

DETAILED TABLE OF CONTENTS

	<i>Main Volume</i>	<i>Supple- ment</i>
DEDICATION	v	—
BOARD OF EDITORS	vii	v
FOREWORD	xv	xv
PREFACE	xvii	xvii
SUMMARY TABLE OF CONTENTS	xxv	xix
CHAPTER 1: A BRIEF HISTORY OF THE FAIR LABOR STANDARDS ACT		
I. Overview	1-1	1-1
II. Pre-FLSA Legislation	1-3	—
A. Federal Activity	1-5	—
1. Eight-Hour Laws	1-5	—
2. The Seaman’s Act	1-6	—
3. The Davis-Bacon Act	1-7	—
4. The Motor Carrier Act	1-7	—
5. The Merchant Marine Act	1-8	—
6. The Walsh-Healey Act	1-8	—
7. The National Industrial Recovery Act	1-9	—
B. State Wage and Hour Laws	1-10	—
III. The Fair Labor Standards Act	1-12	—
A. Enactment	1-12	—
B. Early Constitutional Challenge	1-18	—
IV. Significant Amendments to the FLSA Through 1974	1-20	—

	<i>Main Volume</i>	<i>Supple- ment</i>
A. The Portal-to-Portal Act of 1947	1-20	—
1. Compensable Activity	1-23	—
2. Compromise of Claims and Liquidated Damages	1-24	—
3. Collective Actions	1-25	—
4. Statute of Limitations	1-25	—
5. Reliance on Administrative Rulings	1-26	—
B. The 1949 Amendments	1-26	—
C. The 1961, 1966, and 1972 Amendments	1-29	—
D. The Equal Pay, Age Discrimination in Employment, and Service Contract Acts	1-33	—
E. The 1974 Amendments	1-34	—
1. <i>National League of Cities v. Usery</i>	1-35	—
2. <i>Garcia v. San Antonio Metropolitan Transit Authority</i>	1-36	—
V. Later Legislative Developments	1-37	—
A. Legislative Developments From 1975 to 1979	1-37	—
1. The 1977 Amendments	1-37	—
2. The 1978 Amendment Concerning Military Commissaries	1-38	—
B. Legislative Developments From 1980 to 1989	1-38	—
1. The 1985 Amendments Concerning Public Employees	1-38	—
2. The 1986 Amendments	1-39	—
3. The 1989 Amendments	1-39	—
C. Legislative Developments From 1990 to 1999	1-41	—
1. The 1990 Amendments	1-41	—
2. The Congressional Accountability Act of 1995	1-42	—

	<i>Main Volume</i>	<i>Supple- ment</i>
3. The Court Reporter Fair Labor Amendments of 1995	1-42	—
4. The 1996 Small Business Job Protection Act	1-43	—
5. The Federal Civil Penalties Inflation Adjustment Act	1-44	—
6. The 1996 Compactors and Balers Safety Standards Modernization Act	1-44	—
7. The 1998 Drive for Teen Employment Act	1-45	—
8. The Amy Somers Volunteers at Food Banks Act	1-45	—
9. The 1998 Labor Department Appropriations Act	1-45	—
10. The 1999 Amendments Concerning Partial Overtime Exemption for Fire and Law Enforcement Personnel	1-46	—
D. Legislative Developments From 2000 to 2009	1-46	—
1. The Worker Economic Opportunity Act of 2000	1-46	—
2. The Consolidated Appropriations Act of 2004	1-47	—
3. The SAFETEA-LU	1-47	—
4. The 2007 Amendments Concerning Minimum Wage	1-49	—
5. The 2008 Amendments Regarding DOL Penalties	1-50	—
E. Legislative Developments in the 2010s	1-50	—
1. The Patient Protection and Affordable Care Act	1-50	—

	<i>Main Volume</i>	<i>Supple- ment</i>
CHAPTER 2: OPERATIONS AND FUNCTIONS OF THE DEPARTMENT OF LABOR	2-1	2-1
I. Overview	2-3	—
II. Organization of the Department of Labor	2-4	—
A. Introduction	2-4	—
B. Secretary of Labor	2-4	—
C. Solicitor of Labor	2-5	—
D. Wage and Hour Administrator	2-6	—
III. Deference With Respect to Agency Actions	2-8	2-4
A. Deference Standards	2-8	2-4
1. Deference Under <i>Skidmore</i>	2-9	—
2. Deference Under <i>Chevron</i>	2-11	2-4
3. <i>Auer</i> Deference	2-13	2-7
4. The <i>Mead</i> Clarification	2-17	—
B. Deference As Applied to Actions of the DOL	2-18	2-7
1. Regulations and Interpretation	2-18	2-7
a. Legislative Regulations and <i>Chevron</i> Deference	2-18	2-7
b. Interpretive Rules and <i>Skidmore</i> Deference	2-19	2-8
2. Opinion Letters	2-25	2-8
3. Administrator Interpretations	2-27	—
a. Administrator Interpretation No. 2010-1	2-28	—
b. Administrator Interpretation No. 2010-2	2-29	—
4. Amicus Briefs	2-29	—
5. Field Operations Handbook	2-32	2-9
6. Wage and Hour Field Assistance Bulletins	2-37	—
7. Fact Sheets	2-38	—
8. Results of Field Investigations	2-39	—

	<i>Main Volume</i>	<i>Supple- ment</i>
9. Other DOL Materials	2-39	2-9
10. Department of Labor Website	2-41	—
IV. Homework Certificates	2-42	—
A. Overview	2-42	—
B. Historical Background	2-46	—
1. State and Federal Regulation	2-46	—
2. Enactment of the FLSA	2-47	—
3. Early Ban on Homework in Certain Industries	2-48	—
4. Modification of Ban and Development of the Certificate System	2-51	—
C. Homework Certificates for Elderly or Disabled Workers and Workers Responsible for Care of an Invalid	2-58	—
D. The Certification System and Related Enforcement Mechanisms	2-59	—
1. The Information Application	2-59	—
2. Employer Assurances	2-60	—
3. Bonding Requirements	2-61	—
4. Special Recordkeeping Requirements	2-62	—
5. Investigation	2-62	—
6. Denial or Revocation of the Certificate	2-63	—
a. State Prohibition	2-63	—
b. Piecework	2-63	—
c. Unpaid Violations, Likelihood of Violations, Investigations, and Other Proceedings	2-63	—
d. Child Labor Violations	2-64	—
e. Back Wages or Civil Money Penalties	2-65	—
f. Obstruction or Failure to Cooperate	2-65	—

	<i>Main Volume</i>	<i>Supple- ment</i>
g. Discrimination or Retaliation	2-65	—
7. Enforcement	2-66	—
8. Administrative Procedures That Apply to Denial, Refusal to Renew, or Revocation of a Certificate and to Assessment of Civil Money Penalties	2-67	—
a. Notice of Determination	2-67	—
b. Request for Hearing and Alternative Proceedings	2-68	—
c. Referral to Administrative Law Judge	2-69	—
d. Review by the Secretary	2-70	—
e. Judicial Review	2-70	—
E. Homework Outside of Regulated Industries	2-70	—
F. Enforcement Issues	2-71	—
V. Special Certificates	2-72	—
A. Overview	2-72	—
B. Full-Time Students	2-74	—
1. Retail and Service Establishments	2-75	—
2. Agriculture	2-77	—
3. Educational Institutions	2-77	—
C. Student-Learners	2-78	—
D. Apprentices	2-82	—
E. Learners	2-85	—
F. Disabled Workers	2-87	—
G. Messengers	2-91	—
H. Student-Workers	2-92	—
I. Certificate Annulment or Withdrawal	2-93	—
VI. Other Functions of the Department of Labor	2-94	—
A. Conducting Studies	2-94	—

	<i>Main Volume</i>	<i>Supple- ment</i>
B. Reports	2-95	—
C. Legislative Recommendations	2-95	—
D. Budgetary Process	2-96	—
 CHAPTER 3: THE EMPLOYMENT		
RELATIONSHIP	3-1	3-1
I. Overview	3-2	—
II. The Economic Reality Test	3-3	—
III. Employee Status	3-8	3-2
A. Employee or Independent		
Contractor	3-8	3-2
1. General Principles	3-8	3-2
a. Control	3-13	3-3
b. Opportunity for Profit and Loss	3-18	3-5
c. Investment	3-20	3-5
d. Permanency	3-23	—
e. Specialized Skill	3-25	—
f. “Integral Part of Employer’s Operation”	3-27	—
2. Illustrative Cases	3-28	3-5
a. Cases Finding Employee Status	3-28	3-5
b. Cases Finding Independent Contractor Status	3-31	3-9
c. Same Job Titles With Different Results	3-33	3-10
B. Volunteers	3-35	3-12
C. Trainees	3-39	3-13
1. Generally	3-39	3-13
2. Interns and Externs	3-45	3-14
D. Patient-Workers	3-52	—
E. Prison Labor	3-54	3-15
F. Clergy	3-59	—
G. Undocumented Workers	3-61	3-15
H. Owner-Employees	3-64	3-16

	<i>Main Volume</i>	<i>Supple- ment</i>
I. Student-Athletes [New Topic]	—	3-16
IV. Employer Status	3-65	3-17
A. Joint Employers	3-65	3-17
1. DOL Activity	3-66	3-17
a. Regulations	3-66	—
b. Opinion Letters and Administrator Interpretations	3-68	3-17
2. Court Decisions Addressing the Joint Employment Doctrine	3-70	3-21
3. The Migrant and Seasonal Agricultural Worker Protection Act	3-83	3-26
B. Individuals (Corporate Officers, Owners, Shareholders, and Managers/Supervisors) Who Are “Employers”	3-86	3-26
1. Corporate Officers	3-89	3-27
2. Owners and Shareholders	3-92	3-28
3. Managers and Supervisors	3-96	3-30
CHAPTER 4: EMPLOYER COVERAGE	4-1	4-1
I. Overview	4-2	—
II. Individual Coverage	4-4	4-3
A. General Principles	4-4	4-3
B. “Engaged in Commerce”	4-5	4-3
1. Work Related to the Actual Movement of Commerce	4-6	4-3
2. Regular Use of the Channels of Commerce	4-10	4-4
3. Work Related to the Instrumentalities of Commerce	4-14	—
C. “Engaged in the Production of Goods”	4-18	—
1. “Production”	4-19	—
2. “Goods”	4-23	—

	<i>Main Volume</i>	<i>Supple- ment</i>
3. Whether Goods Are Produced “for Commerce”	4-26	—
4. “Closely Related” and “Directly Essential”	4-29	—
5. Employees of Independent Suppliers	4-33	—
III. Enterprise Coverage	4-35	4-5
A. General Principles	4-35	—
B. Requirements of Section 3(r)	4-37	4-5
1. “Related Activities”	4-38	4-5
a. Same or Similar	4-39	4-5
b. Auxiliary Activities	4-39	—
c. Vertical Activities	4-42	—
d. Other Activities That May Be Part of the Enterprise	4-43	4-5
2. “Common Business Purpose”	4-44	4-5
3. “Unified Operation” or “Common Control”	4-46	4-6
a. “Unified Operation”	4-47	—
b. “Common Control”	4-49	4-6
4. Leased Departments	4-51	—
5. Exceptions From the Section 3(r) Definition of “Enterprise”	4-53	—
a. Retail or Service Franchises	4-54	—
b. Independent Contractors Performing Work “for” an Enterprise	4-57	—
c. Establishments Whose Only Regular Employees Are Owners and Immediate Family Members	4-57	—
C. Requirements of Section 3(s)	4-58	4-6
1. Section 3(s) (1) (A) (i): Engagement in Commerce	4-59	4-6
a. The “Handling” Standard of Enterprise Coverage	4-61	4-6

	<i>Main Volume</i>	<i>Supple- ment</i>
2. Section 3(s)(1)(A)(ii): The Business Dollar Volume Test	4-66	4-7
a. General Principles	4-66	4-7
b. Gross Receipts	4-69	—
c. Exclusions From Gross Receipts	4-71	—
d. Computing Annual Volume of Sales or Business: The “Rolling Quarter” Method	4-73	4-8
e. New Business Coverage	4-75	—
f. Conglomerate Coverage Rules	4-75	—
3. Section 3(s)(1)(B): Engagement in the Operation of a Hospital, Institution, or School	4-76	—
IV. Geographic Limits of Coverage	4-77	—
CHAPTER 5: WHITE-COLLAR EXEMPTIONS	5-1	5-1
I. Overview	5-5	—
II. Brief History of the 541 Regulations	5-6	5-6
A. Early 541 Regulations	5-7	—
B. 2004 Amendments to the 541 Regulations	5-8	—
C. 2016 Amendments to the White-Collar Regulations [Amended Heading]	5-11	5-6
III. Legal Principles That Govern the Analysis of the White-Collar Exemptions	5-12	5-8
A. Construction and Burden of Proof	5-12	—
B. Compensation Form and Amount	5-16	—
C. Primary Duty	5-18	5-8
1. General	5-18	5-8
2. “Directly and Closely Related”	5-20	—
3. Emergency Tasks	5-23	—
4. Occasional Tasks	5-24	—

	<i>Main Volume</i>	<i>Supple- ment</i>
5. Combination Exemption	5-24	—
D. Trainees	5-26	—
IV. The Salary Basis Test	5-27	5-9
A. Background	5-27	—
B. Requirements of the Salary Basis Test	5-28	5-9
1. Salary Basis Test Generally	5-28	5-9
2. Relationship Between Salary and Hours Worked	5-34	—
C. Permissible Deductions From Salary	5-35	5-9
1. Personal Absences of a Day or More	5-35	—
2. Deductions From Salary for Absences of a Day or More Due to Sickness or Disability	5-36	—
3. Disciplinary Deductions	5-38	5-9
a. Deductions in the Form of Penalties Imposed for Violations of Safety Rules of Major Significance	5-38	—
b. Disciplinary Suspensions for Violations of Work Rules	5-39	5-9
4. Initial and Terminal Weeks of Employment	5-41	—
5. Absences for Leave Under the Family and Medical Leave Act	5-41	—
6. Deductions From Leave Accounts	5-42	—
D. Permissible Reductions in an Exempt Employee's Salary	5-43	5-10
E. Impermissible Deductions From an Employee's Salary	5-46	—
1. Absences Occasioned by the Employer	5-46	—

	<i>Main Volume</i>	<i>Supple- ment</i>
2. Absences Due to Jury Duty, Attendance as a Witness, or Temporary Military Leave	5-47	—
3. Absences of Less Than One Day...	5-48	—
F. Effect of Improper Deductions	5-49	—
1. Generally	5-49	—
2. Effect of Deduction Made on Status of Other Employees	5-51	—
3. Isolated or Inadvertent Deductions	5-51	—
4. Employer “Safe Harbor”	5-53	—
G. Fee Basis Alternative for Professional and Administrative Exemptions	5-54	—
V. The Executive Exemption	5-56	5-10
A. Management Duties	5-57	—
B. Primary Duty of Managing	5-59	5-10
1. Performing Management Duties	5-60	—
2. Performing Management Duties Less Than 50 Percent of the Time	5-63	5-10
C. “The Enterprise” or “a Customarily Recognized Department or Subdivision” Thereof	5-71	—
D. “Customarily and Regularly Direct the Work of Two or More Other Employees”	5-73	—
E. Authority With Respect to Personnel Matters “Are Given Particular Weight”	5-74	5-11
F. Business Owners	5-77	—
G. Working Supervisor	5-77	—
VI. The Administrative Exemption	5-78	5-12
A. “Office or Non-Manual Work”	5-79	—
B. “Directly Related to Management or General Business Operations”	5-80	5-12

	<i>Main Volume</i>	<i>Supple- ment</i>
C. “Discretion and Independent Judgment”	5-92	5-14
D. Regulatory Application of Principles to Specific Job Categories	5-101	5-18
1. Insurance Claims Adjusters—29 C.F.R. §541.203(a)	5-102	5-18
2. Financial Services Industry Employees—29 C.F.R. §541.203(b)	5-104	5-18
3. Team Leaders—29 C.F.R. §541.203(c)	5-110	—
4. Executive Assistants—29 C.F.R. §541.203(d)	5-110	5-20
5. Human Resources Personnel—29 C.F.R. §541.203(e)	5-112	5-20
6. Purchasing Agents—29 C.F.R. §541.203(f)	5-113	—
7. Inspectors—29 C.F.R. §541.203(g)	5-113	—
8. Examiners/Graders—29 C.F.R. §541.203(h)	5-114	—
9. Buyers—29 C.F.R. §541.203(i)	5-115	—
10. Investigators—29 C.F.R. §541.203(j)	5-115	5-20
E. “Educational Establishments”	5-116	—
VII. The Professional Exemption	5-118	5-21
A. Learned Professional	5-118	5-21
1. “Work Requiring Advanced Knowledge”	5-119	5-21
2. “Field of Science or Learning”	5-122	5-21
3. “Customarily Acquired by a Prolonged Course of Specialized Intellectual Instruction”	5-124	—
4. Regulatory Guidance on Specific Learned Professional Occupations	5-126	5-21

	<i>Main Volume</i>	<i>Supple- ment</i>
a. Registered or Certified Medical Technologists— 29 C.F.R. §541.301(e)(1)	5-127	—
b. Nurses—29 C.F.R. §541.301(e)(2)	5-128	5-21
c. Dental Hygienists—29 C.F.R. §541.301(e)(3)	5-128	—
d. Physician Assistants—29 C.F.R. §541.301(e)(4)	5-128	—
e. Accountants—29 C.F.R. §541.301(e)(5)	5-128	—
f. Chefs—29 C.F.R. §541.301(e)(6)	5-130	5-22
g. Paralegals—29 C.F.R. §541.301(e)(7)	5-130	—
h. Athletic Trainers—29 C.F.R. §541.301(e)(8)	5-131	—
i. Funeral Directors or Embalmers—29 C.F.R. §541.301(e)(9)	5-131	—
j. Potential Newly Certified Occupations—29 C.F.R. §541.301(f)	5-132	—
B. Creative Professional	5-132	5-22
C. Teachers	5-136	5-22
D. Employees Engaged in the Practice of Law or Medicine	5-139	5-23
VIII. Highly Compensated Employees	5-140	5-23
A. Compensation Requirements	5-141	5-23
B. Duties Requirements	5-143	5-23
IX. Computer Employees	5-144	5-24
X. The Outside Sales Exemption	5-152	5-25
A. “Making Sales”	5-153	5-25
B. Tasks Incidental to Sales Activities	5-158	—
C. “Away From the Employer’s Place or Places of Business”	5-159	5-26

	<i>Main Volume</i>	<i>Supple- ment</i>
D. Promotion Work	5-161	5-27
E. Drivers Who Sell	5-163	—
 CHAPTER 6: OTHER STATUTORY		
EXEMPTIONS	6-1	6-1
I. Overview	6-6	—
II. Section 13(a) Exemptions From the Minimum Wage and Overtime Requirements of the FLSA	6-8	6-9
A. Employees Employed by Amusement or Recreational Establishments, Organized Camps, or Religious or Nonprofit Educational Conferences	6-8	6-9
1. The “Establishment” Requirement	6-11	6-9
2. Municipal Governments.....	6-19	—
3. What Is an “Amusement or Recreational” Establishment?	6-20	—
4. Can the Establishment Have a Primary Function of Selling Goods?	6-24	—
5. Must the Establishment Be Open to the Public?	6-26	—
6. What Are Organized Camps, or Religious or Nonprofit Educational Conference Centers?	6-27	—
7. How Do the Seasonality Tests Apply Under the Exemption?	6-28	—
a. Does Not Operate for More Than Seven Months in Any Calendar Year	6-28	—
b. The 33 1/3% Test	6-30	—

	<i>Main Volume</i>	<i>Supple- ment</i>
c. “Receipts” Test When the Employer Is a Government Entity	6-32	—
d. Maintenance and Construction Work in the “Off Season”	6-33	—
B. Employees Engaged in Fishing or First Processing at Sea of Aquatic Products	6-34	—
C. Employees Employed in the Publication of Limited Circulation Newspapers	6-37	—
D. Switchboard Operators Employed by Small Public Telephone Companies	6-42	—
E. Seamen on Non-American Vessels	6-43	—
F. Casual-Basis Babysitters and Domestic Companionship Service Providers	6-46	6-9
1. Casual Babysitters	6-47	—
a. “Babysitting Services”	6-47	—
b. “Casual Basis”	6-48	—
2. Domestic Companionship Service Providers	6-49	6-9
a. Historical Background	6-51	—
b. The 2013 Final Rule	6-53	—
c. “Domestic Service Employment”: Section 552.3 ...	6-54	—
d. What Is a “Private Home?”	6-55	6-10
e. What Are “Companionship Services?”	6-59	—
(i.) Section 552.6(a): Fellowship and Protection	6-60	—

	<i>Main Volume</i>	<i>Supple- ment</i>
(ii.) Section 552.6(b): Care ...	6-60	—
(iii.) Section 552.6(c): Domestic Services Primarily for Other Members of the Household	6-61	—
(iv.) Section 552.6(d): Medically Related Services	6-62	—
f. Third-Party Employment	6-63	—
III. Section 13(b) Exemptions From the Overtime Requirements of the FLSA	6-66	6-11
A. Employees Covered Under the Motor Carrier Act	6-67	6-11
1. The Effect of SAFETEA-LU and the Technical Corrections Act on the Section 13(b)(1) Exemption.....	6-69	6-11
a. SAFETEA-LU	6-69	—
b. SAFETEA-LU Technical Corrections Act	6-72	—
c. “Hybrid” Employers	6-74	6-11
(i.) Early Technical Corrections Act Cases Finding Employees to Be “Covered Employees” [New Topic]	—	6-12
(ii.) Early Technical Corrections Act Cases Finding Employees to Be “Exempt” Under the Motor Carrier Act [New Topic]	—	6-13

	<i>Main Volume</i>	<i>Supple- ment</i>
(iii.) The Department of Labor’s Field Assistance Bulletin: Change in Application of the Section 13(b)(1) Motor Carrier Exemption [New Topic]	—	6-14
(iv.) Cases After Issuance of the Field Assistance Bulletin [New Topic]	—	6-17
2. Requirements for the Section 13(b)(1) Exemption	6-80	6-20
a. Carriers Subject to the Power of the Secretary of Transportation	6-80	—
(i.) Carriers of Passengers ...	6-85	—
b. Employees Engaged in Activities That Directly Affect Safety	6-90	6-20
(i.) Drivers	6-91	—
(ii.) Drivers’ Helpers	6-93	—
(iii.) Loaders	6-94	6-20
(iv.) Mechanics	6-97	—
c. Transportation in Interstate Commerce	6-99	6-20
(i.) Definition of “Interstate Commerce” Under the MCA	6-99	—
(ii.) Transportation From One State to Another	6-102	6-20
(iii.) Intrastate Transportation	6-104	6-21

	<i>Main Volume</i>	<i>Supple- ment</i>
(a.) “Fixed and Persisting Transportation Intent”	6-104	6-21
(b.) “Practical Continuity of Movement”	6-110	—
B. Railroad Employees	6-115	—
1. “Transportation by Rail Carrier” ...	6-119	—
2. Terminal Area Exception	6-120	—
3. The Effect of Deregulation of the Railroad Industry on Section 13(b) (2)	6-123	—
C. Air Transportation Employees	6-126	—
D. Employees Employed as Seamen Under Section 13(b) (6)	6-129	6-22
1. “Seaman”	6-130	6-22
2. “Vessel”	6-136	—
E. Announcers, News Editors, or Chief Engineers of Certain Radio or Television Stations	6-137	—
F. Certain Employees of Automobile, Truck, or Farm Implement Dealers; Salespersons of Trailers, Boats, and Aircraft	6-139	6-24
G. Local Delivery Drivers	6-145	—
H. Taxicab Drivers	6-147	—
I. Domestic Servants Who Reside in a Household	6-148	6-29
1. Recordkeeping Requirements	6-150	6-30
2. Third-Party Employment	6-151	—
J. Husbands and Wives Who Serve as House Parents	6-151	—
K. Motion Picture Theater Employees....	6-152	—

	<i>Main Volume</i>	<i>Supple- ment</i>
L. Employees of Amusement or Recreational Establishments Located in a National Park, National Forest, or on Land in the National Wildlife Refuge System	6-153	—
IV. Section 7 Exceptions From the Overtime Requirements of the FLSA	6-157	6-30
A. Section 7(b) Exceptions.....	6-159	—
1. Section 7(b) (1) and Section 7(b) (2) Exceptions Relating to Collective Bargaining Agreements That Meet Certain Conditions	6-159	—
2. Section 7(b) Exceptions Applicable to Distributors of Petroleum Products	6-162	—
a. Scope of the Exception	6-164	—
b. The “Enterprise” Requirement	6-165	—
c. “Independently Owned and Controlled Local Enterprise”	6-166	—
d. Sales Made Within the State ...	6-168	—
e. Sales Made to Other Bulk Distributors	6-169	—
f. Compensation Requirements of the Section 7(b) (3) Exception	6-169	—
B. Section 7(i) Exception: Commissioned Employees in Retail or Service Establishments	6-170	6-30
1. Historical Background of the Section 7(i) Retail or Service Establishment Exception	6-172	—
a. 1938	6-172	—
b. 1949	6-173	—

	<i>Main Volume</i>	<i>Supple- ment</i>
c. 1961	6-174	—
d. 1989	6-176	—
2. The Employer Must Be a Retail or Service Establishment	6-177	6-30
a. Meaning of “Establishment”	6-181	—
b. Retail Concept	6-185	6-30
(i.) Finance Companies	6-188	—
(ii.) Cleaning and Repair Services	6-192	6-30
(iii.) Learning Institutions	6-194	—
(iv.) Cable/Satellite Installation and Services	6-196	—
(v.) Timeshare and Real Estate Companies	6-197	—
(vi.) Travel Agencies	6-198	—
(vii.) Other Industries	6-199	—
c. “Recognized as Retail Sales or Services in the Particular Industry”	6-201	—
d. Sales Must Not Be Made for Resale	6-205	—
3. “More Than Half of an Employee’s Compensation for a Representative Period Must Represent Commissions”	6-212	6-31
a. “Bona Fide” Commission Rate	6-212	6-31
(i.) DOL Regulations	6-214	—
(ii.) DOL Opinion Letters and Case Law	6-215	6-31
b. Representative Period	6-227	—
4. Regular Rate of Pay Must Exceed 1.5 Times the Minimum Wage	6-229	—

	<i>Main Volume</i>	<i>Supple- ment</i>
C. Section 7(n) Exception: Employees Engaged in Charter Activities for Local Passenger Carriers	6-231	—
V. Section 13(d) Exemption From Minimum Wage, Overtime, and Child Labor Requirements	6-233	—
A. Engaged in Delivering “Newspapers”	6-233	—
B. Delivery Must Be to the Consumer.....	6-234	—
VI. Section 13(f) Exemption From Minimum Wage, Overtime, Recordkeeping, and Child Labor Requirements	6-235	—
A. Minimum Wage and Overtime Issues	6-237	—
1. Guam, Puerto Rico, and the Virgin Islands	6-237	—
2. American Samoa and the Commonwealth of the Northern Mariana Islands	6-238	—
B. Application of Section 13(f)	6-240	—
C. Retaliation Claims Under Section 13(f)	6-242	—
CHAPTER 7: AGRICULTURAL EXEMPTIONS	7-1	7-1
I. Overview	7-4	—
II. General Scope of the Term “Agriculture”	7-7	7-5
A. Introduction	7-7	—
B. “Primary” Agriculture	7-8	7-5
1. Farming in All Its Branches	7-9	7-5
2. Cultivation and Tillage of the Soil	7-10	—
3. Dairying	7-10	—
4. Agricultural or Horticultural Commodities	7-11	—

	<i>Main Volume</i>	<i>Supple- ment</i>
5. Commodities Included by Reference to the Agricultural Marketing Act	7-15	—
6. “Production, Cultivation, Growing, and Harvesting” of Commodities	7-16	—
7. Raising Livestock, Bees, Fur-Bearing Animals, or Poultry	7-17	—
a. Raising of Livestock	7-18	—
b. Raising of Bees	7-19	—
c. Raising of Fur-Bearing Animals	7-19	—
d. Raising of Poultry	7-19	—
C. “Secondary” Meaning of the Term “Agriculture”	7-20	7-5
1. Practices Performed “by a Farmer”	7-22	—
2. Practices Performed “on a Farm”	7-24	7-5
3. “Such Farming Operations” of the Farmer	7-25	—
4. “Such Farming Operations” on the Farm	7-26	7-5
5. Performance of the Practice “as an Incident to or in Conjunction With” Farming Operations	7-28	—
6. Practices Included When Performed as Provided in Section 3(f)	7-37	—
a. Preparation for Market	7-38	—
b. Specified Delivery Operations	7-40	—
7. Transportation Operations Not Enumerated in Section 3(f)	7-42	—

	<i>Main Volume</i>	<i>Supple- ment</i>
8. Other Unlisted Practices That May Be Within Section 3(f)	7-43	—
D. Agriculture as It Relates to Specific Situations	7-44	—
1. Forestry or Lumbering Operations	7-44	—
2. Nursery and Landscaping Operations	7-45	—
3. Hatchery Operations	7-50	—
E. Court Decisions Regarding “Agricultural” or “Nonagricultural” Work	7-51	—
III. Section 13(a)(6) Exemption From the FLSA’s Minimum Wage and Overtime Requirements	7-55	7-6
A. Basic Conditions	7-55	—
B. Section 13(a)(6) After the 1966 Amendments	7-56	7-6
1. Small Farms Exemption (“Man-Days”)	7-57	7-6
2. Immediate Family Exemption (Family Farms)	7-59	—
3. Local Hand-Harvest Laborer Exemption	7-60	—
a. Hand-Harvest Laborers	7-61	—
b. Piece-Rate Basis	7-62	—
c. Operations Recognized as Paid on a Piece-Rate Basis	7-62	—
d. Local Hand-Harvest Laborers	7-62	—
e. The Thirteen-Week Provision	7-63	—
4. Migrant Hand-Harvest Laborers Under Seventeen Years of Age	7-64	—
a. Nonlocal Minors	7-65	—

	<i>Main Volume</i>	<i>Supple- ment</i>
b. Minors Sixteen Years of Age or Under	7-65	—
c. Employed on the Same Farm as Parent or Person Standing in Place of Parent	7-65	—
5. Range Production of Livestock Exemption	7-66	7-6
IV. Section 13(b) Exemptions From the Overtime Requirements of the FLSA	7-68	—
A. Outside Buyers of Certain Agricultural Products	7-69	—
B. Agricultural Workers and Those Employed in Operating or Maintaining Irrigation Systems for Agricultural Purposes	7-70	—
1. Employees Employed in Agriculture	7-71	—
2. The Irrigation Exemption	7-72	—
C. Employment in Agriculture and Livestock Auction Operations by a Farmer	7-75	—
D. Employment by Small Country Elevators Within the Area of Production	7-77	—
E. Processing Maple Sap Into Sugar or Syrup	7-79	—
F. Intrastate Transportation of Fruits and Vegetables, and Fruit and Vegetable Harvesters	7-80	—
G. Small-Scale Forestry or Lumbering Operations	7-82	—
V. Section 13(d) Exemption From the Minimum Wage, Overtime, and Child Labor Requirements: Employment of Homeworkers in Making Wreaths	7-85	—

	<i>Main Volume</i>	<i>Supple- ment</i>
VI. Fourteen-Workweek Limitation on Exemption From Overtime Requirements	7-86	—
A. Activities Exempt Under Section 13(h)	7-90	—
1. Ginning, Receiving, Handling, Storing, and Processing of Cotton	7-91	—
2. Sugar Cane	7-92	—
3. Sugar Beets	7-93	—
B. Activities Exempt Under Section 13(i): Employees Engaged in Cotton Ginning	7-95	—
C. Activities Exempt Under Section 13(j): Employees Engaged in Sugar Processing	7-96	—
D. Activities Exempt Under Section 7(m): Employees Providing Services for Tobacco Auctions	7-98	—
CHAPTER 8: COMPENSABLE HOURS	8-1	8-1
I. Overview	8-3	—
II. Historical Context of the Term “Hours Worked”	8-4	8-4
A. “Hours Worked”	8-4	—
B. The Portal-to-Portal Act	8-6	—
C. Supreme Court Interpretation of the Portal-to-Portal Act	8-7	8-4
III. Principles for Determining “Hours Worked”	8-9	8-5
A. Definition of “Employ”	8-9	8-5
B. Effect of Custom, Contract, or Agreement	8-10	—
C. Section 3(o) of the FLSA	8-13	—
1. “Custom or Practice”	8-15	—
2. What Is “Clothing”	8-17	—

	<i>Main Volume</i>	<i>Supple- ment</i>
3. What Is “Changing”	8-19	—
4. What Is “Washing”	8-20	—
D. Continuous Workday Rule	8-20	8-5
IV. Application of Principles	8-26	8-6
A. “Suffer or Permit to Work”	8-26	8-6
1. Knowledge of Employer	8-26	8-6
2. Work Performed Away from the Job Site	8-31	—
3. Duty of Management	8-33	—
B. Waiting Time	8-34	8-8
1. On Duty	8-35	8-8
2. Off Duty	8-37	8-8
3. On-Call Time	8-39	8-9
a. Decisions Finding On-Call Time Compensable	8-41	8-9
b. Decisions Finding On-Call Time Not Compensable	8-42	8-9
C. Rest Breaks and Meal Periods	8-45	8-9
1. Rest Breaks	8-45	8-9
2. Meal Periods	8-46	8-10
a. Decisions Finding Meal Periods Compensable	8-51	8-10
b. Decisions Finding Meal Periods Not Compensable	8-53	8-11
D. Sleeping Time and Certain Other Activities	8-54	8-11
1. Duty Period of Less Than 24 Hours	8-54	—
2. Duty Period of 24 Hours or More	8-55	8-11
3. Employee Residing on Employer’s Premises or Working at Home	8-58	—
E. Preparatory and Concluding Activities	8-61	8-12

	<i>Main Volume</i>	<i>Supple- ment</i>
1. <i>Steiner and King Packing Company</i>	8-63	—
2. Donning and Doffing	8-64	8-12
3. Preparing Equipment and Vehicles	8-68	—
4. Transporting Tools and Equipment	8-68	—
5. Security Screening	8-70	—
6. Shift-Change Activities	8-72	8-12
7. Other Preparatory/Concluding Activities	8-72	8-13
F. Lectures, Meetings, and Training Programs	8-74	8-13
1. Involuntary Attendance	8-74	—
2. “Directly Related to” Employee’s Job	8-76	8-14
3. Independent Training	8-79	—
4. Apprenticeship Training	8-81	—
G. Travel Time	8-82	8-14
1. Preliminary and Postliminary Travel	8-83	8-14
2. Employee Commuting Flexibility Act of 1996	8-90	—
3. Emergency or Call-Back Situations	8-93	—
4. Overnight Travel	8-93	—
5. Special One-Day Trips	8-94	—
6. Travel During the Workday	8-95	—
H. Time Spent on Other Activities	8-97	8-15
1. Adjusting Grievances	8-97	—
2. Medical Attention	8-98	8-15
3. Civic and Charitable Work	8-99	—
4. Suggestion Systems	8-100	—
5. Bidding for Work Schedules or Vacation Leave	8-100	—
V. Recording Working Time	8-101	8-16

	<i>Main Volume</i>	<i>Supple- ment</i>
A. Rounding Practices	8-101	8-16
B. The De Minimis Doctrine	8-102	8-16
1. General Principle	8-102	—
2. Determining What Is De Minimis	8-105	8-16
a. Factors	8-105	8-16
b. Aggregation of Time	8-108	—
c. Cases Finding Time De Minimis	8-112	—
d. Cases Finding Time Not De Minimis	8-115	8-16
 CHAPTER 9: MINIMUM WAGE REQUIREMENTS	 9-1	 9-1
I. Overview	9-3	—
II. Payment of the Minimum Wage	9-5	9-4
A. “Free and Clear” Payments	9-5	—
B. Method of Payment	9-7	—
1. Payment Must Be in Cash or Negotiable Instruments	9-7	—
2. Direct Deposit Permitted	9-8	—
3. Scrip, Tokens, Coupons, and Similar Devices Not Permitted	9-8	—
C. Time of Payment and Changing Pay Periods	9-10	9-4
III. Non-Cash Wages Under Section 3(m): “Board, Lodging or Other Facilities”	9-13	9-4
A. “Customarily Furnished” to the Employee	9-14	9-5
1. “Voluntary and Uncoerced”	9-14	9-5
a. Meals	9-15	9-5
b. Lodging	9-16	9-5
2. “Customarily Furnished”	9-18	9-6
B. “Board, Lodging or Other Facilities”	9-18	9-6
1. Meals	9-18	9-6

	<i>Main Volume</i>	<i>Supple- ment</i>
2. Lodging	9-21	9-6
3. “Other Facilities”	9-23	—
a. General Merchandise	9-23	—
b. Fuel, Electricity, Water, and Gas	9-23	—
c. Transportation	9-24	—
d. Educational Costs	9-24	—
4. Items Primarily for Benefit or Convenience of Employer Are Not Facilities	9-24	—
C. Determining “Reasonable Cost”	9-25	—
1. General Determination	9-26	—
2. Procedure for Administrator Determination of “Reasonable Cost”	9-27	—
3. Procedure for Determining “Fair Value”	9-28	—
D. Effect of Collective Bargaining Agreements	9-29	—
IV. Payment of Wages to Tipped Employees	9-29	9-7
A. Historical Background of the Tip Credit	9-30	—
B. Statutory Provisions Regarding Tipped Employees	9-32	—
C. Requirements for Taking a Tip Credit	9-33	9-7
1. “Tipped Employee”	9-34	9-7
a. General Characteristics of Tips	9-34	—
b. Compulsory Charges for Service Are Not Tips	9-36	9-7
c. “Customarily and Regularly Receives More Than \$30 a Month in Tips”	9-37	—
d. Dual Jobs	9-39	9-7

	<i>Main Volume</i>	<i>Supple- ment</i>
2. Compensation of Tipped Employees (Direct Wage and Tip Credit)	9-42	9-8
3. Notice of the Provisions in Section 3(m)	9-43	9-8
4. Tip Pooling	9-46	9-9
D. Other Considerations	9-51	9-10
1. Deductions From Tips	9-51	9-10
a. Generally	9-51	—
b. Deductions to Recoup Credit Card Charges	9-51	9-10
c. Deductions for Taxes	9-53	—
2. Application of Section 3(m) When Tipped Employees Are Paid Direct Wages Sufficient to Satisfy the Minimum Wage Requirement	9-53	9-10
3. Overtime Payments to Tipped Employees	9-56	—
V. Calculating the Minimum Wage	9-57	9-12
A. Averaging Earnings Over the Workweek	9-57	9-12
B. Monthly Salaries	9-59	—
C. Commission Payments	9-60	9-13
1. Commission Paid on a Weekly Basis	9-61	—
2. Monthly and Longer Commission Period	9-63	—
D. Piece Rates	9-64	—
1. Nonproductive Activities	9-65	—
2. Average Earnings of Beginners	9-65	—
VI. Deductions From Wages	9-66	9-13
A. Amounts Deducted for Taxes	9-67	—
B. Payments to Third Persons Pursuant to Court Orders	9-67	—

	<i>Main Volume</i>	<i>Supple- ment</i>
C. Payments to Employee’s Assignees	9-68	—
D. Shortages	9-69	—
E. Other Debts to the Employer	9-70	9-13
1. Cash Advances and Bona Fide Loans	9-71	—
2. Overpayment of Wages	9-72	—
3. Unearned Vacation	9-72	—
4. Training Costs	9-73	9-13
F. Transportation and Visa Expenses for Foreign Workers	9-74	9-14
G. Uniforms and Uniform Cleaning	9-76	—
1. What Is a Uniform?	9-77	—
2. Paying for the Uniform	9-78	—
3. Caring for the Uniform	9-79	—
VII. Special Minimum Wage Requirements ...	9-81	—
A. Employees Working Under Special Certificates	9-81	—
B. Employees Under Age 20 Paid an Opportunity Wage	9-82	—
C. United States Territories	9-83	—
 CHAPTER 10: OVERTIME COMPENSATION	 10-1	 10-1
I. Overview	10-5	—
II. General Principles	10-7	—
III. The “Workweek” Concept	10-8	10-7
A. Determining the Workweek	10-8	10-7
B. Alternative Work Schedules	10-10	—
C. Overtime Must Be Paid on the Regular Payday	10-11	10-7
D. Prepayment Plans	10-13	—
IV. The “Regular Rate”	10-13	10-7
A. Relationship Between the Regular Rate and Federal, State, or Local Minimum Wages	10-13	—
B. Regular Rate Includes “All Remuneration”	10-14	10-7

	<i>Main Volume</i>	<i>Supple- ment</i>
C. Statutory Exclusions From the Regular Rate and Payments		
Creditable to Overtime	10-16	10-8
1. Extra Compensation Paid for Overtime Work:		
Sections 7(e)(5)–(7)	10-19	10-8
a. Premium Pay for Work in Excess of the Daily or Weekly Standard: Section 7(e)(5)	10-19	10-8
b. Premium Pay for Work on Saturdays, Sundays, and Other Special Days: Section 7(e)(6)	10-22	—
c. “Clock Pattern” Premium Pay: Section 7(e)(7)	10-24	—
d. Other Types of Premium Pay Distinguished	10-26	—
e. Premium Pay Creditable to Overtime Under Section 7(h) and as a Setoff	10-26	10-8
2. Discretionary Bonuses, Prizes, and Awards: Section 7(e)(3)(a)	10-29	10-9
a. Discretionary Versus Nondiscretionary	10-29	10-9
b. Prizes, Contest Awards, and Suggestion Systems	10-31	10-9
c. Nondiscretionary Bonuses Determined and Paid by Others	10-33	—
d. Nondiscretionary Bonuses That Include Overtime	10-34	10-10
3. Gifts, Christmas, and Special Occasion Bonuses: Section 7(e)(1)	10-35	10-10

	<i>Main Volume</i>	<i>Supple- ment</i>
4. Profit-Sharing or Trust or Thrift or Savings Plans:		
Section 7(e)(3)(b)	10-36	—
5. Stock Option Grants:		
Section 7(e)(8)	10-38	—
6. Benefit Plan Contributions:		
Section 7(e)(4)	10-39	10-10
a. Cafeteria Plans	10-41	10-11
7. Payments Made When No Work Is Performed: Section 7(e)(2)	10-42	10-11
8. Reimbursement for Work-Related Expenses: Section 7(e)(2)	10-44	—
9. “Other Similar Payments”:		
Section 7(e)(2)	10-45	10-12
a. Show-Up, Call-Back, and Short Call Pay	10-46	—
b. Pay for Other Nonproductive Hours	10-47	10-12
10. Talent Fees in the Radio and Television Industry:		
Section 7(e)(3)(c)	10-51	—
D. Calculating Regular Rate and Overtime Under Various Methods of Payment	10-51	10-13
1. Payment of Wages Based on an Hourly Rate	10-52	—
a. Employees Paid at One Hourly Rate	10-52	—
b. Employees Paid at Two or More Hourly Rates	10-52	—
2. Payment of Wages Based on a Nonhourly Rate	10-53	10-13
a. Piece Rates Generally	10-53	10-13
b. Piece Rate with Hourly Guarantee	10-54	—
c. Day Rates and Job Rates	10-55	10-13

	<i>Main Volume</i>	<i>Supple- ment</i>
d. Salaried Employees: Generally	10-56	—
e. Salaried Employees: Fluctuating Workweek Method	10-57	10-14
(i.) Salary Basis of Payment	10-61	10-15
(ii.) Salary Exceeds Minimum Wage	10-64	10-15
(iii.) “Clear Mutual Understanding”	10-65	10-16
(iv.) Fluctuating Hours	10-66	10-16
f. Commission Employees	10-67	10-17
(i.) Paid on a Workweek Basis	10-68	—
(ii.) Deferred Payments	10-68	10-17
(iii.) Delayed Credits and Debits	10-71	—
g. Bonuses	10-71	10-17
h. “Task” Basis of Payment	10-72	—
(i.) Payment for Tasks Regardless of Actual Hours Worked	10-72	—
(ii.) Computing Overtime Pay for Employees Compensated on a Task Basis	10-74	—
i. Tipped Employees	10-75	—
V. Special Problems Concerning the Regular Rate	10-76	10-17
A. Change in the Beginning of the Workweek	10-76	—
B. Retroactive Pay Increases	10-78	—
C. Deductions From Wages	10-78	10-17
1. Deductions for Lodging, Meals, and Other Facilities	10-79	10-17

	<i>Main Volume</i>	<i>Supple- ment</i>
2. Deductions for Items Other Than Facilities	10-79	—
3. Deductions Authorized by the Employee or Required by Law	10-79	—
4. Salary Reductions in Short Workweeks	10-80	—
5. Deductions for Disciplinary Reasons	10-80	—
D. Lump Sum Attributed to Overtime ...	10-81	—
1. The Overtime Rate Is an Hourly Rate	10-81	—
2. Fixed Sum: Constant Amount of Overtime	10-81	—
3. Fixed Sum: Varying Amounts of Overtime	10-82	—
4. Flat Rate for a Special Job Performed in Overtime Hours.....	10-83	—
E. Reduction in the Workweek Schedule With No Change in Pay	10-84	—
1. Reducing the Fixed Workweek for Which a Salary Is Paid	10-85	—
2. Effect if the Salary Is for a Variable Workweek	10-86	—
3. Reduction of the Regular Overtime Workweek Without Reduction of Take-Home Pay	10-86	—
4. Temporary or Sporadic Reduction in Schedule	10-86	—
F. Gap Time	10-87	10-17
VI. Exceptions From the Regular Rate Principles	10-90	10-18
A. Using Basic Rates for Regular Rates...	10-90	—
1. Requirements for a Basic Rate	10-90	—
2. Methods for Calculating Basic Rates	10-92	—
a. Averaging Salary	10-92	—

	<i>Main Volume</i>	<i>Supple- ment</i>
b. Averaging Earnings for a Period Other Than a Workweek	10-93	—
c. Averaging Earnings for Each Type of Work	10-94	—
d. Regular Rate Minus Certain Meals	10-95	—
e. Regular Rate Minus Incidentals	10-95	—
f. Average Earnings for the Year or Quarter Year Preceding the Current Quarter	10-96	—
3. Rates Authorized on Application	10-97	—
4. Computation of Overtime Pay	10-99	—
B. <i>Belo</i> -Type Wage Contracts	10-99	10-18
1. Statutory Exception Provided by Section 7(f)	10-99	—
2. Detailed Requirements of a <i>Belo</i> Plan	10-102	10-18
a. Irregular Hours Required	10-102	10-18
b. Bona Fide Agreement Required	10-103	—
c. Specified Regular Rate	10-103	10-19
d. Provisions for Overtime Pay	10-104	—
e. Guarantee of Weekly Salary	10-104	—
f. Approval of Section 7(f) Contracts	10-105	—
C. Computing Overtime Pay With the Rate Applicable to the Type of Work Performed in Overtime Hours	10-105	—
1. General Requirements of Section 7(g)	10-105	—
2. Piecework	10-106	—
3. Hourly Workers Employed at Two or More Rates	10-107	—
4. Hour-for-Hour Offset	10-108	—

	<i>Main Volume</i>	<i>Supple- ment</i>
VII. Examples of Pay Plans That Circumvent the FLSA	10-108	—
VIII. Special Overtime Provisions	10-112	10-19
A. Veterans’ Subsistence Allowance	10-112	—
B. Hospital and Residential Care Establishments	10-113	10-19
C. Employees Receiving Remedial Education	10-115	—
CHAPTER 11: GOVERNMENT EMPLOYMENT	11-1	11-1
I. Overview	11-5	—
II. Coverage Issues	11-7	11-6
A. What Constitutes a “Public Agency” for FLSA Coverage	11-7	—
B. Employer-Employee Relationship in Public Sector	11-10	—
C. Exclusions for Non-Civil Service Employees	11-11	—
1. Elected Officials	11-11	—
2. Personal Staff of Elected Officials	11-12	—
a. Court Employees	11-13	—
(i.) Judges	11-13	—
(ii.) Clerks	11-13	—
(iii.) Court Reporters	11-14	—
b. Law Enforcement Employees	11-15	—
3. Policy-Making Appointees	11-16	—
4. Legal Advisors	11-17	—
5. Employees of State and Local Government Legislative Bodies	11-18	—
6. Tribal Employees Engaged in Intramural Tribal Matters	11-18	—
D. Volunteers	11-19	11-6
1. Definition of “Volunteer”	11-19	11-6

	<i>Main Volume</i>	<i>Supple- ment</i>
2. Receipt of Expenses, Reasonable Benefits, or a Nominal Fee	11-22	—
3. Employment by the “Same Agency” in the “Same Type” of Position	11-27	—
a. Same Public Agency	11-27	—
b. Same Type of Service	11-28	—
4. Mutual Aid Agreements	11-33	—
5. Private Individuals as Volunteers for Public Agencies	11-33	—
III. Public Sector Exemptions From FLSA		
Overtime Requirements	11-34	11-7
A. Section 7(o): Compensatory Time	11-34	11-7
1. Prior Agreement or Understanding	11-36	11-7
2. Representative of Employees	11-37	—
3. Rate of Accrual	11-40	—
4. Maximum Accrual	11-40	11-7
5. Conditions for Using or Cashing Out Comp Time	11-41	—
a. “Reasonable Period”	11-43	—
b. “Unduly Disrupt”	11-46	—
6. Effect of Comp Time on the Regular Rate for Overtime Compensation	11-47	—
7. Records to Be Kept of Compensatory Time	11-47	—
B. Court Reporters’ Time Spent Preparing Transcripts	11-48	—
C. Section 7(p)(1): Special Detail Work by Fire Protection and Law Enforcement Personnel	11-49	—
D. Section 7(p)(2): Occasional or Sporadic Employment	11-52	11-7
1. Statutory Provision	11-52	—
2. Provisions in the Regulations	11-53	11-7

	<i>Main Volume</i>	<i>Supple- ment</i>
a. “Occasional or Sporadic”	11-53	11-7
b. “Different Capacity”	11-54	11-8
E. Section 7(p) (3): Voluntary Substitution	11-56	—
F. Training Time	11-58	11-8
IV. FLSA Exemptions Applied to Public Sector Employees	11-59	11-9
A. The White-Collar Exemptions	11-59	11-9
1. Executive Employees	11-60	11-9
2. Administrative Employees	11-61	—
3. Professional Employees	11-66	—
4. Applying White-Collar Exemptions to Emergency Responder Personnel	11-69	11-9
5. Issues Under the Salary Basis Test	11-74	11-10
B. Recreational Establishment Exemption	11-75	—
C. Federal Criminal Investigator Exemption	11-77	—
D. Domestic Service Employee Exemptions	11-77	11-10
1. Section 13(a) (15) of the FLSA	11-77	11-10
2. Section 13(b) (21) of the FLSA	11-79	—
E. Transportation Employee Exemptions	11-80	—
F. Partial Overtime Exemption for Hospital Employees	11-80	—
G. Border Patrol Pay Reform Act Exemption	11-81	11-10
V. Special Provisions That Apply to Fire Protection and Law Enforcement Employees	11-81	11-10
A. Small Department Exemption	11-82	—
B. The Section 7(k) Exemption	11-83	11-10

	<i>Main Volume</i>	<i>Supple- ment</i>
C. Compensable Hours of Work Rules ...	11-87	—
1. Sleep Time	11-87	—
2. Meal Time	11-89	—
3. Early Relief	11-91	—
4. Animal Care	11-92	—
VI. Determining Whether Employees Are Employed in Fire Protection or Law Enforcement Activities	11-94	—
A. Fire Protection Activities	11-95	—
B. Law Enforcement Activities	11-99	—
C. Public Agency Employees Engaged in Both Fire Protection and Law Enforcement Activities	11-102	—
D. Trainees	11-103	—
VII. The Federal Sector	11-103	11-11
A. White-Collar Exemptions	11-106	11-11
1. Executive Exemption	11-108	—
2. Administrative Exemption	11-109	—
3. Professional Exemption	11-111	11-11
4. Other OPM Regulations Regarding Exempt Status	11-112	—
B. Compensable Hours of Work Rules ...	11-115	11-11
1. Compensability Under the OPM Regulations	11-115	11-11
2. Preliminary and Postliminary Activities	11-117	—
3. Sleep Time	11-120	—
C. Calculation of Overtime Pay	11-121	—
D. Compensatory Time	11-123	11-12
E. The Portal-to-Portal Act Good Faith Defenses	11-125	11-12
1. Section 10 of the Portal-to-Portal Act	11-125	—
2. Section 11 of the Portal-to-Portal Act	11-126	11-12

	<i>Main Volume</i>	<i>Supple- ment</i>
F. Willfulness	11-129	—
G. FLSA’s Interplay With Other Federal Statutes and Constitution Regarding Federal Sector Employees	11-130	11-13
1. Cases Addressing the Impact of Other Laws	11-130	11-13
a. Tucker Act	11-130	11-13
b. Whether Other Federal Laws Preempt Application of the FLSA to Certain Federal Sector Employees	11-131	11-13
c. Fifth Amendment	11-133	—
2. Impact of Collective Bargaining Agreements and FLSA Rights	11-133	11-14
3. Whistleblower Protections and the FLSA [New Topic]	—	11-14
VIII. Application to Congressional Employees	11-135	—
A. Coverage	11-136	—
B. Office of Compliance	11-138	—
1. Rules	11-139	—
2. The Board’s Regulations	11-140	—
3. Compensatory Time Regulations	11-141	—
4. Child Labor	11-142	—
C. Study Regarding Government Accountability Office, Government Printing Office, and Library of Congress	11-143	—
D. Administrative and Judicial Dispute Resolution Procedures	11-143	—
IX. Unique Constitutional Defenses	11-146	11-16
A. The Tenth Amendment	11-146	—
B. When States’ Sovereign Immunity Can Bar Enforcement of the FLSA	11-148	11-16

	<i>Main Volume</i>	<i>Supple- ment</i>
1. Constitutional Principles Underlying States' Sovereign Immunity	11-148	—
2. States' Sovereign Immunity Does Not Bar Enforcement by Secretary of Labor	11-152	—
3. Determining What Entities and Officials Have Sovereign Immunity From Private FLSA Enforcement Actions	11-152	11-16
a. Determining Whether Political Subdivisions Enjoy Immunity as "Arm of the State"	11-153	11-16
b. Immunity for U.S. Territories and Indian Tribes	11-157	—
c. Determining When Public Officials Are Immune From Suit	11-157	11-16
C. Waiver of Sovereign Immunity	11-159	11-17
 CHAPTER 12: CHILD LABOR.....	 12-1	 12-1
I. Overview	12-3	—
II. Precursors to the FLSA	12-8	—
A. The Keating-Owen Law	12-9	—
B. The Child Labor Tax Law	12-11	—
C. Attempts to Amend the Constitution	12-12	—
D. The National Industrial Recovery Act	12-12	—
III. Passage of the FLSA	12-14	—
IV. Child Labor Amendments	12-17	—
A. 1940–1949	12-17	—
B. 1950–1960	12-19	—
C. 1961–1969	12-19	—

	<i>Main Volume</i>	<i>Supple- ment</i>
D. 1970–1979	12-19	—
E. 1990–1999	12-20	—
F. 2000–2008	12-21	—
V. General Scope of Statutory Provisions	12-22	—
A. “Oppressive Child Labor”	12-23	—
B. Section 12(a): The “Hot Goods” Restriction	12-25	—
C. Section 12(c): The “Direct Prohibition”	12-25	—
D. Joint and Separate Applicability of Sections 12(a) and 12(c)	12-27	—
VI. Work Restrictions by Age and Occupation	12-28	—
A. Nonagricultural Occupations	12-30	—
1. Minors Between 16 and 18 Years of Age	12-30	—
a. Generally	12-30	—
b. The Hazardous Orders	12-30	—
c. Exemptions From the Hazardous Order Prohibitions	12-45	—
(i.) Apprenticeship Exemption	12-46	—
(ii.) Student-Learner Exemption	12-46	—
2. Minors Between 14 and 16 Years of Age	12-47	—
a. Hours Restrictions	12-48	—
b. Occupations That Are Prohibited to Minors 14 and 15 Years of Age	12-51	—
c. Occupations That May Be Performed By Minors 14 and 15 Years of Age	12-55	—
(i.) Generally	12-55	—
(ii.) Approved Work Experience and Career Exploration Programs	12-61	—

	<i>Main Volume</i>	<i>Supple- ment</i>
(iii.) Work-Study Program	12-62	—
3. Minors Under Age 14	12-66	—
B. Agricultural Occupations	12-66	—
1. Minors Under Age 16	12-67	—
a. The Hazardous Occupations...	12-67	—
b. Student-Learners	12-68	—
2. Minors Under Age 14	12-69	—
3. Minors Under Age 12: “Tiny Tots”	12-69	—
VII. Specific Statutory Exemptions Involving Child Labor	12-71	—
A. Actors and Performers	12-73	—
B. Parental Exemption	12-74	—
VIII. Certificates of Age	12-75	—
IX. Interaction of Federal and State Law	12-78	—
X. “Hot Goods” Ban	12-79	—
XI. Enforcement	12-79	—
A. Civil Money Penalties	12-80	—
1. Administrative Law Judge Proceedings Contesting Civil Money Penalties for Child Labor Violations	12-84	—
2. Review by the Administrative Review Board	12-85	—
B. Injunctive Relief	12-87	—
1. Hot Goods Injunction	12-87	—
2. Injunction to Compel Compliance	12-88	—
C. Criminal Prosecution	12-89	—
D. No Private Remedy	12-89	—
 CHAPTER 13: RETALIATION.....	 13-1	 13-1
I. Overview	13-2	—
II. Parties	13-3	13-3
A. Plaintiffs	13-3	13-3
1. “Any Employee”	13-3	13-3
2. Former Employees	13-5	—

	<i>Main Volume</i>	<i>Supple- ment</i>
3. Spouses, Family Members, and Friends of Employees	13-6	13-3
4. Applicants for Employment	13-7	—
5. Undocumented Workers	13-9	13-3
B. Defendants	13-10	13-4
1. “Any Person”	13-10	13-4
2. Individuals	13-13	—
3. Labor Unions	13-14	—
4. Government Agencies	13-15	13-4
III. Prima Facie Case and Burden of Proof ...	13-15	13-4
IV. Protected Activities Under		
Section 15(a) (3)	13-22	13-7
A. Filing Any Complaint—“Fair Notice”	13-27	13-7
1. Internal Complaints	13-27	13-7
2. Complaints by Managers and Human Resources Personnel	13-30	13-9
3. “Good Faith” Requirement	13-31	13-10
B. Employer’s Belief That a Complaint Was or Is Going to Be Filed	13-33	—
C. Contacting the Department of Labor	13-36	13-11
D. Testimony	13-38	13-11
E. Other Protected Activity	13-39	13-12
V. Prohibited Conduct Under		
Section 15(a) (3)	13-40	13-12
A. Constructive Discharge	13-42	—
B. Harassing Acts at Work	13-44	13-12
C. Postemployment Acts	13-46	13-13
D. Retaliatory Lawsuits	13-49	13-13
VI. Defenses	13-51	13-14
A. Statute of Limitations	13-51	13-14
B. Waiver and Release	13-53	—
C. Claim Preclusion	13-54	—
VII. Remedies	13-54	13-14

	<i>Main Volume</i>	<i>Supple- ment</i>
A. Reinstatement and Other Injunctive Relief	13-55	13-14
1. Reinstatement	13-55	—
2. Reinstatement Pending a Trial on the Merits	13-57	13-14
3. Other Injunctive Relief	13-58	—
B. Monetary Damages	13-60	13-14
1. Back Pay	13-60	13-14
2. Front Pay	13-62	13-15
3. Liquidated Damages	13-64	—
4. Compensatory and Punitive Damages	13-65	13-15
a. Compensatory Damages	13-65	13-15
b. Punitive Damages	13-67	13-16
5. Interest	13-69	—
a. Prejudgment Interest	13-69	—
b. Postjudgment Interest	13-70	—
C. Attorneys' Fees and Costs	13-71	—
VIII. Preemption of Wrongful Discharge Actions	13-72	13-17
CHAPTER 14: RECORDKEEPING	14-1	14-1
I. Overview	14-3	—
II. Recordkeeping Requirements for Employees Subject to the Minimum Wage and/or Overtime Pay Provisions of the FLSA	14-5	14-5
A. Records Generally Required for Employees Subject to the Minimum Wage and/or Overtime Provisions of the FLSA	14-5	—
B. Special Recordkeeping Requirements or Exceptions for Certain Employees Subject to the Minimum Wage and/or Overtime Provisions of the FLSA	14-7	14-5

	<i>Main Volume</i>	<i>Supple- ment</i>
1. Tipped Employees	14-7	14-5
2. Domestic Service Employees	14-8	—
3. Employees Subject to Deductions for Board, Lodging, and Other Facilities	14-10	—
4. Industrial Homeworkers	14-12	—
5. Learners, Apprentices, Messengers, Students, or Disabled Workers Employed Under Special Certificates as Provided in Section 14	14-14	—
6. Employees of State and Local Governments	14-15	—
C. Records of Supervised Payments of Back Wages	14-17	—
III. Recordkeeping Requirements for Employees With Unique Pay Systems Under Section 7 of the FLSA	14-17	—
A. Employees Under Certain Collective Bargaining Agreements (Section 7(b)(1) or 7(b)(2))	14-17	—
B. Bulk Petroleum Employees (Section 7(b)(3))	14-18	—
C. Workers Employed Under Section 7(f) <i>Belo</i> Contracts	14-19	—
D. Employees Paid on the Basis of “Applicable” Rates (Section 7(g)(1) or 7(g)(2))	14-19	—
E. Employees Paid for Overtime at Premium Rates Computed on a “Basic” Rate (Section 7(g)(3))	14-20	—
F. Commissioned Employees of a Retail or Service Establishment (Section 7(i))	14-22	—

	<i>Main Volume</i>	<i>Supple- ment</i>
G. Employees of Hospitals and Residential Care Facilities Compensated for Overtime on the Basis of a 14-Day Work Period (Section 7(j))	14-23	—
H. Employees Engaged in Charter Activities (Section 7(n))	14-24	—
I. Employees Receiving Remedial Education (Section 7(q))	14-24	—
IV. Recordkeeping Requirements for Exempt Employees	14-25	—
A. Bona Fide Executive, Administrative, and Professional Employees and Outside Sales Employees (Section 13(a)(1))	14-25	—
B. Employees Exempt From Minimum Wage and Overtime Pay Requirements Under Certain Provisions of Section 13(a) or 13(d)	14-26	—
C. Employees Exempt From Overtime Pay Requirements Under Certain Provisions of Section 13(b)	14-27	—
D. Agricultural Employees Exempt From Minimum Wage and Overtime Pay Requirements Under Sections 13(a), 13(b), and 13(h)–(j) and 7(m)	14-30	—
1. Workers Employed in Agriculture Pursuant to Section 13(a)(6) or 13(b)(12)	14-30	—
2. Livestock Auction Employees (Section 13(b)(13))	14-33	—
3. Country Elevator Employees (Section 13(b)(14))	14-33	—

	<i>Main Volume</i>	<i>Supple- ment</i>
4. Employees in Certain Tobacco, Cotton, Sugar Cane, or Sugar Beet Services (Sections 7(m), 13(h), 13(i), or 13(j))	14-34	—
E. Special Recordkeeping Requirements for Employees Subject to Certain Exemptions Under Section 13	14-35	—
1. Seamen (Section 13(b)(6))	14-35	—
2. Local Delivery Drivers (Section 13(b)(11))	14-35	—
3. Employees of Private Entities That Operate Amusement or Recreation Establishments in National Parks, National Forests, or Land in the National Refuge System (Section 13(b)(29))	14-36	—
V. Form and Preservation of Records and Posting of Notices	14-37	14-5
A. Form of Records	14-37	14-5
B. Place for Keeping Records	14-39	—
C. Period for Keeping Records	14-39	—
1. Three-Year Retention Period	14-39	—
2. Two-Year Retention Period	14-41	—
D. DOL Requests for Records	14-42	—
E. Petition for Exceptions	14-42	—
F. Posting of Notices	14-43	—
VI. Violation of Recordkeeping Requirements	14-44	14-6
A. Actions by the Secretary of Labor	14-44	—
B. Other Consequences for Failure to Keep Records or Post Required Notices	14-46	14-6

	<i>Main Volume</i>	<i>Supple- ment</i>
CHAPTER 15: DEPARTMENT OF LABOR ENFORCEMENT AND REMEDIES	15-1	15-1
I. Overview	15-6	—
II. DOL Investigations	15-11	15-7
A. Basis of the Investigation	15-12	—
1. Complaint	15-12	—
a. “Worst-First” Basis	15-12	—
b. Conciliation	15-13	—
c. Geographic Scope	15-14	—
2. Department-Initiated Investigations	15-15	—
B. Conducting Investigations	15-15	—
1. Initial Conference With the Employer	15-15	—
2. Issues in the Investigation	15-17	—
3. Inspection of Records	15-20	—
4. Employee Interviews and the Informer’s Privilege	15-21	—
C. Voluntary Compliance and Supervised Settlements	15-23	15-7
1. Promises of Future Compliance and Back Wages	15-23	—
2. WH Form WH-56 [New Topic]	—	15-7
3. WH Form WH-58 [New Topic]	—	15-8
4. Law Regarding DOL-Supervised Payments [New Topic]	—	15-10
5. Liquidated Damages [Renumbered Topic (Formerly 3.)]	15-24	15-14
6. Installment Payments [Renumbered Topic (Formerly 4.)]	15-25	15-14

	<i>Main Volume</i>	<i>Supple- ment</i>
7. Request for Waiver of Statute of Limitations [Renumbered Topic (Formerly 5.)].....	15-26	15-15
D. If Voluntary Compliance Is Not Achieved	15-26	—
E. Subpoenas Issued by the DOL	15-29	15-15
1. Statutory Basis of DOL's Subpoena Power	15-29	—
2. Procedure and Practice	15-30	—
3. Scope	15-31	—
4. Enforcement of Administrative Subpoena	15-32	15-15
III. Civil Money Penalties	15-33	—
A. Assessment of Civil Money Penalties	15-34	—
1. Repeated or Willful Minimum Wage or Overtime Violations and Child Labor Violations	15-35	—
a. Assessment	15-35	—
b. Exceptions	15-39	—
2. Homework Violations	15-42	—
B. Administrative Law Judge Proceedings When Civil Money Penalties Are Contested	15-43	—
1. Repeated or Willful Minimum Wage or Overtime Violations and Child Labor Violations	15-43	—
2. Homework Violations	15-45	—
C. Appeals to the Secretary	15-46	—
1. Repeated or Willful Minimum Wage or Overtime Violations and Child Labor Violations	15-46	—
2. Homework Violations	15-48	—
D. Judicial Review of Civil Money Penalties	15-49	—
1. Generally	15-49	—

	<i>Main Volume</i>	<i>Supple- ment</i>
2. Venue	15-49	—
3. Standard of Review	15-50	—
4. Time for Review	15-52	—
E. Other Administrative Actions	15-53	—
F. Double Jeopardy and Civil Money Penalties	15-54	—
IV. Actions for Injunctive Relief	15-56	15-15
A. Generally	15-56	—
1. Who Can Bring a Section 17 Injunction Action	15-56	—
2. The Subject of a Section 17 Injunction Must Be an Employer	15-59	—
3. Conduct Subject to Injunction Actions	15-61	—
B. Prospective Injunctions	15-61	15-15
1. General Standards for Issuance	15-62	15-15
2. Recordkeeping Violations	15-72	15-17
3. Child Labor Violations	15-74	—
4. Hot Goods Violations	15-77	—
5. Retaliation Violations	15-77	—
6. Homework Violations	15-77	—
C. Restitutory Injunctions	15-77	—
1. Nature and Purpose	15-78	—
2. Factors	15-80	—
3. Actions on Behalf of Group or Class of Employees	15-83	—
4. Statute of Limitations	15-84	—
5. Interest	15-85	—
a. Prejudgment Interest	15-86	—
b. Postjudgment Interest	15-89	—
c. Computation and Rate	15-91	—
D. Temporary Restraining Orders and Preliminary Injunctions	15-93	—
1. Authority to Seek Preliminary Relief	15-93	—

	<i>Main Volume</i>	<i>Supple- ment</i>
2. Proof and Procedure	15-95	—
3. Hot Goods Cases	15-97	—
E. Duration of Injunctions	15-99	—
F. Motions to Modify or Vacate	15-100	—
G. Contempt	15-102	15-17
1. Civil Contempt	15-105	15-17
a. The Prima Facie Case and Applicable Defenses	15-105	15-17
b. Statute of Limitations	15-110	—
c. Remedies	15-111	15-17
2. Criminal Contempt	15-116	—
V. DOL Actions for Back Wages	15-119	15-18
A. Secretary's Authority to Bring Action for Back Wages	15-119	—
B. Preclusive Effect of Secretary's Back Pay Lawsuit or Intervention	15-120	15-18
C. Right to a Jury Trial Under Section 16(c)	15-122	—
D. Defendants	15-124	—
E. Litigation Issues	15-125	15-18
1. Discovery of DOL Material	15-125	15-18
a. Generally	15-125	—
b. Discovery of Information From Informers	15-126	15-18
(i.) The Informer's Privilege	15-126	15-18
(ii.) Work Product Doctrine	15-129	15-19
(iii.) Witness Statements	15-130	—
(iv.) Attempting to Prevent Employee Interviews	15-132	15-19
2. Counterclaims Against the Government [New Topic]	—	15-19
F. Calculation of Money Damages	15-133	—
G. Disposition of Unclaimed Back Wages	15-133	—

	<i>Main Volume</i>	<i>Supple- ment</i>
H. Liquidated Damages Available to the Secretary Under Section 16(c)	15-134	—
VI. DOL Actions Enforcing Ban on Shipment of Hot Goods	15-135	15-20
A. Overview	15-135	—
B. The Original Hot Goods Language ...	15-137	—
C. Historical Background	15-141	—
1. The Child Labor Act of 1916	15-141	—
2. Legislative History of the Hot Goods Provisions	15-143	—
3. Constitutionality of the Section 15(a) Hot Goods Prohibition—the <i>Darby</i> Decision	15-145	—
D. Definitions Used in the Hot Goods Provisions	15-147	—
1. Terms Found in the Hot Goods Ban of Section 12(a)	15-147	—
a. “Producer, Manufacturer, or Dealer”	15-148	—
b. “Ship” or “Deliver for Shipment” in Commerce	15-149	—
c. “Goods”	15-150	—
d. “Produced”	15-154	—
e. “Establishment Situated in the United States”	15-156	—
f. “In or About”	15-157	—
g. Removal	15-158	—
2. “Any Person” Under the Hot Goods Ban of Section 15(a)(1)	15-159	—
a. Secured Creditors	15-159	—
b. Debtors in Bankruptcy	15-162	—
c. Owner, Manager, President	15-165	—

	<i>Main Volume</i>	<i>Supple- ment</i>
E. Statutory Exemptions From the Prohibition Against Interstate Shipment of Hot Goods	15-167	—
1. The Common Carrier Exemption	15-168	—
2. The Good Faith Purchaser Exemption	15-169	—
a. Introduction	15-169	—
b. Legislative History	15-170	—
c. Written Assurance From the Producer	15-170	—
d. “Acquired in Good Faith for Value Without Notice”	15-172	—
e. Litigation Under the Good Faith Purchaser Exemption	15-173	—
(i.) Good Faith Effort to Comply	15-173	—
(ii.) Violations Occurring After Purchase	15-174	—
F. Enforcement of the Hot Goods Ban	15-175	15-20
1. Injunction Proceedings	15-175	15-20
2. Dissolution of a Hot Goods Injunction	15-179	—
3. Contempt of a Hot Goods Injunction	15-180	—
VII. Criminal Proceedings	15-181	—
A. Nature of Offenses	15-181	—
1. The Willfulness Standard	15-183	—
2. Course of Conduct	15-185	—
B. Defendants	15-186	—
1. Corporations	15-186	—
2. Owners, Stockholders, Directors, Managers, and Others	15-187	—
C. Procedure	15-188	—
D. Punishments Available	15-190	—

	<i>Main Volume</i>	<i>Supple- ment</i>
1. First Offenses	15-190	—
2. Second and Subsequent Offenses	15-190	—
E. Statute of Limitations	15-190	—
F. Other Defenses	15-191	—
 CHAPTER 16: LITIGATION ISSUES	 16-1	 16-1
I. Overview	16-5	—
II. Jurisdiction	16-8	16-7
A. Generally	16-8	—
B. Federal Courts	16-8	16-7
1. Original Jurisdiction	16-8	16-7
2. Supplemental Jurisdiction Over State Law Claims	16-10	16-8
C. State Courts	16-11	—
D. Removal From State to Federal Court	16-12	—
III. Venue	16-13	16-8
A. Generally	16-13	16-8
B. Consolidation and Transfer	16-13	16-8
1. Section 1404 Transfer and Forum Non Conveniens	16-13	16-8
2. Section 1407 Consolidation and Transfer (Multidistrict Litigation)	16-16	—
3. The “First to File” Rule	16-17	—
IV. FLSA Claims in Arbitration	16-17	16-9
A. Arbitrability of FLSA Claims	16-18	16-9
B. Form and Scope of Arbitration Agreements	16-19	16-10
C. Enforceability of Arbitration Agreements	16-20	16-12
1. Threshold Enforceability Issues....	16-20	16-12
2. Concepts of Unconscionability	16-23	16-13
3. Waiver of Right to Compel Arbitration	16-25	16-13

	<i>Main Volume</i>	<i>Supple- ment</i>
4. Arbitration Agreements and Non-Parties to the Agreement	16-26	16-14
5. Dismissal or Stay	16-26	—
D. Arbitration of FLSA Claims in the Union Context	16-27	16-14
1. Collectively Bargained Arbitration Procedures and the FLSA	16-27	16-14
2. Requirement to Exhaust Grievance Procedures	16-30	16-14
3. Effect of Prior Grievance Arbitration on Subsequent FLSA Lawsuit	16-32	—
V. Parties	16-34	16-15
A. Standing	16-34	16-15
1. Actions by Private Plaintiffs	16-34	—
2. Actions by Unions	16-35	16-15
3. Preclusion of Private Party Claims Following Enforcement Action by Secretary	16-36	—
4. Actions by Other Interested Parties	16-38	—
a. The Declaratory Judgment Act	16-38	—
b. The Administrative Procedure Act	16-43	—
B. Joinder of Parties	16-45	16-16
C. Intervention	16-47	16-18
1. Parties Plaintiff	16-47	—
2. Parties Defendant	16-48	—
D. Joint Employers as Defendants	16-49	—
E. Individuals as Defendants	16-49	—
F. Indemnification	16-50	—
G. Successors	16-51	16-19
VI. Pleading	16-54	16-20
A. General Pleading Standards	16-54	—

	<i>Main Volume</i>	<i>Supple- ment</i>
B. Pleading FLSA Minimum Wage and Overtime Claims	16-56	16-20
C. Pleading Affirmative Defenses	16-60	16-24
D. Demand for a Jury Trial	16-62	—
VII. Defenses	16-63	16-26
A. Preemption	16-64	16-26
B. Exemptions, Deductions, and Credits	16-66	16-26
C. Statute of Limitations	16-69	16-27
1. Generally	16-69	16-27
2. Willful and Nonwillful Violations	16-71	16-28
a. Willfulness Standard	16-71	16-28
b. Determination of Willfulness by Judge or Jury	16-80	16-31
3. Commencement of Action	16-81	—
4. Accrual of Limitations Period	16-82	16-31
5. Equitable Tolling and Equitable Estoppel	16-85	16-32
D. Laches	16-91	—
E. Good Faith Defenses	16-92	16-33
1. Section 10: Actions Taken in Good Faith, in Conformity With, and in Reliance on Written Rulings or Enforcement Policies of the Administrator	16-93	—
a. General Nature of the Defense	16-93	—
b. “In Good Faith”	16-98	—
c. “In Actual Conformity With” ...	16-102	—
d. “In Reliance On”	16-104	—
e. “Any Written Administrative Regulation, Order, Ruling, Approval, or Interpretation” ...	16-105	—

	<i>Main Volume</i>	<i>Supple- ment</i>
f. “Or an Administrative Practice or Enforcement Policy”	16-110	—
g. “An Agency of the United States”	16-113	—
2. Section 11: Actions Taken in Good Faith and With Reasonable Grounds for Believing They Were Not in Violation of the FLSA	16-116	16-33
a. General Nature of the Defense	16-116	—
b. Burden of Proof	16-118	16-33
c. Judicial Findings Required	16-122	—
d. Subjective Good Faith	16-124	16-33
e. Reasonable Grounds to Believe Not in Violation of the FLSA	16-129	—
f. Effect of a Jury Verdict on Willfulness for Statute of Limitations Purposes on a Trial Court’s Discretion Under Section 11	16-142	—
g. Amount of Liquidated Damages Awarded	16-147	—
3. Waiver of Attorney-Client Privilege	16-149	16-33
F. Estoppel	16-150	16-34
1. Failure to Disclose FLSA Claims in Bankruptcy	16-151	16-34
2. Failure to Claim Overtime	16-153	16-35
3. Collective Bargaining, Custom, and Practice	16-157	—
G. Mootness	16-160	16-36
H. Claim and Issue Preclusion	16-162	16-37
I. Bankruptcy	16-165	—

	<i>Main Volume</i>	<i>Supple- ment</i>
VIII. Burden of Proof	16-167	16-38
A. Generally	16-167	—
B. Proving the Prima Facie Wage Case ...	16-168	16-38
C. Proving the Number of Hours Worked	16-172	16-38
1. Generally	16-172	—
2. Inadequate or Inaccurate Records	16-172	16-38
D. Proving Exemptions and Other Defenses	16-176	—
E. Standards of Review on Appeal	16-181	—
IX. Remedies	16-183	16-40
A. Scope of Remedies Under the FLSA in Minimum Wage and Overtime Actions	16-183	—
B. Monetary Damages	16-185	16-40
1. Actions for Back Wages and Overtime	16-185	16-40
a. Computation: Generally	16-185	—
b. Computation: Salaried Employees Misclassified as Exempt	16-185	—
c. Computation: Calculation of Back Pay Where Employer's Records Are Inadequate	16-190	—
d. Deductions and Setoffs	16-193	—
e. Unclaimed Back Wages	16-196	16-40
f. Calculating Damages When Fluctuating Workweek Arrangements Fail to Meet Requirements [New Topic]	—	16-40
2. Liquidated Damages	16-197	16-41
a. Availability	16-197	16-41
b. Computation	16-200	—
3. Interest	16-201	16-42
a. Prejudgment Interest	16-202	16-42

	<i>Main Volume</i>	<i>Supple- ment</i>
b. Postjudgment Interest	16-207	—
C. Non-Monetary Remedies	16-208	—
D. Attorneys’ Fees	16-209	16-42
1. Generally	16-209	—
2. Specific Factors That Affect Attorneys’ Fee Awards	16-216	16-42
a. Prevailing Plaintiff Requirement	16-216	—
b. <i>Hensley v. Eckerhart</i> and the Fee-Shifting Standard	16-218	16-42
c. Attorneys’ Fees for Non-FLSA Claims Made in FLSA Litigation	16-220	—
d. Attorneys’ Fees for Appellate Work	16-222	—
e. Calculating “Reasonable” Attorneys’ Fees	16-223	16-42
(i.) Calculating the Lodestar Figure	16-224	16-42
(ii.) Adjusting the Lodestar Amount: The 12-Factor Test	16-231	16-43
f. Effects of Contingent Fee Arrangements and Offers of Judgment	16-237	16-43
g. Appellate Review	16-240	—
E. Costs	16-241	16-44
X. Compromise, Settlement, Waiver, and Release	16-244	16-44
A. Generally	16-244	16-44
B. Private Settlement, Waiver, Releases and Stipulated Dismissals	16-245	16-45
C. DOL-Supervised Settlements	16-251	—
D. Judicially Approved Consent Decrees	16-255	16-51
E. Confidentiality of Settlements	16-257	16-53

	<i>Main Volume</i>	<i>Supple- ment</i>
F. Breadth of the Release [New Topic]	—	16-56
G. Settlement Must Award Plaintiff’s Counsel a Reasonable Fee [New Topic]	—	16-58
1. Prevailing Plaintiff Requirement [New Topic]	—	16-58
2. Effects of Contingency Fee Arrangements [New Topic]	—	16-59
H. Stipulated Dismissal of FLSA Claims Without the Involvement of the Court [New Topic]	—	16-61
I. Approval of Offers of Judgment [New Topic]	—	16-62
 CHAPTER 17: COLLECTIVE ACTIONS AND “HYBRID” CLASS ACTIONS	 17-1	 17-1
I. Overview	17-7	—
II. Procedural Requirements of Section 16(b)	17-10	17-10
A. The Opt-In Versus Opt-Out Requirement	17-10	—
B. The Consent Requirement	17-11	17-10
1. Scope and Use of Consent Form	17-15	—
2. Form of Consent	17-16	17-10
C. Impact of DOL Actions for Back Wages on Collective Actions	17-18	—
III. The Two-Stage Process Used to Determine if a Collective Action May Proceed to Trial	17-19	17-11
A. Overview	17-19	17-11
B. Stage I: Standard for Determining Whether Conditional Certification Should Be Granted	17-23	17-11

	<i>Main Volume</i>	<i>Supple- ment</i>
1. Standard Applied During Stage I	17-23	17-11
2. Scope of Discovery Prior to Conditional Certification	17-35	17-13
a. Cases Denying Discovery	17-39	—
(i.) Cases Explicitly Denying Discovery	17-39	—
(ii.) Cases Granting Notice and Noting No Need to Await Discovery	17-41	—
b. Cases Granting Discovery	17-41	17-15
c. Cases Addressing Whether Discovery of Names and Addresses of Potential Opt-In Plaintiffs Is Appropriate in Advance of Conditional Certification	17-44	17-15
3. Issues Courts Have Considered in Determining Whether to Grant Conditional Certification	17-47	17-16
a. Geographical Scope	17-47	17-16
b. Variance in Job Duties	17-52	17-19
c. Individualized Allegations or Defenses	17-59	17-23
d. Interest in Joining the Action	17-64	17-24
e. Similar Practices or Policies	17-68	17-25
f. Addressing “Dispositive Issues” Prior to Conditional Certification	17-73	17-27
g. The Time Period of Employment	17-77	—
h. Certification in Cases Involving Multiple Employers	17-79	17-27

	<i>Main Volume</i>	<i>Supple- ment</i>
i. Prior Publicity About the Lawsuit	17-80	—
4. Conditional Certification in Specific Types of Cases	17-81	17-29
a. Exemption Misclassification Cases	17-81	17-29
b. Off-the-Clock Cases	17-88	17-33
(i.) Pre-Shift and Post-Shift Cases	17-92	17-35
(ii.) Uncompensated Work During Meal Break Time	17-102	17-36
(iii.) Rounding Cases	17-106	17-37
(iv.) Time Shaving Cases	17-109	17-38
c. Independent Contractor Misclassification Cases	17-109	17-38
5. Communication About the Collective Action	17-111	17-39
a. Contact by the Parties	17-111	17-39
(i.) Contact by Plaintiffs and Their Counsel	17-111	17-39
(ii.) Contact by Defendants and Their Counsel	17-121	17-40
b. Court Facilitated Notice	17-128	17-44
(i.) Notice Content	17-131	17-44
(a.) Inclusion of the Employer’s Defenses	17-136	17-45
(b.) Obligations of the Opt-In Plaintiffs	17-137	17-45
(c.) Right to Seek Independent Counsel	17-139	17-45
(d.) Liability for Costs	17-140	17-46

	<i>Main Volume</i>	<i>Supple- ment</i>
(e.) Fee Arrangement With Plaintiff's Counsel	17-142	—
(f.) Judicial Neutrality	17-143	17-47
(g.) Instructions on Consent Form Collection	17-146	17-47
(h.) Contact Information	17-147	17-48
(i.) Inclusion of State Law Claims	17-150	17-48
(j.) Statement Concerning No Retaliation	17-150	—
(ii.) Scope and Method of Providing Notice	17-151	17-48
(a.) Temporal Scope of the Limitations Period	17-151	17-48
(b.) Equitable Tolling	17-154	17-49
(c.) Length of Notice Period and Late Filing of Consents	17-161	17-53
(iii.) Method of Providing Notice and Data Provided by Defendant	17-164	17-54
C. Stage II: The Standard for Deciding Motions to Decertify Collective Actions	17-176	17-58
1. Introduction	17-176	17-58

	<i>Main Volume</i>	<i>Supple- ment</i>
2. Disparate Factual and Employment Settings of the Plaintiffs	17-181	17-62
a. Misclassification Claims	17-186	17-64
b. Off-the-Clock Claims	17-191	17-70
3. Individualized Defenses	17-195	17-75
4. Fairness and Procedural Considerations	17-202	17-82
IV. Intervention if Certification Action Is Denied	17-208	—
V. Case Management Issues	17-211	17-84
A. Scope of Discovery from Opt-In Plaintiffs	17-211	17-84
B. Bifurcation of Liability and Damages	17-219	17-85
C. Test Plaintiffs	17-224	—
VI. Management of Multiple Collective Actions	17-226	17-86
A. Multidistrict Transfer	17-226	17-86
1. FLSA Cases Transferred Under Section 1407	17-228	—
2. FLSA Cases Not Transferred Under Section 1407	17-230	17-86
B. Alternatives to Section 1407 Transfer	17-231	—
C. Section 1407 Common Issues Standard Versus the Section 16(b) Collective Action Standard	17-232	—
D. Notice and Opting In/Out of an MDL Case	17-233	—
E. The First-to-File Rule	17-234	17-86
F. Stays and Injunctions	17-238	—
VII. Pre-Trial Disposition of Cases	17-240	17-87
A. Offers of Judgment to Collective Action Plaintiffs and Opt-Ins	17-240	17-87

	<i>Main Volume</i>	<i>Supple- ment</i>
B. Summary Adjudication of Opt-In Plaintiff Claims	17-248	—
C. Issue Preclusion in Multiple Collective Actions	17-249	17-90
VIII. Trial	17-252	17-92
A. Representative Testimony and Evidence	17-253	17-92
B. Use of Expert Witnesses	17-260	17-94
1. Damages [New Topic]	—	17-95
2. Former Department of Labor Officials [New Topic]	—	17-95
3. Surveys [New Topic]	—	17-98
4. Time Studies [New Topic]	—	17-99
C. Order and Presentation of Proof	17-268	—
IX. Attorneys' Fees, Costs, and Expenses in Collective Actions	17-272	17-102
A. Attorneys' Fees in Collective Actions Litigated to Judgment	17-273	—
B. Attorneys' Fees in Settlement of Collective Actions	17-274	17-102
1. Common Fund	17-276	17-103
2. Common Fund and Lodestar Cross Check	17-279	17-103
3. Combination of Common Fund and Lodestar	17-280	—
C. Issues Unique to Fee Determinations in Collective Actions	17-280	—
D. Costs and Expenses	17-282	17-104
1. Fee-Shifting Awards of Costs and Expenses to Prevailing Plaintiffs	17-282	—
2. Awards of Costs and Expenses in Common Fund Cases	17-283	17-104
3. Awards of Costs to a Prevailing Defendant	17-283	—
X. Settlement Issues in Collective Actions ...	17-284	17-104

	<i>Main Volume</i>	<i>Supple- ment</i>
A. General Requirements for Settling FLSA Claims	17-284	17-104
B. Settlement of Class Actions Versus Collective Actions	17-287	17-105
C. Determining Whether a Collective Action Settlement Is the Product of a Bona Fide Dispute	17-290	17-105
D. Determining Whether a Collective Action Settlement Is “Fair and Reasonable”	17-291	17-106
E. Settlement Issues for Collective Actions	17-293	17-108
1. Incentive Payments or Service Awards [Amended Heading]	17-293	17-108
2. Release of Claims	17-295	17-109
3. Reversion of Settlement Funds	17-296	17-110
4. Confidentiality of Settlement	17-296	17-110
5. Severability Clauses	17-298	—
XI. Appellate Issues for Collective Actions ...	17-299	17-111
XII. The Collective Action Mechanism in Arbitration	17-303	17-111
A. Arbitration Agreements Expressly Prohibiting Class and Collective Arbitration	17-303	17-111
B. Arbitration Agreements Not Expressly Prohibiting Class and Collective Arbitration	17-309	17-115
C. Procedural Rules for Arbitrating FLSA Class and Collective Actions	17-313	—
D. Conditional Certification When Putative Class Members May Be Subject to Arbitration Agreements	17-315	17-118
XIII. Hybrid FLSA/State Law Class Actions ...	17-316	17-122
A. Introduction	17-316	—
B. Why Hybrid Actions?	17-318	—
C. Legal Challenges to Hybrid Actions...	17-322	17-122

	<i>Main Volume</i>	<i>Supple- ment</i>
1. “Incompatibility”	17-322	17-122
2. Rules Enabling Act	17-327	—
D. Federal Jurisdiction Over State Law		
Claims in Hybrid Actions	17-329	—
1. Diversity Jurisdiction Under the Class Action Fairness Act	17-329	—
2. Supplemental Jurisdiction Under 28 U.S.C. §1367	17-331	—
a. The Supplemental Jurisdiction Statute	17-332	—
b. Whether Supplemental Jurisdiction Is Authorized	17-332	—
(i.) No Federal Statute “Expressly” Precludes Jurisdiction	17-332	—
(ii.) Whether the State Law Claims Are So Related to the FLSA Claims That They Form Part of the “Same Case or Controversy”	17-334	—
(iii.) Whether Supplemental Jurisdiction Extends to Individuals Who Do Not Opt In to the FLSA Action	17-336	—
c. Whether the Court Should Decline to Exercise Supplemental Jurisdiction	17-341	—
(i.) Novel or Complex Issues of State Law	17-343	—
(a.) Cases Declining Jurisdiction	17-343	—
(b.) Cases Exercising Jurisdiction	17-344	—

	<i>Main Volume</i>	<i>Supple- ment</i>
(ii.) Substantial Predominance of State Law Claims	17-346	—
(a.) Cases Declining Jurisdiction	17-347	—
(b.) Cases Retaining Jurisdiction	17-352	—
(iii.) Dismissal of the FLSA Claims	17-356	—
(iv.) “Exceptional Circumstances”/ “Compelling Reasons” ...	17-357	—
(a.) “Conflict” Between Opt-In Actions and Opt-Out Actions	17-358	—
(b.) Manageability	17-360	—
(c.) Class Member Confusion	17-362	—
E. Standing to Prosecute the State Law Claims in Hybrid Actions	17-364	—
F. Rule 23 Class Certification in Hybrid Actions	17-365	17-123
1. Numerosity/Impracticability of Joinder	17-366	17-123
2. Superiority	17-368	—
a. Availability of an Opt-In Action for the FLSA Claims	17-368	—
b. Considerations Relating to Supplemental Jurisdiction and Congressional Intent	17-372	—
c. Class Member Confusion	17-374	—
d. Manageability	17-376	—

	<i>Main Volume</i>	<i>Supple- ment</i>
APPENDIX A: STATUTORY MATERIAL	APP-3	—
A.1. The Fair Labor Standards Act	APP-3	—
A.2. The Portal-to-Portal Act	APP-53	—
A.3. Other Relevant Legislation	APP-63	—
a. Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU)	APP-63	—
b. SAFETEA-LU Technical Corrections Act of 2008 (SAFETEA-LU TCA)	APP-65	—
APPENDIX B: SECRETARIES AND ADMINISTRATORS	APP-67	APP-1
B.1. Secretaries of Labor and Administrators of the Wage and Hour Division (Alphabetical Listing)	APP-67	APP-3
B.2. Secretaries of Labor (Chronological Listing)	APP-69	APP-6
B.3. Administrators of the Wage and Hour Division (Chronological Listing)	APP-70	APP-7
APPENDIX C: DEPARTMENT OF LABOR COEFFICIENT TABLE	APP-72	—
APPENDIX D: HISTORICAL TREATMENT OF SECTION 13(a) AND (b) EXEMPTIONS	APP-75	—
D.1. Section 13(a) Exemptions	APP-75	—
D.2. Section 13(b) Exemptions	APP-88	—
APPENDIX E: UNIFORMS AND THEIR MAINTENANCE UNDER THE FLSA	APP-101	—
APPENDIX F: RETAIL EXEMPTIONS UNDER THE FLSA	APP-105	—
F.1. Establishments Lacking Retail Concept	APP-105	—

	<i>Main Volume</i>	<i>Supple- ment</i>
F.2. Establishments Recognized as Retail	APP-110	—
F.3. Retail and Service Establishments Interpretative Bulletin	APP-112	—
APPENDIX G: OVERVIEW OF THE MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION ACT		
	APP-125	—
APPENDIX H: CHILD LABOR REGULATIONS		
	APP-132	—
H.1. U.S. Department of Labor, Wage and Hour Division: Child Labor Final Rule, Nonagricultural Employment 16- and 17-Year-Olds— Major Changes	APP-132	—
H.2. U.S. Department of Labor, Wage and Hour Division: Child Labor Final Rule, Nonagricultural Employment 14- and 15-Year-Olds—Major Changes	APP-134	—
H.3. U.S. Department of Labor, Wage and Hour Division: Initial Civil Money Penalty Assessment Amounts by Violation (Non- Agriculture) as Per 29 C.F.R. §579...	APP-137	—
APPENDIX I: WEEKLY SALARY LEVELS FOR EXEMPTION		
	APP-141	APP-9
APPENDIX J: U.S. DEPARTMENT OF LABOR, WAGE AND HOUR DIVISION: DEFINING AND DELIMITING THE EXEMPTIONS FOR EXECUTIVE, ADMINISTRATIVE, PROFESSIONAL, OUTSIDE SALES, AND COMPUTER EMPLOYEES, FINAL RULE, 29 C.F.R. PART 541 [NEW TOPIC]		
		— APP-11

	<i>Main Volume</i>	<i>Supple- ment</i>
TABLE OF CASES	TC-1	TC-1
INDEX	IDX-1	—