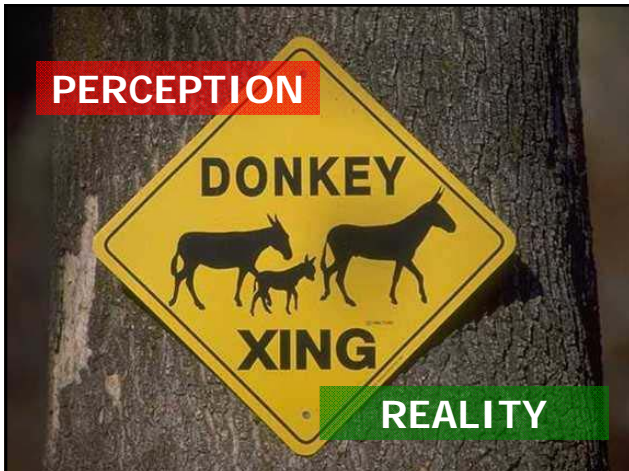


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What is YOUR Role in HR???

Advisor	Or	Employee Advocate
Decisionmaker, Onion-peeler	Or	Rubberstamper, Ostrich
Professional	Or	One of the Gang
Neutral Factfinder	Or	Prosecutor, Judge & Jury
Proactive	Or	Reactive
Dynamic Leadership	Or	Status Quo
Role Model	Or	Part of the Problem



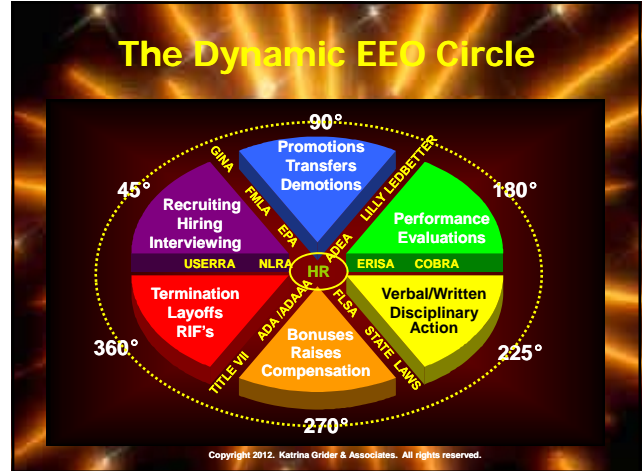
**Hayes v. Crescent Real Estate Equities,
 No. 11-2201 (S.D. Tex. 2011)**

- Hayes (VP-HR) told company that discretionary bonuses were actually nondiscretionary payments. Plus, hourly employees were misclassified and improperly paid. Company said, “Drop it.”
- Hayes didn’t. She prepared the upcoming budget and presented it to the directors. Hayes listed a higher amount for labor costs and explained the reason was hourly employees had been underpaid under the FLSA due to the nondiscretionary bonuses. Company said “we’re not changing it” and warned again to stop raising the issue.

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**Hayes v. Crescent Real Estate Equities,
 No. 11-2201 (S.D. Tex. 2011)**

- Next, Hayes was terminated. She sued, alleging retaliation for engaging in protected activity. Crescent: Hayes was merely doing her job when she warned them, and was not engaged in protected activity.
- Court: Disagreed--since Hayes had not dropped the matter, she stepped outside her usual role and had engaged in protected activity. It ordered a trial.



Lies

EEO Myth #1:
 It Will Never Happen to Me

Truth

NEXT EXIT 50m

**Personal Liability:
 You CAN be Sued in HR!**

YES	NO
FMLA	Title VII
FLSA	ADA, ADA AAA
USERRA	ADEA
Employee Polygraph Protection Act	PDA
Some state non-discrimination laws	NLRA

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**FMLA/FLSA Personal Liability:
Legal Standard**

- ◆ **Managers must:**
 - ✓ Exercise supervisory authority over the employee who is seeking FMLA leave
 - ✓ Exercise supervisory authority over the exempt or nonexempt employee
 - ✓ Be responsible in whole or in part for the alleged violation
 - ✓ Would cover any manager or supervisor with hiring and firing authority

How to Avoid Personal Liability

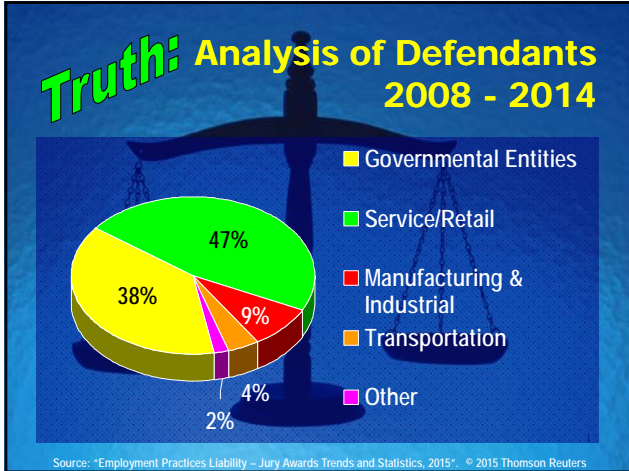
- ◆ Know the law (federal and state disability and family leave statutes)
- ◆ Educate and train decision-makers
- ◆ Follow the law:
 - ❖ Not just your marching orders
 - ❖ Not just to cut corners
- ◆ Document your decisions and who tells you to do what
- ◆ Review all policies
- ◆ Do not act in anger or retaliate

**Managers:
Stay in Your Lane**

- Do not go drinking/shopping/fishing or stuff with the people you supervise
- Do not Facebook friend anybody you supervise (directly or indirectly)
- Do not sleep with people
- Do not manage by ambush (gotcha!)
- Do not play favorites and make exceptions to your rules and policies
- Do not run your mouth about confidential medical stuff



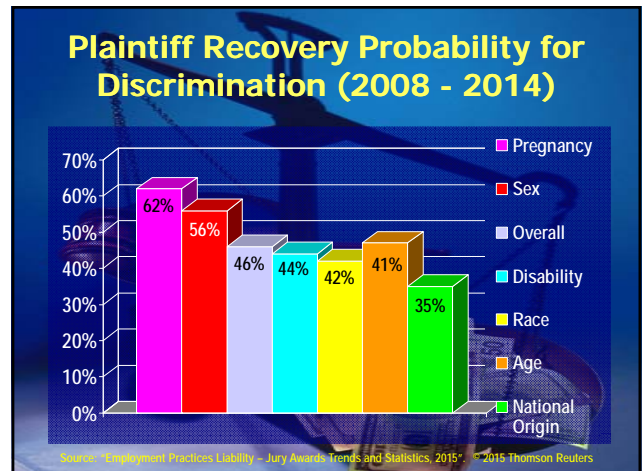
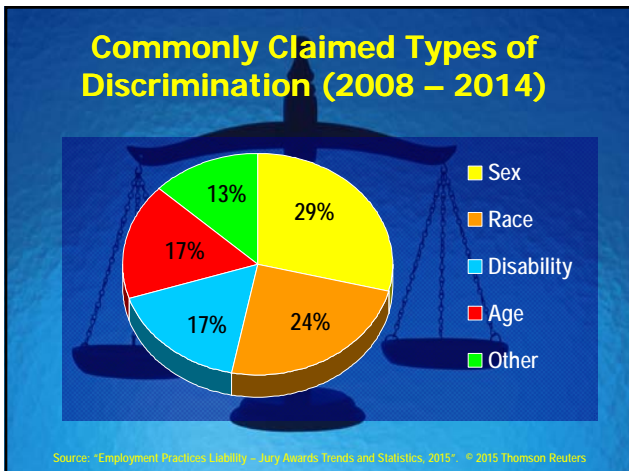
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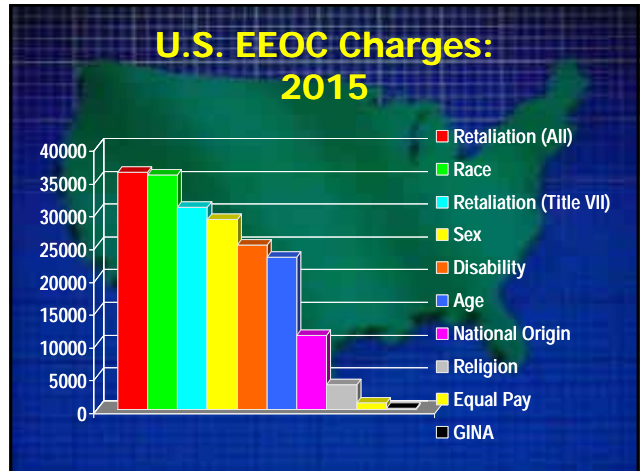
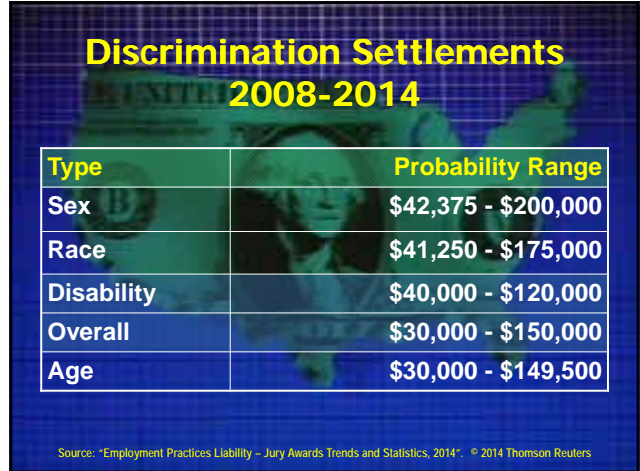
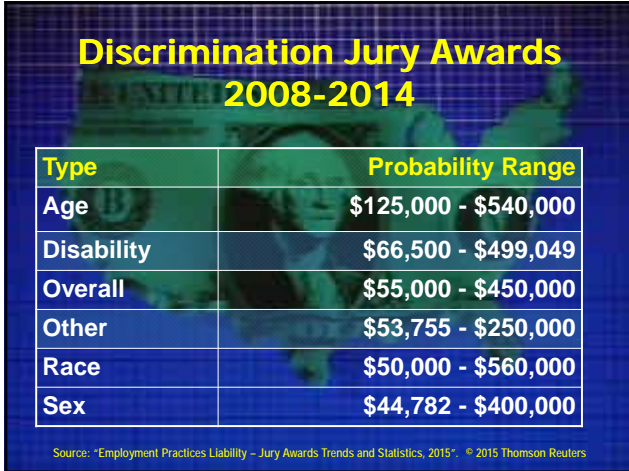
Defendant Awards 2008 - 2014

Type	Probability Range
Government Entities	\$77,192 - \$548,326
Manufacturing/Industrial	\$49,410 - \$604,282
Service/Retail	\$17,475 - \$272,643
Transportation	\$34,459 - \$480,000
Overall	\$30,885 - \$400,000

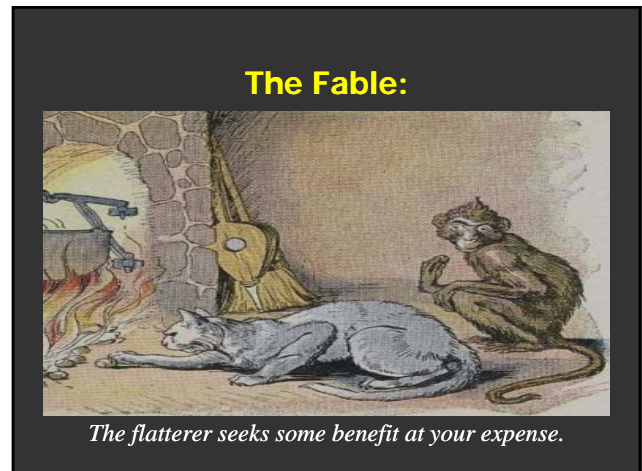
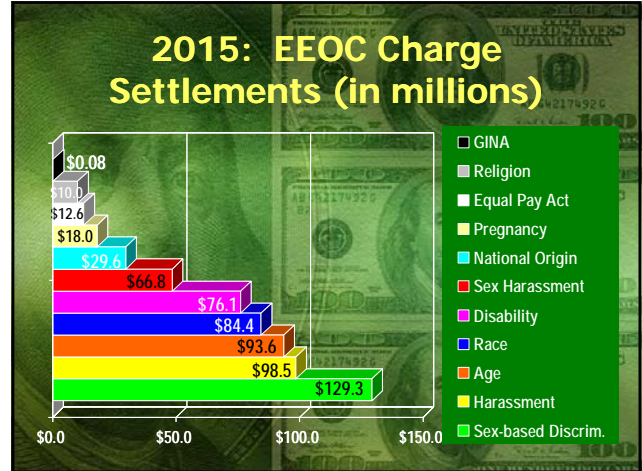
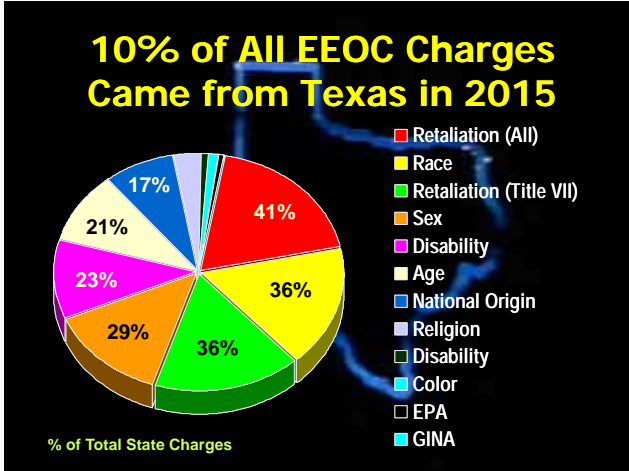
Source: "Employment Practices Liability - Jury Awards Trends and Statistics, 2015" © 2015 Thomson Reuters



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The Supreme Court’s Cat’s Paw Theory of Liability

An employee may establish **unlawful employment discrimination or retaliation** when:

a **biased non-decisionmaker** (the monkey, a.k.a. the manager) influences an **unbiased decisionmaker** (the cat, a.k.a. HR) to take action that HR otherwise would not take.



Price v. FedEx
Federal Ct. - Houston

- × Company fired black employee after he complained of discrimination
- × Houston jury found non-promotions and firing were retaliatory

Back pay	\$180,000
Punitive	\$2,500,000
Compensatory	\$170,000
TOTAL	\$2,850,000
Jury Time	4.25 Hours
Jury Vote	8-0 (3M/5F)

Demand = \$390,000

Offer = \$55,000

Retaliation Factors

- × Take **adverse action** against employee who engages in a **protected activity**:
 - Excessive monitoring of employee’s performance
 - Ignoring or avoiding one who filed a complaint
 - Threatening employee with disciplinary action or termination
 - Intimidating employee (chain of command)
- × Causal connection between protected activity and adverse action

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FMLA Retaliation Examples

- Firing an employee on FMLA leave because the he/she is not at work when the manager wants.
- Firing an employee who was caring for a child—and telling her it was because she took too much time off from work.
- Returning an employee from FMLA to lesser duties and pay.
- Weekly calls to employee about his/her return date.

Retaliation Awards Overall (2008 – 2014)

Award Range	\$1.00 – \$11,441,559
Award Average	\$564,873

Source: “Employment Practices Liability – Jury Awards Trends and Statistics, 2015”. © 2015 Thomson Reuters

Lies

EEO Myth #6:
No One Will Ever Find Out

Truth



NEXT EXIT 50m

Psychologists:
Lying Online May
Be The Norm

TRUTH

LIES

Abstract, *Liar, Liar, Hard Drive on Fire: How Media Context Affects Lying Behavior*, 41 J. Applied Psych. 2492 (2011).


- ☒ People who communicate online lie more in those interactions than they do during face-to-face encounters.
- ☒ The most lies were in e-mail, followed by instant messaging, and lastly face-to-face talks.
- ☒ Conclusion: it may be normal to distort reality online.

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All That Glitters is Not Gold

CareerExcuse.com
FakeYourJob.com

Paladin Deception Service, Inc. (registered in China)

CareerExcuse.com
Established Since July 2008

- Fast Process results
- Legal and Compliant
- No Hidden Fees Ever
- All Inclusive
- No Contracts

Call Software
1-800-637-7709
@careerexcuse.com

CareerExcuse Now Hiring!
Earn \$50 providing professional job references in ONE ten-minute phone call!
bit.ly/1888a9b-1

Bad Reference? Resume Weak? Fired?
WE CAN HELP!
We will act as your past employer and have our business standing to give you that "great" reference that you need to any inquirer. Join now and you will be able to create a career with a work history and pay range as you see fit. To find out more, [click here](http://bit.ly/1888a9b-1).

Our guarantees
Jobs Within 60 Days
as we refund your money PLUS \$50 extra

No other job reference service on Earth is willing to put their money where their job is! If you are not 100% satisfied, we offer a full refund of your money. Why you DON'T AGREE? You can't help but rework your references!

Interviews within 30 days or we'll rework your references - no extra fee!
75% of our clients are called for interviews within just 10-12 days of

Our Process

- Step 1:** Choose a plan. Basic/Professional plan takes our established vetted companies. Or, you can create your very own company with our premium plan.
- Step 2:** Complete our submission form, we will contact with you via email to complete your materials and recommend one of our vetted companies according to your career needs or confirm we can create your desired company and provide exact references requested.
- Step 3:** Upon receiving your new references, you will be given subscription directions where you will receive your new company.

Our Commitment

We will act as your very own Human Resources Department and supervisor using one of our vetted companies (including your name, job title, description, work dates and answer any questions with a positive reference in a professional, business like manner)

Discreetly increase your response rate.

Fake Your Job Fake job references & fake landlord references

HOME SERVICES RATES & PACKAGES FAQ BLOG ABOUT US CONTACT US

Toll free 1.888.908.8289

FAQ

Frequently Asked Questions

Below are a list of frequently asked questions. Should you have further questions unanswered in this FAQ, feel free to contact us. You may contact us via our contact page, or pick up the phone and call.

Is what you are doing legal?
In short, yes. Although people may find this type of ad to be unethical, it is legal as long as you are not trying to defraud or fabricate yourself to your local, state, or federal government.

Can I go to jail or get arrested for this?
If you're doing this for employment or for renting a place to live, no. However, if you are trying to deceive any government agency, you very well can get fined and thrown in jail. This is why we only offer this service for personal endurance. Any place that is not government run is eligible.

Can I get a mortgage with this service?
We will not provide employment references or help in any way to get you a home. That is illegal.

How real does my "previous employment" look when you're all done?
When we get done with your project, you will have a very professional website, and business contact that no one will be able to tell apart. Don't worry.

How long does it take once we get started?
Typically, the process takes about 3-5 business days depending on which package you choose and how involved we get.

Should I get a toll free number or a local number?
It's your choice, but we'd probably recommend a local number in your area code for a more authentic presence. But, it depends on the business and industry.



Who: Timothy Green (age 54)
What: Runs Paladin Deception Services in Forest Lake, MN
Where: Company is registered in China
Claim: "Will lie to anyone about anything"
Cost: \$54 per month

- * Customers run the gamut from cheating spouses in need of alibis to people playing hooky from work
- * Real demand comes from job seekers, making up more than 60% of what Green says are its 250 to 300 monthly clients

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PhoneGangster.com

- ❖ Allow you to fake the caller id when calling another party
- ❖ Upon calling a person, you get to choose what number appears
- ❖ Phone records of party called displays the altered number
- ❖ Can change gender of voice
- ❖ “Our service is not only fun and useful, but it is legal as well”

Texas Online Impersonation Statute (Tex. Penal Code §33.07)

- ✱ **3rd degree felony** if a person sends an email, IM, text, tweet referring to another person:
 1. Without obtaining the other person's consent
 2. Intending to cause a recipient to believe that the message was sent by that person
 3. Intending to harm or defraud the person

Lies

EEO Myth #7:
You Can't Harass People
on Social Media--It Has To Be In
Person....**Truth**

NEXT EXIT 50m

Old School Conduct on New School Devices...

- Disabled employee harassed by coworkers on blog outside the workplace = \$1.6M verdict
- Store manager sent sexually charged text messages to employee; employee reported conduct to direct supervisor; that supervisor was fired for reporting it to legal department = \$2.3M settlement
- Survey: increase in social media complaints

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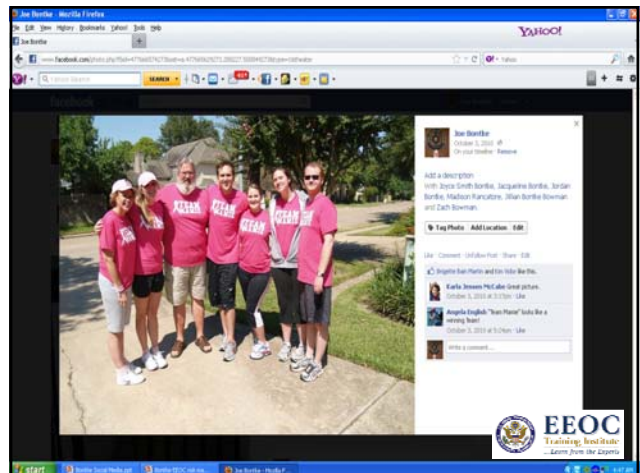


Can You Google an Employee or Applicant on Social Media? NO

- ❖ Over 24 million Facebook users leave their profiles public
- ❖ www.openbook.org (shut down 07/12)
- ❖ 73% of social media profiles can be found through a public search engine
- ❖ 77% of social network users do not restrict access to their photos

Can You Google an Employee or Applicant on Social Media? NO

- ❖ 35% employers have at least once decided to not offer a job to an applicant based on the content posted
- ❖ Over 50% of the decisions based on:
 - ✦ Provocative photos
 - ✦ References to drinking and drug use or
 - ✦ Bad-mouthing of previous employers and colleagues



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**Social Media Postings:
NLRB Standard – Private Sector**

- ❖ NLRB protects **statements made during the course of “protected conduct” and/or “concerted activity”** unless they are **so egregious** as to remove the employee’s conduct from protection of the Act?
 - ✓ Applies to both non-union and union employees
 - ✓ Applies to all employers engaged in interstate commerce

**Social Media Postings:
NLRB Standard – Private Sector**

- ❖ What are **“statements made during the course of protected conduct”**?
 1. Terms and conditions of employment
 - Wages, tipping arrangements, or commissions?
 - Complaints about management in general or perhaps a specific supervisor?
 - Failure to get raises, or complaints about annual reviews?

**Social Media Postings:
NLRB Standard – Private Sector**

- ❖ What are **“statements made during the course of concerted activity”**?
 1. Engaged in with or on authority of other employees?
 2. Engaged in to solicit or induce group action?
 3. Engaged in to advance truly group complaints?

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Pregnancy Discrimination

- Review the EEOC Guidelines on pregnancy discrimination
- Pregnancy-related conditions may fall under the ADA (infertility, gestational diabetes, preeclampsia)
- Don't treat pregnancy any differently than any other medical condition
- Promptly respond to accommodation requests from pregnant employees

Breaks for Nursing Mothers Under the FLSA

- Must provide reasonable break time for nursing mothers to express milk for 1 year after the child is born
- Must provide a place that is shielded from view and free from intrusion
- A bathroom, even if private is NOT a permissible location
- Compensable time if you pay for other breaks (rest, smoke breaks, etc.)

Fair Labor Standards Act (FLSA) Scope

- ❖ Minimum wage (currently \$7.25/hr effective July 24, 2009)
- ❖ Overtime (mandating non-exempt employees be compensated at rate of 1½ times regular rate for all hours worked over 40 in a workweek)
- ❖ Record keeping (verifying employers keep accurate records of worked time and compensation)

FLSA Personal Liability for Violations

- ❖ Enforced by the Department of Labor (DOL)
- ❖ FLSA is one of the few statutes which can impose individual liability on owners, corporate officers or even supervisors.
- ❖ There is individual liability under the FMLA (for nonprofits with 50 or more employees within a 75 mile radius)

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FLSA: Overtime Exemptions

- ❖ Two categories of employees:
 - Exempt = No overtime paid
 - Nonexempt = Overtime must be paid
- ❖ Must pay nonexempt employees
 - Minimum wage
 - Overtime for all hours worked over 40
- ❖ Certain white-collar employees are exempt from these provisions
- ❖ Workweek is 7 day consecutive 24 hour periods (168 hours)

White Collar Exemptions: Employees Who Do Not Get Overtime

- ❖ To qualify for exemption, employee must meet duties test AND be paid \$913/week or \$47,476 annually
- ❖ Executive
- ❖ Administrative
- ❖ Professional
- ❖ Outside sales
- ❖ Computer programmers
- ❖ Job titles do not determine exempt status!
- ❖ Payment of salary alone does not determine status!

DOL Final Rule: White Collar Exemptions

- ❖ Effective 12/01/16
- ❖ Increases the salary basis from \$455/week (\$23,660 annually) to \$913/week (\$47,476 annually)
- ❖ Increases the total annual compensation for highly compensated employees (HCE) from \$100k to \$134,004
- ❖ Amends salary basis test to allow ERs to use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10% of the new standard salary level

What's the Problem on 12/01/16? Employees Must be Paid Overtime

- ❖ Employees who earned \$23,660/year AND met the duties test did not have to be paid overtime.
- ❖ On 12/01/16, Employees who make > \$23,660/year and < \$47,476/year are now eligible for overtime regardless of what their duties are!!
- ❖ May need to increase the salaries of employees to \$47,476 in order to avoid paying overtime
- ❖ May need to adjust workloads to decrease chances of overtime being incurred
- ❖ May need to reclassify employees as nonexempt and adjust budgets to pay overtime