



Fair Labor Standards Act



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

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

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 an “employer” and an “employee”
- Properly classified “independent contractors” are not covered under the FLSA

Employment Relationship (cont'd)

Economic Reality Test

- The economic reality test is used to analyze whether a worker is an employee under the FLSA or an independent contractor.
- At the outset, no single factor is more important to the analysis than the others.
- All parts of the work relationship are examined.

Employment Relationship (cont'd)

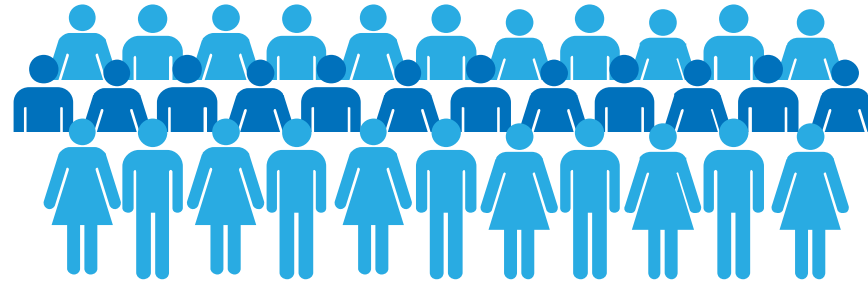
Economic Reality Test

The following factors should guide the assessment of whether a worker is an employee under the FLSA or an independent contractor:

- Opportunity for Profit or Loss Depending on Managerial Skill
- Investments by the Worker and the Employer
- Degree of Permanence of the Work Relationship
- Nature and Degree of Control
- Extent to which the Work Performed is an Integral Part of the Employer's Business
- Skill and Initiative

Additional factors may be considered as well if they assist in determining whether the worker is in business for themselves or is economically dependent on the employer for work.

Coverage

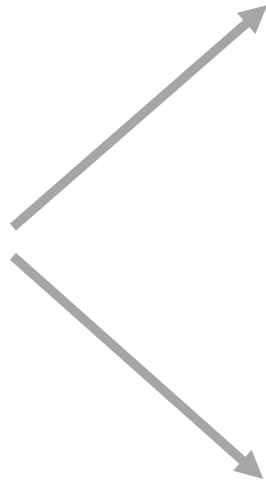


Over 135 million workers in more than
7 million workplaces protected or covered
by the FLSA, enforced by the Wage and Hour Division of the
U.S. Department of Labor

Coverage



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; however individual employees are covered and entitled to FLSA protections

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

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

Minimum Wage

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

Minimum Wage

Lodging and Board – credit toward wages (known as the 3(m) 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; and
- 5) the employer maintains accurate records of the costs incurred in furnishing the lodging.

Minimum Wage

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) \times (30 \text{ hours}) = \240.00

Less uniform charges: - \$30.00

Leaves worker with: \$210.00

$(\text{MW } \$7.25/\text{hour}) \times (30 \text{ Hours}) = \217.50

Deduction for uniform takes wages below required MW

Minimum Wage

Tipped Employee

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

Minimum Wage

Tip Credit

$$\text{FLSA MW} - \text{Cash Wage Paid} = \text{Tip Credit}$$

Employer may claim “tip credit” only if:

- Employee informed 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



Hours Worked

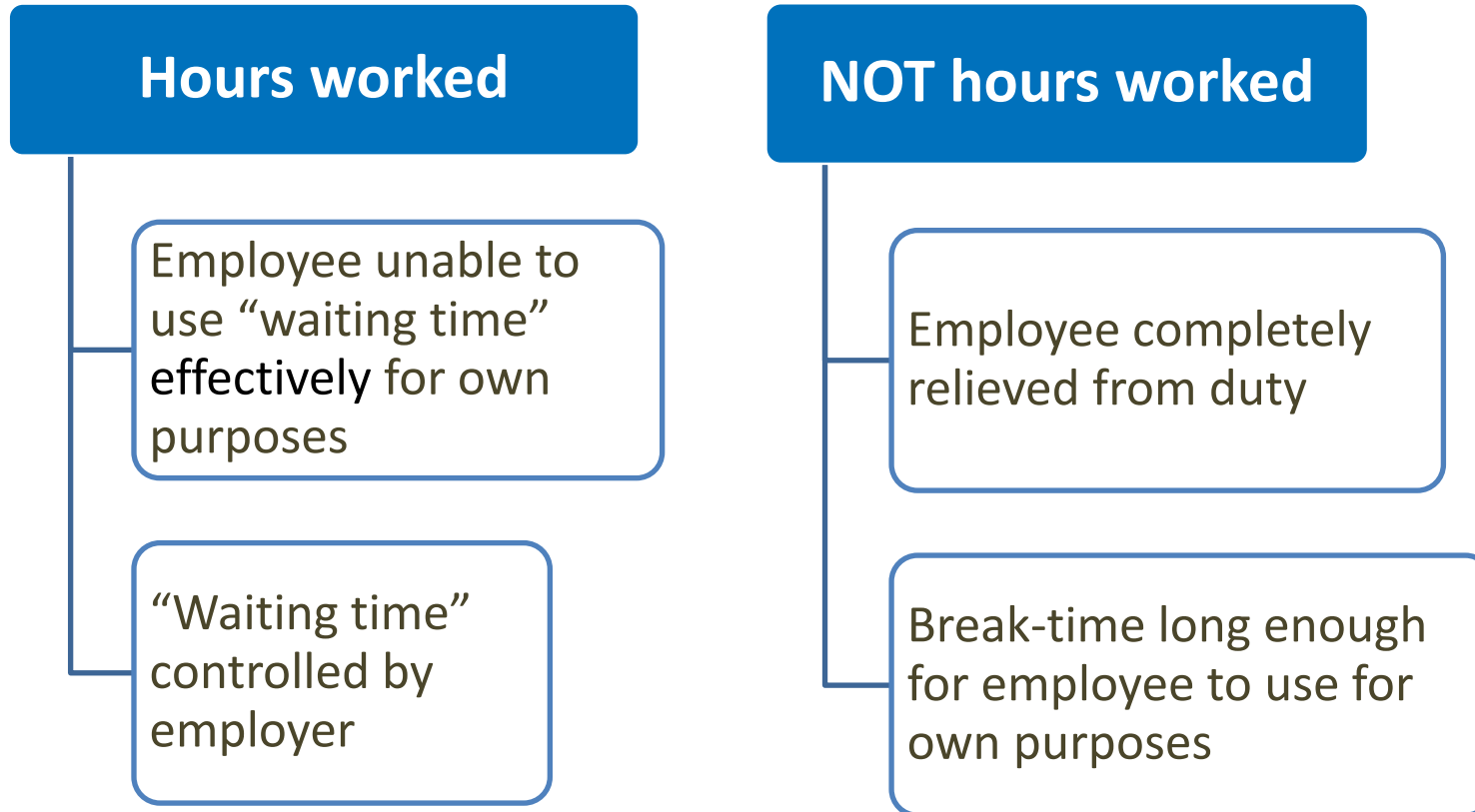
An employee must be paid for all of the time considered to be “hours worked” under the FLSA.

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.

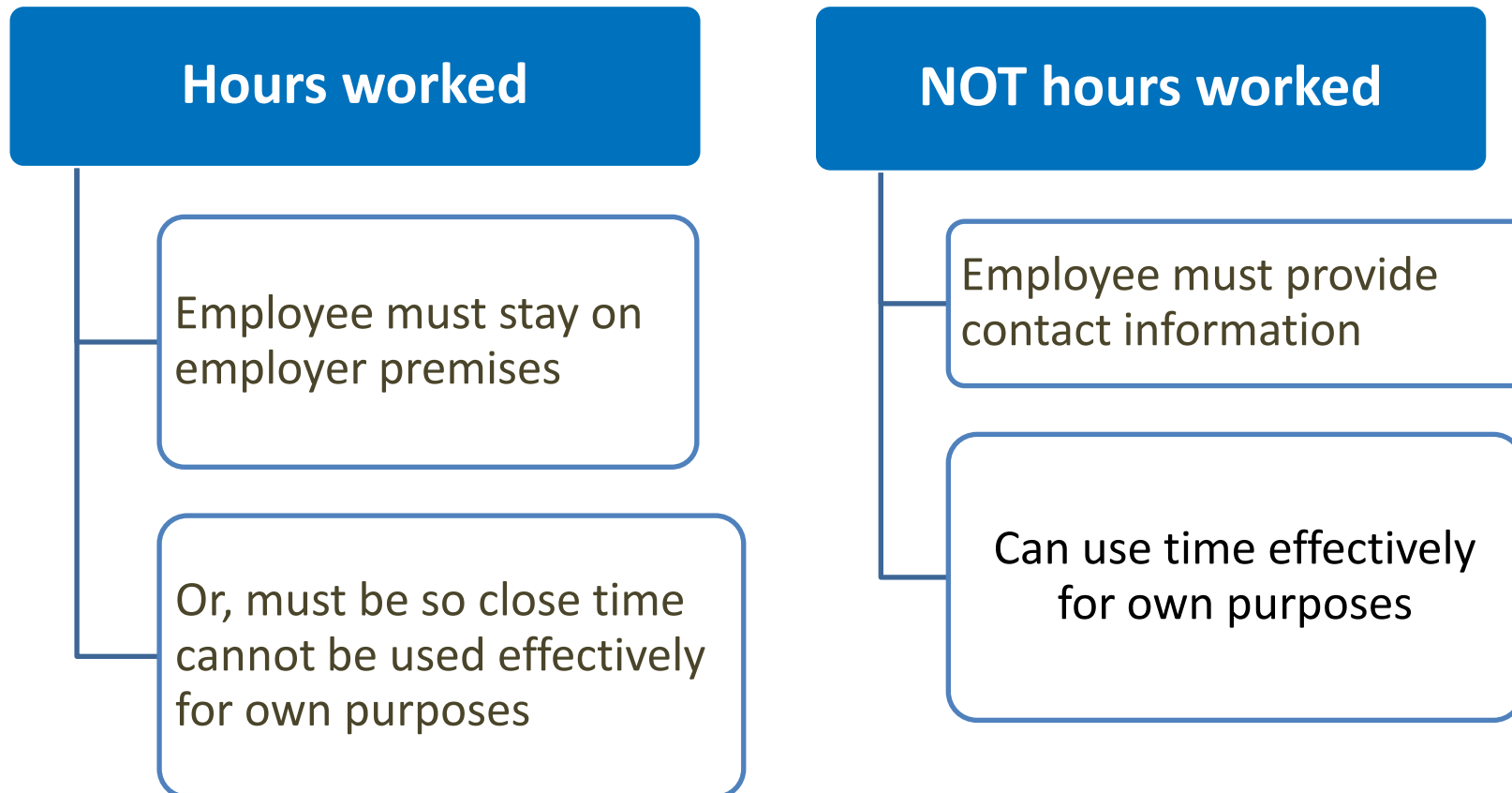
Minimum Wage

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

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

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:** deduct for 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 (except for statutory exclusions) by total number of hours worked in workweek

Total Compensation (except for statutory exclusions)

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Total Hours Worked = RR

- *Regular Rate* 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*

Overtime

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

Overtime

- **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

Overtime

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; and
 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.

Overtime

Regular Rate and Premium Pay for OT Hours

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

Total Compensation (except for statutory exclusions)

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Total Hours Worked = RR

STEP 2: $RR \times .5 =$ Half-time Premium Pay per OT Hour

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

Overtime

Exercise: Production Bonus

Hourly Rate:	\$9.00	$48H \times \$9.00 =$	\$432.00
Bonus per week:	\$10.00	$\$432 + \$10.00 =$	\$442.00
Hours worked:	48	$\$442.00 \div 48H =$	\$9.21 RR
		$\$9.21 \times .5 =$	\$4.61
		$\$4.61 \times 8H =$	\$36.88 OT
Total compensation for week:		$\$442.00 + \$36.88 =$	\$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

Exercise: Piece Rates

Piece Rate Wages		46H @ Piece Rate:	\$391.00
for week :		4H x \$7.25 =	\$29.00
	\$391.00	Production Bonus:	\$12.50
Piece Rate Hours:	46	Total ST Earnings:	\$432.50
Wait Time Rate:	\$7.25	\$432 ÷ 50H =	\$8.65 RR
Wait Time Hours:	4	\$8.65 x .5 =	\$4.33
Production Bonus		\$4.33 x 10H =	\$43.30 OT
for week :	\$12.50		
Total Hours Worked:	50		
Total compensation for week:		\$432.50 + \$43.30 =	\$475.80

Overtime

Exercise: Salary for Fixed Hours

Weekly Salary for		$\$420 \div 40 =$	\$10.50 RR
40 hours:	\$420.00	$\$10.50 \times 1.5 =$	\$15.75 OT
Fixed Hours:	40	Rate	
Hours Worked		$\$15.75 \times 8H =$	\$126.00 OT
that workweek:	48	$\$420 + \$126 =$	\$546.00
		Total compensation due,	
		including OT	

Overtime

Exercise: Fixed Salary for Fluctuating Hours

**Weekly Salary-for all
hours worked:**

\$420.00

$$\$420 \div 49H =$$

\$8.57 RR

Week 1

Hours Worked:

49

Additional Half-Time Rate:

$$\$8.57 \times .5 =$$

\$4.29

$$\$4.29 \times 9H =$$

\$38.61 OT

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

\$458.61 Total

compensation due for Week 1

Overtime

Exercise: Fixed Salary for Fluctuating Hours

Weekly Salary-for all hours worked : \$420.00

$\$420 \div 41H = \10.24 RR

Week 2

Hours Worked: 41

Additional Half-Time Rate:

$\$10.24 \times .5 = \5.12

$\$5.12 \times 1H = \5.12 OT

$\$420 + \$5.12 = \$425.12 \text{ Total compensation due for Week 2}$

Overtime

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 reimbursed

Overtime

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

Overtime

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

- Executive Employees
- Administrative Employees
- Professional Employees

541 Exemptions

Salary Basis

Salary Level

Job Duties

Overtime

“White Collar” Exemption: 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, given particular weight

Overtime

“White Collar” Exemption: 20% Owner Executives *Executive Exemption* also includes

Any employee who:

- Owns at least a bona fide 20% equity interest in the enterprise at which he or she is employed, and
- Is actively engaged in management of that enterprise

Salary level and salary basis tests do not apply to employees who meet these requirements

Overtime

“White Collar” Exemption: Administrative Duties

Primary duty

- 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.
 - Includes activities such as analysis, making determinations, setting prices, assessing risk, committing company resources, negotiating, and similar tasks.

Overtime

“White Collar” Exemption: Administrative Duties

Management or General Business Operations Includes:

- 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

Overtime

“White Collar” Exemption: Professional Duties

Primary duty

- Performance of work requiring advanced knowledge in field of science or learning customarily acquired by a prolonged course of specialized instruction; or
- Performance of work requiring invention, imagination, originality, or talent in recognized artistic or creative field.

Overtime

“White Collar” Exemption: Professional Duties Field of Science or Learning



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

Overtime

“White Collar” Exemption: Exempt Medical Professions

1. Doctors, 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. Dental Hygienists
 - 4 years pre-professional and professional study in accredited college or university
4. Certified Physician Assistants
 - 4 years pre-professional and professional study, **and** graduation from accredited physician assistant program

Overtime

“White Collar” Exemption: Professional Duties Other commonly exempt professions

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

Overtime

Non-Exempt Professions

Common errors: misapplication of exemptions

- 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

Overtime

“White Collar” Exemption: Professional Duties *Recognized Field of Artistic or Creative Endeavor*

- **Music**

Musicians, composers, conductors,
soloists

- **Graphic Arts**

Painters, photographers,
cartoonists

- **Acting**

- **Writing**

Essayists, novelists, short-story writers,
playwrights, screenwriters who choose
their own subjects, responsible writing
positions in advertising agencies

Overtime

“White Collar” Exemption: Computer-related Occupations

Primary duty

- 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.

Overtime

“White Collar” Exemption: Computer-related Occupations

Additionally, exempt employees must also receive either:

- Guaranteed Salary of at least \$684 weekly
- Hourly rate of at least \$27.63

Overtime

“White Collar” Exemption: Outside Sales

Primary duty

- 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

Overtime

Exemption for Employees Paid Commissions by Retail Establishments

Employee is exempt from overtime pay if:

- Employed by a *retail or service establishment*;
- More than half employee's total earnings in *representative period* are commissions on goods, services; and
- 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

Overtime

Exemption for Employees Paid Commissions by Retail Establishments

Retail or Service Establishment

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

- is not for resale; and
- is recognized as retail sales or services in the particular industry

Overtime

Exemption for Employees Paid Commissions by Retail Establishments

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

Overtime

Exemption for Employees Paid Commissions by Retail Establishments

Regular Rate More than One and One-Half Minimum Wage

To determine:

Divide employee's total earnings by
total hours worked within workweek

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

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

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

“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

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.

Download the poster electronically at :
<https://www.dol.gov/agencies/whd/posters/flsa>

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 Enforcement

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 subject to civil money penalties for each violation

[Civil Money Penalties Chart](#)

FLSA Compliance Assistance

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

[Fair Labor Standards Act of 1938](#)

[Regulations](#)

[FLSA Poster.pdf](#)

[Handy Reference Guide.pdf](#)

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

[Fact Sheets](#)

[Opinion Letters](#)

FLSA Compliance Assistance

- Call WHD toll free and confidential information and helpline:
1-866-4US-WAGE (1-866-487-9243)
- Call or visit the nearest Wage and Hour Division Office: [WHD Offices](#)
- Employment Laws Assistance for Workers and Small Businesses
(ELAWS): [Elaws](#)

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