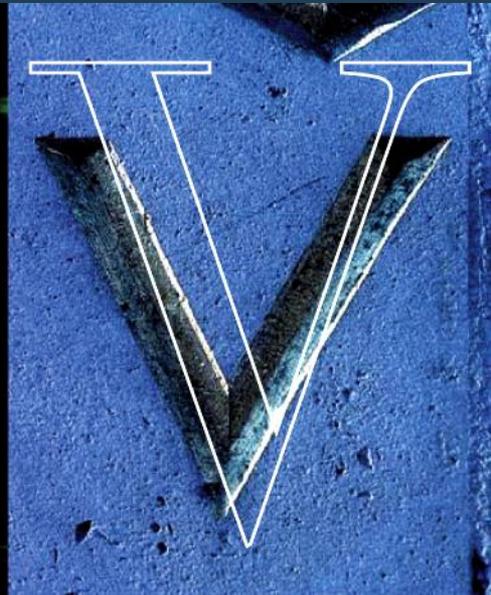
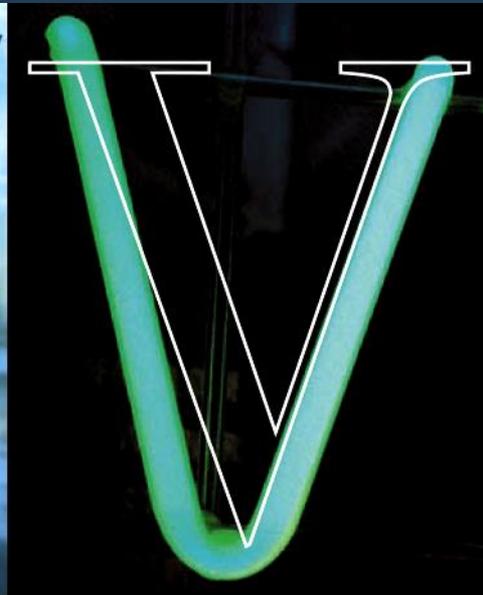
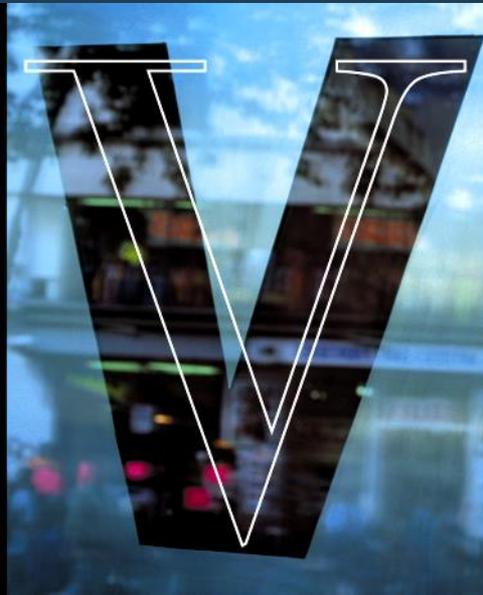
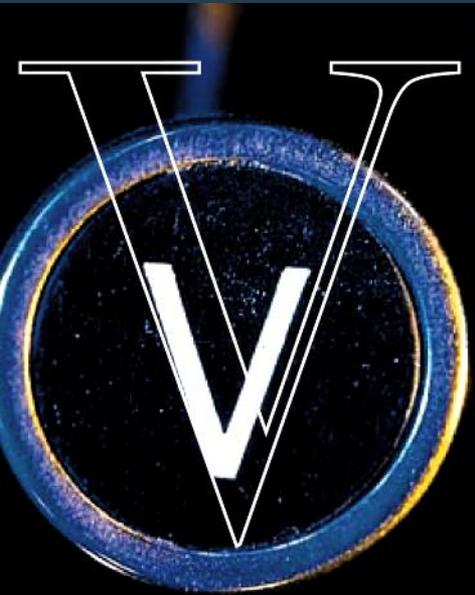


VENABLE[®]_{LLP}

I Work Hard For My Money:
Exemptions, Overtime and Compliance with Wage and Hour Laws

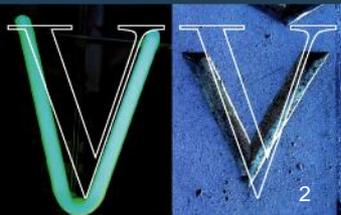
Caryn Pass, presenter
ISACS WEBINAR
May 10, 2016



Session Outline

- Governing law and Audits
- Exemption Classifications
- Changes To Rate of Salary Basis
- Changing Exemption Status

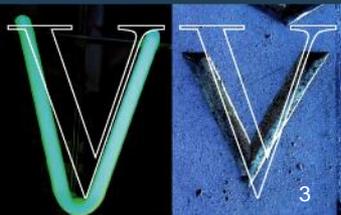
*Wise In The
School World*



Governing Law

- Fair Labor Standards Act (FLSA)
 - Federal law
 - State law may be similar, more restrictive, less restrictive, or non-existent
 - Enforced by the Department of Labor
 - Audits of employers based on
 - Industry
 - Complaint
 - National DOL Attention

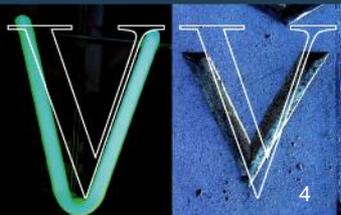
*Wise In The
School World*



Audits

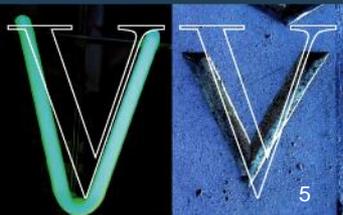
- Both Federal and state department of labor can conduct audit
- Generated by:
 - Complaint – usually look at more than just complainant
 - Industry focus
 - Random selection
- Can look at FMLA compliance, I-9 documents, exemption classification, calculation of pay, tracking of hours, etc.
- May notify other agencies if concerns: OSHA, IRS etc.
- Appear at door asking for records: Suggest you need time to compile and set another meeting
- Appear cooperative but do not over share
 - Attempt to determine why they are visiting
 - May or may not tell you

*Wise In The
School World*



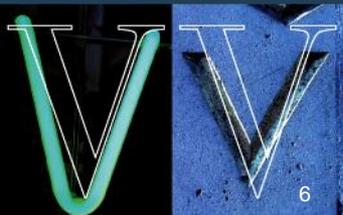
Exemption Overview

- Employees covered by FLSA unless qualify under “exemption” category
 - **Non-Exempt** = *Not* exempt from overtime & other requirements
 - **Exempt** = Exempt from overtime & other requirements
- Non-Exempt (covered by the FLSA rules)
 - Compensated at minimum wage for all hours *worked*
 - Overtime for all hours *worked* over 40 in a workweek
 - Overtime calculated at regular rate of pay (not necessarily hourly rate)
- Exempt (not covered by the FLSA rules on overtime)
 - Qualifies under exemption category
 - Executive, Administrative, Administrative in Educational Establishments or Professional
 - Paid on salary basis
- Independent contractor not covered by FLSA



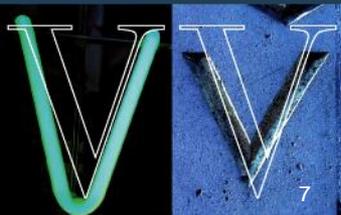
Non-Exempt Employees

- Employer must track hours worked by non- exempt employee
 - Risk assessment – how much risk for how much benefit
 - Clock, employee recording on paper, employee recording on computer, sign in & out at front desk, assume base work hours and notify employer when work more or less than base work hours
- Non exempt paid on hourly rate
 - # of hours worked times hourly rate
 - Can set “fixed” rate per week based on established work week and add overtime payment for hours over 40
 - Salary overtime eligible employee vs. hourly employee
- Overtime paid at 1 ½ times **regular rate** of pay
 - “work” doesn’t include paid leave
 - Regular rate = total remuneration for employment earned in the workweek (number of hours worked times hourly rate + any non discretionary payment) divided by the total number of hours worked by the employee in the workweek



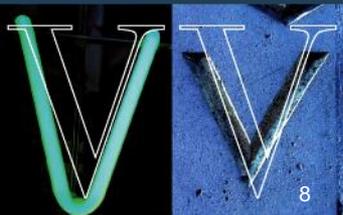
Three Part Test For Exemption

- Salary Level
 - Paid at the minimum rate of \$455/week
- Salary Basis
 - Paid the same amount each week regardless of the # of hours worked
 - Limited ability to dock in hour increments
- Job Duties
 - Meet the qualifications of an exempt category
 - Executive, Administrative, Administrative in Educational Establishments or Professional
 - Actual duties performed by the employee
 - Not just as described in the job description



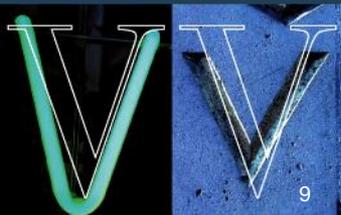
Salary Level & Salary Basis

- Salary Level
 - Paid at the minimum rate of \$455/week
- Salary Basis
 - Pre-determined amount of compensation each pay period
 - Cannot be reduced based on quality/quantity of work
 - Must receive full salary if any work performed
 - regardless of the number of days or hours worked
 - FMLA exemption: Based on hours if intermittent leave
 - can use paid vacation or sick leave (whole days vs hours)
- Docking allowed in whole days if:
 - Voluntarily absent for personal reasons (trip with husband)
 - Used up sick and vacation leave
 - Disciplinary suspension
 - **Major** safety violations
- Teachers Not Subject to Salary Basis Pay
 - Allowed to dock in hour increments



Changes to the FLSA (Wage and Hour)

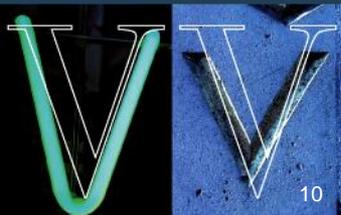
- Nothing finalized
 - Still awaiting final decisions
 - Unclear as to amount of time before law becomes effective
- Modification to law used as an explanation of why schools are making other changes
 - Employees currently misclassified can be corrected
- Only impacts minimum salary requirement to qualify for exempt status
- Time to prepare for pending modifications
- Changes can be made consistent with culture of school
- Strategies for making change without creating total chaos



Go Back To Your School and Check

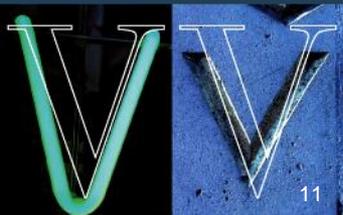
DO YOU HAVE AN EXEMPT
EMPLOYEE ON
YOUR PAYROLL THAT HAD
THEIR PAY DOCKED IN HOUR
INCREMENTS?

*Wise In The
School World*



Job Duties Considered in Exemption Qualification

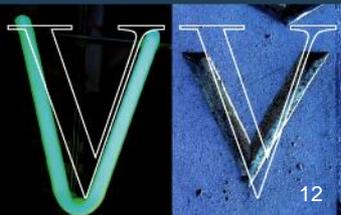
- Review of job duties when determining qualification for exemption category
- Actual job duties and responsibilities performed by employee
- Factors also considered
 - Job title
 - Can hurt but not necessarily help
 - Job description
 - Make sure the person actually performs this work
- Review regularly since responsibilities change
- Performance of employee may allow one employee but not another to qualify as exempt
 - Two employees holding the same job title may assume different amounts of responsibility



Go Back To Your School and Check

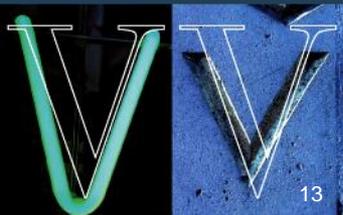
DO YOU HAVE EMPLOYEES WITH
THE SAME TITLE PERFORMING
DIFFERENT JOBS AS A RESULT
OF INITIATIVE, SKILLS,
KNOWLEDGE OR TENURE IN THE
POSITION?

*Wise In The
School World*



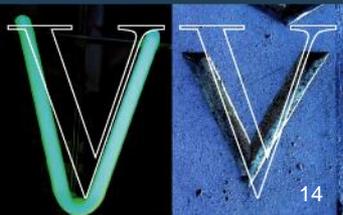
Executive Exemption

- Paid on Salary Basis
- Primary duty
 - managing the school, or a customarily recognized department or subdivision
- Direct
 - two or more other full-time employees or the equivalent
 - four half times
- Authority to
 - hire, fire, advance, promote & change status given *particular weight*
 - “*Particular weight*”
 - part of the employee’s job duties to make such recommendations?
 - recommendations are made, requested, and relied upon?



Administrative Exemption

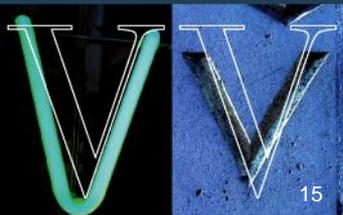
- Paid on Salary Basis
- Primary duty
 - performance of office or non-manual work directly related to the management or general business operations of the School
 - work directly related to running or servicing of the School
- Must
 - exercise discretion and independent judgment on matters of significance
 - authority to compare, evaluate and make decision on matters of significance
 - more than applying well-established techniques, procedures or specific standards described in manuals or other sources



Professional Exemption

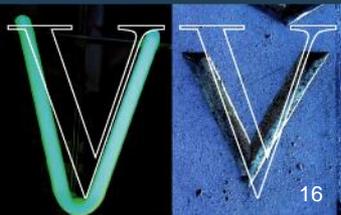
- Paid on a salary basis or fee basis of not less than \$455/week
- Primary duty
 - performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment
- Advanced knowledge
 - in field of science or learning
 - customarily acquired by a prolonged course of specialized intellectual instruction
 - lawyers, doctors, engineers

*Wise In The
School World*



Professional Exemption: Teachers

- Salary Basis Not Required
 - can dock in hour increments
 - can dock for leaving day before spring break begins
 - can dock if fails to appear on first day of orientation
- Primary duty
 - teaching, tutoring, instructing or lecturing in the activity of imparting knowledge in an educational establishment
 - caution if considering teacher's aids



Administrative In Educational Establishments

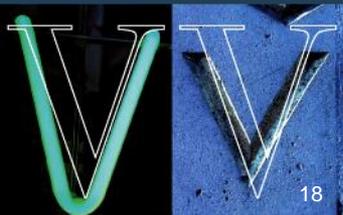
- Paid on a salary basis or fee basis of \$455/week or not less than entry level teacher
- Primary duty
 - performing administrative functions directly related to academic instruction or training in the educational establishment
 - performing work related to the academic operations and functions of the school

*Wise In The
School World*



Positions to Consider

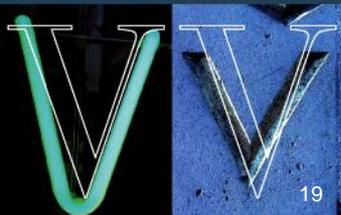
- Coaches – teachers? coach elsewhere?
- Substitutes – day rates? substitute for other schools?
- Counselors – have own practice?
- Psychometrists (testers) – have own practice?
- Tutors – work for other schools/parents?
- Other specialists (coordinator of play, after school programs,)



Changing From Exempt to Non-Exempt

- Employees often “offended”
 - perceived as “unprofessional”
 - tracking time is often the issue
- Cost Benefit Analysis
 - law requires overtime payment to non-exempt employees
 - employees upset if status changed
 - financial liability for failing to compensate overtime
 - liability for cost of non-payment vs. employee morale
- Challenges
 - Retroactive or only going forward
 - Employees question why not retroactive
 - Great unhappiness
- Strategies for Change
 - Identify other changes planned (benefits, handbooks)
 - Roll out as one package
 - Sell as a positive
 - Consider using “overtime eligible” and “overtime not-eligible”

*Wise In The
School World*



contact information

VENABLE INDEPENDENT SCHOOL LAW PRACTICE

Caryn G. Pass

cpass@venable.com

@schoollawyer

Office: 202.344.8039

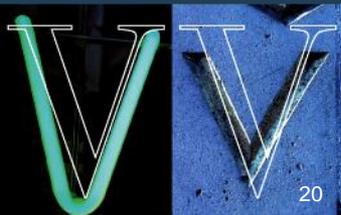
Cell: 202-222-8026

575 7th Street, NW

Washington, D.C. 20004

www.Venable.com/education

*Wise In The
School World*



the road ahead

*Wise In The
School World*

