



UNDERSTANDING YOUR WAGE AND HOUR DEFENSE
SUPPLEMENTAL APPLICATION

To be read in conjunction with the Wage and Hour Defense Supplemental Application

1. If the answer is “No” and there is not a satisfactory explanation as to how these issues are handled then this will result in Underwriters declining to offer the coverage. Underwriters are attempting to ensure that the applicants are adopting a professional approach to Wage and Hour issues
2. If “No” then Underwriters would decline. Sales personnel are difficult to classify. If a member of the sales team spends more than 50% of their time outside of their office (i.e. on the road), then they can be classified as an exempt employee, but only on the basis that they are partly or wholly compensated by commissions. If the sales employee is not entitled to commission on their own sales, then they should be considered as non-exempt. Office based sales employees should be treated as non-exempt, unless qualifying as such through another exemption, i.e. management etc.
3. If “No” then Underwriters would decline. The answer to all questions should be “yes”. Clearly each question is designed to determine the level of management responsibility of salaried employees and ensure that they are consistent with the requirements of the FLSA as such.
4. If “No” then Underwriters would decline. Minimum Wage should be paid to all non-exempt employees. Meal and rest breaks should be provided without exception, regardless of whether an employee is willing to work through such breaks.
5. If “No” then Underwriters would decline. The answer should be “yes”. The FLSA requires that all on-call time, preparation for work etc. be accounted for in remuneration to non-exempt employees.
6. If “No” then Underwriters would decline. The answer should clearly be “yes”. Under no circumstances should non-exempt employees be offered reduced hours in any workday or workweek to offset overtime hours accrued in previous workdays or workweeks.

7. If “No” then Underwriters would decline. The answer should be “yes” and if it is not then a short narrative would be useful to understand how rest and meal breaks are “enforced”. The reality is that not all firms will have an electronic time keeping system, meaning that a short narrative on how this provision is enforced will be required from the majority of the applicants.

8. i) If “No” move on to Question 10.

ii) If “No” add Independent Contractor Exclusion

In the absence of a written hold harmless agreement then independent contractors should be excluded from the Wage & Hour extension.

9. If “No” then Underwriters would decline. Failure to provide itemized wage statements is a breach of the FLSA, and although it is difficult to understand how this could materially affect an individual employee, as a breach of statute this needs to be appropriately administered. We have seen an increase in plaintiffs alleging this type of violation and would accordingly expect any successful applicant to be managing the provision of itemized wage statements appropriately.

10. If “No” then Underwriters would decline. This is a requirement in California, however, as best practice it would be our recommendation that this is adopted by all insureds regardless of their domicile.

11. If “No” then Underwriters would decline.

12. If “Yes” refer with full details and ideally