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Collective Bargaining and the FLSA – Properly Paying Overtime

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- Overview of the Fair Labor Standards Act
- Interplay with Collective Bargaining Agreements
- Common Pitfalls and Potentially Problematic CBA Provisions

Overview of the Fair Labor Standards Act

- Requires payment of (1) minimum wage and (2) overtime.
  - Subject to exemptions.
- Goals of FLSA:
  - Reduce unemployment.
  - Provide “Fair days pay’s for a fair day’s work.”
  - Reduce overwork and detrimental effect on health and well-being.
- State laws may have stricter requirements.
  - But FLSA preempts any less strict requirements.

Overview of the Fair Labor Standards Act

- Overtime calculation:
  - Total Pay Attributed to a Week / Total Hours Worked = Regular Rate
  - Overtime Pay = 1.5 x Regular Rate For All Hours Worked Over 40 in a Week
- Regular rate typically must include all remuneration (including most bonuses)
  - Only limited exceptions (e.g., discretionary bonuses, certain premium payments, etc.)

Interplay with Collective Bargaining

- Rights under the FLSA cannot typically be waived.
- Cannot be waived by private agreements.
  - Only if agreement is approved by DOL or Court.
- So employers cannot enter into agreements with employees to modify or waive FLSA requirements.
  - This includes CBAs, FLSA rights cannot be waived by a CBA.
- CBA can always provide greater rights.
  - But CBA cannot provide lesser rights than FLSA.

Interplay with Collective Bargaining

- FLSA does permit parties some flexibility under CBA:
  - 29 U.S.C. 203(o): excludes from compensable time “any time spent in changing clothes or washing at the beginning or end of each workday which was excluded from measured working time during the week involved by the express terms of or by custom or practice under a bona fide collective-bargaining agreement applicable to the particular employee.”
  - 29 U.S.C. 203(m): CBA can exclude certain board/lodging costs from definition of “wages”
  - 29 U.S.C. 207(e): certain premium pay provided under CBA may be excluded from regular rate calculation.
  - 29 U.S.C. 207(o): public agencies may pay comp. time in lieu of overtime payments if certain requirements are met.

Interplay with Collective Bargaining

- Arbitration
  - Typically cannot require parties to arbitrate FLSA claims using grievance and arbitration procedures laid out in CBA.
  - But if adjudication of FLSA claims requires “interpretation” of FLSA, can require claimants to first obtain that interpretation using grievance and arbitration procedures in CBA.
  - Or if trying to enforce contractual rights under CBA to overtime rather than trying to enforce statutory rights under FLSA, can require claimant to follow CBA process.
  - Can have separate agreement with employees requiring individual arbitration of claims without violating NLRA. *Epic Systems v. Lewis*, Supreme Court, 2018.

Interplay with Collective Bargaining

- Parties negotiating a CBA usually know what they intend when they negotiate specific provisions.
- Problems arise when individuals not privy to the parties intent try to interpret the intent or strictly apply the language in the CBA regardless of what the law says.
- Some time-collection software is not sophisticated enough to capture the nuances of multiple time entries required by a standard transit industry CBA.
- Communication between the company negotiating team and the payroll department is essential before contract implementation and throughout the contract term to avoid problems with overtime.

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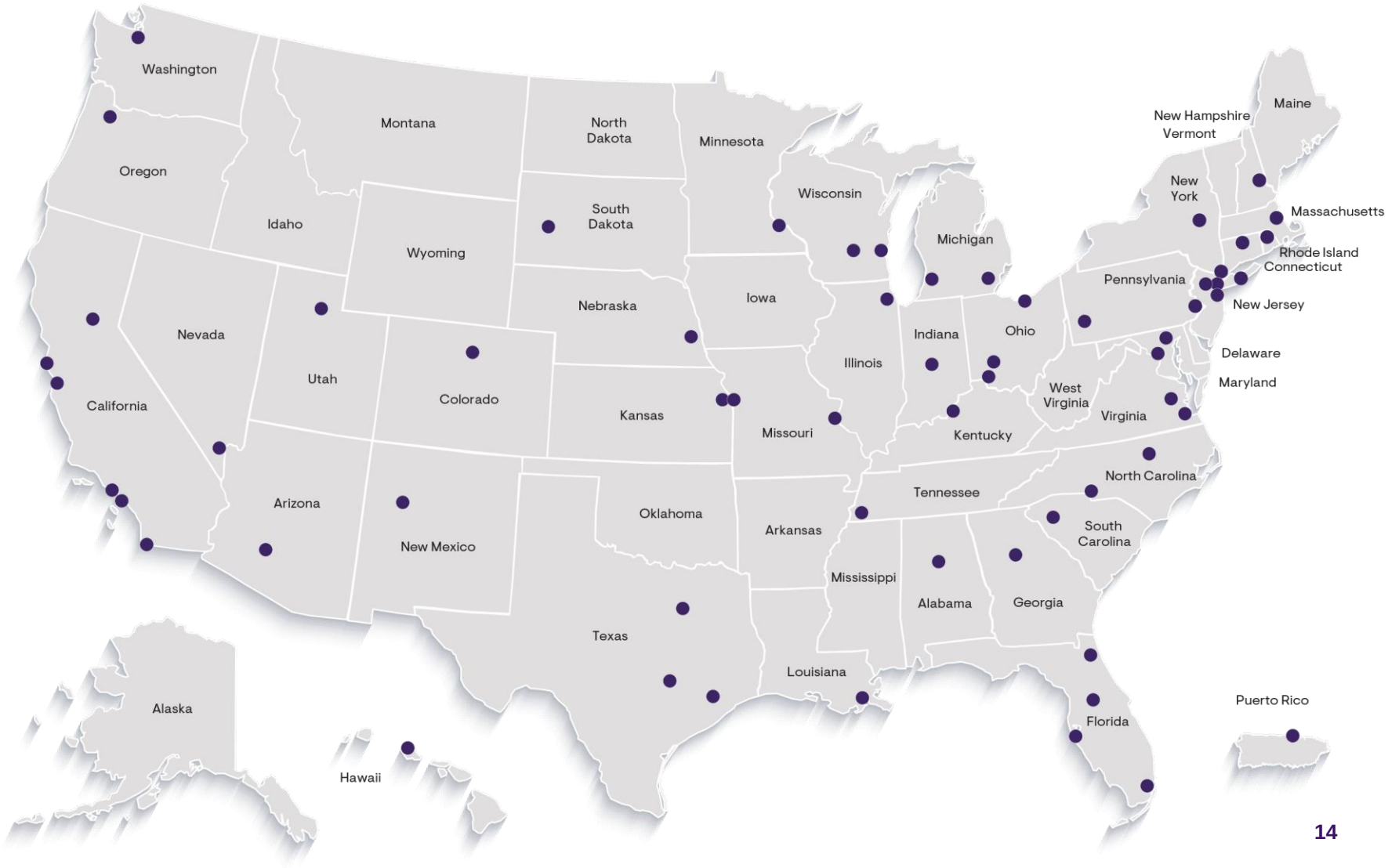


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