



MCIT

MINNESOTA COUNTIES INTERGOVERNMENTAL TRUST

VIRTUAL RISK MANAGEMENT WORKSHOP

Key Employment Risks for Small Employers

PRESENTED BY:

Sonya Guggemos

**Senior Staff Counsel for Risk
Control**

sguggemos@mcit.org



The information contained in this document is intended for general information purposes only and does not constitute legal or coverage advice on any specific matter.

Topics Covered

- Family and Medical Leave Act
- Minnesota leave laws
- Minnesota Veterans Preference Act
- Disability accommodation
- Fair Labor Standards Act
- And more!

Federal Family and Medical Leave Act (FMLA)

Family and Medical Leave Act (FMLA)

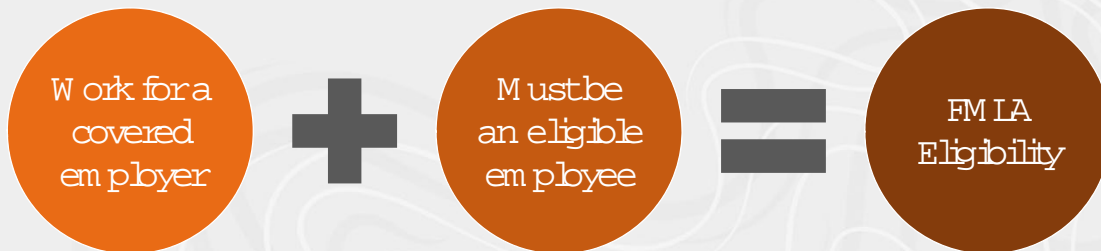
- Permits eligible employee to take 12 weeks of unpaid leave for certain qualified events
- Provides job and benefit protection during that leave



True or False?

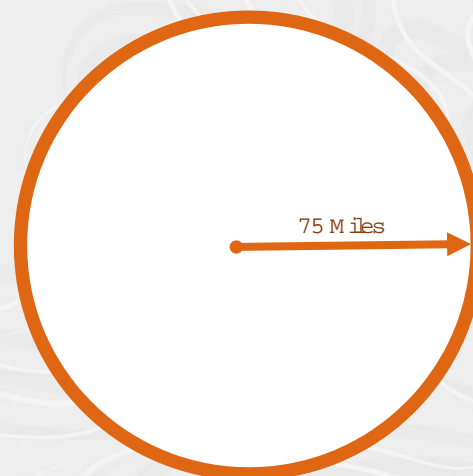
The FMLA does not apply to government entities with fewer than 50 employees?

FMLA Eligibility



FMLA Eligible Employees

- All must be true:
 - Employed by a covered employer for at least 12 months (nonconsecutive)
 - Employed for 1,250 hours over the previous 12 months immediately preceding the leave
 - Employed at a work site where 50 or more employees are employed by the employer within 75 miles of that work site



PUBLIC EMPLOYER FMLA OBLIGATIONS

All FMLA-covered Employers

Post a general FMLA notice

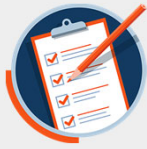


PUBLIC EMPLOYER FMLA OBLIGATIONS

FMLA-covered Employers with Eligible Employees



- Provide employees general notice about FMLA
- Notify employees concerning their eligibility status, rights and responsibilities under the FMLA
- Notify employees whether specific leave is designated as FMLA leave and the amount of time that will count against their FMLA leave entitlement



Practice Tips

- Be aware of possible implications of adopting the FMLA
 - Check health insurance policies and other employee benefits contracts
 - Past practice? Equitable estoppel?
- Discuss with legal counsel and employee insurance benefits carriers



Resources

- “How FMLA Applies to Public Employers” (MCIT.org/resource/)
- U.S. Department of Labor, Wage and Hour Division
Family and Medical Leave Act website
(DOL.gov/agencies/whd/fmla)

Minnesota Leave Laws

Quiz!

Which Minnesota leave laws only apply to employers with 21 or more employees at a single site, regardless of where that site is?

Choose all that apply.

- A. Minnesota Pregnancy and Parenting Leave
- B. Minnesota Sick and Safety Leave
- C. School Conference and Activities Leave

Minnesota Pregnancy and Parental Leave

- Up to 12 weeks of unpaid leave upon the birth or adoption of a child
- Employer-provided health insurance must be continued
- Employee has right to reinstatement



MINNESOTA PREGNANCY AND PARENTAL LEAVE Employee Eligibility

- All must be true:
 - Worked at least half time (FTE) for 12 months
 - Have been with the employer for at least 12 months (not necessarily consecutively)
 - Includes all individuals employed at any site owned or operated by the employer but not an independent contractor



Minnesota Sick and Safe Leave

- If allow employee to take time off for own injury or illness, must allow employee to take time for:
 - Care for an ill or injured minor child, adult child, spouse, sibling, parent, mother-in-law, father-in-law, grandchild, grandparent or stepparent in the same manner the employer would allow an employee to use the leave for themselves
 - Themselves or a relative (as listed above) to provide or receive assistance because of sexual assault, domestic abuse, stalking or harassment

Minnesota Sick and Safe Leave Eligibility

- Employers (both must be true):
 - Have 21 or more employees at a single site, regardless of where site is
 - Offer personal sick leave benefits for absence from work due to an employee's illness or injury
- Employees (both must be true):
 - Have worked for the employer for at least 12 months
 - Worked at least half-time (FTE) during the past 12 months



School Conference and Activities Leave

Employee must be granted up to 16 unpaid leave hours for each child during any 12-month period to attend child's school conferences and activities each year



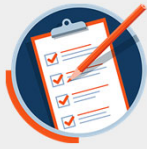
School Conference and Activities Leave Eligibility

Employers:

Have 1 or more employees

Employees:

Worked at least half-time (FTE) during the past 12 months



Practice Tips

- Review resources and relevant laws when leave request is received
- Employers can provide greater leave benefits, within their legal authority, but not less than law requires
- Discuss with legal counsel if questions



Resources

Minnesota Department of Labor and Industry

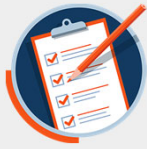
- Pregnancy and Parental Leave
- Sick and Safe Leave
- School Conference and Activities Leave

Disability Accommodation

Relevant Laws



- **Americans with Disabilities Act Title I Employment:**
 - Applies to employers with 15 or more employees
- **Minnesota Human Rights Act**
 - Applies to all Minnesota employers with at least 1 employee
 - 15 or more for reasonable accommodation
- **Section 504 of the Rehabilitation Act of 1973**



Practice Tips

- Review relevant laws
- Consult with legal counsel with questions
- Engage in the interactive process and work with the employee as appropriate



Resources

- Minnesota Department of Human Rights
- *ADA.gov*: U.S. Dept. of Justice, Civil Rights Division

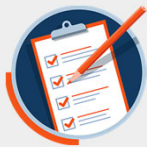
Pregnancy and Nursing Accommodations

Minnesota Pregnancy Accommodations

- Employers with 15 or more employees
- Automatic, upon request and without documentation:
 - More frequent restroom, food and water breaks
 - Seating
 - Limits on lifting more than 20 pounds
- **NEW:** No length of employment required

Nursing Mothers

- Employers with 1 or more employees
- Must provide:
 - Reasonable break times to express milk
 - Private space to express milk:
 - Not a bathroom
 - Shielded from view
 - In close proximity to the work area
 - Free of intrusion from co-workers and public
 - Has access to an electrical outlet



Practice Tips

- Employers can provide more than legally required, but cannot provide less.
- Consult with legal counsel if questions



Resource

"Pregnancy and Nursing Accommodation Under Minnesota Law" (MCI.org/resource/)

Minnesota Veterans Preference Act

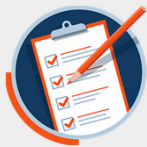
True or False?

The Minnesota Veterans Preference Act applies to all counties, home rule charter or statutory cities, towns, school districts and other municipalities or political subdivisions regardless of their size.

Minnesota Veterans Preference Act

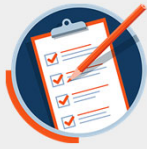


- Provides preference for qualified veterans and disabled veterans in open, competitive positions
- Qualified veterans may only be disciplinarily demoted or terminated for incompetence or misconduct shown after a hearing



Practice Tips: VPA in Hiring

- Provide opportunity for applicants to apply for preference points
- Request documentation (DD-214) to confirm qualifications
- Follow VPA requirements for screening applicants
 - 100-point system
 - 10 additional points for veteran
 - 15 additional points for disabled veteran



Practice Tips: VPA in Discharge

- Remember to provide statutorily required notice to the veteran employee
- Consult with legal counsel



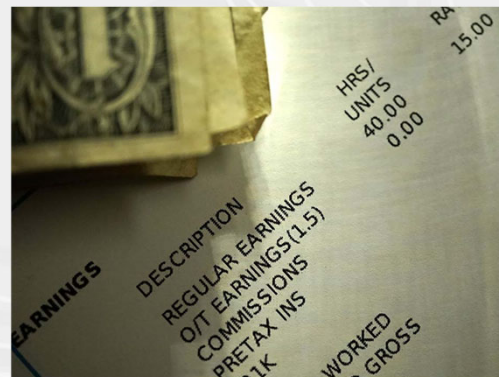
Resources

- “Veterans Preference Act in Employment” (MCIT.org/resource/)
- Minnesota Department of Veterans Affairs website

Federal Fair Labor Standards Act

Fair Labor Standards Act (FLSA)

- Classifies employees as exempt or nonexempt
- Nonexempt employees generally have the right to overtime or compensatory time



True or False?

Job titles are the best way to determine if a position is exempt or nonexempt from the FLSA?

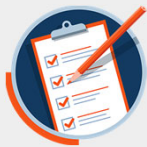
Exempt or Nonexempt?



- To be “exempt,” employees must:
 - Be paid on a salary basis of not less than \$684 per week (but may be exceptions)
 - Meet certain tests regarding job duties

Public-sector Difference

May require salaried exempt employees to use accumulated leave when they take off work to account for their time according to a pay system (including an hourly time recording system) without losing the FLSA exemption



Practice Tips

- When in doubt, classify an employee as nonexempt and pay overtime as required
- Know the FLSA classifications of the positions you supervise
- Make sure your employees know whether their position is classified as exempt or nonexempt

Quiz

SWCD personnel policies state that no overtime may be worked without prior approval by the district manager.

The district manager discovered that a nonexempt employee worked extra hours without pre-approval on the weekend.

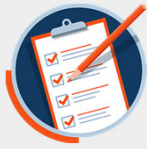
Does the SWCD need to pay the overtime?

- A. No. The overtime was not pre-approved
- B. Yes, the district manager/SWCD knew the employee had performed work
- C. Yes, unless the employee chooses to waive the overtime payment

Overtime

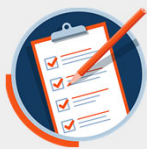
- Covered, nonexempt employees must be paid **at least time-and-one-half** their regular rate of pay for all hours worked over 40 in a workweek
- Overtime cannot be waived



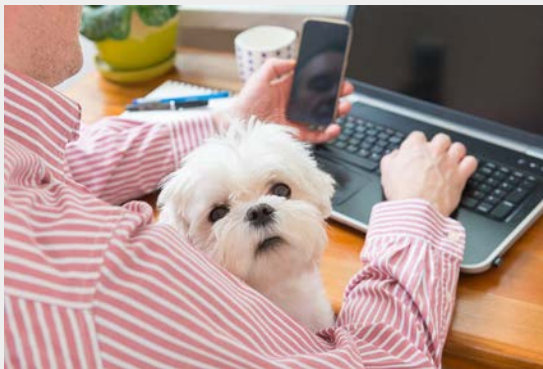


Practice Tips

- Have a written overtime policy that is consistently enforced
- Ensure that employees are aware of the policy and know what constitutes “working”



Practice Tips: Time Worked



- Checking and answering e-mail, phone calls and voice mail during nonwork hours may constitute compensable time for nonexempt employees
- Unless clearly de minimus, nonexempt employees should report all time worked

Hypothetical

SWCD has a bi-weekly payroll.

Established work week begins Sunday at 12 a.m. and ends on Saturday at 11:59 p.m.

A nonexempt, regular SWCD employee works 48 hours in the first payroll week and 32 hours in the second payroll week.

Which is correct?

- A. No overtime is owed; employee worked 80 hours in the pay period
- B. Employee is paid for 72 hours at standard pay rate and owed 8 hours of overtime at time and a half

Establishing the Work Week

- Work week is fixed, regularly recurring period of 168 hours (7 consecutive 24-hour periods)
- Flex time is a policy decision but must be within the established workweek
- Compressed time is not an option for local government entities



Compensatory Time



- Public-sector alternative to paying overtime
- Must be established by agreement with the employee before work is performed
- Must provide at rate of at least **time-and-one-half** over 40 hours worked

Compensatory Time

- Limit of 240 hours of comp time for most employees
- Generally employee must be allowed to take comp time within a reasonable period, unless “unduly disrupts” entity’s operation





Resources

- Minnesota Department of Labor and Industry website
- U.S. Department of Labor, Wage and Hour Division
 - Fact Sheet No. 7: State and Local Governments Under the Fair Labor Standards Act (FLSA)
- “FLSA and Flexed or Compressed Schedules”
(MCIT.org/resource/)

Federal Form I-9

Quiz

How many days do employers have to complete Form I-9, Employment Eligibility Verification, for a new employee?

- A. 1 day
- B. 3 days
- C. 1 week
- D. This is a trick question

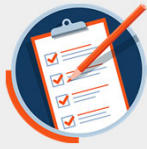
Federal Form I-9

Section A

Employee must complete on first day of employment

Section B

Employer must verify employee's documentation within 3 days of employment



Practice Tip

Provide copy of I-9 form and instructions to employee prior to first day of employment



Resource

United States Citizenship and Immigration Services,
E-Verify Central

Minnesota Wage Laws

Minnesota Wage Disclosure Protection

- Generally prohibits employers from requiring employees not to disclose or discuss their wages or take adverse action against an employee for doing so
- An employer that provides an employee handbook must include a notice of employee rights and remedies under this law

Minnesota Wage Theft Protection Act

- Record keeping requirements added in 2019:
 - List of the personnel policies provided to the employee, including the date the policies were given to the employee and a brief description of the policies
 - Wage notice given at the beginning of employment, along with written changes
 - Additional information required on earnings statements



Resources

- Minnesota Department of Labor and Industry
 - Wage Disclosure Protection FAQs
 - Wage Theft Protection Act resources

Join Us for More Workshops

Register at [MCIT.org/training-calendar/](https://mcit.org/training-calendar/)

- **Ethics and Public Purpose Doctrine for Public Entities:**
Oct. 27 at 1:30 p.m.
- **Managing Performance with Positive Communication:**
Nov. 16 at 1:30 p.m.

DISCUSSION

ASK QUESTIONS, SHARE EXPERIENCES



THANK YOU!

Please complete the online evaluation