



NEW HAMPSHIRE MUNICIPAL ASSOCIATION



Federal Overtime Rule and Municipal Governments

Presented by:

*Thomas M. Closson, Esquire
Stephen C. Buckley, Legal Services Counsel*

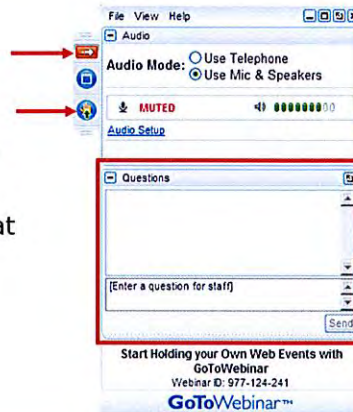
August 17, 2016

How to Participate Today

Open and close your Panel

Submit text questions

- Couple of poll questions for your entertainment today
- Q&A addressed during and at the end of today's session



Today's Agenda

1. Fair Labor Standards Act (FLSA) **Basics**

Stephen C. Buckley, Legal Services
Counsel, NHMA

2. The New Overtime Rules

Thomas M. Closson, Esq., Jackson
Lewis P.C.

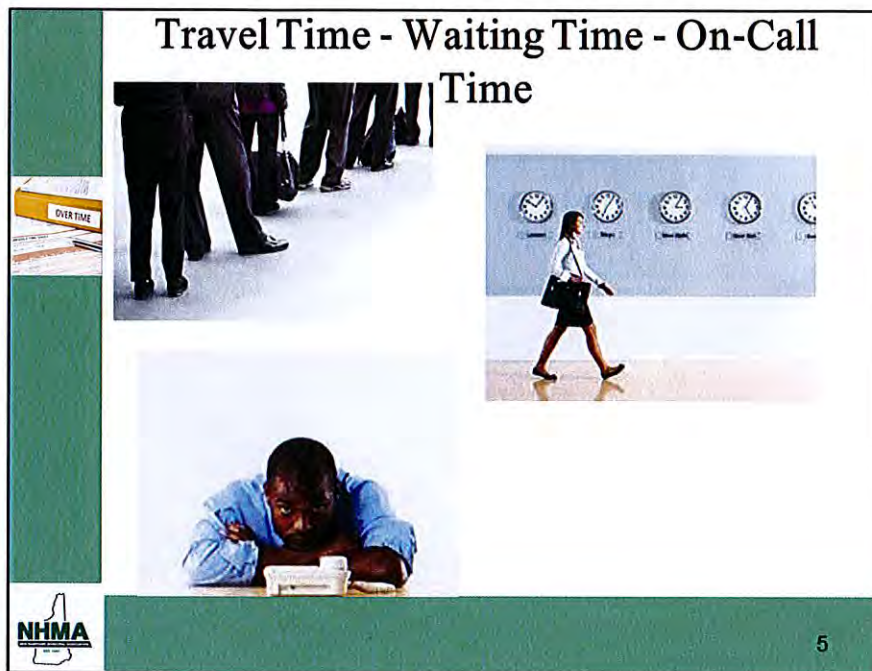




The FLSA generally requires employers to pay employees a minimum wage at a rate of \$7.25 per hour.

The Act also imposes overtime pay requirements which compel employers to pay their employees at least one and one-half times their regular rates for all time worked in excess of 40 hours in any one workweek.

However, specific provisions of the FLSA provide exceptions to these general rules for "white collar" employees, administrative employees and public employees engaged in law enforcement or fire protection activities.



“Normal travel between home and work is not work time.”

“Time spent by an employee in travel as part of his principal activity, such as travel from job site to job site during the workday, must be counted as hours worked.”

Any work which an employee is required to perform while traveling must, of course, be counted as hours worked. “An employee who drives a truck, bus, automobile, boat or airplane, or an employee who is required to ride therein as an assistant or helper, is working while riding, except during bona fide meal periods or when he is permitted to sleep in adequate facilities furnished by the employer

As a general rule, periods of inactivity which occur during the workday and while the employee is on duty are compensable as hours worked.

Periods during which an employee is completely relieved from duty and which are long enough to enable the employee to use the time effectively for his or her own purposes are not hours worked. An employee is not completely relieved from duty and cannot use the time effectively for his or her own purposes unless he or she is expressly told in advance that he or she may leave the job, and that he or she will not have to commence work until a specified hour has arrived.

The determination of whether on-call time is compensable depends on whether the time spent on-call is primarily for the benefit of the employer or the employee. In general, when an employee who is on-call is free to use the time for his or her own benefit, the on-call hours are not hours worked under the FLSA unless the employee actually responds to a call. However, if the employee’s ability to engage in personal pursuits while on-call is restricted by the frequency of the calls or by the employer’s policies, hours spent on-call are compensable hours worked.

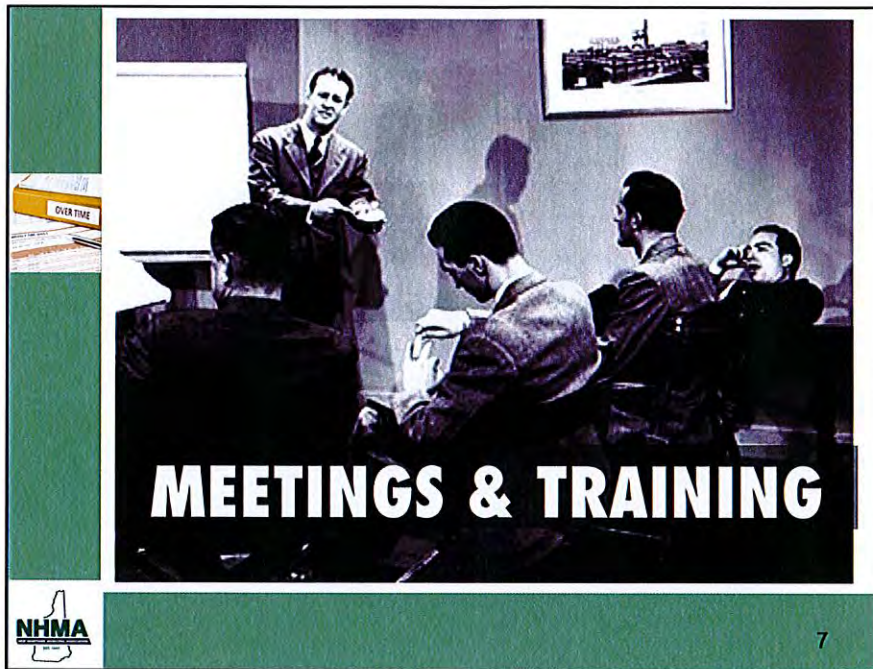
SPECIAL SITUATIONS: Sleeping Time



As a general rule, "sleeping time is non-compensable."

An employee who is required to be on duty for less than 24 hours is working even though he is permitted to sleep or engage in other personal activities when not busy.

In the absence of an agreement, sleeping periods included in a duty period of 24 hours or more are considered to be compensable "hours worked." However, "where an employee is required to be on duty for 24 hours or more, the employer and employee may agree to exclude bona fide meal periods and a bona fide regularly scheduled sleeping period of no more than 8 hours from hours worked, provided adequate sleeping facilities are furnished by the employer and the employee can usually enjoy an uninterrupted night's sleep."



Attendance at lectures, meetings, training programs and similar activity need not be counted as working time if the following criteria are met:

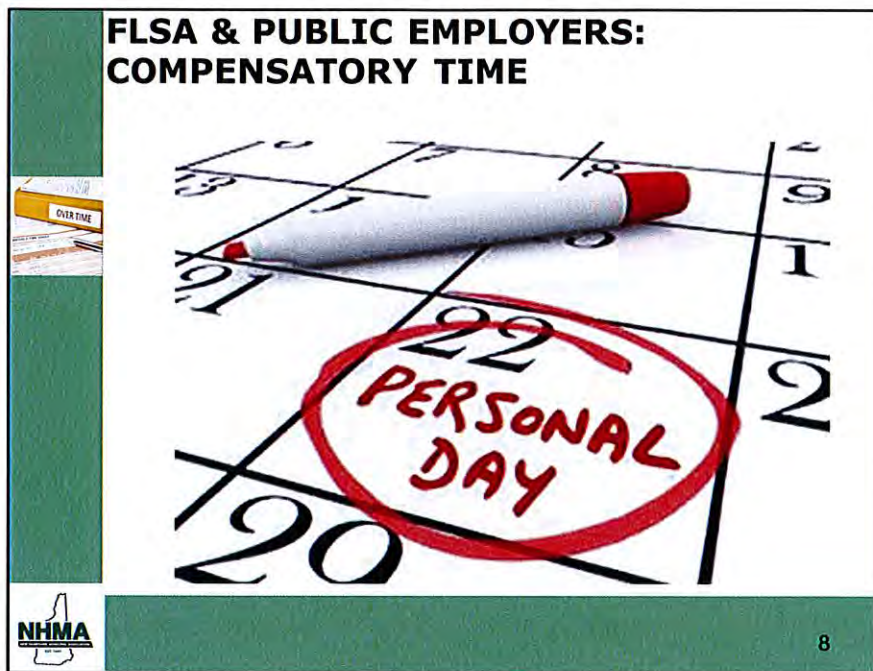
Attendance Is Outside The Employee's Regular Working Hours

Attendance Is In Fact Voluntary

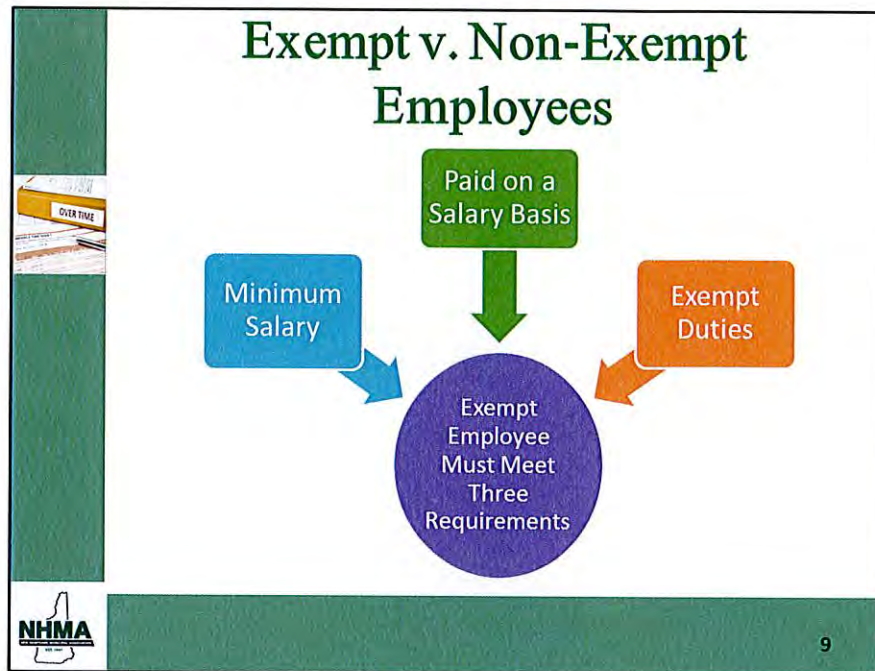
Course, Lecture, Or Meeting Is Not Directly Related To The Employee's Job

The Employee Does Not Perform Any Productive Work During Such Attendance

Independent Training

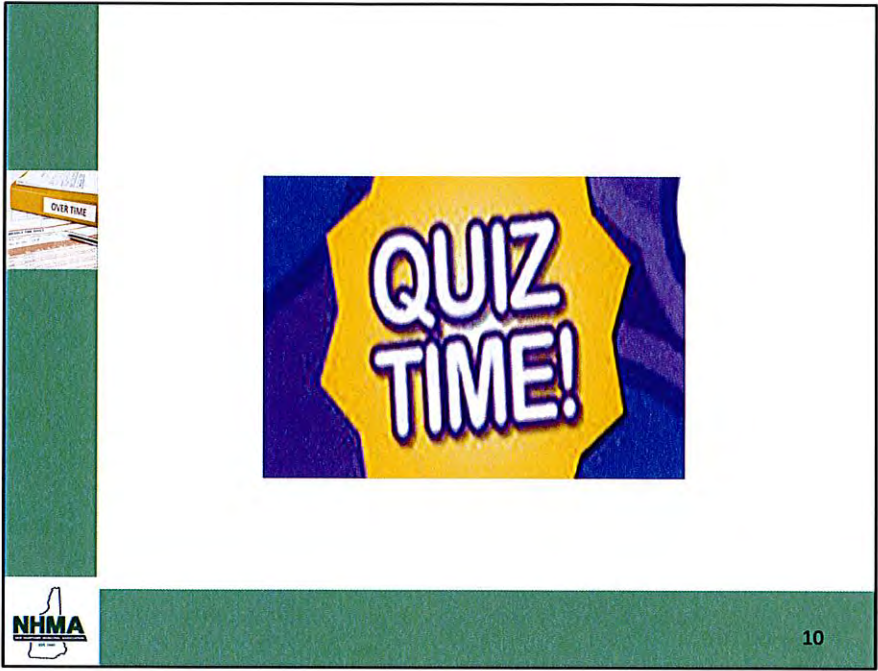


- 1) Elected Officials Are Not Employees
- 2) Compensatory Time and Compensatory Time Off
- 3) Although employers generally must pay overtime to employees for hours worked in excess of forty (40) hours in a workweek, the FLSA permits state and local government employers the choice of providing compensatory time off in lieu of monetary overtime compensation.
- 4) Compensatory time received in lieu of cash must be at the rate of not less than one and one-half hours of compensatory time for each hour of overtime work.
- 5) As a condition for providing compensatory time off in lieu of monetary overtime compensation, the employer and the employee must agree to the means of compensation prior to the performance of the work.
- 6) The FLSA provides that employees engaged in public safety activity, emergency response activity, or seasonal activity may accrue not more than 480 hours of compensatory time. All other employees may accrue not more than 240 hours of compensatory time. Upon termination of employment, the employee must be paid for the unused compensatory time at a rate not less than: (1) the average regular rate received by such employee during the last 3 years of employment; or (2) the final regular rate received by such employee, whichever is higher.



The [FLSA](#) requires that most employees in the United States be paid at least the [federal minimum wage](#) for all hours worked and [overtime pay](#) at time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek.

FLSA also provides an exemption from both [minimum wage](#) and [overtime pay](#) for employees employed as bona fide executive, administrative, professional and outside sales employees. To qualify for exemption, employees generally must meet certain tests regarding their job duties and be paid on a minimum amount of wages on a salary basis. Job titles do not determine exempt status. In order for an exemption to apply, an employee's specific job duties and salary must meet all the requirements of the Department's regulations.



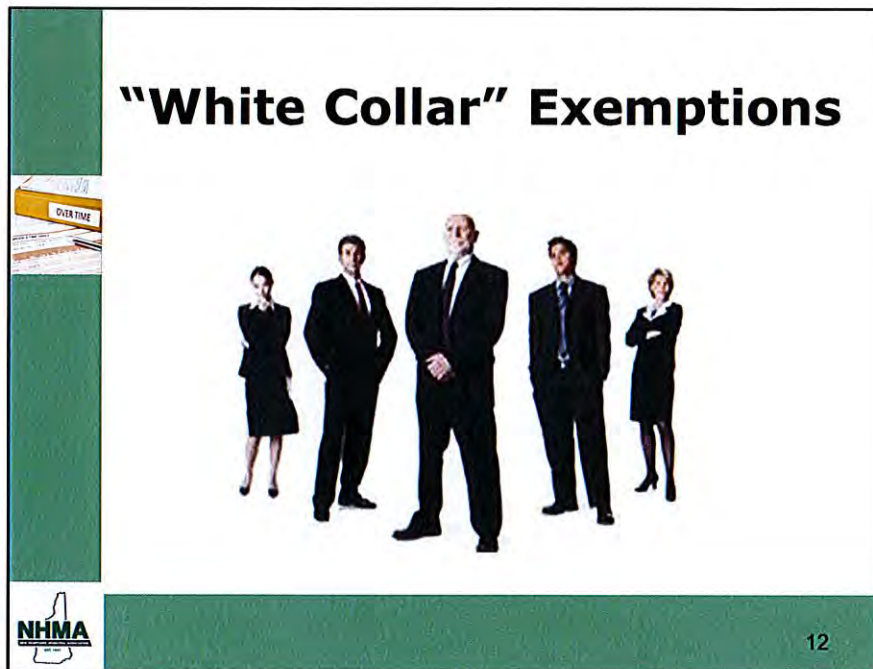
The image is a slide with a white background and a green border on the left and bottom. In the center is a yellow starburst shape with the words "QUIZ TIME!" in white, bold, outlined letters. To the left of the starburst, there is a small graphic of a stack of papers with a yellow tab labeled "OVERTIME". In the bottom left corner, there is a logo for "NHMA" featuring a white outline of the state of New Hampshire. In the bottom right corner, the number "10" is displayed.



Name the city or town that was known as the "Potato Capital" of New Hampshire in 1894? It also houses the villages of Kidderville and Factory Village.

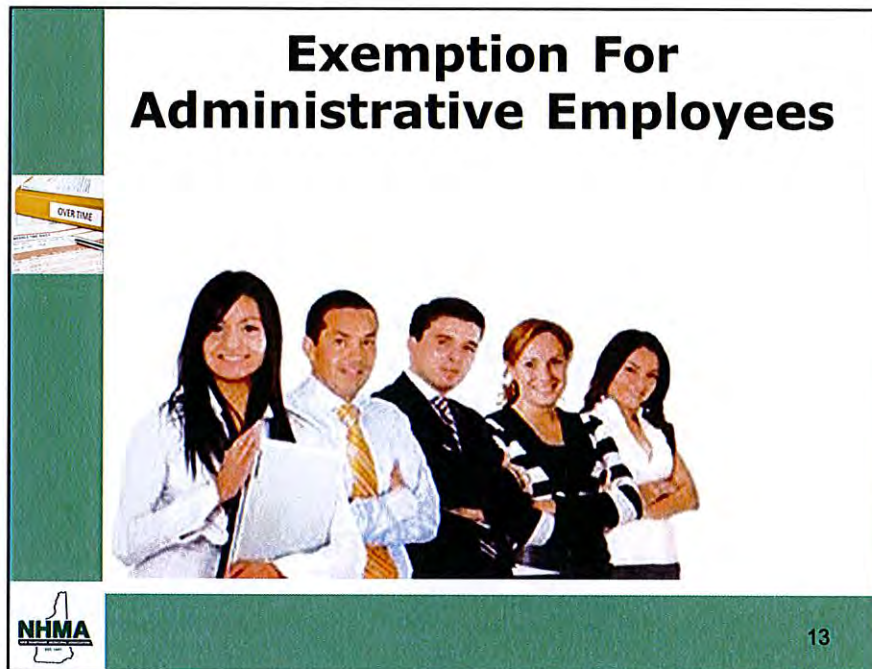
1. Columbia
2. Colebrook
3. Campton
4. Clarksville





Executive Exemption To qualify for the executive employee exemption, all of the following tests must be met:

- The employee must be compensated on a minimum salary basis;
- The employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
- The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and
- The employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.



Administrative Exemption

To qualify for the administrative employee exemption, all of the following tests must be met:

- The employee must be compensated on a minimum salary or fee basis;
- The employee's primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and
- The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.



The FLSA provides that individuals performing volunteer services for local governments will not be regarded as “employees” within the meaning of the FLSA.


A “volunteer” is “[a]n individual who performs hours of service for a public agency for civic, charitable, or humanitarian reasons, without promise, expectation or receipt of compensation for services rendered.”

An individual is not considered to be a volunteer if the individual is otherwise employed by the same public agency to perform the same type of services as those for which the individual proposes to volunteer.

Volunteers may be paid expenses, reasonable benefits, a nominal fee, or any combination thereof for their service without being deemed employees for purposes of the FLSA.

Individuals do not lose their volunteer status simply because they are reimbursed for out-of-pocket expenses incurred incidental to providing the volunteer services, including payment for the cost of meals, transportation, or wear and tear on personal clothing worn while performing volunteer service.


Some municipalities provide certain volunteers with nominal fees for their services. The payment of such nominal fees will not cause individuals to lose their status as volunteers if the fee is not tied to productivity and is not a substitute for compensation.



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15



Four key provisions in the new overtime regulations



16

CHANGE #

1

Standard salary level increases

CURRENT

EFF. 12/01/2016

\$455/week

\$913/week

(\$23,660/year)

(\$47,476/year)



CHANGE # **2**

HCE* threshold will increase

CURRENT **EFF. 12/01/2016**

\$100,000/year **\$134,004/year**

* Highly Compensated Employee




CHANGE #

3


Salary level will increase automatically every three years

- Automatic salary level increase every three years effective January 1st
 - Next Increase: January 1, 2020
- DOL Estimates: \$51,168 for standard salary and \$147,524 for HCE
- DOL will announce increases 150 days prior (by August 1st of prior year)






A central graphic featuring the words "QUIZ TIME!" in a bold, white, bubbly font with a blue outline. The text is set against a yellow, jagged-edged shape that resembles a starburst or a torn piece of paper. This yellow shape is centered on a dark blue background with a subtle, darker blue pattern.




A small graphic on the left side of the slide, showing a yellow box with the words "OVERTIME" written on it. Below the box are some papers and a pen, suggesting a classroom or office setting.




The logo for the National Health Management Association (NHMA), featuring a stylized outline of the state of New Hampshire above the letters "NHMA".

20



Name the city or town that is known as the site of the largest manufacturer of piano sounding boards in the world? It was also known for charcoal making and for the first rope ski tow in New Hampshire.

1. Lincoln
2. Littleton
3. Lisbon
4. Langdon



21

CHANGE #

4

Employers permitted to use incentive compensation to partially meet salary level requirement



Incentive compensation types

- Commissions
- *Non-discretionary* bonuses
- Other Incentive payments

Incentive compensation limit = 10%

- \$42,728.40 annual
\$821.70 week is required





No Change

No changes to duties test



23

The graphic features a white background with a green border on the left and bottom. A black circle on the left contains the text "No Change" in white. To the right of the circle, the text "No changes to duties test" is written in black. In the bottom left corner, there is a logo for NHMA (New Hampshire Nurses' Health and Medical Association) featuring a map of New Hampshire. In the bottom right corner, the number "23" is displayed.

The graphic consists of several elements: a green vertical bar on the left side; a yellow sign with the word "OVERTIME" in black; a calendar for December 2016 with the number "1" circled in red; and the NHMA logo at the bottom left. The text "Final rule is effective DECEMBER 1, 2016" is centered below the calendar.

Sun	Mon	Tue	Wed	Thu	Fri	Sat
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

Final rule is effective DECEMBER 1, 2016



Find your affected employees



STEP TWO

Of those, identify who will no longer meet the salary level test

i.e., those making less than \$913/week
(\$47,476/year)



STEP ONE

Identify exempt employees



STEP THREE

Determine which of these work more than 40 hours a week



OPTION # **1**

Strategies for responding to change



Increase salary level for affected employees

CHALLENGES

- Potentially costly option
- May impact other exempt employees above the salary level - global adjustment?
- Employer may offset additional cost by reducing fringe benefits, smaller pay increases or delayed promotions



OPTION #

2

Strategies for responding to change



Reclassify employees

- ...as non-exempt/overtime eligible and pay overtime
- ...as non-exempt/overtime eligible and...
 - Adjust hourly rate to account for anticipated overtime so reclassification is cost neutral (e.g. \$800/week = \$14.54/hr @ 50 hrs/week; don't set rate by dividing current salary by 40—\$20 per hour)



OPTION # **3**

Strategies for responding to change



Reduce staff and have exempt managers absorb duties and perform more work



Unemployment increases not decreases



OPTION #

4

Strategies for responding to change



Hire more part-time workers

Take 60 hour job and make it two 30 hour jobs without overtime

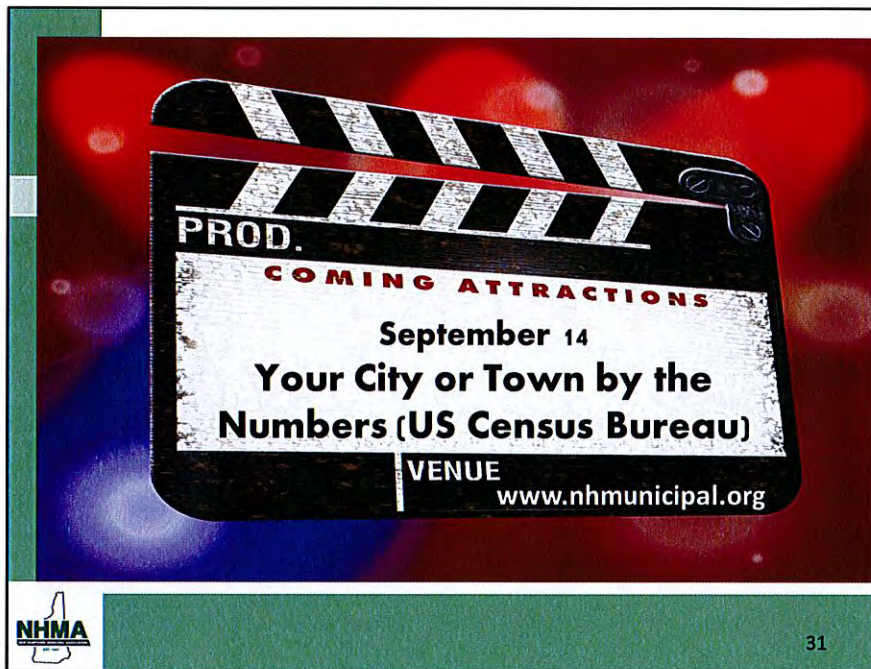


One benefit of the new rule....



**Good excuse to
conduct wage/hour
audit and implement
overdue changes**





PROD.
COMING ATTRACTIONS
October 12
The Growing Threat of Ransomware
VENUE
www.nhmunicipal.org



How Does Your City or Town Stack Up?

A Workshop on Organizational Performance Measurement

Friday, September 30, 2016

9:00 a.m.— 11:30 a.m.

NHMA Offices

25 Triangle Park Drive, Concord, NH 03301

This class, hosted by NHMA and presented by Daniel Bromberg, Assistant Professor of Political Science at the University of New Hampshire and Director of the M.P.A. Program, will provide user-friendly, non-prescriptive strategies that will assist municipal managers and department heads in developing and implementing a performance measurement system.

Performance measurement is an advanced management process whereby organizations assess how well they are doing compared to their previous performance, compared to other organizations, or compared to previously established targets.

This workshop will focus on basic concepts of performance measurement and move towards more advanced utilization concepts and outcomes. By the end of the workshop, participants will learn how to develop a basic performance measurement system, overcome the common pitfalls associated with performance measurement, and learn the most effective ways to communicate performance results to a wide group of stakeholders.

Cost: \$45 per person. Registration 8:30 a.m.— 9:00 a.m.

Register online at www.nhmunipal.org under CALENDAR OF EVENTS

Questions? Please call 800.853.3356, ext. 3358 or email NHMAregistrations@nhmunipal.org



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