

MAKING A DIFFERENCE IN
PEOPLE'S LIVES:
WAGE AND HOUR JOB STUDIES

Cristina Banks, PhD

Making a Difference in People's Lives



- Short Primer on the Fair Labor Standards Act 1938 and State Wage and Hour Laws
- Short Primer on Job Analysis
- New Applications of Job Analysis in the Context of Wage and Hour Laws
 - ▣ Classification of Jobs as “Exempt”
 - ▣ “On-Duty Lunches” for Non-Exempt Employees
 - ▣ Tip-Pooling

The Law



- Fair Labor Standards Act 1938
 - ▣ Sets a minimum wage
 - ▣ Sets limits to work hours and establishes work rules (e.g., child labor work hours)
 - ▣ Provides overtime pay for work over 40 hours/wk
- State Wage and Hour Laws
 - ▣ Sets own rules for overtime pay
 - ▣ Provides meal and rest breaks and an extra hour of pay if not provided (CA only)
 - ▣ Prevents “agents of management” from sharing in collective tip pools

Specific Issues To Be Resolved



- Is a job properly classified as “exempt” or “non-exempt?”
- Can an hourly manager take a 30-minute uninterrupted meal period off-premises?
- Is an hourly manager an “agent of management?”
- Should “donning and doffing” time be compensated?
- How long does it take to close a store?

How can you answer these questions?

- By performing a job analysis.
- Job analysis: Systematic study of the content of a job.
- Data gleaned from a job analysis:
 - ▣ What specific tasks and activities are performed by job incumbents.
 - ▣ How much time it takes to perform each task/activity.
 - ▣ How much time is spent on non-work activities.
 - ▣ How job incumbents differ in how they perform the same job.

How these questions can be answered:



- **Exempt or non-exempt job?**

- How much time is spent on exempt work in a work week?

- **Can a manager leave the store to take a lunch?**

- How often are there 30-minute periods in a shift where the manager performs non-critical tasks?

- **Is the manager an “agent?”**

- What is the overlap in tasks performed with employees who share in the tipping pool?

Questions answered:



- **Donning and doffing time compensated?**
 - How much time does it take to put on uniform/equipment before work begins? To take off uniform/equipment when work ends?
- **How long to close a store?**
 - How much time does it take to perform closing tasks while on-the-clock and off-the-clock?

Typical Approaches to Job Analysis

- Purpose is to write a job description and to derive job specifications.
- Information collected by interviews, observations, critical incidents, and job questionnaires.
- Information collected from high-performing incumbents and their managers/supervisors.
- Variability in responses assumed to be either error in reporting or variation in sources.
- High Inter-rater agreement is desired.
- Result: Generalized view of the important and frequently performed tasks composing the job.

An Atypical Approach to Job Analysis

- Individual differences in how job incumbents perform their job are real and provide important data.
- Purpose is to obtain individual-level measurement of work performed.
- Inter-rater agreement is not assumed; reliability of report is evaluated by methods applied to tests and inventories which assume individual differences.
- Tasks can be grouped into categories for various purposes.
- Time spent on tasks or groups of tasks is more informative than what job incumbents in the job generally do.
- Result: Specific data on what each incumbent actually does on the job and how much time is spent on each task or group of tasks.

New Application of Job Analysis: Properly Classifying a Job as “Exempt”

- Exempt from the FLSA or Wage and Hour Laws means that a job incumbent is not covered by these laws.
- Exemption criteria:
 - ▣ Earns more than \$455/week or \$100,000/year
 - ▣ Customarily and regularly performs one or more of the exempt duties of an executive, administrative or professional employee
 - ▣ Exercises discretion and independent judgment

Further Elaboration of Exemptions



- Executive Exemption:

- Primarily engaged or whose primary duty is management of the enterprise
- Customarily and regularly directs the work of two or more other employees
- Has the authority to hire and fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change in status of other employees are given particular weight

Further Elaboration (cont.)



- Professional Exemption

- Primary duty is the performance of work requires advanced knowledge in a field of science or learning
- Advanced knowledge is customarily acquired by a prolonged course of specialized intellectual instruction
- Or work requires invention, imagination, originality or talent in a “recognized field of artistic or creative endeavor”

Application to Misclassification Cases



- Create a comprehensive task list describing all possible tasks a manager could perform.
- Categorize tasks as either “exempt” or “non-exempt.”
- Sort tasks into homogeneous clusters, each cluster capturing a specific part of the job and having only exempt or non-exempt tasks—Task Areas.
- Group Task Areas into broader clusters, each cluster capturing a major aspect of the job—Work Categories.

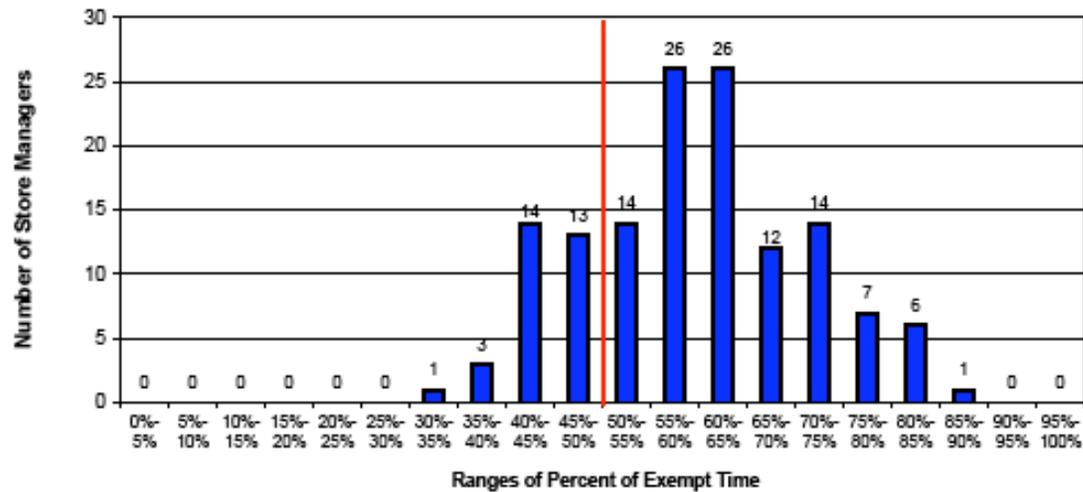
Collecting Data on Time Spent on Exempt Work

- Create a self-report job questionnaire that obtains incumbents' responses to questions about relative time spent.
 - ▣ Ask incumbents to report time spent on each task relative to all other tasks.
 - ▣ Then ask incumbents to report percentage of time spent on Work Categories and then on Task Areas within Work Categories.
 - ▣ Add up percentages of time spent for exempt vs. non-exempt Task Areas.
- Result: Total time spent on exempt work for each incumbent.

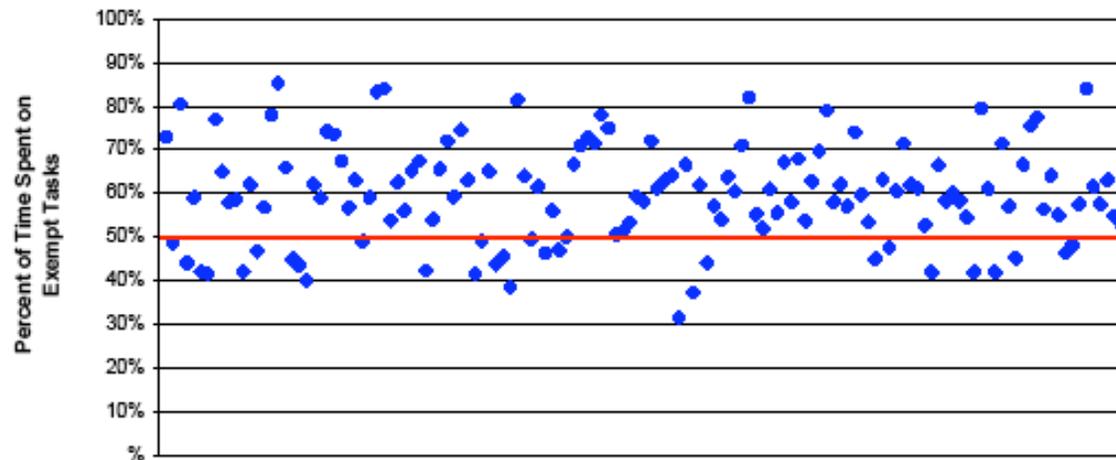
**SUMMARY OF STORE MANAGERS'
PERCENT OF TIME SPENT WITHIN EACH TASK AREA**
Average, Minimum, Maximum, & Standard Deviation across
137 Store Managers

Work Category	Task Area	Average % Time		Min %	Max %	St. Dev.
		Exempt	Non-Exempt			
SALES						
	Selling and Renting Merchandise		12.0	0.0	42.5	7.4
	Overseeing Sales	9.6		0.0	27.3	4.5
	Delivering and Picking-up Merchandise		2.7	0.0	12.0	2.8
COLLECTIONS						
	Performing Collections Activities		12.0	0.0	40.0	8.0
	Overseeing Collections	13.5		0.0	40.0	5.9
INVENTORY						
	Tracking and Processing Inventory		5.2	0.0	25.0	3.7
	Controlling and Maintaining Inventory	5.9		0.0	25.0	3.8
OPERATIONS						
	Planning and Scheduling Work	5.6		0.0	27.0	4.8
	Analyzing Business Performance	5.7		0.0	25.0	4.2
EMPLOYEE RELATIONS						
	Managing Personnel Activities	3.8		0.0	18.0	2.9
	Training and Managing Coworker Performance	8.3		0.0	30.0	5.3
CASH AND SECURITY						
	Handling Cash and Security		3.9	0.0	25.0	3.0
	Controlling Cash, Security and Safety	4.0		0.0	25.0	2.9
STORE MAINTENANCE						
	Cleaning and Maintaining Store		4.5	0.0	18.8	3.9
	Overseeing Store and Vehicle Appearance and Maintenance	5.4		0.0	22.5	3.9
TOTAL PERCENT EXEMPT		59.7		31.4	85.3	11.6
TOTAL PERCENT NON-EXEMPT			40.3	14.8	68.6	11.6

**Distribution of Percent of Time Spent on Exempt Tasks
for All Store Managers**



**Percent of Time Spent on Exempt Tasks
for Each Store Manager**



The red line drawn at 50% illustrates that 31 Store Managers spent 50% or less of their time on exempt tasks, and 108 Store Managers spent more than 50% of their time on exempt tasks.

Application to On-Duty Lunches

- Create a comprehensive task list describing all possible tasks a manager could perform.
- Classify each task into one of five categories:
 - **A:** Mgr tasks that are not predictable or flexible
 - **B:** Mgr tasks that are predictable but not flexible
 - **C:** Mgr tasks that are not predictable but are flexible
 - **D:** Mgr tasks that are both predictable and flexible
 - **E:** Tasks that any employee could do
 - **F:** Tasks that any employee could do but manager has to do them and are not flexible

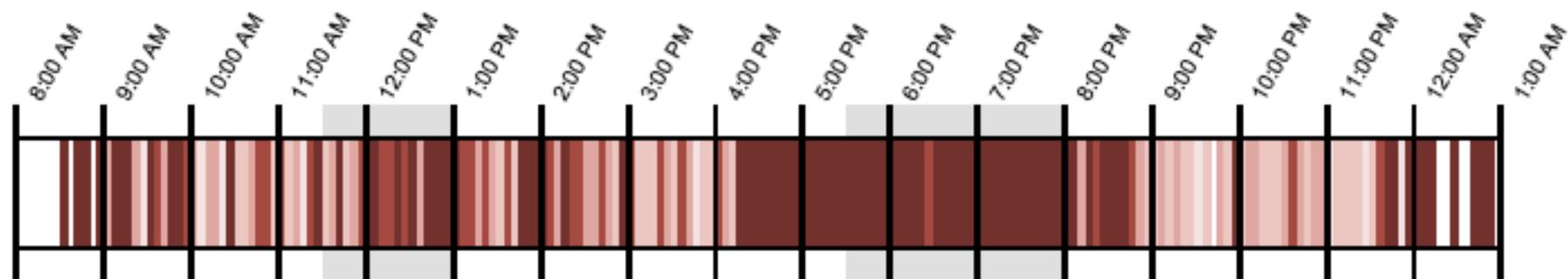
On-Duty Lunches (cont.)

- Observe incumbents on shift and record tasks performed and time spent on each task.
- Add up all time spent on A, B, C, D, E, and F tasks.
- Plot on a timeline from start to end of observation when each task occurred and for how long.
- Identify 30-minute periods in which C, D, and E tasks were performed without interruption by A, B, and F tasks.
- Result: A set of timelines, one for each incumbent, for which periods of at least 30 minutes could be spent outside the store.

SAMPLE - MANAGER STUDY

Timeline Indicating the Likelihood that an A, B or F Task will Be Performed Throughout the Day - Across all 35 Managers

A, B and F Tasks

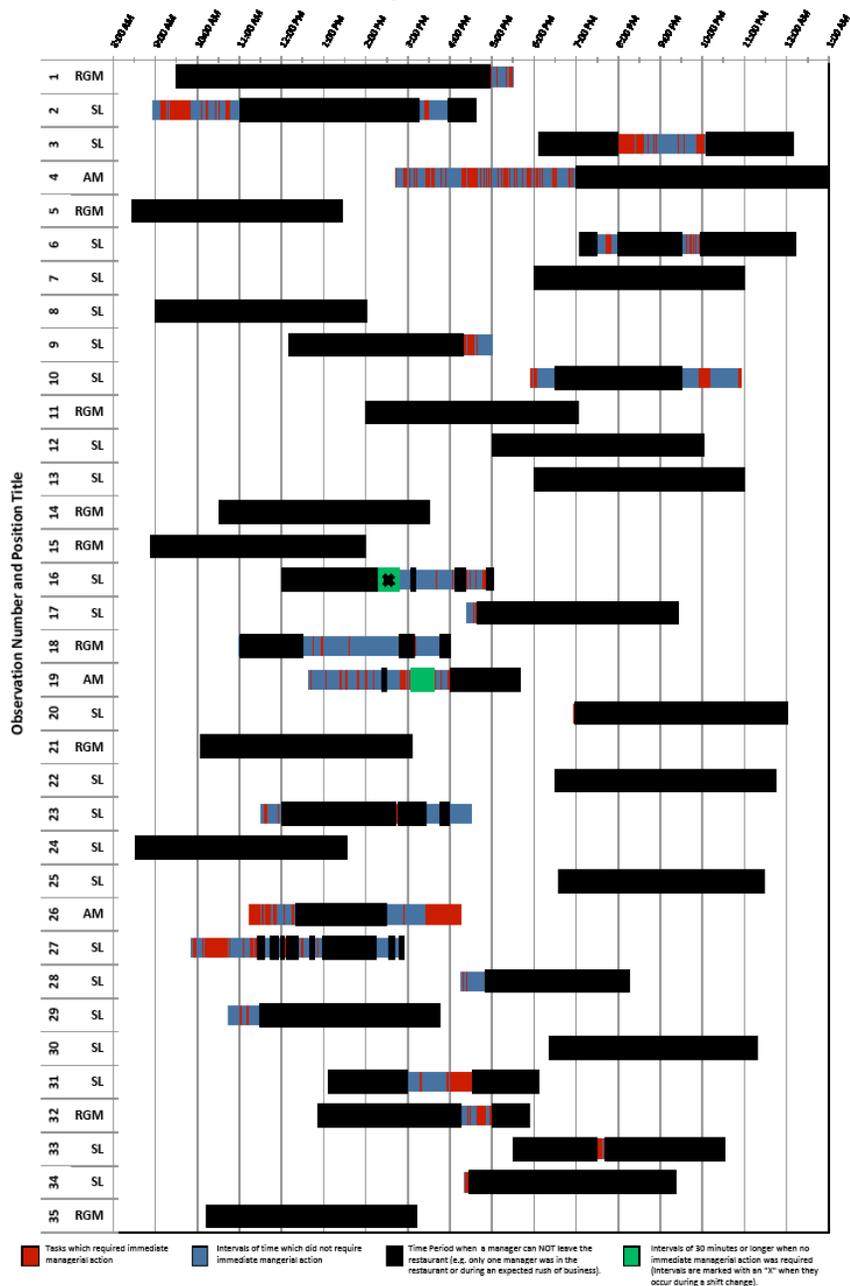


- Indicates that an A, B or F task occurred at least 1.0 time per manager being observed during that 5 min. interval
- Indicates that an A, B or F task occurred between 0.8 and 1.0 times per manager being observed during that 5 min. interval
- Indicates that an A, B or F task occurred between 0.6 and 0.8 times per manager being observed during that 5 min. interval
- Indicates that an A, B or F task occurred between 0.4 and 0.6 times per manager being observed during that 5 min. interval
- Indicates that an A, B or F task occurred between 0.2 and 0.4 times per manager being observed during that 5 min. interval
- Indicates that an A, B or F task occurred less than 0.2 times per manager being observed during that 5 min. interval
- Indicates typical rush periods

*Note: An A, B or F task is considered to have occurred if it began during the 5 min. interval

Sample - Manager Study

Summary of 35 Observations
Listed by Observation Number



Application to Tip Pooling

- Create a comprehensive task list describing all possible tasks a shift manager could perform.
- Classify each task as either a “barista” task or a “managerial” task.
- Observe shift managers during their shift and record tasks performed and time spent on each task.
- Add up all time spent on “barista” tasks and on “managerial” tasks.
- Calculate percentage of time spent performing barista work for each shift manager observed.
- Result: Total time spent performing tasks that were the same as incumbents who qualified for tip pooling.

Example: Overall Percent of Time in Each Job Code Area Across 20 Managers

PERCENT OF TIME SPENT IN EACH JOB CODE AREA
ACROSS 20 MANAGERS

JOB CODE AREAS		Minimum	Maximum	Average	Standard Deviation
Non-Managerial Barista Activities in Front of House					
1	Serving Customers & Preparing Orders in Front of House	18.6%	72.6%	45.4%	13.4%
2	Stocking and Maintaining Stations in Front of House	4.0%	27.0%	10.4%	5.4%
3	Cleaning and Maintaining Front of House	3.1%	24.7%	14.0%	6.5%
Managerial Activities					
4	Managing Customer Service in Front of House	0.0%	1.0%	0.3%	0.3%
5	Cash Handling in Front of House	0.0%	2.3%	0.8%	0.7%
6	Managing Stocking and Maintaining Stations in Front of House	0.0%	2.4%	0.6%	0.7%
7	Managing Cleaning and Maintaining Front of House	0.0%	3.5%	0.8%	1.0%
8	Front of House Employee Relations	0.0%	11.8%	1.7%	2.8%
Not Observed Back of House/Patio/Outside Activities					
9	Not Observed Back of House Activities	11.5%	55.6%	25.7%	12.7%
10	Not Observed Patio/Outside Activities	0.0%	1.1%	0.2%	0.4%
Total Time Performing Barista Activities in Front of House		42.4%	86.9%	69.8%	12.7%
Total Time Managerial Activities		0.8%	16.0%	4.2%	3.7%
Total Time Non-Observed BOH/Patio/Outside Activities		11.8%	55.6%	25.9%	12.6%
Total Work Time		100.0%	100.0%	100.0%	0.0%
Clock-Out Time		0:01:57	0:34:01	0:19:19	0:11:30

Conclusion



- Job analysis information about actual work performed was critical for answering key questions in wage and hour cases.
- As an expert, you can offer the court actual scientific data to support your conclusions—not opinions based judgment and experience.
- Well-constructed questionnaires and scientifically-conducted time studies generate reliable and valid data from which courts can understand and accept expert's findings.
- Many questions raised in wage and hour cases can be resolved through a carefully designed job analysis.
- Results of these studies greatly affect people's lives—plaintiffs and company owners/management. Settlements reach upwards to \$100 million dollars!

Conclusion



- Our work as I-Os is highly relevant to employees' day-to-day lives.
- There are many possibilities of new applications of job analysis in this area of the law—it just takes imagination!