


MORE THAN  
**\$1.3 BILLION**  
in back wages recovered by WHD  
in the last five years

 = \$5,000,000



## Outreach and Education

WHD has long recognized that the vast majority of employers want to play by the rules. We proudly engage in a robust outreach and education program that continues to educate employers and workers alike to promote compliance.

we conducted more than  
**15,000**  
outreach events in the  
past five years

**Record-Breaking Outreach**  
in 2018

we conducted more than  
**3,600**  
outreach events in 2018 alone



WHD continues to provide around the clock service to both employers and employees via the internet. In FY 2018, our website was viewed nearly 30 million times.

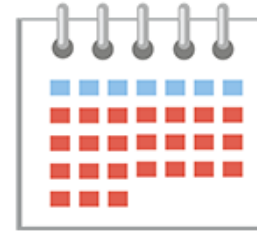
# \$835,000/Day

Helping workers put food on the table.



In fiscal year 2018, WHD collected an average of \$835,000 in back wages for workers per day. That's enough to feed more than 900 families for a month. [Click here](#) for more statistics with low wage industries to view back wages collected for workers in low wage industries.

# Pay Recovered



WHD investigations in fiscal year 2018 found, on average, \$1,150 for each employee due back wages. For retail cashiers, that means nearly four times what they would earn in a typical workweek. Imagine how challenging it would be if you weren't compensated for four weeks of work. That's the reality for many workers who don't get paid what they have earned.

We are finding more back wages for low wage workers. [Click here](#) for more details.

## WHAT DOES \$1,150 MEAN?

\$1,150 represents multiple paychecks to typical workers in many industries\*

### MAID / HOUSEKEEPER

3.5 Paychecks



### SECURITY GUARD

2.8 Paychecks



### JANITOR

3.0 Paychecks



### LANDSCAPER

2.5 Paychecks



### RETAIL CASHIER

3.7 Paychecks



(\*based upon BLS data for median wage rates and weekly hours per occupation)

## WHAT DOES \$1,150 BUY?

### 5+ WEEKS OF FOOD

at \$213/week



### 1+ MONTHS OF RENT

at \$938/month



### 3+ MONTHS OF UTILITIES

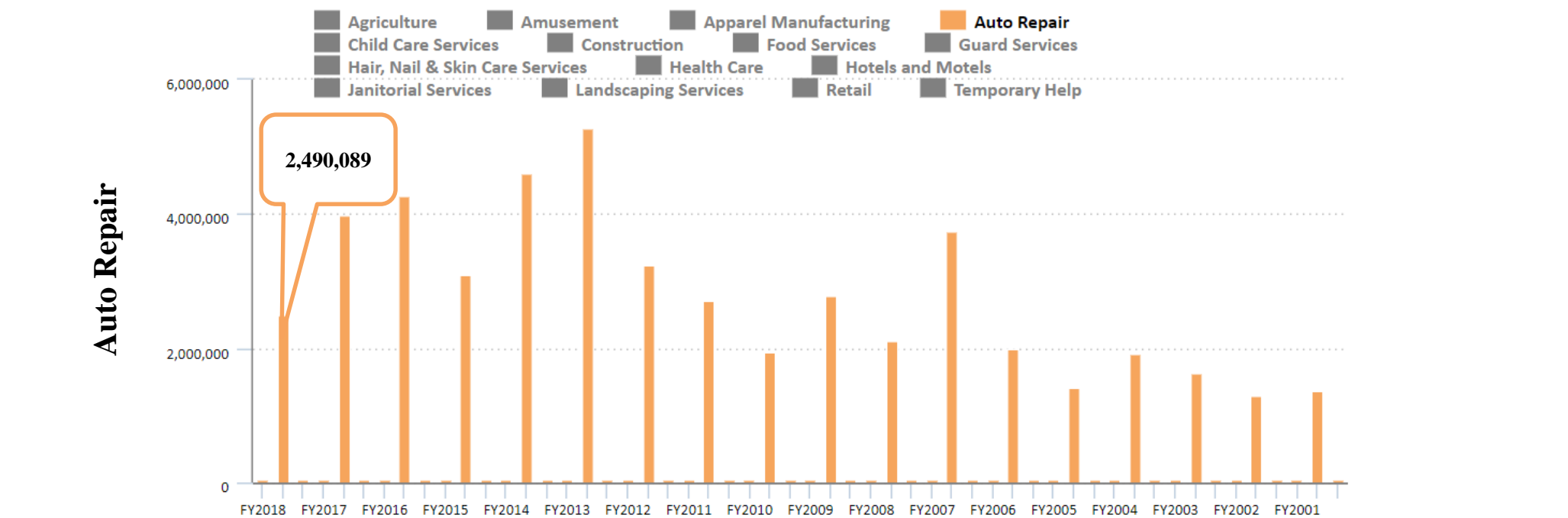
at \$319/month



### 7+ WEEKS OF CHILDCARE

at \$159/week







# Auto Repair FY2018 Statistics

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- 359 cases
- \$2,490,089 collected
- 2,421 employees
- \$1,029 per employee
- Plus liquidated damages \$1,029 per employee
- Total = \$2,058 per employee





# Additional Considerations

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- Cost to employer
  - Personal time/expense
  - Outside third party assistance
- Employee morale
- Loss of management credibility
- PR exposure and loss of reputation
- Emotional/stressful



# How Do You Get Investigated?

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- Directed – 49% of all auto repair investigations are directed
- Complaint driven – 51%



# Percent of Violations in Auto Repair

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- Directed – 81% of audits result in violations/fines
- Complaint – 84% of audits result in violations/fines



# Trends in FLSA Litigation/Action

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- FLSA lawsuits
  - Four (4) years liability
  - Plus you pay attorney fees
- FLSA violations/liability/fines #1 in 2017
- Education by Wage-Hour (billboards/commercials/print/etc.)
- Online information
- Attorney marketing



# FLSA Basics

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- **Non-Exempt** employees must:
  - receive minimum wage (\$7.25) (Federal)
  - maintain an accurate time record
  - receive overtime at time and one-half hours worked in excess of 40 hours per week
- **Unless exempt**



# White-Collar Exemptions

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- Executive Exemption
- Administrative Exemption
- Learned Professional Exemption
- Creative Professional Exemption
- Computer Exemption
- Outside Sales Exemption
- Highly-Compensated Employees



# White-Collar Exemptions

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- **Executive Exemption**

- Management - 51% of work time
- Manager - 2 or more employees
  - Hire/Fire
  - Performance Reviews
  - Discipline
- Owners
- Store Managers (with caution)



# White-Collar Exemptions

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- **Administrative Exemption**
  - Independent Discretion and Judgment – 51% of work time
  - CFO – Controller  
(Larger operation)





# White-Collar Exemptions

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- **Computer Exemption**
  - Programmers/Analysts
  - Not Help Desks, Network Administrators, Webmasters
  - Not applicable in automotive repair unless extremely large employer



# White-Collar Exemptions

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- **Outside Sales Exemption**
  - Engaged in Sales vs. Delivery
  - “Outside” 51% of work cycle
  - No guaranteed salary required
  - Not counter sales!



# White-Collar Exemptions

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- **Highly-Compensated Employees**
  - Guaranteed \$100,000
  - Most show independent discretion/judgment



# Guaranteed Salary Requirements

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White Collar Exemption	Current Annual Guaranteed Salary
Executive	\$23,660 (\$455)
Administrative	\$23,660 (\$455)
Computer	\$23,660 (\$455)
Professional	\$23,660 (\$455)
Outside Sales	No salary requirements

**Note:** DOL considering changes – expectation low \$30,000's.  
**March 2019**

# Fluctuating Workweek Method of Payment - Option

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- Guaranteed salary for all hours worked
- Half-time paid for hours worked in excess of 40 hours per week
- Example:

Weekly salary	\$600.00	
Total hours worked	÷ 45	
<hr/>		
Regular Rate	\$13.33	
Half-time rate	\$6.67	(\$13.33 x .5 hours overtime)
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Overtime due	\$33.35	
Total Pay	\$633.35	

**Note: Payroll providers are not normally aware of or compliant to the Fluctuating Workweek Method of Payment.**

**Call SESCO to discuss details/state laws.**



# Fluctuating Workweek Method of Payment

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- Department of Labor Coefficient Table can be used to compute the additional half-time in one quick calculation
- Employer/employee must have a Letter of Understanding acknowledged by the employee that they understand the pay plan



# Myth

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- **Paying someone on a salaried basis does not mean they are exempt**
- Exemption status is **only** determined by actual job duties/requirements **and** guaranteed salary
- Examples of non-compliant positions:
  - Assistant Managers
  - Service Managers
  - Counter Sales
  - Store Manager where owner works
  - Office Manager
  - Accountant



# Partial Exemption (overtime only) – Retail 7(i)

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1. Must be retail - 75% repair/service/sales to ultimate consumer
2. Employee must average:
  - Average \$10.88 per hour – Federal
    - Determined on payroll period
  - 51% or more of gross income from commissions
    - Audited no less than monthly up to 12 months





# Requirement #1

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- Average minimum wage – 1.5 times
- Pay period gross earnings

÷ Hours worked

= \$10.88 or more per hour (Federal)



## Requirement #2

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### 1. Commission

- True flat rate is a commission

### 2. Must select a representative period of time to audit 51% or more, re: monthly, quarterly, annually



## Retail 7(i)

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- Must maintain an accurate record of actual time worked
- Can be applied to any position who's pay plan meets the requirements



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# **Common FLSA Violations/Traps**



# Trap #1

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- **Misclassifying Non-Exempt Employees As Exempt**
- **Examples**
  - “Managers” performing non-exempt work as a primary duty (counter sales, inventory, service writing)
  - Administrative employees non-exempt:
    - Office managers
    - Accountants
    - Marketing personnel



## Trap #2

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- **Employees cannot waive their rights**



## Trap #3

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- **What are “Hours” Worked?**
  - Break time
  - Travel time
  - Meetings
  - Training



# Trap #3

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- Working lunches
- Pre-work
- Home work
- Unauthorized overtime





## Trap #4

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- **Not Calculating the Regular Rate Properly**
  - Not including all “work” time as defined
  - **Non-discretionary bonuses**, re: spiffs, commissions
  - Averaging workweeks
  - Comp time

# Example of Overtime Calculated on Non-Discretionary Bonuses

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April received \$100 in commission

- Prorated - \$25.00 per week

Week 1 - Employee worked 40 hours – no overtime paid

Week 2 - Employee worked 47 hours

$$25.00 \div 47 = .53$$

$$.53 \times .5 = .265$$

$$.265 \times 7 \text{ hours} = \$1.85 \text{ due}$$

Overtime Factor Chart 47 hours = .074 Factor

$$.074 \times \$25.00 = \$1.85$$



# Potential Back Wage Total

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45 weeks worked @ 47 hours

- Received \$25.00 per week

Annual back wage = \$83.25

x 4 years = \$333.00



## Trap #5

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- **Improper Pay Deductions – Below Minimum Wage (state laws)**
  - Loans – call them advancements
  - Equipment breakage/customer vehicle damage
  - Not returning equipment/materials/uniforms upon separation
  - Holding paychecks upon separation



# Trap #6

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- **Misclassification of Independent Contractors**
  - Improper classification
    - Tax liability
    - Workers' comp liability
    - Overtime liability
  - DOL/IRS actively pursuing misclassifications



# SESCO's Staff Recommendations for Compliance

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- Issue policy on clocking time by other employees
- Policy for mispunches/edits
- Manager sign handwritten time entries
- Always edit time records before paying



# SESCO's Staff Recommendations for Compliance

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- Implement rounding policies
- Conduct annual compliance audits of exemption status and pay plans
  - Anyone paid a salary or a combination of salary and commission – review pay plan
  - Pay overtime on all monies including spiffs, commissions, bonuses



# SESCO Cases

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- Employer A:
  - Not paying service writers overtime
  - Not paying overtime on spiffs
  - Total - \$200,000 (not counting attorney/SESCO fees)
  
- Employer B:
  - Not paying overtime on spiffs
  - Total \$20,000





# Thank You!

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