

The Department announced a Final Rule focused primarily on updating the salary and compensation levels needed for Executive, Administrative and Professional workers to be exempt. For more information, see <http://www.dol.gov/whd/overtime/final2016/>.

Fair Labor Standards Act

Presented by the
U.S. Department of Labor
Wage and Hour Division



U.S. Department of Labor
Wage and Hour Division



Major Provisions

- Coverage
- Minimum Wage
- Overtime Pay
- Youth Employment
- Recordkeeping



Employment Relationship

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



Coverage



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Coverage

More than 130 million workers in more than 7 million workplaces are protected or “covered” by the Fair Labor Standards Act (FLSA), which is enforced by the Wage and Hour Division of the U.S. Department of Labor



Coverage

Two types of coverage

- **Enterprise coverage:** If an enterprise is covered, all employees of the enterprise are entitled to FLSA protections
- **Individual coverage:** Even if the enterprise is not covered, individual employees may be covered and entitled to FLSA protections



Enterprise Coverage

- Enterprises with
 - At least two (2) employees
 - At least \$500,000 a year in business
- Hospitals, businesses providing medical or nursing care for residents, schools, preschools and government agencies (federal, state, and local)



Individual Coverage

- Workers who are engaged in:
 - Interstate commerce;
 - Production of goods for commerce;
 - Closely-related process or occupation directly essential (CRADE) to such production; or
 - Domestic service
- Engaging in “interstate commerce” which may include:
 - Making telephone calls to other states
 - Typing letters to send to other states
 - Processing credit card transactions
 - Traveling to other states



The Bottom Line

- Almost every employee in the United States is covered by the FLSA
- Examples of employees who may not be covered
 - Employees working for small construction companies
 - Employees working for small independently owned retail or service businesses



Minimum Wage



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Minimum Wage: Basics

- Covered, non-exempt employees must be paid not less than the federal minimum wage for all hours worked
- The minimum wage is \$7.25 per hour effective July 24, 2009
- Cash or equivalent – free and clear



Minimum Wage: Issues

- Compensation Included
- Deductions
- Tipped Employees
- Hours Worked



Compensation Included

- Wages (salary, hourly, piece rate)
- Commissions
- Certain bonuses
- Tips received by eligible tipped employees (up to \$5.12 per hour July 24, 2009)
- Reasonable cost of room, board and other “facilities” provided by the employer for the employee’s benefit



Board and Lodging

- Cannot exceed actual cost
- Cannot include a profit to the employer
- Employer's method of determining reasonable cost should follow good accounting practices
- Employer cannot take a credit when no cost is incurred



Deductions

- Deductions from pay illegal if
 - Deduction is for item considered primarily for the benefit or convenience of the employer; and
 - The deduction reduces employee's earnings below required minimum wage
- Examples of illegal deductions
 - Tools used for work
 - Damages to employer's property
 - Cash register shortages



Minimum Wage Example

Employee receives \$9 per hour for 40 hours plus \$5 in commission and \$20 in reasonable cost of board, lodging or other facilities

Total earnings = $\$360 + \$5 + \$20 = \385

Total earnings/total hours $\$385/40 = \9.63



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Tipped Employee

- Works in occupation in which he or she customarily and regularly receives more than \$30 per month in tips
- Paid at least \$2.13 in cash by employer, who may claim a “tip credit” for the rest of minimum wage



Tip Credit

- Employer may claim “tip credit” only if
 - The employer informs each tipped employee about the tip credit allowance, including amount to be credited before the credit is utilized
 - The employer can document that the employee received at least enough tips to bring the total wage paid up to minimum wage or more
 - All tips are retained by the employee and are not shared with the employer or other employees, unless through a valid tip pooling arrangement



Hours Worked: Issues

- Suffered or Permitted
- Waiting Time
- On-Call Time
- Meal and Rest Periods
- Training Time
- Travel Time
- Sleep Time



Suffered or Permitted

Work not requested but suffered or permitted is work time



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Waiting Time

- Counted as hours worked when
 - Employee is unable to use the time effectively for his or her own purposes; and
 - Time is controlled by the employer
- Not counted as hours worked when
 - Employee is completely relieved from duty; and
 - Time is long enough to enable the employee to use it effectively for his or her own purposes



On-Call Time

- On-call time is hours worked when
 - Employee has to stay on the employer's premises
 - Employee has to stay so close to the employer's premises that the employee cannot use that time effectively for his or her own purposes
- On-call time is not hours worked when
 - Employee is required to carry a pager
 - Employee is required to leave word at home or with the employer where he or she can be reached



Meal and Rest Periods

- Meal periods are not hours worked when the employee is relieved of duties for the purpose of eating a meal
- Rest periods of short duration (normally 5 to 20 minutes) are counted as hours worked and must be paid



Training Time

Time employees spend in meetings, lectures, or training is considered hours worked and must be paid, unless

- Attendance is outside regular working hours
- Attendance is voluntary
- The course, lecture, or meeting is not job related
- The employee does not perform any productive work during attendance



Travel Time

- Ordinary home to work travel is not work time
- Travel between job sites during the normal work day is work time
- Special rules apply to travel away from the employee's home community



Sleep Time

- Less than 24 hour duty
 - Employee who is on duty for less than 24 hours is considered to be working even if allowed to sleep or engage in other personal pursuits
- Duty of 24 hours or more
 - Parties can agree to exclude bona fide sleep and meal periods



Overtime



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Overtime Pay

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



Overtime Issues

- Each workweek stands alone
- Regular rate
 - Payments excluded from rate
 - Payments other than hourly rates
 - Tipped Employees
- Deductions



Workweek

- Compliance is determined by workweek, and each workweek stands by itself
- Workweek is 7 consecutive 24 hour periods (168 hours)



Regular Rate

- Is determined by dividing total earnings in the workweek by the total number of hours worked in the workweek
- May not be less than the applicable minimum wage



Regular Rate Exclusions

- Sums paid as gifts
- Payments for time not worked
- Reimbursement for expenses
- Discretionary bonuses
- Profit sharing plans
- Retirement and insurance plans
- Overtime premium payments
- Stock options



Regular Rate (RR)

Step 1: Total Straight Time Earnings (Minus Statutory Exclusions) Divided By Total Hours Worked = Regular Rate

Step 2: Regular Rate x .5 = Half Time Premium

Step 3: Half Time Premium x Overtime Hours = Total Overtime Premium Due



Example: Hourly Rate + Production Bonus

Total Hours = 48

Hourly Rate = \$9.00

Bonus = \$10

48 hours x \$9.00 = \$432.00

Bonus + \$10.00

Total = \$442.00

$\$442.00 / 48 \text{ hrs} = \9.21 (Regular Rate)

$\$9.21 \times 0.5 = \4.61

$\$4.61 \times 8 \text{ hrs} = \36.88 (Overtime Due)



Example: Different Hourly Rates

Janitor Rate \$8.50, Janitor Hours 21

Cook Rate \$9.00, Cook Hours 26

$$21 \text{ hours} \times \$8.50 = \$178.50$$

$$26 \text{ hours} \times \$9.00 = \underline{\$234.00}$$

$$\text{Total} = \$412.50$$

$$\$412.50 / 47 \text{ hours} = \$8.78 \text{ (Regular Rate)}$$

$$\$8.78 \times 0.5 = \$4.39$$

$$\$4.39 \times 7 \text{ hours} = \$30.73 \text{ (Overtime Due)}$$



Example: Piece Rates

Piece Rate Earnings \$391.00 for 46 Hrs
Waiting Time Rate \$7.25 for 4 Hrs
Production Bonus \$12.50

46 hours = \$391.00
4 hours x \$7.25 = \$29.00
Production Bonus = \$12.50
Total = \$432.50

\$432.50 / 50 hrs = \$8.65 (Regular Rate)
\$8.65 x 0.5 = \$4.33
\$4.33 x 10 hrs = \$43.30 (Overtime Due)



Example: Salaried for Fixed Hours

Salary Earnings \$420.00 (for a 40 hour workweek)

Hours Worked 48

Regular Rate \$10.50 ($\$420/40$ hours)

Overtime Rate \$15.75

Salary Equals = \$420.00

8 hours x \$15.75 = \$126.00

Total Due = \$546.00



Example: Fixed Salary for Fluctuating Hours

Fixed Salary \$420.00 (for all hours worked)

Week 1 Hours Worked 49

Regular Rate \$8.57 ($\$420 / 49$ hours)

Additional Half-Time Rate \$4.29

Salary Equals = \$420.00

9 hours x \$4.29 = \$38.61 (Overtime Due)

Total Due = \$458.61



Example: Fixed Salary for Fluctuating Hours

Fixed Salary \$420.00 (for all hours worked)

Week 2 Hours Worked 41

Regular Rate \$10.24 ($\$420 / 41$ hours)

Additional Half-Time Rate \$5.12

Salary Equals = \$420.00

1 hour x \$5.12 = \$5.12

Total Due = \$425.12



Example: Tipped Employee

Rate Employer Pays	\$2.13
Tip Credit Claimed	\$5.12
Regular Rate	\$7.25
Additional Half-Time Rate	\$3.63

$$50 \text{ Hours} \times \$7.25 = \$362.50$$

$$10 \text{ hours} \times \$3.63 = \underline{\$36.30}$$

$$\text{Total Due (less tip credit)} = \$398.80$$

$$\text{Tip Credit } 50 \times \$5.12 = \underline{\$256.00}$$

$$\text{Total Cash Wage Due} = \$142.80$$



Deductions in Overtime Workweeks



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Deductions for Board, Lodging and Facilities

- No limit on the amount deducted for the reasonable cost of board, lodging, or other facilities
- Items that are primarily for the benefit or convenience of the employer do not qualify as facilities
- Regular rate is calculated before deduction is taken



Deductions for Items Other Than Board, Lodging, and Facilities

- A deduction may be made if
 - The deduction is bona fide, and
 - It is made for particular items under a prior agreement, and
 - The purpose is not to evade statutory overtime requirements or other laws, and
 - It is limited to the amount above the highest applicable minimum wage for the first 40 hours



Exemptions and Exceptions

There are numerous exemptions and exceptions from the minimum wage and/or overtime standards of the FLSA



“White Collar” Exemptions



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“White Collar” Exemptions

The most common FLSA minimum wage and overtime exemption -- often called the “541” or “white collar” exemption -- applies to certain

- Executive Employees
- Administrative Employees
- Professional Employees
- Outside Sales Employees
- Computer Employees



Three Tests for Exemption

Salary Level

Salary Basis

Job Duties



Minimum Salary Level: \$455

- For most employees, the minimum salary level required for exemption is \$455 per week
- Must be paid “free and clear”
- The \$455 per week may be paid in equivalent amounts for periods longer than one week
 - Biweekly: \$910.00
 - Semimonthly: \$985.83
 - Monthly: \$1,971.66



Salary Basis Test

- Regularly receives a predetermined amount of compensation each pay period (on a weekly or less frequent basis)
- The compensation cannot be reduced because of variations in the quality or quantity of the work performed
- Must be paid the full salary for any week in which the employee performs **any** work
- Need not be paid for any workweek when no work is performed



Deductions From Salary

- An employee is not paid on a salary basis if deductions from the predetermined salary are made for absences occasioned by the employer or by the operating requirements of the businesses
- If the employee is ready, willing and able to work, deductions may not be made for time when work is not available



Permitted Salary Deductions

Seven exceptions from the “no pay-docking” rule

1. Absence from work for one or more full days for personal reasons, other than sickness or disability
2. Absence from work for one or more full days due to sickness or disability if deductions made under a bona fide plan, policy, or practice of providing wage replacement benefits for these types of absences
3. To offset any amounts received as payment for jury fees, witness fees, or military pay



Permitted Salary Deductions (continued)

Seven exceptions from the “no pay-docking” rule (cont.)

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



Effect of Improper Deductions

- An actual practice of making improper deductions from salary will result in the loss of the exemption
 - During the time period in which improper deductions were made
 - For employees in the same job classifications
 - Working for the same managers responsible for the actual improper deductions
- Isolated or inadvertent improper deductions, however, will not result in the loss of exempt status if the employer reimburses the employee



Safe Harbor

- The exemption will not be lost if the employer:
 - Has a clearly communicated policy prohibiting improper deductions and including a complaint mechanism
 - Reimburses employees for any improper deductions; and
 - Makes a good faith commitment to comply in the future
- Unless the employer willfully violates the policy by continuing to make improper deductions after receiving employee complaints



Executive Duties

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



20% Owner Executives

- The executive exemption also includes employees who
 - own at least a bona fide 20-percent equity interest in the enterprise
 - are actively engaged in management of the enterprise
- The salary level and salary basis requirements do not apply to exempt 20% equity owners



Administrative Duties

- Primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers
- Primary duty includes the exercise of discretion and independent judgment with respect to matters of significance



Management or General Business Operations

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



Insurance Claims Adjusters

- Exempt status depends on actual job duties
- May be exempt if duties include
 - Interviewing insured, witnesses, and physicians;
 - Inspecting property damage
 - Reviewing factual information to prepare damage estimates
 - Evaluating and making recommendations regarding coverage of claims
 - Determining liability and total value of a claim;
 - Negotiating settlements
 - Making recommendations regarding litigation



Financial Services

- May be exempt if duties include
 - Collecting and analyzing information regarding the customer's income, assets, investments or debts
 - Determining which financial products best meet the customer's needs and financial circumstances
 - Advising the customer regarding the advantages and disadvantages of different financial products
 - Marketing, servicing, or promoting the employer's financial products
- An employee whose primary duty is selling financial products does not qualify for the administrative exemption



Professional Duties

- Primary duty is the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction
- Primary duty is the performance of work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor



Field of Science or Learning

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

Law	Accounting	Actuarial Computation
Theology	Teaching	Physical Sciences
Medicine	Architecture	Chemical Sciences
Pharmacy	Engineering	Biological Sciences



Exempt Medical Professions

- Doctors
- Registered Nurses
- Registered or certified medical technologists
 - 3 years of pre-professional study in an accredited college or university, plus 1 year of professional study in an accredited school of medical technology
- Dental hygienists
 - 4 years of pre-professional and professional study in an accredited college or university
- Certified physician assistants
 - 4 years of pre-professional and professional study, including graduation from an accredited physician assistant program



Other Commonly Exempt Professions

- Lawyers
- Teachers
- Accountants
- Pharmacists
- Engineers
- Actuaries
- Chefs
- Certified athletic trainers
- Licensed funeral directors or embalmers



Additional Nonexempt Professions

- Licensed practical nurses
- Accounting clerks and bookkeepers who normally perform a great deal of routine work
- Cooks who perform predominantly routine mental, manual, mechanical or physical work
- Paralegals and legal assistants
- Engineering technicians



Recognized Field of Artistic or Creative Endeavor

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



Computer Related Occupations

- Primary duty is:
 - The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications
 - The design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
 - The design, documentation, testing, creation, or modification of computer programs related to machine operating systems
 - A combination of the above requiring the same level of skills, and



Computer Related Occupations

The employee must also receive either

- A guaranteed salary or fee of \$455 per week or more, or
- An hourly rate of not less than \$27.63 per hour



Outside Sales

- Primary duty is
 - Making sales or
 - Obtaining orders or contracts for services or facilities for consideration paid by customer and
- Customarily and regularly engaged away from the employer's place(s) of business in performing such primary duty
- No compensation test



Exception for Retail Commissioned Sales Employees



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Overtime Exception for Retail Commissioned Sales Employees

Employees of a retail or service establishment who are paid more than half their total earnings on a commission basis may be exempt from the overtime pay requirements of the FLSA



Requirements for Exception

- The employee must be employed by a retail or service establishment
- More than half the employee's total earnings in a representative period must represent commissions on goods or services
- Employee's total compensation divided by number of hours worked or regular rate must exceed one and one-half times the minimum wage



Requirements for Exception

Unless all three conditions are met, the exception does not apply, and overtime premium pay must be paid for all hours worked over forty in a workweek at one and one-half times the regular rate of pay



Retail Establishment

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



Representative Period

- May be as short as one month, but must not be greater than one year
- Employer must select a representative period in order to determine if this condition has been met



More than One and One-Half Times the Minimum Wage

To determine if the regular rate exceeds one and one-half times the minimum wage, divide the employee's total earnings for the pay period by the employee's total hours worked during the pay period



Youth Employment



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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. Sixteen- and 17-year-olds may be employed for unlimited hours in any occupation other than those declared hazardous by the Secretary of Labor
- 14 Fourteen- and 15-year-olds may be employed outside school hours in a variety of non-manufacturing and non-hazardous jobs for limited periods of time and under specified conditions
- <14 Children under 14 years of age may not be employed in non-agricultural occupations covered by the FLSA



Introduction to the FMLA

- Purpose:
- Balance work and family life
- Promote economic security of families and serve national interest in preserving family integrity

- Shared Responsibilities:
- Communication is key



Employer Coverage

- Private sector employers with 50 or more employees
- Public Agencies
- Public and private elementary and secondary schools



Employee Eligibility

- Employed by covered employer
- Worked at least 12 months
- Have at least 1,250 hours of service during the 12 months before leave begins
- Employed at a work site with 50 employees within 75 miles



Recordkeeping

An accurate record of the hours worked each day and total hours worked each week is critical to avoiding compliance problems



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Recordkeeping

The FLSA requires that all employers subject to any provision of the Act make, keep, and preserve certain records



Recordkeeping

- Records need not be kept in any particular form
- Time clocks are not required



Recordkeeping

Every covered employer must keep certain records for each non-exempt worker



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Required Posting

Covered employers must post a notice explaining the FLSA, as prescribed by the Wage and Hour Division, in a conspicuous place



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Common Errors to Avoid



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Common Errors to Avoid

- Assuming that all employees paid a salary are not due overtime
- Improperly applying an exemption
- Failing to pay for all hours an employee is “suffered or permitted” to work
- Limiting the number of hours employees are allowed to record



Common Errors to Avoid

- Failing to include all pay required to be included in calculating the regular rate for overtime
- Failing to add all hours worked in separate establishments for the same employer when calculating overtime due



Common Errors to Avoid

- Making improper deductions from wages that cut into the required minimum wage or overtime. Examples: shortages, drive-offs, damage, tools, and uniforms
- Treating an employee as an independent contractor
- Confusing Federal law and State law



The 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
- A discharge notice, reason for discharge, or immediate payment of final wages to terminated employees
- Any limit on the number of hours in a day or days in a week an employee at least 16 years old may be required or scheduled to work
- Pay raises or fringe benefits



Compliance Assistance Materials - FLSA

- The Law
- The Regulations (29 C.F.R. Part 500-899)
- Interpretive Guidance (opinion letters, field operations handbook, and field bulletins)
- FLSA Poster
- Handy Reference Guide
- Fact Sheets
- Information for New Businesses
- Department of Labor Home Page



Enforcement

- FLSA enforcement is carried out by Wage and Hour staff throughout the U.S
- Where violations are found, Wage and Hour advises employers of the steps needed to correct violations, secures agreement to comply in the future and supervises voluntary payment of back wages as applicable
- A 2-year statute of limitations generally applies to the recovery of back pay. In the case of a willful violation, a 3-year statute of limitations may apply



Enforcement

In the event there is not a voluntary agreement to comply and/or pay back wages, the Wage and Hour Division may:

- Bring suit to obtain an injunction to restrain the employer from violating the FLSA, including the withholding of proper minimum wage and overtime
- Bring suit for back wages and an equal amount as liquidated damages



Employee Private Rights

An employee may file a private suit for back pay and an equal amount as liquidated damages, plus attorney's fees and court costs



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Penalties

- Employers who willfully violate the Act may be prosecuted criminally and fined up to \$11,000
- Employers who violate the youth employment provisions are subject to a civil money penalty of up to \$11,000 for each employee who was the subject of a violation
- Employers who willfully or repeatedly violate the minimum wage or overtime pay requirements are subject to a civil money penalty of up to \$1,100 for each such violation



Additional Information

- Visit the WHD homepage at: <http://www.wagehour.dol.gov>
- Call the WHD toll-free information and helpline at 1-866-4US-WAGE (1-866-487-9243)
- Use the DOL interactive advisor system - ELAWS (Employment Laws Assistance for Workers and Small Businesses) at: <http://www.dol.gov/elaws>
- Call or visit the nearest Wage and Hour Division Office



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