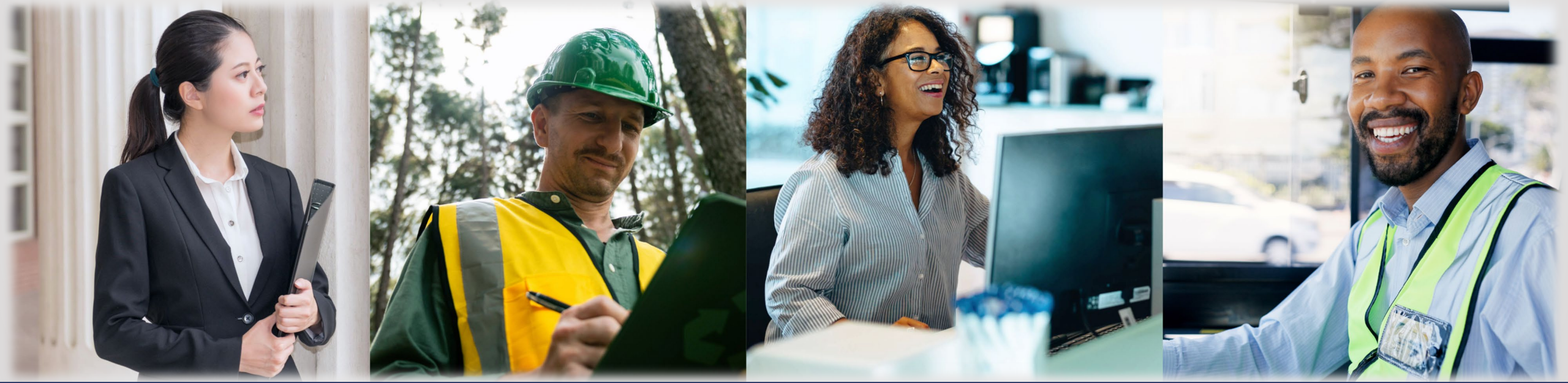
Fair Labor Standards Act



State and Local Governments under the FLSA

WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

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Major Provisions

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

Coverage

The requirements of the FLSA apply to employees of public agencies

The FLSA **does not** apply to:

- Holders of public elective office
- Elected official's personal staff
- Policy makers appointed by elected officials
- Legal advisors to elected officials
- Volunteers

Minimum Wage

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.

Current federal minimum wage = $7.25

Total Compensation

Compensation includes:

- 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

Hours Worked under the FLSA

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.

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

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:*** unpaid but not free from duty
- ***Rest Periods:*** deducting for short breaks
- ***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 under the FLSA

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.

Regular Rate

Regular Rate and Premium Pay for OT Hours

STEP 1: Total compensation paid in a workweek (minus statutory exclusions) divided by total hours worked in the workweek

Total Compensation ÷ Total Hours = RR

STEP 2: **RR** x .5 = Half-time Premium Pay per OT Hour

STEP 3: Half-time Premium Pay Rate x Overtime Hours in the Workweek = Overtime Compensation Due

Exemptions

Salary 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 for executive, administrative or professional employees, and is often called the **“White Collar”** or **“EAP”** exemption.

Exemptions Tests

Three Tests for the "EAP" Exemption

- Salary Basis
- Salary Level
- Job Duties

Salary Basis Test

- Regular, predetermined amount of compensation each pay period, on weekly or less frequent basis
- Compensation cannot be reduced due to variations in quality or quantity of work performed
- Compensation not required for any workweek when no work performed

Salary Level Test

For most employees, the minimum salary level required for exemption is **$684 per week.**

It may be paid in equivalent amounts for longer periods:

Biweekly	Semimonthly	Monthly
$1,368	$1,482	$2,964

Highly Compensated Employees (HCEs)

- Annual Compensation must be at least $107,432
- Such employees must still receive at least the standard minimum salary amount ($684 weekly) for each pay period and satisfy the salary basis test.
- Nondiscretionary bonuses, incentive payments, and commissions:
  - Cannot be counted toward *weekly* salary requirement in HCE test.
  - May count toward total *annual* HCE compensation requirement of $107,432.

Job Duties

Executive

Administrative

Professional

Computer Employees

Outside Sales

Special Exceptions

Special Exception

For State and Local Government Employees:

- Hourly deductions required by state or local law may be made from a salaried employee's pay.
- The employee is still exempt from overtime so long as the duties meet all other requirements.

Seasonal Amusement or Recreational Establishments

- No minimum wage or overtime is due employees of some seasonal amusement parks or recreational facilities
- The FLSA child labor requirements still apply in these establishments

Exemptions from Overtime Only

- Substitution
- Occasional or sporadic part time employment

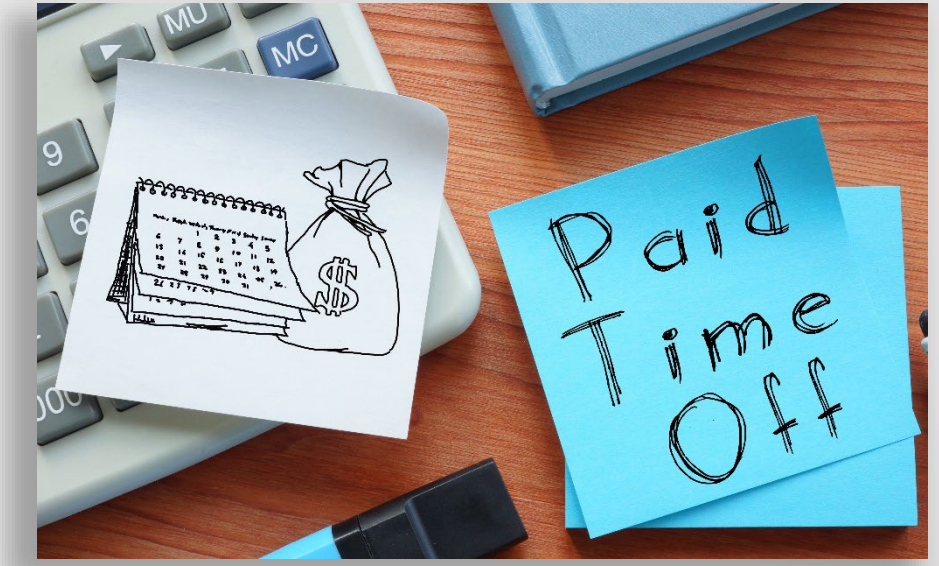
Common Overtime Violations

- **"EAP" Exemptions**: Misapplication of exemption, or improper assumption that all salaried employees are exempt.
- **Deductions**: Improper deductions in OT weeks.
- **Hours worked**: Failure to record, pay for all hours worked.
- **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.

Compensatory Time

Compensatory Time Off

Employees of State or local government agencies may receive compensatory time off instead of cash overtime pay at a rate of not less than one and one-half hours for each hour of overtime worked.



Compensatory Time Limits

Limited to 480 Hours

- Law enforcement
- Fire protection
- Emergency response personnel
- Employees engaged in seasonal activities

Limited to 240 Hours

- All other employees

Compensatory Time Pay Out

When State or local government employees terminate employment, they must receive cash for the balance of their compensatory time.

Fire Protection & Law Enforcement

Fire Protection and Law Enforcement

Special Rules Apply for

Law Enforcement Employees	Fire Protection Employees
• who are empowered by state or local ordinance to enforce laws.	• including firefighters, paramedics, emergency medical technicians, rescue workers, ambulance personnel, or hazardous materials workers.

Maximum Hours Per Work Period

Days	Law Enforcement	Fire Protection
28	171	212
21	128	159
14	86	106
7	43	53

Sleep time: Duty of 24 Hours or Less

If the employer has elected to use the work period overtime exception, sleep time cannot be deducted for a tour of duty of 24 hours or less.

Outside Employment/Special Duty

When off-duty law enforcement or fire protection employees perform special duty, working for an outside employer at their own option, the time is normally not counted as hours worked for the public agency.

Youth Employment

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

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.

Compensatory Time Records

State and local government employers must also keep specific records documenting compensatory time records and work periods.

FLSA Enforcement

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 Compliance Assistance

Fair Labor Standards Act of 1938

Regulations

FLSA Poster.pdf

Handy Reference Guide.pdf

Fact Sheets

Opinion Letters

Thank you!

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