



# *Fair Labor Standards Act*

Presented by the  
US Department of Labor  
Wage and Hour Division



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# 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”





# *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
- Cash or equivalent – free and clear



# *Minimum Wage: Issues*

- Compensation Included
- Deductions
- Hours Worked



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# Compensation Included

- Wages (salary, hourly, piece rate)
- Commissions
- Certain bonuses



# 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







# *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

- Compliance is determined by workweek, and each workweek stands by itself
- Workweek is 7 consecutive 24 hour periods (168 hours)
- Regular rate
  - Payments excluded from rate
- Deductions



# 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



# *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**



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# 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**



# *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





# *Youth Employment*



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# Youth Employment

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

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



# Recordkeeping

- An accurate record of the hours worked each day and total hours worked each week is critical to avoiding compliance problems
- The FLSA requires that all employers subject to any provision of the Act make, keep, and preserve certain records
- Records need not be kept in any particular form
- Time clocks are not required
- Every covered employer must keep certain records for each non-exempt worker



# 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
- Failing to include all pay required to be included in calculating the regular rate for overtime



# Common Errors to Avoid

- Failing to add all hours worked in separate establishments for the same employer when calculating overtime due
- 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



# Enforcement

- FLSA enforcement is carried out by Wage and Hour staff throughout the US
- 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



# 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:  
[www.wagehour.dol.gov](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: [www.dol.gov/elaws](http://www.dol.gov/elaws)
- Call or visit the nearest Wage and Hour Division  
Office





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