

## Wage and Hour Division

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## FAIR LABOR STANDARDS ACT



UNITED STATES DEPARTMENT OF LABOR  
WAGE AND HOUR DIVISION

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

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## Major Provisions



Coverage



Youth  
Employment



Minimum Wage



Recordkeeping



Overtime

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# Employment Relationship

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

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## Fact Sheet #13 – Employment Relationship

U.S. Department of Labor Wage and Hour Division



**Fact Sheet #13 – Employment Relationship Under the Fair Labor Standards Act (FLSA)**

**Key Takeaways:**

- The fact sheet provides general information concerning the meaning of "employment relationship" and the requirements of the FLSA.
- An employment relationship under the FLSA does not require a contract, a written contract, or a contract with a specific term.
- The fact sheet provides information on whether a worker is an employee or an independent contractor.
- The fact sheet provides information on whether a worker is an employee or an independent contractor.

FLSA 13

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## Coverage



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



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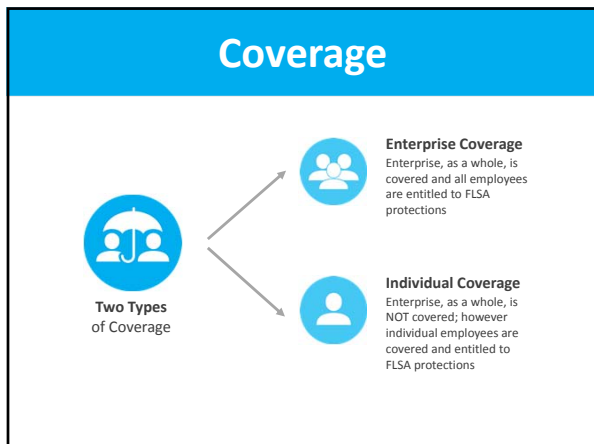
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### Enterprise Coverage

Enterprise coverage may apply to a business if:

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

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### Enterprise Coverage

**Enterprise Coverage in Non-Profit Organizations**

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

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## Enterprise Coverage

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

**Named enterprises:**

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

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## Individual Coverage



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

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

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## Individual Coverage

Includes workers engaged in:

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

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## Individual Coverage

**Interstate commerce** includes:

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

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## Coverage



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

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

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## Minimum Wage



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

Current federal minimum wage **\$7.25**

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## Minimum Wage

**Compensation includes:**

- Wages (salary, hourly and piece rates)
- Commissions
- Certain bonuses
- Tips received by eligible employees up to \$5.12 per hour (where the employer takes a tip credit)
- Reasonable cost of room, board, other "facilities" provided by employer for employee's benefit

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## Minimum Wage

**Deductions from pay are illegal if:**

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

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



**FACT SHEET:**  
Deductions

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## Minimum Wage

**Tipped Employee**

- Engaged in an occupation in which he or she customarily and regularly receives more than \$30 per month in tips
- Applied on an individual basis



**FACT SHEET:**  
Tipped Employees

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## Minimum Wage




**Hours Worked**

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

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

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

FACT SHEET:  
Hours Worked

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## Minimum Wage

**Rest and Meal Periods**

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

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## Minimum Wage

**Hours Worked Summary and Common Violations**

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

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## Overtime

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

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

FACT SHEET:  
[Overtime](#)

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## Overtime



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

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## Overtime

**Regular Rate**

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

**Total Compensation ÷ Total Hours Worked = RR**

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

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 **Overtime**

**Exercise: Different Hourly Rates**

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

**Total compensation for week: \$412.50 + \$30.73 = \$443.23**

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 **Overtime**

**Exercise: Piece Rates**

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

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**Overtime**


Three Tests for the “White Collar” Exemptions



**Salary Basis**

**Salary Level**

**Job Duties**



**FACT SHEET:**  
Blue Collar  
Workers

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## Overtime

### Salary Level Test

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

It may be paid in equivalent amounts for longer periods.

<b>Bi-weekly:</b>	\$910.00
<b>Semi-monthly:</b>	\$985.83
<b>Monthly:</b>	\$1971.66

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

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## Overtime

### Salary Basis Test

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



**FACT SHEET:**  
Salary Basis

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## Overtime

### “White Collar” Exemption: Executive Duties

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



**FACT SHEET:**  
Executive  
Duties  
Exemption

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**Overtime**

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

Any employee who:

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

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

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**Overtime**

**“White Collar” Exemption: Administrative Duties**  
 Primary duty

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

 **FACT SHEET:**  
 Administrative Duties Exemption

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**Overtime**

**“White Collar” Exemption: Administrative Duties**  
*Management or General Business Operations* Includes:

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

 **FACT SHEET:**  
 Administrative Duties Test

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**Overtime**

**“White Collar” Exemption: Professional Duties**  
Primary duty

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



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**Overtime**

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



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

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**Overtime**

**“White Collar” Exemption: Exempt Medical Professions**

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

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**Overtime**

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

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

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**Overtime**

**Non-Exempt Professions**  
*Common errors: misapplication of exemptions*

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




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**Overtime**

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

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

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## Overtime

**“White Collar” Exemption: Computer-related Occupations**  
Primary duty

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



FACT  
SHEET:  
Computer-  
Related  
Exemption

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## Overtime

**“White Collar” Exemption:  
Computer-related Occupations**

Additionally, exempt employees must also receive either:

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

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## Overtime

**“White Collar” Exemption: Outside Sales**  
Primary duty

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

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



FACT  
SHEET:  
Outside  
Sales  
Exemption

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## Overtime

**Exemption for Employees Paid Commissions by Retail Establishments**

Employee is exempt from overtime pay if:

- Employed by a *retail or service establishment*;
- More than half employee's total earnings in *representative period* are commissions on goods, services; and
- Total compensation divided by number of hours worked, or regular rate, *exceeds one and one-half times the minimum wage*

If all conditions are not met, exemption does not apply



FACT SHEET:  
[Commissioned Sales Exemption](#)

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## Overtime

**Exemption for Employees Paid Commissions by Retail Establishments**

*Retail or Service Establishment*

An establishment is a retail or service establishment if at least 75% of its annual dollar volume of sales of goods, services or both:

- is not for resale; and
- is recognized as retail sales or services in the particular industry

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## Overtime

**Exemption for Employees Paid Commissions by Retail Establishments**

*Representative Period*

- Representative period may be as short as one month, cannot be greater than one year
- Employer selects representative period
- More than half of the employee's earnings during the representative period must be commissions

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## Overtime

**Exemption for Employees Paid Commissions by Retail Establishments**

*Regular Rate More than One and One-Half Minimum Wage*

To determine:  
Divide employee's total earnings by total hours worked within workweek

(Total Earnings ÷ Total Hours) > (MW x 1.5)

For the exemption to apply in a particular workweek, the employee's regular rate must exceed one and one-half times the minimum wage in that workweek

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## Overtime

**Common Overtime Violations**

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

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## Overtime

**Common Overtime Violations**

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

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## Youth Employment



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



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## Youth Employment

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

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## Recordkeeping



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



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**Recordkeeping**

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

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

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**Recordkeeping**

**Posting**

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

Download the poster electronically at :  
[www.dol.gov/oasam/boc/osdbu/sbrefa/poster/matrix.htm](http://www.dol.gov/oasam/boc/osdbu/sbrefa/poster/matrix.htm)

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

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**FLSA Enforcement**

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

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

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## FLSA Enforcement



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

FACT SHEET:  
Visits to  
Employers

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## FLSA Enforcement

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

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## FLSA Enforcement

**Penalties**

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

[Civil Money Penalties Chart](#)

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## FLSA Compliance Assistance

Fair Labor Standards Act of 1938

Regulations

FLSA Poster.pdf

Handy Reference Guide.pdf

Frequently Asked Questions (FAQs)

Fact Sheets

Opinion Letters

Visit the WHD home page: [www.dol.gov/whd](http://www.dol.gov/whd)

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## FLSA Compliance Assistance

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

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