

Handy Reference Guide to the Fair Labor Standards Act (FLSA)

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

The Wage and Hour Division (Wage-Hour) administers and enforces FLSA with respect to private employment, State and local government employment, and Federal employees of the Library of Congress, U.S. Postal Service, Postal Rate Commission, and the Tennessee Valley Authority. The FLSA is enforced by the U.S. Office of Personnel Management for employees of other Executive Branch agencies, and by the U.S. Congress for covered employees of the Legislative Branch.

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

Basic Wage Standards

Covered nonexempt workers are entitled to a minimum wage of not less than \$4.75 an hour, effective October 1, 1996, and not less than \$5.15 an hour, effective September 1, 1997. Overtime pay at a rate of not less than one and one-half times their regular rates of pay is required after 40 hours of work in a workweek.

Wages required by FLSA are due on the regular payday for the pay period covered. Deductions made from wages for such items as cash or merchandise shortages, employer-required uniforms, and tools of the trade, are not legal to the extent that they reduce the wages of employees below the minimum rate required by FLSA or reduce the amount of overtime pay due under FLSA.

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

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

For example, FLSA does *not* require:

- vacation, holiday, severance, or sick pay;
- meal or rest periods, holidays off, or vacations;
- premium pay for weekend or holiday work;
- pay raises or fringe benefits; and
- a discharge notice, reason for discharge, or immediate payment of final wages to terminated employees.

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

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

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

Who is Covered?

All employees of certain enterprises having workers engaged in interstate commerce, producing goods for interstate commerce, or handling, selling, or otherwise working on goods or materials that have been moved in or produced for such commerce by any person are covered by FLSA.

A covered enterprise is the related activities performed through unified operation or common control by any person or persons for a common business purpose and --

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

Construction and laundry/dry cleaning enterprises, which had been previously covered regardless of their annual dollar volume of business, became subject to the \$500,000 test on April 1, 1990.

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

Employees of firms which are not covered enterprises under FLSA still may be subject to its minimum wage, overtime pay, and child labor provisions if they are individually engaged in interstate commerce or in the production of goods for interstate commerce, or in any closely-related process or occupation directly essential to such production. Such employees include those who: work in communications or transportation; regularly use the mails, telephones, or telegraph for interstate communication, or keep records of interstate transactions; handle, ship, or receive goods moving in interstate commerce; regularly cross State lines in the course of employment; or work for independent employers who contract to do clerical, custodial, maintenance, or other work for firms engaged in interstate commerce or in the production of goods for interstate commerce.

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

- their cash wages from one employer are at least \$1,000 in a calendar year (or the amount designated pursuant to an adjustment provision in the Internal Revenue Code), or
- they work a total of more than 8 hours a week for one or more employers.

Tipped Employees

Tipped employees are those who customarily and regularly receive more than \$30 a month in tips. The employer may consider tips as part of wages, but the employer must pay at least \$2.13 an hour in direct wages.

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

Employer-Furnished Facilities

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

Industrial Homework

The performance of certain types of work in an employee's home is prohibited under the law unless the employer has obtained prior certification from the Department of Labor. Restrictions apply in the manufacture of knitted outerwear, gloves and mittens, buttons and buckles, handkerchiefs, embroideries, and jewelry (where safety and health hazards are not involved). The manufacture of women's apparel (and jewelry under hazardous conditions) is generally prohibited. If you have questions on whether a certain type of work is restricted, or who is eligible for a homework certificate, or how to obtain a certificate, you may contact the local Wage-Hour office.

Subminimum Wage Provisions

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

Youth Minimum Wage

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

Exemptions

Some employees are exempt from the overtime pay provisions or both the minimum wage and overtime pay provisions.

Because exemptions are generally narrowly defined under FLSA, an employer should carefully check the exact terms and conditions for each. Detailed information is available from local Wage-Hour offices.

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

Exemptions from Both Minimum Wage and Overtime Pay

- Executive, administrative, and professional employees (including teachers and academic administrative personnel in elementary and secondary schools), outside sales employees, and employees in certain computer-related occupations (as defined in Department of Labor regulations);
- Employees of certain seasonal amusement or recreational establishments, employees of certain small newspapers, seamen employed on foreign vessels, employees engaged in fishing operations, and employees engaged in newspaper delivery;
- Farm workers employed by anyone who used no more than 500 "man-days" of farm labor in any calendar quarter of the preceding calendar year;
- Casual babysitters and persons employed as companions to the elderly or infirm.

Exemptions from Overtime Pay Only

- Certain commissioned employees of retail or service establishments; auto, truck, trailer, farm implement, boat, or aircraft salesworkers, or parts-clerks and mechanics servicing autos, trucks, or farm implements, who are employed by nonmanufacturing establishments primarily engaged in selling these items to ultimate purchasers;
- Employees of railroads and air carriers, taxi drivers, certain employees of motor carriers, seamen on American vessels, and local delivery employees paid on approved trip rate plans;
- Announcers, news editors, and chief engineers of certain nonmetropolitan broadcasting stations;
- Domestic service workers living in the employer's residence;
- Employees of motion picture theaters; and
- Farmworkers.

Partial Exemptions from Overtime Pay

- Partial overtime pay exemptions apply to employees engaged in certain operations on agricultural commodities and to employees of certain bulk petroleum distributors.
- Hospitals and residential care establishments may adopt, by agreement with their employees, a 14-day work period instead of the usual 7-day workweek, if the employees are paid at least time and one-half their regular rates for hours worked over 8 in a day or 80 in a 14-day work period, whichever is the greater number of overtime hours.
- Employees who lack a high school diploma, or who have not attained the educational level of the 8th grade, can be required to spend up to 10 hours in a workweek engaged in remedial reading or training in other basic skills without receiving time and one-half overtime pay for these hours. However, the employees must receive their normal wages for hours spent in such training and the training must not be job specific.

Child Labor Provisions

The FLSA child labor provisions are designed to protect the educational opportunities of minors and prohibit their employment in jobs and under conditions detrimental to their health or well-being. The provisions include restrictions on hours of work for minors under 16 and lists of hazardous occupations orders for both farm and nonfarm jobs declared by the Secretary of Labor to be too dangerous for minors to perform. Further information on prohibited occupations is available from local Wage-Hour offices.

Nonagricultural Jobs (Child Labor)

Regulations governing youth employment in nonfarm jobs differ somewhat from those pertaining to agricultural employment. In nonfarm work, the permissible jobs and hours of work, by age, are as follows:

- Youths 18 years or older may perform any job, whether hazardous or not, for unlimited hours;
- Youths 16 and 17 years old may perform any nonhazardous job, for unlimited hours; and
- Youths 14 and 15 years old may work outside school hours in various nonmanufacturing, nonmining, nonhazardous jobs under the following conditions: no more than 3 hours on a school day, 18 hours in a school week, 8 hours on a nonschool day, or 40 hours in a nonschool week. Also, work may not begin before 7 a.m., nor end after 7 p.m., except from June 1 through Labor Day, when evening hours are extended to 9 p.m. Under a special provision, youths 14 and 15 years old enrolled in an approved Work Experience and Career Exploration Program (WECEP) may be employed for up to 23 hours in school weeks and 3 hours on school days (including during school hours).

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

Farm Jobs (Child Labor)

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

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

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

Recordkeeping

The FLSA requires employers to keep records on wages, hours, and other items, as specified in Department of Labor recordkeeping regulations. Most of the information is of the kind generally maintained by employers in ordinary business practice and in compliance with other laws and regulations. The records do not have to be kept in any particular form and time clocks need not be used. With respect to an employee subject to the minimum wage provisions or both the minimum wage and overtime pay provisions, the following records must be kept:

- personal information, including employee's name, home address, occupation, sex, and birth date if under 19 years of age;
- hour and day when workweek begins;
- total hours worked each workday and each workweek;

- total daily or weekly straight-time earnings;
- regular hourly pay rate for any week when overtime is worked;
- total overtime pay for the workweek;
- deductions from or additions to wages;
- total wages paid each pay period; and
- date of payment and pay period covered.

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

Terms Used in FLSA

Workweek -- A workweek is a period of 168 hours during 7 consecutive 24-hour periods. It may begin on any day of the week and at any hour of the day established by the employer. Generally, for purposes of minimum wage and overtime payment each workweek stands alone; there can be no averaging of 2 or more workweeks. Employee coverage, compliance with wage payment requirements, and the application of most exemptions are determined on a workweek basis.

Hours Worked -- Covered employees must be paid for all hours worked in a workweek. In general, "hours worked" includes all time an employee must be on duty, or on the employer's premises or at any other prescribed place of work. Also included is any additional time the employee is allowed (i.e., suffered or permitted) to work.

Computing Overtime Pay

Overtime must be paid at a rate of at least one and one-half times the employee's regular rate of pay for each hour worked in a workweek in excess of the maximum allowable in a given type of employment. Generally, the regular rate includes all payments made by the employer to or on behalf of the employee (except for certain statutory exclusions). The following examples are based on a maximum 40-hour workweek.

- **Hourly rate** -- (regular pay rate for an employee paid by the hour). If more than 40 hours are worked, at least one and one-half times the regular rate for each hour over 40 is due.

Example: An employee paid \$8.00 an hour works 44 hours in a workweek. The employee is entitled to at least one and one-half times \$8.00, or \$12.00, for each hour over 40. Pay for the week would be \$320 for the first 40 hours, plus \$48.00 for the four hours of overtime--a total of \$368.00.

- **Piece rate** -- The regular rate of pay for an employee paid on a piecework basis is obtained by dividing the total weekly earnings by the total number of hours worked in that week. The employee is entitled to an additional one-half times this regular rate for each hour over 40, plus the full piecework earnings.

Example: An employee paid on a piecework basis works 45 hours in a week and earns \$315. The regular rate of pay for that week is \$315 divided by 45, or \$7.00 an hour. In addition to the straight-time pay, the employee is also entitled to \$3.50 (half the regular rate) for each hour over 40 -- an additional \$17.50 for the 5 overtime hours -- for a total of \$332.50.

Another way to compensate pieceworkers for overtime, if agreed to before the work is performed, is to pay one and one-half times the piece rate for each piece produced during the

overtime hours. The piece rate must be the one actually paid during nonovertime hours and must be enough to yield at least the minimum wage per hour.

- **Salary** -- the regular rate for an employee paid a salary for a regular or specified number of hours a week is obtained by dividing the salary by the number of hours for which the salary is intended to compensate.

If, under the employment agreement, a salary sufficient to meet the minimum wage requirement in every workweek is paid as straight time for whatever number of hours are worked in a workweek, the regular rate is obtained by dividing the salary by the number of hours worked each week. To illustrate, suppose an employee's hours of work vary each week and the agreement with the employer is that the employee will be paid \$420 a week for whatever number of hours of work are required. Under this agreement, the regular rate will vary in overtime weeks. If the employee works 50 hours, the regular rate is \$8.40 (\$420 divided by 50 hours). In addition to the salary, half the regular rate, or \$4.20 is due for each of the 10 overtime hours, for a total of \$462 for the week. If the employee works 60 hours, the regular rate is \$7.00 (\$420 divided by 60 hours). In that case, an additional \$3.50 is due for each of the 20 overtime hours, for a total of \$490 for the week.

In no case may the regular rate be less than the minimum wage required by FLSA.

If a salary is paid on other than a weekly basis, the weekly pay must be determined in order to compute the regular rate and overtime pay. If the salary is for a half month, it must be multiplied by 24 and the product divided by 52 weeks to get the weekly equivalent. A monthly salary should be multiplied by 12 and the product divided by 52.

Enforcement

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

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

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

Violators of the child labor provisions are subject to a civil money penalty of up to \$10,000 for each employee who was the subject of a violation.

Employers who willfully or repeatedly violate the minimum wage or overtime pay requirements are subject to a civil money penalty of up to \$1,000 for each such violation.

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

Recovery of Back Wages

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

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

An employee may not bring suit if he or she has been paid back wages under the supervision of Wage-Hour or if the Secretary of Labor has already filed suit to recover the wages.

A 2-year statute of limitations applies to the recovery of back pay, except in the case of willful violation, in which case a 3-year statute applies.

Other Labor Laws

In addition to FLSA, Wage-Hour enforces and administers a number of other labor laws. Among these are:

- the **Davis-Bacon and Related Acts**, which require payment of prevailing wage rates and fringe benefits on federally-financed or assisted construction;
- the **Walsh-Healey Public Contracts Act**, which requires payment of minimum wage rates and overtime pay on contracts to provide goods to the Federal Government;
- the **Service Contract Act**, which requires payment of prevailing wage rates and fringe benefits on contracts to provide services to the Federal Government;
- the **Contract Work Hours and Safety Standards Act**, which sets overtime standards for service and construction contracts;
- the **Migrant and Seasonal Agricultural Worker Protection Act**, which protects farm workers by imposing certain requirements on agricultural employers and associations and requires the registration of crewleaders who must also provide the same worker protections;
- the **Wage Garnishment Law**, which limits the amount of an individual's income that may be legally garnished and prohibits firing an employee whose pay is garnished for payment of a single debt;
- the **Employee Polygraph Protection Act**, which prohibits most private employers from using any type of lie detector test either for pre-employment screening of job applicants or for testing current employees during the course of employment;
- the **Family and Medical Leave Act**, which entitles eligible employees of covered employers to take up to 12 weeks of unpaid job-protected leave each year, with maintenance of group health insurance, for the birth and care of a child, for the placement of a child for adoption or foster care, for the care of a child, spouse, or parent with a serious health condition, or for the employee's serious health condition; and
- the **Immigration and Nationality Act**, as amended, which: *under the employment eligibility provisions*, requires employers to verify the employment eligibility of all individuals hired and keep Immigration and Naturalization Service forms (I-9) on file for at least 3 years and for one year after an employee is terminated;

under the H-2A provisions, provides for the enforcement of contractual obligations of job offers which have been certified to by employers of temporary alien nonimmigrant agricultural workers;

under the H-1C provisions, provides for the enforcement of employment conditions attested to by employers in disadvantages areas employing H-1C temporary alien nonimmigrant registered nurses;

under the D-1 provisions, provides for the enforcement of employment conditions attested to by employers seeking to employ alien crewmembers to perform specified longshore activity at U.S. ports; and

under the H-1B provisions, provides for the enforcement of labor condition applications filed by employers wishing to employ aliens in specialty occupations and as fashion models of distinguished merit and ability.

More detailed information on FLSA and other laws administered by Wage-Hour is available from local Wage-Hour offices, which are listed in most telephone directories under U.S. Government, Department of Labor, Wage and Hour Division. For those who have access to the Internet, further information may also be obtained on the Wage and Hour Division Internet Home Page which can be located at the following address: www.wagehour.dol.gov.

Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

In accordance with the provisions of the SBREFA, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. Small businesses wishing to comment on the enforcement activities of the Wage and Hour Division may call 1-888-REG-FAIR (1-888-734-3247), or write to the Ombudsman at 500 W. Madison Street, Suite 1240, Chicago, Illinois 60661.

The right to file a comment with the Ombudsman is in addition to any other rights a small business may have, including the right to contest the assessment of a civil money penalty. Filing a comment with the Ombudsman neither extends the maximum time period for contesting the assessment of a penalty, nor takes the place of filing the response required to secure an administrative hearing on a penalty.

Equal Pay Provisions

The equal pay provisions of FLSA prohibit sex-based wage differentials between men and women employed in the same establishment who perform jobs that require equal skill, effort, and responsibility and which are performed under similar working conditions. These provisions, as well as other statutes prohibiting discrimination in employment, are enforced by the Equal Employment Opportunity Commission. More detailed information is available from its offices which are listed in most telephone directories under U.S. Government.