



Spotlight

ON IMPLEMENTATION AND
COMMUNICATIONS

THE NEW RULES

WHAT DO THEY SAY?

Standard Salary Level Increased By More Than 100%

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- **New annualized salary level will be \$47,476**
 - This is \$913/week
 - Less than \$50,440 proposed in NPRM
 - Represents 40th percentile of full-time salaried workers in South (as of Q4 of 2015) in apparent nod to employers who commented on regional cost of living variations
- **Allows up to 10% of the minimum salary to be met by non-discretionary bonuses, incentive pay or commissions, if made at least on quarterly basis**

Unprecedented Decision to Automatically Update Salary Level

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- Beginning on January 1, 2020, the salary level required for exemption will be automatically updated **every three years**
 - DOL will post new salary levels 150 days before effective date
- Pegged to the 40th percentile of the lowest-wage region in the BLS data set (historically the South or Midwest)
 - Less disruptive than proposed annual increase and much less disruptive than annual update based on 40th percentile
- In 2020, the salary will increase to the **estimated** annualized level of \$51,168
 - a 7.7% increase over three years
 - similar increase for 2023 would reach \$55,108
 - and a similar increase for 2026 would reach \$59,351

Highly Compensated Employee Salary Level Increased More than \$34,000

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- **New Highly-Compensated Salary Level will be \$134,004**
 - More than \$122,100 identified in NPRM
 - Represents 90th percentile of full-time salaried workers nationally as of Q4 of 2015
- **Requires payment on a salary basis of at least \$913/week**
- **Additional payments to bring to new level can include:**
 - Commissions
 - Nondiscretionary bonuses
 - End-of-year catch-up payment

No Changes to the Duties Tests

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- In the NPRM, DOL asked several questions regarding the duties tests – particularly the primary duty test – but did not propose specific language
- In the Final Rule, DOL does not make any changes to the duties tests
- Nor are there any changes to the salary basis test
- As under the existing regulations, there still are no exceptions or allowances for:
 - part-time employees
 - employees of non-profits, colleges or universities, or public entities

Employers Have More Than Five Months to Comply

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- Effective date is December 1, 2016
- Any upward salary adjustments must be in place before to that date to ensure continued application of exempt status
 - Note that December 1 is a Thursday
- For bi-weekly pay, employers will need to adjust pay for pay period that includes December 1, 2016

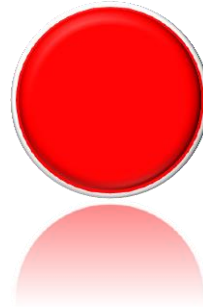
TRUE OR FALSE



The last time reclassification occurred (2004), companies that did not adequately plan lost \$250-500 millions dollars in settlements and judgments.



TRUE



FALSE

TRUE OR FALSE

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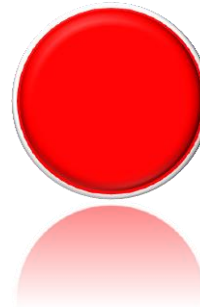
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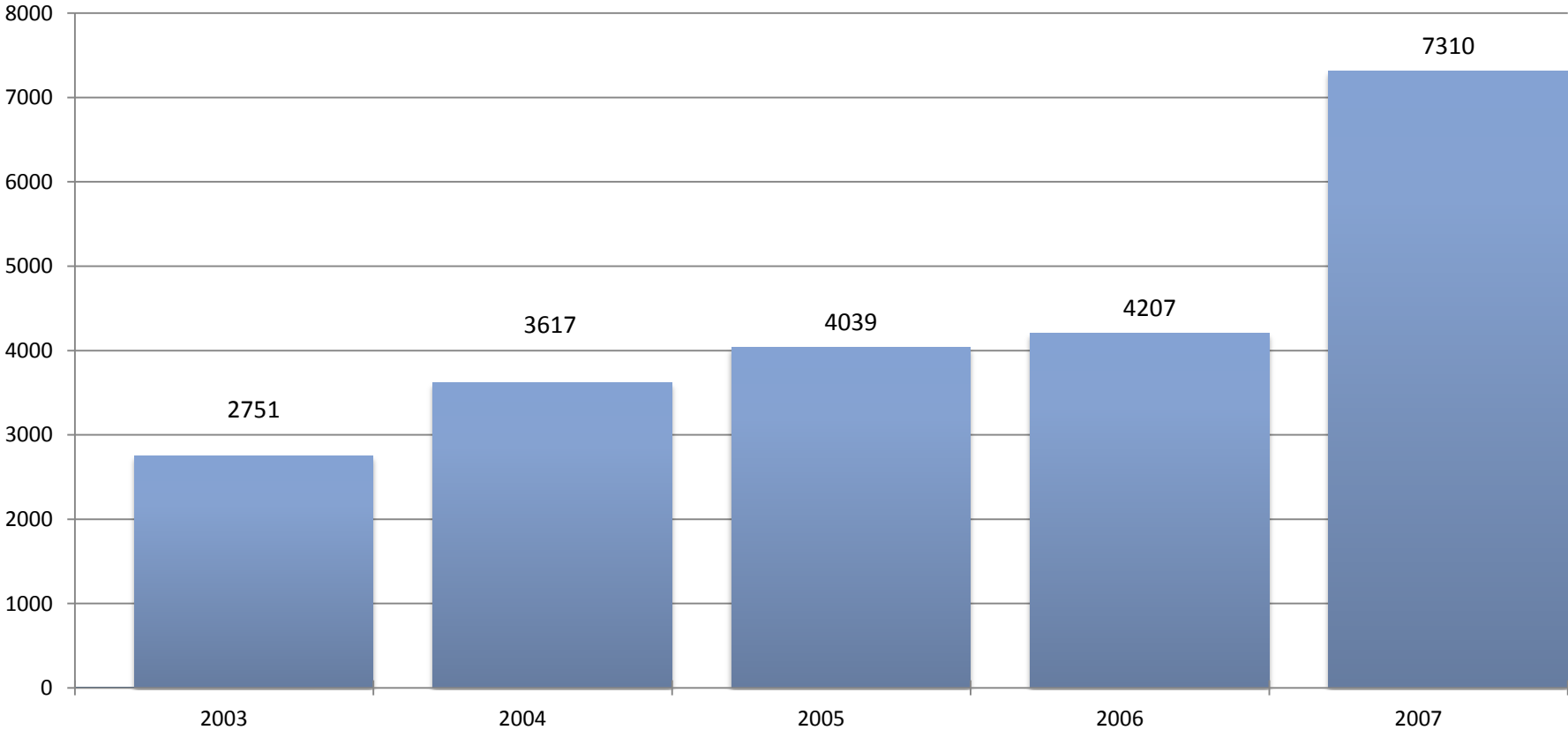
**\$2.5-\$5 Billion
(in settlements, alone)**



FALSE

WAGE AND HOUR FEDERAL COURT LAWSUITS

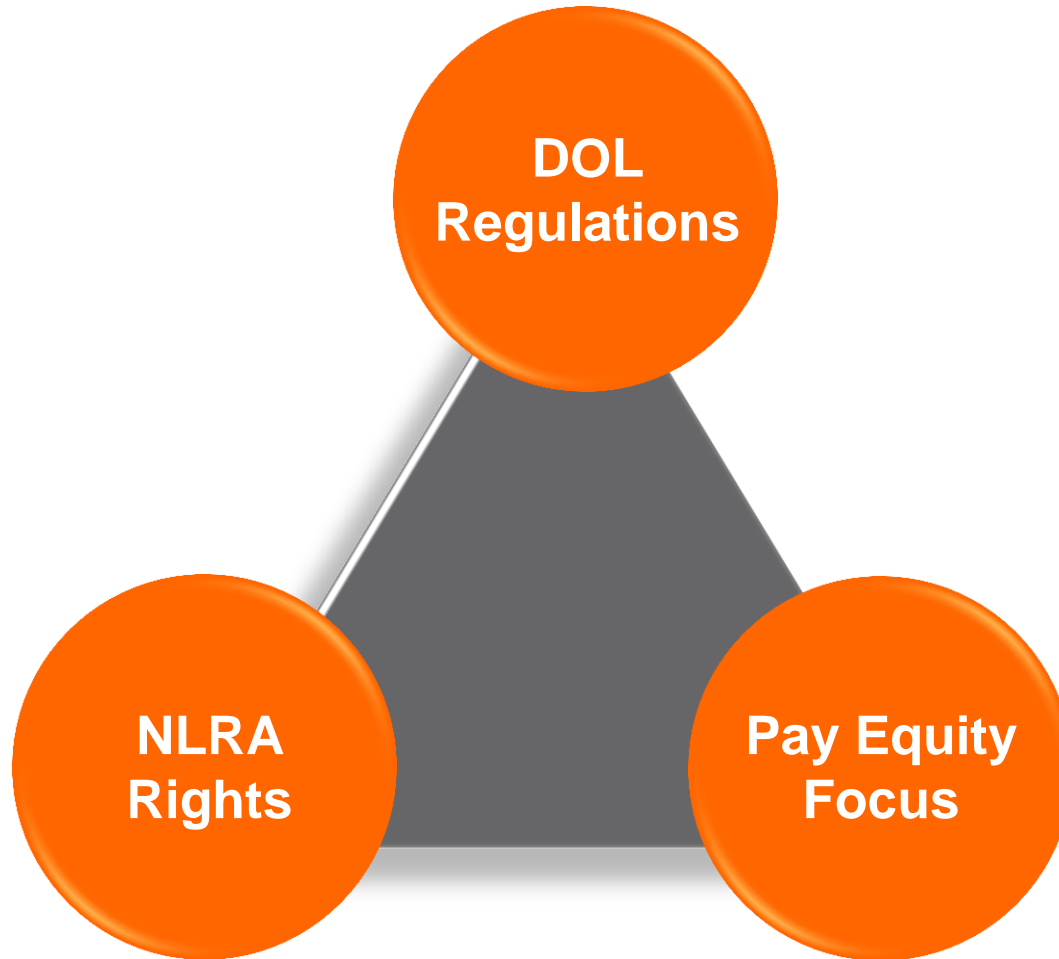
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BUILDING OFF THE LESSONS LEARNED IN 2004

TALKING PAY



WHAT IN-HOUSE LEGAL TEAMS/HR MAY MISS

WHAT IN HOUSE LEGAL TEAMS/HR MAY MISS

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The Human Psychology Factor

People who feel insecure about a change in _____ are more depressed than people who faced a serious or life threatening illness.

The leading cause of workplace stress is a change in _____.

Workers who recently felt that their _____ changed are two times more likely to get sick than secure workers.

Perceived change in _____ creates a 50- 80% decline in employee engagement.

WHAT IN HOUSE LEGAL TEAMS/HR MAY MISS

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The Human Psychology Factor – Status Shock

People who feel insecure about a change in **status** are more depressed than people who faced a serious or life threatening illness.

The leading cause of workplace stress is a change in **status**.

Workers who recently felt that their **status** changed are two times more likely to get sick than secure workers.

Perceived change in **status** creates a 50- 80% decline in employee engagement.

WHAT IN HOUSE LEGAL TEAMS/HR MAY MISS

1 2 3 4 5 6 7

The Human Psychology Factor – the Vacuum

“Why did this only happen to us?”

“This is only happening because...”

“We are no longer on a fast track, are we?”

SOLUTIONS

SOLUTIONS



- Drafting Collaborative Teams
- Determining Appropriate Data/Strategy
- Developing a Communications Plan
- Designing and Deploying Training that Imprints

THE ABC'S OF COMPLIANCE



Actions

Built On

Collaboration

THE ABC'S OF COMPLIANCE: ACTIONS BUILT ON COLLABORATION



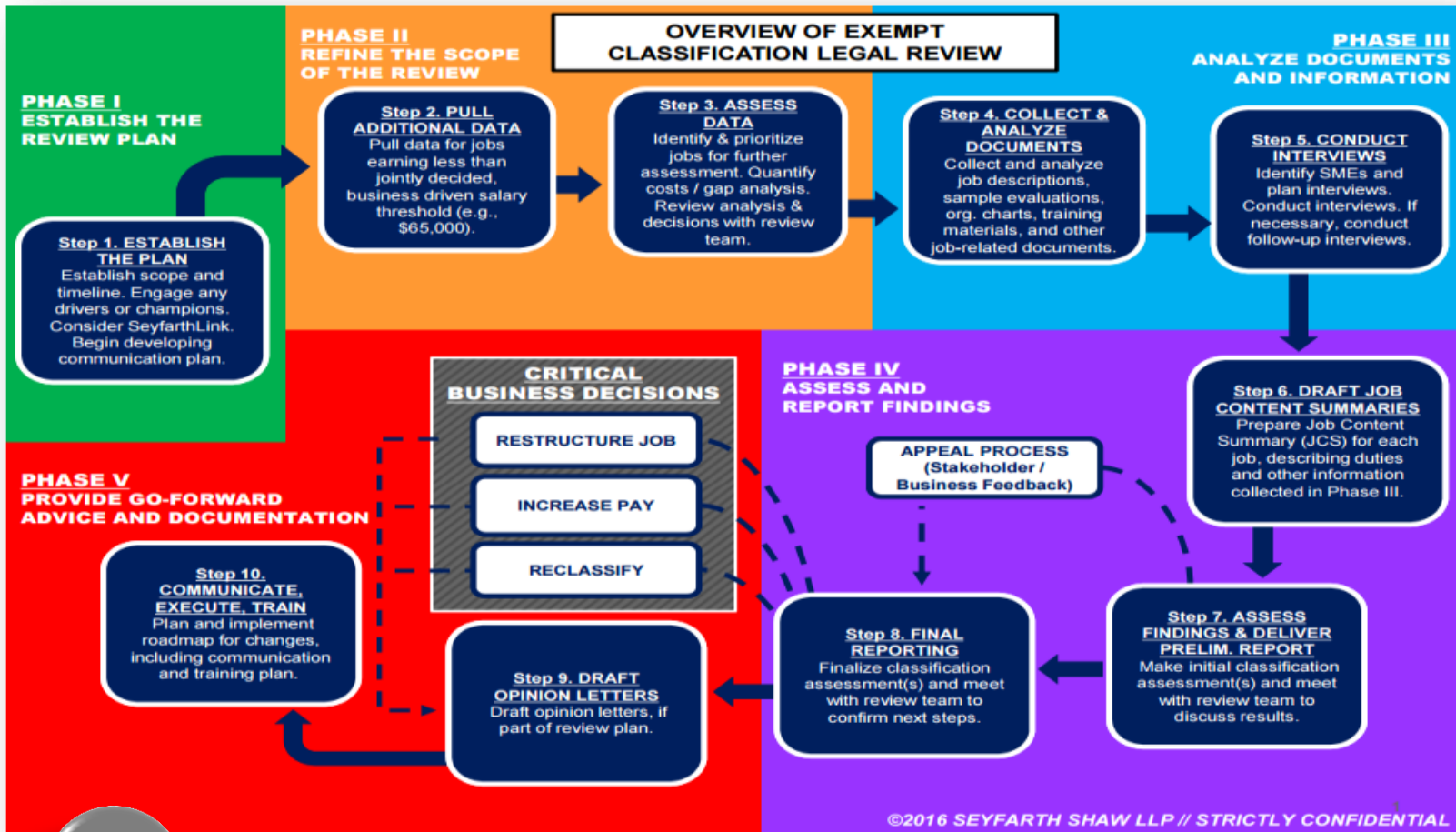
Three Key Collaborative Working Sessions:

1. **C**ore Planners
2. **C**ritical Implementers
3. **C**aptains of Teams (*training*)

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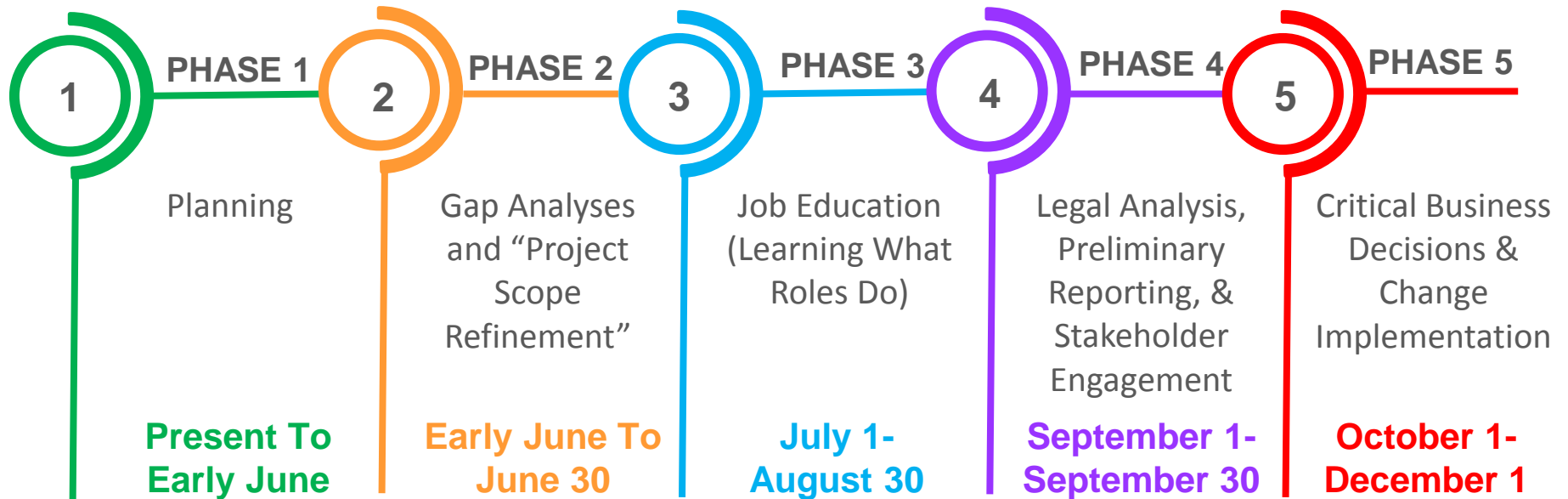
Effective **C**ompliance and **C**ommunication Strategy

DEVELOP AN OVERALL IMPLEMENTATION PLAN AND CALENDAR



Tools: Implementation Plan and Calendar

HERE'S THE PLAN



WORKING SESSION I

**CORE PLANNERS/
COMPLIANCE
LEADERS**

GOALS FOR WORKING SESSION I



- Establish Scope & Timeline
- Engage Drivers & Champions
- Begin Developing Communications Plan

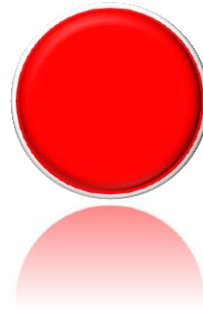
TRUE OR FALSE



The critical departmental representatives to include in the initial planning session are from: Legal, Operations, Human Resources and the C-Suite



TRUE



FALSE

TRUE OR FALSE

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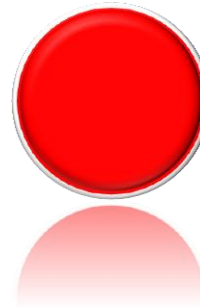
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The critical departmental representatives to include in the initial planning session are from: Legal, Operations, Human Resources and the C-Suite

Don't Forget: Payroll & Benefits + Finance + IT



FALSE
(OR NOT
ENTIRELY TRUE)

WORKING SESSION 1: CORE PLANNERS/COMPLIANCE LEADERS



Identifying Key Stakeholders: Who should share the \$potlight?

Who can be impacted?

Who needs to be involved?

**WE NEED TO BE FORWARD THINKING
AND ACHIEVE BUY-IN**

COMMUNICATING WITH EXECUTIVES

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Buy-In:



“This project manages risk and provides the following advantages:____ It also aligns with our business objective of:_____.”



Tool: Script Folders

PLANNING FOR WORKING SESSION II

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Assess Data

Collect Documents

Conduct Interviews

Draft Job Content
Summaries

Assess Findings

Draft Preliminary Report

Draft Opinion Letters

Make Decisions



Tool: Agenda/Action Items

WORKING SESSION II

**CRITICAL
IMPLEMENTERS/
CREDIBLE
MESSENGERS**

WORKING SESSION II: CRITICAL IMPLEMENTERS



Spotlight on DATA

What do we analyze?

How do we determine actual costs?

Who do we interview?

What should our decisions be based on?



WORKING SESSION II: CRITICAL IMPLEMENTERS



Spotlight on Ripple Effects

COMPRESSION

AND....

Labor Costs

Pay Equity

Morale

Discrimination Claims



OVERVIEW OF EXEMPT CLASSIFICATION LEGAL REVIEW

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Running a Gap Analysis Based on Salary Level “Our First Priority”

PULL DATA

Pull data for jobs earning less than jointly decided, business driven salary threshold (e.g., \$65,000).



ASSESS DATA

Identify & prioritize jobs for further assessment. Quantify costs/gap analysis. Review analysis & decisions with review team.



Tool: Workflow Process Map

BUILDING OFF THE LESSONS LEARNED IN 2004 - PART II

WORKING SESSION II



- Assess Data*
- Collect Documents*
- Conduct Interviews*
- Draft Job Content Summaries*
- Assess Findings*
- Draft Preliminary Report*
- Draft Opinion Letters*
- Make Decisions*



- Develop Communications Plan**
- Develop Communications Calendar**
- Develop Training Design Plan**
- Develop Training Deployment Calendar**



Tool: Communications and Training Calendar



OVERVIEW OF EXEMPT CLASSIFICATION LEGAL REVIEW

1 2 3 4 5 6 7

Analyze Documents And Information

COLLECT & ANALYZE DOCUMENTS

Collect and analyze job descriptions, sample evaluations, org. charts, training materials, and other job-related documents



CONDUCT INTERVIEWS

Identify SMEs and plan interviews. Conduct interviews. If necessary, conduct follow-up interviews

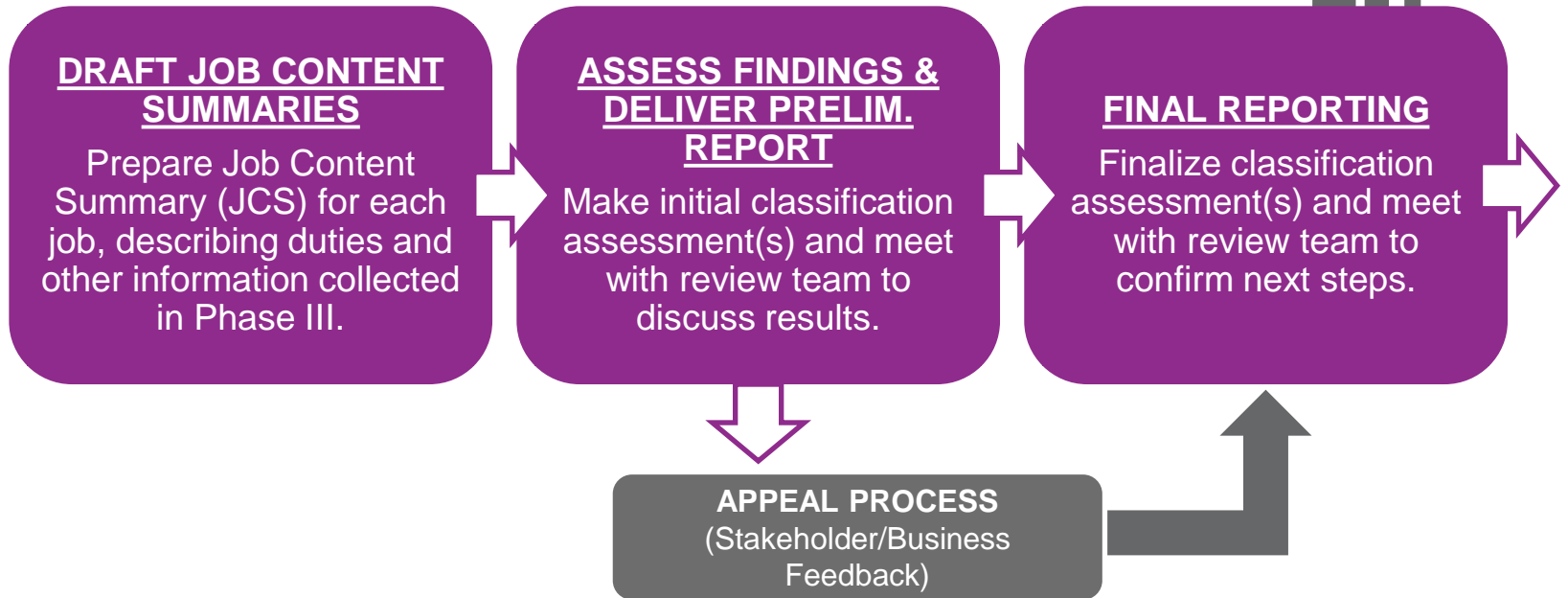


Tool: Workflow Process Map

OVERVIEW OF EXEMPT CLASSIFICATION LEGAL REVIEW

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Assess And Report Findings

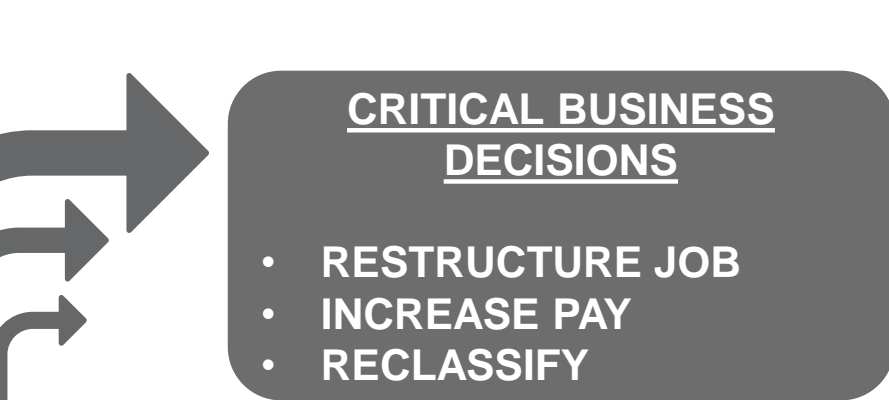
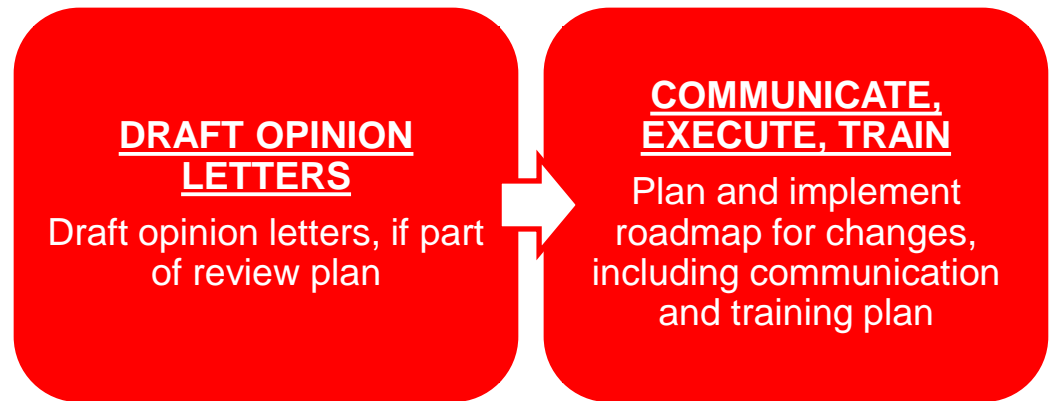


Tool: Workflow Process Map

OVERVIEW OF EXEMPT CLASSIFICATION LEGAL REVIEW



Provide Go-forward Advice And Documentation



Tool: Workflow
Process Map



DEVELOP COMMUNICATIONS/TRAINING PLAN

DEVELOP COMMUNICATIONS/ TRAINING PLAN

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Whom, When and How

- Allocate significant time for communications
- States may require notice of pay changes
- Proactive vs. reactive communication



TRUE OR FALSE

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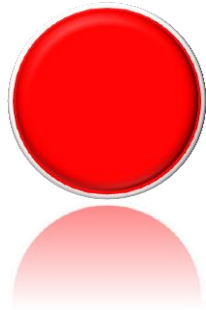
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If an employee asks a manager to explain why his status was changed, it is a good practice for the manager to explain that it was an HR decision and politely direct the employee to HR.



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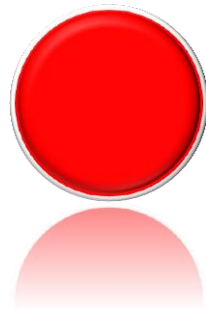
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If an employee asks a manager to explain why his status was changed, it is a good practice for the manager to explain that it was an HR decision and politely direct the employee to HR.



FALSE



What Do We Tell Our People Today

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NO ONE-SIZE-FITS-ALL COMMUNICATION

AWARENESS

“The company is tracking developments carefully and we will be sharing information as soon as possible and wherever appropriate.”

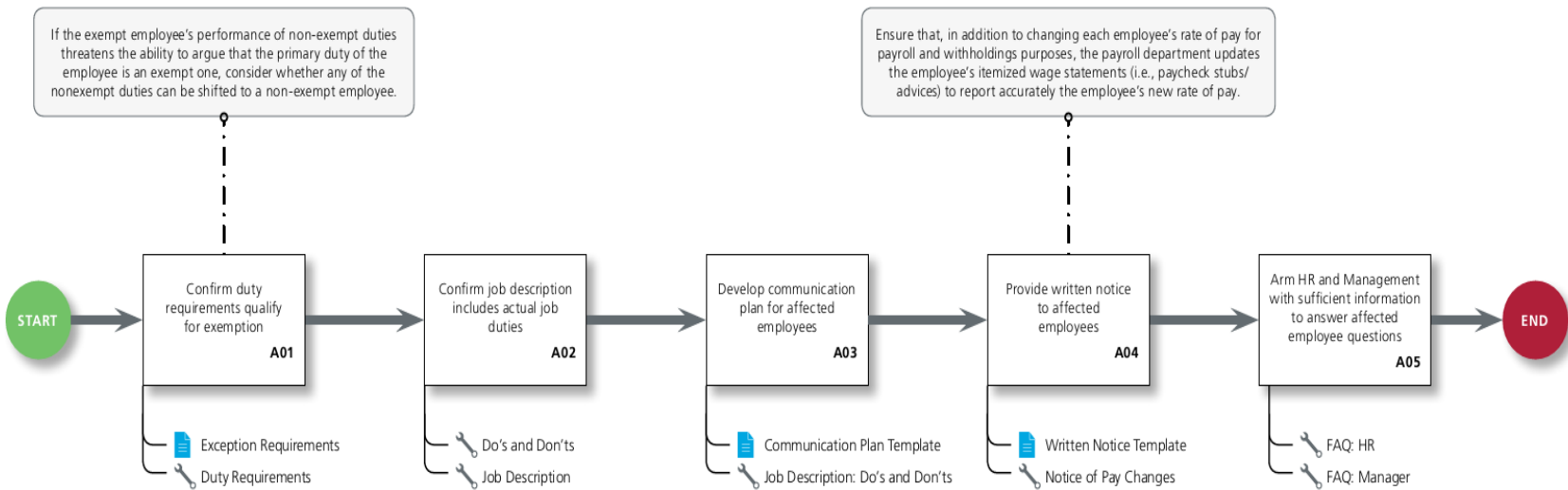
EMPATHY

“We know that many of our people will be very interested to know what this means and that is why we are committed to developing next steps with appropriate care and planning.”

EXEMPT SALARY INCREASE PROCESS MAP



Steps with Respect to Exempt Employees Receiving a Salary Increase



SESSION III: TRAINING

**TRAINING OF
CAPTAINS OF TEAMS:
MANAGERS/
SUPERVISORS**

Manager Topics



Managing Performance/Success/Time

- Consistency - it Calms the Waters
- Responses -with practice, practice, practice
- Praise ("Value Statements that Stick.")
- Difficult Conversations

DESIGN AND DELIVERY



- Decisions, Policies & Best Practices Simplified
- Realistic Scenarios
- Multiple Opportunities for Issue Spotting
- Meaningful Consensus Building
- Engaging and Interactive
- Practice, Practice, Practice of Response Scripts, Again
- Customized to Each Area/Environment
- Reduce to Final Concepts and Take-Aways



SPOTLIGHT ON TRAINING MANAGERS

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HOW WILL THEY RESPOND TO....

Employee Challenges/Questions

“Why did this only happen to us?”

“This is only happening because...”

“We are no longer on a fast track.”

Manager Concerns

“I can still have him work on weekends, right?”

“Can I tell my former exempt employee to not work overtime?”

“She keeps working overtime without authorization.”

TRAINING

1 2 3 4 5 6 7

Managers Practice, Practice, Practice: To Master the “HOW”

How to express clarity as to policies and procedures.

How to best exude an openness to listen and an empathetic ear.

How and when to appropriately redirect.

How to take complaints seriously and relay immediately.



**Tool: User Friendly Training that is
Third-Party Vetted/Approved**

FINAL \$POTLIGHT ON OUR TOOLS



IMPLEMENTATION PLAN AND CALENDAR



CHECKLISTS



AGENDA/ACTION ITEMS



COMMUNICATIONS AND TRAINING CALENDAR



WORK FLOW PROCESS MAP



**SCRIPT FOLDERS/USER FRIENDLY TRAINING OF
MANAGERS THAT IS THIRD PARTY
VETTED/APPROVED**

NEXT STEPS



SEYFARTH SHAW AT WORK IS HERE TO HELP COLLABORATE AND DELIVER

**WORKING
SESSION I: CORE
PLANNER/
COMPLIANCE
LEADERS**

**WORKING
SESSION II:
IMPLEMENTERS/
CREDIBLE
MESSENGERS**

**WORKING
SESSION III:
TRAINING OF
CAPTAIN OF
TEAMS:
MANAGERS/
SUPERVISORS**

NEED ASSISTANCE?

Email: seyfarthshawatwork2@seyfarth.com

Phone: 312-460-6242

Implementation and Communication - Other Resources

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Visit The FLSA Exemption Resource Center

- Go Here:
www.seyfarth.com/OTRuleResources



The FLSA Exemption Resource Center



Employer Toolbox



Background Resources



Five on Friday

THANK YOU



QUESTIONS?

