

HR Insights

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Fair Labor Standards Act Reference Guide

The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, recordkeeping and child labor standards affecting full-time and part-time workers in the private sector and in federal, state and local governments.

The Wage and Hour Division (WHD) of the U.S. Department of Labor (DOL) administers and enforces the FLSA with respect to private employment, state and local government employment and federal employees of the Library of Congress, U.S. Postal Service, Postal Rate Commission, and the Tennessee Valley Authority. The FLSA is enforced by the U.S. Office of Personnel Management for the employees of other executive branch agencies, and by the U.S. Congress for covered employees of the legislative branch.

Special rules apply to state and local government employment involving fire protection and law enforcement activities, volunteer services and compensatory time off instead of cash overtime pay.

Basic Wage Standards

Covered, nonexempt workers are entitled to a minimum wage of **\$7.25 per hour**. Special provisions apply to workers in American Samoa and the Commonwealth of the Northern Mariana Islands. Nonexempt workers must be paid overtime pay at a rate of not less than one and one-half times their regular rate after 40 hours of work in a workweek.

Wages required by the FLSA are due on the regular payday for the pay period covered. Deductions made from wages for items such as cash or merchandise shortages, employer-required uniforms and tools of

the trade are not legal to the extent that they reduce the wages of employees below the minimum rate required by the FLSA or reduce the amount of overtime pay due under the FLSA.

The FLSA contains some exemptions from these basic standards. Some apply to specific types of businesses; others apply to specific kinds of work.

While the FLSA does set basic minimum wage and overtime pay standards and regulates the employment of minors, there are a number of employment practices which the FLSA does not regulate.

For example, the FLSA does NOT require:

1. Vacation, holiday, severance or sick pay;
2. Meal or rest periods, holidays off or vacations;
3. Premium pay for weekend or holiday work;
4. Pay raises or fringe benefits; or
5. A discharge notice, reason for discharge or immediate payment of final wages to terminated employees.

The FLSA does not provide wage payment or collection procedures for an employee's usual or promised wages or commissions in excess of those required by the FLSA. However, some states have laws under which such claims (sometimes including fringe benefits) may be filed.



The FLSA also does not limit the number of hours in a day or days in a week an employee may be required or scheduled to work, including overtime hours, if the employee is at least 16 years old.

The above matters are for agreement between the employer and the employees or their authorized representatives.

Who Is Covered?

Employees may be covered by the FLSA in two ways: through “enterprise coverage” or through “individual coverage.”

Enterprise coverage applies to employees who work for businesses or organizations that have at least two employees and:

1. Whose annual gross volume of sales made or business done is at least \$500,000 (exclusive of excise taxes at the retail level that are separately stated); or
2. Is a hospital, an institution primarily engaged in the care of the sick, the aged or the mentally ill who reside on the premises; a school for mentally or physically disabled or gifted children; a preschool, an elementary or secondary school or an institution of higher education (whether operated for profit or not for profit) or a government agency.

Any enterprise that was covered by the FLSA on March 31, 1990, and that ceased to be covered because of the revised \$500,000 test continues to be subject to the child labor, overtime pay and recordkeeping provisions of FLSA.

Individual coverage applies to employees who are “engaged in commerce or in the production of goods for commerce.” Examples of employees who are involved in interstate commerce include those who: produce goods (such as a worker assembling components in a factory or a secretary typing letters in an office) that will be sent out of state, regularly make telephone calls to people located in other states, handle records of interstate transactions, travel to other states for their jobs, and do janitorial work in buildings where goods are produced for shipment outside the state.

Individual coverage may apply even when there is no enterprise coverage.

Also, domestic service workers, such as day workers, housekeepers, chauffeurs, cooks or full-time babysitters, are covered if:

- Their cash wages from one employer in calendar year 2010 are at least \$1,700 (this calendar year threshold is adjusted by the Social Security Administration each year); or
- They work a total of more than eight hours a week for one or more employers.

Tipped Employees

Tipped employees are individuals engaged in occupations in which they customarily and regularly receive more than \$30 per month in tips. The employer may consider tips as part of wages, but the employer must pay at least \$2.13 per hour in direct wages.

An employer who elects to use the tip credit provision must inform the employee in advance and must be able to show that the employee receives at least the applicable minimum wage (see above) when direct wages and the tip credit allowance are combined. If an employee’s tips combined with the employer’s direct wages of at least \$2.13 an hour do not equal the minimum hourly wage, the employer must make up the difference. Also, employees must retain all of their tips, except to the extent that they participate in a valid tip pooling or sharing arrangement.

Employer-furnished Facilities

The reasonable cost or fair value of board, lodging or other facilities customarily furnished by the employer for the employee’s benefit may be considered part of wages.

Industrial Homework

The performance of certain types of work in an employee’s home is prohibited unless the employer has obtained prior certification from the Department of Labor (DOL). Restrictions apply in the manufacture of knitted outerwear, gloves and mittens, buttons and buckles, handkerchiefs, embroidery and jewelry (where safety and health hazards are not involved). The manufacture of women’s apparel (and

jewelry under hazardous conditions) is generally prohibited. If you have questions on whether a certain type of work is restricted, who is eligible for a homework certificate or how to obtain a certificate, you may contact the local WHD office.

Subminimum Wage Provisions

The FLSA allows employment of certain individuals at wage rates below the statutory minimum. Such individuals include student-learners (vocational education students) as well as full-time students in retail or service establishments, agriculture or institutions of higher education. Also included are individuals whose earning or productive capacity is impaired by a physical or mental disability, including those related to age or injury, for the work to be performed. Employment at less than the minimum wage is authorized to prevent curtailment of opportunities for employment. Such employment is permitted only under certificates issued by WHD.

Youth Minimum Wage

A minimum wage of not less than \$4.25 per hour is permitted for employees under 20 years of age during their first 90 consecutive calendar days of employment with an employer. Employers are prohibited from taking any action to displace employees in order to hire employees at the youth minimum wage. Partial displacements, such as reducing employees' hours, wages or employment benefits, are also prohibited.

Exemptions

Some employees are exempt from the overtime pay provisions or both the minimum wage and overtime pay provisions. Because exemptions are generally narrowly defined under the FLSA, an employer should carefully check the exact terms and conditions for each. Detailed information is available from local WHD offices.

The following are examples of exemptions which are illustrative, but not all-inclusive. These examples do not define the conditions for each exemption.

Exemptions from Both Minimum Wage and Overtime Pay

1. Executive, administrative and professional employees (including teachers and academic

administrative personnel in elementary and secondary schools), outside sales employees and employees in certain computer-related occupations (as defined in DOL regulations);

2. Employees of certain seasonal amusement or recreational establishments, employees of certain small newspapers, seamen employed on foreign vessels, employees engaged in fishing operations and employees engaged in newspaper delivery;
3. Farm workers employed by anyone who used no more than 500 "man-days" of farm labor in any calendar quarter of the preceding calendar year;
4. Casual babysitters and persons employed as companions to the elderly or infirm.

Exemptions from Overtime Pay Only

1. Certain commissioned employees of retail or service establishments; auto, truck, trailer, farm implement, boat or aircraft sales-workers; or parts-clerks and mechanics servicing autos, trucks or farm implements who are employed by non-manufacturing establishments primarily engaged in selling these items to ultimate purchasers;
2. Employees of railroads and air carriers, taxi drivers, certain employees of motor carriers, seamen on American vessels and local delivery employees paid on approved trip rate plans;
3. Announcers, news editors and chief engineers of certain non-metropolitan broadcasting stations;
4. Live-in domestic service workers;
5. Employees of motion picture theaters; and
6. Farm workers.

Partial Exemptions from Overtime Pay

1. Partial overtime pay exemptions apply to employees engaged in certain operations on agricultural commodities and to employees of certain bulk petroleum distributors.
2. Hospitals and residential care establishments may adopt, by agreement with their employees, a 14-day work period instead of the usual seven-day workweek if the employees are paid at least time and one-half their regular rates for hours worked

over eight in a day or 80 in a 14-day work period, whichever is the greater number of overtime hours.

3. Employees who lack a high school diploma or who have not attained the educational level of the eighth grade can be required to spend up to 10 hours in a workweek engaged in remedial reading or training in other basic skills without receiving time and one-half overtime pay for these hours. However, the employees must receive their normal wages for hours spent in such training and the training must not be job-specific.
4. Public agency fire departments and police departments may establish a work period ranging from seven to 28 days in which overtime need only be paid after a specified number of hours in each work period.

Child Labor Provisions

The FLSA child labor provisions are designed to protect the educational opportunities of minors and prohibit their employment in jobs and under conditions detrimental to their health or well-being. The provisions include restrictions on work hours for minors under age 16 and hazardous occupations for both farm and non-farm jobs declared by the Secretary of Labor to be too dangerous for minors to perform. Further information on prohibited occupations is available on the DOL's YouthRules! [website](#).

Nonagricultural Jobs (Child Labor)

Regulations governing child labor in non-farm jobs differ somewhat from those pertaining to agricultural employment. In non-farm work, the permissible jobs and hours of work, by age, are as follows:

1. Youths 18 years or older may perform any job, whether hazardous or not, for unlimited hours;
2. Youths 16 and 17 years old may perform any nonhazardous job for unlimited hours; and
3. Youths 14 and 15 years old may work outside school hours in various nonmanufacturing, non-mining, nonhazardous jobs under the following conditions: no more than three hours on a school day, 18 hours in a school week, eight hours on a non-school day or 40 hours in a non-school week. Also, work may not

begin before 7 a.m. nor end after 7 p.m., except from June 1 through Labor Day, when evening hours are extended to 9 p.m. Under a special provision, youths 14 and 15 years old enrolled in an approved Work Experience and Career Exploration Program (WECEP) may be employed for up to 23 hours in school weeks and three hours on school days (including during school hours.) In addition, academically oriented youths enrolled in an approved Work-Study Program (WSP) may be employed during school hours.

Fourteen is the minimum age for most non-farm work. However, at any age, youths may deliver newspapers; perform in radio, television, movie or theatrical productions; work for parents in their solely-owned non-farm business (except in mining, manufacturing or on hazardous jobs); or gather evergreens and make evergreen wreaths.

Farm Jobs (Child Labor)

In farm work, permissible jobs and hours of work, by age, are as follows:

1. Youths 16 years and older may perform any job, whether hazardous or not, for unlimited hours;
2. Youths 14 and 15 years old may perform any nonhazardous farm job outside of school hours;
3. Youths 12 and 13 years old may work outside of school hours in nonhazardous jobs, either with a parent's written consent or on the same farm as the parent(s);
4. Youths under 12 years old may perform jobs on farms owned or operated by parent(s), or with a parent's written consent, outside of school hours in nonhazardous jobs on farms not covered by minimum wage requirements.

Minors of any age may be employed by their parents at any time in any occupation on a farm owned or operated by their parents.

Recordkeeping

The FLSA requires employers to keep records on wages, hours and other items, as specified in DOL recordkeeping regulations. Most of the information is of the kind generally

maintained by employers in ordinary business practice and in compliance with other laws and regulations. The records do not have to be kept in any particular form and time clocks need not be used. With respect to an employee subject to the minimum wage provisions or both the minimum wage and overtime pay provisions, the following records must be kept:

1. Personal information, including the employee's name, home address, occupation, sex and birth date (if under 19 years of age);
2. Hour and day when workweek begins;
3. Total hours worked each workday and each workweek;
4. Total daily or weekly straight-time earnings;
5. Regular hourly pay rate for any week when overtime is worked;
6. Total overtime pay for the workweek;
7. Deductions from or additions to wages;
8. Total wages paid each pay period; and
9. Date of payment and pay period covered.

Records required for exempt employees differ from those for nonexempt workers. Special information is required for homeworkers, for employees working under uncommon pay arrangements, for employees to whom lodging or other facilities are furnished and for employees receiving remedial education.

Nursing Mothers

Under the Affordable Care Act (ACA), employers are required to provide reasonable break time for an employee to nurse for one year after her child's birth. Employers are also required to provide a private room other than a bathroom which may be used by nursing mothers.

Only employees who are not exempt from the FLSA's overtime pay requirements are entitled to breaks to express milk. State laws may also obligate employers to provide breaks to nursing mothers, even though it is not required by the FLSA. Employers with fewer than 50 employees are not subject to the FLSA break time requirement if compliance with the provision would impose an undue hardship.

The FLSA does not require employers to compensate nursing mothers for breaks taken to express milk. Where employers

already provide compensated breaks, an employee who uses that break time to express milk must be compensated in the same way that other employees are compensated for break time.

Terms Used in the FLSA

Workweek—A workweek is a period of 168 hours during seven consecutive 24-hour periods. It may begin on any day of the week and at any hour of the day established by the employer. Generally, for purposes of minimum wage and overtime payment, each workweek stands alone; there can be no averaging of two or more workweeks. Employee coverage, compliance with wage payment requirements, and the application of most exemptions are determined on a workweek basis.

Hours Worked—Covered employees must be paid for all hours worked in a workweek. In general, "hours worked" includes all time an employee must be on duty, on the employer's premises or at any other prescribed place of work, from the beginning of the first principal activity of the workday to the end of the last principal work activity of the workday. Also included is any additional time the employee is allowed to work.

Computing Overtime Pay

Overtime must be paid at a rate of at least one and one-half times the employee's regular rate of pay for each hour worked in a workweek in excess of the maximum allowable in a given type of employment. Generally, the regular rate includes all payments made by the employer to or on behalf of the employee, except for the following statutory exclusions:

- Gifts, and payments in the nature of gifts, on special occasions as a reward for service;
- Payments for absences such as vacations or holidays;
- Reimbursement for expenses incurred in furtherance of the employer's business;
- Discretionary bonuses;
- Payments made pursuant to a bona fide profit-sharing plan or savings plan;
- Talent fees paid to performers;

- Irrevocable contributions to a retirement plan or for insurance;
- Certain overtime premium payments for work in excess of a daily or weekly standard, for work on weekend days and other "special" days and for certain "clock pattern" periods of time.

The following examples are based on a maximum 40-hour workweek applicable to most covered nonexempt employees.

1. **Hourly rate** (regular pay rate for an employee paid by the hour)—If more than 40 hours are worked, at least one and one-half times the regular rate for each hour over 40 is due. Example: An employee who is paid \$8 per hour works 44 hours in a workweek. The employee is entitled to at least one and one-half times \$8, or \$12, for each hour over 40. Pay for the week would be \$320 for the first 40 hours plus \$48 for the four hours of overtime—a total of \$368.
2. **Piece rate**—The regular rate of pay for an employee paid on a piecework basis is obtained by dividing the total weekly earnings by the total number of hours worked in that week. The employee is entitled to an additional one-half times this regular rate for each hour over 40 plus the full piecework earnings. Example: An employee paid on a piecework basis works 45 hours in a week and earns \$405. The regular rate of pay for that week is \$405 divided by 45, or \$9 per hour. In addition to the straight-time pay, the employee is also entitled to \$4.50 (half the regular rate) for each hour over 40—an additional \$22.50 for the five overtime hours—for a total of \$427.50.
3. Another way to compensate pieceworkers for overtime, if agreed to before the work is performed, is to pay one and one-half times the piece rate for each piece produced during the overtime hours. The piece rate must be the one actually paid during non-overtime hours and must be enough to yield at least the minimum wage per hour.
4. **Salary** – The regular rate for an employee paid a salary for a regular or specified number of hours a

week is obtained by dividing the salary by the number of hours for which the salary is intended to compensate. The employee is entitled to an additional one-half times this regular rate for each hour over 40 plus the salary.

If, under the employment agreement, a salary sufficient to meet the minimum wage requirement in every workweek is paid as straight time for whatever number of hours is worked in a workweek, the regular rate is obtained by dividing the salary by the number of hours worked each week.

To illustrate, suppose an employee's hours of work vary each week and the agreement with the employer is that the employee will be paid \$480 a week for whatever number of hours of work are required. Under this agreement, the regular rate will vary in overtime weeks. If the employee works 50 hours, the regular rate is \$9.60 (\$480 divided by 50 hours). In addition to the salary, half the regular rate, or \$4.80, is due for each of the 10 overtime hours, for a total of \$528 for the week. If the employee works 60 hours, the regular rate is \$8 (\$480 divided by 60 hours.) In that case, an additional \$4 is due for each of the 20 overtime hours, for a total of \$560 for the week.

In no case may the regular rate be less than the minimum wage required by the FLSA. If a salary is paid on other than a weekly basis, the weekly pay must be determined in order to compute the regular rate and overtime pay. If the salary is for a half month, it must be multiplied by 24 and the product divided by 52 weeks to get the weekly equivalent. A monthly salary should be multiplied by 12, and the product divided by 52.

Enforcement

WHD's enforcement of the FLSA is carried out by investigators stationed across the United States. As WHD's authorized representatives, they conduct investigations and gather data on wages, hours and other employment conditions or practices in order to determine compliance with the law. Where violations are found, they also may recommend changes in employment practices to bring an employer into compliance.

It is a violation to fire or in any other manner discriminate against an employee for filing a complaint or for participating in a legal proceeding under the FLSA.

Willful violations may be prosecuted criminally and the violator may be fined up to \$10,000. A second conviction may result in imprisonment.

Employers who violate the child labor provisions of FLSA are subject to a penalty of up to \$11,000 for each employee who was the subject of a violation.

Employers who willfully or repeatedly violate the minimum wage or overtime pay requirements are subject to a penalty of up to \$1,100 for each violation.

The FLSA prohibits the shipment of goods in interstate commerce which were produced in violation of the minimum wage, overtime pay, child labor or special minimum wage provisions.

Recovery of Back Wages

Listed below are methods which the FLSA provides for recovering unpaid minimum and/or overtime wages.

1. WHD may supervise payment of back wages.
2. The Secretary of Labor may bring suit for back wages and an equal amount as liquidated damages.
3. An employee may file a private suit for back pay and an equal amount as liquidated damages, plus attorney's fees and court costs.
4. The Secretary of Labor may obtain an injunction to restrain any person from violating FLSA, including the unlawful withholding of proper minimum wage and overtime pay.

An employee may not bring suit if he or she has accepted back wages under the supervision of WHD or if the Secretary of Labor has already filed suit to recover the wages.

A two-year statute of limitations applies to the recovery of back pay, except in the case of willful violation, in which case a three-year statute applies.

More detailed information on the FLSA and other laws administered by WHD is available by calling 866- 4US-WAGE (866-487-9243) or on the [WHD website](#)

