Division in an area frequented by employees where it may be easily read during the work day.
 - If the work site or other conditions make a physical posting impractical (including private residences employing only one worker, and certain entirely outdoor worksites lacking an indoor area), the employer shall provide a copy of the COMPS Order or poster to each employee within his or her first month of employment, and shall make it available to employees upon request.

100

Employer Record-Keeping and Posting Requirements

- **Distribution.** Every employer publishing or distributing to employees any handbook, manual, or written or posted policies shall include a copy of the COMPS Order, or a COMPS Order poster published by the Division, with any such handbook, manual, or policies.
- Every employer that requires employees to sign any handbook, manual, or policy shall, at the same time or promptly thereafter, include a copy of the COMPS Order, or a COMPS Order poster published by the Division, and have the employee sign an acknowledgement of being provided the COMPS Order or the COMPS Order poster.

101

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102

More Employer Resources from ASAP

support.businessASAP.com

The screenshot displays the ASAP Help Center interface. At the top, the ASAP logo is on the left and "ASAP Accounting & Payroll, Inc." is on the right. Below the logo is the text "Help Center". A search bar with the placeholder "Search the help center" and a blue "Search" button is positioned below the header. The main content area features a grid of nine resource categories, each with a title and the number of articles:

Year-End Resources 23 articles	PPP & Recovery Resources 13 articles	FFCRA & Colorado HFWA Paid Leave 6 articles
Return to Work HR Guidance 7 articles	Furloughs, Terminations & Unemployment 8 articles	1099 Processing 12 articles
HR FAQ's & Best Practices 20 articles	Hiring Employees 10 articles	Getting Started w/ ASAP 10 articles

103