



Fair Labor Standards Act



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

dol.gov/whd
1-866-4US-WAGE

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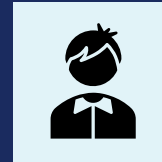


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Major Provisions



Coverage



Youth
Employment



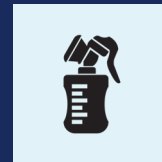
Minimum Wage



Recordkeeping



Overtime



Pumping at Work





FLSA Employment Relationship



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Employment Relationship

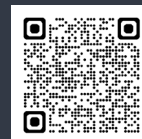
For the FLSA to apply, there must be an employment relationship between an “employer” and an “employee”

Properly classified “independent contractors” are not covered under the FLSA



Economic Reality Test

- Extent to which services rendered are an integral part of the employer's business
- Permanency of the relationship
- Amount of the alleged contractor's investment in facilities and equipment
- Nature and degree of control by the principal
- Alleged contractor's opportunities for profit and loss
- Amount of initiative, judgment, and foresight in open market competition with others required for the success of the claimed independent contractor
- Degree of independent business organization and operation





FLSA Coverage



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Coverage

Over 155 million workers in more than 12 million workplaces protected or covered by the FLSA, enforced by the Wage and Hour Division of the U.S. Department of Labor



Coverage Types

Two Types of Coverage



Enterprise Coverage

Enterprise, as a whole, is covered and all employees are entitled to FLSA protections



Individual Coverage

Enterprise, as a whole, is NOT covered, but individual employees are covered and entitled to FLSA protections

Enterprise Coverage



Enterprise coverage may apply to a business if:

Its commercial activities result in no less than \$500,000 in annual dollar volume (ADV), sales or total business

It has two or more employees



Individual Coverage



Individual coverage may apply to employees of businesses not covered on an enterprise basis. Includes workers engaged in:

Interstate commerce,

Production of goods for interstate commerce, or

Activity that is closely related and directly essential to such production




Individual Coverage, continued

- The employee's activities, not the establishment's, determine coverage
- Individual coverage applies on a workweek basis
- Domestic service, including home care



Interstate Commerce Examples

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



**Almost every
employee in the
U.S. is covered by
the FLSA**



Coverage of Non-Profits

- A non-profit organization'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 for enterprise coverage:
 - Includes only activities performed for a **business purpose**
 - Does not include income from donations, membership fees, etc. used for **charitable activities**
- Employees of non-profits may be covered individually



Named 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



Minimum Wage



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Current Minimum Wage

\$7.25

Current federal
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



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Minimum Wage Compensation

- 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

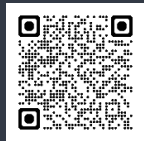


Lodging and Board Credit

The following five requirements must be met:

- 1 the lodging is regularly provided by the employer or similar employers
- 2 the employee voluntarily accepts the lodging
- 3 the lodging is furnished in compliance with applicable federal, state, or local law
- 4 the lodging is provided primarily for the benefit of the employee rather than the employer
- 5 the employer maintains accurate records of the costs incurred in furnishing the lodging

**Known as the
3(m) credit**



Deductions

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



Minimum Wage Exercise

Hourly Rate: \$8.00

Weekly Hours: 30

Employer-required uniform cost: \$30.00

Earnings (\$8.00) x (30 hours) = \$240.00

Less uniform charges= -\$30.00

Leaves worker with= \$210.00

(MW \$7.25/hour)x(30 Hours) = \$217.50

Deduction for uniform reduces pay below required minimum wage



Tipped Employee

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



Tip Credit

FLSA Minimum Wage – Cash Wage Paid = Tip Credit

Employer may claim “tip credit” only if:

- Employee provided prior notice of tip credit allowance and amount of wage claimed as “tip credit”
- Employer documents sufficient tips received to bring total wage to at least minimum wage
- Tips retained by employee, not shared with employer or other employees except in valid tip pooling arrangement



Minimum Wage Summary & 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



FLSA Hours Worked



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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 traveling, as well as sleep time
- Work not requested but “suffered or permitted” is work time



Waiting Time

Hours Worked

Employee unable to use “waiting time” effectively for own purposes

“Waiting time” controlled by employer

NOT Hours Worked

Employee completely relieved from duty

Break-time long enough for employee to use for own purposes



On-Call Time

Hours Worked

Employee must stay on employer premises

Or must be so close time cannot be used effectively for own purposes

NOT Hours Worked

Employee must provide contact information

Can use time effectively for own purposes



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



Training Time



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

1. Attendance outside regular work hours,
2. Attendance voluntary,
3. Course, lecture, meeting not job related, *and*
4. Employee does not perform any productive work



Travel Time

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



Sleep Time

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

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



Shifts of 24 Hours or More

For workers who do not permanently or for extended periods of time reside on the employer's premises, the employer and employee can exclude from hours worked up to 8 hours spent sleeping if:

- The employer furnishes adequate sleeping facilities; and
- The employee can usually enjoy 5 consecutive hours of uninterrupted sleep; and
- The employer and employee have an express or implied agreement to exclude sleep time



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





Overtime



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Overtime Rate

1½

- 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 and Workweek

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



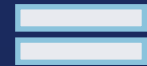
Regular Rate

Determined by dividing total earnings in workweek (except for statutory exclusions) by total number of hours worked in workweek

Total Compensation (except for statutory exclusions)



Total Hours Worked



Regular Rate (RR)

RR 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



Exclusions from the Regular Rate

- **Gifts** – e.g., coffee, snacks, t-shirts, raffle prizes, certain longevity bonuses, certain sign-on bonuses
- **Discretionary bonuses** – e.g., severance bonuses, referral bonuses for employees not primarily engaged in recruiting activities, bonuses for overcoming challenging or stressful situations
- **Payments for time not worked** – includes paid leave, paid leave buybacks, “show up” or “reporting pay”, “call-back pay”
- **Reimbursements for business expenses** – includes business supplies, tools, cell phone plans, credentialing exam fees, travel expenses



More Exclusions from the Regular Rate

- **Overtime premium payments**
- **“Perks” and conveniences for the employee** – e.g., gym memberships, gym access, fitness classes, wellness programs, employee discounts on retail and services, on-the-job medical care, tuition payments, adoption assistance, parking benefits and spaces
- **Profit sharing plans, stock options**
- **Retirement and insurance plan contributions** - also includes plans for accident, unemployment, legal services, or other events that could cause significant future financial hardship or expense



Discretionary Bonuses

- Discretionary bonuses may be excluded from the regular rate if **ALL** the following criteria are met:
 1. The employer has the sole discretion, until at or near the end of the period that corresponds to the bonus, to determine whether to pay the bonus
 2. The employer has the sole discretion, until at or near the end of the period that corresponds to the bonus, to determine the amount of the bonus
 3. The bonus payment is not made according to any prior contract, agreement, or promise causing an employee to expect such payments regularly
- Labels are not determinative



Regular Rate and Premium Pay for Overtime

Step One

Total Compensation in Workweek (except statutory exclusions) ÷ Total Hours Worked = Regular Rate



Step Two

Regular Rate X .5 = Half-time Premium Pay per Overtime Hour



Step Three

Half-time Premium Pay Rate X Overtime Hours in Workweek = Overtime Compensation Due



Exercise: Production Bonus

Hourly Rate: \$9.00

Bonus per week: \$10.00

Hours Worked: 48

Total Weekly Compensation

48 hours x \$9.00 = \$432.00

\$432 + \$10.00 = \$442.00 ST

\$442.00 ÷ 48H = \$9.21 RR

\$9.21 x .5 = \$4.61

\$4.61 x 8H = \$36.88 OT

\$442.00 + \$36.88 = \$478.88



Exercise: Different Hourly Rates

Janitor Rate: \$8.50

Janitor Hours: 21

Cook Rate: \$9.00

Cook Hours: 26

Total Hours: 47

Total Weekly Compensation

21 hours x \$8.50 = \$178.50

26 hours x \$9.00 = \$234.00

\$178.50 + \$234 = \$412.50 ST

\$412.50 ÷ 47H = \$8.78 RR

\$8.78 x .5 = \$4.39

\$4.39 x 7H = \$30.73 OT

\$412.50 + \$30.73 = \$443.23



Exercise: Piece Rates

Piece Rate Wages:	\$391
Piece Rate Hours:	46
Wait Time Rate:	\$7.25
Wait Time Hours:	4
Production Bonus:	\$12.50
Total Weekly Hours:	50

Total Weekly Compensation

46H @ Piece Rate =	\$391.00
4H x \$7.25 =	\$29.00
Production Weekly Bonus:	\$12.50
\$391 + \$29 + \$12.50 =	\$432.50 ST
\$432.50 ÷ 50H =	\$8.65 RR
\$8.65 x .5 =	\$4.33
\$4.33 x 10H =	\$43.30 OT
\$432.50 + 43.30 =	\$475.80



Exercise: Salary for Fixed Hours

Weekly Salary for 40H: \$420

Fixed Hours: 40

Workweek Hours Worked: 50

Total Compensation Due

$\$420 \div 40H = \10.50 RR

$\$10.50 \times 1.5 = \15.75 OT Rate

$\$15.75 \times 8H = \126.00 OT

$\$420 + 126 = \546



Exercise: Fixed Salary for Fluctuating Hours

Weekly Salary,
all hours worked: \$420
Week One,
Hours Worked: 49

Compensation Due for Week 1

$$\$420 \div 49H = \$8.57 \text{ RR}$$

$$\$8.57 \times .5 = \$4.29 \text{ Half-Time Rate}$$

$$\$4.29 \times 9H = \$38.61 \text{ OT}$$

$$\$420 + 38.61 = \$458.61$$



Exercise: Fixed Salary, Fluctuating Hours

Weekly Salary,
all hours worked: \$420
Week Two,
Hours Worked: 41

Compensation Due for Week 2

$$\text{\$420} \div 41\text{H} = \text{\$10.24 RR}$$

$$\text{\$10.24} \times .5 = \text{\$5.12 Half-Time Rate}$$

$$\text{\$5.12} \times 1\text{H} = \text{\$5.12 OT}$$

$$\text{\$420} + 5.12 = \text{\$425.12}$$



Most Common Exemptions

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



Executive Employees



Administrative Employees



Professional Employees



541 Exemptions



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541 or “EAP” Exemptions



Salary Basis



Salary Level



Job Duties



Salary Basis Test



- Regularly receives a predetermined amount of compensation each pay period
- Compensation cannot be reduced due to variations in the quality or quantity of the work performed
- Need not be paid for any workweek when no work is performed



Effect of Improper Deductions

Improper deductions from salary may result in loss of exemption:

- During period in which improper deductions made
- For employees in same job classification
- For employees working for manager making improper deductions

Isolated, or inadvertent improper deductions will not result in loss of exempt status if employee is reimbursed



Safe Harbor

Exemption will not be lost if employer:

- Has clearly communicated policy prohibiting improper deductions including complaint mechanism
- Reimburses employees for improper deductions
- Makes good faith commitment to comply in future

If employer willfully violates policy by continuing improper deductions after receiving employee complaints, it cannot claim the exemption for the affected employees



Minimum Salary Levels

Standard Salary Level

Pursuant to 29 CFR 541.600

\$ 684 per week

Highly Compensated Employees (HCE)

Total annual compensation level,
pursuant to 29 CFR 541.601

\$107,432 per year



Primary Duty

- Primary duty means the principal, main, major or most important duty that the employee performs
- Employees who spend more than 50% of their time performing exempt work will generally satisfy the primary duty requirement
- However, the regulations do not **require** that exempt employees spend more than 50% of time performing exempt work



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, are given particular weight



20% Owner Executives

The executive exemption also includes any employees who:

- Own at least a bona fide 20% equity interest in the enterprise, and
- Is actively engaged in management of that enterprise



Administrative Duties

- Primary duty is 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
 - Such as analysis, making determinations, setting prices, assessing risk, committing company resources, negotiating, and similar tasks



Management or General Business Operations

- 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



Professional Duties



Performance of work requiring advanced knowledge in field of science or learning customarily acquired by a prolonged course of specialized instruction



Performance of work requiring invention, imagination, originality, or talent in recognized artistic or creative field



Professional: Field of Science or Learning

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



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Overtime Exempt Medical Professions

1. Doctors and 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. Certified Physician Assistants

- **4 years** pre-professional and professional study, and graduation from accredited physician assistant program



Professional: Other Commonly Exempt Professions



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



Common Misapplication of Exemptions

Non-Exempt Professions

- 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



Professional: Field of Artistic or Creative Endeavor

Music

Musicians

Composers

Conductors

Soloists

Graphic Arts

Painters

Photographers

Cartoonists

Acting

Actors

Writing

Novelists

Playwrights

Screenwriters choosing
own subjects

Advertising writers
in inventive roles



Computer-Related Occupations Exemption

Exempt employees in computer-related occupations must receive either:

Guaranteed salary of at least **\$684 weekly**

OR

Hourly rate of at least **\$27.63**



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Computer-Related Occupations Duties

Primary duty is:

- 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



Outside Sales Exemption

Primary duty must be:

- 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





7(i) Overtime Exemption



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Exemptions for Commission Employees

Overtime exemption applies only if:

1. Employed by a retail or service establishment
2. More than half employee's total earnings in representative period are commissions on goods, services
3. 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



Retail or Service Establishment



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

- Not for resale, and
- Recognized as retail sales or services in the particular industry



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



Regular Rate Exceeds 1.5 Times Minimum Wage

Divide employee's weekly total earnings by total hours worked

$$(\text{Total Earnings} \div \text{Total Hours}) > (\text{MW} \times 1.5)$$

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



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



Common Overtime Violations, continued

- **541 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



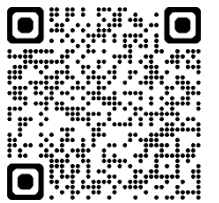
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Youth Employment Standards



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

[Child Labor
Fact Sheet #43](#)



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Hours 14- and 15-year-olds Cannot Work

14- and 15-year-olds can work *only outside of school hours* and may not work:

More than 3 hours on a school day, including Friday

More than 18 hours per week when school is in session

More than 8 hours per day when school is not in session

More than 40 hours per week when school is not in session

Before 7:00 a.m. or after 7:00 p.m. on any day, except from June 1 through Labor Day, when nighttime work hours are extended to 9:00 p.m.



17 Hazardous Occupations Orders

- Explosives
- Exposure to radioactive materials
- Mining (including coal)
- Forestry
- Meat processing
- Woodworking machines
- Metal working & shearing
- Bakery machines
- Lifting Equipment (including forklift)
- Saws
- Driving
- Balers and compactors
- Demolition
- Roofing
- Excavation
- Bricks and tiles



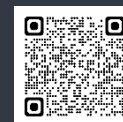
Restrictions (Non-agricultural)

- **Under 14:** limited to work that is exempt from the FLSA such as delivering newspapers to the consumer, acting, or casual baby-sitting
- **14 and 15:** may work outside school hours only for a limited number of hours per day and per week; restrictions on type of work; **any work not specifically permitted is prohibited**
- **16 and 17:** may be employed for unlimited hours, but may **NOT** work in any Hazardous Occupation Order
- **18:** no longer subject to federal child labor laws



Restrictions (Agricultural)

- **Under 12-years old:** 1) May work only outside of school hours; 2) May NOT work in jobs declared hazardous by Secretary of Labor; 3) May work **only** on farms where none of the employees are subject to the FLSA
- **12- and 13-year-olds:** 1) May work only outside school hours; 2) May NOT work in jobs declared hazardous by Secretary of Labor; 3) Must have written consent from a parent
- **14- and 15-year-olds:** 1) May work only outside school hours; 2) May NOT work in jobs declared hazardous by Secretary of Labor
- **16 and above:** May work in any agricultural occupation at any time





Recordkeeping



Recordkeeping Requirements



- 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



Basic Records

“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





PUMP Act Provisions



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Pump at Work Protections

Most nursing workers are entitled to **reasonable break time and a private space** to pump at work for up to one year after their child's birth.



Most employers are required to provide covered employees with space that is:

- Functional for pumping milk
- Shielded from view
- Free from intrusion
- Available as needed
- Not a bathroom



Undue Hardship Exemption

An employer that employs fewer than 50 employees is not required to provide break time and space only if it would impose undue hardship

- Employer must demonstrate that compliance requires **significant difficulty or expense** when considered in relation to the size, financial resources, nature, or structure of the employer's business
- Not available to employers with 50 or more employees
- All employees who work for the employer, regardless of work site, are counted





FLSA Enforcement



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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



Investigative Process

1



Initial Conference

Our investigator holds an initial conference with the employer and/or the employer's representative and tours the employer's establishment.

2



Conducting Interviews

Our investigator interviews employees in private.

3



Reviewing Records

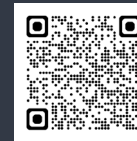
The WHD investigator reviews the employer's records to determine compliance.

4



Final Conference

We hold a final conference with the employer and/or the employer's representative to discuss any violations found and how to correct them. If back wages are owed to employees, the investigator will request payment of back wages.



Enforcement

- 2-year statute of limitations generally applies to back pay recovery
- 3-year statute of limitations may apply if willful violations found
- 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



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 are subject to civil money penalties for each violation

Civil Money Penalties Chart



FLSA Compliance Assistance

[Fair Labor Standards Act of 1938](#)

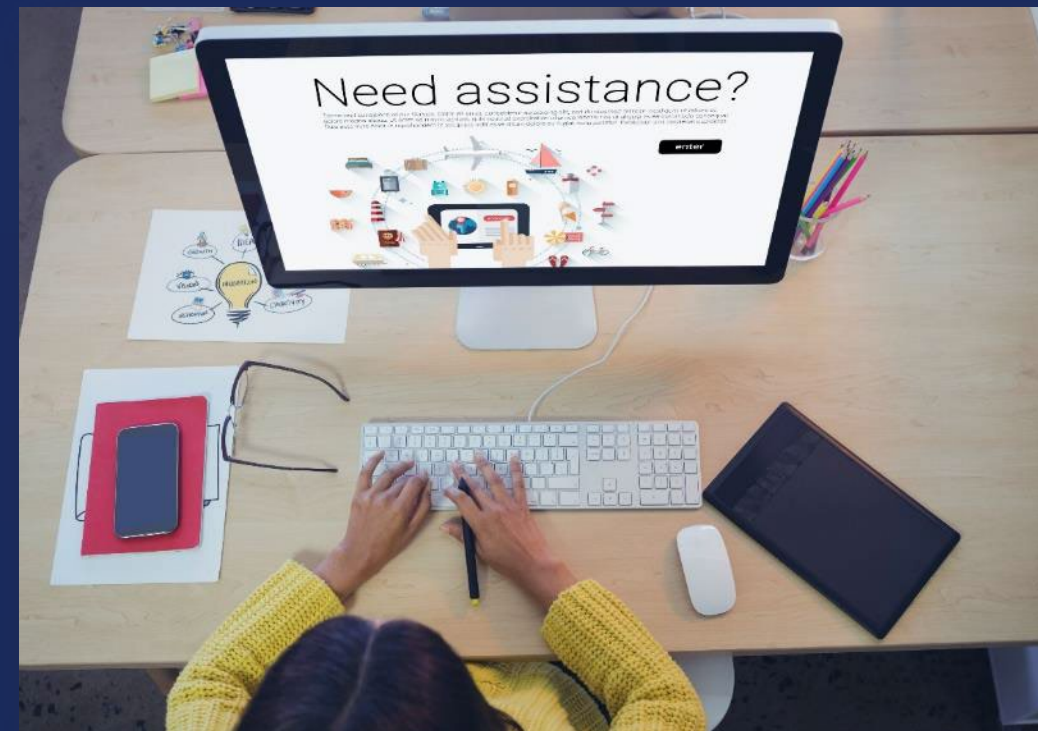
[Regulations](#)

[Handy Reference Guide](#)

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

[Fact Sheets](#)

[Opinion Letters](#)

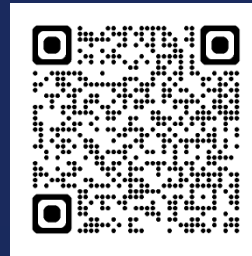


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Thank you!

Have questions later?

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