

# Welcome to the call!

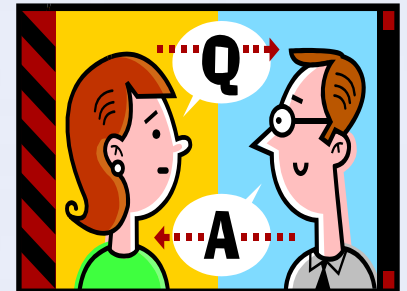
If you have questions during the call, you can submit them by writing them in the at the bottom right-hand corner of the screen. You can also “raise your hand” by clicking the raised hand icon. We will end on time...

but... *you might still have more questions*

**We'll then stay on for another 15 minutes**

Use this time to ask Bill Rollings questions

***We'll be starting shortly.***





Suzanne Bogdan, Partner, Fisher & Phillips, LLP

- Chair, Education Group
- Works with 100 private schools and colleges
- Works with many school associations and accrediting agencies
- Presenter to NAIS, NBOA, FCIS, MISBO



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- Provides HR support to 400 private schools across the country
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# Fixing the Wage Hour Problem Lurking in Your School



*Presented by:*

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# Wage Hour Violations

- **Tremendous growth in wage-hour claims**
- **Large potential for class action lawsuits**
- **Small liability; large fees**
- **Strict compliance with law required**



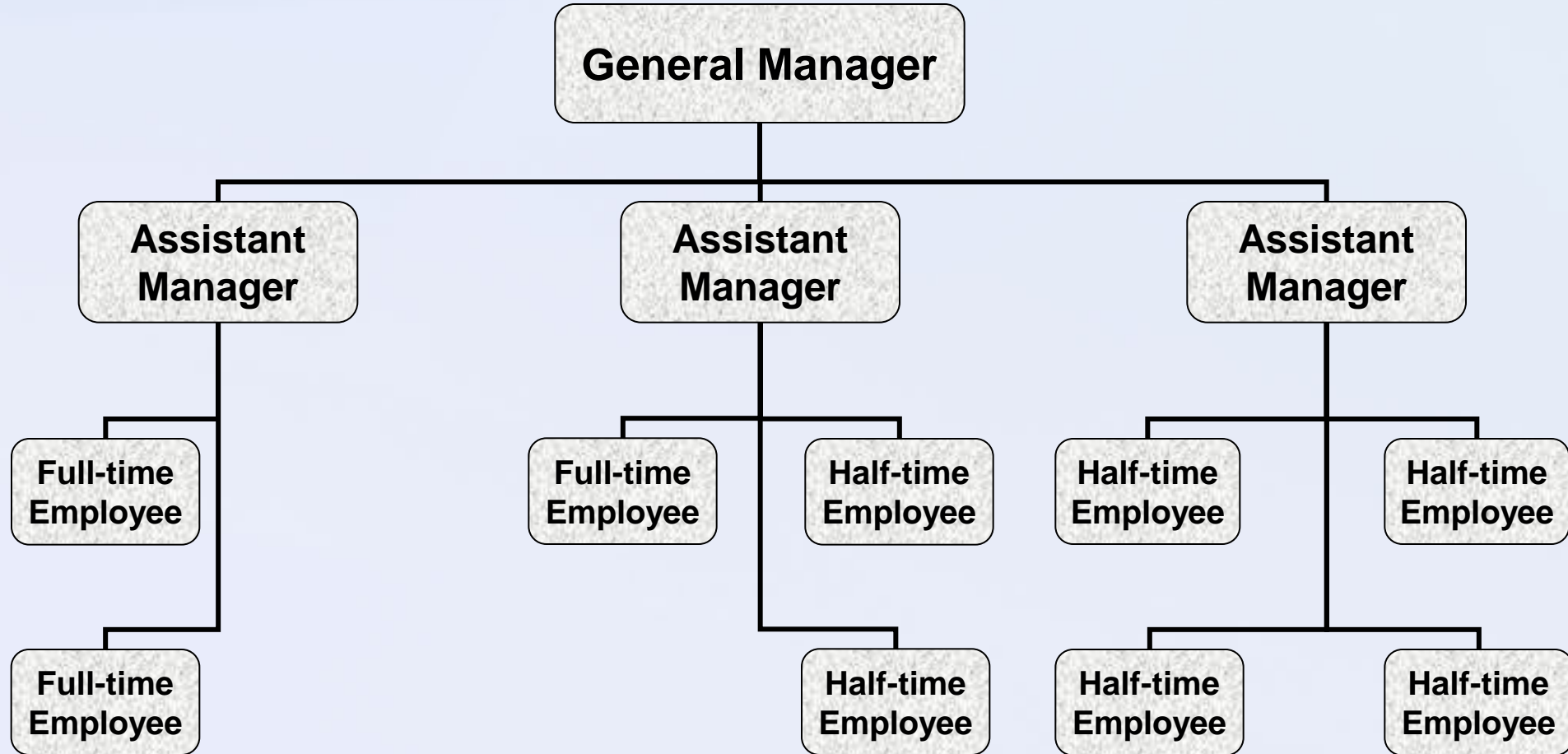
# Exemption Analysis Process

- **In the event of a DOL investigation or lawsuit, exemptions are analyzed as follows:**
- **What is the primary job function of the position in question?**
  - note: titles do not control
  - this requires an analysis of everything that the employee does
- **Are more than 50% of the employee's duties/responsibilities exempt in nature?**
  - If so, under which exemption(s)?
- **Does the employee have to be paid on a salary basis for the exemption in question?**
  - If so, is he/she?
  - Are there any violations to the salary exemption requirement?

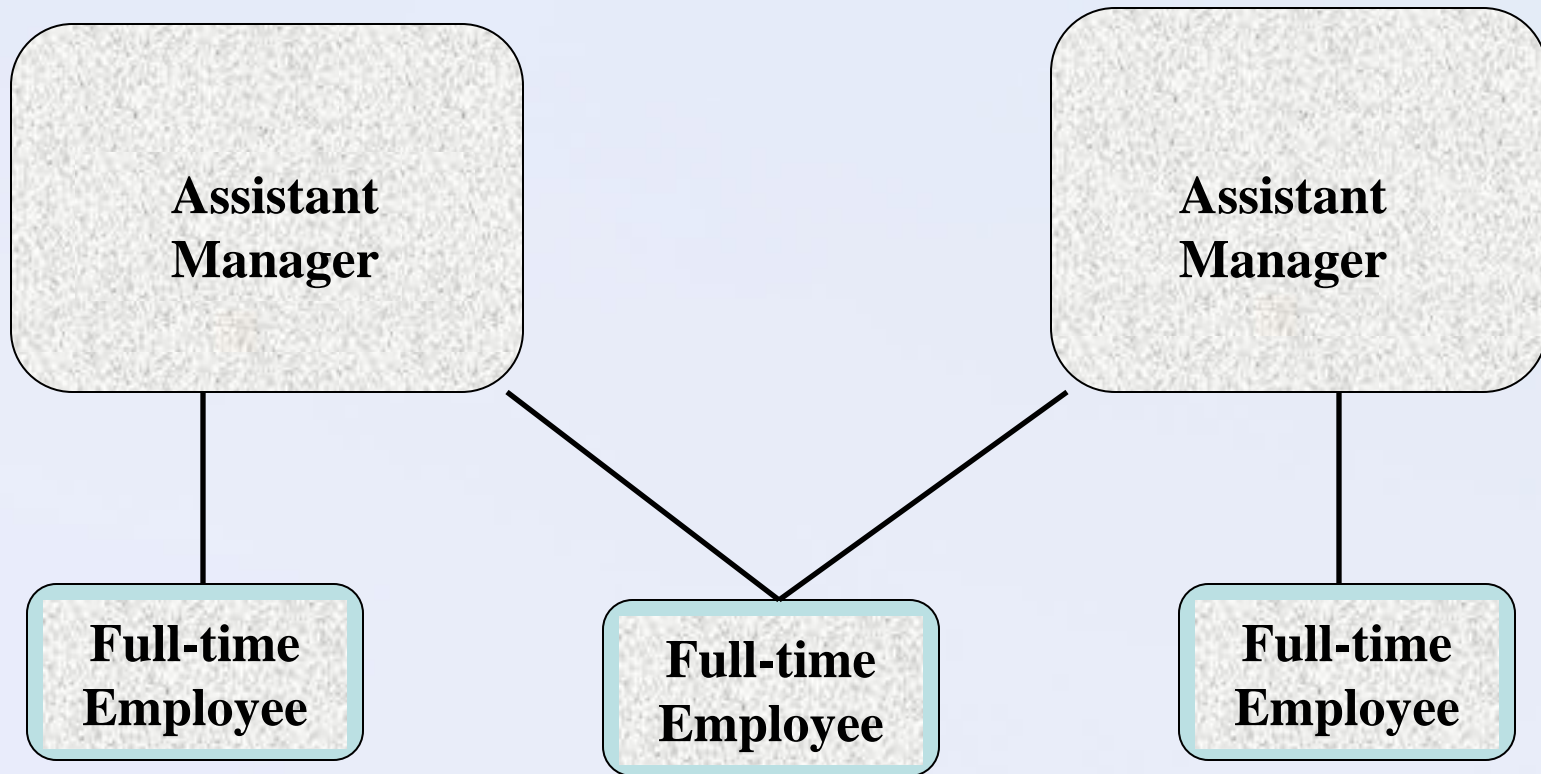
# Typical Exemptions for Independent Schools

- **There are three types of exemptions that typically apply to an independent school:**
- **Executive Exemption**
  - **Manager of the entire school or an important division/department**
  - **Must “hire and fire” or make recommendations given “particular weight”**
  - **Must be paid on a salary basis of \$455/workweek**
  - **Must “customarily and regularly” supervise at least two or more other full-time employees or the equivalent**

# Staffing Meets The “Two or More” Requirement



# Staffing Does Not Meet The “Two or More” Requirement



# Typical Exemptions for Independent Schools

- **Administrative Exemption**
  - Two types – general and academic
  - As to General – positions like “CFO” or “training coordinator”



# Typical Exemptions for Independent Schools

- **As to Academic Administrative Exemption:**
  - **Must be engaged in work that is directly related to academic instruction or training carried on therein**
    - **not general business operation**
  - **Admissions Director, College Counseling Director, Dean of Students, Department Heads**

# Typical Exemptions for Independent Schools

- **For both types:**
  - **Must exercise independent discretion and judgment**
  - **Must make high level decisions**
  - **Must be paid on salary basis of \$455/workweek**



# Typical Exemptions for Independent Schools

- **Requirements for the Professional Exemption**
  - Employed as teacher by educational institution
  - Duties

**(What's missing?)**



# The Case of the Very Responsible Administrative Assistant

- Handling important work (re-enrollment contracts, employee contracts)
- During crunch times, impossible to do the job in 40 hours
- We rewarded her for the extra hours with an extra week or two off during slow times.
- Paid on a salary basis

# Common Wage-Hour Problems for Schools

- **Misclassifying employees as “exempt” from the recordkeeping and overtime provisions of the law because they are paid on a salary basis.**
  - **Office and clerical/administrative employees**
  - **Development office employees**
  - **Teaching Assistants**

# Analysis of Violations

- **If a position is determined to be non-exempt, the DOL/Court will need to determine;**
  - **how many hours the person typically works;**
  - **whether he/she has been properly compensated for all hours;**
  - **including all elements of compensation**

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# Typical Questions on Hours Worked

- **Does the employee maintain a time record?**
  - what is recorded?
  - weekly? monthly? 15th and last day of month?
- **How many hours does the employee typically work in a 7-day statutory workweek?**
- **Are there periods during the year when the hours fluctuate?**
  - admissions office open house?
  - development drives
- **Does the employee take breaks, including lunch?**
  - Is any time deducted or non-counted as paid time for breaks?
- **Does the employee work “extra hours” not counted?**
  - come in early to meet/greet parents?
  - work through lunch or answer a few calls/emails during lunch?

# Typical Questions on Pay

- **How is the employee paid?**
  - salary? hourly? commission?
- **Does he/she receive any other elements of compensation?**
  - bonuses?
  - commissions?
  - other types of “extra pay”? (stipends?)
- **Is the employee paid overtime?**
  - how is it calculated?
  - does the overtime calculation include all elements of bonus and extra pay?
- **Is there any program for “compensatory time” in place?**

# The Combo Position

- Employee working in the after school program moved into a full-time support teacher position.
- Paid hourly for the support teacher role.
- Also assigned to her the assistant basketball coaching position for \$2,000 stipend.

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# Paying Non-Exempt Employees

- **If a non-exempt employee works more than one job, all hours must be combined**
- **If total hours are over 40, overtime must be paid**
- **School can pay different rates for different jobs**
- **If different rates, used weighted average method**

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# Weighted Average Calculation

Concept: take all weekly compensation for all hours/jobs; divide total hours into total compensation to get weighted average hourly rate; calculate an additional half-time for overtime to be paid.

- We know how much the support teacher made each week for her teaching (hourly rate X hours worked)

(assume \$12.00 per hour x 37.5 hours = \$450.00)

- We have to find out how much she made each week for basketball coaching (divide total stipend by total weeks of basketball)

(assume \$2000 divided by 15 weeks of basketball = \$133.33 per week)

- Employee must maintain time record for ALL hours so you know how many hours she worked in support position and how many hours in basketball.

# Weighted Average Calculation

Calculating pay and overtime:

Assume regular week (37.5 hours) for support teaching	\$450.00
Assume 10 hours for basketball	\$133.33
Total pay	\$583.33

Overtime calculation:

Divide total pay (\$583.33) by total hours (37.5 + 10 = 47.5) = \$12.28 per hour.  
You have paid “time” for all 47.5 hours. You owe “and a half” for the 7.5 hours over 40. Calculation is weighted average rate of \$12.28 x overtime hours of 7.5 x ½ = \$46.05 in overtime.

Total pay is \$583.33 + 46.05 OT = \$629.38

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# Getting 20/20 Vision

- Bus driver who had a flat tire on the way home one night.
- What happened?
- Why did it happen?
- What did you learn?
- What was the cost to the School?

# Preventive Measures

- **Invest in a comprehensive audit**
  - **Use counsel to cloak assessment materials with attorney-client privilege**
  - **Have counsel help you determine where your errors exist**
  - **Have counsel help you assess which employees can become exempt by adjusting job functions and responsibilities**
  - **Have counsel give you options on addressing other issues (stipends, combo jobs, pay methods)**

# Implementing Corrections – Timing

- **The sooner you correct the problem, the sooner the statute of limitations runs out**
  - **Some schools choose to correct immediately**
  - **Some schools choose to correct at the beginning of the next school year, when other changes also go into effect (less obvious)**
  - **If you only give contracts to exempt personnel, then you need to correct before the contracts are offered**

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# Practical Concerns in Correcting Wage Hour Problems

- Communicating the issue to employees
- Feeling of being devalued
- Do you “go back” and pay for errors or pay owed prior to the correction?

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# Going Forward

- **Assess new jobs closely to determine the exempt status**
- **Watch time records for accuracy**
- **Ensure time records are signed by employees (certification is important)**
- **Watch who receives stipends and extra pay**
- **Correct errors quickly before the liability adds up**

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- Thoughts?
- Opinions?

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# Final Questions?

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**Thank you Suzanne and Bill!!**

**...also...**

***Thank you Elana Alfred***

**for all of your administrative support at PEJE!**