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FLSA & Temporary (Contract) Employees

In recent years there has developed a fairly common practice of employers contracting for employees from third-party "employee leasing" firms. Such workers include traditional "temporary" clerical employees (Manpower, Kelly), as well as longer-term employees who may provide a variety of clerical, technical or even management services.

Unless the workers under such plans are truly "independent contractors" (and this is relatively rare under the law), they are employees, either of the "employee leasing" company, or the "recipient company," or both. Sometimes such employees' FLSA overtime rights have "fallen through the cracks" because of the "contract" nature of their employment. However, as employees, they are either governed by the FLSA or they are not, and if they are they are either exempt or nonexempt under the regular FLSA rules. If such employees are nonexempt, they are entitled to overtime pay if and when they actually work more than 40 hours in a work week.

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