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Wage & Hour Compliance Under the FLSA

A Practical Guide for Tennessee HR Professionals

Wednesday, February 18



Presenters:

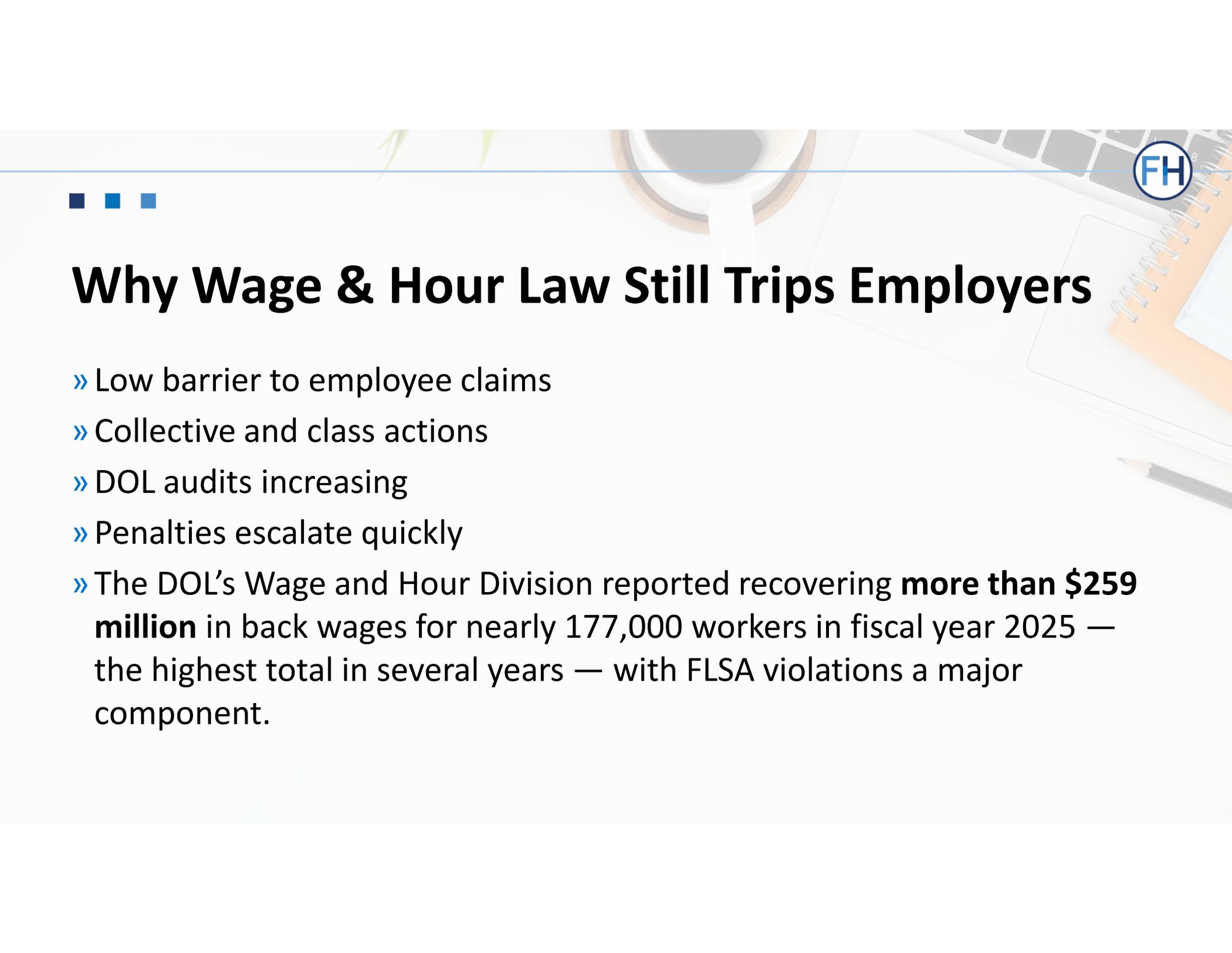


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Why Wage & Hour Law Still Trips Employers

- » Low barrier to employee claims
- » Collective and class actions
- » DOL audits increasing
- » Penalties escalate quickly
- » The DOL's Wage and Hour Division reported recovering **more than \$259 million** in back wages for nearly 177,000 workers in fiscal year 2025 — the highest total in several years — with FLSA violations a major component.



FLSA : What does it Cover?

- » Minimum wage
- » Overtime
- » Recordkeeping
- » Child labor





Who Is Covered Under the FLSA

- » Enterprise coverage
- » Individual coverage
- » Interstate commerce is broad



Employee vs. Independent Contractor

- » Misclassification risk
- » Economic realities test
- » DOL enforcement focus

Independent Contractor Factors

- » Degree of control
- » Opportunity for profit or loss
- » Permanence of relationship
- » Integral to business





Common Misclassification Traps

- » Long-term contractors
- » “Consultants” that are controlled by management
- » Professionals with no other employment



Exempt vs. Non-Exempt Overview

- » Salary basis
- » Duties test
- » Failing either defeats exemption

Salary Basis Requirement

- » Guaranteed salary
- » No improper deductions
- » Minimum salary threshold





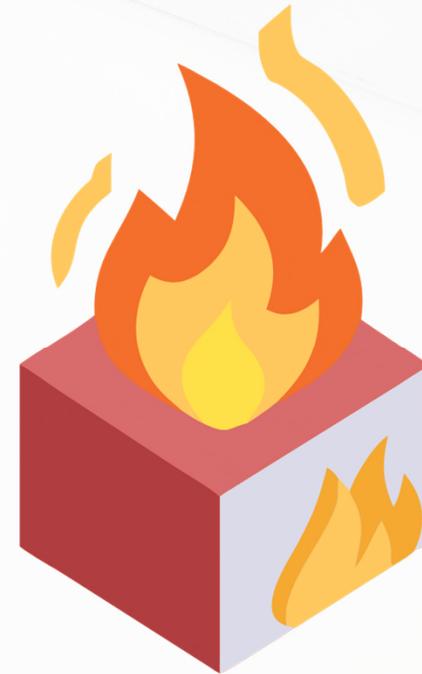
Common FLSA Exemptions

- » Executive
- » Administrative
- » Professional
- » Outside sales
- » Computer Professional



Where Employers Get Burned

- » Working managers
- » Clerical vs. administrative
- » Inconsistent practices





Overtime Basics

- » Over 40 hours in a workweek
- » Time-and-a-half of regular rate
- » No averaging weeks



What Counts as Hours Worked

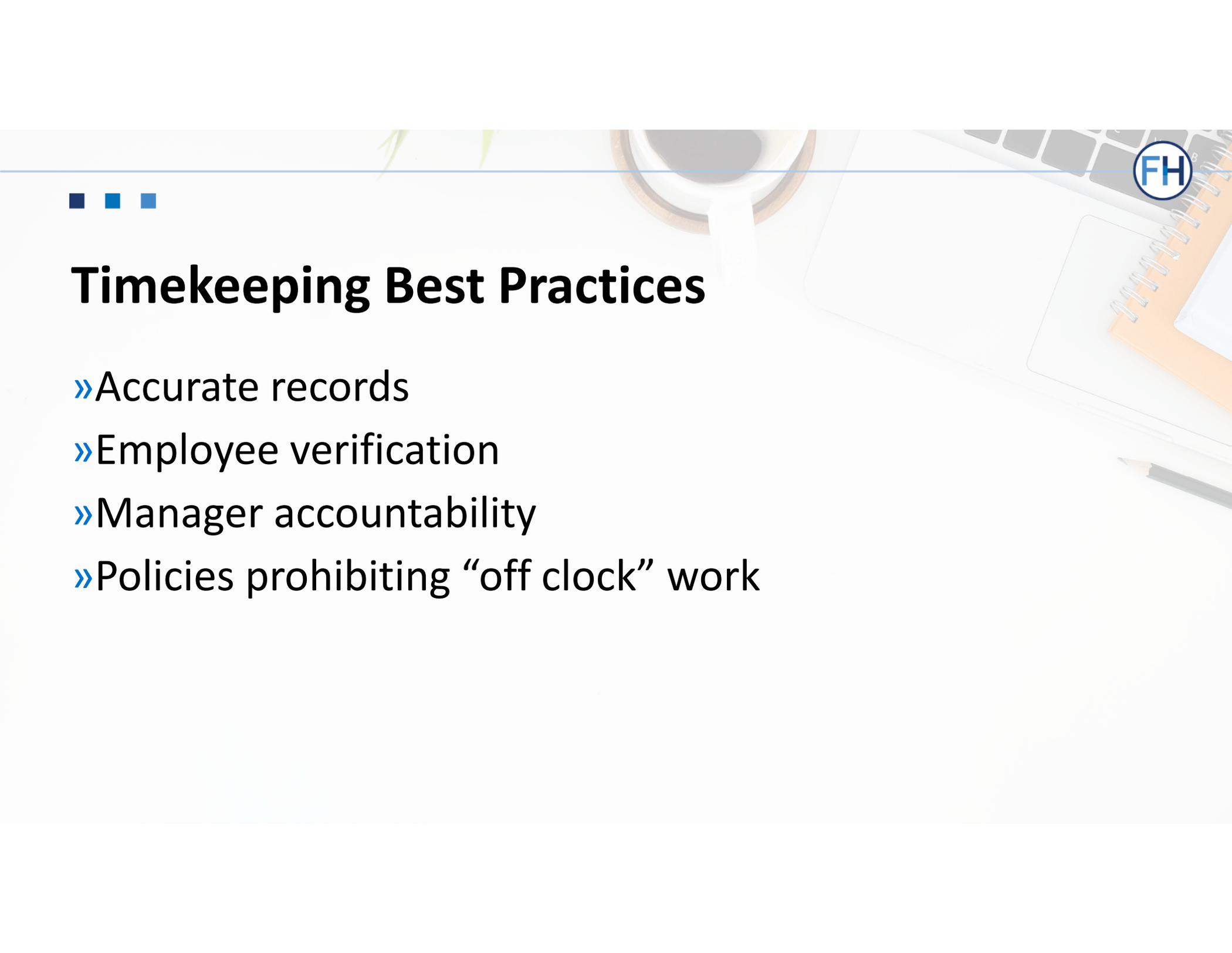
- » Pre- and post-shift work
- » Remote work and email
- » Training time



Regular Rate of Pay Pitfalls

- » Non-discretionary bonuses
- » Shift differentials
- » Commissions





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Timekeeping Best Practices

- » Accurate records
- » Employee verification
- » Manager accountability
- » Policies prohibiting “off clock” work



Off-the-Clock Work

- » Prohibited practices
- » Discipline vs. pay
- » Manager training





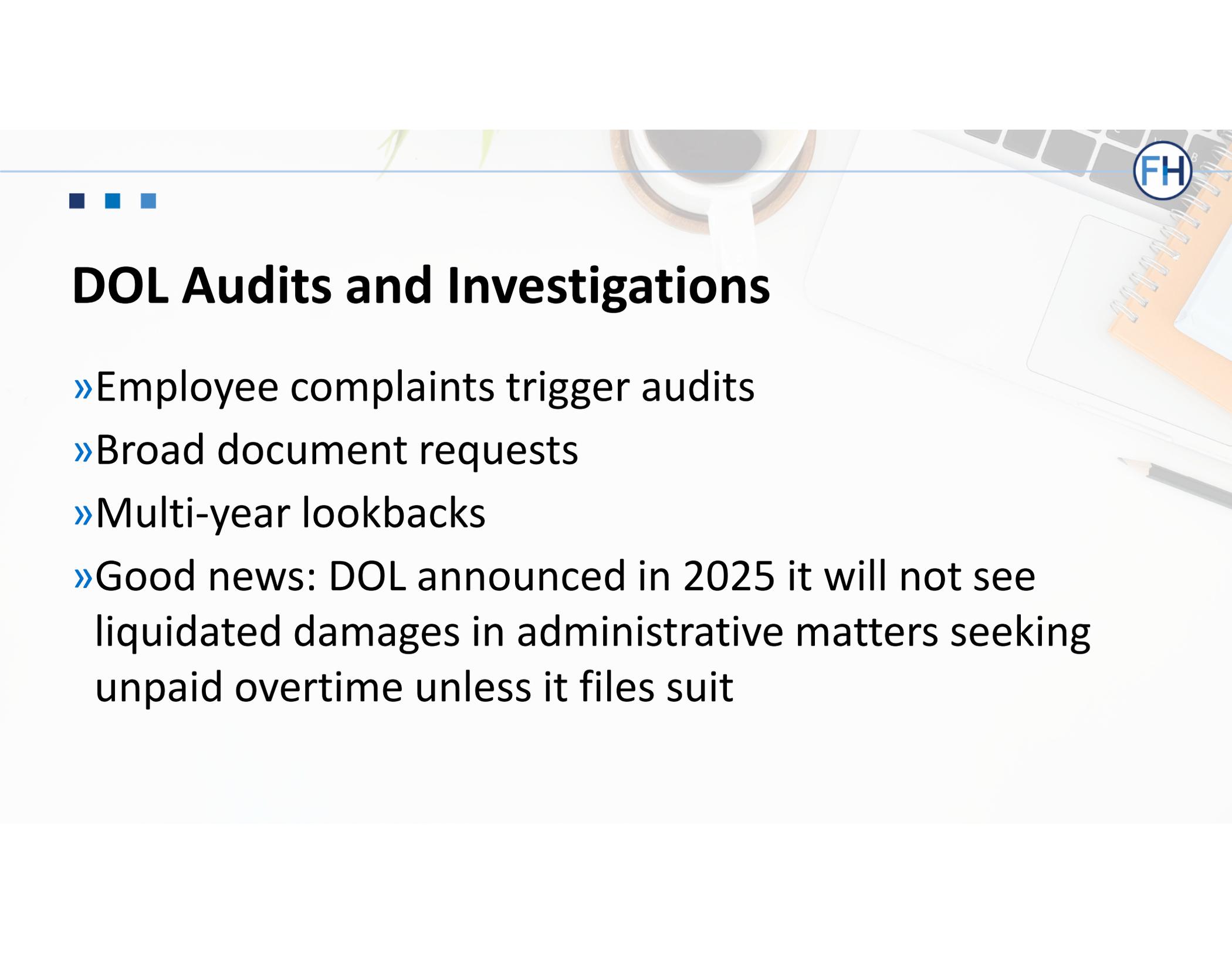
Meal and Rest Breaks

- » Short breaks are paid
- » Auto-deductions risky

Tennessee Wage & Hour Snapshot

- » No state overtime law
- » Federal FLSA controls
- » Wage payment statutes still apply





DOL Audits and Investigations

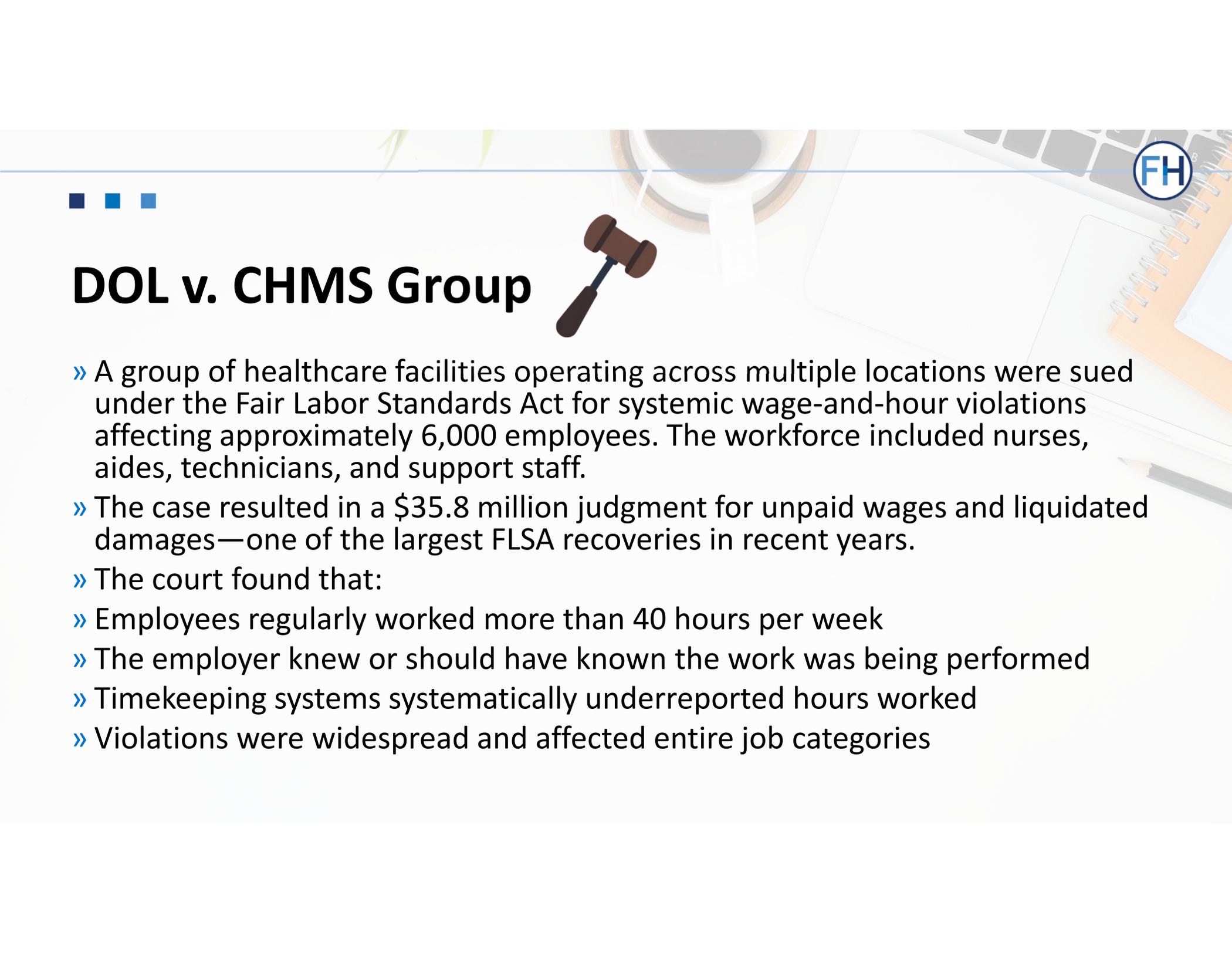
- » Employee complaints trigger audits
- » Broad document requests
- » Multi-year lookbacks
- » Good news: DOL announced in 2025 it will not see liquidated damages in administrative matters seeking unpaid overtime unless it files suit



Notable Cases



- » E.M.D. Sales v. Carrera
- » Three sales representatives for EMD Sales sued the food distribution company, alleging that the company misclassified them as overtime-exempt under the FLSA and, as a result, violated the FLSA by failing to pay them overtime. EMD argued that the employees were not entitled to overtime pay because they fell under the FLSA's exemption for outside salespersons. At trial, the district court concluded that EMD failed to prove by "clear and convincing evidence" that the FLSA's outside-salesperson exemption applied to the employees.
- » US Supreme Court Overturned
- » The decision is a win for employers, as it assures that they will not incur a heightened evidentiary standard in any jurisdiction when seeking to prove that an employee is FLSA-exempt.
- » Employers should nevertheless remain diligent over the classification of employees as exempt under the FLSA. Employers should be mindful that employees still need to pass the salary basis and duties requirement



DOL v. CHMS Group



- » A group of healthcare facilities operating across multiple locations were sued under the Fair Labor Standards Act for systemic wage-and-hour violations affecting approximately 6,000 employees. The workforce included nurses, aides, technicians, and support staff.
- » The case resulted in a \$35.8 million judgment for unpaid wages and liquidated damages—one of the largest FLSA recoveries in recent years.
- » The court found that:
 - » Employees regularly worked more than 40 hours per week
 - » The employer knew or should have known the work was being performed
 - » Timekeeping systems systematically underreported hours worked
 - » Violations were widespread and affected entire job categories



Top Wage & Hour Risk Areas

- » Misclassification
- » Remote work creep
- » Bonus calculations
- » Manager training gaps
- » Policy Errors
- » Relying too heavily on third party pay providers



What HR Can Do Tomorrow

- » Audit classifications
- » Train supervisors
- » Review policies
- » Document decisions





Key Takeaways

- » Classification drives liability
- » Pay practices must match reality
- » Early fixes save money



Questions?



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