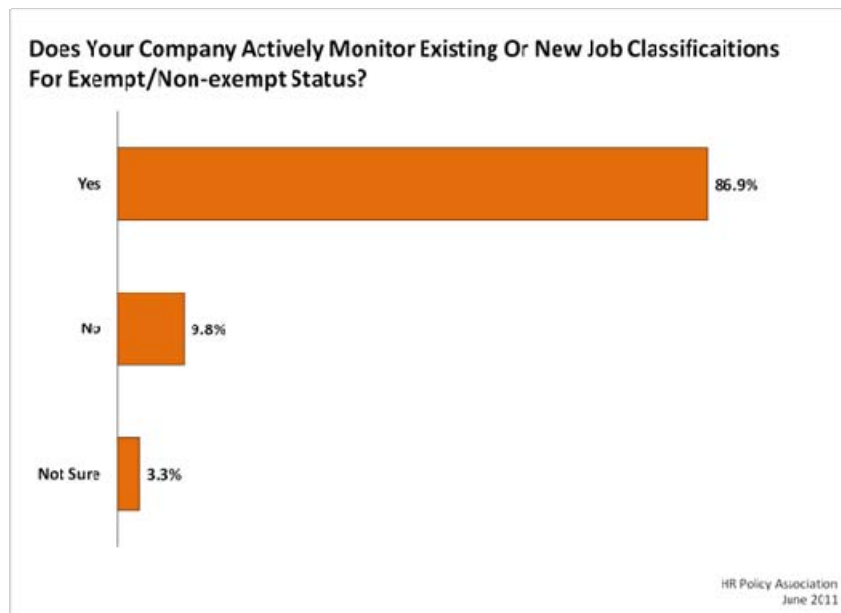


Survey of Large Companies Measures Impact of 1930s Wage and Hour Law on 21st Century Workplace Flexibility

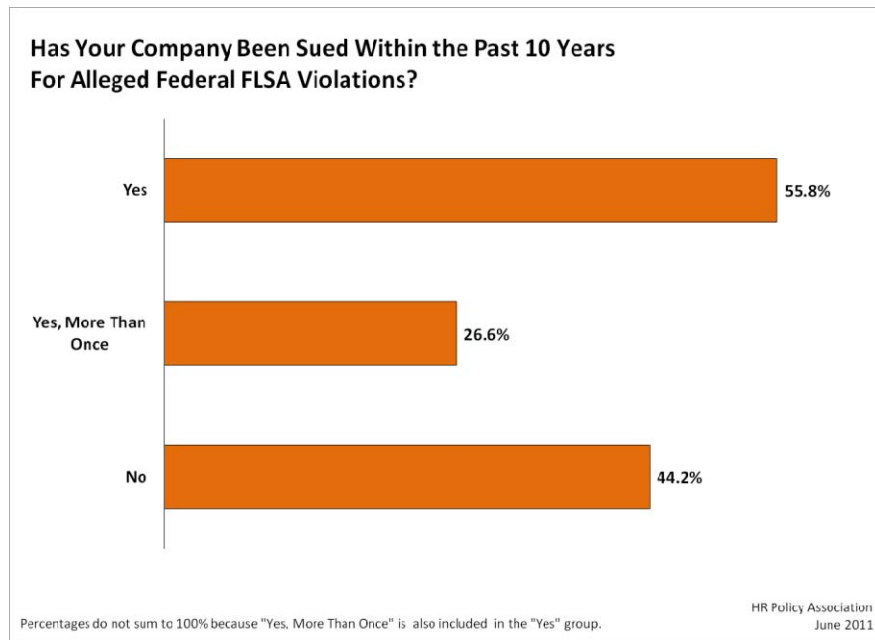
In June 2011, the Association conducted a survey of its members on issues surrounding compliance with the outdated Fair Labor Standards Act, the 1938 law which regulates pay and scheduling in the 21st century digital workplace. Employers are concerned that the substantial litigation caused by the law’s anomalous and vague requirements is forcing them to impose precautionary workplace policies that are overly restrictive and out of step with modern work habits. Nearly one-half of the membership responded to the survey, representing large companies doing business in the United States from a cross-section of major industries. The survey results, which are described in detail below, clearly demonstrate:

- The increase in FLSA litigation—primarily over the vague rules as to which employees are exempt from the law’s requirements—is clearly taking a toll on large employers, wasting resources and man-hours, even when they are diligent in their efforts to ensure compliance;
- The litigation is not limited to low-paid, low-skilled employees whom the law was intended to protect and often includes very highly compensated employees; and
- In their efforts to protect themselves against further litigation, employers are imposing restrictions on popular practices such as telecommuting, flexible working hours and the use of PDAs.

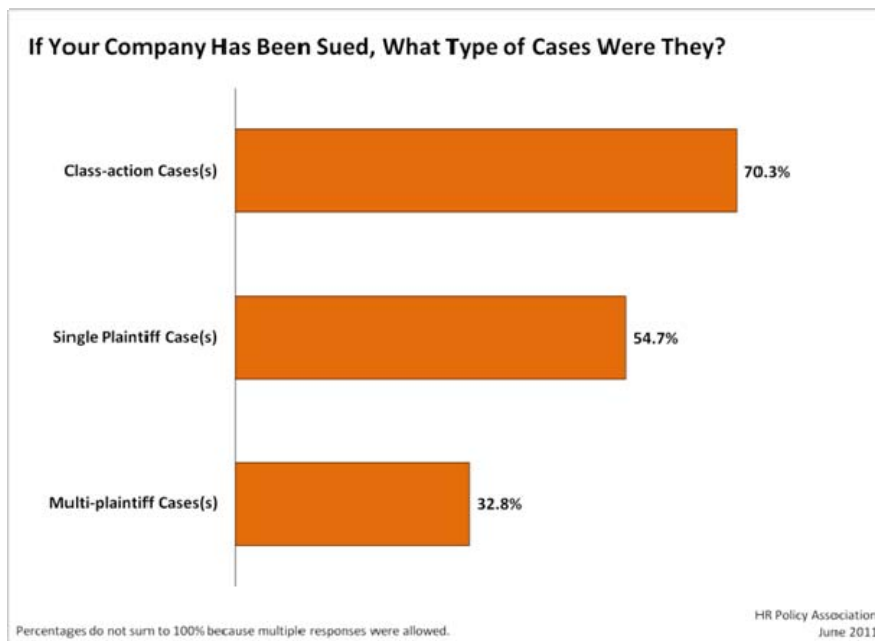
Monitoring/Auditing of Exempt Status. The vast majority of members (86.9 percent) actively monitor existing or new job classifications for exempt/non-exempt status, a costly process that can reduce, but not eliminate FLSA problems and litigation expenses.



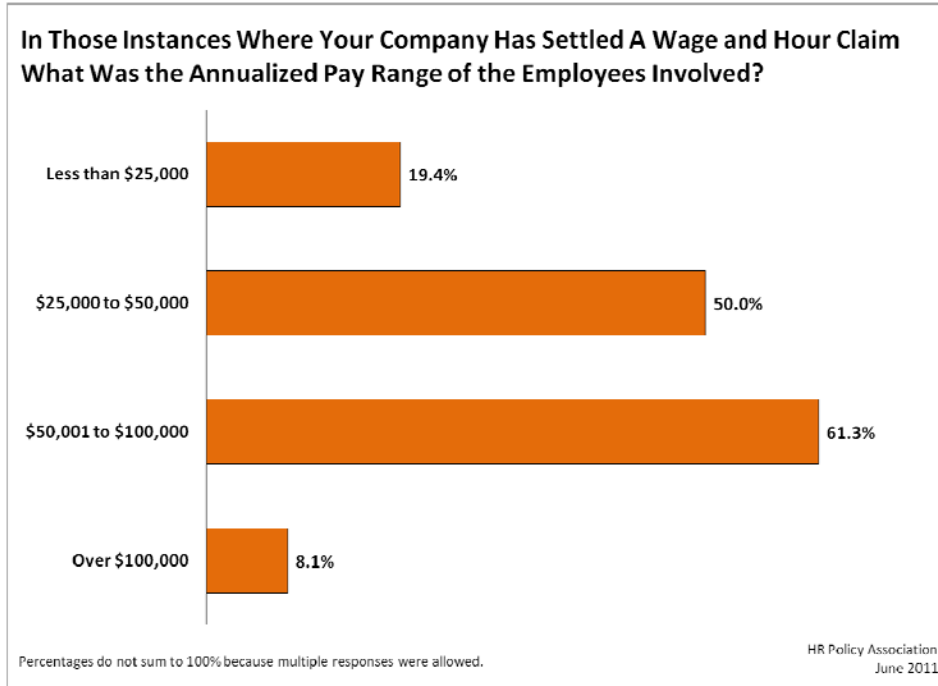
Litigation Experience. Despite this good-faith effort, almost 56 percent of the Association’s members have been sued for alleged federal FLSA violations over the past 10 years; 26.6 percent have been sued more than once. Most of those sued (81 percent) have had suits involving misclassification of exempt employees. (See Question 9 in Appendix.) Moreover, the complicated maze of state FLSA laws that is layered upon the federal statute has resulted in 39 percent of the members being sued for alleged state violations over the past 10 years; most often in California. (See Question 10 in the Appendix.)



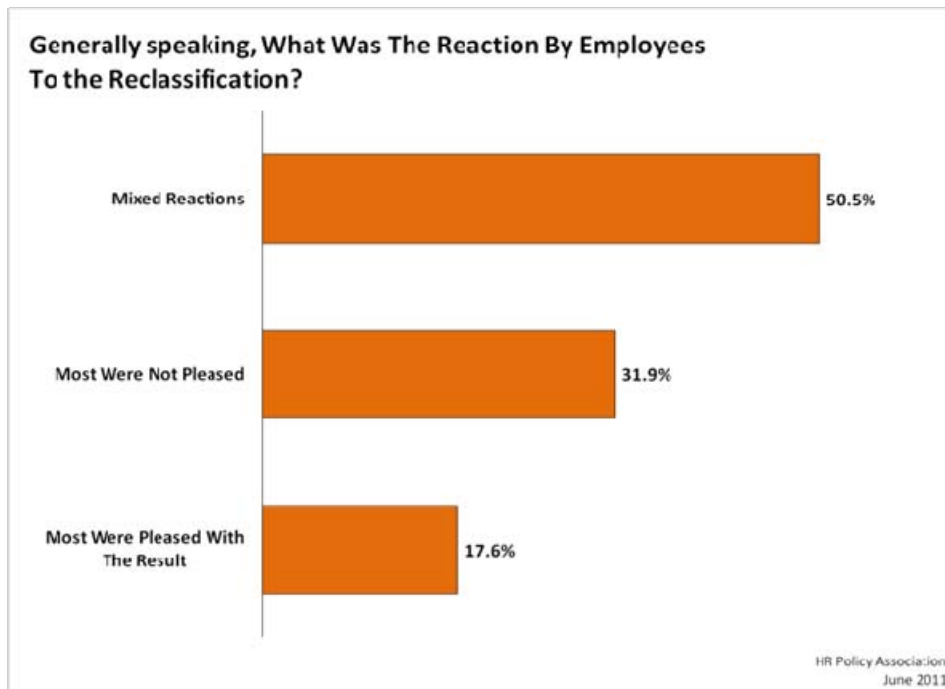
Class Actions. Because the Association’s members are typically large employers, 70.3 percent of those sued have had suits involving large and expensive class-action court cases, 37.3 percent of which involved over 1,000 people. (See Question 8 in the Appendix.)



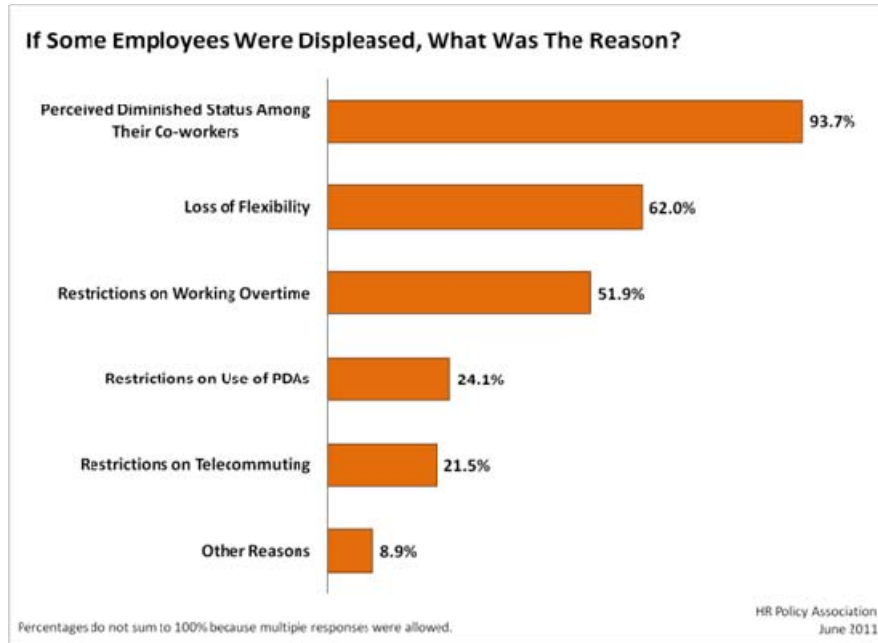
Salary Levels of Plaintiffs. Employers cannot assume that well-compensated salaried employees are necessarily exempt. Of the companies reporting litigation, 61.3 percent of them reported cases involving employees earning \$50,000 to \$100,000 per year, and 8.1 percent of them reported cases involving employees earning more than \$100,000 per year.



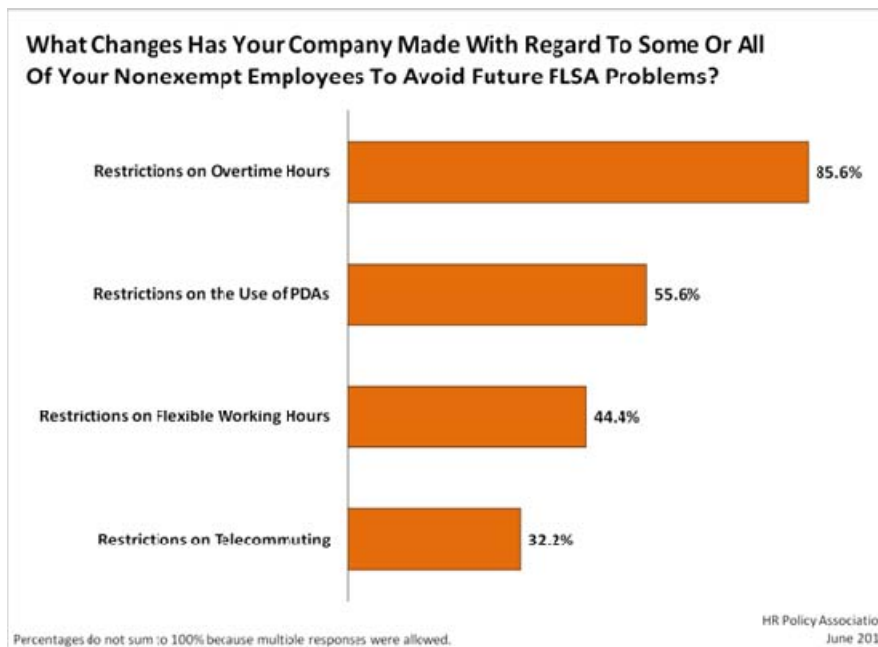
Reactions to Reclassifications. Significantly, more companies reported that employees were generally unhappy with being reclassified as non-exempt (31.9 percent) than were happy (17.6 percent).



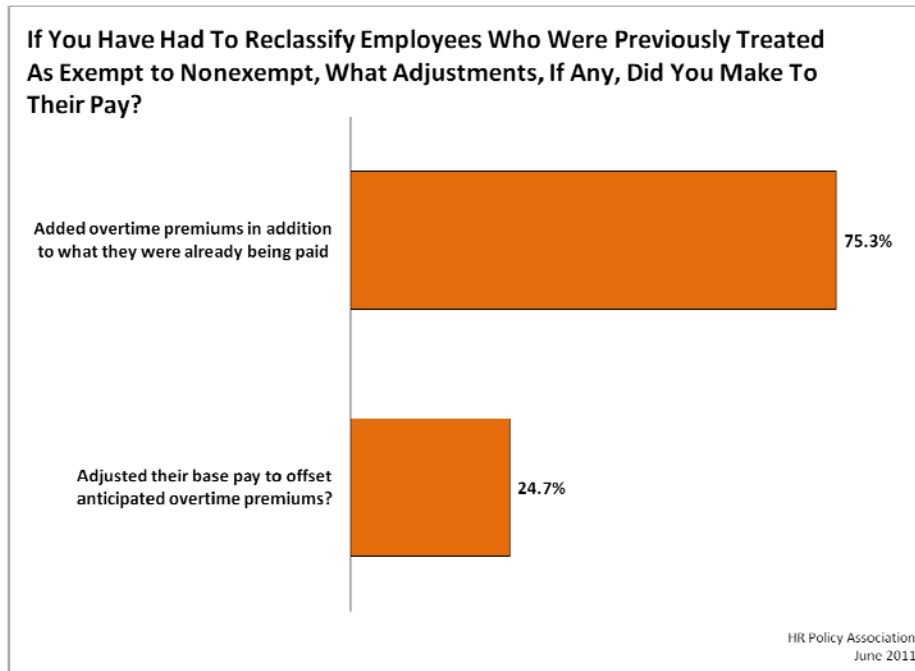
Reasons for Negative Reactions to Reclassification. The most common reason given for why employees resented being reclassified to non-exempt status was a diminished sense of status among their co-workers (93.7 percent); followed by the loss of workplace flexibility (62.0 percent), and restrictions on working beyond normal working hours (51.9 percent).



Restrictions on Flexible Workplace Policies. In order to protect themselves from future FLSA liability, companies have implemented a number of restrictions on non-exempt employees, including: restrictions on the use of PDAs (55.6 percent), restrictions on flexible working hours (44.4 percent), restrictions on telecommuting (32.2 percent), and restrictions on overtime hours (85.6 percent).



Impact on Pay and Hours. Being reclassified as a nonexempt employee who is eligible for overtime does not necessarily translate into higher pay. Almost 25 percent of the companies who reclassified employees also adjusted their base pay to offset the anticipated overtime premium, and as noted above, almost 86 percent placed restrictions on the amount of overtime hours nonexempt employees can work.



A Consensus-Based Approach is Needed. That a 1938 wage and hour law no longer fits 21st century pay and scheduling practices should come as no surprise. The disconnect will continue to grow as more and more inflexibilities are imposed on employers and their employees and more resources are wasted on enforcement efforts and adjudications involving anomalous and vague requirements.

APPENDIX

Additional Survey Results

1. How many employees does your company have in the United States?

	<i>Response Percent</i>
Less than 5,000	14.4%
5,000 to 20,000	35.6%
More than 20,000	50.0%

2. Which describes the industry or industries in which your company is engaged (answer all that apply)?

	<i>Response Percent</i>
Manufacturing	37.9%
Financial Services	19.3%
Wholesale and retail trade	18.6%
Health care	12.4%
Professional and business services	11.0%
Communication and information services	9.7%
Transportation & warehousing	6.9%
Utilities	6.9%
Leisure and hospitality	1.4%
Construction	1.4%
Educational services	0.0%

3. Roughly what percent of your company's employees are currently treated as exempt from the Fair Labor Standards Act?

	<i>Response Percent</i>
Less than 10 percent	6.3%
10 to 25 percent	26.4%
26 to 50 percent	35.4%
More than 50 percent	31.9%

4. Has your company been audited by the Department of Labor for FLSA compliance within the past 10 years?

	<i>Response Percent</i>
Yes	35.7%
Yes, frequently (i.e., 5 or more)	1.7%
No	62.6%

If so, what prompted the audit (answer all that apply)?

	<i>Response Percent</i>
Employee complaints about potential FLSA violations	77.5%
Alleged violations of other laws enforced by DOL	10.0%
Randomly selected by DOL	32.5%

5. What were the findings of the internal or DOL audit (answer all that apply)?

	<i>Response Percent</i>
Company found to be generally in compliance	61.7%
Employees were being treated as exempt who should be paid overtime	31.7%
Nonexempt employees were not having their hours properly tracked and compensated (e.g on-call time, travel time to or from work, etc.)	30.0%
Training time not properly being Compensated	5.0%
Other (please specify)	18.3%

6. Has your company been sued within the past 10 years for alleged federal FLSA violations?

	<i>Response Percent</i>
Yes	29.2%
Yes, more than once, less than four times	14.2%
Yes, four or more times	12.4%
No	44.2%

7. If yes, were they (check all that apply):

	<i>Response Percent</i>
Single plaintiff case(s)	54.7%
Multi-plaintiff case(s)	32.8%
Class-action case(s)	70.3%

8. If you have defended a class action, how many potential class members were involved?

	<i>Response Percent</i>
Less than 100	29.4%
100 to 1000	33.3%
Over 1000	37.3%

9. Did any of the lawsuits involve alleged misclassification of exempt employees?

	<i>Response Percent</i>
Yes	81.0%
No	19%

10. Has your company been sued in the past 10 years for alleged violations of state wage and hour laws where the same activity may not have constituted an FLSA violation?

	<i>Response Percent</i>
Yes	39.0%
No	61.0%