



FAIR LABOR STANDARDS ACT



UNITED STATES DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION

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

Major Provisions



Coverage



Youth
Employment



Minimum Wage



Recordkeeping

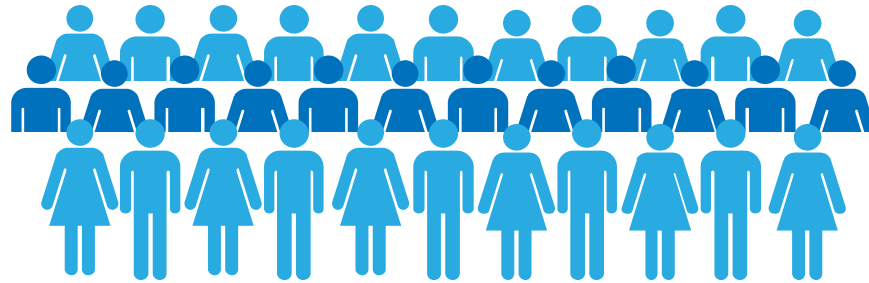


Overtime

Employment Relationship

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

Coverage



Over 135 million workers in more than 7 million workplaces protected or covered by the FLSA, enforced by the Wage and Hour Division of the U.S. Department of Labor

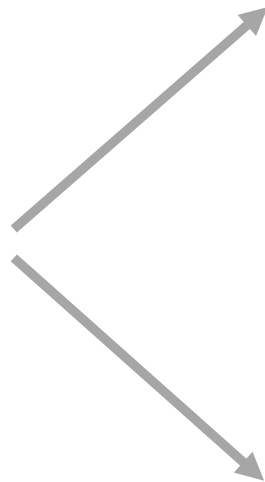


FACT SHEET:
FLSA Coverage

Coverage



Two Types
of Coverage



Enterprise Coverage

Enterprise, as a whole, is covered and all employees are entitled to FLSA protections



Individual Coverage

Enterprise, as a whole, is NOT covered; however individual employees are covered and entitled to FLSA protections

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

Enterprise Coverage

Enterprise Coverage in Non-Profit Organizations

- A non-profit's charitable activities are not ordinary commercial activities and are not covered under the FLSA
- A non-profit's activities performed for a business purpose, however, are covered if the ADV is met
- The "ADV" threshold:
 - Includes only activities performed for a **business purpose**
 - Does not include income—from donations, membership fees, etc.—used for **charitable activities**

Enterprise Coverage

A business or a non-profit organization may also be covered by the FLSA as a “named enterprise.”

Named enterprises:

- Include hospitals, residential medical or nursing care facilities, schools, preschools, and government agencies
- Are covered regardless of their ADVs
- Must afford minimum wage and overtime protections to all employees, unless exempt

Individual Coverage



Employees of businesses not covered on an enterprise basis may still be covered individually

- The employee's activities, not the establishment's, determine coverage
- Individual coverage applies on a workweek basis

Coverage



Employees who *may* not be covered include those employed by:

- Small construction companies
- Small independently owned retail or service businesses

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

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.



FACT SHEET:
Hours Worked

Minimum Wage

On-Call Time

Hours worked

Employee must stay on employer premises

Or, must be so close time cannot be used effectively for own purposes

NOT hours worked

Employee must provide contact information

Can use time effectively for own purposes

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

Minimum Wage

Minimum Wage Summary and Common Violations

- ***Compensation Included:*** Required minimum wage in cash and/or allowable equivalent
- ***Deductions:*** Illegal deductions, minimum wage not paid
- ***Tipped Employees:*** Tips not retained by employees, cash wage not paid
- ***Hours Worked:*** Work suffered or permitted not recorded, or paid

Overtime

1½

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

$$\text{Total Compensation} \div \text{Total Hours Worked} = \text{RR}$$

- *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

$$\text{Total Compensation} \div \text{Total Hours} = \text{RR}$$

STEP 2: $\text{RR} \times .5 = \text{Half-time Premium Pay per OT Hour}$

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



Overtime

Exercise: Production Bonus

Hourly Rate:	\$9.00	$48\text{H} \times \$9 =$	\$432
Bonus per week:	\$10.00	$\$432 + \$10 =$	\$442
Hours worked:	48	$\$442 \div 48\text{H} =$	\$9.21 RR
		$\$9.21 \times .5 =$	\$4.61
		$\$4.61 \times 8\text{H} =$	\$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: Fixed Salary for Fluctuating Hours

**Weekly Salary-for all
hours worked:** \$420.00

$$\$420 \div 49\text{H} = \$8.57 \text{ RR}$$

Week 1

Hours Worked: 49

Additional Half-Time Rate:

$$\$8.57 \times .5 = \$4.29$$

$$\$4.29 \times 9\text{H} = \$38.61 \text{ OT}$$

$$\$420 + \$38.61 = \$458.61 \text{ Total compensation due for Week 1}$$



Overtime

Exercise: Fixed Salary for Fluctuating Hours

Weekly Salary-for all

hours worked : \$420.00 $\$420 \div 41H =$ **\$10.24 RR**

Week 2

Hours Worked: 41

Additional Half-Time Rate:

$\$10.24 \times .5 =$ **\$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



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

Highly Compensated Employees (HCEs)

- Such employees must still receive at least the standard minimum salary amount (\$455 weekly) for each pay period and satisfy the salary basis test.
- Nondiscretionary bonuses, incentive payments, and commissions
 - Cannot be counted toward *weekly* salary requirement in HCE test
 - May count toward total *annual* HCE compensation requirement of \$100,000



FACT SHEET:
Highly Compensated Employees

Overtime

Salary Basis Test

- Regular, predetermined amount of compensation paid each pay period, on weekly or less frequent basis
- Compensation cannot be reduced due to variations in quality or quantity of work performed
- Compensation not required for any workweek when no work performed



Overtime

Deductions from Salary

Not permissible

- Deductions from predetermined salary for absences occasioned by employer for operating requirements of business
- Work not available, but employee ready, willing and able to work

Overtime

Deductions from Salary *Permissible Deductions*

Seven Exceptions from the “No Pay-Docking” Rule

1. One or more *full days* absence not related to sickness, or disability
2. One or more *full days* absence for sickness or disability if deductions made under bona fide plan, policy, or practice of wage replacement
3. Offset of payments received for jury fees, witness fees or military pay

Overtime

Deductions from Salary

Seven Exceptions from “No Pay-Docking” Rule

4. Good-faith penalties for safety rule violations of “major significance”
5. Unpaid disciplinary suspension of one or more *full days*, imposed in good faith, for violations of written workplace conduct rules
6. Proportionate part of employee’s full salary may be paid for time worked in first and last weeks of employment
7. Unpaid leave taken pursuant to Family and Medical Leave Act

Overtime

Effect of Improper Deductions

Improper deductions from salary may result in loss of exemption

- During period in which improper deductions made
- For employees in same job classification
- For employees working for manager making improper deductions

Isolated, or inadvertent improper deductions will not result in loss of exempt status if employee reimbursed

Overtime

Safe Harbor

Exemption will not be lost if employer

- Has clearly communicated policy prohibiting improper deductions including complaint mechanism
- Reimburses employees for improper deductions
- Makes good faith commitment to comply in future

If employer willfully violates policy by continuing improper deductions after receiving employee complaints, it cannot claim the exemption for the affected employees

Overtime

“White Collar” Exemption: Executive Duties

- Primary duty is management of enterprise or customarily recognized department or subdivision
- Customarily and regularly directs work of two or more employees
- Authority to hire, or fire employees; or, recommendations as to hiring, firing, advancement, promotion, change of status, given particular weight



FACT SHEET:
Executive Duties Exemption

Overtime

“White Collar” Exemption: 20% Owner Executives *Executive Exemption* also includes

Any employee who:

- Owns at least a bona fide 20% equity interest in the enterprise at which he or she is employed, and
- Is actively engaged in management of that enterprise

Salary level and salary basis tests do not apply to employees who meet these requirements

Overtime

“White Collar” Exemption: Administrative Duties Primary duty

- Office or non-manual work directly related to the *management or general business operations* of the employer or the employer’s customers; and
- Exercise of discretion and independent judgment in matters of significance.
 - Includes activities such as analysis, making determinations, setting prices, assessing risk, committing company resources, negotiating, and similar tasks.



FACT SHEET:
Administrative Duties Exemption

Overtime

“White Collar” Exemption: Administrative Duties

Management or General Business Operations Includes:

- Tax, Finance, Budgeting, Accounting
- Auditing, Legal and Regulatory Compliance
- Quality Control, Insurance, Safety and Health
- Purchasing, Procurement
- Advertising, Marketing, Research
- Human Resources, Labor Relations, Benefits
- Computer Network, Internet, Database Administration



FACT SHEET:
Administrative Duties Test

Overtime

“White Collar” Exemption: Professional Duties

Primary duty

- Performance of work requiring advanced knowledge in field of science or learning customarily acquired by a prolonged course of specialized instruction; or
- Performance of work requiring invention, imagination, originality, or talent in recognized artistic or creative field.



**FACT
SHEET:**
Professional
Exemption

Overtime

“White Collar” Exemption: Professional Duties *Field of Science or Learning*



Occupations with recognized professional status, as distinguished from mechanical arts or skilled trades

Overtime

“White Collar” Exemption: Exempt Medical Professions

1. Doctors, Registered Nurses
2. Registered or Certified Medical Technologists
 - 3 years pre-professional study in accredited college or university plus 1 year professional study in accredited school of medical technology
3. Dental Hygienists
 - 4 years pre-professional and professional study in accredited college or university
4. Certified Physician Assistants
 - 4 years pre-professional and professional study, **and** graduation from accredited physician assistant program

Overtime

“White Collar” Exemption: Professional Duties **Other commonly exempt professions**

- Lawyers
- Teachers
- Accountants
- Pharmacists
- Engineers
- Actuaries
- Chefs
- Certified Athletic Trainers
- Licensed Funeral Directors
- Embalmers

Overtime

Non-Exempt Professions

Common errors: misapplication of exemptions

- Licensed Practical Nurses
- Paralegals, legal assistants
- Engineering Technicians
- Accounting clerks, bookkeepers typically performing routine work
- Cooks performing predominantly routine mental, manual, mechanical, or physical work



FACT SHEET:
Technologists
&
Technicians

Overtime

“White Collar” Exemption: Professional Duties *Recognized Field of Artistic or Creative Endeavor*

- **Music**
Musicians, composers, conductors, soloists
- **Graphic Arts**
Painters, photographers, cartoonists
- **Acting**
- **Writing**
Essayists, novelists, short-story writers, playwrights, screenwriters who choose their own subjects, responsible writing positions in advertising agencies

Overtime

“White Collar” Exemption: Computer-related Occupations

Primary duty

- Application of systems analysis techniques and procedures, including consultation with users about hardware, software, or system function specifications;
- Design, development, documentation, analysis, creation, testing, or modification of computer systems or programs related to user or system design specifications;
- Design, documentation, testing creation, or modification of machine operating systems; or
- Combination of above duties requiring equal skill level.



FACT SHEET:
Computer-Related Exemption

Overtime

“White Collar” Exemption: Computer-related Occupations

Additionally, exempt employees must also receive either:

- Guaranteed Salary of at least \$455 weekly
- Hourly rate of at least \$27.63

Overtime

“White Collar” Exemption: Outside Sales Primary duty

- Making sales or
- Obtaining orders or contracts for services for the use of facilities paid by the customer and
- Customarily and regularly working-away from employer’s place of business

There are no salary basis and salary level tests for the outside sales exemption



FACT SHEET:
Outside Sales Exemption

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



FACT SHEET:
Youth
Employment

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

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