

Sage Abra HRMS



# Wage and Hour: Staying on the Right Side of the DOL

**Sage HR R&R: Refresh and Recertify  
Webcast Series**

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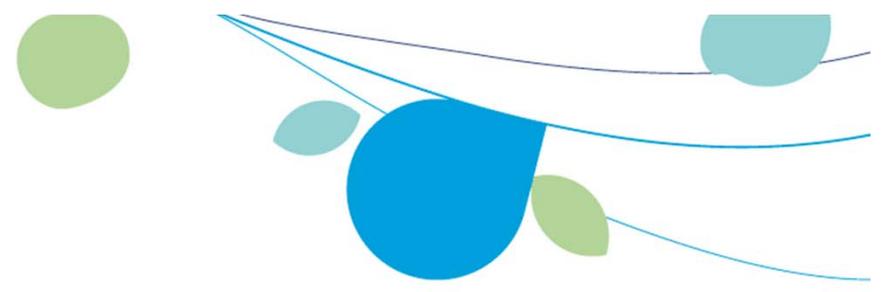
# Your Presenter for Today

Mary Anne Osborne, SPHR  
The Osborne Group

- Over 25 years of HR experience in Telecom, Financial, Manufacturing, Healthcare and Higher Education arenas
- People-centric HR Professional
- Award winning
- Business, Customer Service and Quality focused



# Objectives

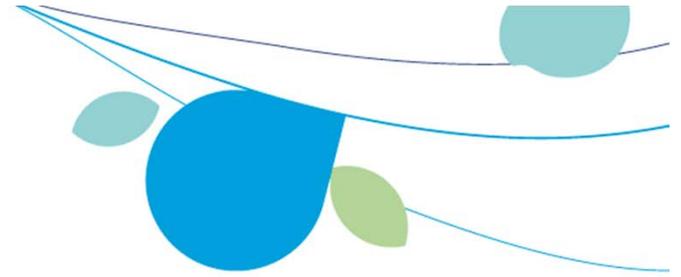


## In Today's Webcast You Will Learn:

- How the DOL's interpretation of the FLSA affects your business.
- How the latest court cases are affecting wage and hour.
- What actions the HR department should be engaged in now to avoid fines and litigation.



# Department of Labor Wage and Hour Division



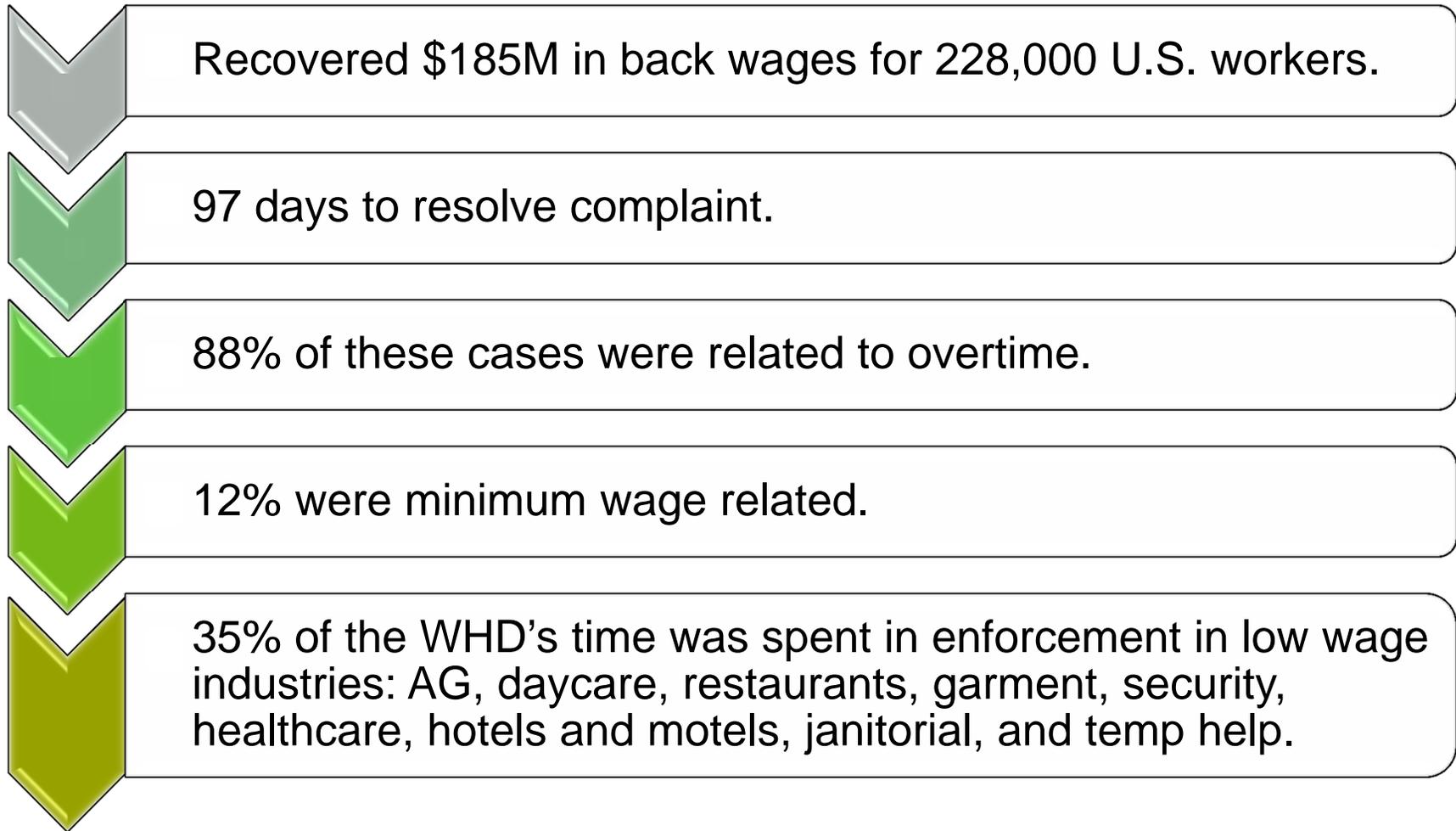
## Mission Statement

The WHD **enforces Federal minimum wage, overtime pay, recordkeeping, and child labor requirements of the Fair Labor Standards Act.**

WHD also enforces the Migrant and Seasonal Agricultural Worker Protection Act, the Employee Polygraph Protection Act, the Family Medical Leave Act, wage garnishment provisions of the Consumer Credit Protection Act, and a number of employment standards and worker protection as provided in several immigration related statutes.

Additionally WHD administers and enforces the prevailing wage requirements of the Davis Bacon Act and the Service Contract Act and other statutes applicable to federal contracts for construction and for the provision of goods and services.

# WHD Statistics For 2008

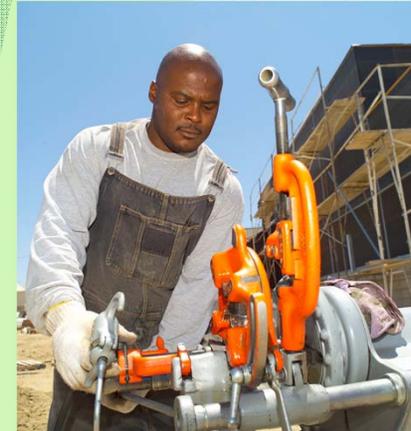


# FLSA:



White Collar  
Exemption

Contractor



Temp Labor

## White Collar Exemption



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## Key Factors

- Titles don't determine status
- Must be paid \$455/week or not less than \$23,660 annually
- Categories covered under the exemption **MAY** include:
  - Executives
  - Administrators
  - Outside sales
  - Professionals
  - Highly compensated employees
  - Computer professionals

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## White Collar Exemption: Executives



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## Key Factors

- Wage requirements\*
- Primary duty—managing the business or a subset
- Regularly directs the work of two or more people
- Have the authority to hire and fire or their recommendations on business decisions must be given particular weight

\* If an executive owns 20% of equity shares, they don't have to meet wage requirement.

## White Collar Exemption: Administrators



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## Key Factors

- Wage requirements
- Work must be office, **not** manual, directly related to management policies or business operations of the employer or its customers.
- The employee is regularly expected to use discretion and exercise independent judgment with regards to significant matters.

## White Collar Exemption: Outside Sales



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## Key Factors

- There is no compensation test for this exemption.
- Must meet both of these requirements:
  - The primary duty is to make sales, obtain orders or contracts for services, or contracts for the use of facilities for which the customer or client pays.
  - The employee is primarily or customarily engaged in the performance of their duties away from the primary place of business.

## White Collar Exemption: Professionals



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## Key Factors

- Salary requirement must be met.
- Work must be office, non-manual and requires one of the following:
  - Advanced knowledge in a field of science or learning generally acquired through a long course of intellectual instruction.
  - Invention, imagination, originality, or talent in a field of artistic or creative endeavor.

## White Collar Exemption: Highly Compensated Employees



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## Key Factors

- Earns at least \$100,000 in base salary, commissions, and non-discretionary bonuses.
- Performs one or more of the duties of either an exempt executive, professional or administrative employee.

## White Collar Exemption: Computer Professionals



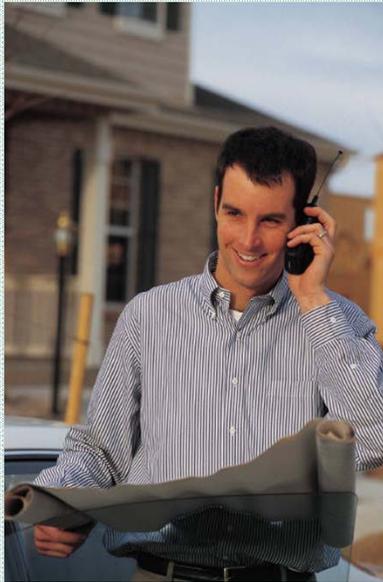
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## Key Factors

- Wage requirements include \$23.63/hour.
- Exempt computer employee must have primary duty in one of the following:
  - Application of systems analysis techniques and procedures.
  - Design, development, documentation, analysis, testing, creation, or modification of systems or programs including prototypes based on or related to user design specifications.
  - Design, development, documentation, testing, creation, or modification of computer programs related to machine operating systems.
  - A combination of the above three requiring the same level of skills and abilities.

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## Contractors



## Key Factors

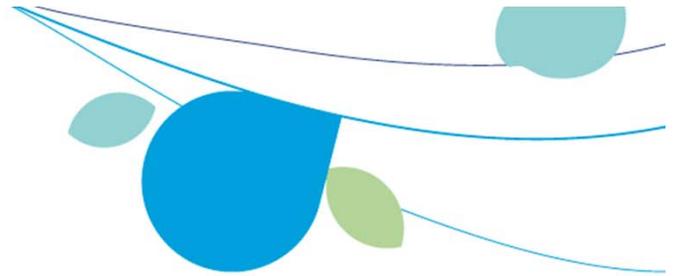
- Degree to which the “contractor” has the freedom to control the manner in which the work is performed.
- The opportunity for profit/loss depending on own skills.
- Who controls investment in equipment to perform job.
- Whether the services rendered require specific skills.
- The degree of permanence of the relationship.
- Whether the work performed is an integral part of the employers business.

## Temp Labor



## Key Factors

- Are they truly independent contractors?
- May work for the “leasing agency” or the recipient employer or both
  - To what level is your company involved in the selection, hiring, and establishing working conditions?
- Are they covered under FLSA, FMLA, etc.



## FEDS

- Pass Laws
- Enforce through government agencies and regulations

## STATES

- Pass Laws
- Enforce through the state's attorney general's office

## COURTS

- Interpret and clarify laws

# Recent Court Cases

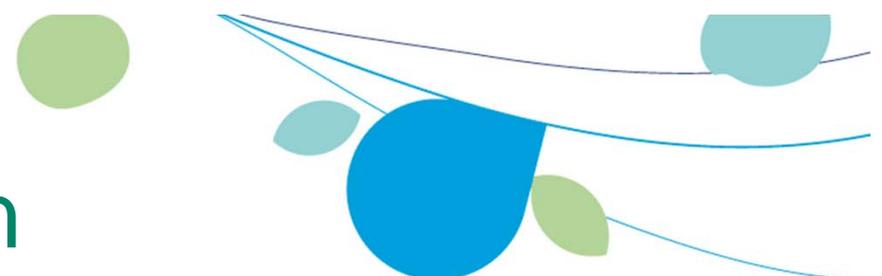
## At Federal and Circuit Court

- **Supreme Court:** Oral complaints must be heard
- **Ninth Circuit:** Pharmaceutical sales reps fall within Outside Sales exemption
- **Seventh Circuit:** Fluctuating workweek
- **“Bridge to Justice”** U.S. DOL has agreement with ABA to refer cases

## State Cases

- **CA:** Make suitable seats available
- **NYS DOL** has issued new rules on minimum wage and tips in the food service industry.

# Employers Take Action



## RECORDKEEPING

AUDITS

RECORD  
HOURS  
WORKED  
WEEKLY

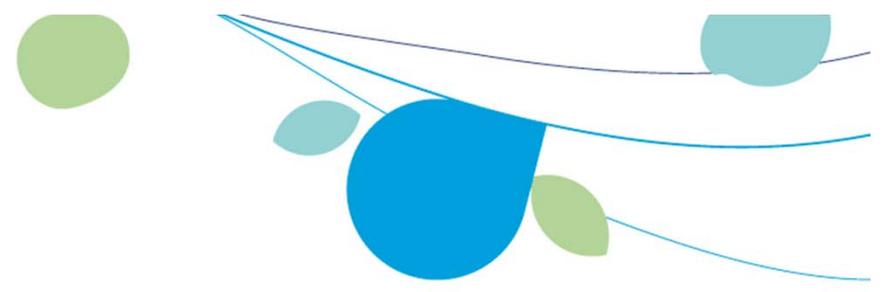
MANAGE  
TIME  
RECORD  
EDITS

PRESERVE  
DATA FOR  
EASY  
RETRIEVAL



DO THE  
RIGHT  
THING

DO IT  
RIGHT THE  
FIRST TIME



# REFERENCES

- [www.dol.gov](http://www.dol.gov)
- [www.dol.gov/whd/flsa](http://www.dol.gov/whd/flsa)
- [www.dol.gov](http://www.dol.gov)>ComplianceAssistance>ByLaw
- [www.flsa.com](http://www.flsa.com)
- [amross@munckcarter.com](mailto:amross@munckcarter.com)

# About Sage Abra HRMS

- Sage Abra is human resource management system software that delivers tightly integrated HR, payroll, benefits and attendance functionality, plus rich reporting and analysis tools.
- Sage Abra can help you stay on the right side of the Department of Labor by helping you keep track of your employees, your company's labor records, and by providing advanced reporting tools (both customizable and standard) such as Crystal Reports.

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