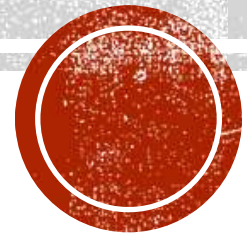


# HOT TOPICS IN H.R.

Kim Gailey  
Director of Human Resources  
Western Colorado University



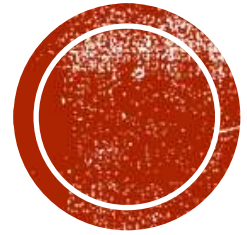
# TOPICS TO TAKE NOTICE OF

## NOW:

- Fair Labor Standards Act regulations pertaining to minimum wage & overtime
- Pets, Service Animals and E.S.A.s in the Workplace
- Violence Prevention and Active Shooter Response Training
- #metoo, and Sexual Harassment at Work
- A new year, a new Colorado Governor; What Might Employers Expect?



# FAIR LABOR STANDARDS ACT



REGULATIONS  
PERTAINING TO  
MINIMUM WAGE &  
OVERTIME

# F.L.S.A. - THE MOST VIOLATED REGS

- Fair Labor Standards Act - a federal law enacted in 1938 (as amended thereafter)
- Establishes minimum wage, overtime pay, recordkeeping, equal pay for equal work and youth employment standards affecting employees in the private sector and in Federal, State, and local governments. (Colorado's minimum wage is now \$11.10/hour.)
- Fallacy: If we pay you a salary, we don't have to track your hours or worry about minimum wage, or pay you overtime. **THIS IS A COMMON MISTAKE.**
- All jobs are subject to FLSA (non-exempt) UNLESS they meet certain FLSA exemption tests.



# F.L.S.A. EXEMPTION TESTS

1. The salary level test
  - Currently \$23,660 – under review by the USDOL
2. The duties test – pass salary level and then must pass duties test
  - Executive
  - Administrative
  - Learned professional
  - Computer professional
  - Creative professional
  - Outside sales
3. The salary basis test - paid on a salary basis, not influenced by quality or quantity.



# THE F.L.S.A. DUTIES TESTS

- Defines "primary duties" qualitatively - most important parts of the job – not strictly time based

<b>Executive</b>	<ul style="list-style-type: none"><li>• primary duty is managing the enterprise, or managing a customarily recognized department</li><li>• must customarily and regularly direct the work of at least two or more FTE employees; and</li><li>• must have the authority to hire or fire other employees, or the employee's suggestions &amp; recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.</li></ul>
<b>Administrative</b>	<ul style="list-style-type: none"><li>• primary duty is performance of office/non-manual work directly related to the management or general business operations of the employer or the employer's customers; and</li><li>• primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.</li></ul>
<b>Professional</b>	<ul style="list-style-type: none"><li>• primary duty is work requiring advanced knowledge, predominantly intellectual in character and requiring the consistent exercise of discretion and judgment;</li><li>• the advanced knowledge must be in a field of science or learning; and</li><li>• the advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.</li></ul>





# SPECIFICALLY EXEMPTED JOBS

- Teachers (primary duty is imparting knowledge)
- Lawyers (primary duty is practicing law & certified/licensed)
- Doctors (primary duty is practicing medicine & certified/licensed)
- Outside Sales (as defined by FLSA)
- Highly compensated employees
- Current rule is over \$100,000 annually, with reduced duties tests
- Computer Professionals (programmers/analysts)
- Must meet the salary test

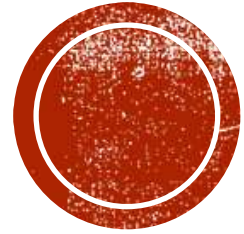


# WHAT ARE THE PENALTIES?

- Currently, the misclassification by employers of employees as exempt is one of the most active areas of enforcement for the DOL.
- Make sure your current employees that are classified as exempt are truly exempt.
- Employers that improperly classify employees as exempt are generally required to reimburse the improperly classified employees for the income lost due to the improper classification (i.e. pay back wages).
- Employers may also be subject criminal prosecution and fines up to \$10,000 or \$1,964 per violation depending on the willfulness of the violation.







# PETS, SERVICE ANIMALS AND E.S.A.S IN THE WORKPLACE



# I LOVE MY PET, I'M SURE YOU DO TOO!

- A common request in our valley (and our world) – may I bring my pet to work?
- What are the potential problems?
  - Clients and other employees may have fear of dogs (or other pets).
  - Clients and other employees may have allergies.
  - Animals can cause safety risks.
  - Animals can increase required cleaning and maintenance.
  - What if employees pets don't get along with each other?
- What are the potential benefits?
  - Stress reduction
  - Friendly environment
  - Viewed as an employee benefit



# EMOTIONAL SUPPORT ANIMALS (E.S.A.s)

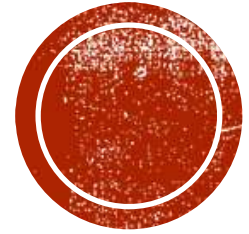
- What about emotional support animals (E.S.A.s)?
- ESAs or Comfort Animals are often used as part of a medical treatment plan as therapy animals, they are not considered service animals under the ADA.
- Provide companionship, relieve loneliness, and can help with depression, anxiety, phobias, and other conditions but do not have special training to perform tasks that assist people with disabilities.
- An employee's request for an ESA at work may be a request for a reasonable accommodation of a disability. If so, consider the request appropriately.
- ESAs may qualify as a reasonable accommodation under the Fair Housing Act.



# SERVICE ANIMALS

- Service animals are restricted to dogs and small horses trained to do a task to assist a person with a disability. (Defined in 28 CFR 36.104)
  - Service animals must be allowed under the ADAAA
  - People with a service animal do not need a “certification” document, nor does the animal need a “vest”
  - Only two questions may be asked
    1. Is the dog a service animal required because of a disability?
    2. What work or task has the dog been trained to perform?
  - Be careful here – you may not inquire what the disability is, ask for papers or ask for a demonstration.
- Best practice is to establish a written policy and follow your policy.





**VIOLENCE  
PREVENTION AND  
ACTIVE SHOOTER  
RESPONSE  
TRAINING**

# VIOLENCE PREVENTION

- 2.1 million workers annually report being victims of workplace violence
- 409 were killed workplace attacks in 2014 (*source: Bureau of Labor Statistics*)
- Workplace violence falls into four categories:
  1. Criminal intent
  2. Customer/Client
  3. Worker-on-Worker
  4. Domestic Violence Comes to Work (also note: nearly 8 million lost work days)
- People don't "just snap" or "go postal"
- 80% of school shooters told someone of their violent plan prior to the event
- Respond with zero tolerance to "testing" limits on behavior





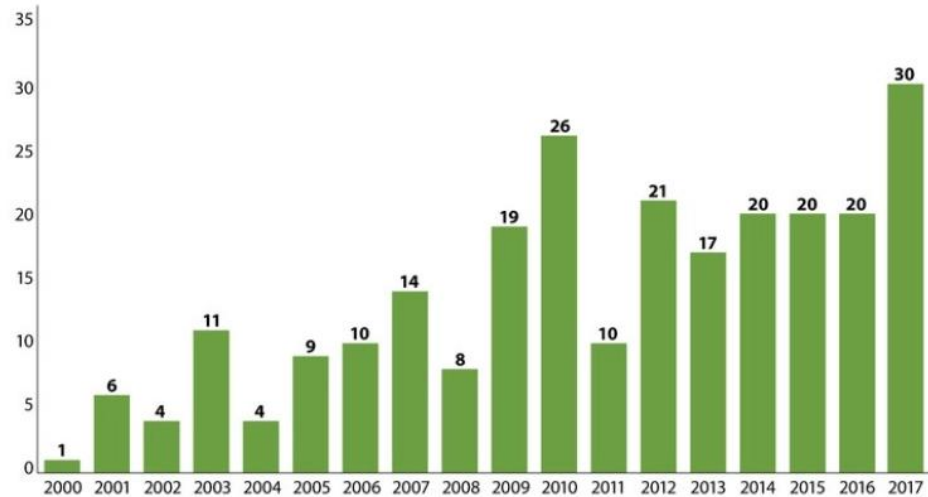
# VIOLENCE PREVENTION

- Adopt and enforce a zero tolerance policy related to violence in the workplace
- Employee Training for Prevention
  - See something / Say something (Department of Homeland Security has materials)
  - Know the Signs (visit the Sandy Hook Promise website)
- Take victims of domestic violence seriously
  - Show concern
  - Share resources for victims
  - Allow flexibility with schedules
  - Consult with victim and legal counsel if the need arises (workplace restraining orders)
  - Plan for security (consider escorts to office, parking, screening calls, visitor sign in, etc.)

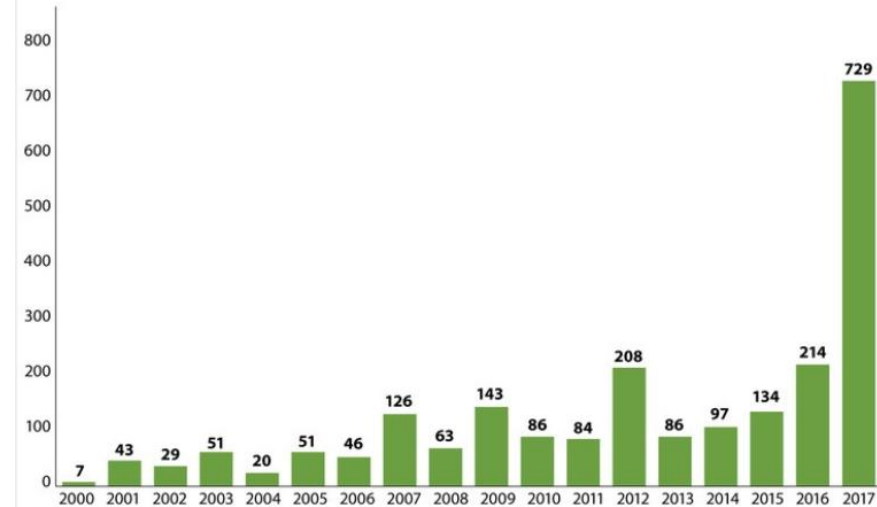


# ACTIVE SHOOTER RESPONSE

Quick Look: 250 Active Shooter Incidents in the United States From 2000 - 2017  
Incidents Per Year



Quick Look: 250 Active Shooter Incidents in the United States From 2000 - 2017  
Casualties Per Year



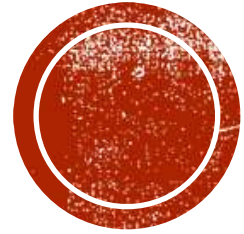
- There were 250 FBI-designated active shooter incidents, resulting in 799 deaths, and 1,418 injuries between 2000 and 2017 (17 years). Note: 2017 was very high.
- Employees are (rightly) highly concerned that employers have a plan for their safety.



# ACTIVE SHOOTER RESPONSE

- Get familiar with the Department of Homeland Security's "Run, Hide, Fight" program (see: [www.ready.gov](http://www.ready.gov))
- Conduct trainings with employees
  - Show a video(s)
  - Provide "Run, Hide, Fight" concept materials
  - Discuss "Run, Hide, Fight" and actually make plans for your work space
  - Contact local law enforcement to see if ALICE training is available for your group
  - Bring in an expert for in-person trainings
- Continue to reinforce Awareness, Reporting, Response Training





# #metoo, AND SEXUAL HARASSMENT AT WORK



# #metoo / SEXUAL HARASSMENT

- Definitions

1. Quid pro Quo – unwelcome sexual advance, requests for sexual favors or other sexual behavior where there is a power differential and subjection to or rejection of the behavior results in adverse educational or employment action, terms or conditions.
2. Hostile Environment – unwelcome sexual behavior, or behavior on the basis of one's gender, sexual identity, orientation that is offensive, hostile, and/or intimidating and that adversely affects the recipient's ability to work, learn or take advantage of programs. Conduct that is sufficiently severe, pervasive, persistent and patently/objectively offensive that it interferes with the conditions of employment or education both from the alleged victim (subjective) and a reasonable person (objective) point of view.
3. Retaliation

- Expanded Definitions

1. Sexual Assault/Violence
2. Domestic Violence
3. Dating Violence
4. Sexual Exploitation
5. Stalking
6. Intimidation




# #metoo / SEXUAL HARASSMENT

- October 2017 – accusations against Harvey Weinstein boosted the #metoo movement.
- Throughout the year high profile figures were charged with harassment/abuse
- October 2018 – Judge Kavanaugh FBI investigation into allegations of sexual misconduct while in high school.
  
- What is changing in regard to sexual harassment?
- What should employers be doing to change culture and/or respond to the changing landscape?





# #metoo – WHAT HAS IT CHANGED?

- According to an ABC/Washington Post Poll in October 2017 of 1,260 adults (740 women)
- A seemingly huge shift in willingness to report (*this varies widely by organization/culture*)
  - Social media
  - Marches
  - High profile men have lost their jobs
- Adults who think sexual harassment is a serious problem
  - 2011 = 47%  2017 = 64%
- 2/3 of Americans believe men who sexually harass usually get away with it.
- 1/3 of women polled report sexual advances from men with power over their jobs
  - 1/3 of that number considered it sexual abuse
- About 8 in 10 women who experienced unwanted sexual advances at work considered it sexual harassment



# #metoo – WHAT HAS IT CHANGED?

- According to an October 2018 Society for Human Resources (SHRM) poll:
  - Nearly 1/3 of 1,034 executives polled say they have changed their behavior to a moderate to very great extent to avoid perceived sexual harassment
  - About 1/4 of 1,022 managers polled said they have changed behaviors
  - Uncertainty of what constitutes sexual harassment has made some men uncomfortable around female co-workers... can lead to troubling trends of not including female colleagues in business travel, networking events, reducing opportunities.
- E.E.O.C. complaints have increased and they are increasing enforcement activity
- Polls vary on what workers are saying about employer training; but good quality training is expected.
- Cities and states are legislating all kinds of responses from mandatory written policies and training to mandatory employer reporting of complaint outcomes.



# WHAT SHOULD EMPLOYERS DO?

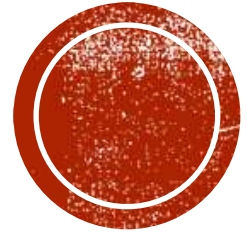
- Update policies
- Scope to include your employees regardless of gender, gender identity, sexual orientation as protected from sexual harassment
- Clarify your procedures for how to complain
  - Don't restrict options – verbal, in writing, to a manager, to the director, to a line supervisor
  - And... which employees are mandated to report what they know (responsible employee)
- Clarify your procedures for how you will handle a complaint
  - Informal and Formal resolutions
  - Who will investigate?
  - Ensure equal protection and process for both complainant and respondent
  - Don't drag your feet! Timely investigations.
- Outline strong repercussions for harassers



# WHAT SHOULD EMPLOYERS DO?

- Take all complaints seriously – listen to complainants
  - Provide confidential resources (but once you know, you know!)
  - Provide support resources
  - Consider if immediate interim responses are needed
- HR personnel should get training in how to handle cases
- Consistently follow your policy/procedures – don't ignore complaints
- Document your outcomes
- Make sure retaliations is absolutely NOT tolerated
- Implement employee training
  - Understanding of what constitutes sexual harassment
  - Raising awareness
  - Workers are then more likely to report
  - Education will help with prevention





**A NEW YEAR, A NEW  
COLORADO  
GOVERNOR; WHAT  
MIGHT EMPLOYERS  
EXPECT?**

# COLORADO 2019 AND BEYOND

- Governor Polis is interested in
  - Providing State employees with paid parental leave
  - Perhaps enacting legislation mandating private organizations provide paid parental leave
  - Pursuing similar actions for paid family medical leave
  - Providing universal healthcare to Coloradans (this could be a long haul goal)
- The US Department of Labor Secretary, Alexander Acosta, is expected to propose F.L.S.A. regulations, perhaps increasing the salary level threshold for exemption and perhaps other changes.
- Title IX (sexual harassment in education) proposed regulations will go through the final stages of rule-making.

