



Contract Work Hours and Safety Standards Act and Fair Labor Standards Act Overtime and Government Contracts



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

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Introduction

- The Wage and Hour Division (WHD) is responsible for administering and enforcing several federal laws involving labor standards including:
 - The Davis-Bacon and Related Acts (DBRA);
 - The McNamara – O’Hara Service Contract Act (SCA);
 - Executive Orders applicable to federal contractors;
 - The Fair Labor Standards Act (FLSA);
 - Family Medical Leave Act (FMLA).

Davis-Bacon and Related Acts

- The DBRA applies to contractors and subcontractors performing on federal or federally assisted contracts in excess of \$2,000 for construction, alteration, or repair.
- Covered contractors and subcontractors must pay their laborers and mechanics working on the site of work no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area.

Is Overtime Required?

- Federal laws that require overtime pay:
 - The Contract Work Hours and Safety Standards Act (CWHSSA), and
 - The Fair Labor Standards Act (FLSA)



Contract Work Hours and Safety Standards Act

When are Contracts Covered by CWHSSA?

- Covers contracts over \$100,000 (\$150,000 for contracts procured under the Federal Acquisition Regulation) that require or involve the employment of laborers and mechanics, including guards and watchpersons, on:
 - Davis-Bacon and Related Acts (DBRA) covered construction contracts; and
 - Service Contract Act (SCA) covered service contracts.
- CWHSSA is self-executing (even if not stated in contract)
- No “site of the work” limitation

What Does CWHSSA Require?

- Overtime pay for laborers, mechanics, guards, and watchpersons at a rate not less than one and one-half times the basic rate of pay for hours worked over 40 in a workweek on covered contracts
- Liquidated damages can be assessed per day for each laborer, mechanic, guard, or watchperson not paid required overtime

Which Hours Count for CWHSSA Overtime?

- CWHSSA applies to laborers, mechanics, guards, and watchpersons for the time spent on covered contract work only.
- To determine whether a worker is due overtime under CWHSSA, include all time the worker spent working on covered contracts (off-site as well as on-site on DBRA projects) and exclude all commercial, non-government, non-covered work.

What is the Basic Rate of Pay Under CWHSSA?

- CWHSSA requires the payment of not less than one and one-half the “basic rate” of pay for all hours worked over 40 hours in a workweek
- The basic rate of pay under CWHSSA is the straight time hourly rate, which cannot be less than the basic hourly rate required in an applicable wage determination, not including any required fringe benefit amount.
- However, if a worker is paid a regular rate above the basic hourly rate (excluding fringe benefits or cash in lieu of fringe benefits), that regular rate will be considered the basic rate.

What About the Fringe Benefits?

- Although fringe benefits must be paid for all hours worked, additional half-time premiums do not need to be computed for amounts paid to fulfill the fringe benefit rate listed in the applicable wage determination under CWHSSA
- This applies to both cash payments made to comply with the fringe benefit portion of the prevailing wage requirement and contractor contributions to bona fide benefit plans made to comply with that requirement



Fair Labor Standards Act

What About the FLSA Overtime Provisions?

- Overtime pay requirements may apply to a contractor or subcontractor under the FLSA on contracts to which CWHSSA does not apply.
- Even when CWHSSA does apply to a contract, FLSA may also apply.

What Does the FLSA Require?

- Under the FLSA, an employer is required to compensate an employee at not less than one and one-half times their regular rate of pay for all hours worked over 40 in a workweek.
- 29 U.S.C. 207(a); 29 CFR 778.101

Wait...Did You Say They Both Apply?

- 29 CFR 5.32 and 778.6 discuss dual application of Davis-Bacon and FLSA overtime requirements
- Unless specifically exempted from FLSA overtime pay requirements, an employee who performs work on both federally funded/federally assisted projects and commercial work in the same workweek must receive an overtime premium for hours worked over 40 in the workweek.

A construction site with rebar in the foreground and workers in the background. The rebar is arranged in a grid pattern, and the workers are visible in the background, some wearing hard hats and safety vests. The scene is brightly lit, suggesting a sunny day.

Hours Worked

What Are Hours Worked, Anyway?

- CWHSSA and FLSA overtime requirements apply only to “hours worked”
- Non-work hours, such as paid holidays and paid leave, are not counted in computing hours worked for overtime purposes
- Rules regarding “hours worked” –
29 CFR 785



Regular Rate and Overtime Premium

What if Someone Works in Multiple Jobs?

- If in a single workweek an individual works in more than one classification with different rates of pay, the half-time premium should be computed based on the weighted average rate.
- The total straight time pay at all rates in the workweek is divided by the total number of hours worked in the workweek to determine the regular rate of pay.

What About the Rate in Effect?

- A worker who performs work in two or more classifications for which different straight time hourly rates are established may also agree with their employer, in advance of performing the work, to be paid at a rate not less than one and one-half times the hourly non-overtime rate established for the type of work they will perform during overtime hours.

How Do I Compute Overtime Pay Under the FLSA?

A worker is hired to perform work on a covered construction contract in two job classifications: Electrician and Painter

- The wage determination rate for an Electrician is \$35.00 (basic hourly rate) plus \$15.00 in fringe benefits
- The wage determination rate for a Painter is \$33.00 (basic hourly rate) plus \$17.00 in fringe benefits
- The payroll shows that the worker performed 30 hours of painting and 18 hours of electrical work
- The next three slides illustrate the two methods of computing the overtime pay

Method 1: Weighted Average Regular Rate

Computation of the overtime premium based on the weekly average “regular rate” for the workweek:

- Step 1 – Determine the straight time wages due – excluding fringe benefits:

• Painter: 30 hours x \$33.00/hour	=	\$990.00
• Electrician: 18 hours x \$35.00/hour	=	\$630.00
• Total straight time wages due	=	\$1,620.00

(continued on next slide)

Method 1: Weighted Average Regular Rate (continued)

Computation of the overtime premium based on the weekly average “regular rate” for the workweek:

- Step 2 – Calculate the “regular rate” of pay:
 - Total straight time compensation/Total hours worked
 - $\$1,620/48$ hours = $\$33.75$ regular rate
- Step 3 – Calculate the overtime premium due:
 - Additional $\frac{1}{2}$ time based on the average regular rate
 - $\$33.75 \times .5 = \16.88×8 hours overtime = $\$135.04$

Method 2: Rate in Effect

Computation of the overtime premium based on the “rate in effect” when the overtime hours were worked (if by established advance agreement, as described previously):

In this example the 8 overtime hours occurred on a Saturday, when the worker was performing electrical work. The overtime premium may be computed as follows:

- $\$35.00 \times .5 = \$17.50/\text{hour} \times 8 \text{ hours} = \140.00
- Note: In some cases, a question arises over whether a cash payment made to a laborer or mechanic is paid in lieu of a fringe benefit contribution or whether it is simply part of the individual’s normal basic hourly rate. In the latter situation, the cash payment is not excludable in computing the overtime pay obligation.



DBRA Overtime Computations



DBRA Overtime Computations

- The next three slides provide examples that reflect correct computations under CWHSSA or FLSA for a worker who worked 44 hours on a covered Davis-Bacon and Related Act contract as an Electrician, where the wage determination rate for an Electrician is \$35.00 (basic hourly rate) plus \$15.00 in fringe benefits.
- The slides relate to different ways contractors may meet the Davis-Bacon and CWHSSA/FLSA requirements for hours worked over 40 in a workweek.

DBRA Overtime Computations – Example 1

If the contractor paid \$35.00 in cash wages and paid \$15.00 in fringe benefits, the Electrician would receive:

- 44 hours x \$35.00 = \$1,540.00 cash wages
- 44 hours x \$15.00 = \$660.00 in fringe benefits
- 4 hours x .5 x \$35.00 = \$70.00 for CWHSSA overtime earnings
- Total compensation = \$2,270.00

DBRA Overtime Computations – Example 2

If the contractor paid \$30.00 in cash wages and paid \$20.00 in fringe benefits, the Electrician would receive:

- 44 hours x \$30.00 = \$1,320.00 cash wages
- 44 hours x \$20.00 = \$880.00 in fringe benefits
- 4 hours x .5 x \$35.00 = \$70.00 for CWHSSA overtime earnings
- Total compensation = \$2,270.00

DBRA Overtime Computations – Example 3

If the contractor paid \$35.00 in cash wages, \$5.00 cash in lieu of fringe benefits, and \$10.00 in fringe benefit contributions, the Electrician would receive:

- 44 hours x \$35.00 = \$1,540.00 cash wages
- 44 hours x \$5.00 = \$220.00 cash in lieu of fringe benefits
- 44 hours x \$10.00 = \$440.00 in fringe benefits contributions
- 4 hours x .5 x \$35.00 = \$70.00 for CWHSSA overtime earnings
- Total compensation = \$2,270.00



SCA Overtime Computations



Overtime Computations – SCA Contracts

- The next slide provides an example that reflects correct computations under CWHSSA or FLSA for an employee who worked 44 hours on a covered SCA contract as a janitor, with a wage rate of \$18 per hour and \$4.80 H&W

SCA Overtime Computations – Example

- A service employee worked 44 hours on a covered contract as a Janitor
- Applicable wage determination rate is \$18.00 per hour, with an additional \$4.80 in H&W
 - 40 hours x \$4.80 = \$192.00 H&W FBs
 - 44 hours x \$18.00 = \$792.00 Cash Wage
 - 4 hours x .5 x \$18.00 = \$36.00 Overtime
 - Total Compensation = \$1,020.00



Liquidated Damages

What About Liquidated Damages?

CWHSSA

- On CWHSSA covered contracts, liquidated damages may be computed for each calendar day on which an individual did not receive the required overtime compensation.
- Liquidated damages are assessed by the contracting agency, but the contracting agency must seek the concurrence of the Administrator to reduce or waive them, per 29 CFR 5.8.

FLSA

- The statute provides that liquidated damages shall be assessed in an amount equal to the unpaid compensation, including amounts computed for overtime.
- Liquidated damages are assessed by WHD.

Internet Sites

- Wage Determinations: <https://sam.gov>
- Wage and Hour Division: <http://www.dol.gov/agencies/whd/government-contracts>
- WHD Protections for Workers in Construction under the Bipartisan Infrastructure Law: <https://www.dol.gov/agencies/whd/government-contracts/protections-for-workers-in-construction>
- Resource Book: <http://www.dol.gov/agencies/whd/prevaling-wage-resource-book>
- Office of the Administrative Law Judges Law Library: <https://www.dol.gov/agencies/oalj/topics/libraries/LIBDBA>
- Prevailing Wage Topic videos: <https://www.dol.gov/agencies/whd/government-contracts/construction/presentations>

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