



FAIR LABOR STANDARDS ACT



DWHD

UNITED STATES DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION

dol.gov/whd
1-866-837-3333

Wage and Hour Division

Disclaimer

This presentation is intended as general information only and does not carry the force of legal opinion. The Department of Labor is providing this information as a public service. This information and related materials are presented to give the public access to information on Department of Labor programs. You should be aware that, while we try to keep the information timely and accurate, there will often be a delay between official publications of the materials and the modifications of these pages. Therefore, we make no express or implied guarantees. The *Federal Register* and the *Code of Federal Regulations* remain the official source for regulatory information published by the Department of Labor. We will make every effort to keep this information current and to correct errors brought to our attention.

Major Provisions



Coverage



Youth Employment



Minimum Wage



Recordkeeping



Overtime

Employment Relationship

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

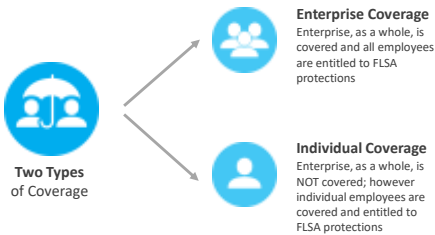
Coverage



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



Coverage



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 engaged in commerce or the production of goods for commerce

Enterprise Coverage

Enterprise Coverage in Non-Profit Organizations

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

Enterprise Coverage

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

Named enterprises:

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

Individual Coverage



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

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

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

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

Coverage



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

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

Minimum Wage



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

Current federal minimum wage

\$7.25

Minimum Wage

Deductions from pay are illegal if:

- For items that 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



Minimum Wage

Hours Worked



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

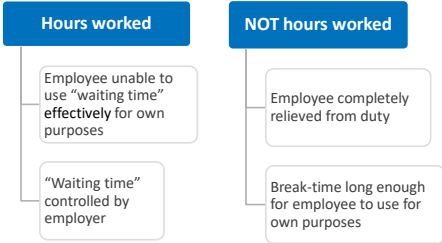
This may include time spent engaged to wait, on-call, in training, or travelling, as well as sleep time.

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



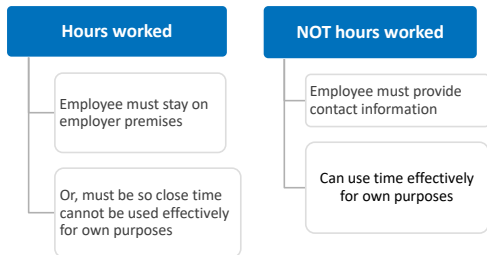
Minimum Wage

Waiting Time



Minimum Wage

On-Call Time



Minimum Wage

Rest and Meal Periods

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

Minimum Wage

Training Time

Time spent in meetings, lectures or training is considered *hours worked* and must be paid, unless:

- Attendance outside regular work hours
- Attendance voluntary
- Course, lecture, meeting not job related, **and**
- Employee does not perform any productive work

Minimum Wage

Travel Time

- Ordinary home to work travel is *not* compensable work time
- Travel between job sites during normal work day *is* work time and thus compensable hours worked
- Special rules apply to travel away from employee's home community

Minimum Wage

Sleep Time

Duty: Shifts of less than 24 hours:

Employee on duty for less than 24 hours is considered *working* even if allowed to sleep, engage personal pursuits; no sleep time deduction permitted

Duty: Shifts of 24 hours or more:

Parties can agree to exclude bona fide sleep periods, up to 8 hours, and only if certain conditions are met

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:** unpaid sleep in less than 24-hour shift

Minimum Wage

Minimum Wage Summary and Common Violations

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

Overtime



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

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



Overtime



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

Overtime

Regular Rate

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

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

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



Overtime

Exercise: Production Bonus

Hourly Rate:	\$ 9.00	48H x \$9 =	\$432
Bonus per week:	\$10.00	\$432 + \$10 =	\$442
Hours worked:	48	\$442 ÷ 48H =	\$9.21 RR
		\$9.21 x .5 =	\$4.61
		\$4.61 x 8H =	\$36.88 OT
Total compensation for week:		\$442 + \$36.88 =	\$478.88



Overtime

Exercise: Different Hourly Rates

Janitor Rate:	\$8.50	21H x \$8.50 =	\$178.50
Janitor Hours:	21	26H x \$9.00 =	\$234.00
Cook Rate:	\$9.00	\$178.50 + \$234 =	\$412.50
Cook Hours:	26	\$412.50 ÷ 47H =	\$8.78 RR
Total Hours:	47	\$8.78 x .5 =	\$4.39
		\$4.39 x 7H =	\$30.73 OT
Total compensation for week:		\$412.50 + \$30.73 =	\$443.23

Overtime

Exemptions

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

One of the most common FLSA minimum wage and overtime exemptions is often called the “541” or “white collar” exemption



Overtime

Common Overtime Violations

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

Overtime

Common Overtime Violations

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

Youth Employment



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



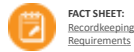
Youth Employment

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

Recordkeeping



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



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.

To download poster electronically:

FLSA Poster.pdf

To request by phone call:

1-866-487-9243

FLSA Enforcement

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

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

FLSA Enforcement



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



FLSA Enforcement

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

FLSA Compliance Assistance

[Fair Labor Standards Act of 1938](#)

[Regulations](#)

[FLSA Poster.pdf](#)

[Handy Reference Guide.pdf](#)

[Frequently Asked Questions \(FAQs\)](#)

[Fact Sheets](#)

Visit the WHD home page: www.dol.gov/whd

FLSA Compliance Assistance

- Call WHD toll free information and helpline:
1-866-4US-WAGE (1-866-487-9243)
- Call or visit the nearest Wage and Hour Division Office:
Salt Lake District Office
60 E. South Temple, Suite 575
Salt Lake City, UT 84108
801 524-5706
- Employment Laws Assistance for Workers and Small Businesses (ELAWS): [ELaws](#)
