

U.S. DOL **Employment Standards Administration**
Wage and Hour Division

---DISCLAIMER---

Fact Sheet No. 031

NURSING CARE FACILITIES UNDER THE FAIR LABOR STANDARDS ACT

This fact sheet provides general information concerning the application of the minimum wage, overtime pay and child labor requirements of the Fair Labor Standards Act (FLSA) to skilled nursing care facilities, intermediate care facilities, and nursing and personal care facilities. It is designed to provide general information on the requirements of the FLSA and to alert employers to certain employment practices that result in FLSA violations.

Coverage

The FLSA covers all nursing care enterprises, public and private, whether operated for profit or not for profit.

Requirements

Minimum Wage: FLSA covered employers are required to pay all non-exempt employees the Federal minimum wage of \$4.75 an hour [the Federal minimum wage will increase to \$5.15 on September 1, 1997] on their regularly scheduled payday.

Overtime: Employers must also pay all non-exempt employees a rate of time-and-one-half the regular rate of pay for each hour of overtime worked. Nursing care facilities may pay employees overtime after 40 hours in a 7 day workweek or alternatively, use the "8 and 80" system. Under the "8 and 80" system, the nursing care facility may pay employees -- with whom they have a prior agreement -- overtime for any hours worked after more than 8 hours in a day and more than 80 hours in a 14-day period.

Recordkeeping: Employers are required to maintain accurate payroll and time records. Time records must be preserved for two years and payroll records must be kept for three years. Employers must also record and maintain the dates of birth for employees under age 19.

Exemptions: Certain employees whose primary duties are managerial, administrative, or professional in nature are exempt from the FLSA's minimum wage and overtime pay requirements.

Child Labor: The FLSA sets a minimum age of 14 for most youth employed in covered non-agricultural employment. Fourteen- and 15-year-olds can work for limited periods of time each day (outside school hours) in specified occupations which do not interfere with their schooling, health, or well-being. Sixteen- and 17-year-old individuals may work at any time for unlimited hours in all jobs not declared hazardous by the Secretary of Labor.

Common Industry Problems

Non-exempt employees must be compensated for any time during which they perform activities that benefit the employer.

The most common violation in the nursing care industry is the failure of employers to pay for all the

hours that an employee works. This uncompensated time most frequently occurs when employers fail to pay for work performed:

- Before and after a worker's scheduled shift;
- During an employee's scheduled meal period; and
- While employees are attending staff meetings and compensable training sessions.

Minimum wage and overtime pay violations also occur when employers make deductions or demand reimbursement for the cost of required uniforms or equipment.

Individuals not otherwise employed by the facility who volunteer – without expectation of pay – to attend to the comfort of nursing home residents in a manner not otherwise provided by the facility are not considered employees under the FLSA. However, individuals (including residents) who perform work of any consequential economic benefit to the facility are employees and entitled to FLSA minimum wage and overtime.

Overtime pay violations often occur when employers:

- Fail to pay overtime after 8 hours of work in a day for workers (both full time and part time) who are under the "8 and 80" system.
- Pay overtime after 80 hours worked during a biweekly period rather than after 40 hours in a workweek to employees not under the "8 and 80" system.
- Fail to combine hours worked in more than one department or at more than one facility when determining the total overtime hours worked.
- Fail to include in calculating overtime hours the time spent or hours worked while performing on-call assignments.
- Fail to include shift differential, bonuses or on-call fees in calculating an employee's regular rate.
- Fail to pay overtime to misclassified salaried but non-exempt employees (e.g., clerical staff, cooks, and activities directors).

Other Pertinent Labor Laws

The Immigration Reform and Control Act requires employers to complete and maintain I-9 forms to verify the employment eligibility of all individuals hired after November 6, 1986, and contains certain anti-discrimination provisions.

The Family and Medical Leave Act entitles eligible employees of covered employers to take up to 12 weeks of unpaid job-protected leave each year for specified family and medical reasons.

The Employee Polygraph and Protection Act prohibits most employers from using any type of lie detector test either for pre-employment screening of job applicants or, with certain exceptions, during the course of employment.

The Immigration Nursing Relief Act of 1989 (now expired) provides for the enforcement of employment conditions attested to by employers of H-1A temporary nonimmigrant registered nurses.

The McNamara-O'Hara Service Contract Act requires the payment of prevailing wages and fringe benefits to service employees on contracts for the provision of services to the Federal government.

To Obtain Additional Information

Copies of this and other publications may be obtained from the nearest office of the Wage and Hour

Division, which are listed in most telephone directories under U.S. Government, Department of Labor, Employment Standards Administration. Or check our on-line [list of offices](#).

This is one of a series of fact sheets highlighting U.S. Department of Labor programs. It is intended as a general description only and does not carry the force of a legal opinion.

[DOL Home Page](#)[ESA Home Page](#)[Top of Document](#)[WHD Info](#)



Employment Standards Administration Wage and Hour Division

Fact Sheet No. 030

THE FEDERAL WAGE GARNISHMENT LAW

This fact sheet provides general information concerning the amounts that may be garnished (withheld) from an employee's wages.

What is a wage garnishment?

A wage garnishment is a legal procedure through which some portion of an employee's earnings are required to be withheld by an employer for the payment of a debt. Most garnishments are made by court order.

Wage garnishments do not include voluntary wage assignments -- that is, situations in which employees voluntarily agree that their employers may turn over some specified amount of their earnings to a creditor or creditors.

Which federal law regulates wage garnishment?

Title III of the Consumer Credit Protection Act limits the amount of an employee's earnings that may be garnished and protects an employee from being fired if pay is garnished for one debt. Title III is administered by the Wage and Hour Division of the Department of Labor's Employment Standards Administration.

To whom does the law apply?

The law protects everyone receiving personal earnings, i.e., wages, salaries, commissions, bonuses, or income including earnings from a pension or retirement program.

The law applies in all 50 states, the District of Columbia, Puerto Rico, and all U.S. territories and possessions.

What is the protection against discharge when wages are being garnished?

The law prohibits an employer from firing an employee whose earnings are subject to garnishment for any one debt, regardless of the number of levies made or proceedings brought to collect that debt. The law does not prohibit discharge if the employee's earnings have been garnished for a second or subsequent debts.

What are the restrictions on wage garnishment?

The amount of pay subject to garnishment is based on an employee's "disposable earnings" which is the amount left after legally required deductions have been made for federal, state, and local taxes, Social Security, unemployment insurance, and State employee retirement

systems.

Other deductions, such as those for union dues, health and life insurance, contributions to charitable causes, voluntary wage assignments, purchases of savings bonds, and payments to employers for payroll advances or purchases of merchandise, not required by law may not be subtracted from gross earnings when calculating the amount of disposable earnings.

The law sets the maximum amount that may be garnished in any workweek or pay period, regardless of the number of garnishment orders received by the employer. For ordinary garnishments (i.e. those not for support, bankruptcy, or tax), the amount may not exceed the lesser of two figures: 25 percent of the employee's disposable earnings, or the amount by which an employee's disposable earnings for the workweek are greater than 30 times the federal minimum wage (\$4.75 an hour effective October 1, 1996 and \$5.15 an hour effective September 1, 1997.)

For illustration, if the pay period is weekly and disposable earnings are \$142.50 (\$154.50 effective September 1, 1997) or less, there can be no garnishment. If disposable earnings are more than \$142.50 (\$154.50 effective September 1, 1997) but less than \$190 (\$206 effective September 1, 1997), the amount above \$142.50 (\$154.50 effective September 1, 1997) can be garnished. If disposable income earnings are \$190 or more (\$206 effective September 1, 1997), a maximum of 25 percent can be garnished. When pay periods cover more than one week, multiples of the weekly restrictions must be used to calculate the maximum amounts that may be garnished.

What about child support and alimony?

Specific restrictions apply to court orders for child support or alimony. The garnishment law allows up to 50 percent of a worker's disposable earnings to be garnished if the worker is supporting another spouse or child, and up to 60 percent for a worker who is not. An additional 5 percent may be garnished for support payments more than 12 weeks in arrears. These garnishments are **not** subject to the limitation noted earlier.

Are there any exceptions to the law?

The wage garnishment law specifies that garnishment restrictions do not apply to bankruptcy court orders and debts due for federal or state taxes.

If a state wage garnishment law differs from the federal law, the law resulting in the smaller garnishment must be observed.

For more information about the federal wage garnishment law ...

Contact the nearest office of the Wage and Hour Division, listed in most telephone directories under U.S. Government, Department of Labor, Employment Standards Administration.

—DISCLAIMER—



Employment Standards Administration Wage and Hour Division

Fact Sheet No. 031

NURSING CARE FACILITIES UNDER THE FAIR LABOR STANDARDS ACT

This fact sheet provides general information concerning the application of the minimum wage, overtime pay and child labor requirements of the Fair Labor Standards Act (FLSA) to skilled nursing care facilities, intermediate care facilities, and nursing and personal care facilities. It is designed to provide general information on the requirements of the FLSA and to alert employers to certain employment practices that result in FLSA violations.

Coverage

The FLSA covers all nursing care enterprises, public and private, whether operated for profit or not for profit.

Requirements

Minimum Wage: FLSA covered employers are required to pay all non-exempt employees the Federal minimum wage of \$4.75 an hour [the Federal minimum wage will increase to \$5.15 on September 1, 1997] on their regularly scheduled payday.

Overtime: Employers must also pay all non-exempt employees a rate of time-and-one-half the regular rate of pay for each hour of overtime worked. Nursing care facilities may pay employees overtime after 40 hours in a 7 day workweek or alternatively, use the "8 and 80" system. Under the "8 and 80" system, the nursing care facility may pay employees -- with whom they have a prior agreement -- overtime for any hours worked after more than 8 hours in a day and more than 80 hours in a 14-day period.

Recordkeeping: Employers are required to maintain accurate payroll and time records. Time records must be preserved for two years and payroll records must be kept for three years. Employers must also record and maintain the dates of birth for employees under age 19.

Exemptions: Certain employees whose primary duties are managerial, administrative, or professional in nature are exempt from the FLSA's minimum wage and overtime pay requirements.

Child Labor: The FLSA sets a minimum age of 14 for most youth employed in covered non-agricultural employment. Fourteen- and 15-year-olds can work for limited periods of time each day (outside school hours) in specified occupations which do not interfere with their schooling, health, or well-being. Sixteen- and 17-year-old individuals may work at any time for unlimited hours in all jobs not declared hazardous by the Secretary of Labor.

Common Industry Problems

Non-exempt employees must be compensated for any time during which they perform activities that benefit the employer.

The most common violation in the nursing care industry is the failure of employers to pay for all the hours that an employee works. This uncompensated time most frequently occurs when employers fail to pay for work performed:

- Before and after a worker's scheduled shift;
- During an employee's scheduled meal period; and
- While employees are attending staff meetings and compensable training sessions.

Minimum wage and overtime pay violations also occur when employers make deductions or demand reimbursement for the cost of required uniforms or equipment.

Individuals not otherwise employed by the facility who volunteer – without expectation of pay – to attend to the comfort of nursing home residents in a manner not otherwise provided by the facility are not considered employees under the FLSA. However, individuals (including residents) who perform work of any consequential economic benefit to the facility are employees and entitled to FLSA minimum wage and overtime.

Overtime pay violations often occur when employers:

- Fail to pay overtime after 8 hours of work in a day for workers (both full time and part time) who are under the "8 and 80" system.
- Pay overtime after 80 hours worked during a biweekly period rather than after 40 hours in a workweek to employees not under the "8 and 80" system.
- Fail to combine hours worked in more than one department or at more than one facility when determining the total overtime hours worked.
- Fail to include in calculating overtime hours the time spent or hours worked while performing on-call assignments.
- Fail to include shift differential, bonuses or on-call fees in calculating an employee's regular rate.
- Fail to pay overtime to misclassified salaried but non-exempt employees (e.g., clerical staff, cooks, and activities directors).

Other Pertinent Labor Laws

The Immigration Reform and Control Act requires employers to complete and maintain I-9 forms to verify the employment eligibility of all individuals hired after November 6, 1986, and contains certain anti-discrimination provisions.

The Family and Medical Leave Act entitles eligible employees of covered employers to take up to 12 weeks of unpaid job-protected leave each year for specified family and medical reasons.

The Employee Polygraph and Protection Act prohibits most employers from using any type of lie detector test either for pre-employment screening of job applicants or, with certain exceptions, during the course of employment.

The Immigration Nursing Relief Act of 1989 (now expired) provides for the enforcement of employment conditions attested to by employers of H-1A temporary nonimmigrant registered nurses.

The McNamara-O'Hara Service Contract Act requires the payment of prevailing wages and fringe benefits to service employees on contracts for the provision of services to the Federal government.

To Obtain Additional Information

Copies of this and other publications may be obtained from the nearest office of the Wage and Hour Division, which are listed in most telephone directories under U.S. Government, Department of Labor, Employment Standards Administration. Or check our on-line [list of offices](#).

This is one of a series of fact sheets highlighting U.S. Department of Labor programs. It is intended as a general description only and does not carry the force of a legal opinion.

[DOL Home Page](#)[ESA Home Page](#)[Top of Document](#)[WHD Info](#)



Employment Standards Administration Wage and Hour Division

Fact Sheet No. 028

See The CFR

THE FAMILY AND MEDICAL LEAVE ACT OF 1993

The U.S. Department of Labor's Employment Standards Administration, Wage and Hour Division, administers and enforces the Family and Medical Leave Act (FMLA) for all private, state and local government employees, and some federal employees. Most Federal and certain congressional employees are also covered by the law and are subject to the jurisdiction of the U.S. Office of Personnel Management or the Congress.

FMLA became effective on August 5, 1993, for most employers. If a collective bargaining agreement (CBA) was in effect on that date, FMLA became effective on the expiration date of the CBA or February 5, 1994, whichever was earlier. FMLA entitles eligible employees to take up to 12 weeks of unpaid, job-protected leave in a 12-month period for specified family and medical reasons. The employer may elect to use the calendar year, a fixed 12-month leave or fiscal year, or a 12-month period prior to or after the commencement of leave as the 12-month period.

The law contains provisions on employer coverage; employee eligibility for the law's benefits; entitlement to leave, maintenance of health benefits during leave, and job restoration after leave; notice and certification of the need for FMLA leave; and, protection for employees who request or take FMLA leave. The law also requires employers to keep certain records.

EMPLOYER COVERAGE

FMLA applies to all:

- public agencies, including state, local and federal employers, local education agencies (schools), and
- private-sector employers who employed 50 or more employees in 20 or more workweeks in the current or preceding calendar year and who are engaged in commerce or in any industry or activity affecting commerce — including joint employers and successors of covered employers.

EMPLOYEE ELIGIBILITY

To be eligible for FMLA benefits, an employee must:

- (1) work for a covered employer;
- (2) have worked for the employer for a total of 12 months;

(3) have worked at least 1,250 hours over the previous 12 months; and

(4) work at a location in the United States or in any territory or possession of the United States where at least 50 employees are employed by the employer within 75 miles.

LEAVE ENTITLEMENT

A covered employer must grant an eligible employee up to a total of 12 workweeks of unpaid leave during any 12-month period for one or more of the following reasons:

- for the birth and care of the newborn child of the employee;
- for placement with the employee of a son or daughter for adoption or foster care;
- to care for an immediate family member (spouse, child, or parent) with a serious health condition; **or**
- to take medical leave when the employee is unable to work because of a serious health condition.

Spouses employed by the same employer are jointly entitled to a combined total of 12 work-weeks of family leave for the birth and care of the newborn child, for placement of a child for adoption or foster care, and to care for a parent who has a serious health condition.

Leave for birth and care, or placement for adoption or foster care must conclude within 12 months of the birth or placement.

Under some circumstances, employees may take FMLA leave intermittently — which means taking leave in blocks of time, or by reducing their normal weekly or daily work schedule.

- If FMLA leave is for birth and care or placement for adoption or foster care, use of intermittent leave is subject to the employer's approval.
- FMLA leave may be taken intermittently whenever **medically necessary** to care for a seriously ill family member, or because the employee is seriously ill and unable to work.

Also, subject to certain conditions, employees or employers may choose to use accrued **paid** leave (such as sick or vacation leave) to cover some or all of the FMLA leave.

The employer is responsible for designating if an employee's use of paid leave counts as FMLA leave, based on information from the employee.

"Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves either:

- any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical-care facility, and any period of incapacity or subsequent treatment in connection with such inpatient care; **or**
- Continuing treatment by a health care provider which includes any period of incapacity (i.e., inability to work, attend school or perform other regular daily activities) due to:

(1) A health condition (including treatment therefor, or recovery therefrom) lasting more than three consecutive days, and any subsequent treatment or period of incapacity relating to the same condition, that also includes:

- treatment two or more times by or under the supervision of a health care provider; or
- one treatment by a health care provider with a continuing regimen of treatment; or

(2) Pregnancy or prenatal care. A visit to the health care provider is not necessary for each absence; or

(3) A chronic serious health condition which continues over an extended period of time, requires periodic visits to a health care provider, and may involve occasional episodes of incapacity (e.g., asthma, diabetes). A visit to a health care provider is not necessary for each absence; or

(4) A permanent or long-term condition for which treatment may not be effective (e.g., Alzheimer's, a severe stroke, terminal cancer). Only supervision by a health care provider is required, rather than active treatment; or

(5) Any absences to receive multiple treatments for restorative surgery or for a condition which would likely result in a period of incapacity of more than three days if not treated (e.g., chemotherapy or radiation treatments for cancer).

"Health care provider" means:

- doctors of medicine or osteopathy authorized to practice medicine or surgery by the state in which the doctors practice; or
- podiatrists, dentists, clinical psychologists, optometrists and chiropractors (limited to manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice, and performing within the scope of their practice, under state law; or
- nurse practitioners, nurse-midwives and clinical social workers authorized to practice, and performing within the scope of their practice, as defined under state law; or
- Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; or
- Any health care provider recognized by the employer or the employer's group health plan benefits manager.

MAINTENANCE OF HEALTH BENEFITS

A covered employer is required to maintain group health insurance coverage for an employee on FMLA leave whenever such insurance was provided before the leave was taken and on the same terms as if the employee had continued to work. If applicable, arrangements will need to be made for employees to pay their share of health insurance premiums while on leave.

In some instances, the employer may recover premiums it paid to maintain health coverage for an employee who fails to return to work from FMLA leave.

JOB RESTORATION

Upon return from FMLA leave, an employee must be restored to the employee's original job, or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment.

In addition, an employee's use of FMLA leave cannot result in the loss of any employment benefit that the employee earned or was entitled to before using FMLA leave, nor be counted against the employee under a "no fault" attendance policy.

Under specified and limited circumstances where restoration to employment will cause substantial and grievous economic injury to its operations, an employer may refuse to reinstate certain highly-paid "key" employees after using FMLA leave during which health coverage was maintained. In order to do so, the employer must:

- notify the employee of his/her status as a "key" employee in response to the employee's notice of intent to take FMLA leave;
- notify the employee as soon as the employer decides it will deny job restoration, and explain the reasons for this decision;
- offer the employee a reasonable opportunity to return to work from FMLA leave after giving this notice; and
- make a final determination as to whether reinstatement will be denied at the end of the leave period if the employee then requests restoration.

A "key" employee is a salaried "eligible" employee who is among the highest paid ten percent of employees within 75 miles of the work site.

NOTICE AND CERTIFICATION

Employees seeking to use FMLA leave are required to provide 30-day advance notice of the need to take FMLA leave when the need is foreseeable and such notice is practicable.

Employers may also require employees to provide:

- medical certification supporting the need for leave due to a serious health condition affecting the employee or an immediate family member;
- second or third medical opinions (at the employer's expense) and periodic recertification; and
- periodic reports during FMLA leave regarding the employee's status and intent to return to work.

When intermittent leave is needed to care for an immediate family member or the employee's own illness, and is for planned medical treatment, the employee must try to schedule treatment so as not to unduly disrupt the employer's operation.

Covered employers must post a notice approved by the Secretary of Labor explaining rights and responsibilities under FMLA. An employer that willfully violates this posting requirement

may be subject to a fine of up to \$100 for each separate offense.

Also, covered employers must inform employees of their rights and responsibilities under FMLA, including giving specific written information on what is required of the employee and what might happen in certain circumstances, such as if the employee fails to return to work after FMLA leave.

UNLAWFUL ACTS

It is unlawful for any employer to interfere with, restrain, or deny the exercise of any right provided by FMLA. It is also unlawful for an employer to discharge or discriminate against any individual for opposing any practice, or because of involvement in any proceeding, related to FMLA.

ENFORCEMENT

The Wage and Hour Division investigates complaints. If violations cannot be satisfactorily resolved, the U.S. Department of Labor may bring action in court to compel compliance. Individuals may also bring a private civil action against an employer for violations.

OTHER PROVISIONS

Special rules apply to employees of local education agencies. Generally, these rules provide for FMLA leave to be taken in blocks of time when intermittent leave is needed or the leave is required near the end of a school term.

Salaried executive, administrative, and professional employees of covered employers who meet the Fair Labor Standards Act (FLSA) criteria for exemption from minimum wage and overtime under Regulations, 29 CFR Part 541, do not lose their FLSA-exempt status by using any unpaid FMLA leave. This special exception to the "salary basis" requirements for FLSA's exemption extends only to "eligible" employees' use of leave required by FMLA.

The FMLA does not affect any other federal or state law which prohibits discrimination, nor supersede any state or local law which provides greater family or medical leave protection. Nor does it affect an employer's obligation to provide greater leave rights under a collective bargaining agreement or employment benefit plan. The FMLA also encourages employers to provide more generous leave rights.

FURTHER INFORMATION

The final rule implementing FMLA is contained in the January 6, 1995, Federal Register. For more information, please contact the nearest office of the Wage and Hour Division, listed in most telephone directories under U.S. Government, Department of Labor.

—DISCLAIMER—

[DOL Home Page](#)[ESA Home Page](#)[Top of Document](#)[WHD Info](#)



Employment Standards Administration Wage and Hour Division

Fact Sheet No. 027

New Businesses Under The Fair Labor Standards Act (FLSA)

This fact sheet is directed to new businesses covered by the provisions of the FLSA.

Coverage

Enterprise coverage refers to those businesses with a gross annual dollar volume of sales made or business done of \$500,000 or more.

Even if a business is not a covered enterprise, many employees will be covered by the FLSA on an individual basis. Individual coverage applies to all employees who are engaged in interstate commerce or the production of goods for such commerce. Covered employees include persons who produce, receive, ship, transport or load goods that are moving in interstate commerce, as well as those who prepare, handle or transmit information or documents in interstate commerce, such as credit card transactions. Other persons such as guards, janitors and maintenance employees who perform duties which are closely related and directly essential to such interstate activities are also covered by the FLSA.

Requirements

Employees who are covered by the FLSA are entitled to be paid at least the minimum wage, — \$4.75 an hour effective 10/1/96; \$5.15 an hour effective 9/1/97 — as well as time and one-half their regular rates of pay for all hours worked over 40 in a workweek. There are also child labor provisions regulating the employment of anyone under the age of 18 in covered work, as well as recordkeeping requirements.

Youth Minimum Wage: The 1996 Amendments to the FLSA allow employers to pay a youth minimum wage of not less than \$4.25 an hour to employees who are under 20 years of age during the first 90 consecutive calendar days after initial employment by their employer. The law contains certain protections for employees that prohibit employers from displacing any employee in order to hire someone at the youth minimum wage.

Covered employees must be paid for all hours worked in a workweek. In general, compensable hours worked include all time an employee is on duty or at a prescribed place of work and any time an employee is suffered or permitted to work. This would generally include work performed at home, travel time, waiting time, training and probationary periods.

There may be employees of a covered business who are exempt from the minimum wage and/or overtime provisions of the FLSA. Bona fide executive, administrative, professional, and outside sales employees are exempt from both the minimum wage and overtime

provisions, if all tests for the exemption are met. Additional employees may be excluded from minimum wage or overtime pay provisions as defined by other specific exemptions.

Typical Problems

There are common problems and misconceptions which Wage and Hour investigations frequently disclose. These include:

- The misapplication of the executive or administrative exemption to non-exempt "salaried" persons such as clerical workers, working foremen, dispatchers, and inside salespersons.
- Employment of underage minors in prohibited duties and/or beyond permitted hours.
- Failure to pay overtime to non-exempt salaried employees.
- Failure to pay employees for all hours suffered or permitted to work, including time spent taking inventory, cleaning up, completing paperwork, etc., beyond the normal work schedule.
- Failure to maintain records on non-exempt salaried or piece rate employees.
- Granting compensatory time off in lieu of overtime pay.
- Considering certain employees to be "contract labor" or independent contractors and thus treating them as not covered by the FLSA's provisions.
- Illegal deductions or kickbacks for shortages, uniforms, errors, bad checks, etc., which reduce an employee's pay below the applicable minimum wage or required overtime pay.
- Failure to pay minimum wage and overtime to part time employees.

Where to Obtain Additional Information

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations. Copies of Wage and Hour publications may be obtained by contacting the nearest office of the Wage and Hour Division listed in most telephone directories under U.S. Government, Department of Labor.

—DISCLAIMER—

[DOL Home Page](#)[ESA Home Page](#)[Top of Document](#)[WHd Info](#)



Employment Standards Administration Wage and Hour Division

Fact Sheet No. 026

Section H-2A of the Immigration Reform and Control Act

This fact sheet provides general information concerning the application of the H-2A requirements to the agricultural industry.

Coverage

The Immigration Reform and Control Act authorizes the lawful admission of temporary, nonimmigrant workers (H-2A workers) to perform agricultural labor or services of a temporary or seasonal nature.

Requirements

Any employer who has been certified for a specific number of H-2A jobs must have initially attempted to find U.S. workers to fill these slots. Even after H-2A workers are recruited employers must continue to engage in "positive recruitment" of U.S. workers. The employer must agree to accept U.S. workers until 50% of the certified contract period has been completed.

Rates of Pay: In every H-2A employment situation the employer must agree to pay to all workers working in certified jobs a wage rate of the higher of either: (a) the Adverse Effect Wage Rate [AEWR] or (b) the Prevailing Rate for a given crop/area. Neither of these rates may be less than the Federal Minimum Wage -- \$4.75 an hour effective 10/1/96; \$5.15 an hour effective 9/1/97. Wages may be calculated on the basis of hourly or "piece" rates of pay. However computed, they must not be less than the rate specified in the job offer/worker contracts.

Job Clearance Order/Worker Contracts: Every worker must be provided a copy of the worker contract or, as a substitute for the worker contract, a copy of the job clearance order. If worker contracts are provided they must specify at least those benefits required by the Order/DOL Regulations. The job clearance order is the "official" document since it is the one submitted by the employer and approved by DOL. The job clearance order/contracts must state:

- the beginning and ending dates of the contract period
- any and all significant conditions of employment -- such as payment for transportation expenses incurred, housing and meals to be provided (and related charges), specific days workers are not required to work (i.e., Sabbath, Federal holidays)
- the hours per day and the days per week each worker will be expected to work during

- the contract period
- the crop(s) to be worked — rate(s) for each crop/job
- the rate(s) of pay for each job to be performed
- any tools required and that the employer pays for same
- that workers' compensation insurance will be provided per State law of the State where work is performed

Guarantees to All Workers: Employers certified for H-2A must agree to provide each worker employed an offer of at least 75% of the hours in the contract period—called the "three-fourths guarantee." For example, if a contract is for a 10-week period, during which a normal workweek is specified as 6-days a week, 8-hours per day, the worker would have to be guaranteed employment for at least 360 hours (e.g., 10 weeks x 48 hours/week = 480-hours x 75% = 360).

Wages for the guaranteed 75% period would be calculated at not less than the AEWR for the State in which the work was being done. This rate will be stated in the Job Offer/Worker Contracts.

Transportation Costs/Reimbursement: Every non-local worker employed on an H-2A contract is entitled to be paid for all transportation costs related to travel from the place where the worker was recruited to the site of the job, and then back to the worker's area of residence. This includes both foreign and U.S. workers. Workers are "non-local" if they cannot reasonably return to their permanent residence every night. Expenses must be reimbursed according to the following schedule:

- For transportation to the place of employment the employer must repay the worker when 50% of the contract period has been completed.
- For transportation "home" the worker must complete the agreed upon contract period. Otherwise, the employer has no obligation to pay return expenses, unless some special provision in the Worker's Contract so provides.

Records Required: Employers certified under H-2A must keep records of the hours each worker actually works. In addition the employer must retain a record of time "offered" to the worker but which the worker "refused" to work. Each worker must be provided a wage statement showing hours of work, hours refused, pay for each type of crop, the basis of pay (i.e., whether the worker is being paid by the hour, per piece, "task" pay, etc.). The wage statement must indicate total earnings for the pay period and all deductions from wages (along with an explanation as to why deductions were made).

Termination of Workers: Employers must maintain records concerning any worker who was terminated and the reason for such termination. The employer, in order to negate a continuing liability for wages and benefits to workers, must notify the local Job Service Office by providing a report on any termination(s), the date of the termination, giving the reason for each. The employer should also indicate if replacement(s) will be sought for such worker(s).

Where to Obtain Additional Information

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations. Copies of Wage and Hour publications may be obtained by contacting the nearest office of the Wage and Hour Division listed in most telephone directories under U. S. Government, Department of Labor.

—DISCLAIMER—

[DOL Home Page](#)[ESA Home Page](#)[Top of Document](#)[WHD Info](#)



Employment Standards Administration Wage and Hour Division

Fact Sheet No. 025

The Home Health Care Industry Under The Fair Labor Standards Act (FLSA)

This fact sheet provides general information concerning the application of the FLSA to the home health care industry.

Characteristics

Employers who provide home health care services for individuals who (because of age or infirmity) are unable to care for themselves may or may not be required to pay minimum wage and/or overtime premium pay depending upon the type of services provided and the nature of the working relationship. Employees providing "companionship services" as defined by the FLSA need not be paid the minimum wage or overtime. Trained personnel such as nurses, whether registered or practical, are not exempt from minimum wage or overtime under the exemption for companions, but registered nurses may be exempt as professionals. Certified nurse aides and home health care aides may be considered exempt from the FLSA's wage requirements depending upon the nature of their work.

Requirements

Persons employed in domestic service in households are covered by the FLSA. Nurses, certified nurse aides, home health care aides, and other individuals providing home health care services fall within the term "domestic service employment."

An employee who performs companionship services in or about the private home of the person by whom he/she is employed is exempt from the FLSA's minimum wage and overtime requirements if all criteria of the exemption are met. "Companionship services" means services for the care, fellowship, and protection of persons who because of advanced age or physical or mental infirmity cannot care for themselves. Such services include household work for aged or infirm persons including meal preparation, bed making, clothes washing and other similar personal services. General household work is also included, as long as it does not exceed 20 percent of the total weekly hours worked by the companion. Where this 20 percent limitation is exceeded, the employee must be paid for all hours in compliance with the minimum wage and overtime requirements of the FLSA.

The term "companionship services" does not include services performed by trained personnel such as registered or practical nurses. Registered nurses are exempt from the FLSA's wage requirements where their time is spent in the performance of the duties of a nurse and are paid on a salary or a "fee basis" as defined by Regulations, 29 CFR Part 541.

Individuals other than trained personnel (such as nurses) who attend to invalid infants and

young children are considered companions, rather than babysitters, and their status may thus be within the companion exemption.

Covered domestic service employees who reside in the household where they are employed are entitled to the minimum wage but may be exempt from the Act's overtime requirements.

Typical Problems

An employee hired as a companion to an aged individual with a physical infirmity spends more than 20% of his/her time doing general household work. That person must be paid at least the minimum wage and one and one-half the regular rate of pay for hours in excess of forty in a workweek.

An employee who provides care and protection for minor children, where the children are not physically or mentally infirm, must be paid the minimum wage and proper overtime compensation. This activity would not constitute exempt companionship services.

Where to Obtain Additional Information

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations. Copies of Wage and Hour publications may be obtained by contacting the nearest office of the Wage and Hour Division listed in most telephone directories under U. S. Government, Department of Labor.

—DISCLAIMER—

[DOL Home Page](#)[ESA Home Page](#)[Top of Document](#)[WHD Info](#)



Employment Standards Administration Wage and Hour Division

Fact Sheet No. 024

Homeworkers Under The Fair Labor Standards Act (FLSA)

This fact sheet provides general information concerning the application of the FLSA to homeworkers.

Characteristics

Under the FLSA, industrial homework (as defined in Reg. 530.1(d)) means the production by any person in or about a home, apartment, tenement, or room in a residential establishment, of goods for an employer who suffers or permits such production, regardless of the source (whether obtained from an employer or elsewhere) of the materials used by the homeworker in such production.

Coverage

The FLSA applies to homeworkers who are covered on an "individual" basis or whose employer is covered on an "enterprise" basis. The enterprise coverage test requires a specified annual dollar volume of business. However, in most instances, a homeworker is covered under the FLSA on the basis of individual coverage (i.e. production of goods for out of state shipment and/or receipt of out of state materials or goods used in the production process).

Requirements

Homework requires certification in only seven specific industries: women's apparel, jewelry manufacturing, knitted outerwear, gloves and mittens, button and buckle manufacturing, handkerchief manufacturing and embroideries. Certification occurs when the employer obtains an employer certificate, or homeworkers obtain individual certification, from the Department's Wage and Hour Division, authorizing such work. Certified employers of homeworkers in these industries will be required to renew their certificate every two years. Employer certification is not available for women's apparel and certain hazardous jewelry manufacturing operations; only individual certification is permitted. Homework under the FLSA is not restricted in any industry other than those listed above. However, all individually covered homework is subject to the FLSA's minimum wage, overtime and recordkeeping requirements.

Homeworker employees must be paid the minimum wage -- \$4.75 an hour effective 10/1/96; \$5.15 an hour effective 9/1/97. This rate must be met regardless of whether the worker is paid by time, piece, job, incentive, or any other basis. The cost of tools, tool repair, or other similar requirements, may not be borne by the worker where such cost would reduce the wages paid below the required minimum wage or in any way reduce wages due for overtime hours. Overtime must be paid at one and one-half times the employee's regular rate of pay for each

hour worked in excess of 40 hours in any workweek. The regular rate includes all remuneration for employment, such as piece rate earnings and commissions paid. Time and one-half of the average piece rate of pay is to be paid for hours worked over 40 per week, if the average is greater than the employee's regular rate of pay (never less than the required minimum wage).

Records which must be kept for all employees include: name, social security number, home address and telephone number, date of birth (if under 19 years of age), hours worked each day (including time spent transporting), total hours worked each workweek, basis of pay computations, regular pay, overtime premium pay, total gross pay, deductions (specifying the nature and amount of each), and net pay. All employees who have been hired since November of 1986 must also fill out the I-9 form, required by INS.

When employing homeworkers, a separate homeworker handbook is required. These handbooks are available through Wage and Hour offices. Employers are responsible for insuring that handbooks are completed as required. The handbooks require homeworkers to also list business related expenses, such as equipment and supplies.

In the case of clerical workers who may perform duties at home on only an occasional or sporadic basis, employers are not required to follow homework regulations. However, all hours, including the time worked at home, must be recorded and compensated as required by the FLSA for every employee.

Typical Problems

(1) Employer improperly treats homeworkers as "independent contractors". (2) Employer fails to maintain required record of hours, production, etc., or fails to instruct the employee to record the required data in the DOL homeworker handbook. (3) Employer fails to assure that homeworker paid on piece rate basis has earned the minimum wage. (4) The employer must bear the cost of tools purchased as well as tool maintenance and repair to the extent that these costs cut into the minimum wage or overtime wages required. (5) Employer fails to count as hours worked preparatory and concluding activities, time spent at the shop, travel time and training time. (6) Employer fails to ensure proper certification for the restricted industries.

Where to Obtain Additional Information

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations. Copies of Wage and Hour publications may be obtained by contacting the nearest office of the Wage and Hour Division listed in most telephone directories under U. S. Government, Department of Labor.

—DISCLAIMER—

[DOL Home Page](#)[ESA Home Page](#)[Top of Document](#)[WHD Info](#)



Employment Standards Administration Wage and Hour Division

Fact Sheet No. 023

Overtime Pay Requirements Of the Fair Labor Standards Act (FLSA)

This fact sheet provides general information concerning the application of the overtime pay provisions of the FLSA.

Characteristics

An employer who requires or permits an employee to work overtime is generally required to pay the employee premium pay for such overtime work.

Requirements

Unless specifically exempted, employees covered by the Act must receive overtime pay for hours worked in excess of 40 in a workweek at a rate not less than time and one-half their regular rates of pay. There is no limit in the Act on the number of hours employees aged 16 and older may work in any workweek. The Act does not require overtime pay for work on Saturdays, Sundays, holidays, or regular days of rest, as such.

The Act applies on a workweek basis. An employee's workweek is a fixed and regularly recurring period of 168 hours – seven consecutive 24-hour periods. It need not coincide with the calendar week, but may begin on any day and at any hour of the day. Different workweeks may be established for different employees or groups of employees. Averaging of hours over two or more weeks is not permitted. Normally, overtime pay earned in a particular workweek must be paid on the regular pay day for the pay period in which the wages were earned.

The regular rate of pay cannot be less than the minimum wage. The regular rate includes all remuneration for employment except certain payments excluded by the Act itself. Payments which are not part of the regular rate include pay for expenses incurred on the employer's behalf, premium payments for overtime work or the true premiums paid for work on Saturdays, Sundays, and holidays, discretionary bonuses, gifts and payments in the nature of gifts on special occasions, and payments for occasional periods when no work is performed due to vacation, holidays, or illness.

Earnings may be determined on a piece-rate, salary, commission, or some other basis, but in all such cases the overtime pay due must be computed on the basis of the average hourly rate derived from such earnings. This is calculated by dividing the total pay for employment (except for the noted statutory exclusions) in any workweek by the total number of hours actually worked.

Where an employee in a single workweek works at two or more different types of work for

which different straight-time rates have been established, the regular rate for that week is the weighted average of such rates. That is, the earnings from all such rates are added together and this total is then divided by the total number of hours worked at all jobs.

Where non-cash payments are made to employees in the form of goods or facilities, the reasonable cost to the employer or fair value of such goods or facilities must be included in the regular rate.

Typical Problems

Fixed Sum for Varying Amounts of Overtime: A lump sum paid for work performed during overtime hours without regard to the number of overtime hours worked does not qualify as an overtime premium even though the amount of money paid is equal to or greater than the sum owed on a per-hour basis. For example, no part of a flat sum of \$90 to employees who work overtime on Sunday will qualify as an overtime premium, even though the employees' straight-time rate is \$6.00 an hour and the employees always work less than 10 hours on Sunday. Similarly, where an agreement provides for 6 hours pay at \$9.00 an hour regardless of the time actually spent for work on a job performed during overtime hours, the entire \$54.00 must be included in determining the employees' regular rate.

Salary for Workweek Exceeding 40 Hours: A fixed salary for a regular workweek longer than 40 hours does not discharge FLSA statutory obligations. For example, an employee may be hired to work a 45 hour workweek for a weekly salary of \$300. In this instance the regular rate is obtained by dividing the \$300 straight-time salary by 45 hours, resulting in a regular rate of \$6.67. The employee is then due additional overtime computed by multiplying the 5 overtime hours by one-half the regular rate of pay ($\$3.335 \times 5 = \$16.68$).

Overtime Pay May Not Be Waived: The overtime requirement may not be waived by agreement between the employer and employees. An agreement that only 8 hours a day or only 40 hours a week will be counted as working time also fails the test of FLSA compliance. An announcement by the employer that no overtime work will be permitted, or that overtime work will not be paid for unless authorized in advance, also will not impair the employee's right to compensation for compensable overtime hours that are worked.

Where to Obtain Additional Information

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations. Copies of Wage and Hour publications may be obtained by contacting the nearest office of the Wage and Hour Division listed in most telephone directories under U. S. Government, Department of Labor.

—DISCLAIMER—

[DOL Home Page](#)[ESA Home Page](#)[Top of Document](#)[WHD Info](#)



Employment Standards Administration Wage and Hour Division

Fact Sheet No. 022

Hours Worked Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information concerning what constitutes compensable time under the FLSA. The Act requires that employees must receive at least the minimum wage and may not be employed for more than 40 hours in a week without receiving at least one and one-half times their regular rates of pay for the overtime hours. The amount employees should receive cannot be determined without knowing the number of hours worked.

Definition of "Employ"

By statutory definition the term "employ" includes "to suffer or permit to work." The workweek ordinarily includes all time during which an employee is necessarily required to be on the employer's premises, on duty or at a prescribed work place. "Workday", in general, means the period between the time on any particular day when such employee commences his/her "principal activity" and the time on that day at which he/she ceases such principal activity or activities. The workday may therefore be longer than the employee's scheduled shift, hours, tour of duty, or production line time.

Application of Principles

Employees "Suffered or Permitted" to work: Work not requested but suffered or permitted to be performed is work time that must be paid for by the employer. For example, an employee may voluntarily continue to work at the end of the shift to finish an assigned task or to correct errors. The reason is immaterial. The hours are work time and are compensable.

Waiting Time: Whether waiting time is time worked under the Act depends upon the particular circumstances. Generally, the facts may show that the employee was engaged to wait (which is work time) or the facts may show that the employee was waiting to be engaged (which is not work time). For example, a secretary who reads a book while waiting for dictation or a fireman who plays checkers while waiting for an alarm is working during such periods of inactivity. These employee have been "engaged to wait."

On-Call Time: An employee who is required to remain on call on the employer's premises is working while "on call." An employee who is required to remain on call at home, or who is allowed to leave a message where he/she can be reached, is not working (in most cases) while on call. Additional constraints on the employee's freedom could require this time to be compensated.

Rest and Meal Periods: Rest periods of short duration, usually 20 minutes or less, are common in industry (and promote the efficiency of the employee) and are customarily paid for

as working time. These short periods must be counted as hours worked. Bona fide meal periods (typically 30 minutes or more) generally need not be compensated as work time. The employee must be completely relieved from duty for the purpose of eating regular meals. The employee is not relieved if he/she is required to perform any duties, whether active or inactive, while eating.

Sleeping Time and Certain Other Activities: An employee who is required to be on duty for less than 24 hours is working even though he/she is permitted to sleep or engage in other personal activities when not busy. An employee required to be on duty for 24 hours or more may agree with the employer to exclude from hours worked bona fide regularly scheduled sleeping periods of not more than 8 hours, provided adequate sleeping facilities are furnished by the employer and the employee can usually enjoy an uninterrupted night's sleep. No reduction is permitted unless at least 5 hours of sleep is taken.

Lectures, Meetings and Training Programs: Attendance at lectures, meetings, training programs and similar activities need not be counted as working time only if four criteria are met, namely: it is outside normal hours, it is voluntary, not job related, and no other work is concurrently performed.

Travel Time: The principles which apply in determining whether time spent in travel is compensable time depends upon the kind of travel involved.

Home To Work Travel: An employee who travels from home before the regular workday and returns to his/her home at the end of the workday is engaged in ordinary home to work travel, which is not work time.

Home to Work on a Special One Day Assignment in Another City: An employee who regularly works at a fixed location in one city is given a special one day assignment in another city and returns home the same day. The time spent in traveling to and returning from the other city is work time, except that the employer may deduct/not count that time the employee would normally spend commuting to the regular work site.

Travel That is All in the Day's Work: Time spent by an employee in travel as part of his/her principal activity, such as travel from job site to job site during the workday, is work time and must be counted as hours worked.

Travel Away from Home Community: Travel that keeps an employee away from home overnight is travel away from home. Travel away from home is clearly work time when it cuts across the employee's workday. The time is not only hours worked on regular working days during normal working hours but also during corresponding hours on nonworking days. As an enforcement policy the Division will not consider as work time that time spent in travel away from home outside of regular working hours as a passenger on an airplane, train, boat, bus, or automobile.

Typical Problems

Problems arise when employers fail to recognize and count certain hours worked as compensable hours. For example, an employee who remains at his/her desk while eating lunch

and regularly answers the telephone and refers callers is working. This time must be counted and paid as compensable hours worked because the employee has not been completely relieved from duty.

Where To Obtain Additional Information

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations. Copies of Wage and Hour publications may be obtained by contacting the nearest office of the Wage and Hour Division listed in most telephone directories under U.S. Government, Department of Labor.

--DISCLAIMER--

[DOL Home Page](#)[ESA Home Page](#)[Top of Document](#)[WHD Info](#)

U.S. DOL **Employment Standards Administration**
Wage and Hour Division

---DISCLAIMER---

Fact Sheet No. 021

Recordkeeping Requirements Under The Fair Labor Standards Act (FLSA)

This fact sheet provides a summary of the FLSA's recordkeeping Regulations, 29 CFR Part 516.

Records To Be Kept By Employers.

Highlights: The FLSA sets minimum wage, overtime pay, recordkeeping and child labor standards for employment subject to its provisions. Unless exempt, covered employees must be paid at least the minimum wage and not less than one and one-half times their regular rates of pay for overtime hours worked.

Posting: Employers must display an official poster outlining the provisions of the Act, available at no cost from local offices of the Wage and Hour Division.

What Records Are Required: Every covered employer must keep certain records for each non-exempt worker. The Act requires no particular form for the records, but does require that the records include certain identifying information about the employee and data about the hours worked and the wages earned. The law requires this information to be accurate. The following is a listing of the basic records that an employer must maintain:

1. Employee's full name and social security number.
2. Address, including zip code.
3. Birth date, if younger than 19.
4. Sex and occupation.
5. Time and day of week when employee's workweek begins.
6. Hours worked each day.
7. Total hours worked each workweek.
8. Basis on which employee's wages are paid (e.g., "\$6 an hour", "\$220 a week", "piecework")
9. Regular hourly pay rate.
10. Total daily or weekly straight-time earnings.
11. Total overtime earnings for the workweek.
12. All additions to or deductions from the employee's wages.
13. Total wages paid each pay period.
14. Date of payment and the pay period covered by the payment.

What About Timekeeping?: Employers may use any timekeeping method they choose. For example, they may use a time clock, have a timekeeper keep track of employee's work hours, or tell their workers to write their own times on the records. Any timekeeping plan is acceptable as long as it is complete and accurate.

The following is a sample timekeeping format employers may follow but are not required to do so:

DAY	DATE	IN	OUT	TOTAL HOURS
Employee Name _____				
Sunday	5/2/93		-----	
Monday	5/3/93	8:00	12:02	
		1:00	5:03	8
Tuesday	5/4/93	7:57	11:58	
		1:00	5:00	8
Wednesday	5/5/93	8:02	12:10	
		1:06	5:05	8
Thursday	5/6/93		-----	
Friday	5/7/93		-----	
Saturday	5/8/93		-----	
Total Workweek Hours				24

Employees on Fixed Schedules: Many employees work on a fixed schedule from which they seldom vary. The employer may keep a record showing the exact schedule of daily and weekly hours and merely indicate that the worker did follow the schedule. When a worker is on a job for a longer or shorter period of time than the schedule shows, the employer must record the number of hours the worker actually worked, on an exception basis.

How Long Should Records Be Retained: Each employer shall preserve for at least three years payroll records, collective bargaining agreements, sales and purchase records. Records on which wage computations are based should be retained for two years, i.e., time cards and piece work tickets, wage rate tables, work and time schedules, and records of additions to or deductions from wages. These records must be open for inspection by the Division's representatives, who may ask the employer to make extensions, computations, or transcriptions. The records may be kept at the place of employment or in a central records office.

Where To Obtain Additional Information

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations. Copies of Wage and Hour publications may be obtained by contacting the nearest office of the Wage and Hour Division listed in most telephone directories under U.S. Government, Department of Labor.


[DOL Home Page](#)

[ESA Home Page](#)

[Top of Document](#)

[WHD Info](#)



Employment Standards Administration Wage and Hour Division

Fact Sheet No. 020

Employees Paid Commissions by Retail Establishments Who are Exempt Under Section 7(i) from Overtime Under The Fair Labor Standards Act (FLSA)

This fact sheet provides general information concerning the application of the Section 7(i) overtime exemption from the FLSA to employees of retail and service establishments, who are paid on a commission basis in whole or part.

Characteristics

Retail and service establishments are defined as establishments 75% of whose annual dollar volume of sales of goods or services (or of both) is not for resale and is recognized as retail sales or services in the particular industry. In addition, more than 50% of the establishment's dollar volume of sales of goods or services must be within the State in which the establishment is located.

Requirements

If a retail or service employer elects to use the Section 7(i) overtime exemption for commissioned employees, three conditions must be met:

- 1) the employee must be employed by a retail or service establishment, and
- 2) the employee's regular rate of pay must exceed one and one-half times the applicable minimum wage for every hour worked in a workweek in which overtime hours are worked, and
- 3) more than half the employee's total earnings in a representative period must consist of commissions.

Unless all three conditions are met, the Section 7(i) exemption is not applicable, and overtime premium pay must be paid for all hours worked over 40 in a workweek at time and one-half the regular rate of pay.

The representative period for determining if enough commissions have been paid may be as short as one month, but must not be greater than one year. The employer must select a representative period in order to determine if this condition has been met.

If the employee is paid entirely by commissions, or draws and commissions, or if commissions are always greater than salary or hourly amounts paid, the-greater-than-50%-commissions condition will have been met. If the employee is not paid in this manner, the employer must separately total the employee's commissions and other compensation paid during the

representative period. The total commissions paid must exceed the total of other compensation paid for this condition to be met.

To determine if an employer has met the "more than one and one-half times the applicable minimum wage" condition, the employer may divide the employee's total earnings attributed to the pay period by the employee's total hours worked during such pay period. If the result is greater than time and one-half the minimum wage, this condition of the exemption has been met.

Hotels, motels and restaurants may levy mandatory service charges on customers which represent a percentage of amounts charged customers for services. If part or all of the service charges are paid to service employees, that payment may be considered commission and, if other conditions are met, the service employees may be exempt from the payment of overtime premium pay.

Typical Problems

Regulations require that employers maintain accurate records of hours worked each workday, hours worked each workweek, and earnings and wages paid. Without hours worked and earnings records, the employer will be unable to substantiate that all conditions for the exemption have been met. In addition, the employer must select a representative period of at least one month, but not more than one year, which typifies the characteristics of the employee's earning pattern, in order to test whether the employee is paid principally by commissions.

Tips paid to service employees by customers may never be considered commissions for the purposes of this exemption.

An employee is employed by the central office of a retail chain enterprise as a sales instructor working in the various retail establishments. Since this employee is employed by the central office and not "by" the retail "establishment", the exemption does not apply.

Where to Obtain Additional Information

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations. Copies of Wage and Hour publications may be obtained by contacting the nearest office of the Wage and Hour Division listed in most telephone directories under U.S. Government, Department of Labor.

—DISCLAIMER—

[DOL Home Page](#)[ESA Home Page](#)[Top of Document](#)[WHD Info](#)



Employment Standards Administration Wage and Hour Division

Fact Sheet No. 019

The Motor Carrier Exemption Under the Fair Labor Standards Act (FLSA)

Section 13(b)(1) of the FLSA is an exemption from overtime. The provisions of Section 7 (overtime) do not apply with respect to any employee to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of Section 204 of The Motor Carrier Act of 1935.

Section 13(b)(1) of the FLSA provides an exemption from the overtime pay provisions, but not from the minimum wage (Section 6) requirements. This exemption has been interpreted as applying to any driver, driver's helper, loader or mechanic employed by a carrier and whose duties affect the safety of operation of motor vehicles in the transportation on public highways of passengers or property in interstate or foreign commerce.

Requirements

The Section 13(b)(1) overtime exemption applies to those employees for whom the Department of Transportation claims jurisdiction and if the employer is:

- 1) a private carrier and hauls property or;
- 2) a common or contract carrier and hauls property or passengers and additionally if;
 - a) the employee's duties (consisting wholly or in part) affect the safety of operation of a motor vehicle and;
 - b) the employee's travel is in interstate commerce (across State lines) or the employee handles trips which connect with an intrastate terminal (rail, air, water, or land) to continue an interstate journey of goods that have not come to rest at a final destination.

The exemption will apply to those employees called upon in the ordinary course of work to perform, either regularly or from time to time, safety-affecting activities. The employee comes within the exemption in all workweeks when he/she is employed in such work. This general rule assumes that the activities involved in the continuing duties of the job in all workweeks will include activities that affect safety of operation of motor vehicles. Where this is the case, the exemption will be applicable regardless of the proportion of "safety affecting activities" performed in a particular workweek.

On the other hand, where continuing duties of the employee's job have no substantial direct effect on such "safety of operation", or where such safety affecting activities are so trivial, casual, and insignificant as to be de minimis, the exemption will not apply in any workweek so long as there is no change in the duties.

Where safety affecting employees have not made an actual interstate trip, they may still be subject to DOT's jurisdiction if:

- 1) the employer is shown to have an involvement in interstate commerce and;
- 2) it can be established that the employee could have, in the regular course of employment, been reasonably expected to make an interstate journey or could have worked on the motor vehicle in such a way to be safety affecting.

Satisfactory evidence of the above could take the form of statements from the employees, or documentation from the employer, such as employee agreements. Where such evidence is developed with regard to an employee, the DOT will assert jurisdiction over that employee for a four (4) month period beginning with the date he/she could have been called upon to, or actually did, engage in the carrier's interstate activities. Thus, such employee(s) would be exempt under Section 13(b)(1) for the same four-month period, notwithstanding references to the contrary in Regulations, 29 CFR 782.2.

The overtime pay exemption does not apply to employees of non-carriers such as commercial garages, firms engaged in the business of maintaining and repairing motor vehicles owned and operated by carriers, or firms engaged in the leasing and renting of motor vehicles to carriers.

Typical Problems

A carrier may improperly apply the Section 13(b)(1) overtime exemption to employees of the company who are not engaged in "safety affecting activities", such as dispatchers, office personnel, those who unload vehicles or those who load but are not responsible for the proper loading of the vehicle. Only drivers, driver's helpers, loaders who are responsible for proper loading, and mechanics working directly on motor vehicles that are to be used in transportation of passengers or property in interstate commerce, can be exempt from the overtime provisions of the FLSA under Section 13(b)(1).

Where to Obtain Additional Information

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations. Copies of Wage and Hour publications may be obtained by contacting the nearest office of the Wage and Hour Division listed in most telephone directories under U.S. Government, Department of Labor.

—DISCLAIMER—

[DOL Home Page](#)[ESA Home Page](#)[Top of Document](#)[WHD Info](#)



Employment Standards Administration Wage and Hour Division

Fact Sheet No. 018

Section 13(a)(3) Exemption For Seasonal And Recreational Establishments Under The Fair Labor Standards Act (FLSA)

The FLSA requires that most employees in the United States be paid at least a minimum wage -- \$4.75 an hour effective 10/1/96; \$5.15 an hour effective 9/1/97 -- and overtime pay at time and one-half the regular rate of pay after 40 hours in a workweek. In addition, the law includes child labor and recordkeeping provisions. However, the Act provides some specific exemptions from these requirements for employees employed by certain establishments and in certain occupations. This fact sheet provides general information concerning the application of the Section 13(a)(3) exemption from minimum wage and overtime pay to seasonal and recreational establishments under the FLSA.

Some State wage laws may not recognize or permit the application of this exemption, and since an employer must comply with the most stringent of the State or Federal provisions, it is strongly recommended that the State laws be reviewed prior to applying this exemption.

General Provisions of Section 13(a)(3)

Section 13(a)(3) provides an exemption from the minimum wage and overtime provisions of the FLSA for "any employee employed by an establishment which is an amusement or recreational establishment, if (A) it does not operate for more than seven months in any calendar year, or (B) during the preceding calendar year, its average receipts for any six months of such year were not more than 33-1/3 per centum of its average receipts for the other six months of such year."

Tests for the Exemption

(a) An "amusement or recreational establishment" will be exempt under Section 13(a)(3) of the Act if it meets either Test (A) or Test (B) as explained in the following paragraphs.

(b) "Does not operate for more than seven months in any calendar year." Whether an amusement or recreational establishment "operates" during a particular month is a question of fact, and depends on whether it operates as an amusement or recreational establishment. If an establishment engages only in such activities as maintenance operations or ordering supplies during the "off season" it is not considered to be operating for purposes of the exemption.

(c) 33-1/3 % Test. Because the language of the statute refers to receipts for any six months (not necessarily consecutive months), the monthly average based on total receipts for the six individual months in which the receipts were smallest should be tested against the monthly average for six individual months when the receipts were largest to determine whether this test

is met. To illustrate:

An amusement or recreational establishment operated for nine months in the preceding calendar year. The establishment was closed during December, January and February. The total receipts for May, June, July, August, September and October (the six months in which the receipts were largest) totaled \$260,000, a monthly average of \$43,333; the total receipts for the other six months totaled \$75,000, a monthly average of \$12,500. Because the average receipts of the latter six months were not more than 33-1/3% of the average receipts for the other six months of the year, the Section 13(a)(3) exemption would apply.

"Employed by" an Exempt Establishment

For purposes of applying Section 13(a)(3), the general principles set forth in IB 779.307 - 779.311 apply. Thus an employee, to be exempt, must be "employed by" the exempt establishment. If the concessionaire and host establishment constitute a single establishment, as is usually the case, the tests apply on the basis of all the operations of the establishment, including those of the concessionaire. Central functions of an organization operating more than one such establishment, as in the case of employees of a central office, warehouse, garage, or commissary which serves a chain of exempt "amusement or recreational" establishments would not be within the exemption under Section 13(a)(3).

"Receipts" of a publicly operated amusement or recreational establishment. Section 13(a)(3) contains certain percentage tests for "receipts" of the establishment. As used here, receipts are fees from admissions. A publicly operated amusement or recreational establishment whose operating costs are met wholly or primarily from tax funds would fail to qualify under Section 13(a)(3)(B).

Where to Obtain Additional Information

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations. Copies of Wage and Hour publications may be obtained by contacting the nearest office of the Wage and Hour Division listed in most telephone directories under U. S. Government, Department of Labor.

—DISCLAIMER—

[DOL Home Page](#)[ESA Home Page](#)[Top of Document](#)[WHD Info](#)



Employment Standards Administration Wage and Hour Division

Fact Sheet No. 017

Exemption For Executive, Administrative, Professional, & Outside Sales Employees Under The Fair Labor Standards Act (FLSA)

This fact sheet provides general information concerning the exemption provided by Section 13(a)(1) of the FLSA as defined by Regulations, 29 CFR Part 541.

Characteristics

Section 13(a)(1) of the FLSA exempts executive, administrative, professional, and outside sales employees from the minimum wage and overtime requirements of the FLSA, provided they meet certain tests regarding job duties and responsibilities and are compensated "on a salary basis" at not less than stated amounts. Subject to certain exceptions set forth in the regulations, in order to be considered "salaried", employees must receive their full salary for any workweek in which they perform any work without regard to the number of days or hours worked. This rule applies to each exemption that has a salary requirement (outside sales employees, and certain licensed or certified doctors, lawyers and teachers have no salary requirement. For certain computer-related occupations under the professional exemption, they need not be paid a salary if they are paid on an hourly basis at a rate not less than \$27.63 per hour). The special requirements which apply to each category of employees are summarized below.

Executive Exemption

Applicable to employees who have management as their primary duty; who direct the work of two or more full-time employees; who have the authority to hire and fire or make recommendations regarding decisions affecting the employment status of others; who regularly exercise a high degree of independent judgment in their work; who receive a salary which meets the requirements of the exemption; and who do not devote more than 20% of their time to non-management functions (40% in retail and service establishments).

Administrative Exemption

Applicable to employees who perform office or non-manual work which is directly related to the management policies or general business operations of their employer or their employer's customers, or perform such functions in the administration of an educational establishment; who regularly exercise discretion and judgment in their work; who either assist a proprietor or executive, perform specialized or technical work, or execute special assignments; who receive a salary which meets the requirements of the exemption; and who do not devote more than 20% of their time to work other than that described above (40% in retail and service establishments).

Professional Exemption

Applicable to employees who perform work requiring advanced knowledge and education, work in an artistic field which is original and creative, work as a teacher, or work as a computer system analyst, programmer, software engineer, or similarly skilled worker in the computer software field; who regularly exercise discretion and judgment; who perform work which is intellectual and varied in character, the accomplishment of which cannot be standardized as to time; who receive a salary which meets the requirements of the exemption (except doctors, lawyers, teachers and certain computer occupations); and who do not devote more than 20% of their time to work other than that described above.

Outside Sales Exemption

Applicable to employees who engage in making sales or obtaining orders away from their employer's place of business and who do not devote more than 20% of the hours worked by non-exempt employees of the employer to work other than the making of such sales.

Typical Problems

Some problems and misconceptions which are commonly found in the application of the Section 13(a)(1) exemptions are:

- Employers without a formal sick leave policy docking salaried, exempt employees for time missed from work because of sickness.
- Employees not receiving full salary payments each week.
- Employees performing routine production type duties that seem related to general business operations but which have no bearing on setting of management policies.
- Employees who hold degrees performing jobs which are not professional in nature or to which the degree they hold is not applicable.
- Employers confusing job skills with the exercise of independent judgment and discretion.
- Employees placed on salary and classified as exempt without regard to duties or percentage of time spent in exempt duties.

Where To Obtain Additional Information

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations. Copies of Wage and Hour publications may be obtained by contacting the nearest office of the Wage and Hour Division listed in most telephone directories under U. S. Government, Department of Labor.

—DISCLAIMER—

[DOL Home Page](#)[ESA Home Page](#)[Top of Document](#)[WHD Info](#)

U.S. DOL **Employment Standards Administration**
Wage and Hour Division

---DISCLAIMER---

Fact Sheet No. 016

Deductions From Wages For Uniforms And Other Facilities Under The Fair Labor Standards Act (FLSA)

This fact sheet provides general information concerning the application of the FLSA to deductions from employees' wages for uniforms and other facilities.

Characteristics

The FLSA does not allow uniforms, or other items which are considered to be primarily for the benefit or convenience of the employer, to be included as wages. Thus, an employer may not take credit for such items in meeting his/her obligations toward paying the minimum wage or overtime.

Requirements

Uniforms: The FLSA does not require that employees wear uniforms. However, if the wearing of a uniform is required by some other law, the nature of a business, or by an employer, the cost and maintenance of the uniform is considered to be a business expense of the employer. If the employer requires the employee to bear the cost, it may not reduce the employee's wage below the minimum wage or cut into overtime compensation required by the Act.

For example, if an employee who is subject to the statutory minimum wage of \$5.15 an hour is paid an hourly wage of \$5.15, the employer may not make any deduction from the employee's wages for the cost of the uniform nor may the employer require the employee to purchase the uniform on his/her own. However, if the employee were paid \$5.50 an hour and worked 30 hours in the workweek, the maximum amount the employer could legally deduct from the employee's wages would be \$10.50 ($\$3.35 \times 30$ hours).

The employer may prorate deductions for the cost of the uniform over a period of paydays provided the prorated deductions do not reduce the employee's wages below the required minimum wage or overtime compensation in any workweek.

Other Items: Employers at times require employees to pay or reimburse the employer for other items. The cost of any items which are considered primarily for the benefit or convenience of the employer would have the same restrictions as apply to reimbursement for uniforms. In other words, no deduction may be made from an employee's wages which would reduce the employee's earnings below the required minimum wage or overtime compensation.

Some examples of items which would be considered to be for the benefit or convenience of the employer are tools used in the employee's work, damages to the employer's property by the employee or any other individuals, financial losses due to clients/customers not paying bills, and theft of the employer's property by the employee or other individuals. Employees may not be required to pay for any of the cost of such items if, by so doing, their wages would be reduced below the required minimum wage or overtime compensation. This is true even if an economic loss suffered by the employer is due to the employee's negligence.

Employers may not avoid FLSA minimum wage and overtime requirements by having the employee

reimburse the employer in cash for the cost of such items in lieu of deducting the cost from the employee's wages.

Typical Problems

(1) A minimum wage employee working as a cashier is illegally required to reimburse the employer for a cash drawer shortage. (2) An employer improperly requires tipped employees to pay for customers who walk out without paying their bills or for incorrectly totaled bills. (3) An employer furnishes elaborate uniforms to employees and makes them responsible for having the uniforms cleaned. (4) An employee driving the employer's vehicle causes a wreck, and the employer holds the employee responsible for the repairs, thereby reducing the employee's wages below the minimum wage. (5) A security guard is required to purchase a gun for the job, and the cost causes him/her to not earn the minimum wage. (6) The cost of an employer-required physical examination cuts into an employee's minimum wage or overtime compensation.

Where to Obtain Additional Information

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations. Copies of Wage and Hour publications may be obtained by contacting the nearest office of the Wage and Hour Division listed in most telephone directories under U. S. Government, Department of Labor.

[DOL Home Page](#)[ESA Home Page](#)[Top of Document](#)[WHD Info](#)



Employment Standards Administration Wage and Hour Division

Fact Sheet No. 015

Tipped Employees Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information concerning the application of the FLSA to employees who receive tips.

Characteristics

Tipped employees are those who customarily and regularly receive more than \$30 a month in tips. Tips actually received by tipped employees may be counted as wages for purposes of the FLSA, but the employer must pay not less than \$2.13 an hour in direct wages.

Requirements

If an employer elects to use the tip credit provision the employer must:

- 1) Inform each tipped employee about the tip credit allowance (including amount to be credited) before the credit is utilized.
- 2) Be able to show that the employee receives at least the minimum wage when direct wages and the tip credit allowance are combined.
- 3) Allow the tipped employee to retain all tips, whether or not the employer elects to take a tip credit for tips received, except to the extent the employee participates in a valid tip pooling arrangement.

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 -- \$4.75 an hour effective 10/1/96; \$5.15 an hour effective 9/1/97 -- the employer must make up the difference.

Youth Minimum Wage: The 1996 Amendments to the FLSA allow employers to pay a youth minimum wage of not less than \$4.25 an hour to employees who are under 20 years of age during the first 90 consecutive calendar days after initial employment by their employer. The law contains certain protections for employees that prohibit employers from displacing any employee in order to hire someone at the youth minimum wage.

Dual Jobs: When an employee is employed concurrently in both a tipped and a non-tipped occupation, the tip credit is available only for the hours spent in the tipped occupation. The Act permits an employer to take the tip credit for time spent in duties related to the tipped occupation, even though such duties are not by themselves directed toward producing tips, provided such duties are incidental to the regular duties and are generally assigned to such occupations. Where tipped employees are routinely assigned to maintenance, or where tipped

employees spend a substantial amount of time (in excess of 20 percent) performing general preparation work or maintenance, no tip credit may be taken for the time spent in such duties.

Retention of Tips: The law forbids any arrangement between the employer and the tipped employee whereby any part of the tip received becomes the property of the employer. A tip is the sole property of the tipped employee. Where an employer does not strictly observe the tip credit provisions of the Act, no tip credit may be claimed and the employees are entitled to receive the full cash minimum wage, in addition to retaining tips they may\should have received.

Service Charges: A compulsory charge for service, for example, 15 percent of the bill, is not a tip. Such charges are part of the employer's gross receipts. Where service charges are imposed and the employee receives no tips, the employer must pay the entire minimum wage and overtime required by the Act.

Tip Pooling: The requirement that an employee must retain all tips does not preclude tip splitting or pooling arrangements among employees who customarily and regularly receive tips, such as waiters, waitresses, bellhops, counter personnel (who serve customers), busboys/girls and service bartenders. Tipped employees may not be required to share their tips with employees who have not customarily and regularly participated in tip pooling arrangements, such as dishwashers, cooks, chefs, and janitors. Only those tips that are in excess of tips used for the tip credit may be taken for a pool. Tipped employees cannot be required to contribute a greater percentage of their tips than is customary and reasonable.

Credit Cards: Where tips are charged on a credit card and the employer must pay the credit card company a percentage on each sale, then the employer may pay the employee the tip, less that percentage. This charge on the tip may not reduce the employee's wage below the required minimum wage. The amount due the employee must be paid no later than the regular pay day and may not be held while the employer is awaiting reimbursement from the credit card company.

Typical Problems

Minimum Wage Problems: Employee does not qualify as a "tipped employee", tips are not sufficient to make up difference between employer's direct wage obligation and the minimum wage; employee receives tips only -- so the full minimum wage is owed; illegal deductions for walk-outs, breakages and cash register shortages; and invalid tip pools.

Overtime Problems: Failure to pay overtime on the full minimum wage; failure to pay overtime on the regular rate including all service charges, commissions, bonuses and other remuneration.

Where to Obtain Additional Information

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations. Copies of Wage and Hour publications may be obtained by contacting the nearest office of the Wage and Hour Division listed in most telephone directories under U. S. Government, Department of Labor.



Employment Standards Administration Wage and Hour Division

Fact Sheet No. 014

Coverage Under The Fair Labor Standards Act (FLSA)

This fact sheet provides general information concerning coverage under the FLSA.

The FLSA is the Federal law which sets minimum wage, overtime, recordkeeping, and child labor standards.

The minimum wage is \$4.75 an hour effective 10/1/96; \$5.15 an hour effective 9/1/97. With only some exceptions, overtime ("time and one-half") must be paid for work over forty hours a week. Child labor regulations prohibit persons younger than eighteen years old from working in certain jobs and additionally sets rules concerning the hours and times employees under sixteen years of age may work.

More than eighty million American workers are protected (or "covered") by the FLSA, which is enforced by the Wage and Hour Division of the U.S. Department of Labor.

There are two ways in which an employee can be covered by the law: "enterprise coverage" and "individual coverage."

Enterprise Coverage

Employees who work for certain businesses or organizations (or "enterprises") are covered by the FLSA. These enterprises, which must have at least two employees, are:

- (1) those which do at least \$500,000 a year in business
- (2) hospitals, businesses providing medical or nursing care for residents, schools and preschools, and government agencies

Individual Coverage

Even when there is no enterprise coverage, employees are protected by the FLSA if their work regularly involves them in commerce between States ("interstate commerce"). In its own words, the law covers individual workers 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 persons located in other States, handle records of interstate transactions, travel to other States on their jobs, and do janitorial work in buildings where goods are produced for shipment outside the State.

Also, domestic service workers (such as housekeepers, full-time babysitters, and cooks) are normally covered by the law.

Where to Obtain Additional Information

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations. Copies of Wage and Hour publications may be obtained by contacting the nearest office of the Wage and Hour Division listed in most telephone directories under U.S. Government, Department of Labor.

—DISCLAIMER—

[DOL Home Page](#)[ESA Home Page](#)[Top of Document](#)[WHD Info](#)



Employment Standards Administration Wage and Hour Division

Fact Sheet No. 013

Employment Relationship Under The Fair Labor Standards Act (FLSA)

This fact sheet provides general information concerning the meaning of "employment relationship" and the significance of that determination in applying provisions of the FLSA.

Characteristics

An employment relationship under the FLSA must be distinguished from a strictly contractual one. Such a relationship must exist for any provision of the FLSA to apply to any person engaged in work which may otherwise be subject to the Act. In the application of the FLSA an employee, as distinguished from a person who is engaged in a business of his or her own, is one who, as a matter of economic reality, follows the usual path of an employee and is dependent on the business which he or she serves. The employer-employee relationship under the FLSA is tested by "economic reality" rather than "technical concepts." It is not determined by the common law standards relating to master and servant.

The U. S. Supreme Court has on a number of occasions indicated that there is no single rule or test for determining whether an individual is an independent contractor or an employee for purposes of the FLSA. The Court has held that it is the total activity or situation which controls. Among the factors which the Court has considered significant are:

- 1) The extent to which the services rendered are an integral part of the principal's business.
- 2) The permanency of the relationship.
- 3) The amount of the alleged contractor's investment in facilities and equipment.
- 4) The nature and degree of control by the principal.
- 5) The alleged contractor's opportunities for profit and loss.
- 6) The amount of initiative, judgment, or foresight in open market competition with others required for the success of the claimed independent contractor.
- 7) The degree of independent business organization and operation.

There are certain factors which are immaterial in determining whether there is an employment relationship. Such facts as the place where work is performed, the absence of a formal employment agreement, or whether an alleged independent contractor is licensed by State/local government are not considered to have a bearing on determinations as to whether there is an employment relationship. Additionally, the Supreme Court has held that the time or

mode of pay does not control the determination of employee status.

Requirements

When it has been determined that an employer-employee relationship does exist, and the employee is engaged in work that is subject to the Act, it is required that the employee be paid at least the Federal minimum wage, — \$4.75 an hour effective 10/1/96; \$5.15 an hour effective 9/1/97 — and in most cases time and one-half his/her regular rate of pay for all hours worked in excess of 40 per week. The Act also has child labor provisions which regulate the employment of minors under the age of eighteen, as well as record keeping requirements.

Typical Problems

(1) One of the most common problems is in the construction industry where contractors hire so-called independent contractors, who in reality should be considered employees because they do not meet the tests for independence, as stated above. (2) Franchise arrangements can pose problems in this area as well. Depending on the level of control the franchisor has over the franchisee, employees of the latter may be considered to be employed by the franchisor. (3) A situation involving a person volunteering his or her services for another may also result in an employment relationship. For example, a person who is an employee cannot "volunteer" his/her services to the employer to perform the same type service performed as an employee. Of course, individuals may volunteer or donate their services to religious, public service, and non-profit organizations, without contemplation of pay, and not be considered employees of such organization. (4) Trainees or students may also be employees, depending on the circumstances of their activities for the employer. (5) People who perform work at their own home are often improperly considered as independent contractors. The Act covers such homeworkers as employees and they are entitled to all benefits of the law.

Where To Obtain Additional Information

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations. Copies of Wage and Hour publications may be obtained by contacting the nearest office of the Wage and Hour Division listed in most telephone directories under U. S. Government, Department of Labor.

—DISCLAIMER—

[DOL Home Page](#)[ESA Home Page](#)[Top of Document](#)[WHD Info](#)



Employment Standards Administration Wage and Hour Division

Fact Sheet No. 012

Agricultural Employers Under The Fair Labor Standards Act (FLSA)

This fact sheet provides general information concerning the application of the FLSA to agricultural employment. The FLSA is the federal law which sets minimum wage, overtime, recordkeeping, and child labor standards.

Agriculture includes farming in all its branches when performed by a farmer or on a farm as an incident to or in conjunction with such farming operations.

Coverage

Virtually all employees engaged in agriculture are covered by the Act in that they produce goods for interstate commerce. There are, however, some exemptions which exempt certain employees from the minimum wage provisions, the overtime pay provisions, or both.

Employees who are employed in agriculture as that term is defined in the Act are exempt from the overtime pay provisions. They do not have to be paid time and one half their regular rates of pay for hours worked in excess of forty per week.

Agriculture does not include work performed on a farm which is not incidental to or in conjunction with such farmer's farming operation. It also does not include operations performed off a farm if performed by employees employed by someone other than the farmer whose agricultural products are being worked on.

Any employer in agriculture who did not utilize more than 500 "man days" of agricultural labor in any calendar quarter of the preceding calendar year is exempt from the minimum wage and overtime pay provisions of the FLSA for the current calendar year. A "man day" is defined as any day during which an employee performs agricultural work for at least one hour.

Additional exemptions from the minimum wage and overtime provisions of the Act for agricultural employees apply to the following:

- Agricultural employees who are immediate family members of their employer
- Those principally engaged on the range in the production of livestock
- Local hand harvest laborers who commute daily from their permanent residence, are paid on a piece rate basis in traditionally piece-rated occupations, and were engaged in agriculture less than thirteen weeks during the preceeding calendar year
- Non-local minors, 16 years of age or under, who are hand harvesters, paid on a piece rate basis in traditionally piece-rated occupations, employed on the same farm as their parent, and paid the same piece rate as those over 16.

Requirements

Although exempt from the overtime requirements of the FLSA, agricultural employees must be paid the minimum wage — \$4.75 an hour effective 10/1/96; \$5.15 an hour effective 9/1/97. There are numerous restrictions on the employment of minors less than 16 years of age, particularly in occupations declared hazardous by the Secretary of Labor. Substantial civil money penalties are prescribed for violations of the monetary and child labor provisions of the law. The FLSA also requires that specified records be kept.

Youth Minimum Wage: The 1996 Amendments to the FLSA allow employers to pay a youth minimum wage of not less than \$4.25 an hour to employees who are under 20 years of age during the first 90 consecutive calendar days after initial employment by their employer. The law contains certain protections for employees that prohibit employers from displacing any employee in order to hire someone at the youth minimum wage.

Typical Problems

Not keeping/maintaining records of the names and permanent addresses of temporary agricultural employees, dates of birth of minors under age 19, or hours worked by employees being paid on a piece rate basis.

Failing to pay overtime to employees whose jobs are related to agriculture but which do not meet the definition of agriculture contained in the Act.

Agricultural employers who utilize the services of a farm labor contractor are almost always in a situation of joint employment with the contractor in regard to the employees. Joint employment means that both the contractor and the farmer are responsible for complying with the minimum wage, overtime, recordkeeping, and child labor provisions of the law. If either party fails to comply with the law both parties may be held liable.

Finally, most agricultural employers, agricultural associations, and farm labor contractors are subject to another statute, also administered by the Wage and Hour Division — the Migrant and Seasonal Agricultural Worker Protection Act. Employers in agriculture or agriculture-related businesses should ascertain how this law applies to their operations.

Where To Obtain Additional Information

This Fact Sheet is for general information and is not to be considered in the same light as official statements of position contained in the regulations. Copies of Wage and Hour publications may be obtained by contacting the nearest office of the Wage and Hour Division listed in most telephone directories under U.S. Government, Department of Labor.

—DISCLAIMER—

[DOL Home Page](#)[ESA Home Page](#)[Top of Document](#)[WHD Info](#)



Employment Standards Administration Wage and Hour Division

Fact Sheet No. 011

Automobile Dealers Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information concerning the application of the FLSA to automobile dealers.

Characteristics

Automobile dealers are non-manufacturing establishments engaged in the business of selling new or used automobiles and trucks to the ultimate purchaser.

Coverage

There are two types of coverage under the FLSA. Either or both may apply in a given situation depending on the circumstances.

Enterprise coverage applies to all employees of new or used automobile dealerships which have at least \$500,000 per year in gross sales.

Individual coverage applies to any employee whose work regularly involves commerce between states ("interstate commerce") even if the employer's annual sales are less than \$500,000.

Requirements

The minimum wage, -- \$4.75 an hour effective 10/1/96; \$5.15 an hour effective 9/1/97 -- is required to be paid to all non-exempt employees.

Youth Minimum Wage: The 1996 Amendments to the FLSA allow employers to pay a youth minimum wage of not less than \$4.25 an hour to employees who are under 20 years of age during the first 90 consecutive calendar days after initial employment by their employer. The law contains certain protections for employees that prohibit employers from displacing any employee in order to hire someone at the youth minimum wage.

The FLSA requires the payment of time and one half the employee's regular rate of pay for all hours worked in excess of 40 in a workweek to all non-exempt employees.

Numerous exemptions exist which remove certain types of employees from specified requirements of the FLSA. Among those most commonly applicable to automobile dealerships is one which exempts certain sales and parts personnel, mechanics, and service writers from the overtime requirements. Another exempts certain managers and administrative employees from the minimum wage and overtime requirements.

There is no requirement that wages be paid weekly, as long as some regular pay period (such as bi-weekly or monthly) is established by the employer. Once the employer has established the pay period the FLSA requires that employees receive "prompt payment" for all hours of work within the pay period. Although the "settlement period" does not have to coincide with the regular pay period, in the absence of strong evidence to the contrary it will be assumed that an employer intended that a settlement period for commissions represents the pay period for the affected employees. Periodic draws against commission earnings within the pay/settlement period may be less than the minimum wage. Employers may credit such draws against their minimum wage obligation when settling the amount due to employees at the end of the pay/settlement period.

Workers under the age of 18 are prohibited from working in certain jobs such as operating motor vehicles. Minors younger than 16 may work only during particular times of the day and for a limited number of hours. Minors under 14 may not be employed.

Employers must keep records showing their employees' names, hours worked, rates of pay, regular and overtime pay, home addresses, dates of birth (if they are under the age of 19), gender, and occupation.

Where To Obtain Additional Information

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations. Copies of Wage and Hour publications may be obtained by contacting the nearest office of the Wage and Hour Division listed in most telephone directories under U.S. Government, Department of Labor.

—DISCLAIMER—

[DOL Home Page](#)[ESA Home Page](#)[Top of Document](#)[WHD Info](#)



Employment Standards Administration Wage and Hour Division

Fact Sheet No. 010

Wholesale and Warehouse Industries Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information concerning the application of the FLSA to wholesale and warehouse industries.

Characteristics

The wholesale industry is characterized by the sale of goods for resale, rather than sales to the ultimate consumer.

The warehouse industry includes central warehouses for a business enterprise, public warehouses, and storage establishments.

Coverage

All employees of wholesale or warehouse employers whose gross annual dollar volume of sales made or business done is not less than \$500,000 are covered by the FLSA.

Even if a wholesale or warehouse business is not a covered enterprise, most employees will be covered by the FLSA on an individual basis. Individual coverage applies to all employees who are engaged in interstate commerce or the production of goods for commerce. Such employees include persons who receive, ship, transport, or load goods that are moving in commerce or who prepare or transmit documents relating to such shipments. Other persons, such as guards, janitors and maintenance employees who perform duties which are closely related and directly essential to such interstate activities are also covered by the FLSA.

It has been the experience of the Wage and Hour Division that virtually all employees of wholesale and warehouse businesses are covered by the Act's provisions.

Requirements

The FLSA sets basic minimum wage and overtime pay standards and regulates the employment of minors. The minimum wage is \$4.75 an hour effective 10/1/96; \$5.15 an hour effective 9/1/97. Employees not otherwise exempt must be paid time and one-half their regular rates of pay for all hours worked over 40 per workweek, regardless of whether paid an hourly rate, salary, piece rate, commission or other basis. Each workweek stands alone and there can be no averaging of hours over two or more workweeks.

Youth Minimum Wage: The 1996 Amendments to the FLSA allow employers to pay a youth minimum wage of not less than \$4.25 an hour to employees who are under 20 years of age during the first 90 consecutive calendar days after initial employment by their employer. The

law contains certain protections for employees that prohibit employers from displacing any employee in order to hire someone at the youth minimum wage.

Warehouse employers may not employ anyone under 16 years of age. Wholesalers may have employees as young as 14 in certain jobs, but only during closely regulated hours and in very limited occupations. Employees under age 18 may not engage in occupations which have been declared hazardous by the Secretary of Labor.

Regulations, 29 CFR Part 516 specify the records which are to be kept on each employee. Most of the required records are of the type generally maintained by employers in ordinary business practices (employee names, addresses, hours of work, rates of pay, wages, deductions, etc.). These must usually be maintained for a 3-year period.

There may be employees within a covered business who are exempt from the minimum wage and/or overtime provisions of the Act. Bona fide executive, administrative and outside sales persons are exempt from both minimum wage and overtime provisions, if all the tests of the exemptions are met. Interstate drivers, mechanics, and loaders may be exempt from the Act's overtime provisions.

Typical Problems

There are some problems and misconceptions which Wage and Hour investigations commonly disclose in the wholesale and warehouse industry. These include:

- The misapplication of the executive or administrative exemptions to non-exempt persons, such as clerical workers, working foremen, dispatchers, and inside salespersons.
- Employment of underage minors, especially in the operation of fork lifts and paper balers.
- The misconception that salaried employees need not be paid overtime.
- Failure to pay employees for all hours suffered or permitted to work, including time spent taking inventory, completing paperwork, etc. beyond the normal schedule.
- Failure to maintain time records on salaried or piece rate employees.
- Giving compensatory time off in lieu of overtime pay.
- Considering certain employees to be "contract labor" and thus, not covered by the Act's provisions.
- Deductions made for reasons other than board, lodging, etc., in overtime work weeks.

Where To Obtain Additional Information

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations. Copies of Wage and Hour publications may be obtained by contacting the nearest office of the Wage and Hour Division listed in most telephone directories under U.S. Government, Department of Labor.

—DISCLAIMER—



Employment Standards Administration Wage and Hour Division

Fact Sheet No. 009

Manufacturing Establishments Under The Fair Labor Standards Act (FLSA)

This fact sheet provides general information concerning the application of the FLSA to manufacturers.

Characteristics

Employees who work in manufacturing, processing, and distributing establishments (including wholesale and retail establishments) that produce, handle, or work on goods for interstate or foreign commerce are included in the category of employees engaged in the production of goods for commerce. The minimum wage and overtime pay provisions of the Act apply to employees so engaged in the production of goods for commerce.

Coverage

The FLSA applies to employees of a manufacturing business covered either on an "enterprise" basis or by "individual" employee coverage. If the manufacturing business has at least some employees who are "engaged in commerce" and the \$500,000 annual dollar volume test is met, then the business is required to pay all employees in the "enterprise" in compliance with the FLSA without regard to whether they are individually covered.

A business that does not meet the dollar volume test discussed above may still be required to comply with the FLSA for employees covered on an "individual" basis if any of their work in a workweek involves engagement in interstate commerce or the production of goods for interstate commerce. The concept of individual coverage is indeed broad and extends not only to those employees actually performing work in the production of goods to be directly shipped outside the State, but also applies if the goods are sold to a customer who will ship them across State lines or use them as ingredients of goods that will move in interstate commerce. Additionally, employees who handle interstate calls, mail, invoices, or receive packages, etc., are individually covered.

It has been the experience of the Wage and Hour Division that virtually all employees of manufacturers are covered by the Act's provisions.

Requirements

Covered, nonexempt employees must be paid the FLSA minimum wage, — \$4.75 an hour effective 10/1/96; \$5.15 an hour effective 9/1/97. This minimum rate must be met regardless of whether the employees are paid by time, piece, job, incentive, or any other basis. The cost of tools, uniforms or other similar requirements may not be borne by the employee where such

cost would reduce the wages paid in the workweek below the required minimum wage or in any way reduce the wages due for overtime hours.

Youth Minimum Wage: The 1996 Amendments to the FLSA allow employers to pay a youth minimum wage of not less than \$4.25 an hour to employees who are under 20 years of age during the first 90 consecutive calendar days after initial employment by their employer. The law contains certain protections for employees that prohibit employers from displacing any employee in order to hire someone at the youth minimum wage.

Unless specifically exempt, all covered employees must receive overtime pay for hours worked in excess of 40 in a workweek at a rate of not less than one and one-half times their regular rates of pay, regardless of the payroll frequency (bi-weekly, semi-monthly etc.). The regular rate of pay is defined as all remuneration (including production bonuses, shift differentials, attendance bonuses) divided by the total hours of work in the workweek.

Typical Problems

(1) Hours Worked: Failure to count and pay for all the hours as work time such as time spent oiling, greasing, cleaning or installing machines at the start or end of the workday; time spent in travel from job site to job site; or time spent at a designated place to receive instructions or to pick up and carry tools to a designated place. (2) Exemptions: Employees treated as exempt simply because they have impressive titles or are paid on a salary basis. (3) Minors under the age of 18 employed in restricted occupations, work areas, or improper hours and times of work. (4) Employees performing work in their private homes in restricted industries without prior certification from Wage and Hour. (5) Recordkeeping: Failure to make and keep the required records on wages, hours and other items listed in the recordkeeping regulations (29 CFR Part 516).

Some Other Pertinent Labor Laws: (1) The Immigration Reform and Control Act requires employers to complete and maintain I-9 forms to verify the employment eligibility of all individuals hired after November 6, 1986. (2) The Wage Garnishment Law limits the amount of an individual's income that may be garnished and prohibits firing an employee whose pay is garnished for a single debt. (3) The Employee Polygraph Protection Act prohibits most private employers from using any type of lie detector tests either for pre-employment screening or during the course of employment. (4) The Family and Medical Leave Act requires covered employers to provide up to 12 weeks of unpaid, job protected leave to "eligible" employees for certain family and medical reasons.

Where to Obtain Additional Information

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations. Copies of Wage and Hour publications may be obtained by contacting the nearest office of the Wage and Hour Division listed in most telephone directories under U. S. Government, Department of Labor.

—DISCLAIMER—



Employment Standards Administration Wage and Hour Division

Fact Sheet No. 008

Police And Fire Fighters Under The Fair Labor Standards Act (FLSA)

This fact sheet provides general information concerning the application of the FLSA to law enforcement and fire protection personnel of State and local governments.

Characteristics

Fire protection personnel are employees working for an organized fire department or fire district who have been trained for and have the legal authority and responsibility to engage in the prevention and control of fires.

Law enforcement personnel are employees who are empowered by State or local ordinance to enforce laws designed to maintain peace and order, protect life and property, and to prevent and detect crimes; who have the power to arrest; and who have undergone training in law enforcement.

Coverage

Employees of State and local governments are covered by the FLSA (section 3(s)(1)(C)).

Requirements

Hours of work include all of the time an employee is on duty at the employer's establishment or at a prescribed work place, as well as all other time during which the employee is suffered or permitted to work for the employer. Under certain specified conditions time spent in sleeping and eating may be excluded from compensable time.

The FLSA requires that all covered, non-exempt employees be paid at least the statutory minimum wage, -- \$4.75 an hour effective 10/1/96; \$5.15 an hour effective 9/1/97.

The FLSA requires that all covered, non-exempt employees be paid time and one-half their regular rates of pay for all hours worked in excess of 40 in a workweek.

Section 13(b)(20) of the FLSA provides an overtime exemption to law enforcement or fire protection employees of a public agency which employs less than five employees in law enforcement or fire protection activities.

Section 7(k) of the FLSA provides that employees engaged in fire protection or law enforcement may be paid overtime on a "work period" basis. A "work period" may be from 7 consecutive days to 28 consecutive days in length. For example, fire protection personnel are due overtime under such a plan after 212 hours worked during a 28-day period, while law

enforcement personnel must receive overtime after 171 hours worked during a 28-day period. For work periods of at least 7 but less than 28 days, overtime pay is required when the number of hours worked exceeds the number of hours which bears the same relationship to 212 (fire) or 171 (police) as the number of days in the work period bears to 28.

Under certain prescribed conditions, a State or local government agency may give compensatory time at a rate of not less than one and one-half hours for each overtime hour worked, in lieu of cash overtime compensation. Employees engaged in police and fire protection work may accrue up to 480 hours of compensatory time.

An employee should be permitted to use compensatory time within a reasonable period after making the request, if doing so does not "unduly disrupt" the operations of the employer.

At the time of termination an employee must be paid the higher of (1) his/her final regular rate of pay or (2) the average regular rate during his/her last three years of employment for any compensatory time remaining "on the books" when termination occurs.

No covered employer may employ any minor in violation of the child labor provisions of the FLSA. The Act establishes specific provisions concerning prohibited occupations and/or hours of employment of minors under age 18.

Covered employers must make, keep and preserve payroll-related records as described by Regulations, 29 CFR Part 516.

Where to Obtain Additional Information

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations. Copies of Wage and Hour publications may be obtained by contacting the nearest office of the Wage and Hour Division listed in most telephone directories under U.S. Government, Department of Labor.

—DISCLAIMER—

[DOL Home Page](#)[ESA Home Page](#)[Top of Document](#)[WHI Info](#)



Employment Standards Administration Wage and Hour Division

Fact Sheet No. 007

State and Local Governments Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information concerning the application of the FLSA to State and local government employees.

Characteristics

State and local government employers consist of those entities that are defined as public agencies by the FLSA. "Public Agency" is defined to mean the Government of the United States; the government of a State or political subdivision thereof; any agency of the United States, a State, or a political subdivision of a State, or any interstate governmental agency. The public agency definition does not extend to private companies that are engaged in work activities normally performed by public employees.

Coverage

Section 3(s)(1)(C) of the FLSA covers all public agency employees of a State, a political subdivision of a State, or an interstate government agency.

Requirements

The FLSA requires employers to:

- pay at least the Federal minimum wage -- \$4.75 an hour effective 10/1/96; \$5.15 an hour effective 9/1/97 -- to all covered non-exempt employees for all hours worked
- pay at least one and one-half times the employees' regular rates of pay for all hours worked over 40 in the workweek
- comply with the child labor standards
- comply with the recordkeeping requirements

Youth Minimum Wage: The 1996 Amendments to the FLSA allow employers to pay a youth minimum wage of not less than \$4.25 an hour to employees who are under 20 years of age during the first 90 consecutive calendar days after initial employment by their employer. The law contains certain protections for employees that prohibit employers from displacing any employee in order to hire someone at the youth minimum wage.

Under certain prescribed conditions, employees of State or local government agencies may receive compensatory time off at a rate of not less than one and one-half hours for each overtime hour worked, instead of cash overtime pay. Police and fire fighters, emergency response personnel, and employees engaged in seasonal activities may accrue up to 480 hours

of comp time; all others, 240 hours.

In locations with concurrent State wage laws, some States may not recognize or permit the application of some or all of the following exemptions. Since an employer must comply with the most stringent of the State or Federal provisions, it is strongly recommended that the State laws be reviewed prior to applying any of the exclusions or exemptions discussed herein.

Certain employees in the following examples may be exempt from the overtime requirements of the FLSA:

- employees who solely at their option occasionally or sporadically work on a part-time basis for the same public agency in a different capacity than the one in which they are normally employed
- employees at their option with approval of the agency, who substitute for one another during scheduled work hours in the same work capacity
- employees that meet exemption requirements for Executive, Administrative, Professional or Outside Sales occupations
- hospital or residential care establishments may with agreement or understanding with employees adopt a fixed work period of 14 consecutive days and pay overtime after 8 hours in a day or 80 in the work period, whichever is greater
- mass transit employees' time spent in charter activities may be excludable from the regular rate
- minimum wage and overtime may not be required for employees working in separate seasonal amusement or recreational establishments such as swimming pools, parks, etc.

Special Exemptions for Employees Engaged in Fire Protection and Law Enforcement Activities

- employees may at their own option perform special duty work in fire protection and law enforcement for a separate and independent employer without including wages and hours in regular rate or overtime determinations
- Fire Departments or Police Departments may establish a work period ranging from 7 to 28 days in which overtime need be paid only after a specified number of hours in each work period
- any employee who in any workweek is employed by an agency employing less than 5 employees in fire protection or law enforcement may be exempt from overtime

Where to Obtain Additional Information

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations. Copies of Wage and Hour publications may be obtained by contacting the nearest office of the Wage and Hour Division listed in most telephone directories under U. S. Government, Department of Labor.

—DISCLAIMER—



Employment Standards Administration Wage and Hour Division

Fact Sheet No. 006

The Retail Industry under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information concerning the application of the FLSA to employees of the retail industry.

A retail establishment is an establishment 75% of whose annual dollar volume of sales is not for resale and is recognized as retail in the particular industry. Some examples of establishments which may be retail are: automobile repair shops, bowling alleys, gasoline stations, appliance service and repair shops, department stores and restaurants. Some examples of establishments which are not retail are: accounting firms, medical and dental clinics, construction companies, radio and television stations.

Coverage

Employees of retail establishments may be covered by the Act in either of two ways. Any retail establishment which is part of an enterprise with an annual dollar volume of sales of at least \$500,000 (exclusive of excise taxes at the retail level that are separately stated) must abide by the Act's requirements. Any employee of a retail establishment, regardless of its sales volume, who is engaged in interstate commerce activities is "covered" on an individual basis. Some examples of such activities are: ordering goods from out-of-state, verifying and processing credit card transactions, using the mail or telephone for interstate communications, keeping records of interstate transactions, or handling, shipping, or receiving goods moving in commerce.

Requirements

Covered, non-exempt retail establishments are required to meet certain standards under the Act relative to wages and employment of minors.

Covered, non-exempt employees are entitled to a minimum wage, -- \$4.75 an hour effective 10/1/96; \$5.15 an hour effective 9/1/97. Overtime pay at a rate not less than one and one-half times the employee's regular rate of pay is required after 40 hours are worked in a workweek.

Youth Minimum Wage: The 1996 Amendments to the FLSA allow employers to pay a youth minimum wage of not less than \$4.25 an hour to employees who are under 20 years of age during the first 90 consecutive calendar days after initial employment by their employer. The law contains certain protections for employees that prohibit employers from displacing any employee in order to hire someone at the youth minimum wage.

The FLSA Child Labor regulations forbid the employment in non-agricultural jobs of minors

under 14, restrict the hours of work and limit occupations for 14 & 15 year olds, and forbid the employment of 16 & 17 year olds in hazardous occupations.

The Act requires employers to keep records of wages, hours, and other items, as specified in the recordkeeping regulations. With respect to an employee subject to both minimum wage and overtime provisions, records must be kept as prescribed by Regulations, 29 CFR Part 516. Records required for exempt employees differ from those for non-exempt workers, for employees working under uncommon pay arrangements, or for employees to whom lodging or other facilities are furnished.

Typical Problems

Hours Worked: Employers must record and pay for all hours worked by employees including any time controlled by the employer, such as time spent "engaged to wait." Where employees report to work at their scheduled time, the employer must begin counting that as work time. However, if the employer immediately tells the employees that they are not needed, completely relieves them of duty, and gives them a specific report-back time which enables the employees to use the time for their own benefit, this time does not have to be counted as working time. If the employees are only told to wait until they are needed, and are not given a specific report-back time that is long enough to use for their own benefit, all of the waiting time is to be counted as hours worked.

Illegal Deductions: Deductions made from employees' wages for such items as cash or merchandise shortages, required uniforms, and tools of the trade are not legal to the extent that they reduce the wages below the statutory minimum wage or reduce the amount of overtime pay.

Salaried Employees: A salary, by itself, does not exempt employees from the minimum wage or from overtime. Whether employees are exempt from minimum wage and overtime depends on their job duties and responsibilities as well as the salary paid. Often, in retail businesses, salaried employees do not meet all the requirements specified by the regulations to be considered as exempt from overtime pay. Regulations, 29 CFR Part 541 contain a discussion of the requirements for several exemptions under the FLSA (i.e., executive, administrative, and professional employees -- including computer professionals, and outside sales persons).

Where to Obtain Additional Information

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations. Copies of Wage and Hour publications may be obtained by contacting the nearest office of the Wage and Hour Division listed in most telephone directories under U.S. Government, Department of Labor.

—DISCLAIMER—

[DOL Home Page](#)[ESA Home Page](#)[Top of Document](#)[WHD Info](#)



Employment Standards Administration Wage and Hour Division

Fact Sheet No. 005

Real Estate and Rental Agencies Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information concerning the application of the FLSA to real estate and rental agencies.

Characteristics

A real estate/rental agency is one which represents both in-state and out-of-state clients in negotiating the purchase or sale of property within the State in which the broker is located, or negotiates for the purchase or sale of property in other states, or collects or remits rents or other monies for property owners.

Coverage

Employees of real estate/rental agencies are individually covered by the Act if they regularly engage in work which is considered to be interstate commerce. This includes, for example, handling goods coming in from outside the state or which will be sent outside the state either by direct shipment or by a customer. Clerical and janitorial employees whose work is closely related and directly essential to such interstate operations are also covered, as are employees regularly engaged in interstate communication by telephone, telegraph, or the mails.

An enterprise is defined in the FLSA to mean the related activities performed, either through unified operation or common control, by any person or persons for a common business purpose. The FLSA applies to enterprises that have employees who are engaged in interstate commerce, produce, handle, sell, or work on goods that have been moved in or produced for interstate commerce, have \$500,000 in annual business volume, are named in the FLSA, or are subject to continuing coverage under the so-called "grandfather clause". All employees of a covered enterprise who are not specifically exempt must be paid in accordance with requirements of the FLSA.

In determining the annual business volume, gross receipts from rental property owned and gross fees from rental property managed should be included. Gross receipts from the sale of property and property insurance should also be included.

Requirements

The FLSA requires minimum wage payments -- \$4.75 an hour effective 10/1/96; \$5.15 an hour effective 9/1/97 -- to covered non-exempt employees and overtime pay at a rate of not less than one and one-half times the regular rate of pay after 40 hours of work in a workweek. Wages required by FLSA are due on the regular payday for each pay period. Employers are

required to keep records containing information specified in the regulations (29 CFR Part 516).

The FLSA Child Labor regulations forbid the employment of minors under 14, restrict the hours of work and certain occupations for 14 & 15 year olds, and forbid the employment of 16 & 17 year olds in hazardous occupations.

Exemptions from various provisions of the FLSA are provided for employees who meet certain requirements. Among the employees who may be exempt from minimum wage and overtime pay are executive, administrative, professional, and outside sales employees. Each of these categories of employee must meet specified requirements before the exemption may be applied.

Typical Problems

Some problems and misconceptions which Wage and Hour investigations commonly find in this type of business are:

- Employees being charged for meals, lodging, and other facilities which are actually furnished for the benefit of the employer.
- Employees being charged full retail cost for facilities furnished for their benefit. They may only be charged actual cost.
- Improper computation of gross business volume. With respect to the sale of any property or commodity (such as insurance) or the rental of property owned by the employer, gross receipts are counted in determining business volume. In the rental of property owned by someone else, only the commission paid is counted in the gross business volume.

Where To Obtain Additional Information

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations. Copies of Wage and Hour publications may be obtained by contacting the nearest office of the Wage and Hour Division listed in most telephone directories under U.S. Government, Department of Labor.

—DISCLAIMER—

 [DOL Home Page](#)  [ESA Home Page](#)  [Top of Document](#)  [WHD Info](#)



Employment Standards Administration Wage and Hour Division

Fact Sheet No. 004

Security Guard/Maintenance Service Industry Under The Fair Labor Standards Act (FLSA)

This fact sheet will briefly cover how the FLSA applies to the Security Guard and Maintenance Service Industries.

Characteristics

The Security Guard service industry includes those firms that provide protection to firms or individuals. Normally, the guard obtains a State license which is portable from firm to firm. The guards cover a post daily and are usually paid on an hourly basis.

The Maintenance Service industry includes those firms that provide janitorial services in general. Normally, the firm provides the necessary materials to do the cleaning. The employees generally perform work at one or more locations during the work shift.

Coverage

If the security guard or maintenance worker is employed in an establishment that is engaged in commerce or in the production of goods for commerce, such as a warehouse, factory, bank, insurance company, etc, he/she is covered by the FLSA.

If the security guard or maintenance firm has sales or projects sales in excess of \$500,000 per year, or is part of other related businesses where there is common ownership, control, or business purpose and the combined sales or projected sales are in excess of \$500,000 per year, then the FLSA will apply to all employees of the firm/enterprise.

Requirements

The FLSA requires the payment of the applicable minimum wage -- \$4.75 an hour effective 10/1/96, \$5.15 an hour effective 9/1/97 -- and the payment of time and one-half the regular rate of pay for hours worked in excess of 40 in the workweek. The FLSA also requires the firm to make, keep and preserve certain records among which are the hours worked on a daily and weekly basis by non-exempt employees

There are also certain restrictions in the employment of minors under age 18, such as the number of hours worked per day/week, how late they can work in the day, and the work they may engage in.

Youth Minimum Wage: The 1996 Amendments to the FLSA allow employers to pay a youth minimum wage of not less than \$4.25 an hour to employees who are under 20 years of age

during the first 90 consecutive calendar days after initial employment by their employer. The law contains certain protections for employees that prohibit employers from displacing any employee in order to hire someone at the youth minimum wage.

Typical Problems

Security Guard Firms: The security guard cannot bear the cost of the uniform, gun, whistle, belt, and other employer/industry required tools if by purchasing them he/she receives less than the applicable minimum wage or such purchasing would cut into any overtime wages earned. This applies whether she/he buys the uniform directly or if it is sold to the employee by the firm.

The cost of dry cleaning the uniform cannot be borne by the employee if in doing so he/she receives less than the minimum wage or the costs would cut into any overtime wages.

Overtime must be calculated on a workweek basis, and the hours cannot be averaged over a two week period.

The hours worked by guards in more than one post in the same week must be counted together for overtime purposes.

Travel time between work sites must be treated as hours worked.

All hours of work must always be recorded; sometimes they are hidden by showing "expense" payments for hours over 40 in a week, which is illegal.

Maintenance Service Firms: Every person who works must receive payment. If a man and wife team, and/or other family members work together, each member of the team must be carried on the payroll and each must receive proper compensation for their hours worked.

Minors under the age of 16 cannot work past 7:00 p.m., except from June 1st through Labor Day, when they may work until 9:00 p.m.

If minors work, they must also receive proper compensation for the hours they work.

Overtime must be paid after 40 hours of work in the workweek to all non-exempt employees regardless of the method of compensation, i.e., hourly, piece rate, task basis, salary, etc.

The hours worked by a janitor who works in more than one establishment must be counted together for overtime purposes.

Where to Obtain Additional Information

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations. Copies of Wage and Hour publications may be obtained by contacting the nearest office of the Wage and Hour Division listed in most telephone directories under U. S. Government, Department of Labor.

—DISCLAIMER—



Employment Standards Administration Wage and Hour Division

Fact Sheet No. 003

Professional Offices Under the Fair Labor Standards Act (FLSA)

This fact sheet contains information to assist in determining how the Fair Labor Standards Act (FLSA) applies to Professional Offices, e.g., doctors, lawyers, accountants, etc.

Characteristics

Professional offices provide services to their customers, clients, patients which may or may not involve the sale of "goods" or "products". Many such offices are small, with few employees, and are local in nature. Others may be part of a larger enterprise with more than one office or establishment.

Coverage

The FLSA provides two methods for determining whether provisions of the Act apply to employees of a given employer.

The "enterprise" basis of coverage provides that if the annual dollar volume of sales or business done is \$500,000 or more, whether from an enterprise made up of only one establishment or one with multiple establishments, all employees of the enterprise are covered by the Act.

Additionally, the Act also provides an "individual employee" basis of coverage. If the gross sales or volume of business done does not meet the requisite dollar volume of \$500,000 annually, employees may still be covered if they individually engage in interstate commerce, the production of goods for interstate commerce, or in an occupation closely related and directly essential to such production. Interstate commerce includes such activities as transacting business via interstate telephone calls or the U. S. Mail (such as handling insurance claims), ordering or receiving goods from an out-of-state supplier, or handling the accounting or bookkeeping for such activities. It would also include the handling of credit card transactions since that involves the interstate banking and finance systems.

Requirements

Employees who are covered by the FLSA are entitled to be paid at least the minimum wage -- \$4.75 an hour effective 10/1/96; \$5.15 an hour effective 9/1/97 -- as well as time and one-half the regular rate of pay for all hours worked over 40 in a workweek. (This may not apply to certain executive, administrative, and professional employees). The Act also contains Child Labor provisions regulating the employment of minors under the age of 18 in covered work, as well as recordkeeping requirements.

Typical Problems

(1) Paying non-exempt employees a salary and not paying time and one-half for hours over 40 a week, (2) not paying employees for all hours they work, e.g., reporting early or working through lunch break or staying late without being paid for such extra time, (3) not paying for the time employees spend performing work at home or not including such hours for overtime purposes.

Some Other Pertinent Labor Laws: (1) The Immigration Reform and Control Act requires employers to complete and maintain I-9 forms to verify the employment eligibility of all individuals hired after November 6, 1986. (2) The Wage Garnishment Law limits the amount of an individual's income that may be garnished and prohibits firing of an employee whose pay is garnished for a single debt. (3) The Employee Polygraph Protection Act prohibits most private employers from using any type of lie detector tests either for pre-employment screening or during the course of employment. (4) The Family and Medical Leave Act requires covered employers to provide "eligible" employees up to 12 weeks of unpaid, job-protected leave each year for specific family and medical reasons.

Where to Obtain Additional Information

This publication is for general information and is not to be considered in the same light as official statements of position contained in the Regulations. Copies of Wage and Hour publications may be obtained by contacting the nearest office of the Wage and Hour Division listed in most telephone directories under U. S. Government, Department of Labor.

—DISCLAIMER—

[DOL Home Page](#)[ESA Home Page](#)[Top of Document](#)[WHD Info](#)



Employment Standards Administration Wage and Hour Division

Fact Sheet No. 002

Restaurants and Fast Food Establishments Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information concerning the application of the FLSA to employees of restaurants and fast food establishments.

Characteristics

The restaurant/fast food industry includes establishments which are primarily engaged in selling and serving to purchasers prepared food and beverages for consumption on or off the premises.

Coverage

Restaurants/fast food businesses with annual gross sales from one or more establishments that total at least \$500,000 are subject to the FLSA. Also, any person who works on or otherwise handles goods that are moving in interstate commerce is individually subject to the minimum wage and overtime protection of the FLSA. For example, a waitress or cashier who handles a credit card transaction would in all probability be subject to the Act.

Requirements

Minimum Wage: Covered non-exempt workers are entitled to a minimum wage -- \$4.75 an hour effective 10/1/96; \$5.15 an hour effective 9/1/97. Wages are due on the regular payday for the pay period covered. Deductions made from wages for items such as cash shortages, required uniforms, or customer walk-outs are illegal if the deduction reduces the employee's wages below the minimum wage or cuts into overtime pay. Deductions made for items other than board, lodging, or other recognized facilities normally cannot be made in an overtime workweek. Tips may be considered as part of wages, but the employer must pay not less than \$2.13 an hour in direct wages and make sure that the amount of tips received is enough to meet the remainder of the minimum wage.

Food Credit: The employer may take credit for food which is provided at cost. This typically is an hourly deduction from an employee's pay. However, the employer cannot take credit for discounts given employees on food (menu) prices.

Tips: Tipped employees are those who customarily and regularly receive more than \$30 a month in tips. Employees must be informed in advance if the employer elects to use the tip credit, the amount of tip credit to be claimed, and the employer must be able to show that employees receive at least the applicable minimum wage when wages and tips are combined. Also, employees must retain all of their tips, except in the case of valid tip pool arrangements.

Overtime: 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 excess of 40 hours per week. Tipped employees who receive \$2.13 per hour in direct wages are also subject to overtime at one and one-half times the applicable minimum wage, not one and one-half times \$2.13.

Youth Minimum Wage: The 1996 Amendments to the FLSA allow employers to pay a youth minimum wage of not less than \$4.25 an hour to employees who are under 20 years of age during the first 90 consecutive calendar days after initial employment by their employer. The law contains certain protections for employees that prohibit employers from displacing any employee in order to hire someone at the youth minimum wage.

Typical Problems

If uniforms are required by the employer the cost of the uniform is considered to be a business expense of the employer. If the employer requires the employee to bear the cost, such cost may not reduce the employee's wages below the minimum wage or cut into overtime compensation.

Youths 14 and 15 years old may work outside school hours in various non-hazardous jobs only under the following conditions: no more than 3 hours on a school day, 18 hours in a school week, 8 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. Permitted occupations for 14 and 15 year old employees include those such as cashier, office/clerical work, bagging orders, cleanup work, hand-cleaning vegetables, etc. Cooking and baking cannot generally be performed by minors under age 16.

Youths 16 and 17 years old may perform any non-hazardous job, for unlimited hours. Examples of equipment declared hazardous in restaurants include power-driven meat processing machines (saws, patty forming machines, grinding, chopping or slicing machines), commercial mixers, and certain power-driven bakery machines. Employees under 18 are not permitted to operate, feed, set-up, adjust, repair or clean such machines. Minors under age 18 may not be employed to operate a motor vehicle for deliveries, etc.

Exemptions from Overtime: Section 13(a)(1) of the FLSA provides an exemption from FLSA monetary requirements for an employee employed in a bona fide executive, administrative or professional capacity or as an outside salesperson. An employee will qualify for exemption if all pertinent tests relating to duties, responsibilities and salary, as set forth in Regulations, 29 CFR Part 541, are met. The salary and duties tests for the exemptions are fully described in Regulations Part 541.

Where to Obtain Additional Information

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations. Copies of Wage and Hour publications may be obtained by contacting the nearest office of the Wage and Hour Division listed in most telephone directories under U.S. Government, Department of Labor.



Employment Standards Administration Wage and Hour Division

Fact Sheet No. 001

The Construction Industry Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information concerning the application of the FLSA to the construction industry.

Characteristics

Businesses involved in this industry are engaged in the activities of new construction or reconstruction. The repair or renovation of existing commercial and/or residential structures, as well as roadway and bridge construction, are also a part of this industry. The following work activities are included in the construction industry: painting, sandblasting, tuckpointing, roofing, guttering, spouting, water well drilling, installation of flooring and landscaping.

Coverage

A business in the construction industry must have two or more employees and have an annual sales volume of \$500,000 or more to be subject to the law. Individual coverage applies to employees whose work regularly involves them in commerce between states ("interstate commerce"). Any person who works on or otherwise handles goods that are moving in interstate commerce or who works on the expansion of existing facilities of commerce is individually subject to the protection of the FLSA and the current minimum wage and overtime pay requirements, regardless of the sales volume of the employer.

Requirements

Employers who are covered under the FLSA must comply with the record keeping requirements of Regulations, 29 CFR Part 516.

Also, an employer must establish a workweek (7 consecutive 24-hour periods) and must pay overtime when hours worked exceed 40 in the workweek. The practice of paying overtime after 80 hours in a bi-weekly pay period is illegal since each workweek stands alone.

For non-exempt employees, covered employers must pay the applicable minimum wage -- \$4.75 an hour effective 10/1/96; \$5.15 an hour effective 9/1/97 -- and time and one half the regular rate of pay for time worked over 40 hours in a workweek. These businesses must also be aware of the potential for violations of the Child Labor requirements of the FLSA. This is especially critical due to the dangerous nature of both the work performed and the tools used in this industry.

If the employer performs work on a federally financed project or a project in which the Federal government has provided assistance in financing the project, a different and somewhat

stricter set of labor standards applies. Typically this would require that employees performing on such contracts be paid a "prevailing wage rate".

Youth Minimum Wage: The 1996 Amendments to the FLSA allow employers to pay a youth minimum wage of not less than \$4.25 an hour to employees who are under 20 years of age during the first 90 consecutive calendar days after initial employment by their employer. The law contains certain protections for employees that prohibit employers from displacing any employee in order to hire someone at the youth minimum wage.

Typical Problems

(1) Failure to record all hours actually worked to include time spent before or after the shift. (2) Shorting of hours by using terms such as down time or rain delay. (3) Failure to compensate for meal breaks where the employee does not receive at least 30 minutes of uninterrupted time for the meal. (4) "Banking" of overtime hours or payment of overtime in the form of "comp time". (5) Failure to combine the hours worked for overtime purposes by an employee in more than one job classification for the same employer within the same workweek. (6) Failure to segregate and pay overtime hours on a workweek basis when employees are paid on a bi-weekly or semi-monthly basis. (7) Failure to pay for travel from shop to work-site and back.

Some Other Pertinent Labor Laws: (1) The Immigration Reform and Control Act requires employers to complete and maintain I-9 forms to verify the employment eligibility of all individuals hired after November 6, 1986. (2) The Wage Garnishment Law limits the amount of an individual's income that may be garnished and prohibits firing an employee whose pay is garnished for a single debt. (3) The Employee Polygraph Protection Act prohibits most private employers from using any type of lie detector test either for pre-employment screening or during the course of employment. (4) The Family and Medical Leave Act requires covered employers to provide eligible employees up to 12 weeks of unpaid, job-protected leave each year for specified family and medical reasons. (5) The Davis-Bacon and Related Acts require payment of prevailing wages on federally funded or assisted construction projects.

Where to Obtain Additional Information

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations. Copies of Wage and Hour publications may be obtained by contacting the nearest office of the Wage and Hour Division listed in most telephone directories under U. S. Government, Department of Labor.

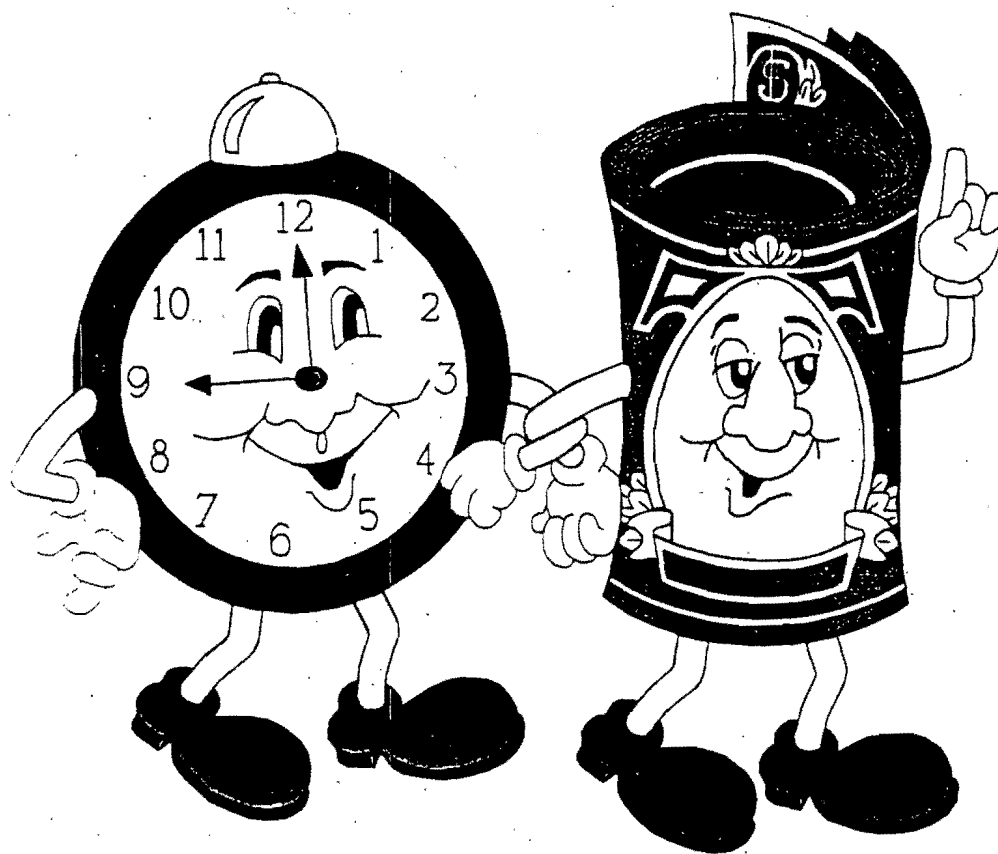
—DISCLAIMER—

[DOL Home Page](#)[ESA Home Page](#)[Top of Document](#)[WHD Info](#)

U.S. DEPARTMENT OF LABOR WAGE AND HOUR DIVISION



INFORMATION FOR NEW BUSINESSES



May 7, 1999

This publication is for general information and is not to be considered in the same light as official statements of position contained in Interpretative Bulletins and in opinion letters of the Wage and Hour Administrator.

Material contained in this publication is in the public domain and may be reproduced, fully or partially, without permission of the Federal Government. Source credit is requested but not required. Permission is only required to reproduce copyrighted material contained herein.

This material will be made available to sensory impaired individuals upon request.

Voice Phone: 202-693-0023

TDD* Phone: 800-326-2577

*Telecommunications Device for the Deaf

INTRODUCTION

The Wage and Hour Division (the Division) of the United States Department of Labor congratulates you on the creation of your new business. It is a big step, and we recognize the important role you play in our nation's economy.

Creation of a new business brings many new responsibilities, including compliance with federal wage and hour laws. Employers often have questions about some of those responsibilities. We are ready to provide you with the assistance and information you may need to properly and effectively stay in compliance with the laws and regulations administered by the Division. When employees are treated in a way that is consistent with our nation's employment standards laws, everyone benefits.

This package provides general information about the laws administered by the Division, and lists different resources designed to get you the information you need to comply with those laws. This information is available both through our offices and on the Internet. Our **ELAWS (EMPLOYMENT LAWS ASSISTANCE FOR WORKERS AND SMALL BUSINESSES)** program on the Internet (<http://www.dol.gov/elaws>) can even provide an answer to many of your questions any time of the day or night. This interactive program was designed to give advice to business owners – and other interested parties – in a question and answer format, similar to that used by a human expert.

BACKGROUND/OVERVIEW

The Wage and Hour Division was created by the Fair Labor Standards Act of 1938. The Division is responsible for the administration and enforcement of a wide range of labor standards laws that collectively cover virtually all private, state and local government employment. The Division is comprised of a nationwide staff of investigators, supervisors, technical and clerical employees.

MISSION

The Division's mission is to achieve compliance with the nation's labor standards through enforcement, administrative, and educational programs. The Division enforces labor standards under the following laws:

- Fair Labor Standards Act;
- Migrant and Seasonal Agricultural Worker Protection Act;
- Employee Polygraph Protection Act;
- Family and Medical Leave Act;
- Davis-Bacon and Related Acts;
- McNamara-O'Hara Service Contract Act;
- Garnishment Provisions of the Consumer Credit Protection Act;
- Temporary Worker Provisions of the Immigration and Nationality Act.

MAJOR STATUTES ADMINISTERED BY THE WAGE AND HOUR DIVISION

FAIR LABOR STANDARDS ACT (FLSA)

The FLSA requires that most employees in the United States be paid at least the minimum wage (currently \$5.15 per hour) and time and one-half their regular rate for hours worked beyond 40 in a workweek. Youth under 20 years of age may be paid not less than \$4.25 an hour during the first 90 consecutive calendar days of employment with an employer. The FLSA also includes child labor and recordkeeping provisions. The FLSA covers all workers who are engaged in or producing goods for interstate commerce or are employed in certain enterprises.

CHILD LABOR

The FLSA sets 14 years of age as the minimum age for employment, and restricts hours of work and allowable occupations for 14 and 15 year olds. It also bans employment in specified hazardous occupations for those under 18 years of age. Special rules apply to minors employed in agriculture.

MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION ACT (MSPA)

The MSPA protects migrant and seasonal agricultural workers in their dealings with farm labor contractors, agricultural employers, agricultural associations, and providers of migrant housing. All persons and organizations subject to the MSPA must observe certain rules when recruiting, soliciting, hiring, employing, transporting, or housing these workers, or when furnishing them to other employers.

EMPLOYEE POLYGRAPH PROTECTION ACT (EPPA)

The EPPA limits private employers in the use of lie detector tests either for pre-employment screening of job applicants or for testing current employees during the course of employment. Polygraph tests are permitted under limited circumstances and subject to certain restrictions.

FAMILY AND MEDICAL LEAVE ACT (FMLA)

The FMLA requires employers of 50 or more employees (and all public agencies) to provide eligible employees up to 12 weeks of unpaid, job-protected leave each year for the birth and care of a newborn child, for placement with the employee of a child for adoption or foster care, or for the serious illness of the employee or of the employee's child, spouse or parent.

CONSUMER CREDIT PROTECTION ACT (CCPA)

The CCPA's wage garnishment provisions limit the amount of an individual's disposable income that may be legally garnished and prohibit an employer from firing an employee whose pay is garnished for payment of any single debt.

DAVIS-BACON AND RELATED ACTS (DBRA)

The DBRA require payment of prevailing wages and fringe benefits to laborers and mechanics employed by contractors and subcontractors engaged in federally financed and assisted construction projects.

MCNAMARA-O'HARA SERVICE CONTRACT ACT (SCA)

The SCA requires payment of prevailing wages and fringe benefits to service employees of contractors and subcontractors furnishing services to agencies of the U.S. Government.

IMMIGRATION AND NATIONALITY ACT (INA)

Under the Immigration and Nationality Act:

- Employers are required to verify the employment eligibility of all the individuals they hire and to keep Immigration and Naturalization Service (INS) Forms I-9 on file for at least 3 years or one year after employee termination, whichever is longer;
- Section H-2A provides for enforcement of contractual obligations of job offers to which employers of temporary nonimmigrant agricultural workers have certified;
- Section D-1 provides for enforcement of employment conditions attested to by employers seeking to employ alien crewmembers to perform specified longshore activities at U.S. ports; and
- Section H-1B provides for enforcement of labor condition attestations filed by employers wishing to employ, temporarily, nonimmigrants in specified professional occupations.

EASY TO UNDERSTAND INFORMATION EXPLAINING LEGAL REQUIREMENTS

This Compliance Package includes copies of Division publications which businesses like yours have found useful in determining how to comply with federal worker protection laws. The following list of additional publications may be obtained from the nearest Division District Office (see the enclosed list) or found on the Division's Internet site:

http://www.dol.gov/dol/esa/public/whd_org.htm.

- The Handy Reference Guide to the FLSA
- Employee's Rights Under the FLSA
- Compliance Guide to the Family and Medical Leave Act
- Davis-Bacon and Related Acts Web Information Service
- Labor Protections and Welfare Reform
- Memo 186 - Regarding Nondisplacement of Qualified Workers Under Certain Federal Contracts
- Change in the Child Labor Law Affecting Loading Scrap Paper Balers and Paper Box Compactors

FACT SHEETS

- 001: The Construction Industry Under the FLSA
- 002: Restaurants and Fast Food Establishments Under the FLSA
- 003: Professional Offices Under the FLSA
- 004: Security Guard/Maintenance Service Industry Under the FLSA
- 005: Real Estate and Rental Agencies Under the FLSA
- 006: Retail Industry Under the FLSA
- 007: State and Local Governments Under the FLSA
- 008: Police and Fire Fighters Under the FLSA
- 009: Manufacturing Establishments Under the FLSA
- 010: Wholesale and Warehouse Industries Under the FLSA
- 011: Automobile Dealers Under the FLSA
- 012: Agricultural Employers Under the FLSA
- 013: Employment Relationship Under the FLSA
- 014: Coverage Under the FLSA
- 015: Tipped Employees Under the FLSA
- 016: Deductions from Wages for Uniforms and Other Facilities Under the FLSA
- 017: FLSA Exemption for Executive, Administrative, Professional & Outside Sales Employees
- 018: Section 13(a)(3) Exemption for Seasonal and Recreational Establishments Under the FLSA
- 019: Motor Carrier Exemption Under the FLSA
- 020: Employees Paid Commissions by Retail Establishments Who are Exempt Under the FLSA
- 021: Recordkeeping Requirements Under the FLSA
- 022: Hours Worked Under the FLSA
- 023: Overtime Pay Requirements of the FLSA
- 024: Homeworkers Under the FLSA
- 025: Home Health Care Industry Under the FLSA
- 026: Section H-2A of the Immigration Reform and Control Act
- 027: New Businesses Under the FLSA
- 028: FMLA
- 029: 1996 Amendments to the FLSA
- 030: Federal Garnishment Law
- 031: Nursing Care Facilities
- 032: Youth Minimum Wage Under the FLSA
- 033: Residential Care Providers
- 034: Changes in the Child Labor Laws Affecting Teen Driving

OTHER MAJOR STATUTES ADMINISTERED BY THE U.S. DEPARTMENT OF LABOR

Other U.S. Department of Labor agencies enforce additional worker protection statutes. A summary of the most significant ones follows, along with appropriate Internet addresses.

- The **Employee Retirement Income Security Act (ERISA)** governs certain activities of most employers who have pension or welfare benefit plans. The Pension and Welfare Benefits Administration (PWBA) administers ERISA.
 - The PWBA home page is <http://www.dol.gov/dol/pwba>.
 - The ERISA ELAWS Advisor page is <http://www.dol.gov/elaws/pwbaplan.htm>.
- The **Occupational Safety and Health Act (OSHA)**, which is administered by the Occupational Safety and Health Administration (OSHA), regulates safety and health conditions in most private industry workplaces (except those regulated under other federal statutes, e.g., the transportation industry).
 - The OSHA home page is <http://www.osha.gov>.
 - The OSHA ELAWS Advisor page is <http://www.osha.gov/oshasoft>.
- The **Uniformed Services Employment and Reemployment Act (USERRA)** ensures that those who serve in the armed forces have a right to reemployment with the employer they were with when they went in service, including those called up from the reserves or National Guard. USERRA is administered by the Veterans' Employment and Training Service (VETS).
 - The VETS home page is <http://www.dol.gov/dol/vets>.
 - The USERRA ELAWS Advisor page is <http://www.dol.gov/elaws/userra0.htm>.
- The **Labor Management Reporting and Disclosure Act (LMRDA)** (also known as the Landrum-Griffin Act) deals with the relationship between a union and its members. It ensures certain basic standards of democracy and fiscal responsibility in labor organizations. The Office of Labor-Management Standards (OLMS) administers this Act.
 - The OLMS home page is http://www.dol.gov/dol/esa/public/olms_org.htm.
- Non-discrimination and affirmative action requirements apply to certain federal contractors under **Executive Order 11246**, **Section 503 of the Rehabilitation Act**, and the **Vietnam Era Veteran's Readjustment Act**. These programs prohibit discrimination and require affirmative action with regard to race, sex, ethnicity, religion, disability and veterans' status. The Office of Federal Contract Compliance Programs (OFCCP) administers these programs.
 - The OFCCP home page is http://www.dol.gov/dol/esa/public/ofccp_org.htm.
 - The OFCCP ELAWS Advisor Page is <http://www.dol.gov/elaws/ofccp0.htm>.

- The goal of the **Federal Mine Safety and Health Act** is to improve working conditions in the nation's mines. Its provisions cover all miners and other persons employed to work on mine property. The Mine Safety and Health Administration (MSHA) administers the Act.
 - The MSHA home page is <http://www.msha.gov>.
 - The MSHA Advisor pages are: <http://www.dol.gov/elaws/contractorid.htm> and <http://www.dol.gov/elaws/msha.htm>.
- The **Black Lung Benefits Act (BLBA)** provides for monthly payments and medical treatment to coal miners totally disabled from pneumoconiosis (black lung disease). The Act also provides for payments to certain family members of miners who died from, or are totally disabled because of pneumoconiosis. The Office of Workers' Compensation Programs (OWCP) administers the Act.
 - The OWCP home page is http://www.dol.gov/dol/esa/public/owcp_org.htm.

More detailed information on these Acts may be obtained either from the cited agency or from the Department of Labor's Small Business Handbook. The Small Business Handbook may be downloaded off the Internet at <http://www.dol.gov/dol/asp/public/programs/handbook/main.htm>.

STATE AND LOCAL LAWS

States and other jurisdictions often have their own employment standards laws. If both federal and state or local law apply to your business, your employees are entitled to the most generous benefit provided under either law. States use various names for the agencies regulating employment practices; however, common names for such state agencies are: Department of Consumer and Industry Services, Employment Services, Human Resources, Industrial Relations, Labor, or Workforce Development. For more information about your state's labor laws, look under the listing for State Government Agencies of your local telephone book or check the Internet at:

http://www.dol.gov/dol/esa/public/contacts/state_of.htm.

U.S. Department of Labor's District Offices of Wage and Hour Division

(Select the District Office nearest to employer/job location.)

(Revised 4-28-99)

ALABAMA

Birmingham, AL
35203-3711
950 - 22nd Street North
Suite 656
TEL: (205) 731-1305
FAX: (205) 731-3482

ALASKA

See Seattle, WA

ARIZONA

Phoenix, AZ 85016-7103
3221 North 16th Street
Suite 301
TEL: (602) 640-2990
FAX: (602) 640-2979

ARKANSAS

Little Rock, AR 72201
TCBY Building, Suite 725
425 West Capitol Avenue
TEL: (501) 324-5292
FAX: (501) 324-5129

CALIFORNIA

Glendale, CA 91205-1752
300 South Glendale Ave.
Suite 400
TEL: (818) 240-5274
FAX: (213) 894-6845

Sacramento, CA 95821
2981 Fulton Avenue
TEL: (916) 979-2040
FAX: (916) 979-2045

San Diego, CA 92123-1362
5675 Rutin Rd., Suite 320
TEL: (619) 557-5000
FAX: (619) 557-6375

San Francisco, CA 94105
455 Market St., Suite 800
TEL: (415) 744-5590
FAX: (415) 744-5088

West Covina, CA 91791
100 N. Barranca St.
Suite 850
TEL: (626) 966-0478
FAX: (626) 966-5539

COLORADO

East of Divide:
Denver, CO 80202-2614
1801 California St.
Suite 935
TEL: (303) 844-4405
FAX: (303) 844-5532

West of Divide:

See Salt Lake City, UT

CONNECTICUT

Hartford, CT 06103
135 High St., Room 310
TEL: (860) 240-4160
FAX: (860) 240-4029

DELAWARE

See Baltimore, MD

DISTRICT of COLUMBIA

See Baltimore, MD

FLORIDA

Jacksonville, FL 32207
3728 Phillips Highway
Suite 219
TEL: (904) 232-2489
FAX: (904) 232-3114

Miami, FL 33173-3038
Sunser Center, Rm. 255
10300 Sunset Drive
TEL: (305) 596-9874
FAX: (305) 279-8393

Orlando, FL 32803-3712
3444 McCrory Place
Suite 155
TEL: (407) 648-6471
FAX: (407) 648-6094

Tampa, FL 33607-3838
Austin Laurel Bldg
Suite 300
4905 W. Laurel Ave
TEL: (813) 288-1242
FAX: (813) 288-1240

GEORGIA

Atlanta, GA 30303
Atlanta Federal Center
61 Forsyth St., S.W.
Room 7M10
TEL: (404) 562-2201
FAX: (404) 562-2180

HAWAII

Honolulu, HI 96850
300 Ala Moana Blvd. Room
7328
TEL: (808) 541-1361
FAX: (808) 541-2956

IDAHO

Northern Panhandle
(Coeur d'Alene, Lewiston):
See Seattle, WA

Remainder of State:

See Portland, OR

ILLINOIS

Chicago, IL 60604-1595
230 South Dearborn Street
Room 412
TEL: (312) 353-8145
FAX: (312) 353-2327

Springfield, IL 62704-1929
509 West Capitol Avenue
Suite 205
TEL: (217) 492-4060
FAX: (217) 492-4910

INDIANA

Indianapolis, IN
46204-1873
429 N. Pennsylvania St.
Room 403
TEL: (317) 226-6801
VM: (317) 687-3289
FAX: (317) 226-5177

South Bend, IN 46601-1615
501 E. Monroe, Suite 160
TEL: (219) 236-8331
FAX: (219) 236-8819

IOWA

Des Moines, IA 50309
Federal Building
210 Walnut St., Rm. 643
TEL: (515) 284-4625
FAX: (515) 284-7171

KANSAS

Eastern Third:
Kansas City, KS 66101
Gateway Tower II
400 State Ave., Suite 1010
TEL: (913) 551-5721
FAX: (913) 551-5730

Remainder of State:

See Omaha, NE

KENTUCKY

Louisville, KY 40202-9570
601 West Broadway, Room
31
TEL: (502) 582-5226
FAX: (502) 582-6890

LOUISIANA

New Orleans, LA 70113
701 Loyola Avenue
Room 13028
TEL: (504) 589-6171
FAX: (504) 589-4751

MAINE

See Manchester, NH

MARYLAND

Baltimore, MD 21202-4061
103 S. Gay Street
Room 207
TEL: (410) 962-3199
FAX: (410) 962-9512

MASSACHUSETTS

Boston, MA 02203
JFK Federal Bldg.
Room 525
TEL: (617) 565-2066
FAX: (617) 565-3700

MICHIGAN

Detroit, MI 48226-2799
211 W. Fort St., Rm. 1317
TEL: (313) 226-7447
FAX: (313) 226-3072

MINNESOTA

Minneapolis, MN
55401-2233
Midland Square, Suite 920
331 Second Avenue
TEL: (612) 370-3371
FAX: (612) 370-3372

MISSISSIPPI

Jackson, MS 39201-2126
One Jackson Place
Suite 1020
188 East Capitol Street
TEL: (601) 965-4347
FAX: (601) 965-5408

MISSOURI**Eastern Half:****St. Louis, MO 63103**

1222 Spruce Street

Room 9.102B

TEL: (314) 539-2706

FAX: (314) 539-2723

Western Half:*See Kansas City, KS***MONTANA***See Salt Lake City, UT***NEBRASKA****Omaha, NE 68102**

106 South 15th Street

Room 715

TEL: (402) 221-4682

FAX: (402) 221-3719

NEVADA**Clark, Lincoln & Nye****Counties (Las Vegas):***See Phoenix, AZ***Remainder of State:***See Sacramento, CA***NEW HAMPSHIRE****Manchester, NH 03101**

2 Wall Street, 1st Floor

TEL: (603) 666-7716

FAX: (603) 666-7600

NEW JERSEY**Southern NJ:****Lawrenceville, NJ 08648**

3131 Princeton Pike

Building 5, Room 216

TEL: (609) 989-2247

FAX: (609) 989-0457

Northern NJ:**Mountainside, NJ 07092**

200 Sheffield St.

Suite 102

TEL: (201) 645-2279

FAX: (201) 645-2573

NEW MEXICO**Albuquerque, NM**

87102-2160

Western Bank Bldg

505 Marquette Ave., NW

Suite 840

TEL: (505) 248-5115

FAX: (505) 248-5119

NEW YORK**Albany, NY 12207**

Leo W. O'Brien Federal

Bldg., Room 822

TEL: (518) 431-4279

FAX: (518) 431-4281

Garden City, NY 11530-2137

825 East Gate Boulevard

Room 202

TEL: (516) 227-3100

FAX: (516) 745-0848

New York, NY 10278

26 Federal Plaza

Room 3838

TEL: (212) 264-8185

FAX: (212) 264-9548

NORTH CAROLINA**Charlotte, NC 28205-6903**

800 Briar Creek Road

Suite CC-412

TEL: (704) 344-6302

FAX: (704) 344-6307

Raleigh, NC 27609-6296

Somerset Park Building

4407 Bland Road

Suite 260

TEL: (919) 790-2742

FAX: (919) 790-2843

NORTH DAKOTA*See Denver, CO***OHIO****Cincinnati, OH 45202-3268**

525 Vine Street, Suite 880

TEL: (513) 684-2942

FAX: (513) 684-2906

Cleveland, OH 44199-2054

Federal Office Building

Room 817

1240 East Ninth Street

TEL: (216) 522-3892

FAX: (216) 522-4235

Columbus, OH 43215-2475

200 North High Street

Room 646

TEL: (614) 469-5677

FAX: (614) 469-5428

OKLAHOMA*See Little Rock, AR***OREGON****Portland, OR 97201-5842**

1515 S.W. 5th Avenue

Suite 1040

TEL: (503) 326-3052

FAX: (503) 326-5951

PACIFIC TERRITORIES*See San Francisco, CA***PENNSYLVANIA****Philadelphia, PA 19106**

U.S. Custom House

Second & Chestnut Streets

Room 400

TEL: (215) 597-4950

FAX: (215) 597-4949

Pittsburgh, PA 15222

1000 Liberty Avenue

Room 313

TEL: (412) 395-4996

FAX: (412) 395-5772

Wilkes-Barre, PA 8702-3594

Stegmaier Bldg., Suite 373-M

7 N. Wilkes-Barre Blvd.

TEL: (717) 826-6316

FAX: (717) 821-4186

PUERTO RICO**Hato Rey, PR 00918**

159 Carlos Chardon Street

Room 102

TEL: (787) 766-5263

FAX: (787) 766-5792

RHODE ISLAND*See Hartford, CT***SOUTH CAROLINA****Columbia, SC 29201-2449**

Federal Building

1835 Assembly Street

Room 1072

TEL: (803) 765-5981

FAX: (803) 253-3003

SOUTH DAKOTA*See Denver, CO***TENNESSEE****Nashville, TN 37217-2626**

1321 Murfreesboro Road

Suite 511

TEL: (615) 781-5343

FAX: (615) 781-5347

TEXAS**Dallas, TX 75202-5007**

A. Maceo Smith Federal

Bldg., Room 507

525 South Griffin St.

TEL: (214) 767-6294

FAX: (214) 767-3839

Houston, TX 77042-4546

South Bldg., Suite 202

9990 Richmond Ave.

TEL: (713) 339-5500

FAX: (713) 339-5591

San Antonio, TX 78216

Northchase I Office Bldg.

10127 Morocco, Suite 140

TEL: (210) 308-4515

FAX: (210) 308-4518

West TX/Panhandle

(Amarillo, Big Spring,

El Paso, Lubbock, Midland,

& Odessa): *See**Albuquerque, NM***UTAH****Salt Lake City, UT 84101**

10 West Broadway, Suite 307

TEL: (801) 524-5706

FAX: (801) 524-5722

VERMONT*See Manchester, NH***VIRGINIA****Northern VA:***See Baltimore, MD***Southwestern VA:***See Charleston, WV***Remainder of State:****Richmond, VA 23240**

Federal Bldg., Suite 416

400 N. Eighth Street

TEL: (804) 771-2995

FAX: (804) 771-8127

VIRGIN ISLANDS*See Hato Rey, PR***WASHINGTON****Southwest Corner**

(Longview, Vancouver)

*See Portland, OR***Remainder of State:****Seattle, WA 98101-3212**

1111 Third Avenue

Suite 755

TEL: (206) 553-4482

FAX: (206) 553-2883

WEST VIRGINIA**Eastern Panhandle***See Baltimore, MD***Remainder of State:****Charleston, WV 25301**

2 Hale Street, Suite 301

TEL: (304) 347-5206

FAX: (304) 347-5467

WISCONSIN**Madison, WI 53703-2878**

212 East Washington Ave.

Room 309

TEL: (608) 264-5221

FAX: (608) 264-5224

WYOMING**Albany and Laramie Cos.***See Denver, CO***Remainder of State***See Salt Lake City, UT*



HISTORY OF FEDERAL MINIMUM WAGE RATES UNDER THE FAIR LABOR STANDARDS ACT, 1938 - 1996

The table of federal minimum wage rates under the Fair Labor Standards Act, 1938 - 1996 is also available in a [PDF Version](#). In order to view and/or print PDF documents you must have a PDF viewer (e.g., [Amber](#) or [Acrobat Reader](#)) available on your workstation.

Minimum hourly wage of workers in jobs first covered by --

Effective Date	1938 Act ¹	1961 Amendments ²	1966 and Subsequent Amendments ³	
			Nonfarm	Farm
Oct 24, 1938	\$0.25			
Oct 24, 1939	\$0.30			
Oct 24, 1945	\$0.40			
Jan 25, 1950	\$0.75			
Mar 1, 1956	\$1.00			
Sep 3, 1961	\$1.15	\$1.00		
Sep 3, 1963	\$1.25			
Sep 3, 1964		\$1.15		
Sep 3, 1965		\$1.25		
Feb 1, 1967	\$1.40	\$1.40	\$1.00	\$1.00
Feb 1, 1968	\$1.60	\$1.60	\$1.15	\$1.15
Feb 1, 1969			\$1.30	\$1.30
Feb 1, 1970			\$1.45	
Feb 1, 1971			\$1.60	
May 1, 1974	\$2.00	\$2.00	\$1.90	\$1.60
Jan. 1, 1975	\$2.10	\$2.10	\$2.00	\$1.80
Jan 1, 1976	\$2.30	\$2.30	\$2.20	\$2.00
Jan 1, 1977			\$2.30	\$2.20
Jan 1, 1978		\$2.65 for all covered, nonexempt workers		
Jan 1, 1979		\$2.90 for all covered, nonexempt workers		
Jan 1, 1980		\$3.10 for all covered, nonexempt workers		
Jan 1, 1981		\$3.35 for all covered, nonexempt workers		
Apr 1, 1990 ⁴		\$3.80 for all covered, nonexempt workers		
Apr 1, 1991		\$4.25 for all covered, nonexempt workers		
Oct 1, 1996		\$4.75 for all covered, nonexempt workers		
Sep 1, 1997 ⁵		\$5.15 for all covered, nonexempt workers		

¹ The 1938 Act was applicable generally to employees engaged in interstate commerce or in the production of goods for interstate commerce.

² The 1961 Amendments extended coverage primarily to employees in large retail and service enterprises as well as to local transit, construction, and gasoline service station employees.

³ The 1966 Amendments extended coverage to State and local government employees of hospitals, nursing homes, and schools, and to laundries, drycleaners, and large hotels, motels, restaurants, and farms. Subsequent amendments extended coverage to the remaining Federal, State and local government employees who were not protected in 1966, to certain workers in retail and service trades previously exempted, and to certain domestic workers in private household employment.

⁴ Grandfather clause - Employees who do not meet the tests for individual coverage, and whose employers were covered by the FLSA on March 31, 1990, and fail to meet the increased annual dollar volume (ADV) test for enterprise coverage, must continue to receive at least \$3.35 an hour.

⁵ A subminimum wage -- \$4.25 an hour -- is established for employees under 20 years of age during their first 90 consecutive calendar days of employment with an employer.

 [DOL Home Page](#) |  [ESA Home Page](#) |  [Top of Document](#)