



FAIR LABOR STANDARDS ACT

WHD

UNITED STATES DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION

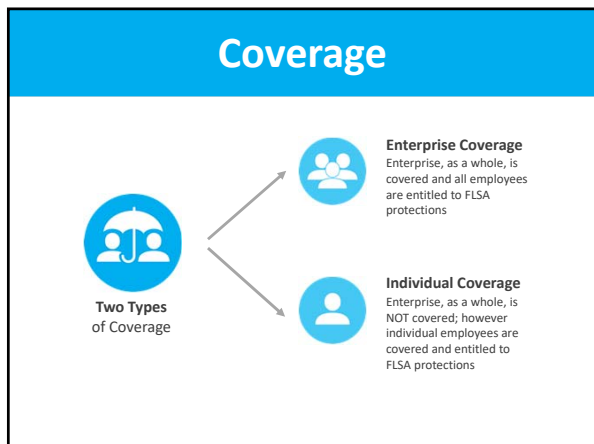
dol.gov/whd
1-866-487-9243

Major Provisions

 <u>Coverage</u>	 <u>Youth Employment</u>
 <u>Minimum Wage</u>	 <u>Recordkeeping</u>
 <u>Overtime</u>	

Employment Relationship

In order for the FLSA to apply, there must be an employment relationship between the “employer” and the “employee”



Enterprise Coverage

Enterprise coverage may apply to a business if:

- It engages in commercial activities that result in no less than \$500,000 in annual dollar volume (ADV), sales or total business, and
- It has two or more employees

Individual Coverage

Includes workers engaged in:


- Interstate commerce, the production of goods for interstate commerce, or an activity that is closely related and directly essential to such production
- Domestic service, including home care
- Employees of non-profits may also be covered individually

Individual Coverage

Interstate commerce includes:

- Making out-of-state phone calls, or
- Receiving, sending interstate mail or electronic communications, or
- Ordering, receiving goods from out-of-state suppliers, or
- Handling credit card transactions, performing accounting or bookkeeping for such activities

Minimum Wage



Covered, non-exempt employees must be paid at least the federal minimum wage, in cash or the equivalent, free and clear, for all hours worked

Current federal minimum wage


\$7.25

Minimum Wage


Deductions from pay are illegal if:

- Items are primarily for the benefit or convenience of employer, and
- Deduction reduces employee earnings below required minimum wage

Examples of illegal deductions: deductions for tools, damages to property, cash register shortages

FACT SHEET:
Deductions

Minimum Wage




Hours Worked

An employee must be paid for all of the time considered to be "hours worked" under the FLSA.

This may include time spent engaged to wait, on-call, in training, or travelling, as well as sleep time.

Work not requested but "suffered or permitted" is work time.



Minimum Wage

Rest and Meal Periods

- Short rest breaks (20 min or less) are compensable
- Bona fide meal periods (typically 30 minutes or more) need not be paid as hours worked
- Worker must be completely relieved of duty for meal period not to be compensable time.

Minimum Wage

Training Time

Time spent in meetings, lectures or training is considered *hours worked* and must be paid, unless:

- Attendance outside regular work hours
- Attendance voluntary
- Course, lecture, meeting not job related, **and**
- Employee does not perform any productive work

Minimum Wage

Travel Time

- Ordinary home to work travel is *not* compensable work time
- Travel between job sites during normal work day *is* work time and thus compensable hours worked
- Special rules apply to travel away from employee's home community

Minimum Wage

Hours Worked Summary and Common Violations

- **Suffered or Permitted:** working "off the clock"
- **Waiting Time:** engaged to wait
- **On-Call Time:** not free from duty or employer control
- **Meal and Rest Periods:** not free from duty
- **Training Time:** unpaid training during work time
- **Travel Time:** unpaid travel between job sites
- **Sleep Time:** deduct for sleep in less than 24-hour shift

Overtime



Covered, non-exempt employees must receive one and one-half times their regular rate of pay for all hours worked over forty in a workweek

All time that is hours worked must be counted when determining overtime hours worked.



Overtime



- Compliance determined by workweek
- Each workweek stands alone
- Workweek is 7 consecutive 24-hour periods (168 hours)

Overtime

Regular Rate

- Determined by dividing total earnings in workweek by total number of hours worked in workweek

Total Compensation ÷ Total Hours Worked = RR

- *Regular Rate* may not be less than the applicable minimum wage
- *Total earnings include commissions, certain bonuses, and cost of room, board, and other facilities provided primarily for the employee's benefit*

Overtime

Exclusions from the *Regular Rate*

- Gifts, *discretionary* bonuses
- Payments for time not worked
- Reimbursements for expenses
- Profit sharing plans, stock options
- Retirement and insurance plan contributions
- Overtime premium payments

Overtime

Regular Rate and Premium Pay for OT Hours

STEP 1: Total compensation paid in a workweek (minus statutory exclusions) divided by total hours worked in the workweek

Total Compensation ÷ Total Hours = RR

STEP 2: RR x .5 = Half-time Premium Pay per OT Hour

STEP 3: (Half-time) Premium Pay Rate x Overtime Hours in the Workweek = Overtime Compensation Due

Overtime

Exercise: Production Bonus

Hourly Rate:	\$9.00	48H x \$9 =	\$432
Bonus per week:	\$10.00	\$432 + \$10 =	\$442
Hours worked:	48	\$442 ÷ 48H =	\$9.21 RR
		\$9.21 x .5 =	\$4.61
		\$4.61 x 8H =	\$36.88 OT
Total compensation for week:		\$442 + \$36.88 =	\$478.88

Overtime

Exercise: Different Hourly Rates

Janitor Rate:	\$8.50	21H x \$8.50 =	\$178.50
Janitor Hours:	21	26H x \$9.00 =	\$234.00
Cook Rate:	\$9.00	\$178.50 + \$234 =	\$412.50
Cook Hours:	26	\$412.50 ÷ 47H =	\$8.78 RR
Total Hours:	47	\$8.78 x .5 =	\$4.39
		\$4.39 x 7H =	\$30.73 OT
Total compensation for week:		\$412.50 + \$30.73 =	\$443.23

Overtime

Exercise: Piece Rates

Piece Rate Wages	46H @ Piece Rate:	\$391.00
for week :	\$391.00	4H x \$7.25 = \$29.00
Piece Rate Hours:	46	Production Bonus: \$12.50
Wait Time Rate:	\$7.25	Total ST Earnings: \$432.50
Wait Time Hours:	4	\$432 ÷ 50H = \$8.65 RR
Production Bonus		\$8.65 x .5 = \$4.33
for week :	\$12.50	\$4.33 x 10H = \$43.30 OT
Total Hours Worked:	50	
Total compensation for week:	\$432.50 + \$43.30 = \$475.80	

Overtime

Exercise: Salary for Fixed Hours

Weekly Salary for	$\$420 \div 40 =$	\$10.50 RR
40 hours:	\$420.00	$\$10.50 \times 1.5 =$ \$15.75 OT Rate
Fixed Hours:	40	$\$15.75 \times 8H =$ \$126.00 OT
Hours Worked		$\$420 + \$126 =$ \$546.00 Total
that workweek:	48	compensation due, including OT

Overtime

Exercise: Fixed Salary for Fluctuating Hours

Weekly Salary-for all	$\$420 \div 49H =$	\$8.57 RR
hours worked:	\$420.00	
		Additional Half-Time Rate:
<u>Week 1</u>		$\$8.57 \times .5 =$ \$4.29
Hours Worked:	49	$\$4.29 \times 9H =$ \$38.61 OT
		$\$420 + \$38.61 =$ \$458.61 Total
		compensation due for Week 1

Overtime

Exercise: Fixed Salary for Fluctuating Hours

Weekly Salary-for all				
hours worked :	\$420.00	$\$420 \div 41H =$	$\$10.24$	RR

<u>Week 2</u>		Additional Half-Time Rate:		
Hours Worked:	41	$\$10.24 \times .5 =$	$\$5.12$	
		$\$5.12 \times 1H =$	$\$5.12$	OT
		$\$420 + \$5.12 =$	$\$425.12$	Total compensation due for Week 2

Overtime


Exemptions

There are numerous exemptions from the minimum wage and/or overtime standards of the FLSA

One of the most common FLSA minimum wage and overtime exemptions is often called the “541,” “white collar” or “EAP” exemption

Overtime


Three Tests for the “White Collar” Exemptions



Salary Basis

Salary Level

Job Duties



FACT SHEET: Blue Collar Workers

Overtime

On July 26, 2017, the Department of Labor published a Request for Information (RFI) regarding the Overtime Final Rule, which was published on May 23, 2016, asking for public input on what changes the Department should propose. That comment period has ended and the Department is reviewing those submissions.

On August 31, 2017, U.S. District Court Judge Amos Mazzant granted summary judgment against the Department of Labor in consolidated cases challenging the Overtime Final Rule. The court held that the Final Rule's salary level exceeded the Department's authority, and concluded that the Final Rule is Invalid.

On October 30, 2017, the Department of Justice, on behalf of the Department of Labor, appealed the district court's decision to the U.S. Court of Appeals for the Fifth Circuit. On November 6, 2017, the Fifth Circuit granted the government's motion to hold the appeal in abeyance while the Department of Labor undertakes further rulemaking to determine what the salary level should be.

Overtime

Salary Level Test

For most employees the minimum salary level required for exemption is **\$455.00 per week**.

It may be paid in equivalent amounts for longer periods.

Bi-weekly:	\$910.00
Semi-monthly:	\$985.83
Monthly:	\$1971.66

Note: Until the Department issues its final rule, it will enforce the part 541 regulations in effect on November 30, 2016, including the \$455 per week standard salary level.

Overtime

Common Overtime Violations

- **Regular Rate:** Failure to include production bonuses, shift differentials, piece rates in determining the regular rate for calculating OT compensation due
- **Combined hours, rates for dual jobs:** Failure to combine all hours in dual jobs or multiple sites of single employer
- **Tipped Employees:** Failure to calculate correct cash OT payment

Overtime

Common Overtime Violations

- **“White Collar” Exemptions:** Misapplication of exemption, or improper assumption that all salaried employees are exempt
- **Deductions:** Improper deductions in OT weeks
- **Misclassification:** Improper treatment of employee as independent contractor
- **Hours worked:** Failure to record, pay for all hours worked
- **State Law:** Confusion between state and federal law

Youth Employment




Federal youth employment rules set both hours and occupational standards for youth




Youth Employment

- **16 and 17 year olds**
Unlimited hours; may work in any occupation other than those declared hazardous by Secretary of Labor
- **14 and 15 year olds**
May work outside school hours and for limited periods of time; only non-manufacturing, non-hazardous jobs, and specific conditions apply
- **Children under 14**
With limited exceptions, no employment permitted in covered, non-agricultural occupations

Recordkeeping



- All employers subject to any provision of the FLSA must make, keep, and preserve certain records
- Time clocks are not required and records need not be kept in any particular form
- Every covered employer must keep basic records for each worker, with additional requirements for non-exempt workers



FACT SHEET:
Recordkeeping
Requirements

Recordkeeping

“Basic records” that a covered employer must keep for each non-exempt worker include:

- Full name, sex , DOB if younger than 19
- Regular rate of pay, total hours worked, total daily or weekly straight-time earnings, **total overtime compensation, if any**
- Deductions, date of payment and pay period for payment

Recordkeeping

Posting

Covered employers must post a notice explaining the FLSA, as prescribed by the Wage and Hour Division, in a conspicuous place such as a lunch room or employee lounge area.

Download the poster electronically at :
www.dol.gov/oasam/boc/osdbu/sbrefa/poster/matrix.htm

To request by phone call:
1-866-487-9243

FLSA Enforcement

Limits of the FLSA
FLSA does **NOT** require

- Vacation, holiday, severance, sick pay
- Meal or rest periods, holidays off, vacations
- Premium pay for weekend or holiday work
- Discharge notice, reason for discharge
- Limit on number of hours or days employees 16 years or older may work
- Pay raises, fringe benefits

FLSA Enforcement



- Carried out by the Wage and Hour Division in the U.S. and territories
- If violations found, the Wage and Hour Division secures agreement to comply in future, supervises voluntary payment of back pay as applicable



FACT SHEET:
Visits to
Employers

FLSA Enforcement

- 2-year statute of limitations generally applies to back pay recovery; if willful violation, a 3-year statute of limitations may apply
- If voluntary agreement not obtained, the Wage and Hour Division may bring suit to restrain employer from violating FLSA and/or obtain back wages and liquidated damages
- Employees may file private suit for back pay, liquidated damages, plus attorney and court fees

FLSA Enforcement

Penalties

- Willful violations may be prosecuted with fines amounting to thousands of dollars
- Violators of youth employment are subject to civil money penalties
- Willful, repeat violations of minimum wage or overtime requirements subject to civil money penalties for each violation

[Civil Money Penalties Chart](#)

FLSA Compliance Assistance

[Fair Labor Standards Act of 1938](#)

[Regulations](#)

[FLSA Poster.pdf](#)

[Handy Reference Guide.pdf](#)

[Frequently Asked Questions \(FAQs\)](#)

[Fact Sheets](#)

[Opinion Letters](#)

Visit the WHD home page: www.dol.gov/whd

FLSA Compliance Assistance

- Call WHD toll free and confidential information and helpline:
1-866-4US-WAGE (1-866-487-9243)
- Call or visit the nearest Wage and Hour Division Office: [WHD Offices](#)
- Employment Laws Assistance for Workers and Small Businesses (ELAWS): [Elaws](#)

Wage and Hour Division

Disclaimer

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